

STATE OF MICHIGAN
COURT OF APPEALS

DENNIS DONOVAN,

Plaintiff-Appellant,

UNPUBLISHED
November 12, 2002

v

CAROL SUE DONOVAN,

Defendant-Appellee.

No. 235047
Wayne Circuit Court
LC No. 00-019762-DZ

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

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting defendant's motion for summary disposition. We affirm.

The parties were married in 1972 and divorced in 1980. Plaintiff was awarded the marital home in Inkster. Defendant forfeited any claim on plaintiff's pension. Eight months later the parties reconciled and resumed living together in the Inkster home. They remarried in 1993. In August 1998 defendant filed a complaint for divorce. Plaintiff was personally served with the summons and complaint but did not answer, and was defaulted.

Defendant moved for entry of a default judgment in the divorce case. Plaintiff received a copy of the proposed default judgment prior to the hearing, but took no action to set aside the default. The proposed default judgment awarded defendant the Inkster home and fifty percent of plaintiff's pension. After a hearing on November 23, 1998 the trial court entered the default judgment. Subsequently the trial court entered a qualified domestic relations order (QDRO) awarding defendant fifty percent of plaintiff's pension that accrued between January 8, 1983 and November 23, 1998.

In June 2000 plaintiff filed the instant independent action pursuant to MCR 2.605, MCR 2.612(C)(1)(c) and (f), and MCR 2.612(C)(3) seeking declaratory and injunctive relief. The complaint alleged that the provisions of the default judgment of divorce were grossly unfair and inequitable. Plaintiff sought to have both the default judgment and the QDRO set aside, and requested an evidentiary hearing to accomplish an equitable division of property. Defendant moved for summary disposition pursuant to MCR 2.116(C)(8), arguing that because plaintiff sought relief from the property settlement entered in the divorce action, the trial court could grant relief only if plaintiff did not have notice of the action or if there was a fraud on the court in connection with that action. Defendant noted that plaintiff was personally served with the

summons and complaint for divorce, and thus had notice of the action. Furthermore, she asserted that plaintiff's complaint did not properly plead a case of fraud. The trial court granted the motion, finding that the complaint did not state a claim on which relief could be granted because it did not allege fraud with particularity.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

A party may obtain relief from a final judgment, order, or proceeding on grounds of fraud, misrepresentation, or other misconduct of the adverse party. MCR 2.612(C)(1)(c). A motion based on MCR 2.612(C)(1)(c) must be brought within one year after the judgment, order, or proceeding was entered or taken. MCR 2.612(C)(2). The one-year limit is not applicable if the plaintiff brings an independent action that claims either that the plaintiff did not have actual notice of the prior action, or that a fraud was perpetrated on the court. MCR 2.612(C)(3); *Kiefer v Kiefer*, 212 Mich App 176, 182; 536 NW2d 873 (1995).

The elements of fraud are that: (1) the defendant made a material misrepresentation; (2) the representation was false; (3) when the statement was made the defendant knew that it was false, or the defendant made it recklessly without any knowledge of its truth and as a positive assertion; (4) the defendant made the statement with the intention that it would be acted upon by the plaintiff; (5) the plaintiff acted in reliance upon the statement; and (6) as a consequence of that reliance, the plaintiff suffered injury. *Kassab v Michigan Basic Property Ins Ass'n*, 441 Mich 433, 442; 491 NW2d 545 (1992).

Plaintiff argues the trial court erred by granting defendant's motion for summary disposition. We disagree and affirm. At the hearing on the motion plaintiff asserted that at the hearing on November 23, 1998 defendant perpetrated fraud upon the court by concealing the fact that in 1980 his pension was not vested and by stating that she would not live with him as husband and wife in the future. By making these assertions plaintiff was attempting to establish that defendant misled the court into awarding her fifty percent of his pension and the Inkster home. These assertions were not contained in plaintiff's complaint. Fraud must be pleaded with specificity. *LaMothe v Auto Club Ins Ass'n*, 214 Mich App 577, 586; 543 NW2d 42 (1995). Plaintiff's complaint did not allege that defendant made material misrepresentations that she knew to be false, that were made with the intention that he or the court would rely on them, and that were relied on to his detriment. *Kassab, supra*. The trial court correctly found that plaintiff's allegation of fraud were not specifically pleaded, and did not warrant an evidentiary hearing. *Id.*; *Kiefer, supra*, 179. Summary disposition was proper. MCR 2.116(C)(8).

Affirmed.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Patrick M. Meter