STATE OF MICHIGAN

COURT OF APPEALS

TRIAD MECHANICAL, INC., Plaintiff-Appellant, v HASTINGS MUTUAL INSURANCE COMPANY, Defendant-Appellee.	UNPUBLISHED September 17, 2009 No. 287129 Oakland Circuit Court LC No. 2006-079666-CZ

Before: Sawyer, P.J., and Cavanagh and Hoekstra, JJ.

PER CURIAM.

In this worker's compensation dispute, plaintiff appeals as of right from the trial court's order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). We affirm.

In this case, an attorney retained by defendant Hastings Mutual Insurance Company to defend a worker's compensation claim against plaintiff, Triad Mechanical, Inc., settled the claim without plaintiff's consent. Plaintiff believed the claimant had been injured while working on a side job, not while working for plaintiff. However, an independent medical examination obtained by the attorney defending the case diagnosed the claimant as having a partial disability due to a ruptured herniated disc, which would limit his future ability to work as a plumber. Therefore, the attorney concluded that if the claimant's trial testimony would be believed, an open award would be an almost certainty. Accordingly, on May 22, 2002, a tentative settlement was reached for $40,000. However, on June 24, 2002, a letter that indicated plaintiff's objection to the settlement was sent to the attorney defending the claim. Even though the letter indicated plaintiff's objection, the attorney later scheduled a redemption hearing on July 24, 2002. Then, on July 2, 2002, the attorney sent notice of the redemption hearing to plaintiff and informed plaintiff on how to exercise its right to object to the settlement. A typographical error in the letter did list June 24, 2002, instead of July 24 as the date of the redemption hearing. Plaintiff never exercised its rights to object to the settlement; therefore, at the redemption hearing the magistrate approved the agreement.

Plaintiff argues that the trial court erred when it ruled that defendant was not obligated, under its duty to defend, to obtain plaintiff's consent before it settled the worker's compensation claim. We disagree. This Court reviews de novo a trial court's decision on a motion for summary disposition. *Collins v Comerica Bank*, 468 Mich 628, 631; 664 NW2d 713 (2003). Summary

disposition is appropriate under MCR 2.116(C)(10) if no genuine issue of any material fact exists, and the moving party is entitled to judgment as a matter of law. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds could differ. *Id.*

In the present case, even though there was no express contractual provision requiring consent prior to settlement, there was a statutory provision, MCL 418.836, which provides in pertinent part:

> (1) A redemption agreement shall only be approved by a worker's compensation magistrate if the worker's compensation magistrate finds all of the following:
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> * * *
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> (b) That the redemption agreement is voluntarily agreed to by all parties. If an employer does not object in writing or person to the proposed redemption agreement, the employer shall be considered to have agreed to the proposed agreement.

After receiving notice of the redemption hearing, plaintiff failed to satisfy the requirements of MCL 418.836 by not objecting in writing or in person to the proposed redemption agreement and is therefore considered to have agreed to it. Without an express contract or statutory provision providing otherwise, an insurance company in Michigan can settle a claim within policy limits without the consent of the insured. *Kallas v Lincoln Mut Cas Co*, 309 Mich 626, 632; 16 NW2d 99 (1994).

However, it must be decided whether defendant breached its duty to defend by settling the claim within policy limits when plaintiff made it known to defendant it did not want to settle. For an insurer to be liable when it fails to settle a claim within policy limits, a finding of bad faith is required. *Wakefield v Globe Indemnity Co*, 246 Mich 645, 648, 651; 225 NW2d 643 (1929). Therefore, bad faith should also be required for an insurer to be liable when it settles within policy limits against the known wishes of the insured because insurers have their own interests in making a settlement. *Id.* at 653. Bad faith has been defined as "arbitrary, reckless, indifferent, or intentional disregard of the interests of the person owed a duty." *Commercial Union Ins Co v Liberty Mut Ins Co*, 426 Mich 127, 136; 393 NW2d 161 (1986). Because plaintiff had a statutory avenue under MCL 418.836 in which it could object to settlement, the defendant did not act arbitrary, reckless, indifferent, or with an intentional disregard to plaintiff's interest by settling the claim. The possibility of an open award further removes any elements of bad faith from defendant's decision to settle. Thus, defendant did not breach its duty to defend when it settled the claim.

The next issue to be decided is whether defendant provided plaintiff the proper notice required by MCL 418.835 when the notice listed the wrong date for the redemption hearing. Notice is sufficient if it substantially complies with notice provisions required by statute. *Meredith v Melvindale*, 381 Mich 572, 580; 165 NW2d 7 (1969). Further, an individual is considered to have notice of facts he could have readily ascertained when he has knowledge of

facts that would cause an ordinary prudent businessman to make further inquiries and he avoids making those inquiries. *Cherry River Nat Bank, W VA v Wallace*, 329 Mich 384, 389; 45 NW2d 332 (1951). As in the present case, notice for a hearing on a date that has already passed would cause an ordinary prudent businessman to make further inquiries. Plaintiff never made any further inquiries, therefore, plaintiff can be considered to have had notice of the hearing date.

Plaintiff next argues that the trial court erred when it granted summary disposition on a basis not raised or briefed by defendant. Plaintiff cites no authority for his contention that the trial court erred by basing its decision to grant summary disposition on an argument not raised or briefed. "A party may not leave it to this Court to search for authority to sustain or reject its opinion." *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). An appellant must do more than announce his position and then leave this Court with the task of discovering and rationalizing the basis for his claims. *Id.* Citation to appropriate authority or policy supporting the argument must be provided. MCR 7.212(C)(7); *Peterson Novelties*, *supra*. An issue is abandoned if a party failed to properly address the merits of an assertion. *Peterson Novelties, supra*. Therefore, this issue is abandoned. *Id.*

Plaintiff argues that the trial court erred when it denied plaintiff's motion to amend its complaint. We disagree. This Court will not reverse a trial court's decision regarding leave to amend unless it constituted an abuse of discretion that resulted in injustice. *PT Today, Inc v Comm'r of Financial & Ins Services*, 270 Mich App 110, 142; 715 NW2d 398 (2006). An abuse of discretion occurs only when the trial court's decision is outside the range of reasonable and principled outcomes. *In re Kostin Estate*, 278 Mich App 47, 51; 748 NW2d 583 (2008).

Reasons that justify denial of leave to amend include undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the defendant, or futility. *Miller v Chapman Contracting*, 477 Mich 102, 105; 730 NW2d 462 (2007). The trial court must specify its reasons for denying leave to amend and the failure to do so requires reversal unless the amendment would be futile. *PT Today, supra* at 143. Because the trial court listed no reasons for denying plaintiff's motion to amend its complaint in either its December 20, 2007, order denying the motion or its December 12, 2007, order granting defendant's motion for summary disposition, the trial court's decision must be reversed unless the amendment would be futile.

An amendment to a pleading would be futile if: (1) ignoring the substantive merits of the claim, it is legally insufficient on its face; (2) it merely restates allegations already made; or (3) it adds a claim over which the court lacks jurisdiction. *Id.* As mentioned earlier, defendant did not act in bad faith by settling the claim because plaintiff had a statutory avenue under MCL 418.836 in which it could object to settlement; therefore, the motion to amend is legally insufficient on its face. Further, plaintiff's motion to amend also merely restates allegations already made because bad faith is a component of the issue whether defendant breached its duty to defend and plaintiff made allegations that constitute bad faith in its original complaint. Thus, the trial court did not abuse its discretion when it denied plaintiff's motion to amend its complaint because the motion would have been futile.

Plaintiff next argues that the trial court improperly granted defendant case evaluation sanctions because defendant's request for the sanctions was not timely. We decline to address this issue for lack of jurisdiction. This Court has jurisdiction of an appeal of right filed from a

"final judgment or final order," as defined in MCR 7.202(6). MCR 7.203(A)(1). Plaintiff did timely file a claim of appeal from a "final order" on August 14, 2008, when it appealed the trial court's December 12, 2007, order granting defendant's motion for summary disposition. Because it was the first order that disposed of all the claims and adjudicated the rights and liabilities of all the parties, the order granting defendant's motion for summary disposition was a "final order." MCR 7.202(6)(a)(i); *Baitinger v Brisson*, 230 Mich App 112, 116; 583 NW2d 481 (1998). A party who files a claim of appeal from a final order may raise on appeal issues related to other orders in the case. *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992). However, the party may not challenge subsequent orders entered after the claim of appeal has been filed. *Gracey v Grosse Pointe Farms Clerk*, 182 Mich App 193, 197; 452 NW2d 471 (1989). On November 4, 2008, after plaintiff had filed its claim of appeal from the order granting summary disposition, the trial court entered its order awarding case evaluation sanctions. Because the postjudgment awards under MCR 2.403 are defined as a final order, MCR 7.202(6)(a)(iv), plaintiff could have filed a separate appeal by right from the November 4, 2008, order. However, plaintiff did not do so, thus this Court does not possess jurisdiction to review this issue. *McDonald v Stroh Brewery Co*, 191 Mich App 601, 609; 478 NW2d 669 (1991).

Affirmed.

/s/ David H. Sawyer
/s/ Mark J. Cavanagh