STATE OF MICHIGAN

COURT OF APPEALS

MICHELLE WOZNIAK,

Plaintiff/Counter-Defendant,

v

PAMELA L. LYONS,

Defendant/Counter-Plaintiff/Appellee,

and

WEIDEMAN & WEIDEMAN, P.C., CARL M. WEIDEMAN, JR., and CARL M. WEIDEMAN, III,

Appellants.

UNPUBLISHED
April 23, 2002

No. 226880
Wayne Circuit Court
LC No. 98-825399-CK

Before: Whitbeck, C.J., and Markey and K. F. Kelly, JJ.

PER CURIAM.

Appellants Weideman & Weideman, P.C., Carl M. Weideman, Jr. and Carl M. Weideman, III (collectively, the Weidemans), appeal as of right from an order imposing sanctions against them for their conduct in the underlying lawsuit between plaintiff Michelle Wozniak, whom the Weidemans represented in her suit against defendant Pamela L. Lyons. We affirm.

I. Basic Facts And Procedural History

Lyons entered into a contract with Wozniak to purchase her business. When Lyons defaulted on payments owed under a promissory note, Wozniak commenced this action for breach of contract and promissory estoppel. Lyons filed a counterclaim, alleging that Wozniak had breached material terms of the contract and that the contract was induced by fraudulent misrepresentation. A negotiated settlement was placed on the record, agreed to by the parties, reduced to writing, and signed by attorneys for Wozniak and Lyons. Thereafter, the Weidemans, who were in possession of the settlement money from Wozniak, attempted to impose numerous additional requirements on Lyons before tendering the money and finalizing the settlement. Finding that their efforts were unsuccessful, the Wiedmans returned the money to Wozniak and advised her to file for bankruptcy. The trial court, on Lyons' motion, awarded her attorney fees for work performed after the settlement order was entered, which the trial court awarded solely against the Weidemans.

II. Authority To Impose Sanctions For Misconduct

A. Standard Of Review

The Weidemans argue that the trial court lacked authority under MCR 9.103 or 9.104 to sanction them because these rules relate to the standards for professional responsibility. Instead, they contend, the trial court should have referred the matter to the Attorney Grievance Commission, which is charged with handling complaints against attorneys licensed to practice in Michigan. This question of law implicating the court rules requires review de novo.[1]

B. The Court Rules

MCR 9.103 provides in relevant part:

> (A) General Principles. The license to practice law in Michigan is, among other things, a continuing proclamation by the Supreme Court that the holder is fit to be entrusted with professional and judicial matters and to aid in the administration of justice as an attorney and counselor and as an officer of the court. It is the duty of every attorney to conduct himself or herself at all times in conformity with standards imposed on members of the bar as a condition of the privilege to practice law. These standards include, but are not limited to, the rules of professional responsibility . . . .

MCR 9.104, a court rule Lyons noted in support of her motion, sets out acts and omissions that are grounds for discipline and includes, among numerous items, "conduct prejudicial to the proper administration of justice."[2]

Substantively, however, Lyons moved for sanctions pursuant to MCR 2.114(D), which provides:

> The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer 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.

---

[1] See, generally, *Hilgendorf v St. John Hospital and Medical Center Corp*, 245 Mich App 670, 695; 630 NW2d 356 (2001).

[2] MCR 9.104(1).

MCR 2.114(E) allows for sanctions, including attorney fees, against a party or his representative. As factual support for this motion, Lyons alleged that the Weidemans' recent actions, including bringing the ex parte motion to pay funds to the court and filing the bankruptcy petition, were designed to avoid the settlement order. She argued that the Weidemans did not act in good faith when they attempted to make her jump through unnecessary "hoops" and tried to avoid carrying out the settlement. Rather, these acts were part of a pattern or practice of delaying and causing needless expense. Consequently, Lyons argued that she should be compensated for the attorney fees she incurred as a result of the Weidemans' conduct.

C. The Trial Court's Decision

The trial court made numerous statements about awarding attorney fees, but never indicated which court rule it believed supported its decision to order the Weidemans to pay attorney fees as a sanction. However, the trial court did state that it was granting the motion because the Weidemans intentionally delayed the process, causing Lyons to incur additional expenses. Having reviewed the record, we have no cause to think that the trial court granted Lyons' motion under the mistaken belief that she was entitled to sanctions for the Weidemans' alleged violation of the rules of professional responsibility. The trial court premised its decision on the Weidemans' intentionally dilatory tactics, which directly implicated its authority to grant sanctions under MCR 2.114(E) because, it evidently concluded, the Weideman's conduct violated MCR 2.114(D)(3). Further, trial courts have the inherent authority to sanction a party or attorney that engages in misconduct in order to manage its caseload, deter future misbehavior, or compensate an innocent party for expenses incurred because of the misconduct.[3] Thus, we conclude, the trial court had the legal authority to order sanctions in this case regardless of whether the Attorney Grievance Commission could have disciplined the Weidemans under the rules of professional responsibility.

III. The Weidemans' Conduct

A. Standard Of Review

Notwithstanding the trial court's underlying legal authority to impose sanctions, the Weidemans argue that their conduct did not justify the sanctions in this case. We review a trial court's decision to impose sanctions pursuant to it's inherent authority[4] for an abuse of that discretion.[5]

---

[3] See *Persichini v William Beaumont Hosp*, 238 Mich App 626, 639-641; 607 NW2d 100 (1999).

[4] See *id*. at 642.

[5] Sanctions under MCR 2.114(E) are mandatory. *In re Forfeiture of Cash & Gambling Paraphernalia*, 203 Mich App 69, 73; 512 NW2d 49 (1993). Thus, we give the Weidemans the benefit of the doubt and assume for the sake of analysis that the trial court relied on its inherent authority to award sanctions. In any event, the same reasons that supported the trial court's decision to impose sanctions under its inherent authority also required sanctions under MCR 2.114(E) because the Weidemans violated MCR 2.114(D)(3).

B. The Trial Court's Findings

The trial court specifically found that the Weidemans had engaged in intentional misconduct, which the record supports. The settlement between Wozniak and Lyons was the product of long negotiation. The trial court entered the terms of the settlement on the record immediately, which the parties agreed to under oath. The terms were also reduced to writing in an order, which prohibited contingencies not identified in the order itself and which the attorneys signed. Wozniak then gave the money to satisfy the settlement to the Weidemans, which the Weidemans did not give to Lyons. Rather, they attempted to impose numerous additional contingencies and moved to pay the money to the clerk of the court instead of Lyons. This was pure procedural gamesmanship, as the trial court referred to it, and directly resulted in Lyons' added expenses. After causing Lyons to incur these fees, the Weidemans then advised Wozniak not to follow through with the settlement, they returned the settlement money to her, and they advised her to file for bankruptcy. It was not the Weidemans' individual acts of returning the money or advising Wozniak to file for bankruptcy that the trial court sanctioned, but their attempt to renegotiate the settlement. This not only violated the terms of the settlement itself, but suggested that they had never intended to allow Wozniak to follow through with her obligations under the settlement. This was just the sort of bad conduct a trial court should deter and for which it may compensate the victim. We see no abuse of discretion here.

IV. Reasonable Attorney Fees

A. Standard Of Review

The Weidemans contend that the trial court erroneously ordered attorney fees as a sanction without making an appropriate inquiry into whether the fees Lyons sought were reasonable. We review this issue for an abuse of the trial court's discretion.[6]

B. The Trial Court's Decision

The record reflects that the trial court was presented with information about the hourly rates Lyons's attorney charged, the work that they performed after the trial court entered the settlement order on November 3, 1999, and the experience of the associate attorney on the file. The trial court was also aware of the amount of time Lyons and her attorney spent attempting to finalize the settlement. The trial court did not simply accept the invoices for Lyons' attorney fees; the trial court reviewed the invoices and refused to order any expenses or fees incurred in relation to the bankruptcy proceeding itself. There is no "precise formula" for setting reasonable attorney fees.[7] In light of these facts, we conclude that the trial court conducted a proper inquiry into the fee matter before entering its order.

---

[6] See *Persichini, supra* at 644.

[7] *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973).

V. Evidentiary Hearing

Finally, the Weidemans contend that a party filing a motion must give notice to the opposing party that the hearing on the motion will include taking evidence rather than merely oral argument. At issue here is whether Lyons gave adequate notice to the Weidemans that, at the hearing on the motion for sanctions, she would present evidence of her attorney fees. Though citing MCR 2.119, the Weidemans have failed to identify any rule of law that requires specific notice that a motion hearing will involve evidence, resulting in abandonment of this issue.[8] Further, any prejudice that the Weidemans suffered was their own fault; they knew the hearing was scheduled, they knew it involved sanctions, they had contested the amount of sanctions, they should have known that motions for sanctions require evidence when contested,[9] they had actual notice that there would be evidence involved in the hearing at least a day in advance, and their attorney appeared and argued on their behalf. Thus, we have no cause to examine this issue further.

Affirmed.

/s/ William C. Whitbeck
/s/ Jane E. Markey

I concur in result only.

/s/ Kirsten Frank Kelly

---

[8] See *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

[9] See *B & B Investment Group v Gitler*, 229 Mich App 1, 15-16; 581 NW2d 17 (1998).