

STATE OF MICHIGAN
COURT OF APPEALS

MARLENE J. TIERNEY,

Plaintiff-Appellee,

v

EUGENE J. TIERNEY,

Defendant-Appellant.

UNPUBLISHED

November 21, 2006

No. 263068

Washtenaw Circuit Court

LC No. 03-001969-DO

Before: Servitto, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right the trial court's denial of his motion to amend the judgment of divorce, based on his assertion that the judgment did not fully comply with the parties' settlement agreement. We affirm in part and reverse in part.

A settlement agreement is binding when it is made in open court. *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349; 605 NW2d 360 (1999) (citation omitted). In the instant case, the parties agreed to a settlement, and placed it on the record. In Michigan, a "husband and wife, during the pendency of a suit for divorce, may agree upon a property settlement, and, in the absence of fraud, duress, or mutual mistake, be bound thereby." *Kasper v Metro Life Ins*, 412 Mich 232, 245; 313 NW2d 904 (1981). Defendant initially claims that the judgment entered by the court includes certain terms not discussed by the parties and, thus, should be amended to "correct" these deviations.

Defendant contends as error the inclusion of requirements in the judgment of divorce that defendant secure his obligation to pay alimony to plaintiff with a life insurance policy and a provision requiring filing of the judgment with the register of deeds. In *Kurz v Kurz*, 178 Mich App 284; 443 NW2d 782 (1989), the plaintiff argued that the trial court abused its discretion by requiring him to maintain a life insurance policy naming defendant as sole beneficiary to secure her alimony payments. *Id.* at 296-297. This Court agreed with the plaintiff, because the parties in *Kurz* had agreed that alimony payments would cease upon the payor's death. *Id.* at 297. The agreement in the instant case significantly differs from *Kurz* because the judgment states that the payments shall terminate upon the death of plaintiff, the payee. Hence, because plaintiff's entitlement to alimony survives defendant's death and terminates only upon plaintiff attaining a specified age, the trial court did not err in requiring defendant to secure his alimony obligation by purchasing a life insurance policy to effectuate compliance with the judgment. "It is clear that the trial court has the power to clarify and construe a divorce judgment as long as it

effectuates no change in the substantive rights of the parties.” *Barbier v Barbier*, 45 Mich App 402, 404-405; 206 NW2d 464 (1973) (citations omitted).

In reference to the inclusion of the provision that the divorce judgment be recorded with the register of deeds, defendant fails to acknowledge that a Michigan statute specifically permits parties to record divorce decrees. MCL 552.104 provides, “[a] certified copy of any decree granted in a suit for divorce may be recorded in the office of the register of deeds of any county in this state.” Based on the existence of MCL 552.104, defendant’s argument that inclusion of this provision in the judgment of divorce exceeds the parties’ settlement terms and should be stricken is without support, because the requirement merely serves as a mechanism to assure effectuation of the judgment terms. *Barbier, supra* at 404-405.

Defendant further claims that the judgment included incorrect statements regarding the valuation of the parties’ marital assets. Because the record reveals that defendant had an opportunity to approve the figures before agreeing to the settlement, we reject defendant’s objection to the valuation statement. Since a settlement agreement is governed by general contract principles, defendant must show that the contract was somehow invalid in order to revise its terms. See *Kasper, supra* at 245; *Mikonczyk, supra* at 349. Defendant does not suggest that he was induced into agreeing with the settlement valuation by fraud, duress, or mutual mistake; thus, he is bound by the terms. *Kasper, supra* at 245. This Court is bound by the terms of the parties’ agreement, because “a court may not revise or void the unambiguous language of the agreement to achieve a result that it views as fairer or more reasonable.” *Rory v Continental Ins Co*, 473 Mich 457, 489; 703 NW2d 23 (2005) (footnote omitted). In addition, defendant’s counsel specifically stipulated to the accuracy “of the financial numbers” in approving the judgment of divorce. In accordance with MCR 2.507(G) the approval of defendant’s counsel to the valuations is binding. Even if defendant disputes his attorney’s authority to settle the case on his behalf, defendant is still bound by the attorney’s settlement with the opposing party unless the opposing party had a reason to believe that the attorney lacked authority to settle the case. *Nelson v Consumers Power Co*, 198 Mich App 82, 89-90; 497 NW2d 205 (1993). Because this Court is bound by the terms of the parties’ agreement and the stipulation of counsel, defendant is precluded from obtaining relief on this issue.

Defendant next asserts that because the trial court failed to make any findings of fact or state its conclusions of law on the record, in accordance with MCR 2.611(F) when denying defendant’s motion to amend the judgment, the court’s decision should be reversed and remanded. In addition, defendant contends the order denying the motion to amend judgment was not properly entered in accordance with MCR 2.602(B). Notably, defendant raises these issues for the first time on appeal. This Court need not address issues raised for the first time on appeal. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993).

Defendant did seek amendment of the judgment in accordance with MCR 2.612 in the lower court. Defendant asserts that the court abused its discretion by failing to grant his motion to amend the judgment. We disagree. This Court reviews a trial court’s decision to grant or deny relief from a judgment under MCR 2.612(C)(1) for an abuse of discretion. *Heugel v Heugel*, 237 Mich App 471, 478; 603 NW2d 121 (1999). “An abuse of discretion is found only in extreme cases where the result is so palpably and grossly violative of fact and logic that it evidences a

perversity of will, a defiance of judgment, or the exercise of passion or bias.” *Miller v Allied Signal, Inc*, 235 Mich App 710, 713; 599 NW2d 110 (1999).

MCR 2.612(C)(1)(f) provides for three requirements, which must be satisfied for relief to be granted:

(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. [*Heugel, supra* at 478-479 (citations omitted).]

“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.” *Id.* at 479 (citations omitted).

In the instant case, defendant identifies no impropriety by plaintiff. Defendant was represented by counsel and was present for the placement of the settlement on the record. Defendant contends that he was unable to read the proposed judgment because he was vacationing when it was entered. However, defense counsel indicated that he had provided defendant with financial information, which had previously been missing from the proposed judgment, several days before the motion hearing. Although defendant’s counsel did request the trial court grant defendant additional time to review the judgment before entry, defense counsel also stated that he was prepared to approve the terms of the judgment as accurate, “both in terms of the financial numbers and the language.” Since this Court has previously held that relief should be granted under MCR 2.612(C)(1)(f) only in extraordinary circumstances, *Heugel, supra* at 478, defendant is not entitled to relief. Defendant had the benefit of counsel and an opportunity to review the judgment. Because defendant cannot show that he is entitled to relief under the rule, his claim is denied.

Finally, defendant contends the personal property provision of the judgment of divorce fails to accurately represent the agreement of the parties regarding referral of disputed items of glasswork to binding arbitration. At oral argument, plaintiff’s counsel concurred that the language of the judgment of divorce did not fully reflect the agreement of the parties, as placed on the trial court’s record. Therefore, this issue is remanded to the trial court for amendment of the judgment of divorce to reflect the agreement of the parties for referral of the distribution of disputed items of personal property, for binding arbitration, to the individual previously identified in the judgment of divorce.

Affirmed in part and reversed in part.

/s/ Deborah A. Servitto
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot