

STATE OF MICHIGAN
COURT OF APPEALS

MARY C. FAIRCHILD, Personal Representative of
the Estate of Paula Weiss, deceased,

UNPUBLISHED
January 11, 2000

Plaintiff-Appellee,

v

No. 213545
Wayne Circuit Court
LC No. 970729943 DO

HAROLD F. WEISS,

Defendant-Appellant.

Before: Saad, P.J., and McDonald and Gage, JJ.

MEMORANDUM.

Defendant appeals by right the trial court's order entering a judgment of divorce *nunc pro tunc* after the death of Paula Weiss. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This appeal is being decided on stipulated facts. Paula Weiss filed this divorce action on September 19, 1997. On December 15, 1997, both parties appeared with counsel before the trial court and placed the terms of a settlement agreement on the record. The parties requested that a judgment of divorce not be effective until after January 1, 1998, so that they would be eligible to file a joint income tax return. The court accepted the settlement, and stated that a judgment of divorce would enter after January 1, 1998, pursuant to the terms and conditions set forth on the record.

On January 7, 1998, Paula Weiss died before a judgment of divorce entered. Her personal representative moved to intervene, and sought entry of a judgment of divorce *nunc pro tunc*. The trial court granted plaintiff's motion, and entered the judgment.

Where it is contemplated that a judge's oral statement that a divorce will be granted, will be followed by the signing of a judgment, the divorce and property settlement do not become effective until the judgment is signed and cannot be made effective *nunc pro tunc* after one of the parties dies. *Tiedman v Tiedman*, 400 Mich 571, 573; 255 NW2d 632 (1977). *Tiedman* recognized two possible exceptions to this rule. The first exception occurs when a trial court reads all terms of the judgment into the record, and declares that the judgment will take immediate effect without further

action. This exception is clearly inapplicable here, where the court explicitly stated that the judgment would not take effect until after January 1, 1998.

The second exception is based on footnote 1 of *Tiedman*, and is found where the parties have relied in good faith on the court's oral statement that a divorce is or will be granted. *Ensman v Ensman*, 86 Mich App 91, 95-96; 272 NW2d 176 (1978). There was no evidentiary hearing, and plaintiff's motion presented no basis for finding any reliance on the oral indication that a divorce judgment would be granted. Like *Tiedman*, and unlike *Ersman*, here the party's death was unanticipated. There is no showing that the parties took any action in reliance on the divorce judgment.

Reversed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Hilda R. Gage