

STATE OF MICHIGAN
COURT OF APPEALS

STEPHANIE LADA, individually and
as Next Friend for LOGAN SLIWA,

Plaintiff/Counterdefendant-
Appellant/Cross-appellee

v

TOWNHOUSE MANOR COOPERATIVE,

Defendant/Counterplaintiff-
Appellee/Cross-appellant.

UNPUBLISHED
November 19, 2013

No. 310519
Macomb Circuit Court
LC No. 2011-3241-NI

Before: M. J. KELLY, P.J., and CAVANAGH and SHAPIRO, JJ.

PER CURIAM.

Both parties appeal by right from the trial court orders that disposed of their respective claims by summary disposition pursuant to MCR 2.116(C)(10) on the grounds of res judicata. Plaintiff also appeals by right the court's denial of her motion for leave to amend her complaint. Because the circuit court erred by finding that the parties' claims were barred by res judicata, and abused its discretion by denying plaintiff's request to amend her complaint, we reverse.

On May 1, 2001, plaintiff and defendant entered into a residential lease agreement for an apartment unit in Center Line, Michigan. Plaintiff claims that she vacated the premises on or about January 18, 2011 due to mold contamination caused by defendant's failure to repair the unit. Specifically, plaintiff claims that defendant failed to replace a broken bathroom window within 18 months of being notified of the problem, despite plaintiff's multiple requests.

On April 22, 2011, defendant sued plaintiff in district court for nonpayment of rent. On May 6, 2011, the district court entered a default judgment stating that defendant had a right to possession of the premises and was owed \$2,629.00 in past-due rent. On May 16, 2011, plaintiff filed a motion and affidavit to set aside the default, in which she explained that she did not receive notice of the May 6, 2011 hearing because the notice was sent to the subject apartment where she no longer resided. She claimed that the unit was uninhabitable.

At a May 27, 2011 hearing on plaintiff's motion, the parties agreed that plaintiff would vacate the premises by May 31, 2011 and relinquish any right of possession. In exchange, the default judgment against her would be set aside. The district court then entered a consent judgment to that effect and did not award money damages to either party.

On August 4, 2011, plaintiff initiated the instant case in circuit court, alleging that defendant was liable for: (1) violations of Michigan housing law; (2) violation of MCL 554.139 (lessor must keep premises in reasonable repair); (3) violation of the consumer protection act, MCL 445.901 *et seq.*; (4) negligence and breach of warranty, and; (5) nuisance. On September 26, 2011, defendant counterclaimed, asserting breach of the occupancy agreement. Plaintiff's first amended complaint, filed October 7, 2011, omitted the nuisance claim.

On December 15, 2011, defendant moved for summary disposition under MCR 2.116(C)(10), arguing that summary disposition was warranted on grounds of res judicata and spoliation of the evidence related to mold-testing of plaintiff's unit. In response, plaintiff moved for partial summary disposition under MCR 2.116(I)(2) as to defendant's liability for the uninhabitable unit. On January 25, 2011, in a written order, the circuit court granted summary disposition in favor of defendant on all of plaintiff's claims on grounds of res judicata and denied plaintiff's motion for partial summary disposition. After the court denied plaintiff's motion for reconsideration, only defendant's counterclaim remained unresolved.

Plaintiff subsequently moved for summary disposition on defendant's counterclaim under MCR 2.116(C)(10), and moved for leave to amend her complaint. The trial court granted summary disposition in favor of plaintiff on the grounds of res judicata, and also granted her motion for leave to amend. After defendant moved for reconsideration, the court denied plaintiff's motion for leave to amend, but affirmed the grant of summary disposition.

Each party argues that the trial court erred by granting summary disposition¹ on their respective claims on the grounds of res judicata.² We agree.

"The doctrine of res judicata precludes relitigation of a claim when it is predicated on the same underlying transaction that was litigated in a prior case." *Duncan v Michigan*, 300 Mich App 176, 194; 832 NW2d 761 (2013). However, MCL 600.5750 provides:

The remedy provided by summary proceedings *is in addition to, and not exclusive of*, other remedies, either legal, equitable or statutory. A judgment for possession under this chapter *does not merge or bar any other claim for relief* [Emphasis added.]

Consistent with MCL 600.5750, we have declined to bar by res judicata issues arising from summary proceedings other than the right of possession:

¹ We review de novo a trial court's grant of summary disposition under MCR 2.116(C)(10). *Ernsting v Ave Maria College*, 274 Mich App 506, 509; 736 NW2d 574 (2007). "Summary disposition is proper under MCR 2.116(C)(10) if the documentary evidence shows that there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id.*

² "The applicability of the doctrine of res judicata is a question of law that is [] reviewed de novo." *Stoudemire v Stoudemire*, 248 Mich App 325, 332; 639 NW2d 274 (2001).

In *Sewell v Clean Cut Management, Inc*, 463 Mich 569, 576-577; 621 NW2d 222 (2001), our Supreme Court stated that although a summary eviction judgment does not bar other claims and remedies, it is “conclusive on the narrow issue of whether the eviction was proper.” In other words, a district court judgment is res judicata on the issue of who has the right to possess the premises, because that question is actually litigated in the district court. *Id.* at 574-577. Thus, where . . . no claim for damages is asserted in the district court, the district court judgment is conclusive only on the question of who has a right to possess the premises. [*1300 LaFayette East Coop, Inc v Savoy*, 284 Mich App 522, 530; 773 NW2d 57 (2009).]

The only issue actually litigated and resolved in the district court summary proceeding was whether plaintiff or defendant had the right to possess the premises. *Id.* While the summary proceeding originally resulted in a default judgment against plaintiff for \$2,629.00 in past-due rent, “unlike an ordinary damages award . . . the amount of past-due rent is *not* a judgment for damages enforceable by a writ of execution.” *Id.* Further, the default judgment against plaintiff was vacated pursuant to the parties’ consent judgment. Neither plaintiff’s claims in her first amended complaint, nor defendant’s counterclaim, addressed or attempted to relitigate the right of possession. Because the district court summary proceeding was only res judicata as to the right of possession, those claims were not barred by the doctrine of res judicata. *Id.* Accordingly, the circuit court erred by granting summary disposition on this basis.

Defendant argues that the consent judgment actually contained an award of money damages. The court form on which the consent judgment was entered contained a section dedicated to money judgments. While neither of the two boxes in the “Money Judgment” section was checked, “\$0.00” appears on the line for total money judgment due. The fact that the boxes went unchecked, on its face, sufficiently establishes that no money damages were awarded. Moreover, our review of the district court transcripts indicates that parties intended to litigate only the issue of possession. Defendant’s counsel stated that, “This was an action for possession only[.]” After plaintiff’s counsel noted that plaintiff “is a shareholder or has equity in the premises[.]” defendant’s counsel admitted that, “we are not contesting that [plaintiff] has rights to equity in her shares[,] that’s totally separate and we are not contesting that at all.” Accordingly, both the caselaw and the record support our finding that the district court summary proceedings do not bar plaintiff’s instant claims or defendant’s instant counterclaim under the doctrine of res judicata.

Plaintiff next argues that the circuit court erred by granting defendant’s motion for reconsideration and denying her motion for leave to amend her complaint.³ We agree.

³ We review for an abuse of discretion a trial court’s decision on a motion for leave to amend pleadings, *Lewandowski v Nuclear Mgt*, 272 Mich App 120, 126; 724 NW2d 718 (2006), as well as its decision on a motion for reconsideration, *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009).

After the court granted summary disposition in favor of defendant on all of plaintiff's claims, she moved for leave to amend her complaint to add counts of statutory and common law conversion. Specifically, plaintiff alleged that defendant had illegally retained equity in the premises to which plaintiff was entitled. Plaintiff moved for leave to amend under MCR 2.118(A)(2), which provides, in part, that, "Leave shall be given freely when justice so requires." "However, leave to amend a complaint may be denied for particularized reasons, such as undue delay, bad faith, or dilatory motive on the movant's part, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party, or where amendment would be futile." *Hakari v Ski Brule, Inc*, 230 Mich App 352, 355; 584 NW2d 345 (1998). "An amendment is futile where, ignoring the substantive merits of the claim, it is legally insufficient on its face." *Id.* (quotation marks and citation omitted).

On reconsideration, the circuit court denied plaintiff's motion for leave to amend, stating:

Under the totality of the circumstances, the Court opines that [plaintiff]'s conversion claims would be futile inasmuch as her equity-related allegations appear to arise out of her contractual relationship with [defendant].

The court noted that plaintiff had "requested leave to amend her complaint for the purpose of addressing the equity issue," and that the court was "troubled by the fact that her amended pleading contained some of the same claims that had already been dismissed[.]"

The court did not cite to, nor are we aware of, any authority that requires a party to omit previously-dismissed claims from an amended pleading. There is no indication that plaintiff sought to reopen or relitigate those claims; therefore, the fact that they were included in the amended complaint should have been irrelevant to the court's ruling. Further, it is unclear how the fact that plaintiff's conversion claims "appear to arise out of her contractual relationship" with defendant renders them futile. Indeed, the court noted that, "this statement should not be construed as a finding that [plaintiff] has a valid breach of contract claim, or as an invitation that she should pursue such a claim or any other claim."

The court noted that defendant "does not presently deny . . . that [plaintiff] is entitled to have her account credited for the amount of equity she has in the unit" and that "[defendant] refers to the credit as a 'set off' against the amount that [plaintiff] owes it." This is confusing; however, given that the court had already dismissed defendant's counterclaim against plaintiff, defendant has not, at least to date, obtained any money damages against plaintiff to which her equity could be "set off." The fact that defendant apparently conceded that plaintiff retains equity in the unit does not preclude plaintiff from pursuing a legal remedy to obtain that equity. Certainly, that fact does not render her amendment futile. Accordingly, we find that the circuit court abused its discretion by granting defendant's motion for reconsideration and reversing its prior grant of plaintiff's motion for leave to amend.

Lastly, defendant argues that the circuit court erred by failing to grant summary disposition in its favor on its counterclaim. In its response to plaintiff's motion for summary disposition on defendant's counterclaim, defendant argued that it was entitled to summary disposition under MCR 2.116(I)(2). Even though the trial court did not address defendant's argument, it is properly preserved. See *Peterman v Dep't of Natural Resources*, 446 Mich 177,

183; 521 NW2d 499 (1994) (stating that a party “should not be punished” for the trial court’s failure to address a matter raised). However, in the absence of a trial court ruling on the merits of defendant’s counterclaim, we decline to address the issue.⁴

We reverse and vacate the January 25, 2012 trial court order that granted summary disposition in favor of defendant on plaintiff’s claims, as well as the April 26, 2012 order that granted summary disposition in favor of plaintiff on defendant’s counterclaim. We also reverse the May 10, 2012 order that granted defendant’s motion for reconsideration and denied plaintiff’s motion for leave to amend. We remand this case to the trial court for proceedings consistent with this opinion.

Reversed and remanded. We do not retain jurisdiction.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Douglas B. Shapiro

⁴ We note that neither party is precluded, on remand, from moving for summary disposition on the merits of any of their claims.