

STATE OF MICHIGAN
COURT OF APPEALS

DAVID M. MORAN,

Plaintiff/Counter-Defendant,

v

PEGGY L. MORAN,

Defendant/Counter-Plaintiff-
Appellee,

and

BILL WILLIAMS,

Defendant,

and

J. ANTHONY SYKORA,

Defendant/Counter-Plaintiff-
Appellee,

and

GERALD M. ZAMBOROWSKI,

Appellant.

UNPUBLISHED

August 12, 2004

No. 249791

Sanilac Circuit Court

LC No. 02-028928-NZ

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

MEMORANDUM.

Attorney Gerald M. Zamborowski appeals as of right an order granting J. Anthony Sykora's motion for sanctions. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Facts and Procedural History

The circumstances surrounding the instant case began with divorce proceedings between David and Peggy Moran. During the proceedings, criminal and civil assault actions were brought against Mr. Moran. When Mr. Moran was acquitted of the criminal charges, the parties agreed to dismiss the civil action with prejudice and without costs. After the dismissal, Mr. Zamborowski filed a complaint on behalf of Mr. Moran against both Ms. Moran and her attorney, Mr. Sykora, alleging malicious prosecution and intentional infliction of emotional distress. Both defendants represented themselves in propria persona in the action. The trial court granted defendants' motion for summary disposition and ordered Mr. Moran to pay defendants' costs involved in defending those claims. Four days later, Mr. Sykora filed a motion for costs pursuant to the trial court's order, without filing an actual bill of costs. Mr. Sykora urged the court to sanction Mr. Zamborowski, as the claim filed against him was frivolous. Neither defendant was awarded costs, but the trial court granted \$2,356.27 to Mr. Sykora as sanctions. Mr. Sykora listed \$2,356.27 as attorney fees in his motion for "costs."

II. Award of Attorney Fees for Frivolous Claim

Mr. Zamborowski contests the award of attorney fees to Mr. Sykora as a sanction for his filing of a frivolous claim pursuant to MCR 2.114(F).¹ Although an attorney's time equals money, an attorney proceeding pro se, like all other pro se litigants, may not be awarded attorney fees.² In *FMB-First Mich Bank v Bailey*, this Court reversed an order granting attorney fees to attorney defendants proceeding pro se against their co-defendant as a sanction pursuant to MCR 2.114(F) for raising a frivolous defense.³ This Court found that such a sanction is not authorized for pro se litigants pursuant to MCR 2.114 and MCL 600.2591. The court rule and statute permit the award only of the amount of costs and fees actually incurred.⁴ Pro se litigants, including attorneys, do not incur attorney fees because they represent themselves.⁵

The amount of sanctions in this case mirrored the requested attorney fees. It is therefore clear that the trial court granted Mr. Sykora these fees as a sanction for Mr. Zamborowski filing a frivolous claim. As we are bound by *FMB-First Mich Bank*, we must, therefore, reverse the trial court's award of sanctions.

As we have determined that the trial court improperly awarded attorney fees to a pro se litigant as a sanction pursuant to MCR 2.114(F), it is unnecessary to consider Mr.

¹ Mr. Zamborowski actually contests the award of attorney fees as costs. However, the trial court awarded only sanctions.

² *FMB-First Mich Bank v Bailey*, 232 Mich App 711, 713-714, 721-722; 591 NW2d 676 (1998).

³ *Id.*

⁴ *Id.* at 725, citing MCR 2.114(E), MCL 600.2591.

⁵ *Id.* at 726.

Zamborowski's underlying claim that the trial court improperly determined that his claim was frivolous.

Reversed.

/s/ Joel P. Hoekstra
/s/ Jessica R. Cooper
/s/ Kirsten Frank Kelly