Circuit Court for Prince George's County
Case No. CAL22-19622

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1791

September Term, 2024

HEATHER KOLBE,

v.

FELICIA MCKNEW, ET AL.

Leahy,
Ripken,
Kehoe, Christopher B.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: January 20, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal involves a challenge by appellant, Heather Kolbe ("Kolbe"), to the grant of a motion to enforce a settlement agreement in favor of appellee, Felicia McKnew ("McKnew"), by the Circuit Court for Prince George's County. In September of 2021, McKnew and Kolbe, while operating separate vehicles, were involved in a collision. Kolbe subsequently filed suit in the circuit court, seeking damages on behalf of herself and her minor children, who were also in the vehicle at the time of the accident. In August of 2024, counsel for Kolbe sent counsel for McKnew a settlement demand via email, which counsel for McKnew asserts he verbally accepted via a subsequent phone call. Counsel for McKnew later filed a motion to enforce settlement, which counsel for Kolbe opposed, acknowledging that the phone call took place but asserting that no agreement was reached between the parties. The circuit court, based on the parties' unsworn submissions and without a hearing, granted McKnew's motion to enforce settlement. Kolbe filed a motion for reconsideration, which the court denied. Kolbe then filed this timely appeal and presents the following issue for our review:[1]

> Whether the circuit court erred in granting the motion to enforce settlement without a hearing.

For the reasons to follow, the judgment of the circuit court is reversed, and the case is remanded for further proceedings consistent with this opinion.

[1] Rephrased from:

> DID THE TRIAL COURT ERR WHEN IT SUMMARILY GRANTED [MCKNEW]'S MOTION TO ENFORCE SETTLEMENT WITHOUT HEARING AND WITHOUT ANY FACTS IN THE RECORD?

BACKGROUND

Underlying Facts and Procedural History

In September of 2021, McKnew and Kolbe were involved in a collision. In July of 2022, Kolbe, individually and on behalf of herself and her two minor children,[2] filed a motor tort action against McKnew and McKnew's father—who owned the vehicle McKnew was driving—for injuries she claimed to have sustained and medical expenses allegedly incurred by her and her children as a result of the crash. Kolbe later amended her complaint to add McKnew's mother, who was riding with McKnew at the time of the accident, as a defendant.

Per Kolbe, McKnew's parents were liable for their daughter's conduct because McKnew was acting as their agent at the time of the collision. Counsel for McKnew filed affidavits on behalf of each parent, wherein each stated that McKnew was not acting as his or her agent at the time of the crash; at the same time, counsel filed motions for summary judgment as to each parent, asserting that because McKnew was not acting as her parent's agent at the time of the collision, neither were liable for McKnew's conduct. The circuit court did not rule on either motion.

McKnew answered the complaint, denying any wrongdoing and asserting several affirmative defenses. The parties engaged in pretrial discovery, and a trial date was set, following an initial postponement by consent of both parties.

[2] Kolbe's daughters were present in the car at the time of the collision.

Motion to Enforce Settlement[3]

While awaiting trial and rulings on pending motions, the parties engaged in settlement discussions via email and phone calls. On August 5, 2024, counsel for McKnew sent a settlement offer to counsel for Kolbe via email, stating, "I have final authority of $30k/each for the kids for a total of $160k." Counsel for Kolbe made a counteroffer stating, "I am at $175,000" and asked whether the insurance company would make it a "[g]lobal settlement[.]" According to counsel for McKnew, he orally accepted that offer on August 7, 2024, during a phone call with opposing counsel. Subsequently, per counsel for McKnew, counsel for Kolbe attempted to raise the settlement demand to $300,000 on the same phone call. Counsel for McKnew later filed a motion to enforce settlement for $175,000.

In response to the motion, counsel for Kolbe did not dispute whether the phone call took place or whether counsel for McKnew accepted the settlement demand for $175,000. Instead, counsel asserted that he withdrew the $175,000 settlement offer "at the same time" that counsel for McKnew accepted. Per counsel for Kolbe, there was no settlement, and negotiations thus remained ongoing.

The Circuit Court's Ruling

In September of 2024, the circuit court granted McKnew's motion to enforce settlement without holding a hearing. Kolbe filed a motion for reconsideration, which the court denied. Kolbe then filed this timely appeal.

[3] The facts described in this section represent assertions made in the parties' pleadings.

DISCUSSION

THE CIRCUIT COURT ERRED IN GRANTING THE MOTION TO ENFORCE WITHOUT A PLENARY HEARING REGARDING THE EXISTENCE OF A SETTLEMENT AGREEMENT BETWEEN THE PARTIES.

A. Party Contentions

Kolbe contends that there is insufficient evidence to establish the existence of an oral settlement agreement between the parties. Primarily, Kolbe avers that there was no meeting of the minds between the parties; hence, a contract could not have been created. Notably, Kolbe contends this is exemplified by the ongoing settlement negotiations. Moreover, to the extent that the existence of a settlement agreement is in dispute, Kolbe argues, a plenary hearing was required to establish facts, and the court's reliance on allegations and legal arguments in granting the motion to enforce settlement was improper.

McKnew asserts that the parties agreed on the essential terms of a contractual agreement. Thus, McKnew argues, counsel's verbal acceptance of Kolbe's August 2024 demand, before it was withdrawn, created a binding and enforceable executory accord (i.e., settlement agreement) between the parties. Per McKnew, the existence of an agreement is demonstrated by counsel for Kolbe's statement that he "'meant' to withdraw the offer but had not done so" during the phone call in which the offer to settle was purportedly accepted. Accordingly, McKnew contends that the trial court correctly granted the motion to enforce because she neither breached the agreement nor gave an indication that she would do so.

B. Standard of Review

"In reviewing the [grant] of a motion to enforce a settlement agreement, we review the circuit court's factual findings for clear error and its legal conclusions *de novo*." *Sang*

Ho Na v. Gillespie, 234 Md. App. 742, 749 (2017). "A trial court's factual findings are not clearly erroneous as long as they are supported by any competent material evidence in the record." *4900 Park Heights Ave. LLC v. Cromwell Retail 1, LLC*, 246 Md. App. 1, 18 (2020) (quoting *Saxon Mortg. Servs. v. Harrison*, 186 Md. App. 228, 262 (2009)). *De novo* review means that we review the case and the application of law "on a clean slate, without regard to prior . . . determinations." *Mayer v. Montgomery Cnty.*, 143 Md. App. 261, 281 (2002). A trial court's entry of an order reflecting a settlement is reviewed for abuse of discretion, which occurs if the court "enters an order containing terms that vary from, or otherwise fail to reflect, those to which the parties have agreed." *4900 Park Heights Ave. LLC*, 246 Md. App. at 18.

C. Analysis

"The settlement of litigation has long been a favored method of resolving disputes." *David v. Warwell*, 86 Md. App. 306, 309 (1991). One such method of settling is known as an "executory accord[,]" where one party agrees to discharge claims against the opposing party in exchange for substituted performance. *Clark v. Elza*, 286 Md. 208, 214 (1979) (citation omitted). The performance itself, and not the promise to perform, discharges the potential claim. *See id.* (citation omitted).

"It is often extremely difficult to determine the factual question of whether the parties . . . intended to create an executory accord. . . ." *Id.* at 214–15. These agreements need not be in writing, and oral executory accords are binding and may be enforced as long as the "basic requirements to form a contract are present[.]" *See id.* at 215, 219. This Court has held that where the existence of a settlement agreement is contested, "a full plenary

hearing is required." *Warwell*, 86 Md. App. at 320. That an agreement to settle exists between the parties must be proven based on facts in the record and not solely on the allegations of counsel. *See id.* at 318–20 (citation omitted); *see also Clark*, 286 Md. at 215 (citing *Porter v. Berwyn Fuel & Feed*, 244 Md. 629, 639 (1966)) (holding that there must be "clear evidence" to disavow an apparent executory accord between parties).

The *Warwell* case is instructive. In *Warwell*, the circuit court granted a motion to enforce settlement, although the parties disputed whether an agreement existed between them. *Warwell*, 86 Md. App. at 308–09, 316. The trial court held a hearing regarding the motion to enforce settlement. *Id.* at 316. However, at the hearing, "[t]here was no sworn testimony[,] . . . affidavits, depositions, interrogatories[,] or anything remotely resembling evidence adduced at the motion hearing" regarding the alleged settlement. *Id.* at 319. Thus, at most, the circuit court decided the motion "solely on the arguments of counsel." *Id.* This Court found that the trial court erred in doing so and therefore reversed its judgment, holding that "[w]here [an] agreement itself is contested, . . . a full plenary hearing is required" to adduce evidence of its existence. *Id.* at 320–21.

The trial court in the instant action erred because "a full plenary hearing [was] required" prior to issuing a ruling on the motion to enforce settlement. *See id.* In *Warwell*, we held that the trial court improperly granted a motion to enforce settlement where the parties disputed the existence of an agreement, and there was no evidence adduced at a hearing by which the court could have granted the motion. *See id.* at 319–20. The same error occurred in the trial court here.

As in *Warwell*, the trial court here granted McKnew's motion to enforce settlement without any evidence proving that the parties agreed to settle the case, although the parties disputed the existence of any such agreement. *See id.* at 308–09, 316. On the one hand, counsel for McKnew asserted that an enforceable agreement existed, and on the other hand, counsel for Kolbe argued that such an agreement did not exist, noting settlement negotiations were ongoing. Additionally, as in *Warwell*, "[t]here was no sworn testimony[,] . . . affidavits, depositions, interrogatories, or anything remotely resembling evidence adduced at the motion hearing" to prove the existence of an agreement between Kolbe and McKnew. *Id.* at 319. The trial court here granted McKnew's motion to enforce settlement solely based on the representations made by counsel in their pleadings. To the contrary, a plenary hearing was required to adduce evidence to prove the existence of an agreement between Kolbe and McKnew. *See id.* at 319–20. Thus, as in *Warwell*, there was no evidence before the trial court in the instant case by which it could have granted the motion to enforce settlement. *See id.* at 321. Therefore, the circuit court erred in doing so. *See id.*

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY REVERSED. COSTS TO BE PAID BY APPELLEE.