STATE OF MICHIGAN

COURT OF APPEALS

CHERYL SALOKA,

Plaintiff-Appellant,

v

SHELBY NURSING CENTER JOINT VENTURE, a/k/a PINEHURST EAST INC, a/k/a BEAUMONT NURSING HOME, CRYSTAL REICK, VICTORIA CICONE, PREMIERE HEALTHCARE MANAGEMENT INC, and RENEE DECEMBER,

Defendant-Appellees.

UNPUBLISHED
December 6, 2005

No. 255954
Macomb Circuit Court
LC No. 2002-005423-NZ

CHERYL SALOKA,

Plaintiff-Appellant,

v

SHELBY NURSING CENTER JOINT VENTURE, a/k/a PINEHURST EAST INC, a/k/a BEAUMONT NURSING HOME, CRYSTAL REICK, VICTORIA CICONE, PREMIERE HEALTHCARE MANAGEMENT INC, and RENEE DECEMBER,

Defendant-Appellees.

No. 257200
Macomb Circuit Court
LC No. 2002-005423-NZ

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

In these consolidated cases, plaintiff, Cheryl Saloka, appeals as of right from circuit court orders granting defendants' (Shelby Nursing Center Joint Venture (SNC), Assistant Director of Nursing Crystal Reick, Corporate Compliance Officer Victoria Cicone, Premiere Healthcare Management, Inc. (PHM), and Administrator Renee December) motions for summary disposition and case evaluation sanctions, in this case involving alleged: retaliation in violation

of the Whistleblowers' Protection Act (WPA) and public policy, civil conspiracy, promissory estoppel, and fraud. We affirm.

I

SNC is a nursing home facility providing assisted living for the elderly. In 1999, plaintiff was hired as the Director of Medical Records for SNC. Plaintiff was an at will employee. As Director of Medical Records, plaintiff's job entailed "coding of resident diagnoses for reimbursement to the facility. Also maintaining confidentiality of the patient medical records, maintaining correct documentation and required documentation in the medical record charts, working with doctors to take care of deficiencies in medical records [sic]." Plaintiff's immediate supervisor at the SNC was Renee December. During this employment PHM was under contract with SNC to provide management services and was the employer of two supervisors Victoria Cicone, Corporate Compliance Officer, and December, Administrator for SNC.

In late August 2002, SNC apparently learned of alleged medical chart violations through anonymous allegations, at which time an investigation began. According to plaintiff, in August 2002, Cicone approached her regarding researching deaths that occurred in the facility. There was a medical record for a patient referred to as Patient #1 that had been changed by Reick, who was the assistant director of nursing for SNC, and plaintiff claims she forwarded this information to Cicone who wanted to know of information changes. Plaintiff claimed that she thought this was improper, and that Ann Bendit, a nurse, was asked by Crystal Reick to fix the chart, but she did not bring it to the attention of Cicone or December prior to the investigation. Plaintiff also claims that Patient #2's medical records were altered by Nurse Beverly Burgess, which later made her believe something was being covered up. Plaintiff acknowledged that she did not bring this to the attention of December, but claims she told Cicone in August or early September, and that Gloria Yerkovich, a unit manager, told her that she had informed December and the director of nursing, Janice Rogers. Plaintiff claims that during an August 29, 2002, meeting with Cicone she got the idea that any problem was going to be "swept under the table," because of the attitude. SNC ultimately concluded that errors were isolated mistakes and did not result in harm.

On September 11, 2002, plaintiff was told that she was terminated because she did not inform the Administrator, December, or the Administrator's superior, Cicone of the improprieties she believed were occurring. Plaintiff acknowledges that she did not inform December, and that she did not inform Cicone until August 2002. On the day of her discharge, plaintiff informed December that she was going to report SNC. After being discharged, plaintiff contacted the Michigan Bureau of Health Systems and reported nursing home abuse at the Shelby Nursing Center.

On November 22, 2002, plaintiff filed a complaint against SNC, PHM, Cicone, December, and Reick alleging: (1) they violated the Whistleblower's Protection Act (WPA) when plaintiff was discharged for engaging in protected activities; (2) statutes and public policy were violated when defendants discharged plaintiff in retaliation for participating in an internal investigation and refusing to cover up illegal activities; (3) promissory estoppel requires that plaintiff keep her job because definite promises were made to her that if she reported patient mistreatment she would not be retaliated against, and she relied on these representations; (4) fraud based on fraudulent representations made by defendants to plaintiff; and (5) civil

conspiracy because December, Cicone, and Reick engaged in concerted activity pursuant to an agreement to a accomplish a criminal purpose by altering medical records and covering up patient mistreatment to avoid statutory reporting requirements. Subsequently, defendants SNC and Reick filed a motion for summary disposition, and a separate motion for summary disposition was filed by PHM, Cicone, and December.

After a hearing, the trial court, in granting defendants' motions for summary disposition, found: (1) plaintiff has not stated a claim under the WPA as the decision to terminate plaintiff could not have been based on retaliation of her intent to file a report with the state because the decision to terminate was made first; (2) summary disposition was proper on plaintiff's public policy claim because she did not make report under MCL 333.21771, thus, is not entitled to the protections and the evidence establishes plaintiff was terminated for failing to report the incident when they first occurred; (3) plaintiff's reliance on the Corporate Compliance Manual's statement that employees would not be retaliated against for reporting patient mistreatment and other improper conduct is misplaced because plaintiff failed to report the incidents when she first knew of them and instead participated after someone else reported, thus, summary disposition is proper on the promissory estoppel claim; (4) plaintiff's fraud claim is impermissibly based on future promises and she has not proffered any evidence that statements made were false or with reckless disregard for the truth; and (5) plaintiff's civil conspiracy claim fails for lack of any underlying tort.

Subsequently, defendants filed a motions for case evaluation sanctions and contended that they accepted the case evaluation award, plaintiff rejected, and, subsequently, the trial court granted defendants' motions for summary disposition. Following a hearing, the trial court issued and opinion and order granting defendants' motions for case evaluation sanctions. The trial court found that there was nothing unusual in the course of litigation warranting the interests of justice exception and there were no issues of first impression. In addition, the trial court examined the requested attorney fees in connection with the November 2003 Michigan Bar Journal providing the median income, and noted that Attorneys Glazek and Smith should receive more than the median amount because of their extensive experience, was satisfied with the submitted amounts, except for Attorney Glazek's which it reduced from $345 per hour to $250 per hour. A judgment was entered in favor of defendants SNC and Reick for $7,785 for case evaluation sanctions. And, a judgment was entered in favor of defendants PHM, Cicone, and December for $5,895 in case evaluation sanctions.

II

Plaintiff argues, on appeal, that the trial court erred in granting defendants' motions for summary disposition with regard to her claims pursuant to the WPA, public policy, and civil conspiracy.

A. Standard of Review

"Whether a plaintiff has established a prima facie case under the WPA is a question of law subject to review de novo." *Manzo v Petrella*, 261 Mich App 705, 711; 683 NW2d 699 (2004). This Court also reviews de novo the grant or denial of summary disposition to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich

109, 118; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). When deciding a motion for summary disposition, a court must consider the pleadings, affidavits, depositions, admissions and other documentary evidence submitted in the light most favorable to the nonmoving party. *Id*. A motion for summary disposition based on the lack of a material factual dispute must be supported by documentary evidence. MCR 2.116(G)(3)(b); *Scalise v Boy Scouts of America*, 265 Mich App 1, 10; 692 NW2d 858 (2005). The moving party must specifically identify the matters which have no disputed factual issues, MCR 2.116(G)(4); *Maiden, supra* at 120; *Reed v Reed*, 265 Mich App 131, 140; 694 NW2d 65 (2005), and has the initial burden of supporting his position by affidavits, depositions, admissions, or other documentary evidence, *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999). The party opposing the motion then has the burden of showing by evidentiary materials that a genuine issue of disputed fact exists. *Id.*

B. Whistleblowers' Protection Act

Plaintiff first claims that the trial court erred in granting defendants' motion for summary disposition with regard to her WPA claim. MCL 15.362 provides:

> An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of a law or regulation or rule promulgated pursuant to law of this state, a political subdivision of this state, or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing, or inquiry held by that public body, or a court action.

A prima facie violation of the WPA requires a plaintiff to show "that (1) the plaintiff was engaged in protected activity as defined by the Whistleblowers' Protection Act, (2) the plaintiff was discharged, and (3) a causal connection existed between the protected activity and the discharge." *Shallal v Catholic Social Services of Wayne Co*, 455 Mich 604, 610; 566 NW2d 571 (1997); *Phinney v Verbrugge*, 222 Mich App 513, 553; 564 NW2d 532 (1997).

Claims made under the WPA are analyzed using the burden-shifting framework used for claims under the Civil Rights Act, MCL 37.2101 et seq. *Roulston v Tendercare, Inc*, 239 Mich App 270, 280; 608 NW2d 525 (2000). Under this framework, the plaintiff bears the initial burden of establishing a prima facie violation of the WPA. *Id*. at 280-281. If the plaintiff succeeds, the burden shifts to the defendant to articulate a legitimate business reason for the adverse employment action against the plaintiff. *Id*. at 281. If the defendant produces evidence establishing the existence of a legitimate business reason for the adverse employment action, the plaintiff must be provided an opportunity to prove that the legitimate reason offered by the defendant was not the true reason, but was only a pretext for the adverse employment action. *Id*.

The trial court found that plaintiff did not meet her initial burden of proof in establishing a prima facie violation because there was nothing to support she was engaged in a protected activity. On review de novo, we find that summary disposition was properly granted because

plaintiff failed to produce any support for her claim that defendants were aware that she provided or was about to provide information to a "public body."

There is no dispute that plaintiff was discharged. The dispute is whether plaintiff was engaged in protected activity, and, if so, whether there was a causal connection between the protected activity and her discharge. A protected activity under the act consists of "(1) reporting to a public body a violation of a law, regulation, or rule, (2) being about to report such a violation to a public body, or (3) being asked by a public body to participate in an investigation." *Chandler v Dowell Schlumberger, Inc,* 456 Mich 395, 399; 572 NW2d 210 (1998), citing the WPA, MCL 15.362; *Roulston, supra* at 270, 279. A "public body" under the WPA is any body that is either created or funded by state or local authority, including a member of that body. *Manzo, supra* at 713-714.

It is undisputed that plaintiff did not file a complaint with a public body until nine days after she was terminated, thus, there must be something to support that plaintiff was about to report and that defendants were aware she was about to report. Employers are entitled to objective notice of a report or a threat to report by a whistleblower. *Id*. Objective notice has been interpreted by the courts to mean that the employer or the person who fired the employee was aware of the protected activity in which the employee engaged. See *Kaufman & Payton, PC v Nikkila*, 200 Mich App 250, 257-258; 503 NW2d 728 (1993).

Plaintiff contends that defendants were on notice of her intention to report because of statements she made. Plaintiff, in her deposition, testified that she made the decision to file a complaint with the state prior to her termination, and that December and Cicone were aware. However, her testimony does not support that December and Cicone would be aware she was about to report, as evidenced by the following colloquial from plaintiff's deposition:

Q. On what day did you tell [December] that you were going to file a complaint with a governmental body against [SNC]?

A. I did not use those exact words.

Q. On what day, tell me what day -

A. September 11, 2002.

Q. In the termination interview?

A. Yes.

Q. And did you tell her before September 11, 2002?

A. I did not.

Q. Did you tell [Cicone] before September 11, 2002?

A. In advertently I did.

Q. On what date did you tell [Cicone]?

A. The day that her and [December] interviewed me, when I made the comment about if the state came in and looked at (Patient #1's) chart, would they follow through going to the hospital to prove that it was not correctly - - what was in the documentation was not correct.

* * *

Q. Okay, - - you made no other statement to [Cicone] or [December] prior to the termination meeting on September 11th about filing charges or any complaints with any governmental body, correct?

A. I did not.

Q. And the statement that you made in August - - I'll say August 29th; I'm assuming that's the date - - the statement that you made, in the meeting with [December] and [Cicone] regarding the state is the that you just reiterated?

A. Correct.

Q. So it's correct that other than those two statements which you've just referred to in the termination meeting and in the prior meeting with [Cicone] and [December] - - I want to be clear - - you never told anybody else at [SNC] or [PHM] anything about filing charges with a government body?

A. No, I told Karen Case the day she told me I was being terminated.

Q. That was the day before - - that was September 10th?

A. Correct.

Q. And what did you say to Karen Case specifically? I want the words.

A. Specifically I told her that the reason I was being fired is because they knew that I knew they were sweeping things under the carpet and that they knew I was going to report it to the state. And I believe at that time that - - I assumed at that time that Karen went back to [Cicone] and [December].

* * *

Q. Sitting here today, can you tell me of your personal knowledge that Renee December and Vicki Cicone when they made the decision to terminate you, had been informed that you were about to file charges with a public body? Sitting here today do you know that for a fact?

A. I do not know that for a fact. I was terminated, though. That should speak for itself. . . .

Basically, plaintiff acknowledges that she did not specifically tell December and Cicone until after she knew she was being terminated. Defendants presented documentary evidence

supporting that they were not aware that plaintiff was going to file a complaint with the state when the decision to terminate her was made. The statement plaintiff claims that she made to Cicone is not the type of statement, even when viewed in a light most favorable to plaintiff, that would put defendants on notice that plaintiff was filing a complaint with a public body. In addition, the alleged statement to Case does not suffice because plaintiff acknowledges that she said nothing to Case until the decision to terminate plaintiff had already been made. The fact that plaintiff thinks they knew does not support the claim because her claims lacks any support that they were aware. Summary disposition is proper because plaintiff knew her discharge was imminent before there was any casual connection.

Plaintiff also claims that MCL 333.20180 provides a cause of action, with all remedies available to whistleblowers under the WPA, in favor of those individuals who make internal complaints. However, this same issue was addressed in *Manzo, supra* at 718, and in denying a similar claim this Court provided:

> Contrary to plaintiff's argument, a plain reading of MCL 333.20180 demonstrates that no private right of action exists under the section. There are repeated references in the text to assisting "the department," which clearly reference a public entity, a governmental department or agency. Further, and significantly, the statute even sets out conditions that must be met before making a report to the governmental department. After reviewing the language of the statute, and the framework set out within the statute, it is clear that the statute does not create a private right of action.

For the same reasons stated in *Manzo*, plaintiff's claim, in this regard, is without merit.

Because plaintiff has not raised a question of fact with regard to whether she was engaged in a protected activity there is no prima facie case, thus, this Court need not address whether the proffered reason for the termination was pretext, nor does the Court need to address plaintiff's claim regarding Bullard-Plawecki.[1]

C. Public Policy Claim

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[1] Even if plaintiff were engaged in protected activity, her claims fails because she has not presented any support for there being a causal connection between her planning to file a report and her discharge other than timing. However, "a temporal relationship, standing alone, does not demonstrate a causal connection between [a] protected activity and any adverse employment action. Something more . . . is required to show causation . . . ." *West v Gen Motors Corp*, 469 Mich 177, 186; 665 NW2d 468 (2003), citing, e.g., *Taylor v Modern Engineering, Inc,* 252 Mich App 655, 662; 653 NW2d 625 (2002) (stating that a temporal relationship does not demonstrate causation in a case alleging retaliation for alleged whistleblower activity). Plaintiff attempts to stretch the argument beyond timing, but all contentions are related to timing. Further, even if plaintiff was engaged in protected activity, "the fact that a plaintiff engages in a 'protected activity' under the Whistleblowers' Protection Act does not immunize him from an otherwise legitimate, or unrelated, adverse job action." *Id.* at 187.

Plaintiff's next argues that the trial court erred in granting defendants' motion for summary disposition with regard to her claim of discharge in violation of public policy. In support of her claim, plaintiff relies on the language of MCL 333.21771, arguing that she was discharged in violation of this legislative statement and for a failure to violate the law during her employment. MCL 333.21771(6), of the Public Health Code, provides:

> (1) A licensee, nursing home administrator, or employee of a nursing home shall not physically, mentally, or emotionally abuse, mistreat, or harmfully neglect a patient.
> (2) A nursing home employee who becomes aware of an act prohibited by this section immediately shall report the matter to the nursing home administrator or nursing director. A nursing home administrator or nursing director who becomes aware of an act prohibited by this section immediately shall report the matter by telephone to the department of public health, which in turn shall notify the department of social services.
> (3) Any person may report a violation of this section to the department.
> (4) A physician or other licensed health care personnel of a hospital or other health care facility to which a patient is transferred who becomes aware of an act prohibited by this section shall report the act to the department.
> (5) Upon receipt of a report made under this section, the department shall make an investigation. The department may require the person making the report to submit a written report or to supply additional information, or both.
> (6) A licensee or nursing home administrator shall not evict, harass, dismiss, or retaliate against a patient, a patient's representative, or an employee who makes a report under this section.

Plaintiff was an at will employee. There are limited exceptions to the general rule that an employer may terminate the employment of an at-will employee at any time. In *Edelberg v Leco Corp*, 236 Mich App 177, 179-180; 599 NW2d 785 (1999), this Court provided:

> In [*Suchodolski v Michigan Consolidated Gas Co*, 412 Mich 692, 694-695; 316 NW2d 710 (1982)], our Supreme Court recognized three situations where the discharge is so contrary to public policy as to be actionable though the employment is at will. The three public policy exceptions to the at-will doctrine apply when (1) the employee is discharged in violation of an explicit legislative statement prohibiting discharge of employees who act in accordance with a statutory right or duty, (2) the employee is discharged for the failure or refusal to violate the law in the course of employment, and (3) the employee is discharged for exercising a right conferred by a well-established legislative enactment. 412 Mich at 695-696.

First, as noted by the trial court there is nothing supporting that plaintiff made a report under MCL 333.21771. The plain language of the statute protects "an employee who makes a report under this section." Plaintiff did not make a report pursuant to MCL 333.21771 of the Public Health Code, thus, she is not entitled to the protections of the provision.

Even if plaintiff were covered by the provision her claims fails because she has not presented any support for there being a causal connection between her filing this type of report and her discharge other than timing. However, "a temporal relationship, standing alone, does not demonstrate a causal connection between [a] protected activity and any adverse employment action. Something more . . . is required to show causation . . . ." *West v Gen Motors Corp*, 469 Mich 177, 186; 665 NW2d 468 (2003), citing, e.g., *Taylor v Modern Engineering, Inc,* 252 Mich App 655, 662; 653 NW2d 625 (2002) (stating that a temporal relationship does not demonstrate causation in a case alleging retaliation for alleged whistleblower activity). Thus, plaintiff cannot show causation, and summary disposition is proper.

Because plaintiff's claim fails on the basis of her not being engaged in the protected activity provided, it is unnecessary to discuss plaintiffs' other assertions regarding this claim. Furthermore, even if she was engaged in a protected activity, plaintiff has presented nothing beyond timing to support her claim.

D. Civil Conspiracy Claim

Plaintiff also argues that the trial court erred in dismissing her claim of civil conspiracy because defendants were in violation of several criminal and civil laws. The trial court dismissed the civil conspiracy claim because there was no sustainable underlying tort.

The essential elements of a civil conspiracy are: (1) a concerted action (2) by a combination of two or more persons (3) to accomplish an unlawful purpose (4) or a lawful purpose by unlawful means. *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 313; 486 NW2d 351 (1992); *Mays v Three Rivers Rubber Corp*, 135 Mich App 42, 48; 352 NW2d 339 (1984). A civil conspiracy claim standing alone is not actionable; it is necessary to prove a separate actionable tort underlying the conspiracy. *Advocacy Organization for Patients & Providers v Auto Club Ins Ass'n,* 257 Mich App 365, 384; 670 NW2d 569 (2003). The claim cannot "'exist in the air; rather, it is necessary to prove a separate, actionable tort.'" *Advocacy Organization for Patients & Providers, supra* at 384, quoting *Early Detection Center, PC v New York Life Ins Co*, 157 Mich App 618, 632; 403 NW2d 830 (1986). Thus, a civil conspiracy claim fails as a matter of law in the absence of a viable underlying tort. *Id.*

As discussed, *supra*, plaintiff did not establish any viable underlying claim against defendants. Nor can plaintiff establish any unlawful purpose or unlawful means in defendants' actions. It is well settled that a claim for civil conspiracy, standing alone, is not actionable. *Cousineau v Ford Motor Co*, 140 Mich App 19, 36-37; 363 NW2d 721 (1985). In other words, a civil conspiracy claim may not be maintained where there are no legal and equitable claims remaining in the case. See *Detroit Bd of Ed v Celotex Corp*, 196 Mich App 694, 713; 493 NW2d 513 (1992). Because plaintiffs failed to establish any actionable underlying tort, the conspiracy claim must also fail. Thus, plaintiff failed to state a prima facie case of civil conspiracy. Accordingly, this claim fails as a matter of law, and the trial court's grant of summary disposition to defendants was appropriate.

III

Next, plaintiff argues that the trial court's award of case evaluation sanctions in favor of defendants should be reversed because it is clearly in the interest of justice to refuse to award

sanctions under the unique circumstances in this case. In addition, plaintiff argues that the trial court abused its discretion in awarding unreasonable sanctions based on unreasonable hours and rates. We disagree with both contentions.

A. Standard of Review

In *Harbour v Correctional Medical Services, Inc*, 266 Mich App 452, 465; 702 NW2d 671 (2005), this Court provided the following standard of review:

> A trial court's decision to grant or deny case evaluation sanctions is subject to review de novo on appeal. *Elia v Hazen*, 242 Mich App 374, 376-377; 619 NW2d 1 (2000). However, because a trial court's decision whether to award costs pursuant to the "interest of justice" provision set forth in MCR 2.403(O)(11) is discretionary, this Court reviews that decision for an abuse of discretion. *Campbell v Sullins*, 257 Mich App 179, 205 n 9; 667 NW2d 887 (2003). An abuse of discretion may be found only when the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Dep't of Transportation v Randolph*, 461 Mich 757, 768; 610 NW2d 893 (2000).

If applicable to the circumstances, the imposition of case evaluation sanctions is mandatory, and a court's decision whether to grant sanctions is a question of law subject to de novo review on appeal. *Cusumano v Velger*, 264 Mich App 234, 235; 690 NW2d 309 (2004). Determination of the rate for fees to include in a sanction is in the trial court's discretion, *Zdrojewski v Murphy*, 254 Mich App 50, 73; 657 NW2d 721 (2002), and this Court will uphold the determination of the amount of the award absent an abuse of discretion, *Elia, supra* at 377. An abuse of discretion occurs only if the trial court's decision was grossly violative of fact and logic, or it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Harbour, supra* at 465.

B. Award of Case Evaluation Sanctions

Plaintiff contends that the case evaluation sanctions awards should be reversed based on the interests of justice exception. A party who rejects an evaluation is subject to sanctions if he fails to improve his position at trial. *Elia v Hazen*, 242 Mich App 374, 378; 619 NW2d 1 (2000). MCR 2.403(O) provides in relevant part:

> (1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the case evaluation.
>
> (2) For the purpose of this rule "verdict" includes,

* * *

> (c) a judgment entered as a result of a ruling on a motion after rejection of the case evaluation.
>
> * * *
>
> (11) If the "verdict" is the result of a motion as provided by subrule (O)(2)(c), the court may, in the interest of justice, refuse to award actual costs.

Thus, if the verdict is the result of a judgment entered as the result of a motion after rejection of the case evaluation, the court may, in the interests of justice, refuse to award actual costs. MCR 2.403(O)(11); *Haliw v Sterling Hts*, 471 Mich 700, 706; 691 NW2d 753 (2005). Such an interest of justice exists when there is a legal issue of first impression presented, when the law is unsettled and substantial damages are at issue, when a party is indigent and an issue merits determination by a trier of fact, or when the effect on third persons might be significant. *Haliw v Sterling Heights*, 257 Mich App 689, 707; 669 NW2d 563 (2003), rev'd on other grds 471 Mich 700; 691 NW2d 753, on rem 266 Mich App 444; 702 NW2d 637 (2005). The "interest of justice" exception should be implicated only in "unusual circumstances." *Id.* at 707-709, citing *Stitt v Holland Abundant Life Fellowship (On Remand)*, 243 Mich App 461, 472; 624 NW2d 427 (2000), and *Luidens v 63rd Dist Ct*, 219 Mich App 24, 35-36; 555 NW2d 709 (1996). "'Other circumstances, including misconduct on the part of the prevailing party, may also trigger [the interest of justice] exception.'" *Haliw, supra,* 257 Mich App 707, quoting *Luidens, supra* at 36. Absent such unusual circumstances discussed above, the general rule mandating an award of costs applies. *Id.* 709.

The trial court in its opinion and order carefully addressed plaintiff's arguments for the interest of justice exception, and found that there was nothing unusual in the course of litigation warranting the interests of justice exception and there were no issues of first impression. We are not persuaded that the trial court abused its discretion by declining to invoke the "interest of justice" exception. As noted by the trial court, the reason for any delay for a trial court decision was plaintiff's request for leave to file a brief to exceed twenty pages and adjournments that were granted at the request of plaintiff. Plaintiff has not demonstrated that there are unusual circumstances justifying application of this narrow exception. Contrary to plaintiff's argument, this case does not present an issue of first impression. Rather, the issues raised have been adequately addressed and covered by Michigan case law. There was no misconduct shown on the part of defendants. Plaintiff rejected evaluation, and failed to improve her position at trial, and no unusual circumstances exist to invoke the interest of justice exception. As such, the trial court did not abuse its discretion.

C. Reasonableness of Case Evaluation Sanctions

Lastly, plaintiff disputes the amount of time and the hourly rates of the attorneys requested and received as case evaluation sanctions. If sanctions are appropriate, the actual costs to be charged are the costs taxable in any civil action plus a reasonable attorney fee. MCR 2.403(O)(6); *Dessart v Burak*, 470 Mich 37, 40; 678 NW2d 615 (2004). A reasonable attorney fee must be based on a reasonable hourly or daily rate, as determined by the trial judge, for

services necessitated by the rejection of the evaluation. MCR 2.403(O)(6)(b); *Dessart, supra*. If the reasonableness of the fees is challenged, the court should conduct an evidentiary hearing unless the parties have created a sufficient record. *Jager v Nationwide Truck Brokers, Inc*, 252 Mich App 464, 488; 652 NW2d 503 (2002), overruled on the grounds in *Elezovic v Ford Motor Co*, 472 Mich 408, 411; 697 NW2d 851 (2005).

In determining a reasonable hourly or daily rate, the trial court should use empirical data contained in the Law Practice Survey and other reliable studies. This information should be coordinated with other relevant criteria, including: (1) the professional standing and experience of the lawyer; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client. *Zdrojewski, supra* at 72; *Temple v Kelel Distributing Co*, 183 Mich App 326, 333; 454 NW2d 610 (1990); *Jernigan v General Motors Corp*, 180 Mich App 575, 587; 447 NW2d 822 (1989). Reasonable fees are not equivalent to actual fees charged. *Zdrojewski, supra*. Reasonable fees can include fees incurred through representation by multiple lawyers. *Attard v Citizens Ins Co*, 237 Mich App 311, 329-330; 602 NW2d 633 (1999). Attorney fees necessitated by rejection of an evaluation must be causally connected to the rejection. *Haliw, supra*, 471 Mich 711 n 8.

Defendants PHM, Cicone, and December requested $5,855 in actual attorney fees with an hourly rate of $190 per hour for Attorney Richard Smith and $170 per hour for attorney Rebecca Smith, and $40 in costs. Defendants SNC and Reick filed a motion for case evaluation sanctions requesting $10,299.50, which included $345 per hour for Attorney Glazek and $120 per hour for Attorney Viviano.

The trial court issued an opinion and order granting defendants' motions for case evaluation sanctions, but reduced Attorney Glazek's rate from $345 per hour to $250 per hour. A judgment was entered in favor of defendants SNC and Reick for $7,785 for case evaluation sanctions, and a judgment was entered in favor of defendants PHM, Cicone, and December for $5,895 in case evaluation sanctions.

The trial court did not abuse its discretion in calculating a reasonable attorney fee for Attorney Glazeks' services at a rate of $250 an hour. The trial court was presented with evidence of the relative experience of each attorney and affidavits stating that the rates were reasonable, given the legal experience of each attorney and the locality of the action. The court was also referred to statistics published by the State Bar of Michigan Bar Journal in 2003, which listed a reported median hourly rate of $175.00. Attorney Glazek had requested $345 per hour. The trial court, at the hearing, did ask Attorney Glazek representing SNC and Reick, the justification for his $345 rate, and he replied that it was the same rate he charged all of his clients and that it was comparable to what other firms in the same area charged. The trial court in allowing for $250 per hour recognized Attorney Glazek's experience, and that his value should be above the median. The trial court did not abuse its discretion in considering $250 per hour a reasonable fee for Attorney Glazek because of his experience and longstanding relationship with the client. Clearly, the trial court carefully considered this, and made a decision of what it thought was reasonable. Under the circumstances, the trial court's fee determination with regard to Attorney Glazek did not constitute an abuse of discretion.

Plaintiff also objected to the alleged hours spent by the attorneys for SNC and Reick, who spent a combined 21.6 hours to review and prepare a response to plaintiff's brief in opposition to defendant's motion for summary disposition. The trial court reviewed the parties' briefs below and heard arguments on the issue, and there is nothing on the record supporting this submitted time was excessive. To the contrary, the record supports that plaintiff filed a lengthy brief, raising issues, and citing a significant number of cases. Under the circumstances, the trial court did not abuse its discretion in this regard.

We further note that plaintiff has cited no authority for her arguments that the number of attorney hours was excessive and, thus, has abandoned the issue. The appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *Ambs v Kalamazoo County Road Comm*, 255 Mich App 637, 650; 662 NW2d 424 (2003), nor may he give issues cursory treatment with little or no citation of supporting authority, *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984); *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001). Argument must be supported by citation to appropriate authority or policy. MCR 7.212(C)(7), *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue. *Yee v Shiawassee County Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

Plaintiff also argues that the fees requested by the attorneys for PHM, Cicone, and December were excessive, but again cites no authority, thus, the issue has been abandoned. In addition, there is nothing supporting that hours were excessive or unreasonable in light of the fact that defendants were responding to such a lengthy brief from plaintiff. The trial court did not abuse its discretion. [2]

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Jane E. Markey

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[2] Plaintiff does not appear to have raised issue with the grant of summary disposition in regard to her claims for promissory estoppel and fraud; thus, we need not address these issues on appeal.