STATE OF MICHIGAN

COURT OF APPEALS

CHRIS KATSIKAS, individually and d/b/a CK CONSULTANTS,

Plaintiff-Counter Defendant-Appellee,

v

SANDRA CRANE and J & S CRANE, INC., d/b/a COTTAGE INN PIZZA,

Defendants-Counter Plaintiffs-Appellants.

UNPUBLISHED
February 14, 1997

No. 187405
Oakland Circuit Court
LC No. 94-481038

Before: Doctoroff, P.J. and Hood and Paul J. Sullivan,* JJ.

PER CURIAM.

Defendants appeal as of right from the trial court's order denying their motion for relief pursuant to MCR 2.114 and granting plaintiff's motion for costs pursuant to MCR 2.405 against defendant J & S Crane, Inc. In addition, defendant Sandra Crane appeals by right from the trial court's order denying her motion for mediation sanctions. We affirm.

Plaintiff originally filed this action in small claims court to collect sums for engineering services rendered to defendants. Defendants then filed a counter-complaint alleging professional malpractice against plaintiff and removed the case to circuit court. The case went to mediation and the mediation panel recommended an award of $11,000 to defendants. The panel's recommendation was accepted by defendants but rejected by plaintiff. Trial was scheduled for March 6, 1995.

On February 24, 1995, ten days prior to the scheduled trial date, plaintiff served an offer to stipulate to entry of judgment pursuant to MCR 2.405 on defendants. The terms of the offer were that defendant pay plaintiff $1,600 and plaintiff pay defendant $1,500. Pursuant to MCR 2.115(B), defendants filed a motion to strike plaintiff's offer of judgment, claiming that plaintiff's offer was untimely because it was served only 10 days prior to the scheduled trial date. Defendants alleged that this was in

---

* Circuit judge, sitting on the Court of Appeals by assignment.

violation of MCR 2.405(B), which requires that an offer to stipulate to entry of judgment be served at least 28 days prior to trial.

The trial court placed the case on standby status on March 6, 1995. On March 26, 1995, defendants served a "response to offer of judgment, counter offer and/or offer of judgment" for $16,000 in favor of defendants. Plaintiff did not respond to this offer. Trial was eventually held on May 22, 1995, and the jury found in favor of plaintiff in the amount of $1,600 against defendant J & S Crane, but returned a verdict of no cause of action on plaintiff's claim against defendant Sandra Crane. The jury also rendered a verdict in favor of plaintiff on defendants' counter-claims against plaintiff. Following the jury verdict, the trial court considered several motions which are now at issue in this appeal.

First, defendants argue that the trial court erred by granting plaintiff's motion for costs pursuant to MCR 2.405. Defendants contend that plaintiff's offer of judgment was invalid because it was served only 10 days prior to the scheduled trial date and, therefore, it was untimely. Defendants contend that the trial court should have looked to the scheduled trial date rather than the actual trial date in determining whether plaintiff's offer of judgment was timely pursuant to MCR 2.405(B). We disagree.

Interpretation of a court rule is a question of law which is reviewed de novo by this Court. *Auto Club Ins Ass'n v General Motors Corp*, 217 Mich App 594, 598; 552 NW2d 523 (1996). MCR 2.405(B) provides:

> Until 28 days before trial, a party may serve on the adverse party a written offer to stipulate to the entry of a judgment for the whole or part of the claim, including interest and costs then accrued.

We find that the trial court properly ruled that plaintiff's offer of judgment was timely. May 22, 1995, the date that the trial was actually held, is the date that should be used to determine the timeliness of plaintiff's offer. *Wilkins v Gagliardi*, 219 Mich App 260, 273-274; ___ NW2d ___ (1996). Plaintiff's offer was served on February 24, 1995, nearly three months before the case was tried. Thus, the offer was clearly within the requirements of the court rule.

The alleged untimeliness of plaintiff's offer of judgment is also the basis of defendants' argument that the trial court erred when it denied their motion for relief pursuant to MCR 2.114. Therefore, for the reasons discussed above, we also reject defendants' argument on this issue.

Next, defendants challenge the trial court's decision that plaintiff was entitled to recover costs pursuant to MCR 2.405. Defendants contend that the court rule precludes plaintiff from recovering costs because he did not respond to their offer of judgment. We disagree. MCR 2.405(D)(2) provides that an offeree who does not make a counter-offer is precluded from recovering actual costs under the rule. *Beveridge v Shore Crest Lanes*, 204 Mich App 466, 470; 516 NW2d 117 (1994). However, where there are two offers, MCR 2.405(D) is inapplicable and either party is entitled to recover costs if the jury's verdict is more favorable when compared to their own offer. *Id*. In this case, defendants'

response to plaintiff's offer of judgment was served nine days too late to be considered a counter-offer, and is therefore deemed to be a separate offer of judgment. Accordingly, MCR 2.405(D) does not preclude plaintiff from recovering costs. *Id.*

Defendants also argue that the trial court abused its discretion in awarding plaintiff attorney fees pursuant to MCR 2.405. This Court will not reverse a trial court's decision to award sanctions under MCR 2.405 unless there was an abuse of discretion. *JC Building Corp II v Parkhurst Homes, Inc*, 217 Mich App 421, 426; 552 NW2d 466 (1996). Defendants contend that plaintiff filed an untimely offer of judgment and then forced the matter to trial by rejecting the mediation award and refusing to settle. Defendants thus argue that, pursuant to the "interest of justice" provision of MCR 2.405,[1] the trial court should have denied plaintiff's request for attorney fees. We find no abuse of discretion in the trial court's refusal to invoke the interest of justice exception in this case. The offer of judgment was timely, and defendants remaining allegations do not rise to the level of "gamesmanship" required for a trial court to deny attorney fees in the interest of justice. *Luidens v State of Michigan 63rd District Court*, 219 Mich App 24, 35; ___ NW2d ___ (1996).

Next, defendants contend that the trial court failed to consider the factors for determining a reasonable attorney fee, which this Court set forth in *Crawley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973), and thus, plaintiff's award should be reversed. We disagree. The trial court stated on the record that it had considered the appropriate factors in determining the amount of the award. Therefore, we will defer to the trial court's determination on this issue.

Defendant Sandra Crane also argues that the trial court erred when it denied her motion for mediation sanctions pursuant to MCR 2.403(O). Defendant's argument is misplaced because the controlling rule is MCR 2.405, which provides:

> (E) In an action in which there has been both the rejection of a mediation award pursuant to MCR 2.403 and a rejection of an offer under this rule, the cost provision of the rule under which the later rejection occurred control, except that if the same party would be entitled to costs under both rules costs may be recovered from the date of the earlier rejection.

In this case, defendant Crane's rejection of plaintiff's offer of judgment occurred after plaintiff's rejection of the mediation award. Therefore, sanctions under MCR 2.405 control and defendant is not entitled to mediation sanctions under MCR 2.403(O). *Luidens, supra*, at 29. We affirm the trial court's decision to deny defendants' motion for mediation sanctions.

Defendant J & S Crane also contends that the trial court erred by awarding sanctions against it because it was not a party at the time plaintiff made his offer of judgment. Defendant has abandoned this issue on appeal because it has failed to cite authority in its brief. *Shanafelt v Allstate Ins Co*, 217 Mich App 625, 643; 552 NW2d 671 (1996). In addition, we find that throughout this litigation, J & S Crane acted as a party to this action, and thus the doctrine of equitable estoppel prevents it from

denying that it was a party. See *Solitis v First of America Bank-Muskegon*, 203 Mich App 435, 444; 513 NW2d 148 (1994).

Defendants have abandoned their remaining issues raised on appeal because they have failed to cite any authority in support of their arguments. *Shanafelt*, *supra*. Moreover, we find no merit in their arguments.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Harold Hood
/s/ Paul J. Sullivan

[1] The provision provides that, "[t]he court may, in the interest of justice, refuse to award an attorney fee under this rule." MCR 2.405(D)(3).