STATE OF MICHIGAN

COURT OF APPEALS

BARBARA DROOMERS, Personal Representative of the Estate of WARREN DROOMERS, Deceased,

Plaintiff-Appellee,

v

JOHN R. PARNELL, PARNELL & ASSOCIATES, P.C., and MUSILLI, BAUMGARDNER, WAGNER & PARNELL, P.C.,

Defendants,

and

RALPH MUSILLI and WALTER BAUMGARDNER,

Appellants.

UNPUBLISHED
February 12, 2009

No. 278162
Oakland Circuit Court
LC No. 2000-024779-CK

Before: Servitto, P.J., and Talbot and Owens, JJ.

PER CURIAM.

Appellants Ralph Musilli and Walter Baumgardner, shareholders of defendant law firm Musilli, Baumgardner, Wagner & Parnell, P.C., appeal as of right, challenging the trial court's orders partially reinstating a criminal contempt judgment requiring them to pay fines and serve 30 days in jail, and to pay compensatory damages. We affirm, and remand to the trial court for a recalculation of statutory interest and entry of a judgment incorporating the recalculated interest amount.

In a prior appeal, this Court affirmed the trial court's finding of contempt, but remanded for clarification regarding whether the trial court meant to impose sanctions for criminal or civil contempt. *Droomers v Parnell*, unpublished opinion per curiam of the Court of Appeals, issued June 30, 2005 (Docket No. 253455).

Appellants first argue that both the trial court and the chief judge erred in denying their motion to disqualify the trial judge. We disagree.

In reviewing a trial court's decision on a motion to disqualify a judge, the court's findings of fact are reviewed for an abuse of discretion, while the application of the law to the facts is reviewed de novo. *Olson v Olson*, 256 Mich App 619, 637-638; 671 NW2d 64 (2003). An abuse of discretion occurs only when the court's decision is outside the range of "reasonable and principled outcome[s]." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Appellants no longer argue that disqualification was required under MCR 2.003(B) because of actual bias. Instead, they argue that disqualification was required on constitutional grounds, given that they had filed a federal lawsuit and a Judicial Tenure Commission ("JTC") complaint against the judge and, therefore, the judge was the target of personal criticism by appellants, giving rise to the appearance of impropriety.

A judge may be disqualified without a showing of actual bias "where experience teaches us that the probability of actual bias . . . is too high to be constitutionally tolerable." *Crampton v Dep't of State*, 395 Mich 347, 351; 235 NW2d 352 (1975) (internal quotations and citations omitted); see also *Kloian v Schwartz*, 272 Mich App 232, 244; 725 NW2d 671 (2006). Among the situations presenting such a risk are: (1) where the trial judge "has a pecuniary interest in the outcome," (2) where the judge "has been the target of personal abuse or criticism from the party before him," (3) where the judge is "enmeshed in [other] matters involving petitioner," and (4) where the judge may have "prejudged the case because of prior participation." *Crampton, supra* at 351; *Kloian, supra* at 244-245. However, "disqualification for bias or prejudice is only constitutionally required in the most extreme cases." *Cain v Dep't of Corrections*, 451 Mich 470, 498; 548 NW2d 210 (1996).

Appellants appear to argue that a lower standard for disqualification on due process grounds should apply in the present case because the case had been dismissed (and not yet reinstated) when the federal lawsuit and the JTC complaint were filed. However, appellants offer no authority to support applying a lower standard in such a case. If a lower standard were applied, an attorney would be able to pre-disqualify any judge by simply filing a frivolous lawsuit or complaint before filing a case. We therefore reject appellants' argument.

The existence of a judicial tenure complaint against a trial judge does not automatically disqualify the judge from hearing this case. *Ireland v Smith*, 214 Mich App 235, 249; 542 NW2d 344 (1995), mod on other grounds 451 Mich 457, 547 NW2d 686 (1996); *Olson v Olson*, 256 Mich App 619, 642-643; 671 NW2d 64 (2003). By analogy, appellants' filing of a federal lawsuit, by itself, was not grounds for disqualification under either the court rule or on constitutional grounds. Appellants' federal lawsuit and their JTC complaint were both found to be frivolous, and the trial court's disqualification was not constitutionally required because of them. "To hold otherwise would allow an attorney to judge shop by filing even frivolous grievances." *Coble v Green*, 271 Mich App 382, 390; 722 NW2d 898 (2006). Thus, the trial court and chief judge did not abuse their discretion in denying appellants' motion to disqualify the trial judge.

Appellants next argue that the trial court lacked jurisdiction to reinstate the contempt judgment. They additionally argue that reinstatement was precluded by principles of res judicata and double jeopardy. We find no merit to these arguments.

Whether a court has jurisdiction is a question of law to be reviewed de novo. *Sierra Club Mackinac Chapter v Dep't of Environmental Quality*, 277 Mich App 531, 544; 747 NW2d 321 (2008). The applicability of the doctrine of res judicata is also a question of law to be reviewed de novo. *Pierson Sand & Gravel, Inc v Keeler Brass Co*, 460 Mich 372, 379; 596 NW2d 153 (1999). Similarly, whether double jeopardy applies is a question of law that is reviewed de novo. *People v White*, 212 Mich App 298, 304-305; 536 NW2d 876 (1995).

The trial court reinstated the contempt judgment in response to plaintiff's motion for relief from the court's prior order dismissing the case with prejudice pursuant to a settlement agreement. The parties' agreement specifically provided that if appellants failed to comply with the settlement, the contempt judgment could be reinstated. Moreover, MCR 2.612(C) provides that a court may relieve a party from a judgment, under appropriate circumstances. Thus, even without considering the clear language of the settlement agreement, the circuit court had jurisdiction to consider plaintiff's motion for relief from the final judgment of dismissal with prejudice. Further, because this case did not involve a subsequent action, or a second punishment or a second prosecution, appellants' res judicata and double jeopardy arguments have no merit. See *Ozark v Kais*, 184 Mich App 302, 307; 457 NW2d 145 (1990); see also Const 1963, art 1, § 15.

Appellants next argue that plaintiff, as a civil litigant, lacked standing to prosecute a criminal contempt proceeding. That argument was squarely rejected by this Court in *DeGeorge v Warheit*, 276 Mich App 587, 598-600; 741 NW2d 384 (2007), and need not be considered further.

Next, appellants argue that the trial court erred in reinstating the contempt judgment, and by failing to make any findings of fact or conclusions of law. We disagree.

A trial court's decision on a motion for relief from judgment is reviewed for an abuse of discretion. *Peterson v Auto-Owners Ins Co*, 274 Mich App 407, 412; 733 NW2d 413 (2007).

In this case, all the facts were of record and were well known to the parties and the court. Further, under MCR 2.517(A)(4), "[f]indings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required by a particular rule. See, e.g., MCR 2.504(B)." MCR 2.612 does not require any findings on a motion for relief from judgment. Thus, the trial court's failure to make specific findings of fact is not grounds for relief.

Appellants argue that they were financially unable to pay the settlement, so relief from judgment was inappropriate under MCR 2.612(C)(1)(c), for fraud, misrepresentation, or other misconduct. At the hearing below, however, appellants indicated that they simply reconsidered the wisdom of the settlement agreement. Moreover, appellants even attempted to deposit the settlement funds with the federal court. Only later did they file for bankruptcy. Under the circumstances, there was sufficient evidence that appellants committed fraud, misrepresentation or other misconduct to warrant relief from the judgment of dismissal. Thus, the trial court did not abuse its discretion in granting plaintiff's motion for relief from the judgment of dismissal.

Appellants also argue that the reinstatement orders revived their right to appeal the trial court's December 14, 2005, order after remand. Questions of law are reviewed de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467

NW2d 21 (1991). We do not question appellants' standing to challenge any orders issued by the trial court after remand as part of this appeal. MCR 7.203(A) provides for appeals by right from a final order. Generally, an appellant may challenge all prior interim rulings of the trial court as part of an appeal by right, such as this one, and this Court has jurisdiction to consider such challenges. See *Tomkiw v Sauceda*, 374 Mich 381, 385; 132 NW2d 125 (1965); *Attorney Gen v Pub Service Comm*, 237 Mich App 27, 39-40; 602 NW2d 207 (1999). The parties do not argue that this appeal should have proceeded by leave rather than by right. Thus, the usual rules of appeals by right apply, and this Court may consider appellants' challenges to orders issued by the trial court after remand. But that does not mean that appellants' prior appeal in Docket No. 268480 should be deemed reinstated. That appeal was voluntarily dismissed pursuant to the parties' settlement agreement. The settlement agreement is silent regarding reinstatement for failure to comply with the agreement, and no motion for reinstatement was ever filed with this Court. Thus, we find no basis for reinstating appellants' prior appeal.

For their last claim of error, appellants argue that the trial court erred in awarding damages to plaintiff as part of its finding of criminal contempt. We disagree.

On December 4, 2003, the trial court issued identical orders against Musilli, Baumgardner, and Parnell, holding them in contempt, and requiring them to appear before the court "for a determination of the fines *and the damages* caused by this contempt." At that hearing, however, the issue of damages was not considered. Damages were not mentioned in the order subsequently entered by the court. The contemnors appealed on January 27, 2004, before any consideration of damages by the trial court.

On appeal, this Court affirmed the trial court's finding of contempt, but remanded for clarification whether the trial court intended to impose sanctions for civil or criminal contempt. *Droomers*, *supra*, slip op at 1, 6-7. This Court did not address the issue of damages, except to quote *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 714; 624 NW2d 443 (2000), for the proposition that, when a court finds someone in criminal contempt, "[t]he court may also require a criminal contemnor to pay compensation for damages caused by the contemptuous conduct." *Id*., slip op at 6.

"The power of the lower court on remand is to take such action as law and justice may require so long as it is not inconsistent with the judgment of the appellate court." *People v Fisher*, 449 Mich 441, 446-447; 537 NW2d 577 (1995). In *Taylor v Currie*, 277 Mich App 85, 100; 743 NW2d 571 (2007), this Court held that the contempt statute, MCL 600.1721, requires a trial court to order a contemnor to indemnify any person who suffers an actual injury as a result of the contempt, even when the contemnor is found in criminal contempt.

Here, the trial court's award of compensatory damages was not inconsistent with this Court's remand order, and was required by law and justice. Because this Court did not previously reach the issue of damages, the trial court remained free to consider it on remand. See *Fisher*, *supra* at 447; see also *K & K Constr, Inc v Dep't of Environmental Quality*, 267 Mich App 523, 544; 705 NW2d 365 (2005). Therefore, compensatory damages were properly ordered by the trial court.

Appellants argue that the trial court simply allowed plaintiff to use the trial court's powers of coercion to force appellants to satisfy the civil judgment entered against their law firm.

This Court rejected this argument in *DeGeorge*, *supra* at 598-599, and appellants' attempts to distinguish *DeGeorge* are unavailing.

Appellants also argue that the trial court erred in imposing damages in the amount of the civil judgment ($431,350.00). However, the record discloses that appellants failed to submit any evidence to dispute the voluminous documentary evidence submitted by plaintiff in support of his request for damages. Thus, appellants failed to create a question of fact concerning the amount of damages sustained by plaintiff as a result of appellants' contempt. Accordingly, appellants have failed to show that the trial court erred in failing to hold an evidentiary hearing, or in its decision concerning the amount of the damages sustained by plaintiff.

Finally, we note that because the judgment at issue was entered some time ago and remains unpaid, the amount of statutory interest awarded in the judgment pursuant to MCL 600.6013(6) requires recalculation. We therefore remand to the trial court for a recalculation of statutory interest and entry of a judgment incorporating the recalculated interest amount.

Affirmed and remanded to the trial court for a recalculation of statutory interest and entry of a judgment incorporating the recalculated interest amount. We do not retain jurisdiction. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Deborah A. Servitto
/s/ Michael J. Talbot
/s/ Donald S. Owens