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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-236

Filed 3 December 2024

Cleveland County, No. 21CVS1702

CHARLES D. JOHNSON, and MEDSYN.ORG d/b/a MEDSYN ORG., INC.,
Plaintiffs,

v.

AARON LOW and STOTT, HOLLOWELL WINDHAM & STANCIL, PLLC,
Defendants.

Appeal by plaintiffs from order entered 30 August 2023 by Judge Karen Eady-Williams in Cleveland County Superior Court. Heard in the Court of Appeals 10 September 2024.

TLG Law, by Sean A. McLeod and David G. Redding, for plaintiffs-appellants.

Cranfill Sumner LLP, by Steven A. Bader and Samuel H. Poole, Jr., for defendants-appellees.

GORE, Judge.

Plaintiffs appeal the order granting defendants’ motion to enforce the settlement agreement between plaintiffs and defendants. Plaintiffs argue the trial court erred by granting the motion because it lacks material terms, plaintiff Charles D. Johnson (“plaintiff Johnson”) lacked capacity to enter into the mediated settlement

agreement, and it fails under the Statute of Frauds. Upon review of the briefs and the record, we affirm.

I.

On 2 October 2021, plaintiffs filed a lawsuit for legal malpractice against defendants. The parties exchanged discovery and on 19 December 2022, the parties attended a virtual mediation, each with attorney representation. Plaintiff Johnson attested that on the day of mediation he told his attorney that he had Covid-19, food poisoning, and was dealing with lethargy and headaches due to these infections. He also attested that he communicated with his attorney his concerns about attending the mediation due to the medications he was taking: hydroxyzine and cetirizine.

The parties reached a settlement agreement at the mediation and filled out the Administrative Office of the Courts (“AOC”) mediated settlement agreement form. The mediated settlement agreement (“MSA”) required defendants to pay a certain amount (redacted in the record) within 21 days, for plaintiff to sign a release (prepared by defendants) of liens and hold defendants harmless for such claims, and for plaintiff to file a voluntary dismissal with the court. Additionally, the MSA required inclusion of non-disparagement terms in the release and requirements for legally acceptable confidentiality terms. Plaintiffs executed the MSA and defendants had their attorney execute the MSA. Defendants sent a prepared release along with the required settlement funds to plaintiffs’ attorney on 6 January 2023. Plaintiffs refused to execute the release.

Defendants filed a motion to enforce the MSA on 31 March 2023. In response, plaintiffs filed a motion to set aside the MSA. Plaintiff Johnson also filed an affidavit claiming he lacked the proper capacity at the time of the mediation to agree to the MSA, and that he would not have entered into the MSA had he been in a different state of mind. Defendants' attorney filed an affidavit articulating they had no notice nor knowledge of plaintiff Johnson's alleged incapacity.

The trial court heard the opposing motions on 26 June 2023. Plaintiff Johnson filed another affidavit and attached a letter from his current doctor, Dr. Speight, to further articulate his alleged incapacity. On 30 August 2023, the trial court entered an order granting defendants' motion to enforce the MSA and denying plaintiffs' motion to set aside the MSA. Plaintiffs timely appealed the order.

II.

Plaintiffs appeal of right pursuant to N.C.G.S. § 7A-27(b)(1). Plaintiffs argue the MSA is unenforceable because plaintiff Johnson lacked the necessary capacity to enter into the agreement, because the MSA lacked essential terms in the agreement, i.e.: (1) the "contemplated mutual release," (2) satisfaction of any legally enforceable liens related to the matter, (3) execution of a hold harmless, and (4) execution of non-disparagement provisions with legally permissible confidentiality terms, and because the MSA does not meet the Statute of Frauds.

We review an order granting a motion to enforce a settlement agreement under the de novo summary judgment standard. *Culbreth v. Manning*, 277 N.C. App. 221, 227 (2021); *Hardin v. KCS Int'l, Inc.*, 199 N.C. App. 687, 694–95 (2009).

Such judgment is appropriate only when the record shows that there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law. When considering a motion for summary judgment, the trial judge must view the presented evidence in a light most favorable to the nonmoving party. If the movant demonstrates the absence of a genuine issue of material fact, the burden shifts to the nonmovant to present specific facts which establish the presence of a genuine factual dispute for trial.

In re Will of Jones, 362 N.C. 569, 573 (2008) (cleaned up).

Plaintiffs argue the MSA is unenforceable because plaintiff Johnson lacked the requisite capacity to enter into the settlement agreement because of the medication he took for symptoms related to his COVID-19 illness and food poisoning.

A person has mental capacity sufficient to contract if he knows what he is about, and that the measure of capacity is the ability to understand the nature of the act in which he is engaged and its scope and effect, or its nature and consequences, not that he should be able to act wisely or discreetly, nor to drive a good bargain, but that he should be in such possession of his faculties as to enable him to know at least what he is doing and to contract understandingly.

Ridings v. Ridings, 55 N.C. App. 630, 633 (1982) (cleaned up).

In the present case, plaintiff Johnson argues he was mentally incapacitated at the time of the mediation. In support of this argument, plaintiff Johnson relies on the following evidence as sufficient to establish a genuine issue of material fact: (1) the medication he was taking to alleviate his symptoms on the day of the mediation;

(2) the advisement to his attorney of his Covid-19 illness, food poisoning, and the effects of his medication; (3) that he told opposing counsel about his status at the mediation as well; (4) the affidavits from plaintiff Johnson; and (5) the letter from his current physician discussing his case.

Plaintiff Johnson cites to his affidavit in the record and his deposition with opposing counsel to support his statements that opposing counsel was aware of his illness and medication side effects at the time of the mediation. However, the documents upon which he relies point to a September deposition in which he told opposing counsel he was taking hydroxyzine, but he disliked the side effects and only took it a few times. The mediation occurred in December 2022, much later than the September 2022 deposition. There is no evidence in the record defendants were aware of plaintiff Johnson's physical condition at the time of the mediation. The only evidence in the record that plaintiff Johnson's mediation attorney had knowledge of his "lethargy and serious headaches" is plaintiff Johnson's affidavit. Further, the letter from Dr. Speight states he was not caring for plaintiff Johnson at the time of the mediation and provides a generalized medical opinion as to a potential impairment from the medications and symptoms.

The evidence provided in the record does not raise a genuine issue of material fact that plaintiff Johnson was mentally incapacitated at the time of the mediation, nor does the evidence demonstrate any knowledge from opposing counsel of their awareness of any physical incapacity at the time of the mediation. Plaintiff Johnson's

ability or inability to “drive a good bargain” is not the determinative factor for mental capacity in a mediation. *Ridings*, 55 N.C. App. at 633. The evidence in the record demonstrates plaintiff Johnson knew what he was doing and knew the scope and effect of the mediation. Accordingly, the trial court did not err by enforcing the MSA because plaintiff Johnson failed to demonstrate in the record that there is a genuine issue of material fact to overcome summary judgment as a matter of law.

Next, plaintiff Johnson argues the settlement agreement was unenforceable because it lacked material terms. Specifically, plaintiff Johnson argues there was “no meeting of the minds” because (1) the specific terms for a release are missing, (2) there is a lack of specificity as to the requirement for plaintiff Johnson to set aside any enforceable, existing liens related to the settlement, (3) there are no specific terms for the requirement to hold defendants harmless, and (4) it generally states a requirement of non-disparagement provisions and legally acceptable confidentiality terms without specifying what these would be. Plaintiff Johnson argues that these missing terms result in a settlement agreement that is “voidable for indefiniteness.” We disagree.

The validity of a mediated settlement agreement is “governed by general principles of contract law.” *Chappell v. Roth*, 353 N.C. 690, 692 (2001). “A valid contract exists only where there has been a meeting of the minds as to all essential terms of the agreement. . . . [T]he terms . . . must be sufficiently definite and certain, and a contract that leav[es] material portions open for future agreement is . . . void

for indefiniteness.” *Charlotte Motor Speedway, LLC v. Cnty. of Cabarrus*, 230 N.C. App. 1, 7 (2013) (citations omitted). “If any portion of the proposed terms is not settled, or no mode agreed on by which they may be settled, there is no agreement.” *Chappell*, 353 N.C. at 692.

Plaintiffs rely upon *Chappell*, *Boyce v. McMahan*, and *Charlotte Motor Speedway* to analogize why the MSA was unenforceable. However, upon review of these cases, we determine they are distinguishable from the present case. The settlement agreement in *Chappell* was unenforceable because essential to the agreement was a release that had to be “mutually agreeable” to both parties involved in the settlement. 353 N.C. at 693. Our Supreme Court determined the mutual agreement of the “release was part of the consideration,” and therefore, it was a material term of the agreement. *Id.* In *Boyce*, the “agreement” was determined to be only a “preliminary agreement” because the document “emphasiz[ed] its preliminary character” and included only “the desires of the parties but not the agreement of both.” 285 N.C. 730, 734 (1974). The *Boyce* Court determined it was merely an agreement for a future agreement and all parties conceded no future agreement was ever made. *Id.*

In *Charlotte Motor Speedway*, this Court determined the letter, which the plaintiffs in that case contended was the contract, lacked any consideration required by plaintiffs, making it unclear what they “were bound to do, or not do, by virtue of

[the letter].” 230 N.C. App. at 8. This Court determined the letter was “too indefinite to constitute a binding contract” and affirmed the Rule 12(b)(6) dismissal. *Id.*

Whereas, in the present case, the MSA is on a form provided by the AOC for parties in mediation with attorney representation. The MSA states “the parties stipulate and agree that at the Mediated Settlement Conference on the 19th day of December 2022, via Zoom, North Carolina, a full and final agreement of all issues was reached.” It specifies a redacted amount for defendants to pay plaintiffs within 21 days of the MSA. It further specifies that plaintiffs are to sign releases that defendant determines are acceptable, and must file a voluntary dismissal with prejudice. The parties added additional terms:

Plaintiff will satisfy any legally enforceable liens related to this matter and would agree to hold Defendant harmless from any such claims.

The release will include non-disparagement provisions and confidentiality as allowed by law.

The 21 days will commence upon execution of the release.

All parties signed the MSA, or had their attorney sign the document. Importantly, plaintiffs and not their attorneys signed the MSA. Although plaintiffs argue the requirement to sign a release without all the terms specified in the release leaves out material terms from the MSA, unlike *Chappell*, the MSA specifies the releases are required by defendants and defendants determined acceptability, not both parties. The additional terms are like the case in *Harris*, in that the requirement to satisfy any enforceable liens and hold defendants harmless from those liens (or claims) was implied as this was the final agreement and would bring the ongoing

litigation to completion. *See Harris v. Ray Johnson Const. Co.*, 139 N.C. App. 827, 831 (2000). The requirement to include non-disparagement provisions and confidentiality provisions did not have to be explicitly written, because the format was based upon defendants' preference, rather than mutually agreed upon like in *Chappell*. Accordingly, plaintiffs fail to demonstrate a genuine issue of material fact as to the enforceability of the MSA based upon its material terms. Therefore, the MSA is enforceable as a matter of law, and the trial court did not err by granting summary judgment to enforce the MSA.

Finally, plaintiffs argue the MSA is unenforceable as a violation of the Statute of Frauds pursuant to N.C.G.S. § 7A-38.1(l). Defendants argue that plaintiffs failed to raise this issue before the trial court and therefore failed to preserve the issue for appeal. We agree with defendants.

North Carolina General Statutes § 7A-38.1 provides that “[n]o settlement agreement to resolve any or all issues reached at the proceeding conducted under this subsection or during its recesses shall be enforceable unless it has been reduced to writing and *signed by the parties against whom enforcement is sought* or signed by their designees.” N.C.G.S. § 7A-38.1. Plaintiffs did not raise this issue before the trial court, likely because *plaintiffs* are “the parties against whom enforcement is sought” and plaintiffs signed the settlement agreement. In any event, it is well established that pursuant to Rule 10(a)(1) of the North Carolina Rules of Appellate Procedure, the parties seeking appellate review must preserve the issue by

specifically presenting the argument at the trial court level and obtaining a ruling. Failure to properly preserve the argument prevents our review at the appellate level. *See* N.C.R. App. P. 10(a)(1). In the present case, plaintiffs failed to raise this argument at the trial court, and we will not consider it for the first time on appeal.¹ Accordingly, having considered the various arguments by plaintiffs to hold the MSA unenforceable, we determine there was no genuine issue of material fact as to the enforceability of the MSA and therefore, the trial court properly granted the motion to enforce the MSA.

III.

For the foregoing reasons, we affirm the trial court's order granting defendants' motion to enforce the settlement agreement.

AFFIRMED.

Judges STROUD and HAMPSON concur.

Report per Rule 30(e).

¹ Plaintiffs also seek suspension of the appellate rules through Rule 2, however, the case in which they rely for their statute of frauds argument, *Mitchell v. Boswell*, 274 N.C. App. 174 (2020), is inapposite to plaintiffs' argument as *Mitchell* addressed a memorandum of settlement signed by a party's attorney, and here, plaintiffs, not their counsel, signed the settlement agreement. Therefore, there is no manifest injustice to plaintiffs by the enforcement of Rule 10(a)(1).