

STATE OF MICHIGAN
COURT OF APPEALS

JAMES E. PEASE,

Plaintiff-Appellant,

v

MARY JANE PEASE,

Defendant-Appellee.

UNPUBLISHED

July 17, 2001

No. 221364

Wayne Circuit Court

LC No. 97-073163-DO

Before: Gage, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the order amending the parties' consent judgment of divorce. We reverse.

At a hearing on September 14, 1998, both parties were sworn and entered on the record the terms of a property settlement to be included in a consent judgment of divorce. Plaintiff objected, however, to defendant's request that a provision be included concerning defendant leasing a car under the name of one of her children under Ford's A-plan, which is a benefit of plaintiff's employment. Plaintiff objected on the ground that defendant would not be eligible after the divorce to participate in Ford's A-plan.¹ The trial court stated:

Well, it's, I don't think you can include that language.

But if she ends up having to pay more as a result of his malicious or intentional interference with a contractual relation that would be an indication that alimony should be increased.

On September 30, 1998, the parties and their attorneys signed a written consent judgment of divorce that did not include a provision regarding the lease of a car.² On January 15, 1999,

¹ Defendant clearly recognized that she would no longer be eligible to purchase or lease a vehicle under plaintiff's A-plan as a benefit of plaintiff's employment because she sought a provision prohibiting plaintiff from interfering with her children leasing a car under the plan and then providing the car to her.

² Judge Kirsten Frank Kelly presided over the settlement hearing and entered the judgment of
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defendant moved to amend the consent judgment when plaintiff did not provide the parties' children with the information necessary to allow them to lease a car for defendant under the Ford A-plan as a benefit of plaintiff's employment.³ Following an evidentiary hearing, the trial court amended the judgment of divorce in several ways, including adding a provision that plaintiff pay defendant \$112 per month toward the cost of leasing a car "as long as Mrs. Pease drives a motor vehicle." Plaintiff's motion for reconsideration was denied.

Plaintiff argues that the trial court erred in amending the judgment of divorce to include the provision that he pay defendant \$112 per month as a contribution toward the cost of leasing a car. He contends that the trial court lacked the authority to modify the property settlement provisions of the parties' consent judgment. We agree.

Property settlement provisions in a divorce judgment are typically final and cannot be modified by the court. *Quade v Quade*, 238 Mich App 222, 226; 604 NW2d 778 (1999). Modifications of property settlements in divorce judgments are disfavored and generally cannot be ordered except under limited circumstances. *Norman v Norman*, 201 Mich App 182, 189; 506 NW2d 254 (1993). Absent fraud, duress, or mutual mistake, courts are bound to uphold property settlements reached through negotiations and agreement by the parties in a divorce action. *Quade, supra* at 226. The rule limiting the trial court's authority to modify property settlements applies whether the settlement is reduced to writing or is simply orally placed on the record with consent. *Bers v Bers*, 161 Mich App 457, 464; 411 NW2d 732 (1987).

Here, the trial court amended the consent judgment of divorce without finding that the judgment was the product of fraud, duress, or mutual mistake. Rather, the court found only that plaintiff's unwillingness to allow defendant to lease a car caused a change in circumstances because defendant was unable to afford to lease a car. The only impropriety mentioned by the trial court was that plaintiff had failed to follow the trial court's previous oral order regarding the lease.⁴ Because plaintiff's actions were not in violation of any contract, promise, policy, or enforceable order, his actions were not fraudulent and were not grounds for amending the consent judgment of divorce.⁵ Hence, we conclude that the trial court erred by modifying the terms of the consent judgment.⁶

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divorce.

³ The motion to amend was heard by Judge Sheila Gibson Manning.

⁴ An agreement may be enforced only when it is reduced to writing and signed by the parties or their attorneys or is made in open court. MCR 2.507(H); *Fear v Rogers*, 207 Mich App 642, 644; 526 NW2d 197 (1994). Oral statements of the court are not enforceable. *Tiedman v Tiedman*, 400 Mich 571, 576; 255 NW2d 632 (1977).

⁵ There was nothing in the consent judgment of divorce providing that plaintiff was required to allow defendant to lease a car with plaintiff's employment benefits. Furthermore, plaintiff never agreed on the record that he would allow defendant to lease a car. There is no evidence that plaintiff interfered with any contractual relationship between defendant and Ford or defendant and her children. Plaintiff merely did not supply his children with the necessary information for

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Plaintiff requests that this Court order that he be reimbursed for the fees and costs he incurred in responding to defendant's motion to amend the judgment of divorce because the motion was groundless. Absent a statute or court rule authorizing the award of attorney fees, each side is responsible for his own attorney fees. *Radenbaugh v Farm Bureau General Ins Co of Michigan*, 240 Mich App 134, 152; 610 NW2d 272 (2000). Plaintiff does not argue a meritorious exception to this rule based on statute, court rule, or contract. *Id.* Therefore, he is not entitled to attorney fees.⁷

Reversed.

/s/ Hilda R. Gage
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

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them to lease a car under the Ford A-plan for defendant's benefit.

⁶ However, we note that the consent judgment provides that spousal support is nonmodifiable for the first three years and that "subsequent to the three year period, either party may petition the court for a modification of spousal support for substantial changes in circumstances."

⁷ We also reject defendant's request for sanctions and attorney fees under MCR 7.216 for filing a vexatious appeal.