

STATE OF MICHIGAN
COURT OF APPEALS

CALIFORNIA CHARLEY'S CORPORATION,

Plaintiff-Appellant,

and

GERARD TRUDEL,

Plaintiff,

v

CITY OF ALLEN PARK, JOHN CIOTTI,
ANTHONY NICHOLAS, MARTIN DELOACH,
GREGORY MURPHY, KEVIN WELCH,
KENNETH DOBSON, LEVON KING,
BEVERLEY KELLEY, and DAVID TAMSEN,

Defendants-Appellees,

and

FRANCESCO TUCCI,

Defendant,

and

RONALD HAAS, and JUDICIAL TENURE
COMMISSION,

Intervening Parties-Appellees,

and

PATROSKE ENTERPRISES, INC., and MARIA
ORTEGA,

Intervening Parties.

UNPUBLISHED

April 9, 2013

No. 295575

Wayne Circuit Court

LC No. 04-409295-CZ

CALIFORNIA CHARLEY'S CORPORATION,

Plaintiff,

and

GERARD TRUDEL,

Plaintiff-Appellant,

v

No. 295579
Wayne Circuit Court
LC No. 04-409295-CZ

CITY OF ALLEN PARK, JOHN CIOTTI,
ANTHONY NICHOLAS, MARTIN DELOACH,
GREGORY MURPHY, KEVIN WELCH,
KENNETH DOBSON, LEVON KING,
BEVERLEY KELLEY, and DAVID TAMSEN,

Defendants-Appellees,

and

FRANCESCO TUCCI,

Defendant,

and

RONALD HAAS, and JUDICIAL TENURE
COMMISSION,

Intervening Parties-Appellees,

and

PATROSKE ENTERPRISES, INC., and MARIA
ORTEGA,

Intervening Parties.

CALIFORNIA CHARLEY'S CORPORATION
and GERARD TRUDEL,

Plaintiffs,

v

CITY OF ALLEN PARK, JOHN CIOTTI,
ANTHONY NICHOLAS, MARTIN DELOACH,
GREGORY MURPHY, KEVIN WELCH,
KENNETH DOBSON, LEVON KING, and
BEVERLEY KELLEY,

Defendants-Appellees,

and

FRANCESCO TUCCI and DAVID TAMSEN,

Defendants,

and

PATROSKE ENTERPRISES, INC.,

Intervening Party-Appellant,

and

RONALD HAAS and JUDICIAL TENURE
COMMISSION,

Intervening Parties-Appellees,

and

MARIA ORTEGA,

Intervening Party.

CALIFORNIA CHARLEY'S CORPORATION
and GERARD TRUDEL,

Plaintiffs-Appellants,

v

CITY OF ALLEN PARK, JOHN CIOTTI,
ANTHONY NICHOLAS, MARTIN DELOACH,

No. 295659
Wayne Circuit Court
LC No. 04-409295-CZ

No. 299199
Wayne Circuit Court
LC No. 04-409295-CZ

GREGORY MURPHY, KEVIN WELCH,
KENNETH DOBSON, LEVON KING,
BEVERLEY KELLEY, and DAVID TAMSEN,

Defendants-Appellees,

and

FRANCESCO TUCCI,

Defendant,

and

PATROSKE ENTERPRISES, INC., RONALD
HAAS, MARIA ORTEGA, and JUDICIAL
TENURE COMMISSION,

Intervening Parties.

Before: TALBOT, P.J., and JANSEN and METER, JJ.

PER CURIAM.

In these consolidated appeals, plaintiff California Charley's Corporation (California Charley's), and its sole shareholder, plaintiff Gerard Trudel, appeal as of right in Docket Nos. 295575 and 295579, respectively, from the trial court's judgment awarding plaintiffs \$150,677.96 pursuant to an arbitration award, inclusive of all liens, costs, interest, and attorney fees. In Docket No. 295659, intervening party Patroske Enterprises, Inc., appeals as of right, challenging the trial court's determination that its lien against the arbitration award was inferior to liens by the Judicial Tenure Commission (JTC) and Ronald Haas. In Docket No. 299199, both plaintiffs appeal by leave granted a postjudgment order denying their motion to disqualify the assigned judge, Wayne Circuit Court Judge Susan Borman. We affirm.

Plaintiff Trudel, a former district court judge, was the sole shareholder of California Charley's, which was formed to operate a nightclub in Allen Park, Michigan. Plaintiffs brought this action alleging that defendant city of Allen Park and the individual defendants, who were various elected and appointed city officials, wrongfully impeded and interfered with their efforts to open and operate the business. The parties agreed to submit the case to binding arbitration. In December 2008, the arbitration panel awarded plaintiffs \$150,677.96 against most of the individual defendants, but found that plaintiffs had no cause of action against the city of Allen Park and defendant David Tamsen.

Plaintiff subsequently filed motions to enforce the arbitration award and for additional postjudgment remedies, including awards of attorney fees, costs, interest, and case-evaluation sanctions. In addition, several parties intervened, seeking to assert and enforce liens against the

arbitration proceeds. The JTC and Haas both asserted liens and served writs of garnishment to garnish the arbitration proceeds. Patroske Enterprises, the landlord for the California Charley's property, claimed a security interest in the arbitration award as collateral for past-due rent. Trudel's former wife, Maria Ortega, sought a share of the arbitration award to satisfy a spousal-support arrearage.

The trial court determined that the arbitration award was inclusive of attorney fees, costs, and interest, and, therefore, plaintiffs were not entitled to any additional awards for those items, but that plaintiffs were entitled to first be reimbursed for their costs and attorney fees before the remaining arbitration-award proceeds were distributed to the various lien creditors. The court determined that plaintiffs were entitled to a one-third contingency fee, which it calculated after first deducting the amount of plaintiffs' costs. Accordingly, the court awarded plaintiffs costs of \$37,608.79 and attorney fees of \$37,851.58, leaving a balance of \$75,217.59 to be divided among the lien creditors.

With regard to the competing claims of JTC, Haas, and Patroske Enterprises,¹ the trial court found that the JTC and Haas had first priority as lien creditors because they had perfected their claims by garnishing the arbitration award, whereas Patroske Enterprises had not perfected its security interest in the arbitration award and, therefore, was left to collect whatever remained.

I. DOCKET NO. 295575

A. ATTORNEY FEES

California Charley's argues that the trial court erred in its methodology for calculating the contingency fee in this case. We disagree. This issue essentially presents a question of law, and we review questions of law de novo. *In re Capuzzi Estate*, 470 Mich 399, 402; 684 NW2d 677 (2004).

California Charley's does not dispute that it had a contingency-fee agreement providing for a one-third contingency fee. Because plaintiffs' action included claims for personal injury, the trial court properly calculated the fee in accordance with MCR 8.121(C)(1), which explicitly provides that the fee shall be "computed on the net sum recovered after deducting from the amount recovered all disbursements properly chargeable to the enforcement of the claim or prosecution of the action." Although California Charley's argues that this action included commercial, non-personal injury claims, and that counsel was entitled to a reasonable attorney fee for pursuing those claims that was not limited to one-third of the net recovery, the arbitration award did not distinguish between the commercial and personal injury claims, and further, California Charley's never submitted evidence of a different fee agreement for the commercial claims. For that reason, the trial court was not required to conduct an evidentiary hearing to decide the reasonableness of plaintiffs' requested fees by considering the factors in MRPC 1.5.

¹ Ortega withdrew her claim after satisfying the support arrearage through other means.

B. RELIEF FROM THE ARBITRATION AWARD

California Charley's argues that the trial court erred by declining to award additional attorney fees, costs, and interest. We disagree. This issue involves questions of law and questions of court-rule interpretation, which we review de novo. *In re Capuzzi Estate*, 470 Mich at 402; *Hinckle v Wayne Co Clerk*, 467 Mich 337; 654 NW2d 315 (2002). The trial court declined to award additional amounts for these items because the arbitration award expressly provided that it was inclusive of attorney fees, costs, and interest. California Charley's argues that it is entitled to these additional items because the parties' arbitration agreement reserved the issue of "post judgment remedies." It contends that the arbitrators exceeded their authority by including these items in the award, thereby entitling it to have the arbitration award modified or vacated.

We agree with the trial court that relief is not available because (1) plaintiffs never moved to vacate the arbitration award under MCR 3.602(J), and (2) relief was not available under MCR 3.602(K), even assuming, without deciding, that plaintiffs filed an adequate motion under that rule. A request to vacate an arbitration award must be made by motion. MCR 3.602(J)(1). Contrary to California Charley's assertion, plaintiffs never moved to vacate the arbitration award. On the contrary, plaintiffs sought to enforce the arbitration award by seeking to have the trial court enter a judgment on the award, together with additional attorney fees, costs, and interest. Although plaintiffs later filed a second motion asking the court to determine post-judgment remedies in which they alternatively requested that the court correct the arbitration award in accordance with MCR 3.602(K), the only apparent applicable subsection of that rule is subsection (2)(b), which provides that a court may modify or correct an award if "the arbitrator has awarded on a matter not submitted to the arbitrator, and the award may be corrected without affecting the merits of the decision on the issues submitted" In this case, the arbitrators issued an award that included a no-cause decision for some defendants and awarded plaintiffs \$150,677.96, which "covers all claims by Plaintiffs against all Defendants and is inclusive of all liens, costs, interest and attorney fees." Because the arbitrators did not specify which portion of the award was attributable to costs, interest, and attorney fees, the award was not capable of being corrected without affecting the merits of the decision on the issues submitted. To properly present this issue to the trial court, plaintiffs were required to file an appropriate motion to vacate the award, which they failed to do.

Accordingly, because the arbitration award was inclusive of costs, interest, and attorney fees; plaintiffs did not bring an appropriate motion to vacate the award; and correction of the award was not available under MCR 3.602(K), the trial court did not err by denying plaintiffs' motion for additional post-judgment remedies.

II. DOCKET NO. 295579

A. GARNISHMENT OF THE ARBITRATION AWARD

Plaintiff Trudel argues that the trial court erred by refusing to set aside the liens of the JTC and Haas on the ground that their writs of garnishment were improperly served. We disagree. Once again, this issue involves questions of law and questions of court-rule

interpretation and is reviewed de novo. *In re Capuzzi Estate*, 470 Mich at 402; *Hinckle v Wayne Co Clerk*, 467 Mich 337; 654 NW2d 315 (2002).

MCR 3.101(F)(1) directs that a writ of garnishment be served in the manner provided in MCR 2.105. Under MCR 2.105(G)(2), service on a city may be accomplished by serving the mayor, the city clerk, or the city attorney. However, MCR 2.105(J)(3) provides that “[a]n action shall not be dismissed for improper service of process unless the service failed to inform the defendant of the action within the time provided in these rules for service.”

The JTC and Haas both served their writs of garnishment on the attorney for the city of Allen Park’s insurer. Trudel argues that the attorney for the insurer is not the city attorney and, therefore, is not a person authorized to receive service under MCR 2.105(G)(2). We agree with the trial court, however, that because plaintiffs received actual notice of the writs of garnishment in time to file an appropriate response, any error in service did not require dismissal of the writs. MCR 2.105(J)(3). The record discloses that service was accomplished on the attorney who the parties knew was in control of the insurance funds that were to be distributed to satisfy the arbitration award, and who had filed a request for interpleader with the trial court to determine how the funds should be distributed. Indeed, plaintiffs had accepted a portion of the arbitration-award proceeds from that same attorney, to satisfy the trial court’s awards of costs and attorney fees. Further, the attorney provided plaintiffs with notice of the writs and invited plaintiffs to file a response. Under these circumstances, even if the insurer’s attorney is not a person designated in MCR 2.105(G)(2) to accept service on behalf of the city, the trial court properly concluded that MCR 2.105(J) precluded relief for any improper service.

Trudel also argues that the trial court should have vacated or modified the arbitration award because the arbitration panel did not specifically address Trudel’s claim for discrimination under the Persons With Disabilities Civil Rights Act (PWDCRA), MCL 37.1101 *et seq.* As previously discussed in section I.B., however, plaintiffs never moved to vacate the arbitration award under MCR 3.602(J). Furthermore, correction under MCR 3.602(K) was not available because the award was not capable of being corrected to address the PWDCRA claim without affecting the merits of the decision on the issues submitted.

III. DOCKET NO. 295659

A. PRIORITY OF THE CLAIMS TO THE ARBITRATION AWARD

Patroske Enterprises argues that the trial court erred in determining that it did not have a perfected security interest in the arbitration award. We disagree.

A security interest in collateral is enforceable against the debtor and third parties if, among other requirements, “[t]he debtor has authenticated a security agreement that provides a description of the collateral”² MCL 440.9203(2)(c)(i). To perfect a security interest in collateral, a financing statement must be filed with the Secretary of State to provide notice of the

² There are certain exceptions, but they do not apply here.

security interest in the collateral. *Michigan Tractor & Machinery Co v Elsey*, 216 Mich App 94, 97; 549 NW2d 27 (1996); MCL 440.9310(1). The security agreement between plaintiffs and Patroske Enterprises provided that Patroske Enterprises was owed \$97,050 in unpaid rent and \$5,500 for unpaid taxes and water service. Plaintiffs granted Patroske Enterprises a security interest in certain described property, including, in relevant part:

(d) all supplies, . . . , general intangibles, . . . , commercial tort claims, personal tort claims,

Initially, we reject Patroske Enterprises' unpreserved argument that the trial court erred by considering whether the description "commercial tort claims" was sufficient to create a perfected security interest in the arbitration award, rather than determining whether the arbitration award was encompassed within the description of "general intangibles." The Uniform Commercial Code (UCC) defines "commercial tort claim" and "general intangible" as follows:

(1) As used in this article:

* * *

(m) "Commercial tort claim" means a claim arising in tort with respect to which 1 of the following applies:

(i) The claimant is an organization.

(ii) The claimant is an individual and the claim arose in the course of the claimant's business or profession and does not include damages arising out of personal injury to or the death of an individual.

* * *

(pp) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software. [MCL 440.9102(1)(m) and (pp).]

At the hearing below, counsel for Patroske Enterprises argued that this case was included within the description of collateral for which a security interest had been granted because, "[i]n a nutshell, this is a commercial tort claim." Patroske Enterprises also reiterated in a supplemental brief that the arbitration case was encompassed within the description of "commercial tort claim" as defined by the UCC. Accordingly, Patroske Enterprises cannot now argue on appeal that the trial court should have treated the arbitration award as falling within the description of "general intangibles" rather than "commercial tort claim." A party may not take a position before the trial court and later seek redress in this Court based on a contrary position. *Living Alternatives for the Developmentally Disabled, Inc v Dep't of Mental Health*, 207 Mich App 482, 484; 525 NW2d 466 (1994).

Thus, treating the arbitration case as a commercial-tort claim, we must determine whether the reference to a security interest in “all” of plaintiffs’ “commercial tort claims” was sufficient to perfect a security interest in the arbitration award. We review de novo whether valid and enforceable security agreements exist under the UCC. See *In re Moukalled Estate*, 269 Mich App 708, 713; 714 NW2d 400 (2006). We agree with the trial court that the general description of “commercial tort claims” was insufficient to perfect a security interest in the arbitration award in this case. MCL 440.9108 provides, in pertinent part:

(1) Except as otherwise provided in subsections (3), (4), and (5), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

* * *

(5) A description only by type of collateral defined in the uniform commercial code is an insufficient description of either of the following:

(a) A commercial tort claim.

Thus, under MCL 440.9108(5)(a), it was insufficient to merely refer to “commercial tort claims” to create a perfected security interest in the arbitration award in this specific case. See also, generally, *Helms v Certified Packaging Corp*, 551 F3d 675, 681 (CA 7, 2008). This case was pending when Patroske Enterprises obtained its security interest, so there was no reason why plaintiffs could not have referred to this case specifically to identify a security interest in any recovery obtained in the case. Further, under MCL 440.9204(2)(b), “[a] security interest does not attach under a term constituting an after-acquired property clause to . . . [a] commercial tort claim.”

While Patroske Enterprises asserts that the JTC and Haas had actual notice of its security interest, Patroske Enterprises has not provided any authority for its argument that actual notice of the security interest is material to determining the priority of competing liens. Rather, this issue is controlled by the UCC, under which a lien creditor who has a perfected lien has priority over a creditor with an unperfected security interest. *Michigan Tractor*, 216 Mich App at 97. MCL 440.9317(1) provides, in pertinent part:

A security interest or agricultural lien is subordinate to the rights of 1 or more of the following:

* * *

(b) Except as otherwise provided in subsection (5), a person that becomes a lien creditor before the earlier of the following:

(i) The time the security interest or agricultural lien is perfected.

(ii) The time 1 of the conditions specified in section 9203(2)(c) is met and a financing statement covering the collateral is filed.

The JTC and Hass both served writs of garnishment against the arbitration award. A lien attaches when a writ of garnishment is served. *Mary v Lewis*, 399 Mich 401, 411; 249 NW2d 102 (1976). A prejudgment garnishment lien is perfected when the judgment is entered. *Id.* Although a judgment was not issued in this case until December 2009 (after the writs of garnishment had been served), the amount of the arbitration award had been set and it was that award that was at issue, not the judgment. Accordingly, the trial court properly determined that because Patroske Enterprises did not have a perfected security interest in the arbitration award, the JTC's and Haas's liens were first in priority.³

IV. DOCKET NO. 299199

In Docket No. 299199, plaintiffs challenge the denial of their motions to disqualify Judge Borman. Plaintiffs brought two motions for disqualification before Judge Borman, both of which were denied, and then sought de novo review before the chief judge, who also denied the request for disqualification. A trial court's factual findings regarding a motion for disqualification are reviewed for an abuse of discretion and the court's application of the facts to the law is reviewed de novo. *In re MKK*, 286 Mich App 546, 564; 781 NW2d 132 (2009). "An abuse of discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes." *Id.* (internal citation and quotation marks omitted).

Plaintiffs argue that Judge Borman's disqualification was warranted because she delayed entering a final judgment, violated court rules, and engaged in other misconduct that demonstrated her partiality for defendants and bias against plaintiffs. The record does not support plaintiffs' claims.

Initially, plaintiffs contend that Judge Borman improperly denied their first motion for disqualification at a hearing on December 4, 2009, before that motion had formally been noticed and without having had the opportunity to review the motion. We cannot conclude that Judge Borman acted improperly in addressing that motion, given that a hearing had already been scheduled for entry of judgment and plaintiffs' counsel informed Judge Borman at that hearing that the motion for disqualification had just been filed. Because plaintiffs were seeking to disqualify Judge Borman from participating in further proceedings in the case, it was appropriate for Judge Borman to address the motion for disqualification before hearing other matters regarding the case. To the extent that Judge Borman prematurely addressed the motion without having reviewed the pleadings, plaintiffs were not prejudiced because they later filed a second motion for disqualification that included the same grounds asserted in the first motion, and Judge

³ Patroske Enterprises asserts for the first time on appeal that the JTC's writ of garnishment did not create a security interest in the arbitration award because it only named Trudel as a judgment debtor. However, Patroske Enterprises has not cited any authority for its position that a writ of garnishment obtained against only one debtor is ineffective against collateral that the debtor jointly possesses with another party. This Court will not search for authority to sustain or reject a party's position, and the failure to provide sufficient authority in support of an argument constitutes abandonment of that argument. *Hughes v Almena Twp*, 284 Mich App 50, 71-72; 771 NW2d 453 (2009).

Borman denied that motion after having reviewed and considered all the alleged grounds for disqualification.

We find no merit to plaintiffs' argument that Judge Borman improperly refused to refer the matter to the chief judge for de novo review after she denied plaintiffs' first motion for disqualification. MCR 2.003(D)(3)(a)(i) requires referral only at "the request of a party." There is no indication in the record that plaintiffs ever requested referral to the chief judge. At the hearing on plaintiffs' second motion for disqualification, plaintiffs' counsel informed Judge Borman, before she decided the motion, that he had already filed a request for review before the chief judge. Thus, there was no reason for Judge Borman to refer the matter herself after she denied the second motion. Accordingly, plaintiffs have not shown any procedural error involving Judge Borman's failure to refer the disqualification issue to the chief judge.

With regard to the merits of plaintiffs' request for disqualification, we agree that disqualification was not warranted. Plaintiffs' motion for disqualification was brought under MCR 2.003(C)(1)(a) and (b), which provide:

(1) Disqualification of a judge is warranted for reasons that include, but are not limited to, the following:

(a) The judge is biased or prejudiced for or against a party or attorney.

(b) The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, ___US___; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

"A trial judge is presumed to be fair and impartial, and any litigant who would challenge this presumption bears a heavy burden to prove otherwise." *In re Susser Estate*, 254 Mich App 232, 237; 657 NW2d 147 (2002). An actual showing of prejudice is required before a judge will be disqualified. *In re Contempt of Steingold*, 244 Mich App 153, 160; 624 NW2d 504 (2000).

The record does not show that Judge Borman was biased or prejudiced against plaintiffs. At times, Judge Borman expressed her displeasure with plaintiffs' attorney's disregard for courtroom decorum and respect for the court. The record contains instances where counsel took actions such as interrupting the court or arguing positions that were not supported by the court rules. Further, plaintiff's counsel's obstructive behavior contributed to much of the delay in entering a final judgment. At any rate, a court's comments that are critical or disapproving of or even hostile to counsel, the parties, or the case generally do not prove partiality. *Cain v Dep't of Corrections*, 451 Mich 470, 497 n 30; 548 NW2d 210 (1996). Moreover, typical expressions of impatience, dissatisfaction, annoyance, and anger also do not establish partiality. *Id.* Plaintiffs have not shown that any of the trial court's comments or actions were unjustified under the circumstances or that they reflected actual bias.

We also reject plaintiffs' argument that disqualification was warranted because Judge Borman participated in improper ex parte communications with defense counsel on November 20, 2009. At a hearing earlier that day, the parties could not agree on language for a final

judgment. Judge Borman instructed the parties to discuss the matter off the record and “work it out.” A short time later, the case was recalled, but only defendants’ attorney and defendant David Tamsen were present. Defendants’ attorney informed Judge Borman that plaintiffs’ counsel had left. Defense counsel told Judge Borman that he would contact plaintiffs’ counsel to attempt to resolve the matter. At one point, Judge Borman asked whether it would be okay to enter a modified version of plaintiffs’ proposed judgment. Defense counsel questioned whether that judgment accurately reflected the arbitration award, so the court agreed to reschedule the matter for another hearing in two weeks to settle the issue.

We disagree with plaintiffs that this record establishes an improper ex parte communication. It appears that plaintiffs’ counsel improperly left the courthouse without updating the court on the progress of the parties’ attempts to resolve their differences over the final judgment, as was intended. However, even if there was a legitimate misunderstanding concerning whether the attorneys were expected to go back on the record, the transcript does not show that the substance of the conversation between defense counsel and Judge Borman violated the Code of Judicial Conduct, Cannons 2.A., 2.B., or 3.A.(4), or MRPC 3.5 or 8.4, as plaintiffs now argue.

First, the discussion primarily concerned scheduling and administrative matters related to preparing a final judgment for entry. Judge Borman was already aware of the parties’ objections from the earlier discussion at which plaintiffs’ counsel was present, and the judge did not consider anything new or decide anything substantive when defense counsel returned. Defendants merely repeated an earlier objection about the judgment. Judge Borman’s comment about plaintiffs not liking the result did not pertain to anything of substance that was still pending before the court. Second, there is no basis for concluding that the brief on-the-record exchange that occurred after plaintiffs’ counsel left allowed defendants to gain a procedural or tactical advantage. The fact that the exchange occurred on the record meant that there would be a record of any communications that were made. Further, defense counsel advised Judge Borman that he would contact plaintiffs’ counsel to attempt to resolve their disagreement over the language of a final judgment, thus indicating that plaintiffs would have an opportunity to provide their input. In addition, Judge Borman set another hearing date in two weeks, thereby protecting plaintiffs by providing them with an opportunity to respond to any judgment offered by defendants. We find no support in the record for plaintiffs’ contention that this brief, on-the-record discussion between defendants’ counsel and Judge Borman shows that Judge Borman could not be impartial in this matter. *Van Buren Twp v Garter Belt, Inc*, 258 Mich App 594, 598; 673 NW2d 111 (2003).

We also reject plaintiffs’ argument that Judge Borman violated MCR 8.107(A) or the Code of Judicial Conduct, Canon 3.A.(5), by not timely entering a final judgment. MCR 8.107 provides:

(A) Time. Matters under submission to a judge or judicial officer should be promptly determined. Short deadlines should be set for presentation of briefs and affidavits and for production of transcripts. Decisions, when possible, should be made from the bench or within a few days of submission; otherwise a decision should be rendered no later than 35 days after submission. For the purpose of this rule, the time of submission is the time the last argument or presentation in the

matter was made, or the expiration of the time allowed for filing the last brief or production of transcripts, as the case may be.

The Code of Judicial Conduct, Canon 3.A.(5), provides that “[a] judge should dispose promptly of the business of the court.”

The record does not support plaintiffs’ contention that Judge Borman never decided their first motion for entry of judgment, which was filed in March 2009. Rather, the record indicates that Judge Borman decided that a judgment could not be entered at that time because there were unresolved issues between the parties and unresolved disputes between various lienholders. Those matters were not resolved until August 2009, after which the parties continued to disagree on the substance of a final judgment. After plaintiffs filed a second motion for entry of a final judgment in early November 2009, Judge Borman held a hearing on the matter two weeks later, on November 20, 2009. As indicated above, the parties continued to disagree about the terms of a final judgment at that hearing, and Judge Borman instructed them to attempt to work out their differences off the record. However, plaintiffs’ counsel subsequently left the courthouse, thereby preventing the matter from being resolved that day. Another hearing was held two weeks later, on December 4, 2009, at which time Judge Borman entered the final judgment. Considering the complexities of the parties’ issues and the competing lienholder claims, we are satisfied that Judge Borman timely responded to plaintiffs’ requests for entry of a final judgment.

In sum, we find no basis for concluding that Judge Borman’s various comments, conduct, and rulings in this case provided a basis for her disqualification.

Affirmed.

/s/ Michael J. Talbot
/s/ Kathleen Jansen
/s/ Patrick M. Meter