

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KEVIN MICHAEL THOMPSON,

Plaintiff/Counter Defendant-  
Appellee,

v

MICHELLE LAYNE THOMPSON,

Defendant/Counter Plaintiff-  
Appellant.

UNPUBLISHED  
September 13, 2012

No. 307845  
Lapeer Circuit Court  
Family Division  
LC No. 10-042647-DM

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Before: O'CONNELL, P.J., and JANSEN and RIORDAN, JJ.

PER CURIAM.

Defendant appeals by right a revised judgment of divorce entered by the circuit court following a bench trial. The trial was held after the court ordered that the parties' settlement agreement as reflected in the original judgment of divorce should be set aside. For the reasons set forth below, we reverse the judgment of the trial court, vacate the revised judgment of divorce, and reinstate the original judgment of divorce.

**I. BASIC FACTS**

The parties have been twice married. Following the dissolution of their first marriage, plaintiff was involved in a motorcycle accident. The parties subsequently remarried. In December 2010, as part of the second divorce proceedings, plaintiff and defendant reached a property settlement after weeks of negotiation. In relevant part, defendant agreed to receive two real properties, and plaintiff agreed to receive three real properties. Defendant was also awarded \$140,470 to equalize the asserted disparity in real-property values. Most of the funds used to acquire the real properties were obtained from a settlement awarded to plaintiff with respect to the motorcycle accident. Neither party hired an appraiser to assess the value of the real properties prior to reaching the settlement. The judgment of divorce was ultimately entered on February 14, 2011.

On May 13, 2011, plaintiff filed a motion to set aside the judgment of divorce pursuant to MCR 2.612(C)(1). Plaintiff alleged that the judgment of divorce was inequitable, as indicated by subsequent appraisals of the real properties. Plaintiff also alleged that he was not competent to enter into the settlement agreement due to the brain injuries he received as a result of the

motorcycle accident. Plaintiff's treating physician testified at the motion hearing that plaintiff was unable to manage "emotionally charged situation[s]" as a result of the damage to the frontal lobes of his brain. The physician testified that plaintiff was able to process ordinary daily situations, but not serious situations involving substantial amounts of information and emotional responses. The trial court granted plaintiff's motion to set aside the judgment of divorce, but made no findings regarding whether plaintiff was competent at the time he entered into the settlement agreement. When it set aside the judgment of divorce, the trial court stated:

The testimony today . . . and . . . [MCR] 2.612 allows the Court to give relief from a judgment in any reason justifying relief as a court of equity. I want you folks to have an agreement that is fair to everybody and whether this one's fair or not, I have no idea. I don't know the facts. I don't know the [property] values. I don't know what negotiations there were. I know there's a 401(k) involved, maybe separate property involved. I don't know whether this is fair or not. But I think it's the Court's obligation to make sure, to go the extra mile to make sure that any, either a ruling by the Court or a settlement by the parties is fair and equitable.

This appeal followed.

## II. ANALYSIS

A trial court's decision to grant or deny relief from judgment is reviewed for an abuse of discretion.<sup>1</sup> "An abuse of discretion occurs when a court selects an outcome that is not within the range of reasonable and principled outcomes,"<sup>2</sup> and when "the trial court misapprehends the law to be applied . . . ."<sup>3</sup>

Defendant argues that the trial court erred when it set aside the judgment of divorce. We agree. MCR 2.612(C) lists the grounds for relief from judgment. MCR 2.612(C)(1) states:

On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

(a) Mistake, inadvertence, surprise, or excusable neglect.

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).

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<sup>1</sup> *Rose v Rose*, 289 Mich App 45, 49; 795 NW2d 611 (2010).

<sup>2</sup> *Borowsky v Borowsky*, 273 Mich App 666, 672; 733 NW2d 71 (2007).

<sup>3</sup> *Bynum v ESAB Group, Inc*, 467 Mich 280, 283; 651 NW2d 383 (2002).

(c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

(d) The judgment is void.

(e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.

(f) Any other reason justifying relief from the operation of the judgment.

“[W]hile permitting relief under [MCR 2.612(C)(1)(f)] for ‘any other reason’ justifying it, our courts have long required the presence of both extraordinary circumstances and a demonstration that setting aside the judgment will not detrimentally affect the substantial rights of the opposing party.”<sup>4</sup> Thus,

[w]hen the parties have expressly elected finality in lieu of flexibility, a court considering relief under MCR 2.612(C)(1)(f) must strictly apply the factors limiting relief from a judgment . . . . Those factors confine the application of subrule (f) to extraordinary situations not covered by subrules (a) through (e) and mandate that a court refrain from vacating a judgment if doing so detrimentally affects the rights of the opposing party. <sup>[5]</sup>

These factors apply when a party moves to set aside the property settlement in a judgment of divorce.<sup>6</sup> “Generally, relief is granted under subsection f only when the judgment was obtained by the improper conduct of the party in whose favor it was rendered.”<sup>7</sup> Although MCR 2.612(C)(1)(f) grants a court extensive power in equity as a general rule, the court’s equitable powers are restricted with respect to a motion to set aside a binding contract.<sup>8</sup> With respect to contracts, public policy considerations militate in favor of finality of judgments and enforcement of unambiguous contracts.<sup>9</sup>

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<sup>4</sup> *Rose*, 289 Mich App at 58.

<sup>5</sup> *Id.* at 59-60 (citations omitted). See also *Heugel v Heugel*, 237 Mich App 471, 478-479; 603 NW2d 121 (1999) (“In order for relief to be granted under MCR 2.612(C)(1)(f), the following three requirements must be fulfilled: (1) the reason for setting aside the judgment must not fall under subsections a through e, (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice. . . .” (citations omitted)).

<sup>6</sup> *Heugel*, 237 Mich App at 478.

<sup>7</sup> *Id.* at 479.

<sup>8</sup> *Rose*, 289 Mich App at 59-60.

<sup>9</sup> *Id.*

Moreover, property agreements are subject to general contract principles, including the principle that courts do not modify contracts simply to produce “reasonable” or “equitable” results.<sup>10</sup> This Court outlined the applicable standard for setting aside a property settlement in *Keyser v Keyser*.<sup>11</sup>

It is a well-settled principle of law that courts are bound by property settlements reached through negotiations and agreement by parties to a divorce action, in the absence of fraud, duress, mutual mistake, or severe stress which prevented a party from understanding in a reasonable manner the nature and effect of the act in which [the party] was engaged.<sup>[12]</sup>

In this case, the trial court apparently set aside the judgment pursuant to MCR 2.612(C)(1)(f), noting its authority under the court rule to do so for “any reason justifying relief as a court of equity.” The trial court’s decision was erroneous, because plaintiff failed to show improper conduct on defendant’s part,<sup>13</sup> or that the facts here amount to an extraordinary circumstance.<sup>14</sup> Additionally, setting aside the divorce judgment would detrimentally affect defendant’s substantial rights, because defendant lost her property rights as reflected in the original property settlement.<sup>15</sup> Moreover, “equity,” standing alone, is not a valid reason to set aside a property agreement in a judgment of divorce.<sup>16</sup> In short, the trial court “misapprehend[ed] the law to be applied”<sup>17</sup> and therefore abused its discretion when it granted plaintiff’s motion for relief from judgment.

Plaintiff argues that the judgment should be set aside because he was incompetent to consent to the terms of the settlement agreement in the first instance. We disagree. “Where a party alleges that his or her consent, while actually given, was influenced by circumstances of severe stress, the standard to be applied is that of mental capacity to contract.”<sup>18</sup> To determine a party’s mental capacity to contract, courts should apply the following test:

The well-settled test of mental capacity to contract, properly adopted by the trial court, 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

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<sup>10</sup> *Lentz v Lentz*, 271 Mich App 465, 477-478; 721 NW2d 861 (2006).

<sup>11</sup> 182 Mich App 268; 451 NW2d 587 (1990).

<sup>12</sup> *Id.* at 269-270.

<sup>13</sup> See *Rose*, 289 Mich App at 59-60.

<sup>14</sup> See *Rose*, 289 Mich App at 58; *Heugel* 237 Mich App at 478-479.

<sup>15</sup> *Heugel*, 237 Mich App at 471.

<sup>16</sup> *Lentz*, 271 Mich App at 477-478.

<sup>17</sup> *Bynum* 467 Mich at 283.

<sup>18</sup> *Howard v Howard*, 134 Mich App 391, 396; 352 NW2d 280 (1984).

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.<sup>19</sup>

Plaintiff has presented no evidence that he was incompetent to consent to the divorce settlement under that test. Although it did not make a finding regarding plaintiff's competence, the trial court heard testimony with regard to plaintiff's competence at the hearing on the motion to set aside the judgment. That record demonstrates that plaintiff was represented by counsel at the divorce proceedings, and plaintiff has not alleged that his counsel did not adequately protect his rights during that proceeding. Plaintiff himself testified that, although he had a conservator in the past, he has not needed one in seven years. Plaintiff testified that he is able to handle his own affairs and care for his children. Although plaintiff's doctor testified that plaintiff had difficulty making some decisions when he is "impacted emotionally," there is no evidence that this impairment rises to the standard of incompetence to enter into a contract. In short, plaintiff has presented no evidence that he "had no reasonable perception of the nature or terms of the contract."<sup>20</sup> Accordingly, he has not shown that he was incompetent to consent to the terms of the divorce settlement.

The judgment of the trial court is reversed. We vacate the revised judgment of divorce and reinstate the original judgment of divorce.

/s/ Kathleen Jansen  
/s/ Michael J. Riordan

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<sup>19</sup> *Id.* (citations and internal quotation marks omitted).

<sup>20</sup> *Id.*