STATE OF MICHIGAN

COURT OF APPEALS

KEVIN ADELL,

Plaintiff-Appellant,

v

KATHY MAROTTA and VILLAGE OF FRANKLIN,

Defendants-Appellees.

UNPUBLISHED
June 26, 1998

No. 201400
Oakland Circuit Court
LC No. 96-515531 CZ

Before: Sawyer, P.J., and Bandstra and J. B. Sullivan*, JJ.

PER CURIAM.

Plaintiff filed this defamation lawsuit arising from a memo distributed by defendant Kathy Marotta to the Village of Franklin council members regarding an anonymous tip about plaintiff. The trial court had previously denied defendants' motion for summary disposition, but after an interlocutory appeal, this Court granted defendants' motion for peremptory reversal and reversed the trial court's order denying the motion for summary disposition. *Adell v Marotta*, unpublished order of the Court of Appeals, entered January 17, 1997 (Docket No. 197514). Prior to this Court's order, however, the case went to mediation, whereby the mediators rendered an award in favor of plaintiff for $50,000. Plaintiff accepted as to defendant Village of Franklin, but rejected as to defendant Kathy Marotta. Plaintiff now appeals from the trial court's orders granting defendants' motion for summary disposition pursuant to this Court's order and denying plaintiff's motion for entry of judgment for acceptance of mediation award. We reverse in part.

Plaintiff first argues that, because he accepted the mediation evaluation against Franklin, the trial court should have entered judgment notwithstanding this Court's subsequent order granting defendants' motion for peremptory reversal of the denial of their motion for summary disposition. We agree.

MCR 2.403 provides in relevant part:

(L) Acceptance or Rejection of Evaluation.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

(1) Each party shall file a written acceptance or rejection of the panel's evaluation with the mediation clerk within 28 days after service of the panel's evaluation. The failure to file a written acceptance or rejection within 28 days constitutes rejection.

(2) There may be no disclosure of a party's acceptance or rejection of the panel's evaluation until the expiration of the 28-day period, at which time the mediation clerk shall send a notice indicating each party's acceptance or rejection of the panel's evaluation.

(3) In mediations involving multiple parties the following rules apply:

(a) Each party has the option of accepting all of the awards covering the claims by or against that party or of accepting some and rejecting others. However, as to any particular opposing party, the party must either accept or reject the evaluation in its entirety.

(b) A party who accepts all of the awards may specifically indicate that he or she intends the acceptance to be effective only if all opposing parties accept. If this limitation is not included in the acceptance, an accepting party is deemed to have agreed to entry of judgment as to that party and those of the opposing parties who accept, with the action to continue between the accepting party and those opposing parties who reject.

(c) If a party makes a limited acceptance under subrule (L)(3)(b) and some of the opposing parties accept and others reject, for the purposes of the cost provisions of subrule (O) the party who made the limited acceptance is deemed to have rejected as to those opposing parties who accept.

The purpose of MCR 2.403 is to expedite and simplify the final settlement of cases. *Bush v Mobil Oil Corp*, 223 Mich App 222, 226; 565 NW2d 921 (1997). If a party's response to the mediation evaluation does not conform to the court rules, the trial court should deem it a rejection. *Id*. at 227. Moreover, acceptance of the mediation award is a final settlement of the case and disposes of all issues including those on which an appeal is pending at the time of the acceptance. *Id*. at 228.

The plain language of MCR 2.403(L)(3) indicates that a party may accept an award as to one opposing party while rejecting it as to another party. This is exactly what plaintiff did: accept mediation as to one party and reject as to another. We are not persuaded that it makes any difference that the claims against both defendants were the same, or that the claim against one defendant was based upon the doctrine of respondeat superior. There may very well be legitimate reasons why a party would choose to do so. For example, a plaintiff might conclude that the respondeat superior claim may be weak and, therefore, it would be best to settle as to that defendant, while maintaining the claim against the primary tortfeasor. Or a plaintiff might conclude that it would be unlikely to be able to collect a judgment larger than the mediation award against a particular defendant and, therefore, there is nothing to be gained by continuing the litigation against that defendant, with the corresponding time, expense and

risk of doing so. Whatever the reason for accepting mediation as to one defendant and not the other, plaintiff was free to do so under the court rules. Accordingly, there was a valid and enforceable mediation award as to defendant Franklin.

There is the secondary issue of the fact that the trial court did not enter an order on the mediation award until after this Court's order directing the trial court to enter summary disposition in favor of defendants. Ordinarily, our decision would preclude the trial court from taking further action. However, the mediation award was rendered, and accepted, before this Court's decision on the earlier interlocutory appeal. Entry of a judgment following acceptance of a mediation award is mandatory. MCR 2.403(M). We are aware of no authority which provides that mediation proceedings are suspended while this Court is considering an application for leave to appeal. Indeed, as we noted in *Bush, supra* at 228, mediation disposes of all issues, including those for which an appeal is pending. Had mediation not occurred, or at least the responses not filed, until after our earlier decision was made, a different result may well apply. However, the mediation award was effective upon the filing of the acceptances and the trial court had no choice but to engage in the ministerial task of entering a judgment accordingly. MCR 2.403(M).

Plaintiff also argues that the trial court erroneously granted defendants' motion for summary disposition on the basis that his claim was barred by the statute of limitations and res judicata. However, we do not need to address the merits of plaintiff's arguments because this Court's prior ruling in this matter is binding by the law of the case doctrine. *Freeman v DEC Intern, Inc*, 212 Mich App 34, 37; 536 NW2d 815 (1995).

Affirmed in part and reversed in part. No costs, neither party having prevailed in full.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Joseph B. Sullivan