

2015 IL App (1st) 141726-U
No. 1-14-1726
February 24, 2015

SECOND DIVISION

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

DIANE GALANTE and DAVID HINES,)	Appeal from the Circuit Court
As Special Administrator of the Estate of)	Of Cook County.
NORMAN HINES, deceased, and JUDITH A.)	
MITCHELL HINES,)	
)	No. 13 L 987
Plaintiffs-Appellees,)	13 L 1428
)	
v.)	The Honorable
)	Franklin Valderrama,
E. JAMES DAVIS,)	Judge Presiding.
)	
Defendant-Appellee,)	
)	
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LISA O'ROURKE and GARY HINES,)	
)	
Plaintiffs-Appellants,)	
)	
v.)	
)	
E. JAMES DAVIS,)	
)	
Defendant-Appellee.)	

JUSTICE NEVILLE delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

ORDER

¶ 1 *Held:* The trial judge may rely on her memory of a settlement conference to hold that a party reached a settlement of her claims, if the judge's memory does not contradict the written record in the case.

¶ 2 Lisa O'Rourke and the estate of Norman Hines filed separate lawsuits against E. James Davis to recover for injuries Norman and Lisa suffered in a car accident. Davis tendered his insurance policy limits, asking the plaintiffs to accept the payment in full satisfaction of all their claims arising from the accident. Norman's heirs sought to work out a distribution of the insurance proceeds acceptable to all heirs, including Lisa and her husband, Gary Hines. A circuit court judge helped with the negotiations and later granted the estate's motion to enforce Gary and Lisa's agreement to accept specified amounts in full satisfaction of their claims against Davis.

¶ 3 In this appeal, Gary and Lisa argue that they never agreed to settle their claims, the circuit court should have held an evidentiary hearing to determine whether they settled their claims, the circuit court should have vacated the alleged settlement due to the acts of the estate's attorney in excess of her authority, and the circuit court should have vacated the settlement as unconscionable.

¶ 4 We hold that the judge could rely on her memory, without holding an evidentiary hearing, to find that Gary and Lisa agreed to a settlement of their claims. The acts of the attorney do not affect the validity of the settlement, as the attorney did not represent Gary or Lisa when they negotiated their claims, and the attorney did not commit fraud. We also find the settlement neither procedurally nor substantively unconscionable. Therefore, we affirm the circuit court's judgment.

¶ 5

BACKGROUND

¶ 6

Gary and Lisa flew to Chicago to visit Gary's father, Norman, late in 2012. At the end of their visit, Norman drove Gary and Lisa to the airport. Norman and Lisa took the luggage out of the car's trunk. Behind them, Davis tried to pull out from a parking space, but his foot got stuck between the gas pedal and the brake. His car accelerated and slammed into Norman and Lisa, pinning them against Norman's car. Norman and Lisa suffered severe injuries.

¶ 7

Norman and Lisa both hired Regina Etherton to represent them in lawsuits against Davis. Etherton filed a complaint on behalf of Norman, and a separate complaint on behalf of Lisa and Gary.

¶ 8

Norman died on May 20, 2013. The circuit court appointed two of Norman's children, David Hines and Diane Galante, as special administrators of Norman's estate "for the purpose of prosecuting the causes of action for damages on behalf of the Estate pursuant to the Illinois Wrongful Death Act [740 ILCS 180/1 *et seq.* (West 2012)], the Illinois Survival Act [755 ILCS 5/27-6 (West 2012)] and other statutes and laws in such cases made and provided." Etherton continued to prosecute the lawsuit as counsel for the estate.

¶ 9

Davis tendered his insurance policy limits of \$1,300,000, seeking dismissal of all claims of Lisa, Gary, and Norman's estate. The circuit court entered an order, dated May 30, 2013, acknowledging the settlement offer and providing that "[a]ll claimants *** are to determine within 21 days *** whether an agreement can be reached as to the distribution of funds."

¶ 10

After the 21 days passed, Etherton informed the judge that the claimants failed to reach an agreement concerning the distribution of funds from the settlement offer. Gary and Lisa

hired a new attorney, Joseph Sorce, to represent them in further proceedings concerning their complaint and their right to damages for Norman's death. The circuit court ordered the parties to engage in pretrial discussions with Judge Lynn Egan "to determine whether an agreement can be reached before a distribution hearing is ordered." Judge Egan began the conference on July 22, 2013, and continued the conference to August 14, 2013.

¶ 11 On August 14, the conference focused on Gary and Lisa's demands. After the end of that day's conference, the court entered an order stating:

"1. This matter is continued to 9/5/13 *** for further discussions re allocation and distribution of the \$1,300,000 settlement proceeds.

2. Allison Hines and Tyler Hines [Norman's grandchildren] are ordered to appear on 9/5/13 *** if they do not agree to waive any right they may have as next of kin, to discuss any potential dependency they assert as next of kin and/or to set the matter for a distribution hearing, if need be."

¶ 12 Allison and Tyler signed affidavits in which they waived their rights to participate in the distribution of the settlement proceeds.

¶ 13 Sorce subsequently sent Gary and Lisa a draft "conditional settlement agreement," providing that Lisa would accept a payment of \$250,000 from Travelers Insurance under the underinsured motorist provision of the policy Norman purchased for coverage for the car in which Lisa rode as a passenger right before the accident. According to the draft, Lisa would also agree not to claim any part of the distribution of the \$1,300,000 available under Davis's policy, and Gary would accept 16% of the settlement proceeds remaining after Etherton took her fees and costs. Both Etherton and Sorce agreed not to seek fees from the \$250,000

Travelers would pay to Lisa. The draft said, "This settlement is conditional upon verification that *** Davis does not possess independent assets which would warrant continuing litigation."

¶ 14 Gary and Lisa did not sign the proposed settlement agreement. They fired Sorce and hired James Bonebrake to represent them in subsequent proceedings. Bonebrake first appeared on September 5, 2013, and informed the court that Gary and Lisa did not agree to the proposed settlement. The estate made an oral motion to enforce the settlement agreement, and Gary and Lisa objected. In a written order entered September 6, 2013, Judge Egan granted the motion for enforcement of the settlement and continued the matter for presentation of a written petition to approve the settlement.

¶ 15 Gary and Lisa moved for reconsideration of the September 6 order, and requested an evidentiary hearing on the issue of whether the parties settled the case. At the hearing on the motion for reconsideration, Etherton admitted that no one had opened a probate estate for Norman, and that, therefore, the special administrators lacked authority to bring a survival action on behalf of the estate. Norman's estate dismissed its Survival Act claim against Davis. Etherton pointed out that the doctors and hospitals that provided care for Norman would have a valid lien against any amounts recovered under the Survival Act, but they could not claim a lien against amounts paid to Norman's heirs under the Wrongful Death Act. However, at a hearing on November 8, 2013, Etherton informed the court that Medicare claimed a lien against the estate even for amounts paid under the Wrongful Death Act. Etherton negotiated Medicare's claim down to \$66,802.86, but Medicare refused to reduce the claim any further. Medicare also threatened to seek repayment of all of Norman's

medical expenses related to the accident and covered by Medicare, totaling about \$300,000, if the heirs did not voluntarily pay Medicare \$66,802.86. David and Diane, along with Norman's other children, Brian and Marlene Hines, agreed to pay the entire amount Medicare demanded, without any contribution from Gary and Lisa.

¶ 16 On May 19, 2014, Judge Egan entered an order denying both the motion to reconsider the order of September 6, 2013, and the motion for an evidentiary hearing on the issue of whether the parties settled the case. Judge Egan, partly relying on notes she made during the conference on August 14, 2013, recalled that Lisa agreed to accept, in full satisfaction of her claims, the \$250,000 in underinsured motorist coverage, plus lesser amounts from her other insurance, because her insurers could claim a lien against any sums she recovered from Norman's estate, but the insurers would have no such lien against Gary's share of the estate. Judge Egan also recalled that Gary agreed to accept 16% of the estate, after deductions for Etherton's fees and expenses, in full satisfaction of his claims. Judge Egan found the agreement enforceable, so she found no grounds for reconsidering the order dated September 6, 2013, and she found no grounds for holding an evidentiary hearing.

¶ 17 Gary and Lisa moved for further reconsideration of the order. In the motion they set out the evidence they expected to adduce if the court held an evidentiary hearing. According to Gary and Lisa's offer of proof, Davis's attorney would testify that in May 2013, when Etherton still represented Gary and Lisa, Etherton offered to settle the case for \$1,300,000, the limit of Davis's insurance policy, and Davis accepted the offer. Etherton would testify that she never obtained written consent from Gary and Lisa to accept \$1,300,000 in full settlement of all the claims against Davis. Etherton would also admit that prior to the

conference of August 14, 2013, she did not tell Gary and Lisa about a trust Norman created and Norman's wish to distribute the trust corpus in equal shares to his five children.

¶ 18 Gary and Lisa, in the offer of proof, further claimed that Sorce would testify that after the August 14 conference, he served on Davis asset interrogatories and requests for production, to determine whether Davis had independent assets which would warrant continuing litigation. Sorce would admit that on August 29, 2013, he sent an email to Gary and Lisa, stating, "Everything is conditional on verification that Davis has no other assets."

¶ 19 The offer of proof also included affidavits detailing testimony Gary and Lisa would give. Lisa would detail her extensive injuries and her expensive medical care, and she would add that she knew her insurers could have liens on the amounts she received from Travelers. Gary would testify about his close relationship with Norman. Gary would swear that he never agreed to pay any part of Etherton's fees out of his share of the proceeds from the wrongful death action, and he and Lisa told Judge Egan that they would not agree to any settlement that left them liable to Lisa's insurers for repayment of her medical expenses that her insurance covered.

¶ 20 Sorce sent to the court and the parties an email in which he said that Judge Egan correctly remembered the negotiations of August 14. Sorce also said in open court that he found no evidence that Davis had any significant assets other than the insurance, and the assets did not warrant further litigation.

¶ 21 In an order dated July 9, 2014, Judge Egan held that nothing in the offer of proof could overcome her vivid memory of the settlement conference and Gary and Lisa's agreement on August 14, 2013, to the specific terms set for their recovery from the wrongful death action

and from other available insurance. The court denied the second motion for reconsideration of the order for enforcement of the settlement agreement. Gary and Lisa filed a timely notice of appeal from the denial of their initial motion for reconsideration. They subsequently amended the notice of appeal to include the July 9, 2014, order as a subject for their appeal.

¶ 22

ANALYSIS

¶ 23

Gary and Lisa argue on appeal that (1) the evidence does not support the conclusion that they settled their claims against Davis; (2) the trial court should have held an evidentiary hearing on the issue of whether Gary and Lisa settled their claims; (3) Etherton and the special administrators of Norman's estate exceeded their authority in several respects during the negotiation of the parties' claims against Davis; and (4) the settlement was unconscionable.

¶ 24

Settlement

¶ 25

Gary and Lisa argue that Judge Egan improperly relied on her notes and her vivid memory of the conference held on August 14, 2013. "When presented with a challenge to a trial court's determination that parties reached an oral settlement agreement, a reviewing court will not overturn that finding unless it is against the manifest weight of the evidence." *K4 Enterprises, Inc. v. Grater, Inc.*, 394 Ill. App. 3d 307, 312 (2009). "[A]ny corrections of or additions to the record which contradict the clear and unambiguous contents of the record must be supported by something other than the 'clear memory' of the trial judge." *Hartgraves v. Don Cartage Co.*, 63 Ill. 2d 425, 432 (1976). The decision in *Hartgraves* limits the judge's reliance on her recollection to circumstances in which her recollection does not contradict or impeach the clear contents of the record. *Paschen Contractors, Inc. v. Illinois State Toll*

Highway Authority, 225 Ill. App. 3d 930, 934 (1992). "The amendment of the record without some documentation is permissible where that amendment supplies an omission in the record and does not impeach or contradict its contents." *Paschen*, 225 Ill. App. 3d at 935.

¶ 26 Gary and Lisa claim that Judge Egan's memory of the conference contradicts the record in that the order dated August 14, 2013, said that the court continued the matter for further discussion of the allocation of insurance proceeds. Also, the asset interrogatories and Sorce's email to Gary and Lisa on August 29, 2013, indicate only a conditional settlement, which Gary and Lisa never accepted.

¶ 27 The August 14 conference focused on finding compensation that would satisfy Gary and Lisa. While Gary's siblings participated in the conference, two other potential claimants, Allison and Tyler, did not participate. Without a resolution of the potential claims of Allison and Tyler, the conference participants could not reach a final settlement binding on all potential claimants. The order of August 14, 2013, with its continuation for further discussion about the allocation of available funds, reflects this limit on the result of the conference. The order does not contradict Judge Egan's recollection that Gary and Lisa agreed to dismiss their claims against Davis in exchange for Travelers's payment to Lisa of \$250,000 plus the payment to Gary from the wrongful death action of 16% of the remainder of Davis's insurance funds after payment of Etherton's fees and costs.

¶ 28 The documents Sorce prepared corroborated Judge Egan's recollection of the settlement Gary and Lisa agreed to accept during the August 14 conference. Sorce's investigation revealed that Davis had no assets that warranted further litigation. Sorce in a later email also confirmed Judge Egan's memory of the August 14 conference.

¶ 29 Because Judge Egan's memory of the conference does not contradict the record, she could rely on her memory to find that Gary and Lisa agreed to settle their claims against Davis. See *Hartgraves*, 63 Ill. 2d at 432; *Paschen*, 225 Ill. App. 3d at 935. We cannot say that the manifest weight of the evidence contradicts Judge Egan's finding that the parties reached a settlement concerning the payments Gary and Lisa would receive in exchange for their dismissal of all their claims against Davis.

¶ 30 Evidentiary Hearing

¶ 31 Gary and Lisa contend that the trial court should have held an evidentiary hearing to determine whether they agreed to settle their claims against Davis. In this appeal, they complain that the court did not permit them to make an offer of proof. The record on appeal includes their offer of proof, and the offer fulfills the function of permitting the parties, the circuit court and this court to assess the effect of the circuit court's decision not to hold an evidentiary hearing on Gary and Lisa's motion to reconsider the order granting Davis and the estate enforcement of the settlement agreement. See *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 495 (2002); *People v. Thompkins*, 181 Ill. 2d 1, 10 (1998). The circuit court's nominal denial of the motion to make an offer of proof does not provide grounds for disturbing the trial court's judgment. See *Bangaly v. Baggiani*, 2014 IL App (1st) 123760, ¶ 140.

¶ 32 According to the offer of proof, if the circuit court had held the evidentiary hearing, Etherton would have admitted that she did not obtain a written consent from Gary and Lisa before agreeing to accept the insurance policy limits from Davis in exchange for a release of all claims against him by Lisa, Gary, and Norman's estate. But Judge Egan remembered that after Gary and Lisa obtained new counsel, they expressly agreed to settle their claims against

Davis in exchange for the specified compensation. Etherton's testimony, as promised in the offer of proof, would not show fraud in the inducement to settle, mutual mistake, mental incompetence, or any other recognized ground for avoiding the settlement to which Gary and Lisa agreed. See *Blaylock v. Toledo, Peoria & Western R.R. Co.*, 43 Ill. App. 3d 35, 37 (1976). Thus, Etherton's lack of a written consent from Gary and Lisa would not vitiate their subsequent consent to the settlement.

¶ 33 According to the offer of proof, Etherton would also admit that before the settlement conference, she did not tell Gary and Lisa that Norman directed the distribution of the corpus of his trust in equal shares to his five children. However, the trust agreement did not govern the allocation of the wrongful death damages, as none of the damages passed into the trust. Judge Egan found that Gary and Lisa insisted during the negotiations that Gary should receive one-fifth of the wrongful death damages. He accepted 16% of the damages after Etherton and Sorce waived their claims for fees on the payment to Lisa by Travelers. Judge Egan further explained that after Gary's siblings agreed to pay Medicare without any contribution from Gary and Lisa, Gary obtained a share nearly equal to one-fifth of the total the heirs recovered from Davis. Thus, the record does not support the inference that disclosure of the trust agreement would have affected the settlement.

¶ 34 Further, according to the offer of proof, Sorce would testify that Gary and Lisa contingently accepted the proposed settlement, with their acceptance depending on finding that Davis lacked other significant assets. But Sorce would also testify that his investigation showed that Davis lacked significant assets apart from the insurance. Accordingly, Sorce's

testimony would support the circuit court's order for enforcement of the settlement agreement.

¶ 35 Lisa's testimony would not affect the validity of the settlement, as she knew about her injuries and her continuing need for medical care when she agreed to the settlement. See *Blaylock*, 43 Ill. App. 3d at 37.

¶ 36 Gary would testify that in the settlement conference he never agreed to reduce his portion of the insurance proceeds to pay Etherton's fees. Gary's proposed testimony would flatly contradict Judge Egan's recollection of the conference and the written conditional settlement agreement Sorce prepared after the conference. In this case, as in *Elustra v. Mineo*, 595 F.3d 699, 708-09 (7th Cir. 2010), the circuit court could find that Gary's testimony could not overcome the court's vivid recollection of Gary's assent to the settlement offer. We find that the circuit court did not abuse its discretion when it decided that it did not need an evidentiary hearing to determine that Gary and Lisa agreed to the settlement offer.

¶ 37 Etherton's Authority

¶ 38 Gary and Lisa next contend that they entered no valid settlement because Etherton and the special administrators of Norman's estate exceeded their authority in several respects during the negotiations with Davis. Gary and Lisa claim that (1) Etherton lacked authority to accept Davis's policy limits in settlement of all claims against Davis; (2) Etherton and the special administrators lacked authority to bring the Survival Act claim, and they lacked authority to dismiss it; (3) Etherton breached her duty to inform Gary and Lisa of their rights under the trust agreement; and (4) Etherton breached her duty to tell the claimants in the

wrongful death action of the medical expenses deductible from the amounts they would recover.

¶ 39 Etherton's authority and the special administrators' authority to negotiate claims against Davis and to dismiss claims against Davis have no bearing on this appeal. As long as Gary and Lisa, represented by counsel other than Etherton, agreed to dismiss all their claims against Davis in exchange for specified payments, Etherton's authority or lack thereof at other times has no effect on the validity and enforceability of the settlement. Judge Egan meticulously explained the terms of the settlement to Gary and Lisa, so that no fraud or mutual mistake affected their acceptance of the settlement offer. See *Blaylock*, 43 Ill. App. 3d at 37.

¶ 40 Gary and Lisa note that at the time of the August 14, 2013 conference, the parties and their attorneys all believed that the insurance proceeds would go to Norman's heirs, with no reductions for Norman's medical expenses, as long as the parties recovered solely for wrongful death, and not under the Survival Act. That belief later proved wrong, when Medicare threatened to sue the estate if the heirs did not pay Medicare \$66,802.86. We agree with Gary and Lisa that this new expense would have invalidated their settlement, if the other heirs had insisted that any part of the payment to Medicare come from Gary and Lisa's share of the insurance proceeds. The payment of 16% of \$66,802.86 would substantially alter the settlement to which Gary and Lisa agreed. See *Northern Trust Co. v. Brentwood North Nursing & Rehabilitation Center, Inc.*, 225 Ill. App. 3d 1039, 1042 (1992). However, the parties did not so alter the agreement. All of Gary's siblings agreed to pay the Medicare demand without any contribution from Gary so that Gary and Lisa could receive the full

sums they agreed to accept in exchange for the dismissal of their claims against Davis. Again, the lack of complete information about the costs the heirs faced does not alter Gary and Lisa's acceptance of the settlement offer. Accordingly, we find that Etherton's and the special administrators' alleged lack of authority for certain actions cannot justify vacating the settlement agreement.

¶ 41 Unconscionability

¶ 42 Gary and Lisa contend that the court should vacate the settlement as unconscionable. We review the issue *de novo*. *Crown Mortgage Co. v. Young*, 2013 IL App (1st) 122363, ¶ 6.

¶ 43 Illinois courts reviewing settlements have identified two kinds of unconscionability: "(1) procedural unconscionability, which 'involves impropriety during the process of forming a contract that deprives a party of a meaningful choice;' and (2) substantive unconscionability, which 'relates to situations where a clause or term in a contract is allegedly one-sided or overly harsh.' " *In re Marriage of Gibson-Terry & Terry*, 325 Ill. App. 3d 317, 325-26 (2001), quoting *Bishop v. We Care Hair Development Corp.*, 316 Ill. App. 3d 1182, 1196 (2000).

¶ 44 Gary and Lisa ask us to vacate the settlement as procedurally unconscionable because, at the time of the conference, (1) Judge Egan did not have all of Lisa's medical records and bills; (2) Judge Egan and the parties did not know about Medicare's lien; and (3) Gary did not know the terms of Norman's trust. Judge Egan recounted that Lisa explained to the court, on August 14, 2013, the extent of her injuries, and Judge Egan took those injuries into account in the negotiations. At the time that Lisa agreed to accept \$250,000 from Travelers in settlement of her claims, she knew the extent of her injuries and her need for future care. We

cannot say that Judge Egan's lack of bills and medical records deprived Lisa of a meaningful choice of whether to accept the settlement offer, and therefore the lack of the bills and records does not make the settlement procedurally unconscionable. See *Gibson-Terry*, 325 Ill. App. 3d at 327.

¶ 45 At the time of the settlement, the parties and the court did not know that Medicare would seek to recover part of Norman's medical expenses from the sums recovered in the wrongful death action. A party's lack of necessary information may make a settlement procedurally unconscionable, if the absence of the information injured the party who seeks to avoid the settlement. *Garmisa v. Garmisa*, 4 Ill. App. 3d 411, 426-27 (1972). Medicare's lien did not affect the amounts Gary and Lisa would receive in the settlement, although it reduced the sums available to the other wrongful death claimants. Because Gary and Lisa suffered no harm due to Medicare's demand, unknown at the time of the settlement conference, it provides no grounds for them to ask the court to vacate the settlement. *Garmisa*, 4 Ill. App. 3d at 423.

¶ 46 Similarly, the failure to disclose the terms of Norman's trust does not make the settlement agreement procedurally unconscionable. When a failure to disclose information amounts to a misrepresentation, a party seeking to avoid a settlement due to the non-disclosure "must show *** that she relied on it to her injury." *Garmisa*, 4 Ill. App. 3d at 423. But the trust agreement here did not govern the distribution of the wrongful death proceeds. If Norman's estate had recovered any funds under the Survival Act, the insurers who paid for Norman's medical care could have absorbed much of the recovery, and all of the trust beneficiaries would have received much smaller amounts than they recovered for the wrongful death

claim. Gary forcefully argued for receiving one-fifth of the proceeds from Davis's insurance, and after extensive negotiations, he received about 17% of the net proceeds from that insurance, while also getting Etherton and Sorce to agree not to seek fees for the work they did to help Lisa gain the \$250,000 payment from Travelers Insurance. Gary has not shown that the availability of the trust agreement would have changed the result of the negotiations or increased his eventual recovery, and therefore he has not shown that he suffered any injury from the failure to disclose the terms of the trust before the settlement. Accordingly, we find no procedural unconscionability.

¶ 47 Finally, Gary and Lisa contend that the circuit court should have vacated the settlement as substantively unconscionable in light of Lisa's injuries and medical expenses. Insurers made a total of \$1,550,000 available to Norman's heirs and their attorneys. Lisa agreed to accept \$250,000 from that pool, but past and future medical expenses, and legal fees of about \$27,000, promise to absorb much of that payment. Etherton claimed \$436,555.48 for her fees and expenses, leaving \$863,444.52 for distribution to Norman's children and for Medicare. Under the settlement, Gary will receive 16% of \$863,444.52, or \$138,151.13. In all, Gary and Lisa will receive about \$361,000, although a significant part of that sum may pay for Lisa's medical care. Gary's siblings will receive, on average, about \$165,000, which is less than half of the amount Gary and Lisa will receive. We do not find the terms so inordinately one-sided or oppressive as to justify vacating the settlement.

¶ 48 CONCLUSION

¶ 49 Because Judge Egan's memory did not contradict the written record, she could rely on her memory to find that on August 14, 2013, Gary and Lisa agreed to accept specified amounts

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in settlement of all their claims against Davis. Gary and Lisa's offer of proof shows that the court properly chose not to hold an evidentiary hearing, as the evidence in the offer of proof could not overcome Judge Egan's vivid recollection of their agreement to the settlement. Etherton's alleged lack of authority for actions she took when she represented Gary and Lisa cannot vitiate the settlement, made when Gary and Lisa had new counsel. Gary and Lisa have not shown that procedural or substantive unconscionability warrant vacating the settlement. Accordingly, we affirm the circuit court's judgment.

¶ 50 Affirmed.