S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

BARBARA MANNEY, Personal Representative of the ESTATE OF JANIE B. SANDERS, Plaintiff-Appellee,	UNPUBLISHED August 13, 2026 1:27 PM
v	No. 371678 Wayne Circuit Court
CYNTHIA M. FOX, Defendant-Appellant.	LC No. 18-001855-NZ

Before: LETICA, P.J., and O'BRIEN and REDFORD, JJ.

PER CURIAM.

Defendant appeals as of right the trial court judgment entered after a bench trial, providing that plaintiff, Barbara Manney, as personal representative of the Estate of Janie B. Sanders, was entitled to judgment on plaintiff's claims of breach of fiduciary duty and conversion by defendant while acting as durable power of attorney for the decedent, Sanders. For the reasons that follow, we affirm.

I. BACKGROUND FACTS AND PROCEDURAL HISTORY

This case arises from disputes over the estate of decedent, who died on June 10, 2014, at age 87. Plaintiff is decedent's daughter and lives in Chicago, Illinois. Defendant is decedent's niece; however, they did not form a relationship until later in life when defendant learned the identity of her biological father—the decedent's brother. Maxine Gillespie is the decedent's sister and aunt to both parties. She lives in Toledo, Ohio. The decedent's grandson, Demetrius Boykin-Hayes, son of the decedent's late daughter, lived with decedent in her home in Detroit.

The decedent started having health problems and was in and out of the hospital starting in the fall of 2013. Medical evidence admitted at trial established she had a stroke in September 2013. She appointed Gillespie as her medical power of attorney around that time. On October 3, 2013, the decedent appointed defendant as her durable power of attorney, giving her the following authority:

1. TRUST. To transfer to trust all property (real or personal) and all life insurance that I own or of which I am the named beneficiary of the policy and that has not already been transferred to my trust during my lifetime.

2. GIFTS. My Attorney in Fact is NOT authorized to make a gift of any or all part of my property.

3. REAL AND PERSONAL PROPERTY. To collect, hold, manage, maintain, improve, invest, insure, sell, mortgage, lease, exchange, abandon, convey, and otherwise deal in any way with any of my real or personal property or any interest therein and any proceeds thereof and the income therefrom in such manner and upon such terms as my said attorney deems advisable, and to transfer any such property to the trustee of any trust created by me or for my benefit.

4. BANKING. To open and/or close accounts, to deposit in and withdraw from any bank, savings and loan association, credit union, financial institution, brokerage firm or other custodian of my assets, any moneys, time certificates, negotiable paper or securities, which I may now or hereafter have on deposit or be entitled, and to make, endorse, negotiate and accept checks, drafts, money orders, promissory notes and other obligations, including cashing or depositing any social security checks that I may be entitled to. My Attorney in Fact is not authorized to create an account or other asset in joint tenancy between myself and my Attorney in Fact.

* * *

7. SAFE DEPOSIT BOXES. To have access to any safe deposit box of which I am a tenant or co-tenant with full power to withdraw or change from time to time the contents thereof, and to exchange or surrender the box and keys thereto, renew any rental contract therefore, and to do and perform all things which any depository agency, association or bank or its agents may require on the premises, thereby releasing the lessor from all liability in connection therewith.

8. LIFE INSURANCE AND BENEFITS. To exercise all powers and options involving any of my life insurance policies, social security benefits, retirement programs, compensation plans, pension, profit sharing and other employee benefit plans.

* * *

12. SUPPORT. To disburse such funds as may be necessary in the sole discretion of my said attorney for the proper maintenance and support of myself.

* * *

18. EXONERATION. My Attorney in Fact is hereby exonerated from any liability resulting from any breach of fiduciary duty except for actions committed by my Attorney in Fact in bad faith or reckless indifference. However, my Attorney

in Fact shall not be exonerated for any action resulting from an abuse of a fiduciary or confidential relationship.

19. COMPENSATION. I do not authorize My Attorney in Fact to receive a reasonable compensation for his/her services.

Although plaintiff presented evidence at trial that the decedent suffered a stroke in September 2013, and was diagnosed with dementia in March 2014, defendant testified that the decedent was in good mental condition at the time she executed the power of attorney, and claimed decedent did not suffer from the stroke until after the power of attorney was signed. In March 2014, acting as the medical power of attorney, Gillespie moved decedent to a nursing home near her own home in Toledo.

Plaintiff did not know decedent had appointed defendant as durable power of attorney until she started monitoring decedent's checking account, saw a lot of withdrawals, and a bank teller told her a power of attorney was on file. Thus, plaintiff withdrew $2,800 from a joint checking account she shared with decedent and closed the account. She was told by the bank that defendant, as power of attorney, withdrew $4,575 from the decedent's savings account, for which plaintiff was the beneficiary. Defendant testified the decedent told her to take that money and close that account so plaintiff would not get the money. Defendant actually opened a new account, ending in 1061, under her own name with decedent as beneficiary with some of the money she withdrew.

When plaintiff received accountings from defendant of her management of decedent's money, she found several issues. There were several expenses or payments made while the decedent was in the Toledo nursing home and would not have incurred such expenses. There was a disputed Social Security payment, funeral expenses marked from before the decedent's death, and credit card charges from retailers close to defendant's home in Michigan while the decedent was in the nursing home in Ohio. Most notably, there were two charges on the decedent's credit cards for luxury handbags from Louis Vuitton for over $2,000 each, charged in March 2014, and the delivery address was defendant's post office (PO) box address in Grosse Pointe, Michigan. Defendant denied using the decedent's credit cards for such purposes.

Plaintiff filed suit against defendant in February 2018, alleging conversion, material misrepresentations, unjust enrichment, breach of fiduciary duty, and breach of defendant's duty to provide a complete and accurate accounting of decedent's financial affairs. A default was entered for defendant's failure to plead or otherwise defend, as well as a default judgment in plaintiff's favor for $40,143.42 and a writ of garnishment. When defendant learned of this lawsuit, she moved to set aside the default and default judgment, which the court granted. Defendant also moved for summary disposition, which the trial court denied,[1] and the case proceeded to a bench trial.

After the four-day bench trial, the parties submitted written final conclusions of fact and law. The trial court determined that defendant breached the fiduciary duties that she owed to the

[1] The register of actions indicates that this motion was denied, but there is no written order included in the lower court file.

decedent as the power of attorney and that she converted the decedent's property. Therefore, the court entered judgment in plaintiff's favor, awarding $41,026.50 in damages plus attorney fees and costs. Defendant now appeals.

II. WAIVER

As an initial matter, we note that defendant's brief on appeal filed *in propria persona* was twice flagged as being defective. When she was informed of the page and word limits, she delineated where her brief ended and the appendix began in her 212-page document. She initially provided a list of claims in her designated brief, but a statement of questions presented and conclusions of law at the end of her appendix. Many of the issues raised in defendant's list of claims and statement of questions presented are abandoned for failure to be properly briefed. See *Seifeddine v Jaber*, 327 Mich App 514, 520; 934 NW2d 64 (2019) (indicating that "[f]ailure to adequately brief an issue constitutes abandonment."). This includes defendant's arguments regarding (1) elder abuse; (2) the absence of a pretrial conference; (3) mediation; (4) alleged procedural errors including false documents, pleadings from a previous case, and witness tampering; (5) the calculation of plaintiff's damages; (6) judicial reassignment; and (7) delayed judgment. Defendant did not address or properly brief these issues in her brief on appeal; as such, they are abandoned. *Id*. The entirety of defendant's appendix appears to be drafted by defendant and is not part of the lower court record. Therefore, it cannot be properly considered on appeal. See *Magley v M&W Inc*, 325 Mich App 307, 322 n 8; 926 NW2d 1 (2018) ("A litigant may not expand the record on appeal[.]). Nor can any discernible arguments made by plaintiff in her appendix be considered because it would exceed the page limit for briefs accepted by this Court to consider both defendant's brief and appendix, totaling over 200 pages. Thus, to the extent any of these arguments are made in the appendix to defendant's brief on appeal, they are not considered. The following analysis pertains to the issues this Court was able to discern from defendant's designated brief.

III. VALIDITY OF THE POWER OF ATTORNEY

Defendant asserts that the parties disputed the validity of the power of attorney, and that it met all the statutory requirements to be valid. At the time defendant moved for summary disposition in September 2021, the statutory requirements for a valid durable power of attorney were set forth in MCL 700.5501, which was repealed by 2023 PA 187. See also MCL 556.504 (repealing MCL 700.5501 to MCL 700.5505 of the Michigan Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq*.). To be valid, the power of attorney had to contain language indicating it was not affected by the principal becoming disabled or incapacitated, and it had to be signed in front of two witnesses and notarized. Former MCL 700.5501(1) and (2)(a) to (b). Durable powers of attorney are now governed by the uniform power of attorney act, MCL 556.201 *et seq*.

This issue is moot. "An issue is moot if an event has occurred that renders it impossible for the court to grant relief." *In re Gerald L. Pollack Trust*, 309 Mich App 125, 154; 867 NW2d 884 (2015) (quotation marks and citation omitted). "An issue is also moot when a judgment, if entered, cannot for any reason have a practical legal effect on the existing controversy." *Id*. (quotation marks and citation omitted).

Although the parties testified about the decedent's mental and physical status at the time the power of attorney was executed, there was no holding in the final judgment that the power of attorney was invalid. In discussing the conversion claim, the trial court stated the evidence established decedent lacked capacity as late as September 2013, after having a stroke, and was therefore a vulnerable adult, but this was in relation to defendant's expenditures from decedent's accounts. Had the trial court ruled that the power of attorney was invalid before trial, the issues at trial would have been different. But plaintiff never explicitly challenged the validity of the power of attorney in her complaint, or otherwise. Her arguments that defendant breached her fiduciary duty and converted the decedent's property were based on the underlying relationship and defendant's authority based on the power of attorney. Thus, defendant's argument on appeal that the power of attorney met the statutory requirements is moot because if the Court were to now rule on its validity, it would not change the judgment entered for plaintiff. See *id*. If this Court deemed the power of attorney valid, it would not affect the trial court's ultimate judgment on the issues of breach of fiduciary duty and conversion in plaintiff's favor. Defendant does not argue the power of attorney was invalid, which could change the outcome of the lower court proceedings. Thus, this issue is moot, *id*., and this Court generally does not decide moot issues, *Garrett v Washington*, 314 Mich App 436, 449; 886 NW2d 762 (2016).

IV. BREACH OF FIDUCIARY DUTY

The trial court did not clearly err by finding that defendant breached her fiduciary duty to the decedent.

"This Court reviews for clear error the trial court's factual findings following a bench trial and reviews de novo the trial court's conclusions of law." *Patel v Patel*, 324 Mich App 631, 633; 922 NW2d 647 (2018). "A finding of fact is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake was made." *Brown v Home-Owners Ins Co*, 298 Mich App 678, 690; 828 NW2d 400 (2012) (quotation marks and citation omitted). "On appellate review, this Court must afford deference to the trial court's superior ability to judge the credibility of the witnesses who appear before it." *Patel*, 324 Mich App at 633. "In the absence of disputed facts, [an appellate court] also review[s] de novo whether a cause of action is barred by the applicable statute of limitations." *Trentadue v Buckler Lawn Sprinkler*, 479 Mich 378, 386; 738 NW2d 664 (2007).

"A fiduciary owes a duty of good faith to his principal and is not permitted to act for himself at his principal's expense during the course of his agency." *Prentis Family Foundation v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 49; 698 NW2d 900 (2005) (quotation marks and citations omitted). To establish a breach of fiduciary duty, the plaintiff must prove: "(1) the existence of a fiduciary duty, (2) a breach of that duty, and (3) damages caused by the breach of duty." *Highfield Beach at Lake Mich v Sanderson*, 331 Mich App 636, 666; 954 NW2d 231 (2020). "Damages may be obtained for a breach of fiduciary duty when a position of influence has been acquired and abused, or when confidence has been reposed and betrayed." *Prentis Family Foundation*, 266 Mich App at 47 (quotation marks and citation omitted). This Court has held that an attorney-in-fact acting under a power of attorney is in a fiduciary relationship with the principal. *In re Susser Estate*, 254 Mich App 232, 235; 657 NW2d 147 (2002).

As an initial matter, defendant argues that plaintiff's breach-of-fiduciary duty claim is barred by a three-year statute of limitations or six-year statute of limitations in MCL 600.5807(8). This appears to be a typographical error as MCL 600.5807 governs breaches of contract and MCL 600.5807(8) provides a 10-year statute of limitations for actions on a bond, note, or other like instrument issued by public entities. MCL 600.5807(9) provides a six-year statute of limitations "for an action to recover damages or money due for breach of contract that is not described in subsections (2) to (8)." The statute of limitations period for a claim of breach of fiduciary duty is actually three years. *Prentis Family Foundation*, 266 Mich App at 47. "A claim of breach of fiduciary duty or breach of trust accrues when the beneficiary knew or should have known of the breach." *Id*. (quotation marks and citations omitted). "[A] plaintiff is deemed to be aware of a possible cause of action when he becomes aware of an injury and its possible cause." *Id*. at 48 (quotation marks and citation omitted; alteration in original).

This argument is insufficiently briefed and deemed abandoned on appeal. See *McIntosh v McIntosh*, 282 Mich App 471, 484; 768 NW2d 325 (2009). Defendant merely states in her brief on appeal that "[a]ny breach of fiduciary duty claims are subject to a three-year statute of limitations in Michigan. No formal claim of breach was substantiated during trial." Defendant does not provide any specific dates for when plaintiff's claims accrued or identify when the three-year period ended to preclude such claims. Thus, defendant's statute-of-limitations argument is abandoned. *Id*.

On the merits, the trial court properly concluded that defendant breached the fiduciary duty she owed to the decedent. First, defendant seemingly argues that she withdrew $4,575.14 and closed the decedent's account per the decedent's wishes, whereas plaintiff withdrew $2,800 from the decedent's checking account without decedent's permission. The power of attorney provided that defendant could open and close accounts and withdraw money from the decedent's accounts. The breach, however, occurred when defendant opened the new account ending in 1061 under her own name with decedent as the beneficiary using this money. The same banking paragraph of the power of attorney provided that defendant was "not authorized to create an account or other asset in joint tenancy between myself and my Attorney in Fact." Thus, defendant violated the power of attorney in this regard, constituting a breach of her fiduciary duty, and the trial court did not clearly err in reaching the same conclusion. Plaintiff's withdrawal of $2,800 is irrelevant to this conclusion; regardless, plaintiff's withdrawal came from a joint account under the names of both decedent and plaintiff, and thus, plaintiff had access to that account and authority to withdraw the money.

Defendant next argues that despite plaintiff's assertion to the contrary, defendant had no knowledge or authority to remove plaintiff's name as beneficiary of a life insurance policy in the decedent's name. Plaintiff testified she was removed as beneficiary from such a policy, which defendant denied. The trial court did not analyze this allegation in the final judgment. Nor was there ever any insurance policy admitted as an exhibit at trial. Rather, plaintiff was shown bank statements at trial and indicated that a payment to United Omaha was for a life insurance policy, but when plaintiff reached out to the company, she was told her name had been removed as beneficiary. Without further evidence, and absent a conclusion from the trial court on this issue, the trial court did not clearly err by not addressing it in the final judgment or rendering a conclusion whether defendant breached her fiduciary duty in this regard and defendant is not entitled to any relief.

Next, defendant argues that she did not misappropriate the decedent's Social Security check for April 2014. Defendant asserts Gillespie assumed control over the decedent's Social Security benefits after Gillespie relocated decedent to Ohio in March 2014. Gillespie testified that although she applied for a transfer of decedent's Social Security benefits, decedent died before the application was completed and she never received control. Plaintiff testified that one accounting provided by defendant indicated Gillespie received one Social Security payment, but plaintiff did not believe that Gillespie had ever received it. Defendant, however, admitted to receiving a Social Security check for $1,666 with her signature on the back as power of attorney, even though the check was written out to decedent and plaintiff. This was direct evidence of a breach of defendant's fiduciary duty.

Defendant next argues that she was not in breach of her fiduciary duty by reinstating decedent's auto insurance policy according to decedent's wishes. She testified that she used $672 of the decedent's money to reinstate decedent's car insurance policy in November 2013. Defendant admitted that the decedent was no longer driving in November 2013, but decedent gave Boykin-Hayes permission to drive her vehicle. Similarly, defendant argues on appeal that there was no evidence that she provided Boykin-Hayes with decedent's Home Depot credit card. Plaintiff testified about a large charge on the Home Depot card made by Boykin-Hayes, stating that defendant let him use the card. Defendant testified that she was aware decedent had a Home Depot account, but she never saw a Home Depot credit card, and when asked if she gave Boykin-Hayes the card, defendant said she "never had access to any credit cards." The power of attorney, however, prohibited defendant from making any gifts from decedent's property. The trial court did not clearly err by determining that these were gifts to Boykin-Hayes and constituted a breach of defendant's fiduciary duty to act in the decedent's best interests as to her money and assets.

Defendant also argues that the evidence did not establish that she used the decedent's credit cards to purchase luxury handbags from Louis Vuitton. She argues the evidence admitted at trial about these purchases was inconsistent and relied on plaintiff's admission that she did not know who made the purchases. When reviewing the decedent's bank statements at trial, plaintiff testified that there were two Louis Vuitton handbags purchased at over $2,000 each on decedent's credit card in March 2014. Plaintiff testified that these purchases were not made by the decedent. Defendant denied ever seeing the receipts admitted at trial. Defendant admitted, however, that the address on the receipts was her PO Box in Grosse Pointe, that she had decedent's bills mailed there, and that she would pay decedent's credit card bills without checking the statements for extra charges. Defendant's daughter, Shaquandra McCallum, admitted that she also received mail at defendant's PO box address, and that her e-mail address was on the Louis Vuitton receipts. The fact that defendant and McCallum both testified that Louis Vuitton typically does not deliver to PO boxes does not invalidate the receipts and the transactions. This evidence also established a breach of fiduciary duty by defendant in the misuse of the decedent's funds.

In sum, the trial court did not clearly err in its findings regarding breaches of defendant's fiduciary duty owed to the decedent which resulted in damages incurred by decedent's estate. As such, defendant is not entitled to relief on appeal.

V. CONVERSION

The trial court did not err by ruling that defendant converted decedent's property. The Court's factual findings regarding the conversion claim are also reviewed for clear error, and its conclusions of law are reviewed de novo. *Patel*, 324 Mich App at 633.

Plaintiff did not specify in the complaint whether she was alleging statutory or common-law conversion, or both. "Conversion, both at common law and under the statute, is defined as any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Magley*, 325 Mich App at 314 (quotation marks and citation omitted). It is an intentional tort in the sense that the converter's actions are willful. *Id*. at 314-315. Good faith, mistake, and ignorance are not valid defenses to a conversion claim. *Id*. at 315. A party claiming statutory conversion under MCL 600.2919a(1)(a) must show the additional requirement that the conversion was for the defendant's own use. *Id*. at 314 n 3. "[S]omeone alleging conversion to the defendant's 'own use' under MCL 600.2919(1)(a) must show that the defendant employed the converted property for some purpose personal to the defendant's interests, even if that purpose is not the object's ordinarily intended purpose." *Id*. (quotation marks and citation omitted).

In her brief on appeal, defendant does not delineate between what she claims were not breaches of fiduciary duties and what did not constitute conversion, and the trial court's findings of facts included many instances of defendant's conduct that constituted both. We have attempted to split defendant's arguments between the two claims accordingly to the best of our ability.

First, regarding items allegedly taken from the decedent's purse, Gillespie testified that the first time she visited the decedent in the hospital, she witnessed a nurse ask decedent if she wanted to put her purse in a locker, and the decedent said she had a few dollars, credit cards, and jewelry in her purse. Gillespie did not look into the purse to see its contents. Appearing confused about what to do, the decedent gave her purse to defendant. Plaintiff testified the decedent kept diamond rings and expensive eyeglasses in her purse.

Defendant testified that she was given decedent's purse while they were still in the hospital waiting room, and once decedent was taken to her room, defendant left the purse with decedent. The decedent said her purse contained her cell phone, a "phone book," and $7, but defendant did not look inside the purse. Defendant kept a separate pouch with all of the decedent's paperwork and bills in it. The decedent gave defendant her driver's license and insurance card, but no credit or debit cards. McCallum was present at the hospital that day and said that once decedent was checked in, the decedent was given her purse and personal belongings back. McCallum testified that defendant did not remove anything from decedent's purse.

Defendant denies removing anything from decedent's purse. The trial court ruled that it was "unable to conclude with reasonable certainty who removed said items" from decedent's purse. As such, the court effectively determined that plaintiff had not met her burden of proof. Because there is no error alleged by defendant that this Court is able to correct, this argument is moot. *In re Gerald L. Pollack Trust*, 309 Mich App at 154.

The same is true for the allegations regarding removal of items from the decedent's safe. Although sometimes referred to as a "safe deposit box," plaintiff clarified that decedent had a safe in her home containing expensive jewelry and important papers. The decedent sent plaintiff a key to the safe, but plaintiff never retrieved its contents. Defendant denied knowledge of the safe and testified she was never alone in decedent's home or granted access to private areas. Defendant and McCallum both testified that they did not have free access or a key to decedent's home; they would have to contact Boykin-Hayes to be let inside. As such, defendant was never in the home without decedent or Boykin-Hayes present. She was only recently made aware that there was a safe in the home; she never saw it or had access to it. McCallum never saw a safe in decedent's home. The trial court ruled "once again, without further evidence, the Court is unable to conclude Defendant is responsible for the removal of the contents of the safe." Therefore, this issue is also moot. See *id*.

Lastly, defendant argues there was no evidence of any theft of the decedent's credit cards, and even plaintiff admitted not knowing what happened to them. The trial court found, however, that the evidence at trial established that defendant made payments on the card, and from March 2014 to June 2014, defendant did not review the statements before paying them off. Defendant testified that she did not have access to decedent's credit cards but would pay the bills without looking to see if extra charges were incurred. The trial court found defendant's testimony was not credible. The court noted defendant "failed to explain" how decedent's card was used for shopping at several stores in Michigan near where defendant resided, and the court found defendant's testimony about the luxury handbags "lacking in trustworthiness" where there was "no doubt" that defendant had control over the PO box address on the receipt. "On appellate review, this Court must afford deference to the trial court's superior ability to judge the credibility of the witnesses who appear before it." *Patel*, 324 Mich App at 633. As such, this Court must give deference to the trial court's finding that defendant's testimony lacked credibility, and that she committed conversion through her actions.

The trial court also concluded that defendant's withdrawal of money from decedent's account ending in 5747 and opening of a new account ending in 1061 under defendant's name with decedent as the beneficiary established conversion. The court again discredited defendant's testimony that "vacillated" between claiming the accounts were jointly owned and claiming she used the money to reimburse herself for expenses she incurred caring for the decedent. Because the power of attorney prohibited opening any new joint accounts and defendant failed to provide any receipts or accounting for her alleged expenses, the court found she wrongfully converted decedent's assets.

In sum, defendant wrongfully exerted domain over decedent's personal property inconsistent with her rights as power of attorney. *Magley*, 325 Mich App at 314. And the trial court did not clearly err in its factual findings or its ultimate determination that defendant committed conversion.

VI. SPEEDY TRIAL

Defendant's argument that she was denied a speedy trial is waived and otherwise lacks merit.

An issue must be raised in or addressed by the trial court to be preserved on appeal. *Glasker-Davis v Auvenshine*, 333 Mich App 222, 227; 964 NW2d 809 (2020). Defendant did not argue in the lower court that she was denied any constitutional right to a speedy trial; this argument was first raised in her brief on appeal. In civil cases, Michigan follows the "raise or waive" rule, requiring litigants to preserve an issue to be considered on appeal. *Tolas Oil & Gas Exploration Co v Bach Servs & Mfg, LLC*, 347 Mich App 280, 289; 14 NW3d 472 (2023). An issue must be raised in the trial court to be preserved on appeal, and the same basis for the error claimed on appeal must have been brought to the trial court's attention. *Id*. "If a litigant does not raise an issue in the trial court, this Court has no obligation to consider the issue." *Id*. "However, this Court may overlook preservation requirements 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 the facts necessary for its resolution have been presented." *Id*. at 289-290 (quotation marks and citations omitted).

This issue is waived because defendant did not raise it in the trial court. *Id*. at 289. Regardless, defendant's argument lacks merit because neither the federal Constitution nor the state Constitution guarantee the right to a speedy trial in a civil case. The right to a speedy trial is only guaranteed to criminal defendants, not civil litigants. See US Const, Am VI ("[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial"); Const 1963, art 1, § 20 ("[i]n every criminal prosecution, the accused shall have the right to a speedy and public trial by an impartial jury"). Thus, these constitutional provisions do not apply in this case because it is a civil case, not a criminal prosecution.

VII. PLAINTIFF'S INCONSISTENT TESTIMONY

The trial court did not err by admitting plaintiff's testimony regarding the decedent's funeral arrangements and otherwise properly exercised its authority during trial to strike or limit plaintiff from testifying about hearsay statements.

This Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion. *Kuebler v Kuebler*, 346 Mich App 633, 653; 13 NW3d 339 (2023). An abuse of discretion occurs when the trial court's decision falls outside the range of principled outcomes. *Richards v Richards*, 310 Mich App 683, 699; 874 NW2d 704 (2015). A trial court necessarily abuses its discretion when it makes an error of law. *Elizabeth A. Silverman, PC v Korn*, 339 Mich App 384, 388; 984 NW2d 536 (2021).

During direct examination of plaintiff, the trial court upheld many of defense counsel's objections on the basis of hearsay. The court explained to plaintiff what constitutes a hearsay statement and warned her not to testify about what other people previously told her. Later in plaintiff's testimony, after the court repeatedly told plaintiff she could not testify about hearsay statements, it again told her that she could only speak about things that she had personal knowledge of, and that she had the burden of proof.

Hearsay is generally inadmissible under MRE 802 unless an exception provided in MRE 803 applies.[2] Defendant, however, does not specify what hearsay statements were made by plaintiff that were improperly admitted. Defendant's failure to properly brief this issue constitutes abandonment on appeal. *Seifeddine*, 327 Mich App at 520. See also *Mitchum v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) ("It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to [the appellate court] to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position. The appellant himself must first adequately prime the pump; only then does the appellate well begin to flow.").

Likewise, defendant failed to identify any statement made by plaintiff that constitutes perjury, and therefore, abandoned this argument as well. *Id*. Regardless, defendant focuses on alleged inconsistencies or "contradictions" in plaintiff's testimony about the funeral services held for the decedent. For example, during cross-examination, defense counsel was questioning plaintiff about the cremation of the decedent when the court inquired about its relevance. Defense counsel responded that plaintiff gave receipts indicating she spent the decedent's money on a funeral in Toledo, which defense counsel asserted never occurred because the decedent was scheduled to be cremated, and the line of questioning was to show that plaintiff's character could not be trusted. Defense counsel asserted that plaintiff made conflicting statements about things that never actually happened. Plaintiff then testified that she did not know whether the decedent was scheduled for cremation and did not recall being contacted by the funeral home or cemetery in Detroit regarding her mother's burial.

The testimony provided by plaintiff and defendant regarding the decedent's different funeral services and burial was confusing at best. However, plaintiff's testimony regarding the decedent's funeral and burial was during cross-examination by defense counsel. Because defense counsel engaged in this line of questioning, defendant cannot now claim that plaintiff's answers were admitted in error. See *In re Koch Estate*, 322 Mich App 383, 402-403; 912 NW2d 205 (2017) ("A party may not appeal an error that the party created."). Allowing defendant to do so would permit her to harbor her attorney's error as an appellate parachute. See *Dresselhouse v Chrysler Corp*, 177 Mich App 470, 477; 442 NW2d 705 (1989) ("A party is not allowed to assign as error on appeal something which his or her own counsel deemed proper at trial since to do so would permit the party to harbor error as an appellate parachute."). Moreover, any inconsistency in plaintiff's testimony goes to the weight of the evidence rather than its admissibility. See e.g., *People v Barrera*, 451 Mich 261, 289; 547 NW2d 280 (1996). And witness credibility and the weight accorded to evidence are questions for the trier of fact. *Guerrero v Smith*, 280 Mich App 647, 779; 761 NW2d 723 (2008). As such, the trial court did not abuse its discretion by admitting plaintiff's testimony regarding the funeral services for the decedent.

[2] The Michigan Rules of Evidence were recently amended, effective January 1, 2024. Any citation to the Michigan Rules of Evidence herein will refer to the previous version of the rules in effect at the time of the bench trial and trial court's decision.

VIII. DEFENDANT'S FAMILIAL STATUS

The trial court did not err in its admission and preclusion of certain evidence regarding defendant's truthfulness or familial status with the decedent's family.

As stated above, this Court reviews a trial court's decision to admit or exclude evidence for an abuse of discretion. *Kuebler*, 346 Mich App at 653. A trial court abuses its discretion when its decision falls outside the range of principled outcomes, *Richards*, 310 Mich App at 699, or when it makes an error of law, *Elizabeth A. Silverman, PC*, 339 Mich App at 388.

Relevant evidence is generally admissible while irrelevant evidence is not. MRE 402. Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401.

Defendant challenges the admission of certain testimony by Gillespie only. Gillespie said that seeing decedent give her purse to defendant in the hospital made her feel "terrible" because the decedent handed her purse over "to someone we hardly knew." Gillespie explained that her family only knew defendant less than 10 years because she was adopted by her stepfather, and her mother did not let defendant know the other side of the family. Gillespie said defendant was born in Mississippi and "the rumors [were] there" that Gillespie's brother, defendant's birth father, and their family were "not good enough." Gillespie was then questioned about how she was related to defendant, and what she meant by defendant being someone she hardly knew. She explained that defendant was the birth daughter of Gillespie's brother, but defendant was adopted by her stepfather and did not know their side of the family. At that point, defense counsel objected to the line of questioning as irrelevant and the trial court agreed, indicating that the familial relationship was established, although it was later in life, and sustained the objection.

Thus, the trial court did not abuse its discretion by admitting Gillespie's testimony that was relevant and excluding other parts of her testimony that were irrelevant. Defendant's relationship with the decedent was relevant to the dynamic between the two and defendant's status as power of attorney. But once it was established that their familial bond was established later in life, the trial court properly deemed Gillespie's further testimony irrelevant.

When asked what happened to the Social Security checks for the months of April, May, and June 2014, Gillespie testified, "I don't know if it's fair for me to say, but of course, I'm sure [defendant] still got them and she never gave them—" When defense counsel objected, Gillespie said defendant "has to have them," then admitted she did not know what happened to them. When plaintiff's counsel asked Gillespie if she thought defendant told the truth, defense counsel objected, and the trial court sustained. Then plaintiff's counsel asked Gillespie if she believed that defendant took funds from the decedent that she should not have taken. The court said Gillespie could answer if she had personal knowledge and told counsel to rephrase the question. Counsel, however, did not continue this line of questioning. On cross-examination, Gillespie said she "had no relationship with [defendant]," and when she tried to put the decedent in a nursing home in Detroit, defendant "lied" when she said she would meet Gillespie at one of the homes. Gillespie also testified that she did not trust defendant "from the beginning." The court ultimately sustained defense counsel's objection that whether Gillespie trusted defendant was irrelevant.

Thus, the trial court did not improperly admit any irrelevant evidence as to Gillespie's opinion regarding the Social Security benefits and defendant's credibility or veracity, and defendant is not entitled to any relief. Defendant seemingly makes a cumulative-error argument in relation to the trial court's alleged errors. Under the cumulative-error doctrine, "[a]lthough individual errors may not establish prejudice, they may, in combination, equal substantial prejudice, impelling a reversal." *Haynes v Seiler*, 16 Mich App 98, 103; 167 NW2d 819 (1969). See also *Stitt v Holland Abundant Life Fellowship*, 243 Mich App 461, 471; 624 NW2d 427 (2000). Here, however, the trial court did not commit any errors or abuse its discretion in its evidentiary decisions, so the cumulative-error doctrine does not provide a basis for relief.

IX. EVIDENCE AT TRIAL

The trial court did not abuse its discretion in its evidentiary decision regarding decedent's medical record and defendant's argument regarding Exhibit 30 was waived.

Again, an issue must be raised in or addressed by the trial court to be preserved on appeal. *Glasker-Davis*, 333 Mich App at 227. To preserve an evidentiary issue for review, the party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal. *Nahshal v Fremont Ins Co*, 324 Mich App 696, 709-710; 922 NW2d 662 (2018). During defendant's testimony, defense counsel objected to the line of questioning regarding when the decedent had a stroke, indicating that counsel was not in possession of the medical record that plaintiff's counsel was referring to. Defendant's argument in this regard is preserved on appeal and reviewed for an abuse of discretion. *Kuebler*, 346 Mich App at 653. A trial court abuses its discretion when its decision falls outside the range of principled outcomes, *Richards*, 310 Mich App at 699, or when it makes an error of law, *Elizabeth A. Silverman, PC*, 339 Mich App at 388.

During defendant's direct testimony, she was questioned about the decedent's medical record indicating she had a stroke before executing the power of attorney. Plaintiff's counsel indicated the medical record was not admitted as an exhibit but submitted with plaintiff's list of exhibits. Defense counsel indicated she did not have the document. Plaintiff's counsel asserted it was just used to refresh defendant's recollection. The court told plaintiff's counsel that she should have laid a foundation to indicate defendant's memory needed to be refreshed but said it did not have to be admitted into evidence. Nevertheless, the court allowed a break in the proceedings for defense counsel to go over the document with defendant off the record. After reviewing the document, defendant reasserted that the decedent did not suffer a stroke before executing the power of attorney.

The trial court did not abuse its discretion in making this evidentiary ruling. Defendant seemingly misunderstands that these medical records were not actually admitted as exhibits at trial, but rather, used to impeach her testimony that the decedent did not have a stroke until after the power of attorney was executed. "[E]vidence used exclusively for impeachment purposes is not substantively admissible without an independent basis, and therefore, may not be introduced as an exhibit for the jury's consideration." *Barnett v Hidalgo*, 478 Mich 151, 164; 732 NW2d 472 (2007). When defense counsel indicated she was not in possession of the record, the court allowed a break in the proceedings for defendant to review the document with counsel. After returning from the break, defendant maintained that the decedent's stroke did not occur until after the power of attorney was signed. Thus, the trial court did not abuse its discretion by allowing the evidence to be used in an attempt to impeach defendant, and she maintained her original position after reviewing the document.

Defendant next argues that the trial court erred by allowing plaintiff's Exhibit 30 to be admitted. Exhibit 30 is the April 2014 Social Security check that defendant signed even though it was made out to decedent and plaintiff. At first, plaintiff's counsel said it would be used for impeachment purposes but then moved to admit it as Exhibit 30. Defense counsel said it had already been turned over to defendant and had no objection to its admission. When asked whether she had withdrawn the $1,666 reflected in the check from decedent's account, defendant said she did not and added: "If the Court would allow me to explain, I would like to do so, in regards to this." The court said it was up to plaintiff's counsel who was conducting the examination. Defendant then testified that it was her signature as power of attorney on the check, she received the funds, and she did not share any with plaintiff. Defendant said she used the funds for the decedent.

Because defense counsel failed to object to the admission of Exhibit 30, this argument is waived, and the Court has no obligation to consider it. *Tolas Oil & Gas Exploration Co*, 347 Mich App at 289. Otherwise, it would allow defendant to appeal an error her attorney created and harbor that error as an appellate parachute. *In re Koch Estate*, 322 Mich App at 402-403; *Dresselhouse*, 177 Mich App at 477.

X. FORUM-SHOPPING

Defendant's "forum-shopping" claim appears mislabeled; nonetheless, there was no error in any relitigation of any issue in this case that was previously resolved by the probate court. The court's factual findings regarding any possible relitigation of issues are reviewed for clear error, and its conclusions of law are reviewed de novo. *Patel*, 324 Mich App at 633.

Plaintiff alleged in the complaint that on March 14, 2014, defendant signed a quit claim deed to convey the decedent's interest to her home in Detroit to Boykin-Hayes, removing plaintiff's interest in the property under the decedent's will. Defendant argues that plaintiff engaged in "forum-shopping" because the quit claim deed issue had already been litigated in the probate court, but plaintiff attempted to relitigate it in this case. Although labeled as a claim of "forum-shopping," a party's choice of label is not dispositive, and this Court is not bound by it when doing so exalts form over substance. *Norris v Lincoln Park Police Officers*, 292 Mich App 574, 582; 808 NW2d 578 (2011). "The concern surrounding forum shopping stems from the fear that a plaintiff will be able to determine the outcome of a case simply by choosing the forum in which to bring the suit." *Farrell v Ford Motor Co*, 199 Mich App 81, 88; 501 NW2d 567 (1993) (quotation marks and citation omitted). "Presumably, plaintiffs will bring suit in the forum whose law is the most advantageous. In so doing, the plaintiff may be attempting to obtain a favorable result simply by choosing the right forum[.]" *Id*. (quotation marks and citation omitted).

Here, however, defendant is seemingly arguing that plaintiff could not relitigate issues regarding decedent's property because they were already resolved in probate court. Her argument more appropriately may be considered one of collateral estoppel, which "prevents relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid judgment and the issue was actually and necessarily determined in the prior proceeding." *Keywell & Rosenfeld v Bithell*, 254 Mich App 300, 340; 657 NW2d 759 (2002) (quotation marks and citation omitted). However, courts do not serve as research assistants for the parties before them, *Walters v Nadell*, 481 Mich 377, 388; 751 NW2d 431 (2008), and an appellant may not simply announce a position or assert an error and leave it up to this Court to discover and rationalize the basis of the claims, elaborate the parties' arguments, or search for authority in support, *Mitcham*, 355 Mich at 203. Moreover, the property and quit claim deed in this matter were not actually relitigated, rendering defendant's argument moot. "An issue is moot if an event has occurred that renders it impossible for the court to grant relief." *In re Gerald L. Pollack Trust*, 309 Mich App at 154 (quotation marks and citation omitted).

Defendant also seemingly makes an argument with the procedure of this case, arguing that the writ of garnishment entered in this case included decedent's property, which was already litigated, and when the case was "reopened," decedent's home was again included in plaintiff's claims. For clarity, what actually occurred was that a default was entered against defendant for failure to plead or otherwise defend, and then a default judgment was entered in plaintiff's favor. A writ of garnishment was entered, which defendant asserted was how she found out about this lawsuit, and she moved to set aside the default judgment. The court granted the motion, and the default judgment was set aside.

The complaint included factual allegations that defendant signed a quit claim deed in March 2014 to convey decedent's interest in her home to Boykin-Hayes, that defendant had the deed recorded, and that the conveyance removed plaintiff's interest in the property as provided under decedent's will. At trial, plaintiff testified that the decedent executed a quit claim deed of her house to Boykin-Hayes. Defense counsel objected to the admission of the quit claim deed, saying the issue had already been adjudicated in the Wayne Probate Court, and plaintiff had received a judgment. Defense counsel indicated this was why she filed a motion based on "forum shopping." Boykin-Hayes kept the property, and plaintiff received a monetary award for her interest. The court asked what the relevance of the deed was when making a decision about admissibility and then concluded that the issue would not be relitigated after being decided by the probate court. The deed was not admitted as an exhibit. Nor was decedent's property or this transfer discussed in the final judgment. Because the property issue was not actually relitigated in circuit court and the quit claim deed was not admitted at trial, defendant is not entitled to any relief.

Affirmed.

/s/ Anica Letica
/s/ Colleen A. O'Brien
/s/ James Robert Redford