2015 IL App (5th) 130580-U

NO. 5-13-0580

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

JEAN BILLHARTZ, Plaintiff-Appellant, v. JAN BILLHARTZ and SUSAN ZAVAGLIA, Plaintiffs-Appellees, v. MARCIA BILLHARTZ and WARD BILLHARTZ, individually and as Co-trustee of the WARREN BILLHARTZ Self Declaration of Trust Dated December 22, 1992, as amended and restated, Defendants-Appellees. NORMA BILLHARTZ, by and through her attorney in fact, WARD BILLHARTZ, and WARD BILLHARTZ individually, Plaintiffs-Appellees, v. MARCIA BILLHARTZ, as trustee of the WARREN BILLHARTZ TRUST, Defendant-Appellee.	)	Appeal from the Circuit Court of St. Clair County. Nos. 12-MR-215 & 12-MR-218 Honorable Stephen P. McGlynn, Judge, presiding.

JUSTICE SCHWARM delivered the judgment of the court.
Justices Stewart and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court erred in finding an enforceable oral agreement following mediation because the written mediation agreement and the circumstances surrounding mediation revealed the parties intention that any settlement agreement be reduced to writing and formally executed as a condition precedent to its completion.

¶ 2 The appellant, Jean Billhartz, and the appellees, Jan Billhartz, Susan Zavaglia, Ward Billhartz, and Marcia Billhartz, individually and as trustee of the Warren Billhartz self-declaration of trust dated December 22, 1992 (the Trust), agreed to attend mediation relating to, among other issues, the distribution of Warren's assets upon his death. After participating in mediation, Marcia, Warren's widow, along with Eileen Hoffman, Warren's sister, filed motions to enforce an alleged oral settlement agreement reached at mediation. After a hearing, the circuit court granted the motions, finding that a written agreement, prepared subsequent to the mediation and not signed by all the parties, nevertheless reflected the terms of an oral settlement agreement reached during mediation and was therefore enforceable.

¶ 3 Jean appeals, arguing that the circuit court erred in finding that the parties had reached an enforceable oral agreement during mediation because an agreement executed by the parties prior to mediation (the Mediation Agreement) required the execution of a written settlement agreement, the Uniform Mediation Act (710 ILCS 35/1 *et seq.* (West 2012)) required the execution of a written settlement agreement, the oral communications

at mediation were inadmissible and unenforceable, and the alleged oral settlement agreement omitted essential terms. Jean also argues that the proceedings in the trial court were manifestly unfair. For the following reasons, we reverse the circuit court's order, and we remand for further proceedings.

¶ 4 BACKGROUND

¶ 5 Warren and Norma Billhartz were married on December 2, 1955. Four children were born of the marriage: Ward, Jan, Jean, and Susan. On November 28, 1978, the circuit court of Madison County entered a judgment dissolving the marriage between Warren and Norma. The judgment incorporated a marital settlement agreement between the parties which included provisions with respect to the distribution of Warren's assets upon his death. Specifically, the settlement agreement provided that one-half of Warren's "estate *** be given in his [w]ill to the children of the parties *** in equal shares."

¶ 6 Thereafter, Warren created and transferred assets, including $60 million in bank stock and cash, to the Trust. The Trust provided for, among other things, the distribution of trust assets after Warren's death to Marcia, Ward, Jan, Susan, Jean, and Eileen. With respect to the four children, the Trust provided that Ward receive 16% of the Trust residue, plus the option to purchase up to 15% of the issued and outstanding bank stock, and provided that Jean, Jan, and Susan receive 6% of the Trust residue each. All residual distributions were subject to "[p]ayment of any legally enforceable debts" which arguably included the debt arising from the marital settlement agreement.

¶ 7 Warren last executed a will in 2000, and this will made no explicit provision for the distribution of one-half of his estate to the four children. Instead, the will provided

that property not otherwise necessary for the payment of legally enforceable debts and taxes be distributed to the Trust. Marcia and Ward were appointed executors of Warren's will and also trustees of the Trust upon Warren's death. The record reveals that Ward was also Norma's attorney-in-fact.

¶ 8 At the time of the divorce in 1978, Warren and Norma owned property with an aggregate value of approximately $4 million. At the time of Warren's death on August 21, 2006, however, the estimated value of Warren's assets, including assets held in the Trust and in joint tenancy with Marcia, totaled approximately $85 million.

¶ 9 On July 11, 2007, Jan, Jean, Susan, and Ward executed an acknowledgement, allocation agreement, and waiver (the Waiver), wherein they waived any claim against Warren's estate. In exchange, the four children and Eileen received $1 million as a partial distribution of their share of the Trust.

¶ 10 On June 11, 2012, Ward resigned as trustee of the Trust. On June 12 and 14, 2012, the four children and Norma, through Ward, collectively filed six lawsuits in the circuit courts of Madison and St. Clair Counties. They alleged that in early 2012, they first became aware that the 1978 judgment of dissolution of marriage provided that half of Warren's estate pass to them in equal shares. The plaintiffs alleged that Marcia, individually and in her capacities regarding the Trust and Warren's estate, had intentionally and fraudulently concealed the transfer of assets of Warren's estate, which were not in compliance with the judgment of dissolution of marriage. They asserted that they relied on Marcia's fraudulent acts and omissions in signing the Waiver. They alleged that the Waiver was therefore unenforceable and requested that the court enter an

order declaring the Waiver to be invalid, removing Marcia as trustee, and awarding attorney fees and punitive damages.

¶ 11 On February 13, 2013, the circuit court entered an order, noting that the parties had scheduled mediation. The parties entered into an agreement to suspend all litigation, including potential claims against the attorneys who drafted documents at issue, pending settlement discussions.

¶ 12 Jean, Jan, Susan, Ward, Marcia, Eileen, and their attorneys signed the Mediation Agreement prior to, or on the day of, mediation. The Mediation Agreement provided that each party agreed "to submit the dispute for non-binding mediation." The Mediation Agreement further provided:

> "All offers, promises and statements, whether written or oral, made in the course of mediation, including those made in pre-mediation or post-mediation submissions (1) shall be considered confidential and privileged settlement communications; (2) shall be deemed inadmissible in any arbitration, administrative or judicial proceeding; (3) may not be disclosed to non-participants in the mediation.

Further, the Mediation Agreement provided:

> "Any executed written settlement agreement shall be considered binding on the parties and may be enforced by any party to the agreement."

In the Mediation Agreement, the parties agreed that they would not subpoena or otherwise require the mediator to testify or produce records in any subsequent proceeding.

¶ 13 On March 1, 2013, Jean, Jan, Susan, Ward, Eileen, Marcia, both individually and as trustee of the Trust, and their attorneys participated in a 13-hour mediation session with the Honorable Patrick J. Hitpas, retired circuit judge, acting as mediator. The mediation began at approximately 9 a.m. There were settlement negotiations going back and forth between various conference rooms and parties throughout the day. Offers were presented in written form, the last of which was entitled "Memorandum of Settlement." Jean's attorney left mediation at approximately 6:30 p.m., but the parties continued the mediation session. Hours later, the mediator gathered the remaining parties and attorneys in a large conference room, where each orally indicated that they had reached an agreement. Approximately 20 to 30 minutes after the mediator confirmed that a settlement had been reached, however, Jean stated that she wanted to "sleep on it" before signing any written agreement. Jean did not sign the Memorandum of Settlement, which had been prepared that evening to confirm the oral agreement, nor did she execute any written settlement agreement thereafter.

¶ 14 Indeed, no one signed the 2½-page Memorandum of Settlement prepared at mediation. The Memorandum of Settlement provided, among other things, that the parties agreed "to execute a global settlement agreement" to discharge any and all claims arising out of the Trust, Warren's estate, the 1978 divorce, and the marital settlement agreement and "ratify, confirm, and approve all actions of the Trustee regarding the management and operation of the Trust up to the date of closing of the settlement." The Memorandum of Settlement further included a summary of calculations "with an estimated net amount to be paid."

¶ 15 In August and September 2013, Eileen and Marcia filed motions to enforce an oral settlement agreement, global release, and covenant not to sue, requesting the court to enter an order finding that a valid and enforceable oral settlement agreement was entered into at mediation on March 1, 2013. In essence, Eileen and Marcia sought to enforce the terms of a written settlement agreement, which had been prepared after mediation but was offered into evidence as a written record that contained the matters orally agreed to at mediation on March 1, 2013. This written settlement agreement consisted of 22 pages, 15 of which involved, among other things, the release of claims, the "attempt to provide" Jan, Susan, and Jean cash distributions of $1.45 million in addition to Trust assets, the time limits for the sale of shares and payment of the settlement amounts, the redemption of shares by First Company Bank Corporation, Inc., or alternatively to Marcia, the potential distribution of shares to Jan, Susan, and Jean, the 2012 valuation of stock, the payment of attorney fees, the payment of federal and state estate tax liabilities and trust expenses, estimates and contingencies involving the final distributable share, federal and state tax deficiencies involving over $3 million, ratification and approval of Trustee actions, the appointment of a guardian *ad litem* for Norma, and confidentiality.

¶ 16 On September 23, 2013, at the hearing on the motions to enforce the settlement agreement, Jerald J. Bonifield, an attorney with the law firm of Bonifield and Rosenstengel, represented both Ward and Norma. Bonifield testified that he attended mediation held on March 1, 2013. Bonifield testified that settlement negotiations occurred throughout the day, with each offer presented as a written proposal. Bonifield testified that after 13 hours of negotiations, everyone gathered in a large conference

room, and the mediator made it very clear that everyone understood and agreed that the parties had reached an agreement to a cash settlement of $1.45 million. Bonifield testified that the written settlement agreement prepared after mediation and offered into evidence contained the matters agreed to at mediation.

¶ 17 Bonifield acknowledged that two items were not finalized at the March 1, 2013, mediation: the sale of stock sufficient to fund the settlement of the litigation and the final accounting of the Trust. He testified that at mediation, the parties had information regarding the 2011 value of the stock, and it was agreed that the final settlement would be amended to reflect the most recent valuation that had been performed at the end of 2012.

¶ 18 Pat Mathis, one of Marcia's attorneys who was also present at mediation, testified that the question addressed in mediation involved what comprised Warren's estate: whether it was only probate assets, probate and joint tenancy assets, or probate, joint tenancy, and trust assets. Mathis testified that when filing Warren's estate tax return, the estate claimed a deduction for the 6% shares that went to the four children and also claimed a deduction for the amounts left to the children pursuant to the marital settlement agreement.

¶ 19 Mathis also testified that there were two components to the case: the litigation and the Trust. Mathis testified that the settlement comprised the litigation that settled for $1.45 million each for Jan, Jean, and Susan and verification of the Trust accounting. Mathis testified that the Trust would distribute based upon the percentage represented in it: Ward would receive 16%, Eileen would receive 16%, Jan, Jean, and Susan would each receive 6%, and Marcia would receive 50%.

¶ 20 Mathis explained that the purpose of stating the stock valuation was to set a threshold price below which the Trust could not sell stock to fund the cash settlement. The most recent 2012 valuation was ultimately used because the book value of the stock had appreciated. If the stock were sold at the lower 2011 valuation, then more shares would have to be sold to raise the money to pay the cash settlement, leaving fewer shares to distribute to the parties from the Trust. Mathis acknowledged that the valuation of the stock affected the value of the overall Trust. Mathis testified that funds outside the trust were not offered in settlement negotiations.

¶ 21 Mathis testified that the written settlement agreement offered into evidence accurately reflected the terms orally agreed to at mediation. Mathis testified that First Company Bank Corporation redeemed the preferred bank shares from the Trust. Mathis explained that the written settlement agreement involved, among other things, a set of timelines after its approval for offering shares to Marcia at the December 31, 2012, price, and then offering the stock to third parties to generate the cash to pay the settlement. Marcia had 15 days following court approval to purchase a portion of the shares at the December 31, 2012, book value. If Marcia did not purchase sufficient shares to generate the cash to pay the settlement and any tax from the sale, then there was a 45-day period when the trustee would seek to sell those shares to a third-party. Then, if the trustee was unable to sell those shares to generate the cash to pay the income tax and the settlement amounts, then the cash that was made available from the redemption would be paid out to the three daughters, and a balance would be distributed in stocks.

¶ 22 Warren's family members also testified. Jan testified that she believed that all parties had orally agreed to a settlement at mediation on March 1, 2013. Jan testified that she reviewed and signed a written settlement agreement, which was prepared after the mediation and had undergone many changes by the attorneys. Jan nevertheless testified that the terms of the written settlement agreement reflected the terms she understood the parties had orally agreed to at mediation.

¶ 23 Susan testified that she also believed that all of the parties, including Jean, had reached an oral settlement agreement on March 1, 2013. Susan testified that she, Jan, and Jean were to be paid $1.45 million on the litigation aspect of the mediation issues and to receive a proportionate share pursuant to the terms of the Trust. Susan testified that these terms were accurately reflected in the written settlement agreement prepared several months later. Susan testified that she understood at the conclusion of the mediation that a more formal, detailed settlement agreement would be prepared. When asked whether the Mediation Agreement indicated to her "that [she] would have to sign some written settlement agreement at some point in time in order for it to be a binding and enforceable agreement," Susan answered, "Yes."

¶ 24 Ward testified that, at the conclusion of mediation on March 1, 2013, he orally agreed to a settlement and believed that all of the parties at the mediation had agreed to the settlement. Ward testified he heard Jean orally agree to the settlement at mediation. Ward testified that he understood that a formal document would be prepared "summarizing and detailing" the terms and conditions that had been agreed to at mediation. Ward acknowledged that the parties did not get into the details about the

settlement agreement on the night of mediation, that the agreement was "[n]ot in its finality," and that "it took 41 revisions to get to that." Ward testified, however, that he was not under the impression that an agreement had to be written to be binding.

¶ 25 Ward testified that he signed the later-prepared written settlement agreement on behalf of himself and on behalf of Norma. Ward testified that under the terms of the written settlement agreement, he would receive a 9% share instead of the 16% share he would have received under the terms of the Trust alone. Ward testified that he believed the written settlement accurately reflected the oral agreement that was reached at mediation.

¶ 26 Eileen testified that she attended the mediation on March 1, 2013, because Warren had left her a percentage of the Trust assets. Eileen acknowledged that she had agreed to receive less pursuant to the settlement agreement than she would have received pursuant to the Trust alone. Eileen testified that at the conclusion of mediation, she orally agreed to a settlement, and that, although she was not in the same room as Jan, Jean, Susan, or Ward, she believed that all of the parties had orally agreed to a settlement. Eileen testified that the terms of the later-prepared written settlement agreement reflected the terms that she believed the parties had orally agreed to at mediation. Eileen testified that while she did not believe that a written agreement was required, she had understood that a written settlement agreement would be drafted that everyone would have to sign.

¶ 27 Marcia was married to Warren from 1979 until his death on August 21, 2006. Marcia testified that at the conclusion of mediation on March 1, 2013, she understood that a settlement agreement had been reached among the parties. Marcia acknowledged

that she was not in the room with Jean but that the mediator had conveyed to her that Jean had proposed the settlement that she had accepted. Marcia testified that she understood that after the mediation, a more formal written settlement agreement would be prepared. Marcia testified that she signed the later-prepared written settlement agreement and that the terms of that settlement agreement reflected the terms she believed the parties orally agreed to at mediation.

¶ 28 Jean testified that the written settlement agreement did not reflect what had been agreed to at mediation because at mediation the settlement involved "all cash terms." Jean acknowledged that she told the mediator at one point that she would settle her claim for $1.45 million cash, with no taxes withdrawn, and loans forgiven. Jean testified, however, that when she was presented with the one-page memorandum of settlement agreement and the terms were explained to her, she indicated then that she had not agreed to those terms, that the terms had changed, and that she would not sign an agreement.

¶ 29 The circuit court entered an order on November 14, 2013. In its order, the court noted that at the settlement conference, Jean was represented by an attorney, who left to tend to personal matters. The court found that he was available by telephone to consult with Jean, who found herself without her attorney present the last few hours of mediation.

¶ 30 In its order, the circuit court further noted that at some time in the evening, the mediator had met with Jan, Jean, and Susan and Jan's and Susan's attorneys, positing the question: would a demand to settle for stock pursuant to the Trust, plus an additional $1.45 million to each of the children, settle the case? The court found that Jan, Jean, and Susan each told the mediator that if the parties would agree to those terms, all claims

would be settled. The court found that the parties had agreed to those terms, and at that point, the mediator and all those present had concluded that a global settlement had been reached. The circuit court found that although Jean subsequently stated that she would like to sleep on the deal and did not execute a written agreement, "an enforceable meeting of the minds occurred on March 1, 2013 in which all parties hereto agreed to settle all claims." The court thereby approved the 22-page written settlement agreement, which was prepared subsequent to the mediation, as reflecting the terms of the oral settlement agreement reached at mediation on March 1, 2013. On December 13, 2013, Jean filed her notice of appeal.

¶ 31 ANALYSIS

¶ 32 On appeal, Jean argues, among other contentions, that the circuit court's order must be reversed because it was entered contrary to the terms of the Mediation Agreement.

¶ 33 The Mediation Agreement is a contract and as such, its construction and enforcement are governed by principles of contract law. *In re Marriage of Haller*, 2012 IL App (5th) 110478, ¶ 26. In interpreting a contract under Illinois law, "[t]he paramount objective is to give effect to the intent of the parties as expressed by the terms of the agreement." *International Minerals & Chemical Corp. v. Liberty Mutual Insurance Co.*, 168 Ill. App. 3d 361, 370 (1988).

¶ 34 Even where the essential terms of a contract have been orally agreed upon, " 'if the clear intent of the parties is that neither will be legally bound until the execution and delivery of a formal agreement, then no contract comes into existence until such

execution and delivery.' " *Ceres Illinois, Inc. v. Illinois Scrap Processing, Inc.*, 114 Ill. 2d 133, 143-44 (1986) (quoting *Chicago Title & Trust Co. v. Ceco Corp.*, 92 Ill. App. 3d 58, 69 (1980)); *Wysocki v. Bedrosian*, 124 Ill. App. 3d 158, 168 (1984). In other words, where the reduction of an agreement to writing and its formal execution is objectively intended by the parties as a condition precedent to its completion, there can be no contract until then, even if the actual terms have been agreed upon. *Chicago Investment Corp v. Dolins*, 107 Ill. 2d 120, 126-27 (1985); *In re Estate of Glassman*, 257 Ill. App. 3d 102, 108 (1993); *In re Marriage of Lorton*, 203 Ill. App. 3d 823, 827 (1990); *Russell v. Jim Russell Supply, Inc.*, 200 Ill. App. 3d 855, 860 (1990); *In re Marriage of Chaltin*, 153 Ill. App. 3d 810, 813 (1987); *Interway, Inc. v. Alagna*, 85 Ill. App. 3d 1094, 1098 (1980); see also *La Salle National Bank v. International Ltd.*, 129 Ill. App. 2d 381, 392-94 (1970) (an oral settlement agreement will not be binding on the parties, even where the parties are in total and complete agreement as to all essential and material terms, where it was not the intent of the parties from the outset of the negotiations to be bound, except upon the execution of a written agreement).

¶ 35 The Mediation Agreement, signed by all the parties prior to or on the day of mediation, governed the terms of the mediation. Pursuant to the Mediation Agreement, the parties agreed "to submit the dispute for non-binding mediation." The plain language of the Mediation Agreement contemplated the execution of a written settlement agreement that would be binding and enforceable in a judicial proceeding. It further contemplated that prior to the "executed written settlement agreement" the parties' oral or written offers, promises, and statements made in the course of mediation, premediation,

or postmediation "shall be considered confidential and privileged settlement communications[,] shall be deemed inadmissible in any arbitration, administrative[,] or judicial proceeding[,] and may not be disclosed to non-participants in the mediation." To hold that the parties agreed to consider an oral agreement binding and enforceable in a judicial proceeding would render these provisions meaningless. See *Thompson v. Gordon*, 241 Ill. 2d 428, 442 (2011) ("A court will not interpret a contract in a manner that would nullify or render provisions meaningless, or in a way that is contrary to the plain and obvious meaning of the language used."); *Bjork v. Draper*, 381 Ill. App. 3d 528, 541 (2008) (meaning and effect must be given to each provisions of a contract so that no provision is rendered meaningless). Instead, the plain language of these provisions reveals that the parties clearly intended the reduction of the agreement to writing and its formal execution as a condition precedent to its completion. See *Interway, Inc.*, 85 Ill. App. 3d at 1101 (no contract exists where unambiguous letter of intent stated the " 'purchase is subject to a definitive Purchase and Sale Contract to be executed by the parties' "); *S.N. Nielsen Co. v. National Heat & Power Co.*, 32 Ill. App. 3d 941, 943 (1975) (no contract where letter of intent stated a " '[f]ormal contract will be issued in the very near future' ").

¶ 36 Moreover, in determining whether a party intended that a contract should be reduced to writing, a court can consider the following factors: whether the contract is one usually put into writing, whether there are few or many details, whether the amount involved is large or small, whether the agreement requires a formal writing for a full expression of the covenants and promises, and whether negotiations themselves indicate

that a written draft is contemplated as the final conclusion of negotiations. *Quake Construction, Inc. v. American Airlines, Inc.*, 141 Ill. 2d 281, 289 (1990); *Chicago Investment Corp.*, 107 Ill. 2d at 124; *In re Marriage of Chaltin*, 153 Ill. App. 3d at 813. "Also, where the anticipated document is never executed, the parties' conduct and statements subsequent to the oral agreement may be decisive of the question whether a contract had been made." *Ceres Illinois, Inc.*, 114 Ill. 2d at 144.

¶ 37 All of these factors support the conclusion that the parties intended from the outset of negotiations to be bound only upon the execution of a written contract. The parties were negotiating a complex, multi-million dollar settlement agreement following mediation. The final, proffered version of the agreement was not a simple memorialization of the parties' oral agreement; it contained numerous provisions regarding details that had not been finalized at mediation. See *Ceres Illinois, Inc.*, 114 Ill. 2d at 145.

¶ 38 Settlement agreements following mediation are contracts usually reduced to written form. Section 4(a) of the Uniform Mediation Act provides that all "mediation communication[s]" are privileged and cannot be used in a court proceeding. 710 ILCS 35/4(a) (West 2012). "Mediation communications" include "a statement, whether oral or in a record or verbal or nonverbal, that occurs during a mediation or is made for purposes of considering, conducting, participating in, initiating, continuing, or reconvening a mediation or retaining a mediator." 710 ILCS 35/2(2) (West 2012). However, there is no privilege for a mediation communication that is "in an agreement evidenced by a record signed by all parties to the agreement." 710 ILCS 35/6(a) (West 2012). The Uniform

Mediation Act therefore contemplates that a signed, written agreement is admissible and enforceable following mediation and that oral communications generally are not.

¶ 39 Likewise, the local court rules contemplate a written agreement following mediation. Although the parties' mediation was voluntary and not court-ordered, the local court rules provide that during mediation "[i]f an agreement is reached in whole or in part, it shall be reduced to writing on the Memorandum of Agreement Form or attached thereto and signed by the parties and their counsel, if any, at the conclusion of the mediation." 20th Judicial Cir. Ct.-Annexed Mediation for Civil Cases IV(M) (Oct. 26, 2004). See *In re Marriage of Akbani*, 2014 IL App (5th) 130266, ¶ 39 (finding agreement following voluntary mediation nonbinding pursuant to this local court rule because neither attorney signed agreement). Accordingly, we find that mediation agreements are customarily reduced to writing and that this factor supports the conclusion that the parties contemplated a written settlement agreement. See *In re Marriage of Chaltin*, 153 Ill. App. 3d at 813 (where property settlements are customarily reduced to writing and parties continued hearing to reduce agreement to writing, parties contemplated written settlement agreement and oral settlement agreement was not binding).

¶ 40 We find untenable the contention that the parties agreed in advance pursuant to the Mediation Agreement to reserve the right to enforce an oral settlement agreement. The Mediation Agreement made mediation, premediation, and postmediation offers, promises, and statements, written or oral, confidential and privileged and inadmissible. The Mediation Agreement contemplated, however, that the parties would be bound by an

"executed written settlement agreement." Likewise, the Uniform Mediation Act provides that statements, whether oral or in a record or verbal or nonverbal, during a mediation are privileged and confidential, and not subject to discovery or admissible in evidence in a proceeding but provides no privilege for a signed agreement evidenced by record. 710 ILCS 35/4(a), 6(a), 8 (West 2012). The Mediation Agreement's language was therefore consistent with the Uniform Mediation Act and certainly did not constitute an agreement that all or part of the oral communications at mediation would not be privileged (710 ILCS 35/4(c) (West 2012)).

¶ 41 Moreover, the amount involved was substantial, and the complex and detailed agreement contemplated by the parties as well as the negotiations demonstrate that the parties intended and expected that the settlement agreement would be formalized in a written and signed document before a contract existed. Prior to mediation, the Trust consisted primarily of closely held bank stock, the sale of which was restricted by a stock agreement. In order for the bank stock to be converted into cash to fund the settlement amounts, the stock restrictions would need to be resolved with the bank and a willing buyer found, necessarily involving parties outside of mediation. Accordingly, the terms of the sale of the bank stock could not have been incorporated into an agreement at mediation but would necessarily require consultation after mediation, prior to the executed written agreement. Indeed, Marcia concedes in her brief on appeal that "all of the [p]arties clearly understood and agreed prior to the mediation that a written settlement agreement would necessarily have to be drafted and signed after the conclusion of the

mediation in order to incorporate the timing, mechanics[,] and mechanism of the sale of bank stock, if any."

¶ 42 Marcia also concedes in her brief that "a written settlement agreement would be prepared at a later date" because of "the complexity of drafting the settlement terms." The parties' mediation involved all pending litigation and all matters regarding the management, operating, and accounting of the Trust for payment of a specified amount, verification of the Trust operation and accounting, the handling of pending tax litigation, and the execution of a mutual release of claims by each of the parties. The written settlement agreement that allegedly memorialized the oral agreement reached at mediation was 22 pages in length, 15 of which involved, among other things, extensive provisions involving the settlement amount, tax allocation, redemption of bank shares, release of claims, confidentiality, and attorney fees.

¶ 43 Moreover, the record reveals that the terms of the proffered written settlement agreement underwent 41 revisions after mediation, before reaching the version presented to the circuit court. See *Ceres Illinois, Inc.*, 114 Ill. 2d at 144 (parties' conduct subsequent to the alleged oral agreement may be decisive of the question of whether a contract had been made). This further indicates that the parties believed they were in the process of negotiating the final details of the settlement agreement but did not consider themselves bound until the appropriate revisions had been made to the final, binding written document. See *Quinlan v. Stouffe*, 355 Ill. App. 3d 830, 839-40 (2005) (even if the parties reached an agreement, their subsequent actions, including the plaintiff's faxed settlement agreement, defendants' counterproposal and plaintiff's rejection of that

counterproposal and offer to dismiss in exchange for payment, indicated that they effectively withdrew from the agreement); *National Union Building Ass'n v. Knab*, 177 Ill. App. 649, 651 (1913) ("The contemporaneous talk about a written lease and the subsequent submission of one render it clearly a case where the parties negotiating a contract contemplated that a formal agreement should be drawn up and signed as a condition precedent to its completion, and it would not be a contract until that was done. Amer. & Eng. Ency. of Law, vol. 7 (2nd Ed.) p. 140.").

¶ 44 In sum, the record evidences a clear intention by the parties to reduce the settlement agreement to writing as a condition precedent to the binding effect of any agreement. *In re Marriage of Akbani*, 2014 IL App (5th) 130266, ¶ 38 (no binding agreement because attorney review clause found to be condition precedent to the formation of a contract); *Walsh v. Fallis*, 266 Ill. App. 341, 344 (1932) ("If it was the intention of the parties to draft a written lease covering their future status then the oral agreement was not binding unless reduced to writing and signed.").

¶ 45 Because the reduction of an agreement to writing and its formal execution was objectively intended by the parties as a condition precedent to its completion, there was no contract until then, even if the actual terms had been agreed upon. The oral agreements and draft provisions created during and after mediation will not constitute the formation of a binding contract. See *Ceres Illinois, Inc.*, 114 Ill. 2d at 143. Accordingly, we find that the circuit court erred in finding that the parties entered into a binding and enforceable oral settlement agreement at mediation. Because we conclude that the circuit court erred in this regard, we need not address Jean's remaining arguments.

¶ 46 CONCLUSION

¶ 47 For the reasons stated, we reverse the judgment of the circuit court of St. Clair County, and we remand the cause for further proceedings consistent with this order. With regard to the appellees' motions to strike portions of Jean's brief on appeal, which were taken with the case, we hereby deny the motion to strike portions of Jean's issue statement. We further deny the motion to strike Jean's statements and arguments regarding an alleged conflict of interest, as these are rendered moot as a result of our holding.

¶ 48 Reversed and remanded.