STATE OF MICHIGAN

COURT OF APPEALS

ANGELA DANYL BARBU,

Plaintiff-Appellee,

v

MIRCEA MIRCA BARBU,

Defendant-Appellee,

and

MICHAEL P. CAMAJ and NEDA, CAMAJ & FAKHOURI, PC,

Appellants.

UNPUBLISHED
November 19, 2020

Nos. 352934; 352975
Macomb Circuit Court
Family Division
LC No. 2018-001019-DM

Before: BOONSTRA, P.J., and CAVANAGH and BORRELLO, JJ.

PER CURIAM.

These consolidated appeals[1] arise from the same lower court file in this postjudgment divorce proceeding. In Docket No. 352934, appellants, Michael P. Camaj and Neda, Camaj & Fakhouri, PC, who are the former attorneys of defendant, appeal as of right an April 12, 2019 order granting plaintiff's motion for attorney fees and awarding attorney fees to plaintiff in the amount of $10,697.50. In Docket No. 352975, the same appellants appeal as of right an April 12, 2019 judgment in favor of plaintiff and against defendant and appellants, jointly and severally, in the amount of $10,697.50. We affirm.

The parties were married in Michigan in 2013 and have two children together. Plaintiff has always lived in Michigan, and defendant is from the Republic of Serbia. In 2018, plaintiff

[1] See *Barbu v Barbu*, unpublished order of the Court of Appeals, entered March 13, 2020 (Docket Nos. 352934 and 352975) (consolidating these appeals).

commenced this divorce action against defendant, who had been deported to Serbia in 2015 following multiple felony convictions in Michigan. After plaintiff unsuccessfully tried to serve process on defendant in Serbia through international mail and Federal Express, the trial court granted plaintiff's motion for the issuance of a second summons and for an order allowing alternative service on defendant by scanning and sending the summons and complaint by text message to defendant's cellular telephone. Defendant was successfully served in this manner. A default was entered when defendant failed to respond timely to the complaint. Defendant later retained appellants as his counsel and moved to dismiss the case on the ground that he was not properly served. The trial court rejected defendant's argument that he was not properly served and denied the motion to dismiss. Plaintiff moved for entry of a default judgment of divorce, defendant moved to set aside the default, and the trial court ultimately denied the motion to set aside the default and entered a default judgment of divorce on November 5, 2018, reserving the issue of plaintiff's request for an award of attorney fees.

An evidentiary hearing was held on the attorney fee issue on January 2, 2019, at the conclusion of which the trial court ruled in plaintiff's favor. Defendant discharged appellants as his counsel and retained new counsel. After retaining his new counsel, defendant withdrew all challenges to the attorney fee ruling, but appellants, on their own behalf, continued to challenge the attorney fee ruling. On April 12, 2019, the trial court entered an order granting plaintiff's motion for attorney fees and entered a judgment holding appellants jointly and severally liable with defendant for the attorney fee award. Appellants filed multiple motions seeking reconsideration of the attorney fee ruling or relief from judgment, and the trial court denied all of appellants' motions. These appeals ensued and were consolidated.

Initially, we reject plaintiff's argument challenging this Court's jurisdiction in these appeals. Plaintiff asserts that this Court lacks jurisdiction over this matter because appellants are not aggrieved parties with regard to some of the issues raised on appeal. In response, appellants assert that they are aggrieved by the trial court's decisions that they have appealed to this Court. There is no question that appellants filed timely claims of appeal from final orders in both Docket No. 352934 and Docket No. 352975. Plaintiff does not contest these facts. Therefore, it is clear that this Court has jurisdiction over these two appeals. It appears that the claim raised by plaintiff essentially goes to the scope of the appeal, not this Court's jurisdiction.

MCR 7.203(A) requires an appeal of right to be brought by an "aggrieved party." To be aggrieved by a judgment, a party must have a legal right that was invaded, or some interest of a pecuniary nature in the outcome of the case, and not a mere possibility arising from some unknown and future contingency. *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 291; 715 NW2d 846 (2006). Appellants are aggrieved by the orders on appeal. The trial court's April 12, 2019 judgment holds appellants jointly and severally liable with defendant for the award of attorney fees and costs to plaintiff. Appellants' arguments on appeal are efforts to vacate or reverse the April 12, 2019 judgment affecting appellants' pecuniary interest, i.e., that holds appellants jointly and severally liable for a monetary award. For example, appellants argue that the April 12, 2019 order and judgment should be vacated because the trial court lacked personal jurisdiction over defendant. Because appellants are aggrieved by the April 12, 2019 order and judgment that they challenge on appeal, plaintiff's challenge to this Court's jurisdiction or to appellants' standing to raise certain issues on appeal must fail.

Turning to appellants' arguments on appeal, they first argue that the April 12, 2019 order and judgment must be vacated because the trial court never acquired personal jurisdiction over defendant and the case should thus have been dismissed before the entry of the November 5, 2018 default judgment of divorce. Appellants' argument fails.

"Whether a trial court has personal jurisdiction over a party is a question of law that this Court reviews de novo." *In re SZ*, 262 Mich App 560, 564; 686 NW2d 520 (2004).

"[A] party may stipulate to, waive, or implicitly consent to personal jurisdiction." *People v Lown*, 488 Mich 242, 268; 794 NW2d 9 (2011) (emphasis omitted). See also *Burger King Corp v Rudzewicz*, 471 US 462, 473 n 14; 105 S Ct 2174; 85 L Ed 2d 528 (1985) ("[B]ecause the personal jurisdiction requirement is a waivable right, there are a variety of legal arrangements by which a litigant may give express or implied consent to the personal jurisdiction of the court.") (quotation marks omitted); *Lease Acceptance Corp v Adams*, 272 Mich App 209, 229; 724 NW2d 724 (2006) ("Challenges to personal jurisdiction may be waived by either express or implied consent.") (citation omitted); *Dundee v Puerto Rico Marine Mgt, Inc*, 147 Mich App 254, 257; 383 NW2d 176 (1985) (the defense of lack of personal jurisdiction may be waived).

Defendant, through appellants, waived any challenge to the propriety of service of process on him and to the trial court's exercise of personal jurisdiction over him. Defendant submitted to the trial court's authority by filing his October 5, 2018 motion for a mutual restraining order and by agreeing to the October 15, 2018 mutual restraining order that the trial court entered. Defendant thereby availed himself of the trial court's jurisdiction by seeking relief from the trial court and implicitly consented to the trial court's exercise of personal jurisdiction over him. Moreover, at the November 5, 2018 hearing, Camaj, on behalf of defendant, expressly waived any challenges to the service of process on defendant and to the trial court's exercise of personal jurisdiction over him. In particular, Camaj stated that defendant "has participated in these proceedings, he is waiving any type of incorrections in regard to personal service. He's accepting this Court's jurisdiction in regard to that." Because defendant, through appellants, waived any challenges to service of process and to personal jurisdiction, appellants' argument that the case should have been dismissed and that the April 12, 2019 order and judgment must be vacated are devoid of merit.

In addition, although it is not necessary to our analysis, we note that MCR 2.105(J)(3) provides, "An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service." It is beyond dispute that defendant received actual notice of the divorce proceeding within the time provided for service. Appellants do not dispute the authenticity of text messages produced by plaintiff reflecting defendant's awareness of the divorce action before the expiration of the first summons, after the summons and complaint had been scanned and sent to defendant's cellular telephone. The summons and complaint were then again sent to defendant's cellular telephone as a method of alternative service during the pendency of the second summons, in accordance with the trial court's order for alternative service. Because defendant was informed of the action within the time provided for service, appellants' argument that the action should have been dismissed because of alleged defects in service, thereby requiring that the April 12, 2019 order and judgment be vacated, is unavailing for this additional and independent reason as well.

Appellants next argue that, after the entry of the November 5, 2018 default judgment of divorce, the trial court lacked jurisdiction to consider plaintiff's motion for attorney fees, and the April 12, 2019 order and judgment are therefore void. Appellants' argument fails.

"A claim that the lower court lacks jurisdiction is a question of law, which this Court reviews de novo." *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005).

The family division of circuit court possesses jurisdiction over divorce cases and ancillary matters. See MCL 552.6(1); MCL 600.1021(1)(a); *Fowler v Fowler*, 191 Mich App 318, 319; 477 NW2d 112 (1991). A circuit court's jurisdiction in a divorce case extends to the dissolution of the marriage and ancillary matters. *Reed*, 265 Mich App at 158. Attorney fee awards in domestic relations cases are addressed by MCL 552.13 and MCR 3.206(D). See *Reed*, 265 Mich App at 164. MCL 552.13(1) provides, in relevant part, "In every action brought, either for a divorce or for a separation, the court may require either party to . . . pay any sums necessary to enable the adverse party to carry on or defend the action, during its pendency." MCR 3.206(D) provides:

> (1) A party may, at any time, request that the court order the other party to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding.
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> (2) A party who requests attorney fees and expenses must allege facts sufficient to show that
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> (a) the party is unable to bear the expense of the action, and that the other party is able to pay, or
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> (b) the attorney fees and expenses were incurred because the other party refused to comply with a previous court order, despite having the ability to comply.

In addition, MCR 1.109(E)(6) authorizes an award of attorney fees and costs as sanctions for signing a document in violation of the requirements of MCR 1.109(E)(5), which provides:

> (5) Effect of Signature. The signature of a person filing a document, whether or not represented by an attorney, constitutes a certification by the signer that:
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> (a) he or she has read the document;
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> (b) 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
>
> (c) 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.

Further, MCL 600.2591(1) authorizes a court to award to a prevailing party costs and attorney fees incurred when a civil action or a defense to a civil action was frivolous.

Appellants contend that the trial court did not have jurisdiction to award costs and attorney fees after the entry of the November 5, 2018 default judgment of divorce. Appellants argue that the trial court did not retain jurisdiction to rule on the attorney fee issue after the entry of the default judgment of divorce. Appellants are mistaken.

When entering the default judgment of divorce, the trial court expressly reserved for later its resolution of plaintiff's request for attorney fees. At the November 5, 2018 hearing, plaintiff's counsel asked the trial court to reserve plaintiff's request for an attorney fee award. The trial court responded, "You can have a hearing on that." The court scheduled a hearing on the attorney fee issue for December 18, 2018 (which was later adjourned to January 2, 2019). On November 5, 2018, the trial court entered an order denying defendant's motion to set aside the default and for a stay, stating that a default judgment of divorce will enter, reserving plaintiff's request for attorney fees, and noting that a hearing on the attorney fee issue would be held on December 18, 2018. It is also notable that, in an order entered on September 24, 2018, the trial court likewise reserved the issue of plaintiff's request for attorney fees.

On November 5, 2018, the trial court entered the default judgment of divorce. As noted, the evidentiary hearing on plaintiff's request for attorney fees was ultimately adjourned to January 2, 2019. The evidentiary hearing was held on that date, and on April 12, 2019, the trial court entered an order awarding attorney fees and costs to plaintiff pursuant to MCR 3.206(D), MCR 1.109(E)(6), and MCL 600.2591, and entered a judgment holding appellants jointly and severally liable with defendant for the attorney fee award.

In short, appellants' argument is premised on a misunderstanding of the record. Contrary to appellants' assertions, the trial court entered orders expressly reserving the attorney fee issue. A trial court speaks through its written orders and judgments. *In re KMN*, 309 Mich App 274, 287; 870 NW2d 75 (2015). Appellants' argument that the trial court did not retain jurisdiction to rule on the attorney fee issue thus fails. See *DePew v DePew*, 373 Mich 162, 164-165; 128 NW2d 533 (1964) (the trial court retained jurisdiction to award attorney fees after entering an order that dismissed the case except for a pending petition for attorney fees).

Appellants next argue that the trial court erred in ordering appellants to pay plaintiff's attorney fees under MCL 552.13(1) and MCR 3.206(D) and that the court erred in holding appellants jointly and severally liable with defendant for the attorney fee award. Appellants' argument is unavailing.

A trial court's award of attorney fees is reviewed for an abuse of discretion. *Safdar v Aziz*, 327 Mich App 252, 267; 933 NW2d 708 (2019). An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes. *Id*. Findings of fact are reviewed for clear error, which exists if this Court is definitely and firmly convinced that a mistake was made. *Id*. at 267-268. The interpretation and application of court rules and statutes are reviewed de novo. *In re Sanders*, 495 Mich 394, 404; 852 NW2d 524 (2014).

Appellants are correct that they could not be ordered to pay plaintiff's attorney fees under MCL 552.13(1) or MCR 3.206(D). MCL 552.13(1) provides that "the court may require *either party* . . . to pay any sums necessary to enable the adverse party to carry on or defend the action, during its pendency. It may award costs *against either party* and award execution for the same . . .

." (Emphasis added.) MCL 552.13(1) "does not empower a trial court to order a party's lawyer to pay the opposing party's attorney's fee." *Lockhart v Lockhart*, 149 Mich App 10, 14; 385 NW2d 709 (1986). The statutory language only allows the court to order *a party* to pay the other party's attorney fees. *Id*. Appellants are not parties to this action; rather, they were counsel for defendant. Likewise, MCR 3.206(D)(1) provides, "A party may, at any time, request that the court order *the other party* to pay all or part of the attorney fees and expenses related to the action or a specific proceeding, including a post-judgment proceeding." (Emphasis added.) The court rule only allows an award of attorney fees against *a party*. Because appellants are not parties, the trial court could not order them to pay plaintiff's attorney fees under MCL 552.13(1) or MCR 3.206(D)(1).

But the trial court never said that it was ordering appellants to pay plaintiff's attorney fees under MCL 552.13(1) or MCR 3.206(D). The court's attorney fee award was also independently based on MCR 1.109(E)(6) and MCL 600.2591 because defendant asserted frivolous positions in documents signed and filed by appellants on behalf of defendant.

MCR 1.109(E)(6) authorizes an award of attorney fees and costs as sanctions on a person who signs a document in violation of the requirements of MCR 1.109(E)(5), which provides:

> (5) Effect of Signature. The signature of a person filing a document, whether or not represented by an attorney, constitutes a certification by the signer that:
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> (a) he or she has read the document;
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> (b) 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
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> (c) 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.

Further, MCL 600.2591(1) authorizes a court to award to a prevailing party costs and attorney fees incurred when a civil action or a defense to a civil action was frivolous; such an award is imposed against the nonprevailing party *and* that party's attorney.[2] MCR 2.625(A)(2) provides, "In an

[2] In particular, MCL 600.2591(1) provides,

> Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party *and their attorney*. [Emphasis added.]

action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591."

Under these provisions, a trial court may impose sanctions against a party's attorney and hold the attorney jointly and severally liable with the party for the sanctions. See *John J Fannon Co v Fannon Prods, LLC*, 269 Mich App 162, 172-173; 712 NW2d 731 (2005) (holding that the plaintiff's attorneys were subject to sanctions under MCR 2.114[3] and MCR 2.625(A)(2) and that the trial court did not abuse its discretion when it imposed joint and several liability on the plaintiff and its attorneys); *Briarwood v Faber's Fabrics, Inc*, 163 Mich App 784, 792; 415 NW2d 310 (1987) (holding that MCR 2.114 "provides for an award of sanctions against both a party and his counsel . . ."); *Lloyd v Avadenka*, 158 Mich App 623, 629; 405 NW2d 141 (1987) (noting that sanctions may be awarded pursuant to MCR 2.114 against both a party and the party's counsel).

Accordingly, appellants' argument on this issue fails. Although appellants are correct that they could not be ordered to pay plaintiff's attorney fees under MCL 552.13(1) or MCR 3.206(D), the trial court never said that it was holding appellants jointly and severally liable under those provisions. The trial court's award of attorney fees was independently based on MCR 1.109(E)(6) and MCL 600.2591, and under those provisions, the trial court may impose sanctions against a party's attorney and hold the attorney jointly and severally liable with the party for the sanctions.

Appellants finally argue that the trial court erred in imposing sanctions pursuant to MCR 1.109(E)(6) and MCL 600.2591. We disagree.

"This Court will not disturb a trial court's finding that a claim was frivolous unless the finding is clearly erroneous. A trial court's decision is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *In re Attorney Fees & Costs*, 233 Mich App 694, 701; 593 NW2d 589 (1999) (citation omitted).

MCR 1.109(E)(6) states:

> 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.

MCR 1.109(E)(5) provides:

[3] The sanctions provisions currently set forth in MCR 1.109(E) were previously contained in MCR 2.114, and the relevant provisions remain identical in all material respects. This change in the location of the sanctions provisions was effective on September 1, 2018. See 501 Mich xxix.

> (5) Effect of Signature. The signature of a person filing a document, whether or not represented by an attorney, constitutes a certification by the signer that:
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> (a) he or she has read the document;
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> (b) 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
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> (c) 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 reasonableness of an attorney's inquiry into the factual and legal basis of a document "is determined by an objective standard and depends on the particular facts and circumstances of the case." *LaRose Market, Inc v Sylvan Ctr, Inc*, 209 Mich App 201, 210; 530 NW2d 505 (1995). An attorney's subjective good-faith is irrelevant. *Lloyd*, 158 Mich App at 630.

Further, MCR 2.625(A)(2) states, "In an action filed on or after October 1, 1986, if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591." MCL 600.2591(1) provides,

> Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.

MCL 600.2591(3)(a) states:

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

Whether a claim is frivolous under the court rule and statutory provisions set forth above depends on the facts of a case. *Kitchen v Kitchen*, 465 Mich 654, 662; 641 NW2d 245 (2002).

The trial court announced its findings on this issue at the conclusion of the January 2, 2019 evidentiary hearing. The court noted that it had authorized substituted service in a manner reasonably calculated to provide defendant with actual notice of the case; such notice was in fact achieved because defendant communicated to plaintiff that he was aware of the divorce action.

Defendant's motion to dismiss the case or quash service of process was meant to harass or injure plaintiff, and the legal position asserted in that motion was devoid of arguable legal merit. It was also frivolous for defendant to keep contesting the court's jurisdiction after having availed himself of the court's jurisdiction by seeking a restraining order. With respect to his motion to set aside the default, defendant failed to plead or show good cause for setting aside the default. Further, the hearing on plaintiff's original motion for entry of a default judgment had been adjourned so that defendant could have an opportunity to file his motion to set aside the default, and plaintiff then refiled the motion for entry of a default judgment. Overall, the court found grounds to award costs and attorney fees as requested by plaintiff and stated that it was awarding the requested costs and fees. Further, in its February 21, 2020 order denying appellants' motion for reconsideration, the trial court again expressed agreement with plaintiff that defendant's motion to dismiss or quash service of process was frivolous and comprised part of an effort to increase the cost of litigation for plaintiff.

The trial court's findings were not clearly erroneous. The record supports a finding that appellants filed multiple motions that advanced frivolous positions and that were part of an effort to injure plaintiff by increasing the costs of litigation.

Appellants filed a motion to dismiss on the basis of allegedly improper service of process even though it is beyond dispute that defendant actually received a copy of the summons and complaint within the time for service, as reflected in defendant's text messages to plaintiff. The motion to dismiss was thus devoid of arguable legal merit. See MCR 2.105(J)(3) ("An action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service.").

Appellants filed a motion to set aside the default that failed to provide any coherent basis for finding good cause. A showing of good cause was required given that defendant and appellants ultimately conceded at the November 5, 2018 hearing that the trial court had jurisdiction over defendant. See MCR 3.210(B)(3) ("A motion to set aside a default, except when grounded on lack of jurisdiction over the defendant or subject matter, shall be granted only upon verified motion of the defaulted party showing good cause.").

Defendant and appellants availed themselves of the trial court's jurisdiction by moving for a mutual restraining order and agreeing to the mutual restraining order that was entered. But appellants continued to assert in later documents they filed that the trial court lacked personal jurisdiction over defendant, before expressly conceding at the November 5, 2018 hearing that the trial court had personal jurisdiction over defendant.

In opposing plaintiff's motion for entry of a default judgment of divorce, appellants argued on behalf of defendant that the motion and proposed default judgment had not been served at least 14 days before the hearing as required by MCR 3.210(B)(4)(a). But the original motion and proposed default judgment had in fact been served approximately two months before the hearing, and the proposed judgment was merely updated to reflect the trial court's custody and parenting time rulings reflected in a September 24, 2018 order. The hearing on plaintiff's original motion for entry of a default judgment had been adjourned so that defendant could have an opportunity to file his motion to set aside the default, and plaintiff then refiled the motion for entry of a default judgment. In short, the trial court more than amply accommodated defendant so that he could seek

to set aside the default, and defendant was afforded adequate notice of the proposed default judgment of divorce under the court rule.

Also, at the January 2, 2019 evidentiary hearing, plaintiff testified that, shortly after the entry of the November 5, 2018 default judgment of divorce, defendant sent a text message to plaintiff stating, "This ain't over yet. Believe me. You're trying to make me look like a criminal in court, has nothing to do with me being a father to my kids. I am not going to be done fighting to get my kids." Plaintiff responded to defendant, "I'm not going to fight with you, I'm not sending kids overseas yet. That's it. That's my answer. It will not change for a few or more years when they are older. They are too young now." When asked how she interpreted defendant's text message, plaintiff responded, "Sounds to me like he just wants to keep going to court, which I don't have the money to keep going." The trial court admitted the text message as an exhibit. Later in the text message exchange, after plaintiff said the children were too young to go to Serbia now, defendant wrote, "[D]o you want to come to some agreement or you want to keep spending money in court? What do you want, you need to stop thinking about yourself and think about the kids. I am not going to stop fighting and I don't think you can afford it." Plaintiff took defendant's comments as a threat because he wants to keep taking her to court and he knows that she cannot afford it.

Overall, the record supports the trial court's findings regarding frivolousness. Appellants signed documents and asserted arguments and positions that were devoid of arguable legal merit and that were not properly grounded in fact or law. Defendant's communications to plaintiff support a reasonable inference that there was an effort to injure or harass plaintiff or cause a needless increase in the cost of litigation for plaintiff. The trial court did not clearly err in its findings when imposing sanctions under MCR 1.109(E)(6) and MCL 600.2591.

Affirmed.

/s/ Mark T. Boonstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello