STATE OF MICHIGAN

COURT OF APPEALS

MICHELE AURORA MICHALSKI,

Plaintiff-Appellant,

v

RONALD JOSEPH MICHALSKI,

Defendant-Appellee.

UNPUBLISHED
August 25, 1998

No. 200207
Tuscola Circuit Court
LC No. 96-014988-DO

Before: Doctoroff, P.J. and Reilly and G.S. Allen, Jr.*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a consent judgment of divorce. In particular, plaintiff challenges the trial court's order denying her motion to set aside the consent judgment of divorce. We affirm.

On August 19, 1996, the date set for the pretrial conference in this case, plaintiff's counsel negotiated a divorce settlement with defendant. The terms of the settlement were read into the record in open court. Plaintiff testified that the terms were correct. The consent judgment of divorce was entered on October 11, 1996. Subsequently, plaintiff moved to set aside the consent judgment of divorce, asserting that "she did not knowingly and freely and without duress approve the consent judgment." At the hearing on plaintiff's motion, plaintiff testified that she was told by a staff member at her attorney's office that she did not need to attend the August 19, 1996, pretrial settlement conference. Thirty minutes after she arrived at work that morning, plaintiff received a telephone call from defendant informing her that she needed to be at the conference. After rushing to the courthouse, and arriving late, plaintiff was rushed to the witness stand where she agreed to the terms of the consent judgment negotiated by her attorney without having any chance to contemplate those terms. In denying plaintiff's motion to set aside the consent judgment of divorce, the trial court explained that it would not set aside the agreed upon settlement because there was no showing of fraud, mistake, coercion, duress, or undue influence.

On appeal, plaintiff first argues that the trial court erred in refusing to set aside the consent judgment of divorce on the ground that plaintiff did not knowingly, consensually, and freely enter into the

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

terms of the consent judgment. We disagree. A trial court's decision on a motion to set aside a judgment should not be disturbed on appeal absent a clear showing of an abuse of discretion. *Kowatch v Kowatch*, 179 Mich App 163, 167; 445 NW2d 808 (1989). An abuse of discretion exists when the result is so palpably and grossly violative of fact and logic that it evidences perversity of will or the exercise of passion or bias rather than the exercise of discretion. *Dacon v Transue*, 441 Mich 315, 329; 490 NW2d 369 (1992).

For a consent judgment to become effective, the parties must in fact consent. *Howard v Howard*, 134 Mich App 391, 397; 352 NW2d 280 (1984). "Settlements, duly arrived at by the parties and placed on the record in open court in the presence of counsel, are entitled to a high degree of finality." *Tinkle v Tinkle*, 106 Mich App 423, 428; 308 NW2d 241 (1981). Thus, as a general rule, in the absence of fraud, duress or mutual mistake, courts are bound by property settlements reached through negotiations and agreement by the parties to a divorce action. *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990); *Calo v Calo*, 143 Mich App 749, 753; 373 NW2d 207 (1985); *Howard*, *supra* at 396. However, when a party to a consent judgment argues that his consent was achieved through duress or coercion practiced by his own attorney, the judgment will not be set aside absent a showing that the other party participated in the duress or coercion. *Grand Rapids Growers, Inc v Old Kent Bank & Trust Co*, 99 Mich App 128, 129-130; 297 NW2d 633 (1980); see also *Howard*, *supra* at 397. Moreover, when a party argues that his consent, while actually given, was influenced by circumstances of severe stress, the standard to be applied is that of mental capacity to contract. *Howard*, *supra* at 396. The test of mental capacity to contract is whether the person in question possesses sufficient mind to understand, in a reasonable manner, the nature and effect of the act in which he is engaged. To avoid a contract, it must appear not only that the person was of unsound mind or insane when it was made, but that the unsoundness or insanity was of such a character that he had no reasonable perception of the nature or terms of the contract. *Id.*, citing *Star Realty, Inc v Bower*, 17 Mich App 248, 250; 169 NW2d 194 (1969). Finally, a party's apparent consent to a divorce settlement is not valid when it is apparent from the record that the party was not aware of all of the provisions of the settlement. See *Howard*, *supra* at 397-400.

In this case, plaintiff argues that her expression of "consent" to the consent judgment in open court did not, in fact, signify actual consent to the terms of the settlement because (1) plaintiff did not know the extent of the marital assets or of her husband's income,[1] (2) as a result of her "mad dash" to the courtroom before testifying, plaintiff was upset, unnerved, and had no time to collect herself when she gave her "consent," (3) immediately before testifying, and after plaintiff informed her attorney that she was not in agreement with the settlement, plaintiff's attorney advised her that "she had better be careful because the trial judge was upset with her because her tardiness had caused the court to be running late and if she pushed too hard that morning she could get nothing at all," and (4) plaintiff was not advised by her attorney or the trial court that she could walk away from the pretrial hearing and proceed to trial. These asserted grounds were not sufficient to merit setting aside the judgment of divorce.[2] First, plaintiff's alleged lack of knowledge regarding the size of the marital estate and her husband's income does not demonstrate any lack of awareness regarding the agreed upon terms of the settlement. Cf. *Howard*, *supra* at 399-400. Second, plaintiff's unnerved state of mind during the pretrial hearing did not rise to the level necessary to invalidate a settlement for lack of capacity to

contract. See *Howard, supra* at 396. Third, there was no showing that defendant participated in the coercive

nature of the advice plaintiff received from her attorney. See *Grand Rapids Growers, supra* at 130. Finally, the fact that plaintiff was not specifically advised by her attorney or by the court that she did not have to consent, does not demonstrate that her expression of consent was something other than an actual expression of consent. For these reasons, we hold that the trial court did not abuse its discretion when it refused to set aside the parties' consent judgment of divorce.

Plaintiff next argues that no consent judgment of divorce can be effectively entered into without an express admonition from the bench that instead of accepting the terms of the settlement, the parties may elect to proceed to trial where they may get the same amount, more, less, or nothing. We are not persuaded by the legal authority offered by plaintiff that such a requirement is currently in effect, and we decline this opportunity to bring such a requirement into being.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Glenn S. Allen, Jr.

[1] Plaintiff admits in her brief on appeal that she knew that no discovery had taken place and that her husband had lied to her in the past regarding his acquisition of certain assets.

[2] Because it is axiomatic that plaintiff lacks standing to assert defendant's rights in this action, we need not address plaintiff's argument that defendant too failed to effectively consent to the settlement agreement.