

STATE OF MICHIGAN
COURT OF APPEALS

TERRANCE BAILEY,

Plaintiff-Appellant,

v

CITY OF KALAMAZOO,

Defendant-Appellee.

UNPUBLISHED

May 2, 2000

No. 214826

Kalamazoo Circuit Court

LC No. 98-000493 CZ

Before: Wilder, P.J., and Sawyer and Markey, JJ.

MEMORANDUM.

Plaintiff, acting *in propria persona*, appeals as of right from the trial court's order granting defendant's motion for summary disposition. We affirm.

Plaintiff filed an original action pursuant to MCR 2.612(C)(3) seeking relief from a default judgment entered in *City of Kalamazoo v Various Real & Personal Properties*, Kalamazoo Circuit Court Docket No. D90-2180-CZ, a forfeiture case. He claimed that the judgment was obtained as a result of fraud perpetrated on the court when counsel for the city misrepresented the nature of the allegations in the complaint. Defendant moved for summary disposition pursuant to MCR 2.116(C)(7) and (8), arguing that plaintiff's complaint was time-barred, and that it failed to state a claim on which relief could be granted because it did not state a cause of action for fraud or misrepresentation. The trial court granted the motion pursuant to MCR 2.116(C)(8).

We review a trial court's decision on a motion for summary disposition *de novo*. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff argues that the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. Plaintiff's independent action sought relief from the default judgment entered in the forfeiture case on the ground that that judgment was obtained by fraud on the court. This type of fraud is perpetrated when a material fact is concealed from the court, or when a material misrepresentation is made to the court. *Postill v Postill*, 116 Mich App 578, 580-581; 323 NW2d 491 (1982). Here, plaintiff contends that in the forfeiture case, counsel for the city misrepresented the contents of the complaint to the court, thereby perpetrating a fraud on the court. This allegation is

without merit. The court in the forfeiture case read the complaint and determined that it provided adequate notice to plaintiff. Plaintiff's assertion that the court in the forfeiture case was unaware of the true nature of the contents of the complaint, and thus was misled, is not supported by the record. Summary disposition was proper under MCR 2.116(C)(8). Amendment of the complaint pursuant to MCR 2.116(I)(5) would have been unjustified for the reason that plaintiff could not have alleged any new or different facts that would state a claim for fraud on the court. *Postill, supra*.

Finally, plaintiff's assertion that the trial court erred in relying on this Court's dismissal of his claim of appeal in the forfeiture action (Docket No. 151634) for the reason that the appeal was not filed in a timely manner is without merit. Michigan does not recognize the prison mailbox rule. *Walker-Bey v Dep't of Corrections*, 222 Mich App 605, 606; 564 NW2d 171 (1997).

Affirmed.

/s/ Kurtis T. Wilder
/s/ David H. Sawyer
/s/ Jane E. Markey