

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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LAVERA MELODY WARD,

Plaintiff-Appellee,

V

MICHAEL CHARLES WARD,

Defendant-Appellant.

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UNPUBLISHED

January 25, 2002

No. 221471

Macomb Circuit Court

LC No. 99-002953-DZ

Before: Griffin, P.J., and Markey and Meter, JJ.

PER CURIAM.

Defendant appeals by right from a judgment of divorce. We affirm.

Defendant first argues that the trial court lacked jurisdiction because plaintiff's complaint failed to contain the requisite statutory language. While the complaint did not contain the language specified in MCL 552.6(1), we conclude that this did not defeat the court's jurisdiction. Rather, the court had jurisdiction as long as either party had resided in the state for 180 days, and resided in the county for ten days, immediately preceding the filing of the complaint. *Smith v Smith*, 218 Mich App 727, 730; 555 NW2d 271 (1996). Here, the complaint alleged that "the Plaintiff hereto has resided in the State of Michigan for a period upwards of one year immediately preceding the commencement of this action and has resided in the County of Macomb continuously for a period of more than ten days immediately preceding the commencement of this action." Therefore, the court had subject matter jurisdiction over the action.

Next, defendant argues that there was insufficient evidence of a breakdown in the marriage relationship to the extent that the objects of matrimony had been destroyed and that there was no reasonable likelihood that the marriage could be preserved. We disagree.

MCL 552.6(3) provides:

The court shall enter a judgment dissolving the bonds of matrimony if evidence is presented in open court that there has been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed and there remains no reasonable likelihood that the marriage can be preserved.

If either of the parties is unwilling to live together, then the objects of matrimony have been destroyed. *Kretzschmar v Kretzschmar*, 48 Mich App 279, 285; 210 NW2d 352 (1973). Here, plaintiff claimed that the parties had never lived together, that the marriage had never been consummated, and that there had been only one contact between the parties in the last two years. Plaintiff further asserted that she no longer wanted to be married and had no feelings for defendant. Given these facts, there is no clear error in the trial court's determination that there had been a breakdown in the marriage relationship to the extent that the objects of matrimony have been destroyed and that there is no reasonable likelihood that the marriage could be preserved.

Defendant also contends that the trial court erred in granting summary disposition in plaintiff's favor under MCR 2.116(C)(10). We disagree. "In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence." *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999), quoting *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). The moving party is required to specifically identify the issues as to which the party believes there is no genuine issues as to any material fact. MCR 2.116(G)(4); *Meyer v Center Line*, 242 Mich App 560, 574; 619 NW2d 182 (2000). When a motion under subrule (C)(10) is made and properly supported, an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavit, deposition, admission, or other documentary evidence set forth specific facts showing that there is a genuine issue for trial. MCR 2.116(G)(4); *Meyer, supra* at 574; *Marlo Beauty Supply, Inc v Farmers Ins Group of Companies*, 227 Mich App 309, 321-322; 575 NW2d 324 (1998).

Here, although plaintiff did not attach any affidavits, depositions, admissions, or other documentary evidence in support of her motion, the court could properly consider the pleadings already submitted. *Farm Bureau Mutual Ins Co v Blood*, 230 Mich App 58, 66; 583 NW2d 476 (1998). In her complaint, plaintiff alleged that there was no genuine issue of material fact because defendant had been incarcerated the entire period of the marriage, the parties had no children, there were no support issues, there was no joint or commingled property, the marriage had not been consummated, and she was not pregnant. Plaintiff then confirmed these allegations at the motion hearing, thus establishing the requisite factual support for her claim that there was no genuine issue for trial. Defendant did not timely respond to plaintiff's motion. Therefore, the court was justified in granting summary disposition in plaintiff's favor.

Defendant also requested that a writ be issued to permit his appearance in court numerous times during the pendency of this case. The court initially ruled it was dismissing all of defendant's motions, and then later ruled that defendant had an adequate opportunity to present his arguments via his written pleadings and that his personal presence was not required. Under the circumstances of this case, we cannot find that the trial court abused its discretion in so concluding. Contrary to defendant's assertion, the trial court was aware of *Hall v Hall*, 128 Mich App 757; 341 NW2d 206 (1983), and in fact cited *Hall* in support of its ruling that defendant's presence in court was unnecessary because "defendant has had an adequate opportunity [to] present his arguments via written pleadings."

Neither did the court err by declining to require plaintiff to bear any expenses incurred by defendant in defending the suit. This Court will not reverse the trial court's decision to deny attorney fees in a divorce action absent an abuse of discretion. *Hawkins v Murphy*, 222 Mich

App 664, 669; 565 NW2d 674 (1997). Again, under the unique facts of this case, clearly defendant should be responsible for his own costs.

We have reviewed defendant's remaining issues on appeal and find them to be without merit.

We affirm.

/s/ Richard Allen Griffin

/s/ Jane E. Markey

/s/ Patrick M. Meter