

STATE OF MICHIGAN
COURT OF APPEALS

MARK H. YATES,

Plaintiff-Appellee,

v

PATRICIA A. YATES,

Defendant-Appellant,

and

LORAN FAULHABER,

Defendant.

UNPUBLISHED

March 25, 1997

No. 188445

Lenawee Circuit Court

LC No. 94-015683 TM

Before: Corrigan, P.J., and J.B. Sullivan* and T.G. Hicks,** J.J.

PER CURIAM.

Defendant Patricia Yates, appeals by right a July 31, 1995, order denying her motion for leave to file an amended complaint and dismissing the case with prejudice. We affirm.

The long and complicated history of the present case began with a 1981 divorce judgment dissolving the marriage of plaintiff, Mark Yates, and defendant, Patricia Yates, entered by Washtenaw Circuit Court Judge William F. Ager. The judgment provided that the marital home, which was located in Lenawee County, was to be sold "at the earliest possible date," with plaintiff to be awarded fifteen thousand dollars from the proceeds. A 1985 amendment to the judgment conveyed the property to defendant, ordered her to pay plaintiff a total of fourteen thousand dollars within eighteen months, and granted plaintiff a lien on the property to secure payment.

* Former Court of Appeals Judge, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

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

On September 3, 1987, upon motion by plaintiff, who had not yet been paid, the Washtenaw Circuit Court entered an order appointing Jay Tressler as receiver and ordering sale of the property. This order was followed on October 20, 1987, by an amended order appointing Thomas Stringer as co-receiver. The property was sold to James and Terry Sosko, and, on March 10, 1988, the Washtenaw Circuit Court entered an order approving distribution of the proceeds. Following a satisfactory accounting of the proceeds of the sale, the Washtenaw Circuit Court dissolved the receivership and discharged Mr. Tressler and Mr. Stringer from their liability and obligations as co-receivers. Defendant did not appeal the orders of the Washtenaw Circuit Court.

On November 12, 1991, defendant filed a complaint in Lenawee Circuit Court alleging fraud against the receivers, Mr. Tressler and Mr. Stringer, the purchasers, Mr. and Mrs. Sosko, and the real estate agent, Grace Edwards. Lenawee Circuit Judge Kenneth E. Glaser dismissed the complaint in three separate orders: a voluntary dismissal with prejudice entered on May 7, 1992, at defendant's request; and grants of summary disposition as to the other defendants. Defendant did not appeal the orders of the Lenawee Circuit Court.

Defendant then filed a motion in Washtenaw Circuit Court seeking to set aside the sale of the property and the dismissal of the receivers. On March 8, 1993, the court denied the motion finding that the corresponding allegations of fraud were already the subject of the 1991 Lenawee County lawsuit, and that defendant "did have remedies in the Lenawee County action." Defendant did not appeal this decision, but rather made a motion to "remove cause of action" to Lenawee County. The motion, signed by both defendant and her counsel, stated that the County of Lenawee was "where a prior action was commenced and later dismissed regarding *the exact same claims* raised initially in [Washtenaw Circuit] Court" (emphasis added). In an order entered on April 8, 1994, the Washtenaw Circuit Court found that the divorce action had been settled and disposed of, but that additional questions remained concerning the property. The court "removed" the property issues to Lenawee Circuit Court for whatever relief the Lenawee court deemed appropriate, and "release[d its] jurisdiction over these property issues."

Based on this "removal" order, defendant filed a motion in Lenawee Circuit Court for leave to file an amended complaint to set aside account of receivers and sale of real estate. In the motion, which was captioned in terms of the original divorce action, defendant misrepresented the substance of the Washtenaw Circuit Court's March 8, 1993 order, claiming that it "ruled that [d]efendant's remedies properly lay in civil action to be instituted in Lenawee County." Accordingly, defendant sought "leave to file [a]mended [c]omplaint and or such supplemental pleadings and conduct such discovery and evidentiary hearings as the Court may permit." In opposing the motion, plaintiff argued laches, statute of limitations, failure to state a claim, and res judicata. In denying defendant's motion and dismissing the case, Lenawee Circuit Judge Timothy Pickard found that defendant failed to appeal any of the Lenawee Circuit Court dismissals of the 1991 fraud claim, that defendant failed to appeal the 1993 Washtenaw Circuit Court order denying the motion to set aside the sale, and that the ten-year statute of limitations for enforcement of judgments barred defendant's claims.

Defendant first claims that the ten-year statute of limitations for enforcement of judgments, MCL 600.5809(3); MSA 27A.5809(3), does not apply to her claims against Jay G. Tressler, Thomas Stringer, Grace Edwards, James Sosko and Terry Sosko. The period of limitations for actions to enforce judgments or decrees is ten years. *Ewing v Bolden*, 194 Mich App 95, 99; 486 NW2d 96 (1992); *Gabler v Woditsch*, 143 Mich App 709, 710-711; 372 NW2d 647 (1985). We agree with defendant that the ten-year statute of limitations for enforcement of judgments does not apply to the above named defendants for the reason that they were not parties to the instant appeal.

Defendant's claims against Tressler, Stringer, Edwards and the Soskos are, however, barred by the doctrine of res judicata because of defendant's failure to appeal the prior dismissal with prejudice in lower court case number 91-5168-CZ, the case in which those persons were parties. *Wilson v Knight-Ridder Newspapers, Inc*, 190 Mich App 277; 475 NW2d 388 (1991). The action was dismissed in three separate orders: a voluntary dismissal with prejudice at the request of defendant who was plaintiff in that action; and the defendants' motions for summary disposition. The dismissals operated as an adjudication on the merits. See, *In re Koernke Estate*, 169 Mich App 397; 425 NW2d 795 (1988); MCR 2.504(B)(3).

Defendant's instant motion for leave to file an amended complaint, captioned in terms of the original divorce action and filed in the Lenawee Circuit Court, is similarly barred by her failure to appeal any of the numerous orders of the Washtenaw Circuit Court, particularly the 1993 order denying the motion to set aside the 1988 sale, the distribution of proceeds and the accounting of the receivers.

Defendant claims that, if the ten year statute of limitations for enforcement of judgments does apply, her cause of action for fraud against Tressler, Stringer, Edwards and the Soskos is not barred because the 1985 modification of the judgment of divorce restarted the running of the statute. Even if we were persuaded by the authority cited by defendant, however, our determination that res judicata bars defendant's claims is dispositive.

The same analysis applies to defendant's claim that the trial court's denial of defendant's request for leave to file an amended complaint was violative of MCR 2.118. We echo Judge Ager's apt characterization of this case: "Matters must be brought to a close sometime."

Affirmed.

/s/ Maura D. Corrigan
/s/ Joseph B. Sullivan
/s/ Timothy G. Hicks