

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DAVID M. AHO,

Plaintiff-Appellee,

v

DEPARTMENT OF CORRECTIONS,

Defendant-Appellant.

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UNPUBLISHED

February 1, 2007

No. 262822

Marquette Circuit Court

LC No. 00-037785-NZ

Before: White, P.J., and Zahra and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order denying its motion for costs and fees. We reverse and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff worked for defendant as a corrections officer. In July 1999, while on medical leave from his employment, plaintiff was charged with operating a vehicle under the influence of intoxicating liquor (OUIL) and possession of marijuana. Plaintiff pleaded guilty to the misdemeanor charge of OUIL in return for dismissal of the possession charge.

Plaintiff returned to work in January 2000, and was terminated in March 2000 after an investigation determined that he had violated work rules by being charged with OUIL and possession of marijuana. Plaintiff grieved the termination decision, and ultimately, an arbitrator ruled that plaintiff should be reinstated. However, plaintiff indicated that he was medically unable to return to work, and took a leave of absence.

Plaintiff filed suit, alleging that his discharge constituted unlawful retaliation in violation of the Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.* (Count I), and that defendant failed to purge his arrest record and terminated him based on a charge of possession that was dismissed, in violation of the Civil Rights Act (CRA), MCL 37.2101 *et seq.* (Count II).<sup>1</sup>

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<sup>1</sup> Specifically, plaintiff alleged that at the time he was arrested, defendant was not considered a law enforcement agency, according to Attorney General Opinion No. 7030; therefore, MCL (continued...)

The parties filed cross-motions for summary disposition. The trial court granted defendant's motion with respect to plaintiff's CRA claim, but denied both motions with respect to the PWDCRA claim. The trial court found that genuine issues of fact existed as to whether the person who terminated plaintiff's employment was aware that plaintiff had been involved in prior litigation against defendant,<sup>2</sup> and as to whether a causal connection had been demonstrated between the prior litigation and plaintiff's termination.

Defendant appealed by leave granted, and plaintiff cross-appealed from the trial court's decision. In *Aho v Dep't of Corrections*, 263 Mich App 281; 688 NW2d 104 (2004), another panel of this Court affirmed in part, reversed in part, and remanded for entry of an order consistent with its opinion. The *Aho* Court held that the trial court properly granted summary disposition to defendant on plaintiff's CRA claim, but erred in denying summary disposition to defendant on plaintiff's PWDCRA claim.

On remand, the trial court entered judgment in favor of defendant. Thereafter, defendant moved to tax costs and assess attorney fees pursuant to MCR 2.625(A)(1) and MCR 2.403(O), seeking a total of \$15,540.75 in costs and fees.

The trial court denied defendant's motion to tax costs and attorney fees, finding that an award of costs and attorney fees would not serve the interests of justice. The trial cited as reasons for its decision the disparity between the parties' positions, the fact that defendant would be allowed to claim part of plaintiff's worker's compensation award, and also on the fact that defendant rejected the case evaluation.

If both parties reject the case evaluation, the prevailing party is entitled to an award of costs "only if the verdict is more favorable to that party than the case evaluation." MCR 2.403(O)(1). A "verdict" includes a "ruling on a motion after rejection of the case evaluation." MCR 2.403(O)(1)(c). An award of actual costs, also referred to as sanctions, includes costs taxable in a civil action, and a reasonable attorney fee. MCR 2.403(O)(6).

Pursuant to MCR 2.403(O)(11), a court may deny an award of sanctions in the interest of justice if the verdict is a judgment entered as a result of a ruling on a motion after rejection of the case evaluation. See MCR 2.403(O)(2)(c). An interest of justice exists if there is a public interest in having an issue judicially determined, including when the issue is one of first impression, when the law is unsettled and substantial damages are at stake, when a party is indigent and an issue merits decision by a trier of fact, or when the effect of resolution of the issue on third parties may be significant. *Haliw v Sterling Heights (On Remand)*, 266 Mich App 444, 448-449; 702 NW2d 637 (2005); *Luidens v 63<sup>rd</sup> Dist Court*, 219 Mich App 24, 36; 555

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(...continued)

37.2205a required defendant to purge his arrest record for marijuana possession from his file because no conviction resulted from that charge. Ten days before plaintiff was discharged, the Legislature enacted 1999 PA 202, which modified MCL 37.2205a to provide that defendant is a law enforcement agency.

<sup>2</sup> In 1995, plaintiff and several other employees had filed suit challenging defendant's no-facial-hair policy. A settlement agreed to in 1996 exempted ten percent of corrections officers from the rule prohibiting facial hair. Plaintiff was among those exempted from the rule.

NW2d 709 (1996). We review a decision to grant or deny a motion for sanctions for an abuse of discretion. *Haliw, supra* at 446.

We reverse the trial court's order denying defendant's motion for sanctions, and remand this case to the trial court for further proceedings. In denying defendant's motion for sanctions, the trial court relied on plaintiff's arguments against the motion, which included that: the case involved issues of significant interest, including issues of first impression; the parties were in unequal positions; defendant had been accused of wrongdoing; and defendant could seize plaintiff's worker's compensation benefits to collect sanctions. The trial court also relied on the fact that defendant had rejected the case evaluation as a reason for denying the motions. The trial court's grounds for denying the motion are without merit.

The issue whether defendant was a law enforcement agency for purposes of the CRA was not entirely clear at the time plaintiff filed suit; however, that issue was resolved by the Legislature, not this litigation. The *Aho* Court declined to decide whether the amendment of MCL 37.2205a should be given retroactive or prospective effect, finding that defendant became aware of plaintiff's arrest via other sources. *Aho, supra* at 294. Furthermore, the *Aho* Court's decision that the passage of five years between plaintiff's participation in protected activity, the lawsuit regarding facial hair, and his termination precluded the finding of a nexus between the two events was not particularly significant in light of authority that much shorter periods precluded the finding of a causal connection. *Id.* at 291-292 (and authority cited therein).

A party's more modest economic standing in relation to that of an opposing party is not an appropriate basis on which to deny a motion for sanctions. *Luidens, supra* at 36. Moreover, nothing on the record before the trial court demonstrated that plaintiff had been awarded worker's compensation benefits. The trial court's assumption that defendant would seize such benefits was unsubstantiated.

The facts that plaintiff's claims were not frivolous and that defendant had been accused of wrongdoing did not support the trial court's decision to deny sanctions. *Id.* at 33.

Finally, the trial court's assertion that an award of sanctions was inappropriate because defendant had also rejected the case evaluation is without merit. Sanctions are awardable even if both parties reject the case evaluation. *Haliw, supra* at 450; see also MCR 2.403(O)(1).

The trial court abused its discretion by denying defendant's motion for sanctions. *Id.* at 446. We reverse the trial court's order and remand this case with instructions that the trial court determine an appropriate award of sanctions.

Reversed and remanded. We do not retain jurisdiction.

/s/ Brian K. Zahra  
/s/ Kirsten Frank Kelly