STATE OF MICHIGAN

COURT OF APPEALS

2841 COCHRANE, L.L.C., an Assignee of FRANKLIN BANK, Plaintiff/Counter-Defendant-Appellee,	UNPUBLISHED April 10, 2012
v ROSLYN D. PEOPLES, Defendant/Counter-Plaintiff-Appellant.	No. 298701 Wayne Circuit Court LC No. 08-106583-CZ

Before: WILDER, P.J., and O'CONNELL and WHITBECK, JJ.

PER CURIAM.

In this action to quiet title, defendant appeals the trial court's order granting plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(10), on the basis of defendant's deemed admissions after defendant failed to timely respond to plaintiff's requests for admissions. This Court originally denied defendant's application for a delayed appeal "for lack of merit in the grounds presented," *2841 Cochrane, LLC v Peoples*, unpublished order of the Court of Appeals, entered January 13, 2011 (Docket No. 298701), but our Supreme Court, in lieu of granting leave to appeal, thereafter remanded the case to this Court for consideration as on leave granted. *2841 Cochrane, LLC v Peoples*, 490 Mich 856; ___ NW2d ___ (2011). We affirm.

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law."[1] This Court reviews a trial court's decision on a motion for summary disposition de novo.

[1] Plaintiff moved for summary disposition under MCR 2.116(C)(9) and (10). The trial court did not specify the subrule under which it granted the motion. The former tests the legal sufficiency of a defendant's pleadings and evaluates whether the defendant pleaded a valid defense. *Slater v Ann Arbor Pub Sch Bd of Ed*, 250 Mich App 419, 425; 648 NW2d 205 (2002). Because the trial court's ruling was not based on a legal deficiency in the pleaded defense, but rather on the absence of disputed issues of fact in light of defendant's deemed admissions, we treat the trial court's decision as having granted summary disposition pursuant to MCR 2.116(C)(10).

Maiden v Rozwood, 461 Mich 109, 118; 597 NW2d 817 (1999).

MCR 2.312 states, in pertinent part:

> **(B) Answer; Objection.**
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> (1) Each matter as to which a request is made is deemed admitted unless, within 28 days after service of the request, or within a shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter. Unless the court orders a shorter time a defendant may serve an answer or objection within 42 days after being served with the summons and complaint.
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> **(D) Effect of Admission.**
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> (1) A matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of an admission. For good cause the court may allow a party to amend or withdraw an admission. The court may condition amendment or withdrawal of the admission on terms that are just.

"[A]dmissions resulting from a failure to answer a request for admissions may form the basis for summary disposition." *Medbury v Walsh*, 190 Mich App 554, 556; 476 NW2d 470 (1991).

Defendant essentially argues that the trial court improperly granted summary disposition on the basis of her deemed admissions because at a prior hearing on plaintiff's motion to compel discovery, the court orally agreed to give her an additional 14 days to respond to all discovery requests, which included the requests for admissions.

Contrary to defendant's assertions, the trial court did not permit withdrawal or amendment of the deemed admissions at the March 2009 hearing on plaintiff's motion to compel. The court stated on the record that it was granting plaintiff's motion to compel, which was not directed at the requests for admissions, and the court gave defendant an additional 14 days to respond to the discovery requests. The court did not mention withdrawal or amendment of defendant's deemed admissions, much less make a finding of good cause to allow withdrawal or amendment of the deemed admissions. Defendant relies on an exchange at the hearing on plaintiff's motion to compel in which plaintiff's counsel referred to defendant's failure to respond to the requests for admissions to argue that the trial court's oral ruling allowing 14 days to respond to discovery also extended to the requests for admissions. We disagree with defendant's interpretation of the trial court's ruling. Plaintiff's counsel's reference to the requests for admissions was made in the context of describing defendant's lack of participation in the case generally. In that exchange, plaintiff's counsel also referred to defendant's failure to participate in the case evaluation. To the extent that the trial court's oral ruling could be considered ambiguous with respect to whether the court was allowing withdrawal or amendment of the deemed admissions and the filing of new answers, the written order submitted by plaintiff pursuant to MCR 2.602(B)(3), which drew no objections from defendant, was not.

The court's written order did not allow withdrawal or amendment of the deemed admissions, or grant defendant additional time to answer the requests for admissions. It only granted relief with respect to the specific discovery matters (interrogatories, requests for the production of documents, and notice of deposition) that plaintiff raised in its motion to compel. Generally, a trial court speaks through its written orders, and not its oral pronouncements. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977). Defendant's reliance on *McClure v H K Porter Co, Inc*, 174 Mich App 499, 503-504; 436 NW2d 677 (1988), for the proposition that "an oral ruling has the same force and effect as a written order" is misplaced because that case did not involve an oral ruling that was at best ambiguous with respect to its scope and a written order that was specific about its scope. Moreover, MCR 2.602(B)(2) states that a court shall enter a submitted order "if, in the court's determination, it comports with the court's decision." The court's entry of the order indicates it concluded that the order comported with its decision. For these reasons, we disagree with defendant's contention that the trial court granted her additional time to respond to the requests for admissions.

At the May 2009 hearing on plaintiff's motion for summary disposition, the trial court recognized that it could allow withdrawal of the deemed admissions for good cause and inquired whether good cause existed. But rather than attempting to persuade the court that good cause existed, defendant merely argued that the trial court had already ruled on the matter. The trial court considered the order that followed the prior hearing and correctly stated that it did not address requests for admissions. In light of defendant's failure to respond as required by MCR 2.312, the absence of a formal motion to withdraw the deemed admissions, and the fact that the order granting plaintiff's motion to compel did not refer to the requests for admissions, the course of action chosen by trial court, in effect refusing to allow amendment or withdrawal of the deemed admissions, was not an abuse of its discretion. *Medbury*, 190 Mich App at 556-557. With those admissions intact,[2] the trial court did not err in granting plaintiff's motion for summary disposition because there was no genuine issue of material fact. Although defendant asserts that she has a meritorious defense to plaintiff's action, the existence of a meritorious defense does not avoid the effect of a party's failure to respond to requests for admissions.

In light of our decision, it is unnecessary to address defendant's argument that the trial court's order granting summary disposition to plaintiff improperly ordered that defendant's notice of lis pendens be withdrawn.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Peter D. O'Connell
/s/ William C. Whitbeck

[2] The requests for admissions were extensive and included "Please admit that Defendant's rights in the property expired on February 28, 2008," and "Please admit that Defendant has no further rights in the property."