In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-09-00430-CV

MELANIE BROOKS-KHAMISA, Appellant

V.

MINAZ KHAMISA, Appellee

On Appeal from the County Court at Law No. 4
Montgomery County, Texas
Trial Cause No. 07-09-09206-CV

MEMORANDUM OPINION

Melanie Brooks-Khamisa appeals from a divorce decree that the trial court signed on August 21, 2009. Appellant and appellee were married on September 21, 1991. There are two children from the marriage, one a minor when the divorce was granted. We affirm the judgment of the trial court.

Issue one contends the trial court erred in entering a divorce decree that is contrary to the trial court's oral pronouncement of the judgment. "If the written order does not comport with the judgment rendered, the parties are entitled to have the order reformed to

accurately reflect the action taken by the trial court." *Stallworth v. Stallworth*, 201 S.W.3d 338, 349 (Tex. App.—Dallas 2006, no pet.). A timely-filed motion to modify the judgment will preserve the error for appellate review. *In re Estate of Bendtsen*, 230 S.W.3d 823, 831 (Tex. App.—Dallas 2007, pet. denied). While the trial court maintains plenary power over the case, the trial court may modify its judgment and we review such modification for an abuse of discretion. *Stallworth*, 201 S.W.3d at 349*; Cook v. Cook*, 888 S.W.2d 130, 131-32 (Tex. App.—Corpus Christi 1994, no writ).

Appellant argues that the decree fails to address her portion of the proceeds from the sale of the Calgary house, which she argues were expended by the community. Appellee testified that he bought the house in 1987, prior to their marriage. During the marriage, the Khamisas continued to make mortgage payments on the property and sold the house in 1994 when appellee was transferred to Norway. The proceeds from the sale were deposited in a Royal Bank of Canada account and were immediately invested. In pronouncing the judgment, the trial court confirmed the proceeds from the Calgary house as appellee's separate property subject to reimbursement to the community for reduction of the principal paid during the marriage and the interest income from the proceeds. The trial court stated that it had accounted for the reimbursement in the division of the Khamisas' main account, which included separate property and community property and from which funds had been withdrawn and disbursed into other accounts. The judgment confirms one of the accounts as appellee's separate property and divides the other

accounts between the parties. Accordingly, any separate property interest recognized in the division of the accounts included a community reimbursement that was reflected in the award of the other accounts at the same financial institution. The record does not support appellant's argument that the decree varies from the oral rendition of the judgment.

Appellant also argues that the decree failed to provide for a mediated stipulation pertaining to visitation between the parties' son and appellee. A trial court generally has no discretion to vary from the terms of a mediated settlement agreement. *See Garcia-Udall v. Udall*, 141 S.W.3d 323, 330-32 (Tex. App.—Dallas 2004, no pet.). According to appellant, the mediated agreement provided that their son would determine if visitation would occur. The partial mediated settlement agreement included a statement that "Father shall have the following visitation with [the son]" but the final version of the agreement excised the following language, that "if [the son] tells his father and his mother that he wishes to have the following times shortened or otherwise modified, father shall respect [the son's] wishes." Because the language on which she relies was not included in the mediated settlement agreement that was signed by the parties, appellant has not shown a material deviation between the final decree and the terms of the mediated visitation. *See Haynes v. Haynes*, 180 S.W.3d 927, 930 (Tex. App.—Dallas 2006, no pet.) (The trial court does not abuse its discretion when the decree implements and effectuates the agreed terms of the settlement agreement.). We overrule issue one.

Issue two contends the decree is not a just and right division of the community estate. Appellant suggests that a divorce on fault grounds would have been appropriate. She also argues that appellee failed to present sufficient evidence to support an unequal division of community assets, that appellee failed to meet his burden of proof on his alleged separate property, and that the trial court improperly awarded to her assets that were disposed of prior to entry of the divorce.

The trial court may consider fault in dividing the community property, but it is not required to do so. *Young v. Young*, 609 S.W.2d 758, 762 (Tex. 1980). Both spouses alleged the marriage had become insupportable and requested that fault be considered in making the property division. The trial court granted the divorce on grounds of insupportability. In pronouncing judgment, the trial court noted that it had considered both parties' complaints of the other spouse's fault in the breakup of the marriage, along with the needs of the children in the future and the wasting of community assets. Appellant has not shown that the trial court abused its discretion.

The presumption that property possessed by a spouse at the time of dissolution of the marital estate is community property must be overcome by clear and convincing evidence. *See* Tex. Fam. Code Ann. § 3.003 (West 2006). Appellant does not identify the particular property that she claims appellee failed to prove was his separate property. The divorce decree identifies eighteen items of property that the trial court confirmed were appellee's separate property. They include stock shares that appellee testified he

owned prior to the marriage, a mutual fund account appellee testified was established by a gift from his parents, and the portion of the pension plan that appellee owned before the marriage. *See generally* Tex. Const. art. XVI, § 15 ("All property, both real and personal, of a spouse owned or claimed before marriage, and that acquired afterward by gift, devise or descent, shall be the separate property of that spouse[.]"). Appellant does not identify any evidence in the record that contradicts appellee's testimony. *See Burgess v. Burgess*, No. 09-06-301 CV, 2007 WL 1501117, at *7 (Tex. App.—Beaumont May 24, 2007, no pet.) (mem. op.) ("A spouse's uncorroborated and uncontradicted testimony is sufficient to constitute clear and convincing evidence.").

Appellant admitted that she removed over $240,000 out of two community accounts prior to the time of trial. Before trial, the court ordered the parties to account for the funds. At trial appellant stipulated that she transferred the money out of the two accounts. Appellant testified at the time of trial $30,000 to $40,000 remained out of the community funds she took. The trial court found that appellant failed to comply with the trial court's order to produce documents to verify the use of the funds and at final trial placed the sum of $240,000 on her side of the property division as a waste of community assets. Appellant does not identify any evidence that contradicts the trial court's finding. Waste of the assets of the community estate is a factor that the trial court may consider in the division of the community estate. *Schlueter v. Schlueter*, 975 S.W.2d 584, 589 (Tex. 1998). Appellant has not shown that the trial court decreed an unjust division of the

marital estate for any of the reasons mentioned in appellant's argument under this issue. We overrule issue two.

Issue three contends the trial court erred in confirming items of property as appellee's separate property. In its decree the trial court confirmed eighteen items as appellee's separate property. Appellant's brief on issue three does not specifically address any of these items of property. Instead, she primarily refers to testimony regarding the 1994 sale of the Calgary home, which appellee owned prior to the marriage.

To overcome the community property presumption, the evidence must be such that the trier of fact could form a firm belief or conviction that the property is separate. *Garza v. Garza*, 217 S.W.3d 538, 548 (Tex. App.—San Antonio 2006, no pet.). Separate property may be ascertained by establishing the time and means by which the spouse originally obtained the property. *Id.* The party claiming certain property as separate property may rebut the community property presumption by tracing. *See McKinley v. McKinley*, 496 S.W.2d 540, 543 (Tex. 1973). Separate property retains its character through a series of exchanges if the asset on hand during the marriage can be traced to property that by virtue of the time and manner of its acquisition is separate in character. *Nelson v. Nelson*, 193 S.W.3d 624, 630-31 (Tex. App.—Eastland 2006, no pet.).

At trial, appellant conceded that appellee once owned a home in Calgary that was his separate property, which was sold in 1994 when the Khamisas moved to Norway. Appellee testified that he placed the proceeds from the sale into a Royal Bank of Canada

account, that the funds were moved to a guaranteed investment certificate security account, or GIC, and that the funds remained in the account and rolled over into new certificates until appellant removed funds from two investment accounts at Royal Bank of Canada. In September 2007 appellant withdrew $139,208.08 from one account, leaving a balance of $137,292.43, and over $102,000 out of another account. Appellant stipulated that she removed half of the funds from these accounts. The trial court ordered the parties to account for the funds withdrawn from the accounts. When appellant failed to account for the funds, the trial court made an express finding that she had wasted the community assets.

Appellant refers the Court to testimony from a personal friend who assisted appellant in the pre-trial preparation of the suit for divorce. This assistant testified as a fact witness.[1] The witness prepared appellant's inventory, was involved in document production, and spent a month working on appellant's reply to appellee's motion for sanctions for appellant's spoliation of documents concerning appellee's separate property. Appellee called the assistant as an adverse witness for the purpose of establishing the alleged spoliation. Although he demonstrated some familiarity with the storage of the Khamisas' financial records and their production to appellee, the assistant demonstrated no personal knowledge of the Khamisas' finances. He testified that he had reviewed the documents that appellee had produced in the divorce action. The witness

[1] At the time of the trial, the witness was suspended from the practice of law in the State of Arizona. He is not licensed to practice law in Texas.

stated that "it's a matter of interpretation" that appellee stated that appellee received $128,800 as a result of the sale of the home and immediately deposited that sum in an investment certificate that has grown to $280,000. The witness stated that he secured documentation showing that appellee sold the house for $145,600, and that during the marriage the house had two liens totaling $101,000. According to the witness, "[a]t the time [appellee] sold the house, his equity could not have been what he has represented to the Court that it is." The witness stated that appellee's December 2008 inventory stated that as of September 21, 1991, the balance of a particular Scotia McLeod account was approximately $130,000 and represented proceeds from the sale of a residence prior to marriage.[2] A document in appellant's response to appellee's motion for sanctions was the third page of a three page statement for that account. The statement showed that the security positions in the account as of February 22, 1994, were "122" "Mobil Corp" with a market price of $107.521 for a market value of "$13,194." The witness expressed his opinion that this meant that the account "is not an account that is set up to take a deposit of any funds." He had never seen the first two pages of the statement and was not aware of what information may have been contained on those pages. He did not see any statements for that account that pre-dated the exhibit in question.

The record contains other evidence concerning the sale of appellee's home in Calgary. A land title certificate stated a consideration of $135,000 for the property, a

[2] Appellee's amended inventories state that the Scotia McLeod account held stock purchased prior to the marriage and do not trace the proceeds from the sale of the Calgary house into a Scotia McLeod account.

$76,250 first mortgage, and a $25,000 second mortgage. The certificate shows that the second mortgage was discharged on August 28, 1992, the first mortgage was discharged on November 23, 1994, with a new mortgage to Pegasus Savings and Credit Union, and title transferred on December 21, 1994. A document dated June 1990, prior to his marriage to appellant, stated that appellee was paying $11,205 per year on the first mortgage and $5,000 per year on an interest-free loan from his employer. According to appellee, at the time of the marriage $5,000 remained to be paid on the five-year note secured by the second mortgage. An income tax checklist for 1994 stated that the Calgary home was purchased in August 1987 for $137,500 and sold in December 1994 for $145,600. A Pegasus Saving and Credit Union promissory note dated October 17, 1994, showed a loan amount of $13,000 secured by the house. A promissory note dated November 17, 1994 added $3,000 to the $13,000 secured note. Appellee testified the sum of the two notes represented the payoff of the balance due on the first mortgage. A Royal Bank of Canada statement showed that $128,941.94 was deposited on December 22, 1994. Appellee testified that this deposit, made the day after closing, was a deposit of the proceeds from the sale of the home. The documentary evidence corroborates appellee's testimony. *See Pace v. Pace*, 160 S.W.3d 706, 714 (Tex. App.—Dallas 2005, pet. denied); *Newland v. Newland*, 529 S.W.2d 105, 107-09 (Tex. Civ. App.—Fort Worth 1975, writ dism'd).

Appellant provides no argument to explain how the assistant's testimony shows that appellee failed to trace his separate property into assets held by the Royal Bank of Canada. Appellant also fails to explain the impact of this testimony on the justness of the property division. The divorce decree does not mention the proceeds of the sale of the Calgary house in the confirmation of appellee's separate property, and appellant does not argue that any of the accounts confirmed as appellee's separate property represented those proceeds. Appellee's counsel argued that the funds from the Calgary house had been deposited into one of the two Royal Bank of Canada accounts from which appellant withdrew approximately $240,000 prior to trial. Appellee withdrew the remaining funds and deposited those funds into a third Royal Bank of Canada account that the decree confirmed as appellee's separate property. Appellee's counsel argued that the funds in the third account should be confirmed as separate property because appellant was guilty of spoliation of documents and waste of community assets. In pronouncing judgment, the trial court noted that it considered both appellee's claim of separate property and appellant's claim for community reimbursement in dividing the community property, but the trial court's ruling on the division of the funds in the third account with the Royal Bank of Canada was based in part upon appellant's waste of the community assets she had taken from the first two accounts. The trial court awarded appellant approximately $240,000 in funds reflecting the amount she had withdrawn from the two Royal Bank of Canada accounts, and awarded appellee the $283,795.95 from the third Royal Bank of

Canada account. Although the trial court confirmed the third account as separate property, it is evident from the trial court's comments that the account included an award of $240,000 taken out of the community estate from the first two accounts. Assuming the trial court erred in confirming the entire account as appellee's separate property because appellee failed to establish that he held the account prior to the marriage, the characterization had no discernable effect on the trial court's just and right division of the property because the trial court intentionally divided the Royal Bank of Canada accounts as though they had been community assets. *See Graves v. Tomlinson*, 329 S.W.3d 128, 153-54 (Tex. App.—Houston [14th Dist.] 2010, pet. filed) (If the trial court characterizes community property as separate property, the mischaracterization is harmful if the property is excluded from the community property division and it has a value that would have affected the trial court's just and right division.). A reasonable inference can be drawn from the record that any discrepancy in the present value of the accounts awarded to appellant and appellee is due to appellant's waste of the community estate, not to appellee's claim of separate property.

The testimony set forth in appellant's brief refers to evidence in the record concerning two other assets. One asset is an account called "Pegasus" that appellant's assistant testified was owned by appellee prior to the marriage. The trial court confirmed an account with Pegasus Savings and Credit Union as appellee's separate property. The other asset is appellee's interest in his employer's pension fund. The parties stipulated to

their respective interest in the pension plan. As to these two assets, appellant has not directed this Court's attention to any evidence in the record that would support an argument that the trial court mischaracterized community property as the separate property of appellee. We overrule issue three.

Issue four contends the trial court erred in awarding appellant funds that had been expended prior to trial. The trial court ordered the parties to account for the approximate sum of $240,000 withdrawn from the Royal Bank of Canada. The trial court ordered appellant to provide "statements of account reflecting account balances and withdrawals, all canceled checks reflecting all expenditures from the account and any other document necessary to prove that the money was spent on a legitimate community expense, including but not limited to credit card statements." The record contains a brief list of expenditures, but in her brief, appellant concedes that the expenses she incurred prior to trial were not properly brought to the attention of the court. At trial, appellant testified that she had been paying as much as $1,000 per month for their son's counseling and that she had been paying all of their son's expenses, including all of the expenses for a trip to Europe. Appellant testified that her monthly expenses would run at least $5,000 to $7,000. Appellant also paid substantial sums for legal services, including $70,000 that she paid to her assistant to work as a "paralegal" to assist her attorneys with preparation of documents, research, and consultation, and approximately $50,000 to four different lawyers, each of whom withdrew prior to trial. But she failed to document her

expenditures as she had been ordered to do by the trial court. The trial court's order warned the parties that a failure to produce documents to verify the use of the funds on legitimate community expenditures would result in the unverified amount being placed on the non-compliant party's side of the property division.

"Waste occurs when one spouse, dishonestly or purposefully with the intent to deceive, deprives the community estate of assets to the detriment of the other spouse." *Giesler v. Giesler*, No. 03-08-00734-CV, 2010 WL 2330362, at *3 (Tex. App.—Austin June 10, 2010, no pet.) (mem. op.). A trial court may take wasting of community assets into consideration in making a just and right division of the marital estate. *Schlueter*, 975 S.W.2d at 589. The disposition of community assets for community purposes would not be waste. *See Giesler*, 2010 WL 2330362, at *4. Appellant failed to comply with the trial court's order to provide documentation for the money she spent on community expenses. Under these circumstances, the trial court could have chosen to disbelieve appellant's unsupported testimony that she spent at least $5,000 each month for community purposes. Accordingly, the trial court did not abuse its discretion. We overrule issue four.

Issue five contends that the divorce decree makes a disproportionate division that is contrary to the evidence presented at trial. The trial court has broad discretion in determining a just and right division of the marital estate, and the property division will

not be disturbed on appeal in the absence of an abuse of that discretion. *See Murff v. Murff*, 615 S.W.2d 696, 698 (Tex. 1981).

Appellant complains that the trial court did not consider the rights of the minor child in the divorce decree. She mentions that property is owned by the minor child, but she does not explain how the minor's property affected the property division. Some of the child's personal belongings were awarded to appellant. Appellant has not shown that the trial court erred with respect to the minor child's property. Similarly, appellant mentions the trial court's duty to divide employee benefits, but she fails to direct this Court's attention to evidence in the appellate record that shows that the trial court erred in dividing appellee's employment benefits. *See* Tex. Fam. Code Ann. § 7.003 (West 2006).

Appellant argues that the trial court erred in failing to consider appellee's responsibility for the sudden break-up of the marriage when it divided the community estate. Both parties alleged and presented evidence of fault. The trial court stated on the record that it considered fault and the needs of the children in the future. If the trial court failed to give sufficient consideration to the issue, appellant has not stated how the property would have been divided if their relative fault had been properly considered. Appellant has not established an abuse of discretion by the trial court. *See Murff*, 615 S.W.2d at 698; *see also Young v. Young*, 609 S.W.2d 758, 762 (Tex. 1980) (The property division should not be used to punish an errant spouse.). We overrule issue five.

Issue six contends that the judgment regarding the minor child is not in the best interest of the child. In her argument under this issue, appellant mentions that she had filed for divorce in 2006, but she suggests that she reconciled with appellee so that she could keep her children in private school. Appellant also mentions that she took the children on a trip to Australia, and suggests that she did so for the well-being of the children. Appellant produced trial testimony on these matters, evidently as examples of cruel treatment and miserliness of appellee, and perhaps to justify her monthly household expenditures of $5,000 to $7,000.

"The trial court is given wide latitude in determining the best interests of a minor child." *Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex. 1982). The decree makes the parties joint managing conservators of their minor child. Appellant has the exclusive right to designate the primary residence of the child. The decree limits appellee's possession of the child during the initial period following the divorce. Appellant is to receive $1,500 monthly for child support, to be withheld from appellee's earnings. Appellee must provide health insurance for the child, and he must pay one-half of the child's medical expenses not covered by insurance. Appellee is responsible for paying costs incurred for treatment by the child's psychologist, up to $250 per month.[3]

[3] Appellant testified that the child was seeing the psychologist once a week, and that the psychologist charges $250 per session. The parties' partial mediated settlement agreement provided that appellee's duty to reimburse appellant for the cost of these visits would be limited to $250 per month.

It appears the trial court followed the parties' mediated settlement agreement and the applicable guidelines for possession and support. *See* Tex. Fam. Code Ann. §§ 153.007-.0071 (West 2008) (agreed parenting plan and alternative dispute resolution), §§153.3101-.317, §§ 154.121-.126 (West 2008 & Supp. 2010) (standard possession and child support guidelines). The testimony referred to by appellant in her brief neither establishes that the trial court rendered a judgment that was not in the best interest of the minor child nor demonstrated an abuse of the trial court's discretion. We overrule issue six.

Issue seven contends appellee committed fraud against the community and the trial court by not disclosing community assets. She argues that a comparison of the documents filed with the trial court and appellee's testimony reflect a "profound shifting of assets" from one account to another. In determining a just and right division of the community estate, the trial court may consider the wrongful conduct of a spouse, which may justify an unequal division of the property to compensate the wronged spouse for a lost interest in community property. *Schlueter*, 975 S.W.2d at 588.

Appellant contends that appellee failed to trace the proceeds of the sale of his house in Calgary. In the trial court proceedings, appellee argued that the approximate sum of $128,000 deposited into an account in 1994 grew to approximately $242,702 over thirteen years. Appellee claimed that appellant's spoliation of the financial records impaired his ability to trace the proceeds from the sale of the Calgary house. As we

discussed in addressing issue three, appellant removed approximately one-half of the funds from two accounts at the Royal Bank of Canada. Appellee claimed the proceeds from the sale of the Calgary house were in one of those accounts. Appellee moved for sanctions on the ground that appellant had been guilty of spoliation with regard to the records that were relevant to tracing his separate property. The trial court confirmed the proceeds from the sale of the Calgary house as appellee's separate property subject to reduction for community reimbursement for principal paid during the marriage and the interest income from the proceeds. The trial court did not specify the amount of the proceeds or the reimbursement, and the bulk of the third account appears to have been appellee's one-half of the funds from the first two Royal Bank of Canada accounts that the trial court ordered the parties to account for as community property. Moreover, appellee presented evidence to support his claim of spoliation, but the trial court did not make an express finding of spoliation. If the trial court intended to include the account in a roughly equal division of the community estate, it appears that appellee's net gain on his claim of separate property was roughly equal to or slightly less than the amount appellee showed was deposited after the house was sold, less the approximate amounts that were paid on the mortgages during the marriage. Appellee showed that approximately $128,000 was deposited after the house was sold and approximately $21,000 was paid on the mortgages during the marriage.

Appellant also contends that appellee gave false information to the trial court on his inventory. Appellee's original inventory stated that $130,000 of the funds in a Scotia McLeod account represented the proceeds from the sale of the house in Calgary. In appellee's first amended inventory, appellee states that he deposited the proceeds of that sale in a GIC account at Royal Bank of Canada and that the Scotia McLeod account included 306 shares of stock owned prior to marriage, and that the shares split twice and uplifted for a merger for 1615 shares worth about $135,000. Appellee's second amended inventory repeated the information in the first amended inventory but valued the shares at $140,000. The trial court admitted the amended inventories without objection. The contents of appellee's original inventory were brought to the attention of the trial court during the testimony of appellant's assistant, who helped prepare appellant's case for trial. According to appellant's assistant, the Scotia McLeod documents he reviewed showed that the Scotia McLeod account was a brokerage account. Appellee testified that he owned 306 shares at the time of the marriage, and that there were two stock splits and uplift of roughly 32.5% at the time of the Exxon Mobil merger. He produced a document that showed that there were 408 shares of stock in the account in July 1992. The evidence from the trial and the final inventory are consistent with each other. Appellant has not shown that the original inventory was deliberately misleading.

Appellant also mentions a September 25, 2007 Royal Bank of Canada statement that showed a $139,222.05 Prime-Linked Cashable GIC. Appellee testified that the day

after appellant withdrew one-half of the funds in two accounts, appellee took the other half of one of the accounts and purchased the GIC. Appellee testified that he has not withdrawn any of the original money, but that every time a certain amount of money accumulates in the non-interest bearing account he transfers the funds to a high interest savings account. One of the exhibits showed that the account was a "Day to Day Banking" account and that funds were moved from that account onto the "High Interest eSavings" account at the same financial institution.

Appellant argues that there is a discrepancy between the amounts listed on appellee's proposed property division for the amounts appellee received from the two Royal Bank of Canada accounts and the statements from that institution. A statement from the bank reveals a telephone banking transfer of $125,766.68 on September 25, 2007. The GIC redemption, in the amount of $139,208.08, occurred the previous day. The redemption is documented in the record, as is the subsequent purchase of a Prime-Linked Cashable GIC in an account solely in appellant's name. A series of redemptions of securities totaling $102,947.19 occurred on September 27, 2007, in an account in appellant's name. These transactions were the transfers to appellant, not the transfers to appellee. Appellee withdrew $137,292.43 on September 25, 2007. The September 25, 2007 purchase of a Prime-Linked Cashable GIC in the amount of $139,222.05 in an account solely in appellee's name is also documented in the record. Appellant's claim that appellee failed to account for the transactions is not supported by the record.

Appellant mentions appellee's testimony regarding his compensation from his employment. Appellant contends appellee's testimony is misleading because he is paid twice a month. At trial, appellant testified that she believes appellee gets two paychecks, but she did not identify any supporting documentation for the claim. The parties' tax returns for the years 2005 through 2007 appear in the record. Appellant's claim that appellee failed to reveal his actual earned income is not supported by the record.

Appellant also claims that appellee failed to identify all of his stock option transactions. Appellee testified that in 1993 Mobil Oil Canada initiated a stock option plan and that he received stock options from 1993 through 1999. According to appellee, the options expire in ten years. He stated that options from 1998 were cashed in for 2008. According to appellant, the second amended inventory reflected the differences in values for the options that were cashed in, and the record from the trial conducted in June 2009 includes supporting documentation for the exercise of the option. Appellant claims that appellee failed to disclose the option exercised in September or October of 2009, but the trial occurred in June 2009. Appellant's claim that appellee failed to disclose stock option transactions is not supported by the appellate record.

Appellant has not established that the trial court's failure to find that appellee committed fraud on the community was an abuse of the trial court's discretion. We overrule issue seven.

Appellant's statement of issues includes "ISSUE EIGHT: Ineffective counsel." No argument on the issue was included in appellant's brief. We decline to address the unbriefed issue. The judgment of the trial court is affirmed.

AFFIRMED.

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CHARLES KREGER
Justice

Submitted on July 14, 2011
Opinion Delivered August 11, 2011

Before Gaultney, Kreger, and Horton, JJ.