

Order entered March 7, 2013



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

No. 05-12-00051-CV

IN THE INTEREST OF E.L.B., A CHILD

**On Appeal from the 366th Judicial District Court
Collin County, Texas
Trial Court Cause No. 366-52691-07**

ORDER

This case is appropriate for mediation pursuant to Chapter 154 of the Texas Civil Practice and Remedies Code. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 154.001–.073 (West 2011).

Chief Justice Linda Thomas (Ret.) shall serve as mediator. Any objection to this Order must be filed and served upon all parties and the mediator within 10 days from the date of this Order; an objection that is neither timely filed nor ruled upon before the scheduled mediation may be waived.

Mediation is a mandatory but nonbinding settlement conference, conducted with the assistance of the mediator. Mediation is private, confidential and privileged. After mediation, the mediator will advise the Court only that the case did or did not settle.

Unless the mediator agrees to mediate without fee according to section D(3) of the Court's ADR Procedures, the mediator will negotiate a reasonable fee with the parties, which

shall be divided and borne equally by the parties unless agreed otherwise, paid by parties directly to the mediator, and taxed as costs. If the parties do not agree upon the fee requested by the mediator, the Court will set a reasonable fee, which shall be taxed as costs. All parties and their counsel are bound by the mediation rules attached to this order and shall complete the information forms furnished by the mediator.

Before the first scheduled mediation session, all parties shall provide the mediator and all attorneys of record with an information sheet setting forth their positions about the issues that need to be resolved. At or before the first session, all parties shall produce all information necessary for the mediator to understand the issues presented. The mediator may require any party to supplement the information provided.

Named parties shall be present during the entire mediation process and each corporate party must be represented by an executive officer with authority to settle. Mediation shall take place at a time to be agreed by the parties and the mediator, but no later than **THIRTY DAYS** of the date of this order.

On the Court's motion, this appeal is **ABATED**. The appeal will be reinstated at the earlier of **FORTY DAYS** from the date of this order or when the parties report that mediation is concluded.

Failure or refusal to attend the mediation as scheduled may result in the imposition of sanctions, as permitted by law. The mediator shall notify the Court about the outcome of the mediation within 10 days of the conclusion of the mediation session pursuant to Fifth District Court of Appeals Local Rule 3.

/s/ ELIZABETH LANG-MIERS
PRESIDING JUSTICE

RULES FOR MEDIATION

1. **Definition of Mediation.** Mediation is a process under which an impartial person, the mediator, facilitates communication between the parties to promote reconciliation, settlement or understanding among them. The mediator may suggest ways of resolving the dispute, but may not impose the mediator's own judgment on the issues for that of the parties.
2. **Conditions Precedent Serving as Mediator.** The mediator shall not serve as a mediator in any dispute in which he or she has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the mediator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with parties.
3. **Authority of Mediator.** The mediator does not have the authority to decide any issue for the parties, but will attempt to facilitate the voluntary resolution of the dispute by the parties. The mediator is authorized to conduct joint and separate meeting with the parties and to offer suggestions to assist the parties achieve settlement. If necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine.
4. **Parties Responsible for Negotiating Their Own Settlement.** The parties understand the mediator will not and cannot impose a settlement in their case. The mediator, as an advocate for settlement, will use every effort to facilitate the negotiations of the parties. The mediator does not warrant or represent that settlement will result from the mediation process.
5. **Authority of Representatives.** Party representatives must have authority to settle and all persons necessary to the decision to settle shall be present. The names and addresses of such persons shall be communicated in writing to all parties and the mediator.
6. **Time and Place of Mediation.** The mediator shall fix the time of each mediation session. The mediation shall be held at the office of the mediator or at any other convenient location agreeable to the mediator and the parties, as the mediator shall determine.
7. **Privacy. Mediation sessions are private.** The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.
8. **Confidentiality and Privilege.** Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports or other documents received by a mediator while serving in that capacity shall be confidential. The mediator shall not be compelled to divulge

such records or to testify in regard to the mediation in any adversary proceeding or judicial forum. Any party that violates this order shall pay all reasonable fees and expenses of the mediator and other parties, including reasonable attorney's fees, incurred in opposing the efforts to compel testimony or records from the mediator.

9. **No Stenographic Record.** There shall be no stenographic record of the mediation process and no person shall tape record any portion of the mediation session.
10. **No Service of Process at or near the site of the Mediation session.** No subpoenas, summons, complaints, citations, writs or other process may be served upon any person at or near the site of any mediation session upon any person entering, attending or leaving the session.
11. **Termination of Mediation.** The mediation shall be terminated: A) By the execution of a settlement agreement by the parties; B) By declaration of mediator to the effect that further efforts at mediation are no longer worthwhile; or, C) after the completion of one full mediation session, by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.
12. **Interpretation and Application of Rules.** The mediator shall interpret and apply these rules.
13. **Fees and Expenses.** The mediator's daily fee, if agreed upon prior to mediation, shall be paid in advance of each mediation day. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including fees and expenses of the mediator, and the expenses of any witness and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.