IN THE SUPREME COURT OF TEXAS

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NO. 07-1065
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RAOUL HAGEN, PETITIONER,

v.

DORIS J. HAGEN, RESPONDENT

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ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS
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Argued January 14, 2009

JUSTICE JOHNSON delivered the opinion of the Court, in which CHIEF JUSTICE JEFFERSON, JUSTICE HECHT, JUSTICE WAINWRIGHT, JUSTICE GREEN, and JUSTICE WILLETT joined.

JUSTICE BRISTER filed a dissenting opinion, in which JUSTICE O'NEILL and JUSTICE MEDINA joined.

Doris and Raoul Hagen's 1976 divorce decree awarded a percentage of Raoul's military retirement pay to Doris to be paid if, as, and when he received it. After Raoul's subsequent retirement from the Army, he was determined by the Veterans' Administration (VA) to have a service-connected disability. He then elected to be paid VA disability benefit payments, which are not subject to federal income taxes, in place of part of his military retirement payments, which are subject to income taxes. Raoul's election reduced the amount of military retirement pay he received. When Doris began receiving her percentage of the reduced Army retirement pay Raoul received, she

sought enforcement and clarification of the divorce decree. The trial court determined that the decree divided only the military retirement pay being received by Raoul, it did not divide his VA disability benefits, and Doris was entitled to only a percentage of the military retirement pay. The court of appeals reversed. The appeals court held that the trial court modified the 1976 decree instead of clarifying it, and the modification was barred by res judicata principles. ___ S.W.3d ___, ___. We hold that the trial court correctly clarified the unambiguous original decree, and its action was not a modification barred by res judicata principles. We reverse the court of appeals' judgment and affirm the judgment of the trial court.

I. Background

Doris and Raoul Hagen divorced in 1976. At the time of the divorce, Raoul was a member of the United States Army. The decree awarded Doris right, title, and interest to

> One-half of 18/20ths of all Army Retirement Pay or Military Retirement Pay, IF, AS AND WHEN RECEIVED, and the Petitioner RAOUL HAGEN shall be a Trustee of the One-half of 18/20ths of all Army Retirement Pay or Military Retirement Pay, for the use and benefit of DORIS J. HAGEN, and shall pay the same immediately upon each receipt of the same, to DORIS J. HAGEN.

When Raoul retired from the Army in 1992 his retirement compensation consisted solely of military retirement pay, which was subject to federal income taxes. In 2003, the VA determined Raoul had a service-connected disability rating of forty-percent. As allowed by federal statute, Raoul elected to waive part of his retirement pay and be paid VA disability in its place. *See* 38 U.S.C. § 5305. The VA disability pay is not subject to federal income taxes. *See id.* § 5301(a)(1). After Raoul made his election, payments to Doris were reduced to an amount calculated by applying the decree's formula to only the military retirement pay Raoul received.

Doris filed a combined motion for contempt, clarification of the decree, and petition for damages. She claimed that Raoul failed to comply with the 1976 decree because he failed to pay her the proper amount of his gross retirement pay, and in the alternative, she sought clarification of the decree. She also sought damages from Raoul alleging that by electing to be paid VA disability pay and waive part of his retirement pay, he breached a fiduciary duty to her and converted payments she should have received. Following a non-jury hearing, the trial court (1) ordered that "the military retirement pay now being received by Raoul Hagen shall be divided according to the formula stated in the Original Decree of Divorce," (2) found the amount subject to division under the decree did not include Raoul's disability pay, (3) awarded attorney's fees in the event of appeal, and (4) denied all other relief.

Doris appealed, and the court of appeals reversed. ___ S.W.3d ___. Relying in large part on *Berry v. Berry*, 786 S.W.2d 672 (Tex. 1990) (per curiam), the court of appeals held that res judicata barred Raoul's position as a collateral attack on the divorce decree, and the Uniformed Services Former Spouses' Protection Act (USFSPA)[1] could not be applied retroactively to collaterally attack the decree. ___ S.W.3d at ___. We hold that the trial court's action was a permissible clarification, not an impermissible modification, of the decree.

[1] The USFSPA provides state courts the authority to treat "disposable retired pay" as community property. *See* 10 U.S.C. § 1408(c)(1). The United States Supreme Court has held, however, that the USFSPA bars state courts from treating military retirement pay that has been waived to receive VA disability benefits as property divisible upon divorce. *Mansell v. Mansell*, 490 U.S. 581, 594-95 (1989).

II. Interpreting Divorce Decrees

We interpret divorce decree language as we do other judgments of courts. *Shanks v. Treadway*, 110 S.W.3d 444, 447 (Tex. 2003). We construe the decree as a whole to harmonize and give effect to the entire decree. *Id.* If the decree is unambiguous, the Court must adhere to the literal language used. *Id.* If the decree is ambiguous, however, the decree is interpreted by reviewing both the decree as a whole and the record. *See Wilde v. Murchie*, 949 S.W.2d 331, 332 (Tex. 1997) (per curiam). Whether a divorce decree is ambiguous is a question of law. *Shanks*, 110 S.W.3d at 447.

As with other final, unappealed judgments which are regular on their face, divorce decrees and judgments are not vulnerable to collateral attack. *Berry*, 786 S.W.2d at 673. The decree must be void, not voidable, for a collateral attack to be permitted. *Id.* Errors other than lack of jurisdiction over the parties or the subject matter render the judgment voidable and may be corrected only through a direct appeal. *Reiss v. Reiss*, 118 S.W.3d 439, 443 (Tex. 2003).

The Family Code provides that trial courts may enter orders of enforcement and clarification to enforce or specify more precisely a decree's property division. TEX. FAM. CODE § 9.006(a) ("[T]he court may render further orders to enforce the division of property made in the decree of divorce or annulment to assist in the implementation of or to clarify the prior order."). But courts may not "amend, modify, alter, or change the division of property" originally set out in the decree. *Id.* § 9.007(a). Attempting to obtain an order that alters or modifies a divorce decree's property division is an impermissible collateral attack. *See Reiss*, 118 S.W.3d at 442 (holding that a trial court's correct construction of a divorce decree's award "does not impermissibly 'amend, modify,

alter, or change the division of property made or approved in the decree of divorce'" (quoting TEX. FAM. CODE § 9.007(a))).

III. The Decree in Question

A. The Decree's Language

The Hagens stipulated that their decree[2] awarded Doris "One-half of 18/20ths of all Army Retirement Pay or Military Retirement Pay, IF, AS AND WHEN RECEIVED," and directed Raoul to "pay the same immediately upon each receipt of the same, to DORIS J. HAGEN." Neither party claims the decree defined "Army Retirement Pay" or "Military Retirement Pay" to include any type of compensation or pay outside of the plain import of the words used. The decree language does not specifically reference VA disability compensation Raoul might receive, and the parties do not contend that VA benefits were referenced anywhere in the decree. We conclude the decree is unambiguous in dividing military retirement pay "if, as and when" Raoul received it. The question, then, is whether, at the time the decree was entered, military retirement pay included VA disability compensation. *See Shanks*, 110 S.W.3d at 447 (stating that we "must effectuate the order in light of the literal language used").

B. Retirement Pay and VA Disability Compensation

When the trial court entered the Hagens' decree on May 7, 1976, federal law provided two means by which a former service member could receive disability-related compensation: retirement pay for physical disability under Title 10 of the United States Code and VA disability compensation

[2] A copy of the decree was attached to Doris's brief in the court of appeals.

under Title 38. Armed Forces (Title 10), ch. 1041, 70A Stat. 91 (1956) (current version at 10 U.S.C. § 1201); Veterans' Benefits (Title 38), § 310, 72 Stat. 1119 (1958) (current version at 38 U.S.C. § 1110). Under Title 10, if a member was found to be disabled, the secretary of the applicable branch of the armed forces could "retire the member, with retired pay" computed under the statute. Armed Forces (Title 10), ch. 1041, 70A Stat. 91 (1956) (current version at 10 U.S.C. § 1201). Title 38, on the other hand, mentioned nothing about retirement. Veterans' Benefits (Title 38), § 310, 72 Stat. 1119 (1958) (current version at 38 U.S.C. § 1110). Instead, it compensated for "disability resulting from personal injury suffered or disease contracted in line of duty, or for aggravation of a preexisting injury suffered or disease contracted in line of duty." *Id.*; *see also* Veterans' Benefits (Title 38), § 331, 72 Stat. 1122 (1958) (current version at 38 U.S.C. § 1131) (providing VA disability compensation for peacetime injuries).

At the time the trial court entered the Hagens' decree, Texas courts recognized that only military disability pay that was an earned property right could be divided upon divorce, and VA disability compensation was not an earned property right. *Busby v. Busby*, 457 S.W.2d 551, 552-53 (Tex. 1970); *Dominey v. Dominey*, 481 S.W.2d 473, 475 (Tex. Civ. App.—El Paso 1972, no writ); *Ramsey v. Ramsey*, 474 S.W.2d 939, 941 (Tex. Civ. App.—Eastland 1971, writ dism'd). In *Busby*, we did not address the question of VA disability benefits; we addressed only the two types of military retirement pay—voluntary retirement benefits and disability retirement benefits. 457 S.W.2d at 554. We held that military retirement pay—whether based upon a member's voluntary election to retire after having served the required time or whether based on retirement for disability—is not a gift or gratuity but an earned property right divisible upon divorce. *Id.* at 552.

In *Ramsey*, the court of appeals applied *Busby* to VA disability benefits, holding that VA disability benefits are not an earned property right because they compensate "for personal injury or disease . . . for service-connected disability," and there is "no obligation or promise by the Veterans' Administration to remunerate" for service-connected disabilities. 474 S.W.2d at 941. VA disability benefits were, thus, characterized differently than military retirement pay. VA disability benefits were characterized as a gratuity based upon a service-connected disability rather than an earned property right based upon years of service. *Id.*; *see also Milliken v. Gleason*, 332 F.2d 122, 123 (1st Cir. 1964), *cert. denied*, 379 U.S. 1002 (1965) (holding that because the payment of VA disability compensation is at the discretion of the United States Congress, such compensation is not considered property).

C. The Parties' Contentions

Citing *Dominey*, 481 S.W.2d 473, Doris nevertheless argues that at the time the decree was entered, Texas courts had established disability pay was an earned property right. *Dominey*, however, pertained to Navy disability retirement pay, not VA disability benefits. *Id.* at 474. In *Dominey*, the court expressly distinguished *Ramsey* and the VA benefits at issue there from military retirement benefits. *Id.* at 475. In doing so, the court held that although the retirement benefits being received by Dominey were military disability retirement benefits, they were nonetheless retirement benefits and thus property, unlike the VA disability retirement benefits at issue in *Ramsey*. *Id.* at 475-76.

Relying on *Baxter v. Ruddle*, 794 S.W.2d 761, 762-63 (Tex. 1990); *Berry*, 786 S.W.2d at 673; and *Jones v. Jones*, 900 S.W.2d 786, 789 (Tex. App.—San Antonio 1995, writ denied), Doris

also argues Texas courts have held that ex-spouses who make a post-divorce election to waive military retirement pay for VA disability benefits are in effect collaterally attacking the decree, and such an attack is barred by res judicata principles. We do not disagree that asserting the USFSPA as justification for violating provisions of a final divorce decree could constitute a collateral attack under some circumstances. But Raoul is not making such an assertion in this matter; rather, he relies on the specific language of the decree. And the cases Doris references do not support her position that Raoul's waiver was a collateral attack on the Hagens' decree.

In *Baxter*, the parties agreed to a property settlement and the agreed decree was not appealed. 794 S.W.2d at 762. The decree provided that the wife received

> All right, title and interest to thirty-seven and one-half percent (37 1/2%) of JAMES RUDDLE's gross U.S. Army retirement and/or disability benefits and/or V.A. disability benefits (including thirty-seven and one-half percent (37 1/2%) of all increases therein due to the cost of living) if, as and when received.

Id. Ruddle remained in the service after the divorce, so his retirement pay increased over the amount he would have received had he retired at the time of divorce. *Id.* He did not comply with the decree by paying his former wife, Judith Ann Baxter, the specified percentage of his actual gross retirement pay. *Id.* In considering Baxter's Motion for Contempt and Arrearage Judgment, the trial court determined Baxter was entitled to a percentage of benefits valued as of the time of the divorce. *Id.* This Court held that the unappealed, agreed divorce decree unambiguously provided for Baxter to receive thirty-seven and one-half percent of the *gross* retirement benefits received by Ruddle, including post-divorce increases; the parties agreed to the method of apportionment and their agreement should be enforced even if the court could not have ordered the division except for the

parties' agreement; the decree was binding on the parties; and the trial court's determination in contravention to the decree was barred by res judicata. *Id.* at 762-63. Unlike the Hagens' decree, the agreed, unappealed decree in *Baxter* specifically referenced and divided gross retirement benefits, VA disability benefits, and all cost of living increases. *Id.* at 762. And, unlike Raoul's situation, in which he seeks to *enforce* the language of the decree, Ruddle attempted to effect a substantive *change* to a prior final decree's express provisions.

In *Berry*, relied on in large part by the court of appeals in this case, the parties entered into an agreement and consent decree. 786 S.W.2d at 673. The decree specified the wife would receive "twenty-five percent of . . . *gross* Air Force disability retirement pay." *Berry v. Berry,* 780 S.W.2d 846, 847 (Tex. App.—Dallas 1989), *rev'd per curiam*, 786 S.W.2d 672 (Tex. 1990) (emphasis added). The husband later elected to accept VA disability benefits, and his retirement pay was reduced accordingly. *Berry*, 786 S.W.2d at 673. The wife began receiving a percentage of the reduced retirement pay and sought to enforce the decree's literal language that awarded her a portion of the husband's gross retirement pay. *Id.* At the enforcement hearing, the wife introduced a statement from the Air Force showing the husband's gross Air Force disability retirement pay had not changed, but the VA disability benefits were credited against the retirement pay as a deduction and reduced the gross pay to a net amount:

> As the statement clearly indicates, Husband received *gross* pay in the amount of $2,422 with a VA waiver of $1,355 and an A.L.M.T. reduction of $9. After subtracting this waiver and reduction, Husband was left with a *net* pay of $1,058.

Berry, 780 S.W.2d at 849. The trial court held the wife was entitled to twenty-five percent of the husband's net Air Force disability pay of $1,058. *Id.* at 847-48. The court of appeals affirmed. *Id.*

at 851. This Court noted that the original decree provided for the wife to receive twenty-five percent of the husband's *gross* pay, not *net* pay; the decree was final; the decree was not void; and the decree could not be substantively altered by using the USFSPA to collaterally attack it:

> This court has held that, as with other final, unappealed judgments which are regular upon their face, divorce judgments are not vulnerable to collateral attack. Although a final judgment may be erroneous or voidable, it is not void and thus subject to collateral attack if the court had jurisdiction of the parties and the subject matter. Because the final judgment is voidable as opposed to void, the rule of res judicata would apply. Under these cases, the subsequent adoption of the USFSPA cannot be used to collaterally attack the Berrys' final divorce decree.

786 S.W.2d at 673 (citations omitted). As a result, the Court enforced the divorce decree according to its literal language that awarded the wife a percentage of what she proved was the husband's gross retirement pay. *See id.* at 674.

And in *Jones*, 900 S.W.2d 786, the consent decree entered pursuant to an agreement between the parties provided as follows:

> [Wife is awarded] if, as, and when retirement is received by DONALD J. JONES, a monthly amount equal to twenty-five percent (25%) of that monthly amount that a retired Major with 20 years service will receive on the date DONALD J. JONES begins to receive his retirement, with the same percentage of any and all costs of living related increases to which DONALD J. JONES shall become entitled for the period beginning on the date of retirement and ending on the death of DONALD J. JONES.

Id. at 787. Donald Jones later retired, accepted a disability retirement amount in lieu of part of his regular retirement pay, and sought to preclude payment of any of the disability retirement pay to his former wife based on the USFSPA. *Id.* The trial court enforced the decree as written. *Id.* In affirming, the court of appeals held that Jones's attempt to apply the USFSPA to alter the substantive provisions of the decree was an attempt to avoid the effect of the unappealed decree and was thus

a prohibited collateral attack. *Id.* at 787-88. Similar to the outcome in *Berry*, the end result was that the decree was enforced according to its original language. *See id.*

In *Baxter*, *Berry*, and *Jones*, there were attempts to, in effect, modify or change a prior final decree's provisions. Here, Raoul does not attempt to attack, change, or alter the decree; he seeks enforcement according to its literal language. If a trial court order does not modify or amend the substantive division of property set out in a final decree, then the court merely construes the decree, and its order is properly classified as a clarification or enforcement order. *See* TEX. FAM. CODE §§ 9.006-.007. Only an attempt to judicially alter or change the substantive provisions of a final decree constitutes a prohibited collateral attack. *See Reiss*, 118 S.W.3d at 442. The trial court's clarification order in this case did not change the decree's substantive division of property and thus did not permit a collateral attack on the decree.

Doris also contends the decree awarded her a portion of Raoul's "gross" or "total" military pay because courts have held that language similar to language used in the Hagens' decree encompasses all types of military pay, including VA disability benefits. Her argument fails. First, "military pay" is different from and does not include VA disability pay as we have discussed above. Next, the literal language employed in this decree is unambiguous, does not specify division of gross military pay, and does not specify a division of VA disability benefits. *See Shanks*, 110 S.W.3d at 447. And, none of the cases Doris references—*Jones*, 900 S.W.2d 786; *Gallegos v. Gallegos*, 788 S.W.2d 158 (Tex. App.—San Antonio 1990, no writ); or *Ex parte Hovermale*, 636 S.W.2d 828 (Tex. App.—San Antonio 1982, no writ)—support her position. In *Jones*, the court of appeals did not consider whether "military retirement pay" means "gross" military pay. *See* 900 S.W.2d 786. It

enforced a decree that provided the wife was to receive an amount set by formula. *Id.* at 787-88 (wife was awarded "a monthly amount equal to twenty-five percent (25%) of that monthly amount that a retired Major with 20 years service will receive on the date DONALD J. JONES begins to receive his retirement," together with cost of living increases). In *Hovermale* and *Gallegos*, the decrees divided "gross military retirement pay," and because the decrees included the term "gross," the courts did not address whether a decree not including that term has the same meaning. *See Hovermale*, 636 S.W.2d at 829 (noting the final decree "requir[ed] relator to pay to his former wife a portion of his gross monthly military retirement pay, based on a formula set out in the decree of divorce"); *Gallegos*, 788 S.W.2d at 160 (the decree provided "IT IS ORDERED AND DECREED that [appellee] shall have judgment against and recover from [appellant] twenty-one and one-half percent (21.5%) of the gross present and future military retirement pay received each month by [appellant]").

IV. Response to the Dissent

The dissent says our holding today conflicts with *Berry* because the Hagens' decree is similar to the *Berry* decree in that neither specifically references VA disability compensation, yet we held the *Berry* decree divided VA disability while we hold the Hagen decree does not. With due respect, the dissent is mistaken. Neither the *Berry* decree nor the Hagens' decree divided VA disability compensation, nor did we hold in *Berry* that the decree there did so.

In *Berry*, the original decree specified the husband was to instruct a bank to "disburse to Wife monthly, as received, at a bank or other address of her choice, twenty-five percent (25%) of said Retirement Pay *computed on the gross amount thereof before any deductions*." *Berry*, 780 S.W.2d

at 847 (emphasis added). The decree did not limit or specify the type or amount of deductions that could be taken from the retirement pay. Under the language of the decree, the type or amount of deductions did not matter because the wife was to be paid an amount computed on the husband's gross retirement pay before deductions. *Id.* The decree's language made it clear the parties and the court contemplated the possibility that in the future some types of deductions or reductions might be applied to the gross retirement pay. They took that possibility into account and provided for it. *Id.* at 847-49. The husband later attempted to collaterally attack the final, unappealed decree. 786 S.W.2d at 673.

Contrary to the dissent's position, this Court did not hold that the decree divided VA disability benefits. The Court held that the husband was barred from using the USFSPA to collaterally attack the original decree, noting (1) the unappealed, final decree contained a formula calculating the wife's entitlement based on the "gross amount [of retirement pay] before deductions" language, and (2) a copy of one of the husband's Air Force Retiree Account Statements showed the term "gross" pay was used to indicate monthly pay before any deductions. *Id.* at 673 & n.1.

In the case before us, the Hagens' original decree did not award Doris amounts "calculated on" Raoul's gross, or even total, retirement pay before deductions, as the decree in *Berry* did. The Hagens' decree plainly entitled Doris only to part of the Army or military retirement pay Raoul received, if, as, and when he received it. As discussed previously, such military retirement pay did not include VA disability benefits. Thus, the trial court in this case did not modify the Hagens' decree; it only clarified that the decree did not divide VA disability pay that was or might become payable to Raoul because of disability resulting from service-connected personal injury or disease.

The trial court in this case did not allow an impermissible collateral attack on the decree, just as this Court did not allow an impermissible collateral attack on the decree in *Berry*. *See id.* at 673; *see also* TEX. FAM. CODE § 9.007(a) ("A court may not amend, modify, alter, or change the division of property made or approved in the decree of divorce or annulment."); BLACK'S LAW DICTIONARY 278 (8th ed. 2004) (defining "collateral attack" as "[a]n attack on a judgment in a proceeding other than a direct appeal").

Although the dissent urges that the Hagens' decree is void, neither of the parties have taken that position. To the contrary, Doris has asserted the decree is *not* void. Of course, whether a judgment or decree is void does not depend on what the parties say; it depends on legal principles. *See Brazzel v. Murray*, 481 S.W.2d 801, 803 (Tex. 1972) (quoting *Murchison v. White*, 54 Tex. 78 (1880)) ("A void act is one entirely null within itself, not binding on either party, and which is not susceptible of ratification or confirmation. Its nullity cannot be waived."). But in this case, the trial court in 1976 had jurisdiction over the parties and the subject matter, and it did not act outside its capacity as a court. *See Reiss v. Reiss*, 118 S.W.3d 439, 443 (Tex. 2003). The trial court did not issue an advisory opinion about VA disability benefits Raoul might later receive due to a disability emanating from his military service; it did not address them at all.

The dissent recognizes that divorce decrees divide future retirement benefits that are contingent on continued future employment but contrasts VA disability benefits from that type of compensation because "payments are not 'earned' during marriage and 'are not property.'" We do not disagree with the dissent's statement, but it is not relevant here because the Hagens' decree

simply did not divide Raoul's VA disability pay. It divided his Army or military retirement pay if, as, and when he received it.

Finally, the dissent says that because this Court held in *Berry* that a decree dividing military retirement pay also divided VA disability pay that arose later, we should overrule *Berry* and remand the case for Doris to reassert her claims for conversion and breach of fiduciary duty because she relied on *Berry*. We decline to do so for at least three reasons. First, as we have explained above, we do not agree that our decision in this case conflicts with *Berry* and we decline to overrule *Berry*. Second, Doris did not—as the dissent claims—rely on *Berry* in the trial court and court of appeals for the proposition that a decree dividing military retirement pay also divides VA disability pay arising later. In the trial court, the court of appeals, and this Court, Doris cited *Berry* only for the proposition that the Hagens' decree was final and could not be modified by the trial court. She did not include *Berry* in her brief of authorities to the trial court, nor did her counsel mention it at the hearing on her motion for contempt except one time in connection with res judicata:

> [This] case is protected by res judicata. No one ever appealed this case. And there are many, many cases on that. Two cases that I haven't included in my brief, one is Berry versus Berry, which is a Supreme Court of Texas case.

In her briefs at the court of appeals and this Court, Doris again cited *Berry* only once, and the reference was in regard to the res judicata issue:

> A trial court may not amend, modify, alter or change the division of property made or approved in a decree of divorce or annulment. It is limited to an order to assist in the implementation of or to clarify the prior order . . . . Berry v. Berry, 786 S.W.2d 672 (Tex. 1990).

Third, Doris asserted claims against Raoul for breach of fiduciary duty and conversion in the trial court. The claims were denied, and Doris has not presented the issues on appeal. The issue Doris pursued in the court of appeals was whether the trial court's order modified or clarified the Hagens' original decree.

V. Conclusion

The Hagens' 1976 divorce decree is unambiguous. It provides Doris is to receive a percentage of the Army Retirement Pay or Military Retirement Pay Raoul receives. It does not provide she is to receive payments calculated on any other basis, or that she is to receive part of his VA disability compensation. The trial court's order was a proper clarification of, and not an impermissible modification of, the decree.

On the surface, it appears that Raoul's election to receive VA benefits has worked an inequity on Doris. But the language used in divorce decrees is important, and we must presume the divorce court chose it carefully, especially given the frequency of attempts to enforce decrees—as was the case here—through contempt orders. The meager record before us shows that Doris did not appeal from the 1976 decree when it was entered over thirty years ago. There is no indication she did not then have full opportunity to present her legal and equitable positions, present her proof, and request the decree she wanted the trial court to enter.

We conclude Doris has had full opportunity to seek relief. The record does not justify a remand for further litigation of the issues. We reverse the judgment of the court of appeals and affirm the judgment of the trial court.

Phil Johnson
Justice

OPINION DELIVERED: May 1, 2009