



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-15-00039-CV

IN THE INTEREST OF T.N.L., A CHILD

On Appeal from the 307th District Court
Gregg County, Texas
Trial Court No. 2008-353-DR

Before Morriss, C.J., Moseley and Burgess, JJ.
Memorandum Opinion by Justice Burgess

MEMORANDUM OPINION

Samuel Lanier appeals from a judgment enforcing the terms of a divorce decree in favor of his ex-wife, Carlos Renee Lanier. Samuel argues that the trial court abused its discretion by entering a new judgment that awarded the family residence to Carlos because it “chang[ed] the actual, substantive division of the marital property.” We find that the trial court’s judgment was a proper enforcement of the divorce decree that did not alter or amend the division of marital property. Accordingly, we affirm the trial court’s judgment.

I. Factual and Procedural History

A. The 2008 Divorce and the Divorce Decree

Following their divorce in 2008, Samuel and Carlos were appointed as joint managing conservators of their daughter, Taylor Lanier. In the divorce decree, the trial court ordered that the family residence, located at 2308 Nixson Drive, Longview, Texas, be set aside for Carlos and Taylor’s exclusive use and benefit until Taylor “attained 18 years of age or finished high school” or until Carlos and Samuel mutually agreed to sell the house. The divorce decree required that, in lieu of child support, Samuel pay the “house note,” insurance premiums, and property taxes on the residence until Taylor graduated from high school or turned eighteen years old, whichever occurred later. The divorce decree further ordered that all maintenance expenses on the residence exceeding \$500.00 be split among Samuel and Carlos.

The decree gave Carlos two options when the period of exclusive occupancy expired. First, she could place the house for sale with a reputable real estate agent and pay Samuel one-half of the net sale proceeds (the sale option). Alternatively, Carlos could have the house appraised and

pay Samuel one-half of the house's equity (the buyout option). When the trial court issued its ruling in the 2008 divorce, it clarified the buyout option as follows:

[Carlos' Counsel]: I had one question on the equity, just a clarification from you on what your ruling was. At age 18 or when she graduates from high school, Ms. Lanier can purchase him out of the house at that point for one-half of the net equity as of today's date, the date of the divorce, or . . .

THE COURT: No, as of that date.

[Carlos' Counsel]: Okay.

THE COURT: Because he's going to be paying the payments in the meantime.^[1]

B. Carlos Invokes the Buyout Option and Sought Enforcement of the Divorce Decree

After Taylor turned eighteen years old on April 23, 2014, and graduated from high school soon thereafter Carlos decided to invoke the buyout option in the divorce decree. Carlos filed suit to enforce the divorce decree and asked the trial court to determine the amount of Samuel's interest.

¹The trial court's order did not create a tenancy in common between the separate estates. The Texas Supreme Court has explained:

The term "joint owner" is utilized in the statute which authorizes partition of jointly held property. See Tex. Prop. Code § 23.001. This term, however, is imprecise because its use does not signify any one type of ownership. The term has, in the past, been used to refer both to property held in joint tenancy, see *Stauffer v. Henderson*, 801 S.W.2d 858 (Tex. 1990), and property held in cotenancy. See *Harrell v. Harrell*, 692 S.W.2d 876 (Tex. 1985) (per curiam).

A cotenancy is formed when two or more persons share the unity of exclusive use and possession in property held in common. 4A R. Powell & P. Rohan, *Real Property*, ¶ 601[1] (1991); 2 H. Tiffany, *Real Property*, § 319 (3rd ed. 1939). The present right to possession of the property is essential because one who is never entitled to possession of property held in common is not a cotenant. *Reed v. Turner*, 489 S.W.2d 373, 381 (Tex. Civ. App.—Tyler 1972, writ ref'd n.r.e.); *LeBus v. LeBus*, 269 S.W.2d 506, 510 (Tex. Civ. App.—Fort Worth 1954, writ ref'd n.r.e.). Therefore, [Wife] and [Husband] did not hold the residence as tenants in common because the divorce decree gave [Wife] the right to the use and possession of the residence to the exclusion of [Husband].

Laster v. First Huntsville Props. Co., 826 S.W.2d 125, 128–29 (Tex. 1991).

She also alleged that Samuel was in contempt for failing to pay the house note, insurance premiums, property taxes, and maintenance expenses on the residence and asked the trial court to offset the amount she would owe to Samuel under the buyout option with the amount of Samuel's delinquency.²

In calculating how much Samuel owed under the divorce decree, Carlos testified that Samuel failed to give her any money after the divorce, that she had to save the home from foreclosure in February 2009, and that she made all of the mortgage payments from that point on. Carlos testified and provided documentation from Midland Mortgage Company demonstrating that the mortgage payments made after the divorce totaled \$41,755.62. Carlos also testified that she was required to repair the air conditioning unit, introduced an invoice showing that the cost of the repair was \$3,195.00, and testified that Samuel failed to pay one-half of this cost, or \$1,597.50, as required by the decree. Based on this evidence, Carlos calculated that Samuel owed her \$43,353.12 under the terms of the divorce decree. As a credit against this amount, Carlos testified that in March 2011, she received a lump payment of \$21,948.00 from the Social Security Administration when Samuel began receiving social security disability benefits specifically designated for Taylor. After offsetting the lump sum payment from the amounts Samuel owed under the divorce decree, Carlos testified that she was seeking a total of \$21,405.12 as a result of Samuel's contempt.

²In 2013, Carlos had filed a suit to modify the parent-child relationship and argued that the "amount of support ordered differs by 20 percent from the amount that would be awarded in accordance with the guidelines in chapter 154 of the Texas Family Code." However, after Taylor turned eighteen years old, Carlos dismissed the request for modification and clarified that she was only asking the trial court to enforce the divorce decree and to establish "the amount of equity in the home and how that's to be determined based on the language of the decree."

Carlos asked the trial court to either enter a money judgment in the amount of \$21,405.12, or “to give [her] the house, and whatever [Samuel] owes just offset it” as she wanted the matter resolved. To calculate Samuel’s share of the equity, Carlos hired Daniel Jay Garrett, an appraiser certified by the Texas Appraiser Licensing and Certification Board, to appraise the residence. Garrett concluded that the market value of the home, as of December 12, 2014, was \$69,000.00. Carlos then introduced a payoff statement from Midland Mortgage, which calculated that \$28,676.36 was required to pay off the residence. Based on this evidence, Carlos calculated that the total equity in the home was \$40,323.64 and that Samuel’s share of the equity would be \$20,161.82. Carlos concluded that the amount Samuel owed her under the divorce decree exceeded the value of his share of the equity in the residence by \$1,243.30, and she urged the trial court to award her judgment in that amount in addition to the home.

In response, Samuel testified that, from 2008 to 2011, he had periodically made monthly cash payments to Carlos in the amount of \$650.00 or \$700.00, but that he had no proof of those payments. Samuel alleged that he made the last payment to Carlos sometime in 2011, after he had become disabled. Samuel claimed that he did pay his share of the air conditioning repair, testifying that the air conditioner was in need of repair prior to the divorce, that he had paid for someone to “add . . . freon to the air conditioner every year,” and that he did not owe her any money for the repair because he had already paid to fix the air conditioner twice.

C. The Trial Court’s Ruling

After reviewing the evidence, the trial court ruled in Carlos’ favor. The judgment stated:

The Court finds that pursuant to the terms of the Final Decree, CARLOS RENEE LANIER may buyout SAMUAL LANIER’S equity in the residence . . . for the sum

of \$20,161.82. However, the Court, having found that SAMUEL LANIER owes the sum of \$21,405.12 to CARLOS RENEE LANIER, find[s] that after giving Mr. Lanier credit for his portion of the equity, SAMUEL LANIER continues to owe CARLOS RENEE LANIER the sum of \$1,243.30.

Thus, the trial court awarded the residence to Carlos, ordered Samuel to execute documents necessary to transfer his interest in the property to Carlos, entered judgment against Samuel and in favor of Carlos for \$1,243.30, and ordered Samuel to pay \$2,285.12 in attorney's fees.³

II. Analysis

On appeal, Samuel argues that the trial court abused its discretion by changing the property division under the divorce decree and in “awarding the house to Carlos rather than ordering its sale as previously agreed.”

“We review the trial court’s ruling on a post-divorce motion for enforcement under an abuse of discretion standard.” *Bien v. Bien*, 365 S.W.3d 492, 494 (Tex. App.—Eastland 2012, no pet.) (citing *Gainous v. Gainous*, 219 S.W.3d 97, 103 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). “The test for abuse of discretion is a question of whether the court acted without reference to any guiding rules and principles.” *Id.* (citing *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 242 (Tex. 1985)).

A. The Trial Court Did Not Err in Enforcing the Buyout Option

Samuel cites to Sections 9.006 and 9.008 of the Texas Family Code in support of his argument that the trial court’s order impermissibly altered the division of property under the divorce decree. Section 9.006 states:

³Subsequently, the trial court issued findings of fact and conclusions of law supporting its judgment.

Sec. 9.006. ENFORCEMENT OF DIVISION OF PROPERTY.

(a) Except as provided by this subchapter and by the Texas Rules of Civil Procedure, the court may render further orders to enforce the division of property made or approved in the decree of divorce or annulment to assist in the implementation of or to clarify the prior order.

(b) The court may specify more precisely the manner of effecting the property division previously made or approved if the substantive division of property is not altered or changed.

TEX. FAM. CODE ANN. § 9.006(a), (b) (West Supp. 2015). Yet, a court's enforcement authority under Section 9.006 is limited by Section 9.007, which reads:

Sec. 9.007. LIMITATION ON POWER OF COURT TO ENFORCE.

(a) A court may not amend, modify, alter, or change the division of property made or approved in the decree of divorce or annulment. An order to enforce the division is limited to an order to assist in the implementation of or to clarify the prior order and may not alter or change the substantive division of property.

(b) An order under this section that amends, modifies, alters, or changes the actual, substantive division of property made or approved in a final decree of divorce or annulment is beyond the power of the divorce court and is unenforceable. . . .

TEX. FAM. CODE ANN. § 9.007 (West 2006).

Although Samuel correctly cites to Sections 9.006 and 9.007 as defining the trial court's authority to enforce a property division agreement, we disagree with his conclusion that the trial court exceeded that authority because the trial court did not amend, modify, alter, or change the division of the residence as provided by the divorce decree when it enforced the buyout option. Rather, the trial court's judgment merely assisted in the implementation of the previous division of property, was fully consistent with the divorce decree, and was in compliance with Texas law.

Section 9.002 of the Family Code provides that “[t]he court that rendered the decree of divorce . . . retains the power to enforce . . . a property division and any contractual provisions under the terms of an agreement incident to divorce . . . that was approved by the court.” TEX. FAM. CODE ANN. § 9.002 (West Supp. 2015). The divorce decree provided two methods by which the property could be divided once the period for Carlos and Taylor’s exclusive occupancy expired. The buyout option specifically authorized Carlos to purchase the home after paying Samuel for his one-half “interest in and to the equity in said property, over and above outstanding liens thereon.”

Carlos elected to enforce the buyout option and filed suit to clarify the amount of Samuel’s share. The trial court entered an order enforcing the buyout option. Therefore, the trial court’s judgment awarding the residence to Carlos and requiring Samuel to execute documents transferring his interest in the residence to Carlos was specifically authorized by the original decree and Section 9.002. The trial court did not abuse its discretion in entering that judgment.

B. The Trial Court Did Not Err in Offsetting Samuel’s Delinquent Payments With His Share of the Equity Under the Buyout Option

Carlos also sought a judgment against Samuel for failing to make payments under the divorce decree. She then asked to use that judgment to offset the amount she owed Samuel under the buyout option. Section 9.010 of the Texas Family Code states,

Sec. 9.010. REDUCTION TO MONEY JUDGMENT.

(a) If a party fails to comply with a decree of divorce or annulment and delivery of property awarded in the decree is no longer an adequate remedy, the court may render a money judgment for the damages caused by that failure to comply.

(b) If a party did not receive payments of money as awarded in the decree of divorce or annulment, the court may render judgment against a defaulting party for the amount of unpaid payments to which the party is entitled.

(c) The remedy of a reduction to money judgment is in addition to the other remedies provided by law.

(d) A money judgment rendered under this section may be enforced by any means available for the enforcement of judgment for debt.

TEX. FAM. CODE ANN. § 9.010 (West 2006). Section 9.009 provides,

To enforce the division of property made or approved in a decree of divorce or annulment, the court may make an order to deliver the specific existing property awarded, without regard to whether the property is of especial value, including an award of an existing sum of money or its equivalent.

TEX. FAM. CODE ANN. § 9.009 (West Supp. 2015).

The trial court found that Samuel owed Carlos \$21,405.12 under the divorce decree. The trial court also found that Samuel's share of the equity was \$20,161.82. Samuel has not contested these figures. The trial court then used the amount Samuel owed Carlos for delinquent payments to offset the amount Carlos would be required to pay to Samuel under the buyout option and entered judgment against Samuel for the remaining amount he still owed Carlos. Accordingly, the trial court's judgment was not only consistent with the original divorce decree, it was specifically authorized by Sections 9.09 and 9.010 of the Family Code. Consequently, we find no abuse of discretion in the trial court's orders.⁴

⁴Carlos testified that she was a "home care, home health . . . provider" and that she had received \$1,800.00 per month for two years, in exchange for allowing adults to live in the residence instead of in a group home. Carlos also testified that she had worked at Skeeter Products until August 2009, that she placed her pension benefit into an IRA, and that, under the divorce decree, Samuel was entitled to, but had not yet received, a portion of those sums. On appeal, Samuel argues that the trial court erred in failing to allow for these offsets. However, as pointed out by Carlos, Samuel "had no affirmative pleadings on file with the court at the time of trial."

We affirm the trial court's judgment.

Ralph K. Burgess
Justice

Date Submitted: November 9, 2015
Date Decided: February 9, 2016