

STATE OF MICHIGAN
COURT OF APPEALS

CHERYL A. VADER,

Plaintiff-Appellant,

v

DANIEL J. VADER,

Defendant-Appellee.

UNPUBLISHED

May 27, 2004

No. 246878

Delta Circuit Court

LC No. 02-016793-NZ

Before: Whitbeck, C.J., and Griffin and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(8). We affirm.

Plaintiff argues that the trial court erred in dismissing her independent claims against defendant, her ex-husband, for fraud allegedly arising from the parties' 1992 divorce settlement.

We review a grant of summary disposition pursuant to MCR 2.116(C)(8) de novo. *Beaty v Hertzberg & Golden, PC*, 456 Mich 247, 253; 571 NW2d 716 (1997). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim, and all "well-pleaded factual allegations are accepted as true and construed in a light most favorable to the nonmovant." *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). A (C)(8) motion should be granted only "where the claims are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992).

It is well settled that res judicata prevents a party from seeking relief from a judgment via an independent action where the party complains only of intrinsic fraud. *Sprague v Buhagiar*, 213 Mich App 310, 313-314; 539 NW2d 587 (1995), citing *Triplett v St Amour*, 444 Mich 170, 175-176; 507 NW2d 194 (1993); *Rogoski v Muskegon*, 107 Mich App 730, 737; 309 NW2d 718 (1981). This Court has defined intrinsic fraud as "a fraud within the cause of action itself," and it has offered the following examples of intrinsic fraud: perjury, discovery fraud, fraud used to induce a settlement or other contract, or an underlying contract that is fraudulent. *Sprague*, *supra* at 314. The only remedy for intrinsic fraud is a motion for relief from judgment, pursuant to MCR 2.612(C)(1)(c). *Nederlander v Nederlander*, 205 Mich App 123, 126-127; 517 NW2d 768 (1994).

Plaintiff argues that her claim should not have been so restricted because she alleged that defendant perpetrated a fraud on the court. We disagree and find that the trial court properly adhered to *Nederlander* in granting defendant's motion for summary disposition. Even assuming for purposes of review that defendant committed the acts plaintiff attributes to him, *Nederlander* is clear that an independent cause of action cannot be premised on intrinsic fraud of the type plaintiff alleges. See *Maiden, supra* at 119.

We also reject plaintiff's contention that the applicable statute of limitation should have been tolled for two years pursuant to MCL 600.5855 because defendant fraudulently concealed plaintiff's cause of action from her. The trial court dismissed plaintiff's claim because there is no independent cause of action for intrinsic fraud like that alleged here. See *Nederlander, supra*. It was not, as plaintiff suggests, dismissed because it was time barred. Therefore, the tolling provision has no application to this case.

We consider plaintiff's other allegations of error abandoned because she fails adequately to brief and support her arguments on these points. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).

Affirmed.

/s/ William C. Whitbeck
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello