

STATE OF MICHIGAN
COURT OF APPEALS

SHARON TAYLOR,

Plaintiff-Appellant,

v

MONROE COUNTY SENIOR LEGAL
SERVICES, INC., and LAWRENCE
VANWASSHENOVA,

Defendants-Appellees.

UNPUBLISHED

November 23, 2010

No. 292266

Wayne Circuit Court

LC No. 09-001658-NM

Before: SAWYER, P.J., and FITZGERALD and SAAD, JJ.

PER CURIAM.

Plaintiff, acting in propria persona, appeals as of right from the trial court's order granting summary disposition to defendant pursuant to MCR 2.116(C)(10), in this action for legal malpractice and breach of contract arising from defendant's unsuccessful prosecution of an appeal that challenged the dismissal of plaintiff's underlying legal malpractice action. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

After carefully considering plaintiff's arguments on appeal, we conclude that no basis for relief is apparent. Among plaintiff's complaints are that the trial court failed to give "serious attention" to this case and that it improperly allowed defense counsel to discuss irrelevant matters at the hearing on defendant's motion for summary disposition. We disagree. This Court reviews a trial court's summary disposition decision de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). Thus, regardless of the perceived level of attention given this matter by the trial court, or the perceived lack of relevancy of defense counsel's arguments, it is still incumbent upon plaintiff to demonstrate, upon de novo review, that the trial court's ultimate decision was incorrect. See also MCR 2.613(A) ("an error or defect in anything done or omitted by the court or by the parties is not ground for . . . vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice"). Indeed, even errors in a trial court's reasoning may be harmless because this Court will not reverse a trial court's decision if it reached the correct result, albeit for the wrong reasons. *Norris v State Farm Fire & Cas Co*, 229 Mich App 231, 240; 581 NW2d 746 (1998). In this case, plaintiff has done little to attack the merits of the trial court's decision.

Many of plaintiff's arguments are based on a misunderstanding of the law governing motions for summary disposition. Although plaintiff argues that her complaint sufficiently

stated a cause of action, the trial court did not dismiss this action under MCR 2.116(C)(8) for failure to state a claim. Rather, the court granted summary disposition under MCR 2.116(C)(10) (no genuine issue of material fact). A motion under MCR 2.116(C)(10) tests the factual support for a claim. *Maiden*, 461 Mich at 120. Plaintiff contends that the trial court based its decision on the assumption that she did not have evidence to support her case, despite her “argument” to the contrary. When a party files a motion under MCR 2.116(C)(10), the moving party must specifically identify the matters that it believes have no disputed factual issues, and has the initial burden of presenting affidavits, depositions, admissions, or other documentary evidence in support of the motion. *Id.*; *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996); MCR 2.116(G)(4) and (5). Once that burden is met, the burden shifts to the opposing party to show that a genuine issue of material fact exists. *Quinto*, 451 Mich at 362. The party opposing the motion may not rest on mere allegations or denials in the pleadings, but must, by documentary evidence, set forth specific facts to show that there is a genuine issue for trial. *Id.*; *Maiden*, 461 Mich at 121.

Contrary to what plaintiff asserts, when a court reviews a motion under MCR 2.116(C)(10), it may not employ a standard that determines whether a record “might” be developed to support a claim, or whether there is a “possibility” that a claim could be supported by evidence at trial. *Smith v Global Life Ins Co*, 460 Mich 446, 455 n 2; 597 NW2d 28 (1999). Likewise, a mere promise to present supporting evidence in the future is insufficient to avoid summary disposition under MCR 2.116(C)(10). *Maiden*, 461 Mich at 121. Rather, a reviewing court should evaluate the motion “by considering the substantively admissible evidence actually proffered in opposition to the motion.” *Id.* Thus, plaintiff’s mere “arguments” and assertions that she would be able to factually support her claims were insufficient to avoid summary disposition under MCR 2.116(C)(10).

Further, a trial court’s decision to grant summary disposition under MCR 2.116(C)(10) does not infringe on a litigant’s right to a jury trial. See *Moll v Abbott Laboratories*, 444 Mich 1, 26-28; 506 NW2d 816 (1993). In addition, in an action for appellate malpractice, the issue whether an appeal would have been successful is a question for the court to decide, not a jury. *Charles Reinhart Co v Winiemko*, 444 Mich 579, 588-604; 513 NW2d 773 (1994) (RILEY, J.), 608 (CAVANAGH, C.J.), 609 (BOYLE, J.).

Plaintiff argues that the trial court ignored defendant’s admission that he failed to submit a copy of the complaint and jury demand in the underlying malpractice action in support of the prior appeal. However, this Court reviewed the underlying decision, which was based on MCR 2.116(C)(10), on the basis of the evidence that the parties submitted in the trial court, which occurred before defendant became involved in the case. See *Taylor v O’Brien*, unpublished opinion per curiam of the Court of Appeals, issued April 22, 2008 (Docket No. 274125), slip op at 2 n 2. Further, the lower court record in the underlying malpractice case, which presumably contained a copy of plaintiff’s complaint and jury demand in that case, was filed with this Court in the prior appeal. Thus, there is no reason to conclude that defendant’s failure to submit an additional copy of the complaint and jury demand in that action affected this Court’s prior decision.

Defendant made a tactical decision to focus the facts and arguments in his appellate brief in the prior appeal on the bases for the trial court’s adverse rulings. Defendant’s decision concerning which facts to highlight and which legal issues to raise were tactical decisions and do

not show a violation of the duty to perform as a reasonably competent appellate lawyer. *Simko v Blake*, 448 Mich 648, 660-661; 532 NW2d 842 (1995). Furthermore, to establish proximate cause, plaintiff must show that but for defendant's alleged malpractice, this Court would have modified the trial court's judgment. *Charles Reinhart Co*, 444 Mich at 586-587. Plaintiff has not identified any meritorious issue that could have resulted in some form of relief in the prior case had it been raised.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Henry William Saad