

STATE OF MICHIGAN
COURT OF APPEALS

CROWN TECHNOLOGY PARK and MICHAEL
L. STEFANI,

UNPUBLISHED
October 7, 2003

Plaintiffs-Appellants,

v

No. 240213
Oakland Circuit Court
LC No. 94-488695-CB

D & N BANK, FSB,

Defendant-Appellee.

Before: Owens, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order granting defendant's motion to recognize and hear its request for sanctions. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1994, plaintiff Crown Technology Park ("Crown") sued defendant under theories of negligence, waiver, equitable estoppel, and promissory estoppel. In 1995, the complaint was amended to add plaintiff Michael Stefani's claims of negligence and breach of fiduciary duty. Case evaluation took place later in 1995. Crown's claims against defendant were evaluated at \$20,000. Stefani's claims were evaluated at \$0. Both Crown and Stefani rejected these awards. Defendant accepted the award as to Stefani, but rejected the award as to Crown.

Before trial, plaintiffs made an offer of judgment of \$74,000 for Crown's claims and \$10,000 for Stefani's claims. Defendant rejected these offers, and made a counteroffer of \$10,000 for Crown's claims and \$100 for Stefani's claims. Both Crown and Stefani rejected defendant's counteroffer and the matter proceeded to trial. On the first day of trial, Crown and Stefani moved to dismiss Stefani's claims. Over defendant's objection, the trial court granted the motion to dismiss. On May 30, 1997, the jury awarded Crown approximately \$40,000.

On June 19, 1997, Crown moved for case evaluation, offer of judgment, and "prevailing party" sanctions, requesting approximately \$100,000 in attorney fees and costs. On June 30, 1997, defendant filed a brief in opposition to those sanctions. The brief was titled: "Brief in Support of Defendant's Opposition to Plaintiff's Motion for Mediation and/or Offer of Judgment Sanctions." In the brief, defendant contended that, contrary to Crown's argument, defendant was the party entitled to sanctions because the "adjusted verdict" was less than the amount of the

“average offer.” Defendant further contended that it was entitled to attorney fees regarding Stefani’s dismissed claims.

Defendant also appealed to this Court. On September 15, 2000, we ruled that the trial court erred in denying defendant’s motion for summary disposition.¹ Thus, Crown was no longer entitled to any damages.

On October 13, 2000, defendant filed a document that was again titled: “Brief in Support of Defendant’s Opposition to Plaintiff’s Motion for Mediation and/or Offer of Judgment Sanctions.” The body of this document, however, revealed that defendant was seeking case evaluation and offer of judgment sanctions of approximately \$150,000. Defendant did not submit a notice of hearing or motion praecipe with this document.

Crown applied for leave to appeal to our Supreme Court on December 12, 2000. On May 2, 2001, our Supreme Court denied Crown’s request for leave to appeal our ruling.

On January 25, 2002, defendant filed a motion requesting that the trial court recognize its document filed on October 13, 2000, as a motion requesting sanctions. Crown opposed the motion, contending that defendant’s request for sanctions was untimely and that defendant’s delay in requesting the sanctions caused it prejudice. Following a hearing, the trial court, without explanation, granted defendant’s motion to recognize the October 13, 2000, document as a timely filed sanctions request. We granted plaintiff leave to appeal the trial court’s ruling.

Here, in light of our ruling that summary disposition for defendant was appropriate, defendant was entitled to both case evaluation sanctions, MCR 2.403, and offer of judgment sanctions, MCR 2.405. In *JC Building Corp II v Parkhurst Homes*, 217 Mich App 421, 426; 552 NW2d 466 (1996), we recognized that if “there has been both the rejection of the mediation award pursuant to MCR 2.403 and a rejection of an offer of judgment under MCR 2.405, the costs provisions of the rule under which the later rejection occurred control.” Thus, because plaintiff rejected defendant’s offer of judgment after it rejected the case evaluation, the costs provisions of MCR 2.405 control the instant matter.

Generally, we review a trial court’s decision to award offer of judgment sanctions for an abuse of discretion.² *JC Building, supra* at 426. But we review de novo a trial court’s

¹ In an order dated January 18, 2001, we remanded for “entry of judgment or any other necessary action in accordance with the opinion” issued on September 15, 2000.

² It should be noted that several panels of this Court have ruled that we review de novo a trial court’s decision to award case evaluation sanctions. See e.g., *Brown v Gainey Transportation Services*, 256 Mich App 380, 383; 663 NW2d 519 (2003); *Braun v York Prop, Inc*, 230 Mich App 138, 149; 583 NW2d 503 (1998); *Great Lakes Gas Transmission Ltd. Partnership v Markel*, 226 Mich App 127, 129-131; 573 NW2d 61 (1997). There is no obvious reason for the different standards of review. It is beyond the scope of this appeal, however, to resolve whether there is any basis for the different standards of review. Our Supreme Court may find it prudent to resolve this issue sometime in the future.

interpretation of a court rule. *Brown v Gainey Transportation Services*, 256 Mich App 380, 383; 663 NW2d 519 (2003).

Crown contends that the trial court was without jurisdiction to consider defendant's motion to recognize and hear its request for sanctions. Specifically, Crown contends the trial court did not have jurisdiction to consider the case after our Supreme Court denied Crown's application for leave to appeal. However, after reversing the trial court's denial of defendant's motion for summary disposition, we remanded to the trial court. Thus, the trial court resumed jurisdiction over the instant matter. There is no indication that the trial court filed any document closing the case, as required by MCR 2.602(A)(3). Moreover, because our Supreme Court denied Crown's application for leave, the trial court never lost the jurisdiction it obtained following our remand. Therefore, the trial court had jurisdiction when it made the instant rulings.

Crown's primary argument on appeal is that the trial court erred in granting defendant's motion to recognize and hear its request for sanctions. MCR 2.405(D)(5) states that a "request for costs . . . must be filed and served within 28 days after the entry of the judgment or entry of an order denying a timely motion for a new trial or to set aside the judgment."³

The parties' briefs focus on the sufficiency of defendant's October 13, 2000, filing as a request for sanctions. But, as noted above, we remanded the instant matter to the trial court for entry of a judgment. The record does not indicate that the trial court complied with our remand instruction. Thus, there was no "judgment" in defendant's favor to start the 28-day period. The procedural history of this case, of course, did not include the denial of a motion for a new trial or a motion to set aside the judgment. Accordingly, the events that MCR 2.405(D)(5) enumerates as starting the 28-day period have not yet occurred.

Further, MCR 2.405(D)(5) does not expressly state that an appellate decision starts the 28-day period. Nor are we persuaded that an appellate decision constitutes a "judgment" under MCR 2.405(D)(5). To be sure, in *Braun*, we broadly defined "judgment," as used in MCR 2.403(O)(8), as "the judgment adjudicating the rights and liabilities of particular parties, regardless of whether that judgment is the final judgment from which the parties may appeal." *Braun, supra* at 150. However, *Braun* involved a case with multiple parties and claims, and two separate judgments entered in the trial court. *Id.* We simply recognized that the moving party must request sanctions when it prevails in a judgment against a party—even if there are other pending claims between the moving party and another party. *Id.*

Thus, September 15, 2000, was not the relevant date for starting the 28-day period; therefore, the debate about the sufficiency of the October 13, 2000 document is misplaced.⁴ Instead, the appropriate date for starting the 28-day period will be the date that the trial court enters a judgment in defendant's favor. Because that has not yet happened, the 28-day period

³ MCR 2.403(O)(8) contains an identical provision relating to case evaluation sanctions.

⁴ Similarly, the date that our Supreme Court denied leave is irrelevant.

has not yet started, much less expired. Accordingly, even if we were to agree with Crown's contention that the trial court erred in deeming the October 13, 2000, document a sufficient request for sanctions, we would nevertheless conclude that any error was harmless because defendant could still file a timely motion requesting sanctions. Consequently, Crown's contention of error is without merit.

Affirmed.

/s/ Donald S. Owens
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter