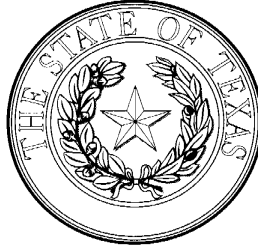


Opinion issued August 16, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00106-CV

**LAVERNE NATALIE DAILEY, INDEPENDENT EXECUTRIX OF THE
ESTATE OF RUTH CARTER CARROLL, DECEASED, Appellant**

V.

**ALMA MCAFEE, DEPENDENT ADMINISTRATRIX OF THE ESTATE
OF CARL M. CARROLL, JR., DECEASED, Appellee**

**On Appeal from the Probate Court No. 2
Harris County, Texas
Trial Court Case No. 297526-402**

OPINION

Appellant Laverne Natalie Dailey, independent executor of the Estate of Ruth Carter Carroll, Deceased (hereinafter “Ruth’s executor”), appeals the probate court’s denial of her motion to enforce an agreement as a Rule 11 agreement. The

motion is part of an underlying dispute in which Ruth's executor seeks a court order stating that certain assets belong to Ruth and are not part of the estate of Ruth's former husband, Carl M. Carroll, Jr. Ruth's executor argues that the agreement in question is a Rule 11 agreement related to the divorce of Ruth and Carl because it was in writing, signed by their divorce attorneys, related to the division of their property, and was filed in the trial court prior to Ruth's executor's attempt to enforce it. We agree. We reverse the trial court's order and remand for further proceedings in accordance with this opinion.

Background

On June 21, 1983, Carl and Ruth were divorced in the 257th Judicial District Court of Harris County, Texas.

The divorce decree awards Ruth:

**500 shares of stock in C&RC-53, Inc., which she will exchange for 1,000 shares of stock in C&RC-23, Inc., which is now owned by C&RC-53, Inc., and which will be spun off from C&RC-53, Inc., and will at that time contain the following assets (which are presently in C&RC-53, Inc.): Its one-third undivided interest in a 158.7975 acre tract or parcel of land lying and being situated in the A. R. Stephens, A-102, Survey of Washington County, Texas, being the same land previously conveyed to C&RC-53, Inc., by Ruth Natalie Carter Carroll on or about September ___, 1979, which conveyance will convey all land and all mineral interests now held by C&RC-53, Inc., and also one-half of any cash remaining in the bank account of C&RC-53, Inc., after all current expenses and taxes are paid. These expenses include but are not limited to attorney's fees, accountant's fees, and taxes. [Carl] is hereby ORDERED as President of C&RC-53, Inc., to execute all necessary division orders, transfers, deeds, and checks necessary to affect the transfer of the above assets of C&RC-

53, Inc. to C&RC-23, Inc. [Ruth] will then surrender her 500 shares in C&RC-53, Inc., to C&RC-53, Inc., and _____ shall receive 1,000 shares of C&RC-23, Inc., which shares will then become the sole and separate property of [Ruth].

The divorce decree awards Carl: “500 shares of stock in C&RC-53, Inc., subject to the spinoff of certain of its assets into its wholly owned subsidiary C&RC-23, Inc., as outlined in Respondent’s award of properties.”

Two days later, on June 23, 1983, each of their divorce attorneys signed an agreement that detailed the logistics for effectuating the divorce decree. The agreement was titled “Settlement Agreement” (hereinafter “the agreement” or “the 1983 agreement”).

Paragraph 7 of the 1983 agreement states:

As for C & RC 53, [Carl] as President of said corporation shall draft and send within seven (7) days: but no later than the morning of June 30, 1983 a division order to all lessees and persons who currently pay royalties on oil property to C & RC 53 directing them to send as of July 1, 1983 to send all future royalty checks to C & RC 23, Inc. care of Ms. Ruth Carroll

Carl died on September 25, 1997. His estate was probated in Probate Court No. 2, Harris County, Texas in cause number 297,526. In January 1999, Carl’s sister, as administrator of his estate, filed an inventory that listed C&RC-53, Inc. as Carl’s separate property and an asset of his estate.

Ruth died on February 23, 2011. Her estate was probated in Probate Court No. 4, Harris County, Texas in cause number 414,113. The appellant, Dailey, is the executor of Ruth's estate.

The underlying suit relates to Ruth's executor's allegation that Ruth, rather than Carl, is entitled to overriding royalties from leases held in the name of C&RC-53, Inc. In June 2014, Ruth's executor filed the 1983 agreement with the district court. Ruth's executor then filed a petition for declaratory judgment in Probate Court No. 2. Of Harris County, Texas. The petition contended that Carl failed to abide by the terms of the divorce decree and the 1983 agreement because he never transferred ownership of C&RC-53, Inc. to Ruth. Ruth's executor alleged that this constituted fraud and conversion by Carl and his estate. The petition also alleged that Ruth's executor learned of the conduct in July 2012. Ruth's executor asked the probate court to declare that "all real property, royalties, and leases held by C&RC-53, Inc. belong to the Estate of Ruth Natalie Carter Carroll, Deceased and that said property was never part of the Estate of Carl M. Carroll, Jr., Deceased, pursuant to the Decree of Divorce and Settlement Agreement." According to Ruth's executor, she had made multiple demands to the oil company for payment of the overriding royalties, but the company refused because "it believed confusion existed respecting the proper ownership of the overriding royalty interests."

Carl's sister, as administrator of Carl's estate, was served with citation of the petition for declaratory judgment in August 2014. At the time she was over 90 years old and suffered from dementia. When Carl's sister did not respond, Ruth's executor moved for a default judgment. The probate court granted the declaratory judgment by default in 2015.

In August 2016, Alma McAfee became the dependent administrator of Carl's estate due to the legal incapacity of Carl's sister. Alma, on behalf of Carl's estate, filed a bill of review in Probate Court No. 2 in August 2018 challenging the default judgment that adjudicated the ownership of the property by default. Among other defenses, Carl's administrator argued that the default judgment was void and should be set aside because the probate court did not have subject matter jurisdiction. The court granted the bill of review on that basis.

Ruth's executor appealed.¹ On appeal, this court reversed the probate court's judgment and held that the probate court had jurisdiction to hear the declaratory judgment petition filed by Ruth's executor. We also held that the trial court erred in failing to consider and hear evidence on Carl's administrator's defenses as alleged in the bill of review. In the absence of evidence to support Carl's administrator's bill of review, we concluded that the trial court abused its discretion in granting it. We remanded for further proceedings.

¹ See *Dailey v. McAfee*, No. 01-18-01060-CV, 2020 WL 4758429 (Tex. App.—Houston [1st Dist.] Aug. 18, 2020, no pet.) (mem. op.).

After the case was remanded to the trial court, Carl's administrator supplemented the bill of review and again asked the probate court to overturn the default judgment granted to Ruth's executor. Ruth's executor moved to enforce the 1983 agreement as a Rule 11 agreement. Ruth's executor also filed a no-evidence summary judgment motion. Before trial on the bill of review, the court held a hearing on the motion to enforce. The parties agreed that Carl never turned over to Ruth ownership of the real property and royalty assets of C&RC-53, Inc. They disagreed as to whether Ruth's executor could seek to enforce the 1983 agreement and whether that agreement was a Rule 11 agreement. The court denied Ruth's executor's motion to enforce the 1983 agreement as a Rule 11 agreement. Ruth's executor appeals.

Enforcement of Agreement as Rule 11 Agreement

The sole issue on appeal is whether the probate court erred by denying Ruth's executor's motion to enforce the 1983 agreement as a Rule 11 agreement. Ruth's executor argues that because the agreement is a Rule 11 agreement, the trial court had a ministerial duty to enforce its terms. Carl's administrator argues that Carl and Ruth did not enter into a Rule 11 agreement, and at most, they entered into a post-divorce contract, the breach of which is subject to a four-year statute of limitations. We hold that the trial court erred in denying Ruth's executor's motion because the 1983 agreement was a valid Rule 11 agreement.

A. Standard of review

A trial court’s decision regarding enforcement of a Rule 11 agreement is reviewed for abuse of discretion. *See Mantas v. Fifth Ct. of Appeals*, 925 S.W.2d 656, 659 (Tex. 1996); *Staley v. Herblin*, 188 S.W.3d 334, 336 (Tex. App.—Dallas 2006, pet. denied). A trial judge has no discretion in determining what the law is or in applying the law to the facts of a case. *Staley*, 188 S.W.3d at 336. The test for abuse of discretion is whether the trial court acted without reference to guiding rules and principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985). Abuse of discretion is shown when a trial judge fails to analyze or apply the law correctly. *Staley*, 188 S.W.3d at 336.

B. Analysis

Neither party challenges the substantive terms of the 1983 agreement or the divorce decree. The dispute is whether the 1983 agreement is valid and enforceable as a Rule 11 agreement. Rule 11 of the Texas Rules of Civil Procedure, titled “Agreements to be in Writing,” provides:

Unless otherwise provided in these rules, no agreement between attorneys or parties touching any suit pending will be enforced unless it be in writing, signed and filed with the papers as part of the record, or unless it be made in open court and entered of record.

TEX. R. CIV. P. 11. An agreement satisfies the requirements of Rule 11 if it is (1) in writing, (2) signed, and (3) filed with the papers as part of the record. TEX. R. CIV. P. 11; *Padilla v. LaFrance*, 907 S.W.2d 454, 459 (Tex. 1995).

The parties agree that the agreement is in writing and signed by Ruth's and Carl's divorce attorneys. They dispute whether the agreement meets Rule 11's pendency requirements because the agreement was signed after the divorce decree was entered. They also dispute whether the probate court may enforce the agreement despite the fact that it was filed with the court many years after the parties entered into it.

1. Pendency for purposes of Rule 11

Ruth's executor argues that the agreement is valid as a Rule 11 agreement even though it was entered into after the final judgment was entered. We agree. The trial court may enforce a Rule 11 agreement that is entered into after the final judgment has been entered, so long as it "touch[es] upon" the underlying suit. *Coale v. Scott*, 331 S.W.3d 829, 831 (Tex. App.—Amarillo 2011, no pet.) (holding court could enforce Rule 11 agreement many years after final judgment even though the agreement was entered into after final judgment). The trial court's authority to approve a Rule 11 agreement does not depend upon whether it has plenary jurisdiction over its judgment. *Id.*; see *Karp v. Karp*, No. 14-01-902-CV, 2002 WL 31487899, at *1 (not designated for publication) (trial court's

jurisdiction to enforce a Rule 11 agreement is not contingent on its jurisdiction to modify a divorce decree).

“[C]ommon sense tells us that an attempt to have the court enforce its judgment . . . is tantamount to the continuation of an aspect of the underlying suit.” *Coale*, 331 S.W.3d at 831. An agreement entered into regarding the enforcement of a judgment falls within the scope of “any suit pending” for purposes of Rule 11. *Id.*

The trial court that renders a divorce decree “retains the power” to enforce the property division in the decree or in an agreement incident to divorce that was approved by the court. TEX. FAM. CODE § 9.002; *Pearson v. Fillingim*, 332 S.W.3d 361, 363 (Tex. 2011) (per curiam). The court may enforce the division of property made or approved in the divorce decree by rendering further orders “to assist in the implementation of or to clarify the prior order.” TEX. FAM. CODE § 9.006(a). It may also “specify more precisely the manner of effecting the property division previously made or approved if the substantive division of property is not altered or changed.” *Id.* § 9.006(b).

We have previously held that the probate court had concurrent jurisdiction to enforce the divorce decree so long as Carl’s probate proceeding was pending when Ruth’s executor filed her petition because doing so aided in the efficient administration of a pending estate. *See Dailey v. McAfee*, No. 01-18-01060-CV, 2020 WL 4758429 at *5 (Tex. App.—Houston [1st Dist.] Aug. 18, 2020, no pet.).

The fact that the 1983 agreement was entered into after the divorce decree was finalized does not bar enforcement of the 1983 agreement as a Rule 11 agreement.

2. Timing for filing Rule 11 agreement with the court

Ruth's executor also argues that the trial court erred because the language of Rule 11 does not include a time limit for filing the agreement with the court. According to Ruth's executor, the fact that the agreement was filed 31 years later does not preclude its enforcement as a Rule 11 agreement. We agree.

Although Rule 11 requires the writing to be filed in the court record, the rule does not specify when the writing must be filed. *Padilla*, 907 S.W.2d at 461. "The purpose of the filing requirement, in the language of *Birdwell v. Cox*, is to put the agreement before the court so that 'the court can judge. . . [its] import, and proceed to act upon [it] with safety.' This purpose is satisfied so long as the agreement is filed before it is sought to be enforced." *Id.* (quoting *Birdwell v. Cox*, 18 Tex. 535, 537 (1857)). Ruth's executor filed the agreement in the proper court before seeking enforcement of the divorce decree.

We hold that the 1983 agreement is a valid Rule 11 agreement because it is in writing, signed by the parties' attorneys, and has been filed in the record of the court. The probate court abused its discretion in denying Ruth's executor's motion to enforce the agreement as a Rule 11 agreement. *Staley*, 188 S.W.3d at 336.

Conclusion

We reverse the trial court's ruling on the motion to enforce because the 1983 agreement was a Rule 11 agreement. We remand for further proceedings in accordance with this opinion.

Peter Kelly
Justice

Panel consists of Justices Kelly, Goodman, and Guerra.