

STATE OF MICHIGAN
COURT OF APPEALS

BRANDON BERRY, a Minor, by his Next Friend
CARMELIA BERRY,

UNPUBLISHED
April 1, 2003

Plaintiff-Appellant,

v

JOHN TIMOTHY MORRIS,

No. 234466
Kent Circuit Court
LC No. 99-007678-NI

Defendant-Appellee.

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

MEMORANDUM.

Plaintiff appeals as of right from a circuit court order granting defendant’s motion for case evaluation sanctions. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff first contends that the law does not authorize imposition of mediation sanctions against a minor’s next friend. This presents a question of law, and questions of law are reviewed de novo on appeal. *Minority Earth Movers, Inc v Walter Toebe Constr Co*, 251 Mich App 87, 91; 649 NW2d 397 (2002).

If a minor does not have a conservator to represent him as a plaintiff in an action, the court shall appoint a competent and responsible person to appear as next friend on the minor’s behalf, “and the next friend is responsible for the costs of the action.” MCR 2.201(E)(1)(b). Similarly, MCL 600.2415 provides in part that “Any person who brings an action as next friend for an infant ... shall be responsible for the costs of the suit.” Taxable costs include those “[m]atters specially made taxable elsewhere in the statutes or rules” and “[a]ny attorney fees authorized by statute or by court rule.” MCL 600.2405(2), (6). Particular to this case, attorney fees and costs are authorized by the court rules when an opponent has wrongfully rejected a case evaluation. MCR 2.403(O)(1), (6). Hence, because plaintiff wrongfully rejected the case evaluation as defined under the court rules, the next of friend is liable for those costs. Not only does the plain language of the court rule and statutes compel such a result, but we further note that in Michigan next of friends have historically been “liable for all costs of litigation.” *Marquette Prison Warden v Meadows*, 114 Mich App 121, 123; 318 NW2d 627 (1982). See, also *Sick v Michigan Aid Ass’n*, 49 Mich 50, 52; 12 NW 905 (1882); *Amwake v Mercy-Memorial Hosp*, 92 Mich App 546, 550 n 2; 285 NW2d 369 (1979).

We decline to consider plaintiff's unpreserved constitutional challenge to the imposition of sanctions. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234 n 2; 507 NW2d 422 (1993).

Affirmed.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray