

When is a motion to enforce a settlement agreement appealable?



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In a perfect world, we'd reach amicable resolutions with opposing parties and each party would happily abide by the agreement and go their separate ways. However, since we don't live in a perfect world, we deal with parties who not only refuse to abide by the terms of the agreement but may even deny the existence of the agreement itself.

As the attorney for your client, you'll want to either file a Motion to Enforce the Agreement, or a Motion to Set Aside or Opposition to Enforce the Agreement.

After the trial court enters its ruling on its enforceability, your client may be asking you about appeal options – but when exactly is the right time to appeal? The Court of Special Appeals recently discussed this exact issue in the case of *Pattison v. Pattison*.

There, after months of negotiation, Wife sent a proposed settlement package, including a full written agreement, to Husband. Wife's attorney sent the agreement on a Friday at 3:51 p.m., along with a letter "today" and that another document needed to be executed by the coming Monday.

Counsel for both Wife and Husband were in touch throughout Friday, and Husband ultimately

executed all documents on that Monday. Shortly thereafter, Husband amended his complaint for divorce requesting a divorce by mutual consent and alleging that the parties had resolved all issues related to property by agreement.

In response, Wife filed an answer denying the existence of the agreement on the basis that Husband had not signed the agreement on the Friday that it was sent to his counsel.

Husband's attorney naturally filed a Motion to Enforce the Agreement, and after an evidentiary hearing the trial court found that the parties had entered into a valid and enforceable agreement and granted Husband's Motion to Enforce.

The court agreed to stay the divorce proceedings while Wife appealed from the trial court's order to enforce the agreement.

The Court of Special Appeals ultimately concluded that the appeal period was not yet ripe and dismissed Wife's appeal without reaching the merits of her argument.

The Court of Special Appeals first noted that, subject to certain exceptions, a litigant may only appeal from a final judgment that resolves all issues in the case. The court reasoned that because the trial court had not entered a judgment on the agreement itself and entered a final divorce, that the trial court order was not a final judgment from which Wife could appeal.

Next, the court looked to whether the trial court order fell within one of the exceptions to the final judgment rule, namely whether it was: 1) allowed as an interlocutory appeal by statute, 2) immediately appealable under Rule 2-602, or 3) allowed under the collateral order doctrine.

As the first two exceptions were not applicable to the case before the court, the only relevant exception would be if the matter fell within the

collateral order doctrine.

The collateral order doctrine is only "to be applied sparingly and under extraordinary circumstances."

To even fall within the exception, the appealing party must show that the interlocutory order meets four conditions: the order 1) must conclusively determine a disputed question, 2) resolve an important issue, that is 3) completely separate from the merits of the action, and 4) "must involve [an] issue that would be effectively unreviewable on appeal from final judgment."

The court found that the collateral order doctrine was not applicable in the context of an order *granting* a motion to enforce as "there is benefit lost", i.e. it did not satisfy the fourth requirement of the collateral order doctrine.

Conversely, as noted by the court, if the Motion to Enforce had been denied, it likely would have satisfied that fourth requirement because "the party must proceed to a trial on the merits, the party loses the contractual benefit of avoiding the expense and inconvenience of a trial."

Although not addressed by the Court of Special Appeals, practitioners should note that the trial court found that the ongoing communications with Husband and Wife's counsel about executing the agreement on Monday indicated Wife's assent to the same. It also found that Wife's delay in raising the issue of untimeliness constituted a waiver of the requirement to sign by the date given.

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