

STATE OF MICHIGAN
COURT OF APPEALS

MICHELE AURORA MICHALSKI,

UNPUBLISHED

Plaintiff-Appellant,

v

No. 200207

Tuscola County

RONALD JOSEPH MICHALSKI,

LC No. 96-014988

Defendant-Appellee.

Before: Doctoroff, P.J., and Reilly and G.S. Allen, Jr.*, JJ.

DOCTOROFF, P.J. (DISSENTING)

I respectfully dissent.

Although plaintiff stated on the record that she understood and accepted the consent judgment, the circumstances surrounding plaintiff's appearance at the pretrial conference support her contention that she did not knowingly and voluntarily agree to the terms of the settlement. Nevertheless, because it appears that plaintiff's own counsel coerced her into accepting the judgment, and there was no evidence that defendant participated in the coercion, the decisions of previous panels of this court in *Howard v Howard* 134 Mich App 391, 397; 352 NW2d 280 (1984), and *Grand Rapids Growers, Inc. v Old Kent Bank & Trust Co*, 99 Mich App 128, 130; 297 NW2d 633 (1980) support the majority's opinion affirming the trial court's refusal to set aside the consent judgment of divorce. However, because these decisions were issued before November 1, 1990, they are not binding precedent under MCR 7.215(H)(1), and I would decline to follow them. Under the circumstances of this case, in the interest of fairness, I would reverse the trial court's denial of plaintiff's motion to set aside the consent judgment of divorce.

Plaintiff's attorney's office initially informed plaintiff that she did not have to attend the pretrial conference scheduled for August 19, 1996 because a settlement had not been reached. On August 19, plaintiff received a telephone call at her place of work from defendant telling her that "everybody is upset that you're not here." Plaintiff rushed to court, where her attorney informed her that he had been working on a settlement. When plaintiff told her attorney that she did not agree with the settlement, her

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

attorney replied that she had better be very careful because the judge was upset that she was late, and that, if she pushed too hard, she might not get anything at all. She was never informed that she could reject the settlement and proceed to trial. On these facts, I do not believe that plaintiff knowingly agreed to the terms of the consent judgment.

During a stressful and confusing time such as a divorce proceeding, particularly at the stage when a final settlement is reached and cool heads should prevail, a party must be confident that her own attorney will protect her interests and that the court will reach its decisions in a fair and thoughtful manner. Here, the complaint was filed fewer than ninety days before the pretrial conference, and no discovery had taken place. Plaintiff learned for the first time that a settlement had been reached minutes before she was asked to testify on the record. She had only a few minutes to consider the terms of the settlement, and did not have any real opportunity to consult with her attorney, who apparently pressured her into accepting the agreement on the spot. While I am sensitive to the need for efficiency in the courts, it cannot be achieved at the expense of fundamental fairness. This Court must not condone the sort of treatment plaintiff experienced in this case. Therefore, I would reverse.

/s/ Martin M. Doctoroff