

STATE OF MICHIGAN
COURT OF APPEALS

TERESA LYNN WIAND,

Plaintiff-Appellant,

v

RONALD CARLYSLE WIAND,

Defendant-Appellee.

UNPUBLISHED
March 20, 2012

No. 301621
Oakland Circuit Court
Family Division
LC No. 2004-691004-DM

Before: STEPHENS, P.J., and CAVANAGH and SAAD, JJ.

PER CURIAM.

Plaintiff appeals the trial court's order that dismissed plaintiff's motion to set aside the parties' judgment of divorce. For the reasons set forth below, we reverse and remand.

On September 29, 2005, the trial court entered a judgment of divorce based on the parties' settlement agreement dated September 5, 2005. The settlement and judgment addressed all the issues raised by the parties including, among others, child support, alimony, property division, attorney's fees, custody, and parenting time. On September 28, 2006, plaintiff filed a motion to set aside the judgment of divorce pursuant to MCR 2.612(C)(1) and (C)(2) on the ground of alleged fraud and duress by defendant.

The record reflects that the trial court scheduled numerous evidentiary hearings for plaintiff's motion between January 2006 and September 2007, but that all hearings were adjourned, typically by mutual agreement of the parties. After the last adjournment, no further hearing was scheduled. It appears plaintiff attempted to revive the case when she subpoenaed defendant to appear for a deposition scheduled for August 31, 2010. Thereafter, defendant moved to dismiss plaintiff's motion to set aside the consent judgment for failure to prosecute and pursuant to the doctrine of laches. On November 24, 2010, the trial court granted defendant's motion to dismiss plaintiff's motion to set aside the judgment of divorce. The trial court stated that too much time had passed since plaintiff's motion filing and there was no activity on the case.

Plaintiff argues that the trial court abused its discretion by granting defendant's motion to dismiss without a showing that the delay prejudiced defendant, and without holding an evidentiary hearing. This Court reviews a trial court's decision on a motion for relief from judgment for an abuse of discretion. *Yee v Shiawassee County Bd of Com'rs*, 251 Mich App

379, 404; 651 NW2d 756 (2002). We also review a trial court's decision whether to hold an evidentiary hearing for an abuse of discretion. *Williams v Williams*, 214 Mich App 391, 399; 542 NW2d 892 (1995). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

"In general, consent judgments are final and binding upon the court and the parties, and cannot be modified absent fraud, mistake, or unconscionable advantage." *Laffin v Laffin (On Remand)*, 280 Mich App 513, 517; 760 NW2d 738 (2008); MCR 2.612(C)(1)(c). "Generally, where a party alleges that a fraud has been committed on the court, it is an abuse of discretion for the court to decide the motion [for relief from judgment] without first conducting an evidentiary hearing into the allegations." *Yee*, 251 Mich App at 405 (internal quotation marks and citations omitted). "[W]here the party requesting relief fails to provide specific allegations of fraud relating to a material fact, the trial court need not proceed to an evidentiary hearing." *Id.*

The equitable doctrine of laches requires a plaintiff to exercise due diligence to ensure the timely prosecution of the claim to avoid unduly prejudicing the defendant. *Rowry v University of Michigan*, 441 Mich 1, 11; 490 NW2d 305 (1992). In certain cases, laches can operate to cut short a statutory limitation period where equitable relief is sought. *Id.* at 11-12. However, for laches to apply, a plaintiff's delay must have been *shown* to prejudice defendant. *Id.* "[L]apse of time alone is not sufficient to constitute laches. There must also be a change of conditions rendering it inequitable to enforce the claim, or such a showing as establishes that the [defendant was] prejudiced by the delay. Each case must be determined on its own facts." *Tilley v Brady*, 323 Mich 547, 551; 36 NW2d 140 (1949).

Here, the trial court did not decide on the merits that plaintiff's motion to set aside the judgment of divorce should be dismissed. Rather, the trial court granted defendant's motion to dismiss on the basis of a lapse of time and inactivity. The trial court ruled that it was unfair for plaintiff to have "subpoena power and discovery open for four years on a case that had a disposition." The court further asserted that plaintiff waited too long to reschedule an evidentiary hearing. The record is silent regarding the reasons for plaintiff's delay in moving her motion toward a decision.

While we share the trial court's concerns about the delays, we are mindful that a party to a consent judgment should have the opportunity to present his or her case that the judgment was procured by fraud. Accordingly, we hold that the trial court abused its discretion by granting defendant's motion without requiring or considering a showing that the lapse in time prejudiced defendant, and without holding an evidentiary hearing. See *Rowry*, 441 Mich at 11; *Tilley*, 323 Mich at 551; *Yee*, 251 Mich App at 405.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Henry William Saad