STATE OF MICHIGAN

COURT OF APPEALS

RONALD T. HOOPER,

Plaintiff/Counter-Defendant/Third-party Defendant-Appellee,

and

SHERRY HOOPER,

Third-party Defendant,

v

DONALD HOOPER,

Defendant/Counter-Plaintiff/Third-party Plaintiff-Appellant,

and

PAMELA HOOPER,

Defendant/Counter-Plaintiff/Third-party Plaintiff-Appellant,

and

HOOPER BROTHERS FARMS,

Defendant,

and

HOOPER DAIRY, INC.,

Defendant/Third-party Plaintiff.

UNPUBLISHED
December 13, 2002

No. 231544
Sanilac Circuit Court
LC No. 95-023891-CK

Before: Saad, P.J., and Smolenski and Owens, JJ.

PER CURIAM.

Defendants appeal by right an entry of judgment for plaintiff and subsequent denial of their motion for reconsideration or rehearing. We affirm.

Twin brothers Ronald T. Hooper and Donald Hooper[1] became partners in 1984, later forming Hooper Dairy, a Michigan corporation, and Hooper Brothers Farms, a co-partnership. The brothers found themselves unable to agree on the management of their ventures, eventually resulting in the instant case. The parties subsequently entered into a stipulated judgment, whereby a receiver's report would dispose of certain claims. The meaning of the following passage of the stipulation forms the basis of the present appeal:

> IT IS FURTHER ORDERED AND ADJUDGED That if either Counter-Plaintiff, DONALD HOOPER, or Counter-Defendant, RONALD T. HOOPER, feel aggrieved by the Receiver's written recommendation to this Court, or any portion thereof, then that party can petition this Court for relief within 21 days of receipt of said written recommendation.

The record discloses that defendants received the receiver's report on October 3, 2000, mailed their objections on October 24, 2000, and that the trial court received the objections on October 26, 2000. The trial court refused to consider the objections, ruling that the period specified by the parties required that it should have received the objections no later than October 24, 2000.

Defendants first contend that the trial court erred by ruling that the stipulated judgment constituted a settlement agreement under MCR 2.507(H). We disagree. Defendants' argument is contradicted by the lower court record, which indicates the judgment was a settlement agreement that all parties agreed to, specifically using the term "settlement agreement" several times. Moreover, the parties to the suit each affirmed in open court that they wanted the agreement to be binding and settle all claims. The stipulated judgment clearly constituted a settlement agreement within the meaning of MCR 2.507(H).

Settlement agreements become binding on parties where made in open court or evidenced by writing. MCR 2.507(H); *Reed v Citizens Ins Co of America*, 198 Mich App 443, 448; 499 NW2d 22 (1993). Only where the agreement was not made in open court or reduced to writing will it be unenforceable. *Brunet v Decorative Engineering, Inc*, 215 Mich App 430, 436; 546 NW2d 641 (1996). Because the agreement here was made in open court, reduced to writing, and acknowledged by the parties to be a settlement agreement that would be the final resolution in the suit, the trial court correctly found that it was a settlement agreement under MCR 2.507(H). Because settlement agreements between parties to a lawsuit constitute contracts and are binding on the parties to the agreement, *Mikoncszyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349; 605 NW2d 360 (1999), the trial court correctly concluded that the settlement agreement between the instant parties constituted a binding contract.

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[1] Sherry Hooper and Pamela Hooper are Ronald's wife and Donald's wife, respectively.

Defendants next contend that the trial court erred by holding that the agreement was subject to principles of contract interpretation and that under the plain meaning of the excerpted passage, defendant filed his objections past the twenty-one-day deadline. Contrary to defendants' argument, courts must interpret settlement agreements according to the principles of contract interpretation, with the goal of honoring the intent of the parties. *Mikonczyk, supra* at 349-350. Where a contract contains no ambiguity, a trial court must enforce it as written, *Farm Bureau Mut Ins Co of Michigan v Nikkel*, 460 Mich 558, 566; 596 NW2d 915 (1999), deciding the meaning of the contract as a matter of law, *Orley Enterprises, Inc v Tri-Pointe, Inc*, 206 Mich App 614, 617; 522 NW2d 896 (1994). The fact that the parties dispute the meaning of the contract does not render it ambiguous. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 14; 614 NW2d 169 (2000). Courts confronting an unambiguous contract must ascertain the parties' intent from the plain and ordinary meaning of the contractual language. *Id*. at 13.

We find that the excerpted passage contains no ambiguities, and that the plain meaning indicates that if either of the parties had objections to the receiver's report, they had to file those objections in the Sanilac Circuit Court no later than twenty-one days after they received the report. The agreement required defendants to petition the lower court within the twenty-one day window. The objections, therefore, were not properly raised until they were filed in that court. MCR 2.107(G); *General Motors Corp v Detroit*, 141 Mich App 630, 634; 368 NW2d 739 (1985). Mailing the objections within twenty-one days was not sufficient. *Id*.[2] Defendants do not dispute that they received the receiver's report on October 3, 2000, and that the trial court received their objections after October 24, 2000. Therefore, the trial court properly refused to consider defendants' objections because the contract term was unambiguous, and the objections were not filed within the express twenty-one-day period.

Defendants finally claim that the trial court should have investigated the receiver's report to verify its accuracy and fairness. We find no such duty. On the contrary, courts must enforce settlement agreements as written. *Nikkel, supra* at 566; *Mikonczyk, supra* at 349-350. A settlement agreement "'cannot be set aside or vacated by the court without the consent of the parties . . . [because] it is not the judgment of the court but the judgment of the parties.'" [*Tudryck v Mutch*, 320 Mich 99, 105; 30 NW2d 518 (1948), quoting *In re Estate of Meredith*, 275 Mich 278, 289; 266 NW 351 (1936).]

The parties' stipulated judgment constituted a binding settlement agreement requiring objections to be filed within twenty-one days of receiving the receiver's report. Nothing in the stipulation required the trial court to inquire into the methods used by the receiver or to make a determination of fairness or accuracy. Thus, defendants essentially asked the trial court to modify the settlement agreement, thereby setting aside the unambiguous intent of the parties. The trial court could not have done this without the consent of the parties, and plaintiff did not consent to defendants' proposed modification. *Tudryck, supra* at 105. Moreover, this Court generally will not consider a party's complaint that the trial court enforced an order to which

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[2] The statute at issue in *General Motors, supra*, was subsequently amended to allow a filing to be effective upon certified mailing or actual delivery. 1985 PA 95, § 2. However, this only affected filings with the Tax Tribunal, not circuit court. The filing at issue in this case is governed by the court rule.

both parties stipulated. *Marsh v Dep't Civil Service (After Remand)*, 173 Mich App 72, 77; 433 NW2d 820 (1988).

Affirmed.

/s/ Henry William Saad
/s/ Michael R. Smolenski
/s/ Donald S. Owens