STATE OF MICHIGAN

COURT OF APPEALS

MAURICE R. GRIGGS, Plaintiff-Appellant,	UNPUBLISHED May 21, 2013
v	No. 309133 Oakland Circuit Court
GERALDINE HAMILTON, Defendant-Appellee.	LC No. 2010-109709-CK

Before: CAVANAGH, P.J., and SAAD and RIORDAN, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court order granting summary disposition to defendant. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I. FACTUAL BACKGROUND

Plaintiff filed a complaint against his mother, defendant, alleging breach of contract, fraud, unjust enrichment, and conversion. Plaintiff alleged that he loaned defendant $46,000 and, in return, she promised to use the money to repair a home she owned. Plaintiff further alleged that, as part of the deal, his mother promised to sell the home, repay plaintiff, and split the profits from the sale of the home with plaintiff. According to plaintiff, defendant did not comply with the agreement and instead used the money to repair a different home that she owned. Defendant, however, denied ever entering into an agreement for a loan or receiving $46,000 from plaintiff and alleged that she was coerced into tendering a quit claim deed to plaintiff for the property at issue.

As the litigation progressed slowly through the lower court, with both parties being *in propria persona* for portions of the litigation, defendant eventually filed a motion for summary disposition pursuant to MCR 2.116(C)(8) and (C)(10). The trial court granted the motion, stating that there was no genuine issue of material fact regarding plaintiff's claims because he was unable to produce any evidence that he loaned defendant $46,000, and the evidence established that defendant quitclaimed the property to plaintiff. Plaintiff now raises several issues on appeal.

II. ANSWER & AFFIRMATIVE DEFENSES

A. Standard of Review

Plaintiff first argues that the trial court erred in refusing to admit the allegations in the complaint as admissions by defendant pursuant to MCR 2.111(C), (D) and (E). He also contends that the trial court erred in failing to find that defendant waived the affirmative defenses of impossibility and waiver. "Decisions concerning the meaning and scope of pleadings fall within the sound discretion of the trial court." *Dacon v Transue*, 441 Mich 315, 328; 490 NW2d 369, 374 (1992). A trial court abuses its discretion when it selects a decision that falls outside the range of reasonable and principled outcomes. *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 8; 753 NW2d 595 (2008).

B. Analysis

Generally, MCR 2.111(C), (D), and (E) provide that a party must state an explicit admission or denial, or claim insufficient knowledge, to each allegation in a complaint. If an allegation is not denied in the responsive pleading, it is considered admitted. MCR 2.111(E). "The primary function of a pleading in Michigan is to give notice of the nature of the claim or defense sufficient to permit the opposite party to take a responsive position." *Dalley v Dykema Gossett*, 287 Mich App 296, 305; 788 NW2d 679 (2010) (quotation marks, citation, and brackets omitted). In other words, a defendant's answer "must be sufficiently specific so that a plaintiff will be able to adequately prepare his case[.]" *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 318; 503 NW2d 758 (1993).

Here, defendant filed her answer *in propria persona*. She asserted that there was no agreement or contract, that the house had not sold because there was a lien on the property and plaintiff only wanted to sell if the title was unencumbered, and that plaintiff now was living in the house. Defendant also denied telling plaintiff that the house would be worth $100,000 or that she solicited the loan from plaintiff. Defendant stated that plaintiff instructed her to take the money from a Scottrade account and that she subsequently received a tax bill for the withdrawal. In light of these detailed responses, we find that plaintiff had notice that defendant was denying the existence of a contract or that a loan occurred, and asserting that plaintiff was living at the disputed property. When viewing the answer as a whole, we find that it provided plaintiff with sufficient notice to "prepare his case[.]" *Stanke*, 200 Mich App at 318. The trial court did not abuse its discretion in denying plaintiff's motion to strike defendant's answer or in failing to construe defendant's answer as admissions.

We also reject plaintiff's argument that defendant waived the affirmative defense of impossibility or waiver. While defendant did not use the words impossibility or waiver, and failed to delineate a separate section for affirmative defenses, she specifically stated in her answer that plaintiff now lived in the house he claimed she had agreed to fix, sell, and from which she agreed to share the profits. "This statement was sufficient to give plaintiff[] notice of the affirmative defense" of impossibility and waiver. *Paterek v 6600 Ltd*, 186 Mich App 445, 451; 465 NW2d 342 (1990).

III. DEADLINE EXTENSION

A. Standard of Review

Plaintiff also argues that the trial court erred in failing to grant him a meaningful extension of the deadline for filing dispositive motions. "This Court reviews for an abuse of discretion a trial court's decision to decline to entertain motions filed after the deadline set forth in its scheduling order." *Kemerko Clawson LLC v RXIV Inc*, 269 Mich App 347, 349; 711 NW2d 801 (2005). An abuse of discretion occurs when the trial court selects a decision outside the range of principled outcomes. *Herald Co, Inc v E Michigan Univ Bd of Regents*, 475 Mich 463, 467; 719 NW2d 19 (2006).

B. Analysis

Under MCR 2.401(B)(2), the trial court is required to establish a timeline during which the parties must perform certain actions, including the filing of relevant documents. In the instant case, the scheduling order was amended and extensions were given on several occasions, both at the request of plaintiff and defendant. On December 10, 2010, plaintiff filed his first motion to extend the trial court's scheduling order, requesting additional time to comply with discovery requests due to the withdrawal of his counsel. While the trial court amended the scheduling order, on September 14, 2011, plaintiff again filed a motion to extend some of the filing deadlines, including the deadline for summary disposition motions. The trial court again amended the scheduling dates.

However, plaintiff claims that on the date of the deadline for filing dispositive motions, the trial court's e-file system was shut down and while the trial court notified him of a brief extension, he did not receive this message until after the extension elapsed. Despite plaintiff's adamant protests on appeal that this was unfair and prejudicial, the record does not reveal how long the court's e-file system was shut down, what hours the system was shut down, or at what time plaintiff was notified of the extension. Plaintiff also was able to file a lengthy response to defendant's motion for summary disposition, in which he asserted that he was entitled to summary disposition based on MCR 2.116(C)(9) as well as MCR 2.116(I)(1) and (2). Hence, plaintiff has not established how the trial court abused its discretion in refusing to grant him a third extension.

IV. MCR 2.312 ADMISSIONS

A. Standard of Review

Plaintiff also argues that the trial court erred in failing to rule that the requests for admissions he served on defendant were deemed admitted pursuant to MCR 2.312. "This Court reviews for an abuse of discretion a trial court's decision on a party's motion to amend its admissions under MCR 2.312(D)(1)." *Bailey v Schaaf*, 293 Mich App 611, 620; 810 NW2d 641 (2011). An abuse of discretion occurs when the trial court selects an outcome that falls outside the range of reasonable and principled outcomes. *Id.* Whether the trial court complied with a court rule is a question of law, which we review de novo. *Haliw v City of Sterling Hts*, 471 Mich 700, 704; 691 NW2d 753 (2005).

B. Analysis

Pursuant to MCR 2.312(B)(1), "[e]ach matter as to which a request is made is deemed admitted unless, within 28 days after service of the request, or within a shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter." Plaintiff claims that he served his request for admissions on defendant on January 31, 2011. Defendant, who was *in propria persona*, conceded at the motion hearing on April 6, 2011, that she did not reply to the request for admissions. However, the trial court stated that defendant had 30 days within which to respond to the interrogatories and request for admissions. Despite this extension, defendant failed to file her responses within that time period.

Plaintiff, therefore, concludes that the admissions should have been deemed admitted. See *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 420; 551 NW2d 698 (1996) ("the judicial admission, unless allowed by the court to be withdrawn, is conclusive") (quotation marks and citation omitted). Yet, this argument overlooks plaintiff's own failure to comply with the court rules. According to plaintiff's motion for sanctions filed on March 30, 2011, the requests for admissions were served on defendant on January 31, 2011. MCR 2.312(F) requires that "[r]equests and responses under this rule must be filed with the court either before service or within a reasonable time thereafter." There is no evidence in the lower court record that plaintiff filed his request with the court until well after he served it on defendant, as he finally attached it to his motion to admit the admissions on November 23, 2011.

Moreover, defendant did file a response to the request for admissions, albeit an untimely one. According to MCR 2.312(D)(1), "[a] matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of an admission. For good cause the court may allow a party to amend or withdraw an admission. The court may condition amendment or withdrawal of the admission on terms that are just." Even assuming that defendant's response constitutes a motion to withdraw her admissions, the trial court failed to address or grant a withdrawal or amendment. The trial court should have determined whether good cause existed to justify the withdrawal or amendment of the admissions. Thus, it is necessary to remand for the trial court to rule whether there was good cause to withdraw or amend the alleged admissions. Because the resolution of this issue affects whether summary disposition was properly granted, we decline to address plaintiff's arguments regarding the grant of summary disposition under MCR 2.116(C)(10).[1]

[1] However, we agree that defendant did not adequately give notice of her statute of limitations defense, rendering it waived, and summary disposition improper under MCR 2.116(C)(7). See *Attorney Gen ex rel Dept of Envtl Quality v Bulk Petroleum Corp*, 276 Mich App 654, 665; 741 NW2d 857 (2007) ("a statute of limitations defense is an affirmative defense that may be waived" if a party fails to properly give notice of the defense in the answer to the complaint.) We also agree that, as the trial court relied on evidence outside of the pleadings, summary disposition under MCR 2.116(C)(8) is not proper. See *Liggett Rest Group, Inc v City of Pontiac*, 260 Mich App 127, 133; 676 NW2d 633, 637 (2003) ("[s]ummary disposition is appropriate

V. CONCLUSION

Defendant's answer was sufficiently responsive to the complaint and provided plaintiff with notice of the defenses of impossibility or waiver. Further, the trial court did not abuse its discretion in not granting plaintiff a third scheduling extension. We agree, however, that summary disposition based on MCR 2.116(C)(10) was premature, as the trial court failed to address plaintiff's request for admissions under MCR 2.312. Therefore, we remand for the determination of whether good cause existed to allow defendant to withdraw her admissions. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Henry William Saad
/s/ Michael J. Riordan

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under MCR 2.116(C)(8)" only "if no factual development could possibly justify recovery.") (quotation marks and citation omitted).