

STATE OF MICHIGAN
COURT OF APPEALS

RANDIE K. GRIER,

Plaintiff-Appellant

and

ANGELA ISBY

Plaintiff

v

SUNSHINE AUTO COLLISION INC., a/k/a
SUNSHINE AUTO COLLISION CORP., a/k/a
SUNSHINE AUTO COLLISION CO., and
HAZZAN GHAZALI

Defendants-Appellees

and

KAREN ANDERSON, JUNE L. FOSTER and
CURTIS THURSTON,

Defendants

UNPUBLISHED

November 20, 2007

No. 273297

Wayne Circuit Court

LC No. 05-515942-CH

Before: Servitto, P.J., and Sawyer and Murray, JJ.

PER CURIAM.

I. Introduction

Randie K. Grier appeals as of right the trial court's August 31, 2006, order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(5) and (C)(8), and denying Grier's motion for a declaratory judgment quieting title to the disputed property. On appeal, Grier argues that the trial court erred when it granted defendants' motion for summary disposition and subsequently dismissed his complaint based on a lack of standing, and further erred when it denied his motion for a declaratory judgment quieting title. We hold that the trial court did not err when it dismissed Grier's complaint pursuant to MCR 2.116(C)(5) and (C)(8), and furthermore, did not err when it denied Grier's motion for a declaratory judgment quieting

title. Nevertheless, we find that remand is necessary to allow Grier the opportunity to amend his complaint.

II. Procedural History

On May 27, 2005, plaintiffs, in pro per, filed a complaint seeking to quiet title to property located at 16800 Plymouth Road in Detroit, Michigan (the property). The complaint alleged fraud, misrepresentation, trespass to real property, intentional infliction of emotional distress, tortious interference with a contract, abuse of process, and slander of title against defendants. Plaintiffs' complaint factually alleges that Kevin Williams, who has been in prison since December 19, 2002, purchased the property on July 13, 1999, from William McApline. McApline's attorney, Vincent Giovanni, subsequently held Williams' warranty deed to the property in escrow. On September 3, 2003, Curtis Thurston, concocted a fraudulent power of attorney from Williams. Thurston then fraudulently leased the property to Sunshine Auto Collision Inc and Hazzan Ghazali. On November 9, 2003, Ghazali became aware that Thurston did not own the property, and thus, although Sunshine and Ghazali continued to occupy the property, they refused to make further lease payments. On November 14, 2003, Ghazali, Karen Anderson and June Foster recorded a fraudulently signed quitclaim deed that purported to have been signed by Williams, who was still in prison.¹ The fraudulent deed denied plaintiffs² of their interest in the property, which was later "properly transferred to them" from Williams on June 24, 2004.

Defendants deny plaintiffs allegations that they concocted a fraudulent quitclaim deed from Williams to Ghazali, and factually allege that Ghazali received a valid quitclaim deed from Williams, which was given for monetary consideration of \$28,500. Defendants allege that Isby's deed from Williams, and Grier's deed from Isby are both fraudulent, and that Grier was never deeded the property. It is defendants' belief that Grier is committing the unauthorized practice of law because he is only involved in this case to assist Isby in presenting her case without an attorney, which is evidenced by the fact that Grier only became involved in this matter after Isby's initial case (with Williams as a co-plaintiff) was dismissed, with Isby complaining that her attorneys' "bungled" her case, and by Isby's deposition statements that she paid Grier \$1500 for legal advise.

On July 8, 2005, defendants, Sunshine and Ghazali, filed a motion to strike plaintiffs' complaint. Defendants argued that plaintiffs' complaint should be dismissed for lack of standing because they have no interest in the property, which plaintiffs acknowledged in a prior dismissed action.³ Defendants further argued that plaintiffs' complaint should be dismissed for failure to

¹ Plaintiffs' allegations of fraud are supported by Williams' affidavit statements that he never deeded the property to Ghazali, and in fact has never met Ghazali.

² Although the complaint states that *plaintiffs* were denied their interest in the property that was later transferred to *them* from Williams, it should be noted that plaintiffs only stated facts alleging that Williams transferred the property to Isby. Plaintiffs never alleged in the complaint that Williams transferred the property to Grier.

³ The record reflects that Isby and Williams filed a prior complaint against defendants to quiet
(continued...)

state a claim upon which relief can be granted, or alternatively, for failing to properly serve defendants with the summons and complaint.

After reviewing defendants' motion to strike, which the trial court properly addressed as a motion for summary disposition pursuant to MCR 2.116(C)(3), (5) and (8), the trial court granted in part defendants' motion. The trial court specifically found that since an attorney had entered an appearance on behalf of defendants and filed "the motion currently under consideration," defendants waived any service of process objections, and accordingly, summary disposition under MCR 2.116(C)(3) was not appropriate. The trial court further found that summary disposition under MCR 2.116(C)(5) was not appropriate because "a question of fact exists as to whether or not plaintiffs have standing to bring this action." Finally, the trial court found that plaintiffs failed to establish prima facie cases of fraudulent misrepresentation, intentional infliction of emotional distress, and abuse of process, but did plead prima facie cases of trespass, tortious interference with a contract, and slander of title. Accordingly, the trial court granted defendants' motion for summary disposition, pursuant to MCR 2.116(C)(8), regarding plaintiffs' fraudulent misrepresentation, intentional infliction of emotional distress, and abuse of process claims, and denied defendants' motion for summary disposition in regard to plaintiffs' trespass, tortious interference with a contract, and slander of title claims. On April 5, 2006, the trial court entered an order dismissing Isby with prejudice for her "fail[ure] to appear" at relevant proceedings. The order further noted that it "closes the case regarding [Isby]."

Shortly after Isby was dismissed with prejudice, defendants filed a motion to dismiss Grier's complaint, arguing that Grier lacked standing because Grier's only alleged interest in the property would need to stem from a finding that Isby (who Grier alleges deeded him the property) had a valid deed to the property from Williams, and Isby had been dismissed. Defendants alternatively argued that Grier lacked standing because, since Greir's alleged deed from Isby was not executed until July 15, 2005, Grier could not have suffered any damages as a result of defendants' alleged improper actions, which took place in 2003. On April 24, 2006, Grier filed his answer to defendants' motion, arguing that defendants could not re-raise the standing issue because the trial court's December 22, 2005, order already stated that "a question of fact exists as to whether or not plaintiffs have standing to bring this action," and that the issue would be determined at trial. Grier further argued that even if defendants could re-raise the issue, he had standing because he has an equitable and legal interest in the property. In the instance the trial court found that Grier did not have standing, Grier alternatively requested that the trial court allow him to amend his complaint to reflect that he has standing (i.e. ground to file a motion to quiet title based on his equitable and/or legal interest in the property). On May 5, 2006, defendants filed a response to Greir's answer, arguing that Grier did not have an equitable interest in the property simply because he gave Isby money to pay property taxes, and that even if he did, his interest would only be enforceable against Isby, who had been dismissed. Defendants further noted that Grier's request to amend his complaint was untimely and "would not alleviate the problem of [Isby's] dismissal," and therefore, should be denied.

(...continued)

title on July 12, 2004, alleging that Williams gave Isby power of attorney, Isby subsequently contacted McAlpine and had him release to her the warranty deed, and thus, Isby owned the property.

On July 19, 2006, Grier filed a motion for declaratory judgment to quiet title,⁴ asking the trial court to declare that the deed defendants received from Williams was fraudulent and the deed Grier subsequently received from Isby (via Williams) was valid. On July 26, 2006, defendants filed a response to Grier's motion, arguing that the motion should be denied because Grier lacked standing to pursue the declaratory judgment.

After reviewing defendants' motion to dismiss Grier's complaint, and Grier's motion for a declaratory judgment quieting title,⁵ the trial court issued an opinion and order granting defendants' motion and denying Grier's motion. The trial court granted defendants' motion based on its finding that Grier lacked standing to pursue all the remaining claims because they all "occurred with respect to Isby's purported title to the property," and since Isby was dismissed as a party and Grier "did not hold title to the subject property when the complaint was filed [and never amended his complaint to reflect his alleged interest that was allegedly later transferred to him from Isby], he cannot establish that he suffered any injury in fact as a result of the acts alleged in the complaint." The trial court denied Grier's motion based on its finding that Grier "failed to plead facts entitling him to a declaratory judgment quieting title in his favor," because he was not a part of the chain of title to the property when he filed his action to quiet title, and alternatively, because his complaint to quiet title did not meet the requirements set forth in MCR 3.411. Grier appeals as of right.

III. Analysis

Grier first argues that the trial court erred when it dismissed his complaint pursuant to MCR 2.116(C)(5) and (C)(8), finding that he lacked standing to bring the complaint. We review a trial court's decision to grant or deny summary disposition under MCR 2.116(C)(5), as well as whether a party has standing, de novo, *Franklin Historic Dist Study Comm v Village of Franklin*, 241 Mich App 184, 187; 614 NW2d 703 (2000), reviewing the pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties to determine whether the moving party is entitled to judgment as a matter of law. MCR 2.116(G)(5); *Kuhn v Secretary of State*, 228 Mich App 319, 333; 579 NW2d 101 (1998). We also review de novo a trial court's decision to grant or deny summary disposition pursuant to MCR 2.116(C)(8), reviewing the legal sufficiency of a plaintiff's complaint on the pleadings alone to determine whether the claims are "so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *Maiden v Rozwood*, 461 Mich 109, 118-120; 597 NW2d 817 (1999), quoting *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992).

"An action must be prosecuted in the name of the real party in interest." MCR 2.201(B); MCL 600.2041. "A real party in interest is one who is vested with a right of action in a given claim, although the beneficial interest may be with another." *MOSES, Inc v Southeast Michigan Council of Governments*, 270 Mich App 401, 415; 716 NW2d 278 (2006), quoting *Rohde v Ann*

⁴ Grier's motion for declaratory judgment to quiet title was filed by his attorney, Ralph Richardson. This is the only document that Grier did not file pro per.

⁵ The trial court dispensed with oral argument pursuant to MCR 2.119(E)(3).

Arbor Pub Schools, 265 Mich App 702, 705; 698 NW2d 402 (2005). In addition to having a personal stake in the outcome of litigation sufficient to ensure vigorous advocacy, a party must have, in an individual or representative capacity, some real interest in the cause of action, or a legal or equitable right, title or interest in the subject matter of the controversy. *Id.* at 412, 414. To establish standing, a plaintiff must show: (1) an injury in fact, consisting of an invasion of a legally protected interest which is concrete and particularized, and actual or imminent; (2) a causal connection between the injury and the conduct of which he complains; and (3) that it is likely that the injury will be redressed by a favorable decision. *Id.* at 413.

Here, the factual allegations in plaintiffs' complaint regarding plaintiffs' request to quiet title, and Grier's remaining claims of trespass, tortious interference with a contract, and slander of title, have a basis only with respect to Isby's alleged title to the property. Plaintiffs' complaint does not allege that Grier had any interest in the property at the time the aforementioned alleged claims took place. Accordingly, Grier cannot establish that he suffered an injury in fact as a result of the defendants' alleged acts in the complaint. We therefore hold that since Isby was previously dismissed with prejudice and Grier was the only remaining plaintiff, the trial court did not err when it granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(5) and (C)(8). *MOSES, Inc, supra* at 412-414.

Next, Grier argues that the trial court erred when it denied his motion for a declaratory judgment to quiet title. Requests for declaratory relief and to quite title are actions in equity, the grant or denial of which we review de novo. *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001); *Lake Angelus v Oakland Co Rd Comm*, 194 Mich App 220, 223; 486 NW2d 64 (1992).

A declaratory judgment is “[a] binding adjudication of the rights and status of litigants ... [which] is conclusive in a subsequent action between the parties as to the matters declared...” Black's Law Dictionary (6th ed.), p. 409. A declaratory judgment is a procedural remedy that allows parties to avoid multiple litigation by enabling them “to seek a determination of questions formerly not amenable to judicial determination.” *Associated Builders and Contractors v. Director of Consumer & Industry*, 472 Mich 117, 124; 693 NW2d 374 (2005). “The plain text of the declaratory judgment rule makes clear that the power to enter declaratory judgments neither limits nor expands the subject-matter jurisdiction of the court.” *Id.* at 124-125. In order to issue declaratory relief there must be an actual case in controversy, and the party seeking relief must be an interested party, thereby incorporating traditional restrictions on justiciability such as standing, ripeness, and mootness. *Id.* at 125. To be an interested party, the party seeking relief must demonstrate an interest that will ensure sincere and vigorous advocacy. *Id.* at 125-126. An actual controversy exists if a declaratory judgment is necessary to guide the plaintiff's future conduct in order to preserve his legal rights. *Id.* Before affirmative declaratory relief can be granted, it is essential that a plaintiff, at a minimum, plead facts entitling him to the judgment he seeks. *Demido v Kelly*, 100 Mich App 254, 257; 299 NW2d 43 (1980).

Here, as previously discussed, after Isby was dismissed with prejudice, Grier lacked standing to bring plaintiffs' complaint seeking to quiet title to the property. Grier is therefore not an interested party entitled to seek declaratory relief. *Associated Builders and Contractors, supra* at 124-125. Furthermore, as properly pointed out by the trial court, plaintiffs' complaint to quiet title did not meet “the requirements set forth in MCR 3.411 for a complaint to quiet title” because the complaint did not “describe the land in question with reasonable certainty,” and

because plaintiffs failed to attach “a statement of the title on which [plaintiff’s relied], showing from whom the title was obtained and the page and book where it appears of record” to the complaint. See MCR 3.411(B) and (C). Accordingly, the trial court did not err when it denied Grier’s motion for a declaratory judgment to quiet title.

Finally, Grier argues in the alternative that the trial court should have allowed him to amend his complaint and motion for a declaratory judgment to quiet title to reflect his alleged newly acquired interest in the property. We review a trial court’s decision to permit a party to amend his pleadings for an abuse of discretion. *Franchino v Franchino*, 263 Mich App 172, 189; 687 NW2d 620 (2004). To constitute an abuse of discretion in the denial of leave to amend a pleading, the result must be so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias. *Id.* at 193.

A party may amend its pleadings at any time before judgment is rendered by leave of the court when justice so requires. MCL 600.2301; MCR 2.118(A)(2); *Franchino, supra* at 189-190. If a trial court grants summary disposition on the basis of failure to state a claim, it must give the parties an opportunity to amend their pleadings unless the amendment would be futile. MCR 2.116(I)(5); *Yudashkin v Holden*, 247 Mich App 642, 651; 637 NW2d 257 (2001). An amendment would be futile if: (1) ignoring the substantive merits of the claim, it is legally insufficient on its face, (2) it merely restates allegations already made, or (3) it adds a claim over which the court lacks jurisdiction. *PT Today, Inc v Commissioner of the Office of Financial and Insurance Services*, 270 Mich App 110, 143; 715 NW2d 398 (2006).

In Grier’s answer to defendants’ motion to dismiss his complaint, he alternatively requested that the trial court allow him to amend his complaint to reflect that several months after the initial complaint was filed, Isby quitclaim deeded him the property. In the trial court’s opinion and order dismissing Grier’s complaint and denying his motion for a declaratory judgment to quiet title, the trial court recognized that Grier had not amended his complaint, but then did not address Grier’s request to amend his complaint. Grier requests that pursuant to MCR 7.216(A)(1), this Court allow him to amend his complaint so that it can be modified to be in conformity with MCR 3.411, and so that it reflects his newly acquired interest in the property via a quitclaim deed from Isby dated July 15, 2005.

Given that Grier’s proposed amendment would arguably establish that he has an interest in the property,⁶ and that the trial court denied his motion for declaratory judgment to quiet title based on its finding that Grier lacked standing because he did not hold title to the subject property and was not in the chain of title to the property, it would not be futile to allow Grier to amend his complaint. *PT Today, Inc, supra* at 143. Given the trial court’s failure to address Grier’s request to amend, we therefore remand this matter to the trial court to allow Grier to

⁶ On remand, the parties and trial court are free to determine the legitimacy of any deed, as well as the transaction between Isby and Grier. We note that the purchase agreement between Isby and Grier does not indicate how it will be financed, does not contain a closing date, or contain any other relevant information regarding the finalizing of the purchase.

move to amend his complaint to comply with MCR 3.411, and reflect his alleged newly acquired interest in the property. MCR 2.116(I)(5); *Yudashkin, supra* at 651.⁷

We are also compelled to address defendants' concern that Grier may be engaging in the unauthorized practice of law. MCL 600.916(1) provides:

A person shall not practice law or engage in the law business, shall not in any manner whatsoever lead others to believe that he or she is authorized to practice law or to engage in the law business, and shall not in any manner whatsoever represent or designate himself or herself as an attorney and counselor, attorney at law, or lawyer, unless the person is regularly licensed and authorized to practice law in this state. A person who violates this section is guilty of contempt of the supreme court and of the circuit court of the county in which the violation occurred, and upon conviction is punishable as provided by law. This section does not apply to a person who is duly licensed and authorized to practice law in another state while temporarily in this state and engaged in a particular matter. [(Emphasis added.)]

The practice of law by one who has no license is unauthorized, whether done by him in person or through his agent. *Petitions of Ingham County Bar Ass'n v Walter Neller Co*, 342 Mich 214, 233; 69 NW2d 713 (1955). The purpose of the prohibition against the unauthorized practice of law is to protect the public from untrained legal counsel and incorrect legal advice. *Dressel v Ameribank*, 247 Mich App 133, 137-138; 635 NW2d 328 (2001), rev'd on other grounds 468 Mich 557 (2003). The determination of what constitutes the unauthorized practice of law is within the discretion of the court. *Id.* at 137. For an individual to commit the unauthorized practice of law, it must be found that he or she counseled or assisted another in matters that require the use of legal discretion and profound legal knowledge. *Dressel v Ameribank*, 468 Mich 557, 567-569; 664 NW2d 151 (2003). The preparation of an ordinary mortgage by completion of a form, or the completion of any standard legal form, is not considered the practice of law unless legal knowledge or discretion was involved in the document's completion. *Dressel, supra* at 567-569.

Here, Grier, who held himself out to Isby as a "management consultant," is not authorized to practice law in this state. Nevertheless, in regard to Isby's previous lawsuit, Isby testified that she paid Grier \$1,500 "for consultation on what [she] needed to do next" after one of her cases was dismissed, obtained advice regarding evicting individuals from one of her alleged properties and on how to get a quitclaim deed set aside on grounds of fraud. Isby stated that Grier got the "ball rolling," pointed out errors in her complaint to quiet title, advised her to go to the 36th District Court, and showed her how she could file legal paperwork on her own. Moreover, after Isby's initial case was dismissed, she and Grier subsequently filed a pro per

⁷ We note that Grier is only allowed to amend his complaint in regard to his motion to quiet title. Any amendment in regard to Grier's remaining claims of trespass, tortious interference with a contract, and slander of title would be futile because Grier does not allege that he had any interest in the property at the time that the aforementioned causes of action arose.

complaint in the case at hand despite the fact that the complaint did not allege that Grier had any interest in the disputed property. Whether Grier's actions constitute the unauthorized practice of law is left to the trial court to consider on remand, who has the authority to take appropriate action. MCL 600.916(1).⁸

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

/s/ Deborah A. Servitto
/s/ David H. Sawyer
/s/ Christopher M. Murray

⁸ At oral argument before this Court, Grier stated that the State Bar of Michigan investigated the allegations of unauthorized practice of law raised in this case, but eventually closed this matter. We could not confirm or deny that fact with the State Bar.