STATE OF MICHIGAN

COURT OF APPEALS

KEVIN REFFITT, PENCON, INC., and RONALD REFFITT, SR.,

Plaintiffs-Appellants,

v

GERARD MANTESE, MANTESE HONIGMAN, PC, KENT GERBERDING, RUNNING WISE & FORD, PLC, and DAWN BACHI-REFFITT,

Defendants-Appellees.

UNPUBLISHED
October 15, 2019

No. 346471
Oakland Circuit Court
LC No. 2018-166093-CB

Before: FORT HOOD, P.J., and SAWYER and SHAPIRO, JJ.

PER CURIAM.

This case stems from plaintiff Kevin Reffitt and defendant Dawn Bachi-Reffitt's divorce. Plaintiffs' claims of malicious prosecution, abuse of process, and tortious interference with business relationships are based on an action brought by Dawn in federal court asserting violations of the Racketeer Influence and Corrupt Organizations Act (RICO), 18 USC 1961 *et seq.* for plaintiffs' alleged scheme to conceal assets from the marital estate. The federal court granted plaintiffs a dismissal of the case, and awarded them sanctions on the basis that Dawn's complaint was frivolous. Plaintiffs then brought the instant action against Dawn and the attorneys representing her in the federal case. The trial court granted defendants' motion for summary disposition under MCR 2.116(C)(8) (failure to state a claim). Plaintiffs appeal, and for the reasoned stated below, we affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

I. FACTS AND PROCEDURE

Kevin and Dawn divorced in April 2013 pursuant to a consent judgment of divorce (JOD) entered in Grand Traverse family court.[1] Kevin asserted in those proceedings that he sold his stock in plaintiff Pencon, Inc, to his father, plaintiff Ronal Reffitt, Sr., for $150,000 before the divorce proceedings were initiated. Kevin and Dawn divided the proceeds of the stock sale equally in their settlement.

In June 2014, Dawn filed a motion for relief from judgment arguing that Kevin failed to disclose two assets in the divorce case: (1) proceeds from a life insurance policy resulting from his brother's death; and (2) that his ownership interest in Pencon was worth over $1 million. The family court held that the motion was time-barred.

In October 2014, Dawn filed an independent action in Grand Traverse circuit court claiming fraud based on the same allegations regarding Kevin's failure to disclose. The circuit court dismissed the complaint without prejudice, concluding that the alleged fraud occurred during the divorce proceedings and therefore must be raised before the family court.

In January 2015, Dawn filed in the family court a motion to enforce the JOD concerning the concealed life insurance policy asset. The court eventually granted Dawn summary disposition after determining that Kevin concealed or failed to disclose the life insurance policy and proceeds thereof. The JOD provided that if either party "concealed assets" the circuit court would award the other party the "entire value" of those assets. Accordingly, in April 2016 the court entered an order awarding Dawn the full value of the life insurance proceeds, $1.5 million.[2]

In March 2017, Dawn filed suit against Kevin, his father, and Pencon (collectively "plaintiffs") in the United States District Court for the Western District of Michigan.[3] Dawn alleged RICO violations based on plaintiffs' "scheme to defraud Dawn of millions of dollars, through a pattern of mail fraud and wire fraud," i.e., "racketeering activity under RICO." The counts pertained only to plaintiffs' alleged efforts to keep Dawn from receiving a share of Kevin's Pencon stock or the actual value thereof. But Dawn also relied on the concealment of the life insurance policy in support of her claims. In addition to the RICO violations, Dawn

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[1] Because the trial court granted summary disposition under MCR 2.116(C)(8), we accept plaintiffs' well-pleaded allegations as true. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). We also consider the court filings and orders attached to plaintiffs' complaint, see *Laurel Woods Apartments v Roumayah*, 274 Mich App 631, 635; 734 NW2d 217 (2007), and other court orders referenced by the parties as matters of public record, see *Dalley v Dykema Gossett*, 287 Mich App 296, 301 n 1; 788 NW2d 679 (2010).

[2] This Court denied Kevin leave to appeal that order, *Reffitt v Bachi-Reffitt*, unpublished order of the Court of Appeals, issued October 24, 2016 (Docket No. 333149), as did the Supreme Court, *Reffitt v Bachi-Reffitt*, 501 Mich 866 (2017).

[3] *Bachi-Reffitt v Reffitt*, United States District Court for the Western District of Michigan (Case No. 1:17-cv-263).

alleged various state-law claims such as fraud and unjust enrichment. Dawn was represented in the federal action by defendant Gerard Mantese and defendant Mantese Honigman PC; defendant Running, Wise & Ford PLC provided co-counsel, including member attorney defendant Kent Gerberding (collectively "defendants").

After suit was filed, Mantese Honigman sent letters to plaintiffs' family members and business associates informing them of their continuing obligation to preserve evidence relating to Kevin and Dawn's dispute. The letters are substantially similar. They remind the recipients of previous correspondences outlining their obligation to preserve evidence, inform them of the federal action and explain that it involves "a wide-ranging and long active scheme to defraud various individuals."

In December 2017, the federal court granted plaintiffs' motion to dismiss Dawn's complaint under FRCP 12(b)(1) (lack of subject-matter jurisdiction) and (b)(6) (failure to state a claim). The court declined to reach the merits of the RICO claims, but instead granted the motion on numerous procedural grounds. The court rule that (1) it was precluded under Michigan law from addressing any allegation of intrinsic fraud in the divorce proceedings; (2) the doctrine of res judicata barred Dawn's claims; (3) the JOD's release-of-claims provision precluded Dawn's complaint; and (4) Dawn failed to establish RICO standing. The court also imposed sanctions, concluding that Dawn's claims violated FRCP 11(b)(2) (prohibiting frivolous claims) "because they are contrary to both the facts and the law and are not otherwise supported by a nonfrivolous legal argument."[4] Dawn's appeal to the Sixth Circuit is still pending.

In June 2018, plaintiffs brought the instant action, asserting claims of malicious prosecution, abuse of process, and tortious interference on the basis of the frivolous federal lawsuit and the corresponding preservation letters. Plaintiffs averred that the federal litigation and the preservation letters were intended to damage their reputation, to gain leverage in the divorce action and to interfere with their business relationships. They specifically alleged that the letters were sent with malicious intent and without a legitimate purpose, and that they lost business relationships as a result.

In July 2018, defendants moved for summary disposition under MCR 2.116(C)(8) for failure to state a claim. They contended that the malicious prosecution claim had not accrued because Dawn's appeal was still pending. They also argued that plaintiffs had not alleged a "special injury" necessary to support a claim for malicious prosecution. As for abuse of process, defendants argued that plaintiffs had not alleged that a "proper legal procedure" had been used for a collateral purpose. They relied on caselaw holding that the filing of a claim is not enough; abuse of process must pertain to an action taken after the filing of a suit. Defendants asserted that the preservation letters were not sent pursuant to any judicial process. Finally, defendants argued that the filing of a lawsuit and corresponding preservation letters were not a sufficient

[4] The federal court denied Dawn's motion for reconsideration, but acknowledged that it did not address Dawn's state-law claims in its prior order. Given the dismissal of the RICO claims, the court declined to exercise supplemental jurisdiction over the state-law claims and dismissed them without prejudice.

basis for a tortious interference claim. Dawn filed a concurrence and joinder in the motion for summary disposition.

In response, plaintiffs did not dispute that their malicious prosecution claim had not yet accrued given the pending appeal, but argued that any dismissal of the claim should be without prejudice; they also requested the opportunity to file an amended complaint. As for the merits, plaintiffs maintained that they had stated a claim in all three causes of action. They argued that defendants' malicious intent could be inferred from the filing of a frivolous lawsuit, or at least created a question of fact on that matter. With respect to abuse of process, plaintiffs contended that defendants failed to use "legitimate discovery" and instead sent the preservation letters outside the "regular process of litigation." Plaintiffs also argued that the issuance of "bogus" preservation letters was enough to support a claim for tortious interference. Finally, they contended that Dawn's joinder in defendant's motion was improper and not contemplated by court rules. Defendants filed a reply brief addressing plaintiffs' arguments.

The trial court decided the motion without hearing oral argument. In a written opinion, the court first determined that the premature malicious prosecution claim should be dismissed with prejudice and that the filing of an amended complaint would be futile when Dawn's appeal in federal court was still pending. The court also found that plaintiffs had failed to state a claim for malicious prosecution because they "have not alleged injuries that qualify as 'special injury' for the purposes of a malicious prosecution claim." The court next determined that plaintiffs failed to state a cognizable claim for abuse of process because the filing of lawsuit is not an improper use of process and the sending of preservation letters did not involve use of legal process. As for tortious interference, the court found that the filing of lawsuit does not support such a claim. The court continued, "Further, the allegations are not sufficient to show that the sending of the preservation letters was done with malice and without justification." Finally, regarding Dawn's joinder in defendants' motion, the court concluded that plaintiffs did not demonstrate that the arguments raised by defendants did not apply equally to Dawn.

II. ANALYSIS

As to each cause of action, plaintiffs argue that the trial court erred in determining that they failed to state a claim. We affirm the trial court's grant of summary disposition, dismissing the claims for malicious prosecution and abuse of process. However, we reverse the court's ruling that plaintiffs failed to state a claim for tortious interference.[5]

[5] We review de novo a circuit court's decision to grant summary disposition. See *Pace v Edel-Harrelson*, 499 Mich 1, 5; 878 NW2d 784 (2016). "A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). Summary disposition under this subrule is proper only when the claims are "so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Kuznar v Raksha Corp*, 481 Mich 169, 176; 750 NW2d 121 (2008) (cleaned up). To make this determination, all well-pleaded allegations are accepted as true and construed in a light most favorable to the nonmonving party. *Maiden*, 461 Mich at 119.

A. MALICIOUS PROSECUTION

Plaintiffs argue that the trial court erred in dismissing their malicious prosecution claim with prejudice on the basis that the claim had not yet accrued given Dawn's pending appeal in the underlying action. We decline to address that issue, however, because we conclude that the trial court properly dismissed the claim with prejudice on the grounds that plaintiffs failed to plead a special injury.

In order to establish malicious prosecution of a civil proceeding, the plaintiff must show that (1) the prior proceedings terminated in the plaintiff's favor; (2) there was no probable cause for the prior proceedings; (3) the prior proceedings were brought with malice, i.e., "a purpose other than that of securing the proper adjudication of the claim"; and (4) a "special injury" resulted from the prior proceedings. *Young v Motor City Apartments Ltd*, 133 Mich App 671, 675; 350 NW2d 790 (1984), citing *Friedman v Dozorc*, 412 Mich 1, 48; 312 NW2d 585 (1981).

In *Friedman*, the Supreme Court declined to depart from the "English rule" requiring a special injury for this tort. A special injury has historically been limited to three categories: injury to one's fame, injury to one's person or liberty, and injury to one's property. *Id*. at 32-34. A review of the Supreme Court's caselaw showed that malicious prosecution claims have only been recognized where a special injury, or "an interference with the plaintiff's person or property," had occurred. *Id*. at 35. The Court found that there was no allegation of special injury in that case, which involved a doctor suing the attorneys that unsuccessfully litigated a medical malpractice claim against the doctor. *Id*. at 16, 34.

In *Barnard v Hartman*, 130 Mich App 692, 698; 344 NW2d 53 (1983), we held that damage to professional reputation does not constitute a special injury. That case involved a court reporter who had been charged in the prior proceedings with preparing a false and misleading transcript. *Id*. at 693. We noted that *Friedman* did not explain whether an injury to fame was still a viable category of special injury or "whether damage to one's professional reputation" constituted a special injury. *Id*. at 694. But we read *Friedman* as implicitly rejecting those damages as a sufficient basis for a special injury. See *id*. at 694, 696. We also noted the modern view that a special injury "must be some injury which would not necessarily occur in all suits prosecuted for similar causes of action." *Id*. at 695, citing 52 Am Jur 2d, Malicious prosecution, § 11, pp 194-195. We concluded that the plaintiff did not plead a special injury because "[t]he damage to her professional reputation on which plaintiff relies is the damage which would ordinarily result" in the type of action brought by the defendant. *Id*. at 696.

In *Young*, 133 Mich App at 677, we further held that "[i]nterference with one's usual business and trade, including the loss of goodwill, profits, business opportunities and the loss of reputation, is not cognizable as special injuries." In that case the plaintiffs were attorneys who had been sued in a prior action for malpractice by their former clients. *Id*. at 674. We determined that the alleged business damages "do not differ substantially from the claims of the physician in *Friedman,* and fall short of being equivalent to a seizure of property." *Id*. at 677.

In their appellate brief, plaintiffs do not address the trial court's ruling that they failed to plead a special injury. When a party fails to address the reason for the trial court's decision, this Court need not consider granting appellate relief. *Derderian v Genesys Health Care Sys*, 263

Mich App 364, 381; 689 NW2d 145 (2004). In their reply brief, plaintiffs argue that the "destruction of both personal and business relationships, including lost profits," constitutes a special injury. As explained, however, loss of profits and business opportunities is not enough to show a special injury. *Young*, 133 Mich App at 677. And the alleged loss of personal relationships is substantially similar to a claim of damage to reputation, which does not constitute a special injury.[6] *Barnard*, 130 Mich App at 698. Plaintiffs do not attempt to distinguish either *Barnard* or *Young* or explain why they suffered a unique injury in this case. For those reasons, we affirm the dismissal of the malicious prosecution claim with prejudice on the grounds that plaintiffs failed to plead a special injury.[7]

B. ABUSE OF PROCESS

Plaintiffs next argue that the trial court erred in ruling that they failed to state a claim for abuse of process. We disagree.

"Abuse of process is the wrongful use of the process of a court." *Lawrence v Burdi*, 314 Mich App 203, 211; 886 NW2d 748 (2016) (cleaned up). "To recover upon a theory of abuse of process, a plaintiff must plead and prove (1) an ulterior purpose and (2) an act in the use of process which is improper in the regular prosecution of the proceeding." *Friedman*, 412 Mich at 30.

The trial court correctly concluded that the filing of a suit does not by itself support a claim for abuse of process. "A complaint [asserting an abuse of process] must allege more than the mere issuance of the process, because an 'action for abuse of process lies for the improper use of process after it has been issued, not for maliciously causing it to issue.' " *Dalley v Dykema Gossett*, 287 Mich App 296, 322; 788 NW2d 679 (2010), quoting *Friedman*, 412 Mich at 31. See also *Lawrence*, 314 Mich App at 211-212. This is what distinguishes abuse of process from malicious prosecution, i.e., "[a]buse of process is concerned with the wrongful use of process after it has been issued, while the tort of malicious prosecution is concerned with the wrongful issuance of process." 54 CJS, Malicious Prosecution, § 4, p 738.

Thus, plaintiffs' abuse of process claim necessarily turns on the sending of the preservation letters. Improper use of discovery devices can give rise to an abuse of process claim. In *Lawrence*, 314 Mich App at 213-214, for instance, we held that the plaintiff successfully stated a claim for abuse of process on the basis of requests for admissions that were wholly irrelevant to the underlying action. However, in that case there was "no doubt that filing requests to admit is an act of process . . . ." *Id*. at 213.

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[6] We note that plaintiffs did not actually allege loss of personal relationships in their complaint.

[7] Summary disposition under MCR 2.116(C)(8) is generally considered to be on the merits and it is therefore granted with prejudice to the refiling of the claim. *ABB Paint Finishing, Inc v Nat'l Union Fire Ins Co of Pittsburgh, PA*, 223 Mich App 559, 563; 567 NW2d 456 (1997). We decline to address whether that holds true—or whether subrule (C)(8) is necessarily applicable—when a claim is dismissed because it has not yet accrued.

Here, the trial court found that sending preservation letters was not an act of process. Plaintiffs do not argue otherwise. Indeed, they seem to concede that defendants did not use judicial process in sending the preservation letters. They contend that the sending of the letters was "not part of the regular process of litigation" and that defendants should have used "legitimate discovery." Thus, plaintiffs seem to be arguing that defendants' decision to *not* use legal process, i.e., discovery devices, in the federal action supports their abuse of process claim. But they cite no authority in support of this novel theory, and the federal action was dismissed before any discovery occurred.

In the one case we found addressing the issue, the Colorado Court of Appeals held that the sending of preservation letters to third parties did not constitute a use of judicial process for purposes of an abuse of process claim.[8] *Active Release Techniques, LLc v Xtomic, LLC*, 413 P3d 210; 2017 COA 14 (Colo App, 2017). The court noted that the preservation letters related to the plaintiff's complaint, but reasoned,

> The letters were not, however, issued in conjunction with or as the result of a hearing or pleading before the court. They were sent prior to any court filing and independent of any court action or involvement, and there was no evidence that the court was asked to play any role in their issuance or enforcement. Therefore, we cannot conclude that they were a legal proceeding as contemplated by the abuse of process tort. [*Id*. at 214.]

The same reasoning applies in this case. Defendants sent preservation letters before the federal complaint was filed. More letters were sent thereafter, but they did not require any court involvement. Thus, defendants did not need to file the federal action in order to send the letters, and plaintiffs have not identified any provision of the Federal Rules of Civil Procedures that mandates or event contemplates the sending of preservation letters. Accordingly, the trial court correctly granted summary disposition on the grounds that plaintiffs did not allege the improper use of a legal procedure.[9]

C. TORTIOUS INTERFERENCE

Plaintiffs also argue that the trial court erred in finding that they failed to sufficiently plead a tortious interference claim. We agree.

The elements of tortious interference with a business relationship or expectancy are (1) the existence of a valid business relationship or expectancy, (2) knowledge of the relationship or expectancy on the part of the defendant, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resultant damage to

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[8] We may rely on authority from sister state courts for its persuasive value. *Estate of Voutsara by Gaydos v Bender*, 326 Mich App 667, 676; 929 NW2d 809 (2019).

[9] Given our ruling, we decline to address defendants' alternative argument that plaintiffs failed to plead a sufficient ulterior purpose.

the plaintiff. *Cedroni Ass'n, Inc v Tomblinson, Harburn Assoc, Architects & Planners Inc*, 492 Mich 40, 45; 821 NW2d 1 (2012). The third element requires the plaintiff to show that the defendant acted improperly. *Dalley*, 287 Mich App at 323. Thus, "in order to succeed under a claim of tortious interference with a business relationship, the plaintiffs must allege that the interferer did something illegal, unethical or fraudulent." *Early Detection Center, PC v New York Life Ins Co*, 157 Mich App 618, 631; 403 NW2d 830 (1986). There are two different ways to allege an improper act. The plaintiff must allege either "the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another." *CMI Intern, Inc v Intermet Intern Corp*, 251 Mich App 125, 131; 649 NW2d 808 (2002).

Plaintiffs no longer claim that the filing of the lawsuit supports a claim of tortious interference. See *Early Detection Center, PC*, 157 Mich App at 631 ("There is nothing illegal, unethical or fraudulent in filing a lawsuit, whether groundless or not."). They contend, however, that the preservation letters, sent in connection with a frivolous lawsuit, are sufficient to maintain a tortious interference action. They rely on *Winiemko v Valenti*, 203 Mich App 411; 513 NW2d 181 (1994), in which we upheld a tortious interference award premised on an improper "lien letter" sent by an attorney to the plaintiff's client. The issue in that case appears to have been whether a claim of tortious interference could be maintained when it was *the plaintiff* who ended the business relationship with the client. See *id*. at 417. Still, the case lends some support to plaintiffs' position that an improper communication sent to a third party can form the basis of tortious interference claim.

Regardless, we conclude that plaintiffs have stated a cognizable claim for tortious interference. Sending a preservation letter is not wrongful per se, so plaintiffs expressly pleaded that the letters were sent with malice and without justification. The trial court concluded that plaintiffs had not set forth sufficient allegations in support of that theory. Viewing the complaint in a light most favorable to plaintiffs, however, there were specific allegations that reasonably informed defendants of the nature of the claim. See *Dalley*, 287 Mich App at 305. Plaintiffs alleged that the preservation letters served no legitimate purpose and they provided two supporting examples. First, defendants sent a letter to plaintiffs' accountant, who could not disclose any information given the accountant-client privilege. Second, defendants sent a letter to someone who had no involvement with the issues involved in the underlying action, i.e., plaintiffs' alleged scheme to defraud Dawn in the divorce proceedings. Thus, when the complaint is fairly read, it alleges that defendants sent preservation letters to plaintiffs' business associates[10] without any reason to believe that those individuals had evidence relevant to the federal action, but instead to indicate that plaintiffs were involved in "a wide-ranging and long active scheme to defraud various individuals." Accepting that allegation as true—as we must at this stage—the letters were sent without justification and with the sole intent to harm plaintiffs. Accordingly, plaintiffs set forth a cognizable claim for tortious interference.

[10] Although letters were also allegedly sent to plaintiffs' friends and family, the tortious interference claim will pertain only to those with whom plaintiffs had a business relationship.

Defendants rely on *Dalley*, 287 Mich App 296, in support of their position that a preservation letter cannot support a tortious interference claim. In *Dalley*, the underlying action was a dispute between an insurance company and its agent. The company obtained a temporary restraining order (TRO) that required a computer consultant (the plaintiff) to make available to the insurance company all computer data that contained the company's records. *Id*. at 300. When served with the TRO, the plaintiff directed the agents to the hard drive containing the company's data. But the agents insisted on transferring data from all of the plaintiff's computers, which contained "highly personal information medical records, photographs, and tax returns." *Id*. at 302. We held that the plaintiff, who had been diagnosed with AIDS, stated viable claims for invasion of privacy and trespass, but affirmed summary disposition of the tortious interference claim based on the underlying litigation and the TRO. *Id*. at 324. We reasoned that there was nothing improper about the filing of a lawsuit, and "decline[d] to find that defendants' pursuit of the TRO amounts to illegal, unethical, or fraudulent conduct . . . ." *Id*.

Defendants argue that *Dalley* "compels the conclusion that reliance on the litigation process to ensure preservation of records" cannot serve as the basis for a tortious interference claim. But recall that with respect to the abuse of process claim, defendants argued—and we agreed—that the sending of the preservation letters did *not* involve legal process. Thus, even assuming that defendants' reading of *Dalley* is correct, the case is inapposite because the preservation letters did involve the use of the litigation process, for the reasons discussed above.

Defendants also rely on the caselaw providing that a plaintiff alleging a malicious and unjustified act "must demonstrate specific, affirmative acts that corroborate the unlawful purpose of the interference." *CMI Intern, Inc*, 251 Mich App at 131. First, we reject the argument that plaintiffs may not rely on the underlying lawsuit to show defendants' intent. While the federal action itself cannot support a tortious interference claim, defendants do not adequately explain why it cannot be considered by a jury in determining whether defendants acted with malice when sending the preservation letters. To the contrary, the fact the lawsuit was found to be frivolous supports plaintiffs' position that the letters were sent with an intent to damage plaintiffs' business relationships rather than out of a genuine concern about the preservation of evidence. Moreover, the preservation letters sent to plaintiffs' family and friends can serve as corroborating acts to the letters sent to plaintiffs' business associations.

Second, we question whether the caselaw calling for corroborating acts is always applicable. That requirements stems from a case where the defendant purchased nursing homes before the plaintiff could exercise its option to do the same. See *Feldman v Green*, 138 Mich App 360, 362, 369-370; 360 NW2d 881 (1984). The defendant in that case was plainly motivated by legitimate business purposes, and this Court understandably imposed a high bar for that plaintiff to show that the defendant's actions were nonetheless unlawful. In this case, however, plaintiffs allege that defendants were not acting for a legitimate purpose in sending the preservation letters. If plaintiffs can carry their burden of proof on that matter, we see no reason why they must identify other wrongful acts. In any event, we conclude that plaintiffs' complaint sufficiently sets forth acts corroborating their position that defendants sent preservation letters to plaintiffs' business associates without justification.

D. DAWN'S JOINDER

Finally, plaintiffs argue that the trial court erred in allowing Dawn to join defendants' motion for summary disposition. We disagree. Plaintiffs do not identify any authority supporting their position that a party may not join another party's motion. Further, trial courts have the authority to sua sponte grant summary disposition to a party under MCR 2.116(I)(1) ("If the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay."). *Al-Maliki v LaGrant*, 286 Mich App 483, 485; 781 NW2d 853 (2009). So the court could have granted Dawn summary disposition even if she did not join the motion.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Karen M. Fort Hood
/s/ David H. Sawyer
/s/ Douglas B. Shapiro