

STATE OF MICHIGAN
COURT OF APPEALS

KAREN R. LOWE,

Plaintiff/Cross-Appellant,

v

CITY OF HIGHLAND PARK,

Defendant/Cross-Appellee.

UNPUBLISHED

June 3, 1997

No. 165675

Wayne Circuit Court

LC Nos. 92-201608

88-807319

Before: Smolenski, P.J., and Kelly and Gribbs, JJ.

PER CURIAM.

Plaintiff cross appeals¹ from the trial court's order granting plaintiff \$7,000 in mediation sanctions. We reverse and remand.

Plaintiff argues that the trial court abused its discretion in awarding mediation sanctions based solely on the number of days of trial. While we agree that the trial court abused its discretion in awarding mediation sanctions in an arbitrary fashion, we decline judgment as to the amount awarded.

Because the verdict in this case was greater than ten percent above the mediation evaluation, plaintiff was entitled to mediation sanctions, where both parties rejected the mediation evaluation. MCR 2.403(O)(1)(2). Therefore, sanctions were appropriate in the amount of the actual costs taxable plus a reasonable attorney fee. MCR 2.403(O)(6). We conclude that the trial court abused its discretion in basing the mediation sanction solely on the number of days of trial (\$1,000 per day times three days), plus \$4,000 for all preparation prior to trial, for a \$7,000 total award, because in doing so, the court failed to take into consideration the amount of work necessitated by defendant's rejection of the mediation award and the factors enumerated by this Court in *Temple v Kelel Distributing Co*, 183 Mich App 326, 331; 454 NW2d 610 (1990), and *Jernigan v General Motors Corp*, 180 Mich App 575, 587; 447 NW2d 822 (1989). Without an evidentiary hearing we are unable to determine if the award is too high or too low.

Accordingly, we reverse the trial court's award of mediation sanctions and remand the case for an evidentiary hearing consistent with this opinion.

Reversed and remanded for further proceedings. We do not retain jurisdiction. No taxable cost pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Michael R. Smolenski

/s/ Roman S. Gibbs

¹ Defendant was the original appellant in this case. However, on October 2, 1996, this Court dismissed defendant's appeal for having failed to file with this Court by September 19, 1996, the certificate reflecting the order of all post-judgment transcripts, while allowing plaintiff's cross-appeal to continue. MCR 7.207(D).