STATE OF MICHIGAN

COURT OF APPEALS

LATIF Z. ORAM a/k/a RANDY Z. ORAM, and O.B. PROPERTIES LIMITED PARTNERSHIP,

Plaintiffs/Counter-Defendants-Appellees,

and

O.B. PROPERTIES and JAM SOUND SPECIALISTS, INC.,

Plaintiffs/Counter-Defendants/Third-Party Plaintiffs-Appellees,

v

JOHN ORAM and GARY ORAM,

Defendants/Counter-plaintiffs/Third-Party Plaintiffs-Appellees,

and

INTERNATIONAL OUTDOOR, INC., VISION PROPERTIES, INC., DISCOUNT PAGING CO., INC., and FUTURE VISION PROPERTIES, L.L.C.,

Third-Party Defendants,

and

HARRY CENDROWSKI,

Intervening-Plaintiff-Appellee,

and

UNPUBLISHED
April 16, 2009

No. 280505
Oakland Circuit Court
LC No. 02-039499-CK

THAV, GROSS, STEINWAY & BENNETT, P.C.,
and ARMAND VELARDO,

Intervening-Plaintiffs,

and

ABBOTT NICHOLSON, P.C.,

Intervening-Plaintiff-Appellant.

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Intervening-plaintiff/appellant, Abbott Nicholson, P.C. (appellant), appeals as on leave granted from the trial court's order denying its request for attorney fees.[1] We affirm.

Appellant alleges that the trial court erred in refusing to grant its request for attorney fees from the receivership estate. We disagree. The appellate court reviews the trial court's award of attorney fees for an abuse of discretion. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). An abuse of discretion occurs when the lower court's decision falls outside the range of reasonable and principled outcomes. *Id.*

Specifically, appellant contends that the trial court erred because the underlying settlement agreement expressly provided for an award of attorney fees. Irrespective of the language of the settlement agreement, the trial court concluded that appellant was not a party to the settlement agreement and did not demonstrate it was a third-party beneficiary. Appellant failed to brief or address the merits of the trial court's holding. When an appellant fails to challenge the basis of the ruling by the trial court, we need not even consider granting the party the relief requested. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d 145 (2004). Furthermore, an appellant's failure to properly address the merits of an assertion of error with citation to authority constitutes abandonment of the issue. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 626-627; 750 NW2d 228 (2008). In light of the failure to address the merits of the trial court's ruling with citation to authority, appellant abandoned this issue. *Id.*

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[1] We denied appellant's delayed application for leave to appeal. *Oram v Oram*, unpublished order of the Court of Appeals issued March 29, 2007 (Docket No. 273162). However, the Supreme Court remanded this case for consideration as on leave granted. *Oram v Oram*, 480 Mich 852; 737 NW2d 730 (2007).

Appellant contends that two Michigan cases hold that it is entitled to be paid as a direct creditor of the receivership estate and compensated before disbursement to the parties. The decision in *Bogrette v Young*, 132 Mich App 431; 347 NW2d 193 (1984), is factually distinguishable. In *Bogrette*, the payment of attorney fees was disputed because the lawsuit was brought as a result of the defendants' misconduct. Despite the misconduct, this Court held that the appellant could file a lawsuit as a creditor of the corporation against the receiver. *Id*. at 434. This Court concluded that a claim could proceed where the language of the order appointing the receiver contained broad and unqualified language that would allow for such a filing. *Id*. at 434-435. However, in the present case, appellant failed to brief and identify broad and unqualified language in the order appointing the receiver that would support such a direct cause of action. In light of the insufficient briefing, appellant has also abandoned this issue. *Woods, supra*.

Appellant also relies on a case where the city of Detroit challenged the priority of payment to creditors. *In re Rite-Way Tool & Mfg Co*, 333 Mich 551; 53 NW2d 373 (1952). In *Rite-Way*, the trial court determined the priority of payment and placed taxes below disbursements to secured debts, costs of the receiver, and fees of the receiver. The city challenged the priority order placing payment of taxes below all of these disbursements. The Supreme Court agreed, concluding that taxes should be paid first because they were assessed against the receivership, and the receiver had an obligation to remove the tax lien to protect the property rights of the respective parties. *Id*. at 557-559. The Supreme Court did not address any other order of priority except for the payment of taxes. Appellant's reliance on this case is misplaced.

Further, appellant contends that statutory authority in the corporation and partnership acts provided for an award of attorney fees. This issue is not preserved for appellate review because it was not raised, addressed, and decided in the trial court. *Persinger v Holst*, 248 Mich App 499, 510; 639 NW2d 594 (2001). Moreover, the statute cited by appellant, MCL 450.1497, provides for attorney fees if the action was commenced or maintained in bad faith or without reasonable cause. The trial court never made such a finding. Appellant's contention that the trial court implicitly made such a finding by dismissing the action is without merit. The lower court record does not substantiate the assertion, and in any event, the Supreme Court reversed the dismissal. *Oram v Oram*, 480 Mich 1163; 746 NW2d 865 (2008). This issue is unpreserved and without merit.

Lastly, appellant asserts that the trial court was bound by the prior appeal before this Court wherein we declined to overturn an earlier award of attorney fees.[2] We disagree. Although this issue was not raised in the trial court or in the delayed application for leave to appeal, we will address it. The application of the law of the case doctrine presents a question of law subject to de novo review. *Ypsilanti Fire Marshal v Kircher (On Reconsideration)*, 273 Mich App 496, 522; 730 NW2d 481 (2007). Generally, the law of the case doctrine applies "without regard to whether the decision was actually correct, but it is a matter of practice and discretion rather than an absolute limit on the court's authority." *Hill v City of Warren*, 276

[2] See *Oram v Oram*, unpublished opinion per curiam of the Court of Appeals issued May 22, 2007 (Docket No. 267077).

Mich App 299, 308; 740 NW2d 706 (2007). The law of the case doctrine will not be applied if there is a material or substantial change in the facts or if there has been a change in the law. *Id*. The law of the case doctrine applies when the prior appeal involved the same set of facts, the same parties, and the same question of law. *Manistee v Manistee Fire Fighters Ass'n Local 645, IAFF*, 174 Mich App 118, 125; 435 NW2d 778 (1989). "The law of the case may be viewed as shorthand for the holding of a prior decision between the same parties which is applied by a lower court upon remand or an appellate court upon subsequent review." *Topps-Toeller, Inc v Lansing*, 47 Mich App 720, 727; 209 NW2d 843 (1973). "We conclude that law of the case offers the same parties a measure of certainty by according finality to the litigated issues until the cause of action is fully litigated, including retrials or appeals, and the superseding doctrines of res judicata and collateral estoppel become effective." *Id*. at 729.

Review of the docket entries from the earlier appeal reveals that appellant was not a party to the prior appeal. Moreover, the same question of law is not at issue. In the prior appeal, this Court concluded that the award of attorney fees would not be overturned when plaintiff failed to sufficiently brief the issue.[3] When appellant petitioned the trial court for additional attorney fees, the trial court examined the language of the settlement agreement and concluded that it could not recover when it was not a party to the agreement and did not qualify as a beneficiary of the agreement. Appellant has failed to brief and challenge the validity of the trial court's ruling. Accordingly, the law of the case does not apply. *Topps-Toeller*, *supra*.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood
/s/ Alton T. Davis

[3] See *Oram v Oram*, unpublished opinion per curiam of the Court of Appeals issued May 22, 2007 (Docket No. 267077), slip op p 14.