

STATE OF MICHIGAN  
COURT OF APPEALS

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FRANKLIN R. BRUSSOW,

Plaintiff-Appellant,

v

DIRECTOR OF EMPLOYMENT RELATIONS  
COMM and DIRECTOR OF DEP'T OF LABOR,

Defendants -Appellees.

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UNPUBLISHED

September 13, 1996

No. 182093

LC No. 89-63674-AA

AFTER REMAND

Before: Michael J. Kelly, P.J., and Hoekstra and E.A. Quinnell,\* JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the trial court that required defendants to reimburse plaintiff for attorney fees and costs. Plaintiff had filed an action against defendants for failure to disclose two public documents pursuant to the Michigan Freedom of Information Act (FOIA), MCL 15.231 *et seq.*; MSA 4.1801(1) *et seq.*, and was seeking fees and costs pursuant to FOIA. We affirm in part, reverse in part, and remand.

Shortly after plaintiff filed this action, but before defendants were served, defendants disclosed one of two documents that plaintiff had requested. The other was provided after service but before trial. The trial court granted defendants' motion for summary disposition, and awarded plaintiff no attorney fees. Plaintiff appealed and this Court affirmed the order granting summary disposition, but remanded for reconsideration of the question of attorney fees, since plaintiff had "prevail[ed] in part" in obtaining the second document as a result of filing the action.<sup>1</sup> On remand, the trial court awarded plaintiff attorney fees allocable to the original proceedings and to the proceedings on remand. However, since plaintiff appeared *in propria persona* on the original appeal to this Court, no fees were awarded for the appeal. Plaintiff now appeals to this Court again, contending the amount of the award for attorney fees was too low.

Plaintiff first claims that the trial court abused its discretion because it reduced by one half the amount of attorney fees it found to be allocable to the original proceedings. We disagree. When a plaintiff prevails only as to a portion of an FOIA request, the award of fees should be "fairly allocable"

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\* Circuit judge, sitting on the Court of Appeals by assignment.

to that portion. *Booth Newspapers, Inc v Kalamazoo School Dist*, 181 Mich App 752, 759; 450 NW2d 286 (1989). By way of this FOIA case, plaintiff prevailed in obtaining one of two documents requested, which was obtained by plaintiff from defendant soon after the action was filed and without the necessity of any court hearings or orders. The other document was supplied to plaintiff after the suit was filed, but before defendant was notified of it. Given the circumstances, the trial court logically found that half of plaintiff's attorney fees were fairly allocable to the successful portion of his FOIA request. We find no abuse of discretion.

Plaintiff next contends that the trial court abused its discretion when it refused to award him attorney fees allocable to the original appeal. We disagree. On his original appeal, plaintiff appeared before this Court *in propria persona*, and thus incurred no reimbursable attorney fees. Where no fees are paid, no award is merited. *Laracey v Financial Institutions Bureau*, 163 Mich App 437, 446; 414 NW2d 909 (1988). Although plaintiff, who is an attorney, claimed that he was in fact representing clients when he filed this action, plaintiff's original complaint contains no claim in which he asserts that he brings the action on behalf of anyone other than himself. Furthermore, plaintiff offers no evidence other than his own assertions that he was representing other parties when he filed this lawsuit in his own name.

Plaintiff points to the opinion of this Court on the first appeal, where we noted that because plaintiff's first appeal was a continuation of the process started below, he would be entitled to a proportionate amount of reasonable attorney fees, costs, and disbursements incurred in the appellate process. Contrary to plaintiff's assertion, however, nothing in that opinion requires awarding plaintiff attorney fees that he did not actually incur. We find no abuse of discretion in the trial court's denial of attorney fees for the first appeal.

Plaintiff next asserts that the trial court abused its discretion by failing to include all the attorney fees plaintiff alleged were incurred on remand. Again, we disagree. We find no abuse of discretion where the trial court determined that the number of hours plaintiff claimed to have been spent on the remand of this case was excessive, and that plaintiff's trial counsel had billed fewer hours for his time in the original proceedings. Furthermore, we note that the issues on remand had been clearly delineated, and that plaintiff researched and reargued issues previously dispensed with by this Court.

Finally, plaintiff contends that it was error for the trial court to reduce by one half the amount of attorney fees it did find to be allocable to the proceedings on remand. With regard to this last contention, we agree. Because the only issue properly litigated on remand was the appropriate amount of attorney fees to be awarded, plaintiff's reasonable fees incurred on remand should not have been reduced proportionate to his success with regard to the original FOIA action. Thus, we direct the case be remanded for entry of an order awarding plaintiff an additional \$1,062.50 to compensate plaintiff for the entire amount of time that the trial court held to be reasonable.

Affirmed in part, reversed in part, and remanded for entry of an order awarding plaintiff \$1,062.50 in additional attorney fees. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Edward A. Quinnell

I concur in result.

/s/ Michael J. Kelly

<sup>1</sup> See *Brussow v Director of Michigan Employment Relations Comm*, unpublished opinion per curiam of the Court of Appeals, issued 3/17/93 (Docket No. 126976).