STATE OF MICHIGAN

COURT OF APPEALS

ARTHUR SELKE,

Plaintiff/Counterdefendant-Appellee,

v

SHANEL GHERMAN, d/b/a NORSTAR DEVELOPMENT,

Defendant/Counterplaintiff-Appellant.

UNPUBLISHED
February 8, 2005

No. 250210
Wayne Circuit Court
LC No. 02-207215-CH

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment awarding plaintiff $130,000, secured by a mortgage on real property in Dearborn. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

This appeal involves the parties' settlement of plaintiff's action to collect a debt from defendant. Plaintiff's complaint alleged that he made a series of construction loans to defendant, and was owed an outstanding balance of $203,097.30, plus interest at an annual contract rate of ten percent from February 8, 2002. Plaintiff sought to collect this debt and foreclose on a mortgage on property in Dearborn that allegedly secured the debt. Defendant filed a counterclaim, challenging the validity of the mortgage, seeking an accounting of the debt, and alleging claims for slander of title, usury, and breach of contract.

In January 2003, a settlement was reached whereby the parties agreed to a judgment that established the debt and modified the amount of the mortgage of record at $130,000, set the due date for payment of the debt at sixty days, and provided for accrued interest if no payment was made after sixty days. The terms of settlement were placed on the record in court and both parties' acknowledged their assent and understanding of the settlement. The entry of judgment was to be held in abeyance for sixty days, with a stipulated order of dismissal to enter, rather than a judgment, if defendant paid plaintiff the $130,000 amount.

Before a judgment was entered, defendant obtained new counsel and moved to set aside the settlement agreement. The trial court denied defendant's motion and entered judgment in

favor of plaintiff in accordance with the settlement agreement. Defendant thereafter moved for relief from the judgment, which the trial court denied.

On appeal, defendant presents eighteen separate arguments, framed as two stated issues. Many of these arguments are insufficiently briefed to properly invoke appellate review. See *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002); *Eldred v Ziny*, 246 Mich App 142, 150; 631 NW2d 748 (2001); *Prince v MacDonald*, 237 Mich App 186, 197; 602 NW2d 834 (1999). Defendant's brief also fails to comply with the requirements that she state the questions presented concisely and without repetition, and set forth the standard of review for each issue. MCR 7.212(C)(5) and (7); *Williams v Cadillac*, 148 Mich App 786, 790; 384 NW2d 792 (1985). The requisite statement of questions is important because it governs the scope of the issues to be reviewed by this Court. *Id.* at 790. While we have endeavored to consider defendant's various arguments, the responsibility for any failure to consider a claim of error rests with defendant, rather than this Court. *Id.*

We find no merit to defendant's claim that MCR 2.507(H) was misapplied by the trial court. Defendant's mere assertion that a trial court should make a probing inquiry into the parties' understanding of a settlement, similar to the inquiry a court makes before accepting a guilty plea in a criminal case, is insufficient to invoke appellate review. A party may not merely announce a position and leave it to this Court to discover and rationalize its basis. *Yee*, *supra* at 406.

In any event, a settlement agreement is governed by the legal principles applicable to the construction and interpretation of a contract. *Michigan Mut Ins Co v Indiana Ins Co*, 247 Mich App 480, 484; 637 NW2d 232 (2001). The requirement in MCR 2.507(H) that a settlement agreement be in writing or made in open court, by the parties or their attorneys, essentially operates as a statute of frauds for legal proceedings. *Id.*; see also *Farm Bureau Mut Ins Co v Buckallew*, 262 Mich App 169, 178; 685 NW2d 675 (2004), lv pending. Because the court rule does not require the type of probing inquiry suggested by defendant, we reject defendant's contention that such an inquiry was required. If the language of a court rule is unambiguous, a court must enforce the meaning expressed. *CAM Construction v Lake Edgewood Condominium Ass'n*, 465 Mich 549, 554; 640 NW2d 256 (2002). Because the parties' attorneys placed the settlement agreement on the record in court, the requirements of MCR 2.507(H) were satisfied. The trial court's decision to additionally place the parties under oath and have their attorneys ascertain their agreement and assent to the stated terms, while unnecessary under MCR 2.507(H), only provides further support that compliance with the court rule was achieved.

We have considered defendant's other arguments in the context of applying the general rules for contracts that govern settlement agreement. We reject defendant's claim that the trial court's remarks concerning its understanding of the parties' relationship warrant relief from the judgment, or compel an evidentiary hearing regarding whether fraud was perpetrated on the court. Where a party requesting relief from a judgment under MCR 2.612 fails to provide specific allegations of fraud relating to a material fact, a trial court may proceed without an evidentiary hearing. *Yee*, *supra* at 405. In the case at bar, an evidentiary hearing was not necessary because the parties' relationship was not a material fact affecting the validity of the settlement agreement. *Id.* at 404-405. Rather, the trial court appropriately determined whether a valid settlement agreement existed by examining the record of the settlement placed on the record at the January 2003, hearing to ascertain if defendant consented to the agreement.

We note that a valid settlement agreement does not require a party's express consent, but rather can be established by his or her attorney's apparent authority to settle the claim. See *Nelson v Consumers Power Co*, 198 Mich App 82; 497 NW2d 205 (1993). In this case, however, the trial court had the benefit of a record, made in open court, in which both the parties and their attorneys expressed their agreement to the settlement. The trial court's determination, based on this record, that defendant assented to the agreement was not erroneous. *Keyser v Keyser*, 182 Mich App 268, 270; 451 NW2d 587 (1990); MCR 2.613(C).

The necessary mutual assent for a valid contract only requires that the parties mutually assent to all essential terms and manifest that intent in some objective form. *Reed v Citizens Ins Co*, 198 Mich App 443, 449; 499 NW2d 22 (1993); *Groulx v Carlson*, 176 Mich App 484, 491; 440 NW2d 644 (1989). A party's subjective state of mind is not relevant. *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 548; 487 NW2d 499 (1992). Hence, regardless of the nature of the parties' relationship, mutual assent was objectively established at the January 2003 hearing when the attorneys stated the terms of the settlement agreement, and both parties expressed their assent to those terms. Any misstatement by the trial court concerning the nature of the parties' relationship was not relevant or material to whether a binding settlement agreement was established and, therefore, was harmless. MCR 2.613(A).

Also, defendant has not established any basis for relief from the judgment based on her former attorney's alleged fraud or wrongful conduct in coercing, forcing, or otherwise convincing her to place a settlement on the record. Defendant's cursory treatment of this claim could preclude review. *Eldred*, *supra* at 150. In any event, "[a] settlement agreed to in open court by a party through coercion by his or her attorney will not be set aside absent a showing that the other party participated in the coercion." *Howard*, *supra* at 397. Because defendant did not offer evidence that plaintiff participated in her attorney's alleged wrongful conduct, there is no basis for disturbing the trial court's refusal to set aside the settlement agreement, without an evidentiary hearing, on this ground.

While we agree with defendant that a settlement agreement may be set aside based on an unconscionable advantage, the settlement itself is conclusive as to all matters included therein. *Groulx*, *supra* at 492; *Pedder v Kalish*, 26 Mich App 655, 657-658; 182 NW2d 739 (1970). Factors relevant to a determination whether a settlement agreement is unenforceable as unconscionable are (1) the parties' relative bargaining power, and (2) whether the challenged term is substantially reasonable. *Hubscher & Son, Inc v Storey*, 228 Mich App 478, 481; 578 NW2d 701 (1998).

Once again, defendant's claim of unconscionability is given only cursory treatment. *Ziny*, *supra* at 150. But treating defendant's claim as addressing the trial court's refusal to set aside the settlement agreement on this ground before the entry of the judgment, we find no basis for relief. The substance of defendant's argument below was directed at the merits of the underlying debt action, rather than the reasonableness of the settlement terms or the parties' bargaining power when entering into the settlement agreement. The trial court appropriately declined to consider the merits of the underlying debt action when denying the motion because this dispute was resolved by the settlement. Because defendant did not show that the settlement terms were unconscionably advantageous to plaintiff, we find no basis for disturbing the trial court's decision.

Finally, we reject defendant's claim that the trial court should have applied the great weight of the evidence standard in MCR 2.611, inasmuch as defendant has not established that she requested consideration of this standard in her postjudgment motion. In any event, the great weight of the evidence standard is applicable to a verdict after a trial. Because defendant cites no authority supporting her position that it may apply in the context of a judgment based on a settlement agreement, we decline to further consider this issue. *Yee*, *supra* at 406; *Ziny*, *supra* at 150.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Mark J. Cavanagh
/s/ Stephen L. Borrello