STATE OF MICHIGAN

COURT OF APPEALS

JOY RAHAMAN,

Plaintiff-Appellant,

and

AFFILIATED DIAGNOSTICS OF OAKLAND, LLC and ANESTHESIA SERVICES AFFILIATES, PLLC,

Intervening Plaintiffs,

v

AMERIPRISE INSURANCE COMPANY,

Defendant,

and

IDS PROPERTY CASUALTY INSURANCE COMPANY,

Defendant-Appellee.

UNPUBLISHED
November 24, 2020

No. 349463
Wayne Circuit Court
LC No. 16-016070-NF

Before: GLEICHER, P.J., and K. F. KELLY and SHAPIRO, JJ.

PER CURIAM.

Through her counsel, plaintiff Joy Rahaman entered into an arbitration agreement with defendant IDS Property Casualty Insurance Company. She now appeals the trial court's order denying her motion to vacate the arbitration agreement and granting defendant's motion to enforce that agreement. We affirm.

I. BACKGROUND

Plaintiff was injured in a motor vehicle accident in September 2016. She filed this lawsuit for personal protection insurance benefits against her insurer[1] in December 2016. The parties litigated this matter for more than a year before agreeing to binding arbitration. The arbitration agreement was signed on September 21, 2018, weeks before the scheduled trial. The agreement provided, among other things, that the parties would participate in a "binding" and "final" arbitration with a $190,000 cap on recovery pursuant to a "high-low agreement." The agreement provided that the ultimate award would "include Plaintiff's No-Fault claims for all benefits, including interest and attorney fees, if any, as well as past, present and future benefits." The agreement was signed by plaintiff's counsel at the time, Kevin W. Geer, but did not contain a signature line for plaintiff herself and her signature does not appear on the document. In November 2018, plaintiff, defendant, and their attorneys participated in an arbitration hearing. The arbitration ended with a $130,000 award in plaintiff's favor and the waiver of future medical benefits.

After learning of the arbitration award, plaintiff e-mailed defendant's counsel directly asking him not to "sign off" on the arbitration award and asserting that she never agreed to arbitration. Defendant then filed a motion to enforce the arbitration agreement. At the motion hearing, Geer was no longer representing plaintiff and, on the basis of their differing accounts, the trial court ordered an evidentiary hearing.

At the evidentiary hearing, plaintiff testified that she was intending on going to trial until Geer told her on September 24, 2018, "that we had to arbitrate, that we weren't going to trial," without explanation. Plaintiff said that Geer did not discuss the terms of the arbitration agreement with her. She explained that she participated in the arbitration hearing only because Geer told her that her case would be dismissed if she did not. Plaintiff said that she did not learn of the arbitration result until about 10 days after the hearing and that she was upset to learn that she was waiving future medical benefits when she had testified at the hearing that she had upcoming surgeries scheduled. According to Geer, plaintiff agreed to arbitrate her case instead of proceeding to trial and she was aware of the terms of the arbitration agreement. He stated that he had authority from plaintiff to do so and pointed out contradictions in plaintiff's testimony concerning their communications.

Following the hearing, plaintiff filed a brief asking the trial court to vacate the arbitration award on the basis of fraud, undue influence and duress. Plaintiff's primary claim was that the arbitration agreement was fraudulently induced. The court heard additional argument at a hearing before granting defendant's motion to enforce the arbitration agreement and denying plaintiff's motion to vacate. The court later entered a stipulated order of dismissal, from which plaintiff appeals.

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[1] Plaintiff named Ameriprise Insurance Company as defendant but, in its answer, defendant IDS identified itself as the proper defendant and Ameriprise as having been "improperly captioned" as the defendant. Accordingly, "defendant" as used in this opinion refers to IDS.

II. ANALYSIS

Plaintiff first argues that she never agreed to arbitration and that her attorney did not have the authority to bind her to any agreement at the time of the arbitration.[2]

An agency relationship exists between an attorney and his or her client. *Fletcher v Bd of Ed of Sch Dis Fractional No 5*, 323 Mich 343, 348; 35 NW2d 177 (1948). "Under fundamental agency law, a principal is bound by an agent's actions within the agent's actual or apparent authority." *James v Alberts*, 464 Mich 12, 15; 626 NW2d 158 (2001). "Apparent authority arises where the acts and appearances lead a third person reasonably to believe that an agency relationship exists." *Alar v Mercy Memorial Hosp*, 208 Mich App 518, 528; 529 NW2d 318 (1995). If an agent has apparent authority to do an act, the principal is bound by it even if it was not actually authorized. *Central Wholesale Co v Sefa*, 351 Mich 17, 26; 87 NW2d 94 (1957). It is well settled that "[a]n attorney has the apparent authority to settle a lawsuit on behalf of his or her client." *Kloian v Domino's Pizza LLC*, 273 Mich App 449, 453; 733 NW2d 766 (2006). As we observed in *Nelson v Consumers Power Co*, 198 Mich App 82, 89-90; 497 NW2d 205 (1993):

> Generally, when a client hires an attorney and holds him out as counsel representing him in a matter, the client clothes the attorney with apparent authority to settle claims connected with the matter. Thus, a third party who reaches a settlement agreement with an attorney employed to represent his client in regard to the settled claim is generally entitled to enforcement of the settlement agreement even if the attorney was acting contrary to the client's express instructions. In such a situation, the client's remedy is to sue his attorney for professional malpractice. The third party may rely on the attorney's apparent authority unless he has reason to believe that the attorney has no authority to negotiate a settlement. [Citations omitted.]

MCR 2.507(G) confirms that an attorney can enter into a binding settlement or arbitration agreement on behalf of a client: "An agreement or consent between the parties or their attorneys respecting the proceedings in an action is not binding unless it was made in open court, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney."

As plaintiff's counsel, Geer had apparent authority to enter into an arbitration agreement with defendant on plaintiff's behalf. The agreement to settle the case through arbitration was enforceable under MCR 2.507(G) because it was "subscribed by the party against whom the agreement is offered *or by that party's attorney*." MCR 2.507(G) (emphasis added). Plaintiff maintains that she did not agree to arbitrate and that Geer entered into the arbitration agreement without her permission. However, whether or not plaintiff agreed to arbitrate, there is nothing in the record to suggest that defendant would have or should have had known that Geer did not have authority to settle the case on behalf of plaintiff who, as defendant points out, appeared for and participated in the arbitration hearing.

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[2] The existence and enforceability of an arbitration agreement is reviewed de novo. *Watts v Polaczyk*, 242 Mich App 600, 603; 619 NW2d 714 (2000).

Plaintiff also argues that the arbitration agreement was the product of fraudulent inducement. An arbitration agreement is a contract. *Altobelli v Hartmann*, 499 Mich 284, 295; 884 NW2d 537 (2016). "Fraud in the inducement occurs where a party materially misrepresents future conduct under circumstances in which the assertions may reasonably be expected to be relied upon and are relied upon." *Samuel D. Begola Servs, Inc v Wild Bros*, 210 Mich App 636, 639; 534 NW2d 217 (1995). "Fraud in the inducement to enter a contract renders the contract voidable at the option of the defrauded party . . . ." *Bazzi v Sentinel Ins Co*, 502 Mich 390, 408; 919 NW2d 20 (2018) (quotation marks and citation omitted). To avoid a contract on the basis of a fraudulent misrepresentation, a party, here the plaintiff, must show that:

> (1) the defendant made a material representation; (2) the representation was false; (3) when the defendant made the representation, the defendant knew that it was false, or made it recklessly, without knowledge of its truth and as a positive assertion; (4) the defendant made the representation with the intention that the plaintiff would act upon it; (5) the plaintiff acted in reliance upon it; and (6) the plaintiff suffered damage. [*Bank of America, NA v Fidelity Nat Title Ins Co*, 316 Mich App 480, 499; 892 NW2d 467 (2016).]

Plaintiff claims that defendant committed fraud in the inducement by omitting a signature line for her on the arbitration agreement. This does not constitute a misrepresentation, but even if it did, plaintiff could not have relied on it because she maintains she did not see the agreement until after the award was issued. In fact, plaintiff's claim that she was fraudulently induced into the arbitration agreement is inconsistent with her argument that she never agreed to arbitrate in the first place. More broadly, plaintiff claims that defendant worked in concert with Geer to obtain her assent to the arbitration proceedings while concealing the terms of the agreement from her. However, the trial court held an evidentiary hearing and plaintiff did not proffer any evidence of defendant's involvement in, or knowledge of, such a scheme. "[F]raud must be established by clear and convincing evidence and must never be presumed." *Foodland Distrib v Al-Naimi*, 220 Mich App 453, 457; 559 NW2d 379 (1996). Accordingly, plaintiff's fails to establish that the arbitration agreement or her participation in the arbitration proceedings were fraudulently induced by defendant. Plaintiff's reliance on MCR 2.612(C)(1)(c), which allows a court to set aside a judgment or order, is also unavailing because she fails to show "[f]raud (intrinsic or extrinsic), misrepresentation, or other misconduct *of an adverse party*." (Emphasis added).

Depending on the evidence, plaintiff may have viable claims against Geer. However, whether Geer committed fraud or legal malpractice has no bearing on defendant's motion to enforce the arbitration agreement in the absence of any evidence indicating that defendant had knowledge of Geer's alleged misconduct.[3] Because Geer had apparent authority to enter the

[3] Plaintiff also argues that defendant committed fraudulent insurance acts under MCL 500.4503 by misrepresenting her medical history in its arbitration summary by failing to include favorable medical records in its arbitration summary. However, it was not defendant's duty to present evidence favoring the plaintiff and to the degree there were any actual misrepresentations, it was her attorney's responsibility to correct or respond to them.

arbitration agreement on plaintiff's behalf, defendant could enforce that agreement even if it was contrary to plaintiff's express wishes. See *Nelson*, 198 Mich App at 90.

Finally, plaintiff contends that the trial court's decision to enforce the arbitration agreement improperly deprived her of her right to a civil jury trial. See Const 1963, art 1, § 4. Although plaintiff made a demand for a jury trial, through her attorney she effectively withdrew that demand when she voluntarily dismissed this matter in favor of binding arbitration. See MCR 2.508(D)(3) ("A demand for trial by jury may not be withdrawn without the consent, expressed in writing or on the record, of the parties or their attorneys."). Therefore, this argument is without merit.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Kirsten Frank Kelly
/s/ Douglas B. Shapiro