

No. 04-21-00289-CV

**In the Fourth Court of Appeals
San Antonio, Texas**

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MICHAEL A. CRUZ
Clerk

Kenneth Richard Griffith

v.

Martha Hightower Griffith

Appeal

**From the 216th Judicial District Court
Gillespie County, Texas**

No. 15087

Hon. Stephen B. Ables, Judge Presiding

**BRIEF OF APPELLEE
MARTHA HIGHTOWER GRIFFITH**

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Oral Argument Conditionally Requested

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STATEMENT REGARDING ORAL ARGUMENT

The facts and the law are not complicated. The appellate record fully supports the trial court's judgment. For these reasons, Appellee, Martha Hightower Reyes, does not believe oral argument would assist this Court's analysis or resolution of the dispute. Therefore, oral argument is not requested. However, if the Court decides to grant oral argument, Martha Hightower Reyes asks to be able to participate.

STATEMENT OF THE CASE

Martha Hightower Reyes (fka Martha Hightower Griffith) (hereinafter “Martha”) agrees with Kenneth Richard Griffith’s (hereinafter “Kenneth”) Statement of the Case for the most part, with the below elaboration and clarifications.

Martha and Kenneth were divorced in the Medina County Court at Law, Cause No. 09-01-5052-CCL, after a contested trial, and the Final Decree of Divorce was signed by the Honorable Vivian Torres on November 30, 2009. CR 66-92. Kenneth appealed the Final Decree of Divorce to this Court, Cause No. 04-10-00174-CV, and this Court issued an opinion affirming the trial court’s judgment on January 5, 2011 (*see Griffith v. Griffith*, 341 S.W.3d 43 (Tex. App.–San Antonio 2011, no pet.)). CR 125-141.

The underlying suit in this appeal began with Kenneth filing his Plaintiff’s Original Petition in the 216th District Court of Gillespie County, Texas, Cause No. 15087, on August 31, 2017, whereby he alleged Martha had failed and refused to discharge certain debts, and for civil conspiracy, and sought damages. CR 6-8. Martha, as a pro-se litigant, filed her Defendant’s Original Answer on November 29, 2017. CR 9. Much later, Kenneth dropped his civil conspiracy cause of action in his Plaintiff’s First Amended Original Petition, filed on September 12, 2018. CR 15-17. Martha filed her Defendant’s First Amended Answer and Counterclaim on May 13, 2019. CR 49-52. On May 19, 2020, Kenneth filed his Petitioner’s Second Amended

Petition for Enforcement of Property Division, where for the first time he repleaded his case as an action to enforce the Decree of Divorce, no longer seeking damages, but instead seeking a money judgment for alleged unpaid payments by Martha that were ordered in the parties' Final Decree of Divorce. CR 57-65. An Answer to Petition for Enforcement of Property Division by Contempt was filed by Martha on June 23, 2020. CR 93-94. Thereafter, Martha filed a Defendant's Second Amended and First Supplemental Answer and Counterclaim on January 29, 2021.

On March 29, 2021, Martha filed Defendant's Motion to Dismiss Petition for Enforcement, or in the Alternative, Motion to Transfer. CR 326-328. After a hearing conducted on April 6, 2021, an Order Dismissing Case was signed by the Honorable Stephen B. Ables, Judge Presiding over the 216th Judicial District Court, Gillespie County, Texas. CR 573-574.

Kenneth filed a Motion for New Trial, or in the Alternative, Motion to Modify, Correct, or Reform Judgment on May 3, 2021. CR 578-80. An Order Denying Motion for New Trial was signed on July 2, 2021. CR 636-37. This appeal ensued.

ISSUE PRESENTED

Issue One

The Trial Court did not err in dismissing Kenneth's enforcement suit because Kenneth sought to enforce the decree in the wrong court.

STATEMENT OF FACTS

Martha does not agree that Kenneth's Statement of Facts fairly sets out the facts of this case. Martha vehemently denies that she failed to meet her obligations under the Final Decree of Divorce. Martha supplies the following as her statement of facts.

Kenneth's and Martha's Final Decree of Divorce was signed by County Court-at-Law Judge, Vivian Torres, Medina County, Texas, on November 30, 2009. CR 66-92. The Final Decree of Divorce contained a division of the marital estate, and imposed certain obligations on the parties regarding the award of assets and debts, as ordered by Judge Torres. *Id.*

Following the entry of the decree, Kenneth filed an appeal in this Court complaining that: (1) the trial court erred in denying his special appearance; (2) the trial court erred in denying his plea in abatement; (3) the trial court erred in denying his motion to dismiss or, in the alternative, motion to stay proceedings under the doctrine of forum non conveniens; (4) the trial court erred in dividing property located in Texas and Florida; and (5) the trial court erred in refusing to exercise "partial jurisdiction." *Griffith*, 341 S.W.3d at 48. CR 125. This Court affirmed the trial court's judgment in all respects. *Id.* at 57. CR 141. As a result of the appeal, Martha had a judgment against Kenneth for \$35,000.00 in attorney's fees, plus interest. CR 142-43.

Kenneth failed to fulfill other obligations under the divorce decree, as well. On

August 25, 2010, this Court issued an Interlocutory Opinion on Appeal of Order Setting Security and issued an Order, affirming the trial court's order setting the amount of a supersedeas bond that Kenneth was obligated to tender at \$220,000.00. Kenneth never posted that bond. Upon Kenneth's unsuccessful appeal, this Court taxed the costs of the appeal against Kenneth (CR 142), and Martha filed an exhibit as part of her Defendant's Second Amended and First Supplemental Answer and Counterclaim on January 29, 2021 reflecting those fees, costs, and interest as of January 31, 2021 amounting to \$59,920.01. CR 143. This amount remains unpaid to this day.

On August 31, 2017, Kenneth filed an Original Petition in the 216th District Court of Gillespie County, Texas, alleging Martha had failed and refused to discharge certain debts, and for civil conspiracy claiming that Martha conspired to wrongfully and wilfully violate his rights in connection with the divorce proceeding, and sought damages. CR 6-8. Kenneth's Original Petition did not purport to be an enforcement action. It was not until May 19, 2020, after he changed lawyers, that Kenneth filed his Petitioner's Second Amended Petition for Enforcement of Property Division, transforming his tort and damage claims into an enforcement action, no longer seeking damages, but rather a money judgment for failure to make payments that were ordered in the parties' Final Decree of Divorce. CR 57-65. Although Kenneth contends that "both parties unquestionably incurred tens of thousands of dollars in

attorney’s fees and litigation expenses” pursuing the Gillespie County cause of action, this statement is not supported by the appellate record and should be stricken from Kenneth’s Brief or disregarded.

Judge Stephen B. Ables dismissed Kenneth’s cause of action for lack of subject-matter jurisdiction by Order dated April 23, 2021. CR 573-74. Kenneth’s subsequent Motion for New Trial was denied by the trial court on July 2, 2021. CR 636-37. On July 16, 2021, Kenneth filed a Notice of Appeal. CR 638-39.

SUMMARY OF THE ARGUMENT

Subject matter jurisdiction is an inherent element of a court’s power to decide a case, and the issue of whether subject matter jurisdiction exists can be raised at any time, including for the first time on appeal.

The Final Decree of Divorce that Kenneth is seeking to enforce resulted from the trial court’s rulings after a contested trial on the merits, and contains no agreements nor contractual obligations. While a Texas district court may have general jurisdiction to enforce contractual provisions of an agreement incident to divorce or an agreed decree of divorce, where a party wishes to seek decretal enforcement of a decree of divorce only the court that issued the judgment can enforce its own judgment.

ARGUMENT

I. Standard of Review

Subject matter jurisdiction is “essential to a court’s power to decide a case.” *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 553–54 (Tex.2000). A court acting without such power commits fundamental error that may be reviewed for the first time on appeal. *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443–44 (Tex.1993). Not only may a reviewing court assess jurisdiction for the first time on appeal, but all courts bear the affirmative obligation “to ascertain that subject matter jurisdiction exists regardless of whether the parties have questioned it.” *In re United Servs. Auto. Ass’n*, 307 S.W.3d 299, 306 (Tex. 2010) (quoting *Univ. of Tex. Sw. Med. Ctr. at Dall. v. Loutzenhiser*, 140 S.W.3d 351, 358 (Tex. 2004)). Subject matter jurisdiction presents a question of law that courts must review de novo. *Tex. Dep’t of Transp. v. A.P.I. Pipe & Supply, LLC*, 397 S.W.3d 162, 166 (Tex. 2013).

II. The Trial Court did not Err in Granting Martha’s Motion to Dismiss.

The Final Decree of Divorce that Kenneth is now seeking to enforce was signed by the Honorable Vivian Torres in her capacity as judge of the Medina County Court-at-Law, on November 30, 2009. CR 66-92. All of the property awards in the decree were the result of rulings made by Judge Torres after a two-day trial that took place over October 13 and 14, 2009. CR 66. It is important to note that no award of property in the decree was based on agreement or contractual rights.

Texas Family Code §§ 9.001 and 9.002 provides authority for a post-divorce enforcement action to be brought in the court that granted the divorce. According to

9.001, “a party affected by a decree of divorce... may request enforcement of that decree by filing a suit to enforce as provided by this chapter *in the court that rendered the decree.*” Tex. Fam. Code § 9.001(a) [emphasis added]. Continuing authority to enforce the decree is statutorily granted by 9.002, which states, “the court that rendered the decree of divorce or annulment retains the power to enforce the property division as provided by Chapter 7....” Tex. Fam. Code § 9.002.

The Texas Supreme Court has recognized that, “[u]nder the Family Code, the court that renders a divorce decree retains jurisdiction to clarify and enforce the property division within that decree.” *Pearson v. Fillingham*, 332 S.W.3d 361, 363 (Tex. 2011). This Court has similarly held that a trial court that renders a final decree of divorce retains continuing subject-matter jurisdiction to clarify and enforce the decree’s property division. *Seabron v. Seabron*, No. 04-12-00482-CV, 2013 WL 4685440, at *2 (Tex. App.—San Antonio Aug. 30, 2013, pet. denied) (mem. op.) citing Tex. Fam. Code §§ 9.002, 9.008, and *see also* § 9.006(a), (b) (providing that trial court has continuing jurisdiction to “render further orders to enforce the division of property made in the decree....”); *see Murray v. Murray*, 276 S.W.3d 138, 144 (Tex. App.—Fort Worth 2008, pet. disp’d) (holding that “a court that renders a divorce decree retains continuing subject-matter jurisdiction to clarify and to enforce the decree’s property division) (citing Tex. Fam. Code §§ 9.002, 9.008); *Johnson v. Ventling*, 132 S.W.3d 173, 178 (Tex. App.—Corpus Christi—Edinburg 2004, no pet.)

(stating that after expiration of plenary power, “a trial court retains its inherent power to clarify or enforce a divorce decree). And, there is no shortage of courts in other jurisdictions that are aligned. *See Marshall v. Priess*, 99 S.W.3d 150, 156 (Tex. App.–Houston [14th Dist.] 2002, no pet.) (“Under Texas Family Code section 9.002, the court rendering the decree of divorce retains the power to enforce the property division.”); *Haas v. Otto*, 392 S.W.3d 290, 292 (Tex. App.–Eastland 2012, no pet.) (“A trial court that renders a decree of divorce retains jurisdiction to clarify and enforce property divisions contained in that decree.”); *Perry v. Perry*, 512 S.W.3d 523, 527 (Tex. App.–Houston [1st Dist.] 2016, no pet.) (“Under the Family Code, the trial court that renders a divorce decree retains jurisdiction to clarify and to enforce the decree’s property division.”); *In re J.A.F.*, No. 09-15-00020-CV, at *4 (Tex. App.–Beaumont Mar. 23, 2017, no pet.) (mem. op.) (“A trial court does, however, retain continuing jurisdiction to render some further orders regarding a final decree of divorce. *See* Tex. Fam. Code Ann. §§ 9.002, 9.006 (West Supp. 2016), § 9.007 (West 2006). Such orders include those to ‘enforce the division of property....’”); *Chakrabarty v. Ganguly*, 573 S.W.3d 413, 417 (Tex. App.–Dallas May 2019, no pet.) (“Generally, the court that rendered the decree of divorce retains the power to enforce the property division contained therein.”).

III. The Case Law Kenneth Relies Upon in Support of his Position is Easily Distinguished.

Kenneth's argument that Texas Family Code §§ 9.001 and 9.002 do not vest exclusive jurisdiction in a divorce court to enforce its own decree is inherently flawed. Kenneth invokes cases that recognize that a party can seek enforcement of contractual provisions contained in an agreed divorce decree, and can seek contractual enforcement of an agreement incident to divorce, under the venue rules that apply to suits to enforce a contract. These cases are wholly inapplicable to this case, where there is no contract to enforce.

A. Chavez v. McNeely

Kenneth takes the position that section 9.001 of the Texas Family Code is permissive in nature because the word "may" is used, as opposed to the word "shall." The main case Kenneth relies upon is *Chavez v. McNeely*, 287 S.W.3d 840 (Tex. App.–Houston [1st Dist.] 2009, no pet.). In *Chavez*, the Houston [1st Dist.] Court identifies the main issue in the very first line of its opinion, stating: "[t]he issues presented by this case are (1) whether a district court has jurisdiction to construe a ***contract*** that is incorporated into an agreed, final divorce decree even though the court is not the same court that rendered the divorce judgment...." *Id.* at 842 [emphasis added]. Ultimately concluding that the non-rendering district court had jurisdiction to resolve the post-divorce contract issues contemplated, the Houston [1st Dist.] Court noted that, "[Appellee's] suit is a breach of contract action based upon an agreement incorporated into a final decree of divorce. A breach of contract action

to recover money damages invokes the general jurisdiction of the district court.” *Id.* at 845. In our case, the decree Kenneth seeks to enforce stemmed purely from a judicial ruling, with no agreed or contractual terms. Therefore *Chavez* does not apply.

While it is true that *Chavez* discusses the possible legislative intent of sections 9.001 and 9.002 of the Texas Family Code, its analysis is dicta to the extent it goes beyond contractual enforcement. The Houston [1st Dist.] Court states:

We begin by noting that the language of section 9.001 — “a party affected by a divorce decree . . . may request enforcement of that decree . . .” — is permissive in nature, not mandatory. Unless the legislature clearly intended otherwise, words used in statutes should be given their ordinary, reasonable meaning. *See Inwood N. Homeowners’ Ass’n, Inc. v. Meier*, 625 S.W.2d 742, 743 (Tex.Civ.App.-Houston [1st Dist.] 1981, no writ). The ordinary meaning of “shall” or “must” is of a mandatory effect, whereas the ordinary meaning of “may” is merely permissive in nature. *Id.*; *see also U.S. v. Rodgers*, 461 U.S. 677, 706, 103 S.Ct. 2132, 76 L.Ed.2d 236 (1983) (“The word ‘may,’ when used in a statute, usually implies some degree of discretion.”).

Secondly, had the Legislature intended that sections 9.001 and 9.002 provide exclusive jurisdiction, it could have done so by using clear statutory language, as it has done in other situations. See TEX. FAM. CODE ANN. § 9.101(a) (Vernon 2006) (“[T]he court that rendered a final decree of divorce . . . retains continuing, exclusive jurisdiction to render an enforceable qualified domestic relations order”); TEX. FAM. CODE ANN. § 155.002(a) (Vernon 2008) (“[A] court acquires continuing exclusive jurisdiction over the matter provided for by this title in connection with a child on the rendition of a final order.”).

Chavez, 287 S.W.3d at 844-45. *Chavez*’s assessment of 9.001 and 9.002 misses the forest for the trees. When construing a statute, courts look to the plain language to

determine the intent of the Legislature. *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006). Unambiguous statutory language text is determinative of legislative intent “unless enforcing the plain language of the statute as written would produce absurd results.” *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009). Thus, courts may consider the objective of the law and the consequences of a particular construction. *In re Christus Santa Rosa Health Sys.*, 492 S.W.3d 276, 280 (Tex. 2016) (orig. proceeding). In section 9.001, it would make no sense to say that a party “shall” request enforcement of a divorce decree in the court that issued the divorce because no party is *required* to seek enforcement. Rather, the statute simply establishes an enforcement claim, but provides that the action is for the issuing court to address. As a rule of construction of constitutions, ordinarily when the circumstances are specified under which a right is to be acquired, there is an implied prohibition against legislative power to either add to or withdraw from the circumstances specified. *Arnold v. Leonard*, 273 S.W. 799, 803 (Tex. 1925). The rule of implied exclusion applies in construing statutes the same as in interpreting constitutions. *Id.* Employing the rule of implied exclusion, the statute does not state that a party “may” file a suit to enforce in the issuing court, and a party “may” file in any other court of their choice. “Every word excluded from a statute must also be presumed to have been excluded for a purpose.” *Laidlaw Waste Sys. (Dallas), Inc. v. City of Wilmer*, 904 S.W.2d 656, 659 (Tex. 1995).

Assume for a moment that Kenneth’s application of *Chavez* is correct. Can Kenneth dispossess the Medina County Court of jurisdiction to enforce its own decree by filing first in Gillespie County, thereby invoking the principle of dominant jurisdiction? “The general common law rule in Texas is that the court in which suit is first filed acquires dominant jurisdiction to the exclusion of other coordinate courts.” *Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974). If so, then Kenneth can dispossess the Medina County Court of the jurisdiction granted in Sections 9.001 and 9.002 of the Texas Family Code. The Legislature cannot be understood to allow a party to negate the divorce court’s jurisdiction to enforce its own decree by the simple decision to seek enforcement of the decree in another court.

B. *Ishee v. Ishee*

Another case that Kenneth relies on is *Ishee v. Ishee*, No. 09-15-00197-CV, 2017 WL 2293150 (Tex. App.–Beaumont May 25, 2017, no pet.) (mem. op.). In *Ishee*, the Beaumont Court of Appeals reviewed whether the 284th Judicial District Court had jurisdiction to hear a breach of contract action and breach of fiduciary duties arising from a divorce decree rendered in the 418th Judicial District Court. *Id.* at *4. Utilizing the framework set forth in *Chavez v. McNeely*, the Beaumont Court noted that “[b]ecause [Appellee’s] claims concern contract rights awarded to her in the divorce decree, we conclude that the 284th District Court possessed jurisdiction over [Appellee’s] post-divorce claims even though her claims, in part, are based on the

terms of the decree.” *Id.* at 10. Here again, the holding of the case is that a breach of contract suit can be brought under venue rules applying to contract suits. That is wholly different from the suit brought by Kenneth. Any language in *Ishee* that goes beyond enforcement of a contractual right is dicta.

C. Dailey v. McAfee

Next, Kenneth returns to the Houston [1st Dist.] Court of Appeals by relying on *Dailey v. McAfee*, No. 01-18-01060-CV (Tex. App.–Houston [1st Dist.] Aug. 18, 2020, no pet.) (mem. op.). In *Dailey*, an appeal arising out of Probate Court No. 2, Harris County, the Houston [1st Dist.] Court explains its rationale of *Chavez v. McNeely* as follows:

In *Chavez*, this Court held that a district court in another county, which was not the court that rendered the decree, possessed jurisdiction over a post-divorce action to construe and enforce a party’s ***contract*** rights to property as set forth in the terms of the divorce decree. *See id.* We further held that Family Code section 9.001(a) is permissive in nature, that the language of sections 9.001 and 9.002 does not indicate that the Legislature intended to make the district court rendering the divorce decree a court of exclusive jurisdiction ***over post-divorce actions to enforce contract rights acquired under the decree***, and that breach of contract actions that rely on the decree invoke a district court’s powers of general jurisdiction to decide a dispute. *Id.* at 844-45.

Dailey, No. 01-18-01060-CV at *6 [emphasis added]. Through the *Dailey* opinion, the Houston [1st Dist.] Court clarifies the scope of its holding in *Chavez* by saying that sections 9.001 and 9.002 of the Texas Family Code do not limit the power of courts to litigate contract claims. Since Kenneth is not seeking to enforce a contract, the

three cases he cites have no application to our case.

Although not discussing them in detail, Kenneth asserts that the cases *Rubio v. Rubio*, No. 13-17-00682- CV (Tex. App.–Corpus Christi-Edinburg July 16, 2020, no pet.) (mem. op.), *Clogston v. Clogston*, No. 03-14-00479, 2015 WL 8591609 (Tex. App.–Austin Dec. 10, 2015, no pet.) (mem. op.), and *Byrd v. Vick, Camry & Smith, LLP*, 409 S.W.3d 772 (Tex. App.–Fort Worth 2013, rev’d sub nom.) also support his position. However, just like those cases above, they do not apply to our case which is not a contractual enforcement case.

D. *Rubio v. Rubio*

In *Rubio*, the opinion specifically states that the “parties agreed to the terms of the decree.” *Rubio*, No. 13-17-00682 at *2. The Corpus Christi-Edinburg Court further points out that “a court that renders a divorce decree retains continuing subject-matter jurisdiction to clarify and to enforce the decree’s property division.” *Id.* at 11, citing *Murray v. Murray*, 276 S.W.3d 138, 144 (Tex. App.–Fort Worth 2008, pet. dismiss’d) (citing Tex. Fam. Code §§ 9.002, 9.008); *Johnson v. Ventling*, 132 S.W.3d 173, 178 (Tex. App.–Corpus Christi-Edinburg 2004, no pet.) (citing *McGhee v. Epley*, 661 S.W.2d 924, 926 (Tex. 1983) (per curiam)). Kenneth attempts to widen the breadth of the *Rubio* opinion when he cites the passage, “[t]he divorce court’s continuing jurisdiction to enforce the property division is not exclusive, though; a court of general jurisdiction, like the court in this case, may enforce a party’s rights to

property that were acquired based on the terms of the decree,” but neglects to recognize the cite to *Chavez* and *Ishee*, and the fact that the “terms of the decree” in *Rubio* are in fact contractual. *Rubio*, 13-17-00682 at *11. Any language in *Rubio* is dicta as applied to the enforcement of a divorce decree with no contractual terms to enforce.

E. *Clogston v. Clogston*

The *Clogston* opinion is no different. Kenneth focuses on a footnote of this opinion to support his position, but overlooks the fact that the premise of the underlying suit is the enforcement of an *agreed* divorce decree. *Clogston*, No. 03-14-00479 at *1. In fact, the Austin Court of Appeals did not even address the jurisdictional issue in the body of its opinion, and instead concluded the trial court properly denied the Appellant’s petition because she failed to present any evidence to that would support her entitlement to relief. *Id.* at *3.

F. *Byrd v. Vick, Camry & Smith*

Lastly, Kenneth cites to another footnote in the *Byrd v. Vick, Camry & Smith, LLP* case citing to *Chavez*, in an effort to support his jurisdictional argument. *Byrd* recognizes that an agreed decree of divorce was signed by the 415th District Court of Parker County, but opines that “[a]lthough [Appellee] characterizes the suit as an enforcement action, appellants, by their claims, do not seek to enforce the provisions of the decree; rather, they seek damages based on alleged wrongful conduct by

[Appellee] during and after the divorce proceedings.” *Id.* at 774-76. The Forth Worth Court of Appeals ultimately holds that the trial court erred in dismissing the case because the Appellee’s claims “are not enforcement claims for which the divorce court has exclusive, continuing jurisdiction.” *Id.* at 776. The *Byrd* case in fact undermines Kenneth’s position, because the opinion clearly says that the divorce court has “exclusive, continuing jurisdiction” over decretal enforcement actions.

IV. Kenneth’s Interpretation of Martha’s Case Law Presented at the Hearing on the Motion to Dismiss is Misplaced.

During the hearing on the Motion to Dismiss, counsel for Martha presented two cases to the trial court in support of continuing jurisdiction for the rendering court in a non-contractual enforcement action: 1) *Beach v. Beach*, 912 S.W.2d 345 (Tex. App.–Houston [14th Dist.] 1995, no pet.), and 2) *Dechon v. Dechon*, 909 S.W.2d 950 (Tex. App.–El Paso 1995, no writ). RR 11: 15-21. Both of these cases recognize that the rendering court retains subject-matter jurisdiction over post-divorce enforcement actions.

Although Kenneth accurately states that the *Beach* opinion contemplates the propriety of filing a post-divorce intervention, he fails to fully assess the appellate court’s reasoning. In *Beach*, it was incumbent upon the Houston [14th Dist.] Court of Appeals to first decide whether the basis of the declaratory judgment was in fact an enforcement action. *Beach*, 912 S.W.2d at 347. The Court of Appeals noted that,

“[a]fter the rendition of a divorce decree, the trial court retains the power to enforce the property division.” *Id.* at 348. Furthermore, the Court of Appeals states that, “[a] court order or property division may be enforced by filing a motion in the court that rendered the decree...” *Id.* Despite the substance of the underlying lawsuit in *Beach* differing from the present case, the rationale of the Court of Appeals is no less significant. If the court that issued the divorce decree has continuing jurisdiction to enforce its decree, that jurisdiction cannot be negated by a party filing an enforcement proceeding in another court.

Similar omissions are made with regard to Kenneth’s assessment of the *Dechon* opinion. While in *Dechon*, the appellant’s underlying issue was a personal jurisdiction complaint, nonetheless, the El Paso Court of Appeals analyzed personal jurisdiction and subject-matter jurisdiction in tandem. *Dechon*, 909 S.W.2d at 952, 955. According to the Court of Appeals in *Dechon*, “[a] trial court has inherent power to clarify or enforce its previously entered decree,” and “[s]uch jurisdiction encompasses both subject-matter jurisdiction to adjudicate the dispute and personal jurisdiction over the parties originally affected by the decree.” *Id.* at 955. As it applies to the present case, this logic undermines Kenneth’s claim.

V. The Trial Court’s Dismissal was not a Departure from Every Other Case Interpreting and Addressing Subject Matter Jurisdiction for Section 9 Enforcement Claims.

Kenneth’s assertion that the trial court’s dismissal was a departure from every

other case interpreting and addressing subject matter jurisdiction for section 9 enforcement claims is simply wrong. Every case that Kenneth relies upon to support his position regarding subject-matter jurisdiction for section 9 enforcement claims was built on the foundation of a claim for breach of contract, which is not involved in the present case. In contrast, Martha has cited multiple cases including the Texas Supreme Court and this Court, that are enforcement actions based on judicially rendered terms. Without question, the trial court acted properly in dismissing Kenneth's enforcement action for lack of subject-matter jurisdiction.

CONCLUSION AND PRAYER

For these reasons, Appellee, Martha Hightower Reyes, respectfully asks this Court to affirm the trial court's judgment in its entirety. Martha also respectfully asks the Court for any further relief to which she may be entitled in law or equity.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true copy of this Appellee's Brief was served in accordance with rule 9.5 of the Texas Rules of Appellate Procedure on Appellant's lead counsel as follows:

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