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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A18-1785**

Jeremy J. Cobb,  
Appellant,

vs.

Dwight J. Schultz, et al.,  
Respondents.

**Filed July 22, 2019  
Affirmed  
Bjorkman, Judge**

Hennepin County District Court  
File No. 27-CV-17-14407

Jeremy J. Cobb, Cobb Chaucer PLLC, Minneapolis, Minnesota (attorney pro se)

James T. Smith, Huffman, Usem, Crawford & Greenberg, P.A., Minneapolis, Minnesota  
(for respondents)

Considered and decided by Reyes, Presiding Judge; Cleary, Chief Judge; and  
Bjorkman, Judge.

**UNPUBLISHED OPINION**

**BJORKMAN**, Judge

Appellant-attorney challenges the district court's enforcement of his mediated settlement agreement with respondents, his putative former clients, and dismissal of this action. We affirm.

## **FACTS**

Appellant Jeremy J. Cobb, a licensed attorney, sued respondents Patti M. Schultz and Dwight J. Schultz, alleging that in mid-June 2017 they sought his advice and representation in a matter arising under the Fair Credit Reporting Act (FCRA). The Schultzes did not sign a contingent-fee agreement or approve a draft complaint that Cobb sent to them later that month. Instead, on July 15, the Schultzes informed Cobb that Patti successfully resolved the FCRA issue herself. After the Schultzes refused his payment requests, Cobb commenced this action seeking to recover damages for “numerous hours” of unpaid work under the theories of quantum meruit, breach of implied contract, and unjust enrichment.

The case proceeded to mediation that concluded with the parties signing a settlement agreement. Key provisions of the mediated settlement agreement (agreement) require (1) Patti to assign her interest in the FCRA claim to Cobb, (2) Cobb to dismiss his complaint against the Schultzes with prejudice, and (3) the Schultzes to pay Cobb \$500 as a “settlement,” from which Cobb will pay his share of the mediation fees. The agreement also requires Cobb to prepare the assignment document and the parties to waive any conflicts of interest. And the agreement includes a notice that it “is a binding and enforceable agreement and contract” and “the mediator has no duty to protect their interests or provide them with information about their legal rights.” The Schultzes paid Cobb \$500 pursuant to the agreement.

When Cobb refused to dismiss the action, the Schultzes moved to enforce the agreement, arguing that they mediated in good faith and fully performed their contractual

obligations. At the motion hearing, Cobb explained that after entering into the agreement, he became concerned about taking an assignment of Patti's FCRA claim. In particular, he pointed to a rule of professional conduct that prohibits an attorney from "acquir[ing] a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client." Minn. R. Prof. Conduct 1.8(i).<sup>1</sup> He argued that the agreement is invalid or unenforceable because it could potentially violate Minnesota law.

The district court granted the Schultzes' motion and dismissed Cobb's action with prejudice. The court concluded that Cobb had failed to establish a basis for invalidating the agreement and summarily rejected Cobb's contention that the agreement is void based on an arguable violation of the ethics rule. Cobb appeals.

## DECISION

Settlement agreements are favored in the law and not set aside lightly. *Beach v. Anderson*, 417 N.W.2d 709, 711-12 (Minn. App. 1988), *review denied* (Minn. Mar. 23, 1988). They are presumed to be valid. *Skalbeck v. Agristor Leasing*, 384 N.W.2d 209, 212 (Minn. App. 1986). And they will be upheld even if the parties' "rights were different from what [the parties] supposed them to be" as long as "there was no fraud, no misrepresentations, nor mistake of fact." *Johnson v. St. Paul Ins. Co.*, 305 N.W.2d 571, 574 (Minn. 1981) (quotation omitted). The district court's decision whether to vacate a

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<sup>1</sup> Cobb sought an advisory opinion from the Lawyers Professional Responsibility Board. The Board demurred because the inquiry only concerned Cobb's past conduct, and the question of "whether the assignment of a client's claim to an attorney" violates Minn. R. Prof. Conduct 1.8(i) is not settled law in Minnesota.

settlement agreement is discretionary and will not be reversed “unless it be shown that the court acted in such an arbitrary manner as to frustrate justice.” *Id.* at 573.

A settlement agreement is enforceable if there is a definite offer, acceptance, and a meeting of the minds on the agreement’s essential terms. *Ryan v. Ryan*, 193 N.W.2d 295, 297 (Minn. 1971). A mediated settlement agreement is binding if:

- (1) it contains a provision stating that it is binding and a provision stating substantially that the parties were advised in writing that (a) the mediator has no duty to protect their interests or provide them with information about their legal rights; (b) signing a mediated settlement agreement may adversely affect their legal rights; and (c) they should consult an attorney before signing a mediated settlement agreement if they are uncertain of their rights; or
- (2) the parties were otherwise advised of the conditions in clause (1).

Minn. Stat. § 572.35, subd. 1 (2018).

The agreement contains the statutorily required terms, and Cobb does not argue that it lacks the elements of a binding contract or fails to comply with Minn. Stat. § 572.35, subd. 1. Rather, he contends the agreement is void because it may cause him to violate an ethics rule. This argument is unavailing.

First, as the party challenging the agreement, Cobb bears “the burden of showing sufficient grounds for its vacation.” *Johnson*, 305 N.W.2d at 573 (stating that the party challenging a settlement agreement “has the burden of showing sufficient grounds for its vacation”). His contention that accepting an assignment of Patti’s FCRA claim “may” violate Minn. R. Prof. Conduct 1.8(i) does not satisfy this burden. The Schultzes hotly

disputed whether they ever had an attorney-client relationship with Cobb. And even if they did, they are clearly former clients, to whom rule 1.8(i) does not apply.<sup>2</sup>

Second, the fact that Cobb may not have considered the impact of the agreement on his ethical responsibilities is not a basis for voiding the agreement. A settlement agreement is a compromise of rights, even rights about which one party to the settlement is unaware or mistaken. *See id.* at 574; *Schumann v. Northtown Ins. Agency, Inc.*, 452 N.W.2d 482, 485 (Minn. App. 1990) (“A party who voluntarily enters into a settlement agreement cannot avoid the agreement upon determining . . . that the agreement has ultimately become disadvantageous . . .”). Because Cobb is an attorney, he is fairly charged with a heightened knowledge of the law and should have acted with due diligence in researching his rights before entering into the agreement. *See Jerry’s Enters., Inc. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 711 N.W.2d 811, 817 (Minn. 2006) (“Attorneys have a duty to exercise that degree of care and skill that is reasonable under the circumstances, considering the nature of the undertaking.” (quotation omitted)).

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<sup>2</sup> Cobb acknowledges that rule 1.8(i) was enacted to prevent champerty, defined as “an agreement between a stranger to a lawsuit and a litigant by which the stranger pursues the litigant’s claims as consideration for receiving part of any judgment proceeds,” *Maslowski v. Prospect Funding Partners LLC*, 890 N.W.2d 756, 763 (Minn. App. 2017) (quotation omitted), *review denied* (Minn. May 16, 2017), and maintenance, defined as “assistance in prosecuting or defending a lawsuit given to a litigant by someone who has no bona fide interest in the case; meddling in someone else’s litigation,” *Johnson v. Wright*, 682 N.W.2d 671, 675 (Minn. App. 2004), *review granted* (Minn. Oct. 19, 2004) and *appeal dismissed* (Minn. Jan. 10, 2005). Cobb further acknowledges the agreement likely does not implicate those concerns, and that he made no such argument in the district court. The district court noted that the agreement does not violate the American Bar Association’s model rules on professional conduct, which permit an attorney to purchase a client’s accounts receivable that is the subject matter of the litigation if the attorney purchases the entire account. ABA Comm’n on Ethics & Prof’l Responsibility, Formal Op. 00-416 (2000).

Third, the agreement does not, by its terms, require Cobb to violate the law or his professional obligations. The only thing the agreement requires Cobb to do is dismiss his claim against the Schultzes with prejudice and prepare the assignment document. It does not condition any aspect of the settlement upon Cobb actually taking an assignment of and asserting Patti's FCRA claim. If Cobb decides for whatever reason not to pursue the FCRA claim, he has nevertheless received the benefit of his bargain. *See Baker v. Best Buy Stores, LP*, 812 N.W.2d 177, 182 (Minn. App. 2012) (upholding unfavorable retail service contract provision that terminated the contract upon replacement of a purchased good, because the purchasers agreed to the contract term and "received the benefit of the bargain" with the retailer), *review denied* (Minn. Apr. 25, 2012).

In sum, the district court did not abuse its discretion by enforcing the agreement and dismissing Cobb's action against the Schultzes.

**Affirmed.**