COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

VERONICA CHAVEZ VARA,	§	No. 08-20-00087-CV
Appellant,	§	Appeal from the
v.	§	388th Judicial District Court
MARK VARA,	§	of El Paso County, Texas
Appellee.	§	(TC# 2012DCM10912)

O P I N I O N

Appellant Veronica Chavez Vara (Veronica) appeals from the trial court's order dismissing a petition that she filed seeking clarification and enforcement of a 2008 divorce decree when she and Appellee Mark Vara (Mark) were originally divorced. Veronica contends that the trial court erred in dismissing her petition and in denying her motion for default judgment against Mark. Because we find that Veronica's petition had no basis in law and was invalid on its face, we affirm the trial court's judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

The procedural history of this case is detailed in our prior opinion in *Vara v. Vara*, 558 S.W.3d 782, 784-85 (Tex.App.--El Paso 2018, pet. denied). We will therefore give an abbreviated history as it pertains to Veronica's current appeal.

A. The Divorce Proceedings in Travis County

Veronica and Mark entered an agreed decree of divorce (the Original Decree), which the 261st District Court for Travis County signed in 2008. The Original Decree contained provisions relating to the sale of the parties' residence, which, among other things, stated that: (1) the parties were to enter into a listing agreement to sell the house by a certain date; (2) the house was to be sold at a price agreeable to both parties; (3) Veronica had the right to stay in the house until the close of escrow; (4) Mark was to make the mortgage, taxes, and insurance payments on the house, while Veronica was to pay for routine maintenance, and the parties were to split the cost of any necessary structural or mechanical repairs on the house until it was sold; and (5) the proceeds from the sale were to be used to first pay off $20,000 owed on a credit card in Veronica's name, and to then reimburse Mark for a portion of the mortgage payments he made, as well as the resulting pay down in equity on the house, with the remainder to be divided equally between the parties.

Mark subsequently filed a motion for clarification and enforcement of the Original Decree, complaining that Veronica had failed to sign a listing agreement by the date set forth in the decree. He further urged the court to clarify the date on which Veronica was to vacate the house. In response, a Travis County family law associate judge, Andrew Hathcock, entered a temporary order on October 21, 2008, which found, among other things, that the Original Decree only gave Veronica the unambiguous right to remain in the house until October 28, 2008. The order required Veronica to vacate the premises pending a hearing and further orders of the court. The district court judge approved associate Judge Hathcock's order.

Following a de novo hearing, a different Travis County district court judge, Judge Rhonda Hurely, entered an "Order on Motions for Clarification and Enforcement" on December 22, 2009, in which she "clarified" the Original Decree, providing that Veronica was to "re-vacate" the home

by November 22, 2009. Both parties were also to "agree" on the amount in a listing agreement that she ordered them to sign. And both parties signed that order, conveying their agreement with it. Neither party challenged the December order at that time, and the house was thereafter sold for $450,000 and the proceeds divided in accordance with the provisions set forth in the Original Decree.[1]

B. The Prior Enforcement Proceedings in El Paso County

Approximately six years later, after Veronica moved to El Paso, and jurisdiction of her case was transferred here, she moved to vacate the December 2008 order. Her motion contended that the sales provisions in the Original Decree were not ambiguous and that it was therefore improper for the court to have modified those provisions. Judge Laura Strathmann of the 388th Judicial District Court in El Paso agreed and in 2017 vacated the December 2009 order. In her order, Judge Strathmann expressly stated that she was reinstating the Original Decree, and that Veronica could file a motion for clarification and enforcement of the decree under Chapter 9 of the Texas Family Code.

Veronica thereafter filed her "Second Amended Petition for Enforcement of Property Division of the Original Decree of Divorce" (the Enforcement Petition) in the same court. In her Enforcement Petition, Veronica argued that Mark did not abide by the terms of the sales provisions in the Original Decree by: (1) restricting her access to the parties' house from October 2008 to February 2010 when the house was sold; and (2) by selling the house for $450,000, without her agreement. She sought damages of $1.8 million. Mark, who had since moved to Singapore, did not answer the Enforcement Petition, and Veronica moved for a default judgment. Judge

[1] The record contains a document signed by both parties, reflecting that the proceeds were used to pay off Veronica's credit card, to reimburse Mark for the mortgage payments he made prior to close of escrow, together with the equity pay down, with the remainder split equally between the parties.

Strathmann, however, denied the motion for a default judgment and dismissed the Enforcement Petition, concluding that Veronica did not come forward with sufficient evidence to support her claim for damages. Veronica appealed the judgment to this Court. We agreed with Judge Strathmann and therefore affirmed the judgment. *See Vara*, 558 S.W.3d at 789.

C. The Current Clarification and Enforcement Proceeding

Veronica then filed a "Second Amended Original Petition for Clarification and Enforcement of the Property Division of the Original Decree of Divorce via Reduction to Money Judgment with Motion to Vacate" (the Clarification Petition).[2] In her Clarification Petition, Veronica first sought to vacate Associate Judge Hathcock's October 2008 temporary order, arguing that Judge Strathmann only vacated the December 2008 order, which she believed effectively reinstated Judge Hathcock's earlier order. She then sought a ruling that Judge Hathcock's October order was void and should be vacated, as it impermissibly amended, altered, or modified the Original Decree. Veronica argued that once Judge Hathcock's temporary order was vacated, and the Original Decree effectively reinstated, it was necessary to clarify, or "distinguish" various aspects of the sales provisions in the decree. Specifically, Veronica requested that the decree include the following: (1) Veronica could remain in the parties' house before its sale and do so at no cost to her; (2) Mark had to make payments to cover the expenses on the house before its sale, and was required to pay her at least $3,500 a month; (3) the parties were to agree upon a sales price for the house but that agreed-upon sales price was to be set at $1.65 million; and (4) the proceeds from the sale were to be distributed to ensure that Veronica was "free and clear" of all debts to Mark.

[2] In her petition, Veronica also sought a modification of Mark's child support obligations for the parties' remaining child who was under the age of 18 at the time, which the trial court granted in part, ordering Mark to pay additional medical support for that child. Veronica appealed from that order as well, but she subsequently moved to voluntarily dismiss the appeal, which we granted in August 2021 in Cause No. 08-20-00088-CV.

And finally, if the court agreed to "clarify" the Original Decree in this way, Veronica sought enforcement of the newly clarified sales provisions against Mark and sought damages for his alleged violation of those provisions. Veronica's request for enforcement was nearly identical to the request that she made in her earlier Enforcement Petition, as she once again sought $59,500 in damages for Mark's actions in restricting her access to the house for 17 months before its sale, and $600,000 in damages for his actions in selling the house for $450,000, rather than for the $1.65 million "agreed-upon" price that she wanted placed in the clarified order. And because Mark failed to file an answer to her Clarification Petition, she once again filed a motion for a default judgment against him.

This matter was assigned to retired visiting Judge Guadalupe Rivera. At a hearing that was held at Veronica's request, Judge Rivera informed Veronica that she believed her pleadings were frivolous and groundless, and failed to state a valid claim for relief. Specifically, Judge Rivera advised Veronica that she had "long ago" accepted the benefits of the property division when the house was sold, and that she had already litigated these same issues in the prior enforcement proceeding that ended with this Court's earlier opinion. She therefore orally directed Veronica not to file any future challenges to the sales provisions in the decree raising these same issues.

In her written order, Judge Rivera denied Veronica's motion for default judgment; denied Veronica's motion to declare the October 2008 temporary order void; and dismissed her Clarification Petition. Veronica thereafter requested findings of fact and conclusions of law, and filed a series of motions seeking to modify, correct or reform Judge Rivera's rulings, as well as seeking a new trial, all of which were overruled by operation of law. This appeal followed.

II. ISSUES ON APPEAL

Veronica lists six issues on appeal, many of which overlap.[3] In Issues One, Three, and Five, she contends that Judge Rivera erred by dismissing her Clarification Petition, and by denying her motion for default judgment. In Issues Four and Six, she contends that Judge Rivera erred in dismissing her petition with prejudice and in ordering her not to refile her claims in any future proceedings. And in Issue Two, she contends that Judge Rivera erred by denying her motion to vacate Judge Hathcock's October 2008 order. We start our analysis with Issue Two.

III. MOTION TO VACATE THE OCTOBER 2008 ORDER

In Issue Two, Veronica argues that Judge Rivera erred in denying her motion to vacate Judge Hathcock's October 2008 order, contending that once Judge Strathmann vacated Judge Hurley's December 2008 order, the October 2008 order was effectively reinstated. In turn, she contends that the October 2008 order improperly clarified the Original Decree and was therefore void and should have been vacated. We conclude, however, that Judge Hathcock's October 2008 order no longer had any force after Judge Hurley issued her December 2008 order, and that the October order was therefore not reinstated when the December order was vacated.

Judge Hathcock's October 2008 order was a temporary order, and by its express terms, it was to only remain in effect pending a hearing and further orders of the court. Judge Hathcock was an associate family law judge who had no power to enter a final order in the case.[4] *See*

[3] We note that in her Argument section, Veronica lists only four issues, but in her "Issues Presented," she lists six issues. For clarification purposes, we will treat her brief as raising all six issues.

[4] A family law associate judge's authority is limited by section 201.007 of the Family Code, which provides that: "Except as limited by an order of referral, an associate judge may. . . without prejudice to the right to a de novo hearing before the referring court . . . render and sign: (A) a final order agreed to in writing as to both form and substance by all parties; (B) a final default order; (C) a temporary order; or (D) a final order in a case in which a party files an unrevoked waiver made in accordance with Rule 119, Texas Rules of Civil Procedure, that waives notice to the party of the final hearing or waives the party's appearance at the final hearing. TEX. FAM. CODE ANN. § 201.007(a)(14). None of these circumstances applies to Judge Hathcock's order.

Alwazzan v. Alwazzan, 596 S.W.3d 789, 804 (Tex.App.--Houston [1st Dist.] 2018, pet. denied) (recognizing the limited power of an associate judge to sign a final order); *In re A.G.D.M.*, 533 S.W.3d 546, 547 (Tex.App.--Amarillo 2017, no pet.) (same). Following the entry of an associate judge's temporary order, the Family Code gives the parties the right to a de novo hearing in front of a district court judge, which is considered "a new and independent action" on the issues raised in that proceeding. *See In re N.T.*, 335 S.W.3d 660, 669 (Tex.App.--El Paso 2011, no pet.) (recognizing that a de novo appeal from an associate judge's ruling on designated issues "is a new and independent action on those issues raised."). And a district court's entry of a final order following a de novo hearing supersedes the associate judge's temporary order, which in turn, renders any complaints about the temporary order moot. *See In Interest of A.K.*, 487 S.W.3d 679, 683 (Tex.App.--San Antonio 2016, no pet.) (recognizing that a final order supersedes a temporary order, rendering moot any complaint about the temporary order."); *see also In re A.A.*, No. 08-14-00085-CV, 2014 WL 3953490, at *1 (Tex.App.--El Paso Aug. 13, 2014, no pet.) (mem. op.) (trial court's temporary orders were rendered moot when trial court entered final orders during pendency of mandamus proceeding). Therefore, once Judge Hurley signed the final order of clarification in December 2008, following the de novo hearing, Judge Hathcock's October 2008 temporary order was superseded, and no longer had any effect, thereby rendering moot any complaints about it.[5]

And more to the point, when Judge Strathmann ruled that the December 2008 final clarification order was void and vacated that order, she expressly held that this re-instated the

[5] In her brief, Veronica contends that this Court held in its earlier opinion that the October 2008 order was still in effect after Judge Strathmann vacated the December 2008 order. The claim is not accurate. In our opinion, we only considered whether Veronica had come forward with sufficient evidence of damages for Mark's alleged breach of the Original Decree, and we did not indicate that the October 2008 order was still in effect, or otherwise indicate that it was of any concern in our analysis. *See Vara v. Vara*, 558 S.W.3d 782, 785, 788-89 (Tex.App.--El Paso 2018, pet. denied)

Original Decree. The ruling was never challenged. Accordingly, because Judge Hurley's temporary order had long ago ceased to have any effect, there was no basis for Judge Rivera to grant Veronica's request to declare that order void or to vacate it. Veronica's Issue Two is overruled.

IV. DISMISSAL OF THE CLARIFICATION PETITION AND DENIAL OF THE MOTION FOR DEFAULT JUDGMENT

In Issues One, Three, and Five, Veronica contends that Judge Rivera erred by refusing to enter a default judgment in her favor on her Clarification Petition, and by dismissing her petition. We disagree on both accounts.

A. Judge Rivera Properly Declined to Enter a Default Judgment

Veronica filed a motion for default judgment, pointing out that Mark did not answer her Clarification Petition despite being duly served. At a hearing on her motion, she also informed Judge Rivera that she had served requests for admissions on Mark which had gone unanswered. Those requests asked Mark to admit that he had violated the sales provisions in the Original Decree. Veronica then asked Judge Rivera to treat them as "deemed admissions," and argued that she was entitled to a default judgment on that basis. Veronica renews these same arguments on appeal, contending that because she was the only party to appear at the hearing, and because Mark failed to respond to her requests for admissions, Judge Rivera had to grant her motion for a default judgment. We disagree.

When a party does not respond to requests for admissions, they may generally be considered "deemed admissions," which may be used as evidence to support a default judgment. *See Lucas v. Clark*, 347 S.W.3d 800, 803 (Tex.App.--Austin 2011, pet. denied). However, overly broad, merits-preclusive requests for admissions are improper and therefore, may not result in deemed admissions in support of a default judgment. *Id.* at 804, *citing In re Estate of Herring,*

970 S.W.2d 583, 589 (Tex.App.--Corpus Christi 1998, no pet.) (requests for admissions requesting party to admit ultimate facts, which were "sweepingly broad" could not be deemed admitted when opposing party failed to respond); *Birdo v. Hammers*, 842 S.W.2d 700, 701 (Tex.App.--Tyler 1992, writ denied) (sweepingly broad requests for admission, which ask the defendant to admit or deny every allegation made in plaintiff's petition, may not result in deemed admissions).

In her requests for admissions, Veronica asked Mark to admit that he violated the sales provision in the Original Decree by restricting her access to the parties' house before the close of escrow, and by improperly forcing the sale of the house for $450,000. She also asked Mark to admit that he owed her $59,500 for restricting her access to the house, and $600,000 for improperly forcing the sale of the house for less than $1.65 million. These requests were overly broad, as they asked Mark to admit to legal conclusions about the interpretation of the Original Decree, and to admit to the ultimate issue raised in her petition--whether he owed any damages to her. Accordingly, Mark's failure to respond to the requests for admissions did not serve as a proper basis for granting Veronica's motion for default judgment.

In addition, as the Texas Supreme Court has repeatedly recognized, a no-answer default judgment may not be entered on the claims set forth in a party's petition, when the petition itself affirmatively discloses the "invalidity" of those claims. *See Paramount Pipe & Supply Co., Inc. v. Muhr*, 749 S.W.2d 491, 494 (Tex. 1988); *see also Elite Door & Trim, Inc. v. Tapia*, 355 S.W.3d 757, 766 (Tex.App.--Dallas 2011, no pet.) (recognizing that a default judgment may be granted only on a party's claim if the petition "does not disclose any invalidity of the claim on its face."). As discussed below, the claims set forth in Veronica's Clarification Petition were invalid on their face, and they thus did not support the entry of a default judgment. Similarly, their invalidity further justified Judge Rivera's order dismissing the petition.

B. Judge Rivera Properly Denied Veronica's Clarification Petition

The Family Code authorizes a court to "render further orders to enforce the division of property made or approved in the decree of divorce . . . or to clarify the prior order." TEX.FAM.CODE ANN. § 9.006(a). But the court cannot "amend, modify, alter, or change the division of property made or approved in the decree of divorce" after the order becomes final. TEX.FAM.CODE ANN. § 9.007(a). Moreover, an order to clarify the prior order "may not alter or change the substantive division of property." *Id.* An order that does so, "is beyond the power of the divorce court and is unenforceable." *Id.* § 9.007(b); *see also Hagen v. Hagen*, 282 S.W.3d 899, 902 (Tex. 2009) (recognizing that a court may not "amend, modify, alter, or change the division of property" originally set out in the decree); *Johnson v. Ventling*, 132 S.W.3d 173, 178 (Tex.App.--Corpus Christi 2004, no pet.) (any order "that amends, modifies, alters, or changes the actual, substantive division of property made or approved in a final decree of divorce or annulment is beyond the power of the divorce court and is unenforceable.").

Moreover, a trial court only has the authority to clarify an *ambiguous* divorce decree, and lacks the authority to modify, alter, or change the terms of an *unambiguous* decree. *See*; *Kimsey v. Kimsey*, 965 S.W.2d 690, 694-95 (Tex.App.--El Paso 1998, pet. denied) (recognizing that when a divorce decree is unambiguous, the trial court lacks any authority to issue an order altering or modifying the original disposition of property). Thus, even if a divorce decree contains legal errors, a court may still not make a substantive change to the decree after it becomes final, absent any ambiguities in the order. *See Murray v. Murray*, 276 S.W.3d 138, 144 (Tex.App.--Fort Worth 2008, pet. dism'd), *citing Shanks v. Treadway*, 110 S.W.3d 444, 449 (Tex. 2003) (declaring that a party's "remedy for a substantive error of law by the trial court was by direct appeal, and he cannot now collaterally attack the judgment").

Here, although Veronica may have been entitled to bring a petition to clarify the Original Decree, her Clarification Petition, on its face, did not set forth a legally valid claim under the above principles. First, her petition failed to allege that there were any ambiguities in the decree's sales provisions that required clarification. Nor do we find any ambiguities in those provisions. *See generally Shanks*, 110 S.W.3d at 447 ("As with other written instruments, whether a divorce decree is ambiguous is a question of law."), *citing Coker v. Coker*, 650 S.W.2d 391, 394 (Tex. 1983); *see also Watret v. Watret*, 623 S.W.3d 555, 561 (Tex.App.--El Paso 2021, no pet.) (whether the terms in a divorce decree are ambiguous is a question of law which we review de novo). As addressed above, and as Veronica argued in earlier proceedings, the terms of the Original Decree set forth the parties' rights and responsibilities for the sale of their residence. And more importantly, Veronica's petition did not truly seek to clarify any of those provisions. Instead, her petition, on its face, asked the court to substantively alter the provisions by: adding new and different terms to the decree, requiring Mark to pay a minimum of $3,500 a month in payments before the close of escrow; allowing her to stay in the home at no cost to her; requiring the parties to agree on a price for the house of $1.65 million; and requiring a different distribution of the proceeds from the sale.

Thus, we conclude that Veronica's Clarification Petition was invalid on its face, having no basis in law, and that Judge Rivera therefore properly denied Veronica's motion for a default judgment and properly dismissed the petition.

Veronica's Issues One, Three, and Five are Overruled.

C. Dismissal with Prejudice

In Issue Four, Veronica contends that Judge Rivera erroneously dismissed her Clarification Petition with prejudice. Issue Six questions whether she may file another petition, with her argument alluding to Judge Rivera's oral directive for her not to file any other petitions for

clarification or enforcement of the sales provisions in the Original Decree. Judge Rivera warned Veronica that she risked being declared a vexatious litigant if she did.

Addressing Issue Six first, the oral pronouncement that Veronica should not file any other petitions is not part of the written order appealed from and it would not by itself rise to the level of an anti-suit injunction. *See Wyrick v. Bus. Bank of Texas, N.A.*, 577 S.W.3d 336, 356 (Tex.App.--Houston [14th Dist.] 2019, no pet.) (noting extraordinary nature and requirements for anti-suit injunction); *In re Price*, No. 09-02-206 CV, 2002 WL 1339895, at *2 (Tex.App.--Beaumont June 20, 2002, orig. proceeding) (per curiam) (citing cases that infer "an oral order is insufficient to hold a person in constructive contempt--whether the oral order is one requiring the payment of child support or one enjoining a party from certain conduct."); TEX.CIV.PRAC. & REM.CODE ANN. § 11.101(a) (vexatious litigant provision that allows court on its own motion to "enter an order" declaring a litigant to be vexatious, thus contemplating a written order filed of record). The trial court's oral pronouncement, nonetheless, is sage advice, because signing any pleading filed of record exposes the signor to certain duties, the breach of which exposes them to sanctions. *See* TEX.R.CIV.P. 13 (obligation of person signing pleading and motion, and sanctions for violating same); TEX.CIV.PRAC. & REM.CODE ANN. § 10.001 (sanctions for signing frivolous pleading or motion); *Akinwamide v. Transportation Ins. Co.*, 499 S.W.3d 511, 528-29 (Tex.App.--Houston [1st Dist.] 2016, pet. denied) (upholding sanctions against pro se litigant under Rule 13 and expressly rejecting notion that the Rule did not apply to pro se litigant).

As to Issue Four, we agree that Judge Rivera's written order of dismissal should be with prejudice. Veronica has already had been given multiple opportunities to challenge the provisions in the Original Decree. And the doctrines of collateral estoppel and res judicata would bar her from bringing further challenges raising these same issues or claims.

First, the doctrine of collateral estoppel, or issue preclusion, prevents a party from relitigating issues already resolved in a prior suit. *See Barr v. Resolution Tr. Corp. ex rel. Sunbelt Fed. Sav.*, 837 S.W.2d 627, 628-29 (Tex. 1992) *citing Bonniwell v. Beech Aircraft Corp.*, 663 S.W.2d 816, 818 (Tex. 1984); *see also Croysdill v. Old Republic Ins. Co.*, 490 S.W.3d 287, 295 (Tex.App.--El Paso 2016, no pet.). And here, the issue of whether the sales provisions in the Original Decree were ambiguous and needing clarification have already been resolved against her.

Second, the doctrine of res judicata, or claims preclusion, "prevents the relitigation of a claim or cause of action that has been finally adjudicated, as well as related matters that, with the use of diligence, should have been litigated in the prior suit." *See Barr*, 837 S.W.2d at 628; *see also Murray v. Murray*, 276 S.W.3d 138, 144 (Tex.App.--Fort Worth 2008, pet. dism'd) (recognizing that the doctrine of res judicata applies to the property division in a final divorce decree, just as it does to any other final judgment, barring subsequent collateral attack even if the divorce decree improperly divided the property). Veronica already had the opportunity in the prior enforcement proceedings in Judge Strathmann's court to pursue her claims for damages against Mark for allegedly violating the sales provisions in the Original Decree, but failed to produce sufficient evidence to support her claims. Therefore, since she has already unsuccessfully litigated those claims, she is precluded from relitigating those claims.

Thus, to the extent that Judge Rivera dismissed Veronica's Clarification Petition with prejudice, we find no error in doing so.

Veronica's Issues Four and Six are overruled.

VII. CONCLUSION

The trial court's judgment is affirmed.

JEFF ALLEY, Justice

March 31, 2022

Before Rodriguez, C.J., Palafox, and Alley, JJ.