

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 10, 2009 Session

**KEITH RAMSEY and CASSANDRA RAMSEY v. MR. T'S AUTO DETAIL
& SALES, INC., and PROFESSIONAL FINANCIAL SERVICES OF
TENNESSEE, LLC.**

**Direct Appeal from the Chancery Court for Rutherford County
No. 07-0865 CV Hon. Robert E. Corlew, III., Chancellor**

No. M2008-01865-COA-R3-CV - Filed June 8, 2009

Plaintiffs accepted an offer of judgment in this case, which offer provided that the defendant would pay \$750.00 to plaintiffs for any expenses or alleged damages. Plaintiffs then moved for attorney's fees, asserting they were the prevailing party and that under the Tennessee Consumer Protection Act and the Magnuson-Moss Warranty Act, they were entitled to attorney's fees. The Trial Court overruled the motion and on appeal, we affirm.

Tenn. R. App. P.3 Appeal as of Right; Judgment of the Chancery Court Affirmed and Remanded.

HERSCHEL PICKENS FRANKS, P.J., delivered the opinion of the court, in which D. MICHAEL SWINEY, J., and JOHN W. McCLARTY, J., joined.

Jerry E. Farmer, Murfreesboro, Tennessee, for Appellants, Keith and Cassandra Ramsey.

Terry A. Fann, Murfreesboro, Tennessee, for Appellee, Mr. T's Auto Detail and Sales, Inc.

OPINION

In this action, plaintiffs sought a rescission of the purchase of a used automobile and the financial agreement relating to the purchase. They alleged they purchased the automobile from the defendant and the car would not run properly and defendant failed to repair the automobile

despite representations that it would do so. Plaintiffs further alleged that another mechanic advised them that the car's engine needed to be replaced or rebuilt. They alleged violations of the Tennessee Consumer Protection Act and the Magnuson-Moss Warranty Act. After defendant's Answer and Counterclaim, Mr. T's submitted an Offer of Judgment to plaintiffs, offering to cancel the note to finance the car and to rescind the sale of the car. The Offer of Judgment also provided that Mr. T's would have the counterclaim dropped and notify the credit bureaus that the debt had been satisfied, and that Mr. T's would pay the court costs associated with the filing of the complaint, and would also pay plaintiffs \$750.00 for any other expenses/damages they had incurred. Plaintiffs timely accepted the Offer of Judgment, and the Court entered an Order incorporating the same.

Plaintiffs then filed a Motion for Attorney's Fees, asserting that they were the prevailing party and thus entitled to their fees under the TCPA and the Magnuson-Moss Warranty Act. Mr. T's filed a Response asserting that an additional award of fees was not proper, because the Offer of Judgment stated that plaintiffs would receive \$750.00 for "any expenses or alleged damages they may have sustained". Mr. T's also filed a Motion for Relief from Judgment. Responding to the Motions, the Court entered an Order denying the Motion for Attorney's Fees, and finding the Motion for Relief from Judgment to be moot. This appeal ensued.

The issues presented on appeal are:

1. Whether the term "all court costs associated with the filing of the complaint" in an offer of judgment made under Tenn. R. Civ. P. 68 includes attorney's fees accrued as of the time of the making of the offer when the underlying statutes define "costs" to include attorney's fees?
2. Whether either party is entitled to fees on appeal?

Appellants insist they are entitled to recover their attorney's fees accrued up to the time of the making of the offer of judgment, because the Tennessee Consumer Protection Act and the Magnuson-Moss Warranty Act both define costs to include attorney's fees. They argue that the U.S. Supreme Court in *Marek v. Chesny*, 473 U.S. 1 (1985), held that "costs" as used in Fed. R. Civ. P. 68 would include attorney's fees so long as the underlying statute defined "costs" to include the same.

Appellants' argument misapprehends the case law in several respects. First, all of the cases relied upon by appellants in their brief involve situations where the defendant made an offer of judgment that was rejected by the plaintiff, and then at trial the plaintiff ultimately received less judgment than had been offered. *See Marek*; *see also Delta Air Lines, Inc. v. August*, 450 U.S. 346 (1980). In these instances, Rule 68 provides that the offeree shall pay the "costs" that accrue after the making of the offer, and the federal courts have held that such cost awards can include attorney's fees. Those facts are distinguishable from the case before us where the plaintiff accepted an offer of judgment that specified exactly what costs or damage were to be paid. We find no cases that give guidance on whether a party can seek additional fees or costs after an offer of judgment has been

accepted. A majority view from other jurisdictions, hold that when an offer includes a reference to costs, expenses, and/or fees, a party cannot then seek additional fees after the judgment based on the offer is entered. *See State Offer of Judgment Rule - Construction, Operation, and Effect of Acceptance and Resulting Judgment*, 120 A.L.R.5th 559 (2004).

In the case before us the Judgment which plaintiffs accepted specifically provides that the defendant “will pay all court costs associated with the filing of the complaint in this cause” and that defendant “will pay Seven hundred and fifty dollars (\$750.00) to the Plaintiffs for any expenses or alleged damages they may have sustained in this matter”. The offer included reference to court costs associated with the complaint, and also to “any expenses” that the plaintiffs incurred otherwise. The word “any” would necessarily include every type of expenses, including attorney’s fees. Thus, the offer of judgment will be enforced as any other contract, and plaintiffs may not obtain additional fees after acceptance of the offer specifically providing for costs and expenses. We affirm the Trial Court on this issue.¹

Both parties have sought attorney’s fees on appeal. This is not a proper case for an award of attorney’s fees to either party. Plaintiffs are denied such fees as we find they are not the “prevailing parties”. Fees are denied to the defendant on the basis of frivolous appeal because we hold that plaintiffs’ appeal is not “so devoid of merit” as to warrant such action. *See* Tenn. Code Ann. §27-1-122; *Young v. Barrow*, 130 S.W.3d 59 (Tenn. Ct. App. 2003).

We affirm the Judgment of the Trial Court and remand, with the cost of the appeal assessed to Keith and Cassandra Ramsey.

HERSCHEL PICKENS FRANKS, P.J.

¹This holding follows the rationale in other Tennessee cases which have ruled on the issue of what “costs” are recoverable by the defendant when the plaintiff refuses an offer of judgment and then receives a less favorable judgment after trial hold that other expenses such as deposition costs, expert witness fees, and attorney’s fees are not recoverable as costs. *See Person v. Fletcher*, 582 S.W.2d 765 (Tenn. Ct. App. 1979); *Simpson v. Simpson*, 2006 WL 1735134 (Tenn. Ct. App. June 26, 2006); *Burton v. Fine*, 2004 WL 1541341 (Tenn. Ct. App. July 9, 2004); *Jordan v. CSX Transportation, Inc.*, 2001 WL 378555 (Tenn. Ct. App. Apr. 17, 2001); *Howard v. Norwood*, 2000 WL 679228 (Tenn. Ct. App. May 25, 2000). *Cf.* The federal rule developed in the federal case law interpreting Fed. R. Civ. P. 68. *See Marek and Delta, supra.*