

STATE OF MICHIGAN
COURT OF APPEALS

BARBARA ANN CARNAHAN,

Plaintiff-Appellant,

v

PAUL WAYNE CARNAHAN,

Defendant-Appellee.

UNPUBLISHED

January 28, 2010

No. 289664

Oakland Circuit Court

LC No. 2007-088066-CZ

Before: Donofrio, P.J., and Meter and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order dismissing her case against defendant. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed this action in December 2007, seeking to collect \$259,500, plus interest, that allegedly was owed by defendant pursuant to a June 8, 2005, promissory note. Although the promissory note provided for monthly payments of principal and income beginning on July 20, 2008, plaintiff sought to accelerate payment based on defendant's alleged breach of an agreement that was executed in conjunction with the note, which secured defendant's obligation to pay plaintiff with a one-third-ownership interest in a corporation. Plaintiff also sought a determination that defendant had converted the security and proceeds from the sale of the security to his own use. As the case proceeded toward trial, the trial court entered a scheduling order on September 11, 2008, which afforded the parties an opportunity to submit stipulated facts and briefing in lieu of a trial. Following the filing of a stipulation of facts and briefs from both parties, the trial court dismissed plaintiff's case. In a written opinion and order, and relying in part upon MCR 2.504(B)(1), the trial court held that both parties' briefs provided factual material and issues well beyond the stipulated facts, which was in violation of a prior order and the court rules.

On appeal, plaintiff raises various challenges to the trial court's decision, including the trial court's authority to sanction parties for violating court orders and the court's assessment of the merits of plaintiff's claim based on the stipulated facts.

MCR 2.116(A) recognizes that parties to an action and the court may agree to have a matter decided on stipulated facts. The rule provides, in pertinent part:

(1) The parties to a civil action may submit an agreed-upon stipulation of facts to the court.

(2) If the parties have stipulated to facts sufficient to enable the court to render judgment in the action, the court shall do so.

In this case, the trial court relied on the parties' written stipulation of "[f]acts to be used by the Court to reach a determination in the above referenced matter," as establishing the stipulated facts. Although plaintiff asserts that it was also agreed that the parties could present additional facts in their briefs, plaintiff has not cited any record support for this claim. "This Court will not search for factual support for a party's claim." *McIntosh v McIntosh*, 282 Mich App 471, 485; 768 NW2d 325 (2009).

Assuming for the sake of argument that the trial court abused its discretion when it dismissed as a sanction plaintiff's case under MCR 2.504(B)(1), and struck her (and defendant's) entire brief, plaintiff has not shown that the trial court erred in holding that plaintiff failed to sustain her burden of showing entitlement to relief based on the stipulated facts and the documents incorporated therein, pursuant to MCR 2.116(A). Our review of this question is de novo. See *Morrison v City of East Lansing*, 255 Mich App 505, 517; 660 NW2d 395 (2003), citing *Wills v State Farm Ins Co*, 222 Mich App 110, 114; 564 NW2d 488 (1997).

Having considered plaintiff's arguments regarding her theories of liability, as well as the brief submitted by defendant to the trial court, we conclude that plaintiff has not established any basis for appellate relief. Plaintiff has abandoned any claim for treble damages based on her theory of conversion because she does not address this claim on appeal. "It is axiomatic that where a party fails to brief the merits of an allegation of error, the issue is deemed abandoned by this Court." *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Further, plaintiff has failed to substantiate her position that defendant's execution of the stock purchase agreement for the corporation, as set forth in the stipulation of facts and the documents incorporated therein, violated the security agreement. The terms of the security agreement clearly contemplated that stock could be liquidated, and plaintiff has not sufficiently articulated why she should prevail on this theory. *McIntosh*, 282 Mich App at 485.

Finally, while the parties stipulated that "Defendant has failed to pay Plaintiff the payment due July 20, 2008 or has any other monthly payment been received," the trial court considered this particular issue in light of plaintiff's failure to plead a violation of the promissory note's payment provisions in her complaint. Because plaintiff does not address this aspect of the trial court's decision, and the question whether she should have been permitted to pursue this unpleaded theory is a necessary issue, appellate relief is precluded. See *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987) (a party's failure to brief a necessary issue precludes appellate relief).

Affirmed.

/s/ Pat M. Donofrio
/s/ Patrick M. Meter
/s/ Christopher M. Murray