

STATE OF MICHIGAN
COURT OF APPEALS

RUBEN TREVINO,

Plaintiff-Appellant,

v

FREDERICK LEE SILER and COUNTY OF
SAGINAW,

Defendants-Appellees,

and

SAGINAW COUNTY MOSQUITO
ABATEMENT COMMISSION,

Defendant.

UNPUBLISHED
January 17, 2017

No. 330120
Saginaw Circuit Court
LC No. 2014-021894-NI

Before: O'CONNELL, P.J., and MARKEY and MURRAY, JJ.

PER CURIAM.

Plaintiff, Ruben Trevino, appeals by delayed leave granted¹ the trial court's order enforcing a settlement agreement between Trevino and defendants Frederick Lee Siler and Saginaw County. We affirm.

I. FACTUAL BACKGROUND

Trevino's suit arose from injuries that Trevino and his son sustained during an automobile accident with Siler, who was operating a truck while working for Saginaw County. The case proceeded to case evaluation, which valued Trevino's claims at \$100,000. Siler and Saginaw County accepted the award, but Trevino rejected it.

¹ *Trevino v Siler*, unpublished order of the Court of Appeals, entered February 23, 2016 (Docket No. 330120).

Shortly after case evaluation, Trevino's attorney Barry F. Keller urged Trevino to settle if his doctor did not change his position regarding the cause of Trevino's need for surgery. Keller stated that Trevino authorized him to settle the case if the doctor's opinion did not change.² Trevino's doctor did not change his position at a meeting on February 26, 2015. Accordingly, Keller contacted defense counsel and informed them that Trevino would settle for the amount of the case evaluation award. Defense counsel responded with an email that confirmed the conversation and agreement, with attached settlement agreement documents for Trevino to review and execute.

Trevino subsequently refused to execute the settlement agreement's release of claims. In April 2015, after defense counsel advised Keller that it would attempt to enforce the settlement agreement, Keller filed a motion to enforce the agreement. After a hearing, the trial court granted the motion to enforce the settlement agreement.

II. ANALYSIS

Trevino contends that the trial court erred by enforcing the settlement agreement because he did not consent to it and it did not comply with MCR 2.506(G). We disagree.

We review de novo the existence and interpretation of a settlement agreement because such agreements are governed by the legal principles applicable to the construction of contracts. *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 452; 733 NW2d 766 (2006). We review de novo the construction and application of court rules. *Id.* at 456. We also review de novo whether MCR 2.507 bars enforcement of a settlement agreement. *Id.*

A settlement agreement requires an offer, an acceptance, and mutual assent on all the essential terms. *Id.* at 452-453. This Court will also not enforce a contract to settle pending litigation unless the agreement satisfies the pertinent provisions of MCR 2.507. *Id.* at 456. MCL 2.507(G) provides that

[a]n agreement or consent between the parties or their attorneys respecting proceedings in an action is not binding unless it was made in open court, or unless

² When questioned by the trial court, Trevino testified:

THE COURT: Because Mr. Keller has indicated to the court that you and he had discussed this case at length, you had told him he had authority to settle; is that correct?

THE WITNESS: Yes, sir.

THE COURT: And then at some point in time you changed your mind after he had told the other side you had agreed to settle; is that correct?

THE WITNESS: Yes, Your Honor. Because I had some more testing I have to do and then I wanted to wait . . . for that testing to get over with and make sure everything was all right.

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, the March 3, 2015 email to Keller from defense counsel "confirmed our conversation of March 2, 2015, where in you advised that your clients have agreed to resolve this matter for the total sum of \$100,000." It also included a document that contained the terms of the parties' agreement. Keller returned a letter confirming the settlement. This correspondence satisfied MCR 2.507's requirement that the agreement was in writing and subscribed by the party's attorney. See *Kloian*, 273 Mich App at 459. Accordingly, the agreement in this case complied with MCR 2.507(G) and was binding.

Trevino argues that the agreement was not binding because at best the permission he gave Keller to settle the suit on his behalf was verbal and conditional, and the condition was not met. We conclude that regardless of whether Keller had permission to settle the case, the trial court properly enforced the agreement between Trevino and the defendants.

An attorney has no general authority to settle on behalf of his or her client. *Nelson v Consumers Power Co*, 198 Mich App 82, 85; 497 NW2d 205 (1993). However, if an agreement to settle pending litigation satisfies the elements of MCR 2.507, it is binding even if a party subsequently denies that his or her attorney had authority to settle the suit. *Id.* at 90. If an attorney settles with a third party without authority to do so, the client's remedy is to sue the attorney for professional malpractice. *Id.*

In this case, the agreement satisfied the requirements of MCR 2.507. Accordingly, even though Trevino now denies that Keller had authority to settle the suit, the settlement remains binding between Trevino and the defendants.

We affirm.

/s/ Peter D. O'Connell
/s/ Jane E. Markey
/s/ Christopher M. Murray