

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

IN THE MATTER OF JAMES W. McGINNIS.

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SARAH JOSEPHINE MOORE, Personal  
Representative of the Estate of ROGER AVERY  
MOORE, Deceased,

Plaintiff,

v

MICHIGAN HEALTH CENTER and ELLIOT  
GREENSPAN,

Defendants,

and

JAMES W. McGINNIS,

Appellant,

and

DR. MAYS,

Appellee.

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UNPUBLISHED  
February 17, 1998

No. 196382  
Wayne Circuit Court  
LC No. 94-410905 NH

Before: Michael J. Kelly, P.J., and Fitzgerald and M.G. Harrison\*, JJ.

**MEMORANDUM.**

Appellant appeals by right from an order of the Wayne Circuit Court, holding him in contempt for failure to satisfy a previous order requiring him to pay appellee Dr. Mays costs and attorney fees of \$3,500 pursuant to MCL 600.2591; MSA 27A.2591, and awarding appellee an additional \$2,457.50

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

in costs and attorney fees in conjunction with efforts to collect the original \$3,500 amount. This case is being decided without oral argument pursuant to MCR 7.214(E). We reverse.

Appellant, as attorney, represented the principal plaintiff in this wrongful death action based on a theory of medical malpractice. After summary disposition in favor of Dr. Mays on the merits, Dr. Mays sought costs and attorney fees for a frivolous action under RJA § 2591, *supra*. By stipulation of the parties, the circuit court on September 30, 1994, awarded Dr. Mays \$3,500, to be paid by appellant personally and not by his client.

That amount was to be paid within ninety days, but it was not paid. Eventually, through counsel appellee sought an order compelling payment and appellant, having failed to pay pursuant to that further order of the circuit court, was held in contempt and ordered incarcerated, and appellee was awarded additional costs and attorney fees.

The circuit court's order of September 30, 1994, requiring appellant McGinnis to pay appellee Mays \$3,500 as sanctions for the pursuit of a frivolous civil action, finally determined the rights of these parties and was accordingly an enforceable money judgment. *Ex parte Lewis*, 335 Mich 640; 56 NW2d 211 (1953). Hence, appellee could have enforced the order by execution, and contempt may not be maintained for enforcement of such a decree. *Ex parte Ridgley*, 261 Mich 42; 245 NW 803 (1932); *Klimek v Borkowski*, 259 Mich 383; 243 NW 313 (1932).

Similarly, since the proper means of enforcing this order was by execution, appellee was not entitled to costs or attorney fees in conjunction with the pursuit of other, unauthorized remedies for enforcement of the judgment. The circuit court accordingly erred in awarding appellee an additional \$2,457.50 in costs and attorney fees in conjunction with proceedings subsequent to the original order of September 30, 1994.

Reversed. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ E. Thomas Fitzgerald

/s/ Michael G. Harrison