

STATE OF MICHIGAN
COURT OF APPEALS

BONNIE A. ARLT,

Plaintiff-Appellant,

v

NORMAN E. ARLT, JR.,

Defendant-Appellee.

UNPUBLISHED
February 12, 2004

No. 243540
Presque Isle Circuit Court
LC No. 02-002494-CZ

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

MEMORANDUM.

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

Plaintiff brought this action asserting that defendant committed fraud in misrepresenting the value of the parties’ assets in a prior divorce action. The trial court granted summary disposition to defendant, concluding that plaintiff’s remedy was to file a motion for relief from judgment, not an independent action.

In *Triplett v St. Amour*, 444 Mich 170, 178-179; 507 NW2d 194 (1993), the 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. See also *Daoud v De Leau*, 455 Mich 181, 200; 565 NW2d 639 (1997). 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 plaintiffs were allowed to file fraud actions. *Triplett*, *supra* at 178.

In *Nederlander v Nederlander*, 205 Mich App 123, 124; 517 NW2d 768 (1994), the plaintiff brought an independent fraud action based on a claim that the defendant misrepresented the value of marital assets during divorce proceedings. This Court relied on *Triplett* to conclude that the trial court properly granted summary disposition of the independent fraud claim where MCR 2.612(C)(1)(c) allows a party to seek redress for intrinsic fraud. *Id.* at 126.

Plaintiff relies on *Courtney v Feldstein*, 147 Mich App 70, 74; 382 NW2d 734 (1985), for the proposition that a party can maintain an independent cause of action for fraud during a divorce proceeding. However, *Courtney* was decided on res judicata principles, and did not

consider the effect of the court rule. The *Nederlander* Court examined the *Courtney* decision and concluded that the issue was controlled by *Triplett*. Furthermore, the *Nederlander* decision is binding precedent. MCR 7.215 (J)(1).

The trial court properly granted summary disposition where plaintiff's remedy was to file a motion for relief from judgment. *Triplett, supra*.

Affirmed.

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