

STATE OF MICHIGAN
COURT OF APPEALS

MARY MCCORMICK,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 193967

Wayne Circuit Court

LC No. 95-532266

MICHAEL E. MCCORMICK, SR., FRANK K.
RHODES, III, DIANE L. AIMAR-SAYLOR,
FRANK K. RHODES AND ASSOCIATES, P.C.,
ERIC A. BRAVERMAN, WAYNE COUNTY
SHERIFF ROBERT A. FICANO, DEPUTY
SHERIFF BLACKMORE, DEPUTY SHERIFF
COOK, DEPUTY SHERIFF FRANCES BAKER,
and COUNTY OF WAYNE,

Defendants-Appellees.

Before: Markey, P.J., and Jansen and White, JJ.

WHITE, J. (concurring in part and dissenting in part)

I concur in the majority's determination to affirm the grants of summary disposition to defendants. However, I cannot agree with the assessment of sanctions on the basis that plaintiff's claims were frivolous and thus respectfully dissent from the majority's upholding that determination on the basis that plaintiff's claims are without merit.

Plaintiff filed the instant complaint November 1, 1995, and alleged that her husband's death in October 1992 put an end to the divorce litigation pending in Wayne Circuit Court (on remand from this Court).¹ Her claims of federal civil rights violations under 42 USC § 1983 and her state tort claims flowed from this premise. This Court disagreed with plaintiff's argument in *McCormick v McCormick*, 221 Mich App 672, 678; 562 NW2d 504 (1997), finding that plaintiff's marriage was dissolved and the actual divorce was final before Edward McCormick died. However, that decision was issued in February 1997, more than a year after plaintiff filed the instant complaint.

I cannot agree that plaintiff's position was devoid of legal merit such that her suit should have been deemed frivolous and sanctions imposed. In *Yeo v Yeo*, 214 Mich App 598, 600-601; 543 NW2d 62 (1995), this Court determined that the trial court improperly bifurcated the proceedings when it granted a divorce judgment that reserved the division of property to a later date. This Court noted that MCR 3.211(B)(3), which requires that a judgment of divorce contain a property settlement, controls as to the mandatory contents of a judgment of divorce, and further noted:

Compliance with 3.211(B)(3) ensures that divorce cases are not tried piecemeal subjecting the parties to a multiplicity of orders that could be appealed. *Ritzer v Ritzer*, 243 Mich 406, 410; 220 NW 812 (1928). Cf. *Dobrzenski v Dobrzenski*, 208 Mich App 514, 515; 528 NW2d 827 (1995). . . . because the judgment of divorce did not comply with MCR 3.211(B)(3), we reverse the trial court's denial of plaintiff's motion to set aside the judgment of divorce and vacate the judgment of divorce.

Plaintiff argued that because divorce proceedings may not be bifurcated, there was no final divorce judgment while her appeal of the property division was pending. In plaintiff's eyes, as there was no final divorce judgment, at Edward McCormick's death the bank accounts passed to her and should not have been probated because she was the appointed primary beneficiary with right of survivorship on one account and the IRA beneficiary on the other. While the case law on bifurcation does not compel the result urged by plaintiff, it provides sufficient basis for a good-faith argument.

Plaintiff also premised claims on the absence of a proper circuit court order committing her to jail. The only document in the lower court record is a modified standardized Friend of the Court form applicable to defendants who are in arrears under a support order, and is dated June 28, 1993, three days after plaintiff was placed in jail for contempt. Thus, plaintiff's argument that she was confined in jail absent a valid order was not frivolous.

I would reverse the award of sanctions.

/s/ Helene N. White

¹ Plaintiff alleged that the parties reconciled their differences during Mr. McCormick's last illness and that he wished to be with and married to plaintiff, who was his principal care giver during this time.