

STATE OF MICHIGAN
COURT OF APPEALS

HENRY B. JOY, IV,

Plaintiff-Appellant,

v

ROBERTA T. JOY,

Defendant-Appellee.

UNPUBLISHED

May 6, 2008

No. 274854

Emmet Circuit Court

LC No. 05-008995-DM

Before: Saad, C.J., and Murphy and Donofrio, JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment of divorce entered by the trial court that incorporated a divorce settlement agreement ostensibly reached by the parties. The dispute focuses on whether there was actually a meeting of the minds relative to the supposed agreement. Because the words expressed by the parties in placing the agreement on the record are unambiguous when viewed in total and support defendant's position and the trial court's ruling, we affirm.

The parties were heading toward trial on issues concerning the distribution of the marital estate and child custody, when, on the day of the pretrial conference with the court, they unexpectedly announced that they had just reached a settlement agreement. The purported agreement, which was not yet reduced to writing, was then orally presented to the court on the record. Several weeks later, when a version of the alleged agreement was reduced to writing by plaintiff in the form of a proposed consent judgment of divorce, defendant objected, claiming that the proposed consent judgment was inconsistent with the oral agreement arrived at in court. Plaintiff claimed that the settlement called for \$2,250,000 in total assets to be awarded to defendant, which amount included both cash and the value of property to be given to defendant. Specifically, plaintiff contended below and contends on appeal that defendant was to receive \$1,700,000 in cash within two years, sooner if the marital home were sold,¹ \$400,000 in personal property, \$100,000 in motor vehicles, and \$50,000, which had already been given to defendant. But defendant claimed that the agreement called for her to receive \$2,250,000 in cash, *plus*

¹ There is no dispute that plaintiff was required to pay defendant \$350,000 up front as part of the agreement.

named property, which included most of the marital home's contents and various motor vehicles. The trial court ruled in favor of defendant, finding that the settlement agreement required plaintiff to pay defendant \$2,250,000 in cash, *plus* defendant was entitled to various items of property. Plaintiff now appeals, claiming that the disparity in interpretations of the agreement indicates that there was never a meeting of the minds between plaintiff and defendant; therefore, there was no settlement agreement or contract to enforce.

Plaintiff argues that, viewing the words of the parties and their visible acts, it is apparent that they did not reach an agreement or understanding concerning the disposition of the marital estate in this case, making the trial court's enforcement of what was really a nonexistent settlement agreement error. We disagree.

An agreement to settle a lawsuit is governed by the principles generally applicable to the interpretation of contracts, and the existence and interpretation of a contract are legal questions that this Court reviews *de novo*. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). A settlement agreement in a divorce action regarding the distribution of assets or property is a contract and is to be construed and applied as such. *MacInnes v MacInnes*, 260 Mich App 280, 289; 677 NW2d 889 (2004). "Settlements, duly arrived at by the parties and placed on the record in open court in the presence of counsel, are entitled to a high degree of finality." *Tinkle v Tinkle*, 106 Mich App 423, 428; 308 NW2d 241 (1981). "It is a well-settled principle of law that courts are bound by property settlements reached through negotiations and agreement by parties to a divorce action, in the absence of fraud, duress, mutual mistake, or severe stress which prevented a party from understanding in a reasonable manner the nature and effect of the act in which she was engaged." *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990); see also MCR 2.507(G)(agreements by parties made in open court are binding). "Generally, contracts between consenting adults are enforced according to the terms to which the parties themselves agreed." *Lentz v Lentz*, 271 Mich App 465, 471; 721 NW2d 861 (2006).

The formation of a contract requires an offer and an unambiguous acceptance that is in strict conformance with the offer. *Kloian, supra* at 452. "Further, a contract requires mutual assent or a meeting of the minds on all the essential terms." *Id.* at 453. "A meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind." *Id.* at 454 (citation and internal quotation marks omitted).

In presenting the purported agreement, plaintiff's counsel stated that "the ultimate contribution from [plaintiff] to [defendant is] in the amount of \$2,250,000." And this statement was immediately followed by plaintiff's counsel announcing, "That is the settlement agreement which consists not only of cash but also of property and other assets." Counsel then proceeded to discuss the distribution of motor vehicles and property contained in the home. If this were the full extent of the agreement, we would agree that an ambiguity existed. However, any ambiguity was laid to rest by the following passage articulated by plaintiff's counsel:

The balance of the *monies*, Your Honor, *which will again approximate to 2.25 million dollars* will be payable as follows. The \$350,000 forthwith at least half of what is owing on that amount within 12 months of today's date, or before shall the home sell, and then those proceeds can be paid forthwith. And that

provision will be in the language. And then the balance within two years then from today's date if the home is not sold or if there is not other means from which to pay *those monies* to Ms. Joy. [Emphasis added.]

This language, which plaintiff fails to even acknowledge, clearly contemplates the payment of "monies" or cash to defendant in the amount of \$2,250,000. Moreover, a review of the settlement transcript fails to reveal any mention of a cash payment to defendant in the amount of \$1,700,000. Furthermore, while plaintiff speaks of \$400,000 in personal property being awarded to defendant, along with \$100,000 in motor vehicles, those dollar amounts were never referenced or mentioned when the agreement was placed on the record. Accordingly, we find no error in the trial court's ruling.

With respect to plaintiff's request for an evidentiary hearing, "a trial court is obligated to conduct an evidentiary hearing to resolve an ambiguity or a factual dispute that arises in a proceeding related to a divorce only if a party specifically asks for an evidentiary hearing." *Mitchell v Mitchell*, 198 Mich App 393, 399; 499 NW2d 386 (1993). Because plaintiff did not request an evidentiary hearing, and because there is no ambiguity with respect to the agreement, there is no basis to order an evidentiary hearing.

Affirmed.

/s/ Henry William Saad

/s/ William B. Murphy

/s/ Pat M. Donofrio