

STATE OF MICHIGAN
COURT OF APPEALS

KENNETH LINDSTROM,

Plaintiff-Cross Appellee,

V

CHRIS YANOSY and JANE YANOSY,

Defendants-Cross Appellants.

UNPUBLISHED

June 3, 2004

No. 244965

Oakland Circuit Court

LC No. 01-030014-NI

Before: Markey, P.J., and Wilder and Meter, JJ.

MEMORANDUM.

Defendants Yanosy appeal¹ from a circuit court order granting in part their motion for case evaluation sanctions. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court's decision to grant case evaluation sanctions is reviewed de novo on appeal. The amount of sanctions awarded is reviewed for an abuse of discretion. *Campbell v Sullins*, 257 Mich App 179, 197; 667 NW2d 887 (2003). An abuse of discretion exists when an unprejudiced person would find that there was no justification or excuse for the court's ruling. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227-228; 600 NW2d 638 (1999).

Both parties rejected the case evaluation. The court subsequently granted summary disposition in favor of defendants. Because the verdict was more favorable to defendants than the case evaluation, defendants were entitled to actual costs. MCR 2.403(O)(1), (2)(c). Therefore, the trial court did not err in granting defendants' motion.

The costs to be awarded include taxable costs plus a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial court for services necessitated by the rejection of the case evaluation. MCR 2.403(O)(5). Because fees are limited to those necessitated by the rejection of the evaluation, fees incurred before the deadline for accepting or

¹ Plaintiff filed a claim of appeal from the trial court order granting summary disposition to defendants but it was ultimately dismissed for want of prosecution. Only defendants cross-appeal is before this Court.

rejecting the evaluation are not taxable. *J C Bldg Corp II v Parkhurst Homes, Inc*, 217 Mich App 421, 431; 552 NW2d 466 (1996). Because fees are to be based on a reasonable hourly or daily rate, the rate actually charged by the attorney is not determinative. *Ghaffari v Turner Const Co*, 259 Mich App 608, 618; ___ NW2d ___ (2003).

The court found that this was a relatively simple premises liability case, which finding is supported by its ruling on the dispositive motion. Defendants presented no evidence in support of their claim for attorney fees apart from an article surveying law firm billing rates and the record shows that after the November 16, 2001 deadline for accepting or rejecting the case evaluation, defense counsel filed an answer to the amended complaint, reviewed and filed a reply to plaintiff's response to the motion for summary disposition, appeared for the hearing on the motion, and then filed and appeared for the hearing on the motion for sanctions. Under the circumstances, the trial court's finding that \$1,460 represented a reasonable fee for those services was not an abuse of discretion.

Affirmed.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter