

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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WALTER W. WAWRZYNIAK and  
PEUTERBAUGH BUILDING COMPANY

UNPUBLISHED  
November 1, 1996

Plaintiffs-Appellees,

v

No. 184829  
LC No. 92-005032

NANCY PEUTERBAUGH, Personal Representative  
for the Estate of BRUCE G. PEUTERBAUGH,

Defendant-Appellant,

and

JOHN V. DAVIDSON, JP TOOL INC, and  
DERDERIAN, KANN, SEXFERTH and SALUCCI, P.C.,

Defendants.

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Before: Wahls, P.J., and Cavanagh and J.F. Kowalski,\* JJ.

PER CURIAM.

Defendant Nancy Peuterbaugh, as personal representative for the estate of Bruce G. Peuterbaugh, appeals as of right from a judgment awarding plaintiff Walter W. Wawrzyniak \$56,124.68 in costs, attorney fees, and sanctions. We remand the case to the trial court to clarify whether it intended to award attorney fees incurred in bringing the motion for costs, attorney fees and sanctions. We affirm the remaining issues raised on appeal.

In 1982, Wawrzyniak and Peuterbaugh entered into an agreement to form a co-partnership, Peuterbaugh Building Company, to engage in real estate investment. The main assets of the partnership was a piece of real estate and a commercial building located on the real estate. In 1982 the partnership entered into a five-year lease for portions of the building with J. P. Tool, Inc., a company of which

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

Peuterbaugh was the controlling shareholder, and with another company of which Wawrzyniak was the controlling shareholder. Pursuant to an option to renew, both companies extended their leases for an additional five-year term. The lease provided that if the option to renew was exercised then the rental rate would be increased twenty-five percent. However, J. P. Tool did not pay the increased rental rate through the five-year period. John V. Davidson, a certified public accountant, and owner and director of Derderain, Kann, Sexferth and Salucci, P.C., was retained by plaintiffs to conduct financial business for Peuterbaugh Building Company, including the collection of monthly rentals.

As a result of J.P. Tool's failure to pay the increased rental rate, plaintiffs brought the instant suit against Peuterbaugh to dissolve the partnership and recover unpaid rents.<sup>1</sup> After the partnership was dissolved and the rent was paid during these proceedings, plaintiffs sought costs, attorney fees, and sanctions. Peuterbaugh moved for summary disposition of plaintiffs' claim. However, Peuterbaugh's motion was denied, and plaintiff Wawrzyniak was subsequently granted costs, attorney fees, and sanctions in the amount of \$56,124.68.

## I

Defendant first argues that the trial court erred in awarding sanctions pursuant to MCR 2.114 for Peuterbaugh's unwarranted denial of an allegation in plaintiffs' complaint. Peuterbaugh denied an allegation in plaintiffs' complaint that he, as a partner in Peuterbaugh Building Company, was accountable to the partnership and every partner as a fiduciary, "as untrue in fact." The trial court found that MCL 449.21; MSA 20.21 imposed a fiduciary duty on Peuterbaugh, and accordingly found that his denial of the allegation was not supported by law. Defendant argues that Peuterbaugh should not have been sanctioned because pursuant to an accounting agreement and an addendum to that agreement, he had a good faith belief that he had assigned his fiduciary duties to Davidson. We find that Peuterbaugh had no basis in law to believe that his fiduciary duties could be assigned or delegated and had no reasonable factual basis to believe that the accounting agreement or the addendum amounted to an assignment of his fiduciary duties.

"Every partner must account to the partnership for any benefit, and hold as trustee for it any profits derived by him without consent of the other partners from any transaction connected with the formation, conduct, or liquidation of the partnership or from any use by him of its property." MCL 449.21; MSA 20.21. This fiduciary relationship of partners imposes an obligation of the utmost good faith and integrity in their dealing with one another in the partnership. *Band v Livonia Associates*, 176 Mich App 95, 113; 439 NW2d 285 (1989). The partners' fiduciary duties requires the highest morals, and is one of full and frank disclosure of all relevant information. *Id.* A partner's fiduciary duties connote "not mere honesty but the punctilio of honor most sensitive." *Id.*, quoting 59A Am Jur 2d, Partnership, § 420, p 453. Although the provisions of a partnership contract may vary many aspects of the partnership relationship, "the contract must not destroy the essential fiduciary character of the partners' relationship." 59A Am Jur 2d, Partnership, § 421, p 454. These duties continue as long as the enterprise is in existence. 59A Am Jur 2d, Partnership, § 429, p 458. Thus, a partner's fiduciary duties are non-delegable.

Moreover, we have reviewed the accounting agreement and addendum, and find that that these documents did not assign Peuterbaugh's fiduciary duties. Although these documents authorize Davidson to act as the partnership's agent in basic accounting matters, such as the collection of rentals and the payment of taxes, these documents did not expressly assign the partners' fiduciary duties. Thus, defendant's argument that Peuterbaugh had a good faith belief that these documents assigned his fiduciary duties to Davidson lacks merit.

Defendant also argues that Peuterbaugh's denial of his fiduciary duties was not relevant to any costs or attorney fees incurred by plaintiffs. Accordingly, defendant argues that sanctions should not have been imposed since the essence of the suit was the dissolution of the partnership. As noted, sanctions shall be imposed for a violation of MCR 2.114, and these sanctions "may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees." MCR 2.114(E). However, the instant suit was originally filed because Peuterbaugh had not paid an increased rent to the partnership, which plaintiffs alleged was a breach of his fiduciary duties. Thus, because at least some attorney fees and costs were incurred until Peuterbaugh paid the rent, defendant's argument does not prove meritorious. Further, in general, although there is authority to the contrary, a partner's fiduciary duties continue until the partnership is terminated or the affairs are fully settled. See 59A Am Jur 2d, Partnership, §§ 429-431, pp 458-459; see also *Seitovitz v Levin*, 246 Mich 117, 121; 224 NW 613 (1929).

## II

Next, defendant argues that the trial court erred in imposing sanctions against Peuterbaugh for his contemptuous disobedience of the court's April 5, July 9, and 13, 1993, orders. Defendant argues that Peuterbaugh did not disobey the court's orders. We disagree.

The trial court has inherent authority to punish persons for contemptuous disobedience to the court. *Homestead Development Co v Holly Twp*, 178 Mich App 239, 245; 443 NW2d 385 (1989). Sanctions may be imposed for such disobedience. *Id.* The interpretation adopted by the appellate court regarding an ambiguous judgment should render it more reasonable, effective, and conclusive in light of the facts and law of the case. See *Eyde v Michigan*, 82 Mich App 531, 539; 267 NW2d 442 (1978).

The April 5, 1993, order stated that Wawrzyniak was to "close on the purchase of the real estate by July 15, 1993." However, the closing for the real estate transaction did not occur until August 3, 1993. Defendant argues that Peuterbaugh did not disobey this order because it only required Wawrzyniak to close on the real estate by July 15, 1993. Although defendant is literally correct, in order for Wawrzyniak to close by July 15, 1993, Peuterbaugh as co-owner of the building had to participate in the closing. Thus, we find that the most straightforward interpretation of the court's order was that Peuterbaugh, along with plaintiff, had to close by July 15, 1993. Therefore, when Peuterbaugh did not close by July 15, 1993, he disobeyed the April 5, 1993, order.

Defendant also argues that Peuterbaugh did not disobey the July 9, 1993 “order” because the court ruled from the bench that everything was to be closed by Tuesday [July 12, 1993]. As we previously noted, the closing did not occur until August 3, 1993. Because the July 9 ruling was not reduced to writing, he did not violate any order. A court speaks through its written orders and judgments and not its oral statements. *People v Jones*, 203 Mich App 74, 82; 512 NW2d 26 (1993); *Hall v Fortino*, 158 Mich App 663, 667; 405 NW2d 106 (1986). However, this order was reduced to writing on July 13, 1993. In the July 13, 1993, order, the court stated that Peuterbaugh had to appear at a closing for the real estate “prior to July 13, 1993.” Defendant asserts that because the order was not entered until July 13, 1993, Peuterbaugh could not follow this order and close “prior” to July 13, 1993. However, Peuterbaugh knew, due to the court’s oral statement on July 9 that he was to close by July 12, that he had to close prior to July 13. Peuterbaugh also knew that an order would be prepared in accordance with the court’s July 9 bench ruling. Although a court speaks through its written orders and judgments and not its oral statements, *id.*, Peuterbaugh was not free to disobey the court’s July 9, 1993, bench ruling. As noted, the trial court has inherent authority to punish persons for contemptuous disobedience to the court. *Homestead, supra*, at 245. Contemptuous disobedience is “a willful disregard of the *authority* or orders of the court.” *Id.* (emphasis added). Here, although Peuterbaugh’s failure to attend the closing on July 12 did not amount to a disregard of a written order in effect at the time, he did disregard the court’s bench ruling. Accordingly, sanctions were proper.

### III

Next, defendant contends that the trial court erred in awarding attorney fees that were incurred in proving attorney fees. In determining the reasonableness of an attorney fee award, the trial court should consider the eight factors listed in MRPC 1.5(a). *In re Condemnation of Private Property for Hwy Purposes*, 209 Mich App 336, 341-342; 530 NW2d 183 (1995). Although the trial court is not required to detail its specific findings as to each factor considered, *Michigan Nat’l Bank v Metro Food Institutional Food Service, Inc.*, 198 Mich App 236, 241; 497 NW2d 225 (1993), if any of the underlying facts, such as the number of hours expended, are in dispute, the trial court should make findings of fact on those issues, *Maple Hill Apartment Co v Stine (On Remand)*, 147 Mich App 687, 693; 382 NW2d 849 (1985). The burden of proof on the reasonableness of fees rests upon the party claiming the fees. *Petterman v Haverhill Farms, Inc.*, 125 Mich App 30, 33; 335 NW2d 710 (1983). Here, the court awarded sanctions and attorney fees based on Peuterbaugh’s actions and conduct during the underlying proceeding. The court did not state whether it also believed that the award of attorney fees for fees incurred in proving attorney fees was proper. However, the court awarded the full amount of attorney fees requested, which included attorney fees incurred in proving attorney fees. Thus, we find that it is necessary to remand the case to the trial court so that it can specifically determine whether the award of fees incurred in proving fees was intended. See *Maple Hill Apartment Co, supra*, at 693.

Defendant also argues that the amount of fees bears no relationship to Peuterbaugh’s “alleged” misdeeds. Specifically, defendant argues that, because this was not a particularly complicated case, the

attorney fees charged in this case were unreasonable. However, the testimony of Wawrzyniak and his attorneys sufficiently demonstrated that the reason that the litigation had been time so consuming, and therefore expensive, was due to the actions of Peuterbaugh.

#### IV

Finally, defendant argues that the trial court erred in denying Peuterbaugh's motion for summary disposition because plaintiffs' release of Davidson, Peuterbaugh's agent, from the lawsuit released Peuterbaugh from further liability. However, defendant has not preserved this argument for appeal because it was not raised in the statement of issues presented. See *Meagher v McNeely & Lincoln*, 212 Mich App 154, 156; 536 NW2d 851 (1995). Additionally, we have reviewed the merits of defendant's argument and find that Davidson was an agent for the partnership and not an agent for Peuterbaugh as an individual.

Affirmed, but remanded for clarification of the award of attorney fees. We do not retain jurisdiction.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh

/s/ John F. Kowalski

<sup>1</sup> Against J.P. Tool, plaintiffs claimed breach of contract for refusing to pay the increased rental rate during the five-year lease extension period. Against Davidson and Derderian, Kann, Sexferth and Salucci, plaintiffs claimed professional negligence malpractice and breach of fiduciary duty because they failed to ensure that the proper rent was collected from J.P. Tool and because they failed to disclose the J.P. Tool delinquency in rent.