**AFFIRM; and Opinion Filed June 5, 2017.**

**In The**
# Court of Appeals
# Fifth District of Texas at Dallas

**No. 05-16-00344-CV**

**DIANA FAY BASS, Appellant**
**V.**
**RICHARD H. BASS, Appellee**

**On Appeal from the 401st Judicial District Court**
**Collin County, Texas**
**Trial Court Cause No. 401-54722-2015**

## MEMORANDUM OPINION

Before Justices Lang, Brown, and Whitehill
Opinion by Justice Brown

Pro se appellant Diana Fay Bass appeals from a final decree of divorce incorporating the terms of a mediated settlement agreement (MSA). After she and appellee Richard H. Bass entered into the MSA, Diana sought to have the trial court set it aside. As we read Diana's brief, she raises three issues: (1) the trial court erred in failing to revoke the MSA because it was procured by fraud and duress; (2) the MSA is invalid because it was not notarized; and (3) the divorce decree varied from the MSA. We affirm the trial court's decree.

Diana and Richard married in 1997. There are no children of the marriage. In August 2015, Richard filed an original petition for divorce, and Diana later filed a counter petition for divorce. The parties mediated their dispute and agreed to settle all claims and controversies between them. On October 5, 2015, Diana and Richard and their attorneys signed an MSA which divided the parties' property and debts. The agreement was contingent upon the short sale

of real property at 1605 Rockhill Road in McKinney. Among other things, Richard was awarded all interest in 1605 Rockhill, "including Wife's 50% undivided interest in such property related to the short sale by Ocwen." The agreement required Diana to sign, by October 6, certain documents to effectuate the sale of real properties in McKinney. The MSA also provided that Richard was to pay Diana $170,000 from the proceeds of the sale of "the real properties in McKinney." Richard was also awarded all interest in two trusts, the Bass Living Trust and the Bass Living Trust-RHB Subtrust.

About three weeks later, Diana's attorney moved to withdraw, and the trial court granted the motion. Richard moved the court to sign a final decree of divorce. In response, Diana filed a pro se motion to quash the MSA. Richard then filed an emergency ex parte motion for appointment of a receiver, asserting Diana refused to sign the papers to facilitate the sale of the property as required by the MSA. On November 2, 2015, the trial court granted Richard's motion and appointed Richard as receiver, specifically authorizing him to sell the 1605 Rockhill property. The property was sold, and Diana's $170,000 share of the proceeds was deposited into the registry of the court.[1]

In February 2016, Diana again filed a motion asking the trial court to revoke the MSA. On March 17, 2016, the trial court held a hearing on Diana's motion. Richard testified that he inherited real property in McKinney from his mother after she died in 2003. At some point, the property was divided into three contiguous parcels, one of them being 1605 Rockhill. Outside of 1605 Rockhill, the only other real estate Richard owned was in McKinney, and it was owned in the name of the Bass Living Trust. Richard testified that Diana asked him for a fifty percent

[1] Diana appealed the trial court's interlocutory order appointing a receiver. In April 2016, we dismissed the appeal as moot because the property had been sold. *Bass v. Bass*, 05-15-01362-CV, 2016 WL 1703007, at *1 (Tex. App.—Dallas Apr. 27, 2016, pet. denied) (mem. op.). To the extent Diana complains in this appeal that the trial court should not have appointed a receiver to sell the property, we will not revisit that issue. *See Killingsworth v. Housing Auth. of City of Dallas*, 447 S.W.3d 480, 490 n.12 (Tex. App.—Dallas 2014, pet. denied) (courts of appeals are bound by prior decisions if there is subsequent appeal in case).

interest in 1605 Rockhill, and he deeded her such an interest in that property. During the hearing, Diana claimed that she had a one-half separate property interest in *all* of the McKinney properties, not just 1605 Rockhill. Diana claimed ownership in the other property by way of the Bass Living Trust. She further claimed Richard had sold property in July, before the MSA, without informing her and without her permission and in doing so broke the rules of the trust. She admitted to the trial court that she knew the status of the property before she went to mediation "because [her] daughter had looked it up," and that during the mediation she confirmed it had been sold.

The trial court denied Diana's request to set aside the MSA and signed the final decree of divorce incorporating the terms of the MSA. In its written order denying the request to set the MSA aside, the trial court made several findings. The court found that no credible evidence of fraud, duress, or other circumstances exists to justify setting aside the MSA and found that the MSA was entered into freely and voluntarily. The court also found that before she signed the MSA, Diana "had knowledge and was aware of real estate transactions undertaken before the MSA was signed." This appeal followed.

Diana's pro se brief contains four pages of "issues presented." The issues are contained in lengthy paragraphs and are not numbered, but we construe the brief to complain that (1) the court should have set aside the MSA because it was obtained by fraud and duress; (2) the MSA was not notarized; and (3) the decree varied from the MSA. We will address these issues in order.

Under the Texas Family Code, an MSA that meets certain statutory formalities is binding on the parties and requires the rendition of a divorce decree that adopts the parties' agreement. *Loya v. Loya*, No. 15-0763, 2017 WL 1968033, at *3 (Tex. May 12, 2017); *Milner v. Milner*, 361 S.W.3d 615, 618 (Tex. 2012); *see* TEX. FAM. CODE ANN. § 6.602 (West 2006). If a signed MSA

meets the formal statutory requirements, the trial court is not required to evaluate its merits or determine if the property division is "just and right," but must render judgment on the parties' agreement. *Milner*, 361 S.W.3d at 616, 618. Further, unlike other settlement agreements, once signed, an MSA cannot be revoked. *Id.* at 618. Whether an MSA complies with the requirements of section 6.602 is a question of law that we review de novo. *See Spiegel v. KLRU Endowment Fund*, 228 S.W.3d 237, 241–42 (Tex. App.—Austin 2007, pet. denied). We review a trial court's decision not to set aside an MSA for an abuse of discretion. *R.H. v. Smith*, 339 S.W.3d 756, 765 (Tex. App.—Dallas 2011, no pet.); *In re C.H., Jr.*, 298 S.W.3d 800, 804 (Tex. App.—Dallas 2009, no pet.).

First, Diana contends the trial court should have set aside the MSA because it was procured by fraud and duress. Some courts of appeals have concluded that section 6.602 does not require the enforcement of an MSA procured by fraud, duress, coercion, or other dishonest means; the Texas Supreme Court, however, has not been faced with the issue. *See Milner*, 361 S.W.3d at 619 (citing *Morse v. Morse*, 349 S.W.3d 55, 56 (Tex. App.—El Paso 2010, no pet.); *Spiegel*, 228 S.W.3d at 242; *In re Marriage of Joyner*, 196 S.W.3d 883, 891 (Tex. App.—Texarkana 2006, pet. denied); *Boyd v. Boyd*, 67 S.W.3d 398, 403–05 (Tex. App.—Fort Worth 2002, no pet.); *In re Kasschau*, 11 S.W.3d 305, 312 (Tex. App.—Houston [14th Dist.] 1999, orig. proceeding)). For purposes of this appeal, we will assume without deciding that an MSA is subject to revocation if procured by fraud, duress, or other dishonest means.

The essence of Diana's fraud claim is that Richard committed fraud in the mediation by stating that the real estate owned by the trust was his separate property and that he had the right to sell it. Diana maintains she owned other property in McKinney apart from 1605 Rockhill under the trusts and was entitled to an equal share of the proceeds from the sale of all McKinney property. In support of her duress argument, Diana contends in her brief the mediation lasted

twelve hours, which was torture for her as she is disabled. There was little discussion of duress at the hearing. Diana asserted that duress had occurred and later stated that there was "one threat after another" at mediation.

The record reflects that the facts regarding the sale of the McKinney properties were known to Diana at the time of mediation. She acknowledged to the trial court that during mediation it was confirmed Richard had sold the properties. Thus, Diana entered into the MSA, which provided that she would receive $170,000 of the proceeds from the sale and that all interest in the trusts would go to Richard, knowing Richard had already sold the properties. The trial court found there was no credible evidence of fraud or duress in this case. We defer to the trial court's evaluation of the credibility of the witnesses. *See Strong v. Strong*, 350 S.W.3d 759, 771 (Tex. App.—Dallas 2011, pet. denied) (trial court, as trier of fact, is sole judge of credibility of witnesses and weight to be given their testimony). The trial court did not abuse its discretion in refusing to set aside the MSA on grounds it was procured by fraud, duress, or other dishonest means. We overrule Diana's first issue.

Next, Diana contends the MSA did not meet the requirements of section 6.602 of the family code because it was not notarized. To be binding, an MSA must be signed by each party to the agreement and by the party's attorney, if any, who is present at the time the agreement is signed. TEX. FAM. CODE ANN. § 6.602(b). There is no requirement that the MSA be notarized. *See id.* The MSA in this case is signed by Richard and Diana and their attorneys. It also meets the other statutory requirements. *See id.* We overrule this issue.

Finally, Diana contends the terms of the decree deviated from the MSA. Without citation to the record, she argues that the MSA required Richard to pay all taxes and the decree did not. We assume she is referring to a provision in the MSA requiring Richard to pay all taxes resulting

from the sale of the McKinney properties. The divorce decree contains that requirement in provision H-5. Diana's third issue is without merit.

In sum, the MSA in this case met the requirements set out in the family code, and the MSA's terms regarding payment of taxes from the sale of property were incorporated into the decree. We defer to the trial court's determination, based on the evidence and credibility of the witnesses, that there was no evidence of fraud, duress, or other circumstances that would justify setting the MSA aside. Accordingly, we affirm the trial court's final decree of divorce.

/Ada Brown/
ADA BROWN
JUSTICE

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# Court of Appeals
# Fifth District of Texas at Dallas

## JUDGMENT

DIANA FAY BASS, Appellant

No. 05-16-00344-CV V.

RICHARD H. BASS, Appellee

On Appeal from the 401st Judicial District Court, Collin County, Texas
Trial Court Cause No. 401-54722-2015.
Opinion delivered by Justice Brown, Justices Lang and Whitehill participating.

In accordance with this Court's opinion of this date, the trial court's final decree of divorce is **AFFIRMED**.

It is **ORDERED** that appellee RICHARD H. BASS recover his costs of this appeal from appellant DIANA FAY BASS.

Judgment entered this 5th day of June, 2017.