

## COA Opinion: 28-day time period for filing motion for case evaluation sanctions under MCR 2.403 does not begin to run until court enters order on plaintiff's motion for reconsideration of summary disposition decision

8. April 2011 By Madelaine Lane

On Thursday, April 6, 2011, the Michigan Court of Appeals published its opinion in the consolidated appeal *Meemic Ins. Co. v. DTE Energy Co.*, Case Nos. 295232 & 296102. In Case No. 295232, the court affirmed the trial court's grant of summary disposition in defendant's favor because the plaintiff had failed to provide sufficient evidence that an issue of fact existed as to the cause of this house fire. In Case No. 296102, the Court reversed the trial court's denial of defendant's motion for case evaluation sanctions. In reaching this conclusion, the court reiterated its prior ruling in *Peterson v. Fertel*, 283 Mich. App. 232; 770 N.W.2d 47 (2009) and determined that a "verdict" for purposes of MCR 2.403(O) includes an order on a motion for reconsideration of the summary disposition ruling. Defendant's motion for sanctions was timely in this case because it was filed and served 16 days after the trial court's order on plaintiff's motion for reconsideration.

The *Meemic* case arises out of a house fire at the home of plaintiff's insureds. The fire engulfed the back of the home and appeared to be emanating from the DTE gas meter located at the back of the house. Both sides hired experts to review the damage and determine the cause of the fire. Defendant's investigator pointed out that the area around the gas meter was not as charred as the surrounding materials, suggesting that the fire was not started in the area of the meter. Instead, the investigator opined that the fire was due to natural gas leaking from the fuel line several feet away from the meter. Plaintiff's expert disagreed and concluded that the fire began at the meter. However, this expert acknowledged that the fuel line was destroyed in the fire and therefore the possibility that the fire started in the fuel line "could not be eliminated".

Defendant filed a motion for summary disposition arguing that plaintiff could not establish DTE had any duty with regard to the gas meter and that they could not show the fire was caused by a breach of that duty. In light of the expert reports, the trial court ruled that plaintiff had failed to present sufficient evidence sufficient to establish the existence of an issue of material fact regarding causation. The Court of Appeals affirmed the trial court's decision. In reaching this conclusion, the court addressed only the causation issue. Because the plaintiff's expert could not rule out the possibility that the fire started in the fuel line, a fact finder could not infer that the gas meter caused the fire. To reach that conclusion, the fact finder would have to speculate about the cause of the fire. Speculation is insufficient to create an issue of material fact and prevent summary disposition.

The second appeal arises from defendant's request for case evaluation sanctions. MCR 2.403(O) provides that a party that has rejected a case evaluation award must pay the opposing party's actual costs if the verdict in the case is more favorable to the

opposing party than the case evaluation. This motion must be filed and served within 28 days after the verdict or the order regarding a motion for a new trial or a motion to set aside the verdict.

In this case, the order granting defendant's motion for summary disposition was entered on October 13, 2009. The order denying plaintiff's motion for reconsideration was issued on November 4, 2009. Defendant filed its motion for case evaluation sanctions on November 19, 2009 – 37 days after the summary disposition order but only 16 days after the order on the motion for reconsideration. The trial court held that the clock started running on October 13, 2009, not on November 4, 2009. Accordingly, it denied defendant's motion as untimely. The Court of Appeals disagreed. It pointed to the court's earlier ruling in *Peterson* which expressly held that a motion for reconsideration of the court's opinion on a motion for summary disposition is a "verdict" for purposes of MCR 2.403(O). Just like a motion for new trial or motion to set aside the verdict, a motion for reconsideration is aimed at reversing the judgment and keeping the litigation alive. Accordingly, in this case the 28-day window for filing a motion for sanctions under MCR 2,403 began on November 4, 2009 -the date when the trial court ruled on the motion for reconsideration. Therefore, the motion for sanctions was timely. The trial court's decision denying defendant's case evaluation sanctions was reversed and remanded for proceedings consistent with this opinion.