

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the WILLIAM AND LEONA
STEWART REVOCABLE TRUST.

JULIE GAUSDEN SCHRECK, MATTHEW
GAUSDEN, ALEXANDER J. SCHRECK, Minor,
and GRAHAM D. GAUSDEN, Minor,

UNPUBLISHED
March 28, 2006

Petitioners-Appellees,

v

ARLENE STEWART, Personal Representative of
the Estate of JAMES STEWART, and JEFFREY
STEWART,

No. 259019
Wayne Probate Court
LC No. 00-623815-TV

Respondents-Appellants.

Before: Neff, P.J., and Saad and Bandstra, JJ.

MEMORANDUM.

Respondents appeal as of right from a judgment entered for petitioners following case evaluation. We affirm in part, reverse in part, and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This suit involved a dispute over the assets of a trust. The minor children's claims were settled, and they were dismissed from the suit. The adult petitioners' claims were resolved by case evaluation. Respondents refused to execute a proposed settlement, claiming that the probate court first had to pass on the matter pursuant to MCR 2.420. The probate court disagreed and entered judgment for the adult petitioners, and awarded them prejudgment interest and costs.

The construction, interpretation and application of the court rules is a question of law that is reviewed de novo on appeal. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003).

MCR 2.420 governs settlement of an action brought for a minor by a next friend, guardian, or conservator. MCR 2.420(A). This case did not involve a civil action, see MCR 2.101(B); MCR 5.101(A), (C), and neither of the minor children was represented by a next friend, guardian, or conservator. This case involved a trust proceeding. MCR 5.101(A)-(C). The settlement did not involve the minors' claims, and the adult petitioners whose claims were at

issue did not share in the settlement made on behalf of the minors. Therefore, the probate court did not err in concluding that MCR 2.420 was inapplicable to the settlement at issue.

If a contested proceeding in a probate matter is sent to case evaluation, MCR 2.403 “shall apply to the extent feasible, except that sanctions must not be awarded unless the subject matter of the case evaluation involves money damages or division of property.” MCR 5.143(B). If all parties accept the case evaluation and the award is not paid within four weeks after notice of acceptance, the court is to enter a judgment in accordance with the evaluation. “The judgment . . . shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest to the date it is entered.” MCR 2.403(M)(1). The case evaluation panel determines if costs, fees, or interest should be included in the evaluation. If the panel declines to award costs, fees, or interest, the parties’ acceptance of the evaluation waives the subsequent raising of the issue in the trial court. *Larson v Auto-Owners Ins Co*, 194 Mich App 329, 332; 486 NW2d 128 (1992). Therefore, the probate court erred in awarding petitioners interest and costs.

Affirmed in part, reversed in part and remanded for entry of a judgment in accordance with this opinion. Jurisdiction is not retained.

/s/ Janet T. Neff
/s/ Henry William Saad
/s/ Richard A. Bandstra