

STATE OF MICHIGAN
COURT OF APPEALS

WYANDOTTE HOSPITAL/HENRY FORD,

Plaintiff-Appellant,

v

STERLING ROGERS,

Defendant-Appellee.

UNPUBLISHED

February 27, 2001

No. 219930

Wayne Circuit Court

LC No. 98-804835-CZ

Before: Smolenski, P.J., and Jansen and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right the default judgment entered against defendant in the amount of \$9,000 in this action to collect unpaid medical bills. We affirm the entry of the default judgment but vacate the damage award and remand.

Plaintiff filed the present action seeking recovery for unpaid medical bills in the amount of \$51,129.24. Defendant, believing that the expenses were covered by his medical insurance, sought to require Blue Cross/Blue Shield (BCBS) to reconsider payment of certain amounts of the unpaid bills. BCBS ultimately made partial payment in the amount of \$24,036.92.

After BCBS made partial payment, the remaining balance was submitted to mediation. Mediation resulted in an award in favor of plaintiff in the amount of \$9,000. Plaintiff rejected and defendant accepted mediation. However, subsequent to mediation BCBS reversed its decision to make partial payment, and plaintiff sought recovery of the entire balance of \$51,129.24.

The court conducted a settlement conference at which it was disclosed to the court, at the court's request, that the amount of the mediation evaluation was \$9,000. Two additional settlement conferences were ultimately held, and defendant failed to appear at both conferences.¹ At the final settlement conference, plaintiff requested a default judgment pursuant to MCR 2.401(G)(1) in the amount of \$51,340.25.² The court granted a default judgment for the amount

¹ Defendant's attorney attended the conferences, but raised no objection to entry of a default judgment.

² Plaintiff sought to recover the balance due of \$51,129.24, plus court costs of \$196 and statutory
(continued...)

of the mediation evaluation of \$9,000.³ Plaintiff objected to the amount of the court's proposed judgment on the ground that plaintiff was being denied the opportunity to present evidence regarding the amount of damages and was "being denied a trial . . . for his [defendant's] failure to appear." The court thereafter took testimony of the individual responsible for billing at Wyandotte Hospital. This individual testified that the amount due and owing by defendant was \$51,129.24. After taking this testimony, the court stated:

This case was mediated for nine thousand. The Court will grant a default judgment for nine thousand dollars.

Plaintiff argues that the trial court improperly considered the amount of the mediation evaluation in determining damages and that the court failed to make adequate findings of fact and conclusions of law to support the award of damages.

I

As a preliminary issue, we note that plaintiff relies, in part, on MCR 2.403(N)(4) in support of its argument that the amount of the mediation evaluation was erroneously revealed to the trial court. MCR 2.403(N)(4) provides:

The mediation clerk shall place a copy of the mediation evaluation and the parties' acceptances and rejections in a sealed envelope for filing with the clerk of the court. *In a nonjury action*, the envelope may not be opened and *the parties may not reveal the amount of the evaluation until the judge has rendered judgment*. [Emphasis supplied.]

Under this rule, if the trial court is acting as the trier of fact, it may not open the envelope, and the parties may not reveal the evaluation amount until after the judge has rendered judgment. *Schell v Baker Furniture Co*, 232 Mich App 470, 480; 591 NW2d 349 (1998).

In the present case, however, defendant demanded a jury trial. The rule suppressing the mediation evaluation applies only in nonjury actions. "If a jury has been demanded, the trial court may review the mediation award before trial and continue settlement negotiations with the parties." 2 Dean, Longhofer, Michigan Court Rules Practice, p 526. Hence, plaintiff's reliance on MCR 2.403(N)(4) is misplaced because the present action was a jury action.

II

The court granted a default judgment in favor of plaintiff under MCR 2401(G)(1), which provides in part that "failure of a party or the party's attorney to attend a scheduled conference, as directed by the trial court, constitutes a default to which MCR 2.603 is applicable. . . ." MCR

(...continued)

costs of \$15.

³ The propriety of entering a default judgment under these circumstances is not at issue in this appeal.

2.603(B)(3)(a)(ii) provides that if it is necessary for the court to determine the amount of damages in order to enter a default judgment or to carry it into effect, “the court may conduct hearings or order references it deems necessary and proper, and shall accord a right of trial by jury to the parties to the extent required by the constitution.”⁴

Here, the trial court clearly disregarded plaintiff’s un rebutted proofs on the issue of damages and, instead, relied solely on the amount of the mediation evaluation in determining damages. In *Bennett v Medical Evaluation Specialists*, ___ Mich App ___; ___ NW2d ___ (Docket No. 213274, rel’d 12/26/00), slip op p 3, this Court noted that one of the main concerns of the mediation rules, as evidenced by certain subsections of MCR 2.403, is judicial impartiality where a mediated case proceeds to trial. The Court also noted that the implication of these subsections is “that a trial judge with knowledge of a mediation award is disqualified from further participation in the action.” See, e.g., MCR 2.403(D)(3) (a judge may be selected as a member of the mediation panel, but may not preside at the trial of any action in which he or she served as a mediator) and MCR 2.403(N)(2)(d) (a judge who hears a motion based on the mediator’s determination that a party’s action or defense is frivolous under subrule (K)(4) is precluded from presiding at a nonjury trial on the action). For obvious reasons,⁵ a judge who is aware of the amount of a mediation evaluation is automatically disqualified from conducting a bench trial in the action. 2 Dean, Longhofer, Michigan Court Rules Practice, pp 526. Because the hearing on the issue of damages was tantamount to a bench trial, the judge should not have presided over the hearing on the issue of damages.

Accordingly, we set aside that part of the trial court’s judgment that awards damages and remand the matter to the trial court to conduct a jury trial on the issue of damages. If a jury trial on the issue of damages is waived, a hearing on the issue of damages shall be conducted by a different judge. *Bennett, supra* at slip op p 3.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Michael R. Smolenski
/s/ Kathleen Jansen
/s/ E. Thomas Fitzgerald

⁴ Plaintiff does not argue that it was entitled to a trial by jury. Hence, for the purpose of analyzing the issue presented by plaintiff, we assume that the right to a jury trial was waived.

⁵ Such “obvious reasons” are apparent in the present case where the trial judge completely disregarded plaintiff’s unrefuted evidence on the issue of damages and stated that it would enter judgment in the amount of the mediation evaluation.