



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

No. 07-15-00248-CV

FREDERIKC W. DOBBINS, APPELLANT

V.

CASSANDRA L. DOBBINS, APPELLEE

On Appeal from the 360th District Court
Tarrant County, Texas
Trial Court No. 360-535647-13, Honorable Michael K. Sinha, Presiding

June 20, 2017

MEMORANDUM OPINION

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

This is an appeal from the trial court's order denying post-decree relief requested by appellant Frederikc W. Dobbins after a final decree was entered in his divorce from appellee Cassandra L. Dobbins.¹ He presents three issues, all addressing the property division aspects of the divorce decree. We will affirm.

¹ Through the decree, appellee changed her name to Cassandra Lynn Preston.

Background

The parties were married in May 1981. Appellee wife filed for divorce in April 2013 and husband filed a counter-petition for divorce. The parties tried the case in June 2014, each party appearing *pro se*. The court later held a hearing to resolve differences between the parties regarding the terms to be incorporated into the decree. The court signed the final decree of divorce in November 2014. Husband filed a timely motion for new trial.² The court held a hearing on the motion, at which no evidence was received. The court signed no written order disposing of the motion for new trial. Husband later filed the pleading made the subject of this appeal, entitled “Motion for Clarification of Divorce Decree & Post-Judgment Motion to Divide Community Debts & Assets.” The court held an additional hearing, and signed an order denying husband’s motion. It is from this order husband now appeals.

Analysis

Husband’s post-judgment motion discusses several topics other than the decree’s division of the marital property and the parties’ debts, but as noted, only the property division aspects are addressed on appeal. The motion itself gives a reader little understanding of the relief sought. The motion contains a series of paragraphs containing factual assertions and argument, some of which assert inadequacies in the

² Husband also filed two amended motions for new trial, but neither was timely because they were not filed within thirty days after the November decree was signed. See TEX. R. CIV. P. 329b(b); *In re Brookshire Grocery Co.*, 250 S.W.3d 66, 71-72 (Tex. 2008) (orig. proceeding). See also *Voth v. Felderhoff*, 768 S.W.2d 403, 412 (Tex. App.—Fort Worth 1989, writ denied) (amended motion for new trial not filed within thirty days after judgment signed is nullity and may not be considered); accord, *Ferguson v. Globe-Texas Co.*, 35 S.W.3d 688, 690 (Tex. App.—Amarillo 2000, pet. denied).

decree's provisions for payment of the parties' children's expenses, some of which rehash evidence and arguments presented at previous hearings, and some of which argue for additional decretal language addressing marital assets and debts. Some paragraphs make reference to events that occurred after the signing of the decree. The motion concludes with the assertion "[j]ustice will not be properly served unless the above issues are resolved," and the prayer "that the Court resolves (sic) the issues herein addressed."

Husband's motion does not make reference to provisions of Chapter 9 of the Texas Family Code but, to the extent the motion sought clarification of the decree and division of assets and debts, the parties treated it as the initiation of post-decree proceedings authorized by that chapter. See TEX. FAM. CODE ANN. §§ 9.001, 9.201 (West 2017). Wife's responsive pleading is entitled "original answer" and contains a general denial. See TEX. FAM. CODE ANN. § 9.001(b) (except as otherwise provided in Chapter 9, suit to enforce decree "shall be governed by the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit"). At the court's hearing on husband's motion, his counsel also indicated that the relief sought was that authorized by Chapter 9.

No evidence in support of husband's motion was introduced at the hearing. For support of the motion, the court heard only argument of counsel.³ It is apparent from the hearing record that the court struggled to understand which paragraphs of

³ Wife presented evidence in support of her request for attorney's fees as a sanction, contending husband's motion was merely an effort to relitigate issues resolved by the final decree and arguments rejected by the court in its denial of the motion for new trial. The court awarded wife \$1200 in attorney's fees. That aspect of the court's order is not addressed on appeal.

husband's pleading properly called for clarification of the decree and whether there was marital property left undivided.

On appeal, husband raises three issues. He contends the trial court erred by: (1) failing to divide certain community assets and debts; (2) refusing to grant the motion for clarification of the divorce decree; and (3) refusing to grant the post-judgment motion to divide community debts and assets. In his argument, husband focuses on his motion's assertions that the decree's property division failed to address some of the parties' debt and one of their joint bank accounts. He refers also to his motion's assertion that the decree's division of their household goods was unworkable because it awarded each party the items in the party's possession or subject to the party's control but most of the household goods were still in the marital home and had not been divided between them.⁴ Wife argued at the hearing, and contends on appeal, that the decree reflected a proper just and right division of all the marital estate and their debts.

We apply an abuse of discretion standard to review of the trial court's ruling on a post-divorce motion for clarification of a divorce decree. *Murray v. Murray*, 276 S.W.3d 138, 143 (Tex. App.—Fort Worth 2008, pet. dismissed) (citing *In re Marriage of McDonald*, 118 S.W.3d 829, 832 (Tex. App.—Texarkana 2003, pet. denied)). A court that renders a divorce decree retains jurisdiction to clarify and enforce the decree's property division. *Pearson v. Fillingim*, 332 S.W.3d 361, 363 (Tex. 2011) (citing TEX. FAM. CODE ANN. §§ 9.002, 9.008). In doing so, however, the court may not amend, modify, alter or change the division of property made or approved in the decree. TEX. FAM. CODE ANN.

⁴ These assertions were raised also in husband's motion for new trial. In fact, the motion we consider reads in substance much the same as husband's second untimely amended motion for new trial.

§ 9.007; *Pearson*, 332 S.W.3d at 363. “The court may specify more precisely the manner of effecting the property division previously made or approved if the substantive division of property is not altered or changed.” TEX. FAM. CODE ANN. § 9.006(b).

On the record presented, we are unable to say the trial court abused its discretion by denying husband relief under the pleading filed. As noted, the court was presented with no evidence in support of the relief requested. We note also that the appellate record contains no reporter’s record from the June 2014 trial. No findings of fact or conclusions of law were requested or made following that trial.⁵ Accordingly, we have no way of determining whether the decree’s provisions for division of the marital property and debts are supported by the evidence presented at trial or whether, under the evidence presented at trial, the decree’s provisions require clarification.⁶ Moreover, at least some of the clarifications for which counsel for husband argued at the hearing would require modification of the decree, not merely clarification. See *In re W.L.W.*, 370 S.W.3d 799, 803 (Tex. App.—Fort Worth 2012, orig. proceeding) (attempt to obtain order that alters or modifies divorce decree’s property division is impermissible collateral attack) (citation omitted).

For the same reasons, we see no abuse of discretion in the trial court’s denial of a division of property under section 9.201. TEX. FAM. CODE ANN. § 9.201; see *Harton v.*

⁵ See TEX. FAM. CODE ANN. § 6.711 (requiring, on request by a party, court to state findings and conclusions concerning characterization and valuation of assets and liabilities on which disputed evidence was presented).

⁶ See W. Wendall Hall, *Standards of Review in Texas*, 42 St. Mary’s L. J. 1, 65 (2012) (in absence of findings and conclusions and a reporter’s record, reviewing court presumes all facts necessary to support judgment have been found); *Trevino & Gonzalez Co. v. R.F. Muller Co.*, 949 S.W.2d 39, 41 (Tex. App.—San Antonio 1997, no writ).

Wade, No. 12-12-00158-CV, 2013 Tex. App. LEXIS 6343, at *3 (Tex. App.—Tyler May 22, 2013, no pet.) (released for publication) (reviewing post-decree division for abuse of discretion). Without a record of the evidence presented at trial of their divorce proceeding, it is not possible to determine whether the decree’s provisions left undivided any asset described by the evidence at trial. Further, from our review of the record, we would say that the court did not abuse its discretion in its implicit finding that the decree fully divided the parties’ assets and debts, even if the arguments of counsel the court heard at the hearing on husband’s pleading were considered to be evidence. See *id.* (abuse of discretion does not occur when trial court bases its decision on conflicting evidence).

For those reasons, we overrule husband’s issues, and affirm the trial court’s order.

James T. Campbell
Justice