STATE OF MICHIGAN

COURT OF APPEALS

KREIS, ENDERLE, HUDGINS & BORSOS, P.C.,

Plaintiff-Appellee,

v

ALEXANDRA N. BEDFORD,

Defendant-Appellant.

UNPUBLISHED
November 10, 2011

No. 300183
Kalamazoo Circuit Court
LC No. 2009-000627-CK

Before: JANSEN, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals by right the circuit court's order granting summary disposition in favor of plaintiff pursuant to MCR 2.116(C)(10). We affirm.

I

Defendant is a veterinarian in Kalamazoo County. She was formerly married to Abedel Karim Abushmaies (Abushmaies). Defendant and Abushmaies were divorced pursuant to a judgment of divorce entered in December 2008 in the Kalamazoo Circuit Court (hereinafter "the divorce litigation").

Attorney Ross F. Stancati (Stancati) represented defendant in the divorce litigation. At some point during the pendency of the divorce litigation, someone challenged Stancati's representation of defendant on the ground that Stancati had become "too attached" to defendant and was engaged in some type of improper relationship with her. A "Motion to Determine Conflict of Interest" was then filed in the divorce litigation and Stancati informed defendant "that he was temporarily bringing in an unnamed attorney in order to defend himself against [the] allegations of improper conduct[.]"

It is undisputed that in June 2008, Stancati hired attorney Russell A. Kreis (Kreis), a member of plaintiff law firm, to defend him against the charges that he had a conflict of interest or an improper relationship with defendant. According to plaintiff, Kreis "successfully convinc[ed] the [c]ourt that Attorney Ross Stancati should be able to remain in the case and represent [d]efendant." However, it does not appear that Kreis only represented defendant with regard to the conflict-of-interest proceedings against Stancati. Kreis remained involved in the divorce litigation even after the conflict-of-interest matter was resolved, serving alongside Stancati and continuing to represent defendant on other family-law matters, including child

custody, throughout the remainder of the proceedings. The circuit court ultimately permitted Kreis to withdraw from the divorce litigation in April 2009.

Defendant asserts that Stancati hired Kreis to represent him in the conflict-of-interest proceedings only, without ever consulting her and without her consent or knowledge. Defendant argues that she never personally participated in the decision to hire Kreis and that she therefore should not be liable for plaintiff's charges. It is undisputed that each month between June 2008 and April 2009, plaintiff sent defendant a billing statement purporting to show the amount she owed for Kreis's legal services in the divorce litigation. Defendant did not pay these bills.

The judgment of divorce entered in the divorce litigation awarded defendant significant assets. After entry of the judgment of divorce, funds were paid over to Stancati's office to be held for defendant. However, defendant refused to authorize Stancati to release any of these funds to pay plaintiff.

In December 2009, plaintiff sued defendant in the Kalamazoo Circuit Court on a theory of account stated, alleging that defendant owed it substantial legal fees that remained unpaid. Plaintiff attached detailed billing statements to its complaint, indicating that defendant owed it $36,383.50 for legal services performed in the divorce litigation and $1,246.76 for other expenses incurred in that matter. Plaintiff also submitted an affidavit of account in which its bookkeeper averred that she had personal knowledge of defendant's account with plaintiff and that defendant was currently indebted to plaintiff in the amount of $37,360.26.

Acting *in propria persona*, defendant answered plaintiff's complaint. She admitted that funds had been paid over to Stancati's office to be held for her following the divorce litigation and that she had refused to authorize Stancati to release any of these funds to pay plaintiff or Kreis. However, she denied that she owed any money to plaintiff.

In response to plaintiff's requests for admissions, defendant admitted that she "ha[d] met with . . . plaintiff in the past," that she had received monthly billing statements from plaintiff, and that she had never formally objected to these billing statements, either verbally or in writing. But plaintiff denied that she had ever hired plaintiff, denied that Stancati had ever advised her to hire plaintiff, and denied that she owed plaintiff $37,630.26. Curiously, defendant objected to plaintiff's request for admissions number 8, but then, "[w]ithout waiving any objection," admitted that she had "authorized [p]laintiff to perform legal services on [her] behalf [in the divorce litigation]." In response to plaintiff's interrogatories, plaintiff asserted, among other things, that she had "refused to authorize Mr. Stancati to release funds to the [p]laintiff . . . because [d]efendant did not owe [p]laintiff any money" and that she believed that "[p]laintiff was guilty of malpractice."

Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(9) and (10). Plaintiff asserted that defendant had failed to plead any valid defenses to its claim of account stated and argued that it was beyond genuine factual dispute that defendant was indebted to it in the amount of $37,360.26 for legal services rendered. Attached to its motion for summary disposition, plaintiff submitted the affidavits of Kreis and Stancati, as well as the detailed billing statements and affidavit of account that had been submitted with the complaint.

Kreis averred in his affidavit that he had been "asked[1] to become co-counsel for [defendant] and to take over some of the trial and negotiating responsibilities of [the divorce] case." Kreis further averred that he had "participated in all aspects of the divorce proceedings," and that defendant had at all times been "fully aware of all actions taken by me and by my firm on her behalf[.]" Kreis averred that defendant had never complained about or objected to his services in the divorce litigation and that she never questioned any of the bills sent to her by plaintiff.

Stancati averred in his affidavit that he had "clarified for [defendant] that Mr. Kreis would be performing services for a portion of her case and she indicated to me that she was willing and able to pay for these services." Stancati further averred that "[a]t the conclusion of the divorce proceedings, funds to pay Mr. Kreis were set aside," but that defendant "would not authorize the release of those funds." Stancati opined that Kreis had rendered his services "in accordance with the ethical and quality standards called for by our profession." Stancati never specified whether he had consulted with defendant before hiring Kreis.

The attached detailed billing statements indicated that defendant owed plaintiff a total of $37,360.26 for legal services performed in the divorce litigation. In the affidavit of account, plaintiff's bookkeeper averred that she had personal knowledge of defendant's account with plaintiff and that defendant was currently indebted to plaintiff in the amount of $37,360.26. Plaintiff's bookkeeper further averred that approximately 10 monthly billing statements had been sent to defendant between June 2008 and April 2009, and that defendant "never contacted [p]laintiff's office indicating that she contested the amounts owing."

In response to plaintiff's motion, defendant argued that Stancati had informed her that he was bringing Kreis into the divorce litigation *only* for the purpose of representing him against the conflict-of-interest charges. Defendant contended that she was never informed that Kreis would continue to be involved in the divorce litigation beyond the conclusion of the conflict-of-interest matter and that she "objected to Mr. Kreis's continued involvement in the case in numerous e-mails to Mr. Stancati, both because she openly disclosed to Mr. Stancati that she did not like Mr. Kreis personally and she did not understand the need for his involvement." Defendant believed that Kreis had somehow committed malpractice in the divorce litigation, although she never clearly explained how this malpractice was committed, and argued that her charges of malpractice against Kreis constituted a valid defense to plaintiff's present account-stated claim. Defendant contended that the affidavits of Kreis and Stancati were conclusory, self-serving, and insufficient to establish the absence of a genuine issue of material fact for trial. Defendant also maintained that she had been unable to locate any attorney to represent her in the present matter because plaintiff was a well-known law firm with many connections in the Kalamazoo area and no local attorney wanted to challenge Kreis or his firm.[2] Defendant did not submit any affidavits of her own.

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[1] Kreis did not specify whether he was "asked" by defendant or by Stancati.

[2] Defendant also pointed out that plaintiff had offered to reduce the amount she owed from $37,360.26 to $18,470.13, in exchange for her signature on a "Settlement and Release

In July 2010, plaintiff submitted a brief replying to defendant's response, arguing that defendant's accusations against Kreis were "unsupported" and "libelous." Plaintiff argued that defendant had no evidence to support her bald assertion that Kreis had committed malpractice. A few days later, defendant replied that she "[wa]s indeed alleging that Plaintiff committed malpractice and will prove these allegations in a malpractice suit." Defendant also alleged that plaintiff would not give her access to any files it possessed pertaining to the divorce litigation and that this "ma[de] it next to impossible to provide evidentiary support." Defendant further argued that Kreis had taken an unprofessional and cavalier attitude throughout the entire divorce litigation and had not represented her best interests. For instance, she alleged that Kreis had been more concerned about Abushmaies's wellbeing than about her own, that Kreis had not objected when she only received 38 percent of the marital assets in the judgment of divorce, and that Kreis told her, "Don't worry, you'll find another rich husband soon." Defendant also suggested that because plaintiff and Kreis had contributed to the circuit judge's election campaign, there was an appearance of impropriety. At the very least, defendant argued, there was a genuine issue of material fact concerning whether she owed plaintiff the amount sought in the complaint and whether her allegations of malpractice constituted a valid defense to plaintiff's claim of account stated.

Without holding oral argument, the circuit court granted plaintiff's motion for summary disposition. The circuit court noted that plaintiff had sought summary disposition under both MCR 2.116(C)(9) and (10), and noted that a party opposing a motion for summary disposition brought pursuant to subrule (C)(10) must come forward with admissible documentary evidence to establish the existence of a genuine issue of fact for trial. The court observed that defendant had submitted no admissible documentary evidence to support her claims that she had never hired Kreis to represent her, that Kreis had committed legal malpractice, or that she did not owe the amounts sought by plaintiff. Accordingly, the circuit court granted summary disposition in favor of plaintiff pursuant to MCR 2.116(C)(10). Thereafter, judgment was entered for plaintiff in the amount of $37,630.26, plus $314.78 in costs and fees.

Defendant moved for reconsideration of the circuit court's decision. Defendant argued that because she had acted *in propria persona*, she should have been treated more leniently and should not have been expected to strictly comply with the court rules concerning motion practice and motions for summary disposition. Defendant also asserted that the court should have assisted her by "intervening to ensure that [she would receive] at least a fair chance to present . . . her case[.]" Defendant lastly suggested, without specifically arguing, that the circuit court should have disqualified itself on the basis of an appearance of impropriety.

The circuit court denied defendant's motion for reconsideration, ruling that defendant had largely presented the same issues that had already been considered by the court and that she had

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Agreement" by which she would agree not to sue plaintiff or Kreis for legal malpractice. Defendant submitted a copy of the Settlement and Release Agreement bearing Kreis's signature, as well as an e-mail from Stancati urging her to sign the agreement. In the e-mail to defendant, Stancati wrote that "[i]f you sue [Kreis], his malpractice insurance company will bring me into [the suit] as well . . . ." Stancati also wrote that he was "very upset about this turn of events" and that he "cannot go on representing you if your difference with [Stancati] continues."

not demonstrated the existence of any palpable error. See MCR 2.119(F)(3). With respect to defendant's concerns about the appearance of impropriety, the court noted that it had not been biased in favor of either party and that defendant had never actually moved for disqualification in accordance with the procedures set forth in MCR 2.003. Lastly, with regard to defendant's contention that she should not have been expected to strictly follow the court rules, the court observed that individuals who represent themselves in Michigan's courts are held to the same standards as members of the state bar and that it would have been improper for the court to make defendant's legal arguments for her.

II

We review de novo the circuit court's grant of summary disposition. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003). A motion for summary disposition brought pursuant to MCR 2.116(C)(10) tests the factual support for a claim. *Dressel*, 468 Mich at 561. When considering a motion for summary disposition under this subrule, the circuit court must consider the pleadings, affidavits, depositions, admissions, and other admissible documentary evidence in a light most favorable to the nonmoving party. MCR 2.116(G)(5); *Wilson v Alpena Co Rd Comm*, 474 Mich 161, 166; 713 NW2d 717 (2006).

A party moving for summary disposition pursuant to subrule (C)(10) must specifically identify the issues as to which it believes there is no genuine issue of material fact. MCR 2.116(G)(4); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). If the moving party fulfills its initial burden, the party opposing the motion must then demonstrate that a genuine issue of material fact exists. *Reed v Reed*, 265 Mich App 131, 141; 693 NW2d 825 (2005). The nonmoving party may not rest upon mere allegations or denials, but must, by affidavits or other admissible evidence, "set forth specific facts showing that there is a genuine issue for trial." MCR 2.116(G)(4). Summary disposition is properly granted "if the affidavits and other documentary evidence show that there is no genuine issue concerning any material fact and that the moving party is entitled to judgment as a matter of law." *Kennedy v Great Atlantic & Pacific Tea Co*, 274 Mich App 710, 712; 737 NW2d 179 (2007).

III

The circuit court did not err by granting summary disposition in favor of plaintiff pursuant to MCR 2.116(C)(10).

"When an account is stated in writing by the creditor and accepted as correct by the debtor, either by payments thereon without demur *or by failure within a reasonable time to question the state of the account as presented*, it becomes an account stated . . . ." *Corey v Jaroch*, 229 Mich 313, 315; 200 NW 957 (1924) (emphasis added). If a party bringing an action on an account stated "makes an affidavit of the amount due . . . and annexes thereto a copy of [the] account," and serves a copy of the affidavit and account on the defendant with a copy of the complaint, "[the] affidavit shall be deemed prima facie evidence of [the] indebtedness" unless the defendant makes an affidavit denying the account stated and serves a copy on the plaintiff with his or her answer. MCL 600.2145. "[A]n unanswered affidavit under MCL 600.2145 creates a prima facie case that the party failing to respond owes the other party the amount

stated." *Echelon Homes, LLC v Carter Lumber Co*, 261 Mich App 424, 435; 683 NW2d 171 (2004), rev'd in part on other grounds 472 Mich 192 (2005).

With its complaint, plaintiff served upon defendant a detailed billing statement showing all activity on her account and an affidavit of the amount due. Defendant did not submit an affidavit of her own denying the existence of the account or the amount due. Accordingly, the affidavit and other documents submitted by plaintiff constituted prima facie evidence that defendant was indebted to plaintiff in the amount of $37,360.26. MCL 600.2145; *Echelon Homes*, 261 Mich App at 435. Plaintiff then moved for summary disposition, once again submitting the detailed billing statements and the affidavit of account executed by its bookkeeper. This evidence tended to establish that defendant had received the bills from plaintiff and that defendant had not objected to plaintiff's bills or to the amounts charged.

As the circuit court correctly noted, once plaintiff had filed and supported its motion for summary disposition, the burden shifted to defendant to establish the existence of a genuine issue of material fact. *Reed*, 265 Mich App at 141. Defendant was not entitled to rest upon her mere denials, but was required to submit affidavits or other admissible documentary evidence specifically showing that there was a genuine issue of material fact for trial. MCR 2.116(G)(4).

However, defendant did not come forward with any admissible evidence of her own. We fully acknowledge defendant's arguments that she never personally hired plaintiff and that Stancati never consulted her before he brought Kreis into the divorce litigation. But despite defendant's arguments in this regard, the fact remains that defendant admitted during discovery that she had authorized plaintiff to perform legal services for her, that she had received the monthly billing statements from plaintiff, and that she had never formally objected to the billing statements, either verbally or in writing. We likewise acknowledge defendant's repeated claims that plaintiff committed legal malpractice in the course of the divorce litigation. However, defendant never filed a countercomplaint against plaintiff or sued plaintiff for malpractice in a separate action. Nor did defendant identify any other specific issues remaining in dispute that would have precluded a grant of summary disposition. Quite simply, because plaintiff failed to carry her burden of demonstrating the existence of a genuine issue of fact for trial, MCR 2.116(G)(4), the circuit court properly granted summary disposition in favor of plaintiff with respect to its account-stated claim.

Defendant contends that she was unable to sufficiently support her defenses in this case because plaintiff was in sole possession of the necessary documents and information. This argument is unavailing. Even without the documents that were in plaintiff's possession, defendant still could have submitted an affidavit contesting the amounts due or denying that she had authorized plaintiff to perform legal services in the divorce litigation. Yet she did not do so. Indeed, as noted previously, defendant admitted during discovery that she had authorized plaintiff to perform legal services on her behalf. Defendant's claim that she could not sufficiently prepare a defense without the materials in plaintiff's possession is without merit.

Nor can we conclude that the circuit court erred by failing to disqualify itself in this case. Defendant never actually moved for judicial disqualification. Instead, she merely suggested that the circuit judge might be prejudiced in favor of plaintiff because plaintiff was a well-known law

firm and because plaintiff's members and Stancati had contributed to the judge's election campaign.

Because defendant failed to seek judicial disqualification in accordance with MCR 2.003(D), this issue is unpreserved. *Welch v Dist Court*, 215 Mich App 253, 258; 545 NW2d 15 (1996). Unpreserved issues are reviewed for outcome-determinative plain error. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

Defendant has made no showing of actual judicial bias or prejudice in this case. See *Van Buren Twp v Garter Belt, Inc*, 258 Mich App 594, 598; 673 NW2d 111 (2003). The fact that Stancati and plaintiff's members supported the circuit judge's election simply does not rise to the level of a showing of actual bias. Indeed, defendant admitted that she would have supported the circuit judge's campaign as well. Nor does the fact that the circuit court ultimately ruled in favor of plaintiff demonstrate actual bias or prejudice. "The mere fact that a judge ruled against a litigant . . . is not sufficient to require disqualification or reassignment." *In re Contempt of Henry*, 282 Mich App 656, 680; 765 NW2d 44 (2009). Finally, there has been no showing that Stancati and plaintiff's members "had a *significant and disproportionate influence* in placing the judge on the case by raising funds or directing the judge's election campaign . . . ." *Caperton v A T Massey Coal Co, Inc*, 556 US 868; 129 S Ct 2252, 2263-2264; 173 L Ed 2d 1208 (2009) (emphasis added). In short, we find no outcome-determinative plain error with respect to this issue.

Lastly, plaintiff argues that because she acted *in propria persona*, she should not have been expected to strictly comply with the provisions of the court rules concerning motion practice and motions for summary disposition. She also suggests that the circuit court should have informed her how to conduct discovery and how to properly oppose plaintiff's motion for summary disposition. She claims that she had an absolute right to proceed *in propria persona*, and that by holding her to the same exacting standards as a practicing lawyer, the circuit court effectively interfered with her right to procedural due process. We cannot agree.

Without question, litigants have a constitutionally guaranteed right to proceed *in propria persona* in the courts of this state. Const 1963, art 1, § 13; see also *Shenkman v Bragman*, 261 Mich App 412, 416; 682 NW2d 516 (2004). However, it is well settled that individuals who represent themselves in Michigan's courts are held to the same standards as members of the state bar. *Baird v Baird*, 368 Mich 536, 539; 118 NW2d 427 (1962); *Totman v Royal Oak School Dist*, 135 Mich App 121, 126; 352 NW2d 364 (1984). This Court will not overlook a party's tactical errors or consider documentary evidence that was not submitted to the trial court merely because a party acted *in propria persona*. *Amorello v Monsanto Corp*, 186 Mich App 324, 330-331; 463 NW2d 487 (1990); *Bachor v Detroit*, 49 Mich App 507, 512; 212 NW2d 302 (1973). When a litigant elects to proceed without counsel, the litigant is "bound by the burdens that accompany such election." *Hoven v Hoven*, 9 Mich App 168, 174; 156 NW2d 65 (1967). We find no error in the circuit court's treatment of defendant or handling of this case.

IV

Because defendant failed to come forward with sufficient admissible evidence to support her arguments, and for the other reasons stated in this opinion, we affirm the circuit court's order granting summary disposition in favor of plaintiff.

Affirmed. As the prevailing party, plaintiff may tax costs pursuant to MCR 7.219.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Douglas B. Shapiro