

STATE OF MICHIGAN
COURT OF APPEALS

STANLEY THOMAS JAROH,

Plaintiff/Counter-Defendant-
Appellee,

v

NANCY JEAN JAROH,

Defendant/Counter-Plaintiff-
Appellant.

UNPUBLISHED
October 17, 2017

No. 334216
Grand Traverse Circuit Court
LC No. 2016-031467-DO

Before: BOONSTRA, P.J., and METER and GADOLA, JJ.

PER CURIAM.

This appeal arises out of a consent judgment of divorce entered pursuant to a settlement agreement reached between the parties during mediation. After the parties reached the settlement but before the court entered the judgment, defendant moved to set aside the settlement claiming that the terms were inequitable. The trial court entered the judgment and subsequently denied defendant's motion to set aside the settlement. Defendant appeals as of right. We affirm.

The parties married in 1985 and plaintiff filed for divorce on February 26, 2016. The parties proceeded to mediation on June 9, 2016, which culminated in a written settlement agreement regarding the parties' properties. The parties' agreement awarded plaintiff the following properties: 1143 DeGroff Street, Grand Ledge;¹ Mark Drive, Lima Township, Chelsea (10 acres of vacant land);² North St. Joseph's Street, Suttons Bay (vacant commercial lot);³ 1300 Dewey, Plymouth (apartment building);⁴ Lot 178 and 179 of Sherwood Estates No. 4, Traverse

¹ Valued at \$61,000 by plaintiff with \$55,000 debt; valued at \$61,500 by defendant with \$46,510.50 debt.

² Valued at \$100,000 by plaintiff and at \$80,000 by defendant.

³ Valued at \$100,000 by both parties.

⁴ Valued at \$700,000 by both parties.

City (Holiday Hills apartment building);⁵ 9409 Center Road, Traverse City (new build);⁶ and Oyster Bay, St. Maarten (time share).⁷ Defendant was awarded the following properties under the agreement: 15526 Center Road, Traverse City (marital residence);⁸ 15532 Center Road, Traverse City (five acres adjoining marital residence);⁹ St. Thomas, U.S. Virgin Islands (time share);¹⁰ and residence in Playa del Carmen (parties' Mexican home).¹¹

Further, plaintiff agreed to pay off the first and second mortgages on the marital home, totaling \$286,421, or in the alternative to pay defendant a monthly amount of \$1,600 for the first mortgage and \$500 for the second mortgage until the mortgages were repaid in full. The agreement stated that the payoff would be treated as a property settlement to defendant and would continue to be owed even if defendant sold the marital home. Plaintiff also agreed to remove the five acres of land adjoining the marital home as collateral for a loan on the Holiday Hills apartment building and to remove defendant's name from the indebtedness on the same property. Plaintiff agreed to pay defendant \$90,000 non-modifiable spousal support in monthly installments of \$1,500 for 60 months, beginning on July 1, 2016. Plaintiff also agreed to be responsible for all the credit card debt incurred by the parties during their marriage and for all tax liabilities that might have been owed by the parties at the time of the settlement.

Subsequently, when plaintiff moved to enforce the settlement agreement and for entry of the divorce judgment, defendant refused to sign the consent judgment, arguing that the terms of the agreement were unconscionable. The trial court entered the judgment of divorce, finding that defendant did not present any real evidence that there was a problem with the settlement agreement. Defendant moved to set aside the parties' settlement agreement, contending that she signed the agreement under duress because she had no food during the nine-hour mediation process and was pressured by her attorney and the mediator to sign the agreement. Defendant also asserted that plaintiff committed fraud by failing to disclose all the marital debts, thereby making it difficult for the court and defendant to know the true value of the marital estate or the extent of its liabilities. Further, she contended that plaintiff misrepresented the values of the Holiday Hills apartment building and the Center Road home, which were awarded to him, by undervaluing them. Specifically, defendant stated that the division of the marital estate in the

⁵ Valued at \$1.25 million by plaintiff with a mortgage of \$876,000; valued at \$1.25 million by defendant with a mortgage of \$877,305.66.

⁶ Valued at \$164,000 by plaintiff and at \$400,000 by defendant.

⁷ Valued at \$19,000 by plaintiff with a mortgage of \$11,400; Plaintiff asserted that the value was "unknown" with a mortgage debt of \$11,216.70.

⁸ Valued at \$500,000 by plaintiff with two mortgages totaling \$287,027; valued at \$600,000 by defendant with two mortgages totaling \$286,421.21.

⁹ Valued at \$75,000 by plaintiff with a mortgage debt of \$875,000 by being used as collateral for the rental property; valued at \$100,000 by defendant.

¹⁰ Valued at \$24,000 by plaintiff and at "unknown" by defendant.

¹¹ Valued at \$425,000 by plaintiff and at \$400,000 by defendant.

settlement agreement was unconscionable because it awarded the parties' two largest assets—the two commercial apartment buildings valued by plaintiff at \$1,074,000—to plaintiff. According to defendant, under the division of the marital assets outlined in the parties' agreement, plaintiff would receive 73% of the marital estate while she would receive 27% of the marital estate.

Plaintiff asked the court to deny defendant's motion for failure to show fraud by clear and convincing evidence. Plaintiff contended that defendant's assertions of fraud were false and contradicted by the pleadings and court record. According to plaintiff, defendant accused him of undervaluing the Holiday Hills apartment building; however, plaintiff pointed out that in their pretrial statements, both parties valued the property at \$1.25 million. Plaintiff also argued that, even if defendant's claim that plaintiff undervalued the Holiday Hills apartment building was true, the undervaluation could only be considered a mistake, which is not a ground for disturbing the parties' agreement when both parties had access to the relevant information at the time of settlement and had ample time to conduct appraisals of the properties. The trial court concluded that the settlement agreement was fair and reasonable and denied defendant's motion.

On appeal, defendant argues that the settlement agreement was obtained by fraud and that the trial court abused its discretion by failing to set it aside and by failing to hold an evidentiary hearing when defendant asserted that plaintiff had procured the settlement agreement by fraud. "The finding of the trial court concerning the validity of the parties' consent to a settlement agreement will not be overturned absent a finding of an abuse of discretion." *Vittiglio v Vittiglio*, 297 Mich App 391, 400; 824 NW2d 591 (2012) (quotation marks and citation omitted). Similarly, a trial court's decision whether to hold an evidentiary hearing is reviewed for an abuse of discretion. *Kernen v Homestead Dev Co*, 252 Mich App 689, 691; 653 NW2d 634 (2002). An abuse of discretion occurs if the trial court's decision is outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Further, "[f]or an issue to be preserved for appellate review, it must be raised, addressed, and decided by the lower court." *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007). Although defendant argued that the settlement agreement was obtained by fraud and objected to the entry of a consent judgment of divorce, she did not specifically ask for an evidentiary hearing; therefore this issue is unpreserved. See *Mitchell v Mitchell*, 198 Mich App 393, 399; 499 NW2d 386 (1993) ("[A] trial court is obligated to conduct an evidentiary hearing to resolve an ambiguity or a factual dispute that arises in a proceeding related to a divorce only if a party specifically asks for an evidentiary hearing."). Defendant did not request an evidentiary hearing, so our review of this issue is limited to plain error affecting substantial rights. *In re Utrera*, 281 Mich App 1, 8; 761 NW2d 253 (2008). "Generally, an error affects substantial rights if it caused prejudice, i.e., it affected the outcome of the proceedings." *Id.* at 9.

MCR 3.216(A)(2) provides that "[d]omestic relations mediation is a nonbinding process" However, once the parties reach a settlement agreement, it should not normally be set aside merely because a party had a "change of heart." *Vittiglio*, 297 Mich App at 399. "It is a well-settled principle of law that courts are bound by property settlements reached through negotiations and agreement by parties to a divorce action, in the absence of fraud, duress, mutual mistake, or severe stress which prevented a party from understanding in a reasonable manner the nature and effect of the act in which she was engaged." *Id.* at 400, quoting *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990). "This rule applies whether the settlement

is in writing and signed by the parties or their representatives or the settlement is orally placed on the record and consented to by the parties, even though not yet formally entered as part of the divorce judgment by the lower court.” *Keyser*, 182 Mich App at 270.

Defendant’s claim that the trial court abused its discretion when it entered the consent judgment of divorce and denied her motion to set aside the settlement agreement is without merit because it ignores the binding nature of her freely given signature on the settlement agreement. It is undisputed that defendant willingly participated in mediation, that she had legal counsel during the process, and that she signed the settlement agreement memorializing the parties’ agreement regarding the property division. In her verified motion to set aside the settlement agreement and the judgment of divorce, defendant argued that she accepted the settlement agreement under duress. According to defendant, she had no food during the nine-hour process and she was pressured by the mediator and her attorney to end the mediation by signing and accepting the settlement agreement.

Contracts may be voided on grounds of duress. *Clement v Buckley Mercantile Co*, 172 Mich 243, 253; 137 NW 657 (1912). However, to succeed with respect to a claim of duress, defendant must establish that she was illegally compelled or coerced to act by fear of serious injury to her person, reputation, or fortune. See *Farm Credit Servs of Mich Heartland, PCA v Weldon*, 232 Mich App 662, 681; 591 NW2d 438 (1999).

In this case, defendant’s allegation that she did not eat during the nine-hour mediation and was pressured to accept the terms of the settlement agreement by her attorney and the mediator does not demonstrate the coercion necessary to sustain a claim of duress. Plaintiff’s attorney explained to the court that during the mediation process, the mediator provided the parties with snacks. There is no evidence that defendant was refused a request to get something to eat or that she was not allowed to bring in her own snacks or food during the mediation process. Further, the record established that the mediation was conducted as a shuttle mediation where the parties were separated, while their attorneys used a shuttle form to negotiate the terms of the agreement with the parties. Additionally, the trial court correctly pointed out that

[t]he agreement in question is extensive. It’s typewritten. There don’t appear to be any handwritten changes to the agreement. So obviously the parties took some time to prepare it. It is five pages long. Contains a very detailed resolution of their affairs, separation of personal effects, right down to very small items. Provides that the plaintiff is responsible for various debts that have been accrued during the marriage, would take care of them. Including debts on some of the property.

Further, there is no evidence that plaintiff personally coerced or influenced defendant to accept the terms of the settlement agreement. When a party asserts that the party’s attorney coerced or unduly influenced him or her, courts will not overturn a consent judgment absent a showing that the opposing party participated in the coercion or influence. *Vittiglio*, 297 Mich App at 401-402. Consequently, there is no evidence that defendant signed the agreement under duress.

Moreover, defendant did not request an evidentiary hearing and the trial court was not obligated to grant her one sua sponte. See *Mitchell*, 198 Mich App at 399. In her verified

motion to set aside the settlement agreement and during the motion hearing, defendant did not specifically ask for an evidentiary hearing; rather, she asked the court to set aside the settlement agreement and the judgment of divorce and to order the parties to engage in a new mediation at her expense. Because defendant did not ask for an evidentiary hearing, the trial court cannot be found to have abused its discretion by failing to hold one.

A trial court may, however, abuse its discretion when a party alleges fraud in a consent judgment and the court fails to hold an evidentiary hearing. See *Kiefer v Kiefer*, 212 Mich App 176, 183; 536 NW2d 873 (1995). But the trial court need not hold an evidentiary hearing when it can sufficiently decide an issue on the basis of the evidence already before it. *Vittiglio*, 297 Mich App at 406. Additionally, “where the party requesting relief fails to provide specific allegations of fraud relating to a material fact, the trial court need not proceed to an evidentiary hearing.” *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 405; 651 NW2d 756 (2002).

Defendant alleges that plaintiff procured the settlement agreement through misrepresentation and fraud. Specifically, defendant claims that plaintiff misrepresented the value of the Holiday Hills apartment building. However, defendant’s argument is unconvincing given that both parties valued this property at \$1.25 million in their pretrial statements. Also, the parties presented evidence that they gave 60% of the shares of the company holding the Holiday Hills property to their adult children in 2000. Therefore, plaintiff’s interest in the property as awarded under the consent judgment constitutes only 40% of the property’s value. Defendant also argues that plaintiff misrepresented the value of the 9409 Center Road property by valuing it at \$164,000. In her pretrial statement, defendant valued the property at \$400,000; therefore, at the time of mediation, defendant knew or should have known that the property might be worth more than the value assigned by plaintiff. With that knowledge, she could have insisted that she be awarded the property or declined a final agreement pending a proper appraisal. Moreover, the trial court was informed that the parties did not use the values attributed to each property in their pretrial statements during the settlement agreement; rather the values were “compromised in arguments.” Finally, defendant had the opportunity to conduct proper appraisals of the marital properties but failed to do so. In fact, defendant subsequently commissioned an appraisal of the Holiday Hills apartment property, which she could have elected to do before the mediation. “If, at the time of the settlement, the parties had access to the information on which the allegations of error or fraud are now based, their compromise should not be disturbed.” *Villadsen v Villadsen*, 123 Mich App 472, 477; 333 NW2d 311 (1983).

Defendant also argues that during the parties’ marriage, plaintiff intentionally underreported substantial income to the IRS and the state of Michigan, exposing both parties to substantial liability. However, the issue of marital debts was addressed in the parties’ settlement agreement. Per the settlement agreement, plaintiff was responsible for all the credit card debt incurred by the parties during their marriage and for all tax liabilities that may be owed by the parties. Consequently, even accepting defendant’s assertion that plaintiff exposed the parties to tax liability by underreporting income, plaintiff would be solely responsible for such liability under the parties’ settlement agreement.

Finally, although the trial court did not conduct an evidentiary hearing, it heard defendant’s motion to set aside the settlement agreement, listened to the parties’ arguments,

questioned the parties, and concluded that the settlement agreement was fair and reasonable. The trial court's decision was not outside the range of reasonable and principled outcomes.

Affirmed.

/s/ Mark T. Boonstra
/s/ Patrick M. Meter
/s/ Michael F. Gadola