Court of Appeals, State of Michigan

ORDER

Mark A Chaban PC v Shirley Getsinger

Docket No. 282481

LC No. 07-709097-AV

Michael J. Talbot
Presiding Judge

Brian K. Zahra

Karen M. Fort Hood
Judges

The Court orders that the motion to strike is GRANTED only to the extent that it applies to the claim of cross appeal. MCR 7.207(A)(1) provides that a cross appeal may be filed only "[w]hen an appeal of right is filed or the court grants leave to appeal." No appeal of right has been filed and this Court has not granted leave to appeal. Further, the Supreme Court's order of remand directed this Court to reconsider the application in Docket No. 282481 in light of arguments made by Tindall & Company P.C.; the Supreme Court did not remand the case as on leave granted. Accordingly, there is no provision in the court rules for the filing of a claim of cross appeal under these circumstances.

The Court also declines to consider the "objection to this Court's order dated December 3, 2009" because that order did not address Docket No. 282109. To the extent that the objection could be considered a motion for reconsideration of this Court's order of December 3, 2009, it was untimely filed. Further, where the Supreme Court's order expressly remanded "this case" (i.e., Docket No. 282481) for the limited purpose of reconsideration of this Court's May 14, 2008 order vacating sanctions in Docket No. 282841, no basis existed for reopening Docket No. 282109. If Chaban had objections regarding the Supreme Court order, such objections should have been raised with the Supreme Court.

Pursuant to the Supreme Court's order of June 23, 2009, this Court has reconsidered its May 14, 2008 order in Docket No. 282481 and has afforded Tindall & Company, P.C. the opportunity to present arguments in support of the portions of the probate court's March 6, 2006 and March 8, 2006 orders awarding sanctions that were vacated by this Court's May 14, 2008 order. Upon reconsideration of the merits of the arguments posed by Tindall, the Court again orders, pursuant to MCR 7.205(D)(2), that the November 1, 2007, order of the Wayne Circuit Court affirming the grant of sanctions to petitioner Chaban hereby is REVERSED.

The probate court expressly found that the pleadings filed in the defense of petitioner's request for attorneys fees were not frivolous. This Court reviews for clear error the trial court's finding that an action or defense was frivolous. *Evans & Luptak, PLC v Lizza*, 251 Mich App 187, 203; 650 NW2d 364 (2002). No clear error exists in the probate court's finding that the pleadings filed by Getsinger were not frivolous. Where the probate court specifically stated that the pleadings were not frivolous, it erred in assessing sanctions for frivolous pleadings.

Justice Young commended to this Court MCL 600.2591, a provision that this Court not only considered in its first analysis, but directly cited in its May 14, 2008, order of reversal. Nothing in the plain language of that statute permits a court to assess sanctions for a party's persistence in objecting to attorney fees that were later ruled to be excessive. The statute, MCR 2.114 and MCR 2.625(A)(2) do

not provide for sanctions to be assessed against respondent Getsinger for the reasons described by the probate court on the record on January 24, 2006 and March 8, 2006. Accordingly, the probate court had no basis upon which to assess sanctions under MCR 2.114, MCR 2.625(A)(2) or MCL 600.2591. Consequently, the Court VACATES the portions of the probate court's orders of March 6, 2006 and March 8, 2006, awarding sanctions.

This order is to have immediate effect, MCR 7.215(F)(2).

The Court retains no further jurisdiction.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

JUN 01 2010
Date

Sandra Schultz Mengel
Chief Clerk