STATE OF MICHIGAN

COURT OF APPEALS

ESTATE OF FRANK ANTHONY KARWOSKI,

Plaintiff-Appellant,

v

VICKY HAMLIN-ROGERS,

Defendant-Appellee.

UNPUBLISHED
January 12, 2026
9:39 AM

No. 371980
Ostego Circuit Court
LC No. 22-019131-CZ

Before: CAMERON, P.J., and KOROBKIN and BAZZI, JJ.

PER CURIAM.

In this case involving the conservatorship of a protected person, plaintiff, the estate of Frank Anthony Karwoski, appeals as of right the trial court's orders granting defendant, Vicky Hamlin-Rogers, summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact), and denying plaintiff's motion for reconsideration. For the reasons set forth in this opinion, we affirm.

I. BASIC FACTS AND PROCEDURAL BACKGROUND

This case arises out of plaintiff's allegations that defendant breached her fiduciary duty by failing to inventory, and subsequently selling, the collections of coins and precious metals of Frank Anthony Karwoski (decedent), resulting in an unverified amount of damages to the estate. Decedent's daughter, Kathy Alston, is the personal representative of his estate. Decedent had been diagnosed with dementia and was living with his adult son. Defendant was decedent's conservator from October 21, 2020, until his death on September 4, 2022.[1] Before defendant, Alston had served as decedent's conservator.

During her deposition testimony, defendant asserted that upon becoming conservator, she searched decedent's house for assets and information related to his assets. She eventually

[1] Defendant was also appointed decedent's guardian, but plaintiff's complaint and arguments solely pertain to defendant's role as conservator.

discovered a list of assets decedent had compiled, which delineated approximately $197,257 in precious metals and coins. Because of decedent's dementia, however, defendant "had no idea what was true and was not true" regarding the list. As conservator, defendant prepared an inventory of decedent's assets. Defendant testified that she belatedly filed her initial inventory, and she did not catalog the metals and coins because she did not know at that time that the items were valuable. Approximately a year into the conservatorship, Alston informed defendant that the metals and coins had potential value. Defendant subsequently sold certain metals and coins from decedent's collection after an appraisal at Treasure Trove, a store defendant frequented for 30 years. Before selling, defendant contacted other coin shops referenced in decedent's documents, and she was told that the coins were not worth what decedent paid for them. Defendant additionally consulted with an elder-law attorney before the sale.

Defendant disclaimed that she sold all the coins except a number of souvenir pieces that lacked intrinsic value or were worth only face value. According to a receipt from Treasure Trove, the coins and metals were valued at $105,720, a sale on consignment may net $90,000, and Treasure Trove offered $80,000 for the lot. Defendant opted to sell the items, as opposed to consigning the coins, because the latter process appeared too extensive in light of decedent's condition. Defendant testified that she returned all unsold coins and materials to the safe where she had found them. Alston, however, asserted that she was unaware of where the remaining coins and metals were located, but she acknowledged that the $80,000 from the sale was deposited in decedent's bank account.

Alston believed that the value obtained for her father's collection was too low, but she also admitted that she had not consulted an expert, and Alston was solely relying on her own Internet research as the basis for that opinion. In an unnotarized "affidavit," Alston claimed that decedent valued the collection at $426,000, that defendant informed Alston she was simply going to have the collection appraised, that defendant nevertheless sold the assets, that no remaining items were returned to the safe, that a probate court report indicated that defendant retained some of the coins, and that there was "no legitimate financial reason" to sell the collection. But Alston conceded that she had no evidence defendant converted coins for her personal use.

Defendant purportedly sold the disputed assets in response to information from decedent's doctor that decedent would likely pass away within months. Decedent maintained in-home care services from Comfort Keepers; although decedent had liquid assets of approximately $35,000 and monthly income of $4,000, defendant was concerned that decedent would soon require full-time care, costing approximately $7,000 to $10,000 per month, resulting in her decision to liquidate the coin and metal collections as funds for the additional services. Defendant admitted, however, that it was a mistake not to inventory the items before the sale.

During the conservatorship, the probate court appointed Thomas Mammoser, a retired pastor, to investigate claims regarding defendant's handling of decedent's assets. Mammoser's subsequent report detailed Alston's concern about the coins and metals and the sale of these collections, and stated that "[o]ther coins, not yet appraised, remain in [defendant's] possession." Mammoser's report delineated the gifts provided to Alston and to decedent's son, in addition to the expenses charged against the estate. While the report questioned defendant's handling of the

estate and recommended the removal of defendant as conservator, it was unclear why Mammoser maintained such concerns.[2]

After decedent's passing, Alston was appointed personal representative of his estate, and commenced the underlying action. In her complaint, Alston alleged that defendant breached her fiduciary duty by "failing to properly account for the assets of the Ward [i.e., decedent] and by using the assets for her personal benefit." Alston further contended that defendant failed to file accurate accountings, and breached the fiduciary's "prudent investment" rule by "failing to accurately account for the gold and silver owned by the Ward," "by selling the gold and silver when there was no financial need to do so," and by selling items "at a price that was inadequate and below the standard value."

Defendant moved for summary disposition under MCR 2.116(C)(10), arguing that there was no issue of material fact regarding Alston's conversion or fiduciary duty claims, precluding judgment as a matter of law. At the subsequent motion hearing, the trial court questioned how plaintiff determined the true value of the contested coins and metals. Plaintiff's counsel cited decedent's list with the estimated values of the items. The trial court inquired regarding the admissibility of the list, noting decedent could have simply made up the listed values. Regarding the breach-of-fiduciary-duty claim, the trial court observed that there was no dispute that defendant had such duties. But the trial court held that none of the evidence plaintiff proffered created an issue of fact. The court further held that decedent's list was inadmissible hearsay, over which plaintiff had not argued any exception. The court also noted even if the list was admissible, that it solely reflected what decedent believed his property was worth, and thus did not create a triable issue. The trial court additionally resolved that while the receipt from Treasure Trove may be admissible, the receipt was essentially a purchase agreement and did not support plaintiff's position regarding the inadequate purchase value of the coins and metals. The only other evidence indicating the value of the collections was Alston's personal online searches, which were insufficient to properly establish the value of the items.

Regarding Mammoser's report, the trial court concluded that it was hearsay from a person not designated an expert, and who had no apparent expertise in the field. The court further ruled that the report failed to qualify as an expert opinion because Mammoser did not possess sufficient experience in investigation such claims, and it did not set forth a basis for recovering damages or otherwise identify a breach of fiduciary duties. The trial court similarly held that Alston's "affidavit" did not substantiate her claims, and the document was not notarized, with allegations that were "cursory and unsupported, making any evidentiary weight. . . minimal." The trial court additionally determined that Alston's testimony indicated that she lacked proofs that defendant retained any of the coins for her own use, and that Alston simply relied on the Internet to determine the value of the coins and metals. The court also stated that Alston's deposition testimony

[2] During the conservatorship, defendant made gifts from decedent's assets to her daughter and son. Although plaintiff's complaint included allegations concerning those gifts, plaintiff has not raised on appeal any arguments challenging the propriety of the gifts. Similarly, although the complaint alleged that defendant used decedent's credit card for her own benefit, plaintiff does not raise any related arguments in this appeal.

contradicted her the allegations in the "affidavit" regarding the return of certain items to the safe. The trial court noted that Alston conceded, in her deposition testimony, proof of conversion or damages. Accordingly, the court ruled, even if there were a breach of duty, there was no evidence of damages, which was fatal to her claim. The trial court ultimately granted defendant's motion for summary disposition.

Plaintiff moved for reconsideration, essentially reiterating the allegations in the complaint, and contending that the record established a genuine question of material fact regarding her claims. Plaintiff further argued, for the first time, that the report from the probate court's investigation was admissible as a regular business record under MRE 803. The trial court denied the motion, opining that plaintiff's argument concerning the business-records exception to the general hearsay prohibition was cursory and insufficient. The court further provided that it considered the contents of the report, and "found it. . . unavailing in creating any genuine factual issues for trial." This appeal followed.

II. STANDARDS OF REVIEW

"This Court reviews de novo a trial court's decision on a summary disposition motion to determine if the moving party was entitled to judgment as a matter of law." *Patrick v Turkelson*, 322 Mich App 595, 605; 913 NW2d 369 (2018) (quotation marks and citation omitted). Motions "for summary disposition brought pursuant to MCR 2.116(C)(10) test[] the factual support for a claim." *Id*. A (C)(10) motion may be granted "when the affidavits or other documentary evidence, viewed in the light most favorable to the nonmoving party, show that there is no genuine issue as to any material fact and the moving party is therefore entitled to judgment as a matter of law." *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5; 890 NW2d 344 (2016). The moving party may satisfy its burden by "showing the insufficiency of plaintiff's evidence." *Id.* at 9. If the nonmoving party bears the burden of proof at trial, it

> may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. . . . If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. [*Id.* at 7 (quotation marks and citation omitted).]

"We review a trial court's ruling on a motion for reconsideration for an abuse of discretion." *Shenandoah Ridge Condo Ass'n v Bodary*, ___Mich App___, ___; ___NW2d___ (2025) (Docket No. 364972); slip op at 6. An abuse of discretion occurs if the "trial court's decision was outside the range of reasonable and principled outcomes." *Id.* (quotation marks and citation omitted). To prevail, "[t]he 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." *Id.* (quotation marks and citation omitted). Evidentiary rulings are generally reviewed for an abuse of discretion. *Dorsey v Surgical Institute of Mich, LLC*, 338 Mich App 199, 230; 979 NW2d 681 (2021).

III. ANALYSIS

A. BREACH OF FIDUCIARY DUTY

Plaintiff argues that defendant breached her fiduciary duty to decedent in various ways.[3] We disagree.

"[A] fiduciary relationship arises from the reposing of faith, confidence, and trust and the reliance of one upon the judgment and advice of another." *Vicencio v Ramirez*, 211 Mich App 501, 508; 536 NW2d 280 (1995). "To establish a claim for breach of fiduciary duty, a plaintiff must prove (1) the existence of a fiduciary duty, (2) breach of that duty, and (3) damages caused by the breach of duty." *Highfield Beach at Lake Mich*, 331 Mich App 636, 666; 954 NW2d 231 (2020).

In the present case, there is no dispute that a fiduciary relationship existed between defendant and decedent. Under MCL 700.5416, "a conservator shall act as a fiduciary and observe the standard of care applicable to a trustee." At issue are the second and third elements of a breach claim, i.e., whether the duty was breached and whether the breach caused damages. As a fiduciary, a conservator must

> discharge all of the duties and obligations of a confidential and fiduciary relationship, including the duties of undivided loyalty; impartiality between heirs, devisees, and beneficiaries; care and prudence in actions; and segregation of assets held in the fiduciary capacity. With respect to investments, a fiduciary shall conform to the Michigan prudent investor rule. [MCL 700.1212(1).]

Even assuming defendant breached her fiduciary duties, plaintiff has not offered evidence that the estate suffered any damages. Plaintiff asserts, without any legal support, that it was not obligated to present proofs in support of an award of damages. But Michigan caselaw expressly provides that damages are an essential element of a breach claim. See *Abdelmaguid Estate v Dimensions Ins Gp, LLC*, ___Mich App___, ___; ___NW2d___ (2024) (Docket No. 361674); slip op at 6; see also *Highfield Beach at Lake Mich v Sanderson*, 331 Mich App at 666. Further, when damages are an essential part of a claim, summary disposition is appropriate where there has been no showing of damages. See *New Freedom Mtg Corp v Globe Mtg Corp*, 281 Mich App 63, 69-70; 761 NW2d 832 (2008), overruled in part on other grounds by *Bank of America, NA v First American Title Ins Co*, 499 Mich 74; 878 NW2d 816 (2016).

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[3] Plaintiff first questions whether the trial court applied the correct "standard of review," by which it apparently means the appropriate standard for deciding a motion under MCR 2.116(C)(10). Plaintiff does not, however, provide any argument on the standard itself, and there appears no dispute that the trial court properly sought to determine whether a question of material fact existed. Therefore, this argument is deemed abandoned on appeal. *Berger v Berger*, 277 Mich App 700, 712; 747 NW2d 336 (2008) ("A party abandons a claim when it fails to make a meaningful argument in support of its position.")

Plaintiff further contends that the language of MCR 2.116(C)(10) providing that summary disposition is proper when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law," indicates that establishing damages is unnecessary at the summary-disposition stage. But the cited subrule does not dispense with the need to establish a question of fact concerning the existence of damages, rather, it permits summary disposition when the extent of a party's liability, i.e., the "amount of damages," remains disputed. The standard remains "that a moving party may be entitled to summary disposition as a result of the nonmoving party's failure to produce evidence sufficient to demonstrate an essential element of its claim." *Lowrey*, 500 Mich at 9. Accordingly, in response to a motion for summary disposition, a party must provide admissible evidence to establish, to a reasonable certainty, the existence of damages. *Hofman v Auto Club Ins Ass'n*, 211 Mich App 55, 108; 535 NW2d (1995).

Plaintiff additionally asserts that defendant sold decedent's coins and metals below the collection's true value. However, the only admissible evidence of the items' value was the receipt from the Treasure Trove sale, as discussed further below. Moreover, Alston conceded, in her deposition testimony, that her personal online searches were the sole support for her belief that the coins and metals maintained greater value than what the items sold for. To be considered at the summary disposition stage, evidence must be substantively admissible, even if not yet in admissible form. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 373; 775 NW2d 618 (2009). Plaintiff makes no argument that Alston's research is substantively admissible, that Alston qualified as an expert in the valuation of such items, or that Alston's testimony otherwise established a genuine factual dispute sufficient to survive summary disposition. The only other proof relevant to the valuation of decedent's collection was his list of the coins and metals with their purported values. But plaintiff does not contest the trial court's evidentiary ruling regarding the list on appeal, nor does plaintiff address the court's alternative holding that, even if the list were admissible, it failed to create a triable issue. As with Alston's research, plaintiff did not advance that decedent was an expert, or that his valuations were otherwise based on reliable information. Consequently, that list does not present a triable issue.

Plaintiff's remaining arguments pertain to defendant's alleged breaches of her fiduciary duties to decedent. While, as previously noted, plaintiff cannot succeed on its claims because of its failure to indicate any damages resulting from defendant's alleged conduct, we nonetheless address its contentions.

Plaintiff first asserts that defendant neglected to list all the assets on the inventory upon becoming conservator. A conservator must, within 56 days of his or her appointment, file a complete inventory of the ward's estate. MCL 700.5417(1); MCR 5.409(B)(2). Further, a "conservator must keep suitable records of the administration," MCL 700.5417(2), and provide an annual accounting of the estate, MCL 700.5418(1). Violation of these statutes can constitute a breach of fiduciary duty. See *In re Conservatorship of Murray*, 336 Mich App 234, 247-248; 970 NW2d 372 (2021).

In the present case, defendant acknowledged that it was a "mistake" not to include the coins and metals in the inventory before selling the items. But, for the reasons already discussed, even assuming this was a breach of fiduciary duty, plaintiff's claim fails because plaintiff has not shown that any damage arose from this breach. Alston acknowledged that the money received from the

sale of the coins and metals was deposited in decedent's bank account, and defendant stated that all the unsold coins were returned to the safe. Plaintiff speculates that defendant may have kept the unsold coins and metals, but it has presented no evidence supporting that conjecture. Indeed, Alston testified that she lacked proofs that defendant retained the coins and metals. Consequently, plaintiff has not raised a genuine issue of material fact in connection with this argument.[4]

Plaintiff further claims that defendant obtained the coins and metals under the pretense of acquiring an appraisal, but with the true purpose of selling the items. Plaintiff, however, has presented no authority or argument for the implicit proposition that defendant was obligated to disclose her plans to Alston or any other party before selling the collection. MCL 700.5415 enables individuals interested in the welfare of a person under a conservatorship to petition a court to mandate a bond for the conservator, require a distribution, force an accounting, or obtain appropriate relief. But plaintiff does not suggest that Alston took such actions, and, as noted, plaintiff has offered no support for the proposition that defendant was required to inform Alston of her intentions, or that damages resulted from defendant's failure to inform Alston about the sale.

Plaintiff additionally argues that the sale of the coins and metals was unnecessary. But plaintiff fails to sufficiently develop this argument. Nonetheless, the record indicates that defendant testified that, on the basis of a conversation with decedent's doctor, she anticipated decedent would soon require full-time care. Defendant further testified that, despite decedent's monthly income and liquid assets, defendant believed additional funds were necessary to pay for his increasing levels of care. Plaintiff has presented no evidence or argument that casts doubt on this testimony, including whether decedent required the suggested care, or whether decedent's assets were sufficient to cover the costs.

Lastly, plaintiff asserts that defendant's motion for summary disposition should have been denied because the record may have developed further to unearth an issue of fact. But " '[a] litigant's mere pledge to establish an issue of fact at trial cannot survive summary disposition under MCR 2.116(C)(10). The court rule plainly requires the adverse party to set forth specific facts at the time of the motion showing a genuine issue for trial.' " *Lowrey*, 500 Mich at 7-8, quoting *Maiden v Rozwood*, 461 Mich 109, 121, 597 NW2d 817 (1999). In light of the foregoing, we conclude that the trial court applied the appropriate standard in deciding the summary-disposition motion, and that plaintiff neglected to demonstrate that summary disposition was otherwise improper.

[4] Plaintiff's complaint included a claim of conversion concerning the supposedly retained coins and metals. The trial court dismissed this claim, and, aside from a stray reference to missing property, plaintiff has not developed any argument on appeal challenging that decision. Further, as the trial court recognized, Alston's unnotarized affidavit asserting that defendant retained the property was contradicted by Alston's deposition testimony admitting she had no evidence of this retention. "It is well established that a party may not manufacture a question of material fact by directly contradicting the person's own deposition testimony with an affidavit." *Bakeman v Citizens Ins Co*, 344 Mich App 66, 76-77; 998 NW2d 743 (2022). Accordingly, the unnotarized affidavit did not create a triable issue.

B. ADMISSIBILITY OF THE PROBATE COURT'S REPORT

Plaintiff argues that the trial court erred by excluding Mammoser's investigatory report to the probate court. We disagree.

As a preliminary matter, plaintiff failed to properly preserve this argument for appellate review because it first argued that the report was admissible as a business record in its motion for reconsideration. An issue initially presented in a motion for reconsideration is not properly preserved for appeal. *Bodary*, ___Mich App at___; slip op at 8. We nonetheless retain discretion to consider an untimely argument

> if the failure to consider the issue would result in manifest injustice, if consideration is necessary for a proper determination of the case, or if the issue involves a question of law and facts necessary for a proper determination of the case, or if the issue involves a question of law and the facts necessary for its resolution have been presented. [*Id* at___ (quotation marks and citation omitted); slip op at 8.]

On appeal, plaintiff does not address why its unpreserved issue merits review, nor do we believe the cited factors support the consideration of plaintiff's evidentiary challenge. Eschewing review would not result in manifest injustice because the trial court addressed the contents of the report during the lower court proceedings, and it determined that the report did not present a triable issue. Further, consideration is not necessary to fully resolve the case because plaintiff's claims fail regardless because it did not demonstrate the existence of damages. Additionally, the facts necessary for resolution have not been established as a matter of record—plaintiff has not properly indicated how the report would otherwise be admissible.

Plaintiff's argument is further insufficiently developed. The parties do not dispute that the report constituted hearsay, i.e., an unsworn, out-of-court statement offered "to prove the truth of the matter asserted in the statement," MRE 801(c), and hearsay is inadmissible unless an exception applies. MRE 802. Plaintiff relies on the exception provided under MRE 803(6) for records of regularly conducted activity, which states:

> A record of an act, transaction, occurrence, event, condition, opinion, or diagnosis if:
>
> > The record was made at or near the time by—or from information transmitted by—someone with knowledge;
> >
> > The record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
> >
> > Making the record was a regular practice of that activity;
> >
> > All these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with a rule prescribed by the Supreme Court or with a statute permitting certification; and

> The opponent does not show that the source of information or the method or circumstances of preparation indicate a lack of trustworthiness.

Plaintiff entirely omits consideration of these requirements. Critically, plaintiff has offered no testimony by a custodian or qualified witness, or any certification, that establishes the necessary showings. We acknowledge that plaintiff was not obliged to lay a full and proper foundation for admission at the summary disposition stage. See *Barnard*, 285 Mich App at 373. But plaintiff has provided no basis for concluding that the report was a record of any regularly conducted activity. Moreover, the trial court noted that the report itself provide that the author, Mammoser, did not regularly prepare such documents. Plaintiff additionally disregards the trial court's alternative analysis, which assumed the admissibility of the report and found that it nevertheless failed to create a triable issue. The trial court determined that Mammoser lacked relevant experience, and that the report neglected to show either a breach of duty or resulting damages. Without any argument from plaintiff against these rulings, we cannot conclude that plaintiff is entitled to relief on this basis.

C. EVIDENCE OF NEGLIGENCE

Plaintiff argues that the trial court erred by failing to consider defendant's admission that she should have inventoried the coins and metals before selling the items as evidence of negligence. We disagree.

Plaintiff never pleaded a claim of negligence in the lower court, and plaintiff's appellate argument regarding this matter solely addresses defendant's alleged breach of her fiduciary duties. But we have already determined that this argument lacks merit because of plaintiff's failure to demonstrate the existence of damages arising from defendant's conduct. Further, plaintiff has not presented any evidence that the value of the collection was higher than the purchase price obtained at Treasure Trove.

Affirmed.

/s/ Thomas C. Cameron
/s/ Daniel S. Korobkin
/s/ Mariam S. Bazzi