

STATE OF MICHIGAN
COURT OF APPEALS

EUGENE DUNN,

Plaintiff-Appellant,

v

JAMES SPENCER,

Defendant-Appellee.

UNPUBLISHED

December 6, 1996

No. 189524

LC No. 93-05-267 NO

Before: Markey, P.J., and Michael J. Kelly and M.J. Talbot,* JJ

PER CURIAM.

Plaintiff appeals as of right from an order of the circuit court granting judgment of no cause of action against plaintiff on his civil assault and battery claim and from an order awarding defendant mediation sanctions. We affirm.

Plaintiff first argues that the trial court abused its discretion by precluding plaintiff, pursuant to MRE 403, from disclosing to the jury that defendant's chief witness had previous financial dealings with defendant's employer, the Village of Union City. This Court reviews a trial court's assessment of the probative value and prejudicial effect of evidence for abuse of discretion. *Gilliam v Lloyd*, 172 Mich App 563, 586; 432 NW2d 356 (1989). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling. *Gore v Rains & Block*, 189 Mich App 729, 737; 473 NW2d 813 (1991).

Here, the trial court did not abuse its discretion by precluding plaintiff from using the offered evidence. The trial court found that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice to defendant, confusion of the issues, misleading the jury, and considerations of waste of time. Plaintiff presented the trial court with no evidence of bias resulting from the witness' financial dealings with defendant's employer despite the fact that the trial court adjourned the trial to allow plaintiff to redepose the witness on that matter. Therefore, it cannot be said that the trial court was without justification or excuse for its ruling. *Id.* Thus, the trial court did not abuse its discretion.

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

Plaintiff next argues that the trial court erred by allowing plaintiff's expert witness to testify, over plaintiff's objections, to the psychiatric and psychological makeup of plaintiff. Plaintiff asserts that the witness, a general medical practitioner, was never qualified in the fields of psychiatry or psychology. The qualification of a witness as an expert, and the admissibility of his testimony, are in the trial court's discretion and will not be reversed by this Court absent an abuse of discretion. *Froede v Holland Ladder & Mfg Co*, 207 Mich App 128, 138; 523 NW2d 849 (1994).

Here, however, plaintiff opened the door to the admissibility of the challenged testimony by directly broaching the area of plaintiff's psychological condition on direct examination of the witness. Testimony which would otherwise be inadmissible can be rendered admissible if the opponent of the testimony has opened the door to its admissibility. *People v Beckley*, 434 Mich 691, 730-731; 456 NW2d 391 (1990). Moreover, this Court has held that irrelevant evidence can be made relevant if the opponent of the evidence first broaches an area with a witness that would otherwise be an improper basis of inquiry. *People v Yarger*, 193 Mich App 532, 538; 485 NW2d 119 (1992). Accordingly, the trial court properly admitted the challenged testimony.

Plaintiff finally argues that the mediation costs awarded to defendant, pursuant to MCR 2.403, were unreasonable and not limited to the rejection of mediation by plaintiff, especially since defendant's representation was funded through an insurance policy procured by defendant's employer. This Court reviews a trial court's award of attorney fees, under MCR 2.403, for abuse of discretion. *Michigan Basic Property Ins Ass'n v Hackert Furniture Distributing, Inc.*, 194 Mich App 230, 234; 486 NW2d 68 (1992). An abuse of discretion occurs only if the trial court's decision is grossly violative of fact and logic. *Id.*

The language of the mediation sanction rule instructs the trial court to assess reasonable attorney fees and does not mandate that the trial court calculate actual attorney fees. *Johnston v Detroit Hoist & Crane Co*, 142 Mich App 597, 601; 370 NW2d 1 (1985) (discussing GCR 1963, 316, the precursor to MCR 2.403). Moreover, the court rule makes no distinction between parties who pay for their legal counsel and parties who are otherwise supplied with legal counsel. *Dembinski v Miller*, 130 Mich App 822, 827; 345 NW2d 626 (1983) (again discussing GCR 1963, 316, the precursor to MCR 2.403). The applicable language of MCR 2.403 is identical to the former court rule discussed in *Miller* and *Johnston*. Therefore, the trial court did not abuse its discretion by awarding the challenged attorney fees. *Hackert Furniture, supra*, at 234.

Plaintiff also argues that attorney fees should never have been expended in the first place because defendant is not covered under the applicable insurance policy for willful and deliberate acts. Plaintiff's argument is without merit because no controversy existed between defendant's insurer and defendant regarding the scope of the coverage available to defendant. See *Allstate Ins Co v Hayes*, 442 Mich 56; 68; 499 NW2d 743 (1993). Therefore, plaintiff lacks standing to contest the scope of the insurance contract between defendant and his insurer. *Id.*

Plaintiff finally claims that the attorney fees awarded by the trial court were unreasonable. In awarding the attorney fees, the trial court reviewed defendant's counsel's hourly rate as well as an

itemized list which detailed all attorney fees incurred by defendant subsequent to plaintiff's rejection of mediation. After reviewing the record, it cannot be said that the trial court's decision to impose the challenged mediation sanctions grossly violated fact and logic. *Hackert Furniture, supra, at 234*. Therefore, the trial court did not abuse its discretion.

We affirm.

/s/ Jane E. Markey

/s/ Michael J. Kelly

/s/ Michael J. Talbot