STATE OF MICHIGAN

COURT OF APPEALS

BRIAN TAYLOR and MARGARET TAYLOR,

Plaintiffs/Counterdefendants-Appellees,

v

BENJAMIN BELILL,

Defendant/Counterplaintiff-Appellant.

UNPUBLISHED
July 22, 2021

No. 354613
Genesee Circuit Court
LC No. 17-108841-CH

Before: FORT HOOD, P.J., and MARKEY and GLEICHER, JJ.

PER CURIAM.

This dispute between neighbors deals with drainage. Both sides complain that surface water pools on their land and that the opposing party is responsible. A jury found in favor of plaintiffs Brian and Margaret Taylor and awarded them $1,000 in damages. The trial court crafted an equitable remedy. Defendant Benjamin Belill asserts that the case never should have gone to trial.

Three of Belill's four appellate arguments involve the original trial date. The Taylors' counsel was ill and did not appear. The court dismissed their complaint and granted a default in favor of Belill on his counterclaim. But the court subsequently reconsidered these decisions, reinstating the case and setting aside the default.

Belill insists that the court's reconsideration ruling was wrong procedurally and substantively, and that the ordered equitable relief constitutes an abuse of discretion. None of Belill's claims have merit. We affirm.

I. FACTS AND PROCEEDINGS

The Taylors own a farm next to Belill's home. In approximately 1970, drainage swales were installed to allow water flowing on the farm property to drain into a ditch. In 2015, Belill built a garage and according to the Taylors, filled in a swale. Water began to back up onto the Taylors' farmland. Two years later, the Taylors filed this nuisance action. Belill counterclaimed,

asserting that the Taylors' removal of a stand of trees caused water from the farm to flow onto *his* property, creating a nuisance.

On the day before the January 29, 2019 trial date, the Taylors' attorney, Michael Edmunds, suddenly became ill with a norovirus, resulting in vomiting, dehydration, fatigue and weakness. His paralegal advised the trial court's judicial administrative secretary of Edmunds' illness. The paralegal and the judge had divergent interpretations of the secretary's instructions regarding the need for Edmund to appear for trial, but this disagreement is of little consequence. Edmunds remained ill and was unable to appear the next day. Another attorney from his firm, not a counsel of record in this case, made a cameo appearance only to notify the court that Edmunds was too sick to try the lawsuit. Attorney Kim Lavalle *was* identified on the pleadings as Edmunds' co-counsel, but did not appear.

Defense counsel moved for dismissal and a default judgment on the counterclaim. The court granted these motions, observing that "no one" had appeared for trial and that Lavalle, as co-counsel, had an obligation to go forward with the trial. But the court "struggled" with this ruling, expressing obvious discomfort with the harshness of its decision:

> The Court has to determine what to do about this situation. The Court has discretion to do lots of things, to just adjourn it or to default and dismiss, and everything in between including sanctions.
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> The Court has thought about this and struggled with it. It is a tough situation. I do understand that lawyers get sick. However, the way this played out makes it difficult.
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> This case was identified as a case that would go. It's difficult to get a civil jury trial to actually go in light of the Court's busy criminal schedule. I've got several murder cases. And this is a case that has been on my radar and everybody understood that.
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> There were lots of discussions about where the case was in the lineup and it was made clear that for at least two or three weeks that this was going to go today. We had to thread the needle in order to have it happen even with that.
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> We've got today [Tuesday], tomorrow and Thursday. I had Tuesday available, but I understand counsel was planning to get the case done by Thursday.
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> * * *
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> I understand the point that Mr. Lavalle doesn't try cases. I know that. I know Mr. Lavalle. I used to work with Mr. Lavalle. He never went to Court back then either, but, as [defense counsel] points out, that may be a practical consideration, but that's not a legal basis upon which after you have put your name on the case [sic]. Every document in the file not only has Mr. Lavalle's name as counsel, but he's the first identified as counsel.

> And so there's really not a justification for - - even if an attorney gets sick, when there's another attorney on the file, there's an obligation to go forward. I mean that's just a risk that you take when you proceed in that way and that's how you handle cases in the office.
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> It's been reported to me that, I mean, it was just assumed that the case wasn't going to go just on the phone call, but that's not at all what the direction of this Court through my secretary - - it's not the direction she gave. She never gave permission to assume that the trial was not going to go. She never told anybody they didn't need to come. She never said to call off witnesses.
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> I don't like to jam people up. I don't like to have cases decided this way, but I feel based on the circumstances that we have here that the actions - - the circumstances and the actions of counsel and [the Taylors] leave me no choice to have to impose the remedy of entering a . . . dismissal on the [Taylors'] claim, a default with regard to the counterclaim and that's how we've got to proceed at this point.

As it happened, court was closed the next two days due to a snowstorm.

The trial court's subsequent order stated in relevant part: "Defendant/Counter-Plaintiff's request for dismissal of Plaintiff/Counter-Defendant's claim shall be GRANTED. A default shall be entered in favor of Defendant/Counter Plaintiff against Plaintiff/Counter-Defendant." Belill never moved for entry of a default judgment.[1]

The Taylors timely filed a motion for reconsideration accompanied by several affidavits describing in considerable detail Edmunds' illness and the events surrounding the aborted trial. The affidavits substantiated that Lavalle, a "real estate and environmental" lawyer, had "never tried a case to a jury" and was planning to be out of town on January 31. The Taylors' brief in support of reconsideration summarized: "There was nothing Mr. Edmunds could have done differently to make himself available for trial, and there was no one else available to try the case in his place with 24 hours notice."

Defense counsel vigorously opposed reconsideration, contending that the Taylors' motion was procedurally improper because a default had been entered and MCR 2.603(A)(3) requires a defaulted party to move to set aside the default before a court may "proceed with the action." At the motion hearing, Edmunds expressed his belief that a motion for reconsideration could address both the dismissal and the default rulings, and that his motion papers did specifically request that the court set aside the default. Edmunds volunteered to pay defense counsel's attorney fees for the time spent on January 29.

The trial court granted reconsideration, rejecting with a lengthy explanation Belill's argument that a motion for reconsideration was an improper vehicle for setting aside the default.

[1] Whether the court should have entered a separate order of default is an interesting question that we need not address.

The court acknowledged that it had been fully informed of the circumstances surrounding Edmunds' absence, and that its primary concern had been prejudice to Belill occasioned by the difficulty in getting a new trial date. Because of the court's closure due to the bad weather, the court observed, the trial would have been interrupted anyway, eliminating any prejudice. Payment of defense counsel's attorney fees would eliminate any additional prejudice, the court found:

> And one of the big reasons why I did come down on that was I thought that there was prejudice toward the defense in that they were not going to get their case heard. The case was set for February. It's very difficult for the Court to get civil trials to go because of I've got so many murder cases. I was threading the needle. We had a plan to do it and the fact that we weren't going to be able to go meant that we wouldn't be able to try it then and I wouldn't - - I didn't know when we would be able to try it.
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> But subsequent to that, okay, we had the snow days, and I didn't know it at the time that I made the decision, but upon - - after the week went by, it became clear to me that even if we would have gone to trial on the date that we set the trial for, we would not have been able to have the trial completed, and it would have necessitated the adjournment of the trial anyways, and that was the major reason I thought that, you know, the tough decision, it came out in favor of granting the default because of that concern about the prejudice.
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> But it turns out that that is not how it played out. Even if Mr. Edmunds hadn't gotten sick, we still would not have been able to do it and I thought that it would be months and months that would go by before we would get it rescheduled. It turns out that that also is not the case because my staff was able to schedule it within 30 days of when we thought we were going to try it.
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> So, there was a lot that happened and whether you want to call that palpable error, whether you want to call it a failure to predict the weather, whatever, you know, that I think can constitute a reason why the Court would be able to reconsider, but I will say this, the Court has the authority even just because it wants to, it has the discretion to give a redo even without any change in the dynamics. The court has the authority to do that.

The court granted the Taylors' motion for reconsideration, set aside the order dismissing their claim and set aside the default related to Belill's counterclaim.

After a three-day trial, the jury found that Belill had created a condition on his property that interfered with the Taylors' ability to use and enjoy their property, and awarded the Taylors $1,000. The jury returned a verdict of no cause of action on Belill's counterclaim. After considering competing proposals to abate the nuisance, the trial court adopted the recommendations of the Taylors' expert. The trial court's order directed Belill to

> within 90 days, either install a swale, restore his back yard to pre-construction conditions, and plug or remove his drain tiles . . . or pay to have the work done. The swale must be dug to the size and grade recommended by [the Taylors']

> engineer in the attached letter. When removing the back yard fill, the pre-construction conditions are to be determined using soil samples. Upon completion of the work, it is to be approved by the same engineer, who will notify the court that the project has been approved.

Defense counsel objected to the order, asserting that the township would not issue a permit allowing Belill to place a pond in his backyard. The Taylors' counsel noted that the court did not order Belill to install a pond on his property, and represented that township officials who reviewed the order agreed that Belill could legally comply with it. If Belill did not follow the expert's recommendations, counsel offered, he could instead excavate his backyard and install 20 more drain tiles, at substantially greater cost. Given this information, defense counsel agreed to ask the township what Belill needed to do to comply with the court's order. The court stated that it planned to close the case but would revisit the options for abating the nuisance if Belill was legally precluded from complying with the court's order.

II. THE GRANT OF RECONSIDERATION

Belill challenges the merits of the trial court's decision to grant reconsideration, as well as its procedural form. We address these contentions separately.

A. THE MERITS OF THE TRIAL COURT'S RECONSIDERATION DECISION

Belill argues that the trial court abused its discretion by granting the Taylors any relief from the dismissal and the default. We view the situation differently. Had the shoe been on the other foot, we have no doubt but that defense counsel would have insisted on an adjournment. Counsel's severe illness was a more than adequate reason to adjourn the trial, and the court did not err by coming to this conclusion after gaining a fuller understanding of the facts.

We review a trial court's decision on a motion for reconsideration for an abuse of discretion. *K & W Wholesale, LLC v Dep't of Treasury*, 318 Mich App 605, 611; 899 NW2d 432 (2017). We also review for an abuse of discretion a trial court's decision to grant or deny a motion to set aside a default. *Huntington Nat'l Bank v Ristich*, 292 Mich App 376, 383; 808 NW2d 511 (2011). A trial court abuses its discretion when it selects an outcome outside the range of reasonable and principled outcomes. *Id*. We review any related findings of fact for clear error, and review de novo the interpretation and application of a statute or court rule. *Vittiglio v Vittiglio*, 297 Mich App 391, 397-398; 824 NW2d 591 (2012).

MCR 2.119(F)(3) provides:

> Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

This Court has repeatedly held that MCR 2.119(F)(3) affords a trial court significant discretion to grant reconsideration. Indeed, this Court has stated that "if a trial court wants to give

a second chance to a motion it has previously denied, it has every right to do so, and . . . MCR 2.119(F)(3) does nothing to prevent this exercise of discretion." *Kokx v Bylenga*, 241 Mich App 655, 659; 617 NW2d 368 (2000) (cleaned up). Under this court rule, "a trial court has unrestricted discretion to review its previous decision." *Prentis Family Foundation, Inc v Karmanos Cancer Institute*, 266 Mich App 39, 52; 698 NW2d 900 (2005). "All this rule does is provide the trial court with some guidance on when it may wish to deny motions for rehearing." *Smith v Sinai Hosp of Detroit*, 152 Mich App 716, 723; 394 NW2d 82 (1986). Further, MCR 2.119(F)(3) "does not categorically prevent a trial court from revisiting an issue even when the motion for reconsideration presents the same issue already ruled on; in fact, it allows considerable discretion to correct mistakes." *Macomb Co Dep't of Human Servs v Anderson*, 304 Mich App 750, 754; 849 NW2d 408 (2014).

Both parties cite *Vicencio v Ramirez*, 211 Mich App 501; 536 NW2d 280 (1995), as support for their positions. *Vicencio* sets forth factors a trial court should consider when deciding what to do when a party fails to appear for trial. In *Vicencio*, this Court stated:

> A court, in its discretion, may dismiss a case with prejudice or enter a default judgment when a party or counsel fails to appear at a duly scheduled trial. MCR 2.504(B)(1); *Zerillo v Dyksterhouse*, 191 Mich App 228, 230; 477 NW2d 117 (1991). . . .
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> * * *
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> Dismissal is a drastic step that should be taken cautiously. *Barlow v John Crane–Houdaille, Inc*, 191 Mich App 244, 251; 477 NW2d 133 (1991). Before imposing such a sanction, the trial court is required to carefully evaluate all available options on the record and conclude that the sanction of dismissal is just and proper. *Hanks v SLB Mgt, Inc*, 188 Mich App 656, 658, 471 NW2d 621 (1991). Here, because the trial court did not evaluate other available options on the record, it abused its discretion in dismissing the case. *Id*.; *Houston v Southwest Detroit Hosp*, 166 Mich App 623, 631; 420 NW2d 835 (1987).
>
> Moreover, under these facts, dismissal was inappropriate. Our legal system favors disposition of litigation on the merits. *North v Dep't of Mental Health*, 427 Mich 659, 662, 397 NW2d 793 (1986). This Court has summarized some of the factors that a court should consider before imposing the sanction of dismissal: (1) whether the violation was wilful or accidental; (2) the party's history of refusing to comply with previous court orders; (3) the prejudice to the opposing party; (4) whether there exists a history of deliberate delay; (5) the degree of compliance with other parts of the court's orders; (6) attempts to cure the defect; and (7) whether a lesser sanction would better serve the interests of justice. *Dean v Tucker*, 182 Mich App 27, 32-33, 451 NW2d 571 (1990). This list should not be considered exhaustive. *Id*. at 33. [*Vicencio*, 211 Mich App at 506-507.]

When making its initial decision, the trial court briefly considered alternatives to dismissal. The court principally focused on what it viewed as an apparently willful violation of the secretary's

instruction to appear for trial, and the perceived prejudice to Belill in rescheduling at a much later date. The court did not specifically review the *Vicencio* factors on the record.

Nevertheless, we find no abuse of discretion. The court acknowledged that it was unaware of the totality of the circumstances surrounding the Taylors' counsel's absence on the day of trial, and added that it certainly would have allowed an adjournment if Edmunds or Lavalle had appeared in court and asked to reschedule. The court observed that the weather would have prevented the trial anyway, and that reimbursement of defense counsel's attorney fees for that day would mitigate any additional prejudice.

The *Vicencio* factors strongly support the trial court's decision. Belill does not contend that counsel's failure to appear was a deliberate delaying tactic or part of a history of noncompliance. The trial court admitted that its original understanding of the circumstances had been mistaken, and that there may have been some confusion about whether trial would proceed on the original date. The record reveals communication failures, not deliberate misconduct. The court's recognition of its own possible role in the miscommunications amply supports its decision to revisit whether counsel's absence warranted dismissal and a default.

Belill also finds fault with the court's "hindsight" consideration of the weather's impact on the prejudice equation, but offers no legal support for his argument. Because a trial court has broad discretion to grant reconsideration, we are not persuaded that the court's consideration of the impact of later developments was improper.

As further discussed below, we also do not find persuasive Belill's argument that the Taylors were also required to satisfy the good-cause requirement in MCR 2.603(D)(1) to warrant reconsideration of the dismissal decision. As to the default, the facts underlying the trial court's reconsideration decision support a finding of good cause. For purposes of setting aside a default, good cause may be established by showing: "(1) a procedural irregularity or defect, or (2) a reasonable excuse for not complying with the requirements that created the default." *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639, 653; 617 NW2d 373 (2000). Edmunds's sudden illness and the contacts between his office and the court to advise the court of his situation established "a reasonable excuse for not complying with the requirement that created the default." The misunderstandings or miscommunication between counsel, counsels' paralegal, the court, and the court's administrative secretary, lend additional "good cause" for the court's decision.

In sum, we find no abuse of discretion in the court's grant of reconsideration, reinstatement of plaintiffs' claim, and its finding of good cause to set aside the default.

B. BELILL'S PROCEDURAL ARGUMENTS

Belill strongly objects to the *form* of the Taylors' motion for relief from the trial court's order of dismissal and default. The Taylors were required to move to set aside the default under MCR 2.603(D)(1), Belill posits, and the court erred by granting relief in the absence of a motion brought under that rule. This argument elides the *substance* of the Taylors' motion and ignores the guiding principle of our court rules: "These rules are to be construed, administered, and employed by the parties and the court to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of

the parties." MCR 1.105. While the form of the Taylors' motion may have been incorrect technically, its substance fulfilled the requirements of MCR 2.603(D)(1). We discern no abuse of discretion in the trial court's decision to overlook any procedural error.

1. THE TAYLORS' FILING OF A MOTION UNDER MCR 2.119(F) TO SEEK RECONSIDERATION

Belill first argues that because the trial court's initial decision involved a default in addition to a dismissal, the Taylors should have invoked MCR 2.603(A)(3). That court rule provides:

> **(A) Entry of Default; Notice; Effect.**
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> * * *
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> (3) After the default of a party has been entered, *that party may not proceed with the action until the default has been set aside* by the court in accordance with subrule (D) or MCR 2.612.
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> * * *
>
> **(D) Setting Aside Default or Default Judgment.**
>
> (1) A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, *shall be granted only if good cause is shown and a statement of facts showing a meritorious defense, verified in the manner prescribed by MCR 1.109(D)(3)*, is filed.
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> * * *
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> (3) In addition, the court may set aside a default and a default judgment in accordance with MCR 2.612. [Emphasis added.]

The trial court initially dismissed plaintiffs' claim and allowed entry of a default on defendant's counterclaim. Belill argues that the trial court erred by entertaining a motion seeking reconsideration of both orders absent a motion to set aside the default. We find any procedural error utterly harmless.

Although the Taylors' motion was designated as a motion for reconsideration, "[a] court is not bound by what litigants choose to label their motions because this would exalt form over substance. Rather, courts must consider the gravamen of the complaint or motion based on a reading of the document as a whole." *Lieberman v Orr*, 319 Mich App 68, 77 n 4; 900 NW2d 130 (2017) (cleaned up). See also *Ellsworth v Highland Lakes Dev Assoc*, 198 Mich App 55, 57-58, 498 NW2d 5 (1993) ("The mislabeling of a motion does not preclude review where the lower court record otherwise permits it."). Although the Taylors moved for reconsideration, their motion also specifically requested that the court set aside the default. In addition, when defense counsel argued that the Taylors were required to bring a motion to set aside the default, the Taylors' counsel suggested that the court treat their motion as seeking to set aside the default. We note that because the trial court originally granted both a dismissal and a default, a motion brought under MCR 2.603

alone would not have addressed the dismissal of the Taylors' nuisance claim. The Taylors' hybrid motion sought to set aside both determinations and Belill has not demonstrated that he is entitled to relief merely because the default-related arguments were folded into a motion for reconsideration.

We also disagree that MCR 2.603(A)(2) prohibited the Taylors from "proceeding with the action" by seeking reconsideration of the dismissal before the default was set aside. As the trial court noted, the Taylors asked the trial court to reconsider both the default and the dismissal so that they could then "proceed with the action" in a trial. No one "proceeded" before the default was set aside.

Belill implies, although does not fully brief, the notion that reconsideration was improper because the Taylors did not supply "good cause" or file affidavits supporting "a meritorious defense" under MCR 2.603(A)(3) and (D). Edmunds' sudden and severe illness was a "reasonable excuse" for his failure to appear at trial. *Barclay*, 241 Mich App at 653. And the affidavit requirement Belill cites was removed from MCR 2.603(D)(1) with an amendment effective May 1, 2019. Although the Taylors' motion was brought before that date, the trial court's order granting the motion and setting aside the default was not entered until October 2019. At that time, the Taylors were only required to present "a statement of facts showing a meritorious defense, verified in the manner prescribed by MCR 1.109(D)(3)." MCR 2.603(D)(1). The Taylors satisfied that requirement by filing a signed trial brief

Almost 30 years ago, our Supreme Court declared that "[p]rocedure should be the handmaid of justice, a means to an end," rather than "an end in itself . . . oblivious to the practical needs of those to whose ills it is designed to minister." *Allstate Ins Co v Hayes*, 442 Mich 56, 64; 499 NW2d 743 (1993) (cleaned up). This pronouncement remains compelling. We decline to adopt a formalistic construction of the court rules that would overturn a discretionary decision grounded in a thorough evaluation of the facts, and that would have resulted in the elimination of what proved to be a valid claim.

2. PALPABLE ERROR UNDER MCR 2.119(F)

Belill makes an unusual and perplexing argument that the trial court erred by granting relief under MCR 2.119(F) despite that the Taylors never demonstrated that the trial court, rather than the Taylors and their counsel, committed any palpable error. Belill also claims that the trial court was not permitted to consider events that occurred after the court made its prior decision in determining whether to grant reconsideration.

The trial court *did* err by dismissing the case and granting a motion for default based on a misunderstanding of the facts. This was a "palpable error by which the court and the parties" were misled. Nothing more need be shown.

And because MCR 2.119(F) does not limit what a court may take into account on reconsideration, we will not read any temporal limitations into the rule. *Byker v Mannes*, 465 Mich 637, 646-647; 641 NW2d 210 (2002). Indeed, this Court has held that MCR 2.119(F)(3) does not prevent a trial court from exercising its discretion to grant reconsideration as it sees fit. See *Anderson*, 304 Mich App at 754; *Prentis Family Foundation, Inc*, 266 Mich App at 52; *Kokx*, 241

Mich App at 659; *Smith*, 152 Mich App at 723. Accordingly, we find no error in the trial court's consideration of circumstances arising after its original decision.

III. PAYMENT OF COSTS AS A PREREQUISITE TO SEEKING RELIEF

Belill asserts that the trial court erred by failing to require the Taylors to pay defense counsel's costs related to the default before reinstating their dismissed claim and setting aside the default. MCR 2.603(D)(4) provides:

> An order setting aside the default or default judgment must be conditioned on the defaulted party paying the *taxable costs* incurred by the other party *in reliance on the default or default judgment*, except as prescribed in MCR 2.625(D). The order may also impose other conditions the court deems proper, including a reasonable attorney fee. [Emphasis added.]

In turn, MCR 2.625(D) provides, in pertinent part:

> **(D) Costs When Default or Default Judgment Set Aside.** The following provisions apply to an order setting aside a default or a default judgment:
>
> (1) If personal jurisdiction was acquired over the defendant, the order must be conditioned on the defendant's paying or securing payment to the party seeking affirmative relief the taxable costs incurred in procuring the default or the default judgment and acting in reliance on it[.]

Preliminarily, we note that MCR 2.603(D)(4) distinguishes between taxable costs and a reasonable attorney fee, and Belill does not suggest that he incurred any actual taxable costs in procuring the default. The Taylors' counsel agreed to compensate Belill for his counsel's time as a condition of setting aside the default. The trial court's order granting reconsideration and setting aside the default specifically stated that "[d]efendant is entitled to costs, the amount to be litigated separately." The court subsequently conducted a hearing and awarded Belill $600 as a reasonable attorney fee. Although MCR 2.625(D)(1) provides that an order setting aside a default must be conditioned on the defaulted party paying the other party's taxable costs, the record reveals no evidence of costs, rendering this argument meritless.

In his reply brief, Belill asserts for the first time that the award of $600 was woefully inadequate. To the extent that this statement is an argument, it is not properly before this Court. "Reply briefs must be confined to rebuttal, and a party may not raise new or additional arguments in its reply brief." *Kinder Morgan Mich, LLC v City of Jackson*, 277 Mich App 159, 174; 744 NW2d 184 (2007). Accordingly, we decline to consider any challenge to the amount awarded.

IV. EQUITABLE REMEDY

Belill complains that the trial court improperly retained "perpetual jurisdiction" over this case in its order granting equitable relief. The record does not support this argument.

We review a trial court's decision to grant equitable relief de novo. *Walker v Farmers Ins Exch*, 226 Mich App 75, 79; 572 NW2d 17 (1997). However, this Court will not disturb the court's

findings unless it would have arrived at a different result had it been in the position of the trial court. *Biske v City of Troy*, 381 Mich 611, 613; 166 NW2d 453 (1969).

The jury returned a verdict in favor of the Taylors on their claim for nuisance. The trial court was then obligated to fashion an appropriate remedy to abate the nuisance. In other cases, this Court has held that a trial court should "tailor the remedy to the problem, to abate the nuisance without completely destroying the business in which the nuisance originates." *Norton Shores v Carr*, 81 Mich App 715, 724; 265 NW2d 802 (1978). Specifically, "[e]quity will not abate a lawful continuing business as a nuisance when it is possible to eliminate objectionable features which infringe upon the ordinary rights of others." *Id*.

After hearing from experts, the trial court crafted a remedy that would abate the nuisance while minimizing Belill's costs and preserving his garage. Contrary to Belill's argument, the court did not require him to build a pond in violation of the township's zoning ordinance, and defense counsel acknowledged that the township would permit Belill to comply with the court's order. Although the trial court stated that it would revisit the equitable options if compliance was legally impossible, this is simply not equivalent to "perpetual jurisdiction." Belill has not established any error.

We affirm. As the prevailing party, the Taylors may tax costs. MCR 7.219(A).

/s/ Karen M. Fort Hood
/s/ Jane E. Markey
/s/ Elizabeth L. Gleicher