STATE OF MICHIGAN

COURT OF APPEALS

JEREMY KLEINJAN, Plaintiff-Appellee,	UNPUBLISHED January 19, 2016
v	No. 328772 Ottawa Circuit Court
CHRISTINE CARLTON, Defendant-Appellant.	LC No. 15-079667-DC

Before: BOONSTRA, P.J., AND SAWYER AND MARKEY, JJ.

PER CURIAM.

Defendant appeals by right from an order resolving custody, child support, and parenting-time issues in accord with the parties' prior, signed mediated agreement. We affirm.

The parties are the unmarried parents of a minor child born in 2013. On February 23, 2015, plaintiff filed a complaint requesting legal and physical custody of the minor, child support, and supervised parenting time for defendant. On July 16, 2015, the parents participated in domestic mediation, accompanied by their respective attorneys and lead by a mediator of the parents' choosing. The parents resolved their outstanding issues during the mediation, and plaintiff's attorney memorialized the terms of their agreement in a handwritten mediation agreement that the parties and their respective attorneys then signed. Plaintiff's attorney then drafted the appropriate order, circulated it for signature, and provided it to the trial court for entry.

At the July 22, 2015 settlement conference to enter the proposed order, defendant attempted to disavow the agreement, refused to sign the proposed order, and asked the trial court for an adjournment to allow her to engage new counsel to achieve a better outcome. In response to questioning by the trial judge, defendant admitted that she had participated in the mediation session and signed the handwritten mediation agreement, but insisted that she did not think she was adequately advised and thought that she could obtain a better result with a different attorney. She answered affirmatively when asked if she had had a change of heart after signing the mediation agreement. She could not identify any terms of the proposed order that differed from the signed mediation agreement, or any deficient performance of her attorney relative to the mediation agreement. When asked whether she thought the agreement was not in the best interests of the minor, she insisted that it was not because plaintiff delegated care of the minor to

his parents when he was at work, and she thought that she should be the one caring for him. The trial court entered the proposed order, and defendant appealed.

Defendant first claims on appeal that the trial court abused its discretion by entering the order without her signature. Defendant objected to entry of the order below because she had changed her mind, not because she was asserting that the signed, handwritten mediation agreement entered into by the parties was not binding or that she did not enter into the agreement knowingly. "An objection based on one ground is usually considered insufficient to preserve an appellate attack based on a different ground[,]" *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004). To the extent defendant raises issues that are unpreserved, we review for plain error affecting her substantial rights. *Rivette v Rose-Molina*, 278 Mich App 327, 328; 750 NW2d 603 (2008).

The premise of defendant's argument on appeal is that the signed, handwritten mediation agreement is not binding, and that she can disavow the agreement by refusing to sign the proposed order that incorporated its terms. Defendant cites no authority in support of her premise, nor does it find support in our court rules or case law. MCR 3.216(A)(1) provides that all domestic relations cases are subject to mediation under court rule unless otherwise provided by statute or court rule. MCR 3.216(D) provides a procedure for parties who wish to remove their case from mediation. Where parties are able to resolve their domestic relations disputes through mediation, MCR 3.216(H)(7) requires the following:

> If a settlement is reached as a result of the mediation, to be binding, the terms of that settlement must be reduced to a signed writing by the parties or acknowledged by the parties in an audio or video recording. After a settlement has been reached, the parties shall take steps necessary to enter judgment as in the case of other settlements.

Thus, under the plain language of MCR 3.216(H)(7), a writing signed by the parties binds the parties to the terms of their agreement. *Vittiglio v Vittiglio*, 297 Mich App 391, 399; 824 NW2d (2012). Parties cannot disavow a written, signed agreement. *Gojcaj v Moser*, 140 Mich App 828, 835; 366 NW2d 54 (1985). Nor may they dispute a signed agreement because they have had a change in heart. *Metropolitan Life Ins Co v Goolsby*, 165 Mich App 126, 128; 418 NW2d 700 (1987).

It is undisputed that defendant willingly participated in mediation, that she had legal counsel during the process, and that she signed the handwritten mediation agreement that memorialized the parties' agreement regarding child custody, child support, parenting time, and other issues. Defendant's reason for setting aside the mediation agreement was her belief that a different attorney could obtain a better result. Although she said that the proposed order was more detailed than the handwritten agreement, she could not identify any relevant differences between the terms in the proposed order and those agreed to by the parties in the mediation agreement. Indeed, our review of the handwritten agreement and the proposed order confirms the trial court's finding that, except for two insertions required by statute, the terms of the two documents are the same. Defendant attempted to disavow the agreement at the settlement conference because she had "a change of heart."

On appeal, however, defendant contends that she "refused to consent to the final order based on the fact that she did not read and understandably enter into the agreement." Defendant claims that she "did not sign the mediation agreement. She did not read the mediation agreement. She was under the belief the parties were close to settlement, but there was no final agreement between the parties." Defendant further claims that the trial court abused its discretion by denying her an opportunity to "dispute these issues" with new counsel. However, not only did defendant not raise these claims below, but also ignores her statements at the settlement conference affirming her participation in mediation, her signature on the handwritten mediation agreement, and her subsequent reconsideration of the agreement. Defendant does not acknowledge MCR 3.216 in her brief to this Court, nor does she cite any facts or authority in support of her position that her signature on the mediation agreement should not be binding under the circumstances.

In *Wyskowski v Wyskowski*, 211 Mich App 699, 700; 536 NW2d 603 (1995), we affirmed a trial court's entry of a consent order in a domestic case based on the parties' signed mediation agreement, despite the defendant's disavowal of the agreement and refusal to sign the consent order. *Id*. at 702-703. Like the defendant in *Wyskowski*, the instant defendant reached an agreement at mediation, reduced the agreement to writing, signed it, and affirmed at the settlement conference that the proposed order incorporated the terms to which she had initially agreed. Therefore, like the defendant in *Wyskowski*, this defendant's signature on the handwritten mediation agreement bound her to its terms even though she refused to sign the proposed order that incorporated those terms. She cannot simply disavow the agreement, *Gojcaj*, 140 Mich App at 835, nor can she dispute it based on her change in heart, *Metropolitan Life Ins*, 165 Mich App at 128.

Defendant next claims that the trial court abused its discretion by denying her motion for new counsel to dispute the validity of the order entered without her signature. We review for an abuse of discretion a trial court's denial of a request for an adjournment, *Isbey v Isbey*, 31 Mich App 185, 187; 187 NW2d 488 (1971), and will not reverse unless the "trial court's decision falls outside the range of principled outcomes," *Macomb Co Dep't of Human Services v Anderson*, 304 Mich App 750, 754; 849 NW2d 408 (2014).

We first note that defendant did not move below for an adjournment to allow new counsel to challenge the validity of the order. Rather, she requested an adjournment to enable her to engage new counsel who might be able to achieve a better outcome. To succeed on her claim that the trial court abused its discretion by denying her motion for adjournment, defendant has to show that her motion was based on a legally sufficient cause, MCR 2.503(B)(1), or promoted the cause of justice, MCR 2.503(D)(1). *Matter of Jackson*, 199 Mich App 22, 28; 501 NW2d 182 (1993). She shows neither. Defendant does not argue that she did not enter the mediation freely, or that her signature on the handwritten mediation agreement was the product of fraud, mutual mistake, or duress. See *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990) (stating that courts are bound by "property settlements reached through negotiations and agreements by parties to a divorce action, in the absence of fraud, duress, mutual mistake, or severe stress . . . ."). Nor does she show that the agreement was not in the best interests of the minor. See *Harvey v Harvey*, 470 Mich 186, 187 n 2, 192; 680 NW2d 835 (2004) (setting forth that, where parents reach agreements regarding custody informally or through arbitration or mediation, the trial court is still required to make an independent

determination of the best interests of the child before entering any resulting order). In short, defendant fails to show any factual or legal insufficiency with the agreement or the mediation process. Consequently, it cannot be said that the trial court's decision to deny her request for an adjournment fell outside the range of principled outcomes, and therefore was an abuse of discretion. *Macomb Co Dep't of Human Services*, 304 Mich App at 754.

There is no support in the record for defendant's implication on appeal that she requested new counsel to argue the legality of the agreement, and because defendant first raises this claim on appeal, we are not obligated to address it. *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). Nevertheless, we note that defendant's claim is without legal support because it is based on the assumption that the final agreement is invalid without her signature, an assumption which in turn is based on defendant's erroneous notion that her signature on the handwritten mediation agreement does not bind her to the terms of the agreement. However, as MCR 3.216(H)(7) and *Wyskowski* established, defendant is bound by her signature as long as the agreement is in the best interests of the child, *Harvey*, 470 Mich at 187, which defendant has not contested, and her signature did not result from fraud, mutual mistake, or duress, *Keyser*, 182 Mich App at 269-270, which defendant has not claimed. Thus, even if defendant had argued below that she wanted new counsel to contest the legality of the agreement, she failed to provide the trial court with any evidence of the agreement's infirmity, and the trial court's denial of her motion for an adjournment to procure new counsel would not have been an abuse of discretion.

Finally, defendant claims that the trial court violated her right to procedural due process by entering the order without her signature, and by denying her the opportunity to raise objections to the mediation agreement at an evidentiary hearing. Natural parents have a fundamental liberty interest in the care, custody, and management of their children, see *In re Sanders*, 495 Mich 394, 410; 852 NW2d 524 (2014), and no person may be deprived of life, liberty or property without due process of law, US Const, Am V; US Const, Am XIV; Const 1963, art 1, § 17. The fundamental requisite of due process is the opportunity to be heard. *Bullington v Corbell*, 293 Mich App 549, 556; 809 NW2d 657 (2011).

Defendant's claim that the trial court violated her right to due process because it entered the final order without her consent is without merit because it ignores the binding nature of her freely given signature on the handwritten mediation agreement. Moreover, defendant did not request an evidentiary hearing below and the trial court was not obligated to grant her one sua sponte, especially where there was no ambiguity or factual dispute regarding the preparation and terms of the signed mediation agreement. *Mitchell v Mitchell*, 198 Mich App 393, 399; 499 NW2d 393 (1993) (showing that a trial court is obligated to hold an evidentiary hearing to resolve an ambiguity or factual dispute involving a domestic relations matter, but only if a party specifically asks for an evidentiary hearing). Notably, the record shows that, in an extended colloquy with defendant, the trial court gave her multiple opportunities to provide legally sufficient reasons why the court should not enter the proposed order based on the parties' signed mediation agreement.

The opportunity to be heard does not require a full trial-like proceeding, but requires a hearing to the extent that a party has a chance to know and respond to the evidence. *Hinky Dinky Supermarket, Inc v Dep't of Community Health*, 261 Mich App 604, 606; 683 NW2d 759 (2004).

Defendant was personally served with plaintiff's complaint and summons seeking physical custody of their child, was well aware of the terms of the mediation agreement, affirmed that she had participated in mediation, and affirmed that she had signed the handwritten mediation agreement that memorialized the parties' settlement with regard to child custody, child support, and parenting time. She was represented by counsel experienced in family law. In addition, when defendant attempted to disavow the agreement at the settlement conference, the trial court gave her multiple opportunities to explain her position. In light of the foregoing, it cannot be said that the trial court violated defendant's due process right by denying her the opportunity to be heard. *Bullington*, 293 Mich App at 556. Consequently, there was no due process violation.

In sum, court rules and case law support the position that the trial court did not err by entering an order based on the parties' signed, handwritten mediation agreement, despite defendant's attempt to disavow the agreement and her refusal to sign the final document. Defendant is bound by the terms of the signed, written mediation agreement. MCR 3.216(H)(7); *Vittiglio*, 297 Mich App at 399. She cannot simply disavow the agreement, *Gojcaj*, 140 Mich App at 835, nor can she dispute it based on her change in heart, *Metropolitan Life Ins*, 165 Mich App at 128. Thus, defendant's due process claim fails to the extent it is based on the trial court's entry of the order without her signature. Defendant's claim that the trial court abused its discretion by denying her motion for an adjournment to find new counsel also fails because it was not based on good cause, but on the desire to achieve a better outcome. In addition, her claim that she wanted new counsel in order to contest the legality of an order entered without her signature fails because it is based on the erroneous assumption that she is not bound by her signature on the handwritten mediation agreement, which the contested order incorporates. Furthermore, defendant's due process claim fails to the extent that it is based on an alleged denial of her right to be heard because the trial court gave her multiple opportunities to articulate her objections to entry of the order. For these reasons, the trial court did not err by entering the order without defendant's signature, and entry of the order did not violate defendant's procedural due process rights.

Affirmed.

/s/ Mark T. Boonstra
/s/ David H. Sawyer
/s/ Jane E. Markey