

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

MICHIGAN NEUROLOGY ASSOCIATES, P.C.

Plaintiff/Counter-Defendant,

vs.

Case No. 2016-4048-CB

STEVEN S. BEALL, M.D.,

Defendant/Counter-Plaintiff.

OPINION AND ORDER

Both sides have filed motions for case evaluation sanctions.

I. Factual and Procedural History

In this matter, both sides rejected the case evaluation award on the counterclaim of \$0.00. Further, both sides rejected the case evaluation award of \$60,000.00 entered in connection with Plaintiff's claims. On January 2, 2019, the Court entered its Opinion and Order following a bench trial finding no cause of action with respect to all of the claims in this case. Both parties have appealed the decision which is currently pending in the Michigan Court of Appeals.

As a preliminary matter, neither side argues that the other is not entitled to case evaluation sanctions under MCR 2.403(O). However, Defendant argues that Plaintiff forfeited its right to obtain such sanctions because it did not file its motion for case evaluation sanctions within 28 days of the date of the January 2, 2019 Opinion and Order as required by MCR 2.403(O)(8). Specifically, Defendant maintains that this Court do not have the discretion to entertain a motion for case evaluation sanctions filed beyond the 28 day deadline. MCR 2.403(O)(8) provides:

A request for costs under this subrule must be filed and served within 28 days after the entry of judgment or entry of an order denying a timely motion (i) for a new trial, (ii) to set aside the judgment, or (iii) for a rehearing or reconsideration.

While Defendant cites to *Braun v York Properties, Inc.*, 230 Mich App 138, 150; 583 NW2d 503 (1998) in support of its position that a Court must deny a motion for case evaluation sanctions if filed untimely, the holding of that case was merely that the Court did not error in refusing to entertain a motion for case evaluation sanctions that was filed late. It did not address in any way whether a court has the discretion to accept a tardily filed motion. However, in *Robbins v Wells Fargo Bank, NA*, unpublished per curiam opinion of the Court of Appeals, decided February 22, 2018 (Docket No. 335778), the Michigan Court of Appeals addressed a similar issue. Specifically at issue was whether a court is required to ignore an untimely filed response to a motion for summary disposition. MCR 2.116(G)(1)(a)(ii), like MCR 2.403(O)(8), provides that the pleading in question “must be filed and served” within a defined period of time. The Court of Appeals in *Robbins* held that the trial court failed to exercise its discretion based on a mistaken belief that it did not possess the ability to accept a late pleading due to the use of the word “must” before the stated deadline. Unpub op. at 2. Further, the Court held that trial courts have the discretion to decide whether to entertain pleadings filed after a stated deadline. *Id.*

In this matter, as in *Robbins*, the question before the Court is whether the Court has the discretion to accept a pleading filed before the deadline set forth in the court rules. This Court is convinced that it has such discretion. This decision is further supported by the fact that the Michigan Supreme Court has noted that it reviews for an

abuse of discretion a trial court's decision as to whether or not to entertain motions and briefs filed after the deadlines set forth in the court rules. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). The statement in *Maldonado* itself implies that trial courts have such discretion. In exercising such discretion, this Court is satisfied that Plaintiff's motion for case evaluation sanctions should be accepted. The remaining issue to determine what amount of sanctions each side shall be awarded.

In this case, the amount of sanctions is contested. The Michigan Court of Appeals, in *Reed v Reed*, 265 Mich App 131, 166; 693 NW2d 825 (2005), held that "where the requested attorney fees are contested, it is incumbent on the trial court to conduct a hearing to determine what services were actually rendered, and the reasonableness of those services." Accordingly, this Court will hold an evidentiary hearing on the amount of sanctions to be awarded to each side.

Conclusion

Based upon the reasons set forth above, Defendant's request to deny Plaintiff's motion for case evaluation sanction based on the untimeliness of the motion is DENIED. An evidentiary hearing on the amount of case evaluation sanctions to be awarded to each side, if any, is hereby scheduled for **April 5, 2019 at 1:30 pm**. In compliance with MCR 2.602(A)(3), the Court states this matter REMAINS CLOSED.

IT IS SO ORDERED.

Date: MAR 18 2019



Hon. Kathryn A. Viviano, Circuit Court Judge