

STATE OF MICHIGAN
COURT OF APPEALS

DAVID L. DUDLEY,

Plaintiff-Appellant,

v

MARTIN HULSEBOS,

Defendant-Appellee.

UNPUBLISHED

July 17, 1998

No. 196272

Eaton Circuit Court

LC No. 93-000606-CH

Before: McDonald, P.J., and O’Connell and Smolenski, JJ.

PER CURIAM.

Following a bench trial, the trial court entered an order awarding plaintiff \$3,850 for damages and \$328.99 in taxed costs. The court denied plaintiff’s request for costs of \$19,775, which would have included plaintiff’s attorney fees and survey costs. Plaintiff appeals as of right. We affirm in part, reverse in part, and remand for further proceedings.

Plaintiff argues the trial court erred by failing to award him the full costs associated with litigating his claim, including attorney fees and the survey costs. Plaintiff contends that *Druse v Wheeler*, 22 Mich 439 (1871), provides support for the proposition that a party that prevails on a claim involving a question of real estate title is entitled to recover actual costs associated with bringing or defending the claim. Plaintiff also claims he was erroneously denied attorney fees and survey fees. We will address each item separately.

Michigan follows the “American rule” for recovery of attorney fees, which provides that a prevailing party in a lawsuit is not entitled to attorney fees as part of costs or damages unless recovery of attorney fees is expressly authorized by statute, court rule, or some recognized exception. *Burnside v State Farm Fire and Casualty Co*, 208 Mich App 422, 426-427; 528 NW2d 749 (1995). In *Druse*, *supra* at 444, the Michigan Supreme Court did hold that a prevailing party could recover all costs associated with litigation involving title to land, a right of way, an easement, or any other related injury. However, the Court relied upon 1857 CL 5597, which was repealed by the Revised Judicature Act of 1961, MCL 600.101 *et seq.*; MSA 27A.101 *et seq.* *Id.* Because *Druse* relied upon a statute that has since been repealed, it no longer effectively provides an exception to the general rule that

parties are responsible for their own attorney fees. Accordingly, plaintiff has failed to cite any applicable statute, court rule, or recognized exception that authorizes him to recover attorney fees, and the trial court properly concluded he was responsible for his own attorney fees.

Regarding the survey costs, we note that under MCR 2.625, a prevailing party is entitled to costs in an action unless those costs are prohibited by statute, court rule, or by the trial court for reasons stated in writing. MCR 2.625(A)(1). The purpose of this rule is to compensate a prevailing party for the costs of litigation. *Farmers Ins Group v Lynch*, 186 Mich App 537, 538; 456 NW2d 21 (1990). In *Michigan State Highway Comm v Cousinea Gravel*, 58 Mich App 405; 228 NW2d 856 (1975), this Court concluded that an aerial survey used to contest a condemnation action was a taxable item and should have been considered a portion of the defendant's award of costs. *Id.* at 409-410. We conclude that the survey costs in this case should not have been disregarded as a taxable item unless done so for valid reasons stated in writing. Accordingly, we remand for reconsideration of whether plaintiff should be awarded the survey costs.

To provide guidance on remand, we note that in a case with several issues, a party is entitled to costs only with regard to those issues upon which the party prevails. MCR 2.625(B)(2). Here, plaintiff's claims were premised on negligence, nuisance, and trespass but he prevailed only on the trespass claim. However, in *Klinke v Mitsubishi Motors*, 219 Mich App 500, 520; 556 NW2d 528 (1996), lv gtd 456 Mich 902 (1997), this Court held that when a plaintiff alleges alternative theories of liability that essentially arise from a single cause of action, the plaintiff is entitled to all costs associated with the cause of action if the plaintiff prevails on one theory, but fails on other theories of liability. Accordingly, the failure to prevail on all theories advanced will not serve as a basis for denying plaintiff the survey costs.

Affirmed in part, reversed in part, and remanded for reconsideration of whether the survey fees should be taxed as costs. We do not retain jurisdiction.

/s/ Gary R. McDonald

/s/ Peter D. O'Connell

/s/ Michael R. Smolenski