

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM R. FROEDE and LIBERTY MUTUAL
INSURANCE COMPANY,

UNPUBLISHED
February 9, 2001

Plaintiffs-Appellants,

v

HOLLAND LADDER AND MANUFACTURING
COMPANY and NATIONAL LADDER &
SCAFFOLDING COMPANY,

No. 211464; 217933
Oakland Circuit Court
LC No. 89-373873-NP

Defendants-Appellees.

Before: O’Connell, P.J., and White and Saad, JJ.

WHITE, J. (*concurring in part and dissenting in part*).

While the trial court might well have determined that there was good reason not to tax the costs of the first trial under all the circumstances,¹ the trial court had authority under MCR 2.625 to tax such costs, and I am unable to say that it was an abuse of discretion to do so. “Taxation of costs under MCR 2.625(A)(1) is within the trial court’s discretion.” *Blue Cross & Blue Shield of*

¹ In the instant case, plaintiffs accepted the mediation award, and defendants rejected it. The case proceeded to trial and the first trial ended with a substantial jury verdict in plaintiffs’ favor. In a split decision, this Court reversed the verdict in plaintiffs’ favor and granted a new trial on the basis that a juror deliberately misrepresented her criminal history on the juror questionnaire. See *Froede v Holland Ladder Co*, 207 Mich App 127, 130-135; 523 NW2d 849 (1994) (Holbrook, J., dissenting in part, concluding that trial court properly denied defendants’ motion for new trial because the defendants failed to establish actual prejudice arising from juror’s misrepresenting her criminal history). This Court agreed with only one of defendants’ other challenges, that the trial court’s allowing plaintiffs to elicit testimony from an expert witness on cross-examination regarding the results of a Bureau of Labor Statistics survey was an abuse of discretion because the survey evidence did not concern accidents similar to the one at issue and was thus irrelevant. *Froede, supra* at 135. However, there is no indication that this Court would have reversed on the basis of that evidentiary ruling alone. There is no mention in *Froede, supra*, that by virtue of that ruling, a substantial right of defendants’ was affected. MRE 103(a). Thus, this Court’s reversal of the jury verdict in plaintiffs’ favor was on grounds unrelated to plaintiffs’ conduct of the trial and unrelated to any fault of plaintiffs’.

Michigan v Eaton Rapids Community Hospital, 221 Mich App 301, 314-315; 561 NW2d 488 (1997).

I conclude, however, that the trial court abused its discretion in permitting defendants to tax the fees paid to Ver Halen for the many hours he waited to testify and for repeated trips from Chicago to Detroit. While defendants needed to be ready to begin their case when plaintiffs rested, they should have enlisted the court's aid in determining when to have their witnesses ready. I would remand for a redetermination of Ver Halen's fees.²

/s/ Helene N. White

² I find no legal error or abuse of discretion in the circuit court's handling of the remaining fees and costs issues.