

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

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WILLIAM J. ANDERSON,

Plaintiff-Appellant,

v

WAYNE COUNTY COMMUNITY COLLEGE,

Defendant-Appellee.

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UNPUBLISHED

December 19, 2006

No. 262869

Wayne Circuit Court

LC No. 03-328367-NZ

Before: Wilder, P.J., and Kelly and Borrello, JJ.

PER CURIAM.

Plaintiff appeals as of right the order of the trial court dismissing plaintiff's employment discrimination complaint against defendant and entering an order of settlement. We affirm, but remand for the trial court to strike two immaterial provisions in the settlement agreement to which plaintiff did not agree.

In August 2003, plaintiff filed a complaint against defendant alleging racial discrimination, harassment and retaliation in violation of the Michigan Civil Rights Act, MCL 37.2101 *et seq.* Defendant moved for summary disposition under MCR 2.116(C)(10). The parties were prepared to attend a summary disposition hearing on March 8, 2005. On that date, however, the trial court engaged the parties in a settlement conference, during which the parties negotiated and reached a settlement agreement. At the conclusion of the hearing, the trial court asked plaintiff if he wanted the trial court to accept the settlement, and plaintiff responded affirmatively. Thereafter, however, plaintiff filed objections to the written settlement agreement, claiming that it contained items that were not part of the settlement agreement and matters that exceeded what was discussed on the record. On April 29, 2005, the trial court held a hearing on defendant's request for entry of an order and plaintiff's objections. At the conclusion of the hearing, the trial court ruled that the order accurately reflected the parties' settlement agreement as placed on the record and granted defendant's motion to enter the order. The trial court entered an order dismissing plaintiff's complaint and requiring plaintiff to sign the documents necessary to effectuate the parties' settlement agreement.

Plaintiff argues that the settlement agreement that was placed upon the record in open court was merely a tentative agreement and that the trial court erred in entering an order of settlement that contained terms not specifically agreed upon by the parties.

This Court reviews de novo issues of contract interpretation. *Burkhardt v Bailey*, 260 Mich App 636, 646; 680 NW2d 453 (2004). This Court reviews for clear error issues regarding the formation of a valid contract. *Id.* at 646; *Powell Prod, Inc v Jackhill Oil Co*, 250 Mich App 89, 97; 645 NW2d 697 (2002). The ruling by a trial court on a motion seeking relief from judgment is discretionary and will not be disturbed on appeal absent a clear showing of an abuse of discretion. *Jackson Printing Co v Mitani*, 169 Mich App 334, 340; 425 NW2d 791 (1988). Unpreserved claims of error are reviewed for a clear or obvious error that affected substantial rights (i.e., that likely affected the outcome of the proceedings). *Kern v Blethen-Coloni*, 240 Mich App 333, 336; 612 NW2d 838 (2000) (citation omitted).

A settlement agreement is binding when it is made in open court. MCR 2.507(H); *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349; 605 NW2d 360 (1999). A settlement agreement is a contract and is to be governed by the legal principles applicable to the construction and interpretation of contracts. *Id.* The primary goal in the construction or interpretation of any contract is to honor the intent of the parties. *Id.* at 349-350. “Decisions regarding the legitimacy of an offer and acceptance revolve around the particular facts pertaining to a specific transaction . . .” *Powell Prod, Inc, supra* at 97 (citation omitted). “[A]n acceptance sufficient to create a contract arises where the individual to whom an offer is extended manifests an intent to be bound by the offer, and all legal consequences flowing from the offer, through voluntarily undertaking some unequivocal act sufficient for the purpose.” *Kraus v Gerrish Twp*, 205 Mich App 25, 45; 517 NW2d 756 (1994), *aff’d* in part and remanded in part 451 Mich 420. An acceptance cannot be ambiguous and, to be valid, is required to strictly conform to the essential terms of the offer. *Eerdmans v Maki*, 226 Mich App 360, 364; 573 NW2d 329 (1997).

While plaintiff initially balked at the terms of the proposed agreement, review of the transcript of the proceeding indicates his ultimate concurrence with most of the terms that were subsequently reduced to the writing provided by defendant. The trial court provided plaintiff with ample opportunity to refuse the agreement in open court. The trial court stopped the proceedings to afford counsel additional time to speak with their respective clients and explain the terms of the agreement in detail. The trial court engaged plaintiff in lengthy discourse, frequently questioning his understanding of the proceedings and terms, to which plaintiff averred an understanding. Most significantly, when the trial court inquired of plaintiff whether he wished the trial court to accept the agreement of the parties as presented, plaintiff responded with an unequivocal “yes.”

For plaintiff to now suggest that his agreement was only “tentative” and that a meeting of the minds did not exist merely reflects buyer’s remorse. For a valid and enforceable settlement agreement to exist there must be a meeting of the minds regarding material terms, judged by an objective standard, looking to the express words of the parties and their visible acts. *Groulx v Carlson*, 176 Mich App 484, 491; 440 NW2d 644 (1989). A comparison of the written settlement agreement to the terms specified on the record, in open court, verifies agreement of most of the terms. The fact that these terms were reviewed and discussed repeatedly with plaintiff during the proceedings, coupled with plaintiff’s unequivocal acceptance, leads to the conclusion that the trial court did not err in approving the settlement agreement and dismissing plaintiff’s complaint.

Plaintiff asserts that he was coerced by the trial court to enter into the agreement. However, a review of the transcript of the proceeding evidences the opposite. The trial judge afforded plaintiff several opportunities to express his objections and on numerous occasions indicated to the plaintiff that if he did not agree with the settlement provisions, the proceedings would continue. The trial judge demonstrated patience and respect for the plaintiff affording him every opportunity to reject the settlement offer in open court. The trial judge went out of his way to explain all the ramifications of the settlement agreement, and continuously informed plaintiff that if he did not want to accept the settlement, the matter would proceed to trial. The only evidence of any alleged coercion is contained in plaintiff's affidavit, which is best described as self-serving. Plaintiff's affidavit does not comport with the record before us but rather is a reflection of plaintiff's subjective disappointment and interpretation of the trial court's attempt to both settle the matter and help plaintiff more realistically evaluate the viability and potential outcome of his claim.

Although we find that the parties agreed to the material terms of the settlement agreement and affirm the trial court's decision to enforce the settlement agreement, we observe that the settlement agreement contains two immaterial provisions to which plaintiff did not agree on the record. Specifically, defendant admitted at oral argument that the portion of the proposed settlement agreement referencing tax consequences and the portion of the settlement agreement mandating a nondisclosure clause were not discussed with plaintiff prior to their entry into the proposed settlement agreement. Therefore we remand for the trial court to strike these two provisions from the settlement agreement.

Finally, this Court need not consider plaintiff's contention that defendant's inclusion of a provision specifying payment of settlement monies by a 1099 form violates federal law, because the argument is raised for the first time on appeal and therefore is not preserved for review. *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 104; 693 NW2d 170 (2005). We therefore decline to review this issue because plaintiff failed to properly preserve it. *Id.* In addition, plaintiff fails to cite to any legal authority to support his position, thus resulting in this issue being deemed abandoned. *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999).

Affirmed, but remanded for the trial court to strike two immaterial provisions in the settlement agreement to which plaintiff did not agree. We do not retain jurisdiction.

/s/ Kurtis T. Wilder  
/s/ Kirsten Frank Kelly  
/s/ Stephen L. Borrello