STATE OF MICHIGAN

IN THE COURT OF APPEALS

KATHERINE J. KENDALL,
Plaintiff-Appellee
Cross-Appellant

-v-

NO. 82582

WAUSAU INSURANCE COMPANIES,
Defendant-Appellant
Cross-Appellee

BEFORE: S. J. Bronson, PJ; Allen and Michael H. Cherry*, JJ.

PER CURIAM.

On January 7, 1985, plaintiff was awarded $7,000 in attorney fees pursuant to MCL 500.3148(1); MSA 24.13148(1), a provision of the no-fault insurance act and $45 in costs. The trial court awarded interest on the attorney fees and costs which was to accrue from October 26, 1984, the date of the nonjury trial on the issue of attorney fees and costs, until the award was paid in full. Defendant appeals the award of attorney fees by leave granted. By way of a delayed application for cross-appeal which has been granted, plaintiff appeals the denial of prejudgment penalty interest on the award of attorney fees.

Plaintiff initiated this lawsuit, contending that defendant was responsible for the payment of personal protection insurance benefits relative to an April 6, 1982 automobile accident. Following a jury trial, a judgment was entered for plaintiff in the amount of $15,153.49. That judgment is not contested in this appeal. Plaintiff then brought a motion for attorney fees. A bench trial was held solely on this issue whereat plaintiff's counsel appeared

* Circuit Judge sitting on the Court of Appeals by assignment.

as the only witness. Following this trial, the lower court determined that defendant had unreasonably refused to pay the benefits and awarded the $7,000 attorney fee. Defendant maintains that the trial court abused its discretion by awarding a fee which constituted 46% of the jury verdict.

MCL 500.3148(1); MSA 24.13148(1) provides for the award of a reasonable attorney fee in an action for overdue personal protection insurance benefits. In Wood v DAIIE, 413 Mich 573, 588; 321 NW2d 653 (1982), quoting Crawley v Schick, 48 Mich App 728, 737; 211 NW2d 217 (1972), the Supreme Court held that the following factors should be considered in determining the reasonableness of an attorney fee, but indicated that this list was not exhaustive:

> "(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."

A contingent fee agreement is also regarded as a pertinent factor but is not determinative. Liddell v DAIIE, 102 Mich App 636, 652; 302 NW2d 260, lv den 411 Mich 1079 (1981).

In the case at bar, the parties stipulated that plaintiff's counsel had 23 years experience. Plaintiff's counsel testified that although he was handling a related lawsuit for plaintiff based on the allegation that she had suffered a serious impairment of body function, he spent 108 hours and 25 minutes strictly on the case against defendant. The parties disputed whether this was a difficult case. Plaintiff's counsel testified that the expenses incurred solely for this lawsuit were $846 while defendant maintained that they were $183. The parties stipulated that plaintiff and her attorney had had a professional relationship of five years duration. Further, plaintiff's counsel testified that he had entered into a one-third contingent fee arrangement with plaintiff.

The trial court indicated that its award of $7,000 was based on the six criteria outlined in Wood, supra, and Crawley, supra. This award will not be disturbed on appeal unless the finding as to "reasonableness" constituted an abuse of discretion. Wood, p 588. Defendant maintains that there was such an abuse, arguing that the issues involved in this litigation were not complex, and that the amount of the award when compared to the jury verdict is, on its face, indicative of an abuse of discretion.

Although the trial court indicated that it took the difficulty of the case into account, it did not indicate whether this factor balanced in favor of plaintiff or defendant. However, in Wood, p 588, the Court stated that a trial court need not detail its findings as to each factor considered. Even if this factor weighed in favor of defendant, we believe that when it is balanced against the remaining factors the award should be sustained. With respect to the fact that the award amounted to 46% of the jury verdict, we note that the "results achieved" constitute only one of the factors considered by the trial judge. Since the result in this case was favorable to plaintiff, the evidence supported findings favorable to plaintiff on the experience of counsel, the skill, time and labor involved, and the duration of the attorney-client relationship, we would be constrained to find an abuse of discretion merely because the issues were not complex or the amount of the award represented a large percentage of the verdict. We note that the award granted reflected an hourly rate of approximately $65. We do not believe that such a rate of compensation is unreasonable. Compare Nelson v DAIIE, 137 Mich App 226; 359 NW2d 536 (1984) (award of attorney fee which exceeded the jury verdict was upheld where the plaintiff's attorney was compensated at a rate of $75 per hour).

Plaintiff maintains that pursuant to MCL 600.6013; MSA 27A.6013, the interest awarded on the attorney fees should have accrued from the date the complaint was filed, as opposed to the date of judgment or the date that the award was granted. Defendant argues that interest on the award should begin to accrue on the date that the award was granted since the attorney fee represents expenses incurred after the filing of the complaint. Although we find that defendant's argument has merit, we believe that Wood and Liddell, supra, support an alternative conclusion.

In Wood, the Supreme Court held that interest could be awarded on overdue personal protection insurance payments pursuant to MCL 500.3142; MSA 24.13142, a provision of the no-fault act designed to penalize the recalcitrant insurer, and that interest could also be awarded on the judgment pursuant to MCL 600.6013; MSA 27A.6013, a provision of the Revised Judicature Act designed to compensate the prevailing party for the expenses incurred in bringing the action and for the delay in receiving money damages. In Wood, the judgment subject to the § 6013 interest provision included an award of attorney fees granted pursuant to MCL 500.3148(1); MSA 24.13148(1). Section 6013 provides that interest begins accruing as of the date of the filing of the complaint. Since the Supreme Court held that § 6013 was properly applied to the judgment which included the attorney fees, we believe that the Supreme Court has implicitly endorsed the finding that interest on an award of attorney fees granted pursuant to § 3148(1) begins accruing as of the date of the filing of the complaint.

In Liddell, supra, the insurer challenged an award of interest on attorney fees granted pursuant to § 3142(3). Since this provision allows for interest on overdue payments but makes no mention of whether interest should be awarded on attorney fees, this Court held that the provision was improperly applied to the attorney fees. The Court stated

that "[i]n the absence of [a] statute authorizing a special interest payment for attorney fees, the standard judgment interest rate of six percent [i.e., the amount allowed by § 6013 which is now twelve percent] is applicable." 102 Mich App 653. Again, such a holding compels the finding that interest on an award of attorney fees granted pursuant to § 3148(1) will begin accruing on the date that the complaint was filed.

We hold that the trial court erred in finding that the interest on attorney fees began accruing on October 26, 1984. Consistent with § 6013, the interest should have accrued from February 24, 1983, the date that the complaint was filed. Thus, while we affirm the award of attorney fees, we remand to the trial court and direct it to enter a judgment consistent with this opinion.

/s/ S. Jerome Bronson
/s/ Glenn S. Allen, Jr.
/s/ Michael H. Cherry