STATE OF MICHIGAN

COURT OF APPEALS

NICOLE L. SMITH,

Plaintiff-Appellant,

v

THELMA L. FORREST,

Defendant-Appellee.

UNPUBLISHED
July 30, 2020

No. 349810
Wayne Circuit Court
LC No. 18-007081-CB

Before: MARKEY, P.J., and M. J. KELLY and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting summary disposition in favor of defendant. Because MCR 2.612 regarding relief from judgment has no application to plaintiff's effort to challenge the validity of a settlement agreement that was executed by the parties outside the context of a judicial or court proceeding, and because the trial court predominantly relied on MCR 2.612 in summarily dismissing plaintiff's lawsuit, we reverse and remand for further proceedings.

The parties were equal partners in the law firm of Forrest & Smith, PC. In late 2010, defendant decided to leave the law firm to take a position with the Friend of the Court. The parties reached an oral agreement regarding defendant's departure from the law firm, which included a buyout of defendant's interest by plaintiff and plaintiff's retention of the firm's client list. For purposes of this appeal, there is no need to discuss any of the details concerning the oral agreement. In 2013, the parties became embroiled in a dispute with respect to their oral agreement and the events that had transpired since 2010. Again, we need not examine the nature of the dispute to resolve this appeal. In December 2013, *outside of any judicial or court proceeding or case*, the parties entered into facilitation and resolved the dispute pertaining to dissolution of the law firm, as reflected in a Confidential Settlement Agreement (CSA). The CSA provided that "[e]ach party releases the other for all time with respect to any claim they have or could have asserted for any event occurring before the effective date of this [CSA]."

In 2017, plaintiff allegedly first learned of some matters regarding the law firm's client list, defendant's continued practice of law, the real estate sale of the firm's office, and firm assets. This

prompted plaintiff to file suit against defendant in June 2018, alleging claims of breach of contract, fraud, breach of fiduciary duty, and violation of the Michigan Rules of Professional Conduct. At the core of plaintiff's complaint was that defendant had engaged in fraudulent conduct in connection with facilitation and the execution of the CSA, had misrepresented and concealed material information related to the terms of the parties' 2010 oral agreement and the 2013 CSA, and had participated in unlawful and improper conduct impacting to the true value of the law firm's assets.

Defendant moved for summary disposition under MCR 2.116(C)(8) and (10) and presented numerous arguments that focused heavily on the release language in the CSA. Defendant did not argue that MCR 2.612 was implicated. After the filing of several briefs by the parties, the trial court issued a written opinion and order granting defendant's motion. The trial court concluded that MCR 2.612 regarding motions and actions for relief from judgment applied to plaintiff's challenge of the CSA and that the now-expired deadlines in MCR 2.612 barred plaintiff's lawsuit.[1] At the end of the opinion, after having devoted the opinion to consideration of MCR 2.612, the court in extremely cursory fashion stated that the plain language of the release barred plaintiff's claims. The trial court subsequently denied plaintiff's motion for reconsideration.

This Court reviews de novo the interpretation of a court rule, *Estes v Titus*, 481 Mich 573, 578-579; 751 NW2d 493 (2008), as well as a ruling on a motion for summary disposition, *Loweke v Ann Arbor Ceiling & Partition Co, LLC*, 489 Mich 157, 162; 809 NW2d 553 (2011). "When called upon to interpret and apply a court rule, this Court applies the principles that govern statutory interpretation." *Haliw v Sterling Hts*, 471 Mich 700, 704-705; 691 NW2d 753 (2005); see also *Fleet Business Credit, LLC v Krapohl Ford Lincoln Mercury Co*, 274 Mich App 584, 591; 735 NW2d 644 (2007).[2] "Court rules should be interpreted to effect the intent of the drafter, the

[1] It appears that the trial court, sua sponte at a status conference, raised the possibility that MCR 2.612 applied. Again, defendant did not raise any argument under MCR 2.612. Defendant has filed an appearance in this appeal but not a brief, perhaps recognizing the trial court's flawed reliance on MCR 2.612.

[2] In *Whitman v City of Burton*, 493 Mich 303, 311-312; 831 NW2d 223 (2013), our Supreme Court articulated the principles that govern the construction of a statute:

> When interpreting a statute, we follow the established rules of statutory construction, the foremost of which is to discern and give effect to the intent of the Legislature. To do so, we begin by examining the most reliable evidence of that intent, the language of the statute itself. If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted. Effect should be given to every phrase, clause, and word in the statute and, whenever possible, no word should be treated as surplusage or rendered nugatory. Only when an ambiguity exists in the language of the statute is it proper for a court to go beyond the statutory text to ascertain legislative intent. [Citations omitted.]

Michigan Supreme Court." *Fleet Business*, 274 Mich App at 591. Clear and unambiguous language contained in a court rule must be given its plain meaning and is enforced as written. *Id.*

MCR 2.612(C)(1) provides that "[o]n 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 . . . ." (Emphasis added.) And MCR 2.612(C)(3) states that the "subrule does not limit the power of a court to entertain an independent action to relieve a party from a *judgment, order, or proceeding* . . . ." (Emphasis added.) In the instant action, the trial court, absent citation of any authority and any legal analysis, cursorily concluded that the CSA constituted "a resolution of a pre-suit conflict within the language of 'other proceeding' in MCR 2.612(C)(1)."[3] Plaintiff argues that the trial court erred in treating the CSA as a "proceeding" that was subject to the strictures of MCR 2.612. We agree.

We conclude that the plain language of MCR 2.612 contemplates a judgment, order, or proceeding arising out of or connected to an action in court. MCR 2.612(C)(1) speaks of a "party" seeking relief by "motion," which clearly and unambiguously envisions circumstances in which a court took an action during litigation that one of the parties now, by motion, seeks to have set aside for one of the enumerated reasons in MCR 2.612(C)(1). A person challenging a settlement agreement that was reached outside of or untethered to a court proceeding or case could not simply file a "motion" in court. See MCR 2.101(A) and (B) ("There is one form of action known as a 'civil action,' " which "is commenced by filing a complaint with a court."). Consistent with our construction, Black's Law Dictionary (7th ed), p 1221, defines a "proceeding" as "[t]he regular and orderly progression of a *lawsuit*, including all acts and events between the time of commencement and the entry of judgment." (Emphasis added.) Quoting Edwin E. Bryant, *The Law of Pleading Under the Codes of Civil Procedure* (2d ed, 1899), pp 3-4, Black's Law Dictionary further indicates that a "proceeding" is a term " 'used to express the business done in courts.' " *Id.*

In *Farm Bureau Mut Ins Co of Mich v Buckallew*, 471 Mich 940, 940; 690 NW2d 93 (2004), our Supreme Court, in an order, ruled:

> The parties agreed to settle defendant's wrongful death action for $300,000. After defendant dismissed the action, plaintiff refused to pay the agreed settlement amount because it exceeded its no-fault policy limit for the underlying accident, a fact that neither party realized when they settled. The parties' settlement *and dismissal of the earlier action* took the place of a court judgment, and for purposes of this case was tantamount to a judgment. As such, plaintiff must seek relief under the principles set forth in MCR 2.612, governing relief from judgment. But the facts of this case do not warrant such relief. Plaintiff's mistake in understanding its own policy is not a mistake or excusable neglect that can be a basis for relief under MCR 2.612(C)(1)(a). [Emphasis added.]

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[3] Contrary to the trial court's statement, the word "other" is not contained in MCR 2.612(C)(1).

In *Buckallew*, the probate court had approved the settlement agreement, and the circuit court entered an order dismissing the action on the basis of the settlement agreement. *Farm Bureau Mut Ins Co of Mich v Buckallew*, 262 Mich App 169, 173; 685 NW2d 675 (2004), vacated 471 Mich 940 (2004). Here, we had no court involvement whatsoever with respect to the dispute between the parties, the facilitation, and the CSA. Thus, the Supreme Court order in *Buckallew* is entirely inapposite for our purposes.

We reverse and remand for the trial court to entertain and resolve the arguments that defendant did raise in her motion for summary disposition.[4] We do not retain jurisdiction. Having fully prevailed on appeal, plaintiff may tax costs under MCR 7.219.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ Mark T. Boonstra

[4] It is clear to us that the trial court decided this case on the basis of MCR 2.612, but to the extent that the court additionally found that the release barred plaintiff's claims, the court's ruling was cursory and superficial, failing entirely to address any of plaintiff's arguments that the release was unenforceable. The trial court is free to expand on the matter on remand.