

STATE OF MICHIGAN
COURT OF APPEALS

DENISE L. TEMROWSKI,

Plaintiff-Appellee,

v

LEEROY H. TEMROWSKI, MARY TEMROWSKI
and JOHN TEMROWSKI,

Defendants-Appellants.

UNPUBLISHED

May 16, 1997

No. 179913

Macomb Circuit Court

LC No. 93-001995

Before: Jansen, P.J., and Reilly and W.C. Buhl,* JJ.

PER CURIAM.

Defendants appeal as of right the trial court order which granted plaintiff's motion for voluntary dismissal, denied defendants LeeRoy and Mary Temrowski's motion for summary disposition, and denied defendant John Temrowski's request for costs and attorney fees. We affirm.

Defendant John Temrowski argues that the trial court abused its discretion in failing to award costs and attorney fees to him pursuant to MCR 2.114(F) because he was wrongfully named a party to Count I of plaintiff's complaint. We disagree.

John Temrowski argues that he was entitled to costs and attorney fees under MCR 2.114 because he was compelled to defend a frivolous claim. The general rule is that attorney fees may be awarded as taxable costs only where specifically authorized by statute or court rule. *Attorney General v Piller (After Remand)*, 204 Mich App 228, 232; 514 NW2d 210 (1994). MCR 2.114(F) subjects a party to costs and attorney fees if the party pleads a frivolous claim. *Dep't of Natural Resources v Bayshore Associates, Inc*, 210 Mich App 71, 86; 533 NW2d 593 (1995). A trial court's finding with respect to whether a claim was frivolous will not be disturbed on appeal unless clearly erroneous. *Siecinski v First State Bank of East Detroit*, 209 Mich App 459, 466; 531 NW2d 768 (1995).

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

Although defendant John Temrowski was improperly named as a defendant to Count I, plaintiff subsequently amended her complaint, which led to the eventual dismissal of John Temrowski as a party to that count. In denying attorney fees and costs, the trial court concluded that the litigation was not frivolous. This finding was not clearly erroneous. The trial court also explained that pursuant to *Haskins v Oronoko Twp Supervisor*, 172 Mich App 73; 431 NW2d 210 (1988), John Temrowski was not entitled to attorney fees because he represented himself. *Watkins v Manchester*, 220 Mich App 337; ___ NW2d ___ (1996) (attorney acting in pro se is not entitled to attorney fees as a mediation sanction) provides further support for the trial court's conclusion. Thus, the trial court did not err in denying John Temrowski attorney fees.

Defendants LeeRoy and Mary Temrowski also argue that they were denied costs and attorney fees based on plaintiff's filing of a frivolous claim. Although LeeRoy and Mary Temrowski argue that they made such a request, the record does not indicate that they did. Therefore, this issue has not been preserved for appellate review. Nonetheless, even if LeeRoy and Mary Temrowski had made such a request, such fees would not have been awarded because the trial court specifically found that plaintiff's claim was not frivolous.

Affirmed.

/s/ Kathleen Jansen
/s/ Maureen Pulte Reilly
/s/ William C. Buhl