

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY

| | | |
|-----------------------|---|--|
| KILEY WILSON, et al. |) | CASE NO. CV-17-883441 |
| Plaintiffs, |) | |
| |) | JUDGE SHANNON M. GALLAGHER |
| vs. |) | |
| |) | |
| |) | <u>JUDGMENT ENTRY AND OPINION</u> |
| SPENCER PRIDE, et al. |) | |
| Defendant, |) | |

Shannon M. Gallagher, J.:

This matter is before the court on Plaintiffs' motion to vacate settlement and Defendants' motion to enforce settlement. On 9/11/2018, the court held a hearing on the pending motions. The parties appeared and presented evidence. Plaintiffs' motion to vacate settlement is denied and Defendants' motion to enforce settlement is granted. The court finds that the parties entered into an enforceable oral settlement agreement in the amount of \$25,000, whereby \$4,000 would be allocated to Plaintiffs Lyric Bryant, Landen Bryant, and Brianne Bryant, and \$21,000 would be allocated to Plaintiff Kiley Wilson. The court dismisses this matter with prejudice, and retains jurisdiction over settlement.

I. Summary

This case arises from a motor vehicle collision. Plaintiffs allege that they suffered injuries caused by defendants' negligence. Defendants dispute liability. The case was scheduled for trial on 9/10/2018. On 9/7/2018, defense counsel Andrew Goldwasser advised the court through email that the parties had reached a settlement agreement. Plaintiffs dispute that the parties had reached a final, enforceable settlement agreement. Plaintiffs argue in their motion to vacate settlement that Attorney Middleton did not have authority to agree to a settlement on

behalf of the two minor plaintiffs and their mother. Defendants argue in their motion to enforce settlement that plaintiffs' counsel Fred Middleton called defense counsel and accepted the \$25,000 offer of global settlement on behalf of all four plaintiffs. The court scheduled this matter for a hearing on 9/11/2018.

II. Findings of Fact

Defendants called Attorney Andrew Goldwasser to the stand to testify on behalf of Defendants' motion to enforce settlement. Attorney Andrew Goldwasser testified that he had several conversations with Attorney Fred Middleton between Thursday 9/6/2018 and Friday 9/7/2018. Attorney Goldwasser stated that he initiated three phone calls to Attorney Middleton – on Thursday morning, Thursday afternoon, and Friday morning – to extend an offer of \$25,000 for global settlement.

Attorney Goldwasser testified that on Friday at around 12:30 p.m., Attorney Middleton initiated a phone call to Attorney Goldwasser and accepted the \$25,000 offer of settlement on behalf of all four clients. Attorney Middleton then proposed an allocation of the settlement funds whereby Plaintiffs Lyric Bryant, Landen Bryant, and Brianne Bryant would receive \$4,000 and Plaintiff Kiley Wilson would receive \$21,000. Attorney Goldwasser then sent an email to the court advising of the settlement agreement and allocation of funds. (Defendants' Exhibit A).

Attorney Goldwasser then testified that Attorney Middleton called him back at approximately 1:30 p.m. to advise that Plaintiff Kiley Wilson had changed his mind in regards to the settlement agreement.

The parties stipulated to the fact that Attorney Middleton called the court Friday afternoon, sometime after Attorney Goldwasser had notified the court by email of the settlement, and advised that Kiley Wilson was not willing to settle the case.

Plaintiffs called Kiley Wilson to the stand to testify on behalf of Plaintiffs' motion to vacate settlement. Plaintiff Kiley Wilson testified that he had not agreed to any settlement and had not given Attorney Middleton authority to accept the settlement offer on his behalf. Plaintiffs then called John Bryant to the stand, husband of Plaintiff Brianne Bryant and father of Plaintiffs Lyric Bryant and Landen Bryant. John Bryant testified that neither he nor his wife agreed to any settlement offer, nor did they give Attorney Middleton authority to accept the settlement offer on their behalf.

Plaintiffs failed to present any evidence to rebut Attorney Goldwasser's testimony that Attorney Middleton accepted the \$25,000 settlement offer on behalf of his clients. Attorney Middleton chose not to testify. Neither of Plaintiffs' witnesses were parties to the telephone call between Attorney Goldwasser and Attorney Middleton on Friday 9/7/2018 at 12:30 p.m. Plaintiffs' motion to vacate settlement is not evidence that plaintiffs can rely upon to support Attorney Middleton's version of events.

III. Conclusions of Law

A settlement agreement is a contract designed to terminate a claim by preventing or ending litigation and is valid and enforceable by either party. *Continental W. Condominium Unit Owners Assn. v. Howard E. Ferguson, Inc.*, 74 Ohio St. 3d 501, 502, 1996-Ohio-158, 660 N.E.2d 431 (1995). A meeting of the minds as to the essential terms of the contract is required. *Kostelnik v. Helper*, 96 Ohio St. 3d 1, 2002-Ohio-2985, 770 N.E.2d 58, P15-16. An oral settlement agreement is enforceable if there is sufficient particularity to form a binding contract. *Id.*

In order for a meeting of the minds to occur, both parties to an agreement must mutually assent to the substance of the exchange. *Tiffe v. Groenenstein*, 8th Dist. Cuyahoga No. 80668,

2003-Ohio-1335, P25. There must be a definite offer on one side and an acceptance on the other. *Turoczy Bonding Company v. Mitchell*, 8th Dist. Cuyahoga No. 103787, 2018-Ohio-3173, P18. Once there is a meeting of the minds as to the essential terms of a settlement, a party cannot refuse to proceed due to a mere change of mind. *Mack v. Polson Rubber Co.*, 14 Ohio St.3d 34, 36, 470 N.E.2d 902 (1984).

Plaintiffs agreed to accept \$25,000 in exchange for dismissal of all claims. On Friday 9/7 at 12:30 p.m., Fred Middleton called Andrew Goldwasser and accepted the \$25,000 offer of global settlement on behalf of all four plaintiffs. According to the unrebutted testimony of Attorney Goldwasser, Attorney Middleton proposed that \$4,000 of the funds would be allocated to Landen and Lyric Bryant, with the remaining \$21,000 going to Kiley Wilson.

The oral communications between the attorneys reflect a definite offer and acceptance, bargained for consideration, and the parties' clear understanding of the settlement terms. There was no evidence that the parties did not intend to be bound by the terms of the settlement until formalized in a written document and signed by all parties. Any evidence that Kiley Wilson changed his mind is not sufficient to vacate an otherwise valid settlement agreement.

Kiley Wilson and John Bryant both testified at the hearing that none of the plaintiffs accepted the offer of settlement, nor did they give Attorney Middleton authority to accept any offers of settlement on their behalf. Plaintiffs argued at the hearing that any settlement agreement is not enforceable because Attorney Middleton did not have authority to accept the settlement offer on Plaintiffs' behalf.

However, Attorney Middleton had apparent authority to accept the settlement offer on behalf of his clients. The attorney/client relationship is one of an agent and a principal. *Gaines Reporting Service v. Mack*, 4 Ohio App.3d 234, 447 N.E.2d 1317 (6th Dist. 1982). Attorneys act

as agents on behalf of their clients, and a client is bound by the acts of his attorney acting within the actual or apparent scope of the agent's authority. See *Shimola v. City of Westlake*, 8th Dist. Cuyahoga Nos. 75164, 75165, 75204, 2000 Ohio App. LEXIS 4168 (Sept. 14, 2000). In general, Ohio courts hold that an attorney's conduct is imputed to her clients. *GTE Automatic Electric, Inc. v. ARC Industries, Inc.*, 47 Ohio St. 2d 146, 152, 351 N.E.2d 113 (1976), citing *Link v. Wabash R. R. Co.*, 370 U.S. 626 (1962).

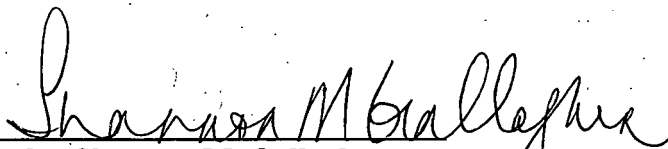
According to the un rebutted testimony of Andrew Goldwasser, Attorney Middleton called Attorney Goldwasser and advised that the plaintiffs would accept the \$25,000 settlement offer. It was within the apparent scope of Attorney's Middleton's authority to accept the settlement offer on his clients' behalf. Because Attorney Middleton had apparent authority to accept the offer, his acceptance is binding upon his clients.

Plaintiffs presented no evidence regarding the phone call that took place between Attorneys Andrew Goldwasser and Fred Middleton on Friday 9/7/2018 at approximately 12:30 p.m. The only evidence before the court regarding this phone call is the testimony of Attorney Andrew Goldwasser, leaving no factual dispute for this court to resolve.

The parties have entered into a binding settlement agreement because there was a meeting of the minds as to the essential terms of the contract. There was sufficient particularity in the oral settlement agreement to form a binding contract. A party cannot refuse to proceed due to a mere change of mind. Plaintiffs' counsel accepted the defendants' offer of settlement as the agent of all plaintiffs and therefore had apparent authority to finalize the terms of the settlement agreement.

This matter is dismissed with prejudice. Court to retain jurisdiction over the enforcement of the settlement agreement. Parties each to bear their own costs.

IT IS SO ORDERED:


Judge Shannon M. Gallagher

9/12/2018
Date