# STATE OF MICHIGAN

# COURT OF APPEALS

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| LAMAR LEMMONS,<br><br>Plaintiff-Appellant, | UNPUBLISHED<br>September 18, 2014 |
| v | No. 316414<br>Wayne Circuit Court |
| CRYSTAL IRELAND,<br><br>Defendant-Appellee. | LC No. 11-012120-CH |

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

PER CURIAM.

In this wrongful-eviction dispute, plaintiff appeals by right the circuit court's order of May 6, 2013, awarding case evaluation sanctions for defendant in the amount of $8,600 plus interest. We affirm.

I

Plaintiff rented property at 11024 Whittier Street in Detroit ("the premises"), which he used as both a residence and an office, pursuant to a month-to-month lease agreement with landlord Joe Menefield. Under the terms of the lease agreement, plaintiff's rent was due on the 15th of each month. Plaintiff's rent was paid in full through October 15, 2010.

Menefield failed to pay property taxes on the premises and the Wayne County Treasurer commenced tax foreclosure proceedings. Unbeknown to plaintiff, defendant purchased the premises at a tax foreclosure sale on September 22, 2010. On September 23, 2010, defendant contacted Menefield by telephone and learned that plaintiff had been renting the premises. Defendant contacted plaintiff and arranged for him to remove his furniture and personal belongings from the premises. On September 27, 2010, without plaintiff's knowledge, defendant changed the locks. After plaintiff complained, defendant gave him a key. However, defendant entered the premises on October 4, 2010, and discovered that plaintiff still had not removed his personal property. Accordingly, defendant removed and disposed of plaintiff's personal belongings and again changed the locks.

Relying on MCL 600.2918, plaintiff filed suit in the Wayne Circuit Court on October 3, 2011, alleging that he had been wrongfully evicted by defendant and had lost personal property exceeding $25,000 in value. Plaintiff requested treble damages under the statute.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(8) and (10). Among other things, defendant argued that MCL 600.2918 did not apply because (1) she had no landlord-tenant relationship with plaintiff, and (2) plaintiff had not been ejected from the premises "by force" within the meaning of the statute.

The matter was referred to case evaluation in accordance with MCR 2.403. The case evaluators unanimously recommended an award of $3,500 for plaintiff. Defendant accepted the case evaluation but plaintiff rejected it in August 2012.

At a hearing on March 7, 2013, the circuit court observed that defendant had acquired title to the premises following the tax foreclosure sale and had given plaintiff adequate opportunity to vacate the premises. The court noted that plaintiff had never even alleged the use of force in his pleadings. The court ultimately ruled that it was beyond genuine factual dispute that plaintiff had not been ejected from the premises "by force" within the meaning of MCL 600.2918. Five days later, on March 12, 2013, the circuit court entered an order granting summary disposition in favor of defendant pursuant to MCR 2.116(C)(10).

On March 20, 2013, defendant moved for case evaluation sanctions pursuant to MCR 2.403(O). Defendant argued that her attorneys had been required to provide 34.4 hours of legal services as a result of plaintiff's rejection of the case evaluation award. Defendant argued that her attorneys were entitled to be compensated at a rate of $300 per hour, for a total of $10,320 in reasonable attorney fees.

At hearings on April 10, 2013, and May 3, 2013, the circuit court considered the billing statements of defendant's attorneys, their skill, and the difficulty of the services rendered in this case. The court agreed that defendant's attorneys had been required to perform 34.4 hours of work as a result of plaintiff's rejection of the case evaluation award. However, the court determined that defendant's attorneys were entitled to compensation at the lower, more reasonable rate of $250 per hour. On May 6, 2013, the circuit court entered an order awarding case evaluation sanctions for defendant in the amount of $8,600 plus interest.

II

We review de novo the circuit court's decision to award case evaluation sanctions under MCR 2.403(O). *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). However, we review for an abuse of discretion the specific amount of attorney fees and costs awarded. *Id*. The circuit court's decision whether to apply the interest-of-justice exception of MCR 2.403(O)(11) is also reviewed for an abuse of discretion. *Harbour v Correctional Med Services, Inc*, 266 Mich App 452, 465; 702 NW2d 671 (2005). We review de novo the interpretation and application of the court rules. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010).

III

Plaintiff argues that the circuit court's award of case evaluation sanctions was improper because the 34.4 hours of legal services claimed by defendant were not "necessitated" by plaintiff's rejection of the case evaluation award within the meaning of MCR 2.403(O)(6)(b). Specifically, plaintiff asserts that because he did not reject the case evaluation award until August 2012, after defendant's initial motion for summary disposition and accompanying brief

in support had already been filed, there was no "causal nexus" between his rejection of the case evaluation award and defendant's later incurred expenses. We disagree.

MCR 2.403(O)(6)(b) permits the award of "a reasonable attorney fee" as part of case evaluation sanctions if the attorney fee was "necessitated by the rejection of the case evaluation." Interpreting this provision, our Supreme Court has held that there must be a "causal nexus" between one party's rejection of the case evaluation award and the other party's incurred expenses. *Haliw v Sterling Heights*, 471 Mich 700, 711 n 8; 691 NW2d 753 (2005).

Contrary to plaintiff's argument on appeal, the billing statements submitted by defendant's attorneys reveal that most of their legal work was performed *after* plaintiff's rejection of case evaluation in August 2012. Although it is true that defendant's attorneys had prepared and filed an earlier motion for summary disposition and accompanying brief, a new motion for summary disposition and accompanying brief in support were filed in December 2012, after this matter was reassigned to a different circuit judge. The new motion for summary disposition and accompanying brief in support were much longer and more detailed than the original motion and brief. The new motion and brief also contained many more citations to legal authority than the original motion and brief. Despite plaintiff's claims to the contrary, it is apparent that the new motion and brief required substantial additional legal work and were not merely restatements of the original motion and brief.

In addition to the new motion for summary disposition and accompanying brief in support, defendant's attorneys performed numerous other legal services that were necessitated by plaintiff's rejection of the case evaluation award. Among other things, they contacted potential witnesses, prepared defendant's reply to plaintiff's response to the motion for summary disposition, attended hearings, and corresponded with defendant. We have carefully reviewed the billing statements submitted by defendant, which detail 34.4 hours of legal services performed by her attorneys between August 30, 2012, and March 20, 2013. We conclude that these 34.4 hours of legal services were both reasonable and necessitated by plaintiff's rejection of case evaluation in August 2012. See MCR 2.403(O)(6)(b). The circuit court did not err by including attorney fees for 34.4 hours of legal work in the case evaluation sanctions awarded in this case.[1]

IV

Plaintiff also argues that the circuit court erred by failing to apply the interest-of-justice exception of MCR 2.403(O)(11). We disagree.

The case evaluation sanctions provided for in MCR 2.403(O) are generally mandatory. See *Haliw v Sterling Heights (On Remand)*, 266 Mich App 444, 447; 702 NW2d 637 (2005). However, when the verdict is the result of a ruling on a motion, as it was in the present case, "the court may, in the interest of justice, refuse to award actual costs." MCR 2.403(O)(11). The

[1] Plaintiff does not challenge the circuit court's specific decision to award attorney fees at the rate of $250 per hour.

decision whether to apply this interest-of-justice exception is within the sound discretion of the court. *Harbour*, 266 Mich App at 465. Only "unusual circumstances" will warrant the application of the interest-of-justice exception. *Id*. at 466; see also *Haliw*, 266 Mich App 448. This includes cases of first impression, cases in which the law is unsettled and substantial damages are at issue, cases in which there is a significant financial disparity between the parties, cases that will significantly affect third parties, and cases involving misconduct by the prevailing party. *Harbour*, 266 Mich App at 466.

Plaintiff argues that application of the interest-of-justice exception was warranted in this case because (1) the law is unsettled concerning whether purchasers of occupied properties can resort to self-help to evict tenants, (2) defendant committed misconduct by forcibly entering plaintiff's residence, and (3) two circuit judges disqualified themselves from this case due to plaintiff's political connections. However, we conclude that these circumstances were not sufficiently unusual to warrant the circuit court's application of the interest-of-justice exception. See *Haliw*, 266 Mich App 448-449. Quite the contrary, there was a strong interest in having the present dispute settled by the parties. *Id*. at 449. The circuit court did not abuse its discretion by declining to invoke the interest-of-justice exception. *Id*. at 450.

V

Plaintiff lastly argues, albeit in cursory fashion, that the circuit court failed to comply with the requirements of MCR 2.602(B) when it granted summary disposition in favor of defendant. Again, we disagree.

At the hearing of March 7, 2013, the court observed that it would grant summary disposition in favor of defendant. The court's order granting summary disposition was entered five days later, on March 12, 2013. Plaintiff argues that the circuit court's order was entered in violation of MCR 2.602(B), that he was accordingly unaware that the order existed, and that this deprived him of the ability to claim an appeal from the order.

Under MCR 2.602(B), the circuit court "may sign the judgment or order at the time it grants the relief provided by the judgment or order." The hearing of March 7, 2013, was held on a Thursday. The order was signed and entered on the following Tuesday, March 12, 2013. Taking into account the intervening weekend, as well as the Wayne Circuit Court's demanding schedule, we simply cannot conclude that the court failed to comply with MCR 2.602(B)(1). Regardless, any error in failing to comply with the exact timing requirements of MCR 2.602(B)(1) was harmless and did not result in substantial injustice to plaintiff. See MCR 2.613(A). Indeed, plaintiff's counsel was present and fully participated at the hearing of March 7, 2013, at which time the court made clear that it would "be granting the defendant's motion for summary disposition." Under the rules of agency, an attorney's knowledge is generally imputed to his or her client. See *Katz v Kowalsky*, 296 Mich 164, 174; 295 NW 600 (1941). Thus, it is disingenuous at best for plaintiff to argue that he was unaware of the court's order granting summary disposition for defendant. Finally, we note that even if plaintiff did miss the 21-day window for filing a claim of appeal, he could have sought leave to appeal under MCR 7.205(G). But he did not do so. We perceive no error.

Affirmed. As the prevailing party, defendant may tax her costs pursuant to MCR 7.219.

/s/ Donald S. Owens
/s/ Kathleen Jansen
/s/ Peter D. O'Connell