MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jamia Franklin, as Personal Representative of the Estate of Phillip Franklin,

Appellant,

v.

Elizabeth Senetar,

Appellee

January 13, 2023

Court of Appeals Case No. 21A-CT-2154

Appeal from the Lake Superior Court

The Honorable John M. Sedia, Judge

Trial Court Cause No. 45D01-1608-CT-00152

May, Judge.

[1] Jamia Franklin, as Personal Representative of the Estate of Phillip Franklin, ("Franklin") appeals the trial court's denial of the motion to correct error that Franklin filed following the "Order Enforcing Settlement" that the trial court entered in favor of Elizabeth Senetar. (Appellant's App. Vol. 2 at 123-4) (full capitalization removed). Franklin argues the trial court abused its discretion when it did not overturn its judgment determining an enforceable settlement agreement existed because: (1) Senetar never offered $40,000 to settle the case; (2) Franklin did not accept $40,000 to settle the case; (3) Senetar and Franklin never achieved a meeting of the minds; and (4) if an agreement had been reached, it was conditioned on Franklin's ability to resolve the worker's compensation lien, which Franklin was unable to achieve. Senetar asserts we should affirm the trial court's denial of the motion to correct error because Franklin's arguments are nothing more than requests that we reweigh the evidence. Because the record is devoid of evidence of any of the actual terms of the alleged settlement reached by the parties, there can be no settlement to enforce, and the trial court abused its discretion when it denied Franklin's motion to correct error. We therefore reverse and remand for further proceedings consistent with this opinion.

Facts and Procedural History

[2] As a trial on the facts underlying this case did not occur, we state the underlying facts as asserted in the complaint. Phillip Franklin ("Phillip") was employed by the United States Postal Service and drove a postal truck in the course of his

employment. On August 23, 2014, as Phillip was delivering mail in his postal truck, his truck was struck from behind by Senetar's vehicle. The postal truck spun, flipped on its side, and struck a utility pole. Phillip sustained injuries that required medical treatment from various healthcare providers, and he also "experienced mental anguish, emotional distress, and pain and suffering." (Appellant's App. Vol. 2 at 13.) Phillip died in March 2016 from causes not alleged to be related to the accident with Senetar. In July 2016, Phillip's wife, Franklin, filed suit against Senetar to recover "an amount commensurate with Phillip Franklin's injuries and damages . . . ." (*Id*. at 14.)

[3] In March 2018, Senetar's counsel sent a letter to Franklin's counsel.[1] The letter reiterated a conversation the two counsel had the previous day, reviewed the insurance policy limits and Phillip's medical expenses, and explained why Senetar's counsel believed the case should be settled. The letter then stated:

> Any settlement will be conditioned on your client executing a Confidential, Full, Final and Complete Release of All Claims and Settlement and Indemnity Agreement. The confidentiality section will have non-disparagement language, with social media restrictions. Moreover, the indemnification language will contractually obligate your client to satisfy any and all liens purportedly related to the incident, including any Worker's Compensation lien, CMS lien, or any other lien for that matter. With that being said, be advised that the Westfield adjuster will

[1] Franklin has had three different attorneys during these proceedings, but all three worked for Schiller Law Offices. Jeremy Noel represented Franklin when this letter was received; Dana Phillips entered her appearance on January 10, 2019; and Matthew T. Kavanagh, who is also Franklin's appellate counsel, entered his appearance for Franklin in the trial court on July 16, 2020.

> be on board with my suggestion of yesterday, but only if the Plaintiff demands $40,000.00. Thus, do not consider this an offer of $40,000.00. Yet, you have my professional representation that Westfield indicates that if the Plaintiff demands $40,000.00, they will pay it (subject to the aforementioned conditions).

(*Id*. at 58-9.) In June 2018, the parties attended mediation, but they were unable to reach a settlement.

[4] On October 11, 2018, the trial court held a status conference and set trial for April 27, 2020, with a discovery deadline of December 27, 2019. Franklin filed an expert disclosure on June 20, 2019, and a final witness list on November 27, 2019. According to Senetar's counsel, he contacted Franklin's counsel multiple times between June 2019 and December 27, 2019, asking for additional information about Franklin's experts and for a time to depose Franklin's experts, but he never received a response from Franklin's counsel. In March 2020, the trial court cancelled the trial dates and final pre-trial hearings due to the pandemic and set a status hearing for August 5, 2020.

[5] The trial court then held an unrecorded status conference on August 5, 2020. Thereafter, the court entered a Hearing Journal Entry that stated:

> Status hearing held. The Court will calendar the matter for 120 days for Counsel to resolve lien issues. If case is not dismissed, the Court will reset for status hearing.

(*Id.* at 8.)

[6] The trial court held another status conference on January 28, 2021, during which Franklin's counsel expressed interest in taking the case to trial. Senetar's counsel objected to the notion of going forward to trial:

> [T]his case has been pending since 2016. And it went to mediation; it didn't settle. We had status conferences in the past. We've had a case management conference. This was scheduled quite sometime ago for a trial in early 2020, and, obviously, the pandemic changed that.
>
> However, we had a status conference with your Honor in August -- August 5, 2020 . . . I didn't request that hearing to be recorded or on the record because normally we don't. However, it is my recollection from that hearing that, in essence, it was reported to the Court -- although [Franklin's counsel] had appeared and substituted for prior Counsel, I don't know, a couple of months or a month before that. What was reported to the Court, as I recall, was you had asked for an update, and [Franklin's counsel], I believe, represented to the Court something to the effect for all intents and purposes the case is settled. His office just needs to finalize dealing with the lien and attempting to get the lien waived.
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> * * * * *
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> Now, I understand that has not happened, and at the last time I spoke with [Franklin's counsel], that still had not happened or even [been] attempted.
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> So, you know, I'm curious as to what attempts have been made to resolve the actual lien because, you know, I understand it's [Franklin's] Counsel's intention to ask your Honor, even though this case has been pending for four and a half years, to now get us

> a new case management conference, set new dates and deadlines, and get a trial date.
>
> My position is, especially what has been represented to me not only with current Counsel but the prior Counsel and the Counsel prior to that, all with the same firm, that they were going to attempt to try and resolve this Worker's Comp lien. So that's -- that -- that's my position on where we are is I've been under the understanding for quite sometime that [Franklin's] Counsel was going to attempt to resolve the Worker's -- the federal Worker's Comp lien.

(*Id.* at 62-5.) Franklin's counsel explained:

> . . . As [Senetar's] Counsel pointed out, I did substitute my appearance in this case on July 16th, 2020. A colleague in my -- a couple colleagues in my office had been handling the case.
>
> When we had our status conference, I had reviewed the file, and based on the notes of my colleagues, prior colleagues, my understanding was that the case was close to being settled, and that the Worker's Compensation -- federal Worker's Comp lien did need to be addressed. And I did reach out to the federal Work Comp paralegal handling. I made several attempts to reach her. All of those were unsuccessful.
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> However, upon further review of the file and all the medical records . . . I don't think the settlement that was tentatively reached in this case was fair at all. My client doesn't think it's fair. My client never agreed -- officially agreed to the settlement based on my conversations with her. And even if we -- you know, after look -- digging into this case deeper, even if we were able to resolve the -- or have the Work Comp lien waived, this is still -- which -- which, you know, in working with, you know, federal entities and with liens before, it's nearly impossible

> to get that done. But even if we were able to do that, the amount that my client would receive in her pocket, it's very minimal and not fair.

(*Id*. at 65-6.) The trial court stated:

> All right. Well, then, obviously [Franklin] doesn't want to accept the settlement, and you know, as [Senetar's counsel] indicated, that was my impression at the status, even though we didn't put it on the record. My impression, and I think you've kind of confirmed it, since you said that you just took over the file and you're relying on notes, my impression was the case was about to be settled, and I didn't want to haul you back in here for another status conference if all you had to do was work out the Workmen's Comp lien, you know, and do the settlement documents. So I calendared it for 90 days. And then when nothing happened, I reset it for today to see what's going on.
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> I mean that's generally what I do in these things is I just -- you know, if -- you know, it's your case. You know, you two have the case. If you tell me, hey, we're close to settlement, we just have to work out this lien issue, that's fine. Why make you come back, you know, over and over again for status hearings when that's what you have to do.
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> Well, now, I'm hearing that [Franklin] apparently has changed her mind, and she wants to pursue the case at trial.
>
> Am I correct, [Franklin's counsel]?

(*Id*. at 67-8.) Franklin's counsel confirmed Franklin wanted to go to trial but asked for additional time to complete discovery. Senetar's counsel objected to the idea of allowing discovery:

This case has been pending for four and a half years. This -- while [Franklin's] law firm has had ample time to do discovery. In fact, at one point when we went to meditation and it failed, we went before your Honor, admittedly with a different prior Counsel at the same [Franklin's] Counsel's office, [Franklin] did disclose experts, and [Senetar] disclosed experts.

And then I followed up with [Franklin's] Counsel at the time, specifically and unambiguously asking for supplementation of the C.V. of the experts, and I wanted to depose those experts that are actually going to trial. That never happened. There was no communication about that.

I didn't have the opportunity to depose their experts within the time period the Court allowed it, despite my request; and that's when things pivoted from instead of litigating and doing that and saying discovery that [Franklin's] Counsel now wants to continue doing, stopping my ability to do it. The conversations changed from, hey, let us try and resolve the lien. We've got to work with the Worker's Comp paralegal, this federal paralegal specialist, trying to negotiate this lien. They're working on it, they're working on it, they're working it. It's been represented to the Court they were working on it, and no litigation had taken place on that expert disclosure that I was already trying to do right before the last trial deadline.

And so my point is, especially as an officer of the Court with representation made by Counsel to each other and to you Honor that they've -- they failed to prosecute that, and instead had made representations, and like at the last hearing to your Honor about the case is essentially settled, they've just got to deal with this lien issue. My point is they failed to prosecute anything that they would need to do in terms of expert discovery.

> If -- if your Honor is inclined to go ahead and set us a trial date, my point is they should -- I'm going to do a motion to exclude experts and expert testimony based on failure to comply with discovery and discovery requests, and they shouldn't be allowed to continue to find medical bills and records from a guy who's been deceased since 2016. . . .

(*Id*. at 69-70.) The trial court then set a hearing for May 12, 2021, on the motions it expected Senetar's counsel to file to preclude any expert testimony being offered by Franklin.

[7] After that status conference, the trial court entered an order that noted Senetar "anticipates filing a Motion to Bar Expert Testimony" if Franklin tries to offer any. (*Id.* at 49.) On March 30, 2021, Senetar filed a motion to enforce settlement agreement that asked the trial court to enforce the "meeting of the minds – as was demonstrated by [counsel's] representations to the Court at the August 5, 2020 Status Conference." (*Id*. at 53.) Senetar also filed, in the alternative, a "Motion to Bar Plaintiff's Expert Witnesses."[2] (*Id*. at 9.) On May 6, 2021, Franklin filed an "Objection and Response" to Senetar's motion to enforce settlement agreement, (*id*. at 75) (capitalization removed), and a response to Senetar's motion to bar expert witnesses. (*Id*. at 9.) On May 7, 2021, Senetar filed motions to strike Franklin's responses as being untimely, and on May 10, 2021, Franklin filed objections to Senetar's motions to strike.

[2] We have not found a copy of this motion in the portions of the record provided to us on appeal; however, its filing appears in the Chronological Case Summary.

[8] The trial court heard argument on Senetar's motions on May 12, 2021. On May 13, 2021, the trial court entered an order containing the following:

> This litigation arises out of a vehicular collision that took place on August 23, 2014. The lawsuit was filed within the month prior to the expiration of the period of limitations in 2016. On March 27, 2018, Senetar's counsel advised Franklin's counsel that if a demand to settle the case for $40,000 was made, Senetar's insurer would pay that amount. In mid-March, 2020, Franklin's counsel confirmed interest in settling the case for $40,000 if a worker's compensation lien could be worked out. At an August 5, 2020 status hearing, Franklin's [counsel] stated that for all intents and purposes, the case is settled, which was confirmed by Franklin's counsel at a January 28, 2021 status hearing.
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> There is no requirement for a settlement agreement to be in writing; oral agreements are enforceable, *Zimmerman v. McColley*, 826 N.E.2d 71, 78 (Ind. Ct. App. 2005), *Skalka v. Skalka* (*In re Estate of Skalka*), 751 N.E.2d 769, 772 (Ind. Ct. App. 2001). If a party agrees to settle, but then refuses to consummate the agreement, the opposite party may obtain a judgment enforcing the agreement, *MH Equity Managing Member, LLC v. Sands*, 938 N.E.2d 750, 757 (Ind. Ct. App. 2010), *Harding v. State*, 603 N.E.2d 176, 179 (Ind. Ct. App. 1992), *trans. denied*.
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> Here, Franklin, through her counsel, made three separate representations that a $40,000 settlement would be acceptable. Mention was made of the desirability of working out a worker's compensation lien to obtain more money for Franklin, but this desire did not rise to the level of making resolution of the worker's compensation lien a condition of the settlement.
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> IT IS THEREFORE ORDERED by the Court as follows:

1. The Motion to Enforce Settlement filed by the defendant, Elizabeth Senetar, is granted.

2. After the plaintiff, Jamia Franklin, Personal Representative of the Estate of Phillip Franklin, obtains approval of the probate court and executes a release and indemnity agreement in favor of the defendant, Elizabeth Senetar, she shall pay the sum of $40,000 to Jamia Franklin, Personal Representative of the Estate of Phillip Franklin within 30 days after execution of the release and indemnity.

3. This case is dismissed without prejudice, costs paid. The Court retains jurisdiction to vacate this Order and to reopen this action. Upon effectuation of the settlement, the parties shall stipulate to a dismissal with prejudice of this case.

4. All other motions filed by the defendant, Elizabeth Senetar, are denied as moot.

(*Id*. at 123-24.) Franklin filed a motion to correct error, and Senetar filed a response thereto. The trial court heard oral argument and then denied Franklin's motion in an order that contained no findings of fact or conclusions of law. (*Id*. at 174.)

Discussion and Decision

[9] Franklin appeals the denial of her motion to correct error. We usually review the denial of a motion to correct error for an abuse of discretion. *Wilson v. Wilson*, 181 N.E.3d 417, 419 (Ind. Ct. App. 2021). "However, where the issue raised in the motion to correct is a question of law, the standard of review is de

novo." *Id*. Here, Franklin's motion questioned the trial court's determination that the parties had reached an enforceable settlement agreement. "Settlement agreements are governed by the same general principles of contract law as any other agreement[,]" *Georgos v. Jackson*, 790 N.E.2d 448, 453 (Ind. 2003), *reh'g denied*, and the "existence of a contract is a question of law[,]" *Barrand v. Martin*, 120 N.E.3d 565, 572 (Ind. Ct. App. 2019), *trans. denied*, which we review de novo. *Berg v. Berg*, 170 N.E.3d 224, 227 (Ind. 2021) (questions of law reviewed de novo). Accordingly, we review de novo the trial court's denial of Franklin's motion.

[10] Settlement agreements, like all contracts, come into existence when "'parties exchange an offer and acceptance.'" *DiMaggio v. Rosario*, 52 N.E.3d 896, 905 (Ind. Ct. App. 2016) (quoting *Kelly v. Levandoski*, 825 N.E.2d 850, 857 (Ind. Ct. App. 2005), *trans. denied*), *reh'g denied*, *trans. denied*.

> Oral contracts exist when the parties agree to all of the terms of the contract. If there is no agreement on one essential term of the contract, then there is no mutual assent, and, thus, no contract. A meeting of the minds of the contracting parties, having the same intent, is essential to the formation of a contract.

Id. (internal quotations and citations omitted).

[11] At the hearing on August 5, 2020, Franklin's counsel undeniably gave the impression to both the trial court and Senetar's counsel that a settlement was in the works. (Appellant's App. Vol. 2 at 67) (trial court recalled: "my impression was the case was about to be settled"). However, Franklin's counsel also

clearly indicated the Worker's Compensation lien needed to be resolved first, as the trial court's entry for the hearing indicated the court was setting the matter aside for "120 days for Counsel to resolve lien issues." (*Id*. at 8.) (*See also id*. at 67) (trial court recalled: "all you had to do was work out the Workman's Comp lien, you know, and do the settlement documents"). Aside from the impression that settlement was the goal after the lien was resolved, neither the parties nor the trial court suggests any terms of such a settlement were discussed during the hearing on August 5, 2020. In such a circumstance, we fail to see how the "meeting of the minds of the contracting parties, having the same intent," could be inferred from the discussion of August 5, 2020. *DiMaggio*, 52 N.E.3d at 905.

[12] To fill out the terms of the alleged agreement reached by the parties, Senetar's counsel points to the letter he sent to Franklin's counsel in March 2018 that expressed a willingness to settle the case for $40,000.00 *if Franklin demanded that amount and agreed to a list of conditions required by Senetar*. However, that letter was sent to Franklin's prior counsel more than two years earlier, and while Franklin's current counsel was aware of the content of that 2018 letter at the hearing on August 5, 2020, when Senetar's counsel asserts they had a meeting of the minds as to those terms, Franklin's counsel did not demand $40,000.00 or agree to the conditions listed in that letter. Instead, he indicated an intent to settle the case after resolving the Worker's Compensation lien.

[13] While we certainly understand the frustration expressed by the trial court and Senetar's counsel regarding the missed discovery deadlines and the delays in attempting to resolve the lien, the solution cannot be the enforcement of an

agreement that simply never existed. Accordingly, we reverse the judgment of the trial court and remand for further proceedings.[3]

Conclusion

[14] Because the record is devoid of evidence of a meeting of the minds regarding any of the actual terms of the alleged settlement reached by the parties, there can be no settlement to enforce, and the trial court abused its discretion by denying Franklin's motion to correct error. We therefore reverse and remand for further proceedings consistent with this opinion.

[15] Reversed and remanded.

Riley, J., and Tavitas, J., concur.

[3] Because the trial court denied Senetar's evidentiary motions as moot, rather than on the merits, we express no opinion as to their viability.