Affirmed and Memorandum Opinion filed May 28, 2020.

In The

Fourteenth Court of Appeals

NO. 14-19-00272-CV

LADONNA K. TATUM, Appellant

V.

BRETT A. TATUM, Appellee

On Appeal from the 309th District Court
Harris County, Texas
Trial Court Cause No. 2010-24775

MEMORANDUM OPINION

Several years after the divorce, the trial court rendered a domestic relations order, which purported to implement the division of retirement benefits that was established in the final decree of divorce. In this appeal from that order, the question presented is whether the trial court complied with the terms of the decree. For the reasons explained below, we conclude that it did.

BACKGROUND

LaDonna and Brett Tatum divorced in December of 2010, after more than ten years of marriage. One issue in the divorce was the division of Brett's retirement benefits. As an officer with the Houston Police Department, Brett was entitled to receive certain benefits under both the HPD Pension System and that system's deferred retirement option plan ("DROP"), in which he was also a participant. Brett had not yet retired at the time of the divorce, so the division of these benefits was achieved through a formula, which was set forth in separate provisions in the final decree of divorce.

In pertinent part, the decree established that Brett would be awarded the following division:

> H-10. All of the HPD pension DROP account in the husband's name, except for 50% of the community portion (which equals 36.25% of the total amount balance as of 12/31/10) of the HPD Pension System DROP account awarded to the wife by this Decree pursuant to the Qualified Domestic Relations Order to be signed by this Court.
>
> H-11. All of the HPD pension payments and plan in the name of Husband except for 50% of the community portion (which equals 36.25% of the total account as of 12/31/10) of the HPD pension payments pursuant to the Qualified Domestic Relations Order to be signed by the Court.

In a corresponding section of the decree, LaDonna was awarded the following division:

> W-6A. 50% of the community portion (which equals 36.25% of the total account as of 12/31/10) of BRETT A. TATUM's pension payments/plan pursuant to a Qualified Domestic Relations Order to be signed by the Court.
>
> W-7. A portion of BRETT A. TATUM's retirement benefits in HPD Pension System DROP account, that portion being 50% of the community portion (which equals 36.25% of the total amount balance

> as [of] 12/31/10) of the HPD Pension System DROP account, and more particularly defined in a Qualified Domestic Relations Order to be signed by the Court.

These same provisions were incorporated into an amended decree of divorce, which the trial court signed several months later. LaDonna challenged that amended decree in a direct appeal to this court, but her challenge focused exclusively on the division of certain real property. She did not raise any issues pertaining to the division of Brett's retirement benefits.

In that earlier appeal, we found error in the trial court's division of real property, so we reversed the portion of the amended decree that divided the marital estate and we remanded the case to the trial court for additional proceedings consistent with our opinion. *See Tatum v. Tatum*, No. 14-11-00622-CV, 2012 WL 1795112 (Tex. App.—Houston [14th Dist.] May 17, 2012, no pet.) (mem. op.). Upon remand, the real property at issue was sold, and the parties entered into a Rule 11 agreement governing the division of the proceeds. The trial court memorialized this agreement with an agreed final order, which confirmed all remaining provisions in the amended decree of divorce. Neither side appealed from that final order.

Years later, in November of 2016, Brett retired from the police force. LaDonna then filed an original petition to enter a post-divorce domestic relations order, which had been contemplated by the decree of divorce.

Both sides agreed that a domestic relations order was required by the decree, but they disagreed as to what the order should encompass. Under LaDonna's interpretation of the decree, the order would need to provide for certain post-divorce contributions and increases like cost of living adjustments. Under Brett's competing interpretation, the order should only provide for LaDonna's 36.25% share of his

pension and DROP account, which was fixed as of December 31, 2010, and did not include any post-divorce contributions and increases.

The trial court agreed with Brett and rendered a domestic relations order stating that LaDonna would be entitled to the following payments (emphasis in original):

> - **36.25%** of the deferred retirement option plan ("DROP") account effective **December 31, 2010**, but shall not include cost-of-living-adjustments ("COLA's"), insurance payments, or DROP account credits after December 31, 2010.
> - **36.25%** of [Brett's retirement/disability monthly benefit], as of **December 31, 2010**, per month, but shall not include any increases such as cost-of-living adjustments ("COLA's") or insurance payments after December 31, 2010.

LaDonna now appeals from this order, arguing in two overlapping issues that the trial court erroneously altered the terms of the divorce decree by divesting her of Brett's post-divorce contributions and increases.

ANALYSIS

A party may petition the trial court to render a domestic relations order pursuant to a final decree of divorce. *See* Tex. Fam. Code § 9.102(a). In rendering such an order, the trial court may implement or clarify the division of property that was made in the decree. *See* Tex. Fam. Code § 9.006(a). But the trial court "may not alter or change the substantive division of property." *See* Tex. Fam. Code § 9.007(a). Any such alteration or change renders the order unenforceable. *See* Tex. Fam. Code § 9.007(b).

When, as here, a party argues that a domestic relations order is unenforceable because the trial court altered the terms of a divorce decree, the question for us, as the reviewing court, is to determine the division of property under the decree. *See*

Shanks v. Treadway, 110 S.W.3d 444, 447 (Tex. 2003). We interpret the decree by applying the same rules that govern the construction of judgments. *Id.* Under these rules, we construe the decree as a whole so that all of its terms are harmonized and given effect. *Id.* If the decree is unambiguous, then we must enforce its literal language. *Id.*

The decree here is unambiguous. It awards the entirety of the pension account and the DROP account to Brett, with the exception of a community portion that is carved out specifically for LaDonna. The decree then calculates LaDonna's community portion at 36.25% of the total balance in each account as of December 31, 2010. By specifying this certain date, the decree manifests an intent that LaDonna would not be entitled to any contributions or increases that accrued after that date. *Compare Cox v. Carter*, 145 S.W.3d 361, 365 (Tex. App.—Dallas 2004, no pet.) (holding that the wife was not entitled to post-divorce increases to her husband's retirement plan where the decree provided that she was to receive a 50% share "calculated as of the date of the divorce"), *with Reiss v. Reiss*, 118 S.W.3d 439, 441–42 (Tex. 2003) (holding that the wife was entitled to a share of her husband's total retirement account, including any post-divorce contributions and increases, where there was no language in the decree indicating that her benefits were to be calculated as of a certain date).

LaDonna responds that her award of "the community portion" under the decree necessarily included post-divorce contributions and increases. As authority for this argument, she relies on *Stavinoha v. Stavinoha*, 126 S.W.3d 604 (Tex. App.—Houston [14th Dist.] 2004, no pet.), in which this court held that post-divorce contributions and increases could be classified as community property subject to division if those contributions and increases were not attributable to continued employment. *Id.* at 610–12. This argument fails for at least two reasons.

First, even if Brett's post-divorce contributions and increases could be treated as community property, the decree equated LaDonna's community portion to a specific percentage as of a specific date. Because the decree is unambiguous and must be enforced as written, LaDonna's share cannot include additional amounts that accrued after that date.

Second, there is a separate provision in the decree that demonstrates that the divorce court was capable of expressly apportioning post-divorce contributions and increases. This provision addressed LaDonna's retirement plan, instead of Brett's, and it awarded LaDonna "all sums . . . accrued or unaccrued . . . together with all increases thereof . . . to any . . . retirement plan . . . existing by reason of the wife's past, present, or future employment." Had the divorce court intended to award LaDonna a share of Brett's post-divorce contributions and increases, it could have done so with similar language—i.e., expressly, as in this other provision; rather than implicitly, as LaDonna has suggested on appeal. *See, e.g., Baxter v. Ruddle*, 794 S.W.2d 761, 762 (Tex. 1990) (the decree awarded the wife a share of her husband's "gross" retirement benefits including a share of "all increases therein due to the cost of living"). But because there is no so such language in the portion of the decree dividing Brett's retirement benefits, we must presume that the divorce court intended that LaDonna would not be entitled to a share of Brett's post-divorce contributions and increases. *See Hagen v. Hagen*, 282 S.W.3d 899, 908 (Tex. 2009) (presuming that the divorce court carefully chose the language of the decree when it awarded the wife a portion of her husband's "military retirement pay" but not his separate "VA disability compensation").

For the foregoing reasons, we conclude that the trial court correctly construed the divorce decree and did not erroneously alter its terms by divesting LaDonna of any post-divorce contributions and increases.

CONCLUSION

The trial court's domestic relations order is affirmed.

/s/ Tracy Christopher
Tracy Christopher
Justice

Panel consists of Justices Christopher, Wise, and Zimmerer.

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