STATE OF MICHIGAN

COURT OF APPEALS

TOWNSHIP OF RILEY, Plaintiff-Appellee,	UNPUBLISHED June 12, 2008
v	No. 276751 St. Clair Circuit Court
ROBERT BIRKENSHAW, ROSEMARY BIRKENSHAW and EMOCO, INC., Defendants-Appellants.	LC No. 05-002512-CE

Before: O'Connell, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Defendants appeal as of right from the circuit court's entry of a "consent judgment" over their objections. We affirm, and decide this appeal without oral argument pursuant to MCR 7.214(E).

Plaintiff commenced this action against defendants, alleging violations of township ordinances and the Construction Code Act, MCL 125.1501 *et seq*. On the day scheduled for a bench trial, a proposed consent judgment was signed by Robert Birkenshaw, individually and as president of Emoco, Inc., defense counsel, and plaintiff's counsel, whose signature indicating approval of the agreement remained subject to the approval of plaintiff's township board. Rosemary Birkenshaw did not sign the proposed consent judgment. The township board subsequently approved the consent judgment, and the township supervisor and clerk signed it. Plaintiff then filed a notice of entry of order pursuant to MCR 2.602(B)(3) ("the seven-day rule"), accompanied by the "CONSENT JUDGMENT BY AGREEMENT OF THE PARTIES."

Defendants objected to entry of the consent judgment, asserting that MCR 2.602 did not apply to a consent judgment, that the proposed consent judgment was defective because Rosemary Birkenshaw had not signed it, and that the submitted judgment included exhibits not approved or contemplated by defendants. The circuit court determined that defense counsel's signature sufficed to render the agreement enforceable against all defendants. At plaintiff's counsel's suggestion, the court withheld the challenged exhibits from the consent judgment.

Defendants first contend on appeal that the purported consent judgment was improperly submitted and entered under MCR 2.602(B)(3). The interpretation and application of a court rule involves a question of law that this Court reviews de novo. *Associated Builders &*

Contractors v Dep't of Consumer & Industry Services Director, 472 Mich 117, 123-124; 693 NW2d 374 (2005).

The procedure set forth in MCR 2.602(B)(3) does not authorize the entry of a consent judgment. The rule affords a process by which a party may prepare a written "judgment or order" that reflects a prior ruling or decision of the trial court. "By its own terms, MCR 2.602(B)(3) comes into operation '(w)ithin 7 days *after the granting of the judgment.*"' *Hessel v Hessel*, 168 Mich App 390, 396; 424 NW2d 59 (1988) (emphasis in original). Entry of a proposed order under the rule can occur "if . . . it comports with the court's decision." MCR 2.602(B)(3)(a). But when the parties reach an agreement, and thereby avoid the need for the trial court to issue a judgment or make an order or decision, MCR 2.602(B)(3) plainly does not apply. Therefore, the trial court erred in entering the consent judgment pursuant to MCR 2.602(B)(3).

Defendants further assert that entry of the judgment was not appropriate as a consent judgment because Rosemary Birkenshaw did not sign it. Plaintiff responds that although Rosemary Birkenshaw did not sign it, her attorney's signature established an enforceable agreement pursuant to MCR 2.507(G), which 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.

"An agreement to settle a pending lawsuit is a contract and is to be governed by the legal principles applicable to the construction and interpretation of contracts." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006), quoting *Walbridge Aldinger Co v Walcon Corp*, 207 Mich App 566, 571; 525 NW2d 489 (1994).

Contrary to defendants' assertion, the absence of Rosemary Birkenshaw's signature or assent does not render the settlement agreement unenforceable. The proposed consent judgment bore the signature of Rosemary's attorney, in satisfaction of MCR 2.507(G). Regardless whether Rosemary actually assented, her attorney's signature sufficed to bind her to the terms of the consent judgment on the basis of the attorney's apparent authority. "Generally, when a client hires an attorney and holds him out as counsel representing him in a matter, the client clothes the attorney with apparent authority to settle claims connected with the matter. . . . The third party may rely on the attorney's apparent authority unless he has reason to believe that the attorney has no authority to negotiate a settlement." *Nelson v Consumers Power Co*, 198 Mich App 82, 89-90; 497 NW2d 205 (1993) (citation and internal quotation omitted). Defendants do not offer any basis for concluding that defense counsel lacked apparent authority to approve the consent judgment on Rosemary's behalf.

Defendants argue that even if Rosemary Birkenshaw at one time consented to the substance of the judgment, she had the unequivocal right to withdraw her consent before entry of the judgment. We observe, however, that defendants' reliance on *City of Norton Shores v Carr*, 59 Mich App 561; 229 NW2d 848 (1975), in support of this argument is misplaced. This Court has repudiated *City of Norton Shores* in several subsequent decisions. See *Michigan Bell Tel Co v Sfat*, 177 Mich App 506, 515-516; 442 NW2d 720 (1989), and the cases cited therein.

Finally, defendants argue that the circuit court abused its discretion in entering the consent judgment because it contained additional terms not contemplated, negotiated, or assented to by them. However, as noted above, the circuit court ordered at the time of the consent judgment's entry that the judgment would not include the attachments to which defense counsel objected on the basis that they included additional terms. Accordingly, defendants' claim that the judgment improperly included additional terms is unfounded.

In summary, although we agree with defendants that MCR 2.602(B)(3) does not apply to the entry of the parties' consent judgment, we conclude that the circuit court appropriately entered the consent judgment because it embodied an enforceable agreement under MCR 2.507(G), despite the absence of Rosemary Birkenshaw's signature.

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher