

STATE OF MICHIGAN
COURT OF APPEALS

JONATHAN BROWN, a Minor, by his Next
Friend, JACQUELINE ALLEN,

UNPUBLISHED
October 17, 2006

Plaintiff-Appellee,

v

AMERITECH CORPORATION, INC., d/b/a SBC
AMERITECH,

Nos. 262420; 263469
Wayne Circuit Court
LC No. 03-326653-NF

Defendant-Appellant.

Before: Borrello, P.J., and Jansen and Cooper, JJ.

PER CURIAM.

Defendant appeals as of right from an order awarding plaintiff attorney fees of \$73,200 pursuant to MCL 500.3148(1), and from a separate order awarding defendant case evaluation sanctions of \$28,534.15 pursuant to MCR 2.403(O). We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

The minor child, Jonathan Brown, was riding his bicycle when he was struck by defendant's vehicle. The child's next friend filed this action to recover personal injury protection (PIP) benefits for the injuries the child sustained in that accident. A jury returned a verdict in favor of plaintiff in the amount of \$38,900. The trial court awarded plaintiff attorney fees pursuant to MCL 500.3148(1), and awarded defendant case evaluation sanctions pursuant to MCR 2.403(O). On appeal, defendant challenges the amounts of each of those awards.

This Court reviews for an abuse of discretion the trial court's determination of the amounts awarded for case evaluation sanctions and attorney fees. *Ayre v Outlaw Decoys, Inc*, 256 Mich App 517, 520; 664 NW2d 263 (2003) (case evaluation sanctions); *Wood v Detroit Automobile Inter-Ins Exch*, 413 Mich 573, 588; 321 NW2d 563 (1982) (fees awarded under MCL 500.3148(1)). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Radeljak v DaimlerChrysler Corp*, 475 Mich 598, 603; 719 NW2d 40 (Docket No. 127679, decided July 19, 2006).

The reasonableness of attorney fees underlies each of these awards: the award to plaintiff is strictly plaintiff's attorney fees, and the case evaluation sanction award to defendant is premised on the fees defendant paid to defense counsel. In determining the reasonableness of attorney fees, the factors the trial court should consider include the professional standing and

experience of the attorney, the skill and labor involved, the amount in question and the results achieved, the difficulty of the case, the expenses incurred, and the nature and length of the professional relationship with the client. *Zdrojewski v Murphy*, 254 Mich App 50, 72; 657 NW2d 721 (2002); *Wood, supra*, p 588.

The variety of factors to consider allows the trial court broad discretion in the determination of a reasonable fee for each attorney in each case, and the trial judge is plainly in the best position to weigh each of the enumerated factors. Given the level of deference due the trial court, we do not find an abuse of discretion in the determination of a reasonable fee for either attorney here, even though the trial court set the reasonable fee for plaintiff's attorney at \$300 an hour and the reasonable fee for defendant's attorney at \$150 an hour.¹

Here, defendant acknowledged at the May 6, 2005, hearing that the rate of \$300 an hour was reasonable, and defendant paid its attorney only \$150 an hour, which suggests he found that amount reasonable for those services.² Defendant has not shown that the trial court abused its discretion in adopting these two amounts in the calculation of the award of attorney fees to plaintiff or case evaluation sanctions to defendant.

Affirmed.

/s/ Kathleen Jansen
/s/ Jessica R. Cooper

¹ We note that it is not uncommon for plaintiff's attorneys to command higher rates because of the risk of non-payment involved on that side of the table, and further that it is not uncommon for defense attorneys to accept lower rates as the trade-off for more business volume, particularly where the paying client is an insurance company rather than an individual insured.

² MCR 2.403(O) does not limit the recovery of attorney fees to the amount actually charged, but rather allows for the court to determine a reasonable fee. *McAuley v Gen Motors Corp*, 457 Mich 513, 524; 578 NW2d 282 (1998), overruled in part on other grounds in *Rafferty v Markovitz*, 461 Mich 265, 273 n 6; 602 NW2d 367 (1999). However, while it is true that "[r]easonable fees are not equivalent to actual fees charged," *Zdrojewski, supra*, p 72, clearly the contract fee agreed upon by client and attorney is at least a factor that the trial court may consider in determining what fee is reasonable.