

STATE OF MICHIGAN
COURT OF APPEALS

KENNETH A. PICKL, MARGO L. PICKL,
FREDERICK W. JACKSON, JR., and
PATRICIA JACKSON NUSBAUM, as trustees
of the FREDERICK W. JACKSON TRUST, and
PATRICIA JACKSON NUSBAUM and
FREDERICK W. JACKSON, JR., as Personal
Representatives of the Estate of VIRGINIA
JACKSON,

Plaintiffs/Counter-Defendants-
Appellants,

v

GEORGE E. MICHAELS, JOSEPH N.
IMPASTATO, CHRISTINE E. MICHAELS, and
MARIAN A. IMPASTATO,

Defendants-Appellees,

and

GEORGE E. MICHAELS, P.C.,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED
March 22, 2005

No. 251496
Otsego Circuit Court
LC No. 96-006813-CK

Before: Saad, P.J., and Smolenski and Cooper, JJ.

PER CURIAM.

Plaintiffs, Kenneth and Margot Pickl and the various representatives of the estate and trust of Frederick and Virginia Jackson, appeal as of right from an order dismissing their case against defendants George and Christine Michaels, Joseph and Marian Impastato, and George E. Michaels, P.C., entered after this Court reversed the trial court's original judgment in favor of

plaintiffs.¹ This appeal arose out of an action in which plaintiffs alleged that defendants breached a land sale agreement, committed fraud, and engaged in legal malpractice. The complex factual and procedural history of the dispute are fully described in this Court's prior opinion.² This Court reversed the trial court's judgment in favor of plaintiffs and remanded for further proceedings. Consistent with that opinion, the trial court vacated its previous judgment and dismissed plaintiffs' case against defendants. We affirm.

Plaintiffs first argue that the trial court should have enforced an order granting them specific performance from two of the defendants. The trial court issued the order during the proceedings before remand. The order required George and Christine Michaels to convey their interest in the disputed land to plaintiffs. Plaintiffs' motion is equivalent to a motion for relief from judgment or to set aside a judgment. Such motions are reviewed for an abuse of discretion.³ The trial court properly refused to reissue or enforce its prior order. "Each judgment must state, immediately preceding the judge's signature, whether it resolves the last pending claim and closes the case."⁴ The final judgment on appeal in this case noted that "[p]laintiffs' claims against defendants are dismissed with prejudice," and also that it was "a final order disposing of all claims." Therefore, the prior specific performance order, which included an explicit statement that it was not enforceable until a final order was entered, was vacated by the court's subsequent final order before remand, which was itself reversed on appeal. Accordingly, the trial court properly refused to enforce a specific performance order that was no longer valid.

Plaintiffs next argue that the trial court erred by denying their motions for a new trial, relief from judgment, and to set aside the judgment. We again disagree. We review a trial court's decision on these motions for an abuse of discretion.⁵ The trial court did not abuse its discretion by denying plaintiffs' motion for a new trial. In their motion, plaintiffs simply listed several enumerated grounds for relief from MCR 2.611(A)(1). As plaintiffs completely failed to support or explain their right to relief on any of these grounds, the trial court had no basis to grant their motion.

Plaintiffs argue that they are entitled to relief from judgment pursuant to MCR 2.612 because this Court's prior opinion did not address whether defendants breached an agreement to sell the disputed land to plaintiffs. Therefore, plaintiffs contend that the trial court improperly dismissed their case in its entirety. Before remand, the trial court found that it was "completely

¹ *Pickl v Michaels*, unpublished per curiam opinion of the Court of Appeals, entered August 27, 2002 (Docket No. 224206).

² *Id.* at 1-5.

³ *Redding v Redding*, 214 Mich App 639, 643; 543 NW2d 75 (1995); *Henritzky v General Elec Co*, 182 Mich App 1, 7; 451 NW2d 558 (1990).

⁴ MCR 2.602(A)(3).

⁵ *Redding*, *supra* at 643; *Phillips v Mazda Motor Mfg (USA) Corp*, 204 Mich App 401, 411; 516 NW2d 502 (1994); *Henritzky*, *supra* at 7.

irrelevant” whether there had been a valid contract of sale of the land to the Pickls “because the attorneys should never have been in that position as co-owner.” Accordingly, the court did not make findings on the record on this issue. However, plaintiffs sought and were granted attorney fees as prevailing parties. As plaintiffs’ remaining claim had already been dismissed, the trial court must have determined that plaintiffs prevailed on the breach of contract claims.

Furthermore, plaintiffs failed to raise their motion for relief in a timely fashion.⁶ Plaintiffs failed to preserve this issue in the previous appeal by raising or arguing alternative grounds for affirming the trial court’s original judgment in their cross-appeal. If plaintiffs truly believed the trial court had failed to make a necessary ruling, they should have raised the issue in the previous appeal. Plaintiffs also took no action to clarify the meaning of this Court’s previous opinion. That opinion stated “[f]or the same reasons we concluded that the trial court erred in interpreting the contract at trial, *it also erred in denying the motion for post-judgment relief.*”⁷ Plaintiffs neither sought reconsideration nor appealed this Court’s prior decision. Accordingly, the trial court properly denied plaintiffs’ motion for relief from judgment based on their failure to take any action on this ground.

Plaintiffs finally argue that the trial court improperly denied their motion to amend their complaint after the trial and previous appeal were complete. Plaintiffs filed this motion years after the original judgment had been entered and seven months after this Court issued its opinion in the previous appeal. The trial court denied plaintiffs’ motion because they failed to seek reconsideration of or appeal from this Court’s previous opinion. We review a trial court’s decision regarding a motion for leave to amend pleadings for an abuse of discretion.⁸ Leave to amend is granted freely in the interest of justice, except where the court finds that particular reasons justify denial of the opportunity.⁹ Where undue delay would prejudice the opposing party, denial is appropriate.¹⁰ Plaintiffs have completely failed to explain their delay in attempting to amend their complaint. We find that the trial court’s determination was reasonable in light of plaintiffs’ delay in moving to amend their complaint and failure to appropriately challenge this Court’s prior opinion in this matter.

Affirmed.

/s/ Henry William Saad
/s/ Michael R. Smolenski
/s/ Jessica R. Cooper

⁶ Pursuant to MCR 2.612(C)(2), a party must file a motion for relief from judgment “within a reasonable time” or “within one year after the judgment, order, or proceeding was entered or taken” if the motion is based on MCR 2.612(C)(1)(a), (b), or (c).

⁷ *Pickl*, *supra* at 8 (emphasis added).

⁸ *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996).

⁹ *Id.* See also MCR 2.118(A)(2).

¹⁰ *Jenks*, *supra* at 420.