STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

RICHARD G. ALEXANDER and
CAROL H. ALEXANDER,

Plaintiffs,

v

Case No. 2010-112599-CH
Hon. Wendy Potts

BRUCE RYDING and
DIANNE RYDING,

Defendants.
_____/

OPINION AND ORDER RE: PLAINTIFFS' AMENDED MOTION FOR RECONSIDERATION OF PLAINTIFFS' MOTION FOR SANCTIONS AGAINST DEFENDANTS FOR VIOLATION OF MCR 2.114

At a session of Court
Held in Pontiac, Michigan On
MAR 1 6 2016

This matter is before the Court on Plaintiffs' Amended Motion for Reconsideration of Plaintiffs' Motion for Sanctions Against Defendants for Violation of MCR 2.114. The Court dispenses with oral argument pursuant to MCR 2.119(F)(2).

In review of Plaintiffs' motion, the Court relies on MCR 2.119(F)(3), which provides, in relevant part:

> [A] motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

"The grant or denial of a motion for reconsideration rests within the discretion of the trial court." *Charbeneau v Wayne Cty. Gen. Hosp.*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

On June 17, 2015, the parties appeared before the Court on Plaintiffs' Motion for Sanctions Against Defendants for Violation of MCR 2.114. Plaintiffs' motion concerned the alleged frivolity of Defendants' defense that the 1978 plat of their subdivision eliminated Plaintiffs' easement. Following oral arguments of the parties, the Court rendered a ruling and consequently denied the motion. Thereafter, Plaintiffs timely filed their motion for reconsideration.

Plaintiffs argue that the Court committed palpable error in finding that Defendants' belief in their plat defense was reasonable at the outset of this action. According to Plaintiffs, Defendants failed to provide a legal basis for their contention that the 1978 plat extinguished Plaintiffs' rights. Plaintiffs argue that Defendants neglected to research Plaintiffs' chain of title or conduct a title search prior to bringing their claims.

"Whether a claim is frivolous within the meaning of MCR 2.114(F) and M.C.L. § 600.2591 depends on the facts of the case." *Kitchen v Kitchen*, 465 Mich 654, 662; 641 NW2d 245 (2002).

"[F]rivolous claims provisions impose an affirmative duty on each attorney to conduct a reasonable inquiry into the factual and legal viability of a pleading before it is signed. The reasonableness of the inquiry is determined by an objective standard. The focus is on the efforts taken to investigate a claim before filing suit, and a determination of reasonable inquiry depends on the facts and circumstances of the case...That the alleged facts are later discovered to be untrue does not invalidate a prior reasonable inquiry." *Attorney Gen. v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003).

In this matter, Defendants asserted, as their defense, that the 1978 plat of their subdivision eliminated Plaintiffs' easement. In support of this assertion, Defendants relied on numerous documents including, but not limited to: the June 27, 2010 boundary survey letter by Jim Bishop, PS; the certified boundary survey of Lot 7; the recorded plat of the Peabody Orchards Lakeside Subdivision; the recorded plat of the Peabody Farms Subdivision; the recorded building and use restrictions for the Peabody Orchards Lakeside Subdivision; the March 12, 1979 Quit Claim Deed from Abbey Homes of Michigan; the recorded Tract Index for Lot 7 of the Peabody Orchards Lakeside Subdivision; and the Lot 7 survey of the Peabody Orchards Lakeside Subdivision.

In their Answer, Defendants also deferred to the deposition testimony of Dianne Ryding regarding her inability to locate the existence of a recorded easement in favor of Plaintiffs at the Oakland County Register of Deeds office. Dianne Ryding also provided deposition testimony that a 1988 Title Search failed to identify the subject easement.

During the June 17, 2015 motion hearing, the Court concluded that based upon the evidence presented, Defendants' plat defense was not frivolous at the outset. Upon further review of Plaintiffs' motion for sanctions, Defendants' answer, and the supporting exhibits, the Court confirms its earlier determination that Defendants' plat defense was not frivolous at the time it was asserted.

In consideration of Defendants' exhibits and deposition testimony, the Court further finds that Defendants and/or their counsel conducted a reasonable inquiry into the factual and legal viability of their defense that the 1978 plat of their subdivision eliminated Plaintiffs' easement. While Defendants' defense did not prevail, the Court gave due consideration to that defense prior to ultimately rejecting it.

After reviewing Plaintiffs' motion, it is clear that they have failed to demonstrate a palpable error by which the Court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

Accordingly, Plaintiffs' Amended Motion for Reconsideration of Plaintiffs' Motion for Sanctions Against Defendants for Violation of MCR 2.114 is denied.

IT IS SO ORDERED.

Dated: MAR 1 6 2016

Hon. Wendy Potts
Circuit Court Judge