

STATE OF MICHIGAN
COURT OF APPEALS

PHILLIP E. BYERS

Plaintiff-Appellant,

v

CAROLENE L. BYERS,

Defendant-Appellee.

UNPUBLISHED
November 1, 1996

No. 174746
LC No. 93-320484

Before: Wahls, P.J., and Cavanagh and J.F. Kowalski,* JJ.

PER CURIAM.

Plaintiff appeals by right the judgment granting him a divorce from defendant and ordering him to pay alimony to defendant. We affirm.

Plaintiff first argues that the circuit court erred by refusing to remand the case to the mediator. We disagree.

The parties to a divorce may agree to submit their disputed issues to binding mediation or arbitration, including issues of property division, child support and child custody. *Frain v Frain*, 213 Mich App 509, 510; 540 NW2d 741 (1995); *Dick v Dick*, 210 Mich App 576, 582-583, 588; 534 NW2d 185 (1995). A mediation award is subject to judicial review for fraud or duress and for whether the mediator exceeded his/her powers. MCR 3.602(J)(1)(c); *Frain, supra* at 511. Absent a showing of fraud, duress or an extension of the mediator's powers, a court is unable to review a mediator's decision. *Frain, supra* at 511.

The facts of this case fall squarely within the facts of *Frain*. Here, following mediation, plaintiff asked the trial court to remand the case to the mediator for further proceedings on the alimony issue because plaintiff believed the mediator had not understood how much monthly income defendant was to receive from the property she was awarded from the marital estate. Plaintiff was essentially arguing that the mediator erred in awarding defendant \$2000 a month in alimony in light of the substantial income she was to receive from other sources. This issue is not one that can be reviewed by the trial court. *Frain*,

* Circuit judge, sitting on the Court of Appeals by assignment.

supra at 512. Nowhere did plaintiff allege fraud, duress, or that the mediator had exceeded her powers. As such, the trial court properly declined to remand the case to the mediator and entered the judgment of divorce in accord with the mediator's determinations. *Id.* at 511.

In light of this holding, we need not address whether the award of alimony to defendant was appropriate. The mediator had the authority to award alimony and therefore the lower court properly entered the judgment of divorce which, in part, granted defendant \$2000 a month in alimony.

Affirmed.

/s/ Myron H. Wahls

/s/ Mark J. Cavanagh

/s/ John F. Kowalski