Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2016-341

MAY TERM, 2017

Kevin Barrup	}	APPEALED FROM:
	}	
	}	Superior Court, Orleans Unit,
v.	}	Family Division
	}	
	}	
Tammy Barrup	}	DOCKET NO. 239-12-04 Osdm
		Trial Judge: Howard E. Van Benthuysen

In the above-entitled cause, the Clerk will enter:

Defendant ex-wife appeals the superior court's orders regarding her post-judgment motions in this divorce action. We affirm.

The parties were divorced by a final order and decree issued in November 2007. In August 2015, defendant filed a motion to enforce, alleging that plaintiff ex-husband failed to convey to her stock that was awarded to her under the final divorce order, failed to pay attorney's fees as ordered, and failed to turn over certain personal property awarded to her in the order. The superior court held a hearing and, on February 17, 2016, entered a decision requiring plaintiff to pay defendant's attorney $2400 within thirty days and to deliver to defendant within fifteen days specified stock or its cash value of $21,922, a 2003 Sea-Doo or its Kelley Blue Book cash value, and $1 in lieu of conveying a snowman collection.

On March 14, 2016, defendant filed a motion entitled "perjury" and attached an affidavit stating that defendant provided false information regarding certain assets and income in financial statements submitted in the divorce proceeding. On July 13, 2016, the superior court denied the motion—motion number 177 in what the court described as an "ultra high-conflict" divorce—concluding that plaintiff had failed to provide sufficient information upon which the court could act. On July 25, 2016, plaintiff filed a motion to alter or amend the July 13 order, stating that the court had misinterpreted her motion entitled "perjury" and that she was seeking "special relief" under the family rules or, in the alternative, under Vermont Rule of Civil Procedure 60(b)(6). She further stated that she specified in her "perjury" motion that plaintiff had been untruthful in submitting information concerning the value of a particular car wash business, the value of a particular house, certain bank statements, and other undisclosed assets. The superior court denied the motion, stating that defendant's motions were directed at reopening the property award in the 2007 final divorce order and that the motion to alter or amend was untimely filed.

On appeal, the pro se defendant for the most part repeats her claim that plaintiff committed perjury with respect to the value and amount of his assets and income reported in the divorce proceeding. She also claims that she did not receive adequate compensation from plaintiff for the 2003 Sea-Doo that the court dealt with in its February 17, 2016 order.

As the superior court stated, although defendant purported to seek reconsideration of the court's July 13, 2016, she was actually seeking to reopen the 2007 divorce judgment, which would fall under Vermont Rule of Civil Procedure 60(b). Essentially, defendant alleges fraud by an adverse party, an allegation that must be filed within one year of the judgment unless the fraud rises to the level of egregious fraud upon the court. See V.R.C.P. 60(b) (stating that motions under first three subsections of section b, including motions alleging fraud by adverse party, must be filed not more than one year after judgment); Olio v. Olio, 2012 VT 44, ¶ 17, 192 Vt. 41 (noting narrow fraud-upon-court exception to rule that seeking to reopen judgment based on allegation of fraud is subject to one-year limitation). Defendant has not alleged either before the superior court or this Court that husband's fraud rose to the level of fraud upon the court, and in fact this Court has ruled that an allegation of a spouse's deliberate attempt to conceal marital assets coupled with the spouse's misrepresentations to the other spouse and the court in the course of doing so did not fall within the narrow exception of fraud upon the court. Olio, 2012 VT 44, ¶ 20. Nor can defendant rely upon the catch-all provision within the rule—Rule 60(b)(6)—insofar as her allegations fall squarely within Rule 60(b)(3). See Perrott v. Johnston, 151 Vt. 464, 466 (1989) (stating that Rule 60(b)(6) provision "is available only when a ground justifying relief is not encompassed within any of the first five classes of the rule" (quotation omitted)). Defendant's allegation that her ex-husband committed fraud, whether it be characterized as committing perjury or as failure to disclose assets, is outside of the time allowed to assert it under V.R.C.P. 60(b)(3) and is barred. As for defendant's complaint that plaintiff did not sufficiently compensate her for the 2003 Sea-Doo pursuant to the superior court's February 17, 2016 order, defendant may make such a claim in a motion to enforce with the superior court.

Affirmed.

BY THE COURT:

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Marilyn S. Skoglund, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice