

STATE OF MICHIGAN
COURT OF APPEALS

THEDFORD A. ROWSER,

Plaintiff-Appellant,

v

DETROIT EDISON,

Defendant-Appellee.

UNPUBLISHED

March 19, 2002

No. 221808

Wayne Circuit Court

LC No. 98-802101-CZ

Before: Hood, P.J., and Gage and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right an order granting defendant summary disposition in this general negligence case. We affirm.

Plaintiff contends that the trial court erred in granting defendant's motion for summary disposition because defendant did not refile or repraecipe its motion despite the trial court's instruction that, after reinstating plaintiff's case, it would not consider any motions that had been filed but not heard prior to the reinstatement. This Court reviews de novo a trial court's summary disposition ruling. *Smith v Globe Life Ins Co*, 460 Mich 446, 454; 597 NW2d 28 (1999). Defendant moved for summary disposition citing MCR 2.116(C)(8), the subrule applicable when the opposing party has failed to state a claim on which relief can be granted. *Horace v City of Pontiac*, 456 Mich 744, 749; 575 NW2d 762 (1998). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone; the motion may not be supported with documentary evidence.¹ *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). The ruling court accepts all well-pleaded factual allegations in support of the claim as true and construes in the light most favorable to the nonmoving party any reasonable inferences or conclusions that can be drawn from the facts. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999); *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998). The court should grant the motion only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify recovery. *Maiden, supra*.

¹ Although the trial court's order states that summary disposition was based on "the oral arguments, the pleadings and the affidavits and briefs," we note that no affidavits other than affidavits of service supported the parties' motions and responses.

Plaintiff argues that the trial court's statements on January 22, 1999 or March 20, 1999 precluded it from granting defendant's motion. We find that plaintiff waived this issue, however, by failing to provide this Court with the lower court transcripts necessary to address her assertions. In her statement of questions presented on appeal, plaintiff indicates that the trial court made the alleged statement on January 22, 1999. In her statement of facts, plaintiff states that the court made the statement on March 20, 1999. Plaintiff has provided this Court with several transcripts, but has not supplied a transcript of proceeding that occurred on either January 22, 1999 or March 20, 1999.² We conclude that plaintiff's failure to provide the transcripts containing the trial court's rulings that plaintiff challenges on appeal precludes our review of the issue.³ *Waterford Sand & Gravel Co v Oakland Disposal, Inc*, 194 Mich App 571, 572; 487 NW2d 511 (1992). Without a record of the alleged statement by the trial court we cannot determine whether the court in fact made the statement, and without a transcript of the summary disposition hearing we cannot address the reasons behind the trial court's grant of summary disposition.

Even addressing plaintiff's argument to the extent possible from the existing record, we find her claim without merit. First, the trial court's statement, as quoted by plaintiff, did not constitute a court order but merely an instruction to facilitate court procedure. Second, our review of the trial court record makes it apparent that the court provided the instruction because plaintiff, who acted in propria persona, filed numerous incoherent and redundant documents. Third, the record reflects that defendant repraeciped the motion and sent plaintiff notice. Plaintiff cannot show that she suffered any prejudice arising from the alleged error.

Furthermore, the trial court properly granted summary disposition pursuant to MCR 2.116(C)(8) because plaintiff's pleadings failed to comply with the trial court's March 20, 1998 order that she clarify her allegations. While not very succinctly pleaded, plaintiff's complaint alleged that defendant connected her neighbor's electrical service through her house and engaged in fraudulent billing practices. Plaintiff alleged that defendant put her and her home in danger and destroyed her fence and garage, but set forth no specific facts regarding these claims. Plaintiff also cited to the civil rights act,⁴ but made no specific allegations regarding violations of the act.

Defendant filed a motion for a more definite statement on the basis that the complaint was vague, ambiguous and failed to make specific allegations of time, duty, causation or illegal acts. Plaintiff responded by denying that her complaint was lacking in any way and failed to

² One transcript dated September 17, 1999 is a transcript of a hearing on plaintiff's motion for relief from judgment and motion for a temporary restraining order. Another transcript dated September 17, 1999 is a transcript of a hearing on plaintiff's motion to disqualify the trial judge. Plaintiff attached to her brief on appeal a portion of a May 8, 1998 transcript of a prior motion to disqualify the trial judge and a January 28, 2000 transcript of proceedings before the Michigan Public Service Commission.

³ We note that plaintiff previously received notice from this Court that issues for which the relevant transcripts were not provided might be deemed waived.

⁴ MCL 37.2101 *et seq.*

otherwise clarify her allegations. In response to a March 20, 1998 court order, plaintiff filed a more definite statement alleging that defendant previously had been “found guilty of discriminating against the black race” and likewise was discriminating against plaintiff because she is African-American. Plaintiff added that due to the loss of her electricity, she sustained flood damage in her basement and the loss of food in her refrigerator and freezer. Our review of plaintiff’s complaint reveals that although she alluded to several causes of action, she did not fully set forth the elements of any cause of action and it remains unclear what alleged facts apply to what cause of action. Accordingly, we conclude that, on the basis of the pleadings alone, the trial court properly granted defendant summary disposition pursuant to MCR 2.116(C)(8).

We note lastly that plaintiff presents several other factual arguments in her brief that this Court will not address because plaintiff did not properly raise them in her statement of the questions presented. MCR 7.212(C)(5); *Caldwell v Chapman*, 240 Mich App 124, 132; 610 NW2d 264 (2000).

Affirmed.

/s/ Harold Hood
/s/ Hilda R. Gage
/s/ Christopher M. Murray