

STATE OF MICHIGAN
COURT OF APPEALS

JACQUELINE RINAS, Personal Representative of
the Estate of JOHN B. RINAS IV, Deceased,

Plaintiff-Appellant,

v

DIANE MERCER, Personal Representative of the
ESTATE OF DAVID QUIROZ, JR.; EARL
HARGROVE JR.; CELADON TRUCKING
SERVICE; JG'S LOUNGE,

Defendants/Cross-Defendants-
Appellees,

and

SOUTHERN DREAMS,

Defendant/Cross-Plaintiff Appellee.

FOR PUBLICATION
October 7, 2003
9:15 a.m.

No. 232686
Wayne Circuit Court
LC No. 00-001182-NI

Updated Copy
December 5, 2003

Before: Saad, P.J., and Zahra and Schuette, JJ.

SAAD, P.J. (*dissenting*).

I respectfully dissent. While I appreciate the difficulty of interpreting this inartfully drafted court rule, I believe the plain language of the rule compels the trial court's ruling. That is, though I respect the majority's interpretation as an effort to apply the plain language of the rule, I believe the "plain language" analysis results in dismissal of the third suit after two voluntary dismissals. I read the permissive "may" in MCR 2.504(A)(1) to allow a plaintiff to dismiss, voluntarily, a suit either with or without an order or with or without an assessment of costs depending on the circumstances of the case. The rule gives a plaintiff discretion to voluntarily dismiss one action but says if the plaintiff voluntarily dismisses a second action (and again gives the plaintiff discretion to do so without an order), then the second dismissal will be treated as a final adjudication. This reading gives meaning to all the words of the court rule while the majority's reading renders the court rule meaningless.

For example, regarding costs, plaintiff argues and the majority reasons that, because subrule (A)(1)(a) states that a plaintiff may dismiss an action "without an order of the court and on the payment of costs," and because, in the second suit, the trial court failed to impose costs,

the second dismissal did not trigger the "adjudication on the merits" provision. The language regarding the potentiality of the imposition of costs does not change the nature of plaintiff's voluntary notice of dismissal. Rather, the rule merely affords a defendant the protection of recovering his expenses incurred, if any, because of a plaintiff's unilateral decision to file and then dismiss an action before responsive pleadings are filed. Nothing in MCR 2.504 says or suggests that a plaintiff's notice of dismissal *depends on* the imposition of costs, or that the *res judicata* effect of a second dismissal is nullified if no costs are imposed. If a defendant decides not to pursue his right to reimbursement of costs (for example, if the costs are minimal), and, therefore, the trial court does not "impose costs," this does not remove the second dismissal from the consequences of the plain language of the rule. To so hold simply renders the court rule totally ineffective in cases where a defendant, for whatever reason, chooses not to seek costs.

/s/ Henry William Saad