Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00437-CV

Jennay Marie **BRISCOE**,
Appellant

v.

James Nathan **BRISCOE**,
Appellee

From the 224th Judicial District Court, Bexar County, Texas
Trial Court No. 2017CI17827
Honorable Laura Salinas, Judge Presiding

Opinion by: Liza A. Rodriguez, Justice

Sitting: Rebeca C. Martinez, Justice
Patricia O. Alvarez, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: March 6, 2019

REVERSED AND REMANDED

Jennay Marie Briscoe appeals an "Agreed Final Decree of Divorce" asserting the trial court erred by: (1) erroneously adjudicating the parentage of K.A.B.; and (2) concluding she waived the prerequisites for adoption by signing a mediated settlement agreement. Because the divorce decree varies from the terms of the parties' mediated settlement agreement, the divorce decree is reversed, and the cause is remanded to the trial court for further proceedings.

BACKGROUND

James and Jennay were married on March 14, 2017. On September 15, 2017, James filed a petition for divorce in the underlying cause, alleging he and Jennay were the "parents of the following children of this marriage," listing K.A.B. and A.J.B. Jennay filed an answer containing a general denial.

On January 23, 2018, James, Jennay, and their attorneys executed a mediated settlement agreement ("MSA") which stated, "THIS AGREEMENT IS NOT SUBJECT TO REVOCATION." The MSA provided, "Jennay and James shall continue with the adoption process and Jennay agrees to the adoption of [K.A.B.] by James." The clerk's record contains a document entitled "Judge's Notes" dated January 24, 2018, stating "proved up; granted and rendered divorce."

On May 21, 2018, James filed a motion to enter agreed final decree of divorce. On May 22, 2018, Jennay's attorney filed a motion to withdraw, and on May 24, 2018, Jennay's newly retained counsel filed an amended answer alleging James's pleadings listed K.A.B. as a child of the marriage and asserting:

> [K.A.B.] is not a child of the marriage. Respondent denies the paternity of James Nathan Briscoe to the child [K.A.B.]. The biological father of said child has had his rights terminated in a separate suit in Bexar County, Texas and there are no court-ordered conservatorships, court-ordered guardianships, or other court-ordered relationships with respect to James Nathan Briscoe and [K.A.B.].

On May 31, 2018, the trial court held a hearing on James's motion at which the following ruling was made regarding the provision of the proposed decree entitled "Children of the Marriage":

> [Jennay's attorney]: Okay, Judge.
> The next issue is that the pleadings and the divorce decree and the reference in the MSA they all have it listed as [K.A.B.] being a child of the marriage. She's not a child of the marriage. There is no conservatorship. No guardianship. I don't think anyone denies that he is not the biological father of this child.

> Petitioner has not alleged anything in the original petition to confer standing upon [K.A.B.] so with respect to that child, the Court has no jurisdiction to enter any sort of orders with respect to that child.
>
> [James's attorney]: Judge, there's —
>
> [Jennay's attorney]: Excuse me.
> And any provisions in the MSA regarding that child would be void as a matter of law.
> They have not amended their pleadings and it's specifically pled that [K.A.B.] is a child of the marriage, she is not.
>
> THE COURT: Jennay [and] James shall continue with the adoption process and Jennay agrees to the adoption of [K.A.B.] by James.
> Their agreement that they both have signed off on, right? Okay. So I mean its' black and white. I don't understand what you're —
>
> [Jennay's attorney]: And just for that, Judge, my argument is that things have to be specifically pled and they have to go in the proper course. I understand that —
>
> THE COURT: Or she waived it when she signed off the agreement, what she did. She agreed. Now, if she wants to start relitigating everything, this is not subject to revocation. It's in big bold letters here. So it's not going to be redone. It's already in here.

At the conclusion of the hearing, the trial court signed an "Agreed Final Decree of Divorce." The decree stated the divorce was judicially pronounced and rendered on January 24, 2018 but signed on May 31, 2018. The decree provided in pertinent part:

> ***Children of the Marriage***
>
> The Court finds that Petitioner and Respondent are the parents of the following children: [K.A.B. and A.J.B.]. The Court finds no other children of the marriage are expected.

Jennay appeals.

STANDARD OF REVIEW AND MEDIATED SETTLEMENT AGREEMENTS

"A mediated settlement agreement is binding on the parties if the agreement: (1) provides, in a prominently displayed statement that is in boldfaced type or capital letters or underlined, that the agreement is not subject to revocation; (2) is signed by each party to the agreement; and (3) is

signed by the party's attorney, if any, who is present at the time the agreement is signed." TEX. FAM. CODE ANN. § 153.0071(d). "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."[1] *Id.* § 153.0071(e). We review a trial court's rendition of judgment on a mediated settlement agreement under an abuse of discretion standard. *In re Lee*, 411 S.W.3d 445, 450 (Tex. 2013); *In re C.C.E.*, 530 S.W.3d 314, 319 (Tex. App.—Houston [14th Dist.] 2017, no pet.).

"A final judgment rendered pursuant to a mediated settlement agreement must be in strict or literal compliance with that agreement." *In re K.A.M.*, No. 12-17-00402-CV, 2018 WL 3748687, at *4 (Tex. App.—Tyler Aug. 8, 2018, no pet.) (mem. op.). "The Family Code does not authorize a court to modify an MSA before incorporating it into a decree." *In re L.T.H.*, 502 S.W.3d 338, 345 (Tex. App.—Houston [14th Dist.] 2016, no pet.); *see also In re S.A.D.S.*, 413 S.W.3d 434, 438 (Tex. App.—Fort Worth 2010, no pet.) ("the trial court had no authority to enter an order that varied from the terms of the mediated settlement agreement"); *Garcia-Udall v. Udall*, 141 S.W.3d 323, 332 (Tex. App.—Dallas 2004, no pet.) (same). "Modifications to settlement agreements are typically grounds for reversal, however, only where they add terms, significantly alter the original terms, or undermine the intent of the parties." *In re K.A.M.*, 2018 WL 3748687, at *4.

DISCUSSION

In her first issue, Jennay contends the trial court erred in adjudicating K.A.B.'s parentage by finding James to be her father "despite reading from the MSA that provided James was to adopt

[1] Although the trial court retains the discretion to decline to enter a judgment on a mediated settlement agreement based on findings of family violence or past or present physical or sexual abuse, those exceptions are not applicable in the instant case. *See* TEX. FAM. CODE ANN. § 153.0071(e-1).

K.A.B." Because the MSA signed by James and Jennay met the requirements of section 153.0071(c), the trial court could not vary from its terms. *In re L.T.H.*, 502 S.W.3d at 345; *In re S.A.D.S.*, 413 S.W.3d at 438; *Garcia-Udall*, 141 S.W.3d at 332. In a divorce proceeding, a trial court makes an adjudication of the parentage of a child if its final order "expressly identifies the child as 'a child of the marriage' or 'issue of the marriage' or uses similar words indicating that the husband is the father of the child." TEX. FAM. CODE ANN. § 160.637(c)(1). In this case, the divorce decree identifies Jennay and James as K.A.B.'s parents under a provision entitled "Children of the Marriage" in which the trial court further finds "no ***other*** children of the marriage are expected." (emphasis added). Therefore, in context, the divorce decree identifies K.A.B. as a child of the marriage, thereby adjudicating her parentage. *See id.* Nothing in the appellate record or the parties' briefing, however, establishes the adoption process was completed between the date the parties signed the MSA and the date the trial court signed the divorce decree. Because the MSA only provided that Jennay agreed to K.A.B.'s adoption by James and required James and Jennay to continue with the adoption process, the trial court erred in identifying K.A.B. as a child of the marriage.

In her second issue, Jennay contends the trial court erred "by holding Jennay waived the prerequisites for adoption." Jennay's objection at the hearing, however, related to the pleadings in the context of a motion to enforce the MSA, and the trial court's verbal ruling was focused on Jennay being bound by the terms of the MSA which was not subject to revocation. Although the trial court abused its discretion in entering a judgment that varied from the terms of the MSA, Jennay agreed to K.A.B.'s adoption by James and to continue the adoption process.

CONCLUSION

The "Agreed Final Decree of Divorce" is reversed, and the cause is remanded to the trial court for further proceedings.

Liza A. Rodriguez, Justice