Court of Appeals, State of Michigan

ORDER

Sami Abu Farha v Ben Nakash

Docket No. 283715

LC No. 04-421307-CH

Brian K. Zahra
Presiding Judge

Kirsten Frank Kelly

Karen M. Fort Hood
Judges

The Court orders that the motion for immediate consideration is GRANTED.

In lieu of granting the application, the Court orders, pursuant to MCR 7.205(D)(2), that the December 7, 2007, order of the Wayne Circuit Court assessing a one-day jail stay for plaintiff hereby is REVERSED IN PART. The punishment imposed for contempt should be the least that is adequate to accomplish its purpose. *In re Contempt of Dudzinski*, 257 Mich App 96, 109; 667 NW2d 68 (2003). Under the totality of the circumstances, the one-day jail term was not appropriate. In all other respects, the application for leave to appeal is DENIED for failure to persuade the Court of the need for immediate appellate review.

This order is to have immediate effect, MCR 7.215(F)(2). The Court retains no further jurisdiction.

Zahra, J., would also set aside the fine imposed for allegedly causing a mistrial. A mistrial is a drastic measure that should be avoided unless absolutely required. Here, the plaintiff's inappropriate testimony should have been corrected with a curative instruction to the jury.

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 28 2008

Date

Sandra Schultz Mengel

Chief Clerk