

STATE OF MICHIGAN
COURT OF APPEALS

GERALDINE BLANCHE FRANK,
Plaintiff-Appellant,

UNPUBLISHED
May 17, 2011

v

THOMAS LEONARD FRANK,
Defendant-Appellee.

No. 295428
Saginaw Circuit Court
LC No. 1991-046958-DO

Before: DONOFRIO, P.J., and BECKERING and SHAPIRO, JJ.

PER CURIAM.

In this divorce action, plaintiff appeals as of right the trial court's order denying her motion to set aside the property settlement placed on the record in 2000. We affirm.

I

Plaintiff initiated divorce proceedings in Saginaw County on November 19, 1991. The State Court Administrator's Office assigned the case to Judge Timothy Green of the 29th Circuit Court after all Saginaw County judges disqualified themselves on the ground that defendant was a member of the Saginaw County Bar Association.

Following a period of inactivity for unknown reasons, Judge Jeffrey L. Martlew (Judge Green's successor) entered a scheduling order on June 10, 1993. An order for temporary spousal support, health care coverage, and partial attorney fees was entered on June 22, 1993.

There was no significant activity in the case again until September 15, 1999, when an amended scheduling order and notice of trial was signed by the court. The parties appeared for trial and placed a settlement of all issues on the record on February 15, 2000. For health insurance purposes, the parties requested entry of a judgment of separate maintenance.¹ The trial court placed both parties under oath and verified that they had placed the full and final settlement

¹ The parties intended that the separate maintenance agreement would last for three years, at which time they could petition the court for the entry of an absolute judgment of divorce.

on the record and agreed to its provisions.² The parties agreed that a settlement document would be signed by the court and sealed, and that the judgment would be part of the public record. Defendant was to prepare a judgment of separate maintenance, which he never completed. All subsequent proceedings, and this appeal, originate from this proceeding.

In 2008, plaintiff requested copies of portions of the case file and filed motions for discovery and transcripts. Discovery began and in July 2009 a settlement conference was conducted in chambers. On August 13, 2009, plaintiff filed a motion for enforcement of a temporary order regarding spousal support and to set aside the 2000 settlement. Following failed attempts by the parties to agree to the terms of a judgment, the trial court drafted its own judgment, dated February 15, 2009, based on the settlement transcript. The separate maintenance agreement was changed to a judgment of divorce. Treating the motion to set aside as a motion to amend the judgment, the trial court thereafter denied plaintiff's motion.

II

Plaintiff argues on appeal that the trial court erroneously failed to exercise its discretion regarding the equity of the property distribution before entering the judgment of divorce. We disagree.

The interpretation of the parties' agreement presents a question of law subject to de novo consideration on appeal, *MacInnes v MacInnes*, 260 Mich App 280, 283; 677 NW2d 889 (2004), while "[t]he 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), quoting *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990).

Divorce proceedings are equitable in nature. *Draggoo v Draggoo*, 223 Mich App 415, 428; 566 NW2d 642 (1997). "[A] court of equity molds its relief according to the character of the case; once a court of equity acquires jurisdiction, it will do what is necessary to accord complete equity and to conclude the controversy." *Id.* (citations omitted). A divorce judgment entered by consent is in the nature of a contract, and it must be construed and applied as such. *MacInnes*, 260 Mich App at 289. Absent fraud, coercion, or duress, unambiguous contracts are not open to judicial construction and must be enforced as written. *Lentz*, 271 Mich App at 471-472. However, the court can clarify ambiguous language provided it does not change the substantive rights of the parties. *Bers v Bers*, 161 Mich App 457, 464; 411 NW2d 732 (1987).

² The settlement terms were placed on the record by defendant and included a provision that there would be "no alimony now or in the future." Plaintiff was represented by her attorney at the hearing, and she twice replied affirmatively when questioned whether she was satisfied with the terms of the settlement. She also confirmed that she understood and had no questions concerning the provisions of the settlement.

The trial court did not err by refusing to review the parties' 2000 property settlement to determine whether it was equitable. This Court previously concluded that no reason exists to alter a property settlement entered into by consenting adults in anticipation of separation or divorce. *Lentz*, 271 Mich App at 471-472, 478. "Absent fraud, coercion, or duress, the adults in the marriage have the right and the freedom to decide what is a fair and appropriate division of the marital assets, and our courts should not rewrite such agreements." *Id.* at 472. Plaintiff's argument that such a settlement should be reviewed to determine whether it is equitable is unsupported by case law and would eviscerate the rule that contracts entered into by adults should be enforced as written. The trial court did not err by refusing to perform such a review.

III

Plaintiff next argues that the trial court erred by denying her motion to set aside the divorce judgment. Plaintiff asserts that the 2000 property settlement placed on the record was vague and that the trial court abused its discretion by declining to take evidence on her allegation that the property settlement was unconscionable.

"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 a contract govern the parties' purported settlement agreement in a divorce case. *Id.* This Court reviews a trial court's decision to grant or deny relief from a judgment for an abuse of discretion. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 404; 651 NW2d 756 (2002).

The property settlement is not vague. The statement that "the total amount of money that the plaintiff would receive would be the total sum of \$169,000[]" is clear and not open to interpretation. Plaintiff claims she received little money for the sale of certain properties due to the accrual of significant debt. There is no evidence that defendant concealed such information. Plaintiff's allegation regarding the charge of capital gains following the sale of the market and real property, with no distribution of proceeds following same, has no relevance in relation to whether the property settlement agreement is vague and ambiguous. Plaintiff attempts to parse words on the record to create a vagueness or ambiguity that simply does not exist. Finally, plaintiff was represented by her attorney at the 2000 hearing and she twice replied affirmatively when questioned whether she was satisfied with the property settlement. As there is no evidence of fraud, duress, or mutual mistake, the settlement agreement must be upheld. *Lentz*, 271 Mich App at 474-475; *Keyser*, 182 Mich App at 269-270.

In arguing that the property settlement was unconscionable, plaintiff asserts that certain facts, as well as the current values of certain assets awarded to the parties, demonstrates that she did not receive an equitable share of same. Her argument on appeal is simply an attempt to avoid the effect of the stipulation and to regain that which she forfeited by agreeing to it. At the time the property settlement was placed on the record, there was no assertion by plaintiff that the

agreement was unconscionable.³ Moreover, while a trial court may in rare circumstances have equitable powers to do justice by setting aside a judgment despite prejudice to the opposing party, see, generally, *Heugel v Heugel*, 237 Mich App 471; 603 NW2d 121 (1999), it may generally do so only in the presence of extraordinary circumstances when the judgment was obtained due to the improper conduct of a party, *Rose v Rose*, 289 Mich App 45, 62; ___ NW2d ___ (2010). There are no such facts present in this case. Moreover, the property settlement was placed on the record nine years before plaintiff filed her motion to set aside the settlement. Such a lapse in time makes review of the circumstances surrounding placement of the settlement on the record difficult at best. The trial court did not abuse its discretion by denying plaintiff's request to conduct an evidentiary hearing.

Affirmed.

/s/ Pat M. Donofrio
/s/ Jane M. Beckering
/s/ Douglas B. Shapiro

³ See *Northwest Acceptance Corp v Almont Gravel, Inc*, 162 Mich App 294, 300; 412 NW2d 719 (1987); 8 Williston, Contracts (4th ed), § 18:12, pp 77-80 (footnote omitted) (“The determination of whether a given clause or contract is in fact unconscionable is to be made at the time of its making rather than at some subsequent point in time (e.g., at the time for performance) . . .”).