

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

---

GREG DOLL,

Plaintiff-Appellant,

v

CITY OF FLINT,

Defendant-Appellee.

UNPUBLISHED

October 6, 2005

No. 253253

Genesee Circuit Court

LC No. 00-067045-CL

---

GREG DOLL,

Plaintiff-Appellee,

v

CITY OF FLINT,

Defendant-Appellant,

and

KELLER, THOMA, SCHWARZE, SCHWARZE,  
DUBAY, & KATZ, P.C.,

Respondent-Appellant.

No. 253292

Genesee Circuit Court

LC No. 00-067045-CL

---

Before: Sawyer, P.J., and Talbot and Borrello, JJ.

TALBOT, J (*concurring in part and dissenting in part*).

I concur with the majority that the trial court did not abuse its discretion in awarding defendant attorney fees under the offer of judgment rule. I also concur with the majority in vacating the trial court's order requiring respondent to reimburse defendant for attorney fees of \$7,791.25. However, because the trial court in its original opinion expressed bias toward respondents as non-local attorneys, I cannot conclude that the reduction of defendant's requested attorney fees was clearly based on proper, impartial grounds. Additionally, because the trial court expressed a willingness to consider post-hearing affidavits and acted inconsistently with the record made at the January 21, 2003, hearing when rendering its written opinion, I believe its order to strike \$42,000 of the requested attorney fees was an abuse of discretion. I, therefore,

respectfully dissent from the majority opinion, as I would remand for further proceedings regarding the reasonableness of the requested attorney fees, to be decided by a different trial judge on remand.

I agree with defendant that the trial court exhibited bias on the record toward respondent; however, I do not agree that this requires automatic reinstatement of all requested attorney fees. Instead, I would grant defendant's request to have this case reassigned to a different judge on remand, where the trial court would determine the reasonableness of all the requested attorney fees. *Feaheny v Caldwell*, 175 Mich App 291, 309; 437 NW2d 358 (1989) (“[A]n appellate court may remand to a different judge if the original judge would have difficulty in putting previously expressed views or findings out of his or her mind, if reassignment is advisable to preserve the appearance of justice, and if reassignment would not entail excessive waste or duplication.”).

The trial court's June 25, 2003, order is replete with statements that demonstrate a bias toward respondent in so far as the trial court stated that “[a]ny local attorney” would have known the trial court's policies on allowing trial counsel voir dire and ensuring racial diversity in its juries. The trial court also expressed its desire that “[i]n the future, the City of Flint should consider finding different trial counsel who will prepare for and try a case in a more realistic manner without charging the city such a high fee.” The trial court even went so far as to call respondent's actions “shameful lawyering reminiscent of law office politics in a Grisham novel.” On defendant's motion, the trial court issued an amended opinion on November 20, 2003, which softened the language that criticized respondent, demonstrating that even the trial court realized that some of its comments about respondent had been improper. In this case, I believe that the sharpness of the trial court's criticisms of respondent in its June 25, 2003, order indicate both the trial court's bias toward respondent and that “the original judge would have difficulty in putting previously expressed views or findings out of his . . . mind.” *Feaheny, supra*. I, therefore, think that remanding this case to a new trial judge to determine the reasonableness of defendant's requested attorney fees is necessary to preserve the appearance of justice.

With regard to a specific adjustment striking \$42,000 of the requested attorney fees, the record reflects that the trial court initially stated at the January 21, 2003, hearing that it would strike requested attorney fees claimed for time spent by attorneys Jonathon Rabin, Lincoln Herweyer, and Terrence Miglio, but later indicated that it would consider defendant's request to submit affidavits to substantiate the requested attorney fees relative to these attorneys. The court stated, however, “I'm not inviting the affidavits and do not submit without my invitation.” Further, the trial court denied plaintiff's request to strike the time of another attorney, Karin Young, who appeared at the hearing. The court specifically directed plaintiff to refigure the amounts in question, stating, “I have a suspicion that – that she [Young] put significant amounts of that \$42,000 dollars in, so I'm going to have to make you refigure that.” Although plaintiff later filed a “bill of particulars” indicating that the total time for the three attorneys was valued at \$12,103.75, the trial court struck \$42,000 in attorney fees, stating in both its original and amended opinions that “[d]efendant requested an opportunity to submit an affidavit or proof of the work of other members of his firm and the Court has been waiting for months. Since no supplemental information has been provided, the Court will order that \$42,000 fee be stricken.”

The trial court's opinion is inconsistent with the record made at the January 21, 2003, hearing, and the inconsistency formed the basis of the court's decision to strike the additional

requested fees totaling approximately \$42,000. As such, the trial court's decision was grossly violative of fact and logic and was, therefore, an abuse of discretion. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999). Accordingly, I would reverse the trial court's decision striking defendant's requested attorney fees of \$42,000, and remand for further proceedings before a new trial judge for a determination of the reasonableness of all of the requested attorney fees that were stricken.

/s/ Michael J. Talbot