

**Vacated in part and Affirmed in part and Remanded and Opinion Filed June 21, 2023**



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

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**No. 05-22-01199-CV**

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**KEVIN GLEN MATHEWS, Appellant  
V.  
MICHELLE LYNN MATHEWS, Appellee**

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**On Appeal from the 468th Judicial District Court  
Collin County, Texas  
Trial Court Cause No. 468-54611-2022**

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**MEMORANDUM OPINION**

Before Justices Nowell, Goldstein, and Breedlove  
Opinion by Justice Breedlove

In this appeal, Kevin Glen Matthews (Husband) seeks reversal of the trial court's October 24, 2022 decree of divorce, alleging that Michelle Lynn Mathews (Wife) breached her fiduciary duties, committed actual and constructive fraud, and wasted community assets. Husband alleges he was unaware of Wife's fraud when he signed the decree to signify his approval and consent "as to both form and substance." Because we conclude that Husband timely revoked his consent to the division of property in the decree, we vacate that portion of the trial court's judgment

as void and remand the case for new trial. We affirm the portion of the judgment granting the parties' divorce.

### **BACKGROUND**

The parties were married on September 3, 2005, and ceased living together as a married couple on August 1, 2022. Wife filed an original petition for divorce on August 5, 2022. She alleged among other matters her belief that the parties would enter into an agreement for division of their estate. She requested a just and right division of the estate if the parties were not able to agree.<sup>1</sup> Husband signed a waiver of service that was filed with the petition.

On October 5, 2022, Wife filed an "Affidavit for Prove-Up of Agreed Divorce," attesting that she and Husband had entered into an agreement for division of their property and debts. She stated that the agreement's terms were just and right, and the agreement was fair and equitable to both spouses. She also stated that "I have submitted an agreed decree of divorce, which has been signed by my spouse and me. This is the document that contains the agreements entered into between my spouse and me." She requested the court's approval of the agreement.

On October 21, 2022, Husband filed an original counterpetition for divorce, alleging that Wife had breached her fiduciary duties to him by "unfairly convey[ing] more than her share in the community estate for the primary purpose of enriching

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<sup>1</sup> There are no minor children of the marriage, and consequently, no conservatorship or child support issues to be resolved.

herself and defrauding [Husband].” He also alleged constructive fraud, waste of assets, and conversion. Husband alleged damage to his separate estate of “approximately \$100,000.00.” He pleaded for the court to set aside Wife’s transfer of property as a fraud on the community and to award damages and other relief.

On October 24, 2022, however, the trial court rendered judgment on a “Final Decree of Divorce” that was signed by both Husband and Wife as “approved and consented to as to both form and substance.” The signatures are not dated. The decree recites that the court heard the case on October 5, 2022, and the trial court’s docket sheet reflects October 5, 2022 as the date that Wife’s affidavit for prove-up was filed. There is no oral hearing noted on the docket sheet and there is no reporter’s record of any hearing in the record on appeal.

Husband filed a notice of appeal in the trial court on November 7, 2022. In it, he contended that although he had signed the decree, he did so with the “understanding that marital property would be split 50/50.” He alleged that Wife “sold marital property and unfairly conveyed to herself more than half of the community estate” without his understanding, agreement, or knowledge. He requested that the trial court set the matter for hearing and “enter an order setting aside the transfer as a fraud on the community and declaring the assets to be the community assets” or his separate property. Although apparently asking the trial court for this relief, he also filed an identical notice of appeal in this Court on the following day, commencing this appeal. In one issue, he contends the trial court

erred by entering the agreed final decree of divorce after he withdrew his consent. Wife has not filed a response.

### DISCUSSION

Consent to an agreed judgment must exist at the time the judgment is rendered. *Kennedy v. Hyde*, 682 S.W.2d 525, 528–29 (Tex. 1984). “For a valid consent judgment to exist, it is not sufficient that the parties may have at some time consented; the parties must explicitly and unmistakably give consent, and their consent must exist at the very moment the court undertakes to make the agreement the judgment of the court at rendition.” *Cooper v. Cooper*, No. 05-20-00507-CV, 2021 WL 1747856, at \*3 (Tex. App.—Dallas May 4, 2021, no pet.) (mem. op.) (quoting *Sohocki v. Sohocki*, 897 S.W.2d 422, 424 (Tex. App.—Corpus Christi-Edinburg 1995, no writ)). A party may revoke his consent to settle a case any time before judgment is rendered. *Samples Exterminators v. Samples*, 640 S.W.2d 873, 874–75 (Tex. 1982) (per curiam); see also TEX. FAM. CODE ANN. § 7.006(a) (agreement incident to divorce “may be revised or repudiated before rendition of the divorce . . . unless the agreement is binding under another rule of law”).

A judgment based on an agreement cannot be rendered if the consent of one of the parties has been withdrawn or is lacking at the time the agreement is rendered; “such judgment is void.” *Cooper*, 2021 WL 1747856, at \*3 (internal quotation omitted). “The proper inquiry is whether the information in the trial court’s possession is clearly sufficient and of such a nature as to put the court on notice that

a party's consent is lacking and to require the court to make further inquiry before rendering judgment." *Id.* "A pleading filed prior to rendition of judgment which alleges a party's revocation of consent or a motion opposing the entry of judgment on said grounds is sufficient to effectively withdraw consent to the agreed judgment." *Sohocki*, 897 S.W.2d at 424.

Here, Husband filed his counterpetition on October 21, 2022, alleging breaches of fiduciary duty, actual and constructive fraud, waste of community assets, and conversion by Wife. He requested the court to enter an order setting aside certain transfers of property as frauds on the community and declaring the assets to be either community property or Husband's separate property. He also alleged that the marriage "has become insupportable because of discord or conflict of personalities . . . that destroys the legitimate ends of the marriage relationship and prevents any reasonable expectation of reconciliation," and requested the court to grant a divorce. Although the decree recites that the court "heard" the case on October 5, 2022, the court did not sign the decree until October 24, 2022, three days after Husband filed his counterpetition. We conclude the record clearly reflects Husband's revocation of consent to the division of property three days before the trial court rendered the final decree of divorce. Consequently, we conclude that portion of the decree is void for lack of consent. *See Sohocki*, 89 S.W.3d at 424. We sustain Husband's challenge to the division of property and vacate that portion of the judgment as void. We affirm the portion of the trial court's judgment granting the parties' divorce. *See Cooper*,

2021 WL 1747856, at \*5 (affirming the granting of divorce but reversing property division).

### CONCLUSION

We vacate the property division in trial court's judgment as void. We affirm the portion of the judgment granting the parties' divorce. The case is remanded to the trial court for new trial on all issues other than the parties' divorce.

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/Maricela Breedlove/  
MARICELA BREEDLOVE  
JUSTICE



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

**JUDGMENT**

KEVIN GLEN MATHEWS,  
Appellant

No. 05-22-01199-CV      V.

MICHELLE LYNN MATHEWS,  
Appellee

On Appeal from the 468th Judicial  
District Court, Collin County, Texas  
Trial Court Cause No. 468-54611-  
2022.

Opinion delivered by Justice  
Breedlove. Justices Nowell and  
Goldstein participating.

In accordance with this Court's opinion of this date, the property division in the trial court's judgment is **VACATED** as void. The portion of the judgment granting the parties' divorce is **AFFIRMED**. This cause is **REMANDED** to the trial court for a new trial on all issues other than the parties' divorce.

It is **ORDERED** that appellant Kevin Glen Mathews recover his costs of this appeal from appellee Michelle Lynn Mathews.

Judgment entered this 21<sup>st</sup> day of June, 2023.