

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT KAMPHAUS, DONNA KAMPHAUS,
MICHAEL CIUCHNA, KRISTY CIUCHNA,
GERALD RYNKOWSKI, and VIRGINIA
RYNKOWSKI,

UNPUBLISHED
February 26, 2009

Plaintiffs-Appellees/Cross-
Appellants,

v

No. 279962
Macomb Circuit Court
LC No. 2003-005067-CZ

DAVID A. BURNS,

Defendant-Appellant/Cross-
Appellee,

and

JOHN DOE and MARY ROE,

Defendants.

Before: Cavanagh, P.J., and Jansen and Meter, JJ.

JANSEN, J. (*concurring in part and dissenting in part*).

I concur in the result reached by the majority with respect to the issues raised by plaintiffs on cross-appeal. I respectfully dissent, however, from the majority's conclusion that defendant was entitled to case evaluation sanctions under MCR 2.403(O).

It is true that the ultimate verdict in this case was less favorable to plaintiffs than was the case evaluation award of \$7,500. However, as noted by the majority, plaintiffs had abandoned their claim for money damages by the time of the bench trial in this matter. The trial court ultimately concluded that certain of defendant's actions had not violated the deed restrictions, but that certain of defendant's other actions had constituted "technical violations" of the deed restrictions. Because no money damages were awarded, the trial court's verdict in this regard essentially amounted to a declaratory judgment.

Suits for declaratory relief are equitable in nature. *Coffee-Rich, Inc v Dep't of Agriculture*, 1 Mich App 225, 228; 135 NW2d 594 (1965). Although case evaluation sanctions are generally mandatory when the ultimate verdict is less favorable to the rejecting party than the

case evaluation award would have been, MCR 2.403(O)(1), sanctions are merely discretionary when the verdict awards equitable relief, MCR 2.403(O)(5). When a verdict awards equitable relief, case evaluation sanctions “may” be awarded, MCR 2.403(O)(5), but only when “it is fair to award costs under all of the circumstances,” MCR 2.403(O)(5)(b).

The trial court’s verdict was essentially a declaratory judgment, and therefore clearly amounted to an award of “equitable relief” within the meaning of MCR 2.403(O)(5). See *Coffee-Rich, Inc*, 1 Mich App at 228; see also *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 79-80; 577 NW2d 150 (1998). Therefore, the court was entitled to award case evaluation sanctions to defendant only if doing so would have been “fair . . . under all of the circumstances.” MCR 2.403(O)(5)(b). I conclude that it would not have been fair to award case evaluation sanctions under the circumstances of this case because, as the trial court properly determined, defendant had, indeed, violated the deed restrictions in many respects. Even assuming that many of defendant’s violations were merely “technical violations”, and therefore not sufficiently egregious to warrant relief for plaintiffs, defendant still acted wrongfully by violating the deed restrictions in the first instance.

Although I disagree with the trial court’s exact reasoning, I conclude that it reached the correct result in denying defendant’s motion for case evaluation sanctions. See MCR 2.403(O)(5)(b). In general, this Court should affirm when the trial court has reached the correct result, even if it has done so for the wrong reason. *Netter v Bowman*, 272 Mich App 289, 308; 725 NW2d 353 (2006). I would affirm the trial court’s denial of defendant’s request for case evaluation sanctions in this case.

/s/ Kathleen Jansen