STATE OF MICHIGAN

COURT OF APPEALS

BRAD EDDY, BRAD EDDY CONTRACTING, DMH, EDDY BROTHERS AUTO PARTS INC., RICHIE SALES, EDDY BROTHERS FARMS, and ESTATE OF TIMM G. EDDY,

Plaintiffs-Appellants,

v

KAWKAWLIN TOWNSHIP, DENNIS BRAGIEL, DANIEL WIELAND, JOHN WIELAND, D&J WIELAND FARMS LLC, MATHEW WIELAND, and WIELAND CONTRACTING INC.,

Defendants-Appellees,

and

RICHARD SABIAS and WESTSHORE LLC,

Defendants.

UNPUBLISHED
March 21, 2024

No. 362983
Bay Circuit Court
LC No. 2017-003686-CZ

Before: M.J. KELLY, P.J., and BOONSTRA and CAMERON, JJ.

PER CURIAM.

Plaintiffs appeal by right the trial court's orders granting summary disposition in favor of defendants Kawkawlin Township (the township) and its supervisor, Dennis Bragiel, (collectively, the township defendants) and defendants Daniel Wieland, John Wieland, D&J Wieland Farms,

LLC, Mathew Wieland, and Wieland Contracting, Inc. (collectively, the Wieland defendants).[1] We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

The Eddy and Weiland families own neighboring properties in Kawkawlin Township. According to plaintiffs, Eddy Brothers Auto Parts (Eddy Brothers) has operated a junkyard since 1963 on land located on Huron Road (the subject property). Eddy Brothers has had "zoning approval" for a "Class B-Used Vehicle Dealer," "Class E-Distressed Vehicle Transporter," and "Class R-Automotive Recycler" since at least September 15, 2005.

In 2015, plaintiff Brad Eddy and his wife Lisa purchased Dockett Mobile Homes from Lisa's parents and renamed it DMH. Also in 2015, according to plaintiffs, Brad entered into a contractual agreement to purchase Eddy Brothers, as well as the subject property, from Brad's mother.[2] At some point in 2015, Brad moved mobile classroom and office units onto the subject property. Dan Weiland and his brothers John and Matthew took exception to this change, and Dan allegedly notified the township supervisor, Bragiel, about the mobile homes on the subject property. Bragiel instructed the township clerk to notify Eddy Brothers of a zoning violation and inform the property owners that they had until June 23, 2015 to remove the mobile homes. Around the same time, Brad notified the Michigan Department of Environmental Quality (DEQ) about suspected illegal building and dumping on the Weiland property.

In 2015, Brad's mother and brothers filed suit to quiet title against the Wielands, alleging border encroachments onto the subject property. The township also filed an injunction action against Eddy Brothers to force the removal of the mobile homes. The injunction action was settled in 2016, with Eddy Brothers agreeing to remove the remaining mobile office or classroom units. In 2017, Brad and Lisa signed the agreement to purchase the subject property.[3] Ownership of the property was not transferred until July 2018, after the quiet-title action was resolved via a

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[1] Defendant Richard Sabias was dismissed from the case by stipulation. Plaintiff's claims against defendant Westshore, LLC were administratively stayed by bankruptcy proceedings. Neither defendant is a party to this appeal.

[2] We note that the only agreement appended to plaintiffs' complaint or produced during the proceedings below was a real estate purchase agreement (naming Brad and Lisa as Buyer). That agreement does not appear to relate to the sale of Eddy Brothers, and no separate contract for the purchase of Eddy Brothers as a business entity appears in the record. We further note that the real estate purchase agreement reflects that it was signed by the parties not in 2015, as alleged, but rather on January 28, 2017, although the agreement states that the sale of the property was "agreed to on April 5, 2015."

[3] Again, this agreement stated that the parties had agreed to the sale on April 5, 2015. And although plaintiffs contend that Brad and Lisa also agreed to purchase Eddy Brothers, this agreement does not appear to cover any such sale.

settlement. Also in 2017, Bragiel, in his role as township supervisor, declined to approve a renewal of Eddy Brothers' business license.

In November 2017, plaintiffs filed this current action. Count I of plaintiffs' second amended complaint, against the township defendants, was labeled as one for "declaratory relief," but in its essence it asserted that the township defendants had "breached the duties imposed by law" by enabling wrongful conduct by the Wieland defendants, amounting to "an unconstitutional property right taking" that entitled plaintiffs to "lawful remedies and compensation." Plaintiffs specifically asserted that the subject property did not require rezoning and that approval of Eddy Brothers' business license renewal had been wrongfully withheld. Against the Weiland defendants, plaintiffs alleged tortious interference with business and contractual relationships, sought to quiet title to disputed areas on the border between the subject property and the Weiland property, and sought indemnification for costs and fees plaintiffs had allegedly incurred as a result of the Wielands' alleged releasing of contaminants on or near the subject property. Plaintiffs also alleged a conspiracy count against all defendants, claiming that the township defendants had conspired with the Weiland defendants to interfere with plaintiffs' business and contractual relationships; more specifically, plaintiffs alleged that two or more of the defendants had engaged in a conspiracy to interfere with plaintiffs' business and contractual relationships.

The Weiland defendants moved for summary disposition under MCR 2.116(C)(8), arguing that plaintiffs lacked standing to file suit because they did not own the subject property; further, the Weiland defendants alleged that plaintiffs had failed to state a valid claim for relief. The township defendants moved for summary disposition under MCR 2.116(C)(5), (7), and (8), arguing that plaintiffs lacked standing to sue and asserting that plaintiffs' claims were barred by governmental immunity.

In September 2018, the trial court granted the Weiland defendants' motion and dismissed plaintiffs' claims against them based on a lack of standing and failure to state claims on which relief could be granted. In July 2022, the trial court granted the township defendants' renewed motion[4] and dismissed plaintiffs' claims against the township defendants based on governmental immunity, collateral estoppel, and a lack of standing. This appeal followed.

II. CLAIMS AGAINST TOWNSHIP DEFENDANTS

Plaintiffs argue that the trial court erred by granting the township defendants' motion for summary disposition. We disagree.

We review de novo a lower court's resolution of a summary disposition motion. *Vectren Infrastructure Servs Corp v Dep't of Treasury*, 512 Mich 594, 614; ___ NW2d ___ (2023). Summary disposition is appropriate under MCR 2.116(C)(7) when "[e]ntry of judgment, dismissal of the action, or other relief is appropriate because of . . . immunity granted by law . . . ."

[4] The trial court denied the township defendants' original motion for summary disposition in 2019. The township defendants renewed their motion in 2022, following a settlement conference that failed to result in a settlement.

> Under MCR 2.116(C)(7), the moving party is entitled to summary disposition if the plaintiff's claims are barred because of immunity granted by law. The moving party may support its motion for summary disposition under MCR 2.116(C)(7) with affidavits, depositions, admissions, or other documentary evidence, and the contents of the complaint are accepted as true unless contradicted by the evidence provided. If no facts are in dispute, and if reasonable minds could not differ regarding the legal effects of the facts, whether the claim is barred is an issue of law for the court. But if a question of fact exists so that factual development could provide a basis for recovery, caselaw states that dismissal without further factual development is inappropriate. [*Doe v Gen Motors*, LLC, 511 Mich 1038, 1039 (2023) (quotation marks, citations, and brackets omitted).]

MCL 691.1407 of the governmental tort liability act (GTLA) describes the immunity enjoyed by government actors from tort liability. MCL 691.1407(1) provides immunity for "governmental agencies" that are "engaged in the exercise or discharge of a governmental function." MCL 691.1407(2) states:

> Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, . . . and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service . . . if all of the following are met:
>
> (a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.
>
> (b) The governmental agency is engaged in the exercise or discharge of a governmental function.
>
> (c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

MCL 691.1407(2) "does not alter the law of intentional torts as it existed before July 7, 1986." MCL 691.1407(3). MCL 691.1407(5) provides broader immunity for certain individuals, and provides: "A judge, a legislator, and the elective or highest appointive executive official of all levels of government are 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, legislative, or executive authority." The GTLA does not prohibit claims for declaratory and injunctive relief. See *Lash v Traverse City*, 479 Mich 180, 194-196; 735 NW2d 628 (2007).

It is undisputed that Kawkawlin Township is a governmental agency under MCL 691.1407(1). Moreover, and although plaintiffs question Bragiel's motives and the correctness of his decisions as township supervisor, we reject plaintiffs' suggestion that the township defendants were therefore not "engaged in the exercise or discharge of a governmental

function." *Id*. Consequently, plaintiffs' claims against the township were barred by governmental immunity and properly dismissed.

With respect to Bragiel, it is also undisputed that the township is a "level of government" as contemplated in MCL 691.1407(5). The township defendants argue that Bragiel is entitled to immunity under that provision because a township supervisor is "the elective or highest appointed executive official" in the township level of government. By contrast, plaintiffs argue that there exists a question of fact as to whether the township supervisor is in fact such an executive official. The township defendants further argue, in any event, that the township supervisor is a member of the township board and therefore a "legislator" within the meaning of MCL 691.1407(5).

The parties have provided little analysis or authority addressing the precise nature of a township supervisor's position, duties, or authority, such as whether the position is an executive one, a legislative one, or some sort of hybrid. This Court has noted, however, that the separation of powers doctrine does not apply to a township. See *Armstrong v Ypsilanti Charter Twp*, 248 Mich App 573, 588; 640 NW2d 321 (2001) (quoting with approval, from the Michigan Townships Association, that "townships are a unique form of government in which there is no clear separation of executive and legislative powers between elected officials"), citing *Rental Property Owners Ass'n v Grand Rapids*, 455 Mich 246; 566 NW2d 514 (1997) (holding that the separation of powers doctrine applies only to state government, not local government). Consequently, we conclude that regardless of whether Bragiel was the highest executive officer of the township or the leader of the township's legislative body, or some combination or hybrid of the two, he is entitled to absolute immunity under MCL 691.1407(5) if he was acting within the scope of his authority. *Id*.

Plaintiffs contend that Bragiel acted improperly and outside the scope of his authority by ordering the township clerk to issue a zoning violation notice to Eddy Brothers, and by refusing to approve the municipal business license renewal form required by the state to renew a business license based on his determination that plaintiffs' current use of the property violated the township's zoning ordinance. However, apart from questioning Bragiel's motives and the correctness of his decisions, plaintiffs make no argument and provide no authority to support that these actions were outside the scope of the township supervisor's authority (such that they would be exempted from the application of governmental immunity).

> A party may not leave it to this Court to search for authority to sustain or reject its position. The appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give issues cursory treatment with little or no citation of supporting authority. Argument must be supported by citation to appropriate authority or policy. An appellant's failure to properly address the merits of his assertion of error constitutes abandonment of the issue. [*Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) (quotation marks and citations omitted).]

As noted, although Count I of plaintiffs' second amended complaint is labeled as one for "declaratory relief," it in essence alleges a tort or constitutional takings violation. Plaintiffs specifically alleged that the township defendants took steps to enable the Weiland defendants to interfere with plaintiffs' business interests and "appropriate property or property rights without permission," and further alleged that they are entitled to, and seeking "lawful remedies or

compensation" as a result of the township defendants' alleged illegal wrongful conduct. Count VI of plaintiffs' second amended complaint also alleges the tort of conspiracy in connection with the Wieland defendants' alleged tortious interference. We therefore conclude that the trial court properly evaluated the applicability of governmental immunity with respect to all of plaintiffs' claims against the township defendants. See *Adams v* Adams, 276 Mich App 704, 710-711; 742 NW2d 399 (2007) ("It is well settled that the gravamen of an action is determined by reading the complaint as a whole, and by looking beyond mere procedural labels to determine the exact nature of the claim.").

Further, the fact that plaintiffs alleged an unconstitutional taking of their property rights does not alter this conclusion. The Michigan Supreme Court has held that immunity is not available when the government or governmental actor "by virtue of custom or policy" violates rights conferred by the Michigan Constitution. *Mays v Governor of Mich*, 506 Mich 157, 187-190; 954 NW2d 139 (2020), citing *Smith v Dep't of Pub Health*, 428 Mich 540; 410 NW2d 749 (1987). The zoning of property can amount to an unconstitutional taking if the zoning regulations are "overly burdensome" and if (1) "the regulation does not advance a legitimate state interest" or (2) the regulation denies the landowner economically viable use of the land. *Grand/Sakwa of Northfield, LLC v Northfield Twp*, 304 Mich App 137, 146; 851 NW2d 574 (2014) (quotation marks and citations omitted).

While plaintiffs contend that they used the subject property as a junkyard since 1963, the business license forms suggest that the approved use of the property was similar to, but narrower than, a general junkyard. The parties agree plaintiffs had always kept vehicles on the land for salvage, scrap, and sales of parts. After purchasing DMH, Brad and Eddy Brothers apparently wanted to add mobile homes and similar units to the inventory. Bragiel testified that he researched the Secretary of State and Department of Licensing and Regulatory Affairs (LARA) regulations regarding mobile homes and determined that this use was not allowed under the specific business licenses maintained by Eddy Brothers. Therefore, the township advanced a legitimate state interest by limiting plaintiffs' commercial use of the subject property to that allowed under its business license. Moreover, plaintiffs were not denied any economically viable use of the land; the record shows that if plaintiffs had removed the offending mobile homes and similar units, they could have continued the historical business uses of the property. Even taking plaintiffs' pleaded allegations as true, therefore, plaintiffs could not, as a matter of law, establish an unconstitutional taking, and the doctrine of governmental immunity therefore bars plaintiffs' claims.

III. CLAIMS AGAINST WIELAND DEFENDANTS

Plaintiff argue that the trial court erred by granting the Weiland defendants' motion for summary disposition. We disagree. Regarding plaintiffs' tortious interference, conspiracy, and indemnification claims, we conclude that summary disposition was appropriately granted under MCR 2.116(C)(8), and we therefore limit our analysis to that ground and need not address the trial court's holdings regarding collateral estoppel or standing. We further conclude that plaintiffs' quiet title claim is moot.

> A motion under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone to determine if the opposing party has stated a claim for which relief can be granted. We must accept all well-pleaded

> allegations as true and construe them in the light most favorable to the nonmoving party. The motion should be granted only if no factual development could possibly justify recovery. [*Zaher v Miotke*, 300 Mich App 132, 139; 832 NW2d 266 (2013) (quotation marks and citations omitted).]

A. TORTIOUS INTERFERENCE AND CONSPIRACY

Plaintiffs alleged that the Weiland defendants tortiously interfered with their business relationships and expectancies as well as their contractual relations. "In Michigan, tortious interference with a contract or contractual relations is a cause of action distinct from tortious interference with a business relationship or expectancy." *Health Call of Detroit v Atrium Home & Health Care Servs, Inc*, 268 Mich App 83, 89; 706 NW2d 843 (2005). To establish a claim of tortious interference with a contract, the plaintiff must show "(1) the existence of a contract, (2) a breach of the contract, and (3) an unjustified instigation of the breach by the defendant." *Id*. at 90.

> The elements of tortious interference with a business relationship or expectancy are (1) the existence of a valid business relationship or expectancy that is not necessarily predicated on an enforceable contract, (2) knowledge of the relationship or expectancy on the part of the defendant interferer, (3) an intentional interference by the defendant inducing or causing a breach or termination of the relationship or expectancy, and (4) resulting damage to the party whose relationship or expectancy was disrupted. [*Health Call of Detroit*, 268 Mich App at 90.]

Both of these claims are intentional torts. *Knight Enterprises, Inc v RPF Oil Co*, 299 Mich App 275, 280; 829 NW2d 345 (2013). To support these claims, a plaintiff must show "the intentional doing of a per se wrongful act or the doing of a lawful act with malice and unjustified in law for the purpose of invading the contractual rights or business relationship of another." *Id*. (quotation marks and citations omitted).

Plaintiffs alleged tortious interference with contract in relation to their agreements to purchase Eddy Brothers and the subject property, and they attached to their complaint the purchase agreement for the subject property. Plaintiffs alleged in their complaint that the Weiland defendants had deposited contaminants on and adjacent to the subject property, took steps to land-lock a portion of the subject property, made threats to plaintiffs in response to land surveying and environmental assessments, and wrongfully instigated a blight or nuisance action against Eddy Brothers. Plaintiffs further alleged that, in 2017, Dan committed "acts of larceny or conversion" against Eddy Brothers by removing property from the premises, and specifically state that Dan had removed a vehicle owned by Eddy Brothers from the subject property.[5] All of these activities, apart from the alleged larceny and conversion by Dan in 2017, were alleged to have occurred in 2015. Plaintiffs alleged that in 2015, Brad and Lisa contracted to purchase, and did purchase, DMH; additionally, they alleged that Brad and Lisa contracted to purchase Eddy Brothers and the subject property, although that agreement was not actually signed until 2017 and the sale did not ultimately occur until 2018.

[5] Plaintiffs did not plead a claim for statutory or common-law conversion against Dan.

Taking plaintiffs' factual allegations as true, plaintiffs have failed to allege a claim for tortious interference with a contract. Plaintiffs make vague allegations that defendants acted to "discredit" plaintiffs and to "obscure the Defendants [sic] conduct and actions on the properties" and acted to make "Plaintiff's contractual interests in the subject property, [sic] less beneficial," to "portray Plaintiffs in a negative light" and "usurp equity in tangible equipment, real property and other assets." It is unclear what "contractual interests in the subject property" plaintiffs are referring to; even less clear is how the Weiland defendants acted to "discredit" plaintiffs and "obscure" their conduct, or how Dan's alleged conversion of personal property on the subject property affected any contractual (or business, for that matter) relationship. Plaintiffs have completely failed to explain how any of the Weiland defendants' alleged conduct affected any contractual relationship between plaintiffs and DMH; further, although plaintiffs alleged that the Weiland defendants' instigation of lawsuits in 2015 interfered with the contractual sale of Eddy Brothers and the subject property, they did not even allege that the Weiland defendants actions caused "a breach or termination of the relationship or expectancy." *Health Call of Detroit*, 268 Mich App at 90. The trial court properly dismissed this count under MCR 2.116(C)(8).

Plaintiffs also did not state a legally cognizable claim for interference with a business expectancy. Plaintiffs alleged that the Weiland defendants essentially interfered with the business relationships between various plaintiffs as well as between Brad Eddy and the previous owners of the subject property and of Eddy Brothers. Plaintiffs pleading is very unclear regarding this claim. To the extent that plaintiffs argue that the business relationships (apart from the contractual relationships already discussed) between Brad Eddy and DMH, or between Eddy Brothers and DMH, were interfered with by the Weiland defendants' conduct, plaintiffs failed to plead a valid claim for relief. DMH was headquartered and operated from 2248 South Huron Road, not from the subject property. Plaintiffs did not allege that the Wielands prevented them from operating DMH at its address of record. Rather, plaintiffs complained that the Wielands instigated the township's injunction action for removal of mobile homes and similar units from the subject property. Plaintiffs were still able to operate the business of DMH at 2248 South Huron Road. Further, regarding the remaining business relationships or expectancies, plaintiffs did not explain in their complaint how these relationships were affected by the Weiland defendants' actions, or how those actions were either wrongful per se or a lawful action done with malice and without justification under the law. *Knight Enterprises, Inc*, 299 Mich App at 280. Accordingly, the trial court properly dismissed this count as well for failure to state a claim.

Plaintiffs' conspiracy claim was contingent on a finding of tortious interference with a contract or business expectancy. The failure to state a claim on the underlying counts, supported dismissal of the conspiracy count for failure to state a claim as well. See *Advocacy Org for Patients & Providers v Auto Club Ins Ass'n*, 257 Mich App 365, 384; 670 NW2d 569 (2003) (citation omitted) (noting that "a claim for civil conspiracy may not exist in the air; rather it is necessary to prove a separate, actionable tort).

B. QUIET TITLE

Actions to quiet title are equitable in nature. *Canjar v Cole*, 283 Mich App 723, 727; 770 NW2d 449 (2009). MCL 600.2932(1) states:

> Any person, whether he is in possession of the land in question or not, who claims any right in, title to, equitable title to, interest in, or right to possession of land, may bring an action in the circuit courts against any other person who claims or might claim any interest inconsistent with the interest claimed by the plaintiff, whether the defendant is in possession of the land or not.

By the time the trial court resolved the Wieland defendants' summary disposition motion, the quiet-title action filed by the property owners had been settled. This rendered plaintiffs' claim to quiet title moot. "An issue is moot if an event has occurred that renders it impossible for the court to grant relief." *Barrow v City of Detroit Election Comm'n*, 305 Mich App 649, 659; 854 NW2d 489 (2014). Title was already quieted in favor of the sellers of the subject property, allowing them to transfer the property to Brad Eddy. There was no further relief to be granted and the trial court should have dismissed this count on mootness grounds. This Court may affirm a trial court's decision when it reaches the right result, but for the wrong reason. *Gleason v Mich Dep't of Transp*, 256 Mich App 1, 3; 662 NW2d 822 (2003).

C. INDEMNIFICATION

Plaintiffs' claim for indemnification was premised on plaintiffs' claimed expectation that, in the future, they would incur costs as the result of remediating the Weiland defendants' alleged environmental contamination of the subject property. Plaintiffs' complaint did not specify whether the claim was based in contract (although they have cited to none), statute, or the common law. Plaintiffs did cite to certain subsections of the natural resources and environmental protection act (NREPA), MCL 324.101 *et seq.* Specifically, plaintiffs cited to a definitional section of the statute, MCL 324.20126, and to a section addressing liability for costs and damages related to environmental remediation, MCL 324.20126(1). But plaintiffs failed not only to identify the statute, or to specify that their request for indemnification arose from the statute, but failed even to plead how the Weiland defendants would be liable under that provision or how it serves to create a right of indemnification for un-incurred, expected future remediation costs. To the extent that plaintiffs sought to plead a claim under the NREPA, the pleading was inadequate to even put the Weiland defendants on notice of such a claim, much less adequately plead all of the elements of such a claim. See MCR 2.111(B)(1); *Rymal v Baergen*, 262 Mich App 274, 298 n 6; 686 NW2d 241 (2004) ("MCR 2.111(B)(1) provides that a plaintiff, in alleging a cause of action, need only plead factual allegations sufficient to reasonably 'inform the adverse party of the nature of the claims the adverse party is called on to defend[.]' ").

Moreover, to the extent that plaintiffs sought to plead a common-law claim for indemnification, which is an "equitable right to restitution of a party held liable for another's wrongdoing," *Hamilton v Telford*, 219 Mich App 225, 229; 556 NW2d 180 (1996) (emphasis omitted), they again failed to plead a basis for its application here. The trial court's grant of summary disposition on this claim under MCR 2.116(C)(8) was appropriate.

IV. CONCLUSION

In sum, the trial court properly granted the township defendants' motion for summary disposition on governmental immunity grounds, and it properly granted the Wieland defendants'

motion for summary disposition for failure to state cognizable claims and because of mootness. *Vectren Infrastructure Servs Corp*, 512 Mich at 614.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark T. Boonstra
/s/ Thomas C. Cameron