

STATE OF MICHIGAN
COURT OF APPEALS

TOWNSHIP OF COLUMBUS,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 182853
St. Clair Circuit Court
LC No. 80-611267-CZ

THOMAS MARKEL and CATHERINE MARKEL,

Defendants-Appellants.

Before: Holbrook, Jr., P.J., and White and A. T. Davis*, JJ.

WHITE, J. (concurring in part and dissenting in part).

I concur in the portion of the majority's opinion that vacates the penalty assessment. I respectfully dissent from the portion of the majority's opinion that vacates the circuit court's finding of contempt, and vacates the award of attorney fees to plaintiff. Because the record reflects that the successor judge was adequately familiar with the proceedings that preceded the January 17, 1995 hearing; the parties had requested that the record of the evidentiary hearing on contempt held before the retiring judge be preserved; and the record does not reflect that defense counsel expressly sought to continue the show cause hearing before the successor judge,¹ I conclude that the successor judge's finding of contempt need not be vacated.

I would affirm the finding of contempt and the award of attorney fees, and grant plaintiff an opportunity to establish any actual losses, in addition to attorney fees, sustained as a direct result of defendants' contempt.

/s/ Helene N. White

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

¹ Rather than seek a continuation of the show-cause hearing, defendants filed a motion to extend time and objections to plaintiff's proposed order.