NO. 12-11-00218-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

IN THE INTEREST	***§***	***APPEAL FROM THE 321ST***
OF A.M.S.,	***§***	***JUDICIAL DISTRICT COURT***
A CHILD	***§***	***SMITH COUNTY, TEXAS***

MEMORANDUM OPINION

Blake George Sinclair appeals from an agreed order in a suit to modify the parent-child relationship. Blake contends in one issue that the trial court erred in rendering the order because it did not strictly comply with the mediated settlement agreement signed by him and Stephanie Michelle Sinclair. We affirm.

BACKGROUND

Blake and Stephanie divorced in 2007. In their divorce decree, they were both appointed as joint managing conservators of their only child, with Stephanie being the parent with the exclusive right to designate the child's primary residence. Blake was also ordered to pay child support to Stephanie. Additionally, the decree provided for contractual alimony of $100,000.00 to be paid over a series of years by Blake to Stephanie.

In late 2009, Blake filed a petition to modify the parent-child relationship in which he requested to be appointed as the child's sole managing conservator or, alternatively, have the right to designate the child's primary residence. Stephanie filed a counterpetition for enforcement in which she contended that Blake was behind on his child support payments and had breached the contract to pay her alimony. Stephanie later filed another counter petition seeking further relief on support payments and seeking to maintain her status as the parent

allowed to designate the child's primary residence. In a series of hearings, the following occurred:

January 12, 2011 Hearing: The trial court orders the parties to mediation on the conservatorship and possession issues. Stephanie tells the court that she will seek to have the contractual alimony issue decided by a jury at a later date.

February 14, 2011 Hearing: Blake and Stephanie announce they have signed a mediated settlement agreement to resolve the conservatorship and possession issues. After the trial court orders the parties to circulate an agreed order based on the mediated settlement agreement, Stephanie reports to the court that the contractual alimony issue was not settled. Upon hearing this, the trial court orders the parties back to mediation to try to settle the contractual alimony issue. Blake welcomes the opportunity to return to mediation on the contractual alimony issue. The court tells Stephanie that if an impasse between the parties remains after this mediation attempt, she is to go ahead and file a suit for breach of the contractual alimony agreement.

The record before us does not mention what happened at the mediation or even if there was one. However, on March 22, 2011, Stephanie filed suit against Blake for breach of the contractual alimony agreement in their divorce decree.

April 11, 2011 hearing: In presenting the proposed agreed order approving the mediated settlement agreement, Blake submits to the court an order with the following release section:

> *Release*
>
> The parties agree to release, discharge, and forever hold the other parties harmless from any and all claims and causes of action that have been alleged or could have been alleged in the above entitled and numbered cause including, but not limited to, any claims for personal injuries.
>
> The parties agree that this release inures to the benefit of all attorneys, agents, employees, officers, directors, shareholders and partners of the parties. IT IS THEREFORE ORDERED that the parties, their respective attorneys, agents, employees, officers, directors, shareholders and partners are released, discharged and forever held harmless of any and all claims and causes of action that have been alleged or could have been alleged, including but not limited to, any claims for personal injuries.

Stephanie objects to this language in the order. She contends that Blake is attempting to use this language in the release section of the agreed order to release her contractual alimony

claim against him. The trial court, before it signs the agreed order, makes the following interlineation to its release section:

> *Release*
>
> The parties agree to release, discharge, and forever hold the other parties harmless from any and all claims and causes of action that have been alleged or could have been alleged in the above entitled and numbered cause including, but not limited to, any claims for personal injuries.
>
> The parties agree that this release inures to the benefit of all attorneys, agents, employees, officers, directors, shareholders and partners of the parties. IT IS THEREFORE ORDERED that the parties, their respective attorneys, agents, employees, officers, directors, shareholders and partners are released, discharged and forever held harmless of any and all claims and causes of action that have been alleged or could have been alleged, including but not limited to, any claims for personal injuries, **subject to that claim filed in cause no. 59,212-B which was filed in County Court at Law #3 and which was transferred to this court on April 5, 2011.**

Blake objects to the court's interlineation on the agreed order.

Blake timely filed this appeal.

MEDIATED SETTLEMENT AGREEMENT

In his sole issue, Blake contends that the trial court altered the mediated settlement agreement he signed with Stephanie on February 10, 2011, and that he is entitled to an order reflecting the terms of that binding agreement.

Standard of Review and Applicable Law

We review a trial court's judgment on a mediated settlement agreement for an abuse of discretion. ***R.H. v. Smith***, 339 S.W.3d 756, 765 (Tex. App.–Dallas 2011, no pet.).

If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract. TEX. CIV. PRAC. & REM. CODE ANN. § 154.071(a) (West 2011). Texas has specified alternative dispute resolution procedures in suits involving the parent-child relationship. Family code Section 153.0071 states in relevant part:

> (d) 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) (West 2008). If a mediated settlement agreement meets the requirements of subsection (d), a party is entitled to judgment on the mediated settlement agreement. ***Id***. § 153.0071(e). In order to effect the purposes of mediation and other alternative dispute resolution mechanisms, settlement agreements must be treated with the same dignity and respect accorded other contracts reached after arm's length negotiations. ***In re Marriage of Ames***, 860 S.W.2d 590, 592 (Tex. App.–Amarillo 1993, no writ).

A final judgment rendered pursuant to a mediated settlement agreement must be in strict or literal compliance with that agreement. ***Vickrey v. Am. Youth Camps, Inc.***, 532 S.W.2d 292, 292 (Tex. 1976). The trial court has no power to supply terms, provisions, or conditions not previously agreed to by the parties. ***Keim v. Anderson***, 943 S.W.2d 938, 946 (Tex. App.–El Paso 1997, no writ). 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. ***Beyers v. Roberts***, 199 S.W.3d 354, 362 (Tex. App.–Houston [1st Dist.] 2006, pet. denied).

Analysis

We must determine whether the trial court abused its discretion in making the interlineation in its agreed order incorporating the mediated settlement agreement. We are able to make that determination by reviewing the record of the trial court's hearing of February 14. On that date, both parties agreed in open court that the mediated settlement agreement did not include Stephanie's contractual alimony claim. Both parties agreed to go back to mediation on the contractual alimony claim. There was agreement between the parties on February 14, just four days after the mediated settlement agreement had been signed, that it did not include Stephanie's contractual alimony claim.

Therefore, when the trial judge made the April 11 interlineation on the agreed order before signing it, she was not altering the terms of the mediated settlement agreement. She was only clarifying what the parties themselves had agreed to on February 14 in open court. She was trying to avoid any confusion that might occur in the future regarding whether the contractual alimony claim was part of the mediated settlement agreement. Thus, the trial judge was neither adding terms to nor altering the original terms of the mediated settlement agreement. *See* ***Beyers***, 199 S.W.3d at 362. She was merely establishing the parameters of the mediated

settlement agreement. We hold that the trial judge did not abuse her discretion with the interlineation made in the agreed order. Blake's sole issue is overruled.

DISPOSITION

Having overruled Blake's sole issue, the order of the trial court is ***affirmed***.

JAMES T. WORTHEN
Chief Justice

Opinion delivered July 31, 2012.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)

COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JULY 31, 2012

NO. 12-11-00218-CV

IN THE INTEREST OF A.M.S., A CHILD

Appeal from the 321st Judicial District Court
of Smith County, Texas. (Tr.Ct.No. 06-3247-D)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that there was no error in the trial court's order.

It is therefore ORDERED, ADJUDGED and DECREED that the order of the court below **be in all things affirmed**, and that all costs of this appeal are hereby adjudged against the appellant, **BLAKE GEORGE SINCLAIR**, for which execution may issue, and that this decision be certified to the court below for observance.

James T. Worthen, Chief Justice.
Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.