STATE OF MICHIGAN

COURT OF APPEALS

FRANK MITAN,

Plaintiff,

v

MARK R. FOX, FRASER TREBILCOCK DAVIS & DUNLAP, P.C., and FRANDORSON PROPERTIES,

Defendants-Appellees,

and

KEITH MITAN,

Appellant.

UNPUBLISHED
December 11, 2008

No. 280667
Ingham Circuit Court
LC No. 04-000535-CZ

Before: Cavanagh, P.J., and Jansen and Meter, JJ.

PER CURIAM.

Appellant Keith Mitan appeals as of right, challenging the circuit court's orders granting sanctions of $2,260 to defendant Frandorson Properties ("Frandorson") and $8,480 to defendant Mark Fox and Fox's law firm, defendant Fraser Trebilcock Davis & Dunlap, P.C. ("Fraser"), pursuant to MCR 2.114(E). We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

MCR 2.114(D) states:

> 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.

The sanctions for violating the rule are set forth in MCR 2.114(E) as follows:

> If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, 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.

Imposition of a sanction under MCR 2.114(E) must be based on a factual finding that a party has signed a document in violation of the requirements of MCR 2.114. *In re Stafford*, 200 Mich App 41, 42; 503 NW2d 678 (1993); *Contel Systems Corp v Gores*, 183 Mich App 706, 710-711; 455 NW2d 398 (1990). If a violation of MCR 2.114(D) has occurred, the sanctions provided by MCR 2.114(E) are mandatory. *Id.* This Court reviews for clear error the trial court's findings that result in the imposition of a sanction under MCR 2.114. *Id*.

Appellant initially represented plaintiff in this action and signed the original complaint. That complaint alleged that Frandorson was represented by Fox and Fraser; that plaintiff had an account at H&R Block; that "the Account was unconstitutionally frozen" from October 6, 2000, to December 6, 2000; that defendants "were responsible" for causing the account to be frozen and to remain frozen; and that as a result of the account being frozen, plaintiff suffered damages.

The trial court found that appellant "as counsel for Plaintiff, is sanctionable under MCR 2.114(D), as this Court finds that Keith Mitan signed a claim that was not warranted by law and that was filed with the intent to harass the Defendants."

Appellant contends that the filing of the first amended complaint cured any defects in the original complaint. Appellant's argument that any legal deficiencies were cured by filing an amended complaint addresses only one of the two grounds provided by the trial court for finding a violation of MCR 2.114(D). The amended allegations may have addressed the legal deficiencies, but they have no bearing on the improper purpose for the initial filing. Appellant does not offer any argument to challenge the trial court's finding that the original complaint "was filed with the intent to harass the Defendants." That finding alone required that the court award a sanction. In any event, appellant's argument that the filing of an amended complaint may cure defects in the original complaint, and thereby avoid an award of sanctions, is not supported by the court rule. MCR 2.114(E) requires the court to order an appropriate sanction for a violation of the rule. The rule does not provide an exception for documents that are signed in violation of the rule but are subsequently cured by amendment.

Appellant argues that even if he could be sanctioned for signing a document that was later amended, sanctions were not appropriate in this case. He maintains that prejudgment injunctions are not allowed, and "pre-judgment attachments are unconstitutional." In support of this argument, appellant relies on authority holding that Michigan's former prejudgment garnishment procedure violated due process, *Cochrane v Westwood Wholesale Grocery Co*, 394 Mich 164; 229 NW2d 309 (1975), and that courts generally may not issue injunctions restraining

the disposal of assets before a judgment, *Irwin v Meese*, 325 Mich 349; 38 NW2d 869 (1949). But these authorities do not indicate that a party who is aggrieved by an injunction has a cause of action against the party who sought the injunction for causing an "unconstitutional" freezing of an account.

Appellant has not shown that the trial court clearly erred in its finding that he violated MCR 2.114(D) by signing a complaint that was not warranted by law and was filed with the intent to harass defendants.

Appellant separately challenges the trial court's June 29, 2007, order in which the court dismissed the remaining portion of the action against Frandorson and ordered appellant and plaintiff to pay additional sanctions. Appellant contends that the additional sanction was attributable to flaws in the first amended complaint and that, because he did not sign the first amended complaint, the trial court erred by imposing sanctions against him in this regard.

Appellant's argument is premised on a misinterpretation of the trial court's opinion and order. The court expressly adopted "the sanction language made in the September 12, 2006, order," in reference to the factual findings it had previously made concerning the violations of MCR 2.114(D). The discussion of the amended complaints was pertinent to a determination of an "appropriate sanction."[1] Insofar as the court's initial findings that appellant violated MCR 2.114(D) were not clearly erroneous, appellant has not shown that the court erred in imposing additional sanctions upon the conclusion of the action against Frandorson.[2]

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Patrick M. Meter

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[1] On appeal, appellant does not challenge the amount of the sanction.

[2] Defendants request that this Court impose additional sanctions against appellant for pursuing a vexatious appeal. See MCR 7.216(C). But we cannot conclude that appellant pursued the instant proceedings "without any reasonable basis for belief that there was a meritorious issue to be determined on appeal." MCR 7.216(C)(1)(a).