

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

BRET WADE,
Plaintiff,
v.
ERIN CHANEY FOSTER,
Defendant.

Case No. 1:17-cv-01371-JMC

**DEFENDANT ERIN FOSTER'S OPPOSITION TO MOTION TO REOPEN
MATTER**

Plaintiff's Motion to reopen this case, which was dismissed following the Parties' October 24, 2017 settlement agreement, should be denied.

This case arose because Defendant Erin Foster told others that Plaintiff Bret Wade had tied her up and sexually penetrated her without her permission. Wade did not like the fact that Foster made such statements and sued Foster for more than \$1.5 million. Foster filed an Answer contending that her statements were true and countersued for assault and defamation. An important dynamic in this case has been that Wade apparently has substantial funds to pay attorneys to represent him while, on the other hand, Foster, who recently lost her job, has little in the way of assets. Although a legal defense fund, supported by individuals who think that she has been treated unfairly, has helped, Foster has incurred tens of thousands of dollars in legal fees and has contemplated filing for personal bankruptcy.

Against this background, the Parties met for a court-ordered settlement conference on October 24, 2017 presided over by Magistrate Judge Jillyn K. Schulze. At that conference the Parties reached a settlement, a copy of which is attached to this Opposition.

The settlement provides that “no money will change hands” and that “all claims will be dismissed with prejudice.” It also provides that the parties “issue” a joint statement. In that statement Wade asserts that he “did not believe” that his conduct was unconsented. For her part, Foster did not retract her view that she did not consent to this conduct, but acknowledges that “she has no reason to doubt” that Wade subjectively believed that he was not acting without consent.

The Parties’ written settlement agreement is labeled “Settlement Agreement,” requires that all claims be “dismissed with prejudice,” and contains a non-disparagement clause. It makes no reference to any intent to negotiate additional or supplemental terms.

Litigation settlements are, by definition, compromises and, in many cases, neither party is entirely happy with what they have signed. Foster would have preferred more favorable terms, but accepts that she has agreed to a settlement and is bound by it. Wade, however, may have had second thoughts.

Wade’s “Motion to Reopen Case” does not identify any deficiency or incompleteness in the October 24 Agreement. Nevertheless, he says, without

citing any authority, that this agreement cannot be deemed the final agreement between the Parties because it is short and handwritten and, although the agreement says nothing of the sort, it was the unilateral “understanding of Plaintiff that the hand written lines would be reduced” to a more formal settlement agreement.

Litigation settlement agreements are subject to “standard contract principles.” *Lopez v. XTEL Const. Grp., LLC*, 796 F. Supp. 2d 693, 699 (D. Md. 2011). A binding “agreement ‘exists once offer, acceptance, and consideration are exchanged between the parties, regardless of whether the agreement is oral or written.’” *Id.* (enforcing oral settlement agreement). In *Lopez* an oral settlement agreement was deemed binding because it contained “a complete agreement, the terms of which are readily ascertainable.” *Id.* Here the situation is analogous, except that the agreement is written, not oral.¹

It is true that some mediation sessions result in agreements to agree—in complex cases the parties will often put in writing the key material terms of their settlement and note that they intend to negotiate additional routine terms in a final document. In this case, however the issues are not complex, there is no need for

¹ In *Lopez* the plaintiff successfully sought to enforce the agreement, which required the defendant to pay money to plaintiff, something defendant was apparently refusing to do. In this case no money will change hands and Wade does not allege that Foster breached the agreement.

any additional wording and nothing in the signed agreement suggests that the Parties anticipated entering into a subsequent writing.

Wade has attached to his motion a proposed settlement agreement which he thinks Foster should have signed. Although it is impossible to know with certainty the subjective intent of Wade and his attorneys, the document Wade attaches suggests that he may have hoped that, under the coercive threat of additional costly motion practice, Foster would agree to terms more favorable those that she and Wade agreed to before Magistrate Judge Schulze. Several examples of unilateral modifications that would seemingly benefit Wade are evident: 1) Wade's language incorrectly describes Foster's claims in a manner that belittles their seriousness 2) Wade's language implies that this court will continue to have jurisdiction of the settlement, forcing Foster, who lives in New Mexico, to travel to Maryland to defend against any alleged breach, even if such an allegation is baseless and made years in the future; and 3) Wade's language apparently requires that Foster somehow erase pre-October 24 statements critical of Wade, something not required by the October 24 agreement.²

² Although not obligated to do so, Foster has removed all past internet postings controlled by her that could reasonably be deemed disparaging. Others, however, have made highly critical internet postings related to Wade's reported sexual assault of Foster and Wade's decision to sue Foster. Foster is concerned that Wade would use his proposed language to attempt to hold her liable for publications by third parties which may cite or quote her prior statements. Foster cannot, of

