

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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BRUCE CLARK,

Plaintiff-Appellant,

v

DARLENE CLARK,

Defendant-Appellee,

and

AMBER MACKEY and TAYLOR THOMA,

Defendants.

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UNPUBLISHED

January 17, 2017

No. 329995

Oakland Circuit Court

LC No. 2014-138509-CH

Before: RIORDAN, P.J., and FORT HOOD and SERVITTO, JJ.

PER CURIAM.

Plaintiff Bruce Clark appeals as of right the trial court's judgment of no cause of action in favor of defendant Darlene Clark. We affirm.

**I. FACTUAL BACKGROUND**

This case involves a property dispute between family members. Plaintiff, defendant, and Carlene Clark<sup>1</sup> were siblings. In 2010, the siblings' mother died, and they inherited a house from her as tenants in common. Subsequently, defendant and Carlene, who lived in the house, refused to give plaintiff a key and would not allow him to access the home. This led to multiple confrontations between the parties, as plaintiff still stored some personal possessions, including

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<sup>1</sup> Carlene Clark died after plaintiff filed the complaint in this case, and her daughters, Amber Mackey and Taylor Thoma, inherited her share of the property at issue. Mackey and Thoma were defendants in the underlying case but did not appear at trial. As a result, the trial court entered default judgments against them. The record indicates that plaintiff and defendant had at least one other sibling, but the other sibling was not involved in the case.

an electric organ and a set of hair trimmers, in the house, even though he had not lived there in approximately 20 years. At some point, defendant deposited some of plaintiff's possessions, including the organ and photographs, on the street curb. Plaintiff was able to recover the photographs before they were ruined, but the organ was damaged in the rain. Additionally, according to plaintiff, defendant hit him in the head with a lamp on one occasion when he was attempting to enter the house after his mother's death, and a personal protection order was entered against plaintiff in October 2014 after he again attempted to enter the residence.

Despite his inability to access the house, plaintiff had a key to the garage on the property, where he stored some equipment. Plaintiff claimed that, during the ongoing dispute, defendant forcibly opened the garage door and left plaintiff's equipment exposed. As a result, plaintiff felt compelled to move the equipment out of the garage and pay for storage elsewhere in order to protect the items. Plaintiff also had parked a "backhoe tractor" on the lawn for several years. Defendant asked plaintiff to move the machinery, but he refused. Subsequently, the City of Pontiac received a complaint about the machine, and the city required that plaintiff remove it based on an ordinance prohibiting the storage of commercial machinery in residential areas. Plaintiff also had to move a vehicle that he stored on the property.

Plaintiff initiated the instant action, alleging that defendant had interfered with his possession of the real property, and that defendant had converted or destroyed personal property belonging to him. He requested, *inter alia*, that the trial court divide or sell the property given the parties' inability to reside together, that the trial court enjoin defendant from precluding plaintiff from entering the residence, and that the trial court order defendant to pay damages reimbursing him for property damage and storage costs. At trial, plaintiff and defendant agreed to dismiss his claim related to the division or sale of the home. Therefore, the only remaining issue was whether plaintiff was entitled to damages for his lost personal property and storage costs.

Following the bench trial, the trial court entered an opinion and order finding "that Plaintiff has failed to prove by a preponderance of the evidence that Defendant converted his personal property or that Defendant is responsible for any of the damages incurred by Plaintiff." Accordingly, it entered a judgment of no cause of action.

## II. STANDARD OF REVIEW

Plaintiff failed to preserve his claims of error by raising them in the trial court. *Detroit Leasing Co v Detroit*, 269 Mich App 233, 237; 713 NW2d 269 (2005). "This Court will generally decline to address unpreserved issues unless a miscarriage of justice will result from a failure to pass on them, . . . the question is one of law and all the facts necessary for its resolution have been presented, or [it is] necessary for a proper determination of the case." *Autodie, LLC v City of Grand Rapids*, 305 Mich App 423, 431; 852 NW2d 650 (2014) (quotation marks and citation omitted; alterations in original). When this Court does review an unpreserved issue, it reviews the issue for plain error. *Demski v Petlick*, 309 Mich App 404, 426-427; 873 NW2d 596 (2015). "Plain error occurs at the trial court level if (1) an error occurred (2) that was clear or obvious and (3) prejudiced the party, meaning it affected the outcome of the lower court proceedings." *Duray Dev, LLC v Perrin*, 288 Mich App 143, 150; 792 NW2d 749 (2010).

### III. ANALYSIS

As an initial matter, we conclude that all of plaintiff's claims on appeal are abandoned because he fails to cite any legal authority in support of his claims of error. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Even so, we have reviewed plaintiff's claims and conclude that he has failed to establish any error warranting relief. See *Duray Dev*, 288 Mich App at 150.

Plaintiff first challenges the representation provided by his attorney at trial. None of the grounds that prompt us to consider unpreserved issues are present here. See *Autodie*, 305 Mich App at 431. Nonetheless, we note that to the extent that plaintiff attempts to assert on appeal that his counsel was ineffective, such a claim is misplaced because this is a civil case, not a criminal case. See *People v Trakhtenberg*, 493 Mich 38, 48; 826 NW2d 136 (2012) (recognizing that a civil malpractice case against an attorney is distinct from a criminal ineffective assistance of counsel claim). Likewise, to the extent that plaintiff otherwise challenges his attorney's representation and appears to suggest that his attorney had a conflict of interest that constrained his representation in this case, the proper avenue for challenging an attorney's representation is through a legal malpractice suit in the trial court. See *Bowden v Gannaway*, 310 Mich App 499, 503; 871 NW2d 893 (2015) (describing the elements of a legal malpractice action). This appeal—which arises from a case involving real property and personal property issues, not a legal malpractice claim—is not the proper avenue for challenging counsel's representation during the lower court proceedings.

Relatedly, plaintiff contends that his side of the case was not heard, primarily because his attorney did not “present all the times and dates recordings [sic] rele[v]ant to this case.” This claim is plainly unsupported by the record. At trial, plaintiff's counsel presented evidence and arguments on behalf of plaintiff. Specifically, plaintiff's counsel elicited testimony about plaintiff's family background, his relationship and interactions with his sisters, and the inherited house at issue in this case. Plaintiff testified that defendant and Carlene denied him access to the house and deposited his possessions on the curb. He also testified regarding which possessions were destroyed or damaged, how the loss affected him financially, and the steps that he took to protect his property afterward. Moreover, the record demonstrates that the trial court considered plaintiff's testimony as it rendered its opinion. For example, the court's opinion and order mentioned that defendant barred plaintiff from entering the home, noted plaintiff's testimony that defendant converted his personal property, and referenced his testimony that he had to pay storage and removal costs for the equipment that he removed from the property. Accordingly, the record reflects that plaintiff had an opportunity to present his claims at trial, and the trial court considered the evidence that he presented when it made its decision.

Lastly, plaintiff raises an issue regarding whether he “can change his mind” about the sale of the home. We cannot discern whether plaintiff is attempting to argue that the voluntary dismissal of his claim related to the division or sale of the home was improper, whether he is arguing that this Court should somehow reinstate the dismissed claim, or whether he is claiming that the dismissal was with prejudice. Because we are unable to discern the premise of this issue, and plaintiff fails to identify any legal authority or analysis to support it, we deem the claim abandoned. “It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or

unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). See also *Movie Mania Metro, Inc v GZ DVD’s Inc*, 306 Mich App 594, 605-606; 857 NW2d 677 (2014) (“An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority.”).

Even in considering the issue, however, we find no basis for concluding that the trial court plainly erred in allowing plaintiff to voluntarily dismiss the claim regarding the sale of the property. See MCR 2.504(A)(2); *African Methodist Episcopal Church v Shoulders*, 38 Mich App 210, 212; 196 NW2d 16 (1972) (discussing relevant considerations in considering a motion requesting voluntary dismissal of a claim). Further, because trial court’s order did not specify otherwise, the voluntary dismissal was without prejudice, MCR 2.504(A)(2)(b), meaning that plaintiff had an opportunity to refile the claim, *Thomas v Michigan Employment Sec Comm’n*, 154 Mich App 736, 742; 398 NW2d 514 (1986) (“The inclusion of the term ‘without prejudice’ in a judgment of dismissal ordinarily indicates the absence of a decision on the merits, and leaves the parties free to litigate the matter in a subsequent action, as though the dismissed action had not been commenced.”) (quotation marks and citation omitted).

#### IV. CONCLUSION

Plaintiff has failed to demonstrate that he is entitled to relief.

Affirmed.

/s/ Michael J. Riordan  
/s/ Karen M. Fort Hood  
/s/ Deborah A. Servitto