

IN THE UTAH COURT OF APPEALS

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William Kurt Dobson,)	MEMORANDUM DECISION	
)	(Not For Official Publication)	
Plaintiff and Appellee,)		
)	Case No. 20070525-CA	
v.)		
)	F I L E D	
Cindy Delaughter Cooper,)	(October 23, 2008)	
)		
Defendant and Appellant.)	<table border="1"><tr><td>2008 UT App 373</td></tr></table>	2008 UT App 373
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Third District, Salt Lake Department, 050922651
The Honorable Robert P. Faust

Attorneys: D. Miles Holman, Sandy, for Appellant
 Meb W. Anderson and Bret W. Rawson, Salt Lake City,
 for Appellee

Before Judges Thorne, Billings, and Orme.

ORME, Judge:

Rule 56 of the Utah Rules of Civil Procedure requires summary judgment to be granted if "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Utah R. Civ. P. 56(c) (emphasis added). We review a grant of summary judgment for correctness, with no particular deference to the trial court's conclusions of law. See Rinderknecht v. Luck, 965 P.2d 564, 565 (Utah Ct. App. 1998).

The elements of fraudulent misrepresentation are well known. See, e.g., Larsen v. Exclusive Cars, Inc., 2004 UT App 259, ¶ 7, 97 P.3d 714. From the record, it is clear that there are both disputes of material fact and disagreement about the inferences fairly to be drawn from the undisputed facts. See Francisconi v. Union Pac. R.R., 2001 UT App 350, ¶ 8, 36 P.3d 999 (stating that summary judgment is only appropriate where there are no genuine issues of material fact); Ellsworth Paulsen Constr. Co. v. 51-SPR-L.L.C., 2008 UT 28, ¶ 21, 183 P.3d 248 ("Where . . . equally plausible contrary inferences may be drawn, neither party should have been granted summary judgment.") (citation omitted). We accordingly conclude that summary judgment was improper in this case with respect to at least two of the elements of fraudulent

misrepresentation, i.e., reliance and damage. See Larsen, 2004 UT App 259, ¶ 7.

First, it could be fairly inferred by a fact finder that Plaintiff was not relying on any misrepresentation made by Defendant in entering into the settlement agreement, but was instead acting to promote his own personal and financial objectives in entering into a settlement that would bring the proceeding to a quicker end and that favored him considerably as concerns the property distribution. Second, a fact finder could conclude that Plaintiff received a favorable property award that more than offset his high child support such that even if Plaintiff did misrepresent her health status to Defendant, he did not sustain demonstrable damage as a result.

The summary judgment is reversed and this matter is remanded for trial or for such other proceedings as may now be in order.¹

Gregory K. Orme, Judge

WE CONCUR:

William A. Thorne Jr.,
Associate Presiding Judge

Judith M. Billings, Judge

¹In view of some perplexing comments made at oral argument, we note that if Plaintiff ultimately proves his fraud case, and the settlement agreement and resulting divorce decree are voided, all aspects of the fraudulently induced settlement agreement would have to be reconsidered de novo--not just child support.