

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

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ST. PAUL ALBANIAN CATHOLIC  
COMMUNITY,

UNPUBLISHED  
March 9, 2004

Plaintiff-Appellant,

v

No. 243608  
Macomb Circuit Court  
LC No. 02-003297-CH

ADAM MAIDA, ROMAN CATHOLIC  
ARCHDIOCESE OF DETROIT, ANTON  
KQIRA, and WARREN CONSOLIDATED  
SCHOOL DISTRICT,

Defendants-Appellees.

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Before: Fort Hood, P.J., and Bandstra and Meter, JJ.

PER CURIAM.

In this real property ownership dispute, plaintiff St. Paul Albanian Catholic Community appeals as of right from an order dismissing its complaint against defendants Cardinal Adam Maida, the Roman Catholic Archdiocese of Detroit (archdiocese), Father Anton Kqira, and the Warren Consolidated School District (school district). We affirm.

Plaintiff first contends that the circuit court made insufficient factual findings and legal conclusions in support of its decision, contrary to MCR 2.517(A)(1) and MCR 3.411(D)(1). We conclude that the circuit court need not have made any specific findings of fact in this case because, as discussed further below, the circuit court granted defendants' motion for summary disposition of plaintiff's complaint. See MCR 2.517(A)(4) (factual findings and legal conclusions "are unnecessary in decisions on motions unless findings are required by a particular rule"). The rule pursuant to which the circuit court summarily disposed of plaintiff's complaint, MCR 2.116, contains no specific requirement that the court make factual findings or conclusions of law. Furthermore, our review of the transcript of the August 16, 2002, hearing reveals that the circuit court made factual findings and conclusions of law that demonstrated its awareness of the property issues presented and its resolution of these issues.<sup>1</sup>

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<sup>1</sup> To the extent that plaintiff argues that defendants failed to comply with court rule requirements (continued...)

Plaintiff next asserts that although it timely requested a jury trial with respect to its complaint, the circuit court invaded the jury's province by resolving disputed issues of fact in favor of defendants. Whether the court rules authorize a court to dismiss a case before trial, despite the plaintiff having filed a jury demand, constitutes a legal question that this Court reviews de novo. *State Treasurer v Abbott*, 468 Mich 143, 148; 660 NW2d 714 (2003).

Although defendants did not specify a court rule provision supporting their motion to dismiss plaintiff's complaint, MCR 2.116(B)(1) plainly contemplates that "[a] party may move for dismissal of or judgment on all or part of a claim in accordance with this rule." Our review of defendants' arguments at the August 16, 2002, hearing plainly reflects their position that no genuine issues of material fact existed to warrant trial concerning plaintiff's complaint. MCR 2.116(C)(10).<sup>2</sup> Defendants argued that the facts warranted dismissal of the complaint because they established that (1) plaintiff had no corporate existence until April 2002, and, therefore, lacked standing to file suit, (2) plaintiff had no recorded deed to the property, (3) defendants constituted good-faith purchasers of the parcel, and (4) laches barred plaintiff's suit.

The circuit court neglected to specifically enumerate what court rule governed its decision to grant defendant's motion to dismiss. We find, however, that the court acted properly pursuant to the following provision of MCR 2.116(I):

- (1) If the pleadings show that a party is entitled to judgment as a matter of law, or *if the affidavits or other proofs show that there is no genuine*

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(...continued)

that they answer the complaint, plaintiff extinguished any potential error by stipulating that defendants need not file an answer. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000). In a reply brief, plaintiff seeks to undermine the validity of trial counsel's stipulation on the basis that counsel, "in recent conversations with [plaintiff's] officer, has expressly repudiated the document purporting to be a stipulation because its terms were not what she discussed over the phone with" the archdiocese's counsel. Plaintiff offers absolutely no documentation or other substantiation of its bare assertions in this regard, however, and plaintiff has also failed to properly present the issue for appeal by omitting its contention from its primary brief on appeal. *Check Reporting Services, Inc v Michigan Nat'l Bank-Lansing*, 191 Mich App 614, 628; 478 NW2d 893 (1991).

<sup>2</sup> We decline to consider at length plaintiff's one-sentence argument within its reply brief that the circuit court "proceedings were informal, hurried, lacked coherence, and were conducted without notice that a trial, or hearing was to be conducted," in support of which plaintiff offers neither citations to the record nor legal authority. We note, however, that, within the August 13, 2002, stipulated scheduling order, the parties explicitly acknowledged that the August 16, 2002, hearing would address the potential dismissal of the case. Even assuming that plaintiff properly presented its lack of notice argument on appeal and did not waive the circuit court's adherence to summary disposition procedures, our review of the record indicates that plaintiff suffered no confusion that prejudiced its ability to present its positions regarding the merits of its complaint. *Moy v Detroit Receiving Hosp*, 169 Mich App 600, 605; 426 NW2d 722 (1988). On the day of the August 16 hearing, plaintiff filed a lengthy brief together with exhibits in support of its positions, and introduced during the hearing copies of its lost deeds and Kelmendi's testimony. Plaintiff does not argue that the proceedings deprived it of the chance to introduce any specific evidence or argument.

*issue of material fact*, the court shall render judgment without delay. [Emphasis added.]

See *Yakowich v Dep't of Consumer & Industry Services*, 239 Mich App 506, 510 n 6; 608 NW2d 110 (2000) (noting that MCR 2.116(I)(1) does not obligate the court to specify the grounds on which it grants the motion). As discussed further below, we conclude that undisputed facts, derived from the affidavits and other documentary evidence filed by the parties and Kelmendi's testimony at the hearing, warranted entry of the circuit court's order of dismissal without delay. Because the circuit court clearly considered documentary evidence beyond the pleadings in granting defendants' motion to dismiss, this Court presumes that the circuit court decided the matter pursuant to MCR 2.116(C)(10). *Krass v Tri-County Security, Inc*, 233 Mich App 661, 664-665; 593 NW2d 578 (1999).

Plaintiff's assertion that the circuit court's entry of the order of dismissal deprived it of its right to a jury trial lacks merit. Our Supreme Court has held that a party's demand for a jury trial does not preclude a trial court from summarily disposing of a cause of action, provided that no disputed issues of material fact exist. *Moll v Abbott Laboratories*, 444 Mich 1, 26-28; 506 NW2d 816 (1993). "[A] jury is charged with resolving disputed facts. . . . Where the facts of a case are uncontroverted and the only question left is what legal conclusions can be drawn from the facts, the question is for the court and not the jury." *Id.* at 26. Because in this case undisputed facts warranted summary disposition of plaintiff's complaint, the circuit court's order of dismissal did not deprive plaintiff of its right to a jury trial.

Plaintiff additionally argues that the circuit court erred by concluding that plaintiff lacked standing to bring this quiet title action because it did not incorporate until April 2002. Plaintiff insists that it constituted a de facto corporation at the time it obtained its ownership interest in the contested property, and that the court mistakenly opined that "very little evidence" supported plaintiff's existence as a de facto corporation. Whether particular facts support a court's application of the de facto corporation doctrine appears to involve a question of law, which this Court reviews de novo. *State Treasurer, supra*.

The cases cited by plaintiff recognize that the presence of the following circumstances warrants recognition of a de facto corporation: (1) some charter or statute exists pursuant to which the de facto corporation might have organized and assumed the powers that it purported to possess; (2) the members of the de facto corporation made bona fide efforts to incorporate according to the charter or statute; and (3) the de facto corporation engaged in actual use of corporate powers that it would have obtained pursuant to a proper incorporation under the charter or statute. *Tisch Auto Supply Co v Nelson*, 222 Mich 196, 200-201; 192 NW 600 (1923); *Newcomb-Endicott Co v Fee*, 167 Mich 574, 580-581; 133 NW 540 (1911); *Eaton v Walker*, 76 Mich 579, 585; 43 NW 638 (1889).

Kelmendi's testimony, viewed in a light most favorable to plaintiff, tended to support the fact that in 1976 or 1977 a group of church elders made certain good-faith efforts to create a corporation, including payment of money to an attorney to draft documents, and execution and

signature of articles of incorporation that ultimately never were filed. We will assume for purposes of argument that plaintiff's use of corporate powers may be found on the basis of the land contract and deeds it obtained that explicitly recited its corporate status, plaintiff's selection of officers, and its November 1977 meeting and resolution.<sup>3</sup> But nowhere within its brief on appeal or reply brief does plaintiff refer this Court to any particular statute that authorized plaintiff's incorporation for the purpose of purchasing the property. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 57; 649 NW2d 783 (2002) (explaining that a party may not leave it to this Court to search for authority to sustain or reject its position).

Because plaintiff has failed to demonstrate that the circuit court misapplied the de facto corporation doctrine, plaintiff cannot show that the court erred in concluding that plaintiff had no standing to file this quiet title action. To have standing to file a lawsuit, a person or entity must possess a legally protected interest that is in jeopardy of being adversely affected. *In re Foster*, 226 Mich App 348, 358; 573 NW2d 324 (1997). Because plaintiff undisputedly failed to file its documents of incorporation until April 2002, and, therefore, did not exist at the time of the 1977 and 1978 land contract and deeds pursuant to which the "St. Paul Albanian Catholic Community" purchased an interest in the property, the circuit court correctly found that plaintiff had no legally protected interest in the property.

Plaintiff further contends that the circuit court erred by concluding that laches precluded it from filing this quiet title action against defendants.

The doctrine of laches is a tool of equity that may remedy "the general inconvenience resulting from delay in the assertion of a legal right which it is practicable to assert." It is applicable in cases in which there is an unexcused or unexplained delay in commencing an action and a corresponding change of material condition that results in prejudice to a party. [*Dep't of Public Health v Rivergate Manor*, 452 Mich 495, 507; 550 NW2d 515 (1996), quoting *Lenawee Co v Nutten*, 234 Mich 391, 396; 208 NW 613 (1926).]

This Court reviews for clear error a trial court's application of the equitable doctrine of laches. *City of Jackson v Thompson-McCully Co, LLC*, 239 Mich App 482, 492; 608 NW2d 531 (2000).

The circuit court reasoned that laches precluded plaintiff from filing this quiet title suit against the archdiocese and the school district because plaintiff took no legal action during the

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<sup>3</sup> To the extent that plaintiff attempts to expand the record on appeal with reply brief references to documents not presented to the circuit court, this Court will not consider these documents. *Sherman v Sea Ray Boats, Inc*, 251 Mich App 41, 56; 649 NW2d 783 (2002). We further note that plaintiff's lengthy emphasis in its reply brief that the archdiocese knew at all times that plaintiff constituted a corporation has no relevance to the elements of a de facto corporation. *Tisch Auto Supply, supra*; *Newcomb-Endicott Co, supra*; *Eaton, supra*. Plaintiff apparently attempts to invoke the distinct doctrine of corporation by estoppel, *Perry & Derrick Co, Inc v King*, 24 Mich App 616, 618-619; 180 NW2d 483 (1970), but fails to set forth any elements of, or authority concerning, this doctrine, thus abandoning the issue. *Sherman, supra* at 57.

period in the early 1990s when the St. Paul Albanian Catholic Church began considering a relocation, or during the subsequent two-year period that the property had been listed for sale. According to the testimony of Kelmendi and the affidavit of a parishioner submitted by defendant, plaintiff was aware of the congregation's proposed relocation of the church during the early 1990s, and of the parish's 1994 purchase of Rochester Hills property designated as the site for the relocated church. Beginning around 2000, plaintiff failed to take any action during the approximate two-year period that the property was listed for sale, and waited until the archdiocese sold the property to the school district for \$1.8 million before filing this action.

Furthermore, irrespective of plaintiff's actual knowledge, plaintiff must be charged with constructive notice of the recorded deed to Cardinal Dearden on behalf of the archdiocese. The May 1979 recording of that deed constituted public notice of a property interest that plainly infringed on plaintiff's asserted title to the contested parcel. MCL 565.25(1) and (4).

In sum, plaintiff waited more than *twenty-three years*—between the 1979 recording and the filing of the instant case in July 2002—to assert any ownership interest in 3411 Twelve Mile. Plaintiff's delay resulted in prejudice to defendants, primarily the school district. *Dep't of Public Health, supra*. In reliance on the archdiocese's recorded title to the property, the school district paid \$1.8 million for the property, obtained title insurance, changed the church building's locks, and began implementing its plan to change the church building into a gymnasium.

In light of this record, we cannot conclude that the circuit court clearly erred in determining that laches precluded plaintiff from pursuing this lawsuit. *City of Jackson, supra*. Plaintiff's twenty-three-year delay, and its assertion of its rights only after the school district purchased the property,<sup>4</sup> “would make it inequitable to enforce the claim against” defendants. *Gallagher v Keefe*, 232 Mich App 363, 369; 591 NW2d 297 (1998).

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<sup>4</sup> We reject plaintiff's claim that the school district lacked the status of a good-faith purchaser of 3411 Twelve Mile. *Royce v Duthler*, 209 Mich App 682, 690-692; 531 NW2d 817 (1995). Plaintiff reasons that the recorded June 1975 land contract, pursuant to which the Woryks obtained their vendee interest in 3411 Twelve Mile from Tropea, ought to have placed the school district on inquiry of a potential flaw in the subsequently obtained title of the archdiocese because the chain of title did not include any clear disposition of the Woryks' interest. Tropea's deed to the archdiocese clearly and unambiguously explains, however, that (1) Tropea's conveyance to the archdiocese was not subject to any potential interests arising from the recorded June 10, 1975, land contract with the Woryks because Tropea's conveyance to the archdiocese occurred in fulfillment of the land contract; and (2) the Woryks conveyed any interest they obtained pursuant to the June 1975 land contract via a March 5, 1979, quitclaim deed to the archdiocese. Even assuming that the school district should have further investigated whether the Woryks had any interest adverse to the title of the archdiocese, the record reflects that the school district obtained title insurance on the property that revealed no competing interests in the Woryks or anyone else to the title of the archdiocese, other than the property's encumbrances by governmental or public easements. Moreover, as the circuit court noted, no investigation by the school district into the chain of title would have yielded any potential interest that plaintiff obtained pursuant to its unrecorded instruments of conveyance.

Because plaintiff failed to demonstrate error in the circuit court's finding that it lacked standing to initiate this quiet title action against defendants, and because laches also precludes plaintiff from maintaining this action, we need not consider the merits of plaintiff's claim of title or plaintiff's unpreserved contention concerning a constructive trust. *Alan Custom Homes, Inc v Krol*, 256 Mich App 505, 512-513; 667 NW2d 379 (2003).

We affirm.

/s/ Karen M. Fort Hood

/s/ Richard A. Bandstra

/s/ Patrick M. Meter