

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

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LARRY SALISBURY,

Plaintiff/Counterdefendant-Appellant,

v

JOSEPH DORR,

Defendant/Counterplaintiff-Appellee,

and

CITY OF ECORSE BUILDING DEPARTMENT,

Defendant-Appellee.

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UNPUBLISHED

March 17, 2000

No. 209885

Wayne Circuit Court

LC No. 96-609018-CH

Before: Murphy, P.J. and Hood and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from the circuit court's order granting summary disposition in favor of defendants pursuant to MCR 2.116(C)(10). We affirm and remand for imposition of sanctions pursuant to MCR 7.216(C)(2) for bringing a vexatious appeal.

I.

Contrary to what plaintiff argues, the trial court did not rule that plaintiff's challenge regarding the validity of the building permit issued in 1996 was barred by collateral estoppel or res judicata. Rather, summary disposition was granted under MCR 2.116(C)(10), on the basis that there was no genuine issue of material fact and defendants were entitled to judgment as a matter of law. We find no error.

Plaintiff's complaint alleged that defendant City of Ecorse violated state law and local ordinance when it granted defendant Dorr a building permit. In support of their motions for summary disposition, defendants presented the affidavit of Ecorse City Engineer Alan Schneider, which effectively refuted the allegations in plaintiff's amended complaint that Ecorse was not in compliance with 1986 PA 54, that

Ecorse failed to inspect Dorr's property, and that Ecorse failed to enforce § 1402(g) of the Ecorse Zoning Ordinance with regard to Dorr's property. Plaintiff did not present affidavits or documentary evidence refuting the factual statements in Schneider's affidavit, nor has plaintiff ever offered any comprehensible argument explaining the reasons behind his allegations. Therefore, summary disposition was proper under MCR 2.116(C)(10). *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

## II.

The circuit court did not err by granting summary disposition in favor of defendants on the encroachment issue. In support of their motion for summary disposition, defendants presented the affidavit of surveyor Arthur Crossman and an accurate survey of the property prepared by Crossman, dated May 1, 1996. This survey was originally ordered by plaintiff. Crossman's affidavit states that Dorr's garage roof does not cross the true property line. The May 1, 1996 survey performed by Crossman also clearly shows that Dorr's garage and roof do not cross the lot line. Crossman's affidavit also explains that he prepared an additional survey at plaintiff's request, and that this survey, dated May 28, 1996, depicts a line drawn from the surveyor's monument to a meaningless point at the end of the sidewalk, rather than the true boundary line. Crossman's affidavit states that this line is much closer to Dorr's garage than the actual lot line. Plaintiff relies upon this deliberately misleading and inaccurate May 28, 1996 survey in support of his claim that Dorr's garage roof encroaches into his airspace or will encroach into his airspace at some future time. In fact, plaintiff's brief contains the May 26, 1996 survey as an attachment, and makes no mention of the May 1, 1996 survey. Plaintiff presented no other proofs or argument on this issue, leaving Arthur Crossman's affidavit and May 1, 1996 survey unrefuted. Because plaintiff did not present evidence showing the existence of a material factual dispute regarding the encroachment issue, defendants were entitled to judgment as a matter of law. *Smith, supra*.

## III.

The circuit court did not err by granting defendants summary disposition on the issue of whether Dorr's new garage roof improperly expanded an existing nonconforming building in violation of Ecorse Zoning Ordinance § 1402(g). City Engineer Schneider's affidavit states that the addition of the gable roof is not considered to increase the cubic contents of a building under the zoning ordinance because it does not add to the habitable living area of the building. Schneider's affidavit also states that the addition of a gable roof did not violate § 1402(g), because it restored the existing building to a safe condition. Plaintiff did not present affidavits or documentary evidence refuting the statements in Schneider's affidavit, nor has plaintiff offered any sound legal arguments challenging Schneider's interpretation of the ordinance. Because plaintiff failed to show the existence of a genuine issue of material fact with regard to this matter, summary disposition was properly granted under MCR 2.116(C)(10). *Smith, supra*.

## IV.

The circuit court did not clearly err in finding plaintiff's claims to be frivolous and in therefore awarding defendants sanctions pursuant to MCR 2.625(A)(2) and MCL 600.2591; MSA 27A.2591.

The primary claim raised in both plaintiff's original and amended complaint was that defendant Dorr's new garage roof extended into the airspace of his property. The record indicates that plaintiff knew that there was no encroachment onto his property, yet persisted in pursuing his encroachment claims and, in fact, had a deliberately misleading survey prepared in an attempt to support his claims. Plaintiff also presented this misleading survey in his appeal to this Court. Nor does it appear that plaintiff had any reason to believe the facts underlying his remaining claims. Plaintiff never presented any evidence suggesting that defendant Ecorse was issuing building permits in violation of 1986 PA 54 or provided any explanation or legal argument in support of this assertion. Likewise, plaintiff never supported its assertion that Ecorse had never inspected Dorr's property, a fact issue which could easily have been resolved by reference to public records. Nor did plaintiff ever present facts or argument explaining why Dorr's new garage roof, which replaced an old, flat, and rotten roof, did not fall within the "strengthen or restore" exception to § 1402. These circumstances indicate that plaintiff's primary purpose in bringing these claims was simply to harass, embarrass, or injure defendants. Accordingly plaintiff's claims fell within the definition of "frivolous" under MCL 600.2591(3)(a)(i) and (ii); MSA 27A.2591(3)(a)(i) and (ii).

## V.

Our review of the circuit court record and plaintiff's brief indicates that plaintiff has brought this appeal without any reasonable basis to believe that there was a meritorious issue to be determined on appeal. As previously noted, the circumstances of this case strongly indicate that plaintiff filed his complaints against defendants with the primary purpose of harassing, embarrassing, or injuring defendants, and with no basis for believing that there was any legitimate factual basis for his claims. When the first survey showed that there was no factual basis for plaintiff's encroachment claims, plaintiff had a misleading survey prepared showing a false boundary line, then proceeded to rely upon that misleading survey in his arguments before the circuit court. When defendants moved for summary disposition of his claims, plaintiff did not bother to present affidavits or reliable documentary evidence in support of his claims, resulting in the circuit court's order granting summary disposition for defendants. On appeal to this Court plaintiff continues to rely upon the deliberately misleading May 28, 1996 survey, which is attached to plaintiff's brief, and does not otherwise point to any evidence which would create a genuine issue of material fact regarding any relevant issues. Instead plaintiff's brief merely asserts that the circuit court erred and raises numerous arguments which were never raised before the circuit court and are not germane to the issues to be decided in this appeal. Plaintiff's appeal is vexatious within the meaning of MCR 7.216(C)(1)(a). Defendants are entitled to actual damages and expenses incurred as a result of having to defend against plaintiff's vexatious appeal, including reasonable attorney fees. MCR 7.216(C)(2).

Affirmed and remanded to the circuit court for a determination and award of actual damages and expenses, including reasonable attorney fees incurred by defendants as a result of

having to defend against plaintiff's vexatious appeal. MCR 7.216(C)(2) We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Harold Hood

/s/ E. Thomas Fitzgerald