Affirmed and Memorandum Opinion filed April 13, 2017.

In The

Fourteenth Court of Appeals

NO. 14-15-00990-CV

WILMA REYNOLDS, Appellant

V.

DAVID REYNOLDS, Appellee

On Appeal from the 300th District Court
Brazoria County, Texas
Trial Court Cause No. 48170

M E M O R A N D U M O P I N I O N

These former spouses appear regularly on our docket. In this latest chapter of their long-running dispute, appellant Wilma Reynolds challenges two rulings by the trial court: (1) the denial of her motion to compel appellee David Reynolds to produce financial records; and (2) the granting of David's traditional motion for summary judgment. Because we conclude that the trial court did not abuse its discretion when it denied her motion to compel, we overrule Wilma's first issue.

We overrule Wilma's second issue because David's summary judgment evidence established as a matter of law his affirmative defense of collateral estoppel. We therefore affirm the trial court's judgment.

BACKGROUND

David petitioned for divorce from Wilma in 2008. *Reynolds v. Reynolds*, No. 14-09-00720-CV, 2010 WL 3418209, at * 1 (Tex. App.—Houston [14th Dist.] Aug. 31, 2010, pet. denied). David is employed by QuantLab Financial, LLC. *Id.* David also participates with his employer in two entities, QuantLab Trading Partners US, LLP (QTP) and Quantlab Incentive Partners I LLC (QIP). *Id.* In addition to his salary from Quantlab Financial, David receives income from both QTP and QIP. *Id.* During the 2009 divorce trial, a central dispute between the parties was "David's interest in and income derived from those entities, and how those items should be divided in the divorce decree." *Reynolds v. Reynolds*, No. 14-14-00080-CV, 2015 WL 4504626, at *1 (Tex. App.—Houston [14th Dist.] 2015, July 23, 2015, no pet.). This issue was litigated and both David and Wilma submitted proposed divisions of the marital estate that encompassed the estate's interest in QTP and QIP.

In the 2009 judgment dividing the marital estate, the trial court adopted David's proposed division and awarded Wilma $3,220,874.74 and other property, and also awarded her "50 percent of the year 2008 Estimated Income from [QIP] after taxes are paid on the income." *Reynolds*, 2010 WL 3418209, at *2. The divorce decree awarded David the marital estate's entire interest in both QTP and QIP except for the 50 percent of the 2008 estimated income from QIP specifically awarded to Wilma. In 2010, "[t]his Court affirmed the trial court's divorce decree and division of the marital estate because we concluded Wilma was estopped from challenging the decree on appeal as a result of her acceptance of the benefits of the

property division." *Reynolds*, 2015 WL 4504626, at *1.

The record does not reveal how much of the estate has been consumed by further litigation between the parties, which has included: a petition to modify the parent-child relationship; a bill of review; a petition to enforce property division; a petition for post-divorce division of community property; appeals associated with each of these proceedings; and at least thirteen petitions for writ of mandamus in this Court and three in the Supreme Court of Texas. Much of this litigation has concerned income (or records of income) from QTP and QIP.

In 2015, Wilma filed the present petition seeking a post-divorce division of community property. Wilma alleged that there were community assets "undivided by the trial court," including (1) the "community estate's earned income/bonuses or the community estate's share of earned profits" for QTP; and (2) the "community estate's earned QIP income/bonuses for the years 2007 or 2009." Soon thereafter, Wilma served requests for production on David. Among other things, Wilma asked David to produce his ownership and financial records related to QTP, QIP, and Quantlab Financial. Wilma also asked for records for all of David's accounts with domestic banks or other financial institutions and foreign banks or other financial institutions, for the period May 3, 1997 until April 22, 2009. Wilma served interrogatories on David inquiring into the same subjects.

David filed a motion for protection from Wilma's discovery requests. Among other objections, David objected that the requests were not relevant, were an improper fishing expedition prohibited by the rules of discovery, were served for improper purposes including expense and harassment, were redundant of previous requests that had already been ruled on by the trial court and affirmed on appeal, and sought protected proprietary and financial information. Wilma responded with a motion to compel, which included no argument in response to

David's objections. Instead, Wilma simply asked the trial court to overrule David's objections, deny his motion for protection, and compel him to respond to the discovery. Wilma also asked the trial court to take judicial notice of various documents that had been filed previously for in camera inspection, review the documents, determine their relevance to the pending action, and release any relevant documents to her.[1]

David also filed a traditional motion for summary judgment on Wilma's petition for post-divorce division of community property. David argued he was entitled to summary judgment on three affirmative defenses: (1) statute of limitations, (2) res judicata, and (3) collateral estoppel.

The trial court held a hearing in which it considered these pending motions. At the end of the hearing, the trial court denied Wilma's motion to compel, granted David's motion for protection, and granted David's motion for summary judgment. This appeal followed.

[1] This request was based (at least in part) on Wilma's belief that documents she had sought in discovery—after filing a petition for modification of the parent-child relationship based on alleged changed financial circumstances—would reveal that David had concealed documents, given false testimony, and introduced false evidence in the property division trial. *See In re L.R.*, 416 S.W.3d 675, 676 (Tex. App.—Houston [14th Dist.] 2013, no pet.). The documents were submitted to the trial court handling the modification proceeding for in camera inspection. After that inspection, the trial court found that the documents were not relevant and denied Wilma's motion to compel their production. *Id.* The trial court then granted David's motion for directed verdict, and Wilma unsuccessfully appealed. *Id.* Wilma later sought discovery of the same documents by filing (1) a bill of review and (2) a petition to enforce the property division, in each case without success. *Reynolds*, 2015 WL 4504626, at *2 n.1; *see also Reynolds v. Reynolds*, No. 14-14-00624-CV, 2015 WL 7456059, at *3 (Tex. App.—Houston [14th Dist.] Nov. 24, 2015, no pet.).

ANALYSIS

I. The trial court did not abuse its discretion when it denied Wilma's motion to compel.

Wilma argues in her first issue that the trial court abused its discretion when it denied her motion to compel and granted David's motion for protection. According to Wilma, David's interest in QTP and QIP was unvested at the time of the 2009 divorce decree, so any bonuses that had accrued to David from QTP and QIP were retained in accounts controlled by those entities. She argues that because these accrued bonuses remained in company-controlled accounts, they were not divided by the 2009 divorce decree and the requested discovery is relevant to the present litigation. We conclude that Wilma has not demonstrated an abuse of discretion by the trial court.

A. Standard of review

We review a trial court's order denying a motion to compel discovery for an abuse of discretion. *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 661 (Tex. 2009). Trial courts have broad discretion in matters of discovery. *Hernandez v. Abraham, Watkins, Nichols, Sorrels & Friend*, 451 S.W.3d 58, 66 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). A trial court abuses its discretion when it compels overly broad discovery. *In re Jacobs*, 300 S.W.3d 35, 44 (Tex. App.—Houston [14th Dist.] 2009, orig. proceeding).

A party may obtain discovery regarding matters that are not privileged and are relevant to the subject matter of the pending action. Tex. R. Civ. P. 192.3(a). Relevant evidence is evidence that has a tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Tex. R. Evid. 401. The information sought in discovery need not be admissible, however; it need only be

"reasonably calculated to lead to the discovery of admissible evidence." Tex. R. Civ. P. 192.3(a).

Although the scope of discovery is broad, it is limited by the legitimate interests of the opposing party in avoiding overly broad requests, harassment, or disclosure of privileged information. *In re Am. Optical Corp.*, 988 S.W.2d 711, 713 (Tex. 1998). Discovery may not be used as a fishing expedition. *K Mart Corp. v. Sanderson*, 937 S.W.2d 429, 431 (Tex. 1996) (orig. proceeding). Therefore, discovery requests must be reasonably tailored to include only matters relevant to the case. *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 180 (Tex. 1999); *In re Jacobs*, 300 S.W.3d at 44. Trial courts have broad discretion to determine the relevance of material sought in discovery. *See In re Issuance of Subpoenas Depositions of Bennett*, 502 S.W.3d 373, 378 (Tex. App.—Houston [14th Dist.] 2016, orig. proceeding). This discretion is particularly broad when a party seeks discovery into another party's personal finances. *In re Jacobs*, 300 S.W.3d at 46. Such discovery raises privacy concerns and also provides the requesting party with an opportunity for abuse and harassment. *Id.*

B. The trial court did not abuse its discretion because it could have reasonably concluded that Wilma sought discovery of information that was not relevant.

The premise behind Wilma's latest proceeding against David is her belief that community property—specifically David's accrued bonuses from QTP and QIP that were retained in accounts controlled by QTP and QIP—was not divided by the 2009 divorce decree. This subjective belief by Wilma is insufficient to demonstrate that the trial court abused its discretion when it denied her motion to compel and granted David's motion for protection. *See In re Beeson*, 378 S.W.3d 8, 15 (Tex. App.—Houston [1st Dist.] 2011, orig. proceeding) (holding that a

party's distrust, standing alone, is insufficient to support a motion to compel disclosure of financial records).

As set out above, the question of the marital estate's interest in QTP and QIP bonuses was litigated during the original property division trial. Both David and Wilma proposed property divisions that encompassed those bonuses. The trial court awarded to David, among other property, 100 percent of the marital estate's membership interest in QTP and QIP, except for 50 percent of the QIP 2008 post-tax estimated income. The court also awarded David "all sums" and "rights related to" any "benefits existing by reason of [his] past, present, or future employment," whether "matured or unmatured, accrued or unaccrued, vested or otherwise," including "accrued unpaid bonuses." We conclude that, based on the literal language used, this property division encompassed the entirety of the marital estate's interest in both QTP and QIP, including any bonuses that had not been distributed but remained on deposit in accounts controlled by QTP and QIP. *See Hagen v. Hagen*, 282 S.W.3d 899, 901 (Tex. 2009) (stating courts must construe unambiguous divorce decrees by adhering to "literal language used").

Because the divorce decree addressed and divided 100 percent of the marital estate's interest in QTP and QIP, which would include any bonuses deposited in accounts controlled by QTP and QIP, we hold that the trial court reasonably could have concluded that Wilma's discovery requests sought documents and information that were not relevant. *See In re Hallmark County Mutual Ins. Co.*, No. 08-16-00175-CV, 2016 WL 6996584, at *4 (Tex. App.—El Paso Nov. 30, 2016, orig. proceeding) (holding trial court abused discretion by compelling production of information not relevant to the subject matter of the case). The same conclusion applies to Wilma's renewed effort to obtain access to the in camera documents that had been previously produced and reviewed by the trial court, as

well as her request for other financial records from the period May 3, 1997 until April 22, 2009.[2] *See id.* We overrule Wilma's first issue on appeal.

II. David established that he was entitled to summary judgment on his affirmative defense of collateral estoppel.

David moved for traditional summary judgment on Wilma's petition seeking a post-divorce division of community property. David asserted he was entitled to judgment as a matter of law on any of three different affirmative defenses: (1) the statute of limitations, (2) res judicata, and (3) collateral estoppel. The trial court agreed and granted the motion without specifying the grounds on which it was granted. Wilma contends in her second issue that the trial court erred when it granted David's motion for summary judgment because he failed to prove his affirmative defenses as a matter of law. Because David proved his affirmative defense of collateral estoppel as a matter of law, we disagree.

A. Standard of review and applicable law

We review a trial court's order granting a traditional summary judgment de novo. *Mid-Century Ins. Co. v. Ademaj*, 243 S.W.3d 618, 621 (Tex. 2007). To prevail on a traditional motion for summary judgment, a movant must prove entitlement to judgment as a matter of law on the issues set out in the motion. Tex. R. Civ. P. 166a(c). When the movant is a defendant, a trial court should grant summary judgment only if the defendant (1) negates at least one element of each of the plaintiff's causes of action, or (2) conclusively establishes each element of an

[2] In addition to addressing the marital estate's interest in QTP and QIP, the 2009 Divorce Decree also addressed the couple's accounts with other banks and financial institutions. It awarded David (1) the funds on deposit in a specified Bank of America account; (2) 100 percent of his retirement plans, including a Fidelity Quantlab Financial 401(k) Plan; (3) approximately $1.8 million in a Morgan Stanley Investment account; (4) all stocks, bonds, and securities in David's name; and (5) 100 percent of a specified Ameriprise Financial Services, Inc. account. The divorce decree awarded Wilma (1) $3,220,874.74 deposited in a Morgan Stanley Investment account; and (2) the funds on deposit in a specified Frost Bank account.

affirmative defense. *Clark v. ConocoPhillips Co.*, 465 S.W.3d 720, 724 (Tex. App.—Houston [14th Dist.] 2015, no pet.). When the trial court's order granting summary judgment does not specify the grounds relied on for the ruling, the summary judgment will be affirmed if any of the theories advanced are meritorious. *Olmstead v. Napoli*, 383 S.W.3d 650, 652 (Tex. App.—Houston [14th Dist.] 2012, no pet.).

The doctrine of collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that it previously litigated unsuccessfully. *Calabrian Corp. v. Alliance Specialty Chems., Inc.*, 418 S.W.3d 154, 158 (Tex. App.—Houston [14th Dist.] 2013, no pet.). The doctrine "serve[s] the vital functions of bringing litigation to an end, maintaining stability of court decisions, avoiding inconsistent results, and promoting judicial economy." *Id.* at 157–58. Collateral estoppel is an affirmative defense, and the party asserting it bears the burden of pleading the defense and proving that (1) the facts sought to be litigated in the second action were fully and fairly litigated in the first action; (2) those facts were essential to the judgment in the first action; and (3) the parties were cast as adversaries in the first action. *Id.* at 158. If David establishes these elements, then Wilma is precluded from litigating the issue again. *Id.* Whether collateral estoppel applies is a question of law. *Id.*

B. The summary judgment evidence established David's collateral estoppel affirmative defense as a matter of law.

In his motion for summary judgment, David argued that collateral estoppel applied because Wilma had previously litigated the division of the community estate's interest in any QTP and QIP bonuses and other financial accounts during the original property division trial in 2009. David attached to his motion the final divorce decree, his Second Amended Inventory and Appraisement, and Wilma's

Inventory and Appraisement. Wilma filed a response to David's motion and attached, in addition to other items, the transcript of the 2009 property division trial.

This summary judgment evidence establishes that the division of the marital estate's interest in QTP and QIP bonuses and other financial accounts was an issue known to the parties during the property division trial, litigated during the trial, and resolved by the divorce decree. Because the summary-judgment evidence conclusively proved (1) the facts sought to be litigated in the second action—division of the estate's interest in QTP and QIP and other financial accounts—were fully and fairly litigated in the first action; (2) those facts was essential to the judgment in the first action; and (3) David and Wilma were cast as adversaries in the first action, we hold that the trial court did not err when it granted David's motion for summary judgment based on the affirmative defense of collateral estoppel. *See* Tex. R. Civ. P. 166a(c); *Haase v. Abraham, Watkins, Nichols, Sorrels, Agosto & Friend, L.L.P.*, 499 S.W.3d 169, 177 (Tex. App.—Houston [14th Dist.] 2016, no pet.) ("The summary-judgment record includes the evidence [the nonmovant] attached to his response, and we may rely upon [that] evidence to affirm the trial court's summary judgment."); *Calabrian Corp.*, 418 S.W.3d at 158. We overrule Wilma's second issue.

CONCLUSION

Having overruled both issues raised by Wilma in this appeal, we affirm the trial court's judgment.

/s/ J. Brett Busby
Justice

Panel consists of Justices Boyce, Busby, and Wise.