

STATE OF MICHIGAN
COURT OF APPEALS

OLGA E. TURNEY,

Plaintiff-Appellee,

v

COTICCHIO, ZOTTER, SULLIVAN, MOLTER,
SKUPIN & TURNER, P.C.,

Defendant,

and

SKUPIN & LUCAS, P.C., and JOSEPH LUCAS,

Defendants-Appellants.

UNPUBLISHED

June 4, 2002

No. 229594

Wayne Circuit Court

LC No. 99-905132-NO

OLGA E. TURNEY,

Plaintiff-Appellee,

v

COTICCHIO, ZOTTER, SULLIVAN, MOLTER,
SKUPIN & TURNER, P.C.,

Defendant-Appellant,

and

SKUPIN & LUCAS, P.C. and JOSEPH LUCAS,

Defendants.

No. 229796

Wayne Circuit Court

LC No. 99-905132-NO

Before: Fitzgerald, P.J., and Holbrook, Jr., and Doctoroff, JJ.

PER CURIAM.

In these consolidated cases, defendants appeal by leave granted from a circuit court order denying their motions to enforce a settlement agreement. We reverse. These appeals are being decided without oral argument pursuant to MCR 7.214(E).

An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney. [MCR 2.507(E).]

A written settlement agreement need not be filed with the court to be binding. *Walbridge Aldinger Co v Walcon Corp*, 207 Mich App 566, 571; 525 NW2d 489 (1994). A party is bound by a settlement agreement absent a showing of mistake, fraud, duress, or unconscionable advantage. *Plamondon v Plamondon*, 230 Mich App 54, 56; 583 NW2d 245 (1998); *Howard v Howard*, 134 Mich App 391, 394; 352 NW2d 280 (1984). A unilateral change of mind or change of heart is not a valid basis for excusing performance. *Reed v Citizens Ins Co*, 198 Mich App 443, 447; 499 NW2d 22 (1993); *Groulx v Carlson*, 176 Mich App 484, 492; 440 NW2d 644 (1989). The trial court's finding concerning the parties' consent to a settlement agreement is reviewed for an abuse of discretion. *Howard, supra* at 396-397.

There is no dispute that plaintiff signed the settlement agreement. That she did so was no mistake; she admitted in her affidavit that she knew the agreement was for the purpose of settling her legal malpractice case against defendants. That she attempted to revoke her acceptance of defendants' settlement offer before defendants' executed the settlement agreement is immaterial. Defendants made a settlement offer, plaintiff accepted the offer, and her acceptance and the complete terms of the settlement agreement were in a writing signed by her, and thus it is enforceable against her. MCR 2.507(H); *Reed, supra* at 448-449. There is no evidence of fraud, unconscionable advantage, or any other misconduct by defendants. That plaintiff felt coerced by her own attorney is not a basis for setting aside her acceptance of the settlement agreement unless defendants participated in the coercion. *Howard, supra*.

Plaintiff warranted in the settlement agreement itself that apart from defendants' promise to pay \$27,500 within thirty days, she was not induced to enter into the settlement agreement by "any statement, act or representation of any kind or character" made by defendants, and presented no evidence that defendants had done anything improper. Nor is this a case where plaintiff was unaware of a material term of the settlement agreement, as was the case in *Howard*. Plaintiff did not claim that she did not know she was releasing defendants from liability and agreeing to dismiss her legal malpractice claim for payment of \$27,500. Rather, she claimed that she was unaware of certain evidence pertaining to her underlying medical malpractice case which she believed increased the value of her case against defendants.

While plaintiff claimed to be influenced by severe stress when she signed the agreement, that is not a basis for avoiding the agreement unless she actually lacked the mental capacity to contract, *Howard, supra* at 396, and plaintiff made no such allegation or showing here. Accordingly, we find that the trial court abused its discretion in declining to enforce the settlement agreement.

Reversed.

/s/ E. Thomas Fitzgerald
/s/ Donald E. Holbrook, Jr.
/s/ Martin M. Doctoroff