IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

RORY FELDMAN, Plaintiff/Counterclaim-Defendant-Appellant, vs. KIMBERLY P. KLOSTERMAN, Successor Trustee under the Kenneth F. Klosterman, Sr., Revocable Trust dated July 13, 2005, Defendant/Counterclaim-Plaintiff-Appellee.	:	APPEAL NO. C-250658 TRIAL NO. A-2102377 *JUDGMENT ENTRY*

This cause was heard upon the appeal, the record, the briefs, and arguments.

For the reasons set forth in the Opinion filed this date, the judgment of the trial court is affirmed.

Further, the court holds that there were reasonable grounds for this appeal, allows no penalty, and orders that costs be taxed under App.R. 24.

The court further orders that (1) a copy of this Judgment with a copy of the Opinion attached constitutes the mandate, and (2) the mandate be sent to the trial court for execution under App.R. 27.

To the clerk:

Enter upon the journal of the court on 10/7/2026.

Pursuant to App.R. 30, the clerk is directed to send all parties, or their counsel if represented, a copy of the court's judgment and note such action on the docket.

By: Jennifer Kinsley
Administrative Judge

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Civil Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed

Date of Judgment Entry on Appeal: October 7, 2026

Hochscheid Law, LLC, and *Tabitha M. Hochscheid*, for Plaintiff/Counterclaim-Defendant-Appellant,

Squire Patton Boggs, *Nathaniel L. Truitt*, *Madeline E. Brown*, *Frost Brown Todd LLP* and *Maureen A. Bickley*, for Defendant/Counterclaim-Plaintiff-Appellee.

ZAYAS, Judge.

{¶1} In this appeal, plaintiff/counterclaim-defendant-appellant Rory Feldman challenges the trial court's judgment enforcing a settlement agreement and dismissing all claims and counterclaims in the action with prejudice. In three assignments of error, Feldman asserts that (1) no valid settlement agreement existed, (2) the trial court erred in dismissing all claims and counterclaims in the absence of a valid settlement agreement, and (3) the trial court violated his right to due process by enforcing a settlement without providing him notice and an opportunity to be heard. For the reasons that follow, we overrule the assignments of error and affirm the judgment of the trial court.

I. Background

{¶2} The instant case arises from a dispute over certain magic memorabilia and an alleged agreement concerning ownership and possession of this collection.

{¶3} Feldman initiated this action against defendant/counterclaim-plaintiff-appellee Kimberly P. Klosterman, Successor Trustee under the Kenneth F. Klosterman, Sr., Revocable Trust dated July 13, 2005, asserting claims for declaratory judgment, tortious interference with a contract, conversion, and constructive trust. Klosterman asserted counterclaims against Feldman for declaratory judgment and intentional interference with expectancy of inheritance.

{¶4} After interim litigation, the trial entered a case scheduling order in October 2024 setting the matter for trial on May 12, 2025.

{¶5} On May 6, 2025, Feldman sought a continuance of the trial on the basis that his physician instructed him not to travel "for medical reasons." His motion stated, "Medical documentation supporting this restriction will be separately submitted to the Court and to opposing counsel under seal to protect Plaintiff's privacy

interest."

{¶6} Klosterman opposed the request on the basis that trial had been scheduled four different times in the nearly four years the case had been pending and Feldman "failed to provide sufficient documentation for why he cannot participate in trial."

{¶7} The trial court granted the continuance and rescheduled the trial for October 27, 2025.

{¶8} On October 15, 2025, Feldman again moved for a continuance of the trial on the basis that he "continues to experience health issues" and has been instructed by his physician not to travel "for medical reasons." This motion stated, "Letters from Plaintiff's physicians will be separately submitted to the Court for in camera review to protect Plaintiff's privacy interests."

{¶9} Klosterman opposed the request on the basis that Feldman "neither identified a specific condition nor provided the documentation requested by [Klosterman] to substantiate his last-minute request—choosing instead to seek in camera review to shield his rationale from any meaningful review or challenge by opposing counsel." Klosterman also asserted that Feldman could "attend remotely" if he truly could not appear in person.

{¶10} The record does not explicitly reflect whether this motion was granted or denied. However, the record suggests that it was denied. The record also suggests that trial did not occur.

{¶11} On October 24, 2025, Klosterman filed a "Motion to Enforce Settlement Agreement." In the motion, Klosterman requested that the court "enforce the parties' binding settlement agreement and enter judgment effectuating the terms by dismissing all claims and counterclaims with prejudice." The motion claims that

Feldman's continuance request was denied and that Feldman, through counsel, subsequently agreed—during a telephone conference on October 23—to dismiss his claims with prejudice if Klosterman agreed not to pursue her counterclaims for attorney fees. The court purportedly ordered the parties to file a stipulation of dismissal the following morning. The motion states,

> This Court rejected [Feldman's] latest attempt to delay, and rather than face the consequences of failing to appear for his own trial, he agreed to lay down arms. In exchange, the Trustee agreed not to pursue attorneys' fees or additional damages for having to defend Mr. Feldman's baseless suit.
>
> Now that Mr. Feldman believes the threat of trial has passed, he has reversed course. He refuses to sign a mutual release or authorize his counsel to file a stipulated dismissal of the claims. This Court should end Mr. Feldman's charade once and for all by enforcing the parties' agreement and dismissing all claims and counterclaims with prejudice.

{¶12} The parties appeared before the court that same day. The record reflects that, at the start of this proceeding, Feldman's counsel stated,

> Let me explain the position from my client's perspective. Yesterday I indicated to the Court that my client was willing to enter into a stipulation of dismissal and wanted to sign an agreement with a mutual release of all claims by all parties. I communicated that based on the direction that my client gave to me.
>
> [Counsel for Klosterman] drafted a mutual release and sent it to me, and my client reviewed it and has requested that there be included some terms that, number one, the personal property at issue be

> auctioned, and number two, that the video deposition that was taken be destroyed.
>
> I understand this is not what I communicated yesterday, but I had not heard anything about that at the time that I communicated with the Court, and my client has refused to sign the release as it is currently drafted. And so [counsel for Klosterman] filed a motion to enforce the settlement agreement, and that's where we are, from my perspective.

{¶13} After the court asked counsel if that meant the case was proceeding to trial, Klosterman's counsel brought up her motion to enforce the settlement agreement. When the court asked Feldman's counsel for his response to the request, counsel stated,

> I'm in a difficult position because I communicated what my client directed me to communicate. I recognize that there was nothing about the auction or any other terms, other than mutual release, that we discussed.
>
> My client, as it stands, has not signed a release. I don't intend to file any opposition to the motion to enforce the settlement because I recognize that we agreed to a stipulation of dismissal, and it hasn't been executed by my client.

{¶14} Consequently, the trial court said that an order granting the motion "will be signed today." The court stated, "So I am enforcing the settlement agreement. The cases [sic] will be dismissed with prejudice as to all claims."

{¶15} Consistent with its oral ruling, the trial court entered a judgment enforcing the settlement agreement and ordering "that all claims and counterclaims asserted in this action are hereby dismissed with prejudice." (Emphasis in original.)

{¶16} Feldman now appeals, raising three assignments of error for this court's review.

II. Analysis

A. First Assignment of Error

{¶17} In the first assignment of error, Feldman argues that no valid settlement agreement exists where no written agreement was executed, the settlement terms were never read into the record, and he "consistently disputed that any final agreement had been reached." Thus, he asserts that there was no meeting of the minds on all essential terms.

{¶18} "Settlement agreements are contracts between the parties 'to terminate a claim by preventing or ending litigation.'" *Swan v. Villas Condominium Unit Owners' Assn.*, 2024-Ohio-2313, ¶ 16 (1st Dist.), quoting *Kinnett v. Corporate Document Solutions, Inc.*, 2019-Ohio-2025, ¶ 18 (1st Dist.). "They are highly favored by the law as an efficient means to resolve litigation." *Id.*, citing *Kinnett* at ¶ 18.

{¶19} "Settlement agreements present issues of contract law." *Id.* at ¶ 17, citing *Turoczy Bonding Co. v. Mitchell*, 2018-Ohio-3173, ¶ 16 (8th Dist.). "Accordingly, to be enforceable a settlement agreement must include 'an offer, acceptance, contractual capacity, consideration (the bargained for legal benefit and/or detriment), a manifestation of mutual assent and legality of object and consideration.'" *Id.*, quoting *Kostelnik v. Helper*, 2002-Ohio-2985, ¶ 16. "A meeting of the minds regarding the essential terms of the agreement is also necessary." *Id.*, citing *Kostelnik* at ¶ 16.

{¶20} "While it is preferable that a settlement agreement be put in writing, 'an oral settlement agreement may be enforced if there is sufficient particularity to form a binding contract.'" *Id.* at ¶ 18, quoting *Kostelnik* at ¶ 15. "The terms of an oral

agreement will be determined based on the parties' 'words, deeds, acts, and silence.'" *Id.*, quoting *Kostelnik* at ¶ 15.

{¶21} "The standard of review applicable to a trial court's ruling on a motion to enforce a settlement agreement depends on the issue presented for review on appeal." *Swan*, 2024-Ohio-2313, at ¶ 19 (1st Dist.), citing *Kinnett*, 2019-Ohio-2025, at ¶ 19 (1st Dist.). "A de novo standard of review will be applied to questions of law, including whether the parties have entered into an enforceable agreement." *Id.*, citing *Kinnett* at ¶ 19. "But if 'the question is a factual one, such as whether an offer and acceptance has been made, a reviewing court will not overturn the trial court's finding if there was sufficient evidence in the record to support the finding.'" *Id.*, quoting *Kinnett* at ¶ 19.

{¶22} Feldman argues that the trial court erred in enforcing the settlement agreement where no meeting of the minds existed under *Rulli v. Fan Co.*, 79 Ohio St.3d 374 (1997).

{¶23} Klosterman argues that the trial court did not err in enforcing the oral settlement agreement where Feldman was precluded from repudiating his settlement agreement under *Spercel v. Sterling Industries, Inc.*, 31 Ohio St.2d 36 (1972), and *Mack v. Polson Rubber Co.*, 14 Ohio St.3d 34 (1984).

{¶24} The question addressed in *Rulli* was "whether a trial court abuses its discretion by ordering the enforcement of a disputed settlement agreement without first conducting an evidentiary hearing." *Rulli* at 376. The Ohio Supreme Court concluded that "it is not within the province of the trial judge to enforce a purported settlement agreement when the substance or the existence of that agreement is legitimately disputed." *Id.* This conclusion was based on the premises that "[a] court cannot enforce a contract unless it can determine what it is." *Id.* The Court said,

"Vagueness of expression, indefiniteness and uncertainty as to any of the essential terms of an agreement have often been held to prevent the creation of an enforceable contract." (Citation omitted.) *Id.* Further, "the law disfavors court enforcement of contracts laden with ambiguity." *Id.* "Since a settlement upon which a final judgment has been entered eliminates the right to adjudication by trial, judges should make certain the terms of the agreement are clear, and that the parties agree on the meaning of those terms." *Id.* Therefore, if there is a factual dispute as to the meaning or existence of a settlement agreement, the trial judge must conduct an evidentiary hearing to resolve the dispute about the existence of an agreement or the meaning of its terms. *Id.* at 377. However, in the absence of a factual dispute, a trial court is not required to conduct an evidentiary hearing. *Id.*, citing *Mack* at syllabus.

{¶25} In *Spercel*, the Ohio Supreme Court held that a nunc pro nunc entry journalizing an oral settlement agreement reached in the presence of the judge in chambers, with the parties and counsel present, could not be set aside via a motion to vacate the judgment over a year after the agreement was reached. *Spercel* at 36-37, 39. The judge who was present in chambers testified at the hearing on the petition to vacate and said that a firm agreement was reached in the presence of both clients and their counsel. *Id.* at 38. The Court first found that the agreement reached was of "binding effect" where the record warranted a finding that the negotiations reached a point where mutual assent had been expressed orally to settle. *Id.* at 39. The Court then found it apparent that the challenging party had the intent, made known to the judge several months later, to "disavow the settlement agreement" for the reasons explained in the petition to vacate. *Id.* at 39-40. The Court said,

> Something more is required of a party to effect a rescission of a settlement agreement than was done in the instant case. When the trial

> judge signed the *nunc pro tunc* entry, he was merely journalizing what had transpired in the cause at the settlement conference. Although he had knowledge that plaintiff had not complied with the agreement, the judge acted properly in signing the entry in the absence of some affirmative action on the part of plaintiff other than oral notification that plaintiff would and had refused to honor the agreement.
>
> Once the settlement agreement was achieved through the efforts of the trial judge, plaintiff had a duty, if he wished to disavow that agreement, to file a motion to set it aside.
>
> To permit a party to unilaterally repudiate a settlement agreement would render the entire settlement proceedings a nullity, even though, as we have already determined, the agreement is of binding force.
>
> In an action for accounting and royalties a settlement agreement entered into between the parties in the presence of the court constitutes a binding contract, even though not reduced to writing; and where a party enters into such an agreement he must, if he seeks rescission, file a motion to set it aside. Where no such motion is filed, a journal entry reflecting the settlement agreement will be given effect.

Id. at 40.

{¶26} In *Mack*, 14 Ohio St.3d 34, the judge was informed at a pretrial conference that the parties had reached a settlement in the case. *Id.* at 35. The judge therefore removed the cause from the docket. *Id.* However, the settlement agreement was ultimately not effectuated. *Id.* Thus, the ultimate complying party filed a motion to enforce the settlement. *Id.* The ultimate noncomplying party did not oppose the

motion. *Id.* At an "oral hearing" on the motion, the noncomplying party's attorney "admitted that a settlement agreement had been reached, the terms of the agreement were the same as those identified by appellee, and the only reason for [the noncomplying party]'s non-compliance [sic] with the settlement agreement was that [the party] had subsequently become dissatisfied with the agreement." *Id.* The trial court judge accordingly enforced the settlement agreement as "valid and existing." *Id.* On appeal, the noncomplying party argued that the trial court was required to conduct an evidentiary hearing on the motion to enforce. *Id.* The Ohio Supreme Court addressed the question of "whether an evidentiary hearing is required prior to issuing a judgment entry enforcing a settlement agreement between the parties in the absence of a factual dispute as to the existence or the terms of the settlement agreement." *Id.* at 36.

{¶27} The noncomplying party argued that an evidentiary hearing was required to factually determine whether a settlement agreement had been reached and, if so, what the terms were. *Id.* The Court rejected this argument under *Spercel*, stating that the trial court possessed "the authority to enforce a settlement agreement voluntarily entered into by the parties to a lawsuit since such an agreement constitutes a binding contract." *Id.* The Court said that the only difference between the case before it and *Spercel* was that, in *Spercel*, "the settlement agreement was entered into in the presence of the court." *Id.* The court said that this distinction did not take the case outside the authority of *Spercel* "for a number of reasons." *Id.* First, the noncomplying party "made no motion to vacate or set aside the settlement agreement prior to the issuance of a judgment entry enforcing the agreement." *Id.* Second, counsel "admitted that the parties had entered into a settlement agreement and did not dispute any of the terms or conditions of the agreement." *Id.* Third, "the record

[was] silent as to any request by [the noncomplying party] for an evidentiary hearing to adjudicate either the existence or terms of the settlement agreement." *Id.* at 36-37. Thus, the Court held, "[I]n the absence of allegations of fraud, duress, undue influence, or of any factual dispute concerning the existence or the terms of a settlement agreement, a court is not bound to conduct an evidentiary hearing prior to signing a journal entry reflecting the settlement agreement." *Id.* at 37.

{¶28} Thus, the Court in *Mack* clearly viewed the attorney's statement that the client later became unsatisfied with the agreement, combined with the noncomplying party's lack of action to dispute the agreement, as signaling only a repudiation of the agreement and not as a factual dispute as to the existence of a valid agreement.

{¶29} We view the facts similarly here. During the oral hearing, Feldman's counsel acknowledged that, during the telephone conference, he informed the court that Feldman "was willing to enter into a stipulation of dismissal and wanted to sign an agreement with a mutual release of all claims by all parties." He stated, "I communicated that based on the direction that my client gave to me." However, he then informed the court that Feldman was now refusing to sign the mutual release without the addition of certain terms that were not discussed at the telephone conference. He said, "I understand this is not what I communicated yesterday, but I had not heard anything about that at the time that I communicated with the Court, and my client has refused to sign the release as it is currently drafted." Counsel then stated that he would not oppose the motion to enforce the settlement agreement where he "communicated what [Feldman] directed [him] to communicate," and "recognize[d] that there was nothing about. . . any other terms, other than mutual release, that [were] discussed [at the telephone conference]."

{¶30} Thus, Feldman's counsel agreed that the parties had entered into an

agreement for a mutual release and agreed that Feldman did not communicate any additional terms to him when Feldman told him that he wanted to sign an agreement for a mutual release. Based on counsel's statements, the record supports that there was a meeting of the minds as to a mutual release with no additional terms.

{¶31} Nevertheless, Feldman refused to sign the release without the addition of certain terms. Under *Mack*, this clearly signaled a repudiation, rather than a factual dispute as to the existence of an agreement, where counsel admitted that the agreement existed and Feldman did not oppose the motion to enforce or request an evidentiary hearing.

{¶32} For these reasons, we hold that the trial court did not err in finding that a valid settlement agreement existed. Accordingly, we overrule the first assignment of error.

B. Second Assignment of Error

{¶33} In the second assignment of error, Feldman argues that dismissal with prejudice "is improper when the court has not conducted a trial or determined the merits of the claims." This argument is premised on the first assignment of error and the assertion that no valid settlement agreement exists. Because the first assignment of error has no merit for the reasons stated above, we similarly overrule the second assignment of error.

C. Third Assignment of Error

{¶34} In the third assignment of error, Feldman argues that the trial court violated his right to due process by enforcing the settlement agreement without providing him with notice and an opportunity to be heard. He appears to argue that the trial court should have granted his request for a continuance on the basis of medical reasons. However, all his arguments rely on medical documentation

appended to his appellate brief that he acknowledges is not a part of the record before this court. Because he relies on evidence outside of the record, we cannot hold that it was an abuse of discretion for the trial court to deny his request for a continuance on the basis of this documentation.

{¶35} Beyond that, he does not set forth any argument as to why he was denied notice and an opportunity to be heard even though his attorney appeared on his behalf. Therefore, we overrule the third assignment of error.

III. Conclusion

{¶36} For the foregoing reasons, we overrule the assignments of error and affirm the judgment of the trial court.

Judgment affirmed.

KINSLEY, P.J., and **CROUSE, J.,** concur.