STATE OF MICHIGAN

COURT OF APPEALS

DWIGHT COOK d/b/a DWIGHT COOK BUILDERS and BRAD MONK d/b/a BMC PAINTING,

Plaintiffs/Appellees/Cross-Appellants,

UNPUBLISHED
October 15, 2013

v

No. 306421
Eaton Circuit Court
LC No. 09-001140-CH

LANDMARK DELTA, LLC and JAMES M. VEILLEUX d/b/a LAND-MARK/LANDMARK DELTA

Defendants/Cross-Defendants/Appellants/Cross-Appellees,

and

MORGAN CREEK OF DELTA, LLC,

Defendant/Appellant/Cross-Appellee,

and

HOMEOWNERS CONSTRUCTION LIEN RECOVERY FUND,

Defendant/Cross-Plaintiff,

and

NICHOLAS A. DYBAS and ANGELA R. OSIKA,

Defendants,

and

STELLAMAR INVESTMENT LLC and

PROVIDENCE MORTGAGE COMPANY,

Interested parties,

and

JEFFREY KAFTAN,

Cross-Defendant.

Before: HOEKSTRA, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM

Defendants appeal by right the trial court's grant of summary disposition in favor of plaintiffs. Plaintiffs cross-appeal the trial court's award of attorney fees and costs in their favor. We affirm.

In 2008, plaintiffs Dwight Cook, a carpenter, and Brad Monk, a painter, performed work on condominium units 62 and 55 in the Morgan Creek Subdivision. There is no dispute that they performed their work fully and properly. There is also no dispute that neither was paid for their work on unit 55. Finally, there is no dispute that Monk was at least eventually paid in full for his work on unit 62, whereas Cook was paid very nearly in full for his work on unit 62.[1] In early 2009, plaintiffs filed construction liens against both units, although they later dismissed their liens against unit 62.[2] There does not appear to be any dispute that, at least in the abstract, Cook and Monk are entitled to full payment for the work they performed. At issue was whether any of the named defendants were responsible for that payment, at least pursuant to any of the legal theories and factual assertions put forth by plaintiffs.

As the trial court observed, numerous parties were involved in the condominium project. Furthermore, their interrelationships are complex. James Veilleux, a licensed residential builder, was the sole owner of Landmark Building Company and owned 49 percent each of Landmark Delta, LLC, and Morgan Creek of Delta, LLC, both of which were established to build and sell units for Morgan Creek Condominiums. Morgan Creek of Delta owned unit 55. Veilleux "loaned" his license to, and acted as an agent for, Landmark Delta, which was not itself licensed. Plaintiffs submitted their work bids to Veilleux. Plaintiffs appear to be uncertain whether they contracted with Veilleux personally or with Landmark Delta through Veilleux as an agent. It is

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[1] Defendants did not technically agree that Cook was really owed the small sum, but at the first motion hearing they indicated that it was simply too trivial an amount to be worth disputing.

[2] Plaintiffs made numerous other claims as well, including breach of contract and fraud, but only plaintiffs' construction liens against unit 55 remain at issue in the instant appeal.

not disputed that plaintiffs did not have any dealings with Morgan Creek of Delta, the owner of unit 55, nor did plaintiffs have any contract, written or oral, with Morgan Creek of Delta.[3]

Defendants argue on appeal that the trial court erred in granting summary disposition in favor of plaintiffs as to their claim for foreclosure of their construction liens on unit 55. We disagree.

A trial court's determination of a motion for summary disposition is reviewed de novo. *Ormsby v Capital Welding*, *Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004). When reviewing a motion brought under MCR 2.116(C)(10), the court considers the affidavits, depositions, pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the non-moving party. *Rose v Nat'l Auction Group*, *Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.*

A lien established under the Construction Lien Act, MCL 570.1101 *et seq.*, operates as "a security interest given to facilitate the satisfaction of the debt." *Old Kent Bank of Kalamazoo v Whitaker Const Co*, 222 Mich App 436, 439; 566 NW2d 1 (1997). A lien provides the lienor with an interest in the property that has been improved. *Id.* The purpose of the Construction Lien Act is "to protect the interests of contractors, workers, and suppliers through construction liens, while protecting owners from excessive costs." *Stocker v Tri-Mount/Bay Harbor Bldg Co*, *Inc*, 268 Mich App 194, 197; 706 NW2d 878 (2005). The Construction Lien Act is remedial in nature, and "shall be liberally construed to secure the beneficial results, intents, and purposes of [the] act." MCL 570.1302(1); see *Karaus v Bank of New York Mellon*, 300 Mich App 9, 18; 831 NW2d 897 (2012).

Defendants first assert that the trial court erred in finding that plaintiffs had a valid construction lien for work performed on unit 55 because the trial court could not define the identity of the contracting parties, their status related to the improvements to unit 55, or the contract amount.

In *In re Brown*, 287 BR 676, 679-681 (ED Mich, 2001), the court found that the language of the Construction Lien Act indicated that a valid and enforceable contract is a "necessary predicate" to file a valid lien. The language describing a contract underlying the construction lien is found in MCL 570.1107(1), which provides as follows:

> Each contractor, subcontractor, supplier, or laborer who provides an improvement to real property has a construction lien upon the interest of the owner or lessee who contracted for the improvement to the real property, as described in the notice of commencement given under section 108 or 108a, the interest of an owner who has subordinated his or her interest to the mortgage for the improvement of the real property, and the interest of an owner who has

[3] Veilleux stated he was an agent for Landmark Delta and Morgan Creek of Delta as the onsite manager overseeing building projects and potential sales.

> required the improvement. A construction lien acquired pursuant to this act shall not exceed the amount of the lien claimant's contract less payments made on the contract.

It is not seriously disputed that plaintiffs had contracts with *someone* to perform work on unit 55. As noted above, because of the nature of plaintiffs' claims, and the number and business relationships of the entities involved, the parties extensively disputed the identities of the contracting parties.

Dwight Cook stated that he negotiated a contract on behalf of Dwight Cook Builders with Veilleux to perform trim work at unit 55. Dwight Cook Builders bid proposal of $2,931.70, in trim labor and materials for unit 55 was signed by Paul Hamilton and initialed as "OK" by Veilleux. Veilleux testified that he paid Paul Hamilton as a subcontractor to assist in managing building projects. Brad Monk stated that he negotiated a contract with Veilleux for Brad Monk Painting to paint unit 55 for $3,500. Cook and Monk satisfactorily completed work on unit 55. Cook submitted an invoice to Landmark Companies for payment regarding unit 55 in the amount of $2,931.70, and Monk submitted an invoice to Landmark Delta for payment regarding unit 55 for $3,500. Cook's construction lien against unit 55 was in the amount of $2,931.70, and Monk's construction lien against unit 55 was in the amount of $3,500. Defendants acknowledged that Cook and Monk were not paid for work on unit 55.[4]

MCL 570.1103(5) defines a contractor as "a person who, pursuant to a contract with the owner or lessee of real property, provides an improvement to real property." Matthew Leach, building inspector for Delta Township, stated that the building permit for unit 55 listed Landmark Delta as the contractor and Veilleux as the licensed builder. Leach explained that Veilleux should have been listed as the contractor because Landmark Delta was not a licensed builder. More significantly, there was no evidence that plaintiffs contracted with the owner of unit 55, Morgan Creek of Delta. Consequently, plaintiffs could not be contractors by definition, because they had no contract with the owner or lessee of unit 55. As the trial court correctly reasoned, defendants' argument pursuant to MCL 570.1114, which provides that a contractor may not obtain a lien unless the written contract between the owner and contractor contains information about the contractor's license, and Monk lacks a license, is inapplicable because plaintiffs are not "contractors."

Rather, the evidence showed that plaintiffs were subcontractors or laborers, not contractors. MCL 570.1106(4) states that a subcontractor is "a person, other than a laborer or supplier, who pursuant to a contract between himself or herself and a person other than the owner or lessee performs any part of a contractor's contract for an improvement." A laborer refers to "an individual who, pursuant to a contract with a contractor or subcontractor, provides an improvement to real property through the individual's personal labor." MCL 570.1104(6). Irrespective of whether plaintiffs contracted with Veilleux as an individual or as an agent for one of the entities in which he held an interest, plaintiffs clearly provided improvement to unit 55 through their personal labor pursuant to a contract with a contractor or, pursuant to a contract

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[4] Veilleux contended they were not paid because the pending sale of unit 55 did not materialize.

with a person other than the owner, performed a part of a contractor's contract for an improvement. Plaintiffs were therefore either subcontractors or laborers who provided an uncompensated improvement to unit 55 under their agreements with Veilleux. Therefore, plaintiffs established evidence sufficient to meet the minimum demands of MCL 570.1107(1) for the existence of a valid lien.

Defendants argue that the trial court should not have granted summary disposition because of a factual dispute regarding whether the construction liens were barred because plaintiffs were late in filing a sworn statement. Defendants cite MCL 570.1110(9), which provides:

> If a contractor fails to provide a sworn statement to the owner or lessee before recording the contractor's claim of lien, the contractor's construction lien is not invalid. However, the contractor is not entitled to any payment, and a complaint, cross-claim, or counterclaim may not be filed to enforce the construction lien, until the sworn statement has been provided.

However, again as the trial court noted, plaintiffs were not contractors as defined by the Construction Lien Act. Therefore, MCL 570.1110(9) is inapplicable.

MCL 570.1110(2) requires subcontractors to "provide a sworn statement to the owner or lessee when a demand for the sworn statement has been made by or on behalf of the owner or lessee and, if applicable, the owner or lessee has complied with the requirements of subsection (6)." The trial court properly found no evidence that Morgan Creek of Delta demanded a sworn statement. However, MCL 570.1110(3) requires subcontractors to "provide a sworn statement to the contractor when payment is due to the subcontractor from the contractor or when the subcontractor requests payment from the contractor." Plaintiffs did not provide a sworn statement until October 21, 2009, after filing a claim of lien on February 19, 2009, and a complaint on September 17, 2009. MCL 570.1110(10) provides that, where the subcontractor fails to provide a sworn statement before filing a claim of lien, the lien is valid, but an action to enforce the lien cannot be filed until the sworn statement was provided.

The sworn statement functions to provide the owner of a property with a comprehensive list of potential lien claimants on which to rely. *Vugterveen Systems*, *Inc v Olde Millpond Corp*, 454 Mich 119, 123; 560 NW2d 43 (1997). A delayed sworn statement is a defense that should be considered "in light of the remedial and equitable purpose of the act." *Id*. at 123-124. Substantial compliance with the sworn statement provision is sufficient for the perfection of the construction liens and to give the court jurisdiction to enforce them. MCL 570.1302(1); *Brown Plumbing and Heating*, *Inc v Homeowner Const Lien Recovery Fund*, 442 Mich 179, 183; 500 NW2d 733 (1993). Here, there is no evidence that the delayed sworn statement led to any excess costs to the property owner. See *Stocker*, 268 Mich App at 197. An equitable perfection of

plaintiffs' liens is appropriate in consideration of the liberal application of the remedial statute and the circumstances of the case.[5]

Defendants also argue that provisions of the Residential Builders Act, MCL 339.2401 *et seq.*, prohibit Monk from pursuing his claims. MCL 339.2412 prevents residential builders or residential maintenance and alteration contractors that lack the required licensure from utilizing the courts to collect fees. MCL 339.2412 provides, in relevant part:

> (1) A person or qualifying officer for a corporation or member of a residential builder or residential maintenance and alteration contractor shall not bring or maintain an action in a court of this state for the collection of compensation for the performance of an act or contract for which a license is required by this article without alleging and proving that the person was licensed under this article during the performance of the act or contract.
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> * * *
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> (3) A person or qualifying officer for a corporation or a member of a residential builder or residential maintenance and alteration contractor shall not impose or take any legal or other action to impose a lien on real property unless that person was licensed under this article during the performance of the act or contract.

The Occupational Code defines, in relevant part, a residential maintenance and alteration contractor as

> a person who, for a fixed sum, price, fee, percentage, valuable consideration, or other compensation, other than wages for personal labor only, undertakes with another for the repair, alteration, or an addition to, subtraction from, improvement of, wrecking of, or demolition of a residential structure or combination residential and commercial structure . . . [MCL 339.2401(b).]

MCL 339.2402(3) lists "painting and decorating" among the crafts and trades that may be issued a residential maintenance and alteration contractor's license. Thus, MCL 339.2412 pertains to Monk.

MCL 339.2412 prevents unlicensed contractors from collecting on wholly performed residential building or alteration contracts, and courts have "consistently upheld this harsh penalty for noncompliance" with the statute. *Robert H Pastor Bldg and Real Estate Dev Co v*

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[5] Plaintiffs argue this case is analogous to *Childers Mfg Co v Altman*, 100 Mich App 289, 300; 298 NW2d 725 (1980), where the Court found the plaintiff substantially complied with providing a sworn statement by serving it on one of several intertwined parties. However, the dispute in the instant case involves the timing of the sworn statement, rather than the party on whom it was served.

Cole, 127 Mich App 168, 172; 339 NW2d 11 (1983). Because they do not concern perfecting a construction lien or a court's jurisdiction, construction lien statutes requiring licensure require more than substantial compliance. *Brown Plumbing and Heating*, *Inc*, 442 Mich at 183-186.

However, MCL 339.2403 provides exceptions to the bar against unlicensed residential maintenance and alteration contractors pursuing claims for payment. In relevant part, § 2403 provides as follows:

> Notwithstanding article 6, a person may engage in the business of or act in the capacity of a residential builder or a residential maintenance and alteration contractor or salesperson in this state without having a license, if the person is 1 of the following:
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> * * *
>
> (e) A person other than the salesperson who engages solely in the business of performing work and services under contract with a residential builder or a residential maintenance and alteration contractor licensed under this article.

Here, Monk's work on unit 55 was work under contract with a licensed residential builder because Monk had an oral agreement with Veilleux to paint unit 55. Thus, Monk was excepted from the licensing requirements of MCL 339.2412 as it pertains to painting unit 55.

Defendants note that the trial court did not define whether Monk's contract was with Veilleux or Landmark Delta. However, because Veilleux had a significant interest in Landmark Delta and had to "loan" his builder's license to Landmark Delta so it could receive a building permit for unit 55, the distinction between whether Monk's contract was with Veilleux or Landmark Delta is not dispositive for purposes of the Construction Lien Act. The case is analogous to *Reynolds v College Park Corp*, 63 Mich App 325; 234 NW2d 507 (1975), which involved MCL 339.2403 (formerly MCL 338.1503). The *Reynolds* Court concluded that the plaintiff was exempt from the prohibition against recovery for unlicensed builders even though the plaintiff's contract was with defendant, an unlicensed builder:

> In view of the close relationship between plaintiff and defendant in this case, we are willing to hold that plaintiff is exempted from the act, even though defendant was not licensed. Otherwise, defendant would divert the statute's thrust of consumer protection and use it as a shield against worthy, nonconsumer claims. Like the developer in Brummel, it is to defendant that the ultimate occupiers of the park will look, not plaintiff. [*Reynolds*, 63 Mich App at 330.]

Similarly, *Childers Mfg Co v Altman*, 100 Mich App 289; 298 NW2d 725 (1980), is analogous to the instant case. The plaintiff in *Altman* foreclosed a mechanics' lien after contracting with a general contractor, Altman Construction Company, for work on a residential project, Willow Creek. *Id.* at 292-294. The defendants argued that the plaintiff's lien was invalid because there was no evidence of "direct dealing" between plaintiff and Willow Creek Corporation, whereas the plaintiff argued that his contract with Altman was direct dealing because Altman Construction Corporation and Willow Creek Corporation were intertwined. *Id*. at 299. This

Court upheld the trial court's finding that plaintiff complied with the statute based on the relationships of the several entities involved. *Id*. at 299-300.[6]

On cross-appeal, plaintiffs argue that the trial court erred in awarding them only $11,000, of the $66,472 in attorney fees sought for work on their construction lien claim. We disagree.

An award of attorney fees and whether the fees were reasonable are reviewed for an abuse of discretion. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008). An abuse of discretion occurs when a decision results in an outcome falling outside the reasonable and principled range of outcomes. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). The findings of fact underlying an award of attorney fees are reviewed for clear error. *In re Duane v Baldwin Trust*, 274 Mich App 387, 396-397; 733 NW2d 419 (2007). A trial court's factual findings are clearly erroneous when there is no supporting evidence for the findings or the reviewing court is left with a definite and firm conviction that a mistake was made. *Hill v Warren*, 276 Mich App 299, 308; 740 NW2d 706 (2007).

Generally, attorney fees are awarded only as permitted by court rule or statute. *Smith*, 481 Mich at 526. The Construction Lien Act allows a trial court to award reasonable attorney fees to the prevailing party. MCL 570.1118(2) provides as follows:

> In an action to enforce a construction lien through foreclosure, the court shall examine each claim and defense that is presented and determine the amount, if any, due to each lien claimant or to any mortgagee or holder of an encumbrance and their respective priorities. The court may allow reasonable attorneys' fees to a lien claimant who is the prevailing party. The court also may allow reasonable attorneys' fees to a prevailing defendant if the court determines the lien claimant's action to enforce a construction lien under this section was vexatious.

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[6] The Court detailed the relationships of the entities:

> The plaintiff had entered into a contract with Altman Construction Corporation to furnish labor and materials on the Willow Creek project. This contract was signed by Joel Altman. It seems undisputed that Altman was the sole or controlling stockholder of Altman Construction Corporation and that he was also a general partner in Willow Creek Limited Partnership, which acquired ownership of the project at its completion. Plaintiff's Exhibit No. 20 at trial is the construction agreement between Altman Construction Corporation and Willow Creek Corporation dated April 5, 1974. The agreement was signed by Altman and Edward Thompson, who was listed as the president of Willow Creek Corporation. Within the lower court file is a certificate for the Willow Creek Limited Partnership. Willow Creek Corporation II is listed as a general partner, and Edward Thompson is listed as the president of Willow Creek Corporation II. [*Childers Mfg Co v Altman*, 100 Mich App at 299-300.]

The party requesting the attorney fees has the burden of proof to demonstrate the reasonableness of the requested fees. *Smith*, 481 Mich at 529.

Defendants argue that plaintiffs did not establish that they were entitled to any attorney fees because they did not have a fee agreement with plaintiffs and plaintiffs paid little of the attorney fee. Plaintiffs' attorney testified that he had no written fee agreement with plaintiffs in this case because he has represented them in other cases. He explained that he typically collects fees at the end of construction lien cases because they typically resolve without difficulty, and informed plaintiffs of this practice. Plaintiffs produced invoices for attorney services that were provided in this case, establishing a fee for the attorneys' services.

Plaintiffs' expert witness on the fees issue believed that the time plaintiffs' attorney billed for the pleadings and work in the instant case was reasonable. He agreed that the attorney fees included fees for the entire case, including non-lien claims. But he stated that his experience indicated that the lien claim was 95 percent of the case and the other claims were ancillary. Plaintiffs' attorney testified that he spent less than 10 percent of his time on the claims that were not for foreclosure of construction liens, and that 80 percent of the foreclosure claims was for unit 55, with the remaining time for unit 62.

Factors that must be considered to determine the reasonableness of an attorney fee include:

> (1) the skill, time and labor involved; (2) the likelihood, if apparent to the client, that the acceptance of the employment will preclude other employment by the lawyer; (3) the fee customarily charged in that locality for similar services; (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 at 138.]

In *Smith*, 481 Mich at 531-532, the Court found that the analysis of the reasonableness of attorney fees should begin by ascertaining "the fee customarily charged in the locality for similar legal services," and multiplying this figure by "the reasonable number of hours expended in the case." The trial court may then adjust the figures based on its consideration of the remaining factors. *Id.* A trial court may also consider any additional relevant factors. *Wood v Detroit Auto Inter–Ins Exch*, 413 Mich 573, 588; 321 NW2d 653 (1982).

The trial court found the analysis of plaintiffs' expert witness valid with respect to the hourly rate charged for the legal services provided to plaintiffs. This finding is not contested.

Under MCL 570.1118(2), plaintiffs were only entitled to attorney fees incurred for the foreclosure of the construction lien on unit 55. The trial court found that plaintiffs had not separated the charges for the foreclosure of the construction lien on unit 55 from the charges for pursuing plaintiffs' other claims. In other words, plaintiffs' itemized timesheets were "not sufficient to establish the reasonableness of the fee." *Petterman v Haverhill Farms*, *Inc*, 125 Mich App 30, 32; 335 NW2d 710, 712 (1983). Thus, the trial court "parsed out the bills resolving any ambiguities in favor of defendants." The trial court also eliminated any charges

for duplicate pleadings that were charged to each plaintiff, while recognizing that each plaintiff required some individualized work. Plaintiffs have not demonstrated that the trial court erred in its detailed analysis of the invoices that plaintiffs submitted.

Plaintiffs cite *Beach v Kelly Auto Group*, *Inc*, 482 Mich 1101; 757 NW2d 868 (2008) (YOUNG, J., concurring), for the proposition that the amount in controversy should not be a factor in determining reasonable attorney fees. JUSTICE YOUNG observed that "[a]djusting attorney fees based on 'the amount in question and the results achieved' is not antithetical to the purpose of [a consumer protection statute]," *id.* at 1103, whereas the amount in question was "'not a relevant consideration in determining a reasonable attorney fee for case-evaluation sanctions,'" *id*. at 1102, quoting *Smith*, 481 Mich at 534 n 20. JUSTICE YOUNG stated that the latter rule "was unique to the policy underlying case evaluation sanctions." *Id.* JUSTICE YOUNG concluded "that the lower courts properly attributed the extraordinary fees to defendant's conduct, which unnecessarily caused additional costs." *Id.* at 1101. He noted that the district court had reasoned, in part, that the defendant's "complete denial" and "complete lack of cooperation" as an approach to the litigation resulted in a "disproportionate amount of time on the case" and extraordinary legal fees. *Id*. at 1103.

Here, plaintiffs' expert witness reviewed the pleadings and research in the instant case and commented that the fees were reasonable, particularly in light of the obstacles that defendants introduced. The trial court found that plaintiffs' attorney fees were "extraordinary" because defendants continually contested the validity of the construction lien, even where the defenses lacked merit. The trial court found that "there was never a dispute that plaintiffs' work on the unit was deficient in some way."

The trial court evaluated the reasonableness of the fees according to the proper factors and awarded plaintiffs $11,000. Plaintiffs have not demonstrated any error in the trial court's findings.

Next, plaintiffs argue that the trial court erred in awarding costs to plaintiff of $4,865.46, while they requested $16,526.82. The Court reviews a trial court's decision on a motion for costs for an abuse of discretion. *Mason v City of Menominee*, 282 Mich App 525, 530; 766 NW2d 888 (2009). The Court reviews whether a particular expense is taxable as a cost de novo as a question of law. *Van Elslander v Thomas Sebold & Assoc*, *Inc*, 297 Mich App 204, 211; 823 NW2d 843 (2012).

MCR 2.625(A)(1) provides that "[c]osts will be allowed to the prevailing party in an action, unless prohibited by statute or by these rules or unless the court directs otherwise, for reasons stated in writing and filed in the action." The taxation of costs acknowledges "the burden of litigation presumed to be known by the affected party." *Mason*, 282 Mich App at 530. "[C]osts are not recoverable where there is no statutory authority for awarding them." *Lavene v Winnebago Indus*, 266 Mich App 470, 473; 702 NW2d 652 (2005).

Here, plaintiffs filed a bill of costs for $16,526.80, detailing equal costs to each plaintiff during the instant lawsuit. Defendants filed an objection to the costs and the Deputy Clerk granted $4,865.46 in costs to plaintiffs. Plaintiffs filed a motion for the trial court to review the award of costs according to MCR 2.625(F)(4), and the trial court issued an opinion that plaintiffs

were entitled to tax costs of $4,865.46. Plaintiffs argue that the trial court should have awarded the entirety of their $16,526.80 costs because they were the victim of defendants' deleterious tactics. Plaintiffs note that $13,104.95 of the fees were incurred as a result of defendants demanding a hearing on the award of attorney fees and prolonging the testimony over three days. However, plaintiffs do not detail or argue which expenses the trial court wrongly failed to include in its award.

Not every expense incurred by the prevailing party may be recovered. *Van Elslander*, 297 Mich App at 216. What constitutes costs, as used in MCR 2.625(A), is determined by the statutory provisions defining what items are taxable as costs. *Guerrero v Smith*, 280 Mich App 647, 670-671; 761 NW2d 723 (2008). Generally, the items and fees that may constitute taxable costs are found in the Revised Judicature Act, at MCL 600.2401 *et seq.* and 600.2501 *et seq.* *Lavene*, 266 Mich App at 475. For example, MCL 600.2405 lists specific taxable costs, as follows:

> The following items may be taxed and awarded as costs unless otherwise directed:
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> (1) Any of the fees of officers, witnesses, or other persons mentioned in this chapter or in chapter 25, unless a contrary intention is stated.
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> (2) Matters specifically made taxable elsewhere in the statutes or rules.
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> (3) The legal fees for any newspaper publication required by law.
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> (4) The reasonable expense of printing any required brief and appendix in the supreme court, including any brief on motion for leave to appeal.
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> (5) The reasonable costs of any bond required by law, including any stay of proceeding or appeal bond.
>
> (6) Any attorney fees authorized by statute or by court rule.

Here, the trial court provided a specific listing of the costs that were taxable and the statutes that authorized these costs. The trial court also provided categories of costs requested by plaintiffs that were not authorized as taxable costs by statute. Plaintiffs do not assert that any of these specific findings were in error and do not argue any specific cost was authorized by statute. Therefore, plaintiffs have failed to demonstrate error in the trial court's discretionary award of costs.

Plaintiffs also argue that the trial court erred in awarding a $1,000 sanction to plaintiffs against defendants' attorney. We review an award of sanctions for an abuse of discretion. *Maldonado v Ford Motor Co*, 476 Mich 372, 375-376; 719 NW2d 809 (2006).

A trial court has "inherent authority to impose sanctions on the basis of the misconduct of a party or an attorney." *Persichini v William Beaumont Hosp*, 238 Mich App 626, 639-640; 607 NW2d 100 (1999). Trial courts have express authority to direct and control the proceedings before them by a variety of sanctions. MCL 600.611; *Maldonado*, 476 Mich at 376. This power

results from the necessary control vested in courts "to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Maldonado*, 476 Mich at 375-376. A trial court's "inherent power to sanction misconduct and to control the movement of cases on its docket includes the power to award attorney fees as sanctions." *Persichini*, 238 Mich App at 640-641.

Here, the trial court awarded $1,000 in fees to plaintiffs due to the conduct of defendants' attorney in prolonging the attorney fee hearings. The trial court noted that defendants' attorney "repeatedly failed to abide by the court's directives to address only relevant issues," resulting in unnecessary cross-examination and subpoenaing and cross-examination of irrelevant witnesses. The trial court concluded that the conduct of defendants' attorney caused extraordinary costs. Plaintiffs assert that the conduct of defendants' attorney was so egregious as to warrant a more severe sanction. However, the trial court reasoned that plaintiffs' extraordinary costs that resulted from the conduct of defendants' counsel during a motion hearing was mitigated by the obligation of plaintiffs' counsel to perform much of the work performed regardless of defense counsel's conduct.

A trial court may award attorney fees where the court finds that a defense was frivolous. MCR 2.625(A)(2); MCL 600.2591(1); *Auto-Owners Insurance Co v Ferwerda Enterprises*, *Inc*, 287 Mich App 248, 257; 797 NW2d 168, vac'd in part on other grounds 488 Mich 917 (2010). Frivolous includes circumstances where by a "party's legal position was devoid of arguable legal merit." MCL 600.2591(2)(a)(*iii*). Here, however, plaintiffs do not make a reasoned and supported legal argument that defense counsel's positions were frivolous. Moreover, the trial court issued sanctions for defense counsel's conduct rather than for frivolous defenses. The trial court's sanction of defense counsel was within the range of reasonable and principled outcomes. *Maldonado*, 476 Mich at 388.

Finally, plaintiffs assert they should be awarded $21,077.33 in appellate fees and costs for having to defend its construction lien claim on appeal. In *Solution Source*, *Inc v LPR Assoc Ltd Partnership*, 252 Mich App 368, 375; 652 NW2d 474 (2002), citing *Vugterveen Sys*, *Inc v Olde Millpond Corp*, 454 Mich 119; 560 NW2d 43 (1997), the Court concluded that "the Legislature intended that appellate and postjudgment attorney fees" were recoverable under MCL 570.1118(2) of the Construction Lien Act. MCL 570.1118(2) provides in part that "[t]he court may allow reasonable attorneys' fees to a lien claimant who is the prevailing party." As the prevailing party, plaintiffs are entitled to appellate attorney fees with respect to defendants' appeal of the grant of summary disposition. However, plaintiffs are not entitled to the attorney fees resulting from plaintiffs' challenges on cross-appeal to the fees and costs awarded stemming from the proceedings below because plaintiffs did not prevail on these issues.

We affirm the grant of summary disposition. We reject all challenges to the fees and costs awarded stemming from the proceedings below. We remand to the trial court for determination regarding which appellate fees were a result of defendants' appeal of the trial court's grant of summary disposition. Because neither party prevailed in full in their respective appeals, neither party is entitled to costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra