STATE OF MICHIGAN

COURT OF APPEALS

LUCY ANN LOUD, Plaintiff-Appellant,	UNPUBLISHED September 15, 2011
v	Nos. 295836; 298811 Allegan Circuit Court
LEE TOWNSHIP ELECTION COMMISSION, Defendant-Appellee.	LC No. 08-044092-CZ

Before: GLEICHER, P.J., and HOEKSTRA and STEPHENS, JJ.

PER CURIAM.

In these consolidated appeals, plaintiff Lucy Ann Loud appeals as of right the trial court's orders granting summary disposition under MCR 2.116(C)(8) for defendant Lee Township Election Commission and awarding $11,503.10 in sanctions against plaintiff. We affirm.

Plaintiff's first argument is that the trial judge should have been disqualified; plaintiff asserts several bases for disqualification. We review a trial court's factual findings on a motion for disqualification for an abuse of discretion and review "the application of the facts to the law . . . de novo." *Van Buren Charter Twp v Garter Belt, Inc*, 258 Mich App 594, 598; 673 NW2d 111 (2003). A trial court abuses its discretion when it reaches a decision that falls outside the range of principled outcomes. *Pontiac Fire Fighters Union Local 376 v City of Pontiac*, 482 Mich 1, 8; 753 NW2d 595 (2008).

"A judge is disqualified when he cannot hear a case impartially." *Van Buren Charter Twp*, 258 Mich App at 598. MCR 2.003(C)(1) provides a variety of grounds for disqualification, including where (1) a judge is biased or prejudiced for or against a party, (2) a judge, "based on objective and reasonable perceptions, has . . . a serious risk of actual bias" affecting the due process rights of a party, and (3) the judge knows that the judge's spouse is likely to be a material witness in the case. MCR 2.003(C)(1)(a), (b), (g)(iv). A party moving to disqualify a judge must overcome a heavy presumption of judicial impartiality. *Van Buren Charter Twp*, 258 Mich App at 598.

We reject plaintiff's assertion that the trial judge should have been disqualified for demonstrating actual bias in statements made in a December 14, 2008 letter to the State Board of Canvassers. Plaintiff has not established that the trial judge had an actual bias against plaintiff or in favor of defendant that was "both personal and extrajudicial." *Id.* The judge's statements did not concern plaintiff or defendant; rather, the judge's statements addressed the legality of an

election recount and the merit of the incumbent's objection to the recount. Contrary to plaintiff's assertion, the judge's statements also did not illustrate prejudice against individuals who request election recounts for small fees. Even if they did, "[a] generalized hostility toward a class of claimants does not present disqualifying bias." *In re MKK*, 286 Mich App 546, 566; 781 NW2d 132 (2009). We also reject plaintiff's assertion that the judge's statements evidenced a serious risk of actual bias impacting plaintiff's due process rights. Nothing in the judge's letter demonstrates a probability "too high to be constitutionally tolerable" that the judge possessed actual bias. *Van Buren Charter Twp*, 258 Mich App at 599 (quotation marks and citation omitted). And, plaintiff does not assert that the judge had a pecuniary interest in the outcome of the case, was the subject of personal abuse or criticism by a party to the case, was involved in other matters with plaintiff, or prejudged the case. See *id.* at 599-600 (stating that these are examples of situations where the probability of actual bias is too high to be constitutionally tolerable).

In addition to her arguments related to the trial judge's letter, plaintiff raises the following arguments for disqualification: (1) the judge issued a variety of decisions that were unfavorable to plaintiff; (2) the judge allowed defendant to amend its proposed orders that granted summary disposition and sanctions to defendant; and (3) the judge's wife was a material witness in the case. However, plaintiff waived these arguments by not moving to disqualify the trial judge on these grounds under MCR 2.003. See *Reno v Gale*, 165 Mich App 86, 90-91; 418 NW2d 434 (1987) (issue of disqualification is waived where party fails to timely assert the issue); *Law Offices of Lawrence J Stockler, PC v Rose*, 174 Mich App 14, 22-23; 436 NW2d 70 (1989) (issue of disqualification is waived where party fails to comply with MCR 2.003); see also *Davis v Chatman*, ___Mich App___; ___NW2d___ (2011) (issue of disqualification is waived where party fails to submit an affidavit with a motion under MCR 2.003). But, even if we were to consider these arguments as unpreserved, plaintiff has not established plain error. *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 31; 772 NW2d 801 (2009). Nothing in the course of this case even suggests that the trial judge issued the orders that were unfavorable to plaintiff because the judge was biased. "The mere fact that a judge rules against a litigant, even if the rulings are determined to be erroneous, is not sufficient to require disqualification or reassignment." *Ypsilanti Fire Marshal v Kircher*, 273 Mich App 496, 554; 730 NW2d 481 (2007). As to defendant's proposed orders that granted summary disposition and sanctions to defendant, nothing in the course of this case illustrates that the trial judge permitted defendant to amend the orders because the judge was biased. To the contrary, the trial judge permitted defendant to amend its proposed orders to accommodate plaintiff's objections to the orders, even though the trial judge concluded that the proposed orders were consistent with his oral ruling that granted summary disposition and sanctions for defendant. Finally, with regard to the trial judge's wife's status as a material witness, nothing in the record establishes that she witnessed Maas's alleged assault of plaintiff. Moreover, even assuming that she witnessed the alleged assault, there is no evidence that the trial judge knew that his wife was likely to be a material witness in the case.

Plaintiff's next argument is that the trial court erred when it denied her request for accommodations, i.e., her request for security clearance and use of court facilities away from crowded areas. This issue is a claim against the 48th Circuit Court, which is not a defendant in the present case. Accordingly, the issue is not properly before the Court. See *Hoad v Van*

Wagoner, 278 Mich 600, 607; 270 NW 802 (1937) (declining to address claims where the necessary parties to the claims were not before the Court).

Regardless, the argument is without merit. The 48th Circuit Court's policy governing requests for accommodations by individuals with disabilities provides that "[a]ll applications for accommodations shall include a description of the accommodation sought along with a statement of the functional impairment that necessitates the accommodation." It also provides that "[a]n application [for accommodations] may be denied only if the court finds that" (1) the applicant "failed to satisfy the requirements of [the] policy" or (2) the requested accommodation "would result in a fundamental alteration in the nature of the program, service or activity, or create an undue financial or administrative burden on the court." The court's policy defines an "individual with a disability" as "a person covered by the Americans with Disabilities Act of 1990 (42 USC 12101 *et seq.*) and the ADA Amendments Act of 2008, and includes individuals who have a physical or mental impairment that substantially limits one or more major life activities; have a record of such an impairment; or are regarded as having such an impairment."

The trial court's finding of fact that plaintiff was not disabled at the time of her request for accommodations was not clearly erroneous. The form that plaintiff provided to the court stating that she was disabled in June 1992 did not illustrate that she was disabled at the time of her request for accommodations over 16 years later. In addition, the trial court's finding of fact that plaintiff's requested accommodations would burden the court's security was not clearly erroneous. Providing an individual with authority to bypass security checkpoints and access to areas removed from the public in a courthouse would compromise the safety and security of the 48th Circuit Court. Accordingly, the trial court did not abuse its discretion when it denied plaintiff's request for accommodations.[1]

Next, plaintiff argues that the trial court erred when it failed to hold an evidentiary hearing, which the court indicated that it would conduct in its November 3, 2008, and November 19, 2008 orders. However, we decline to decide this issue because it is abandoned; plaintiff does not support her argument with citation to any legal authority. *Blackburne & Brown Mtg Co v Ziomek*, 264 Mich App 615, 619; 692 NW2d 388 (2004).

Plaintiff also argues that the trial court erred because it did not give her "a chance to amend" her June 30, 2009 amended complaint. Because plaintiff did not seek leave to amend the June 30, 2009 pleading under MCR 2.116(I)(5), the issue is unpreserved, and we review it for plain error. *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 95; 693 NW2d 170 (2005); *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000). Under MCR

[1] We decline to address plaintiff's additional, unpreserved arguments that both the 48th Circuit Court's policy governing requests for accommodation and the court's application of its policy in the present case violated the ADA and "other related state and federal law." These issues are independent claims against the 48th Circuit Court and, therefore not properly before the Court. *Hoad* 278 Mich at 607. In addition, the issues are abandoned as plaintiff has failed to cite any legal authority in support of her argument. *Blackburne & Brown Mtg Co v Ziomek*, 264 Mich App 615, 619; 692 NW2d 388 (2004).

2.116(I)(5), "[i]f a court grants summary disposition pursuant to MCR 2.116(C)(8), (9), or (10), the court must give the parties an opportunity to amend their pleadings pursuant to MCR 2.118, unless the amendment would be futile." *Weymers v Khera*, 454 Mich 639, 658; 563 NW2d 647 (1997). MCR 2.118(A)(2) states that leave to amend a pleading "shall be freely given when justice so requires." "A motion to amend . . . should be denied only for the following particularized reasons:" (1) undue delay; (2) bad faith; (3) repeated failure to cure deficiencies in previous amendments; (4) undue prejudice to the opposing party if the amendment is allowed; or (5) the amendment would be futile. *Weymers*, 454 Mich at 658.

In the present case, plaintiff did not did not seek leave to amend her pleadings under MCR 2.116(I)(5). Therefore, we find that plaintiff has failed to establish that the trial court plainly erred by not providing her an opportunity to amend her pleadings. Furthermore, we find that even if the trial court had denied a request by plaintiff to amend her pleadings under MCR 2.116(I)(5), it would not have abused its discretion. Although plaintiff twice amended her original complaint, the trial court found that her June 30, 2009 pleading failed to state a claim and to comply with the pleading requirements in MCR 2.111(A)(1) and MCR 2.113(E)(2). The record illustrates that the trial court "spent a considerable amount of time" during the pretrial conference explaining the pleading requirements to plaintiff.[2] Under these circumstances, amendment of the June 30, 2009 pleading would have been unjustified as there was a previous failure to cure deficiencies and the amendment would have been futile.

Plaintiff's next argument is that the trial court erroneously granted summary disposition to defendant and dismissed all of her claims under MCR 2.116(C)(8). Plaintiff, however, does not contend that her pleadings sufficiently stated claims for which relief could be granted to withstand summary disposition under MCR 2.116(C)(8). Rather, plaintiff contends that her pleadings could have withstood summary disposition if the trial court had held an evidentiary hearing and allowed her to further amend her complaint under MCR 2.116(I)(5).[3] Accordingly, plaintiff has abandoned any argument that her pleadings sufficiently stated a claim for which relief could be granted. *McIntosh v McIntosh*, 282 Mich App 471, 484; 768 NW2d 325 (2009) (issue is abandoned where a party fails to sufficiently brief the issue for purposes of appellate consideration). Moreover, we reject plaintiff's contention that the trial court erred by granting summary disposition for defendant because plaintiff's pleadings could have withstood summary disposition had plaintiff amended her complaint and an evidentiary hearing been held. When defendant moved for summary disposition on July 20, 2009, plaintiff's pleadings—as of July 20, 2009—had to withstand summary disposition under MCR 2.116(C)(8). How plaintiff would have amended her June 2009 amended complaint had the trial court held an evidentiary hearing

[2] During the September 4, 2009 motion hearing, defendant emphasized that the trial court took "great pains to explain to the plaintiff" during the pretrial conference that her next amended complaint should provide specific allegations, dates, and times, statements of what laws were violated, and factual explanations of how the laws were violated. Neither the trial court nor plaintiff disputed defendant's account of the trial court's actions at the pretrial conference.

[3] Indeed, plaintiff explains in her appellate brief how she would amend her June 30, 2009 pleading, admitting that she even has "difficulty understanding parts of [her] own pleading."

and granted her leave to amend under MCR 2.116(I)(5) is immaterial to whether the trial court properly granted summary disposition for defendant on the basis of plaintiff's then-existing pleadings.

Plaintiff also contends that the trial court erroneously granted summary disposition for defendant because the court demonstrated bias against her and in favor of defendant during the summary disposition motion hearing. We decline to address this argument because it is abandoned due to plaintiff's failure to provide this Court with any legal authority in support of her argument. *Blackburne & Brown Mtg Co*, 264 Mich App at 619.

Next, plaintiff argues that the trial court "abused its discretion" by granting defendant's request for sanctions for plaintiff's filing of frivolous claims. We review a trial court's finding that a claim is frivolous and its decision to impose sanctions for clear error. *Guerrero v Smith*, 280 Mich App 647, 677; 761 NW2d 723 (2008); *BJ's & Sons Constr Co, Inc v Van Sickle*, 266 Mich App 400, 405; 700 NW2d 432 (2005). When a party signs a pleading, she certifies, to the best of "her knowledge, information, and belief formed after reasonable inquiry, [that] 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[.]" MCR 2.114(D)(2). If a party signs a pleading in violation of MCR 2.114, "the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it an appropriate sanction, which may include an order to pay the other party . . . the amount of the reasonable expenses incurred because of the filing of the document, including reasonable attorney fees." MCR 2.114(E). "In addition to sanctions under [MCR 2.114], a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2)." MCR 2.114(F). Under MCR 2.625(A)(2), "if the court finds on motion of a party that an action . . . was frivolous, costs shall be awarded as provided by MCL 600.2591." MCL 600.2591(1) provides that "if a court finds that a civil action . . . was frivolous, the court . . . shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party . . . ." MCL 600.2591(1). MCL 600.2591(3)(a) states that a claim is frivolous if one of three conditions is met. One condition is where a "party's legal position was devoid of arguable legal merit." MCL 600.2591(3)(a)(iii).

In the present case, the trial court determined that plaintiff's claim under the Open Meetings Act for the failure of the board of Lee Township to calls meetings to order using particular methods was devoid of arguable legal merit and, thus, frivolous. The trial court did not clearly err. The Open Meetings Act does not require meetings of public bodies to be called to order using a particular method. In fact, the Open Meetings Act does not require that meetings of public bodies be called to order at all. See MCL 15.261 *et seq*. The trial court also found that plaintiff's claims with respect to Elverta Maas and Joyce Watts, i.e., plaintiff's claims to order defendant to relieve Maas of her duties as an election inspector and to "punish" defendant for its failure to address the conduct of Maas and Watts, were devoid of arguable legal merit. The trial court's decision was not clearly erroneous. Plaintiff did not provide the trial court with any legal basis to conclude that defendant was vicariously liable for the alleged tortious acts of Maas and Watts. "A principal is generally liable for the torts of his agent committed in the scope of the agency." *St Paul Fire & Marine Ins Co v Ingall*, 228 Mich App 101, 109; 577 NW2d 188 (1998). "In Michigan, the test for a principal-agent relationship is whether the principal has the right to control the agent." *Little v Howard Johnson Co*, 183 Mich

App 675, 680; 455 NW2d 390 (1990). Plaintiff did not allege that Maas and Watts were acting as defendant's agents at the time of their alleged tortious conduct. Indeed, Watts was not a member of defendant election commission or under defendant's control through any other principal-agent relationship. And, while Maas was appointed as an election inspector for the August 5, 2008 primary election and the November 4, 2008 general election, nothing in the pleadings indicated that Maas, in her capacity as an election inspector, was acting under defendant's control on September 3, 2008, and October 13, 2008, the dates of her alleged tortious conduct. Plaintiff also did not provide the trial court with any legal basis to challenge Maas's appointment as an election inspector. Indeed, MCL 168.674(3) provides that county chairs of major political parties may challenge the appointment of an election inspector and, thus, implicitly excludes other individuals—such as plaintiff—from challenging the appointment. See *Alcona Co v Wolverine Environmental Prod, Inc*, 233 Mich App 238, 247; 590 NW2d 586 (1998) (the express mention of one thing in a statute implies the exclusion of other similar things). Finally, the trial court determined that plaintiff's claims relating to MCL 168.873 were devoid of arguable legal merit. Again, we find that the trial court's conclusion was not clearly erroneous. The express language of MCL 168.873—a criminal statute—does not create a private cause of action for plaintiff to seek damages. See *Lucido v Apollo Lanes & Bar, Inc*, 123 Mich App 267, 271-272; 333 NW2d 246 (1983) (stating that the plaintiffs could not assert a cause of action on the basis of a violation of a penal statute that prohibits the sale of liquor to a minor when the statute does not specifically create a cause of action for a minor who is illegally served). Plaintiff had no legal basis to assert a private cause of action against defendant on the basis of MCL 168.873.

We reject plaintiff's unpreserved argument that the trial court erroneously awarded sanctions against plaintiff because the court may have decided defendant's motion for summary disposition under MCR 2.116(C)(10) instead of MCR 2.116(C)(8). The trial court expressly stated that it dismissed plaintiff's claims under MCR 2.116(C)(8). We also reject plaintiff's argument that sanctions were inappropriate because the trial court improperly eliminated her right to discovery by granting summary disposition for defendant. A trial court may grant summary disposition before the parties conclude discovery on the basis of a plaintiff's failure to state a claim where "no fair chance exists that further discovery will result in factual support for the nonmoving party." *Northland Wheels Roller Skating Ctr, Inc v Detroit Free Press, Inc*, 213 Mich App 317, 329-330; 539 NW2d 774 (1995). And, we reject plaintiff's argument that sanctions were inappropriate because the trial court inappropriately considered her previous experience as a pro per litigator when it decided whether to award sanctions. A trial court may sanction a party for filing frivolous claims regardless of whether the party is represented by counsel; thus, the trial court could have sanctioned plaintiff even if she had no prior litigation experience. See MCR 2.114(D), (E), (F); MCR 2.625(A)(2); MCL 600.2591.

Plaintiff's final argument is that the trial court abandoned the "process" and "abused its discretion" when it determined the sanctions award.[4] However, plaintiff does not support her

[4] We note that plaintiff does not present any argument on appeal with respect to the reasonableness of the amount of sanctions awarded by the trial court. And, plaintiff did not expressly raise the issue of the reasonableness of the amount of sanctions in her statement of

argument with citation to any relevant legal authority. "An appellant may not merely announce its position or assert an error and leave it to this Court to discover and rationalize the basis for its claims, unravel or elaborate its argument, or search for authority for its position." *Blackburne & Brown Mtg Co*, 264 Mich App at 619. Therefore, plaintiff has abandoned her argument, and we decline to address it. *Id.*; see also *MOSES, Inc v Southeast Mich Council of Gov'ts*, 270 Mich App 401, 419; 716 NW2d 278 (2006).

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Joel P. Hoekstra
/s/ Cynthia Diane Stephens

questions presented. Therefore, we do not address this issue. See *McIntosh*, 282 Mich App at 484 (issue is abandoned where a party fails to sufficiently brief the issue for purposes of appellate consideration); *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 221; 761 NW2d 293 (2008) (issue is abandoned where appellant fails to state the issue in the statement of questions presented).