

STATE OF MICHIGAN
COURT OF APPEALS

LISA ANN DETTLOFF,

Plaintiff-Appellee,

v

DENNIS MICHAEL DETTLOFF,

Defendant-Appellant.

UNPUBLISHED

December 21, 2006

No. 268551

Presque Isle Circuit Court

LC No. 03-082567-DM

Before: Sawyer, P.J., and Wilder and Servitto, JJ.

SERVITTO, J. (*concurring in part and dissenting in part*).

I agree with the majority that the trial court did not abuse its discretion in awarding short-term spousal support and awarding physical custody of the parties' minor children to plaintiff. However, I respectfully disagree with the majority's conclusion regarding enforcement of the parties' purported agreement concerning the marital home.

The standard indicated in *Lentz v Lentz*, 271 Mich App 465; 721 NW2d 861 (2006) is that courts are bound by property settlements reached through negotiations. Here, there is no indication that the parties engaged in any negotiations with respect to the agreement. Rather, defendant drafted the agreement and simply presented it to plaintiff for her signature during a November 2003 attempt at reconciliation.

Moreover, there is no indication plaintiff received any benefit from signing the agreement. Plaintiff testified at the hearing that she signed the agreement as a gesture of goodwill. While the parties did reconcile for a short time during the period in which the agreement was signed, defendant testified that signing the agreement was not a precondition to or part of their effort to reconcile. Given that complete failure of consideration can be grounds for rescission, (See *Adell Broadcasting Corp v Apex Media Sales, Inc*, 269 Mich App 6, 12-13; 708 NW2d 778 (2005)) I cannot say that the trial court abused its discretion in refusing to enforce the agreement. While the trial court refused to enforce the agreement because it was suspiciously made without the advice of counsel, at a time when both parties were represented by counsel, and because it did not constitute a comprehensive property settlement, I would nevertheless find that the trial court reached the right result, albeit for the wrong reason (*Etefia v Credit Technologies Inc*, 245 Mich App 466, 470; 628 NW2d 577 (2001)), and would affirm the trial court's ruling regarding enforcement of the parties' agreement concerning the marital home.

/s/ Deborah A. Servitto

