STATE OF MICHIGAN

COURT OF APPEALS

ELDEAN COMPANY, doing business as ELDEAN SHIPYARD,

Plaintiff/Counterdefendant-Appellee,

and

ROBERT J. JOHNSON,

Intervening Plaintiff,

v

CHRISTINE SKANDIS,

Defendant/Counterplaintiff/Third-Party Plaintiff-Appellant,

v

WADE ELDEAN and HERB ELDEAN,

Third-Party Defendants-Appellees.

UNPUBLISHED
October 22, 2020

No. 349218
Allegan Circuit Court
LC No. 18-060031-CK

Before: MURRAY, C.J., AND CAVANAGH AND CAMERON, JJ.

PER CURIAM.

Defendant, Christine Skandis, appeals the trial court's judgment awarding plaintiff, Eldean Shipyard, damages and attorney fees under the Michigan Marina and Boatyard Storage Lien Act ("MBSLA"), MCL 570.371 *et seq*. On appeal, Skandis challenges the trial court's decision to grant Eldean Shipyard's motion for partial summary disposition. Skandis also challenges the trial court's decision to grant summary disposition in favor of Eldean Shipyard, Wade Eldean, and Herb Eldean, which resulted in Skandis's claims being dismissed. We affirm.

I. BACKGROUND

This case arises out of unpaid fees for the storage and maintenance of two vintage yachts. The yachts were brought to Eldean Shipyard by Larry Fuller, who signed storage contracts in his individual capacity for both yachts in November 2012 and September 2014. In signing the contracts, Fuller represented that he either owned the yachts or that he was the owner's authorized agent. Eldean Shipyard only received partial payments for storing the yachts, and storage fees and finance charges accrued. In 2016, Eldean Shipyard brought suit against Fuller and obtained a default judgment in the amount of $73,476.72 on March 17, 2017. However, Eldean Shipyard later discovered that Skandis alone had held title to both yachts since 2010. Eldean Shipyard then exercised its rights under the MBSLA, and purchased the yachts for $100 each following an auction on February 20, 2018.

In August 2018, Eldean Shipyard filed a complaint against Skandis, seeking payment for unpaid fees for the storage and maintenance of the yachts. In response, Skandis filed a 25-count "counter complaint," which named Eldean Shipyard as a counterdefendant and Wade and Herb as third-party defendants. Discovery commenced, and Eldean Shipyard later sought partial summary disposition in regard to its claim that it was entitled to the deficiency still owed after the sale of the yachts. To support that summary disposition on this claim was proper, Eldean Shipyard argued that it complied with the MBSLA by sending adequate notice and by conducting a commercially reasonable sale of the yachts. Skandis opposed the motion. After hearing oral argument, the trial court granted Eldean Shipyard's motion under MCR 2.116(C)(10) (no genuine issue of material fact) in December 2018. However, the trial court determined that it was inappropriate to enter a monetary judgment while Skandis's claims were still pending.

In February 2019, Eldean Shipyard, Wade, and Herb sought summary disposition under MCR 2.116(C)(7) (barred by the period of limitations), (C)(8) (failure to state a claim upon which relief can be granted), and (C)(10) concerning all 25 counts in Skandis's "counter complaint." Skandis opposed the motion. After hearing oral argument, the trial court granted the motion, dismissing all of Skandis's claims. Thereafter, Eldean Shipyard moved the trial court for entry of judgment and for an award of attorney fees and legal expenses under the MBSLA. The trial court held an evidentiary hearing and heard oral argument on the matter. The trial court ultimately entered judgment in favor of Eldean Shipyard in the amount of $149,895.78, which consisted of $25,780.98 in attorney fees and $124,114.80 in unpaid storage fees. This appeal followed.

II. ANALYSIS

A. SUMMARY DISPOSITION ON ELDEAN SHIPYARD'S CLAIM UNDER THE MBSLA

Skandis argues that the trial court erred by granting summary disposition on Eldean Shipyard's claim under the MBSLA for several reasons, each of which we will discuss in turn.

Skandis first argues that Eldean Shipyard's claim was barred by the doctrine of res judicata because Eldean Shipyard had already obtained a judgment against Fuller for the unpaid storage fees for the yachts when the complaint was filed. Based on res judicata, Skandis argues that the trial court should have granted summary disposition in her favor with respect to Eldean Shipyard's claim under the MBSLA. We disagree.

"This Court reviews de novo a trial court's ruling on a motion for summary disposition." *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 162; 809 NW2d 553 (2011). MCR 2.116(C)(7) provides for summary disposition when an action is barred by a "prior judgment[.]" With respect to motions for summary disposition brought under MCR 2.116(C)(7), the Court in *RDM Holdings, Ltd v Continental Plastics Co*, 281 Mich App 678, 687; 762 NW2d 529 (2008), observed the following:

> Under MCR 2.116(C)(7) . . . , this Court must consider not only the pleadings, but also any affidavits, depositions, admissions, or other documentary evidence filed or submitted by the parties. The contents of the complaint must be accepted as true unless contradicted by the documentary evidence. This Court must consider the documentary evidence in a light most favorable to the nonmoving party. If there is no factual dispute, whether a plaintiff's claim is barred under a principle set forth in MCR 2.116(C)(7) is a question of law for the court to decide. If a factual dispute exists, however, summary disposition is not appropriate. [Citations omitted.]

Summary disposition is proper under MCR 2.116(I)(2) "[i]f it appears to the court that the opposing party, rather than the moving party is entitled to judgment[.]" "The applicability of the doctrine of res judicata is a question of law that is . . . reviewed de novo." *Duncan v State*, 300 Mich App 176, 194; 832 NW2d 761 (2013) (quotation marks and citation omitted).

"The doctrine of res judicata is employed to prevent multiple suits litigating the same cause of action." *Adair v State*, 470 Mich 105, 121; 680 NW2d 386 (2004). The purposes of res judicata are to "relieve parties of the cost and vexation of multiple lawsuits, conserve judicial resources, and encourage reliance on adjudication[.]" *TBCI, PC v State Farm Mut Auto Ins Co*, 289 Mich App 39, 43; 795 NW2d 229 (2010) (quotation marks and citation omitted). Res judicata requires that:

> (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies, and (3) the matter in the second case was, or could have been, resolved in the first. [*Adair*, 470 Mich at 121.]

In this case, Eldean Shipyard acknowledges that it obtained a judgment against Fuller for unpaid balances concerning the yachts. However, Eldean Shipyard argues that Skandis cannot rely on the doctrine of res judicata because she was not a party to the matter involving Fuller and because Fuller and Skandis are not in privity. We agree.

The same party prerequisite of res judicata requires that the parties were previously adversaries. *York v Wayne Co Sheriff*, 157 Mich App 417, 426; 403 NW2d 152 (1987). Adverse parties are those who, by the pleadings, "are arrayed on opposite sides." *Id*.

> The parties to the second action need be only substantially identical to the parties in the first action, in that the rule applies to both parties and their privies. Regarding private parties, a privy includes a person so identified in interest with another that he [or she] represents the same legal right, such as a principal to an agent, a master to a servant, or an indemnitor to an indemnitee. [*Peterson Novelties,*

Inc v City of Berkley, 259 Mich App 1, 12-13; 672 NW2d 351 (2003) (quotation marks and citations omitted).]

The initial case involved Eldean Shipyard and Fuller, while this case involves Eldean Shipyard and Skandis. Therefore, the same parties were not involved in both actions. Moreover, the undisputed evidence establishes that Fuller and Skandis were not in privity. Skandis denied that Fuller stored the yachts at Eldean Shipyard at her request. Indeed, Skandis claimed that she did not know that the yachts were stored at Eldean Shipyard. Furthermore, Fuller signed the storage contracts with Eldean Shipyard in 2012 and 2014 in his individual capacity, and the undisputed evidence establishes that Skandis was the actual owner of both yachts at all relevant times. Consequently, because Fuller did not have an ownership interest in the yachts and because Skandis denied that Fuller was acting as her agent, Fuller and Skandis were not so identified in interest that they represented the same legal rights. See *id*. Because the actions did not involve the same parties or their privies, Skandis's argument that Eldean Shipyard's claim under the MBSLA is barred by the doctrine of res judicata is without merit.

Next, Skandis argues that the trial court erred by granting summary disposition in favor of Eldean Shipyard because Eldean Shipyard failed to comply with the MBSLA's notice requirements. We disagree.

"In reviewing a motion for summary disposition under subrule (C)(10), we consider the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party." *Sallie v Fifth Third Bank*, 297 Mich App 115, 117-118; 824 NW2d 238 (2012) (quotation marks and citation omitted). "Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Latham v Barton Malow Co*, 480 Mich 105, 111; 746 NW2d 868 (2008). This Court reviews de novo whether a trial court properly interpreted and applied the relevant statutes. *Makowski v Governor*, 317 Mich App 434, 441; 894 NW2d 753 (2016).

Skandis's argument requires interpretation of certain provisions of the MBSLA. When interpreting a statute, the goal "is to ascertain and give effect to the intent of the Legislature." *Portelli v IR Constr Prods Co, Inc*, 218 Mich App 591, 606; 554 NW2d 591 (1996). "Plain and clear language is the best indicator of that intent, and such statutory language must be enforced as written." *Velez v Tuma*, 492 Mich 1, 16-17; 821 NW2d 432 (2012). The word "shall" is generally used to designate a mandatory directive, *Smitter v Thornapple Twp*, 494 Mich 121, 136; 833 NW2d 875 (2013), and the word " 'or' is a disjunctive term, indicating a choice between two alternatives," *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 148; 783 NW2d 133 (2010).

The MBSLA provides that "[a] facility owner has a possessory lien on property stored at that facility for storage, rent, labor, repairs, maintenance services, materials, supplies, and other charges and for expenses reasonably incurred in the sale of that property under [the MBSLA]." MCL 570.373(1).

Concerning the enforcement of liens, MCL 570.375(2) provides that, "[i]f a property owner is in default for a period of more than 180 days, the facility owner may enforce the lien by selling the repaired or stored property at a commercially reasonable public sale." However, "before enforcing the lien," the "facility owner" is required to "notify a property owner . . . of [the] lien[.]"

MCL 570.374(1). A "property owner" is considered to be notified under the MBSLA if (1) "[t]he property owner has signed a written repair, service, or storage agreement that includes a notice of the lien created under" the MBSLA or (2) "[t]he facility owner has mailed written notification of the lien created under [MBSLA] to the property owner and all prior lienholders or has otherwise satisfied the requirements of [MCL 570.375(5)(a)]." MCL 570.374(1).

In this case, it is undisputed that Skandis never signed "a written repair, service, or storage agreement[.]" Consequently, in order to provide the requisite notice before enforcing the lien, Eldean Shipyard had to mail written notifications of the liens created under MBSLA to Skandis or "otherwise satisf[y] the requirements of" MCL 570.375(5)(a). MCL 570.375(5) provides the following:

> Before conducting a sale under this section, and within a reasonable time after default has continued for more than 180 days, the facility owner shall do both of the following:
>
> (a) Mail a notice of default to the property owner and the secretary of state by certified mail or by another commercially available delivery service that provides proof of delivery . . . . The notice of default must include all of the following:
>
> (*i*) A statement that the property is subject to a lien held by the facility owner.
>
> (*ii*) A statement of the facility owner's claim indicating the charges due on the date of the notice, the amount of any additional charges that will become due before the date of sale, and the date the additional charges will become due.
>
> (*iii*) A demand for payment of the charges due within a specified time not less than 30 days after the date the notice is delivered to the property owner and all lienholders of record.
>
> (*iv*) A statement that the property will be sold if the claim is not paid within the time stated in the notice. The statement must include the time and location of the sale.
>
> (*v*) The name, street address, and telephone number of the facility owner, or the facility owner's designated agent, whom the property owner may contact to respond to the notice.
>
> (b) After the expiration of the 30-day period set forth in subdivision (a)(*iii*), publish an advertisement of the sale once a week for 2 consecutive weeks in the print or electronic version of a newspaper of general circulation in the area where the sale is to be held. The advertisement must include a general description of the property, the name of the property owner, and the time and location of the sale. The date of the sale must be not less than 15 days after the date the first advertisement of the sale is published.

Although Skandis asserts that she never received notice regarding the liens or the upcoming auctions, Eldean Shipyard sent several written notifications of the liens created under MBSLA, several notices of default, and several notices of sale for both yachts to Skandis between July and November 2017. Eldean Shipyard sent the notices to Skandis's personal residential address in Saugatuck, Michigan, and to her business address in Kalamazoo, Michigan. Review of the notices of default establishes that they comported with the requirements outlined in MCL 570.375(5)(a). Additionally, Eldean Shipyard published notice of the February 20, 2018 sale in the Holland Sentinel, The Commercial Record, The Union Enterprise, and the Allegan County News at the end of January 2018 and the beginning of February 2018.[1] Although Skandis never accepted service, acceptance of service is not a requirement for proper notice under the MBSLA. Rather, "[n]otices are considered delivered on the date the recipient of the notice signs the return receipt or, if the notice is undeliverable, the date the post office last attempts to deliver the notice." MCL 570.375(13). Based on the undisputed evidence, Skandis's argument that she was not properly notified under the MBSLA is without merit.

In sum, the trial court properly concluded that there was no genuine issue of material fact that Eldean Shipyard complied with the MBSLA and was, therefore, entitled to summary disposition under MCR 2.116(C)(10). In so holding, we acknowledge that Skandis argues on appeal that this Court should "vacate the Order for Partial Summary Disposition" based on arguments that MCL 570.373(1), MCL 570.375(11), and "Lien Law § 39" were violated. However, because Skandis does not explain or rationalize in a logical manner how the violation of these statutory provisions would invalidate Eldean Shipyard's claim under the MBSLA, the argument is abandoned and need not be considered. See *Houghton ex rel Johnson v Keller*, 256 Mich App 336, 339-340; 662 NW2d 854 (2003).

Next, Skandis argues that Eldean Shipyard was not entitled to "damages because [it was] not entitled to Summary Disposition." We disagree. MCL 570.375(2) provides the following:

> If a property owner is in default for a period of more than 180 days, the facility owner may enforce the lien by selling the repaired or stored property at a commercially reasonable public sale . . . .[2] The proceeds of the sale under this

[1] The auction was initially scheduled for October 26, 2017, and notices were published in the Holland Sentinel, The Commercial Record, The Union Enterprise, and the Allegan County News. However, the auction was ultimately rescheduled to February 20, 2018.

[2] To the extent that Skandis disputes on appeal that the sale of the yachts was commercially reasonable, we conclude that the record supports that the sale was reasonable. Eldean Shipyard provided an affidavit prepared by the vice president of sales at the auction company. In the affidavit, the vice president averred that the yachts were advertised on two websites in January and February 2018, with both receiving multiple views and that the auction was conducted in a commercially reasonable manner. Skandis did not provide any evidence or argument to dispute this evidence.

section must be applied in the following order:

> (a) To the reasonable expenses of the sale incurred by the facility owner including, to the extent not prohibited by law, reasonable attorney fees and legal expenses.
>
> (b) To satisfy the lien created under this act to the extent that it has priority over all other liens.
>
> (c) To satisfy all other liens on the property held by all lienholders of record to be paid in the order of priority.
>
> (d) To the extent that the proceeds of sale exceed the sum of the items described in subdivisions (a) to (c), the facility owner shall pay the surplus to the property owner.

"If proceeds of the sale under this section are not sufficient to satisfy the property owner's outstanding obligations to the facility owner . . ., the property owner remains liable to the facility owner . . . for the deficiency." MCL 570.375(4).

In this case, the sale of the yachts did not satisfy Skandis's obligation to Eldean Shipyard and, as already explained, the trial court properly concluded that Eldean Shipyard complied with the MBSLA when enforcing the liens. Consequently, under MCL 570.375(4), Skandis was liable to Eldean Shipyard for the deficiency on the outstanding balance relating to the storage and sale of the yachts, as well as reasonable attorney fees and legal expenses. See MCL 570.375(2)(a). Eldean Shipyard provided evidence in the trial court concerning the amounts of the deficiency, attorney fees, legal expenses. The trial court ultimately entered judgment in favor of Eldean Shipyard in the amount of $149,895.78, which consisted of $25,780.98 in attorney fees and $124,114.80 in unpaid storage fees. Importantly, because Skandis does not dispute the actual amounts awarded in the judgment, we need not address them.

B. SUMMARY DISPOSITION ON SKANDIS'S "COUNTER COMPLAINT"

Skandis next argues that the trial court erred by granting summary disposition in favor of Eldean Shipyard, Herb, and Wade on the claims contained in her "counter complaint." However, in Skandis's brief on appeal, she does not explain or rationalize these arguments in a meaningful manner or provide this Court with relevant authority. Although litigants acting *in propria persona* are generally allowed some leniency in pursuing their claims, *Haines v Kerner*, 404 US 519, 520; 92 S Ct 594; 30 L Ed 2d 652 (1972), litigants acting *in propria persona* are still required to abide by the Michigan Court Rules, *Bachor v Detroit*, 49 Mich App 507, 512; 212 NW2d 302 (1973). Furthermore, it is well settled that "[a]n appellant may not merely announce [a] position and leave it to this Court to discover and rationalize the basis for his [or her] claims, nor may [an appellant] give issues cursory treatment with little or no citation of supporting authority." *Houghton ex rel Johnson*, 256 Mich App at 339. Therefore, because Skandis has failed to adequately brief her issue, arguments concerning the dismissal of her claims are abandoned and need not be considered. See *id*. at 340.

C. RIGHT TO A JURY TRIAL

Skandis argues that the trial court erred and violated her "constitutional rights when it denied [her] a right to [a] jury trial on the issue of damages."

Whether a party is entitled to a jury trial is a constitutional question that this Court generally reviews de novo. *Anzaldua v Band*, 457 Mich 530, 533; 578 NW2d 306 (1998). Although Skandis did request a jury trial at the beginning of the evidentiary hearing concerning damages, she did not argue that she was constitutionally entitled to a jury. Rather, she argued that she was entitled to a jury because she requested one and paid for one. As a result, Skandis's constitutional claim is unpreserved. See *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 386-387; 803 NW2d 698 (2010). We therefore review for plain error. *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id.*, quoting *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). An error has affected a party's substantial rights when there is "a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *Carines*, 460 Mich at 763.

Skandis does not provide any legal or factual support for her argument that she was entitled to a jury trial under the Constitution. Rather, Skandis argues that, because she paid for a jury, she was "entitled to [a] jury" on the issue of damages. To the extent that Skandis is referring to the jury demand in her "counter complaint," the trial court dismissed Skandis's claims. Consequently, Skandis was not entitled to a jury trial on her claims against Eldean Shipyard, Herb, and Wade. Importantly, Skandis has not pointed to any express provision in the MBSLA to support that a jury trial is required to calculate a deficiency owed under the MBSLA.

Furthermore, we fail to see how denial of a jury trial affected Skandis's substantial rights. As already discussed, the trial court correctly determined that Eldean Shipyard was entitled to payment for any deficiency owed for the storage of the yachts. At the evidentiary hearing, Eldean Shipyard provided documentary evidence and testimony to support its request for payment. Skandis did not provide any evidence to support that the amounts were improper and does not argue on appeal that the amounts were improper. Because Skandis has failed to establish that the alleged error affected the outcome of the proceedings, we conclude that the trial court's decision to determine the amount owed under the MBSLA does not constitute error requiring reversal.

D. ADDITIONAL ATTORNEY FEES

Finally, Eldean Shipyard requests that this Court "award [it] the additional attorney fees that it has been forced to expend to defend against Skandis's frivolous appeal." Under MCR 7.216(C)(1), this Court may "assess actual and punitive damages . . . when it determines that an appeal . . . was vexatious[.]" However, a party seeking relief under MCR 7.216(C) "must file a motion under MCR 7.211(C)(8)." *Fette v Peters Constr Co*, 310 Mich App 535, 553; 871 NW2d 877 (2015). MCR 7.111(C)(8) provides that "[a] request that is contained in . . . a brief . . . will not constitute a motion[.]" Accordingly, because Eldean Shipyard "made its request for damages in its brief on appeal and not in a separate motion, the request is ineffectual." *Fette*, 310 Mich App

at 553. Therefore, we decline to address the issue of whether additional attorney fees are warranted at this time.

Affirmed.

/s/ /Christopher M. Murray
/s/ Mark J. Cavanagh
/s/ Thomas C. Cameron