

**Vacate and Remand; Opinion Filed September 22, 2017.**



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

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**No. 05-16-01058-CV**

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**ROBERT T. O'DONNELL, Appellant  
V.  
JULIA L. VARGO, Appellee**

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**On Appeal from the 380th Judicial District Court  
Collin County, Texas  
Trial Court Cause No. 380-50667-2013**

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**MEMORANDUM OPINION**

Before Justices Lang, Evans, and Schenck  
Opinion by Justice Evans

Appellant Robert O'Donnell appeals the trial court's order granting appellee Julia L. Vargo's motion for clarification of the Final Decree of Divorce. We vacate and remand to the trial court for proceedings consistent with this opinion.

**BACKGROUND**

On September 16, 2014, the trial court signed the Final Decree of Divorce. In the decree, the trial court divided interest in an entity owned by the community estate known as the O'Donnell Family Limited Partnership (OFLP) and ordered that it be wound up as soon as practicable:

The Court has awarded 100% of the community interest in RTO&JLV, LLC ("the LLC") to Julia L. Vargo, which entity is the 1% owner and general partner of the O'Donnell Family Limited Partnership ("OFLP"). The Court has awarded Robert T. O'Donnell a 49.5% interest in the O'Donnell Family Limited Partnership ("OFLP") and has awarded Julia L. Vargo a 49.5% interest in OFLP. As the

100% owner of the OFLP general partner, RTO &JLV, LLC (“the LLC”), Julia L. Vargo is awarded a total 50.5% of the OFLP and Robert T. O’Donnell is awarded 49.5% of the OFLP. The Court finds that there are no other partners or members in these two entities.

The Court finds and ORDERS that Julia L. Vargo shall henceforth be the sole Member of the LLC (the general partner), with all the powers of the president of the LLC and she will have sole control of the general partner and the OFLP subject to the orders of the Court set forth below, and any applicable partnership laws, regulations and the partnership agreement. The Court Orders the winding up of the partnership operation of OFLP and the dissolution of OFLP, and thereafter the LLC. Julia L. Vargo will owe a fiduciary duty to Robert T. O’Donnell in the winding up of the partnership as described below. In accordance with Texas Business Organization Code (“TBOC”) Section 11.052, IT IS ORDERED that the operation of the O’Donnell Family Limited Partnership be wound up as soon as reasonably practicable.

The decree also contains the following provision pertaining to a specific asset owned by

OFLP:

The Court finds that there is a claim owned by OFLP against RedBumper, a former tenant, for unpaid rent and taxes. The Court further finds the current liquidated damages are approximately \$64,267.87. IT IS ORDERED that whatever money is collected on the breach of lease and other causes of action against RedBumper by OFLP, such recovery, net of attorney fees and costs, shall be divided and distributed as follows: 50.5% to Julia L. Vargo and 49.5% to Robert T. O’Donnell.

Vargo subsequently settled the RedBumper claim for \$24,421.79 in May 2015. Vargo deposited these settlement proceeds into OFLP’s operating account and did not distribute them.

On June 22, 2015, O’Donnell filed suit against Vargo in county court alleging breach of contract and breach of fiduciary duties. Vargo filed a motion to dismiss the county court lawsuit but the county court denied the motion to dismiss and set the case for trial on June 16, 2016.

On March 4, 2016, Vargo filed a Motion for Judgment of Dissolution and for Clarification with the trial court. Vargo requested clarification regarding the timing of the distribution of the RedBumper settlement proceeds. Specifically, Vargo argued that the distribution should not occur until after the final dissolution of the partnership. In the motion, Vargo also noted that she had completed the dissolution tasks for OFLP and sought a judgment

of dissolution of the OFLP from the trial court. On May 11, 2016, the trial court signed the Judgment of Dissolution of the OFLP.

By order dated July 27, 2016, the trial court granted Vargo's request for clarification and removed the language in the decree that required an earlier distribution of the Redbumper settlement proceeds. The clarifying order provided as follows:

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the statement on pages 39-40 of the Final Decree of Divorce: "*IT IS ORDERED that whatever money is collected on the breach of lease and other causes of action against Red Bumper by OFLP, such recovery, net of attorney's fees and costs, shall be divided and distributed as follows: 50.5% to Julia L. Vargo and 49.5% to Robert T. O'Donnell...*"

be, and it is hereby clarified as follows: "IT IS ORDERED that whatever money is collected on the breach of lease and other causes of action against Red Bumper by OFLP ("the lawsuit proceeds"), is an asset of OFLP, and the lawsuit proceeds shall be deposited into the OFLP operating account and used to pay any attorney fees, and ongoing operating expenses and expenses of dissolution of the OFLP"

"IT IS FURTHER ORDERED that after dissolution of OFLP is completed, any taxes and unsecured creditors of OFLP have been paid, any remaining portion of the lawsuit proceeds and any other cash of OFLP, shall be divided and distributed as follows: 50.5% to Julia L. Vargo and 49.5% to Robert T. O'Donnell."

O'Donnell then appealed the trial court's clarifying order.

## **ANALYSIS**

### **A. Standard of review**

We review a trial court's clarifying order for an abuse of discretion. *In re Marriage of McDonald*, 118 S.W.3d 829, 832 (Tex. App.—Texarkana 2003, pet. denied). A trial court abuses its discretion when it acts in an unreasonable and arbitrary manner or without reference to any guiding rules or principles. *Id.*

### **B. The trial court's limited, continuing jurisdiction**

After expiration of its plenary jurisdiction, a trial court retains its inherent power to clarify or enforce or a divorce decree. *See McGehee v. Epley*, 661 S.W.2d 924, 925-26 (Tex.

1983). A party may seek clarification of a divorce decree through a suit for enforcement or a motion to clarify. *See* TEX. FAM. CODE ANN. §§ 9.001 (West Supp. 2016), 9.006 (West Supp. 2016), 9.008 (West 2006). On the request of a party, the court may render a clarifying order setting forth specific terms to enforce compliance with an original division of property on a finding that the original division of property is not specific enough to be enforceable by contempt. *See* TEX. FAM. CODE ANN. § 9.008; *DeGroot v. DeGroot*, 260 S.W.3d 658, 662 (Tex. App. Dallas—2008, no pet). However, there are limitations on the enforcement and clarification powers of the court that rendered the divorce decree. *DeGroot*, 260 S.W.3d at 663. If a divorce decree is unambiguous, the court has no authority to alter or modify the original disposition of property. *In re Marriage of McDonald*, 118 S.W.3d at 832. A court may not amend, modify, alter, or change the division of property made or approved in the divorce decree. *See* TEX. FAM. CODE ANN. § 9.007(a) (West 2006); *Shanks v. Treadway*, 110 S.W.3d 444, 449 (Tex. 2003). An order that amends, modifies, alters, or changes the divorce decree's property division is beyond the power of the court. *See* TEX. FAM. CODE ANN. § 9.007(b). Accordingly, section 9.007 of the Texas Family Code is jurisdictional and orders violating its restrictions are void. *DeGroot*, 260 S.W.3d at 663.

### **C. Analysis**

When interpreting a divorce decree, courts apply the general rules regarding construction of judgments. *Shanks*, 110 S.W.3d at 447. If the decree read as a whole is unambiguous as to the property's disposition, the court has no authority to enter an order altering or modifying the original distribution of property. *Id.* at 449. Rather, it must effectuate the order in light of the literal language used. *Id.* at 447.

Here, the final divorce decree provided that any money collected on causes of action against RedBumper by OFLP would be divided and distributed to Vargo and O'Donnell net of

attorney fees and costs. The clarifying order, however, modifies the final divorce decree's distribution of property by requiring that the RedBumper lawsuit proceeds be deposited in the OFLP operating account, held by OFLP until completion of winding up and dissolution of OFLP, and be used to pay any attorney fees, ongoing expenses and expenses of dissolution of the OFLP. The clarifying order further provides that any remaining portion of the lawsuit proceeds cannot be divided among O'Donnell and Vargo until dissolution is complete and any taxes and unsecured creditors of OFLP have been paid. Thus, the clarifying order not only delays the payment but also authorizes reduction or elimination of the distribution of the RedBumper proceeds to Vargo and O'Donnell. As a court may not amend, modify, alter, or change the division of property made or approved in the divorce decree, this change is outside the scope of the trial court's authority. *See* TEX. FAM. CODE ANN. § 9.007(a) and (b); *Shanks*, 110 S.W.3d at 449. Having concluded that the clarifying order impermissibly modified the divorce decree, we conclude the order is void because it was beyond the power of the trial court. *See DeGroot*, 260 S.W.3d at 663; TEX. FAM. CODE ANN. § 9.007(b). Accordingly, O'Donnell's sole point of error is sustained.<sup>1</sup>

### CONCLUSION

As the trial court abused its discretion by substantively changing the final divorce decree's distribution of property, we vacate the trial court's clarifying order and remand for proceedings consistent with this opinion.

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/David W. Evans/  
DAVID EVANS  
JUSTICE

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<sup>1</sup> Because modifying the final judgment was beyond the power of the trial court and the order is void, we do not reach the effect of the final and not appealed Judgment of Dissolution because it could not have vested the trial court with jurisdiction to modify its previous Final Decree of Divorce.



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

**JUDGMENT**

ROBERT T. O'DONNELL, Appellant

No. 05-16-01058-CV      V.

JULIA L. VARGO, Appellee

On Appeal from the 380th Judicial District  
Court, Collin County, Texas

Trial Court Cause No. 380-50667-2013.

Opinion delivered by Justice Evans.

Justices Lang and Schenck participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **VACATED** and this cause is **REMANDED** to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that appellant ROBERT T. O'DONNELL recover his costs of this appeal from appellee JULIA L. VARGO.

Judgment entered this 22nd day of September, 2017.