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**STATE OF MINNESOTA
IN COURT OF APPEALS
A06-2198**

David J. Gherity,
Appellant,

vs.

Marvin Brewer,
Respondent.

**Filed March 25, 2008
Affirmed
Wright, Judge**

Dakota County District Court
File No. C2-04-10194

David J. Gherity, 30100 Wulff Valley Lane, Red Wing, MN 55066 (pro se appellant)

Marvin R. Brewer, 3126 Little Crow Drive, Shakopee, MN 55379 (pro se respondent)

Considered and decided by Peterson, Presiding Judge; Stoneburner, Judge; and Wright, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

Appellant challenges the district court's denial of his motion, under Minn. R. Civ. P. 60.02, for relief from a stipulated judgment, arguing that he is entitled to such relief because respondent induced him to settle by misrepresenting the value of real property that was conveyed as consideration in support of the settlement agreement. We affirm.

FACTS

Appellant David Gherity was a practicing attorney before his license was suspended in March 2003. Over the past 20 years, Gherity has represented respondent Marvin Brewer and Brewer's family in various matters in Minnesota. In November 2004, Gherity brought the underlying action against Brewer.

According to the complaint, Brewer was convicted of manslaughter in Arizona for causing the death of his business partner by strangulating him and setting fire to his residence while he was still alive. While incarcerated in June 2000, Brewer retained Gherity as his lawyer and personal assistant. Brewer promised Gherity a monthly salary of \$5,000 plus expenses. He later promised Gherity a more lucrative arrangement with lifetime employment as an executive in Brewer's company. Relying on Brewer's promises, Gherity relocated to Arizona, where Brewer was imprisoned. But Brewer failed to pay Gherity for his work.

Brewer conditioned Gherity's pay on securing Brewer's early release as an incentive to work harder. Although he expressed dissatisfaction, Gherity continued to work for Brewer. Gherity helped secure Brewer's early release from prison in 2002. When Gherity returned to Minnesota after Brewer's release, Brewer reneged on the employment agreement. Based on these allegations, Gherity sought damages for unpaid wages, breach of contract, fraud, wrongful discharge, intentional infliction of emotional distress, and quantum meruit.

The parties eventually negotiated a settlement. On July 26, 2005, the district court entered a stipulated judgment incorporating the settlement agreement and dismissing

Gherity's claims on the merits and with prejudice. Under the terms of the stipulated judgment, Brewer agreed to pay Gherity \$50,000 and to convey to him certain residential property in Arizona in exchange for a full release from all claims arising out of Gherity's employment.

Gherity had visited the residential property when he was living in Arizona, which was two or three years before the settlement agreement. When he visited the property after the settlement agreement, Gherity was "astounded" by what he saw. The house on the property, in which Gherity contends he had planned to reside, was "completely gutted." According to an appraisal, the house was not built to code and has no value. Based on the estimated cost of demolition and removal of debris, the cost to clean up the lot surpassed the land's value. It is not disputed, however, that Brewer paid Gherity \$50,000, most of which Gherity accepted after inspecting the Arizona property.

On July 26, 2006, 364 days after the judgment was entered, Gherity moved for relief from the stipulated judgment incorporating the settlement agreement. Minn. R. Civ. P. 60.02. In support of the motion, Gherity claimed that, when he inquired about the condition of the property during settlement negotiations, Brewer showed Gherity a property-tax assessment from the previous year, pointed to the designation of its "cash value" as \$61,361, and stated, "[T]his should make you feel better." Gherity further asserts that, although he "felt that this figure was low," Brewer had led him to believe that the property was in good condition and had a value of at least the amount stated on the tax assessment. Based on Brewer's allegedly fraudulent misrepresentation regarding the value of the property, Gherity moved to vacate the stipulated judgment or reform the

settlement agreement. Alternatively, he sought leave to bring an independent action based on the condition of the property. After a hearing, the district court denied the requested relief. This appeal followed.

DECISION

Gherity challenges the district court's denial of his motion to vacate or modify the stipulated judgment.¹ A stipulated dismissal with prejudice is a final judgment, and a motion for relief from its terms is governed by Minn. R. Civ. P. 60.02. *Butkovich v. O'Leary*, 303 Minn. 535, 536, 225 N.W.2d 847, 848 (1975); *W. Lake Superior Sanitary Dist. v. Interpace Corp.*, 454 N.W.2d 449, 452 (Minn. App. 1990). We review the denial of a rule 60.02 motion for an abuse of discretion. *Regents of the Univ. of Minn. v. Medical Inc.*, 405 N.W.2d 474, 481 (Minn. App. 1987), *review denied* (Minn. July 15, 1987).

A district court may grant relief from a final judgment procured by the “[f]raud . . . , misrepresentation, or other misconduct of an adverse party.” Minn. R. Civ. P. 60.02(c). Although it is not entirely clear, Gherity's primary argument on appeal appears to challenge the district court's decision as inconsistent with common-law fraud and misrepresentation. The Minnesota Supreme Court has acknowledged that fraud is a “protean legal concept” that “assum[es] many shapes and forms” in many different areas of law. *Florenzano v. Olson*, 387 N.W.2d 168, 172 (Minn. 1986) (quotation omitted);

¹ Gherity characterized his alternative motion as seeking “enforcement of the settlement according to the intentions contemplated by the parties.” Although Gherity labels this relief as “reformation” of the settlement agreement, we will treat his motion as one seeking relief, namely, modification, from the judgment incorporating the terms of the settlement agreement.

see generally William L. Prosser & W. Page Keeton, *Prosser & Keeton on the Law of Torts*, § 105 (W. Page Keeton et al. eds., 5th ed. 1984) (comparing variations on concept of fraud that appear in different legal contexts). Although the precise relationship between the common-law doctrine of fraud and fraud contemplated in rule 60.02(c) has not been clarified, the rule generally is interpreted to “extend[] beyond fraud in the formal sense.” *See* 21A Fed. Proc., § 51:162 (1997) (discussing equivalent federal rule).

Ordinarily, to obtain relief from a judgment under rule 60.02(c), the fraud or misconduct must relate directly to the central issues in the action rather than being merely collateral to them. *Turner v. Suggs*, 653 N.W.2d 458, 466 (Minn. App. 2002). Gherity alleges that Brewer misrepresented the value and condition of a parcel of real property that has no relation to any of the factual or legal issues in the underlying litigation regarding Gherity’s employment. As such, the alleged fraud is a collateral issue.

But Gherity is attacking a stipulated judgment, which is “the product of a negotiated agreement similar [to] a contract.” *City of Barnum v. Sabri*, 657 N.W.2d 201, 205 (Minn. App. 2003). The enforceability of a contract presupposes the integrity of the negotiation process. Restatement (Second) Contracts, ch. 7 intro. note (1981). Such integrity is compromised when one party enters the agreement in reliance on false or misleading assertions of fact. *See Heidbreder v. Carton*, 645 N.W.2d 355, 367 (Minn. 2002) (listing elements of fraud); Restatement (Second) Contracts, § 159 (1981) (defining “misrepresentation”). Brewer’s alleged misrepresentations regarding the value of the Arizona property are central to resolving the underlying litigation regarding Gherity’s employment because the Arizona property was consideration for the settlement

agreement and, therefore, the judgment itself. *Cf. City of Barnum*, 657 N.W.2d at 205-06 (recognizing that terms of stipulated judgment “do[] not represent the judgment of the court” on its underlying merits because parties essentially self-adjudicate by contract).

Rule 60.02(c) requires the moving party to establish an adverse party’s misconduct by clear and convincing evidence. *Turner*, 653 N.W.2d at 466. Because stipulated judgments are effectively court-adopted contracts, *Hentschel v. Smith*, 278 Minn. 86, 92-93, 153 N.W.2d 199, 204 (1967), a party seeking relief from a stipulated judgment under rule 60.02(c) must prove that (1) the adverse party made a false representation of a material fact susceptible of knowledge; (2) the adverse party knew the representation was false or represented it as true without knowing whether it was true or false; (3) the adverse party intended to induce the moving party to agree to the judgment in reliance on the representation; (4) the moving party agreed to the judgment in justifiable reliance on the representation; and (5) the moving party was prevented from fully and fairly presenting its case as a result of the reliance. *Cf. Szarzynski v. Szarzynski*, 732 N.W.2d 285, 293 (Minn. App. 2007) (construing stipulated judgment using contract principles); *Turner*, 653 N.W.2d at 466 (discussing nature of fraud contemplated by rule 60.02(c)); *Heidbreder*, 645 N.W.2d at 367 (describing elements of fraudulent misrepresentation); *Carpenter v. Vreeman*, 409 N.W.2d 258, 261 (Minn. App. 1987) (discussing misrepresentation in context of contract rescission). Determining whether the moving party has proved these elements by clear and convincing evidence rests within the sound discretion of the district court “as fact finder and evaluator of weight and credibility of

evidence.” *J.L.B. v. T.E.B.*, 474 N.W.2d 599, 603 (Minn. App. 1991), *review denied* (Minn. Oct. 11, 1991).

Here, the district court rejected Gherity’s claim of fraudulent misrepresentation because several “red flags” should have prompted Gherity to “at least . . . view the property” before settling his case. This finding indicates that, to the extent that Gherity relied on Brewer’s representations, the district court found his reliance unjustified.

Ordinarily, a deceived party is justified in relying on an adverse party’s representations without investigating the truth. *Spieß v. Brandt*, 230 Minn. 246, 254, 41 N.W.2d 561, 567 (1950). This is because “one who deceives another to his prejudice ought not to be heard to say in defense that the other party was negligent in taking him at his word.” *Id.* But the fact-finder may consider the context in which a representation is made; it is no excuse to “close [one’s] eyes to the realities of the situation.” *Burns v. Valene*, 298 Minn. 257, 263, 214 N.W.2d 686, 690 (1974). “Receiving repeated assurances from one who is believed to be dishonest provides no comfort and serves as an inadequate basis for any justifiable reliance.” *Id.*

In rejecting Gherity’s arguments, the district court observed that Gherity has a substantial history with Brewer. From this history, Gherity had ample reason to be wary of relying on Brewer’s assurances. Indeed, the representations were made during the parties’ negotiations to settle Gherity’s lawsuit alleging Brewer’s fraud in connection with an employment agreement. Moreover, the difference between Gherity’s subjective belief as to the value of the Arizona property and the amount he claims that Brewer represented the value to be is approximately 100 percent. In light of Brewer’s alleged

history of defrauding Gherity, a sound basis exists for the district court's determination that any reliance on Brewer's representation was unjustified. Therefore, Gherity has not shown that the district court abused its discretion by denying his motion to vacate or modify the stipulated judgment under rule 60.02(c) for fraud.²

Gherity alternatively sought leave to bring an independent action for fraud, misrepresentation, breach of warranty, and similar theories. Although rule 60.02 "does not limit the power of a court to entertain an independent action to relieve a party from a judgment," the "independent action" contemplated by rule 60.02 is a "reference to . . . what had been historically known simply as an independent action in equity to obtain relief from a judgment." 11 Charles Alan Wright et al., *Federal Practice & Procedure* § 2868 (2nd ed. 1995) (quotation omitted) (discussing equivalent federal rule). In this context, relief from a judgment generally means setting aside, vacating, modifying, or reopening the judgment to relitigate the controversy that it resolved. *See Bode v. Minn. Dep't of Natural Res.*, 594 N.W.2d 257, 261 (Minn. App. 1999) (noting that rule 60.02 is designed to provide avenue for direct attack on judgment); 11 Wright et al., *supra*, §§ 2867-68 (comparing common-law writs providing relief from judgment abolished by equivalent federal rule and replaced with relief currently available);

² The district court also found Gherity's claim of reliance unpersuasive because a provision of the settlement agreement states, "Gherity is relying on his judgment, belief and knowledge . . . [and] is not relying on representations or statements made by [Brewer]." As Gherity correctly argues, language disclaiming reliance cannot, as the district court found, be "controlling" when the validity of the settlement agreement is being challenged for fraud. *Nat'l Equip. Corp. v. Volden*, 190 Minn. 596, 600, 252 N.W. 444, 445 (1934). But any error in the district court's reliance on the disclaimer is harmless because the district court's determination that Gherity did not establish justifiable reliance provides an ample basis to uphold the decision.

Restatement (Second) Judgments, ch. 5 intro. note (1982) (discussing historical availability and categories of relief from judgments).

The relief in the independent action that Gherity sought leave to bring appears to be for the alleged difference between the actual value of the Arizona property and its value as represented. This is a new claim for relief in contract or tort based on Brewer's alleged misrepresentations in connection with settling the underlying employment dispute. *See Wallace v. Hallowell*, 56 Minn. 501, 507, 58 N.W. 292, 294 (1894) (stating that measure of damages incurred in reliance on misrepresentation or breached warranty is "the difference between the actual value of the property and its value if it had been as represented"). This proposed action is not an attack on the judgment or its validity, just as a breach-of-warranty claim does not challenge the validity of the underlying contract. Because rule 60.02 does not supply the procedural mechanism to bring a new cause of action against Brewer, the district court did not abuse its discretion by denying Gherity's motion for leave to bring a new action.

Affirmed.