

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JAMES NEELEY and KATHLEEN NEELEY,

Plaintiffs/Counter-  
Defendants/Appellants,

v

ALLSTATE INSURANCE COMPANY,

Defendant/Counter-  
Plaintiff/Appellee.

UNPUBLISHED

April 20, 2001

No. 222947

Kalamazoo Circuit Court

LC No. 97-003174-NF

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Before: Talbot, P.J., and Sawyer and F.L. Borchard\*, JJ.

PER CURIAM.

Plaintiffs claim an appeal from orders entered by the trial court entering judgment on a mediation award and providing for the distribution of certain funds previously placed in escrow. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs were injured in an automobile accident in Indiana. Defendant, plaintiffs' no-fault carrier, paid medical expenses for plaintiffs and lost wage benefits for James Neeley. Eventually, defendant ceased paying lost wage benefits on the ground that James Neeley was no longer disabled. At the same time, James Neeley was granted social security disability benefits.

Plaintiffs filed suit seeking unpaid medical expenses and lost wage benefits. Defendant filed a counterclaim to recover any amount paid to plaintiffs in social security benefits which duplicated benefits already received, and moved for partial summary disposition. In addition, defendant filed a lien against a third-party settlement plaintiffs received in Indiana. The trial court entered orders granting defendant a lien against the settlement in the amount of \$5,733.00, MCL 500.3116(2); MSA 24.13116(2), and a setoff against the social security benefits in the amount of \$7,976.00. MCL 500.3109(1); MSA 24.13109(1). Both awards were ordered held in escrow pending the resolution of plaintiffs' principal claim.

The case was submitted to mediation. The panel recommended an award of \$5,000.00 in favor of plaintiffs. Both parties accepted the evaluation. The trial court entered judgment on the award, and also ordered that the sums previously placed in escrow be distributed to defendant.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

The effect of the trial court's orders was to grant distribution of a total of \$13,749.00 to defendant, while awarding plaintiffs judgment in the amount of \$5,000.00.

Plaintiffs moved for reconsideration, arguing that the mediation evaluation of \$5,000.00 was intended as a net award after subtraction of the social security setoff. Plaintiffs submitted affidavits from the mediators, each of whom indicated that the figure of \$5,000.00 was intended to be a net award. The trial court denied the motion.

The rules of statutory construction apply to the interpretation of court rules. *Smith v Henry Ford Hosp*, 219 Mich App 555, 558; 557 NW2d 154 (1996). The interpretation and application of court rules presents a question of law which we review de novo. *Cardinal Mooney High School v Michigan High School Athletic Ass'n*, 437 Mich 75, 80; 467 NW2d 21 (1991).

MCR 2.403(M)(1) provides that if both parties accept a mediation evaluation, the resulting judgment or dismissal "shall be deemed to dispose of all claims in the action and include all fees, costs, and interest to the date it is entered."

Plaintiffs argue that the trial court erred in concluding that the parties' acceptance of the mediation evaluation did not resolve all claims in the case, including those involving the lien on the third-party settlement and the setoff against the social security benefits. We disagree and affirm the trial court's orders entering judgment on the mediation award and providing for distribution of the funds held in escrow. Defendant's entitlement to the funds awarded pursuant to the lien and the setoff was determined prior to mediation, and was not contingent on some future event or decision in the case. The record does not indicate that the parties formally requested that the mediation panel consider the impact of the amounts already awarded to defendant when making its decision. While the mediation panel might have intended that the figure of \$5,000.00 be a net amount, its award did not so state. The mediation panel had no authority to vacate any order previously entered by the trial court, see *Merit Mfg & Die, Inc v ITT Hignite Mfg Co*, 204 Mich App 16, 21-22; 514 NW2d 192 (1994), and no evidence indicated that it attempted to do so. Plaintiffs remained obligated to pay the funds awarded pursuant to the lien and the setoff. The trial court did not abuse its discretion by failing to set aside the judgment and the mediation award on which the judgment was based. The trial court's decision did not result in substantial injustice to plaintiffs. *State Farm Mut Auto Ins Co v Galen*, 199 Mich App 274, 278; 500 NW2d 769 (1993).

Affirmed.

/s/ Michael J. Talbot  
/s/ David H. Sawyer  
/s/ Fred L. Borchard