NO. 09-20-00028-CV

IN THE NINTH COURT OF APPEALS
BEAUMONT, TEXAS

IN THE INTEREST OF
FRANCIS MORENO LEBLANC

ON APPEAL FROM THE 317TH JUDICIAL DISTRICT COURT,
JEFFERSON COUNTY, TEXAS
TRIAL CAUSE NO. C-233,639

APPELLANT'S OPENING BRIEF

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STATEMENT OF THE CASE

Nature of the case. This is a divorce case. On October 21, 2019, Frances Leblanc ("Frances") and Larry Leblanc ("Larry") entered into an Irrevocable Mediated Settlement Agreement ("MSA") resolving this action. Appendix A.[1] They signed it. *Id*. They initialed every page. *Id*. And so did their lawyers and the mediator. *Id*. Indeed, no Party disputes the MSA's validity or enforceability.

Frances prepared and submitted to the trial court a divorce decree in strict compliance with the MSA. App. B. Larry, however, changed his mind about the holiday visitation schedule bargained-for by the Parties and submitted a version of the divorce decree that adds terms and incorporates an entirely different holiday visitation schedule not in strict compliance with the MSA. App. C.

Course of proceedings. The final hearing to enter the divorce decree was on January 14, 2020.

Trial court disposition. The trial court entered Larry's version of the decree (App. C), rather than Frances' version of the decree. This appeal has resulted.

[1] The Appendices hereafter will be referred to as "App. __" or "App. __ at [page number(s)]."

STATEMENT REGARDING ORAL ARGUMENT

Frances respectfully asserts that oral argument is not necessary. The facts and the law in this case are straightforward. This appeal may easily be decided on submission. As such, the Court's decisional process would not be aided by oral argument.

ISSUE PRESENTED FOR REVIEW

The MSA sets forth the Parties' bargained-for holiday visitation schedule for *every year* going forward under the heading "Holidays Every Year." App. A at 3-4. The holiday visitation schedule in Frances' proposed divorce decree (App. B at 9-10) is in strict compliance with the MSA. The holiday visitation schedule in Larry's version of the decree (App. C at 9-11), however, is not—for two reasons: it adds terms and incorporates an entirely different holiday visitation schedule than in the MSA *and* violates the "Holidays Every Year" MSA provision that "[m]other has possession at all times not specifically awarded to father." App. A at 4. Under Larry's version of the decree, which the trial court erroneously entered, Larry receives more time with the children during the Thanksgiving and Christmas holidays than he otherwise bargained for in the MSA.

Thus, the issue before the Court is whether the final decree entered by the trial court is in strict compliance with the MSA and, if not, whether the trial court erred by entering it?

STATEMENT OF FACTS

On October 21, 2019, Frances and Larry entered into the MSA. App. A. They signed it. *Id*. They initialed every page. *Id*. And so did their lawyers and the mediator. *Id*. Indeed, no Party disputes the MSA's validity or enforceability.

The MSA sets forth the Parties' bargained-for Thanksgiving and Christmas visitation schedules for *every* year going forward under the heading "Holidays Every Year:"

(i) *every* Thanksgiving, Larry has possession of the Parties' children from 3:00 p.m. to 8:00 p.m. on Thanksgiving Day (App. A at 3) and Frances has possession of the Parties' children from 8:00 a.m. to 3:00 p.m. (*Id*. at 4); and

(ii) *every* Christmas, Larry has possession of the Parties' children on December 24 from 8:00 a.m. to 10:00 p.m. (*Id*. at 4) and Frances has possession of the Parties' children from December 24 at 10:00 p.m. through December 26 at 8:00 a.m. *Id.*

At the end of the "Holidays Every Year" section, the MSA also states that "[m]other has possession at all times not specifically awarded to father." *Id.*

Frances prepared and submitted a divorce decree to the trial court that is in strict compliance with the MSA. App. B. Larry, however, changed his mind about the holiday visitation schedule bargained-for by the Parties and submitted an alternative divorce decree that adds terms and incorporates an entirely different holiday visitation schedule not in the MSA:

(e) Holiday Schedule

Notwithstanding the above ordered periods of possession for **LARRY JULES LEBLANC, JR., FRANCES MORENO LEBLANC** and **LARRY JULES LEBLANC, JR.** shall have the right to possession of the child as follows:

1. Christmas Holidays in Even-Numbered Years-In even-numbered years, **LARRY JULES LEBLANC, JR.** shall have the right to possession of the child beginning at the time the child's school is dismissed for the Christmas school vacation and ending at noon on December 28, and **FRANCES MORENO LEBLANC** shall have the right to possession of the child beginning at noon on December 28 and ending at 6:00 P.M. on the day before school resumes after that Christmas school vacation.

Notwithstanding the above ordered Christmas holiday period of possession for **LARRY JULES LEBLANC, JR.,** in even-numbered years **FRANCES MORENO LEBLANC** shall have the right to possession of the child beginning at 10:00 P.M. on December 24 and ending at 8:00 A.M. on December 26, provided that **FRANCES MORENO LEBLANC** picks up the child from **LARRY JULES LEBLANC, JR.'s** residence and returns the child to that same place.

2. Christmas Holidays in Odd-Numbered Years-In odd-numbered years, **FRANCES MORENO LEBLANC** shall have the right to possession of the child beginning at the time the child's school is dismissed for the Christmas school vacation and ending at noon on December 28, and **LARRY JULES LEBLANC, JR.** shall have the right to possession of the child beginning at noon on December 28 and ending at 6:00 P.M. on the day before school resumes after that Christmas school vacation.

Notwithstanding the above ordered Christmas holiday visitation for **FRANCES MORENO LEBLANC,** in odd-numbered years **LARRY JULES LEBLANC** shall have the right to possession of the child beginning at 8:00 A.M. on December 24 and ending at 10:00 P.M. on that day, provided that **LARRY JULES LEBLANC, JR.** picks up the child from **FRANCES MORENO LEBLANC's** residence and returns the child to that same place.

3. Thanksgiving in Odd-Numbered Years-In odd-numbered years, **LARRY JULES LEBLANC, JR.** shall have the right to possession of the child beginning at the time the child's school is dismissed for the Thanksgiving holiday

and ending at 6:00 P.M. on the Sunday following Thanksgiving, except that **FRANCES MORENO LEBLANC** shall have the right to possession of the child on Thanksgiving Day beginning at 8:00 A.M. and ending at 3:00 P.M. on that day, provided that **FRANCES MORENO LEBLANC** picks up the child from **LARRY JULES LEBLANC, JR.'s** residence and returns the child to that same place.

4. Thanksgiving in Even-Numbered Years-In even-numbered years, **FRANCES MORENO LEBLANC** shall have the right to possession of the child beginning at the time the child's school is dismissed for the Thanksgiving holiday and ending at 6:00 P.M. on the Sunday following Thanksgiving, except that **LARRY JULES LEBLANC, JR.** shall have the right to possession of the child on Thanksgiving Day beginning at 3:00 P.M. and ending at 8:00 P.M. on that day, provided that **LARRY JULES LEBLANC, JR.** picks up the child from **FRANCES MORENO LEBLANC's** residence and returns the child to that same place.

App. C at 9-10 (capital letters and emphasis in original).

The trial court rejected Frances' version of the divorce decree and entered Larry's version of the divorce decree.

STANDARD OF REVIEW

A trial court's rendition of judgment on a mediated settlement agreement is reviewed 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.). Here, the trial court abused its discretion and erred as a matter of law by entering a divorce decree with a holiday visitation schedule that is not in strict compliance with the Parties' MSA.

SUMMARY OF THE ARGUMENTS

"A final judgment rendered pursuant to a mediated settlement agreement must be in strict or literal compliance with that agreement." *See, e.g., In re K.A.M.*, No. 12-17-00402-CV, 2018 WL 3748687, at *4 (Tex. App.—Tyler Aug. 8, 2018, no pet.). "The Family Code does not authorize a court to modify an MSA before incorporating it into a decree." *See, e.g., In re L.T.H.*, 502 S.W.3d 338, 345 (Tex. App.—Houston [14th Dist.] 2016, no pet.). Modifications to settlement agreements are grounds for reversal when 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.

The holiday visitation schedule in Frances' proposed divorce decree is in strict compliance with the MSA. The holiday visitation schedule in Larry's version of the decree is not—for two reasons: it adds terms and incorporates an entirely different holiday visitation schedule than in the MSA *and* violates the "Holidays Every Year" MSA provision that "[m]other has possession at all times not specifically awarded to father." Under Larry's version of the decree, which the trial court erroneously entered, Larry receives more time with the children during the Thanksgiving and Christmas holidays than he otherwise bargained for in the MSA.

Larry's version of the decree also undermines well-established Texas policy encouraging mediation as a form of dispute resolution in high-conflict family matters involving divorced parents' visitation rights. *In re Lee*, 411 S.W.3d at 449.

The trial court abused its discretion and erred as a matter of law by entering Larry's proposed divorce decree, rather than Frances' proposed divorce decree.

ARGUMENTS AND AUTHORITIES

In *In re Lee*, the Texas Supreme Court determined that as a matter of policy, encouragement of mediation as an alternative form of dispute resolution is critically important to the emotional and psychological well-being of children involved in high-conflict custody disputes. *Id.*, 411 S.W.3d at 449. Indeed, the Texas Legislature has recognized that it is "the policy of this state to encourage the peaceable resolution of disputes, *with special consideration given to disputes involving the parent-child relationship, including the mediation of issues involving conservatorship, possession, and support of children,* and the early settlement of pending litigation through voluntary settlement procedures." *Id*. (citing, by way of example, TEX. CIV. PRAC. & REM. CODE § 154.002 (emphasis added)).

This policy is well-supported by, *inter alia*, literature discussing the enormous emotional and financial costs of high-conflict custody litigation, including its harmful effect on children. *In re Lee*, 411 S.W.3d at 449. Children involved in these disputes—tellingly, referred to as "custody battles"—can face perpetual emotional turmoil, alienation from one or both parents, and increased risk of developing psychological problems. *Id*. All the while, most of these families have two adequate parents who merely act out of fear of losing their child. *Id*. For the

children themselves, the conflict associated with the litigation itself is often much greater than the conflict that led to a divorce or custody dispute. *Id*. The Legislature has thus recognized that, because children suffer needlessly from traditional litigation, the amicable resolution of child-related disputes should be promoted forcefully. *Id*. at 449-50.

Indeed, in *In re Lee*, the State Bar of Texas Family Law Council submitted an amicus brief, arguing that a strict interpretation of TEX. FAM. CODE § 153.0071 fulfills the state policy favoring amicable resolution of disputes, and to hold otherwise, could lead to a loss in confidence in mediation, an increase in litigation, and gut the legislative intent favoring alternative dispute resolution of family law matters by mediation—increasing both the cost of the proceedings and the stress on families forced to resolve their disputes in the adversarial venue of the courts, rather than the cooperative environment of mediation. *Id*., 411 S.W.3d at 453.

That said, "[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 § 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." *Id.* § 153.0071(e).

"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.*, 2018 WL 3748687, at *4. "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 at 345; *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 grounds for reversal when they add terms, significantly alter the original terms, or undermine the intent of the parties. *See In re K.A.M.*, 2018 WL 3748687, at *4.

Here, the Parties' MSA "(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 § 153.0071(d). Indeed, no one disputes the validity and enforceability of the MSA.

The holiday visitation schedule in Frances' proposed divorce decree (App. B at 9-10) is in strict compliance with the MSA. The holiday visitation schedule in

Larry's version of the decree (App. C at 9-10) is not—for two reasons: it adds terms and incorporates an entirely different holiday visitation schedule than in the MSA *and* violates the "Holidays Every Year" MSA provision that "[m]other has possession at all times not specifically awarded to father." App. A at 4. Under Larry's version of the decree, which the trial court erroneously entered, Larry receives more time with the children during the Thanksgiving and Christmas holidays than he otherwise bargained for in the MSA.

The final decree entered by the trial court is not in strict compliance with the MSA regarding the Thanksgiving and Christmas holiday visitation schedule bargained for by the Parties. It's not even close.

By entering Larry's version of the divorce decree, the trial court, without authorization, modified the Parties' bargained-for Thanksgiving and Christmas holiday visitation schedule—which is forbidden as a matter of law. *In re L.T.H.*, 502 S.W.3d at 345. The trial court also undermined well-established Texas policy encouraging mediation as an alternative form of dispute resolution in high-conflict family matters involving divorced parents' visitation rights.

The trial court abused its discretion and erred as a matter of law by entering Larry's version of the divorce decree, rather than Frances' version of the divorce decree.

* * * * *

WHEREFORE, Appellant Frances Moreno Leblanc respectfully requests the Court to reverse the judgment of the trial court, render judgment in her favor that the divorce decree entered by the trial court is not in strict compliance with the Parties' MSA, and remand this case to the trial court with a directive to enter the divorce decree she submitted, which, in fact, is in strict compliance with the MSA.

In all things, Appellant Frances Moreno Leblanc respectfully requests the Court to award her such other and further relief to which she is justly entitled.

Date: May 15, 2020

Respectfully submitted,

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RULE 9.4(i)(3) CERTIFICATION

I certify that Appellant's Opening Brief contains 2135 computer generated words, calculated including and excluding the portions of the Brief identified in TEX. R. APP. P. 9.4(i)(1). This Brief was prepared using Microsoft Word 2016. Pursuant to TEX. R. APP. P. 9.4(e), I further certify this Brief is printed in 14-point Times New Roman.

/s/ Sonya B. Coffman
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CERTIFICATE OF SERVICE

I certify that a true copy of Appellant's Opening Brief was served on the following attorney of record, pursuant to the Texas Rules of Appellate Procedure, on May 15, 2020.

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