STATE OF MICHIGAN

COURT OF APPEALS

JOHN M. HALL,

Plaintiff/Counterdefendant-Appellee,

v

MICHELE J. HALL,

Defendant/Counterplaintiff-Appellant.

UNPUBLISHED
January 28, 2010

No. 288241
Lapeer Circuit Court
LC No. 07-039178-DM

Before: Gleicher, P.J., and Fitzgerald and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from a circuit court order entering a consent judgment of divorce. We affirm.

In August 2007, plaintiff filed a divorce complaint seeking to conclude the parties' 30-year marriage. Plaintiff and defendant executed a settlement agreement in mid-September 2007 and a consent judgment of divorce in October 2007. The settlement agreement contemplated no spousal support and precluded defendant from obtaining any of plaintiff's pension benefits. Plaintiff moved to enter the consent judgment, and defendant responded that she had signed the agreement under duress and asked the court to set aside the settlement agreement.

After an evidentiary hearing, the circuit court found nothing illegal with respect to plaintiff having used evidence of defendant's sexual acts to pressure her to sign the settlement agreement, and that defendant did not lack mental capacity when she agreed to the settlement. The court emphasized that in the days between defendant's signings of the settlement agreement and the consent judgment, defendant no longer lived with plaintiff and remained free to do whatever and contact whomever she pleased. The circuit court also noted defendant's acknowledgement that she comprehended all provisions of the settlement agreement, further signifying that defendant willingly opted to release her interest in plaintiff's property to shield her children and the public from disclosure of her online sexual communications. The court thus concluded that no duress existed and entered the consent judgment.

We review for an abuse of discretion a trial court's finding "concerning the validity of the parties' consent to a settlement agreement." *Keyser v Keyser*, 182 Mich App 268, 269-270; 451

NW2d 587 (1990). What constitutes duress is a question of law, and whether duress exists in a particular case is a question of fact. *Clement v Buckley Mercantile Co*, 172 Mich 243, 253; 137 NW 657 (1912). We review for clear error a trial court's findings of fact. *Ross v Auto Club Group*, 481 Mich 1, 7; 748 NW2d 552 (2008). Clear error occurs "when the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id*. (internal quotation omitted).

Our Supreme Court has explained that duress generally "exists when one by the unlawful act of another is induced to make a contract or perform some act under circumstances which deprive him of the exercise of free will," and that "[m]oral duress consists in imposition, oppression, undue influence, or the taking of undue advantage of the business or financial stress or extreme necessities or weakness of another," where "in equity and good conscience" the party profiting "ought not . . . be permitted to retain" what he gained. *Norton v State Hwy Dep't*, 315 Mich 313, 319-320; 24 NW2d 132 (1946) (internal quotation omitted). A court also may set aside a settlement agreement between the parties if the party challenging the agreement demonstrates that she lacked mental capacity to enter the binding agreement. *Van Wagoner v Van Wagoner*, 131 Mich App 204, 213; 346 NW2d 77 (1983).

> The well-settled test of mental capacity to contract . . . is whether the person in question possesses sufficient mind to understand, in a reasonable manner, the nature and effect of the act in which he is engaged. However, to avoid a contract it must appear not only that the person was of unsound mind or insane when it was made, but that the unsoundness or insanity was of such a character that he had no reasonable perception of the nature or terms of the contract . . . . Emotional disorders, alone, will not invalidate a contract. [*Id*. at 214 (internal quotation omitted).]

The circuit court in this case correctly found that defendant did not enter the settlement agreement under duress. The parties described that they had entered the settlement agreement shortly after plaintiff learned that defendant was exchanging sexually explicit emails with other men and advertising sexual services online. If the question of property division had gone to trial, the circuit court would have considered the factors set forth in *Sparks v Sparks*, 440 Mich 141, 159-160; 485 NW2d 893 (1992), which include the "past relations and conduct of the parties . . . and . . . general principles of equity." Plaintiff thus did nothing illegal to the extent that in reaching the settlement agreement with defendant he relied on admissible evidence of her past relations and conduct. And the circuit court did not clearly err in finding that the record substantiated no other unduly coercive behavior or conduct by plaintiff. Consequently, we conclude that the circuit court correctly found nothing inequitable in defendant's decision to forego spousal support in exchange for the keeping of her sexual activities from becoming public.

Furthermore, the circuit court correctly characterized the record as containing no evidence suggesting that defendant suffered from stress that amounted to a mental incapacity. Defendant recounted having some depression and sleep loss. But defendant also conceded that she otherwise successfully performed her requisite daily activities even during these periods, and as the circuit court noted, defendant had more than a week to contemplate the terms of the settlement agreement and consider whether to retain legal counsel to review the settlement

agreement. In summary, we detect no clear error in the circuit court's findings that defendant knew what she was giving up in signing the settlement agreement and that she had awareness of the reasons why she had decided to enter the agreement.

Defendant further claims on appeal that the circuit court "erred in not considering a modification of the child support or spousal support provisions, even if the settlement were otherwise deemed valid." Because defendant has not identified in her brief any allegedly erroneous ruling of the circuit court related to spousal support or child custody, we simply cannot address the merits of her contention. *McIntosh v McIntosh*, 282 Mich App 471, 484-485; 768 NW2d 325 (2009). Moreover, our review of the record reveals no support- or custody-related request by defendant that the circuit court refused to consider.[1]

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Kurtis T. Wilder

[1] The parties originally agreed, as reflected in the initial consent judgment of divorce entered by the circuit court, that defendant would have primary physical custody of two of the parties' three children, plaintiff would have primary physical custody of the parties' third child, and plaintiff would pay defendant $800 in monthly child support. Plaintiff later sought a change in this custodial arrangement and cancellation of his child support obligation, averring that defendant had contacted him to advise "that he needed to come pick-up his son and take him since she did not have the money or ability to support or care for him." Without any objection of record by defendant, the circuit court entered an "Order granting plaintiff's motion to change custody and terminating support." This order expressly envisions that defendant "may re-petition the Court to change custody, if she so chooses."