

STATE OF MICHIGAN
COURT OF APPEALS

MARK A. MANGANO and RANDA H.
MANGANO,

UNPUBLISHED
April 17, 2012

Plaintiffs-Appellants,

v

No. 302893
Wayne Circuit Court
LC No. 10-010897-CZ

RECEIVER GREGORY J. SAFFADY, 35th
DISTRICT COURT, and 35th DISTRICT COURT
CHIEF JUDGE,

Defendants-Appellees.

Before: BORRELLO, P.J., and JANSEN and GLEICHER, JJ.

PER CURIAM.

Plaintiffs appeal by right the circuit court's order granting summary disposition in favor of defendants and dismissing plaintiffs' complaint with prejudice. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

In February 2008, Mark A. Chaban, P.C., filed suit in the 35th District Court against plaintiffs Mark and Randa Mangano, as well as their company Related Auto Care, Inc., seeking to recover unpaid legal fees and damages for conversion of their client file.¹ Chief Judge Robert Lowe of the 35th District Court presided over the action and ultimately entered judgment against plaintiffs. In particular, Judge Lowe entered a final, revised judgment in the amount of \$6,149.85 against Mark Mangano and Related Auto Care, Inc., jointly and severally, and in the amount of \$34,780.40 against Randa Mangano individually. Plaintiffs had previously moved to Tennessee, had concealed assets from the 35th District Court, and were apparently otherwise uncooperative with the court. Accordingly, Chief Judge Lowe appointed Gregory J. Saffady as receiver to collect the outstanding judgment against plaintiffs. Among other things, Chief Judge Lowe ordered Saffady to take control of plaintiffs' property and to prepare to liquidate it in an effort to satisfy the outstanding judgment.

¹ Mark A. Chaban, P.C., also sued John A. Lygizos. Mr. Lygizos is not involved in the present appeal.

Plaintiffs appealed Chief Judge Lowe's revised judgment to the Wayne Circuit Court. However, plaintiffs' appeal was dismissed because they failed to post the required bond.

Saffady took control of a home in Canton, Michigan, that was owned by plaintiffs. Plaintiffs had tenants living in the house at the time. Upon Saffady's taking control of the home, the tenants moved out. The home's utilities had been turned off and the sump pump in the basement was therefore inoperable. Apparently unbeknownst to Saffady, standing water began to accumulate in the basement and the pipes eventually froze as well. Saffady did not notice these problems until much later.

Saffady received two offers to buy the house and prepared to sell the home to satisfy the outstanding judgment. On October 27, 2008, Chief Judge Lowe entered an order allowing Saffady to proceed with the sale of plaintiff's Canton home.

However, plaintiffs then filed for bankruptcy protection in the United States Bankruptcy Court for the Middle District of Tennessee and the home became part of the bankruptcy estate. Saffady filed a motion seeking to dismiss the bankruptcy proceedings or, in the alternative, to release the Canton home from the bankruptcy estate. But the United States Bankruptcy Court denied Saffady's motion and ordered Saffady to turn over plaintiffs' Canton home, as well as all other property in his possession, to the bankruptcy trustee. The trustee in bankruptcy assumed possession of the Canton home sometime in March or April 2009.

On the motion of Chase Home Finance, Inc., the primary mortgagee of the Canton home, the house was released from the bankruptcy estate effective September 1, 2009, and the trustee in bankruptcy relinquished control of the home at that time.

Meanwhile, Chief Judge Lowe recused himself from the matter and the case was reassigned to Judge Kathleen McCann of the 16th District Court. On August 12, 2009, Judge McCann entered an order discharging Saffady as receiver and appointing Public Administrator Walter Sakowski as successor receiver. On March 29, 2010, the United States Bankruptcy Court entered an order discharging plaintiffs from bankruptcy.

Plaintiffs commenced the present action on September 21, 2010, alleging that Saffady, Chief Judge Lowe, and the 35th District Court had been negligent in failing to properly preserve the Canton home and by allowing water damage to occur while the home was in their possession. Plaintiffs asserted that although defendants knew the utilities were turned off, that the sump pump was not working, and that the pipes would likely freeze in the winter, they did nothing to protect the house or to prevent the water damage that ultimately occurred. Plaintiffs also alleged that Saffady, Chief Judge Lowe, and the 35th District Court had "converted" their property by interfering with their use and possession of the Canton home for an extended period of time.

Relying on *In re Receiver of Venus Plaza*, 228 Mich App 357, 360-362; 579 NW2d 99 (1998), the circuit court ruled that plaintiffs had failed to set forth legally cognizable claims against Saffady because they had not alleged bad faith by the receiver. The circuit court also found that the receiver was protected from tort liability by qualified or quasi-judicial immunity because he had been acting as an arm of the district court. The circuit court ruled that the 35th District Court and Chief Judge Lowe were protected by governmental immunity, MCL

691.1407(1) and (5), and that plaintiffs had failed to plead in avoidance of this immunity granted by law.

II. STANDARDS OF REVIEW

We review de novo the circuit court's grant of summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). The applicability of governmental immunity is a question of law that we review de novo on appeal. *Herman v Detroit*, 261 Mich App 141, 143; 680 NW2d 71 (2004). We similarly review de novo all other questions of law. *In re Rudell Estate*, 286 Mich App 391, 403; 780 NW2d 884 (2009).

III. NEGLIGENCE CLAIM AGAINST THE RECEIVER

In order to sue a court-appointed receiver, a plaintiff must allege and prove bad faith. *In re Receiver of Venus Plaza*, 228 Mich App at 361. Mere negligence or errors in business judgment by a court-appointed receiver are not actionable. *Id.* In the present case, plaintiffs never alleged or even suggested that Saffady had acted in bad faith. Instead, they merely asserted that Saffady had acted negligently by failing to realize that the utilities had been turned off, that the sump pump was inoperable, and that the pipes were likely to freeze during the winter. They also contended that Saffady should have inspected the home more frequently and should have taken additional measures to prevent the water damage that ultimately resulted. Because plaintiffs failed to allege and prove bad faith by the receiver, the circuit court properly determined that they had failed to set forth a legally cognizable claim of negligence against Saffady. *Id.* at 361-362.² Plaintiffs' negligence claim against Saffady was properly dismissed pursuant to MCR 2.116(C)(8).

IV. NEGLIGENCE CLAIM AGAINST THE JUDGE AND DISTRICT COURT

Nor did the circuit court err by determining that the 35th District Court was entitled to governmental immunity under MCL 691.1407(1), or that that Chief Judge Lowe was entitled to absolute judicial immunity under MCL 691.1407(5). MCL 691.1407(1) provides that "a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function." The 35th District Court is a governmental agency that was engaged in the exercise of a governmental function at all relevant times. In similar fashion, MCL 691.1407(5) provides in pertinent part that "[a] judge . . . [is] immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial . . . authority." By appointing Saffady to serve as receiver of plaintiffs' assets and by overseeing Saffady's performance in this regard, Chief Judge Lowe was clearly acting within the scope of his judicial authority. See *American Transmissions, Inc v Attorney General*, 454 Mich 135, 141, 144; 560 NW2d 50 (1997). Plaintiffs' claim that the 35th District Court and Chief Judge Lowe had acted negligently by failing to preserve the Canton house while

² Moreover, as the circuit court correctly observed, to the extent that Saffady was acting "as 'an arm of the court'" and "'perform[ing] a function integral to the judicial process,'" he was entitled to quasi-judicial immunity. *Diehl v Danuloff*, 242 Mich App 120, 133; 618 NW2d 83 (2000).

it was under their control was clearly barred by governmental immunity and was properly dismissed pursuant to MCR 2.116(C)(7).

V. CONVERSION CLAIM

Plaintiffs' conversion claim against Saffady, Chief Judge Lowe, and the 35th District Court was properly dismissed as well. The tort of conversion can occur only with respect to personal property—not real property. *Embrey v Weissman*, 74 Mich App 138, 143; 253 NW2d 687 (1977); see also *Eadus v Hunter*, 268 Mich 233, 237; 256 NW 323 (1934). Consequently, plaintiffs' claim that defendants had converted their Canton home was legally insufficient to justify recovery and was properly dismissed pursuant to MCR 2.116(C)(8).

Affirmed. Defendants may tax costs pursuant to MCR 7.219.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Elizabeth L. Gleicher