

STATE OF MICHIGAN

IN THE 20th CIRCUIT COURT FOR THE COUNTY OF OTTAWA
SPECIALIZED BUSINESS DOCKET

414 Washington Street
Grand Haven, MI 49417
616-846-8315

* * * * *

M. VLIEM & ASSOCIATES, LLC,

Plaintiff,

v

GUY ALDERTON,

Defendant.

OPINION AND ORDER
ON MOTION FOR
ATTORNEY FEES

Ottawa File No. 21-06563-CB

Ogemaw File No. 21-651920-CB

Hon. Jon A. Van Allsburg

At a session of said Court, held in the Ottawa County
Courthouse in the City of Grand Haven, Michigan,
on the 21st day of June, 2022,

PRESENT: HON JON A. VAN ALLSBURG, CIRCUIT JUDGE

This motion stems from an action for damages against the sole member of a limited liability company. Plaintiff, M. Vliem & Associates, LLC (Vliem), a judgment creditor of Creative Minds Solutions, LLC (CMS), seeks to hold the defendant, Guy Alderton (Alderton) personally liable for the judgment debt of CMS on the ground that he disregarded CMS as a separate entity and converted its funds. On September 16, 2020, this Court entered a consent judgment, in favor of plaintiff and against CMS, in the amount of \$31,910.52.¹

On October 18, 2021, this Court granted defendant's motion for a change of venue to Ogemaw County, Michigan, pursuant to MCR 2.223. On October 22, 2021, plaintiff's motion for reconsideration was denied because this Court found that plaintiff's original injury occurred in Ogemaw County, where Alderton's alleged conversion and disregarding of the LLC entity occurred, pursuant to MCL 600.1629(1)(a).

On or about February 11, 2022, in the Ogemaw County Circuit Court, defendant filed a motion for reconsideration regarding his request for costs and attorney fees stemming from his change of venue motion filed and heard in this Court. On April 28, 2022, the Ogemaw Court

¹ *M. Vliem & Associates, LLC v Creative Minds Solutions, LLC*, Ottawa County 20th Circuit Court, issued September 16, 2020 (Case No. 2019-0619-CB).

denied defendant's motion and remanded the matter back to this Court for a "further hearing on the issue of costs, expenses, and attorney fees relative to the transfer."²

Before this Court is defendant's Motion to Determine Costs and Attorney Fees Incurred Due to Venue Improperly Laid.

I. Argument

First, plaintiff argues that the mandatory fee provisions of MCL 600.1653³ apply only to "an action based on tort" and that plaintiff's complaint does not "not reveal a claim of a tort." Instead, plaintiff argues that its complaint sought "to pierce the corporate veil." However, plaintiff has specifically argued that defendant has committed conversion in this action. In addition, this Court previously concluded that plaintiff's cause of action is based on tort and that MCL 600.1629(1)(a)⁴ applies for determining venue.⁵ Accordingly, based on the plain reading of the statute, this Court finds that the mandatory fee provisions of MCL 600.1653 apply here to assess defendant's costs and reasonable attorney fees.

² *M. Vliem & Associates, LLC v Guy Alderton*, Order of the Ogemaw County 34th Circuit Court, issued April 28, 2022 (Case No. 21-65920-CB). The court stated, and this Court agrees, that a hearing involving reasonable attorney fees "must be held in the court that changed venue and not the court the case is transferred to." *Id.* at 2. In support, the court added the following:

This finding is based upon the plain language of MCL 600.1653 which provides "[i]f a party brings a motion for change of venue in an action based on tort alleging improper venue, **the court shall** award expenses and costs as follows: (a) If the motion is granted, **the court shall**, after opportunity for hearing, require the party who opposed the motion to pay the moving party the reasonable expenses, including reasonable attorney fees...." *Id.* at 2 (emphasis in original).

The court added that "although the transferring court on a change of venue is immediately divested of any jurisdiction over substantive issues, the transferring court does have jurisdiction to hear requests related to costs and expenses 'relative to the transfer.'" *Id.* citing *Frankfurth v Detroit Med Ctr*, 297 Mich App 654, 658-659; 825 NW2d 353 (2012) (emphasis in original).

³ MCL 600.1653 states, in part:

If a party brings a motion for a change of venue in an action based on tort alleging improper venue, the court shall award expenses and costs as follows:

- (a) If the motion is granted, the court shall, after opportunity for a hearing, require the party who opposed the motion to pay to the moving party the reasonable expenses, including reasonable attorney fees, incurred in obtaining the order and to pay the statutory filing fee applicable to the court to which the action is transferred....

⁴ (1) Subject to subsection (2), in an action based on tort or another legal theory seeking damages for personal injury, property damage, or wrongful death, all of the following apply:

- (a) The county in which the original injury occurred and in which either of the following applies is a county in which to file and try the action:
 - (i) The defendant resides, has a place of business, or conducts business in that county.
 - (ii) The corporate registered office of a defendant is located in that county.

⁵ *M. Vliem & Associates, LLC v Guy Alderton*, Opinion and Order of the Ottawa County 20th Circuit Court, issued October 22, 2021 (Case No. 21-06563-CB).

Next, plaintiff argues that any attorney fees that defendant accrued during, and in preparation for, proceedings in the Ogemaw County Circuit Court should not be awarded.⁶ Plaintiff claims that these fees are unreasonable because they are not related to “obtaining the order.”⁷ This Court agrees. Defendant alleges that he tried to file a motion for costs and fees in this Court prior to filing it with the Ogemaw Court. Defendant argues that this Court would not accept his motion because “it mistakenly believed that it no longer had jurisdiction.”⁸ This allegation is inaccurate. This Court did not make any such ruling or declaration. It is likely that this Court’s Clerk’s Office denied defendant’s filing because, at the time of his request, this case was transferred to Ogemaw County. If this was the case, defendant should have brought the appropriate legal authority to the attention of the Court.⁹ Further, as plaintiff asserts, defendant does not provide any legal authority for this Court to award fees and costs for proceedings in front of another court. Ultimately, plaintiff should not have to pay for defendant’s mistake. Accordingly, this Court finds that plaintiff is not responsible for defendant’s fees and costs between October 22, 2022, and May 4, 2022.¹⁰

II. Calculation of Attorney Fee

“Michigan follows the ‘American rule’ with respect to the payment of attorney fees and costs. Under the American rule, attorney fees generally are not recoverable from the losing party as costs in the absence of an exception set forth in a statute or court rule expressly authorizing such an award.”¹¹ Here, MCL 600.1653 mandates that this Court award expenses and costs to defendant because this Court is the transferring court that granted defendant’s motion for a change of venue based on tort alleging improper venue.

In *Pirgu v United Services Auto Association*, the Michigan Supreme Court set forth a four-step process that a trial court must employ in calculating a reasonable attorney fee.¹² First, this Court must determine the “reasonable hourly rate” for the attorney’s services.¹³ Here, plaintiff and

⁶ Plaintiff cites this Court’s Register of Actions, which shows that defendant took no action on this case in this Court between October 22, 2021 and May 4, 2022.

⁷ MCL 600.1653.

⁸ Defendant’s Brief, p 3.

⁹ For example, defendant could have sent a “Judge’s Copy” of the rejected motion to the court or, more formally, moved for issuance of a writ of mandamus. MCR 3.301(A)(1)(c). “[A] writ of mandamus is an extraordinary remedy and will only be issued where (1) the party seeking the writ has a clear legal right to performance of the specific duty sought, (2) the defendant has the clear legal duty to perform the act requested, (3) the act is ministerial, and (4) no other remedy exists that might achieve the same result.” *Citizens Protecting Michigan’s Constitution v Secretary of State*, 280 Mich App 273, 284; 761 NW2d 210 (2008).

¹⁰ According to defendant’s invoices and itemized time spreadsheets, this is the timeframe when defendant was logging hours relating to Ogemaw County. Plaintiff claims 14.5 hours should be subtracted from the 23.3 hours claimed by defendant. After reviewing defendant’s invoices and itemized time sheets, this Court finds that the amount to be subtracted is 12.3 hours.

¹¹ *Haliw v Sterling Heights*, 471 Mich 700, 706-707; 691 NW2d 753 (2005) (citations omitted).

¹² *Pirgu v United Services Auto Ass’n*, 499 Mich 269; 884 NW2d 257 (2016).

¹³ *Id.* at 281.

defendant stipulated to the reasonable hourly rate of \$325.00. Second, this Court must decide the “reasonable number of hours” expended by the attorney, and this Court determines that to be 11 hours.¹⁴ Third, this Court must multiply the reasonable hourly rate by the reasonable number of hours, and the product is the “baseline figure,” which is \$3,575.00.¹⁵

Fourth, this Court must consider eight “up-or-down” factors and determine whether any of these factors support an increase or a decrease in the baseline figure.¹⁶ If the court relies on any of the up-or-down factors to increase—or to decrease—the baseline figure, the court should identify each up-or-down factor on which the court relies, and the court should briefly discuss its view as to that factor or factors.¹⁷ As set forth in *Pirgu*, the eight up-or-down factors are:¹⁸

The experience, reputation, and ability of the lawyer or lawyers performing the services – Defense counsel has solid qualifications and has practiced for over 25 years. However, these factors do not justify a departure from the baseline amount, as they are incorporated into counsel’s hourly rate.

The difficulty of the case, i.e., the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly – This was a rather straightforward matter with a competent attorney trying to minimize costs to his client. This factor does not justify either an upward or downward departure from the baseline amount.

The amount in question and the results obtained - Defendant was successful in his motion to change venue. Given the simplicity of the case, this factor does not justify either an upward or downward departure from the baseline amount.

The expenses incurred – The reasonable expenses total \$41.20 for filing costs in this Court. The filing costs in Ogemaw County, \$23.92, will not be awarded. This factor does not justify either an upward or downward departure from the baseline amount.

The nature and length of the professional relationship with the client – Presumably, defendant’s client was a new client and was attracted to defendant’s law office due to location, reputation, etc. And presumably, the client was not dissuaded by the fee schedule. Thus, this factor does not justify either an upward or downward departure from the baseline amount.

¹⁴ *Id.* This Court calculated the reasonable number of hours, after a review of defendant’s itemized fee statements, by subtracting 12.3 (the number this Court determined to be unreasonable) from 23.3 (the number proposed by defendant).

¹⁵ *Id.*

¹⁶ *Id.* at 282.

¹⁷ *Id.*

¹⁸ *Id.* at 281-282.

The likelihood, if apparent to the client, that acceptance of the particular employment will preclude other employment by the lawyer – There were no special circumstances contemplated by this factor present in this case. This factor does not justify either an upward or downward departure from the baseline amount.

The time limitations imposed by the client or by the circumstances – There were no time limits beyond the usual case management guidelines. This factor does not justify either an upward or downward departure from the baseline amount.

Whether the fee is fixed or contingent – This factor does not justify either an upward or downward departure from the baseline amount.

This Court concludes that the *Pirgu* factors do not justify a departure from the baseline amount. This Court orders the reimbursement of *reasonable* fees which may, or may not, reflect *actual* fees.¹⁹

III. Costs

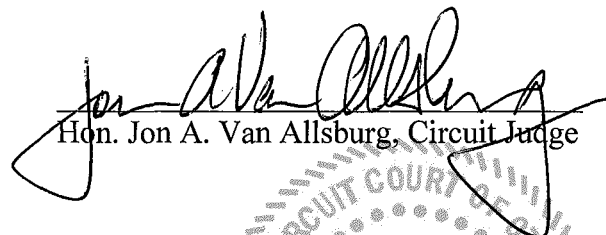
As mentioned above, the costs amount to \$41.20 and are objectively reasonable. Therefore, this entire amount is awarded.

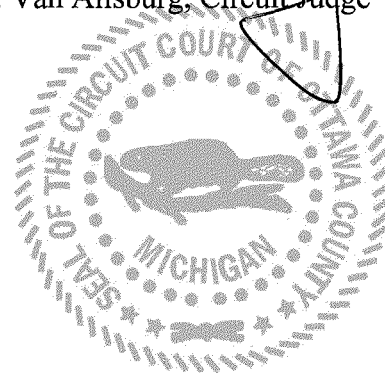
IV. Conclusion

This Court finds that the baseline figure is \$3,575.00, with reasonable costs of \$41.20, and further finds that there are no “up adjustments” or “down adjustments.” Accordingly, defendant’s motion for attorney fees is granted in the amount of \$3,616.20.

IT IS SO ORDERED.

Dated: June 21, 2022


Hon. Jon A. Van Allsburg, Circuit Judge



¹⁹ *Smith v Khouri*, 481 Mich 519, 528 n12; 7751 NW2d 472 (2008).