

**IN THE COURT OF APPEALS
THIRD APPELLATE DISTRICT
VAN WERT COUNTY**

LINDA STETLER

PLAINTIFF-APPELLANT

CASE NO. 15-05-16

v.

RONALD STETLER

OPINION

DEFENDANT-APPELLEE

**CHARACTER OF PROCEEDINGS: Civil Appeal from Common Pleas
Court, Domestic Relations Division**

JUDGMENT: Judgment Affirmed

DATE OF JUDGMENT ENTRY: May 30, 2006

ATTORNEYS:

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For Appellee

BRYANT, P.J.

{¶1} Plaintiff-appellant Linda Stetler (“Linda”) brings this appeal from the judgment of the Court of Common Pleas of Van Wert County dismissing her claim for lack of jurisdiction.

{¶2} Linda and Ronald Stetler (“Ronald”) were married on February 14, 1959. They divorced on June 6, 1989, after entering into a separation agreement that purportedly was the entire agreement between the parties. Although the agreement contained a clause titled “Article V, Insurance and Retirement Benefits,” the agreement was silent as to Ronald’s pension plan accumulated during the marriage. In January 2004, Ronald retired and began receiving his pension. Linda, after speaking to a volunteer at a local Senior Center, learned that the pension was a marital asset to which she was entitled to a share. On October 1, 2004, Linda filed a motion to divide the undisclosed asset. A hearing was held on June 22, 2005. After the hearing, the magistrate entered his decision finding a lack of jurisdiction on July 12, 2005. Linda filed timely objections to the

magistrate's decision. On October 17, 2005, the trial court overruled the objections. Linda appeals from this decision and raises the following assignments of error.

The trial court erred in ruling it had no jurisdiction to divide a marital asset, namely [Ronald's] pension through Navistar, which was undisclosed to the court in the separation agreement when the court entered its judgment entry dissolving the parties' marriage.

The trial court erred in affirming the magistrate's decision that Civil Rule 60(B)(5) relief was not available to [Linda] to allow the trial court to divide [Ronald's] pension.

The trial court erred in affirming the magistrate's decision that laches is applicable to bar [Linda's] motion to divide the marital portion of [Ronald's] pension.

{¶3} In the first assignment of error, Linda claims that the trial court erred in finding it had no jurisdiction to divide the property after the original judgment. The trial court dismissed for lack of jurisdiction because of the passage of 16 years between the original decree and the motion to modify the decree.

Pursuant to R.C. 3105.171(I), a division of marital property or a distributive award made pursuant to a divorce action is not subject to future modification by the court. Accordingly, a trial court does not have jurisdiction to later modify a marital property division.

Strain v. Strain, 6th Dist. No. L-03-1332, 2004-Ohio-3792. Here, the trial court entered a final judgment which did not reserve jurisdiction to modify the property

division. Thus, the trial court lacked jurisdiction to re-visit the property division.

The first assignment of error is overruled.

{¶4} The second assignment of error alleges that the trial court erred in finding that relief was unavailable pursuant to Civ.R. 60(B)(5).

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment order or proceeding was entered or taken.

Civ.R. 60(B). Although there is no specific time limit set forth under reason 5, it is a catch-all provision that only applies if none of the more specific grounds apply. *Hamlin v. Hamlin*, 2nd Dist. No. 1629, 2004-Ohio-2742.

{¶5} In this case, Linda claims that she did not know of the pension until 2004. This claim raises a basis for relief from judgment under Civ.R. 60(B)(2) for newly discovered evidence. The record reveals no reason why Linda, or her counsel, could not have discovered the pension at the time of the original proceeding. Evidence was presented that Ronald told Linda about the pension.

Even if that was false, there is no evidence that Linda, through counsel, asked about a pension plan or could not have learned of it by some reason. If the claim is that Ronald hid the pension, then reason 3 setting forth fraud or misconduct of an adverse party applies. Even viewing the evidence in a light most favorable to Linda, the time limit for relief under Civ.R. 60(B) is one year. *Id.* A party may not circumvent the one year limitation by seeking to vacate a judgment under Civ.R. 60(B)(5) when the grounds is duplicative of a ground subject to the time limitation. *Id.* Therefore, the second assignment of error is overruled.

{¶6} The final assignment of error raises the issue of whether the doctrine of laches applies. The doctrine of laches is an affirmative defense claiming that an omission to assert a right for an unreasonable and unexplained length of time has prejudiced the party raising the defense and should bar recovery by the plaintiff. *Connin v. Bailey* (1984), 15 Ohio St.3d 34, 472 N.E.2d 328. The application of the doctrine of laches to a particular case is a matter within the sound discretion of the trial court. *In re Estate of Dinsio*, 159 Ohio App.3d 98, 2004-Ohio-6036, 823 N.E.2d 43. The delay in this case was approximately 15 years from the time of the original decree until the time that the motion to divide the pension was filed. The trial court heard the testimony of the parties and made the following finding.¹

1. The passing of sixteen (16) years from the time original Judgment was entered in this matter to the filing of the

¹ The trial court accepted the findings of fact set forth in the magistrate's opinion.

Motion cannot by any stretch of the imagination be considered to be a “reasonable time” as envision (sic) by the Civil Rules. The court should also be persuaded by the Respondent’s argument of Laches whereby in his reliance on the finality of Judgment, he planned his retirement accordingly and has in fact been retired since 2004.

- 2. The Movant is guilty of “inexcusable neglect” in that the exercise of ordinary care, particularly after a thirty (30) year marriage, would have at least raised a suspicion that a twenty (20) year tenure at a major corporation might yield a retirement benefit. Moreover, if it didn’t occur to Linda, it certainly crossed the mind of her attorney who drafted the Separation Agreement containing ARTICLE V and ARTICLE VII.**

Magistrate’s Decision, 3. These findings are supported by the testimony in the record. Given these findings, the trial court did not abuse its discretion in applying the doctrine of laches. The third assignment of error is overruled.

{¶7} The judgment of the Court of Common Pleas of Van Wert County is affirmed.

Judgment Affirmed.

SHAW and CUPP, J.J., concur.

/jlr