THIRD DIVISION
DILLARD, P. J.,
GOBEIL and PIPKIN, JJ.

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April 21, 2026

In the Court of Appeals of Georgia

A26A0277. FALKNER v. GILLILAND et al.

DILLARD, Presiding Judge.

In this interlocutory appeal, Amanda Falkner challenges the trial court's order enforcing a settlement agreement with Kaylee Gilliland, James Gilliland, and Kristin Livingston West.[1] Because we agree with Falkner that she did not make an offer to settle appellees could accept (*i.e.*, there was no settlement agreement), we reverse the trial court's judgment.[2]

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[1] For ease of reference, Kaylee and James will be referred to by their first names and West will be referred to by her last name. We will refer to them collectively as the "appellees."

[2] Because we reverse on this ground, we need not consider Falkner's other arguments, which are that the trial court erred when it (1) resolved genuine issues of material fact without an evidentiary hearing, (2) disregarded a response which constituted a rejection to any purported offer to settle, (3) concluded appellees

Viewed *de novo* in the light most favorable to Falkner,[3] the record shows that in 2018, she and then-minor Kaylee were involved in a car crash. In 2020, Falkner filed suit against Kaylee and her parents, James and West. At the time of the crash, Kaylee and James had an automobile liability insurance policy with USAA with a bodily injury liability limit of $100,000; West had an automobile liability insurance policy with Progressive; and Falkner had an underinsured motorist policy with Nationwide.

In 2020 and 2022, Falkner offered to settle any claims against appellees if USAA paid the $100,000 policy limits; but appellees did not accept this offer. Then, on January 21, 29, and 31, 2025, appellees' counsel sent Falkner's counsel emails about scheduling court-ordered mediation. On January 31, 2025, Falkner's counsel sent appellees' counsel the following email:

"accepted" any purported offer to settle rather than making a counteroffer, and (4) found there was a meeting of the minds despite a material dispute as to the release of West, who was not insured under the tendered insurance policy.

[3] See, e.g., *Lester v. Hampton*, 377 Ga. App. 353, 353 (922 SE2d 595) (2025) ("When reviewing a trial court's order on a motion to enforce a settlement agreement, we apply a de novo standard of review and view the evidence in a light most favorable to the nonmoving party.").

> Would you be agreeable to having a virtual mediation? As you know, as a condition of the UM policy[4] in place, we are not in a position to accept anything short of the full liability limits. I assume if your clients were willing to tender the policy limits, you would have done so by now after several years of litigation with multiple demands and offers of settlement.
>
> If your clients are willing to tender the policy limits, we are agreeable to attending an in-person mediation to allow for negotiations with the UM carrier. If your clients are unwilling, I would like to request a virtual mediation as there is a zero chance of any settlement, and I would very much appreciate you saving me a couple of days of travel for the mediation. Please let me know how you would like to proceed.

The parties then exchanged emails on February 10 and 24, 2025, regarding mediation. On February 10, 2025, Falkner's counsel wrote to appellees' counsel as follows: "Just circling back with you on the mediation. I'm happy to circulate some dates based on the mediator's calendar. Please let me know." Then, on February 24, 2025, appellees' counsel wrote Falkner's counsel: "If you would circulate dates, that would be great! My folks are ready to proceed with mediation." And later that day, Falkner's counsel asked appellees' counsel: "Are you guys agreeing to a virtual mediation?"

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[4] This was Falkner's underinsured motorist policy with Nationwide.

On February 25, 2025, appellees' counsel sent Falkner's counsel an email stating: "I am authorized to tender the available $100,000.00 bodily injury limits under [the] USAA Policy . . . in exchange for a limited liability release of [appellees]. Please provide payment instructions and a W9." The next day, Falkner's counsel sent appellees' counsel an email stating that there was no offer or agreement to settle the case for $100,000. Appellees later moved to enforce a settlement agreement, arguing that Falkner offered to settle her claims in the January 31, 2025 email and appellees accepted the offer through their February 25, 2025 email. Falkner responded that her January 31, 2025 email did not constitute an offer to settle but was simply sent to clarify whether appellees were willing to tender the USAA policy limits, which would trigger Falkner's underinsured policy with Nationwide and thus warrant in-person mediation in Savannah.

The trial court granted appellees' motion to enforce the settlement agreement. In doing so, the court found that (1) Falkner's January 31, 2025 email constituted a definitive offer and manifested a willingness to accept the USAA policy limits in exchange for settlement by stating "if [appellees] are willing to tender the policy limits, we are agreeable to attending an in-person mediation"; and (2) appellees'

February 25, 2025 response constituted an unequivocal acceptance of Falkner's offer. The court reasoned that the inclusion of the limited liability release in the February 25, 2025 response was not an additional condition requiring separate acceptance, but merely acknowledged the parties' implied agreement to terminate the controversy. The court also found that the essential terms of the settlement agreement were clearly established: appellees would tender the $100,000 USAA policy limits, and Falkner would execute a limited liability release of appellees. The court then certified its ruling for immediate review, and Falkner filed an interlocutory application, which we granted.[5] This appeal follows.

Again, Falkner argues that her January 31, 2025 email did not constitute a valid settlement offer because (1) it did not manifest an intent to resolve her claims against appellees, and (2) the purpose of the email was simply to determine whether mediation would be in-person or virtual. In response, appellees claim Falkner's email

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[5] An order granting a motion to enforce a settlement agreement "is not final until the trial court expressly enters final judgment on that order." *Thomas v. Sheppard*, 349 Ga. App. 871, 871 (827 SE2d 60) (2019). Here, there is no indication the trial court entered a final judgment making the settlement agreement the court's judgment. As a result, an interlocutory application was required. See *State v. White*, 354 Ga. App. 214, 216 (840 SE2d 697) (2020) (noting that "[b]ecause the order appealed from is not a final order, the State was required to follow the interlocutory application procedures in OCGA § 5-6-34(b)").

constituted a valid settlement offer because under *Herring v. Dunning*,[6] the correspondence contained an implied promise to execute a release or otherwise terminate the controversy in exchange for payment of the USAA policy limits. But we agree with Falkner that the January 31, 2025 email did not constitute a valid settlement offer, and so the trial court erred in granting appellees' motion to enforce settlement agreement.

We are mindful, of course, that "the law favors compromise," and when parties have "entered into a definite, certain, and unambiguous agreement to settle, it should be enforced."[7] And in Georgia, an agreement "alleged to be in settlement and compromise of a pending lawsuit must meet the same requisites of formation and enforceability as any other contract."[8] So, an agreement between two parties will

[6] 213 Ga. App. 695 (446 SE2d 199) (1994).

[7] *Francis v. Chavis*, 345 Ga. App. 641, 643 (814 SE2d 778) (2018) (punctuation omitted). Accord *Johnson v. DeKalb County*, 314 Ga. App. 790, 793(1) (726 SE2d 102) (2012). See also *Pourreza v. Teel Appraisals & Advisory, Inc.*, 273 Ga. App. 880, 882 (616 SE2d 108) (2005) ("Compromises of doubtful rights are upheld by general policy, as tending to prevent litigation, in all enlightened systems of jurisprudence." (citation and punctuation omitted)).

[8] *Francis*, 345 Ga. App. at 643 (punctuation omitted). Accord *S. Medical Corp. v. Liberty Mut. Ins. Co.*, 216 Ga. App. 289, 291(2) (454 SE2d 180) (1995).

occur "only when the minds of the parties meet at the same time, upon the same subject matter, and in the same sense."[9] In other words, absent a mutual agreement, there is "no enforceable contract as between the parties."[10]

In cases like this one, in which "the existence of a binding agreement is disputed, the proponent of the settlement must establish its existence in writing."[11] And when determining whether the parties

> had the mutual assent or meeting of the minds necessary to reach agreement, courts apply an objective theory of intent whereby one party's intention is deemed to be that meaning a reasonable man in the position of the other contracting party would ascribe to the first party's manifestations of assent, or that meaning which the other contracting party knew the first party ascribed to his manifestations of assent.[12]

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[9] *Francis*, 345 Ga. App. at 643 (punctuation omitted). Accord *S. Medical Corp.*, 216 Ga. App. at 291(2).

[10] *Francis*, 345 Ga. App. at 643 (punctuation omitted). Accord *Anderson v. Benton*, 295 Ga. App. 851, 854(1) (673 SE2d 338) (2009).

[11] *Francis*, 345 Ga. App. at 643 (punctuation omitted). Accord *Pourreza*, 273 Ga. App. at 882.

[12] *Cox Broadcasting Corp. v. NCAA*, 250 Ga. 391, 395 (297 SE2d 733) (1982).

In doing so, the circumstances surrounding the making of the contract, "such as correspondence and discussions, are relevant in deciding if there was a mutual assent to an agreement, and courts are free to consider such extrinsic evidence."[13]

Importantly, a contract is enforceable when its terms are "expressed in language sufficiently plain and explicit to convey what the parties agreed upon." And a definite offer and complete acceptance, for consideration, "create a binding contract."[14] But if the offer is so indefinite "as to make it impossible for a court to decide just what it means, and to fix the legal liability of the parties, its acceptance can not result in an enforceable agreement."[15] Indeed, an offer is "the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it."[16] So, any conduct from which

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[13] *Frickey v. Jones*, 280 Ga. 573, 575 (630 SE2d 374) (2006) (punctuation omitted). Accord *Cox Broadcasting Corp.*, 250 Ga. at 395.

[14] *Moreno v. Strickland*, 255 Ga. App. 850, 852(1) (567 SE2d 90) (2002). Accord *Gabrell v. Hancock*, 378 Ga. App. 406, 410 (926 SE2d 110) (2026).

[15] *Herring*, 213 Ga. App. at 697 (punctuation omitted). Accord *Weill v. Brown*, 197 Ga. 328, 332 (29 SE2d 54) (1944); *Poulos v. Home Fed. Sav. & Loan Ass'n*, 192 Ga. App. 501, 502 (385 SE2d 135) (1989).

[16] *Rakusin v. Radiology Assocs. of Atlanta*, 305 Ga. App. 175, 180(1) (699 SE2d 384) (2010) (physical precedent only) (quoting the Restatement (Second) of Contracts § 24 (1981)).

"a reasonable person in the offeree's position would be justified in inferring a promise in return for a requested act or a requested promise by the offeree amounts to an offer."[17]

This bring us back to appellees' misplaced reliance on *Herring*, in which the defendant agreed to settle the plaintiff's lawsuit by paying the $15,000 coverage limits of an insurance policy in exchange for a complete release.[18] More precisely, the plaintiff sent the defendant a written "offer to settle th[e] case ... for the limits of your liability insurance policy," as well as a written "offer to settle th[e] case for $15,000"; and the defendant wrote to the plaintiff to "accept [the] offer to settle the ... case ... for the policy limits of $15,000.00 in exchange for a full and final release of [the defendant]."[19] And we concluded in *Herring* that the plaintiff's "offer to settle" his lawsuit for a stated amount was an offer capable of acceptance,[20] reasoning that while the offer

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[17] *Id*. (quoting 1 Williston on Contracts § 4:20 (4th ed.)).

[18] 213 Ga. App. at 696.

[19] *Id.*

[20] *Id.* at 697.

> contained no express promise to release or discharge the defendant upon tender of the policy limits ... , a promise to terminate the controversy or the litigation is a necessary implication to the 'offer to settle.' It is the quid pro quo. Indeed, that promise is the very definition of an 'offer to settle.' An implicit contractual provision exists where such provision is necessary to effect the full purpose of the contract and is so clearly within the contemplation of the parties that they apparently deemed it unnecessary to state it. Since the plaintiff's written offer to settle her pending tort claim with the tortfeasor for the limits of the latter's automobile liability coverage necessarily contained her implied promise to execute some instrument terminating the controversy as to that settling defendant, such an offer is sufficiently definite to be capable of acceptance and so to create a mutually binding and enforceable contract.[21]

We also explained in *Herring* that a "settlement" is "an agreement to terminate or forestall all or part of a lawsuit" and the word "settle" has "an established legal meaning and implies a mutual adjustment of accounts between different parties and an agreement upon the balance."[22]

In contrast with *Herring*, Falkner's January 31, 2025 email did not constitute a definite or valid offer capable of acceptance because its text did not manifest an intent

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[21] *Id.* at 698 (citation omitted).

[22] *Id.* at 697.

to terminate her lawsuit in exchange for payment of the $100,000 USAA policy limits. Rather, the purpose of the email (as evinced by the relevant language) was to determine whether appellees were willing to *tender* or *offer* the USAA policy limits, which would then trigger Falkner's underinsured motorist policy and affect the nature of mediation. Again, Falkner's email provided as follows:

> If [appellees] are willing to tender the policy limits, we are agreeable to attending an in-person mediation to allow for negotiations with the UM carrier. If your clients are unwilling, I would like to request a virtual mediation as there is a zero chance of any settlement, and I would very much appreciate you saving me a couple of days of travel for the mediation.

So, although Falkner manifested her willingness to attend in-person mediation upon appellees' tender of the policy limits, she did *not* manifest a willingness to terminate her lawsuit in exchange for such a tender.[23]

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[23] Cf. *Slaughter v. Cravens*, 375 Ga. App. 642, 649–50(1)(a),(b) (917 SE2d 224) (2025) (holding that plaintiff made an offer to settle to which insurance company made a counteroffer, and analyzing the response and actions of plaintiff's counsel after receiving the counteroffer to conclude the counteroffer was accepted before plaintiff engaged in settlement negotiations with UM carrier), *cert. granted* (Feb. 17, 2026).

Herring is inapposite, then, because there—unlike here—the plaintiff used the phrase "offer to settle" in his communications with the defendant.[24] And in the absence of a valid offer to settle, the parties cannot form a binding settlement agreement. As a result, the trial court erred in concluding otherwise and we reverse its judgment.

Judgment reversed. Gobeil and Pipkin, JJ., concur.

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[24] See *Johnson v. DeKalb County*, 314 Ga. App. 790, 794(1) (726 SE2d 102) (2012) (holding that email "making definite statements to settle" constituted an offer to settle); *Rakusin*, 305 Ga. App. at 180 (1) (holding that, by tendering checks to the offeree, the offeror "clearly and unambiguously was manifesting a willingness to pay the amounts reflected in those checks in return for the [offeree] accepting those amounts as a fair valuation of what was owed [her]"); *Pourreza*, 273 Ga. App. at 883 (holding that letter memorialized the parties' oral agreement to settle, when "[t]he essential terms of the agreement were clear: [i]n exchange for [the plaintiff's] agreement to dismiss the lawsuit with prejudice, [the defendant] agreed not to seek attorney fees").