

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

RHONDA L. BENTLEY,	:	APPEAL NO. C-100076
Plaintiff-Appellant,	:	TRIAL NO. DR-0702469
vs.	:	<i>JUDGMENT ENTRY.</i>
BENJAMIN JEFFREY BENTLEY,	:	
Defendant-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

In this divorce case, plaintiff-appellant Rhonda L. Bentley challenges the decision of the Hamilton County Common Pleas Court, Domestic Relations Division, overruling both her motion to set aside a magistrate's decision and her motion for attorney fees. We affirm.

Rhonda filed for divorce in December 2007. The court ordered defendant-appellee Benjamin Bentley to pay \$5,900 per month in spousal and child support, and it required Rhonda to pay the mortgage on the marital residence, along with other bills.

Rhonda and Benjamin litigated the case fervently, and the parties accrued attorney fees at a quick pace. The case was tried in April 2009, and the trial was then continued to July 2009. In the interim, the parties attempted unsuccessfully to settle the case. In July 2009, the trial continued, and one day later the parties reached a settlement agreement. The agreement was read into the record, and Benjamin then

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

prepared a separation agreement and sent it to Rhonda, who refused to sign or revise the agreement. Benjamin then moved to adopt the separation agreement that had been read into the record and further sought an award of attorney fees. After a hearing, the magistrate ordered Benjamin to prepare the final decree as it had been read into the record, held the motion for attorney fees in abeyance, and set the case for a final merits hearing.

Rhonda then moved to set aside the magistrate's decision, to vacate the separation agreement that had been read into the record, and to have the magistrate recused from the case.

The trial court overruled Rhonda's motions to vacate the magistrate's decision and to set aside the separation agreement that had been read into the record, and it then denied both parties' motions for attorney fees.

In her appeal, Rhonda now contends that she had entered into the separation agreement under duress; that the separation agreement should have been set aside because there had been no meeting of the minds; and that the trial court erred in denying her motion for attorney fees without first holding a hearing.

Duress

In support of her argument that she had entered into the separation agreement under duress, Rhonda contends that the magistrate coerced her into settling by conveying his opinion that it was unlikely that a full trial on the merits would afford her a more favorable result than what had already been offered by Benjamin.

Rhonda argues that her will was overpowered by the magistrate's statements to her. Not so.

A settlement agreement that has been entered into in the presence of a court is a binding contract.² A party seeking to avoid a contract on the basis of duress must prove coercion by the other party to the contract. “It is not enough to show that one assented merely because of difficult circumstances that are not the fault of the other party.”³ As this court has previously stated, “[w]hen the parties enter into an in-court settlement agreement, so long as the court is satisfied that it was not procured by fraud, duress, overreaching or undue influence, the court *has the discretion to accept* it without finding it to be fair and equitable. * * * In the absence of fraud, duress, overreaching or undue influence, or of a factual dispute over the existence of terms in the agreement, the court *may adopt* the settlement as its judgment.”⁴ (Emphasis added.)

The record shows that, after the separation agreement had been reached, the parties read the agreement into the record, and the court asked Rhonda if anyone had placed her under duress to enter into the agreement, to which she replied, “Can I talk to [my attorney] outside?” A brief recess was had, and the court again asked Rhonda on the record if anyone had improperly induced her to enter into the agreement. Rhonda replied, “No.” The court then asked if she accepted the terms of the agreement, and she responded, “Yes.”

The fact that Rhonda asked to speak to her attorney off the record does not indicate coercion or duress. And we are convinced that the magistrate did not unduly influence her to enter into the separation agreement by asking that she discuss a settlement with Benjamin or by telling her his opinion of what the outcome of the case would likely be in the absence of a settlement. We cannot presume coercion based on off-the-record conversations, and the record is otherwise devoid of evidence showing that Rhonda entered into the separation agreement under duress

² *Walther v. Walther* (1995), 102 Ohio App.3d 378, 657 N.E.2d 332; *Michaels v. Michaels*, 9th Dist. No. 09CA0047-M, 2010-Ohio-963.

³ *Kessler v. Kessler*, 10th Dist. No. 09AP-740, 2010-Ohio-2369.

⁴ *Mulholland v. Mulholland*, 1st Dist. No. C-030931, 2005-Ohio-1196, citing *Walther*, supra.

or coercion. Our conclusion that Rhonda entered into the separation agreement free from duress or coercion is buttressed by her statements on the record that she accepted the terms of the agreement and that she had not been coerced to sign the agreement. The first assignment of error is overruled.

We summarily overrule Rhonda's second assignment of error, which contends that the trial court erred in adopting the agreement that had been read into the record. As we have already noted, Rhonda explicitly stated that she accepted the terms of the agreement, and the record does not otherwise reflect that there had not been a meeting of the minds on the terms of the separation agreement.

Attorney Fees

Rhonda's final assignment of error argues that she was denied the right to due process when the trial court denied her motion for attorney fees without holding a hearing. Rhonda has failed to provide us with a transcript of the final merits hearing, and we therefore must presume regularity in the proceedings below and uphold the trial court's decision denying her motion for attorney fees.

Having overruled Rhonda's assignments of error, we affirm the trial court's judgment.

A certified copy of this judgment entry is the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

CUNNINGHAM, P.J., SUNDERMANN and MALLORY, JJ.

To the Clerk:

Enter upon the Journal of the Court on December 17, 2010

per order of the Court _____
Presiding Judge