Affirmed in Part, Reversed and Remanded in Part, and Memorandum Opinion filed August 31, 2010.

In The

Fourteenth Court of Appeals

NO. 14-09-00720-CV

WILMA REYNOLDS, Appellant

V.

DAVID REYNOLDS, Appellee

On Appeal from the 300th District Court
Brazoria County, Texas
Trial Court Cause No. 48170

MEMORANDUM OPINION

In this divorce case, Wilma Reynolds challenges the trial court's division of the marital estate. She contends the evidence is insufficient to support the trial court's conclusion that David Reynolds's interests in certain entities had not vested, and thus, the evidence does not support the trial court's valuation of those interests. She further contends that the trial court failed to exercise its discretion properly in dividing the marital estate because the court denied her certain discovery and therefore lacked sufficient information on which to base its valuation. In a subsidiary argument, she contends that the trial court abused its discretion in granting David's motion for protection and sanctions regarding her post-judgment discovery requests. David moved to dismiss the appeal,

arguing that Wilma is estopped from bringing this appeal because she accepted the benefits awarded to her. The motion was taken with the case.

We conclude that Wilma accepted the benefits of the judgment, which included an award of a portion of David's 2008 income. We further conclude that the trial court abused its discretion in protecting documentation of that income from discovery and in sanctioning Wilma for requesting them. We therefore deny the motion to dismiss, affirm the divorce decree, reverse the trial court's order on David's post-judgment motion for protection and sanctions, and remand for David to respond to Wilma's post-judgment discovery requests.

I. FACTUAL AND PROCEDURAL BACKGROUND

David is the chief technology officer of Quantlab Financial, LLC ("Quantlab"), and is paid a base salary and substantial bonuses. He also participates with his employer in two entities, Quantlab Trading Partners US, LLP ("QTP") and Quantlab Incentive Partners I, LLC ("QIP"). According to David, he is a limited partner in QTP and receives monthly income and the majority of his bonuses from that entity. He also is entitled to receive a share of QTP's profits. David receives additional income from QIP.

After eleven years of marriage, David petitioned for divorce from Wilma in July 2008. Wilma valued the community estate at $6,711,744.46, exclusive of David's interests in QTP and QIP. David maintained that this figure includes the value of those interests because they are not vested. Wilma served numerous discovery requests to David and his employer seeking the vesting and participation agreements, operating agreements, and other information about the two entities. The agreements concerning QIP were produced, but those concerning QTP were not. The trial court overruled a few of David's objections, but for the most part, it denied Wilma's motions to compel discovery responses and granted David's motions for protection. At trial, Quantlab's lawyer testified that David's interest in QIP is not vested and that he can be redeemed out

of QTP at any time because he participates solely at the discretion of the general partner. David testified that his estimated 2008 income from QIP is $249,454.00.

The trial court rendered judgment awarding Wilma $3,220,874.74 from a particular investment account, together with "50 percent of the year 2008 Estimated Income from [QIP] after taxes are paid on the income," and other property. At Wilma's request, the court issued findings of fact and conclusions of law, but did not respond to her requests for additional or amended findings and conclusions. Wilma timely appealed.

In September 2009, Wilma served David with a post-judgment request for production of documents concerning his 2008 QIP income. David moved for protection and for sanctions on the grounds that the requests were frivolous, oppressive, and harassing because the judgment had been satisfied. In support of the motion, David offered an excerpt from a hearing transcript in which Wilma admitted that $3,220,874.74 was wired to her bank account on May 27, 2009. In response, Wilma pointed out that the trial court had awarded her a share of David's 2008 QIP income in addition to the award from the investment account. The trial court granted David's motion and sanctioned Wilma $750.00. Wilma then filed a supplemental notice of appeal to challenge this order. David moved to dismiss the appeal on the ground that Wilma accepted the benefits of the award and therefore is estopped to challenge it. We took the motion with the appeal, and now address all of the matters presented.

II. ISSUES PRESENTED

In two issues, Wilma argues that the evidence is legally and factually insufficient to support the trial court's conclusion that David's interest in QTP and QIP had not vested. In a third issue, she contends that the trial court could not properly exercise its discretion in dividing the marital property because it denied her discovery necessary to value the property.

III. ANALYSIS

A. Acceptance of Benefits

Because it is potentially dispositive, we first address David's request that we dismiss Wilma's appeal on the ground that she accepted the benefits awarded to her in the divorce decree. *See Carle v. Carle*, 149 Tex. 469, 472, 234 S.W.2d 1002, 1004 (1950) (explaining that a party who accepts the benefits of a judgment is estopped from appealing it); *Waite v. Waite*, 150 S.W.3d 797, 803 (Tex. App.—Houston [14th Dist.] 2004, pet. denied) (same). The property awarded to Wilma included $3,220,874.74 from the parties' investment account. This sum represents about 49% of the net marital estate as found by the trial court, and about 96% of the property awarded to Wilma, exclusive of her share of David's 2008 QIP income.[1] It is undisputed that within ten days after the trial court signed the divorce decree, the funds had been transferred to Wilma's account, and she had withdrawn and spent $1.7 million.

Wilma concedes that she accepted the benefits of the judgment, but she argues that her appeal falls within an exception to the estoppel doctrine. "Where an appellant accepts only that which appellee concedes, or is bound to concede, to be due appellant under the judgment[,] appellant is not estopped to prosecute an appeal which involves only a right to further recovery." *Carle*, 149 Tex. at 472, 234 S.W.2d at 1004. This exception applies if (1) the "appellee would be compelled to concede upon another trial that appellant has the right to retain those benefits regardless of the outcome of the litigation," and (2) a reversal of those portions of the judgment challenged by appellant could not "possibly affect appellant's right to the benefits secured by [her] under the judgment." *Id.*

Wilma argues that the first of these requirements is met because David became "contractually bound to concede the $3,220,870.74" to her when he signed the divorce

[1] The remaining property awarded to her consisted of the household items in her possession, valued at $2,000.00; a checking account with a balance of $1,549.81; a vehicle with a net value of $6,720.68; and half of David's estimated 2008 QIP income.

decree, approving it as to form and substance. She bases this argument on the following language in the divorce decree: "The Court finds that the parties have entered into a written agreement as contained in this decree by virtue of having approved this decree as to both form and substance. To the extent permitted by law, the parties stipulate the agreement is enforceable as a contract." Because David signed the judgment indicating his approval, but Wilma did not, she argues that the judgment became a property agreement that binds David in the event of a retrial, but does not bind her. In other words, Wilma argues that she may enforce the judgment's terms against David as a consent decree or a property agreement, while simultaneously maintaining that she did not consent to the judgment's terms, agree to the property division, or sign the judgment.

These arguments are without merit. The judgment cannot be a property agreement: Wilma did not sign it, and a marital property agreement must be signed by both parties. TEX. FAM. CODE ANN. § 4.104 (Vernon 2006). It is not a consent decree: Wilma did not approve it, and a consent decree may not be rendered when the consent of any party is lacking. *See Rogers v. Rogers*, 806 S.W.2d 886, 889 (Tex. App.—Corpus Christi 1991, no writ); see *also Chang v. Nguyen*, 81 S.W.3d 314, 316 n.1 (Tex. App.—Houston [14th Dist.] 2001, no pet.) (explaining that a consent judgment is one to which each party explicitly and unmistakably gives its consent, and this is not shown merely by the phrase "approved as to form and substance"). And finally, the trial court's decree as to the division of the estate could not be enforced by or against anyone if we were to reverse it as Wilma has asked. *See In re S.S.G.*, 208 S.W.3d 1, 3 (Tex. App.—Amarillo 2006, pet. denied) ("The effect of our reversal [would be] to nullify the judgment of the trial court, leaving it as if it had never been rendered other than as to further rights of appeal.").

Because Wilma has not shown that her appeal of the trial court's division of the marital estate falls within an exception to the estoppel doctrine, we overrule all of Wilma's challenges to the property division and affirm the divorce decree. We do not grant David's motion to dismiss Wilma's entire appeal, however, because the estoppel

arguments apply only to Wilma's challenges to the divorce decree, not to her appeal of the trial court's order sanctioning her and preventing her from discovering David's QIP 2008 income.

B. Post-Trial Discovery and Sanctions

We review a trial court's discovery-related protective order and its imposition of sanctions for abuse of discretion. *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007) (sanctions); *Boales v. Brighton Builders, Inc.*, 29 S.W.3d 159, 168 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) (protective orders).[2] A trial court abuses its discretion if its actions are arbitrary or unreasonable. *Cire v. Cummings*, 134 S.W.3d 835, 839 (Tex. 2004).

Here, the trial court awarded Wilma half of David's 2008 post-tax income from QIP, and instructed the parties and their counsel in open court that David's attorney was to provide documentation of that amount as follows:

> If you'll look over on Page 25 [of the proposed judgment], I have included an asterisk there. The estimated income from QuantLab Incentive Partners I, L.L.C., [is] listed at $124,727 to each of the parties. My asterisk is whatever that amount is, since it is an estimated number. When it is received and finalized insofar as an amount, then it will be divided 50-50 whether it represents 124,727 to each or more or less. Whatever that number is that is going to be received, that's going to be split 50-50; and it is a net 50-50 after taxes have been paid on that income.
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> So, once income is received, the documentation verifying the amount will be provided to [David's attorney] whose office will forward it to [Wilma's attorney]; and then taxes will be assessed on that insofar as the estimated taxes to be paid on that income actually received. And then after the taxes are paid, then the remaining net will be split 50-50.

[2] Although discovery orders, both pretrial and post-trial, are commonly reviewed by mandamus, we may address them when deciding an appeal from the final judgment in the underlying suit. *Parks v. Huffington*, 616 S.W.2d 641, 643–45 (Tex. App.—Houston [14th Dist.] 1981, writ ref'd n.r.e.).

Wilma requested documentation regarding David's 2008 QIP income, and the record does not indicate that he responded with any objections. Instead, he moved for a protective order and for sanctions, asserting that the judgment had been paid because he transferred $3,220,874.74 to Wilma a few days after the trial court signed the divorce decree. The trial court granted David's motion.

The record, however, shows that the award of $3,220,874.74 was in addition to the award of half of David's 2008 post-tax QIP income; thus, payment of one did not excuse David's obligation to pay the other. Moreover, the trial court specifically instructed the parties five months earlier that David was to produce documentation of that income when it was received and finalized. Wilma did not engage in conduct warranting sanctions by requesting that such documents be produced.

We conclude that the trial court abused its discretion by sanctioning Wilma and granting David's motion protecting documents about his 2008 QIP income from discovery. We therefore sustain her challenge to the trial court's order.

IV. CONCLUSION

Because Wilma accepted the benefits of the trial court's division of the marital estate, she is estopped from appealing it. We therefore overrule Wilma's issues challenging the portion of the divorce decree concerning the characterization and division of the marital property. Her post-judgment discovery requests, however, were consistent with and in furtherance of the trial court's judgment and instructions to the parties. Thus, we reverse the trial court's order of October 6, 2009 sanctioning Wilma and protecting documentation of David's 2008 QIP income from discovery, and we remand the case with instructions that the trial court allow David thirty days from the date of the mandate to

respond to Wilma's post-judgment discovery requests concerning David's 2008 post-tax QIP income.

/s/ Tracy Christopher
Justice

Panel consists of Justices Brown, Sullivan, and Christopher.