

STATE OF MICHIGAN
COURT OF APPEALS

GRAMONT MANOR CONDOMINIUM
ASSOCIATION,

UNPUBLISHED
August 21, 2008

Plaintiff-Appellant,

v

NEDRA D. CAMPBELL,

No. 278779
Wayne Circuit Court
LC No. 06-604116-CH

Defendant-Appellee.

Before: Cavanagh, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court order awarding it “reasonable attorney fees” in the amount of \$3,220, and costs in the amount of \$205. Plaintiff argues that the trial court erred by failing to award its actual, requested attorney fees. We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

We reject plaintiff’s argument that the trial court erred by awarding it reasonable attorney fees rather than actual attorney fees. Plaintiff both stipulated and represented to the trial court that the court was only required to determine a reasonable attorney fee. The parties’ stipulation that removed the matter from case evaluation and submitted the attorney fee dispute to the trial court stated in part that “there is no dispute that Plaintiff is entitled to receive from Defendant *reasonable* attorney fees incurred in the collection of the unpaid assessments pursuant to . . . the Bylaws for Gramont Manor Condominium” The parties agreed that the court could decide the issue on written briefs, and in plaintiff’s reply brief, it again advised the court that “the only issue before this Court . . . is the reasonableness of the fees incurred by Plaintiff in the collection of the unpaid condominium dues that Defendant has admitted owing it.” An appellant cannot contribute to error by plan or design and then argue error on appeal. *Bloemsma v Auto Club Ins Ass’n (After Remand)*, 190 Mich App 686, 691; 476 NW2d 487 (1991). Having both stipulated and represented that the trial court should determine only *reasonable* attorney fees, plaintiff cannot now complain that the trial court was required to award actual attorney fees.¹

¹ See also MCL 559.206(b) (stating that in an action such as this, the condominium association
(continued...))

Plaintiff also argues that the trial court erred in its determination of which fees were reasonable. Specifically, plaintiff contends that the trial court erroneously stated that the case involved a “routine foreclosure case where Defendant posed no defense.”

“This Court reviews a trial court’s grant of attorney fees for an abuse of discretion. Findings of fact on which the trial court bases an award of attorney fees are reviewed for clear error; questions of law are reviewed de novo.” *Stallworth v Stallworth*, 275 Mich App 282, 288; 738 NW2d 264 (2007) (citation omitted).

The trial court’s statement that the case involved “a routine foreclosure case where Defendant posed no defense” was essentially accurate. Although defendant pleaded various defenses, they were not litigated. As explained in plaintiff’s brief to the trial court regarding the fees, the actions required in the case primarily consisted of correspondence, preparation of discovery requests, and negotiations regarding the settlement agreement. Thus, the trial court did not clearly err by characterizing this case as “routine” or by stating that defendant “posed no defense.”

Plaintiff also argues that the trial court erred by stating that the “amount in controversy” was only \$2,608, which plaintiff concedes was the approximate amount of past due assessments at the time the complaint was filed. Plaintiff contends that the amount in controversy was actually \$8,288.88, consisting of the amount of past due assessments and the amount of attorney fees and costs incurred.

Plaintiff has not shown clear error in the trial court’s decision. The court’s reference to the “amount in controversy” referred to the amount of unpaid assessments that led to the filing of the complaint. Although the association’s bylaws provided that plaintiff was entitled to recover attorney fees incurred in collecting the unpaid assessments, that did not necessarily make attorney fees and costs part of the “amount in controversy” that led to the filing of this action.

Plaintiff has not shown that the trial court’s award of attorney fees was an abuse of discretion. We accordingly perceive no error requiring reversal.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly

(...continued)

“if successful, shall recover the costs of the proceeding and *reasonable* attorney fees . . . to the extent the condominium documents expressly so provide”) (emphasis added).