

STATE OF MICHIGAN  
COURT OF APPEALS

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FRANK WILLIAMS,

Plaintiff-Appellee,

V

JOSEPH RITTER and STEVEN BARIL,

Defendants-Appellants.

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UNPUBLISHED

October 30, 2001

No. 223192

Cass Circuit Court

LC No. 93-000354-CZ

Before: Neff, P.J., and Doctoroff and Wilder, JJ.

MEMORANDUM.

Defendants appeal as of right the order of the trial court granting plaintiff's motion for dismissal while denying defendants' request for costs and attorney fees. We remand this case for proceedings consistent with this opinion.

Defendants argue that the trial court abused its discretion when it denied defendants' request for costs and attorney fees as a condition to plaintiff's voluntary dismissal of the case. We review a trial court's decision to grant or deny a defendant's request for costs and attorney fees for an abuse of discretion. *McKelvie v Mount Clemens*, 193 Mich App 81, 84; 483 NW2d 442 (1992). An abuse of discretion occurs where the result is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather the exercise of passion or bias." *Alken-Ziegler v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999), quoting *Marrs v Bd of Medicine*, 422 Mich 688, 694; 375 NW2d 321 (1985).

In this case, plaintiff moved to voluntarily dismiss the case under MCR 2.504(A)(2), which states:

Except as provided in subrule (A)(1), an action may not be dismissed at the plaintiff's request except by order of the court *on terms and conditions the court deems proper*. [Emphasis added.]

Under this court rule, a trial court may impose costs and attorney fees as a condition of a voluntary dismissal. *McKelvie, supra* at 84. See also *Davis v Koch*, 118 Mich App 529, 534; 325 NW2d 482 (1982).

The trial court denied defendants' request for costs and attorney fees, but did not explain its reasoning. We find no Michigan cases requiring a trial court to state its reasoning for denying costs and attorney fees under MCR 2.504. However, we have required a trial court to justify its denial of costs under MCR 2.625.<sup>1</sup> *Blue Cross & Blue Shield of Michigan v Eaton Rapids Community Hosp*, 221 Mich App 301, 308; 561 NW2d 488 (1997). Further, given the complete absence of a record indicating the trial court's findings and conclusions on this matter, we are unable to determine whether the court's decision evidences perversity of will, defiance of judgment, or exercise of passion or bias. *Alken-Ziegler, supra* at 227. Therefore, we remand this case to the trial court for an explanation concerning its denial of defendants' motion for costs and attorney fees.

Remanded. We retain jurisdiction.

/s/ Janet T. Neff

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder

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<sup>1</sup> MCR 2.625 requires the trial court to explain the denial of costs in writing. MCR 2.504 contains no such requirement.