STATE OF MICHIGAN

COURT OF APPEALS

SHERYL ANN BORGER,

Plaintiff-Appellee,

v

ROBERT KARL LUSCH,

Defendant,

and

BRUCE D. HAMMON and HAROLD ZIEGLER FORD, INC.,

Defendants-Appellants.

UNPUBLISHED
March 1, 2002

No. 229220
Wayne Circuit Court
LC No. 96-614734-NI

Before: Bandstra, P.J., and Murphy and Murray, JJ.

PER CURIAM.

Defendants-appellants appeal by leave granted from an order granting plaintiff's motion to set aside a settlement agreement. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This is a third-party automobile negligence action in which plaintiff alleged that she was injured in a collision involving a vehicle driven by defendant Hammon and owned by defendant Harold Zeigler Ford. On the day set for trial, the parties decided to participate in a facilitative process that afternoon with attorney Stuart Freedman. After several hours of negotiating at Freedman's office, and shortly after Freedman left the office for a previous engagement, plaintiff, her attorney, and defense counsel signed a "facilitation award" drafted by Freedman stating in whole, "This matter, having been facilitated with the agreement of the parties by the undersigned; It is hereby acknowledged that the parties have agreed on a settlement in the amount of $125,000.00, with no costs, interest, or attorney fees." Before he left the office, Freedman authorized one or both attorneys to sign the document on his behalf, and defense counsel placed his name on the document after the parties reached their agreement. The next day, plaintiff sent a letter to defense counsel notifying her that she was "rescinding and canceling the document which I signed yesterday 7-27-99."

Plaintiff subsequently filed a motion to set aside the settlement agreement. She testified at an evidentiary hearing that she understood the facilitation process to be non-binding arbitration and that she signed the award document believing she could drive home and think about it because Freedman had not signed it before she did. The trial court found that Freedman's absence at the time the agreement was reached was a "substantial irregularity" in the facilitation and that plaintiff thought "there was a way out of this agreement if she didn't want to keep it." While the judge recognized that plaintiff's understanding that the agreement was non-binding was wrong, she concluded that it would be unjust to enforce it under the circumstances.

On appeal, defendants contend that the trial court erred in setting aside the settlement agreement. We agree. A decision on a motion to set aside a settlement agreement is reviewed for an abuse of discretion. See *Groulx v Carlson*, 176 Mich App 484, 493; 440 NW2d 644 (1989). Settlements of pending controversies are favored by the courts. *Id.* at 489. An agreement to settle a pending lawsuit is a contract and is to be governed by legal principles applicable to the construction and interpretation of contracts. *Michigan Mut Ins Co v Indiana Ins Co*, 247 Mich App 480; 637 NW2d 232 (2001). Under usual contract principles, a party is bound by the settlement agreement absent a showing of mistake, fraud, or unconscionable advantage. *Plamondon v Plamondon*, 230 Mich App 54, 56; 583 NW2d 245 (1998). Settlements should not be upset because of any hesitation or secret reservation on the part of either party. *Meyer v Rosenbaum*, 71 Mich App 388, 393; 248 NW2d 558 (1976).

In this case, plaintiff admitted that she knew the case would not go to trial if she signed the agreement. She admitted that she read the agreement before she and her attorney signed it. She also admitted that she changed her mind after signing the agreement. A change of heart is normally insufficient to justify the setting aside of a settlement agreement. *Groulx, supra* at 492; *Reed v Citizens Ins Co of America*, 198 Mich App 443, 447; 499 NW2d 22 (1993). Plaintiff argues that there was no meeting of the minds, and hence no agreement, because she thought that the settlement was not binding when she signed the facilitation award.

However, in *Rzepka v Michael*, 171 Mich App 748, 756-757; 431 NW2d 441 (1988), this Court rejected an argument that a consent judgment should be set aside because one of the parties did not realize the legal effect of the judgment. The *Rzepka* Court reasoned that a"[m]istake as to the legal effect of a written instrument, deliberately executed and adopted, constitutes no ground for relief in equity." *Id.* at 756. Applying that principle to this case, we conclude that the trial court abused its discretion in setting aside the parties' settlement agreement. Plaintiff's misunderstanding concerning the binding nature of the agreement was not a valid ground for relief.

Reversed and remanded for entry of an order requiring enforcement of the settlement agreement. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Christopher M. Murray