

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL WHITE,

Plaintiff-Appellant,

v

DONALD KNAPP, JR., and KORAL KNAPP,

Defendants-Appellees.

UNPUBLISHED

April 23, 2020

No. 346921

Saginaw Circuit Court

LC No. 18-037070-CH

Before: BORRELLO, P.J., and O'BRIEN and CAMERON, JJ.

PER CURIAM.

Plaintiff Michael White, proceeding *in propria persona*, appeals the trial court's order granting summary disposition in favor of defendants, Donald Knapp, Jr., and Koral Knapp.¹ We affirm.

I. FACTS AND PROCEEDINGS

In 1990, White purchased real property located on Block Road in Birch Run, Michigan.² In 2013, White filed for Chapter 11 bankruptcy, which was later converted to a Chapter 7 bankruptcy proceeding. In March 2015, the bankruptcy court ordered the bankruptcy trustee to sell the Block Road property. On June 1, 2015, the bankruptcy trustee entered into a purchase agreement to sell the property to the Knapps, “together with all improvements and appurtenances, if any, now on the premises.” On June 25, 2015, the bankruptcy court confirmed the sale pursuant

¹ White filed this appeal individually and as personal representative of the Estate of Darla K. White. This Court dismissed the appeal “as to appellant in his capacity as personal representative of the Estate of Darla K. White,” but allowed the appeal to proceed “as to appellant in his individual capacity.” *White v Knapp*, unpublished order of the Court of Appeals, entered January 29, 2019 (Docket No. 346921). Consequently, this opinion will not reference the Estate because it is not a party to this appeal.

² White also owned another piece of real property on Block Road. This appeal only concerns the property located at 11085 Block Road.

to the offer to purchase, and the bankruptcy trustee executed a deed conveying the property to the Knapps.

White appealed the bankruptcy court's order confirming the sale of the Block Road property. The federal district court dismissed the appeal as moot pursuant to 11 USC 363(m), because White did not obtain a stay of the property sale pending appeal and because he failed to establish that the sale was not made in good faith. *In re White*, unpublished order of the United States District Court for the Eastern District of Michigan, issued March 10, 2016 (Docket No. 15-cv-12354). Thereafter, the Sixth Circuit Court of Appeals affirmed the district court's order, *In re White*, unpublished order of the United States Sixth Circuit Court of Appeals, entered March 31, 2017 (Docket Nos. 16-1426/1427), and the United States Supreme Court denied White's petition for a writ of certiorari, *White v Corcoran*, ___ US ___, 138 S Ct 663; 199 L Ed 2d 534 (2018).

In July 2018, White filed an action against the Knapps in state circuit court, asserting property rights to a perennial pasture crop, a perennial hay crop, fencing around the crop areas, and fish in a pond on the Block Road property. In lieu of answering the complaint, the Knapps moved for summary disposition. The Knapps argued, in relevant part, that summary disposition was proper under MCR 2.116(C)(10) because the undisputed evidence established that White did not have a property interest in the crops, fencing, and fish that were located on the Block Road property. White opposed the motion. After hearing oral arguments, the trial court granted the Knapps' motion in a November 2, 2018 order. White filed a motion for reconsideration of the trial court's order, which was denied. This appeal followed.

II. ANALYSIS

White argues that the trial court erred by granting summary disposition in favor of the Knapps because the record evidence supports that White had a property interest in the crops, fencing, and fish. We disagree.

We review de novo a trial court's decision on a motion for summary disposition. *Johnson v Vanderkooi*, 502 Mich 751, 761; 918 NW2d 785 (2018). Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). In reviewing a grant of summary disposition under MCR 2.116(C)(10), this Court considers the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party. *Sallie v Fifth Third Bank*, 297 Mich App 115, 117-118; 824 NW2d 238 (2012) (quotation marks and citation omitted).

In this case, White argues that the crops, fencing, and fish in the pond at the Block Road property were not part of the bankruptcy estate and therefore were not transferred to the Knapps pursuant to the trustee's deed. White argues that he retained a legal interest in the property because he claimed statutory exemptions and because the trustee abandoned the bankruptcy estate's interest in the property.

The Bankruptcy Code provides that the commencement of a bankruptcy case "creates an estate" comprising "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 USC 541(a)(1). When a debtor claims a valid statutory

exemption, the exempted property is “withdrawn from the estate (and hence from the creditors)” and returned to the debtor. *Owen v Owen*, 500 US 305, 308; 111 S Ct 1833; 114 L Ed 2d 350 (1991). In contrast,

[a]bandonment is the method used by the trustee to relieve the estate of “any property . . . that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” [11 USC 554.] The trustee may refuse to abandon property that has value to the estate, but if the debtor is entitled by statute to an exemption in it, he may claim it without abandonment by the trustee.” [*Szyszlo v Akowitz*, 296 Mich App 40, 49; 818 NW2d 424 (2012), quoting *Wissman v Pittsburgh Nat’l Bank*, 942 F2d 867, 870 (CA 4, 1991).]

The record does not support White’s claim that the property was removed from the bankruptcy estate by exemption and/or abandonment on the part of the bankruptcy trustee. The trial court ordered the trustee to sell the Block Road property. On August 5, 2015, the Block Road property, which contained the crops, fencing, and fish, was transferred to the Knapps via a quitclaim deed. On February 12, 2016, the bankruptcy court issued an order in relation to White’s December 23, 2014 amended claim of exemptions. The bankruptcy court held that White was entitled to certain exemptions under 11 USC 522(d) for property that is unrelated to this appeal, and the court specifically held that White was not entitled to an exemption “as to the hay.” The February 12, 2016 order further held that “to the extent property . . . is owned by a third party or a non-debtor entity, the property shall be administered by the trustee.” On December 19, 2016, the bankruptcy court approved White’s request for abandonment of various assets that remained in the bankruptcy estate, but the crops, fencing, and fish were listed in the order. Rather, in the December 2016 order, the bankruptcy court explicitly held that the Block Road property had already been sold and was “not abandoned and [would] continue to be administered by the Trustee.” On July 31, 2018, the bankruptcy court issued another order, which denied White’s request for various exemptions under 11 USC 522(d), including any exemption “for hay, crops, and pasture” on the Block Road property. Consequently, the record does not support that the crops, fencing, and fish were abandoned or excluded from the bankruptcy estate.

Additionally, we conclude that White’s argument that the crops, fencing, and fish were not transferred to the Knapps is not supported by the plain language of the bankruptcy court’s June 25, 2015 order and the trustee’s deed. Specifically, the bankruptcy court’s June 25, 2015 order confirmed the sale of the Block Road property to the Knapps “pursuant to the Offer to Purchase,” which specifically encompassed “all improvements and appurtenances” on the property. Thereafter, the trustee’s deed conveyed the property to the Knapps “pursuant to the [June 25, 2015] Order Confirming Sale of Real Estate” Although White argues that he acquired profit á prendre rights with respect to the crops, fencing, and fish after the property was conveyed to the Knapps, he entirely fails to explain or rationalize this argument or provide supporting evidence. Indeed, there is no evidence in the record that the parties agreed that White would retain rights in any attributes of the subject property, and the bankruptcy court expressly denied White’s request

for “any exemption for hay, crops, and pasture” at the Block Road property.³ Consequently, because the undisputed record evidence supports that White did not have a property interest in the crops, fencing, and fish on the Block Road property, the trial court did not err by granting summary disposition in favor of the Knapps.

Affirmed.

/s/ Stephen L. Borrello
/s/ Colleen A. O’Brien
/s/ Thomas C. Cameron

³ “A profit á prendre is the right to acquire, by severance or removal from another’s land, something previously constituting part of the land.” *Hubscher & Son, Inc v Storey*, 228 Mich App 478, 483; 578 NW2d 701 (1998). “Interests in land are usually created or transferred only by act or operation of law or by written deed of conveyance.” *Evans v Holloway Sand and Gravel, Inc*, 106 Mich App 70, 79; 308 NW2d 440 (1981).