

STATE OF MICHIGAN
COURT OF APPEALS

STUART TRAGER,

Plaintiff-Appellee,

v

CITY OF DETROIT,

Defendant,

and

DETROIT BOARD OF TRUSTEES OF THE
GENERAL RETIREMENT SYSTEM OF THE CITY
OF DETROIT,

Defendant-Appellant.

UNPUBLISHED

November 23, 1999

Nos. 209668;214835

Wayne Circuit Court

LC No. 97-715854 CL

Before: Gribbs, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

In these consolidated appeals, defendant Detroit Board of Trustees of the General Retirement System of the City of Detroit appeals as of right from an order granting plaintiff's motion for summary disposition and appeals by leave granted from an order granting plaintiff's motion for attorney fees and costs. We affirm in part and reverse in part.

This case involves a dispute over pension benefits. After plaintiff's pension rights had vested and he began drawing a pension, defendant adopted a resolution providing that the pension benefits of a "retirant" who returns to work for the city will be suspended until he or she again retires. More than a year after plaintiff returned to city employment, defendant suspended payment of plaintiff's pension benefits in accordance with that resolution. Plaintiff sued and the trial court ruled that defendant had acted illegally and must resume paying plaintiff his pension. It subsequently granted plaintiff's motion for costs and attorney fees.

Defendant first contends that the trial court erred in granting summary disposition for plaintiff. The trial court's ruling on a motion for summary disposition is reviewed de novo. *Pinckney Community Schools v Continental Casualty Co*, 213 Mich App 521, 525; 540 NW2d 748 (1995).

This case is governed by Const 1963, art 9, § 24, which provides in pertinent part:

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

That provision “makes the financial benefits of a pension plan a contractual obligation of the city,” *Retired Policemen & Firemen of Lincoln Park v Lincoln Park*, 6 Mich App 372, 378; 149 NW2d 206 (1967), and precludes reduction of an accrued benefit, *Seitz v Probate Judges Retirement System*, 189 Mich App 445, 451; 474 NW2d 125 (1991), or other impairment thereof. *Campbell v Judges’ Retirement Bd*, 378 Mich 169, 181; 143 NW2d 755 (1966). Given that defendant does not dispute that plaintiff's pension rights had vested, its resolution requiring him to forfeit those rights is unconstitutional. Therefore, the trial court properly granted plaintiff's motion for summary disposition.

Defendant next contends that the trial court erred in granting plaintiff's motion for costs and attorney fees.

“Michigan follows the ‘American rule’ regarding attorney fees. Under this rule, attorney fees are generally not recoverable unless a statute, court rule, or common-law exception provides to the contrary.” *Schoensee v Bennett*, 228 Mich App 305, 312; 577 NW2d 915 (1998). “Exceptions to the general rule are construed narrowly.” *Burnside v State Farm Fire & Casualty Co*, 208 Mich App 422, 427; 528 NW2d 749 (1995).

We reject plaintiff's claim that there is a general exception permitting trust beneficiaries to recover attorney fees in trust disputes. The only exception is when recovery of fees is necessary to avoid an inequitable result, *Merkel v Long (On Rehearing)*, 375 Mich 214, 218, 220; 134 NW2d 179 (1965), and plaintiff has not identified any special circumstances that would produce an inequitable result if he had to pay his own attorney fees.

Plaintiff primarily premised his claim for attorney fees on this Court's ruling in *Bank of the Commonwealth v Criminal Justice Inst*, 102 Mich App 239; 301 NW2d 486 (1980). In that case, the plaintiff was the trustee of pension plan assets held in trust for the benefit of the defendant's employees. The defendant apparently went out of business and the plaintiff filed an interpleader action regarding disbursement of the assets. On the bank's motion, the court appointed counsel to represent the defendant's employees, who had been named as party defendants. The employees then filed a counterclaim/cross-claim, asserting a right to distribution of the plan's assets. *Id.* at 246. Because none of the employees' pension rights had vested, their claim failed. *Id.* at 243-244. The employees' attorney filed a motion for attorney fees, which the court granted. This Court held that principles of equity dictated that the attorney be compensated because the bank requested that he be appointed “and

defendant governmental bodies, by not opposing such appointment, under circumstances where the compensation of such legal counsel for the funds under court control reasonably should have been expected, should not now be permitted to oppose court approval of reasonable attorney fees for appointed counsel from such funds.” *Id.* at 247. In so ruling, this Court analogized to MCL 555.63(c)(2); MSA 26.79(13)(c)(2) (authorizing a trustee to charge against the trust principal legal “expenses incurred in maintaining or defending any action to construe the trust”) because the trustee had requested the attorney’s appointment. This Court also noted that appointment of counsel to represent the employees was necessary for an adversarial proceeding, which was the best way to resolve a dispute over the trust assets between the defendant and its employees. *Id.* at 245.

We find *Bank of the Commonwealth* inapplicable in this case. This suit began as an adversarial proceeding against two parties represented by independent counsel. Plaintiff’s attorney was retained, not appointed by the court, and was paid by his client. Defendant therefore had no reason to expect that it might be held responsible for plaintiff’s attorney fees. Accordingly, we find that the trial court erred in awarding plaintiff attorney fees. The award of attorney fees is therefore reversed.

Plaintiff claims a right to attorney fees on various other grounds, including the “common fund” doctrine, public policy, and MCL 600.2591; MSA 27A.2591. We disagree and are not persuaded that any of the exceptions to the American rule apply. *Auto Club Ass’n v State Farm Ins Co*, 221 Mich App 154, 168; 561 NW2d 445 (1997). Further, we decline to address these issues inasmuch as the trial court never reached these claims and this Court is usually limited to issues actually decided by the trial court, *Norton Shores v Carr*, 81 Mich App 715, 723; 265 NW2d 802 (1978). In light of our ruling that plaintiff was not entitled to attorney fees under trust law or *Bank of the Commonwealth*, we need not reach defendant’s remaining issue regarding the reasonableness and appropriateness of the fees awarded.

Affirmed in part and reversed in part.

/s/ Roman S. Gribbs
/s/ William B. Murphy
/s/ Richard Allen Griffin