NUMBER 13-14-00514-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

BELINDA LOPEZ, **Appellant,**

v.

ERASMO LOPEZ AND SANTOS MALDONADO JR., **Appellees.**

On appeal from the 275th District Court of Hidalgo County, Texas.

MEMORANDUM OPINION

Before Justices Rodriguez, Garza, and Longoria
Memorandum Opinion by Justice Garza

By a single issue, appellant Belinda Lopez ("Belinda") contends the trial court erred in rendering a final divorce decree in her divorce from appellee, Erasmo Lopez ("Erasmo"). Belinda contends the trial court erred in granting the decree based on a purported agreement that she repudiated prior to the granting of judgment. In a motion to dismiss the appeal, Erasmo contends that Belinda is estopped from challenging the

trial court's judgment because she accepted benefits under that judgment. We deny Erasmo's motion to dismiss. We reverse the trial court's judgment and remand to the trial court for further proceedings.

I. BACKGROUND[1]

Belinda filed for divorce from Erasmo in November 2010. In July 2011, Belinda hired appellee Santos Maldonado to represent her. On February 25, 2013, the parties and their attorneys met at the Hidalgo County Courthouse. The parties met in an empty courtroom, with a court reporter present but no judge presiding; the outlines of a purported agreement were dictated to the court reporter. On May 22, 2013, the parties again met in court and dictated terms "in addition to" those included in the February 25, 2013 agreement. Again, apparently, no judge was present during the May 22, 2013 proceedings.

On September 12, 2013, Erasmo filed a Motion for Entry of the Divorce Decree. Belinda responded that she had repudiated any purported agreement. On October 2, 2013, Belinda terminated Maldonado. On November 11, 2013, Belinda—by written letter from her new counsel—withdrew her consent to any purported agreement.

On November 20, 2013, the trial court held a hearing on Erasmo's Motion for Entry of the Divorce Decree. At the hearing, Belinda's new counsel explained that Belinda had repudiated any purported agreement. Erasmo's counsel argued that the May 22, 2013 agreement met the requirements of a Rule 11 agreement. *See* TEX. R. CIV. P. 11. Belinda's new counsel argued that, even if the agreement met the requirements of Rule 11, she had nonetheless repudiated the agreement. The trial court stated that it would

[1] We note that some of the documents referred to are not included in the record. In some cases, we have relied on the parties' recitations of certain dates.

"allow" a proposed divorce decree, but the terms of the decree should not differ from the terms as outlined in the agreement.

Also on November 20, 2013, Maldonado filed an intervention in the divorce proceeding asserting that he was entitled to attorneys' fees for his representation of Belinda. On December 12, 2013, Belinda filed a response to Maldonado's intervention, in which she alleged a counterclaim for legal malpractice. [2]

On June 5, 2014, the trial court entered a final divorce decree. This appeal followed.

II. MOTION TO DISMISS

As an initial matter, we address Erasmo's motion to dismiss this appeal filed on July 25, 2016. In his motion, Erasmo alleges that this Court lacks jurisdiction over this appeal. Specifically, Erasmo argues that Belinda has accepted the benefits of the final divorce decree and is estopped from challenging the judgment on appeal. *See F.M.G.W. v. D.S.W.*, 402 S.W.3d 329, 332 (Tex. App.—El Paso 2013, no pet.) ("The acceptance-of-benefits doctrine provides that a party who has accepted the benefits of a judgment is not permitted to challenge the same judgment on appeal."). Erasmo attached an affidavit to his motion, in which he outlined the benefits Belinda received pursuant to the terms of the divorce.

Belinda filed a response to Erasmo's motion to dismiss. Belinda argued that there are two exceptions to the general rule that a party who accepts the benefits of a judgment is estopped from appealing the judgment. The first exception applies when the

[2] Maldonado's intervention for attorneys' fees and Belinda's counterclaim for legal malpractice were eventually severed into a separate cause. Our disposition of the appeal in that cause is addressed in *Lopez v. Maldonado*, No. 13-15-042-CV, 2016 WL ____ (Tex. App.—Corpus Christi Dec. 21, 2016, no pet. h.) (mem. op.).

acceptance of benefits is not voluntary because of financial duress or other economic circumstances. *Waite v. Waite*, 150 S.W.3d 797, 803 (Tex. App.—Houston [14th Dist.] 2004, pet. denied). A second exception applies when an appellant accepts only that which an appellee concedes, or is bound to concede, to be due to the appellant. *Id.* at 804. Belinda argued that she meets both exceptions. Belinda attached an affidavit to her response, in which she outlined the economic circumstances that required her to accept the benefits of the divorce. The affidavit detailed, in relevant part, the following economic circumstances: (1) Belinda's net income is approximately $5,200 per month, but her monthly living expenses are approximately $7,700[3]; (2) the couple's daughter lives with Belinda when not attending college; (3) Belinda took about three months off from work to care for the couple's son, who suffered injuries in an auto accident; (4) Belinda supports her aging parents, who live with her; and (5) Belinda has incurred major expenses related to home maintenance and medical expenses, including $6,600 in home repairs and $2,450 in medical expenses.

Erasmo, as the movant and appellee in this case, bears the burden of proof to establish the applicability of the acceptance of benefits doctrine. *See Leedy v. Leedy*, 399 S.W.3d 335, 339 (Tex. App.—Houston [14th Dist.] 2013, no pet.) (citing *Waite*, 150 S.W.3d at 803); *see In re M.A.H.*, 365 S.W.3d 814, 818 (Tex. App.—Dallas 2012, no pet.); *see also Domit v. Domit*, No. 13-14-00001-CV, 2014 WL 5500475, at *1 (Tex. App.—Corpus Christi Oct. 30, 2014, no pet.) (mem. op.). When the acceptance of benefits doctrine applies, the appeal is moot, and the appellate court must dismiss for want of jurisdiction. *F.M.G.W.*, 402 S.W.3d at 332). The non-movant—here, appellant—bears

[3] The monthly living expenses were further itemized, with specific amounts identified.

the burden to establish the applicability of one of two exceptions to the doctrine: the economic necessity exception or the entitlement exception. *Id.*

Here, Erasmo's affidavit states that Belinda accepted child support in the amount of $1,520 per month, deeds to the residence and thirty-six funeral plots, a concession trailer which she sold, and $3,000 per month for twenty months. In her affidavit, Belinda identifies and itemizes her monthly living expenses, including housing expenses, car payment and insurance, food, credit card debt, and assistance to her parents and son. She states that her monthly expenses exceeded her net monthly salary by approximately $2,500. The affidavit also states that she sold the concession trailer for $12,000 and used the sale proceeds to pay for expenses related to caring for the couple's son after his accident. The affidavit details that Belinda spent $6,600 in home repairs, approximately $2,450 in medical expenses, and approximately $7,000 in attorneys' fees related to the divorce.

We conclude that Belinda established that she accepted the benefits of the divorce decree because of economic necessity. In *Waite*, the appellant's affidavit was found to be insufficient to establish economic necessity because it stated only generally that he had to pay for food, clothing, rent, and insurance, but did not specify the cost of such items. *See* 150 S.W.3d at 805. In contrast, Belinda's affidavit itemizes and identifies specific monthly expenses. *See In re M.A.H.*, 365 S.W.3d at 818 (finding evidence established that appellant's acceptance of benefits of judgment was due to economic necessity where appellant had no job and no valuable possessions aside from benefits of divorce). Because Belinda established that she accepted the benefits of the divorce decree because of economic necessity, we overrule Erasmo's motion to dismiss and

address the merits of Belinda's appeal.

III. REPUDIATION OF AGREEMENT

By her sole issue, Belinda contends the trial court erred when it granted a final decree of divorce based on a purported agreement that she had repudiated. Belinda argues that the purported agreement: (1) is not a mediated settlement agreement because it fails to meet the requirements of section 6.602 of the family code, *see* TEX. FAM. CODE ANN. § 6.602 (West, Westlaw through 2015 R.S.); and (2) is not enforceable because even if it met the requirements of Rule 11, she withdrew her consent prior to judgment.

Erasmo appears to concede that the agreement does not meet the requirements of a mediated settlement agreement. Instead, he argues that the agreement is a Rule 11 agreement because "[t]he parties entered sworn testimony as to their agreement in open court and on the record." Belinda responds that even if Erasmo is correct, the trial court lacked authority to enter a judgment based on the terms of the agreement because she repudiated it months before the trial court entered judgment. We agree with Belinda.

"Ordinarily, a court may not enter an agreed judgment under rule 11 when one of the parties no longer consents to the judgment." *In re M.A.H.*, 365 S.W.3d at 818 (citations omitted). "A judgment enforcing a settlement agreement after one of the parties revokes consent is void." *Id.*; *see also S & A Rest. Corp. v. Leal*, 892 S.W.2d 855, 858 (Tex. 1995) (per curiam).[4]

[4] "When one party revokes consent to a rule 11 settlement agreement, the party seeking enforcement of the agreement for judgment may enforce the agreement through a separate claim for breach of contract." *In re M.A.H.*, 365 S.W.3d 814, 818–19 (Tex. App.—Dallas 2012, no pet.); *see Woody v. Woody*, 429 S.W.3d 792, 796 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

Here, Erasmo concedes that: (1) Belinda withdrew her consent to the purported agreement on November 11, 2013; (2) at the November 20, 2013 hearing, Belinda's counsel stated that she had repudiated the purported agreement; and (3) the trial court signed the final decree of divorce on June 5, 2014. Because the trial court rendered its judgment on the purported agreement after Belinda revoked her consent, the trial court's judgment granting the divorce is void. *See In re M.A.H.*, 365 S.W.3d at 818; *Leal*, 892 S.W.2d at 858. We sustain Belinda's sole issue on appeal.

IV. CONCLUSION

We reverse the trial court's judgment and remand to the trial court for further proceedings consistent with this opinion. We overrule Erasmo's motion to dismiss.

DORI CONTRERAS GARZA
Justice

Delivered and filed the
21st day of December, 2016.