

STATE OF MICHIGAN
COURT OF APPEALS

ROSEMARY A. STUMPO,

Plaintiff-Appellant,

v

THOMAS R. STUMPO,

Defendant-Appellee.

UNPUBLISHED
September 7, 1999

No. 209050
Oakland Circuit Court
LC No. 95-490362 DO

Before: Bandstra, C.J., Whitbeck, and Talbot, JJ.

PER CURIAM.

In this divorce action, plaintiff appeals as on leave granted, after remand from the Supreme Court,¹ the trial court's order that denied her motion for relief from judgment. We affirm.

Plaintiff argues that the trial court abused its discretion in failing to grant her relief from the judgment of divorce entered in this action in which approximately 4300 shares of General Motors (GM) stock was excluded from division between the parties. We disagree.

The property settlement provisions of a divorce judgment are final and generally cannot be modified. *Tomblinson v Tomblinson*, 183 Mich App 589, 594; 455 NW2d 346 (1990). However, a trial court may grant a motion for relief from judgment pursuant to MCR 2.612(C). *Id.* A trial court's decision on a motion for relief from judgment will not be disturbed on appeal absent a clear showing of an abuse of discretion. *Redding v Redding*, 214 Mich App 639, 643; 543 NW2d 75 (1995); *Tomblinson, supra* at 595.

In this case, plaintiff requested relief from judgment pursuant to MCR 2.612(C)(1)(a), (c), and (f), which provide:

(1) On motion and on just terms, the court may relieve a party . . . from a final judgment, order, or proceeding on the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

* * *

(c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

* * *

(f) Any other reason justifying relief from the operation of the judgment.

With regard to MCR 2.612(C)(1)(a), plaintiff has failed to establish mistake, inadvertence, surprise, or excusable neglect, which would warrant relief from judgment. “Mistake” for purposes of MCR 2.612(C)(1)(a) has been understood by this Court to mean “mutual mistake.” See *Marshall v Marshall*, 135 Mich App 702; 355 NW2d 661 (1984). The trial court has the authority to vacate the judgment if it finds that both parties shared a mistaken belief that led to their consent to a settlement. *Villadsen v Villadsen*, 123 Mich App 472, 477; 333 NW2d 311 (1983). There is no indication in the present case that the stock was excluded from the judgment because of a mutual mistake. Defendant initially sought to maintain ownership of all the stock in the settlement, and the parties negotiated a different settlement. The pleadings in this case establish that both parties were aware of the stock before entry of the judgment of divorce. Specifically, in her interrogatories, plaintiff acknowledged the 4300 shares of GM stock. Plaintiff apparently forgot about the individual shares of stock owned by defendant, while defendant asserts that he made other financial concessions to plaintiff because he intended to keep the stock as his own asset. Because plaintiff was aware of the stocks at the time of settlement, relief from judgment is not warranted based on mutual mistake. *Id.*

Nor is plaintiff entitled to relief from judgment based on her claim of fraud, misrepresentation, or other misconduct. MCR 2.612(C)(1)(c). Although defendant may have provided an incorrect answer to Interrogatory No. 16 as asserted by plaintiff, we do not believe that this constitutes fraudulent misrepresentation in light of defendant’s answers to other interrogatories. The fact that both plaintiff and defendant truthfully answered and agreed that they jointly owned a safety deposit box containing stock certificates supports defendant’s claim that he simply misunderstood Interrogatory No. 16. More importantly, these interrogatory answers, as well as plaintiff’s contention that she had a financial interest in over 4,300 shares of GM stock, undercut any contention that plaintiff was in any way misled by defendant’s incorrect answer to Interrogatory No. 16. Because plaintiff was aware of the existence and location of the stock, there is no merit to her allegation that defendant fraudulently concealed the stock from her. *Villadsen, supra*. Relief from judgment is not warranted on this basis. *Id.*

We also conclude that plaintiff is not entitled to relief from judgment based on “[a]ny other reason justifying relief from the operation of the judgment.” MCR 2.612(C)(1)(f). To grant relief under this subsection, three requirements must be fulfilled: “(1) the reason for setting aside the judgment must not fall under subrules (1) through (5); (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside and (3) extraordinary circumstances must exist which mandate setting aside the judgment in order to achieve justice.” *Altman v Nelson*, 197 Mich App 467, 478; 495 NW2d 826 (1992), quoting *McNeil v Caro Community Hosp*, 167 Mich App 492, 497;

423 NW2d 241 (1988), interpreting GCR 1963, 528.3(6), now MCR 2.612(C)(1)(f); see, also, *Tomblinson*, *supra* at 594-595.

Assuming, without deciding, that the above first and third requirements are fulfilled,² we conclude that defendant's substantial rights would be detrimentally affected if the judgment were set aside. *Zeer v Zeer*, 179 Mich App 622, 625; 446 NW2d 328 (1989). A loss of stock valued at approximately \$85,000³ at the time of the divorce would clearly detrimentally affect defendant's substantial rights. *Id.*

Further, we deny defendant's request for sanctions on appeal pursuant to MCR 7.216(C). "Although we find no merit to the issues raised on appeal, the matter was not so lacking in merit as to be vexatious." *Haverbush v Powelson*, 217 Mich App 228, 241; 551 NW2d 206 (1996).

We affirm.

/s/ Richard A. Bandstra

/s/ William C. Whitbeck

/s/ Michael J. Talbot

¹ See *Stumpo v Stumpo*, 456 Mich 920 (1998).

² However, we do question whether extraordinary circumstances exist in this case. Plaintiff was aware of the existence of the stock before entry of the judgment of divorce, and, in some respects, has "created her own predicament." *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389, 393; 573 NW2d 336 (1997).

³ This figure assumes that plaintiff is requesting only half of the stock in question. Further, \$85,000 is based on plaintiff's valuations of the GM stock as stated in her interrogatories (i.e., 3,293 shares of GM common stock valued at \$39.25 per share and 1,092 shares of GME stock valued at \$37.125 per share.).