

STATE OF MICHIGAN  
COURT OF APPEALS

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SAMUEL A. RAGNONE,

Plaintiff-Appellant,

v

INDUSTRIAL MUTUAL ASSOCIATION OF  
GREATER FLINT and RONALD MILLER,

Defendants-Appellees.

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UNPUBLISHED

January 24, 2003

No. 236151

Genesee Circuit Court

LC No. 00-067782-CZ

Before: Cooper, P.J., and Bandstra and Talbot, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order of voluntary dismissal entered by the trial court. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

After the trial court denied plaintiff's untimely request for an adjournment on the date set for trial, the court granted plaintiff's request for a voluntary dismissal. After receiving evidence regarding legal fees paid by defendants, the court entered an order of dismissal, requiring that plaintiff pay defendants \$17,694.98 in costs and attorney fees as a condition for refileing the action.

The request for a voluntary dismissal was entirely reasonable, as plaintiff's counsel had no client and no witnesses present when trial was set to begin. Plaintiff may not argue on appeal that the trial court abused its discretion in granting an action he requested. *People v McCray*, 210 Mich App 9, 14; 533 NW2d 359 (1995). Under MCR 2.504(A)(2), an action may not be dismissed at the plaintiff's request except by order of the court on terms and conditions the court deems proper. A trial court has the discretion to condition a grant of voluntary dismissal upon the payment of costs and attorney fees. *McKelvie v Mt Clemens*, 193 Mich App 81, 84; 483 NW2d 442 (1992). The court held an evidentiary hearing, and plaintiff did not object to the amount of the payment ordered. There is no basis for contesting the dismissal.

We also find that plaintiff's appeal was taken for purposes of hindrance or delay, without any reasonable basis for belief that there was a meritorious issue to be determined on appeal. MCR 7.216(C)(1)(a). Therefore, defendants are entitled to costs and attorney fees incurred in opposition to plaintiff's appeal. We remand for a determination of costs and attorney fees.

Affirmed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jessica R. Cooper  
/s/ Richard A. Bandstra  
/s/ Michael J. Talbot