

COA Opinion: Ex-husband forced to pay ex-wife's costs and attorney's fees where he misrepresented his income at child-support hearing

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On September 16, 2010, the Michigan Court of Appeals published its opinion in *Keinz v. Keinz*, No. 292781. The plaintiff-ex-wife sought to increase the defendant-ex-husband's child-support obligations. At the first hearing on the matter, the defendant misrepresented his income, causing the need for additional proceedings. The plaintiff moved for costs and attorney's fees under MCL 600.2591. The trial court denied the motion. The Court of Appeals reversed and granted the plaintiff's request.

At the initial child-support hearing in July 2008, the defendant stated that his biweekly gross income was \$1,594.56, derived from his usual work schedule of 36 hours one week and 48 hours the next (or \$41,458.56 annually). The plaintiff believed that the defendant's income was higher and filed objections. After several additional proceedings, it was revealed that the defendant was excluding voluntary overtime from his estimated income. At the time of the July 2008 hearing, he had already earned roughly \$40,000, and he ultimately earned \$81,808.32 in 2008. Before the trial court decided the issue, the parties reached a settlement that increased the defendant's child-support payments. The trial court approved the settlement, but denied the plaintiff's request for costs and attorney's fees under MCL 600.2591. The plaintiff appealed.

The Court of Appeals first considered whether the plaintiff was the prevailing party as MCL 600.2591 requires. The court held that she was the prevailing party because the settlement resulted in higher child-support payments. Next, the court examined whether the defendant had asserted a frivolous defense. The court held that the defendant had no reasonable basis to believe that the biweekly income he reported to the court accurately represented his income, and so his argument was frivolous. Therefore, the trial court abused its discretion in failing to award the plaintiff costs and attorney's fees under MCL 600.2591. The Court of Appeals reversed and remanded.