

STATE OF MICHIGAN
COURT OF APPEALS

ANTONIO L. THOMAS and ANTONIO L.
THOMAS ASSOCIATED,

UNPUBLISHED
November 17, 2009

Plaintiffs-Appellees,

v

No. 288306
Wayne Circuit Court
LC No. 02-220633-CZ

LA-VAN HAWKINS, URBAN CITY FOODS,
LLC, and STATE OF MICHIGAN,

Defendants,

and

MELVIN BUTCH HOLLOWELL,

Receiver-Appellant.

Before: Stephens, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Appellant Hollowell appeals as of right from the trial court's order vacating its earlier order awarding him sanctions against plaintiffs. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case has a long history and has been to this Court on two previous occasions. In 2005, plaintiffs, who are judgment creditors of defendant Mr. Hawkins, sought to remove Hollowell as receiver because he had a "massive conflict of interest." Eventually, the case was resolved with Hollowell remaining receiver. Hollowell moved for sanctions under MCR 2.114(D) and (E), and MCR 2.313, asserting that plaintiffs' action to remove him was not grounded in fact and that plaintiffs failed to respond to discovery requests. The trial court ruled in his favor, giving the reason that, "this is part of the continuing pattern that I see wherein there is no factual basis to support the claims of conflict." The court did not mention the alleged discovery violations as a ground for awarding sanctions. Plaintiffs appealed; this Court affirmed. *Thomas v Hawkins*, unpublished opinion per curiam of the Court of Appeals, issued January 3, 2008 (Docket No. 271031). However, our Supreme Court then issued the following order:

On order of the Court, the application for leave to appeal the January 3, 2008 judgment of the Court of Appeals is considered and, pursuant to MCR 7.302(G)(1), in lieu of granting leave to appeal, we REVERSE the judgment of the Court of Appeals. In *Sellers v Lamb*, 303 Mich 604, 610-611 (1942), this Court held that “a situation in which a receiver would be even *tempted* to favor one or another party cannot be tolerated.” (emphasis in original). Here, plaintiffs produced sufficient evidence in support of their claim that the sale of the Sweet Georgia Brown restaurant was tainted, or at least *appeared* to be tainted, with a conflict of interest through Hollowell’s representation of Wendy Hawkins, La-Van Hawkins and La-Van Hawkins’ business entities. Moreover, Hollowell’s refusal to include the co-receiver in the bidding and sale process raised legitimate concerns about his impartiality. Further, Hollowell did not procure any other bids for the restaurant or secure appraisals, and Hollowell knew Frank Taylor, the buyer, and gave him a \$160,000 credit, thereby preferring Taylor over secured creditors. Therefore, on the facts at the time of filing as reconstructed at the remand hearing, this claim was *not* frivolous, because plaintiffs had a good faith factual basis to raise the conflict of interest issue. We REMAND this case to the Wayne Circuit Court for further proceedings consistent with this order. [*Thomas v Hawkins*, 482 Mich 884 (2008) (emphasis in original).]

On remand, the trial court declined to find a new reason to grant sanctions after all the time that had passed, and stated the only ruling it could make that would be consistent with our Supreme Court’s order was to grant plaintiffs’ motion to vacate sanctions. At the same time, the trial court denied plaintiffs’ motion for sanctions against Hollowell’s counsel. This is the decision we review here.

On appeal, Hollowell argues that our Supreme Court’s order said only that the suit was not frivolous; it did not prevent the trial court from finding the suit was not well-grounded in fact. These are separate grounds for awarding sanctions; frivolous claims are sanctioned under MCR 2.114(F), while the trial court awarded, and this Court affirmed, sanctions awarded under MCR 2.114(D) and (E). Our Supreme Court’s order also is silent on this Court’s holding that a trial court has inherent authority to sanction a party or attorney for misconduct before the court. See *Maldonado v Ford Motor Co*, 476 Mich 372; 719 NW2d 809 (2006). Plaintiffs did not conduct their litigation with “clean hands,” and our Supreme Court’s order does not prevent the trial court from exercising its inherent authority to sanction plaintiffs for their misconduct. Finally, Hollowell argues that the trial court could have awarded sanctions based on plaintiffs’ discovery violations because the Supreme Court’s order does not preclude such a finding.

Plaintiffs argue that our Supreme Court’s order is the “law of the case.” The order removed any basis for sanctioning plaintiffs because it stated unequivocally that plaintiffs acted in good faith. Thus, even if the trial court had the inherent authority to award sanctions, it had no basis for doing so. Moreover, the trial court’s decision was consistent with the remand order. Even if our Supreme Court’s order left some issues remaining for the trial court to decide, its decision to not award sanctions on some other basis was consistent with its finding that plaintiffs should not be sanctioned for their claim that Hollowell had a conflict of interest. Finally, plaintiffs argue that Hollowell’s discovery sanctions issue is not properly presented before this Court because the trial court has never ruled on it.

We review for an abuse of discretion a trial court's decision to grant or deny attorney fees. *Taylor v Currie*, 277 Mich App 85, 99; 743 NW2d 571 (2007). The trial court has not abused its discretion if its decision is within the range of principled outcomes. *Id.* We review for clear error the factual findings on which the decision is based. *Id.*

The trial court originally granted Hollowell's motion for sanctions under MCR 2.114(D) and (E). Together, these provide:

(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.

These provisions apply to all motions, pleadings, and other papers. MCR 2.114(A).

The trial court did not abuse its discretion by vacating the order awarding sanctions. The only ground for awarding sanctions ever identified by the trial court throughout this whole proceeding was the lack of factual ground for the assertion that Hollowell had a conflict of interest. Hollowell's argument that our Supreme Court's order only precludes a finding that plaintiffs filed pleadings that were frivolous is a reasonable argument given the language used in the order. However, our Supreme Court's conclusion that "plaintiffs had a good faith factual basis to raise the conflict of interest issue" and the quotation from *Sellers* identify the error made by the lower courts. Because this was receivership, it did not matter if Hollowell had an *actual* conflict of interest, which is what the trial court went to great pains to ascertain. Instead, *Sellers* indicates that a situation where a conflict is merely possible is enough to justify removal of a receiver. The pleadings in the trial court did not have to be supported by actual fact, but only by plaintiffs' good-faith belief that the facts showed conflict was possible. Our Supreme Court's conclusion that plaintiffs raised the conflict issue in good faith precluded the trial court from finding a violation of MCR 2.114(D).

Nor did the trial court err in declining to award sanctions under some other ground after all this time. There were allegations that both sides had engaged in discovery violations, and the court likely would have had to hold at least another evidentiary hearing to explore the new

theories. Hollowell points out that alternative grounds exist, but does not explain why the trial court abused its discretion when it concluded, “To find another basis to impose sanctions when I was not doing that from the beginning, I don’t think that’s appropriate.”

Affirmed.

/s/ Cynthia Diane Stephens

/s/ Mark J. Cavanagh

/s/ Donald S. Owens