STATE OF MICHIGAN

COURT OF APPEALS

SANDRA MILLER,

Plaintiff-Appellant,

v

JOHN MILLER,

Defendant-Appellee.

UNPUBLISHED
March 24, 2009

No. 282997
Oakland Circuit Court
LC No. 2007-729752-DM

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Plaintiff appeals by right the judgment of divorce entered by the circuit court following the denial of her motion to set aside a settlement agreement. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

We review the trial court's decision whether to set aside a party's acceptance of a mediation evaluation for an abuse of discretion. *Reno v Gale*, 165 Mich App 86, 92; 418 NW2d 434 (1987). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

An agreement between parties to an action or their attorneys, if 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(G). Generally, a party may obtain relief from a settlement agreement for mutual mistake, fraud, unconscionable advantage, or ignorance of a material term of the settlement agreement. *Plamondon v Plamondon*, 230 Mich App 54, 56; 583 NW2d 245 (1998); *Howard v Howard*, 134 Mich App 391, 394, 399-400; 352 NW2d 280 (1984). Other grounds for relief include unilateral mistake induced by fraud, *Windham v Morris*, 370 Mich 188, 193; 121 NW2d 479 (1963); innocent misrepresentation, *Alibri v Detroit Wayne Co Stadium Auth*, 470 Mich 895; 683 NW2d 147 (2004); lack of capacity to contract, *Star Realty, Inc v Bower*, 17 Mich App 248, 250; 169 NW2d 194 (1969); and duress or coercion, *Lafayette Dramatic Productions, Inc v Ferentz*, 305 Mich 193, 216-217; 9 NW2d 57 (1943).

The instant case was referred to nonbinding mediation, following which both parties and their attorneys executed a settlement agreement. The following day, plaintiff appeared in court and admitted on the record in open court that she had read and voluntarily signed the agreement.

Plaintiff first argues that she was tricked into signing the agreement by her attorney. However, coercion by one's own attorney is not a valid basis for setting aside a settlement agreement "absent a showing that the other party participated in the coercion." *Howard*, *supra* at 397. Plaintiff has neither alleged nor shown that defendant colluded with her attorney to secure her consent to the settlement agreement.

Plaintiff also contends that she executed the settlement agreement based on her mistaken belief that she had to accept it to obtain spousal support. A mistake of fact warranting rescission must be mutual, i.e., shared and relied on by both parties. *Ford Motor Co v Woodhaven*, 475 Mich 425, 442; 716 NW2d 247 (2006). Plaintiff has neither alleged nor shown that defendant shared her mistaken belief and a unilateral mistake of fact is not grounds for voiding a contract. *Meyer v Rosenbaum*, 71 Mich App 388, 394; 248 NW2d 558 (1976).

Plaintiff lastly contends that the agreement should be set aside because the terms gave defendant an unconscionable advantage. The unconscionable advantage that warrants relief from a contract is "unconscionable advantage taken by one party over the other." *Jackson v Wayne Circuit Judge*, 341 Mich 55, 60; 67 NW2d 471 (1954). Given that plaintiff was represented by counsel at mediation and has not alleged that defendant took advantage of her during settlement negotiations, unconscionable advantage is not a basis for relief. Rather, plaintiff appears to contend that various terms of the settlement were unconscionable. A contract can be found to be invalid if it is one of adhesion, as where its terms are oppressive or unconscionable. *Brown v Siang*, 107 Mich App 91, 106-107; 309 NW2d 575 (1981).

> In order for a contract or contract provision to be considered unconscionable, both procedural and substantive unconscionability must be present. Procedural unconscionability exists where the weaker party had no realistic alternative to acceptance of the term. If, under a fair appraisal of the circumstances, the weaker party was free to accept or reject the term, there was no procedural unconscionability. Substantive unconscionability exists where the challenged term is not substantively reasonable. However, a contract or contract provision is not invariably substantively unconscionable simply because it is foolish for one party and very advantageous to the other. Instead, a term is substantively unreasonable where the inequity of the term is so extreme as to shock the conscience. [*Clark v DaimlerChrysler Corp*, 268 Mich App 138, 143-144; 706 NW2d 471 (2005) (citations omitted).]

The case was referred to mediation, but mediation is not binding unless it results in a settlement agreement accepted by both parties. MCR 3.216(A)(2) and (H)(7). Plaintiff was free to reject the settlement and proceed to trial on the scheduled trial date and admitted as much under oath on the record. Because she has not shown that the settlement agreement was procedurally unconscionable, she has not established a right to relief on this ground.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Karen M. Fort Hood
/s/ Alton T. Davis