STATE OF MICHIGAN

COURT OF APPEALS

JEANNETTE MIRANDA and JOAQUIN MIRANDA, Co-Personal Representatives of the ESTATE OF JOSEPH MIRANDA, Deceased,

Plaintiffs-Appellants,

v

SHELBY TOWNSHIP, JANICE CODY, d/b/a WINDING RIVER CANOE RENTALS, and YATES CIDER MILL, INC.,

Defendants-Appellees.

UNPUBLISHED
October 23, 2003

No. 240568
Macomb Circuit Court
LC No. 00-005244-NO

Before: Whitbeck, C.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiffs appeals as of right from orders granting defendant Yates Cider Mill Inc.'s (Yates) motion for summary disposition, defendant Shelby Township's motion for summary disposition, defendant Janice Cody's motion for summary disposition, and the order denying plaintiffs' motion to amend their complaint. We affirm.

On July 3, 1999, plaintiffs' decedent Joseph Miranda (hereinafter "Miranda") rented a kayak from defendant Cody, d/b/a Winding River Canoe Rental (Winding River). As part of the kayak trip, Miranda went through an area of the Clinton River in which the Yates Dam was located. Miranda drowned when his kayak flipped over the dam.

Plaintiffs first contend that the trial court erred in granting summary disposition in favor of defendant Yates, who owned the dam. This Court reviews the grant of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Plaintiffs contend that the trial court erred in refusing to acknowledge that Miranda was an invitee, rather than a mere licensee. A landowner's duty to an invitee is greater than that to a licensee. Our Supreme Court discussed the common-law classifications for persons who enter upon the land of another in *Stitt v Holland Abundant Life*, 462 Mich 591, 596; 614 NW2d 88 (2000). Historically, Michigan has recognized the following categories: (1) trespasser, (2) licensee, or (3) invitee. *Id.*, citing *Wymer v Holmes*, 429 Mich 66, 71, n 1; 412 NW2d 213 (1987). A "licensee" is a person who is privileged to enter another's land by virtue of the

possessor's consent. *Id.*, citing *Wymer, supra*. "Permission may be implied where the owner, or person in control of the property, 'acquiesces in the known, customary use of property by the public.'" *Pippin v Atallah,* 245 Mich App 136, 142; 626 NW2d 911 (2001) citing *Alvin v Simpson,* 195 Mich App 418, 420; 491 NW2d 604 (1992). "A landowner owes a licensee a duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved." *Stitt, supra* at 596. An "invitee" is a person who enters upon another's land upon an invitation that carries with it an implied representation, assurance, or understanding that reasonable care has been used to prepare the premises and make it safe for the invitee's reception. *Id.* at 596-597 citing *Wymer, supra*. "The landowner has a duty of care, not only to warn the invitee of any known dangers, but the additional obligation to also make the premises safe, which requires the landowner to inspect the premises and, depending upon the circumstances, make any necessary repairs or warn of any discovered hazards." *Id.* at 597 citing *Wymer, supra*. The Court concluded that "[i]n order to establish invitee status, a plaintiff must show that the premises were held open for a *commercial* purpose." *Id* at 604.

Plaintiffs argue that this analysis does not apply to Miranda's presence on a navigable waterway under the "public trust doctrine." Based on this doctrine, plaintiffs argue that Miranda was not a licensee and that defendant Yates' premises created an affirmative duty to warn, inspect, and maintain the reasonable safety of the dam it created for commercial purposes into the direct flow of the navigable Clinton River. In support of this argument, plaintiffs cite to *Peterman v DNR,* 446 Mich 177; 521 NW2d 499 (1994); *Bott v Natural Resources Comm,* 415 Mich 45, 71; 327 NW2d 838 (1982); and *Densel v Ann Arbor,* 144 Mich App 673, 674; 376 NW2d 181 (1985). However, these cases are not useful for resolution of this question because they address, in various contexts, who has a right to use a particular waterway. The right of plaintiff's decedent to use the waterway is not issue. It is his legal status that must be resolved.

The facts at hand are similar to those in *McCormick v Indiana,* 673 NE2d 829 (Ind App, 1996). Even though *McCormick, supra,* is not binding authority, we find it persuasive. In *McCormick, supra,* Paul McCormick, the deceased, died in a boating incident at Morse Reservoir when he and his boat went over the spillway near the dam. *Id.* at 831. The Water Company owned the reservoir and the State of Indiana regulated various matters related to it. *Id.* The plaintiff contended that McCormick was a public invitee of the Water Company at the time of the incident. *Id.* at 836. The Indiana Court of Appeals stated that those persons described in the Restatement (Second) of Torts, § 332, qualified as invitees: a person who is invited to enter or remain on the land as a member of the public for a purpose directly or indirectly connected with business dealings with the possessor of the land. *Id.* On the other hand, the court stated that licensees have a license to use the land and are privileged to enter or remain on the land by virtue of the permission or sufferance of the owner or occupier. *Id.* The court further stated that licensees enter the land of another for their own convenience, curiosity, or entertainment, and take the land as they find it. *McCormick, supra.*

The court concluded that construing the evidence in the light most favorable to the decedent, no reasonable person could conclude that the Water Company extended an invitation to the decedent to use Morse Reservoir. *Id.* at 837. The court reasoned that the evidence supported the inference that the Water Company was, in fact, willing that the decedent and others enter and remain upon the reservoir or that the Water Company, at least, gave the

decedent reason to believe that it was willing that he enter upon his own desire to do so. *Id.* However, the court stated that the plaintiff produced no evidence from which one could reasonably conclude that the Water Company desired, induced, encouraged or expected the decedent to enter the reservoir. *Id.* "In other words, the evidence most favorable to the decedent establishes that the Water Company merely gave the decedent permission to enter the reservoir and not that the Water Company issued him an invitation for that purpose." *Id.* The court stated that the mere permission of the Water Company made the decedent a licensee but did not make him an invitee, public or otherwise. *Id.*

Like the Water Company in *McCormick*, it does not appear that defendant Yates desired, induced, or encouraged Miranda to kayak over the dam. Rather, like the court's reasoning in *McCormick*, it appears that defendant Yates merely gave Miranda permission to kayak over the dam and not that defendant Yates issued him an invitation for that purpose. See *McCormick, supra* at 837. Therefore, we conclude that the trial court did not err in finding that Miranda was a licensee, rather than an invitee.

Because a landowner has a duty to warn the licensee of any hidden dangers the owner knows of, the next issue is whether the condition of the dam was open and obvious. Whether a danger is open and obvious depends on whether an average user with ordinary intelligence would have been able to discover the danger and the risk presented upon casual inspection. *Novotney v Burger King (On Remand),* 198 Mich App 470, 474-475; 499 NW2d 379 (1993). Because this test is an objective one, the Court looks not to whether plaintiff should have known of the hazardous condition, "but to whether a reasonable person in his position would foresee the danger." *Hughes v PMG Building, Inc,* 227 Mich App 1, 11; 574 NW2d 691 (1997).

Douglas Marcum, who was kayaking with Miranda at the time of the incident at issue, testified at his deposition that he pulled off the Clinton River once he approached the dam. Marcum was asked if he saw that there was more water going over the dam than normal, and he stated, "Oh, yes." Marcum acknowledged that there was more current towards the dam, both above it and below it. Marcum was asked if he noticed a "back eddy" below the dam, and he stated, "Yes." Marcum also testified that he saw a log below the dam, "just churning in there." Based on Marcum's deposition testimony, we find that an average user with ordinary intelligence would have been made aware of the current surrounding the dam, and the danger posed. We note that plaintiffs submitted, on appeal, the affidavit of Dr. Richard Kaufman, an expert on dams and dam structures. However, after reviewing the lower court file, we find that the trial court was not presented with this affidavit or informed of this affidavit before the hearing on Yates' summary disposition motion. Because our review is limited to the record developed by the trial court, and a party is not permitted to enlarge the record on appeal, *Kent Co Aeronautic Bd v Dep't of State Police,* 239 Mich App 563, 579-580; 609 NW2d 593 (2000), we decline to consider this affidavit.

Plaintiffs submitted, with their response to defendant Yates' motion for summary disposition a document entitled, "PERSONAL PREPAREDNESS AND RESPONSIBILITY," a document that discussed the perceived dangers of the Potomac River, and the deposition of Les Posey, the owner of Yates. After reviewing that, we conclude that this evidence did not create a genuine issue of material fact on the issue of whether the dam was open and obvious. Therefore, the trial court did not err in granting summary disposition in favor of defendant Yates on this issue.

Plaintiffs next argue that the there was sufficient evidence submitted below to establish a genuine issue of material fact regarding whether the dam constituted a nuisance per se or a nuisance in fact and that, therefore, the trial court erred in granting summary disposition to Yates on those claims. "A nuisance per se is 'an activity or condition which constitutes a nuisance at all times and under all circumstances, without regard to the care with which it is conducted or maintained.'" *Palmer v WMU*, 224 Mich App 139, 144; 568 NW2d 359 (1997) citing *Li v Feldt (After Second Remand)*, 439 Mich 457, 476-477; 487 NW2d 127 (1992). This Court, in *Wagner v Regency Inn Corp*, 186 Mich App 158, 164; 463 NW2d 450 (1990), stated the following with regard to a nuisance in fact:

> By contrast, a nuisance in fact is a nuisance by reason of circumstances and surroundings. An act may be found to be a nuisance in fact when its natural tendency is to create danger and inflict injury on person or property. A negligent nuisance in fact is one that is created by the landowner's negligent acts, that is, a violation of some duty owed to the plaintiff, which results in a nuisance. A nuisance in fact is intentional if the creator intends to bring about the conditions which are in fact found to be a nuisance. To establish intent, the plaintiff must show that, when the defendant created or continued the condition causing the nuisance, he knew or must have known that the injury was substantially certain to follow, in other words, deliberate conduct. [Internal citations omitted.]

In *Li, supra*, the plaintiffs' decedent, Javier Garcia, drowned after he went swimming in the holding pond behind the Holton Dam in Jackson. *Li, supra* at 464. Garcia was sucked into the conduit and dragged through it into the Grand River. *Id.* The substance of the plaintiffs' complaint was that the city had maintained the Holton Dam in a dangerous condition, when it knew or should have known that drownings were likely to result. *Id.* at 465. In an opinion by Justice Cavanagh, with Justices Brickley and Mallett concurring and Justice Riley concurring only in the result, the Court found that the maintenance of the holding pond did not constitute an intrinsically unreasonable or dangerous activity, without regard for care or circumstances. *Id.* at 477. The Court stated that to the contrary, the maintenance of the holding pond served obvious and beneficial public purposes and was clearly capable of being conducted in such a way as not to pose any nuisance at all. *Id.* The Court looked at the fact that the very essence of the claim was that the underlying activity became unreasonable and dangerous because the defendant allegedly exercised improper or inadequate care. *Id.* Therefore, the Court concluded that the plaintiffs did not present a colorable claim of nuisance per se. *Li, supra.*

In the case at hand, the dam, like the holding pond in *Li, supra,* was capable of being maintained in such a way as not to pose any nuisance. Therefore, we conclude that plaintiffs did not present a claim of nuisance per se. In addition, after reviewing the depositions of Posey and Marcum, we conclude that this evidence does not establish that the dam or the dangerous waters below the dam were created by Yates' negligent act or that Yates intentionally brought about the condition of the dam. These depositions do not create a genuine issue of material fact on the issue of nuisance in fact. Therefore, the trial court properly granted defendant Yates' motion for summary disposition.

Plaintiffs next contend that the trial court erred in granting defendant Cody's motion for summary disposition. At the hearing on that motion, the trial court found that the release signed by plaintiffs' decedent was clear and unambiguous and that the cause of action fell within the

scope of the release. "As a general proposition, parties are free to enter into any contract at their will, provided that the particular contract does not violate the law or contravene public policy." *Cudnik v William Beaumont Hosp,* 207 Mich App 378, 384; 525 NW2d 891 (1994) (citations omitted). "The scope of a release is governed by the intent of the parties as it is expressed in the release." *Cole v Ladbroke Racing Michigan Inc,* 241 Mich App 1, 13; 614 NW2d 169 (2000). If the text of the release is unambiguous, the parties' intentions must be ascertained from the plain, ordinary meaning of the language of the release. *Id.* "A contract is ambiguous only if its language is reasonably susceptible to more than one interpretation." *Id.* citing *Rinke v Automotive Moulding Co,* 226 Mich App 432, 435; 573 NW2d 344 (1997). The interpretation of a contract is a question of law that is reviewed de novo. *Old Kent Bank v Sobczak,* 243 Mich App 57, 61; 620 NW2d 663 (2000).

This Court has recently addressed releases and the necessary language needed in a release in *Xu v Gay,* 257 Mich App 263; 668 NW2d 166(2003). In *Xu, supra* the plaintiff argued that the trial court erred in dismissing his ordinary negligence claim against the defendant because the top of the sign-in sheet at the defendant's fitness center did not constitute a release. *Id.* at 271. While this Court found that the language was unambiguous and clearly stated that the defendant would not assume responsibility for any injuries or sickness, the Court found that it did not inform the reader that he or she was solely responsible for injuries incurred or that he or she waived the defendant's liability by relinquishing the right to sue, nor did it contain the words "waiver," "disclaim," or similar language that would clearly indicate to the reader that by accepting its terms he or she was giving up the right to assert a negligence claim. *Id.* at 275. This Court stated that while such words are not necessary to create a release, at a minimum, a release should explicitly inform the reader as to the effect of the release. *Id.* citing *Klann v Hess Cartage Co,* 50 Mich App 703, 705; 214 NW2d 63 (1973).

Unlike the release in *Xu, supra,* the release at hand specifically states that the signer *waives* any and all claims arising out of bodily injury relating to the rental of kayaks. As such, Miranda was informed as to the effect of the release. Therefore, we conclude that summary disposition, pursuant to MCR 2.116(C)(7), was appropriate in favor of defendant Cody on the claim for negligence, based on the unambiguous language of the release.

Plaintiffs also argue that defendant Cody's violation of MCL 324.44514, which is evidence of negligence, created a question for the finder of fact. MCL 324.44514 provides that a person shall not operate a boat livery within this state unless the boats and equipment are inspected and a permit to operate the boat livery is issued. However, because plaintiffs' counsel admitted that the inspections were not a basis of plaintiffs' claim and this basis was not contained in any of the pleadings, we concluded that the statutory violation complained of was not relevant to the facts of the case. Therefore, the trial court did not err in granting summary disposition in favor of defendant Cody on the negligence claim.

Plaintiffs next argue that the trial court erred in granting summary disposition on their gross negligence claim against Cody. This Court stated, in *Lamp v Reynolds,* 249 Mich App 591, 594; 645 NW2d 311 (2002), that "although a party may contract against liability for harm caused by his ordinary negligence, a party may not insulate himself against liability for gross negligence or willful and wanton misconduct." (Citing *Universal Gym Equipment, Inc v Vic Tanny Int'l, Inc,* 207 Mich App 364, 367-368; 526 NW2d 5 (1994), vacated in part on other

grounds, 209 Mich App 511; 531 NW2d 719 (1995); *Skotak v Vic Tanny Int'l, Inc*, 203 Mich App 616, 617-618; 513 NW2d 428; *Wagner, supra* at 169).

Plaintiffs submitted the deposition of Marcum where he indicated that he asked Scott Wooten, an employee of Winding River, whether it was feasible to go over the dam. Marcum testified that Wooten stated that it was feasible, and then gave him advice on how to go over the dam. Wooten, on the other hand, testified at his deposition that he told Marcum and the others that it was not possible to go over the dam. Viewing the evidence, in the light most favorable to plaintiffs, we conclude that reasonable minds could not differ as Wooten's alleged statement regarding the feasibility of going over the dam does not constitute conduct so reckless as to demonstrate a substantial lack of concern for whether an injury would result to Miranda. See *Xu, supra*. Therefore, the trial court did not err in granting summary disposition in favor of defendant Cody.

Plaintiffs also contend that the trial court erred in granting summary disposition in favor of defendant Shelby Township because plaintiffs presented evidence of gross negligence on the part of defendant's employees, Bottcher and Moore, and presented evidence that the operation of the boat livery was a proprietary function. Plaintiffs further contend that the trial court erred because plaintiffs presented a factual issue regarding the breach of a third party contract. We disagree.

We note that plaintiffs' argument regarding the gross negligence and the proprietary function with regard to defendant's motion for summary disposition is raised for the first time on appeal. This argument was included in plaintiffs' motion to amend their complaint to add a count against Richard Bottcher and David Moore for gross negligence and a count for ordinary negligence on the basis that defendant Shelby Township was acting in a proprietary function. Because this argument was not raised by plaintiffs below in response to defendant's motion for summary disposition, and, consequently, was not addressed by the trial court in this context, it is not preserved for appellate review. *Camden v Kaufman*, 240 Mich App 389, 400, n 2; 613 NW2d 335 (2000), citing *Miller v Inglis*, 223 Mich App 159, 168; 567 NW2d 253 (1997).

With regards to plaintiffs' argument concerning third party beneficiary to a contract, MCL 600.1405 provides in relevant part:

> Any person for whose benefit a promise is made by way of contract, as hereinafter defined, has the same right to enforce said promise that he would have had if the said promise had been made directly to him as the promisee.
>
> (1) A promise shall be construed to have been made for the benefit of a person whenever the promisor of said promise has undertaken to give or to do or refrain from doing something directly to or for said person.
>
> * * *
>
> (2)(b) If such person is not in being or ascertainable at the time the promise becomes legally binding on the promisor then his rights shall become vested the moment he comes into being or becomes ascertainable if the promise

has not been discharged by agreement between the promisor and the promisee in the meantime.

Our Supreme Court stated, in *Brunsell v City of Zeeland*, 467 Mich 293, 296; 651 NW2d 388 (2002), that the plain language of this statute reflects that not every person incidentally benefited by a contractual promise has a right to sue for breach of that promise, but, rather, only if the promisor has "undertaken to give or to do or refrain from doing something *directly* to or for said person." (citing MCL 600.1405(1)). "In other words, MCL 600.1405 draws a distinction between intended third-party beneficiaries who may sue for a breach of a contractual promise in their favor, and incidental third-party beneficiaries who may not." *Id.* Our Supreme Court further stated that it adopted the statutory analysis found in *Koenig v South Haven*, 460 Mich 667, 676-677, 680; 597 NW2d 99 (1999). *Brunsell, supra* at 296. The Court, in *Koenig, supra*, stated the following:

> In describing the conditions under which a contractual promise is to be construed as for the benefit of a third party to the contract in § 1405, the Legislature utilized the modifier "directly." Simply stated, section 1405 does not empower just any person who benefits from a contract to enforce it. Rather, it states that a person is a third-party beneficiary of a contract only when the promisor undertakes an obligation "directly" to or for the person. This language indicates the Legislature's intent to assure that contracting parties are clearly aware that the scope of their contractual undertakings encompasses a third party, directly referred to in the contract, before the third party is able enforce the contract. Subsection 1405(2)(b)'s recognition that a contract may create a class of third-party beneficiaries that includes a person not yet in being or ascertainable precludes an overly restrictive construction of subsection 1405(1). That is, it precludes a construction that would require precision that is impossible in some circumstances, such as would be the case if there were a requirement in all cases that a third-party beneficiary be referenced by proper name in the contract. This is simply to say that the Legislature, in drafting these two provisions, apparently wanted to strike a balance between an impossible level of specificity and no specificity at all. This means that there must be limits on the use of subsection 1405(2) to broaden the interpretation of subsection 1405(1) because otherwise the result is to remove all meaning from the Legislature's use of the modifier "directly."

Plaintiffs contend that pursuant to *Brunsell, supra*, the express terms of the contract executed for the livery concession with Winding River support the legal conclusion that Miranda was a direct third party beneficiary.

Looking at the clear language of this contract, we conclude that plaintiffs have not met their burden of showing that defendant Shelby Township expressly promised "to give or to do or to refrain from doing something directly to or for" Miranda. *Brunsell, supra* at 298. As such, the trial court properly granted summary disposition in favor of defendant Shelby Township.

Plaintiffs next contend that the trial court abused its discretion in denying their motion to amend their complaint to add a claim for ordinary negligence and negligent hiring and supervision of an independent contractor. This Court reviews denials of motions for leave to

amend pleadings for an abuse of discretion. *Jenks v Brown,* 219 Mich App 415, 420; 557 NW2d 114 (1996) citing *Horn v Dep't of Corrections,* 216 Mich App 58, 65; 548 NW2d 660 (1996).

"Amendment is generally a matter of right rather than grace." *Jenks, supra* at 419, citing *Patillo v Equitable Life Assurance Society of the United States,* 199 Mich App 450, 456; 502 NW2d 696 (1992). Pursuant to MCR 2.118(A)(2), a trial court should freely grant leave to amend if justice so requires. "Leave to amend should be denied only 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." *Jenks, supra* at 415 citing *Horn, supra* at 65.

This Court has defined "independent contractor" as "'one who, carrying on an independent business, contracts to do work without being subject to the right of control by the employer as to the method of work but only as to the result to be accomplished.'" *Candelaria v B C General Contractors, Inc,* 236 Mich App 67, 73; 600 NW2d 348 (1999) quoting *Kamalnath v Mercy Memorial Hosp Corp,* 194 Mich App 543, 553; 487 NW2d 499 (1992).

As noted above, the contract between defendants Cody and Shelby Township permitted defendant Cody to use Shelby Township land to operate a canoe livery. Looking at the language of this contract, defendants Cody and Shelby Township entered into a contract for lease of the land, rather than an employment type contract. Based on the definition of independent contractor and on the language of the contract, such an amendment to the complaint would have been futile. See *Jenks, supra* at 415. Consequently, the trial court did not abuse its discretion in denying plaintiffs' motion to amend their complaint.

Plaintiffs also contend that the trial court erred in denying their motion to amend their complaint to include a claim of gross negligence against Wooten. We disagree. Plaintiffs assert that the record is clear as to the role Wooten played in Miranda's demise. However, as discussed above, Wooten's alleged statement regarding the feasibility of going over the dam does not constitute conduct so reckless as to demonstrate a substantial lack of concern for whether an injury would result to Miranda. See *Xu, supra; Lamp, supra* at 594. We agree with defendant that such amendment to the complaint, to add a claim against Wooten for gross negligence, would have been futile. See *Jenks, supra* at 415. Accordingly, the trial court did not abuse its discretion in denying plaintiffs' motion on this issue.

Plaintiffs also contend that they should have been able to amend their complaint to add a claim against Cody for violation of the Michigan Consumer Protection Act. MCL 445.903 states in part:

> (1) Unfair, unconscionable, or deceptive methods, acts, or practices in the conduct of trade or commerce are unlawful and are defined as follows:
>
> * * *
>
> (e) Representing that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another.
>
> * * *

> (s) Failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer.

Plaintiffs contend that the language of the release, including the phrase, "I acknowledge the inherent risks associated with canoeing and assume all such risks. Any person that takes equipment over the waterfall located north of Yates Cider Mill will be charged a minimum of $100 depending on damages to equipment," creates a question of fact as to whether defendant Cody's actions were deceptive as to the overall risks of renting her kayaks and whether such acts were unconscionable. Plaintiffs further state that the release did not expressly warn of the risk of death if the kayaker went over the dam. As discussed above, the language of the release at hand is clear and unambiguous and informed Miranda as to the effect of the release. Specifically, the release warned that the signer waived any and all claims arising out of bodily injury relating to the rental of kayaks. We conclude that because of the clear language contained in this release, such an amendment would have been futile. See *Jenks, supra* at 415. Therefore, the trial court did not abuse its discretion in denying plaintiffs' motion to amend their complaint.

Plaintiffs further contend that defendant Cody's actions relative to Miranda were deceptive to the extent that Cody represented that the equipment she rented or had available for lease and use were of a particular standard, quality, or grade. Plaintiffs have not alleged that any defect in the rented kayak caused the incident in question. In addition, plaintiffs have provided no authority to support their position that such actions by defendant Cody come within the language of MCL 445.903(e) or (s). "A party may not leave it to this Court to search for authority to sustain or reject its position." *In re Keifer*, 159 Mich App 288, 294; 406 NW2d 217 (1987) (citations omitted). Therefore, we decline to address this specific argument as it is abandoned. See *Magee v Magee* 218 Mich App 158, 161; 553 NW2d 353 (1996).

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Jane E. Markey