

STATE OF MICHIGAN
COURT OF APPEALS

WALTER W. WAWRZYNIAK and
PEUTERBAUGH BUILDING COMPANY,

UNPUBLISHED
January 24, 2003

Plaintiffs-Appellees,

v

No. 231289
Macomb Circuit Court
LC No. 92-005032-CK

ESTATE of BRUCE G. PEUTERBAUGH,
Deceased,

Defendant-Appellant,

and

JOHN V. DAVIDSON, J.P. TOOL, INC., and
DERDERIAN, KANN, SEYFERTH & SALUCCI,
P.C.,

Defendants.

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Defendant Peuterbaugh's estate appeals as of right from a circuit court order affirming the award of attorney fees to plaintiff Wawrzyniak following an order of remand from this Court. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The trial court dissolved the partnership between Wawrzyniak and Peuterbaugh. The principal asset of the partnership was a parcel of real property and a commercial building located thereon, which the court ordered sold. The closing occurred on August 3, 1993. Thereafter, plaintiff Wawrzyniak sought sanctions in the form of attorney fees and costs for defendant's violation of MCR 2.114 and various court orders. Following an evidentiary hearing, the court awarded plaintiff \$56,124.68. On appeal, this Court affirmed the ruling that plaintiff was entitled to sanctions, but remanded for clarification whether the court intended to include in its award the attorney fees and costs incurred with respect to the motion for sanctions. *Wawrzyniak v Peuterbaugh*, unpublished order of the Court of Appeals, issued November 1, 1996 (Docket No. 184829). On remand, the trial court held that its award did not include attorney fees and costs incurred by plaintiff as a consequence of his motion for sanctions and the associated six-day evidentiary hearing.

On appeal, defendant argues that the trial court clearly erred in finding that the award of sanctions did not include fees and costs attributable to plaintiff's motion for sanctions. We disagree. A trial court's decision, including associated findings of fact, regarding the imposition of sanctions is reviewed for clear error. MCR 2.613(C); *Schadewald v Brule*, 225 Mich App 26, 41; 570 NW2d 788 (1997).

In plaintiff's motion for sanctions he requested fees and costs of (1) \$24,775, the amount he paid attorney Clark Stevens for services rendered from June 1992 to August 3, 1993, and (2) \$87,474.36, the amount he paid to attorney Robert Weller for services rendered from October 1992 to August 31, 1994. Consequently, the amount of sanctions requested totaled \$112,249.36, only half of which was awarded by the trial court. Defendant contends that a large portion of those fees "**had** to have been incurred in proving Plaintiff's attorney fees and costs" because on August 24, 1993, plaintiff claimed that he only paid Weller \$47,235.50; therefore, the additional \$40,238.86 (\$87,474.36 - \$47,235.50) was incurred from August 24, 1993 through August 31, 1994. However, the record does not support defendant's assertion that the "only thing left to do in the case" after August 24, 1993, was file the motion for sanctions.

The record illustrates, at least, that plaintiff's counsel, Weller, (a) attended plaintiff's deposition on October 1, 1993, (b) responded to (on November 30, 1993), and appeared for oral argument with regard to (on December 7, 1993), defendant's motion for summary disposition that was filed on November 16, 1993, (c) responded to defendant's motion for entry of order requiring production of documentation that was filed on March 15, 1994, and for which an order was entered on March 17, 1994, and (d) responded to defendant's "motion for sanctions and/or order regarding discovery" that was filed on August 22, 1994. Consequently, contrary to defendant's argument, the additional attorney fees and costs claimed by plaintiff were not necessarily incurred as a result of plaintiff's motion for sanctions. Accordingly, the trial court did not clearly err when it concluded that the award did not include such attorney fees and costs.

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh