In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-16-00143-CV

IN THE MATTER OF THE MARRIAGE OF GEORGE MANOR AND JUDY IONE MANOR

On Appeal from the 43rd District Court
Parker County, Texas
Trial Court No. CV11-0836, Honorable Craig Towson, Presiding

March 21, 2018

MEMORANDUM OPINION

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

Judy Ione Manor, appellant, appeals from the trial court's order clarifying the division of property in the final decree of divorce. She presents three issues. We will affirm.

Background

The parties were married in 1999 and ceased to live together as husband and wife in 2011. Sometime later, appellee George Manor filed for divorce. In July 2013, the parties signed a mediated settlement agreement ("MSA") containing an agreed-upon

division of the marital estate. The trial court granted the divorce following a short hearing that same month. The final decree, also agreed, was signed by the parties and the court in June 2014.[1]

Among the items of property addressed in the MSA, and later in the decree, was a tract of improved real estate in Parker County. The parties agreed the surface of the tract would be divided between them. In the decree, the manner of division of the tract was described in two ways: by reference to a map attached as Exhibit A to the decree; and by reference to the metes and bounds descriptions attached as Exhibit B (describing George's part) and Exhibit C (describing Judy's part).

Because the improvements located on Judy's part had greater value, the agreement was that George would be allocated 26 additional acres. The parties' present dispute concerns the manner of allocation of the 26 acres. In 2015, George filed a motion for clarification of the division of the tract. He contended the decree was ambiguous. After a hearing the trial court agreed and, after a further hearing, entered an order clarifying the decree of divorce. The clarification provided that the division of the tract as shown on the map, Exhibit A, controlled over the division described in Exhibits B and C. The court later issued findings of fact and conclusions of law supporting its clarifying order.

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[1] *See* TEX. FAM. CODE ANN. § 6.602(c) (West 2015) (If a mediated settlement agreement meets the requirements of this section, a party is entitled to judgment on the mediated settlement agreement notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law).

Analysis

By her three issues, Judy contends the trial court erred by entering its order clarifying the decree of divorce. She argues the trial court could not, under section 9.007 of the Family Code, modify, alter or change the division of property made or approved in the decree. *See* TEX. FAM. CODE ANN. § 9.007 (West 2015) (describing limitation on power of court to enforce decree). George argues the trial court properly found an ambiguity and acted only to clarify the division of property.

Standard of Review and Applicable Law

We review the trial court's ruling on a post-divorce motion for enforcement or clarification of a divorce decree under an abuse-of-discretion standard. *Dobbins v. Dobbins,* No. 07-15-00248-CV, 2017 Tex. App. LEXIS 5641, at *4 (Tex. App.—Amarillo June 20, 2017, no pet.) (mem. op.) (citing *Murray v. Murray*, 276 S.W.3d 138, 143 (Tex. App.—Fort Worth 2008, pet. dism'd)); *see also Gainous v. Gainous,* 219 S.W.3d 97, 103 (Tex. App.—Houston [1st Dist.] 2006, pet. denied) (citation omitted). A final, unambiguous divorce decree that disposes of all marital property bars relitigation. *Pearson v. Fillingim,* 332 S.W.3d 361, 363 (Tex. 2011). Seeking an order that alters or modifies a divorce decree's property division constitutes an impermissible collateral attack. *In re W.L.W.,* 370 S.W.3d 799, 803 (Tex. App.—Fort Worth 2012, orig. proceeding) (citing *Hagen v. Hagen*, 282 S.W.3d 899, 902 (Tex. 2009); TEX. FAM. CODE ANN. § 9.007(a), (b)). A trial court does, however, retain continuing subject matter jurisdiction to clarify and to enforce the decree's property division. *Dobbins,* 2017 Tex.

App. LEXIS 5641, at *4 (citing *Pearson,* 332 S.W.3d at 363*,* TEX. FAM. CODE ANN. §§ 9.002, 9.008)); *see also In re W.L.W.,* 370 S.W.3d at 803.

The court may render further orders to assist in the implementation of or to clarify the prior order. *Marshall v. Priess,* 99 S.W.3d 150, 157 (Tex. App.—Houston [14th Dist.] Jan. 31, 2002, no. pet.) (mem. op.) (citing TEX. FAM. CODE ANN. § 9.006(a) (other citations omitted)). These orders "may more precisely specify how the previously ordered property division will be implemented so long as the substantive division of the property is not altered." *Id.* (citing TEX. FAM. CODE ANN. § 9.006(b) (other citations omitted).

The court may enter an order of clarification if its divorce decree is ambiguous. *Pearson,* 332 S.W.3d at 363 (citing TEX. FAM. CODE ANN. §§ 9.006, 9.008); *see In re R.F.G.,* 282 S.W.3d 722, 725 (Tex. App.—Dallas 2009, no pet.) (clarifying order permitted if original form of division of property is ambiguous); *Zeolla v. Zeolla*, 15 S.W.3d 239, 241-42 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) (ambiguity authorized clarification); *Bina v. Bina,* 908 S.W.2d 595, 598 (Tex. App.—Fort Worth 1995, no writ) (trial court found original decree ambiguous, clarification order affirmed). Whether a divorce decree is ambiguous is a question of law we review *de novo.* *Shanks v. Treadway,* 110 S.W.3d 444, 447 (Tex. 2003). "An agreed divorce decree implementing an agreed property division is controlled by the rules of construction applicable to ordinary contracts." *Ansley v. Ansley*, No. 03-01-00241-CV, 2002 Tex. App. LEXIS 6364, at *10 (Tex. App.—Austin Aug. 30, 2002, no pet.) (mem. op.) (citing *Allen v. Allen,* 717 S.W.2d 311, 312 (Tex. 1986); *Harvey v. Harvey*, 905 S.W.2d 760, 764 (Tex. App.—Austin 1995, no writ)).

A contract is ambiguous when its meaning is uncertain or doubtful or it is reasonably susceptible to more than one meaning. *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983); *Guerrero v. Guerra,* 165 S.W.3d 778, 782 (Tex. App.—San Antonio 2005, no pet.); *see Shanks,* 110 S.W.3d at 447. The court "determines whether a contract is ambiguous by looking at the contract as a whole in light of the circumstances surrounding formation of the contract." *Guerrero,* 165 S.W.3d at 782 (citation omitted). When a contract contains an ambiguity, its interpretation is a question of fact. *Id.* at 783. The "disputed language is construed in the context of the entire agreement in light of the circumstances present when the agreement was formed to find the true intention of the parties." *Ansley,* 2002 Tex. App. LEXIS 6364, at *13-14 (citing *Coker*, 650 S.W.2d at 394). Both parol evidence and the parties' post-divorce conduct may be considered in determining their intent. *Guerrero*, 165 S.W.3d at 783 (citations omitted).

Application

Issue 2—Ambiguity

We begin our analysis with Judy's second issue, in which she contends the trial court erred in finding the decree was ambiguous with regard to the division of the tract. As we construe Judy's argument, she essentially contends the decree's exhibits B and C conclusively establish the decree's division of the tract. We cannot agree.

The decree's language dividing the marital estate awarded George a part of the tract, which part was described as "[t]he real property situated as shown on Exhibit A designated with the letter "H" to signify its award to Husband, *plus* 26 acres to be surveyed

as per Exhibit A . . . ." (italics ours).[2] The language went on to say, "The metes and bounds of the property awarded to Husband, including the 26 acres, are attached hereto as Exhibit B."

The decree's award to Judy described her part of the tract as "[t]he real property situated as shown on Exhibit A designated with the letter "W" to signify its award to Wife, *less* 26 acres to be surveyed as per Exhibit A . . . ." (italics ours). The decree also states, "The metes and bounds of the property awarded to Wife are attached hereto as Exhibit C."

The map, Exhibit A, depicts the entire tract as generally rectangular but somewhat irregular in shape. It shows a line running east-to-west, dissecting the tract. In the north part of the tract, near wording reading "(142.85 acres of land more or less)," is a handwritten "W." In the south part, near wording reading the same, appears a handwritten "H." In addition, the map depicts a rectangular tract bearing the handwritten words "26 acres to H."[3]

As the additional 26 acres to be awarded to George are depicted on Exhibit A, they lie entirely within the part of the tract designated for Judy. We agree with the trial court that Exhibit A, and the decree's language awarding parts of the tract for each party by

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[2] The decree's language was consistent with that of the MSA, which stated George would be awarded "real property situated at [sic] shown on Exhibit A plus 26 acres to be surveyed as indicated by the dotted line . . . ." The MSA said Judy would be awarded "real property situated at [sic] shown on Exhibit A less 26 acres to be surveyed as indicated by the dotted line . . . ."

[3] It is undisputed the H refers to the husband George and the W to Judy.

reference to Exhibit A, call for the tract to be divided as shown on Exhibit A and 26 additional acres awarded to George.

The trial court's findings state, and it appears undisputed, that the metes and bounds descriptions on Exhibits B and C were prepared so as to designate the 26 additional acres to George first, then divide the remaining acreage equally between George and Judy.

As is apparent, the resulting acreage allocations of the two methods of dividing the tract will not be the same. Under the method as depicted on Exhibit A, all the additional 26 acres awarded George are taken from Judy's share after the division. Under the method followed in Exhibits B and C, because the 26 acres were effectively set aside first before the division, each party contributed 13 of the additional acres. Both methods find support in the decree's language. The awards to each party are first described by reference to Exhibit A; following language states that the awards are depicted by metes and bounds descriptions on Exhibits B and C. We find the decree reasonably can be read to require either method, and that the methods cannot be reconciled; the tract must be divided by one method or the other. The trial court did not err by finding the decree to be ambiguous as to its requirement for division of the tract. *See Coker,* 650 S.W.2d at 393-94.

Judy also contends that even if the decree is ambiguous, the trial court erred by failing to adopt the metes and bounds descriptions contained on Exhibits B and C. To interpret an ambiguous decree, a court reviews both the decree as a whole and the record, *Hagen*, 282 S.W.3d at 901, so as to resolve the fact issue of the true intentions

of the parties as expressed in the decree. *See Ansley,* 2002 Tex. App. LEXIS 6364, at *13-14.

As noted, the trial court held a hearing on George's motion for clarification of the property division in the decree. George and Judy testified to their respective understandings of their agreement. Judy testified that at mediation she agreed "he [George] gets the 26 acres and then we divide the ranch." She said the metes and bounds descriptions accomplished that method of the division. George testified his understanding of their agreement was that the property was to be divided in half and then he would receive 26 acres of Judy's half. He said the mediator, on the map that became Exhibit A, "drew 26 acres off of Judy's side and said this will be added to my side . . . ."

In support of her contention the court erred by adopting George's evidence of their intent, Judy also emphasizes the clear statements in Exhibits B and C of the number of acres awarded each party and George's willing execution of the divorce decree containing the exhibits; the presence on the property, prior to the divorce decree of the surveyor's stakes indicating his division of the tract and George's failure to object to their location; George's failure to object to a fence she constructed; George's execution, months after the date of the decree, of a mineral deed incorporating Exhibits B and C, and his execution of a contract for his purchase from Judy of some of her acreage in the tract, containing a description of her acreage consistent with Exhibit C.

At the hearing, George testified he raised objection to the result of the surveyor's work on one occasion but signed the divorce decree because he was relying on the surveyor for a correct description of the property division; said he paid little attention to

the use of Exhibits B and C on the mineral deed because the parties divided only the surface and held the minerals underlying the tract in equal undivided interests;[4] and said he paid little attention to the acreage attributed to Judy in his purchase contract because he was concerned only with the 32 acres he was purchasing from her, not with the acreage she would have left.

Considering the language of the decree as a whole and the other evidence of the parties' intent, we cannot see an abuse of discretion in the trial court's conclusion accepting George's interpretation of the agreed decree. Although there is evidence supporting Judy's interpretation, probative evidence also support's George's position concerning the parties' intention. *See Williams v. Williams*, No. 2-06-143-CV, 2007 Tex. App. LEXIS 207, at *2 (Tex. App.—Fort Worth Jan. 11, 2007, no pet.) (mem. op.) (citing *In re Barber*, 982 S.W.2d 364, 366 (Tex. 1998); *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 211 (Tex. 2002) (op. on reh'g)) ("[a]n abuse of discretion does not occur when the trial court bases its decision on conflicting evidence" and as long as "some evidence of substantive and probative character exists to support the trial court's decision."). As we have noted, the decree expressly awarded George the property designated with "H" on Exhibit A "plus 26 acres to be surveyed as per Exhibit A." The depiction of the 26 acres on Exhibit A indicates it was to come from the part of the tract designated for Judy, as George testified. Despite the decree's language confirming that Exhibit B described the property awarded George, including the 26 acres, the metes and bounds description on Exhibit B did not give him the property designated with "H" on Exhibit A plus 26 acres. As

[4] The decree awarded each party "[o]ne-half of any mineral interest in the entirety of the property shown on Exhibit A."

fact finder, the trial court was the sole judge of the credibility of witnesses and the weight to be given their testimony. *Prentiss v. Prentiss,* No. 02-10-00476-CV, 2012 Tex. App. LEXIS 2070, at *16 (Tex. App.—Fort Worth March 15, 2012, no pet.) (mem. op.). The trial court was thus free to accept George's testimony.

Judy contends the opinion of the Texas Supreme Court in *Stribling v. Millican DPC Partners, LP*, 458 S.W.3d 17 (Tex. 2015), should control the interpretation of the decree. The court there was confronted with the task of construing a deed neither party contended was ambiguous. It thus was construing the deed as a matter of law, discerning the parties' intent from the entirety of the deed's language. *Id.* at 20. In that context, it found the specific metes and bounds description controlled over a conflicting general description that referred to a previous deed and contained an acreage call. *Id.* at 21. In this case, the trial court determined its agreed-upon divorce decree was ambiguous with regard to the manner of division of the tract, and we have agreed with that determination. The trial court thus heard evidence to determine the parties' intent and resolve the ambiguity. Resolving that fact issue, the court found the decree's language requiring division of the tract as described in Exhibit A more accurately stated the parties' intention. Even in the context of its construction of an unambiguous instrument, the court in *Stribling* was careful to point out that a metes and bounds description is not always to be given controlling effect. *Id.* at 21. We would not read the opinion to so constrict the role of a fact finder interpreting an ambiguous divorce decree.

Judy's second issue is overruled.

Issue 1—Clarification Order

In her first issue, Judy asserts the trial court's order was not proper enforcement or clarification because it altered or changed the division of property set forth in the divorce decree and therefore was an unenforceable order. Specifically, Judy contends the trial court erred in entering its clarification order because it exceeded the authority provided in section 9.008 of the Family Code. The Fort Worth Court of Appeals, in *Murray*, 276 S.W.3d at 145, addressed such a contention regarding the clarifying order entered by the trial court in that case.[5] Based on its conclusion the divorce decree contained an ambiguity, the appellate court held the trial court had authority to enter its clarifying order. Because the decree in this case was likewise ambiguous, the court had authority under Family Code sections 9.006 and 9.008 to render its clarifying order. *See Pearson,* 332 S.W.3d at 363.

We do not disagree with Judy's contention there are limitations on the enforcement and clarification powers of the trial court. A trial court may not "amend, modify, alter, or change the division of property made or approved in the decree of divorce." *Murray,* 276 S.W.3d at 144 (citing TEX. FAM. CODE ANN. § 9.007(a)). But we do not perceive that the trial court effected an impermissible substantive change in the division of the tract by clarifying which of two means of accomplishing the division the parties, and the trial court in its agreed decree, intended. *See Murray*, 276 S.W.3d at 144 (to determine whether a subsequent order clarifies or modifies a decree, court "must interpret the decree to

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[5] Originally appealed to the Second Court of Appeals, this appeal was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. TEX. GOV'T CODE ANN. § 73.001 (West 2013); TEX. R. APP. P. 41.3.

determine not what the trial court should have done but, if possible, what the trial court actually did") (quoting *Shanks*, 110 S.W.3d at 447).

As part of her argument, Judy also contends the clarification order violates her constitutional rights under section 15 of article 16 of the Texas Constitution. *See* TEX. CONST. art. 16, § 15 (addressing separate and community property). She asserts the property she was awarded in the division of the community estate is now her separate property, and the court's clarification order divested her of her constitutionally-protected separate property. The argument is merely another way of expressing her contention the court's clarifying order actually was a modification of its decree. Resolving the ambiguity in its decree, the trial court clarified the manner of division of the tract that was intended by the decree. In the language of *Shanks*, what the trial court "actually did" by its decree it clarified by the clarifying order. *Shanks*, 110 S.W.3d at 447. No divesting of Judy's separate property occurred.

We resolve Judy's first issue against her.

Issue 3—Res Judicata

In Judy's last issue, she argues George's motion for clarification requested relief barred by res judicata.

The doctrine of res judicata "prevents the relitigation of a claim or cause of action that has been finally adjudicated, as well as related matters that, with the use of diligence, should have been litigated in the prior suit. *Berteen v. Hamdan,* No. 14-10-00247-CV, 2011 Tex. App. LEXIS 6277, at *4 (Tex. App.—Houston [14th Dist.] Aug. 11, 2011, no pet.) (mem. op.) (citing *Barr v. Resolution Trust Corp.,* 837 S.W.2d 627, 628 (Tex. 1992)).

Res judicata "applies to a final divorce decree to the same extent that it applies to any other final judgment." *Baxter v. Ruddle,* 794 S.W.2d 761, 762 (Tex. 1990) (citation omitted).

There is no dispute that the decree of divorce was a final determination on the merits of a court of competent jurisdiction, that Judy and George were the same parties to that action, or that this matter is based on the same claims as those addressed in the divorce proceeding. *Travelers Ins. Co. v. Joachim,* 315 S.W.3d 860, 862 (Tex. 2010) (citing *Amstadt v. U.S. Brass Corp.,* 919 S.W.2d 644, 652 (Tex. 1996); TEX. R. CIV. P. 94 (identifying res judicata as an affirmative defense and setting forth elements)). However, the Family Code specifically provides that a trial court may render clarification orders when necessary. *See* TEX. FAM. CODE ANN. § 9.008. Imposing "a prohibition under the doctrine of res judicata would be contrary to the court's '[c]ontinuing' authority to render further 'orders' (in the plural) to enforce its decree." *Berteen,* 2011 Tex. App. LEXIS 6277, at *4 (citing TEX. FAM. CODE ANN. §§ 9.002, 9.006(a)). Accordingly, the trial court's clarification order was not barred under the doctrine of res judicata. *See also Ocker v. Ellis,* No. 13-04-071-CV, 2005 Tex. App. LEXIS 6182, at *5 (Tex. App.—Corpus Christi Aug. 4, 2005, no pet.) (mem. op.) (finding that because the court's modification of the relevant wording in the divorce decree merely clarified the decree by expressly excluding disability benefits to which appellant never had a right, there was no merit in appellant's claims of a res judicata violation).

We resolve Judy's final issue against her.

Conclusion

Having overruled each of Judy's issues, we affirm the judgment of the trial court.

James T. Campbell
Justice