

STATE OF MICHIGAN
COURT OF APPEALS

DAVID DUBRIWNY and KAREN L.
DUBRIWNY,

Plaintiffs-Appellees,

v

WILLIAM C. MCQUEEN,

Defendant-Appellant.

UNPUBLISHED
March 16, 2006

No. 264279
Crawford Circuit Court
LC No. 04-006527-CZ

Before: Murphy, P.J., and White and Meter, JJ.

PER CURIAM.

Defendant appeals as of right from an order of the circuit court granting summary disposition to plaintiffs. This case stems from a dispute over defendant's continued use of a driveway located on plaintiffs' property. We affirm.

Defendant asserts on appeal that the circuit court erred in granting summary disposition to plaintiffs. A trial court's decision with regard to a motion for summary disposition is reviewed de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). Because the trial court reviewed evidence in deciding defendant's motion for summary disposition, its grant of summary disposition was clearly predicated on MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the claim. *Corley v Detroit Bd of Ed*, 470 Mich 274, 278; 681 NW2d 342 (2004). The moving party must specifically identify the matters that have no disputed factual issues, MCR 2.116(G)(4); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999), and must support its position with affidavits, depositions, admissions, or other documentary evidence. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

Defendant's argument on appeal does not address the merits of his assertion that he has a prescriptive right to use plaintiffs' driveway. Rather, defendant merely makes an extremely brief, underdeveloped argument that plaintiffs failed to submit documentary evidence with their motion for summary disposition. This assertion is belied by plaintiffs' motion, to which they appended two letters between the parties' attorneys and a land survey. Whether the content of these documents adequately supported plaintiffs' motion is an entirely separate question that defendant fails to address and thus has abandoned. It is not the role of this Court to examine the content of the documents and admissions and develop an argument on defendant's behalf. See *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998) ("[i]t is not enough for an

appellant in his brief simply to . . . assert an error and then leave it up to this Court to discover and rationalize the basis for his claims [t]he appellant himself must first adequately prime the pump; only then does the appellate well begin to flow”).

Next, defendant argues that the court abused its discretion by failing to grant his motion for relief from the circuit court’s order. We disagree. We review a trial court’s decision to grant or deny relief from a judgment under MCR 2.612(C)(1) for an abuse of discretion. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999). “An abuse of discretion is found only in extreme cases where the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias.” *Miller v Allied Signal, Inc*, 235 Mich App 710, 713; 599 NW2d 110 (1999).

A court has discretion to grant relief from an order if there has been a mistake, inadvertence, surprise, excusable neglect, or newly discovered evidence that could not have been discovered by due diligence. MCR 2.612(C)(1)(a) and (C)(1)(b). Here, defendant offered several new items into evidence with his motion for relief from the circuit court’s order but failed to argue below or on appeal that this evidence could not have been discovered earlier with due diligence. Thus, defendant has failed to show that the court abused its discretion by failing to grant relief from judgment on the basis of newly discovered evidence. Defendant also implies that the court committed a mistake of law by granting summary disposition. This argument also relies entirely on new facts regarding the existence of a prescriptive easement that were not before the trial court at the time of the summary disposition ruling. Defendant fails to show how the court misapplied the law at the summary disposition hearing or relied on a mistaken understanding of the law. Thus, defendant has failed to meet the standard for granting relief from the circuit court’s order, and we conclude that the trial court did not abuse its discretion in denying the motion for relief.

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Patrick M. Meter