STATE OF MICHIGAN

COURT OF APPEALS

KHALID KADA, KHELOUD KADA, WALEED KADA, and ADRIAN KADA,

Plaintiffs-Appellants,

v

DR. LABEED NOURI,

Defendant-Appellee,

and

ZIAD SITTO,

Defendant.

UNPUBLISHED
November 19, 2020

No. 351402
Oakland Circuit Court
LC No. 2018-164647-CH

Before: O'BRIEN, P.J., and BECKERING and CAMERON, JJ.

PER CURIAM.

Plaintiffs appeal as of right the trial court's judgment entered to confirm an arbitration award against defendant Dr. Labeed Nouri. More specifically, they appeal the trial court's denial of their request for attorney fees and costs. Because the trial court did not abuse its discretion under the presenting circumstances, we affirm.

I. BACKGROUND

This case arises from plaintiffs' claims of fraud, silent fraud, negligent or innocent misrepresentation, and unjust enrichment stemming from plaintiff Khalid Kada's purchase of real property from Dr. Nouri. In January 2019, a case evaluation panel recommended that the case be

settled for $13,500 in Khalid's favor, with $12,500 payable by Dr. Nouri and $1,000 payable by defendant Ziad Sitto.[1] Sitto accepted the evaluation, but Dr. Nouri and Khalid both rejected it.

Approximately two months later, the trial court entered a stipulated order providing, in pertinent part, as follows:

> 1. All claims asserted in this case shall be decided by binding arbitration that shall be conducted by a single arbitrator in accordance with the terms of this Order and otherwise pursuant to MCR 3.602.
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> * * *
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> 9. The Plaintiff[2] and Defendant Nouri shall each contribute an equal share of the cost of the arbitration (Defendant Sitto shall not be responsible for costs or [sic: of?] Arbitration) unless otherwise agreed to by the parties in writing or ordered by the arbitrator in the award.
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> * * *
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> 11. This case shall be administratively stayed pending completion of the arbitration. The Court retains jurisdiction to enforce this Order and to enter judgment upon the award or order pursuant to MCR 3.602., including case evaluations [sic] if appropriate.

The parties' arbitrator later issued an award directing Dr. Nouri to pay "Claimant"—presumably Khalid—"$44,923.15 with interest from the filing of the complaint at the Michigan statutory rate." The award required "Claimant" and Dr. Nouri to each pay half of the remaining fees owed to the arbitrator and stated, "Neither party is awarded attorney fees."

In a rather cursory one-and-a-half page motion, plaintiffs sought to confirm the arbitration award and requested attorney fees and costs "pursuant to MCR 3.602(M) and MCR 2.403(O)." Dr. Nouri objected to the fees and costs. Foregoing oral argument,[3] the trial court granted the motion with respect to confirming the arbitration award, but denied plaintiffs' request for attorney fees and costs. The trial court also denied plaintiffs' motion for reconsideration, in which they

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[1] Sitto was Dr. Nouri's attorney-in-fact for the transaction. He was dismissed from the case by stipulated order and is not involved in this appeal.

[2] It is unclear whether the use of the singular term plaintiff was a typographical error or whether Khalid was the only plaintiff to participate in arbitration.

[3] The trial court rendered its decision without hearing oral argument. Plaintiff had scheduled oral argument for their motion, but the court concluded that argument would not assist it in rendering a decision and dispensed with it pursuant to MCR 2.119(E)(3).

attempted to bolster their evidentiary support for entitlement to attorney fees and costs. This appeal followed.

II. DENIAL OF INITIAL REQUEST FOR ATTORNEY FEES AND COSTS

Plaintiffs argue that attorney fees and costs should have been awarded under MCR 2.403(O) and MCR 3.602(M) and that the trial court erred by finding that plaintiffs abandoned their request for fees and costs.[4] Dr. Nouri argues that the arbitration award precluded such recovery. While we agree with plaintiffs that the arbitration award did not preclude an award of case evaluation sanctions under MCR 2.403(O), we conclude that the trial court's refusal to grant sanctions was not an abuse of discretion because plaintiffs failed to properly present the issue to the trial court for decision.

This Court reviews a trial court's ruling on a request for costs for an abuse of discretion. *Keinz v Keinz*, 290 Mich App 137, 141; 799 NW2d 576 (2010). "An abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Id*. "An error of law necessarily constitutes an abuse of discretion." *Denton v Dep't of Treasury*, 317 Mich App 303, 314; 894 NW2d 694 (2016).

Issues involving the interpretation of court rules present questions of law that we review de novo. *Henry v Dow Chemical Co*, 484 Mich 483, 495; 772 NW2d 301 (2009). This Court looks to " 'the plain language of the court rule in order to ascertain its meaning' and the 'intent of the rule must be determined from an examination of the court rule itself and its place within the structure of the Michigan Court Rules as a whole.' " *Decker v Trux R Us, Inc*, 307 Mich App 472, 479; 861 NW2d 59 (2014), quoting *Henry*, 484 Mich at 495. "If the rule's language is plain and unambiguous, then judicial construction is not permitted and the rule must be applied as written." *Decker*, 307 Mich App at 479 (quotation marks and citation omitted).

MCR 2.403 governs case evaluation and the availability of sanctions against a party that rejects case evaluation. *Sabbagh v Hamilton Psychological Servs, PLC*, 329 Mich App 324, 354-355; 941 NW2d 685 (2019). Subrule (O)(1) provides:

> 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. However, if the opposing party has

[4] To the extent plaintiffs rely on the terms of the parties' stipulated order for arbitration as supporting their claim for case evaluation sanctions, plaintiffs waived review of this issue by failing to raise it when they first moved for case evaluation sanctions. Although plaintiffs cited the stipulated order in their motion for reconsideration, an issue first raised in that manner is untimely and will not be considered preserved for review. *Pioneer State Mut Ins Co v Michalek*, 330 Mich App 138, 150; 946 NW2d 812 (2019), citing *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich App 513, 519; 773 NW2d 758 (2009). Failure to raise an issue in a timely fashion generally waives review of that issue on appeal. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008).

> also rejected the evaluation, a party is entitled to costs only if the verdict is more favorable to that party than the case evaluation. [MCR 2.403(O)(1).]

The use of the term "verdict" in MCR 2.403 refers to "a jury verdict," MCR 2.403(O)(2)(a), "a judgment by the court after a nonjury trial," MCR 2.403(O)(2)(b), or "a judgment entered as a result of a ruling on a motion after rejection of the case evaluation," MCR 2.403(O)(2)(c).

The trial court denied plaintiffs' request for case evaluation sanctions for several reasons, including the reasons raised in Dr. Nouri's response to plaintiffs' motion. In pertinent part, Dr. Nouri argued that plaintiffs' request was improper because the parties agreed to submit "all claims" to arbitration, which necessarily included plaintiffs' claim for attorney fees and costs as case evaluation sanctions. Dr. Nouri reasoned that the arbitration award included a denial of attorney fees that could not be disturbed by the trial court. To the extent the trial court adopted Dr. Nouri's contention that case evaluation sanctions were precluded under the circumstances of this case, we disagree.

This Court addressed a substantially similar issue in *Simcor Constr, Inc v Trupp*, 322 Mich App 508; 912 NW2d 216 (2018), albeit in the context of "offer-of-judgment costs" available under MCR 2.405, rather than case evaluation sanctions under MCR 2.403. Until 28 days before trial, MCR 2.405(B) permits a party to "serve on the adverse party a written offer to stipulate to the entry of a judgment for the whole or part of the claim, including interest and costs then accrued." If the offer of judgment is rejected and "the adjusted verdict is more favorable to the offeror than the average offer, the offeree must pay to the offeror the offeror's actual costs incurred in the prosecution or defense of the action."[5] *Simcor Constr*, 322 Mich App at 515, quoting MCR 2.405(D)(1). Like the case evaluation court rule, MCR 2.405(A)(4)(c) includes "a judgment entered as a result of a ruling on a motion after rejection of the offer of judgment" within the meaning of the term "verdict" for purposes of MCR 2.405.

In *Simcor Constr*, 322 Mich App at 512, the plaintiff rejected an offer of judgment in the amount of $2,400 and made a counteroffer of $9,338.39, but the parties were unable to reach a settlement. An arbitrator later determined that the plaintiff's claim should be dismissed with prejudice and without costs. *Id*. The district court denied the plaintiff's motion to vacate the arbitration award, confirmed the award, and entered a judgment of no cause of action in favor of the defendants. *Id*. It also denied the defendants' postjudgment motion for costs and attorney fees under MCR 2.405, relying primarily on an unpublished Court of Appeals' opinion holding that confirmation of an arbitration award was not a "verdict" under a former version of MCR 2.405(A)(4). *Id*. at 512-513. The district court also relied on the fact that the arbitrator did not grant any costs or attorney fees to either party. *Id*. at 520.

[5] " 'Adjusted verdict' means the verdict plus interest and costs from the filing of the complaint through the date of the offer." MCR 2.405(A)(5). " 'Average offer' means the sum of an offer and a counteroffer, divided by two. If no counteroffer is made, the offer shall be used as the average offer." MCR 2.405(A)(3).

This Court reversed the district court's denial of offer-of-judgment costs. *Id*. at 522. The Court reasoned that "judgments confirming arbitration awards carry 'the same force and effect . . . as other judgments' and 'may be enforced in the same manner,' " *id*. at 516-517, quoting MCR 3.602(L), and nothing in the language of the offer-of-judgment rule excluded its application to such judgments, *Simcor Constr*, 322 Mich App at 517. Furthermore, the judgment was entered as a result of the district court's ruling on a motion to vacate the arbitration award, thereby satisfying the definition of a "verdict" set forth in MCR 2.405(A)(4)(c). *Id*. at 517-518.

The Court also rejected the plaintiff's contention that imposition of offer-of-judgment costs contravened the arbitrator's award, which included a statement that " '[a]ll claims not expressly granted herein are hereby denied[.]' " *Id*. at 520 (first alteration in original). The Court explained:

> Under MCR 2.405(D)(1), "costs are payable" if "the adjusted verdict is more favorable to the offeror than the average offer . . . ." Until the arbitration award was confirmed by the district court, there was no "verdict," and the issue of offer-of-judgment costs was not before the arbitrator. Plaintiff also fails to acknowledge that the arbitrator ruled that "[t]his Award is in full settlement of all claims submitted *to this Arbitration*." (Emphasis added.) The claim for offer-of-judgment costs was not submitted to arbitration, and no such claim existed at that time because there was no verdict. [*Id*. at 520 (alteration in original).]

Applying the same logic to the case at bar, the trial court erred by agreeing that the broad language of the stipulated order to submit "all claims" to arbitration precluded an award of case evaluation sanctions when the arbitrator explicitly denied an award of attorney fees. Like the offer-of-judgment rule, MCR 2.403(O)(1) only calls for an award of actual costs upon entry of a verdict that is less favorable to the rejecting party than the case evaluation. Compare MCR 2.403(O)(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.") with MCR 2.405(D)(1) (providing that costs are payable if the "adjusted verdict is more favorable to the offeror than the adjusted offer"). Relevant to this case, MCR 2.403(O)(2)(c) defines a verdict as including "a judgment entered as a result of a ruling on a motion after rejection of case evaluation." Until the trial court entered a judgment confirming the arbitration award, there was no "verdict" that could be deemed more or less favorable to the rejecting party for purposes of determining the availability of case evaluation sanctions under MCR 2.403(O)(1). See *Simcor Constr*, 322 Mich App at 520. Consequently, the arbitrator could not have decided whether actual costs should be assessed under MCR 2.403(O)(1) because the procedural predicate for an award of costs under that rule—the entry of a less favorable verdict—had yet to occur. *Id*. Therefore, we agree with plaintiffs' contention that case evaluation sanctions were not precluded by the arbitration award.

But beyond adopting the reasons argued by Dr. Nouri, the trial court also determined that plaintiffs abandoned their request for fees and costs because they "fail[ed] to cite any authority to support their claim that such costs and fees should be awarded in a case submitted to arbitration." In addition, the trial court noted that plaintiffs' motion was defective because it failed to include a brief, as required by MCR 2.119(A)(2). Lastly, the court found the request for attorney fees deficient because it did not address any of the factors used to prove the reasonableness of the fee. Regarding the latter, the trial court indicated in its order:

Finally, the request for attorney fees is deficient. Michigan jurisprudence has long held that "[t]he burden of proving fees rests on the claimant of those fees. *Petterman v Haverhills Farms, Inc*, 125 Mich App 33, 33; 335 NW2d 710 (1983). See also *In re Eddy's Estate*, 354 Mich App 334, 347; 92 NW2d 458 (1958) ("the burden of proof is on the bank claimant for attorney fees"). Accordingly, a party seeking attorney fees has the burden of proof with regard to the reasonability of fees. *Smith v Khouri*, 481 Mich 519, 528-529; 751 NW2d 472 (2008). Although there was a time when Michigan law provided that there was "no precise formula computing the reasonableness of an attorney's fee," *Liddel v DAIIE*, 102 Mich App 636, 651-652 (1981), quoting *Crowley v Schick*, 48 Mich App 728, 737; 211 NW2d 217 (1973), the Michigan Supreme Court has since promulgated a particularized formula. In *Smith*, 481 Mich at 530, the Court held that a trial court should begin its analysis by determining the fee customarily charged in the locality for similar legal services . . . . " *Id*. at 530-531. Once this number is determined, it "should be multiplied by the reasonable number of hours expended in the case . . . . " "The number produced by this calculation should serve as the starting point for calculating a reasonable attorney fee." *Id*. This analysis must be conducted independently for each lawyer. *Id*. at 532.

Once that "starting point" is determined, the trial court is then required to evaluate the several other factors to "determine whether an up or down adjustment is appropriate. *Id*. at 531. See also *id*. at 533 ("Multiplying the reasonable hourly rate by the reasonable hours billed will produce a baseline figure. After these two calculations, the court should consider the other factors and determine whether they support an increase or decrease in the base number.") Those several other factors include:

(1) the professional standing, reputation, experience, and ability of the attorney;
(2) the skill (including skill requisite to perform the legal service property), time and labor involved;
(3) the amount in question and the results achieved;
(4) the difficulty of the case (including novelty and difficulty of the questions involved);
(5) the expenses incurred; the fee customarily charged in the locality for the similar legal services;
(6) the nature and length of the professional relationship with the client;
(7) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
(8) the time limitations imposed by the client or by the circumstances; and
(9) whether the fee is fixed or contingent. [*Id*. at 529, quoting *Wood v Detroit Inter-Ins Exch*, 413 Mich 573, 588; 321 NW2d 653 (1982) (quotation marks, citation and footnote omitted); *Id*. at 530, quoting MRPC 1.5a (quotation marks omitted).]

Any additional factors must be expressly noted by the Court and the Court must "justify the relevance and use of the new factor." *Smith*, 481 Mich at 531 n 15.

> To support the claim, "[t]he fee applicant must submit detailed billing records, which the court must examine and the opposing parties may contest for reasonableness. The fee applicant bears the burden of supporting its claimed hours with evidentiary support." *Id*. at 532 (emphasis added). "If a factual dispute exists over the reasonableness of the hours billed or hourly rate claimed by the fee applicant, the party opposing in the fee request is entitled to an evidentiary hearing to challenge the applicant's evidence and to present any countervailing evidence." *Id*.
>
> Furthermore, "[t]he reasonable hourly rate represents the fee customarily charged in the locality for similar legal services, which is reflected by the market rate for the attorney's work." *Id*. at 531. The Court has found that determining the market rate requires evidentiary support of a serious nature. *Id*.
>
> In short, the Plaintiffs' Motion does not even bother to conduct this analysis.

Plaintiffs argue that the trial court erred because they explicitly referred to MCR 2.403 and MCR 3.602 in their motion, that MCR 2.119(A)(2) was not dispositive or applicable when there was no contested issue of law or fact at the time plaintiffs filed their motion, and that if the court required more information about the reasonableness of the requested fees, it could have held an evidentiary hearing. While it might have been reasonable for the trial court to go forward with oral arguments on plaintiffs' motion and allow plaintiffs' counsel to take the stand or proffer additional evidence in support of plaintiffs' motion, we cannot conclude that the trial court's decision fell outside the range of principled outcomes. *Keinz*, 290 Mich App at 141.

"Trial courts are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008). A litigant may not simply declare a position and leave the courts to "discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Henry Ford Health Sys v Everest Nat'l Ins Co*, 326 Mich App 398, 406; 927 NW2d 717 (2018), quoting *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002) (quotation marks omitted). Underscoring the duty to fully present and support an issue, MCR 2.119(A)(2) mandates that "when a motion presents an issue of law, the motion must be accompanied by a brief that cites the authority on which the motion is based." *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 625; 750 NW2d 228 (2008).

Plaintiffs' motion for confirmation of the arbitration award included only two statements on the issue of case evaluation sanctions:

> 7. The Court should assess costs pursuant to MCR 3.602(M) and MCR 2.403(O). (Exhibit D)
>
> 8. The costs consist of all those taxable in a civil matter in the amount of $7,008.92 and reasonable attorney fees (necessitated by the rejection of the case evaluation in the amount of $12,500 by Defendant Dr. Labeed Nouri) in the amount of $47,340.00. (Exhibit E)

Exhibit D to the motion began with an index identifying the costs claimed by plaintiffs, followed by court reporter invoices and the register of actions. Exhibit E was a billing statement from plaintiffs' counsel including charges for services between February 7, 2019 (the date on the case evaluation notice of rejection) and September 10, 2019 (the day before plaintiffs filed their motion to confirm the arbitration award).

Contrary to plaintiffs' position on appeal, bare citation to two court rules without any attempt to explain their relevance did not sufficiently present plaintiffs' request for case evaluation sanctions. Plaintiffs cited MCR 2.403(O) and MCR 3.602(M) in their motion, and attached to their motion the stipulated order for arbitration that provided for an award of case evaluation sanctions if appropriate. However, to the trial court's point, plaintiffs did not apply the court rules to their particular request for case evaluation sanctions, or draw to the court's attention that the stipulated order provided for an award of case evaluation sanctions if appropriate. Furthermore, it was not until several days after filing their motion that plaintiffs submitted to the court a supplemental exhibit that showed that plaintiffs and defendant had rejected the case evaluation. In the trial court's view, plaintiffs left it to the court to scour the court rules referenced and the documents attached to the motion to flesh out plaintiffs' entitlement to attorney fees as case evaluation sanctions. Plaintiffs' perfunctory conclusion that "[t]he Court should assess costs pursuant to MCR 3.602(M) and MCR 2.403(O)" was woefully inadequate to properly present their request to the trial court. "[T]he parties have a duty to fully present their legal arguments to the court for its resolution of their dispute." *Walters*, 481 Mich at 388.

Plaintiffs' contention that failure to provide a brief in accordance with MCR 2.119(A)(2) is not dispositive because there was no legal question that they were entitled to case evaluation sanctions might be true in other circumstances. Here, however, the absence of a brief is related to the plaintiffs' failure, in the trial court's view, to clearly provide the legal authority for their claim of attorney fees and costs. MCR 2.403(O)(1) makes mandatory the award of "actual costs" as case evaluation sanctions where appropriate, MCR 2.403(O)(6)(b) defines "actual costs" as "costs taxable in any civil action" and "a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the case evaluation . . . ," and the stipulated order making case evaluations sanctions available if appropriate. Taken together, these provisions resolve any issue of law regarding whether attorney fees were awardable. But from the trial court's perspective, plaintiffs did not justify an award of attorney fees in their motion by expressly applying the court rules and the stipulated order to the facts of their case, nor provide an explanatory brief. Instead, plaintiffs left it to the trial court to put together the pieces of the puzzle they provided and to arrive at the conclusion that attorney fees were awardable in this case. Again, we cannot fault the trial court for declining to act as plaintiffs' research assistant.

Lastly, the court found the request for attorney fees deficient because it did not address any of the factors used to prove the reasonableness of the fee. Plaintiffs attached to their motion an itemized bill for legal services that showed the date of the service, the service provider, the description of the service, the hourly rate, the time spent on the task, and the product of the rate and the time. Nothing in the motion mentioned any of the factors necessary to establish the reasonableness of the attorney's hourly rate or the hours spent on the case, nor did plaintiffs' attorney attach an affidavit in support of the reasonableness of his fees. "The burden of proving fees rests upon the claimant of those fees." *Campbell v Sullins*, 257 Mich App 179, 201; 667

NW2d 887 (2003), superseded on other grounds by MCL 600.2919a, quoting *Petterman v. Haverhill Farms, Inc*., 125 Mich App 30, 33, 335 NW2d 710 (1983). "The trial court is not required to accept an itemized bill on its face." *Campbell*, 257 Mich App at 201.

In sum, the trial court deemed plaintiffs' request for attorney fees abandoned because of the combined effect of the aforementioned deficiencies. This is a close call. Individual judges in similar circumstances might not have deemed the request abandoned without at least holding oral argument in order to allow counsel an opportunity to flesh out the arguments and defend the sufficiency of the evidence produced. However, we cannot fault the trial court judge who declines to serve as a plaintiff's research assistant. *Walters*, 481 Mich at 388; see also *Henry Ford Health Sys*, 326 Mich App at 406. As already indicated, "the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute." *Walters*, 481 Mich at 388. Plaintiffs did not fulfill their duty in this case, so the trial court's decision to treat the issue as having been abandoned did not fall outside the range of principled outcomes. *Keinz*, 290 Mich App at 141.

III. DENIAL OF MOTION FOR RECONSIDERATION

Plaintiffs also argue that the trial court erred by refusing to award case evaluation sanctions because Dr. Nouri did not object to the reasonableness of the hourly rate charged by plaintiffs' counsel and because they submitted sufficient documentation to support their request. Plaintiffs maintain that if the trial court had concerns regarding the reasonableness of the hourly rate charged by their attorney, it could have taken judicial notice of the rates charged by comparable attorneys, held an evidentiary hearing, or simply requested additional information from the parties. We construe plaintiffs' final claim of error as challenging the trial court's denial of their motion for reconsideration[6] and conclude that the trial court did not abuse its discretion.

A trial court's decision on a motion for reconsideration is reviewed for an abuse of discretion. *Woods*, 277 Mich App at 629. As noted, "[a]n abuse of discretion occurs when the decision results in an outcome falling outside the range of principled outcomes." *Keinz* 290 Mich App at 141.

"MCR 2.119(F)(3) requires the party moving for reconsideration to 'demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.' " *Sanders v McLaren-Macomb*, 323 Mich App 254, 264; 916 NW2d 305 (2018), quoting MCR 2.119(F)(3). "The rule allows the court considerable discretion in granting reconsideration to correct mistakes, to preserve judicial economy, and to minimize costs to the parties." *Kokx v Bylenga*, 241 Mich App 655, 659; 617 NW2d 368 (2000). As a general rule, this Court will not find an abuse of discretion when the trial court denies "a motion resting on a legal theory and facts which could have been pled or argued

[6] If we construed plaintiffs' argument as challenging the trial court's initial denial of their request for attorney fees and costs, this issue would be waived because plaintiffs first presented this argument to the trial court in their motion for reconsideration. *Walters*, 481 Mich at 387; *Pioneer State Mut Ins Co*, 330 Mich App at 150.

prior to the trial court's original order." *Woods*, 277 Mich App at 630 (quotation marks and citation omitted).

Plaintiffs arguments are misplaced because the trial court did not reject their request for case evaluation sanctions, initially or in its denial of their motion for reconsideration, on the basis of an unreasonable hourly fee rate. Rather, it deemed plaintiffs' request abandoned in their initial motion and untimely in their motion for reconsideration. For the reasons set forth in Part II of this opinion, the trial court did not err by concluding that plaintiffs abandoned their request for case evaluation sanctions by failing to adequately brief the issue. The trial court's later denial of plaintiffs' motion for reconsideration was not an abuse of discretion because the court reasonably concluded that plaintiffs should have properly presented their request in their first motion. *Id*. Furthermore, in denying the motion for reconsideration, the trial court also observed that plaintiffs' motion still "fail[ed] to address the factors set forth in binding Michigan jurisprudence about how to assess reasonable attorney fees and costs." We agree with the trial court's assessment.

As indicated above, the actual costs that can be recovered as case evaluation sanctions include "a reasonable attorney fee based on a reasonable hourly or daily rate as determined by the trial judge for services necessitated by the rejection of the case evaluation . . . ." MCR 2.403(O)(6)(b). Plaintiffs focus on the fact that MCR 2.403(O)(6)(b) authorizes an award of reasonable attorney fees, but fail to appreciate the requirements imposed on a party requesting attorney fees. As summarized by this Court:

> To evaluate whether an attorney fee is reasonable, courts begin by determining the fee customarily charged in the locality for similar legal services. To determine this amount, courts should use "reliable surveys or other credible evidence of the legal market." Then, the reasonable hourly rate should be multiplied by the number of hours that were reasonably expended to reach a baseline figure for a reasonable attorney fee. Courts should make adjustments to the figure using the factors from MRPC 1.5(a) and *Wood v Detroit Auto Inter-Ins Exch*, 413 Mich 573; 321 NW2d 653 (1982). [*Ford Motor Co v Dep't of Treasury*, 313 Mich App 572, 590-591; 884 NW2d 587 (2015), citing *Smith v Khouri*, 481 Mich 519, 530-533; 751 NW2d 472 (2008) (opinion by TAYLOR, C.J.).]

"The party requesting attorney fees bears the burden of proving that they were incurred and that they are reasonable." *Sabbagh*, 329 Mich App at 356.

While plaintiffs provided some information concerning these factors as exhibits to their motion for reconsideration, their brief still lacked any attempt to apply that information to the above framework or otherwise analyze the relevant factors. In fact, plaintiffs did not even cite the controlling framework for assessing the reasonableness of claimed fees. Again, "the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute," *Walters*, 481 Mich at 388, and the trial court was not responsible for discovering the appropriate analytical framework or applying it to the facts of the case when plaintiffs made no attempt to do so in the first instance, *Henry Ford Health Sys*, 326 Mich App at 406. Thus, even if plaintiffs had raised the same arguments and presented the same proofs with their motion to confirm the arbitration award as they did in their motion for reconsideration, the trial court would not have abused its

discretion by denying plaintiffs' request for case evaluation sanctions. Its denial of plaintiffs' motion for reconsideration was, likewise, not outside the range of principled outcomes.

Affirmed.[7]

/s/ Colleen A. O'Brien
/s/ Jane M. Beckering
/s/ Thomas C. Cameron

[7] We decline Dr. Nouri's invitation to summarily dismiss plaintiffs' appeal for their failure to cite the record or file an appendix. Plaintiffs cured these defects by filing an amended appellate brief accompanied by an appendix and more thorough citation to the record. Moreover, while MCR 7.216(C) permits this Court to take "disciplinary action" on its own initiative when it determines that an appeal is vexatious, MCR 7.211(C)(8) provides that "[a] *party's request* for damages or other disciplinary action under MCR 7.216(C) must be contained in a motion filed under this rule." (Emphasis added.) "A request that is contained in any other pleading, including a brief filed under MCR 7.212, will not constitute a motion under this rule." MCR 7.211(C)(8). Dr. Nouri has not filed a motion seeking damages or other disciplinary action, and we decline to take such action sua sponte.