

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN AFSCME COUNCIL 25,
and LOCAL 3075,

UNPUBLISHED
November 22, 1996

Plaintiffs-Appellees,

v

No. 189437
LC No. 94-471255-CZ

CHARTER TOWNSHIP OF ROYAL OAK,

Defendant-Appellant.

Before: Bandstra, P.J., and Neff and M. E. Dodge,* JJ.

PER CURIAM.

Defendant appeals as of right from the order of the circuit court enforcing an arbitration award and entering a judgment in favor of plaintiffs against defendant in the amount of \$154,867, for back pay and damages owed to AFSCME member James Thomas. We affirm, but remand for proceedings consistent with this opinion.

The underlying facts are undisputed. James Thomas ("Thomas"), while working as a police sergeant with defendant, arrested a suspected drug dealer after finding large amounts of drugs and money on the suspect. Thomas' corresponding police report allegedly contained "substantial inaccuracies" which led to the release of the suspect, and the suspension of Thomas without pay pending the outcome of criminal proceedings against Thomas. Thomas was ultimately acquitted of these charges and asked to return to work at his former pay rate.

Defendant failed to compensate Thomas for his suspension, and on April 29, 1992, Thomas filed a grievance in order to recover back pay from October 1987 through his reinstatement in November 1991. On January 25, 1994, an arbitration award was issued in Thomas' favor. On November 2, 1994, the trial court entered an order confirming and enforcing the award. The trial court also awarded plaintiffs costs and attorney fees. Defendant's untimely appeal from this order was denied by this Court and the Supreme Court.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant failed to comply with the trial court's order, and on June 2, 1995, plaintiffs filed a motion for contempt alleging, among other things, that defendant failed to reinstate Thomas to his former position. On July 12, 1995, the court entered an order remanding the matter to the arbitrator for clarification of certain issues. However, the court ordered defendant to comply with the back pay and damages provision from October 1987 through November 1991 by August 2, 1995. Defendant again refused to comply with the court's order and on September 13, 1995, the trial court ordered defendant to pay Thomas \$150,033.25 in back pay and \$4,837 in costs and attorney fees.

Defendant first argues that plaintiffs were not entitled to costs and attorney fees because the trial court failed to make any findings that its defense was "frivolous." Defendant's unexplained noncompliance with the original arbitration award and subsequent trial court orders suggest that its actions to vacate the arbitration award and raise defenses against plaintiffs' efforts to enforce the award were in fact frivolous. MCR 2.114(F) and 2.625(A)(2); MCL 600.2591; MSA 27A.2591. Plaintiffs point out that defendant has continued to delay and oppose payment from the time of the award issued on January 25, 1994, to the present without any apparent justification. Further, plaintiffs recognize that defendant, on appeal, simply contends that its actions were not frivolous yet fails to provide any authority or explanation as to why this was so. Defendant fails to indicate the basis of its defense. A party may not leave it to this Court to search for authority to sustain or reject its position. *Hover v Chrysler Corp*, 209 Mich App 314, 319; 530 NW2d 96 (1995). As a result, defendant is not entitled to its requested relief.

Next, defendant contends that the trial court erred in accepting plaintiffs' calculations of damages. Certain questions regarding Thomas' actual monetary award were remanded by the trial court on July 12, 1995, for the arbitrator to resolve. No additional document appears in the record regarding the arbitrator's findings in this regard or whether he accepted plaintiffs' calculations. The trial court thereafter awarded back pay in the amount of \$150,030.74 apparently based on the figures plaintiffs submitted. No contrary figures were provided by defendant. Plaintiffs accurately note that despite the fact that the trial court permitted defendant to depose Thomas, defendant failed to notice him for a deposition at any time. The documents defendant attaches to its brief were not presented to the trial court before it made its ruling, and defendant failed to move for reconsideration of the trial court's order. Defendant's failure to include contrary figures in this regard underscore its recalcitrant behavior throughout this litigation.

Also, defendant's reliance on MCR 2.603(B)(3) is misplaced because the trial court never relied on this rule in its order nor did plaintiffs move for a default judgment under this rule. As a result, this aspect of defendant's issue will not be considered by this Court. See *Bowers v Bowers*, 216 Mich App 491, 495; 549 NW2d 592 (1996).

Finally, we find that defendant's brief was grossly lacking in the requirements of propriety in that many of its arguments were irrelevant and it cited facts not before the trial court. Further, defendant only belatedly provided this Court with the relevant transcripts requiring unnecessary administrative and substantive delay. Accordingly, we grant plaintiffs actual costs, including reasonable attorney fees on

appeal. MCR 7.216(C). We remand to the trial court for a determination of the amount of costs and fees.

Affirmed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Michael E. Dodge