

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

FRANK J. KELLEY, Attorney General of the State  
of Michigan, *ex rel* the MICHIGAN DEPARTMENT  
OF STATE POLICE and the MICHIGAN  
DEPARTMENT OF ENVIRONMENTAL  
QUALITY,

UNPUBLISHED  
February 5, 1999

Plaintiffs-Appellees,

v

THOMAS CAGNEY,

No. 199421  
Genesee Circuit Court  
LC No. 94-031016 CE

Defendant-Appellant.

---

Before: Kelly, P.J., and Gribbs and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's decision granting summary disposition in favor of plaintiffs pursuant to MCR 2.116(C)(10). Defendant also appeals the trial court's orders granting injunctive relief and imposing a civil fine pursuant to the Natural Resources and Environmental Protection Act, MCL 324.21101 *et seq.*; MSA 13A.21101 *et seq.*, and the Fire Prevention Code, MCL 29.1 *et seq.*; MSA 4.559(1) *et seq.* We affirm.

Plaintiffs filed this action on August 11, 1994 seeking injunctive and monetary relief under the former Underground Storage Tank Regulatory Act to abate and remedy the unlawful underground storage tanks located on defendant's property. There was an exception in the underground storage tank statute for farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes. MCL 299.701(m); MSA 13.29(71)(m). Throughout these proceedings, defendant has claimed, based on the exception, that there were no tanks located on his property that fell within the regulatory scheme of the Act. The trial court ruled otherwise, however, and granted plaintiffs' motion for summary disposition under MCR 2.116(C)(10). The trial court also ordered defendant not to use the tanks or to remove them except pursuant to authorized procedures. Ultimately, the court imposed a civil fine for defendant's failure to comply with the applicable regulations.

Initially, we note that defendant has raised no less than eleven issues on appeal. However, despite numerous warnings from this Court, and two prior orders striking defendant's brief for failing to conform to the requirements of MCR 7.212(C), defendant has failed to correct the defects noted in this Court's orders and has filed an amended brief that does not satisfy the rules of court. Defendant's brief on appeal makes only one specific reference to the record, cites little or no authority and gives only cursory consideration to the issues. This Court need not address issues that are not properly briefed. *Meagher v Wayne State University*, 222 Mich App 700, 716; 565 NW2d 401 (1997). Moreover, we find that defendant's continued failure to file a brief in conformity with the court rules constitutes a vexatious appeal. Accordingly, plaintiffs are entitled to actual expenses incurred as a result of having to respond to this appeal. MCR 7.216(C)(2).

However, we will address the merits of the issues raised by defendant, albeit in a more concise order. First, defendant claims that the trial court erred by granting summary disposition in favor of plaintiffs under MCR 2.116(C)(10), no genuine issue of material fact. Defendant bases his assertion on the claim that the affidavits filed by plaintiffs were fabricated. Defendant also claims that the tanks on his property were exempt from regulation. Finally, he alleges that no regulated substances were stored in the tanks after the Underground Storage Tank Act took effect. We find these claims unpersuasive.

Defendant had ample opportunity to submit contradictory affidavits or other documentary evidence to support his claim that there was a genuine issue of material fact. The only affidavit submitted in response to the motion was defendant's own bare assertion that there were no underground storage tanks on his property. As is clear from the record, defendant was extremely uncooperative during discovery. The trial judge provided generous assistance in addressing defendant's objections to plaintiffs' interrogatories, depositions and requests for production. Nevertheless, defendant did not produce any verifiable evidence that the land was devoted to farming or primarily used as his residence. On the other hand, plaintiffs' affidavits and other documentary evidence clearly showed that the property where the tanks were located was a commercial airport.

Additionally, defendant's argument that the tanks were not being used is irrelevant. The Fire Prevention Code covers tanks that are currently being used and those that were once used to store flammable material. There are no exceptions for farm or residential tanks in the Fire Prevention Code. Thus, the fact that the tanks are dormant is even more compelling evidence of the need for proper closure. There were no records that the tanks had ever been properly registered or closed according to the statute. Because defendant failed to produce any evidence that would tend to show a genuine issue of material fact, affirm the trial court's grant of summary disposition.

Defendant also claims the court lacked authority to revise its order granting summary disposition to include the imposition of a civil fine. We disagree. Under MCR 2.604(A), the court was empowered to revise its order to impose the fine. The trial court had reserved the issue of liability for past registration fees and civil fines pending defendant's compliance with the court's February 5, 1996, order that the tanks be properly closed. That order was stayed on May 13, 1996 pending defendant's appeal of that order. When this Court dismissed the appeal on the ground that the order was not a final order, plaintiffs moved to revise the trial court's order to include the fine. The motion was supported by the affidavit of an underground storage tank removal expert who calculated the fine utilizing the federal

Environmental Protection Agency's guidelines and the evidence contained in the record. Defendant failed to submit any contradictory affidavits or other relevant documentary evidence challenging the fine. Therefore, we find that the trial court properly revised its order to impose the fine as requested.

Finally, defendant claims this action was barred by the statutes of limitations governing injury to persons or property. Defendant raised the statute of limitations issue in his motion for rehearing or reconsideration filed on February 13, 1996, eighteen months after this action had been filed and many months after defendant had filed his answer to the complaint and several motions and responses to motions for summary disposition. Pursuant to MCR 2.116(D)(2), the issue should have been raised in defendant's responsive pleading. This he failed to do. Moreover, defendant's wrongful acts were of a continuing nature and the period of limitation would not have run until the wrong was abated. *Horvath v Delida*, 213 Mich App 620, 626; 540 NW2d 760 (1995). Therefore, the trial court correctly ruled that this action was not time-barred.

The other issues stated in defendant's brief on appeal are deemed abandoned for his failure to properly brief those issues.

Affirmed. This matter is remanded to the trial court for determination of plaintiffs' actual expenses, including attorney fees, incurred as a result of this appeal. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ Roman S. Gibbs

/s/ E. Thomas Fitzgerald