Court of Appeals, State of Michigan

ORDER

Estate of Diane Miljan v Robert N. Jedick

Docket No. 272753, 272754

LC No. 02-000271-CH, 02-000272-CH

Alton T. Davis
Presiding Judge

William C. Whitbeck, CJ

Bill Schuette
Judges

The Court orders that, in lieu of granting the applications for delayed appeal, the order taxing costs is AFFIRMED IN PART and the case is REMANDED for further proceedings.

The trial court correctly determined that costs could not be taxed as a necessary expense for the presence of defendants' expert at the deposition and during the trial testimony of plaintiffs' expert. MCR 2.625(G)(2)(a). Further, costs cannot be awarded for the deposition of defendants' expert unless it was read into evidence at trial. MCL 600.2549. However, in addition to the costs that were ordered for their expert's court time, defendants were entitled to tax costs for the expert's time that was required to prepare for his testimony as an expert. This time would not include conferences with counsel for purposes such as educating counsel or strategizing with counsel, or for critical assessments of the opposing expert's opinion. *Detroit v Lufran Co*, 159 Mich App 62, 67; 406 NW2d 235 (1987). On remand, the trial court shall determine the amount of time that the expert necessarily spent on preparation for his trial testimony, and amend the order taxing costs to include the costs associated with that preparation time.

This Court does not retain jurisdiction.

Presiding Judge

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAR 7 2007
Date

Sandra Schultz Mengel
Chief Clerk