

STATE OF MICHIGAN
COURT OF APPEALS

KEITH HAYNES,

Plaintiff-Appellant,

v

RONALD HAMLIN and BARBARA HAMLIN,

Defendants-Appellees.

UNPUBLISHED

May 9, 1997

No. 194045

Ingham Circuit Court

LC No. 94-076959-CZ

Before: Michael J. Kelly, P.J., Wahls, and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition for defendants pursuant to MCR 2.116(C)(10) in this action involving the doctrine of judicial estoppel. We affirm.

I

Our Supreme Court has recently reaffirmed the doctrine of judicial estoppel in Michigan:

[A] party who has successfully and unequivocally asserted a position in a prior proceeding is estopped from asserting an inconsistent position in a subsequent proceeding. [*Paschke v Retool Industries*, 445 Mich 502, 509; 519 NW2d 441 (1994).]

It is inconsistent *positions* which are the touchstone of judicial estoppel. *Id.*, pp 509-510. The doctrine was developed to prevent parties from playing "fast and loose with the legal system." *Id.*, p 509.

Here, plaintiff's instant position (i.e., that oral contracts existed between him and defendants going back to 1988 by which he enjoyed both real property purchase options as well as the expectation of compensation for services rendered to defendants) was wholly inconsistent with plaintiff's successful and unequivocal position previously asserted before the Bankruptcy Court for the Western District of Michigan in 1991 (i.e., that he had no interests in real property or other unliquidated claims or counterclaims). As such, the trial court correctly determined that the doctrine of judicial estoppel

operated to prevent plaintiff from asserting the existence of the alleged oral contracts. *Id.* Summary disposition for defendants was therefore proper. *Taylor v Lenawee Co Bd of Co Rd Comm'rs*, 216 Mich App 435, 437; 549 NW2d 80 (1996).

II

Plaintiff also argues that the trial judge should have disqualified himself because of personal bias against plaintiff. We disagree. The record reveals that the trial judge's sua sponte referral of this case to the FBI was directed at neither party in particular, but rather reflected the judge's concern that one or both parties may have broken the law. Plaintiff has failed to show either actual or personal bias on the part of the trial judge. MCR 2.003(B); *Cain v Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996).

Affirmed. Defendants having prevailed in full, they may tax costs pursuant to MCR 7.219.

/s/ Michael J. Kelly
/s/ Myron H. Wahls
/s/ Hilda R. Gage