

STATE OF MICHIGAN
COURT OF APPEALS

FRESH CUT LAWN MAINTENANCE, INC.,

Plaintiff-Appellee/Cross-Appellant,

v

CHRISTOPHER YATOOMA, d/b/a OUTDOOR
CREATIONS GROUP, and LAND ESCAPE
OUTDOOR MAINTENANCE, L.L.C., d/b/a
OUTDOOR CREATIONS GROUP,

Defendants-Appellants/Cross-
Appellees.

UNPUBLISHED

April 2, 2013

No. 308075

Oakland Circuit Court

LC No. 2011-117116-CK

Before: MURPHY, C.J., and O'CONNELL and BECKERING, JJ.

PER CURIAM.

Defendants appeal by delayed leave granted from the trial court's order denying their motion for offer-of-judgment sanctions under MCR 2.405. We affirm in part, vacate in part, and remand for further proceedings consistent with this opinion.

On February 22, 2011, plaintiff Fresh Cut Lawn Maintenance, Inc. filed a complaint against defendant Christopher Yatooma, d/b/a Outdoor Creations Group ("OCG"). On April 28, 2011, Yatooma offered to stipulate pursuant to MCR 2.405 to the entry of a judgment in the amount of \$1,000. On May 12, 2011, plaintiff filed an amended complaint that added Land Escape Outdoor Maintenance, L.L.C. ("Land Escape), d/b/a OCG, as a defendant. The trial court eventually granted defendants' joint motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). Defendants moved the court for sanctions under MCR 2.405; however, the court denied the motion, stating that an award of sanctions would not be proper in the "interest of justice."

We review for an abuse of discretion a trial court's decision to deny a motion for sanctions under MCR 2.405 on the basis that the denial is in the interest of justice. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 374; 689 NW2d 145 (2004).

MCR 2.405(B) provides that "[u]ntil 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." An "[o]ffer" means a written notification to an adverse party of the offeror's willingness to stipulate to the entry of a judgment in a sum

certain, which is deemed to include all costs and interest then accrued.” MCR 2.405(A)(1). “If an offer is rejected, [and i]f the adjusted verdict is more favorable to the offeror than the average offer, the offeree must pay to the offeror the offeror’s actual costs incurred in the prosecution or defense of the action.” MCR 2.405(D)(1). Failure to respond to an offer is deemed a rejection. MCR 2.405(C)(2)(b). “‘Actual costs’ means the costs and fees taxable in a civil action and a reasonable attorney fee for services necessitated by the failure to stipulate to the entry of judgment.” MCR 2.405(A)(6).

“The court may, in the interest of justice, refuse to award an attorney fee under [MCR 2.405].” MCR 2.405(D)(3). The interest-of-justice exception applies only to attorney fees and is not a basis for refusing to award a request for taxable costs. *Derderian*, 263 Mich App at 390. Moreover, the exception is to be applied only in unusual circumstances. *Luidens v 63rd Dist Court*, 219 Mich App 24, 31-32; 555 NW2d 709 (1996). Neither the reasonableness of the offeree’s refusal of the offer nor the nonfrivolous nature of the offeree’s legal claims against the offeror is a sufficient basis for the application of the interest-of-justice exception. *Id.* at 34-35; see also *Derderian*, 263 Mich App at 391. “When a decision is made *not* to grant fees that would otherwise be properly awarded under the rule, the trial court must articulate why the ‘interest of justice’ will be served in light of the role that MCR 2.405 was designed to serve in the administration of our judicial process under the Michigan Court Rules.” *Hamilton v Becker Orthopedic Appliance Co*, 214 Mich App 593, 597; 543 NW2d 60 (1995).

With respect to Yatooma, we conclude that the trial court abused its discretion by determining that it was in the interest of justice to deny Yatooma’s request for sanctions under MCR 2.405. The trial court did not adequately explain why the denial of attorney fees would serve the interest of justice. To the extent that the court determined that the denial of fees was in the interest of justice because plaintiff’s claims were not frivolous, the reason was insufficient to trigger the application of the interest-of-justice exception. See *Luidens*, 219 Mich App at 34-35. Furthermore, the exception could not serve as a basis to deny Yatooma’s request for taxable costs. See *Derderian*, 263 Mich App at 390. Therefore, we vacate the trial court’s denial of Yatooma’s request for sanctions and remand for the trial court to reconsider Yatooma’s request in light of this opinion.

With respect to Land Escape, the trial court likewise did not adequately explain why the denial of Land Escape’s request for sanctions would serve the interest of justice. And, again, the nonfrivolous nature of plaintiff’s claims was not a sufficient basis to trigger the application of the interest-of-justice exception, and the exception could not serve as a basis to deny Land Escape’s request for taxable costs. See *id.*; *Luidens*, 219 Mich App at 34-35. Nevertheless, “we will not reverse the [trial] court’s order when the right result was reached for the wrong reason.” *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000). In the present case, Land Escape is not entitled to sanctions under MCR 2.405 because it is not an offeror. See MCR 2.405(D)(1) (stating that an *offeror* is entitled to actual costs incurred if the adjusted verdict is more favorable to the offeror than the average offer). Land Escape never made a written offer to plaintiff to stipulate to the entry of a judgment in a sum certain. See MCR 2.405(A)(1), (B). Only Yatooma made an offer in this case. Land Escape, therefore, cannot be entitled to sanctions under MCR 2.405.

We note that plaintiff filed a cross-appeal but does not raise any substantive issue apart from addressing the trial court's denial of sanctions under MCR 2.405. Although the statement of facts portion of plaintiff's brief contains a single statement suggesting that summary disposition was inappropriate because defendants did not respond to discovery, plaintiff does not otherwise address the merits of the trial court's summary disposition ruling in its brief. "It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Moreover, the "Conclusion and Relief Requested" section at the end of plaintiff's brief asks this Court to affirm the trial court's order denying defendants' motion for sanctions under MCR 2.405 but does not request any relief with respect to the order granting summary disposition to defendants. Accordingly, plaintiff has abandoned any challenge to the trial court's order granting summary disposition.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Peter D. O'Connell

/s/ Jane M. Beckering