

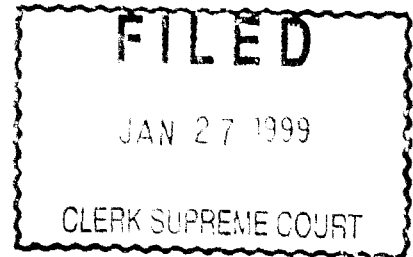
IN THE COURT OF APPEALS OF IOWA

No. 8-535 / 97-1543
Filed January 27, 1999

**CORRECTIONAL MEDICAL SYSTEMS and
RELIANCE INSURANCE COMPANY,**
Appellees,

vs.

RITA WILSON,
Appellant.



Appeal from the Iowa District Court for Lee County, David B. Hendrickson,
Judge.

Rita Wilson appeals from the district court's order directing her to specifically perform an alleged settlement agreement with her employer and its workers' compensation carrier on her workers' compensation claim. **AFFIRMED.**

Craig D. Warner of Aspelmeier, Fisch, Power, Warner & Engberg, P.L.C.,
Burlington, for appellant.

John Werner and Mark A. Schultheis of Grefe & Sidney, P.L.C., Des Moines,
for appellees.

Heard by Streit, P.J., and Vogel and Mahan, JJ.

STREIT, P.J.

Rita Wilson appeals from the trial court's order she specifically perform by signing the written document reflecting an oral agreement she reached with the plaintiffs settling her workers' compensation claim. She argues the agreement is voidable on grounds of mutual mistake, impossibility of performance, and lack of consideration. Because we find none of her defenses meritorious, we affirm the trial court's order of specific performance.

I. Background & Facts.

Rita Wilson was an employee of Correctional Medical Systems in January 1994. While at work, she was attempting to unfasten straps securing medical charts when the buckle broke loose, striking her in the right eye. Wilson alleged physical and psychological injuries resulting from the accident.

In regard to the psychological injury, a psychiatrist at the University of Iowa Psychiatry Outpatient Clinic found no evidence of depression or psychosis. Another psychiatrist at the same clinic, examining Wilson a few months later, determined Wilson had a major depressive disorder following her eye injury and the depression was causally related to her eye injury.

Wilson filed for workers' compensation benefits. Reliance Insurance Company was Correctional Medical Systems workers' compensation carrier. On September 20, 1995, the parties participated in a dispute resolution conference before

the Industrial Commissioner. The disputed issues were the amount of weekly temporary disability payments Wilson was entitled to after May, 1994; the extent of permanent partial disability; and whether the employer had any responsibility for paying psychological treatment expenses. Only the first report stating Wilson had no psychological disorder was available to the parties at the time of the dispute resolution conference.

At the end of the conference, the parties came to an oral settlement agreement. The agreement, essentially, was Wilson's permanency rating was seventy-eight percent and the employer would pay her \$13,200. No documents were executed at the conclusion of the conference.

The plaintiffs' attorney drafted settlement documents which presumably reflected the agreement at the settlement conference. Within the settlement document was a paragraph stating the parties agreed any psychological problems sustained were denied by the employer. The settlement document also contained a "global release."

During the time period Wilson was reviewing the settlement documents, she and her attorney became aware of the fact that \$600 of pharmacy expenses, largely for antidepressants, had not been paid by the insurance company. They also discovered other unpaid medical bills related to Wilson's psychological treatment. Because of the discovery of the unpaid bills and the employer's denial of liability for the bills, Wilson refused to sign the settlement document.

CMS, joined by Reliance, filed suit against Wilson alleging the parties had come to an oral settlement agreement at the dispute resolution conference and Wilson had breached the agreement by refusing to execute the settlement documents. The case was tried to the district court who found in favor of the plaintiffs and ordered Wilson to sign the settlement documents. Wilson appeals.

II. Standard of Review.

We review requests for specific performance de novo. *Breitbach v. Christenson*, 541 N.W.2d 840, 843 (Iowa 1995). Specific performance is not granted as a matter of right, but is within our discretion. *Id.* It is to be granted only in extraordinary cases, in which irreparable harm will result. *Id.* It should be denied when it would produce injustice. *Id.* A party to an agreement to settle a workers' compensation claim may seek specific performance of the settlement.¹

The plaintiff's burden in a suit for specific performance is to prove by clear, satisfactory, and convincing evidence the terms of the contract declared upon in his or her pleadings. Specific performance of a contract is not a remedy which is available as a matter of right. Rather,

¹ Iowa Code section 85.35 in pertinent part provides: "The parties to a contested case . . . may enter into a settlement of any claim arising under this chapter . . . providing for final disposition of the claim The settlement shall be in writing and submitted to the industrial commissioner for approval." In *Dillon v. City of Davenport*, 366 N.W.2d 918, 926 (Iowa 1985), the supreme court rejected the employer's contention that an oral settlement agreement must be in writing and signed by the parties before it becomes binding on the parties. The court further rejected the employer's claim that approval by the Industrial Commissioner is a condition precedent to a trial court's ordering specific performance of an oral agreement to settle. The court concluded that the decree which enforces the oral agreement requires the parties to execute their agreement so it may be tendered to the commissioner for approval. *Id.*

its availability rests in the sound discretion of the court. When the terms of an agreement are definitely fixed so that nothing remains except to reduce them to writing, an oral contract will be upheld unless the parties intended not to be bound until the agreement was reduced to writing. In order to be binding, the settlement must be complete in itself and certain. An agreement to agree at some point in the future is not binding. Whether preliminary negotiations actually ripened into an oral contract depends on the intention of the parties as gleaned from the facts of the case.

H & W Motor Exp. v. Christ, 516 N.W.2d 912, 913-914 (Iowa App. 1994)(citations omitted). There is no dispute among the parties the oral agreement formed a binding contract, however, Wilson seeks to void the contract based on alleged mutual mistakes, impossibility of performance, and lack of consideration. We consider her defenses in turn.

III. Mutual Mistake.

Wilson argues the trial court erred in granting plaintiffs specific performance on the oral contract because the contract was unenforceable based on mutual mistakes. She claims three mutual mistakes. First, she claims the fact neither party had possession of the psychiatric medical examination report stating there is a likely causal connection between her eye injury and her depression at the settlement conference amounted to a mutual mistake. Second, she claims the parties made a mutual mistake as to the extent of Wilson's medical bills. Third, she claims the terms of the global release were a mutual mistake.

A contract may be voidable if clear, satisfactory, and convincing evidence proves mutual mistake. *Davenport Bank and Trust Co. v. State Cent. Bank*, 485 N.W.2d 476, 480 (Iowa 1992). Wilson had the burden of showing mutual mistake. The mistake must have been both mutual and material. *Gentile v. Allied Energy Products, Inc.*, 479 N.W.2d 607, 609 (Iowa App. 1991). A unilateral mistake is not grounds on which to void an agreement. *Gouge v. McNamara*, No. 97-1349, 1998 WL 841502, at *2 (Iowa App., September 30, 1998).

We find none of the grounds alleged by Wilson constitute mutual mistake.

In regard to the psychiatric medical examination, Wilson has not shown the alleged mistake to be material to the agreement. Even if the missing report of the independent medical examination would have been available to the parties at the settlement conference, there is no indication the plaintiffs would have changed their position on whether Rita's depression was causally related to her eye injury. It was always the position of the plaintiffs that Wilson's psychiatric treatment was not causally related to her eye injury. Admittedly, Wilson's position would have been bolstered by having the report to reference at the settlement conference, however, a finding the plaintiffs would have changed their position had the report been available is pure speculation. The court cannot rewrite the contract which the parties have made so as to express an agreement which they did not enter into. *See Gouge*, 8-114 / 97-0134.

This holding does not mean we approve of the plaintiffs' practice of not providing Wilson with a copy of the report prior to the settlement conference. They were required to do so under the administrative rules. *See* 876 Iowa Admin. Code § 4.17. There is no showing plaintiffs knew of the report or withheld the report from defense counsel.

Wilson's second ground, that the parties made a mutual mistake as to the extent of Wilson's medical bills, was a unilateral, not a mutual mistake. *See Gouge*, 8-114 / 97-0134. After the settlement conference, Wilson discovered an unpaid pharmacy bill and other medical bills for psychiatric treatment amounting to approximately \$5500. It was Wilson's thought that all her medical bills were presented to the plaintiffs at the settlement conference. The plaintiffs did not know if all Wilson's medical expenses had been presented to them; nor did they care. It was plaintiffs position to offer Wilson a lump-sum payment to cover all claims. Both parties understood Wilson would pay any medical bills outstanding after application of the settlement amount. Even if the psychiatric, pharmacy, and medical bills now in dispute had been presented to the plaintiffs, it is unlikely the plaintiffs' lump-sum settlement offer would have differed. It was the plaintiffs' position that psychiatric expenses were not causally related to Wilson's eye injury and not compensable.

Wilson's third ground for claiming mutual mistake is the terms of the global release were not discussed at the settlement conference, and, therefore, a mutual

mistake exists as to the identification of the claims allegedly released. Since a release is a contract, its validity is governed by the usual rules relating to contracts. *Stetzel v. Dickenson*, 174 N.W.2d 438, 439 (Iowa 1990). The cardinal principle is the intent of the parties must control and except in cases of ambiguity, this is determined by what the contract itself says. *Chariton Feed & Grain, Inc. v. Harder*, 369 N.W.2d 777, 785 (Iowa 1985). The intent of the parties is also determined by what they did; and if the instrument is clearly a covenant not to sue, or a full release, there is no room for construction. *Verne R. Houghton Ins. Agency, Inc. v. Orr Drywall Co.*, 470 N.W.2d 39, 42 (Iowa 1991).

The release in question is clearly a full release; settling any claims of any type or variety against the plaintiffs. The actions of the parties did not show the intent to be otherwise. At the settlement conference, the parties agreed a global release would be executed as part of the settlement agreement. The plaintiffs' attorney drafted the release and sent it to Wilson's attorney. The release contained the following language: "I, Rita Wilson, waive and release any claims of any type or variety against Correctional Medical Systems . . . for discrimination, breach of contract, bad faith claim, unemployment or any other cause of action which may otherwise have occurred during or as a result of or related to my employment at Correctional Medical Systems." After reviewing the release, Wilson's attorney made no objection to its substantive terms. He never told plaintiffs' attorney Wilson refused to sign the

settlement agreement because of the terms of the release. It was not until trial Wilson made this argument. Because the terms of the release are clear, the terms were not a mutual mistake, and the acts of the parties do not speak otherwise, the release is enforceable.

IV. Impossibility of Performance.

Wilson next argues the contract is impossible to perform because it requires her to relinquish rights in contravention of Iowa Code §§ 85.18 and 85.55. Wilson's argument is directly contradicted by Iowa's workers' compensation statute and the supreme court case *Dillion v. City of Davenport*, 366 N.W.2d 918, 926 (Iowa 1985). Iowa Code section 85.35 specifically legitimizes settlement agreements for workers' compensation injuries: "The parties to a contested case . . . may enter into a settlement of any claim arising under this chapter . . . providing for final disposition of the claim The settlement shall be in writing and submitted to the industrial commissioner for approval." The court in *Dillion* held a court could order specific performance of a settlement agreement by requiring a party to sign an agreement before being approved by the Industrial Commissioner. *Dillion*, 366 N.W.2d at 926. Such a practice does not bypass the workers' compensation statute. *Id.* For these reasons, Wilson's argument the contract is impossible to perform because it requires relinquishment of statutory rights does not have merit. The trial court is affirmed.

V. Consideration for Oral Agreement.

Wilson's last argument is that the contract is unenforceable for lack of consideration. See *Hardin v. Eska Co.*, 127 N.W.2d 595, 597 (Iowa 1964). Consideration is defined as "a benefit to the promisor or a loss or detriment to the promisee." *Federal Land Bank of Omaha v. Woods*, 480 N.W.2d 61, 65 (Iowa 1992). The plaintiffs' promise to pay Wilson a monetary settlement for her disputed workers' compensation claims in exchange for Wilson's signed release of claims against the plaintiffs is valid consideration for the settlement agreement. The settlement agreement is enforceable. The trial court's ruling is affirmed.

AFFIRMED.