STATE OF MICHIGAN

COURT OF APPEALS

BRIM SLATS, INC. d/b/a BRIM CONCRETE and ROGER ZOOK,

Plaintiffs-Appellants/ Cross-Appellees,

v

ROBERT BOGAN and DOUG DUFF,

Defendants,

and

ROY COLE and IRISH HILLS HOG FARM,

Defendants-Appellees/ Cross-Appellants.

UNPUBLISHED
August 7, 1998

No. 197945
Eaton Circuit Court
LC No. 92-000714-NO

Before: Corrigan, C.J., and Hoekstra and Young, Jr., JJ.

PER CURIAM.

Plaintiffs appeal by right the judgment of no cause of action following a bench trial on their claim for contribution under MCL 600.2925a *et seq.;* MSA 27A.2925(1) *et seq.* Defendants cross appeal, challenging the trial court's denial of their motion for directed verdict. We affirm the judgment and dismiss the cross appeal as moot.

I

This action arises from plaintiffs' entry into a settlement agreement in a negligence action brought by Patricia and Sidney Murphy. Because the $250,000 settlement extinguished the Murphys' claims against defendants, plaintiffs commenced the present action for contribution under MCL 600.2925a *et seq.*; MSA 27A.2925(1) *et seq.* Plaintiffs entered into a consent judgment with defendant Duff and dismissed their claim against defendant Bogan. A jury trial then commenced on plaintiffs' claims against defendants Cole and Irish Hills Hog Farm.

The jury returned the following special verdict:

QUESTION NO. 1: Was any Defendant negligent in their conduct toward Patricia and Sidney Murphy which occurred on August 23, 1990?

Answer: **Yes** (yes or no)

If your answer is "no," do not answer any further questions.

QUESTION NO. 2: Was any Defendant's negligence a proximate cause of the injuries suffered by Patricia and Sidney Murphy on August 23, 1990?

Answer: **Yes** (yes or no)

If your answer is "no," do not answer any further questions.

QUESTION NO. 3: Did Plaintiff Brim Concrete, Inc. pay more than it's pro rata share of the common liability created in its $250,000 settlement with Patricia and Sidney Murphy?

Answer: **No** (yes or no)

If your answer is "no," do not answer any further questions.

QUESTION NO. 4: If you find that Defendant's [sic] are liable in contribution to Plaintiff Brim Concrete, Inc., next to each party listed, place the percentage of fault attributed to that party.

Plaintiff: _____ percent

Defendant: _____ percent

(Note: The total of the percentages of fault must add up to 100 percent.)

Plaintiffs subsequently moved for a new trial on the ground that the jury's verdict was inconsistent because it found that defendants' negligence was a proximate cause of the Murphys' injuries but nevertheless determined that plaintiffs did not pay more than their pro rata share of the common liability. The trial court, while conceding that the jury's answers to the questions on the special verdict form were arguably inconsistent and that jury confusion existed, denied the motion. The court subsequently granted mediation sanctions against plaintiffs. The parties then stipulated under MCR 7.210(B)(1)(d) to filing a partial trial transcript in this Court.

II

Plaintiffs argue that the trial court abused its discretion in denying their motion for a new trial on the ground that the jury returned an inconsistent verdict. We reject plaintiffs' argument because the record is inadequate to review this question.

This Court reviews a trial court's decision whether to grant a new trial for an abuse of discretion. *Setterington v Pontiac General Hosp,* 223 Mich App 594, 608; 568 NW2d 93 (1997). Generally, courts will set aside a verdict and grant a new trial in a civil action when the verdict is inconsistent and contradictory. *Clark v Seagrave Fire Apparatus, Inc,* 170 Mich App 147, 150-151; 427 NW2d 913 (1988). In *Harrington v Velat,* 395 Mich 359, 360; 235 NW2d 357 (1975), our Supreme Court cited the general rule contained in 66 CJS, New Trial, § 66, pp 197-198:

> "Ordinarily, a verdict may and should be set aside and a new trial granted where it is self-contradictory, inconsistent, or incongruous, and such relief should, as a rule, be granted where more than one verdict are (sic) returned in the same action and they are inconsistent and irreconcilable."

The Supreme Court later stressed in *Granger v Fruehauf Corp,* 429 Mich 1, 9; 412 NW2d 199 (1987), that "every attempt must be made to harmonize a jury's verdicts." The Court explained that "[o]nly where verdicts are so logically and legally inconsistent that they cannot be reconciled will they be set aside." *Id.* Consequently, "[i]f there is an interpretation of the evidence that provides a logical explanation for the findings of the jury, the verdict is not inconsistent." *Id.* at 7.

In *Lagalo v The Allied Corp,* 457 Mich 278; 577 NW2d 462 (1998), the Michigan Supreme Court recently expounded on the critical importance of the court's review of the evidence and arguments at trial in its attempt to harmonize the jury's verdict. The Court explained:

> To implement the teaching of *Granger*, one must consider the evidence in the full context of the case, including the arguments of counsel, the instructions given by the court, and, if appropriate, the pleadings. [*Id.* at 286, n 10.]

The Supreme Court in *Lagalo* noted that this Court failed to engage in this factual review below, and, after completing the factual analysis, concluded that the jury verdict was not logically inconsistent or irreconcilable. *Id.* at 284-288.

In this case, we are unable to engage in the required review because the parties stipulated to the filing of a partial trial transcript that does not include any of the trial testimony.

> [G]enerally, the appellant bears the burden of furnishing the reviewing court with a record that verifies the basis of any argument on which reversal or other claim for appellate relief is predicated. [*Petraszewsky v Keeth (On Remand),* 201 Mich App 535, 540; 506 NW2d 890 (1993).]

We therefore affirm the trial court's denial of plaintiffs' motion because plaintiffs have failed to furnish this Court with an adequate record to facilitate appellate review. *Lemanski v Ford Motor Co,* 82 Mich App 244, 251-252; 266 NW2d 775 (1978).

III

Plaintiffs next argue that the trial court abused its discretion in awarding defendants an attorney fee based on an allegedly excessive hourly rate of $150. We disagree. This Court reviews the trial court's determination regarding the amount of mediation sanctions for an abuse of discretion. *Meagher v McNeely & Lincoln, Inc*, 212 Mich App 154, 158; 536 NW2d 851 (1995).

Plaintiffs concede that defendants were entitled to an award of actual costs under MCR 2.403(O)(1). Actual costs include "a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the mediation evaluation." MCR 2.403(O)(6). A reasonable fee, however, is not necessarily the equivalent of the actual fee charged by counsel. *Cleary v The Turning Point*, 203 Mich App 208, 212; 512 NW2d 9 (1994). Thus, this Court concluded in *Cleary* that the trial court did not abuse its discretion in awarding an attorney fee calculated at an hourly rate greater than the actual rate charged by counsel. *Id.*

In this case, defendants requested an attorney fee for services rendered in 1995 calculated at a hourly rate of $150. To support their request, defendants relied on the results of a Michigan Bar Association survey that determined that the median hourly rate charged for trial practice in 1994 was $145. Plaintiffs, by contrast, urged the trial court, and now urge this Court, to take judicial notice that attorneys compensated by insurance companies routinely charge reduced hourly rates of $80 to $90. We reject plaintiffs' argument and conclude on the basis of the record before us that the trial court did not abuse its discretion in determining a reasonable attorney fee in this case. Even assuming that attorneys commonly charge reduced rates for services rendered to insurance companies, the trial court could have permissibly exceeded that rate when determining a reasonable fee based on a reasonable hourly rate. *Cleary*, *supra* at 212.

IV

Our decision to affirm the judgment renders defendants' cross appeal moot. We nevertheless observe that, as with plaintiffs' issue, the absence of a trial transcript likely would have precluded review of defendants' challenge to the trial court's denial of their motion for directed verdict. In reviewing a motion for directed verdict, this Court considers the evidence adduced through the time of the motion in a light most favorable to the nonmovant to determine whether a material issue of fact existed. *Haberkorn v Chrysler Corp*, 210 Mich App 354, 364; 533 NW2d 373 (1995). Defendants, as cross-appellants, have failed to furnish us with the trial transcripts necessary to facilitate appellate review. See *Petraszewsky*, *supra* at 251-252.

Affirmed.

/s/ Maura D. Corrigan
/s/ Joel P. Hoekstra
/s/ Robert P. Young, Jr.