STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

DEVIN DANTE,

Plaintiff,

v

File No. 07-25778-NI
HON. PHILIP E. RODGERS, JR.

PIONEER STATE MUTUAL INSURANCE COMPANY,

Defendant.
/

L. Kent Walton (P25123)
Attorney for Plaintiff

Mark D. Williams (P41120)
Attorney for Defendant

DECISION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S OBJECTIONS TO PLAINTIFF'S VERIFIED BILL OF COSTS

This third party, no-fault automobile accident case culminated in a jury verdict for the Plaintiff which was rendered on May 7, 2008. As the prevailing party, the Plaintiff submitted a Verified Bill of Costs pursuant to MCR 2.625. The Defendant filed Objections. The Court issued a pre-hearing order, giving the Plaintiff 14 days from the date of the order to respond to the Defendant's objections and giving the Defendant 21 days from the date of the order to file a reply. These time limits have expired.

The Court dispenses with oral argument pursuant to MCR 2.119(E)(3) and issues this decision and order, granting in part and denying in part the Defendant's objections.

Generally, a prevailing party may be entitled to costs. MCR 2.625(A)(1). "Costs 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." MCR 2.625(A)(1); see also *Beach v State Farm Mut Auto Ins Co,* 216 Mich App 612, 621; 550 NW2d 580 (1996). Taxation of costs and allowable fees is governed by MCL 600.2401 *et*

seq., and MCL 600.2501 *et seq.* The power to tax costs is purely statutory, and the prevailing party cannot recover such expenses absent statutory authority. *Elia v Hazen,* 242 Mich App 374, 379; 619 NW2d 1 (2000). 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." *Beach, supra* at 622, quoting 3 Martin, Dean & Webster, Michigan Court Rules Practice (3d ed), pp 720-721.

Since the Court's power to tax costs is wholly statutory, whether recovery of a particular cost is authorized is a question of statutory interpretation. *LaVene v Winnebago Industries,* 266 Mich App 470, 473; 702 NW2d 652 (2005); *Portelli v I R Constr Products Co, Inc*, 218 Mich App 591, 605; 554 NW2d 591 (1996). The primary intent of judicial interpretation of statutes is to ascertain and give effect to the intent of the Legislature. The first criterion in determining intent is the specific language of the statute. The Legislature is presumed to have intended the meaning it plainly expressed. Courts may not speculate regarding the probable intent of the Legislature beyond the words expressed in the statute. Where the language employed in a statute is plain, certain, and unambiguous, the statute must be applied as written without interpretation. When the plain and ordinary meaning of the language is clear, judicial construction is normally neither necessary nor permitted. Such a statute must be applied, and not interpreted, because it speaks for itself. *Id at* 606-607.

I.

First, the Defendant objects to Plaintiff's request for motion fees under MCL 600.2441(a) and filing fees under MCL 600.2529(1)(e) because they are either duplicative or inappropriate because they include filing fees for motions filed by the Defendant. This objection was rendered moot by Plaintiff's withdrawal of his request for $120 in motion fees under MCL 600.2441(a).

II.

The Defendant next objects to the Plaintiff's request, made pursuant to MCL 600.2543, for the cost of the transcript of the March 10, 2008 hearing on Defendant's Motion for Summary Disposition. The Defendant claims that the cost of the transcript can only be

recovered if the transcript was ordered for the purposes of moving for a new trial or preparing the record for appeal. Since the Plaintiff ordered the transcript before the trial had taken place, the Defendant contends that he could not have ordered it for either of these purposes.

MCL 600.2543 provides, in pertinent part, as follows:

> (1) The circuit court reporters or recorders are entitled to demand and receive per page for a transcript ordered by any person the sum of $1.75 per original page and 30 cents per page for each copy, unless a lower rate is agreed upon. For a transcript ordered by the circuit judge, reporters or recorders are entitled to receive from the county the same compensation. The supreme court, by administrative order or court rule, may authorize the payment to circuit court reporters or recorders the sum of $3.00 per original page and 50 cents per page for each copy for transcripts ordered and timely filed as part of a program of differentiated case management for appeals of civil cases in which the circuit court either grants or denies summary disposition. If a transcript ordered under a program of differentiated case management is not timely filed, the circuit court reporter or recorder is not entitled to receive the increased rate for that transcript.
>
> (2) **Only if the transcript is desired for the purpose of moving for a new trial or preparing a record for appeal shall the amount of reporters' or recorders' fees paid for the transcript be recovered as a part of the taxable costs of the prevailing party in the motion, in the court of appeals or the supreme court.** [Emphasis added.]

MCL 600.2543(1) provides that certain fees may be charged by circuit court stenographers for transcripts ordered by parties. MCL 600.2543(2) provides that a prevailing party may recover the cost of the transcripts "[o]nly is the transcript is desired for the purpose of moving for a new trial or preparing a record for appeal."

The rationale for this rule was discussed by the Court of Appeals in its unpublished opinion in *Nugent v Muskegon Summer Celebration, Inc,* Docket Nos. 266445, 269804 (Oct. 18, 2007). There the Court denied the plaintiff's request for recovery of transcript costs, saying:

> Though plaintiffs argued that the parties both relied on the trial transcripts during trial and during post-trial motions, plaintiffs did not file a motion for new trial and plaintiffs presented no affidavit or other evidence to establish whether and to what extent either party used the transcripts for other purposes. Further, the reason transcript costs are recoverable on appeal is because an appellant must order them to establish his claims and, if he prevails, such costs were both necessary and justified. There is no such rationale for the recovery of costs in the trial court generally or under the circumstances in this case. Accordingly, the trial court properly denied plaintiff's request for the transcript costs.

In the instant case, the Plaintiff maintains that he desired the transcript of the hearing on Defendant's Motion for Summary Disposition, not only for use in preparing Plaintiff's trial brief, but also for the purpose of moving for a new trial. The fact that the Plaintiff moved for a new trial or amendment of judgment in this case distinguishes it from the *Nugent* case and makes the cost of the transcript of the hearing on Defendant's Motion for Summary Disposition a recoverable cost. The Defendant's objection to awarding the Plaintiff $112.80 for the transcript of the hearing is overruled.

III.

Plaintiff seeks to recover $321.10 for deposition transcripts of witnesses Kimberly Dante, Devin Dante and Terry Coates. MCL 600.2549 provides, in pertinent part, as follows:

> Reasonable and actual fees paid for depositions of witnesses filed in any clerk's office . . . shall be allowed in the taxation of costs only if, at the trial or when damages were assessed, the depositions were read in evidence, except for impeachment purposes . . .

The Defendant initially objected because the Plaintiff did not file these transcripts with the clerk's office; the Defendant did. However, there is nothing in the statute that requires the party seeking to recover the cost of transcripts be the one that files them in the clerk's office. The statute merely requires that they be filed which these transcripts were.

The Defendant also objects to this cost in his reply brief because the statute requires that the transcripts be "read in evidence" either "at the trial or when damages were assessed." The Defendant is correct. Since these deposition transcripts were not read in evidence, the cost is not recoverable. The Defendant's objection is sustained.

IV.

The Defendant next objects to the taxation of video deposition playback charges. Again, MCL 600.2549 provides, in pertinent part, as follows:

> Reasonable and actual fees paid for depositions of witnesses filed in any clerk's office . . . shall be allowed in the taxation of costs only if, at the trial or when damages were assessed, the depositions were read in evidence, except for impeachment purposes . . .

In *Stevens v Hogue*, 85 Mich App 185; 270 NW2d 735 (1978) the Court held:

> GCR 1963, 315 provides for the use of videotape depositions. Rule 315.10 provides that the cost for the deposition may be taxed in 'accordance with the provisions of Rule 526.' Under GCR 1963, 526.1, the amount of costs to be taxed is subject to any limitation contained in a statute. MCL 600.2549 limits costs for depositions. There is no reason not to apply this statute to videotape depositions. It was error for the trial court to assess the actual cost incurred in taking and presenting this videotape deposition. *Mihailoff v Meijer, Inc*, 53 Mich App 312; 218 NW2d 798 (1974).

GCR 1963, 315 has since been amended. MCR 2.315(I) now provides:

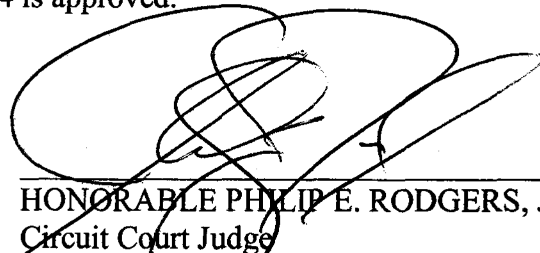
> The costs of taking a video deposition and the cost for its use in evidence may be taxed as costs as provided by MCR 2.625 in the same manner as depositions recorded in other ways.

Therefore, the cost of taking video depositions and the cost of having them replayed at trial are recoverable costs. The Defendant's objection to the $790 for trial playback charges is overruled.

CONCLUSION

Consistent with this decision and order, the Defendant's objections to duplicate motion fees and fees for motions filed by the Defendant as well as the cost of copies of witness transcripts are sustained. The Defendant's objection to the cost of the transcript of the hearing on Defendant's motion for summary disposition and the charges for the playback of video depositions at trial are overruled. The Plaintiff's bill of costs must be reduced by $120 to eliminate duplicate and inappropriate motion fees and it must be reduced by $321.10 for copies of witness deposition transcripts that were not read in evidence. Otherwise, the Plaintiff's bill of costs in the adjusted amount of $6,085.34 is approved.

IT IS SO ORDERED.



HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: 10/27/08