

STATE OF MICHIGAN
COURT OF APPEALS

CHRISTINE COX,

Plaintiff-Appellant,

v

ROCHE J. FEATHERSTONE, M.D. and GRAND
TRAVERSE SURGERY, P.C.,

Defendants-Appellees.

UNPUBLISHED

April 26, 2016

No. 326078

Grand Traverse Circuit Court

LC No. 2013-030093-NH

Before: SAWYER, P.J., and MURPHY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court’s amended order granting defendant’s bill of costs. We affirm.

Plaintiff filed a medical malpractice complaint against defendants for complications she alleged she experienced after defendant Roche Featherstone, M.D. performed a revision of a prior Roux-en-Y gastric bypass procedure. The jury found that Dr. Featherstone was not professionally negligent, and the trial court entered a judgment for no cause of action. The court indicated that “[t]he issue of costs, attorney fees and sanctions are reserved by the Court.” Defendants subsequently filed a bill of costs with the clerk of the court asking for, in part, an award of expert witness fees for the two board certified general surgeons that testified on their behalf at trial. Plaintiff filed an objection, arguing that the clerk of the court lacked authority to award the expert fees. The court disagreed. The trial court awarded defendants \$3,000 in expert witness fees for the appearance of John Weber, M.D., at trial and \$600 for his trial preparation. Defendants were also awarded \$1,500 for the appearance Randal Baker, M.D., at trial and \$2,100 for his trial preparation. This appeal followed.

“We review for an abuse of discretion the trial court’s ruling on a motion to tax cost under MCR 6.252.” *Guerrero v Smith*, 280 Mich App 647, 670; 761 NW2d 723, 739 (2008). The trial court does not abuse its discretion when it chooses an outcome within the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Whether a particular expense is taxable as a cost is reviewed de novo as a question of law. *Van Elslander v Thomas Sebold & Assoc, Inc*, 297 Mich App 204, 211; 823 NW2d 843 (2012).

“Generally, MCR 2.625(A)(1) allows a prevailing party to tax costs.” *Mason v City of Menominee*, 282 Mich App 525, 530; 766 NW2d 888 (2009). “The taxation of costs is neither a reward granted to the prevailing party nor a punishment imposed on the losing party, but rather a component of the burden of litigation presumed to be known by the affected party.” *Id.*, quoting *North Pointe Ins Co v Steward (On Remand)*, 265 Mich App 603, 611; 697 NW2d 173 (2005).

MCR 2.625(F) provides in part as follows:

(1) Costs may be taxed by the court on signing the judgment, or may be taxed by the clerk as provided in this subrule.

(2) When costs are to be taxed by the clerk, the party entitled to costs must present to the clerk, within 28 days after the judgment is signed, or within 28 days after entry of an order denying a motion for new trial, a motion to set aside the judgment, a motion for rehearing or reconsideration, or a motion for other postjudgment relief except a motion under MCR 2.612(C),

(a) a bill of costs conforming to subrule (G),

(b) a copy of the bill of costs for each other party, and

(c) a list of the names and addresses of the attorneys for each party or of parties not represented by attorneys.

* * *

(3) Within 14 days after service of the bill of costs, another party may file objections to it, accompanied by affidavits if appropriate. After the time for filing objections, the clerk must promptly examine the bill and any objections or affidavits submitted and allow only those items that appear to be correct, striking all charges for services that in the clerk's judgment were not necessary. The clerk shall notify the parties in the manner provided in MCR 2.107.

(4) The action of the clerk is reviewable by the court on motion of any affected party filed within 7 days from the date that notice of the taxing of costs was sent, but on review only those affidavits or objections that were presented to the clerk may be considered by the court.

Plaintiff argues that the trial court erred when it taxed expert fees without first properly awarding them. Plaintiff argues that pursuant to subrule (2), the clerk of the court may only tax costs awarded in the judgment entered by the court. “Since the clerk of the court is not empowered to *award* expert witness fees,” she argues, “Defendants lost their right to *tax* expert witness fees [when judgment was entered] . . . without specifically *awarding* expert witness fees.” (Emphasis in original.)

The Michigan Court Rules Practice guide properly provides guidance on the procedure to be followed under MCR 2.625:

The judge may tax costs when the judgment is signed. In such cases, it is not necessary to file a bill of costs. This is rarely done, however, inasmuch as the supporting data needed to tax costs is not usually gathered until after the prevailing party is determined by the judgment itself. Consequently, the judgment typically provides that the prevailing party may tax costs . . .

If the judge does not tax costs, then, within 28 days after the judgment is signed, or within 28 days after entry of an order denying a motion for a new trial, a motion to set aside the judgment, or a motion for other postjudgment relief except a motion under MCR 2.612(C), the party entitled to costs must present to the clerk of the court a verified bill of costs . . . Affected parties must be given at least 14 days' notice that a bill of costs has been submitted to the clerk, within which time any objections they may have to the bill of costs must be filed . . .

After a bill of costs has been properly filed and copies thereof served on all parties (as evidenced by proof of service filed in the action) the clerk will wait 14 days before examining the bill of costs and any supporting affidavits. During that 14-day period, any party to the action may file objections to the bill of costs, accompanied by affidavits if appropriate. After the time for filing objections has past, the clerk will review the bill of costs and any objections or affidavits submitted and allow only those items that appear to be correct, striking all charges for services which in the clerk's judgment were not necessary . . .

Any affected party may request that the court review and pass upon the bill of costs approved by the clerk. A motion seeking such relief must, however, be filed within seven days from the date that the clerk served notice of the taxing of costs . . .

Thus, the proper remedy to correct a mistake in the taxation of costs is by appeal from the court order on the motion to review.” [3 Longhofer, Mich. Ct. Rules Prac. (6th ed.), § 2625.10 (*Internal citations omitted*).]

Judgment was entered on November 16, 2014. In the judgment, the trial court expressly reserved the issue of costs, attorney fees, and sanctions. Defendants timely presented a bill of costs to the clerk of the court on December 4, 2014, to which the plaintiff filed a timely objection. The trial court properly reviewed the bill of costs and denied plaintiff’s objections. We can find no court rule or statute that precludes the trial court, when reviewing the bill of costs filed with the clerk, from awarding fees included in that bill of costs. Accordingly, we find that the procedure followed was in accordance with MCR 2.625.

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Amy Ronayne Krause