STATE OF MICHIGAN

COURT OF APPEALS

ADRIENNE KENNEDY,

Plaintiff-Appellant,

v

MATTHEW HAYDUK, SHARON ANN HAYDUK, and HOME DEPOT USA, INC.,

Defendants-Appellees.

UNPUBLISHED
February 25, 2010

No. 290243
Wayne Circuit Court
LC No. 07-718465-NI

Before: Fitzgerald, P.J., and Cavanagh and Davis, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order enforcing the parties' settlement agreement. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The parties entered into settlement negotiations over a personal injury lawsuit filed by plaintiff. In October 2008, the parties held a settlement conference, but negotiations were not completed at that time. On December 11, 2008, counsel for the Hayduks, James Sukkar, sent plaintiff's counsel, Carl L. Collins, a letter, the substance of which read:

> I am writing to confirm that this matter has been resolved as to all parties by way of an upfront payment of $10,000.00 and a structured settlement as follows:
>
> - $2,500.00 payable to Adrienne Kennedy on January 1, 2013;
> - $5,000.00 payable to Adrienne Kennedy on January 1, 2017; and
> - $12,513.00 payable to Adrienne Kennedy on January 1, 2021.
>
> The Release and Structured Settlement Documents are being prepared by the Professional Settlement Consultants and will be forwarded to you shortly. I have ordered the upfront settlement draft.

> I am enclosing my proposed Stipulation and Order of Dismissal. I would ask that you execute the Stipulation and return it to me. I will have it entered with the court and will forward a true copy to you.

On December 22, 2008, Collins faxed to Sukkar a copy of the proposed stipulation and order that Collins had signed. The stipulation states that plaintiff and defendants "hereby stipulate to the dismissal with prejudice and without costs of all claims brought by Plaintiff against Defendants in the above captioned matter." Neither the stipulation nor the proposed order mentions a settlement.

According to defendants' motion to enforce settlement,[1] a short time later, Collins contacted Sukkar, indicating he wanted his attorney fee payments structured. However, Sukkar considered the settlement already complete. Collins' name could not be added to the checks because of federal tax laws. Apparently anticipating problems, defendants filed a motion to enforce settlement on January 7, 2009, arguing that Collins' signature on the stipulation satisfied the "written evidence" requirement of MCR 2.507(G), thus precluding plaintiff from denying the existence of the agreement.

The trial court agreed with defendants, quoting the December 11, 2008, letter and finding that Collins' signature on the stipulation showed plaintiff agreed to a lump sum settlement from which the attorney fee could be paid. This satisfied the court rule.

We review the trial court's decision for clear error because it involves the question of whether a contract was formed. MCR 2.613(C); *In re Costs & Attorney Fees*, 250 Mich App 89, 97; 645 NW2d 697 (2002). A decision is clearly erroneous where the reviewing court is left with a definite and firm conviction that a mistake has been made. *Carrier Creek Drain Drainage Dist v Land One, LLC*, 269 Mich App 324, 329-330; 712 NW2d 168 (2005).

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.

Plaintiff argues that MCR 2.507(G) does not apply because there was no agreement in this case. Plaintiff asserts that settlement negotiations were not yet complete because she would not accept a settlement unless it provided for attorney fees based on a structured payment, and so no contract was ever formed. We disagree.

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[1] Sukkar filed an affidavit with the motion, stating that the factual assertions in the motion were true and accurate. Plaintiff does not contradict this.

The December 11, 2008, letter unambiguously stated that the structured payments were payable to plaintiff only. After receiving this statement of the agreement's terms, Collins signed and returned the Stipulation and Order of Dismissal referred to in the letter. While the letter by itself does not prove agreement, the stipulation lacks the essential terms of the agreement, and those terms can only be found by reading the letter and the stipulation together. See *Forge v Smith*, 458 Mich 198, 207; 580 NW2d 876 (1998); *Foremost Ins Co v Allstate Ins Co*, 439 Mich 378, 389 n 27; 486 NW2d 600 (1992). The signed stipulation was unconditional acceptance of defendants' offer. "A meeting of the minds is judged by an objective standard, looking to the express words of the parties and their visible acts, not their subjective states of mind." *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 454; 733 NW2d 766 (2006). The objective evidence shows that an agreement was reached.

Finally, there is no record evidence supporting plaintiff's self-serving and subjective claim that there was no meeting of the minds. Notably, plaintiff does not dispute that Collins signed the stipulation. In fact, plaintiff does not dispute any of the factual assertions defendants set forth in their motion brief. Nor does plaintiff provide any evidence that a counter-offer was made or that some other terms were agreed to. Thus, the only other possibility is that Collins signed a stipulation to dismiss with prejudice when no agreement had been reached. This seems highly unlikely. The trial court did not clearly err in finding defendants' evidence showed the existence of an agreement.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Mark J. Cavanagh
/s/ Alton T. Davis