

STATE OF MICHIGAN
COURT OF APPEALS

JOHN HENNING, Next Friend of JEREMY
HENNING, Minor,

UNPUBLISHED
December 23, 1997

Plaintiff-Appellant,

v

No. 194833
Monroe Circuit Court
LC No. 95-003321 NO

JEFFREY GEIMAN and CARRIE GEIMAN,

Defendants-Appellees.

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right from a circuit court order dismissing his negligence action and granting defendants' motion to enforce a settlement agreement. We reverse and remand.

Plaintiff argues that the trial court erroneously granted the motion to enforce the settlement agreement because the agreement is invalid in light of the fact that the agreement is not in writing or was not made in open court. MCR 2.507(H). Plaintiff's reliance on MCR 2.507 (H) is misplaced. The court rule applies to settlements of pending court actions. MCR 2.507(H); *Walbridge Aldinger Co v Walcon Corp*, 207 Mich App 566, 571; 525 NW2d 489 (1994); 3 Martin, Dean & Webster, Michigan Court Rules Practice (3d ed Cum Supp), p 29. In the instant case, assuming an agreement existed, it was entered into before the instant suit was filed. Therefore, MCR 2.507(H) has no application in this case.

Plaintiff also argues that the trial court erroneously determined that an enforceable oral compromise and settlement agreement exists because the evidence presented to the court established the existence of a genuine issue of material fact with regard to whether plaintiff had accepted the settlement offer made by defendants' insurer. Plaintiff's argument overlooks the general rule that a parent has no authority, merely by virtue of being a parent, to waive, release, or compromise claims by or against the parent's child. *Smith v YMCA of Benton Harbor/St Joseph*, 216 Mich App 552, 554; 550 NW2d 262 (1996). Accordingly, even if plaintiff accepted the offer of settlement, the settlement required the approval of the probate court, after a hearing, based on a finding that the compromise is

made in good faith, with full disclosure of all pertinent facts. *Hammond v Weiss*, 46 Mich App 717; 208 NW2d 578 (1973), and cases cited therein. Where the child's legal representatives have had neither legal nor medical counsel, the probate court could hardly lend its imprimatur to the agreement reached in this case, assuming there was an agreement. Because the agreement is not a binding contract until approved by the probate court, plaintiff could renounce the agreement at any time. Accordingly, the court erroneously granted summary disposition in favor of defendants.

Reversed and remanded. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie

/s/ Harold Hood

/s/ Joel P. Hoekstra