

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

---

MARVIN RADTKE, JR.,

Plaintiff,

v

File No. 06-25352-CK  
HON. PHILIP E. RODGERS, JR.

BLAIR TOWNSHIP and PATRICK PAHL,

Defendants.

---

Lawrence R. LaSusa (P41558)  
Joshua M. Reynolds (P58962)  
Attorneys for Plaintiff

Daniel W. White (P27738)  
Attorney for Defendants

---

**DECISION AND ORDER GRANTING  
DEFENDANT BLAIR TOWNSHIP'S MOTION FOR RELIEF FROM ORDER**

On January 2, 2007, the Court heard the oral arguments of counsel regarding Plaintiff's Motion to Show Cause for Defendants' (Specifically Larry Fleis and Betty Tharp) Failure to Comply with Settlement Agreement, dated December 19, 2006. At the conclusion of the hearing, the Court ordered the Defendant Blair Township to pay sanctions in the amount of Plaintiff's reasonable attorney fees and actual costs incurred in the preparation for and attendance at facilitative mediation, as well as, in preparation for and attendance at the hearing on the motion. The Court gave Plaintiff's counsel seven days within which to file and serve his affidavit of fees and costs and gave the Defendant seven days within which to file and serve any objection.

On January 9, 2007, Plaintiff's counsel filed his affidavit of fees ad costs and a proposed order pursuant to MCR 2.602(B)(3) with a proof of service. Defendant's counsel did not file an objection within seven days. On January 17, 2007, the Court entered the proposed order.

On February 5, 2007, Defendant filed a Motion for Relief from Order, claiming that counsel did not receive the Plaintiff's affidavit or proposed order. On February 6, 2007, the Court issued a pre-hearing order giving any opposing party seven days from the date of the order to file and serve a response and giving the moving party 14 days from the date of the order to file and serve a reply. These time limits have now expired. In order to seamlessly move this matter forward with an ultimately more cost effective utilization of legal resources, the Court dispenses with any further oral argument, pursuant to MCR 2.119(E)(3), and issues this written decision and order. Without any lag in transition time and for the reasons stated herein, the Defendant's motion is granted and the Defendant is ordered to pay the amount of reasonable fees and actual costs provided herein.

MCR 2.612(C) provides:

- (1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:
  - (a) Mistake, inadvertence, surprise, or excusable neglect.
  - (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).
  - (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
  - (d) The judgment is void.
  - (e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.
  - (f) Any other reason justifying relief from the operation of the judgment.

Defendant's counsel contends, contrary to the proof of service filed by the Plaintiff, that he never received the Plaintiff's affidavit of fees and costs or the Plaintiff's proposed order. He does not accuse the Plaintiff or his counsel of any misdeed, but simply swears that these documents were never received in his office. His affidavit is confirmed by the affidavits of two support people from his office. As a result of not receiving the affidavit or proposed order, Defendant's counsel did not file a timely objection.

Plaintiff assumes that Defendant's counsel did not receive the affidavit and proposed order because "administrative neglect or inadvertence may have occurred in Defendant's counsel's office administration." He reads Defendant's motion as a concession on Defendant's part that 20.5 hours at Plaintiff's counsel's hourly rate of \$225 is a reasonable fee and argues that Defendant's only objection is to the double billing because two members of Plaintiff's

counsel's firm attended the mediation. He has offered to stipulate to a \$1,487.50 reduction in the fee to reduce the fees by the amount billed for the combined time of two attorneys to attend mediation.

The Court does not read the Defendant's objection quite the same way as Plaintiff's counsel. The Court understands that, for whatever reason, Defendant's counsel did not receive the affidavit and proposed order. He has put his license to practice law on the line by swearing, under penalty of perjury, to this fact. Second, the Court understands that Defendant objects to the affidavit because it shows a total of 28.7 hours of time spent in preparation for and attendance at facilitative mediation and in preparation for and attendance at the hearing on the motion to show cause while Defendant's counsel billed only 20.5 hours for the same proceedings which included 11 hours of travel to and from Alpena. Since counsel for the Plaintiff practices in Traverse City, there was no travel time reflected in his bill. In other words, Plaintiff's counsel purportedly spent 20.4 hours doing the same tasks (28.7 hours – 8.3 hours for the preparation of and hearing on the motion to show cause) that counsel for the Defendant spent 9.5 hours doing. This is a significant discrepancy.

In *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973), the Court of Appeals set forth factors to be considered in determining the reasonableness of the attorney fees, saying:

Where the amount of attorney fees is in dispute each case must be reviewed in light of its own particular facts. There is no precise formula for computing the reasonableness of an attorney's fee. However, among the facts to be taken into consideration in determining the reasonableness of a fee include, but are not limited to, the following: (1) the professional standing and experience of the attorney; (2) the skill, time and labor involved; (3) the amount in question and the results achieved; (4) the difficulty of the case; (5) the expenses incurred; and (6) the nature and length of the professional relationship with the client. See generally 3 Michigan Law & Practice, Attorneys and Counselors, s 44, p. 275 and Disciplinary Rule 2-106(B) of the Code of Professional Responsibility and Ethics.

See also, *Wood v DAIIE*, 413 Mich 573, 588; 321 NW2d 653 (1983) ("the controlling criterion is that the attorney fees be 'reasonable.'")

The Court has reviewed counsel's affidavit in light of these factors and finds that the fees that were awarded are not "reasonable." Plaintiff's counsel has offered to stipulate to a \$1,487.50 reduction in the fees sought so as to eliminate the double billing for two attorneys

from the same firm attending the facilitative mediation. This offer was well advised and will be accepted by the Court.

In addition, the Court does not believe, based on the nature of this litigation and the skill, time and labor involved in attending facilitative mediation and preparing and arguing a motion to show cause that the number of hours spent and the hourly rates of \$225 and \$175 for the attorneys is commensurate with the time necessary or the hourly rates charged by attorneys of equal professional standing and experience in this community. According to the Economics of Law Practice published by the State Bar of Michigan, a reasonable hourly rate for an attorney of Mr. LaSusa's professional standing and experience in this area is \$175. For an associate attorney with Mr. Reynolds professional standing and experience, a reasonable hourly rate is \$125. Based on these appropriate hourly rates and the amount of time reasonably necessary to perform the services provided, the Court has recalculated the attorney fees. The Defendant Blair Township should be and hereby is ordered to pay the Plaintiff, via his attorneys, the sum of \$3,250 as reasonable attorney fees.

The amount of actual costs incurred by the Plaintiff is not disputed. Therefore, the Defendant Blair Township should be and hereby is ordered to pay the Plaintiff, via his attorneys, the additional sum of \$850.33 for actual costs.

Within 28 days of the date of this Order, the Defendant Blair Township shall pay to the Plaintiff, via his attorneys, the total sum of \$4,100.33.

IT IS SO ORDERED.

---

HONORABLE PHILIP E. RODGERS, JR.  
Circuit Court Judge

Dated: s/ 02/23/07