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STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM MICHAEL COAN and CINDY PLANT, Plaintiffs/Counterdefendants-Appellants/Cross-Appellees,	UNPUBLISHED October 20, 2026 2:24 PM
v	No. 368227 Livingston Circuit Court
ROBERT ERCOLANI, Defendant/Counterplaintiff-Appellee/Cross-Appellant.	LC No. 2020-030740-NZ

Before: YOUNG, P.J., and REDFORD and FEENEY, JJ.

PER CURIAM.

This case involves a very acrimonious dispute between neighbors over water moving between the parties properties. It involved years of litigation, multiple failed efforts at resolution, and a complete inability of these contiguous property owners to get along in any reasonable fashion. Portions of the claims were tried to a jury, and portions of claims were tried to the bench.

Plaintiffs, William Michael Coan and Cindy Plant, appeal as of right multiple orders issued by the trial court throughout the course of the litigation and an order wherein the trial court adopted a drainage-solution formulated by an independent expert as opposed to plaintiffs' expert's plan in this drainage dispute between neighbors.

Defendant, Robert Ercolani, likewise cross-appeals multiple orders issued by the trial court throughout the course of the litigation and the order wherein the trial court adopted the drainage solution formulated by an independent expert as opposed to defendant's expert's plan.

We affirm.

I. BRIEF FACTUAL SUMMARY AND ARGUMENTS ON APPEAL

Defendant owns property at 796 N. Latson Rd. in Livingston County. Coan owns neighboring property to the north and east, at 800 N. Latson Rd. Coan and Plant (who is Coan's

girlfriend) own property at 790 N. Latson Rd., to the south of defendant's property.[1] The dispute in this case primarily involves flooding occurring at 796 N. Latson Rd. and 800 N. Latson Rd.

Evidence showed that such flooding started after plaintiffs acquired their property and that it largely had not occurred before that took place. The parties dispute why the flooding initially started, but both Coan and defendant undertook various actions throughout the years to regrade and otherwise alter their properties. Extremely contentious and lengthy litigation commenced, with a complaint and counterclaim being filed. The theories that proceeded to a jury trial were trespass (due to water flow) and negligence. The jury found as follows: (1) defendant was negligent but his negligence was not a proximate cause of plaintiffs' damages; (2) defendant trespassed on plaintiffs' property and damaged their property other than trees in the amount of $85,000; (3) neither Coan nor Plant was negligent; (4) Coan trespassed on defendant's property and caused $91,250 in damages as a result; and (5) Plant trespassed on defendant's property but did not thereby damage the property. The court was then left with trying to determine how to resolve the drainage problem, and a bench trial was held for that purpose. Plaintiffs and defendant provided, by way of experts, proposed drainage-solution plans for the properties. The court also appointed an independent expert to set forth a drainage solution from a neutral perspective. The court ultimately adopted the plan proposed by the independent expert.

On appeal, plaintiffs contend that (1) the court should have granted their motion to strike defendant's expert, (2) the court should have granted their motion for summary disposition regarding defendant's claims of trespass and negligence, and (3) the court should have rejected the independent expert's drainage-solution plan and adopted plaintiffs' proposed plan. Defendant, on cross-appeal, argues that (1) the court should have granted an expanded preliminary injunction against plaintiffs; (2) part of the jury verdict was inconsistent; (3) the court erred in admitting evidence at a contempt hearing, improperly found defendant in contempt of court, and assessed an improper fine; and (4) the case should be remanded for a new bench trial on the drainage-solution plan so that updated information can be taken into account.

Because none of the claims or counterclaims made by either appellant or cross-appellant have any merit, we affirm the trial court in its entirety.

II. MOTION TO STRIKE AND MOTION FOR SUMMARY DISPOSITION

Plaintiffs contend that the trial court should have granted their motion to strike the testimony of defendant's expert witness, Joel Rinkel, and should have granted summary disposition regarding defendant's counterclaims of trespass and negligence because there was insufficient evidence in support of them, especially without Rinkel's testimony.

This Court reviews the admissibility of an expert's testimony for an abuse of discretion. *Lopez v Gen Motors Corp*, 224 Mich App 618, 636-637; 569 NW2d 861 (1997). "An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling." *Cleary v Turning Point*, 203 Mich App 208, 210; 512 NW2d 9 (1993). We review a summary-disposition ruling de novo. *West*

[1] For ease of reference, "Coan's property" will generally refer to 800 N. Latson Rd.

v Gen Motors Corp, 469 Mich 177, 183; 665 NW2d 468 (2003). The trial court analyzed the motion under MCR 2.116(C)(10). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *Id*. The evidence is viewed in the light most favorable to the party opposing the motion. *Id*.

At the time in question, MRE 702 stated:

> If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Rinkel took soil borings to show that land topography had been manipulated such that more water would flow from Coan's property to defendant's than would otherwise have been the case.

Citing the Michigan Supreme Court's order in *Lowery v Enbridge Energy Ltd Partnership*, 500 Mich 1034; 898 NW2d 906 (2017), plaintiffs contend that a mere temporal relationship between events cannot prove causation and that Rinkel relied on such a relationship. They also contend that Rinkel's analyses were flawed because he did not do an analysis of the quantity of water that flowed between the properties.

Rinkel stated in a report that "[a]ny change in elevation to the existing ground surface (e.g. raising site grades with backfill or lowering site grades by excavation) will affect the natural flow of surface water." The report noted that fill on 800 N. Latson created "new and different paths for surface water flow" and that "grade changes have altered the flow of surface water on the property, and have redirected surface water to the edges of, and in some cases onto, the neighboring properties." The report indicated that some surface water that "previously accumulated" on 800 N. Latson Rd. was now going onto 796 N. Latson Rd. Rinkel stated that the information in his report "was based on what we found with the field exploration and our review of the files, all the plans, the aerials, the topography, [and] the survey." He also stated that the borings and aerial photographs tended to show that some fill was being placed on Coan's property before any manipulations on defendant's property. Rinkel also used aerial imagery to demonstrate that fill was added between 2016 and 2018. In addition, Coan admitted to putting fill on his property.

We conclude that the trial court did not abuse its discretion by failing to strike the expert. Rinkel explained that the soil borings show the addition of fill. Likewise, Rinkel did not rely *solely* on soil borings in reaching his conclusions but also relied on topographical maps and aerial photography. Plaintiffs contend that, for his testimony to have any value, Rinkel needed to have calculated the volume of water flowing between the properties. However, even the fact of a redirection of water was something that would "assist the trier of fact to understand the evidence

or to determine a fact in issue[.]" MRE 702. Photographic evidence or testimony from other witnesses could then go toward the issues of the exact direction of the water and the water volume.[2]

Plaintiffs next contend that the trial court should have granted their motion for summary disposition regarding defendant's counterclaims for trespass and negligence. The negligence issue is moot. "Whether a case is moot is a threshold question that we address before reaching the substantive issues of a case. An issue is moot when a subsequent event makes it impossible for this Court to grant relief." *Gleason v Kincaid*, 323 Mich App 308, 314; 917 NW2d 685 (2018). After the denial of plaintiffs' motion for summary disposition, the jury concluded that neither Plant nor Coan had been negligent. Accordingly, this Court cannot grant any relief on this assignment of error.

As for the claim of trespass, plaintiffs contend that defendant did not present sufficient evidence of causation to survive a motion for summary disposition. But defendant stated that his property never flooded until plaintiffs began altering their property. Defendant's brother said he saw Coan pumping water onto defendant's property. Another witness said he saw Coan pumping water onto defendant's property in 2020 and said that defendant was trying to figure out how to mitigate the problem. He stated that Coan "swamped us out." Defendant claimed that he put in a berm because he "got tired" of Coan "flooding me out." And he also said that Coan's actions had stopped some of the water from defendant's property from going into the pond on Coan's property.

Plaintiffs place great emphasis on defendant's admission that the water currently coming onto his property from plaintiffs' property was because of the trench that the court ordered him to install. But plaintiffs omit to set forth that the trench was ordered to mitigate the effects of a berm that defendant installed *because of flooding allegedly caused by plaintiffs*.

In light of this evidence and Rinkel's evidence, the trial court did not err by denying the motion for summary disposition.

III. FINAL INJUNCTIVE RELIEF

Both plaintiffs and defendant take issue with the court's adoption of the drainage-solution plan proposed by the independent expert, Wayne Perry.

"The granting of injunctive relief is within the sound discretion of the trial court, although the decision must not be arbitrary and must be based on the facts of the particular case." *Twp of Holly v Holly Disposal, Inc*, 440 Mich 891; 487 NW2d 753 (1992). "[I]njunctive relief is carved out from the general rule that equitable relief is reviewed de novo and is, instead, reviewed for an abuse of discretion." *Dep't of Environmental Quality v Gomez*, 318 Mich App 1, 33 n 12; 896 NW2d 39 (2016).

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[2] To the extent *some* of the soil borings were not relevant because of their location, this would go toward the overall weight of Rinkel's testimony but would not make his testimony outright inadmissible. His testimony about "boring B3" was particularly pertinent in that he indicated that multiple feet of backfill had been added, which forced water toward 796 N. Latson.

Perry submitted a plan that proposed (1) large, specifically constructed sedimentation areas, with berms, on both 800 N. Latson Rd. and 796 N. Latson Rd.; (2) a linear, permeable, subsurface French drain system connecting the two sedimentation areas, with flow from 800 N. Latson Rd. to 796 N. Latson Rd.;[3] (3) a pond overflow pipe on 800 N. Latson Rd. discharging to the sedimentation area on 796 N. Latson Rd.; (4) grading of 796 N. Latson Rd. to allow surface water to flow south; (5) a connector pipe to direct downspout water from an existing building on 796 N. Latson Rd. to the French drain system; (6) a redirection of surface water from the parking area on 796 N. Latson Rd.; and (7) allowing surface water from the western part of 796 N. Latson Rd. to continue flowing north and across 800 N. Latson Rd.

The court concluded that the properties had been changed so much that the grades that existed in 2010, before the parties' various alterations and the subsequent flooding, could not be successfully restored. It said that it needed to find a solution that would alleviate flooding and last into the future. It stated that there was a great deal of animosity between the parties and that the ideal solution would require little collaboration between them and allow for objective criteria to measure performance. The court concluded that Perry's plan "best alleviates the flooding on the subject parcels, without unduly burdening any party, all while respecting and incorporating as best as possible (given the man-made changes to the parcels in the last decade) the natural and historic flow of the water in that area."

The court stated that plaintiffs' proposed plan, which relied on grading and an infiltration zone, was not a viable solution because 796 N. Latson Rd. could not be graded to the necessary extent, and there was no evidence that the infiltration rate on 796 N. Latson Rd. was sufficient to allow the plan to succeed. It stated that defendant's plan was not a viable solution because it relied on directing water to the east pond on Coan's property, and this was likely to overflow and flood 796 N. Latson Rd. The court adopted Perry's plan.

Plaintiffs contend that their plan should have been adopted. But the trial court gave adequate reasons why the plan, which relied on sloping and an infiltration zone, was not feasible. The infiltration rate of defendant's property had not been calculated to show that the proposed infiltration zone would be effective. Perry said that infiltration zones generally work for "very small storm events" but not for major storms. He also said that most soils in Livingston County had limited infiltration. He added that the slope across defendant's property was "less than what we would like to see normally for surface water flows," and that "the maximum slope you could achieve across that piece of property isn't going to change." In other words, one could not increase the slope to make the water flow better.

Plaintiffs also contend that the trial court's adoption of Perry's plan was barred by *Wiggins v City of Burton*, 291 Mich App 532; 805 NW2d 517 (2011), and that decision's discussion of the Drain Code. In that case, this Court concluded that certain provisions of the Drain Code pertaining to the taking of land had not been followed before the city installed a drain with the permission of certain landowners but not the plaintiff. *Id*. at 537, 568-570. This Court noted, however, that these

[3] Evidence was presented that this was the general, natural direction of the water (i.e., from 800 N. Latson Rd. to 796 N. Latson Rd.), with some small exceptions in areas.

provisions only applied after a drainage district had been established, after the drain commissioner or drainage board had established the necessity of the drain, after a petition for the drain had been filed, and after the drain commissioner had endeavored to obtain pertinent permissions from affected landowners. *Id*. at 570. It ordered removal of the drain so that the city could decide whether to reinstall it under the Drain Code. *Id*. Here, no evidence was presented that a new drainage district needed to be established in the present dispute between two landowners, and Perry's plan involves drainage *to the parcel defendant owned*, as one of the parties to the dispute. Plaintiffs contend that Perry's plan forces parties to install pipes potentially against their will, contrary to the holding in *Wiggins*. See, e.g., *id*. at 550-551 (the drain was held to be a trespass). But clearly the court here was going to force the parties to make some alterations to their properties to resolve the long-running dispute at issue in this case. Indeed, that was the entire point of the bench trial. Plaintiffs also contend that Perry's plan could result in litigation from neighbors, stating that a neighbor had complained about defendant's pumping of water onto Latson Rd. But Perry's plan does not require any such pumping.

Defendant, for his part, contends that Perry's plan was not sufficiently supported by evidence. But Perry stated that he met twice with Rinkel and with plaintiffs' expert to understand the current drainage conditions and reviewed topographical surveys, site information, and plans depicting the drainage for both parcels. Defendant also contends that a remand is necessary so that a new bench trial can be held with updated information regarding the condition of the parcels.[4] Perry's plan, however, provides specific dimensions and elevation levels that can be followed regardless of the current conditions.

We conclude that the trial court did not abuse its discretion by adopting Perry's drainage-solution plan.

IV. PRELIMINARY INJUNCTION

Defendant contends that the court erred by failing to issue a preliminary injunction enjoining Coan from doing any further grading of the property.

We disagree.

Again, this Court reviews a trial court's decision regarding injunctive relief for an abuse of discretion. *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 8; 753 NW2d 595 (2008).

This Court explained in *Alliance for Mentally Ill of Mich v Dep't of Comm Health*, 231 Mich App 647, 655-656; 588 NW2d 133 (1998), that "[t]he objective of a preliminary injunction is to maintain the status quo pending a final hearing regarding the parties' rights." That final hearing has now occurred, and the trial court has ordered final injunctive relief pertaining to the water flow over the parties' properties. For this reason alone, appellate relief is not warranted. In

[4] In his latest brief, defendant has ceased arguing, in the alternative, that Rinkel's drainage-solution plan should be adopted.

addition, the initial preliminary injunction issued by the court stated that Coan was to remove any piping directed toward defendant's property and that Coan "cannot direct any unnatural or additional water to Defendant's property." This was to protect defendant's property, as he requested. Grading such that additional water would be directed to defendant's property is encompassed by this language. And when defendant specifically requested a prohibition against grading, the court said that Coan could bring in manure only, and only for farming/fertilizer purposes, but could add no more gravel or fill. Again, this order was protective of defendant's property. Given all the circumstances, no abuse of discretion is apparent.

V. CONTEMPT

Defendant contends that the trial court improperly allowed a witness who had not been disclosed as a witness prior to the hearing to testify at the contempt hearing, allowed an improper exhibit, and improperly found defendant in contempt of court.

This Court reviews for an abuse of discretion the decision to allow an undisclosed witness to testify. *Dehring v Northern Mich Exploration Co, Inc*, 104 Mich App 300, 321; 304 NW2d 560 (1981). We review a trial court's order of contempt for an abuse of discretion. *Porter v Porter*, 285 Mich App 450, 454; 776 NW2d 377 (2009). The admission of evidence is also reviewed for an abuse of discretion. *Albro v Drayer*, 303 Mich App 758, 760; 846 NW2d 70 (2014).

After plaintiffs moved for a preliminary injunction, the court signed a stipulated order on September 29, 2020, stating that defendant was enjoined from "any pumping of water onto . . . 790 N. Latson Rd., or . . . 800 N. Latson Rd." At the hearing regarding whether defendant was in contempt of court for failing to adhere to this order, engineer Brent DeRose testified that it was untrue that water in a flooded backyard would reach defendant's house if he did not use his pump, because it would instead "overflow to the south" well before it entered the home. Defendant contends that DeRose should not have been allowed to testify because he was an undisclosed witness.

As an initial matter, defendant admits that no witness lists were exchanged. As such, it is difficult to conclude that DeRose was a so-called "undisclosed witness," especially when plaintiffs referred to DeRose and his testimony in the brief prepared for the evidentiary hearing. Also, in *Pastrick v Gen Telephone Co of Mich*, 162 Mich App 243, 245; 412 NW2d 279 (1987), this Court stated that "[t]rial courts should not be reluctant to allow unlisted witnesses to testify where justice so requires, particularly with regard to rebuttal witnesses." Defendant testified at the contempt hearing that he needed to use a pump to prevent water from reaching his house. In essence, defendant was arguing that the pumping of water was needed to protect his home. The trial court did not abuse its discretion by deciding that DeRose's testimony was necessary to further explore this issue. Moreover, although the trial court mentioned DeRose's testimony in its findings, the

court stated that even disregarding the scientific testimony, defendant was still prohibited from violating the court's order. Reversal is not warranted.[5]

Defendant contends that there was insufficient evidence for a finding of contempt. He alleges that the evidence did not show a pump moving water directly onto Coan's property. The reasonable inference from all the evidence, however, was that pumping of water, resulting in water moving to Coan's property, took place. No abuse of discretion is apparent with regard to the finding of contempt.

Defendant also argues that the trial court did not make adequate findings in its written order of contempt. But the court made its detailed findings on the record and referred to the hearing dates in its order. This is a very common practice and demonstrates no need for a reversal or remand. The court fined defendant $2,900 for contempt of court and added attorney fees, for a total of $8,147.50. Defendant contends that this violated MCL 600.1715(1), which limits a contempt fine to $7,500. This argument is without merit because the attorney fees are separate from the fine. See MCL 600.1721 and *In re Contempt of Henry*, 282 Mich App 656, 685; 765 NW2d 44 (2009).[6]

Affirmed.

/s/ Adrienne N. Young
/s/ James Robert Redford
/s/ Kathleen A. Feeney

[5] Defendant also contends that DeRose's testimony was without foundation. He fails to provide any support for this argument. A party may not simply announce a position and leave it to this Court to make the party's arguments for him, discover the basis for his claims, and search for authority to support the party's position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Defendant also contends that a text exchange was improperly admitted at the contempt hearing. He implies that it violated the rules of hearsay, but he fails to mention what the text exchange stated, whether it contained admissions of a party opponent, etc. In addition, he refers to it as "exhibit 11," but exhibit 11 was a deposition transcript. Once again, the briefing is inadequate. *Id*.

[6] We need not address defendant's argument that the jury's finding that Plant's trespass caused no damage was inconsistent, because defendant did not raise it below. *In re Doe*, 350 Mich App 1, 9; 29 NW3d 499 (2024). The argument is without merit, in any event, because the evidence against Coan was stronger than that against Plant. We also decline to reform the jury verdict to find "no cause of action" against Plant, as argued by plaintiffs.