STATE OF MICHIGAN

COURT OF APPEALS

LINDA MCCORMICK,

Plaintiff-Appellant,

v

SUSAN RICHARD,

Defendant-Appellee.

UNPUBLISHED
September 16, 2014

No. 315811
Wayne Circuit Court
LC No. 11-007810-CZ

Before: HOEKSTRA, P.J., and WILDER and FORT HOOD, JJ.

PER CURIAM.

In this action for defamation, plaintiff appeals as of right the trial court's order granting summary disposition to defendant pursuant to MCR 2.116(C)(7) based on the expiration of the applicable statute of limitations and awarding sanctions to defendant pursuant to MCR 2.114(E). For the reasons explained in this opinion, we affirm.

Plaintiff and defendant are sisters. The present case has its factual origins in a familial dispute dating back to 1976, a dispute which has been much litigated in both state and federal proceedings, and which has resulted in repeated appeals to this Court, the Michigan Supreme Court, and the Sixth Circuit.[1] Relevant to the current lawsuit, during divorce proceedings in 1987 involving the parties' parents, defendant apparently stated that she had signed a quit claim deed in 1980, conveying her interest in a property to plaintiff and their mother. Years later, sometime in the 1990s, after the death of the parties' father, defendant changed her account of events, stating that she had not signed the document. Handwriting analysis confirmed the signature was not defendant's, and the document was determined in circuit court proceedings to be void because the signature was forged. Still later, in 2010, defendant continued to maintain that she had not signed the deed in question. Specifically, during proceedings in probate court

[1] See, e.g., *McCormick v Braverman*, 451 F3d 382, 387 (CA 6 2006); *In re Estate of McCormick*, 485 Mich 881; 772 NW2d 337 (2009); *McCormick v Braverman*, unpublished opinion of the Court of Appeals, issued May 24, 2002 (Docket No. 222415), vacated in part *McCormick v Braverman*, 468 Mich 858; 657 NW2d 118 (2003); *McCormick v McCormick*, 221 Mich App 672, 677; 562 NW2d 504 (1997).

held on January 25, 2010, defendant offered the assertion that her signature had been forged, stating:

> *[The Court]*. Okay. What did you want to say?
>
> *[Defendant]*. Yes, she forged my name in whatever court we were in (INDECIPHERABLE) I don't remember.
>
> * * *
>
> *[Defendant]*. I didn't sign the deed. They forged my name. I had an expert prove it. That's all I'm here to say. . . .

Plaintiff now maintains that this accusation of forgery was directed at her and constitutes defamation. Accordingly, she filed suit on June 29, 2011 against defendant, and notably, alleged that the purportedly defaming statement occurred on June 29, 2010.

Defendant moved for summary disposition pursuant to MCR 2.116(C)(7), arguing plaintiff's claim for defamation was subject to a one-year statute of limitation pursuant to MCL 600.5805(9) and was thus time barred. The trial court granted defendant's motion and imposed sanctions on plaintiff pursuant to MCR 2.114(E) for her misrepresentation of facts in her verified complaint contrary to MCR 2.114(D). Plaintiff now appeals as of right.

On appeal, plaintiff first challenges the trial court's grant of summary disposition under MCR 2.116(C)(7). In particular, she argues that a one-year statute of limitations should not have been applied to dismiss her case because the six year statute of limitations applicable to fraud should control and, in any event, the statutory period should have been extended due to discovery based tolling and/or the doctrine of continuing wrongs.

We review de novo a trial court's decision to grant a motion for summary disposition. *Hoffman v Boonsiri*, 290 Mich App 34, 39; 801 NW2d 385 (2010). A motion for summary disposition under MCR 2.116(C)(7) should be granted if the plaintiff's claims are barred by the applicable statute of limitations. *Burton v Macha*, 303 Mich App 750, 754; 846 NW2d 419 (2014). "In reviewing a motion under MCR 2.116(C)(7), this Court accepts as true the plaintiff's well-pleaded allegations, construing them in the plaintiff's favor." *Id.* If the facts are not in dispute, whether a claim is barred by the applicable statute of limitations presents a question of law which we review de novo. *Trentadue v Buckler Lawn Sprinkler*, 479 Mich 378, 386; 738 NW2d 664 (2007).

Pursuant to MCL 600.5805(9), defamation claims must be filed within one year from the date the claim first accrued. *Mitan v Campbell*, 474 Mich 21, 25; 706 NW2d 420 (2005). By statute, a claim accrues when "the wrong upon which the claim is based was done regardless of the time when damage results." MCL 600.5827. For purposes of defamation, this means that the claim accrues when the defamatory statement was made. *Mitan*, 474 Mich at 25.

In the present case, defendant made the purportedly defamatory statement in question on January 25, 2010. Plaintiff filed suit on June 29, 2011, more than one year later, meaning her claim is barred by the statute of limitations. MCL 600.5805(9); *Mitan*, 474 Mich at 25. Because

plaintiff's claim was barred by the applicable statute of limitations, the trial court properly granted summary disposition under MCR 2.116(C)(7).

On appeal, plaintiff offers numerous arguments to the contrary, all of which are without merit. First, contrary to plaintiff's arguments, the six year limitations prescribed in MCL 600.5813 is not applicable in this case because plaintiff has not pled fraud. Her claim as pled was undoubtedly one for defamation, libel, and slander to which a one year statute of limitation applies. See MCL 600.5805(9); *Mitan*, 474 Mich at 25. Second, to the extent plaintiff attempts to rely on a common law discovery rule, she does so without citation to supporting authority, meaning her claim may be deemed abandoned. See *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). In any event, her claim is without merit as we cannot employ an "extrastatutory discovery rule" to toll accrual in avoidance of the plain language of MCL 600.5827 which clearly mandates the accrual of a claim when "the wrong upon which the claim is based was done regardless of the time when damage results." See *Trentadue*, 479 Mich at 391-392. Plaintiff's claim is governed by the statutory limits, and her reliance on a common law discovery rule is misplaced.[2]

Third, plaintiff's claim is not made timely by the discovery-based tolling provided in MCL 600.5855, which only applies where the defendant has fraudulently concealed the existence of a claim. See *Trentadue*, 479 Mich at 405. Far from concealing a possible defamation claim, defendant made the statement in question in plaintiff's presence at the January 25, 2010 probate court hearing.[3] MCL 600.5855 has no application to the present case.

Fourth, plaintiff's reliance on the doctrine of continuing wrongs is similarly misplaced. As an initial matter, her argument is not well-developed and includes no legal authority, meaning it can be deemed abandoned. *Peterson Novelties, Inc*, 259 Mich App at 14. In any case, the doctrine has been held "contrary to the language" of MCL 600.5805 such that it has "no continued place in the jurisprudence of this state," meaning it does not apply to plaintiff's case. See *Garg v Macomb Co Community Mental Health Servs*, 472 Mich 263, 290; 696 NW2d 646 (2005). Moreover, even assuming some continued validity of this doctrine, plaintiff's defamation suit is not within the narrow class cases—i.e., trespass, nuisance, and civil rights—to which the doctrine has been historically applied. See *Blazer Foods, Inc v Rest Props, Inc*, 259 Mich App 241, 247; 673 NW2d 805 (2003). Rather, as discussed, caselaw is clear that the statute of limitations on defamation begins to run when the statement is made, *Mitan*, 474 Mich

[2] And, in any event, given plaintiff's presence at the hearing in question and her remarks on the record, she clearly discovered, or should have reasonably discovered, her claim at that time.

[3] On appeal, plaintiff offers an unpersuasive argument to the effect that the probate court somehow attempted to conceal the defamation claim by misstating on the record what defendant said at the hearing. But, this argument is entirely unavailing given that plaintiff was present at the hearing when defendant made the statements in question. Moreover, the statute requires fraudulent concealment by the "person who is or may be liable," which in this case is theoretically defendant, and there is no evidence defendant did anything to hide the existence of the claim from plaintiff. See MCL 600.5855.

at 25, and the running of the statute may not be prevented by subsequent repetitions of the slander, *Grist v Upjohn Co*, 1 Mich App 72, 81; 134 NW2d 358 (1965). In sum, plaintiff's claim for defamation is subject to the one-year limit prescribed in MCL 600.5805(9) and, because more than a year expired before plaintiff filed suit, the trial court properly granted summary disposition pursuant to MCR 2.116(C)(7).

Next, on appeal, plaintiff offers cursory challenges to the trial court's imposition of sanctions under MCR 2.114(E), asserting that the sanctions were draconian, outrageous, and unsupported by the evidence. Because this issue is not contained in plaintiff's statement of the questions presented, it is not properly before this Court, and need not be considered. MCR 7.212(C)(5); *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 221; 761 NW2d 293 (2008). Further, because plaintiff failed to provide citation to any supporting authority, the issue may be deemed abandoned. *Peterson Novelties, Inc*, 259 Mich App at 14. Were we to consider the matter, it is apparent the trial court did not commit clear error in imposing sanctions under MCR 2.114(E) for plaintiff's violation of MCR 2.114(D).

Specifically, pursuant to MCR 2.114(D):

> The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that
>
> (1) he or she has read the document;
>
> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
>
> (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

An attorney or party violating this provision becomes subject to sanctions under MCR 2.114(E), which states:

> If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees. The court may not assess punitive damages.

Pursuant to these provisions, "[t]he filing of a signed document that is not well grounded in fact and law subjects the filer to sanctions pursuant to MCR 2.114(E)." *Guerrero v Smith*, 280 Mich App 647, 678; 761 NW2d 723 (2008). The purpose of the rule "is to deter parties and attorneys from filing documents or asserting claims and defenses that have not been sufficiently investigated and researched or that are intended to serve an improper purpose." *FMB-First Mich Bank v Bailey*, 232 Mich App 711, 722-723; 591 NW2d 676 (1998). The sanctions in question

are mandatory if the court determines there has been a violation. *Guerrero*, 280 Mich App at 678.

In this case, plaintiff's verified complaint alleged that defendant defamed her on June 29, 2010, when in actuality the statement in question was made on January 25, 2010. While plaintiff argues the error in the date was unintentional and can be attributed to a mistake by the court reporter regarding the date of proceedings, these contentions are unavailing given that plaintiff was personally present at the January 25, 2010 hearing where the statement occurred, and the register of actions related to the probate court proceedings properly lists the date of the hearing as January 25, 2010. By signing a document that reasonable inquiry, and indeed her own knowledge of events, would have revealed to be false, plaintiff violated MCR 2.114(D)(2) and became liable for sanctions pursuant to MCR 2.114(E).

Although plaintiff complains that the imposition of these sanctions was draconian and outrageous, the fact remains that sanctions under MCR 2.114(E) are mandatory where there has been a violation of MCR 2.114(D). Moreover, though plaintiff attempts to cast the error as minor and unintentional, it is challenging to conjure sympathy for plaintiff where her misstatement of the date of the alleged wrong on her complaint was not a meaningless error. By falsely setting the date of the alleged wrongdoing at June 29, 2010, plaintiff endeavored to make her suit filed on June 29, 2011 timely. Indeed, the transcript on which plaintiff purportedly relied in crafting her complaint reported that the date of the hearing at issue was June 21, 2010, not the June 29, 2010 which she reported on her complaint, thereby belying any claim that her error should be excused as attributable to reliance on a transcriber's error. Ultimately, plaintiff's complaint was not well founded in fact and the trial court did not commit clear error in assessing sanctions pursuant to MCR 2.114(E).

On appeal, plaintiff next asserts that the doctrine of unclean hands applies to bar defendant from obtaining relief in this case. Review of equitable matters, including the applicability of the doctrine of unclean hands, is de novo. *Attorney General v Ankersen*, 148 Mich App 524, 545; 385 NW2d 658 (1986). A trial court's factual findings, if any, are reviewed for clear error. MCR 2.613(C); *Killips v Mannisto*, 244 Mich App 256, 258; 624 NW2d 224 (2001).

The doctrine of unclean hands may be succinctly expressed by recognition of the principle that "one who seeks the aid of equity must come in with clean hands." *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 463; 646 NW2d 455 (2002). Under this doctrine, "[r]elief is not denied merely because of the general morals, character or conduct of the party seeking relief." *McFerren v B & B Inv Group*, 253 Mich App 517, 524; 655 NW2d 779 (2002) (quotation omitted). Rather, the misconduct "must bear a more or less direct relation to the transaction concerning which complaint is made," *id.*, and conversely that fact that hands may be "unclean with respect to matters and persons not here involved is not ground for denying relief," *Rosenthal v Lipsitz*, 251 Mich 195, 202; 231 NW 560 (1930). Notably, the doctrine is relevant only in equitable actions, meaning it cannot be invoked to deny a party a remedy based in law. See *Rose*, 466 Mich at 467-468.

Because the doctrine of unclean hands applies to equitable matters but not legal concerns, it plainly has no application in the present case. The trial court granted summary disposition

under MCR 2.116(C)(7) based on MCL 600.5805(9), the statute of limitations applicable to defamation actions. See *Mitan*, 474 Mich at 24. Statutes of limitations are, by definition, statutory matters, providing a conclusive legal bar to suit based on delay alone, without regard for equitable concerns. See *Tenneco Inc v Amerisure Mut Ins Co*, 281 Mich App 429, 457; 761 NW2d 846 (2008); *Sloan v Silberstein*, 2 Mich App 660, 676; 141 NW2d 332 (1966). That is, statutes of limitations constitute a defense "available at law." *Eberhard v Harper-Grace Hosps*, 179 Mich App 24, 35; 445 NW2d 469 (1989) (explaining distinction between legal defense provided by statute of limitations and equitable defense of laches). Accordingly, the doctrine of unclean hands did not bar defendants from seeking the defense of the applicable statute of limitations.

Similarly, there are no equitable considerations involved in the award of sanctions pursuant to MCR 2.114(E). As discussed, the award of sanctions pursuant to MCR 2.114(E) is a mandatory consequence, imposed by law, for a litigant's violation of MCR 2.114(D). See *Contel Sys Corp v Gores*, 183 Mich App 706, 711; 455 NW2d 398, 400 (1990); *Guerrero*, 280 Mich App at 678. It does not present a question of competing equities between the parties so as to implicate the doctrine of unclean hands. Cf. *Rzadkowolski v Pefley*, 237 Mich App 405, 409; 603 NW2d 646 (1999). Consequently, the doctrine of unclean hands did not bar an award of sanctions under MCR 2.114(E).

Next, plaintiff asserts that the trial court should have granted her motion to amend her complaint in order to add allegations of fraud and additional instances of purported defamation occurring during defendant's deposition. A trial court's decision regarding a motion to amend a complaint is reviewed for an abuse of discretion. *Sanders v Perfecting Church*, 303 Mich App 1, 9; 840 NW2d 401 (2013). Under this standard, this Court will "defer to the trial court's judgment, and if the trial court's decision results in an outcome within the range of principled outcomes, it has not abused its discretion." *Wormsbacher v Seaver Title Co*, 284 Mich App 1, 8; 772 NW2d 827 (2009).

MCR 2.118(A) governs amendment of pleadings. Pursuant to MCR 2.118(A)(2), "[e]xcept as provided in subrule (A)(1), a party may amend a pleading only by leave of the court or by written consent of the adverse party. Leave shall be freely given when justice so requires." The rule plainly affords a trial court discretion to deny a request to amend pleadings. *Kemerko Clawson LLC v RXIV Inc*, 269 Mich App 347, 352; 711 NW2d 801 (2005). However, because leave to amend must be freely given, this Court has explained that a motion to amend should ordinarily be denied only for particularized reasons, including "undue delay, bad faith or dilatory motive, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the defendant, or futility." *Wormsbacher*, 284 Mich App at 8.

In this case, plaintiff moved for amendment of her complaint following an undue delay and with apparent undue prejudice to defendant. Specifically, the allegations of fraud plaintiff sought to add involve nothing new, but merely involved a rehashing of plaintiff's claims that defendant has lied about the purported forgery for many years. Plaintiff could have, and should have, raised these allegations in her original complaint, or her amended complaint. Insofar as plaintiff claims additional defamation occurred at defendant's deposition, she learned of these statements at defendant's deposition on September 28, 2012 and nevertheless waited more than 2 1/2 months to seek leave to amend her complaint. She did not file her motion until January 10,

2013, at which time defendant had already sought summary disposition and it would have been readily apparent that plaintiff's complaint was in fact barred by the statute of limitations. The late offered motion to amend can thus be characterized as untimely and prejudicial to defendant. See *id.* at 10 ("[T]he prejudice stems from the fact that the new allegations were offered late, and not from the fact that they might cause the defendant to lose on the merits.").

Moreover, any amendment to plaintiff's complaint would clearly have been futile. To the extent plaintiff's sought after amendments included vague allegations of fraud and misrepresentation, those allegations were completely lacking in the particularity required by MCR 2.112(B)(1) and did not plead a claim of fraud. While claiming "fraud and misrepresentation," plaintiff's proffered amendment failed to identify any representation made by defendant to plaintiff upon which defendant intended plaintiff to rely and which she did rely to her detriment. See generally *Roberts v Saffell*, 280 Mich App 397, 403; 760 NW2d 715 (2008). Rather, plaintiff broadly recounts her claims that, throughout the years, defendant has lied about the forgery and done so in court. She has not stated a claim of fraud, and she has certainly not done so with particularity, meaning amendment to add claims of fraud would have been futile. Indeed, her allegation of "fraud" rests heavily on the premise that defendant committed perjury during the course of the family's previous litigation. But, alleged perjury in one lawsuit does not give rise to a fraud claim to support a second lawsuit. See *Daoud v De Leau*, 455 Mich 181, 202-203; 565 NW2d 639 (1997) ("[T]he testimony of a witness is to be weighed by the factfinder in the matter at bar, not by a subsequent jury summoned to determine whether the first lawsuit was tainted by fraud."). In short, the trial court did not abuse its discretion in denying plaintiff's request to add counts of fraud to her complaint.

Insofar as plaintiff attempted to add new allegations of defamation, in large part, her claims merely expounded on the allegations already contained in her complaint, rehashing the general assertions that defendant had accused her of forgery. "An amendment is futile where the paragraphs or counts the plaintiff seeks to add merely restate, or slightly elaborate on, allegations already pleaded." *Wormsbacher*, 284 Mich App at 9. Moreover, it is well-settled in Michigan that statements made by witnesses during judicial proceedings are absolutely privileged, and where such absolute privilege exists there can be no action for defamation. *Couch v Schultz*, 193 Mich App 292, 294; 483 NW2d 684 (1992). Specifically, this Court has explained:

> Statements made by witnesses during the course of [judicial] proceedings are absolutely privileged, provided they are relevant, material, or pertinent to the issue being tried. The immunity extends to every step in the proceeding and covers anything that may be said in relation to the matter at issue, including pleadings and affidavits. The judicial proceedings privilege should be liberally construed so that participants in judicial proceedings are free to express themselves without fear of retaliation. [*Id.* at 295 (internal citations omitted).]

It follows that defendant's statements at her deposition, made directly in response to questioning from plaintiff, were absolutely privileged and do not support a claim for defamation. Accordingly, the trial court did not abuse its discretion in denying plaintiff's motion to amend her complaint.

On appeal, plaintiff also asserts that the trial court abused its discretion by denying her motion to compel discovery of the names of defendant's coworkers. We agree with defendant that the issue should not be considered because plaintiff's argument regarding discovery was rendered moot by the trial court's proper grant of summary disposition. Given that the case has been dismissed, any relief related to plaintiff's claims of error in the discovery process can have no practical effect. See *B P 7 v Bureau of State Lottery*, 231 Mich App 356, 359; 586 NW2d 117 (1998).[4] The issue is thus moot.

Even if the matter were not moot, it is readily apparent that the trial court did not abuse its discretion in denying plaintiff's motion to compel. While Michigan follows "an open, broad discovery policy," *Augustine v Allstate Ins Co*, 292 Mich App 408, 419; 807 NW2d 77 (2011), our discovery rules do not permit the use of discovery as "fishing expeditions" on the basis of conjecture, *VanVorous v Burmeister*, 262 Mich App 467, 477; 687 NW2d 132 (2004). Further, a trial court must protect the opposing party from discovery requests that are "excessive, abusive, or irrelevant." *Cabrera v Ekema*, 265 Mich App 402, 407; 695 NW2d 78 (2005). To permit plaintiff access to the names of defendant's coworkers would have allowed plaintiff to embark on a fishing expedition into an irrelevant area on the hope that she would uncover someone to whom defendant had made a defamatory statement. Defendant has denied discussing her forgery opinions outside of court, and plaintiff offers no evidence to the contrary to suggest her efforts to obtain the names of coworkers would have been anything but a fishing expedition. Consequently, the trial court did not abuse its discretion in prohibiting plaintiff from pursuing this line of discovery.

Lastly, plaintiff alleges that the trial court judge should have been disqualified.[5] She asserts he had actual bias and prejudice, and that his continued role in the proceedings gave the appearance of impropriety and violated due process. In particular, she accuses the trial court, who did not preside in prior litigation relating to plaintiff's family, of having preconceived

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[4] Plaintiff suggests on appeal that information from coworkers could have led to discovery of later dates of defamation, thereby defeating defendant's motion for summary disposition. But, as discussed, a claim of defamation accrues when the statement is made, and any hypothetical statements by defendant to her coworkers would not have made timely plaintiff's assertion that defendant defamed her on January 25, 2010. See *Mitan*, 474 Mich at 25; *Grist*, 1 Mich App at 81.

[5] To the extent defendant makes the argument that she was entitled to a change of venue, her argument is not sufficiently briefed and she offers no supporting authority. It may thus be deemed abandoned. See *Peterson Novelties, Inc*, 259 Mich App at 14. Moreover, nothing in the lower court record supports defendant's undeveloped contention that a change of venue was appropriate. And, indeed, the trial court's grant of summary disposition rendered plaintiff's request for a change of venue moot. See *Triplett v St Amour*, 444 Mich 170, 210; 507 NW2d 194, 211 (1993) ("Because the trial court had the power to grant summary disposition regardless of the venue . . . the venue issue is moot because the trial court's action precluded the requested change."), citing MCL 600.1645 ("No order, judgment, or decree shall be void or voidable solely on the ground that there was improper venue.").

notions and biases stemming from the previous litigation which colored the trial court's view of her case. She argues the trial court demonstrated this bias by telling plaintiff, when denying plaintiff's motions for reconsideration and recusal of the trial court, that "enough is enough," and that her litigation "hobby is now coming to an end." Plaintiff's argument is without merit.

Due process entitles litigants to an unbiased and impartial decision-maker. *Mitchell v Mitchell*, 296 Mich App 513, 523; 823 NW2d 153 (2012). Pursuant to MCR 2.003(C)(1), disqualification of a judge is warranted, among other reasons, if:

> (a) The judge is biased or prejudiced for or against a party or his attorney.
>
> (b) The judge, based on objective and reasonable perceptions, has either (i) a serious risk of actual bias impacting the due process rights of a party as enunciated in *Caperton v Massey*, 556 US 868; 129 S Ct 2252; 173 L Ed 2d 1208 (2009), or (ii) has failed to adhere to the appearance of impropriety standard set forth in Canon 2 of the Michigan Code of Judicial Conduct.

The first subsection provides for disqualification where there is actual bias or prejudice. *Cain v Michigan Dep't of Corrections*, 451 Mich 470, 495; 548 NW2d 210 (1996). In contrast, MCR 2.003(C)(2) provides for disqualification when there is either (1) an appearance of impropriety contrary to Canon 2 of the Michigan Code of Judicial Conduct or (2) a due process concern. The test for whether there is an appearance of impropriety is objective, concerned with "whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." *People v Aceval*, 486 Mich 887, 889; 781 NW2d 779 (2010); *Adair v Dep't of Ed*, 474 Mich 1027, 1039; 709 NW2d 567 (2006). Similarly, the due process inquiry is also an objective one, focused on whether "under a realistic appraisal of psychological tendencies and human weakness, the interest poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented." *Caperton*, 556 US at 883-884. Among those situations identified as implicating due process concerns are those where the judge or decision-maker:

> (1) has a pecuniary interest in the outcome;
>
> (2) "has been the target of personal abuse or criticism from the party before him";
>
> (3) is "enmeshed in [other] matters involving petitioner ..."; or
>
> (4) might have prejudged the case because of prior participation as an accuser, investigator, fact finder or initial decisionmaker. [*Cain*, 451 Mich at 498 (citations omitted).]

Most matters relating to judicial disqualification do not rise to a constitutional level; rather, it is only the "most extreme" or "extraordinary" cases where recusal is necessary on due process grounds. *Caperton*, 556 US at 876, 887; *Cain*, 451 Mich at 498.

In this case, plaintiff has not shown actual bias or prejudice, an appearance of impropriety, or a due process concern warranting the trial court's recusal. Regarding actual bias,

plaintiff has ultimately alleged nothing more significant than that the trial court decided against her in regard to defendant's motion for summary disposition and that he denied her motion for recusal. Repeated rulings against a litigant do not, however, merit disqualification. See *Gates v Gates*, 256 Mich App 420, 440; 664 NW2d 231 (2003). Moreover, the trial court's decision on defendant's motion for summary disposition was plainly correct, and certainly not evidence of deep-seated favoritism or antagonism. Cf. *People v Jackson*, 292 Mich App 583, 598; 808 NW2d 541 (2011). Any frustration or criticism expressed by the trial court in the face of plaintiff's refusal to cease her efforts to perpetuate litigation was an understandable opinion arising from the proceedings, and not indicative of actual bias meriting recusal. See *In re Contempt of Henry*, 282 Mich App 656, 680; 765 NW2d 44 (2009). Likewise, plaintiff has not shown that the trial court had any involvement in prior litigation or any interests relating to the parties and/or the outcome of the case which would give rise to an appearance of impropriety or a due process concern. *Adair*, 474 Mich at 1039; *Caperton*, 556 US at 876, 887. Accordingly, disqualification was not merited.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kurtis T. Wilder
/s/ Karen M. Fort Hood