Opinion issued December 4, 2018

In The

Court of Appeals

For The

First District of Texas

NO. 01-17-00222-CV

CHARLES EDWARD SHEARN, JR., Appellant

V.

JENNIFER ANN BRINTON-SHEARN, Appellee

On Appeal from the 505th District Court
Fort Bend County, Texas
Trial Court Case No. 11-DCV-187297

MEMORANDUM OPINION

Appellant, Charles Edward Shearn, Jr. ("Charles"), challenges the trial court's order entered in favor of appellee, Jennifer Ann Brinton-Shearn ("Jennifer"), granting her motion for enforcement and clarification of the parties' agreed final divorce decree and distribution of certain monies held in a trust account. In four

issues, Charles contends that the trial court erred in granting Jennifer's motion and not filing findings of fact and conclusions of law.[1]

We affirm.

Background

On May 31, 2012, the parties signed a Mediated Settlement Agreement (the "MSA"). And on September 26, 2012, the trial court signed an agreed final divorce decree, which included "[p]rovisions [for] [d]ealing with [the] [s]ale of [the parties'] [r]esidence."

On June 24, 2016, Jennifer filed a motion, titled "Motion for Declaratory Judgment and for Leave to Disburse Funds in Attorney Trust Account," seeking enforcement and clarification of the parties' agreed final divorce decree and distribution of certain monies being held in a trust account. In her motion, Jennifer asserted that the parties' residence, in accordance with the terms of the agreed final divorce decree, was sold on March 10, 2016. During the time between the signing of the parties' agreed final divorce decree and the sale of the property, Charles secured a home equity loan and paid the property taxes related to the residence from the proceeds of the loan. At the closing of the sale of the residence, the home equity loan was paid in full prior to either party receiving his/her portion of the proceeds, and Charles "asked to be reimbursed for one-half of the property taxes[, which he

[1] *See* TEX. R. CIV. P. 296, 297.

had paid prior to the sale of the residence,] by equalizing the net proceeds of the sale." Jennifer objected. Because the parties disagreed as to who bore the responsibility for paying the property taxes under the terms of the agreed final divorce decree, a portion of the proceeds from the sale of the residence, i.e., $60,000, was placed in a trust account so that the sale of the residence could close and "the parties could work out the distribution between themselves."

Jennifer further asserted that, under the terms of the agreed final divorce decree, Charles was responsible for paying 100% of the property taxes related to the residence, while she was responsible for paying "the principal and interest on the mortgage." Thus, according to Jennifer, the entire home equity loan, the proceeds of which had been used exclusively by Charles to pay the property taxes for the residence, should be repaid solely from Charles's share of the proceeds from the sale of the residence. And Jennifer "should receive a greater share of the $60,000[] left over from the net proceeds of the sale" of the residence in order to reimburse her for fifty percent of the property-tax debt. Based on her calculations, "[u]sing the figures from the actual closing settlement statement, and giving [herself] credit for the property taxes (by charging 100% to [Charles],) and giving [Charles] credit for one-half of the costs of physical repairs to the [residence], (by charging 50% to [herself], per the [agreed final divorce] decree)," Jennifer was entitled to $44,750.91 of the $60,000 being held in the trust account. Jennifer requested that the trial court,

based on the terms of the parties' MSA and the agreed final divorce decree, clarify that Charles was responsible for paying 100% of the property taxes related to the residence, Jennifer was responsible for paying 50% of the cost of physical repairs to the residence, and her "proposed disbursement" of the monies held in the trust account was correct.

At the hearing on her motion, Jennifer testified that she had previously been married to Charles and they had divorced in September 2012. Prior to the finalization of their divorce, she and Charles entered into the MSA, which was purportedly incorporated into the agreed final divorce decree. The MSA, admitted into evidence at the hearing, provided, in regard to the parties' residence:

> Parties to remain tenants in common until property sold with sale[] proceeds to be split 50/50 subject to the specific conditions set forth below[.]
>
> [Jennifer] to have exclusive use and possession[.]
>
> [Jennifer] to pay 100% of bills associated with residence including but not limited to, mortgage, utilities, homeowners' insurance SAVE AND EXCEPT property taxes which [Charles] agrees to pay (without reimbursement of [Jennifer]'s 50% subject to conditions set forth below)[.]
>
> House to be listed no later than July 1st, 2012[.]
>
> Parties to jointly select listing agent who is an MLS Realtor. Absent mutual agreement, parties will use Jan Saunders.
>
> Parties agree that, absent mutual agreement to the contrary, they shall follow the recommendation of the listing agent as to listing price[.]

. . . .

> Parties agree that [Charles] will pay 100% of the property taxes until sale provided [Jennifer] cooperates so that [Charles] can access home equity loan in order to pay property taxes. [Charles] agrees to pay 100% of all closing costs and to pay 100% of all interest incurred on same.
>
> Parties agree that agreed upon repairs above $250 and that agreed upon upgrades, if any, necessary for sale shall be accessed from home equity loan.
>
> [Charles] to pay debt service upon home equity loan until house is sold.
>
> [Jennifer] to reimburse to [Charles] from her 50% portion of the sales proceeds, 50% of the actual cost of agreed upon repairs and 50% of agreed upon upgrades.
>
> [Charles] to pay 100% of the property taxes and [Charles] to have 100% tax deduction for mortgage interest and for property taxes until sale[.]

The parties' agreed final divorce decree, also admitted into evidence, stated, in regard to their residence:

> 1. The parties shall list the property no later than July 1, 2012 with a duly licensed real estate broker having sales experience in the area where the property is located, provided further that the real estate broker shall be an active member in the Multiple Listing Service. In absence of mutual agreement, the parties will use Jan Saunders.
>
> 2. The property shall be sold for a price that is mutually agreeable to [the parties]. If the parties are unable to mutually agree on a listing price, they will follow the recommendation of the listing agent as to the listing price.
>
> 3. JENNIFER . . . shall continue to make all payments of principal, interest, and insurance on the property during the pendency of the sale,

> and JENNIFER . . . shall have the exclusive right to enjoy the use and possession of the premises until closing. All maintenance and repairs necessary to keep the property in its present condition shall be paid by JENNIFER . . . . If repairs and upgrades cost above $250[], the parties agree that any upgrades or repairs necessary for the sale of the home will be assessed from the home equity loan.
>
> 4. CHARLES . . . shall pay 100% of ad valorem property taxes until the sale provided JENNIFER . . . cooperates so that CHARLES . . . can access a home equity loan in order to pay property taxes. CHARLES . . . shall pay 100% of all closing costs and 100% of all interest associated with any home equity loan. CHARLES . . . shall pay debt service on [the] home equity loan until [the] house is sold. CHARLES . . . shall receive all direct costs of the home equity loan plus 100% of the ad valorem tax payments as an IRS tax deduction to him.
>
> 5. The net sales proceeds (defined as the gross sales price less cost of sale and full payment of any mortgage indebtedness or liens on the property and after payment of home equity loan) shall be distributed as follows:
>
> Sales proceeds to be split 50% to [Charles] and 50% to [Jennifer]. [Jennifer] is to reimburse [Charles] from her portion of sales proceeds 50% of actual cost of agreed upon repairs and upgrades.

Jennifer further testified that, pursuant to the MSA and the agreed final divorce decree, she cooperated with Charles in obtaining a home equity loan and he paid the property taxes for the residence from the proceeds of the loan. During the time that she remained in the home, Jennifer made all mortgage and utilities payments, but she did not pay property taxes or "take any income tax deductions for the property taxes" that were paid related to the residence.

The residence was listed for sale in December 2015, and after repairs to the home were made, it sold in March 2016. Jennifer agreed that she was responsible for one-half of the cost of the repairs to the residence. At the closing of the sale, the home equity loan was paid off prior to either party receiving his/her portion of the proceeds, $60,000 related to the payment of the property taxes was placed into the trust account, and the remainder of the proceeds of the sale of the residence were split equally between Jennifer and Charles.

In regard to the $60,000 held in the trust account, Jennifer stated that she was entitled to $44,750.91 and Charles was entitled to $15,249.09. She explained that she was not obligated to pay any portion of the property taxes related to the residence; Charles was "responsible [for paying] 100 percent" of the property taxes related to the residence; the home equity loan, which Charles had exclusively used to pay the property taxes, was improperly repaid by the marital estate, instead of solely from Charles's share of the proceeds from the sale of the residence; and her calculations, related to the division of the monies held in the trust account, took those facts into account. The trial court admitted into evidence Jennifer's calculation of the "Division of Proceeds from Sale of House."

Charles testified that under the terms of the MSA and the agreed final divorce decree, he was "to pay 100 percent of the property taxes [related to the residence] and . . . get 100 percent of the income tax benefit of paying the property taxes." He

did timely pay the property taxes related to the residence and take income-tax deductions for those payments. And at the closing for the sale of the residence, he and Jennifer each received one-half of the net proceeds from the sale, except that $60,000 of the proceeds from the sale was placed in a trust account "to cover the disputed amount of the property taxes and . . . reimbursement of 50 percent of the repairs" made to the residence.

Charles further testified that he was required to pay the property taxes related to the residence "up front"; however, he also opined that after the property was sold, the home equity loan was to be repaid by the marital estate before the proceeds from the sale of the residence were divided between him and Jennifer. Jennifer would also pay him for one-half of any other expenses that were not covered by the home equity loan. Although both he and Jennifer agreed that the total cost of repairs for the residence, i.e., $23,000, should be divided between themselves equally, they disagreed as to whether "the property taxes should be split or whether that should come out of [Charles's] portion" of the proceeds from the sale of the house. Based on Charles's calculations, he was entitled to $41,457.55 and Jennifer was entitled to $18,542.45 of the $60,000 held in the trust account. And the trial court admitted into evidence Charles's calculation of the "Division of Proceeds from Sale of House."

Following the hearing, the trial court granted Jennifer's motion, ordering, in regard to the $60,000 that was being held in a trust account, that she receive $44,750.91 and Charles receive $15,249.09.

Motion for Enforcement and Clarification

In his second, third, and fourth issues, Charles argues that the trial court erred in granting Jennifer's motion and awarding her $44,750.91 because the trial court lacked jurisdiction to grant a declaratory judgment; Jennifer's motion was an improper collateral attack on the agreed final divorce decree; the agreed final divorce decree was not void; the only proper way for Jennifer to have attacked the agreed final divorce decree was through a bill of review; Jennifer's motion was not a motion to clarify; and even if Jennifer's motion was a motion to clarify, the trial court erred in interpreting the agreed final divorce decree.

We review a trial court's ruling on a post-divorce motion for enforcement or clarification of a divorce decree for an abuse of discretion. *Hollingsworth v. Hollingsworth*, 274 S.W.3d 811, 815 (Tex. App.—Dallas 2008, no pet.); *Gainous v. Gainous*, 219 S.W.3d 97, 103 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). A trial court abuses its discretion when it acts arbitrarily or unreasonably or without reference to any guiding rules or principles. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990). When, as here, the trial court makes no separate findings of fact

or conclusions of law, we draw every reasonable inference supported by the record in favor of the trial court's judgment. *Id.*

A final, unambiguous divorce decree that disposes of all marital property bars relitigation. *Pearson v. Fillingim*, 332 S.W.3d 361, 364 (Tex. 2011). Seeking an order that alters or modifies a divorce decree's property division constitutes an impermissible collateral attack. *See* TEX. FAM. CODE ANN. § 9.007(a)–(b) (Vernon Supp. 2018); *Hagen v. Hagen*, 282 S.W.3d 899, 902 (Tex. 2009); *see also Sydow v. Sydow*, No. 01-13-00511-CV, 2015 WL 1569950, at *3 (Tex. App.—Houston [1st Dist.] Apr. 7, 2015, no pet.) (mem. op.) ("A court may not amend, modify, alter, or change the division of property made or approved in the divorce decree after its plenary power expires.").

However, a trial court retains continuing subject matter jurisdiction to clarify and to enforce a divorce decree's property division. *See* TEX. FAM. CODE ANN. §§ 9.002, 9.006 (Vernon Supp. 2018), § 9.008 (Vernon 2006); *Pearson*, 332 S.W.3d at 363; *Howard v. Howard*, 490 S.W.3d 179, 185 (Tex. App.—Houston [1st Dist.] 2016, pet. denied); *Marshall v. Priess*, 99 S.W.3d 150, 156 (Tex. App.—Houston [14th Dist.] 2002, no. pet.). A party affected by a divorce decree may seek to enforce and clarify the decree's property division by filing an enforcement and clarification motion. *See* TEX. FAM. CODE ANN. § 9.001(a) (Vernon Supp. 2018), § 9.006(a); *Joyner v. Joyner*, 352 S.W.3d 746, 749 (Tex. App.—San Antonio 2011, no pet.).

And the trial court may render further orders to assist in the implementation of, or to clarify, its prior order. *See* TEX. FAM. CODE ANN. §§ 9.006(a), 9.008(b); *Howard*, 490 S.W.3d at 185; *Marshall*, 99 S.W.3d at 156. Such orders "may more precisely specify how the previously ordered property division will be implemented so long as the substantive division of the property is not altered." *Marshall*, 99 S.W.3d at 156; *see also* TEX. FAM. CODE ANN. § 9.006(b); *Dechon v. Dechon*, 909 S.W.2d 950, 956 (Tex. App.—El Paso 1995, no writ).

Title of Jennifer's Motion

In his second and third issues, Charles argues that the trial court erred in granting Jennifer's motion because she improperly sought a declaratory judgment and her motion was not a motion to clarify.[2]

In her motion, titled "Motion for Declaratory Judgment and for Leave to Disburse Funds in Attorney Trust Account," Jennifer sought enforcement and clarification of the agreed final divorce decree and permission to distribute certain monies being held in a trust account. She asserted that the parties' residence, pursuant to the terms of the agreed final divorce decree, was sold on March 10, 2016.

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[2] In his brief, Charles, relative to his second and third issues, also asserts the following sub-points: the trial court lacked jurisdiction to grant a declaratory judgment; Jennifer's motion was an improper collateral attack on the agreed final divorce decree; the agreed final divorce decree was not void; and the only proper way for Jennifer to have attacked the agreed final divorce decree was through a bill of review. Due to our disposition of Charles's second and third issues, we need not address these additional sub-points. *See* TEX. R. APP. P. 47.1.

And during the time between the signing of the parties' agreed final divorce decree and the sale of the residence, Charles secured a home equity loan and paid the property taxes related to the residence from the proceeds of the loan. At the closing of the sale, the home equity loan was paid in full prior to either party receiving his/her portion of the proceeds, and Charles "asked to be reimbursed for one-half of the property taxes[, which he had paid prior to the sale of the residence,] by equalizing the net proceeds of the sale." Jennifer objected. Because Jennifer and Charles disagreed as to who bore the responsibility for paying the property taxes, a portion of the proceeds from the sale of the residence, i.e., $60,000, was placed into a trust account so that the sale of the residence could close and "the parties could work out the distribution between themselves."

Jennifer further asserted that, under the agreed final divorce decree, Charles was responsible for paying 100% of the property taxes related to the residence, while she was responsible for paying "the principal and interest on the mortgage." Thus, according to Jennifer, the entire home equity loan, the proceeds of which had been used exclusively by Charles to pay the property taxes for the residence, should be repaid solely from Charles's share of the proceeds from the sale of the residence. And Jennifer "should receive a greater share of the $60,000[] left over from the net proceeds of the sale" of the residence in order to reimburse her for fifty percent of the property-tax debt. "Using the figures from the actual closing settlement

statement, and giving [herself] credit for the property taxes (by charging 100% to [Charles],) and giving [Charles] credit for one-half of the costs of physical repairs to the [residence], (by charging 50% to [herself], per the [agreed final divorce] decree)," Jennifer asserted that she was entitled to the $44,750.91 of the $60,000 being held in the trust account. And she asked the trial court to award her such monies.

It is well settled that the nature of a motion is determined by its substance, rather than its title or caption. *See In re Brookshire Grocery Co.*, 250 S.W.3d 66, 72 (Tex. 2008) (orig. proceeding); *State Bar of Tex. v. Heard*, 603 S.W.2d 829, 833 (Tex. 1980); *see also Surgitek, Bristol–Myers Corp. v. Abel*, 997 S.W.2d 598, 601 (Tex. 1999) ("We should not be so constrained by the form or caption of a [motion].").

Through her motion, Jennifer did not seek to amend, modify, alter, or change the division of property made or approved in the agreed final divorce decree. Rather, she explained that the parties had, pursuant to the terms of the agreed final divorce decree, closed on the sale of their residence, but they disagreed as to "the disposition of [a] part of the proceeds from the sale of the house" because Charles, under the terms of the agreed final divorce decree, believed that he should be "reimbursed for one-half of the property taxes" that he had paid related to the residence and Jennifer believed that Charles was not entitled to a reimbursement because he was

responsible for paying "100% of the property taxes."[3] In other words, Jennifer sought from the trial court an order to assist in the implementation of, or to clarify, the parties' agreed final divorce decree's property division, specifically the portion of the decree related to the parties' residence and the distribution of the proceeds from the sale of that residence. Jennifer did not seek a declaratory judgment from the trial court.[4] *See* TEX. FAM. CODE ANN. §§ 9.002, 9.006(a)–(b), 9.008(b); *Howard*, 490 S.W.3d at 185; *Marshall*, 99 S.W.3d at 156.

As previously noted, the trial court had continuing subject matter jurisdiction to clarify and to enforce the parties' agreed final divorce decree's property division. *See* TEX. FAM. CODE ANN. §§ 9.002, 9.006, 9.008; *Pearson*, 332 S.W.3d at 363; *Howard*, 490 S.W.3d at 185; *Marshall*, 99 S.W.3d at 156. Accordingly, we hold that the trial court did not err in granting Jennifer's motion on the grounds that she had improperly sought a declaratory judgment and her motion was not a motion to clarify.

We overrule Charles's second and third issues.

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[3] At the hearing on Jennifer's motion, the parties told the trial court that the only disagreement between them was whether, under the terms of the agreed final divorce decree, Charles was solely responsible for paying the property taxes related to the residence or whether both Charles and Jennifer were equally responsible for such payments.

[4] We note that although Jennifer titled her motion, "Motion for Declaratory Judgment and for Leave to Disburse Funds in Attorney Trust Account," she did not actually reference the Uniform Declaratory Judgments Act in her motion. *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 37.001–.011 (Vernon 2015).

Interpretation of Agreed Final Divorce Decree

In his fourth issue, Charles argues that the trial court erred in granting Jennifer's motion and awarding her $44,750.91 because it did not properly interpret the parties' agreed final divorce decree.

As previously explained, a party affected by a divorce decree may seek to enforce and clarify the decree's property division by filing an enforcement and clarification motion. *See* TEX. FAM. CODE ANN. §§ 9.001(a), 9.006(a); *Joyner*, 352 S.W.3d at 749. In the event that a trial court finds the division of property as provided in a divorce decree to be ambiguous or insufficiently specific, then the court may render an enforcement and clarification order to enforce compliance with the original division of property. *See* TEX. FAM. CODE ANN. §§ 9.006(a), 9.008; *Pearson*, 332 S.W.3d at 363; *Joyner*, 352 S.W.3d at 749; *see also Murray v. Murray*, 276 S.W.3d 138, 144 (Tex. App.—Fort Worth 2008, pet. dism'd) (trial court's "[s]ubsequent order may . . . clarify a decree to correct an ambiguity so that the parties to that decree are able to comply with its terms"); *McKnight v. Trogdon-McKnight*, 132 S.W.3d 126, 130–31 (Tex. App.—Houston [14th Dist.] 2004, no pet.) ("In the absence of any ambiguity, the trial court ha[s] no authority to change the terms of the decree . . . by way of a clarifying order.").

In its order, the court may specify more precisely the manner of effecting the property division previously made, provided that the substantive division of the

property is not altered or changed. *See* TEX. FAM. CODE ANN. §§ 9.006(b), 9.007(a); *Campos v. Campos*, 388 S.W.3d 755, 757 (Tex. App.—El Paso 2012, no pet.). A valid clarification order is consistent with the divorce decree and merely enforces by appropriate order the controlling decree. *McKnight*, 132 S.W.3d at 130.

An agreed divorce decree implementing an agreed property division is controlled by the rules of construction applicable to ordinary contracts. *Murray*, 276 S.W.3d at 144; *McKnight*, 132 S.W.3d at 130–31; *Harvey v. Harvey*, 905 S.W.2d 760, 764 (Tex. App.—Austin 1995, no writ). In interpreting the language of a divorce decree, we apply the general rules applicable to the construction of judgments—that is, we construe the decree as a whole to harmonize and give effect to the entire decree. *Hagen*, 282 S.W.3d at 901; *Shanks v. Treadway*, 110 S.W.3d 444, 447 (Tex. 2003); *Murray*, 276 S.W.3d at 144.

Whether a divorce decree is ambiguous is a question of law that we review de novo. *Hagen*, 282 S.W.3d at 901–02; *Shanks*, 110 S.W.3d at 447. A contract is unambiguous where it can be given a certain or definite legal meaning or interpretation. *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. CBI Indus., Inc.*, 907 S.W.2d 517, 520 (Tex. 1995); *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983). If, when read as a whole, a divorce decree's terms are unambiguous, we must effectuate the order in light of the actual language used. *Shanks*, 110 S.W.3d at 447; *Murray*, 276 S.W.3d at 144; *see also Guerrero v. Guerra*, 165 S.W.3d 778, 782

(Tex. App.—San Antonio 2005, no pet.) (where agreed decree, when read as whole, is unambiguous, "we must enforce the decree according to its literal language").

On the other hand, if a divorce decree's terms are ambiguous, we must review the record along with the decree to aid in interpreting the judgment. *Shanks*, 110 S.W.3d at 447; *Murray*, 276 S.W.3d at 144. A contract is ambiguous when its meaning is uncertain or doubtful or it is reasonably susceptible to more than one meaning. *Coker*, 650 S.W.2d at 393–94; *McKnight*, 132 S.W.3d at 131; *see also Guerrero*, 165 S.W.3d at 782–83. The court determines whether a contract is ambiguous by looking at the contract as a whole in light of the circumstances surrounding formation of the contract. *Coker*, 276 S.W.3d at 394. When a contract is ambiguous, parol evidence may be considered for the purpose of ascertaining the parties' intention at the time the contract was entered. *Nat'l Union Fire*, 907 S.W.2d at 520. The parties' post-divorce conduct may be considered in determining their intent. *See Consol. Eng'g Co. v. S. Steel Co.*, 699 S.W.2d 188, 192–93 (Tex. 1985); *Guerra*, 165 S.W.3d at 783.

Here, we must first determine whether the provisions in the parties' agreed final divorce decree related to the payment of property taxes for the residence are reasonably susceptible to more than one meaning and render the divorce decree ambiguous. *See Murray*, 276 S.W.3d at 144–45; *Guerrero*, 276 S.W.3d at 783–84. In regard to the agreed final divorce decree's "[p]rovisions [for] [d]ealing with [the]

[s]ale of [the parties'] [r]esidence," and more specifically, whose responsibility it was to bear the cost of the property taxes related to the residence, Charles, in his brief, asserts that "the literal wording of the decree when read as a whole is unambiguous as to the property's disposition" and contradicts the assertion that the property taxes should be paid entirely by him.

The agreed final divorce decree, in regard to the sale of the parties' residence and the payment of property taxes, provides:

> 3. JENNIFER . . . shall continue to make all payments of principal, interest, and insurance on the property during the pendency of the sale, and JENNIFER . . . shall have the exclusive right to enjoy the use and possession of the premises until closing. All maintenance and repairs necessary to keep the property in its present condition shall be paid by JENNIFER . . . . If repairs and upgrades cost above $250[], the parties agree that any upgrades or repairs necessary for the sale of the home will be assessed from the home equity loan.
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> 4. *CHARLES . . . shall pay 100% of ad valorem property taxes* until the sale provided JENNIFER . . . cooperates so that *CHARLES . . . can access a home equity loan in order to pay property taxes*. *CHARLES . . . shall pay* 100% of all closing costs and *100% of all interest associated with any home equity loan*. CHARLES . . . shall pay debt service on [the] home equity loan until [the] house is sold. *CHARLES . . . shall receive all direct costs of the home equity loan plus 100% of the ad valorem tax payments as an IRS tax deduction to him*.
>
> 5. *The net sales proceeds (defined as the gross sales price less cost of sale and full payment of any mortgage indebtedness or liens on the property and after payment of home equity loan)* shall be distributed as follows:
>
> Sales proceeds to be split 50% to [Charles] and 50% to [Jennifer]. [Jennifer] is to reimburse [Charles] from her portion of sales proceeds 50% of actual cost of agreed upon repairs and upgrades.

(Emphasis added.)

The language of the agreed final divorce decree states that Charles is 100% responsible for paying the property taxes related to the parties' residence; he will use the proceeds from the home equity loan, acquired by him, to make the necessary property-tax payments; and he is the only party to receive a tax deduction related to the property-tax payments.[5] However, the decree, in contradiction, also states that the home equity loan, secured by Charles to pay the property taxes for the residence, will be repaid from the proceeds of the sale of the parties' residence, prior to the either party receiving his/her portion of the sale proceeds,[6] so that Charles, in effect, would be reimbursed by Jennifer for 50% of the property taxes he paid for the residence.

This second provision directly contradicts to the decree's provision requiring Charles to "pay 100% of [the] . . . property taxes," by making Jennifer also responsible for paying the property taxes related to the residence, because her portion of the proceeds from the sale of the house is reduced by the repayment of the home equity loan (the proceeds of which were used *exclusively* by Charles to pay the property taxes prior to the sale of the residence). In other words, the parties'

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5 *See* Section 4 quoted above.

6 *See* Section 5 quoted above.

agreed final divorce decree contains one provision, stating that Charles is required to pay 100% of the property taxes related to the residence. And it contains a second provision, effectively stating that Jennifer is required to pay 50% of the property taxes related to the residence because she must reimburse Charles for one-half of his property-tax payments with the proceeds from the sale of the residence prior to either party receiving his/her portion, which ultimately reduces Jennifer's share of the proceeds.

Thus, we conclude that the agreed final divorce decree is susceptible to two reasonable, yet contradictory interpretations, i.e., one in which Charles is solely responsible for the property-tax payments and another in which Jennifer is partially responsible for the property-tax payments because she must reimburse Charles for 50% of the cost of the property taxes by repaying the home equity loan (previously used exclusively by Charles to pay the property taxes) with a portion of her proceeds from the sale of the residence. Accordingly, we hold that the agreed final divorce decree is ambiguous. *See Fox v. Fox*, No. 03-04-00749-CV, 2006 WL 66473, at *6–7 (Tex. App.—Austin Jan. 13, 2006, no pet.) (mem. op.) (concluding divorce decree ambiguous where provisions directly conflicted); *Guerrero*, 165 S.W.3d at 783 (parties' divorce decree ambiguous where contained contradictory language regarding valuation of retirement benefits); *Wilson v. Uzzel*, 953 S.W.2d 384, 388 (Tex. App.—El Paso 1997, no writ) ("A contract is ambiguous . . . if there is

uncertainty as to which of two meanings is correct."); *Gibson v. Bentley*, 605 S.W.2d 337, 339 (Tex. App.—Houston [14th Dist.] 1980, writ ref'd n.r.e.) (contract ambiguous where "it [was] equally susceptible to two irreconcilably adverse interpretations"). And due to the ambiguity of the agreed final divorce decree, the provisions of the decree were subject to clarification by the trial court. *See Murray*, 276 S.W.3d at 144–45; *Guerrero*, 165 S.W.3d at 782–84.

Having determined that the parties' agreed final divorce decree is ambiguous, we next consider whether the trial court's interpretation of the decree is supported by the record. *See Shanks*, 110 S.W.3d at 447; *Murray*, 276 S.W.3d at 145; *Guerrero*, 165 S.W.3d at 784. When a contract is ambiguous, its construction or interpretation becomes a question of fact for the fact finder and authorizes the consideration of extrinsic evidence, if necessary. *Coker*, 650 S.W.2d 393–94; *Guerrero*, 165 S.W.3d at 784; *Wilson*, 953 S.W.2d at 388*; see also Barger v. Barger*, No. 01-15-00659-CV, 2016 WL 7473944, at *6 (Tex. App.—Houston [1st Dist.] Dec. 29, 2016, no pet.) (mem. op.) ("[W]hen a contract is susceptible to two or more reasonable interpretations, a fact issue arises which must be resolved by the trier of fact."). As the fact finder, the trial court determines the weight to be given any testimony and resolves conflicts in the evidence. *Guerrero*, 165 S.W.3d at 784. The trial court, as the trier of fact, may draw reasonable inferences from the evidence and, absent findings of fact and conclusions of law, its factual determinations may

not be disturbed on appeal if the record contains probative evidence which reasonably supports them. *See Gibson v. Bentley*, 605 S.W.2d 337, 340 (Tex. App.—Houston [14th Dist.] 1980, writ ref'd n.r.e.).

At the hearing on her motion, Jennifer testified that prior to the finalization of their divorce, she and Charles entered into the MSA, which provided, in regard to their residence:

> Parties to remain tenants in common until property sold with sale proceeds to be split 50/50 subject to the specific conditions set forth below[.]
>
> . . . .
>
> [Jennifer] to pay 100% of bills associated with residence including but not limited to, mortgage, utilities, homeowners' insurance SAVE AND *EXCEPT property taxes which [Charles] agrees to pay (without reimbursement of [Jennifer]'s 50%* subject to conditions set forth below)[.]
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> . . . .
>
> *Parties agree that [Charles] will pay 100% of the property taxes until sale provided [Jennifer] cooperates so that [Charles] can access home equity loan in order to pay property taxes*. [Charles] agrees to pay 100% of all closing costs and to pay 100% of all interest incurred on same.
>
> Parties agree that agreed upon repairs above $250 and that agreed upon upgrades, if any, necessary for sale shall be accessed from home equity loan.
>
> *[Charles] to pay debt service upon home equity loan until house is sold.*

> [Jennifer] to reimburse to [Charles] from her 50% portion of the sales proceeds, 50% of the actual cost of agreed upon repairs and 50% of agreed upon upgrades.
>
> *[Charles] to pay 100% of the property taxes and [Charles] to have 100% tax deduction* for mortgage interest and *for property taxes until sale*[.]

(Emphasis added.)

Jennifer further testified that, pursuant to the MSA and the agreed final divorce decree, she cooperated with Charles so that he could obtain a home equity loan and he paid the property taxes for their residence from the proceeds of the loan. During the time that she remained in the home, Jennifer made all mortgage and utilities payments, but she did not pay property taxes or "take any income tax deductions for the property taxes" that were paid related to the residence. At the closing of the sale of the residence, the entirety of the home equity loan was paid off by the marital estate prior to either party receiving his/her portion of the proceeds, $60,000 related to the payment of property taxes was placed into a trust account, and the remainder of the proceeds of the sale of the residence were split equally between Jennifer and Charles.

In regard to the $60,000 held in the trust account, Jennifer explained that she was entitled to $44,750.91 and Charles was entitled to $15,249.09 because she was not obligated to pay any portion of the property taxes related to the residence; Charles was "responsible [for paying] 100 percent" of the property taxes related to

the residence; the home equity loan, which Charles had exclusively used to pay the property taxes, was improperly repaid by the marital estate, instead of solely from Charles's share of the proceeds from the sale of the residence; and her calculations, related to the division of the monies held in the trust account, took those facts into account. The trial court admitted into evidence Jennifer's calculation of the "Division of Proceeds from Sale of House," which contemplated Charles paying the entirety of the property taxes related to the residence.

Charles similarly testified that, under the terms of the MSA and the agreed final divorce decree, he was "to pay 100 percent of the property taxes [related to the residence] and . . . get 100 percent of the income tax benefit of paying the property taxes." And he did timely pay the property taxes related to the residence and take income-tax deductions for those payments. However, based on his calculations, Charles opined that he was entitled to $41,457.55 and Jennifer was entitled to $18,542.45 of the $60,000 held in the trust account because the property taxes should have been divided equally between himself and Jennifer. The trial court admitted into evidence Charles's calculation of the "Division of Proceeds from Sale of House," which contemplated Charles and Jennifer's splitting of the cost of the property taxes related to the residence.

After reviewing the decree, the record, and the parties' actions subsequent to their divorce, we conclude that the parties, in their agreed final divorce decree,

intended to make Charles responsible for paying 100% of the property taxes related to the residence prior to its sale, and the trial court's enforcement and clarifying order fulfils that intent. *See Brown v. Brown*, 236 S.W.3d 343, 350 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (agreeing with trial court's construction of ambiguous divorce decree, which comported with decree as whole and circumstances surrounding its formation); *see also In re Manor*, No. 07-16-00143-CV, 2018 WL 1415407, at *2–4 (Tex. App.—Amarillo Mar. 21, 2018, pet. denied) (mem. op.) (where agreed divorce decree ambiguous, trial court free to accept husband's interpretation of agreed decree).

According, we hold that the trial court did not err in granting Jennifer's motion, entering an enforcement and clarifying order, and awarding her $44,750.91 and Charles $15,249.09 of the $60,000 being held in the trust account. *See Unifund CCR Partners v. Villa*, 299 S.W.3d 92, 97 (Tex. 2009) (abuse of discretion does not occur when trial court bases its decision on conflicting evidence, as long as some evidence of substantive and probative character exists to support trial court's decision); *Brown*, 236 S.W.3d at 350 ("The trial court correctly exercised its authority to clarify th[e] ambiguous language in order to give effect to the . . . allocation of the community estate that it originally intended.").

We overrule Charles's fourth issue.

Findings of Fact and Conclusions of Law

In his first issue, Charles argues that the trial court erred in not filing the requested findings of fact and conclusions of law because he timely requested such findings and conclusions and filed a notice of past due findings of fact and conclusions of law. *See* TEX. R. CIV. P. 296, 297.

Findings of fact and conclusions of law are required upon request in any case tried in the district or county court without a jury. *Gene Duke Builders, Inc. v. Abilene Hous. Auth.*, 138 S.W.3d 907, 908 (Tex. 2004); *see also* TEX. R. CIV. P. 296, 297. When properly requested, a trial court has a mandatory duty to file findings of fact and conclusions of law. *See* TEX. R. CIV. P. 296, 297; *Murray*, 276 S.W.3d at 143. The purpose of Texas Rule of Civil Procedure 296 is to give a party a right to findings and conclusions finally adjudicated after a conventional trial on the merits before the court. *IKB Indus. (Nigeria) Ltd. v. Pro–Line Corp.*, 938 S.W.2d 440, 442 (Tex. 1997); *Murray*, 276 S.W.3d at 143.

However, findings and conclusions are not required in every case. *See IKB Indus.*, 938 S.W.2d at 442 (findings and conclusions often unnecessary and requiring them in every case would unduly burden trial courts); *see also Kendrick v. Lynaugh*, 804 S.W.2d 153, 156 (Tex. App.—Houston [14th Dist.] 1990, no writ) (rules 296 and 297 "do not impose any duty on the trial court to file findings of fact or conclusions of law where there has been no trial"); *Johnson v. J.W. Constr. Co.*, 717

S.W.2d 464, 467–68 (Tex. App.—Fort Worth 1986, no writ). For instance, a trial court's duty to file findings of fact and conclusions of law does not extend to post-judgment hearings. *Murray*, 276 S.W.3d at 143; *Johnson*, 717 S.W.2d at 467–68; *see also Santiago v. Bank of N.Y. Mellon*, No. 05-15-00342-CV, 2015 WL 2375400, at *1 (Tex. App.—Dallas May 18, 2015, no pet.) (mem. op.); *Zimmerman v. Robinson*, 862 S.W.2d 162, 164 (Tex. App.—Amarillo 1993, no writ) ("[A]ny request for findings and conclusions, in a case not tried, is without effect.").

Here, Jennifer filed a post-judgment motion for enforcement and clarification. After a hearing, the trial court entered an order enforcing and clarifying the provisions of the parties' agreed final divorce decree related to the sale of their residence. Because the trial court's hearing was a post-judgment hearing and the trial court had no duty to make findings of fact and conclusions of law, we hold that the trial court did not err in not filing the requested findings of fact and conclusions of law. *See Murray*, 276 S.W.3d at 143–44 (where trial court held hearing on party's motion for enforcement and clarification and entered clarifying order, no duty to make findings of fact and conclusions of law).

Further, even were we to presume that the trial court was required to file findings of fact and conclusions of law in the instant case, we note that if the record affirmatively shows that the requesting party was not harmed by their absence, then the trial court's failure to file such findings and conclusions is not presumed

reversible error. *Cherne Indus., Inc. v. Magallanes*, 763 S.W.2d 768, 772 (Tex. 1989); *Pham v. Harris Cty. Rentals, L.L.C.*, 455 S.W.3d 702, 706 (Tex. App.—Houston [1st Dist.] 2014, no pet.); *Alsenz v. Alsenz*, 101 S.W.3d 648, 652 (Tex. App.—Houston [1st Dist.] 2003, pet. denied); *see also Kuo Kung Ko v. Pin Ya Chin*, 934 S.W.2d 839, 842 (Tex. App.—Houston [14th Dist.] 1996, no writ) ("[W]hen the record affirmatively shows that the complaining party suffered no injury, we need not presume that harm has resulted when the trial court failed to prepare findings of fact and conclusions of law.").

The general rule is that a party is harmed by a trial court's failure to file findings of fact and conclusions of law if he has to guess at the reason the trial court ruled against him or is prevented from properly presenting his case to the appellate court. *R.H. v. Smith*, 339 S.W.3d 756, 766 (Tex. App.—Dallas 2011, no pet.); *Nev. Gold & Silver, Inc. v. Andrews Indep. Sch. Dist.*, 225 S.W.3d 68, 77 (Tex. App.—El Paso 2005, no pet.); *Alsenz*, 101 S.W.3d at 652. However, a party "suffers no harm [when] the reason for the trial court's judgment is clear, and the appellate court does not have to guess the reason for the trial court's decision." *Pham*, 455 S.W.3d at 706; *see also R.H.*, 339 S.W.3d at 766.

It is not disputed that Charles timely requested findings of fact and conclusions of law. *See* TEX. R. CIV. P. 296, 297. But the parties' dispute in this case is a narrow one, i.e., whether Charles was required to bear the entire cost of the

property taxes for the residence or whether Charles and Jennifer were required to split the cost of the property taxes for the residence. *Cf. R.H.*, 339 S.W.3d at 766; *Kuo Kung Ko*, 934 S.W.2d at 842 (noting limited issues before trial court). The parties each presented their own calculation as to how the proceeds from the sale of their residence were to be divided based on how they believed the cost of the property taxes should be allocated under the terms of the agreed final divorce decree. It is clear from the record that the trial court accepted Jennifer's calculation. *Cf. Kuo Kung Ko*, 934 S.W.2d at 842 ("[U]nlike other cases involving complex and/or disputed facts, [party] needed no guesswork to determine why the judge ruled as he did . . . .").

Notably, this is not a case with multiple claims or defenses and a summary disposition by the trial court that has left Charles unable to narrow his contentions for appeal because he has to guess at the reason that the trial court ruled against him. *See Pham*, 455 S.W.3d at 706; *R.H.*, 339 S.W.3d at 766. Further, Charles does not explain, and the record does not show, how he was prevented from properly presenting his case to this Court, and he does not identify any issue that he was unable to brief as a result of the trial court's failure to file findings of fact and conclusions of law. *See Barger*, 2016 WL 7473944, at *4–5; *Rumscheidt v. Rumscheidt*, 362 S.W.3d 661, 665–66 (Tex. App—Houston [14th Dist.] 2011, no

pet.); *Alsenz*, 101 S.W.3d at 652 (party did not appear to have any problem presenting case on appeal).

We overrule Charles's first issue.

Conclusion

We affirm the order of the trial court.

Terry Jennings
Justice

Panel consists of Justices Jennings, Keyes, and Higley.