STATE OF MICHIGAN

COURT OF APPEALS

ROBERT J. SCHREINER and LAURA L. SCHREINER,

Plaintiffs-Appellants,

v

ALEXANDER PRESTON and ANN PRESTON,

Defendants-Appellees.

UNPUBLISHED
April 12, 2002

No. 226490
Oakland Circuit Court
LC No. 97-001347-CZ

Before: Neff, P.J., and Cavanagh and K. F. Kelly, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's denial of their motion for case evaluation sanctions and the trial court's calculation of statutory interest and determination of taxable costs. We reverse.

Plaintiffs leased defendants a home located in Birmingham for several years. As a condition of the lease, defendants were required to provide a security deposit in the amount of $3,450. After defendants vacated the home, plaintiffs brought suit for unpaid rent and property damages. A case evaluation awarded plaintiffs $9,000. Defendants rejected this award and the case proceeded to trial. After a trial by jury, plaintiffs were awarded $700 in unpaid rent and $10,220 for property damage.

On appeal, plaintiffs first argue that the trial court erred when it held that plaintiffs could not tax costs for video depositions that were used by defendants at trial because they were not filed with the court clerk. We disagree. We review the trial court's decision to grant or deny costs for an abuse of discretion. *Blue Cross & Blue Shield of Michigan v Eaton Rapids Community Hosp*, 221 Mich App 301, 308; 561 NW2d 488 (1997).

Generally, a prevailing party may be entitled to costs. See MCR 2.625(A)(1). However, because the power to tax costs is wholly statutory, only costs statutorily authorized may be recovered. See *Rickwalt v Richfield Lakes Corp*, 246 Mich App 450, 465; 633 NW2d 418 (2001); *Beach v State Farm Mut Auto Ins Co*, 216 Mich App 612, 621; 550 NW2d 580 (1996). The statutory authority allowing costs for depositions of witnesses is MCL 600.2549, which provides:

> Reasonable and actual fees paid for depositions of witnesses filed in any clerk's office and for the certified copies of documents or papers recorded or filed in any public office shall be allowed in the taxation of costs only if, at the trial or when damages were assessed, the depositions were read in evidence, except for impeachment purposes, or the documents or papers were necessarily used.

Consequently, to tax costs for a deposition, including a video deposition, the deposition must have been filed in a clerk's office. See *Rickwalt, supra* at 465-466; *Portelli v I R Constr Products Co, Inc*, 218 Mich App 591, 606-607; 554 NW2d 591 (1996); *Stevens v Hogue*, 85 Mich App 185, 190; 270 NW2d 735 (1978).

Here, plaintiffs argue that the video depositions were "filed in any clerk's office" because they were given to the trial court's clerk. However, as plaintiffs concede, we addressed this precise argument in *Elia v Hazen*, 242 Mich App 374, 380-382; 619 NW2d 1 (2000) and held:

> Notwithstanding that plaintiffs presented the several deposition transcripts to the trial judge, who eventually passed them to clerk Kuelbs, the depositions were not filed in any clerk's office and, thus, were not filed in accordance with MCL 600.2549; MSA 27A.2549. Consequently, plaintiffs are not entitled to the costs of those depositions. This conclusion is necessary notwithstanding that "logic would indicate that depositions used to resolve a case should be taxable . . . ." [*Id*. at 382 (citations omitted).]

We are bound by our majority decision in *Elia* and, therefore, reject plaintiffs' argument. See MCR 7.215(H)(1). Further, this Court has consistently held, pursuant to the plain language of MCL 600.2549, that the cost of a deposition is not taxable when the deposition was not filed in a court clerk's office. See *Rickwalt*, *supra* at 465; *Portelli*, *supra* at 606-607. Although, as plaintiffs argue, it may appear unfair to allow defendants to avoid the imposition of costs in this case, as we noted in *Portelli*, [w]hile logic would indicate that depositions used to resolve a case should be taxable, we cannot rewrite statutes." *Id*. at 607. "The plain, clear, and unambiguous language of [the statute] indicates that the Legislature intended the taxation of costs only for depositions filed in a clerk's office." *Id*. Therefore, we conclude that the trial court did not abuse its discretion when it held that plaintiffs could not recover costs for the video depositions because they were not filed with the clerk's office.

Next, plaintiffs argue that the trial court improperly calculated the statutory interest because the trial court only calculated interest on $7,470, the jury verdict [$10,920] minus the security deposit [$3,450]. Instead, plaintiffs argue, that the trial court should have calculated interest on $10,920. We agree. An award of interest pursuant to MCL 600.6013 is reviewed de novo on appeal. *Beach*, *supra* at 623-624.

Pursuant to MCL 600.6013(1), interest is allowed on "a *money judgment* recovered in a civil action . . . ." (Emphasis added.) Here, the jury awarded plaintiffs $700 for unpaid rent and $10,220 for damages to the rental home, for a total award of $10,920. Although the jury verdict form instructed the jury to subtract $3,450 from the total award to account for the security deposit, plaintiffs were awarded $10,920. Therefore, plaintiffs were entitled to statutory interest on $10,920, the amount of the money judgment. This conclusion comports with our holding in *Marina Bay Condominiums, Inc v Schlegel*, 167 Mich App 602, 609; 423 NW2d 284 (1988),

which permitted statutory interest to be awarded although the plaintiff was merely keeping money that had been held in escrow. Further, defendants' argument to the contrary, plaintiffs did not have full and free legal use of the security deposit for several years. See MCL 554.605; 554.613(1) and (2). Therefore, the trial court erred in denying plaintiffs statutory interest on $10,920.

Next, plaintiffs argue that the trial court erred when it concluded that judgment was not rendered on a written instrument, thus, they were not entitled to interest under MCL 600.6013(5). We agree. Statutory interpretation with regard to determining the provision that applies for purposes of calculating interest on a judgment is subject to de novo review. *Yaldo v North Pointe Ins Co*, 457 Mich 341, 344; 578 NW2d 274 (1998).

MCL 600.6013 provides, in pertinent part:

> (5) For complaints filed on or after January 1, 1987, if a judgment is rendered on a written instrument, interest shall be calculated from the date of filing the complaint to the date of satisfaction of the judgment at the rate of 12% per year compounded annually, unless the instrument has a higher rate of interest. In that case interest shall be calculated at the rate specified in the instrument if the rate was legal at the time the instrument was executed. The rate shall not exceed 13% per year compounded annually after the date judgment is entered.
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> (6) Except as otherwise provided in subsection (5) and subject to subsection (11), for complaints filed on or after January 1, 1987, interest on a money judgment recovered in a civil action shall be calculated at 6-month intervals from the date of filing the complaint at a rate of interest that is equal to 1% plus the average interest rate paid at auctions of 5-year United States treasury notes during the 6 months immediately preceding July 1 and January 1, as certified by the state treasurer, and compounded annually, pursuant to this section.

The purpose of the interest statute "is to compensate the prevailing party for expenses incurred in bringing the suit and for any delay in receiving such damages." *Everett v Nickola*, 234 Mich App 632, 638; 599 NW2d 732 (1999). The statute is remedial and should be construed liberally in favor of plaintiffs. *Id*. at 638-639. Although the term "written instrument" was not defined by statute, this Court has held that the term "written instrument" is "an agreement or understanding reduced to writing as a means of giving formal expression to an act or contract . . . ." *Auto Club Ins Ass'n v State Farm Ins Cos*, 221 Mich App 154, 169; 561 NW2d 445 (1997), overruled in part on other grounds by *CAM Constr v Lake Edgewood Condominium Ass'n*, ___ Mich ___; 640 NW2d 256 (2002). A written insurance contract has been found to be a written instrument for purposes of this statutory provision. See *Yaldo*, *supra* at 346-347. The term "written instrument" has also been held to include a no-fault plan and an ERISA based health care plan, *Auto Club Ins*, *supra* at 169, as well as a written fee agreement, *Everett*, *supra* at 638-639.

In this case, plaintiffs sought damages for unpaid rent and property damage to which they were entitled because a landlord/tenant relationship existed between plaintiffs and defendants as evidenced by a lease. The lease was a formal agreement, reduced to writing, which explained the rights and responsibilities of plaintiffs as the landlords and defendants as the tenants. Consequently, plaintiffs were entitled to interest at the rate of twelve percent, pursuant to MCL

600.6013(5), because judgment was rendered on a written instrument, the lease. Further, defendants reliance on *Charbeneau v Wayne Co General Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987) is misplaced because, although plaintiffs initially requested interest under MCL 600.6013(6), they requested interest under MCL 600.6013(5) before the trial court entered judgment. Therefore, the trial court erred when it ordered the payment of interest under MCL 600.6013(6) instead of MCL 600.6013(5).

Next, plaintiffs argue that the trial court erred in its determination of the time period for which statutory interest accrued on the judgment pursuant to MCL 600.6013. We agree. Under MCL 600.6013(5), plaintiffs were entitled to statutory interest "calculated *from the date of filing the complaint to the date of satisfaction of the judgment* at the rate of 12% per year . . . ." (Emphasis added.) Consequently, plaintiffs were entitled to statutory interest from November 12, 1997, the date the complaint was filed, until the judgment, dated March 27, 2000, was satisfied. Contrary to defendants' arguments on appeal, MCL 600.6013(5) governs the time period used to calculate statutory interest, not MCR 2.403(O)(3). Further, the record reveals that plaintiffs made every attempt to move the litigation forward and, in fact, moved for entry of judgment on at least two occasions; thus, they are entitled to the entire amount of interest accrued. See *Eley v Turner*, 193 Mich App 244, 247; 483 NW2d 421 (1992). Therefore, we remand to the trial court to recalculate the interest due to plaintiffs, pursuant to MCL 600.6013(5), abating the interest for the period that the matter has been on appeal. See *Dedes v Asch*, 233 Mich App 329, 340; 590 NW2d 605 (1998).

Finally, plaintiffs argue that the trial court erred in denying their request for case evaluation sanctions. We agree. Our review of the trial court's decision to award or deny case evaluation sanctions is de novo. *Elia*, *supra* at 376-377.

A party that rejects a case evaluation and then fails to improve its position at trial is subject to sanctions. *Id*. at 378. MCR 2.403(O), the court rule pertaining to case evaluation sanctions, provides in part:

> (1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation.
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> (3) For the purpose of subrule (O)(1), a verdict must be adjusted by adding to it assessable costs and interest on the amount of the verdict from the filing of the complaint to the date of the case evaluation, and, if applicable, by making the adjustment of future damages as provided by MCL 600.6306; MSA 27A.6306. After this adjustment, the verdict is considered more favorable to a defendant if it is more than 10 percent below the evaluation, and is considered more favorable to the plaintiff if it is more than 10 percent above the evaluation.

In this case, the case evaluation awarded plaintiffs $9,000. After a jury trial, plaintiffs were awarded $700 in unpaid rent and $10,220 for damages to the rental home, totaling $10,920. However, the trial court improperly compared an adjusted jury verdict of $7,470 [$10,920 minus the security deposit of $3,450] to $8,100 [the $9,000 case evaluation reduced by ten percent] and

denied case evaluation sanctions. MCR 2.403(O)(3) clearly provides that to determine if case evaluation sanctions are appropriate "a verdict must be adjusted by adding to it assessable costs and interest on the amount of the verdict from the filing of the complaint to the date of the case evaluation . . . ." Consequently, comparing the $10,920 jury award to the case evaluation, it is clear that defendants did not improve their position at trial. Accordingly, plaintiffs were entitled to case evaluation sanctions.[1]

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Janet T. Neff
/s/ Mark J. Cavanagh
/s/ Kirsten Frank Kelly

[1] We note that costs and interest are typically added to the verdict to determine if case evaluation sanctions are appropriate. MCR 2.403(O)(3). However, in this case, even before costs and interest are added, it is clear that plaintiffs are entitled to case evaluation sanctions.