

“fifty percent (50%) of such retirement or pension benefit to which Edwin F. Reiss is entitled to receive from Goodyear Tire & Rubber Company.” Because similar language appears in the decree in *Shanks*, the Court concludes that there is “no valid reason to interpret the Reisses’ decree differently than the very similar decree in *Shanks*.” __ S.W.3d __, __. But the Court’s conclusion dismisses as irrelevant material differences between the decrees.

For example, prior to awarding Gloria fifty percent of Edwin’s retirement benefits, the decree provides:

The Court further finds that the parties own *as community [property]* . . . a Pension Plan at Goodyear Tire & Rubber Company, where [Edwin] is employed at its Houston, Texas, plant, which Pension Plan the parties have a vested interest in.

(Emphasis added.) Thus, the trial court specifically determined on June 12, 1980 that Edwin’s “Pension Plan” was community property. The decree also provides that the parties’ “community property” should be divided in an “equitable manner.”¹ None of this language, however, appears anywhere in the decree in *Shanks*. In fact, the *Shanks* decree does not characterize the retirement benefits as either separate or community property. Moreover, in *Shanks*, the trial court advised the parties that it intended to award Treadway twenty-five percent of Shanks’s total retirement benefits. Such a clarification is absent from the record here. Given these significant differences, I disagree with the Court’s conclusion that the decrees are sufficiently similar to construe them alike.

I recognize that the decree provides that Gloria is entitled to receive “fifty percent (50%) of such retirement or pension benefit to which Edwin F. Reiss is entitled to receive from Goodyear Tire & Rubber Company.” Nevertheless, when construed in context of the entire decree, it is unreasonable to conclude that the decree awards Gloria an interest in the entirety of Edwin’s retirement benefits, including that portion representing his separate property. The decree’s structure and plain language, from beginning to end, evidence an intent to divide only the couple’s community property. This construction is also consistent with

¹ “All marital property is . . . either separate or community. If acquired before marriage by any method, or after marriage by gift, devise or descent, it is separate; otherwise, it is community.” *Eggemeyer v. Eggemeyer*, 554 S.W.2d 137, 140 (Tex. 1979) (quoting *Hilley v. Hilley*, 342 S.W.2d 565, 567-68 (Tex. 1961)). Because the trial court found the pension to be “community property,” its division of that property was necessarily referable to those assets that accrued during the time that Gloria and Edwin were married.

Texas law at the time of the Reisses' divorce. *See Eggemeyer v. Eggemeyer*, 554 S.W.2d 137, 142 (Tex. 1977) (holding that both Texas's Constitution and Family Code prohibit a court from divesting spouses of separate property) (citing TEX. CONST. art. I, § 9; art. XVI, § 15; TEX. FAM. CODE §§ 3.63, 5.01). To interpret the decree as the Court does here is inconsistent with prevailing law at the time and gives effect to one isolated sentence over the construction of the decree as a whole and the trial court's clear characterization of the pension as community property.

The Court's holding also permits the trial court to effectuate a substantive change in the original decree's property division. Under the Texas Family Code, the court rendering a divorce decree retains the power to enforce property divisions. TEX. FAM. CODE § 9.002. Upon a finding that the original decree is insufficiently specific to be enforceable by contempt, "the court may render a clarifying order setting forth specific terms to enforce compliance with the original division of property." *Id.* § 9.008(b). A court may not, however, "amend, modify, alter, or change the division of property made or approved in the [original] decree." *Id.* § 9.007(a). Thus, if the original decree is unambiguous, as it is here, the district court is without authority to enter an order altering or modifying the original disposition of property. *Pierce v. Pierce*, 850 S.W.2d 675, 679 (Tex. App.—El Paso 1993, writ denied).

The Reisses' decree unambiguously awarded Gloria a fifty percent interest in the *community* portion of Edwin's retirement benefits. Thus, the district court was without authority to enter a QDRO altering that division. *See* TEX. FAM. CODE § 9.007. Accordingly, the appellate court correctly found that the district court erred by awarding Gloria a fifty percent interest in the entirety of Edwin's retirement benefits.

The Court holds that the Reisses' decree unambiguously awards Gloria an interest in the entirety of Edwin's retirement benefits. To reach this conclusion, it dismisses as irrelevant important differences between the decree in this case and the one in *Shanks*. Moreover, the Court improperly sanctions a substantive change in the decree's property division. I would hold that the decree, when read in its entirety, unambiguously awards Gloria fifty percent in only the community portion of Edwin's retirement benefits. Accordingly, I would affirm the courts of appeals' judgment. Because the Court does otherwise, I

respectfully dissent.

Wallace B. Jefferson
Justice

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