STATE OF MICHIGAN

COURT OF APPEALS

JENNIFER L. LANXNER, f/k/a JENNIFER L. GORDON,

Plaintiff-Appellant,

v

JASON S. GORDON,

Defendant-Appellee.

UNPUBLISHED
March 7, 2013

No. 305980
Oakland Circuit Court
Family Division
LC No. 2007-730585-DM

Before: RIORDAN, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

Plaintiff appeals by right the circuit court's August 2011 order assessing costs and attorney fees against plaintiff under MCR 2.114(E) and MCR 3.215(F)(3). We affirm.

The parties divorced in 2008, and in the ensuing seven years they have sparred about parenting issues and child support. In 2009, the circuit court granted defendant's first motion to reduce his child support payments. In addition, the court required plaintiff to pay $7,272 in attorney fees and costs as a sanction for pursuing objections that lacked any reasonable basis in fact or law. Plaintiff appealed the sanction order, and this Court affirmed, concluding,

> Because plaintiff brought no new evidence, or even argument, to the proceedings that took place in response to her filing of objections that supported her position, the trial court did not clearly err in deeming her objections as lacking bases in fact or law. For that reason, the court did not abuse its discretion in awarding defendant his reasonable fees and costs in connection with defending against those objections. [*Gordon v Gordon*, unpublished opinion per curiam of the Court of Appeals, issued January 13, 2011 (Docket No. 294910) (unpub op at 4).]

After this Court resolved the first appeal, the circuit court addressed a second motion by defendant to further reduce his child support payments. The court referee had heard evidence on defendant's second motion and had found that although some additional income should be imputed to defendant, a further reduction in child support was warranted. Plaintiff again objected to the referee's findings. The circuit court reviewed the transcript of the referee hearing, listened to the parties' arguments on the objections, and read the parties' briefs. Having considered the evidence and the arguments, the circuit court adopted the referee's

recommendation. In addition, the circuit court found that plaintiff had failed to provide an adequate factual basis for her assertions at the referee hearing, and that plaintiff's arguments to the circuit court remained unproven. Accordingly, the court again assessed costs and fees against plaintiff, this time for $5,500.

Plaintiff now contends that the circuit court erred by ordering plaintiff to pay costs and fees to defendant. We review the court's decision for an abuse of discretion. *Moore v Secura Ins*, 482 Mich 507, 516; 759 NW2d 833 (2008). A circuit court abuses its discretion when it selects an outcome that is outside the range of reasonable and principled outcomes. *Borowsky v Borowsky*, 273 Mich App 666, 672; 733 NW2d 71 (2007). Additionally, we review the circuit court's factual findings for clear error. *Id.* A finding is clearly erroneous when this Court is left with the definite and firm conviction that a mistake has been made. *Moore v Moore*, 242 Mich App 652, 654-655; 619 NW2d 723 (2000). "A trial court's finding with regard to whether a claim or defense was frivolous will not be disturbed on appeal unless the finding is clearly erroneous." *State Farm Fire & Casualty Co v Johnson*, 187 Mich App 264, 268-269; 466 NW2d 287 (1990).

The circuit court has authority to assess reasonable costs and attorney fees against a party that raises a frivolous objection to the decision of a referee. MCR 3.215(F)(3). As this Court explained in its previous opinion, "[a] claim is frivolous if '(1) the party's primary purpose was to harass, embarrass, or injure the prevailing party, or (2) the party had no reasonable basis upon which to believe the underlying facts were true, or (3) the party's position was devoid of arguable legal merit.' *Cvengros v Farm Bureau Ins Co*, 216 Mich App 261, 266-267; 548 NW2d 698 (1996), citing MCL 600.2591(3)(a)." *Gordon*, unpub op at 3.

Regarding the order at issue in this case, the circuit court expressly found "[p]laintiff has failed to provide an adequate factual basis for her assertion that defendant misrepresented his income and financial situation to [the referee]." The record supports the circuit court's finding. Plaintiff pressed the court with her assertions about perquisites from defendant's family business, his supposed assets, and his putative earning potential. The circuit court correctly noted, however, that the referee had imputed an additional $7,000 in annual income to defendant, and that plaintiff had presented nothing to warrant any greater imputed income. Absent any reasonable factual bases in the record to support plaintiff's assertions, we find no clear error in the circuit court's finding.

Moreover, we find no clear error in the circuit court's apparent finding that plaintiff's legal arguments lacked merit. The circuit court properly described the law governing imputed income in child support matters, citing, among other cases, *Olson v Olson*, 189 Mich App 620; 473 NW2d 772 (1991). A party who challenges the amount of imputed income must demonstrate that the person to whom income is to be imputed has "an actual ability and likelihood of earning the imputed income." *Berger v Berger*, 277 Mich App 700, 726; 747 NW2d 336 (2008). In this case plaintiff relied on aspersions concerning defendant's activities and expenditures, rather than on valid legal argument. The circuit court reasonably rejected plaintiff's aspersions.

Given that there was no clear error in the circuit court's findings, we conclude that the court was within its discretion when it required plaintiff to pay defendant's reasonable costs and fees.

Affirmed.

/s/ Michael J. Riordan
/s/ Peter D. O'Connell