# S T A T E  O F  M I C H I G A N

# C O U R T  O F  A P P E A L S

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S. G. CEMETERY ASSOCIATION, INC.,

Plaintiff-Appellant/Cross-Appellee,

v

JOHN CARLO, INC. and ELRO CORPORATION,

Defendants-Appellees,

and

CITY OF STERLING HEIGHTS,

Defendant-Appellee/Cross-Appellant.

UNPUBLISHED
February 4, 1997

No. 182450

Macomb Circuit Court
LC No. 89-002195-CH

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Before: Corrigan, P.J., and J.B. Sullivan* and T.G. Hicks, ** J.J.

PER CURIAM.

Plaintiff S.G. Cemetery Association sought damages for the ongoing trespass to its property by defendants, claiming that defendant City of Sterling Heights had no authority to issue permits for the construction of a right turn lane, road shoulder, utility poles and traffic signs that encroached onto plaintiff's property. The trial court granted plaintiff's motion for summary disposition on the issue of liability, apparently pursuant to MCR 2.116(C)(7), finding that it had been determined in a prior litigation that the city did not have an easement. Following a trial on the issue of damages only, the court entered a directed verdict for plaintiff and a judgment that included $100 in nominal damages and $10,000 in attorney fees. Plaintiff appeals as of right from the judgment. Defendant city cross-appeals arguing that the trial court erred in granting summary disposition on the issue of liability. We affirm the

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* Former Court of Appeals Judge, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.
** Circuit judge, sitting on the Court of Appeals by assignment.

grant of summary disposition, but remand for an evidentiary hearing with regard to the amount of attorney fees.

Plaintiff claims that the amount of attorney fees awarded was inadequate and that a higher amount was warranted "as a component of exemplary damages."[1] Plaintiff has cited no legal basis upon which an award of attorney fees may be made a component of exemplary damages. Furthermore, exemplary damages were neither requested nor litigated in the instant case. Such damages must be specially pleaded and proved. *Kratze v Independent Order of Oddfellows*, 442 Mich 136, 148; 500 NW2d 115 (1993).

Although plaintiff was not entitled to an attorney fees award as a component of exemplary damages, a partial award of attorney fees was justified under MCR 2.114 for the portion of the litigation attributable to the city's assertion that the construction occurred within its right-of-way. See also MCL 600.2591; MSA 27A.2591; MCR 2.625(A)(2). As discussed in connection with defendant's cross-appeal, this claim could not have been made in good faith because a jury had determined in prior litigation between the parties that no thirty-three foot road easement existed along plaintiff's property. However, because attorney fees under this court rule are recoverable only "in the amount . . . incurred because of the filing of the document," plaintiff is entitled only to those attorney fees it incurred in establishing liability, or until the lower court granted its motion for summary disposition on that issue. MCR 2.114(E).

The trial court failed to hold an evidentiary hearing or make any findings of fact justifying the amount of attorney fees awarded. While a trial court need not set forth detailed findings with regard to each of the factors set forth in *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982), an award of attorney fees cannot be upheld where the trial court abuses its discretion by arbitrarily picking a dollar amount. Consequently, remand is necessary in order to allow the court to make findings of fact regarding the measure of attorney fees warranted in this case. See *City of Detroit v Larned Associates*, 199 Mich App 36, 43; 501 NW2d 189 (1993); *City of Flint v Patel*, 198 Mich App 153, 160; 497 NW2d 542 (1993).

Defendant contends on cross-appeal that the trial court erred when it granted plaintiff's motion for summary disposition on the basis of res judicata. The lower court did not err when it concluded that the issue regarding whether the city had an easement was determined in the 1975 litigation between the parties. However, relitigation of the issue was barred by collateral estoppel, not by res judicata. Contrary to the city's assertions, there is no requirement that the pleadings set forth in precise language the issue as ultimately determined. *City of Detroit v Qualls*, 434 Mich 340, 357; 454 NW2d 374 (1990). Although the complaint in the prior litigation merely alleged trespass, the city defended by claiming that it had a thirty-three foot right-of-way. Close examination of the record in the 1975 case demonstrates that all the city's activities that gave rise to plaintiff's complaint took place within the claimed easement area. Thus, the jury must have necessarily determined that no easement existed in order to find that a trespass occurred entitling plaintiff to the damages that were awarded. Collateral estoppel applied because the identical issue was actually litigated and adjudged and was essential to the determination of liability in the earlier case. *Qualls*, *supra,* at 357. Therefore, the trial court's finding

that plaintiff was entitled to summary disposition was not in error, even if the court erroneously applied the doctrine of res judicata. Although application of the wrong legal analysis does constitute legal error, reversal is not required where the trial court reached the right result for the wrong reason. *Gray v Pann*, 203 Mich App 461, 464; 513 NW2d 154 (1994).

Affirmed with regard to the grant of plaintiff's motion for summary disposition, but remanded for an evidentiary hearing with regard to and limited to the amount of attorney fees. We do not retain jurisdiction.

/s/ Maura D. Corrigan
/s/ Joseph B. Sullivan
/s/ Timothy G. Hicks

[1] Although defendant argues that the award of attorney fees was improper, the issue was not raised in its statement of questions presented on cross-appeal. Thus, we do not address it. MCR 7.212(C)(5).