

STATE OF MICHIGAN
COURT OF APPEALS

OAKCREST OF FARMINGTON HILLS
CONDOMINIUM ASSOCIATION,

UNPUBLISHED
September 18, 2012

Plaintiff-Appellant,

v

No. 305351
Oakland Circuit Court
LC No. 2010-115007-CH

MARK SCHUERMAN and MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC., as Nominee for QUICKEN LOANS, INC.,

Defendants-Appellees.

Before: CAVANAGH, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting a default judgment against defendants in this action to foreclose on a condominium association lien. Because the trial court did not err by refusing to disqualify itself but failed to consider the appropriate factors in determining the reasonableness of the attorney fees that plaintiff requested, we affirm in part and remand for an evidentiary hearing regarding the reasonableness of the requested attorney fees.

Plaintiff first argues that the trial court abused its discretion by denying plaintiff's requested amount of attorney fees. "The decision to award attorney fees, and the determination of the reasonableness of the fees requested, is within the discretion of the trial court." *Windemere Commons I Ass'n v O'Brien*, 269 Mich App 681, 682; 713 NW2d 814 (2006). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). We review for clear error a trial court's findings of fact underlying an award of attorney fees. *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 296; 769 NW2d 234 (2009). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake was made." *Id.* (quotation marks and citation omitted).

"The general 'American rule' is that attorney fees are not ordinarily recoverable unless a statute, court rule, or common-law exception provides the contrary." *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008) (quotation marks and citations omitted). Under the Michigan

Condominium Act, MCL 559.101 *et seq.*, attorney fees are permitted in certain circumstances. MCL 559.206(b) provides:

In 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.

In addition, MCL 559.208(2), pertaining to the foreclosure of a condominium association lien, provides in relevant part:

A foreclosure shall be in the same manner as a foreclosure under the laws relating to foreclosure of real estate mortgages by advertisement or judicial action except that to the extent the condominium documents provide, the association of co-owners is entitled to reasonable interest, expenses, costs, and attorney fees for foreclosure by advertisement or judicial action.

In this case, the condominium documents expressly provided for the recovery of attorney fees. Article II, § 6(d) of the condominium bylaws provides:

The expenses incurred in collecting unpaid assessments, including interest, costs, actual attorneys' fees (not limited to the statutory fees) 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 his Unit.^[1]

“The party claiming entitlement to costs and fees has the burden of proving that the amount requested is reasonable.” *Windemere Commons*, 269 Mich App at 683. In determining the reasonableness of attorney fees, a trial court must first use credible evidence to determine the fee customarily charged in the locality for such services and multiply the fee by the number of hours reasonably spent. *Smith*, 481 Mich at 530-531. “The number produced by this calculation should serve as the starting point for calculating a reasonable attorney fee.” *Id.* at 531. Thereafter, the trial court may adjust the number up or down as appropriate considering other relevant factors, which include:

(1) the skill . . . and labor involved; (2) the likelihood, if apparent to the client, that the acceptance of the employment will preclude other employment by the lawyer; . . . (4) the amount in question and the results achieved; (5) the expense incurred; (6) the time limitation imposed by the client or the circumstances; (7) the nature and length of the professional relationship with the client; (8) the professional standing and experience of the attorney; and (9) whether the fee is fixed or contingent. [*In re Temple Marital Trust*, 278 Mich App 122, 138; 748 NW2d 265 (2008).]

¹ To the extent that plaintiff claims that it is entitled to actual attorney fees, we note that MCL 559.206(b) and MCL 559.208(2) provide for only reasonable attorney fees.

In order to facilitate appellate review, a trial court should briefly discuss its findings regarding the factors considered. *Smith*, 481 Mich at 531. Generally, if a party challenges the reasonableness of an attorney fee request, the trial court should conduct an evidentiary hearing. *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999). A hearing is unnecessary, however, when the record is sufficient for appellate review and the trial court fully explained the reasons for its decision. *Head v Phillips Camper Sales & Rental, Inc*, 234 Mich App 94, 113; 593 NW2d 595 (1999).

In this case, plaintiff requested attorney fees and costs totaling \$3,123.15, which included \$512.65 in costs, a total flat fee of \$586.50, and a total hourly fee of \$2,024. The trial court approved the costs but granted only a portion of the attorney fees requested. In particular, the court reduced the total flat fee by \$314² on the basis that the flat fees requested were not reasonable. Plaintiff requested \$276 for drafting the lien and discharge of the lien, \$115 for drafting the notice to the tenant, and \$92 for drafting the payoff letter and account breakdown. The trial court approved only \$100, \$34.50, and \$34.50 for those services, respectively, reducing the fees by a total of \$314. Because the trial court merely announced that the flat fees requested were not reasonable and provided no reasoning why the amounts granted were reasonable, we remand this case to the trial court for an evidentiary hearing addressing the reasonableness of the fees requested.

In addition, with respect to the hourly fee requested, the trial court reduced the number of billed hours from 8.8 to 5.9, thereby reducing the requested hourly fee from \$2,024 to \$1,357.³ The trial court reduced the number of billed hours for attending a show cause hearing from .5 to zero, stating “[i]t is not reasonable to include this attorney’s fee in the default judgment because it is through an error of the attorney that a default was not timely entered against defendants to prevent the generation of this show cause order.” The trial court also reduced the billed hours for drafting a consent judgment, stating “plaintiff never entered this consent judgment against defendants; therefore, it is not reasonable to include this attorney’s fee in the default judgment.” Therefore, the trial court sufficiently articulated its reasoning for the above reductions. Regarding the remaining hourly reductions, however, the trial court failed to offer any explanation. The court reduced the number of hours that plaintiff’s counsel billed for drafting the summons and complaint from 1.4 hours to 1 hour with no explanation why 1.4 hours was not reasonable. Likewise, the court reduced the number of hours that plaintiff’s counsel billed for drafting the motion for default judgment and the default judgment from two hours to one hour without offering any explanation. Given the overall conclusory nature of the trial court’s decision, it is impossible to determine whether the court abused its discretion by arbitrarily reducing plaintiff’s requested hourly fees. Nothing in the record indicates what factors, if any, the trial court reviewed in determining the reasonableness of the attorney fees. For these reasons, we remand this case for an evidentiary hearing to determine the reasonableness of the attorney fees requested and direct the trial court to articulate its reasoning for its determinations.

² Although the trial court indicated that the difference between the flat fees requested and the amount approved was only \$138, it was actually \$314.

³ The trial court determined that plaintiff’s counsel’s hourly rate of \$230 was reasonable.

Plaintiff next argues that the trial court erred by refusing to disqualify itself after plaintiff presented evidence of bias and arbitrariness in the court's rulings against plaintiff's counsel. Because plaintiff failed to move for disqualification within 14 days after the discovery of the grounds for disqualification pursuant to MCR 2.003(D), this issue is not preserved for this Court's review. Our review of unpreserved issues is limited to plain error affecting substantial rights. *Wolford v Duncan*, 279 Mich App 631, 641; 760 NW2d 253 (2008).

Disqualification of a judge is warranted when the judge has shown bias or prejudice against a party or a party's attorney. MCR 2.003(C)(1)(a). Generally, disqualification is improper absent a showing of actual bias or prejudice, and rulings against a litigant, even if erroneous, do not alone establish bias unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 597; 640 NW2d 321 (2001) (quotation marks and citation omitted). A party "challeng[ing] a judge on the basis of bias or prejudice must overcome a heavy presumption of judicial impartiality." *Cain v Michigan Dep't of Corrections*, 451 Mich 470, 497; 548 NW2d 210 (1996).

Plaintiff has failed to establish that the trial court, Judge Leo Bowman, was actually biased or prejudiced. Plaintiff alleges that Judge Bowman was biased against plaintiff's counsel based on "incongruent results and disparate treatment." Although Judge Bowman ruled against plaintiff with respect to its attorney-fee request, plaintiff has failed to demonstrate deep-seated antagonism that would make fair judgment impossible. Plaintiff's claims are based on two instances, one in which Judge Bowman allegedly failed to apprise plaintiff's counsel that a motion to show cause would not be heard on the date scheduled and another in which counsel was assured that his motion would be called next, only to later discover that it would not be heard that day. In its opinion and order on plaintiff's motion for reconsideration, Judge Bowman explained that its courtroom protocol may have played a role in the alleged mishaps. In any event, these instances do not demonstrate actual bias or prejudice and do not rise to the level of deep-seated favoritism or antagonism sufficient to overcome the heavy burden of judicial impartiality.

Affirmed in part and remanded to the trial court for an evidentiary hearing within thirty-five days regarding the reasonableness of the requested attorney fees. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Pat M. Donofrio