

STATE OF MICHIGAN
COURT OF APPEALS

GLORIA EVE GORNY-VANHOUTEGHEN,

Plaintiff-Appellant,

v

VICTOR RUSSELL VANHOUTEGHEN,

Defendant-Appellee.

UNPUBLISHED

December 1, 1998

No. 202321

Washtenaw Circuit Court

LC No. 94-002000 DM

Before: Sawyer, P.J., and Wahls and Hoekstra, JJ.

MEMORANDUM.

Plaintiff appeals as of right from the entry of a judgment of divorce. Plaintiff asserts that the trial court erred when it refused to include two terms of the parties' property settlement agreement in the judgment. We agree. This case is being decided without oral argument pursuant to MCR 7.214(E).

A trial court is bound by a property settlement reached through agreement by the parties to a divorce action, absent fraud, duress, mutual mistake, or stress sufficiently severe so as to prevent a party from understanding in a reasonable manner an effect of the act in which the party was engaged. *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990). This rule applies where the settlement is orally entered on the record and consented to by the parties, even though not yet formally entered as part of the divorce judgment by the trial court. *Id.* at 270. However, where the property settlement is ambiguous, the court may exercise its inherent powers to interpret and clarify the terms of the settlement so long as the clarification does not alter the substantive rights of the parties. *Bers v Bers*, 161 Mich App 457, 464; 411 NW2d 732 (1987). Ambiguity is not synonymous with incompleteness; therefore, where the agreement is incomplete, the court may not add terms to the agreement and create a property settlement for the parties that they did not make for themselves. See, e.g., *Marshall v Marshall*, 135 Mich App 702, 709-711; 355 NW2d 661 (1984).

The settlement placed orally on the record in this case lacks any mention of the consequences plaintiff would suffer if she failed to supply the supportive documentation within the three-week period agreed to by the parties. Because the settlement contained no sanction provision, the settlement was incomplete. The trial court lacked the authority to read into the settlement a forfeiture provision and,

thereby, to modify the settlement by striking from the originally proposed divorce judgment the credits to which the parties agreed plaintiff was entitled. See *Marshall, supra*. Accordingly, we reverse the decision of the court and remand so that the judgment may be modified to include paragraphs seven and eight as originally drafted and proposed by plaintiff.

We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Myron H. Wahls

/s/ Joel P. Hoekstra