

STATE OF MICHIGAN
COURT OF APPEALS

COURTNEY RITCHIE,

Plaintiff-Appellant,

v

ANDY ATTISHA,

Defendant-Appellee.

UNPUBLISHED

January 14, 2021

No. 351061

Oakland Circuit Court

LC No. 2018-167746-NO

Before: FORT HOOD, P.J., and CAVANAGH and TUKEL, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant's motion for summary disposition and dismissing her trespass and conversion claims that arose after defendant purchased plaintiff's real property in a tax foreclosure proceeding. We affirm.

Plaintiff was the owner of a home located at 21191 Andover in the City of Southfield. Plaintiff failed to pay her property taxes for tax years 2007 through 2013, totaling about \$51,717.34 as of February 2015. Plaintiff was sent several notices that her property had been forfeited to the Oakland County Treasurer for non-payment of taxes and was subject to foreclosure proceedings. She was also sent notices that a show cause hearing was scheduled for February 3, 2015, and a judicial foreclosure hearing was scheduled at the Oakland County Circuit Court for February 18, 2015, case number 14-141180-CZ. On February 18, 2015, the Oakland County Circuit Court entered a judgment of foreclosure and the Oakland County Treasurer became the title owner of the subject property, i.e., 21191 Andover. The property was subsequently offered for sale by the Oakland County Treasurer. Defendant purchased the property on August 18, 2015 for \$96,000. Shortly thereafter, defendant went to the property to begin emptying out the contents of the house and rehabilitating the property. Plaintiff appeared at the property several times to dispute ownership.

On August 13, 2018, plaintiff filed this lawsuit claiming, in relevant part, that defendant wrongfully removed her personal possessions from her home and property in August 2015. In Count I, plaintiff brought a "trespass to land" claim, asserting that defendant trespassed on her possessory property interest in the house at 21191 Andover. In Count II, plaintiff brought a

“trespass to personal property” claim, asserting that defendant trespassed on her personal property that had been in the house. In Count III, plaintiff brought a “conversion” claim, asserting that defendant converted or caused to be converted plaintiff’s personal property that had been inside and outside of her house.¹

Subsequently, defendant filed a motion for summary disposition under MCR 2.116(C)(10), arguing that (1) plaintiff had no possessory interest in the property at issue, and thus, defendant did not trespass on “her” real or personal property; and (2) plaintiff abandoned her personal property for years so, when defendant purchased the subject real property, he was entitled to dispose of that property. Defendant noted that the house was uninhabitable after a fire in February 2012, had no functioning utilities, was boarded up, and condemned for years preceding his purchase of the property. Accordingly, defendant argued, this case must be dismissed. Defendant attached to his motion numerous documents obtained from the Oakland County Treasurer’s Office regarding the forfeiture and foreclosure of the subject property, including notices sent to plaintiff regarding the tax delinquency and related proceedings. Defendant also attached excerpts from plaintiff’s deposition which included her admission that she stopped living at the house on Andover in 2012, after a fire occurred and the City of Southfield condemned the house as unsafe. Plaintiff also admitted that she did not pay the property taxes on that property. Defendant also attached to his motion a copy of the (1) Property Transfer Affidavit which indicated that the property was transferred to him on August 18, 2015, from the seller, Oakland County, for \$96,000; (2) the Purchase Agreement for Foreclosed Real Estate which indicated as follows: “The Oakland County Treasurer became the title owner of this parcel of real estate as a result of the forfeiture and foreclosure of land for unpaid taxes and a judgment of the Oakland County Circuit Court dated February 18, 2015” and sold the subject property to defendant on August 18, 2015 for \$96,000; and (3) defendant’s affidavit which indicated that he was instructed upon purchase that he was able to take possession of the subject property on the same day, August 18, 2015.

Plaintiff filed a response to defendant’s motion for summary disposition, arguing that defendant had no legal right to enter the property at 21191 Andover or to break the locks on the home and remove plaintiff’s personal possessions. Plaintiff argued that defendant did not have “legal title to the real property via a deed” at the time he entered the property and removed plaintiff’s possessions. Plaintiff claimed that she believed her tax dispute was resolved when she was approved for a loan in April 2013 through the “Step Forward Michigan Loan Rescue Program” to pay her back taxes. Further, she argued, she was engaged in a Chapter 13 bankruptcy at the time of defendant’s illegal entry onto the property, although ultimately the bankruptcy failed to stay the foreclosure. And, plaintiff argued, at no time did she voluntarily abandon the home or its contents; thus, her possessory rights were superior to defendant’s rights “until her interests were extinguished by an eviction.” Further, because defendant took some of plaintiff’s personal property, or destroyed it, he can be found to have converted it for his own purposes. Accordingly, defendant’s motion for summary disposition should be denied. Plaintiff attached exhibits to her response, including her affidavit in support of statements made in her response brief, a letter dated

¹ Plaintiff’s other claims of intentional infliction of emotional distress (Count IV), negligent infliction of emotional distress (Count V), and assault and battery (Count VI) were dismissed and are not relevant to this appeal.

April 17, 2013 from the Oakland County Treasurer regarding her approval through the Step Forward Michigan Loan Rescue Program, and a printout showing her Chapter 13 bankruptcy case was filed in August 2015 and dismissed in September 2015.

A hearing on defendant's motion was held on June 19, 2019, and the parties argued consistently with their briefs. The trial court granted defendant's motion for summary disposition under MCR 2.116(C)(10) as to plaintiff's claims of the trespass to land, trespass to personal property, and conversion. The court noted that plaintiff had not lived at the property since 2012; the City of Southfield had condemned the property in 2013 following a fire; plaintiff provided no documentation to demonstrate that she actually received the Step Forward loan and paid off her delinquent property taxes; plaintiff provided no evidence to support her claim that a bankruptcy case stayed the County's right to recover delinquent property taxes; and the Oakland County Treasurer pursued a judicial foreclosure because of delinquent taxes for tax years 2007 through 2013 and became the title owner of the property on February 18, 2015. Therefore, plaintiff could not establish that defendant committed an unauthorized invasion of her private property. And, for the same reasons, plaintiff was deemed to have abandoned her claim to any items left at the property. An opinion and order was entered accordingly.

Thereafter, plaintiff filed a motion to amend her complaint to add a count of wrongful eviction. Defendant opposed the motion, arguing that there was undue delay to seek amendment and, in any case, amendment would be futile because plaintiff did not own the real property and had abandoned her personal property. Moreover, any such claim is barred by the one-year statute of limitations, MCL 600.2918(8). The trial court denied plaintiff's motion, holding that there was undue delay causing prejudice to defendant, and further, such amendment would be futile because the statute of limitations expired on that cause of action. Plaintiff now appeals.

Plaintiff argues that the trial court erred in dismissing her trespass and conversion claims because she had superior possessory rights over defendant and did not abandon her property. We disagree.

We review de novo a trial court's decision to grant a motion for summary disposition. *Sheridan v Forest Hills Pub Sch*, 247 Mich App 611, 620; 637 NW2d 536 (2001). A motion brought under MCR 2.116(C)(10) "tests the factual support of a plaintiff's claim." *Spiek v Dept of Transp*, 456 Mich 331, 337; 572 NW2d 201 (1998). The moving party must identify the matters that have no disputed factual issues, and has the initial burden of supporting its position with documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The party opposing the motion must then establish by evidentiary materials that a genuine issue of disputed fact exists. *Id.* After considering the documentary evidence submitted in the light most favorable to the nonmoving party, the court determines whether a genuine issue of material fact exists to warrant a trial. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "There is a genuine issue of material fact when reasonable minds could differ on an issue after viewing the record in the light most favorable to the nonmoving party." *Allison v AEW Capital Mgt, LLP*, 481 Mich 419, 425; 751 NW2d 8 (2008).

To recover for trespass to land, the plaintiff must prove an unauthorized intrusion onto land over which the plaintiff has a right to exclusive possession. *Terlecki v Stewart*, 278 Mich App 644, 654; 754 NW2d 899 (2008), quoting *Adams v Cleveland-Cliffs Iron Co*, 237 Mich App 51,

67; 602 NW2d 215 (1999). In this case, plaintiff had no “right to exclusive possession” of the subject property. Plaintiff was not the owner of the property at the time defendant entered the subject property. Oakland County was the undisputed title owner of the subject property and had been since February 18, 2015. Defendant did not need plaintiff’s permission or authorization to enter onto the property. And defendant was authorized to enter onto the property after purchasing the property from Oakland County on August 18, 2015. Therefore, as the trial court concluded, plaintiff’s trespass to land claim fails as a matter of law.

To establish a claim for trespass to chattels, or “personalty,” a plaintiff must show a wrongful exercise of dominion or control over the plaintiff’s personal property. See *Burns v Kirkpatrick*, 91 Mich 364, 366; 51 NW 893 (1892). Similarly, conversion is an “act of dominion wrongfully exerted over another’s personal property in denial of or inconsistent with his rights therein.” *Thoma v Tracy Motor Sales, Inc*, 360 Mich 434, 438; 104 NW2d 360 (1960) (citation omitted); see also *Dep’t of Agriculture v Appletree Marketing, LLC*, 485 Mich 1, 13; 779 NW2d 237 (2010). Thus, liability does not arise when an actor is entitled to the personal property at issue, i.e., the act of dominion is not “wrongful.” *Thoma*, 360 Mich at 438.

In this case, Oakland County became vested with absolute title in fee simple of the subject real property on February 18, 2015. See MCL 211.78k. At minimum, plaintiff had sufficient time to remove her personal property from the subject real property between the time of the show cause hearing on February 3, 2015 and the time of the judicial foreclosure hearing. Further, plaintiff provides no evidence of any attempt by her to seek the recovery from Oakland County of any personal property that had been on the subject property when Oakland County became the new title owner of that property. That is, from the time Oakland County acquired the property to the time it sold the property to defendant, plaintiff made no effort to remove her personal property. Thus, as the trial court held, plaintiff abandoned her personal property. In fact, the house had been condemned as uninhabitable for about two years before Oakland County became the title owner of the property. Plaintiff appears to argue on appeal that she retained a “possessory interest” in the subject property even after Oakland County became vested with absolute title to the property on February 18, 2015. Plaintiff fails to explain this claim and provides no legal authority to support such a claim. This Court will not provide a party’s arguments for them and then search for authority to support such legal arguments. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). Clearly, Oakland County did not become plaintiff’s “landlord” when it obtained title to the subject property; no lease existed. Further, it is undisputed that plaintiff did not live at this condemned, uninhabitable property either before or after Oakland County became the title owner. And once defendant purchased the subject property from Oakland County in August 2015, defendant became the owner of that property, including the house and all of its contents. In other words, as the trial court concluded, plaintiff cannot show that defendant wrongfully exercised dominion or control over plaintiff’s personal property when defendant proceeded to clean out the real property he purchased from Oakland County. See *Thoma*, 360 Mich at 438; *Burns*, 91 Mich at 366.

In summary, the trial court did not err in concluding there was no genuine issue of material fact as to plaintiff’s claims for trespass to land, trespass to personal property, and conversion; accordingly, defendant was entitled to summary disposition of those claims.

Next, plaintiff argues that her motion to amend her complaint to add a claim of wrongful eviction should have been granted. After review of the trial court's decision for an abuse of discretion, we disagree. See *Weymers v Khera*, 454 Mich 639, 654; 563 NW2d 647 (1997).

In support of her claim that she was entitled to assert a claim of wrongful eviction, plaintiff refers us to caselaw pertaining to landlord-tenant situations. In the only case relied upon by plaintiff, *Deroshia v Union Terminal Piers*, 151 Mich App 715; 391 NW2d 458 (1986), “[t]he sole issue raised by the parties in the briefs on appeal [wa]s whether a landlord may resort to self-help in the form of changing the locks on the leased premises to gain repossession and evict a holdover tenant.” *Id.* at 718. But the subject property in this case was not leased to plaintiff, plaintiff was not a “holdover tenant,” and neither Oakland County nor defendant was a landlord to plaintiff. Thus, plaintiff’s claim that she was entitled to amend her complaint to assert a “wrongful eviction” claim is wholly unsupported by apposite argument and legal authority. Again, this Court will not provide a party’s arguments for them and then search for authority to support such legal arguments. See *Wilson*, 457 Mich at 243. In any case, under these factual circumstances, we agree with the trial court that any such amendment would be futile, albeit for a different reason. Accordingly, the trial court did not abuse its discretion when it denied plaintiff’s motion to amend her complaint.

Affirmed. Defendant is entitled to costs as the prevailing party. See MCR 7.219(A).

/s/ Karen M. Fort Hood

/s/ Mark J. Cavanagh

/s/ Jonathan Tukel