STATE OF MICHIGAN

COURT OF APPEALS

LEONARD KROL, Individually and as Next Friend of BRIANNA KROL, a Minor, Plaintiffs-Appellants, v HEIDELBURGER DRUCKMASCHINEN AG, HEIDELBERG EASTERN, INC., and THOMAS BROWN, Defendants-Appellees.	UNPUBLISHED August 28, 2001 No. 221388 Wayne Circuit Court LC No. 90-016241-NP

Before: Bandstra, C.J., and Whitbeck and Owens, JJ.

PER CURIAM.

Plaintiff Leonard Krol[1] appeals as of right from an order dismissing his case against defendants. This order effectively denied Krol's motion pursuant to MCR 2.612(C) for relief from the trial court's 1992 order dismissing the action. We affirm.

I. Basic Facts And Procedural History

Heidelberger Druckmaschinen AG manufactured a printing press that Typocraft, Inc., Krol's employer, purchased. Following this purchase, in the early 1980s after Typocraft arranged for Heidelberg Eastern, Inc., to service the printing press, Heidelberg Eastern and Typocraft entered into an agreement under which Typocraft undertook a duty to defend and indemnify Heidelberg Eastern in any claims arising out of the service work. In 1989, Krol was attempting to clear lint from the press when the press caught his right arm, crushing it. Krol's injuries were so extensive doctors had to amputate his arm.

Krol first filed a product liability suit against defendants on June 27, 1990. Heidelberg Eastern notified Typocraft of Krol's claims and Typocraft denied its written tender of defense. Defendants undertook their own defense and denied Krol's allegations, claiming that Krol's

[1] Brianna Krol is Leonard Krol's daughter. Her claim is purely derivative.

negligence caused his injury or, alternatively, that Typocraft's intervening negligence solely caused Krol's injury.

The case proceeded to mediation. On September 12, 1991, the mediation panel recommended an award of $550,000 in favor of Krol against all defendants, jointly and severally. Krol accepted the mediation award, but all defendants rejected it. On October 29, 1991, Krol proposed a settlement pursuant to which (1) the case would be settled in the amount of the mediation, (2) defendants would assign their right to indemnification against Typocraft to Krol, and (3) Krol would agree to collect the judgment solely from Typocraft. Krol filed a motion to approve the settlement, which the trial court granted. Under the terms of the settlement agreement, Heidelberg Eastern assigned its indemnification claim against Typocraft to Krol. In exchange, Krol agreed not to execute the $550,000 judgment against Heidelberg Eastern. At defendants' request, the trial court dismissed Heidelberger Druckmaschinen AG and Thomas Brown, Heidelberg Eastern's regional manager, from the case with prejudice in consideration of the settlement between Krol and Heidelberg Eastern.

On July 24, 1992, Krol sued Typocraft and its insurers to recover the settlement amount. The trial court in that case found that the settlement agreement between Krol and defendants was collusive or in bad faith. In particular, the trial court noted that the settlement agreement imposed joint and several liability, rather than proportionate liability, and that the settlement left Typocraft no opportunity to seek contribution from defendants. Consequently, the trial court dismissed Krol's claim against Typocraft and its insurers with prejudice.

Krol appealed the *Typocraft* decision to this Court. In a split decision, this Court affirmed the trial court, agreeing that reasonable minds could not differ in the conclusion that Krol and defendants entered into the settlement agreement in bad faith.[2] When this Court denied Krol's motion for rehearing, Krol appealed to the Michigan Supreme Court. The Supreme Court denied leave to appeal on October 21, 1997,[3] and subsequently denied Krol's motion for reconsideration on January 30, 1998.[4]

On February 6, 1998, Krol returned to the trial court and moved for relief from the February 19, 1992, order dismissing his action against defendants. Krol argued that the agreement lacked consideration due to a mutual mistake regarding Michigan law. Krol also contended that the agreement was "no longer equitable that the judgment should have prospective application," or, alternatively, that the case presented "extraordinary circumstances," warranting relief from the trial court's judgment pursuant to MCR 2.612(C)(1)(e) or (f). The trial court initially granted Krol's motion to reinstate the action, reasoning that "the parties deserve each other." Defendants then applied for leave to appeal the trial court's decision to reinstate the

---

[2] *Krol v CNA Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued May 26, 1995 (Docket No. 166847), slip op at 1-2.

[3] *Krol v CNA Ins Co*, 570 NW2d 783 (1997).

[4] *Krol v CNA Ins Co*, 456 Mich 880; 573 NW2d 621 (1998).

action, but this Court denied the application.[5] However, the trial court later dismissed Krol's reinstated case with prejudice in relation to all defendants.

Krol now argues that, under MCR 2.612(C)(1)(f), he was entitled to relief from the trial court's 1992 judgment. Thus, he contends, the trial court erred in dismissing his action.

II. Relief From Judgment

A. Standard Of Review

This Court reviews a trial court's decision to grant relief from an earlier judgment for an abuse of discretion.[6]

B. Grounds For Relief

MCR 2.612(C) provides:

> (1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect.
>
> (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).
>
> (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
>
> (d) The judgment is void.
>
> (e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.
>
> (f) Any other reason justifying relief from the operation of the judgment.
>
> (2) The motion must be made within a reasonable time, and, for the grounds stated in subrules (C)(1)(a), (b), and (c), within one year after the judgment, order, or proceeding was entered or taken. A motion under this subrule does not affect the finality of a judgment or suspend its operation.

---

[5] See *Krol v Heidelberger Druckmaschinen AG*, unpublished order of the Court of Appeals, entered September 24, 1998 (Docket No. 210842).

[6] *Detroit Free Press, Inc v Dep't of State Police*, 233 Mich App 554, 556; 593 NW2d 200 (1999).

This Court's opinion in *Heugel v Heugel*[7] outlined the circumstances under which it is appropriate for a trial court to grant a motion for relief from judgment under MCR 2.612(C)(1)(f):

> (1) the reason for setting aside the judgment must not fall under subsections a through e, (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice.[8]

Further, relief under MCR 2.612(C)(1)(f) generally is permissible only "when the judgment was obtained by the improper conduct of the party in whose favor it was rendered."[9]

C. Detrimental Effect And Extraordinary Circumstances

Despite the fact that the 1992 judgment appears to favor Krol, defendants are now enforcing it to Krol's detriment. Accordingly, Krol is entitled to relief from the trial court's 1992 judgment if it was obtained by defendants' "improper conduct." Although Krol argues that relief is appropriate in this case because *both* parties were guilty of misconduct related to the settlement agreement underlying the trial court's 1992 judgment, we cannot conclude on the basis of the record and the *Heugel* factors that the trial court erred in denying relief from the judgment.

In particular, we note that this case does not satisfy the second of the three factors this Court set out in *Heugel*.[10] In our view, granting relief from judgment would have an adverse effect on defendants' substantial rights because of the significant amount of time that has elapsed since Krol first sued. True, much of the delay can be attributed to the lengthy appellate process, which is not Krol's fault. However, this second condition in *Heugel* prohibits granting relief from judgment when the relief will detrimentally affect the party opposing the motion. Notably, *Heugel* does not condition this factor on which party has caused the detrimental effect. Rather, that this detrimental effect will occur is enough to deny relief from judgment under *Heugel's* conjunctive language, which indicates that a movant must demonstrate all three factors in order to be entitled to relief.

Under *Heugel's*[11] third factor, we also have our doubts about whether extraordinary circumstances existed to justify relief from the judgment because there is no question of fact concerning Krol's full participation in and acceptance of the settlement agreement that has now

---

[7] *Heugel v Heugel*, 237 Mich App 471; 603 NW2d 121 (1999)

[8] *Id.* at 478-479, citing *Altman v Nelson*, 197 Mich App 467, 478; 495 NW2d 826 (1992) and *McNeil v Caro Community Hosp*, 167 Mich App 492, 497; 423 NW2d 241 (1988).

[9] *Heugel, supra* at 479, quoting *Altman, supra*, at 478.

[10] *Heugel, supra* at 479.

[11] *Id.*

proved less beneficial than he anticipated.[12] For instance, that Krol attempted to enforce his rights under the settlement agreement by suing Typocraft demonstrates his full acquiescence in an agreement to the settlement. In contrast, settlements subsequently set aside through this relief from judgment mechanism traditionally involve circumstances in which the party seeking to set aside the settlement was effectively bound to the agreement without consent.[13] Affirming is undeniably a harsh result. However, courts are loathe to grant a party relief when that party's own actions, even though they were through counsel, caused such a result.[14]

Affirmed.

/s/ Richard A. Bandstra
/s/ William C. Whitbeck
/s/ Donald S. Owens

---

[12] See *McNeil*, *supra*, 167 Mich App 498 (circumstances did not warrant relief from a judgment because it was disputed whether the plaintiff had authorized her counsel to dismiss her claims with prejudice).

[13] See *Coates v Drake*, 131 Mich App 687, 690, 696; 346 NW2d 858 (1984) (extraordinary circumstances warranting relief from a final judgment existed because the plaintiffs' counsel entered into a settlement and stipulated to a dismissal without the plaintiffs' authorization, and accepted payment of the settlement by forging the plaintiffs' signatures).

[14] See *Limbach v Oakland Co Bd of Co Road Comm'rs*, 226 Mich App 389, 393-394; 573 NW2d 336 (1997).