STATE OF MICHIGAN

COURT OF APPEALS

MARK P. DONALDSON, Plaintiff-Appellant,	UNPUBLISHED January 25, 2011
v	No. 296986 Ingham Circuit Court
DEPARTMENT OF AGRICULTURE, Defendant-Appellee.	LC No. 09-001159-CZ

Before: METER, P.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

Plaintiff appeals by right an order granting summary disposition in favor of defendant. We affirm.

Plaintiff made a number of Freedom of Information Act (FOIA), MCL 15.231 *et seq*, requests of defendant, some of which involved litigation and appeals. Plaintiff commenced this suit to compel production of records. Defendant filed a responsive pleading and affirmative defenses that included a demand for an answer. Plaintiff did not file a response. Defendant moved to dismiss, arguing, among other things, that plaintiff had admitted defendant's affirmative defenses by failing to respond to them. The trial court held a hearing and agreed with defendant. Because some of the admissions were fatal to plaintiff's claims, the trial court granted summary disposition in defendant's favor.

This Court reviews trial court's rulings on motions for summary disposition de novo. *Innovative Adult Foster Care, Inc v Ragin*, 285 Mich App 466, 475; 776 NW2d 398 (2009). Motions for summary disposition brought under MCR 2.116(C)(8) test the legal sufficiency of the complaint solely on the basis of the pleadings. *Dalley v Dykema Gossett*, 287 Mich App 296, 304-305; 788 NW2d 679 (2010). Summary disposition on the basis of subrule (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 to recovery. *Id* at 305.

Generally, affirmative defenses do not require responsive pleadings thereto, but if a reply is demanded, the opposing party must do so. MCR 2.110(B)(5); *Vannoy v City of Warren*, 15 Mich App 158, 161; 166 NW2d 486 (1968). Failure of a party to reply to affirmative defenses that specifically demand a reply will result in the admission of the matters alleged in the affirmative defenses. MCR 2.111(E)(1); *Matter of Annexation of Territory in Larkin Twp To City of Midland*, 146 Mich App 29, 32; 379 NW2d 460 (1985). Here, defendant's affirmative defenses included averments such as, "Plaintiff's complaint fails to state a claim under which

relief can be granted," and "[t]he relief sought by Plaintiff has no legal or constitutional basis." The trial court correctly ruled that plaintiff's failure to respond to these averments in the face of a demand to do so resulted in plaintiff admitting to them. And because these admissions went to the heart of plaintiff's claims, the trial court properly granted summary disposition on their basis.

Plaintiff argues that the trial court should have allowed him to amend his complaint. A trial court's decision to deny leave to amend pleadings is reviewed for an abuse of discretion. *Ormsby v Capital Welding*, 471 Mich 45, 53; 684 NW2d 320 (2004). The trial court concluded that amendment would be futile because plaintiff did not attempt to set aside his admissions to defendant's affirmative defenses. Plaintiff argued at most that defendant had only demanded a response to any affirmative defenses it might raise in the future, but we disagree with plaintiff's parsing of defendant's "affirmative defenses" pleading. Defendant's statement that it "demands an answer to these affirmative defenses" is clearly a reference to defendant's entire list of affirmative defenses, not just the last item in the list (reserving the right to raise additional defenses). We therefore conclude that even if plaintiff had amended his complaint, his admission to defendant's affirmative defenses would remain, so amendment would be futile. The trial court did not abuse its discretion by denying a futile amendment.

Plaintiff argues that defendant should have sought entry of a default judgment against him for his failure to respond to defendant's affirmative defenses and that, had it done so, plaintiff would have had the opportunity to correct its pleadings. Plaintiff provides no authority in support of this argument. Defaults may be entered against parties other than defendants, MCR 2.603(E), but because plaintiff is not "a party against whom a judgment for affirmative relief is sought," default would not have been appropriate here. MCR 2.603(A)(1). Defendant properly noticed its motion and served it on plaintiff, and plaintiff did not seek to file an answer to defendant's affirmative defenses. We find this argument meritless.

In light of our resolution of the preceding issues, we need not consider the remaining arguments plaintiff raises on appeal.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Kelly
/s/ Amy Ronayne Krause