

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

DONNA LYNN NORTH,

Plaintiff,

vs.

Case No. 2001-073-DM

JAMES TODD NORTH

Defendant.

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OPINION AND ORDER

Plaintiff Donna Lynn North has filed a motion seeking an order to amend the Consent Judgment of Divorce.

I. BACKGROUND

The parties entered into a consent judgment for divorce on December 3, 2001. Within the judgment, as part of the property settlement, the parties agreed that plaintiff would receive 50% of defendant's pension plan and VA benefits that the military afforded him from the date of marriage to the date the judgment was entered. On November 30, 2004, the Court denied plaintiff's motion to adopt the child support recommendation of the FOC. The Court also found that federal law precluded the division of disability benefits. However, the Court did state that it would entertain a motion by plaintiff to amend the consent judgment provided that arguments and proofs were placed on the record before doing so.

Plaintiff now moves for an order to amend the consent judgment.

II. ARGUMENT

Plaintiff alleges that by either fraud on the part of defendant (promising to pay plaintiff a portion of his disability benefits which he knew to be indivisible) or by mutual mistake of fact (neither party knew that the defendant's disability benefits could not be divided as part of the divorce settlement), the parties agreed to assign a part of defendant's VA disability benefits to the plaintiff. Plaintiff would now like monetary compensation in the form of spousal support to replace the money she would have received from defendant's disability benefits.

III. LAW AND ANALYSIS

Property settlement provisions in a divorce judgment are typically final and cannot be modified by the court. *Quade v Quade*, 238 Mich App 222, 226; 604 NW2d 778 (1999). Modifications of property settlements in divorce judgments are disfavored and generally cannot be ordered except under limited circumstances. *Norman v Norman*, 201 Mich App 182, 189; 506 NW2d 254 (1993). Absent fraud, duress, or mutual mistake, courts are bound to uphold property settlements reached through negotiations and agreement by the parties in a divorce action. *Quade, supra*, 226.

In the current case plaintiff alleges both fraud and mutual mistake as grounds to amend the consent judgment. Plaintiff's claim of fraud is denied because there is no information before the court to substantiate it. As for the plaintiff's allegation that a mutual mistake was made by the parties (neither party knew that the defendant's disability benefits could not be divided as part of the divorce settlement) it is also insufficient to support an amendment to the consent judgment. Even if a mutual mistake did occur (which is still unclear) the Court feels that it would be inequitable to grant the

plaintiff spousal support. By approving plaintiff's request the Court would still be awarding her a portion of defendant's disability benefits because the funds used to make the alimony payments would essentially be coming from the same pool of currency that contains the benefit money. This would be in clear violation of the Supreme Court ruling which stated that the Former Spouses Protection Act (FSPA) "does not grant the state courts the power to treat as property divisible upon divorce military retirement pay that has been waived to receive veterans' disability benefits." *Mansell v Mansell*, 490 US 581; 109 S Ct 2023; 104 L Ed 2d 675 (1989). Thus, if the Court were to grant plaintiff's motion to amend it would essentially be awarding her a portion of defendant's disability benefits albeit under the guise of "spousal support."

IV. CONCLUSION

For the reasons set forth above, plaintiff Donna Lynn North's motion seeking an order to amend the Consent Judgment of Divorce is DENIED.

This Opinion and Order resolves the last pending claim in this matter and closes the case. MCR 2.602(A)(3).

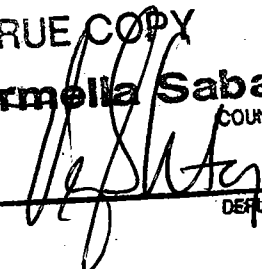
IT IS SO ORDERED.

MARK S. SWITALSKI

Mark S. Switalski, Circuit Judge

Dated: July 12, 2005

Cc: James M. Simasko, Attorney at Law
James Todd North, In Pro Per

A TRUE COPY
Carmella Sabaugh
COUNTY CLERK
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