

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DEREK NORMAN, et al,

Plaintiffs,

v

DYLAN SYER, et al,

Defendants.

Case No. 2014-142340-CB

Hon. Wendy Potts

Consolidated with

Case No. 2014-142461-CH

OPINION AND ORDER RE: DEREK NORMAN'S MOTION FOR CASE EVALUATION
SANCTIONS

At a session of Court
Held in Pontiac, Michigan

On

MAR 28 2016

Plaintiff/Counter-Defendant Derek Norman moves the Court to assess case evaluation sanctions against Defendants/Counter-Plaintiffs Dylan Syer and Sire Consultants, LLC. On May 4, 2015, Norman received a case evaluation award of \$1,000 against both Syer and Sire Consultants. Norman accepted the award and Syer and Sire Consultants rejected the award. On September 25, 2015, the Court entered a judgment awarding Derek Norman a total judgment of \$32,000, offset by \$22,800 in credits for cash and personal property of Sire Consultants, LLC that Norman retained.

The decision whether to assess case evaluation sanctions under MCR 2.403(O) is a question of law. *Smith v Khouri*, 481 Mich 519, 526; 751 NW2d 472 (2008). Defendants rejected the case evaluation award, and Norman's judgment is more favorable than the case evaluation award. Thus, under MCR 2.403(O)(1), Defendants would be required to pay Norman's actual costs, including reasonable attorney fees necessitated by the rejections. Syer

and Sire Consultants object to Norman's motion and argue that the Court has discretion to decline to award costs. "MCR 2.403 identifies three narrow circumstances under which the court is not required to grant sanctions. First, in cases involving equitable relief, the court may decline to award costs if, considering both the equitable and monetary relief, the verdict is more favorable to the rejecting party than the mediation evaluation. MCR 2.403(O)(5). Second, the court may not award costs against a plaintiff in a dramshop action . . . Third, the court may, in the interest of justice, refuse to award costs in cases where the 'verdict' is a judgment entered as a result of a ruling on a motion after the party rejected the mediation evaluation. MCR 2.403(O)(11)." *Great Lakes Gas Transmission Ltd Partnership v Markel*, 226 Mich App 127, 130; 573 NW2d 61 (1997). None of the narrow exceptions described in *Great Lakes Gas Transmission* are applicable to this case. Thus, Syer and Sire Consultants argument in this regard fails.

Syer next argues that Norman's motion is untimely. MCR 2.403(O)(8) addresses the timeliness of a motion pursuant to this Court Rule and provides that "[a] request for costs under this subrule must be filed and served within 28 days after the entry of the judgment or entry of an order denying a timely motion (i) for a new trial, (ii) to set aside the judgment, or (iii) for rehearing or reconsideration." *Smith*, 481 Mich at 526. On October 28, 2015, the Court issued an Opinion and Order re: Dylan Syer and Sire Consultants, LLC's Motion for Reconsideration and Clarification of the Court's Order and Motion to Request Relief from Order. On November 10, 2015, the instant motion was filed, well within the 28 days required by MCR 2.403(O)(8). Accordingly, the motion for case evaluation sanctions is timely.

Syer and Sire Consultant's only specific objection to Norman's billing is an objection to billing pertaining to the reconsideration after judgment. MCR 2.403(O)(6) limits attorney fees to

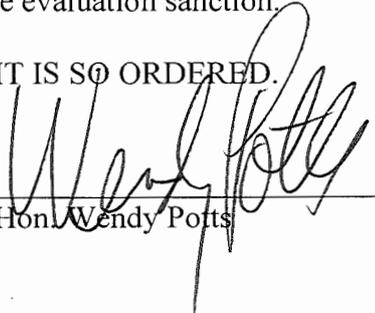
those necessitated by Plaintiff's rejection. Norman's billing on the motion for reconsideration was necessitated by Defendants' filing of the same, which was ultimately filed because the case proceeded to trial after rejection of the case evaluation. Had Syer and Sire Consultants accepted case evaluation, the trial and Defendants' subsequent motion for reconsideration would not have been necessitated. Defendants do not object to the reasonableness of Norman's attorney fees. After review of the bill of costs attached to Norman's motion, the Court finds that the fees incurred were necessitated by Syer and Sire Consultants' rejection of the case evaluation award. MCR 2.403(O)(6)(b). The Court further finds that the attorney fees claimed are reasonable given the time and labor required, the difficulty of the questions involved, the skill required to perform the legal service properly, and the results obtained. *Smith*, 48 Mich at 530. Further, the hourly rate charged by Norman's counsel is comparable to the rates normally charges by attorneys of similar ability and experience in the community. *Id* at 531.

Thus, since Syer and Sire Consultants did not object to Norman's motion for case evaluation sanction other than to his billing for a response to their motion for reconsideration, the Court, considering the equitable relief granted, grants Derek Norman's motion and concludes that Norman is entitled to \$7,000.00 in attorney fees as a case evaluation sanction.

Dated:

MAR 28 2016

IT IS SO ORDERED.



Hon. Wendy Potts