In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth

No. 02-23-00159-CV

MARIA ELVA SAULS, Appellant

V.

MICHAEL WAYNE SAULS, Appellee

On Appeal from the 360th District Court
Tarrant County, Texas
Trial Court No. 360-724625-22

Before Sudderth, C.J.; Kerr and Wallach, JJ.
Memorandum Opinion by Chief Justice Sudderth

MEMORANDUM OPINION

The trial court issued a post-divorce order that, according to Appellant Maria Elva Sauls (Wife), substantively changes the property division in the final divorce decree. Wife challenges that order in this appeal, but Appellee Michael Wayne Sauls (Husband) claims that the order merely clarifies the property division's contradictory terms. Because we hold that the trial court's order substantively changes the property division, and because the trial court lacked subject matter jurisdiction to "amend, modify, alter, or change the division of property," Tex. Fam. Code Ann. § 9.007, we will reverse.

I. Background

The parties divorced in 2022. During that divorce proceeding, and following a bench trial, the trial court sent the parties a letter outlining and rendering the division of property.[1] The letter rendition divided several bank and investment accounts relevant to this appeal:

> The wife is awarded the following property as her sole and separate property:
>
> - 50% of the Morgan Stanley Account
> - 50% of Chase Account ending in 0030

[1]The letter was also filed with the clerk. *See S & A Rest. Corp. v. Leal*, 892 S.W.2d 855, 857 (Tex. 1995) ("Judgment is rendered when the trial court officially announces its decision in open court or by written memorandum filed with the clerk.").

- 50% of Chase Account ending in 8585

. . . .

- 50% of any stocks, stock options, retirement accounts that have vested as of April 20, 2022, but not otherwise listed herein, if any.

[Indentation altered.] The trial court directed Husband's attorney to prepare a divorce decree "that comport[ed] with this rendition."

When Husband's counsel drafted the divorce decree, he filled in several details that had not been expressly stated in the trial court's letter rendition, including the date on which the account balances would be taken for purposes of the property division and the account balances on that date:

> IT IS ORDERED AND DECREED that [Wife] is awarded . . . :
>
> . . . .
>
> P-3. Fifty percent (50%) of all funds on deposit as of April 20, 2022, together with accrued but unpaid interest, in the following bank accounts in the name of [Husband]:
>
> > A. Chase Bank, account number xxx0030 in the amount of forty-two thousand four hundred and sixty-seven dollars and fifty cents ($42,467.50); and
> >
> > B. Chase Bank, account number xxx8585 in the amount of thirty-two thousand two hundred and five dollars ($32,205.00).
>
> . . . .
>
> P-4. Fifty percent (50%) of the following brokerage accounts, stocks, bonds, mutual funds, and securities that have vested as of April 20, 2022:

> A. Morgan Stanley Account, account number xxx4746 in the amount of one thousand five hundred and fifty dollars and fifty cents ($1,550.50).

[Indentation altered.] Each party's counsel approved the divorce decree as to form, and the trial court signed it. Neither party appealed; they allowed the decree to become final.

But in 2023, when Wife moved to enforce the decree's transfer of 50% of the relevant bank and investment accounts, Husband claimed that the account balances reflected in the divorce decree were inaccurate. At a non-evidentiary hearing on the matter, Husband's counsel argued that the dollar amounts included in the divorce decree had been taken from Husband's inventory, but that the inventory had been completed a month before the April 2022 trial date, and that Husband had spent a chunk of the money in the three accounts—more than $50,000 total—between the time he had completed the inventory and the time of trial. No testimonial or documentary evidence was offered to support these arguments, nor was any evidence offered to show what the account balances had been on April 20, 2022.

Nonetheless, the trial court—referring back to its letter rendition—stated that it had intended to award "50 percent of that which was in the account[s] on that date." It signed an order—a "clarification to comport with rendition" (the Order)[2] —

[2]When the trial court entered its Order striking the dollar amounts, it had already entered a previous "clarification to comport with rendition" that addressed other aspects of the property division, so its Order bore the handwritten title, "2nd Clarification to Comport with Rendition." [Capitalization altered.]

in which it "clarified" the divorce decree by striking the dollar amounts from the three relevant provisions:

> P-3. Fifty percent (50%) of all funds on deposit as of April 20, 2022, together with accrued but unpaid interest, in the following bank accounts in the name of Respondent:
>
> > A. Chase Bank, account number xxx0030 ~~in the amount of forty two thousand four hundred and sixty seven dollars and fifty cents ($42,467.50); and~~
> >
> > B. Chase Bank, account number xxx8585 ~~in the amount of thirty-two thousand two hundred and five dollars ($32,205.00).~~
> >
> > . . . .
>
> P-4. Fifty percent (50%) of the following brokerage accounts, stocks, bonds, mutual funds, and securities that have vested as of April 20, 2022:
>
> > A. Morgan Stanley Account, account number xxx4746 ~~in the amount of one thousand five hundred and fifty dollars and fifty cents ($1,550.50).~~

[Indentation altered.] With these changes to the divorce decree, the trial court's Order set a deadline for Husband to transfer 50% of the unspecified April 20, 2022 account balances. Wife unsuccessfully moved to modify the Order, and she challenges that Order in her sole issue on appeal.

II. Discussion

Wife argues that the trial court's Order changes the substance of the property division by removing the dollar amounts and that the trial court lacked the subject

matter jurisdiction to make such a change to the final divorce decree.[3] *See id.* Husband, meanwhile, contends that the Order merely clarifies an ambiguity in the divorce decree and that this clarification is necessary because "the terms of the decree [a]re directly conflicting by dividing two bank accounts both as of a date certain and an amount certain, the two of which d[o] not align." *See id.* § 9.008. Thus, the sole issue on appeal is whether the Order substantively changes the final divorce decree or clarifies ambiguities in it.

A. The divorce decree's plain language is controlling.

A divorce decree, like other judgments, must be interpreted according to its plain language. *Hagen v. Hagen*, 282 S.W.3d 899, 901–02 (Tex. 2009); *Shanks v. Treadway*, 110 S.W.3d 444, 447 (Tex. 2003); *J.K. v. A.K.*, No. 02-19-00010-CV, 2019 WL 5792662, at *5 (Tex. App.—Fort Worth Nov. 7, 2019, no pet.) (mem. op.). We construe the decree as a whole to harmonize and give effect to all of its provisions. *Hagen*, 282 S.W.3d at 901; *Shanks*, 110 S.W.3d at 447. "[I]f 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." *Shanks*, 110 S.W.3d at 447 (quoting *Wilde v. Murchie*, 949 S.W.2d 331, 332 (Tex. 1997)); *see Reiss v. Reiss*, 118 S.W.3d 439, 441–42 (Tex. 2003).

[3]Wife frames her issue as a challenge to the trial court's denial of her motion to modify the Order. The root of her complaint, though, is that the trial court lacked subject matter jurisdiction to issue its Order substantively changing the property division.

Whether a divorce decree is ambiguous is a question of law, which we review de novo.[4] *Hagen*, 282 S.W.3d at 901–02; *cf. J.K.*, 2019 WL 5792662, at *5 (noting that "[e]ven if none of the parties assert that a contract is ambiguous, a court may determine that it is ambiguous" (quoting *Talisman Energy USA Inc. v. Enduring Res., LLC*, No. 01-13-00357-CV, 2014 WL 4219514, at *4 (Tex. App.—Houston [1st Dist.] Aug. 26, 2014, pet. denied) (mem. op.)).

B. Finality is fundamental.

A trial court retains subject matter jurisdiction to clarify ambiguous aspects of its divorce decree and to enforce that decree. *See* Tex. Fam. Code Ann. §§ 9.002, .008; *see also J.K.*, 2019 WL 5792662, at *6 (describing ambiguity as "a prerequisite that enables a trial court to clarify its prior judgment"). But Texas's "strong policy" in favor of "giv[ing] finality to the judgments of the courts" restrains the trial court from doing much more. *In re D.S.*, 602 S.W.3d 504, 512 (Tex. 2020) (quoting *Browning v. Prostok*, 165 S.W.3d 336, 345–46 (Tex. 2005)); *see* Tex. Fam. Code Ann. § 9.007.

"Finality is uniquely important in family law matters," so the legislature has limited the degree to which a trial court may make changes to the decree after it has

[4]Although we review a trial court's ruling on a motion for enforcement or clarification of a divorce decree under an abuse-of-discretion standard, *see J.K.*, 2019 WL 5792662, at *4, the question on appeal turns on interpretation of the divorce decree. Additionally, the trial court's authority to enter its clarification order goes to its subject matter jurisdiction, and as such, it is a question of law subject to de novo review. *See Pearson v. Fillingim*, 332 S.W.3d 361, 364 (Tex. 2011); *Riley v. Riley*, No. 03-21-00051-CV, 2022 WL 17981970, at *3 (Tex. App.—Austin Dec. 29, 2022, no pet.) (mem. op.).

become final. *D.S.*, 602 S.W.3d at 512. If, as here, a party allows a divorce decree to become final—electing not to appeal—the party cannot later collaterally attack the decree by attempting to relitigate the division of property. *See Hagen*, 282 S.W.3d at 901–02; *Reiss*, 118 S.W.3d at 443. And the trial court, in turn, lacks the authority to indulge such re-litigation; it cannot "amend, modify, alter, or change the division of property" after it has become final. Tex. Fam. Code Ann. § 9.007.

This is true "even if [the decree's property division] incorrectly characterizes or divides the property" and even if the trial court erroneously applied the law when it entered the divorce decree. *Pearson*, 332 S.W.3d at 363–64; *see Reiss*, 118 S.W.3d at 442 (noting that even "though the effect of the [divorce] decree [wa]s to divest [the husband] of his separate property, that does not alter the decree's plain language"); *Shanks*, 110 S.W.3d at 448–49 (noting that "the fact that the district court erroneously applied the law when it entered the divorce decree does not alter the decree's plain language"); *Murray v. Murray*, 276 S.W.3d 138, 144 (Tex. App.—Fort Worth 2008, pet. dism'd) (recognizing that "res judicata applies to the property division in a final divorce decree . . . [,] barring subsequent collateral attack even if the divorce decree improperly divided the property"). Whether or not a divorce decree contains substantive mistakes, once it has become final, allowing "subsequent bites at the apple [would] threaten [its] finality in perpetuity." *D.S.*, 602 S.W.3d at 517 (discussing collateral attack on termination of parental rights); *see Browning*, 165 S.W.3d at 346 (noting that "[t]he mischief of retrying every case in which the judgment or decree

rendered [was based on inaccurate information] . . . would be greater, by reason of the endless nature of the strife, than any compensation arising from doing justice in individual cases" (quoting *United States v. Throckmorton*, 98 U.S. 61, 68–69 (1878))). Finality is more important than perfection. *Cf. In re Att'y Gen. of Tex.*, No. 03-06-00307-CV, 2006 WL 6234637, at *2 n.2 (Tex. App.—Austin Aug. 3, 2006, orig. proceeding) (mem. op.) ("In matters concerning minor children, finality is valued above perfection."); *In re T.S.S.*, 61 S.W.3d 481, 484–85 (Tex. App.—San Antonio 2001, pet. denied) (discussing finality of paternity issue and quoting Ohio court's "well-reasoned opinion" that placed "finality above perfection in the hierarchy of values").

C. The Order changes, rather than clarifies, the decree's property division.

So does the trial court's Order clarify ambiguities in the final divorce decree (as the trial court had jurisdiction to do) or does the Order substantively change the decree (as the trial court lacked jurisdiction to do)? The latter.

1. The divorce decree is unambiguous.

The divorce decree, when read as a whole, is facially unambiguous.[5] The plain language of the decree awards Wife "[f]ifty percent (50%)" of the deposited funds,

[5]"[A] latent ambiguity may exist when a contract is facially unambiguous but fails as applied to the subject matter because of a collateral matter." *J.K.*, 2019 WL 5792662, at *5–6 (concluding that decree contained latent ambiguity when it ordered payment based on "the amounts above net of taxes paid in [the husband's] *tax bracket*" and testimony at the enforcement hearing showed that a portion of husband's income was taxed in each tax bracket); *see Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. CBI Indus.,*

accrued interest, and vested amounts "as of April 20, 2022 . . . in the following bank [and investment] accounts": (1) "Chase Bank, account number xxx0030 in the amount of . . . $42,467.50"; (2) "Chase Bank, account number xxx8585 in the amount of . . . $32,205.00"; and (3) "Morgan Stanley Account, account number xxx4746 in the amount of . . . $1,550.50." The dollar figures included in the decree do not render it ambiguous, as Husband contends; rather, the dollar figures add precision to the property being divided by identifying the exact account balances "as of April 20, 2022," of which "fifty percent (50%)" is awarded to Wife. *See Shanks*, 110 S.W.3d at 447–48 (holding that decree's reference to retirement arising from "past employment" did not render decree ambiguous but "merely serve[d] to identify more specifically the property that [wa]s being divided (i.e., [the husband's] retirement plan)"). This interpretation harmonizes the date certain (April 20, 2022) and the dollar figures, giving effect to both, as is our responsibility. *See id.* at 447 ("Judgments should be construed as a whole to harmonize and give effect to the entire decree."). In contrast, Husband's proposed interpretation of the divorce decree—interpreting the April 20, 2022 date as controlling over the precise dollar amounts—throws harmonization out the window and renders the dollar amounts superfluous. *Cf. id.* (reciting canon of

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Inc., 907 S.W.2d 517, 520 n.4 (Tex. 1995) (giving example that "if a contract called for goods to be delivered to 'the green house on Pecan Street,' and there were in fact two green houses on the street, it would be latently ambiguous"). There was no evidence offered at the enforcement hearing to show any collateral matter creating a latent ambiguity, despite the parties' attorneys' unsworn arguments regarding the account balances.

construction that requires giving effect to all provisions); *Constance v. Constance*, 544 S.W.2d 659, 660 (Tex. 1976) (same). So much so, in fact, that adopting Husband's interpretation required the trial court to issue an Order affirmatively striking substantive provisions from the divorce decree rather than giving those provisions effect.

2. The Order does not clarify the divorce decree.

The inharmonious nature of Husband's proposed interpretation is not the Order's only flaw. In addition, the Order relies upon the trial court's authority to "clarify[]" its divorce decree, *see* Tex. Fam. Code Ann. § 9.008, but it does not actually clarify the decree. Removing the precise dollar amounts subject to division makes the divorce decree more ambiguous, not less. The divorce decree orders Husband to transfer 50% of three precise dollar amounts, and the trial court's Order requires Husband to transfer 50% of three unspecified amounts. The Order effectively removes the precision and certainty provided in the final divorce decree, setting up the parties for future disputes regarding the amount to be transferred.[6]

[6]The trial court orally ordered Husband to provide "some sort of documentation" such as a bank "statement showing what was in there on April 20th, 2022." But there was no evidence offered at the enforcement hearing regarding what amounts had been in the accounts in April 2022, and the trial court did not order Husband to transfer 50% of a specific dollar amount.

3. The divorce decree does not conflict with the letter rendition.

The trial court's rationale for changing the divorce decree—its desire to make the divorce decree "comport with [the letter] rendition"—similarly falls apart under scrutiny. [Capitalization altered.] The two-page letter rendition divided the property in broad strokes without specifying dates or dollar amounts for the three relevant accounts. The rendition was then followed by a ten-page divorce decree that fleshes out the details by, among other things, specifying the point in time used to determine the relevant account balances and the precise amount of money in those accounts at that point in time. This practice is not uncommon. A trial court may issue a pre-decree rendition in broad strokes, e.g., when announcing a decision in open court; then it may set forth the details of its decision in a written judgment. *See Cohen v. Midtown Mgmt. Dist.*, 490 S.W.3d 624, 628–29 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (explaining that, when "[t]he final judgment . . . follow[ed] an oral rendition . . . [that] by no means captured all of the specifics that [we]re essential to the judgment," the written judgment signed later with the detailed "pro rata shares of the tax debt, penalties, and interest . . . constitute[d] an extension of the rendition, not merely a clerical recording of the oral pronouncement"). The fact that one expands upon the other does not equate to a conflict. So although the divorce decree expands upon the letter rendition's division of property, because such expansion is consistent with the terms outlined in the letter rendition, it "comport[s] with [the] rendition." [Capitalization altered.]

4. The trial court's unstated intentions are irrelevant.

The trial court's on-the-record comments at Wife's enforcement hearing, though, indicate that it had not intended to specify dollar amounts when it divided the couple's property; it had simply intended to award Wife 50% of the relevant account balances on a date certain. But at the end of the day, specifying dollar amounts is what it did.[7] And the "orderly administration" of justice requires a trial court's rendition to be in spoken or written words, "not in mere cognition." *S & A Rest. Corp.*, 892 S.W.2d at 858 (quoting *Reese v. Piperi*, 534 S.W.2d 329, 330 (Tex. 1976)). Regardless of the trial court's unexpressed thoughts or intentions at the time of its rendition, "our responsibility is to construe the decree as written." *Shanks*, 110 S.W.3d at 448 (speculating that "perhaps the trial court intended to achieve an overall just and right division" by dividing the property differently, but "[i]n any event, our responsibility is to construe the decree as written").

[7]Indeed, the trial court's comments inadvertently highlight its failure to specify the date certain in the letter rendition. After hearing the parties' arguments about the alleged ambiguity in the divorce decree, the trial court stated that the "rendition didn't have numbers in it[;] . . . [it] had a percentage in it as of the date," so to make the decree match the rendition, "[i]t need[ed] to be 50 percent of what was in the account on the date of [the] rendition." But the rendition was issued in July 2022, several months after the April 2022 date certain that was ultimately specified in the divorce decree. Neither the rendition nor the divorce decree used the July rendition date as the point in time for measuring the relevant account balances, even if that was what the trial court had silently intended.

5. Husband cannot bypass the appellate process.

As written, the plain language of the divorce decree orders Husband to transfer 50% of three precise dollar amounts to Wife, which dollar amounts represent—accurately or not—the three relevant account balances as of April 20, 2022. Both Husband and Wife approved the divorce decree as to form, effectively agreeing that it reflected the trial court's letter rendition and ruling. *See E.R. v. B.R.*, No. 02-16-00367-CV, 2017 WL 4172065, at *2 n.3 (Tex. App.—Fort Worth Sept. 21, 2017, no pet.) (per curiam) (mem. op.) (noting that approval as to form indicates agreement "that the written judgment accurately reflects the court's ruling"); *Morrison v. Gage*, No. 02-15-00026-CV, 2015 WL 4043260, at *6 (Tex. App.—Fort Worth July 2, 2015, no pet.) (mem. op.) (similar). The trial court signed the decree as well, affirming the same. Whether the account balances listed on the decree were inaccurate reflections of the April 20, 2022 account balances—whether they were too low or too high—we cannot know for certain because the parties chose not to appeal. *Cf. Shanks*, 110 S.W.3d at 448 (noting that appellate court "simply cannot know with certainty" whether trial court intended to divide property differently "because the decree was never appealed"). Either way, that ship has sailed. *See Reiss*, 118 S.W.3d at 443 (recognizing that trial court incorrectly characterized pension benefits as community property and that judgment was voidable, but because it was not appealed, "the judgment became final, and [the husband could] not [later] collaterally attack the court's division of property in the decree"). Husband cannot "bypass the appellate

process" by urging the trial court to redetermine the balances in the three relevant accounts,[8] *see D.S.*, 602 S.W.3d at 512 (quoting *Browning*, 165 S.W.3d at 346), and the trial court lacked the authority to make such a redetermination, *Riley*, 2022 WL 17981970, at *5 (vacating "clarifications" of divorce decree because "[t]he trial court did not have jurisdiction . . . to redetermine the length of the marriage" or reconsider other findings in the decree because "[e]ven if the original findings were inaccurate, they [we]re not void").

The unambiguous language of the divorce decree must be given effect. *See Reiss*, 118 S.W.3d at 441–42; *Shanks*, 110 S.W.3d at 447.

III. Conclusion

"[I]t is the policy of the law to give finality to the judgments of the courts." *D.S.*, 602 S.W.3d at 512 (quoting *Browning*, 165 S.W.3d at 345). Because the divorce decree is final, and because the trial court's Order substantively changes the unambiguous property division in that final divorce decree, the trial court lacked

[8]Husband's appellate arguments confirm that a redetermination is exactly what he sought. Husband contends, for example, that "the [dollar] amounts [included in the divorce decree] were absent from the record at trial and were not specified or elicited by counsel." This argument effectively attacks the sufficiency of the evidence to support the divorce decree.

But the argument is not on point. While evidentiary sufficiency is a legitimate issue to raise in a direct appeal, it does not alter the trial court's jurisdiction to enter the divorce decree, and a "decree must be void, not [merely] voidable, for a collateral attack to be permitted." *Hagen*, 282 S.W.3d at 902; *see Reiss*, 118 S.W.3d at 443 (distinguishing between void and voidable judgments and explaining that "[e]rrors other than lack of jurisdiction . . . merely render the judgment voidable").

subject matter jurisdiction to issue its Order. *See* Tex. Fam. Code Ann. § 9.007; *Shanks*, 110 S.W.3d at 449 (similarly holding that "[t]he original decree in th[at] case [wa]s unambiguous, and the trial court had no authority to enter an order altering or modifying the original disposition of property"). We reverse the Order and remand the case for further enforcement proceedings consistent with this opinion. Tex. R. App. P. 43.2(d); *see Shanks*, 110 S.W.3d at 449 (affirming reversal of order that altered divorce decree's property division).

/s/ Bonnie Sudderth

Bonnie Sudderth
Chief Justice

Delivered: January 25, 2024