

STATE OF MICHIGAN
COURT OF APPEALS

CARA BESH THIERY,

Plaintiff-Appellee,

v

CHRYSLER CORPORATION,

Defendant-Appellant.

UNPUBLISHED

February 18, 1997

No. 177499

Wayne Circuit Court

LC No. 92-234777-CZ

Before: O'Connell, P.J., and Gribbs and T. P. Pickard,* JJ.

PER CURIAM.

Defendant appeals the circuit court order denying defendant's motion for sanctions and partially granting defendant's motion to tax costs. We reverse and remand.

Defendant raises several issues concerning whether the trial court erred in its determination that a motion for sanctions is untimely when it is filed after entry of judgment. A motion for sanctions based on an allegedly frivolous action, MCL 600.2591; MSA 27A.2591, is timely if "filed within a reasonable time after the prevailing party was determined." *Avery v Demetropoulos*, 209 Mich App 500, 503; 531 NW2d 720 (1995). Because defendant was a prevailing party, and because its motion for sanctions was brought, in part, pursuant to MCL 600.2591; MSA 27A.2591, the trial court should have applied the "reasonable time" standard in this case.

Defendant also contends that the trial court erred in denying specific costs. We agree that the trial court erred in concluding that defendant's costs incurred in obtaining a transcript of the deposition of plaintiff's expert witness were precluded as a matter of law. The applicable statute does allow for recovery of costs of transcripts. *Herrara v Levine*, 176 Mich App 350, 358; 439 NW2d 378 (1989). In this case, the trial court made no finding as to whether defendant used the deposition for substantive or impeachment purposes. Although costs are not permitted if the deposition testimony is used for impeachment purposes, a party may use deposition testimony of another party's witness for substantive

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

purposes, and costs are permitted if the deposition was used as such. MCL 600.2549; MSA 27A.2549.

The trial court's order denying defendant's motion for sanctions as untimely, and denial of defendant's motion for transcript fees without a finding that the deposition was used for impeachment purposes, is reversed. This matter is remanded to allow the trial court to determine whether defendant's motion for sanctions was brought within a reasonable time, and whether defendant used the deposition of plaintiff's expert witness for substantive or impeachment purposes.

Reversed and remanded. We do not retain jurisdiction.

/s/ Peter D. O'Connell

/s/ Roman S. Gibbs

/s/ Timothy P. Pickard