

STATE OF MICHIGAN
COURT OF APPEALS

IRMA HARPER,

Plaintiff-Appellee,

v

LUZVIMINDA RIVER, M.D., BREAST
DIAGNOSTIC CENTER and C.C. KAPDI, M.D.,

Defendants,

and

N.J. PAREKH, M.D.,

Defendant-Appellant.

UNPUBLISHED

July 15, 1997

No. 194915

Wayne Circuit Court

LC No. 94-408875 NH

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

Appellant Dr. Parekh appeals by right a Wayne Circuit Court order holding that Dr. Parekh and appellee Harper entered into an enforceable settlement agreement. This case is being decided without oral argument pursuant to MCR 7.214(E).

Counsel for Dr. Parekh and counsel for plaintiff had different versions of the discussions they had leading up to the purported settlement agreement. No testimony was taken under oath and therefore no findings of fact as to which version was correct could be made. Dr. Parekh and his attorney were in agreement that counsel's authority to settle on behalf of Dr. Parekh for \$40,000 was contingent on participation in such settlement by Dr. Rivera and Breast Diagnostic Center.

The settlement agreement cannot be enforced on the basis of the doctrine of apparent authority developed in *Nelson v Consumers Power Co*, 198 Mich App 82; 497 NW2d 205 (1993), because here the existence of an actual agreement is denied by defendant as having occurred on the terms

* Circuit judge, sitting on the Court of Appeals by assignment.

proposed, and the settlement was neither made nor confirmed in open court nor is it evidenced by an agreement in writing subscribed by the party against whom the agreement is offered or by that party's attorney. MCR 2.507(H); *Nelson v Consumers Power Co*, *supra*, 198 Mich App at 90. What appears from this record is that there was no actual "meeting of the minds", and therefore, in the absence of compliance with the conditions established in MCR 2.507(H), an agreement confirmed in open court or a writing signed by the party against whom the settlement is to be enforced, no enforceable settlement existed. *Brunet v Decorative Engineering, Inc*, 215 Mich App 430, 436; 546 NW2d 641 (1996).

Since counsel's actual authority to settle on behalf of Dr. Parekh authorizes settlement only on the described contingency, plaintiff's acceptance without compliance with the contingency does not represent an agreement which can be predicated on actual authority prior to such authority being revoked by Dr. Parekh. *Cf. Michigan National Bank v Patmon*, 119 Mich App 772, 779; 327 NW2d 355 (1982). Hence, the doctrine of actual authority likewise does not justify enforcement of the claimed settlement agreement.

We conclude that the circuit court erred in enforcing this settlement agreement, as neither the doctrine of apparent nor that of actual authority warrants that result and MCR 2.507(H) stands as an obstacle to recognition of a binding agreement.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Martin M. Doctoroff
/s/ Donald A. Teeple