STATE OF MICHIGAN

COURT OF APPEALS

UNIT 67, L.L.C., Plaintiff-Appellee,	UNPUBLISHED June 7, 2012
v	No. 303398 Macomb Circuit Court
DENISE A. HUDSON, Defendant-Appellant.	LC No. 2010-002221-CH

Before: DONOFRIO, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right an amended consent judgment requiring her to pay plaintiff $11,398 or forfeit her interest in the real property at issue. Because the record demonstrates that defendant agreed to the terms of the amended consent judgment and the mediator did not engage in fraudulent conduct, and the trial court did not err by entering plaintiff's proposed consent judgment or by enforcing the amended consent judgment, we affirm.[1]

This case involves defendant's residential condominium located in Mt. Clemens in Macomb County. In early 2009, defendant owed her condominium association $11,398 in association and attorney fees and approached Earl W. Stilson for financial assistance. Defendant claims that she intended to borrow money from Stilson and did not intend to sell her condo to him or plaintiff, Stilson's corporation. According to defendant, she and Stilson entered into a loan agreement on March 30, 2009, but Stilson retained the only signed copy of the agreement and tore it up. Thereafter, on April 3, 2009, defendant signed a purchase and sale agreement whereby she agreed to sell and plaintiff agreed to buy defendant's condo for $11,398. On the same date, defendant executed a quit claim deed conveying her interest in the property to plaintiff, and plaintiff submitted to defendant's condominium association two checks totaling $11,398. The purchase and sale agreement stated:

> Buyer is paying Association fees and costs ($11,398.30) in the form of bank check to River Hills Condominium Association and receiving a quitclaim

[1] The exact terms of the settlement were placed on the record but are not disputed in this appeal.

> deed from the Association to Denise Hudson, who will assign to 67 LLC in the form of a quitclaim dated 4-3-09 [sic]

Defendant claims that, as a condition precedent to paying the funds, Stilson forced her to have sexual intercourse with him.

On April 13, 2009, River Hills Condominium Association executed a quit claim deed conveying its interest in the premises to defendant and discharged the lien on the property. On the same date, defendant purportedly executed a quit claim deed conveying her interest in the property to plaintiff. Defendant, however, denies signing the April 13, 2009, quit claim deed and contends that the signed deed is fraudulent.

On May 24, 2010, plaintiff filed a complaint against defendant to enforce the purchase and sale agreement, alleging that defendant refused to close on the sale. The parties ultimately reached a settlement, which was placed on the record on January 20, 2011. Defendant now challenges the settlement and contends that she never agreed to its terms.

Defendant first argues that the trial court abused its discretion by failing to hold an evidentiary hearing with respect to the January 20, 2011, mediation and purported settlement. Because defendant failed to preserve this issue for our review by requesting an evidentiary hearing in the trial court, our review is limited to plain error affecting her substantial rights. *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004).

"In general, consent judgments are final and binding upon the court and the parties, and cannot be modified absent fraud, mistake, or unconscionable advantage." *Laffin v Laffin*, 280 Mich App 513, 517; 760 NW2d 738 (2008). Defendant argues that she never approved the settlement and that the mediator, John B. DeMoss, committed misconduct, misrepresented what had occurred during the mediation, and demonstrated bias in favor of plaintiff. Defendant requests that this Court declare the amended consent judgment null and void and hold an evidentiary hearing regarding DeMoss's misconduct.

The record fails to support defendant's argument. The transcript of the January 20, 2011, hearing indicates that the parties reached the agreement set forth in the amended consent judgment. In accordance with the agreement, defendant stated that she would provide documentation that no association dues or assessments on the property were outstanding, and she represented that there were no encumbrances on the property. When the trial court asked defendant whether she agreed to the settlement, defendant responded as follows:

> *MS HUDSON:* I agree, Your Honor, even though there's one thing I wish [y]ou were still sort of, rather than dismissing it outright, until the money is paid that you still have control over this?
>
> *THE COURT:* I do.
>
> *MS. HUDSON:* Thank you.
>
> *THE COURT:* All right.

MR. DEMOSS: Now, it will still be (inaudible) -

THE COURT: Either party can bring it back to me should there be a difficulty in the process.

MS. HUDSON: Okay.

MR. DEMOSS: But at this point in time, call me first before you call the Judge if there's a real problem.

MS. HUDSON: Okay.

THE COURT: Any problems whatsoever.

MS. HUDSON: Okay.

THE COURT: So the terms as laid out on the record are the terms to which you agree, is that correct?

MS. HUDSON: I agree.

Thus, the transcript of the January 20, 2011, hearing demonstrates that defendant agreed to the terms of the settlement.[2] A settlement agreement made in open court is binding on the parties. MCR 2.507(G); *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349; 605 NW2d 360 (1999).

On January 31, 2011, defendant filed an objection to the proposed settlement, stating that she attempted to contact DeMoss on January 21, 2011, the day after the mediation, to object to the settlement. On February 7, 2011, defendant filed an objection to the proposed consent judgment that plaintiff submitted pursuant to the seven-day rule of MCR 2.602(B)(3). Defendant stated that she "reject[ed] the Proposed Consent Judgment in its entirety" and requested that the trial court refuse to enter the judgment "as it [was] not in Defendant's best interests to settle under the proposed terms." Defendant offered an "Alternative Consent Judgment" that provided:

1. Plaintiff Quit Claims Deed to Defendant immediately filed/certified;

2. Plaintiff dissolves Unit 67, LLC immediately-proof;

3. Plaintiff and plaintiff's associates have no further contact with Defendant; and

[2] On October 25, 2011, defendant filed with this Court a motion to correct or amend the January 20, 2011, transcript, arguing that the dialogue indicated in the transcript was fabricated and that she never agreed to the settlement on the record. On November 23, 2011, this Court denied defendant's motion. *Unit 67, LLC v Hudson*, unpublished order of the Court of Appeals, entered November 23, 2011 (Docket No. 303398).

4. Defendant will remit $11,398 to Plaintiff when Defendant has the exact funds available. Funds to be delivered to the Court.

Unlike her argument on appeal, defendant did not indicate in her objection to plaintiff's proposed consent judgment that she never agreed to the terms of the settlement or that DeMoss committed misconduct or misrepresented that a settlement had been reached. Rather, defendant stated that she no longer believed that the settlement was in her best interests and wanted more favorable terms, particularly regarding repayment. While the settlement required defendant to pay plaintiff $11,398 within one year, defendant's alternative consent judgment provided that she would remit the funds when she "has the exact funds available." Not until after the trial court entered the amended consent judgment, on March 21, 2011, did defendant argue that she never consented to the settlement and that DeMoss misrepresented what had occurred during the mediation and falsely indicated that an agreement had been reached. Because the record does not support defendant's claims that she did not agree to the settlement and that DeMoss engaged in fraudulent conduct, she has failed to establish that the trial court's failure to hold an evidentiary hearing amounted to plain error.

Defendant next argues that the trial court erred by entering plaintiff's proposed consent judgment on February 14, 2011, after defendant informed the court that plaintiff did not serve her with its answer to her motion objecting to the proposed consent judgment. Defendant asserts that, by entering the judgment, the trial court violated her Fourteenth Amendment right to due process. We review constitutional issues de novo. *Fluor Enterprises, Inc v Dep't of Treasury*, 477 Mich 170, 174; 730 NW2d 722 (2007).

Generally, due process requires notice of the nature of the proceeding and an opportunity to be heard in a meaningful time and manner before an impartial decision-maker. *Cummings v Wayne Co*, 210 Mich App 249, 253; 533 NW2d 13 (1995). Defendant contends that she was denied an opportunity to respond to plaintiff's answer to her objections to the proposed consent judgment because plaintiff never served her with its answer. Again, the record fails to support defendant's argument. Plaintiff's answer contains a proof of service indicating that plaintiff served defendant with its answer on February 10, 2011. In any event, even if plaintiff did not serve defendant with its answer, defendant was not denied a meaningful opportunity to be heard before the trial court entered plaintiff's proposed consent judgment.

In her objection to plaintiff's proposed consent judgment, defendant stated that she "reject[ed] the Proposed Consent Judgment in its entirety" and requested that the trial court refuse to enter the judgment "as it [was] not in Defendant's best interests to settle under the proposed terms." In its answer to defendant's objection, plaintiff argued that defendant failed to state with specificity the inaccuracy or omission in the proposed consent judgment, as required under MCR 2.602(B)(3)(b).[3] Plaintiff asserted that, because defendant's objection did not

[3] MCR 2.602(B) provides, in relevant part:

> An order or judgment shall be entered by one of the following methods:
>
> * * *

comply with the court rule, the trial court should enter its proposed consent judgment. At the February 14, 2011, hearing, the trial court informed defendant that her objection did not comply with MCR 2.602(B)(3)(b), and defendant indicated that she would submit more specific objections. The trial court nevertheless entered plaintiff's proposed consent judgment, stating "defendant did not provide proof that the proposed judgment did not comport with the settlement placed on the record." Thus, defendant was provided an opportunity to respond to plaintiff's answer at the hearing, but, in any event, the trial court denied defendant's objection for an entirely different reason. Therefore, even if plaintiff did not serve defendant with its answer to defendant's objection, the argument that plaintiff asserted in its answer was not the basis for the trial court's ruling. Further, the relief that defendant requests is vacation of the February 14, 2011, consent judgment. Because the trial court entered an amended consent judgment on March 21, 2011, vacation of the February 14, 2011, consent judgment is unnecessary.

Defendant next argues that the trial court erred by holding a show cause hearing to enforce the amended consent judgment when she never consented to its terms. Defendant reiterates her argument that she never consented to the terms of the settlement and that DeMoss, as well as plaintiff's attorney, committed fraud by misrepresenting that she had agreed to its terms. As previously discussed, the record clearly shows that defendant agreed to the settlement, and a settlement agreement made in open court is binding on the parties. MCR 2.507(G); *Mikonczyk*, 238 Mich App at 349.

Defendant also argues that the trial court erred by holding a show cause hearing to enforce the amended consent judgment when the purchase and sale agreement, on which plaintiff's complaint is based, involves illegal consideration and an altered quit claim deed. Defendant asserts that the purchase and sale agreement is unenforceable because it is based on illegal consideration and that the April 13, 2009, quit claim deed purporting to transfer defendant's interest in the property to plaintiff was fraudulent. Defendant's arguments are misplaced because, rather than resolving those issues in the trial court, she entered into a settlement agreement with plaintiff. If the purchase and sale agreement was based on illegal consideration, i.e., money in exchange for sex, defendant could have challenged the agreement that plaintiff was attempting to enforce. Instead, defendant entered into a settlement agreement whereby she agreed to repay plaintiff $11,398 within one year or forfeit her interest in the property. Because defendant agreed to the settlement, as she indicated in open court, she is bound by its terms. MCR 2.507(G); *Mikonczyk*, 238 Mich App at 349.

> (3) Within 7 days after the granting of the judgment or order, or later if the court allows, a party may serve a copy of the proposed judgment or order on the other parties, with a notice to them that it will be submitted to the court for signing if no written objections to its accuracy or completeness are filed with the court clerk within 7 days after service of the notice. . . .
>
> * * *
>
> (b) Objections regarding the accuracy or completeness of the judgment or order must state with specificity the inaccuracy or omission.

Finally, defendant argues that the trial court abused its discretion when it refused to allow her to explain why a show cause order should not be entered at the April 4, 2011, show cause hearing. Defendant contends that the trial court never allowed her to address DeMoss's misconduct. At the April 4, 2011, hearing, defendant again attempted to challenge the settlement that was placed on the record on January 20, 2011. The trial court indicated that defendant had consented to the settlement in open court. The court further indicated that because the original consent judgment entered on February 14, 2011, did not fully comport with the settlement placed on the record, the court directed plaintiff's counsel to prepare an amended consent judgment, which the court entered on March 21, 2011. The court indicated that the April 4, 2011, show cause hearing regarding defendant's failure to abide by the terms of the amended consent judgment was not the time for defendant to challenge the mediation process that led to the settlement. Because defendant was again attempting to challenge the settlement, to which she agreed in open court, she is not entitled to relief. MCR 2.507(G); *Mikonczyk*, 238 Mich App at 349.

Affirmed. Plaintiff, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Pat M. Donofrio
/s/ Kathleen Jansen
/s/ Douglas B. Shapiro