

STATE OF MICHIGAN
COURT OF APPEALS

WILFRIEDE ANNA BURGESS, as Trustee of the
WILFRIEDE ANNA BURGESS REVOCABLE
TRUST,

Plaintiff-Appellee,

v

DOUGLAS MICHAEL BURGESS,

Defendant-Appellant.

UNPUBLISHED
March 11, 2021

No. 352212
Oakland Circuit Court
LC No. 2018-164727-CH

Before: TUKEL, P.J., and JANSEN and CAMERON, JJ.

PER CURIAM.

Defendant-appellant, Douglas Michael Burgess (“Douglas”) appeals from an order that granted summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact) in favor of plaintiff-appellee, Wilfriede Anna Burgess (“Wilfriede”), as trustee of the Wilfriede Anna Burgess Revocable Trust (“the Trust”). We affirm the trial court’s decision to grant summary disposition on the Trust’s quiet title claim and remand for further proceedings consistent with this opinion.

I. BACKGROUND

This case involves a dispute over real property that is located in Troy, Michigan. In January 1973, Wilfriede and Vern Douglas Burgess (“Vern”), who are Douglas’s parents, acquired the property. In December 1999, Wilfriede and Vern conveyed the property to the Trust, to which Wilfriede is the sole trustee, via a quit claim deed. At some point thereafter, Vern died.

On November 4, 2015, Douglas filed a claim of interest concerning the property in the Oakland County Register of Deeds. The claim of interest, which was signed by Douglas, provided

as follows:

That on or about February 15, 2003, [Douglas] was assigned a certain executory contract for the sale of land, entered into in December, 2002, wherein [the] Seller was the Wilfreide [sic] Anna Burgess Revocable Trust, u/a/d December 22, 1999 and Linda M. Burgess¹ was the Purchaser. The undersigned made payments to Seller to 2008, and Seller received the payments, and claimed the land contract interest as income.

Although the land contract is in full force and effect and Seller has not foreclosed or forfeited the land contract, Seller now refuses to recognize [the] Purchaser's interest.

On March 28, 2018, Wilfriede, on behalf of the Trust, filed an action against Douglas. It was alleged that the Trust was the sole owner of the property and that Douglas was without any rights to the property. The Trust requested that the "entirely false" notice of claim be "set aside, vacated and declared null and void" and that the Trust be awarded damages as a result of Douglas's creation of "a cloud upon the title." Douglas answered the complaint, alleging that he had a valid interest in the property under the land contract.

After the close of discovery, Wilfriede, on behalf of the Trust, filed a motion for summary disposition under MCR 2.116(C)(10). It was alleged that summary disposition was proper because Douglas was unable to produce the purported land contract. Douglas opposed the motion, arguing that the land contract was missing and that he should be able to testify at trial concerning its terms. Douglas also argued that he had made payments on the land contract and had made improvements to the property. After holding oral argument, the trial court concluded that summary disposition was proper under MCR 2.116(C)(10) in a December 17, 2019 order. The trial court conditionally ordered Douglas to file a release of the claim of interest in the Oakland County Register of Deeds. The trial court declined to award costs, sanctions, or attorney fees. The December 17, 2019 order indicated that it was a final order that closed the case. This appeal followed.

II. JURISDICTION

At the outset, it is necessary to address a jurisdictional matter. Although the parties have not challenged this Court's jurisdiction, "[a] court is, at all times, required to question sua sponte its own jurisdiction." *Tyrrell v Univ of Mich*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 349020); slip op at 3. This Court "has jurisdiction of an appeal of right filed by an aggrieved party from . . . [a] final judgment or final order" MCR 7.203(A)(1). Under MCR 7.202(6)(a)(i), a final judgment includes "the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties[.]"

The complaint in this case sought several forms of relief, including equitable relief *and* damages resulting from Douglas "falsely and maliciously" having filed the claim of interest, which allegedly "created a cloud upon the title" and damaged the Trust. As a result, it was requested that

¹ Linda is Wilfriede's daughter and Douglas's sister.

the trial court quiet title in favor of the Trust and award the Trust damages. In the motion for summary disposition, the Trust sought judgment as a matter of law on both its equitable claim and its claim for damages. The trial court's December 17, 2019 order essentially quieted title in favor of the Trust. However, the trial court did not specifically rule on the slander of title claim and did not enter a money judgment in favor of the Trust, thereby suggesting that the trial court failed to address the Trust's claim for damages under the slander of title theory. Consequently, the December 17, 2019 order did not dispose of the entire action, and the trial court erred by failing to permit the Trust's remaining claim to proceed to final judgment. See MCR 2.116(J)(1) ("If a motion under this rule is denied, or if the decision does not dispose of the entire action or grant all the relief demanded, the action must proceed to final judgment."). Additionally, the December 17, 2019 order was not appealable as of right because it was not a final order. Nonetheless, we will treat the December 17, 2019 order as having come to this Court by way of application for leave to appeal. See *Wardell v Hincka*, 297 Mich App 127, 133 n 1; 822 NW2d 278 (2012). In the interest of judicial economy, we grant leave. See *id.* See also MCR 7.216(A)(7).

III. QUIET TITLE CLAIM

Douglas argues that the trial court erred by granting summary disposition in favor of the Trust on the quiet title claim and that the trial court should have applied the unclean-hands doctrine. We disagree.

A. STANDARDS OF REVIEW

"Equitable issues are [generally] reviewed de novo[.]" *Stock Bldg Supply, LLC v Crosswinds Communities, Inc*, 317 Mich App 189, 199; 893 NW2d 165 (2016). This Court also "review[s] de novo a trial court's decision on a motion for summary disposition." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019).

A motion under MCR 2.116(C)(10) . . . tests the factual sufficiency of a claim. When considering such a motion, a trial court must consider all evidence submitted by the parties in the light most favorable to the party opposing the motion. A motion under MCR 2.116(C)(10) may only be granted when there is no genuine issue of material fact. A genuine issue of material fact exists when the record leaves open an issue upon which reasonable minds might differ. [*Id.* at 160 (quotation marks and citations omitted).]

When reviewing a trial court's decision on a motion for summary disposition, this Court's "review is limited to the evidence that had been presented to the [trial] court at the time the motion was decided." *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475-476; 776 NW2d 398 (2009) (citation omitted).²

² To support that summary disposition was improper, Douglas submits the affidavit of Linda. Because the affidavit was not before the trial court when it decided the motion for summary disposition, we will not consider it on appeal.

B. ANALYSIS

An action to quiet title is equitable in nature and is “available to a party in possession of real property who [seeks] to clear the property’s title as against the world.” *Adams v Adams*, 276 Mich App 704, 711; 742 NW2d 399 (2007). In a quiet title action, the plaintiff “has the initial burden of establishing a prima facie case of title.” *Special Prop VI v Woodruff*, 273 Mich App 586, 590; 730 NW2d 753 (2007). If the plaintiff establishes a prima facie case of title, the burden shifts to the defendant to prove superior right or title. *Qualified Personal Residence Trust v Emmet Co Rd Comm*, 236 Mich App 546, 550; 600 NW2d 698 (1999).

In this case, it was undisputed that Wilfriede and Vern owned the property in question and that they later conveyed the property to the Trust. This is exhibited by a 1999 quit claim deed, which was recorded in the Oakland County Register of Deeds. Because the Trust established a prima facie case of title, the burden shifted to Douglas to prove superior right or title. See *id.*

Although Douglas claimed an interest in the property under a land contract, he never produced the land contract. Instead, he argued that the contract was missing and that he could testify concerning its terms. However, “[i]n Michigan, the sale of land is controlled by the statute of frauds.” *Lakeside Oakland Dev, LC v H & J Beef Co*, 249 Mich App 517, 524; 644 NW2d 765 (2002) (citation omitted). “[A] contract for the sale of land must, to survive a challenge under the statute of frauds, (1) be in writing and (2) be signed by the seller or someone lawfully authorized by the seller in writing.” *Zurcher v Herveat*, 238 Mich App 267, 277; 605 NW2d 329 (1999). Because Douglas did not produce a written land contract and did not explain or rationalize how the facts support the application of a statute of frauds exception so as to justify removing the alleged agreement from the statute of frauds, the alleged transfer of the property was void. See MCL 566.106; MCL 566.108. Because a genuine issue of material fact did not exist for trial, the trial court did not err by granting summary disposition in favor of the Trust on the quiet title claim.

In so holding, we note that Douglas argues for the first time on appeal that the unclean-hands doctrine prevented the trial court from granting summary disposition in favor of the Trust. Although Douglas cites authority relating to the unclean-hands doctrine, he does not explain or rationalize how the doctrine applies in this case. “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.” *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339; 662 NW2d 854 (2003) (citations omitted). By failing to adequately brief the issue, Douglas has abandoned the unclean-hands argument on appeal. See *id.* at 339-340. Furthermore, to the extent that we have considered it, we find that the unclean-hands doctrine would not support reversal of the order granting summary disposition on the quiet title claim.

Douglas also argues in a cursory manner that “he is owed additional funds (approximately \$40,000) for landscaping work performed on the property, along with the value of his personal and business property situated on the premises (approximate value \$100,000).” To the extent that Douglas is arguing that the trial court failed to rule on these claims, Douglas never filed a counterclaim or a cross-claim. Rather, Douglas simply answered the complaint. Consequently, given Douglas’s failure to file a claim for money damages in the trial court, we fail to see how he would be entitled to such relief.

Affirmed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jonathan Tukul

/s/ Kathleen Jansen

/s/ Thomas C. Cameron