STATE OF MICHIGAN

COURT OF APPEALS

JEMONICA THOMAS, Plaintiff-Appellee,	UNPUBLISHED October 8, 2013
v	No. 311701 Eaton Circuit Court Family Division
DERRICK HARRIS, Defendant-Appellant.	LC No. 11-001389-CZ

Before: HOEKSTRA, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's order granting summary disposition in favor of plaintiff. We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

The parties maintained an unmarried relationship for a period of years, during which they purchased real property, cohabitated at their real property, shared a joint bank account, and accumulated personal property. When plaintiff moved out of their home, she filed a complaint seeking an equitable division of their jointly purchased real and personal property and the return of personal property plaintiff alleged she had purchased without contribution from defendant.

On February 17, 2012, plaintiff mailed her "First Set of Interrogatories, Requests for Admissions, and Requests to Produce" to defendant's counsel. On April 19, 2012, plaintiff filed a "Motion to Compel Answers to Interrogatories, Request for Admissions, and Requests to Produce, and Motion for Attorney Fees," on the basis that defendant failed to respond to plaintiff's February 17, 2012 discovery requests within 28 days as required under MCR 2.309, MCR 2.310, and MCR 2.312. A status conference and hearing on plaintiff's motion to compel was held on April 25, 2012, at which time the trial court indicated that it would permit defendant's counsel to withdraw and would require defendant to answer plaintiff's discovery

requests within 21 days. The court also ruled "that if discovery requests[1] are not submitted to Plaintiff's counsel within 21 days of this date Defendant will be in default."

On May 1, 2012, defendant filed an "Answer to Requests for Admission," in which he admitted that the real property, as well as an automobile, jet skis, washer and dryer, and lawn mower were jointly purchased. However, defendant neither admitted nor denied that a freezer was jointly purchased, and denied that a storage shed and furniture sets were jointly purchased, stating that he paid for those items. Also on May 1, 2012, defendant filed a document entitled "Answer to Complaint for Order Complelling [sic] Discovery and Attorney Fees[,]" in which he stated that his attorney stopped representing him on April 19, 2012, and that he believed his former attorney and plaintiff's attorney had agreed to extend defendant's deadline to respond to plaintiff's February 17, 2012 discovery requests.

On May 4, 2012, the trial court formally entered its order compelling discovery responses, pursuant to its ruling at the April 25, 2012 hearing on plaintiff's motion to compel. The order thus was entered three days after defendant had filed his answers to the requests for admission, and therefore specifically referenced only the requests for production and interrogatories.

Plaintiff moved the trial court for summary disposition, attaching documentation and receipts in support of her contention that she contributed funds for the purchase of the real property, automobile, jet skis, washer and dryer, freezer, lawn mower, and storage shed. She also included a list of personal property she asserted was "purchased by, inherited by, or gifted to" her. These items included bunk beds, a curio cabinet, a gun case with pistol, personal paperwork, and several enumerated miscellaneous items. Defendant responded to plaintiff's motion and admitted that the lawn mower was jointly purchased, contested plaintiff's claim to the bunk beds, requested further documentation or clarification regarding the purchase of the automobile, jet skis, and freezer, questioned the value of the washer and drier, and identified his contribution to the purchase of the shed. Defendant also asserted that the curio cabinet "was available to Plaintiff at the time of abandonment," that he was willing to turn over the identified holiday decorations, that plaintiff had "refused to accept clothing remaining in the home," and that several miscellaneous items remaining in the home "were not purchased by Plaintiff." Defendant provided no documentation in support of his assertions.

The trial court held a hearing on plaintiff's motion for summary disposition on August 1, 2012. The trial courted noted that plaintiff's motion was "very detailed and had multiple exhibits attached to back up the particular motion," and that defendant's response, which consisted of "some observations that the defendant has," did "not meet the definition of an answer that addresses the motion before the Court." The trial court stated that defendant did not file any answers to plaintiff's requests for admission, and that the requests were, therefore, deemed admitted under the court rules. According to the trial court, "defendant certainly had knowledge that these request [sic] for admission were legitimate court documents that needed to be

[1] It appears from context that the trial court actually meant "responses to discovery requests."

responded to." Defendant asserted that he did file an answer to the requests for admission, identifying documentation filed on May 1, 2012.

Defendant also stated that he had "all [the] facts to prove" that he contributed to and paid for the items of personal property in dispute. The trial court asked defendant if he had any receipts to prove his claims or disprove plaintiff's claims. Defendant stated that he was "just getting all this stuff together 'cause my lawyer did not help me with this," and that he received the verification documents from his former attorney "a couple weeks" before the hearing. The trial court stated that, given defendant's admissions, it was "very clear from the pleadings filed in this case and the lack of pleadings filed in this case" that there was no material issue of fact concerning the ownership of the personal and real property at issue and that plaintiff was entitled to an order of summary disposition.

In its order granting summary disposition, the trial court ordered that the real property be refinanced or sold, with the equity or debt divided between the parties, and awarded certain items of personal property to plaintiff to the extent she proved she was the source of purchase for those items, including the automobile, jet skis, washer and dryer, freezer, lawn mower, and storage shed. The trial court did not award plaintiff the living-room and dining-room furniture sets, for which she could not produce any receipts.

II. REQUESTS FOR ADMISSION

Defendant first argues that the trial court erred in deeming plaintiff's requests for admission admitted where defendant filed an untimely answer due to his counsel's error. According to defendant, the trial court should have applied the three-pronged analysis set forth in *Janczyk v Davis*, 125 Mich App 683, 692-693; 337 NW2d 272 (1983) for determining whether to grant a motion to permit an untimely answer to a request for admission. We agree that the trial court erred in deeming plaintiff's requests for admission admitted due to a failure to answer, but find the error harmless under the circumstances.

A trial court's refusal to permit a party to withdraw or amend its admissions is reviewed for an abuse of discretion. *Medbury v Walsh*, 190 Mich App 554, 556; 476 NW2d 470 (1991). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). The broader decision to grant a motion for summary disposition is reviewed de novo. *Coblentz v City of Novi*, 475 Mich 558, 567; 719 NW2d 73 (2006). Summary disposition under MCR 2.116(C)(10) is appropriate when, considering "the evidence and all legitimate inferences in the light most favorable to the nonmoving party," *id*. at 567-568, "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law," MCR 2.116(C)(10). The moving party bears the initial burden to "specifically identify the issues as to which the moving party believes there is no genuine issue as to any material fact," MCR 2.116(G)(4), and to support its position with "[a]ffidavits, depositions, admissions, or other documentary evidence," MCR 2.116(G)(3)(b). If the moving party satisfies its initial burden, the burden shifts to the nonmoving party, who "may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial." MCR 2.116(G)(4). See *Coblentz*, 475 Mich at 567-569.

Under MCR 2.312(B)(1), "[e]ach matter as to which a request [for admission] is made is deemed admitted unless, within 28 days after service of the request, or within a shorter or longer time as the court may allow, the party to whom the request is directed serves on the party requesting the admission a written answer or objection addressed to the matter." "The answer must specifically deny the matter or state in detail the reasons why the answering party cannot truthfully admit or deny it." MCR 2.312(B)(2). "A matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of an admission. For good cause the court may allow a party to amend or withdraw an admission." MCR 2.312(D)(1).

The trial court deemed the requests admitted because defendant "did not file any answer to the request for admission." Defendant's attempt to inform the court that he had filed answers was not accepted. This finding is clearly erroneous because there is no question that defendant did file answers.

Even so, this error was harmless. Defendant does not contest that he failed to answer within 28 days as required under MCR 2.312(B)(1). Accordingly, the trial court was permitted to deem these requests admitted. Further, defendant neither filed a motion nor otherwise asked the trial court to permit his late answer; this Court has held that a trial court may properly deem the requests admitted under such circumstances. See, e.g., *Medbury*, 190 Mich App at 556. The Court will not reverse "when the right result was reached for the wrong reason." *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

Defendant argues that he should have been allowed to file his later answer under the three-prong balancing test set forth in *Janczyk*. *Janczyk*, 125 Mich App at 691, instructs that "[w]hen a trial judge is asked to decide whether or not to allow a party to file late answers to the request for admissions, he is in effect called upon to balance between the interests of justice and diligence in litigation." In the case at hand, defendant never requested permission to file late answers. Defendant's argument seems to presume that the court had some obligation to act even without such a request, but he has provided no support for such a proposition.

Assuming the court should have sua sponte considered the rule of *Janczyk*, no error has been shown. As discussed in *Janczyk*, trial courts have discretion to consider a late answer to requests for admission based on a consideration of (1) whether allowing the late answer "'will aid in the presentation of the action,'" (2) whether the other party would be prejudiced by a late answer, and (3) "the reason for the delay: whether or not the delay was inadvertent." *Id.* at 692-693 (citations omitted). Arguably, the delay was inadvertent. Defendant was represented by counsel at the time the answer was due, and defendant filed his answer less than a week after his counsel withdrew. But defendant has not shown that allowing the late answer would have aided in the presentation of the action. Moreover, the requests the trial court deemed admitted had the limited effect of discharging plaintiff's obligation to produce evidence that the real property, automobile, jets skis, washer and dryer, lawn mower, freezer, storage shed, and furniture sets were jointly purchased. Of these items, defendant's late answer only denied that the storage shed and furniture sets were jointly purchased, and the trial court did not award plaintiff the furniture sets. Even if defendant had been permitted to deny plaintiff's requests for admission, this would have merely required plaintiff to produce evidence in support of her claims, which she did.

Moreover, it is evident from the record that the trial court did not grant plaintiff's motion for summary disposition based solely on the requests deemed admitted. In fact, it is unclear what role defendant's admissions played in the trial court's decision because the trial court did not mention any specific admission in making its ruling. The trial court ordered the parties' real property to be refinanced or sold, with the equity or debt divided between them because they agreed it was jointly owned. With respect to the personal property, it appears that the trial court awarded plaintiff the automobile, jet skis, washer and dryer, lawn mower, freezer, and storage shed because plaintiff produced documentation showing that she was the source of purchase for those items. The trial court specifically declined to award plaintiff the living-room and dining-room furniture sets, for which she could not produce receipts.

Defendant, on the other hand, produced no evidence that he contributed to the personal property awarded to plaintiff, and he produced no evidence showing that plaintiff's proofs of purchase were inaccurate. Instead, defendant rested on mere denials and unsubstantiated claims that he had evidence to rebut plaintiff's evidence. The trial court demonstrated its willingness to consider whatever evidence defendant had, but defendant could not produce any despite plaintiff's requests in discovery for the production of such evidence, the trial court's order for defendant to respond to plaintiff's discovery requests, and defendant's statement that he obtained evidence in support of his claims two weeks before the motion hearing. We conclude that any error on the part of the trial court in deeming plaintiff's requests for admission admitted was harmless in light of defendant's failure to support his position in response to plaintiff's motion for summary disposition.[2]

III. IMPLIED CONTRACT

Defendant also argues that the trial court erred in granting summary disposition because it failed to consider an implied contract between the parties. However, defendant failed to provide this Court with any reference showing that this issue was properly preserved, as required by MCR 7.212(C)(7), and thus has abandoned it on appeal. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

In any event, defendant's argument is without merit. Unmarried, cohabitating couples "do not enjoy property rights afforded a legally married couple. This Court will, however, enforce an agreement made during the relationship upon proof of *additional independent consideration.*" *Featherston v Steinhoff*, 226 Mich App 584, 588; 575 NW2d 6 (1997) (emphasis added). Defendant has not provided proof of any independent consideration. Moreover, even if an agreement did exist, defendant has not shown the terms of such an

[2] Moreover, we note that the trial court's order compelling discovery indicated that a failure to provide the required responses to plaintiff's counsel within 21 days of the order would result in defendant's default, as permitted by MCR 2.313(B)(2)(c). Although defendant filed answers to plaintiff's requests for admissions, there is no evidence in the record, and he does not argue, that he ever provided responses to the first set of interrogatories or requests for production within the 21-day deadline. Accordingly, the trial court could have simply entered a default judgment against defendant and, as a result, the outcome would have been the same.

agreement and whether the property division ordered contravenes it, especially in light of the lack of evidence documenting his contribution to the accumulation of the disputed property.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Amy Ronayne Krause
/s/ Mark T. Boonstra