

STATE OF MICHIGAN
COURT OF APPEALS

SANDRA GAIL MORRIS, Personal Representative
of the Estate of Frederick Kendell Morris, Jr.,
deceased,

UNPUBLISHED
December 20, 1996

Plaintiff-Appellant,

v

No. 190499
LC No. 80-001211 CK
ON REMAND

CITY OF DETROIT,

Defendant-Appellee.

Before: Taylor, P.J., and Markman and P. J. Clulo,* JJ.

PER CURIAM.

Upon remand from the Supreme Court for plenary consideration, 450 Mich 908 (1996), we consider plaintiff's appeal from an order denying post judgment relief. We reverse and remand.

On May 7, 1985, the trial court entered a judgment upon a jury verdict in favor of plaintiff¹ on his claim under the Michigan Handicappers' Civil Rights Act, MCL 37.1101 *et seq.*; MSA 3.550(101) *et seq.*, and ordered that plaintiff be reinstated to his former position as a building inspector for defendant. An order granting a stay pending appeal was subsequently entered, providing, in part:

[I]n the event Defendant on appeal is not successful in reversing that portion of the judgment requiring the reinstatement of Plaintiff to his former position as a building inspector with the City of Detroit Buildings and Safety Engineering Department, the Defendant shall be liable for full back pay and fringe benefits from May 8, 1985 to the date of reinstatement.

On appeal, we affirmed both the jury verdict and the trial court's order of reinstatement in an unpublished opinion, per curiam, *Morris v City of Detroit*, issued March 17, 1988 (Docket No. 103665).

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

Defendant subsequently requested that plaintiff report for work on November 28, 1988, and submit to a physical examination before reinstatement. Instead of complying with this request, plaintiff initiated contempt proceedings concerning his reinstatement as well as other issues involving satisfaction of the judgment. We denied plaintiff's application for leave to appeal from an order declining to hold defendant in contempt. Plaintiff's continued efforts in pursuit of post judgment matters culminated with an October 1994 order denying his requests, from which he now appeals.

Plaintiff initially contends that the trial court erred as a matter of law in permitting defendant's requirement that he submit to a physical examination before his reinstatement. We disagree.

The decision to grant reinstatement is a matter of equity. *Rancour v Detroit Edison, Co*, 150 Mich App 276, 292; 388 NW2d 336 (1986). Because the trial court has the authority to enforce its equitable order of reinstatement, it was within the court's discretion to authorize defendant's request that plaintiff submit to a physical examination before reinstatement. *Greene v Greene*, 357 Mich 196, 202; 98 NW2d 519 (1959). Plaintiff's reliance on cases discussing whether a plaintiff's rejection of a conditional offer of reinstatement tolls back pay is misplaced. See, e.g., *Orzel v City of Wauwatosa Fire Dep't*, 697 F2d 743, 757 (CA 7, 1983). Plaintiff was obligated to comply with conditions of reinstatement authorized by the trial court in furtherance of its order granting reinstatement.² If defendant sought to use the physical examination for improper purposes, plaintiff could petition the court for redress via contempt proceedings. Consequently, as plaintiff declined reinstatement, the trial court correctly concluded that, pursuant to the order granting the stay, he was only entitled to back pay and fringe benefits for the period beginning on the date of judgment and ending on the date he declined reinstatement.

Plaintiff next argues that the trial court erred in declining his request to present evidence to establish the value of fringe benefits to which he was entitled under the order granting a stay pending appeal. We agree.

Given the explicit and unambiguous language in the order granting the stay, we find that the trial court erred in declining to award plaintiff the value of fringe benefits. See *Boyle v Berg*, 242 Mich 225, 227; 218 NW 757 (1928). Plaintiff is entitled to be compensated for lost insurance, pension, and other fringe benefits, including sick leave and vacation. Cf. *Reisman v Regents of Wayne State University*, 188 Mich App 526, 542; 470 NW2d 678 (1991) (a discharged employee may recover damages for any loss that flows from the discrimination, including "loss of wages, loss of pension rights and employee benefits"). Because the value of the fringe benefits was not established below, we remand for a hearing at which evidence may be presented to identify and value plaintiff's fringe benefits. Subject to the proofs presented, the trial court must enter an appropriate order compensating plaintiff for the lost benefits.

With respect to plaintiff's final contention, we find that the trial court correctly declined to award interest, pursuant to MCL 600.6013; MSA 27A.6013 on plaintiff's recovery of back pay for the period during which proceedings were stayed pending appeal. The statutory interest provision applies only to money judgments. MCL 600.6103(1), (2); MSA 27A.6013(1), (2); *Giannetti v Cornillie*

(*On Remand*), 209 Mich App 96, 101; 530 NW2d 121 (1995). Plaintiff's award of back pay was pursuant to an order suspending the injunctive portion of a judgment pending appeal, MCR 2.614(C), not the judgment. Accordingly, the statute does not apply.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Clifford W. Taylor

/s/ Stephen J. Markman

/s/ Paul J. Clulo

¹ Frederick Morris died during the post judgment proceedings. Sandra Gail Morris was appointed the personal representative of his estate and, in that capacity, continued to pursue the matters underlying this appeal.

² Of course, the trial court's discretion in enforcing its order of reinstatement is not unfettered. However, we find no abuse of that discretion under the circumstances of this case.