

STATE OF MICHIGAN
COURT OF APPEALS

JEROME DICKERSON,

Plaintiff-Appellee,

v

STEVEN SOSA and J.W. TOLBERT,

Defendants-Appellants.

UNPUBLISHED

June 7, 2002

No. 227462

Wayne Circuit Court

LC No. 97-734725-NO

JEROME DICKERSON,

Plaintiff-Appellant,

v

STEVEN SOSA and JAMES TOLBERT,

Defendants-Appellees.

No. 229035

Wayne Circuit Court

LC No. 97-734725-NO

Before: Bandstra, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

In Docket No. 227462, defendants appeal as of right from the circuit court's order awarding plaintiff \$18,725 in attorney fees as mediation sanctions. In Docket No. 229035, plaintiff appeals as of right from the circuit court's order of judgment, challenging the court's order denying plaintiff's motion for additur and treble damages. We vacate the circuit court's order in Docket No. 227462 and affirm its order in Docket No. 229035.

Following his acquittal of a drug charge, plaintiff filed an action against defendants, who were the investigating officers, for malicious prosecution and intentional infliction of emotional distress. The case went to mediation and was evaluated at \$20,000. Both parties rejected the evaluation and the case went to trial. The jury returned a verdict of \$20,000. The trial court entered a judgment on the verdict in the amount of \$23,698, which included interest on the verdict and costs. The court denied plaintiff's motion for additur and treble damages, but granted his motion for mediation sanctions because the adjusted verdict exceeded the amount at which the case was evaluated by more than ten percent.

In Docket No. 227462, defendants argue that the trial court erred in assessing costs that are not authorized by statute when determining that plaintiff was entitled to mediation sanctions under MCR 2.403. Specifically, defendants argue that plaintiff has not identified any statutory authority and, in fact, there is no statutory authority to support the trial court's assessment of costs for record copy fees, transcripts, and the mediation fee. Defendants maintain that only the filing fee, jury demand fee, and service fees may be added to the verdict and interest to reach the adjusted amount for purposes of MCR 2.403(O)(3). When the jury verdict is adjusted by only the interest on the verdict and properly assessable costs, argue defendants, the total verdict for purposes of MCR 2.403(O)(3) is \$21,584, which is less than the ten percent improvement necessary for imposition of mediation sanctions. This Court reviews a trial court's decision whether to award mediation sanctions de novo because it involves a question of law. *Great Lakes Gas Transmission Limited Partnership v Markel*, 226 Mich App 127, 129; 573 NW2d 61 (1997).

"Generally, a party that rejects a mediation evaluation is subject to sanctions if the party does not improve its position at trial." *Elia v Hazen*, 242 Mich App 374, 378; 619 NW2d 1 (2000). The award of mediation sanctions is governed by MCR 2.403(O), which provides, in pertinent part, as follows:

(1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the case evaluation.

* * *

(3) For the purpose of subrule (O)(1), a verdict must be adjusted by adding to it assessable costs and interest on the amount of the verdict from the filing of the complaint to the date of the case evaluation, and, if applicable, by making the adjustment of future damages as provided by MCL 600.6306[. After this adjustment, the verdict is considered more favorable to a defendant if it is more than 10 percent below the evaluation, and is considered more favorable to the plaintiff if it is more than 10 percent above the evaluation.

"The power to tax certain expenses is statutory, and the prevailing party cannot recover such expenses absent statutory authority." *Elia, supra* at 379; see also *Put v FKI Industries, Inc*, 222 Mich App 565, 573; 564 NW2d 184 (1997).

Here, the cost of the record copy fees for plaintiff's employment records is not taxable because those records were not used at trial. MCL 600.2549; *Beach v State Farm Mut Automobile Ins Co*, 216 Mich App 612, 622; 550 NW2d 580 (1996). Moreover, the cost of deposition transcripts could not be taxed because they were not filed in a clerk's office. *Elia, supra* at 381. Further, there is no statutory authority providing for assessment of the cost of a mediation fee. *JC Building Corp II v Parkhurst Homes, Inc*, 217 Mich App 421, 429; 552 NW2d 466 (1996). Finally, plaintiff has not identified any authority, nor are we aware of any, for assessing the cost of a transcript of a criminal trial where, as here, it is desired for use at a subsequent civil trial. Accordingly, the cost of the transcript was not taxable. *Elia, supra* at 379.

When the jury verdict is adjusted by only the interest on the verdict and the properly assessable costs, the total verdict for purposes of MCR 2.403(O)(3) is less than the ten percent improvement necessary for the imposition of mediation sanctions. Accordingly, the trial court erred in awarding plaintiff mediation sanctions and we vacate the order.¹ In light of our resolution of this issue, we need not address defendants' argument that the attorney fees awarded by the trial court as mediation sanctions were unreasonable.

In Docket No. 229035, plaintiff argues that the trial court erred in denying his motion for treble damages under MCL 600.2907. Plaintiff maintains that to deny him trebled damages in this case results in an injustice in that it allows police officers to lie without appropriate consequences.

In denying plaintiff's motion, the trial court relied on *Camaj v SS Kresge Co*, 426 Mich 281; 393 NW2d 875 (1986). There, our Supreme Court held that MCL 600.2907 "is intended only to reach those actions in which a party brings suit against a person who had instituted proceedings against the current plaintiff *in the name of another, without the named person's consent*, or where there is no such person known." *Id.* at 290 (emphasis added). The Court rejected the plaintiff's argument that he was entitled to treble damages because his case was brought in the name of the people. *Id.*

Camaj is squarely on point with regard to defendants' argument and has not been overruled; therefore, this Court, as well as the trial court, is bound by its holding. *Kuhn v Secretary of State*, 228 Mich App 319, 330; 579 NW2d 101 (1998). Accordingly, the trial court did not err in denying plaintiff's motion for treble damages.

We vacate the circuit court's order in Docket No. 227462, and affirm its order in Docket No. 229035.

/s/ Richard A. Bandstra
/s/ Michael R. Smolenski
/s/ Patrick M. Meter

¹ In reaching this conclusion we reject plaintiff's assertion that defendants are barred from raising this issue because they failed to first challenge, in a motion for relief from judgment under MCR 2.612(C), the \$23,695 judgment amount. Under MCR 2.403(O)(3), a party's entitlement to mediation sanctions rests not on the judgment amount, but rather the adjusted verdict. Thus, as explained above, defendants' challenge to plaintiff's motion for mediation sanctions was proper regardless of the amount entered on the judgment.