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This opinion shall not "constitute precedent or be binding upon any court."
Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0434-16T1

MAGDALENA C. GUZMAN,
and RAUL RIVERA GUZMAN in his
personal character and as
attorney-in-fact of MAGDALENA
C. GUZMAN,

Plaintiffs-Respondents,

v.

MARIA RIVERA,

Defendant-Appellant.

Submitted February 28, 2018 – Decided March 29, 2018

Before Judges Manahan and Suter.

On appeal from Superior Court of New Jersey,
Chancery Division, Middlesex County, Docket
No. C-000045-15.

Kasuri Byck, LLC, attorneys for appellant
(Anthony R. Troise, on the brief).

Law Offices of Kenneth L. Gonzalez &
Associates, attorneys for respondents
(Kenneth L. Gonzalez, on the brief).

PER CURIAM

Defendant Maria Rivera appeals from a September 16, 2016 order enforcing a settlement. We affirm.

Plaintiff Magdalena C. Guzman suffers from multiple health issues. Throughout her adult life, a number of plaintiff's children served as her primary caregiver and power of attorney, which included Maria Rivera and Raul Rivera Guzman. In July 2009, plaintiff appointed defendant as power of attorney.

Plaintiff became severely ill in January 2013. At that time, defendant used her position as power of attorney to take responsibility for plaintiff's accounts and property, subsequently transferring the deed of the Keasbey, New Jersey property to herself.

On March 25, 2015, plaintiff filed a complaint against defendant in order to transfer the deed of the property back into her possession. A trial was scheduled to commence on April 21, 2016. Prior to the trial's commencement, a settlement agreement was reached between the parties. The settlement was placed on the record. The following colloquy took place between defendant's counsel and defendant during the hearing:

Q. And [] it is your understanding that the parties have come to a settlement regarding these [] items which I'm about to announce for you. First that the property located at 178-180 [Judy] Drive, in [Keasbey], New Jersey, will be transferred back to the

name of your mother, Magdalena [sic] Guzman,
is that correct?

A. Yes.

. . . .

Q. Have you understood the terms that I
just explained to you that we've been
discussing that make up this — agreement
today?

A. Yes

Q. Have [] you accepted them
voluntarily?

A. Yes.

Q. Has anybody promised you anything in
exchange for this [] settlement?

A. No.

Q. Okay. And has anybody forced you to
accept these terms?

A. No.

Q. Very good. You understand that by
entering into the settlement today we will be
closing this case completely and that it will
not continue and you will not be able to bring
up these issues again, in the court? []

A. Yes.

Q. Okay. Very good. And have you been
satisfied with my services provided today?

A. Tremendously.

Due to defendant's failure to comply with the settlement
agreement, plaintiff filed a motion to enforce the settlement in

July 2016. Two weeks later, defendant filed a cross-motion for reconsideration, in which she argued that her attorney used undue influence and intimidation to coerce her to accept the terms of the settlement agreement.

A hearing was conducted on September 16, 2016. At the conclusion of the hearing, the judge placed her findings on the record and entered an order enforcing the settlement agreement.¹

On appeal, defendant raises the following point:

POINT I

THE COURT CAN SET ASIDE A SETTLEMENT AGREEMENT IF THE PARTY SEEKING THE SETTLEMENT AGREEMENT TO BE SET ASIDE CAN PROVE AN EXTRAORDINARY CIRCUMSTANCE SUFFICIENT TO VITIATE THE AGREEMENT.

"[A]bsent a demonstration of 'fraud or other compelling circumstances,' [a court] should honor and enforce [a settlement between parties] as it does other contracts." Pascarella v. Bruck, 190 N.J. Super. 118, 124-25 (App. Div. 1983). A settlement between parties must be set aside if the "settlement agreement is achieved through coercion, deception, fraud, undue pressure, or unseemly

¹ The order under review enforces the settlement but does not address the motion for reconsideration. We add that the order sought to be reconsidered was dated April 21, 2016. Defendant's cross-motion was filed on August 10, 2016, outside of the permitted timeframe for filing. R. 4:49-2. The appellate record does not contain an order denying the reconsideration motion. Defendant's notice of appeal only references the September 16, 2016 order.

conduct, or if one party was not competent to voluntarily consent thereto" Peskin v. Peskin, 271 N.J. Super. 261, 276 (App. Div. 1994); see also Nolan v. Lee Ho, 120 N.J. 465, 472 (1990). The party seeking to set aside the settlement has the burden to prove extraordinary circumstance sufficient to vitiate the settlement agreement. Wolkoff v. Villane, 288 N.J. Super. 282, 291-92 (App. Div. 1996).

Defendant claims on appeal, as she did before the judge, that she was unduly pressured into the settlement agreement by her counsel and that the settlement agreement should therefore be set aside. However, as the judge found and we agree, the record is devoid of proof of any coercion, deception, fraud, undue pressure, or unseemly conduct. Further, the record is also devoid of proof that defendant was not competent to voluntarily consent to the settlement. In the absence of these requisite proofs, we conclude the judge appropriately determined that defendant failed to meet her burden to demonstrate extraordinary circumstances.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION