

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

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ESTATE OF STEVEN CLINTON, by  
MELISSA REYES, Personal Representative,

UNPUBLISHED  
February 11, 2021

Plaintiff/Counterdefendant-Appellee,

v

No. 352485  
Oakland Circuit Court  
LC No. 2017-161038-CZ

OPTIMUM CONTRACTING SOLUTIONS, LLC,  
and ANAMARIA TET,

Defendants/Counterplaintiffs/Third-  
Party Plaintiffs-Appellants,

and

MELISSA REYES and ROMY GELLER,

Third-Party Defendants.

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Before: GLEICHER, P.J., and K. F. KELLY and RIORDAN, JJ.

PER CURIAM.

Defendants, Optimum Contracting Solutions, LLC (Optimum), and Anamaria Tet, its owner, appeal as of right the trial court order denying case evaluation sanctions against plaintiff, the Estate of Steven Clinton, by Melissa Reyes as personal representative.<sup>1</sup> Finding error warranting reversal, we vacate the trial court’s order and remand for proceedings consistent with this opinion.

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<sup>1</sup> Steven Clinton (the decedent) passed away during the pendency of this action, and this Court granted his estate’s motion for substitution. *Estate of Steven Clinton v Optimum Contracting Solutions, LLC*, unpublished order of the Court of Appeals, entered March 31, 2020 (Docket No. 352485).

## I. BASIC FACTS AND PROCEDURAL HISTORY

This case arises from a contract dispute for real property. In 2017, the decedent entered into a contract with defendants to purchase a newly constructed home. After entering into the contract, the decedent notified defendants that his daughter, Melissa Reyes (Reyes), was appointed as his agent with power of attorney and would address issues pertaining to the house. Throughout the remaining construction, Reyes and her boyfriend, Romy Geller (Geller), regularly communicated with defendants, seeking progress reports and updates regarding the construction. Although the parties closed on the house, the house was not completed until a few months after the closing because of unfinished work and unapproved inspections.

The decedent filed suit against defendants, alleging various claims related to the parties' contract, including breach of contract, unjust enrichment, breach of implied warranty of habitability, breach of warranty, and fraud.<sup>2</sup> In response, defendants filed a countercomplaint against the decedent, Reyes, and Geller, alleging unjust enrichment, common law and statutory conversion, concerted activities contrary to the express and implied agreements in the contract, civil conspiracy, and other wrongs.

Following case evaluation, the decedent was awarded \$10,000 for the complaint against defendants jointly and severally, and defendants were awarded \$2,500 for their countercomplaint against the decedent, Reyes, and Geller, jointly and severally. Defendants accepted the awards, but the decedent, Reyes and Geller failed to respond, resulting in a rejection. Subsequently, defendants moved for summary disposition of the original complaint, alleging the decedent could not establish the contract related claims arising from the home construction and fraud. Although the decedent opposed the dispositive motion, the trial court granted summary disposition and dismissed the complaint.

The decedent moved for reconsideration of the summary disposition decision. Shortly thereafter, the parties appeared for their trial date to address the remaining countercomplaint. At that time, the parties placed a settlement agreement on the record. As a result, the countercomplaint was dismissed. However, it would be reinstated if the decedent's motion for reconsideration of the summary disposition decision was granted or if a claim of appeal from that decision was successful. The parties also addressed the disparaging remarks that had been placed on social media. It was agreed that the comments would be removed if possible or edited to reflect that the parties had resolved their differences, and a liquidated damages provision would be imposed with court oversight to regulate any noncompliance or further misconduct.

Despite the oral settlement placed on the record, the parties failed to execute a written settlement agreement, causing defendants to file a motion for enforcement of the settlement agreement and sanctions. In the motion, it was alleged that counsel for the decedent, Reyes, and Geller failed to meaningfully participate in completing the settlement agreement. In response, counsel for the decedent, Reyes, and Geller stated he had filed a motion to withdraw as counsel

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<sup>2</sup> The decedent also alleged that Tet knowingly or recklessly executed a fraudulent owner's affidavit and violated the Michigan Builder's Trust Fund Act, MCL 570.151 *et seq.*, but the trial court separately granted defendants' motion for summary disposition of this claim.

and requested the trial court deny the defense motion to give the decedent, Reyes, and Geller ample time to seek new counsel. The trial court entered a stipulated order that summarized the terms of the settlement agreement and dismissed the countercomplaint. The next day, the trial court entered a stipulated order to withdraw the decedent's motion for reconsideration.

Defendants filed a motion for case evaluation sanctions, alleging that sanctions were warranted because the decedent rejected the \$10,000 case evaluation award and failed to obtain a more favorable verdict because the complaint was subsequently dismissed by motion. The decedent did not file a response, but counsel asserted, at the hearing, that the trial court's stipulated order resolved the last pending claim, barring defendants' motion because the case was now closed. The trial court denied defendants' motion for case evaluation sanctions, stating that there was a confidential settlement agreement between the parties, and it was unaware of the terms and whether those terms were more favorable to defendants.

Defendants filed a motion for reconsideration, alleging the trial court committed palpable error in refusing to award case evaluation sanctions because the countercomplaint's dismissal was not pertinent, and the settlement agreement did not include a provision barring the recovery of case evaluation sanctions arising from the summary disposition of the decedent's complaint. In response, the decedent asserted the trial court had discretion to refuse to award case evaluation sanctions because of the parties' settlement agreement and defendants were not the prevailing parties when the stipulated agreement did not constitute a verdict. The trial court denied defendants' motion for reconsideration, concluding that the motion merely presented the same issues ruled upon and defendants failed to demonstrate palpable error.

## II. STANDARD OF REVIEW

This Court reviews issues regarding whether it has jurisdiction to hear an appeal de novo. *Wardell v Hincka*, 297 Mich App 127, 131; 822 NW2d 278 (2012). Likewise, the trial court's decision whether to grant sanctions under MCR 2.403(O) presents a question of law subject to de novo review on appeal. *Peterson v Fertel*, 283 Mich App 232, 235; 770 NW2d 47 (2009). An appellate court also reviews de novo the proper interpretation and application of a court rule. *Haliw v Sterling Hts*, 471 Mich 700, 704; 691 NW2d 753 (2005).

## III. ANALYSIS

As an initial matter, we note that the estate asserts that we lack jurisdiction over defendants' appeal because it was not filed within 21 days of the order denying case evaluation sanctions. We disagree.

Under MCR 7.204(A)(1), a party's claim of appeal as of right in a civil action must be filed within 21 days after entry of the judgment or order appealed from, or 21 days after the entry of a postjudgment motion for reconsideration provided the motion was filed within the initial 21-day appeal period. In this case, the order appealed from, an order denying defendants' motion for case evaluation sanctions, was entered on November 12, 2019. The motion for reconsideration of the order denying case evaluation sanctions was filed on December 2, 2019, within 21 days of the entry of the initial order. The order denying the motion for reconsideration was entered on January 9, 2020. Defendants filed their claim of appeal on January 30, 2020, within the 21-day period

required under the court rule. Under these circumstances, the claim of appeal was timely filed. MCR 7.204(A)(1). Accordingly, we reject the jurisdictional challenge.

Defendants claim that the trial court erred in refusing to grant their motion for case evaluation sanctions because the decedent did not achieve a verdict more favorable than the case evaluation following his rejection. We agree.

“In general, MCR 2.403 governs the process for case evaluation and how sanctions are to be awarded.” *Sabbagh v Hamilton Psychological Servs, PLC*, 329 Mich App 324, 354; 941 NW2d 685 (2019). Under MCR 2.403(O)(8), a request for case evaluation sanctions “must be filed and served within 28 days after the entry of judgment or of an order denying a timely motion (i) for a new trial, (ii) to set aside the judgment, or (iii) for rehearing or reconsideration.” Defendants’ motion for case evaluation sanctions was timely filed within 28 days of the trial court’s order withdrawing the decedent’s motion for reconsideration. MCR 2.403(O)(8).

Defendants submit that the trial court’s order granting summary disposition of the decedent’s complaint constituted a verdict for purposes of case evaluation sanctions. In the present case, the decedent was awarded \$10,000 to be paid by defendants Optimum and Tet, jointly and severally.<sup>3</sup> Although defendants accepted the case evaluation, the decedent rejected the award by failing to take any action. MCR 2.403(L)(1). “If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party’s actual costs unless the verdict is more favorable to the rejecting party than the case evaluation.” MCR 2.403(O)(1). A verdict is “more favorable to a defendant if it is more than 10 percent below the evaluation, and is considered more favorable to the plaintiff if it is more than 10 percent above the evaluation.” MCR 2.403(O)(3).

A verdict for case evaluation purposes includes a jury verdict, a judgment by the court after a nonjury trial, and a judgment entered as a result of a ruling on a motion after rejection of the evaluation. MCR 2.403(O)(2)(c); *Acorn Investment Co v Mich Basic Prop Ins Ass’n*, 495 Mich 338, 349; 852 NW2d 22 (2014). “In applying MCR 2.403(O)(2), this Court has consistently rejected attempts to expand or read additional meaning into the rule that is not expressly stated.” *Jerico Constr, Inc v Quadrants, Inc*, 257 Mich App 22, 30; 666 NW2d 310 (2003). “To conclude otherwise would impermissibly expand, by judicial fiat, the specific and precisely worded definition of ‘verdict’ to include any order ending any part of a case by whatever method, thereby rendering the limiting language of MCR 2.403(O)(2)(a)–(c) nugatory.” *Id.* at 31.

Thus, case evaluation liability will not be imposed when the parties to a case resolve their dispute by settlement. *Webb v Holzheuer*, 259 Mich App 389, 391-392; 674 NW2d 395 (2003). Moreover, where a stipulated order of dismissal was entered in light of the parties’ settlement agreement, the order of dismissal did not constitute a verdict for purposes of MCR 2.403(O), and

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<sup>3</sup> Regarding the countercomplaint, defendants were awarded \$2,500 from the decedent, Reyes, and Geller, jointly and severally. The decedent, Reyes, and Geller also did not respond to this award, resulting in a rejection.

the amount of the settlement should not have been considered in determining whether a party was entitled to case evaluation sanctions. See *Jerico Constr, Inc*, 257 Mich App at 31-32.<sup>44</sup>

However, the text of MCR 2.403 demonstrates that multiple parties and multiple claims will lead to different dispositions. “MCR 2.403 does not permit a party in an action involving one plaintiff against one defendant to (1) submit less than all of his or her claims to case evaluation and (2) limit any acceptance.” *Vandercook v Auto-Owners Ins Co*, 325 Mich App 195, 205; 923 NW2d 921 (2018). “Only in cases involving multiple parties with claims against each other does MCR 2.403(L)(3) give the parties the option to accept all or part of a case evaluation award.” *Id.* When the request to impose case evaluation sanctions involve multiple parties, MCR 2.403(O)(4) applies and provides, in pertinent part:

(4) In cases involving multiple parties, the following apply:

(a) Except as provided in subrule (O)(4)(b), in determining whether the verdict is more favorable to a party than the case evaluation, the court shall consider only the amount of the evaluation and verdict as to the particular pair of parties, rather than the aggregate evaluation or verdict as to all parties. However, costs may not be imposed on a plaintiff who obtains an aggregate verdict more favorable to the plaintiff than the aggregate evaluation.

(b) If the verdict against more than one defendant is based on their joint and several liability, the plaintiff may not recover costs unless the verdict is more favorable to the plaintiff than the total case evaluation as to those defendants, and a defendant may not recover costs unless the verdict is more favorable to that defendant than the case evaluation as to that defendant.

In the present case, the parties participated in a case evaluation, resulting in a \$10,000 award to the decedent for the complaint, which he rejected. Thus, the evaluation addressing the original complaint only involved the decedent and defendants, and the award pertaining to these particular parties was \$10,000. MCR 2.403(O)(4)(a). The decedent’s complaint was subsequently dismissed in its entirety by the April 22, 2019 order granting defendants’ motion for summary disposition with the trial court concluding that the decedent could not sufficiently establish the fraud claims. Considering this order, the decedent did not achieve a more favorable verdict than

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<sup>44</sup> The *Jerico* decision involved the version of MCR 2.403 when it was known as mediation. Further, in *Jerico*, the trial court granted summary disposition of the tortious interference claim, and the parties entered into a monetary settlement agreement for the remaining claims. However, on appeal, this Court reversed the grant of summary disposition of the tortious interference claim. Following a jury trial, a verdict of no cause of action was rendered in favor of the defendant. *Jerico Constr, Inc*, 257 Mich App at 25-27. This Court held that the only verdict analyzed for purposes of determining mediation sanctions was the jury verdict, and the settlement agreement should not be considered. *Id.* at 31-32. Thus, the jury verdict of no cause of action in favor of the defendant was more favorable than the mediation award of \$10,500, that both parties rejected, and therefore, the defendant was entitled to mediation sanctions. *Id.* at 34-35.

the rejected case evaluation award.<sup>5</sup> After the motion for summary disposition of the decedent's complaint was granted, the decedent, Reyes, and Geller reached a settlement agreement with defendants pertaining to the dismissal of the countercomplaint as well as the past and any future disparagement. After months of inactivity, defendants filed a motion to enforce the oral settlement agreement, resulting in the trial court's entry of an order that contained the parties' settlement agreement. This order merely confirmed the parties' settlement agreement as outlined at the motion hearing and disposed of the countercomplaint. The trial court erred in concluding that it could not render a determination regarding the case evaluation sanctions because of the confidential settlement agreement. This settlement agreement disposing of the countercomplaint had no bearing on the summary disposition decision resolving the original complaint, and it did not constitute a verdict for purposes of addressing MCR 2.403(O)(2). *Webb*, 259 Mich App at 391-392; *Jerico Constr, Inc*, 257 Mich App at 31-32. Moreover, because the summary disposition order dismissing the case did not render a more favorable verdict to the decedent than the rejected case evaluation award of \$10,000, defendants were entitled to case evaluation sanctions. Accordingly, the trial court erred in denying defendants' motion for case evaluation sanctions premised on the settlement agreement that separately resolved only the countercomplaint between defendants, the decedent, as well as the home occupants, Reyes and Geller, individuals not included in the original complaint.<sup>6</sup>

Vacated and remanded for proceedings consistent with this opinion. We do not retain jurisdiction. Defendants, having prevailed, may tax costs.

/s/ Elizabeth L. Gleicher  
/s/ Kirsten Frank Kelly  
/s/ Michael J. Riordan

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<sup>5</sup> Because we only consider the evaluation and verdict addressing the original complaint between the decedent and defendants, we need not consider the \$2,500 evaluation in favor of defendants pertaining to the decedent, Reyes, and Geller. MCR 2.403(O)(4)(a). Nonetheless, even if we aggregated those awards, defendants still obtained a more favorable verdict under the circumstances.

<sup>6</sup> In addition to building the decedent's home, defendants were also involved in the construction of a home on the adjacent parcel of property. Defendants' countercomplaint alleged that Reyes and Geller wrongfully interfered with this construction.