

STATE OF MICHIGAN
COURT OF APPEALS

ROSA WOODS,

Plaintiff-Appellant/Cross-Appellee,

v

WILLIAMS & SONS PLUMBING & HEATING,
INC., RICK WILLIAMS, a/k/a RECARDO
WILLIAMS, and THEODIS THOMAS,

Defendants-Appellees/Cross-
Appellants.

UNPUBLISHED

January 23, 2007

No. 256394

Wayne Circuit Court

LC No. 95-508913-CZ

Before: Meter, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Plaintiff appeals¹ from the trial court’s final judgment, which awarded her \$5,250 on her contract and MCPA claims, plus interest, in accordance with a jury verdict following a second trial, but merely offset that award against \$76,928.50 in mediation² sanctions awarded to defendants. With only superficial modification of the final judgment, we affirm in all respects.

Plaintiff first argues that the trial court abused its discretion by denying her motion for relief from judgment or new trial. We disagree. We review for abuse of discretion a trial court’s decisions on motions for relief from judgment and new trial. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999); *Hilgendorf v St John Hosp & Medical Center Corp*, 245 Mich App 670, 682-683; 630 NW2d 356 (2001). To support her claim, plaintiff primarily relies on assertions of gross misconduct and fraud perpetrated by her opposing counsel. However, the

¹ There remains a lingering question of the timeliness of plaintiff’s claim of appeal. To resolve this and every other issue once and for all, we will treat plaintiff’s claim of appeal as an application for leave to appeal and grant it. See *Waatti & Sons Electric Co v Dehko*, 230 Mich App 582, 585; 584 NW2d 372 (1998).

² When this case first went through the court’s evaluation process, the rules still referred to the process as “mediation” rather than “case evaluation,” see *Dessart v Burak*, 470 Mich 37, 39, n 1; 678 NW2d 615 (2004), but none of the controlling rules have substantially changed since the time the parties submitted their case to “mediation.”

record reflects that opposing counsel was generous with discovery, professional in her conduct, and extremely guarded in her presentation of evidence. The record belies plaintiff's argument that defense counsel maliciously ambushed her with someone else's medical records. Before the medical record was introduced into evidence, plaintiff reviewed it and denied that she was the "Rosa Woods" discussed in the record. Rather than merely objecting to the document's foundation, however, plaintiff read the most egregious aspects of the record aloud to the jury. Defense counsel later apologized and the trial court gave the jury a stern curative instruction. Under the circumstances, we will not reverse on the basis of a minor error that plaintiff haphazardly exacerbated. *Phinney v Perlmutter*, 222 Mich App 513, 537; 564 NW2d 532 (1997).

Regarding plaintiff's claims of fraud, they center around allegations that defendants or their counsel forged her signature on a document that was later superseded by the actual, uncontested plumbing contract. We note that the denounced signature strongly resembles others in plaintiff's exhibits, and that she attempted to explain the document on the witness stand before she argued its forgery to the jury. Moreover, plaintiff did not initially object to the document's introduction into evidence, and neither side proposed that the document was the contract or had any bearing on the parties' relative obligations. Error requiring reversal may only spring from an evidentiary ruling if the ruling adversely affects a party's substantial rights. MRE 103. Therefore, we are not persuaded that the trial court abused its discretion by holding that any irregularities in the ancillary document were harmless and did not warrant relief from judgment or a new trial. MCR 2.611; MCR 2.612.

Plaintiff also fails to substantiate any of her claimed errors related to the trial court's bias. The record reflects that the trial court was complimentary, cordial, and patiently professional, throughout years of ongoing proceedings. Contrary to plaintiff's assertions, the trial court did not abuse its discretion or otherwise "push" her by deciding not to grant plaintiff a third consecutive adjournment on the day scheduled for trial. The further delay would have prolonged the nearly eight-year-old case into another week and created further scheduling conflicts. Under the circumstances, plaintiff has failed to demonstrate how any of her "substantial rights" were "materially affected" by any of the proceedings below, so the trial court did not abuse its discretion by denying her motion for new trial. MCR 2.611(A)(1).

Next, plaintiff argues that the trial court abused its discretion by awarding defendants over \$76,000 in mediation sanctions. However, plaintiff fails to point to any error in the trial court's application of the mandatory sanctions in this case. The parties both rejected a mediation award of \$18,500 in plaintiff's favor, and defendants' improved their position at trial. MCR 2.403. Although plaintiff argues that the trial court failed to properly determine her award for costs and fees under the Michigan Consumer Protection Act, MCL 445.901, *et seq.*, plaintiff proceeded in pro per and was provided more than a year after the award of sanctions to substantiate her claim that her former attorney was owed reimbursement under the act. She did not. Moreover, in light of our disposition of the MCPA issue, any outstanding issue regarding plaintiff's attorney fees is moot. Plaintiff never substantially challenged defendants' motion for sanctions or their computation of actual costs for the eight years of litigation that followed the mediation award, and the trial court specifically found on the record that the attorney fees appeared understated and that the hourly rate presented by defense counsel was "negligible." Under the circumstances, the imposition of sanctions was appropriate, and we find no abuse of

discretion in the trial court's determination of the sanctions. *Campbell v Sullins*, 257 Mich App 179, 197-198, 205; 667 NW2d 887 (2003).

On cross appeal, defendants first argue that the trial court abused its discretion by vacating the verdict and ordering the second trial. We disagree. Defendants merely argue that the verdict was conceivably consistent with the facts, so the trial court should have left it intact. However, the trial court did not merely find that the verdict was inconsistent. It found that the verdict ran contrary to the great weight of the evidence and failed to conform to the law. MCR 2.611(A)(1)(e). At issue was the fact that the jury found the Williams & Sons (a plumbing corporation) liable for negligence without assigning any liability to any of the individual professionals, which appeared to run contrary to our holding in *Burrows v Bidigare/Bublys, Inc*, 158 Mich App 175, 183-184; 404 NW2d 650 (1987). The trial court indicated that the evidence did not support the proposition that the negligence could be unrelated to defendants' plumbing operations, so the failure to include legally liable professionals individually created an anomalous and potentially prejudicial resolution that did not conform to the law or the presented facts. See *Burrows, supra*; MCL 450.226. Under the circumstances, the trial court did not abuse its discretion by granting a second trial. Defendants fail to provide any legal support for their argument that the trial court should have at least dismissed the contract and MCPA claims and limited the second trial to the negligence claim alone, so this issue has been abandoned. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

Defendants next claim that the trial court should have granted their motion for directed verdict for plaintiff's MCPA claims because the act does not apply to work, such as plumbing, that is authorized and regulated by a state administrative board. We agree, but our remedial options are limited to superficial relief. The individual defendants in this case were licensed plumbers, and they were hired by plaintiff to install and renovate, and later were also enlisted to repair, various plumbing pipes and fixtures throughout plaintiff's house. At the time defendants began performance of the contract, and continuing through today, Michigan has a state plumbing board that closely regulates the state's plumbers and exercises substantial control over their activities and licenses. MCL 338.907 (repealed March 31, 2003); MCL 338.3523.

According to MCL 445.904(1)(a), the MCPA "does not apply to . . . [a] transaction or conduct specifically authorized under laws administered by a regulatory board or officer acting under statutory authority of this state or the United States." In *Smith v Globe Life Ins Co*, 460 Mich 446, 465-466; 597 NW2d 28 (1999), the Supreme Court interpreted this language as a specific preclusion of the act's application to *any* activities in Michigan that were conducted under the auspices of a professional license and subject to the authority of a regulatory board. Because the defendants Williams and Thomas conducted the plumbing renovation, installation, and repair project, however irresponsibly or inadequately, pursuant to their licensure and subject to the authority of the state plumbing board, the MCPA does not apply. MCL 445.904(1)(a). Although we agree with defendants' claim of error, the correct remedy would ordinarily be to dismiss the MCPA claim and grant a new trial on the contract claim, because that is the remedy that would return the parties to the position they held before the error occurred. See generally

United States v. Mechanik, 475 US 66, 71; 106 S Ct 938; 89 L Ed 2d 50 (1986).³ However, defendants adamantly oppose plaintiff's several appellate claims for a third trial and do not formally request this relief. Instead, defendants request that we either reinstate the first verdict or affirm the trial court's final judgment in all respects. In any event, the trial court never awarded any special damages associated with plaintiff's MCPA claim, because plaintiff proceeded in pro per. Therefore, reversing the entire judgment on these grounds serves no practical purpose and would further waste judicial resources. Under the circumstances, we simply affirm the trial court's final judgment and award of mediation sanctions, and only superficially modify the judgment to reflect that plaintiff's MCPA claim is dismissed as invalid and unenforceable.

Affirmed in part and modified in part.

/s/ Patrick M. Meter
/s/ Peter D. O'Connell
/s/ Alton T. Davis

³ Likewise, even if we accepted defendants' argument that the trial court should have limited the second trial to the negligence claim, the proper recourse would be remand for a third trial on plaintiff's negligence issue alone.