

Fifth Circuit Court of Appeal
State of Louisiana

No. 25-CA-414

PATRICIA KELLEY

versus

PROGRESSIVE INSURANCE COMPANY, JAOVYNE THOMAS & FARMERS PROPERTY AND
CASUALTY INSURANCE COMPANY (AS UNINSURED/UNDERINSURED MOTORIST
CARRIER)

ON APPEAL FROM THE TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON, STATE OF LOUISIANA
NO. 846-833, DIVISION "N"
HONORABLE STEPHEN D. ENRIGHT, JR., JUDGE PRESIDING

March 12, 2026

FREDERICKA HOMBERG WICKER
JUDGE

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and John J. Molaison, Jr.

VACATED AND REMANDED

FHW
MEJ
JJM

TRUE COPY



MORGAN NAQUIN
DEPUTY CLERK

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WICKER, J.

Plaintiff-Appellant, Patricia Kelley, appeals the trial court's May 28, 2025 judgment granting the Motion to Enforce Settlement Agreement filed by Defendant-Appellee, Farmers Property and Casualty Insurance Company. Appellant argues that the trial court erred in finding that a valid and enforceable settlement agreement existed between the parties. Because we find that the trial court erred in relying upon evidence not properly offered, introduced, and admitted into evidence at the hearing, we vacate the judgment and remand for further proceedings.

BACKGROUND

This case arises from a rear-end collision, which Ms. Kelley claims caused her personal injuries. She subsequently filed a petition for damages against, among others, her uninsured motorist insurance carrier, Farmers, with whom she had a UM policy providing up to \$250,000 in coverage at the time of the accident. According to the parties, at an unspecified time during the litigation, Farmers tendered \$58,239 of the UM policy to Ms. Kelley. Thereafter, on January 10, 2025, Ms. Kelley sent Farmers her updated medical bills and demanded payment of the remaining policy limits (\$175,000). Between late March and early April 2025, Ms. Kelley's counsel of record, John Norris, and Farmers' counsel of record, Kaylin Storey, engaged in settlement negotiations through text messages, phone calls, and emails. According to the parties, certain text messages and emails are particularly relevant to this appeal. Those communications were neither introduced into evidence nor recited into the record.

On April 10, 2025, Ms. Kelley sought leave of court to amend her petition to add Farmers as an excess liability carrier, claiming that the UM policy limits were insufficient to cover her damages. Farmers subsequently filed a Motion to Enforce Settlement Agreement against Ms. Kelley on April 16, 2025, asserting that Ms. Kelley had agreed to settle for the remaining UM policy limits of \$175,000 and that

the parties' text messages and emails reflected a binding compromise. Farmers attached to its' supporting memorandum text messages, emails, and other exhibits supporting its motion. Ms. Kelley filed an opposition attached to which were her own exhibits, including additional text messages and emails regarding the settlement negotiations.

On May 27, 2027, the trial court held a hearing on the motion to enforce. Following the hearing, the trial court rendered judgment in open court, as follows:

All right, based on the Court's review of the . . . *in particular the text messages* that were just spoken of. Um, it's pretty plain that Counsel you did advise that it made an offer of \$175,000 to settle and within it looks like two days that offer was accepted.

Um, so the Court finds that there was in fact a valid, uh, settlement of this matter and the Court grants a Motion to Enforce Settlement Agreement at this time.

ROA 333, Hr'g Tr. (May 27, 2025) (emphasis added). The hearing consisted entirely of argument by counsel; no testimony or documentary evidence was introduced. According to the hearing transcript, neither party offered into evidence the exhibits attached to their memoranda nor did they stipulate to the admission of any exhibits into evidence. The trial court likewise did not admit any exhibit into evidence during the hearing, and the court's minute entry confirms that no evidence was offered or admitted at the hearing. Thus, in granting Farmers' motion to enforce, the trial court did so by relying upon documents which were not properly admitted into evidence.

On May 28, 2025, the trial court issued a written judgment consistent with its ruling rendered in open court granting Farmers' motion to enforce. Ms. Kelley moved for reconsideration of the judgment, but the trial court denied the motion. This appeal followed. On appeal, Ms. Kelley raises nine assignments of error. We decline to address those assignments, however, because we find the trial court's judgment must be vacated and the matter remanded for further proceedings. There

was no evidence introduced, by either party, in support or against the motion to enforce. Accordingly, the trial court erred in granting the motion.

LAW AND ANALYSIS

Ordinarily, appellate courts review a trial court's judgment granting a motion to enforce settlement agreement under the manifest error standard, because the trial court must decide factual issues regarding the agreement's existence, validity, and scope—all of which depend on the parties' intent, which is "an inherently factual finding." See *Porche v. Porche*, 23-471 (La. App. 5 Cir. 4/24/24), 386 So.3d 695, 702. A settlement or "compromise" is defined as a "contract whereby the parties, through concessions made by one or more of them, settle a dispute or an uncertainty concerning an obligation or other legal relationship." La. C.C. art. 3071. To be valid, a settlement agreement "shall be made in writing or recited in open court[.]" La. C.C. art. 3072. "The party who attempts to rely on the existence of a compromise agreement bears the burden of proof to show that the requirements for a valid compromise are present, including that the parties intended to settle." *Suire v. Lafayette City-Par. Consol. Gov't*, 04-1459, 04-1460, 04-1466 (La. 4/12/05), 907 So.2d 37, 55. Moreover, when a motion must be proven, it is the moving party's burden to present evidence establishing the claims made therein. *Scheuermann v. Cadillac of Metairie, Inc.*, 11-1149 (La. App. 5 Cir. 5/31/12), 97 So.3d 423, 426; La. C.C.P. art. 963.

Exhibits and attachments not properly and officially offered, introduced, and admitted into evidence cannot be considered, even if physically filed into the record. *Denoux v. Vessel Mgmt., Servs., Inc.*, 07-2143 (La. 5/21/08), 983 So.2d 84, 88; *Successions of Cotaya*, 24-39 (La. App. 5 Cir. 12/5/24), 409 So.3d 866, 871. Documents attached to memoranda do not constitute evidence and cannot be considered. *Denoux*, 983 So.2d at 88. Appellate courts are courts of record and may not review evidence that is not in the appellate record or receive new evidence. *Id.*

at 88–89; *Bufkin v. Motwani*, 24-272 (La. App. 5 Cir. 2/19/25), 406 So.3d 629, 633 (citing La. C.C.P. art. 2164). A trial court commits legal error when it relies on items not properly admitted into evidence to form a basis for its decision. *Conner v. B.N.L., Inc.*, 25-302, 2025 WL 2061872, at *1 (La. App. 5 Cir. 7/23/25).¹ As this Court recently explained, “The Supreme Court and this court have routinely held that appellate courts may not consider evidence not properly and officially offered, introduced, and admitted into evidence, whether the lack of admission into evidence was assigned as error or not.” *Id.* at *1.²

Here, the trial court decided that a valid and enforceable settlement agreement existed based on text messages and emails attached as exhibits to the parties’ memoranda. But, as discussed above, the hearing transcript and the trial court minute entry show that neither party introduced any evidence at the May 27, 2025 hearing to prove that a settlement agreement existed. Although both parties attached exhibits to their memoranda and discussed those exhibits during the hearing, none of the exhibits were offered into evidence, none were admitted into evidence by the trial court, and none were admitted into evidence by stipulation of the parties.

Therefore, the trial court had no documentation properly before it to support its conclusion that a valid and enforceable settlement agreement existed. The existence, validity, and scope of such agreements are all questions of fact, but no factual evidence on these issues was offered or admitted into evidence at the hearing.

¹ See e.g., *Soutullo v. LAMMICO*, 24-441, 2024 WL 4586926, at *2 (La. App. 5 Cir. 10/28/24) (finding that the trial court abused its discretion in granting motion *in limine* based on evidence not admitted); *DePhillips v. Technology Ins. Co.*, 19-329, 2019 WL 4866777, at *1 (La. App. 5 Cir. 10/2/19) (finding that the trial court erred by granting motion *in limine* based on expert report not admitted into evidence).

² Citing to *Quinn v. La. Citizens Prop. Ins. Corp.*, 12-152 (La. 11/2/12), 118 So.3d 1011, 1017; *Walker on Behalf of Fried v. ACE Am. Ins. Corp.*, 20-449 (La. App. 5 Cir. 5/26/21), 325 So.3d 1129, 1136, writ denied, 21-914 (La. 10/19/21), 326 So.3d 886; and *Barnes v. Jacob*, 13-596 (La. App. 5 Cir. 12/12/13), 131 So.3d 363, 364.

For these reasons, we conclude that the trial court's finding was manifestly erroneous, and the judgment enforcing the settlement must be vacated.³

DECREE

Accordingly, we vacate the trial court's May 28, 2025 judgment and remand this case for further proceedings.

VACATED AND REMANDED

³ See *Scheuermann v. Cadillac of Metairie, Inc.*, 11-1149 (La. App. 5 Cir. 5/31/12), 97 So.3d 423, 426 (vacating trial court judgment granting motion to enforce settlement where “no evidence was properly and officially offered and introduced at the trial court level to support the motion” and “the hearing on the motion consisted entirely of argument by counsel with no testimony or documentary evidence introduced”).

