

STATE OF MICHIGAN
COURT OF APPEALS

JERVIS B. WEBB COMPANY,

Plaintiff-Appellee,

v

RAPISTAN DEMAG CORPORATION,

Defendant-Appellant.

UNPUBLISHED

August 4, 2000

No. 210913

Oakland Circuit Court

LC No. 96-514213-CZ

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

PER CURIAM.

Following a jury verdict in its favor, defendant challenges on appeal the trial court's opinion and order denying defendant costs, damages and attorney fees under MCR 3.310(D), following dissolution of a preliminary injunction. We affirm.

The court rule at issue states in pertinent part:

(1) Before granting a preliminary injunction or temporary restraining order, the court may require the applicant to give security, in the amount the court deems proper, for the payment of costs and damages that may be incurred or suffered by a party who is found to be wrongfully enjoined or restrained. [MCR 3.310(D).]

In this case the trial court did not require, and defendant apparently did not seek, security for the injunction. Defendant argues that this provision entitles it to costs and damages, including attorney fees, because the injunction in this case was dismissed after defendant prevailed on the merits. The trial court here concluded that costs were only appropriate if the injunction had been wrongfully entered, and, based on the evidence presented at the time the injunction was issued, the court concluded that the injunction here was not wrongful.

In *In re Prichard Estate*, 169 Mich App 140, 149; 425 NW2d 744 (1988), a panel of this Court noted that "[t]he word 'wrongful,' as used in the context of injunctions, has been considered by federal and state courts to mean the issuance of the injunction by a court in error or when it ought not to have been issued." This Court in *Prichard* went on to conclude that the court rule provides

compensation to a party “for costs and damages sustained as a result of an injunction, which, based on the determination made on the merits of the underlying controversy between the parties, should not have been issued at all.” *Id.* at 151. Although the Court in *Prichard* concluded that the verdict in the underlying case was evidence of wrongful enjoinder, it did not limit the lower court’s consideration to the verdict alone. It is clear from this Court’s analysis of the issue that the trial court properly considered a number of principles in addition to the verdict in that case, including the definition of wrongfulness and the question whether the injunction ought to have been issued. *Id.* at 149-151. Here, too, the trial court clearly was aware of all the circumstances surrounding both the issuance of the injunction and the trial itself. Its consideration of all the facts surrounding the case did not constitute a “wrong legal standard.”

Nor is there any merit to defendant’s claim that the injunction was improperly issued in the first place because the trial court improperly relied on a hearsay affidavit. Granting injunctive relief is within the sound discretion of the trial judge. *Kernen v Homestead Development*, 232 Mich App 503, 509; 591 NW2d 369 (1998). The trial court initially refused to issue the injunction but, on reconsideration, agreed that it had failed to consider the likelihood of success on one of plaintiff’s claims. Based on its own previous findings of fact, the trial court concluded that injunctive relief was warranted in this case. We find no abuse of discretion.

Finally, there is no merit to defendant’s claim that costs under MCR 3.310(D) includes attorney fees. Although defendant cites a number of cases from other jurisdictions, it is well established Michigan law that attorney fees are not included under the umbrella term “costs” unless they are specifically authorized by a statute or court rule. *Radenbaugh v Farm Bureau General Insurance Co*, 240 Mich App 134, 152; ___ NW2d ___ (2000) (Docket No. 212080, issued 3-3-2000), slip op at 10; *Attorney General v Piller*, 204 Mich App 228, 232; 514 NW2d 210 (1994). Attorney fees are not authorized by MCR 3.310(D).

Affirmed.

/s/ Patrick M. Meter
/s/ Roman S. Gribbs
/s/ Richard Allen Griffin