

STATE OF MICHIGAN
COURT OF APPEALS

SYBIL JAQUES,

Plaintiff-Appellant/Cross-Appellee,

v

HENRY BASKIN,

Defendant-Appellee/Cross-
Appellant,

and

THE BASKIN LAW FIRM, P.C., f/k/a HENRY
BASKIN, P.C.,

Defendant-Appellee.

UNPUBLISHED

January 9, 2007

No. 270715

Wayne Circuit Court

LC No. 04-436600-CK

Before: Sawyer, P.J., and Bandstra and Murray, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendants' motion for summary disposition of her breach of contract and accounting claims pursuant to MCR 2.116(C)(10). Defendant Henry Baskin ("Baskin") cross-appeals as of right the trial court's order denying defendants' first motion for summary disposition pursuant to MCR 2.116(C)(8) and MCR 2.116(C)(10). We affirm.

Plaintiff contends that the trial court improperly granted defendants' motion for summary disposition based on the voluntary payment doctrine. We disagree.

We review a lower court's determination regarding a motion for summary disposition *de novo*. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff's claim. *Id.* "In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, or any other documentary evidence submitted in a light most favorable to the nonmoving party to decide whether a genuine issue of material fact exists." *Singer v American States Ins*, 245 Mich App 370, 374; 631 NW2d 34 (2001). Summary disposition is appropriate only if there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. *MacDonald, supra* at 332.

Pursuant to the voluntary payment doctrine, a “voluntary payment,” i.e., “one made with a full knowledge of all the circumstances upon which it is demanded, and without artifice, fraud or deception on the part of the payer, or duress of the person, or goods of the person making the payment” may not be recovered by the payor. *Pingree v Mut Gas Co*, 107 Mich 156, 157; 65 NW 6 (1895). However, “[i]t is well-settled law that a payment, although voluntarily made, if made under a mistake of a material fact, may be recovered, even if the mistake be due to a lack of investigation.” *Couper v Metro Life Ins Co*, 250 Mich 540, 544; 230 NW 929 (1930); see also *Wilson v Newman*, 463 Mich 435, 441-442; 617 NW2d 318 (2000) (holding that a payor may recover a payment made under a mistake of fact if the payee has not relied to his or her detriment on the payment). Yet, “where money has been voluntarily paid with full knowledge of the facts, it cannot be recovered on the ground that the payment was made under a misapprehension of the legal rights and obligations of the person paying.” *Montgomery Ward & Co v Williams*, 330 Mich 275, 285; 47 NW2d 607 (1951), quoting 53 ALR 949.

We agree with the trial court that plaintiff’s payment was voluntary given her knowledge of the surrounding facts and circumstances. First, plaintiff signed the engagement agreement, which provided that defendants would prepare interim billings based on the hours expended on her divorce case. Plaintiff was fully aware at the time that she made the payment that she had not been given a final bill despite her alleged request for an invoice. A party to a contract is presumed to have knowledge regarding her rights and obligations under that contract. *Scholz v Montgomery Ward & Co*, 437 Mich 83, 92; 468 NW2d 845 (1991); *Allstate Ins Co v Freeman*, 432 Mich 656, 711; 443 NW2d 734 (1989) (Boyle, J., concurring); *Sponseller v Kimball*, 246 Mich 255, 260; 224 NW 359 (1929). Despite her presumed knowledge that she was entitled to but had not received a billing statement, plaintiff paid defendants for their services on her own initiative and in an amount she, herself, determined.

Second, plaintiff was aware that Baskin requested \$1 million in attorney fees from plaintiff’s husband, Leonard Jaques, during property settlement negotiations. Although plaintiff contended that Baskin had earlier “vaguely mentioned” that her total fees amounted to only \$650,000, plaintiff herself admittedly calculated defendants’ attorney fees to be \$1 million. Moreover, there is no evidence that Baskin coerced plaintiff into paying him this amount. Plaintiff testified that she was fully aware of the amount she paid Baskin, that Baskin never asked her for \$1 million, and that she “voluntarily” paid Baskin \$1 million to settle her account with defendants. Plaintiff’s subsequent attempt to pay Baskin an additional \$25,000 is further evidence that she voluntarily paid Baskin for his services. Similarly, Baskin’s subsequent refusal of plaintiff’s offer to purchase a sports car from plaintiff for less than the vehicle’s actual value is further evidence that Baskin was not attempting to coerce excessive gifts from his client.

Third, we disagree with plaintiff’s assertion that she was insufficiently aware of the surrounding facts and circumstances at the time she paid Baskin because she did not know what other attorneys in the area would have charged for their services. Plaintiff relies on an unpublished case in support of her argument. In *Slobin v Henry Ford Health Care*, unpublished opinion of the Court of Appeals, issued July 9, 2002 (Docket No. 216196), slip op at 6, aff’d in part and rev’d in part, 469 Mich 211 (2003), this Court found the plaintiff’s “voluntary payment” for medical records to be recoverable because the plaintiff was not aware that the charges that he agreed to pay were excessive for the requested services. However, in contrast to the usual charge for medical records, the going rate for a divorce attorney is irrelevant in this case. Plaintiff

admitted that she required a high-end attorney to “stand up to” her husband, himself a prominent attorney. This Court has found that such considerations may be taken into account in calculating an attorney’s fees. *Olson v Olson*, 256 Mich App 619, 636-637; 671 NW2d 64 (2003).

Fourth, plaintiff cannot recover her voluntary payment to Baskin for his services merely because she allegedly was “emotionally fragile” at the time as a result of years of physical and emotional abuse by her husband. Plaintiff also asserted that she was taking an antidepressant during the relevant proceedings, and claimed that Baskin took advantage of this situation by ingratiating himself into her life and making her feel protected while she was vulnerable. However, plaintiff always conducted her own business activities and never had a guardian appointed to handle her affairs.

“The well-settled test of mental capacity to contract, properly adopted by the trial court, is whether the person in question possesses sufficient mind to understand, in a reasonable manner, the nature and effect of the act in which he is engaged. However, to avoid a contract it must appear not only that the person was of unsound mind or insane when it was made, but that the unsoundness or insanity was of such a character that he had no reasonable perception of the nature or terms of the contract.” [*Howard v Howard*, 134 Mich App 391, 396; 352 NW2d 280 (1984), quoting *Star Realty, Inc v Bower*, 17 Mich App 248, 250; 169 NW2d 194 (1969).]

There is no evidence in this case that plaintiff lacked the mental capacity to enter into a contract or to voluntarily satisfy her debt with defendants. Plaintiff was admittedly fully aware of the events around her and of her own actions and consequences of those actions when she chose to pay Baskin \$1 million to settle her account with defendants. Accordingly, the trial court properly dismissed plaintiff’s claims pursuant to the voluntary payment doctrine.

We need not address Baskin’s contention on cross-appeal that the trial court should have dismissed plaintiff’s claims following defendants’ first motion for summary disposition, our decision affirming the trial court’s final order rendering that issue moot. We affirm.

/s/ David H. Sawyer

/s/ Richard A. Bandstra