

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JEFFREY BENJAMIN,

Plaintiff/Counter-Defendant-  
Appellant,

v

SAVIN LAKE SERVICE, INC. d/b/a RUSTIN  
LAKE & POND SERVICE, INC., and GUY B.  
SAVIN, IV,

Defendants/Counter-Plaintiffs-  
Appellees.

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UNPUBLISHED  
June 12, 2012

No. 304246  
Iosco Circuit Court  
LC No. 10-005823-CK

Before: BORRELLO, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Jeffrey Benjamin appeals as of right from the trial court's order dismissing his wrongful termination claim<sup>1</sup> with prejudice against Savin Lake Service, Inc. d/b/a Rustin Lake & Pond Service, Inc., and Guy B. Savin, IV ("Savin") after a bench trial.<sup>2</sup> We reverse and remand for proceedings consistent with this opinion.

Benjamin filed suit against Savin seeking termination of a non-compete agreement and alleging wrongful termination based on religious discrimination. A timely jury demand was filed. Before trial, the trial court ruled that Benjamin was not entitled to a jury trial because Benjamin was requesting both equitable relief and monetary damages. On appeal, Benjamin contends that the trial court's denial of his demand for a jury trial regarding the wrongful

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<sup>1</sup> Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq.

<sup>2</sup> Benjamin also asserted in the trial court that a non-compete agreement that he signed was unenforceable. The trial court's ruling on the issue of the non-compete agreement, as well as an award of costs and attorney fees to Savin, are also addressed in the order but are not at issue on appeal.

termination claim was erroneous. We agree. This Court reviews the trial court's determination that Benjamin was not entitled to a jury trial de novo.<sup>3</sup>

“The right to trial by jury shall remain, but shall be waived in all civil cases unless demanded by one of the parties in the manner prescribed by law.”<sup>4</sup> Whether the constitutional right to a jury trial is retained for a particular action is determined by applying the nature-of-action approach.<sup>5</sup>

Under the nature-of-action approach, the test is whether the cause of action would have been denominated as legal at the time that the 1963 constitution was adopted and, therefore, whether a party bringing the action would have been accorded a right to a jury trial.<sup>6</sup>

We find that the trial court erred in concluding that Benjamin was not entitled to a jury trial for his wrongful termination claim. Applying the rule above, Benjamin had a right to a jury trial on his wrongful termination claim,<sup>7</sup> which he appropriately invoked by filing a timely demand.<sup>8</sup> Although Benjamin also sought equitable relief, his right to a jury trial on the wrongful termination claim remained. “When a case involves both equitable issues and legal issues, it is appropriate for a jury to decide the factual issues relating to the damages claim and the court to decide the factual issues relating to the equitable claim.”<sup>9</sup> Thus, reversal is warranted.

Savin asserts that relief is not warranted because Benjamin waived his right to a jury trial at a September 20, 2010, pre-trial conference and by failing to object to the trial court's September 21, 2010, pre-trial summary. There is no unequivocal record evidence that Benjamin waived his right to a jury trial at the pre-trial hearing. Rather, there is merely a notation on the pre-trial summary that “[t]his is a non-jury matter” without further elaboration. Additionally, Savin has cited no authority supporting its assertion that Benjamin's failure to object to the pre-trial summary had the legal effect of waiving his right to a jury trial. This Court is not required to “discover and rationalize the basis for [Savin's] claims” and “then search for authority either

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<sup>3</sup> *In re MCI Telecommunications Corp Complaint*, 240 Mich App 292, 311; 612 NW2d 826 (2000).

<sup>4</sup> Const 1963, art 1, § 14.

<sup>5</sup> *Anzaldua v Band*, 216 Mich App 561, 576; 550 NW2d 544 (1996).

<sup>6</sup> *Id.* at 565.

<sup>7</sup> See *Smith v Univ of Detroit*, 145 Mich App 468, 476; 378 NW2d 511 (1985).

<sup>8</sup> MCR 2.508(B)(1) (“A party may demand a trial by jury of an issue as to which there is a right to trial by jury by filing a written demand for a jury trial within 28 days after the filing of the answer or a timely reply”); MCR 2.508(D)(3).

<sup>9</sup> *Prentis Family Foundation v Barbara Ann Karmanos Cancer Institute*, 266 Mich App 39, 53; 698 NW2d 900 (2005).

to sustain or reject [its] position.”<sup>10</sup> This Court would further note that the trial court failed to cite waiver as grounds for its conclusion that Benjamin was not entitled to a jury trial. As such, Savin’s argument is unpersuasive.

Moreover, in light of our determination that Benjamin was impermissibly denied his constitutional right to a jury trial regarding the wrongful termination claim, we find it unnecessary to address Savin’s harmless error argument.<sup>11</sup>

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello  
/s/ Peter D. O’Connell  
/s/ Michael J. Talbot

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<sup>10</sup> *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998).

<sup>11</sup> See *People v Cook*, 285 Mich App 420, 424-427; 776 NW2d 164 (2009).