

Affirmed and Memorandum Opinion filed June 24, 2010.



In The

Fourteenth Court of Appeals

NO. 14-09-00012-CV

RICKEY B. TAYLOR, Appellant

V.

KATRINA TAYLOR, Appellee

**On Appeal from the 506th District Court
Grimes County, Texas
Trial Court Cause No. 2353**

MEMORANDUM OPINION

This appeal arises from a final divorce decree in which the husband challenges the trial court's property division as well as its award of a community-estate reimbursement from the husband's separate estate for funds expended to discharge all or part of a liability secured by a lien on the husband's separate, real property. The husband also argues that the trial court erred in failing to offset the reimbursement. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant Rickey B. Taylor and appellee Katrina Taylor were married in 1998. Prior to their marriage, Rickey paid \$2,500 to enter into a lease agreement with an option

to purchase a home. Although the parties agree that Katrina gave Rickey the money for the lease, the parties testified that the lease was in Rickey's name only.

The following year, after Rickey and Katrina were married, Rickey exercised the purchase option. A deed was executed in Rickey's name, and Rickey assumed payments on the home. In 2001, Rickey and Katrina took out a home equity loan for \$71,990.62. Katrina testified that at the time Rickey entered into the lease-purchase agreement, the home was valued at \$71,000.

In February 2005, Rickey was incarcerated on charges of sexual misconduct involving Katrina's daughter. Katrina testified that she continued to live in the home and paid the monthly expenses associated with upkeep of the home in order to avoid foreclosure. These expenses, when tallied, amounted to roughly \$737 each month. Rickey confirmed that since his incarceration, he had not contributed to any payments for the home nor had he used the home.

Rickey filed for divorce in December 2005; Katrina filed a counter-petition for divorce. At trial, Rickey asked the court to award him all of the equity in the home and to award the property to him as separate property. Katrina asked for the trial court to determine that the home was community property with reimbursement or economic contribution to the community for Katrina's upkeep of the home during Rickey's incarceration.

At the conclusion of trial, the court found that the home was Rickey's separate property. The trial court awarded Katrina a contribution allowance of \$425 for each month from February 2005, when Rickey was incarcerated, to May 2008, the time of trial. On this basis, the trial court awarded Katrina an equitable lien against Rickey's separate property at \$425 per month for a period of three years and three months. The trial court ruled that Katrina could continue to reside in the home for six additional months as long as she maintained the home. The trial court awarded Katrina \$425 for

each month she continued to live in the home until the home was sold or she moved from the premises.

The trial court entered a final divorce decree, holding Rickey liable for the balance due on the home equity loan. The trial court found that the community estate was entitled to reimbursement from Rickey's separate estate for funds expended to discharge all or part of a liability secured by the lien on Rickey's separate property, the home, and awarded Katrina a judgment of \$19,550 against Rickey for reimbursement to the community estate. To secure the payment of the judgment, the trial court granted Katrina an equitable lien on the home until the judgment was paid in full.

In a supplemental record, the trial court filed findings of fact and conclusions of law. The trial court found that (1) the home is Rickey's separate property, (2) the home equity loan was a community debt, and (3) community funds were expended to pay Rickey's separate property obligation, for which the community should be reimbursed. The trial court also found that the balance due on the home equity loan at the time of trial was \$63,996.75.

Rickey challenges the trial court's award to Katrina, claiming that the trial court erred in awarding reimbursement to the community estate from Rickey's separate estate because there is no evidence of enhancement value. Rickey also claims that the trial court did not offset the reimbursement award for the benefits actually received by the community estate and that the trial court erred in awarding Katrina over one hundred percent of the assets of the community estate in awarding Katrina \$19,550.

II. ANALYSIS

A. The Trial Court's Findings of Fact and Conclusions of Law

As a preliminary matter, we address Rickey's fourth issue in which he asserts harmful error from the trial court's failure to file findings of fact and conclusions of law pertaining to the trial court's division of community property. This court abated Rickey's

appeal and directed the trial court to correct its error. Thereafter, the trial court provided its findings of fact and conclusions of law and additional findings and conclusions in a supplemental clerk's record. Therefore, Rickey's fourth issue is now moot.

B. Division of Property

In his third issue, Rickey argues that the trial court abused its discretion in its division of the property, characterizing the division as awarding over one hundred percent of the net assets of the community estate to Katrina. According to Rickey, the trial court awarded him a value of \$3,075.00 in personalty and ordered him to pay the entire balance due on the home equity loan (\$63,996.75), but awarded Katrina a value of \$9,900 in personalty in addition to the entirety of the community-reimbursement claim for \$19,550. Rickey does not contest the personalty awarded to each party. According to Rickey, \$45,000 of the home equity loan was used to pay the purchase money debt on the home, requiring him to pay over \$18,996.75 in community debt. According to Rickey's calculations, Katrina received a net total of \$29,450 in community assets, which he characterizes as over one hundred percent of the community estate, and he claims to have received negative \$15,921.75.

In a divorce decree, the trial court "shall order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage." TEX. FAM. CODE ANN. § 7.001 (Vernon 2006). The trial court has broad discretion in dividing the estate of the parties; we review a trial court's division for an abuse of discretion. *Murff v. Murff*, 615 S.W.2d 696, 698 (Tex. 1981). We presume the trial court did not abuse its discretion in dividing the estate, and we will not disturb the division on appeal unless the appellant demonstrates a clear abuse of discretion. *Id.*

The test for abuse of discretion is whether the trial court acted arbitrarily or unreasonably, or whether it acted without reference to any guiding rules or principles. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990); *Knight v. Knight*, 301 S.W.3d

723, 728 (Tex. App.—Houston [14th Dist.] 2009, no pet.). The trial court’s ultimate division need not be equal, so long as it is equitable and so long as the court has some reasonable basis for an unequal division of the property. See *Robles v. Robles*, 965 S.W.2d 605, 621 (Tex. App.—Houston [1st Dist.] 1998, pet. ref’d); *Zeiba v. Martin*, 928 S.W.2d 782, 790 (Tex. App.—Houston [14th Dist.] 1996, no writ) (op. on reh’g). A trial court does not abuse its discretion if the trial court bases its decision on conflicting evidence or when there exists some evidence of a substantial and probative character to support the trial court’s division. *Zeiba*, 928 S.W.2d at 787. Under the abuse-of-discretion standards, the legal and factual sufficiency of the evidence are not independent grounds for error, but are merely relevant factors in assessing whether the trial court abused its discretion. *Knight*, 301 S.W.3d at 728.

Rickey offered an exhibit at trial pertaining to his proposed property division. That exhibit is not included in the record before this court; however, Rickey testified to the value of many items on the list. Katrina testified that she did not assign value to any items listed in her proposed property division offered at trial, but she testified that she did not contest the values of the items in Rickey’s list except for the home. Likewise, Katrina’s proposed property division is not included in this record. The trial court’s findings indicate that the property division was disproportionate based on the parties’ conduct. The trial court had evidence and testimony that Katrina paid for the home, expenses for the home, and property taxes with money taken from her 401(k) account and sold items including motorcycles to make payments on the home during the entire time Rickey was incarcerated. It is undisputed that from the time of Rickey’s incarceration until the time of trial, Rickey had not contributed any money towards the monthly house payment, insurance, or taxes associated with the home.

The trial court’s findings indicate that the trial court ordered a disproportionate division of property because of the conduct of the parties. In its additional conclusions of law, the trial court indicated that Rickey was at fault for the dissolution of the marriage as

a result of his conviction for sexual assault against Katrina's child. In an appeal from a bench trial, we review de novo the trial court's conclusions of law as legal questions and will uphold them on appeal if the judgment can be sustained on any legal theory supported by the evidence. *See BMC Software Belgium v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002). When, as in this case, the appellate record contains a complete reporter's record, we review the trial court's findings of fact under the same standards for legal and factual sufficiency that govern our review of jury's findings. *See Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994); *CA Partners v. Spears*, 274 S.W.3d 51, 69 (Tex. App.—Houston [14th Dist.] 2008, pet. denied). If there is more than a scintilla of fact supporting a finding of fact, we will overrule a legal-sufficiency challenge. *CA Partners*, 274 S.W.3d at 69. In reviewing a factual-sufficiency challenge, we consider all evidence and set aside a finding only if it is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. *Id.*

In exercising its discretion, the trial court may consider many factors including a spouse's fault, the disparity of incomes or of earning capacities, the spouses' capacities and abilities, benefits which the party-not-at-fault would have derived from continuation of the marriage, business opportunities, education, relative physical conditions, relative financial conditions and obligations, disparity of ages, size of separate estates, and the nature of the property. *Murff*, 615 S.W.2d at 698–99. The trial court did not abuse its discretion in considering Rickey's incarceration as contributing to his fault in the dissolution of his marriage. *See id.* The trial court did not abuse its discretion in considering Rickey's conduct in failing to contribute to the expenses associated with his home and Katrina's efforts to maintain payments on the home during his incarceration. *See id.* Likewise, although Rickey states that Katrina was awarded over one hundred percent of the community assets, the trial court did not award Katrina any ownership interest in, or future benefits from, Rickey's separate property (the home) for which some of the community funds were expended during his incarceration. *See Hailey v. Hailey*, 176 S.W.3d 374, 383 (Tex. App.—Houston [1st Dist.] 2004, no pet.) (rejecting similar

complaint on the basis that wife who received more community assets also received the community estate's considerable debt). Rickey has not demonstrated that the trial court's evaluation of the evidence resulted in an abuse of discretion as required to overturn its property division. *See Murff*, 615 S.W.2d at 698–99. Given the wide latitude and discretion vested in the trial court, we cannot conclude on this record that the trial court abused its discretion in dividing the community estate. We therefore overrule Rickey's third issue.

C. Reimbursement to the Community Estate and Offset for Reimbursement

In his first issue, Rickey asserts the trial court erred in requiring him to reimburse the community estate for \$19,550 when he claims there is no evidence to support that his separate property has received any benefit or enhancement from the community estate. In his second issue, Rickey claims the trial court erred in failing to offset the reimbursement by the benefits Katrina actually received.

The trial court entered findings indicating that the community estate was entitled to reimbursement from Rickey's separate estate for funds expended to discharge all or part of the community liability home equity loan secured by a lien on Rickey's separate property. To satisfy the disproportionate division of the community estate in favor of Katrina and to reimburse the community estate, the trial court awarded an equitable lien in favor of Katrina against Rickey's home in the amount of \$19,550.

Reimbursement is an equitable right that arises when the funds or assets of one estate are used to benefit and enhance another estate without itself receiving some benefit. *Vallone v. Vallone*, 644 S.W.2d 455, 458–59 (Tex. 1982). A party may bring a claim for reimbursement of payments by one marital estate to satisfy unsecured debt liabilities of another marital estate. TEX. FAM. CODE ANN. § 3.408(b)(1) (Vernon 2006). The party claiming the right of reimbursement has the burden of pleading and proving that the expenditures were made and that they are reimbursable. *Vallone*, 644 S.W.2d at 458–59. The burden also includes the responsibility to prove the offsetting benefits to the

payor estate. *Zieba*, 928 S.W.2d at 788. “[T]he payment by one marital estate of the debt of another creates a prima facie right of reimbursement.” *Penick v. Penick*, 783 S.W.2d 194, 196 (Tex. 1988).

The trial court shall determine the rights of the parties in a claim for reimbursement and apply equitable principles to determine whether to recognize the claim after considering the parties’ relative circumstances and, in appropriate circumstances, order a division of the claim for reimbursement in a manner that is just and right. TEX. FAM. CODE ANN. § 7.007(b)(1), (2) (Vernon 2009); see *Hailey*, 176 S.W.3d at 384–85. Reimbursement is within the trial court’s discretion, but is not available as a matter of law. *Vallone*, 644 S.W.2d at 459. The discretion to be exercised in evaluating a claim for reimbursement is equally as broad as the discretion exercised in making a just and right division of the community estate. *Penick*, 783 S.W.2d at 198. If there is some evidence of substantial and probative character to support the trial court’s award, an abuse of discretion does not occur. *Zieba*, 928 S.W.2d at 787.

Enhancement value is the measure of reimbursement whether the situation involves payment on behalf of an estate, as in this case, or a capital improvement to an estate. See *Penick*, 783 S.W.2d at 197; *Zieba*, 928 S.W.2d at 788. A claim for reimbursement may be offset as the trial court deems appropriate by considering the benefits and detriments to each estate. *Gutierrez v. Gutierrez*, 791 S.W.2d 659, 663 (Tex. App.—San Antonio 1990, no writ). In evaluating the merits of a claim for reimbursement, a trial court should consider all the facts and circumstances to arrive at a determination that is fair, just, and equitable. See *Penick*, 783 S.W.2d at 197; *Hailey*, 176 S.W.3d at 384. A trial court may not simply return to the contributing estate the actual amount advanced without regard to the benefits received. See *Penick*, 783 S.W.2d at 197. Likewise, the court must ensure that the benefitted estate is not required to pay more in reimbursement than the amount by which it benefitted. See *Gutierrez*, 791 S.W.2d at 663.

The record reflects that for a period of three years and three months following Rickey's incarceration, Katrina paid \$515.25 for the home equity loan and \$80.00 for home insurance on a monthly basis. Katrina also paid annual taxes of approximately \$1,600 to \$1,700 during this time. It is undisputed that, when tallied, these expenses for the home totaled about \$737 each month. Katrina testified that she made these payments on the home and paid property taxes with money taken from her 401(k) account and sold items to maintain payments on the home when Rickey was incarcerated. It is undisputed that Rickey did not make any payments towards the home during his incarceration. The trial court awarded Katrina \$425 for the 39-month period of Rickey's incarceration through the trial and awarded \$425 for an additional six months until Katrina moved or the home was sold. Because reimbursement is an equitable remedy within the trial court's discretion, sufficient evidence exists to support the reimbursement award to Katrina. *See Vallone*, 644 S.W.2d at 459. On this basis, Rickey has not demonstrated that the trial court abused its discretion or that the reimbursement to Katrina was unjust. *See Penick*, 783 S.W.2d at 197 (providing that enhancement value may be measured by one estate's payment on another estate); *Hailey*, 176 S.W.3d at 385. We overrule Rickey's first issue.

Rickey also asserts that the trial court failed to offset the reimbursement to Katrina by the benefits Katrina actually received. He refers to the fact that Katrina paid roughly \$737 each month for home-related expenses, but that she would have paid \$600 had she rented a different home. According to Rickey's calculations, based on an offset and these facts, Katrina should have received only \$137 for each month for her reimbursement claim. Presuming that Rickey requested an offset, the evidence suggests that the trial court did not abuse its discretion in its award to Katrina. *See Hailey*, 176 S.W.3d at 384 (providing that a trial court is required to consider offsetting benefits when a party requests such relief); *Gutierrez*, 791 S.W.2d at 663.

The trial court's findings of fact and conclusions of law do not specifically mention offsets, but the trial court addressed reimbursement to the community estate. Therefore, we may infer omitted findings in support of the trial court's judgment. *See* TEX. R. CIV. P. 299; *Hailey*, 176 S.W.3d at 384. The trial court entered the following findings:

- The monthly payment for the home equity loan was \$515.25.
- The monthly cost of homeowner's insurance on the home was approximately \$80.
- Ad valorem taxes on the home were no more than \$1,700 each year.

The trial court did not award Katrina these same figures for reimbursement. *See Penick*, 783 S.W.2d at 197 (rejecting notion that reimbursement involves balancing out ledgers). Instead, the trial court ordered reimbursement of \$425 to the community estate for each month during the same 39-month period and additionally awarded Katrina \$425 each month for an additional six months until the home was sold or she moved. It is not clear how the trial court determined the reimbursement amount; however, it is clear that the trial court reasonably concluded that there was some offsetting benefit to Rickey. *See Zieba*, 928 S.W.2d at 788. After considering the facts and the parties' circumstances, the trial court could have determined that the reimbursement awarded to Katrina was fair, just, and equitable. *See Hailey*, 176 S.W.3d at 387; *Zieba*, 928 S.W.2d at 788 (overruling claim to reverse reimbursement). We therefore overrule Rickey's second issue.

Having overruled each of Rickey's live issues on appeal, we affirm the trial court's judgment.

/s/ **Kem Thompson Frost**
 Justice

Panel consists of Justices Frost, Boyce, and Sullivan.