

### Section 3

#### Legislation

#### COMMUNITY DISPUTE RESOLUTION ACT

Act 260, 1988, p 672; imd eff July 15, 1988

AN ACT to create the community dispute resolution program; to create the community dispute resolution fund; to establish criteria for funding and participation in the program; to provide for the administration of the program; to authorize pilot projects; to require the reporting of certain statistical data; and to repeal certain parts of this act on specific dates. (Amended by Pub Acts 1993, No. 286, imd eff December 28, 1993.)

The People of the State of Michigan enact:

MCL 691.1551 Short title.

Sec. 1.

This act shall be known and may be cited as the "community dispute resolution act".

MCL 691.1552 Definitions.

Sec. 2.

As used in this act:

- (a) "Administrative expenses" means expenses incurred by the state court administrator in implementing this act.
- (b) "Available grant funds" means that portion of the community dispute resolution fund available for awards to grant recipients, after administrative expenses have been met.
- (c) "Center" means a community-based dispute resolution center.
- (d) "Fund" means the community dispute resolution fund.
- (e) "Grant recipient" means a nonprofit or governmental organization that receives funds to operate a center pursuant to this act.

(f) "Mediator" means an impartial, neutral person who assists parties in voluntarily reaching their own settlement of issues in a dispute and who has no authoritative decision-making power.

(g) "Program" means the community dispute resolution program created by this act.

History:

Pub Acts 1988, No. 260, imd eff July 15, 1988; amended by 1993, No. 286, imd eff December 28, 1993.

MCL 691.1553 Community dispute resolution program; creation; purpose.

Sec. 3.

The community dispute resolution program is created to provide conciliation, mediation, or other forms and techniques of voluntary dispute resolution to persons as an alternative to the judicial process.

History:

Pub Acts 1988, No. 260, imd eff July 15, 1988; amended by 1993, No. 286, imd eff December 28, 1993.

MCL 691.1554 Funding; state court administrator.

Sec. 4.

The program shall be funded by the community dispute resolution fund which is created in the state treasury and shall be administered by the state court administrator.

MCL 691.1555 Revenues, funds, and interest credited to fund.

Sec. 5.

(1) The department of treasury shall credit to the fund the revenues received pursuant to sections 2528, 2529, 5756, 8371, and 8420 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.2528, 600.2529, 600.5756, 600.8371, and 600.8420 of the Michigan Compiled Laws.

(2) Legislative appropriations; federal or private funds; money remaining in fund. The department of treasury shall credit to the fund any funds appropriated by the legislature and any federal or private funds received by the state for the purpose of implementing this act.

Money in the fund at the end of the fiscal year shall remain in the fund, and shall not revert to the general fund.

(3) Interest generated by fund; crediting. Interest generated by revenues in the community dispute resolution fund shall be credited to the community dispute resolution fund by the department of treasury and shall be used exclusively for purposes of this act.

History:

Pub Acts 1988, No. 260, imd eff July 15, 1988; 1993, No. 286, imd eff December 28, 1993.

MSA 27.15(56) [MCL 691.1556] Participation in dispute resolution process.

Sec. 6.

(1) Participation in the dispute resolution process shall be voluntary and the form or technique utilized shall be by mutual agreement of the parties.

(2) Referral to center funded under act; parties not required to reach settlement. Subject to subsection (1), a court may refer the parties to a civil action to a center funded under this act. The court shall not require that the parties to the civil action reach a settlement of the civil action through any dispute resolution process utilized at the center.

History:

Pub Acts 1988, No. 260, imd eff July 15, 1988; 1993, No. 286, imd eff December 28, 1993.

MCL 691.1556a Agreement; enforcement.

Sec. 6a.

If the parties involved in a dispute resolution process reach a settlement and execute a written agreement, the agreement is enforceable in the same manner as any other written contract.

History:

Pub Acts 1988, No. 260, as added by 1993, No. 286, imd eff December 28, 1993.

MCL 691.1556b [Repealed January 1, 1996] Pilot projects; repeal of section.

Sec. 6b.

(1) Notwithstanding section 6, the state court administrator may conduct 1 or more pilot projects authorizing a court, pursuant to a referral plan filed with the state court administrative office, to require the parties to a civil action to attend a center for an



introduction to the dispute resolution processes offered by the center. The court shall not require that the parties to the civil action reach a settlement of the civil action through any dispute resolution process utilized at the center.

(2) Repeal of section. This section is repealed effective January 1, 1996.

History:

Pub Acts 1988, No. 260, as added by 1993, No. 286, imd eff December 28, 1993.

#### MCL 691.1557 Confidentiality.

##### Sec. 7.

(1) The work product and case files of a mediator or center and communications relating to the subject matter of the dispute made during the dispute resolution process by a party, mediator, or other person are confidential and not subject to disclosure in a judicial or administrative proceeding except for either of the following:

(a) Work product, case files, or communications for which all parties to the dispute resolution process agree in writing to waive confidentiality.

(b) Work product, case files, or communications which are used in a subsequent action between the mediator and a party to the dispute resolution process for damages arising out of the dispute resolution process.

(2) Inapplicability of section. Subsection (1) does not apply to statements, memoranda, materials, and other tangible evidence, otherwise subject to discovery, that were not prepared specifically for use in the dispute resolution process.

History:

Pub Acts 1988, No. 260, imd eff July 15, 1988; amended by Pub Acts 1993, No. 286, imd eff December 28, 1993.

#### MCL 691.1559 Civil liability.

##### Sec. 7a.

A mediator of a community dispute resolution center shall not be held liable for civil damages for any act or omission in the scope of his or her employment or function as a mediator, unless he or she acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of the rights, safety, or property of another.

History:

Pub Acts 1988, No. 260, as added by 1993, No. 286, imd eff December 28, 1993.

MCL 691.1558 Administration; operation, grant recipients.

Sec. 8.

This program shall be administered through community dispute resolution centers operated by grant recipients pursuant to a grant contract awarded by the state court administrator.

MCL 691.1559 Eligibility of grant recipient for funding.

Sec. 9.

To be eligible for funding, a grant recipient shall do all of the following:

- (a) Comply with the provisions of this act, and any requirements or guidelines established by the state court administrator to effectuate the purposes of this act.
- (b) Provide neutral mediators who have received not less than 40 hours of training in conflict resolution techniques and principles of the legal system in a course of study approved by the state court administrator or a program of internship as may be required by the state court administrator.
- (c) Provide dispute resolution services without cost to indigents.
- (d) Reject any dispute which involves alleged acts which are or could be the subject of a violent felony or drug-related felony criminal prosecution.
- (e) When appropriate, refer participants to other agencies or organizations for assistance.
- (f) Provide for community participation and respond to local community needs. In determining whether this requirement has been satisfied, the state court administrator shall consider the extent to which the applicant has the following:
  - (i) Active board members and mediators drawn from the community and client constituencies.
  - (ii) Programs and services that target local dispute resolution needs.
  - (iii) Local financial and in-kind support.
  - (iv) A diversified base of referral sources.

History:

Pub Acts 1988, No. 260, imd eff July 15, 1988; amended by 1993, No. 286, imd eff December 28, 1993.

MCL 691.1560 Selection of grant recipients; contents of grant applications submitted for funding; amount of grant award; limitation.

Sec. 10.

(1) Grant recipients shall be selected from applications submitted to the state court administrator. The grant applications submitted for funding shall include all of the following:

(a) The budget for the proposed center including the proposed compensation and qualifications of the employees.

(b) A description of the proposed geographical area of service and an estimate of the number of participants to be served.

(c) A description of current dispute resolution services, if any, available within the proposed geographical area.

(d) A narrative of the applicant's proposed program that includes the support of civic groups, social services agencies, local courts, and criminal justice agencies to accept and make referrals; the present availability of resources; and the applicant's administrative capacity.

(e) A description of the fee structure, if any, that will be applied to participants seeking dispute resolution.

(f) Such additional information as is determined to be needed by the state court administrator.

(2) Applicants; award of grant; amounts. If 1 or more applicants meet the eligibility requirements of section 9 and guidelines established under section 9, the state court administrator shall award a grant or grants totaling an amount at least equal to the pro rata share of available grants funds generated by court filing fees imposed in that county in the year preceding the year for which the applications are made. Nothing in this subsection requires a grant award that exceeds the proposed center's approved budget.

(3) Amounts; limitations. The amount awarded to a grant recipient shall not exceed 65% of the proposed center's approved budget or the amount required by subsection (2), whichever is higher.



History:

Pub Acts 1988, No. 260, imd eff July 15, 1988; amended by 1993, No. 286, imd eff December 28, 1993.

MCL 691.1561 State court administrator, authority, powers.

Sec. 11.

The state court administrator or other authorized state official shall have the power to inspect, examine, and audit the fiscal affairs of any grant recipient.

MCL 691.1562 Grant recipients, annual reports, contents; state court administrator, annual report.

Sec. 12.

Each grant recipient shall annually provide to the state court administrator statistical data on its operating budget, the number of referrals, categories or types of cases referred, number of parties serviced, number of disputes resolved, nature of resolution, amount and type of awards, rate of compliance, returnees to the center, duration and estimated costs of hearing, and such other information the state court administrator may require. The state court administrator shall report annually to the governor and legislature regarding the operation and success of the centers funded pursuant to this act.

MCL 691.1563 Effective date.

Sec. 13.

This act shall take effect upon the expiration of 120 days after the date of its enactment.

MCL 691.1564 Conditions precedent.

Sec. 14.

This act shall not take effect unless Senate Bill No. 816 of the 84th Legislature is enacted into law.

## PLAMONDON v PLAMONDON

Docket No. 199858. Submitted March 17, 1998, at Lansing. Decided May 22, 1998, at 9:20 A.M.

Albert J. Plamondon brought an action in the Leelanau Circuit Court against Michael H. and Angela M. Plamondon, seeking resolution of a property dispute. The trial court, Philip E. Rodgers, Jr., J., referred the dispute to mediation under the Community Dispute Resolution Act, MCL 691.1551 *et seq.*; MSA 27.15(51) *et seq.* The parties participated voluntarily in the mediation and, as a result of the mediation, entered into and signed a written agreement. The court entered a judgment consistent with the written agreement. The plaintiff appealed, alleging that the settlement agreement was void ab initio because the mediation did not comply with MCR 2.403 and 2.507(H) and because the plaintiff made a mistake or was ill-advised in his decision to forgo the presence of counsel or his son Arnold Plamondon at the mediation.

The Court of Appeals held:

1. Neither MCR 2.403 nor MCR 2.507(H) apply to the mediation conducted pursuant to the Community Dispute Resolution Act in this case.
2. As a result of the plaintiff's voluntary participation, the plaintiff is subject to the provisions of the act, notwithstanding the fact that his voluntary participation resulted from a referral to the dispute resolution process by the trial court in a pending case.
3. A signed, written agreement resulting from mediation conducted pursuant to the act is enforceable in the same manner as any other written contract. The plaintiff failed to demonstrate grounds to set aside the settlement agreement by a showing of mistake, fraud, or unconscionable advantage.

Affirmed.

1. COMPROMISE AND SETTLEMENT — COMMUNITY DISPUTE RESOLUTION ACT — MEDIATION

The Community Dispute Resolution Act creates a procedure apart from court actions; the act requires participation in the dispute resolution process to be voluntary, and a person who voluntarily participates in mediation conducted pursuant to the act is subject to the provisions of the act, notwithstanding the fact that the person's

voluntary participation resulted from a referral to the dispute resolution process by the trial court in a pending case (MCL 691.1551 *et seq.*; MSA 27.15(51) *et seq.*).

2. COMPROMISE AND SETTLEMENT — COMMUNITY DISPUTE RESOLUTION ACT — SETTLEMENT AGREEMENTS — CONTRACTS

A written agreement embodying a settlement reached in a dispute resolution process conducted pursuant to the Community Dispute Resolution Act is enforceable in the same manner as any other written contract and is binding on the parties absent a showing of mistake, fraud, or unconscionable advantage (MCL 691.1556a; MSA 27.15(56a)).

Bay Area Legal Services, P.C. (by *Edward M. Czuprynski*), for the plaintiff.

*Robert A. Steadman, P.C.* (by *Robert A. Steadman*), for the defendants.

Before: BANDSTRA, P.J., and MACKENZIE and N.O. HOLOWKA\*, JJ.

PER CURIAM. Plaintiff appeals as of right from a judgment entered on a settlement agreement reached during mediation pursuant to the Community Dispute Resolution Act, MCL 691.1551 *et seq.*; MSA 27.15(51) *et seq.* We affirm.

Plaintiff argues that the settlement agreement was void ab initio because there was no enforceable underlying agreement between the parties to submit to community dispute resolution mediation, there being no agreement made on the record in open court or evidence of the agreement in writing subscribed by plaintiff as required by MCR 2.507(H). We disagree because this court rule is inapplicable to this community dispute resolution mediation.<sup>1</sup> The Community

\* Circuit judge, sitting on the Court of Appeals by assignment.

<sup>1</sup> Even if MCR 2.507(H) were applicable here, it would only mean that the agreement between the parties to submit to community dispute reso-



Dispute Resolution Act sets up a procedure apart from court actions; participants in mediation may or may not be litigants in a pending lawsuit. The act requires only that "[p]articipation in the dispute resolution process shall be voluntary," MCL 691.1556(1); MSA 27.15(56)(1), and the trial court here found, without dispute from plaintiff, that the parties did, in fact, participate voluntarily. As a result of his voluntary participation, plaintiff is subject to the provisions of the act, notwithstanding the fact that his voluntary participation resulted from a referral to the dispute resolution process by the trial court in a pending case.

As a result of the mediation, the parties entered into and signed a written agreement. The act specifies that this agreement "is enforceable in the same manner as any other written contract." MCL 691.1556a; MSA 27.15(56a). Under usual contract principles, plaintiff is bound by the settlement agreement absent a showing of mistake, fraud, or unconscionable advantage. *Prichard v Sharp*, 51 Mich 432, 435; 16 NW 798 (1883); *Marvin v Marvin*, 203 Mich App 154, 157; 511 NW2d 708 (1993); *Meyer v Rosenbaum*, 71 Mich App 388, 393-394; 248 NW2d 558 (1976). Plaintiff does not advance any claim on appeal that the settlement agreement was the result of mistake, fraud, or unconscionable advantage. Instead, plaintiff seeks to upset the validity of the settlement agreement on the ground that the mediation did not comply with MCR 2.403, a rule that is inapplicable to this community

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lution mediation was not binding. However, that agreement is not at issue in this case, the parties having fulfilled it by proceeding through the mediation process. The agreement at issue here is a separate agreement entered into after and as a result of mediation.

dispute resolution mediation. Additionally, plaintiff asserts that the settlement agreement should be upset because, in hindsight, plaintiff made a mistake or was ill-advised in his decision to forgo the presence of counsel and his son Arnold Plamondon at the mediation. Absent a showing of mistake, fraud, or unconscionable advantage, plaintiff has failed to demonstrate grounds to set aside the settlement agreement. We affirm.