# STATE OF MICHIGAN

# COURT OF APPEALS

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ROBERT P. RAHAIM and PATRICIA S. RAHAIM,

Plaintiff-Appellants,

v

ROBERT S. RAHAIM,

Defendant,

and

KELLY A. RAHAIM,

Defendant-Appellee.

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UNPUBLISHED
November 27, 2001

No. 216664
Wayne Circuit Court
LC No. 98-812824-CK

Before: Collins, P.J., and Jansen and Whitbeck, JJ.

PER CURIAM.

Plaintiffs Robert P. Rahaim and Patricia Rahaim appeal as of right. They challenge the trial court's order granting summary disposition and $2,000 in costs to their former daughter-in-law, defendant Kelly Rahaim, who was married to their son, defendant Robert S. Rahaim. We affirm the trial court's decision to grant summary disposition and award sanctions but vacate the amount of the sanctions. We remand so the trial court can recalculate the costs it ordered as sanctions.

## I. Basic Facts And Procedural History

Defendants married in October 1977. In 1981, plaintiffs loaned defendants $126,000 so they could purchase a house. Defendants executed an interest-free promissory note (the note) on October 13, 1981, that was payable to both plaintiffs on demand. On the same day, defendants executed a mortgage against the house they purchased with the loan proceeds.

Approximately seven years later, on July 25, 1988, defendants applied for a loan and second mortgage with Comerica Bank so that they could improve their home and invest in a race car. Comerica staff told defendants that they had to discharge the first mortgage that plaintiffs held on their home before they could secure a new loan and mortgage. The parties executed a

document discharging the mortgage securing the $126,000 loan. Specifically, the discharge document states that the October 13, 1981, mortgage on defendants' house "is fully paid, satisfied and discharged." Nevertheless, the parties had very different ideas concerning the conditions for this discharge. Plaintiffs claimed that all the parties agreed that discharging the mortgage would not forgive the note and that defendants were still obligated to repay the full $126,000 debt. Plaintiffs also claimed that any representations they made regarding discharging the mortgage were solely to the bank, not defendants. Kelly Rahaim claimed that plaintiffs agreed to execute any documents necessary to assure the bank that defendants had no further obligations under the note.

The parties apparently did not discuss repayment on the note for the next several years, although plaintiffs contend that their son paid $2,500 toward the debt in 1991. For instance, during the negotiations leading up to defendants' 1997 divorce, Kelly Rahaim said, she and her former husband and their respective attorneys never mentioned the note and mortgage. Indeed, the divorce settlement agreement does not refer to the $126,000.[1] Plaintiffs, however, argue that the attorneys in the divorce action were aware of the debt, but made a calculated decision not to mention it in the divorce settlement because they did not know how to treat it.

On March 16, 1998, plaintiffs demanded that defendants pay the note in-full. When defendants did not reply to the payment demand, plaintiffs on April 24, 1998, filed a complaint in the trial court requesting a judgment in the amount of $126,000 based on the note, despite their position that their son had already paid $2,500 of the debt. Robert S. Rahaim did not answer the complaint. Kelly Rahaim, however, denied liability under the note and asserted a variety of defenses, including the statute of limitations, accord and satisfaction, res judicata, estoppel, and the unclean hands doctrine. She then moved for summary disposition pursuant to MCR 2.116(C)(7), (8) and (10).

Following a hearing on the motion for summary disposition in October 1998, the trial court concluded that the dispute over the note should have been settled in the divorce action. When plaintiffs' counsel pressed the trial court to explain why it granted summary disposition to Kelly Rahaim, the trial court stated that "[a]ll three of his [defense counsel's] positions were accepted by the Court" and that

> the matter of the repayment of the debt is res judicata in the divorce action and that the father-in-law's or the ex-father-in-law's interests were represented by his son in that, that any claim for these monies is now the responsibility of his son and it's because I find the action in this Court to be a frivolous attempt to undo the divorce action in the marital estate that I assess costs in the amount of fifteen hundred dollars.

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[1] The divorce settlement agreement refers to a $45,000 debt defendants owed Robert P. Rahaim. Because the amount owed is different and is not, evidently, owed to Patricia Rahaim, we think it possible to infer that this is a different debt.

The order granting Kelly Rahaim summary disposition cited MCR 2.116(C)(7), (8), and (10) as the grounds for the trial court's decision. The order awarded Kelly Rahaim costs in the amount of $1,500 because, as the trial court explained at the hearing, this lawsuit was a frivolous attempt to upset the divorce action. The trial court awarded Kelly Rahaim an additional $500 in costs at the hearing for entry of the proposed order granting summary disposition. The trial court explained its decision by simply stating that it was awarding costs based on a Court of Appeals decision; the trial court did not specify which case, court rule, or statute supported this $500 sanction.

## II. Summary Disposition

### A. The Issue On Appeal

On appeal, plaintiffs challenge the many alternative grounds that Kelly Rahaim raised to support her motion for summary disposition. This was a rational way to approach this issue because the trial court's order granting summary disposition does not make clear what subsection of the court rule merited summary disposition. In fact, probably because Kelly Rahaim prepared it, the order cites all three of the grounds she claimed merited summary disposition. Even though the trial court's remarks at the hearing on the motion for summary disposition suggest that it found more than one of Kelly Rahaim's arguments compelling, it is safe to say that the trial court focused primarily on the res judicata issue. While we are inclined to agree that res judicata did not bar this lawsuit,[2] we focus our attention on the statute of limitations question that the parties disputed in the trial court because it is dispositive in this case. This implicates whether summary disposition was proper under MCR 2.116(C)(7).

### B. Standard Of Review

This Court reviews a trial court's ruling on a motion for summary disposition de novo.[3] Similarly, we review questions concerning statutory construction de novo.[4]

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[2] "[U]nder the doctrine of res judicata, claims that were or could have been reduced to final judgment are barred from being brought a second time." *Quinton v General Motors Corp*, 453 Mich 63, 98; 551 NW2d 677 (1996) (Boyle, J., concurring). Among other factors, whether the parties to the present action were also parties to an earlier action that dealt with the same claims is absolutely critical to determining whether res judicata applies. *King v Michigan Consolidated Gas Co*, 177 Mich App 531, 635; 442 NW2d 714 (1989). At issue in this case is whether the divorce action settled plaintiffs' entitlement to have defendants repay the loan the note signified. However, not only were the core legal issues and claims in the divorce action necessarily different from the claims in this case, plaintiffs were not parties to the divorce. Thus, the trial court may have incorrectly concluded that res judicata barred this lawsuit.

[3] *Van v Zahorik*, 460 Mich 320, 326; 597 NW2d 15 (1999).

[4] *Oxendine v Secretary of State*, 237 Mich App 346, 348-349; 602 NW2d 847 (1999).

C. Legal Standard

MCR 2.116(C)(7) permits a trial court to summarily dispose of a claim if the statute of limitations bars its litigation. To support a motion for summary disposition under this particular court rule, a party may submit affidavits and other documentary evidence,[5] which the trial court must then consider.[6] We must also consider all these pieces of evidence supporting or opposing summary disposition and do so in the light most favorable to the nonmovant.[7]

D. Relevant Dates

In order to untangle the relatively intricate arguments of the parties with respect to the statute of limitations issue, it is well to have the relevant dates clearly in mind. Defendants executed the note on October 13, 1981. Although there is some dispute about this, we will accept as true plaintiffs' assertion that in May of 1991 Robert S. Rahaim, their son, paid "2500 toward the outstanding indebtedness of the [note] on behalf of Kelly [Rahaim] and myself." On March 16, 1998, plaintiffs demanded that defendants pay the note in full. On April 24, 1998, plaintiffs filed their complaint.

E. Statute of Limitations

(1) The Statute In Effect At The Time Defendants Executed The Note

Before its amendment in 1993, Article 3 of the UCC,[8] did not have a specific statute of limitations. Rather, the more generic statute of limitations,[9] which provides that "[t]he period of limitations is 6 years for all other actions to recover damages or sums due for breach of contract," applied to actions to enforce negotiable instruments.[10] This generic statute of limitations was in effect at the time defendants executed the note on October 13, 1981.

The next question relates to when plaintiffs' claims "accrued."[11] 1964 PA 250[12] specified that a cause of action on a note that is payable on demand accrues on the date specified in the

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[5] MCR 2.116(G)(3).

[6] MCR 2.116(G)(5).

[7] *Patterson v Kleiman*, 447 Mich 429, 434-435; 526 NW2d 879 (1994).

[8] The title of Article 3 of the UCC now refers to "negotiable instruments." Previously, the title referred to "commercial paper." There is, however, no significant difference in the subject matter of the article as a whole.

[9] MCL 600.5807(8).

[10] *Diversified Financial Systems, Inc v Schanhals*, 203 Mich App 589, 491-592; 513 NW2d 210 (1994); see also *Harik v Harik*, 861 F2d 139, 140 (CA 6, 1988).

[11] See MCL 600.5827.

[12] Codified at MCL 440.3122 but repealed by 1993 PA 130.

instrument or, "if no date is stated, on the date of issue."[13] The language of the note in the present action indicates that it is payable on demand and the note is clearly dated October 13, 1981. We conclude that plaintiffs' cause of action "accrued" on October 13, 1981, at which time the six-year period of limitations began running. Accordingly, absent some intervening factor, the six-year statute of limitations would have expired on October 13, 1987. This was well before plaintiffs filed suit on April 24, 1998. Therefore, again absent some intervening factor, plaintiffs' suit would be barred by the running of the statute of limitations.

(2) The Statute In Effect At The Time Robert S. Rahaim Made His $2500 Payment

Plaintiffs' argue that the intervening factor is Robert S. Rahaim's payment of $2500 in May of 1991. They argue that this payment not only revived the debt but also operated to toll the statute of limitations. Assuming that this is so, we note that, again absent some intervening factor, the then applicable generic six-year statute of limit of limitations would have expired in May of 1997. This was before plaintiffs filed suit on April 24, 1998.

(3) 1993 PA 130

Plaintiffs are thus forced to argue that there was a *second* intervening factor. This, they argue, was the passage of an amendment, in the form of 1993 PA 130, to the UCC pertaining to negotiable instruments that became effective on September 30, 1993. Plaintiffs direct our attention to subsection (2) of MCL 440.3118 which, as amended by 1993 PA 130, now reads:

> (2) Except as provided in subsection (4) and (5),[14] if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within 6 years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years.

There are two relatively obvious problems with plaintiffs' argument. The first concerns retroactivity. Plaintiffs argue that this amendment should be construed to have retroactive effect.

Michigan law generally holds that all statutes apply prospectively unless the context of the statute itself makes clear that the Legislature intended the statute to apply retroactively.[15] In

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[13] Because the Revised Judicature Act does not prescribe a specific accrual rule for this type of action, MCL 600.5827 provides that a claim accrues "at the time the wrong upon which the claim is based was done . . . ." However, because the Legislature enacted the accrual provision that specifically applies to negotiable instruments after it enacted the general accrual provision in the Revised Judicature Act, we presume that the Legislature intended for this more specific statute to apply in this case. See, generally, *Malcolm v East Detroit*, 437 Mich 132, 139; 468 NW2d 479 (1991).

[14] These subsections are not applicable here.

[15] *Gormley v General Motors Corp*, 125 Mich App 781, 788; 336 NW2d 873 (1983).

*In re Certified Questions*,[16] the Michigan Supreme Court outlined the four legal considerations that determine whether the statute may be applied retroactively, contrary to this general presumption of prospective effect.

The first consideration is whether there is any language in the statute that implies retroactivity.[17] There is, quite literally, no language in 1993 PA 130 that suggests that it should be applied retroactively. In fact, other than the periods of limitation described in the statute, the only reference to any time period in the statute at all is the effective date, which indisputable occurred twelve years *after* defendants executed the note. This weighs against applying this new statute of limitations to the instant case.

The second consideration merely admonishes courts not to conclude that a statute applies retroactively because it relates to an act that occurred before the statute was enacted. Because the statute in question does not make any specific references to "antecedent events,"[18] this consideration does not urge retroactive application. Furthermore, plaintiffs do not advance an argument on this ground.

The third consideration is whether the new statute "takes away or impairs vested rights acquired under existing laws, or creates a new obligation and imposes a new duty, or attaches a new disability with respect to transactions or considerations already past."[19] A statute that the Legislature intends to have retroactive effect does one or more of these things. However, that is not the case with regard to 1993 PA 130. The statute does not include any language that refers to claims that have *already* accrued when imposing the time limit on when a cause of action can be filed. For instance, the statute does not require holders of demand notes executed before the statute's effective date to make a demand before a certain date or within a certain time.[20] Thus, there is no reason to believe that the Legislature intended 1993 PA 130 to apply retroactively because it affects claims that have already accrued, which would be impermissible.[21]

The fourth and final consideration, which plaintiffs primarily rely on to support their retroactivity argument, is whether the statute is remedial or procedural in nature and does not otherwise affect a claim that accrued before the statute was made effective.[22] We know that "[a] statute is remedial or procedural if it is designed to correct an existing oversight in the law or

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[16] *In re Certified Questions*, 416 Mich. 558, 570-571, 331 NW2d 456 (1982).

[17] *Id*. at 570.

[18] *Id*. at 570-571, quoting *Hughes v Judges' Retirement Bd*, 407 Mich 75, 86; 282 NW2d 160 (1979).

[19] *Id*. at 571, quoting *Hughes*, *supra* at 85.

[20] Compare this statute with 1993 PA 78, § 4(1), which provided that the amendments to the general tolling provisions in MCL 600.5856 did not "apply to causes of action arising before October 1, 1993."

[21] *Id*. at 572-576.

[22] *Id*. at 571.

redress an existing grievance, or is intended to reform or extend existing rights."[23] The problem with concluding that this consideration supports retroactivity is that 1993 PA 130 is truly new legislation. Although taking advantage of a previously-numbered section of the UCC, the 1993 amendment that created the statute as it now reads created a wholly new statute of limitations that specially applies to notes rather than amending an existing statute.[24] The statute did not merely close a loophole, cure an oversight, or remove some provision that was irrelevant to contemporary commercial practices, or fix a problem in the way the law related to notes previously worked,[25] because there was no previous statute of limitations that dealt directly with notes.[26] Nor did the statute give note holders a new right when it came to enforcing their right to repayment of the underlying debt.[27] While statutes of limitation are often view as procedural in nature,[28] the *amendment* at issue in this case defies classification as procedural because it does not prescribe methods by which an individual may rely on the statute of limitations.[29] These factors all suggest that this new statute of limitations is not intended to be applied retroactively.

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[23] *Stanton v City of Battle Creek*, 237 Mich App 366, 373; 603 NW2d 685 (1999); see also *Saylor v Kingsley Area Emergency Ambulance Service*, 238 Mich App 592, 598; 607 NW2d 112 (1999).

[24] See, generally, *Seaton v Wayne Co Prosecutor*, 233 Mich App 313, 322; 590 NW2d 598 (1998) (suggesting that remedial legislation that applies retroactively often involves amending "existing legislation").

[25] See *id*. at 320-323 (amendment to the Freedom of Information Act applied retroactively because the Legislature intended to cure the "mischief" and expense caused when prisoners file frivolous requests); *Preston v Dep't of Treasury*, 190 Mich App 491, 496-497; 476 NW2d 455 (1991) (tax code amendments were remedial and applied retroactively because it clarified right to a deduction that already existed); *Macomb Co Professional Deputies Ass'n v Macomb Co*, 182 Mich App 724, 730-731; 452 NW2d 902 (1990) (amendment to the Public Employment Relations Act was intended to cure ambiguity between the collective bargaining unit's general duty to negotiate in good faith and the mandate that it bargain on certain pension issues, and so applied retroactively).

[26] The next section explains that MCL 600.5807(8), a general statute of limitations, applied to notes before this change in the UCC.

[27] See *Rookledge v Garwood*, 340 Mich 444, 453; 65 NW2d 785 (1954), quoting 50 American Jurisprudence, § 15, at 33-34.

[28] See *Lothian v Detroit*, 414 Mich 160, 166; 324 NW2d 9 (1982).

[29] Note that while *Allstate Ins Co v Faulhaber*, 157 Mich App 164, 166; 403 NW2d 527 (1987) held that the statutory amendment creating a statute of limitations could apply retroactively, the previous version of the statute was related to the amendment. The section of the UCC at issue in this case, as it read before 1993, was not related to notes to a similar degree. Further, the *Allstate* Court concluded that there would be no prejudice to the defendant if the statute applied retroactively. If this case were binding, see MCR 7.215(H), we would be inclined to see a difference in the level of prejudice between this case and *Allstate* because plaintiffs did not demand payment on the note even once in more than seventeen years. A rational view of this evidence suggests that plaintiffs never really expected repayment, and defendants acted accordingly.

Even, however, if we were to entertain plaintiffs' argument that 1993 PA 130 should be applied retroactively, plaintiffs' second problem is insurmountable. Plaintiffs are forced to suggest that such a retroactive application applies to the revival of the debt accomplished through Robert S. Rahaim's payment of $2500 in May of 1991 *and* that it is the ten-year, not the six-year, statute of limitations that is applicable. The reason for this is quite obvious: if a six-year statute of limitations began to run in May of 1991, it would expire in May of 1997, before plaintiffs brought their suit.

Plaintiffs therefore rely on the second sentence of subsection (2) of MCL 440.3118: "If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of 10 years." We will accept for sake of argument that the first "demand" for payment by plaintiffs came on March 16, 1998. Rather obviously, however, Robert S. Rahaim's payment of $2500 in May of 1991 *was* a payment of principal.

Plaintiffs might argue, however, that this payment was not made "for a continuous period of ten years." This argument, in effect, requires us to rewrite the exception in subsection (2) to the imposition of the ten-year statute of limitations to say that "if neither principal nor interest on the note has been paid *continuously* for a period of 10 years." Such a rewrite would, in our view, change the meaning of the statute entirely. The phrase as written provides an exception to the imposition of the ten-year statute of limitations under circumstances where there has been no payment of principal or interest for a "continuous" – meaning uninterrupted[30] – period of ten years. The phrase as rewritten would mean that for the exception to apply, there must have been payments of principal and interest "continuously" – meaning, presumably, on a regular basis – during the period of ten years. We decline to rewrite the statute in such a fashion. We conclude that the May, 1991, payment brought this situation into the exception to the imposition of the ten-year statute of limitations. Thus, by their reliance on this payment to "revive" the note, plaintiffs are cemented into a six-year statute of limitations commencing in May of 1991. Their suit is, even under their own theory of retroactivity, barred.[31] We hold that 1993 PA 130 does not apply retroactively and that, in any event, the ten-year statute of limitations in that statute is not applicable. Simply put, we hold that plaintiffs filed this lawsuit too late.

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[30] See Websters New World Dictionary, Third College Edition, 1998, definition of "continuous" as "going on or extending *without interruption* or break; unbroken; connected." (Emphasis supplied.)

[31] We are cognizant of the fact that the UCC Comment states that the exception to the ten-year statute of limitations refers to "a family transaction in which a failure to demand payment may indicate that the holder did not intend to enforce the obligation but neglected to destroy the note" and states that, "[a] limitation period that bars stale claims in this kind of case is appropriate if the period is relatively long." There is no question that this case involves a "family transaction," although we question whether plaintiffs are in a position to contend that they did not intend to enforce the note. In any event, we do not believe that the Comment deals directly with the "continuous" versus "continuously" distinction we draw above.

The record does not make clear whether the trial court determined that the statute of limitations barred this cause of action. However, it reached the correct result when it granted summary disposition and we affirm its result even though the trial court did not express this reasoning.[32]

## III. Sanctions

### A. Standard Of Review

Plaintiffs next contend that the trial court erred in awarding Kelly Rahaim $1,500 in costs as a sanction for what the trial court concluded was a frivolous lawsuit. They also challenge the trial court's decision to award her an additional $500 in costs. We review the decision to award sanctions for an abuse of discretion[33] and the prerequisite finding that the lawsuit was frivolous for clear error.[34]

### B. The Authority To Sanction

The trial court has the authority to sanction a party pursuant to MCR 2.114 and MCL 600.2591. Because the trial court did not explicitly state whether it was relying on the court rule or statute to impose sanctions in this case, we examine them both.

MCL 600.2591 is relatively uncomplicated, providing:

> (1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.
>
> (2) The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees.
>
> (3) As used in this section:
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> (a) "Frivolous" means that at least 1 of the following conditions is met:
>
> (i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

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[32] *Glazer v Lamkin*, 201 Mich App 432, 437; 506 NW2d 570 (1993).

[33] *Kitchen v Kitchen*, 239 Mich App 190, 195; 607 NW2d 425 (1999).

[34] *State Farm Fire & Casualty Co v Johnson*, 187 Mich App 264, 268-269; 466 NW2d 287 (1991); see also MCR 2.613(C).

(ii) The party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true.

(iii) The party's legal position was devoid of arguable legal merit.

(b) "Prevailing party" means a party who wins on the entire record.

MCR 2.114 works in a somewhat more complicated manner due to a series of internal cross-references. As a whole, MCR 2.114 works to ensure that all documents parties and their representatives, usually lawyers, submit to the trial court are factually accurate and have no improper purpose. To do this, the court rule establishes a way for individuals to verify their pleadings when specifically required to do so.[35] This, however, is a relatively small class of documents in comparison to the great number of documents that do not require verification. So the court rule requires every party or attorney submitting a document to a trial court to sign the document submitted.[36] This signature does not merely identify the person who submitted the document. Rather it means that the person who signed the document "certifies" that

(1) he or she has read the document;

(2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and

(3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

If the person who signs the document, or the party that person represents, has submitted the document to the trial court for one of these improper purposes, then that person or party falls squarely within the sanctions allowed in MCR 2.114(E). MCR 2.114(E) requires[37] a trial court, even without a motion from a party, to impose an "appropriate sanction" for violating these signature and verification rules on the person who signed the document, the party that person represents, or both. This sanction may not include punitive damages, but the trial court is at liberty to include "the reasonable expenses [the innocent party] incurred because of the filing of the document, including reasonable attorney fees."

MCR 2.114 does not, however, stop with sanctions for signature and verification violations. Instead, in MCR 2.114(F), the court rule permits a trial court to sanction a party for filing a frivolous claim or raising a frivolous defense. Unlike MCR 2.114(E) and MCL 600.2591, MCR 2.114(F) does not specifically define what constitutes a frivolous claim or

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[35] MCR 2.114(B).

[36] MCR 2.114(C).

[37] See *Contel Systems Corp v Gores*, 183 Mich App 706, 710-711; 455 NW2d 398 (1990) (sanctions under MCR 2.114 are mandatory if there is a violation).

defense, even by reference to another court rule. Case law and the standard of review suggest that whether a claim or defense was frivolous within the meaning of MCR 2.114(F) depends on the facts of the case. Thus, while there are cases that hold that some of the same circumstances justifying sanctions under MCR 2.114(E) and MCL 600.2591 also justify sanctions under MCR 2.114(F),[38] MCR 2.114(F) may permit a trial court to look at other circumstances that justify the conclusion that a claim or defense was frivolous.

The other factor that distinguishes MCR 2.114(F) from MCR 2.114(E) is that MCR 2.114(F) does not, itself, define what costs the trial court may impose. Rather, MCR 2.114(F) refers the trial court to MCR 2.625(A)(2) to determine what costs it may award. MCR 2.625(A)(2) then refers the trial court back to MCL 600.2591. Thus, as a practical matter, sanctions under MCR 2.114(F) must encompass "all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees,"[39] but not punitive damages.

This string of internal cross-references in MCR 2.114(f) ultimately brings a trial court awarding sanctions back to MCL 600.2591, which suggests that there is a similarity between the two. Further, both MCR 2.114(F) and the statute only permit a trial court to sanction a party, while MCR 2.114(E) permits a trial court to sanction a party or a person signing a document. Still, one critical difference remains between MCR 2.114(F) and MCL 600.2591: the court rule permits sanctions for even a single frivolous claim while the statute permits sanctions if the "civil action" is frivolous. Thus, it is likely that a trial court could rely on the statute or MCR 2.114(F) if all the claims in a case were frivolous, but MCR 2.114(F) if there was at least one claim that was not frivolous.

### C. The $1,500 Sanction

Before determining whether the trial court properly exercised its discretion to sanction plaintiffs, we must determine whether the trial court relied on MCL 600.2591, MCR 2.114(E), or MCR 2.114(F) to award $1,500 in costs to Kelly Rahaim. Two separate factors lead us to believe that the trial court relied on MCR 2.114(F) or the statute, but *not* on MCR 2.114(E). First, the trial court confirmed on the record that it had not concluded that plaintiffs' counsel had violated "a court rule" in bringing this case. Nor did the trial court mention any certification or signature problem with this case. The fair inference is that the trial court did not find that plaintiffs violated MCR 2.114(E). Second, the trial court's references to plaintiff's "frivolous attempt to undo the divorce action" leads us to believe that the trial court had concluded that *all* the claims in this case were frivolous because this was such a sweeping statement. The trial court did not pick one of the four claims to single out as frivolous, which would have made sanctions in this case fall under MCR 2.114(F), not the statute.

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[38] See, e.g., *Dep't of Natural Resources v Bayshore Associates, Inc*, 210 Mich App 71, 86-87; 533 NW2d 592 (1995) (actions was frivolous under MCR 2.114[F] and merited sanctions because there was no "reasonable basis" for the lawsuit, the allegations in the supporting affidavit, or the plaintiff's motion for summary disposition).

[39] MCL 600.2591(A)(2).

As we noted above, the statute and MCR 2.114(F) are similar in that they both attempt to eliminate frivolous cases by permitting sanctions. Plaintiffs, however, challenge whether the trial court could have concluded that they brought a frivolous suit because, they contend, the trial court did not make any findings of fact before imposing sanctions. Nevertheless, plaintiffs' argument lacks merit because a trial court need not make findings of fact before imposing sanctions for a frivolous lawsuit.[40] More importantly, the trial court also made a factual finding to support its decision to impose sanctions. Specifically, the trial court found that this was a frivolous action because plaintiffs were attempting to take care of a financial matter that had already been resolved in the divorce action.

While we may agree with plaintiffs that res judicata did not bar this case, we cannot see any clear error in the trial court's finding on this issue because the trial court's statement was broader than its ruling on the res judicata issue. The trial court's remarks suggest that it viewed this case as a malicious attempt by plaintiffs to harass their former daughter-in-law. We agree that this case has all the signs of a frivolous lawsuit designed to harass Kelly Rahaim. There is a distinctly hollow ring to plaintiffs' argument that defendants still owe them a debt, or that it was the entire amount of $126,000, given the documentary evidence related to the discharge of the mortgage and the divorce settlement agreement. Also, the way this case progressed, including plaintiffs' decision to demand payment for the first time *after* their son's divorce – seventeen years after defendants executed the note – suggest that plaintiffs really intended to force their former daughter-in-law to pay the debt by herself while absolving their son of any responsibility.

For instance, Robert S. Rahaim and Robert P. Rahaim presented nearly identical affidavits to the trial court after Kelly Rahaim moved for summary disposition. Plaintiffs then used their son's affidavit to support their opposition to summary disposition. Furthermore, even though Robert S. Rahaim never answered the complaint, plaintiffs did not seek a default and default judgment against him. In fact, plaintiffs subsequently dismissed the action against their son. Without some legitimate explanation for their disparate approach to Robert S. Rahaim's share of the debt that he and Kelly Rahaim assumed equally, we see no reason other than harassment to explain why she became the only defendant to this suit. This was a frivolous suit under MCL 600.2591(3)(a)(i) and MCR 2.114(F). The trial court did not clearly err when it made this finding and it did not abuse its discretion by sanctioning plaintiffs.[41] Even if the trial court's reasoning did tie the sanction to its possibly incorrect conclusion on the res judicata issue, this clearly was the right result. We will not, therefore, disturb the decision to impose sanctions.[42]

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[40] *Hicks v Ottewell*, 174 Mich App 750, 756; 436 NW2d 453 (1989).

[41] We note that we have given this issue much more attention than it deserves given that plaintiffs may have waived this argument for appeal when their attorney stated on the record at the December 11, 1998, hearing that they had no objections to the $1,500 sanction.

[42] See *Glazer*, *supra*.

D. The $500 Sanction

Plaintiffs challenge the trial court's decision to award Kelly Rahaim an addition $500 as a sanction for plaintiffs' decision to object to the proposed summary disposition order she submitted to the trial court. Plaintiffs claim that the trial court's decision to do so simply revealed its bias in this case. The trial court's statements, however, suggest that it believed that an opinion by this Court required it to award sanctions to Kelly Rahaim to compensate her for the additional expense she incurred attempting to finalize the disposition of the case as the trial court had ordered. We are not aware of the opinion to which the trial court was referring. However, the cost provision in MCL 600.2591(2), which also applies to sanctions under MCR 2.114(F) through the reference to MCR 2.625(A)(2), permits the trial court to require plaintiffs to compensate Kelly Rahaim for any additional expenses that she incurred in this case. Thus, we conclude that there was no abuse of discretion in this decision to award additional sanctions.

E. The Amount Of The Sanctions

While we have found no error in the trial court's two decisions to award sanctions, we do see a problem in the amounts the trial court awarded. MCL 600.2591(2) required the trial court to determine what "reasonable" costs Kelly Rahaim had "incurred." There is no evidence of any costs in the trial court record. As far as we can determine, $1,500 and $500 were arbitrary amounts that the trial court picked for the sanctions. Accordingly, while we affirm the decision to impose sanctions, we vacate the amount of the sanctions the trial court imposed. On remand, the trial court may request any evidence necessary for it to determine the proper amount for a sanction that encompasses "all reasonable costs [Kelly Rahaim] actually incurred . . . and any costs allowed by law or by court rule, including court costs and reasonable attorney fees" throughout this action. The trial court need not address these as two separate sanctions.

We affirm the order granting summary disposition and the trial court's determination that Kelly Rahaim was entitled to costs for plaintiffs' frivolous action, but vacate the amount of the sanctions and remand for a proper calculation of costs. Because she is the prevailing party, Kelly Rahaim may tax costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ Jeffrey G. Collins
/s/ Kathleen Jansen
/s/ William C. Whitbeck