STATE OF MICHIGAN

COURT OF APPEALS

BEVERLY JANET SCHELSTEDER,

Plaintiff-Appellee,

v

JAMES M. GEROMETTA,

Defendant-Appellant,

and

COMERICA BANK - DETROIT TRUSTEE, under the VALERIO M. GEROMETTA TRUST AGREEMENT,

Defendant.

UNPUBLISHED
January 8, 2002

No. 223422
Wayne Circuit Court
LC No. 99-912646-CZ

Before: Murphy, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Defendant-Appellant James M. Gerometta (defendant) appeals as of right from an order granting summary disposition in favor of plaintiff. We vacate in part, affirm in part, reverse in part, and remand.

Plaintiff, who is a Texas resident, filed a complaint against defendant to enforce certain terms of the parties' judgment of divorce that a Texas court entered on September 23, 1992. Apparently, defendant relocated in Michigan shortly after the divorce and has made virtually no effort to comply with the terms of the judgment. Following an evidentiary hearing on plaintiff's "motion for summary disposition, interest on child support arrearages, attorney fees and lien for future child support" pursuant to MCR 2.116(C)(9) and (10), the trial court awarded plaintiff $16,167.97 for past due child support, $15,250.08 for past due health care expenses, $1,293.44 for interest on support arrearages, and $5,000 for attorney fees, for a total of $37,711.49. The trial court denied defendant's request for reconsideration and this appeal ensued.

We review a trial court's grant of summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Although the trial court's order does not specify which subsection of MCR 2.116(C) that the trial court relied upon, it is without question that the trial court relied on (C)(10) because it held an evidentiary hearing and

considered factual evidence in addition to the pleadings. See *Gibbons v Caraway*, 455 Mich 314, 320, n 7; 565 NW2d 663 (1997).

Defendant first argues that the trial court was without authority to award post-judgment interest. In essence, defendant claims that the trial court erred in awarding post-judgment interest because it calculated the interest due under Michigan, rather than Texas law. Defendant concedes in his argument that pursuant to the Uniform Enforcement of Foreign Judgments Act (UEFJA), MCL 691.1171 *et seq.*, post-judgment interest is awardable in accordance with the law of the jurisdiction in which the judgment was awarded, MCL 691.1176. However, in the trial court, plaintiff petitioned for, and the trial court granted, an award of post-judgment interest pursuant to Michigan law, MCL 552.603a, at a rate of 8% per annum.

In answer to defendant's contention that it was an error to rely on Michigan law, plaintiff argues that the Uniform Foreign Money-Judgments Recognition Act (UFMJRA), MCL 691.1151 *et seq.*, applies to divorce judgments, and that under the UFMJRA, MCL 691.1153, a foreign state judgment is enforceable in the state in the same manner as a judgment from any Michigan court. Consequently, plaintiff maintains that the judgment interest award in this case was proper.

Contrary to plaintiff's assertion, the UFMJRA is not applicable here. MCL 691.1151(a); *Peters Production, Inc v Desnick Broadcasting Co*, 171 Mich App 283, 285; 429 NW2d 654 (1988). Because the UEFJA specifically provides that "[p]ost judgment interest will be awarded in accordance with the law of the jurisdiction in which the judgment was awarded," and because the divorce judgment in the present case was awarded in Texas, Texas law with regard to post-judgment interest is applicable. The trial court's award based on Michigan law is error. We do not agree with defendant, however, that under these circumstances plaintiff is entitled to no award for post-judgment interest. Rather, we vacate the post-judgment interest award of $1,293.44 and remand to the trial court for recalculation according to Texas law.

Next, defendant argues that the trial court was without authority to award attorney fees in an action to enforce a foreign judgment brought under the UEFJA because the statute does not specifically permit the recovery of attorney fees in these actions. Defendant fails to cite any supporting legal authority for this proposition[1] and, consequently, he has abandoned the issue. *Chapdelaine v Sochocki*, 247 Mich App 156, 174; 635 NW2d 339 (2001); *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Additionally, defendant maintains that the proofs that plaintiff submitted failed to adequately support her claim for attorney fees. Relying upon MCR 3.206(C)(2), defendant argues that the award in this case was not supported by any evidence that plaintiff was unable to bear the expense of the action or that defendant was able to pay. However, a trial court may also award attorney fees in a divorce action where a party's unreasonable conduct necessitated the requesting party to incur them. *Milligan v Milligan*, 197 Mich App 665, 671; 496 NW2d 394 (1992). Here, there is abundant evidence of defendant's unreasonable conduct. The trial court did not abuse its discretion in awarding plaintiff attorney fees. *Id*. at 670.

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[1] Defendant does refer this Court to citations in the previous argument, but those citations merely address general principles of statutory interpretation.

In his next two issues, defendant challenges the award of health care benefits. On the basis of the language in the divorce judgment, plaintiff requested, and the trial court awarded her, one-half of the premiums that were paid to provide health insurance coverage for the parties' minor children. Defendant claims that the language of the judgment does not require him to pay for medical insurance premiums. We agree.

With regard to health benefits, the divorce judgment provides:

> As additional child support, JAMES M. GEROMETTA is ORDERED AND DECREED to pay fifty percent (50%) of all health care expenses not paid by insurance that are incurred by, or on behalf of, the parties' children, including without limitation, medical, prescription drug, psychiatric, psychological, dental and orthodontic charges. [Emphasis omitted.]

The divorce decree at issue is silent with regard to whether insurance premiums for medical coverage are "health care expenses" for which defendant is liable to pay half the cost. The decree is clear, however, that costs that are included are ones not covered by insurance. We find it unreasonable to think that a premium for insurance would ever be covered by a policy for health insurance. That is not how insurance works. Consequently, in our opinion, a premium that plaintiff paid for health insurance for the children is not an expense for which defendant was liable under the plain terms of the judgment. Further, an insurance premium is not of the class or kind of expense that the judgment enumerated. Although the list is not all-inclusive, it is representative of the kind of expenses contemplated. Because an insurance premium is so distinctly different from those enumerated in the judgment, we find this language of the judgment to be of further evidence that insurance premiums were not intended to be a covered expense. Accordingly, we reverse and order that on remand the judgment in this case be reduced by the amount awarded to plaintiff to compensate her for one-half of the medical insurance premiums that she paid.[2]

Finally, we find without merit defendant's claim that the medical expenses that defendant incurred due to one of the minor children being injured in an automobile accident is not a covered expense because the expenses were ultimately paid in a settlement reached with an insurance company as a result of a lawsuit. The evidence at the hearing does not support defendant's contention. Although a settlement was reached with the automobile insurance carrier, it was not established that this settlement necessarily covered the medical expenses. Further, it is clear from the evidence that plaintiff's medical insurance carrier was not obligated to pay because the minor child was intoxicated at the time of the accident. Under these circumstances, we agree with the trial court that defendant was obligated to pay his share of the expenses.

In summary, we vacate the award of post-judgment interest, affirm the award of attorney fees, reverse the award for reimbursement of insurance premiums, affirm the award of

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[2] Because of our resolution of this issue, we do not address defendant's claim that the proofs with regard to the amount of insurance premiums paid by plaintiff was insufficient.

reimbursement for expenses incurred by a minor child in an automobile accident, and remand for further proceedings consistent with this opinion.

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

/s/ William B. Murphy
/s/ Janet T. Neff
/s/ Joel P. Hoekstra