

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA10-659

LEN E. BLAYLOCK, JR.

APPELLANT

V.

NANCY L. BLAYLOCK

APPELLEE

Opinion Delivered January 5, 2011

APPEAL FROM THE PERRY
COUNTY CIRCUIT COURT
[NO. E-92-12]

HONORABLE RICHARD NILE
MOORE JR., JUDGE

AFFIRMED IN PART; REVERSED IN
PART AND REMANDED

JOSEPHINE LINKER HART, Judge

Len E. Blaylock, Jr., appeals from an order of the Perry County Circuit Court finding that his ex-wife's disability pension was not subject to division under the parties' 1993 divorce decree. On appeal, he argues that the trial court 1) did not have jurisdiction to enter the order; 2) did not have the power to enter the order; 3) erred in finding that neither party had retired; and 4) erred in failing to hold a "subsequent evidentiary hearing" on interpretation of the divorce decree. We affirm in part, reverse in part, and remand for further proceedings.

The parties' divorce decree was entered January 20, 1993. They agreed to a property settlement that was incorporated into the decree. At issue are the parties' pensions. Each pension was dealt with by a separately numbered paragraph. Paragraph 12 dealt with Len's pension. It stated:

The Defendant [Nancy] shall receive the following from Plaintiff's [Len's] pension upon retirement: 20 years divided by the total service years divided by 2. In addition, Defendant shall receive one half of the cash value of the insurance policy as of December 31, 1991. Defendant shall also receive one half of the \$10,359.31 in the thrift plan belonging to Plaintiff as of December 31, 1991.

Paragraph 13 dealt with Nancy's pension. It stated:

The Plaintiff shall receive the following from Defendant's pension: Seven years divided by the total service years divided by 2. Plaintiff shall also receive one half of the \$13,858.26 in the thrift plan belonging to Defendant as of December 31, 1991.

Additionally, in paragraph 17, the decree also stated that "each party shall execute any documents necessary to effectuate this agreement."

On January 16, 2009, Nancy filed a petition seeking to compel Len to submit a Qualified Domestic Relations Order (QDRO). Len answered and asserted that Nancy's petition was barred by the statute of limitations, estoppel, laches, and unclean hands. He also filed a counter-petition alleging that Nancy had taken early retirement because of disability and had, herself, failed to submit a QDRO. Len sought the marital share of Nancy's pension.

At a hearing on the parties' petitions, Len asserted that the trial court lacked jurisdiction to compel the entry of a QDRO. The trial judge asked for letter briefs on the issue and acknowledged that a further evidentiary hearing could be required to completely resolve the issues in this case. No further hearing was held. However, exhibits were attached to Len's letter brief, including the fruits of his discovery, which included Nancy's answers to interrogatories and documentation from Nancy's former employer.

The trial court entered an order finding that it had personal and subject-matter

jurisdiction. It also found that the decree obligated the parties to share pension benefits only upon their respective “retirement” and that neither party was retired or receiving “retirement compensation contemplated by language of their Decree.” Len timely filed a motion to reconsider and vacate the trial court’s order. He asserted that only the jurisdiction issue had been submitted to the trial court and that the trial court, essentially on its own motion, had granted summary judgment. The motion was not acted on by the trial court and was deemed denied. Len then filed this appeal.

We review traditional cases of equity de novo on the record. *Hudson v. Hilo*, 88 Ark. App. 317, 198 S.W.3d 569 (2004). While we will not reverse factual findings by the trial court unless they are clearly erroneous, a trial court’s conclusion of law is given no deference on appeal. *Id.*

For expediency, we take up and dispose of Len’s first and second points together. He argues that the trial court had neither the jurisdiction nor the power to enter the order. Len contends that pursuant to Rule 60 of the Arkansas Rules of Civil Procedure, the trial court lost jurisdiction to modify its order after 90 days. This argument fails to persuade because the trial court here was not modifying the original decree, but merely interpreting and enforcing it. It is settled law that a trial court retains jurisdiction to interpret, clarify, and enforce the original divorce decree. *Abbott v. Abbott*, 79 Ark. App. 413, 90 S.W.3d 10 (2002). We hold that the above-cited language in paragraph 17 regarding the execution of documents is sufficient to empower the trial court to order the execution of a QDRO in this case if it is

necessary to divide the pensions at issue. Furthermore, the trial court certainly had jurisdiction to interpret and clarify the original decree. *Id.*

Having determined that the trial court indeed had jurisdiction to take up this matter, we next turn to Len's remaining arguments, which we believe are inextricably intertwined. He asserts that the trial court erred in finding that neither party had retired and, alternatively, that it erred in failing to hold a "subsequent evidentiary hearing" on interpretation of the divorce decree. We find the latter point dispositive. There are no greater or more firmly rooted legal principles than the requirement that factual findings be based on evidence. *See, e.g., Taylor v. Taylor*, 353 Ark. 69, 110 S.W.3d 731 (2003). Here, it is undisputed that the trial court failed to hold an evidentiary hearing on the merits of the parties' petitions. Nonetheless, it made factual findings, presumably based on some exhibits that Len appended to his letter brief. Essentially, the trial court granted summary judgment without a summary-judgment motion. We hold that the letter briefs do not satisfy the requirements of a summary-judgment motion as specified by Arkansas Rule of Civil Procedure 56(c).

Additionally, we hold that the trial court erred in endeavoring to make this finding of material fact without an adversary hearing in that its ruling in this matter required it to determine the admissibility and weight to be afforded certain documentary evidence. *Jones v. Abraham*, 58 Ark. App. 17, 946 S.W.2d 711 (1997). Accordingly, we reverse and remand this case to the trial court for the purpose of conducting the evidentiary hearing that was contemplated in the proceeding where the jurisdiction issue was argued. We leave the subject

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of Len's remaining argument, that the trial court erred in determining that neither party had retired, to be resolved in the evidentiary hearing.

Affirmed in part; reversed in part and remanded.

VAUGHT, C.J., and GLOVER, J., agree.