

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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NATALIE RETAMAR,

Plaintiff-Appellant,

v

PERFECT LANDSCAPING COMPANY,

Defendant-Appellee,

and

HERBERT CHARFOOS, RONALD CHARFOOS,  
CHARFOOS & COMPANY, and PRESIDENTIAL  
OFFICE CENTER,

Defendants,

and

HERBERT CHARFOOS, RONALD CHARFOOS  
and CHARFOOS & COMPANY,

Third-Party Plaintiffs,

v

PERFECT LANDSCAPING COMPANY,

Third-Party Defendant.

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Before: Murphy, P.J., and Young, Jr. and M. R. Smith\*, JJ.

MEMORANDUM.

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

In this negligence action, plaintiff seeks to upset a circuit court order requiring her to pay mediation sanctions in the amount of \$75,533.33 to defendant Perfect Landscaping Company. We vacate the order awarding sanctions. This case is being decided without oral argument pursuant to MCR 7.214(E).

The trial court lacked authority to impose mediation sanctions. MCR 2.403(O) requires a party who rejects a mediation and, hence, forces the matter to proceed to trial, to pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the mediation evaluation. Perfect Landscaping predicated its request for mediation sanctions on plaintiff's rejection of the March 20, 1995, mediation evaluation of \$15,000, plaintiff having accepted the \$125,000 August 23, 1996, remediation evaluation. An award of mediation sanctions cannot be predicated on the initial \$15,000 evaluation. Once Perfect Landscaping agreed to the second mediation, and certainly once the remediation of plaintiff's claims occurred, the parties were no longer bound by the first mediation, the first mediation evaluation being effectively vacated. *Mickowski v Keil*, 165 Mich App 212, 213-214; 418 NW2d 389 (1987). Because the initial evaluation was effectively vacated, it may not be used as a predicate to support an imposition of sanctions under MCR 2.403(O). *Mickowski, supra*.

We decline to address whether Perfect Landscaping is entitled to tax costs against plaintiff as a prevailing party pursuant to MCR 2.625 because the order taxing costs against plaintiff did not rely on this rule.

The January 8, 1997, order awarding mediation sanctions is vacated. We do not retain jurisdiction.

/s/ William B. Murphy  
/s/ Robert P. Young, Jr.  
/s/ Michael R. Smith