

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

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LARRY TOUSSAINT,

Plaintiff/Counterdefendant-Appellant,

v

SHIRLEY TOUSSAINT,

Defendant/Counterplaintiff-Appellee.

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UNPUBLISHED

March 20, 1998

No. 199179

St. Clair Circuit Court

LC No. 94-000211-DM

Before: Doctoroff, P.J., and Reilly and Allen\*, JJ.

PER CURIAM.

In this divorce action, plaintiff appeals by right from his September 9, 1996 divorce judgment. On appeal, plaintiff challenges the trial court's denial of his motions to set aside the March 12, 1996 divorce judgment and for new trial, and the order imposing sanctions under MCR 2.114. We affirm.

Plaintiff commenced this action in 1994 to end his twenty-one year marriage to defendant. In December 1995, the parties reached a settlement on all issues except for alimony and the distribution of \$17,000 held in escrow from the sale of the marital home. The trial court entered a divorce judgment on March 12, 1996, reserving the unresolved issues for later decision. The court subsequently held an evidentiary hearing at which it decided all the outstanding issues, including issues that surfaced after the December 1995 hearing, involving defendant's interest in plaintiff's pension and other retirement benefits. Plaintiff thereafter moved to set aside the March 1996 judgment on the ground that the court violated MCR 3.211(B)(3) by entering a judgment that disposed of less than all the property issues. The trial court acknowledged its error, but rather than vacate the judgment, the court renamed it an interim order for custody, support and visitation. The court then entered a divorce judgment on September 9, 1996 that complied with MCR 3.211(B)(3). Plaintiff again objected, arguing that the court should have set aside the March judgment and retried the disputed issues. The trial court denied the request. Plaintiff then moved for a new trial on the ground that the March judgment was defective. The court denied the motion and imposed sanctions on plaintiff under MCR 2.114.

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Plaintiff first contends that the trial court erred in not setting aside the divorce judgment and granting him a new trial because the court improperly entered a judgment without determining the parties' property rights as required by MCR 3.211(B)(3). We disagree. The question presented requires that we determine the appropriate remedy for the trial court's failure to comply with MCR 3.211(B)(3). Under the circumstances of this case, where the court has resolved all disputed issues and entered a judgment that complies with the court rules, we conclude that the court's error was harmless and decline to vacate the March 12, 1996, judgment as amended.

A judgment of divorce must comply with the requirements of MCR 3.211(B). *Yeo v Yeo*, 214 Mich App 598, 601; 543 NW2d 62 (1995). In pertinent part, MCR 3.211(B) requires that a divorce judgment include:

(2) a determination of the rights of the parties in pension, annuity, and retirement benefits, as required by MCL 552.101(4); MSA 25.131(4).

(3) a determination of the property rights of the parties;

In *Yeo, supra*, this Court vacated a divorce judgment because the trial court failed to comply with the requirements of MCR 3.211(B)(3). In so holding, this Court noted that compliance with MCR 3.211(B)(3) ensures that divorce cases are not tried piecemeal, subjecting the parties to a multiplicity of orders that could be appealed. *Id.* at 601.

Plaintiff argues that under *Yeo, supra*, he is entitled to a new trial because the trial court initially entered a judgment that reserved property issues. Although we agree that the trial court erred in entering the March 1996 judgment, we decline to grant plaintiff his requested relief because the court remedied its error by resolving the remaining issues and entering a new judgment of divorce that complied with MCR 3.211(B). To vacate the March, 1996 judgment and order a new trial would serve only to waste judicial resources because the parties have fully litigated the disputed issues. The court rule is designed to ensure one final order from which an aggrieved party in a divorce may appeal, not to provide an appellate parachute for a party who is dissatisfied with the outcome at trial. Unlike the plaintiff in *Yeo, supra*, plaintiff did not apply for leave to appeal from the first judgment and seek a stay of proceedings. Instead, plaintiff fully litigated the remaining property issues, eventually obtaining a judgment that complied with MCR 3.211(B). We hold, therefore, that the trial court's error in entering the original judgment was harmless and affirm the September 9, 1996 judgment.

Plaintiff next argues that the trial court clearly erred in imposing sanctions under MCR 2.114 for his filing of a meritless motion for new trial. We disagree. This Court reviews the trial court's decision to impose sanctions for clear error. *Schadewald v Brulé*, 225 Mich App 26, 41; 570 NW2d 788 (1997). The imposition of a sanction under MCR 2.114(E) is mandatory upon the court's finding that the pleading was signed in violation of the court rule. *Id.* Sanctions are appropriate where a party has reason to know, based on a prior ruling of the trial court, that a particular course of action lacks merit. See *Vermilya v Dunham*, 195 Mich App 79, 84; 489 NW2d 496 (1992). In this case, the trial court properly found that plaintiff filed his motion to delay the proceedings and increase the cost of the litigation. Although plaintiff filed only one pleading captioned "motion for new trial," the record reflects

that plaintiff had twice before presented his argument and moved for the relief. Therefore, we conclude that the trial court did not clearly err in imposing sanctions because plaintiff knew, based on the court's prior rulings, that his motion for new trial lacked merit. Further, the trial court did not abuse its discretion in awarding \$500 for attorney fees incurred in responding to the motion. *Maryland Casualty Co v Allen*, 221 Mich App 26, 32; 561 NW2d 103 (1997).

Affirmed.

/s/ Martin M Doctoroff

/s/ Maureen Pulte Reilly

/s/ Glenn S. Allen, Jr.