

STATE OF MICHIGAN
COURT OF APPEALS

IN RE: HAHN DRAINAGE DISTRICT.

DRAVES BRANCH OF THE HAHN DRAIN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 173316

LC No. 92-1110-CC

JOE C. BOGEL,

Defendant-Appellant.

Before: White, P.J., and Markey, and R.M. Pajtas,* JJ.

WHITE, J. (concurring in part and dissenting in part).

I concur in the majority's conclusion that the court arrived at a reasonable formula when it limited the attorney-fee award in the first action to the issues of non-joinder and subject matter jurisdiction, and in the majority's rejection of defendant's interest argument based on *Escanaba*. I dissent, however, from the affirmance of the \$1,870 fee award to defendants and the \$700 sanction award to plaintiff. I would vacate the sanctions award and remand for further proceedings regarding the attorney fee.

The record before us contains no explanation of how the circuit court reached the \$1,870 figure awarded. Further, the circuit court's ruling appears to have diverged from its order of November 25, 1992, for reasons that are also unclear.¹

I would remand for redetermination of actual reasonable attorney fees incurred in the first action for work not duplicated in the second action. The circuit court should be required to consider each of the factors articulated in *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982), in determining the reasonableness of an attorney fee award. *In Re Condemnation of Property*, 209 Mich App 336, 341-342; 530 NW2d 183 (1995). I recognize the circuit court's discretion in determining what is a "reasonable" attorney fee, but also note that the policy is to allow full compensation of all actual reasonable attorney fees.² MCL 213.66(2); MSA 8.265(16); *Escanaba*, 156 Mich App at 813-815. There are times when the reasonable fee for services may exceed the amount in dispute.

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

I would vacate the circuit court's award of \$700 in sanctions to plaintiff. In light of the wording of the court's November 25, 1992 order, defendant's motion was not frivolous.

/s/ Helene N. White

¹ The November 25, 1992 order allowed attorney fees and expenses "in regard to the admission [sic] of Defendant's wife as a necessary party and lack of subject matter jurisdiction due to Plaintiff's failure to make a good faith written offer prior to commencement of the action." The court's November 16, 1993 opinion, however, allowed attorney fees and expenses only as "directly related to the issue of non-joinder of Mrs. Bogel."

² I understand the circuit court's consternation with the time spent in determining attorney fees where so little money was involved. Nevertheless, remand is necessary for explanation of how the figure awarded was reached. *Wood, supra*.