Court of Appeals, State of Michigan

ORDER

Glenn N. Miller, D.C. v Faye Lee Whitlock

Docket No. 257558

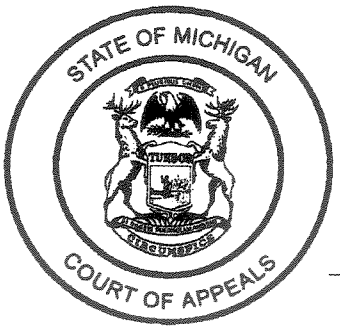
LC No. 04-000434-AV

David H. Sawyer
Presiding Judge

Richard A. Bandstra

Joel P. Hoekstra
Judges

Pursuant to MCR 7.205(D)(2), in lieu of granting the application for leave to appeal, the portion of the April 1, 2004, order of the district court subjecting plaintiff to offer of judgment sanctions and the August 10, 2004, order of circuit court affirming that ruling of the district court are VACATED. The district court erred in treating plaintiff's November 14, 2002, letter as a "counteroffer." Even assuming arguendo that plaintiff's November 14, 2002, letter constitutes an offer within the meaning of MCR 2.405(A)(1), plaintiff's November 14, 2002, letter is nevertheless not a "counteroffer" within the meaning of MCR 2.405(A)(2) because it was not served within 21 days after service of defendant's July 24, 2002, offer. Where no counteroffer is made, the offer is used as the average offer. MCR 2.405(A)(3). Hence, the average offer is the amount of defendant's July 24, 2002, offer, which is less than the adjusted verdict. Accordingly, defendant is not entitled to an award of offer of judgment sanctions under MCR 2.405(D)(1). However, there is no merit in plaintiff's converse argument that the district court abused its discretion in failing to award him his actual costs. Because plaintiff did not make a counteroffer to defendant's July 24, 2002, offer, plaintiff is not entitled to an award of his actual costs. See MCR 2.405(A)(2), MCR 2.405(D)(2). This case is REMANDED to the district court for entry of an order denying defendant's Motion for Sanctions for Rejection of Offer to Settle. We do not retain jurisdiction in this matter.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

FEB 0 2 2005
Date

Sandra Schultz Mengel
Chief Clerk