

STATE OF MICHIGAN
COURT OF APPEALS

ALLAN WEINGER,

Plaintiff-Appellant,

v

PAUL REVERE LIFE INSURANCE COMPANY
and UNUM PROVIDENT CORPORATION,

Defendants-Appellees.

UNPUBLISHED

November 18, 2003

No. 241691

Oakland Circuit Court

LC No. 01-033092-CK

Before: Fort Hood, P.J., and Murphy and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order dismissing the action with prejudice following the parties acceptance of the \$30,000 case evaluation award in favor of plaintiff. We affirm.

Plaintiff filed this litigation alleging a single count of breach of a disability insurance policy and seeking damages in excess of \$25,000. The action proceeded to case evaluation in accordance with MCR 2.403. Defendants submitted that the policy was void ab initio based on fraud where plaintiff failed to disclose preexisting medical injuries to his back and neck at the time of execution of the policy. Defendants further alleged that plaintiff's claim of disability was not substantiated by an independent medical examination and that plaintiff had been videotaped engaging in physical activity that was inconsistent with and contrary to his claim of disability. Therefore, plaintiff was not totally disabled as defined by the policy. Plaintiff alleged that two medical doctors had concluded that he was disabled and that defendant had breached the contract by failing to pay benefits in accordance with the terms of the policy. Plaintiff requested that the case evaluation panel award retroactive benefits he would have received and benefits to the age of sixty-five for a total award of \$529,200. The case evaluation panel awarded \$30,000 in favor of plaintiff, and the parties accepted the award.

The parties could not reach an agreement regarding the language of the order disposing of the case. Plaintiff opined that the case evaluators indicated that an award of future damages was not considered. Therefore, plaintiff alleged that damages were only awarded through the date of mediation, and an order providing that the policy was rescinded was inappropriate where future damages could be requested. Defendants alleged that the award resolved all claims. Alternatively, defendants requested that the trial court set aside the acceptance of the case evaluation award and hear defendants' motion for summary disposition of the action based on

fraud. After reviewing the parties' case evaluation summaries, the trial court agreed with defendants that all claims and defenses under the policy were submitted to the case evaluation panel, thereby resolving all claims. Accordingly, the court dismissed the action in its entirety, with prejudice.¹

In light of MCR 2.403(M)(1) and our Supreme Court's interpretation of that rule in *CAM Construction v Lake Edgewood Condominium Ass'n*, 465 Mich 549, 554-555; 640 NW2d 256 (2002), we conclude there was no error.

MCR 2.403(M)(1) provides as follows:

If all the parties accept the panel's evaluation, judgment will be entered in accordance with the evaluation, unless the amount of the award is paid within 28 days after notification of the acceptances, in which case the court shall dismiss the action with prejudice. The judgment or dismissal shall be deemed to dispose of all claims in the action and includes all fees, costs, and interest to the date it is entered.

In *CAM Construction*, *supra*, the Supreme Court held that MCR 2.403(M)(1) plainly provides that, by accepting a case evaluation award, all claims in the action are disposed of by the award. The Court rejected the idea that bifurcation of claims within the same action is permitted, stating that such allowance "would be directly contrary to the language of the rule." *Id.* at 555.

The Court in *CAM Construction* also rejected the principle announced in *Reddam v Consumer Mortgage Corp*, 182 Mich App 754; 452 NW2d 908 (1990), which, under a prior version of MCR 2.403, allowed the parties to show that fewer than all claims were submitted to the case evaluators. *CAM Construction*, *supra* at 556-557. Regarding this principle, the Court in *CAM Construction* stated:

To the extent that *Reddam* and its progeny have been read to suggest that parties may except claims from case evaluation under the current rule, these cases are overruled. [*Id.* at 557.]

The Court summarized its holding by stating, "If all parties accept the panel's evaluation, the case is over."

In light of *CAM Construction*, plaintiff cannot show that his acceptance of the case evaluation award failed to resolve all claims in the action. Further, because it is clear from plaintiff's complaint that plaintiff's action was not limited only to partial benefits under the policy, the case evaluation award operated to resolve all claims related to the policy. By

¹ We note that the submission of the case evaluation summaries did not serve as substantive evidence in contravention of MCR 2.403(J)(4). Rather, the submission demonstrated the issues that were presented to the panel, which included a claim for future damages.

accepting the case evaluation award, plaintiff has waived any claim to future damages. See *X v Peterson*, 240 Mich App 287, 290; 611 NW2d 566 (2000). The trial court properly dismissed plaintiff's action in its entirety.

Plaintiff also alleges that the trial court erroneously interpreted the case evaluation award as granting defendants equitable relief because the court included in the final judgment language indicating that the policy had been "rescinded and rendered without effect or force." Plaintiff alleges that the case evaluation panel did not have the authority to rescind the policy because rescission is a form of equitable relief. See MCR 2.403(K)(3).

Neither the case evaluation panel, nor the trial court, substantively rescinded the policy. A rescission of a contract is not merely a release, but the contract is annulled from the beginning and the parties are restored to the positions they would have occupied if there had been no contract. *Michelson v Voison*, 254 Mich App 691, 697; 658 NW2d 188 (2003); *Lash v Allstate Ins Co*, 210 Mich App 98, 102; 532 NW2d 869 (1995). Substantively, plaintiff was awarded \$30,000 for his claims under the policy, so he was not actually restored to a position he would have occupied had there been no policy. The court included the subject language in the final judgment in order to make it clear that all claims under the policy had been resolved and that plaintiff was therefore barred from bringing any future claims based on the policy. Because this result derives from the parties' acceptance of the case evaluation award, plaintiff has not shown an entitlement to appellate relief.

Affirmed.

/s/ Karen M. Fort Hood
/s/ William B. Murphy
/s/ Janet T. Neff