

STATE OF MICHIGAN
COURT OF APPEALS

LARRY G. SUTHERLAND and
DONNA SUTHERLAND,

UNPUBLISHED
January 22, 2002

Plaintiffs-Appellants,

v

KENNINGTON TRUCK SERVICES, LTD.,
ELGIN LEASING, LTD., CANADIAN TIMKEN,
LTD., and GREGORY R. ZAVITZ,

No. 225034
Monroe Circuit Court
LC No. 91-018065-NI

Defendants-Appellees.

Before: Cooper, P.J., and Griffin and Saad, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's award of case evaluation sanctions under MCR 2.403. The court awarded plaintiffs sanctions in the amount of \$47,512.50. We affirm.

The underlying facts of this case are summarized in *Sutherland v Kennington Truck Service, Ltd*, 454 Mich 274, 275-277; 562 NW2d 466 (1997). Our Supreme Court held that Michigan law applied to this specific case. *Id.* at 290. Thereafter, defendants conceded negligence but disputed plaintiffs' damages. Following a jury verdict in plaintiffs' favor, plaintiffs moved for case evaluation sanctions and requested an award of \$59,120. This award was comprised of: (1) attorney fees for Richard L. Steinberg in the amount of \$26,500, based on a rate of \$250.00 per hour for 106.0 hours; and (2) attorney fees for Donald C. Wheaton, Jr., in the amount of \$32,620, based on a rate of \$175.00 per hour for 186.4 hours. Following a hearing, the trial court granted the full amount of attorney fees requested for attorney Wheaton, but reduced attorney Steinberg's hourly rate to \$175.00. The court further struck 20.9 hours from the total time requested for attorney Steinberg.

Plaintiffs allege on appeal that the trial court erred in reducing attorney Steinberg's hourly rate and his total hours. We disagree. A trial court's determination of a reasonable attorney fee award under MCR 2.403 is reviewed for an abuse of discretion. *Michigan Basic Property Ins Ass'n v Hackert Furniture Distributing Co, Inc*, 194 Mich App 230, 234; 486 NW2d 68 (1992). An abuse of discretion occurs only if the trial court's decision is so grossly violative of fact and logic that it demonstrates a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Id.*; *Elia v Hazen*, 242 Mich App 374, 377; 619 NW2d 1 (2000).

A party who rejects a case evaluation is subject to sanctions if the party fails to improve their position at trial. MCR 2.403(O)(1); *Elia, supra* at 378. It is undisputed that defendants in the instant case rejected the case evaluation and failed to improve their position at trial. Thus, sanctions are mandatory and include actual costs and reasonable attorney fees. MCR 2.403(O)(1) and (6); *Great Lakes Gas Transmission Ltd Partnership v Markel*, 226 Mich App 127, 129-130; 573 NW2d 61 (1997).

Contrary to plaintiffs' assertion, reasonable attorney fees are not necessarily equivalent to the actual fees charged. *McPeak v McPeak*, 233 Mich App 483, 497; 593 NW2d 180 (1999). Rather, to determine a reasonable hourly or daily rate, a trial court may consider empirical data contained in the Law Practice Survey, and other reliable studies, in conjunction with: "[1] the professional standing and experience of the attorney; [2] the skill, time, and labor involved; [3] the amount in question and the results achieved; [4] the difficulty of the case; [5] the expenses incurred; and [6] the nature and length of the professional relationship with the client." *Temple v Kelel Distributing Co*, 183 Mich App 326, 333; 454 NW2d 610 (1990); *Jernigan v General Motors Corp*, 180 Mich App 575, 587; 447 NW2d 822 (1989). However, these factors are not all-inclusive and the trial court may consider other factors in making its determination. See *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982). "[T]he trial court need not detail its findings as to each specific factor considered." *Id.* Moreover, reasonable fees can include fees incurred through representation by multiple lawyers. *Attard v Citizens Ins Co of America*, 237 Mich App 311, 329-330; 602 NW2d 633 (1999).

After a thorough examination of the record, we conclude that the trial court did not abuse its discretion in calculating a reasonable attorney fee for attorney Steinberg's services at a rate of \$175.00 an hour. The trial court was presented with evidence of the relative experience of each attorney and affidavits stating that the rates were reasonable, given the legal experience of each attorney and the locality of the action. The court was also referred to statistics published by the State Bar of Michigan in *The 1997 Desktop Reference on the Economics of Law Practice in Michigan*, 76 Mich BJ 1312-1313 (December, 1997), which listed a reported median hourly rate of \$125.00, unchanged from 1994. Defendant argued that the \$125 hourly rate was more appropriate as a "typical" hourly rate for this "typical" rear-end, whiplash accident. Following a hearing, the trial court evaluated the various factors referenced above and determined that an hourly fee for attorney Steinberg equal to the fee sought for attorney Wheaton was appropriate because: (1) attorney Steinberg's experience was comparable to attorney Wheaton's; (2) the case involved an average negligence action; and (3) while attorney Steinberg might command a larger hourly fee in Wayne County, his requested fee was not reasonable in Monroe County. Under the circumstances, we are satisfied that the trial court's fee determination was based on a consideration of proper factors and did not constitute an abuse of discretion.

We further disagree with plaintiffs' contention that the trial court improperly considered the locality of the action in its fee determination. This Court has held that a trial court may properly consider the "locality" of a cause of action in determining a reasonable fee. *Michigan Basic Property Ins Ass'n, supra* at 234, 236-237.

We also find that the trial court did not abuse its discretion in striking the 20.9 hours claimed by attorney Steinberg. According to the testimony of plaintiffs' counsel, Steinberg did not keep records of his actual time spent working on the case from September 24, 1998, to April 1, 1999. It is incumbent upon attorneys seeking reimbursement under MCR 2.403 to keep

substantially contemporaneous billing records; therefore, a trial court's refusal to rely on unsubstantiated billing statements is not an abuse of discretion. *Pettermann v Haverhill Farms, Inc.*, 125 Mich App 30, 33; 335 NW2d 710 (1983). Thus, the trial court acted appropriately when it based its fee determination for attorney Steinberg on its recollection of Steinberg's attendance at trial and then added reasonable pretrial preparation time in accordance with attorney Wheaton's representations at the fee hearing.

Affirmed.¹

/s/ Jessica R. Cooper
/s/ Richard Allen Griffin
/s/ Henry William Saad

¹ We have considered defendants' argument that this Court lacks jurisdiction over plaintiffs' appeal and are satisfied that jurisdiction is proper.