IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
August 1, 2019
Lyle W. Cayce
Clerk

No. 18-41189
Summary Calendar

KENISHA S. BOYD,

Plaintiff - Appellant

v.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE,

Defendant - Appellee

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 2:15-CV-708

Before BENAVIDES, HIGGINSON, and ENGELHARDT, Circuit Judges.

PER CURIAM:*

Plaintiff-Appellant Kenisha S. Boyd ("Boyd") appeals the district court's judgment, which enforced the settlement agreement between Boyd and her former employer, Defendant-Appellee Texas Department of Criminal Justice ("TDCJ"). Finding that Boyd has not shown that the district court abused its discretion in enforcing the settlement agreement, we AFFIRM.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

I. PROCEDURAL HISTORY

Boyd is an African-American female who began working as a parole officer for TDCJ in 2005. On October 9, 2014, Boyd left her employment with the TDCJ.

On May 11, 2015, after receiving the notice of the right to sue from the Equal Employment Opportunity Commission, Boyd filed a Title VII suit against TDCJ in federal district court, alleging racial discrimination and retaliation claims. On October 2, 2015, Boyd and TDCJ filed a Joint Advisory to the Court Regarding Mediator, stating that the "parties have agreed that they will seek to have this cause of action mediated before Magistrate Judge Keith Giblin." The district court appointed Magistrate Judge Giblin as the mediator.

On January 6, 2016, a mediation was conducted by the magistrate judge. After several hours of mediation, the magistrate judge stated on the record that the parties had reached an "amicable result – solution in this case." The magistrate judge continued as follows: "What I'll do is I'll dictate the terms of the settlement into the record and I'll ask the attorneys from each side to voice whether or not that's their understanding of the settlement." The magistrate judge announced that it was his understanding that (1) TDCJ agreed to pay Boyd $9,875 in full consideration of her claims; (2) TDCJ wanted it on the record that the appropriate State authority would have to approve the settlement; (3) TDCJ agreed to denote in Boyd's personnel file that she had left voluntarily for personal reasons; and (4) both parties would pay their own costs.

The magistrate judge then asked Boyd's attorney, Ms. Davis-Smith, whether those were the terms of the settlement, and she responded "Yes, Judge." Counsel for TDCJ also agreed on the record that those were the terms of the settlement and clarified that "since it does go through the State of Texas

settlement process, that can take upwards to 180 days." The magistrate judge then stated: "That's the norm, everyone knows that." The docket sheet minute entry provides that the "parties requested and the court would recommend that the parties be given 180 days to submit closing documents." The next day, the magistrate judge filed a Mediator's Report stating that "[i]n accordance with the Court's order, a mediation conference was held on January 6, 2016. The conference resulted in settlement. All parties and counsel were present."

On March 4, 2016, Boyd and TDCJ, through their attorneys, filed a joint motion to stay or abate the proceedings. The joint motion provided that on January 6, 2016, "the parties successfully mediated all claims in this matter" with the magistrate judge. The joint motion also stated that "[o]nce the agreement was read into the record and affirmed by the parties, TDCJ made an announcement that it would take approximately six (6) months for the settlement to be 'officially' approved by the state of Texas." Additionally, although the settlement release had been drafted, it had not been approved by the state. Thus, the parties requested until June 30, 2016 "to prepare and finalize the terms of their agreement." The district court issued an order granting the motion to stay until June 30, 2016.

On July 13, 2016, the parties filed an amended joint motion to stay the proceedings that contained the same language stating that the agreement had been read into the record and affirmed by the parties. The motion further stated that the parties were still waiting on the approval of the state of Texas and requested the stay until August 31, 2016. The district court granted the motion to stay the proceedings.

On August 24, 2016, counsel for Boyd, Ms. Shelly Davis-Smith, filed a motion to withdraw as counsel, stating that she was unable to effectively communicate with Boyd. Boyd consented to the motion, and TDCJ did not oppose the motion. The court granted the motion to withdraw. The next day,

Boyd filed a motion to substitute Timberly J. Davis as her attorney of record, which the district court granted.

On September 1, 2016, Boyd, through her new counsel, filed an opposed motion to vacate the settlement agreement. The motion alleged that Boyd had informed her attorney that she wanted to proceed to trial and that Boyd had never signed any release or agreement. The motion also argued that Boyd reasonably inferred that TDCJ's counsel lacked the authority to bind TDCJ because the agreement needed further approval. TDCJ filed an opposition to the motion to vacate the settlement, stating that the parties agreed on the record as to the terms of the settlement agreement as set forth by the magistrate judge. The opposition also provided that the approval needed was for payment of the money from the state treasury and not as to the terms of the settlement agreement.

The district court denied Boyd's motion to vacate the settlement agreement, finding that there was a "binding settlement between the parties, notwithstanding Boyd's subsequent refusal to sign the settlement documents." Boyd appealed this order to the Fifth Circuit. Because there was no final decision by the district court, the appeal was dismissed for lack of jurisdiction.[1]

On September 14, 2018, the district court held a status conference, and the parties agreed to further discussions before the magistrate judge. The district court issued an order staying the case. However, the subsequent discussions were unfruitful.

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[1] Meanwhile, TDCJ also filed a motion for summary judgment, arguing that Boyd's race discrimination and retaliation claims should be dismissed on the merits. Boyd filed a response arguing that the motion for summary judgment should be denied; or in the alternative, further discovery should be allowed. The district court denied the motion for summary judgment without prejudice while the previous appeal was pending before this Court.

On November 16, 2018, TDCJ filed a motion to enforce the settlement agreement. On December 11, 2018, the district court held a hearing on the motion to enforce the settlement agreement. The district court concluded that Boyd's attorney, Ms. Davis-Smith, agreed to the terms of the settlement agreement on Boyd's behalf and in her presence at the January 6, 2016 mediation. Boyd did not challenge the settlement when the magistrate judge articulated the terms of the settlement agreement. Further, it was not until almost seven months later that Boyd first indicated to the court that she opposed the settlement agreement and moved for substitute counsel to vacate it. Thus, the court concluded that Boyd was bound by the terms of the January 6, 2016 settlement agreement and entered judgment. Boyd timely filed a notice of appeal.

II. ANALYSIS

Boyd contends that the district court erred in finding that the settlement agreement was valid and enforceable. This Court reviews a district court's order enforcing a settlement agreement for abuse of discretion. *Quesada v. Napolitano,* 701 F.3d 1080, 1083 (5th Cir. 2012). "The validity and enforcement of a Title VII settlement agreement are matters of federal law." *Id.* (footnote omitted). "[F]ederal law requires that a settlement of a Title VII claim be entered into 'voluntarily and knowingly' by the plaintiff." *Fulgence v. J. Ray McDermott & Co.,* 662 F.2d 1207, 1209 (5th Cir. 1981) (citations omitted). "Absent a factual basis rendering it invalid, an oral agreement to settle a Title VII claim is enforceable against a plaintiff who knowingly and voluntarily agreed to the terms of the settlement *or* authorized his attorney to settle the dispute." *Id.* (emphasis added).[2]

[2] Under federal law, there is not a requirement that a settlement be reduced to writing. *Fulgence,* 662 F.2d at 1209.

Boyd argues that the agreement is not enforceable because TDCJ could not have had actual knowledge of her acceptance either through her words or deeds. Boyd is correct that she remained silent on the record during the mediation on January 6, 2016. However, her attorney did not remain silent. As previously set forth, after the magistrate judge announced on the record that the parties had "come up with an amicable result – solution in this case," he articulated the terms of the settlement agreement. The magistrate judge asked Boyd's attorney if those were the terms of the settlement, and she responded affirmatively. Thus, contrary to Boyd's assertions otherwise, TDCJ had actual knowledge of Boyd's acceptance through her counsel. Our caselaw makes clear that an attorney of record is presumed to have authority to enter into a settlement agreement for her client. *Quesada,* 701 F.3d at 1083. The party seeking to vacate the settlement has the burden of proving that the "attorney had no right to consent to its entry." *Id.* & n.8. Boyd points to an email she sent to her attorney after the mediation in which she inquires about the "status of things [with respect to] proceeding to trial." This email was sent a week *after* the mediation in which Boyd's counsel accepted the settlement agreement. We have explained that emails sent to counsel after the settlement offer had been accepted "have no bearing on the validity of the settlement." *Id.* at 1084. Additionally, in the order appointing the magistrate judge as the mediator, the district court expressly stated that the Mediation Plan requires the presence of all parties, representatives, and professionals "with full authority to negotiate a settlement." Boyd has failed to demonstrate with affirmative proof that her counsel had no right to consent to the settlement agreement on January 6, 2016. *Id.* at 1083.

Boyd also relies on the fact that she refused to sign the settlement documents. This argument has no merit. "If a party to a Title VII suit who has previously authorized a settlement changes his mind when presented with

the settlement documents, that party remains bound by the terms of the agreement." *Fulgence,* 662 F.2d at 1209 (citations omitted).

Finally, Boyd asserts that TDCJ placed a condition precedent on its offer when it included the condition that the Attorney General and Texas State Comptroller must approve the settlement. Boyd therefore argues that because the condition precedent of approval did not happen until almost nine months after the date of the mediation, there was no contractual obligation created and no contract formed. We are not persuaded by this argument. There are two types of conditions precedent. *Crest Ridge Constr. Grp., Inc. v. Newcourt, Inc.,* 78 F.3d 146, 150 (5th Cir. 1996). "A condition precedent to the formation of a contract prevents the formation of a contract except upon realization of the condition." *Id.* (citation omitted). "A condition precedent to an obligation to perform, on the other hand, does not prevent contract formation, but does prevent a duty to perform from arising except upon realization of the condition." *Id.* (citation omitted).

In *Scott v. Livingston,* a prisoner contended that TDCJ did not intend to be bound by the settlement agreement involving a First Amendment claim because the state attorneys representing TDCJ did not have the "final authority to approve the settlement, which required approval by the Attorney General, Governor, and Comptroller of Texas." 628 F. App'x 900, 903 (5th Cir. 2015). That is the same condition precedent contained in the instant settlement agreement. This Court rejected the prisoner's argument, explaining that it was a condition precedent that "in no way negates TDCJ's intention to be bound." *Id.* Because that opinion is unpublished and interpreted Texas law, it is not controlling. Nonetheless, it is persuasive authority for holding that the condition of approval from the state authorities was a condition precedent to an obligation to perform and thus, did not prevent the instant settlement agreement. *Cf. Crest Ridge Constr. Grp., Inc., v.*

Newcourt, Inc., 78 F.3d 145, 150 (5th Cir. 1996) (stating that, based on the extensive dealings between the parties, the jury could have concluded that the "subject to credit department approval" term was at most a condition precedent to the obligation to perform and did not prevent contract formation) (Texas and Uniform Commercial Code case).

Further, at the mediation hearing on January 6, 2016, when TDCJ's attorney sought to clarify that the approval process from the State of Texas could take upwards of 180 days, the magistrate judge responded that was the "norm, everyone knows that." The magistrate judge's comments on the record indicate that this is a well-known, common practice. *Cf. Westlake Petrochemicals, L.L.C. v. United Polychem, Inc.*, 688 F.3d 232, 239–240 (5th Cir. 2012) (noting that the evidence showed that industry custom permitted payment and credit terms to be completed after formation of the buy and sell contract and thus such a term was only a condition precedent to the obligation to perform) (Texas and Uniform Commercial Code case). In the instant case, we are persuaded that the approval condition was a condition precedent to the obligation to perform and did not prevent the formation of the settlement agreement. Accordingly, Boyd has not shown that the district court abused its discretion by ordering the enforcement of the settlement agreement.

III. CONCLUSION

For the above reasons, the district court's judgment is AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

KENISHA S. BOYD,	§	
	§	
Plaintiff,	§	
	§	
v.	§	**CIVIL ACTION NO. 2:15-CV-00708-JRG**
	§	
TEXAS DEPARTMENT OF CRIMINAL JUSTICE,	§	
	§	
	§	
Defendant.	§	

FINAL JUDGMENT

Pursuant to Rule 58 of the Federal Rules of Civil Procedure and Defendant Texas Department of Criminal Justice's ("TDCJ") Motion to Enforce Settlement Agreement (Dkt. No. 48), the Court hereby **HOLDS**, **ORDERS**, and **ENTERS JUDGMENT** as follows:

1. On January 6, 2016, Kenisha S. Boyd ("Plaintiff"), Shelly Davis-Smith (Boyd's then active counsel), and Calysta Lantiegne representing the Office of the Attorney General mediated the above-captioned case before Magistrate Judge Keith Giblin. (Dkt. No. 14.) At the end of that mediation, Magistrate Judge Giblin announced on the record the specific terms of the settlement agreement as he understood it. (Dkt. No. 48-1, Ex. A.) Both Parties confirmed their acceptance and understanding of the settlement terms on the record. (*Id.*) Ms. Boyd was present and participated in such mediation. She was in the courtroom when the terms of the settlement agreement were announced on the record, and when her counsel (Ms. Davis-Smith) confirmed such was correct. She did not object the terms of the settlement agreement.
2. Magistrate Judge Giblin subsequently filed a mediator's report confirming that the

mediation conference resulted in a settlement. (Dkt. No. 14.)

3. On March 4, 2016, Plaintiff filed a Joint Motion to Stay or Abate Proceedings, in which she stated that "[o]n January 6, 2016, the parties successfully mediated all claims in this matter with the Honorable Keith F. Giblin." (Dkt. No. 15 at 1.)
4. On July 13, 2016, TDCJ filed a Joint Motion to Stay or Abate Proceedings, which was executed by Plaintiff's then-appointed attorney Ms. Davis-Smith, that extended the stay until August 31, 2016. (Dkt. No. 17.)
5. On September 1, 2016, Plaintiff (through her new counsel—Timberly Davis) filed an Opposed Motion to Vacate the Report of Mediation. (Dkt. No. 26.) The Court denied her motion and, after analyzing all of the circumstances surrounding the mediation and settlement agreement, found "there was a binding settlement between the parties, notwithstanding Boyd's subsequent refusal to sign the settlement documents." (*See* Dkt. No. 33 at 4.)
6. Plaintiff appealed the Court's decision to deny her motion to the United States Court of Appeals for the Fifth Circuit. (Dkt. No. 34.) On September 18, 2017, the Fifth Circuit dismissed her appeal for lack of jurisdiction. (Dkt. No. 37.)
7. Subsequently, there was no activity in this case for almost a year until the Court noticed and held a telephonic status conference on September 14, 2018. At that telephonic status conference, the Parties agreed to engage in further discussions related to the Parties' prior settlement agreement and the case was subsequently stayed pending those further discussions. (Dkt. No. 40.) Such discussions, which were again held before Magistrate Judge Giblin, were unsuccessful. (Dkt. Nos. 44–45.)
8. On November 16, 2018, TDCJ filed a Motion to Enforce Settlement Agreement. (Dkt. No.

48.)

9. On December 11, 2018, the Court held an evidentiary hearing on TDCJ's Motion to Enforce Settlement Agreement. At that hearing, the Court found that Plaintiff expressly authorized Ms. Davis-Smith, her then-appointed counsel of record, to settle this case and approved the terms of the settlement and the monetary amount, both of which were announced on the record on January 6, 2016 before Magistrate Judge Giblin acting as mediator. Plaintiff presented no evidence to rebut this finding. There was no evidence that Plaintiff's counsel Ms. Davis-Smith was incompetent or that she colluded with counsel for TDCJ. There was no evidence of fraud, coercion, or overreaching by either Ms. Davis-Smith or TDCJ in negotiating the terms of the settlement. The Court further found that the terms of the settlement agreement were fair and reasonable.

10. Based on the record before the Court, the Court finds that these circumstances present a classic case of buyer's remorse. Ms. Boyd participated in the mediation that took place on January 6, 2016. She was not *pro se* but rather represented by her counsel of choice. She was present when Magistrate Judge Giblin announced on the record the precise terms of the settlement agreement. She was present when her attorney Ms. Davis-Smith agreed to the terms of the settlement agreement on her behalf and in her presence. She did not challenge the settlement when it was announced despite being both present and able to do so. It was not until nearly seven months later that she first indicated that she opposed the settlement agreement and sought substitute counsel to unravel it. The Court concludes and finds that Ms. Boyd is bound to the terms of the settlement agreement as announced on the record on January 6, 2016.

Accordingly, it is **ORDERED** and the Court hereby enters **JUDGMENT** as follows:

1. Defendant TDCJ will pay Plaintiff Kenisha S. Boyd the sum of $9,875.00 in full consideration and extinguishment of her asserted claims.
2. Defendant TDCJ will make any and all necessary changes to Plaintiff's personnel file and records to reflect that Plaintiff voluntarily left her employment with TDCJ for personal reasons.
3. Plaintiff's claims against Defendant TDCJ are **DISMISSED WITH PREJUDICE**.
4. The previous stay of this case is **TERMINATED**.
5. The Clerk is directed to **CLOSE** the above-captioned case.
6. The is a final judgment and all relief requested by Plaintiff and not expressly granted herein is **DENIED**.
7. Each party shall bear their own fees and costs, including attorneys' fees.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 17-40318
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 18, 2017
Lyle W. Cayce
Clerk

KENISHA S. BOYD,

Plaintiff - Appellant

v.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE,

Defendant - Appellee

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 2:15-CV-708

Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

PER CURIAM:*

Kenisha S. Boyd brought suit against her former employer, the Texas Department of Criminal Justice ("TDCJ"), under Title VII of the Civil Rights Act of 1964. The magistrate judge held a mediation conference and reported to the district court that "the conference resulted in a settlement." The district court twice granted the parties' joint motion to stay the proceedings to allow

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the parties to finalize the settlement agreement. In their second motion to stay, the parties asserted that they were "waiting on the finalization of the State of Texas settlement process before the release can be signed and a stipulation of dismissal can be filed with the Court." Boyd then moved the district court "to determine that no settlement agreement yet exists in this case, and that the purported settlement agreement . . . is not a valid and enforceable agreement." The district court denied her motion.

Boyd appeals the district court's denial of her motion. She asserts that this court has appellate jurisdiction pursuant to 28 U.S.C. § 1291, which provides that "[t]he courts of appeals . . . shall have jurisdiction of appeals from all final decisions of the district courts." But the parties never filed a stipulation of dismissal with the district court, and the district court did not otherwise enter a final judgment resolving the dispute between the parties. Boyd does not invoke the collateral order doctrine, and in any case the validity of the settlement agreement is not "effectively unreviewable on appeal from a final judgment." *See In re Deepwater Horizon*, 793 F.3d 479, 484 (5th Cir. 2015) (setting forth the three-pronged test to apply the collateral order doctrine).

Because Boyd does not appeal a final decision of the district court, we DISMISS her appeal for lack of jurisdiction.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
September 18, 2017
Lyle W. Cayce
Clerk

No. 17-40318
Summary Calendar

D.C. Docket No. 2:15-CV-708

KENISHA S. BOYD,

Plaintiff - Appellant

v.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE,

Defendant - Appellee

Appeal from the United States District Court for the
Eastern District of Texas, Marshall

Before DAVIS, CLEMENT, and COSTA, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the appeal is dismissed for lack of jurisdiction.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

September 18, 2017

Mr. David O'Toole
Eastern District of Texas, Marshall
United States District Court
100 E. Houston Street
Room 125
Marshall, TX 75670-0000

No. 17-40318 Kenisha Boyd v. TDCJ
USDC No. 2:15-CV-708

Dear Mr. O'Toole,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Joseph M. Armato, Deputy Clerk

cc:
Mr. Allan Kennedy Cook
Mr. Timberly Jamal Davis

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

KENISHA S. BOYD, Plaintiff, v. TEXAS DEPARTMENT OF CRIMINAL JUSTICE, Defendant.	§ § § § § § § § § §	CIVIL ACTION NO. 2:15-CV-00708-JRG

ORDER

Before the Court is Plaintiff's Motion to Vacate Purported Settlement Agreement filed on September 1, 2016 (Dkt. No. 26). For the reasons set forth below, the motion is **DENIED**.

BACKGROUND

On May 11, 2015, Plaintiff Kenisha Boyd sued Defendant Texas Department of Criminal Justice ("TDCJ") pursuant to Title VII of the Civil Rights Act of 1964, alleging race discrimination. (Dkt. No. 1.) On January 6, 2016, the parties participated in active mediation before U.S. Magistrate Judge Keith F. Giblin in Beaumont, Texas. (Dkt. No. 14.) At the end of the mediation session, Judge Giblin announced before an official court reporter, and in the presence of the parties and their counsel, that the parties had resolved their dispute by agreeing that TDCJ would pay Boyd the sum of $9,875 and would make all necessary changes to Boyd's personnel records to indicate that Boyd left her employment voluntarily. (Dkt. No. 25 at 3.) In addition, TDCJ noted that this settlement was contingent upon approval from the appropriate State authorities, and that consequently finalizing such settlement could take upwards of 180 days to be completed. (Dkt. No. 25 at 3–4.) At the conclusion of Judge Giblin's announcement to such settlement, both parties'

attorneys readily acknowledged and agreed that such announced settlement was accurate and agreed to. (Dkt. No. 25 at 4.) Though Boyd was present and involved during the mediation sessions, and was present when the settlement was announced and recorded, she did not object in any fashion to the settlement terms as read by Judge Giblin. (Dkt. No. 25.) On January 7, 2016, Judge Giblin filed a Mediator's Report with this Court stating that the mediation conference resulted in complete settlement. (Dkt. No. 14.)

Sometime well after completion of the mediation, Boyd asserts that she told her attorney that she wanted to abandon the mediated settlement. (Dkt. No. 26 at 2.) On August 11, 2016, TDCJ's counsel emailed Boyd's attorney a copy of the settlement agreement and release, as executed by the State of Texas. (Dkt. No. 27 at 2.) However, Boyd has refused to sign any of the settlement documents. On August 24, 2016, Boyd's attorney filed a motion to withdraw as counsel. (Dkt. Nos. 19, 26.) On the same day, Boyd filed a motion to substitute counsel. (Dkt. No. 20.) On September 1, 2016, Boyd filed the motion to vacate the settlement agreement which is now before the Court. (Dkt. No. 26.)

ANALYSIS

The Court considers two issues: (1) Whether there was a bona fide settlement between the parties and (2) whether a settlement must be reduced to writing to be enforceable.

During the mediation conference, Judge Giblin read the terms of the settlement agreement before the parties and their counsel in the presence of a certified court reporter. (Dkt. No. 25 at 3.) He then asked the attorneys from each side to confirm that the terms he had announced accurately reflected the parties' understanding and agreement. (Dkt. No. 25 at 3.) Judge Giblin expressly noted that the settlement was contingent upon subsequent approval from the appropriate State authorities, and that each side was aware of this contingency. This was the only condition or contingency. (Dkt. No. 25 at 3.) In addition, Judge Giblin confirmed that approval from the State

of Texas could take upwards of 180 days, but that such practice is normal when dealing with the State. (Dkt. No. 25 at 4.) After Judge Giblin read the terms of the settlement, both parties' attorneys clearly acknowledged and confirmed their agreement to the conditions of the settlement without any reservations. (Dkt. No. 25 at 4.) In the 5th Circuit, it is established that "an attorney of record is presumed to have authority to compromise and settle litigation of his client, and a judgment entered upon an agreement by the attorney of record will be set aside only upon affirmative proof of the party seeking to vacate the judgment that the attorney had no right to consent to its entry." *Quesada v. Napolitano*, 701 F.3d 1080, 1083 (5th Cir. 2012) (finding that the party was bound by the terms of the settlement where the record contained no evidence that the party objected to his attorney's settlement offer at any point during the mediation). Despite being physically present, Boyd did not object during the announcement of settlement at the conclusion of the mediation. (Dkt. No. 25.) She was present and observed as her attorney agreed to the stated terms of the settlement. She never disputed or objected to the same in any way. (Dkt. No. 25.) Boyd argues that she emailed her attorney sometime after the mediation that she wanted to abandon the settlement and proceed to trial. (Dkt. No. 26 at 2.) However, this is not relevant to the Court's inquiry. "If a party to a Title VII suit who has previously authorized a settlement changes his mind when presented with the settlement documents, that party remains bound by the terms of the agreement." *Fulgence*, 662 F.2d at 1209. Accordingly, Boyd is bound to the terms of the settlement agreement, which the Court finds to be a bona fide settlement.

Boyd also argues that TDCJ's attorney lacked the authority to bind TDCJ to the terms of the agreement, and therefore, there is no binding settlement. (Dkt. No. 26 at 4.) TDCJ has represented, however, that its counsel had secured authority before the mediation conference to settle the case for any amount up to a pre-determined maximum. This case settled within that range

of authority. (Dkt. No. 27 at 4.) As noted above, an attorney of record is presumed to have authority to compromise and settle litigation for his client, and settlement will only be set aside upon affirmative proof from the party seeking to vacate, that their attorney had no right or authority to consent to the settlement. *Quesada*, 701 F.3d at 1083. The fact that the settlement agreement was conditioned on the approval of appropriate State authorities does not impact the authority of TDCJ's counsel to settle the case up to a pre-determined maximum, which occurred in this situation. In addition, as discussed earlier, Boyd's attorney acknowledged and agreed to the terms of the settlement for Boyd and in her presence, with full disclosure by counsel for TDCJ that this settlement required subsequent approval of appropriate State authorities. Boyd never objected to the settlement at any point during the mediation or during Judge Giblin's memorialization of the settlement before the court reporter, the parties, and counsel. (Dkt. No. 25 at 4.)

Given that there is a bona fide settlement between the parties, the only question that remains is whether precedent requires such a settlement to be in writing. Boyd argues that she did not sign any documents that evidenced mutual assent or agreement to the settlement. However, federal law does not require that the settlement be reduced to writing in this circumstance. *See Fulgence v. J. Ray McDermott & Co.*, 662 F.2d 1207, 1209 (5th Cir. 1981). Absent a factual basis rendering an agreement invalid, "an oral agreement to settle a Title VII claim is enforceable against a plaintiff who knowingly and voluntarily agreed to the terms of the settlement or authorized his attorney to settle the dispute." *Id.* Accordingly, there is a binding settlement between the parties, notwithstanding Boyd's subsequent refusal to sign the settlement documents.

CONCLUSION

For the reasons set forth above, Plaintiffs' Motion to Vacate Purported Settlement Agreement (Dkt. No. 26) is hereby **DENIED**.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

KENISHA BOYD, Plaintiff, v. TEXAS DEPARTMENT OF CRIMINAL JUSTICE, Defendant.	§ § § § § § § §	CIVIL ACTION NO. 2:15-cv-00708

ORDER ON PLAINTIFF'S MOTION TO VACATE PURPORTED SETTLEMENT AGREEMENT

On this _____ day of September, 2016, the Court considered this Plaintiff's Motion to Vacate Purported Settlement Agreement and this Motion is hereby granted.

_____
HONORABLE RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

KENISHA S. BOYD, Plaintiff, vs. TEXAS DEPARTMENT OF CRIMINAL JUSTICE, Defendant.	)	CASE NO: 2:15-CV-00708-JRG CIVIL Beaumont, Texas Wednesday, January 6, 2016 (10:10 a.m. to 10:11 a.m.) (3:19 p.m. to 3:21 p.m.)

MEDIATION SETTLEMENT ANNOUNCEMENT

BEFORE THE HONORABLE KEITH F. GIBLIN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff:	SHELLY M. DAVIS-SMITH, ESQ. The Davis Law Firm 3100 Richmond Avenue, Suite 480 Houston, TX 77098
Also Present:	Kenisha Boyd, Plaintiff
For Defendant:	CALYSTA L. LANTIEGNE, ESQ. Office of the Attorney General 300 W. Fifteenth Street, 7th Floor Austin, TX 78701
Transcribed by:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

Beaumont, Texas; Wednesday, January 6, 2016; 10:10 a.m.

(Call to Order)

THE COURT: Okay, we're on the record in cause number 2:15cv708, *Kenisha Boyd versus Texas Department of Criminal Justice.*

We're here this morning to begin a mediation. For the record, this case has been referred by Judge Gilstrap -- Judge Rodney Gilstrap to this Court for mediation today.

What I just do -- I just tell the parties what I just do on the record is I just advise the parties of the confidentiality of the mediation process, about it not being about to be brought up at trial so I want to get that out on the record.

I have reviewed, as I always do, the submissions by the parties, the position statements, the exhibits. I think I'm ready to begin mediating this case. And so what I'll do is I'll just ask -- let's see -- I'll ask Ms. Boyd and her attorney -- I have a -- the jury room is right there (indicating) and so what we'll do is we'll split up initially. At the beginning of the medication, I'll ask the defendants to stay in the courtroom because they have more people and they can spread out. The jury room is very nice. There's -- there should be coffee in there and drinks and a restroom. And so, make yourself comfortable in there and then what I'll do is I'll come visit with you first here in about three minutes, as

soon as I can get this robe off and we'll begin the mediation process.

Okay. Thank you-all very much. We'll be in recess.

(Recess from 10:11 a.m. to 3:19 p.m.)

THE COURT: Okay, we're back on the record in the case of *Kenisha S. Boyd versus Texas Department of Criminal Justice*, cause number 2:15cv708.

We've been in mediation most of the day today and we've -- the parties have come up with an amicable result -- solution in this case. What I'll do is I'll dictate the terms of the settlement into the record and I'll ask the attorneys from each side to voice whether or not that's their understanding of the settlement.

My understanding of the terms of the settlement is that the Defendant agrees to pay the Plaintiff the sum of $9,875 in full consideration for her claims.

The Defendants also want on the record, and I understand, that this settlement is contingent upon approval from the appropriate State authorities in their higher ups so this settlement is contingent upon that. So each side is -- I brought that up and each side is aware of that.

As further consideration for the settlement, the Defendant agrees to change -- make the necessary changes -- any and all necessary changes to Plaintiff's personnel file and records to include -- to change the fact that she was

terminated and make her reasons for leaving employment by the State for -- voluntary -- stepping down voluntary for personal reasons, to reflect that.

Each side will pay their own taxable costs in this case.

And I think that that is the only terms of the settlement that I know of.

Ms. Davis-Smith, are there any -- is that the terms of the settlement?

MS. DAVIS-SMITH: Yes, Judge.

THE COURT: Okay. And from the Defendants?

MS. LANTIEGNE: Yes, your Honor. And I'll just add, just for clarification purposes, since it does go through the State of Texas settlement process, that can take upwards to 180 days --

THE COURT: I understand that's --

MS. LANTIEGNE: I just want -- to be above the board on that.

THE COURT: That's the norm, everyone knows that. Okay.

Well also, I'll state on the record that it's been a pleasure mediating the case. It was a pleasure meeting both parties. I enjoyed it. Thank you for letting the Court be involved with this and I hope you have a great ride home.

Thank you so much. We'll be in recess.

(This proceeding was adjourned at 3:21 p.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

Toni I Hudson

September 1, 2016

TONI HUDSON, TRANSCRIBER

EXHIBIT B

< Back to Search Results

Match
Find a boyfriend

Subject: Discrimination Case

K Boyd <shonte3515@yahoo.com>

To Davis Law Firm <shelly.davis@thedavislawfirm.com>, Davis Law Firm <sms@thedavislawfirm.com>

Wednesday, January 13, 2016 2:24 PM

Good evening, would you please email me a copy of the contract. Also inquiring on the status of things for as proceeding to trial. The cost of the deposition for Ruby Marks we spoke regarding proceeding to trail on Jan uary 7, 2015. I was waiting to hear back from you. Also please forward a copy of what was submitted during the discover process on my behalf as well as from the defendant. Please contact me at your earliest conven ience. Thanking you in advance for you cooperation.

Sincerely,
Kenisha S. Boyd

Reply
Forward
Star
Mark as Unread

Reply All
Delete
Move to
Spam

Hi, K

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

KENISHA BOYD,
Plaintiff,

v.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
Defendant.

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CIVIL ACTION NO. 2:15-cv-00708

PLAINTIFF'S MOTION TO VACATE PURPORTED SETTLEMENT AGREEMENT

COMES NOW Plaintiff KENISHA BOYD ("Plaintiff") and hereby moves the Court to determine that no settlement agreement yet exists in this case, and that the purported settlement agreement ("Purported Agreement"), which was reported to this court on January 7, 2016 [ECF No. 14] is not a valid and enforceable agreement. In support of said motion, Plaintiff would show:

INTRODUCTION

The parties attended mediation on January 6, 2016. Plaintiff was present and was represented by her then attorney of record, Attorney Shelly M. Davis-Smith. Defendant TEXAS DEPARTMENT OF CRIMINAL JUSTICE (TDCJ) ("Defendant") was represented by counsel, Attorney Calysta L. Lantiegne.

On January 7, 2016, Honorable Magistrate Judge Keith F. Giblin ("Mediator") filed a Mediator's Report stating that the mediation resulted in settlement. However, Plaintiff denies that a binding settlement agreement exists because there was no mutual assent and Plaintiff withdrew any purported consent to be bound prior to entry of orders. Attorney Calysta L. Lantiegne did not have apparent authority to bind Defendant to Purported Agreement and Purported Agreement was conditional upon approval or revision by various state officials.

FACTS

1. At the beginning of the mediation, after the Court recessed, the parties were placed in separate rooms and met individually with Mediator.
2. Mediator stated that he had a prior commitment and would not be able to stay until 5:00 p.m.

3. Mediator discussed strengths and weaknesses of the case and suggested that negotiation for damages should begin at $20,000.

4. After Mediator left the room, Plaintiff attempted to discuss with Attorney Davis-Smith that she felt the starting point was low and suggested that she wanted to proceed to trial. Attorney Davis-Smith told her that she was against going to trial because the costs would be too high. Plaintiff indicated to Attorney Davis-Smith that she was prepared to pay additional costs of deposition and service of subpoenas. Plaintiff repeated to Attorney Davis-Smith throughout the day that she didn't like the direction mediation was going and wanted to proceed to trial.

5. Court resumed and mediator read Purported Agreement into the record. Attorney Lantiegne made statements in Plaintiff's presence that she would need to obtain State approval of Purported Agreement. Mediator stated that Purported Agreement would be contingent upon those approvals and subject to any changes that would be required. (Exhibit A).

6. The next day Plaintiff contacted Attorney Davis-Smith and asked if she had signed anything agreeing to the settlement offer. Attorney Davis-Smith said, "No," and went on to say that any documents would require Plaintiff's signature. Plaintiff told Attorney Davis-Smith that she wanted to abandon the mediated settlement offer and proceed to trial.

7. On January 13, 2016, Plaintiff sent an e-mail to Attorney Davis-Smith reiterating that she wanted to proceed to trial. (Exhibit B).

8. On March 4, 2016, the parties filed a Joint Motion to Stay or Abate Proceedings until June 30, 2016. In that motion, the parties stated the following:

> Once the agreement was read into the record and affirmed by the parties, TDCJ made an announcement that it would take approximately six (6) months for the settlement to be 'officially' approved by the state of Texas. To date, the settlement release has been drafted but not yet approved by the state of Texas. The parties request additional time to prepare and finalize the terms of their agreement.
> [ECF No. 15].

9. On July 13, 2016, the parties filed an Amended Joint Motion to Stay or Abate Proceedings until August 31, 2016. In that filing the parties re-stated that the

reason for the Stay was to allow Defendant additional time for the settlement to be "approved by the Attorney General, the Governor's Office, and the Texas Comptroller's office." [ECF No. 17].

ARGUMENTS AND AUTHORITIES

Plaintiff denies that a binding settlement agreement exists because there was no mutual assent and Plaintiff withdrew any purported consent to be bound prior to entry of orders. Attorney for Defendants failed to express assent to the agreement because they needed to seek "official approval" of the agreement. Plaintiff reasonably relied that Attorney Lantiegne did not have authority to bind Defendant to an agreement and would not be bound until signatures from all parties were obtained. There was no signed agreement.

The validity of a settlement agreement is "determined by federal law – at least where the substantive rights and liabilities of the parties derive from federal law." *Lopez v. Kempthorne*, No. H-07-1534, 2010 U.S. Dist. LEXIS 118749 (S.D. Tex. 2010) (citing *Mid-South Towing Co. v. Har-Win, Inc.*, 733 F.2d 386, 389 (5th Cir. 1984)). Under federal law settlement agreements are contracts. *Id.* (citing *Guidry v. Halliburton Geophysical Services, Inc.*, 976 F.2d 938, 940 (5th Cir. 1992)). The federal law of contracts "uses the core principles of the common law of contracts that are in force in most states." *Id.* (citing *Smith v. United States*, 328 F.3d 760, 767 n. 8 (5th Cir. 2003)(per curiam)). The Restatements embody core principles of common law. *Id.* (citing *Deville v. United States ex rel. Dep't of Veterans Affairs*, 202 Fed. Appx. 761, 763 n.3 (5th Cir. 2006)(per curiam). A binding agreement exists where there is a manifestation of mutual assent, usually in the form of an offer and an acceptance. *Id.* (citing *Triche v. Louisiana Ins. Guaranty Assoc.*, No. 08-3931, 2010 U.S. Dist. LEXIS 20123, 2010 WL 891000, (E.D. La. Mar. 5, 2010)). Where there is a written document purporting to contain a binding settlement agreement, the question of whether an offer was accepted and a contract was formed is primarily a question of law. *Id.* Thus an agreement must be valid and binding to be enforced.

A trial court cannot enter into a consent judgment which incorporates the terms of that agreement if one of the parties thereto withdraws consent prior to entry of the judgment. *Cavallini v. State Farm Mut. Auto Ins. Co.*, 44 F.3d 256 (5th Cir. 1995) (citing *Stewart v. Mathes*, 528 S.W.2d 116 (Tex. Civ. App. -Beaumont 1975)).

Here Defendant's consent to be bound was conditional upon approval or revision by

various levels of state officials. Attorney Lantiegne lacked real and apparent authority to bind the parties to an agreement.

Apparent Authority exists whenever a principal manifests to a third person that an officer or agent may act in its behalf, and the third person in good faith believes that the authority exists. When that third person reasonably relies upon that apparent authority to his detriment, the principal is estopped to deny the authority. *Clark Adver. Agency, Inc. v. Tice*, 490 F.2d 834 (5th Cir. 1974) (Citing Restatement (Second) of Agency § 8 (1958)). The identification of policymaking officials is a question of state law. *St. Louis v. Praprotnik*, 485 U.S. 112, 124 (1988) (Citing *Pembaur v. City of Cincinnati*, 475 U.S. 469, 483 (1986)). The identification of policymaking officials is not a question of federal law and it is not a question of fact in the usual sense. *Id.* The States have extremely wide latitude in determining the form that local government takes, and local preferences have led to a profusion of distinct forms. *Id.*

The law of agency distinguishes between a general agent and a special agent; the former is authorized to conduct a series of transactions involving a continuity of service, while the latter is "authorized to conduct a single transaction or a series of transactions not involving continuity of service." *Praprotnik* 485 U.S at n.22 (citing Restatement (Second) of Agency §§ 3(1). (2) (1958)).

Only a general agent "subjects his principal to liability for acts done on his account which usually accompany or are incidental to transactions which the agent is authorized to conduct if, although they are forbidden by the principal, the other party reasonably believes that the agent is authorized to do them and has no notice that he is not so authorized." *Id.*, § 161. A special agent, to the contrary, "has no power to bind his principal by contracts or conveyances which he is not authorized or apparently authorized to make," with some exceptions. *Id.* § 161A.

Here Plaintiff was reasonable to infer that Attorney Lantiegne lacked the authority to bind Defendant TDCJ, which would rise to the level of mutual assent. At the end of the day, when the parties reconvened in court, Attorney Lantiegne remarked in the presence of Plaintiff that the agreement would require multiple levels of authority to approve Purported Agreement, which could take several months. The Purported Agreement was conditional on the various levels of the State approving or revising the agreement. Parties jointly filed two motions to stay and abate proceedings. In those motions the sole reason given for requesting the Stay was to allow Defendant additional time to obtain approval from the State and prepare and finalize the

terms of the agreement.

Plaintiff repeatedly told her Attorney that she did not intend to be bound by Purported Agreement. After the mediation she further withdrew any implied consent to be bound by informing her attorney that she wished to proceed to trial. Plaintiff and her substituted Attorney Timberly J. Davis have been presented with the following documents by Defendant for her signature:

- Compromise and Settlement Agreement
- Complete Release and Waiver of All Claims
- Stipulation of Dismissal with Prejudice

Plaintiff has refused to sign any of those documents and Attorney Davis has not submitted her approval or authorization to dismiss the case.

CONCLUSION

The purported mediated settlement agreement does not exist and is not enforceable against the parties. Plaintiff did not agree to the terms of Purported Agreement. She further withdrew any implied consent to be bound. Attorney Lantiegne lacked authority to bind Defendant to an enforceable agreement. No documents were signed that evidenced mutual assent or agreement to Purported Agreement.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests the Court find that no valid and enforceable agreement to settle claims exists in this case.

Respectfully submitted,

/s/ Timberly J. Davis

TIMBERLY J. DAVIS
SBN: 24040772
723 Main St., Suite A1004
Houston, Texas 77002
Tel: (713) 224-7400
Fax: (713) 224-7402
timberly@tjdavislawfirm.com

ATTORNEY FOR PLAINTIFF

CERTIFICATE OF SERVICE

I, TIMBERLY DAVIS, Attorney, certify that on the 1st day of September 2016, a copy of the foregoing has been forwarded to the following counsel of record in accordance with the District's ECF service rules via email.

/s/ Timberly J. Davis
TIMBERLY J. DAVIS

CALYSTA L. LANTIEGNE
Assistant Attorney General
Texas Bar No. 24057611
calysta.lantiegne@texasattorneygeneral.gov

ALLAN K. COOK
Assistant Attorney General
Texas Bar No. 24004374
allan.cook@texasattorneygeneral.gov

Law Enforcement Defense Division
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
(5122) 463-2080/Fax (512) 936-2109

ATTORNEYS FOR DEFENDANT TDCJ

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

KENISHA BOYD,
Plaintiff,

v.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
Defendant.

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CIVIL ACTION NO. 2:15-cv-00708

CERTIFICATE OF CONFERENCE

Attorney Timberly J. Davis through her Associate, Attorney Bryan Terhune, sent an e-mail to Attorney Calysta L. Lantiegne and to Attorney Allan K. Cook, Attorneys for Defendant TDCJ on Thursday, September 1, 2016. In response, Attorney Calysta replied that she is opposed to the motion.

Respectfully submitted,

/s/ Timberly J. Davis

TIMBERLY J. DAVIS
SBN: 24040772
723 Main St., Suite A1004
Houston, Texas 77002
Tel: (713) 224-7400
Fax: (713) 224-7402
timberly@tjdavislawfirm.com

ATTORNEY FOR PLAINTIFF

VERIFICATION

My name is KENISHA BOYD. I am the movant in the foregoing Motion to Vacate Purported Settlement Agreement. I am familiar with the facts and circumstances contained therein are true and to the best of my knowledge and belief.

Kenisha Boyd
KENISHA BOYD

On this the 31 day of August, 2016, KENISHA BOYD, known to me to be person whose signature appears on the foregoing verification, personally appeared and attested to statement herein: .

SWORN AND SIGNED on this the 31st day of August, 2016.

Jennifer F. Willis
NOTARY PUBLIC

JENNIFER F. WILLIS
Notary Public
State of Louisiana
Notary ID # 69182
Caddo Parish