

STATE OF MICHIGAN
COURT OF APPEALS

LINDA THURSFIELD,

Plaintiff-Appellee,

UNPUBLISHED
October 8, 2013

v

DAVID THURSFIELD,

Defendant-Appellant.

No. 302186
Oakland Circuit Court
LC No. 05-070476-CK

Before: MARKEY, P.J., and FITZGERALD and OWENS, JJ.

PER CURIAM.

Defendant appeals as of right a judgment awarding plaintiff damages for breach of a settlement agreement that was incorporated but not merged into the parties' April 18, 2005, judgment of divorce. Because we conclude that the civil division of the circuit court lacked jurisdiction over the claims asserted in this action, we remand for dismissal of this case.

The consent judgment of divorce provides that "the Settlement Agreement of the parties dated April 16, 2005, is hereby adopted by the Court in full and incorporated but not merged into this Judgment." The judgment also provides for continuing jurisdiction. In paragraph 25, the judgment provides as follows.

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter to enforce all the provisions of this Judgment of Divorce, and the Court shall determine the means and methods of compliance and reserves the right to enforce the property settlement provisions through its contempt powers. If either party hereto fails to comply with any of the terms and conditions of the Judgment of Divorce and legal action is taken to enforce the terms and conditions of the Judgment of Divorce, the prevailing party shall be entitled to their actual attorney fees in addition to all other statutory attorney fees and costs from the losing party.

A careful review of plaintiff's complaint, which was brought as a separate action in the civil division of the circuit court, reveals that plaintiff alleged that defendant was in breach of

numerous terms of the settlement agreement.¹ She alleged that defendant failed to quarterly disclose his employment and earnings on the first day of each quarter after entry of the agreement and that he failed to pay the amount due her. Plaintiff requested damages for breach of contract, an accounting, damages for failure to make timely payments, and other relief related to a qualified domestic relations order, a life insurance trust, earnings from defendant's position as director of Imperial Tobacco, and a transfer to her of Imperial Tobacco Stock. Importantly, the complaint does not seek damages as a result of defendant's failure to disclose the income received by him before finalization of the settlement agreement. Rather, the complaint seeks damages for breach of the settlement agreement.²

The family division expressly provided that it "retained jurisdiction to enforce the property settlement and other provisions in the Judgment of Divorce."³ Accordingly, the family division was the proper venue in which to raise the issues presented in this case and plaintiff should have moved to enforce the settlement agreement in the context of a post-judgment filing in the divorce case.⁴ Because the civil division of the circuit court lacked jurisdiction, its judgment in favor of plaintiff is void.

We remand for entry of an order dismissing this action. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Donald S. Owens

¹ Plaintiff alleged that she was induced to enter into the agreement because defendant had not revealed that he was working as a consultant and she believed that defendant, who had retired from his position as an executive at Ford Motor Company during the pendency of the divorce action, would not accept future employment that would pay him less than \$3 million per year. A review of the allegations of the complaint reveals that plaintiff did not allege that defendant committed fraud by failing to disclose that he was working as a consultant but, rather, that he breached the agreement by accepting a position that paid less than \$3 million per year.

² Although Michigan law recognizes an independent cause of action for *fraud* where the fraud induced entry into a settlement agreement that was incorporated, but not merged, into the final judgment of divorce, see *Grace v Grace*, 253 Mich App 357, 364-365, 655 N.W.2d 595 (2002), the present complaint is not a complaint alleging fraud in the inducement of the settlement agreement. Thus, *Grace* is not controlling in the present matter.

³ The circuit court is a court of general jurisdiction, MCL 600.151, and has "original jurisdiction in all matters not prohibited by law. . . ." Const 1963, art 6, § 13. But MCL 600.1021(1)(a) grants to the family division of the circuit court "sole and exclusive jurisdiction over . . . [c]ases of divorce and ancillary matters . . ." in cases commenced on or after January 1, 1998.

⁴ Plaintiff may move to enforce the settlement agreement in the context of a post-judgment filing in the divorce case.