

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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ROSA WOODS,

Plaintiff-Appellant,

and

ROSETTA HALL,

Plaintiff,

v

RE INVESTMENT, INC.,

Defendant,

and

CITIFINANCE, INC., CITIMORTGAGE, INC.,  
and CITI, INC.,

Defendants-Appellees.

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UNPUBLISHED

September 23, 2021

No. 351972

Wayne Circuit Court

LC No. 16-006341-CH

Before: CAVANAGH, P.J., and K. F. KELLY and REDFORD, JJ.

PER CURIAM.

Plaintiff Rosa Woods appeals by right the trial court’s order granting summary disposition to defendants CitiFinance Inc., CitiMortgage Inc., and Citi Inc. under MCR 2.116(C)(7) (statute of limitations), (8) (failure to state a claim on which relief can be granted), and (10) (no genuine issues of material fact), on her tort claims. We affirm.

## I. FACTUAL BACKGROUND

This Court recited most of the pertinent factual background of this case in a prior opinion. Plaintiff's mother, Rosetta Hall, entered into a land contract to purchase a home,<sup>1</sup> but plaintiff lived in the home and made the contractual payments. *Woods v RE Investment, Inc*, unpublished per curiam opinion of the Court of Appeals, issued August 23, 2018 (Docket No. 338139), p 2. Plaintiff was not a party to the contract, and Hall did not assign her rights under the contract to plaintiff. *Id.* Plaintiff fell behind on her payments in 2004. *Id.* She received delinquency notices from 2005 until 2014, when the home was paid off. *Id.* Plaintiff believed that defendants harassed her with notifications. *Id.*

On May 18, 2016, plaintiff and Hall filed a complaint against defendants, asserting "fraud, negligence, negligent misrepresentation, negligent infliction of emotional distress, breach of contract, and breach of the Fair Credit Reporting Act, 15 USC 1681 *et seq.*" *Id.* at 2. The circuit court granted defendants' motion for summary disposition on the basis that plaintiff lacked standing. *Id.* On appeal, plaintiff argued in pertinent part that the circuit court erred by granting defendants' motion for summary disposition on her contract and tort claims. *Id.* at 4. This Court held that the circuit court properly granted summary disposition on plaintiff's contract claims because plaintiff, who was not a party to the contract, did not have standing to challenge or enforce it. *Id.*

However, this Court held that the circuit court failed to apply the proper legal analysis to plaintiff's tort claims for fraud, negligence, negligent misrepresentation, and negligent infliction of emotional distress. *Id.* at 5. The circuit court had granted summary disposition on plaintiff's claims on the basis that she could not maintain a tort claim in a breach-of-contract case, but plaintiff had not been a party to the contract. *Id.* at 5-6. Accordingly, the question was whether defendants owed plaintiff a duty separate from their contractual obligations. *Id.* This Court also stated, "[B]ecause the circuit court did not address the tort claims under these principles, we decline to address them for the first time and instead remand to allow the court to make its determinations under this proper framework." *Id.*

Plaintiff had also argued that the circuit court failed to rule on a pending discovery motion before it granted summary disposition. *Id.* This Court noted that summary disposition would not have been premature had the circuit court considered the motion and asked the trial court to address the merits of plaintiff's discovery motion on remand. *Id.* Finally, this Court rejected plaintiff's contention that the circuit court erred by not holding an evidentiary hearing regarding defendants' claim of title because plaintiff lacked standing. *Id.*

Following remand, plaintiff filed motions for an evidentiary hearing, for accommodations for her disabilities, and to be considered an intended third-party beneficiary under the contract. In her motion for an evidentiary hearing, plaintiff described the basis of her tort claims. After plaintiff's case was officially reinstated, defendants moved for summary disposition. Defendants argued in pertinent part that plaintiff had not pleaded her fraud claims with particularity, they did

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<sup>1</sup> Hall entered into a land contract with a private party, who assigned his interests to RE Investments, which later assigned its interests to the defendants who are parties in this appeal.

not owe plaintiff a duty on which her negligence and negligent misrepresentation claims could be based, and plaintiff's negligent infliction of emotional distress claim must be dismissed because she was a mere bystander and did not complain of extreme and outrageous conduct. Plaintiff subsequently moved to strike defendants' motion for summary disposition.

At the hearing on plaintiff's motions, the trial court asked plaintiff to argue her motion to strike, after which plaintiff indicated that she wanted to address a separate-and-distinct analysis. The trial court indicated that the dispositive motion would be considered at the next hearing. The court asked plaintiff what she sought in discovery, and plaintiff indicated that she wanted "to look at the assignment that they're laying [sic] on." The trial court denied plaintiff's motion to be considered a third-party beneficiary under the contract, but it did not rule on plaintiff's motion for discovery.

At the hearing on defendants' motion for summary disposition, the trial court partially granted plaintiff's request for accommodations to the extent of allowing plaintiff uninterrupted time to speak, but it denied plaintiff's request to the extent that she asked for extensions of time under the court rules. It noted that this Court had ordered it to address plaintiff's motion to compel discovery and denied the motion on the basis that plaintiff had not filed it or served it on opposing counsel. The trial court also denied plaintiff's motion to be considered a third-party beneficiary because plaintiff was not mentioned in the land contract.

After the trial court indicated that it would hear defendants' motion for summary disposition, plaintiff began to interject, and the court informed plaintiff that it was defense counsel's turn to argue. After defense counsel's arguments, the trial court asked plaintiff to address the motion. Plaintiff began addressing discovery issues, and the trial court indicated that it had already ruled on those issues. Plaintiff repeatedly made nonresponsive arguments, and the trial court redirected her to the issues pertaining to the motion for summary disposition. The court ultimately granted defendants' motion for summary disposition.

## II. SCOPE OF REMAND

Plaintiff raises three arguments regarding whether the trial court properly applied this Court's remand order: that the court did not determine whether her claims were separate and distinct; that the court failed to consider her motion to compel discovery; and that the court failed to consider whether there was a second contract between plaintiff and defendants. Plaintiff's arguments lack merit.

This Court reviews de novo whether the trial court followed a remand order. *Schumacher v Dep't of Natural Resources*, 275 Mich App 121, 127; 737 NW2d 782 (2007). If a case has been remanded with instructions, it is improper for the lower court to exceed the scope of the remand order. *Int'l Business Machines Corp v Dep't of Treasury*, 316 Mich App 346, 350; 891 NW2d 880 (2016). A lower court may not vary or contradict the mandates of a remand order but may decide anything that was not foreclosed by the order. *Id.* at 352.

First, plaintiff argues that the trial court erred by failing to determine whether her tort claims were separate and distinct from her contractual claims when this Court ordered the trial

court to decide that issue. The trial court did not err by implicitly deciding that plaintiff's claims were separate from the land contract, then deciding her tort claims on the merits.

During plaintiff's prior appeal, this Court held that the circuit court failed to apply the proper analysis to plaintiff's tort claims. *Woods*, unpub op at 5. This Court noted that the circuit court had granted summary disposition on plaintiff's claims on the basis that she could not maintain a tort claim in a breach-of-contract case. *Id.* However, plaintiff had not been a party to the contract. *Id.* at 6. Accordingly, the question was "whether the defendant owed a duty to the plaintiff that is separate and distinct from the defendant's contractual obligations." *Id.* at 6. This Court "remand[ed] to allow the court to make its determination under this proper framework." *Id.*

After remand, the trial court dismissed plaintiff's claims for failing to plead fraud with particularity, because defendants did not owe plaintiff a duty under negligence and negligent misrepresentation theories, and because plaintiff had not established the elements of negligent infliction of emotional distress. In essence, the trial court's decision *assumed* that plaintiff's tort claims were separate and distinct from Hall's contract, then it decided additional issues that this Court had not considered. The court's decision did not exceed the scope of this Court's remand order because the court made its decision under the proper framework and did not contradict this Court's order.

Second, plaintiff argues that the trial court violated this Court's remand order by failing to consider her motion to compel discovery. The record does not support plaintiff's argument.

"[G]enerally, the appellant bears the burden of furnishing the reviewing court with a record that verifies the basis of any argument on which reversal or other claim for appellate relief is predicated." *Petraszewsky v Keeth*, 201 Mich App 535, 540; 506 NW2d 890 (1993). In this case, this Court "ask[ed] the trial court to address the merits of plaintiff's discovery motion." *Woods*, unpub op at 6. After remand, the trial court in fact addressed plaintiff's motion for discovery by denying it on the basis that it had not been served or scheduled.

Third, in her reply brief, plaintiff argues that the trial court should have considered whether there was a second contract between plaintiff and defendants because this Court did not rule on that issue. We note that this issue is not properly before this Court because plaintiff raised it for the first time in her reply brief. See *Bronson Methodist Hosp v Mich Assigned Claims Facility*, 298 Mich App 192, 199; 826 NW2d 197 (2012). Regardless, the record does not support plaintiff's argument. Instead, the court considered and rejected her separate-contract argument.

### III. DUE PROCESS

Plaintiff argues that the trial court denied her due process of law by ignoring her title rights, refusing to hear her arguments, failing to compel discovery, refusing to accommodate her disabilities, and denying her the fair opportunity to defend herself. We conclude that plaintiff has not established that her proceedings were fundamentally unfair.

As an initial matter, this issue is only partially preserved. To preserve an issue, a party must raise it before the lower court. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 183; 521 NW2d 499 (1994). Plaintiff's accommodation and discovery issues are preserved because she raised them before the trial court. However, an issue is not preserved if it is presented to the trial

court for the first time in a motion for reconsideration. *Vushaj v Farm Bureau Gen Ins Co of Mich*, 284 Mich App 513, 519; 773 NW2d 758 (2009). Plaintiff did not raise her other due-process arguments until her motion for reconsideration.

Generally, this Court reviews de novo issues of due process and the trial court's decision on a motion for summary disposition. *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 277; 831 NW2d 204 (2013). This Court will review an issue presented for the first time in a motion for reconsideration if it is an issue of law for which the relevant facts are available. *Vushaj*, 284 Mich App at 519.

The essential purpose of due process is to ensure fundamental fairness. *Al-Maliki v LaGrant*, 286 Mich App 483, 485; 781 NW2d 853 (2009). Due process requires that a party receive notice of the proceedings and a meaningful opportunity to be heard. *Id.* However, procedural rights are not unlimited and must accommodate the legitimate interests in the trial process. *People v King*, 297 Mich App 465, 473; 824 NW2d 258 (2012).

First, plaintiff argues that she was deprived of due process of law because the trial court refused to compel discovery. Plaintiff's argument lacks merit because, to the extent that the trial court did not grant plaintiff discovery, plaintiff created the error.

A party may not appeal an error that the party created. *Clohset v No Name Corp*, 302 Mich App 550, 555; 840 NW2d 375 (2013). In this case, plaintiff moved to reinstate her case without any reference to discovery. Plaintiff was informed at the first hearing that she had not refiled her discovery motion, but plaintiff still did not file a discovery motion. Even so, the trial court ultimately addressed plaintiff's motion for discovery because this Court had instructed it to do so, and it rejected plaintiff's argument on the basis that she had not served her motion to compel and had not scheduled a hearing. To the extent that the trial court failed to grant plaintiff discovery, she caused any error.

Second, plaintiff argues that the trial court deprived her of due process by failing to consider her argument that she had superior title because she partly performed under the contract. Plaintiff's argument concerns issues that this Court has already decided.

This Court held that plaintiff's only remaining claims were her tort claims and ordered the trial court to address those claims. *Woods*, unpub op at 6. Partial performance concerns whether an oral contract concerning an interest in land may avoid operation of the statute of frauds. See *Empire Shoe Serv, Inc v Gershenson*, 62 Mich App 221, 224-225; 233 NW2d 237 (1975).<sup>2</sup> Plaintiff's argument did not pertain to an issue on which this Court remanded, and the trial court's decision not to address it did not render her proceedings fundamentally unfair.

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<sup>2</sup> This Court is not bound to follow decisions of this Court decided before November 1, 1990, under the rules of stare decisis. *2000 Baum Family Trust v Babel*, 488 Mich 136, 180 n 26; 793 NW2d 633 (2010). However, important prudential considerations, such as the length of time since an opinion was issued and public reliance, may support this Court's following its pre-1990 decisions. *Id.* at 180 n 26.

Third, plaintiff argues that the trial court erred by failing to accommodate her disabilities. Plaintiff's argument is not properly before this Court because it concerns a claim against the trial court, not defendants.

The United States and Michigan Constitutions provide the right to petition the government for redress of grievances. US Const Am I; Const 1963, art I, § 3. A party has a due-process right to reasonable access to the courts for an adequate, effective, and meaningful opportunity to present a claim. See *Proctor v White Lake Twp Police Dep't*, 248 Mich App 457, 463; 639 NW2d 332 (2001) (concerning prisoners' rights in civil actions). For this Court to address a claim, all parties necessary to the claim must be before this Court. *Hoad v Van Wagoner*, 278 Mich 600, 607; 270 NW 802 (1937). Plaintiff's claim that the *trial court* failed to accommodate her disabilities is a claim against the court itself, and the court is not a defendant in this case.

Regardless, trial courts have inherent authority "to manage their own affairs so as to achieve the orderly and expeditious disposition of cases," *Maldonado v Ford Motor Co*, 476 Mich 372, 376; 719 NW2d 809 (2006), and to the extent that the trial court did not give plaintiff uninterrupted time to speak, it interjected solely to redirect plaintiff to the pertinent issues. And to the extent that plaintiff asserts that she should have been entitled to extensions under the court rules, plaintiff has abandoned this claim by failing to provide authority to support her assertion with legal authority. See *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008).

Fourth, plaintiff argues that the trial court deprived her of due process by refusing to hear her defenses. The record does not support plaintiff's assertion.

Again, "generally, the appellant bears the burden of furnishing the reviewing court with a record that verifies the basis of any argument on which reversal or other claim for appellate relief is predicated." *Petraszewsky*, 201 Mich App at 540. If a party has had grievances heard in a meaningful manner, the party "is not deprived of procedural due process because of an unsuccessful outcome in the proceedings." *Hanlon v Civil Serv Comm*, 253 Mich App 710, 724-725; 660 NW2d 74 (2002).

In this case, plaintiff filed a written response to defendants' motion for summary disposition. The trial court allowed plaintiff to present her arguments and repeatedly attempted to clarify its understanding of her positions. Plaintiff made arguments responsive to defendants' arguments regarding negligence and negligent misrepresentation. Finally, plaintiff made arguments responsive to defendants' motion for summary disposition on her claim of negligent infliction of emotional distress. Plaintiff presented her arguments and there is no indication that the trial court did not consider them. Plaintiff was not deprived of due process merely because she was unsuccessful during the proceedings.

Fifth, as part of her statement of the issues on appeal, plaintiff states that the trial court denied her due process of law by denying her an evidentiary hearing before granting summary disposition. Parties abandon issues on appeal if they "merely announce their position and leave it

to this Court to discover and rationalize a basis for their claims.” *VanderWerp*, 278 Mich App at 633. Plaintiff has abandoned this issue by failing to address it in her brief on appeal.<sup>3</sup>

#### IV. PROPRIETY OF SUMMARY DISPOSITION

Plaintiff’s various arguments that the trial court should not have granted summary disposition lack merit because she misunderstands controlling law.

A party may move for summary disposition if the plaintiff’s claim is barred by the statute of limitations. MCR 2.116(C)(7). A party may also move for summary disposition under MCR 2.116(C)(8) if the opposing party has failed to state a claim on which relief can be granted.

First, plaintiff argues that the trial court’s decision relied on allegations and unsupported facts. Plaintiff misunderstands the legal basis for which summary disposition may be granted under MCR 2.116(C)(8). A party may move for summary disposition under MCR 2.116(C)(8) if the opposing party has failed to state a claim on which relief can be granted. “A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone.” *Taylor v Kurapati*, 236 Mich App 315, 359; 600 NW2d 670 (1999). Under MCR 2.116(C)(8), the trial court must accept all factual allegations in the complaint as true, must determine whether a record may be developed that could leave open a factual issue, and may only grant summary disposition if “no factual development could possibly justify a right of recovery.” *Id.* at 359-360. The trial court was not required to consider facts when deciding the motion, nor were defendants required to provide factual support under this ground.

Second, plaintiff argues that the trial court erred by failing to view her motion in the light most favorable to her, as a nonmoving party. This standard applies to motions under MCR 2.116(C)(10). See *Gorman v American Honda Motor Co, Inc*, 302 Mich App 113, 116; 839 NW2d 223 (2013). Because the trial court properly granted summary disposition under MCR 2.116(C)(7) and (8), we need not consider this issue.

Plaintiff does not address the bases on which the trial court granted summary disposition on each of her tort claims, and we decline to address them sua sponte.

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<sup>3</sup> Regardless, the purpose of an evidentiary hearing is to assist the court in making an informed decision about a factually disputed issue. *Parks v Parks*, 304 Mich App 232, 239-240; 850 NW2d 595 (2014). Summary disposition is only appropriate under MCR 2.116(C)(10) if “*there is no genuine issue as to any material fact*, and the moving party is entitled to judgment . . . as a matter of law.” (Emphasis added.) Plaintiff would not be entitled to an evidentiary hearing in this case. Rather, if she had sufficient pleadings and established a disputed issue of fact, summary disposition would not have been appropriate. An evidentiary hearing was not necessary.

## V. CONTRACT CLAIMS

Plaintiff argues that she was entitled to specific performance of the contract and that the trial court erred by ignoring plaintiff's title rights. Plaintiff's argument lacks merit because this Court has already decided that plaintiff was not a party to Hall's land contract.

This Court reviews de novo the application of the law-of-the-case doctrine. *Lenawee Co v Wagley*, 301 Mich App 134, 149; 836 NW2d 193 (2013). This doctrine provides that if this Court has ruled on a particular issue, this Court will not decide an issue differently during a subsequent appeal in the same case. *Id.* "The primary purpose of the doctrine is to maintain consistency and avoid reconsideration of matters once decided during the course of a single continuing lawsuit." *Id.* at 150 (quotation marks and citation omitted).

This Court previously held that plaintiff was not a party to the land contract between Hall and defendants. *Woods*, unpub op at 6. This Court also held that the circuit court had properly granted defendants' motion for summary disposition on plaintiff's contract claims because she lacked standing, and stated that the only issues remaining were plaintiff's tort claims. *Id.* at 5-6. Because this Court had already held that plaintiff was not a party to the land contract between Hall and defendants, the trial court did not err by failing to address plaintiff's contractual claims. This Court's ruling regarding standing was the law of the case.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Kirsten Frank Kelly  
/s/ James Robert Redford