

STATE OF MICHIGAN
COURT OF APPEALS

BETTY JENKINS,

Plaintiff-Appellant,

v

WILLIAM JEFFREY SMITH,

Defendant-Appellee.

UNPUBLISHED
February 10, 2004

No. 243616
Kent Circuit Court
LC No. 02-004636-CZ

Before: Cooper, P.J., and O’Connell and Fort Hood, JJ.

MEMORANDUM.

Plaintiff appeals as of right the order granting defendant summary disposition in this fraud action. We affirm. This appeal is being decided without oral argument, pursuant to MCR 7.214(E).

The parties were divorced in a judgment entered June 24, 1999. Plaintiff later sought post-judgment relief in the divorce action, asserting that defendant committed perjury by failing to disclose a severance package from his old employer and a signing bonus from his new employer. The trial court in the divorce action dismissed the motion as untimely. Plaintiff then initiated this independent claim of fraud based on the same conduct.

In *Triplett v St. Amour*, 444 Mich 170; 507 NW2d 194 (1993), our Supreme Court held that there is no independent cause of action to recover damages for a fraudulently induced settlement because the court rules provide effective remedies and deterrence. The Court held that the balanced approach given in MCR 2.612 to competing public policy considerations concerning the recognition of fraud suits and the finality of judgments would be upset if the plaintiff were allowed to file an independent claim for fraud. *Id.* at 178. In *Daoud v De Leau*, 455 Mich 181, 200; 565 NW2d 639 (1997), the Court interpreted *Triplett* as holding that “the court rules are a primary source for determining the means by which a person aggrieved by a judgment may seek to remedy the situation.”

In *Nederlander v Nederlander*, 205 Mich App 123; 517 NW2d 768 (1994), the plaintiff brought an independent fraud action based on a claim that the defendant misrepresented the value of his assets during divorce proceedings. This Court relied on *Triplett* in finding that the trial court properly granted summary disposition on the independent fraud claim where MCR 2.612(C)(1)(c) allows a party to seek redress for intrinsic fraud.

Here, plaintiff's claim was raised in the divorce action when she filed a motion for post-judgment relief. The trial court in that action denied the motion as untimely, finding that plaintiff had actual notice of defendant's job change, and any potential severance package or signing bonus, on July 6, 1999. Plaintiff's claim is for intrinsic fraud, so it is barred by res judicata. *Sprague v Buhagiar*, 213 Mich App 310, 314; 539 NW2d 587 (1995).

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood