TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00084-CV

Ira D. Willett, Jr., Appellant

v.

Maria Rodriguez, Appellee

FROM THE DISTRICT COURT OF TOM GREEN COUNTY, 391ST JUDICIAL DISTRICT
NO. D14-0306F, HONORABLE THOMAS J. GOSSETT, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

Ira D. Willett, Jr., acting *pro se* at this juncture,[1] appeals from a final divorce decree from the district court that ended his common-law marriage to Maria Rodriguez. In two issues, Willett asserts that the district court erred or abused its discretion by (1) mischaracterizing certain real property as community property rather than as his separate property, and (2) failing to reimburse Willett for expenditures he claims to have made to benefit the community estate from his separate property. We will overrule Willett's contentions and affirm the decree.

[1] Mr. Willett was represented by counsel through a portion of the trial-level proceedings, most recently by the late Justin Mock, who assisted Willett during the first of two hearings at which the district court heard evidence. Following Mr. Mock's passing, Willett has represented himself through the conclusion of trial-level proceedings and on appeal.

BACKGROUND

There is no dispute that the parties commenced a common-law marriage during the spring of 2013, although they differed as to precisely when it began. There were no children of the marriage, and the contested issues regarding the property division centered on the characterization of two parcels of real property that had been acquired in April 2013. On April 1 of that year, Willett, purportedly as "a single person," acquired by warranty deed a .995-acre parcel of residential property, containing a "main house" with a detached apartment, and having the address of 2905 Armstrong Street in San Angelo. However, on April 3—two days later—Willett and Rodriguez, now as "a married couple," acquired by warranty deed an adjacent 4.046-acre parcel of residential property, containing five or six houses, and having the address of 2904 Blum Street.[2] Rodriguez alleged that both properties had been acquired during the marriage and, in turn, were community property,[3] while Willett maintained that both properties were his sole separate property. According to Willett, the couple's marriage had not begun until after the April 1 purchase of the Armstrong property. While he acknowledged that the marriage had begun by the time of the April 3 purchase of the Blum property, Willett urged that the property should nonetheless be characterized as his separate property because the inception of title traced back to an earnest-money contract that predated the marriage.

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[2] Armstrong and Blum run parallel, and the two properties apparently "back up" to one another.

[3] She alleged that the marriage began in late February 2013.

In the event the district court characterized either parcel as community property, Willett sought reimbursement of amounts he claimed to have expended from a pre-marriage retirement account to purchase or improve the properties. These expenditures included down payments Willett made in connection with the properties' purchases, $10,000 of a $42,000 purchase price for the Armstrong property and $8,000 of a $38,000 purchase price for the Blum property. While Rodriguez appeared to concede during trial that Willett was, in theory, entitled to reimbursement of the down payment amounts, she adduced evidence to the effect that any such contributions would have been offset by benefits Willett's separate-property interests received from community contributions or from her own separate property.

After hearing evidence, the district court signed a final divorce decree in which it characterized the Armstrong property as Willett's separate property but the Blum property as community property. It divided that community asset by awarding Willett title and ordering him to pay one-half of the equity in same to Rodriguez within 180 days, with that obligation secured by an equitable lien on the property. The decree did not award Willett reimbursement for any separate property expended to benefit the Blum property. This appeal followed.

ANALYSIS

Willett raises two issues on appeal that largely track his principal theories before the district court. First, he argues that the district court mischaracterized the Blum property as community property rather than his separate property. Second, he argues, in the alternative, that if the Blum property is characterized as community property, he is entitled to reimbursement for his

down-payment on the property and also for improvements he claims to have subsequently made to the property with his separate funds.

Characterization

"Property possessed by either spouse during or on dissolution of marriage is presumed to be community property."[4] And "the degree of proof necessary to establish the property is separate property is clear and convincing evidence."[5] Evidence is "clear and convincing" if it meets "the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established."[6] Any doubts as to the proper characterization of the property are resolved in favor of community status.[7] Because it is undisputed that the Blum property was possessed by Willett and Rodriguez upon the dissolution of their marriage, it was presumptively characterized as community property, and it was Willett's burden to prove that it was separate property by clear and convincing evidence.

In an attempt to meet his burden and overcome the presumption of community property, Willett relies on the inception-of-title doctrine, i.e., the familiar principle that property should be characterized as community or separate at the point in time "when a party first has a claim

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[4] Tex. Fam. Code § 3.003(a).

[5] *Id.* § 3.003(b).

[6] *Id.* § 101.007; *Ganesan v. Vallabhaneni*, 96 S.W.3d 345, 354 (Tex. App.—Austin 2002, pet. denied) (citing *Tarver v. Tarver*, 394 S.W.2d 780, 783 (Tex. 1965); *Ellebracht v. Ellebracht*, 735 S.W.2d 658, 659 (Tex. App.—Austin 1987, no writ)).

[7] *Irvin v. Parker*, 139 S.W.3d 703, 708 (Tex. App.—Fort Worth 2004, no pet.).

of right to the property by virtue of which title is ultimately vested" relative to the time at which the marriage began.[8] If the inception of title predated the marriage, then the property may be characterized as separate property,[9] and if the inception of title occurred after the marriage began, then the property generally is community property.[10]

Although Willett acknowledges that the deed to the Blum property was executed after his marriage to Rodriguez began (indeed, the deed explicitly names as the purchaser both him and Rodriguez, as "a married couple"), he insists that an earnest-money contract he executed in connection with the purchase—and, he claims, prior to the commencement of his marriage—suffices as clear-and-convincing evidence that he held title to the property prior to their marriage. The district court impliedly failed to find these facts, and the substance of Willett's arguments on appeal is that his evidence regarding the earnest-money contract conclusively or by the great weight and preponderance of the evidence establishes these facts by clear-and-convincing evidence.[11]

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[8] *See, e.g.*, *Boyd v. Boyd*, 131 S.W.3d 605, 611–12 (Tex. App.—Fort Worth 2004, no pet.); *Wilkerson v. Wilkerson*, 992 S.W.2d 719, 722 (Tex. App.—Austin 1999, no pet.) (citing *Strong v. Garrett*, 224 S.W.2d 471, 474 (Tex. 1949)).

[9] *See, e.g.*, *Wilkerson*, 992 S.W.2d at 722.

[10] Tex. Fam. Code § 3.003(a); *see, e.g.*, *Pearson v. Fillingim*, 332 S.W.3d 361, 363 (Tex. 2011) (per curiam) ("[T]he common-law proposition [is] that 'property possessed by either spouse during or on dissolution of marriage is presumed to be community property.'") (quoting Tex. Fam. Code. § 3.003(a)) (citing *Tarver*, 394 S.W.2d at 783; *Wilson v. Wilson*, 201 S.W.2d 226, 227 (Tex. 1947)).

[11] Strictly speaking, Willett's challenge to the sufficiency of the evidence is a component of an overarching abuse-of-discretion analysis. *See Zeifman v. Michels*, 212 S.W.3d 582, 587 (Tex. App.—Austin 2006, pet. denied) (citing *In re D.M.*, 191 S.W.3d 381, 393 (Tex. App.—Austin 2006, pet. denied); *Dunn v. Dunn*, 177 S.W.3d 393, 396 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)); *see also Moore v. Moore*, 383 S.W.3d 190, 198 (Tex. App.—Dallas 2012, pet. denied) (citing *Pickens v. Pickens*, 62 S.W.3d 212, 214 (Tex. App.—Dallas 2001, pet. denied)).

Although there are instances in which the date of an earnest money contract may be deemed sufficient to establish the inception of title,[12] Willett's proof regarding the earnest money contract here falls short of establishing a basis for reversal. This is so for two principal reasons. First, the contract in evidence is undated, and the district court, as fact finder, would have been within its discretion to determine that this proof fell short of clear-and-convincing evidence that the contract predated the parties' marriage, especially considering that Rodriguez presented testimony to the effect that the marriage began in late February of 2013. Second, the contract refers to property at the Armstrong address, not to any property at an address on Blum. On this record, we conclude that the district court did not abuse its discretion in determining that Willett had failed to present clear-and-convincing evidence to overcome the presumption of community property.[13] We overrule Willett's first issue.

Reimbursement

In the event we affirm as to the characterization of the Blum property as community property, Willett urges in the alternative that the district court erred in failing to award him reimbursement for the monies that he allegedly spent from his separate retirement fund for the purchase and improvement of the Blum property. Reimbursement is not a legal remedy but an

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[12] *See, e.g.*, *Carter v. Carter*, 736 S.W.2d 775, 779–80 (Tex. App.—Houston [14th Dist.] 1987, no writ).

[13] *See Jacobs v. Jacobs*, 687 S.W.2d 731, 732 (Tex. 1985) (citing *McKnight v. McKnight*, 543 S.W.2d 863, 867 (Tex. 1976)); *Barras v. Barras*, 396 S.W.3d 154, 164 (Tex. App.—Houston [14th Dist.] 2013, pet. denied.).

equitable one, and as such, it lies within the discretion of the district court.[14] In reviewing a trial court's denial of reimbursement, we "will presume that the trial court exercised its discretion properly."[15]

A right to reimbursement may arise when the resources of one estate are utilized to benefit another estate without receiving any shared benefit or enjoyment in return.[16] In a claim for reimbursement, the claimant has the burden of proof.[17] And, as the Family Code provides,

> (b) The court shall resolve a claim for reimbursement by using equitable principles, including the principle that claims for reimbursement may be offset against each other if the court determines it to be appropriate.

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[14] *Penick v. Penick*, 783 S.W.2d 194, 197 (Tex. 1988); *Vallone v. Vallone*, 644 S.W.2d 455, 459–60 (Tex. 1982) ("The right of reimbursement is not an interest in property or an enforceable debt, per se, but an equitable right which arises upon dissolution of the marriage through death, divorce or annulment.") (citing *Burton v. Bell*, 380 S.W.2d 561 (Tex. 1964); *Dakan v. Dakan*, 83 S.W.2d 620 (Tex. 1935)).

[15] *Vallone*, 644 S.W.2d at 460; *see, e.g.*, *Murff v. Murff*, 615 S.W.2d 696, 698 (Tex. 1981) ("The trial court has wide discretion in dividing the estate of the parties and that division should be corrected on appeal only when an abuse of discretion has been shown." (citing *Hedtke v. Hedtke*, 248 S.W. 21 (Tex. 1923))); *Jackson v. Jackson*, No. 03-10-00736-CV, 2011 WL 3373290, at *2 (Tex. App.—Austin Aug. 3, 2011, no pet.) (mem. op.); *see also* Tex. Fam. Code § 7.001; *Murff*, 615 S.W.2d at 700 ("The trial court in a divorce case has the opportunity to observe the parties on the witness stand, determine their credibility, evaluate their needs and potentials, both social and economic. As the trier of fact, the court is empowered to use its legal knowledge and its human understanding and experience. Although many divorce cases have similarities, no two of them are exactly alike. Mathematical precision in dividing property in a divorce is usually not possible. Wide latitude and discretion rests in these trial courts and that discretion should only be disturbed in the case of clear abuse.").

[16] *Vallone*, 644 S.W.2d at 458–59.

[17] *Nelson v. Nelson*, 193 S.W.3d 624, 633 (Tex. App.—Eastland 2006, no pet.) ("The party claiming reimbursement has the burden of proof." (citing *Jensen v. Jensen*, 665 S.W.2d 107, 110 (Tex. 1984))).

> (c) Benefits for the use and enjoyment of property may be offset against a claim for reimbursement for expenditures to benefit a marital estate.[18]

We accord "[w]ide latitude" to the district court's application of equitable principles.[19]

Because the district court's decree did not specifically reference Willett's reimbursement claims, we imply that the district court considered his claims to be offset by the contributions that Rodriguez made from her separate estate to the marital estate and from the marital estate to Willett's separate estate during the course of their marriage.[20] Willett acknowledged in testimony that, prior to the marriage, he began to live with Rodriguez in her separate-property residence and continued doing so for some time after. He also admitted that he and Rodriguez improved his separate Armstrong estate during the course of the marriage. On that point, Rodriguez elaborated that she contributed $5000, some separate and some marital funds, to their joint marital account during 2013, and all of those funds were used to improve both the Blum and Armstrong properties. On top of these financial contributions toward improving the Blum property, Rodriguez indicated that she contributed a significant amount of manual labor to the improvement of the property during the course of the marriage. In short, both parties' testimony tends to show that

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[18] Tex. Fam. Code § 3.402(b)–(c).

[19] *Murff*, 615 S.W.2d at 700 ("Wide latitude and discretion rests in these trial courts and that discretion should only be disturbed in the case of clear abuse.").

[20] *Roberson v. Robinson*, 768 S.W.2d 280, 281 (Tex. 1989); *see Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990); *Matter of Marriage of McCoy & Els*, 488 S.W.3d 430, 433–34 (Tex. App.—Houston [14th Dist.] 2016, no pet.); *Garcia v. Garcia*, 170 S.W.3d 644, 652 (Tex. App.—El Paso 2005, no pet.). So long as the district court's findings are supported by evidence on the record, we will uphold the court's final decree "on any theory of law applicable to the case." *Roberts v. Roberts*, 402 S.W.3d 833, 838 (Tex. App.—San Antonio 2013, no pet.); *see also Roberson*, 768 S.W.2d at 281; *Zeifman*, 212 S.W.3d at 587.

Willett's separate estate and their marital estate profited from Rodriguez's contributions. On this record, the district court was within its discretion to find that any contributions of separate property that Willett had made to the benefit of their community estate had been offset by contributions made by Rodriguez or the community to benefit the Blum property. We overrule Willett's second issue.

CONCLUSION

We affirm the district court's decree.

Bob Pemberton, Justice

Before Justices Puryear, Pemberton, and Field

Affirmed

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