# STATE OF MICHIGAN

# COURT OF APPEALS

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IN RE LAW OFFICES OF BENNER & BILICKI, P.C.,

Appellant,

RONALD COAKLEY,

Plaintiff,

v

HERR VOSS CORPORATION, a Pennsylvania corporation,

Defendant-Appellee,

and

BENGAL STEEL,

Defendant.

UNPUBLISHED
April 8, 1997

No. 181204
Wayne Circuit Court
LC No. 91124460 NP

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Before: Marilyn Kelly, P.J., and Jansen and M. Warshawsky,* JJ.

PER CURIAM.

Appellant, the Law Offices of Benner and Bilicki, P.C., appeals as of right from a grant of actual costs to be paid by appellant to appellee, defendant Herr Voss Corporation, in the amount of $10,237.50. Appellant argues that costs should have been taxed against the client, not the law firm. We affirm.

Appellant's issue on appeal revolves around the parties' agreement concerning who would pay the expenses of out-of-state appellee's employees called by plaintiff during trial. The parties do not dispute that at least part of the agreement was that, if appellee did not call the employees in its case-in-

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* Circuit judge, sitting on the Court of Appeals by assignment.

chief, it would not be responsible for paying their travel, lodging and meal expenses. The dispute occurs over appellee's assertion that the law firm agreed to be held personally responsible for these expenses.

Appellant correctly notes that MCR 2.506(F)(2) does not give the trial court the authority to assess travel costs for out-of-state witnesses against a law firm. Costs may be assessed only against a party. See *Eaddy v Garden City Osteopathic Hosp*, 152 Mich App 767; 394 NW2d 99 (1986). However, in this case, the trial court found that appellant personally agreed to pay the travel expenses. If in fact appellant agreed to pay the expenses, we see no reason why such a stipulation should not be enforced. MCR 2.507(H) provides that the Court has the authority to enforce such an agreement if made in open court. See, also, *Michigan Nat'l Bank v Mudgett*, 178 Mich App 677, 682; 444 NW2d 534 (1989).

Here, appellant denies that he made the agreement in open court. Appellee, on the other hand, insists that the arrangement was made at the January 21, 1994 hearing. The trial court agreed with appellee. Unfortunately, the transcript of the hearing was not filed with this Court. The stenographer filed a certificate stating that no record of the hearing could be found. Without the transcript, we are unable to conclude that the trial court erred in finding that appellant stipulated that it would personally pay the travel expenses. Accordingly, we affirm the trial court's order taxing costs against appellant.

Affirmed.

/s/ Marilyn Kelly
/s/ Kathleen Jansen
/s/ Meyer Warshawsky