



PROFESSOR LEX

BY HARVEY I. HAUER

Dear Professor Lex:

A client saw me regarding setting aside her two-year-old Judgment of Divorce. Her reasoning was a litany of outrageous behavior by her ex-husband shortly before her divorce, and immediately after. In the interests of her privacy, I will not be more specific. If we were to attack the Judgment, where would you suggest that I start?

Practitioner

Dear Practitioner:

The authority for setting aside a judgment is found in MCR 2.612(C), which provides, in part:

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. A motion under this subrule does not affect the finality of a judgment or suspend its operation. [MCR 2.612(C)(1)(a)-(f) and (2)(emphasis added).]

In your case, because your client would be filing her Motion more than one year after the Judgment's entry, she fails to meet the one-year requirement under subrules (C)(1)(a), (b), and (c). From your inquiry, it is unclear whether subrules (d) and (e) are applicable, and you will have to obtain the facts in order to determine whether you can attack the Judgment of Divorce under those subrules. If you do not come within (d) and (e), under the applicable law, MCR 2.612(C)(1)(f) is the only mechanism by which she may attack the parties' Judgment of Divorce. To attain relief under subrule (f), you must also satisfy the requirements of *Heugel v Heugel*, 237 Mich App 471, 603 NW2d 121 (1999). In *Heugel*, the court held:

In order for relief to be granted under MCR 2.612(C)(1)(f), the following **three requirements must be fulfilled**:

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....[*Heugel, supra* at 478-479 (emphasis added)](internal citations omitted).]

Answer respectfully submitted by
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