

Opinion issued December 8, 2020



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

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NO. 01-19-00873-CV

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**CONNIE RENEE BISHOP KLAASSENS, Appellant**

**V.**

**TRAVIS LYNN BISHOP; NELDA R. KEITH AND PATRICK LEON  
KEITH, TRUSTEES OF THE GLADYS NELL BISHOP LIVING TRUST  
DATED JUNE 24, 2013, Appellees**

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**On Appeal from the 151st District Court  
Harris County, Texas  
Trial Court Case No. 2013-44999**

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**MEMORANDUM OPINION**

Connie Renee Bishop Klaassens and Travis Lynn Bishop are the children of Gladys Nell Bishop. Gladys Bishop established a living trust before she died, naming Nelda and Patrick Keith as trustees. After her death, disputes arose among the

children and the trustees over ownership and control of various assets. All parties entered into an agreed family settlement agreement that was incorporated into an agreed final judgment. The judgment stated that it resolved “all issues, claims, and counterclaims raised or which could have been raised by the parties . . . arising out of or in any way connected with” the subject of the disputes.

Klaassens later took the position that she held an ownership interest in property that had been discussed in the settlement agreement in the context of asset transfers to her brother and that her silent ownership interest continued to exist post-settlement. In response, her brother moved for and obtained an order enforcing the agreement and judgment that estopped Klaassens from disputing his ownership of the property.

Klaassens raises four issues on appeal. She contends the trial court erred in concluding that the agreed final judgment and incorporated family settlement agreement were unambiguous and contrary to her proposed interpretation. She contends the trial court erred in its alternative holding that, to the extent the documents are ambiguous, the extrinsic evidence requires an interpretation contrary to Klaassen’s. Related to the first two issues, she contends the trial court, in effect, adjudicated title through a motion to enforce, which she argues was error. And, finally, she contends the trial court erred in awarding attorneys’ fees against her. We affirm.

## **Background**

Gladys Nell Bishop owned multiple companies. The three that made up the bulk of her holdings were Quality Trucking, Inc., Presidential Shores, Inc., and 10-4 Tubular, Inc. Quality Trucking provided hauling services and was located on 5.7 acres in Houston, Harris County. Presidential Shores was a luxury condominium complex located on 4.3 acres in Willis, Montgomery County, Texas. 10-4 Tubular was a pipe-threading company at an unspecified location.

Bishop had two living children: Travis Lynn Bishop and Connie Renee Bishop Klaassens. Her son, Travis Bishop, had a closer relationship to Quality Trucking than to the other business ventures. Her daughter, Connie Klaassens, lived at Presidential Shores and had a closer association with that entity. Gladys Bishop's third child, Debra Foster, predeceased her but left several children.<sup>1</sup>

Gladys Bishop included her children in her businesses. Bishop and Klaassens were officers and directors of some of them. Additionally, Gladys Bishop would, at times, transfer the businesses and assets back and forth among her entities and her three children. For example, there are two separate deeds that transfer ownership of Quality Trucking that were notarized on the same day in 1990. Eventually, Gladys Bishop was convicted of tax fraud in connection with Quality Trucking's tax obligations. She became ill in prison and was released early.

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<sup>1</sup> Both Bishop and Klaassens had children as well.

Gladys Bishop created a living trust<sup>2</sup> in 2013, which added another layer of ownership transfer. She later died, leaving a will and trust assets.

Given Gladys Bishop's operational methods, with multiple transfers and overlapping roles for her children, it follows that, after her death, there were—as phrased in the children's eventual settlement agreement—some “disputes” and “doubtful rights” related to her assets and the children's relationship to them.

The disputes arose almost immediately. The living trust trustees—Nelda and Patrick Keith—asserted control over businesses and assets, and Gladys Bishop's children claimed competing interests. The trustees sued the children, and the children sued the trustees. There were also claims by Bishop against Presidential Shores. At the same time, the IRS pursued its tax claim related to Quality Trucking.

With multiple lawsuits pending, the children and the trustees entered into mediation. It took many sessions with at least two mediators but, eventually, the parties settled their claims. In 2015, the children (and grandchildren) and the trustees executed the Family Settlement Agreement. Both Bishop and Klaassens signed the agreement, specifying that they were doing so in their individual capacities and as

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<sup>2</sup> “A living trust is nothing more than a contract between the maker of the trust agreement and the trustees. The trustees promise to administer assets and income during and after the lifetime of the maker as stated in the contract. Administration is for the benefit of beneficiaries.” *Living Trust*, 18A West's Legal Forms, 18A § 4:14 (West 2019).

former or current officer or director of Quality Trucking, Presidential Shores, 10-4 Tubular, and other entities.

The questions raised in this appeal center on the agreement and judgment's treatment of the 5-plus acres on which Quality Trucking operated. Thus, we turn to the agreement's terms, with a focus on the agreement's provisions related to the land.

The agreement's first sentence explains the parties' intentions in entering into the family settlement agreement: all parties agreed they held "the specific intent to compromise and settle all pending or contemplated disputes . . . adjust doubtful rights . . . contribute to the peace and harmony . . . and avoid litigation."

The agreement contains a long "background" section that spells out the parties' positions before their settlement. Bishop was contending that he (1) was "the 100% owner of Quality Trucking" through successive stock transfers in the 1990's; (2) was a one-third owner of Presidential Shores, where Klaassens lived; and (3) held a derivative right to repayment of \$2,000,000 for a loan Quality Trucking made to 10-4 Tubular years earlier. The trustees were contending that Klaassens improperly depleted 10-4 Tubular's funds by transferring them to another entity, harming Gladys Bishops' beneficiaries. Klaassens, in turn, was contending that the trustees should be removed.

The agreement recites that these disputes were ongoing and that there were other conflicts between the parties over "the interpretation of the Trust, the assets

held in Trust, and distribution of Trust and Estate assets,” as well as disputes over “entitlement to the Survivorship Accounts,” which were bank accounts held in Gladys Bishop’s name, not the trust.

The agreement then specifies the terms under which all these disputes would be resolved. Generally, the agreement accomplishes three things. First, the parties agree to nonsuit their claims against and among the children and trustees. Second, the parties agree that the three largest assets would be divided among the children: (1) Bishop would get the company he was closest associated with, Quality Trucking; (2) Klaassens would get the company she was closest associated with and where she lived, Presidential Shores; and (3) Foster’s children would split the proceeds from the sale of 10-4 Tubular. Third, the parties agree to a method to address the still-pending federal tax issues. As noted earlier, the tax issue related to Quality Trucking and was the basis of Bishop’s conviction. The agreement resolves this contingent liability by creating a hierarchy of assets that would be sold to satisfy any future tax obligation and to account for any remaining funds from those sales.

Moving from the general to the specific, the agreement resolves disputes over competing ownership claims under headings that identified the relevant recipient. So, under the heading “Bishop/Quality Trucking,” the agreement provides:

- V.A.13. The Trustees will (i) assign 100% of the shares in Quality Trucking to Bishop and (ii) will convey any interest the Estate and/or Trust have in the real property known as 8325 Miller Road II, Houston, Texas 77049. . . consisting of approximately 5.7460

acres of land [the land on which Quality Trucking operates] . . . within thirty (30) days of receipt of closing letters from the IRS for the IRS Income Tax Controversies and the Estate Tax Return.

Under the heading “Klaassens,” the agreement provides:

V.B.2. “. . . Klaassens shall be named the sole officer and director of Presidential Shores, Inc.

V.B.7. The Trustees will assign 100% of the shares in Presidential Shores to Klaassens within thirty (30) days of receipt of closing letters from the IRS for the IRS Income Tax Controversies and the Estate Tax Return.

Under the heading “Remaining Beneficiaries,” the agreement provides:

V.D.1. Within twenty (20) days of the receipt of the 10-4 Sales Proceeds by the Trust, the Trustees will make one distribution to each of the Remaining Beneficiaries [Foster’s children] as follows: [\$35,000 to each<sup>3</sup>].

The agreement also includes specific terms for addressing the Quality Trucking contingent tax liability and any possible remaining refunds if property had to be sold to satisfy the debt. The parties agreed to a hierarchy of forced sales:

V.F.ii.1. Except as expressly provided herein, the Trust will . . . [satisfy] the IRS Income Tax Controversies by exhausting funds and assets in the following order:

1.a. First, from the funds in the Quality Trucking Tax Reserve Account [established by the agreement], then

1.b. The trust residue except for the real property known as 8325 Miller Road II, Houston, Texas 77049, then

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<sup>3</sup> There were provisions for additional distributions to these same beneficiaries once the estate administration was concluded.

- 1.c. The proceeds from a sale of Quality Trucking and the real property known as 8325 Miller Road II, Houston, Texas 77049 (with any remaining proceeds from the sale payable to Bishop), then
- 1.d. The proceeds from a sale of Presidential Shores (with any remaining proceeds from the sale payable to Klaassens), then finally
- 1.e. [a smaller property distributed to Klaassen's son].

The last agreement provision we view as relevant to our analysis of this appeal deals with Klaassens's access to personal property she wanted in the settlement:

- V.H.1. Upon execution of this Agreement, the Trustees will make the following personal property of Gladys Bishop [the deceased] available to Klaassens for pickup to the extent such items are present at Quality Trucking:
  - 1.a. The safe at Quality Trucking;
  - 1.b. The slot machine at Quality Trucking;
  - 1.c. The sewing machine at Quality Trucking, and
  - 1.d. The rifle that Gladys Bishop won from the Houston Post for killing a deer.
2. In addition, . . . Klaassens shall be entitled to retrieve her personal property from Quality Trucking, which consists of clothing and a utility trailer.

Klaassens and Bishop signed the agreement "in all capacities set forth," meaning individually and as current or past officers and directors of the businesses.

Just a couple of weeks later, an agreed final judgment was entered, incorporating the family settlement agreement. It states that the dispute between the



parties concerns “pending and contested matters” described in the agreement “and as set forth below,” including (1) Gladys Bishop’s estate administration, (2) the trust’s administration, and (3) the pending lawsuits. The judgment states that “the Parties have agreed to the Agreement concerning *all claims which have been or could have been asserted by any Party*, and have agreed to the entry of this Judgment.” (Emphasis added.) Further, the “Final Judgment resolves all issues, claims, and counterclaims *raised or which could have been raised by the Parties* at a hearing or trial, *arising out of or in any way connected with any act, omission, or event related to the Proceedings, and/or the ‘IRS Income Tax Controversies,’ . . .* and shall be binding between and among all parties.” (Emphasis added.) The final judgment was entered in 2015.

Three years later, Klaassens argued that she had negotiated through the family-settlement process and entry of the final judgment while still holding a one-third ownership interest in the land on which Quality Trucking operated. This brought a new round of litigation.

Bishop moved to enforce the final judgment. The trustees joined. The trial court granted the motion and ordered that Klaassens is “estopped from contesting that Quality Trucking, Inc. and the Miller Road Property are owned by Travis Lynn Bishop and that she has no interest in them.”

Klaassens appeals.

## Direct Appeal or Mandamus

As an initial matter, the parties disagree whether our review should be under traditional direct appellate review or as a mandamus. It is unnecessary to resolve that disagreement because, either way, the family settlement agreement incorporated into the final judgment is unambiguous and supports the trial court's ruling, meaning the trial court did not err and did not clearly abuse its discretion and, as such, there is no basis for relief for Klaassen either way. *See Frost Nat'l Bank v. L&F Distribs., Ltd.*, 165 S.W.3d 310, 311–12 (Tex. 2005) (direct appeal challenging contract construction is reviewed de novo, and, if contract can be given a certain or definite legal meaning or interpretation, then it is not ambiguous and appellate court will construe contract as a matter of law); *see also In re Prudential Ins.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding) (to be entitled to mandamus relief, a relator must show the trial court has clearly abused its discretion), *and In re Tex. Am. Exp., Inc.*, 190 S.W.3d 720, 724 (Tex. App.—Dallas 2005, no pet.) (stating that trial court has no discretion in determining what the law is or in applying the law to facts; a clear failure by the trial court to analyze or apply the law correctly is an abuse of discretion; and if trial court did not abuse its discretion, it is error to grant mandamus relief).

## **Unambiguous Contract Term**

### **A. Klaassens's argument**

In her first issue, Klaassens contends the trial court erred by construing the final judgment and settlement agreement as awarding the Miller Road property to Bishop. She argues that the family settlement agreement only resolved ownership of the Quality Trucking entity, not the land on which it sat, and it only resolved the competing ownership interests as between Bishop and the trust, not herself. She notes that there are no explicit terms in the family settlement agreement through which she conveyed to Bishop any interest she might have to the land. Thus, she argues, her unreferenced interest in that land survived the terms of the family settlement agreement and final judgment. We cannot agree.

### **B. Law on construing contracts, like the family settlement agreement**

The basis for the final judgment is the family settlement agreement. A settlement agreement is a contract, and its construction is governed by the same legal principles applicable to contracts generally. We construe contracts under a de novo standard of review. *See, e.g., Tawes v. Barnes*, 340 S.W.3d 419, 425 (Tex. 2011).

In construing a written contract, the primary concern is to ascertain and give effect to the parties' intentions as expressed in the document. *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 333 (Tex. 2011); *Frost Nat'l Bank*, 165 S.W.3d at 311–12. We begin with the contract's express language.

*Italian Cowboy*, 341 S.W.3d at 333. Contract terms are given their plain, ordinary, and generally accepted meanings unless the contract itself shows the terms were used in a technical or different sense. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 662 (Tex. 2005). We avoid unreasonable interpretations when possible and proper to do so. *Castillo Info. Tech. Servs. v. Dyonyx, LP*, 554 S.W.3d 41, 45 (Tex. App.—Houston [1st Dist.] 2017, no pet.). We consider the entire contract, harmonizing and giving effect to all of the contract’s provisions so that none will be rendered meaningless. *Id.* at 45–46; *IP Petrol. Co. v. Wevanco Energy, L.L.C.*, 116 S.W.3d 888, 899 (Tex. App.—Houston [1st Dist.] 2003, pet. denied). No single provision is given controlling effect; each must be considered in the context of the contract as a whole. *Castillo Info. Tech. Servs.*, 554 S.W.3d at 46. A reviewing court may not “make new contracts between the parties,” but must, instead, “enforce the contract as written.” *In re Davenport*, 522 S.W.3d 452, 457 (Tex. 2017) (orig. proceeding).

If, under these rules, a contract can be given a certain or definite legal meaning or interpretation, then it is not ambiguous, and we will construe the contract as a matter of law. *Frost Nat’l Bank*, 165 S.W.3d at 312. Only if interpretation of the plain meaning of the contract’s provisions results in an ambiguity do we then turn to interpretive canons to resolve the dispute. *See G.T. Leach Builders, LLC v. Sapphire V.P., LP*, 458 S.W.3d 502, 531–32 (Tex. 2015). And only if there is an ambiguity do we turn to extra-contractual expressions of intent, like the parties’ conduct. *See*

*J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003); *Connelly v. Paul*, 731 S.W.2d 657, 660–61 (Tex. App.—Houston [1st Dist.] 1987, writ ref'd n.r.e.). This is because courts must enforce unambiguous contracts as written and may not consider extrinsic evidence to create an ambiguity or to give an unambiguous contract a meaning different from what its language means. *David J. Sacks, P.C. v. Haden*, 266 S.W.3d 447, 450 (Tex. 2008).

**C. Settlement agreement and final judgment terms are unambiguous, support trial court's ruling, and leave Klaassens with no basis for relief**

Gladys Bishop owned three main assets: Quality Trucking, Presidential Shore, and 10-4 Tubular. The only reasonable interpretation of the Family Settlement Agreement, when viewed as a whole, is that the trustees and children agreed that the three main assets would be split among her three children and, in the case of the deceased child, that child's children. Both living children received the company to which they were most closely tied and the land beneath it. The third entity was sold, and the sale proceeds were split among the third sibling's children. It would contradict the overall structure of the settlement agreement if Klaassens received one company and its land, while her brother received just the stock of a second company without the valuable land beneath it.

Klaassens asserts that a 1990 deed conveyed the land under Quality Trucking to the three siblings in one-third shares and suggests that everyone was aware of that transfer when they crafted the terms of the Family Settlement Agreement. But that

argument ignores what the agreement itself states about the situation at the time of the settlement.

Bishop and Klaassens's mother had transferred assets repeatedly, more than one person or entity was claiming ownership of the same assets, and there were lawsuits pending to resolve ownership disputes. The very first sentence of the family settlement agreement states that the parties' "specific intent" in executing the agreement was "to compromise and settle all pending *or contemplated disputes . . .* [and] *adjust doubtful rights.*" And the final judgment states that "the Parties have agreed to the Agreement concerning *all claims which have been or could have been asserted by any Party,*" and that it "resolves all issues, claims, and counterclaims *raised or which could have been raised by the Parties . . . arising out of or in any way connected with* any act, omission, or event related to the Proceedings, and/or the IRS Income Tax Controversies." (Emphasis added.)

The terms of the agreement and judgment do not support Klaassens's position that everyone knew she held an unspoken one-third interest in the land and it survived the agreement. Instead, there were disputes over ownership, and Klaassens contractually agreed that the settlement agreement and final judgment fully resolved related issues and claims. Moreover, that Klaassens was not a named party in the particular suit between the trustees and Bishop over ownership interest in Quality Trucking and its land is immaterial. *See Gracia v. RC Cola-7-Up Bottling Co.*, 667

S.W.2d 517, 519 (Tex. 1984) (“No pleadings are required to support an agreed or negotiated judgment, and a party participating in the judgment is barred by the judgment although not joined in the pleadings.”).

Klaassens’s second argument hinges on whether the phrasing in the agreement’s mention of the land better matches a quitclaim deed rather than a muniment of title. This argument is misplaced. The question is not the degree to which the trust absolved itself of ownership of the land, but whether Klaassens intended to resolve all her ownership interest in these assets in the agreement.

As stated, the agreement Klaassens executed states that there are current and contemplated disputes and that the agreement resolves all claims related to the lawsuits and tax controversy. The tax controversy concerned Quality Trucking, and the parties agreed to sell the company and land, if necessary, to satisfy the contingent tax liability.

Klaassens agreed that, if the land were sold, the tax liability were paid, and money were left over, the entire balance would go to Bishop, not one-third to Bishop, one-third to Klaassens, and one-third elsewhere. Section V.F.ii.1.c. of the agreement states that all proceeds for the sale of Quality Trucking land go to Bishop alone. Likewise, Section V.F.ii.1.d. provides that, if the land that is part of Presidential Shores had to be sold to satisfy the tax liability and sale proceeds were left over, the sale proceeds would go to Klaassens alone. It strays from the terms of the agreement

to conclude that the land under Quality Trucking had any owner but Bishop, who received Quality Trucking in the mediated settlement.

Klaassens argues relinquishment of her ownership interest in the Quality Trucking land required an explicit provision in the agreement through which she transfers title to Bishop. But that conflicts with how the agreement dealt with Bishop's claim of partial ownership of Presidential Shores. The agreement explicitly states that Bishop had asserted an ownership interest in Presidential Shores. The agreement then states that the Presidential Shores asset is granted to Klaassens. The parties did not include an explicit term through which Bishop renounced his ownership interests in Presidential Shores. Instead, his interests were resolved against him under the agreement's provision that it resolved all claims existing or contemplated. The lack of an explicit provision is not controlling, given the structure and other terms in the agreement.

Moreover, to the extent the agreement references ownership of the land, its references support our conclusion that all parties agreed Bishop was granted Quality Trucking and the land on which it operated. The agreement sets out a sale hierarchy for selling assets to satisfy the Quality Trucking contingent tax liability. Section V.F.ii.1.b. states that the "*trust residue except for the real property known as 8325 Miller Road II, Houston, Texas 77049*" will be sold second. (Emphasis added.) By excepting the land from the term "trust residue," the parties—including Klaassens—



agreed that the land was part of the trust. *See Except*, Merriam-Webster Dictionary Online (defining “except” as “to take or leave out from a number or a whole”). This phrasing conflicts with Klaassens’s current position that she and the other parties appreciated that she held and intended to retain an ownership interest in the land.

Finally, we consider the provision of the family settlement agreement about personal property to be granted to Klaassens by agreement. The agreement states that certain items of Gladys Bishop’s personal property were on the Quality Trucking land, including a utility trailer. Section V.H.1. of the agreement states that the trustees agreed to make the personal property “available to Klaassens for pickup” and that Klaassens “shall be entitled to retrieve her personal property” from the Quality Trucking property.

We may not construe a contract in a way that reduces a contract provision to a meaningless addition. *See Castillo*, 554 S.W.3d at 45. If Klaassens held an ownership interest in the Quality Trucking land at the time of the settlement, there would have been no need to negotiate permission for her to enter the land to pick up her trailer. Her ownership interest would have provided her that right. Yet, all parties, including Klaassens, contracted to grant her a right to access.

Because the settlement agreement, as incorporated into the final judgment, was susceptible of only one interpretation—that the contract unambiguously granted to Bishop the Quality Trucking entity and, with it, the land it operated on—we must

conclude there is no basis for Klaassens to obtain appellate relief from the trial court's interpretation of the agreement and judgment. We overrule her first issue, contending that the trial court misconstrued the final judgment and settlement agreement, and hold that her second issue, which challenges the trial court's alternative holding, is moot.

In her third issue, Klassens contends the enforcement order impermissibly adjudicated title to the Quality Trucking land. This argument presupposes that ownership was not granted by the parties' agreement before the enforcement order. We have held that Klasseens agreed that all actual and contemplated disputes related to the tax liability, including the ownership and sale of the Quality Trucking land, were resolved through execution of the family settlement agreement and entry of the final judgment that incorporated it. Ownership was resolved through the parties' agreement, not through the subsequent enforcement order. Moreover, the enforcement order did not exceed the limit the law places on it, which is to enforce the original terms without materially changing them. *Gillet v. ZUPT, LLC*, 523 S.W.3d 749, 758 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

Because the trial court's order merely enforced the terms of the agreement by estopping Klaassens from challenging Bishop's ownership of the land granted to him in the parties' negotiated agreement, we overrule Klaassen's third issue.

## **Attorney's Fees**

In her final issue, Klaassens challenges the award of attorney's fees against her, arguing that Bishop was not a prevailing party entitled to attorney's fees because she was not required to execute documents transferring title to the land to him. But the contract provision allowing for attorney's fees is not limited to that sole basis for a fee award. Instead, under the heading "Dispute Resolution," it states that, if "any dispute arises with regard to the interpretation and/or performance of this Agreement or any of its provisions," the parties "agree that the prevailing party shall be entitled to recover reasonable attorney's fees and expenses."

Klaassens disputed Bishop's interpretation of the family settlement agreement and final judgment. Bishop filed a motion seeking an order of enforcement to estop Klaassens from challenging his ownership of the Quality Trucking land. The trial court granted that motion and entered an order to that effect. Therefore, Bishop was the prevailing party and entitled to attorney's fees. *See Weng Enters., Inc. v. Embassy World Travel, Inc.*, 837 S.W.2d 217, 222–23 (Tex. App.—Houston [1st Dist.] 1992, no pet.).

## **Conclusion**

We affirm.

Sarah Beth Landau  
Justice

Panel consists of Justices Keyes, Lloyd, and Landau.