

STATE OF MICHIGAN
COURT OF APPEALS

DONALD MCCOY,

Plaintiff,

and

VOCATIONAL CONCEPTS, LIZ ARDITTO,
EASTPOINTE TRANSITIONAL LIVING, ETL
HS LLC, REHAB MEDICAL SPECIALISTS, DR.
GERALD SHIENER, SPECTRUM
REHABILITATION, and UNIQUE OPTIONS,

Intervening Plaintiffs-Appellees,

v

HOME OWNERS INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

August 5, 2014

No. 315481

Wayne Circuit Court

LC No. 11-012526-NF

Before: JANSEN, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right an order assessing taxable costs against plaintiff and denying defendant's request for costs against intervening plaintiffs. Defendant contends that the trial court erred because it is entitled to the assessment of costs against all plaintiffs, including intervening plaintiffs. Because the trial court did not adhere to MCR 2.625(A)(1) and provide its reasons for denying costs against intervening plaintiffs, we vacate that part of order denying costs against intervening plaintiffs and remand.

We review a trial court's ruling on a motion to tax costs under MCR 2.625 for an abuse of discretion. *Guerrero v Smith*, 280 Mich App 647, 670; 761 NW2d 723 (2008). A trial court abuses its discretion when it chooses an outcome that falls outside the range of reasonable and principled outcomes. *Smith v Khouri*, 481 Mich 519, 526; 752 NW2d 472 (2008).

"The power to tax costs is purely statutory, and the prevailing party cannot recover such expenses absent statutory authority." *Guerrero*, 280 Mich App at 670. MCR 2.625(A)(1) provides that "[c]osts will be allowed to the prevailing party in an action, unless prohibited by

statute or by these rules or unless the court directs otherwise, for reasons stated in writing and filed in the action.” In civil cases, the starting presumption is as follows:

“[C]osts shall be allowed as a matter of course to the prevailing party. This does not mean, of course, that every expense incurred by the prevailing party in connection with the proceeding may be recovered against the opposing party. The term ‘costs’ as used [in] MCR 2.625(A) takes its content from the statutory provisions defining what items are taxable as costs.” [*Guerrero*, 280 Mich App at 671, quoting *Beach v State Farm Mutual Ins Co*, 216 Mich App 612, 622; 550 NW2d 580 (1996), quoting 3 Martin, Dean & Webster, Michigan Court Rules Practice (3d ed), pp 720-721 (emphasis omitted).]

First, it is important to note, as intervening plaintiffs have acknowledged, that intervening plaintiffs can be deemed to be parties in interest and, as such, defendants can seek taxable costs against them. *Blue Cross & Blue Shield of Mich v Eaton Rapids Community Hosp*, 221 Mich App 301, 312; 561 NW2d 488 (1997). But the award of taxable costs is not mandatory:

Taxation of costs under MCR 2.625(A) is within the discretion of the trial court. By its plain language, MCR 2.625(A)(1) authorizes a trial court either to allow or to decline to allow costs to a prevailing party. . . . [W]e have no trouble concluding that a court may take the intermediate step of apportioning the costs allowed to a prevailing party among the parties against whom the costs are assessed. [*Id.* at 314 (citation omitted).]

This Court elaborated that “[a] case involving multiple plaintiffs and a single prevailing defendant may present a myriad of considerations concerning the justness of taxing costs under MCR 2.625 either jointly and severally to the losing plaintiffs or, alternatively, by apportioning those costs among the losing plaintiffs.” *Id.* at 314-315.

However, while a trial court does have discretion in awarding taxable costs, a court must provide reasons for its denial “in writing.” MCR 2.625(A)(1). Because the record contains no reasons,¹ written or otherwise, for why the trial court denied defendant’s request for taxable costs against intervening plaintiffs, we must vacate that portion of the trial court’s order.

Therefore, we vacate the portion of the order denying taxable costs against intervening plaintiffs, and on remand, if the trial court desires to still deny assessing costs against the intervening plaintiffs, it must provide its reasons for doing so “in writing.” MCR 2.625(A)(1).

¹ The only thing close to an explanation occurred at the motion hearing, where the trial court stated, “But it was [plaintiff’s] claim. [Intervening plaintiffs merely are] saying if there is a recovery, [‘we want our bills paid.’]” It is not clear if the court was implying that intervening plaintiffs, by virtue of their status, could *never* be considered parties in interest and, thus, costs cannot be levied against them. If so, as noted previously, this view would be incorrect. *Eaton Rapids*, 221 Mich App at 312.

We do not retain jurisdiction. No costs, as no party prevailed in full. MCR 7.219.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Pat M. Donofrio