

[Cite as *Colosimo v. Colosimo*, 2009-Ohio-3892.]

# Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA

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JOURNAL ENTRY AND OPINION  
**No. 91883**

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**MICHAEL T. COLOSIMO**

PLAINTIFF-APPELLANT

vs.

**KATHY COLOSIMO**

DEFENDANT-APPELLEE

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**JUDGMENT:  
AFFIRMED**

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Civil Appeal from the  
Cuyahoga County Court of Common Pleas  
Domestic Relations Division  
Case No. CV-D-294209

**BEFORE:** Rocco, J., Cooney, A.J., and Kilbane, J.

**RELEASED:** August 6, 2009

**JOURNALIZED:  
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N.B. This entry is an announcement of the court's decision. See App.R. 22(B) and 26(A); Loc.App.R. 22. This decision will be journalized and will become the judgment and order of the court pursuant to App.R. 22(C) unless a motion for reconsideration with supporting brief, per App.R. 26(A), is filed within ten (10) days of the announcement of the court's decision. The time period for review by the Supreme Court of Ohio shall begin to run upon the journalization of this court's announcement of decision by the clerk per App.R. 22(C). See, also, S.Ct. Prac.R. II, Section 2(A)(1).

KENNETH A. ROCCO, J.:

{¶ 1} Plaintiff-appellant, Michael T. Colosimo, appeals from domestic relations court orders that denied his motion to dismiss and his motion to set aside the parties' in-court agreement and that approved a judgment entry submitted by appellee's counsel. Appellant argues that these decisions were erroneous or an abuse of discretion, and that the court erred or abused its discretion by failing to conduct a hearing on his objections to the judgment entry submitted by appellee's counsel. We find no error or abuse of discretion in the proceedings below, and affirm the trial court's judgment.

#### Procedural History

{¶ 2} Appellant filed his complaint for divorce on August 6, 2003; appellee answered and counterclaimed for divorce. On January 29, 2004, the magistrate ordered appellant to pay appellee support pendente lite for the parties' four minor children. In addition, the court ordered appellant to pay the mortgage payment, real estate taxes and homeowner's insurance on the marital home, utility bills, and the lease payments and automobile insurance on appellee's vehicle. Appellant agreed to continue the oral hearing on this temporary support order until the final hearing.

{¶ 3} The trial date was rescheduled several times. In April 2007, the trial judge recused himself, vacated all prior trial testimony, and reassigned the matter to a visiting judge. The court also allowed appellant's attorney to withdraw. Appellant

entered an appearance pro se on July 11, 2007. The new judge ultimately scheduled the matter for trial on May 23, 2008.

{¶ 4} On May 27, 2008, the parties explained the terms of their agreement to settle this case in an oral hearing before the court and the court approved the settlement. The court directed appellee's attorney to submit journal entries by June 27, 2008, but later extended this deadline to July 25, 2008. Appellee's counsel hand-delivered a proposed judgment entry to appellant on July 18, 2008. An amended proposed entry was hand-delivered to appellant on July 21, 2008.

{¶ 5} On July 24, 2008, new counsel entered an appearance on appellant's behalf and moved to set aside the in-court agreement and to dismiss the action. The court denied these motions and entered judgment granting the parties' divorce, awarding custody of the parties' two minor children to appellee and awarding visitation to appellant, ordering appellant to pay child support and spousal support, and dividing the parties' property. Appellant now appeals from these orders.

#### Law and Analysis

{¶ 6} Appellant first complains that the trial court erred and abused its discretion by denying his motion to dismiss. He asserts that the court should have dismissed the case because appellee did not timely submit a journal entry to the court.

{¶ 7} Under Local Rule 28(B)(6) of the Cuyahoga County Court of Common Pleas, Domestic Relations Division, the failure of a party or his counsel to prepare a judgment entry when ordered or directed to do so by the court "may subject said

party or attorney to the vacating of any award of attorney fees and/or contempt powers of the Court. It may further result in the dismissal of the action.” Appellee’s counsel here prepared a proposed judgment entry and submitted it to appellant within the time allowed by the court. While appellee’s counsel did not meet the court’s original deadline, he obtained an extension and met the deadline as extended.

{¶ 8} In any event, the sanction of dismissal is discretionary, not mandatory. Appellant has not demonstrated that the court abused its discretion by refusing to dismiss the case. The first assignment of error is overruled.

{¶ 9} Second, appellant asserts that the court erred and abused its discretion by denying his motion to set aside the in-court agreement. He claims he entered into the agreement without the benefit of counsel, and the agreement was unjust, unreasonable, and inequitable in several respects.

{¶ 10} Appellant entered an appearance pro se and had been representing himself for more than ten months before he entered into this agreement. He had ample opportunity to retain counsel if he so desired. “[P]ro se civil litigants are held to the same standard as litigants who retain counsel. They are not to be accorded greater rights and must accept the results of their own errors and mistakes. \* \* \* Appellant took the risks of his decision to proceed without counsel.” *DiGuilio v. DiGuilio*, Cuyahoga App. No. 81860, 2003-Ohio-2197, ¶18.

{¶ 11} “Settlement agreements are generally favored in the law. Where parties enter into a settlement agreement in the presence of the trial court, such an

agreement constitutes a binding contract.” *Grubic v. Grubic* (Sept. 9, 1999), Cuyahoga App. No. 73793. “[W]here the parties to a divorce or separation enter into a settlement agreement through an agreed judgment entry, the law of contract applies. *Vasilakis v. Vasilakis* (June 20, 1996), Cuyahoga App. No. 68763, unreported, citing *Dubinsky v. Dubinsky* (Mar. 9, 1995), Cuyahoga App. Nos. 66439, 66440, unreported. Contracts, including settlement agreements, do not need to be fair and equitable to be binding and enforceable, so long as they are not produced by fraud, duress, overreaching or undue influence. *Vasilakis*, supra; *Walther v. Walther* (1995), 102 Ohio App.3d 378.” *Grubic*, supra.

{¶ 12} A party seeking to rescind an in-court settlement must move the court to set aside the agreement, alleging fraud, duress, undue influence or a factual dispute concerning the existence or terms of a settlement agreement. *Grubic*, supra, citing *Mack v. Polson Rubber Co.* (1984), 14 Ohio St.3d 34, 37. Appellant’s motion to set aside the in-court agreement alleged that the agreement was unfair or inequitable in a number of respects, but none of these allegations claimed fraud, duress, or undue influence.<sup>1</sup> Consequently, appellant has not demonstrated that the court erred or abused its discretion by denying his motion to set aside the in-court agreement.

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<sup>1</sup>Only one of appellant’s arguments even conceivably met this standard: the allegation that appellee’s counsel told appellant that appellant could deduct certain expenses on his income tax returns, although appellant later learned that he could not. This allegation does not claim that appellee’s counsel intentionally misled appellant, and thus it does not claim fraud.

{¶ 13} In his third assignment of error, appellant claims the court erred or abused its discretion by failing to hold a hearing on his objections to the journal entry prepared by appellee's counsel. Appellant has not cited any authority requiring the common pleas court to hold a hearing on his objections, and we find none. This court has held that a hearing is required when a party alleges that a settlement agreement was obtained by fraud, duress, or undue influence, or asserts that there is a factual issue concerning the existence or terms of a settlement agreement. *Grubic*, supra; *Roth v. Roth*, Cuyahoga App. No. 89141, 2008-Ohio-927, ¶46; also, see, *Phillips v. Phillips*, Stark App. Nos. 2004CA00105, 2004CA00005, 2005-Ohio-231, ¶27. As noted in our ruling on the second assignment of error, however, appellant has not alleged any fraud, duress, undue influence, or factual issue regarding the existence or terms of a settlement agreement. Appellant also has not alleged that the judgment entry does not accurately reflect the agreement. Therefore, no hearing was required.

{¶ 14} Finally, appellant contends that the trial court erred and abused its discretion by adopting the amended proposed judgment entry even though the terms of the entry were "patently unfair, unjust, and inequitable and the appellant did not have counsel at trial." The trial court here found that the agreement was fair, just, and equitable. Even if this finding was an abuse of discretion, however, it would not require reversal of the judgment. "[T]he court does not have a duty to determine if the agreement is fair and equitable when the parties enter into an in-court settlement agreement." *Szmania v. Szmania*, Cuyahoga App. No. 90346, 2008-Ohio-4091, ¶8.

Appellant's decision to represent himself in settlement negotiations is also not cause for reversal. Therefore, the fourth assignment of error is overruled.

Affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

KENNETH A. ROCCO, JUDGE

COLLEEN CONWAY COONEY, A.J., and  
MARY EILEEN KILBANE, J., CONCUR