

STATE OF MICHIGAN
COURT OF APPEALS

PHILIP PILARSKI, DARCI PILARSKI and
JOHNNY TAYLOR,

UNPUBLISHED
September 4, 1998

Plaintiffs-Appellants,

v

No. 203119
Wayne Circuit Court
LC No. 93-329619 NO

DETROIT ELEVATOR COMPANY,

Defendant-Appellee,

and

THE HISTORIC HECKER MANSION and
GATOR CONSTRUCTION COMPANY,

Defendants,

and

GATOR CONSTRUCTION COMPANY,

Third Party Plaintiff,

v

GASTON E. GAUTHIER and
GAUTHIER ELECTRIC COMPANY,

Third Party Defendants.

Before: Sawyer, P.J., and Kelly and Doctoroff, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an order granting the Detroit Elevator Company's motion for mediation sanctions in the amount of \$9,335.96 in this construction/premises liability case. We affirm in part, reverse in part, and remand.

First, plaintiffs argue that the trial court abused its discretion in granting the Detroit Elevator Company's motion for mediation sanctions because the Detroit Elevator Company could have been dismissed from the case, if not at the very beginning of the case, at least well before mediation. Plaintiffs argue that the Detroit Elevator Company was aware of the factual basis for its motion for summary disposition based on the statute of repose, MCL 600.5839(1); MSA 27A.5839(1), and its delay in filing the motion necessitated the costs incurred not plaintiffs' rejection of the mediation evaluation. We disagree. We review a trial court's decision whether to grant mediation sanctions de novo because it involves a question of law, not a discretionary matter. *Great Lakes Gas Transmission Limited Partnership v Markel*, 226 Mich App 127, 129; 573 NW2d 61 (1997).

MCR 2.403 (O)(1) provides:

If a party has rejected an evaluation and the action proceeds to trial, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the mediation 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 mediation evaluation.

A judgment entered as a result of a ruling on a motion after rejection of the mediation evaluation is considered a "verdict" for the purpose of this rule. MCR 2.403(O)(2)(c). This Court must apply the clear language of the court rule as written. *Great Lakes Gas Transmission Limited Partnership, supra*, 226 Mich App 130. "Our Supreme Court's use of the word "must" indicates that the award of costs is mandatory, not discretionary." *Great Lakes Gas Transmission Limited Partnership, supra*, 226 Mich App 130.

The Pilarskis and the Detroit Elevator Company rejected a mediation award in favor of the Pilarskis for \$50,000. Taylor rejected and the Detroit Elevator Company accepted an award of \$5,000. Accordingly, the trial court did not err in granting the Detroit Elevator Company's motion for mediation sanctions because the Detroit Elevator Company was entitled to sanctions against plaintiffs because the verdict was more favorable to it than the mediation evaluation. MCR 2.403(O)(1); *Great Lakes Gas Transmission Limited Partnership, supra*, 226 Mich App 130.

Next, plaintiffs argue that the trial court abused its discretion when it awarded attorney fees without analyzing the Detroit Elevator Company's documentation or holding an evidentiary hearing. We agree.

This Court will uphold an award of attorney fees absent an abuse of discretion. *Michigan Basic Property Ins Ass'n v Hackert Furniture Distributing Co*, 194 Mich App 230, 234; 486 NW2d 68 (1992). When the party opposing the sanctions challenges the reasonableness of the fee requested, the trial court should inquire into the services actually rendered before approving the award.

Miller v Meijer, Inc, 219 Mich App 476, 479; 556 NW2d 890 (1996). A full-blown trial is not necessary but an evidentiary hearing regarding the reasonableness of the fee request is. *Miller, supra*, 219 Mich App 479. In addition, the trial court is required to make findings of fact with regard to the attorney fee issue. *Miller, supra*, 219 Mich App 480.

In this case, no evidentiary hearing was held regarding the propriety of the attorney fee award, the motion hearing was insufficient to give plaintiffs an opportunity to challenge specific hours or rates, and the trial court's "findings" were not sufficient to satisfy the requirement that the trial court must make findings of fact with regard to the attorney fee issue. *Miller, supra*, 219 Mich App 480; *Howard v Canteen Corp*, 192 Mich App 427, 439; 481 NW2d 718 (1991). The portion of the order awarding the Detroit Elevator Company \$9,335.96 is reversed and the case is remanded for an evidentiary hearing and findings regarding the reasonableness of the requested attorney fees. *Miller, supra*, 219 Mich App 483.

Affirmed in part, reversed in part, and remanded. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Michael J. Kelly

/s/ Martin M. Doctoroff