

STATE OF MICHIGAN
COURT OF APPEALS

MICHIGAN DEPARTMENT OF
TRANSPORTATION,

UNPUBLISHED
January 19, 1999

Plaintiff-Appellant,

v

No. 201353
Macomb Circuit Court
LC No. 91-001704 CC

D & T CONSTRUCTION,

Defendant-Appellee.

AFTER REMAND

Before: Holbrook, Jr., P.J., and O'Connell and Whitbeck, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the trial court's order granting defendant attorney's fees in the amount of \$390,169.97 in this condemnation case. We affirm.

In *In re Condemnation of Private Property for Highway Purposes (Dep't of Transportation v D & T Construction Co)*, 209 Mich App 336; 530 NW2d 183 (1995), this Court remanded this case the trial court for consideration of the eight factors listed in MRPC 1.5(a) in determining the reasonableness of the attorney's fees award granted under § 16 of the Uniform Condemnation Procedures Act, MCL 213.51 *et seq.*; MSA 8.265(1) *et seq.* In response, the trial court analyzed the eight factors and granted defendant the same generous award of attorney's fees as it had in the earlier proceeding. On appeal, plaintiff argues that the trial court erred in awarding defendant the maximum amount of attorney's fees authorized by the statute. We disagree.

We are neither entitled nor permitted to substitute our judgment for that of the trial court concerning the latter's award of attorney's fees; our review is confined to determining whether the trial court's award was so unreasonable as to constitute an abuse of discretion. *In re Condemnation of Private Property for Highway Purposes (Dep't of Transportation v Curis)*, 221 Mich App 136, 139-140; 561 NW2d 459 (1997). "An abuse of discretion occurs when an unprejudiced person, considering the facts upon which the trial court acted, would say that there was no justification or excuse for the trial court's ruling." *Dep't of Transportation v Randolph*, 228 Mich App 91, 94; 576 NW2d 719 (1998). Stated otherwise, "an abuse of discretion will be found when the decision is 'so palpably

and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias.” *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992), quoting *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959).

Our review of the record in this case does not leave us with a clear sense that the trial court’s award of attorney’s fees was wholly without justification, or constituted a perversity of will or defiance of judgment.

Affirmed.

/s/ Donald E. Holbrook, jr.

/s/ Peter D. O’Connell

/s/ William C. Whitbeck