

STATE OF MICHIGAN
COURT OF APPEALS

BENJAMIN F. PETTIT, M.D.,

Plaintiff-Appellee/Cross-Appellant,

v

HFP, LLC,

Defendant-Appellant/Cross-
Appellee,

and

BURNS CLINIC MEDICAL CENTER, P.C.,
BURNS CLINIC MEDICAL CENTER, P.C.
RETIREMENT INCOME PLAN, HEALTH
FACILITIES PARTNERSHIP, DANIEL
MCDONNELL, M.D., JOHN HALL, M.D., and
HARRY COLFER, M.D.,

Defendants.

UNPUBLISHED

October 1, 2002

No. 231078

Emmet Circuit Court

LC No. 99-005294-NZ

Before: Whitbeck, C.J., and Bandstra and Talbot, JJ.

BANDSTRA, J. (*concurring in part and dissenting in part*).

I agree with the majority in its conclusion that the trial court's order granting summary disposition to plaintiff should be affirmed. However, I do not conclude that the trial court's denial of plaintiff's motion for case evaluation sanctions constituted an abuse of discretion and I would affirm that decision as well.

The majority correctly concludes that the abuse of discretion standard applies here and a forty-year history of precedents, both criminal and civil, requires that, to find such an abuse, we must conclude that the trial court's decision was "not the exercise of will but perversity of will, not the exercise of judgment but defiance thereof, not the exercise of reason but rather of passion or bias." *People v Babcock*, 244 Mich App 64, 76; 624 NW2d 479 (2000), quoting *Spalding v Spalding*, 355 Mich 382, 384-385; 94 NW2d 810 (1959).

Although the majority outlines why it is in disagreement with the trial court on this matter, I would not conclude that the determination that actual costs should not be awarded in the interest of justice here was an abuse of discretion under this stringent standard. As the trial court noted, Pettit was awarded his verdict on the basis of a theory that had not been presented to the case evaluators. We look to the purpose of the rule in determining the meaning of the “interest of justice” in application to the facts of each case. See, e.g., *Luidens v 63rd Dist Court*, 219 Mich App 24, 31; 555 NW2d 709 (1996). The general purpose of the case evaluation process is to have an objective evaluation of the merits of a case to assist parties in determining whether to accept the evaluation in settlement of the case or, instead, to proceed to trial. That purpose is not advanced when a party fails to present what later becomes a winning theory to the case evaluators for their analysis. In other words, HFP could not consider the merits of what became Pettit’s winning argument assisted by the evaluators’ assessment of that argument, before it rejected the case evaluation. It would not serve the interest of justice to require that HFP pay the actual costs incurred by Pettit in later developing and presenting that argument. I would not conclude that the trial court, which has firsthand knowledge of the nuances of this litigation and how it unfolded, abused its discretion in so reasoning.

I would affirm.

/s/ Richard A. Bandstra