

STATE OF MICHIGAN
COURT OF APPEALS

TRACY A. BURCH,

Plaintiff/Counter-Defendant-
Appellant,

V

MICHAEL L. BURCH,

Defendant/Counter-Plaintiff-
Appellee.

UNPUBLISHED
December 28, 2006

No. 262250
Genesee Circuit Court
LC No. 04-254037-DM

Before: Servitto, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Plaintiff appeals as of right the March 31, 2005, judgment of separate maintenance entered by the Genesee Circuit Court. Because the judgment of separate maintenance has expired, we dismiss this appeal.

Plaintiff, Tracy Burch, and defendant, Michael Burch, married on June 25, 1988 and had three children during the course of their marriage. In May 2003, the parties separated and plaintiff moved out of the marital home. Before she moved out, she told defendant she was leaving and that she wanted him to pay her \$150,000. Defendant paid plaintiff \$150,000, and she used the money to acquire a new home and furnishings for the home. On May 7, 2004, plaintiff filed a complaint for divorce. Defendant filed a counter-complaint for divorce.

At an evidentiary hearing in this case, plaintiff testified that the \$150,000 paid by defendant represented only her share of the equity in the marital home and not an entire property settlement. She argued that, in addition to the \$150,000, she was entitled to a portion of defendant's pension as well as one-half of the money in a personal savings plan account. According to defendant, however, the parties intended the \$150,000 to comprise plaintiff's divorce settlement. The trial court found that the parties intended the \$150,000 payment to be a property settlement agreement, and that plaintiff was bound by the agreement because she freely, voluntarily, and understandingly entered into the agreement. The trial court's rulings were incorporated into a subsequently entered consent judgment for separate maintenance.

Plaintiff contends on appeal that the trial court erred in enforcing the property settlement agreement (reflected in the judgment) because the agreement is void as against public policy.

However, this Court notes that the judgment of separate maintenance, entered on March 31, 2005, contains the following provision under the “COBRA Benefits” section:

The parties agree that there shall be a Judgment of Separate Maintenance for one year from the date of entry of this Judgment.

From the above language, it would appear the parties only intended for the judgment to be operative for one year, or until March 31, 2006. Any issue concerning the judgment, then, would be moot after March 31, 2006.

An issue is moot when an event occurs that renders it impossible for the reviewing court to fashion a remedy to the controversy.” *People v Cathey*, 261 Mich App 506, 510; 681 NW2d 661 (2004). “Mootness precludes the adjudication of a claim where the actual controversy no longer exists, such as where ‘the issues presented are no longer “live” or the parties lack a legally cognizable interest in the outcome.’” *Michigan Chiropractic Council v Comm'r of Insurance*, 475 Mich 363, 370-371 n 15; 716 NW2d 561 (2006) (opinion of Young, J), quoting *Los Angeles Co v Davis*, 440 US 625, 631; 99 S Ct 1379; 59 L Ed 2d 642 (1979) (internal citations omitted). Because the most critical element of the judicial power requires that a case contain a genuine controversy between the parties, we must ensure that one exists before exercising our judicial authority. *Michigan Chiropractic Council, supra* at 373-374.

Because the judgment appears to have expired by its own terms, no actual controversy concerning the same may exist. The appeal is thus dismissed.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot