

STATE OF MICHIGAN
COURT OF APPEALS

FIORITA MORAVCIK and LEONARD
MORAVCIK,

UNPUBLISHED
March 24, 2009

Plaintiffs-Appellees,

v

No. 281838
St. Clair Circuit Court
LC No. 04-002447-NH

TRINITY HEALTH-MICHIGAN d/b/a MERCY
HOSPITAL-PORT HURON and DR. BRIAN
PIAZZA,

Defendants,

and

ST. CLAIR SURGICAL GROUP, P.C.,

Defendant-Appellant.

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Defendant St. Clair Surgical Group, P.C. (SCSG), appeals as of right from the trial court's order denying its motion requesting attorney fees and costs. We reverse and remand for further proceedings consistent with this opinion. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Underlying this appeal is plaintiffs' medical malpractice suit. Prior to trial, the parties participated in case evaluation. The case evaluation panel unanimously returned an aggregate award of \$220,000 in favor of plaintiffs against all defendants. The award broke down as follows: \$125,000 against SCSG and defendant Dr. Brian Piazza; \$75,000 against SCSG for its employee Dr. Valjee; and \$20,000 against defendant Trinity Health. All parties rejected the award, and the case proceeded to trial. The jury returned a verdict of no cause of action in favor of all defendants.

After trial, SCSG moved for case evaluation sanctions and taxable costs, taking the position that it was entitled to these as a matter of law because all parties had rejected case evaluation and the verdict of no cause of action was more favorable to SCSG than the case evaluation award. MCR 2.403(O); MCR 2.625. The trial court denied the motion, finding that

SCSG's costs were not "necessitated" by plaintiffs' rejection of case evaluation because SCSG made no effort to negotiate a settlement with plaintiffs. The trial court also indicated that SCSG was not entitled to "actual costs" but only "costs" even if it were to grant such an award.

The proper interpretation and application of a court rule is a question of law, which we review de novo. *CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549, 553; 640 NW2d 256 (2002); *Bauroth v Hammoud*, 465 Mich 375, 378; 632 NW2d 496 (2001).

The relevant court rule, MCR 2.403, provides:

(O) Rejecting Party's Liability for Costs.

(1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the evaluation.

* * *

(6) For the purpose of this rule, actual costs are

(a) those costs taxable in any civil action, and

(b) a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the case evaluation.

For the purpose of determining taxable costs under this subrule and under MCR 2.625, the party entitled to recover actual costs under this rule shall be considered the prevailing party.

In *Haliw v Sterling Heights (On Remand)*, 266 Mich App 444, 447; 702 NW2d 637 (2005), this Court stated that unless an exception applies, MCR 2.403(O) sets forth a "mandatory rule" that a party who rejects a case evaluation "must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation." See, also, *Allard v State Farm Ins Co*, 271 Mich App 394; 722 NW2d 268 (2006). *Haliw* also made it clear that "[a]ctual costs, including attorney fees, are awardable when both parties reject the award as well as when only one does." *Haliw, supra* at 450, quoting *Zalut v Andersen & Assoc, Inc*, 186 Mich App 229, 232-234; 463 NW2d 236 (1990) (emphasis added).

In this case, there is no question that all parties rejected the case evaluation award and that all defendants prevailed when the jury returned a no-cause verdict. That verdict was more favorable to defendants than the case evaluation award. None of the court rule exceptions apply in this case. Thus, the trial court was required to award SCSG actual costs, including reasonable attorney fees. *Allard, supra; Haliw, supra*. The trial court impermissibly added its own restriction that an award of costs also depended on the rejecting party's willingness to settle. The court rule allows certain, narrow exceptions, but rejecting settlement offers is not one of them.

SCSG's refusal to attempt to settle was completely vindicated by the jury's verdict; defendants were clearly not the ones who forced the trial to take place and were not required to surrender those defenses and settle with plaintiff.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood
/s/ Alton T. Davis