STATE OF MICHIGAN

COURT OF APPEALS

WEXFORD PARKHOMES CONDO ASSOCIATION, Plaintiff-Appellant,	UNPUBLISHED December 21, 2021
v	No. 355642 Oakland Circuit Court
VIRGINIA KAJMA and LINDA MARIE KAJMA, Defendants-Appellees.	LC No. 2018-163312-CH

Before: BOONSTRA, P.J., and GLEICHER and LETICA, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting in part and denying in part its motion for entry of judgment. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

This appeal arises from our earlier decision in *Wexford Parkhomes Condo Ass'n v Kajma (Wexford I*), unpublished per curiam opinion of the Court of Appeals, issued February 6, 2020 (Docket No. 345611). *Wexford I* set forth the relevant facts underlying the dispute:

> [Defendant] Linda [Kajma] and her mother, [defendant] Virginia Kajma, now deceased, were the co-owners of a condominium located in the Wexford Parkhomes Condominium Project (Wexford) run by plaintiff. As co-owners of a condominium at Wexford, defendants were bound by the bylaws established by plaintiff. Under the relevant bylaws, plaintiff could make annual assessments against each unit for expenses arising from the management, administration, and operation of the condominium association, among other things. See Article II. The owners were required to pay the assessment in 12 equal monthly installments, due on the first day of each month. If any part of the assessment was not paid to plaintiff on or before the due date, the payment was in default. Article II, Sections 2(a) and 3.

> Defendants became delinquent in their assessment payment in December 2016. Plaintiff thereafter sent defendants several letters notifying them of their delinquency. On June 19, 2017, Linda contacted Karen Crouse, the property manager for plaintiff's condominium project, and informed Crouse that she had sent a check to pay a portion of the unpaid balance and would bring the account up to date as soon as possible. The following day, on June 20, 2017, plaintiff's attorneys, The Meisner Law Group, sent a letter to defendants informing them that plaintiff was seeking to collect the delinquent assessment dues they had failed to pay and attached a copy of the lien that was eventually recorded on June 23, 2017. Over the course of the next few months, Linda made several payments toward the unpaid assessments, but never completely paid off the entire balance. Several of the checks she sent were returned to her because, as plaintiff indicated to her, Linda included restrictions in the memo line of the checks that were contrary to the bylaws and rules and regulations that outlined the order in which payments would be made.
>
> In January 2018, plaintiff sued defendants, seeking to foreclose on the statutory lien it had filed and recorded, and to collect the delinquent assessments and late charges. In May 2018, plaintiff moved for summary disposition, arguing that there was no genuine issue of material fact that its bylaws authorized it to file and foreclose on the lien, that defendants were in default, and that plaintiff was also entitled to an award of costs and reasonable attorney fees. After a hearing on the motion, the trial court agreed with plaintiff and entered an opinion and order granting summary disposition in plaintiff's favor, but awarded plaintiff only part of its requested attorney fees and costs. [*Wexford I*, unpub op at 1-2.]

After the trial court denied plaintiff's motion for reconsideration, plaintiff appealed to this Court, arguing that it was entitled to recover fees for paralegal services (paralegal fees) and that the trial court erred "in refusing to award actual attorney fees, in reducing the hourly rate of the attorney fees awarded, and in refusing to award certain fees and costs." *Id*. at 6. This Court concluded that plaintiff was not entitled to paralegal fees, had waived the issue of whether it was entitled to actual attorney fees, and had abandoned the issue of the trial court's reduction of attorney Brian Harris's (Harris) hourly rate. *Id*. However, this Court did agree that the trial court had abused its discretion by reducing certain hours billed by attorney Robert Meisner (Meisner) and Harris related to the case. *Id*. at 6-8. This Court remanded the case to the trial court for further proceedings consistent with its opinion.

After remand, plaintiff moved the trial court for entry of judgment, seeking reimbursement for a number of costs. These included: paralegal fees, increased hourly rates for Harris and Meisner, and fees related to plaintiff's appeals and various postjudgment motions, among others.[1] The trial court denied plaintiff's request for these specific fees, but awarded plaintiff $2,625.75 in additional attorney fees after reviewing the hours billed for certain activities performed by Meisner and Harris in relation to the case. This appeal followed.

[1] For brevity purposes, we refer to the fees related to the appeals and other motions as "appellate attorney fees."

II. STANDARD OF REVIEW

"Whether a trial court followed an appellate court's ruling on remand is a question of law that this Court reviews de novo. A trial court's factual findings are reviewed for clear error and its conclusions of law are reviewed de novo." *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 127; 737 NW2d 782 (2007) (citations omitted).

We review for an abuse of discretion a trial court's decision to grant or deny attorney fees. *Ronnisch Constr Group, Inc v Lofts on the Nine, LLC*, 499 Mich 544, 551-552; 886 NW2d 113 (2016). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes. A trial court necessarily abuses its discretion when it makes an error of law." *Id*. We review de novo issues of statutory interpretation. *Id*. at 552.

III. ANALYSIS

On appeal, plaintiff challenges the trial court's attorney fee award in three respects: the denial of paralegal fees, Harris and Meisner's hourly rates, and the denial of appellate attorney fees. We consider each in turn.

A. PARALEGAL FEES

Plaintiff argues that the trial court erred by denying plaintiff's demand for paralegal fees. We disagree.

"It is the duty of the lower court or tribunal, on remand, to comply strictly with the mandate of the appellate court." *K & K Constr, Inc v Dep't of Environmental Quality*, 267 Mich App 523, 544-545; 705 NW2d 365 (2005), quoting *Rodriguez v Gen Motors Corp*, 204 Mich App 509, 514; 516 NW2d 105 (1994) (quotation marks omitted). "The power of the lower court on remand is to take such action as law and justice may require so long as it is not inconsistent with the judgment of the appellate court." *K & K Constr, Inc*, 267 Mich App at 544 (quotations marks and citation omitted). "When an appellate court remands a case without instructions, a lower court has the same power as if it made the ruling itself." *Id*. (quotation marks and citation omitted). "However, when an appellate court gives clear instructions in its remand order, it is improper for a lower court to exceed the scope of the order." *Id*.

The law-of-the-case doctrine "holds that a ruling by an appellate court on a particular issue binds the appellate court and all lower tribunals with respect to that issue." *New Props, Inc v George D Newpower, Jr, Inc*, 282 Mich App 120, 132; 762 NW2d 178 (2009) (quotation marks and citation omitted). Therefore "if an appellate court has passed on a legal question and remanded the case for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case where the facts remain materially the same." *Grievance Admin v Lopatin*, 462 Mich 235, 259; 612 NW2d 120 (2000). "[A]s a general rule, an appellate court's determination of an issue in a case binds lower tribunals on remand and the appellate court in subsequent appeals." *Id*. at 260. This includes issues decided explicitly or implicitly in the earlier appeal. *Id*. "The primary purpose of the doctrine is to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit." *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001).

In *Wexford I*, the relevant issues included: (1) plaintiff's request for fees "related to work performed by Teresa Duddles (Duddles), a paralegal who works with plaintiff's attorneys"; (2) the trial court's "refus[al] to award actual attorney fees"; (3) the trial court's reduction of "the hourly rate of the attorney fees awarded;" and (4) the trial court's "refus[al] to award certain attorney fees and costs." *Wexford I*, unpub op at 2. With regard to the first issue, this Court determined that plaintiff was not entitled to paralegal fees because:

> plaintiff did not attach any documentary evidence to either its motion for summary disposition or its motion for reconsideration to support its assertions that Duddles met the requirements of MCR 2.626 and Article I, Section 6 of the Bylaws of the State Bar of Michigan. As a result, the statements in plaintiff's motion for reconsideration were not evidence of Duddles'[s] education and qualifications as a paralegal and clear error would have occurred had the trial court relied upon counsel's mere assertions to find otherwise. [*Id*. at 4.]

On remand, the trial court stated it was "not inclined to allow Plaintiff to present this evidence [of Duddles's qualifications] on remand from the Court of Appeals when it failed to present evidence this evidence in its original motion or in its motion for reconsideration."

We agree with the trial court that plaintiff was not entitled to "a third bite of the apple." Because plaintiff's argument concerning its entitlement to paralegal fees involves the same issue and parties as in *Wexford I*, the law-of-the-case doctrine applies. *Grievance Admin*, 462 Mich at 259. This Court's conclusion in *Wexford I* that plaintiff was not entitled to paralegal fees stands, and the trial court did not err in rejecting plaintiff's argument in this respect.

B. HOURLY RATES

Plaintiff also argues that the trial court erred by reducing Harris's hourly rate from $275 to $265 per hour, and by awarding fees for Meisner's work at $300 per hour. We disagree.

Plaintiff has abandoned its argument demanding increased hourly rates for Harris and Meisner. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority." *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003) (citations omitted). Plaintiff asserts that it was entitled to increased hourly rates for the attorneys, yet provides no context or authority in support of this position. *Id*.

Moreover, with regard to Meisner's rates, plaintiff requested in its motion for summary disposition that the trial court allocate an hourly rate of $300. Plaintiff supported this request with billing statements showing the $300 per hour rate. The trial court accepted plaintiff's request, stating that the hourly rate was reasonable in light of Meisner's qualifications and experience. Despite this finding and plaintiff's own request, plaintiff's motion for entry of judgment asked the trial court to impose an hourly rate of $325, and falsely represented that this Court had "affirmed

[the trial court's] award of $325.00 per hour for Robert Meisner."[2] We decline to hold that the trial court erred by granting plaintiff's actual request for a $300 rate. See e.g., *Opland v Kiesgan*, 234 Mich App 352, 364; 594 NW2d 505 (1999) (applying the doctrine of judicial estoppel to prevent the "deliberate manipulation" of the courts).

We find no error in the trial court's award regarding Harris's and Meisner's hourly rates.

C. APPELLATE ATTORNEY FEES

Plaintiff also argues that the trial court erred by declining to award appellate attorney fees. Again, we disagree.

> The decision to award attorney fees, and the determination of the reasonableness of the fees requested, is within the discretion of the trial court. As a general rule, an award of attorney fees as an element of costs or damages is prohibited unless it is expressly authorized by statute or court rule. [*Windemere Commons I Ass'n v O'Brien*, 269 Mich App 681, 683; 713 NW2d 814 (2006).]

MCL 559.206(b) states: "[I]n a proceeding arising because of an alleged default by a co-owner, the association of co-owners or the co-owner, if successful, shall recover the costs of the proceeding and reasonable attorney fees, as determined by the court, to the extent the condominium documents expressly so provide." Under its bylaws, plaintiff may collect:

> The expenses incurred in collecting unpaid assessments, including interest, expenses of collection, costs, late charges, actual attorney's [sic] fees (not limited to statutory fees and attorney's [sic] fees and expenses incurred in connection with the Co-owner's bankruptcy and probate proceedings and appeals) and advances for taxes or other liens paid by the Association to protect its lien, shall be chargeable to the Co-owner in default and shall be secured by the lien on the Co-owner's Unit.

The trial court reasoned that plaintiff was not entitled to appellate attorney fees because:

> Plaintiff's Bylaws state [that it may recover] "expenses incurred in collecting unpaid assessments . . . [.]" As stated previously, Plaintiff filed this Appeal for the sole purpose of collecting additional attorney fees that it was not awarded following its motion for summary disposition. It did not file the appeal to collect unpaid assessments. Plaintiff is seeking fees for seeking fees. Such an

[2] Similarly, plaintiff falsely represented in its brief on appeal that the trial court had "[r]educ[ed] Mr. Meisner's rate by $25," and falsely represented—contrary to the supporting documents attached to plaintiff's summary disposition motion—that his actual hourly rate (at least at the time billed) was $325 per hour. We have serious concerns about whether counsel for plaintiff have acted in accordance with their duty of candor toward both this Court and the trial court. See Michigan Rule of Professional Conduct 3.3.

> award would essentially punish Defendant[s] for the Court's decision not to award the entire amount of attorney fees that Plaintiff sought in its dispositive motion.

There is no error in this reasoning. Indeed, plaintiff's arguments in *Wexford I* were solely focused on perceived errors by the trial court in awarding attorney fees.[3] Under the plain language of MCL 559.206(b), plaintiff's collection efforts were limited to expenses "to the extent the condominium documents expressly so provide." And, plaintiff's bylaws only allow plaintiff to collect "expenses incurred in collecting unpaid assessments." Because plaintiff's appeals and its other motions were for the purpose of collecting additional attorney fees, not "unpaid assessments," plaintiff cannot now ask for fees related to collecting fees.

Affirmed. Having prevailed in full, defendants may tax costs. MCR 7.219.

/s/ Mark T. Boonstra
/s/ Elizabeth L. Gleicher
/s/ Anica Letica

[3] Similarly, plaintiff's motion for reconsideration, its motion for entry of judgment, and the present appeal were all premised on plaintiff's argument that the trial court had incorrectly calculated plaintiff's attorney fees.