

STATE OF MICHIGAN
COURT OF APPEALS

BASIM ALJAZI,

Plaintiff-Appellant,

v

STATE FARM INSURANCE,

Defendant-Appellee.

UNPUBLISHED

October 20, 2011

No. 301038

Ingham Circuit Court

LC No. 09-1685-CZ

Before: SHAPIRO, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

In this insurance coverage dispute, plaintiff alleges that defendant wrongfully denied one of his claims for damage to his house. The trial court granted summary disposition in favor of defendant because plaintiff, who is in pro per, failed to timely respond to defendant's motion.

Plaintiff had a homeowner's insurance policy with defendant. Plaintiff filed his initial claim on July 16, 2008, following a fire in the attic of his house. Defendant honored this claim as well a subsequent claim for water damage and another for cracks in the foundation caused when plaintiff, in an attempt to conduct repairs caused further damage to the home. However, when plaintiff filed a claim for cracking on the first floor of the house, defendant denied the claim as a preexisting condition based on the report of defendant's expert. The expert stated that if the first floor cracks were new, the exterior siding and trim, and the wood sill plate on top of the masonry walls would show damage, distortion, gaps, or lateral movement. He found none of these signs, so he determined that the cracks on the first floor had existed prior to the installation of the siding, and thus also pre-existed plaintiff's insurance policy.

Shortly before the deadline for dispositive motions, defendant moved for summary disposition under MCR 2.116(C)(8) and (C)(10), arguing that plaintiff failed to state a claim, that the first floor cracks were a pre-existing condition, that damage due to ground movement was not covered by the policy, and that defendant could not prove any damages. Plaintiff did not file a response to the motion. At the hearing on the motion, the trial court declined to allow plaintiff to address the merits of the case, questioning him exclusively on the reasons for his failure to respond. Plaintiff stated that he had been called to Iraq because of a family emergency, and did not receive notice of the motion until he returned home approximately 10 days before the motion hearing. The trial court described plaintiff's attitude as "lackadaisical" and found that plaintiff had abandoned his arguments by failing to file a responsive brief or to contact the court or

defendant to request an adjournment as well as his failure to comply with discovery. On this basis, the court granted defendant's motion. Several days after this ruling from the bench, but before a written order was entered, Plaintiff filed a motion for reconsideration to which he attached multiple documents and photographs asserting that they created a question of material fact. The motion for reconsideration also asserted that the summary disposition motion had been mailed by defense counsel with insufficient postage and attached a copy of a post office postage due notice.

On October 25, 2010, the trial court's written order granting the motion was entered. On that same date, plaintiff filed a belated "Response to Defendant State Farm's Motion for Summary Disposition." This pleading contained many of the same arguments and attachments contained in the motion for reconsideration.

Prior to the trial court ruling on the motion for reconsideration, plaintiff filed a claim of appeal. Although this deprived the trial court of jurisdiction¹, the trial court, likely unaware that a claim of appeal had been filed, issued an order denying the motion for reconsideration, affirming its conclusion that dismissal was proper based on defendant's failure to respond as well as noting that there were no questions of material fact.

This Court reviews de novo a grant of summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Maiden*, 461 Mich at 120. This Court considers the evidence submitted by the parties in the light most favorable to the nonmoving party. *Id.* If there is no genuine issue of material fact, the moving party is entitled to judgment as a matter of law. *Id.*

Given the confusing nature of the record regarding service of the motion for summary disposition we elect to review the summary disposition ruling on the merits and have considered the entire record including the materials submitted by plaintiff in his late-filed brief and in his motion for reconsideration. After our review, we conclude that dismissal was proper because plaintiff failed to submit competent evidence creating a question of material fact.²

Plaintiff claims that the photographs he submitted in his late brief and in his motion for reconsideration raise a question of fact as to the origin of the cracks on the first floor of his house. However, there is no testimony in the record explaining the import of the pictures or even authenticating them and on their face, the pictures prove nothing. Further, plaintiff's theory of causation is anything but clear. While at some points in the record it seems that plaintiff is claiming that the first floor was damaged during his repair attempts, at other points he asserts that the first floor cracks were caused by the house settling after 165,000 gallons spilled by a burst pipe drained away under the house. Finally, neither of these theories is supported by any competent evidence and rest solely upon plaintiff's own speculation. "[P]arties opposing a

¹ *Wilson v General Motors Corp*, 183 Mich App 21, 41; 454 NW2d 405 (1990); MCR 7.208(A).

² We may affirm where the trial court reaches the right result, but for the wrong reason. *Etefia v Credit Technologies, Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001).

motion for summary disposition must present more than conjecture and speculation to meet their burden of providing evidentiary proof establishing a genuine issue of material fact.” *Bennett v Detroit Police Chief*, 274 Mich App 307, 319; 732 NW2d 164 (2006). With no evidence to support his case, plaintiff fails to raise a genuine issue of material fact.

Because there is no genuine issue of material fact, summary disposition was proper. *Maiden*, 461 Mich at 120.

Affirmed.

/s/ Douglas B. Shapiro
/s/ Henry William Saad
/s/ Jane M. Beckering