

STATE OF MICHIGAN
COURT OF APPEALS

ANTHONY BASCOMB,

Plaintiff-Appellee,

v

MICHIGAN LAW ENFORCEMENT OFFICERS
TRAINING COUNCIL,

Defendant-Appellant,

and

COUNTY OF WAYNE and WAYNE COUNTY
SHERIFF,

Defendants.

UNPUBLISHED

October 4, 2002

No. 226660

Wayne Circuit Court

LC No. 93-300668-CL

Before: White, P.J., and Neff and Jansen, JJ.

WHITE, P.J. (*concurring*).

I agree that neither collateral estoppel nor the law-of-the-case doctrine barred plaintiff from asserting that he was medically fit at the time he was expelled from the program. The dismissal of the discrimination claim did not constitute a factual determination of the question whether plaintiff was medically qualified when he was expelled in 1997. Nor was the issue determined in the prior appeal.

Further, defendant did not establish that it was entitled to prevail on its mixed motive defense as a matter of law. There were questions of fact regarding defendant's motivation and plaintiff's ability to meet the medical requirements when he was expelled. Evidence of plaintiff's medical condition was properly admitted. The question of economic damages was properly submitted to the jury, and the award was supported by the evidence. I join the majority's discussion of the attorney fee issue.

/s/ Helene N. White