

Affirmed and Memorandum Opinion filed July 11, 2017.



In The

Fourteenth Court of Appeals

NO. 14-16-00023-CV

IN THE INTEREST OF D.R.G., A MINOR

**On Appeal from the 246th District Court
Harris County, Texas
Trial Court Cause No. 2012-09649**

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

Mother appeals from the trial court's order in a suit to modify the parent-child relationship. The dispute in this case concerns whether the six-year-old Child immediately may travel by air unaccompanied, or do so only after reaching ten. Mother contends that the trial court erroneously failed to incorporate the parties' Rule 11 agreement concerning the "Provisions for Long Distance Travel" after Father revoked his consent to the agreement and the trial court held a bench trial concerning the best interest of Child.

Because Father revoked his consent to the Rule 11 agreement and Mother does not challenge the trial court's best-interest finding, we affirm.

I. BACKGROUND

Mother and Father were joint managing conservators with Mother having the exclusive right to designate the primary residence. Each parent filed petitions to modify the parent-child relationship.¹ The parties signed a Rule 11 agreement covering all issues. *See* Tex. R. Civ. P. 11. The parties agreed to remain joint managing conservators and that Father's support obligation would increase, among other things. One provision related to the age at which Child would be allowed to travel by air without the supervision of Father:

5. The child shall not board any airlines or planes without the supervision of [Father] until such time as the child reaches the age of *ten*, and order shall include detailed long distance travel provisions as set forth in [Father's] amended pleadings.

(emphasis added). Father requested in his amended petition an order stating that "the child shall not travel alone between the residence of [Mother] and that of [Father] until the child reaches the age of *five* years." (emphasis added). Father requested an order for various provisions governing "the arrangements for the travel of the child to and from [Father] after the child reaches the age of five years." Specifically, the arrangements provided for each parent to surrender Child to a flight attendant employed by the airline who would be flying on the same flight with Child.

Four months after signing the Rule 11 agreement, Father filed a "motion for partial revocation of Rule 11 agreement based on coercion and duress concerning long distance travel of the child and request for mediation." Father argued that the Rule 11 agreement contained "conflicting provisions that were not agreed to,"

¹ Mother sought an increase in child support and for the court to deny Father access to Child, or order that all possession be supervised. Father admitted to an increase in child support, denied all other allegations, and filed an amended counter-petition to request an order for "long distance access and possession" because Father began active military duty.

quoting paragraph No. 5 about long-distance travel. Mother filed a “motion to sign final order on petition to modify parent child relationship” in the form attached to the motion, which included the Rule 11 agreement.

At trial, the court informed the parties that the court needed “some evidence to show why this whole agreement is in the best interest of this child.” The court noted that the parties did not have an agreement because Father “revoked the agreement.”

Mother testified that she did not believe it was in Child’s best interest to fly unaccompanied at the age of six. Father testified that he was asking the trial court to determine that it was in Child’s best interest to fly at the age of five and older as an unaccompanied minor. Father testified that Child would be accompanied by a flight attendant throughout the entire flight. Father testified that Child never would be left alone, and Child would not be in danger.²

The trial court signed an order modifying the parent-child relationship. The court stated that both parties appeared and announced ready for trial. The court found that the modification was in the best interest of Child and that the court’s orders were in the best interest of Child. Regarding long-distance travel, the court ordered that Child could travel by air unaccompanied after the age of five.³

Mother appeals, seeking modification of the judgment to prohibit unaccompanied air travel until the Child is ten years old.

² Father also testified that he felt coerced into authorizing his attorney to sign the Rule 11 agreement concerning unaccompanied air travel. He testified that Mother had refused to turn over possession of Child for Child to be the ring-bearer in Father’s wedding during a predetermined period of possession over the summer. Mother refused to turn over possession unless Father authorized his attorney to sign the Rule 11 agreement on his behalf.

³ The order includes three pages of detailed provisions about travel arrangements. We do not recite them because Mother complains only about when those provisions should take effect—not about the provisions themselves.

II. ANALYSIS

In two issues, Mother contends that (1) the evidence is legally insufficient to support Father's allegation that he was under duress and coercion when he signed the Rule 11 agreement, and (2) the Rule 11 agreement is not ambiguous. As part of her second issue, Mother contends that the trial court was required to sign a judgment consistent with the Rule 11 agreement because (a) Father withdrew his consent only to a portion of the agreement, which is not effective to withdraw consent because the agreement was an integral whole, and (b) Father's attorney signed the agreement with Father's permission.

We conclude that Father's partial revocation of the Rule 11 agreement was effective to prevent the trial court from rendering an agreed or consent judgment. Accordingly, the trial court did not err by rendering a judgment on the issues raised in the parties' petitions in accordance with the best interest of Child.

A. Partial Revocation of Rule 11 Agreement is Effective

Mother acknowledges that a party to a Rule 11 settlement agreement may revoke consent before the court renders judgment, thus preventing the court from rendering an agreed or consent judgment. *See, e.g., Milner v. Milner*, 361 S.W.3d 615, 618 n.2 (Tex. 2012). Mother also acknowledges that when consent has been revoked, the party seeking to enforce the agreement must proceed under contract law and satisfy typical procedural requirements regarding pleading, proof, and trial. *See Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 663 (Tex. 2009).

Mother does not contend that a breach of contract claim was tried with proper pleading, proof, and trial. Instead, Mother contends that a "partial" withdrawal of consent is not effective to prevent a consent or agreed judgment on

the issue for which the party revoked consent. Mother cites no authority for this contention.

In the context of a suit to modify the parent-child relationship, this court has applied the familiar principle prohibiting a consent judgment when a party to a Rule 11 agreement revoked consent to only part of the agreement. *See Sampson v. Ayala*, No. 14-08-01002-CV, 2010 WL 1438932, at *2–5 (Tex. App.—Houston [14th Dist.] Apr. 13, 2010, no pet.) (mem. op.). When the father revoked consent to “several provisions” of the Rule 11 agreement, *id.* at *2, this court held that the trial court was not required to sign a judgment in accordance with the provisions of the Rule 11 agreement for which the father revoked consent, *see id.* at *6. This court declined to equate the trial on the parties’ petitions for modification of the parent-child relationship with a trial seeking enforcement of the Rule 11 agreement, particularly when the mother did not file an amended pleading to assert a breach of contract claim. *See id.* at *5–6; *see also Davis v. Wickham*, 917 S.W.2d 414, 417 (Tex. App.—Houston [14th Dist.] 1996, no writ) (holding that the trial court’s hearing on motions to enter or not enter a Rule 11 agreed order, which the appellant repudiated before rendition of judgment, was not an action to enforce a settlement agreement based on proper pleading and proof).

We find no authority supporting Mother’s argument that Father’s revocation was ineffective because it only concerned a portion of the Rule 11 agreement. And, from our review of the entire record, including the transcript of the trial and the trial court’s subsequent order modifying the parent-child relationship, we conclude that the parties did not try any claim by Mother for breach of contract. Rather, the court announced at the trial that the parties “don’t have an agreement” because of Father’s revocation, and the court asked the parties to present evidence on the best

interest of Child. The trial court's order does not refer to a contract claim, but instead finds that the provisions are in the best interest of Child.

Accordingly, Father's partial revocation of the Rule 11 agreement prevented the court from signing a consent or agreed judgment.

B. Unchallenged Finding Concerning Best Interest

Moreover, Mother contends that "the cases are legion" to support the proposition that a trial court is required to sign a judgment on an Rule 11 agreement that is filed with the court and signed by the parties. But Mother cites only non-custody cases and cases enforcing mediated settlement agreements.

Mediated settlement agreements involving custody are different from regular Rule 11 agreements. The trial court is required to enforce the parties' mediated settlement agreement regardless of whether a party revokes consent. *See In re Lee*, 411 S.W.3d 445, 448, 458–59 (Tex. 2013) (orig. proceeding) (holding that the trial court abused its discretion when, after the father revoked consent to the mediated settlement agreement, the trial court denied the mother's motion to enter judgment on the agreement based on the trial court's conclusion that the agreement was not in the child's best interest); *see also Cayan v. Cayan*, 38 S.W.3d 161, 165 n.6 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) (noting that before the Legislature enacted the mediated-settlement statute, settlement agreements in family law cases were governed by Rule 11).

The determination of issues concerning possession of and access to a child must always be in the child's best interest. *See* Tex. Fam. Code § 153.002 ("The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child."); *id.* § 156.101 (providing that a court may modify an order regarding

possession of or access to a child “if modification would be in the best interest of the child”). The Family Code provides that a court must render an order in accordance with an agreed parenting plan concerning possession of a child only if the court finds that the agreement is in the best interest of the child. *See* Tex. Fam. Code § 153.007(a)–(b); *cf. Garcia-Udall v. Udall*, 141 S.W.3d 323, 331 (Tex. App.—Dallas 2004, no pet.) (holding that the general rule requiring a best-interest finding for an agreed parenting plan is not applicable to mediated settlement agreements).

Nothing in the record suggests that the Rule 11 agreement was a mediated settlement agreement. Mother cites no authority to suggest that the trial court could have signed a modification order based solely on the Rule 11 agreement without also finding that modification was in Child’s best interest. *See* Tex. Fam. Code § 156.101; *see also In re K.N.M.*, No. 02-08-308-CV, 2009 WL 2196125, at *8 (Tex. App.—Fort Worth July 23, 2009, no pet.) (mem. op.) (reasoning that the parties’ Rule 11 agreement disposing of all conservatorship, possession, and access issues amounted to an agreed parenting plan under Section 153.007, upon which the trial court made a best-interest finding). Thus, the trial court could have rejected the agreement concerning long-distance travel, regardless of Father’s consent, and found that unaccompanied air travel was in Child’s best interest.

Mother does not challenge the trial court’s best-interest finding, so we do not independently review the trial court’s exercise of discretion in that regard. *See In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003) (upholding parental termination and declining to reach other appellate issues when the father did not challenge the sufficiency of the evidence to support predicate and best-interest findings); *see also Berg v. AMF Inc.*, 29 S.W.3d 212, 216 n.1 (Tex. App.—Houston [14th Dist.] 2000,

no pet.) (“The general rule is that a finding of fact not challenged in a point of error is binding on the appellate court.”).

III. CONCLUSION

Father revoked consent to part of the Rule 11 agreement, and the parties went to trial on dueling petitions to modify the parent-child relationship. The trial court found the modifications concerning long-distance travel to be in Child’s best interest, and Mother does not challenge that finding.

Accordingly, we affirm the trial court’s order modifying the parent-child relationship.

/s/ Ken Wise
Justice

Panel consists of Justices Boyce, Busby, and Wise.