

STATE OF MICHIGAN
COURT OF APPEALS

THOMAS CIESLINSKI,

Plaintiff-Appellant,

v

MICHELLE CIESLINSKI,

Defendant-Appellee.

UNPUBLISHED
November 13, 2014

No. 319609
Macomb Circuit Court
Family Division
LC No. 2012-006737-DM

Before: WHITBECK, P.J., and FITZGERALD and MURRAY, JJ.

PER CURIAM.

Plaintiff, Thomas Cieslinski, appeals as of right the November 25, 2013 consent judgment of divorce that granted his divorce from defendant, Michelle Cieslinski, and established custody of the parties' minor child. The question in this case is whether the trial court properly declined to set aside the consent judgment when Thomas Cieslinski alleged that (1) Michelle Cieslinski deliberately withheld information that she was pregnant with another man's child before he signed the consent judgment of divorce, and (2) knowledge of her pregnancy would have affected his decision to sign the consent judgment because he would have been concerned about Michelle Cieslinski's ability to properly parent two children. We conclude that the trial court abused its discretion when it failed to hold an evidentiary hearing after Thomas Cieslinski in essence alleged that Michelle Cieslinski fraudulently obtained the consent judgment. Accordingly, we reverse and remand.

I. FACTS

Negotiations in this contentious divorce case continued until the day before trial. One of Thomas Cieslinski's concerns was Michelle Cieslinski's ability to provide proper care for the parties' minor child. The day before the divorce trial was scheduled, the parties signed a consent judgment of divorce that established custody over the parties' minor child.

However, at the pro confesso hearing on entry of the consent judgment, counsel for Thomas Cieslinski requested the trial court set aside the consent judgment. Thomas Cieslinski asserted that Michelle Cieslinski withheld from him the fact that she was pregnant with another man's child until about half an hour before the hearing. According to Thomas Cieslinski's counsel, the information would have affected his decision to sign the consent judgment of divorce because he did not believe that Michelle Cieslinski would properly care for the child if

there was “another child in[] the mix” and he was concerned that “the minor child is not going to be properly cared for.” Counsel for Michelle Cieslinski asserted that Michelle Cieslinski’s pregnancy was disclosed “for statutory reasons,” but the information did not change the terms of the judgment because Thomas Cieslinski was not the father in the pregnancy.

The trial court noted that Thomas Cieslinski was not the child’s father and dismissed Thomas Cieslinski’s concerns as “hypothetical.” The trial court swore Thomas Cieslinski as a witness and established statutory grounds to grant the divorce—that is, the trial court questioned Thomas Cieslinski about his name, residency, divorce complaint, and the chance of reconciliation. The trial court found that there had been a breakdown of the marriage and entered the consent judgment of divorce. The trial court did not explore Thomas Cieslinski’s allegations of fraud while Thomas Cieslinski was sworn or make findings on those allegations.

Thomas Cieslinski moved for reconsideration. During the reconsideration hearing, Thomas Cieslinski’s counsel contended that the information of Michelle Cieslinski’s pregnancy “was pretty much bamboozled on [Thomas Cieslinski]” and was not discussed during mediation. Counsel noted that the trial court can set aside the judgment in cases of fraud, and that this is “a classic case that she knew she was pregnant, didn’t disclose it, it is an important fact . . . that was concealed from Mr. Cieslinski . . .” Thomas Cieslinski’s counsel further asserted that Thomas Cieslinski “didn’t have full information to enter into that judgment.”

Michelle Cieslinski’s counsel admitted that Michelle Cieslinski knew she was pregnant but did not inform Thomas Cieslinski of the fact, allegedly because she was afraid he would engage in domestic violence against her. Thomas Cieslinski’s counsel asserted that Michelle Cieslinski withheld the information because “she knew that it would change the tone of the [mediation].” Thomas Cieslinski’s counsel again requested that the trial court hold an evidentiary hearing.

The trial court again declined to hold an evidentiary hearing. The trial court noted that the information did not affect Michelle Cieslinski’s moral fitness and asked, “What does that have to do with their decision as to the custody arrangement?” The trial court noted that if there was evidence that Michelle Cieslinski could not take care of both children, Thomas Cieslinski could move to modify the custody award. The trial court concluded that Michelle Cieslinski’s pregnancy was “no reason to hold up a judgment that we should have already consented to.” The trial court denied Thomas Cieslinski’s motion for reconsideration.

II. FRAUD IN A CONSENT JUDGMENT

A. STANDARD OF REVIEW

This Court reviews for an abuse of discretion the trial court’s decision on a motion for relief from judgment.¹ The trial court abuses its discretion when its decision falls outside the range of principled outcomes.²

¹ *Rose v Rose*, 289 Mich App 45, 49; 795 NW2d 611 (2010).

B. LEGAL STANDARDS

“A consent judgment is the product of an agreement between the parties.”³ Generally, a party may obtain relief from a settlement agreement for mutual mistake, fraud, unconscionable advantage, or ignorance of a material term of the settlement agreement.⁴ MCR 2.612(C)(1)(c) allows a party to move the trial court to invalidate a judgment of divorce that was obtained on the basis of fraud.⁵ A party alleges fraud when he or she alleges

(1) that the charged party made a material misrepresentation; (2) that it was false; (3) that when he or she made it he or she knew it was false, or made it recklessly, without any knowledge of its truth as a positive assertion; (4) that he or she made it with the intention that it should be acted upon by the other party; (5) that the other party acted in reliance upon it; and (6) that the other party thereby suffered injury.⁶

C. APPLYING THE STANDARDS

Thomas Cieslinski alleges that the trial court abused its discretion by upholding the parties’ consent judgment of divorce without holding an evidentiary hearing on the issue of fraud. We agree. To deny Thomas Cieslinski an evidentiary hearing is to risk holding him to the terms of a consent judgment that he would not otherwise have signed and a custody arrangement to which he would not otherwise have consented.

In *Kiefer v Kiefer*, a panel of this Court held that the trial court abuses its discretion when a party alleges fraud in a consent judgment but the trial court fails to hold an evidentiary hearing.⁷ The existence of a consent judgment does not, in and of itself, preclude the existence of fraud.⁸ This Court noted that, “[i]n the absence of an evidentiary hearing, we are unable to determine whether sufficient evidence of fraud exists.”⁹

We conclude that *Kiefer* applies squarely to the facts of this case. Here, Thomas Cieslinski contended that Michelle Cieslinski made a material misrepresentation by concealing knowledge of her pregnancy while the parties were negotiating the consent judgment. Thomas Cieslinski alleged that knowledge of her pregnancy would have affected his decision to sign the

² *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1990).

³ *Sylvania Silica Co v Berlin Twp*, 186 Mich App 73, 75; 463 NW2d 129 (1990).

⁴ *Plamondon v Plamondon*, 230 Mich App 54, 56; 583 NW2d 245 (1998).

⁵ See *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999).

⁶ See *City of Novi v Robert Adell Children’s Funded Trust*, 473 Mich 242, 254 n 8; 701 NW2d 144 (2005).

⁷ *Kiefer v Kiefer*, 212 Mich App 176, 183; 536 NW2d 873 (1995).

⁸ See *Id.*

⁹ *Id.*

consent judgment because he was concerned about the care that the parties' minor child would receive if Michelle Cieslinski had another child.

Under *Kiefer*, the trial court should have held an evidentiary hearing and made findings after reviewing the record. The trial court's finding that Thomas Cieslinski's concerns were "hypothetical" did not address any of the elements of fraud. Because the trial court did not take evidence or make findings of fact, this Court is simply not in a position to determine whether the alleged misrepresentation was material, was intended to induce Thomas Cieslinski to sign the consent judgment, or whether Thomas Cieslinski signed the consent judgment in reliance on the misrepresentation. For these reasons, we conclude that the trial court abused its discretion by not holding an evidentiary hearing on Thomas Cieslinski's allegations of fraud.

We reverse and remand for an evidentiary hearing. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ E. Thomas Fitzgerald

/s/ Christopher M. Murray