

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

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SALIM SHIANA,  
Plaintiff-Appellant,

v

ANN SHIANA,  
Defendant-Appellee.

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UNPUBLISHED  
December 18, 2014

No. 318753  
Macomb Circuit Court  
Family Division  
LC No. 2012-004919-DM

SAAD SAAD,  
Plaintiff-Appellee,

v

SALIM SHIANA,  
Defendant-Appellant,  
and  
ANN SHIANA,  
Defendant-Appellee.

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No. 319416  
Macomb Circuit Court  
LC No. 2012-004749-CH

Before: DONOFRIO, P.J., and FORT HOOD and SHAPIRO, JJ.

PER CURIAM.

In Docket No. 318753, plaintiff Salim Shiana (“Salim”) appeals by leave granted<sup>1</sup> a

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<sup>1</sup> *Shiana v Shiana*, unpublished order of the Court of Appeals, entered May 1, 2014 (Docket No. 318753).

judgment of divorce against Salim's former wife, Ann Shiana ("Ann").<sup>2</sup> In Docket No. 319416, defendant Salim appeals by right an order granting plaintiff Saad Saad ("Saad") and third-party defendant Ann summary disposition in a property dispute. We reverse and remand.

These consolidated<sup>3</sup> cases involve a dispute between husband Salim, wife Ann, and Ann's son (Salim's step-son), Saad. While the parties were married, but without Salim's knowledge, Ann gifted Saad money to purchase a condominium. In 2012, Salim filed for divorce from Ann, and filed a notice of *lis pendens* relating to Saad's property, which allegedly rendered Saad's property unmarketable. Saad then filed an action against Salim to quiet title to his real property. Salim counterclaimed for fraud and civil conspiracy, and joined Ann as a third-party defendant. Subsequently, Ann and Salim settled their divorce case at a settlement conference. A judgment was entered, which contained a mutual release of claims. Ann and Saad then used the mutual release of claims in the judgment of divorce as a basis for summary disposition in the property case, and that case was dismissed. On appeal, Salim argues that in the divorce case, Ann agreed that the divorce judgment would not impact the property case, and that he never agreed to the mutual release of claims provision included in the judgment. The trial court in the property case further erred by relying on the erroneous portion of the judgment of divorce in granting summary disposition and dismissing the case.

In docket number 318753, Salim argues that the trial court erred in entering a divorce judgment that did not comport with Salim's and Ann's settlement agreement.<sup>4</sup> We agree.

The interpretation of a settlement agreement is construed as a contract, which involves a question of law that we review *de novo*. *Myland v Myland*, 290 Mich App 691, 700; 804 NW2d 124 (2010), citing *MacInnes v MacInnes*, 260 Mich App 280, 283; 677 NW2d 889 (2004). "The finding of the trial court concerning the validity of the parties' consent to a settlement agreement will not be overturned absent a finding of an abuse of discretion." *Lentz v Lentz*, 271 Mich App 465, 474-475; 721 NW2d 861 (2006) (citation omitted). We also review a court's decision on a motion for reconsideration for an abuse of discretion. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 629; 750 NW2d 228 (2008). We review underlying findings of fact for clear error. *Vittiglio v Vittiglio*, 297 Mich App 391, 400; 824 NW2d 591 (2012).

MCR 2.507(F) provides:

Agreements to be in Writing. An agreement or consent between the parties or their attorneys respecting the proceedings in an action is not binding *unless it was*

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<sup>2</sup> For clarity, the parties are referred to by their first names.

<sup>3</sup> *Shiana v Shiana*, unpublished order of the Court of Appeals, entered May 1, 2014 (Docket No. 318753); *Saad v Shiana*, unpublished order of the Court of Appeals, entered May 1, 2014 (Docket No. 319416).

<sup>4</sup> Ann argues that Salim failed to preserve this argument because he relied on MCR 2.507(G), which does not exist. However, it is clear that Salim was referencing MCR 2.507(F) because he quoted the court rule. Therefore, we do not agree that Salim failed to preserve this issue.

*made in open court*, or unless evidence of the agreement is in writing, subscribed by the party against whom the agreement is offered or by that party's attorney. [Emphasis added.]

In other words, an agreement to settle a pending lawsuit is a contract that becomes binding once entered into on the record. *In re Draves Trust*, 298 Mich App 745, 767; 828 NW2d 83 (2012). "Settlements, duly arrived at by the parties and placed on the record in open court in the presence of counsel, are entitled to a high degree of finality." *Tinkle v Tinkle*, 106 Mich App 423, 428; 308 NW2d 241 (1981). It is well-settled that, with regard to both written agreements and settlements placed verbally on the record, parties to a divorce action are bound by their settlement agreements in the absence of fraud, duress, or mutual mistake. *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990). This Court can also modify judgments to rectify mistakes, interpret ambiguities, and alleviate inequities. *Hagen v Hagen*, 202 Mich App 254, 258; 508 NW2d 196 (1993).

In the current case, the parties entered into an agreement on the record pursuant to MCR 2.507(F). The parties were put under oath, agreed to the terms placed on the record, and the court informed both parties that the terms were binding and would later be incorporated into a judgment.<sup>5</sup> Here, neither party is claiming fraud, duress, or mutual mistake. Rather, the dispute involves the interpretation of the terms of the settlement agreement as placed on the record.

Michigan law requires that the parties' settlement agreement, placed on the record at the settlement conference, be interpreted pursuant to the legal principles governing contract interpretation. "A settlement agreement, such as a stipulation and property settlement in a divorce, is construed as a contract." *MacInnes*, 260 Mich App at 283. The same legal principles that govern the construction and interpretation of contracts govern the parties' purported settlement agreement in a divorce case. See *id.* "Generally, contracts between consenting adults are enforced according to the terms to which the parties themselves agreed." *Lentz*, 271 Mich App at 471 (citation omitted). A stipulation of the parties must be reflected in the final judgment of divorce. *Kline v Kline*, 92 Mich App 62, 71-73, 79; 284 NW2d 488 (1979).

The primary goal in contract interpretation is to honor the intent of the parties. *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 491; 579 NW2d 411 (1998). "A contract must be interpreted according to its plain and ordinary meaning." *Woodington v Shokoohi*, 288 Mich App 352, 373; 792 NW2d 63 (2010) (citation omitted). "A contract is ambiguous if it allows two or more reasonable interpretations, or if the provisions cannot be reconciled with each other." *Id.* at 374. "[I]f contractual language is clear, construction of the contract is a question of law for the court." *Id.*

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<sup>5</sup> In her brief, Ann stated that "the agreement repeatedly referenced by [Salim] was never actually made. Although the terms of a possible settlement agreement were discussed by the parties, the settlement agreement was never entered by the Court." We disagree. The attorneys clearly put the terms on the record, and the parties agreed, under oath, to be bound by the terms.

Salim contends that the parties agreed that the settlement of the divorce action would not resolve the property case. Salim bases his argument on the transcript from the settlement conference. At the conference, the family court asked Salim's attorney if there was anything that required clarification. Salim's attorney referenced the property case pending between Salim, Ann, and Saad. He stated "The case will continue to go on." The following exchange occurred:

*The court.* Well, this litigation will in no way impact that because it's not part of the marital estate.

*Salim.* We just want to make sure that the judgment or this settlement does not dispose of that claim, and that claim is something that we will continue to maintain.

*The court.* I can't see how it would. Ms. Lujan [Ann's attorney], can you see any way that it would?

*Ann.* The item of property is titled in my client's son's name, neither party are on the title, and it's a separate lawsuit. So it has –

*The court.* It's not part of the marital estate?

*Ann.* – no relevance to the marital estate or this issue, *no*. [Emphasis added.]

Salim argues that, based on this exchange, the parties agreed that the settlement of the divorce action would not resolve the property case between Saad and the parties.<sup>6</sup> A contract must be interpreted according to its plain and ordinary meaning. *Woodington*, 288 Mich App at 373. Based on the record, we agree with Salim that the conversation was unambiguous. Salim's intent to include such a term is clear from his attorney's statement. The court then asked Ann's attorney whether she thought that the divorce case would dispose of the property case, and Ann's attorney stated "no." While Ann's attorney statements before she said "no," may seem unclear, her definite "no" as the end of her statement indicates that she did not believe that the divorce case would have any impact on the property case, and, thus, effectively acquiesced to Salim's request. This is further supported by the trial court's subsequent refusal to further discuss or argue the issue. Moreover, Ann's later actions are contradictory to her statement at the settlement conference. Despite stating on the record that she could see no way the divorce case would impact the property case, she quickly used the judgment to dismiss the property case. Therefore, Ann knew that the divorce judgment was extremely relevant to the property case, but still stated on the record that it was not. Based on the plain language from the settlement

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<sup>6</sup> We note that the trial court never made any findings of fact or dispositive ruling regarding this term. In denying Salim's motion to modify the judgment, the court only stated that "[i]t's not unusual to disagree about what the settlement was." After receiving the transcript, the family court gave no explanation for denying Salim's motion for reconsideration.

conference, we conclude that the parties agreed to a term in the judgment that the property case would be unaffected by the divorce case.

Salim also contends that the judgment of divorce improperly contained a mutual release of claims provision to which Salim never agreed. An agreement to a mutual release of claims was never put on the record during the settlement conference. There was no record made on the day the judgment was entered, but a judgment of divorce was entered without Salim's or Salim's attorney's signature. MCR 2.602(B) provides that an order or judgment may be entered under the following circumstances:

(1) The court may sign the judgment or order at the time it grants the relief provided by the judgment or order.

(2) The court shall sign the judgment or order when its form is approved by all the parties and if, in the court's determination, it comports with the court's decision.

(3) Within 7 days after the granting of the judgment or order, or later if the court allows, a party may serve a copy of the proposed judgment or order on the other parties, with a notice to them that it will be submitted to the court for signing if no written objections to its accuracy or completeness are filed with the court clerk within 7 days after service of the notice. The party must file with the court clerk the original of the proposed judgment or order and proof of its service on the other parties.

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(4) A party may prepare a proposed judgment or order and notice it for settlement before the court.

Here, none of these procedures were followed. Salim never agreed to the judgment pursuant to MCR 2.602(B). Moreover, while there appears to have been a court date scheduled for April 18, 2013, no record exists to verify what happened on that date.<sup>7</sup> Therefore, it was improper for the court to enter the judgment that included a term not included in the parties' settlement agreement. The judgment must reflect the terms agreed to by the parties. *Kline*, 92 Mich App at 71-73, 79. Moreover, a mutual release of claims is not a requirement for divorce judgments, and the record is clear that Salim would not have agreed to such a release. See *Gramer v Gramer*, 207 Mich App 123, 125; 523 NW2d 861 (1994). Therefore, the trial court erred in entering the

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<sup>7</sup> Ann claims that Salim forfeited his right to object to the terms of the judgment because he did not attend the scheduled court date. However, again, there is no record from that date explaining the events or verifying either party's attendance. Moreover, it appears that Salim's attorney came to court at the wrong time, and was permitted by the court to participate in the proceedings by phone. Moreover, even had Salim not attended, the judgment would have been more properly entered as a seven-day order pursuant to MCR 2.602(B)(3).

judgment with that clause, and we remand to strike that clause from the judgment. *Kline*, 92 Mich App at 79.

In docket number 319416, Salim first argues that the trial court erred in granting Ann's motion for summary disposition pursuant to MCR 2.116(C)(7) in the property case based on the mutual release provision in the judgment of divorce. We agree.

Ann moved for summary disposition pursuant to MCR 2.116(C)(7). This Court reviews de novo an order granting or denying summary disposition. *Nuculovic v Hill*, 287 Mich App 58, 61; 783 NW2d 124 (2010).

MCR 2.116(C)(7) provides that summary disposition is appropriate when:

Entry of judgment, dismissal of the action, or other relief is appropriate because of *release*, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate or to litigate in a different forum, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action. [Emphasis added.]

The trial court granted summary disposition on the basis of the mutual release of claims in the judgment of divorce. Pursuant to the discussion regarding the judgment of divorce, *supra*, the judgment should have included a term that the property case would not be disposed of based on the judgment of divorce and the mutual release of claims was erroneously included in the judgment. Therefore, we reverse the trial court order granting summary disposition, and remand for further proceedings.

Salim next argues that the trial court erred in granting summary disposition to Saad because Saad never properly filed a motion with the court. However, we decline to address this argument because Salim failed to preserve this issue in the trial court proceeding. Salim did not raise these issues in the trial court, so they are unpreserved. *Michigan's Adventure, Inc v Dalton Twp*, 290 Mich App 328, 330 n 1; 802 NW2d 353 (2010). An appellate court is only obligated to review issues that are properly raised and preserved. *Mich Ed Ass'n v Secretary of State*, 280 Mich App 477, 488; 761 NW2d 234 (2008), *aff'd* 489 Mich 194 (2011).

Finally, Salim argues that the trial court erred in granting Saad summary disposition because the trial court lacked the grounds for summary disposition pursuant to MCR 2.116(I). We disagree that the trial court lacked authority to grant Saad summary disposition pursuant to MCR 2.116(I). MCR 2.116(I)(1) provides that "if the pleadings show that a party is entitled to judgment as a matter of law, or if the affidavits or other proofs show that there is no genuine issue of material fact, the court shall render judgment without delay." MCR 2.116(I)(1) permits a trial court to sua sponte grant summary disposition, so long as one of the two conditions in the rule is satisfied. *Al-Maliki v LaGrant*, 286 Mich App 483, 485; 781 NW2d 853 (2009). Here, the trial court would have had the authority to grant Saad summary disposition to MCR 2.116(I). However, the terms of the judgment of divorce relied on by the trial court in granting Saad summary disposition were improper, and the trial court's order granting summary disposition on that basis should be reversed.

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

/s/ Pat M. Donofrio  
/s/ Karen M. Fort Hood  
/s/ Douglas B. Shapiro