

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA A. MCCLURE and THEODORE C.
BRICE,

Plaintiffs-Appellants,

v

FRIEDA K. VOGT, Personal Representative of the
Estate of MARY ANN HOLTZ, Deceased,

Defendant-Appellee.

UNPUBLISHED
August 10, 1999

No. 202186
Genesee Circuit Court
LC No. 94-027400 NZ

BARBARA A. MCCLURE and THEODORE C.
BRICE,

Plaintiffs-Appellants,

v

FRIEDA K. VOGT, Individually and as Personal
Representative of the Estate of MARY ANN
HOLTZ, a/k/a MARY A. HOLTZ BRICE,
Deceased, MARJORIE PYDYNKOWSKI and
JOHN SCHAADT,

Defendants-Appellees,

and

RONEY & COMPANY MONEY MARKET
ACCOUNT,

Defendant.

No. 202187
Genesee Probate Court
LC No. 94-144257 CZ

Before: Griffin, P.J., and Wilder and R. J. Danhof,* JJ.

PER CURIAM.

Plaintiffs appeal by leave granted from the trial court's order awarding defendants costs, including attorney fees, after plaintiffs' consolidated circuit and probate court actions were dismissed by summary disposition. Attorney fees were awarded pursuant to MCL 600.2591; MSA 27A.2591. We affirm.

Plaintiffs first contend that the trial court erred when it declined to hold that defendants had waived their right to recover costs and attorney fees by not providing all the information desired by plaintiffs within the time allotted by MCR 2.625(F). However, plaintiffs' reliance on MCR 2.625(F) is misplaced. The time limit for filing a bill of costs under that subrule only applies when the costs at issue are to be taxed by the clerk of the court. Where, as here, the issue of costs is judicially determined under MCL 600.2591; MSA 27A.2591, the test is "whether the motion for costs was filed within a reasonable time after the prevailing party was determined." *Avery v Demetropoulos*, 209 Mich App 500, 503; 531 NW2d 720 (1994). There is no indication that defendants' motion for attorney fees, filed twenty-one days after entry of the order determining that defendants were the prevailing party, was not brought within a reasonable time. Accordingly, plaintiffs have "not shown any procedural defects that precluded the trial court from granting defendant[s'] motion for taxation of costs and attorney fees." *Id.*

Plaintiffs next argue that the trial court erred because some of the attorney fees awarded were allegedly incurred in matters unrelated to the defense of their actions. "A trial court's award of attorney fees is reversible only if it constitutes an abuse of discretion." *Beach v State Farm Mutual Automobile Ins Co*, 216 Mich App 612, 625-626; 550 NW2d 580 (1996). The record reveals that plaintiffs expressly waived an evidentiary hearing addressed to the reasonableness of defense counsel's hourly rate. The court noted that defendants had filed extensive documents detailing the nature of the work, the hours expended, and the costs. The amount of the costs and fees to be awarded was argued at two hearings, and during this time defendants deducted certain sums that they conceded were not properly includable in the total claimed. Under these facts the trial court's award does not constitute an abuse of discretion.

Plaintiffs also assert that the trial court's grant of a protective order preventing them from deposing defense counsel regarding his multiple representation and items in the bill of costs deprived them of a fundamental right to challenge the accuracy of the bill of costs by subjecting it to cross-examination. The granting of a protective order under MCR 2.302(C) is within the trial court's discretion, and the underlying consideration is whether the discovery sought would facilitate or impede the litigation. *Dafter Twp v Reid*, 159 Mich App 149, 159; 406 NW2d 255 (1987). Given the detailed billing data with which plaintiffs were provided and their participation in two hearings, the trial court's protective order is reasonable.

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

Plaintiffs lastly maintain that defense counsel's representation of multiple parties was a conflict of interest and that his fees were therefore illegal, citing MRPC 1.5 and 1.7. However, a potential breach of the Michigan Rules of Professional Conduct gives rise only to an initiation of

the discipline process and does not provide plaintiffs with a basis for enforcement. MRPC 1.0(b). Plaintiffs have failed to establish that the trial court's order awarding costs and attorney fees constitutes an abuse of discretion.

Affirmed.

/s/ Richard Allen Griffin

/s/ Kurtis T. Wilder

/s/ Robert J. Danhof