

STATE OF MICHIGAN
COURT OF APPEALS

STELLA M. SENKOW,

Plaintiff-Appellant,

V

DENNIS C. TOMCZYK, DIANE M. MACKEY,
JOHN F. MACKEY, SR., and ALICE MAUREEN
MACKEY,

Defendants-Appellees.

UNPUBLISHED
November 12, 2002

No. 234328
St. Clair Circuit Court
LC No. 99-003195-CH

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order dismissing the case with prejudice. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed suit alleging that she owned property adjacent to property owned by defendants Mackey and occupied by defendant Tomczyk. She sought an injunction precluding defendants from trespassing on her property and money damages as compensation for trees and a fence destroyed by Tomczyk. A survey to which the parties agreed to be bound revealed that the trees and the fence were located on plaintiff's property.

Prior to trial, the court and the parties' attorneys met in chambers to discuss the matter. The discussion was not transcribed. Apparently, there was some discussion regarding whether plaintiff would accept damages in the amount of \$200 and agree to dismiss the case. No written agreement was produced on that date and no settlement was placed on the record. Defendants submitted a proposed release and a check in the amount of \$200. Plaintiff's counsel informed the court and defendants that plaintiff refused to accept the check or to execute the release.

Defendants moved for entry of judgment. The trial court indicated it recalled that the discussion in chambers resulted in an agreement to settle the matter for \$200. The court entered a judgment dismissing the matter with prejudice upon payment of \$200 to plaintiff. Subsequently, the trial court denied plaintiff's motion to set aside the judgment.

MCR 2.507(H) provides as follows:

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.

Interpretation of a court rule is subject to de novo review on appeal. *Michigan Mut Ins Co v Indiana Ins Co*, 247 Mich App 480, 483; 637 NW2d 232 (2001).

A denial is a refusal to acknowledge the validity of a claim. *Id.* at 485. A party's repudiation of a settlement agreement, before it is placed on the record in open court or reduced to a signed writing, based on an assertion that a settlement was never reached because the parties did not achieve a meeting of the minds, constitutes a denial of the agreement. *Brunet v Decorative Engineering, Inc.*, 215 Mich App 430, 433-434; 546 NW2d 641 (1996).

We reverse the trial court's order dismissing the case with prejudice and remand this matter for further proceedings on the amount of plaintiff's damages. The trial court and the parties' attorneys discussed the matter in chambers, and the trial court dismissed the case on the ground that it believed that the discussion had produced a settlement. However, because the agreement was not placed on the record in open court or reduced to a writing signed by plaintiff or her attorney prior to plaintiff's repudiation, it was unenforceable. *Id.* The trial court erred by dismissing the matter based on an unenforceable agreement. *Fear v Rogers*, 207 Mich App 642, 644-645; 526 NW2d 197 (1994).

Reversed and remanded. We do not retain jurisdiction.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Patrick M. Meter