

STATE OF MICHIGAN
COURT OF APPEALS

JAMES VOWELS,

Plaintiff-Appellant,

v

DONALD BRANDT and BRANDT, FISHER,
ALWARD, & ROY, P.C.,

Defendants-Appellees.

UNPUBLISHED

December 11, 2003

No. 243167

Grand Traverse Circuit Court

LC No. 01-021564-NM

Before: Smolenski, P.J., and Sawyer and Borrello, JJ.

PER CURIAM.

Plaintiff James Vowels appeals as of right from the trial court's order granting defendants' motion for summary disposition under MCR 2.116(C)(10). This legal malpractice case arose after plaintiff's attempt to rescind a merger between two corporations in which he had an interest failed. Plaintiff filed suit against defendants, who represented him in the rescission attempt, claiming that defendants should have accomplished the rescission. We affirm.

Plaintiff's sole claim on appeal is that the trial court erred by stating in its written opinion that plaintiff offered to pay \$460,000 of the company's debt in exchange for receiving \$1,000,000 in company assets. We agree that the trial court appears to have made an incorrect finding of fact because plaintiff presented evidence that he had also offered to forgo receiving approximately \$1,000,000 owed to him by the company. Nonetheless, plaintiff has failed to demonstrate how this fact was material. As is well-settled, the non-moving party to a motion for summary disposition may only survive the motion where he or she shows the existence of a genuine issue of *material* fact – not just an issue of *any* fact. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Here, it appears that plaintiff wishes this Court to reverse in his favor merely because the trial court made an improper assessment of the amount of consideration offered in the proposed deal.

But plaintiff has failed to discuss why that fact is material and how changing it would have prevented dismissal of his claim in light of the other complex facts and issues involved. Most acutely, plaintiff has failed to discuss the issue initially raised by defendants in their motion for summary disposition – and the issue on which plaintiff based his complaint – surrounding whether a particular shareholder was an interested director who had no authority to bind HSI in a rescission agreement as plaintiff claimed he did. Even if the trial court erred factually, plaintiff

failed to explain the materiality of the fact or what other material facts should have been considered regarding how defendants' representation was the cause-in-fact of his injury so as to survive summary disposition. Plaintiff states simply that because the trial court made the single erroneous finding of fact plaintiff pointed out, its "decision . . . should be reversed."

We do not find plaintiff's presentation or argument of this issue sufficient to overturn the trial court's holding that plaintiff presented no genuine issue of material fact regarding his legal malpractice claim. Where a plaintiff fails to properly present an issue for appellate review by not raising it, his statement of questions involved, the issue is waived. *Campbell v Sullins*, 257 Mich App 179; 667 NW2d 887 (2003), citing *McGoldrick v Holiday Amusements, Inc*, 242 Mich App 286, 298; 618 NW2d 98 (2000). Moreover, a party may not merely announce a position and leave it up to this Court to search for authority. *Mudge v Macomb Co*, 458 Mich 87, 104-105; 580 NW2d 845 (1998). This Court will not search for legal authority but will consider the issue waived. *Mudge, supra* at 104-105; *In re Coe Marital & Residuary Trusts*, 233 Mich App 525, 536; 593 NW2d 190 (1999).

Therefore, although the trial court's factual finding may have been erroneous, plaintiff has failed to show how that fact was material and has failed to demonstrate why he otherwise should have survived summary disposition. Without such a discussion, this Court is unable to afford plaintiff the relief he seeks.

Affirmed.

/s/ Michael R. Smolenski
/s/ David H. Sawyer
/s/ Stephen L. Borrello