STATE OF MICHIGAN

COURT OF APPEALS

RICHARD W. CLARK,

Plaintiff-Appellee,

v

PEGGY MARIE CLARK,

Defendant-Appellant.

UNPUBLISHED
October 7, 1997

No. 194180
Genesee Circuit Court
LC No. 82-143526

Before: Sawyer, P.J., and Hood and Hoekstra, JJ.

PER CURIAM.

Defendant appeals by leave granted from an order granting plaintiff summary disposition pursuant to MCR 2.116(C)(7) on her claim that plaintiff committed fraud when he procured a promissory note at the time of their divorce in 1984. We affirm.

In 1984, plaintiff and defendant were divorced. As part of the property settlement, plaintiff was awarded a promissory note from 1982, which had an outstanding value of $40,000. Plaintiff was awarded the note and any interest it would accrue. The specific language of the judgment provided:

> ORDERED that *Plaintiff shall* hereafter *have* and hold as his own, *free from any claim of defendant*, . . . the promissory *note* dated 1/9/82, . . . payable to plaintiff, *and any unpaid principal and interest* thereon. [Emphasis added.]

In 1990, plaintiff received a check for $67,000 from the holder of the note. The check made notation that it was for payment on the promissory note. The check was actually written as a $100,000 check with $33,000 in taxes taken out. The $100,000 was reported as income by plaintiff. When defendant discovered that plaintiff's income took a $100,000 climb in 1990, she instituted a proceeding to obtain more child support. During the pendency of that proceeding, specifically in September 1992, she learned that plaintiff had received the $67,000 as payment on the note; that he reported the payment as if it were $100,000 of income; and that he considered the money to be the $40,000 owed plus eight years of interest.

In April 1995, more than two years after learning this information, defendant filed an amended motion requesting not only an increase in child support, but also an evidentiary hearing with regard to the promissory note and whether plaintiff had committed fraud when he procured it at the time of the divorce. Defendant essentially argued that plaintiff knew all along that the asset would pay more than $40,000 and for that reason, he should have to forfeit the asset as procured by fraud. The trial court granted summary disposition to plaintiff on that issue, finding that any motion by defendant to amend the judgment or adjust the property distribution was untimely. We agree.

MCR 2.612(C) sets forth the procedure a party must utilize in order to obtain relief from judgment. MCR (C)(1)(c) provides that a party may obtain relief if there is "fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party." MCR (C)(2) institutes a one-year time limit for obtaining relief under that subsection. Defendant did not attempt to obtain relief from the property judgment for approximately eleven years. Her claim was therefore time barred.

We do not accept defendant's position that MCR 2.612(f) operates to allow her allegations to proceed. MCR 2.612(C)(1)(f) provides relief from a judgment under circumstances that are not otherwise set out in the court rule. Unlike claims made under MCR 2.612(C)(1)(c), it does not have a one-year time limit. In *McNeil v Caro Community Hosp*, 167 Mich App 492, 497; 423 NW2d 241 (1990), this Court explicitly set out the requirements for MCR 2.612(C)(1)(f):

> Three requirements must be fulfilled before relief may be granted . . . (1) The reason for setting aside the judgment must not fall under subrules [(a) through (e)]; (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside; and (3) extraordinary circumstances must exist which mandate setting aside the judgment in order to achieve justice.

See also *Altman v Nelson*, 197 Mich App 467, 478; 495 NW2d 826 (1992). Here, defendant's amended motion alleges that plaintiff committed fraud when obtaining the promissory note as part of the judgment. The issue is covered by subsection (c), and thus (f) does not operate to grant defendant relief.

Defendant's position that her claim is not really one for an amended judgment based on fraud, but rather is one for an equitable distribution of property under *Sands v Sands*, 442 Mich 30; 497 NW2d 493 (1993), is not persuasive. In *Sands*, the defendant husband acted atrociously throughout the divorce proceedings and attempted to hide numerous assets. Nevertheless, the trial judge made an even distribution of property. The plaintiff appealed the divorce judgment. The Supreme Court upheld the decision of this Court to remand the case, finding that where a party hides assets, an even distribution of property may not be equitable and that a trial court must divide assets equitably. *Id.* at 31, 36. *Sands* does not create a ground for relief from a judgment. Rather, the case discusses a trial court's role within the context of an appeal from a property division in a divorce judgment. Moreover, it is interesting to note that defendant in this case never alleged that the original property settlement was inequitable. She simply argues that based on what she learned several years after the divorce, one of the assets was misrepresented.

The purpose of the one-year time limit of MCR 2.612(C)(2) is to promote the finality of judgments. Even where the one-year time limit may be harsh, the public policy with regard to the finality of judgments is well rooted in our state. See *Rucinski v Rucinski*, 172 Mich App 20, 22; 431 NW2d 241 (1988); *Columbia Casualty v Klettke*, 259 Mich 564, 565; 244 NW 164 (1984). The one-year time limit has been applied in the same situation as is presented here and we will not deviate from its application. *Kiefer v Kiefer*, 212 Mich App 176; 536 NW2d 873 (1995); *Nederlander v Nederlander*, 205 Mich App 123; 517 NW2d 768 (1994).

In addition, we do not accept defendant's argument that her motion was really an independent claim for fraud against plaintiff and as such, her claim should proceed. Independent causes of action are not subject to the one-year time limit imposed for motions for relief. MCR 2.612(C)(3). In *Nederlander, supra* at 125-127, this Court extensively addressed this precise issue and held that a party to a divorce could not maintain an independent action for fraud. The plaintiff attempted to maintain an independent action for fraud because her motion for relief from the judgment based on fraud was untimely. This Court noted that to hold that an independent action was appropriate where the time limit for relief from judgment had expired would be contrary to the public policy behind the finality of judgments. *Id.* Further, in this case, we note that where defendant believed, as she testified, that fraud was being committed at the time of the divorce judgment, she should have taken steps to protect herself at that time, namely by adding a provision to the judgment that any hidden assets or misrepresented assets could be the subject of later action. See *Wiand v Wiand*, 205 Mich App 360, 368; 522 NW2d 132 (1994). Defendant also should have taken steps within one year to obtain relief from the judgment where she suspected fraud. *Nederlander, supra* at 127.

Finally, we disagree that MCL 600.5855; MSA 27A.5855 tolls the period within which a party may move for relief from a judgment based on fraud. The statute pertains to concealment of causes of action. Here, there are no allegations that plaintiff concealed a cause of action with which defendant could proceed. Rather, defendant argues that plaintiff concealed his fraud with regard to an asset, a claim that cannot proceed as an independent cause of action under the circumstances. Moreover, we find that even if the statute tolled defendant's claims for two years, defendant did not make any move to amend the judgment or obtain relief based on fraud or maintain an independent cause of action within two years of learning that one may be present.

Affirmed.

/s/ David H. Sawyer
/s/ Harold Hood
/s/ Joel P. Hoekstra