STATE OF MICHIGAN

COURT OF APPEALS

PETER SHEFMAN, individually and as assignee of TERRACE LAND DEVELOPMENT GROUP, d/b/a SHEFMAN TERRACE,

Plaintiff/Counterdefendant-Appellant,

v

DOUGLAS E. KUTHY,

Defendant-Appellee,

and

DOUGLAS E. KUTHY, P.C.,

Defendant/Counterplaintiff-Appellee.

UNPUBLISHED
December 1, 2005

No. 255889
Oakland Circuit Court
LC No. 2003-048726-NM

Before: Whitbeck, C.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals the trial court's dismissal of his case for failure to post a security bond. We affirm.

I.

In April 2003, plaintiff, individually and as assignee of his corporation, Terrance Land Development Corporation, filed a *pro se* complaint against defendants, Douglas E. Kuthy (Kuthy) and his law firm, Douglas E. Kuthy, P.C. (Kuthy P.C.), in which he raised various claims stemming from Kuthy's representation of him in a prior action wherein plaintiff was sued by his lawyers to collect attorney fees. Thereafter, plaintiff retained counsel, who filed an amended complaint alleging various claims against defendants based on legal malpractice, breach of professional rules, claim and delivery, conversion, violation of the Michigan Consumer Protection Act, MCL 445.901 *et seq.*, fraud, unjust enrichment, and breach of contract.

Plaintiff's attorney withdrew and he hired another attorney by the time Kuthy P.C. filed a counterclaim for additional attorney fees allegedly owed by plaintiff. The counterclaim was later

amended to add a claim for abuse of process. In March 2004, plaintiff's substitute counsel moved to withdraw. Before the trial court decided the motion to withdraw, defendants moved for a $25,000 security bond under MCR 2.109, and plaintiff filed a pro se response to the motion. At a hearing on March 17, 2004, the trial court granted plaintiff's substitute counsel's motion to withdraw and additionally required plaintiff to post a $25,000 security bond by April 14, 2004.

In April 2004, the trial court dismissed plaintiff's case for failure to post the security bond. Plaintiff thereafter filed a motion to reinstate the case, which the trial court treated as a motion for reconsideration under MCR 2.119(F), and denied the motion.

On appeal, plaintiff, acting in propria persona, seeks reversal of the order dismissing his case and a remand for further proceedings before a different judge. In his first six issues, plaintiff raises various challenges to the trial court's March 17, 2004, decision ordering him to post a security bond.

II.

We review the trial court's decision to require a security bond under MCR 2.109 for an abuse of discretion. *In re Surety Bond for Costs*, 226 Mich App 321, 331; 573 NW2d 300 (1997). In general, "[a]n abuse of discretion occurs when an unprejudiced person considering the facts upon which the decision was made would say there was no justification or excuse for the decision." *Novi v Robert Adell Children's Funded Trust*, 473 Mich 242, 254; 701 NW2d 144 (2005). Questions of law that might arise in reviewing a trial court's exercise of discretion are reviewed de novo. See generally *Kelly v Builders Square, Inc*, 465 Mich 29, 34; 632 NW2d 912 (2001).

III.

We find no merit to plaintiff's challenge to the trial court's decision on the ground that he was denied the effective assistance of counsel. The record indicates that the trial court permitted plaintiff to make a pro se oral argument at the March 17, 2004, hearing, consistent with plaintiff's previously filed pro se response to defendants' motion for a security bond, albeit the trial court instructed plaintiff to limit his oral argument to approximately two minutes. Under the Michigan Constitution, Const 1963, art 1, § 13, "[a] suitor in any court of this state has the right to prosecute or defend his suit, either in his own proper person or by an attorney." The right to the effective assistance of counsel does not apply to civil proceedings, but rather criminal prosecutions. See US Const, Am VI; Const 1963, art 1, § 20; *United States v $100,375 in United States Currency*, 70 F3d 438 (CA 6, 1995); *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

We also reject plaintiff's claim that defendants' motion for a security bond should have been denied because it was not timely filed. Because plaintiff has not shown that he presented this issue to the trial court, we need to address it. A party may not leave it to this Court to search for factual support for his argument. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 388; 689 NW2d 145 (2004). Nonetheless, though a party should apply for security as early as practicable, *Hall v Harmony Hills Recreation, Inc*, 186 Mich App 265, 269; 463 NW2d 254 (1990), MCR 2.109 does not contain express time limitations. Rather, a party's delay in bringing a motion for a security bond permits a trial court to consider laches in the exercise of its

discretion. See *Goodenough v Burton*, 146 Mich 50, 52; 109 NW 52 (1906). In general, laches is an equitable principle, which is concerned with the effect of the delay. *Lothian v Detroit*, 414 Mich 160, 168 324 NW2d 9 (1982). When considering whether to charge a party with laches, a court must pay attention to prejudice occasioned by the delay. *Id.*

Because the mere fact of delay is not a basis for denying a motion for a security bond and plaintiff failed to show any prejudice occasioned by the delay, appellate relief on this basis is not warranted.

Turning to the merits of the trial court's decision, a trial court may order a security bond under MCR 2.109(A) if it appears "reasonable and proper." The movant must show a substantial reason for security for costs. *Hall, supra* at 270. Our review of the record discloses that the trial court did not abuse its discretion in finding sufficient information about plaintiff's litigation history with attorneys to find good reason to believe that plaintiff's allegations were groundless and unwarranted. *Id.*

Also, the trial court did not abuse its discretion in determining the amount of the security bond. The trial court was not required to conduct an evidentiary hearing to set a security bond. *Dunn v Emergency Physicians Medical Group, PC*, 189 Mich App 519; 523; 473 NW2d 762 (1991). A trial judge may "set the bond in light of his own experience." *Belfiori v Allis-Chalmers, Inc*, 107 Mich App 595, 600-601; 309 NW2d 682 (1981). All costs and recoverable expenses that may be awarded by the trial court, including potential attorney fees for unwarranted allegations, may be allowed under MCR 2.109(A). See *Flanagan v Gen Motors Corp*, 95 Mich App 677, 683; 291 NW2d 166 (1980); MCR 2.114(E) and (F); MCR 2.625(A)(2); MCL 600.2591.

Finally, we are not persuaded that plaintiff has established any basis for disturbing the trial court's failure to waive security under MCR 2.109(B)(1). The rule does not require indigency, but rather a financial inability to furnish a security bond. *Hall, supra* at 272. The trial court's determination regarding the legitimacy of the claim and a party's financial ability to post the bond are findings of fact reviewed for clear error. *In re Surety Bond for Costs, supra* at 333; *Hall, supra* at 636. Although trial courts are encouraged to explain their decisions to provide meaningful appellate review, *Belfiori, supra* at 601, fact findings are not required under MCR 2.109. See MCR 2.517(A)(4). Ultimately, the decision to waive security is within the trial court's discretion. *Farleigh v Amalgamated Transit Union Local, 1251*, 199 Mich App 631, 636; 502 NW2d 631 (1993); *Hall, supra* at 271-272.

Contrary to defendants' argument on appeal, the record contains an affidavit from plaintiff addressing his financial condition. However, we note that while plaintiff specifically asked the trial court to apply the guidelines in *Wells v Fruehauf Corp*, 170 Mich App 326; 428 NW2d 1 (1988), in his pro se response to defendants' motion for a security bond, plaintiff's affidavit was silent regarding the cost of the security bond. Also, plaintiff acknowledged having accumulated savings, but did not disclose his assets or expenses. Because plaintiff did not provide sufficient information in his affidavit for the trial court to assess his financial ability, the trial court did not abuse its discretion in failing to waive a security bond. *Id.* at 338-339.

We decline to address plaintiff's seventh issue regarding discovery and other matters because plaintiff gives only cursory treatment to this issue in his appeal brief. *Houghton v Keller*, 256 Mich App 336, 340; 662 NW2d 854 (2003).

Plaintiff has also insufficiently briefed his eighth claim on appeal, regarding the trial court's failure to order an adjournment or stay of proceedings, because plaintiff's argument lacks citation to the factual basis of his argument. *Derderian, supra* at 388. We also note that any argument relative to the counterclaim is moot because the trial court ultimately dismissed it. Under the harmless error rule, MCR 2.613(A), an error in a trial court's ruling or order, "or any error or defect in anything done or omitted by court or by the parties is not a ground . . . for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice."

To the extent that plaintiff suggests that the trial court should have considered his request for an adjournment to postpone the April 21, 2004, hearing on defendants' motion for dismissal indefinitely, rather than rule on the merits of defendants' motion, we find no merit to this argument. A trial court has discretion to grant an adjournment to promote the cause of justice. MCR 2.503(D)(1); *People v Jackson*, 467 Mich 272, 276; 650 NW2d 665 (2002). But there is no right to an adjournment based on the illness of a party, witness, or attorney. *Andrews v Roberts*, 366 Mich 620; 115 NW2d 322 (1962). In this case, plaintiff responded in writing to defendants' motion to dismiss, filed an appeal to this Court in Docket No. 255059 from the trial court's order requiring the security bond, obtained his physician's recommended sixty-day treatment plan before the April 21, 2004, hearing, and personally appeared at the April 21, 2004, hearing. Although plaintiff might have been suffering from physical and mental health issues that required treatment at that time, plaintiff's actions were not indicative of an individual incapable of responding to defendants' motion to dismiss. Thus, assuming that plaintiff is challenging the trial court's decision to rule on defendants' motion to dismiss, we find no basis for disturbing that action.

Finally, plaintiff has insufficiently briefed the merits of his equal protection and due process claims in his ninth issue on appeal. *Houghton, supra* at 340. This Court need not address an issue that is raised for the first time on appeal. *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95-96; 693 NW2d 170 (2005). There is no indication in the record that plaintiff presented an equal protection claim to the trial court.

Plaintiff did argue, however, that he was denied procedural due process in his motion to reinstate the case. The trial court appropriately treated the motion as a motion for reconsideration under MCR 2.119(F). It was not bound by plaintiff's choice of labels for the motion. *Johnston v Livonia*, 177 Mich App 200, 208; 441 NW2d 41 (1989). In any event, we reject plaintiff's cursory claim of a due process error. *Reed v Reed*, 265 Mich App 131, 157-159; 693 NW2d 825 (2005). Oral argument was not a necessary component of procedural due process. See *Leonardi v Sta-Rite Reinforcing, Inc*, 120 Mich App 377, 382-383; 327 NW2d 486 (1982). Further, the trial court had inherent authority to preserve order in the courtroom after plaintiff interrupted its attempt to announce a decision at the April 21, 2004, hearing. *In the Matter of Hague*, 412 Mich 532, 559; 315 NW2d 524 (1982). The fact that the trial court made rulings adverse to plaintiff does not demonstrate a violation of due process. *Cain v Dep't of Corrections*, 451 Mich 470, 498; 548 NW2d 210 (1996). "The court must form an opinion as to

the merits of the matters before it. This opinion, whether pro or con, cannot constitute bias or prejudice." *Band v Livonia Assoc*, 176 Mich App 95; 439 NW2d 285 (1989).

Affirmed.

/s/ William C. Whitbeck
/s/ Henry William Saad
/s/ Peter D. O'Connell