

STATE OF MICHIGAN
COURT OF APPEALS

PHYLLIS HARRIS,

Plaintiff,

and

MICHAEL HARRIS,

Plaintiff-Appellee,

v

EDDIE JONES,

Defendant-Appellant.

UNPUBLISHED

July 30, 2002

No. 232636

Wayne Circuit Court

LC No. 98-810902-CH

Before: Talbot, P.J., and Cooper and D. P. Ryan*, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order granting plaintiff Michael Harris mediation sanctions. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case concerns the aftermath of a dispute among family members over the division of property. Leola Jones, the mother of plaintiff Phyllis Harris, defendant, and Barbara Hayden, who is not a party to this case, proposed that she transfer the family property, consisting of four and one-half acres of land and a home, to her children. Phyllis Harris and Barbara Hayden declined the offer. Jones quitclaimed the property to herself and defendant. Subsequently, Phyllis Harris sought an interest in the property. Jones and defendant quitclaimed the property to themselves, Phyllis Harris, and Barbara Hayden.

Michael Harris, the son of Phyllis Harris, took up residence in the home on the property with the permission of Jones. Michael Harris continued to live in the home after Jones died. The parties agreed that Michael Harris would rent the home from the owners and the rent would be paid to defendant, who acted as the property manager. Michael Harris stopped paying rent, and defendant served him with a notice to quit. Phyllis Harris quitclaimed one-half of her interest in

* Circuit judge, sitting on the Court of Appeals by assignment.

the property to Michael Harris. Phyllis Harris and Michael Harris filed a complaint against defendant containing the following counts: (I) quiet title; (II) partition; (III) breach of contract; (IV) accounting; (V) conversion; (VI) constructive eviction; (VII) breaking and entering; (VIII) assault and battery; (IX) negligence; and (X) injunctive relief.

The parties agreed to a partition of the property, and dismissed Counts I-IV pursuant to stipulation. The dismissal of Counts I-IV effectively rendered the claim for injunctive relief, Count X, moot. Thereafter, the trial court granted defendant's motion for mediation of the remaining claims. The mediation panel awarded \$5,000 to Michael Harris, and zero to Phyllis Harris. Michael Harris and Phyllis Harris accepted the evaluation, but defendant rejected it.

The case proceeded to a bench trial on the remaining claims. Ultimately the trial court entered judgment in the amount of \$5,676.17 for Michael Harris against defendant, and in the amount of \$990.25 for defendant against Phyllis Harris.

Phyllis Harris and Michael Harris moved for mediation sanctions. Defendant maintained that mediation sanctions were inappropriate because the case contained equitable issues that could not be mediated and that required a trial. The trial court awarded Michael Harris sanctions totaling \$5,550 on the ground that defendant rejected the mediation evaluation and did not improve his position by at least ten percent after trial. MCR 2.403(O)(1). Phyllis Harris was not awarded sanctions.

MCR 2.403(O)(1) provides that if a party rejects a mediation evaluation and the matter proceeds to a verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than was the mediation evaluation. The decision to award mediation sanctions presents a question of law that is reviewed de novo on appeal, while the amount of an award is reviewed for an abuse of discretion. *Elia v Hazen*, 242 Mich App 374, 376-377; 619 NW2d 1 (2000).

Defendant argues that the trial court erred in awarding mediation sanctions because the issues that proceeded to trial were not amenable to mediation. We disagree. The equitable issues were resolved and dismissed prior to mediation. The remaining issues were sent to mediation upon defendant's motion. Contrary to defendant's assertion, trial on these issues was necessitated by defendant's rejection of the mediation evaluation, and not by the nature of the issues. Defendant rejected the mediation evaluation and then failed to improve his position at trial. The award of mediation sanctions was proper. MCR 2.403(O)(1).

Mediation sanctions include costs taxable in a civil action and a reasonable attorney fee. MCR 2.403(O)(6). A reasonable attorney fee must be based on a reasonable hourly or daily rate, as determined by the court, for services necessitated by the rejection of the mediation evaluation. MCR 2.403(O)(6)(b); *Rafferty v Markovitz*, 461 Mich 265, 267; 602 NW2d 367 (1999). In determining a reasonable hourly or daily rate, the court should consider various factors, including: (1) the professional standing and experience of the lawyer; (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).

Defendant contends the trial court abused its discretion by failing to hold an evidentiary hearing on the issue of the attorney fee awarded as part of the mediation sanctions. We disagree. Defendant's assertion that the case would have proceeded to trial even if he had accepted the mediation evaluation is erroneous; therefore, no parceling of the requested attorney fee was necessary. Furthermore, contrary to defendant's assertion, the trial court considered the relevant factors in determining an appropriate fee. Defendant does not specify the basis on which he claims the fee awarded was unreasonable. We conclude that the trial court did not abuse its discretion by awarding Michael Harris mediation sanctions totaling \$5,550, including an attorney fee of \$5,250. *Elia, supra* at 377.

We reject the request by Michael Harris that we assess damages against defendant on the ground that the instant appeal is vexatious. MCR 7.216(C)(1). At a minimum, defendant was entitled to seek review of the amount of sanctions awarded by the trial court.

Affirmed.

/s/ Michael J. Talbot
/s/ Jessica R. Cooper
/s/ Daniel P. Ryan