STATE OF MICHIGAN

COURT OF APPEALS

GERALDINE WARD,

Plaintiff-Appellee,

v

BURNICE WARD,

Defendant-Appellant.

UNPUBLISHED
July 18, 1997

No. 190346
Wayne Circuit Court
LC No. 95-509051-DO

Before: Murphy, P.J., and Michael J. Kelly and Gribbs, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment of divorce entered on October 20, 1995. We affirm.

On appeal, defendant argues that the 1995 judgment of divorce was invalid because the parties had already been divorced in 1979. Specifically, defendant argues that the trial court erred when it ruled that the entry, on September 28, 1979, of a stipulation and order setting aside his August 16, 1979, divorce from plaintiff had the effect of reinstating his marriage to plaintiff. We disagree. Because this is a question of law, our review is de novo. *Shurlow v Bonthuis*, 218 Mich App 142, 148; 553 NW2d 366 (1996).

Initially, we note that the issue on appeal is not the validity of the September 28, 1979, order setting aside plaintiff and defendant's default judgment of divorce, but rather, the legal effect of the order. Although the issue has not been addressed directly, Michigan courts have twice addressed the issue indirectly.

The Michigan Supreme Court, in *Shane v Hackney*, 341 Mich 91; 67 NW2d 256 (1954), held that an order setting aside the plaintiff's divorce from his first wife did not effect his subsequent marriage to his second wife. *Id.* at 93-95, 99-100. The *Shane* Court explained at length that the order setting aside the plaintiff's divorce was invalid because it was different judge than had entered the divorce, and therefore suffered a jurisdictional defect. *Id.* at 96-99. However, the clear implication of the Court's holding was that, but for the defect in the validity of the order setting aside the plaintiff's

divorce, the plaintiff would not have been legally married to his second wife because he would still have been legally married to his first wife by virtue of the order setting aside their divorce. *Id.* at 99-100.

Similarly, this Court, in *St. Clair Commercial & Savings Bank v Macauley*, 66 Mich App 210, 214; 238 NW2d 806 (1975), held that a trial court did not err when three and one-half weeks after entering a judgment of divorce it entered an order setting aside the divorce pursuant to a stipulation of the parties. The *Macauley* Court relied on the fact that actions for divorce are equitable in nature. *Id.*; see also MCL 552.12; MSA 25.92. In reaching its decision, the Court explained that it was "in accord with public policy to allow the parties to *remain married*" if they so desired. *Macauley, supra* at 214 (emphasis added). Thus, in *Macauley, supra* at 214, as in *Shane, supra* at 93-95, 99-100, this Court assumed that a valid order setting aside a judgment of divorce had the effect of reinstating the marriage.

The equities of the instant case require that we apply the rule that was assumed to exist in both *Macauley, supra* at 214, and in *Shane, supra* at 93-95, 99-100. Because the 1979 judgment of divorce was set aside by the same judge pursuant to a stipulation of the parties only forty-three days after it was entered, and because the parties continued to live together as husband and wife for another sixteen years after the order setting aside their divorce was entered, it is apparent that the intent of the parties in 1979 was to remain married. Considering the intent of the parties and the strong public policy in favor of marriage, we hold that the trial court did not err when it determined that the parties were legally married in 1995, when plaintiff filed her complaint for divorce. See *Macauley, supra* at 214.

Finally, we are not convinced by defendant's argument that the parties could not have been "remarried" without again meeting the three statutory requirements of marriage as set forth in MCL 551.2; MSA 25.2. We do not hold that the parties were "remarried" in 1979, but instead hold that their original marriage was reinstated by virtue of the order setting aside their divorce. Thus, the three statutory requirements of marriage were met in 1975, when the parties consented to marry, obtained a marriage license, and solemnized their marriage before a Justice of the Peace.

Affirmed.

/s/ William B. Murphy
/s/ Roman S. Gribbs

I concur in result only.

/s/ Michael J. Kelly