STATE OF MICHIGAN

COURT OF APPEALS

LORI MCKINNEY,

Plaintiff-Appellant,

v

MICHAEL VILLALVA,

Defendant-Appellee.

UNPUBLISHED
November 19, 2013

No. 299736
Wayne Circuit Court
LC No. 09-110131-DZ

LORI MCKINNEY,

Plaintiff-Appellant,

v

MAUREEN VILLALVA,

Defendant-Appellee.

No. 302444
Wayne Circuit Court
LC No. 10-010331-NZ

FREDERICK SCHAEFER,

Plaintiff-Appellant,

v

MICHAEL VILLALVA,

Defendant-Appellee,

and

MIRIAM WOLOCK,

Defendant.

No. 302468
Wayne Circuit Court
LC No. 10-007388-NZ

Before: GLEICHER, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

These consolidated appeals arise from plaintiff Lori McKinney's attempt to register and enforce her 1995 Illinois divorce judgment in Michigan. McKinney and plaintiff Frederick Schaefer also filed separate tort suits against McKinney's ex-husband, Michael Villalva, and Villalva's current wife, Maureen Villalva. The three cases were placed before two Wayne circuit court judges, both of whom summarily dismissed plaintiffs' claims.

The circuit court properly dismissed McKinney's action to reopen her 1995 divorce judgment as she sought to relitigate issues that were already decided or could have been raised in prior lawsuits. And contrary to plaintiffs' many challenges, the circuit court committed no constitutional or procedural errors in dismissing their tort suits.

These lawsuits and the current appeals completely lack merit and were part of a web of legal actions taken by McKinney and Schaefer to harass Villalva and Maureen. The circuit court therefore properly sanctioned plaintiffs for their actions and we follow suit. We affirm the dismissal of plaintiffs' claims and remand to the circuit court to calculate additional sanctions connected to defendants' need to respond to the current appeals.

I. BACKGROUND

In 1995, Lori McKinney and Michael Villalva divorced in Illinois after an 18-year marriage. At that time, Villalva was an active-duty captain in the United States Marine Corps (USMC). In the parties' property settlement, they agreed that Villalva's pension, referred to as his "interest in the disposable retired pay plan of the [USMC]," was marital property. Accordingly, upon Villalva's retirement, McKinney would be entitled to a percentage of Villalva's monthly disposable retired pay.[1] McKinney *elected* to enroll in Villalva's survivor benefit plan (SBP), an annuity that would continue to pay her a portion of Villalva's disposable retired pay if he predeceased her. The annuity was available for a premium. The property settlement provided, "The Wife shall be solely responsible for paying for said benefit from her own financial resources."

Villalva retired from the USMC in 1997. Upon his retirement, the Defense Finance and Accounting Service (DFAS) determined that McKinney was entitled to approximately 35 percent of Villalva's monthly disposable retired pay.[2] The parties had originally planned for the DFAS

[1] "The term 'disposable retired pay' means the total monthly retired pay to which a member is entitled less amounts" required by statute to be deducted before disbursement. 10 USC 1408(a)(4).

[2] In the property settlement, the parties agreed that McKinney would be entitled to 40 percent of Villalva's disposable retired pay earned during the period of their marriage. When Villalva retired, as he had been on active duty both before and after the marriage, 40 percent of the retired pay earned during the marriage equated to approximately 35 percent of his overall retired pay. On appeal, McKinney claims that Villalva fraudulently told the Illinois court that he retired immediately upon becoming eligible when he actually waited five additional months. McKinney

to deduct the SBP premium amount from McKinney's portion of the disposable retired pay. However, they learned that such a deduction was not permitted. 10 USC 1408(a)(4)(D) requires that such premiums be deducted from the retiree's gross retired pay. Accordingly, the Illinois court issued an order under which McKinney was required to directly reimburse Villalva for the premium payments. The court permitted Villalva to reduce his child support obligation by the SBP premium for the remainder of their lone child's minority. The court also modified the child support order to reflect Villalva's reduced income, an order which is a continued bone of contention for McKinney.

McKinney decided that it was unfair to require her to reimburse Villalva for the full SBP premium. McKinney concluded that since the premium was deducted from the gross retired pay, it reduced the disposable retired pay shares of both parties. Under her calculations, Villalva suffered a loss in income of approximately 65 percent of the SBP premium. Therefore, McKinney resolved that she should reimburse Villalva only 65 percent. Without asking any court to modify the divorce judgment, McKinney began reducing the funds she remitted to Villalva and eventually stopped making any payment at all.

From 1997 to 2002, McKinney remarried. McKinney informed the DFAS garnishment office of her marriage but the information did not travel through the correct channels at the agency. During the period of her remarriage, McKinney was not eligible for the SBP benefit. 10 USC 1450(b)(2)-(3). Due to the DFAS "administrative error," the agency continued to draw the premiums from Villalva's gross retired pay. McKinney is still bitter toward Villalva because she felt he did nothing to help fix this problem.

By 2004, Villalva had tired of McKinney's refusal to pay him in full for the benefit premiums being deducted from his retirement pay. He filed suit in Pueblo County, Colorado where McKinney was then living. McKinney presented her mathematical theory to the court. The court conducted an evidentiary hearing at which Villalva presented an expert witness on the issue. The court thereafter rejected McKinney's theory, concluding "The Court understands the argument [McKinney] makes regarding how the cost of the SBP premium should be determined, even though it is 'somewhat mathematically complex.' The Court disagrees with her reasoning." The Pueblo County, Colorado court ordered McKinney to reimburse Villalva all outstanding SBP premiums, which at that time totaled $5,734.87. McKinney did not comply. As she had moved to Arapahoe County, Colorado, Villalva had the case transferred and then secured a judgment holding McKinney in contempt of court. The court ordered McKinney to pay Villalva $10,452.54, a sum including his attorney fees and costs. McKinney then moved to Germany, effectively avoiding collection attempts in Colorado and resulting in the issuance of a bench warrant for her arrest in that state. Although McKinney sought reconsideration in the trial court, she never appealed the Colorado district courts' orders to that state's higher courts.[3]

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asserts that this falsehood somehow reduced her share of the disposable retired pay. This claim is mathematically absurd as the DFAS made the required calculations using accurate information.

[3] Rather, McKinney filed a grievance against Villalva's Colorado counsel with the state's Office of Attorney Regulation Counsel. That office found McKinney's claims unfounded.

During the pendency of the Colorado actions, McKinney filed for bankruptcy in the federal bankruptcy court in that state. McKinney argued to have her debt to Villalva discharged and he had to file an appearance in that court to protect his rights. The bankruptcy court refused and McKinney was again ordered to reimburse Villalva.

After her sojourn in Germany, McKinney returned to the United States and moved to Michigan to live with her boyfriend, Frederick Schaefer. Villalva lives in Virginia with his current wife, Maureen. McKinney decided she no longer wanted to take part in the SBP annuity. She orally asked Villalva to cancel the policy. Villalva refused, likely because McKinney made cancellation of the policy a prerequisite to her voluntarily reimbursing him only 65 percent of the outstanding SBP premium payments.[4] McKinney never sought a modification of the divorce judgment to require Villalva to cancel the policy. McKinney and Schaefer, who had made various payments on his girlfriend's behalf, became disgruntled and filed various suits and administrative actions against Villalva and Maureen and others associated with them.

We first note that McKinney appealed the garnishment of her marital share of Villalva's disposable retired pay to the DFAS.[5] During that process, the DFAS noted, "Ultimately, DFAS determined that Ms. McKinney's direct payment was payable at 35.9184 percent of the member's disposable retired pay, and she was covered as the member's former spouse SBP beneficiary." The DFAS found that the manner in which it garnished McKinney's marital share to cover Villalva's civil judgment was improper. However, the DFAS made no judgment regarding McKinney's duty to reimburse Villalva for the entire SBP premium and did not comment on McKinney's theory that she should owe Villalva only 65 percent of the premium amount. The DFAS did acknowledge that it improperly deducted the SBP premium from Villalva's gross pay during the period of McKinney's remarriage. The agency could not refund the premiums for that five-year period, but noted that the funds could be applied toward the Colorado civil judgment garnishment order, reducing the amount McKinney owed to Villalva. The agency also stopped garnishing her pay to cover Villalva's civil judgment. McKinney filed an administrative appeal but voluntarily withdrew it, preferring to file suit in federal court.

In September 2009, McKinney filed a complaint against Villalva's current wife Maureen with the Virginia Department of Professional and Occupational Regulation (DPOR). Maureen is a licensed real estate agent. McKinney accused Maureen of using her position to secure McKinney's credit report for an unlawful purpose. One month later, the agency closed the matter, determining "that the information in the file does not support a violation of the Board's regulations and/or laws." Dissatisfied with this result, McKinney filed suit against Villalva, Maureen, and Maureen's business partner in a Virginia federal district court. McKinney claimed that the defendants falsely informed a credit reporting agency that McKinney was applying for a home loan so that they could access her credit report without her permission. After a period of discovery, Villalva and Maureen filed a motion for summary judgment. In October 2010, before

[4] McKinney also offered not to pursue a nonexistent child support arrearage if Villalva agreed to reduced SBP payments.

[5] Villalva secured a garnishment order to satisfy his Colorado civil judgment.

the summary judgment motion could be ruled upon, McKinney dismissed her claims against Villalva and Maureen with prejudice and the court ordered the defendants to bear their own costs and fees.

In April 2009, McKinney filed a 93-page, 20-count complaint against Villalva and Maureen in a federal district court in Michigan. McKinney challenged the method by which Villalva named her as a beneficiary of the SBP and the DFAS's conclusion that Villalva made a valid election. McKinney complained that Villalva failed to notify the DFAS when she remarried to stop the deduction of the SBP premiums. Most importantly, McKinney accused Villalva of falsely and fraudulently telling various courts that he paid 100 percent of the SBP premium, entitling him to full reimbursement from McKinney. Villalva was aware that he paid only 65 percent of the premium, McKinney argued, and therefore wrongfully pursued a greater reimbursement from McKinney than permitted. McKinney explained her mathematical theory regarding the division of the SBP premium, asking the federal district court to rule on this already-resolved issue. On the same day that Maureen's and Villalva's Michigan counsel filed an appearance in the federal court, McKinney voluntarily dismissed her extensive complaint. She later claimed that she dismissed her complaint because Villalva's attorney had "a relationship" with the judge assigned to the matter.

Related to the current appeals, McKinney filed an action in Wayne County on July 27, 2009, seeking to register the Illinois divorce judgment. McKinney intended to "litigate" in Michigan "non-finalized monetary provisions pertaining to Life Insurance Policies and the payment of premiums." Schaefer filed suit against Villalva and his Michigan attorney, Miriam Wolock, alleging various torts related to his payments on McKinney's behalf and claiming that Villalva wrongfully obtained a copy of a letter sent to Schaefer by the DFAS.[6] McKinney brought a tort action against Maureen in Wayne County. McKinney wanted to again attack the requirement that she reimburse Villalva for 100 percent of the SBP premium, rather than 65 percent. Schaefer's and McKinney's tort actions were assigned to Judge Susan Borman and are the subject of Docket Nos. 302444 and 302468. McKinney's action regarding the divorce judgment was assigned to Judge Deborah Ross Adams and is the subject of Docket No. 299736.

A. Proceedings in Docket No. 299736

In the fall of 2009, McKinney filed her Wayne County action to register her Illinois divorce judgment. Villalva timely responded and subsequently filed a motion for summary disposition. Among other challenges, Villalva contended that McKinney's various complaints were barred by res judicata because they were decided in the Illinois and Colorado courts or, if not already decided, could have been raised in those prior proceedings.

During the proceedings, McKinney engaged in dilatory conduct that required the summary disposition hearing to be adjourned twice. She terminated her counsel and decided to

[6] McKinney also filed a request for investigation against Wolock with the Michigan Attorney Grievance Commission. The commission closed the request and advised McKinney to bring any concerns before the trial court presiding over her pending case.

proceed pro se, thereafter refusing to cooperate in preparing a court-ordered joint "road map" of the voluminous exhibits and history of events. McKinney repeatedly argued at length that Villalva was "lying" to the court about paying 100 percent of the SBP premium and refused to be reined in by the court's reminders that she failed to appeal the Colorado judgment resolving that issue. McKinney was volatile and emotional during the hearings, requiring the intervention of the court officer on two separate occasions.

Ultimately, on July 27, 2010, the court dismissed McKinney's action, ruling:

> [T]he court is granting the motion for summary disposition, finding that the prior rulings in this matter, in the Illinois court, as well as the Colorado court are controlling is res judicata, and failure to state a claim under state law.
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> All right. Res judicata precludes this Court from granting the relief that's being salt [sic], and registering the divorce judgment as a foreign judgment.

B. Proceedings in Docket Nos. 302444 and 302468

Sensing that matters were not going their way in the action to register the Illinois divorce judgment, Schaefer filed suit against Villalva and Villalva's counsel, Wolock. Schaefer filed his original complaint in Wayne County on June 28, 2010, but never served Villalva or Wolock. He then filed an amended complaint on July 22, this time naming only Villalva as defendant, but waited until August 10 to serve process. Schaefer claimed that Villalva wrongfully obtained a "private" letter sent by the DFAS to Schaefer. The letter described "the workings of the Uniformed Services Former Spouse's Protection Act." As Schaefer later admitted, Villalva was provided with this letter by the DFAS, but Schaefer claimed that Villalva had no legal purpose in requesting it. Schaefer also contended that he had made several payments on McKinney's behalf to Villalva, some directly and some through Villalva's Colorado attorney. Schaefer claimed that those payments had not been credited against the Colorado judgment and therefore were converted by Villalva.

Villalva responded to the complaint asserting as an affirmative defense that the Michigan court lacked personal jurisdiction over him. Although Villalva's answer was dated September 1 and was time stamped in the court clerk's office on September 7, the clerk's office did not actually register the answer in their system until September 16, making the answer appear late. This led to Schaefer filing a motion for a default judgment. The court later noted that it would not grant the motion for a default judgment because Villalva actually responded to the complaint in a timely manner but ultimately found the issue moot because the case should be dismissed for lack of personal jurisdiction.

In September 2010, McKinney also filed suit against Maureen. McKinney accused Maureen of interfering with Villalva's designation of McKinney as his SBP beneficiary. McKinney claimed that the divorce judgment demanded that she be named as an irrevocable beneficiary, but that Villalva designated her as a revocable-at-will beneficiary upon Maureen's urging. McKinney accused Maureen of invading her privacy by opening a Northwest Airlines miles statement addressed to the grown son of McKinney and Villalva. The letter included information about McKinney's flights from Germany to Denver. McKinney claimed that

Maureen shared this information with Villalva and Villalva's Colorado counsel, who then used the information against her in the Colorado proceedings. McKinney further alleged that Maureen invaded her privacy by presenting to the Virginia DPOR, in the process of defending against McKinney's complaint, copies of emails that McKinney had sent to Villalva. McKinney contended that Maureen defamed her during the Virginia DPOR investigation by accusing McKinney of extortion. McKinney also claimed intentional infliction of emotional distress.

Like her husband, Maureen answered the complaint by raising lack of personal jurisdiction as an affirmative defense. Both Maureen and Villalva subsequently sought summary disposition pursuant to MCR 2.116(C)(1) for lack of personal jurisdiction. After conducting a lengthy analysis on the record, the court granted both defendants' motions and dismissed the cases. The court also awarded Villalva and Maureen attorney fees, costs and sanctions.

We note that the circuit court proceedings in these tort actions did not go smoothly. At a September 28, 2010 status conference on Schaefer's claims, the court attempted to assist the pro se plaintiff by advising him that his complaint appeared baseless and that he and McKinney should seek redress in Colorado if their payments were not being credited to reduce the Colorado judgment. Schaefer reacted by presenting a motion to file a seconded amended complaint. However, Schaefer did not even draft his proposed seconded amended complaint, merely stating that his proposed "new claims arise from [Villalva's] conduct, transactions and occurrences complained of in" his first amended complaint. The court again attempted to assist Schaefer, having her clerk telephone Schaefer to ask him to present the proposed second amended complaint, but he refused to do so unless the court issued an order permitting the amendment. For Schaefer's failure to follow directions, the court awarded Villalva $3,250 in attorney fees, which Schaefer then delayed in paying.

At the December 10, 2010 date originally scheduled to consider Villalva's motion to summarily dismiss Schaefer's claims, Schaefer attempted to dismiss his claims with prejudice. Initially, Schaefer agreed to dismiss his claims and reimburse Villalva for his attorney fees. Villalva was hesitant, fearing that Schaefer and McKinney would file yet another action against him in a different court. Ultimately, McKinney interrupted the proceedings and had to be removed from the courtroom by the court officers. She and Schaefer contended that McKinney had a heart-related incident in the hallway and that Schaefer had to rush her to the hospital. The hearing was therefore adjourned until December 16.

Despite that McKinney and Schaefer were informed of the adjourned hearing date in person, by mail, and by email, they refused to appear. They claimed to be out of town, even though they had filed a complaint for superintending control in the Court of Appeals at 4:30 p.m. the evening prior. The court contacted Schaefer and Villalva by telephone and allowed them until 2:00 p.m. to appear. When they did not, the court proceeded to consider and grant Villalva's and Maureen's motions for summary disposition.

Moreover, on December 15, on the eve of the adjourned hearing date, McKinney filed a motion indicating that she was willing to dismiss her claims with prejudice against Maureen but only if Maureen agreed not to demand costs and attorney fees. Maureen's counsel had actually made such an offer to McKinney early in the proceedings when Maureen's costs were still low.

The court rejected McKinney's attempt to avoid the effects of her frivolous lawsuit and granted Maureen costs of $6,650.86.

We also note that during the tort actions before Judge Borman, Schaefer filed two complaints for a writ of superintending control before this Court and McKinney filed one. All three complaints were promptly denied by this Court. *In re McKinney*, unpublished order of the Court of Appeals, entered December 16, 2010 (Docket No. 301602);[7] *In re Schaefer*, unpublished order of the Court of Appeals, entered December 16, 2010 (Docket No. 301601); *In re Schaefer*, unpublished order of the Court of Appeals, entered December 7, 2010 (Docket No. 301334). Schaefer also filed a motion for peremptory reversal of the summary dismissal of his tort action, which this Court denied. *Schaefer v Villalva*, unpublished order of the Court of Appeals, entered March 10, 2011 (Docket No. 302468).

II. ANALYSIS

The circuit court summarily dismissed Schaefer's and McKinney's claims in all three lower court cases. We review de novo a circuit court's grant of summary disposition. *Coblentz v Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). Under MCR 2.116(C)(1), a court must dismiss an action if it lacks personal jurisdiction over the defendant. The plaintiff has the burden of establishing the circuit court's jurisdiction, but when reviewing the lower court's determination, we consider the pleadings and evidence in the light most favorable to the plaintiff. *Yoost v Caspari,* 295 Mich App 209, 221; 813 NW2d 209 (2012).

MCR 2.116(C)(7) demands dismissal when a plaintiff's claims are barred by the doctrine of res judicata. In reviewing a dismissal on this ground, we must accept as true the plaintiff's uncontradicted averments and review the evidence to determine if the plaintiff's claims are barred by a prior judgment. *Odom v Wayne Co*, 482 Mich 459, 466; 760 NW2d 217 (2008).

In the divorce-judgment-registration case, the circuit court also cited MCR 2.116(C)(8) in support of summary disposition. This subrule requires dismissal if the plaintiff fails to state a claim as a matter of law. Our review is limited to the pleadings. The court must accept the plaintiff's well-pleaded allegations as true and only grant relief if no factual development could warrant recovery. *Corley v Detroit Bd of Ed*, 470 Mich 274, 277; 681 NW2d 342 (2004); *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). We note, however, that the court's analysis focused mainly on res judicata and we need not consider the legal support for many of McKinney's specific claims.

We also review de novo issues of statutory and court rule interpretation. *Ligons v Crittendon Hosp*, 490 Mich 61, 70; 803 NW2d 271 (2011). We review for an abuse of discretion a circuit court's denial of a plaintiff's motion to file an amended complaint, *PT Today, Inc v Comm'r of the Office of Financial & Ins Services*, 270 Mich App 110, 142; 715 NW2d 398

[7] In her appellate brief, McKinney claims that her "complaint for superintending control was denied but only for lack of jurisdiction and not based on the merits." This Court's order merely stated that her complaint was denied and McKinney cannot discern the panel's intent.

(2006), and a court's denial of a motion for voluntary dismissal, *Mleczko v Stan's Trucking, Inc*, 193 Mich App 154, 155; 484 NW2d 5 (1992). We review for clear error a court's finding that there exists a reason cited in the court rules to impose sanctions against a party. *Schadewald v Brule*, 225 Mich App 26, 41; 570 NW2d 788 (1997).

A. DOCKET NO. 299736

McKinney challenges the circuit court's refusal to register the Illinois divorce judgment. It appears that the circuit court inartfully worded its order. McKinney did not need court permission to register her judgment. MCL 691.1173 provides that a party may file a foreign judgment with the clerk of any trial court and the court clerk will treat the judgment as if it was a judgment of our state courts. Once filed, however, the party is not automatically entitled to reopen the judgment. By statute:

> A judgment filed under this act has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of the circuit court, the district court, or a municipal court of this state and may be enforced or satisfied in like manner. [*Id.*]

McKinney sought to reopen the Illinois divorce case in her circuit court complaint. But the vast majority of McKinney's challenges were barred by res judicata.

> Res judicata bars a subsequent action between the same parties when the evidence or essential facts are identical. A second action is barred when (1) the first action was decided on the merits, (2) the matter contested in the second action was or could have been resolved in the first, and (3) both actions involve the same parties or their privies.
>
> Michigan courts have broadly applied the doctrine of res judicata. They have barred, not only claims already litigated, but every claim arising from the same transaction that the parties, exercising reasonable diligence, could have raised but did not. [*Dart v Dart*, 460 Mich 573, 586; 597 NW2d 82 (1999) (citations omitted)].

"The doctrine serves a two-fold purpose: to ensure the finality of judgments and to prevent repetitive litigation." *Bergeron v Busch*, 228 Mich App 618, 621; 579 NW2d 124 (1998).

Most of McKinney's challenges revolve around her belief that she owed Villalva only 65 percent of the SBP premiums. McKinney presented her theory in a Colorado district court and it was rejected. McKinney did not pursue an appeal of that judgment, ceasing her efforts after filing a motion for reconsideration,[8] and it is now final and binding. See *Barnett v Elite Props of*

[8] McKinney claims that her motion for reconsideration in the Colorado matter is still "ripe" because she moved, divesting the Colorado court of personal jurisdiction. Nothing prevents a party who has subsequently moved from pursuing post-judgment or appellate relief in the state in which an order or judgment was entered.

America, 252 P3d 14 (CO Ct App, 2010) (holding that an issue is not final if an appeal is still pending; therefore, an issue must be final if no appeal was ever filed). She may not relitigate that issue and is entitled to no compensation for funds she alleges were overpaid.

McKinney also contends that Villalva may have purposefully reduced his income following his retirement from the USMC, first by remaining unemployed during the remainder of their child's minority and then by reducing his disposable retired pay by opting for a "VA waiver." McKinney could have sought to have income imputed to Villalva in the Illinois court when Villalva moved for a modification of the child support order. She was able to raise the VA-waiver issue in the Colorado court proceedings.[9] Also, by the time of the Colorado proceedings, McKinney could have challenged Villalva's failure to provide his pay stubs to her.[10] Although mentioned by McKinney in those proceedings, she did not act diligently in seeking a court order for Villalva's compliance. McKinney sat on these arguments which arose from the same transactions litigated in the prior proceedings and she is now barred from raising them.

McKinney avers that the parties' property settlement is "void" because the SBP premium could not be deducted from her share of Villalva's retirement pay and affected the distribution of the retirement pay in a manner not contemplated by the parties. Again, McKinney could have raised that challenge in the Illinois court when that court first addressed this issue in 1997. Ultimately, the Wayne circuit court correctly declined to reopen the divorce judgment to consider these barred claims.

We advise McKinney of one claim that she may have that supports reopening the divorce judgment. McKinney has claimed since the late 1990s that she would like to cancel the SBP policy and be relieved of her duty to reimburse Villalva for the premium. Villalva never cancelled the policy because McKinney attached untenable strings to her offer. McKinney may now seek to reopen the divorce judgment and ask the Wayne circuit court to modify the settlement agreement by eliminating the SBP provision. The court could then order Villalva to cancel the policy or, if he chooses, to rename Maureen as his beneficiary. However, McKinney has no relief from the accumulated debt she owes Villalva. She is required to reimburse Villalva 100 percent of the SBP premiums until a court orders Villalva to cancel the policy.[11] Any further lawsuit to revisit her debt should be met with court sanctions.

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[9] We note that no provision of the divorce judgment or property settlement precluded Villalva from reducing his disposable pay with such a waiver. Compare *Megee v Carmine*, 290 Mich App 551; 802 NW2d 669 (2010).

[10] McKinney claims that Villalva is required to provide his pension pay stubs to her on a monthly basis. Actually, the property settlement only requires Villalva to provide McKinney documentation necessary to complete her request for direct payment from the DFAS.

[11] McKinney's complaint that Villalva designated her as a revocable-at-will beneficiary of the policy in contravention of the property settlement is actually beneficial to her; she would be unable to seek cancellation of the policy if she was an irrevocable beneficiary.

McKinney additionally challenges that Villalva is not entitled to reimbursement of the accumulated SBP premiums for the five years during which she was remarried. She also seeks reimbursement of funds garnished from her share of Villalva's disposable retired pay to satisfy Villalva's civil judgment in violation of federal social security laws. In the administrative proceedings, the DFAS admitted its error. The agency determined that neither McKinney nor Villalva was entitled to a cash refund of those premiums paid during McKinney's remarriage because their claim was time-barred. The DFAS did offer, however, that the premium amounts for that period could be handled by accounting procedures; Villalva had a civil judgment against McKinney and he was garnishing her share of the disposable retired pay to cover that judgment. The DFAS suggested that the amounts erroneously deducted could be credited against the judgment lien. McKinney has not informed this Court whether that actually occurred. If it has not, her remedy would be to follow through with the DFAS, not file suit in a state court.[12] The DFAS also immediately stopped garnishing McKinney's pay. McKinney is in no position to seek a refund as she actually owed those funds to Villalva.

McKinney also makes much ado about nothing regarding Judge Adams' queries into the subject matter jurisdiction of various courts. Judge Adams simply questioned whether jurisdiction was ongoing in Illinois or in Colorado to enforce the orders entered by those state courts. Judge Adams then noted that she had no power to instruct the courts of other states if they exercised continuing jurisdiction in error. McKinney brought the Wayne circuit court action and never asked for its dismissal based on the lack of jurisdiction. Accordingly, her extensive arguments on appeal are misplaced (and confusing, as McKinney suddenly switches sides of the debate on page 29 of her appellate brief, declaring that "jurisdiction in Michigan is proper").

B. DOCKET NOS. 302444 AND 302468

First and foremost, we reject Schaefer's contention that the circuit court "refus[ed] to take judicial notice . . . that [Villalva] improperly served his response on [Schaefer]" and therefore wrongfully denied Schaefer's motion for a default judgment.[13] Pursuant to MCR 2.603(A)(1), a plaintiff is not entitled to a default judgment if the defendant has pleaded or otherwise defended.

[12] McKinney cites to the property settlement and contends that Villalva must personally reimburse her for funds wrongfully or erroneously withheld by the DFAS. Villalva is only required by the settlement agreement to reimburse McKinney if the DFAS sends him a portion of her 35 percent of the disposable retired pay. He has no duty to reimburse her for funds deducted from his gross pay for the SBP premiums and McKinney actually owed him the amounts garnished from her share.

[13] Schaefer also takes the circuit court to task for failing to take judicial notice of various "adjudicative facts and law items" and lists 13 "items" such as "Plaintiff's Motion for Reconsideration" and "Plaintiff's Motion to Strike Defendant's Motion for Summary Disposition." As Schaefer is a pro se appellant, we have given him wide latitude and addressed those claims we could. Certain of Schaefer's challenges, however, were beyond comprehension.

Villalva did file an answer to Schaefer's complaint and the circuit court explained to Schaefer that Villalva's answer was timely. The circuit court's explanation was accurate.

Schaefer contends that he was not required to file his proposed second amended complaint along with his motion to amend and therefore the circuit court abused its discretion in denying his motion. MCR 2.118(A)(2) provides that a plaintiff may file a second amended complaint after the defendant has answered "only by leave of the court or by written consent of the adverse party." Schaefer did not seek Villalva's consent. And as noted by the circuit court, it could not exercise its discretion given Schaefer's complete failure to identify the new facts and/or claims he intended to raise. Schaefer's refusal to provide additional information upon the court's request wasted the time and resources of the court and Villalva.

We also reject Schaefer's and McKinney's assertion that the circuit court was required to dismiss their complaints with prejudice and without costs simply because they requested it. Further, Schaefer's challenge that the circuit court was required to take "judicial notice" of the caselaw he presented in support of dismissal is without merit because he was not entitled under the court rules to voluntarily dismiss his case without the court's permission. MCR 2.504(A)(1) expressly provides that a plaintiff may only dismiss his or her complaint without court permission if the defendant has not yet filed an answer or if the defendant agrees to the dismissal. Villalva and Maureen had already responded in these tort actions and filed motions for summary disposition. Neither defendant was willing to agree to dismissal on Schaefer's and McKinney's terms. As such, Schaefer and McKinney required court approval to dismiss their actions. MCR 2.504(A)(2) allows the dismissal to be predicated upon "terms and conditions the court deems proper."

Requiring Schaefer and McKinney to pay Villalva's and Maureen's attorney fees was a proper term to place on the voluntary dismissal motion. In a civil action, the court may impose sanctions if a party files a pleading that is not "well grounded in fact" or is not "warranted by existing law" or if the party files the pleading for an "improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." MCR 2.114(D)(2), (3). In such a case, the court may "order [the offending party] 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." MCR 2.114(E). A circuit court is also permitted to award costs as sanctions when a party files a frivolous claim or defense. MCR 2.625(A)(2); MCL 600.2591. The circuit court gave McKinney and Schaefer ample warning early in the proceedings that it found their claims unfounded and frivolous. McKinney and Schaefer insisted on proceeding. The court acted within its discretion by refusing to allow them to simply dismiss their claims without rectifying the financial harm they had caused to Villalva and Maureen.

Further, contrary to Schaefer's assertion on appeal, the circuit court did not improperly fail to consider whether it had subject matter jurisdiction before proceeding. Schaefer correctly notes that the circuit court questioned the existence of subject matter jurisdiction at the September 28, 2010 scheduling conference. By the end of the hearing, however, the court seemed concerned only about its personal jurisdiction over Villalva. Neither Schaefer nor

Villalva sought dismissal based on subject matter jurisdiction and with the issue off its radar, the court did not return to it.[14] Absent any argument by either party, the circuit court did not err in moving forward with the proceedings. Even on appeal, Schaefer makes no argument to support that the circuit court actually lacked subject matter jurisdiction and we are befuddled regarding the type of relief he expects on this ground.

Schaefer's and McKinney's complaints against the circuit court's decision to move forward with defendants' summary disposition motions in their absence are similarly meritless. Due process demands notice and an opportunity to be heard. *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 865 (1950). Neither plaintiff was denied due process. When the December 10, 2010 hearing had to be abandoned due to McKinney's alleged health problems, Judge Borman's law clerk personally informed Schaefer that the hearing had been adjourned to December 16. Judge Borman's clerk then mailed notice to Schaefer and McKinney. Villalva's and Maureen's attorney sent Schaefer and McKinney email confirmation of the adjourned hearing date. Although McKinney filed a December 15 motion to dismiss her complaint and both parties had filed complaints for superintending control in this Court on December 15, no stay had been sought or granted. When Schaefer and McKinney did not appear for their morning hearing, Judge Borman personally telephoned both plaintiffs and gave them until 2:00 p.m. to appear. Schaefer insisted that he was out of town, but the court disbelieved his story. We may not interfere with that credibility assessment. *Kelly v Builder's Square, Inc*, 465 Mich 29, 39-40; 632 NW2d 912 (2001). As Schaefer and McKinney were notified of the hearing date and were given an opportunity to appear, the court afforded them due process.

Interestingly, neither plaintiff challenges the substance of the court's decision that it lacked personal jurisdiction over Villalva and McKinney in relation to these tort claims. Accordingly, we need not address it.

C. SANCTIONS

While these appeals were pending, Villalva filed a motion in this Court seeking "damages for vexatious proceedings." This Court denied the motion without prejudice as "the substance of the appeal [was] not yet [] before the Court." *McKinney v Villalva*, unpublished order of the Court of Appeals, entered July 13, 2011 (Docket No. 299736). Now that we have considered the substance of the appellants' arguments, we now impose sanctions against Schaefer and McKinney for filing these vexatious appeals.

[14] On page 29 of his appellate brief, Schaefer expresses his shock that the circuit court refused to grant his motion to voluntarily dismiss his complaint when, at the same hearing, the court "stated on the record . . . that jurisdiction was lacking!" The record citation provided by Schaefer refers to personal, not subject matter, jurisdiction.

MCR 7.215(C), entitled "Vexatious proceedings," provides:

> (1) The Court of Appeals may, on its own initiative . . . , assess actual and punitive damages or take other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious because
>
> (a) the appeal was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined on appeal; or
>
> (b) a pleading, motion, argument, brief, document, or record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the court.
>
> (2) Damages may not exceed actual damages and expenses incurred by the opposing party because of the vexatious appeal or proceeding, including reasonable attorney fees, and punitive damages in an added amount not exceeding the actual damages. The court may remand the case to the trial court or tribunal for a determination of actual damages.

These appeals squarely fit the definition of vexatious. Schaefer, although not a licensed attorney, is a law school graduate who blatantly violated court procedures and refuses to accept instruction by those tasked with dispensing justice in this state. Even on appeal, Schaefer appears to be purposefully obtuse, claiming he "is still unsure of the reason he was sanctioned" by the trial court, despite the court's repeated explanations of the law.

McKinney has pursued her complaints in numerous venues: two federal district courts, bankruptcy court, the DFAS appeals division, the Virginia DPOR, the Colorado and Michigan attorney grievance agencies, and Wayne circuit court. She has been told time and again that she owes her ex-husband the full amount of the SBP premium, a voluntary benefit that she chose to purchase. Instead of moving forward, McKinney continues to amass her debt to Villalva and has caused him to incur excessive attorney fees that threaten to ruin his livelihood.

We remand these matters to the Wayne circuit court to determine Villalva's and Maureen's "actual damages and expenses incurred . . . because of the vexatious appeal or proceeding, including reasonable attorney fees, and punitive damages in an added amount not exceeding the actual damages." MCR 7.215(C)(2). The circuit court must then issue orders to Schaefer and McKinney demanding their payment.

Affirmed. As the prevailing parties, defendants Michael and Maureen Villalva may tax costs pursuant to MCR 7.219. As provided in this opinion, plaintiffs Lori McKinney and Frederick Schaefer are also sanctioned to reimburse defendants for their actual damages and

expenses, including attorney fees, in defending against these frivolous and vexatious appeals. We remand to the circuit court for a hearing to determine the sanction amount.

/s/ Elizabeth L. Gleicher
/s/ Jane M. Beckering
/s/ Douglas B. Shapiro