STATE OF MICHIGAN

COURT OF APPEALS

RONALD JOSEPH POSLUNS,

Plaintiff-Appellant,

V

AUTO OWNERS INSURANCE CO., SANDY SPEARS, TOM STEENHAGEN, BARTOSIEWICZ & KIMBREL P.C., RON W. KIMBREL, TIG INSURANCE CO., JANICE BOWEN, and PHILIP W. DIETRICH,

Defendants-Appellees

and

DOUG NEILSON, ROBERT A. HAIZMAN, and MAC THOMAS,

Defendants.

UNPUBLISHED
May 20, 2003

No. 232806
Kalamazoo Circuit Court
LC No. 98-003201-CZ

Before: Murphy, P.J., and Owens and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right from orders granting defendants' motions for summary disposition. We affirm.

Plaintiff's rental unit was allegedly contaminated by chemical pesticides after his landlord, defendant Bowen, hired a pest removal company to spray the pesticides.[1] After plaintiff vacated the rental unit, defendant Bowen had it cleaned. Plaintiff filed the instant complaint contending that the cleaning of the rental unit destroyed the evidence that he needed to pursue compensation for his losses due to the contamination. Plaintiff essentially contended that defendant Bowen conspired with the other defendants to destroy the evidence, thereby

[1] Plaintiff sued the pest removal company in a separate matter. See *Posluns v Griffin Pest Control, Inc.*, unpublished opinion per curiam of the Court of Appeals, issued June 27, 2000 (Docket No. 215709).

precluding his recovery. Plaintiff sought to recover from these defendants under various legal theories.

Ultimately, the trial court granted each defendant's motion for summary disposition. Plaintiff contends that the trial court erred in granting those motions for summary disposition. Plaintiff also challenges many other rulings.

I

The primary issue to be resolved is whether the trial court erred in granting defendants' motions for summary disposition. Generally, we review de novo a trial court's ruling on a motion for summary disposition. *Beaudrie v Henderson*, 465 Mich 124, 129; 631 NW2d 308 (2001).

In counts I, II, and III, plaintiff sought to recover for tortuous interference with contractual relations from three defendants. The elements of tortuous interference with contractual relations 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 law for the purpose of invading the contractual rights or business relationship of another." *CMI Int'l Inc v Intermet Int'l Corp*, 251 Mich App 125, 131; 649 NW2d 808 (2002), quoting *Feldman v Green*, 138 Mich App 360, 378; 360 NW2d 881 (1984). "If the defendant's conduct was not wrongful per se, the plaintiff must demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference." *CMI Int'l, supra* at 131. Here, plaintiff has failed to allege facts suggesting that either defendant Bowen or defendant Kimbrel engaged in any activity that was "wrongful per se." Moreover, the allegations against defendant Kimbrel were acts of omission, rather than affirmative acts corroborating a purportedly unlawful interference. Accordingly, the trial court did not err in dismissing counts I and II.[2] *Beaudrie, supra* at 129.

In count IV, plaintiff sought to recover from several defendants under a promissory estoppel theory. The elements of promissory estoppel are (1) a promise "that the promisor should reasonably have expected to induce action of a definite and substantial character on the part of promisee"; (2) which did, in fact, produce reliance or forbearance of that nature; and (3) circumstances such that the promise must be enforced to avoid injustice. *Booker v Detroit (After Remand)*, 251 Mich App 167, 174; 650 NW2d 680 (2002), quoting *Marrero v McDonnell Douglas Capital Corp*, 200 Mich App 438, 442; 505 NW2d 275 (1993), mod on other grounds by *Patterson v Kleiman*, 447 Mich 429, 433 n 3; 526 NW2d 879 (1994). "The sine qua non of promissory estoppel is a promise that is definite and clear." *Booker, supra* at 174, quoting *Marrero, supra* at 442. Here, plaintiff failed to plead that the various defendants made "definite

[2] Count III was a tortuous interference with contractual relations claim against Defendant Thomas. Plaintiff stipulated to the dismissal of defendant Thomas, and defendant Thomas is not a party to this appeal. Plaintiff's appeal does not reference the dismissal of defendant Thomas. Accordingly, we need not consider Count III.

and clear" promises. Instead, plaintiff merely alleged vague statements suggesting that the claims would continue to be investigated and evaluated. Moreover, we note that plaintiff had several months to take whatever steps necessary to preserve any evidence essential to his claims; as such, this is not a case where promissory estoppel must be invoked to avoid injustice. *Booker*, *supra* at 174. As a result, the trial court did not err in dismissing count IV. *Beaudrie*, *supra* at 129.

In count V, plaintiff sought to recover under the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 USC 1962. We note that there is absolutely no evidence establishing that defendants conspired to violate 18 USC 1962. Moreover, we are not persuaded that plaintiff has alleged acts that constitute a "pattern of racketeering activity." 18 USC 1961(5). Accordingly, the trial court did not err in dismissing count V. *Beaudrie*, *supra* at 129.

Finally, in counts VI and VII, plaintiff sought to recover from defendant TIG and defendant Auto-Owners under "third party bad faith" claims. In *Young v Michigan Mut Ins Co*, 139 Mich App 600, 607 n 1; 362 NW2d 844 (1984), we noted that an insurer's bad faith refusal to settle claims filed by a third party against the insured was actionable. In other words, an insured may sue his or her insurer for its bad faith refusal to settle claims. *Id.* The rationale for allowing such an action is that an insurer's bad faith refusal to pay exposes the insured to excess liability. *Id.* Here, plaintiff was not the insured; instead, plaintiff was a third party. Thus, even if the insurers acted in bad faith, only the insured—in this case, defendant Bowen—would have a cause of action against the insurers. Accordingly, plaintiff did not have a cause of action against these defendants under Michigan law. Consequently, the trial court did not err in dismissing counts VI and VII.[3] *Beaudrie*, *supra* at 129.

II

As noted above, plaintiff's briefs raise many other contentions of error. For example, plaintiff devotes several issues to his failed attempts to disqualify Judge Lamb and Judge Johnson. However, plaintiff has failed to cite any authority in support of these contentions of error. It is well established that a party may not merely announce a position and leave it to us to search for the supporting authority. *Staff v Marder*, 242 Mich App 521, 529; 619 NW2d 57 (2000). Regardless, having reviewed the record, we are not persuaded that there was merit to any of plaintiff's motions to disqualify either judge. *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 596-597; 640 NW2d 321 (2001). Consequently, we reject plaintiff's contentions of error.

Similarly, plaintiff failed to cite any authority in support of his contention that the trial

[3] Having concluded that the trial court did not err in granting defendants' motions for summary disposition, we conclude that the trial court properly dismissed plaintiff's complaint. Because there was a proper basis for dismissing each count as a matter of law, we need not address plaintiff's contention that summary disposition was inappropriate on some counts pursuant to MCR 2.116(C)(6).

court erroneously made findings of fact. *Staff, supra* at 529. Again, having reviewed the record, it is not clear that the trial court erred. Further, even if the trial court erred, we are not persuaded that the errors were material or prejudiced plaintiff's case. Consequently, we reject plaintiff's contentions of error.

Plaintiff also contends that the trial court erred when it ordered plaintiff to comply with a discovery request and threatened to dismiss plaintiff's complaint for noncompliance. However, during that same hearing, the trial court granted the prevailing party's motion for summary disposition. Because we have affirmed the dismissal of plaintiff's claims against that party, the discovery issues are moot. *City of Jackson v Thompson-McCully Co, LLC*, 239 Mich App 482, 493; 608 NW2d 531 (2000). Consequently, plaintiff is not entitled to relief on this issue.

Plaintiff raises an issue regarding the trial court's "misunderstanding that plaintiff/appellant couldn't introduce liability insurance in other litigations." Again, we could simply decline to consider this issue because plaintiff failed to cite any authority. *Staff, supra* at 529. Regardless, for the same reasons that the evidence was inadmissible in other litigation, the evidence was inadmissible in this action. Accordingly, this issue is without merit.

Plaintiff contends that he was improperly denied access to the trial court record. Specifically, plaintiff contends that he was denied access to missing praecipes. However, the court clerk testified that she did not know where the missing praecipes were, and she had already testified that Judge Lamb ordered her not to schedule hearings on plaintiff's motions—which was the fact that plaintiff was attempting to establish through the praecipes. In light of her testimony, the missing documents were irrelevant. As a result, the lower court did not err in denying plaintiff's oral request to issue a subpoena to obtain missing and irrelevant documents. Moreover, it is plainly apparent that plaintiff was never denied access to the lower court record. Further, to whatever extent documents were lost, the lower court was unable to provide plaintiff access to these documents, much less admit them into evidence. Consequently, we reject these contentions of error.

Plaintiff also contends that the trial court denied his constitutional right to access certain areas within the Kalamazoo County court building. Plaintiff filed a complaint in federal court raising these issues. The complaint was dismissed because the federal court concluded that the state courts should consider the issues. However, plaintiff did not raise these issues below. Accordingly, these issues are forfeited. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 471-472; 628 NW2d 577 (2001). Regardless, we note that the trial court's ruling provided plaintiff specific notice of the areas where he could and could not go. Given that the trial court's ruling only prevented plaintiff from going where the public was not allowed to go, we reject plaintiff's constitutional challenges to the ruling. Therefore, this contention of error is without merit.

Plaintiff contends that the trial court erred in awarding sanctions because his lawsuit was not frivolous. We review a trial court's decision to award sanctions based on a frivolous complaint for clear error. *Lakeside Oakland Dev LC v H & J Beef Co*, 249 Mich App 517, 532; 644 NW2d 765 (2002). We review the amount of the sanctions for an abuse of discretion. *Powell Products, Inc v Jackhill Oil Co*, 250 Mich App 89, 104; 645 NW2d 697 (2002).

Here, we believe that plaintiff's pattern of litigation was frivolous. Although plaintiff's complaint stated, for the most part, recognized causes of action, plaintiff's attempt to apply the facts of the instant matter to those causes of action was inconsistent with the letter of the law and, more importantly, the spirit of the law. Moreover, to whatever extent we would have otherwise given plaintiff the benefit of the doubt on this issue, plaintiff's pattern of litigation and conduct below certainly suggest that his primary purpose was something other than a pursuit of justice. Thus, we are not persuaded that the trial court clearly erred in awarding defendants sanctions. *Lakeland, supra* at 532.

We further reject plaintiff's contention that defendant Bowen was not entitled to attorney fees because he represented himself. Initially, we note that the trial court did not award attorney fees, but awarded sanctions commensurate with the amount of attorney fees incurred by the defendants. Regardless, the record indicates that defendant Bowen did, in fact, incur attorneys fees, thereby distinguishing the instant matter from cases that have prevented parties representing themselves from recovering attorney fees. See *FMB-First National Bank v Bailey*, 232 Mich App 711, 719; 591 NW2d 676 (1998).

Plaintiff also contends that the trial court erred as a matter of law in sanctioning plaintiff because he was merely "a pro per litigant" with an incorrect view of the law. In *People v Herrera (On Remand)*, 204 Mich App 333, 341; 514 NW2d 543 (1994), we reversed a trial court's order sanctioning a criminal defendant under MCR 2.114(E), where the defendant appeared pro se and filed a frivolous motion. However, the instant matter is plainly distinguishable because plaintiff is a civil litigant and MCR 2.114 applies to civil litigants without regard for whether they are represented by counsel. Accordingly, we reject plaintiff's contention of error.[4]

Plaintiff also contends that the trial court erred in allowing certain defendants to include legal staff billings within their attorneys fees. Again, the trial court did not award attorneys fees, but awarded sanctions based on the attorneys fees incurred. Regardless, the trial court's sanctions orders specifically deducted any improper billings. Accordingly, this issue is moot.[5] *Jackson, supra* at 493.

Defendant also challenges the trial court's order that plaintiff pay the outstanding sanctions and a security for costs before suing defendants regarding any claims arising out of these transactions and events. We review a trial court's order of security for costs for an abuse of discretion. *In re Surety Bond for Costs*, 226 Mich App 321, 331; 573 NW2d 300 (1997). Generally, security should not be required absent a "substantial reason," such as "a 'tenuous legal theory of liability' or where there is a good reason to believe that a party's allegations are 'groundless and unwarranted.'" *Id.* at 331-332, quoting *Hall v Harmony Hills Recreation Inc*,

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[4] Because plaintiff failed to city any authority in support of his position, we further reject plaintiff's contention that he could not be sanctioned because he was indigent. *Staff, supra* at 529.

[5] Similarly, the trial court's award to defendant Dietrich did not include fees based on defendant Dietrich's personal work on the case.

186 Mich App 265, 270; 463 NW2d 254 (1990). Here, given plaintiff's frivolous claims and pattern of litigation, the trial court did not abuse its discretion in ordering the security for costs.[6]

Affirmed.

/s/ William B. Murphy
/s/ Donald S. Owens
/s/ Bill Schuette

[6] To the extent that we have not addressed any alternative arguments, subissues, or minor contentions of error, we note that these arguments and subissues were either devoid of legal merit, forfeited for appellate review, or abandoned by plaintiff's failure to provide authority supporting his position.