

STATE OF MICHIGAN
COURT OF APPEALS

MELISSA MCCRORY, ANDREW MCCRORY,
DEBORAH HUFFMAN, CHAD COPELAND,
and CANDY COPELAND,

UNPUBLISHED
February 16, 2006

Plaintiffs-Appellants,

v

ALAN CLEVINGER,

No. 264255
Jackson Circuit Court
LC No. 04-003220-CH

Defendant-Appellee.

Before: Wilder, P.J., and Zahra and Davis, JJ.

PER CURIAM.

Plaintiffs appeal as of right a circuit court order granting defendant summary disposition of plaintiffs' common-law and statutory claims for intentional interference with a contract and slander of title. The July 14, 2005 order was a final order,¹ having resolved all claims remaining in the case after entry of an earlier April 27, 2005 order that dismissed plaintiffs' quiet title claim and granted summary disposition to defendant on one claim for intentional interference with a contract. We affirm.

This is one of several actions filed after the death of Leona Wetzel, the mother of plaintiff Melissa McCrory and defendant Alan Clevenger. At the time of her death, Wetzel owned a home and ten acres of land in Jackson County. The disposition of her property and that of her husband, who predeceased her, was the subject of at least two other actions in the Jackson County Probate Court. In this circuit court action, plaintiffs sued defendant, individually, to quiet title to the property at issue and to recover damages for interference with two contracts and slander of title.

Plaintiffs first argue that the circuit court erred when it dismissed the quiet title claim pursuant to MCR 2.116(C)(6) on the basis that a quiet title action involving the property was

¹ Although the trial court's order contains a handwritten date of June 23, 2005, the order was not entered until July 14, 2005, and, therefore, plaintiff's claim of appeal, filed on August 4, 2005, was timely.

already pending in probate court. Plaintiffs argue that the probate court did not have jurisdiction to hear the quiet title matter, so their quiet title claim was properly before the circuit court, the only court with jurisdiction to resolve that dispute. We disagree.

We review de novo a trial court's order granting summary disposition pursuant to MCR 2.116(C)(6). *Fast Air, Inc v Knight*, 235 Mich App 541, 543; 599 NW2d 489 (1999). Additionally, we review de novo a question of law concerning whether a court has jurisdiction to hear and decide a matter before it. *Reed v Reed*, 265 Mich App 131, 157; 693 NW2d 825 (2005). Here, that presents a question of statutory interpretation, the fundamental aim of which is to give effect to the intent of the Legislature. *Erb Lumber, Inc v Gidley*, 234 Mich App 387, 392; 594 NW2d 81 (1999). If the specific statutory language is "clear and unambiguous, judicial construction is neither required nor permitted, and courts must apply the statute as written." *Id.*, quoting *USAA Ins Co v Houston Gen Ins Co*, 220 Mich App 386, 389; 559 NW2d 98 (1996). Every word should be presumed to have meaning, and this Court should avoid a construction that renders a statute, or any part thereof, surplusage or nugatory. *Dale v Beta-C, Inc*, 227 Mich App 57, 65; 574 NW2d 697 (1997).

Const 1963, art 6, § 15, specifies that the probate court's jurisdiction, powers, and duties shall be provided by law. *In re Mahoney Trust*, 153 Mich App 670, 675-676; 396 NW2d 494 (1986). MCL 600.2932(1) provides that any person "who claims any right in, title to, equitable title to, interest in, or right to possession of land, *may* bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff. . . ." (emphasis added). The term "may" is permissive. *Jordan v Jarvis*, 200 Mich App 445, 451; 505 NW2d 279 (1993). Thus, MCL 600.2932(1) permits a party to file suit to determine property rights in the circuit court, but the statute does not require that suit be filed in the circuit court.

MCL 600.841(1)(a) provides that the probate court has jurisdiction and power as "conferred upon it under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8102." MCL 700.1303 provides that the probate court has concurrent legal and equitable jurisdiction to determine property rights or interests in regard to an estate of a decedent, protected individual, ward, or trust.

The underlying purpose and policy of this section is to simplify the disposition of an action or proceeding involving a decedent's, a protected individual's, a ward's, or a trust estate by consolidating the probate and other related actions or proceedings in the probate court. [MCL 700.1303(3).]

The quiet title matter here required a determination of the property rights and interests in regard to Leona Wetzel's estate and trusts. Under the plain language of MCL 700.1303, the probate court had concurrent legal and equitable jurisdiction to determine these property rights or interests. No authority limits that jurisdiction, so the probate court had jurisdiction to hear the quiet title matter.

MCL 2.116(C)(6) permits a grant of summary disposition where "[a]nother action has been initiated between the same parties involving the same claims." *Fast Air, Inc, supra* at 544. The purpose of the rule is to avoid harassment of parties caused by new suits brought by the same plaintiff involving the same questions as those involved in pending litigation. *Id.* at 545-

546. At the time this circuit court action was filed, an action to quiet title to the property in question was already pending in the probate court. Therefore, the circuit court properly dismissed plaintiffs' quiet title claim pursuant to MCR 2.116(C)(6).

Plaintiffs raise several issues challenging the probate court's decision quieting title to the disputed property in the John and Leona Wetzel Joint Trust. These issues are not properly before us, for a number of reasons, so we will not consider them.

An opinion deciding the quiet title matter was filed, and it contained a caption for both the probate case and this circuit court case. However, no order quieting title was ever entered in this case. "A court speaks through its orders, and the jurisdiction of this Court is confined to judgments and orders." *Lown v JJ Eaton Place*, 235 Mich App 721, 725-726; 598 NW2d 633 (1999). Because no order was entered, we may not review the issue. *Lown, supra*. Further, the circuit court's April 27, 2005 order clearly dismissed the quiet title claim on procedural grounds, not on the merits.

We also lack the necessary record to consider the probate court's decision quieting title in the joint trust. No appeal was taken from that decision, so we are without jurisdiction to consider it. This appeal was taken only from the circuit court case, and the record in that case lacks necessary documentation that was presented to and considered by the probate court when that court quieted title to the disputed property. MCR 7.210(A) provides that appeals to this Court are to be heard on the original record. We reject plaintiffs' attempt to expand the record improperly by submitting materials that were filed only in the probate court. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002).

The probate court quieted title to the disputed property in favor of John and Leona Wetzel's joint trust. Due process requires that an entity that may be affected by litigation is entitled to notice and a reasonable opportunity to appear and defend its interests. *In re Juvenile Commitment Costs*, 240 Mich App 420, 440; 613 NW2d 348 (2000). Consideration of the probate court's decision would affect the rights of the joint trust. Because the joint trust is not a party to the circuit court action or this appeal, we decline to do so.

Finally, plaintiffs argue that the trial court erred by dismissing the remaining claims in this case. We disagree.

The remaining two claims were for slander of title and for intentional interference with the contract between Andrew McCrory and his wife and the Copelands. Defendant moved for summary disposition on all claims pursuant to MCR 2.116(C)(5) (lack of standing), (C)(8) (failure to state a claim), and (C)(10) (no genuine issues of material fact). We review a trial court's decision on a motion for summary disposition de novo. *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004). The trial court did not place on the record its basis for granting summary disposition. We may affirm the trial court's decision where the correct result

was reached. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).² Here, plaintiffs' claims were properly dismissed under MCR 2.116(C)(10).

In *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 382; 689 NW2d 145 (2004), this Court set out the elements for tortious interference with a contract:

The elements of tortious interference with a contract are: “(1) a contract, (2) a breach, and (3) an unjustified instigation of the breach by the defendant.” *Mahrle v Danke*, 216 Mich App 343, 350; 549 NW2d 56 (1996). One who alleges tortious interference with a contractual or business relationship must allege the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in the law for the purpose of invading the contractual rights or business relationship of another.” *CMI Int'l, Inc v Internet Int'l Corp*, 251 Mich App 125, 131; 649 NW2d 808 (2002).

Plaintiff must show that any interference was improper. *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 382-383; 670 NW2d 569 (2003). Here, defendant filed the notice of claim against the property before the contract came into existence, so filing notice could not have been an act of interference. *Derderian, supra* at 364 (an element of the claim is proof of a contract). Moreover, plaintiffs' claim cannot proceed on the basis of allegations that defendant interfered with the contract when he refused to remove the notice of claim after the Copelands entered into the contract. The probate court quieted title to the property in the joint trust. Because the joint trust owned the property and because defendant filed the notice of claim on behalf of the joint trust, for which he was a cotrustee, and himself, as a beneficiary, plaintiffs cannot demonstrate that defendant committed an act lacking in justification. *Advocacy Org for Patients & Providers, supra*. More importantly, plaintiffs provided no evidence that defendant performed an intentional act that was wrongful per se or performed a lawful act with malice and no justification in the law. *Derderian, supra*. Summary disposition was therefore appropriate. See *Advocacy Org for Patients & Providers, supra* (plaintiff must establish that the interference was improper).

Plaintiffs' slander of title issues are abandoned for failure to present citations to relevant authority or more than cursory argument. *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984); *Korth v Korth*, 256 Mich App 286, 293; 662 NW2d 111 (2003). Further, plaintiffs failed to demonstrate questions of material fact with respect to either slander of title claim.

² On appeal, plaintiffs argue that the trial court's decision was based on its determination that they lacked standing to maintain the tort actions. Plaintiffs limit their arguments, and contend that this Court may not consider any alternative reasons to affirm the grant of summary disposition because defendant failed to file a cross appeal. Plaintiffs' argument is incorrect. “[A]n appellee need not file a cross appeal in order to argue an alternative basis for affirming the trial court's decision.” *Kosmyna v Botsford Community Hosp*, 238 Mich App 694, 696; 607 NW2d 134 (2000).

To establish common-law slander of title, plaintiffs must show (1) falsity, (2) malice, and (3) special damage. *B & B Investment Group v Gitler*, 229 Mich App 1, 8; 581 NW2d 17 (1998). None of these elements were established on the evidence presented to the circuit court. Given that the joint trust was determined to be the owner of the property, the notice of claim by the joint trust and one of its cotrustees, individually, was not shown to be false. Moreover, the record is completely devoid of any evidence to support the existence of a question of material fact regarding malicious intent. *B & B Investment Group, supra*.

Plaintiffs also brought a slander of title claim under MCL 565.25. The plain, statutory language of MCL 565.25 requires three elements to be satisfied: (1) the filing of an encumbrance, (2) without lawful cause, and (3) with intent to harass or intimidate. In this case, plaintiffs failed to offer evidence showing intent to harass or intimidate. Plaintiffs may not rely on their speculation or innuendo to create a genuine issue of material fact. See *Bergen v Baker*, 264 Mich App 376, 381; 691 NW2d 770 (2004) (a party opposing summary disposition may “not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists.”) Because nothing in the record supports the existence of a genuine issue of material fact on the elements of a claim under MCL 565.25, summary disposition was properly granted pursuant to MCR 2.116(C)(10).

Affirmed.

/s/ Kurtis T. Wilder

/s/ Brian K. Zahra

/s/ Alton T. Davis