

STATE OF MICHIGAN
COURT OF APPEALS

DALE PALACIOS and LISA PALACIOS,
Plaintiffs-Appellees,

UNPUBLISHED
March 8, 2012

v

No. 302357
Ingham Circuit Court
LC No. 07-001395-CZ

CITY OF LANSING,

Defendant-Appellant,
and

YOLANDA BENNETT, MINT CITY
EXCAVATING, INC., and LAURA PETERS,

Defendants.

Before: FITZGERALD, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

Defendant City of Lansing appeals as of right the January 12, 2011, order awarding plaintiffs the attorney fees and costs incurred as a result of the city's contempt of a temporary restraining order prohibiting the city from demolishing a house owned by plaintiffs. We affirm.

Defendant has properly appealed as of right the January 12, 2011, order that awarded to plaintiffs the attorney fees and costs that resulted from defendant's contempt of a temporary restraining order, as that is a final order under MCR 7.202(6)(a)(iv) as a postjudgment order awarding attorney fees and costs. However, defendant also seeks to challenge an initial November 14, 2008, order, and an amended July 22, 2009, order, through which the trial court held defendant in contempt of court. But as this Court has recently held, an order finding a party in "civil contempt is not a final order for purposes of appellate review." *In re Mouron*, ___ Mich App ___; ___ NW2d ___ (2012), slip op at 8, so instead can only be challenged by leave. MCR 7.203(A) & (B). Because the city did not file an application for leave from either order finding it in contempt, and the time period for filing a delayed application has long since expired, see MCR 7.205(F)(3), we have no jurisdiction to review the propriety of the orders.

Additionally, in a May 6, 2010, order, the trial court awarded plaintiffs "incidental damages" against the city as a sanction for the contempt due to the destruction of certain items of personal property located in the house at the time of the demolition. However, the city's

challenge to the award of incidental damages in the May 6, 2010, order is outside the proper scope of the appeal from the January 12, 2011, order awarding attorney fees and costs. As noted, the January 12, 2011, order is only a final order as a postjudgment order awarding attorney fees and costs. MCR 7.202(6)(a)(iv). Thus, under MCR 7.203(A), the scope of the appeal from that order “is limited to the portion of the order with respect to which there is an appeal as of right,” i.e., the award of attorney fees and costs. Accordingly, the award of incidental damages to plaintiffs for the destruction of items of personal property is not within the scope of the present appeal as of right.

In sum, this Court lacks jurisdiction to review the circuit court’s contempt orders, as well as the order awarding incidental damages.

With regard to the January 12, 2011, order awarding attorney fees and costs, the city asserts that the trial court erred when it awarded attorney fees for services that were not causally related to the contempt proceeding and that the fees awarded were unreasonable because the hours billed were excessive. We review a trial court’s ruling on a request for attorney fees for an abuse of discretion. *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1982). “An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes.” *Barnett v Hidalgo*, 478 Mich 151, 158; 732 NW2d 472 (2007).

“Under MCL 600.1721, the trial court must order a contemnor to indemnify any person who suffers a loss as a result of the contemnor’s misconduct.” *Taylor v Currie*, 277 Mich App 85, 102; 743 NW2d 571 (2008). “The loss may include attorney fees that occurred as a result of the other party’s contemptuous conduct.” *Homestead Dev Co v Holly Twp*, 178 Mich App 239, 245-246; 443 NW2d 385 (1989). Attorney fees that can be attributed to the contemnor’s misconduct include those “related to the prosecution of the contempt, the investigation of the contempt, or to fashioning a remedy for the contempt.” *Taylor*, 277 Mich App at 102.

The city argues that the attorney fees awarded to plaintiffs include numerous hours that were not related to the contempt proceeding. Although the invoices supplied by the city for this Court’s review include such services, the invoices total an amount far greater than the amount actually awarded by the trial court. Rather, the trial court based its award on the redacted invoices plaintiffs provided. The totals in these invoices reveal that the trial court took the city’s objections under advisement and did not award plaintiffs for work that was unrelated to the contempt proceeding.

The trial court also reduced the award for services provided by co-counsel after the city challenged whether co-counsel’s services were necessary. Co-counsel’s work was limited and necessitated by the possibility that plaintiff’s primary attorney could have been called as a witness during the show cause motion hearing. Although the need did not ultimately arise, the trial court did not abuse its discretion by awarding attorney fees for two hours of co-counsel’s services during the first day of the evidentiary hearing.

The city also argues that the overall award of actual attorney fees is unreasonable. There is no precise formula that a trial court must follow when determining the reasonableness of the fees charged by an attorney. *In re Temple Marital Trust*, 278 Mich App 122, 138; 748 NW2d 265 (2008). Instead, multiple factors exist that a trial court must consider. *Id.* These include:

(1) the skill, time and labor involved; (2) the likelihood, if apparent to the client, that the acceptance of the employment will preclude other employment by the lawyer; (3) the fee customarily charged in that locality for similar services; (4) the amount in question and the results achieved; (5) the expense incurred; (6) the time limitation imposed by the client or the circumstances; (7) the nature and length of the professional relationship with the client; (8) the professional standing and experience of the attorney; and (9) whether the fee is fixed or contingent. [*Id.*]

This framework was further refined by our Supreme Court in *Smith v Khouri*, 481 Mich 519; 751 NW2d 472 (2008). Pursuant to *Smith*, a trial court must first use credible evidence to determine the fees customarily charged in the locality¹ and multiply this by the number of hours reasonably spent on the matter. *Id.* at 530-531. Once this figure has been obtained, a trial court may adjust the award up or down based on the other factors. *Id.* at 531.

In this case, the trial court did not adjust the award upward or downward. The city contends that the award should have been adjusted downward because no results were achieved by the services that were performed. However, the purpose of coercive sanctions is to compel future compliance and punish for the past violation. *In re Contempt of Dougherty*, 429 Mich 81, 107; 413 NW2d 392 (1987). The city was obligated to obey the court order until it was dissolved, regardless of whether it ultimately had the authority to demolish the house. *Plumbers and Pipefitters Local Union No 190 v Wolff*, 141 Mich App 815, 818; 369 NW2d 237 (1985). Thus, it is irrelevant that plaintiffs were unsuccessful on the merits of their underlying claim.

The city also contends that it was unreasonable to award hours for work related to seven adjournments sought by plaintiffs. However, the city does not elaborate any further on this argument. The case was adjourned multiple times, but the record does not indicate the reason for the adjournments.

Further, the city's argument that plaintiffs have not met their burden of proof is without merit. An evidentiary hearing was held and both sides presented expert witnesses who testified regarding the hours reasonably spent on the matter. Because the trial court is in a superior position to judge the evidence and witnesses' credibility, MCR 2.613(C), we cannot conclude that the trial court abused its discretion in concluding that plaintiffs met their burden.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder
/s/ Christopher M. Murray

¹ The record reveals that the parties agreed upon the reasonable hourly attorney fee rate of \$190.00.