STATE OF MICHIGAN

COURT OF APPEALS

NORMA R. BIERLEIN, as Next Friend of SAMANTHA C. BIERLEIN, a Minor, Plaintiff-Appellee, v MARK SCHNEIDER and MARY SCHNEIDER, Defendants-Appellants.	UNPUBLISHED January 20, 2004 No. 242547 Saginaw Circuit Court Juvenile Division LC No. 96-013292-NI

Before: Zahra, P.J., and Cavanagh and Cooper, JJ.

PER CURIAM.

Defendants appeal as of right from an order re-opening the settlement proceedings in this personal injury case. We reverse.

This case arose when Samantha Bierlein was injured in a car accident when the vehicle she was riding in was struck by a car owned by Mark Schneider, which was being driven by Mary Schneider. The parties reached a settlement, but Samantha apparently received no part of that settlement. In light of a court appointed conservator's recommendation, the trial court re-opened the proceedings, and this appeal followed. At issue are a court rule, MCR 2.420, and a statute, MCL 700.403, repealed April 1, 2000.

MCR 2.420(B)(4) establishes the procedure to be followed for entry of a settlement in an action brought on behalf of a minor by a next friend, guardian or conservator. It provides:

> (a) If the settlement or judgment requires payment of more than $5,000 to the minor either immediately or, if the settlement or judgment is payable in installments in any single year during minority, a conservator must be appointed by the probate court before the entry of the judgment or dismissal.

MCL 700.403, repealed April 1, 2000, provided:

> A person under a duty to pay or deliver money or personal property to a minor may perform this duty, in amounts not exceeding $5,000 per annum, by paying or delivering the money or property to the minor, if the minor is married; a parent or a person having the care and custody of the minor under a court order and with whom the minor resides; or a guardian of the minor.

In the trial court, plaintiff moved for relief pursuant to MCR 2.612(C)(1), not specifying a specific subsection. The trial court granted relief based on MCR 2.612(C)(1)(c), citing fraud. However, we will address each subsection of MCR 2.612(C)(1) in turn. MCR 2.612(C) provides:

> (1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:
>
> (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 under MCR 2.611(B).
>
> (c) Fraud (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; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.
>
> (f) Any other reason justifying relief from the operation of the judgment.

Subsection (e) is inapplicable in this case because plaintiff did not seek relief on the ground that the judgment had been satisfied, reversed, or vacated.

Motions under MCR 2.612(C)(1)(a), (b), and (c) must be made within one year of the judgment. MCR 2.612(C)(2). Therefore, the trial court erred by granting the motion under subsection (c) because the motion was not brought until almost five years after judgment. Likewise, if plaintiff intended to file the motion under subsections (1)(a) and (1)(b), it should have been denied for failure to satisfy the one-year requirement of MCR 2.612(C)(2).

Plaintiff now argues on appeal that the judgment is void, MCR 2.612(C)(1)(d), thus the trial court properly re-opened the settlement proceedings. However, when both subject matter jurisdiction and personal jurisdiction exist over a defendant, an award is voidable, not void. *Abbott v Howard*, 182 Mich App 243, 247-248; 451 NW2d 597 (1990). Plaintiff alleges a procedural irregularity, not lack of jurisdiction in the trial court; therefore, the judgment is not void and, according to the plain reading of the rule, plaintiff is not entitled to relief under MCR 2.612(C)(1)(d).

Finally, we turn to subsection (f). To be granted relief under MCR 2.612(C)(1)(f), three requirements must be met: "(1) the reason for setting aside the judgment must not fall under subsections (a) through (e), (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice." *Heugel v Heugel*, 237 Mich App 471, 478-479; 603 NW2d 121 (1999). Plaintiff fails to meet these requirements.

First, plaintiff's motion could have been brought under at least one of the subsections (a) through (e), e.g., mistake in paying the wrong party or misconduct. Second, defendants' rights would be detrimentally affected if the original satisfaction is set aside since they relied on the court approved settlement for almost five years and have paid $55,000 to Samantha's next friend and attorney based on that court approval. And, third, plaintiff has not demonstrated any extraordinary circumstances in this case. Although plaintiff's original attorney appears to have absconded with Samantha's share of the money, through no fault of plaintiff, there are other options available to recover the money. The settlement here was on the record, the judge approved it, and the next friend agreed to the amount. Plaintiff was aware at that time that a conservator had not been appointed, and yet she still agreed to the settlement. When a party's own actions caused the result, courts are reluctant to grant that party relief under 2.612(C)(1)(f). *Limbach v Oakland Co Bd of Rd Comm'rs*, 226 Mich App 389, 393-394; 573 NW2d 336 (1997).

In sum, the trial court erred by setting aside the settlement in this case because the requirements of MCR 2.612(C)(1) were not met. This issue being dispositive to this case, we need not address defendant's remaining issues.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Jessica R. Cooper