

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of LONDON SIDNEY ENGLAND,
Deceased.

TIMOTHY J. DOYLE and ROBERT ENGLAND,

Petitioners-Appellees,

UNPUBLISHED
November 29, 2007

v

No. 272436
Wayne Probate Court
LC No. 1993-501521-DA

DOROTHY SUNMAN,

Respondent-Appellant,

and

CAROLE ENGLAND,

Respondent.

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

PER CURIAM.

Respondent Dorothy Sunman appeals as of right from a probate court order requiring her to pay petitioners' attorney fees as case evaluation sanctions. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The decedent, London Sidney England, died in 1989. Respondent was appointed as the initial personal representative of the estate in 1993. In 1994, respondent filed a complaint alleging that her brothers had improperly disposed of decedent's assets both before and after his death. Respondent's brothers filed a counterclaim asserting that respondent had engaged in self-dealing as the personal representative, attempting to resolve the distribution of the estate in a manner favorable to respondent and her sister at the expense of the brothers. Respondent was removed as personal representative in December 1996 for failure to properly administer the estate, and a series of successor personal representatives were appointed before the conclusion of the litigation. The matter was referred to mediation in 1997, resulting in an award under which respondent would pay each of her three brothers \$10,000, and the residue of the estate would "be divided per will, after all administration costs." The brothers accepted the award but respondent

rejected it. In September 1998, the trial court directed respondent to either comply with previous orders of the trial court or face the dismissal of her pleadings. In March 1999, after respondent had failed to comply, the trial court struck respondent's pleadings. After numerous proceedings, an evidentiary hearing commenced in December 2004, and the case was concluded by order of the trial court in April 2005. The trial court denied a motion for reconsideration of its order in June 2005.

In February 2006, petitioners filed a motion for attorney fees and sanctions, asserting that the unreasonable refusal of respondent to settle the case over the previous 12 years caused petitioners to incur extensive attorney fees. The trial court held a hearing on this motion in March 2006. The trial court made findings that respondent had continued the proceedings for the purpose of delay and to harass the opposing parties, but did not award sanctions on this basis. Instead, the trial court granted petitioners' motion for attorney fees on the basis that respondent had rejected the mediation evaluation, thus necessitating further proceedings to resolve the case. This appeal ensued.

The trial court's decision to grant case evaluation sanctions is reviewed de novo on appeal. The amount of sanctions awarded is reviewed for an abuse of discretion. *Campbell v Sullins*, 257 Mich App 179, 197; 667 NW2d 887 (2003). The construction, interpretation and application of the court rules are questions of law that are reviewed de novo on appeal. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003); *Kernan v Homestead Dev Co*, 252 Mich App 689, 692; 653 NW2d 634 (2002).

MCR 2.403 provides that if a party rejects an evaluation and the case proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation. MCR 2.403(O)(1). Arguably, the order striking respondent's pleadings constituted a verdict, as the term is defined by MCR 2.403(O)(2)(c), but we need not decide that question because petitioners' request for sanctions was untimely under MCR 2.403(O)(8). That rule plainly states that a motion for case evaluation sanctions "must be filed and served within 28 days after the entry of the judgment" at issue. The word "must" is mandatory. *Old Kent Bank v Kal Kustom Enterprises*, 255 Mich App 524, 532-533; 660 NW2d 384 (2003). The order striking respondent's pleadings was entered on March 10, 1999. Petitioners' motion for sanctions was filed on February 21, 2006, almost seven years later. Because petitioners' motion was not filed within the time limits established for such motions, the trial court erred in granting case evaluation sanctions.

Reversed.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder