STATE OF MICHIGAN

COURT OF APPEALS

JOYCE ANNE DEAN,

Plaintiff-Appellant,

v

CITY OF KALAMAZOO,

Defendant,

and

GOODWILL INDUSTRIES, INC.,

Defendant-Appellee.

UNPUBLISHED
August 26, 1997

No. 195755
Kalamazoo Circuit Court
LC No. 95-002114-NO

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell*, JJ.

MEMORANDUM.

Plaintiff appeals by right summary disposition in favor of Goodwill Industries, Inc., in this negligence action based on a slip and fall in a parking lot owned by the City of Kalamazoo, for which Goodwill Industries provided snow and ice removal services. This case is being decided without oral argument pursuant to MCR 7.214(E).

To pursue a breach of contract claim on a third-party beneficiary theory, an objective test applies; the subjective intent of the parties to the contract is irrelevant. *Alcona Community Schools v Michigan*, 216 Mich App 202, 205; 549 NW2d 356 (1996). Here, the contract does not even mention snow or ice removal services. The law presumes that a contract has been executed for the benefit of the parties thereto, and plaintiff has the burden of proving that she was an intended beneficiary of the contract. *Malesev v Garavaglia*, 12 Mich App 282, 286; 162 NW2d 844 (1968). No express promise to act for plaintiff's benefit appears anywhere in this contract and summary disposition on plaintiff's action against Goodwill Industries was therefore proper. *Dynamic Construction Co v*

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

Barton Malow Co, 214 Mich App 425, 428; 543 NW2d 31 (1995); *Koenig v City of South Haven*, 221 Mich App 711; ___ NW2d ___ (1997).

As to sanctions, a trial court's finding with respect to whether a claim was frivolous is reviewed for clear error. *Siecinski v First State Bank*, 209 Mich App 459, 466; 531 NW2d 768 (1995). Where plaintiff's brief fails to cite a single authority involving third-party beneficiary jurisprudence, yet acknowledges that the contract does not even mention snow or ice removal services, the trial court's finding that the complaint was frivolous is not clearly erroneous.

The trial court's allowance of deposition costs under MCR 2.114(E) was not erroneous, because the rule by its terms permits an award of "reasonable expenses incurred because of the filing of the document." MCR 2.114(E) is not limited to "taxable costs," as to which plaintiff's reliance on RJA § 2549 would be on point. Cf. *J C Building Corp II v Parkhurst Homes, Inc*, 217 Mich App 421, 429; 552 NW2d 466 (1996). No claim is made that the deposition costs allowed were not reasonable or were not actually incurred by defendant Goodwill Industries.

Finally, the trial court's award of attorney fees is reviewed, as to amount, for abuse of discretion. *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982); *Temple v Kelel Distributing Co, Inc*, 183 Mich App 326, 333; 454 NW2d 610 (1990). Although defendant claimed 45.7 hours of attorney time at $90 per hour, the trial court awarded only $918. That amount does not represent an abuse of discretion on this record.

Affirmed.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Edward A. Quinnell