STATE OF MICHIGAN

COURT OF APPEALS

LAURI A. NIELL, a/k/a LAURI A. NIELSON, Plaintiff-Appellant,	UNPUBLISHED December 18, 2012
v	No. 302389 Manistee Circuit Court
RAYMOND SCHMOKE, Defendant-Appellee.	LC No. 02-011013-DM

Before: HOEKSTRA, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the trial court's decision to grant defendant's motion, pursuant to MCR 2.612(C)(1)(c), for relief from a February 22, 2010 Friend of the Court judgment. For the reasons stated below, we vacate the trial court's order, but remand for further proceedings.

I. BASIC FACTS AND PROCEDURAL HISTORY

The parties were divorced in 2003, and since then have had a contentious relationship that often has involved the courts. The events leading to the current dispute revolve around a provision in the consent judgment of divorce regarding the payment of uninsured medical expenses. The provision provides:

> IT IS FURTHER ORDERED AND ADJUDGED that Defendant shall be responsible for One Hundred percent (100%) of all uninsured health care costs for the children. All claims for reimbursement of uninsured health care costs must first be submitted to the other parent. If the other parent fails to submit payment with [sic] 30 days of this submission, such claims may then be submitted to the Friend of the Court for collection/enforcement.

Between March 2009 and October 2009, the parties' minor daughter was admitted to Integrity House on the recommendation of her psychologist, for treatment of severe addiction and mental health issues. Integrity House is an accredited residential treatment center. As such, it provided comprehensive care, including treatment, education, and basic living needs (e.g., room and board). The decision to send her there was stressful for both parents, and one of the main concerns was cost. Initially, plaintiff paid all the costs from her personal funds. Plaintiff did not send the bills to defendant as she received them, but she asked Integrity House to send

copies of the bills to defendant to keep him "in the loop." Plaintiff informed Integrity House that she was paying up front so that the minor daughter could remain there and continue to receive treatment, but she explained that Integrity House needed to submit the bills to the insurance company for payment. Plaintiff needed copies of the insurance company's rejection of coverage, or explanation of benefits, so that she could then submit a claim to defendant for reimbursement. Plaintiff testified that defendant refused to give her any information about the insurance, but he did give his insurance information to Integrity House. Integrity House submitted the bills to defendant's insurance company, and coverage was denied.

While the parties' daughter was residing at Integrity house, defendant filed a motion to modify child support, arguing that his monthly child support payment should be reduced by the costs of the non-medical care and services that Integrity House provided. Defendant did *not* argue that he was not responsible for all uninsured medical costs, but rather that some of the costs associated with his daughter's treatment were not "medical." In a ruling from the bench on October 12, 2009, the trial court found that the fees from Integrity House were not 100% medical care, and ruled that defendant would be entitled to deduct from his monthly child support obligation a portion of the cost of Integrity House that was allocated for non-medical expenses, such as room and board and other necessities. The trial court instructed defendant to "[f]ind out what it costs. . . . Her living, her food, the housing part of it, that isn't medical. The medical part, break it down. That doesn't get credited to support." However, defendant did not submit an order following this hearing, and none was entered by the trial court. Within a few days of the hearing, the parties agreed to remove their daughter from Integrity House.[1]

Plaintiff testified that Integrity House attempted to receive payment from defendant's health insurer, but that she received a denial of coverage from the insurance provider in "January of 2010." She testified that "right after" the insurance company denied coverage, she sought payment and reimbursement from defendant by way of her filing of a Complaint for Enforcement of Health Care Expense Payment with the Friend of the Court. The record shows that this complaint was signed and dated by plaintiff on January 27, 2010, and plaintiff asserted below that she filed it on that date. This document is stamped "Received Feb 01 2010, Friend of the Court, Manistee, MI," and the Friend of the Court certified that it mailed the document to defendant on that date. The complaint sought reimbursement of $37,090.00 and payment of $10,884.00 to Integrity House.[2] The complaint form contained the following "Notice to Obligor:"

[1] It appears from the record that the child was admitted to Integrity House on March 15, 2009, and left Integrity House on October 18, 2009.

[2] As we discuss *infra*, the record reflects that plaintiff may not have followed the procedures required by the judgment of divorce for seeking reimbursement of uninsured medical expenses; specifically, she may not have submitted a claim for reimbursement to defendant *prior* to filing a complaint for enforcement with the Friend of the Court, and she may not have waited the requisite thirty (30) days (after submitting such a claim) before filing the complaint.

> Under MCL 552.611a[3] the friend of the court has been asked to enforce the health care expense described below. Unless you file a written objection with the friend of the court within 21 days of this date provided in MCL 552.611,[4] the expenses will be added to your support account as a health care support arrearage and enforced. If you timely file a written objection in the manner required, a hearing will be set to resolve the health care complaint.

Defendant did not file an objection. On February 22, 2010, a money judgment was entered in plaintiff's favor for the amount requested.

Defendant failed to make any payment on the judgment. On March 24, 2010, plaintiff filed a motion and order to show cause why defendant should not be held in contempt of court for failing to pay the unreimbursed medical expenses as required by the February 22, 2010 judgment. Plaintiff argued that their daughter's care at Integrity House fell within the definition of uninsured medical expenses, for which defendant is 100% responsible under the terms of the judgment of divorce. Plaintiff argued that by failing to file any objections, defendant had abandoned them. Defendant responded on April 12, 2010, with a "Motion to Enforce Court's Ruling Regarding Uninsured Medical Expenses." Defendant argued that the February 22, 2010 order directing him to pay $47,000.00 for the Integrity House bill was contrary to the trial court's ruling in October 2009. Defendant reminded the court that at the October 12, 2009 hearing on defendant's motion pertaining to child support, the court had ruled that defendant would not be responsible for the entire cost of Integrity House care, but would only be responsible for the medical expenses incurred there.

On May 3, 2010, the trial court held a hearing on defendant's motion to enforce the court's prior ruling, as well as a show cause hearing on plaintiff's motion for contempt. The trial court noted that, because defendant had filed no objection to the Friend of the Court complaint, it had resulted in the entry of the February 22, 2010 judgment. As the trial court noted, "It's a judgement. [sic] It is a judgment. It is a judgment, a judgment, a judgment."

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[3] It appears the correct citation here should be MCL 552.511a, entitled "Complaint for enforcement of payment of health care expenses, contents, notice hearing; support arrearage." MCL 552.611a is entitled "Multiple orders of withholding; priority; liability for failure to withhold from payer's income; identification of withholding; combining amounts in single payment; identification of portions of single payment attributable to individual payers" and does not appear applicable, as no order of withholding had yet issued in this case, nor does MCL 552.611a specifically reference health care expenses, notice, or times for objection. MCL 552.511a was enacted in December of 2002; it is thus possible that plaintiff's form was simply out of date. See 2002 PA 569.

[4] Again, it appears MCL 552.511a was the correct citation; MCL 552.611 is entitled "Effective date of orders of withholding; priority of orders over other legal process" and does not appear to be applicable to the instant case. See footnote 3, *supra*.

In addition to arguing for enforcement of the trial court's prior ruling, notwithstanding the entry of the February 22, 2010 judgment, defendant contended, for the first time, that he was not obligated to reimburse plaintiff or pay *any* of the amounts paid or owing to Integrity House because the parties had an agreement that the daughter's college fund was going to pay for Integrity House. Based on that representation, the trial court declined any contempt finding, and scheduled an evidentiary hearing to allow defendant to demonstrate that the agreement existed.

Between the show cause hearing and the evidentiary hearing, defendant filed a motion, pursuant to MCR 2.612(C)(1)(a) and (c), requesting relief from judgment. Defendant alleged that the agreement occurred at a meeting in early 2009[5] among himself, his current wife, plaintiff, and the daughter's psychologist. Defendant submitted an affidavit attesting that at the meeting at the psychologist's office, the parties orally agreed to use his daughter's college fund to pay for her care at Integrity House.

At the September 24, 2010 evidentiary hearing, defendant testified that after the 2009 meeting, he understood that the cost of Integrity House would be paid with the college fund:

> *Q.* So when you left Dr. North's office . . . was it your understanding that you and Mrs. Neilson had agreed to utilize Katherine's college money to pay for Integrity House?
>
> *A.* That was my understanding.
>
> *Q.* And was that based on representations Mrs. Neilson had made during that meeting?
>
> *A.* Yes.

The parties agreed that the goal of the meeting was to determine what to do to help their daughter. It was plaintiff's idea to send the daughter to Integrity House, and the parties agreed that it was in her best interests. However, cost was an issue because Integrity House would cost about $70,000. Defendant suggested using the daughter's college fund to pay for the treatment because at the time it did not look like she was going to graduate from high school without some type of assistance. Defendant testified that plaintiff "explicitly said yes" to using the college fund. On cross-examination, defendant admitted that his relationship with his ex-wife was "not pleasant" and that they had been in court "many times." He also stated that he did not trust her. However, when asked why, if he did not trust plaintiff, he would make an oral agreement with

[5] There is a slight discrepancy in the record about the date of the meeting; defendant and his attorney stated at the evidentiary hearing that the meeting took in February of 2009; defendant's current wife referred to the meeting as taking place in March of 2009. Plaintiff testified that she did not know about Integrity House in January and believed that the meeting concerning payment for Integrity House took place in March. The psychologist testified that there were two meetings between the parties, one in January and one in March of 2009, and testified that the relevant events occurred at the January 2009 meeting.

her, defendant replied "Well, this was about one of the children. And I thought this—was extremely important. And that she would not hurt one of the children."

Defendant's current wife testified that she also thought there was an agreement to that effect because plaintiff was nodding her head when it was discussed, and "it was an implied understanding to use the college fund." Additionally, one of the parties' adult children, who was not present at the meeting and who is estranged from her mother, stated her belief that plaintiff had agreed to pay using the college fund; in an affidavit submitted by defendant, she stated that "My mother said that my dad wanted to use [the minor's] college money to pay for Integrity House, that they had discussed using these funds with [the minor's] psychologist, and that they were going to use the college money to pay for Integrity House. My mother told me that she was okay with this." The minor daughter's psychologist described the meeting as "hostile" and stated that although using the college fund to pay for Integrity House was discussed, he did not recall an agreement and left the meeting with the impression that no agreement had been reached.

Plaintiff testified that she "absolutely never" agreed to use the college fund to pay for Integrity House. Before the meeting, she had consulted with her attorney and knew that defendant was 100% responsible for the expenses. And although they discussed using the college fund at the meeting, she never had any intention of agreeing to use the daughter's college fund but did not challenge defendant because she did not want to have "another big screaming match." Her only intention at the meeting "was to discuss getting [her daughter] into long-term treatment."

Plaintiff asked Integrity House to bill her directly because she wanted to make sure that everything was paid, so that the daughter could get her treatment. Plaintiff was very concerned that the daughter would end up dead without the treatment. She knew from the start that there would be trouble with the insurance company. Although she never sent any bills to defendant, she testified that she asked Integrity House to send duplicate bills to him. But she did not know if duplicate bills were ever sent.

Defendant testified that during his daughter's stay at Integrity House, he never received a bill. He assumed that plaintiff was paying the bills out of the college fund. Defendant recalled receiving a bill in or around February 2010, but he believed it was a bill from plaintiff and that he did not need to respond to it. Defendant stated that he did not understand the document he had received to be a complaint for enforcement that had been filed with the Friend of the Court.

The trial court found that there was no agreement regarding the use of the college fund, but that plaintiff had misled defendant into that believing the college fund would be used for their daughter's treatment at Integrity House. The trial court "credited" the testimony of Karen Schmoke, defendant's current wife, that plaintiff had nodded during the 2009 meeting, causing defendant to infer that there was an agreement as to payment. The trial court additionally concluded that plaintiff was being "cagey" and "not doing anything to discourage [defendant] from thinking there is sort of agreement on the college fund." The trial court found that defendant thought there was an agreement. The trial court granted defendant's motion for relief from judgment in part, stating:

> So what am I supposed to do? I think I'm going to fashion—I'm going to fashion a remedy that is not contemplated in the judgment of divorce. Dr. Schmoke should have seen this—it became a judgment. He should have seen it. He should have responded. He thought—he believed he had an agreement. And it falls a little bit short of being a true agreement. And it falls a little bit short of being a true agreement on the college fund. And I've already expressed why I thought there was only one bill.
>
> So they're both parents of this child equally. He'll be responsible for 50%. He'll reimburse Plaintiff 50%.

On November 5, 2010, the trial court entered an order modifying the February 22, 2010 Friend of the Court judgment for uninsured medical expenses. This appeal by plaintiff followed.

II. STANDARD OF REVIEW

This Court reviews for an abuse of discretion a trial court's decision to grant or deny relief from judgment. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 404; 651 NW2d 756 (2002). An abuse of discretion occurs when the trial court selects an outcome that falls outside the range of principled outcomes. *Ewald v Ewald*, 292 Mich App 706, 725; 810 NW2d 396 (2011). Further, this Court reviews a trial court's findings of fact for clear error. *McNamara v Horner*, 249 Mich App 177, 182; 642 NW2d 385 (2002). The trial court's findings of fact are clearly erroneous if, after review of the entire record, this Court is left with the definite and firm conviction that a mistake was made. *Id*. at 182-183.

III. THE TRIAL COURT ERRED IN GRANTING DEFENDANT RELIEF FROM JUDGMENT BASED ON MISREPRESENTATION

MCR 2.612(C) provides in relevant part:

> (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:
>
> * * *
>
> (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.

A motion brought under MCR 2.612(C)(1)(c) must be brought within one year after judgment was entered. MCR 2.612(C)(2). This Court has held that relief from a judgment will generally only be granted in extraordinary circumstances and where the failure to grant the relief would result in a substantial injustice. *Gillispie v Bd of Tenant Affairs of the Detroit Housing Comm*, 145 Mich App 424, 427-428; 377 NW2d 864 (1985). See also *Rose v Rose*, 289 Mich App 45, 58; 795 NW2d 611 (2010) (recommending "[c]autious application of MCR 2.612(C)(1) in divorce cases").

Plaintiff argues that the trial court impermissibly modified the 2003 judgment of divorce, which was entered more than seven years previously. However, the trial court's order purports to modify the February 22, 2010 Friend of the Court judgment, not the judgment of divorce. Defendant was permitted under the court rule to seek relief from this judgment, and defendant's motion was timely.

We nonetheless conclude that the trial court abused its discretion in granting defendant's motion on the grounds presented. The order modifying the February 22, 2010 judgment stated that because of plaintiff's misrepresentation regarding how to pay for Integrity House, both parties were equally responsible. The consent judgment of divorce states that defendant is 100% responsible for their daughter's uninsured medical costs. Contracts, including judgments of divorce, must be enforced as written. *Rose*, 289 Mich App at 58-59. However, the parties to a contract are free to modify their agreement. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 454; 733 NW2d 766 (2006). Therefore, plaintiff and defendant could modify their original consent agreement, in order to address payment of the Integrity House bills. The trial court properly found that the parties did not actually have an agreement to modify the consent agreement. The question then becomes whether plaintiff, through misrepresentation, convinced defendant that there was such an agreement, which would relieve him of the obligation to pay the Integrity House bills. In this case, the trial court found that defendant believed there was an agreement that Integrity House would be paid for with the daughter's college fund. The court also found that there was misrepresentation by plaintiff.

The elements of misrepresentation are:

> (1) That [a party] made a material representation; (2) that it was false; (3) that when he made it he knew that it was false, or made it recklessly, without any knowledge of its truth and as a positive assertion; (4) that he made it with the intention that it should be acted upon by [the other party]; (5) that [the other party] acted in reliance upon it; and (6) that he thereby suffered injury. Each of these facts must be proved with a reasonable degree of certainty, and all of them must be found to exist; the absence of any one of them is fatal to recovery. [*Titan Ins Co v Hyten*, 491 Mich 547, 555; 817 NW2d 562 (2012) (internal citations omitted)].

The trial court did not make explicit findings as to the elements of misrepresentation on the record. Moreover, we find that the record does not support the trial court's ultimate conclusion.

The subject of the alleged misrepresentation was certainly material, as the parties were both concerned about obtaining treatment for their daughter, and paying for it was part of that concern. In short, this was something that mattered. However, it is not clear from the record that plaintiff actually made a representation at the meeting. The trial court found it important that plaintiff knew that defendant wanted to use the college fund, and yet she never explicitly said "no." Instead, when they discussed using the college fund, she nodded her head. Based on that, the trial court found that a representation had been made. "[A] representation can be action or conduct and can be actionable . . . if that action or conduct is intended to create a misimpression to the opposing party." *M&D, Inc v W.B. McConkey*, 231 Mich App 22, 33-34; 585 NW2d 33 (1998). However, such actions must be "highly misleading." *Id.* at 34. The record does not

unambiguously support the conclusion that plaintiff's nod was such a highly misleading action; nodding, after all, is frequently used in human interaction as an indicator that the listener has heard and is considering what the speaker has said. Nonetheless, we cannot say that the trial court abused its discretion in concluding that plaintiff's nod was a representation.

If plaintiff did make a representation, the testimony established that the representation was false. Plaintiff never intended to use the college fund because she believed that the cost of Integrity House was fully defendant's responsibility.

However, the record does not support the conclusion that plaintiff intended this representation as a positive assertion, or that she intended defendant act on this representation. The trial court found it significant that plaintiff did not submit bills to the Friend of the Court as she received them. However, plaintiff testified that she requested that duplicate bills be sent to defendant. Although defendant testified that he never received any bills, no evidence was presented to counter plaintiff's assertion that she requested that Integrity House send them to him. Additionally, testimony established that defendant did not give plaintiff any information about his insurance plan. Thus, at the time of the meeting with the psychologist, plaintiff did not know that defendant's insurance plan would refuse to pay for their daughter's treatment. Plaintiff testified that she informed Integrity House that she was paying up front so that her daughter could remain there and continue to receive treatment, but she explained that Integrity House needed to submit the bills to the insurance company for payment. She also testified that Integrity House did submit these bills to defendant's insurance company, and coverage ultimately was denied. This testimony was uncontroverted. We therefore conclude that the trial court erred in determining (as it must have done, in order to relieve defendant of his obligations under the money judgment) that plaintiff intended her representation as a positive assertion, and intended defendant to act based on her assertion. If she had planned to keep defendant ignorant about his responsibility until after their daughter was treated, she would not have requested that Integrity House send him duplicate bills; additionally, at the time of the meeting, plaintiff did not know that defendant's insurance would deny coverage, and therefore could not have intended to represent that the college fund would be used, in order in induce defendant to agree to admitting their daughter to Integrity House.

Although defendant argues that he acted in reliance on plaintiff's misrepresentation because he would not have allowed his daughter to be admitted to Integrity House if he knew he would have to pay the entire amount, "a party's reliance on a misrepresentation in fraud actions must be reasonable." *Bergen v Baker*, 264 Mich App 376, 389; 691 NW2d 770 (2004). It is difficult, if not impossible, for a party to establish reasonable reliance on representations made by the other party when the parties are "in an obvious adversarial position and generally deal with each other at arm's length." See *Cooper v Auto Club Ass'n*, 481 Mich 399, 415; 751 NW2d 443 (2008). Here, the evidence establishes that the parties had an adversarial relationship and had frequently resorted to the court system to resolve their disputes. The psychologist described the meeting as "hostile," and defendant admitted that he did not trust plaintiff. Thus, it strains credulity that defendant would trust plaintiff sufficiently, during a negotiation for payment of

potentially $70,000 or more worth of medical costs,[6] to believe that they had a binding agreement based on a simple nod. We conclude that the reliance element of misrepresentation was not satisfied.

As to the last element, there is a serious causation issue in the instant case. Even assuming *arguendo* that all of the other elements of misrepresentation were met, defendant was, or should have been, aware of plaintiff's misrepresentation when he received the Friend of the Court complaint on or about February 1, 2010. It was defendant's failure to object within 21 days (not the alleged misrepresentation) that resulted in the entry of the judgment on February 22, 2010. Defendant's testimony that he ignored the complaint because he thought it was merely a bill from plaintiff is nonsensical; the notice clearly spelled out the consequences for failure to respond and was labeled as a "Complaint for Enforcement of Health Care Expense Payment." The record further reflects that plaintiff had filed, and defendant had received, similar communications from the Friend of the Court on multiple prior occasions, such that there was little basis for him to fail to comprehend what the communication was.

We therefore conclude that the trial court erred in modifying the Friend of the Court judgment based on a misrepresentation by plaintiff.

IV. FACTUAL ISSUES SURROUNDING THE ISSUANCE OF THE FRIEND OF THE COURT JUDGMENT

However, we further conclude that defendant may be entitled to relief from the Friend of the Court judgment on other grounds. Specifically, the Friend of the Court judgment may have been improvidently issued, as the prerequisites for the filing of the Complaint for Enforcement of Health Care Expense Payment may not have been satisfied as of the time of its filing. We find that further factual development is required in that regard, as discussed in detail below.

The judgment of divorce provides that "[a]ll claims for reimbursement of uninsured health care costs must first be submitted to the other parent. If the other parent fails to submit payment with [sic] 30 days of this submission, such claims may then be submitted to the Friend of the Court for collection/enforcement." Further, MCL 552.511a provides in relevant part that:

> 1) A complaint seeking enforcement for payment of a health care expense must include information showing that all of the following conditions have been met:
>
> (a) The parent against whom the complaint is directed is obligated to pay the child's uninsured health care expenses, *a demand for payment of the uninsured portion was made to that parent within 28 days after the insurers' final payment or denial of coverage, and that parent did not pay the uninsured portion within 28 days after the demand.* [Emphasis added.]

[6] Plaintiff testified that her understanding was that "the first month [at Integrity House] was going to be over—about $12,500 and each additional month was going to be $5,000. And they anticipated a length of stay of between nine and 12 months."

The Complaint for Enforcement of Health Care Expense Payment, signed by plaintiff, does contain the following (form) language:

> I request the friend of the court to enforce health care expenses. Attached is the Request for Health Care Expense Payment (including all supporting documents)[7] given to the obligor. I declare that:
>
> 1. I requested payment within 28 days of the date notified of the balance due after insurance payments.

However, it is not clear from the record that this procedure was followed. Plaintiff testified that she received the denial from the insurance company in January of 2010. However, the record also reflects plaintiff's assertion that she filed her complaint for enforcement on January 27, 2010, and the document indeed bears that date. Plaintiff admitted that she did not send any bills to defendant before the denial, but demonstrated her awareness that she was supposed to submit a demand for payment to defendant following an insurance denial:

> *Q.* And you did not send the bills to the [sic] Integrity House bills to [defendant] because you had asked Integrity House to send them directly to him?
>
> *A.* Correct. I asked them to send him to him so that he would at least be kept in the loop. And I have emails to them saying, look this is how it works. I'll pay these up front so that we can keep her here but I need you to bill these to insurance and let me know because I *need the rejections, or the explanation of benefits from the insurance company so I can submit it back to* [defendant]. [Emphasis added.]
>
> * * *
>
> *Q.* Okay. And the reason why you waited . . . to file the complaint for uninsured medical expenses was because you were waiting to receive the determination or explanation of benefits from the insurance company?

[7] Although the Complaint itself is attached to plaintiff's brief on appeal, no document entitled "Request for Health Care Expense Payment" accompanies it, nor has this Court's search of the lower court file uncovered this document, nor was it ever referenced by name in any of the proceedings before the lower court. Additionally, no documentation was attached to plaintiff's show cause motion. The only plaintiff's exhibit admitted at the evidentiary hearing was a bank statement. At the evidentiary hearing, plaintiff asked the trial court: "Do you want any of these other documents, these emails back and forth to—I even have emails to Dr. North stating, you know, I'll pay for this up front and seek reimbursement from [defendant] later. I have those emails to Integrity House saying the same thing. It was the same issue. If you want any of those documents." Plaintiff did not receive a direct answer to her question, and no other documentation was admitted.

A. Correct.

Plaintiff also testified that, historically, she had followed the Friend of the Court procedure:

> I've had to always submit my forms to him through the friend of the court. I've submitted, followed the protocol p [sic] submitted them to him directly with a friend of the court form, waited, then sent that form to the friend of the court, requesting their intervention, they would send a form out to him, and then usually I would get payment . . . .

It is unclear from the record, however, whether plaintiff followed this procedure in this particular instance, and her testimony and assertions below call into serious question whether she could have done so.

Although plaintiff may have believed that, prior to the denial of insurance coverage, Integrity House bills were being sent to defendant, the judgment of divorce and MCL 552.11a make it clear that a *demand for payment* must be made subsequent to the insurance denial but prior to filing a complaint with the Friend of the Court. The judgment of divorce further provides that plaintiff may not file a complaint with the Friend of the Court unless defendant has failed to make payment within the 30 day period following the submission of the demand for payment. For the reasons noted, the record before this Court is at best unclear as to whether plaintiff followed this procedure of making a demand for payment after the denial of insurance coverage, and then waiting 30 days for payment before filing her complaint.

Additionally, from the record before this Court, it appears that plaintiff represented to the Friend of the Court that she had submitted a Request for Health Care Expense Payment to defendant, although no such document appears in the record. Plaintiff did not testify, nor is it clear from the record, that she demanded payment of the uninsured amount from defendant, only that she sent him the determination from the insurance provider. Receiving notice that an insurance company will not pay a particular sum is not the equivalent of a demand for payment of that sum; by way of example, and assuming that defendant received only a copy of the denial of coverage, defendant may have thought that he had time to attempt a negotiation with either the insurance company or Integrity House, and may not have been aware that a "ticking clock" had started that would result in the filing of a complaint with the Friend of the Court.

This is not to excuse defendant's failure to respond to the complaint for enforcement. Upon receipt of that document, it should have been clear to him that if he did not object within 21 days, a judgment would issue against him. However, the onus was on *both* parties to comply with the terms of the judgment of divorce and the statutory requirements of MCL 552.511a. The judgment of divorce states that "[a]ll claims for reimbursement of uninsured health care costs must first be submitted to the other parent." A "claim" is "'a demand of a right or alleged right; a calling on another for something due or asserted to be due . . . .'" *Central Wholesale Co v Chesapeake & Ohio Ry Co*, 366 Mich 138, 149-150; 114 NW2d 221 (1962), quoting *Allen v Bd of State Auditors*, 122 Mich 324, 328; 81 NW 113 (1899). The "very essence" of a claim is a demand for payment. *Id.* at 150. We are not convinced that plaintiff made a demand for payment or reimbursement, or that merely providing notice of an insurance company denial is the equivalent of such a claim or demand. See *id.* at 149, quoting *Dawlen Corp v New York*

Central Ry Co, 328 Mich 360, 362; 43 NW2d 887 (1950) ("a claim . . . is more than a notice of loss; it must include a demand for payment of damages."). We also are not convinced that plaintiff waited the requisite 30 days (after a demand, if any) before filing the complaint.

MCR 2.612(C)(1) provides that a court may grant a party relief from judgment on the grounds of:

> (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
>
> * * *
>
> (f) Any other reason justifying relief from the operation of judgment.

As stated above, we find that the trial court abused its discretion in determining that plaintiff's conduct at the 2009 meeting was a misrepresentation entitling defendant to partial relief from judgment. However, if plaintiff in fact failed to demand payment of defendant after the insurance denial, or failed to allow him the requisite time to respond, and yet represented to the Friend of the Court that a demand for payment had been made of defendant, her actions could constitute "[f]raud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party" directed at the Friend of the Court (and by extension the trial court) itself. Misconduct, fraud on the court, and misrepresentation can result from concealment of material facts in order to procure a judgment. See *Williams v Williams*, 214 Mich App 391, 400; 542 NW2d 892 (1995). In that circumstance, granting defendant relief from judgment may be appropriate under MCR 2.612(C)(1)(c).

Additionally, to grant relief under MCR 2.612(C)(1)(f), three conditions 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).]

"Generally, relief is granted under subsection f only when the judgment was obtained by the improper conduct of the party in whose favor it was rendered." *Id.* Assuming, *arguendo*, that the trial court were to find that plaintiff's conduct, while improper, did not rise to the level of misconduct, misrepresentation, or fraud, the trial court could still grant relief under subsection (f).[8] The substantial rights of plaintiff may not be detrimentally affected if the judgment were to

[8] *Heugel* also states that "a trial court may properly grant relief under MCR 2.612(C)(1)(f) even where one or more of the bases for setting aside a judgment under subsections a through e are present, when additional factors exist that persuade the court that injustice will result if the judgment is allowed to stand." 237 Mich App 481. Thus, a finding that plaintiff's conduct

be set aside; the parties would remain bound by the consent judgment of divorce, and defendant would remain liable for all of his daughter's uninsured medical expenses (until the age of majority) under the agreement. Additionally, this particular expense was an extraordinary and substantial expense and plaintiff admitted that she was familiar with the proper course of action for obtaining a support judgment through the Friend of the Court; in the event that the trial court were to determine that plaintiff did not follow those procedures in this case, resulting in a five-figure judgment against defendant, a grant of relief from judgment to defendant may be appropriate under MCR 2.612(C)(1)(f).

V. CONCLUSION

Therefore, in the exercise of this Court's powers to grant relief pursuant to MCR 7.216(A), we VACATE the trial court's November 5, 2010 order modifying the February 22, 2010 Friend of the Court judgment for uninsured medical expenses, and remand this case for further factual development concerning whether the Friend of the Court judgment was properly issued. MCR 7.216(A)(5). We note that our decision does not affect the rights and duties granted to the parties under the judgment of divorce, which remains in effect. See *Holmes v Holmes*, 281 Mich App 575, 595; 760 NW2d 300 (2008) ("A long line of case-law reflects that divorcing parties may create enforceable contracts."). See also *Laffin v Laffin*, 280 Mich App 513, 517; 760 NW2d 738 (2008) ("In general, consent judgments are final and binding on the court and the parties . . . ."). We also do not decide whether, or to what extent, the trial court's October 2009 ruling is effective, or may be given effect, on remand.

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

/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello
/s/ Mark T. Boonstra

warrants relief from judgment under MCR 2.612(C)(1)(c) does not absolutely preclude the trial court from finding that relief is also warranted under subsection (f).