COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

	§	No. 08-21-00042-CV
	§	Appeal from the
IN RE ESTATE OF OLIVER LEE RENZ, DECEASED.	§	County Court at Law
	§	of Reeves County, Texas
	§	(TC# 3080P)

O P I N I O N

Over six years after the Reeves County probate court approved a settlement agreement resolving all issues and claims in a will contest, Appellants, the will contestants, filed new litigation involving estate property in Pecos County. After Appellees, the will proponents, filed a motion to enforce in the Reeves County probate court, the court granted the motion and enjoined Appellants from proceeding with related litigation. For the following reasons, we affirm.

Factual and Procedural Background

This case began as a will contest following the death of Oliver Lee Renz in 2009. Oliver's[1] will—which left his entire estate to his then nine-year-old daughter, Appellee Jolie Renz—was admitted into probate in Reeves County. Appellants, Renz's adult sons, Robert Renz, Jesse Renz,

[1] Because the individuals involved in this matter share the same last name, we use their first names for clarity.

and Teresa Contreras Renz as next friend and guardian for James Clint Contreras Renz, filed an application to set aside the order admitting the will to probate, seeking to set aside Oliver's will and establish that Jolie was not one of Oliver's heirs.

Nearly two years later, Appellants and Jolie, through her attorney ad litem, entered into a tentative settlement agreement. However, the executor of Oliver's estate (and Jolie's mother), Appellee Diana Renz, objected to the proposed agreement because it would expose Jolie to future litigation due to unresolved issues regarding estate assets. The probate court appointed a guardian ad litem to represent Jolie's interests and later rejected the proposed settlement, stating it was not in Jolie's best interest "because it fails to contain a comprehensive agreement to settle all issues between the parties." The court then ordered the parties to mediate.

Following mediation, the parties executed a new settlement agreement, which addressed all real property owned by Oliver, as well as Diana's share of their community estate. Among other things, the settlement agreement required Diana, as executor of Oliver's estate and individually, to convey to Appellants "100% of the interest in the surface estate" in two tracts of land, as well as "an undivided 25% interest in and to all the oil, gas or other minerals." The settlement agreement required Diana to convey these interests by executing two deeds, which form the basis of the parties' current dispute: the Surface Deed and the Mineral Deed. In exchange, Appellants agreed to dismiss with prejudice all claims filed. The settlement agreement also required the parties to "work in good faith to effectuate the transactions contemplated herein."

On April 30, 2014, the court approved the settlement agreement and entered judgment dismissing all of Appellants' claims. Specifically, the court stated, "[a]fter hearing evidence and testimony from the parties, the Court hereby **APPROVES** and **ACCEPTS** the Settlement Agreement and Release of Claims" and found "the matters in controversy . . . have now been fully

and finally settled, and the Court enters **JUDGMENT** acknowledging the settlement and dismissing the Contestant's claims[.]" Following the entry of judgment, the parties executed copies of the Surface Deed and Mineral Deed.

On June 2, 2020, Appellants filed a new lawsuit in Pecos County District Court, suing Jolie and Diana, both individually and as executor of Oliver's estate, among others. They claimed the Mineral Deed in fact conveyed all of Oliver's estate's surface interest in several properties to Appellants—not just 25% of the mineral interests—including the Pecos County property at issue here.

Appellees then filed a motion to enforce in the original probate matter in the Reeves County Court at Law, asking the court to enforce the settlement agreement as incorporated into the final judgment approving the same. They also sought an injunction to preclude Appellants from pursuing claims inconsistent with the settlement agreement's requirement to "work in good faith to effectuate the transactions contemplated." [Internal quotation marks omitted]. Appellants responded by filing an omnibus plea to the jurisdiction, plea in abatement/motion to stay, and response to the motion to enforce. Appellants argued the County Court did not have jurisdiction to hear the motion to enforce, but if it concluded it did, Appellees were not entitled to their requested relief on the merits.

The County Court held a hearing on Appellees' motion to enforce, then entered an order granting the motion and enjoining Appellants from pursuing the related Pecos County litigation. Specifically, the court stated the parties "shall comply with the terms of the Settlement Agreement, which was approved and accepted in this Court's Final Judgment, dated July 19, 2014" and required that Appellants "receive only 25% of mineral and royalty interests and not surface interests (except those conveyed by the Surface Deed) owned by Oliver Lee Renz and Diana Renz

on the date of Oliver Lee Renz's death." The court further clarified that "the Settlement Agreement, this Court's Final Judgment, and the Mineral Deed executed in connection therewith, required a conveyance of only mineral and royalty interests, and not surface interests," and the parties "shall execute any documents necessary to effectuate" those terms. This appeal followed.[2]

Standard of Review

Appellants contest both our jurisdiction to hear this case as well as the underlying merits of the County Court's interpretation of the Settlement Agreement and Mineral Deed. In the jurisdictional issue, Appellants raise a legal-sufficiency challenge. In a legal sufficiency review, we consider all record evidence in the light most favorable to the party for whom judgment was rendered. *Haggar Clothing Co. v. Hernandez*, 164 S.W.3d 386, 388 (Tex. 2005). So long as more than a scintilla of evidence supports the challenged finding, the no-evidence challenge fails. *Id.* Assuming we have jurisdiction, we review the merits of this dispute de novo "using well-settled contract-construction principles." *URI, Inc. v. Kleberg Cnty.*, 543 S.W.3d 755, 763 (Tex. 2018) (citing *Samson Expl., LLC v. T.S. Reed Props., Inc.*, 521 S.W.3d 766, 787 (Tex. 2017)); *Greer v. Shook*, 503 S.W.3d 571, 582 (Tex.App.—El Paso 2016, pet. denied)("[D]eed construction . . . is a question of law we review de novo.").

Analysis

Appellants raise two issues on appeal. In Issue One, they contend the County Court incorrectly interpreted the Settlement Agreement and Mineral Deed in concluding the Mineral Deed did not convey surface interests in the Property to Appellants. In Issue Two, Appellants

[2] On February 22, 2022, approximately one year after Appellants filed their notice of appeal, the County Court issued findings of fact and conclusions of law as requested by Appellants.

contend the County Court did not have jurisdiction to hear the motion to enforce. Because subject matter jurisdiction is a threshold issue, we address it first.

A. The County Court had jurisdiction to hear the motion to enforce.

Appellants contend the County Court's jurisdiction expired on July 19, 2014, or thirty days after its final judgment was signed, and accordingly, the County Court exceeded its jurisdictional authority by hearing the motion to enforce. Specifically, they challenge the legal sufficiency of the County Court's theory of jurisdiction, arguing the County Court's final judgment did not incorporate the settlement agreement—and so the court did not retain jurisdiction to issue post-judgment relief—because the settlement agreement was neither an agreed final judgment nor incorporated into the County Court's final order. Instead, Appellants maintain venue was mandatory in Pecos County because when the Appellees filed their motion to enforce, they had already initiated the Pecos County litigation concerning the same property interests, plus the motion to enforce is a compulsory counterclaim.

A court with jurisdiction to render a judgment also has the inherent authority to enforce its judgments. TEX.R.CIV.P. 308; *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chem. Co., L.P.*, 540 S.W.3d 577, 581 (Tex. 2018)(per curiam). Indeed, "[a] trial court has an affirmative duty to enforce its judgment." *In re Crow-Billingsley Air Park, Ltd.*, 98 S.W.3d 178, 179 (Tex. 2003)(citing TEX.R.CIV.P. 308). While a court's plenary power lasts just thirty days after final judgment, "a trial court's post-judgment enforcement powers can last until the judgment is satisfied." *Alexander Dubose Jefferson & Townsend LLP*, 540 S.W.3d at 581 [Internal quotation marks omitted]. The only limit on this authority is the trial court's post-judgment enforcement orders must remain consistent with the original judgment. *Gillet v. ZUPT, LLC*, 523 S.W.3d 749, 758 (Tex.App.—Houston [14th Dist.] 2017, no pet.).

Further, if a will contest is no longer pending, a settlement agreement may be enforced through a motion to enforce an agreed judgment, so long as the agreement was incorporated into the final judgment and no party to the agreement withdrew consent before the court rendered judgment. *See In re Estate of Spiller*, No. 04-15-00449-CV, 2016 WL 3557206, at *2 (Tex.App.—San Antonio June 29, 2016, no pet.)(mem. op.); O'Connor's Texas Probate Law Handbook Ch. 11-B, § 7.2.2 (2023). However, approval of a settlement alone "does not necessarily constitute rendition of judgment." *S & A Rest. Corp. v. Leal*, 892 S.W.2d 855, 857 (Tex. 1995). The language in the trial court's final judgment "must clearly indicate the intent to render judgment at the time the words are expressed." *Id.* at 858; *see also In re Vaishangi, Inc.*, 442 S.W.3d 256, 259 (Tex. 2014) (per curiam)("[A] settlement agreement does not constitute an agreed judgment unless the words used by the trial court . . . clearly indicate the intent to render judgment at the time the words are expressed." [Cleaned up]).

Here, the County Court approved the settlement agreement and incorporated it into its order rendering final judgment. No party to the agreement withdrew consent before the County Court rendered judgment.[3] The County Court's language clearly manifests its intent to incorporate the Settlement Agreement into the final order.

Appellants take issue with the County Court's statement that it "**APPROVES** and **ACCEPTS**" the settlement agreement, rather than expressly stating it "incorporated" the agreement. We agree with Appellants that "a mere reference" to a document is insufficient to incorporate it. *Azbill v. Dallas Cnty. Child Protective Servs. Unit of Tex. Dep't of Hum. & Regul. Servs.*, 860 S.W.2d 133, 136 (Tex.App.—Dallas 1993, no writ)(citing cases). However, so long as

[3] Indeed, no party contends it did.

the intent to incorporate an extrinsic document or its terms is clearly manifested, no "magic words" are required. *Exxon Mobil Corp. v. Ins. Co. of State*, 568 S.W.3d 650, 657 (Tex. 2019)(considering incorporation by reference in insurance case); *see also Berwick v. Wagner*, 336 S.W.3d 805, 809 (Tex.App.—Houston [1st Dist.] 2011, pet. denied)("Courts should not give conclusive effect to a judgment's use or omission of commonly employed decretal words, but should instead determine what the court adjudicated from a fair reading of all the judgment's provisions.").[4]

The language in the County Court's final judgment indicated its intent to incorporate the settlement agreement into the order and render judgment accordingly. The order states "[a]fter hearing evidence and testimony from the parties, the Court hereby **APPROVES** and **ACCEPTS** the Settlement Agreement and Release of Claims," and "[t]herefore, the Court finds that the matters in controversy . . . have now been fully and finally settled[.]" The County Court then stated it "enters **JUDGMENT** acknowledging the settlement and dismissing the Contestant's claims[.]" The order also specifically references the Surface Deed, Bill of Sale, and Mineral Deed "as described in the Settlement Agreement," as well as the stipulation for attorney's and ad litem fees "to be paid by Contestants in accordance with the Settlement Agreement and Stipulations made here today." Finally, the County Court stated that "[p]ursuant to the Settlement Agreement and stipulations made in open court," it "dismisses all claims[] with prejudice by any party seeking affirmative relief or contesting the will herein," clarifying that "[t]his is a **FINAL** and appealable order[.]" In short, the County Court's intent to incorporate the settlement agreement is clearly manifested through its repeated discussion of and reference to the Settlement Agreement in the final order. The caselaw Appellants cite in favor of their argument otherwise is therefore

[4] "Courts construe orders and judgments under the same rules of interpretation as those applied to other written instruments." *Azbill*, 860 S.W.2d at 136.

distinguishable. *See Vaishangi*, 442 S.W.3d at 260 (concluding Rule 11 agreement was not a final judgment because though trial court signed the agreement, it did not otherwise indicate its intent to render judgment); *Berwick*, 336 S.W.3d at 809–10 (holding judgment's reference to "the stipulation filed between the parties" did not incorporate terms regarding custodial issues discussed in stipulation agreement into final judgment).

Ample record evidence rebuts Appellants' legal sufficiency challenge to the County Court's jurisdictional theory. *See Haggar Clothing Co.*, 164 S.W.3d at 388 ("If more than a scintilla of evidence supports the challenged finding, the no-evidence challenge fails."). Because the County Court incorporated the Settlement Agreement into its final judgment, it had jurisdiction to enforce the judgment. *See* TEX.R.CIV.P. 308.

Issue One is overruled.

B. The Mineral Deed did not convey surface interests to Appellants.

Next, Appellants argue the County Court's order granting the motion to enforce improperly construed the Mineral Deed. They contend the Mineral Deed conveyed not just mineral interests but also an undivided 1/3 interest to each Appellant in the surface interests; however, the County Court's order construed the Mineral Deed as granting only mineral interests. Accordingly, Appellants claim the County Court's order construed the Mineral Deed to render its use of the word "surface" meaningless and interpreted the Settlement Agreement to improperly add the word "only"—*i.e.*, that under the Settlement Agreement, Appellants were to "receive only 25% of mineral and royalty interests and not surface interests (except those conveyed by the Surface Deed)." Appellees maintain the Mineral Deed unequivocally conveys only mineral interests.

Under the Settlement Agreement, Diana, both as executor of Oliver's estate and individually, agreed to convey to Appellants the following interests relevant to this dispute: (1)

100% of surface estate interests owned by Oliver as his separate property and Oliver and Diana as community property in the Saragosa Farm and the Pistachio Farm; and (2) "an undivided 25% interest in and to all the oil, gas or other minerals owned by" Oliver as his separate property and Oliver and Diana as community property, "including, but not limited to," the Saragosa Farm, the Pistachio Farm, the Peach Farm, and the Edith Clifford minerals. The Settlement Agreement provides Diana would convey these interests to Appellants by special warranty deed within seven calendar days of the court's approval of the Settlement Agreement. It also states the parties acknowledge these interests, among other items, "constitute good, valuable and sufficient consideration[] for the settlement, dismissal, releases and discharges set forth in this Agreement." The Settlement Agreement attached copies of both the to-be-executed Mineral and Surface Deeds.

The Mineral Deed provides Diana, both as executor of Oliver's estate and individually, must "sell, convey and transfer" an "undivided one-third (1/3) interest" to each Appellant "the hereinafter described surface, mineral and royalty interests listed in Exhibit 'A'." After describing the consideration for the conveyance—ten dollars and Appellants' dismissal with prejudice of all claims against Oliver's estate—the Mineral Deed states "[t]he mineral interests herein conveyed is an undivided twenty-five percent (25% or 0.25) of all minerals in the name of Oliver Lee Renz, Deceased at the date of his death, November 25, 2009 (whether it be separate or real of the property of Oliver Lee Renz)." It further states "[a]ny mineral interest conveyed that is subject to oil, gas and mineral lease will include twenty-five percent (25% or 0.25) of the ownership of Lessor (Grantor) to be the property of Grantee." The document clarifies Diana's individual conveyance is "as a community property owner," such that she conveys one half of the twenty-five percent community interest shared with Oliver's estate, and Appellants "will receive only twenty-five percent (25%) of the mineral interest in the total community property." The document is titled

"Mineral Deed," and its appended exhibit is titled "Exhibit 'A' to Mineral Conveyance; Estate of Oliver Lee Renz, et al., to Robert Renz, et al." Exhibit A sets out the legal description of four tracts of land in Reeves County, one in Pecos County—the property at issue in Appellants' Pecos County litigation—and one in Ward County.

The Surface Deed provides Diana, both as executor of Oliver's estate and individually, must convey "[a]n undivided one-third (1/3) interest" to each Appellant of two tracts of land in Reeves County: (1) the SE/4 Section 76, Block 13, "containing 160 acres, more or less," and (2) an undivided one-half interest in 7.38 acres of land in Section 93, Block 13, further described in Exhibit A to the Surface Deed. It further states, "[t]his conveyance is for the surface estate only, and no oil, gas or other minerals are herein conveyed."

Neither the Settlement Agreement nor the Surface Deed require a conveyance of the Pecos County property surface interests. However, Appellants contend this is irrelevant because the Pecos County property is not excluded from the list of surface estate properties, and the Settlement Agreement did not expressly limit the properties to which Diana was to convey surface estate interests to Appellants.

The parties rely on conflicting interpretations of the Mineral Deed, though both assert it is unambiguous.[5] If a contract's language is unambiguous, but its meaning is disputed, "our primary objective is to ascertain and give effect to the parties' intent as expressed in the instrument." *URI, Inc.*, 543 S.W.3d at 763 (citing *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 662 (Tex. 2005)); *see also French v. Chevron U.S.A. Inc.*, 896 S.W.2d 795, 796 (Tex. 1995)("If the

[5]Appellees contend in the alternative the Mineral Deed is ambiguous; however, we need not consider this alternative argument because we agree it is unambiguous.

language [of a mineral deed] is unambiguous, the court's primary duty is to ascertain the intent of the parties from the language of the deed by using the 'four corners' rule.").

While our "focus is on the words the parties chose to memorialize their agreement," we recognize "language is nuanced, and meaning is often context driven." *URI, Inc.*, 543 S.W.3d at 757. To that end, Texas courts have long construed words in the context in which they are used. *Id.* at 764. Though surrounding facts and circumstances "cannot be used to augment, alter, or contradict the terms of an unambiguous contract," they can "inform the meaning of language[.]" *Id.* at 758. Our approach is "holistic" and aimed at determining intent from all words and parts of the contract. *Greer*, 503 S.W.3d at 582. To that end, apparent inconsistencies or contradictions within the document must be harmonized by construing the document as a whole. *Id.* Indeed, Texas's rules for deed construction have recently moved even more decisively toward: "(1) a focus on the intent of the parties, expressed by the language within the four corners of the deed, and (2) harmonizing all parts of an instrument, even if particular parts appear contradictory or inconsistent." *Wenske v. Ealy*, 521 S.W.3d 791, 795 (Tex. 2017). Further, when, as here, several instruments comprise a single transaction, those instruments must be construed together. *Jones v. Fuller*, 856 S.W.2d 597, 601 (Tex.App.—Waco 1993, writ denied)(citing *Terrell v. Graham*, 576 S.W.2d 610, 611 (Tex. 1979)). Ultimately, our goal is to objectively determine what an ordinary person using those words under the same circumstances would understand them to mean. *URI, Inc.*, 543 S.W.3d at 764. "Understanding the context in which an agreement was made is essential in determining the parties' intent *as expressed in the agreement,* but it is the parties' expressed intent that the court must determine." *Anglo-Dutch Petroleum Int'l, Inc. v. Greenberg Peden, P.C.*, 352 S.W.3d 445, 451 (Tex. 2011).

We agree the Mineral Deed is unambiguous, so we next turn to determining the parties' intent as expressed in its language. *See Wenske*, 521 S.W.3d at 794. The conflict in this case comes from reconciling the phrase in its first paragraph—"the hereinafter described surface, mineral and royalty interests listed in Exhibit 'A'"—with the remaining language in the Mineral Deed, which refers to a conveyance of just mineral interests. Though both parties present a wide range of arguments, they both understand the construction of the Mineral Deed turns on this apparent contradiction and its impact—if any—on what the parties intended to convey through the Mineral Deed.

From examining the four corners of the Mineral Deed and reading it in its entirety, we conclude the parties intended to convey a mineral interest, but not a surface interest, in the properties set forth in the Mineral Deed. This conclusion harmonizes all portions of the Mineral Deed when construed as a whole and gives effect to its language within the context of the entire contract. After the inconsistent language in the first paragraph, the Mineral Deed then: (1) refers to "[t]he mineral interests herein conveyed;" (2) references "[a]ny mineral interest conveyed . . . subject to oil, gas and mineral lease;" and (3) states Appellants "will receive only twenty-five percent . . . of the mineral interest in the total community property." It is also expressly titled "Mineral Deed," and its exhibit is titled "Exhibit 'A' to Mineral Conveyance." *See RSUI Indem. Co. v. The Lynd Co.*, 466 S.W.3d 113, 121 (Tex. 2015)(agreeing a contract's title may be looked to in determining its meaning and counseling courts to construe contractual provisions "in a manner that is consistent with the labels the parties have given them"). A careful and detailed examination of the Mineral Deed in its entirety leads us to conclude the only reasonable reading of the document results in a conveyance of mineral, but not surface, interests. *See Wenske*, 521 S.W.3d at 798.

This conclusion is even more apparent when the Mineral Deed is construed along with the Settlement Agreement and Surface Deed. For example, the Settlement Agreement states Appellants will receive 100% of surface estate interests in the Saragosa Farm and the Pistachio Farm, and an undivided 25% interest in, among other things, the oil, gas, and other minerals in the Saragosa Farm and the Pistachio Farm. The Surface Deed conveys these two properties, which are also separately included as a conveyance in the Mineral Deed. But if the Mineral Deed in fact also conveys surface estate interests, as Appellants suggest, that would render the Surface Deed conveyance redundant.[6]

Thus, to the extent the reference to "surface" interests in the Mineral Deed conflicts with the parties' clear intent to convey only mineral interests expressed in the rest of the Mineral Deed, and as clarified by the Settlement Agreement and Surface Deed, that word must be disregarded. *See BNSF Ry. Co. v. Chevron Midcontinent, L.P.*, 528 S.W.3d 124, 136 (Tex.App.—El Paso 2017, no pet.). Though we "must endeavor to give every word meaning if we can, we can also disregard portions of a deed that contradict the overall intent of the deed." *Id.* at 135.

Appellants do not construe the Settlement Agreement, Mineral Deed, and Surface Deed together, let alone construe the Mineral Deed as a whole; instead, they focus solely on the inconsistent language in the Mineral Deed's first paragraph. Though Appellants contend we must give effect to every word in the Mineral Deed, and as such, we must conclude the parties intended to convey surface interests in the Mineral Deed, following their logic would in fact fail to give effect to the Mineral Deed's remaining language, as well as the Settlement Agreement and the

[6] Though Appellants do not contest the Surface and Mineral Deeds convey the same two properties, Appellants contend the legal descriptions of the properties are "different and more complete in the Surface Deed than they are in the Mineral Deed." However, we find that argument unavailing for the purposes of ascertaining and giving effect to the parties' intent as expressed in the agreement.

Surface Deed, which make clear the interests conveyed by the Mineral Deed are mineral, not surface, interests. To allow one reference to a conveyance of surface interests in the Mineral Deed control the disposition of this case would be irrational and contrary to our duty to determine and give effect to the parties' intent as expressed by the agreement. *See id.* at 135–36.

The County Court's order granting Appellees' motion to enforce properly construed both the Settlement Agreement and Mineral Deed in concluding the Mineral Deed conveyed mineral, but not surface, interests. Issue Two is overruled.[7]

CONCLUSION

For the above reasons, we affirm the County Court's order granting Appellees' motion to enforce.

YVONNE T. RODRIGUEZ, Chief Justice

December 15, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.

[7] The parties also brief the issue of whether, subject to the Relinquishment Act of 1919 and *Lemar v. Garner*, 50 S.W.2d 769 (Tex. 1932), Appellees currently have any mineral interest to convey in the Pecos County property. Though the County Court's findings of fact and conclusions of law state "[a]pplying the rule stated in *Lemar* would result in the Renz Brothers owning nothing in" the disputed property, we agree with Appellants that Appellees have not made this argument in the County Court. The County Court's final order also did not address this issue, nor did its 2021 order granting the motion to enforce. Accordingly, this tangential issue is not before us on appeal. *See* TEX.R.APP.P. 33.1. To the extent the County Court's findings of fact embraced a hypothetical argument Appellees could make in the future, but had not made in this case, that was error. *See Amarillo v. R.R. Comm'n of Tex.*, 511 S.W.3d 787, 796 (Tex.App.—El Paso 2016, no pet.) ("The distinctive feature of an advisory opinion is that it decides an abstract question of law without binding the parties . . . [and] the underlying issue involves no actual, genuine, live controversy[.]"[Internal citations and quotation marks omitted]).