

Court of Appeals, State of Michigan

ORDER

Mustapha Marwani v Chalmers Service Station, Inc.

Kathleen Jansen
Presiding Judge

Docket No. 310126

Mark J. Cavanagh

LC No. 10-004627-NO

Jane E. Markey
Judges

The Court orders that the motion for immediate consideration is GRANTED.

Defendant's motion to amend the order from which this appeal was taken is GRANTED. The circuit court's order, dated April 18, 2012, provides that defendant's motion for summary disposition "is hereby granted for the reasons stated on the record in open court." On the record, however, the circuit court suggested that plaintiff had violated MCR 2.114 and observed that it would grant summary disposition for defendant on the basis of plaintiff's "lie." The circuit court did not specify the subrule of MCR 2.116(C) under which it was granting defendant's motion. Nor did it explain why plaintiff's lie entitled defendant to summary disposition. The clean-hands doctrine cannot provide a basis for the circuit court's grant of summary disposition because this is not an equitable action, *Rose v Nat'l Auction Group*, 466 Mich 453, 467-468; 646 NW2d 455 (2002), and the wrongful-conduct rule does not apply in this case because plaintiff's deceitful conduct bears no causal connection to his asserted damages, *Cervantes v Farm Bureau Gen Ins Co*, 272 Mich App 410, 417; 726 NW2d 73 (2006). Moreover, the circuit court explicitly remarked that there remained a genuine issue of material fact concerning whether the pit was open and obvious in nature. In sum, the circuit court's reasoning is unclear and does not allow for meaningful appellate review. This matter is accordingly REMANDED FOR CLARIFICATION. On remand, the circuit court shall enter an amended order setting forth its specific reasons for granting defendant's motion for summary disposition. See MCR 7.208(C); MCR 7.216(A)(7). The circuit court shall transmit its amended order to this Court within 35 days of the Clerk's certification of this order.

This Court retains jurisdiction.



A true copy entered and certified by Angela P. DiSessa, Acting Chief Clerk, on

JUN 27 2013

Date

Angela P. DiSessa
Acting Chief Clerk