

STATE OF MICHIGAN
COURT OF APPEALS

JAMES HNATIO and WALDA HNATIO,

Plaintiffs-Appellants,

v

MARK NALEPKA, KIMBERLY NALEPKA,
HALIW, SICILANO, MYCHALOWYCH, VAN
DUSEN & FEUL, P.L.C., and TIMOTHY R. VAN
DUSEN,

Defendants-Appellees.

UNPUBLISHED

April 21, 2009

No. 282146

Wayne Circuit Court

LC No. 06-620302-NZ

Before: Markey, P.J., and Fitzgerald and Gleicher, JJ.

PER CURIAM.

Plaintiffs appeal as of right, challenging the circuit court's order granting summary disposition in favor of the Nalepka defendants pursuant to MCR 2.116(C)(10), and the court's separate order granting summary disposition in favor of defendant Timothy Van Dusen, and his law firm, defendant Haliw, Siciliano, Mychalowych, Van Dusen & Fuel, P.L.C.¹ We affirm.

Plaintiffs alleged that defendants violated MCL 565.25 and MCL 600.2907a by recording an affidavit of interest against their property without lawful cause, with the intent to harass or intimidate them by encumbering their property.

Summary disposition may be granted under MCR 2.116(C)(10) when "there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law." This Court reviews a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

MCL 565.25 and MCL 600.2907a prohibit a person from encumbering property by recording a document "without lawful cause with the intent to harass or intimidate." The trial

¹ The attorney defendants moved for summary disposition under MCR 2.116(C)(8) and (10). The trial court did not specify the particular subrule on which it relied in granting summary disposition.

court correctly determined that there was no genuine issue of material fact concerning defendants' intent to harass or intimidate. In a common-law slander of title action where a plaintiff is required to show "malice," malice "may not be inferred merely from the filing of an invalid lien; the plaintiff must show that the defendant knowingly filed an invalid lien with the intent to cause the plaintiff injury." *Stanton v Dachille*, 186 Mich App 247, 262; 463 NW2d 479 (1990). Similarly, intent to harass or intimidate for purposes of MCL 565.25(5) and MCL 600.2907a may not be inferred merely from the recording of an invalid lien.

Furthermore, the record provides no factual basis for inferring that the Nalepkas or their attorneys were aware that the affidavit was legally unfounded, or that the affidavit was used for an improper purpose. Although the evidence supports an inference that the Nalepka defendants and their attorneys recorded the affidavit for strategy purposes in their lawsuit against plaintiffs, inasmuch as that lawsuit was not shown to have been for the purpose of harassment or intimidation, actions taken to further that lawsuit likewise do not show an intent to harass or intimidate plaintiffs. Moreover, there was no evidence that defendants used the existence of the affidavit as leverage in the lawsuit against plaintiffs. Rather, plaintiffs inadvertently discovered the affidavit several months after it was recorded while doing research on the Internet. Accordingly, plaintiffs failed to establish a genuine issue of material fact with regard to whether the affidavit was recorded with the intent to harass or intimidate. The trial court did not err in granting defendants' motions for summary disposition.

Affirmed. Defendants, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Elizabeth L. Gleicher