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STATE OF MICHIGAN

COURT OF APPEALS

CARMEN CAPATANA, Plaintiff-Appellant,	UNPUBLISHED November 18, 2021
v GEORGE DOULAVERIS, Defendant-Appellee.	No. 354727 Oakland Circuit Court LC No. 2019-178686-CZ

Before: BORRELLO, P.J., and JANSEN and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendant's motion for summary disposition under MCR 2.116(C)(7) and (C)(8). We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Plaintiff and defendant met through a dating website in August 2015. According to plaintiff, defendant was married at the time, but represented that he was separated from his wife and would be obtaining a divorce. In November 2015, plaintiff and defendant discussed having a child together. According to plaintiff, she discussed in vitro fertilization (IVF) with defendant, and defendant agreed to pay for it. However, their relationship deteriorated, and in June 2017, defendant stated that he was not going through with their plan to have a child and would not be divorcing his wife.

On December 19, 2019, plaintiff filed a complaint *in propria persona* alleging claims for breach of contract, intentional infliction of emotional distress (IIED), loss of consortium, and "emotional pain and suffering." Specifically, plaintiff alleged that defendant had breached their agreement that defendant would have a child with her, pay for IVF, and reimburse her for expenses she had incurred related to having a child with defendant. Defendant moved the trial court for summary disposition under MCR 2.116(C)(7), (C)(8), and (C)(10), denying that "there was ever an agreement, oral or written, to get Plaintiff pregnant using the IVF procedure . . . or for Defendant to pay [for] any such procedure or related medical expenses." The trial court dispensed with oral argument under MCR 2.119(E)(3), and issued an opinion and order granting defendant's motion for summary disposition under MCR 2.116(C)(7) and MCR 2.116(C)(8).

Regarding plaintiff's breach-of-contract claim, the trial court granted defendant's motion under MCR 2.116(C)(8), because plaintiff "has not attached a contract to the pleadings, and the allegations in the complaint do not establish the elements of a contract." It dismissed plaintiff's IIED claim under MCR 2.116(C)(7), because the claim was barred by the applicable statute of limitations. It dismissed plaintiff's loss of consortium claim under MCR 2.116(C)(8), because plaintiff had not alleged a relationship that supported such a claim. And it dismissed plaintiff's "emotional pain and suffering" claim under MCR 2.116(C)(8), because it was not a valid cause of action, but rather a recitation of damages.

This appeal followed.

II. STANDARD OF REVIEW

"MCR 2.116(C)(7) provides that a motion for summary disposition may be raised on the ground that a claim is barred because of immunity granted by law." *Dextrom v Wexford Co*, 287 Mich App 406, 428; 789 NW2d 211 (2010). We review de novo a trial court's decision to grant or deny summary disposition under MCR 2.116(C)(7). *Meemic Ins Co v Fortson*, 506 Mich 287, 296; 954 NW2d 115 (2020); *Roby v City of Mount Clemens*, 274 Mich App 26, 28; 731 NW2d 494 (2006). "When reviewing a motion under MCR 2.116(C)(7), a reviewing court must consider all affidavits, pleadings, and other documentary evidence submitted by the parties and construe the pleadings and evidence in favor of the nonmoving party." *Anzaldua v Neogen Corp*, 292 Mich App 626, 629; 808 NW2d 804 (2011); see also *Skinner v Square D Co*, 445 Mich 153, 162; 516 NW2d 475 (1994).

MCR 2.116(C)(8) permits a trial court to grant summary disposition to a party when "[t]he opposing party has failed to state a claim on which relief can be granted." "A motion under MCR 2.116(C)(8) tests the *legal sufficiency* of a claim based on the factual allegations in the complaint." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159- 160; 934 NW2d 665 (2019), citing *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). "When considering such a motion, a trial court must accept all factual allegations as true, deciding the motion on the pleadings alone." *El-Khalil*, 504 Mich 160, citing *Bailey v Schaaf*, 494 Mich 595, 603; 835 NW2d 413 (2013); see also *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). However, "the mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *ETT Ambulance Serv Corp v Rockford Ambulance*, 204 Mich App 392, 395; 516 NW2d 498 (1994). "Summary disposition on the basis of [MCR 2.116](C)(8) should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *Bedford v Witte*, 318 Mich App 60, 64; 896 NW2d 69 (2016), citing *Dalley*, 287 Mich App at 305; see also *Maiden*, 461 Mich at 119.

We review de novo issues involving the interpretation of statutes and the court rules. *State Farm Fire & Casualty Co v Corby Energy Servs, Inc*, 271 Mich App 480, 483; 722 NW2d 906 (2006); *Webb v Holzheuer*, 259 Mich App 389, 391; 674 NW2d 395 (2003). We review de novo questions of law. *In re Estate of Moukalled*, 269 Mich App 708, 713; 714 NW2d 400 (2006), citing *Roan v Murray*, 219 Mich App 562, 565; 556 NW2d 893 (1996). We review unpreserved issues for plain error. *Total Armored Car Serv, Inc v Dep't of Treasury*, 325 Mich App 403, 412; 926 NW2d 276 (2018).

III. ANALYSIS

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition without providing proper notice of the motion hearing and without allowing plaintiff to submit additional evidence. We disagree.

Plaintiff first contends that the trial court erred by not giving her notice of the date and time of the motion hearing. However, the record shows that a hearing on defendant's motion was not held, as is permitted by MCR 2.119(E)(3). Plaintiff does not argue that the trial court erred by exercising its discretion under that court rule. Moreover, the record shows that defendant properly filed and served a notice of hearing with his motion, and that the trial court issued a scheduling order that provided a hearing date. In other words, when a hearing *was* scheduled, plaintiff clearly received notice of it, notwithstanding that it was later cancelled.

Plaintiff also argues that the trial court erred by not accepting additional evidence provided to it. Plaintiff has not provided a factual basis for her claim. She claims to have sent the trial court a number of documents—including affidavits, depositions, and a variety of communications between the parties—by overnight mail on August 5, 2020. She contends that, because of the COVID-19 pandemic, the evidence did not arrive at the trial court until August 13, 2020. But she provides no evidence of the contents of this package, or its arrival date at the trial court; she simply attached, to her answer to defendant's motion for summary disposition, a single USPS receipt showing only that a flat rate envelope was sent by overnight mail on August 5, 2020, at 4:54 p.m. Plaintiff also has provided no basis on which to conclude that the trial court did not, in fact, consider the evidence before issuing its opinion on August 14, 2020. In short, plaintiff's claim is completely unsupported by record evidence.[1]

Moreover, discovery closed on July 20, 2020.[2] And the record does not show that plaintiff ever served this additional evidence on the opposing party. See MCR 2.107(A)(1) ("[E]very party who has filed a pleading, an appearance, or a motion must be served with a copy of every document later filed in this action. . . ."). Plaintiff's status as a pro se litigant does not serve to excuse her from compliance with any procedural requirements set forth in the court rules. See *Bachor v City of Detroit*, 49 Mich App 507, 512; 212 NW2d 302 (1973). Given all of these circumstances, the trial court did not err, even if it did not consider plaintiff's late-filed evidence in support of her claims.

Throughout her brief on appeal, plaintiff also appears to raise issues substantively challenging the trial court's order granting summary disposition to defendant. Plaintiff did not identify these issues in her list of questions presented, and they are therefore not properly

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[1] Although plaintiff provides documents on appeal that were, allegedly, part or all of the contents of the envelope sent on August 5, 2020, we are unable to consider evidence that falls outside the record established by the trial court, and a party may not expand the record on appeal. *Sherman v Sea Ray Boats*, 251 Mich App 41, 56; 649 NW2d 783 (2002), citing *Reeves v KMART Corp*, 229 Mich App 466, 481 n 7; 582 NW2d 841 (1998).

[2] Plaintiff did move the trial court to extend discovery, but the trial court never granted that request.

presented. MCR 7.212(C)(5); *Mich Ed Ass'n v Secretary of State*, 280 Mich App 477, 488; 761 NW2d 234 (2008), *Hunt v Drielick*, 298 Mich App 548, 554 n 3; 828 NW2d 441 (2012). Further, apart from her argument concerning promissory estoppel, plaintiff has given these arguments only cursory treatment, with little or no citation to legal authority. See *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984). And, factually, plaintiff improperly bases her arguments on documentation that is not part of the record in this case. See *Sherman v Sea Ray Boats*, 251 Mich App 41, 56; 649 NW2d 783 (2002); see also *Begin v Mich Bell Tel Co*, 284 Mich App 581, 590; 773 NW2d 271 (2009), overruled in part on other grounds in *Admire v Auto-Owners Ins Co*, 494 Mich 10; 831 NW2d 849 (2013); (noting that a party may not leave it to this Court to search for the factual basis to sustainor reject an argument). Finally, with regard to plaintiff's promissory estoppel argument, we decline to consider this entirely new argument raised for the first time on appeal. See *Booth Newspapers*, *Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993).

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Mark T. Boonstra