

STATE OF MICHIGAN
COURT OF APPEALS

BUSHRA DENHA and BASIL DENHA,

Plaintiffs-Appellees,

v

JULIET HANNA,

Defendant-Appellant.

UNPUBLISHED

March 31, 2000

No. 209165

Oakland Circuit Court

LC No. 96-520023-NO

Before: Wilder, P.J., and Sawyer and Markey, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted an order denying her request for attorney fees under the offer of judgment rule, MCR 2.405. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In this slip and fall action, plaintiffs accepted the mediation evaluation of \$17,500.00, and defendant rejected the evaluation. The month before trial, defendant made an offer of judgment in the amount of \$7,500.00. Plaintiffs rejected this offer, and countered with an offer of \$17,500.00. Defendant rejected plaintiffs' counteroffer, and responded with another offer of \$7,500.00. Plaintiffs rejected this offer by not responding.

The jury returned a verdict of no cause of action, and defendant moved for costs and attorney fees pursuant to MCR 7.405(D). The trial court exercised its discretion not to award attorney fees. We granted defendant's delayed application for leave to appeal.

MCR 2.405 provides in part:

(D) If an offer is rejected, costs are payable as follows:

(1) If 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.

* * *

(3) The court shall determine the actual costs incurred. The court may, in the interest of justice, refuse to award an attorney fee under this rule.

The purpose of the offer of judgment rule is to encourage settlement and to deter protracted litigation. *Hamilton v Becker Orthopedic Appliance Co*, 214 Mich App 593, 596; 543 NW2d 60 (1995). While the rule allows the trial court discretion to deny an award, few situations will justify denying an award of costs in the interest of justice. *Id.*

The trial court failed to give an explanation for its decision, and we find no indication in the record why the denial of attorney fees would be in the interest of justice. Defendant offered to settle the case for \$7,500, and in light of the no cause of action verdict, the settlement would clearly have been in plaintiffs' favor. Plaintiffs' rejection of the offer of judgment led to the trial and the accumulation of costs and fees.

Reversed and remanded for an assessment of attorney fees. We do not retain jurisdiction.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey