

STATE OF MICHIGAN
COURT OF APPEALS

JANICE SUE BURRIS and WILBURN BURRIS,

Plaintiffs-Appellees,

v

DENISE DARLENE BURKE and SMART,

Defendants,

and

RICHARD LARGO DIAZ and DELUXE CAB
COMPANY, INC. OF TAYLOR,

Defendants-Appellants.

UNPUBLISHED

March 15, 2002

No. 225362

Wayne Circuit Court

LC No. 94-416897-NI

Before: Hood, P.J., and Murphy and Markey, JJ.

MEMORANDUM.

In a prior appeal,¹ we vacated \$30,000 of the jury award and instructed the trial court to determine the amount of the adjusted verdict and impose mediation sanctions only if the adjusted verdict exceeded \$36,000. On remand, the trial court concluded that the adjusted verdict exceeded \$36,000, and granted plaintiff's request for mediation sanctions of \$41,325. We reverse and remand for entry of a judgment consistent with this opinion.

The adjusted verdict was calculated by adding assessable costs and interest and by making the adjustment for future damages as provided by MCL 600.6306. See MCR 2.403(O)(3). The adjusted verdict did not exceed \$36,000, and the trial court erred in awarding mediation sanctions of \$41,325.² Furthermore, the trial court erred when it calculated the

¹ *Burris v Diaz*, unpublished opinion per curiam of the Court of Appeals, issued November 5, 1999 (Docket No. 202857).

² Plaintiffs' allegation, that there was a stipulation to not reduce future damages to present value, is without merit. Even if we could construe the record available as a stipulation, there is no indication that any "agreement" was applicable to the calculation for purposes of MCR 2.403. We further note that the portion of the opinion in *Grow v W A Thomas Co*, 236 Mich App 696, 718-719; 601 NW2d 426 (1999) relied on by plaintiffs is nothing more than obiter dictum. See
(continued...)

interest amount. The set off should have been deducted from the verdict before interest was calculated on the judgment amount. *Freysinger v Taylor*, 197 Mich App 349, 352-353; 494 NW2d 870 (1992). In sum, plaintiffs are not entitled to sanctions pursuant to MCR 2.403(O). Further, because the settlement set off exceeds plaintiffs' damages, the judgment and interest amounts should be zero. Therefore, plaintiffs are not the prevailing parties under MCR 2.625(B).

Reversed and remanded for entry of a judgment consistent with this opinion. We do not retain jurisdiction.

/s/ Harold Hood
/s/ William B. Murphy
/s/ Jane E. Markey

(...continued)

People v Higuera, 244 Mich App 429, 437; 625 NW2d 444 (2001). We need not reach the issue of the date of application because, utilizing either calculation period, the adjusted verdict does not exceed \$36,000.