STATE OF MICHIGAN

COURT OF APPEALS

STANTON SHEPHERD,

Plaintiff-Appellant,

v

CHRISTINE L. SHEPHERD,

Defendant-Appellee.

UNPUBLISHED
September 6, 2007

No. 270405
Genesee Circuit Court
LC No. 05-259976-DM

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce, arguing that it was improperly entered under the seven-day rule, MCR 2.602(B)(3)(a). We vacate the judgment and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On February 9, 2006, the day scheduled for trial, the parties and their attorneys appeared before the trial court and advised that they had reached an agreement on certain issues, but the financial settlement depended on whether plaintiff and investors could generate the necessary cash. Defense counsel agreed that, "If they can, we have a deal." Defense counsel suggested that they could inform the court "what we have in mind for settlement" and reiterated that the proposed agreement, which required an initial payment of $150,000 by plaintiff and monthly payments for six years totaling an additional $208,000, was "subject to it being feasible." The monthly payments were to be in the form of alimony. Plaintiff's counsel advised, "We're attempting to obtain the funds to pay her $150,000 upfront, Judge." The attorneys discussed the parties' agreement on other issues involving custody and child support, and plaintiff's counsel stated, "I believe that is the extent of our agreement so far." Defense counsel asked the court to require them to come back in 30 days "to take care of the property type issues." The parties were then sworn in and acknowledged that they had heard the agreement that was placed on the record, agreed with the terms stated, and were asking the court to enter an order accordingly. Near the end of the hearing, the trial court asked the attorneys whether they needed an additional 30 days, and the following exchange took place:

> [*DEFENSE COUNSEL*]: That's-yes, Judge, that-to-for them to determine-the other-the other members and investors to determine how to raise the money if that's feasible.
>
> [*PLAINTIFF'S COUNSEL*]: That's correct, your Honor.

THE COURT: How about if I give you 35 days to submit a Judgment?

[*PLAINTIFF'S COUNSEL*]: If we-yes-we're going to attempt to see if obtaining the financing is feasible within the next 30 days, your Honor. So I don't know if we could have-I guess we could have the judgment done. We'll attempt to have the judgment done in 35 days.

THE COURT: I'll allow you 35 days to get me a judgment . . . .

Approximately a week later, on February 17, 2006, defendant served a proposed judgment of divorce on plaintiff pursuant to MCR 2.602(B)(3), "the seven day rule." Plaintiff did not file timely objections and a judgment was signed by the court, dated March 8, 2006.

On March 28, 2006, plaintiff filed a motion to amend the judgment and for relief from judgment because the judgment did not comport with what was placed on the record. He argued that the financial settlement was only a proposed agreement and that the parties were to return in 30 days to take care of the property settlement issues. He advised that a settlement was not feasible because the necessary cash could not be generated. He also claimed that the judgment included terms that were not in the agreement set forth on the record on February 9, 2006.

The trial court denied plaintiff's motion, stating:

> There was a uh-settlement placed on the record. The parties agreed to that settlement as it was placed on the record. There was a Judgment pursuant to that. The Judgment was submitted pursuant to the agreement as placed on the record on February the 9th of 2006. No objections were filed. The Judgment was signed pursuant to the submission of that Judgment. And the court's not going to re-litigate a divorce matter in which the parties agreed upon.

Plaintiff argues that entry of the judgment pursuant to MCR 2.602 was improper because the judgment did not comport with the trial court's decision and included provisions to which the parties did not agree. Whether the judgment was properly entered pursuant to MCR 2.602(B) involves the interpretation and application of court rules, which is a question of law that this Court reviews de novo. *Associated Builders & Contractors v Dep't of Consumer & Industry Services Director*, 472 Mich 117, 123; 693 NW2d 374 (2005).

MCR 2.602(B)(3) states, in relevant part:

> 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.
>
> (a) If no written objections are filed within 7 days, the clerk shall submit the judgment or order to the court, and the court shall then sign it if, in the court's

> determination, it comports with the court's decision. If the proposed judgment or order does not comport with the decision, the court shall direct the clerk to notify the parties to appear before the court on a specified date for settlement of the matter.

The trial court erred in entering the judgment of divorce pursuant to MCR 2.603(B), because the judgment was not based on a decision of the trial court, but rather on an agreement by the parties (as to certain issues). Plaintiff focuses on whether the judgment conformed to the parties' agreement, but the flaw is more fundamental. The seven-day rule applies where the trial court makes a decision, not where the parties present an agreement in open court. "By its own terms, MCR 2.602(B)(3) comes into operation '[w]ithin 7 days *after the granting of the judgment* [or order].'" *Hessel v Hessel*, 168 Mich App 390, 396; 424 NW2d 59 (1988) (emphasis in original). Entry of the order requires that the proposed order "comport[] with the court's decision . . . ." MCR 2.602(B)(3)(a). Where the parties reach a stipulated agreement, but the trial court does not grant judgment or make an order or decision, MCR 2.602(B)(3) is not available as a means of entering of the judgment.[1] Because the proposed judgment submitted by defendant was not founded on a decision, order, or judgment by the trial court, entry of the judgment pursuant to MCR 2.602(B)(3) was improper.

Plaintiff argues that further proceedings in the case should be heard by a different judge. This Court "may remand to a different judge if the original judge would have difficulty in putting aside previously expressed views or findings, if reassignment is advisable to preserve the appearance of justice, and if reassignment will not entail excessive waste or duplication." *Bayati v Bayati*, 264 Mich App 595, 602-603; 691 NW2d 812 (2004). "Repeated rulings against a party, no matter how erroneous, or vigorously or consistently expressed, are not disqualifying." *Id*. The trial court's rulings reflect its belief that the parties had reached a binding agreement that could be memorialized in a proposed judgment under the seven-day rule. The court's handling of the matter does not suggest bias or show that it would have difficulty putting aside its previously expressed views. Therefore, reassignment is not warranted.

The judgment of divorce is vacated and the case is remanded for further proceedings. We do not retain jurisdiction.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio
/s/ Deborah a. Servitto

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[1] Our determination does not mean that a settlement agreement between the parties is not binding. An agreement placed on the record in open court is binding pursuant to MCR 2.507(G), and where a party fails to comply with such an agreement, the opposing party may bring an appropriate motion to enforce the agreement. See, e.g., *Nelson v Consumers Power Co*, 198 Mich App 82; 497 NW2d 205 (1993).