

STATE OF MICHIGAN
COURT OF APPEALS

46TH CIRCUIT TRIAL COURT,

Plaintiff/Counter-Defendant/Third-
Party-Plaintiff-Appellee,

v

CRAWFORD COUNTY and CRAWFORD
COUNTY BOARD OF COMMISSIONERS,

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

KALKASKA COUNTY,

Third-Party-Plaintiff/Counter-
Defendant-Appellant,

and

OTSEGO COUNTY,

Third-Party-Defendant-Appellee.

FOR PUBLICATION
May 3, 2005
9:05 a.m.

No. 1254179
Crawford Circuit Court
LC No.102-005951-CZ

CRAWFORD COUNTY and KALKASKA
COUNTY,

Plaintiffs-Appellants,

v

OTSEGO COUNTY,

Defendant-Appellee.

No. 254180
Otsego Circuit Court
LC No. 02-010014-CZ

46TH CIRCUIT TRIAL COURT,

Plaintiff/Counter-Defendant/Third-
Party-Plaintiff-Appellee,

v

CRAWFORD COUNTY and CRAWFORD
COUNTY BOARD OF COMMISSIONERS,

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

KALKASKA COUNTY,

Third-Party-Plaintiff/Counter-
Defendant,

OTSEGO COUNTY,

Third-Party-Defendant-Appellee,

and

COHL STOKER TOSKEY & MCGLINCHEY PC,

Appellant.

No. 254181
Crawford Circuit Court
LC No. 02-005951-CZ

CRAWFORD COUNTY and KALKASKA
COUNTY,

Plaintiffs,

v

OTSEGO COUNTY,

Defendant-Appellee,

and

CHOL STOKER TOSKEY & MCGLINCHEY PC,

Appellants.

No. 254182
Otsego Circuit Court
LC No. 02-010014-CZ

46TH CIRCUIT TRIAL COURT,

Plaintiff-Appellee,

v

CRAWFORD COUNTY,

Defendant-Appellant,

CRAWFORD COUNTY BOARD OF
COMMISSIONERS,

Defendant/Counter-Plaintiff/Third-
Party-Plaintiff-Appellant,

KALKASKA COUNTY,

Third-Party-Plaintiff/Counter-
Defendant-Appellant,

and

OTSEGO COUNTY,

Third-Party-Defendant-Appellee.

Nos. 256129; 257234
Crawford Circuit Court
LC No. 02-005951-CZ

Official Reported Version

Before: Zahra, P.J., and Neff and Cooper, JJ.

ZAHRA, P.J. (*concurring in part and dissenting in part*).

I concur with the results reached in parts III, IV, V, VI, VIII, and IX of the majority opinion. I respectfully dissent from parts II (addressing contract claims) and VII (addressing the imposition of sanctions) of the majority opinion. In short, I disagree with the majority's conclusion that a valid contract existed between the Counties and the Trial Court. The Counties were under a preexisting duty to appropriate reasonable funds necessary for the Trial Court to carry out its constitutionally mandated duties. Thus, the promise to fund the Trial Court cannot constitute adequate consideration to support a contract. I further conclude that the imposition of sanctions on the Counties served no purpose except to punish the Counties. The sanctions mandated under MCL 600.2591 and MCR 2.625(A)(2) are intended only to compensate litigants for attorney fees and costs expended in answering frivolous claims and defenses. These sanctions should not be punitive. Here, the Counties were already paying the Trial Court's

reasonable attorney fees and costs. Therefore, the Trial Court did not incur expenses as a result of the Counties' pursuit of allegedly frivolous claims and defenses.¹ Thus, the award of attorney fees as a sanction was not warranted. I would reverse that portion of the lower court's judgment that found the Counties in breach of contract. I would also vacate the award of attorney fees and costs as a sanction for pursuit of frivolous claims and defenses. In all other respects, I would affirm the judgment of the lower court.

I. Contract Claims

The majority concludes in part II of its opinion that the Counties breached an express contract with the Trial Court to implement an improved employee retirement plan. I dissent from this decision because the Counties could not enter into a contract with the Trial Court to fund something they had a preexisting duty to fund under statute and the Michigan Constitution.

The duty of the counties to fund the circuit courts is defined by statute. MCL 600.591(1) requires the county board of commissioners in each county to annually appropriate funds for the operation of the circuit court in that county. Administrative Order No. 1998-5 sets forth the details of court budgeting.² Not only do counties have this statutory duty to fund circuit courts, but the judiciary possesses the inherent constitutional power to compel the counties to pay those sums of money that are reasonable and necessary to carry out the courts' mandated responsibilities. *46th Circuit Trial Court v Crawford Co*, 261 Mich App 477, 489; 682 NW2d 519 (2004), citing *Wayne Circuit Judges v Wayne Co*, 386 Mich 1, 8-9; 190 NW2d 228 (1971) (*Wayne II*). This includes the power to fix the salaries of its employees within the budget appropriations. *Employees and Judge of the Second Judicial District Court v Hillsdale Co*, 423 Mich 705, 722; 378 NW2d 744 (1985); *Ottawa Co Controller v Ottawa Probate Judge*, 156 Mich App 594, 603-604; 401 NW2d 869 (1986). The judiciary also has the inherent authority to manage its employees in order to carry out its operations. *Judicial Attorneys Ass'n v Michigan*, 459 Mich 291, 297; 586 NW2d 894 (1998), vacated in part on other grounds 460 Mich 590 (1999). "[T]he fundamental and ultimate responsibility for all aspects of court administration,

¹ For the purpose of addressing this issue, I shall assume without deciding that the claims and defenses pursued by the Counties were frivolous.

² Administrative Order No. 1998-5, § II provides, in pertinent part:

A court must submit its proposed and appropriated annual budget and subsequent modifications to the State Court Administrator at the time of submission to or receipt from the local funding unit or units. The budget submitted must be in conformity with a uniform chart of accounts. If the local funding unit requests that a proposed budget be submitted in line-item detail, the chief judge must comply with the request. . . . A chief judge may not enter into a multiple-year commitment concerning any personnel economic issue unless: (1) the funding unit agrees, or (2) the agreement does not exceed the percentage increase or the duration of a multiple-year contract that the funding unit has negotiated for its employees. . . . [459 Mich clxxvi-clxxvii.]

including operations and personnel matters within the trial courts, resides within the inherent authority of the judicial branch." *Id.* at 299. A court may file a civil action to compel funding "[i]f, after the local funding unit has made its appropriations, a court concludes that the funds provided for its operations by its local funding unit are insufficient to enable the court to properly perform its duties and that legal action is necessary" Administrative Order No. 1998-5, § III, 459 Mich clxxvii.

Simply put, the Counties were obligated by statute and the Constitution to provide the Trial Court funding adequate to fulfill its function. In fact, the Trial Court asserted its inherent power to order adequate and necessary funding under Administrative Order No. 1998-5. The lower court concluded that funding for the retirement plan was reasonable and necessary for the Trial Court to fulfill its statutorily mandated function. The majority has determined that there is sufficient evidence to support the lower court's finding.³ "A pledge to undertake a preexisting statutory duty is not supported by adequate consideration." *Gen Aviation, Inc v Capital Region Airport Auth (On Remand)*, 224 Mich App 710, 715; 569 NW2d 883 (1997). Because the Counties had a preexisting duty to appropriate funds for the retirement plan, this duty could not provide adequate consideration for any alleged contractual relationship. *Alar v Mercy Mem Hosp*, 208 Mich App 518, 525; 529 NW2d 318 (1995). Further, the Trial Court could not offer the Counties anything in exchange for the Counties providing funding beyond that required by statute. The funding of the trial courts is not a bargained exchange subject to contract principles, but is a statutory obligation for the funding units and a constitutional right for the courts. Because the alleged contract between the Trial Court and the Counties lacked consideration, plaintiff's contract claims must fail.⁴

³ The lower court's finding that funding for the retirement plan was reasonable and necessary for the Trial Court to function is reviewed for clear error. MCR 2.613(C); *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512; 667 NW2d 379 (2003). Clear error exists only where a reviewing court "is left with a definite and firm conviction that a mistake has been made." *Id.* While I have concerns whether the funding of a retirement plan can be necessary to the functioning of a court, I cannot conclude definitively that the lower court erred in making this finding, given the unique circumstances surrounding the merger of courts under the demonstration project imposed upon the Counties.

⁴ Plaintiff alleged alternative counts of breach of contract and contract implied in law (quantum meruit), which it was entitled to do under MCR 2.111(A)(2). *H J Tucker & Assoc, Inc v Allied Chucker & Engineering Co*, 234 Mich App 550, 573; 595 NW2d 176 (1999). Quantum meruit is an equitable principle. *In re McKim Estate*, 238 Mich App 453, 458; 606 NW2d 30 (1999).

"A contract implied in law is not a contract at all but an obligation imposed by law to do justice even though it is clear that no promise was ever made or intended. A contract may be implied in law where there is a receipt of a benefit by a defendant from a plaintiff and retention of the benefit is inequitable, absent reasonable compensation. However, this fiction is not applicable where there exists a relationship between the parties that gives rise to the presumption that services were rendered gratuitously." [*Id.* at 457-458, quoting *In re Lewis Estate*, 168 Mich App 70, 74; 423 NW2d 600 (1988) (citations deleted).]

(continued...)

Additionally, neither the statutes governing appropriations for trial courts nor Administrative Order No. 1998-5 provide that trial courts and their funding units can enter contracts concerning court appropriations. Rather, Administrative Order No. 1998-5 speaks only of contracts between the courts and their employees. Because courts have the authority and responsibility for personnel matters, any contract regarding the salaries or benefits of court employees should be between the court and its employees, not between the court and its funding unit.⁵ The funding unit must appropriate sufficient funds to satisfy a contract between the court and its employees. If the funding unit considers an agreement between a local judiciary and its employees to be excessive because it appears that the budget reflecting the contract will exceed the total appropriation, the funding unit may file suit to test the reasonableness and necessity of the provisions contained in the agreement. *Livingston Co, supra* at 274; *Stanley v Ferndale*, 115 Mich App 703, 709; 321 NW2d 681 (1982). However, there is no legal authority supporting the pursuit of contract claims between courts and their funding units. Accordingly, I conclude that the contract claims lack legal merit.

II. Sanctions for Frivolous Claims and Defenses

The majority concludes in part VII of its opinion that the lower court properly sanctioned the Counties for raising frivolous fraud claims and defenses. I dissent because the sanction amounts to a duplicative award of attorney fees and costs to the Trial Court.

If a party raises a frivolous claim or defense, the court must award the prevailing party costs and fees incurred by that party in connection with the civil action. MCL 600.2591; MCR 2.625(A)(2). "The amount of costs and fees awarded under this section shall include all reasonable costs actually incurred by the prevailing party and any costs allowed by law or by court rule, including court costs and reasonable attorney fees." MCL 600.2591(2). Thus, assuming that the Counties' fraud claims and defenses were frivolous, the lower court had the duty to award the Trial Court reasonable attorney fees and costs. *In re Attorney Fees and Costs*, 233 Mich App 694, 705; 593 NW2d 589 (1999).

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In the present case, there can be no contract implied in law because the Counties did not receive any benefit from the Trial Court. The Counties were statutorily and constitutionally obligated to fund the retirement plan whether or not the Trial Court employees gave up employment benefits in exchange for implementation of the retirement plan.

⁵ In *Judicial Attorneys Ass'n, supra* at 299 n 6, our Supreme Court noted:

Over the years, some trial court judges have arrived at agreements under which the trial courts have allowed their funding units to negotiate on their behalf directly with court employees. In those jurisdictions, typically, the terms and conditions of the court employees vary little if at all from those of the funding unit employees. In contrast, in many jurisdictions the funding units have not desired to play any role concerning the terms and conditions of trial court employment. And in a few jurisdictions, from time to time, courts and their funding units have found themselves at loggerheads over employment issues. It is this category that our case law concerning separation of powers and court employment arises.

As recognized by the majority in part IV of its opinion, this Court concluded in *Crawford Co, supra* at 490-491, that, under the Trial Court's inherent powers, it was entitled to recoup reasonable attorney fees and costs it incurred in litigating all its claims. The majority in the present case holds that the Trial Court is also entitled to attorney fees and costs under MCL 600.2591 for raising frivolous claims and defenses, thus effectively giving the Trial Court a duplicate recovery of attorney fees and costs.

In *McAuley v Gen Motors Corp*, 457 Mich 513, 525; 578 NW2d 282 (1998), repudiated in part on other grounds by *Rafferty v Markovitz*, 461 Mich 265, 273 n 6 (1999), our Supreme Court held that the plaintiff was not entitled to recover duplicative attorney fees under the mediation rule because he already had been fully reimbursed for his reasonable attorney fees under statute. In so holding, the Court explained that only compensatory damages generally are available in Michigan, and that punitive sanctions may not be imposed. *Id.* at 519-520.⁶ "Because the purpose of compensatory damages is to make the injured party whole for the losses actually suffered, the amount of recovery for such damages is inherently limited by the amount of loss; the party may not make a profit or obtain more than one recovery." *Id.* at 520. If a party has already been fully reimbursed for reasonable attorney fees and costs, there are no "actual costs" remaining to be reimbursed. *Id.* at 520-521. However, if a party has been awarded something less than a reasonable attorney fee and there are actual costs remaining, an additional award may be appropriate in some cases. *Id.* at 521.⁷

Here, the Trial Court was awarded reasonable attorney fees and costs under the inherent power doctrine. MCR 2.625(A)(2) and MCL 600.2591 also provide for an award of court costs and reasonable attorney fees. But there is no indication in MCR 2.625(A)(2) or MCL 600.2591 that a double recovery would be appropriate. Further, the purposes of the statute, the court rule, or the Michigan Constitution would not be served by giving a court double recovery at the expense of its funding unit—a sum that would ultimately punish the taxpayers and result in the court recovering money that is not necessary for its functioning.

Because the Trial Court was already reimbursed for reasonable attorney fees and costs, I conclude that it is not entitled to a double recovery of these costs. *McAuley, supra* at 522-524.

/s/ Brian K. Zahra

⁶ As the Court observed, there are "statutory exceptions to this general rule that specifically provide for punitive damages, e.g., MCL 15.240(7) . . . , MCL 600.2911(2)(b) . . . , MCL 750.539h(c)" *McAuley, supra* at 520 n 8.

⁷ In *McAuley, supra* at 522, our Supreme Court stated in obiter dicta that there are situations in which independent policies and purposes may serve to allow a party double recovery. But in *Rafferty v Markovitz, supra* at 273 n 6, the Supreme Court repudiated "the dicta in *McAuley* that left open the possibility of recovering attorney fees under both a court rule and a statute where each attorney-fee provision serves an independent purpose."