



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-14-00208-CV

MARIA CARMEN VEGA, APPELLANT

V.

CARLOS ENRIQUE VEGA, APPELLEE

On Appeal from the 84th District Court
Ochiltree County, Texas
Trial Court No. 13,637; Honorable William D. Smith, Presiding

February 18, 2016

MEMORANDUM OPINION

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

Appellant, Maria Carmen Vega, and Appellee, Carlos Enrique Vega, were divorced on February 27, 2014. Dissatisfied with certain provisions contained in the *Final Decree of Divorce*, Maria filed a *Motion for New Trial* which was eventually overruled by operation of law. By two issues, Maria contends the trial court erred when it failed to grant her motion for new trial because (1) consent did not exist as to all material terms contained in the decree and (2) the decree contains material variations

from, and additions to, the oral rendition of settlement presented to the court. We modify the decree of divorce and affirm that decree as modified.

BACKGROUND

Maria and Carlos were married on November 17, 2012. On May 2, 2013, Maria filed a petition for divorce, seeking dissolution of the marriage, division of the community estate, orders concerning the conservatorship and support of two children (A.C.V. and A.F.V.) who were born to the parties prior to marriage, temporary orders concerning spousal maintenance and child support, and a temporary restraining order. On that date, the trial court entered a temporary restraining order and set a hearing for the issuance of temporary orders. Thereafter, on July 19, 2013, Carlos filed a counter-petition for divorce, again alleging that there were two children born to the relationship.

On August 19, 2013, the Office of Attorney General filed a petition in intervention seeking to enforce a right of support assigned to the OAG pursuant to Chapter 231 of the Texas Family Code. See TEX. FAM. CODE ANN. § 231.104 (West Supp. 2015). By that petition, the OAG requested the trial court to enter appropriate orders concerning the paternity of a third child (N.C.V.) allegedly born to the parties. On November 14, 2013, the trial court entered temporary orders appointing Maria and Carlos as joint managing conservators of A.C.V. and A.F.V. and setting temporary spousal support of \$300 per month and child support at \$600 per month, commencing May 20, 2013.¹ The temporary orders also provided for genetic testing to establish the paternity of N.C.V. On February 27, 2014, Maria and Carlos appeared in person and by their respective

¹ The temporary orders provided that the child support obligation was based upon a finding that Carlos's net resources were \$3,500 per month and that the applicable percentage was 17 percent. Cf. TEX. FAM. CODE ANN. § 154.125 (West Supp. 2015) (providing that the applicable percentage would be 25 percent).

attorneys and announced to the court that the essential terms of the divorce had been settled by agreement. Evidence was presented to “prove up” the divorce, and at the conclusion of that hearing, the trial court approved the agreement of the parties and granted the divorce. A written *Final Decree of Divorce* was subsequently entered on March 10, 2014. The attorneys for Maria and Carlos each signed the decree “approved as to form only.” The decree found that genetic testing excluded Carlos as the father of N.C.V. and that there were only two children of the marriage. The decree appointed Maria and Carlos as joint managing conservators of the children, granted Maria the exclusive right to designate their primary residence, established that Maria had the right to receive child support from Carlos in the amount of \$600 per month, commencing March 20, 2014, and established a “standard possession order.”² The decree stated that “all financial matters imposed by the temporary orders rendered herein for the payment of temporary child support are paid in full” and it ordered that “all temporary child support payments are paid in full from the [sic] May 20, 2013 through February 20, 2014.” The decree further provided for a division of the community estate, including the sale of the marital residence and it ordered an equal division of the net sales proceeds. Finally, the decree confirmed certain property as separate property.

On March 27, 2014, Maria filed a *Motion for New Trial* alleging that she was not informed of the contents of the agreement incident to divorce at the time the parties appeared for the final hearing. She further alleged that she did not have the opportunity to review the decree or ask meaningful questions of her attorney because she only speaks Spanish and her attorney did not speak Spanish. Specifically, Maria alleged

² The *Final Decree of Divorce* did not make specific findings as to Carlos’s net resources or the applicable percentage. See TEX. FAM. CODE ANN. § 154.130 (West 2014).

that the child support amount was deficient because she “recently learned” that his net resources were more than the \$3,500 per month amount used by the court to originally establish his level of support. She further alleged that the property division was inequitable because Carlos was awarded items that were her separate property and he had failed to disclose other community property owned. Finally, she alleged the finding that temporary support obligations had been paid in full was incorrect because Carlos was, in fact, approximately \$5,430 in arrears. A hearing on Maria’s motion was called on May 19, 2014; however, it was adjourned before the presentation of any witnesses because the court’s Spanish interpreter had been subpoenaed as a witness by Carlos’s counsel. The motion for new trial was eventually overruled by operation of law and Maria filed her notice of appeal on May 27, 2014. See TEX. R. CIV. P. 329b(c); TEX. R. APP. P. 25.1.

ANALYSIS

It is axiomatic that in order to enter an agreed decree of divorce, the terms of the agreement must exist at the time the trial court pronounces its verdict. A court “cannot render a valid agreed judgment absent consent at the time it is rendered.” *Chisholm v. Chisholm*, 209 S.W.3d 96, 98 (Tex. 2006) (quoting *Padilla v. LaFrance*, 907 S.W.2d 454, 461-62 (Tex. 1995)). When a consent judgment is rendered without consent or is not in strict compliance with the terms of that agreement, the judgment must be set aside. *Id.*

In the context of a suit for dissolution of marriage involving children, it is not uncommon for divorce decrees to reach twenty pages or more. In fact, the decree entered in this case was twenty-eight pages long, many of which were detailed single-

spaced provisions. The decree detailed the appearance of the parties and their attorneys, the presentation of evidence sufficient to establish jurisdiction and domicile, the children of the marriage, the establishment and conditions of conservatorship, the rights, privileges, and duties of the parents (including detailed provisions for possession and access), the amount, duration, and method of payment of child support, the rights and duties of the parties pertaining to medical care of the children, the division of the marital estate, the acknowledgement of separate property, the allocation of debts incurred jointly during marriage, the resolution of temporary orders, and the granting of the divorce. Although not discussed in the same detail that appears in the decree of divorce, with one exception, every one of those areas was discussed by Maria during her testimony before the court. The area not discussed in the testimony before the court was the status of Carlos's payment of support in accordance with the temporary orders entered on November 14, 2013. In fact, in his brief, Carlos candidly concedes the "temporary support obligations were not covered at the time the agreement was announced by the parties."

We review a trial court's decision to grant or deny a motion for new trial under an abuse of discretion standard. *In re Marriage of Shoemaker*, No. 07-04-00422-CV, 2005 Tex. App. LEXIS 3515, at *6 (Tex. App.—Amarillo 2005, no pet.) (mem. op.); *Wright v. Wright*, 867 S.W.2d 807, 810 (Tex. App.—El Paso 1993, writ denied). Where, as here, the parties have announced to the trial court that an agreement has been reached, testified generally to confirm that agreement, and then presented a decree "approved as to form," we fail to see how the trial court abused its discretion.

As to the area concerning the status of Carlos's payment of support in accordance with the temporary orders entered on November 14, 2013, we find the trial court did err by including within the decree any provisions reciting that those obligations had been fulfilled. Accordingly, we sustain in part and deny in part issues one and two.

CONCLUSION

We modify the *Decree of Divorce* to delete any reference to the fulfillment of Carlos's temporary support obligations, and we affirm the decree as modified.

Patrick A. Pirtle
Justice