

STATE OF MICHIGAN
COURT OF APPEALS

TOWN & COUNTRY DEVELOPMENT, INC.,

Plaintiff/Counter-defendant-Appellee,

v

DJ MANUFACTURING, INC., RICHARD C.
JONES and HELEN L. JONES,

Defendants/Counter-plaintiffs/Third-
party Plaintiffs-Appellants,

and

KENNETH C. HOLLOWELL,

Third-party Defendant.

Before: Markey, P.J., and Sawyer, and Whitbeck, JJ.

PER CURIAM.

Defendants-appellants appeal by right, challenging the trial court orders denying their motions for summary disposition, sanctioning them for filing those motions, denying in part their motion for sanctions against plaintiff, denying their postjudgment motions for interest and costs, and sanctioning them for filing the postjudgment motions. We affirm.

Plaintiff purchased fire-damaged property from defendants pursuant to a land contract that incorporated by reference a purchase agreement. Plaintiff claimed that defendants breached their obligations under the purchase agreement, and plaintiff therefore withheld payments on the land contract. After filing this action for damages, plaintiff deposited the past-due payments in an escrow account and resumed making the monthly payments. Defendants filed a counterclaim to foreclose the land contract and accelerate the debt on the basis of plaintiff's default. Defendants filed six motions for partial summary disposition, and the court granted plaintiff's motion for sanctions for having to respond to them. The court also granted defendants' motion for sanctions for having to oppose that aspect of plaintiff's complaint based on defendants' alleged breach of ¶ 6 of the purchase agreement. After the

parties accepted mediation and the court entered a judgment on the award, defendants filed motions for prejudgment interest and costs. The trial court denied both motions and sanctioned defendants for filing the frivolous motions.

Defendants first contend that the trial court erred in denying their motions for summary disposition. Because the parties accepted mediation after the court ruled on the dispositive motions, those rulings are not subject to appeal. *Joan Automotive Industries, Inc v Check*, 214 Mich App 383, 387; 543 NW2d 15 (1995).

Defendants next contend that the trial court erred in sanctioning them for filing six motions for partial summary disposition and also abused its discretion in refusing to award them the total attorney fee requested as sanctions against plaintiff. The trial court's finding that MCR 2.114(D) was violated such that imposition of a sanction was required under MCR 2.114(E) is one of fact, which is reviewed under the clearly erroneous standard. A finding of fact is clearly erroneous when, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been committed. *Contel Systems Corp v Gores*, 183 Mich App 706, 711; 455 NW2d 398 (1990). The determination of an appropriate sanction under subrule (E) is a matter within the trial court's discretion and is reviewed for an abuse of discretion. *Porter v United Shirt Distributors, Inc*, 176 Mich App 145, 149-150; 438 NW2d 893 (1989), remanded 434 Mich 861; 450 NW2d 270 (1990).

The trial court found that defendants' dispositive motions were filed in violation of MCR 2.114(D)(3), because defendants had filed repeated motions frequently raising the same issues and generally filed more than one motion on the same day. The Court concluded that defendant's actions bordered on harassment and were a delay tactic. We cannot conclude that the trial court clearly erred in finding that defendants violated MCR 2.114(D)(3), nor that it abused its discretion in granting plaintiff sanctions.

Similarly, having reviewed the record, defense counsel's bill of costs, and the same evidentiary hearing transcript, we conclude that the trial court's award of an attorney fee to defendants was reasonable considering the work involved in opposing plaintiff's motion for partial summary disposition with regard to ¶ 6 of the agreement at issue. Thus, the trial court did not abuse its discretion in granting defendants less than the full amount they requested for attorney fees.

Defendants' argument that the trial court erred when it failed to automatically enter a judgment upon the parties' acceptance of the mediation evaluation has not been preserved for appeal. It was not raised below or addressed by the trial court. Also, defendants have not cited any authority in support of their position that the court was required to grant sua sponte their motion for entry of judgment without a hearing. *McCready v Hoffius*, 222 Mich App 210, 218; 564 NW2d 493 (1997); *lv gtd* 457 Mich App 851; 577 NW2d 692 (1998); *Price v Long Realty, Inc*, 199 Mich App 461, 467; 502 NW2d 337 (1993).

Finally, the trial court properly denied defendants' postjudgment motions for prejudgment interest and costs because the judgment on the mediation award "includes all fees, costs, and interest to the date it is entered." MCR 2.403(M)(1); *Sheffer v North American Ins Co*, 227 Mich App 723, 726; 578 NW2d 691 (1998); *Mercer v Winnick*, 185 Mich App 567, 570; 462 NW2d 760 (1990).

Also, because defendants ignored both the explicit language of the court rule and case law interpreting it, relied on inapplicable case law, and even requested prejudgment interest after their attorney had admitted to the court that MCR 2.403(M)(1) prohibited recovery of interest retroactively to the date of mediation, we cannot conclude that the trial court clearly erred in finding that defendants' postjudgment motions also violated MCR 2.114(D)(2).

Affirmed.

/s/ Jane E. Markey

/s/ David H. Sawyer

/s/ William C. Whitbeck