

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WEST MICHIGAN MECHANICAL, INC.,

Plaintiff-Appellee,

v

WEST MICHIGAN MECHANICAL SERVICES,  
LLC, now known as QUAD CITY  
MECHANICAL, LLC,

Defendant-Appellant.

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UNPUBLISHED

December 11, 2008

No. 276613

Ottawa Circuit Court

LC No. 06-054696-CZ

Before: Hoekstra, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order finding defendant in contempt of court for violating a previous order and requiring defendant to pay \$3,000 to plaintiff as a result of its failure to comply with the order. Because we conclude that the trial court, pursuant to MCL 600.1721, was limited to awarding plaintiff \$685, we vacate the trial court's order awarding \$3,000 to plaintiff as a sanction for defendant's contempt and remand for entry of an order awarding \$685 to plaintiff.

The trial court entered an order on or about October 6, 2006, enjoining defendant from using the name "West Michigan Mechanical Services." According to the order, defendant had "forty-five (45) days from September 15, 2006[,] to cease using the name on all existing 'signage,' such as vehicles . . . ." Subsequently, in exchange for defendant's agreement to implement a permanent name change, plaintiff dismissed the action with prejudice and without costs.

In mid-December 2006, plaintiff's president observed a truck labeled "West Michigan Mechanical Services" in a driveway in Ottawa County. He took a picture of the truck and, by calling the telephone number printed on the truck, determined that it belonged to defendant. Shortly thereafter, plaintiff filed a motion for order to show cause and for a finding of contempt. It requested that, upon a finding of contempt by defendant, it be awarded the costs and fees incurred in bringing the motion and that sanctions be imposed upon defendant in a minimum amount of \$2,500. The trial court, finding that defendant was in contempt of court because of its failure to comply with the October 6, 2006 order, awarded plaintiff \$3,000, of which \$685 was for attorney fees and costs "for the enforcement action" and the balance for expenses incurred "during the previous course of this action." In ruling on defendant's objections to the proposed

judgment, the trial court “claimed that the \$3,000 award to Plaintiff was in the form of indemnification and reimbursement for expenses incurred relating to the litigation.”

On appeal, defendant argues that, because the trial court sought to indemnify plaintiff, the trial court, pursuant to MCL 600.1721, was only allowed to award \$685 to plaintiff, which equaled the losses plaintiff incurred as a result of defendant’s contempt. We agree. This Court reviews a trial court’s decision regarding a contempt motion for an abuse of discretion. *DeGeorge v Warheit*, 276 Mich App 587, 591; 741 NW2d 384 (2007). However, questions of law relating to the trial court’s decision, such as the nature of the contempt order and whether the contempt statute permits the sanctions imposed, are reviewed de novo. *Id.*; *In re Contempt of Auto Club Ins Ass’n*, 243 Mich App 697, 714; 624 NW2d 443 (2000).

MCL 600.1721 provides:

If the alleged misconduct has caused an actual loss or injury to any person the court shall order the defendant to pay such person a sufficient sum to indemnify him, in addition to the other penalties which are imposed upon the defendant. The payment and acceptance of this sum is an absolute bar to any action by the aggrieved party to recover damages for the loss or injury.

MCL 600.1721 authorizes a court to order the payment of a sum to indemnify a party who has sustained a loss, which may include attorney fees, as a direct result of another party’s contempt. *In re Contempt of Rochlin*, 186 Mich App 639, 650; 465 NW2d 388 (1990); *Homestead Dev Co v Holly Twp*, 178 Mich App 239, 245-246; 443 NW2d 385 (1989). The burden of proving the amount of the loss sustained rests on the party claiming the loss. *Rochlin, supra* at 651.

Here, plaintiff presented evidence that, in bringing the motion to show cause, it incurred \$685 in costs and fees. Although plaintiff alluded to additional consequential damages, plaintiff offered no evidence to substantiate those losses. Accordingly, the trial court erred in awarding \$3,000 to plaintiff. Because the trial court sought to indemnify plaintiff for the losses it sustained as a direct result of defendant’s contempt, the trial court was limited to awarding plaintiff \$685, the amount of its actual losses. MCL 600.1721.<sup>1</sup>

We vacate the trial court’s order awarding \$3,000 to plaintiff as a sanction for defendant’s contempt and remand for entry of an order awarding \$685 to plaintiff. We do not retain jurisdiction.

/s/ Joel P. Hoekstra  
/s/ Richard A. Bandstra  
/s/ Pat M. Donofrio

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<sup>1</sup> Defendant also contends that the trial court erred by denying its motion for reconsideration. However, because we grant the relief requested by defendant, it is unnecessary to address this issue.