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STATE OF MICHIGAN
COURT OF APPEALS

MINNIE SNELL,

Plaintiff-Appellant,

v

ESTATE OF JAMES GERALD SNELL, by
personal representative SUSAN SNELL,

Defendant-Appellee.

UNPUBLISHED
January 17, 2019

No. 342673
Muskegon Circuit Court
LC No. 90-226959-DO

Before: MARKEY, P.J., and M. J. KELLY and SWARTZLE, JJ.

PER CURIAM.

Plaintiff, Minnie Snell, appeals as of right the trial court order entering a judgment against her in the amount of \$560,454.82. She also challenges the trial court decision to deny her motion for reconsideration. For the reasons stated in this opinion, we affirm.

I. BASIC FACTS

In April 1991, Minnie and James Snell divorced. Relevant to this appeal, the judgment of divorce provided that James was awarded “as his sole and separate property . . . the Harley-Davidson stock . . . free and clear of any right, title, interest, or claim of the Plaintiff, MINNIE SNELL.” The judgment required Minnie to execute any documents necessary “to effectuate the purposes of this Judgment of Divorce, and in the event that” she failed to do so, “this Judgment of Divorce may be recorded and shall be given like effect as if the requisite documents as aforesaid had been executed.” The stock, however, remained registered in both James’s and Minnie’s names until after James’s death in August 2016. According to James’s estate, James sought to remove Minnie’s name from the stock before his death but he was unsuccessful as Minnie refused to cooperate.

On December 15, 2016, Minnie submitted a request to transfer all shares of the Harley-Davidson stock to the Minnie Snell Trust. After the stock was transferred to her trust, Minnie sold it. In February 2017, she received a check for \$184,692.84.¹

On June 5, 2017, James's estate filed a motion to enforce the judgment of divorce. On June 15, 2017, Minnie filed her response, requesting the trial court deny the motion or wait until after discovery to make a decision. In her supporting brief, she argued that James's post-judgment actions showed that he intended her to remain an owner of the stock notwithstanding that the judgment of divorce awarded it to him as his sole property. She directed the court to *In re Estate of Lett*, 314 Mich App 587; 887 NW2d 807 (2016), arguing that like the husband in that case, James received reminders that Minnie's name remained on the stock and could have very simply requested that Minnie sign a document removing her name from the stock. Alternatively, Minnie contended that James's failure to have Minnie's name removed from the stock was a unilateral mistake that should not be held against Minnie. She also posited that "[e]quity would dictate that [James's] failure to complete a very simple task (asking Minnie to sign a transfer form to remove her name) should be construed against Jim and his estate rather than taking an asset from Minnie which she has had an ownership interest in for a significant period of time."

A hearing on the motion was held on June 15, 2017, but was adjourned at the request of the parties. On June 21, 2017, James's estate filed an amended motion to enforce the judgment of divorce, seeking a monetary judgment because Minnie had sold the stock. In the amended motion, James's estate alleged that Minnie had converted the stocks and was liable to the estate under MCL 600.2919a.

Minnie did not file a written response to the amended motion; however, at an August 2017 hearing, she argued that *Lett* remained the applicable caselaw. Minnie's lawyer asserted that Minnie remained close to James after the divorce, they interacted on a regular basis, and if the "attempts to sign off on the stock were ever presented to her, I would imagine she would have complied[.]" He also contended that Minnie's transfer of the stock was as a joint owner and there was no malicious intent. In response to the conversion claim, he stated that because Minnie was a joint owner of the stock and believed that the stock was hers, she had not, in fact, converted it. Thus, he argued that treble damages were not appropriate and requested the court to rely on his earlier brief and find that the stock should remain in Minnie's name. The trial court took the matter under advisement.

On September 5, 2017, the court placed its decision on the record. The court found that Minnie requested the stock be transferred solely into her name, sold the stock, deposited the check with the proceeds of the sale into her account, testified that the money was hers, and announced with specificity how she intended to use the money. The court concluded that Minnie, therefore, statutorily converted the stock, which had been awarded to James in the

¹ At her deposition, Minnie testified that she had no intent to return the money to James because it was her money despite what the judgment of divorce stated. She added that she intended to use the money for herself.

judgment of divorce. The court awarded \$554,078.52 in treble damages, plus costs and reasonable attorney fees. The court invited the estate's lawyer to provide an accounting of his fees to Minnie's lawyer and noted that if there was an objection to the fees, it would hold a hearing to determine if they were reasonable. Subsequently, the court entered a written opinion stating that Minnie had violated the judgment of divorce by converting the Harley-Davidson stock, and it entered a judgment against her in the amount of \$554,078.52 in treble damages, \$296.30 in costs, and \$6,080 in attorney fees for a total of \$560,454.82.

On October 16, 2017, Minnie filed a motion for reconsideration. She contended that reconsideration was warranted because (1) the court lacked subject matter jurisdiction to make a decision regarding the estate's assets, (2) the motion for enforcement was barred by the applicable statute of limitations, (3) the motion should have been denied based on the doctrine of laches, and (4) the conversion claim could only be brought in a new cause of action. On February 12, 2018, the trial court denied the motion for reconsideration, noting that she was raising the issues for the first time in her motion for reconsideration.

II. CHALLENGES TO THE JUDGMENT AND DENIAL OF RECONSIDERATION

On appeal, Minnie raises a number of challenges to the judgment. First, she asserts that the conversion claim was not properly before the trial court because it needed to be brought as a separate cause of action. Second, she argues that the trial court abused its discretion by faulting her for not raising her statute of limitations and laches defenses because she was not required to file a responsive pleading. She contends that under the doctrine of laches and the applicable statute of limitations, the estate's effort to enforce the judgment of divorce is plainly time-barred. Third, Minnie asserts that she was denied her right to a jury trial on the conversion claim. Fourth, Minnie challenges the court's decision to award treble damages, costs, and attorney fees. None of her arguments are preserved for appeal.

“An issue must have been raised before and addressed and decided by the trial court to be deemed preserved for appellate review.” *Lenawee Co v Wagley*, 301 Mich App 134, 164; 836 NW2d 193 (2013). Minnie never argued before the trial court that she was denied her right to a jury trial, so that issue is not preserved. Next, although she was invited to challenge the reasonableness of the costs and attorney fees awarded to James's estate, the record reflects that she did not submit any challenge to the court. Her failure to do so leaves unpreserved her challenge to the propriety of the attorney fees and costs.² Similarly, to the extent that Minnie

² We note that although Minnie's question presented states that the trial court abused its discretion by awarding attorney fees to the estate's personal representative, she wholly failed to provide any legal or factual support for her claim. “It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.” *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

argues that the trial court abused its discretion by awarding treble damages under MCL 600.2919a(1), she raises this issue for the first time on appeal.

Moreover, “[w]here an issue is first presented in a motion for reconsideration, it is not properly preserved.” *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich App 513, 519; 773 NW2d 758 (2009). Thus, because Minnie first raised her arguments regarding the statute of limitations, the doctrine of laches, and whether a claim for conversion was properly before the trial court in her motion for reconsideration, those claims are not properly preserved for appeal. Additionally, we find unpersuasive Minnie’s argument on appeal that the trial court abused its discretion by denying her reconsideration based on its conclusion that she failed to raise the issues “at trial” or “in any pleading.” Although Minnie correctly points out that there is no requirement that she plead affirmative defenses in response to a motion, Minnie was not prohibited from raising the affirmative defenses in response to a motion. And, given that she did not do so, her argument is unpreserved.

In *Walters v Nadell*, 481 Mich 377, 387-388; 751 NW2d 431 (2008) our Supreme Court explained:

Michigan generally follows the “raise or waive” rule of appellate review. Under our jurisprudence, a litigant must preserve an issue for appellate review by raising it in the trial court. Although this Court has inherent power to review an issue not raised in the trial court to prevent a miscarriage of justice, generally a failure to timely raise an issue waives review of that issue on appeal.

The principal rationale for the rule is based in the nature of the adversarial process and judicial efficiency. By limiting appellate review to those issues raised and argued in the trial court, and holding all other issues waived, appellate courts require litigants to raise and frame their arguments at a time when their opponents may respond to them factually. This practice also avoids the untenable result of permitting an unsuccessful litigant to prevail by avoiding its tactical decisions that proved unsuccessful. Generally, a party may not remain silent in the trial court, only to prevail on an issue that was not called to the trial court’s attention. Trial courts are not the research assistants of the litigants; the parties have a duty to fully present their legal arguments to the court for its resolution of their dispute. [Citations and quotation marks omitted.]

Thus, by failing to raise the above arguments in the trial court, Minnie waived review of them.

Nevertheless, Minnie asserts that this Court should overlook the preservation requirements because her arguments are meritorious, the facts necessary to resolve the issue were before the trial court, and failure to review the issue will result in manifest injustice as she will be required to satisfy a significant monetary judgment despite the running of the statute of limitations. This Court may waive preservation requirements “to review an issue not raised in the trial court to prevent a miscarriage of justice,” *id.* at 387, and we may review an unpreserved issue when consideration is necessary to a proper determination of the case, or when the issue is a question of law and the facts necessary for resolution of the issue have been fully presented, *Smith v Foerster-Bolser Constr, Inc*, 269 Mich App 424, 427; 711 NW2d 421 (2006). Yet, even

when there exists a basis for waiving preservation requirements, our Supreme Court has cautioned that appellate courts should exercise their discretion sparingly and only when there are exceptional circumstances that warrant review. *Napier v Jacobs*, 429 Mich 222, 233; 414 NW2d 862 (1987). In this case, given that any of the above arguments could have been raised in Minnie’s response to the motion, we decline to overlook the preservation requirements.

Moreover, to the extent that Minnie argues that the trial court abused its discretion by denying her motion for reconsideration, we disagree. We review for an abuse of discretion a trial court’s decision to grant reconsideration. *In re Estate of Moukalled*, 269 Mich App 708, 713; 714 NW2d 400 (2006). “An abuse of discretion occurs when the trial court chooses an outcome falling outside the principled range of outcomes.” *Nat Waterworks, Inc v Int Fidelity & Surety, Ltd*, 275 Mich App 256, 258; 739 NW2d 121 (2007). MCR 2.119(F)(3) requires the party moving for reconsideration to “demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition of the motion must result from correction of the error.” The trial court has “considerable discretion in granting reconsideration to correct mistakes, to preserve judicial economy, and to minimize costs to the parties.” *In re Moukalled Estate*, 269 Mich App at 714 (quotation marks and citation omitted). A trial court does not abuse its discretion by “denying a motion resting on a legal theory and facts which could have been pled or argued prior to the trial court’s original order.” *Charbeneau v Wayne Co Gen Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). Accordingly, the trial court’s denial of Minnie’s motion for reconsideration is within the principled range of outcomes and an abuse of discretion did not occur.

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ Brock A. Swartzle