

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PAUL PALASZEK, MICHAEL ZAVICAR,  
KAREN ZAVICAR, MARJORIE STEVENS and  
SHIRLEY DRUMM,

UNPUBLISHED  
June 14, 2005

Plaintiffs/Counterdefendants-  
Appellants/Cross-Appellees,

and

DEBORAH BICKERSTAFF, ALBA RUNDLE,  
JAY DRUMM, DUANE DILLEY, NANCY  
DILLEY, SCOTT TUCKER, BETTY DESHLER,  
NANCY YEAGHER and MAURINE WALLACE,

Plaintiffs/Counterdefendants/Cross-  
Appellees,

and

ANNABELL RAQUEL PABOLO,

Intervening Plaintiff,

v

ANNALLIECE ARMSTRONG and  
ANNALLIECE ARMSTRONG TRUST,

Defendants/Counterplaintiffs-  
Appellees/Cross-Appellants,

and

STELLA BINNS,

Defendant.

No. 252715  
Lenawee Circuit Court  
LC No. 98-007981-CH

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Before: Talbot, P.J., and Zahra and Donofrio, JJ.

PER CURIAM.

Plaintiffs appeal as of right a consent judgment with defendant, Annalliece Armstrong,<sup>1</sup> in this land dispute. Defendant cross-appeals the consent judgment. We affirm in part, vacate in part, and remand.

Plaintiffs and defendant both contend that the consent agreement entered by the trial court on November 26, 2003, is not an accurate reflection of the agreement entered on the record during the settlement hearing on May 29, 2002. A court's factual findings are reviewed for clear error. *Westlake Transportation, Inc v Public Service Comm*, 255 Mich App 589, 611; 662 NW2d 784 (2003). A finding is clearly erroneous when, although there is evidence to support it, upon reviewing the entire record, the appellate court is left with a definite and firm conviction that a mistake was made. *Id.* If the trial court's factual findings are not clearly erroneous, then this Court must resolve whether the trial court's dispositional ruling was just and equitable in light of those factual findings. *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992).

A settlement agreement made in open court is binding. MCR 2.507(H); *Mikonczyk v Detroit Newspapers, Inc*, 238 Mich App 347, 349; 605 NW2d 360 (1999). General contract legal principles govern an agreement to settle a pending lawsuit. *Mikonczyk, supra* at 349. Honoring the intent of the parties is the primary goal in contract interpretation. *Id.*

“In Michigan, the essential elements of a valid contract are (1) parties competent to contract, (2) a proper subject matter, (3) a legal consideration, (4) mutuality of agreement, and (5) mutuality of obligation.” *Thomas v Leja*, 187 Mich App 418, 422; 468 NW2d 58 (1991). Mutuality of agreement, commonly referred to as “a meeting of the minds,” requires a meeting of the minds on all the material facts in order to form a valid agreement. *Kamalnath v Mercy Memorial Hosp Corp*, 194 Mich App 543, 548-549; 487 NW2d 499 (1992). Whether there is mutuality of agreement or “a meeting of the minds” is reviewed by an objective standard, viewing the expressed words of each party and their visible acts, rather than their subjective states of mind. *Kamalnath, supra* at 548. The time to incorporate desired terms and conditions into the settlement agreement is at the time that it is placed onto the record. *Mikonczyk, supra* at 350.

In this case, 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 parties attempted to reduce to writing what had been settled in the record. The parties at that time realized that they had a meeting of the minds on most of the essential facts, but had not reached an agreement regarding who owned the remainder of the road. The trial court attempted to write its own agreement where it incorporated facts from an earlier motion that indicated that plaintiffs would concede to defendant owning the road if defendant could produce the appropriate documentation.

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<sup>1</sup> Annalliece Armstrong and Annalliece Armstrong Trust are both listed as defendants, but because Annalliece Armstrong represents the rights of both parties individually, we will refer to these parties jointly as “defendant.”

With this understanding, the trial court awarded the ownership of the remainder of the road that the parties did not agree upon to defendant.

A party's attorney's apparent authority may be used in a settlement agreement to settle the claim. *Nelson v Consumers Power Co*, 198 Mich App 82, 89-90; 497 NW2d 205 (1993). It is not necessary that the party give express consent. *Id.* at 90. However, the court stated in its opinion that at a motion hearing on November 6, 2000, on page 12 of the transcript, plaintiffs' counsel agreed that he would concede to defendant's ownership of the property at issue if defendant could provide the documentation conveying to defendant the property in question. This was not part of the consent agreement entered into on May 29, 2002. The trial court did not reduce the consent agreement to writing, but rather substituted arguments made years previously to fill in gaps in the consent agreement. To the extent that facts in the consent judgment that the trial court entered are not supported by the May 29, 2002, record, the consent judgment must be vacated and this case remanded for disposition of those material issues not decided on May 29, 2002.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael J. Talbot

/s/ Brian K. Zahra

/s/ Pat M. Donofrio