



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-16-00390-CV

Juan **ROBLES**,  
Appellant

v.

Maria Milagros **ROBLES**,  
Appellee

From the 25th Judicial District Court, Guadalupe County, Texas  
Trial Court No. 10-2084-CV  
Honorable W.C. Kirkendall, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Sandee Bryan Marion, Chief Justice  
Rebeca C. Martinez, Justice  
Irene Rios, Justice

Delivered and Filed: September 20, 2017

**ORDER VACATED, APPEAL DISMISSED FOR LACK OF JURISDICTION**

This appeal arises out of a post-divorce proceeding between appellant Juan Robles and appellee Maria Milagros Robles. Juan asserts the trial court lacked plenary power to hold a hearing on Maria's motion to reconsider or enter the March 22, 2016 order granting Maria's motion to reconsider. Because we agree the trial court lacked plenary power to enter the order, we vacate the March 22, 2016 order and dismiss the appeal for lack of jurisdiction.

## **BACKGROUND**

The parties married on January 4, 1985. Maria filed her original petition for divorce in Guadalupe County on October 1, 2010, and Juan filed a counter-petition. The parties entered into a Mediated Settlement Agreement (MSA) on May 20, 2011, and a Final Decree of Divorce was entered on June 19, 2013.

Thereafter, the parties disputed the division of a Thrift Savings Plan (TSP) in the initial Qualified Domestic Relations Order (QDRO) and, subsequently, they were ordered to arbitration for a determination regarding the date designated for division of the TSP, among other issues. The arbitrator determined the date for division of the TSP was May 20, 2011 – the date of the MSA, and Juan filed a motion to enforce the arbitration award and motion for entry of arbitration. On August 13, 2015, the trial court signed an order granting Juan’s motion and directing Maria to reimburse Juan \$13,542.49 for overpayment from the TSP (the “corrected QDRO”).

On August 31, 2015, Maria filed a Motion to Reconsider or Alternatively Order Arbitration. On November 17, 2015, the trial court held a hearing during which Juan argued the trial court lacked plenary power to hold the hearing. The trial court disagreed and proceeded with the hearing. The hearing was subsequently reset for November 23, 2015. At the conclusion of the hearing, the trial court orally pronounced its ruling and set the amount of Maria’s reimbursement to the TSP at \$5,156.14 rather than \$13,542.49. The trial court also ordered Juan to pay Maria \$2,500.00 in attorney’s fees. On March 22, 2016, the trial court signed a written order granting Maria’s motion to reconsider and awarding her attorney’s fees.

This appeal followed.

## **ANALYSIS**

Juan contends the trial court lacked plenary power to proceed with the hearings on November 17, 2015 and November 23, 2015, and as a result, the trial court’s March 22, 2016 order

is void. Juan argues the trial court's plenary power expired thirty days after the trial court signed the August 13, 2015 corrected QDRO because the motion filed by Maria did not extend the trial court's plenary power.<sup>1</sup> Juan additionally argues that even if the trial court's plenary power was extended by Maria's motion, the trial court's plenary power expired before it signed the written order granting Maria's motion on March 22, 2016.

We review whether a trial court has subject matter jurisdiction *de novo*. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004).

The trial court's August 13, 2015 corrected QDRO order is a final, appealable order, which has the same effect as a judgment. *See Reiss v. Reiss*, 118 S.W.3d 439, 441 (Tex. 2003) (post-divorce QDRO reviewed by appeal); *Beshears v. Beshears*, 423 S.W.3d 493, 500 (Tex. App.—Dallas 2014, no pet.).

A trial court retains plenary power to grant a new trial or to vacate, modify, correct, or reform a judgment within thirty days after the judgment is signed. TEX. R. CIV. P. 329b(d); *First Alief Bank v. White*, 682 S.W.2d 251, 252 (Tex. 1984) (orig. proceeding) (per curiam). If no party to a judgment files a motion to extend the trial court's plenary power, the trial court loses plenary power over the judgment thirty days after the judgment is signed. *Pollard v. Pollard*, 316 S.W.3d 246, 251 (Tex. App.—Dallas 2010 no pet.). If such a motion is timely filed, the trial court has plenary power to grant a new trial or to vacate, modify, correct, or reform the judgment until thirty days after such motion is overruled by a written or signed order or by operation of law. TEX. R. CIV. P. 329b(e). Such a motion is overruled by operation of law seventy-five days after the judgment is signed if no **written order** on the motion is signed within that time period. *Id.* R. 329b(c) (emphasis added). The Texas Supreme Court has recognized that “a timely filed

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<sup>1</sup> Juan also argues Maria failed to pay the proper filing fee for a motion for new trial. Juan does not provide any citation to the record showing what filing fee was required for Maria's motion or what filing fee Maria paid.

postjudgment motion that seeks a substantive change in an existing judgment qualifies as a motion to modify under Rule 329b(g), thus extending the trial court's plenary power and the appellate timetable." *Lan Bank Equip. Co. v. Smith S. Equip., Inc.*, 10 S.W.3d 308, 314 (Tex. 2000).

In this case, Maria filed a motion to reconsider the August 13, 2015 corrected QDRO, arguing the amount of repayment was incorrect because it did not take into consideration "any interest, gains or losses in the value of the funds" as required by the MSA. Maria asked the trial court to substitute an order that conformed to both the MSA and the arbitrator's decision, by recalculating the amount owed to Maria to include any interest, gains or losses in the value of the funds from May 20, 2011 until October 18, 2013, the date on which Maria received her share of the funds. Because Maria's motion sought to substantially change the repayment amount Maria was directed to pay in the August 13, 2015 corrected QDRO, this motion qualifies as a motion to modify. *See id.* Because Maria's motion was filed on August 31, 2015, it was timely filed within thirty days of the August 13, 2015 order. *See* TEX. R. CIV. P. 329 b(e). Therefore, the trial court's plenary power was extended by Maria's motion to reconsider. *See id.*

The trial court signed the corrected QDRO incorporating the arbitrator's decision on August 13, 2015; therefore, its plenary power to modify that order expired 105 days later, on November 26, 2015. *See* TEX. R. CIV. P. 329b(c), (e). The trial court did not sign a written order granting Maria's motion to reconsider until March 22, 2016, which was well outside the trial court's plenary power.

#### CONCLUSION

Accordingly, we vacate the trial court's March 22, 2016 order granting Maria's motion to reconsider as void and dismiss this appeal for lack of jurisdiction.

Irene Rios, Justice