STATE OF MICHIGAN

COURT OF APPEALS

LORI ANN GILMORE, formerly known as, LORI ANN ELLERMAN,

Plaintiff-Appellee,

v

SAMUEL D. ELLERMAN,

Defendant-Appellant.

UNPUBLISHED
May 14, 2020

No. 348951
Saginaw Circuit Court
LC No. 11-014498-DM

Before: CAVANAGH, P.J., and SAWYER and RIORDAN, JJ.

PER CURIAM.

Defendant appeals from an order of the circuit court denying his motion to vacate the judgment of divorce. We affirm and remand for assessment of damages for pursuing a vexatious appeal under MCR 7.216(C).

This divorce action commenced in 2011 and the parties reached a settlement in 2013. Plaintiff submitted a proposed judgment under the seven-day rule, MCR 2.602(B)(3). Defendant filed objections. Ultimately, at an April 19, 2013 hearing, the trial court, after hearing the parties' arguments, stated that it would take the matter under advisement and compare the judgment with the transcript. Thereafter, the trial court entered the judgment of divorce.

Disputes between the parties continued. Ultimately, on February 20, 2019, defendant filed a motion for relief from judgment. As discussed below, defendant maintains that his objections to the original judgment of divorce were not properly resolved. The motion was denied. Defendant now appeals and we affirm.

Defendant's argument on appeal consists solely of the following paragraph:

> In this case the Trial Court did not conduct a full evidentiary hearing prior to the entry of the Judgment of Divorce which is the subject of this appeal. *MCR 2.517(A)(1)* by its plain language did require the Trial Court to conduct such a hearing in the absence of a consent to entry of the Judgment. The Trial Court did begin the hearing and on April 19, 2013 the matter was adjourned for additional

> proofs including evidence to be presented by the Defendant until April 26, 2013. The April 26, 2013 hearing did not take place and the Judgment was entered in violation of *MCR 2.517(A)(1)*. Accordingly the matter should be remained [sic] to the Trial Court for further proceedings.

We have a number of problems with defendant's argument aside from its extreme brevity. First, MCR 2.517(A)(1) does not require a full evidentiary hearing on objections to the entry of judgment. It requires that on actions tried on the facts without a jury, the trial court must state its findings of fact

and conclusions of law. Because this matter was settled, the trial court only needed to take the proofs necessary for the pro confesso hearing, which it did. As for the objections, the trial court heard the arguments of the parties and took the matter under advisement, stating that it was going to review the transcript of the hearing at which the settlement was placed on the record. This would seem to be all that is typically necessary—determining whether the judgment conforms to the parties' agreement, as reflected on the record or in a written agreement. Thereafter, the trial court entered the judgment. Any references to the taking of evidence at a future hearing regarded modifications to parenting time or support.

Second, defendant's primary objection raised to the judgment was that his attorney at the time was not authorized to enter into the settlement. But at the hearing at which the settlement was entered on the record, defendant under oath stated that he agreed with the settlement. As for the other objections raised by defendant regarding the parenting time and support issues, the trial court indicated that it would handle the objections to the entry of judgment separately from the motions regarding potential modifications.

Third, defendant does not point to anything in the judgment of divorce that deviated from that to which he agreed in the settlement. That is, defendant does not point to anything in the judgment that was entered that is different from the agreement that was put on the record. Indeed, the trial court indicated before denying the motion that it was going to review the transcript and compare it to the judgment. Apparently, the trial judge at that time was satisfied that the judgment did comport to the agreement.

Fourth, and most importantly at this point, is the actual basis that the trial court denied relief from judgment. Namely, that the motion was untimely. Under MCR 2.612(C)(1), there are six grounds for relief from judgment. The first three must be brought within one year, and the others must be brought within a reasonable time. MCR 2.612(C)(2). The trial court found six years to be unreasonable:

> I can't imagine any court, appellate court thinking six years later is within a reasonable—six years later and three or four attorneys later is within a reasonable amount of time. But even if it was a reasonable amount of time the Court would still deny your motion because there was an agreement placed on the record. And I did review the transcripts of the record. And I did sign the final judgment of divorce based on that back in 2013. And now we are in

> 2019 and there is no way the Court is going to set this aside. Because it was done properly, and this motion is not timely. And, I think it is frivolous and I am going award $600 attorney fees payable to Ms. Brady.

The trial court is correct—we do not think that six years is a reasonable amount of time. Any continuing objections that defendant may have had should have been raised long before 2019. Ultimately, we agree with the trial court—not only is there no basis for a relief from judgment, even if there were a basis to grant relief and we were incorrect in our analysis of the first three points, the time has long since passed for the court to act upon it.

Finally, we note that plaintiff requests sanctions under MCR 7.216(C) for defendant's pursuit of a vexatious appeal. We agree. On remand, the trial court shall determine an appropriate amount.

Affirmed, but the matter is remanded to the trial court for a determination of damages to be awarded plaintiff under MCR 2.612(C). We do not retain jurisdiction. Plaintiff may tax costs.

/s/ Mark J. Cavanagh
/s/ David H. Sawyer
/s/ Michael J. Riordan