



Missouri Court of Appeals
Southern District

Division One

In Re the Marriage of:	)	
LONA WALKER,	)	
	)	
Petitioner/Appellant,	)	
	)	
vs.	)	No. SD36679
	)	Filed: March 10, 2021
DAVID LEE WALKER,	)	
	)	
Respondent/Respondent.	)	
	)	

APPEAL FROM THE CIRCUIT COURT OF JASPER COUNTY

Honorable Jerry L. Holcomb, Judge

AFFIRMED

Lona Walker (“Wife”) appeals from the trial court’s “Judgment Denying Motion to Set Aside Judgment.” In one point relied on, Wife asserts that the trial court erred in ruling that Wife was required to demonstrate that she was free from fault, neglect or inattention in order to be entitled to relief under Rule 74.06(b).¹ Finding no merit to Wife’s point, we affirm the judgment of the trial court.

¹ All rule references are to Missouri Court Rules (2019).

Facts and Procedural Background

Wife and David Lee Walker (“Husband”) were married on May 11, 1996. On September 25, 2018, Wife filed a “Petition for Dissolution of Marriage.” Husband filed an answer to Wife’s petition and also filed a “Counter-Petition for Dissolution of Marriage.”

On January 18, 2019, the parties entered into a “Property Settlement Agreement” (the “Agreement”). The trial court entered its “Judgment and Decree of Dissolution of Marriage by Affidavit” on February 6, 2019, incorporating the Agreement and dissolving the marriage.

On February 3, 2020, Wife filed her “Motion to Set Aside Judgment Under Rule 74.06(b),”² asserting that Husband failed to disclose marital assets in connection with the Agreement and the judgment, and requesting that the judgment be set aside.

On April 15, 2020, a hearing was held on Wife’s motion. The trial court heard arguments of counsel and received exhibits. On April 21, 2020, the trial court entered its judgment denying Wife’s motion to set aside the judgment, and finding that Wife “has not demonstrated she is free from fault, neglect or inattention.” This appeal followed.

In one point, Wife asserts:

THE TRIAL COURT’S RULING THAT MOVANT WAS REQUIRED TO DEMONSTRATE THAT SHE WAS FREE FROM FAULT, NEGLIGENCE OR INATTENTION IN ORDER TO BE ENTITLED TO RELIEF UNDER RULE 74.06(b) WAS ERRONEOUS BECAUSE THE REQUIREMENT THAT A MOVANT ESTABLISH THAT SHE WAS FREE FROM FAULT, NEGLIGENCE OR INATTENTION ONLY APPLIES WHEN A MOVANT IS

² Rule 74.06(b) states:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment or order for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is irregular; (4) the judgment is void; or (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment remain in force.

ALLEGING EXTRINSIC FRAUD AND BY ALLEGING THAT THE RESPONDENT COMMITTED FRAUD BY CONCEALING HIS INTEREST IN A MARITAL ASSET MOVANT WAS ALLEGING THAT HE WAS GUILTY OF INTRINSIC FRAUD.

Standard of Review

“The judgment of the trial court will be affirmed unless there is no substantial evidence to support it, it is against the weight of the evidence, or it erroneously declares or applies the law.” *Pearson v. Koster*, 367 S.W.3d 36, 43 (Mo. banc 2012) (citing *Murphy v. Carron*, 536 S.W.2d 30, 32 (Mo. banc 1976)). As relevant here, “we review the circuit court’s ruling on a motion to set aside a judgment under Rule 74.06 for an abuse of discretion.” *Kerth v. Polestar Entm’t*, 325 S.W.3d 373, 378 (Mo.App. E.D. 2010).

Analysis

Wife argues that the trial court misapplied the law in rejecting her Rule 74.06 fraud claim, specifically arguing that the trial court conflated the analyses governing intrinsic and extrinsic fraud in Rule 74.06(b) and (d) claims.

However, we need not delve into the particulars of the law of intrinsic and extrinsic fraud, as Wife’s argument fails to properly distinguish between the credited and uncredited evidence in the record. As relevant here, the trial court found that Wife “has not demonstrated she is free from fault, neglect or inattention[,]” and denied Wife’s Rule 74.06(b) motion on that basis.

Wife argues in her brief that she “met her burden of establishing the elements of fraud. The evidence supported a finding of the necessary elements.” In attempting to further develop this argument, Wife’s brief suggests: “It is clear that the allegations of [Wife]’s motion to set aside the judgment and the evidence before the court would have been **sufficient** to set aside the judgment for fraud had the court applied the proper standard in considering the pleadings **and evidence** before it.” (Emphasis added).

The trial court heard the arguments of counsel and received evidence. Wife lost, and no detailed fact-findings were issued—it is therefore irrelevant on appeal whether the evidence could support the elements of her own claim.

“In court-tried cases where the trial court does not make specific findings of fact, on review all facts are presumed found in accord with the judgment[.]” *Cent. Am. Health Scis. Univ., Belize Med. Coll. v. Norouzzian*, 236 S.W.3d 69, 87 (Mo.App. W.D. 2007)³ (internal quotation and citation omitted). Wife’s argument does not account for this governing principle of review. Deprived of this analytical starting point, Wife’s challenge in this appeal cannot succeed.⁴

Wife’s Point I argument does not demonstrate her entitlement to relief in this appeal, and the same is accordingly denied.

The judgment of the trial court is affirmed.

WILLIAM W. FRANCIS, JR., J. - OPINION AUTHOR

NANCY STEFFEN RAHMEYER, P.J. - CONCURS

JACK A.L. GOODMAN, J. - CONCURS

³ Cf. *Marck Indus., Inc. v. Lowe*, 587 S.W.3d 737, 743 (Mo.App. S.D. 2019):

(1) we presume the challenged judgment is correct; (2) we presume the trial court knows and applies the law; (3) we will affirm the outcome on any basis supported by the record; and (4) it is appellant’s burden to dislodge us from the presumption that the outcome below was correct.

(internal quotation and citation omitted).

⁴ Two distinct evidentiary challenges are authorized in this context—substantial evidence and against the weight of the evidence. Both require the proponent of the challenge to present the facts in the light most favorable to the judgment. See *Houston v. Crider*, 317 S.W.3d 178, 187 (Mo.App. S.D. 2010). An appellant’s “[f]ailure to follow the applicable framework means the appellant’s argument is analytically useless and provides no support for his or her challenge.” *Langston v. Langston*, 615 S.W.3d 109, 116 (Mo.App. W.D. 2020) (internal quotation and citation omitted).