



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

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No. 07-15-00126-CV

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**MATTHEW EUGENE DEVINE, APPELLANT**

**V.**

**VICKI DIANNE DEVINE, APPELLEE**

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On Appeal from the 324th District Court  
Tarrant County, Texas  
Trial Court No. 324-552104-14, Honorable Jerome S. Hennigan, Presiding

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March 9, 2016

**MEMORANDUM OPINION**

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

Appellant, Matthew Eugene Devine, appeals the trial court's order denying his petition for enforcement of the parties' agreed divorce decree and granting the counter-petition for enforcement filed by appellee, Vicki Dianne Devine. We will affirm the trial court's order.

## Factual and Procedural Background

In December of 2012, Matt and Vicki were divorced. Pursuant to a mediated settlement agreement between Matt and Vicki, the trial court accepted and signed the parties' agreed divorce decree. As part of its division of the community estate, the trial court ordered the parties to sell a lake house located at Possum Kingdom lake (hereinafter, "the PK house"). The divorce decree provided that the terms of sale of the PK house were to be different during two consecutive six-month periods. During the first six months after the date of listing, the parties were required to accept any offer that they received that was within ten percent of the listing price that the parties agreed upon. If the PK house did not sell during that initial six-month period, the parties were required to accept the highest offer received in the next six-month period. However, the decree did not expressly define the phrase "date of listing."

In furtherance of selling the PK house, the parties entered into a listing agreement with a realtor. According to this agreement, "[t]his [l]isting begins on November 29, 2012 and ends at 11:59 p.m. on October 31, 2013." Vicki signed the listing agreement on January 30, 2013, Matt signed it on February 14, 2013, and the realtor signed it on February 20, 2013. No offer was received on the property until, on February 19, 2014, Matt made a written offer to purchase the PK house for \$700,000. On the basis of this offer, Matt contends that Vicki was obligated to execute all documents necessary to effectuate the sale of the PK house to Matt. However, Vicki refused to do so.

Because of Vicki's refusal, Matt brought the present enforcement action seeking an order requiring Vicki to sell the PK house to Matt. Vicki filed a counter-petition seeking enforcement or clarification of the divorce decree and the appointment of a receiver. The case was tried to the bench. The trial court ruled in Vicki's favor and entered a final order and an order appointing receiver which granted the receiver specific authority to sell the PK house. Upon Matt's request, the trial court entered findings of fact and conclusions of law.

By his appeal, Matt presents one issue. That issue contends that the trial court erred by denying Matt's request for enforcement of the divorce decree and by appointing a receiver to sell the PK house in violation of Texas Family Code section 9.007. See TEX. FAM. CODE ANN. § 9.007 (West 2006).<sup>1</sup> While Matt challenges many of the individual findings and conclusions of the trial court, the parties agree that this appeal turns on the applicable definition of the phrase "date of listing."

#### Date of Listing

The divorce decree orders that the PK house be sold. After identifying the real estate agent appointed to facilitate the sale and the terms under which the house must be sold in the first six-month period, the decree states, "In the event the PK House does not sell within six months of the date of listing, the parties shall accept the highest offer made by a qualified buyer within the next six months." The divorce decree does not define "date of listing." However, the consecutive six-month periods began to run from

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<sup>1</sup> Subsection (a) provides that, "[a] court may not amend, modify, alter, or change the division of property made or approved in the decree of divorce or annulment." Subsection (b) provides that, "if a court makes such an amendment, modification, alteration, or change, such action is beyond the power of the court and is unenforceable." *Id.*

the “date of listing.” As such, determining whether Matt’s February 19, 2014 offer to purchase the PK house obligated Vicki to effectuate the sale depends on the construction of “date of listing.”<sup>2</sup>

Both parties’ contentions regarding the proper construction of the phrase make reference to the listing agreement. Matt contends that the date of listing is the date upon which a property is listed for sale publicly by an agent acting with authority. As such, Matt contends that date of listing corresponds with the February 20, 2013 date upon which the listing agreement was finalized and the PK house was publicly listed on the MLS listing service. Vicki contends that the parties contractually agreed to what the date of listing meant in the listing agreement, which provides that “[t]his [l]isting begins on November 29, 2012 . . . .” The trial court made the following findings relevant to the date of listing:

8. The Court finds that Matt Devine, Vicki Devine, and Keith Hanssen, the designated real estate agent under the parties’ Mediated Settlement Agreement and the Final Decree of Divorce, signed the Listing Agreement with the specific listing date of November 29, 2012 for the sale of the Lake House and therefore the parties contractually agreed that the listing date of the sale of the Lake House was November 29, 2012.

16. The Court finds that Matt Devine is a sophisticated party with substantial knowledge in negotiating contracts and was not confused by the listing date contained in the Listing Agreement. The Court finds that Matt Devine signed the Listing Agreement on February 14, 2013 with November 29, 2012 as the listing date and did not change the date or request the date be changed.

18. The Court finds that Matt Devine’s February 19, 2014 offer was not timely under the terms of the Final Decree of Divorce and was after the expiration of the two six month periods from the date of the listing of the Lake House. The Court finds that the time to sell the Lake House expired

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<sup>2</sup> Due to our resolution of this appeal, we will assume without deciding that Matt was a “qualified buyer.”

under the terms of the Final Decree of Divorce by the time Matt Devine made his offer on February 19, 2014.

The trial court also made the following relevant conclusion of law:

2. The Court concludes that Matt Devine's February 19, 2014 offer was not timely under the terms of the Final Decree of Divorce.

Agreed judgments, such as the divorce decree in this case, should be construed in the same manner as a contract. *Gulf Ins. Co. v. Burns Motors, Inc.*, 22 S.W.3d 417, 422 (Tex. 2000). As Matt acknowledges, in our jurisprudence, contract disputes are submitted “to an impartial tribunal for a determination of the agreement as made by the parties and embodied in the contract itself.” *English v. Fischer*, 660 S.W.2d 521, 522 (Tex. 1983). In construing a contract, a court must ascertain the true intentions of the parties as expressed in the writing itself. *Italian Cowboy Partners, Ltd. v. Prudential Ins. Co. of Am.*, 341 S.W.3d 323, 333 (Tex. 2011). Unless a contract requires otherwise, words contained in the agreement must be given their plain, ordinary, and generally accepted meanings. *Petro Pro, Ltd. v. Upland Res., Inc.*, 279 S.W.3d 743, 748 (Tex. App.—Amarillo 2007, pet. denied). As the parties to a contract are the “masters of their own choices,” they must be “entitled to rely on the words selected” and a reviewing court cannot change the terms of the contract merely because one of the parties comes to dislike its provisions. *Cross Timbers Oil Co. v. Exxon Corp.*, 22 S.W.3d 24, 26 (Tex. App.—Amarillo 2000, no pet.).

The agreed divorce decree does not define “date of listing” or otherwise give any guidance into what the parties intended that phrase to mean. As such, we turn to the listing agreement to see whether it clarifies the intent of the parties. The listing

agreement expressly provides, “[t]his [l]isting begins on November 29, 2012 . . . .” We believe this language clearly and unequivocally expresses the intent of the parties as to when the “date of listing” referenced in the agreed decree was to commence. That Matt subsequently determined that he disliked the November 29, 2012 date of listing because it made his February 19, 2014 offer to purchase the PK house untimely is of no import. *Id.* The parties are entitled to rely on the words used in a contract. *Id.*

Matt contends that the divorce decree is unambiguous and, thus, resort to extraneous evidence of the parties’ intent is prohibited. *See Petro Pro, Ltd.*, 279 S.W.3d at 748. We agree that this proposition correctly states the rule of contract construction. However, Matt’s construction of the divorce decree requires reference to the date of execution of the listing agreement as well as the statutory provisions defining the term “broker.” After reviewing and considering the arguments of both parties, we conclude that the construction of the phrase “date of listing” that depends only on the express language used in a contract between the parties is the best expression of the parties’ intent of the meaning of the phrase as used in the agreed divorce decree. As such, we conclude that the “date of listing” referred to in the divorce decree is the November 29, 2012 date agreed to by the parties in the listing agreement. Consequently, we conclude that Matt’s February 19, 2014 offer was made outside of the second six-month period and, therefore, did not have to be accepted. We overrule Matt’s sole issue.

## Conclusion

Having overruled Matt's sole issue, we affirm the judgment of the trial court.

Mackey K. Hancock  
Justice