STATE OF MICHIGAN

COURT OF APPEALS

WILLIAM IRWIN and SUZANNE IRWIN,

Plaintiffs-Appellants,

v

ROBERT LLOYD NORTH, JR., and PATRICK MICHAEL MCMAHON,

Defendants-Appellees.

UNPUBLISHED
May 26, 2000

No. 219115
Ottawa Circuit Court
LC No. 98-031177-NI

Before: Doctoroff, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Plaintiffs appeal as of right from an April 5, 1999, order of the Ottawa Circuit Court granting summary disposition to defendants pursuant to MCR 2.116(C)(7), on the ground that the release signed by plaintiffs referencing a June 28, 1995, automobile accident barred the civil suit brought by plaintiffs for injuries arising out of a July 7, 1995, automobile accident, and ordering sanctions against plaintiffs' attorney pursuant to MCR 2.114. We affirm and remand.

On July 7, 1995, William Irwin was the passenger in a vehicle struck by defendant Patrick Michael McMahon, when McMahon allegedly ran a red light in Holland. McMahon was defendant Robert Lloyd North, Jr.'s employee and was operating the vehicle in the course of his employment. North was leasing the truck driven by McMahon for use in his business. The vehicle driven by McMahon was insured by Hastings Mutual Insurance Company.

Plaintiffs retained attorney Judith Hearn's law firm to represent them. Plaintiffs' attorney-client contract with Hearn provided that Hearn was hired to represent them "regarding [the] personal injury suit from July 1995 accident." It is undisputed that only one accident occurred and that the accident took place on July 7, 1995. It is also undisputed that the parties settled the personal injury claim arising from an accident for the amount of $22,000.

On June 26, 1998, plaintiffs filed this civil action. Plaintiffs do not dispute that the accident-related claims presented in this subsequent action are the same accident-related claims that gave rise to the settlement payoff of $22,000 previously. June 28, 1995, was the inception date of the applicable

Hastings Mutual Insurance Policy, and such date was erroneously placed in the release as the date of the accident. They do not claim that any accident took place on June 28; nor did they return the $22,000 settlement to defendants. Neither party suggests that any fraud was involved in signing the release, and plaintiffs do not claim that they were misled, or unknowingly signed the release, or that the release was unfair. Plaintiffs simply argue that the release does not bar them from bringing this action for claims stemming from the July 7, 1995, accident, because the release incorrectly indicates that the date of the accident was June 28, 1995, rather than July 7, 1995, and would only bar plaintiffs from bringing an action for claims stemming from any hypothetical accident that could have occurred on June 28, 1995.

In response to plaintiffs' complaint, defendants moved the court for summary disposition pursuant to MCR 2.116(C)(7), (8) and (10). The court granted defendants' motion, ruling that the release barred plaintiffs' civil action. The court also ordered sanctions against plaintiffs' counsel, ordering him to pay $2,113, the amount of attorney fees and costs incurred by defendants in defending this action. The court found plaintiffs' claim to be totally lacking in merit and frivolous.

A trial court's grant or denial of summary disposition will be reviewed de novo. *Citizens Ins Co v Osmose Wood Preserving, Inc*, 231 Mich App 40, 43; 585 NW2d 314 (1998). When reviewing a motion for summary disposition under MCR 2.116(C)(7), the trial court accepts the plaintiff's well-pleaded allegations as true and construes them in the plaintiff's favor. *Id.* Likewise, this Court reviews de novo the trial court's decision to grant or deny equitable relief. *Olsen v Porter*, 213 Mich App 25, 28; 539 NW2d 523 (1995).

Plaintiffs argue that because the release contains the June 28 date, it could only apply to an accident that occurred on June 28, and thus should not operate as a bar to this lawsuit for injuries incurred in the July 7 accident. Specifically, plaintiffs argue that there is nothing ambiguous about the June 28 date, that the mistake was a unilateral one made by defendants, and thus, the court is absolutely prohibited by black-letter law from going beyond the four corners of the instrument to discern the parties' intent. We disagree.

A release is valid if it is fairly and knowingly made. *Trongo v Trongo*, 124 Mich App 432, 435; 335 NW2d 60 (1983). Generally, the intent of the parties expressed in the terms of a release governs its scope. However, this Court will look beyond the language of the release to determine the fairness of the release and the intent of the parties on executing it. *Id.*, 435.

"Courts will reform an instrument to reflect the parties' actual intent where there is clear evidence that both parties reached an agreement, but as the result of mutual mistake or mistake on one side and fraud on the other, the instrument does not express the true intent of the parties." *Mate v Wolverine Mutual Ins Co*, 233 Mich App 14, 24; 592 NW2d 379 (1998) (citing *Olsen, supra*, 213 Mich App at 29).

The intention of the parties can be derived "from the language of the release to which they have freely assented." *Romska v Opper*, 234 Mich App 512, 517; 594 NW2d 853 (1999). As this Court recently held in *Romska, supra*, "[t]here cannot be any broader classification than the word 'all,' and

'all' leaves room for no exceptions." *Id.* , 515-516. The release, undisputedly intended to relate to the July 7 accident, was a release of *all* claims between the parties.

A written instrument may be reformed where it fails to express the intentions of the parties thereto as the result of accident, inadvertence, or mistake. *Capitol S & L Ass'n v Przybylowicz*, 83 Mich App 404, 408; 268 NW2d 662 (1978). Further, although the scope of a release is governed by its terms, it covers only claims *intended* to be released. See *Cordova Chemical Co v DNR*, 212 Mich App 144, 150; 536 NW2d 860 (1995) (emphasis added).

This error, in which defendants' insurance adjuster accidentally placed the policy inception date in the blank instead of the accident date when reducing the parties' negotiated agreement to writing, is more akin to a scrivener's error than ambiguous language. A scrivener's mistake is ground for reformation. *Freybler v Lucas*, 39 Mich App 78; 197 NW2d 284 (1972).

Thus, plaintiffs' heavy reliance on *Taggart v United States*, 880 F2d 867, 870 (CA 6, 1989), and similar Michigan cases, is misplaced. *Taggart*, like most contract interpretation cases, involved situations where the parties actually held differing, arguably reasonable interpretations of the ambiguous release language. That is not the case here. Plaintiffs do not even argue that they interpreted the release to actually apply to an accident occurring on June 28. This case is not about ambiguous language—it is about both parties failing to notice that the policy inception date was incorrectly placed in the form space provided for the date of accident. Accordingly, the error was either a mutual mistake, or a unilateral mistake by defendants, that, if ignored by plaintiffs with the intent of collecting the $22,000 and bringing a subsequent lawsuit, involved fraud. Either way, reformation was appropriate on one of these grounds in addition to the applicable scrivener's error doctrine. The trial court properly considered the undisputed intent of the parties that the release would constitute settlement for claims arising from the one and only July 7 accident.[1]

Summary disposition was properly entered in favor of defendants.

Next plaintiffs argue that the court erred by ordering sanctions against plaintiffs' attorney. Specifically, plaintiffs argue that the four corners rule formed the basis for a good-faith argument that the release did not apply to the July 7 accident. We disagree.

Plaintiffs' attorney admittedly never even inquired of his clients whether there was a second, June 28 accident to which they believed the release applied. Moreover, given the fact that plaintiffs do not dispute that only one accident occurred, and given that they collected $22,000 for injuries arising from the July 7 accident and evidenced no intent to return the money, this is not a case where the four corners rule, applicable in cases involving varying interpretations of ambiguous contract language, applies. Plaintiffs' attorney interprets the rule to mean that not even the most basic inquiry of the clients is appropriate or necessary before filing a lawsuit. Plaintiffs' attorney's interpretation defies common sense and MCR 2.114. Plaintiffs' lawsuit was frivolous and sanctions were appropriate.

Finally, defendants request that we impose appellate sanctions under MCR 7.216(C) for actual expenses, including attorney fees, incurred in defending this appeal. We agree that plaintiffs' position is

so frivolous that sanctions are appropriate. Accordingly, we remand the matter to the trial court for a determination of the additional sanctions to be imposed.

Affirmed and remanded for a determination of appellate sanctions. We do not retain jurisdiction.

/s/ Martin M. Doctoroff
/s/ David H. Sawyer
/s/ Mark J. Cavanagh

[1] To make plaintiffs' position even more unreasonable, the release actually refers to an accident "on or about the 28th day of June 1995 at or near Ottawa Beach Road, Holland, Michigan." With no other accident in the physical or temporal vicinity, June 28 is certainly on or about July 7, a mere 9 days later.