STATE OF MINNESOTA
IN COURT OF APPEALS
A11-1383

Jeremiah Olson, et al.,
Respondents,

vs.

Jason Kustritz, et al.,
Appellants.

Filed March 26, 2012
Reversed and remanded
Cleary, Judge

Dakota County District Court
File No. 19HA-CV-08-4099

Christian A. Preus, Kathleen M. Ghreichi, Meagher & Geer, P.L.L.P., Minneapolis, Minnesota (for respondents)

Gary G. Fuchs, Elizabeth E. Rein, Hellmuth & Johnson, PLLC, Edina, Minnesota (for appellants)

Considered and decided by Stoneburner, Presiding Judge; Klaphake, Judge; and Cleary, Judge.

U N P U B L I S H E D O P I N I O N

CLEARY, Judge

Appellants Jason and Margaret Kustritz share a driveway with their neighbors, respondents Jeremiah and Kathryn Olson in South St. Paul. After the Kustritzes informed the Olsons of their intent to remove a portion of the driveway, the Olsons sued

for a declaratory judgment holding that they had secured additional property rights through prescription and adverse possession. The parties reached a settlement, which was approved by the district court and incorporated into a judgment. But the district court later vacated the judgment incorporating the settlement in response to a motion filed by the Olsons. The district court then held a court trial and dismissed the Olsons' claims with prejudice after they failed to make their case. Next, the district court vacated the judgment dismissing the Olsons' claims and reopened the matter on a motion from the Olsons. Finally, the district court held a second trial and ultimately concluded that the Olsons had secured additional property rights through prescription and adverse possession.

The Kustritzes appeal, making four arguments. They first argue that the district court erred by vacating the judgment approving the settlement. They next argue that the district court erred by vacating the judgment after the first trial. They also argue that the district court erred in the second trial by finding that the Olsons proved the elements of a prescriptive easement and by finding that the Olsons proved the elements of adverse possession. We reverse and remand on the first issue. Because the reinstatement of the judgment based on the settlement is dispositive of this case, we will not further analyze the remaining issues.

FACTS

The Kustritz residence is immediately north of the Olson residence in South St. Paul. In 1938, the predecessor homeowners to the Kustritzes and the Olsons created two written easements that grant each homeowner a four-foot easement onto the other's

property for the purposes of a shared driveway and joint walkway. The actual driveway extends onto the Kustritzes' land beyond the four-foot easement that the Olsons now hold.

The Kustritzes moved into their house in 2002. The Olsons began living in their house in 1990. The Olsons used the driveway from 1990 to the present for general residential use. The Kustritzes notified the Olsons sometime prior to September 2008 that they intended to alter or remove a portion of the concrete driveway.

On September 23, 2008, the Olsons commenced an action for a declaratory judgment barring the Kustritzes from removing the driveway. The Olsons claimed (1) that they have a recorded easement for the southern four feet of the Kustritz land; (2) that they acquired prescriptive easement rights to a portion of the Kustritz property lying north of the recorded easement; and (3) that they extinguished the Kustritzes' easement rights over the northern four feet of the Olsons' property through abandonment or adverse possession.

On May 27, 2009, the district court conducted a settlement conference where the parties, both represented by counsel, read a stipulated settlement agreement into the record. The settlement provided that the Olsons and the Kustritzes would each contribute half of the expense of removing and reinstalling the driveway. The new driveway would be located one inch south of the old driveway for every inch that it is north of the original easement on the Kustritzes' land. The settlement also mandated that a retaining wall along the Kustritzes' side of the new driveway would not exceed ten inches in height.

Jeremiah Olson initially expressed reluctance to agree to the settlement because he feared "there'll be cheating from the other side, and this could put us in danger." The district court took a recess to allow the Olsons to discuss their reservations with their attorney. Upon returning, both Kathryn and Jeremiah Olson agreed to the settlement on the record. Both parties' attorneys signed the agreement on behalf of their clients. On June 12, 2009, the district court issued its order approving the settlement agreement.

The Olsons' attorney subsequently withdrew from the case. On July 10, 2009, Jeremiah Olson filed a *pro se* motion to vacate the court's June 12 order and judgment due to "mistake, inadvertence, surprise, or excusable neglect" as provided by Minnesota Rule of Civil Procedure 60.02(a). Olson sent two letters to the district court explaining that he had not been free to speak openly in court because his supervisor pressured him to reach a settlement. Olson is a minister with the Lutheran Church-Missouri Synod. Olson's supervisor, Lane Seitz, wrote to Olson on April 4, 2009, after being contacted by Jason Kustritz. Seitz asked Olson to inform him of the nature of the dispute from his perspective. Seitz referenced biblical principles of dispute resolution, and explained that he was "concerned about the effect that a lawsuit against Mr. Kustritz would have upon your reputation as a pastor on the clergy roster . . . ." Seitz further wrote: "I would encourage you to use every possible means other than a lawsuit to resolve the dispute between the two of you, especially since Mr. Kustritz is open to mediation."

The district court conducted a hearing on July 30, 2009, on the Olsons' motion to vacate the court-approved settlement. The district court vacated the court-approved settlement pursuant to Minnesota Rule of Civil Procedure 60.02(f), which provides for

relief for "any other reason justifying relief from the operation of the judgment." The court found that Jeremiah Olson was "visibly reluctant to express his agreement" to the settlement during the May 27, 2009, hearing because he had felt "substantial professional pressure to agree to settle this matter" due to the correspondence from his supervisor, and that this pressure stemmed from Jason Kustritz's discussions with Seitz.

The court conducted the first court trial on this matter on November 19, 2009. The district court dismissed the Olsons' claims with prejudice under Minnesota Rule of Civil Procedure 41.02(b) in a written order filed on November 25, 2009 because the Olsons had failed to present evidence essential to their claim. The Olsons then filed a motion for amended findings of fact and conclusions of law or for a new trial. The district court granted the Olsons' motion to reopen the trial to present additional evidence under Minnesota Rule of Civil Procedure 59.01.

The district court conducted a second court trial on October 4, 2010. At the close of the second trial, the district court concluded that the Olsons had established a prescriptive easement over the entirety of the driveway, including the section that is on the Kustritz land to the north of the recorded easement. Additionally, the court concluded that the Kustritzes abandoned a section of the recorded easement on the Olsons' land because the Olsons had adversely possessed that area for at least 15 years before commencing the action.

The Kustritzes appeal.

D E C I S I O N

The Kustritzes argue that the district court abused its discretion in granting the Olsons' motion to vacate the judgment approving the parties' settlement. We will not reverse the district court's decision absent an abuse of discretion. *Riley ex. rel. Swanson v. Herbes*, 524 N.W.2d 523, 526 (Minn. App. 1994).

The district court may relieve a party from a final judgment or order for the following reasons:

> (a) Mistake, inadvertence, surprise, or excusable neglect;
>
> (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial pursuant to Rule 59.03;
>
> (c) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
>
> (d) The judgment is void;
>
> (e) The judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
>
> (f) Any other reason justifying relief from the operation of the judgment.

Minn. R. Civ. P. 60.02.

"Settlement of disputes without litigation is highly favored, and such settlements will not be lightly set aside by the courts." *Johnson v. St. Paul Ins. Cos.*, 305 N.W.2d 571, 573 (Minn. 1981) (internal citation omitted). The party seeking to void a settlement

has the burden of showing sufficient grounds for its vacation. *Id.* "'[V]acating a stipulation of settlement rests largely within the discretion of the trial court, and the court's action in that regard will not be reversed unless it be shown that the court acted in such an arbitrary manner as to frustrate justice.'" *Id.* (quoting *Myers v. Fecker Co.*, 312 Minn. 469, 474, 252 N.W.2d 595, 599 (1977)).

The district court provided two grounds to vacate the judgment approving the settlement. First, the court found that Jeremiah Olson was "visibly reluctant to express his agreement. This was overwhelmingly evident to the Court." Second, the court found that Jeremiah Olson "felt his career and ability to sustain an income would be severely frustrated if he did not compromise his legal position."

There is no prior caselaw wherein the district court has used Minnesota Rule of Civil Procedure 60.02(f) to vacate a settlement due to post-settlement assertion of professional pressure on a party to settle. The district court's order and the Olsons' appellate brief both cite *Newman v. Fjelstad*, 271 Minn. 514, 137 N.W.2d 181 (1965). *Newman* is readily distinguishable from the facts of this case and offers little guidance. In *Newman*, the district court used the predecessor to Minnesota Rule of Civil Procedure 60.02(f) to vacate an order approving a settlement of a minor's claim for personal injuries resulting from an automobile accident. *Id.* at 515, 517, 137 N.W.2d at 182, 183. The court approved the settlement in 1946, but the plaintiffs moved the court to vacate the settlement in 1964, citing new injuries which were not previously known. *Id.* at 515-16, 137 N.W.2d at 182. The Minnesota Supreme Court reversed, concluding that the motion

to vacate was not brought within a "reasonable time" as the rule requires. *Id.* at 518–23, 137 N.W.2d at 184–87.

In this case, we struggle to see a legally justifiable reason for the district court to vacate the judgment approving the settlement. Jeremiah and Kathryn Olson are educated adults who, respectively, hold a Ph.D. and a Master's degree. They were represented by counsel prior to and during the settlement conference. The actual content of the letter from Jeremiah Olson's supervisor does not demonstrate overbearing or unreasonable professional pressure on Jeremiah Olson. The letter contains no threats. Seitz informed Jeremiah Olson in the letter that he is "concerned about the effect that a lawsuit against Mr. Kustritz would have upon your reputation as a pastor on the clergy roster . . . ." Seitz asked to be informed in writing "of the nature of this dispute from your perspective," and encouraged Olson to "use every possible means other than a lawsuit to resolve the dispute between the two of you . . . ." Furthermore, the letter is dated April 4, 2009, but Jeremiah Olson made no mention of it during the May 27, 2009, settlement conference. Instead, he explained his reluctance during the settlement conference by stating: "I believe that there'll be cheating from the other side, and this could also put us in danger." Whatever his reservations and later second thoughts, Olson ultimately accepted the settlement, first orally at the conference in May, and again two weeks later when his attorney signed the settlement. He then waited another four weeks before bringing his pro se motion to vacate the court's order approving the settlement.

The field of contract law provides guidance for this dispute. "The settlement of a lawsuit is contractual in nature, requiring offer and acceptance for its formation, and it is

subject to all of the other rules of interpretation and enforcement." *Beach v. Anderson*, 417 N.W.2d 709, 711 (Minn. App. 1988), *review denied* (Minn. Mar. 3, 1988). "Courts should not, nor do they, look for excuses or loopholes to avoid contracts fairly and deliberately made whether such be by individuals or corporations." *Equitable Holding Co. v. Equitable Bldg. & Loan Ass'n*, 202 Minn. 529, 535, 279 N.W. 736, 740 (1938). The district court's order vacating the judgment suggests that Jeremiah Olson acceded to the settlement because of some form of duress or undue influence by Seitz. "Duress is available as a defense to a contract only when agreement is coerced by physical force or unlawful threats." *Bond v. Charlson*, 374 N.W.2d 423, 428 (Minn. 1985). The record here simply does not reveal any violence or threats of violence. These facts do not portray undue influence either. Undue influence is defined as situations in which "confidential relations exist between parties and one of them uses the relationship to secure an inequitable advantage . . . ." *Agner v. Bourn*, 281 Minn. 385, 390, 161 N.W.2d 813, 817 (1968). In this case, Jeremiah Olson's supervisor was not a party to the lawsuit, and it is far from clear that the Kustritzes secured any sort of advantage by agreeing to settle their differences with the Olsons. The Olsons would not have a valid excuse to justify nonenforcement or rescission if we were to interpret the settlement as a contract.

We conclude that the district court abused its discretion by vacating the judgment under Minnesota Rule of Civil Procedure 60.02(f). The totality of the circumstances do not warrant relief from enforcement of the settlement. Accordingly, we reverse and remand for reinstatement of the original June 12, 2009 judgment incorporating the court-approved settlement.

The Kustritzes additionally argue that the district court abused its discretion by reopening the record after the first trial, that the Olsons failed to establish a claim of a prescriptive easement over portions of the Kustritz property during the second trial, and that the district court erred in determining that they abandoned a portion of their recorded easement on the Olsons' property. Because we find that the district court erred by vacating the original settlement, and because that issue is dispositive of this appellate dispute, we decline to further analyze the Kustritzes' remaining three arguments.

Reversed and remanded.