

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-10-00531-CV

RICHARD ADAMS, Appellant

V.

TAMMIE ELIZABETH ADAMS, Appellee

On Appeal from the 359th District Court
Montgomery County, Texas
Trial Cause No. 09-11-11433 CV

MEMORANDUM OPINION

Richard Adams appeals a money judgment in favor of Tammie Elizabeth Adams in a divorce decree. Tammie filed a petition for divorce alleging the marriage had become insupportable and Richard had engaged in cruel treatment. After a bench trial, the trial court signed a decree of divorce dividing the marital property.

Richard was awarded the house, and other property was divided. The property division included a money judgment against Richard in favor of Tammie. Richard was awarded 50% of his retirement account as of the date of divorce. Tammie's community share of the residence was awarded to her as \$40,000 of the monetary judgment; that

portion of the monetary judgment is not contested. An additional \$20,000 award recognized Tammie's loss of employment due to Richard's wrongful conduct. Richard argues the trial court abused its discretion in awarding Tammie \$20,000. He maintains there is insufficient evidence to support the trial court's finding of cruelty.

The Texas Family Code provides that a 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" Tex. Fam. Code Ann. § 7.001 (West 2006). A divorce court has some latitude in the exercise of its discretion to divide the marital estate. *See generally Williams v. Williams*, 160 Tex. 99, 325 S.W.2d 682, 684 (1959). Absent an abuse of discretion, the court's division of a marital estate will not be disturbed on appeal. *See Schlueter v. Schlueter*, 975 S.W.2d 584, 588-90 (Tex. 1998); *Murff v. Murff*, 615 S.W.2d 696, 698 (Tex. 1981); *see also Loaiza v. Loaiza*, 130 S.W.3d 894, 900 (Tex. App.—Fort Worth 2004, no pet.) (sufficiency review under abuse of discretion standard).

The division of the marital estate need not be equal. *Murff*, 615 S.W.2d at 698-99 & n.1. A disproportionate division must have a reasonable basis. *Smith v. Smith*, 143 S.W.3d 206, 214 (Tex. App.—Waco 2004, no pet.). Fault is one of many factors that a trial court may consider in making a division of the community estate. *See Schlueter*, 975 S.W.2d at 589; *Twyman v. Twyman*, 855 S.W.2d 619, 625 (Tex. 1993); *Murff*, 615 S.W.2d at 698-99; *Young v. Young*, 609 S.W.2d 758, 761-62 (Tex. 1980). The trial court may award a money judgment to one spouse to accomplish a just and right division. *See*

Hanson v. Hanson, 672 S.W.2d 274, 278-79 (Tex. App.—Houston [14th Dist.] 1984, writ dismissed). The money judgment must be directly related to the division of the community property. *Price v. Price*, 591 S.W.2d 601, 603 (Tex. Civ. App.—Tyler 1979, no writ).

Tammie testified she had been employed at a bank for twenty-six years. A few months before Tammie filed for divorce, Richard gave her permission to withdraw fifty dollars from his sole proprietorship account containing community property funds. Richard was the only signatory on the account, but she signed for the withdrawal. Richard then reported the withdrawal to the bank, and the bank investigated the matter. The bank gave Tammie the option of resigning or having the action reviewed by the bank's regional office as a violation of the code of ethics. At the time she resigned, her annual salary was \$42,000. Richard did not question Tammie at trial regarding the bank transaction, and he offered no contrary testimony disputing Tammie's explanation of the events that led to her resignation.

The trial court found that Richard's actions resulting in Tammie's "loss of income from a long term employment relationship were an act of cruelty which caused her financial hardship." The trial court stated that many factors were considered, including fault in the breakup of the marriage and the financial loss suffered by one of the parties caused by the actions of the other party. The trial court found that it could, in order to accomplish a just and right division of the community estate, award a money judgment.

As the trier of fact, the trial judge determined the credibility of the witnesses and the weight to be given their testimony. *Burtch v. Burtch*, 972 S.W.2d 882, 888 (Tex. App.—Austin 1998, no pet.) The trial judge obviously believed Tammie’s testimony that Richard authorized the withdrawal and then reported the withdrawal to her employer as unauthorized. The trial court could reasonably find Richard intentionally caused Tammie’s difficulty with her employer.

In considering a spouse’s unjust conduct, the court may consider the relative financial costs to the parties. *See Murff*, 615 S.W.2d at 698-99. “The circumstances of each marriage dictate what factors should be considered in the property division upon divorce.” *Young*, 609 S.W.2d at 761. On the record presented, we cannot say that the trial court’s division of the community estate was unjust or wrong, or that error requires a reversal of the judgment for a new property division. *See Tex. R. App. P. 44.1(a)*. The evidence sufficiently supports the trial court’s findings. Issues one and two are overruled. The judgment is affirmed.

AFFIRMED.

DAVID GAULTNEY
Justice

Submitted on September 15, 2011
Opinion Delivered September 29, 2011

Before McKeithen, C.J., Gaultney and Horton, JJ.