

SUPREME COURT OF MICHIGAN

Dessart v. Burak, 470 Mich. 37

678 N.W.2d 615 (2004) · No. 122238 · Decided May 5, 2004

SUMMARY

The Supreme Court of Michigan affirmed the denial of mediation sanctions under MCR 2.403 in an automobile-negligence action. The court held that attorney fees are not included in “assessable costs” used to adjust a verdict, and that assessable costs are limited to those incurred between filing the complaint and the case evaluation date.

CASE DETAILS

COURT	Supreme Court of Michigan
WRITING FOR THE COURT	Corrigan, C.J.; Cavanagh, J.; Kelly, J.; Markman, J.; Taylor, J.; Weaver, J.; Young, J.
JURISDICTION	Michigan
DECIDED	May 5, 2004
DOCKET	122238
DISPOSITION	affirmed
PROCEDURAL POSTURE	Plaintiffs appealed the denial of mediation sanctions under Michigan Court Rule 2.403 after a jury verdict in their favor was less than the case evaluation. The Michigan Supreme Court granted review and affirmed the Court of Appeals.
STANDARD OF REVIEW	De novo review applies to the interpretation of a court rule because it presents a question of law.
PRECEDENTIAL VALUE	Published Michigan Supreme Court memorandum opinion; precedential status is not otherwise specified in the provided text.
PARTIES	William C. Dessart, Shiela A. Dessart v. Lynn Marie Burak, Bryan R. Burak

TOPICS

- mediation
- civil procedure
- attorney fees
- statutory interpretation
- negligence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether attorney fees are included in assessable costs used to adjust a verdict under MCR 2.403(O)(3).
2. Whether assessable costs used to adjust a verdict under MCR 2.403(O)(3) are calculated through the date of the verdict or only through the date of the mediation or case evaluation.

HOLDINGS

1. Attorney fees are not included in assessable costs used to adjust a verdict under MCR 2.403(O)(3), although attorney fees may be included in actual costs awarded as a mediation sanction under MCR 2.403(O)(6).
2. Assessable costs used to adjust the verdict under MCR 2.403(O)(3) are limited to costs incurred between the filing of the complaint and the date of the mediation or case evaluation, not costs incurred through trial or the verdict.

KEY QUOTATIONS

“We conclude, therefore, that attorney fees are not included in “assessable costs” under MCR 2.403(O)(3).”
(470 Mich. at 38)

“We also agree that in adjusting a verdict under MCR 2.403(O)(3), assessable costs are limited to those incurred between the filing of the complaint and the date of the mediation evaluation or case evaluation.”
(470 Mich. at 39)

FACTUAL BACKGROUND

William Dessart and Lynn Burak were involved in an automobile collision, and William and Shiela Dessart brought a third-party negligence action. A mediation panel evaluated the case at \$120,000; the plaintiffs accepted the evaluation, but the defendants rejected it. After trial, a jury awarded the plaintiff \$100,000, and the plaintiffs sought mediation sanctions based on an adjusted verdict that included attorney fees and costs through the verdict date.

PROCEDURAL HISTORY

After a jury awarded plaintiff \$100,000 following defendants' rejection of a \$120,000 case evaluation, the circuit court denied plaintiffs' motion for mediation sanctions. The Court of Appeals affirmed, holding that attorney fees were not assessable costs for adjusting the verdict and that assessable costs were limited to the period from filing the complaint through the case evaluation. The Michigan Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- CAM Constr. v. Lake Edgewood Condo. Ass'n, 465 Mich. 549, 553, 640 N.W.2d 256 (2002)
- 252 Mich. App. 490, 652 N.W.2d 669 (2002)
- Beach v. State Farm Mut. Automobile Ins. Co., 216 Mich. App. 612, 550 N.W.2d 580 (1996)
- Grow v. W A Thomas Co., 236 Mich. App. 696, 601 N.W.2d 426 (1999)
- Haveman v. Kent County Road Commissioners, 356 Mich. 11, 18, 96 N.W.2d 153 (1959)
- Kales v. Oak Park, 315 Mich. 266, 271, 23 N.W.2d 658 (1946)
- Hopkins v. Hopkins, 287 Mass. 542, 547, 192 N.E. 145 (1934)
- Nemeth v. Abonmarche Dev., Inc., 457 Mich. 16, 37-38, 576 N.W.2d 641 (1998)
- Barnhart v. Thomas, 540 U.S. 20, 124 S. Ct. 376, 157 L. Ed. 2d 333 (2003)