

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Martina Taylor, Defendant Below,
Petitioner**

vs) No. 101628 (Kanawha County 08-C-1820)

**Harrison Wilson Elkins and Alice Faye Elkins,
Plaintiffs Below, Respondents**

FILED
May 27, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Defendant below, Martina Taylor, appeals the circuit court's order granting a motion to compel enforcement of a settlement agreement filed by plaintiffs below, Harrison and Alice Elkins. Mr. and Mrs. Elkins have filed a timely response brief.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

This legal matter began when Mr. and Mrs. Elkins filed a petition for injunctive relief in circuit court seeking to preclude Ms. Taylor, their neighbor, from reconstruction of a building until the parties' boundary line dispute could be resolved. A hearing on the request for an injunction was held before the circuit court on November 25, 2008. Mr. Elkins and Ms. Taylor each appeared in person and by counsel; they also brought their respective land surveyors. After the hearing began, the court declared a recess and directed the parties to discuss settlement. When the hearing resumed, counsel advised the court that there was an issue still in dispute. After accepting a proffer from counsel, the judge expressed to Ms. Taylor, "[y]ou're not going to get a better deal. There's no Court in the world that is going to make him [Mr. Elkins] do what you propose." Ms. Taylor then stated that she agreed to the settlement.

Thereafter, counsel for Mr. and Mrs. Elkins prepared a settlement agreement and corresponding quit claim deeds, but Ms. Taylor refused to sign. Ms. Taylor obtained new counsel and, by letter of June 3, 2009, objected to the settlement. Mr. and Mrs. Elkins filed a motion to enforce settlement. Ms. Taylor asserted that she was intimidated by the court's comment about her not getting a "better deal" and she felt compelled to submit to the settlement terms. The case was transferred to a different judge, who held another hearing and granted the motion to enforce settlement. The circuit court found, *inter alia*, that Ms. Taylor agreed to the settlement on the record and was estopped from avoiding the same; neither Ms. Taylor nor her lawyer expressed any objection to the court's comments until six months after the hearing; a material witness for Mr. and Mrs. Elkins had been available at the November 25, 2008, hearing but is now deceased; the prior judge acted appropriately in his inquiries and comment about the settlement; and the settlement terms were fair and reasonable.

This Court applies an abuse of discretion standard of review to an appeal of a circuit court's order enforcing a settlement agreement. *DeVane v. Kennedy*, 205 W.Va. 519, 527, 519 S.E.2d 622, 630 (1999). This Court explained in *DeVane* that the reason for this deferential standard is that both law and equity favor repose of litigious matters. *Id.* (citations omitted). Upon consideration of the record and the parties' arguments in the instant case, we find no abuse of discretion. We do not believe that the judge's comment at the November 25, 2008, hearing was improper. Ms. Taylor agreed to the settlement on the record, and she has not proven grounds sufficient to avoid the settlement. For these reasons, we affirm.

Affirmed.

ISSUED: May 27, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum
Justice Thomas E. McHugh