

STATE OF MICHIGAN
COURT OF APPEALS

JULIENNE HANUSACK,

Plaintiff-Appellant,

v

DANIEL HANUSACK,

Defendant-Appellee.

UNPUBLISHED

January 15, 1999

No. 200023

Wayne Circuit Court

LC No. 93-305922 DM

Before: Smolenski, P.J., and McDonald and Doctoroff, JJ.

PER CURIAM.

Plaintiff appeals by leave granted from an order denying her motion to set aside a judgment of divorce pursuant to MCR 2.612(C)(1)(c). We affirm.

The parties entered into a judgment of divorce by withdrawal. Almost one year later, plaintiff filed a motion to set aside the judgment alleging that defendant had fraudulently concealed a credit union account during the divorce proceedings. Plaintiff contended that defendant removed the bulk of the funds from the account when he discovered plaintiff was going to file for a divorce. Defendant responded that the account was held on behalf of his uncle, and was not a marital asset requiring disclosure.

Plaintiff's first argument on appeal is that the trial court committed error by failing to place sufficient findings of fact on the record. We disagree. Pursuant to MCR 2.517(A)(4), a trial court is not required to make findings of fact and conclusions of law on a motion unless findings are required by a particular rule. *In re Cotton*, 208 Mich App 180, 182-183; 526 NW2d 601 (1994). There is no rule requiring a trial court to make findings of fact on a motion to set aside a judgment because of fraud pursuant to MCR 2.612(C)(1)(c). Therefore, findings of fact were not required in the instant case. Furthermore, having been presented with evidence from both parties, and noting the lack of deposition testimony from defendant's uncle due to his death, the trial court essentially determined that plaintiff did not satisfy her burden of proving that defendant fraudulently concealed the bank account at issue. Even if factual findings were required, the trial court's findings in the instant case were sufficient because they

indicated that the court was aware of the factual issues and correctly applied the law. *Cotton, supra*, 208 Mich App 183.

Plaintiff next argues that the trial court abused its discretion in denying her motion to set aside the judgment of divorce. We disagree. A trial court's determination on a motion to set aside a prior judgment is discretionary, and will not be reversed on appeal absent a clear showing of an abuse of discretion. *Lopez v Lopez*, 191 Mich App 427, 429; 478 NW2d 706 (1991).

Pursuant to MCR 2.612(C)(1)(c), a court may relieve a party from a prior judgment on the grounds that an adverse party committed fraud or engaged in misconduct. Even when the parties in a divorce proceeding have settled without a trial, courts are not bound to uphold property divisions reached by consent of the parties and finalized in writing if such settlements are the result of fraud. *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990). However, the proof required to sustain a motion to set aside a judgment because of fraud is "of the highest order." *Kiefer v Kiefer*, 212 Mich App 176, 179; 536 NW2d 873 (1995); *Williams v Williams*, 214 Mich App 391, 399; 542 NW2d 892 (1995).

Here, the trial court did not abuse its discretion in denying plaintiff's motion to set aside the judgment of divorce. The court did not conduct an evidentiary hearing, but the parties submitted briefs, exhibits, and affidavits for the court's consideration. Although defendant's uncle died before his deposition was taken, defendant submitted an affidavit signed by his uncle indicating that the money in the credit union account was being held by defendant for the uncle's benefit. Because a trial court's factual conclusions are presumptively correct, it is plaintiff's burden to show that there has been a mistake. *Beason v Beason*, 435 Mich 791, 804; 460 NW2d 207 (1990). Plaintiff has failed to do so. Based on the record, the trial court reasonably could have concluded that plaintiff's evidence did not satisfy her burden of proving that defendant fraudulently concealed the bank account. Accordingly, the trial court did not abuse its discretion in denying plaintiff's motion to set aside the judgment of divorce.

Affirmed.

/s/ Gary R. McDonald

/s/ Martin M. Doctoroff