

STATE OF MICHIGAN  
COURT OF APPEALS

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SHIRLEY FRANZEL,

Plaintiff-Appellant,

v

KERR MANUFACTURING COMPANY and  
REBECCA LEINER,

Defendants-Appellees.

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UNPUBLISHED  
December 13, 2002

No. 230452  
Wayne Circuit Court  
LC No. 94-423648-CZ

Before: Talbot, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Plaintiff Shirley Franzel appeals as of right the denial of her request for a new trial and the award of case evaluation sanctions against her. We affirm.

I

Plaintiff argues that the trial court improperly dismissed her claim because it misinterpreted this Court's prior decision that she was entitled to only nominal damages. We disagree.

Whether the trial court misinterpreted this Court's decision is a question of law, reviewed de novo. *Rapistan Corp v Michaels*, 203 Mich App 301, 306; 511 NW2d 918 (1994). In an earlier opinion regarding this case, this Court stated that plaintiff was entitled to only nominal damages for breach of an at-will employment contract. *Franzel v Kerr Mfg Co*, 234 Mich App 600, 606; 600 NW2d 66 (1999). While plaintiff argues that this Court did not direct entry of a judgment for nominal damages, and that she was, therefore, entitled to a new trial, this Court's opinion is clear that plaintiff is entitled to only nominal damages on her breach of contract claim. *Id.* at 606, 618-619. Plaintiff has established no basis for revival of her remaining claims, which either plaintiff did not appeal following trial or the dismissal of which was affirmed on appeal. Therefore, the trial court's decision denying a third trial in the interest of judicial economy was proper. See *Kolton v Nassar*, 358 Mich 154, 158; 99 NW2d 362 (1959); *Vachon v Todorovich*, 356 Mich 182, 188; 97 NW2d 122 (1959).

## II

Plaintiff argues that the trial court improperly determined that she was entitled to only nominal damages for her breach of contract claim, which excludes unpaid compensation and similar past damages. We disagree.

The doctrine of law of the case holds that a ruling by an appellate court regarding a particular issue binds the appellate court and all lower tribunals with respect to that issue. *Reeves v Cincinnati, Inc (After Remand)*, 208 Mich App 556, 559; 528 NW2d 787 (1995). “Further, a question of law decided by an appellate court will not be decided differently on a subsequent appeal in the same case where the facts remain materially the same.” *Id.* This Court previously reviewed plaintiff’s claims, recognized no claim for past damages, and repeatedly stated that plaintiff was entitled to *only* nominal damages for her breach of contract claim. *Franzel, supra* at 606, 618-619. Plaintiff has shown no evidence of a claim for past damages. A party may not leave it to this Court to search for the factual basis to sustain or reject her position. *People v Traylor*, 245 Mich App 460, 464; 628 NW2d 120 (2001). The trial court’s determination was proper.

## III

Plaintiff argues that the trial court erred in assessing case evaluation sanctions against her when she prevailed at trial. We disagree. A trial court’s decision to grant or deny a motion for case evaluation sanctions is reviewed de novo. *Dessart v Burak*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 233844, issued 8/13/02), slip op p 3.

If a party rejects a case evaluation, and following a trial a verdict more favorable to the rejecting party is returned, MCR 2.403(O) allows the imposition of sanctions on the rejecting party following appellate reversal of the verdict where the final result is no longer favorable to that party. *Keiser v Allstate Ins Co*, 195 Mich App 369, 371; 491 NW2d 581 (1992). As this Court explained in *Keiser, id.* at 374, allowing a plaintiff to escape case evaluation sanctions because of an error of law on the part of the trial court would frustrate the purpose of imposing the burden of litigation on the party that rejects the case evaluation. See also *Hyde v University of Michigan Bd of Regents*, 226 Mich App 511, 526; 575 NW2d 36 (1997).

It is the ultimate verdict following appellate review that should be measured against the case evaluation to determine whether sanctions should be imposed on a rejecting party pursuant to MCR 2.403(O). *Keiser, supra* at 374-375. After appellate review, this Court determined that plaintiff was entitled to only nominal damages, *Franzel, supra* at 606, 618-619; therefore, the award of sanctions could only be based on this Court’s decision and not the jury’s verdict. The trial court’s determination was proper.

## IV

Plaintiff argues that even if case evaluation sanctions are allowed, the inclusion of attorney fees and costs for appellate work and the failure to hold an evidentiary hearing is error requiring reversal. We disagree.

A trial court's decision to award case evaluation sanctions is reviewed de novo. *Elia v Hazen*, 242 Mich App 374, 376-377; 619 NW2d 1 (2000). A trial court's decisions regarding the amount of a case evaluation sanctions award and whether to hold an evidentiary hearing are reviewed for an abuse of discretion. *Id.*; *Kernen v Homestead Development Co*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (Docket No. 225206, issued 9/3/02), slip op p 2. An abuse of discretion will be found only when the result is "so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959). A trial court's findings of fact will not be reversed unless clearly erroneous. *Kernen, supra* at 2. A finding is clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993).

Generally, an evidentiary hearing should be held when the opposing party challenges the reasonableness of a fee request. *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999). However, when the parties create a sufficient record to review the issue, it is not error for the trial court to reach a determination without an evidentiary hearing. *Id.*; *Jager v Nationwide Truck Brokers, Inc*, 252 Mich App 464, 488-489; \_\_\_ NW2d \_\_\_ (2002). In this case, defendant<sup>1</sup> included a summary of the fees requested and attached numerous documents detailing the requested costs, which the trial court reviewed.

In determining whether attorney fees are reasonable, the trial court must consider various factors, including: (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. *Papo v Aglo Restaurants of San Jose, Inc*, 149 Mich App 285, 299; 386 NW2d 177 (1986). However, the trial court need not detail its findings for each factor considered. *Michigan National Bank v Metro Institutional Food Service, Inc*, 198 Mich App 236, 241; 497 NW2d 225 (1993). In addition, costs and expenses incurred on appeal cannot be recovered through MCR 2.403. *Keiser, supra* at 374. While defendant initially requested fees for appellate proceedings, plaintiff never objected to appellate attorney fees being included or the number of hours charged; she objected only to the hourly rates.

The trial court stated it found the hourly rates requested reasonable. The court was familiar with the parties, attorneys, and claims involved. Even if appellate attorney fees and costs were included in the initial request, the trial court reduced the award by over \$40,000 for a case that had endured for over a decade. Plaintiff did not object to this award and has failed to show error requiring reversal with regard to the case evaluation sanctions awarded to defendant. *Kernen, supra* at slip op p 2. The trial court's award of case evaluation sanctions without an evidentiary hearing was not an abuse of discretion.

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<sup>1</sup> References herein to "defendant" refer to defendant Kerr Manufacturing Company.

Finally, defendant requests that this Court award fees and costs incurred in responding to plaintiff's appeal. Because we do not consider plaintiff's appeal frivolous, costs and attorney fees for responding to the appeal are denied. MCL 600.2591; *Meagher v Wayne State Univ*, 222 Mich App 700, 727; 565 NW2d 401 (1997).

Affirmed.

/s/ Michael J. Talbot

/s/ Janet T. Neff

/s/ E. Thomas Fitzgerald