



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00557-CV

James E. **WALLACE** Sr.,
Appellant

v.

Letitia Ann **WALLACE**,
Appellee

From the 408th Judicial District Court, Bexar County, Texas
Trial Court No. 2017-CI-08704
Honorable Angelica Jimenez, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Karen Angelini, Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: November 7, 2018

AFFIRMED

James E. Wallace appeals from an order denying a petition for bill of review, which sought to set aside an order clarifying a divorce decree and three subsequent enforcement orders. Because we conclude the trial court properly denied the bill of review petition, we affirm the trial court's order.

BACKGROUND

In 2011, James was divorced from Letitia Ann Wallace. On April 19, 2011, the trial court signed a final decree of divorce. On November 23, 2011, after the trial court's plenary power had

expired, Letitia filed a motion seeking clarification of provisions in the divorce decree. On August 3, 2012, the trial court ruled on Letitia's motion and signed a clarification order. Thereafter, the trial court signed two contempt orders, one on December 3, 2015, and another on February 4, 2016. The trial court also signed an income withholding order on January 20, 2017.

James filed his bill of review petition on May 11, 2017, more than four years after the trial court had signed the clarification order. The petition alleged the clarification order was void because it impermissibly modified the divorce decree as prohibited by section 9.007(b) of the Texas Family Code. The petition also alleged the subsequent orders, the two contempt orders and the income withholding order, should be set aside because they "relied on" the clarification order.

Letitia answered, denying the allegations in the petition. Letitia's pleadings alleged that the bill of review petition was barred by the four-year statute of limitations, that James failed to satisfy the requirements for a bill of review, and that the clarification order was not void.

After a hearing, the trial court denied the bill of review petition. James appealed.

DISCUSSION

On appeal, James contends the trial court erred in denying his bill of review petition because he met his burden to show the clarification order is void.

Direct vs. Collateral Attack

A petition for bill of review is ordinarily a direct attack on a judgment. Generally, absent a showing of extrinsic fraud, a petition for bill of review must be filed within four years of the judgment or order sought to be set aside. *PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267, 275 (Tex. 2012); *Defee v. Defee*, 966 S.W.2d 719, 722 (Tex. App.—San Antonio 1998, no pet.); *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 16.051. However, "[w]hen a bill of review fails as a direct attack, it may, instead, constitute a collateral attack." *Pursley v. Ussery*, 937 S.W.2d 566, 568 (Tex.

App.—San Antonio 1996, no writ); *see PNS Stores*, 379 S.W.3d at 272 (“After the time to bring a direct attack has expired, a litigant may only attack a judgment collaterally.”).

James acknowledges his bill of review petition was filed more than four years after the clarification order was signed, and therefore, fails as a direct attack on the clarification order. Nevertheless, James contends his bill of review petition, although untimely, constituted a collateral attack on the clarification order. According to James, the clarification order is void and, therefore, the trial court should have granted his bill of review petition and set aside the clarification order.

Void Judgments

Only a void judgment may be collaterally attacked. *Browning v. Prostok*, 165 S.W.3d 336, 346 (Tex. 2005). A judgment is void when the court rendering judgment had no jurisdiction of the parties or property, no jurisdiction of the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act. *PNS Stores*, 379 S.W.3d at 272 (citing *Travelers Ins. Co. v. Joachim*, 315 S.W.3d 860, 863 (Tex. 2010)).

Our review of a collateral attack is limited to whether the record affirmatively and conclusively negates the existence of jurisdiction, not whether the trial court otherwise erred in reaching its judgment. *In re Blankenship*, 392 S.W.3d 249, 255 (Tex. App.—San Antonio 2012, pet. denied). When attacked collaterally, a judgment is presumed valid. *PNS Stores*, 379 S.W.3d at 273. “In a collateral attack, the challenged order is presumed valid, and the party challenging it has the burden to show that it is void.” *Gainous v. Gainous*, 219 S.W.3d 97, 106 (Tex. App.—Houston [1st Dist.] 2006, pet. denied).

In determining whether a judgment is void, we may look beyond the face of the judgment to determine if the record “affirmatively demonstrates that the trial court lacked jurisdiction.” *PNS Stores*, 379 S.W.3d at 273. The record affirmatively demonstrates a jurisdictional defect sufficient to void a judgment when it either (1) establishes that the trial court lacked subject matter

jurisdiction over the suit, or (2) exposes such personal jurisdictional deficiencies as to violate due process. *Id.*

Section 9.007 of the Texas Family Code

In the present case, James contends the clarification order is void based on section 9.007 of the Texas Family Code. Under section 9.007, an order that amends, modifies, alters, or changes the actual, substantive division of property made in a divorce decree is beyond the jurisdiction of the trial court and is void. *In re N.T.P.*, 402 S.W.3d 13, 23 (Tex. App.—San Antonio 2012, no pet.); *In re E.H.G.*, No. 04-08-00579-CV, 2009 WL 1406246, at *6-8 (Tex. App.—San Antonio 2009, no pet.). Specifically, section 9.007 provides, in relevant part:

§ 9.007 Limitation on Power of Court to Enforce

- (a) A court may not amend, modify, alter, or change the division of property made or approved in the decree of divorce or annulment. An order to enforce the division is limited to an order to assist in the implementation of or to clarify the prior order and may not alter or change the substantive division of property.
- (b) An order under this section that amends, modifies, alters, or changes the actual, substantive division of property made or approved in a final decree of divorce or annulment is beyond the power of the divorce court and is unenforceable.

TEX. FAM. CODE ANN. § 9.007(a),(b).

Clarification Order

Letitia's motion to clarify concerned paragraph W-6 in the property division section of the divorce decree which provides:

Federal Civil Service – Fifty (50%) percent of Respondent's Federal Employee Retirement System (FERS) self-only retirement annuity and/or employee disability self-only annuity awarded to Petitioner including cost of living increases and including but not limited to award of annuity without survivor benefit to Petitioner's estate if Petitioner predeceases Respondent; 50% percent of Respondent's FERS earned annuity benefit resulting from recomputation of Petitioner's disability annuity without survivor benefit at age 62; 50% of the former spouse survivor benefit plan and annuity (SBP)[;] 50 % of Respondent's Federal Employee Government Life Insurance (FEGLI) and *full entitlement to (FEHB) all*

to be paid by Respondent, more particularly described in the Qualified Domestic Relations Order filed herein, valued as of the date of this decree.

(Emphasis added).

In her motion to clarify, Letitia asked the trial court to construe and clarify the meaning of the phrase “full entitlement to (FEHB)¹ all to be paid by” James. The trial court granted Letitia’s motion to clarify and signed a clarification order that states:

The court finds after reviewing the record, the judges notes and argument of counsel, that the prior order should be clarified to require [James] to cover or timely pay the health care benefits for [Letitia] as follows.

Respondent JAMES E. WALLACE, is ordered to continue to maintain the health care benefits for Petitioner, LETITIA ANN WALLACE, as post divorce spousal maintenance for so long as post divorce spousal maintenance is payable to Petitioner in the Final Decree of Divorce entered on April 19, 2011. Respondent [is] ordered to timely pay Petitioner, LETITIA ANN WALLACE, the quarterly premiums for the health care coverage currently in effect in the current amount of \$1,065.00 per quarter and to include any increases thereon. Said amount to be paid at \$355.00 per month to Petitioner through allotment or withholding. The court further finds an[] arrearage is due and owing and orders JAMES E. WALLACE to pay an arrearage amount of unpaid health care premiums beginning February 12, 2011, to current in the amount of \$6,390.00. Said amount to be paid to Petitioner at a monthly amount of \$200.00 per month beginning September 1, 2012 and continuing on the first day of each month thereafter until paid in full and bearing interest at a rate of 4% per year until paid in full, through allotment or withholding. The court further orders that if Petitioner receives any notice of premium increase or health care plan change, she is to notify Respondent of any increase in premium payments within 14 day[s] of receiving said notification and Petitioner is ordered to pay same effective the month of the increase if any.

According to James, the trial court impermissibly modified the language of the divorce decree and issued a clarification order that was beyond the trial court’s power. *See* TEX. FAM. CODE ANN. § 9.007(b). James presents multiple arguments to support this contention. James argues the divorce decree is unambiguous, and therefore, there was no need for the trial court to clarify the decree. Courts apply general rules of construction in interpreting a divorce decree. *Shanks v. Treadway*, 110 S.W.3d 444, 447 (Tex. 2003). Courts construe the decree as a whole to harmonize

¹Federal Employees Health Benefits Program.

and give effect to the entire decree. *Id.* If the decree, when read as a whole, is unambiguous as to the property's disposition, the court must effectuate the order in light of the literal language used. *Id.* On the other hand, if the decree is ambiguous—that is, subject to more than one reasonable interpretation—the court can review the record along with the decree to aid in interpreting the decree. *Id.*

In this case, the divorce decree was ambiguous because it did not describe who James was supposed to pay for the health care benefits for Letitia, nor did it describe when and where he was supposed to make these payments. *See Hollingsworth v. Hollingsworth*, 274 S.W.3d 811, 818-19 (Tex. App.—Dallas 2008, no pet.) (concluding divorce decree was ambiguous and subject to clarification when it did not include a precise time and place for payment of tax obligation or describe who the appellant was supposed to pay). Therefore, the trial court was authorized to review the record along with the decree to interpret the decree and render a clarification order. *See Shanks*, 110 S.W.3d at 447.

Next, James argues that the clarification order impermissibly modified the terms of the divorce decree because while the decree required him to obtain the health insurance through his employer, the clarification order required Letitia to obtain health insurance through a “secondary source.” However, the clarification order does not explicitly state that the health care benefits for Letitia are from a secondary source. It simply orders James “to continue to maintain the health care benefits for” Letitia. Furthermore, the record does not otherwise establish the source of the health care benefits for Letitia. Additionally, James argues the trial court granted the motion to clarify because the parties had learned Letitia was ineligible for health care benefits through James's employer. However, Letitia's motion to clarify included multiple reasons for the clarification, including that the divorce decree was not specific enough to be enforced. And, the clarification order does not state the reason the trial court granted the motion to clarify. Therefore, the record

does not affirmatively demonstrate that the clarification order constituted a substantive modification to the terms of the divorce decree.

James also argues the clarification order was beyond the trial court's power under section 9.007(b) because the order imposed obligations on him that did not exist in the divorce decree. James claims these new obligations consist of (1) maintaining health care benefits for Letitia through a third-party provider for as long as post-divorce spousal maintenance is payable under the decree, (2) timely paying Letitia premiums for health insurance coverage, (3) paying these premiums through an allotment or withholding, and (4) paying Letitia premium increases.

After reviewing the record, we conclude the clarification order did not impose new obligations on James. The divorce decree awarded Letitia "full entitlement" to federal employee health benefits "all" of which was to be paid by James. The divorce decree also included other provisions, separate and apart from the health care provisions, requiring James to pay Letitia spousal maintenance and authorizing income withholding.

This case is analogous to *Hollingsworth*. In *Hollingsworth*, the divorce decree ordered that the appellant was solely responsible for all federal income tax liabilities during the marriage and ordered him to timely pay any deficiencies and to indemnify his former wife, the appellee. 274 S.W.3d at 813. The trial court later issued an order clarifying these provisions. *Id.* at 814. On appeal, the appellant argued the clarifying order impermissibly modified the divorce decree because the decree required the appellant to indemnify the appellee for the taxes she paid, but it did not require him to pay her directly for unpaid taxes. *Id.* at 819. The court of appeals rejected the appellant's argument and concluded the clarification order did not impose any new obligations because the decree did not specify whether the appellant was to pay the appellee the amount she owed for her taxes, indemnify her for amounts she had already paid toward the taxes, or if he was to pay the IRS directly. *Id.* Similarly, here, the divorce decree stated that James was responsible

for paying for health benefits for Letitia, but it did not specify how he was supposed to pay for these benefits. The subsequent clarification order specified the manner in which James was to pay for these benefits and did not impose a new obligation on him.

James also complains about the part of the clarification order in which the trial court found James to be in arrears for unpaid health care premiums and ordered him to repay the arrearage at the rate of \$200 per month. James argues “no language in the divorce decree” gave the trial court the authority to interpret the decree “to find [him] in contempt regarding” arrears he owed for unpaid health premiums or to order repayment of the arrearage. Here, James seems to be arguing that because the divorce decree did not explicitly state that the trial court could make an arrearage finding and order repayment of the arrearage, the clarification order imposed new obligations on him.² We reject this argument. The divorce decree required James to pay for “all” of Letitia’s health care benefits without limitation. James’s obligation to provide health care benefits to Letitia began in April 2011, when the parties were divorced. The clarification order and the arrearage finding was not made until sixteen months later, August 2012. The arrearage and repayment provisions were not new obligations; they were subsumed in the decree provision requiring James to pay for “all” of Letitia’s health care benefits.

We hold the clarification order did not impermissibly modify the terms of the divorce decree; it merely assisted in the implementation of the decree and clarified the terms in question, which was permitted under section 9.007(a). We also hold the record does not affirmatively demonstrate that the clarification order is void. We conclude James did not meet his burden to show that the clarification order is void and subject to collateral attack.

²Additionally, contrary to James’s assertions, the clarification order does not find James in contempt, and the divorce decree states the court “expressly reserves the right to make orders necessary to clarify and enforce this decree.”

Subsequent Orders

Additionally, James argues the trial court should have granted his bill of review petition and set aside the subsequent enforcement orders—the two contempt orders and the withholding order—solely because these orders “relied on” the clarification order. Having previously concluded that James did not meet his burden to show the clarification order is void, we reject James’s argument that he met his burden to show the subsequent orders are void.

CONCLUSION

The trial court did not err in denying James’s bill of review petition. The trial court’s order denying James’s bill of review petition is therefore affirmed.

Karen Angelini, Justice