

STATE OF MICHIGAN
COURT OF APPEALS

STEPHEN B. PERKOLA,

Plaintiff-Appellant,
Cross-Appellee,

v

CITY OF WARREN,

Defendant-Appellee,
Cross-Appellant,

and

WARREN POLICE OFFICERS
ASSOCIATION,

Defendant.

UNPUBLISHED

September 20, 1996

No. 176860

LC No. 86003578 CZ

Before: Cavanagh, P.J., and Marilyn Kelly and J.R. Johnson,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the dismissal of his breach of contract action after he failed to comply with the judge's order regarding the calculation of damages. He asserts that the judge erred in dismissing this action, because he requested injunctive relief and the opinion and order were silent on that issue. Defendant City of Warren cross-appeals from the judge's finding of liability. We affirm.

Plaintiff was employed by the City of Warren as a policy cadet. The defendant Warren Police Officers Association (WPOA) was his collective bargaining agent. Plaintiff was ranked 19 on the Cadet Eligibility List. In 1986, other cadets, ranked lower than plaintiff but who were at least twenty-one years old, were promoted to Police Officer Candidate. Plaintiff was twenty years old.

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

After attempting unsuccessfully to pursue his grievance through the WPOA, plaintiff filed suit. He claimed that the WPOA breached its duty of fair representation by failing to file a grievance on his behalf. He alleged that the City breached the collective bargaining agreement by failing to promote plaintiff, there being no requirement that he be twenty-one at the time he entered the Academy.

Following a trial on stipulated facts, the judge found liability on the part of the City. However, he found no cause of action against the WPOA. In the opinion and order, plaintiff was directed to submit calculations of damages within thirty days of the entry of the order. The City had fifteen days in which to respond. The matter would then be set for an evidentiary hearing.

The WPOA moved for costs, and an evidentiary hearing was conducted. The court granted costs, but in an amount less than requested. The WPOA filed a claim of appeal on January 3, 1991. On January 20, 1993, plaintiff filed a motion for evidentiary hearing to ascertain damages. In response, the City filed a motion to dismiss, which the trial judge granted.

We conclude that the judge did not abuse his discretion in dismissing the case. *Zantop International Airlines, Inc v Eastern Airlines*, 200 Mich App 344, 359; 503 NW2d 915 (1993). The judge ordered plaintiff to submit a calculation of damages within thirty days of entry of the order. Instead, plaintiff did not schedule an evidentiary hearing until three years later.

In his brief, plaintiff mentions that the record was sent to this Court when the WPOA appealed from an order regarding costs, so the judge could not take further action on the file. We note, however, that the WPOA's claim of appeal was not filed until January 3, 1991, more than one year after the order requiring plaintiff to submit calculations of his damages. Even if negotiations were ongoing with the City to resolve the employment issue in lieu of money damages, it does not excuse plaintiff from failing to comply with the judge's order.

With respect to plaintiff's prayer for injunctive relief, we note that the complaint requested injunctive relief in the alternative. Because plaintiff won the liability issue and would have received damages had he acted in compliance with the judge's order, there was no need for the judge to mention the alternative injunctive relief prayed for.

In light of the fact that the judge dismissed the case, the City is not an aggrieved party. Therefore, we do not have jurisdiction to review the issues brought in its cross-appeal. MCR 7.203(A)(1); *Reddam v Consumer Mortgage Corp*, 182 Mich App 754, 757; 452 NW2d 908 (1990).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Marilyn Kelly
/s/ J. Richardson Johnson