



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

No. 07-15-00029-CV

TIMOTHY PARRISH, APPELLANT

V.

TRISHA DUNAHOO, APPELLEE

On Appeal from the 146th District Court
Bell County, Texas
Trial Court No. 226,429-B; Honorable Jack Jones, Presiding

October 14, 2016

MEMORANDUM OPINION

Before **CAMPBELL** and **HANCOCK** and **PIRTLE, JJ.**

Appellant, Timothy Parrish, appeals the entry of a *Domestic Relations Order* dated November 12, 2014 (hereinafter the “2014 DRO”).¹ Parrish contends the trial court erred by entering the 2014 DRO because it substantively alters the division of

¹ Appellant’s *Notice of Appeal* was filed on December 9, 2014, at 8:36 a.m. A *Domestic Relations Order Nunc Pro Tunc*, with a signature bearing that same date, was filed December 9, 2014, at 10:07 a.m. Because the two orders are virtually identical with the exception that the later-filed *nunc pro tunc* order contains type-written information that was hand-written in the earlier order, we will treat the two orders as one and will continue to refer to that order as the “2014 DRO.”

property contained in the *Final Decree of Divorce* entered April 30, 2008, terminating the marriage between Parrish and Appellee, Trisha Ann Dunahoo, and dividing their community estate. Specifically, Parrish contends the 2014 DRO changes provisions of an earlier *Domestic Relations Order*, dated April 30, 2008 (hereinafter the “2008 DRO”), which was incorporated into and made a part of the *Final Decree of Divorce*. Parrish contends the 2014 DRO requires, among other things, that he make court-ordered payments to Dunahoo, from his disposable military retirement pay, that were not required by the original *Final Decree of Divorce*. Parrish asserts (1) the trial court lacked subject-matter jurisdiction to make this change to the original property award and (2) the trial court erred because its interpretation was barred by the doctrine of *res judicata*. We modify the trial court’s 2014 DRO and affirm as modified.

BACKGROUND

In November 2007, Parrish filed his original petition seeking a divorce from Dunahoo. In April 2008, the trial court issued its *Final Decree of Divorce* and the 2008 DRO. In pertinent part, the *Final Decree of Divorce* stated as follows:

Agreement of Parties

The Court finds that the parties have entered into a written agreement as contained in this decree by virtue of having approved this decree as to both form and substance. To the extent permitted by law, the parties stipulate the agreement is enforceable as a contract. The Court approves the agreement of the parties contained in this Final Decree of Divorce.

...

Division of Marital Estate

The Court finds that the following is a just and right division of the parties’ marital estate, having due regard for the rights of each party and the children of the marriage.

Property to Husband

IT IS ORDERED AND DECREED that the husband, TIMOTHY PARRISH, is awarded the following as his sole and separate property, and the wife is divested of all right, title, interest, and claim in and to that property:

...

H-8. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights related to or as a result of TIMOTHY PARRISH's service in the United States Army, including any accrued unpaid bonuses, disability plan or benefits, Thrift Savings Plan, or other benefits existing by reason of or as a result of TIMOTHY PARRISH's past, present, or future employment, except that portion of TIMOTHY PARRISH's U.S. military retirement that has been awarded in this decree to TRISHA ANN PARRISH as *more particularly specified in the domestic relations order signed coincident with this decree and incorporated verbatim in it by reference.*

...

Property to Wife

IT IS ORDERED AND DECREED that the wife, TRISHA ANN PARRISH, is awarded the following as her sole and separate property, and the husband is divested of all right, title, interest, and claim in and to that property:

...

W-8. All sums, whether matured or unmatured, accrued or unaccrued, vested or otherwise, together with all increases thereof, the proceeds therefrom, and any other rights related to or as a result of TIMOTHY PARRISH's service in the United States Army, including any accrued unpaid bonuses, disability plan or benefits, Thrift Savings Plan, or other benefits existing by reason of or as a result of TIMOTHY PARRISH's past, present, or future employment, except that portion of TIMOTHY PARRISH's U.S. military retirement that has been awarded in this decree to TIMOTHY PARRISH as *more particularly specified in the domestic relations order signed coincident with this decree and incorporated verbatim in it by reference.*

...

Decree Acknowledgment

Petitioner, TIMOTHY PARRISH, and Respondent, TRISHA ANN PARRISH, each acknowledge that before signing this Final Decree of Divorce they have read this Final Decree of Divorce and fully and completely, have had the opportunity to ask any questions regarding the same, and fully understand that the contents of this Final Decree constitute a full and complete resolution of this case. Petitioner and Respondent acknowledge that they have voluntarily affixed their signatures to this Final Decree of Divorce, believing this agreement to be a just and right division of the marital debt and assets, and state that they have not signed by virtue of any coercion, any duress, or any agreement other than those specifically set forth in this Final Decree of Divorce.

(Emphasis added).

In addition to establishing a formula for calculation of that portion of Parrish's military pension each party was to receive as a part of the division of community property, the 2008 DRO provided, in pertinent part, as follows:

End of Award

IT IS ORDERED that the payment of the disposable retirement pay awarded in this order to TRISHA ANN PARRISH shall continue for 13 years and 4 months after it begins or until the death of TIMOTHY PARRISH or TRISHA ANN PARRISH, whichever event occurs first.

In January 2012, Parrish filed his *Motion for Clarification of Military Retirement Division* requesting that the trial court clarify the exact portion of his military pension that was owing to Dunahoo. In February, he filed an amended motion. In response, Dunahoo filed a *Petition for Enforcement of Retirement* requesting that the trial court clarify any part of the *Final Decree of Divorce* or 2008 DRO not specific enough to be enforced by contempt. In March, she filed a *Supplement to Petition for Enforcement of Retirement* requesting the court to amend the 2008 DRO "to accurately reflect the

property division as set forth in the Court's Final Decree of Divorce." Specifically, Dunahoo requested the trial court to remove the ending date included in the 2008 DRO.

In May 2014, the trial court entered a *Memorandum of Ruling* which, among other things, stated that "the orders" should be revised to reflect that payments from Parrish's military pension to Dunahoo "shall continue until the death of either of the parties." This revision was then reflected in the 2014 DRO, thereby effectively striking the provisions requiring payments to Dunahoo "for 13 years and 4 months after it begins or" until the death of Parrish or Dunahoo, "whichever event occurs first." This appeal followed.²

JURISDICTION

Parrish contends the trial court's order is void to the extent that it alters the substantive division of property contained in the *Final Decree of Divorce*. We agree.

Any party affected by a decree of divorce providing for the division of community or separate property may request enforcement of that decree by filing a suit to enforce as provided by Chapter 9 of the Texas Family Code. TEX. FAM. CODE ANN. § 9.002 (West. Supp. 2016); *Pearson v. Fillingim*, 332 S.W.3d 361, 363 (Tex. 2011). If a decree of divorce is ambiguous, the court may enter a clarification order. TEX. FAM. CODE ANN. § 9.006(a) (West Supp. 2016); *Pearson*, 332 S.W.3d at 363. The court may specify more precisely the manner of effecting the property division previously made provided that the substantive division of the property is not altered or changed. TEX. FAM. CODE

² Originally appealed to the Third Court of Appeals (Austin), this case was transferred to this court pursuant to a docket equalization order entered by the Texas Supreme Court. See TEX. GOV'T CODE ANN. § 73.001 (West 2005). We have applied the precedent from that court where applicable. See TEX. R. APP. P. 41.3.

ANN. § 9.006(b) (West Supp. 2016). See *Campos v. Campos*, 368 S.W.3d 755, 756-57 (Tex. App.—El Paso 2012, no pet.). However, “[a] court may not amend, modify, alter, or change the division of property made or approved in the decree of divorce or annulment.” TEX. FAM. CODE ANN. § 9.007(a) (West 2006). “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.*” *Id.* (Emphasis added).

The issue before us is whether the trial court’s order impermissibly changed or altered the actual, substantive division of property made in the *Final Decree of Divorce* and 2008 DRO, as incorporated into that decree. An agreed divorce decree such as we have here is a contract subject to the usual rules of contract construction. *In the Interest of R.F.G.*, 282 S.W.3d 722, 725 (Tex. App.—Dallas 2009, no pet.). Moreover, we construe decrees, like judgments, as a whole to harmonize and give effect to the entire decree. *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983).

Our primary concern in interpreting an agreed decree is to ascertain the true intent of the parties. *Id.* See *In the Interest of R.F.G.*, 282 S.W.3d at 725. If when read as a whole, the decree’s terms are unambiguous, we must give effect to the order in light of the actual language used. *Coker*, 650 S.W.2d at 393. On the other hand, if the decree’s terms are ambiguous, that is, subject to more than one reasonable interpretation, we must review the record along with the decree to aid in interpreting the judgment. *Id.*

Whether a trial court lacks jurisdiction and whether a contract is sufficiently

definite to be enforceable are legal issues to be reviewed *de novo* by this court. *C.L. Westbrook, Jr. v. Penley*, 231 S.W.3d 389, 394 (Tex. 2007) (subject-matter jurisdiction is question of law that is reviewed *de novo* by appellate court); *MCI Telecomms. Corp. v. Tex. Utils. Elec. Co.*, 995 S.W.2d 647, 650-51 (Tex. 1999) (contract construction is question of law subject to *de novo* review by appellate court). Here, the parties stipulated that the *Final Decree of Divorce* was enforceable as a contract. That decree specifically incorporated the 2008 DRO into the agreement “verbatim . . . by reference,” and both documents were executed by Parrish and Dunahoo on the same day. Hence, we read the two documents together as a single contract. See *In re C & H News Co.*, 133 S.W.3d 642, 645 (Tex. App.—Corpus Christi 2003, orig. proceeding).

The 2008 DRO provided that “the payment of the disposable retirement pay awarded in this order to TRISHA ANN PARRISH *shall continue for 13 years and 4 months after it begins or until the death of TIMOTHY PARRISH or TRISHA ANN PARRISH, whichever event occurs first.*” (Emphasis added). This language is clear and unambiguous. It means what it says. A simple comparison to the language used in the 2014 DRO illustrates that the trial court’s order made a substantive change in the *Final Decree of Divorce* and 2008 DRO, as incorporated therein, by depriving Parrish of his full retirement pay after he has made payments for thirteen years and four months, the duration of his marriage to Dunahoo. The import of this express agreement of the parties is unmistakable.

Further, the *Decree Acknowledgment* contained in the *Final Decree of Divorce*, signed by both parties, provides that they entered into this contractual arrangement with eyes wide open “believing the agreement to be a just and right division of the marital

debt and assets.” Accordingly, we find the trial court lacked jurisdiction to make this change to the *Final Decree of Divorce* and 2008 DRO, as incorporated therein, and we sustain Parrish’s first issue. Finally, we pretermitt consideration of Parrish’s second issue pertaining to the doctrine of *res judicata*. While we are mindful of this contention, our disposition of the Parrish’s first issue eliminates the necessity that we consider that issue.³

CONCLUSION

The trial court’s 2014 DRO is modified to include the following provision immediately following the first paragraph, on the second page, under the title *Award to Former Spouse*:

IT IS ORDERED that the payment of the disposable retirement pay awarded in this order to TRISHA ANN PARRISH shall continue for 13 years and 4 months after it begins or until the death of TIMOTHY PARRISH or TRISHA ANN PARRISH, whichever event occurs first.

As modified, the trial court’s order is affirmed.

Patrick A. Pirtle
Justice

³ See TEX. R. APP. P. 47.1.