

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROBERT JEROME WILKES,

Plaintiff-Appellant,

v

JP MORGAN CHASE BANK, NA, JENNIFER  
BOUERI CHILSON, DYKEMA GOSSETT,  
PLLC, JONATHAN L. ENGMAN, FABRIZIO &  
BROOK, PC, COUNTY OF WAYNE, WAYNE  
COUNTY REGISTER OF DEEDS, BENNY  
NAPOLEON, and WAYNE COUNTY  
SHERIFF'S DEPARTMENT,

Defendants-Appellees.

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UNPUBLISHED

August 19, 2014

No. 316232

Wayne Circuit Court

LC No. 13-000388-CH

Before: MURPHY, C.J., and WHITBECK and TALBOT, JJ.

PER CURIAM.

In this action to quiet title involving the foreclosure of residential property, Robert Jerome Wilkes appeals as of right the trial court's orders granting summary disposition in favor of JP Morgan Chase Bank, NA ("Chase"); Jennifer Boueri Chilson, Dykema Gossett, PLLC, Jonathan L. Engman, and Fabrizio & Brook, PC (collectively "the attorney defendants"); and County of Wayne, Wayne County Register of Deeds, Benny Napoleon, and Wayne County Sheriff's Department (collectively "the County defendants"). We affirm.

Wilkes first contends that the trial court judge should have been disqualified from the case based on her prior employment as an attorney for Dykema and the County of Wayne, her improper rulings, and the risk of bias impacting Wilkes's due process rights.<sup>1</sup> We disagree.

We review the factual findings underlying a ruling on a motion for disqualification for an abuse of discretion, while application of the facts to the law is reviewed de novo.<sup>2</sup> "An abuse of

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<sup>1</sup> We note that Wilkes failed to file a copy of this order with his claim of appeal as required by MCR 7.204(C)(1). Nonetheless, we address this claim in the interest of judicial economy and conclude that it is without merit.

discretion occurs when the trial court's decision is outside the range of reasonable and principled outcomes."<sup>3</sup>

"Due process requires that an unbiased and impartial decision-maker hear and decide a case."<sup>4</sup> MCR 2.003(C)(1) provides the following noninclusive grounds for disqualifying a judge:

- (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*, 556 US 868; 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.
- (c) The judge has personal knowledge of disputed evidentiary facts concerning the proceeding.
- (d) The judge has been consulted or employed as an attorney in the matter in controversy.
- (e) The judge was a partner of a party, attorney for a party, or a member of a law firm representing a party within the preceding two years.
- (f) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent, or child wherever residing, or any other member of the judge's family residing in the judge's household, has more than a de minimis economic interest in the subject matter in controversy that could be substantially impacted by the proceeding.
- (g) The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:
  - (i) is a party to the proceeding, or an officer, director, or trustee of a party;
  - (ii) is acting as a lawyer in the proceeding;
  - (iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding; or

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<sup>2</sup> *Cain v Dep't of Corrections*, 451 Mich 470, 503, 503 n 38; 548 NW2d 210 (1996); *In re Contempt of Henry*, 282 Mich App 656, 679; 765 NW2d 44 (2009).

<sup>3</sup> *In re MKK*, 286 Mich App 546, 564; 781 NW2d 132 (2009) (citation and quotation marks omitted).

<sup>4</sup> *Mitchell v Mitchell*, 296 Mich App 513, 523; 823 NW2d 153 (2012).

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

“A trial judge is presumed unbiased, and the party asserting otherwise has the heavy burden of overcoming the presumption.”<sup>5</sup> “Disqualification on the basis of bias or prejudice cannot be established merely by repeated rulings against a litigant, even if the rulings are erroneous.”<sup>6</sup> Absent actual bias or prejudice, a party can pursue disqualification on the basis of the due process impartiality requirement.<sup>7</sup> However, “disqualification for bias or prejudice is only constitutionally required in the most extreme cases.”<sup>8</sup>

With regard to the trial court judge's previous employment as an attorney for Dykema and the County of Wayne, the record suggests that she worked in those capacities at least twenty years ago. Given that Wilkes failed to establish that her employment was “within the preceding two years,” disqualification was not required on that ground.<sup>9</sup> Moreover, such circumstances did not give the appearance of bias or impartiality warranting disqualification.<sup>10</sup> The trial court judge's rulings against Wilkes during the lawsuit, even if erroneous, are also insufficient to demonstrate bias or prejudice.<sup>11</sup> Further, Wilkes has failed to establish that disqualification was required by the due process clause.<sup>12</sup> Therefore, the trial court did not err in denying Wilkes's motion for disqualification.<sup>13</sup>

Wilkes next contends that the trial court erred in granting summary disposition in favor of Chase, the attorney defendants, and the County defendants. We disagree.

Chase, the attorney defendants, and the County defendants moved for summary disposition pursuant to various court rules, including MCR 2.116(C)(10). The parties attached documentary evidence to their briefs and the trial court considered evidence outside the pleadings. Accordingly, we review the decision under the standard for MCR 2.116(C)(10).<sup>14</sup> We review de novo the trial court decision to grant summary disposition under this subsection.<sup>15</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> *In re MKK*, 286 Mich App at 566.

<sup>7</sup> *Cain*, 451 Mich at 497.

<sup>8</sup> *Id.* at 498.

<sup>9</sup> MCR 2.003(C)(1)(e).

<sup>10</sup> See MCR 2.003(C)(1)(b).

<sup>11</sup> See *In re MKK*, 286 Mich App at 566.

<sup>12</sup> See *Cain*, 451 Mich at 498.

<sup>13</sup> See *id.* at 503.

<sup>14</sup> *Steward v Panek*, 251 Mich App 546, 555; 652 NW2d 232 (2002).

<sup>15</sup> *McLean v Dearborn*, 302 Mich App 68, 72; 836 NW2d 916 (2013).

In reviewing a motion under MCR 2.116(C)(10), the trial court considers affidavits, pleadings, depositions, admissions, and other evidence introduced by the parties to determine whether no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. The evidence submitted must be considered “in the light most favorable to the opposing party.”<sup>16]</sup>

MCR 2.116(G)(4) provides:

A motion under subrule (C)(10) must specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact. When a motion under subrule (C)(10) is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, judgment, if appropriate, shall be entered against him or her.

Further, such documentary evidence “shall only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion.”<sup>17]</sup>

Wilkes first challenges the propriety of the foreclosure based on whether Chase had an adequate ownership interest.<sup>18]</sup> Wilkes failed to establish a genuine issue of material fact regarding ownership and Chase’s ability to foreclose.<sup>19]</sup> Neither Wilkes’s response objecting to Dykema and Chilson’s motion for summary disposition, nor his “Affidavit of Truth,” “set forth specific facts showing that there is a genuine issue for trial.”<sup>20]</sup> While he attached to his “Affidavit of Truth” the forensic audit report on which he relied, he failed to explain how it created a genuine issue of material fact. Thus, the trial court properly granted summary disposition on Wilkes’s claims of wrongful and fraudulent foreclosure.

We also agree with Chase’s contention below and on appeal that Wilkes lacks standing to challenge the sheriff’s sale. This Court recently held that where a plaintiff fails to redeem the property within the applicable time limit, the plaintiff loses standing to bring a claim that the

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<sup>16]</sup> *Id.* at 73 (citations omitted).

<sup>17]</sup> MCR 2.116(G)(6).

<sup>18]</sup> See MCL 600.3204(1)(d) (requiring that the party foreclosing the mortgage is either the owner of the indebtedness or of an interest in the indebtedness secured by the mortgage or the servicing agent of the mortgage).

<sup>19]</sup> See *McLean*, 302 Mich App at 73.

<sup>20]</sup> MCR 2.116(G)(4).

defendant was not the owner of the indebtedness secured by the mortgage, nor the servicing agent of the mortgage.<sup>21</sup>

The law in Michigan does not allow an equitable extension of the period to redeem from a statutory foreclosure sale in connection with a mortgage foreclosed by advertisement and posting of notice in the absence of a clear showing of fraud, or irregularity. Once the redemption period expired, all of plaintiff's rights in and title to the property were extinguished.<sup>[22]</sup>

Wilkes failed to present evidence that he redeemed the property within the applicable time limit. Wilkes also did not make a clear showing of fraud that would extend the period to redeem.<sup>23</sup> Accordingly, the trial court properly granted summary disposition on Wilkes's wrongful foreclosure claim. Given that Wilkes failed to demonstrate a genuine issue of material fact regarding the propriety of the foreclosure, he has also failed to show a basis for his assertion that he had superior title to the property and that he is entitled to relief for his action to quiet title. As such, relief is not warranted.

Wilkes also challenges the trial court's decision to grant summary disposition in favor of the attorney defendants on the abuse of process claim. He argues that the attorney defendants abused legal processes by illegally processing the second foreclosure and drafting the quitclaim deed. "To recover upon a theory of abuse of process, a plaintiff must plead and prove (1) an ulterior purpose and (2) an act in the use of process which is improper in the regular prosecution of the proceeding."<sup>24</sup> Wilkes, however, failed to establish a genuine issue of material fact regarding the requirements of an ulterior purpose and improper act.<sup>25</sup> Thus, summary disposition on those claims was proper.

Finally, to the extent that Wilkes seeks reversal of the trial court's decision to grant summary disposition on his remaining claims, we find that he has abandoned those issues by failing to properly address the merits on appeal.<sup>26</sup> "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he

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<sup>21</sup> *Bryan v JPMorgan Chase Bank*, 304 Mich App 708, 711, 715; \_\_\_ NW2d \_\_\_ (2014).

<sup>22</sup> *Id.* at 714 (citation and quotation marks omitted).

<sup>23</sup> See *id.*

<sup>24</sup> *Friedman v Dozorc*, 412 Mich 1, 30; 312 NW2d 585 (1981).

<sup>25</sup> Moreover, to the extent that Wilkes challenges Chase's post-foreclosure conveyance of the property to the Federal National Mortgage Association and argues that the attorney defendants acted wrongfully in connection with the conveyance, that issue is unpreserved. See *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 386; 803 NW2d 698 (2010) ("Generally, an issue is not properly preserved if it is not raised before, addressed by, or decided by the lower court or administrative tribunal."). Accordingly, we need not address this issue. *Id.* at 387.

<sup>26</sup> *Houghton v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003).

give issues cursory treatment with little or no citation of supporting authority.”<sup>27</sup> Nonetheless, summary disposition was proper because Wilkes failed to properly oppose the motions for summary disposition on those claims by setting forth “specific facts showing that there is a genuine issue for trial.”<sup>28</sup> Rather, Wilkes responded to the motions for summary disposition with a general objection, failed to provide any rationale for his assertion that there were cognizable claims, and failed to reference specific facts or documentary evidence in support of his claim that there were genuine issues of material fact. Therefore, his arguments must fail.

Affirmed.

/s/ William B. Murphy  
/s/ William C. Whitbeck  
/s/ Michael J. Talbot

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<sup>27</sup> *Id.* at 339 (citations omitted).

<sup>28</sup> MCR 2.116(G)(4).