

VACATE and AFFIRM in Part; and Opinion Filed July 11, 2017.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-00890-CV

**LORRI ANNETTE LANCASHIRE, Appellant
V.
DAVID ANTHONY LANCASHIRE, Appellee**

**On Appeal from the 256th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-10-14320-Z**

MEMORANDUM OPINION

**Before Justices Bridges, Lang-Miers, and Evans
Opinion by Justice Lang-Miers**

This appeal arises out of a dispute over a provision in an agreed decree of divorce naming David Anthony Lancashire constructive trustee of property decreed to Lorri Annette Lancashire.¹ That property consisted of a “[f]ifty [p]ercent (50%) undivided interest in all units or shares in the business entity known as Bold Ventures, LLC² in [David’s] name.” The dispute centered on whether David, as constructive trustee, had to provide Lorri documentation showing the status of the shares, Bold’s tax returns and financial statements, and “any Schedule K-1 forms” he received. The trial court granted a declaratory judgment that David owed a duty to provide an annual written summary of the status of the shares. The trial court also granted summary

¹ Consistent with the parties’ brief and due to the common surname, we will refer to the parties by their first names.

² Bold Ventures, LLC is a holding company that was funded during the marriage with community assets.

judgment in David's favor. We vacate the declaratory judgment and affirm the summary judgment.

BACKGROUND

The parties divorced in April 2012. The divorce decree incorporated a mediated settlement agreement and provided, with respect to the Bold shares awarded Lorri, that the shares would be managed by David, who had "the exclusive right to possess, control, manage, and exercise all rights associated with" all the Bold shares held in his name. The decree further provided David would be

a constructive trustee for the benefit of [Lorri] with regard to the Bold [shares] to the extent of his payment obligations set forth in this paragraph, and that [David] is ORDERED to pay to [Lorri], within five business days of receipt, one-half of the sum of any and all monies he receives for any sale or transfer of any Bold units or shares.

Seeking "some assurance" that the value of the Bold shares was "being properly maintained" and not having received the information she requested about Bold, Lorri filed suit against David and moved for the appointment of a "Rule 172 auditor."³ By the suit, a combined motion for enforcement under the Texas Family Code and suit to compel under section 113.151 of the Texas Property Code, Lorri sought an accounting of Bold's financial affairs from January 1, 2011 "through the present." She also sought production of tax returns and "related K-1 forms attributable to Lorri's ownership interest in Bold" as well as "the other previously requested business records."⁴ In support of her claims, she alleged that David, as constructive trustee, "owe[d her] statutory and common law duties . . . including the duty to provide an accounting."

³ Lorri's live pleading also asserted a claim against Bold. Lorri subsequently nonsuited that claim.

⁴ Those included "financial information . . . concerning the value of Bold" in the form of either a copy of the reports each board member receives or "comprehensive income statements and balance sheets" for Bold and its subsidiaries along with auditor notes where available; "articles of formation/organization," "regulations/company agreement," and all amendments; all documents filed with the Texas Secretary of State and Texas Comptroller; and the identity and contact information for all persons/entities with an equity interest in Bold.

David filed an answer, asserting a general denial and the affirmative defenses of res judicata and limitations. He also filed a counterclaim for a declaratory judgment that Lorri “is not entitled to any additional rights other than what is clearly stated in the Final Decree, including but not limited to an accounting or production of Bold financial documents.”

About a year after Lorri filed suit, David moved for traditional and no-evidence summary judgment on Lorri’s claims. David claimed he was entitled to judgment as a matter of law based on his affirmative defenses. He further claimed no evidence existed that the decree contained a provision allowing the relief Lorri sought or that David had failed to comply with any provision of the decree.

The trial court heard the summary judgment motions the day of trial, took them under advisement, and proceeded with trial. Prior to calling Lorri as a witness, Lorri’s counsel clarified that Lorri was seeking only “four categories of information:” (1) Bold’s tax returns; (2) any Schedule K-1 forms issued to David; (3) Bold’s financial statements; and (4) documentation showing whether any of Bold’s shares had been transferred or sold. Lorri then testified as to why she was seeking those documents.

David did not testify or call any witness, but orally agreed to provide documentation showing any transfers or sales of the shares. Eight months later, in accordance with the verbal agreement, the trial court rendered a declaratory judgment that David “will provide an annual written summary of the status of the shares or units in Bold . . . to include: whether or not there has been any transfer of any Bold shares . . . and whether [Lorri’s] 50% interest in Bold remains intact.” The trial court also granted summary judgment in favor of David, without specifying a basis.

DISCUSSION

Lorri raises two issues in this appeal. In her first issue, she argues that David, as constructive trustee, owes her the same duties an express trustee owes his beneficiary and, because nothing in the decree limits his duties, “the trial court erred in declaring [she] was not entitled to the information she sought from David about Bold, namely its tax returns, its financial statements, [and] any K-1s it issued to David.” In her second issue, she argues the trial court erred in granting summary judgment because her summary judgment evidence established both that the divorce decree imposed a duty of full disclosure on David and that he had provided her no financial information about Bold. She further argues that neither of David’s affirmative defenses have any merit.

Declaratory Judgment

A declaratory judgment is a remedial measure that affords parties relief from uncertainty with respect to rights, status, and other legal relations. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.002(b) (West 2015); *Halliburton Energy Servs., Inc. v. Axis Tech, LLC*, 444 S.W.3d 251, 262 (Tex. App.—Dallas 2014, no pet.). However, a declaratory judgment action may not be brought to interpret a prior judgment. *Dallas Cty. Tax Collector v. Andolina*, 303 S.W.3d 926, 930 (Tex. App.—Dallas 2010, no pet.). The use of a declaratory judgment action to interpret a judgment is an impermissible collateral attack on the previous judgment and fails to confer subject matter jurisdiction on the trial court. *See Tex. Dep’t of Ins., Div. of Workers’ Comp. v. Ins. Co.*, 306 S.W.3d 897, 902 (Tex. App.—Austin 2010, no pet.); *Martin v. Dosohs I, Ltd., Inc.*, 2 S.W.3d 350, 354 (Tex. App.—San Antonio 1999, pet. denied).

Although the trial court’s jurisdiction over David’s declaratory judgment action was not questioned at trial and is not being questioned on appeal, we have a duty to consider the issue sua sponte because the trial court’s power to decide the merits, as well as our own power, rests upon

it. *Good Shepherd Med. Ctr., Inc. v. State*, 306 S.W.3d 825, 837 (Tex. App.—Austin 2010, no pet) (citing *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 444-46 (Tex. 1993)); *Moses v. Dallas Indep. Sch. Dist.*, 12 S.W.3d 168, 170 (Tex. App.—Dallas 2000, no pet.). In seeking a declaratory judgment that Lorri “is not entitled to any additional rights other than what is clearly stated in the Final Decree, including but not limited to an accounting or production of Bold financial statements,” David sought an interpretation of the decree. This, however, was an impermissible collateral attack on the judgment and an action over which the trial court lacked subject matter jurisdiction. *See Ins. Co.*, 306 S.W.3d at 902.

When a trial court renders a judgment over which it has no subject matter jurisdiction, we have jurisdiction only to vacate the judgment and dismiss. *See Kerr v. Harris Cty.*, 177 S.W.3d 290, 295 (Tex. App.—Houston [1st Dist.] 2005, no pet.) (mem. op. on reh’g) . Accordingly, we vacate that portion of the judgment granting the declaratory relief and dismiss Lorri’s first issue. *See id.*

Summary Judgment

To prevail on a traditional motion for summary judgment, the movant must establish no genuine issue of material fact exists, and he is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a(c); *Provident Life & Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 215-16 (Tex. 2003). When, as here, the defendant moves for summary judgment on an affirmative defense, he must conclusively establish all necessary elements of the defense to establish his entitlement to judgment. *Thomas v. Omar Inv., Inc.*, 129 S.W.3d 290, 292-93 (Tex. App.—Dallas 2004, no pet.). A no-evidence summary judgment is essentially a pretrial directed verdict. *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 750 (Tex. 2003). After adequate time for discovery has passed, a party without the burden of proof at trial may move for summary judgment on the ground the nonmovant lacks evidence in support of one or more essential elements of his claim.

See TEX. R. CIV. P. 166a(i); *Thomas*, 129 S.W.3d 293. The nonmovant then bears the burden of presenting summary judgment evidence raising a genuine fact issue. *Murray v. Ford Motor Co.*, 97 S.W.3d 888, 890-91 (Tex. App.—Dallas 2003, no pet.).

We review a trial court's summary judgment de novo. *Provident Life*, 128 S.W.3d at 215. In conducting our review, we take as true all evidence favorable to the non-movant and indulge every reasonable inference, and resolve any doubts, in the non-movant's favor. *Id.* When, as here, a trial court's order granting summary judgment does not specify the basis for the judgment, we must affirm if any of the summary judgment grounds are meritorious. *Id.* at 216.

Lorri's first contention as to why the trial court erred in granting summary judgment is that she produced summary judgment evidence establishing the decree imposed a duty of full disclosure on David and David failed to provide any information to her. In claiming her summary judgment evidence established David owed her a duty of full disclosure, she relies exclusively on the provision in the decree naming David "constructive trustee" of the Bold shares awarded to her. Lorri does not assert this provision is ambiguous, but contends that by naming David as "constructive trustee," the decree imposed numerous duties on him, "including a duty of full disclosure of all material facts known to [him] that might affect [her] rights." A judgment that is unambiguous, however, is interpreted literally. See *Shanks v. Treadway*, 110 S.W.3d 444, 447 (Tex. 2003).

Here, the provision names David as "a constructive trustee . . . to the extent of his payment obligations[.]" This language, interpreted literally, imposes an obligation on David to pay Lorri in accordance with the decree. Because the provision does not impose the obligations on David claimed by Lorri, the trial court did not err in granting summary judgment in David's favor, and we need not address Lorri's other arguments. See *Provident Life*, 128 S.W.3d at 216.

We decide Lorri's second issue against her and affirm the summary judgment.

CONCLUSION

We vacate that portion of the judgment granting declaratory relief and affirm the summary judgment.

/Elizabeth Lang-Miers/
ELIZABETH LANG-MIERS
JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

LORRI ANNETTE LANCASHIRE,
Appellant

No. 05-16-00890-CV V.

DAVID ANTONY LANCASHIRE,
Appellee

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Court, Dallas County, Texas
Trial Court Cause No. DF-10-14320-Z.
Opinion delivered by Justice Lang-Miers.
Justices Bridges and Evans participating.

In accordance with this Court's opinion of this date, we **VACATE** the trial court's judgment to the extent it renders a declaratory judgment. We **AFFIRM** the judgment to the extent it grants summary judgment.

We **ORDER** that appellee David Antony Lancashire recover his costs of this appeal from appellant Lorri Annette Lancashire.

Judgment entered this 11th day of July, 2017.