Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00449-CV

IN THE MATTER OF THE ESTATE OF Hugh Bob **SPILLER**, Deceased

From the County Court, Menard County, Texas
Trial Court No. 2013-02059
Honorable Joe Loving, Jr., Judge Presiding[1]

Opinion by: Marialyn Barnard, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Marialyn Barnard, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: June 29, 2016

ORDER RENDERED VOID; CAUSE REMANDED

Reagan Willman appeals an order admitting a will to probate and ordering the independent administrator to distribute the estate in accordance with a family settlement agreement. Willman contends the order is void because he withdrew his consent to the family settlement agreement before the probate court rendered judgment.[2] We agree and render judgment setting aside the order as void.

BACKGROUND

Hugh Bob Spiller died on February 7, 2013. On March 12, 2013, Hugh Bob's wife, Mary Lee Spiller, filed an application to probate a will dated August 21, 2009.

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[1] Sitting by assignment.

[2] Willman also contends the order violates the statute of frauds. We do not address this issue because it is not necessary to the final disposition of this appeal. *See* TEX. R. APP. P. 47.1.

On March 22, 2013, Sharan Spiller Linebaugh, Hugh Bob's daughter, filed an opposition to the probate of the 2009 will, asserting the 2009 will was not a valid will because it was executed as a result of undue influence and Hugh Bob lacked testamentary capacity. On April 29, 2013, Linebaugh filed an application for letters of administration, asserting, to the best of her knowledge, Hugh Bob died without leaving a valid will.

In November of 2013, Mary Lee filed motions for summary judgment on the issues of Hugh Bob's testamentary capacity and the alleged undue influence relating to the 2009 will. In December of 2013, Willman, Linebaugh's son and Hugh Bob's grandson, filed his opposition to the probate of the 2009 will also alleging lack of testamentary capacity and undue influence. In January of 2014, Willman filed an application to probate a will dated November 8, 2006, and Mary Lee filed an opposition to the probate of the 2006 will asserting it had been revoked.

In April of 2014, Mary Lee filed an amended motion for summary judgment on the issues of testamentary capacity, undue influence, and the revocation of the 2006 will by the 2009 will. Linebaugh and Willman filed responses to the motions, and Mary Lee filed a reply. On June 11, 2014, the trial court signed an order denying Mary Lee's motion.

On July 8, 2014, Willman filed an amended application to probate a will dated June 17, 2008. In the alternative, Willman sought to probate a will dated December 27, 2007, or a will dated November 8, 2006. The copies of the 2008 and 2007 wills attached to the application were not signed by Hugh Bob.

On April 2, 2015, the parties appeared before the court for a pretrial hearing for a jury trial set to start "on a Monday two weeks from" the date of the pretrial hearing. At the beginning of the hearing, the trial court announced it had been informed of the existence of a settlement agreement. Mary Lee's attorney announced the parties had reached a family settlement agreement involving Mary Lee, Linebaugh, Willman, and a charitable organization mentioned in one of the

wills. Mary Lee's attorney then proceeded to dictate the terms of the settlement agreement into the record which provided for the 2006 will to be admitted to probate subject to the terms of the family settlement agreement. After various clarifications regarding the terms also were dictated into the record, Mary Lee was sworn as a witness and testified she approved the settlement. Willman's attorney then stated he had "exhaustively discuss[ed] the proposals and settlement resulting today" with his client and was "authorized to accept the settlement proposal." Linebaugh's attorney also stated he had discussed the major terms of the settlement with Willman, and Willman agreed with the terms. Mary Lee's attorney and Linebaugh's attorney then clarified certain issues pertaining only to their clients. The probate judge then asked a few questions which the attorneys clarified, and the attorneys also agreed the parties would waive the right to appeal the order admitting the will to probate. At the conclusion of the foregoing, the trial court stated:

> THE COURT: All right, then. First of all, the Court finds it's in the best interest of the estate of Hugh Bob Spiller that this settlement agreement — family settlement agreement that the attorneys read is hereby approved, and the Court will sign an order — a judgment, rather, and admit the will to probate in accordance with the agreement.

The attorneys then advised the trial court about the substance of the order or judgment they would be submitting.

On May 6, 2015, the case was called for another hearing. The trial court announced the hearing was originally set to "enter the document perpetuating what was read into the record on April the 2nd, 2015, as to an agreed family settlement;" however, the trial court had been handed a motion to withdraw by Willman's attorney. Willman's attorney explained Willman asked him to withdraw and did not agree to the terms of the settlement. The trial court then discussed with the attorneys whether a family settlement agreement was required to be signed by the parties to be enforceable. Mary Lee's attorney argued the agreement as dictated into the record was an enforceable Rule 11 agreement so the trial court should proceed to enter the proposed order. The

trial court stated he did not believe attorneys could agree to a family settlement agreement on a party's behalf; however, the court invited the attorneys to provide case law to the contrary. The trial court then set a date for the jury trial to begin on June 15, 2015, and warned Willman he would not grant any continuances.

On May 8, 2015, Mary Lee filed a motion to enter judgment, asserting the trial court rendered judgment on the settlement agreement on April 2, 2015, and the only matter pending was for the trial court to "ministerially enter a written order in accordance with the judgment rendered on April 2, 2015." On May 18, 2015, Willman filed a response to Mary Lee's motion asserting Mary Lee's only remedy was to seek to enforce the alleged Rule 11 agreement. Willman's response also asserted the settlement terms dictated into the record were unclear or left uncertainties regarding the essential elements of the agreement because the parties contemplated finalizing the agreement at a later date.

On May 18, 2015, the trial court called the case for a hearing on Mary Lee's motion to enter judgment. At the conclusion of the hearing, the trial court announced its ruling as follows:

> THE COURT: The Court finds that having approved, on the record, that which was read into the record at the time of the pretrial hearing and settlement of the case that had been set for jury trial and the representation of Counsel, the Court finds that the Court entered the judgment, and, therefore, the record — the perpetuating that judgment today is before the Court, and the Court should and does hereby enters the order perpetuating that judgment as rendered.

The trial court then signed an order admitting the 2006 will to probate, appointing an independent administrator, and ordering the independent administrator to distribute the estate in accordance with the family settlement agreement. Willman appeals.

WAIVER

In a pending motion before the court which was carried with this appeal and in her brief, Mary Lee contends Willman waived his right to appeal the trial court's order under the terms of

the family settlement agreement. Willman would only have waived his appeal if the family settlement agreement dictated into the reporter's record at the April 2, 2015 hearing is an enforceable agreement. Whether the family settlement agreement is an enforceable Rule 11 agreement is not, however, an issue upon which the trial court ruled in entering its order and, therefore, is not an issue properly presented in this appeal. *See S & A Rest. Corp. v. Leal*, 892 S.W.2d 855, 857 n.1 (Tex. 1995) (noting party revoking consent to settlement agreement could be sued for breach of the settlement agreement); TEX. R. APP. P. 33.1. Instead, the dispositive issue presented in this appeal is whether the trial court rendered judgment before or after Willman revoked his consent to the family settlement agreement. Accordingly, Mary Lee's motion to dismiss this appeal is denied.

DISCUSSION

"A party may revoke its consent to a settlement agreement at any time before judgment is rendered on the agreement." *Id*. at 857. "A judgment rendered after one of the parties revokes his consent is void." *Id*.

"Judgment is rendered when the trial court officially announces its decision in open court or by written memorandum filed with the clerk." *Id*. As the Texas Supreme Court has explained:

> The judge's intention to render judgment in the future cannot be a present rendition of judgment. The rendition of judgment is a present act, either by spoken word or signed memorandum, which decides the issues upon which the ruling is made. The opportunities for error and confusion may be minimized if judgments will be rendered only in writing and signed by the trial judge after careful examination. Oral rendition is proper under the present rules, but orderly administration requires that form of rendition to be in and by spoken words, not in mere cognition, and to have effect only insofar as those words state the pronouncement to be a present rendition of judgment.

Id. at 857-58 (quoting *Reese v. Piperi*, 534 S.W.2d 329, 330 (Tex. 1976)). "The words used by the trial court must clearly indicate the intent to render judgment at the time the words are expressed." *Id*. at 858. And, a trial judge's belief that he rendered judgment is not dispositive. *Id*.

"[A]pproval of a settlement does not necessarily constitute rendition of judgment." *Id*. at 857. In *Leal*, the Texas Supreme Court noted the trial court "distinguished between the acts of *approving the settlement* and *rendering judgment*" as evidenced by the following statement:

> You realize that once this judgment is signed and I approve it, everything else, it's full final and complete? … And you want me to approve the settlement and sign the judgment? I'll approve the settlement.

Id. at 858 (emphasis in original). The Texas Supreme Court held, "Although the trial court expressly approved the settlement, he did not clearly indicate that he intended to render judgment" at the hearing. *Id*.

Similar to the facts in *Leal*, the trial court in the instant case stated he approved the family settlement agreement and "will sign an order" admitting the will to probate in accordance with the agreement. In using the future term "will," the trial court expressed an intention to render the order in the future. *See Reese*, 534 S.W.2d at 330 (holding trial court's statement that he "will" grant a new trial was not a present rendition of judgment); *Araujo v. Araujo*, No. 04-15-00503-CV, 2016 WL 3030942, at *3 (Tex. App.—San Antonio May 25, 2016, no pet. h.) (holding divorce decree awarding wife amount of pension in a QDRO "to be entered after this Decree" did not render the QDRO); *In re M.G.F.*, No. 2-07-241-CV, 2008 WL 4052992, at *3 (Tex. App.—Fort Worth Aug. 28, 2008, no pet.) (holding trial court's statements that it "will approve the agreement" and "will sign an order to that effect" indicated an intent to render judgment in the future) (mem. op.); *but see Blackburn v. Blackburn*, No. 02-12-00369-CV, 2015 WL 2169505, at *6-7 (Tex. App.—Fort Worth May 7, 2015, no pet. h.) (holding following statement by trial court showed a present intent to render a full, final, and complete judgment, "I'm going to grant the divorce pursuant to the terms and provisions of the [mediated settlement agreement] that's been stated here today, and I will sign the Decree upon presentment.") (mem. op). Willman, however, revoked his consent to the family settlement agreement before any order was subsequently rendered. Because the trial court

rendered the order admitting the 2006 will to probate and ordering the distribution of the estate in accordance with the family settlement agreement after Willman revoked his consent to the family settlement agreement, the trial court's order is void. *See Leal*, 892 S.W.2d at 857.

CONCLUSION

We render judgment setting aside the trial court's order as void. The cause is remanded to the trial court for further proceedings.

Marialyn Barnard, Justice