

STATE OF MICHIGAN
COURT OF APPEALS

BRENDA WRIGHT and DANIEL L. WRIGHT,

Plaintiffs-Appellants/Cross-
Appellees,

v

JOSEPH BATTANI, DAVID J. LENA VITT, and
JAY E. FEL DSTEIN,

Defendants,

and

JACK M. LENA VITT,

Defendant-Appellee/Cross-
Appellant.

UNPUBLISHED

June 18, 2013

No. 303491

Lenawee Circuit Court

LC No. 09-003504-NM

Before: BECKERING, P.J., and JANSEN and M. J. KELLY, JJ.

JANSEN, J. (*concurring*).

I fully concur with the conclusions reached in parts I and II of the majority opinion. For the reasons that follow, I must also concur with the result reached in part III of the majority opinion.

I would ordinarily be inclined to hold that the default judgment entered against defendant Joseph Battani (Battani) precluded a finding of additional liability against defendant Jack M. Lenavitt (Lenavitt). The \$35,000 default judgment entered against Battani represented a \$22,500 case-evaluation award and \$12,500 in other expenses and costs. Plaintiffs assert that the case-evaluation award in this case did “not reflect the true value of the underlying medical malpractice case.” But I fail to comprehend plaintiffs’ argument that the \$35,000 default judgment did not represent 100 percent of their damages. After all, case-evaluation awards frequently do not account for the full amount of damages sought by plaintiffs in civil cases. Such is the nature of mediation. Moreover, given that the case evaluators in the present case believed that plaintiffs’ legal-malpractice claim was worth only \$22,500, it strikes me as disingenuous for plaintiffs to claim that they are now entitled to recover additional sums from Lenavitt. I note that plaintiffs failed to request an allocation of damages by the circuit court at the time the default judgment was entered; nor did they ever specify how or to what extent

Lenavitt might have been responsible for any additional amounts. Thus, if this issue had been properly preserved, I would conclude that any damages attributable to Lenavitt were subsumed in the overall \$35,000 default judgment entered against Battani.

However, Lenavitt failed to preserve this issue for appellate review. This issue was raised for the first time in Lenavitt's brief on cross-appeal; it was never raised before or decided by the circuit court. See *Adam v Sylvan Glynn Golf Course*, 197 Mich App 95, 98; 494 NW2d 791 (1992). Moreover, as the majority correctly observes, Lenavitt has abandoned this issue by failing to provide a copy of the relevant transcript on appeal. See *Watkins v Manchester*, 220 Mich App 337, 341; 559 NW2d 81 (1996); *Admiral Ins Co v Columbia Casualty Ins Co*, 194 Mich App 300, 305; 486 NW2d 351 (1992). Given Lenavitt's failure to preserve this issue, and indeed his abandonment thereof, I would decline to reach it or decide it on the merits. See *Coates v Bastian Brothers, Inc*, 276 Mich App 498, 509-510; 741 NW2d 539 (2007). Accordingly, I must concur in the judgment of the majority in this case.

/s/ Kathleen Jansen