

Motion Granted; Appeal Reinstated and Dismissed and Memorandum Opinion filed November 9, 2017.



**In The
Fourteenth Court of Appeals**

NO. 14-17-00703-CV

ESTATE OF DEBORAH TAYLOR CRAWFORD, DECEASED

**On Appeal from the Probate Court No. 2
Harris County, Texas
Trial Court Cause No. 426447**

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

This is an appeal from a judgment following a bench trial in a will contest. In 2013, Judy Taylor, the independent executrix of the Estate of Deborah Taylor Crawford, filed an application to probate the will of Deborah Taylor Crawford. Appellant, Jimmy Crawford, filed a contest to the decedent's will, arguing that a previous valid will existed.

On May 22, 2017, at the end of the first day of testimony in the bench trial,

the parties, through counsel, put the following agreement into the record:

[Appellee's counsel]: We have agreed that both parties will relinquish any claim for good-faith finding and that would enable them to recover attorney's fees. In consideration, the will contestant has agreed not to appeal this decision —

[Appellant's counsel]: Yes.

[Appellee's counsel]: — and has agreed to relinquish any other claim he might have against any parties, the executor or anyone else for any kind of a bad-faith finding.

THE COURT: Okay. Do you agree to that?

[Appellant's counsel]: Yes, Your Honor.

On May 30, 2017, the trial court signed a final judgment finding the will submitted by Judy Taylor is valid and enforceable, and denying appellant's contest. The judgment contains a paragraph noting that, "Pursuant to the agreement of the parties read into the Court record on May 22, 2017, Defendant/Will Contestant Jimmy Crawford is prohibited from appealing this Judgment regarding the Court's finding of an enforceable Will and is further prohibited from asserting any claims or actions against Judy Taylor, Lauren Crawford, Adam Crawford and/or Heath Crawford that arise or might arise from the filing and probating of the Will by the Executrix, Judy Taylor." Appellant filed a notice of appeal from the May 30, 2017 judgment.

On October 3, 2017, this court issued an order abating this appeal for 60 days to allow the parties an opportunity to mediate the dispute. On October 9, 2017, appellee filed a motion to dismiss the appeal and an objection to mediation.

Appellant filed a response to appellee's motion in which appellant argues (1) appellee does not have standing due to a typographical error in the judgment; (2) appellant was denied the right to a jury trial; and (3) the agreement is not valid because appellant fired his lawyer the day after the agreement was read into the court

record. Appellant's response does not demonstrate that appellee's motion to dismiss lacks merit. With regard to the alleged typographical error, it appears from the clerk's record that the trial court cause number originally typed on the judgment was 426447-401. The “-401” portion of the cause number was manually crossed out. The correct trial court cause number is 426447, which is what the judgment reflects. As to appellant's complaint that he was denied a jury trial, the record contains an agreement under Texas Rule of Civil Procedure 11 in which appellant waived his right to a jury trial. The agreement reflects that appellant, “requests that his jury trial be removed from the jury docket set for May 22, 2017 and be set for a bench trial on the same day.”

With regard to the validity of the agreement in which appellant waived his right to appeal, appellant filed a motion for new trial in which he alleged that the agreement “was not what was presented by” appellee's attorney. Appellant argued the agreement is invalid because it was not in writing and he fired his attorney the next day. At the hearing on the motion for new trial appellant again argued that the agreement is invalid because he had fired his attorney.

An attorney may execute an enforceable agreement on behalf of the attorney's client. *Green v. Midland Mortg. Co.*, 342 S.W.3d 686, 691 (Tex. App.—Houston [14th Dist.] 2011, no pet.). An attorney's authority to do so flows from the agency relationship that exists between the attorney and the client; the attorney's acts and omissions within the scope of the attorney's employment are regarded as the client's acts. *Id.* at 691. It is presumed that the attorney has actual authority conferred by the client to act on the client's behalf, and that the attorney is acting in accordance with the client's wishes. *Id.* This presumption may be rebutted by affirmative proof that the client did not authorize the attorney to enter into an agreement, such as an affidavit from the client to that effect. *See City of Roanoke v. Town of Westlake*, 111

S.W.3d 617, 629 (Tex. App.—Fort Worth 2003, pet. denied). “Every reasonable presumption is to be indulged in favor of a settlement made by an attorney duly employed, and especially so after a court has recognized such an agreement and entered a solemn judgment on it.” *Williams v. Nolan*, 58 Tex. 708, 714 (1883); *see also Green*, 342 S.W.3d at 691. Appellant contends that because he fired his attorney the day after the agreement was announced in open court, the agreement is unenforceable. The record does not contain affirmative proof that appellant did not authorize his attorney to enter into the agreement. We conclude that these circumstances do not overcome the presumption that appellant’s attorney acted with actual authority in making the agreement read into the record in open court on appellant’s behalf.

By the terms of the agreement, appellant agreed not to appeal the court’s judgment. The right to appellate review may be waived by agreement. *Rodriguez v. Villarreal*, 314 S.W.3d 636, 645 (Tex. App.—Houston [14th Dist.] 2010, no pet.), *citing In re Long*, 946 S.W.2d 97, 99 (Tex. App.—Texarkana 1997, no writ). Because appellant expressly agreed not to appeal from the judgment in this appeal, we will enforce the terms of his agreement. *See Long*, 946 S.W.2d at 99.

We grant appellee’s motion, reinstate the appeal, and dismiss the appeal.

PER CURIAM

Panel consists of Chief Justice Frost and Justices Boyce and Jewell.