

STATE OF MICHIGAN
COURT OF APPEALS

KEVIN MICHAEL THOMPSON,

Plaintiff/Counter Defendant-
Appellee,

v

MICHELLE LAYNE THOMPSON,

Defendant/Counter Plaintiff-
Appellant.

UNPUBLISHED
September 13, 2012

No. 307845
Lapeer Circuit Court
Family Division
LC No. 10-042647-DM

Before: O'CONNELL, P.J., and JANSEN and RIORDAN, JJ.

O'CONNELL, P.J. (*dissenting*).

I respectfully dissent. I would remand to the trial court to make a finding on the issue of plaintiff's competency to enter into the divorce settlement agreement.

"Where a party alleges that his or her consent [to a settlement agreement], while actually given, was influenced by circumstances of severe stress, the standard to be applied is that of mental capacity to contract." *Howard v Howard*, 134 Mich App 391, 396; 352 NW2d 280 (1984). If severe stress has prevented a party to a property settlement from reasonably understanding the nature and effect of the settlement, a trial court may consider a motion to set aside the settlement. See *Keyser v Keyser*, 182 Mich App 268, 269-270; 451 NW2d 587 (1990). To determine a party's mental capacity to contract, courts should apply the following test:

The well-settled test of mental capacity to contract . . . is whether the person in question possesses sufficient mind to understand, in a reasonable manner, the nature and effect of the act in which he is engaged. However, to avoid a contract it must appear not only that the person was of unsound mind or insane when it was made, but that the unsoundness or insanity was of such a character that he had no reasonable perception of the nature or terms of the contract. [*Howard*, 134 Mich App at 396 (citations and internal quotation marks omitted).]

Here, the trial court failed to make any specific finding on the issue of plaintiff's mental capacity to enter into the settlement agreement. Absent such a finding, the court lacked a sufficient basis for granting plaintiff's motion for relief from the judgment. Given the evidence

concerning plaintiff's brain injury, I would remand for a specific finding concerning plaintiff's mental capacity.

/s/ Peter D. O'Connell