Petition for Writ of Mandamus Denied and Memorandum Opinion filed September 13, 2011.

In The

Fourteenth Court of Appeals

NO. 14-11-00714-CV

IN RE STEPHANIE LEE, Relator

ORIGINAL PROCEEDING
WRIT OF MANDAMUS
309th District Court
Harris County, Texas
Trial Court Cause No. 2005-41798

M E M O R A N D U M O P I N I O N

On August 19, 2011, relator, Stephanie Lee, filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code § 22.221; *see also* Tex. R. App. P. 52. Lee complains that respondent, the Honorable Sheri Y. Dean, presiding judge of the 309th District Court of Harris County, Texas, denied her motion to enter judgment on a mediated settlement agreement. The real party in interest, Benjamin Jay Redus, has filed a response. We deny the petition.

The underlying proceeding arose from Redus's petition to modify the parent-child relationship and recover excess child support. The parties subsequently entered into a

mediated settlement agreement concerning custody of their seven-year old daughter, K.N.R. Lee moved to enter judgment on the agreement. Redus objected to the motion on the grounds the agreement is not in the best interests of his daughter because Lee's husband is a registered sex offender. After a hearing on the matter, the associate judge refused to enter judgment on the agreement. Subsequently, Judge Dean conducted an evidentiary hearing. At the hearing, Lee testified that her husband is a registered sex offender, he was served with a 2009 violation of his deferred adjudication for his unsupervised visitation contact with K.N.R., and Lee herself permitted her husband to be with K.N.R., knowing the conditions of his probation. Judge Dean denied Lee's motion to enter judgment, finding the mediated settlement agreement not to be in the child's best interest. Lee has petitioned this court for a writ of mandamus ordering Judge Dean to enter judgment based on the agreement.[1]

We first note a trial court's refusal to enter judgment on a mediated settlement agreement is subject to mandamus. *In re Kasschau*, 11 S.W.3d 305, 310-11 (Tex. App. – Houston [14th Dist.] 2000, orig. proceeding), (finding relator lacked an adequate remedy "because he will be deprived of the settlement's benefits if forced to expend further time and resources litigating a suit that may have been settled."). In this case, the issue is whether a trial court abuses its discretion in refusing to enter judgment when the agreement is not in the best interest of the child.

Section 153.0071 of the Texas Family Code provides:

> (e) If a mediated settlement agreement meets the requirements of Subsection (d), a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law.
>
> (e-1) Notwithstanding Subsections (d) and (e), a court may decline to enter a judgment on a mediated settlement agreement if the court finds that:
>
> (1) a party to the agreement was a victim of family violence, and that circumstance impaired the party's ability to make decisions; and

[1] The petition further asks we order Judge Dean to vacate her orders setting the underlying case for pretrial conference and trial on the merits.

(2) the agreement is not in the child's best interest.

Tex. Fam. Code § 153.0071(e) (West 2008). Lee urges that the statutory language "notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law" deprives the trial court of the discretion to refuse judgment on the basis of the best interests of the child. The Dallas Court of Appeals rejected the precise argument on the predecessor statute and held that, although the trial court does not have the discretion to enter a judgment that varies from the terms of a mediated settlement agreement, the court does have the authority to refuse judgment on illegal provisions in a mediated settlement agreement. *See Garcia-Udall v. Udall*, 141 S.W.3d 323, 331-32 (Tex. App.—Dallas 2004, no pet.) (holding that "[a]n agreement on conservatorship issues that is not in the child's best interest violates public policy and is unenforceable") citing *Leonard v. Lane*, 821 S.W.2d 275, 278 (Tex. App.—Houston [1st Dist.] 1991, writ denied). *Leonard* succinctly holds that "[p]arties cannot by contract deprive the court of its power to guard the best interest of the child." *Id.*; *cf. Chenault v. Banks*, 296 S.W.3d 186, 190 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (holding that because the trial court plays an "integral role" in child support proceedings to ensure the protection of the child's best interests, contracts to bypass this protection are against public policy and unenforceable).

Moreover, this Court has examined and determined that entry of judgment on a mediated settlement agreement, even a completely compliant mediated settlement agreement, is not ministerial. *See In re Kasschau*, 11 S.W.3d at 311-12 (holding that the section 153.0071 statutory language "entitled to judgment" does not render the entry of judgment a ministerial duty). As in *In re Kasschau*, the issue presented here is not whether Redus may revoke his consent. Instead, the question is whether the trial court has a ministerial duty to enter the judgment on mediated settlement agreement even where, as here, there is no dispute (and the trial court found) that the mediated settlement agreement is not in the child's best interest. We hold that the trial court has not committed a clear

abuse of discretion in refusing to enter judgment on a mediated settlement agreement that is not in the child's best interest.

Accordingly, we deny relator’s petition for writ of mandamus.

PER CURIAM

Panel consists of Justices Brown, Boyce, and McCally.