

STATE OF MICHIGAN
COURT OF APPEALS

DORIS JEAN PASCHAL and WILLIAM LEWIS
PASCHAL, JR.,

UNPUBLISHED
March 16, 2001

Plaintiffs-Appellees,

v

BRISTOL WINDOW AND DOOR, INC.,

No. 216211
Muskegon Circuit Court
LC No. 97-337474-CK

Defendant-Appellant.

Before: Saad, P.J., and Fitzgerald and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from an order granting judgment in favor of plaintiffs. The two-count complaint alleged breach of contract and violations of the Michigan Consumer Protection Act (MCPA), MCL 445.901 *et seq.*; MSA 19.418(1) *et seq.* Following a jury trial, the court entered a \$5,000 judgment in favor of plaintiffs. The trial court subsequently awarded plaintiffs \$11,000 in attorney fees. We affirm.

Defendant first argues that the trial court erred in its determination of reasonable attorney fees pursuant to the MCPA. We disagree.

The MCPA provides that a court may award "reasonable" attorney fees to a prevailing party. MCL 445.911(2); MSA 19.418(11)(2). We review the trial court's award of attorney fees for an abuse of discretion. *Smolen v Dahlmann Apartments, Ltd*, 186 Mich App 292, 296; 463 NW2d 261 (1990). An abuse of discretion occurs where, "an unprejudiced person, considering the facts upon which the trial court acted, would say there was no justification or excuse for the ruling." *Auto Club Ins Ass'n v State Farm Ins Co*, 221 Mich App 154, 167; 561 NW2d 445 (1997).

The trial court retains the discretion to award a reasonable attorney fee regardless of the actual attorney fee the plaintiff incurred. *Head v Phillips Camper Sales & Rental Inc*, 234 Mich App 94, 114; 593 NW2d 595 (1999). The factors a trial court considers when determining a reasonable attorney fee derive from *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973). Among the factors the court examines are:

(1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client. [*Id.*]

The trial court is not limited to consideration of the *Crawley* factors, and may adjust an attorney's fee according to the outcome of the proceedings. *Smolen, supra* at 296.

After weighing the *Crawley* factors in the instant case, the trial court concluded:

The [c]ourt finds from the record that the case required moderate skill, time, and labor; that plaintiffs claimed approximately \$8,000.00 and were awarded \$5,000.00 by the jury after a mediation panel awarded only \$2,500.00; and that the costs of the case were only \$98.50.

Defendant did not object to the claim of \$98.50 in costs, which is allowed. However, the court agrees in part with defendant's contention that it was not necessary to have two attorneys involved to the full extent they were in this particular case. The case was simply not that complex. Thus, the [c]ourt reduces plaintiffs' claimed attorney fee of \$13,653.50 and allows \$11,000.00 as a reasonable attorney fee.

We are satisfied that the trial court's award of attorney fees was not an abuse of discretion. The trial court properly acknowledged that the present case was not complex, and therefore did not require the time of two attorneys. Accordingly, the trial court adjusted the claimed fee of \$13,653.50 downward to \$11,000. Further reduction was not warranted because this case proceeded to trial, and the record reveals that plaintiffs' attorneys expended approximately 120 hours of preparation.

Further, that the attorney fee award was greater than the monetary value of the judgment awarded to plaintiffs does not reflect an abuse of discretion. We reach this conclusion mindful of the remedial purpose of the MCPA, which is "to provide a means for consumers to protect their rights and obtain judgments where otherwise prohibited by monetary constraints." *Jordan v Transnational Motors, Inc*, 212 Mich App 94, 97-98; 537 NW2d 471 (1995). Moreover, we are satisfied that the trial court properly considered the minimal costs of this action in fashioning an award of reasonable attorney fees.

Defendant also argues that there was insufficient evidence for the trial court to submit plaintiffs' breach of contract and MCPA claims to the jury.¹ Because defendant did not challenge the sufficiency of the evidence in the lower court by way of a motion for directed verdict or post verdict motions, this issue is not properly before this Court. *Napier v Jacobs*, 429

¹ On appeal, defendant also asserts that the parol evidence rule prevented plaintiffs from introducing evidence contradicting the express terms of their contract with defendant. Defendant did not raise this issue in the lower court, therefore it is not preserved for appellate review. *Candelaria v B C General Contractors*, 236 Mich App 67, 83; 600 NW2d 348 (1999).

Mich 222, 230; 414 NW2d 862 (1987). Consequently, defendant has waived this issue on appeal absent a showing of manifest injustice. *Id.* at 224.

To avert the normal rule that a challenge to the sufficiency of the evidence not raised in the lower court is waived on appeal, defendant must describe the specific nature of any resulting injustice. *Id.* at 233-234. Here, defendant has failed to articulate any injustice that would follow from this Court declining to review its challenges to the sufficiency of the evidence. The loss of a favorable jury verdict does not amount to manifest injustice. *Id.* at 233.

Affirmed.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell