STATE OF MICHIGAN

COURT OF APPEALS

HERBERT TIDIK and CAROL TIDIK,

Plaintiffs/Counterdefendants-Appellants,

v

LISA TIDIK,

Defendant/Counterplaintiff/Cross-Plaintiff-Appellee,

and

BRAD TIDIK,

Defendant/Cross-Defendant-Appellee.

UNPUBLISHED
July 14, 2000

No. 203891
Wayne Circuit Court
LC No. 95-524570-CH

Before: Bandstra, C.J., and Holbrook, Jr., and Fitzgerald, JJ.

PER CURIAM.

Plaintiffs/counterdefendants Herbert Tidik and Carol Tidik, appeal as of right from a consent judgment. We affirm.

Lisa and Brad Tidik were divorced on September 28, 1995. In 1992, Brad's parents, Herbert and Carol (hereinafter plaintiffs), purchased Brad and Lisa's marital home because the couple were unable to obtaining financing for the property. Plaintiffs initiated this matter when they filed a summary proceedings action for termination of tenancy against Brad and Lisa. Lisa filed a counter-complaint against plaintiffs and a cross-complaint against Brad, alleging that she had equitable title in the home. Lisa claimed that she and Brad supplied the down payment on the house and paid the monthly mortgage payments, and that plaintiffs merely "assisted" in the purchase, "in that they stood as the straw man title holder to the property." Plaintiffs denied that Lisa had an equitable interest in the home, that they were acting as Brad and Lisa's "straw man" when purchasing the property, or that their son and daughter-in-law had provided the down payment. Further, plaintiffs contended that they had agreed with Brad that

the couple could live at the residence provided that plaintiffs were either paid rent or that Brad would work on repairing the residence in lieu of paying rent.[1]

After much negotiating, Lisa and plaintiffs placed a settlement on the record, in which Lisa agreed to purchase the home from plaintiffs for $89,800. However, when Lisa submitted a proposed consent judgment, plaintiffs objected. They contended that the proposed consent judgment did not accurately reflect the parties' agreement, and that they had entered into the settlement out of duress and mistake. Plaintiffs claimed, in part, surprise at the fact that a delinquent water bill was to be paid out of the money held in escrow. Plaintiffs asserted that had they known the bill was for over $600, they never would have settled the case. Further, plaintiffs alleged that the trial court had inappropriately threatened to order that the residence be sold with the proceeds to go solely to Lisa, if the matter was not resolved. At the hearing for entry of the proposed consent judgment, the court concluded that the document accurately reflected what was placed on the record. The court also assessed costs against plaintiffs in the amount of $500.

First, plaintiffs contend that the court erred by entering a consent judgment based on a settlement that was entered into by them while under the influence of surprise and duress, in contravention of MCR 2.612(C). We disagree. Although plaintiffs did not move in the trial court for a relief from judgment under MCR 2.612(C), we will treat it as such. See *DAIIE v Maurizio*, 129 Mich 166, 171; 341 NW2d 262 (1983). "We review the trial court's denial of the motion for relief from judgment for abuse of discretion." *Redding v Redding*, 214 Mich App 639, 643; 543 NW2d 75 (1995). "As a general rule, consent judgments will not be set aside or modified except for fraud or mutual mistake." *Trendell v Solomon*, 178 Mich App 365, 367; 443 NW2d 509 (1989). "A change of heart is normally insufficient to justify the setting aside of a settlement agreement." *Groulx v Carlson*, 176 Mich App 484, 492; 440 NW2d 644 (1989).

Plaintiffs allege that they were surprised when Lisa asked that the water bill be paid from the escrow account at the settlement. In addition, they claimed to be surprised when they later found out the amount of the delinquency. However, plaintiffs could have either refused to enter into the settlement agreement until such time as they had an opportunity to review the delinquent bill, or placed any misgivings they might have had on the record. *Groulx, supra* at 492. Instead, plaintiffs agreed to the consent judgment after the court had indicated that the water bill would be paid out of the escrow account. Further, plaintiffs fail to establish that the problem of the water bill is such an extraordinary circumstance that a substantial injustice will result if the judgment is not set aside. 2 Martin, Dean & Webster, Michigan Court Rules Practice, p 475.

Plaintiffs also argue that because of the court's alleged threat to sell the property and give the proceeds to Lisa if a settlement were not reached, plaintiffs were under duress when they entered into the agreement. However, plaintiffs fail to provide any "satisfactory evidence" to support their assertion that they were under duress at the time. *Groulx, supra* at 492. Without a record for us to review,

[1] Citing to the September 28, 1995 judgment of divorce, the trial court granted Lisa's motion for summary disposition as to Brad. The judgment of divorce states that any interest Brad may have in the marital home "is hereby extinguished and awarded to" Lisa.

there is no way to determine if the statement was actually made, and if so, in what context. Accordingly, plaintiffs fail to establish that extraordinary circumstances exist that "mandate setting aside the judgment in order to achieve justice." *McNeil v Caro Community Hosp*, 167 Mich App 492, 497; 423 NW2d 241 (1988).

Plaintiffs' final two claims of error – (1) that the court erred in assessing costs, and (2) that the court erred by improperly entering a judgment against them while a motion to disqualify the judge was still pending – are deemed waived because plaintiffs have failed to cite authority to support their position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998); *Community Nat'l Bank v Michigan Basic Property Ass'n*, 159 Mich App 510, 520-521; 407 NW2d 31 (1987). In any event, we find both of these arguments to be without merit. We also reject plaintiffs' unfounded accusations that the trial judge's actions were based on animus between him and plaintiffs.

Affirmed.

/s/ Richard A. Bandstra
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald