

STATE OF MICHIGAN
COURT OF APPEALS

JAHJA POSKOVIC,

Plaintiff-Appellant,

v

FARMERS INS EXCHANGE,

Defendant-Appellee.

UNPUBLISHED

December 21, 2006

No. 263846

Wayne Circuit Court

LC No. 01-125077-NF

Before: Zahra, P.J., Cavanagh, and Schuette, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order compelling arbitration and dismissing plaintiff's case in the no-fault insurance case. We reverse.

Plaintiff's first issue on appeal is whether the trial court, contrary to MCR 2.507(G), erred in finding that the parties had agreed to settle their case through binding arbitration. Construing and applying a court rule presents a legal issue subject to de novo review. *Wickings v Artic Enterprises, Inc.*, 244 Mich App 125, 133; 624 NW2d 197 (2000).

In this case, the parties allegedly agreed to settle their case through binding arbitration. This Court has stated that an agreement to settle a pending lawsuit constitutes a contract, and therefore, the agreement is governed by legal principles applicable to the interpretation and construction of contracts. *Columbia Associates, LP v Dept of Treasury*, 250 Mich App 656, 668; 649 NW2d 760 (2002). However a settlement agreement will not be enforced even if it fulfills the requirements of contract principles where the agreement does not additionally satisfy the requirements of MCR 2.507(H), now MCR 2.507(G). *Columbia Associates, LP, supra* at 668-669; *Michigan Mutual Ins Co v Indiana Ins Co*, 247 Mich App 480, 484-485; 637 NW2d 232 (2001).

MCR 2.507(G) provides:

An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney.

In this case, plaintiff has denied any agreement to arbitrate. Consequently, under MCR 2.507(G), the agreement is not binding if it was not made in open court, or reduced to writing and subscribed by plaintiff or plaintiff's attorney. Here, the arbitration agreement was not made in open court or reduced to a writing subscribed by plaintiff or plaintiff's attorney. The trial court therefore erred in finding that a binding arbitration agreement existed.

Defendant argues that, where it is clear from the actions of the parties that it was their expressed intent to submit a case to arbitration, the arbitration agreement need not be signed to be enforceable. That proposition is true under the legal principles applicable to the interpretation and construction of contracts. See *Ehresman v Bultynck & Co, PC*, 203 Mich App 350, 354; 511 NW2d 724 (1994). However, as discussed above, a settlement agreement must satisfy the requirements of contract principles and the requirements of MCR 2.507(G) to be enforceable. *Columbia Associates, LP, supra* at 668-669; *Michigan Mutual Ins Co, supra* at 480.

In light of our disposition of the above issue, plaintiff's remaining issue need not be discussed.

Reversed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Bill Schuette