

STATE OF MICHIGAN
COURT OF APPEALS

JEFFREY WILKINS,

Plaintiff-Appellant,

v

VIRGINIA TILE COMPANY, LLC,

Defendant-Appellee.

UNPUBLISHED

October 01, 2026

10:28 AM

No. 375092

Wayne Circuit Court

LC No. 23-010068-CB

Before: LETICA, P.J., and RICK and GARRETT, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting summary disposition to defendant under MCR 2.116(C)(10) (no genuine issue of material fact). We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff began working for defendant in March 2021 as its National Accounts Sales Manager. His position carried a \$150,000 base salary, along with the possibility of earning commissions based on sales and gross-profit goals. His offer letter provided that variable compensation was not guaranteed and was subject to change. Plaintiff’s employment was at will. To count toward a salesperson’s new-business target and eligibility for commissions, a sale had to be invoiced.

Plaintiff’s initial new-business target for 2021 was approximately \$500,000. He did not meet that target and does not seek commissions for 2021. His 2021 performance review rated him as partially meeting expectations with respect to his goals. The review acknowledged that national-account development could take considerable time, but stated that defendant needed to see results in 2022.

In March 2022, plaintiff’s then-supervisor, Eric Wroldsen, sent him a variable-compensation plan setting a new-business goal of \$1,217,500 and a gross-profit goal of \$405,000. The plan provided for a \$50,000 commission upon achievement of the gross-profit goal, with additional compensation available above that amount. Plaintiff later maintained that the plan was not final and that defendant never provided him with finalized compensation targets. He

nevertheless acknowledged that \$1,217,500 was his stated new-business goal for 2022 and that he had to meet a threshold before becoming entitled to commissions. Plaintiff did not meet the new-business or gross-profit threshold in 2022, and he does not claim that defendant owes him commissions for that year.

Plaintiff's work focused on developing national customers that had not previously done significant business with defendant. He negotiated an agreement with Premier, Inc., a healthcare purchasing group, that allowed defendant to compete for business from Premier members. The agreement did not guarantee defendant any particular projects or orders. Plaintiff also negotiated an agreement making defendant a preferred vendor for Yum Brands. That status gave defendant an opportunity to compete for Yum projects, but defendant still had to win individual bids before any sales resulted. Plaintiff separately pursued a product-standards relationship with Dick's Sporting Goods. That arrangement was nonexclusive and did not require Dick's to purchase tile from defendant.

Plaintiff believed these relationships positioned defendant to receive substantial future business. He therefore maintained that he was on track to meet his sales goals even though his invoiced sales remained below his targets. His assessment depended largely on anticipated projects and projections from potential customers. Plaintiff acknowledged that securing a contract or customer relationship was not the same as making a sale. He also could not establish that his invoiced new business in 2022 reached even \$500,000.

Defendant grew dissatisfied with plaintiff's lack of sales. Management began discussing his performance internally by early 2022. Dana Kropke became plaintiff's supervisor in September 2022. During the hiring process, Kropke was told that management was dissatisfied with plaintiff's results and that at least one member of defendant's ownership believed he should be terminated. Kropke wanted to evaluate plaintiff's performance herself before making that decision.

Defendant ultimately terminated plaintiff in February 2023. Kropke and defendant's former human-resources director testified that plaintiff was terminated because his anticipated sales had not materialized despite the time defendant had allowed his national accounts to develop. Defendant had not yet issued plaintiff a sales or compensation target for 2023 at that point. According to Kropke, defendant generally issued those targets later in the year, and plaintiff was terminated before his 2023 target was prepared. Plaintiff agreed that any 2023 goal likely would have been at least as high as his 2022 goal. Although he believed the accounts he had developed would eventually generate enough business to exceed that figure, he could not identify invoiced sales before his termination that met any potentially applicable commission threshold.

The accounts also did not produce the level of business plaintiff expected after he left. Defendant reported approximately \$382,000 in revenue from Premier members during 2022 and 2023. Plaintiff questioned the accuracy of that figure but had no documentation showing a higher amount. Defendant later concluded that the Premier-related sales reflected business it would have received without the Premier agreement and terminated the agreement in 2024.

Yum generated no completed sales during the relevant period according to defendant's records. A purchase order for approximately \$2,800 was placed shortly before plaintiff's

termination but canceled before shipment. Dick's generated approximately \$32,000 in invoiced sales, largely after plaintiff was terminated. Defendant continued pursuing the customer relationships plaintiff had developed after his termination, but those efforts did not result in the volume of sales plaintiff had anticipated.

Plaintiff filed this action in August 2023. He asserted a breach-of-contract claim and a claim under MCL 600.2961. His contract theory rested largely on the contention that defendant terminated him just as the national accounts he had developed were beginning to mature into substantial business. Plaintiff claimed that the opportunities he developed represented more than \$25 million in projected business. He acknowledged, however, that this figure represented projections rather than completed sales. He could not identify particular transactions for which a commission had become due, nor could he calculate the amount of commissions he claimed defendant owed him.

Defendant moved for summary disposition under MCR 2.116(C)(10). Defendant argued that the governing compensation arrangement required completed, invoiced sales before plaintiff could earn a commission and that there was no genuine dispute that plaintiff had failed to meet his sales thresholds. Defendant further maintained that plaintiff remained an at-will employee throughout his employment. Thus, in defendant's view, the possibility that plaintiff's customer relationships might have produced sales in the future did not restrict defendant's contractual right to terminate him.

Defendant also disputed plaintiff's suggestion that it had fired him to avoid paying commissions on business he had already procured. According to defendant, plaintiff had developed opportunities for future business, not completed sales carrying earned commissions. The customer arrangements plaintiff negotiated did not guarantee purchases, and the anticipated business on which plaintiff relied remained contingent on future bids or orders. Defendant therefore argued that neither the procuring-cause doctrine nor a theory that defendant had prevented plaintiff from earning his commissions could turn those anticipated sales into compensation due under the parties' agreement.

Plaintiff responded that defendant's position ignored the nature of the job for which it had hired him. He emphasized evidence that national accounts could require a year or longer to develop before producing substantial sales. According to plaintiff, defendant knew from the outset that his work would require a lengthy development period, yet terminated him just as the relationships he had established were beginning to produce orders.

Plaintiff maintained that those customer relationships were on the verge of becoming significant sources of revenue. In his view, defendant could not rely on the absence of completed sales when its own decision to terminate him deprived him of the opportunity to bring those relationships to fruition. He argued that defendant effectively prevented him from satisfying the sales condition necessary to earn commissions by ending his employment before the anticipated business materialized. Plaintiff also contended that defendant failed to adequately pursue the accounts after he left, further preventing the expected sales from occurring.

Plaintiff characterized defendant's conduct as a breach of its obligation to act in good faith under the employment agreement. He argued that there was at least a factual dispute concerning

whether defendant could set compensation thresholds, allow him to spend considerable time developing national accounts, and then terminate him before those accounts generated the sales from which his commissions would be calculated. In plaintiff's view, a jury could find that defendant acted unfairly by ending his employment at the point when his earlier work was about to produce substantial returns.

Following oral argument, the trial court concluded that plaintiff had not met his sales goals and therefore had not earned commissions under the parties' agreement. The court rejected plaintiff's reliance on sales that might have occurred had his employment continued, reasoning that potential future business was too speculative to establish an entitlement to commissions. It granted defendant summary disposition on both counts. Plaintiff moved for reconsideration, which the trial court denied. This appeal followed.

II. ANALYSIS

A. STANDARD OF REVIEW

We review de novo a trial court's decision on a motion for summary disposition. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 205; 815 NW2d 412 (2012). We likewise review de novo issues of contractual and statutory interpretation. *Elizabeth Trace Condo Ass'n v American Global Enterprises, Inc*, 340 Mich App 435, 439; 986 NW2d 412 (2022).

A party is entitled to summary disposition under MCR 2.116(C)(10) when, except as to 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." MCR 2.116(C)(10). A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Joseph*, 491 Mich at 206. In deciding the motion, a court considers the affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties. *Id.*; see also MCR 2.116(G)(5).

The moving party bears the initial burden of identifying the issues for which no genuine question of material fact exists. MCR 2.116(G)(4). The movant may satisfy that burden by presenting evidence negating an essential element of the nonmoving party's claim or by demonstrating that the nonmoving party's evidence is insufficient to establish an essential element. *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 7; 890 NW2d 344 (2016). Once the movant satisfies that burden, the nonmoving party must go beyond the pleadings and identify specific facts establishing a genuine factual dispute. *Id.*

The evidence must be considered in the light most favorable to the nonmoving party. *Joseph*, 491 Mich at 205. A court may not weigh the evidence, resolve credibility questions, or make factual findings. *Patrick v Turkelson*, 322 Mich App 595, 605; 913 NW2d 369 (2018). A genuine issue of material fact exists when the record, viewed in the light most favorable to the opposing party, leaves open an issue on which reasonable minds could differ. *Webb v Progressive Marathon Ins Co*, 335 Mich App 503, 507; 967 NW2d 841 (2021). Speculation, however, does not create a factual dispute. *Estate of Trueblood v P&G Apartments, LLC*, 327 Mich App 275, 289; 933 NW2d 732 (2019).

When interpreting a contract, our goal is to determine and enforce the parties' intent from the agreement's plain language. *Harbor Park Market, Inc v Gronda*, 277 Mich App 126, 130; 743 NW2d 585 (2007). If the contractual language is unambiguous and the agreement does not violate the law or public policy, we enforce the agreement as written. *Id.*

B. IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

Plaintiff first argues that defendant violated the covenant of good faith and fair dealing. Plaintiff makes this claim by averring that defendant failed to provide a 2023 compensation plan, set unattainable sales targets, and terminated him before the national accounts he developed could produce substantial commissions. We disagree.

The implied covenant of good faith and fair dealing generally protects a contracting party's ability to obtain the benefits promised by the agreement. *Hammond v United of Oakland, Inc*, 193 Mich App 146, 152; 483 NW2d 652 (1992). But Michigan does not recognize an independent cause of action for violating that covenant. *Gorman v American Honda Motor Co, Inc*, 302 Mich App 113, 133-134; 839 NW2d 223 (2013). Instead, the covenant serves as an interpretive tool for evaluating duties imposed by the parties' agreement. *Id.* Accordingly, this Court has declined to recognize a claim based on the implied covenant in an at-will employment relationship. *Hammond*, 193 Mich App at 152.

When a contract gives one party discretion over how to perform a contractual obligation, that discretion must be exercised "honestly and in good faith." *Burkhardt v City Nat'l Bank of Detroit*, 57 Mich App 649, 652; 226 NW2d 678 (1975). The covenant, however, does not itself create a contractual duty where none otherwise exists. *Kircher v Boyne USA, Inc*, ___ Mich ___; ___ NW3d ___ (2025) (Docket No. 166459); slip op at 7-8. Nor may it override or replace the agreement's express terms. *Id.* at 7. Thus, the relevant question is whether defendant exercised authority granted by the parties' agreement in a manner that deprived plaintiff of a contractual benefit.

Plaintiff first contends that defendant failed to provide him with a 2023 sales target and then fired him for failing to meet that undefined target. The evidence does not support plaintiff's argument. Plaintiff was terminated before defendant typically distributed annual targets. Further, the record shows that, in terminating plaintiff, defendant relied on plaintiff's failure to generate sufficient sales during 2021 and 2022. More importantly, defendant's offer of employment expressly provided that plaintiff's employment was at will. It also stated that variable compensation was not guaranteed and was subject to change. The implied covenant cannot transform those provisions into a promise of continued employment or guaranteed variable compensation. *Hammond*, 193 Mich App at 152.

The parties dispute whether the compensation plan sent to plaintiff in March 2022 was final. That dispute is immaterial. Plaintiff admitted that his 2022 target was at least \$500,000 and that he did not reach that figure. He further admitted that only invoiced sales counted toward the target and that he did not earn variable compensation for 2022. Thus, even accepting plaintiff's testimony about the plan's status, no reasonable fact-finder could conclude that defendant withheld compensation earned by plaintiff under either the disputed 2022 plan or the lower threshold that plaintiff acknowledged.

Plaintiff next contends that defendant deliberately imposed unattainable sales targets so that it could terminate him before the national accounts generated commissions. Although defendant's witnesses testified that plaintiff was terminated because of his poor sales performance, their testimony does not by itself defeat plaintiff's theory at the summary-disposition stage because a court may not resolve questions of credibility. *Patrick*, 322 Mich App at 605. Plaintiff nevertheless had to present some evidence from which a reasonable fact-finder could infer that defendant manipulated his sales targets or terminated him to avoid paying commissions. *Lowrey*, 500 Mich at 7. Plaintiff produced no such evidence.

In support of his argument, plaintiff relies principally on the timing of his termination. He also points to the national-account relationships he developed and defendant's handling of those accounts after his departure. Yet defendant began discussing plaintiff's lack of sales *before* the relationships were finalized, and none of the relationships guaranteed a sale. The sales that occurred after plaintiff's termination remained far below even the lowest target he acknowledged. On this record, plaintiff's assertion that defendant designed unattainable targets or terminated him to avoid substantial commissions is speculation, not a reasonable inference supported by specific facts. *Trueblood*, 327 Mich App at 289.

Finally, plaintiff argues that his sales targets governed only his variable compensation and did not operate as mandatory quotas permitting termination. That distinction does not establish a breach. The agreement did not restrict defendant's authority to terminate plaintiff to particular grounds; it expressly made his employment at will. Whether defendant viewed the targets as compensation thresholds, performance expectations, or both, its decision to end plaintiff's employment did not violate any express contractual limitation. The covenant of good faith and fair dealing cannot supply the limitation the parties omitted. *Kircher*, ___ Mich at ___; slip op at 7-8. Accordingly, plaintiff has not identified a contractual benefit that defendant denied through a bad-faith exercise of contractual discretion.

C. CONDITION PRECEDENT AND PREVENTION OF PERFORMANCE

Plaintiff next argues that completed sales were a condition precedent to his right to receive variable compensation and that defendant prevented the condition from occurring by terminating him and failing to continue developing the national accounts. We disagree.

A condition precedent identifies an event that must occur before a contractual duty becomes enforceable. *Harbor Park*, 277 Mich App at 131. Ordinarily, a party has no duty to perform if the condition does not occur. *Id.* Courts will not treat a contractual term as a condition precedent unless the agreement's language demonstrates that intent. *Real Estate One v Heller*, 272 Mich App 174, 179; 724 NW2d 738 (2006). A condition differs from a contractual promise because it does not itself impose an obligation on either party. *Id.* Rather, its occurrence determines whether a separate contractual duty must be performed. *Id.* Additionally, a promisor generally may not rely on the nonoccurrence of a condition that the promisor wrongfully prevented. *Hayes v Beyer*, 284 Mich 60, 64-65; 278 NW 764 (1938). That principle presupposes an existing contractual obligation and conduct that wrongfully obstructed its performance. It does not create a substantive promise that the parties did not make.

Defendant's offer of employment made plaintiff eligible for variable compensation based on his achievement of sales and gross-profit goals. It did not promise that plaintiff would remain employed until the national accounts generated enough invoiced sales to trigger a commission, nor did it require defendant to continue pursuing those accounts after plaintiff's employment ended. Reading such obligations into the agreement would conflict with its express at-will provision. And plaintiff has identified no evidence that defendant interfered with his ability to generate qualifying sales while he remained employed. Instead, he relies on his belief that continued employment and different management of the accounts would eventually have produced substantial future sales. The accounts, however, merely afforded defendant opportunities to compete for future business. The projected sales on which plaintiff relies never occurred. His expectation that they eventually would is speculative and does not create a genuine issue of material fact. *Trueblood*, 327 Mich App at 289.

Plaintiff has not identified a contractual obligation that defendant breached by terminating his employment or changing its approach to the national accounts afterward. Accordingly, the prevention doctrine does not excuse his failure to satisfy the requirements for variable compensation. The trial court did not err by granting summary disposition to defendant.

D. ABANDONED ISSUES

Defendant argues that plaintiff has abandoned any challenge to the trial court's dismissal of his claim under MCL 600.2961. We agree.

Plaintiff's statement of questions presented identifies only whether the trial court erred by granting summary disposition on his breach-of-contract claim. Although plaintiff refers to his statutory claim in the introduction and conclusion of his brief, he does not develop an argument explaining why the trial court erred by dismissing that claim or cite authority supporting reversal. An issue not raised in the statement of questions presented is not properly presented for appellate review. *Esordi v Twp of Macomb*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 366541); slip op at 5. Moreover, failure to adequately brief an issue constitutes abandonment. *Seifeddine v Jaber*, 327 Mich App 514, 520; 934 NW2d 64 (2019). Accordingly, we decline to consider plaintiff's claim under MCL 600.2961.

Defendant further argues that plaintiff improperly relies on Exhibits 8 and 9, which the trial court excluded when deciding defendant's motion for summary disposition. Plaintiff does not identify the exclusion of those exhibits in his statement of questions presented or otherwise develop an argument that the trial court erred by excluding them. Accordingly, any challenge to that ruling is abandoned, and we do not consider Exhibits 8 and 9 in reviewing the trial court's decision. Plaintiff similarly refers to the procuring-cause doctrine but does not develop it as an independent basis for reversal. We therefore consider that issue abandoned.

E. DEFENDANT'S REQUEST FOR COSTS AND ATTORNEY FEES

Defendant requests costs and attorney fees incurred in defending this appeal. To the extent defendant seeks attorney fees as a sanction under MCR 7.216(C), its request is premature. A party seeking sanctions must file a separate motion under MCR 7.211(C)(8), and the motion may not be

filed until this Court has issued its decision. MCR 7.211(C)(8). Defendant included its request in its appellate brief, and we therefore decline to consider that request.

Affirmed. Defendant, as the prevailing party, may tax costs pursuant to MCR 7.219(A).

/s/ Anica Letica

/s/ Michelle M. Rick

/s/ Kristina Robinson Garrett