STATE OF MICHIGAN

COURT OF APPEALS

KYJUAN TANNER-ROBINSON,

Plaintiff-Appellant,

v

WILL-PAN PLUMBING, CO.,

Defendant-Appellee.

UNPUBLISHED
March 10, 2022

No. 356203
Jackson Circuit Court
LC No. 20-001388-NO

Before: REDFORD, P.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

Plaintiff appeals by delayed leave granted the trial court's order granting summary disposition in favor of defendant. *Tanner-Robinson v Will-Pan Plumbing Co*, unpublished order of the Court of Appeals, entered May 21, 2021 (Docket No. 356203). On appeal, plaintiff argues the trial court erred in granting summary disposition, finding plaintiff was not a real party in interest and the statute of limitations barred plaintiff's claim. We reverse and remand for further proceedings.

I. FACTS AND PROCEDURAL BACKGROUND

This case arises from defendant's plumbing repair services on a leaking water pipe at the house where plaintiff resided. In 2011, 10-year-old plaintiff, and his grandparents, Gerald Tanner and Tonya Tanner, resided in a two-story house, and Tonya Tanner was plaintiff's legal guardian. In April 2011, the Tanners discovered a water leak in a second-floor bathroom through the ceiling of the living room on the first floor. The Tanners contacted defendant to repair the leak. During defendant's first attempt to repair the leak, defendant "[r]emove[d] [the] ceiling in living room to gain access to plumbing[,]" "replace[d] broken drain lines to [the] bathtub and bathroom sink," and "replace[d] leaking water lines to [the] bathroom sink" in the Tanners' house. In May 2011, the water leak persisted and defendant returned to the Tanners' house, discovering the "[d]rain line on bathtub was installed improperly." After defendant opened the living room ceiling, "a towel was found under [the] drain collecting water." The Tanners were not charged any additional amount for defendant's second attempt to repair the leak. In August 2015, the water leak reappeared, and defendant returned to the Tanners' house to "[r]epair the leak on lavatory/tub

drain[.]" The Tanners also discovered mold had developed in the house. As a result of the mold exposure, plaintiff experienced frequent nosebleeds and was diagnosed with allergic rhinitis. Additionally, because of plaintiff's and the Tanners' medical problems related to the mold exposure, plaintiff and the Tanners moved out of the house and into an apartment. Because the Tanners were unable to maintain the mortgage payments on the house, the house was ultimately lost to foreclosure.

Plaintiff filed suit on June 16, 2020 alleging defendant negligently performed plumbing services by failing to repair the leaking water pipe. As a result of defendant's negligence, plaintiff claimed he suffered frequent nosebleeds, was diagnosed with allergic rhinitis, and had to move out of the house and into an apartment. Because plaintiff and the Tanners were unable to pay the mortgage on the house, the mortgagor foreclosed on the property. Defendant denied the allegations, asserting plaintiff failed to state a claim, plaintiff's claim was barred by the statute of limitations, and plaintiff lacked the capacity and standing to file suit.

Defendant moved for summary disposition under MCR 2.116(C)(5), (7), and (8), arguing (1) plaintiff lacked the capacity to file suit against defendant because plaintiff did not hire defendant, and plaintiff did not own the house where the alleged negligence occurred; (2) plaintiff failed to state a negligence claim because defendant did not owe a duty to plaintiff; and (3) plaintiff's claim was barred by the long expired three-year statute of limitations for injuries to a person or property, and the six-year statute of limitations for injuries arising from an improvement to real property. In response, plaintiff argued (1) he sustained actual injuries as a consequence of defendant's negligence that allowed him to file suit against defendant, including loss of his longstanding residence, friends, friendships, living in a big house with a yard, and use of his basketball rim and other yard features as a result of moving; (2) defendant owed a duty to everyone living in the Tanners' house that could be endangered by defendant's negligent repair; and (3) his claim was not barred by the statute of limitations because he was a minor when his claim arose.

The trial court granted defendant's motion for summary disposition, under MCR 2.116(C)(5), finding plaintiff lacked standing. The trial court reasoned "there's no way plaintiff could be a real party in interest, he had no ability to even contract at that time[,] . . . [because] the parties that contacted for the work were Gerald and Tonya Tanner." Additionally, the trial court "also not[ed] that the statute of limitations [had] run[,]" stating plaintiff had:

> [A] three year statute of limitations for any personal injury action that he may have had, and even if I was to use the longer statutory period of six years that would be years after the time of occupancy of the completed improvement, the use of the completed improvement, or acceptance of the improvement.

Accordingly, the trial court entered a written order granting defendant's motion for summary disposition and dismissing plaintiff's suit.

II. ANALYSIS

The trial court granted summary disposition on the grounds that plaintiff was not a real party in interest and the statute of limitations barred plaintiff's claim. Plaintiff challenges both of these grounds, and we will address them separately below.

A. PRESERVATION AND STANDARDS OF REVIEW

Generally, an issue is preserved for appellate review if it is raised before and addressed by the lower court and pursued on appeal. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 182-183; 521 NW2d 499 (1994). Plaintiff preserved his argument that summary disposition was inappropriate because he sustained injuries that allowed him to sue defendant and his claim was timely filed, under MCL 600.5805(1), as he was a minor when his claim arose by raising it in the trial court. However, to the extent plaintiff argues his claim was not barred by the statute of repose, under MCL 600.5839, this issue is unpreserved because plaintiff raises it for the first time on appeal.

Our appellate standard of review is de novo, both as to our review of the trial court's decision regarding the motion for summary disposition, as well as to the applicability of the statute of limitations. *Olin by Curtis v Mercy Health Hackley Campus*, 328 Mich App 337, 343; 937 NW2d 705 (2019); *Fraser v Almeda Univ*, 314 Mich App 79, 100; 886 NW2d 730 (2016). However, this Court reviews unpreserved issues for plain error. *Demski v Petlick*, 309 Mich App 404, 426-427; 873 NW2d 596 (2015). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Id*. at 427 (quotations and citations omitted). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *In re Utrera*, 281 Mich App 1, 9; 761 NW2d 253 (2008).

Under MCR 2.116(C)(5), summary disposition is appropriate when the plaintiff lacks the capacity to sue. *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust Bd of Trustees v Pontiac No. 2*, 309 Mich App 611, 619; 873 NW2d 783 (2015). When reviewing a grant of a motion for summary disposition under MCR 2.116(C)(5) or MCR 2.116(C)(7), this Court considers the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties. *Rohde v Ann Arbor Pub Sch*, 265 Mich App 702, 705; 698 NW2d 402 (2005); *The Reserve at Heritage Village Ass'n v Warren Fin Acquisition, LLC*, 305 Mich App 92, 111; 850 NW2d 649 (2014).

In interpreting a statute, the court's role is to determine the legislative intent that may reasonably be gleaned from the express language in the statute. *Mich Ass'n of Home Builders v Troy*, 504 Mich 204, 212; 934 NW2d 713 (2019). If the statutory language is unambiguous, then the statute must be applied as written without judicial interpretation. *Id*. It is presumed "the Legislature intended the meaning it plainly expressed . . . ." *Cox v Hartman*, 322 Mich App 292, 298-299; 911 NW2d 219 (2017) (quotation marks and citation omitted).

B. REAL PARTIES IN INTEREST

"An action must be prosecuted in the name of the real party in interest[.]" MCR 2.201(B); MCL 600.2041. "A real party in interest is the one who is vested with the right of action on a given claim, although the beneficial interest may be in another." *Barclae v Zarb*, 300 Mich App

455, 483; 834 NW2d 100 (2013) (citation omitted). The real-party-in-interest doctrine places "prudential limitations on a litigant's ability to raise the legal rights of another." *Pontiac Police & Fire Retiree Prefunded Group Health & Ins Trust Bd of Trustees*, 309 Mich App at 621-622. "But plaintiffs must assert their own legal rights and cannot rest their claims to relief on the rights or interests of third parties." *Id*. at 622. The real-party-in-interest doctrine is a "standing doctrine" that "recognizes that litigation should be begun only by a party having an interest that will assure sincere and vigorous advocacy" and "protects a defendant from multiple lawsuits for the same cause of action." *Barclae*, 300 Mich App at 483. "[T]he standing inquiry focuses on whether a litigant is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable." *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 355; 792 NW2d 686 (2010) (quotation marks and citation omitted).

The trial court erred in concluding plaintiff could not pursue his claim against defendant because he was not a real party in interest. A review of the record indicates plaintiff pursued a negligence claim against defendant for negligent plumbing repairs that caused him to suffer damages. Notably, plaintiff did not pursue a tort claim against defendant for damages to the Tanners' house, health, or the costs associated with renting an apartment or losing the house to foreclosure, and nor did he pursue a breach of contract claim. *Stillman v Goldfarb*, 172 Mich App 231, 251; 431 NW2d 247 (1988)(no real party in interest status when plaintiff had no contract with defendant). Rather, plaintiff's claim is strictly a negligence one for damages he personally suffered allegedly as a result of defendant's conduct. Beyond defendant's speculation in the trial court that plaintiff did not establish an actual injury to file suit, there is no dispute plaintiff has alleged he has suffered injuries. Regardless, plaintiff's standing as a real party in interest concerns whether he is a proper party to request adjudication of a negligence claim, and not whether his specific negligence claim is justiciable. *Lansing Sch Ed Ass'n*, 487 Mich at 355.

Moreover, to the extent defendant contends plaintiff's claim would subject it to multiple lawsuits for the same cause of action, the statute of limitations has passed as to any claim the Tanners had against defendant. Because plaintiff has asserted a claim for his own injuries, as a result of defendant's alleged negligence, which the Tanners would not be able to pursue, plaintiff is a real party in interest. *Barclae*, 300 Mich App at 483. Therefore, the trial court erred in granting summary disposition on the basis that plaintiff was not a real party in interest.

C. STATUTE OF LIMITATIONS

In addition, the trial court erred in concluding plaintiff's claim was barred by the statute of limitations. "The burden of establishing that a claim is barred by the statute of limitations is on the party asserting the defense." *Schaendorf v Consumers Energy Co*, 275 Mich App 507, 513; 739 NW2d 402 (2007). For claims of damage to persons or property, a party generally must bring their claim within three years of the time of injury. MCL 600.5805(1) and (2). However, MCL 600.5851 states:

> [I]f the person first entitled to make an entry or bring an action under this act is under 18 years of age . . . at the time the claim accrues, the person or those claiming under the person shall have 1 year after the disability is removed through death or otherwise, to make the entry or bring the action although the period of limitations has run. [MCL 600.5851(1).]

The three-year statute of limitations for negligence actions, under MCL 600.5805, is the applicable statute of limitations for plaintiff's claim. However, since plaintiff was a minor when defendant completed the allegedly negligent repair work, MCL 600.5851(1) also applies. A review of the record indicates plaintiff filed his complaint against defendant 361 days after his 18th birthday. On this basis, plaintiff filed his complaint within one year of his disability, i.e., infancy, being removed and attainment of age of majority. Therefore, plaintiff's claim was not barred by the statute of limitations under MCL 600.5851(1).

In opposition, defendant contends it was a contractor making improvements to the Tanners' house and, therefore, the statute of limitations and repose under MCL 600.5839 instead applies and bars plaintiff's claim regardless of his infancy at the time of the alleged negligence. This statute, which operates as a statute of limitations and repose, *Ostroth v Warren Regency, GP, LLC*, 263 Mich App 1, 9; 687 NW2d 309 (2004), states:

> A person shall not maintain an action to recover damages for injury to property, real or personal, or for bodily injury or wrongful death, arising out of the defective or unsafe condition of an improvement to real property, or an action for contribution or indemnity for damages sustained as a result of such injury, against any state licensed architect or professional engineer performing or furnishing the design or supervision of construction of the improvement, or against any contractor making the improvement, unless the action is commenced within . . . [s]ix years after the time of occupancy of the completed improvement, use, or acceptance of the improvement. [MCL 5839(1)(a).]

"By enacting MCL 600.5839, the Legislature chose to limit the liability of architects, engineers, and contractors in order to relieve them of the potential burden of defending against lawsuits commenced long after an improvement was completed." *Caron v Cranbrook Ed Community*, 298 Mich App 629, 636; 828 NW2d 99 (2012).

A "contractor" is statutorily defined as "an individual, corporation, partnership, or other business entity that makes an improvement to real property." MCL 600.5839(3)(a). An improvement to real property is a "permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs." *Pitsch v ESE Mich, Inc*, 233 Mich App 578, 601; 593 NW2d 565 (1999) (quotation marks and citation omitted). "The test for an improvement is not whether the modification can be removed without damage to the land, but whether it adds to the value of the realty for the purposes for which it was intended to be used." *Id*. (citation omitted). Moreover, "the nature of the improvement and the permanence of the improvement should also be considered." *Id*. (citation omitted). "Furthermore, if a component of an improvement is an integral part of the improvement to which it belongs, then the component constitutes an improvement to real property." *Id*. (citation omitted).

Defendant's plumbing repair service did not constitute improvements to real property within the meaning of MCL 600.5839, but rather, were ordinary repairs to the Tanners' house. It was undisputed that defendant "[r]eplace[d]" existing plumbing fixtures and "[r]epair[ed]" leaking water lines in the Tanners' house. This type of plumbing repair work did not *enhance* the capital value of the Tanners' house but merely repaired and maintained the existing water pipes and

plumbing fixtures. Defendant's work at the Tanners' house was an ordinary repair. *Pitsch*, 233 Mich App at 601.[1]

III. CONCLUSION

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ James Robert Redford
/s/ David H. Sawyer
/s/ Christopher M. Murray

[1] This Court is not bound by any unpublished opinions of this Court. *Cox v Hartman*, 322 Mich App 292, 307; 911 NW2d 219 (2017). Defendant's citation to an unpublished opinion is not helpful to its cause because the work done is distinguishable to what occurred here, and the several other unpublished decisions on this issue reveal the fact-intensive nature of this statutory inquiry.