

STATE OF MICHIGAN
COURT OF APPEALS

In re SOMPHORN SORNJEOW REVOCABLE
LIVING TRUST.

JESSICA RACKLIFF,

Petitioner-Appellant/Cross-
Appellee,

v

CHAIRAT VACHARAKAJORN,

Respondent-Appellee/Cross-
Appellant.

UNPUBLISHED

July 2, 2013

No. 301768

Oakland Probate Court

LC No. 2005-297823-TV

Before: M. J. KELLY, P.J., and MURRAY and BOONSTRA, JJ.

PER CURIAM.

Petitioner Jessica Rackliff appeals as of right and respondent Chairat Vacharakajorn cross-appeals the trial court's order granting respondent's motion for summary disposition pursuant to MCR 2.116(C)(7). We affirm the trial court's order.

I. FACTUAL BACKGROUND & PROCEEDINGS

This case arises from a dispute between a sister (petitioner) and brother (respondent) regarding the distribution of their late mother's trust assets. After the parties' mother passed away in 1996, respondent became the executor of the trust and the parties' uncle, Youngyuth Sornjeow, was named petitioner's guardian and conservator because she was still a minor. Petitioner and respondent continued to reside in their mother's house together, and at some point, respondent gave petitioner \$70,000 cash, gold, and jewelry from the trust assets. In November 1998, the house was burglarized and trust assets (\$180,000 cash, gold, and jewelry) were stolen from respondent's bedroom. Respondent suspected that petitioner actually stole the trust assets because there was no evidence of forced entry, only respondent's bedroom had been ransacked, and petitioner's \$70,000 had not been stolen from her bedroom. In December 1999, respondent attempted to recover the trust assets from petitioner by initiating citation proceedings in probate court, however, petitioner left Michigan without informing any family or friends of her whereabouts. Thus, the citation proceedings did not result in recovery of the trust assets.

Respondent did not take further action until March 2005, when he filed a petition for the approval and distribution of the trust assets. Respondent requested that the probate court distribute to petitioner the trust assets already in her possession and distribute to respondent the remaining assets in the trust. Respondent asserted through counsel that petitioner's whereabouts were unknown and she was unable to be located after diligent search and inquiry, and thus, notice of the trust distribution hearing was published in the Oakland County Legal News. In April 2005, the probate court entered a trust distribution order, providing that petitioner was to receive all the cash, gold, and jewelry already in her possession while respondent was to receive the house, the family restaurant, and a Fidelity Investment Account.

Subsequently, in April 2007, petitioner filed a petition to set aside the trust distribution order, arguing that respondent engaged in fraud upon the court in seeking the trust distribution order because he failed to show that he made a diligent inquiry to ascertain her whereabouts to properly serve notice by publication. Petitioner also denied stealing any trust assets. Thereafter, respondent filed a motion for summary disposition pursuant to MCR 2.116(C)(7) and (10), arguing that notice by publication was sufficient and petitioner's petition to set aside the trust distribution order was untimely under MCR 2.612. After oral argument on the motion, the trial court issued an opinion and order granting respondent's motion for summary disposition pursuant to MCR 2.116(C)(7). The trial court concluded that petitioner's petition was time barred under MCR 2.612(C)(1)(c) and that petitioner's petition was not an independent action under MCR 2.612(C)(3). From this order, petitioner appeals as of right and respondent cross-appeals.

II. ANALYSIS

Petitioner argues that her petition for relief from judgment is an independent action under MCR 2.612(C)(3), or, in the alternative, it is a motion for relief from judgment under MCR 2.612(C)(1)(f). This Court reviews a trial court's granting of a motion for summary disposition pursuant to MCR 2.116(C)(7) de novo. *Kincaid v Cardwell*, __ Mich App __ ; __ NW2d __ (Docket No. 310045, issued April 18, 2013), slip op, p 4. "Summary disposition under MCR 2.116(C)(7) is appropriate when the undisputed facts establish that the plaintiff's claim is barred under the applicable statute of limitations." *Id.* This Court reviews the documentary evidence in the light most favorable to the nonmoving party to determine whether the statute of limitations bars a claim. *Id.* "If there is no factual dispute, whether a plaintiff's claim is barred under the applicable period of limitations is a matter of law for the court." *Id.* Also, the interpretation and application of a court rule is reviewed de novo. *Henry v Dow Chem Co*, 484 Mich 483, 495; 772 NW2d 301 (2009).

The Michigan court rules are interpreted under the principles of statutory construction. *Henry*, 484 Mich at 495. "We begin by considering the plain language of the court rule in order to ascertain its meaning." *Id.* "The intent of the rule must be determined from an examination of the court rule itself and its place within the structure of the Michigan Court Rules as a whole." *Id.* (quotation marks and citation omitted). Court rule interpretations that result in part of the court rule becoming nugatory or surplusage are to be avoided. *Dykes v William Beaumont Hosp*, 246 Mich App 471, 484; 633 NW2d 440 (2001).

MCR 2.612(C) provides:

(C) Grounds for Relief From Judgment.

(1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).

(c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

(d) The judgment is void.

(e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.

(f) *Any other reason justifying relief from the operation of the judgment.*

(2) The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order, or proceeding was entered or taken. Except as provided in MCR 2.614(A)(1), a motion under this subrule does not affect the finality of a judgment or suspend its operation.

(3) *This subrule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding; to grant relief to a defendant not actually personally notified as provided in subrule (B); or to set aside a judgment for fraud on the court. [Emphasis added.]*

Petitioner's petition for relief from judgment is not an independent action under MCR 2.612(C)(3). "MCR 2.612(C)(3) expressly notes that its provision for relief from judgment by a motion directly in the same proceedings 'does not limit the power of a court to entertain an independent action to relieve a party from judgment.'" 3 Longhofer, Michigan Court Rules Practice, p 516. As noted in Michigan Court Rules Practice, the plain language of subsection (C)(3) highlights that a party seeking relief from judgment through this subsection must do so by means of a separate proceeding, and the rule specifically distinguishes between an independent action and a motion made in the same proceeding. See also *Daoud v De Leau*, 455 Mich 181, 203; 565 NW2d 639 (1997) (an independent action before another court for relief from judgment based on fraud may not be filed against the same person involved in the first suit if the court rules provide an avenue for obtaining relief before the first court). Consequently, because petitioner filed her petition as a direction application through a motion in the same proceedings, her petition constitutes a motion for relief from judgment under MCR 2.612(C)(1).

Petitioner argues that filing her petition in the same case with the probate court does not preclude it from being an independent action because the probate court has exclusive jurisdiction over matters involving the administration of trusts, and thus, she was required to bring her petition before the probate court. While MCL 700.1302 does grant the probate court exclusive jurisdiction over the administration of trusts, this statute does not negate the requirements of MCR 2.612(C)(3). Rather, the plain language of MCR 2.612(C)(3) requires a filing outside of the proceedings in which fraud on the court is alleged regardless of the court before which the action is commenced. Consequently, in order for petitioner to avail herself of MCR 2.612(C)(3), she should have filed a separate—and hence independent—complaint or petition alleging fraud on the court regarding the trust distribution order.

Regardless, even if petitioner had correctly filed an independent action for relief from judgment, her claim would have failed. A party may bring an independent action for relief from judgment only when:

(1) the judgment is one that ought not, in equity and good conscience, be enforced, (2) there is a valid defense to the alleged cause of action on which the judgment is founded, (3) fraud, accident, or mistake prevented the defendant from obtaining the benefit of the defense, (4) there was no negligence or fault on the part of the defendant, and (5) there is no adequate remedy available at law. [*Trost v Buckstop Lure Co, Inc*, 249 Mich App 580, 589; 644 NW2d 54 (2002).]

Petitioner cannot satisfy any of these elements. Neither equity nor good conscience permit petitioner to proceed with an independent action for relief from judgment because petitioner's own actions precluded her from being notified about these proceedings. The evidence clearly shows that petitioner intended to end all communication with her family, including respondent, when she left Michigan in 1999. Petitioner admitted as much. Petitioner never provided a forwarding address, did not enter into a lease or place utilities in her name, nor did she inform respondent that she legally changed her first name in 2002. In fact, petitioner did not attempt to contact respondent from 1999 until approximately 2005 or 2006, at which time she first called respondent at the family restaurant and then sent him e-mails, all without providing respondent her address or location. To now set aside the order of distribution because respondent did not give petitioner actual notice would be inequitable.

Petitioner also does not have a valid defense to the trust distribution order, and, regardless, it is clear that fraud, accident, or mistake did not prevent petitioner from obtaining the benefit of a defense. It is undisputed that in 1999 petitioner, while still a minor and aware of the citation proceedings, decided to leave the state of Michigan without informing her guardian, family, or friends of her whereabouts. Petitioner moved several times, eventually settling in Connecticut. However, petitioner never informed a family member of her address until sometime in 2005 and she never provided her whereabouts to respondent. Furthermore, petitioner acknowledged that she did not want respondent to know where she was. Thus, it was not fraud, a mistake, or an accident that led to respondent's inability to serve notice of the trust distribution proceedings to petitioner. Instead, whether phrased as petitioner's fault or negligence, it was clearly petitioner's own actions that foreclosed any chance of petitioner receiving more notice than what she was afforded. The trial court did not err in determining that petitioner could not seek relief from judgment under MCR 2.612(C)(3).

In the alternative, petitioner asserts that her petition for relief from judgment should have been granted under MCR 2.612(C)(1)(f). There are three requirements that must be fulfilled to grant relief from judgment under MCR 2.612(C)(1)(f):

(1) the reason for setting aside the judgment must not fall under subsections a through e, (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice. Generally, relief is granted under subsection f only when the judgment was obtained by the improper conduct of the party in whose favor it was rendered. [*CD Barnes, Assoc, Inc v Star Heaven, LLC*, __ Mich App __; __ NW2d __ (Docket No. 300263, issued April 11, 2013), slip op, p 18, quoting *Heugel v Heugel*, 237 Mich App 471, 478-479; 603 NW2d 121 (1999). (Emphasis deleted.)]

Petitioner cannot use MCR 2.612(C)(1)(f) because she is unable to satisfy the second or third requirements. Assuming the first requirement under *Heugel* is satisfied because respondent, as the trustee and a beneficiary of the trust, does not have an interest opposed to petitioner's interest as a beneficiary of the trust, respondent would be detrimentally affected by the setting aside of the trust distribution order because over two years passed before petitioner moved to set aside the trust distribution order. Respondent would be prejudiced because he believed the trust distribution order settled the trust, ending his duties as the trustee and giving him his share of the trust assets as a beneficiary. See *Lark v The Detroit Edison Co*, 99 Mich App 280, 284; 297 NW2d 653 (1980) (a 10 month lapse between the entry of the judgment and the motion for relief from judgment prejudiced the opposing party where the opposing party relied upon the finality of the judgment). Additionally, petitioner's fraud allegations are not extraordinary circumstances justifying relief to achieve justice. Petitioner has not presented evidence that respondent engaged in fraud by serving notice through publication in 2005 or that he engaged in material misrepresentations regarding the administration of the trust. Rather, petitioner's claims are based on mere allegations stemming from petitioner's displeasure regarding the trust distribution order. Petitioner cannot use MCR 2.612(C)(1)(f) to seek relief from judgment.¹

Affirmed.

Respondent may tax costs as the prevailing party. MCR 7.219(A).

/s/ Michael J. Kelly
/s/ Christopher M. Murray
/s/ Mark T. Boonstra

¹ Because we affirm the trial court's order granting respondent's motion for summary disposition, we do not address the issues in respondent's brief on cross-appeal, all of which were presented as alternative arguments for affirming the trial court's order.