STATE OF MICHIGAN

COURT OF APPEALS

DONALD P. HOWARD,

Plaintiff-Appellee,

v

SHELLEY RODRIGUEZ, a/k/a SHELLY HACKNEY,

Defendant-Appellant.

UNPUBLISHED
November 15, 2002

No. 225707
Macomb Circuit Court
LC No. 99-001621-CH

Before: Fitzgerald, P.J., and Bandstra and Gage, JJ.

PER CURIAM.

In this action to quiet title, defendant appeals as of right from the trial court's order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10). We affirm.

The trial court granted plaintiff's motion for summary disposition primarily because defendant had failed to respond to plaintiff's requests to admit under MCR 2.312 and, consequently, those matters included in the requests to admit were deemed conclusively proven. See MCR 2.312(B)(1) and (D)(1). As a result, the admissions established that defendant had no defense in this case.

Defendant now argues that it was error for the trial court to consider the requests to admit in granting plaintiff summary disposition because the procedures in MCR 2.312 are not self-executing, but rather require that the party seeking to rely upon any admissions bring the issue to the trial court's attention before the requests may be deemed admitted. While we do not dispute defendant's statement of the law in this regard, see *Radtke v Miller, Canfield, Paddock & Stone*, 453 Mich 413, 421 n 7; 551 NW2d 698 (1996) and *Janczyk v Davis*, 125 Mich App 683, 687; 337 NW2d 272 (1983), we reject defendant's claim that the trial court here unilaterally decided to consider the requests to admit as admissions after defendant failed to file a response. Plaintiff brought this issue to the trial court's attention in his reply to defendant's brief in opposition to summary disposition, specifically arguing that the trial court should treat the failure of defendant to timely respond as an admission. Accordingly, plaintiff properly raised this issue below and the trial court could, therefore, rely upon the requests to admit as support for its decision to grant summary disposition in favor of plaintiff.

Defendant also argues that the trial court should have conducted a hearing with regard to the accuracy or truthfulness of the matters deemed admitted. However, nothing in MCR 2.312 requires the court to conduct a hearing for this reason when a party fails to file a response. Only when a response or objection is actually filed by a party is the trial court required to conduct a hearing if the other party moves to determine the sufficiency of the response. MCR 2.312(C). Otherwise, a failure to file a response within the time limits means that the matter is deemed admitted under the rule. MCR 2.312(B)(1).

Defendant further argues that the trial court should have otherwise considered the evidence she produced in response to the motion for summary disposition to determine if the matters deemed admitted under MCR 2.312 were accurate. Defendant fails to acknowledge that admissions made under MCR 2.312 are judicial admissions, not evidentiary admissions. See *Hilgendorf v St John Hosp & Medical Center Corp*, 245 Mich App 670, 689; 630 NW2d 356 (2001). As a result, they are treated as formal concessions in the pleadings and they have the effect of withdrawing a particular issue from the case. *Id.* Moreover, even if a judicial admission is subject to objections like an evidentiary admission, a judicial admission is considered conclusive and is not subject to contradiction or explanation like an evidentiary admission. *Id*. at 689-690, quoting *Radtke*, *supra* at 420-421. Accordingly, the trial court was generally bound to apply the matters deemed admitted to the exclusion of the documentary evidence produced by defendant in responding to the motion for summary disposition. Judicial admissions are considered to be beyond further challenge, although any matters deemed admitted must be narrowly construed. *Hilgendorf*, *supra* at 690.

There is no merit to defendant's argument that the trial court could not rely upon these admissions to decide the motion for summary disposition. In particular, MCR 2.116(G)(5) expressly allows a court to rely upon "admissions," along with other documentary evidence, to decide a motion for summary disposition. *Employers Mut Casualty Co v Petroleum Equipment, Inc*, 190 Mich App 57, 61-62; 475 NW2d 418 (1991).

Defendant also argues that it was error for the trial court not to grant her motion for reconsideration or to allow her to file a late response to the requests to admit. Again, we disagree. Because defendant moved for reconsideration of the trial court's decision, the court properly considered the motion under MCR 2.119(F)(3). This Court reviews a trial court's decision on a motion for reconsideration under MCR 2.119(F)(3) for an abuse of discretion. *In re Beglinger Trust*, 221 Mich App 273, 279; 561 NW2d 130 (1997). MCR 2.119(F)(3) provides as follows:

> Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.

A motion to amend a response under MCR 2.312(D)(1) is also within the trial court's discretion and the court's decision is reviewed by this Court for an abuse of discretion. *Medbury v Walsh*, 190 Mich App 554, 556; 476 NW2d 470 (1991).

Defendant argues that it was error for the trial court not to grant reconsideration or to allow the late filing of her response when her response to the requests to admit was only fourteen days late. The record does not support defendant's claim. Her response was never filed with the lower court or served upon plaintiff, as required by MCR 2.312(B) and (F), until defendant attached it to her brief regarding the motion for summary disposition. Over three months lapsed, not fourteen days. Given this substantial delay, defendant did not demonstrate good cause for the late filing of her response, particularly when there was no explanation offered as to why the response was never filed with the court or served on plaintiff. *Medbury, supra* at 556-557.

Defendant further argues that the trial court did not follow the guidelines set forth in *Janczyk, supra* at 691-693. However, the standards set forth in that case are not contained in MCR 2.312(D)(1). Accordingly, the failure of the trial court to consider the standards in *Janczyk* does not, in and of itself, require that the court's decision be set aside. In any event, defendant has not shown that the result of this case would have changed had the trial court considered the guidelines in *Janczyk*, particularly when defendant was unable to demonstrate that she had a viable defense in this case.[1]

While defendant produced her own affidavit to support the claim that she was never served with notice of the tax sale, her affidavit was not signed. Accordingly, that affidavit was insufficient support for her position in response to plaintiff's motion for summary disposition. *Prussing v General Motors Corp*, 403 Mich 366, 369-370; 269 NW2d 181 (1978); see also MCR 2.114(A), (C)(2). Moreover, the affidavit defendant relied upon from a sheriff's deputy, to show that she was not personally served, did not relate to the tax sale but rather the complaint and summons in this case, which the court allowed to be served by alternate methods. Defendant has otherwise failed to show that the service of notice for the tax sale was improper because of her mental illness by establishing, for example, that she was declared an incompetent person so that service upon a trustee or guardian, instead of defendant, was appropriate. MCL 211.140(4).

Finally, defendant claims that the trial court erred in not granting defendant relief under MCR 2.612(C)(1)(a). Defendant did not file a motion in the trial court under that court rule, and has not shown plain error with respect to the trial court's decision on this basis. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

We affirm.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Hilda R. Gage

---

[1] MCR 2.108(E) does not apply to defendant's request for an extension of time. That court rule does not apply if another court rule restricts a court's authority to extend certain time limits. In this case, MCR 2.312(D)(1) requires good cause for the late filing of a response to requests to admit. *Medbury, supra* at 556. Therefore, the "excusable neglect" standard found in MCR 2.108(E) does not apply.