

**Vacate in part; and Dismiss and Opinion Filed October 4, 2017**



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

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**No. 05-16-01121-CV**

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**MARK ALAN MILLS, Appellant  
V.  
SHANNON LEWIS MILLS, Appellee**

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**On Appeal from the 302nd Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DF-12-06599**

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**MEMORANDUM OPINION**

Before Justices Francis, Myers, and Whitehill  
Opinion by Justice Francis

Mark Alan Mills appeals the trial court's post-divorce order requiring him to indemnify his ex-wife, Shannon Lewis Mills, for federal income tax payments she may be required to make. In one issue, Mark argues the order is a sanction that the trial court lacked plenary power to impose. We agree. Accordingly, we conclude that portion of the order is void, vacate that portion of the order, and dismiss the appeal.

Mark and Shannon married in 2008 and stopped living together in 2009. In April 2012, Mark filed for divorce. After three and a half years of litigation, the trial court signed an agreed divorce decree on October 22, 2015. The decree included a provision for "Treatment/Allocation of Community Income." This provision stated the parties agreed the final decree "resolved all issues between them, regarding all federal income tax liability." It also provided that as

additional consideration for the property division, the parties agreed to partition income tax liability and each shall pay and hold the other harmless for any liability related to that party's federal income taxes "for all income attributable to that party . . . ." It also provided that should the parties be required to file tax returns in a manner "other than as contemplated" by the agreed final decree, the allocation of tax liability will be in accordance with the intent of the decree, "including indemnifying the other party relative to any tax, penalty or interest associated with the earning party's income."

Almost immediately after the divorce was granted, Mark issued two Form 1099s for tax years 2010 and 2011 to Shannon for "nonemployee compensation" that Mark claimed was paid to Shannon by his S Corporation, SJS-CGI, creating potential federal income tax liability for Shannon.<sup>1</sup> In the email attached to the forms, Mark informed Shannon that he had delivered the "appropriate information" to the fraud/crime unit at the Internal Revenue Service.

Shannon responded by filing, in a single document, a timely motion for partial new trial, motion to clarify, motion for enforcement, and breach of contract in which she raised issues related to the 1099s, among other things. In her motion for new trial, Shannon argued the 1099s were not produced during discovery and were therefore newly discovered evidence. In her motion to clarify, she set out three provisions of the divorce decree, including the provision regarding federal income tax liability. She argued the provisions "may not be specific enough to be enforceable by contempt" and asked the court to clarify the terms "to make specific that the prior order represents a just and right division of the marital debts and assets" and disposes of all claims by the parties. Additionally, she requested the court specify "the duties imposed" on

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<sup>1</sup>Mills also delivered a Form 1099 to Shannon's counsel for payment of court-ordered interim attorneys' fees in May 2014. The next day, October 23, Mills sued Shannon in civil district court alleging she wrongfully filed a fraudulent lis pendens against a property during the divorce. Minutes later, he emailed Shannon's counsel and warned, "Things are about to get expensive so you better hang on to that money I paid you. You are going to need every penny of it (like the ones I delivered to your office) and MORE!!" (Mills paid court-ordered attorney fees in bags of pennies.)

Mark and a reasonable time for compliance. Her breach of contract action alleged Mark created false 1099s to transfer liability to her. She also sought attorneys' fees.

The trial court held a hearing on February 1, 2016, which was 102 days after the decree was signed. At the hearing, Shannon sought a finding that the payments reflected in the 1099s were not "employment income" to her, but were cash support paid to her by Mark in 2010 and 2011. As support, she presented evidence that Mark issued W2s and 1099s for the business at the conclusion of each tax year, and Shannon had not worked for Mills's business since 2008. In addition, when previously asked about his knowledge of Shannon's outside sources of income in the past, aside from her current employment, Mark identified only modeling jobs and bookkeeping services for her stepmother. The trial court explained the IRS made determinations as to what constitutes income for tax purposes.

The next day, February 2, the trial court denied Shannon's motion for new trial. Then, on February 5, which was the 106th day after the decree was signed, the trial court issued a written memorandum ruling. The ruling contained seven findings: (1) discovery was conducted in the case; (2) the parties were divorced by consent judgment on October 22, 2015 at the morning docket; (3) after the court signed the divorce decree, Mark emailed Shannon the two 1099s—originating from the S Corporation for which he is the 100 percent shareholder—for tax years 2010 and 2011; (4) Mark had the necessary information required to timely file the two 1099s and failed to do so; (5) the failure was not due to inadvertence, mistake, or negligence, but was "contumacious and deliberately calculated to cause" Shannon financial harm; (6) during her negotiations with Mark, Shannon was unaware of and did not take into consideration the "income" reflected in the two 1099s; and (7) the Court had "inherent power to sanction to the extent necessary to deter, alleviate, and counteract bad faith abuse of the judicial process." The findings were immediately followed by the decretal paragraph, which ordered Mark to indemnify

Shannon should Shannon have to pay federal tax on the 1099s from the S-corporation for tax years 2010 and 2011. The order expressly stated: “It is the purpose of the indemnification order to directly address Mark Mills’ behavior.”

Shannon moved for entry of the order. Mark objected, in part, that the order was a sanction. He argued the trial court’s plenary jurisdiction expired on February 4—105 days after the decree was signed—and therefore the trial court no longer had plenary power to impose a sanction.

A second hearing was held. At this hearing, the trial judge explained that “[s]anction” was probably not the right word to use.” Rather, she explained she was, in an “inartful” way, “clarifying for the parties who would be responsible and who was going to indemnify whom based upon the agreements the parties made.” But, the judge further explained she saw no other way to “redress” Mark’s “behavior,” and the relief she gave was “a way to level the playing field.” Otherwise, the judge stated, people will enter agreements, “use the court system to bless them,” and then go behind the agreements. The judge went on to state her belief that Mark “did it on purpose” and “willfully.” And although the judge continued her position the ruling was a clarification, she expressly declined Shannon’s offer to delete the seventh finding regarding her inherent power to sanction.

Following the hearing, the judge reduced her ruling to an order on February 25, which contained the same findings and followed the same language of the memorandum ruling.<sup>2</sup> Five months later, on July 15, 2016, the judge signed a new order, adding language to deny Shannon’s breach of contract claim and attorney’s fees based on the request for clarification and breach of contract. Mark appealed.

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<sup>2</sup> The trial court did strike language from the order setting aside all confidentiality orders in the case.

In his sole issue, Mark asserts the order is void because the trial court lost any plenary power to sanction him months before the final order was signed. Alternatively, he argues the order impermissibly modified, as opposed to clarified, the divorce decree. Shannon does not directly address Mark's argument that the order is a sanction; rather, she treats the order as a clarification. We must therefore determine the character of the order before us.

We construe court orders and judgments under the same rules of interpretation as those applied to other instruments. *Hahn v. Sw. Double D Ranch, LP*, No. 05-16-00111-CV, 2017 WL 1832505, at \*1 (Tex. App.—Dallas May 8, 2017, no pet.) (mem. op.). If a written instrument can be given a certain or definite legal meaning or interpretation, then there is no ambiguity, and the construction of the instrument is a question of law. *In re A.L.H.C.*, 49 S.W.3d 911, 918 (Tex. App.—Dallas 2001, pet. denied). We construe an unambiguous order in light of the literal meaning of the language used. *Hahn*, 2017 WL 1832505, at \*1. When the judgment or order on its face is plain and unambiguous, extrinsic matters may not be considered to give the decree a different effect from that expressed by the literal meaning of the words used in the order. *Id.* Parol evidence cannot be used to create an ambiguity. *In re A.L.H.C.*, 49 S.W.3d at 918.

Here, the plain language of the order imposes a sanction. The trial judge began by making findings that set up the behavior the trial court was addressing—issuance of the 1099s after the divorce decree was signed. The trial judge then found Mark's action in issuing the 1099s was “contumacious” and deliberately calculated to cause Shannon financial harm. The judge further found she had inherent power to sanction to “deter, alleviate, and counteract bad faith abuse of the judicial process.” These findings are followed by the decretal portion of the order, which requires Mark to indemnify Shannon and expressly states its purpose is to “directly address” Mark's behavior.

In contrast, nothing in the order suggests it is clarifying the divorce decree. Although the trial judge made findings in the order, there are no findings that the decree is ambiguous or is not specific enough to be enforceable by contempt. *See* TEX. FAM. CODE ANN. § 9.008(b) (on finding by court that original form of division of property is not specific enough to be enforceable by contempt, court may render clarifying order setting out specific terms to enforce compliance with original property division). Nor does the trial judge purport to identify any provision of the divorce decree that she is clarifying. The order does recite that the court heard Shannon’s request to clarify and breach of contract, but that language is not enough to overcome the clear import of the order.

Sanctions are tools to be used by a court to right a wrong committed by a litigant. *TransAmerican Nat. Gas Corp. v. Powell*, 811 S.W.2d 913, 922 (Tex. 1991) (Gonzalez, J., concurring). The order here is a clear attempt by the trial court to “right a wrong” committed by Mark. We conclude the order is unambiguous and imposes a sanction on Mark. To the extent Shannon’s brief relies on the trial judge’s oral comment that she was clarifying “who would be responsible and who was going to indemnify whom,” such comments cannot be used to give the order a different effect from that expressed by the literal meaning of the words.

A trial court’s lack of power to order sanctions after its plenary power expires applies to postjudgment conduct. *See Malone v. Hampton*, 182 S.W.3d 465, 470 (Tex. App.—Dallas 2006, no pet.) (concluding in divorce case that order granting motion for sanctions against nonparty for filing frivolous motion for new trial, signed after plenary power expired, was void); *Kenseth v. Dallas County*, 126 S.W.3d 584, 600 (Tex. App.—Dallas 2004, pet. denied) (concluding postjudgment sanctions for filing various postjudgment motions in connection with fund disbursement from court registry on remand after appeal void because sanctions issued after that portion of trial court’s plenary power had expired); *In re Brown*, No. 2-07-071-CV, 2007 WL

2460361, \*4 (Tex. App.—Fort Worth 2007, orig. proceeding) (mem. op.). A sanctions order is “tied to” the portion of the proceedings in which the sanctionable conduct occurred. *Kenseth*, 126 S.W.3d at 600. Once the trial court’s plenary power over that part of the proceedings expires, the court has no power to sanction for conduct within those proceedings. *Id.* That rule applies even where, as here, the trial court sanctions a party under its inherent authority. *See In re Brown*, 2007 WL 2460361, at \*4.

Generally, a trial court retains jurisdiction over a case for thirty days after entry of judgment. TEX. R. CIV. P. 329b(d); *Malone*, 182 S.W.3d at 468. This period is extended, however, upon the timely filing of a motion for new trial or motion to correct, modify, or reform the judgment. *Malone*, 182 S.W.3d at 468. In such instances, the court’s plenary power is extended up to an additional seventy-five days. *Id.* Judicial action taken after the expiration of the court’s jurisdiction is a nullity, and any orders signed outside the court’s plenary jurisdiction are void. *Id.*

Here, the sanctions order was “tied to” the original divorce proceedings because the sanction was for Mark’s conduct in issuing the 1099s after the decree was signed and was the basis for Shannon’s request for post-decree relief. The trial court signed the decree on October 22, 2015. Shannon filed a timely motion for new trial, which extended the trial court’s plenary power for 105 days, or until February 4, 2016. The trial court signed the sanction order after that date and lacked plenary jurisdiction to do so; accordingly, the sanction portion of the July 15, 2016 order is void. We sustain Mark’s issue.

We vacate that portion of the order requiring Mark to indemnify Shannon for potential federal income tax liability. We leave intact the unchallenged portions of the order denying Shannon's breach of contract claim and denying attorney's fees related to the request for clarification and breach of contract. We dismiss the appeal.

/Molly Francis/  
MOLLY FRANCIS  
JUSTICE

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

**JUDGMENT**

MARK ALAN MILLS, Appellant

No. 05-16-01121-CV      V.

SHANNON LEWIS MILLS, Appellee

On Appeal from the 302nd Judicial District  
Court, Dallas County, Texas

Trial Court Cause No. DF-12-06599.

Opinion delivered by Justice Francis;

Justices Myers and Whitehill participating.

In accordance with this Court's opinion of this date, we **VACATE** the portion of the July 15, 2016 order that requires Mark Alan Mills to indemnify Shannon Lewis Mills for potential federal income tax liability and we **DISMISS** the appeal.

It is **ORDERED** that each party bear his or her own costs of this appeal.

Judgment entered October 4, 2017.