

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTINE D. SERA,

Plaintiff-Appellee,

v

MICHAEL W. KING,

Defendant-Appellant.

UNPUBLISHED

November 19, 2002

No. 235597

Oakland Circuit Court

LC No. 00-641654-PP

Before: Griffin, P.J., and Gage and Meter, JJ.

MEMORANDUM.

Defendant appeals as of right from a circuit court order denying his motion for sanctions and his attorney appeals an order directing him to pay costs to plaintiff's counsel. We affirm.

The court is authorized to impose sanctions against a party who pleads a frivolous civil action or a frivolous defense to a civil action. MCR 2.114(F); MCR 2.625(A)(2); MCL 600.2591(A). The purpose of the statute is to sanction attorneys and litigants who file lawsuits or defenses without reasonable inquiry into the factual basis of a claim or defense pleaded. *Louya v William Beaumont Hosp*, 190 Mich App 151, 163; 475 NW2d 434 (1991). "A trial court's finding with regard to whether a claim or defense was frivolous will not be disturbed on appeal unless the finding is clearly erroneous." *State Farm Fire & Cas Co v Johnson*, 187 Mich App 264, 268-269; 466 NW2d 287 (1991).

This action was commenced with an application for a personal protection order, which was granted on an ex parte basis and never set aside. Defendant's claim for sanctions was predicated on plaintiff's allegedly frivolous *motion*, not on a frivolous civil action or defense. Therefore, the trial court did not clearly err in denying defendant's motion.

The trial court has inherent authority to sanction misconduct. This authority must be exercised with restraint and discretion. *Cummings v Wayne Co*, 210 Mich App 249, 252-253; 533 NW2d 13 (1995). "An exercise of the court's 'inherent power' may be disturbed only upon a finding that there has been a clear abuse of discretion." *Brenner v Kolk*, 226 Mich App 149, 160; 573 NW2d 65 (1997).

The hearing on the parties' motions took place over several days. Defense counsel Cohen sought to adjourn one of the hearing dates because his witnesses could not be present. He sent plaintiff's counsel a proposed stipulation and order for the adjournment and rejected the

timely return of the executed stipulation, see MCR 2.119(D)(2), simply because he did not receive it as soon as he would have liked. Consequently, plaintiff and her attorney appeared in court, only to have the matter adjourned. The trial court ordered defense counsel to pay plaintiff's counsel \$300 for needlessly having to appear at the hearing. We find no abuse of discretion.

Affirmed.

/s/ Richard Allen Griffin

/s/ Hilda R. Gage

/s/ Patrick M. Meter