STATE OF MICHIGAN

COURT OF APPEALS

RONALD NICHOLS, JR.,

Plaintiff-Appellant-Cross-Appellee,

v

CORPORATE PARK OF ROCHESTER HILLS, INC.

Defendant-Appellee-Cross-Appellant

and

LISA HERZOG f/k/a LISA NICHOLS,

Defendant-Appellee.

UNPUBLISHED
May 22, 2014

No. 312418
Oakland Circuit Court
LC Nos. 2011-116598-CK &
2011-116601-CK

Before: MARKEY, P.J., and SAWYER and WILDER, JJ.

PER CURIAM.

Plaintiff, Ronald Nichols, Jr., appeals a June 1, 2012 order dismissing his claims against defendants, Corporate Park of Rochester Hills, Inc. ("CPRH") and plaintiff's ex-wife Lisa Herzog f/k/a Lisa Nichols,[1] and ordering plaintiff and Herzog to pay rent to CPRH for the storage of contested personal property during the course of the litigation. Plaintiff also challenges a subsequent order denying his motion to amend his complaint. We affirm the June 1, 2012 order and the subsequent order denying the motion to amend, but remand for consideration of the request by CPRH for attorney fees.

[1] In Lower Court No. 2011-116598-CK, Herzog filed a complaint against CPRH for *inter alia*, breach of a lease with CPRH and conversion of the personal property both plaintiff and Herzog claimed to own. Herzog's case was later consolidated with plaintiff's case in Lower Court No. 2011-116601-CK. Although her claims were also dismissed on June 1, 2012, and she filed a claim of appeal, this Court dismissed Herzog's appeal for her failure to pursue the case in conformity with the rules. *Nichols v Corporate Park of Rochester Hills*, unpublished opinion per curiam of the Court of Appeals, issued November 8, 2012 (Docket No. 312566), citing MCR 7.201(B)(3) and 7.216(A)(10).

I

Plaintiff's first argument on appeal is that the trial court's June 1, 2012 order was not a final order under MCR 7.202(6)(a)(i). We disagree. This Court reviews questions of law, including the interpretation of court rules, de novo. *Colista v Thomas*, 241 Mich App 529, 535; 616 NW2d 249 (2000).

MCR 7.202(6)(a)(i) defines a "final order," in relevant part, as "the first judgment or order that disposes of all the claims and adjudicates the rights and liabilities of all the parties, including such an order entered after reversal of an earlier final judgment or order." Before the evidentiary hearing on May 28, 2012, and June 1, 2012, the trial court advised the parties, "You can have an evidentiary hearing, and I'll decide who's telling the truth. It will essentially be a trial."[2] Plaintiff did not object.[3] Following the hearing, the trial court dismissed all of the "pending claims and close[d] the case" in its June 1, 2012 order. Plaintiff's reliance on *Faircloth v Family Independence Agency*, 232 Mich App 391, 400-401; 591 NW2d 314 (1998) is unpersuasive. In that case, this Court stated that "[m]ere certification" under a prior version of MCR 2.604(A) "does not resolve whether an order is actually "final." Where the trial court in *Faircloth* certified an order granting partial summary disposition as a "final judgment," but ruled in the same order that it would schedule additional proceedings to grant further relief on the claims, the order was not final. This instant case is distinguishable because it disposed of all claims and, unlike the order in *Faircloth*, nothing in the record suggests the trial court intended to further adjudicate the rights and liabilities of the parties.

II

Plaintiff's next argument on appeal is that the trial court erred by dismissing his breach of contract claim. We disagree. This Court reviews a trial court's findings of fact for clear error and conclusions of law de novo. *Knight Enterprises, Inc v RPF Oil Co*, 299 Mich App 275, 279; 829 NW2d 345 (2013). Plaintiff had leased office space from CPRH where plaintiff stored personal property. In his complaint, he alleged that after he failed to pay his rent, CPRH breached the quiet enjoyment provision of his lease by denying him his personal property. Plaintiff admitted in the pleadings that the basis of this claim was an allegation that CPRH had sold the property to Herzog. On appeal, plaintiff argues that the trial court improperly concluded he had no right to quiet enjoyment. The trial court did not expressly address the covenant of quiet enjoyment in its order. Instead, it ruled that CPRH did not sell the property to Herzog. Because no sale occurred, plaintiff's claim that CPRH breached the covenant of quiet enjoyment by selling his property to Herzog could not survive. Plaintiff has not established error requiring reversal with respect to the dismissal of his breach of contract claim.

[2] In his complaint, plaintiff did not demand a trial by jury.

[3] Because plaintiff did not object, he failed to preserve any claim of error concerning the trial court's decision to treat the evidentiary hearing as a trial, and, pertinent to section IV of this opinion, we find no plain error affecting substantial rights in the trial court's decision to do so.

III

Plaintiff's next claim on appeal is that the trial court erred by ordering plaintiff and Herzog to pay rent to CPRH that accumulated for the storage of the contested personal property during the course of the litigation. On cross-appeal, CPRH argues that, in addition to rent, the trial court should have awarded attorney fees, either as an interpleader under MCR 3.603 or pursuant to the lease with plaintiff, which included a provision for the recovery of attorney fees by CPRH if it sued for unpaid rent.

The trial court ordered plaintiff and Herzog to pay $7,898.68 in rent for storage of the personal property during the course of the litigation. Because a party may be compensated for the costs of tendering the disputed property to the court, MCR 3.603(E)(1), we conclude that the order to pay rent was not erroneous. Contrary to plaintiff's unpreserved claim on appeal, CPRH's failure to file a counterclaim or cross-claim for interpleader under MCR 3.603(A)(2) was not error requiring reversal because CPRH included its claim in its answers to both plaintiff and Herzog's complaints and the trial court could have treated the claim as properly designated. MCR 2.110(C)(2). In addition, although plaintiff claims that CPRH could not enjoy an interpleader award because it was a defendant in the suits by plaintiff and Herzog and it was not a disinterested party, CPRH had no stake in the personal property. CPRH's claims for rent and attorney fees, which were documented in its brief in support of the motion for rent and attorney fees, were limited to the recovery of the actual costs of tendering the personal property to the trial court, not the costs of opposing the suit. Cf MCR 3.603(E)(3).[4]

The trial court made no ruling in response to CPRH's request for attorney fees resulting from the pursuit of rent for storage of the personal property during the course of the litigation. On remand, we direct the trial court to consider and rule upon this request. MCR 7.211(C)(1) and MCR 7.216(A).

IV

Plaintiff's last claim on appeal is that the trial court abused its discretion by denying his motion to amend the complaint after the June 1, 2012 order of dismissal. We disagree. The denial of leave to amend is reviewed for abuse of discretion. *Franchino v Franchino*, 263 Mich App 172, 189; 687 NW2d 620 (2004). "An abuse of discretion occurs when a trial court's decision is not within the range of reasonable and principled outcomes." *Sys Soft Technologies, LLC v Artemis Technologies, Inc*, 301 Mich App 642, 650; 837 NW2d 449 (2013) (citation and quotation marks omitted).

MCR 2.118(A)(2) provides that "a party may amend a pleading only by leave of the court," and "Leave shall be freely granted when justice so requires." MCR 2.118(C)(1) provides:

[4] MCL 600.2405 does not limit the "actual costs" under the interpleader rule.

> (1) When issues not raised by the pleadings are tried by express or implied consent of the parties, they are treated as if they had been raised by the pleadings. In that case, amendment of the pleadings to conform to the evidence and to raise those issues may be made on motion of a party at any time, even after judgment.

The amendments plaintiff proposed to the complaint changed the basis of the breach of contract claim and added counts of statutory and common-law conversion. Although some facts on the record at the evidentiary hearing support these claims, the claims were not "tried by the express or implied consent of the parties." At the hearing, plaintiff only argued whether CPRH was a disinterested party for purposes of the motion for rent and attorney fees despite the fact that the trial court had decided to hold a trial to resolve all the factual disputes in the case.[5] Because plaintiff did not argue his new breach of contract and conversion claims to the trial court at the hearing and the record does not suggest they were treated as if they had been raised by the pleadings, we cannot conclude the trial court's decision to deny the post-judgment motion to amend the complaint was outside the range of principled outcomes. *Sys Soft*, 301 Mich App at 650.

Affirmed, but remanded for consideration of the request by CPRH for attorney fees. We do not retain jurisdiction. As the prevailing party, CPRH is entitled to costs pursuant to MCR 7.219(A).

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ Kurtis T. Wilder

[5] Because the trial court did not plainly err in conducting a trial on all issues rather than a more limited evidentiary hearing, plaintiff was required to present his case on all issues. To allow plaintiff to present his entire case, as he deemed proper, to the trial court and then, following an unfavorable judgment, to amend the complaint, would permit plaintiff to harbor error as an appellate parachute. *Marshall Lasser, PC v George*, 252 Mich App 104, 109; 651 NW2d 158 (2002).