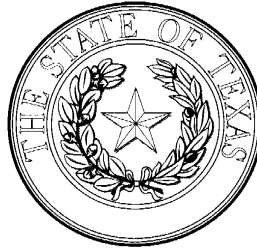


Opinion issued August 27, 2020



In The  
**Court of Appeals**  
For The  
**First District of Texas**

---

NO. 01-18-00852-CV

---

**M&E ENDEAVOURS LLC, Appellant**

**V.**

**AIR VOICE WIRELESS LLC, Appellee**

---

---

**On Appeal from County Civil Court at Law No. 1  
Harris County, Texas  
Trial Court Case No. 1058825**

---

---

*and*

---

01-19-00180-CV

---

**M&E ENDEAVOURS LLC, Appellant**

**V.**

**AIR VOICE WIRELESS LLC, Appellee**

---

---

**On Appeal from the 295th District Court  
Harris County, Texas  
Trial Court Case No. 2014-29960**

---

---

**MEMORANDUM OPINION**

This case involves two related appeals. In the first appeal, appellant, M&E Endeavours LLC (“M&E Endeavours”), challenges the county court’s order, entered in a post-judgment turnover receivership proceeding, which required a receiver to implement a settlement agreement reached in a separate district court suit between M&E Endeavours and appellee, Air Voice Wireless LLC (“Air Voice”).<sup>1</sup> In twelve issues, M&E Endeavours contends that the county court erred in granting Air Voice’s Motion for Court to Approve Settlement by Receiver, entering its August 21, 2018 Order on Motion for Court to Approve Settlement by Receiver and its October 4, 2018 Nunc Pro Tunc Order on Motion for Court to Approve Settlement by Receiver, and dismissing the underlying suit for want of prosecution.

In the second appeal, appellant, M&E Endeavours, challenges the district court’s order dismissing its district court suit against appellee, Air Voice, for, among

---

<sup>1</sup> Appellate cause no. 01-18-00852-CV; trial court cause no. 1058825.

other things, breach of contract. In eleven issues, M&E Endeavours contends that the district court erred in dismissing the suit after a settlement agreement.<sup>2</sup>

We affirm.

### **Background**

Because the facts of these two appeals are intertwined, they will be discussed together. In 2015, Fedex Techconnect, Inc. (“Fedex Techconnect”) brought suit in county court against M&E Endeavours and Mahesh “Moe” Salgaonkar, alleging that Fedex Techconnect had sold and delivered goods, wares, merchandise, and services to M&E Endeavours and Salgaonkar and M&E Endeavours and Salgaonkar failed to pay Fedex Techconnect for the same. On September 21, 2015, the county court entered a default judgment in favor of Fedex Techconnect against M&E Endeavours and Salgaonkar<sup>3</sup> in the amount of “\$15,310.41, together with interest at the rate of six and 00/100 percent (6.00%) per annum from May 15, 2014, until date of judgment, together with reasonable attorneys’ fees . . . in the amount of \$5,105[], and for interest on the entire [j]udgment at the rate of five and 00/100 percent

---

<sup>2</sup> Appellate cause no. 01-19-00180-CV; trial court cause no. 2014-29960.

<sup>3</sup> Salgaonkar brought a bill of review challenging the default judgment against him. The default judgment was then reversed and, on remand, Fedex Techconnect non-suited its claims against Salgaonkar. The non-suit has no bearing on the post-judgment turnover receivership proceeding at issue in the first appeal; Salgaonkar was not a party to post-judgment turnover receivership proceeding; and Salgaonkar is not a party to either appeal.

(5.00%) per annum from the date of [j]udgment until paid, together with costs of court . . . .”

For several months, Fedex Techconnect tried to collect on its default judgment against M&E Endeavours but was unsuccessful. M&E Endeavours did not respond to post-judgment discovery requests and did not identify its assets. In June 2015, Fedex Techconnect filed in county court an application for a turnover order after judgment and for the appointment of a receiver. In October 2016, the county court granted Fedex Techconnect’s application and appointed a receiver. In February 2018, the county court signed a Second Supplemental Order to Turnover and Appointing a Receiver (the “turnover and receivership order”).

The turnover and receivership order states that the court “assumes jurisdiction over and takes constructive possession of all of Receivership Assets. The receivership has a judicial lien on all non-exempt assets of [M&E Endeavours], regardless of whether the [r]eceiver takes actual possession.” Among other things, the order required M&E Endeavours to turnover to the receiver “all non-exempt funds to the extent required to satisfy the [j]udgment.” It also provided that, “[w]ith leave of [c]ourt, [the] [r]eceiver may commence, maintain, settle and control any cause of action owed or owned by [M&E Endeavours] . . . .”

Among the assets subject to the turnover and receivership order was a suit that M&E Endeavours had brought against Air Voice, which was then pending in the

295th Judicial District Court, Harris County, Texas, Cause No. 2014-29960, styled *M&E Endeavours LLC v. Air Voice Wireless LLC* (the “Air Voice suit”). In its first amended petition filed in the Air Voice suit, M&E Endeavours alleged that it had entered into an agreement with Air Voice for Air Voice to purchase cellular telephones. And although M&E Endeavours delivered the cellular telephones to Air Voice, Air Voice failed to pay the \$165,204 that M&E Endeavours was owed. M&E Endeavours brought claims against Air Voice for, among other things, breach of contract. Air Voice answered, generally denying the allegations in the petition and asserting counterclaims for breach of contract and breach of warranty.

In the post-judgment turnover receivership proceeding in county court, M&E Endeavours did not respond to the county court’s turnover and receivership order. And in March 2018, the receiver filed a plea in intervention in the Air Voice suit, asserting that by virtue of the county court’s turnover and receivership order, the receiver had the exclusive right to control the assets of M&E Endeavours and was “the sole person with authority to prosecute, or to authorize another to prosecute, the claims and causes of actions asserted by . . . M&E Endeavours” in the Air Voice suit and “the sole person with authority to make decisions regarding any compromise or settlement of those claims and causes of action.”

On May 4, 2018, the receiver filed, in the post-judgment turnover receivership proceeding in county court, an Emergency Motion for Leave of Court to Settle the

Air Voice suit. In its motion, the receiver asserted that Air Voice had contacted the receiver with an offer to settle the Air Voice suit for \$2,500. Air Voice's position was that the breach-of-contract claim asserted by M&E Endeavours in the Air Voice suit lacked merit, Air Voice's counterclaims were meritorious, and that the likely outcome of a trial of the case would be a substantial judgment in favor of Air Voice and against M&E Endeavours.

According to the receiver, in investigating the Air Voice suit, the receiver's counsel was only able to have one conversation with counsel for M&E Endeavours and M&E Endeavours did not provide any pertinent documents to the receiver and did not respond to subsequent telephone calls or emails. But the receiver was able to review the pleadings in the Air Voice suit and investigate the factual background and the issues involved. Thus, the receiver and Air Voice reached an agreement for Air Voice to pay \$14,000 to the receiver to settle all claims and counterclaims in the Air Voice suit. The receiver opined "that the proposed settlement [was] the best available option to obtain the best possible recovery for or on behalf of M&E Endeavours in connection with the claims and causes of action which are the subject of the [Air Voice] suit." And the receiver requested that the county court approve the settlement agreement between the receiver and Air Voice.

The receiver attached to her emergency motion the written settlement agreement (the “Air Voice settlement agreement”) executed by the receiver and Air Voice on May 3, 2018. It contained the following pertinent terms:

- Receiver will promptly file with the County Civil Court No. 1 [in the post-judgment turnover receivership proceeding], and schedule for hearing at the earliest reasonably available date, an application or motion asking the Receivership Court to sign an order granting leave for the [r]eceiver to implement this Settlement Agreement; and
- The parties, conditioned upon the Receivership Court signing the order granting leave and authorizing the [r]eceiver to implement this Settlement Agreement, and conditioned upon the timely payment by Air Voice to [the] [r]eceiver of the settlement funds as described above, will ask the 295th Judicial District Court to dismiss with prejudice, Case No. 2014-29960 [(the Air Voice suit)], with each party bearing its own costs incurred.

The Air Voice settlement agreement also contained a “mutual release of all claims, including any and all claims which were or could have been asserted in the [Air Voice suit] by M&E Endeavours or Air Voice or by persons claiming by, through, or under them.” Instead of indemnity, the receiver agreed to a conveyance out of the receivership estate of claims that M&E Endeavours had “against any third party, including but not limited to, . . . Salgaonkar, Ellie Haddad, Mara Wilson, or other insiders or purported successors-in-interest of M&E [Endeavours],” so that such claims could be asserted by Air Voice if an insider or successor-in-interest attempted to reopen the Air Voice suit.

M&E Endeavours filed a Response and Objection to the receiver’s emergency motion which, among other things, stated that M&E Endeavours was willing to pay \$20,000 to settle the judgment in favor of Fedex Techconnect. M&E Endeavours further argued that settlement of the Air Voice Suit for \$14,000 was grossly inadequate and unfair because the value of its claims against Air Voice “was substantially higher, namely more than \$150,000.” M&E Endeavours made no representation concerning the value of Air Voice’s counterclaims against it.

The county court, in the post-judgment turnover receivership proceeding, held a hearing on the receiver’s emergency motion. The appellate record contains no reporter’s record of the May 16, 2018 hearing on the emergency motion, but instead of the receiver’s proposed order as originally written—which was consistent with the relief requested in the receiver’s emergency motion and the terms of the Air Voice settlement agreement—the order that the county court ultimately signed was interlineated to order that the Air Voice settlement agreement be “denied . . . on the condition that the amount of \$20,000[] is received by the [r]eceiver from M&E Endeavours LLC on or before 5:00 pm, Friday, May 18, 2018.” The interlineations further provided that “[i]n the event that the [r]eceiver does not receive the amount



of \$20,000[] referred to above by 5:00 p.m., Friday, May 18, 2018,” the receiver was ordered to implement the Air Voice settlement agreement.<sup>4</sup>

M&E Endeavours paid the receiver \$20,000 by the designated deadline. In subsequent filings in the post-judgment turnover receivership proceeding, M&E Endeavours and the receiver represented to the county court that they intended the \$20,000 to be in settlement of Fedex Techconnect’s default judgment against M&E Endeavours,<sup>5</sup> but not until September 20, 2018, when Fedex Techconnect filed a Release of Judgment, does the record contain any written settlement agreement, Rule 11 agreement,<sup>6</sup> or other evidence of the alleged settlement’s terms.

On May 21, 2018, the receiver non-suited her intervention in the Air Voice suit. On June 7, 2018, Air Voice filed a petition in intervention in the post-judgment turnover receivership proceeding, claiming an interest in the Air Voice suit as property in the receivership. It also filed a separate suit in county court against the

---

<sup>4</sup> The order signed by the county court on May 16, 2018 is titled Order Granting Leave for Receiver to Settle Lawsuit.

<sup>5</sup> For instance, the receiver represented in one of her filings in the county court that at the hearing on the receiver’s emergency motion, counsel for M&E Endeavours stated that it proposed to pay Fedex Techconnect \$20,000 to settle the default judgment against it, and counsel for Fedex Techconnect informed the receiver that it would be willing to settle its judgment against M&E Endeavours for the \$20,000 that M&E Endeavours had proposed to pay.

<sup>6</sup> *See* TEX. R. CIV. P. 11.

receiver for breach of the Air Voice settlement agreement.<sup>7</sup> In the petition for intervention, Air Voice asserted that the receiver had breached the Air Voice settlement agreement, it was seeking to enforce the Air Voice settlement agreement, and it was ready, willing, and able to tender its own performance of payment to the receiver in the amount of \$14,000.

On July 12, 2018, Air Voice filed, in the post-judgment turnover receivership proceeding, a Motion for Court to Approve Settlement by Receiver, requesting enforcement of the Air Voice settlement agreement by the county court. In the motion, Air Voice asserted that the receiver had violated the provision in the Air Voice settlement agreement in which she had agreed to ask the county court to sign an order granting leave to implement the Air Voice settlement agreement. And Air Voice asked the county court to implement the settlement agreement by judicially assigning to Air Voice all of M&E Endeavours' claims and causes of action in the Air Voice suit so that the entire case could be dismissed with prejudice, ordering the receiver to accept the \$14,000 payment from Air Voice, and conveying to Air Voice certain claims of M&E Endeavours against its current and former insiders as required by the Air Voice settlement agreement.<sup>8</sup>

---

<sup>7</sup> See *Air Voice Wireless LLC v. Receiver Appointed by County Civil Court at Law No. One in Cause No. 1058825*, Cause No. 1111537, previously pending in County Civil Court at Law No. 4 of Harris County, Texas.

<sup>8</sup> M&E Endeavours and the receiver filed responses to Air Voice's motion.

At the August 21, 2018 hearing on Air Voice’s motion, the county court granted Air Voice’s petition in intervention and granted its Motion for Court to Approve Settlement by Receiver. The county court signed a written Order on Motion for Court to Approve Settlement by Receiver on August 21, 2018. Then, in accordance with the Air Voice settlement agreement, Air Voice paid \$14,000 to the receiver and the Air Voice suit was dismissed with prejudice in the district court. On August 24, 2018, the county court dismissed the underlying Fedex Techconnect suit against M&E Endeavours for want of prosecution. And on October 4, 2018, the county court signed a Nunc Pro Tunc Order on Motion for Court to Approve Settlement by Receiver.

### **Post-Judgment Turnover Receivership**

“A judgment creditor is entitled to aid from a court of appropriate jurisdiction . . . through injunction or other means in order to reach property to obtain satisfaction on the judgment if the judgment debtor owns property, including present or future rights to property, that is not exempt from attachment, execution, or seizure for the satisfaction of liabilities.” TEX. CIV. PRAC. & REM. CODE ANN. § 31.002(a).

We review the trial court’s application of the post-judgment turnover and receivership statute under an abuse-of-discretion standard. *See id.* § 31.002 (providing court “may” order turnover of non-exempt property; otherwise apply

property to satisfaction of judgment; and “appoint a receiver with the authority to take possession of the nonexempt property”); *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991); *see also Sheikh v. Sheikh*, 248 S.W.3d 381, 386 Tex. App.—Houston [1st Dist.] 2007, no pet.) (reviewing turnover order and appointment of receiver in divorce action); *Citimortg. v. Hubener*, 345 S.W.3d 193, 195–96 (Tex. App.—Dallas 2011, no pet.) (reviewing appointment of receiver and duration and termination of receivership); *DeVore v. Central Bank & Tr.*, 908 S.W.2d 605, 608 (Tex. App.—Fort Worth 1995, no writ) (reviewing decisions made pursuant to turnover order). A trial court abuses its discretion when it acts in an unreasonable or arbitrary manner or when it acts without reference to any guiding rules or principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985); *Gray v. CHCA Bayshore L.P.*, 189 S.W.3d 855, 858 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

On a judgment creditor’s motion, the trial court may grant turnover relief and appoint a receiver to aid in collection of the judgment. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 31.002(b). Once a turnover order appointing a receiver is signed, all of the judgment debtor’s non-exempt property becomes property in custodia legis. *Tex. Am. Bank/W. Side v. Haven*, 728 S.W.2d 102, 104 (Tex. App.—Fort Worth 1987, no writ); *see First S. Props. v. Vallone*, 533 S.W.2d 339, 343 (Tex. 1976). During the pendency of a receivership, the property held in custodia legis is free

from interference, with the exclusive custody and possession that the court assumes over it. *See Neel v. Fuller*, 557 S.W.2d 73, 76 (Tex. 1977).

“Under receivership law generally, a receiver is an officer of the court, the medium through which the court acts. A receiver is a disinterested party, the representative and protector of the interests of all persons, including creditors, shareholders and others, in the property in receivership.” *Rich v. Cantilo & Bennett, L.L.P.*, 492 S.W.3d 755, 760–61 (Tex. App.—Austin 2016, pet. denied) (internal quotations omitted). The receiver derives her authority from the court appointing her. *Knox v. Damascus Corp.*, 200 S.W.2d 656, 659 (Tex. App.—Galveston 1947, no writ); *see Vallone*, 533 S.W.2d at 343 (“A receiver has been said to be an arm or instrumentality of the court, holding possession of property for the court which appointed him.”). As the trial court’s agent, the receiver is subject to the trial court’s authority and orders in all things pertaining to the receivership. *Knox*, 200 S.W.2d at 659.

The duration of a receivership and its termination are within the sound discretion of the trial court. *Gilles v. Yarbrough*, 224 S.W.2d 720, 722 (Tex. Civ. App.—Fort Worth 1949, no writ) (trial court did not abuse its discretion by denying motion to terminate receivership more than three years after judgment in main case became final where other pending lawsuits prevented completion of receiver’s duties).

### **A. Judicial Power in Postjudgment Turnover Receivership Proceeding**

In M&E Endeavours' first and twelfth issues, it argues that the county court erred in entering the August 21, 2018 Order on Motion for Court to Approve Settlement by Receiver and the October 4, 2018 Nunc Pro Tunc Order on Motion for Court to Approve Settlement by Receiver because it had lost its plenary power on the issue of the settlement agreement and the orders are void.

“A trial court has an affirmative duty to enforce its judgment.” *In re Crow-Billingsley Air Park*, 98 S.W.3d 178, 179 (Tex. 2003) (citing TEX. R. CIV. P. 308). Thus, even after a court's plenary power has expired, it has the power to enforce its judgment and to aid the judgment creditor in collecting on that judgment until the judgment is satisfied. *Mitchell v. Turbine Res. Unltd., Inc.*, 523 S.W.3d 189, 197 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) (citing TEX. R. CIV. P. 308, 621); *see Bahar v. Lyon Fin. Servs., Inc.*, 330 S.W.3d 379, 387 (Tex. App.—Austin 2010, pet. denied) (contrasting plenary power over suit, which is limited to prevent suit continuing indefinitely even after final judgment, with enforcement power, which court can exercise for indefinite period of time).

M&E Endeavours premises its arguments on its assertion that the May 18, 2018 payment of \$20,000 it made to the receiver satisfied Fedex Techconnect's default judgment against it. The record does not support this premise. The amount

M&E Endeavours owed under Fedex Techconnect's judgment exceeded \$20,000,<sup>9</sup> and the record evidence does not show that Fedex Techconnect accepted the \$20,000 from M&E Endeavours to settle the unpaid judgment until Fedex Techconnect filed its Release of Judgment on September 20, 2018. Thus, when the county court ruled on Air Voice's Motion for Court to Approve Settlement by Receiver, which sought enforcement of the Air Voice settlement agreement, the receivership was still open, M&E Endeavours' property remained in custodia legis, and the county court continued to have the authority to enforce the judgment against M&E Endeavours. *Neel*, 557 S.W.2d at 76 (property not transferred out of custodia legis because details of attempted conveyance were not presented to trial court and trial court had not ruled on conveyance's validity).

Also contrary to M&E Endeavours' apparent position, the county court was not required to ratify the receiver's actions. On the contrary, the county court oversaw the receiver's actions; any authority that the receiver had was derived wholly from the county court. *Knox*, 200 S.W.2d at 659. Further, the turnover and receivership order required the receiver to obtain leave of county court to settle a legal action in the receivership estate. The county court thus expressly reserved its authority to review and rule on the propriety of the receiver's settlement of the Air Voice suit.

---

<sup>9</sup> As of May 2018, the balance due on the judgment was at least \$34,000.

M&E Endeavours also asserts that the county court’s May 16, 2018 order, titled Order Granting Leave for Receiver to Settle Lawsuit, which conditionally denied the Air Voice settlement, became unconditional after M&E Endeavours made its \$20,000 payment to the receiver on May 18, 2018, and, as a result, the county court lost its power to implement the Air Voice settlement agreement before it signed the August 21, 2018 Order on Motion for Court to Approve Settlement by Receiver. To support that assertion, M&E Endeavours relies on authorities holding that a trial court’s order resolving a discrete issue in a receivership is appealable as a final adjudication. *See, e.g., Huston v. F.D.I.C.*, 800 S.W.2d 845, 847 (Tex. 1990). But these authorities do not suggest that a trial court overseeing a receivership may not reconsider a prior order that is not on appeal. And “[e]ven after a receivership ends, the trial court has jurisdiction to conduct proceedings necessary to conclude the receivership and discharge the receiver.” *Hill v. Hill*, 460 S.W.3d 751, 763 (Tex. App.—Dallas 2015, pet. denied). This authority extends to correcting a prior order effecting a settlement to make it consistent with the terms of the settlement agreement, which is what occurred here. Because the receivership had not closed, the county court still had the authority to sign the October 4, 2018 Nunc Pro Tunc Order on Motion for Court to Approve Settlement by Receiver.



Thus, we hold that the county court did not err in entering the August 21, 2018 Order on Motion for Court to Approve Settlement by Receiver and the October 4, 2018 Nunc Pro Tunc Order on Motion for Court to Approve Settlement by Receiver.

We overrule M&E Endeavours' first and twelfth issues.

**B. County Court's Authority to Approve Air Voice Settlement**

In its second issue, M&E Endeavours argues that the county court erred in granting Air Voice's Motion for Court to Approve Settlement by Receiver because the county court had previously denied the receiver's motion to approve the Air Voice settlement agreement.

M&E Endeavours cites no authority to support its assertion that the county court could not reconsider its prior ruling on the matter. An appellant's brief "must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." TEX. R. APP. P. 38.1(i). "This is not done by merely uttering brief conclusory statements, unsupported by [appropriate] legal citations." *Tesoro Petroleum Corp. v. Nabors Drilling USA, Inc.*, 106 S.W.3d 118, 128 (Tex. App.—Houston [1st Dist.] 2002, pet. denied). The briefing requirements are mandatory; a party who does not appropriately cite authority and the record waives his appellate complaint. *Perry v. Cam XV Tr.*, 579 S.W.3d 773, 779 (Tex. App.—Houston [1st Dist.] 2019, no pet.). Thus, we hold that M&E Endeavours waived its second issue.

In its fourth issue, M&E Endeavours, without citation to authority, argues that the county court erred in granting Air Voice's Motion for Court to Approve Settlement by Receiver because the receiver opposed the motion. We hold that this argument is waived for inadequate briefing. *See id.*; *see also* TEX. R. APP. P. 38.1(i). M&E Endeavours' argument also contradicts the county court's turnover and receivership order as well as the portion of the Air Voice settlement agreement requiring the receiver to ask the county court to implement the settlement agreement. The county court had the ultimate authority to approve or disapprove the receiver's settlement proposal related to the Air Voice suit: it was not required to rubber-stamp the receiver's recommendation, which, in any event, had changed twice since she first presented the Air Voice settlement agreement to the county court.

In its fifth issue, M&E Endeavours argues that the county court erred in granting Air Voice's Motion for Court to Approve Settlement by Receiver because Fedex Techconnect had released its default judgment against M&E Endeavours. On the contrary, when the county court ruled on Air Voice's motion, Fedex Techconnect had not yet released its judgment, nor had the receiver requested that the receivership be closed or filed a final accounting. And because the receivership was still open when the county court granted Air Voice's Motion for Court to Approve Settlement by Receiver, M&E Endeavour's non-exempt property, including its claims in the Air Voice suit, remained in the county court's constructive possession. Still yet, M&E

Endeavours cites no authority to support its argument and, as a result, we hold that it has waived its fifth issue. *See* TEX. R. APP. P. 38.1(i); *Perry*, 579 S.W.3d at 779.

In its eighth issue, M&E Endeavours argues that the county court erred in granting Air Voice’s Motion for Court to Approve Settlement by Receiver because Air Voice failed to seek enforcement via a separate breach-of-contract action. “A trial court’s decision whether a settlement agreement should be the subject of a contract action requiring additional pleadings and proof is subject to [an] abuse of discretion standard of review.” *See Baylor Coll. of Med. v. Camberg*, 247 S.W.3d 342, 345–46 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (internal quotations omitted); *see also Mantas v. Fifth Ct. of Appeals*, 925 S.W.2d 656, 659 (Tex. 1996); *In re Gen. Metal Fabricating Corp.*, No. 01-06-00879-CV, 2006 WL 3316877, at \*3 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding) (mem. op.) (trial court abused its discretion in severing action to enforce settlement agreement instead of abating entire case to allow time for resolution of breach-of-settlement-agreement claims).

Here, the Air Voice settlement agreement was particularly suited to adjudication within the post-judgment turnover receivership proceeding. The court appointing a receiver has exclusive jurisdiction over property subject to the receivership. *Chimp Haven, Inc. v. Primarily Primates, Inc.*, 281 S.W.3d 629, 633 (Tex. App.—San Antonio 2009, no pet.). The receiver had already non-suited her

intervention in the Air Voice suit. And Air Voice had intervened in the county court's post-judgment turnover receivership proceeding because the receiver did not ask the county court to implement the Air Voice settlement agreement as required. The Air Voice suit was property subject to the turnover and receivership order and thus was in county court's constructive custody. And because the receiver had negotiated the Air Voice settlement agreement, the county court that appointed her had the authority to approve it and require its implementation. We hold that the county court did not err in enforcing the Air Voice settlement agreement in the post-judgment turnover receivership proceeding.

We overrule M&E Endeavours' eighth issue.

In its tenth issue, M&E Endeavours argues that the county court erred in granting Air Voice's Motion for Court to Approve Settlement by Receiver and ordering the dismissal of the Air Voice suit because the receiver was no longer a party to the Air Voice suit. Because M&E Endeavours cites no authority to support its argument, we hold that it has waived its tenth issue. *See* TEX. R. APP. P. 38.1(i); *Perry*, 579 S.W.3d at 779.

### **C. Propriety of Air Voice's Intervention**

In its third and sixth issues, M&E Endeavours argues that the county court erred in allowing Air Voice to intervene in the post-judgment turnover receivership proceeding and in granting Air Voice's Motion for Court to Approve Settlement by

Receiver because Air Voice “lacked the right and/or standing to intervene in the proceedings to ask the [c]ounty [c]ourt to approve settlement.” We disagree.

A turnover order “acts as a mandatory injunction against the judgment debtor and, if there are such parties, against the receiver and any third parties interested in the property rights being adjudicated.” *Schultz v. Fifth Judicial Dist. Ct. of Appeals*, 810 S.W.2d 738, 740, 740 (Tex. 1991), *abrogated on other grounds by In re Sheshtawy*, 154 S.W.3d 114 (Tex. 2004). “Intervention is a recognized option for a non-party seeking to protect its interest in property that is the subject of a turnover motion” or order. *Mitchell v. Turbine Res., Ltd.*, 523 S.W.3d 189, 200 (Tex. App.—Houston 14th Dist. 2017, pet. denied); *see, e.g., Lerma v. Forbes*, 166 S.W.3d 889, 893 (Tex. App.—El Paso 2005, pet. denied) (recognizing post-judgment intervention is allowed when intervenor that has no complaint with merits of judgment obtained in underlying lawsuit seeks to protect own interest in post-judgment enforcement proceeding); *Breazeale v. Casteel*, 4 S.W.3d 434, 436–37 (Tex. App.—Austin 1999, pet. denied) (declaring intervention not barred after final judgment where intervenor merely sought to protect its interest in property that was subject to turnover motion). And a written settlement agreement may be enforced as a contract even though one party withdraws consent before judgment is rendered on the agreement. *Mantas*, 925 S.W.2d at 658. The receiver’s settlement of the Air Voice suit pursuant to the Air Voice settlement agreement gave Air Voice

an interest in the property in custodia legis and thus the right to intervene in the post-judgment turnover receivership proceeding. *See Vallone*, 533 S.W.2d at 343. Thus, we hold that the county court did not err in allowing Air Voice to intervene in the post-judgment turnover receivership proceeding and in granting Air Voice’s Motion for Court to Approve Settlement by Receiver.

We overrule M&E Endeavours’ third and sixth issues.

In its seventh issue, M&E Endeavours argues that the county court erred in allowing Air Voice to intervene in the post-judgment turnover receivership proceeding and in granting Air Voice’s Motion for Court to Approve Settlement by Receiver because Air Voice’s petition in intervention was untimely. But this argument relies on M&E Endeavours’ erroneous position that the receivership closed when M&E Endeavours made its \$20,000 payment to the receiver on May 18, 2018 and supposed representations made at the May 16, 2018 hearing on the receiver’s Emergency Motion for Leave of Court to Settle the Air Voice suit—a hearing for which we have no record. And M&E Endeavours fails to cite to any authority to support its argument. *See* TEX. R. APP. P. 38.1(i). Thus, we hold that M&E Endeavours has waived its seventh issue. *See Perry*, 579 S.W.3d at 779.

#### **D. Fairness of Air Voice Settlement Agreement**

In its ninth issue, M&E Endeavours argues that the county court erred in granting Air Voice’s Motion for Court to Approve Settlement by Receiver because

the county court did not address whether the settlement amount agreed to be paid by Air Voice was adequate and fair.

Confirmation of a receiver's sale is a matter for the trial court's discretion depending on the particular facts of each case, and we will reverse this decision only on a showing that the trial court has abused its discretion. *See Salaymeh v. Plaza Centro, LLC*, 258 S.W.3d 236, 240 (Tex. App.—Houston [1st Dist.] 2008, no pet.). In confirming a receiver's sale, the trial court must determine from all the facts and evidence whether the bid received was fair and reasonable. *Id.*

We reject M&E Endeavours' assertion that the county court failed to consider M&E Endeavours' opinion of the Air Voice suit's value in deciding to approve the Air Voice settlement agreement. In its Response and Objection to the receiver's Emergency Motion for Leave of Court to Settle the Air Voice suit, M&E Endeavours conclusorily opined that its claims against Air Voice in the Air Voice suit were worth "more than \$150,000," but it did not explain how it arrived at that estimate and, importantly, it provided no estimate for the value of Air Voice's counterclaims against it.<sup>10</sup> Absent evidence of the net settlement value of the Air Voice suit or of misconduct by the receiver in reaching the agreed settlement amount, we hold that

---

<sup>10</sup> During the receiver's settlement negotiations with Air Voice, Air Voice informed the receiver that its counterclaims exceeded the value of M&E Endeavours' claims against it.

the county court did not err in granting Air Voice’s Motion for Court to Approve Settlement by Receiver.

We overrule M&E Endeavours’ ninth issue.

#### **E. Dismissal of Underlying Lawsuit**

In its eleventh issue, M&E Endeavours asserts that the county court erred in signing an August 24, 2018 order dismissing the Fedex Techconnect suit underlying the post-judgment turnover receivership proceeding. That dismissal order, however, is beyond the scope of this appeal. M&E Endeavours notice of appeal identifies only the August 21, 2018 Order on Motion for Court to Approve Settlement by Receiver in the post-judgment turnover receivership proceeding as the basis of its appeal, and it cites no authority supporting the notion that the August 24, 2018 dismissal is a proper issue to raise in this appeal. *See* TEX. R. APP. P. 38.1(i). Thus, we hold that M&E Endeavours has waived its eleventh issue. *See Perry*, 579 S.W.3d at 779.

#### **Dismissal of Air Voice Suit**

In the second appeal, M&E Endeavours asserts that the district court erred in dismissing the Air Voice suit based on the Air Voice settlement agreement. In doing so, M&E Endeavours raises the same issues it raises in the first appeal from the county court’s post-judgment turnover receivership proceeding. In its briefing, M&E Endeavours acknowledges that this Court’s decision in the first appeal “would



dispose of th[e] [second] appeal also.” Due to our disposition of first appeal, we hold that the district court did not err in dismissing the Air Voice suit.

We overrule M&E Endeavours’ eleven issues.

### **Conclusion**

We affirm the order of the county court in appellate cause no. 01-18-00852-CV. We also affirm the order of the district court in appellate cause no. 01-19-00180-CV.

Julie Countiss  
Justice

Panel consists of Chief Justice Radack and Justices Lloyd and Countiss.