

STATE OF MICHIGAN  
COURT OF APPEALS

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MIDLAND NATIONAL LIFE INSURANCE  
COMPANY,

UNPUBLISHED  
May 12, 2011

Plaintiff/Counter-Defendant-  
Appellee,

v

No. 295300  
Macomb Circuit Court  
LC No. 2007-005319-CK

RALPH HENRY NIKKEL,

Defendant/Counter-Plaintiff-  
Appellant.

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Before: SAWYER, P.J., and MARKEY and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court order that granted summary disposition to plaintiff, Midland National Life Insurance Company. We affirm.

Defendant was an insurance agent and had contracted with plaintiff beginning in 2002 to sell life insurance policies and annuities. Defendant was to receive commissions from plaintiff based on sales of plaintiff's products. Defendant sold two \$200,000 annuities to a customer in the fall of 2003. Defendant informed the customer that there would be no penalty for withdrawals of up to 10% of the total amount of the annuity per year. The customer made two early withdrawals from the annuities in 2004 and 2005 that resulted in IRS penalties. Defendant did not know about IRS penalties and did not tell the customer about them. The customer was upset about the IRS charges and wrote a letter to plaintiff complaining about defendant and requesting a resolution. Specifically, the customer requested the cancellation of one annuity without surrender charges. Plaintiff agreed to cancel one of the annuities 27 months after it was purchased in order to settle the dispute with the customer and avoid the possibility of litigation. Upon cancellation of the annuity, plaintiff charged back \$18,000 in commissions previously paid to defendant. Defendant did not refund the commission and plaintiff filed suit. Summary disposition was granted in favor of plaintiff.

A trial court's decision to grant summary disposition is reviewed de novo. *Robinson v Ford Motor Co*, 277 Mich App 146, 150; 744 NW2d 363 (2007). The trial court must look at all evidence in a light most favorable to the non-moving party. *Id.* Summary disposition should be

granted only when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. *Id.*

The plaintiff and defendant entered into a contract that merged three separate forms. Two of these forms refer to the chargeback of commissions paid to agents and subagents of plaintiff. One form, the agent contract, allows plaintiff to charge back commissions at any time when plaintiff chooses to cancel a policy at its sole discretion. The second form, the commission schedule, only allows plaintiff to charge back commissions in the first year after death, surrender, partial withdrawals and cancellation, all of which are customer-initiated events.

The only issue is whether plaintiff was entitled to charge back the commissions paid to defendant on the cancelled annuity. Plaintiff argued that the cancellation was initiated in accordance with plaintiff's right to unilaterally settle the claims of any customers against the licensed agents and is entitled to charge back the commissions. However, if the cancellation was customer-initiated and was not within the first year, plaintiff would not have been entitled to charge back the commission. Defendant argued various theories throughout the case and on appeal argued that the customer initiated the cancellation through the letter requesting resolution to the complaint, triggering the provision in the commission schedule. However, defense counsel previously stated on the record that plaintiff initiated the cancellation. The trial court properly granted summary disposition because there was no genuine issue of material fact; plaintiff had the right to cancel the annuity at any time and charge back commissions, and defendant acknowledged that right.

Defendant also argues that the attorney fees were unreasonable. The reasonableness of costs and attorney fees is reviewed for an abuse of discretion. *Wood v Detroit Automobile Inter-Ins Exch*, 413 Mich 573; 321 NW2d 653 (1982). There is no abuse of discretion when the trial court's decision is within the range of principled outcomes. *Taylor v Currie*, 277 Mich App 85, 99; 743 NW2d 571 (2007).

The contract between plaintiff and defendant provided that defendant would indemnify plaintiff for any attorney fees, court costs, expenses, or money damages that might occur as a result of any legal action brought by or against defendant. This section allows plaintiff to recover attorney fees from defendant. The Michigan Supreme Court wrote in *Wood* that a trial court must consider the following factors when determining whether attorney fees are reasonable: "(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." *Wood*, 413 Mich 573, quoting *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973). The trial court does not have to give detailed findings on each factor. *Septer v Tjarksen (In re Attorney Fees & Costs)*, 233 Mich App 694, 705; 593 NW2d 589 (1999). Additionally, if sufficient evidence is provided to review the issue, an evidentiary hearing is not necessary. *John J Fannon Co v Fannon Prods, LLC*, 269 Mich App 162, 171; 712 NW2d 731 (2005).

Plaintiff provided a detailed bill of particulars outlining the work and costs associated with this case and an affidavit of counsel stating the attorney fees were reasonably calculated and at prevailing market rates, and the trial court was very familiar with the history of the case. Defendant generically disputed items in plaintiff's bill of particulars regarding research and court

time and plaintiff removed a single entry that was admittedly an error. Defendant also argued that the hourly rate charged by plaintiff's attorneys was too high, but the trial court found the rate was one often seen in this type of case.

The trial court did not analyze all of the factors in detail, but the trial court is not required to do so. *Septer* at 705. The materials provided by plaintiff were sufficient evidence for the trial court to determine the reasonableness of attorney fees. Because the trial court had sufficient evidence to determine the reasonableness of attorney fees, there was no abuse of discretion in awarding attorney fees and denying an evidentiary hearing.

Affirmed.

/s/ David H. Sawyer

/s/ Jane E. Markey

/s/ Karen M. Fort Hood