

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS RYAN ANDRUS,

Plaintiff-Appellee,

v

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,

Defendant-Appellant.

UNPUBLISHED

July 15, 2004

No. 245558

Kalamazoo Circuit Court

LC No. 01-000290-CK

Before: Fort Hood, P.J., and Donofrio and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from an order denying its motions to tax costs arising out of its defense of a suit brought by plaintiff. Because defendant did not proceed in accordance with rules governing the taxation of costs, we affirm.

Following the entry of a judgment of no cause of action against plaintiff, defendant filed a motion to tax costs pursuant to MCR 2.403. Defendant then filed an amended motion seeking the same costs under MCR 2.625. The trial court refused defendant's request to consider the first motion under MCR 2.625 and denied the amended motion as untimely. This appeal followed.

The interpretation of court rules presents a question of law that we review de novo. *Peters v Gunnell, Inc.*, 253 Mich App 211, 225; 655 NW2d 582 (2002), citing *Reitmeyer v Schultz Equip & Parts Co, Inc.*, 237 Mich App 332, 336; 602 NW2d 596 (1999). When interpreting the meaning of a court rule, courts must apply general principles of statutory construction. *Haliw v Sterling Heights*, 257 Mich App 689, 695; 669 NW2d 563 (2003), citing *Hinkle v Wayne Co Clerk*, 467 Mich 337, 340; 654 NW2d 315 (2002). This Court has stated that:

When the language of the rule is clear and unambiguous, we must enforce the meaning plainly expressed. If construction is necessary, the first principle guiding our review is to apply the plain language of the rule, giving effect to the ordinary meaning of the words used in light of the purpose to be accomplished. [*Id.*, citations omitted.]

Defendant concedes that costs are not available under MCR 2.403 because the case evaluation was not unanimous and MCR 2.403(O)(7) prohibits the award of costs in such situations. But it contends that it merely cited the wrong court rule. Defendant argues that, as

with motions for summary disposition, the trial court should have considered its original motion under the correct rule, MCR 2.625, or granted its amended motion.

The taxation of costs under MCR 2.625 constitutes a ministerial task and does not require submission to the trial court. *Gunnell, supra*, 226. Under MCR 2.625(F)(1), “costs may be taxed by the court on signing the judgment, or may be taxed by the clerk.” When costs are to be taxed by the clerk, the party entitled to costs must submit a bill of costs to the clerk within twenty-eight days after the judgment is signed. MCR 2.625(F)(2). The rule also requires the party presenting the bill of costs to “immediately serve a copy of the bill and any accompanying affidavits on the other parties” and states that a “failure to present a bill of costs within the time prescribed constitutes a waiver of the right to costs.” MCR 2.625(F)(2). The trial court may review actions taken by the clerk only on the motion of an affected party. MCR 2.625(F)(4).

Although both MCR 2.403 and MCR 2.625 allow a party to recover the costs taxable in any civil action, the rules are not interchangeable. MCR 2.403(O) only applies where there has been a unanimous case evaluation, allows for the recovery of attorney’s fees, and requires a judicial determination. MCR 2.625 creates a ministerial procedure for taxing costs in any civil action. Defendant did not merely cite the wrong court rule. It also followed the procedure set forth for taxing costs under the rule it claims to have erroneously cited. Therefore, a party could be misled by defendant’s actions and the trial court did not err in refusing to proceed under MCR 2.625 where defendant’s motion would have failed under MCR 2.403.

Even if the trial court had considered defendant’s original motion under MCR 2.625 or viewed the amended motion as timely, such motions constitute an improper method of seeking taxable costs pursuant to MCR 2.625. In the instant case, the trial court did not tax costs when it signed the judgment of no cause of action. Based on the unambiguous language of MCR 2.625(F)(1), the only way that defendant could then obtain taxable costs under MCR 2.625 would have been to submit a bill of costs to the clerk within twenty-eight days. Because it failed to follow the procedure set forth in MCR 2.625(F)(2), we find that defendant has waived its right to costs under the rule. Although the trial court considered both of defendant’s motions, it properly denied defendant’s request to tax costs.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Pat M. Donofrio

/s/ Stephen L. Borrello