

STATE OF MICHIGAN
COURT OF APPEALS

STANLEY JEROME BROWN,

Plaintiff-Appellant,

v

STEPHAN DWAYNE BATTLE,

Defendant-Appellee.

UNPUBLISHED

September 30, 2008

No. 279991

Wayne Circuit Court

LC No. 05-510222-NI

Before: O’Connell, P.J., and Smolenski and Gleicher, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order awarding defendant costs pursuant to MCR 2.625. We reverse in part and remand. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed this action to recover for injuries incurred in an automobile accident. A jury returned a verdict for defendant, who then moved to tax costs. Plaintiff challenges the trial court’s award to defendant of \$4,192.40 in deposition fees and \$16,314.13 in expert witness fees.

We review a trial court’s ruling on a motion for costs under MCR 2.625 for an abuse of discretion. *Ivezaj v Auto Club Ins Ass’n*, 275 Mich App 349, 367; 737 NW2d 807 (2007). “However, the power to tax costs is wholly statutory” and whether recovery of a particular cost is authorized is “a question of statutory interpretation, which is reviewed de novo on appeal.” *LaVene v Winnebago Industries*, 266 Mich App 470, 473; 702 NW2d 652 (2005).

The prevailing party in an action is generally entitled to costs. MCR 2.625(A)(1). “Items and prescribed fees that may generally be recovered as taxable costs and fees are set forth in the RJA [Revised Judicature Act] at MCL 600.2401 *et seq.* and 600.2501 *et seq.*” *LaVene, supra* at 475.

“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.” MCL 600.2549. This Court has consistently held that unless the depositions in question were filed in the court clerk’s office, a party cannot recover deposition costs. *Morrison v City of East Lansing*, 255 Mich App 505, 522; 660 NW2d 395 (2003);

Rickwalt v Richfield Lakes Corp, 246 Mich App 450, 465; 633 NW2d 418 (2001); *Elia v Hazen*, 242 Mich App 374, 380–382; 619 NW2d 1 (2000); *Portelli v I R Constr Products Co, Inc*, 218 Mich App 591, 605–607; 554 NW2d 591 (1996).

Contrary to the trial court’s ruling, presenting the transcripts to the judge’s clerk during trial does not constitute filing “in any clerk’s office” such that costs may be recovered under the statute. *Elia, supra*. The record does not indicate whether any depositions for which compensation was claimed were filed with the clerk’s office. We note that the record transferred from the trial court to this Court for purposes of this appeal includes transcripts from the depositions of Dr. Amberg and Dr. Golden, thus suggesting that such transcripts may have been filed with the clerk’s office, although they bear no markings indicating that such is the case. Accordingly, we remand for a determination whether the deposition transcripts were filed in the clerk’s office. The trial court shall award deposition costs only for those transcripts that were filed in that office.

Chapters 24 and 25 of the RJA do not specifically provide for expert witness fees as an element of costs except in the case of actions brought by or against the state. MCL 600.2421; MCL 600.2421b(1)(a); MCL 600.2421c(1). However, costs include “[m]atters specifically made taxable elsewhere in the statutes or rules.” MCL 600.2405(2). Pursuant to MCL 600.2164(1), the court has authority to permit an expert witness to be paid a fee in excess of the ordinary witness fee, which fee “may be taxed as part of the taxable costs in the case.” Experts may be compensated for their “court time and the time required to prepare for their testimony as experts.” *Michigan Citizens for Water Conservation v Nestlé Waters North America Inc*, 269 Mich App 25, 107; 709 NW2d 174 (2005), rev’d in part on other grounds 479 Mich 280 (2007). The fees taxable as costs cannot include time spent educating counsel on matters within the expert’s field, in strategy sessions, or in assessing the opposing party’s position. *Detroit v Luftran Co*, 159 Mich App 62, 67; 406 NW2d 235 (1987).

Defendant requested \$16,314.13 for five expert witnesses who apparently testified via deposition. The trial court awarded defendant \$13,051.30 without explanation. With one exception, the records do not indicate the hourly rate charged by each expert, and the court did not determine what constituted a reasonable fee. Nor did the court determine whether the examinations, tests, record reviews performed by, and the reports issued by, the experts were necessary as part of their trial preparation. Therefore, we remand to the trial court for a determination of the experts’ time spent in trial preparation and testimony at trial and of a reasonable fee for such services.

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

/s/ Peter D. O’Connell
/s/ Michael R. Smolenski
/s/ Elizabeth L. Gleicher