

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DAWN MARIE GRADY,

Plaintiff-Appellee,

v

RIETBERG REALTY COMPANY, INC., and  
RUSTY RICHTER,

Defendants-Appellants.

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UNPUBLISHED

June 14, 2011

No. 297135; 297782

Kent Circuit Court

LC No. 09-005519-NO

Before: SHAPIRO, P.J., and O'CONNELL and OWENS, JJ.

PER CURIAM.

In these consolidated appeals, defendants challenge the trial court's denial of defendants' request for sanctions. We affirm.

On May 22, 2009, plaintiff filed a verified complaint and a motion for temporary restraining order (TRO). Plaintiff alleged that defendants had taken a judgment against her husband, Kevin Grady, and Grady Group Properties, L.L.C. Pursuant to the judgment, defendants had seized the building and contents located at 3321 East Paris Avenue in Kentwood, Michigan. Plaintiff averred that she was the owner of Dawn Marie Catering and operated a catering and banquet facility at this address. She indicated that her catering business had a scheduled graduation open house in the facility on the following day, and that defendants had denied her access to the premises. The trial court entered a TRO that allowed plaintiff reasonable entry and access to the facility. The court's order set the matter for a hearing on June 3, 2009, and stated that the TRO would expire on that date unless renewed.

On the hearing date, plaintiff's counsel advised the court and defense counsel by letter that plaintiff and her husband were filing for bankruptcy and that the TRO hearing was therefore unnecessary. Plaintiff then sought a stipulated order to dismiss the lawsuit, but defense counsel refused to stipulate to the dismissal. Defendants filed a motion for sanctions. Defendants asserted that plaintiff had no documents to support her claim of ownership, that the pleadings were frivolous and without foundation, and that the pleadings were not well grounded in fact or based upon reasonable inquiry. The trial court stated that the lawsuit had "sufficient merit on its face to permit the litigation as it related to Dawn Marie Grady," and denied defendants' motion for sanctions.

In *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 35; 666 NW2d 310 (2003), this Court stated:

This Court reviews a trial court's finding regarding whether an action is frivolous for clear legal error. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). A 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 was made. *Id.*

MCL 600.2591 provides in pertinent part:

(1) 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.

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(3) As used in this section:

(a) "Frivolous" means that at least 1 of the following conditions is met:

(i) The party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure the prevailing party.

(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.

Similarly, MCR 2.114 provides in pertinent part:

(D) Effect of Signature. The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that

(1) he or she has read the document;

(2) 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

(3) 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.

(E) Sanctions for Violation. 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.

Whether a claim or defense is frivolous must be determined based on “the circumstances at the time it was asserted.” *Jerico Constr, Inc*, 257 Mich App at 36. The court rule does not “envisio[n] disciplining a person who signs or verifies a pleading containing an allegation which could reasonably be believed to be true when subscribed but which is later determined to be unfounded.” *Lockhart v Lockhart*, 149 Mich App 10, 14-15; 385 NW2d 709 (1986) (analyzing a prior version of the rule).

Defendants argue that sanctions should have been awarded against plaintiff because she had no reasonable basis to believe that the facts underlying her legal position were true, and because, to the best of her knowledge, the pleadings were not well grounded in fact. However, it appears from the record that a catering business operated out of the premises at issue, that the business was called Dawn Marie Catering, that plaintiff was involved in the business, and that the business had contracted to host a graduation open house. It further appears that plaintiff played some role in the business and that she thought she had a legal interest in this business. Under these circumstances, the trial court did not clearly err in finding that, with respect to plaintiff, the claim was not frivolous.

Defendants argue that plaintiff’s counsel should be sanctioned because he did not do a reasonable inquiry and had he done so, he would have discovered that there was no factual basis for the claim. In *LaRose Mkt, Inc v Sylvan Ctr, Inc*, 209 Mich App 201, 210; 530 NW2d 505 (1995), this Court stated:

An attorney has an affirmative duty to conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed. MCR 2.114(D); *Davids v Davis*, 179 Mich App 72, 89; 445 NW2d 460 (1989). The reasonableness of the inquiry is determined by an objective standard and depends on the particular facts and circumstances of the case. *Id.*

In the present case, defense counsel allegedly told plaintiff’s counsel before the suit was filed that Dawn Marie Catering was not an L.L.C. or registered as a d/b/a in Kent County. Plaintiff’s counsel indicated that plaintiff had acknowledged as much but indicated that she was nonetheless the owner of this business. Plaintiff’s counsel inquired of plaintiff’s accountant, who verified his understanding that plaintiff was the owner of the business and the personal property. Plaintiff’s counsel could perhaps have taken additional steps to validate plaintiff’s ownership, but he was under significant time constraints, given the pending open house. Under these circumstances, the inquiry made by plaintiff’s counsel was objectively reasonable.

Affirmed.

/s/ Douglas B. Shapiro  
/s/ Peter D. O’Connell  
/s/ Donald S. Owens