

STATE OF MICHIGAN
COURT OF APPEALS

SALEM TOWNSHIP,

Plaintiff-Appellee,

v

LINDA HAMILTON,

Defendant-Appellant.

UNPUBLISHED

June 12, 2012

No. 304347

Washtenaw Circuit Court

LC No. 11-000269-CZ

Before: BORRELLO, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Defendant appeals by right the circuit court's order awarding attorney fees and costs to plaintiff under MCL 600.2591.¹ We conclude that plaintiff did not prevail on the entire record and that plaintiff was not a prevailing party within the meaning of MCL 600.2591. Accordingly, we reverse.

The underlying litigation arose from plaintiff's attempts to evict defendant's business from a township building. We review the circuit court's award of sanctions for an abuse of discretion. *Keinz v Keinz*, 290 Mich App 137, 141; 799 NW2d 576 (2010). We review the circuit court's factual determinations, including findings as to whether a defense was frivolous, for clear error. *Id.* Whether a party is a prevailing party is a question of law reviewed de novo. See *Klinke v Mitsubishi Motors Corp*, 219 Mich App 500, 521; 556 NW2d 528 (1996), aff'd 458 Mich 582 (1998).

MCL 600.2591 expressly authorizes the award of attorney fees and costs where a civil action or defense is found to be "frivolous." The statute provides that:

(1) Upon motion of any party, if a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to

¹ The circuit court also cited to MCR 2.114(F) and MCR 2.625(A)(2). Under MCR 2.114(F), "a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2)." In turn, MCR 2.625(A)(2) provides that, "if the court finds on motion of a party that an action or defense was frivolous, costs shall be awarded as provided by MCL 600.2591."

the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney. [MCL 600.2591.]

The statute defines “prevailing party” as “a party who wins on the entire record.” MCL 600.2591(3)(b). “[W]here there is a single cause of action, it is not necessary for a plaintiff to recover the full amount of damages prayed for in order to be considered a prevailing party in determining the award of costs and fees.” *Van Zanten v H Vander Laan Co, Inc*, 200 Mich App 139, 141; 503 NW2d 713 (1993). If a plaintiff pleads alternative theories, any one of which would allow for the full measure of the plaintiff’s damages, the plaintiff is considered the prevailing party if the plaintiff prevails on one theory. *Id.* Otherwise, the statute requires that the party seeking costs and fees must prevail on the *entire* record. MCL 600.2591(3)(b); see also *1300 Lafayette E Coop v Savoy*, 284 Mich App 522, 534; 773 NW2d 57 (2009).

In this case, plaintiff initially filed an eviction action against defendant in district court. Later, plaintiff filed a separate suit in circuit court; the circuit court awarded the attorney fees and costs at issue in this appeal. Consequently, MCL 600.2391 required the circuit court to determine whether plaintiff was the prevailing party on the entire record in the circuit court action. The circuit court did not make an express finding that plaintiff was the prevailing party. Instead, the circuit court noted that it had granted plaintiff’s motion for declaratory relief. Nowhere in the record do we find analysis of whether plaintiff won on the “entire record.”

The circuit court clearly erred in its implied finding that plaintiff was the prevailing party. Plaintiff’s motion in circuit court sought relief on three issues. The circuit court awarded general relief on two of those issues. In particular, as requested by plaintiff, the circuit court ordered that:

Plaintiff, Salem Township’s Motion for Declaratory Relief is hereby GRANTED for the reason that Salem Township has a constitutional right to control its public buildings and to govern matters of local concern, including, to demand that Defendant Hamilton immediately vacate the Township’s municipal complex.

IT IS FURTHER ORDERED that neither the State nor the Court has a right to interfere with the legislative action of the Salem Township Board of Trustees, as to matters of local concern and, in particular, in this case, the lease of Township property to a private citizen.

However, the circuit court did not grant relief to plaintiff on the third issue, i.e., the immediate *enforcement* of the resolution evicting defendant. In particular, plaintiff’s motion in circuit court asked the court to “*enforce* the Resolution of the Salem Township Board of Trustees, as passed on August 10, 2010, evicting Defendant from the Township Offices effective September 27, 2010, pursuant to the Notice to Quit served upon Defendant.” (Emphasis added.) Rather than enforcing the resolution, the circuit court ordered: “given that summary eviction proceedings are specifically jurisdictional to the District Court, this Court believes it is within the jurisdiction of [the district court] to determine whether this Court’s ruling now essentially removes the eviction proceeding from the docket of the district court.” Far from granting the relief sought by plaintiff, the circuit court’s jurisdictional finding was in keeping with the defenses asserted by defendant

in the circuit court. In particular, defendant asserted that the circuit court lacked jurisdiction over an eviction case that was already pending in the district court. The relief plaintiff obtained was little more than general statements of township law. It still remained for the district court to determine the actual issue of eviction and the applicability of statutory protections against retaliation as raised by defendant. Accordingly, plaintiff did not prevail on the “entire record” and cannot be considered a “prevailing party.” MCL 600.2591(3)(b). As such, the circuit court abused its discretion in awarding attorney fees and costs under MCL 600.2591.

We reject plaintiff’s contention that, despite the unresolved eviction issue, its position was bettered because res judicata would have barred further litigation in the district court. “Res judicata bars relitigation of claims that are based on the same transaction or events as a prior suit.” *Ditmore v Michalik*, 244 Mich App 569, 577; 625 NW2d 462 (2001). Contrary to plaintiff’s argument, the circuit court proceedings did not resolve the eviction issue or retaliation defense being litigated in district court. As the circuit court acknowledged, the issue of eviction remained unresolved and within the district court’s jurisdiction. See MCL 600.5704. We are also not persuaded by plaintiff’s contention that the circuit court proceedings bettered its position because it led to defendant’s admission that she was making plans to vacate the property. Defendant’s indication that she intended to move did not lead to the resolution of the district court proceedings. Simply because defendant had “plans” to move did not mean she was forfeiting her defenses in the district court (particularly her claim of retaliation) or even that she would actually vacate the property.

Having decided the circuit court erred in awarding attorney fees and costs to a party who was not a “prevailing party” within the meaning of MCL 600.2591, we need not consider whether defendant’s defenses were frivolous.

Reversed.

/s/ Stephen L. Borrello
/s/ Peter D. O’Connell
/s/ Michael J. Talbot