

STATE OF MICHIGAN
COURT OF APPEALS

CHARTER TOWNSHIP OF CHESTERFIELD,

Plaintiff-Appellee,

v

R.C. HERFERT and KIKI HERFERT,

Defendants-Appellants.

UNPUBLISHED
November 1, 1996

No. 182964
LC No. 93-003362

Before: Gribbs, P.J., and Markey and T. G. Kavanagh,* JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order granting plaintiff's motion for mediation sanctions. We reverse and remand.

Plaintiff filed a complaint for the condemnation of defendants' land, for which it deposited \$23,000 in an escrow account as estimated just compensation. Defendants contested plaintiff's estimate, and a mediation panel awarded defendants \$53,000, which plaintiff accepted and defendants rejected. Defendants subsequently made an offer of settlement for \$53,000 that was deemed rejected by plaintiff. Because defendants' jury award of \$45,000 was less than the mediation evaluation of \$53,000, the trial court awarded plaintiff mediation sanctions in the amount of \$4,980.

Defendants argue that the trial court abused its discretion in awarding mediation sanctions because the mediation award was not sufficiently specific in amount since the evaluation was exclusive of statutory costs and fees. We agree. Before mediation sanctions are determined, the verdict must be adjusted by adding to it assessable costs and interest on the amount of the verdict. MCR 2.403(O)(3). Furthermore, in a condemnation action where, as here, the condemning authority has paid or deposited the estimated just compensation, mediation sanctions must be based on the amount actually in dispute. *Detroit v Kallow Corp*, 195 Mich App 227, 229; 489 NW2d 500 (1992).

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

Defendants contend that the verdict in this case was over ten percent more favorable than the mediation award once the deposit was deducted and assessable costs factored in pursuant to MCR 2.403(O)(3). This argument appears to be meritorious based on the figures offered by defendant. Accordingly, we remand to the trial court for determination of the adjusted verdict and for reconsideration of the mediation evaluation. In light of our decision on this issue, we need not address defendants' remaining claims of error.

Reversed and remanded. We do not retain jurisdiction.

/s/ Roman S. Gibbs

/s/ Jane E. Markey

/s/ Thomas Giles Kavanagh