Court of Appeals
Fourth Court of Appeals District of Texas
San Antonio

MEMORANDUM OPINION

No. 04-10-00563-CV

Douglas Wayne **JOYNER**,
Appellant

v.

Janelle Marie **JOYNER**,
Appellee

From the 408th Judicial District Court, Bexar County, Texas
Trial Court No. 2008-CI-21331
Honorable David A. Berchelmann, Jr., Judge Presiding

Opinion by: Rebecca Simmons, Justice

Sitting: Sandee Bryan Marion, Justice
Rebecca Simmons, Justice
Steven C. Hilbig, Justice

Delivered and Filed: April 6, 2011

AFFIRMED

Appellant Douglas Wayne Joyner appeals the trial court's order denying his petition for bill of review. In his petition, Doug challenges an amended domestic relations order, claiming that the order awarded his former spouse, Appellee Janelle Marie Joyner, a higher percentage of his military retirement benefits than what their divorce decree had awarded her. Specifically, Doug argues that the trial court: (1) lacked jurisdiction to modify the divorce decree; and (2) abused its discretion by denying his bill of review. We affirm the trial court's order.

BACKGROUND

Doug and Janelle were divorced in October 2001. A domestic relations order accompanying their divorce decree awarded Janelle 50% of the community interest in Doug's military retirement benefits. Doug retired from active military service in December 2005. Due to a calculation error, the Defense Finance and Accounting Service (DFAS) paid Janelle approximately 50% of Doug's entire gross military retirement pay, which Doug argues was more than the 50% of the community interest she was owed under the divorce decree.

In February 2006, Doug filed a motion to clarify the divorce decree. Acknowledging the miscalculation, DFAS stated in a July 24, 2006 letter to Janelle and Doug that Janelle should have received only 19.5272% of Doug's gross retirement pay rather than 50%. DFAS also stated that it was issuing Doug a credit of $4,705.61, which was the amount DFAS overpaid Janelle.

On August 22, 2006, Janelle and Doug signed an agreed order stating that Janelle's interest in Doug's total retirement was 37% of Doug's "disposable retired pay." The order was signed by both parties and the trial judge. A second order substantially reflecting the terms of the first order was signed by another judge on February 22, 2007.[1] On March 2, 2007, Doug's attorney moved for a new trial because the amended domestic relations order did not address Doug's $4,705.61 DFAS credit and allegedly impermissibly changed the terms of the divorce decree. The trial court granted the motion upon the condition that Doug pay $1,200 for Janelle's attorney's fees by June 7, 2007, and that "if the attorney's fee payment condition herein is not timely met, the Motion for New Trial is denied."

Doug's counsel thereafter withdrew, and Doug alleged that he was never aware of the conditional motion for new trial. When Janelle's attorney's fees were not timely paid, the trial

[1] It is unclear from the record why the trial court signed a second domestic relations order or how Doug's March 2, 2007 motion for new trial challenging the August 22, 2006 amended domestic relations order was "timely."

court signed an order on June 22, 2007, stating that the new trial was denied because the time for satisfying the condition had expired.

Doug filed a petition for bill of review on December 30, 2008, attacking the jurisdiction of the trial court to amend the domestic relations order. After a preliminary hearing, the trial court denied Doug's petition.

DISCUSSION

Doug's first issue is that the trial court lacked jurisdiction to increase Janelle's award of his military retirement benefits from 19.5272% to 37%. "Whether a trial court has subject-matter jurisdiction is a question of law subject to *de novo* review." *Tex. Natural Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002). Generally, a trial court lacks authority to substantively amend, modify, alter, or change an unambiguous term or division of property in a divorce decree. TEX. FAM. CODE ANN. § 9.007(a)–(b) (West 2006); *Pearcy v. Pearcy*, 884 S.W.2d 512, 514 (Tex. App.—San Antonio 1994, no writ). However, if the parties agree to amend, modify, alter, or change a term in a divorce decree, a change in the decree to reflect that change is not an impermissible substantive modification. *See In re A.L.G.*, 229 S.W.3d 783, 786 n.4 (Tex. App.—San Antonio 2007, no pet.) (noting that a verbal agreement that is approved by a trial court may modify a divorce decree); *Douglas-Peters v. Peters*, No. 03-05-00065-CV, 2006 WL 505178, at *1 n.2 (Tex. App.—Austin Mar. 2, 2006, pet. denied) (mem. op.) (noting that a divorce decree can be modified by agreement if the agreement is signed and filed with the court in compliance with Rule 11); *cf. Votzmeyer v. Votzmeyer*, 964 S.W.2d 315, 322 (Tex. App.—Corpus Christi 1998, no pet.) (holding that the trial court impermissibly modified a divorce decree in the absence of a valid agreement between the parties).

Doug and Janelle's amended domestic relations order was an agreed order stating that Janelle's interest in Doug's "total retirement is 37.0% of [Doug's] disposable retired pay . . . ." Because the agreement was reduced to writing, signed by both Janelle and Doug, and filed as part of the record, the modification made by the amended domestic relations order was not an impermissible substantive modification under the Texas Family Code. *See In re A.L.G.*, 229 S.W.3d at 786 n.4; *Douglas-Peters*, 2006 WL 505178, at *1 n.2; *Votzmeyer*, 964 S.W.2d at 322.[2] Thus, the trial court had jurisdiction to change the terms of the divorce decree with the agreed amended domestic relations order. Accordingly, Doug's first issue is overruled.

Doug's second issue is that the trial court abused its discretion in denying his bill of review. His sole complaint is that the amended domestic relations order was void because the trial court lacked jurisdiction to modify the percentage of Janelle's interest in his military retirement benefits. For the reasons previously stated, we hold that the trial court had jurisdiction to enter the amended domestic relations order. Accordingly, the trial court did not abuse its discretion in denying Doug's bill of review.

CONCLUSION

Based on the foregoing reasons, we affirm the trial court's order.

Rebecca Simmons, Justice

[2] Although Doug asserts that his attorney was at fault both for the erroneous entry of the agreed order and the trial court's subsequent revocation of a conditionally granted motion for new trial, the actions of Doug's attorney are imputed to Doug. *See Transworld Fin. Servs. Corp. v. Briscoe*, 722 S.W.2d 407, 408 (Tex. 1987); *Petro-Chem. Transp., Inc. v. Carroll*, 514 S.W.2d 240, 246 (Tex. 1974).