

STATE OF MICHIGAN  
COURT OF APPEALS

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In re Estate of FRANKLIN R. LOZEN.

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MICHAEL F. LOZEN, Personal Representative of  
the Estate of Franklin R. Lozen, Deceased,

UNPUBLISHED  
August 30, 2011

Appellant-Cross-Appellee,

V

DIANE WILLIAMS, JOHN WILLIAMS, and  
BONNIE DODD,

No. 295956  
Lapeer Probate Court  
LC No. 08-035436-CZ

Appellees-Cross-Appellants.

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Before: WILDER, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Appellant Michael F. Lozen (Lozen), the personal representative of the estate of Franklin R. Lozen, appeals as of right the probate court order granting appellees' motions for summary disposition in this action for conversion. Appellees, Diane Williams, John Williams, and Bonnie Dodd, filed a cross-appeal, challenging the probate court's denial of their motion for sanctions. We affirm the rulings rendered by the probate court.

The trial court's decision regarding a motion for summary disposition is reviewed de novo on appeal. *Kuznar v Raksha Corp*, 481 Mich 169, 175; 750 NW2d 121 (2008). The moving party has the initial burden to support its claim for summary disposition by affidavits, depositions, admissions, or other documentary evidence. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The burden then shifts to the nonmoving party to demonstrate a genuine issue of disputed facts exists for trial. *Id.* The nonmoving party may not rely on mere allegations or denials in the pleadings. *Id.* Affidavits, depositions, and documentary evidence offered in support of, and in opposition to, a dispositive motion shall be considered only to the extent that the content or substance would be admissible as evidence. *Maiden v Rozwood*, 461 Mich 109, 120-121; 597 NW2d 817 (1999). A party may not merely announce its position and expect this Court to discover and rationalize the basis for the claims. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). When an appellant fails to challenge the basis of the ruling by the trial court, we need not even consider granting the party the relief requested. *Derderian v Genesys Health Care Sys*, 263 Mich App 364, 381; 689 NW2d

145 (2004). A trial court's decision regarding a motion for reconsideration is reviewed for an abuse of discretion. *Kokx v Bylenga*, 241 Mich App 655, 658-659; 617 NW2d 368 (2000). The trial court does not abuse its discretion by denying a motion for reconsideration premised on legal theory and facts that could have been pleaded or argued prior to the trial court's original order. *Charbeneau v Wayne Co Gen Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

With regard to appellee Dodd, Lozen contends that summary disposition was inappropriate because questions of fact existed regarding whether his father Franklin's property, specifically, gold and silver bullion, had been converted by Dodd. We disagree.

"In the civil context, conversion is defined as any distinct act of domain wrongfully exerted over another's personal property in denial of or inconsistent with the rights therein." *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 391; 486 NW2d 600 (1992). Generally, conversion is an intentional tort when the converter's actions are willful. *Id.* A person cannot convert his own property. *Id.* A plaintiff does not state a common-law action for conversion when he fails to allege that the initial exercise of domain over the property was in fact wrongful. *Lawsuit Fin, LLC v Curry*, 261 Mich App 579, 591-592; 683 NW2d 233 (2004). "A mere statement of a pleader's conclusions, unsupported by allegations of fact, will not suffice to state a cause of action." *Id.* at 592.

A review of the record reveals that Lozen alleged in the complaint that Dodd observed the gold and silver at his father's residence. However, the complaint failed to allege any specifics of how or when Dodd converted the gold and silver. Additionally, Lozen had no direct or circumstantial evidence regarding any alleged conversion by Dodd, but rather asserted that Dodd had the *opportunity* to convert the property. A party "opposing a motion for summary disposition must present more than conjecture and speculation to meet [its] burden of providing evidentiary proof establishing a genuine issue of material fact." *Libralter Plastics, Inc v Chubb Group of Ins Cos*, 199 Mich App 482, 486; 502 NW2d 742 (1993). Lozen failed to meet his evidentiary burden of establishing a genuine issue of material fact. *Quinto*, 451 Mich at 362. Although Lozen raised new arguments and evidence with his motion for reconsideration, the trial court did not abuse its discretion in denying the motion. *Charbeneau*, 158 Mich App at 733.

Lozen also contends that the trial court erred in granting summary disposition in favor of appellees, Diane and John Williams, regarding the conversion of trailers, sheet metal equipment, and gold and silver bullion. We disagree. Once again, Lozen admittedly presented no direct evidence of conversion. Although Lozen asserted that there were genuine issues of material fact and circumstantial evidence of conversion, the claim was premised on mere speculation and conjecture. *Libralter Plastics, Inc*, 199 Mich App at 486. There was a substantial period of time where the property at issue was merely present on the property owned by the Williams. Lozen failed to establish that the Williams, as opposed to any other individual, converted the property at issue and when the conversion occurred. Although Lozen challenges the transfer of ownership regarding the trailers and statements made by his father in 2004, these issues and evidence were

not submitted until the filing of the motion for reconsideration. The trial court did not abuse its discretion in denying the motion for reconsideration. *Charbeneau*, 158 Mich App at 733.<sup>1</sup>

On cross-appeal, appellees contend that the trial court committed clear error by denying their motions for sanctions because Lozen's claims were frivolous. We disagree. We will not reverse a trial court's finding regarding the frivolous nature of a claim or defense unless that finding is clearly erroneous. *Kitchen v Kitchen*, 465 Mich 654, 661; 641 NW2d 245 (2002). "A decision is clearly erroneous where, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id.* at 661-662. In the present case, the lower court noted that Lozen, as the personal representative of the estate, had an obligation to gather the assets of the estate. The trial court also found that the assets did exist. Therefore, we cannot conclude that the trial court's finding was clearly erroneous. *Id.* at 661.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ William C. Whitbeck  
/s/ Karen M. Fort Hood

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<sup>1</sup> We do not address Lozen's claims for fraud and constructive trust because he did not appeal the dismissal of those claims.