

STATE OF MICHIGAN
COURT OF APPEALS

RONALD EUGENE BILOT,

Plaintiff-Appellant,

v

JANICE PEARL BILOT,

Defendant-Appellee.

UNPUBLISHED

September 10, 1999

No. 209090

Kent Circuit Court

LC No. 96-010967 DM

Before: Markman, P.J., and Saad and P.D. Houk,* JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff filed a complaint for divorce from defendant. On the date set for trial, the parties engaged in extensive negotiations in an attempt to reach a settlement. The parties stated on the record that they had agreed that the marital home was to be awarded to defendant. Furthermore, if defendant sold the home, plaintiff was to have the opportunity to purchase it at fair market value. The parties were unable to agree on language to be included in the judgment to effectuate plaintiff's right to purchase the home. The trial court directed the parties to resolve the issue.

Both plaintiff and defendant drafted a proposed judgment and moved for entry of judgment. Both proposed judgments contained language designed to effectuate plaintiff's right to purchase the marital home. At the court's direction, each party submitted a written statement concerning the issues that it believed remained unresolved. Defendant indicated that in order to avoid a trial, she was willing to abide by the court's choice between the competing provisions concerning sale of the home. The court chose the language proposed by plaintiff. The final judgment provided that defendant would not have the right to sell the marital home without first giving plaintiff the right to purchase the home at fair market value, less one-half of the customary real estate commission. Fair market value was to be determined by averaging the appraisals obtained by each party, or by another method agreed on by the parties.

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

We review a trial court's findings of fact for clear error, and its ultimate disposition de novo. *Edwards v Edwards*, 192 Mich App 559, 562; 481 NW2d 769 (1992).

Plaintiff argues that the trial court erred by entering a judgment of divorce based on an ostensible settlement reached by the parties in light of the fact that he denied the existence of a settlement. MCR 2.507(H). We disagree and affirm. Whether a settlement has been reached is a question governed by the principles applicable to the construction and interpretation of contracts. *Walbridge Aldinger Co v Walcon Corp*, 207 Mich App 566, 571; 525 NW2d 489 (1994). A valid contract requires agreement on all material terms. *Fisk v Fisk*, 328 Mich 570, 574; 44 NW2d 184 (1950). Here, the parties agreed on the material terms relevant to any sale of the marital home. The parties agreed that while defendant was under no obligation to sell the home, if she decided to do so, plaintiff was entitled to have the opportunity to purchase it at fair market value. By accepting the trial court's choice of language to be included in the final judgment, defendant indicated her willingness to agree with plaintiff's position. The trial court's finding that the parties disagreed on the language to be used to effectuate plaintiff's opportunity was not clearly erroneous. *Edwards, supra*. The trial court's choice of plaintiff's proposed language did not change the substantive rights of the parties, but simply clarified an ambiguity. *Bers v Bers*, 161 Mich App 457, 463-464; 411 NW2d 732 (1987).

Affirmed.

/s/ Stephen J. Markman
/s/ Henry William Saad
/s/ Peter D. Houk