STATE OF MICHIGAN

COURT OF APPEALS

GREGORY CUETER and METROPOLITAN PROPERTY MANAGEMENT, INC.,

Plaintiffs-Appellants,

v

PATRICIA VAN OVERBEKE,

Defendant-Appellee.

UNPUBLISHED
November 23, 2021

No. 356171
Macomb Circuit Court
LC No. 2019-004365-CZ

Before: SWARTZLE, P.J., and CAVANAGH and GADOLA, JJ.

PER CURIAM.

Plaintiffs Gregory Cueter and Metropolitan Property Management, Inc. (MPM), appeal as of right the trial court's opinion and order dismissing plaintiffs' claims because there were "no pending claims that would entitle Plaintiffs to the requested injunctive relief." Plaintiffs argue the trial court erred in dismissing their claim for injunctive relief because that claim was exempted from case evaluation under MCR 2.403(A)(3). We disagree and affirm.

I. FACTUAL BACKGROUND

Defendant, Patricia Van Overbeke, has resided at 14750 Mulberry Court, part of the Mill Creek Condominium Association, in Shelby Township, Macomb County, Michigan since 2010. At the time of the events leading to this case, Mill Creek was managed by MPM. Cueter is the owner of MPM.

Plaintiffs filed a complaint on October 28, 2019, claiming defendant had "waged a malice-inspired vendetta against Plaintiffs for over a decade" by publishing "false and derogatory materials about Plaintiffs." Plaintiffs listed several different occasions on which defendant had allegedly defamed them, including an April 17, 2017 letter from defendant to other homeowners stating that plaintiffs had "doubled-dip[ped] on bills" and "overcharged" on monthly fees, a July 20, 2018 letter stating that plaintiffs had bullied homeowners and failed to use licensed contractors for work orders, and an August 14, 2016 letter stating plaintiffs were turning Mill Creek "into a mini Detroit ghetto," and claiming plaintiffs had been sued over 29 times for their poor management. Plaintiffs maintained defendant was liable for defamation (libel per se), defamation

by implication (libel per se), and invasion of privacy (false light), and requested injunctive relief. In support of the defamation and defamation by implication claims, plaintiffs argued defendant published "unprivileged, false, and derogatory statements concerning Plaintiffs with actual malice . . . ."

Defendant answered plaintiffs' complaint on November 21, 2019. She denied plaintiffs' allegations and requested the trial court dismiss plaintiffs' complaint. Defendant also argued that plaintiffs had failed to state a claim for which relief could be granted, plaintiffs were advancing a retaliatory action, and other affirmative defenses.

The trial court issued a discovery and case evaluation order on November 22, 2019, stating that case evaluation would occur after the close of discovery. On February 5, 2020, plaintiffs moved the trial court to exempt their claim for equitable relief (the injunction request) from case evaluation. Plaintiffs referenced MCR 2.403(A)(3), which states that "[a] court may exempt claims seeking equitable relief from case evaluation for good cause shown on motion or by stipulation of the parties if the court finds that case evaluation of such claims would be inappropriate." Plaintiffs argued that good cause existed because their claim for injunctive relief, as a claim in equity, should be exempted from the case evaluation because otherwise the case would be resolved financially and "would not make Plaintiffs whole again."

Defendant answered plaintiffs' motion on February 19, 2020. Defendant cited MCR 2.403(K)(3), which states that a case evaluation "may not include a separate award on any claim for equitable relief, but the panel may consider such claims in determining the amount of an award." Therefore, argued defendant, the case evaluation panel could consider plaintiffs' claim for injunctive relief in determining the amount of the award, but could not exempt it from case evaluation. Defendant cited *CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549; 640 NW2d 256 (2002), which states:

> As we have explained, this unambiguous language evidences our desire to avoid bifurcation of civil actions submitted to case evaluation. To the extent that *Reddam* [*v Consumer Mtg Corp*, 182 Mich App 754; 452 NW2d 908 (1990), lv den 437 Mich 955 (1991), overruled in part *CAM Constr*, 465 Mich 549 (2002)] and its progeny have been read to suggest that parties may except claims from case evaluation under the current rule, these cases are overruled. If all parties accept the panel's evaluation, the case is over. [*CAM Constr*, 465 Mich at 557.]

Defendant argued that *CAM Constr* meant the case could not be bifurcated as plaintiffs wished. She also pointed to *CAM Constr*'s statement that, under MCR 2.403(A)(1), "it is the civil action, not the claims within the civil action, that is submitted to case evaluation." *Id*. at 555 n 6. Defendant maintained there was no good cause for exempting the injunctive relief claim from case evaluation because there would be nothing inappropriate about including it in the case evaluation.

The trial court considered plaintiffs' motion at a hearing on March 2, 2020. The trial court concluded: "The case evaluator[s] may factor in the request for injunctive relief in their deliberations on a monetary award, but are to make no decision or award with respect to that injunctive relief." The trial court "reserve[d] the ability to issue an injunction," and also clarified that the case evaluators were "to only render a monetary award." In an order dated March 5, 2020, the trial court confirmed that "[t]he case evaluators may factor in Plaintiffs' claim for injunctive

relief as far as their case evaluation [of] monetary award is concerned. However, the Court ultimately reserves the power to decide whether or not to grant the requested injunctive relief."

After case evaluation was completed, the parties accepted, and defendant paid the case evaluation award of $500 to plaintiffs.

Plaintiffs moved the trial court for a permanent injunction. The trial court concluded it was "without jurisdiction in this case to grant a permanent injunction. Even though the order was previously issued, both sides accepted case evaluation. Case evaluation purports to resolve all claims that the parties have (indiscernible). [Plaintiffs'] motion is denied." The trial court explained:

> [B]ecause the order did not expressly exempt any of Plaintiff[]s['] "claims" or "causes of action" and all of Plaintiff's "claims" or "causes of action" were submitted to and resolved at case evaluation, there are no remaining "claims" pending before the Court that may justify injunctive relief. Put differently, the parties' mutual acceptance of the case evaluation award resolved all of Plaintiffs' "claims." As such, there are no pending claims that would entitled Plaintiffs to the requested injunctive relief.

This appeal followed.

II. STANDARD OF REVIEW

We review whether to grant or deny an injunction under the abuse of discretion standard. *Michigan State AFL-CIO v Michigan Secretary of State*, 230 Mich App 1, 14; 583 NW2d 701 (1998). An abuse of discretion occurs where the trial court's decision falls "outside the range of reasonable and principled outcomes." *Saffian v Simmons*, 477 Mich 8, 12; 727 NW2d 132 (2007), citing *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Whether to award equitable relief is reviewed under the de novo standard of review. *Cipri v Bellingham Frozen Foods, Inc*, 235 Mich App 1, 9; 596 NW2d 620 (1999). The de novo standard of review requires us to review the legal issues at hand without deferring to the trial court. *Washington v Washington*, 283 Mich App 667, 671; 770 NW2d 908 (2009), citing *In re Contempt of Auto Club Ins Ass'n*, 243 Mich App 697, 714 n 33; 624 NW2d 443 (2000). The de novo standard of review also applies to our interpretation of both Michigan statutes and the Michigan Rules of Court. *State Farm Fire & Casualty Co v Corby Energy Servs, Inc*, 271 Mich App 480, 483; 722 NW2d 906 (2006); *Webb v Holzheuer*, 259 Mich App 389, 391; 674 NW2d 395 (2003). In addition, legal questions are reviewed de novo. *In re Estate of Moukalled*, 269 Mich App 708, 713; 714 NW2d 400 (2006), citing *Roan v Murray*, 219 Mich App 562, 565; 556 NW2d 893 (1996).

III. LAW AND ANALYSIS

Plaintiffs assert the trial court erred by dismissing the case because of the case evaluation being accepted by the parties, despite the exemption of plaintiffs' request for injunctive relief from the case evaluation under MCR 2.403(A)(3). We disagree.

Injunctive relief, a remedy that enjoins a party from doing something, "issues only when justice requires, there is not adequate remedy at law, and when there is *real* and *imminent danger* of irreparable injury." *Dafter Twp v Reid*, 159 Mich App 149, 163; 406 NW2d 255 (1987), quoting *Wexford Co Prosecutor v Pranger*, 83 Mich App 197, 205; 268 NW2d 344 (1978) (emphasis in original). There are two kinds of injunctions that Michigan courts can grant. A preliminary injunction is "an extraordinary remedy that is sometimes granted before a case is even decided on the merits." *Mich Coalition of State Employee Unions v Mich Civil Serv Comm*, 465 Mich 212, 219; 634 NW2d 692 (2001). "Injunctive relief is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." *Kernen v Homestead Dev Co*, 232 Mich App 503, 509; 591 NW2d 369 (1998), quoting *Jeffrey v Clinton Twp*, 195 Mich App 260, 263-264; 489 NW 2d 211 (1992).

MCR 2.403(A)(3) states: "A court may exempt claims seeking equitable relief from case evaluation for good cause shown on motion or by stipulation of the parties if the court finds that case evaluation of such claims would be inappropriate." MCR 2.403(K)(3) states that a case "evaluation may not include a separate award on any claim for equitable relief, but the panel may consider such claims in determining the amount of an award."

Our Supreme Court has expressed the "desire to avoid bifurcation of civil actions submitted to case evaluation." *CAM Constr v Lake Edgewood Condo Ass'n*, 465 Mich 549, 557; 640 NW2d 256 (2002). "[I]t is the civil action, not the claims within the civil action, that is submitted to case evaluation." *Id*. at 555 n 6. "To the extent that *Reddam*[*v Consumer Mtg Corp*, 182 Mich App 754; 452 NW2d 908 (1990), overruled in part *CAM Constr*, 465 Mich 549 (2002)] and its progeny have been read to suggest that parties may except claims from case evaluation under the current rule, these cases are overruled." *CAM Constr*, 465 Mich at 557. Therefore, "[i]f all parties accept the panel's evaluation, the case is over." *Id*.

There were two stages to the trial court's decision in this case. At the first hearing on March 2, 2020, regarding plaintiffs' request to exempt their request for injunctive relief from case evaluation, the trial court concluded the case evaluators could factor in the request for injunctive relief in determining the monetary award, but could not decide whether an injunction should be issued.[1] This conclusion was in line with MCR 2.403(K)(3), which states that a case evaluation "may not include a separate award on any claim for equitable relief, but the panel may consider such claims in determining the amount of an award." The trial court did not grant plaintiffs' request to exempt the injunctive relief requested from the case evaluation; it merely reserved the power to decide whether to grant plaintiffs' request for injunctive relief. The trial court's ruling was in keeping with the text of the applicable court rules. In fact, rather than exempting plaintiffs' equitable claims from case evaluation, the trial court stated that the panel could consider the

[1] Plaintiffs conflate the terms "claims" and "relief" throughout their brief on appeal. " 'Claim' is relevantly defined as '[t]he assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional' and 'a demand for money, property, or a legal remedy to which one asserts a right; esp., the part of a complaint in a civil action specifying what relief the plaintiff asks for.' " *Bauserman v Unemployment Ins Agency*, 503 Mich 169, 182 n 6; 931 NW2d 539 (2019), quoting *Black's Law Dictionary* (10th ed).

equitable claims in fashioning its monetary award, but that only the trial court could award equitable relief. Thus, in its March 5, 2020 order, the trial court expressly permitted the case evaluation panel to consider the request for injunctive relief, while also recognizing that only the court could order injunctive relief. It therefore appears on the face of the order that the trial court did not exempt the equitable claim from case evaluation, but instead allowed the panel to consider it.

After the parties accepted the case evaluation award, defendant paid the award amount, and the trial court held a second hearing on plaintiffs' request for a permanent injunction. This time, the trial court stated it lacked jurisdiction to grant the requested permanent injunction and concluded, because the parties accepted the case evaluation award, all claims had been resolved. In coming to this conclusion, the trial court reiterated that it had not exempted any of plaintiffs' claims from case evaluation.

The trial court properly exercised its discretion in denying plaintiffs' request for a permanent injunction. As the trial court recognized in its January 29, 2021 order, it did not exempt plaintiffs' request for injunctive relief from the case evaluation. It merely reserved the authority to decide whether to grant injunctive relief. The trial court's decision was in line with our Supreme Court's stated "desire to avoid bifurcation of civil actions submitted to case evaluation." *CAM Constr*, 465 Mich at 557. Plaintiffs' claim that they detrimentally relied on the trial court's grant of their motion to exempt their request for injunctive relief from the case evaluation lacks merit. Because the trial court did not exempt any claims from the case evaluation, but merely indicated it might rule separately on the request for an injunction, there was no basis for plaintiffs' alleged reliance.

The trial court declined to exercise its discretion under MCR 2.403(A)(3) to exempt the equitable claim from case evaluation, which left the equitable claim for the panel's consideration. Furthermore, in stating that it reserved for itself the right to issue injunctive relief, the trial court merely recognized that MCR 2.403(K)(3) does not allow a case evaluation panel to issue a "separate" award of equitable relief, which only the trial court itself may order. As our Supreme Court has stated, "[i]f all parties accept the panel's evaluation, the case is over." *Id.* In this case, the trial court permitted the case evaluation panel to consider the equitable claim in fashioning its monetary award, as permitted by the court rules, and the parties accepted the case evaluation award. The case was over at that point. All of plaintiffs' claims were submitted to case evaluation and resolved. As the trial court stated, there was no remaining basis on which to grant a permanent injunction.[2]

[2] The trial court stated at the conclusion of the case that it lacked jurisdiction to award equitable relief, as those claims had been submitted to case evaluation and both parties had accepted the award. Whether the court retained jurisdiction to award equitable relief following case evaluation became a moot point once the trial court declined to exempt the equitable claims from case evaluation and both parties accepted the award, which the trial court properly concluded ended the case, leaving nothing more for the court to resolve.

IV. CONCLUSION

For these reasons, the trial court did not abuse its discretion in refusing to grant plaintiffs' request for a permanent injunction. Affirmed. Having prevailed in full, defendant may tax costs.

/s/ Brock A. Swartzle
/s/ Michael F. Gadola