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STATE OF MICHIGAN

COURT OF APPEALS

LINDA S. MANLEY and MARY C. MATTERN,

Plaintiffs-Appellants,

and

TIMOTHY MATTERN, JANET B. MATTERN, EMORY MULHOLLAND, PAM MULHOLLAND, RICHARD SEBRING, and MICHAEL SMILEY,

Plaintiffs,

v

SUE PIKULSKI, also known as SUE HAWKINS, and JOSEPH A. PIKULSKI, JR.,

Defendants-Appellees.

UNPUBLISHED
April 16, 2019

No. 342839
Lenawee Circuit Court
LC No. 89-004109-CH

Before: TUKEL, P.J., and K. F. KELLY and M. J. KELLY, JJ.

PER CURIAM.

This is the second appeal arising out of this property dispute.[1] Plaintiffs Linda S. Manley and Mary C. Mattern appeal as of right the trial court order denying their motion for costs and attorney fees under MCL 600.2591 and MCR 2.114.[2] Because there are no errors warranting reversal, we affirm.

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[1] *Manley v Pikulski*, unpublished per curiam opinion of the Court of Appeals, issued December 6, 2016 (Docket No. 327510).

[2] MCR 2.114 has since been repealed, effective September 1, 2018. See 501 Mich cxxxvii (2018). It should be noted that the requirements that were formerly set forth in MCR 2.114 have

I. BASIC FACTS

This property dispute represents the most recent instance of litigation between the parties concerning the use of an easement, which granted plaintiffs' property (the dominant estate) access across defendants' property (the servient estate) to frontage on an inland lake, plus the right to dock "one boat" on the existing dock. Following a bench trial, the court entered an order in favor of plaintiffs. Defendants filed a number of motions in the trial court, seeking relief, and, ultimately, filed an appeal with this Court. This Court determined that defendants "failed to establish that any of their claims warrant relief, except to the extent that they have demonstrated that remand is necessary for the trial court to establish a maximum width for the constructed pathway." *Manely*, unpub op at 18. Following the remand to the trial court, plaintiffs filed a motion seeking costs and attorney fees. In doing so, plaintiffs argued that defendants' claims and defenses were frivolous. The trial court disagreed and denied their motion.

This appeal follows.

II. SANCTIONS

A. STANDARD OF REVIEW

Plaintiffs argue that the trial court abused its discretion by denying their motion for costs and attorney fees. However, we do not review the trial court's decision for an abuse of discretion. Rather, "[a] trial court's findings with regard to whether a claim or defense was frivolous, and whether sanctions may be imposed, will not be disturbed unless it is clearly erroneous." *1300 LaFayette E Coop, Inc v Savoy*, 284 Mich App 522, 533; 773 NW2d 57 (2009). "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id*. at 534 (quotation marks and citation omitted). Any related questions of statutory interpretation, or concerning the proper interpretation and application of court rules, are reviewed de novo. *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 28; 666 NW2d 310 (2003).

B. ANALYSIS

"Michigan courts follow the American Rule with respect to the payment of attorney fees and costs," under which "each party is responsible for his or her own attorney fees unless a statute or court rule specifically authorizes the trial court to order an award of attorney fees." *Pransky v Falcon Group, Inc*, 311 Mich App 164, 193; 874 NW2d 367 (2015). At the time the trial court ruled, MCL 600.2951 and MCR 2.114 each set forth exceptions to the American Rule, enumerating certain circumstances under which a prevailing party was entitled to recover costs and attorney fees as sanctions. See *Jerico*, 257 Mich App at 35-36.

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been reenacted in MCR 1.109, which contains language identical to that relied on by plaintiffs in support of their motion.

Under MCL 600.2951, "a claim is frivolous when: (1) the party's primary purpose was to harass, embarrass or injure the prevailing party; (2) the party had no reasonable basis to believe the underlying facts were true; or (3) the party's position was devoid of arguable legal merit." *Jerico*, 257 Mich App at 35-36. Under MCR 2.114(E), "[t]he filing of a signed pleading that [wa]s not well-grounded in fact and law subject[ed] the filer to similar sanctions[.]" *Jerico*, 257 Mich App at 36. The party seeking costs and attorney fees has the burden of proving its entitlement to them. *Ronnisch Constr Group, Inc v Lofts on the Nine, LLC*, 499 Mich 544, 555 n 22; 886 NW2d 113 (2016).

Here, plaintiffs argue that because defendants were not the prevailing party in this action, it follows that their arguments, pleadings, and defenses must have been frivolous. But as the trial court recognized, a party's "inability to prove its case by a preponderance of evidence at trial does not merit a finding that its claim was frivolous," and a reviewing court must not gauge frivolity by whether a given claim or defense was ultimately successful at trial, but rather by whether it was "frivolous . . . based on the circumstances *at the time it was asserted*." *Jerico*, 257 Mich App at 35-36 (emphasis added). Furthermore, the fact that an appellate court ultimately rejects a party's legal argument does not warrant a finding that that argument was frivolous when it was originally asserted in the trial court. See *Kitchen v Kitchen*, 465 Mich 654, 663; 641 NW2d 245 (2002) ("Not every error in legal analysis constitutes a frivolous position. Moreover, merely because this Court concludes that a legal position asserted by a party should be rejected does not mean that the party was acting frivolously in advocating its position."). Such a broad reading of MCL 600.2951 would swallow the American rule entirely, transforming every unsuccessful claim or defense into a "frivolous" position that would entitle the opposing party to sanctions. Accordingly, plaintiffs' reliance on this Court's prior opinion in support of their argument is unavailing.

In light of such principles and of the deferential standard of review, we are unpersuaded by plaintiffs' instant claim of error. Plaintiffs' argument rests entirely on the sort of post-hoc analysis that was condemned as inappropriate in *Kitchen*. As the trial court correctly noted, although this litigation *itself* could well be described as frivolous—a waste of limited judicial resources and a "terrible example" of "unkind," "obnoxiously inappropriate behavior" by plaintiffs and defendants alike—plaintiffs have cited no record evidence demonstrating that, at the time that defendants originally filed their pleadings and defenses in this action, defendants lacked a good-faith belief that their positions and factual allegations would be supported at trial. Nor have plaintiffs cited any record evidence indicating that defendants later took positions that were devoid of *arguable* legal merit or asserted the arguments and defenses that they did with the primary purpose of harassing, embarrassing, or injuring plaintiffs. Hence, we are not left with a definite and firm conviction that the trial court made a mistake.

Affirmed. Defendants may tax costs. MCR 7.219(A).

/s/ Jonathan Tukel
/s/ Kirsten Frank Kelly
/s/ Michael J. Kelly