

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TERRY ROBERT LOLL,

Plaintiff-Appellant,

v

SUSAN KAY LOLL,

Defendant-Appellee.

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UNPUBLISHED

March 24, 2000

No. 215902

Allegan Circuit Court

LC No. 97-021806-DO

Before: Wilder, P.J., and Sawyer and Markey, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed a complaint for divorce from defendant. On the date set for trial, the parties reached a comprehensive settlement. Plaintiff's counsel placed the settlement on the record. Plaintiff asked no questions, voiced no objections, and indicated his understanding of and agreement to the terms of the settlement.

Plaintiff's counsel submitted a judgment of divorce for entry pursuant to MCR 2.602. Subsequently, plaintiff filed objections to the judgment. In the objections, filed by counsel at plaintiff's insistence, plaintiff indicated that he suffered from arthritis and adult attention deficit disorder (AADD), and that on the date the settlement was placed on the record he had not understood the proceedings. At a hearing on defendant's motion for entry of judgment, plaintiff made a lengthy statement in which he objected to many of the provisions in the settlement. The court dismissed plaintiff's objections, and granted defendant's motion. The court acknowledged the existence of AADD, but observed that the condition did not necessarily impair a person's ability to make decisions.

A property division reached by the parties and finalized in writing or placed on the record cannot be modified by the court. *Zeer v Zeer*, 179 Mich App 622, 624; 446 NW2d 328 (1989). The court is bound to uphold a settlement, and cannot set it aside absent fraud, duress, mutual mistake, or severe stress. Absent an abuse of discretion, we will not overturn a court's finding regarding the validity

of a party's consent to a settlement agreement. *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990).

If a party alleges that consent to a settlement was given while he or she was under severe stress, the standard to be applied to determine whether the settlement should be set aside is that of mental capacity to contract. The test of mental capacity to contract is whether the person possessed sufficient mind to understand, in a reasonable manner, the nature and effect of the act in which he or she engaged. *Howard v Howard*, 134 Mich App 391, 395-396; 352 NW2d 280 (1984).

Plaintiff argues that the trial court abused its discretion by finding that his consent to the settlement was valid. We disagree and affirm. Plaintiff's contention that he did not enter into the settlement knowingly and understandingly is unsubstantiated. He presented no evidence that AADD rendered him incapable of understanding the nature and effect of his act of agreeing to the settlement. The record shows that during the hearing in which the settlement was placed on the record, plaintiff clearly indicated that he understood the settlement and wished to enter into the agreement. He neither asked questions about the terms of the settlement, nor expressed reservations about it. The trial court's finding that plaintiff's consent to the settlement was valid did not constitute an abuse of discretion. *Keyser, supra*.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ David H. Sawyer  
/s/ Jane E. Markey