Court of Appeals, State of Michigan

ORDER

Susan Shields v Curtis Blessing

Docket No. 262426

LC No. 2003-053202 NZ

William C. Whitbeck
Chief Judge

Mark J. Cavanagh

Bill Schuette
Judges

The Court orders that the motion for reconsideration is GRANTED, and this Court's opinions issued November 16, 2006 are hereby VACATED. New opinions are attached to this order.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JAN 11 2007
Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN

COURT OF APPEALS

SUSAN SHIELDS, Plaintiff-Appellee,	UNPUBLISHED November 16, 2006
v	No. 262426 Oakland Circuit Court
CURTIS BLESSING and AMANDA VANDUSEN, Defendants-Appellants.	LC No. 03-053202-NZ

Before: Whitbeck, C.J., and Saad and Schuette, JJ.

PER CURIAM.

Defendants, Curtis Blessing (Blessing) and Amanda Van Dusen (Van Dusen), appeal as of right an order denying their motion for frivolous lawsuit sanctions in this action alleging tortious interference with an employment contract. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

The facts are described in a prior appeal in this case:

> Plaintiff was employed by Cranbrook Schools . . . during the 2001-2002 school year. Defendants are the parents of a student who was in Plaintiff's class. In October 2001, defendants contacted the school headmaster regarding concerns they had with plaintiff's teaching methods. A series of contentious meetings and communications between defendants and plaintiff and other school administrators occurred over the next three months. In January 2002, defendants' daughter was assigned to another teacher. Evidence was submitted indicating that during the remainder of the 2001-2002 school year, school administrators confronted plaintiff about a number of other matters of concern, unrelated to defendants' daughter. In a letter dated June 19, 2002, the school informed plaintiff that she was being terminated . . . for insubordination . . . . Plaintiff subsequently brought this lawsuit alleging that defendants tortiously interfered with her employment contract. However . . . the trial court granted summary disposition in favor of defendants. [*Shields v Blessing*, unpublished opinion per curiam of the Court of Appeals, issued August 30, 2005 (Docket No. 261685), slip op at 1.]

During the pendency of the prior appeal, the trial court denied defendants' motion for frivolous lawsuit sanctions. In the prior appeal, this Court affirmed the grant of summary disposition to defendants. *Shields, supra,* slip op at 1.

II. STANDARD OF REVIEW

"A trial court's decision that a claim is not frivolous is reviewed for clear error." *Evans & Luptak, PLC v Lizza*, 251 Mich App 187, 203; 650 NW2d 364 (2002) (citation omitted). Clear error exists if the reviewing court is left with a definite and firm conviction that a mistake has been made. *Id*. (citation omitted).

III. ANALYSIS

MCL 600.2591(1) provides that "if a court finds that a civil action . . . was frivolous, the court . . . shall award to the prevailing party the costs and fees incurred by that party . . . ." MCL 600.2591(3) provides:

> (a) "Frivolous" means that at least 1 of the following conditions is met:
>
> (i) The party's primary purpose in initiating the civil action . . . was to harass, embarrass, or injure the prevailing party.
>
> (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.

Similarly, MCR 2.114(D) provides that where a party or attorney signs a litigation document, the signature:

> . . . constitutes a certification by the signer that
>
> ***
>
> (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.

MCR 2.114(E) provides:

> If a document is signed in violation of this rule, the court . . . shall impose upon the person who signed it . . . an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

"The purpose of imposing sanctions for asserting frivolous claims is to deter parties . . . from . . . asserting claims . . . that have not been sufficiently investigated and researched or that are intended to serve an improper purpose." *BJ's & Sons Constr Co v Van Sickle*, 266 Mich App 400, 405; 700 NW2d 432 (2005) (internal quotation marks and citation omitted). "The determination whether a claim or defense is frivolous must be based on the circumstances at the time it was asserted. . . . That the alleged facts are later discovered to be untrue does not invalidate a prior reasonable inquiry." *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 36; 666 NW2d 310 (2003).

Here, there was evidence that defendants had acted unreasonably and with a high degree of aggressiveness. In an email that existed at the time plaintiff asserted her claim, the school's headmaster, Dr. Brian Schiller, stated: "By her own admission, Amanda Van Dusen lost control at the parent conference with Kate's teachers . . . . Mrs. Van Dusen initiated the shouting . . . ." Schiller described aggressive tactics by defendants:

> Mr. Blessing and Mrs. Van Dusen have been the aggressors in this situation from November 9 onward. They began with a relatively narrow field of attack and rapidly expanded to attacking across many fronts. There was little or no effort on the parents' part to problem solve with the teacher or . . . me. As late as the December 14 meeting, new attack fronts were opened including suggestions that I had not done my job. Anytime I disagreed with their position/view, it was suggested I was not researching the situation, did not know Kate, had not been visiting the classroom, or fell short of badly needed competence in some other fashion.

This evidence can reasonably be interpreted to suggest that defendants may have had an improper motive against plaintiff, and that they would stop at nothing short of having plaintiff removed. Schiller observed that Blessing "was difficult at all meetings with me prior to December 18," and that Blessing "was demeaning, he used his legal background to intimidate, and he pursued termination of Ms. Shields from the very beginning. There has been little or no acknowledgement by the parents (both attorneys) of the moral and legal obligation to provide due process opportunities for Ms. Shields."

Thus, defendants were using intimidation and implied threats in their effort to achieve their goal of having plaintiff replaced. This Court stated that "defendants[']conduct in seeking to resolve their concerns could be considered unprofessional or unbefitting at times . . . ." *Shields, supra*, slip op at 2. Because the evidence suggests that defendants exhibited aggressive behavior, made implied threats, and generally behaved in an unprofessional or unbefitting manner in seeking to oust plaintiff from her teaching position, we conclude that the trial court did not clearly err in concluding that plaintiff's action was not frivolous. While plaintiff's claims were not successful, they were not completely groundless or "devoid of arguable legal merit." *Jericho Constr, Inc, supra* at 36. The trial court did not clearly err in denying sanctions.

Affirmed.

/s/ Henry William Saad
/s/ Bill Schuette