

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-11-00194-CV

JOHN L. BONNER, JR., Appellant

V.

GEORGIA BONNER, Appellee

On Appeal from the 317th District Court
Jefferson County, Texas
Trial Cause No. C-210,555

MEMORANDUM OPINION

Appellant John Bonner, Jr. appeals from the trial court's property division and the award of maintenance to appellee Georgia Bonner in the parties' final decree of divorce. We affirm the trial court's judgment.

Georgia filed a petition for divorce, in which she alleged that the parties' marriage had become insupportable. With respect to division of community property, Georgia requested that the trial court either divide the property in accordance with any agreement reached by the parties or, if no agreement was made, "in a manner that the Court deems just and right, as provided by law." In addition, Georgia requested that the trial court

confirm her separate property as her “separate property and estate.” Georgia also sought reimbursement to the community estate for funds she alleged John had spent “on items not intended for community use or ownership.” Finally, Georgia requested post-divorce maintenance.

John filed a *pro se* answer that contained a general denial, and did not include a claim for contribution or reimbursement. Georgia filed an inventory and appraisal with the trial court. Georgia’s inventory and appraisal indicated that the residence on Hebert Aly is her separate property because she inherited it.

At the final hearing, John testified that he has purchased a home with another woman, who makes most of the mortgage payments. John explained that he makes \$28 per hour, and that his 2007 W-2 indicates that he made \$82,562.98. In addition, John testified that he has wasted community funds “going to the boat and stuff, going to the casino.”

Georgia testified that she and John married on February 7, 1992, and ceased living together as husband and wife several years ago.¹ According to Georgia, the marriage became insupportable because of discord or conflict of personalities. Georgia testified that she is not currently employed, and her sole income consists of disability payments of \$846 per month. The trial judge awarded Georgia maintenance of \$900 per month for thirty-six months. The trial court did not make findings of fact and conclusions of law.

¹ Georgia’s petition alleges that the parties ceased living together as husband and wife in August of 2006.

On appeal, John argues in his *pro se* letter brief that he cannot afford the trial court's order of maintenance to Georgia, he made improvements to the Hebert Aly residence, and the trial court failed to credit him for his "equity" in the residence. Attached to John's brief are several documents. However, those documents are not part of the appellate record; therefore, we may not consider them. *See Green v. Kaposta*, 152 S.W.3d 839, 841 (Tex. App.—Dallas 2005, no pet.) (Appellate court cannot consider documents that are not formally included in the record on appeal.).

We review a trial court's ruling on spousal maintenance under an abuse of discretion standard. *Pickens v. Pickens*, 62 S.W.3d 212, 214 (Tex. App.—Dallas 2001, pet. denied); *In re Marriage of Hale*, 975 S.W.2d 694, 697 (Tex. App.—Texarkana 1998, no pet.). A trial court abuses its discretion if it acts arbitrarily or unreasonably or without reference to any guiding rules and principles. *Bowie Mem'l Hosp. v. Wright*, 79 S.W.3d 48, 52 (Tex. 2002). Likewise, we review a trial court's decision concerning a claim of reimbursement for abuse of discretion. *Garcia v. Garcia*, 170 S.W.3d 644, 649 (Tex. App.—El Paso 2005, no pet.).

To be eligible to receive maintenance, a spouse must prove either of the statutory bases set forth in section 8.051 of the Family Code.² Act of May 25, 2005, 79th Leg., R.S., ch. 914, § 1, 2005 Tex. Gen. Laws 3146, amended by Act of May 18, 2011, 82nd

² Sections 8.051, 8.052, and 8.054 were amended effective September 1, 2011. However, the amendments apply only to suits filed on or after the effective date of the Act. Act of May 18, 2011, 82nd Leg., R.S., ch. 486, §§ 1, 3, 4, 10, 11, 2011 Tex. Sess. Law Serv. 1239, 1240-41, 1243 (West). Therefore, we cite to the prior law.

Leg., R.S., ch. 486, § 1, 2011 Tex. Sess. Law Serv. 1239 (West) (to be codified at Tex. Fam. Code Ann. 8.051). Section 8.051(2) provides that the court may order maintenance for a spouse if the duration of the marriage was ten years or longer, the spouse seeking maintenance lacks sufficient property to provide for the spouse's minimum reasonable needs, and the spouse seeking maintenance is unable to support herself through appropriate employment because of her disability, the disability of a child of the marriage, or her lack of earning capacity. *Id.* In determining a spouse's eligibility to receive maintenance, a trial court must consider (1) the financial resources of the spouse seeking maintenance, (2) the education and employment skills of the spouses, (3) the duration of the marriage, (4) the age, employment history, earning ability, and condition of the spouse seeking maintenance, (5) the ability of the spouse from whom maintenance is sought to provide for his personal needs while meeting the needs of the spouse seeking maintenance, (6) acts by either spouse that resulted in excessive expenditures or destruction of community property, (7) the comparative financial resources of the spouses, (8) the contribution by one spouse to the other spouse's education, training, or increased earning power, (9) the property brought to the marriage by either spouse, (10) the contribution of a spouse as homemaker, (11) marital misconduct of the spouse seeking maintenance, and (12) the efforts of the spouse seeking maintenance to pursue available employment counseling. Act of May 22, 2001, 77th Leg., R.S., ch. 807, § 1, 2001 Tex. Gen. Laws 1574, 1575-76, amended by Act of May 18, 2011, 82nd Leg., R.S.,

ch. 486, § 1, 2011 Tex. Sess. Law Serv. 1239-40 (West) (to be codified at Tex. Fam. Code Ann. § 8.052). A trial court generally may not order maintenance to remain in effect for more than three years after the date of the order, and must limit the duration of a maintenance order to the shortest reasonable period to permit the spouse seeking maintenance to meet her minimum reasonable needs unless her ability to do so is substantially or totally diminished due to disability. Act of May 22, 2001, 77th Leg., R.S., ch. 807, § 1, 2001 Tex. Gen. Laws 1574, 1576, amended by Act of May 18, 2011, 82nd Leg. R.S., ch. 486, § 3, 2011 Tex. Sess. Law Serv. 1239, 1240-41 (West) (to be codified at Tex. Fam. Code Ann. § 8.054(a)). If the spouse seeking maintenance is disabled, the trial court may order maintenance for as long as the disability continues. Act of May 25, 2005, 79th Leg., R.S., ch. 914, § 3, 2005 Tex. Gen. Laws 3146, 3147, amended by Act of May 18, 2011, 82nd Leg., R.S., ch. 486, § 3, 2011 Tex. Sess. Law Serv. 1239, 1241 (West) (to be codified at Tex. Fam. Code Ann. § 8.054(b)).

As discussed above, the trial court heard evidence that the parties had been married for over ten years, Georgia is unemployed due to disability, and Georgia's sole income consists of disability payments in the amount of \$846 per month. In addition, the trial court heard evidence that John made \$82,562.98 in 2007, and generally made \$28 per hour; John had wasted community funds; and John generally had no obligation to make a mortgage payment. Accordingly, the trial court did not abuse its discretion by finding that Georgia was entitled to maintenance of \$900 per month for thirty-six months.

To prove a claim for reimbursement, a party must establish that (1) one marital estate contributed to another, (2) the contribution was reimbursable, and (3) the value of the contribution. *Vallone v. Vallone*, 644 S.W.2d 455, 459 (Tex. 1982); *Gutierrez v. Gutierrez*, 791 S.W.2d 659, 665 (Tex. App.—San Antonio 1990, no writ). As previously discussed, John did not assert a claim for reimbursement or contribution in his answer. In addition, John did not introduce any evidence concerning the value of any contribution. Therefore, the trial court did not abuse its discretion by not awarding reimbursement to John. *See Vallone*, 644 S.W.2d at 459; *Gutierrez*, 791 S.W.2d at 665. Accordingly, we overrule John’s issues and affirm the trial court’s judgment.

AFFIRMED.

STEVE McKEITHEN
Chief Justice

Submitted on November 4, 2011
Opinion Delivered November 17, 2011

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