

STATE OF MICHIGAN
COURT OF APPEALS

FLORENCE B. MIKLE, M.D.,

Plaintiff-Appellant,

V

REGIONAL MEDICAL LABORATORIES
PATHOLOGISTS, P.C.,

Defendant-Appellee.

UNPUBLISHED

August 19, 2003

No. 239217

Calhoun Circuit Court

LC No. 01-004214-CK

FLORENCE B. MIKLE, M.D.,

Plaintiff-Appellant/Cross-Appellee,

V

KARL F. LOOMIS, JON L. NEUMANN,
TERESA M. MYERS, and REGIONAL
MEDICAL LABORATORIES PATHOLOGISTS,
P.C.,

Defendant-Appellees/Cross-
Appellants.

No. 239218

Calhoun Circuit Court

LC No. 00-000943-CB

Before: Neff, P.J., Fort Hood and Borrello, JJ.

PER CURIAM.

Plaintiff appeals by right from an order granting defendants summary disposition under MCR 2.116(C)(6) and MCR 2.116(C)(7). Defendants cross-appeal by right from a judgment in plaintiff's favor for \$300,000, pursuant to a case evaluation award issued under MCR 2.403. We affirm.

After defendants discharged her, plaintiff filed a twelve-count action against them, and she was ultimately awarded a \$300,000 case evaluation. During the time period that plaintiff and defendants could either accept or reject the award, a hearing for summary disposition was held on the same matter. Defendants accepted the award, and fifteen days later, the trial court issued an opinion summarily disposing of the case in defendants' favor. After the trial court's opinion was issued, plaintiff also accepted the award. The trial court then denied defendants' motion to enter an order dismissing the case pursuant to its opinion, and instead entered judgment on the case evaluation award in plaintiff's favor.

The case evaluation award was "in settlement of all claims," and the trial court's judgment on the award stated, "This judgment is a full and final resolution of all of Plaintiff's claims." Meanwhile, from the time plaintiff had been discharged, and throughout the mediation, defendants had continued to make installment payments to plaintiff pursuant to their employment agreements, and they discontinued making these payments soon after the order was entered on plaintiff's award. The trial court later concluded that the award must be off-set by the contractual installment payments made by defendants after the award was issued.

II

On appeal, plaintiff first argues the trial court erred by modifying the judgment on plaintiff's case evaluation award, thereby off-setting the award with the contractual installment payments made by defendants. Because we conclude the trial court order entering judgment on the award resolved all claims between the parties and encompassed defendants' contractual payments, we hold the trial court did not err with respect to this issue.

We review questions of law de novo. *In re Jude*, 228 Mich App 667, 670; 578 NW2d 704 (1998). Interpretation of a court rule, like a matter of statutory interpretation, is a question of law that this Court reviews de novo. *Marketos v American Employers Ins Co*, 465 Mich 407, 413; 633 NW2d 371 (2001).

An accepted mediation evaluation serves as a final adjudication of the claims mediated and is as binding on the parties as is a consent judgment. *Joan Automotive Industries, Inc v Check*, 214 Mich App 383, 389-390; 543 NW2d 15 (1995), lv den 453 Mich 899; 554 NW2d 313 (1996), overruled on other grounds, *CAM Construction v Lake Edgewood Condominium Assoc*, 465 Mich 549; 640 NW2d 256 (2002). Regarding acceptance of a case evaluation, MCR 2.403(M)(1) provides:

If all the parties accept the panel's evaluation, judgment will be entered in accordance with the evaluation, unless the amount of the award is paid within 28 days after notification of the acceptances, in which case the court shall dismiss the action with prejudice. The judgment or dismissal shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest to the date it is entered.

We find the contractual installment payments in the present case were clearly encompassed in the case evaluation award. The contractual installment payments were part of

plaintiff's initial complaint, and they were submitted to case evaluation. See *CAM Construction, supra* at 556-557.

Therefore, the trial court properly modified the case evaluation award to off-set the amount of installment payments defendants made to plaintiff after the award was issued, because the award, and thereafter, the order entering judgment on the award, resolved all claims between the parties, including any contractual installment payments due to plaintiff.

III

Plaintiff next contends that the trial court erred by modifying the order and crediting defendants the amount of contractual installment payments made to plaintiff after the award was issued, because by doing so, it reduced the amount of the case evaluation award and violated MCR 2.403(M)(1). We disagree.

MCR 2.403(M)(1) provides that "If all parties accept the panel's evaluation, judgment will be entered in accordance with the evaluation . . ." Here, the trial court initially entered judgment in accordance with the case evaluation award. However, pursuant to MCR 2.517(B), the trial court properly amended the award on defendants' motion. The trial court properly modified the case evaluation award to off-set the amount of installment payments defendants made to plaintiff after the award was issued, because the award, and order entering judgment on the award, resolved all claims between the parties, including any contractual installment payments due to plaintiff.

IV

Next, plaintiff contends the trial court erred by summarily disposing her subsequent breach of contract claim under MCR 2.116(C)(6) and (7). We disagree.

We review a trial court's decision to grant or deny a motion for summary disposition de novo. *Turner v Mercy Hospital and Health Services of Detroit*, 210 Mich App 345, 348; 533 NW2d 365 (1995).

After the trial court's order entering judgment on the evaluation award, plaintiff filed a breach of contract action against defendants for discontinuing the installment payments due under the various agreements that were executed pursuant to plaintiff's employment. Thereafter, defendants paid plaintiff the entire amount due under the case evaluation award, after off-setting the installment payments defendants made after the case evaluation award was issued. Defendants then moved for summary disposition under MCR 2.116(C)(6) and (7) and also based on the doctrine of res judicata.

A trial court may only grant summary disposition under MCR 2.116(C)(6) when "another action has been initiated between the same parties involving the same claim." In making this determination, the trial court must consider all pleadings, affidavits, depositions, admissions, and other documentary evidence submitted by the parties. MCR 2.116(G)(6). Under MCR 2.116(C)(7), a claim is barred by payment "or other disposition of the claim before commencement of the action." In reviewing a motion for summary disposition based on MCR 2.116(C)(7), the trial court must accept all of plaintiff's factual allegations as true and construe

them in a light most favorable to plaintiff. *Griffith v Brant*, 177 Mich App 583, 585; 442 NW2d 652 (1989).

Although plaintiff expends great effort in her brief arguing that the present case does not meet the test for res judicata, we note the trial court granted summary disposition pursuant to MCR 2.116(C)(6) and (C)(7). Therefore, we find it unnecessary to decide whether plaintiff's breach of contract claim was barred by res judicata.

Nonetheless, summary disposition under MCR 2.116(C)(6) does not require that all the parties and all the issues be identical. Rather, the two suits must be "between the same parties" and "involving the same claims." Thus, "complete identity of the parties is not necessary," and the two suits "must be based on the same or substantially the same cause of action." [*J.D. Candler Roofing Co, Inc, v Dickinson*, 149 Mich App 593, 598; 386 NW2d 605 (1986).]

Summary disposition under MCR 2.116(C)(6) is appropriate when "[r]esolution of either action will require examination of the same operative facts." *Id.* at 601.

We note plaintiff's claim for breach of contract includes an allegation for breach of the promissory notes executed between plaintiff and defendants, and these promissory notes were not specifically mentioned in plaintiff's first action. However, the promissory notes were executed pursuant to plaintiff's employment with defendants just as the other agreements included in the first action were, and just as any dispute regarding those agreements were resolved by the order entering judgment on the case evaluation award, any amounts due on the promissory notes were also resolved by this order, which was a "full and final resolution of all of Plaintiff's claims." We find the issues are sufficiently identical to bar the second action pursuant to MCR 2.116(C)(6). Furthermore, plaintiff's first claim was brought against defendant corporation, and defendants Loomis, Neumann, and Myers, (shareholders of defendant corporation), and her second claim was brought only against defendant corporation. Thus, the parties involved are the same in both actions. Therefore, we conclude the trial court did not err by summarily disposing plaintiff's breach of contract claim under MCR 2.116(C)(6).

We also hold that the trial court did not err by summarily disposing of plaintiff's breach of contract claim under MCR 2.116(C)(7) because payment was previously made disposing of the claim. As previously stated, plaintiff's first action was resolved by case evaluation and an award was issued in favor of plaintiff for \$300,000, as a "full and final resolution of all of Plaintiff's claims." There is no dispute that defendants did pay plaintiff a total of \$300,000, as required by the judgment entered on the award. By doing so, they disposed of plaintiff's second claim for breach of contract, which was based on the contractual payments that had been settled by the first judgment.

Furthermore, we note pursuant to necessary joinder requirements, plaintiff failed to include all its claims against defendants in her original complaint.

Finally, defendants contend the trial court erred by entering a judgment in the case evaluation amount after the court issued its written, signed opinion dismissing the case in its entirety. We disagree.

In the present case, the trial judge's language in the opinion, stating that "Defendants shall prepare an order in conformity with this finding," reveals that the trial judge intended that the document he was signing, was to be an opinion, and that defendants were to submit a proposed order in conformity with that opinion. Therefore, the contents of the document in the present case, and not merely the label "opinion," demonstrate that it is an opinion, and not an order as defendants contend. "A court speaks through its orders and judgments and not through its opinions." *Grievance Adm'r v Lopatin*, 462 Mich 235, 279; 612 NW2d 120 (2000), quoting *Johnson v White*, 430 Mich 47, 53; 420 NW2d 87 (1988). Thus, the trial court's opinion in the present case did not have the same force and effect as an order.

Under the plain language of the court rule governing case evaluations, MCR 2.403(M)(1), and in furtherance of the purpose of the case evaluation rule, judgment was properly issued on the award in the present case.

Here, defendants accepted the case evaluation award at their own risk, while their motion for summary disposition was still pending, and although the trial court issued an opinion granting defendants' motion for summary disposition before plaintiff accepted the award, no order closing the case was ever entered on that opinion. Also, defendants did not submit a proposed order to the trial court until after plaintiff accepted the award, and notification of acceptance was posted on August 1, 2001. Thus, all parties accepted the award and were notified of the acceptances as of August 1, 2001. The amount of the mediation award, \$300,000, was not paid within twenty-eight days after notification of acceptance was sent to all parties. According to the plain language of MCR 2.403(M)(1), in such circumstances, judgment will be issued in accordance with the evaluation award.

An accepted mediation award essentially acts as a consent judgment, *Joan Automotive Industries, supra* at 390, and absent a showing of factors such as fraud or duress, such settlements are to be enforced. *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994). Defendants did not make any showings of this nature in the present case. Accordingly, the trial court did not err in entering judgment on the case evaluation award, and properly denied defendants' motion to enter the order of dismissal.

Affirmed.

/s/ Janet T. Neff
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello