

Opinion issued February 23, 2017



In The
Court of Appeals
For The
First District of Texas

NO. 01-15-00794-CV

PENNY GALLIS, Appellant
V.
GEORGE PAPADOGIANNIS, Appellee

**On Appeal from the 245th District Court
Harris County, Texas
Trial Court Case No. 2011-30520**

MEMORANDUM OPINION

This is an appeal from a judgment arising from the trial court's interpretation of the parties' 2011 divorce decree. We affirm in part and reverse and render in part.

PRIOR PROCEEDINGS AND THE 2011 DECREE

On July 27, 2011, the trial court signed an Agreed Final Decree of Divorce (the 2011 Decree) dissolving the marriage between Penny Gallis (f/k/a Penny Papadogiannis) and George Papadogiannis. It was also signed by Penny, Penny's attorney, and George (who was pro se).

The 2011 Decree appointed the parties as Joint Managing Conservators of their minor child, N.P., and awarded Penny the exclusive right to designate N.P.'s primary residence with a Standard Possession Order governing visitation. George was ordered to pay \$1,500 per month in child support, monthly spousal maintenance, Penny's health insurance premiums, as well as maintain N.P.'s health insurance policy as additional child support, and obligated him to pay all medical costs for N.P. not covered by insurance and the college expenses of both N.P. and M.P. (the parties' adult child).

The relevant property division and spousal support obligations from the 2011 Decree are as follows:

Division of Marital Estate

The Court finds that the following is a just and right division of the parties' marital estate, having due regard for the rights of each party and the child of the marriage.

Property to Husband

IT IS ORDERED AND DECREED that the husband GEORGE PAPADOGIANNIS, is awarded the following as his sole and separate property, and the wife is divested of all right, title, interest, and claim in and to that property:

H-1. The following real property, including but not limited to any escrow funds, prepaid insurance, utility deposits, keys, house plans, home security access and code, garage door opener, warranties and service contracts, and title and closing documents:

The home located at 31-42 34th' Street, Astoria, New York 11106.

H-2. An undivided Twenty percent (20%) interest of the amount invested by GEORGE PAPADOGIANNIS in a residence to be purchased within eighteen months of entry of this Agreed Final Decree of Divorce. Such residence to be chosen by PENNY PAPADOGIANNIS and paid for with \$700,00 [sic] invested by GEORGE PAPADOGIANNIS, plus any additional funds borrowed by PENNY PAPADOGIANNIS. In the event that PENNY PAPADOGIANNIS chooses a residence that costs less than \$700,000. IT IS ORDERED that GEORGE PAPADOGIANNIS shall pay the full purchase price, plus closing costs and fees up to but not to exceed \$700,000.00.

The parties agree and so IT IS ORDERED that GEORGE PAPADOGIANNIS will pay all costs for water service, property taxes and insurance on the residence until [N.P.] reaches the age of majority or PENNY PAPADOGIANNIS sells the residence, whichever event occurs first. IT IS FURTHER ORDERED that PENNY PAPADOGIANNIS may opt to buy GEORGE PAPADOGIANNIS out of his Twenty (20%) interest at any time within ten years of the initial purchase. In the event of the death of one of the parties, IT IS ORDERED that the deceased party's share shall pass to the children equally.

....

Property to Wife

IT IS ORDERED AND DECREED that the wife, PENNY PAPADOGIANNIS, is awarded the following as her sole and separate property, and the husband is divested of all right, title, interest, and claim in and to that property:

....

W-5. An undivided interest, less 20% of the amount invested by GEORGE PAPADOGIANNIS as described herein above in a residence to be purchased within twenty four (24) months of entry of

this Agreed Final Decree of Divorce. Such residence to be chosen by PENNY PAPADOGIANNIS and paid for with \$700,000 invested by GEORGE PAPADOGIANNIS, plus any additional funds borrowed by PENNY PAPADOGIANNIS.

In the event that PENNY PAPADOGIANNIS chooses a residence that costs less than \$700,000, IT IS ORDERED that GEORGE PAPADOGIANNIS shall pay the full purchase price, plus closing costs and fees, but not to exceed \$700,000.00. If the residence costs less than \$700,000.00, IT IS ORDERED that GEORGE PAPADOGIANNIS is to pay the difference between \$700,000.00 and the purchase price directly to PENNY PAPADOGIANNIS no later than the date of closing of the purchase of such residence.

The parties agree and so IT IS ORDERED that GEORGE PAPADOGIANNIS will pay all costs for water service, property taxes and insurance on the residence until [N.P.] reaches the age of majority or PENNY PAPADOGIANNIS sells the residence, whichever event occurs first. IT IS FURTHER ORDERED that PENNY PAPADOGIANNIS may opt to buy GEORGE PAPADOGIANNIS out of his Twenty (20%) interest at any time within ten years of the initial purchase. In the event of the death of one of the parties. IT IS ORDERED that the deceased party's share shall pass to the children equally.

Division of Debt

Debts to Husband

IT IS ORDERED AND DECREED that the husband, GEORGE PAPADOGIANNIS, shall pay, as a part of the division of the estate of the parties, and shall indemnify and hold the wife and her property harmless from any failure to so discharge, these items:

.....

H-4. The sum of Seven Hundred Thousand dollars (\$700,000.00) payable to PENNY PAPADOGIANNIS and to be used for the purchase of a residence within twenty four (24) months of entry of this Agreed Final Decree of Divorce. Such residence is to be chosen by PENNY PAPADOGIANNIS and paid for GEORGE PAPADOGIANNIS, plus any additional funds borrowed by PENNY PAPADOGIANNIS. In the event that PENNY PAPADOGIANNIS chooses a residence that costs less than \$700,000, IT IS ORDERED

that GEORGE PAPADOGIANNIS shall pay the full purchase price, plus closing costs and fees, but not to exceed \$700,000.00. If the residence costs less than \$700,000.00, IT IS ORDERED that GEORGE PAPADOGIANNIS is to pay the difference between \$700,000.00 and the purchase price directly to PENNY PAPADOGIANNIS no later than the date of closing of the purchase of such residence.

H-5. All costs for water service, property taxes and insurance on the above-mentioned residence to be chosen by PENNY PAPADOGIANNIS, until [N.P.] reaches the age of majority, or PENNY PAPADOGIANNIS sells the residence, whichever event occurs first.

....

Debts to Wife

IT IS ORDERED AND DECREED that the wife, PENNY PAPADOGIANNIS, shall pay, as a part of the division of the estate of the parties, and shall indemnify and hold the husband and his property harmless from any failure to so discharge, these items:

W-1. All encumbrances, ad valorem taxes, liens, assessments, or other charges due or to become due on the real and personal property awarded to the wife in this decree unless express provision is made in this decree to the contrary.

....

Additional Agreements

....

The parties agree further and so IT IS ORDERED that GEORGE PAPADOGIANNIS shall pay for water and major repairs to the house purchased by PENNY PAPADOGIANNIS. Major repairs shall be defined as any repair costing more than \$500.00.

Court-Ordered Maintenance

The Court finds that under the circumstances presented in this case, PENNY PAPADOGIANNIS is eligible for maintenance under the provisions of Texas Family Code chapter 8. Accordingly, GEORGE PAPADOGIANNIS is ordered to pay as maintenance the sum of five thousand dollars (\$5000.00) per month to PENNY PAPADOGIANNIS, with the first payment being due on August 1,

2011, and a like amount being due on the first day of each consecutive month thereafter until the earliest of one of the following events occurs:

1. PENNY PAPADOGIANNIS purchases a residence - If PENNY PAPADOGIANNIS purchases a residence, IT IS ORDERED that GEORGE PAPADOGIANNIS shall pay as maintenance the sum of Four Thousand Dollars (\$4,000.00) per month to PENNY PAPADOGIANNIS, with the first payment being due on the first day of the month after PENNY PAPADOGIANNIS moves into such purchased residence; and a like amount being due on the first day of each consecutive month thereafter until the earliest of one of the following events occurs:

2. death of either Petitioner or Respondent;
3. remarriage of PENNY PAPADOGIANNIS; or
4. further orders of the Court affecting the spousal maintenance obligation.

Payment shall be made by GEORGE PAPADOGIANNIS directly to PENNY PAPADOGIANNIS by cash, cashier's check, or money order at the last known address provided to GEORGE PAPADOGIANNIS by PENNY PAPADOGIANNIS.

THE UNDERLYING PROCEEDINGS

A. George's Motion to Modify and Breach of Contract Claim

On October 22, 2013, George filed an Original Petition to Modify Suit Affecting the Parent-Child Relationship, Damage Suit for Parental Alienation and Interference with Possessory Interest in Child, and Suit for Breach of Contract in the court of continuing jurisdiction. The filing alleged that the "circumstances of the child or a person affected by the Order to be modified have materially and substantially changed since the rendition of the Order."

Specifically, George alleged that the 2011 Decree obligated Penny to purchase a house within 18 or 24 months (as there are conflicting time limitations in the decree), but that 26 months had passed without Penny doing so, despite George having provided \$681,000.00 to her in cash towards his obligation to pay the purchase price up to \$700,000.00. Moreover, he asserts that Penny moved N.P. to New York with no notice—a place far away from George and with a much higher cost of living. He points out that the rebuttable presumption under the Texas Family Code is that spousal maintenance is not warranted unless the spouse seeking maintenance has exercised diligence in earning sufficient income to provide for the spouse’s reasonable needs during a period of separation and during the time the suit for dissolution of the marriage is pending. He contends that she has not done so, and that the move to New York has reduced the likelihood of her being able to support herself, and has degraded N.P.’s living conditions, and has prejudiced his ability to see N.P.:

f. . . . Respondent, at no time during the pendency of the divorce or during the 26 months post-divorce, has made any effort to provide for her own minimum reasonable needs, and has, post-divorce, moved herself and the child to the State of New York, in which, given Respondent’s background and education, the likelihood of obtaining employment adequate to supporting herself, is significantly reduced by a move from the Houston, Texas area and the comparative economic conditions of each location.

g. The move to the State of New York has further degraded the living conditions for the child the subject of this suit, due in part to

a dramatic increase in the cost of living in comparison to the Houston, Texas region.

h. In the belief that he was acting in the best interest of all parties, including the child and himself, Petitioner consented to no geographical restriction on the residence of the child, financing the purchase of a \$700,000.00 home presumably in the geographical area of his place of employment, and the payment of generous spousal support for the lifetime of Respondent or himself.

i. Respondent's actions for the 26 months, post-divorce, have exhibited a distinct lack of concern for the living conditions of herself and the child the subject of this suit, behavior that is erratic and devoid of common sense, have alienated the child and Petitioner, and have severely curtailed the times of possession and access of the child by Petitioner, specifically by her erratic communications with Respondent, and her inability to follow through on visitation plans that have been previously agreed to by the parties.

1. *Modifications Sought*

Based on these allegations of changed circumstances, George sought the following modifications to the 2011 Decree.

- Allow Penny to remain joint managing conservator with the exclusive right to designate N.P.'s primary residence, but with a geographical restriction requiring that residence be in Harris County or the counties contiguous to Harris County.
- Vacate George's spousal support obligation or, alternatively, "reduce[]" to a sum of \$1,000.00 per month if and only if Respondent and child the subject of this suit, move their permanent residence to Harris County, Texas or counties contiguous thereto, and that such payment of \$1,000.00 per month continue until the earliest occurrence of one of the following events: (1) the expiration of 24 months from the date of entry of the Order of Modification; (2) the total sum of \$24,000.00 is paid in full to Respondent; (3) the death of either Penny Gallis or George Papadogiannis; (4) remarriage of Penny Gallis; or (5) further orders of the Court affecting the spousal maintenance obligation.

2. *Damages Sought*

George further requested a finding that Penny breached her contractual agreement to purchase a home within 24 months by failing to do so “following the good faith delivery of the sum of \$681,000.00 to her by George Papadogiannis within the agreed time frame.” He requested that the court award him a judgment against Penny for \$681,000.00. He also requested an award of attorneys’ fees.

3. *Penny’s Answer*

Penny entered a general denial and sought attorneys’ fees, characterizing George’s motion as filed frivolously and designed to harass her.

B. Penny’s Counter-Petition to Modify Parent-Child Relationship

On November 25, 2013, Penny filed a motion also alleging that the “circumstances of the child, a conservator, or other party affected by the order to be modified have materially and substantially changed since the date of rendition of the order to be modified.” As a result, she requested a modification to the standard possession order that would require George’s visits with N.P. be supervised, and alleged that change was in N.P.’s best interest. She also requested that George’s monthly child support obligation be increased because the amount awarded “differs by \$100 from the amount that would be awarded in accordance with the guidelines in chapter 154 of the Texas Family Code,” and such an increase would be in N.P.’s best interest.

Penny additionally requested a temporary injunction prohibiting George from disturbing the peace of N.P. or another party, and prohibiting George from disparaging Penny or Penny's family around N.P. She requested a permanent injunction be entered that would prohibit both George and Penny from disrupting the peace of N.P., and prohibit both from making disparaging remarks about the other party or their family within hearing range of N.P. Finally, she prayed for an award of her attorneys' fees and costs.

C. George's request for Temporary Orders

On February 20, 2014, George requested temporary orders for the "safety and welfare of" N.P., including (1) in the alternative, appointing George joint managing conservator with rights and duties provided in section 153.132 of the Texas Family Code, appointing George as joint managing conservator with the exclusive right to determine N.P.'s place of residence, or ordering Penny to return N.P. to Harris County and impose geographical restrictions upon anyone awarded the exclusive right to determine the child's place of residence, (2) ordering the parties to mediate, (3) ordering Penny to produce 2010–2013 tax returns, a financial statement, and current pay stubs, (4) ordering the return of money George gave to Penny to purchase a home, (5) abating George's alimony payment obligations, (6) abating George's child-support payment obligations and ordering Penny to pay child support, (7) appointing a guardian ad litem, an attorney ad

litem, and an amicus attorney, and (8) requiring Penny to execute a bond or security deposit to ensure Penny's compliance with the 2011 Decree's visitation provisions. George's motion was supported with an attached affidavit averring that Penny moved N.P. to New York without the notice required by the 2011 Decree, that Penny has engaged in harassing and stalking behavior towards George, and that Penny has denied him access to N.P. on numerous occasions that George was allowed visitation under the 2011 Decree.

D. Penny's Motion for Enforcement by Contempt of Spousal Maintenance Order

On March 10, 2014, Penny filed a motion requesting that George be jailed and fined for failing to make spousal support payments in February and March of 2014. She also requested the unpaid \$10,000 be reduced to a money judgment, along with attorneys' fees and costs, and an order of wage withholding.

E. The Mediated Settlement Agreement

On April 21, 2014, the parties entered into a Mediated Settlement Agreement for Band-Aid Order. The Order (1) abated George's May 2014 alimony obligation, (2) allowed Penny to use \$14,000.00 of the money George provided her to purchase a home for daily living expenses instead, (3) required Penny to deposit \$667,000 into her attorney's IOLTA account, and (4) required the parties to re-set their motions seeking relief from the trial court to a later date to allow the amicus to conduct further investigation into the parties' allegations.

F. Penny's Motions for Enforcement

Throughout the pre-trial period, Penny filed several additional motions for enforcement of the parties' decree and requests for the court to hold George in contempt for the failure to abide by his obligations.

G. George's Answer

On May 27, 2014, George filed an Original Answer and Motion to Enter Rule 13 Sanctions. In addition to a General Denial, he asserted that the provisions of the 2011 Decree are too ambiguous to be enforced by contempt, because "it is not clear and specific enough in its terms that Respondent knows what duties or obligations are required."

The Answer also states that George lacked, and continues to lack, the ability to pay alimony in the amount ordered and lacks property that can be sold, mortgaged or otherwise pledged. He also claims he unsuccessfully attempted to borrow the funds. Finally, he alleged that contrary to Penny's assertion in her motion for contempt, he has paid certain amounts of maintenance to Penny or on her behalf. He also sought attorneys' fees.

George sought Rule 13 sanctions based on his disputing the factual basis of Penny's motion for contempt:

1. Movant denies any spousal maintenance arrearage and if any arrearage has occurred, that no such arrearage has existed over 30 days.

2. At no time since the previous order has Movant provided Respondent with a) sufficient notice of her new residential addresses; b) any information concerning the location and/or price of a new residence as outlined by the parties' decree within the time period required, set as a condition precedent for payment by Respondent to Movant; c) at no time was Respondent unreachable or unavailable to Movant for the purposes of communication; and d) the Respondent released funds to the Movant for the purchase of a residence in compliance with the terms of the decree for which the Movant failed to select was not due, nor has the Movant returned said funds to the Respondent in excess of \$640,000.00.
- 3 Both Movant and her attorney, S. JAN ROSENTHAL COHEN, are well acquainted with the above alleged facts and the Court's file as of the filing of this motion Respondent would show that there is absolutely no factual or legal basis for the filing or alleging that Respondent has not complied with the spousal maintenance order and the previous order to be enforced Respondent would further show that Movant authorized her attorney S. JAN ROSENTHAL COHEN to file and prosecute said allegations and request for damages, including incarceration for failure to abide by the previous order. S. JAN ROSENTHAL COHEN signed such pleading, thus, both the Movant and her attorney certified that they read such pleading and to the best of their knowledge, information and belief formed after reasonable inquiry, such allegation was not: (a) groundless and brought in bad faith or (b) groundless and brought for the purpose of harassment. Respondent would show that such certification by Movant and her attorney. S. JAN ROSENTHAL COHEN, is false and that such allegation is groundless and (a) was brought in bad faith or (b) brought for the purposes of harassment; consequently, pursuant to Rule 13 of the Texas Rules of Civil Procedure, both Movant and her attorney S.JAN ROSENTHAL COHEN, should be sanctioned pursuant to Rule 13 and Rule 215.2(b) of the Texas Rules of Civil Procedure upon S.JAN ROSENTHAL COHEN who signed such pleading and Movant who is the represented party.

As sanctions, George sought attorneys' fees of at least \$5,000 from Penny, and monetary damages of \$5,000 from Penny's attorney.

H. Penny's Motion to Release IOLTA Funds

On September 12, 2014, Penny Filed an Emergency Motion to Release Funds from her attorney's IOLTA Account. She alleged that since April 23, 2014, she had found several suitable houses, but that she lost them due to lacking funds to submit with an earnest money contract. She further alleged that, on August 26, 2014, her attorney wrote a letter to George's attorney that she was submitting an offer on a house, but needed \$60,000 for the earnest money. After not receiving a reply from George's attorney, on September 3, 2014, Penny's attorney withdrew \$60,000 from her IOLTA account and gave it to Penny. Penny requested that the court permit her to withdraw the remaining \$590,000 in the IOLTA account, order George to pay the additional \$50,000 owed with interest, and award her attorneys' fees.

I. Penny's Motion to Compel and the Trial Court's Ruling

On September 22, 2014, Penny filed a Motion to Compel Discovery and for Sanctions. She alleged, and quoted specific examples, of requests for financial documents—including tax returns, bank statements, K-1, etc.—that George refused to produce and made allegedly frivolous objections to. Penny requested, as relief, that (1) all of George's objections be overruled, (2) George be ordered to pay

Penny's attorney's fees, (3) the court prohibit George from making any objections to future discovery propounded by Penny, (4) George be prohibited from conducting future discovery, and (5) George's pleadings be stricken.

On November 18, the trial court granted Penny's motion to compel production of various documents. In response to Penny's request for sanctions, the court ordered that the issues of attorneys' fees would be taken up at trial.

J. George's Motion for Escrow Funds and Sanctions

On October 2, 2014, George filed an Emergency Motion for Transfer of Escrow Funds and Request to Order Escrow Replenishment and for Sanctions. He alleged that, in violation of the parties Mediated Settlement Agreement, Penny's attorney withdrew funds from her IOLTA account and gave the funds to Penny. His motion requested that the court order the funds be returned and the entire escrowed amount be transferred to George's lawyer's IOLTA account or the court's registry. He attached letters from Penny's attorney indicating that she was making withdrawals from her escrow account for Penny's use when George failed to make spousal support payments.

George also requested that the court sanction Penny \$60,000 in attorneys' fees for violating the Mediated Settlement Agreement, and sanction Penny's attorney \$60,000 for her part in violating the Mediated Settlement Agreement.

K. Trial Court's Order Regarding Spousal Maintenance

On October 24, the trial court entered an Interlocutory Order Regarding Spousal Maintenance providing for \$12,000 to be withdrawn from Penny's attorney's IOLTA account for the benefit of Penny to satisfy George's alimony obligations for December 2014, January 2015, and February 2015.

L. Penny's First Amended Counterpetition

On November 12, 2014, Penny filed a First Amended Counterpetition to Modify Parent-Child Relationship and Suit for Breach of Contract. It stated that the "circumstances of the child, a conservator, or other party affected by the order to be modified have materially and substantially changed since the date of rendition of the order to be modified," and requested that George's visits with N.P. be supervised and child support be modified to the level provided by the current guidelines.

For the breach-of-contract claim, Penny alleged that George breached the contract requiring him to pay her \$700,000 to purchase a house and that—by George's failing to fully perform numerous obligations under the 2011 Decree—he has interfered with Penny's ability to perform her obligations. Penny requested an award of the balance of the \$700,000, unpaid spousal maintenance and health insurance premiums, attorneys' fees, expenses, costs and interest.

M. Penny's Third amended Motion for Enforcement

On February 13, 2015, Penny filed a Third Amended Motion for Enforcement by Contempt of Spousal Maintenance Order and Enforcement of Property Division and Order to Appear. That motion—the one that was live at the time of trial—again requested that George be jailed and fined for the following alleged violations of the 2011 Decree:

Count 1: GEORGE PAPADOGIANNIS is in contempt of court for failing to pay PENNY GALLIS the full amount of \$700,000.00 within 24 months of entry of the parties Agreed Final Decree of Divorce. By his own admission, GEORGE PAPADOGIANNIS has paid only \$681,000.00 as of September 1, 2013.

Count 2: GEORGE PAPADOGIANNIS is in contempt of court for failing to pay PENNY GALLIS spousal maintenance of \$5,000.00 for the month of February, 2014, as set forth in the Agreed Final Decree of Divorce.

Count 3: GEORGE PAPADOGIANNIS is in contempt of court for failing to pay PENNY GALLIS spousal maintenance of \$5,000.00 for the month of March 2014, as set forth in the Agreed Final Decree of Divorce.

Count 4: GEORGE PAPADOGIANNIS is in contempt of court for failing to pay PENNY GALLIS spousal maintenance of \$5,000.00 for the month of April 2014, as set forth in the Agreed Final Decree of Divorce.

Count 5: GEORGE PAPADOGIANNIS is in contempt of court for failing to pay PENNY GALLIS spousal maintenance of \$5,000.00 for the month of May 2014, as set forth in the Agreed Final Decree of Divorce.

Count 6: GEORGE PAPADOGIANNIS is in contempt of court for failing to pay PENNY GALLIS spousal maintenance of \$5,000.00 for the month of June 2014, as set forth in the Agreed Final Decree of Divorce.

- Count 7: GEORGE PAPADOGIANNIS is in contempt of court for failing to pay PENNY GALLIS spousal maintenance of \$5,000.00 for the month of July 2014, as set forth in the Agreed Final Decree of Divorce.
- Count 8: GEORGE PAPADOGIANNIS is in contempt of court for failing to pay PENNY GALLIS spousal maintenance of \$5,000.00 for the month of August 2014, as set forth in the Agreed Final Decree of Divorce.
- Count 9: GEORGE PAPADOGIANNIS is in contempt of court for failing to pay PENNY GALLIS spousal maintenance of \$5,000.00 for the month of September 2014, as set forth in the Agreed Final Decree of Divorce.
- Count 10: GEORGE PAPADOGIANNIS is in contempt of court for failing to pay PENNY GALLIS spousal maintenance of \$5,000.00 for the month of October 2014, as set forth in the Agreed Final Decree of Divorce.
- Count 11: GEORGE PAPADOGIANNIS is in contempt of court for failing to pay PENNY GALLIS spousal maintenance of \$5,000.00 for the month of November 2014, as set forth in the Agreed Final Decree of Divorce.

On October 24, 2014 this Court, on its own motion, made an interlocutory order for the December 2014, January 2015 and February 2015 spousal support payments.

- Count 12: GEORGE PAPADOGIANNIS is in contempt of court for failing to pay PENNY GALLIS spousal maintenance of \$4,000.00 for the month of December 2014, as set forth in the Interlocutory Order Regarding Spousal Maintenance.
- Count 13: GEORGE PAPADOGIANNIS is in contempt of court for failing to pay PENNY GALLIS spousal maintenance of \$4,000.00 for the month of January, 2015, as set forth in the Interlocutory Order Regarding Spousal Maintenance.
- Count 14: GEORGE PAPADOGIANNIS is in contempt of court for failing to pay PENNY GALLIS spousal maintenance of \$4,000.00 for the month of February, 2015, as set forth in the Interlocutory Order Regarding Spousal Maintenance.

On October 17, 2013, GEORGE PAPADOGIANNIS asked PENNY GALLIS to separate herself from the child's health insurance plan due to the fact that he was closing his checking account. The e-mail indicating this request is attached as Exhibit "B" and incorporated herein as if recited verbatim. PENNY GALLIS proceeded to secure health insurance on a separate plan as requested. However, on or about February of this year, GEORGE PAPADOGIANNIS decided he was not going to pay for her health insurance even though he is ordered to do so in the parties Agreed Final Decree of Divorce. On June 10, 2014 PENNY GALLIS sent GEORGE PAPADOGIANNIS an e-mail asking for her health insurance to be paid after learning it had been terminated. He replied that he was not going to pay her health insurance. The e-mail is attached as Exhibit "C" and incorporated herein as if set forth verbatim. PENNY GALLIS proceeded to pay the balance due on her health insurance out of her own pocket. On June 13, 2014 PENNY GALLIS sent GEORGE PAPADOGIANNIS an e-mail with a receipt in the amount of \$1,152.00. The e-mail is attached as Exhibit "D" and incorporated herein as if set forth verbatim. After PENNY GALLIS made this lump sum payment, her insurance was reinstated. To date she has sent a similar request attached as Exhibit "E" and incorporated herein as if set forth verbatim. To date no reimbursements have been made.

In grounds 15 through 28, the motion requested that George be held in contempt for failing to reimburse Penny for her monthly \$372 health insurance premiums from January 2014 through February 2015. Penny also requested a judgment on arrearages and attorneys' fees.

N. The Trial

At the start of the February 26, 2015 bench trial, the trial court announced that Penny's contempt claims would be tried first, followed by George's motion for modification of his spousal-support obligation and his breach-of-contract claim.

Penny testified that George paid \$5,000 in monthly spousal support beginning in August 2011 and continuing through January 2014. George did not make any spousal support payments from February 2014 through February 2015. Penny also testified that, despite a provision in the divorce decree obligating George to provide her a copy of his life insurance policy each year, he had never provided her with a copy of his policy. In addition, George stopped paying for Penny's health insurance in December of 2013, with the exception of one month he paid when she was hospitalized. Penny testified that she provided to George proof her insurance payments of \$372 per month after her COBRA coverage that he paid monthly ran out, which triggered his obligation to reimburse her under the 2011 Decree.

Penny testified that George did not pay her \$700,000 to purchase a house within 24 months of their July 27, 2011 divorce. He paid her \$560,000 in June of 2012, and made other payments later. Penny acknowledged that she did not purchase a house within 24 months after the 2011 Decree was signed, nor anytime

thereafter. She testified, however, that the relief she was seeking was to have that house money released to her.

On cross-examination, Penny acknowledged that—after the COBRA insurance George paid on her behalf expired—she never provided George proof that she had secured insurance coverage for herself. She only provided bills showing her as the payor, but not reflecting who was covered. She also acknowledged that she and George are joint policy holders on their life insurance policy, so that she can as easily as him ascertain if he had maintained coverage in the levels required by the decree. And she testified that in addition to paying child support for N.P., George has transferred money into her account for her to spend on their adult daughter, M.P.

Penny's attorney testified that Penny had accrued reasonable and necessary attorney fees of \$55,242.50 defending the Motion to Modify and prosecuting the Motion to Enforce.

At the close of Penny's testimony, the court granted a directed verdict in George's favor on Penny's request that George be found in contempt. The court outlined for the parties what legal issues it believed remained on George's and Penny's claims for relief. It ordered \$8,000 be released from escrow to Penny for March and April 2014 spousal support, recessed the trial, and requested briefing on the remaining legal issues.

When the trial resumed on April 7, the court began by asking each party what relief each was seeking. George's attorney stated that George was withdrawing his request for custody of N.P., but that he was requesting that the court enter an order discontinuing George's spousal support obligation (or, alternatively, reducing it to \$1,000 per month), order Penny to return to him the \$681,000 that he prepaid for a house purchase, and pay George's attorneys' fees.

Penny requested that she be awarded the unpaid balance of the \$700,000 awarded to her for purchase of a house. Penny also requested that the court give her a certain amount of time to then complete the purchase of a home, and she reiterated that she would grant George a 20% interest in the home, pursuant to the 2011 Decree. Penny also requested that spousal maintenance be continued at \$4,000 per month, and that George be ordered to pay her attorneys' fees and reimburse her portion of N.P.'s amicus's fees, since George had dropped his request for custody.

George testified that Penny's attorney drafted the 2011 Decree, Penny and George went to Penny's attorney's office to sign it, and Penny then obtained a divorce based upon that agreed decree. His understanding of the house provision was that Penny was required to select a house to purchase within 24 months of signing the decree, which would trigger his obligation to provide up to \$700,000

towards the house and receive a 20% interest. He agreed that he “had a hand in” the drafting of the decree.

George stated that Penny asked him for house money in July 2012, and he gave her \$560,000 then. She did not select a house though. He emptied his 401(k) and savings, and continued to make payments towards the \$700,000. Within the 24 months after the 2011 Decree was signed, he had paid Penny 97% of the \$700,000 (i.e. \$681,000). He testified that he was damaged by her failure to timely purchase a house, because it prevented his monthly spousal maintenance amount from going down to \$4,000 as provided for in the decree when Penny purchased her house. In addition, George considered his 20% interest in the home Penny was supposed to purchase as a long-term real estate investment that would appreciate in value. Because Penny never selected a house to purchase despite having considerable funds to do so before the 24-month post-divorce period ended, George testified to his belief that he was entitled to return of the funds he gave Penny to purchase a house. George explained that he took out a loan against property he inherited to give Penny the money he advanced her, and that he wanted the money back to pay off that loan.

On cross-examination, George explained that he always believed that Penny had an obligation to select a house before any obligation was triggered for him to provide funds for that house. But, he claimed, Penny asked him for the money in

2012 and told him that her attorney told her that George's interpretation of the 2011 Decree was wrong. That is why, despite his understanding of the decree, George gave Penny \$560,000 in 2012 and started making payments towards the remainder. George stated that Penny had finally selected a house to buy in October or November of 2014, and that Penny requested that \$60,000 of the money George had provided her be released from escrow. Although the money was released to Penny, that purchase did not close.

George denied ever not paying his child support or that he ever made the payments late. He conceded that he had made some of the checks payable to N.P. rather than Penny, and that he had always sent the payments directly to Penny, rather than through a state clearinghouse.

George also conceded he did not provide Penny written proof of his life insurance each year as provided for in the 2011 Decree, but contended that there has been continuous coverage. He also testified that he had always provided Penny insurance cards for the health insurance he carries on N.P. and M.P.

George's attorney testified that George had paid a total of \$35,000 in attorneys' fees, and that those were reasonable and necessary.

George sought to testify and present evidence of changed financial circumstances in support of his request that his spousal support obligation be modified. The trial court, however, excluded all of George's evidence as to the

changed financial circumstances of George or Penny because George had not adequately answered and supplemented discovery requests for financial documentation.

Penny then testified that she moved to New York on July 11, 2013, just shy of two years after the parties' divorce. They do not have earnest money contracts in New York. But, during the almost two years she lived in Houston post-divorce, she never indicated to George that she had selected a house to submit an earnest money contract on. She instead decided to wait until he had delivered the entire \$700,000 and then purchase a house.

Penny notified George in July of 2013 through email and a certified letter that she was moving to New York. Although she returned to Houston to retrieve belongings, she never resided again in Houston. She made offers on two houses in New York after the 24-month post-divorce period had passed, but they were not accepted and she returned the deposits she put down to her attorney's IOLTA account.

Penny testified that she was seeking a court order for George to pay the balance between what is in the IOLTA account and \$700,000, and for George to pay her health insurance, child support, and the other bills provided for in the decree. She also testified that George was one month behind on child support payments at the time of trial.

O. The Court's Rulings

The court first addressed Penny's Third Amended Motion to Enforce. The court denied contempt relief on counts 1 – 14 (failure to pay spousal support and the full \$700,000 to Penny), but found George in contempt on grounds 15 – 28 (failure to reimburse Penny for her health insurance premiums). The court assessed punishment of 60 days' confinement on each count, to run concurrently, and awarded Penny's attorney \$1,500 in attorneys' fees from George.

The court suspended George's jail sentence until January 1, 2016 on the condition that George pay Penny's attorney \$1,500 and make his child support and Penny's health insurance reimbursements timely. The trial court also ordered that all future child support payments be through the Texas Child Support Disbursement Unit.

The court concluded that, under the terms of the 2011 Decree, George was obligated to pay \$5,000 per month in spousal support for a period of 24 months. The court ruled that after 24 months—beginning with August 1, 2013—George's monthly spousal support obligation was \$4,000.

The court concluded that George did not have an obligation to pay Penny \$700,000 because she did not buy a house in the allotted time:

With regards to the funds, the Court finds -- it appears abundantly clear that the purpose of these provisions were for the purchase of a house. No evidence was presented that the young lady purchased a house, attempted to purchase a house prior to the 24-

month period. The Court finds that while there was a disagreement whether it was 18 months or 24 months, the young lady has testified that she believed it to be 24 months; the gentleman, while the order says 18 months, testified under oath, I believe almost the exact wording was, everybody knew it was for a period of 24 months. And thus, the Court finds that the gentleman does not owe the \$700,000 pursuant to those provisions.

The court accordingly ordered that George's arrearages for spousal support, health insurance, and child support be calculated and dispersed from the funds in Penny's attorney's IOLTA account, and that the remainder be deposited into the court's registry to be distributed to George, pending the outcome of any appeal.

Finally, the court noted that "[b]ased upon the evidence presented, it definitely appears that there was a -- several issues in controversy"; it thus ordered each party to pay their own attorneys' fees.

P. Findings of Fact and Conclusions of Law

The trial court entered the following substantive findings:

FINDINGS OF FACT

1. The parties were divorced by their Agreed Final Decree of Divorce which was signed by this Court on July 27, 2011. At the time of the divorce, PENNY GALLIS was represented by attorney JAN R. COHEN, AND GEORGE PAPADOGIANNIS was not represented by an attorney and appeared Pro Se. JAN R. COHEN drafted the *Agreed Final Decree of Divorce*.

.....
6. The parties' *Agreed Final Decree of Divorce*, dated July 27, 2011, constitutes a contract between them, expressly acknowledging their agreement throughout the document and executed by each of them with the notation that it has been approved and consented to as to

both form and substance. It is not disputed that the parties' Decree constitutes a contract between them, expressly acknowledging their agreement throughout the document and executed by each of them with the notation that it has been approved and consented to as to both form and substance. As a signatory to the contract itself, GEORGE PAPADOGIANNIS is a proper party to sue for breach.

7. The relevant terms of the *Agreed Final Decree of Divorce*, dated July 27, 2011, impose a condition precedent upon PENNY GALLIS to purchase a residence before GEORGE PAPADOGIANNIS' obligation to pay the specified funds is triggered.
8. In both sections (division of property and division of debt), these terms expressly and directly connect any obligation GEORGE PAPADOGIANNIS may have to pay PENNY GALLIS to her selection and purchase of a residence. The literal language of the Decree marks the funds for no other purpose. Further the Decree specifies the time frame in which PENNY GALLIS's selection and purchase is to occur which would then trigger GEORGE PAPADOGIANNIS's obligation to pay.
9. The purchase [sic] a residence by PENNY GALLIS was to occur within eighteen months or twenty four months from the entry of the *Agreed Final Decree of Divorce* and because [sic] PENNY GALLIS failed to enter into a contract for and/or close on the purchase of a residence within either time frame, despite GEORGE PAPADOGIANNIS advancing more than substantial funds to PENNY GALLIS before either time period expired. Because PENNY GALLIS failed to enter into a contract for and/or close upon the purchase of a residence within either of the time frames specified by the contract, the only question before the trial court was whether the contingent amount awarded to PENNY GALLIS for the specific purchase of a residence remains due when the condition precedent to its payment has not been satisfied or whether GEORGE PAPADOGIANNIS should receive a refund the amounts paid or at the very least credit for pre-payment of spousal maintenance.
10. The *Agreed Final Decree of Divorce*, dated July 27, 2011, contemplates the possibility that the residence ultimately chosen by PENNY GALLIS could cost less than the \$700,000 allowance or

investment to be provided by GEORGE PAPADOGIANNIS and in that event the amount that GEORGE PAPADOGIANNIS would owe PENNY GALLIS could not even be determined until the purchase price, closing costs and associated fees were determined.

11. The evidence at trial proved that GEORGE PAPADOGIANNIS's financial commitment under the relevant contract terms was specifically designed to allow PENNY GALLIS to purchase a residence within a specified time after the divorce, and GEORGE PAPADOGIANNIS' contribution would further be considered an investment with GEORGE PAPADOGIANNIS to retain a twenty percent (20%) ownership interest in any such property. The evidence indicated that the terms of the contract clearly contemplated PENNY GALLIS' use of the funds to purchase a residence for her use and the use of the parties' son as it further provided that GEORGE PAPADOGIANNIS would be responsible for certain maintenance items associated with the residence (i.e. water, property taxes, insurance and repairs) during the son's minority or until PENNY GALLIS sold the residence, whichever occurred first.
12. The *Agreed Final Decree of Divorce*, dated July 27, 2011, further provides for the monthly payment of spousal maintenance by GEORGE PAPADOGIANNIS to PENNY GALLIS which would be reduced "if" PENNY GALLIS purchased and moved into the residence contemplated by the relevant provisions of the Decree This contingency clearly indicates that PENNY GALLIS might not make such purchase in which event the spousal support payments would remain at the higher amount.
13. Although the relevant terms of the *Agreed Final Decree of Divorce*, dated July 27, 2011 to the funding and purchase of a residence are included within that section which divides the parties' estate, there is nothing within the balance of the underlying Decree and no evidence was produced in evidence during the trial of this case which would establish that GEORGE PAPADOGIANNIS' contingent obligation to pay PENNY GALLIS as much as \$700,000 is an award of future payments, referable to property in existence at the time of the divorce.
14. The evidence did establish that no community property fund existed from which GEORGE PAPADOGIANNIS might eventually be

called upon to make these payments, but instead after the divorce GEORGE PAPADOGIANNIS borrowed the funds which he actually did advance to PENNY GALLIS from GEORGE PAPADOGIANNIS' anticipated inheritance, funds which were clearly GEORGE PAPADOGIANNIS'S separate property.

15. The Court had no authority to order GEORGE PAPADOGIANNIS to make a future payment of \$700,000 to PENNY GALLIS unless that payment was referable to the division of community property in existence at the time of the marriage. This is true because otherwise the source of any such payment would come from GEORGE PAPADOGIANNIS'

s separate property, property which the trial court had no authority to divest. The only other future payments which may be ordered by a Texas court upon divorce are those which comply with the provisions of Chapter 8 for spousal maintenance.

16. PENNY GALLIS admitted that GEORGE PAPADOGIANNIS paid her \$560,000 by June 2012, well within either the eighteen or twenty four month period afforded PENNY GALLIS to purchase a residence under the terms of the Decree.
17. This payment of \$560,000 represents eighty percent (80%) of the maximum amount for which GEORGE PAPADOGIANNIS may have been held liable under the terms of the contract.
18. The evidence further established that GEORGE PAPADOGIANNIS paid PENNY GALLIS an additional \$121,000, including \$96,000 paid by mid-August 2012 and thereafter monthly installments of \$2,500 from October 2012 through July 15, 2013, bringing GEORGE PAPADOGIANNIS's total payments to \$681,000 or ninety seven percent (97%) of his maximum exposure all within twenty-four (24) months of entry of the Decree.
19. The Court finds that the above-mentioned payments by GEORGE PAPADOGIANNIS to PENNY GALLIS establish GEORGE PAPADOGIANNIS substantial performance of the terms of the contract.
20. The Decree (contract) expressly contemplated that PENNY GALLIS might purchase a residence for less than the full \$700,000 in which case GEORGE PAPADOGIANNIS would not owe the full sum and further the contract expressly provided that in such

event GEORGE PAPADOGIANNIS's payment to PENNY GALLIS was not due until the closing date on her residential purchase which most likely would have been the first date when the exact amount due from GEORGE PAPADOGIANNIS could even be determined.

21. PENNY GALLIS never revealed any plans to relocate permanently to New York, thus GEORGE PAPADOGIANNIS could not have even been certain about the location of the residence PENNY GALLIS might eventually choose, much less the purchase price, closing costs and fees that would be involved, any and all of which would vary from place to place, much less state to state.
22. By advancing PENNY GALLIS \$681,000 (or 97% of his maximum contingent obligation) within the contractual time allotted for her purchase of a residence, GEORGE PAPADOGIANNIS enabled PENNY GALLIS to enter into an earnest money contract for the purchase of a residence.
23. PENNY GALLIS' claim that she could not purchase a residence within the time allowed because she had not received the full amount of \$700,000 is without merit and is belied by the express terms of the contract itself. This is so because PENNY GALLIS entered into a contract which contemplated her purchase of a residence costing less than \$700,000, in which event GEORGE PAPADOGIANNIS would not have even owed her the full, allowable amount she could spend.
24. The evidence established that GEORGE PAPADOGIANNIS substantially performed under the parties' contract and until PENNY GALLIS actually performed by taking legally binding steps to purchase a residence GEORGE PAPADOGIANNIS could not even know what remaining obligations on his part might even have been required.
25. PENNY GALLIS's failure to purchase a residence within the time period specified remains a breach of contract for which she cannot and should not be unjustly compensated.
26. The evidence at trial established that until PENNY GALLIS committed to the purchase of a residence by entering into a legally binding contract to do so, the amount that GEORGE PAPADOGIANNIS might owe to PENNY GALLIS could not even be determined. As such, not only did PENNY GALLIS breach the

terms of her contractual agreement by failing to legally and formally initiate a residential purchase, PENNY GALLIS's inaction prevented GEORGE PAPADOGIANNIS from fulfilling his contingent contractual obligations because he could not determine the amount due.

27. PENNY GALLIS' obligation under the parties' contract was to choose and purchase a residence within either eighteen (18) or twenty-four (24) months after the entry of the parties' Decree on July 27, 2011. PENNY GALLIS did not comply within either time period and further there was no evidence presented at trial to suggest that PENNY GALLIS has even come close to the purchase of a residence since the parties' divorce. PENNY GALLIS admitted that she has never purchased a residence as contemplated by the Decree.
28. Through evidence at trial, the contractual terms of the parties' Decree make it clear that any obligation GEORGE PAPADOGIANNIS undertook to pay PENNY GALLIS as much as \$700,000 was an obligation contingent upon and directly tied to PENNY GALLIS's purchase of a residence. The terms of the contract expressly connect the payment by GEORGE PAPADOGIANNIS to the purchase by PENNY GALLIS without ambiguity. The only potential ambiguity lies in the allowable time period for PENNY GALLIS's purchase (either 18 or 24 months) but that becomes irrelevant when it is considered that PENNY GALLIS failed to purchase a residence at any time.
29. The Decree is clear and unambiguous that once PENNY GALLIS consummated the residence purchase, GEORGE PAPADOGIANNIS would receive the corresponding benefit of a 20% ownership investment in the property and a \$1,000 per month decrease in his spousal support obligations. PENNY GALLIS-breach of the contract deprives GEORGE PAPADOGIANNIS of both and proximately results in actual damages suffered by GEORGE PAPADOGIANNIS.
30. Petitioner established: (1) the existence of a valid contract; (2) that Petitioner is a proper party to assert the claim; (3) that Petitioner has performed or tendered performance under the contract; (4) that PENNY GALLIS breached the contract; and (5) that the Petitioner suffered injury or damage as a result of the breach.

CONCLUSIONS OF LAW

Based on the facts presented, evidence admitted, and argument of counsel, this Court determined that

1. Petitioner established: (1) the existence of a valid contract; (2) that Petitioner is a proper party to assert the claim; (3) that Petitioner has performed or tendered performance under the contract; (4) that PENNY GALLIS breached the contract; and (5) that the Petitioner suffered injury or damage as a result of the breach.
2. The terms of the *Agreed Final Decree of Divorce*, dated July 27, 2011, which address the potential funding and purchase of a residence may only be considered as a contract between the parties and not as a component of any division of property upon divorce and, as such, any relief from this Court will not violate the provisions of Texas Family Code, Chapter 9.
3. In addition, effective in July 2011, Tex Fam. Code § 8.055 capped an award of spousal maintenance at \$2,500 per month. GEORGE PAPADOGIANNIS and GEORGE PAPADOGIANNIS [sic] agreed to twice that amount, meaning even the terms of the Decree obligating payment of sums in excess of \$2,500 per month could be considered only contractual in nature as they were beyond the authority of the trial court to order. When the excess amount of spousal maintenance payments are considered, any finding that the potential \$700,000 payment could also be characterized as spousal maintenance cannot legally be supported.
4. The trial court had no authority to issue a judgment imposing a “contingent” and “conditional” \$700,000 award such as the one agreed upon by the parties in this case, the decree terms agreed upon by GEORGE PAPADOGIANNIS and PENNY GALLIS relating to the future funding and purchase of a residence can be considered contractual only, completely independent of the trial court’s division of then existing community property. These contractual obligations were not part of the property division upon divorce, any relief which this Court may afford Petitioner by virtue of Petitioner’s pending claims cannot compromise the trial court’s limitations under Texas Family Code Chapter 9 because the relief would not constitute the prohibited modification of a property division.

5. A contract is deemed ambiguous as a matter of law, the rules of contract construction permit the court to construe the contract against its drafter. This Court determine [sic] that any relevant terms of the parties' contract were ambiguous, those ambiguities must be construed against PENNY GALLIS as it was her counsel who drafted the contract at a time when GEORGE PAPADOGIANNIS was not represented.
6. The \$630,000.00 presently in the registry of the Court should be returned to GEORGE PAPADOGIANNIS.

The court signed a final judgment consistent with its oral rendition of its rulings. Penny filed a motion for new trial, which the court denied. She then timely perfected this appeal.

ISSUES ON APPEAL

Penny raised the following seven issues on appeal:

- Issue 1: Whether the trial court abused its discretion by vacating portions of the Agreed Decree regarding post-divorce purchase of a residence.
- Issue 2: Whether George's suit is an impermissible collateral attack on the Agreed Decree.
- Issue 3: Whether there was sufficient evidence that George performed under the contract.
- Issue 4: Whether there was sufficient evidence that Penny breached the contract.
- Issue 5: Whether there was sufficient evidence of damages for any alleged breach of contract.
- Issue 6: Whether the trial court abused its discretion by modifying the amount of spousal support to be paid to Penny.
- Issue 7: Whether the trial court abused its discretion by finding that any ambiguities in the Agreed Decree should be construed against Penny.

CONSTRUCTION OF DIVORCE DECREES

Divorcing couples may enter into agreements to divide their property. *See generally* TEX. FAM. CODE ANN. § 7.006(a) (West 2006) (“To promote amicable settlement of disputes on the divorce or annulment, the parties may enter into a written agreement concerning the division of the property and the liabilities of the spouses and the maintenance of either spouse.”). These agreements are considered contracts and their legal force and meaning are governed by contract law, rather than the law of judgments. *See Allen v. Allen*, 717 S.W.2d 311, 313 (Tex. 1986) (“A marital property agreement, although incorporated into a final divorce decree, is treated as a contract and its legal force and meaning are governed by the law of contracts.”); *Traylor v. Traylor*, 789 S.W.2d 701, 702–03 (Tex. App.—Texarkana 1990, no writ) (stating that “such agreements legal force, effect and meaning are governed by the law of contracts and not by the law of judgments”). When a property agreement is incorporated, the divorce decree becomes a consent judgment, subject to the same degree of finality and binding force as a judgment rendered in an adversary proceeding. *See McCray v. McCray*, 584 S.W.2d 279, 281 (Tex. 1979).

Consent judgments look for their interpretation to the law of contracts. *See Harvey v. Harvey*, 905 S.W.2d 760, 764 (Tex. App.—Austin 1995, no writ) (“[W]hen a divorce decree is a consent decree or agreed judgment, ‘it must be

interpreted as if it were a contract between the parties, and the interpretation thereof is governed by the laws relating to contracts.”) (citing *Biaza v. Simon*, 879 S.W.2d 349, 355 (Tex. App.—Houston [14th Dist.] 1994, writ denied)); *Miller v. Miller*, 700 S.W.2d 941, 951 (Tex. App.—Dallas 1985, writ ref’d n.r.e.) (“An agreed judgment must be interpreted as if it were a contract between the parties, and the interpretation of the judgment is governed by the laws relating to contracts.”).

A court must look to the intentions of the parties as they are manifested in the written agreement. *See Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983); *Miller*, 700 S.W.2d at 951; *Thompson v. Thompson*, 500 S.W.2d 203, 207 (Tex. Civ. App.—Dallas 1973, no writ) (court “bound by the express stated intent of the parties as manifested within the four corners of the instrument itself”). And the entire agreement must be interpreted in such a way that all its provisions are given effect and that none are rendered meaningless, *see Praeger v. Wilson*, 721 S.W.2d 597, 600–01 (Tex. App.—Fort Worth 1986, writ ref’d n.r.e.), with every attempt made to harmonize all the provisions within the agreement with reference to the entire agreement. *See Coker*, 650 S.W.2d at 393. Terms stated earlier in the agreement are favored over subsequent terms. *Id.* And, finally, only if the agreement is ambiguous may parol evidence be considered. *See Phillips v. Parrish*,

814 S.W.2d 501, 503 (Tex. App.—Houston [1st Dist.] 1991, writ denied); *Miller*, 700 S.W.2d at 951.

Ambiguity is a question of law for the court. *R & P Enters. v. LaGuarta, Gavrel & Kirk, Inc.*, 596 S.W.2d 517, 518 (Tex. 1980); *Pierce v. Pierce*, 850 S.W.2d 675, 679 (Tex. App.—El Paso 1993, writ denied). A party who contends that an agreement is ambiguous must prove that the agreement is uncertain, doubtful, or is susceptible to more than one meaning. *Coker*, 650 S.W.2d at 393; *Phillips*, 814 S.W.2d at 503. If a written agreement is worded so that it can be given a certain or definite legal meaning or interpretation, it is unambiguous. *Id.*; *Coker*, 650 S.W.2d at 393. If the court determines that the language is ambiguous, the interpretation is a fact issue to be resolved by the fact finder.

The trial court's challenged factual findings are reviewed by applying the same standards used in reviewing the legal or factual sufficiency of the evidence supporting jury findings. *See Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994).

When, as here, the appellate record includes the reporter's record, the trial court's factual findings, whether express or implied, are not conclusive and an appellant may challenge the legal and factual sufficiency of the evidence supporting them. *Hallsted v. McGinnis*, 483 S.W.3d 72, 74 (Tex. App.—Houston

[1st Dist.] 2015, no pet.) (citing *Zenner v. Lone Star Striping & Paving, L.L.C.*, 371 S.W.3d 311, 314 (Tex. App.—Houston [1st Dist.] 2012, pet. denied)).

Courts of appeals will review any legal conclusions drawn from the facts, whether express or implied, to determine their correctness. *Hallsted*, 483 S.W.3d at 74 (citing *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002)). In an appeal from a bench trial, courts of appeals review a trial court’s legal conclusions de novo and will uphold them on appeal if the judgment can be sustained on any legal theory supported by the evidence. *Id.*

A court’s order of enforcement under Texas Family Code Chapter 9 is reviewed under an abuse of discretion standard. *Hollingsworth v. Hollingsworth*, 274 S.W.3d 811, 815 (Tex. App.—Dallas 2008, no pet.). A trial court abuses its discretion if it acts without reference to any guiding rules or principles or acts arbitrarily or unreasonably. *See Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985).

IMPERMISSIBLE COLLATERAL ATTACK?

A collateral attack is an attempt to avoid the binding force of a judgment in a separate proceeding brought for some other purpose. *Gainous Gainous*, 219 S.W.3d 97, 105 (Tex. App.—Houston [1st Dist.] 2006, pet. denied) “Attempting to obtain an order that alters or modifies a divorce decree’s property division is an impermissible collateral attack.” *Hagen v. Hagen*, 282 S.W.3d 899, 902 (Tex.

2009). “It is well established in Texas that a divorce judgment, unappealed, and regular on its face, is not subject to a collateral attack in a subsequent suit.” *Hardin v. Hardin*, 597 S.W.2d 347, 350 (Tex. 1980). A trial court retains plenary power to grant a new trial or to vacate, modify, correct, or reform a judgment within thirty days after the judgment is signed. TEX. R. CIV. P. 329b(d).

In her second issue, Penny argues that George’s seeking return of the house money is an impermissible collateral attack on the 2011 Decree, and that the trial court’s judgment is accordingly void because it changes the parties’ property division outside the court’s plenary power. *See Bass v. Bass*, 106 S.W.3d 311, 314 (Tex. App.—Houston [1st Dist.] 2003, no pet.) (“If no party to a judgment files a motion that extends the trial court’s plenary power, the trial court loses plenary power over the judgment thirty days after the judgment is signed.”). George responds that his suit for recovery of money he had advanced Penny for a house was not brought to *alter* the terms of the decree; rather he sought to enforce the terms of the decree under Chapter 9 of the Texas Family Code.

Accordingly, as a threshold matter, we must resolve whether the trial court’s interpretation of the 2011 Decree (with regard to the house funds) qualifies as an enforcement proceeding or a collateral attack seeking new relief.¹ We agree with

¹ The parties agree that the motion to modify custody provisions and spousal maintenance is a new proceeding, rather than a collateral attack on the original decree.

George that it is not a collateral attack and, thus, the trial court's judgment with regard to the house funds is not void. George's petition in this suit alleges Penny breached the terms of their agreed divorce decree, and seeks judgment against Penny for funds he advanced to her under the assumption that she was going to perform under the contract:

Petitioner requests the Court to find that the agreement between the parties in the Agreed Final Decree of Divorce and concerning the purchase of a home by Penny Gallis within the 24 months following the date of entry of the Agreed Final Decree of Divorce, to be financed by George Papadogiannis, with the sum of \$700,000.00 constitutes a contract between Petitioner and Respondent by rule of law; that Penny Gallis has breached such contract following the good faith delivery of the sum of \$681,000.00 to her by George Papadogiannis within the agreed time frame. Petitioner therefore seeks recovery of the \$681,000.00 delivered to Respondent, and would ask the Court, after notice and hearing, to award Petitioner a judgment against Respondent for the entire sum forwarded to Respondent by Petitioner.

Because George's suit does not seek to "alter[] or modif[y] a divorce decree's property division," *Hagen*, 282 S.W.3d at 902, it is not a collateral attack. Rather, it falls within a suit permitted by section 9.006(a) of the Texas Family Code, which provides that "the court may render further orders to enforce the division of property made or approved in the decree of divorce . . . to assist in the implementation of or to clarify the prior order." Section 9.006 further allows the trial court to "specify more precisely the manner of effecting the property division previously made or approved if the substantive division is not altered or changed."

The trial court made specific findings regarding the parties' rights and responsibilities with regard to the house money in the original decree, and entered an order purporting to enforce those rights and responsibilities from the 2011 Decree, as permitted under Chapter 9.

Because George's suit is not a collateral attack, we overrule Penny's second issue.

THE TRIAL COURT'S INTERPRETATION OF THE 2011 DECREE

Because the remaining issues Penny raises are intertwined and all involve ultimately the question of whether the trial court correctly interpreted the 2011 decree, we address her remaining six issues together. Following trial, the court made numerous findings and ultimately entered an order that did two things related to the house money: the court ruled that (1) George was not obligated to pay \$700,000 for the purchase of a house because Penny did not purchase a house within 24 months of the decree, and (2) after the 24-month house-purchase window had closed, George was only obligated to pay \$4,000 per month in spousal support rather than \$5,000 a month. We conclude that, after interpreting the decree as a whole—giving effect to the language of the decree and the intentions expressed therein, as well as interpreting it in a way that assigns meaning to all of its provisions—the court's first ruling was correct, but its second one was not.

In the 2011 Decree, the provisions related to George's payment of the \$700,000, Penny's potential home purchase, George's financial obligations to pay certain house expenses, George's 20% equity in the purchased home and, finally, the reduction of George's spousal support obligation from \$5,000 to \$4,000 per month are all connected and reconcilable.

The relevant provisions conflict as to terms and obligations in parts; namely, the decree provides for conflicting 18-month and a 24-month periods for Penny to purchase a home, and the decree provides for conflicting obligations on George's part if Penny bought a house that cost less than \$700,000. Specifically, in part of the decree, George is obligated to pay only the total amount of a lesser-priced home and associated closing costs; in another part of the decree, George is obligated to pay Penny the difference between the cost of the lower-priced home and \$700,000:

Property to Husband

.....

H-2. An undivided Twenty percent (20%) interest of the amount invested by GEORGE PAPADOGIANNIS in *a residence to be purchased within eighteen months* of entry of this Agreed Final Decree of Divorce. Such residence to be chosen by PENNY PAPADOGIANNIS and paid for with \$700,00 [sic] invested by GEORGE PAPADOGIANNIS, plus any additional funds borrowed by PENNY PAPADOGIANNIS. *In the event that PENNY PAPADOGIANNIS chooses a residence that costs less than \$700,000. IT IS ORDERED that GEORGE PAPADOGIANNIS shall pay the full purchase price, plus closing costs and fees up to but not to exceed \$700,000.00.*

The parties agree and so IT IS ORDERED that GEORGE PAPADOGIANNIS will pay all costs for water service, property taxes and insurance on the residence until [N.P.] reaches the age of majority or PENNY PAPADOGIANNIS sells the residence, whichever event occurs first. IT IS FURTHER ORDERED that PENNY PAPADOGIANNIS may opt to buy GEORGE PAPADOGIANNIS out of his Twenty (20%) interest at any time within ten years of the initial purchase. In the event of the death of one of the parties, IT IS ORDERED that the deceased party's share shall pass to the children equally.

....

Property to Wife

....

W-5. An undivided interest, less 20% of the amount invested by GEORGE PAPADOGIANNIS as described herein above in *a residence to be purchased within twenty four (24) months* of entry of this Agreed Final Decree of Divorce. Such residence to be chosen by PENNY PAPADOGIANNIS and paid for with \$700,000 invested by GEORGE PAPADOGIANNIS, plus any additional funds borrowed by PENNY PAPADOGIANNIS.

In the event that PENNY PAPADOGIANNIS chooses a residence that costs less than \$700,000, IT IS ORDERED that GEORGE PAPADOGIANNIS shall pay the full purchase price, plus closing costs and fees, but not to exceed \$700,000.00. If the residence costs less than \$700,000.00, IT IS ORDERED that GEORGE PAPADOGIANNIS is to pay the difference between \$700,000.00 and the purchase price directly to PENNY PAPADOGIANNIS no later than the date of closing of the purchase of such residence.

The parties agree and so IT IS ORDERED that GEORGE PAPADOGIANNIS will pay all costs for water service, property taxes and insurance on the residence until [N.P.] reaches the age of majority or PENNY PAPADOGIANNIS sells the residence, whichever event occurs first. IT IS FURTHER ORDERED that PENNY PAPADOGIANNIS may opt to buy GEORGE PAPADOGIANNIS out of his Twenty (20%) interest at any time within ten years of the initial purchase. In the event of the death of one of the parties. IT IS

ORDERED that the deceased party's share shall pass to the children equally.

....

Additional Agreements

....

The parties agree further and so IT IS ORDERED that GEORGE PAPADOGIANNIS shall pay for water and major repairs to the house purchased by PENNY PAPADOGIANNIS. Major repairs shall be defined as any repair costing more than \$500.00.

Court-Ordered Maintenance

The Court finds that under the circumstances presented in this case, PENNY PAPADOGIANNIS is eligible for maintenance under the provisions of Texas Family Code Chapter 8. Accordingly, GEORGE PAPADOGIANNIS is ordered to pay as maintenance the sum of five thousand dollars (\$5000.00) per month to PENNY PAPADOGIANNIS, with the first payment being due on August 1, 2011, and a like amount being due on the first day of each consecutive month thereafter until the earliest of one of the following events occurs:

1. PENNY PAPADOGIANNIS purchases a residence - If PENNY PAPADOGIANNIS purchases a residence, IT IS ORDERED that GEORGE PAPADOGIANNIS shall pay as maintenance the sum of Four Thousand Dollars (\$4,000.00) per month to PENNY PAPADOGIANNIS, with the first payment being due on the first day of the month after PENNY PAPADOGIANNIS moves into such purchased residence; and a like amount being due on the first day of each consecutive month thereafter until the earliest of one of the following events occurs:

2. death of either Petitioner or Respondent;
3. remarriage of PENNY PAPADOGIANNIS; or
4. further orders of the Court affecting the spousal maintenance obligation.

With regard to the performance of the parties' respective obligations under these provisions, the court made the following relevant findings and conclusions:

....

7. The relevant terms of the *Agreed Final Decree of Divorce*, dated July 27, 2011, impose a condition precedent upon PENNY GALLIS to purchase a residence before GEORGE PAPADOGIANNIS' obligation to pay the specified funds is triggered.
8. In both sections (division of property and division of debt), these terms expressly and directly connect any obligation GEORGE PAPADOGIANNIS may have to pay PENNY GALLIS to her selection and purchase of a residence. The literal language of the Decree marks the funds for no other purpose. Further the Decree specifies the time frame in which PENNY GALLIS's selection and purchase is to occur which would then trigger GEORGE PAPADOGIANNIS's obligation to pay.
9. The purchase of a residence by PENNY GALLIS was to occur within eighteen months or twenty four months from the entry of the *Agreed Final Decree of Divorce* and because PENNY GALLIS failed to enter into a contract for and/or close on the purchase of a residence within either time frame, despite GEORGE PAPADOGIANNIS advancing more than substantial funds to PENNY GALLIS before either time period expired. Because PENNY GALLIS failed to enter into a contract for and/or close upon the purchase of a residence within either of the time frames specified by the contract, the only question before the trial court was whether the contingent amount awarded to PENNYGALLIS for the specific purchase of a residence remains due when the condition precedent to its payment has not been satisfied or whether GEORGE PAPADOGIANNIS should receive a refund the amounts paid or at the very least credit for pre-payment of spousal maintenance.
10. The *Agreed Final Decree of Divorce*, dated July 27, 2011, contemplates the possibility that the residence ultimately chosen by

PENNY GALLIS could cost less than the \$700,000 allowance or investment to be provided by GEORGE PAPADOGIANNIS and in that event the amount that GEORGE PAPADOGIANNIS would owe PENNY GALLIS could not even be determined until the purchase price, closing costs and associated fees were determined.

11. The evidence at trial proved that GEORGE PAPADOGIANNIS' financial commitment under the relevant contract terms was specifically designed to allow PENNY GALLIS to purchase a residence within a specified time after the divorce, and GEORGE PAPADOGIANNIS's contribution would further be considered an investment with GEORGE PAPADOGIANNIS to retain a twenty percent (20%) ownership interest in any such property. The evidence indicated that the terms of the contract clearly contemplated PENNY GALLIS' use of the funds to purchase a residence for her use and the use of the parties' son as it further provided that GEORGE PAPADOGIANNIS would be responsible for certain maintenance items associated with the residence (i.e. water, property taxes, insurance and repairs) during the son's minority or until PENNY GALLIS sold the residence, whichever occurred first.
12. The Agreed Final Decree of Divorce, dated July 27, 2011, further provides for the monthly payment of spousal maintenance by GEORGE PAPADOGIANNIS to PENNY GALLIS which would be reduced "if" PENNY GALLIS purchased and moved into the residence contemplated by the relevant provisions of the Decree This contingency clearly indicates that PENNY GALLIS might not make such purchase in which event the spousal support payments would remain at the higher amount.

. . . .
16. PENNY GALLIS admitted that GEORGE PAPADOGIANNIS paid her \$560,000 by June 2012, well within either the eighteen or twenty four month period afforded PENNY GALLIS to purchase a residence under the terms of the Decree.
17. This payment of \$560,000 represents eighty percent (80%) of the maximum amount for which GEORGE PAPADOGIANNIS may have been held liable under the terms of the contract.
18. The evidence further established that GEORGE PAPADOGIANNIS paid PENNY GALLIS an additional \$121,000,

including \$96,000 paid by mid-August 2012 and thereafter monthly installments of \$2,500 from October 2012 through July 15, 2013, bringing GEORGE PAPADOGIANNIS's total payments to \$681,000 or ninety seven percent (97%) of his maximum exposure all within twenty-four (24) months of entry of the Decree.

19. The Court finds that the above-mentioned payments by GEORGE PAPADOGIANNIS to PENNY GALLIS establish GEORGE PAPADOGIANNIS substantial performance of the terms of the contract.

20. The Decree (contract) expressly contemplated that PENNY GALLIS might purchase a residence for less than the full \$700,000 in which case GEORGE PAPADOGIANNIS would not owe the full sum and further the contract expressly provided that in such event GEORGE PAPADOGIANNIS's payment to PENNY GALLIS was not due until the closing date on her residential purchase which most likely would have been the first date when the exact amount due from GEORGE PAPADOGIANNIS could even be determined.

....

22. By advancing PENNY GALLIS \$681,000 (or 97% of his maximum contingent obligation) within the contractual time allotted for her purchase of a residence, GEORGE PAPADOGIANNIS enabled PENNY GALLIS to enter into an earnest money contract for the purchase of a residence.

23. PENNY GALLIS' claim that she could not purchase a residence within the time allowed because she had not received the full amount of \$700,000 is without merit and is belied by the express terms of the contract itself. This is so because PENNY GALLIS entered into a contract which contemplated her purchase of a residence costing less than \$700,000, in which event GEORGE PAPADOGIANNIS would not have even owed her the full, allowable amount she could spend.

....

25. PENNY GALLIS's failure to purchase a residence within the time period specified remains a breach of contract for which she cannot and should not be unjustly compensated.

....

27. PENNY GALLIS' obligation under the parties' contract was to choose and purchase a residence within either eighteen (18) or twenty-four (24) months after the entry of the parties' Decree on July 27, 2011. PENNY GALLIS did not comply within either time period and further there was no evidence presented at trial to suggest that PENNY GALLIS has even come close to the purchase of a residence since the parties' divorce. PENNY GALLIS admitted that she has never purchased a residence as contemplated by the Decree.
28. Through evidence at trial, the contractual terms of the parties' Decree make it clear that any obligation GEORGE PAPADOGIANNIS undertook to pay PENNY GALLIS as much as \$700,000 was an obligation contingent upon and directly tied to PENNY GALLIS's purchase of a residence. The terms of the contract expressly connect the payment by GEORGE PAPADOGIANNIS to the purchase by PENNY GALLIS without ambiguity. The only potential ambiguity lies in the allowable time period for PENNY GALLIS's purchase (either 18 or 24 months) but that becomes irrelevant when it is considered that PENNY GALLIS failed to purchase a residence at any time.
29. The Decree is clear and unambiguous that once PENNY GALLIS consummated the residence purchase, GEORGE PAPADOGIANNIS would receive the corresponding benefit of a 20% ownership investment in the property and a \$1,000 per month decrease in his spousal support obligations. PENNY GALLIS-breach of the contract deprives GEORGE PAPADOGIANNIS of both and proximately results in actual damages suffered by GEORGE PAPADOGIANNIS.
30. Petitioner established: (1) the existence of a valid contract; (2) that Petitioner is a proper party to assert the claim; (3) that Petitioner has performed or tendered performance under the contract; (4) that PENNY GALLIS breached the contract; and (5) that the Petitioner suffered injury or damage as a result of the breach.

CONCLUSIONS OF LAW

1. Based on the facts presented, evidence admitted, and argument of counsel, this Court determined that Petitioner established: (1) the existence of a valid contract; (2) that Petitioner is a proper party to

assert the claim; (3) that Petitioner has performed or tendered performance under the contract; (4) that PENNY GALLIS breached the contract; and (5) that the Petitioner suffered injury or damage as a result of the breach.

....

4. The trial court had no authority to issue a judgment imposing a “contingent and conditional” \$700,000 award such as the one agreed upon by the parties in this case, the Decree terms agreed upon by GEORGE PAPADOGIANNIS and PENNY GALLIS relating to the future funding and purchase of a residence can be considered contractual only, completely independent of the trial court’s division of then existing community property. These contractual obligations were not part of the property division upon divorce, any relief which this Court may afford Petitioner by virtue of Petitioner’s pending claims cannot compromise the trial court’s limitations under Texas Family Code Chapter 9 because the relief would not constitute the prohibited modification of a property division.
5. A contract is deemed ambiguous as a matter of law, the rules of contract construction permit the court to construe the contract against its drafter This Court determine that any relevant terms of the parties’ contract were ambiguous, those ambiguities must be construed against PENNY GALLIS as it was her counsel who drafted the contract at a time when GEORGE PAPADOGIANNIS was not represented.
6. The \$630,000.00 presently in the registry of the Court should be returned to GEORGE PAPADOGIANNIS.

We agree with the trial court’s finding that the sole purpose of the award of the \$700,000 to be paid from George to Penny, as expressed in the decree, was for her to purchase a house within 18 or 24 months of the divorce, in which George would receive a 20% interest. We disagree, however, that the failure of Penny to purchase a home within that time was a breach of the parties’ divorce decree.

Rather, the decree contemplated, and provided alternative consequences flowing from, Penny's decision about whether to purchase a house within that time period.

Although the decree is conflicting, and therefore, ambiguous, as to the time period for the home purchase (18 or 24 months) and George's obligation if Penny purchased a house for less than \$700,000 in the allotted time period (i.e., whether he was required to pay to Penny the difference in the home purchase cost and the \$700,000), neither the trial court nor this Court must resolve those ambiguities because Penny did not purchase a house within 24 months.

Our conclusion that Penny's failure to timely purchase a house was not a breach of contract is premised on the fact that the decree expressly contemplated Penny might not purchase a house; namely, it conditions the reduction of George's spousal support obligation from \$5000 to \$4000 per month on that purchase:

If PENNY PAPADOGIANNIS purchases a residence, IT IS ORDERED that GEORGE PAPADOGIANNIS shall pay as maintenance the sum of Four Thousand Dollars (\$4,000.00) per month

(emphasis added). Each party received reconcilable benefits and detriments based upon Penny's choice in this regard (regardless of how the ambiguity around George's obligation to pay the difference between the house purchase price and \$700,000 was theoretically resolved). The decree, whichever way interpreted, contemplated the benefits and detriments playing out in the following ways:

-Penny could purchase a house that cost more than \$700,000. Penny would receive 80% equity in a home with a value exceeding \$700,000, and the benefit of George's paying the taxes, insurance, and water bill on that property until N.P. reached an age of majority. The detriment to Penny would be her obligation to initially pay most utilities on a house with a value exceeding \$700,000, and then the obligation to pay the taxes, insurance and all utilities on a house with a value exceeding \$700,000 after N.P. reached the age of majority. George would be obligated to provide \$700,000 cash upfront, and would be obligated to pay taxes, insurance, and the water bill on that home for a fixed amount of time. In return, he would receive a 20% investment interest in a house worth more than \$700,000, and he would receive a reduction in spousal support of \$1,000 per month, into perpetuity, until one of the parties died or Penny remarried.

-Penny could purchase a house that cost less than \$700,000. Penny would receive 80% equity in a home with a value less than \$700,000, and the benefit of George's paying the taxes, insurance, and water bill on that property until N.P. reached an age of majority. Depending on the interpretation of an ambiguity in the decree, George would either still be obligated to provide \$700,000 cash upfront (towards the house purchase and a fixed cash amount to make up the difference), or only obligated to pay some lesser amount (the house purchase price and all associated expenses, including closing costs). Under this scenario, in return George would receive 20% of a house worth less than \$700,000, but his obligation with regard to property taxes, insurance, and the water bill on that home for a fixed amount of time would presumably be less, as the tax value, insurance, (and often the utilities expense) are tied to the house's value and size. Penny would receive a corresponding benefit of presumably less utilities expense for a fixed period and less property taxes and insurance when George's obligation expired. George would also receive a reduction in spousal support of \$1,000 per month, into perpetuity, until one of the parties died or Penny remarried.

-Penny could decide to not purchase a house, as she did. The benefit George would be that he was not out the \$700,000 initial cash outlay, and he would avoid the obligation to pay property taxes and her water bill for a fixed amount of time. George would lose the 20% investment in the house. Another detriment to George, and benefit to Penny, would be that George would remain obligated to pay \$5,000

per month in spousal support, into perpetuity, until one of the parties died or Penny remarried.

Because the decree contemplated that Penny might not purchase a house in the allotted time, and because the parties' clear intent, expressed in the decree, that George's obligation to provide \$700,000 was exclusively for the purchase of a house within that allotted time, we agree with the trial court's interpretation and conclusion that George's obligation to provide monies for Penny's house purchase was never triggered.

There is no support in the language of the decree, though, for the trial court's conclusion that George's obligation to pay \$5,000 per month in spousal maintenance was automatically reduced to \$4,000 per month at the conclusion of the 24-month period after the divorce. Rather, that reduction was expressly conditioned upon Penny's deciding to purchase a house. Given the decree's language, "*If* PENNY PAPADOGIANNIS purchases a residence, IT IS ORDERED that GEORGE PAPADOGIANNIS shall pay as maintenance the sum of Four Thousand Dollars (\$4,000.00) per month," such reduction was conditioned upon that purchase, not the passage of 24 months.

In sum, Penny's decision to not purchase a house was not a breach of the 2011 Decree. Her decision freed George from the obligation to provide the \$700,000 towards the home purchase, but also prevented the reduction in spousal support from being triggered. Accordingly, the trial court was correct in

concluding that George did not owe Penny the \$700,000. Although the 2011 Decree contemplated that a future court order could reduce George's monthly spousal support obligations, all of his evidence of changed circumstances justifying a modification was excluded. Accordingly, there was no basis, other than the passage of 24 months, for the trial court to order a reduction in monthly spousal support from \$5,000 to \$4,000. Because this reduction was not triggered by the purchase of a house by Penny, we hold that court ordered reduction was in error.

We thus sustain Penny's fourth issue arguing that there was no evidence that she breached the parties' contract, and her sixth issue arguing that the trial court abused its discretion by modifying George's spousal support obligation.

We overrule her first issue that the trial court abused its discretion by absolving George of his obligation to provide \$700,000 towards a house purchase. We overrule as moot her third issue arguing that there was insufficient evidence that George performed under the contract to provide the \$700,000 and her fifth issue arguing there was insufficient evidence of George's breach-of-contract damages in light of our holdings that she did not breach the contract and that his obligation to perform under the contract was never triggered. We also overrule as moot her seventh issue that the trial court abused its discretion by finding that any ambiguities in the decree should be construed against Penny in light of our

conclusion that the decree's ambiguities need not be resolved because Penny did not purchase a house within 24 months.

CONCLUSION

We affirm the trial court's judgment that George does not owe Penny \$700,000 for the purchase of a house. We reverse the trial court's judgment reducing George's spousal support obligation to \$4,000 and render judgment that George's spousal support obligation remains at \$5,000 per month until either parties dies, Penny remarries, or the amount is altered by future court order as provided by the 2011 Decree.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Higley and Huddle.