

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT A. SHAYA and RONALD COLEMAN,

Plaintiffs-Counter
Plaintiffs/Appellees/Cross-
Appellants/Cross-Appellees,

v

ANTHONY KARAM,

Defendant-Third-Party Plaintiff-
Intervening
Defendant/Appellee/Cross-
Appellee,

and

KAREN KARAM,

Defendant-Intervening
Defendant/Appellee/Cross-
Appellant/Cross-Appellee,

and

MITCHELL E. KARAM,

Third-Party Defendant-Intervening
Defendant/Appellee,

and

DANIEL D. SIMJANOVSKI, as trustee of the
JOSEPH A. KARAM SR. TRUST,

Intervening-Plaintiff, Counter-
Defendant/Appellant/Cross-
Appellee.

UNPUBLISHED
May 6, 2014

No. 308905
Macomb Circuit Court
LC No. 2010-000471-CK

Before: BORRELLO, P.J., and WHITBECK and K. F. KELLY, JJ.

PER CURIAM.

In this case involving plaintiffs Robert Shaya and Ronald Coleman's attempt to enforce an alleged interest in a negotiable instrument, intervening-plaintiff/counter-defendant Daniel Simjanovski, as trustee of the Joseph A. Karam, Sr. Trust (the Trust), appeals as of right a trial court order dismissing this case. The Trust contends that dismissal was improper because the court erred in denying its motion for post-judgment sanctions. Defendant/intervening defendant Karen Karam cross-appeals on the same grounds. Plaintiffs cross-appeal the same order, alleging that dismissal was improper because the court erred in granting the Trust's motion for summary disposition pursuant to MCR 2.116(C)(10). For the reasons set forth in this opinion, we affirm.

I. FACTS

This case arises from a transaction among friends and family members involving the Ebb Tides Motel in Pompano Beach, Florida. In 2007, Mitchell Karam owned a Development Interest in Ebb Tides, wherein he agreed to develop the property in exchange for a share of the motel's profits. Plaintiffs Robert Shaya and Ronald Coleman provided services and/or funding to Mitchell for the development work.

In November 2007, Mitchell's niece Karen Karam and nephew Anthony Karam agreed to purchase the Development Interest for \$1.1 million. The parties executed an "Assignment of Development Interest" at the office of Ken Karam, Mitchell's son and lawyer. Under the terms of the assignment, Karen and Anthony each paid Mitchell \$350,000 in cash and executed a Promissory Note (the original Note) for the remaining \$400,000.

The circumstances surrounding the execution of the original Note are unclear. During discovery, it became apparent that there were, at minimum, two versions of the document circulating amongst the interested parties. Ken testified that at the closing, he agreed to keep the original Note at his office. Ken thought there was only one original Note, but agreed that it was possible there were multiple originals signed that day that may have left his office. He was certain that he kept an original Note at his office that contained ink signatures.

Anthony and Karen were also unsure of how many versions of the original Note they signed. Karen testified that she did not know if she signed more than one original Note, but she thought Ken kept the "originals." Anthony testified that he did not think he signed more than one original Note but he was not 100-percent certain.

Sometime after executing the assignment, Mitchell paid plaintiffs \$350,000 for their investment in Ebb Tides. However, according to Coleman, Mitchell owed plaintiffs additional

monies for their investment and in lieu of cash, Mitchell signed an allonge¹ on December 11, 2007, in an attempt to assign Mitchell's interest in the original Note to plaintiffs. The allonge provides in pertinent part as follows:

Reference is made to the Four Hundred Thousand and 00/100 (\$400,000.00) Dollars Promissory Note dated November 15, 2007 (the "Note") from ANTHONY KARAM AND KAREN KARAM payable to the order of MITCHELL E. KARAM ("Assignor"). It is intended that this Allonge be attached to and made a permanent part of the Note.

Pay to the order of RONALD COLEMAN and ROBERT SHAYA ("Assignees").

Shaya testified that he drafted the allonge then gave it to Coleman who had Mitchell sign the allonge. Coleman testified that he went to Ken's office and obtained what, at the time, he thought was the original Note from Ken and he placed it with the allonge in an envelope. Ken testified that he had no knowledge of the allonge at the time it was executed and he did not recall giving Coleman the original Note; however, Ken testified that he may have provided Coleman with copies of the Note and he agreed that it was possible Coleman obtained an original.

Although Mitchell signed the allonge in December 2007, plaintiffs did not notify anyone about the allonge until April 20, 2009. Meanwhile, on June 9, 2008, Ken, as power of attorney for Mitchell, attempted to assign the original Note to Joseph Karam, Mitchell's brother and Anthony and Karen's father. Specifically, Ken accepted a \$500,000 check from Joseph and physically handed what he thought was the original Note to Joseph. At the time, Ken had no knowledge of the allonge. Ken testified that Joseph wanted to help his brother Mitchell settle an unrelated lawsuit. Ken testified that he may have had a document memorializing the assignment, but he could not recall and nobody could locate a formal assignment.

Karen testified that, after Ken gave Joseph the original Note, Joseph informed her that he was entitled to payment. Karen testified that she paid Joseph \$200,000 in January 2009, which represented her obligation on the Note; she introduced a bank statement at her deposition purporting to show a transfer of money into what was purportedly Joseph's account. Karen testified that after she paid Joseph, Joseph physically gave her the original Note and she brought the original Note (hereinafter "Karen Note") to her deposition. Joseph died in November 2009. At some point, according to the Trust, Karen's counsel, John Tatone scanned the Karen Note and circulated it via email to the other parties in this lawsuit.

In April 2009, Shaya sent letters to Karen and Anthony informing them of the allonge and advising them that payment was due by June 29, 2009. Anthony and Karen refused to pay and plaintiffs filed suit seeking payment in full. Plaintiffs attached to their complaint a black and

¹ An "allonge" is a "slip of paper sometimes attached to a negotiable instrument for the purpose of receiving further indorsements when the original paper is filled with indorsements." Black's Law Dictionary (9th ed).

white copy (“black and white note”) of what they claimed was the original Note. The trial court granted the Trust’s motion to intervene.

During discovery, Mitchell agreed that he owed plaintiffs money, and stated that he had no reason to dispute that he “signed a document signing over the note in question.” In addition, there was a dispute over the authenticity of the black and white note. On November 19, 2010, at a deposition, plaintiffs’ counsel brought a color copy of what was purportedly the original note (the Coleman Note). Shaya testified that he never possessed the Coleman Note, but stated that he had seen it before. He explained that Coleman obtained the document from Ken. Shaya agreed that the Coleman Note had some differences from the black and white note.

Coleman testified that at about the time that Mitchell signed the allonge, he went to Ken’s office and asked Ken for the original Note. Coleman testified that Ken gave him a document, which at the time he thought was an original because it contained signatures in blue ink. At that time, Coleman did not think the document was a color copy. He did not examine it closely and instead stuck it into an envelope with the allonge. Coleman agreed the Coleman Note differed from the black and white note. He did not know where the original to the black and white note was located. Coleman explained that Shaya must have attached the black and white note to the complaint. After reviewing the Karen Note, Coleman agreed that the Coleman Note was not an original and conceded that it was a color copy of an original.

On August 30, 2011, the Trust moved for partial summary disposition, arguing that plaintiffs did not have an enforceable interest in the original Note. The Trust argued that the allonge was not a valid endorsement of a negotiable instrument because it was not affixed to the original Note, as required by MCL 440.3204(1), which provides in pertinent part:

“Endorsement” means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words *is made on an instrument . . . For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.* [Emphasis added.]

The Trust also argued that plaintiffs were not holders in due course of the Note because, at best, plaintiffs only possessed a photocopy. In addition, the Trust argued that the Coleman Note was a printed version of the Karen Note. To support this theory, the Trust attached a report of expert witness Robert Kullman.

Plaintiffs responded, arguing that at the time Mitchell signed the allonge, Coleman obtained a “very well executed color forgery of the original note” (i.e. the Coleman Note) from Ken, which Coleman believed to be the original document. Plaintiffs disputed Kullman’s report and attached a report of their own expert, Jim Bradford, which contradicted the Kullman report. Plaintiffs argued they were holders in due course with rights of enforcement because they had a reasonable belief that the Coleman Note was an original.

The trial court granted summary disposition pursuant to MCR 2.116(C)(10). The trial court held that there were various documents purporting to be the original Note, but even assuming that plaintiffs had the original Note, they were not entitled to enforce it because the

allonge was not affixed to the document as required by MCL 440.3204(1). The court also held that plaintiffs were not holders in due course because plaintiffs did not possess an original negotiable instrument and the UCC did not protect claims of “non-delivery.”

Thereafter, the Trust moved for post-judgment sanctions pursuant to MCR 2.114, MCR 2.625(A) and MCL 600.2591, arguing that plaintiffs falsely represented that they had the original Note and advanced frivolous claims. Karen concurred in the Trust’s motion. The court denied the Trust’s motion, stating that it was “very familiar” with the case and had reviewed the pleadings, and, given, all of the facts and circumstances, found that it would be “unjustifiable” to conclude that plaintiffs’ claims were frivolous. The court dismissed and closed the case.

The Trust appeals as of right and argues the trial court erred in denying its motion for sanctions. Karen cross-appeals on the same basis. Plaintiffs cross-appeal, arguing that the trial court erred in granting the Trust’s motion for summary disposition.

II. ANALYSIS

Plaintiffs argue that the trial court erred in granting summary disposition. “This Court reviews the grant or denial of summary disposition de novo to determine if the moving party is entitled to judgment as a matter of law.” *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). In reviewing a court’s order on a motion under MCR 2.116(C)(10), we consider “the pleadings, admissions, and other evidence submitted by the parties in the light most favorable to the nonmoving party” to determine whether there is a genuine issue of material fact. *Brown v Brown*, 478 Mich 545, 551-552; 739 NW2d 313 (2007). “Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *Id.* at 552. To the extent that we must interpret and apply relevant statutory provisions, issues of statutory construction involve questions of law that we review de novo. *Nash v Salter*, 280 Mich App 104, 108; 760 NW2d 612 (2008).

Plaintiffs erroneously contend that the allonge and “holder in due course” are two separate theories under which they are entitled to enforce the Note. The two are inter-related. A promissory note is a negotiable instrument under the UCC. See MCL 440.3104(1). Endorsement of a promissory note is necessary to negotiate the note to a third-person. See MCL 440.3204(1) (“endorsement” means a “signature, other than that of a signer as maker, drawer, or acceptor . . . made on an instrument for the purpose of negotiating the instrument. . . .”) An allonge is a form of endorsement. See Black’s Law Dictionary (9th ed), *supra*. In cases such as this, proof of negotiation is necessary to establish status as a holder of a negotiable instrument. See Official Comment to UCC § 3-201 (“A person can become holder of an instrument when the instrument is issued to that person, or the status of holder can arise as the result of an event that occurs after issuance. ‘Negotiation’ is the term used in Article 3 to describe this post-issuance event.”). Thus, we will address both theories in the same analysis.

Plaintiffs’ erroneously contend that they are entitled to enforce the Note under the UCC. MCL 440.3301, a subsection of the UCC, provides that the following persons are entitled to enforce a negotiable instrument:

(i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to [MCL 440.3309] or [MCL 440.3418(4)]. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument. [MCL 440.3301.]

In this case, MCL 440.3309 and MCL 440.3418 are inapplicable, as they concern lost possession of an instrument (3309) and payment or acceptance by mistake (3418) and plaintiffs failed to create an issue of fact to support that they were (1) holders of the original Note or (2) nonholders in possession of the original Note with rights of a holder.

Given that the original Note was not issued to them, to prove that they were holders of the original Note, plaintiffs were required to show that Mitchell negotiated it to them. See Official Comment to UCC § 3-201. MCL 440.3201 defines “negotiation” in pertinent part as follows:

(1) “Negotiation” means *a transfer of possession*, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(2) [] [I]f an instrument is payable to an identified person, negotiation requires *transfer of possession* of the instrument *and its endorsement* by the holder. . . . [Emphasis added.]

The UCC’s Official Comment to this section provides in part:

Negotiation *always requires a change in possession* of the instrument because *nobody can be a holder without possessing the instrument*, either directly or through an agent. [Official Comment to UCC § 3-201, (emphasis added).]

In this case, Anthony and Karen executed a negotiable instrument payable to an identified person, i.e. Mitchell. Thus, effective negotiation of the instrument required: (1) transfer of possession to plaintiffs and (2) endorsement. MCL 440.3201(2). Plaintiffs failed to offer proof that either of these occurred.

There was no proof that the original Note was transferred to plaintiffs’ possession. MCL 440.3203(1) governs transfers of negotiable instruments and provides as follows:

An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

Plaintiffs failed to offer any proof that the original Note was delivered to their possession. Indeed, plaintiffs do not even contend that they possess the original Note. Instead, plaintiffs attached the black and white note to their complaint. Then, during discovery they produced the Coleman Note, which, at best, was a color copy of the original. Coleman agreed that the Coleman Note was not an original. Stated simply, plaintiffs were attempting to enforce a

photocopy of a negotiable instrument. Consequently, irrespective of the allonge, because the original Note was not transferred, plaintiffs cannot prove that it was negotiated to them.

Even if we were to address the validity of the allonge, the allonge was not a valid endorsement of a negotiable instrument. MCL 440.3204(1) governs endorsement under the UCC and it provides in pertinent part as follows:

“Endorsement” means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words *is made on an instrument* for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring endorser’s liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an endorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than endorsement. *For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.* [Emphasis added.]

In this case, the allonge referenced a \$400,000 note, but, given that there were multiple notes executed, it is unclear which note the allonge referred to and it therefore failed in that respect. Additionally, the allonge could not have been affixed to the original Note (i.e. the original Note) because, as discussed above, the original Note was never transferred to plaintiffs. Indeed, the allonge was never “affixed” to any instrument. *Random House Webster’s College Dictionary* (1997), defines “affix” in pertinent part as, “to fasten, join, or attach . . . to add on; append . . . something that is joined or attached. . . .” Here, Coleman did not physically attach, fasten, join, append, or add the allonge to any instrument. Thus, the allonge did not constitute a valid endorsement under MCL 440.3204(1).

Plaintiffs contend that they were holders in due course because Ken gave Coleman “a very convincing color copy” that “did not bear ‘apparent evidence of forgery’” and they cite MCL 440.3302(1) in support of this argument. Plaintiffs’ argument lacks merit.

MCL 440.3302 provides in relevant part as follows:

(1) [] “[H]older in due course” means the holder of an instrument if both of the following apply:

(a) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity.

(b) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored . . . (iv) without notice that the instrument contains an unauthorized signature or has been altered. . . . [Footnotes omitted.]

Here, plaintiffs were not “holders in due course.” As explained above, to be a holder in due course requires proof that the instrument was either issued or negotiated to the party

attempting to enforce the instrument. See MCL 440.3302(1)(a). In this instance, the original Note was neither issued nor negotiated to plaintiffs.

Moreover, to obtain status as a holder under MCL 440.3302, the instrument, when negotiated or issued to the party attempting enforcement must not “bear such apparent evidence or forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity.” MCL 440.3302(1)(a). In this case, the Coleman Note contained evidence of irregularities or incompleteness such that plaintiffs should have questioned its authenticity at the time Coleman obtained the document from Ken. As noted, plaintiffs had two different versions of the note; this alone should have put plaintiffs on notice of irregularities or incompleteness. Furthermore, as the trial court indicated, the Coleman Note showed “no original writings and no genuine signatures that one could likely find in an original.” Plaintiffs should have been aware that a document containing these deficiencies was irregular or incomplete.

Plaintiffs not only failed to offer any proof that they were holders of the original Note, but they also failed to offer proof that they were non-holders in possession of the Note with rights of a holder. See MCL 440.3301 (a non-holder in possession of a negotiable instrument may have rights of enforcement). Here, as discussed above, there was no evidence to create an issue of fact to support that plaintiffs were in possession of the original Note. Instead, plaintiffs attempted to enforce photocopies of different instruments. On these facts, plaintiffs could not prove that they were non-holders in possession with rights of a holder.

Plaintiffs argue that the black and white note should be deemed “authentic” pursuant to MCR 2.112(E)(1) because none of the parties challenged its authenticity in their pleadings. Plaintiffs’ argument is devoid of merit.

MCR 2.112(E)(1) provides in relevant part:

In an action on a written instrument, the execution of the instrument and the handwriting of the defendant are admitted unless the defendant specifically denies the execution or the handwriting and supports the denial with an affidavit filed with the answer. . . .

Here, none of the parties disputed that the original Note was executed or that Karen and Anthony signed it. Rather, at issue was whether the instrument was negotiated to plaintiffs for purposes of determining whether they had a right to enforce it under the UCC. MCR 2.112(E)(1) is unrelated to that issue and plaintiffs’ argument to the contrary lacks merit.

In sum, plaintiffs were not entitled to enforce the original Note under the UCC. Accordingly, the trial court did not err in granting the Trust’s motion for summary disposition.

The Trust and Karen argue that the trial court erred in denying the Trust’s motion and Karen’s concurring motion for sanctions. We review a trial court’s decision whether to impose sanctions under MCR 2.114 for clear error. *Guerrero v Smith*, 280 Mich App 647, 677; 761 NW2d 723 (2008). Similarly, we review for clear error a trial court’s decision to impose sanctions under MCR 2.625(A) and MCL 600.2591 on grounds that an action was frivolous. *1300 LaFayette East Coop, Inc v Savoy*, 284 Mich App 522, 533-534; 773 NW2d 57 (2009). “A

decision is clearly erroneous when, although there may be evidence to support it, we are left with a definite and firm conviction that a mistake has been made.” *Guerrero*, 280 Mich App at 677.

The Trust alleged that plaintiffs violated MCR 2.114 when plaintiffs and their counsel signed discovery documents wrongly representing that they had possession of the original Note and that sanctions were therefore mandatory under MCR 2.114(E).

MCR 2.114(C)(1) requires an attorney to sign “every document” in a proceeding. A signature of either an attorney or a party “constitutes a certification” that, among other things, “the document is well grounded in fact,” and “is not interposed for any improper purpose....” MCR 2.114(D)(2) and (3). “If a pleading is signed in violation of MCR 2.114(D), the party or attorney or both must be sanctioned [under MCR 2.114(E)].” *Attorney Gen. v Harkins*, 257 Mich App 564, 576; 669 NW2d 296 (2003).

During discovery, plaintiffs denied a request to admit that they did not possess the original Note, denied a request to admit that the allonge “is not attached to the original [Note],” and stated that they would make the original Note available for inspection. Plaintiffs made similar responses to the Trust’s discovery requests. Plaintiffs also made responses that acknowledged the possibility that Karen may have possessed the original and stated that Ken provided Coleman a document “purporting to be the original note.”

Having reviewed the record, we are not left with a definite and firm conviction that the trial court made a mistake in declining to award sanctions under MCR 2.114(E). Although plaintiffs ultimately agreed that they only possessed photocopies, Coleman testified that, at the time he received the Coleman Note from Ken, he thought it was an original because the signatures were in blue ink. He explained that he finally realized it was not an original after he inspected the Karen Note while attending depositions in this proceeding. Coleman’s testimony and plaintiffs’ responses to the discovery requests were supported by the fact that none of the individuals involved knew how many original notes were signed at closing or where the originals were presently located. It was possible that Coleman could have obtained, or thought he obtained, one of the originals. Anthony and Karen testified that they could have signed more than one original note. Ken testified that it was possible that more than one original note was executed and he agreed that multiple people may have left the office with an “original.” Ken also testified that he may have given copies of the original note to Coleman and he agreed that Coleman may have obtained an original. Moreover, plaintiffs’ discovery responses, when viewed as a whole, acknowledged the possibility that Karen possessed the original. Furthermore, while the Trust maintained that the Coleman Note was merely a copy of the Karen Note, there were competing expert reports on that issue.

In sum, plaintiffs’ discovery responses were well-grounded in fact where it was unclear how many originals were executed at closing, where nobody knew the location of all of the originals, and where plaintiffs’ responses as a whole appeared to acknowledge the possibility that Karen possessed the original note. Accordingly, the trial court did not clearly err in declining to impose sanctions under MCR 2.114(E).

The Trust also moved for sanctions pursuant to MCR 2.114(F), MCR 2.625(A) and MCL 600.2591, arguing that plaintiffs’ claim was frivolous.

MCR 2.114(F) states that “a party pleading a frivolous claim . . . is subject to costs as provided in MCR 2.625(A)(2).” MCR 2.625(A)(2), in turn, states: “if the court finds . . . an action . . . was frivolous, costs shall be awarded as provided by MCL 600.2591.” MCL 600.2591(1) provides that when a court determines that a party’s claim is frivolous, the court “shall award to the prevailing party the costs and fees incurred by that party. . . .” The statute defines “frivolous” as any of the following conditions:

(i) The party’s primary purpose in initiating the action . . . was to harass, embarrass, or injure the prevailing party.

(ii) The party had no reasonable basis to believe that the facts underlying that party’s legal position were in fact true.

(iii) The party’s legal position was devoid of arguable legal merit. [MCL 600.2591(3)(a).]

Given the facts and circumstances discussed above, it was not clear error for the court to conclude that plaintiffs had a reasonable basis to believe the truthfulness of the facts underlying their claim and that their claim had arguable legal merit. At least at the outset, it was unclear whether plaintiffs had a legal right to recover on the original Note. There were multiple parties involved in the transactions at issue in this case, and there were multiple notes circulating among the parties. On at least two occasions, individuals attempted to assign notes and there were questionable transactions between Joseph and Karen near the time of Joseph’s death. Many of the individuals involved in the transactions appeared to owe each other money. Plaintiffs tried to recover money that was owed to them by drafting an allonge. Mitchell admitted that he owed plaintiffs money for their involvement in Ebb Tides and he did not dispute plaintiffs’ assertion that he signed a document attempting to assign the original Note. Thus, although the allonge failed as a matter of law, at the outset of the case, it was reasonable for plaintiffs to conclude that they arguably had a legal right to recover on the original Note.

Additionally, plaintiffs’ argument that the allonge was effective even though it was not physically attached to the instrument arguably had some legal merit. On at least one occasion, a federal district court has held that an allonge need not be physically attached to an instrument to be effective under MCL 440.3204(1) where the intent of the parties is otherwise clear. See *Livonia Prop Holdings, LLC v 12840-12976 Farmington Rd Holdings, LLC*, 717 F Supp 2d 724 (ED Mich 2010) (considering the intent of the parties in holding that an allonge was an effective endorsement under MCL 440.3204(1) even though it was not physically attached to the negotiable instrument).

In sum, the trial court did not clearly err in declining to award sanctions under MCR 2.114(F), MCR 2.625(A), and MCL 600.2591.

The Trust also argues that plaintiffs’ complaint violated MCR 2.112(E) because plaintiffs “did not attach the instrument that [they] later sought to enforce.” However, the Trust fails to articulate how plaintiffs violated MCR 2.112(E) or how it is entitled to sanctions under this court rule. Instead, the Trust cites to MCR 2.113(F)(1), which, provides in part that in actions based on a written instrument, copies of the instrument must be attached to the party’s pleading barring

certain exceptions. The Trust then argues that plaintiffs “violated MCR 2.114(D)-(E)” “when they attached a version of the Promissory Note to which they admittedly had only a black and white photocopy to the Complaint only to later begin relying upon Karen’s. . . .”

To the extent the Trust claims it was entitled to sanctions under MCR 2.114(D)-(E), that argument was addressed and rejected above. To the extent that the Trust advances a separate theory on which it should have been awarded sanctions, the Trust fails to present a cognizable argument and it has therefore abandoned the issue. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (“It is not sufficient for a party simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position” (quotation omitted)).

Separately, Karen argues that sanctions were required under MCR 2.313(C), which allows sanctions where a party falsely denies a request for admission. However, neither the Trust nor Karen referenced this court rule in their motions in the lower court. Absent manifest injustice, issues raised for the first time on appeal in a civil case are not subject to review. *Booth Newspapers, Inc v Univ of Mich Bd. of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). Here, Karen cannot show that failure to address her argument will result in manifest injustice and we therefore decline to address the argument.

Affirmed. No costs awarded, none of the parties having prevailed in full. MCR 7.219(A).

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly