STATE OF MICHIGAN

COURT OF APPEALS

STAYNER F. HALLER, as Personal Representative of the Estate of PEARL HALLER, Deceased,

Plaintiff-Appellee,

v

JOHN H. MCCOLLOUGH, JOHN H. MCCOLLOUGH, M.D., P.C., and MCCOLLOUGH ORTHOPEDIC CENTER,

Defendants-Appellants.

UNPUBLISHED
July 2, 1999

No. 207059
Oakland Circuit Court
LC No. 96-520545-CZ

Before: Markey, P.J., and Holbrook, Jr., and Neff, JJ.

PER CURIAM.

Defendant, John McCollough, appeals by right from the final judgment of the trial court entered pursuant to the parties' stipulation to entry of judgment. Defendant raises issues based on the trial court's order, entered before judgment, denying his motion for summary disposition under MCR 2.116(C)(7) based on the statute of limitations and the doctrine of collateral estoppel. For reasons to be discussed below, we conclude that this appeal is not properly before us.

The parties, through their respective attorneys, entered into a "stipulation to entry of judgment" in which plaintiff agreed to a voluntary dismissal of Counts I and III of its complaint without prejudice and defendant agreed that "a Judgment be entered for Plaintiff and against the Defendant, JOHN MCCOLLOUGH, Individually, pursuant to Count II of Plaintiff's Complaint in the amount of $40,769.00 plus interest to accrue at the statutory rate until the Judgment is paid in full." The stipulated agreement further expressly states that the judgment adjudicates all of the claims and rights and liabilities of all of the parties and constitutes a final order of the court. The trial court then entered judgment in accordance with the parties' stipulation.

The parties have not indicated that they intended only to consent to the form of the order of judgment or that they did not, in fact, stipulate to the outcome of the instant judgment, by which defendant assumed the obligation of his apparently insolvent professional corporation against which prior judgment had entered in favor of plaintiff. See *Ahrenberg Mechanical Contracting, Inc v*

Howlett, 451 Mich 74, 78, n 4; 545 NW2d 4 (1996). The entry of judgment in accordance with the stipulation and agreement of the parties is, in essence, a consent judgment. See *American Mut Liability Ins Co v Michigan Mut Liability Co*, 64 Mich App 315, 327; 235 NW2d 769 (1975). The review of a consent judgment is limited, *Dora v Lesinski*, 351 Mich 579, 582; 88 NW2d 592 (1958), and the agreement entered into on the record is valid and binding on the parties, absent fraud or mistake, *Trendell v Solomon*, 178 Mich App 365, 367-369; 443 NW2d 509 (1989). Neither party has asserted that they entered into the stipulation as the result of fraud or mistake in this case. Moreover, a stipulation is given full force and effect and is binding upon the parties unless abandoned or disaffirmed, although it may be set aside where it has been entered into as a result of inadvertence, improvidence, or excusable neglect. *Blue Cross & Blue Shied of Michigan v Eaton Rapids Community Hospital*, 221 Mich App 301, 307; 561 NW2d 488 (1997); *Nuriel v YWCA*, 186 Mich App 141, 147; 463 NW2d 206 (1990). Defendant has not disaffirmed the stipulation he entered into, and he has not claimed that it was entered into as the result of inadvertence, improvidence, or excusable neglect. Moreover, defendant has not claimed that judgment should be set aside for any of the reasons enumerated in MCR 2.612(C).

"Simply put, this Court has jurisdiction only over appeals filed by an 'aggrieved party.' MCR 7.203(A)." *Reddam v Consumer Mortgage Corp*, 182 Mich App 754, 757; 452 NW2d 908 (1990). Having entered into a formal stipulation whereby defendant expressly agreed to pay plaintiff $40,769 plus interest pursuant to Count II of plaintiff's complaint, and agreed that the judgment adjudicates all of the parties' rights, claims and liabilities, defendant is not an "aggrieved party." Accordingly, this Court is without authority to consider defendant's appeal.

Alternatively, even if we were to consider defendant's claims, we would find them to be without merit.

Defendant's first claim that the trial court erred in determining that plaintiff's cause of action was not barred by the statute of limitations in MCL 600.5805(8); MSA 27A.5805(8) is without merit. The governing statute of limitations is that found at MCL 600.5809(3); MSA 27A.5809(3), which sets a ten-year period for actions founded upon judgments from the time the judgment was rendered. *Belleville v Hanby*, 152 Mich App 548, 553; 394 NW2d 412 (1986). This action was filed well within that ten-year period and the trial court correctly denied summary disposition on this basis.

Defendant's second claim, that plaintiff's action to enforce the judgment was barred by collateral estoppel, is also without merit. The first action against defendant individually was dismissed with prejudice on the parties' acceptance of mediation. The trial court correctly determined that collateral estoppel is inapplicable. See *Hoover Corner, Inc v Conklin*, 230 Mich App 567, 574; 584 NW2d 385 (1998); *Rzepka v Michael*, 171 Mich App 748, 756; 431 NW2d 441 (1988).

To the extent that defendant argues that plaintiff's claims against him are barred by res judicata, defendant has waived this issue on appeal. Although stated as an affirmative defense, the doctrine of res judicata was not argued before or decided by the trial court. See *In re Hensley*, 220 Mich App 331, 335; 560 NW2d 642 (1996). Nor, apparently, was res judicata raised before the trial in this matter, resulting in a waiver of any claim in this regard. *Id*. Moreover, defendant has not identified application

of res judicata as one of the issues he raises on appeal. Collateral estoppel and res judicata are distinct doctrines. See, e.g., *Eaton Co Rd Comm'rs v Schultz*, 205 Mich App 371, 375-377; 521 NW2d 847 (1994).

We dismiss defendant's appeal. Plaintiff may tax costs.

/s/ Jane E. Markey
/s/ Donald E. Holbrook, Jr.
/s/ Janet T. Neff