**In The**

# *Court of Appeals*

## *Ninth District of Texas at Beaumont*

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**NO. 09-09-00023-CV**

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**CHARLES ERIK POHLA, Appellant**

**V.**

**BARBARA ELLEN POHLA, Appellee**

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**On Appeal from the 359th District Court**
**Montgomery County, Texas**
**Trial Cause No. 07-11-11407-CV**

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## MEMORANDUM OPINION

Appellant, Charles Erik Pohla, appeals the trial court's judgment granting a divorce and rendering judgment based on an alleged property settlement agreement between the parties to which he had not consented. In two issues, Mr. Pohla asserts that (1) the trial court erred in entering a divorce decree contrary to the parties' agreement, and (2) the trial court erred in entering the divorce decree without a trial on the merits. We reverse the judgment of the trial court.

The property settlement agreement reached by the parties is at the center of this dispute. The testimony establishes that the parties agreed to a division of property that would in effect "give 58 percent of the community assets to [Mrs. Pohla] and 42 percent of the community assets to Mr. Pohla." Each party was awarded their separate property. The community assets were listed on a worksheet and each asset was awarded either to Mrs. Pohla or Mr. Pohla, with a corresponding value, although the value of each item is not listed. The 58/42 percent division of the community estate was then to be accomplished by offset of an AG Edwards IRA account in Mr. Pohla's name. The parties agreed the IRA account would be "divided in such a way as to make an overall 58/42 division . . . ." At the time of these proceedings, the parties' had not "crunched all the numbers," but they agreed that the IRA account would be offset as of its value on April 30, 2008, in order to accomplish their goal of a 58/42 division of the community estate. Significantly, the asset at issue in this appeal, a Teacher's Retirement System of Texas Retirement Account ("TRS") in Mrs. Pohla's name, was not listed on the worksheet which divided the community assets between the parties.

The trial judge questioned Mrs. Pohla regarding the details of the settlement agreement and the division of various assets as listed in the parties' exhibits. The trial judge asked Mrs. Pohla if she was asking the court to grant the divorce and approve the agreement understanding that a final decree of divorce would be submitted in the future to which Mrs. Pohla answered "yes." Mr. Pohla testified similarly in response to

questions. Mr. Pohla stated that he understood and agreed to the terms of the settlement as stated on the record.

After the parties were questioned regarding the agreement, the court pronounced judgment granting the parties a divorce and approving the property settlement agreement stated on the record by the parties as a "fair and equitable one, a right and just division of that marital estate." The trial court then set an entry date for the Final Decree of Divorce.

When the court asked Mrs. Pohla's counsel if there was anything further, the following exchange took place on the record:

> [MRS. POHLA'S COUNSEL:] Judge, I want to add one thing. It was an oversight. I know its not a problem but I feel like I need to say it for the record. She has a retirement account. Her teacher's retirement account that I think goes without saying it goes to her. Just wanted to get that on the record.
>
> [MR. POHLA'S COUNSEL:] Yeah, I don't -- it's okay?
>
> MR. POHLA: Uh-huh.
>
> THE COURT: Yes? That's a yes?
>
> MR. POHLA: Yes.
>
> THE COURT: Okay.
>
> [MRS. POHLA'S COUNSEL:] That's part of our worksheet here. It's kind of a given.
>
> THE COURT: Yes, sir.
>
> MR. POHLA: We have a counter petition on file announcing non-suit.
>
> THE COURT: Okay. All right. Any objection?

[MRS. POHLA'S COUNSEL:] No ma'am.

In September of 2008, Mrs. Pohla filed a Motion to Sign Final Decree of Divorce and a proposed Final Decree of Divorce. The proposed Final Decree of Divorce purported to award 100 percent of the TRS account to Mrs. Pohla as community property but without any corresponding offset to the IRA account. Mr. Pohla filed an objection to the Motion to Enter. Thereafter, Mrs. Pohla filed an Amended Motion to Sign Final Decree of Divorce. Mr. Pohla maintained his objection to the Motion to Enter, and in November of 2008 the trial court held a hearing on the motion. At the hearing, Mr. Pohla argued that while the TRS account should be awarded to Mrs. Pohla, it was community property and as such, it was subject to the parties' agreement to a 58/42 percent division of the community estate. While Mrs. Pohla agreed the TRS account was community property, she maintained that Mr. Pohla announced his agreement that she should be awarded the full balance of such account. The court overruled Mr. Pohla's objection.

Following the hearing, Mrs. Pohla filed a First Amended Motion to Sign Final Decree of Divorce. This motion incorporated the trial court's rulings made at the November hearing and awarded 100 percent of the TRS account to Mrs. Pohla with no corresponding adjustment to the IRA account or division of community property. The amended motion was set for entry, presented, and the decree was signed by the judge.[1]

[1] We note that the Final Divorce Decree was signed by both parties. However, Mr. Pohla signed the Final Divorce Decree "subject to [his] objection to award of 100% of TRS C/P." Mrs. Pohla's attorney signed the decree "[w]ithout accepting or conceding to Respondent's objections below."

Mr. Pohla signed the decree subject to a written objection stating "[a]pproved subject to Respondent's objection to award of 100% of TRS/CP." This appeal followed.

In issue one, Mr. Pohla argues that the trial court erred in entering a divorce decree which awarded 100 percent of the TRS account to Mrs. Pohla with no corresponding adjustment to the division of the marital estate. Mr. Pohla further argues that during the exchange on the record regarding Mrs. Pohla's TRS account, Mr. Pohla agreed that the account "was part of the worksheet, to be treated like all the other community assets [on the worksheet], and to be placed in the wife's column" making it subject to the agreed 58/42 percent division.

Pursuant to Rule 11 of the Texas Rules of Civil Procedure, settlement agreements must be in writing, signed, and filed with the court, or must be made in open court and entered of record. TEX. R. CIV. P. 11. A Rule 11 agreement must be interpreted by the trial court based on the intention of the parties as expressed in the entire agreement in light of the surrounding circumstances, including the state of the pleadings, the allegations therein and the attitude of the parties with respect to the issues. *In re Acevedo*, 956 S.W.2d 770, 775 (Tex. App.--San Antonio 1997, no writ). The trial court's determination regarding the parties' intent "should be reviewed like a factual determination and should only be held to be an abuse of discretion if the trial court 'could reasonably have reached only one decision.'" *Id*. (quoting *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992)). In the present case, both parties indicated their agreement to the

terms of the settlement, which would award each community asset to one party and accomplish a 58/42 percent division of the community estate as a whole by offsetting an IRA account in Mr. Pohla's name.

Mrs. Pohla argues on appeal that Mr. Pohla agreed to the award of 100 percent of the TRS account to her, and that once the court rendered judgment on the parties' settlement agreement, Mr. Pohla could not revoke his consent to the agreement. "A party may revoke its consent to a settlement agreement at any time before judgment is rendered on the agreement." *S & A Rest. Corp. v. Leal*, 892 S.W.2d 855, 857 (Tex. 1995); *see also Patel v. Eagle Pass Pediatric Health Clinic, Inc.*, 985 S.W.2d 249, 251 (Tex. App.--Corpus Christi 1999, no pet.). "Judgment is rendered when the trial court officially announces its decision in open court or by written memorandum filed with the clerk." *Patel*, 985 S.W.2d at 252 (citing *S & A Rest.*, 892 S.W.2d at 857).

> Rendition is distinguishable from the entry of judgment which is a purely ministerial act by which judgment is made of record and preserved. The words used by the trial court must clearly indicate the intent to render judgment at the time the words are expressed. The judge's intention to render judgment in the future cannot be a present rendition of judgment. The rendition of judgment is a present act, either by spoken word or signed memorandum, which decides the issues upon which the ruling is made.

*Keim v. Anderson*, 943 S.W.2d 938, 942 (Tex. App.--El Paso 1997, no writ) (citations omitted); *see also S & A Rest.*, 892 S.W.2d at 857-58.

After the parties' agreement was dictated into the record by way of their sworn testimony, the trial court ordered and decreed that the marriage be dissolved and found

that the division of the marital estate as set forth in the dictated agreement by the parties was just and right. The trial judge then asked counsel for an entry date. As set forth above, the entry of a judgment is a purely ministerial act. *Keim*, 943 S.W.2d at 942. The trial judge's statements clearly indicate her intent to render judgment granting the parties' divorce and adopting their agreement as to the division of assets at the settlement hearing. Significantly, the TRS account was not listed on the worksheet dividing assets and the issue regarding division of this asset was not raised until after the trial court rendered judgment on the parties' agreement. Because the parties had not agreed to the award of the TRS account at the time the judgment was rendered, the award of the TRS account was outside the scope of the agreed judgment.

When a trial court renders judgment on the parties' settlement agreement, the judgment must be in strict compliance with the terms of the agreement. *Patel*, 985 S.W.2d at 252 (citing *Vickrey v. Am. Youth Camps, Inc.*, 532 S.W.2d 292, 292 (Tex. 1976)). "The trial court has no power to supply terms, provisions, or conditions not previously agreed to by the parties." *Keim*, 943 S.W.2d at 946. The trial court does have the authority to divide the community estate to the extent not set forth in the parties' settlement agreement. *Clanin v. Clanin*, 918 S.W.2d 673, 677-78 (Tex. App.--Fort Worth 1996, no writ). However, if the terms of the court's judgment conflict with the terms of the settlement agreement, the judgment is unenforceable. *Id.* at 678. Moreover, generally, a court's modifications to settlement agreements are grounds for reversal only

where the modifications "add terms, significantly alter the original terms, or undermine the intent of the parties." *Beyers v. Roberts*, 199 S.W.3d 354, 362 (Tex. App.--Houston [1st Dist.] 2006, pet. denied) (citing *Keim*, 943 S.W.2d at 946).

Here, the parties clearly agreed to a 58/42 percent division of the community estate. After the trial court rendered judgment on the stated agreement, Mrs. Pohla's counsel conceded on the record that the TRS account's omission from the community assets worksheet was an "oversight" and that the TRS account should be part of the worksheet. The parties even stipulated at the hearing on the Motion to Enter judgment that the TRS account at issue was community property. Other than Mrs. Pohla's contention that Mr. Pohla expressed his consent on the record to award her 100 percent of the TRS account during the quoted exchange, Mrs. Pohla offered the trial court no other justification for awarding the particular community asset to her while otherwise exempting it from the agreed corresponding offset. Mr. Pohla's statement on the record in the quoted exchange can reasonably be interpreted to express his consent to award the asset to Mrs. Pohla, to be added to the worksheet, which would subject the value of such asset to the agreed division. Without other justification, the trial court's award of the TRS account to Mrs. Pohla, without a corresponding offset to the IRA account, significantly alters the terms of the settlement agreement on which judgment was rendered and such award undermines the parties' clear intent to award 58 percent of the

community estate to Mrs. Pohla. We sustain issue one. Because we sustain issue one, we need not address issue two.

When a consent judgment is not in strict compliance with the terms of the parties' settlement agreement, the judgment must be set aside. *Chisholm v. Chisholm*, 209 S.W.3d 96, 98 (Tex. 2006). Accordingly, we affirm the portion of the trial court's judgment granting the divorce, reverse the portion of the judgment dividing the marital estate, and remand the case to the trial court for entry of judgment in conformity with the terms of the parties' agreement and in accordance with this opinion. *See Patel*, 985 S.W.2d at 252-53; *Clanin*, 918 S.W.2d at 678.

AFFIRMED IN PART, REVERSED AND REMANDED IN PART.

CHARLES KREGER
Justice

Submitted on February 17, 2010
Opinion Delivered March 11, 2010

Before McKeithen, C.J., Gaultney, and Kreger, JJ.