

Court of Appeals, State of Michigan

ORDER

Nagle Paving Co v Vanco Inc

Docket No. 275072

LC No. 03-321184-CH

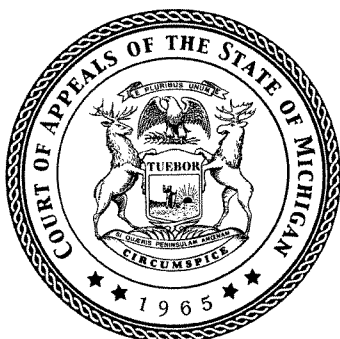
Richard A. Bandstra
Presiding Judge

E. Thomas Fitzgerald

Jane E. Markey
Judges

The Court orders that the May 1, 2008 opinion is hereby AMENDED. The opinion contained the following clerical error: On page two, in the fourth full paragraph the date should read June 5, 2006 instead of June 5, 2005.

In all other respects, the May 1, 2008 opinion remains unchanged.



A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk, on

MAY 21 2008

Date

Sandra Schultz Mengel
Chief Clerk

STATE OF MICHIGAN
COURT OF APPEALS

NAGLE PAVING COMPANY,

Plaintiff,

v

VANCO, INC.,

Defendant/Cross-Defendant/Cross-
Plaintiff,

and

RENEE WIXOM, Personal Representative of the
Estate of RICHARD VANMAN, Deceased,

Defendant/Cross-Defendant/Cross-
Plaintiff-Appellant,

and

TRI CITY ASSEMBLY OF GOD, d/b/a TRI
CITY CHRISTIAN CENTER,

Defendant/Cross-Plaintiff/Cross-
Defendant-Appellee.

UNPUBLISHED

May 1, 2008

No. 275072

Wayne Circuit Court

LC No. 03-321184-CH

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Appellant Wixom, as personal representative of the estate of Richard Vanman (“Vanman”), deceased, appeals by delayed leave granted from a circuit court order denying her motion for case evaluation sanctions against defendant Tri City Assembly of God (“Tri City”) on the basis that the motion was not timely filed. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo both a trial court’s decision to grant or deny a motion for case evaluation sanctions, *Cheron, Inc v Don Jones, Inc*, 244 Mich App 212, 218; 625 NW2d 93 (2000), and the interpretation and application of court rules, *Associated Builders & Contractors v*

Dep't of Consumer & Industry Services Director, 472 Mich 117, 123-124; 693 NW2d 374 (2005).

MCR 2.403(O)(8) states that “[a] request for costs under this subrule must be filed and served within 28 days after the entry of the judgment or entry of an order denying a timely motion for a new trial or to set aside the judgment.”

The dispute in this case concerns whether the 28-day period began to run upon entry of the trial court’s June 5, 2006, opinion and order, or upon entry of a subsequent judgment on July 5, 2006, which was submitted without objection under the seven-day rule. The trial court determined that the applicable period was governed by the June 5, 2006, opinion and order and, therefore, ruled that appellant’s motion for case evaluation sanctions, filed on July 28, 2006, was untimely filed. This ruling was erroneous.

The term “judgment,” as used in MCR 2.403(O)(8), has been defined as “the judgment adjudicating the rights and liabilities of *particular parties*, regardless of whether that judgment is the final judgment from which the parties may appeal.” *Braun v York Properties, Inc*, 230 Mich App 138, 150; 583 NW2d 503 (1998), citing MCR 2.604(A) (emphasis added). An “opinion and order” may qualify as a “judgment” for purposes of the rule. *Cheron, supra* at n 220, 4.

In this case, however, the June 5, 2005, opinion and order was not a judgment that adjudicated the rights and liabilities of Tri City and Vanman. Tri City brought claims against Vanman individually. The trial court’s opinion and order does not address Tri City’s negligence claim or the alleged violation of the Michigan Building Contract Fund Act, which were brought against Vanman. More significantly, the order portion of the opinion and order does not reference entry of judgment in his favor. Rather, the “CONCLUSION” section of the opinion and order states, “Based on the foregoing, the Court shall enter a judgment in favor of Tri-City Christian Center in the amount of \$36,612.74, computed as follows . . . IT IS SO ORDERED.” The judgment that adjudicated the rights and liabilities of Tri-City and Vanman was the judgment entered on July 5, 2006. Accordingly, appellant’s motion for case evaluation sanctions was timely filed.

We reverse and remand. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey