

STATE OF MICHIGAN
COURT OF APPEALS

RONALD JORDAN,

Plaintiff-Appellant,

and

GEORGE G. COUCH,

Plaintiff,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

UNPUBLISHED

January 17, 1997

No. 181442

Ingham County

LC No. 94-77387-CZ

RONALD JORDAN,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellee.

No. 184102

Ingham County

LC No. 94-77387-CZ

Before: Reilly, P.J., and Sawyer and W.E. Collette,* JJ.

PER CURIAM.

Plaintiff Ronald Jordan (plaintiff) appeals as of right circuit court orders revoking the waiver of filing fees and costs and granting defendant's motion to tax \$80 in costs. We vacate the portion of the

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

order revoking the waiver of filing fees and costs, vacate the order granting defendant's motion to tax costs and remand for further proceedings.

Plaintiff and George Couch brought a complaint in Wayne County for superintending control. They were granted a waiver of fees on May 28, 1992. Defendant was granted a change in venue to Ingham County. On June 2, 1994, plaintiff filed a motion for waiver of fees. In an opinion and order dated November 30, 1994, the Ingham County circuit court granted summary disposition in favor of defendant. The opinion and order also addressed plaintiff and Couch's payment of fees:

Further, it is noted that Plaintiffs has [sic] not paid the Court filing fee pursuant to MCR 2.23(B)(1) but have filed a motion for waiver of fees pursuant to MCR 2.002. As the reason for the waiver no longer exists, the Plaintiffs' motion for waiver of fees is moot and is hereby DENIED. Therefore, it is the ORDER of the Court, that the MDOC as keeper of Plaintiffs' accounts, shall remove 50% of the balance in their respective accounts existing as of the date of this ORDER, and from the date of this ORDER onward, the MDOC shall deduct 50% of all funds which are deposited in Plaintiffs' accounts until such time as the MDOC is in possession of \$62.00 collected from such accounts. The MDCO shall then submit those funds for payment of filing fees

....

Plaintiff filed a claim of appeal with this Court on December 16, 1994. On December 28, 1994, defendant filed a motion to tax costs, which the circuit court granted on January 20, 1995. Plaintiff appealed that order and the two appeals were consolidated by this Court.

Plaintiff first contends that the circuit court abused its discretion by revoking the waiver of fees and costs without first finding that the circumstances that necessitated the waiver no longer existed. We agree. Before revoking a previously granted order waiving or suspending filing fees and costs because of indigency, the circuit court must make a determination regarding the financial status of the litigant. *Martin v Dept of Corrections (On Remand)*, 201 Mich App 331, 334-335; 505 NW2d 515 (1993). The circuit court in this case made no such determination. Accordingly, we vacate the portion of the court's November 30, 1994 order revoking the waiver of filing fees and costs, and remand the case to the trial court. On remand, the circuit court is to determine whether there has been a change in indigency status justifying a revocation of the previously granted waiver of filing fees and costs. *Id.* at 335.

Plaintiff also contends that the circuit court was without jurisdiction to entertain and grant defendant's motion to tax costs, which was filed after the claim of appeal was filed in this Court. We agree. Because the circuit court's order granting summary disposition in favor of defendant did not indicate an intention to award costs, the circuit court did not have jurisdiction to award defendant costs. *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 314-315; 486 NW2d 351 (1992). Therefore, the circuit court's order of January 20, 1995 granting defendant's motion to tax costs is vacated.

Finally, plaintiff argues that, under MCR 2.405(D)(2), defendant waived the right to recover costs by failing to make a counteroffer. We disagree. MCR 2.405 is inapplicable because plaintiff did not make an offer as that term is defined by MCR 2.405(A)(1), which provides in pertinent part:

“Offer” means a written notification to an adverse party of the offeror’s willingness to stipulate to the entry of a judgment in a sum certain

Plaintiff offered to settle the suit if he was released from level V or VI custody. This did not indicate a willingness to settle for a “sum certain,” and therefore, MCR 2.405 is not applicable.

The portion of the court’s November 30, 1994, order revoking the waiver of filing fees and costs is reversed and the case is remanded for further proceedings. The circuit court’s order of January 20, 1995 granting defendant’s motion to tax costs is vacated. We do not retain jurisdiction.

/s/ Maureen Pulte Reilly

/s/ David H. Sawyer

Judge Collette did not participate.