

STATE OF MICHIGAN
COURT OF APPEALS

TALISHA WINSTON,

Plaintiff-Appellant,

v

WAYNE STATE UNIVERSITY,

Defendant-Appellee.

UNPUBLISHED

December 21, 2010

No. 292287

Wayne Circuit Court

LC No. 06-604810-CD

Before: BECKERING, P.J., and TALBOT and OWENS, JJ.

PER CURIAM.

Talisha Winston challenges the trial court's award of case evaluation sanctions to Wayne State University (WSU).¹ We reverse.

Winston filed a lawsuit against her former employer, WSU, claiming racial discrimination, violation of public policy, and violation of the Whistleblowers' Protection Act (WPA).² The trial court initially granted summary disposition in favor of WSU on the employment discrimination and public policy claims. The WPA claim was submitted to case evaluation, resulting in an award of \$30,000 in favor of Winston. WSU accepted the award but Winston rejected it. On December 6, 2007, the trial court subsequently granted summary disposition in favor of WSU on Winston's remaining WPA claim. Winston filed a timely motion for reconsideration, which the trial court denied on January 3, 2008. Winston then filed a claim of appeal on January 24, 2008. This Court affirmed the trial court's dismissal of the WPA claim.³

On March 26, 2009, WSU filed a motion in the circuit court seeking case evaluation sanctions.⁴ Winston opposed the motion, asserting it was untimely because it was not filed

¹ This appeal has been decided without oral argument pursuant to MCR 7.214(E).

² MCL 15.361 *et seq.*

³ *Winston v Wayne State Univ*, unpublished opinion per curiam of the Court of Appeals, issued February 26, 2009 (Docket No. 283282).

⁴ MCR 2.403(O).

within 28 days after the trial court denied her motion for reconsideration.⁵ WSU contended that Winston’s filing of her appeal before the 28-day period expired “truncated” the timeframe allotted to WSU in which to file a motion for sanctions. The trial court agreed and ordered the imposition of case evaluation sanctions. Winston contends the trial court’s award was in error because WSU’s motion for sanctions was untimely.⁶

A trial court’s decision whether to grant case evaluation sanctions is reviewed de novo.⁷ This Court reviews de novo the proper interpretation and application of a court rule as a question of law.⁸ In interpreting and applying court rules, appellate courts begin with the language of the court rule.⁹

MCR 2.403(O) provides, in pertinent part:

(1) If a party has rejected an evaluation and the action 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. However, if the opposing party has also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to the party than the case evaluation.

(2) For the purpose of this rule “verdict” includes,

(a) a jury verdict,

(b) a judgment by the court after a nonjury trial,

(c) a judgment entered as a result of a ruling on a motion after rejection of the case evaluation.

* * *

(8) 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.

Although, “Michigan follows the ‘American rule’ . . . [that] attorney fees generally are not recoverable from the losing party as costs in the absence of an exception set forth in a statute or court rule expressly authorizing such an award,”¹⁰ the recovery of “actual costs” is permitted

⁵ Citing MCR 2.403(O)(8).

⁶ MCR 2.403(O).

⁷ *Badiee v Brighton Area Sch*, 265 Mich App 343, 374; 695 NW2d 521 (2005).

⁸ *Haliw v City of Sterling Hts*, 471 Mich 700, 704; 691 NW2d 753 (2005).

⁹ *Id.* at 705.

¹⁰ *Id.* at 706-707 (citation omitted).

from a party that rejects a case evaluation unless the actual verdict is more favorable to the rejecting party.¹¹ “[A]ctual costs” include “costs taxable in any civil action” and “a reasonable attorney fee . . . for services necessitated by the rejection of the case evaluation.”¹² A “request for costs . . . 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.”¹³ The court rule does not provide an exception to the 28-day deadline for the filing and serving of a request for costs.¹⁴ Although WSU posits various policy reasons in favor of allowing a request for costs to be filed after the conclusion of an appeal, its arguments are contrary to the express language of the court rule. As we are obligated to “apply the clear language of the court rule as written,”¹⁵ WSU was required to file its request for costs no later than January 31, 2008, which was 28 days after the trial court denied Winston’s motion for reconsideration. Because WSU’s request for sanctions was not filed until March 2009 we find it was untimely.

Although Winston filed a claim of appeal before the 28-day period expired, the circuit court retained the authority to rule on a timely filed motion for case evaluation sanctions. Specifically, after an appeal is filed, the trial court “may rule on requests for costs or attorney fees under MCR 2.403 . . . unless the Court of Appeals orders otherwise.”¹⁶ Contrary to WSU’s contention that its entitlement to case evaluation sanctions could not be ascertained with certainty until after Winston’s appeal was decided, a trial court does not have to await the outcome of an appeal to award sanctions.¹⁷ The relevant court rule does not require “a party seeking case-evaluation sanctions to specify the amount of actual costs with particularity.”¹⁸ WSU was not required to state its costs and attorney fees as a sum certain in order to request case evaluation sanctions within the 28-day period.

Because WSU’s request for costs was not timely filed, the trial court erred in granting the requested sanctions.

Reversed.

/s/ Jane M. Beckering
/s/ Michael J. Talbot
/s/ Donald S. Owens

¹¹ MCR 2.402(O)(1).

¹² MCR 2.402(O)(6).

¹³ MCR 2.402(O)(8).

¹⁴ MCR 2.403(O).

¹⁵ *Braun v York Props, Inc*, 230 Mich App 138, 150; 583 NW2d 503 (1998).

¹⁶ MCR 7.208(I).

¹⁷ *Meagher v Wayne State Univ*, 222 Mich App 700, 729; 565 NW2d 401 (1997).

¹⁸ *Badiee*, 265 Mich App at 376.