

STATE OF MICHIGAN
COURT OF APPEALS

CHRIS DOMBROWSKI and LORRAINE
DOMBROWSKI,

UNPUBLISHED
October 24, 2006

Plaintiffs-Appellants,

and

HELENE DOMBROWSKI and JAMES F.
PAGELS,

Appellants,

v

No. 269281
Otsego Circuit Court
LC No. 04-010672-CH

EDWARD EICHINGER, CAROL E.
EICHINGER, GREGORY K. LIGHT,
KIMBERLY S. LIGHT, C. DELBERT
ANDREWS, JR., MARCIA A. ANDREWS,
ROBERT L. HIPSHER, LISA M. HIPSHER,
JOSEPH P. EDWARTOWSKI, RITA B.
EDWARTOWSKI, MUSKEGON
DEVELOPMENT COMPANY, JEROME A.
CAPERS, NANCY B. CAPERS, JOSEPH
FERRERA, LAURA D. FERRERA, and
CATHERINE FERRERA,

Defendants-Appellees.

Before: Whitbeck, C.J., and Murphy and Smolenski, JJ.

PER CURIAM.

Plaintiffs Chris and Lorraine Dombrowski (the Dombrowskis) appeal as of right, challenging the trial court's orders granting three separate motions for summary disposition brought by various defendants, dismissing four pro se defendants, denying the Dombrowskis' motion to amend their complaint to add additional parties, and denying the Dombrowskis' request for certain declaratory relief. The Dombrowskis' daughter, appellant Helene Dombrowski, challenges the trial court's order denying her motion to intervene. We affirm.

I. Basic Facts And Procedural History

This case involves a dispute regarding whether the Dombrowskis should be granted an easement, by necessity or express reservation, to provide access to either the eastern or southern portion of their undeveloped 160-acre parcel of property in the northwest quarter of section 12 in Charlton Township, Ostego County. The Dombrowskis, along with John and Pauline Turri (the Turris), acquired an ownership interest in section 12 in 1978.

In October 1978, a survey was recorded to divide the entire eastern half of section 12 into 23 parcels (the Quiet parcels). The survey depicts a private road (Quiet Acres Road) and utility easement running between Quiet parcels 4, 5, 6, and 7 to the north and Quiet Parcels 10, 11, 12, and 13 to the south. Quiet parcels 8 and 9 separate Quiet parcels 7 and 10, respectively, from the Dombrowskis' 160-acre parcel in the northwest quarter of section 12. The Quiet parcels were subsequently sold to various purchasers, including predecessors-in-title to defendants Carol and Gregory Eichinger (Quiet parcels 3 and 4), Gregory and Kimberly Light (Quiet parcels 6 and 7), and C. Delbert and Marcia Andrews (Quiet parcel 12) (collectively, the Eichinger defendants).

In February 1983, the Dombrowskis and the Turris entered into a land contract to sell the southwest quarter of section 12 to John and Edith Hofstra (the Hofstras). The land contract specified an understanding that the land would be split into smaller parcels for resale. The Hofstras thereafter subdivided and sold parcels in the southwest quarter (the SW parcels) to various purchasers. Two larger SW parcels, which abut the southern border of the Dombrowskis' 160-acre parcel, were subsequently acquired by defendants Jerome and Nancy Capers, and defendants Joseph, Laura, and Catherine Ferrera (the Capers defendants). Eight smaller, numbered SW parcels are situated south of the Capers defendants' two SW parcels. Defendant Muskegon Development Company (MDC) owned SW parcel 6 at the time relevant to this case. Defendants Robert and Lisa Hipsher (the Hipshers) owned SW parcel 1 and defendants Joseph and Rita Edwartowski (the Edwartowskis) owned SW parcel 2.

In April 2004, the Dombrowskis filed this action against the Eichinger defendants and other alleged property owners along Quiet Acres Road, seeking a right to use Quiet Acres Road to access their 160-acre parcel under several different easement theories. Following a period of discovery, the Dombrowskis amended their complaint to add easement claims against property owners in the southwest quarter of section 12.

The Dombrowskis obtained defaults against several defendants. The Eichinger defendants, the Capers defendants, and MDC each moved for summary disposition with respect to the Dombrowskis' easement claims. The Dombrowskis moved for summary disposition under MCR 2.116(I)(2), claiming that they had an express easement across Quiet parcels 8 and 9 that would entitle them to use Quiet Acres Road. Alternatively, the Dombrowskis claimed a right to an easement by necessity or implied reservation over land in the southwest quarter of section 12. The Dombrowskis further moved for a declaration that they did not have an express easement for their 160-acre parcel to use a private road (South Shore Drive), which was located to north of the 160-acre parcel in an area designated as section 1.

The Dombrowskis later moved to add property owners along South Shore Drive as defendants if an easement was not placed in section 12. The trial court denied the Dombrowskis' motions and granted the motions for summary disposition brought by the Eichinger defendants,

the Capers defendants, and MDC. Further, the trial court dismissed the Hipshers and the Edwartowskis, who appeared in propria persona. After the trial court's ruling, but before the entry of orders deciding the motions, the Dombrowskis quitclaimed interests in their 160-acre parcel to their daughter, Helene Dombrowski, and their attorney, James Pagels. The Dombrowskis also moved for reconsideration of the trial court's decision and again moved to add South Shore property owners as defendants. Additionally, Helen Dombrowski and Pagels moved to intervene. The trial court denied each motion.

II. Express Easement Over Quiet Parcels 8 And 9

A. Standard Of Review

The Dombrowskis challenge the trial court's decision to grant summary disposition in favor of the Eichinger defendants on the issue of whether the Dombrowskis have an express easement crossing Quiet parcels 8 and 9 that entitles them to use Quiet Acres Road. The Dombrowskis do not cite any authority in support of their challenge to the trial court's application of the doctrine of reciprocal negative easements. An appellant's arguments must be supported by citation to appropriate authority or policy.¹ We may deem an issue abandoned when it is given only cursory treatment, with little or no citation to supporting authority.² Nonetheless, this Court may overlook preservation requirements if the failure to consider an issue would result in manifest injustice, consideration of the issue is necessary to a proper determination in the case, or the issue is one of law for which the necessary facts have been presented.³ Because the existence of an express easement along Quiet Acres Road may affect whether an easement by necessity should be recognized with respect to other appellees appearing before us, specifically MDC and the Capers defendants, we will consider the Dombrowskis' argument.

We review de novo the trial court's decision granting the Eichinger defendants summary disposition.⁴ Although the trial court did not specify whether it granted summary disposition under MCR 2.116(C)(8) or (10), because the trial court considered evidence beyond the parties' pleadings, we will review its decision under MCR 2.116(C)(10).⁵

B. Legal Standards

A motion under MCR 2.116(C)(10) tests the factual support for a claim.⁶ A court considers the affidavits, pleadings, depositions, and other evidence submitted by the parties, to

¹ *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

² *Id.*

³ *Steward v Panek*, 251 Mich App 546, 554; 652 NW2d 232 (2002).

⁴ *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

⁵ *Spiek v Dep't of Transportation*, 456 Mich 331, 338; 572 NW2d 201 (1998).

⁶ *Maiden, supra* at 120.

the extent the content or substance of the evidence would be admissible, in a light most favorable to the nonmoving party.⁷ “Where the proffered evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment as a matter of law.”⁸ The mere fact that discovery is incomplete does not preclude summary disposition.⁹ The nonmoving party must present some independent evidence that a factual dispute exists.¹⁰

C. Easements Versus Dedications

In considering this issue, it is necessary to distinguish easements from dedications, inasmuch as the trial court considered whether the Land Division Act¹¹ has any effect on the Dombrowskis’ claim.

A dedication may arise under statutory or common law.¹² Dedications were traditionally understood to appropriate land to a public use, when accepted for such use by or on behalf of the public.¹³ Before enactment of the Land Division Act (formerly the Subdivision Control Act of 1967), a dedication of land for private use could also be made. Such dedications were implicitly recognized as creating irrevocable easements.¹⁴ Under the Land Division Act, private dedications are expressly allowed.¹⁵ If a plat is certified, signed, acknowledged, and recorded as prescribed by the act, the private dedication conveys an interest in the donee, subject to the use expressed in the dedication.¹⁶

An easement is an interest in land, subject to the statute of frauds, that may be created by language in a writing that manifests a clear intent to create a servitude.¹⁷ It may be created by express grant, reservation, or agreement.¹⁸ Consideration of the parties’ intent and the proper determination of an easement is confined to the four corners of the instrument granting the easement, unless it is ambiguous.¹⁹ As with other legal instruments, if there is ambiguity, a court

⁷ MCR 2.116(G)(6); *Maiden, supra* at 120.

⁸ *Maiden, supra* at 120.

⁹ *VanVorous v Burmeister*, 262 Mich App 467, 476-477; 687 NW2d 132 (2004).

¹⁰ *Id.*

¹¹ MCL 566.101 *et seq.*

¹² *Little v Hirschman*, 469 Mich 553, 557 n 4; 677 NW2d 319 (2004).

¹³ *Martin v Beldean*, 469 Mich 541, 543 n 6; 677 NW2d 312 (2004).

¹⁴ *Little, supra* at 562; *Martin, supra* at 548 n 18.

¹⁵ MCL 560.253(1); *Little, supra* at 562.

¹⁶ *Martin, supra* at 548-549.

¹⁷ *Forge v Smith*, 458 Mich 198, 205; 580 NW2d 876 (1998); *Chapdelaine v Sochocki*, 247 Mich App 167, 170; 635 NW2d 339 (2001).

¹⁸ *Rossow v Brentwood Farms Dev, Inc*, 251 Mich App 652, 661; 651 NW2d 458 (2002).

¹⁹ *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 42; 700 NW2d 364 (2005).

may examine extrinsic evidence to determine the parties' intent.²⁰ Summary disposition is generally inappropriate if an instrument is ambiguous.²¹

Here, we note that the Dombrowskis have not challenged the trial court's determination that the Land Division Act is immaterial to whether there was factual support for their easement claim. Further, although the Eichinger defendants, as appellees, are entitled to argue alternative grounds for affirmance without filing a cross appeal,²² we conclude that the Eichinger defendants have not established any factual or legal support for their contention that the recorded 1978 survey for the Quiet Acres development constitutes a "plat" containing a private dedication of land for a private roadway, which ripened into a fee simple interest under MCL 560.253(1) in favor of any property owner in Quiet Acres, individually or collectively. Hence, we shall analyze the Dombrowskis' easement claim without regard to the Land Division Act.

D. The Relevant Deeds

The appropriate starting point in analyzing the Dombrowskis' easement claim against the Eichinger defendants is to identify the instrument that granted or reserved the alleged easement along Quiet Acres Road. The Dombrowskis' reliance on instruments pertaining to Quiet parcels 8 and 9 is misplaced because none of the Eichinger defendants were parties to those instruments. Rather, the pertinent instruments are the deeds that were executed in satisfaction of the land contracts for the predecessors-in-title to the Eichinger defendants' Quiet parcels 4, 6, 7, and 12, as well as instruments referred therein, including easements of record.

It is apparent from the 1978 survey, which was recorded before the conveyances, that an appurtenant easement, that is, an easement to benefit another tract of land, was intended.²³ Specifically, the easement benefits the particular parcels in Quiet Acres that abut the private road by providing access to a county road to the east. In light of the clear intent evidenced by the recorded survey, we reject the Dombrowskis' argument that an ambiguity exists because the instruments do not identify the dominant estate, that is, the land served or benefited by the appurtenant easement.²⁴ Although the recorded 1978 survey does not itself contain grant or reservation language, the land contracts and subsequent deeds executed to satisfy the land contracts for the original purchases of the Quiet parcels owned by the Eichinger defendants

²⁰ *Id.*; *Little v Kin*, 468 Mich 699, 700; 664 NW2d 749 (2003).

²¹ *Klapp v United Ins Group Agency, Inc*, 468 Mich 459, 469; 663 NW2d 447 (2003).

²² *Middlebrooks v Wayne Co*, 446 Mich 151, 166 n 41; 521 NW2d 774 (1994).

²³ *Dep't of Natural Resources v Carmody-Lahti Real Estate, Inc*, 472 Mich 359, 378 n 40; 699 NW2d 272 (2005). An easement is in gross if it benefits a particular person, rather than a particular piece of land. *Id.* at 379 n 41.

²⁴ *Schadewald v Brulé*, 225 Mich App 26, 36; 570 NW2d 788 (1997).

referred to easements of record or described the easement. Where one writing refers to another instrument, the two writings should be read together in determining if there is ambiguity.²⁵

Further, under the doctrine of reciprocal negative easements, where a parcel is developed in accordance with a general plan, all lots within the parcel may be subject to its restrictions, regardless of whether their conveyances specify the restrictions.²⁶ It is essential to this doctrine that the general plan be maintained from its inception and that it be understood, accepted, and relied on by all interested parties.²⁷ It must start with a common owner and will arise, if at all, out of the benefit accorded to the retained land by restricting the neighboring land sold by the common owner.²⁸

Because it is clear from the four corners of the relevant written instruments that Quiet Acres was developed according to a common scheme, initiating from the recorded 1978 survey, we must disregard Chris Dombrowski's affidavit in which he averred that he intended to continue the road easement between Quiet parcels 8 and 9, for the benefit of the 160-acre parcel to the west of Quiet Acres. It is only when ambiguity in an instrument has been established that extrinsic evidence may be considered to determine its meaning.²⁹

Further, easements cannot be unilaterally modified.³⁰ Therefore, regardless of the Dombrowskis' intent, the only easement to which the Eichinger defendants are subject is that contained in the recorded 1978 survey. We therefore uphold the trial court's grant of summary disposition in favor of the Eichinger defendants under MCR 2.116(C)(10).

In light of our resolution of this issue, it is unnecessary for us to address the other arguments raised on appeal regarding the Dombrowskis' claim of an express easement over Quiet Acres Road.

III. Declaratory Judgment Concerning South Shore Drive

A. Standard Of Review

The Dombrowskis argue that the trial court erred in denying their request for a declaratory judgment with respect to whether they could use South Shore Drive to access their 160-acre parcel. Because the Dombrowskis cite no authority in support of their position that a declaratory judgment on this unpleaded claim was appropriate, we decline to consider their

²⁵ *Forge, supra* at 207.

²⁶ *Allen v Detroit*, 167 Mich 464, 469; 133 NW 317 (1911).

²⁷ *Id.*

²⁸ *Sanborn v McLean*, 233 Mich 227, 230; 206 NW 496 (1925).

²⁹ *Blackhawk Dev Corp, supra* at 42.

³⁰ *Schadewald, supra* at 36.

argument.³¹ We have, however, considered the evidence offered to the trial court regarding South Shore Drive for the purpose of reviewing the Dombrowskis' challenge to the trial court's grant of summary disposition in favor of MDC and the Capers defendants on the Dombrowskis' claim of an easement by necessity. We review de novo the trial court's decision to determine if MDC and the Capers defendants were entitled to judgment as a matter of law under MCR 2.116(C)(10).³²

B. Easements Of Necessity

An easement by necessity will be implied when an estate has been severed, leaving the dominant estate without a means of access.³³ The party claiming the easement must establish strict necessity.³⁴ Although we agree with MDC that the easement claim should be determined by the facts that existed when the Dombrowskis filed this lawsuit,³⁵ this approach does not render the date of conveyance immaterial in determining whether the easement will be implied. Rather, subsequent events are relevant in determining if and when a right-of-way easement ceases to exist.

“While a right of way of necessity continues until some other lawful way has been acquired, and ordinarily cannot be extinguished so long as the necessity continues to exist, nevertheless a way of necessity ceases as soon as the necessity to use it ceases. If the owner of a way of necessity acquires other property of his own over which he may pass, or if a public way is laid out which affords access to his premises, or if a new way is established by a judgment in partition, the right to a way of necessity ceases; and the fact that a former way of necessity continues to be the most convenient way will not prevent its extinguishment when it ceases to be absolutely necessary.” 19 C.J. pp. 953, 954.^[36]

An easement by necessity is not a perpetual right—it is “extinguished on the acquisition of another mode of passage, although far less convenient.”³⁷

The threshold issue that we must consider is whether an easement by necessity was established when the Dombrowskis and the Turris sold the property in the southwest quarter of section 12 to the Hofstras in 1983. MDC and the Capers defendants, as the moving parties, had the initial burden of supporting their motions under MCR 2.116(C)(10) with affidavits,

³¹ *Peterson Novelties, Inc, supra* at 14.

³² *Maiden, supra* at 120.

³³ *Schmidt v Eger*, 94 Mich App 728, 732-733; 289 NW2d 851 (1980).

³⁴ *Id.*

³⁵ *Waubun Beach Ass'n v Wilson*, 274 Mich 598, 605; 265 NW 474 (1936).

³⁶ *Id.* at 611.

³⁷ *Id.* at 609, 611, quoting 9 RCL, pp 815, 816.

depositions, admissions, or other documentary evidence.³⁸ Because they failed to offer evidence on this issue, we will assume for purposes of our review that the sale made by the Dombrowskis and the Turris to the Hofstras left their remaining 160-acre parcel landlocked, thus creating an easement by necessity. Nonetheless, the evidence offered to the trial court regarding the Dombrowskis' admission that they owned land abutting the 160-acre parcel, which abutted South Shore Drive, established that any prior necessity had ceased. Because the evidence offered by the Dombrowskis in opposition to the motions for summary disposition failed to raise a genuine issue of material fact regarding whether they could access the 160-acre parcel through their land in section 1, the trial court did not err in granting summary disposition in favor of the Capers defendants and MDC.

In light of this conclusion, it is unnecessary for us to address the defendants' alternative grounds for affirmance. Further, we decline to address the parties' arguments regarding where an easement by necessity, if any, should be placed.

IV. Amendment Of The Complaint To Add The South Shore Property Owners

A. Standard Of Review

The Dombrowskis argue that the trial court erred in denying their motion to amend their first amended complaint to add South Shore property owners as defendants. They argue that they should have been permitted to add a claim against the South Shore property owners, while requiring the Capers defendants, MDC, and other defendants in the southwest quarter of section 12 to remain in the case. "Leave [to amend] shall be freely given when justice so requires[,]""³⁹ "unless the evidence then before the court shows that amendment would not be justified."⁴⁰ An appellate court will not reverse a trial court's decision to grant or deny a motion to amend pleadings absent an abuse of discretion.⁴¹ We also review for an abuse of discretion a trial court's decision to grant or deny a motion to add a party.⁴²

B. Legal Standards

A trial court should generally grant a motion to amend the pleadings unless one of five particularized reasons exists: (1) undue delay, (2) bad faith or dilatory motive, (3) repeated failures to cure deficiencies in earlier amendments, (4) undue prejudice, or (5) futility.⁴³ Futility,

³⁸ MCR 2.116(G)(4); *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

³⁹ MCR 2.118(A)(2).

⁴⁰ MCR 2.116(I)(5).

⁴¹ *Ormsby v Capital Welding, Inc*, 471 Mich 45, 53; 684 NW2d 320 (2004).

⁴² *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 95; 535 NW2d 529 (1995).

⁴³ *Weymers v Khera*, 454 Mich 639, 659; 563 NW2d 647 (1997).

in this context, means that the amendment merely restates allegations already made or adds allegations that still fail to state a claim.⁴⁴

Although this Court has indicated that a motion to add parties is governed by the same standards as motions to amend pleadings,⁴⁵ the specific standards for joining parties are provided by MCR 2.205 (necessary joinder), MCR 2.206 (permissive joinder), and MCR 2.207, which provides:

Misjoinder of parties is not a ground for dismissal of an action. Parties may be added or dropped by order of the court on motion of a party or on the court's own initiative at any stage of the action and on terms that are just. When the presence of persons other than the original parties to the action is required to grant complete relief in the determination of a counterclaim or cross-claim, the court shall order those persons to be brought in as defendants if jurisdiction over them can be obtained. A claim against a party may be severed and proceeded with separately.

C. New Claims

We conclude that the Dombrowskis have not established any basis for disturbing the trial court's decision to deny their motion to add South Shore property owners as defendants. The trial court's consideration, in dicta, of delay principles, does not warrant reversal. Although mere delay does not warrant denying a motion to amend a complaint to add a new claim or theory, this case does not involve an attempt to add a new claim or theory against an existing defendant. Rather, the Dombrowskis' proposed second amended complaint seeks to add a new easement claim against unnamed South Shore property owners.

D. Futility

With respect to the Capers defendants and MDC, the Dombrowskis' proposed second amended complaint was futile because it merely restated allegations that were already alleged in the first amended complaint relative to these defendants.⁴⁶ The Dombrowskis have not substantiated their claim that the South Shore property owners were necessary under MCR 2.205(A) to the adjudication of the pleaded claim of an easement by necessity over the southwest quarter of section 12 in the first amended complaint.⁴⁷ Further, we are not persuaded that adding a claim of express easement against the South Shore property owners affords any basis for reinstating the easement by necessity claim against the Capers defendant and MDC, or otherwise keeping them in the case after being granted summary disposition. MCR 2.207 permits a trial court to sever claims when there are multiple parties.

⁴⁴ *Lane v KinderCare Learning Centers, Inc.*, 231 Mich App 689, 697; 588 NW2d 715 (1998).

⁴⁵ *Waldorf v Zinberg*, 106 Mich App 159, 166; 307 NW2d 749 (1981).

⁴⁶ *Lane*, *supra* at 697.

⁴⁷ *Hofmann*, *supra* at 96.

We conclude that the Dombrowskis have not demonstrated that the trial court abused its discretion in denying their motion to add the South Shore property owners as defendants. Further, even assuming that the proposed amendment to add a declaratory action against the South Shore property owners would have been appropriate, we would not reverse the trial court's decision. Because the trial court's ruling does not preclude the Dombrowskis from bringing a separate action against the South Shore property owners to seek declaratory relief, our refusal to reverse the trial court's order would not be inconsistent with substantial justice.⁴⁸

V. Helene Dombrowski's Claim

A. Standard Of Review

Helene Dombrowski argues that she should have been allowed to intervene in this action.⁴⁹ A motion to intervene is governed by MCR 2.209. Under MCR 2.209(A)(3), a person, on timely application, has a right to intervene

when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The decision whether to grant a motion to intervene is within the trial court's discretion, but the court rule is liberally construed to allow intervention when the applicant's interest may otherwise be inadequately represented.⁵⁰ The applicant must also have standing to assert the claim.⁵¹ We review de novo the question of whether a party has standing as a matter of law.⁵²

B. The Trial Court's Decision

We are not persuaded that the trial court's failure to provide particularized reasons for denying the motion to intervene requires reversal. Although a trial court should specifically state its reasons for denying a motion to amend a complaint,⁵³ under MCR 2.517(A)(4) "[f]indings of fact and conclusions of law are unnecessary in decisions on motions unless findings are required

⁴⁸ MCR 2.613(A).

⁴⁹ Pagels does not challenge the trial court's denial of his motion to intervene. Thus, we need not address this issue as it pertains to him. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

⁵⁰ *Precision Pipe & Supply, Inc v Meram Constr, Inc*, 195 Mich App 153, 156; 489 NW2d 166 (1992).

⁵¹ *Karrip v Cannon*, 115 Mich App 726, 732; 321 NW2d 690 (1982).

⁵² *Nat'l Wildlife Federation v Cleveland Cliffs Iron Co*, 471 Mich 608, 612; 684 NW2d 800 (2004).

⁵³ *Weymers, supra* at 658-659.

by a particular rule.” Regardless, findings are sufficient if it appears that the trial court was aware of the issues and properly applied the law.⁵⁴ “A judge is presumed to know and understand the law.”⁵⁵

Further, we are not persuaded that the trial court abused its discretion by denying the motion to intervene. Although the motion to intervene was timely in relation to when Helene Dombrowski acquired her interest in the 160-acre parcel, it was untimely in relation to the lower court proceedings because it was not made until after the trial court decided the motions for summary disposition made by the Eichinger defendants, the Capers defendants, and MDC.

We express no opinion whether the Dombrowskis’ conveyance to Helene Dombrowski would provide a more favorable basis for an easement claim than their own property situation. Further, we specifically decline to address MDC’s claim on appeal that relief should be denied under the unclean hands doctrine. We hold only that it was not an abuse of discretion for the trial court to deny Helene Dombrowski’s untimely motion to intervene under the circumstances presented.⁵⁶

Affirmed.

/s/ William C. Whitbeck

/s/ William B. Murphy

/s/ Michael R. Smolenski

⁵⁴ *In re Cotton*, 208 Mich App 180, 183; 526 NW2d 601 (1994).

⁵⁵ *Powell Production, Inc v Jackhill Oil Co*, 250 Mich App 89, 101; 645 NW2d 697 (2002).

⁵⁶ Cf. *W A Foote Mem Hosp v Dep’t of Public Health*, 210 Mich App 516, 525; 534 NW2d 206 (1995); *Dean v Dep’t of Corrections*, 208 Mich App 144, 150-152; 527 NW2d 529 (1994), *aff’d* 453 Mich 448 (1996).