

STATE OF MICHIGAN
COURT OF APPEALS

SUSAN MARIE MONTERO, a/k/a SUSAN
MARIE MARTIN,

UNPUBLISHED
October 19, 2004

Plaintiff-Appellant,

v

LUIS ELIEL MONTERO,

No. 247959
Washtenaw Circuit Court
LC No. 02-000177-DO

Defendant-Appellee.

Before: Griffin, P.J., and Saad and O'Connell, JJ.

PER CURIAM.

Plaintiff appeals from the property settlement provision of the parties' divorce judgment and from the trial court's order denying her motion for reconsideration and/or relief from judgment, and we affirm.¹

Plaintiff filed a complaint for divorce from defendant. The parties reached a property settlement and placed the settlement on the record. Plaintiff's attorney stated that the parties agreed that defendant would pay plaintiff the sum of \$82,000. Defendant agreed to transfer the proceeds from the sale of the marital home, a total of \$53,931.67, to plaintiff as partial payment of the \$82,000, and also agreed to pay plaintiff \$15,000 on the date of entry of the judgment of divorce and the balance of the \$82,000 within sixty days. In response to inquiries from the trial court and her counsel, plaintiff stated that she understood and agreed to the terms of the settlement.

Defendant objected to the terms of plaintiff's proposed judgment on the ground that it deviated from the terms of the negotiated settlement in that it attempted to increase the amount to be paid to plaintiff by approximately \$27,000. The trial court rejected plaintiff's argument that a mutual mistake of fact existed, and entered a proposed judgment submitted by defendant that was consistent with the parties' agreement on the record. Subsequently, the trial court denied plaintiff's motion for reconsideration and/or relief from judgment.

¹ This appeal is being decided without oral argument pursuant to MCR 7.214(E).

A trial court may relieve a party from a final judgment, order, or proceeding on the basis: (1) of mistake, inadvertence, surprise, or excusable neglect; (2) of newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial; (3) of fraud, misrepresentation, or other misconduct of an adverse party; (4) that the judgment is void; (5) that the judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. MCR 2.612(C)(1)(a)-(f). The decision to grant or deny a motion to set aside a prior judgment is within the discretion of the trial court. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999).

We review a trial court's decision to grant or deny a motion for reconsideration for an abuse of discretion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000).

A property division reached by the consent of the parties and finalized in writing or on the record cannot be modified by the court. The court is bound to uphold such a settlement and cannot set it aside absent fraud, duress, mutual mistake, or severe stress. *Quade v Quade*, 238 Mich App 222, 226; 604 NW2d 778 (1999).

Plaintiff argues that the trial court abused its discretion by entering the judgment submitted by defendant and denying her motion for reconsideration and/or relief from judgment. The parties reached a property settlement, and placed the settlement on the record. Plaintiff twice indicated that she understood and agreed to the terms of the settlement. The trial court was bound to uphold the settlement absent a showing of fraud, duress, mutual mistake, or severe stress. *Quade, supra*. Plaintiff's assertion that she was entitled to relief from judgment because the parties made a mutual mistake of fact was unsubstantiated. Plaintiff has failed to establish that she was entitled to have the judgment set aside on any ground listed in MCR 2.612(C)(1). The trial court did not abuse its discretion by denying plaintiff's motion for reconsideration and/or relief from judgment. *Heugel, supra*; *Churchman, supra*; *Quade, supra*.

Affirmed.

/s/ Richard Allen Griffin
/s/ Henry William Saad
/s/ Peter D. O'Connell