S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

ESTATE OF MARK E. PATRICK, Plaintiff-Appellee/Cross-Appellant,	UNPUBLISHED February 11, 2016
v	No. 324438 Oakland Circuit Court
WENDY R. FREEDMAN, Defendant-Appellant/Cross-Appellee.	LC No. 2014-141791-CZ

Before: SERVITTO, P.J., and SAAD and O'BRIEN, JJ.

PER CURIAM.

Defendant, Wendy R. Freedman, appeals from an order of dismissal in this action regarding defendant's consent judgment of divorce with her deceased, former husband, Mark E. Patrick. Defendant challenges an earlier order that granted summary disposition to plaintiff, the Estate of Mark E. Patrick ("the Estate"), on its breach of contract claim and also challenges an order that denied her motion for reconsideration. On cross-appeal, the Estate argues that the trial court abused its discretion by failing to award attorney fees and expenses according to the attorney-fee provision in the consent judgment. We affirm in part, reverse in part, and remand.

I. BASIC FACTS

After Patrick and defendant married, Patrick named defendant as the beneficiary for his entire profit-sharing plan. Patrick and defendant subsequently divorced on June 29, 2007. In their consent judgment of divorce, the division of property and related debts section provides, in part:

> The Plaintiff husband shall be awarded the first $30,000.00 of his Honey Baked Ham 401-K plan. The Defendant wife shall be awarded fifty percent (50%) interest in the balance of the Plaintiff husband's Honey Baked Ham 401-K plan and his Fidelity IRA as of June 30, 2007, plus or minus any gains or losses on the Defendant wife's portion through the date of distribution through a Qualified Domestic Relations Order, roll-over or other appropriate order, prepared in accordance with approval of the Plan Administrator and entered with the Court, dividing said Plan. The Defendant wife shall be the beneficiary for the amount awarded if the Plaintiff husband dies before the plans segregate the award for the Defendant wife. The parties shall contact QDRO Express to prepare the

> Qualified Domestic Relations Order and each party shall be responsible for fifty percent of the fees. Each party shall be responsible for any tax ramifications on the portion of the Plan awarded to him/her once the transfer has occurred. The Plaintiff husband shall be awarded the balance of his account and any future increases or decreases in said account subsequent to June 30, 2007. Defendant wife's 50% interest in both plans shall be distributed from the Plaintiff husband's Honey Baked Ham 401-K plan.

Another section, statutory insurance provision and beneficiary rights, provides:

> Except as otherwise provided herein, any rights of either party as beneficiary in any policy or contract of life, endowment or annuity insurance of the other, as beneficiary, are hereby extinguished.
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> Each party acknowledges that, notwithstanding the language of the above clause, they have been advised by their respective counsel that under ERISA (Employee Retirement Income Security Act of 1974) the plan administrator must pay benefits to those designated in the plan documents. This preempts contrary state laws that relate to such plans. Accordingly, the Federal District Court in the Eastern District of Michigan has held that the plan documents control notwithstanding any language in a Judgment of Divorce that cancels beneficiary designations. The United States Supreme Court affirmed the District Court ruling on March 21, 2001 (*Egelhoff v. Egelhoff*)[1] holding that Congressional intent was to make ERISA uniform in all 50 states.
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> Therefore, any provision in the Judgment of Divorce terminating the other party's interest in any work related benefit, including, but not limited to, annuities, life insurance policies, pension plans, deferred compensation, is of no effect. Therefore, it shall be the responsibility of the parties and not the attorneys to affirmatively submit necessary documentation to the plan administrator to change beneficiaries to effectuate the intent of the Judgment. The parties hereby forever release, discharge and hold harmless their respective attorneys from such undertakings. [Footnote added.]

The next section in the judgment—statutory pension provision—provides, "Except as otherwise stated herein, each party shall retain exclusively any retirement benefits to which they are or shall become entitled to due to their employment, and any claim thereto by the other as beneficiary or otherwise is extinguished."

A constructive trust provision provides:

> If due to omission or commission by either party, or the death or disability of either party prior to implementation and satisfaction of the entire terms of this

[1] *Egelhoff v Egelhoff*, 532 US 141; 121 S Ct 1322; 149 L Ed 2d 264 (2001).

> Judgment, the other party does not receive an asset or other benefit that he or she was intended to receive under the terms of this Judgment, then the person or entity that receives or holds that asset or benefit shall do so in a constructive trust for the benefit of the party who was the intended recipient of that asset or benefit under this Judgment. The parties intend that this clause be binding on their estates, heirs and assigns.

Finally, a provision regarding attorney fees provides that "[i]n the event any of the terms contained in this agreement are not complied with by either party, and the other party must seek enforcement by the Court, then the party not in compliance shall be liable for costs, sanctions and attorney fees."

Patrick died on January 24, 2014, and never changed the beneficiary designation on his 401(k). Defendant requested distribution of the proceeds and, according to the trial court, she received payment from the plan administrator. After the Estate filed the instant complaint, the trial court ordered summary disposition of its breach of contract claim, ruling that the plan administrator properly distributed the proceeds to defendant, but under the consent judgment, she had no right to retain them.

II. ANALYSIS

A. SUMMARY DISPOSITION

Defendant argues that the trial court erred when it granted summary disposition in favor of the Estate on its breach of contract claim. We disagree.

The trial court granted summary disposition pursuant to MCR 2.116(C)(10), which tests the factual sufficiency of the complaint. *Urbain v Beierling*, 301 Mich App 114, 122; 835 NW2d 455 (2013).

> In evaluating a motion for summary disposition brought under Subrule (C)(10), a reviewing court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. Summary disposition is properly granted if the proffered evidence fails to establish a genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. [*Klein v HP Pelzer Auto Sys, Inc*, 306 Mich App 67, 75; 854 NW2d 521 (2014) (citations omitted).]

Summary disposition under MCR 2.116(I)(2) can be granted for the party opposing a motion for summary disposition "[i]f it appears to the court that the opposing party, rather than the moving party, is entitled to judgment." *Owczarek v Michigan*, 276 Mich App 602, 609; 742 NW2d 380 (2007) (quotation marks omitted).

"A divorce judgment entered by agreement of the parties represents a contract." *Rose v Rose*, 289 Mich App 45, 49; 795 NW2d 611 (2010). The interpretation of a contract is a question of law that is reviewed de novo. *Sands Appliance Servs, Inc v Wilson*, 463 Mich 231, 238; 615 NW2d 241 (2000). When interpreting a contract, the primary goal is to ascertain and effectuate the intent of the parties. *Old Kent Bank v Sobczak*, 243 Mich App 57, 63; 620 NW2d

663 (2000). In doing so, this Court reads the contract as a whole and attempts to apply the plain language of the contract itself. *Id*. "An unambiguous contract must be enforced according to its terms." *Reed v Reed*, 265 Mich App 131, 141; 693 NW2d 825 (2005). When a contract is ambiguous, however, this Court may construe the agreement in an effort to find and enforce the parties' intent. *Id*. A contract is ambiguous only if the language used is reasonably susceptible to more than one interpretation. *Cole v Ladbroke Racing Mich, Inc*, 241 Mich App 1, 13; 614 NW2d 169 (2000).

In *Egelhoff v Egelhoff*, 532 US 141, 148; 121 S Ct 1322; 149 L Ed 2d 264 (2001), the United States Supreme Court held that, under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 USC 1001 *et seq.*, a plan administrator must pay plan benefits to the named beneficiary only.

In Michigan, this Court has analyzed whether a named beneficiary, who receives funds from a plan administrator, may have nevertheless waived any right to *retain* those funds. In *Thomas v City of Detroit Ret Sys*, 246 Mich App 155; 631 NW2d 349 (2001), the decedent failed to change the beneficiary designation for his retirement fund from his ex-wife after their divorce. This Court explained the consequence of the wife's waiver in the consent judgment of divorce:

> We believe that language in a divorce decree awarding one party the proceeds of a fund "free and clear" of any claim by that party's spouse—such as the language in the instant divorce judgment—operates to void a designation listing the spouse as the beneficiary. To hold otherwise would be to contravene the clear language of the decree and thereby frustrate the expressed intent of the parties who signed it.
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> * * *
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> Should the parties in a particular case decide to keep each other as beneficiaries in spite of their divorce, they need merely specify as much in the divorce decree. [*Id.* at 160.]

In *Sweebe v Sweebe*, 474 Mich 151; 712 NW2d 708 (2006), the decedent had life insurance benefits under ERISA and the ex-wife was named as the beneficiary under the plan. But the ex-wife and the decedent divorced, and the judgment of divorce contained a clause that each party agreed to relinquish any rights in the life insurance of the other. *Id*. at 153. The decedent's new spouse, who was the personal representative of the estate, sought to have the waiver in the judgment of divorce enforced in court. *Id*. Our Supreme Court explained ERISA's role regarding payment to a beneficiary:

> In general, ERISA's preemption provision states that ERISA supersedes all state laws that relate to an employee benefit plan. 29 USC 1144(a). Therefore, under ERISA preemption, Michigan law cannot affect ERISA's determination of the proper beneficiary. ERISA provides that a plan administrator must distribute the proceeds of an insurance policy to the named beneficiary. 29 USC 1104(a)(1)(D). A "beneficiary" is "a person designated by a participant, or by the terms of an employee benefit plan, who is or may become entitled to a benefit

> thereunder." 29 USC 1002(8). In this case, the named beneficiary was plaintiff. Under ERISA, plaintiff is entitled to receive the insurance proceeds because the decedent designated her as the beneficiary. Consistent with ERISA, this Court cannot undermine her status as the beneficiary. Therefore, the plan administrator properly distributed the proceeds from the life insurance policy to plaintiff in accord with ERISA requirements. [*Id.* at 154-155 (footnote omitted).]

Consequently, the Court concluded that under ERISA, the plan administrator properly distributed the proceeds to the ex-wife. *Id.* at 155. However, regardless of the appropriateness of the disbursement, the Court noted that "the consensual terms of a prior contractual agreement may prevent the named beneficiary from *retaining* those proceeds." *Id.* at 156 (emphasis added). Accordingly, the Court then analyzed whether the ex-wife, "having lawfully renounced her interest in the insurance proceeds in a binding judgment of divorce, may lawfully retain them." *Id.* at 155. It further noted that "[t]his issue is governed exclusively by Michigan law because the proceeds have been properly distributed under ERISA." *Id.*

The Court held that "a valid waiver is not preempted by ERISA and should be enforced." *Id.* at 156. It recognized waiver as "'the intentional relinquishment of a known right,'" and noted that a waiver "must simply be explicit, voluntary, and made in good faith." *Id.* at 156-157 (citation omitted). "In determining if a waiver exists, a court must determine if a reasonable person would have understood that she was waiving her beneficiary interest in the life insurance policy at issue." *Id.* at 157 (quotation marks omitted). The Court concluded that by signing the judgment of divorce, which included provisions that any interest the ex-wife had in the decedent's insurance contract "shall be extinguished," and "the parties shall in the future hold all such insurance free and clear from any right or interest which the other party now has or may have had therein, by virtue of being the beneficiary, contingent beneficiary or otherwise," the ex-wife consented to the waiver of her right to receive and retain the proceeds. *Id.* at 158. As a result, the Court affirmed an order from this Court that required the ex-wife to pay an amount equal to the insurance proceeds to the decedent's estate. *Id.* at 160.

Here, neither party disputes that the retirement plan at issue is an employee-benefit plan governed by ERISA. 29 USC 1003(a). Moreover, just as in *Sweebe*, the parties do no dispute that the plan administrator properly distributed the proceeds of the 401(k) to defendant, as the named beneficiary. The question is whether she had any right to retain the proceeds. The consent judgment awarded Patrick the first $30,000 of his 401(k) plan. Defendant then received 50% of the remaining proceeds and Patrick received "the balance of his account and any future increases or decreases in said account." Patrick and defendant both agreed in the statutory pension provision that "[e]xcept as otherwise stated herein, each party shall retain exclusively any retirement benefits to which they are or shall become entitled to due to their employment, and any claim thereto by the other as beneficiary or otherwise is extinguished." The same type of language extinguishing beneficiary rights was used in the judgments in *Thomas* and *Sweebe*. Thus, although the plan administrator properly distributed the proceeds to defendant, she could not retain them because she explicitly, voluntarily, and in good faith relinquished any rights as a beneficiary to them.

Defendant nevertheless claims that, even if she waived her right to retain the proceeds at the time of the divorce, there is a question of fact whether Patrick decided that she should continue to be his beneficiary after the divorce. Defendant relies on the "no effect" language in the statutory insurance provision and beneficiary rights section. Contrary to defendant's argument on appeal, reading this section as a whole, it merely explains that under ERISA, if the change in beneficiary is not made, the plan administrator would disburse the proceeds to the named beneficiary. The next sentence in the section immediately provides: "Therefore, any provision in the Judgment of Divorce terminating the other party's interest in any work related benefit . . . is of no effect." The placement of this section immediately after the discussion of ERISA and the use of the word "therefore," meaning "for that reason," *Merriam-Webster's Collegiate Dictionary* (11th ed), demonstrate that the waivers in the consent judgment would have "no effect" to prevent a disbursement to a named beneficiary by the plan administrator under ERISA.

Defendant also argues that this section allowed the parties, after the divorce, to either change the beneficiary or keep the other party as the beneficiary. But she ignores the section's plain language that required the parties to change any beneficiaries to "effectuate the intent of the Judgment," which according to the statutory pension provision is to extinguish the other party's rights. Thus, there is no support for defendant's argument that this section nevertheless allowed Patrick to keep her as a beneficiary by merely failing to change the beneficiary designation. In *Thomas*, this Court explained that parties may decide to keep each other as beneficiaries in spite of their divorce by specifying as much in the divorce decree. *Thomas*, 246 Mich App at 160. Alternatively, after the waiver in the consent judgment, the parties could agree to modify the judgment or file a new beneficiary designation. The parties here did not take any of these steps.

As the Estate argues, interpreting the entire consent judgment as extinguishing defendant's rights as a beneficiary to the 401(k) proceeds is consistent with MCL 552.101(4)(a), which requires that each judgment of divorce "determine all rights . . . of the husband and wife in and to . . . [a]ny vested pension, annuity, or retirement benefits." See also MCR 3.211(B)(2). A general rule of construction presumes the legality and enforceability of contracts. See *Universal Underwriters Ins Co v Kneeland*, 464 Mich 491, 498; 628 NW2d 491 (2001). Defendant's interpretation of the consent judgment would be contrary to MCL 552.101(4)(a) and would leave the rights of the beneficiary of the retirement accounts undetermined and conditioned upon the decision whether or not to change the beneficiary after the divorce.[2] In *Metro Life Ins Co v Church*, 150 Mich App 539, 545; 389 NW2d 124 (1986), this Court explained, in the context of life insurance, that MCL 552.101 was created to avoid a party to a divorce from inadvertently receiving benefits and that affirmative action be taken to retain the divorced party as the primary

[2] Defendant claims that MCL 552.101(4) and MCR 3.211(B)(2) only require retirement benefits to be "addressed" by the judgment. But the plain language of both the statute and court rule requires a "determination" of their rights. "Determination" is defined as "the act of coming to a decision or of resolving something," *Random House Webster's College Dictionary* (2001), or "a final decision by a court or administrative agency," *Black's Law Dictionary* (10th ed). Therefore, contrary to defendant's arguments, the parties may not merely reference retirement benefits in the judgment or promise to decide the matter in the future but, instead, must resolve the rights to those benefits in the judgment.

beneficiary. Again, no such affirmative action was taken here. Moreover, interpreting the statutory insurance provision and beneficiary rights section in the consent judgment to leave the rights of the beneficiary of the retirement accounts undetermined would render the provisions in the judgment awarding all remaining proceeds of the 401(k) to Patrick and extinguishing the rights of each spouse as a beneficiary of the other's retirement benefits nugatory. See *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 468; 663 NW2d 447 (2003) ("[C]ourts must . . . give effect to every word, phrase, and clause in a contract and avoid an interpretation that would render any part of the contract surplusage or nugatory.").

Although defendant argued that the consent judgment was unambiguous below, and primarily maintains the same in her brief on appeal, she also, on appeal, alternatively claims for the first time that it is ambiguous.

"[A] contract is ambiguous when two provisions irreconcilably conflict with each other, or when [a term] is equally susceptible to more than a single meaning." *Holland v Trinity Health Care Corp*, 287 Mich App 524, 527; 791 NW2d 724 (2010) (quotation marks omitted). Here, the division of property section and the statutory pension provision split the 401(k) and then extinguished each party's rights as a beneficiary to the other's retirement benefits. The statutory insurance provision and beneficiary rights section is not irreconcilable with these provisions. Again, it explains the law requiring plan administrators to distribute proceeds to named beneficiaries under ERISA, that a consent judgment extinguishing the rights of a beneficiary has "no effect" on this ERISA rule, and that the parties were free to change their beneficiaries to effectuate the intent of the parties to extinguish each party's rights in the other's retirement benefits. With the constructive trust provision, the consent judgment even contemplates what to do if the parties fail to change their beneficiaries and the wrong party receives and retains the proceeds despite his or her waiver. Thus, any facts in the record showing that Patrick, in fact, neglected to change the 401(k) designation would not create a genuine issue of material fact. Even if defendant had argued that the consent judgment was ambiguous below, the trial court would not have erred by rejecting that claim and concluding that there was no question of fact for the jury to resolve and that the Estate was entitled to a judgment as a matter of law. See *id.* (providing that while unambiguous language must be enforced as written as a matter of law, the meaning of ambiguous contract language poses a question of fact).

Defendant unpersuasively argues that there must be ambiguity because the trial court denied the motion for summary disposition under MCR 2.116(C)(9), which she claims implies that a factual scenario could be developed to establish a valid defense. The trial court was required to deny the motion under subpart (C)(9) because, in her answer, defendant categorically denied the breach of contract claim. See *Nasser v Auto Club Ins Ass'n*, 435 Mich 33, 47-48; 457 NW2d 637 (1990) (explaining that merely denying a material allegation of the complaint is a valid defense making summary disposition under MCR 2.116(C)(9) improper). In *Nasser*, the Supreme Court explained:

> The fact that the defense ultimately might be unsuccessful in whole or in part does not render it invalid for purposes of MCR 2.116(C)(9), nor does the fact that it ultimately might be found not to create a genuine issue of material fact to be resolved at trial, thus entitling plaintiff to summary disposition under MCR 2.116(C)(10). [*Id.* at 48.]

In addition to the categorical denial, defendant denied any breach because Patrick neglected to change the 401(k) beneficiary designation. But again, under the plain language of the contract, the Estate was entitled to a judgment as a matter of law regardless of Patrick's failure to change the designation. The trial court's denial of the motion under subpart (C)(9) and grant of the motion under subparts (C)(10) and (I)(2) therefore did not evidence a factual question necessary for the jury to resolve.

B. RECONSIDERATION

Defendant argues that the trial court incorrectly denied her motion for reconsideration. We disagree. We review a trial court's decision on a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). A court abuses its discretion if it selects an outcome that falls outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

MCR 2.119(F)(3) provides:

> Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

Once again, the intent of the consent judgment was to extinguish each party's rights in the other's retirement benefits. The statutory insurance provision and beneficiary rights section addresses disbursement to named beneficiaries under ERISA, regardless of the consent judgment. The parties waived their rights as beneficiaries, and the constructive trust provision contemplated what to do if the parties failed to change their beneficiaries and the wrong party received and retained the proceeds despite his or her waiver. We concluded earlier that any facts demonstrating that Patrick neglected to change the 401(k) designation would not create a genuine issue of material fact. Similarly, even if the affidavit attached to defendant's motion for reconsideration—establishing that Patrick changed another beneficiary designation but not the 401(k) designation—was considered,[3] it does not establish anything more than inadvertence covered by the constructive trust provision. Absent an affirmative act regarding those specific proceeds, the trial court did not abuse its discretion by denying the motion for reconsideration.

III. COSTS, SANCTIONS, AND ATTORNEY FEES

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[3] New evidence submitted in a motion for reconsideration is not properly considered by the trial court when the underlying issue is whether the court erred in its ruling on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 126 n 9; 597 NW2d 817 (1999); *Quinto v Cross & Peters Co*, 451 Mich 358, 366 n 5; 547 NW2d 314 (1996). That is because in reviewing whether a motion for summary disposition was properly granted, review is limited to what was available to the court at the time. *Maiden*, 461 Mich at 126 n 9; *Quinto*, 451 Mich at 366 n 5.

On cross-appeal, the Estate argues that the trial court abused its discretion by failing to award costs, sanctions, and attorney fees. We agree. This Court reviews a trial court's decision whether to award attorney fees for an abuse of discretion, even where the attorney fees are specified by a provision in a contract. *Mitchell v Dahlberg*, 215 Mich App 718, 729; 547 NW2d 74 (1996). In *Talmer Bank & Trust v Parikh*, 304 Mich App 373; 848 NW2d 408 (2014), vacated in part on other grounds 497 Mich 857 (2014), this Court explained:

> Attorney fees are not recoverable as an element of damages or costs unless expressly allowed by court rule, statute, common-law exception, or contract. Parties can contract for the payment of attorney fees, and contractual provisions for the payment of reasonable attorney fees are judicially enforceable. "In other words, a contractual clause providing that in the event of a dispute the prevailing party is entitled to recover attorney fees is valid." Attorney fees that are awarded pursuant to contractual provisions are considered damages, not costs. [*Id.* at 403 (citations omitted); see also *Pransky v Falcon Group, Inc*, ___ Mich App ___; ___ NW2d ___ (2015) (Docket Nos. 319266 & 319613); slip op, p 15 ("Because the authority to award attorney fees arises under the terms of the agreement, the attorney fees are a type of general damages.").]

The attorney-fee provision in the consent judgment provides that "[i]n the event any of the terms contained in this agreement are not complied with by either party, and the other party must seek enforcement by the Court, then the party not in compliance shall be liable for costs, sanctions and attorney fees." First, the record demonstrates that defendant did not comply with the terms of the agreement—namely, she waived any right to Patrick's retirement benefits, but she nevertheless attempted to retain the 401(k) proceeds that were disbursed to her. Second, the other party—here the Estate—was required to seek enforcement by the Court. Specifically, because defendant retained the proceeds, the Estate filed the complaint for breach of contract and the other dismissed claims. Therefore, the party not in compliance—defendant—should be liable to the Estate for "costs, sanctions, and attorney fees" under the agreement.

The trial court's conclusion that the Estate would have been required to seek enforcement by a court regardless of whether defendant attempted to retain the proceeds is outside the range of principled outcomes. Nothing prevented defendant from submitting the 401(k) proceeds that were disbursed to her to the Estate without court intervention. Accordingly, we remand for a determination regarding costs, sanctions, and attorney fees.

The Estate also argues that, under the consent judgment, it is entitled to costs, sanctions, and attorney fees incurred on appeal. It is understood that "'[a] contractual provision for reasonable attorney fees in enforcing provisions of [a] contract may validly include allowance for services rendered upon appeal.'" *Talmer*, 304 Mich App at 403, quoting *Central Transp, Inc v Fruehauf Corp*, 139 Mich App 536, 549; 362 NW2d 823 (1984). However, this precise issue is not properly before us, as there is nothing for us to review, i.e., the Estate is not challenging any order or action of the trial court. As this Court did in *Central Transp*, 139 Mich App at 549, we instruct the trial court on remand to determine whether the parties' contractual attorney fee provision extended to appellate fees and to calculate and award those fees if applicable.

IV. CONCLUSION

We affirm the trial court's orders that granted summary disposition to the Estate and denied defendant's motion for reconsideration, but we reverse the trial court's denial of the Estate's request for attorney fees. On remand, the trial court is to determine the proper amount of "costs, sanctions and attorney fees," pursuant to the consent judgment, to award the Estate. Further, the trial court is to determine whether the parties' contractual attorney fee provision extends to appellate fees and to calculate those fees if applicable. We do not retain jurisdiction. The Estate, as the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Deborah A. Servitto
/s/ Henry William Saad
/s/ Colleen A. O'Brien