

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

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JUDE KUCMIERZ,

Plaintiff-Appellee,

v

DEPARTMENT OF CORRECTIONS and  
DIRECTOR OF CORRECTIONS  
DEPARTMENT,

Defendants-Appellants.

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UNPUBLISHED  
February 12, 2013

No. 309247  
Washtenaw Circuit Court  
LC No. 09-000807-CD

Before: JANSEN, P.J., and WHITBECK and BORRELLO, JJ.

PER CURIAM.

Defendants appeal as of right a trial court order wherein the trial court ordered the parties to submit to arbitration after having previously entered a stipulated order to dismiss the case with prejudice. For the reasons set forth in this opinion, we reverse.

Plaintiff worked as a registered nurse for the Michigan Department of Corrections (MDOC). Plaintiff suffered from several disabilities. On July 6, 2009, plaintiff commenced this action, alleging that defendants discriminated against him on the basis of his disabilities in violation of the Persons with Disabilities Civil Rights Act, MCL 37.1101 *et seq.* Shortly thereafter, the parties stipulated to dismiss the case with prejudice because “same is the subject of an agreement to arbitrate.” The arbitration agreement was attached to the stipulation and it listed plaintiff as the grievant and provided that the MDOC and the United Autoworkers Union (UAW) “agreed that the above grievance(s) will be scheduled for arbitration.” The trial court entered a stipulated order to dismiss the case with prejudice.

On December 3, 2010, plaintiff moved to reinstate the case or alternatively requested that the court order arbitration. Plaintiff alleged that the UAW refused to arbitrate the case and unilaterally settled plaintiff’s grievances without addressing plaintiff’s disability claim. Plaintiff argued that reinstatement of the case was proper under MCR 2.612, the court rule governing relief from judgment. Plaintiff requested that the trial court order the case to arbitration as an alternative to reinstatement.

Following oral argument, the trial court ordered the parties to submit plaintiff’s disability claim to arbitration. The court did not provide meaningful rationale in support of its decision.

On appeal, defendants contend that the trial court erred in ordering arbitration because plaintiff was not entitled to relief from judgment under MCR 2.612, and because the trial court lacked authority to order arbitration.

The trial court did not specify if it granted plaintiff relief from judgment pursuant to MCR 2.612; however, given that the trial court previously entered a stipulated order to dismiss the case with prejudice, the trial court necessarily could not have ordered the parties to arbitrate without first granting relief from the dismissal order. Accordingly, we proceed by determining whether relief from judgment was warranted under MCR 2.612.

We review a trial court's decision on a motion for relief from judgment for an abuse of discretion. *Detroit Free Press, Inc v Dep't of State Police*, 233 Mich App 554, 556; 593 NW2d 200 (1999). A trial court abuses its discretion when it commits a clear legal error. *Kidder v Ptacin*, 284 Mich App 166, 170; 771 NW2d 806 (2009). The interpretation and application of court rules involves a question of law that we review de novo. *Bint v Doe*, 274 Mich App 232, 234; 732 NW2d 156 (2007). Similarly, we review de novo a trial court's determination that an issue is subject to arbitration. *Rooyakker & Sitz, PLLC v Plante & Moran, PLLC*, 276 Mich App 146, 152; 742 NW2d 409 (2007).

Plaintiff argued that relief from judgment was proper under MCR 2.612(C)(1)(a) because of the "mistaken belief and expectation by all parties that the UAW was arbitrating this case for Plaintiff." This court rule provides that a court may relieve a party from a final judgment on grounds of mistake. However, "judgments entered pursuant to the agreement of [the] parties are in the nature of a contract." *Neville v Neville*, 295 Mich App 460, 466; 812 NW2d 816 (2012). Thus, a party can argue to set aside a stipulation based on mistake; however, the mistake must be mutual. *Limbach v Oakland Co Rd Comm'n*, 226 Mich App 389, 394; 573 NW2d 336 (1997).

In this case, while plaintiff alleged that the parties had the "mistaken belief and expectation" that the "UAW was arbitrating the case for Plaintiff," to the contrary, there was no mutual mistake. The stipulation and order provided that the parties agreed to dismiss the proceeding with prejudice because "same" was "the subject of an agreement to arbitrate." The stipulation did not provide that the matter would in fact be arbitrated or that the stipulation was contingent on arbitration actually occurring. The stipulation did not place any terms on the agreement and nothing in the stipulation precluded the UAW and the MDOC from reaching a settlement agreement as a means to avoid the arbitration process. The parties were aware of these terms and were represented by counsel at the time the stipulation was entered. See *id.* at 393 ("MCR 2.612(C)(1)(a) was not designed to relieve counsel of ill-advised or careless decisions"). In sum, plaintiff failed to show that a mutual mistake occurred and he was not entitled to relief from the dismissal order on that basis.

Plaintiff also argued that relief was warranted under MCR 2.612(C)(1)(f), which allows a trial court to grant relief from judgment for "[a]ny other reason justifying relief from the operation of the judgment." Relief is proper under this subsection if the following three requirements are met:

- (1) the reason for setting aside the judgment must not fall under subrules (1) through (5);
- (2) the substantial rights of the opposing party must not be

detrimentally affected . . . and (3) extraordinary circumstances must exist which mandate setting aside the judgment in order to achieve justice. [*Altman v Nelson*, 197 Mich App 467, 478; 495 NW2d 826 (1992).]

“Generally, relief is granted under subsection (f) only when the judgment was obtained by the improper conduct of the party in whose favor it was rendered.” *Id.*

In this case, there were no “extraordinary circumstances” that warranted setting aside the dismissal order. Here, both parties voluntarily stipulated to dismiss the proceeding with prejudice to allow plaintiff’s claims to be resolved in accord with the arbitration agreement. Nothing in the stipulation precluded the UAW and the MDOC from entering into a settlement. Plaintiff entered into the stipulation knowingly, he was represented by counsel, and defendants did not engage in any improper conduct. Moreover, defendants had the right to rely on the finality of the dismissal order. See *id.* (relief under MCR 2.612(C)(1)(f) is not proper where the substantial rights of the opposing party would be detrimentally affected).

In sum, plaintiff was not entitled to relief from the dismissal order under MCR 2.612(C)(1)(a) or (f). Accordingly, the trial court committed clear legal error and abused its discretion in granting plaintiff any relief.

Having concluded that plaintiff failed to articulate proper grounds on which he was entitled to relief from judgment, we need not address defendants’ argument that the trial court lacked authority to order arbitration. However, even if the trial court had articulated a valid grounds on which plaintiff was entitled to relief from judgment, the trial court clearly erred when it ordered the parties to submit to arbitration. Here, there is no evidence in the record to show that the parties had an express agreement to arbitrate.<sup>1</sup> Thus, the trial court did not have authority to order the parties to submit to arbitration. See *Kaleva-Norman-Dickson School Dist v Kaleva-Norman-Dickson School Teachers’ Ass’n*, 393 Mich 583, 587; 227 NW2d 500 (1975) (“Arbitration is a matter of contract. A party cannot be required to arbitrate an issue which he has not agreed to submit to arbitration”); *Port Huron Area School Dist v Port Huron Ed Assoc*, 426 Mich 143, 150-151; 393 NW2d 811 (1986) (“Labor arbitration is a product of contract, and, therefore, its legal basis depends entirely upon the particular contracts of particular parties”). In this case, the only evidence of an agreement to arbitrate was the agreement between the MDOC and the UAW. Those parties settled the grievance and avoided arbitration and the trial court did not have any authority to order them to arbitrate given that the UAW was not a party to the action. See *Shouneyia v Shouneyia*, 291 Mich App 318, 323; 807 NW2d 48 (2011) (“[a trial] court may not make an adjudication affecting the rights of a person or entity not a party to the case”) (quotation omitted).

Plaintiff contends that the trial court had authority to order arbitration pursuant to MCL 600.611, which provides in part that a circuit court has the “power to make any order proper to fully effectuate the circuit courts’ jurisdiction and judgments.” Plaintiff contends that the circuit

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<sup>1</sup> Neither party submitted a copy of the collective bargaining agreement in the lower court; thus, the UAW-MDOC agreement to arbitrate was the only arbitration agreement in the record.

court had authority under this statute because the intent of the dismissal order was to ensure that the matter would be arbitrated. Plaintiff's argument lacks merit. As noted, the stipulated order to dismiss did not guarantee that the UAW and the MDOC would arbitrate plaintiff's grievances and nothing in the stipulation prevented those parties from reaching a settlement agreement. Moreover, the dismissal order did not compel defendants to arbitrate with plaintiff, there was no arbitration agreement between defendants and plaintiff, and the court did not have jurisdiction over the UAW. Hence, the court did not have authority under MCL 600.611 to set aside the dismissal order and order the parties to arbitrate.

Reversed and remanded for entry of judgment in favor of defendants. We do not retain jurisdiction. No costs awarded to either party. MCR 7.219(A).

/s/ Kathleen Jansen  
/s/ William C. Whitbeck  
/s/ Stephen L. Borrello