

STATE OF MICHIGAN
COURT OF APPEALS

JULIAN LAFONTSEE,

Plaintiff-Appellant,

v

HOME-OWNERS INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED

March 27, 2014

No. 313613

Kent Circuit Court

LC No. 11-010346-NI

Before: GLEICHER, P.J., and HOEKSTRA and O'CONNELL, JJ.

PER CURIAM.

In this action for personal protection insurance (PIP) benefits under the no-fault act, MCL 500.3101 *et seq.*, plaintiff appeals as of right the trial court's order denying his motion to proceed with declaratory judgment. We affirm.

According to the complaint, plaintiff was injured by a motor vehicle. Defendant provided some PIP benefits to plaintiff, but discontinued the benefits after an independent medical evaluation of plaintiff. Plaintiff filed the present suit seeking payment of PIP benefits and also seeking a declaratory judgment regarding future benefits. During the course of the litigation, the trial court issued an order striking the independent medical examiner from defendant's witness list. Plaintiff then moved the trial court for summary disposition of all claims, albeit approximately one month after the deadline set by the trial court for filing summary disposition motions. The trial court denied the motion as untimely.

The suit then proceeded to case evaluation. The panel evaluated the case for plaintiff as follows: "\$85,000 for accrued no fault benefits, and does not include any award for future allowable expenses that have not been incurred." Both parties accepted the panel's evaluation, and defendant timely paid the award. Subsequently, the trial court dismissed the entire action pursuant to MCR 2.403(M)(1). The dismissal order stated, "[t]his case is hereby DISMISSED. The effect of this order does not preclude Plaintiff from bringing new claims for any future no-fault benefits which have accrued or may accrue after [the case evaluation date]."

On appeal, plaintiff first argues that the trial court erred by dismissing the entire case. According to plaintiff, the case evaluation resolved only his accrued benefits claim, leaving the declaratory judgment claim for resolution by the trial court. Plaintiff's argument requires us to consider the trial court's construction of MCR 2.403(M)(1). We review *de novo* the court's construction of the rule. *Neville v Neville (On Remand)*, 295 Mich App 460, 466; 812 NW2d

816 (2012). “The overriding goal of judicial interpretation of a court rule is to give effect to the intent of the authors.” *Wilcoxon v Wayne Co Neighborhood Legal Services*, 252 Mich App 549, 553; 652 NW2d 851 (2002). “This Court gives effect to the rule maker’s intent as expressed in the court rule’s terms, giving the words of the rule their plain and ordinary meaning.” *Kloian v Domino’s Pizza LLC*, 273 Mich App 449, 458; 733 NW2d 766 (2006). When a court rule is unambiguous, further interpretation is not only unnecessary but is disallowed. *Wilcoxon*, 252 Mich App at 553.

As of the case evaluation date, MCR 2.403(M)(1) read as follows:

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, *except for cases involving rights to personal protection insurance benefits under MCL 500.3101 et seq., for which judgment or dismissal shall not be deemed to dispose of claims that have not accrued as of the date of the case evaluation hearing.* [Emphasis added.]

The plain language of the rule required the trial court to dismiss all of plaintiff’s claims in the suit once both parties accepted, and defendant timely paid, the case evaluation award. Our Supreme Court has stated that “accepting a case evaluation means that *all claims* in the *action*, even those summarily disposed, are dismissed,” and “[i]f all parties accept the panel’s evaluation, the case is over.” *CAM Constr v Lake Edgewood Condo Ass’n*, 465 Mich 549, 555, 557; 640 NW2d 256 (2002).

Plaintiff points out that MCR 2.403(M)(1) was amended after our Supreme Court issued *CAM Constr*, 465 Mich 549. Plaintiff then argues that *CAM Constr* no longer controls the interpretation of the rule. We disagree. The second sentence of the rule, which contains the amendment, expresses no intent to modify the dismissal required by the first sentence. Therefore, the amended form of the rule still requires the dismissal of all claims upon both parties’ acceptance of the case evaluation award and the prompt payment of the award. The amended language of MCR 2.403(M)(1) simply assures any plaintiff that an acceptance of a case evaluation award will not bar him from seeking future PIP benefits. Therefore, pursuant to MCR 2.403(M)(1) and *CAM Constr*, when both parties accepted and defendant timely paid the case evaluation award, the case was over. As such, the trial court properly dismissed the entire action.¹

Additionally, plaintiff argues that the trial court acted improperly by denying his motion for summary disposition as untimely. We need not address that argument because, under *CAM*

¹ Plaintiff’s reliance on *Manley v DAIE*, 425 Mich 140; 388 NW2d 216 (1986), and its progeny is misplaced because those cases do not consider the procedure required after parties accept a case evaluation award.

Constr, 465 Mich at 550, a party cannot appeal an adverse summary disposition decision after accepting a case evaluation award.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell