

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GREGORY CUETER and METROPOLITAN  
PROPERTY MANAGEMENT, INC.,

Plaintiffs-Appellants,

v

PATRICIA VAN OVERBEKE,

Defendant-Appellee.

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UNPUBLISHED  
November 23, 2021

No. 356171  
Macomb Circuit Court  
LC No. 2019-0004365-CZ

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

CAVANAGH J. (*dissenting*).

I respectfully dissent. I would reverse the trial court’s opinion and order denying plaintiffs’ motion for a permanent injunction—without consideration of its merits—after concluding that plaintiffs’ claim for injunctive relief was disposed of by the parties’ mutual acceptance of the case evaluation award. I would remand this matter for consideration of the merits of plaintiffs’ claim of entitlement to a permanent injunction.

In October 2019, plaintiffs filed a complaint against defendant claiming entitlement to monetary damages for defamation, defamation by implication, and invasion of privacy because defendant had “waged a malice-inspired vendetta” by making false and disparaging remarks about plaintiffs for over a decade. Plaintiffs also claimed they were entitled to a permanent injunction ordering defendant to remove the defamatory statements and to stop making such statements. Subsequently, plaintiffs filed a motion under MCR 2.403(A)(3) to exempt their claim for equitable relief (the permanent injunction) from case evaluation, arguing that a monetary award would be inadequate and would not make plaintiffs whole. Defendant opposed the motion, citing MCR 2.403(K)(3) and arguing that the case evaluation panel could consider the claim for equitable relief in determining any monetary award, but could not include a separate award for that claim. The trial court held that the case evaluation panel could factor the request for injunctive relief into their deliberations on a monetary award, but the court “ultimately reserves the power to decide whether or not to grant the requested injunctive relief.” After case evaluation was completed, both parties accepted—and defendant paid—the case evaluation award in favor of plaintiffs.

Plaintiffs then moved in the trial court for a permanent injunction, requesting that defendant be ordered to: remove all published false and defamatory statements she made about plaintiffs on the internet, publish a retraction, and stop making such statements. Defendant opposed the motion, arguing that she did not disseminate false or defamatory statements about plaintiffs on the internet.

The trial court denied plaintiffs' motion, concluding that the mutual acceptance of the case evaluation award resolved all "claims," and thus, the court was without jurisdiction to grant a permanent injunction. The trial court never considered the actual merits of plaintiffs' motion for injunctive relief. The court noted that it had made a mistake in deciding plaintiffs' motion to exempt their request for injunctive relief (as opposed to their request for monetary relief) from case evaluation because MCR 2.403(A)(3) did not permit the court to reserve "the power to decide whether or not to grant the requested injunctive relief." The court noted that MCR 2.403(A)(3) only allows for the exemption of "claims seeking equitable relief" but injunctions are equitable remedies, not "claims" or independent causes of actions. Plaintiffs' claims were for defamation, defamation by implication, and invasion of privacy which were all submitted to and resolved by case evaluation. Therefore, no pending "claims" existed which would entitle plaintiffs to injunctive relief. Accordingly, plaintiffs' motion was denied and the case was dismissed. That decision is challenged on appeal.

MCR 2.403(A)(1) provides that any civil action seeking primarily money damages may be submitted to case evaluation. However, a court may exempt from case evaluation claims seeking equitable relief for good cause shown if the court finds that case evaluation of such claims would be inappropriate. MCR 2.403(A)(3). In this case, plaintiffs claimed entitlement to monetary damages for defamation, defamation by implication, and invasion of privacy. Consequently, the trial court properly submitted this civil action to case evaluation. However, plaintiffs also claimed entitlement to a permanent injunction and filed a motion to have that claim for equitable relief exempted from the case evaluation under MCR 2.403(A)(3).

As plaintiffs contend, while not the model of clarity, the trial court did grant plaintiffs' motion to exempt their equitable claim for injunctive relief from the case evaluation. At the hearing on the motion, the court held: "The case evaluator 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." In other words, the trial court held, "The case evaluator is to only render a monetary award." Then the trial court entered an order which states in its title: "Reserving Court's Decision Regarding Injunctive Relief Prayer Irrespective of Case Evaluation Acceptance." The order specifically provides that the trial court reserved "the power to decide whether or not to grant the requested injunctive relief."

After case evaluation was conducted, plaintiffs and defendant accepted the panel's evaluation. MCR 2.403(M)(1) provides:

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

....

However, MCR 2.403(M)(2) expressly pertains to equitable claims that have been specifically exempted from case evaluation, and states:

If only a part of an action has been submitted to case evaluation pursuant to subrule (A)(3)<sup>1</sup> and all of the parties accept the panel’s evaluation, the court shall enter an order disposing of only those claims. [Footnote added.]

Plaintiffs argue that their equitable claim for injunctive relief—which was exempted from case evaluation—was not “disposed of” by the parties’ acceptance of the case evaluation award. Only plaintiffs’ claim for monetary damages was “disposed of” with respect to plaintiffs’ allegations of defamation, defamation by implication, and invasion of privacy.

In denying plaintiffs’ motion for a permanent injunction the trial court interpreted MCR 2.403(A)(3)—which allows the trial court to “exempt claims seeking equitable relief from case evaluation”—to mean only “causes of action” may be exempted. I do not agree. If that were so, the court rule would have specifically stated that the trial court could “exempt causes of action seeking equitable relief from case evaluation.” But it does not; instead, the court rule uses the word “claims.” The same principles that govern the interpretation of statutes also govern the interpretation of court rules. *In re McCarrick/Lamoreaux*, 307 Mich App 436, 446; 861 NW2d 303 (2014). Our purpose is to effectuate the intent of the Michigan Supreme Court which is discerned by considering the language of the court rule. *Id.* Generally, every word and phrase of a rule is accorded its plain and ordinary meaning but a word that has acquired a unique or peculiar meaning in the law is construed according to such legal meaning. *Id.*

As recognized by our Supreme Court in *Bauserman v Unemployment Ins Agency*, 503 Mich 169; 931 NW2d 539 (2019), the word “claim” has acquired a unique or peculiar meaning at law:

“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.” *Black’s Law Dictionary* (10th ed.). [*Id.* at 182 n 6.]

A permanent injunction is an equitable remedy recognized at law<sup>2</sup> and when a plaintiff asserts a right or entitlement to a permanent injunction, such assertion is considered a “claim” that may be exempt for purposes of MCR 2.403(A)(3). If that were not so a plaintiff who asserts a right or entitlement to injunctive relief—in addition to monetary damages—would be required to reject the case evaluation award in order to preserve the claim for injunctive relief. Injunctive relief cannot be “awarded” by case evaluators; case evaluators may only consider claims of entitlement to monetary damages. Therefore, such a claim of entitlement to injunctive relief may be exempted

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<sup>1</sup> MCR 2.403(A)(3) provides: “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.”

<sup>2</sup> See *Terlecki v Stewart*, 278 Mich App 644, 663; 754 NW2d 899 (2008) (“It is well settled that an injunction is an equitable remedy, not an independent cause of action.”).

from case evaluation under MCR 2.403(A)(3). This conclusion is consistent 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.”

And I agree with plaintiffs that our Supreme Court’s decision in *CAM Const v Lake Edgewood Condo Ass’n*, 465 Mich 549; 640 NW2d 256 (2002), is factually distinguishable. In that case, one count of the plaintiff’s four-count complaint was dismissed by summary disposition. *Id.* at 551. Subsequently, the case was submitted to case evaluation and both parties accepted the case evaluation award. *Id.* at 551-552. When the defendant requested an order dismissing the entire case, the plaintiff objected and argued that it had reserved its right to appeal the summary disposition of the one count of its complaint. *Id.* at 552. Our Supreme Court rejected the plaintiff’s argument as contrary to the plain language of MCR 2.403(M)(1). The Court noted, “The language of MCR 2.403(M)(1) could not be more clear that accepting a case evaluation means that *all claims* in the *action*, even those summarily disposed, are dismissed.” *Id.* at 555. However, that case did not involve MCR 2.403(M)(2) which specifically states: “If only a part of an action has been submitted to case evaluation pursuant to subrule (A)(3),” only those claims actually submitted to case evaluation are disposed of upon acceptance by the parties of the award. A claim of entitlement to injunctive relief that has been specifically exempted from case evaluation by the trial court under MCR 2.403(A)(3) cannot be considered disposed of by the case evaluation.<sup>3</sup>

Therefore, I would conclude that the trial court erroneously refused to consider plaintiffs’ motion for a permanent injunction following the parties’ acceptance of the case evaluation award. Plaintiffs are entitled to a decision on the merits of their claim of entitlement to a permanent injunction. Accordingly, the matter should be remanded for a decision in that regard.

/s/ Mark J. Cavanagh

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<sup>3</sup> Moreover, the Supreme Court’s holding addressed the problem of a *party* claiming that certain claims were not actually submitted to case evaluation; here, the trial court specifically exempted from the case evaluation, by court order, plaintiffs’ request for a permanent injunction. See *CAM Const*, 465 Mich at 556-557.