COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

TOMAS GUTIERREZ, Appellant, v. MARY JANE RIOS, Appellee.	§ § § §	No. 08-19-00085-CV Appeal from the 143rd District Court of Reeves County, Texas (TC# 17-05-21962-CVR)

O P I N I O N

Tomas Gutierrez appeals from a take-nothing judgment on his breach of contract suit against Appellee Mary Jane Rios. The basis of that suit was an alleged oral agreement for Gutierrez to purchase a house from Rios. The trial court, following a bench trial, found that Gutierrez failed to establish the existence of a contract for the purchase and sale of the house. We affirm.

I. BACKGROUND

A. Undisputed facts

Rios and Gutierrez met through their work. Gutierrez was looking for a place to live with his daughter, and Rios owned a house located at 2033 Alamo Street in Pecos, Texas. Gutierrez remodeled the house, and he and his daughter lived there with Rios's consent. Gutierrez paid Rios a total of $36,000 and also paid taxes on the property. Gutierrez tendered an additional check for

$4,000, which Rios refused to deposit. Rios attempted to evict Gutierrez from the house and Gutierrez filed suit against her for breach of an oral agreement to sell the house to him.

B. Gutierrez's version of events

Gutierrez testified that, in September 2013, he and Rios agreed that Gutierrez would purchase the house for $40,000. At first, Gutierrez paid Rios $1,000 per week because he was making good money during the oil boom. He did not move into the house at that time, though, because it was unlivable. Gutierrez's daughter testified that the house was very dirty and not livable to their standard.

When Gutierrez had paid approximately $15,000, Rios allowed him to suspend making payments so he could remodel the house. Gutierrez remodeled the house "head to toe," which he testified he would not have done had he simply been renting the place. He also testified that Rios was aware of the renovations. In December 2015, Gutierrez and his daughter finally moved in and Gutierrez resumed making payments on the house.

Gutierrez also testified that, in November or December 2015, Rios was having financial problems and told Gutierrez she needed money. She pressured Gutierrez for money, asked him for a loan, and asked about renting out the house or obtaining a loan on it. While Gutierrez had been making payments to Rios in cash, he began to pay her with cashier's checks because he felt that she "got very sketchy . . . ." Those checks contained the notation, "house payment." Gutierrez also began making the property tax payments himself rather than giving Rios the tax money.

In 2016, Gutierrez told Rios on the telephone that he had the final $4,000 payment on the house and was ready to exchange that payment for the deed. Rios did not indicate that she would not give him the deed and did not say that their arrangement had been a lease rather than a purchase

agreement. She put him off, however, and, over the course of a few telephone calls, said that she would go to the title company when she had a chance. In December 2016, while Gutierrez was in Arizona, Rios called and said she had the deed. But when Gutierrez returned to Texas in early January 2017, Rios refused to answer his repeated calls.

Later in January 2017, Gutierrez and Rios argued and "cussed each other out . . . ." Rios attempted to evict Gutierrez from the house and Gutierrez sent Rios a demand letter accompanied by the final $4,000 payment. Gutierrez insisted that he and Rios had always agreed that he was purchasing the house; he was not renting it.

C. Rios's version of events

Rios testified that she allowed Gutierrez to use the Alamo Street house until he could find somewhere to live with his daughter. She told him he could pay her whatever he could weekly. In the beginning, he paid $1,000 per week, which she acknowledged was high for the market. She explained, though, that Rios wanted to pay that amount while he was making good money so that he could still use the house if and when he did not have work. She stated that they did not agree on any total price, nor did they agree on any payment terms. In fact, she testified that she never heard the $40,000 figure until much later. She was adamant that the arrangement was for Gutierrez to rent the house, not purchase it. She acknowledged that Gutierrez's cashier's checks contained a notation, "house payment," but testified that she did not pay any attention to what was written on the checks; she simply deposited them.

Rios testified that, to her knowledge, Gutierrez had lived in the house since 2013. She told Gutierrez that there was no reason to remodel it, but Gutierrez responded that he wanted to make it nice and pretty. Rios stated that the house was in good living condition and that she had had

couples with babies live there without complaint. Oralia Delgado, a coworker of Rios's, testified that she saw the house in early 2013 because Rios had offered to let her use it temporarily. Delgado stated that the house was livable and that she would have been comfortable staying there with her young child. Indeed, a couple and their child were living in the house at the time Delgado saw it. Delgado conceded that she did not know the condition of the house in September 2013, eight or nine months after she saw it.

In 2016, Gutierrez repeatedly called Rios, inquiring about the deed to the house, but Rios told him she had not agreed to sell it and was not ready to sell it. She stated that Gutierrez constantly talked about buying the house but that she kept telling him that she did not want to sell it. She also denied ever asking Gutierrez about obtaining a loan on the property.

D. The trial court's findings and conclusions

On March 21, 2019, the trial court signed a take-nothing judgment containing findings that (1) Gutierrez did not sustain his burden of proving the existence of a valid contract; (2) "the actions of the parties are consistent with tenancies at will, tenancies at holdover, and purchaser/seller relationship"; and (3) it is unusual, but "not unheard of[,]" for a tenant to pay property taxes.

After a request by Gutierrez, the trial court entered findings of fact and conclusions of law independently of the judgment. Of consequence to this appeal, the court found that, "[a]lthough plaintiff believed he was purchasing the subject property from the defendant, there was never an agreement by defendant to sell the subject property to plaintiff. There was no meeting of the minds for the formation of a contract for the purchase and sale of the subject property." The court concluded that "[t]here was no written or oral contract between the parties for the purchase and sale of the subject property" and, as a result, Gutierrez was not entitled to either damages or

specific performance for breach of contract.

II. ISSUES

Gutierrez contends that the evidence is legally and factually sufficient to prove that there was a meeting of the minds regarding the purchase and sale of the house. But because the trial court found that there was no meeting of the minds, an issue on which Gutierrez bore the burden of proof, we construe Gutierrez's issue on appeal as asserting that the evidence conclusively established a meeting of the minds, and that the trial court's contrary finding is against the great weight and preponderance of the evidence. Gutierrez also contends that the parties' oral agreement should be enforced in equity because failure to enforce it would result in a fraud.

In three additional issues, Gutierrez complains that the trial court erred by (1) failing to make all findings necessary to its judgment, (2) finding that the actions of the parties are consistent with tenancies at will or tenancies at holdover, and (3) denying Gutierrez's request for additional findings of fact and conclusions of law.

III. STANDARD OF REVIEW

A. Sufficiency of the evidence

A party challenging the legal sufficiency of the evidence on an issue on which he had the burden of proof must demonstrate on appeal that the evidence establishes the issue as a matter of law. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001) (citing *Sterner v. Marathon Oil Co.*, 767 S.W.2d 686, 690 (Tex. 1989)). Whether there is legally sufficient evidence is determined by "view[ing] the evidence in the light favorable to the verdict, crediting favorable evidence if reasonable [fact finders] could, and disregarding contrary evidence unless reasonable [fact finders]

could not." *City of Keller v. Wilson*, 168 S.W.3d 802, 807 (Tex. 2005); *see Trinity Drywall Sys., LLC v. Toka Gen. Contrs.*, 416 S.W.3d 201, 207 (Tex. App.—El Paso 2013, pet. denied).

Factual sufficiency, on the other hand, is assessed by considering and weighing all of the evidence. *Dow Chem. Co.*, 46 S.W.3d at 242. A fact finding will be set aside under this standard only if it is "so against the great weight and preponderance of the evidence that it is clearly wrong and unjust." *Id.* (citing *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986)).

B. Findings of fact and conclusions of law

A trial court's findings of fact "have the same force and dignity as a jury's verdict upon questions." *Anderson v. City of Seven Points*, 806 S.W.2d 791, 794 (Tex. 1991). They are thus reviewed for legal and factual sufficiency under the same standards as are applied in reviewing the evidence to support a jury's verdict. *Fenenbock v. W. Silver Recycling, Inc.*, 601 S.W.3d 32, 41 (Tex. App.—El Paso 2020, no pet.).

IV. DISCUSSION

A. Contract formation

A fundamental element of a breach of contract claim is the existence of a valid contract, an issue on which the plaintiff bears the burden of proof. *USAA Texas Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 501 n.21 (Tex. 2018). And one of the fundamental elements of contract formation is that "the parties had a meeting of the minds on the essential terms of the contract (mutual assent) . . . ." *Id.*; *see David J. Sacks, P.C. v. Haden*, 266 S.W.3d 447, 450 (Tex. 2008) ("A meeting of the minds is necessary to form a binding contract."). Meeting of the minds is "measured by what the parties said and did and not on their subjective state of mind." *Wells v. Hoisager*, 553 S.W.3d 515, 522 (Tex. App.—El Paso 2018, no pet.); *see Karns v. Jalapeno Tree Holdings, L.L.C.*, 459 S.W.3d

683, 692 (Tex. App.—El Paso 2015, pet. denied). Further, "[w]here one party attests to a contractual agreement while the other vigorously denies any meeting of the minds, determining the existence of a contract is a factual inquiry." *Wells*, 553 S.W.3d at 522.

The trial court in this case expressly found that there was "no meeting of the minds for the formation of a contract for the purchase and sale of the subject property." Gutierrez contends that this finding is not supported by legally or factually sufficient evidence.

1. Legal sufficiency challenge

We first address Gutierrez's legal sufficiency challenge, bearing in mind that it is his burden on appeal to demonstrate that the evidence conclusively establishes a meeting of the minds. *See Dow Chem. Co.*, 46 S.W.3d at 241 (party with burden of proof must show evidence establishes issue as matter of law). The record reveals, however, a sharp disagreement between the parties concerning what they said and did. Gutierrez testified that Rios offered to sell him the house and that they agreed on a purchase price of $40,000. Rios, on the other hand, testified that she never offered to sell the house to Gutierrez, she repeatedly told him that she did not want to sell the house, she only offered to rent Gutierrez the house until he found a place to live with his daughter, they never agreed on any total amount, and she did not even hear the $40,000 figure until late in their relationship.

This conflicting evidence forecloses any argument that the evidence conclusively establishes a meeting of the minds. Gutierrez's legal sufficiency challenge is overruled.

2. Factual sufficiency challenge

Turning now to the factual sufficiency of the evidence, we note that the trial court, as trier of fact in this case, was the sole judge of the credibility of the witnesses and the weight to be given

their testimony. *Gerges v. Gerges*, 601 S.W.3d 46, 57 (Tex. App.—El Paso 2020, no pet.). It was thus within the province of that court to resolve conflicts in the evidence. *Id.* In addition, because the trial court had the ability to examine the witnesses's demeanor, this Court must defer to its credibility determinations. *See Turner v. KTRK Television, Inc*., 38 S.W.3d 103, 120 (Tex. 2000). Finally, this Court may not substitute its judgment for that of the trier of fact under the guise of conducting a factual sufficiency review. *Windrum v. Kareh*, 581 S.W.3d 761, 781 (Tex. 2019).

Gutierrez identifies several portions of the testimony that he contends demonstrate that he and Rios agreed to a contract for the purchase and sale of the house. For example, he argues that his payments of $1,000 per week, the "unevenness" and "sporadic nature" of the payments, his payment of the property taxes, and his total payment of more than the appraised value of the property are not consistent with rental of the property. But Rios explained that Gutierrez wanted to pay $1,000 per week while he was making good money so that he could still use the house if and when he was not making good money. Indeed, while Gutierrez initially paid $15,000 at that weekly rate, there followed a period in which those payments were suspended. This "uneven" and "sporadic nature" of his payments may be uncharacteristic of a rental agreement, but it is likewise uncharacteristic of an owner-financed sale.

As for Gutierrez's payment of the property taxes, we agree that this appears to be more consistent with ownership of property than rental. Even so, we cannot say that Gutierrez's payment of taxes renders the trial court's finding of no meeting of the minds clearly wrong and unjust, particularly when that circumstance is weighed against Rios's affirmative testimony that she told Gutierrez she was not selling the house. *See Dow Chem. Co*., 46 S.W.3d at 242.

We next consider the fact that Gutierrez ultimately paid Rios an amount exceeding the

appraised value of the property. While that fact might evidence an agreement to purchase, it might also evidence an unfavorable agreement to rent, or no agreement at all, that is, a misunderstanding between the parties. It was for the trial court, as trier of fact, to determine what inference to draw from the evidence of Gutierrez's payments, and this Court lacks the authority to second-guess that determination. *Ramo, Inc. v. English*, 500 S.W.2d 461, 467 (Tex. 1973) (choosing between conflicting inferences is function of the trier of fact).

Gutierrez also relies on evidence that cashier's checks he gave to Rios contained the notation, "house payment." But, as Rios points out, that notation could also be construed to mean payment for renting the house. Gutierrez also urges that Rios's testimony that she did not notice the notation on the checks is not credible. But, as noted above, assessing the credibility of the witnesses was a task for the trial court, and this Court must defer to those credibility determinations. *Turner*, 38 S.W.3d at 120; *Gerges*, 601 S.W.3d at 57.

Gutierrez next argues that the evidence establishes a sale because Rios admitted that she did not have a lease agreement with him and did not impose any monthly amount of rent for him to pay. Gutierrez does not cite any authority, and we are aware of none, supporting the proposition that the lack of a lease agreement or stated monthly rent payments establishes that the parties agreed to a sale of the property.

Finally, Gutierrez relies on evidence that Rios led him to believe that she was going to execute a deed transferring the house to him. But other evidence shows that Rios directly informed him, on more than one occasion, that she was not selling the house to him.

Applying the principles by which our factual sufficiency review is governed, we cannot conclude that the trial court's finding that there was no meeting of the minds concerning the

purchase or sale of the house is against the great weight and preponderance of the evidence. *See Dow Chem. Co.*, 46 S.W.3d at 242; *Barker v. Eckman*, 213 S.W.3d 306, 314 (Tex. 2006). Gutierrez's factual sufficiency challenge is overruled.

3. Partial performance doctrine

Under the statute of frauds, a contract for the sale of real property is not enforceable unless it is in writing and signed by the person to be charged with the promise or agreement. TEX. BUS. & COM. CODE ANN. § 26.01(a), (b)(4); *see First Nat. Bank in Dallas v. Zimmerman*, 442 S.W.2d 674, 675 (Tex. 1969). The statute of frauds is an affirmative defense that is waived if not pleaded. *See* TEX. R. CIV. P. 94 (statute of frauds is affirmative defense); *Phillips v. Phillips*, 820 S.W.2d 785, 791 (Tex. 1991) (Rule 94 defenses are waived if not pleaded).

Gutierrez contends that he and Rios entered an oral contract for the sale of the house. Rios did not, however, plead the statute of frauds in the court below, nor does she rely on it on appeal. Nevertheless, Gutierrez argues that the partial performance doctrine, an exception to the statute of frauds, supports a finding that the parties entered an enforceable oral contract. That doctrine provides that:

> [A]n oral contract for the purchase of real property is enforceable if the purchaser: (1) pays the consideration; (2) takes possession of the property; and (3) makes permanent and valuable improvements on the property with the consent of the seller, or, without such improvements, other facts are shown that would make the transaction a fraud on the purchaser if the oral contract was not enforced.

Boyert v. Tauber, 834 S.W.2d 60, 63 (Tex. 1992).

Gutierrez contends that this doctrine applies because he paid $36,000 of the consideration for the house and tendered the remaining $4,000; he took possession of the property by living there since December 2015; he made permanent and valuable improvements, with Rios's consent, by

remodeling the house; and, regardless of those improvements, the transaction would work a fraud on him if his oral agreement with Rios is not enforced.

The flaw in Gutierrez's argument, however, is that the trial court did not deny Gutierrez's claim based on the statute of frauds, that is, based on the fact that the purported contract was not in writing. Rather, as discussed above, the basis of the court's take-nothing judgment is that Gutierrez did not prove that there was a meeting of the minds. This requirement applies to both oral and written contracts and is, thus, independent of the statute of frauds. *See Haden*, 266 S.W.3d at 450 ("A meeting of the minds is necessary to form a binding contract.").

In any event, Gutierrez did not establish that the partial performance doctrine applies. One of that doctrine's requirements is that "the performance on which the party relies must be *unequivocally referable* to the agreement." *Nat'l Prop. Holdings, L.P. v. Westergren*, 453 S.W.3d 419, 426 (Tex. 2015) (internal quotation marks omitted); *see Duncan v. F-Star Mgmt., L.L.C.*, 281 S.W.3d 474, 481 (Tex. App.—El Paso 2008, pet. denied). As the supreme court has further explained, "the purpose of the alleged acts of performance must be to fulfill a specific agreement. If the evidence establishes that the party who performed the act that is alleged to be partial performance could have done so for some reason other than to fulfill obligations under the oral contract, the exception is unavailable." *Westergren*, 453 S.W.3d at 426-27. Whether performance is "unequivocally referable" to an alleged oral agreement presents a question of fact. *Vermont Info. Processing, Inc. v. Montana Beverage Corp.*, 227 S.W.3d 846, 853 (Tex. App.—El Paso 2007, no pet.).

The performance on which Gutierrez relies is his payment of $36,000 to Rios. But Rios testified that those payments were not for the purchase of the house, but for the rental of the house.

Gutierrez argues, though, that it is legally impossible to construe his payments as rent because it is undisputed that the parties did not enter a lease agreement. He urges that, under Texas law, "rent" is owed only if there is a contractual obligation, *i.e.*, lease agreement, to pay rent. But the cases on which he relies do not support that proposition. For example, *Davidow v. Inwood North Professional Group—Phase I*, 747 S.W.2d 373 (Tex. 1988), concerned a landlord's suit to recover unpaid rent from a commercial tenant. *Id.* at 374. The court there noted that "the residential tenant's obligation to pay rent is dependent upon the landlord's performance under his warranty of habitability." *Id.* at 376. It did not state, or even intimate, that rent is owed only if there is a formal lease agreement.

Similarly, *Royal Indemnity Co. v. Little Joe's Catfish Inn, Inc*., 636 S.W.2d 530 (Tex. App.—San Antonio 1982, no writ), does not stand for the proposition that a payment cannot be rent in the absence of a lease agreement. The court there simply noted that the lessee in that case was not obligated to pay rent after the occurrence of a fire because its lease contained two options absolving it of that obligation during the period of business interruption. *Id.* at 534-35.

We reject Gutierrez's contention that it is legally impossible to construe his payments as rent. Because they can be so construed, those payments were not "unequivocally referable" to the alleged oral purchase agreement and do not establish application of the partial performance doctrine. *See Westergren*, 453 S.W.3d at 426-27.

In a related argument (raised as Issue Three), Gutierrez contends that equity should apply to enforce the alleged oral purchase and sale contract because otherwise the transaction would work a fraud on him. This principle is part of the partial performance exception. *See Boyert*, 834 S.W.2d at 63 (third element of partial performance doctrine is that the purchaser made valuable

improvements *or* that failure to enforce the oral contract would work a fraud on the purchaser). Because Gutierrez did not establish that the partial performance doctrine applies, his invocation of equity to enforce the agreement likewise fails.

4. Conclusion on contract formation

The evidence does not conclusively establish a meeting of the minds, the trial court's finding that there was no meeting of the minds is not against the great weight and preponderance of the evidence, and the partial performance doctrine, if relevant in the absence of a statute of frauds defense, does not apply. Gutierrez's first issue on appeal, challenging the sufficiency of the evidence, and his third issue, invoking equity to prevent a fraud, are overruled.

B. Quasi-estoppel

Although not identified in his statement of the issues, Gutierrez contends that Rios is precluded by the doctrine of quasi-estoppel from denying that there was a meeting of the minds on the sale of the house. Gutierrez did not, however, raise the issue of quasi-estoppel in the trial court. For this reason, the issue is not properly before us. *See* TEX. R. APP. P. 33.1 (preservation of error); *Mitchell v. Bank of Am., N.A.*, 156 S.W.3d 622, 629 (Tex. App.—Dallas 2004, pet. denied) (party may not raise new theory for first time on appeal).

Gutierrez relies on *Johnson v. Cherry*, 726 S.W.2d 4 (Tex. 1987), to argue that we may consider his quasi-estoppel argument for the first time on appeal. *Johnson* concerned a suit by Johnson to convert a deed into a mortgage. *Id.* at 8. The supreme court recognized that an offer to repay the loan was a condition precedent to that suit. *Id.* For that reason, even though Cherry did not plead for monetary relief, the court concluded that, "[i]n order for equity to convert the deed into a mortgage, equity must also award judgment equal to the amount owed to Cherry." *Id.*

Johnson is legally and factually distinguishable from the case before us and thus has no application.

Hamilton v. Morris Resources, Ltd., 225 S.W.3d 336 (Tex. App.—San Antonio 2007, pet. denied), on which Gutierrez also relies, is also inapplicable because there is no indication in that case that the issue of quasi-estoppel was raised for the first time on appeal. Finally, while the court in *Malone v. Patel*, 397 S.W.3d 658 (Tex. App.—Houston [1st Dist.] 2012, pet. denied), briefly addressed the merits of the appellant's quasi-estoppel argument, it also recognized that the argument was not properly preserved. *See id.* at 682. Its discussion of the merits was therefore unnecessary to its resolution of the issue.

Gutierrez did not preserve his quasi-estoppel argument for our review. Consequently, we decline to engage in an unnecessary discussion of the merits of that argument.

C. Findings of fact and conclusions of law

In his second issue on appeal, Gutierrez contends that the trial court abused its discretion by failing to make all findings necessary to support its judgment. In his fifth issue, Gutierrez contends that the trial court abused its discretion by denying his request for additional findings of fact and conclusions of law. We will address these issues together.

Upon a party's timely request, a trial court must file findings of fact and conclusions of law in support of its judgment. *See* TEX. R. CIV. P. 296. "[A] trial court should not make findings on every disputed fact, but only those having some legal significance to an ultimate issue in the case." *Guillory v. Dietrich*, 598 S.W.3d 284, 290 (Tex. App.—Dallas 2020, pet. denied); *accord Stuckey Diamonds, Inc. v. Harris Cty. Appraisal Dist*., 93 S.W.3d 212, 213 (Tex. App.—Houston [14th Dist.] 2002, no pet.). Similarly, "[a] trial court is required to make additional findings and conclusions, when they are timely requested, but only on ultimate or controlling issues."

Honeywell Int'l, Inc. v. Denton Cent. Appraisal Dist., 441 S.W.3d 495, 506 (Tex. App.—El Paso 2014, pet. denied); *see* TEX. R. CIV. P. 298.

An issue is controlling if it is essential to a cause of action and would have a direct effect on the judgment. *Honeywell*, 441 S.W.3d at 506. "Accordingly, a trial court is not required to make additional findings and conclusions that are unsupported in the record, that are evidentiary, that are contrary to other previous findings and conclusions, or that will not result in a different judgment." *Id.*; *see ASAI v. Vanco Insulation Abatement, Inc*., 932 S.W.2d 118, 122 (Tex. App.—El Paso 1996, no writ).

1. Failure to define the parties' legal relationship

Gutierrez first argues that the trial court failed to find whether the payments he made to Rios were rent or payment toward purchase of the house. He complains that, instead, the court adopted both parties' versions of the transaction and thus failed to define whether the relationship between the parties was one of a landlord and tenant or a seller and buyer. This complaint is based on the court's finding, recited in its judgment, that "the actions of the parties are consistent with tenancies at will, tenancies at holdover, and purchaser/seller relationship."[1]

We agree that the finding quoted above does not define the legal relationship between Gutierrez and Rios or whether the payments were rent or purchase money. We disagree, however, that the trial court was required to make such findings. As plaintiff, Gutierrez bore the burden of proving that the relationship was one of seller and buyer, and that his payments were purchase money, by establishing the existence of a valid contract for the purchase and sale of the house. The

[1] The Texas Rules of Civil Procedure instruct that a trial court's findings of fact are not to be recited in a judgment but should be filed in a document separate and apart from the judgment. TEX. R. CIV. P. 299a. Gutierrez does not complain of any violation of Rule 299a.

trial court's finding that the evidence could be interpreted to demonstrate a variety of legal relationships between the parties supports its companion finding that Gutierrez "has not carried the burden of proof in proving the existence of a valid contract." In other words, the court's finding is tantamount to a negative answer to a jury question asking whether Gutierrez established, by a preponderance of the evidence, that he and Rios agreed that Rios would sell, and Gutierrez would purchase, the property at 2033 Alamo in Pecos, Texas, for the total sum of $40,000. *See Stuckey Diamonds*, 93 S.W.3d at 213 (findings and conclusions are equivalent to jury verdict on special issues). It was sufficient to a resolution of Gutierrez's breach of contract claim that he failed to prove a seller-buyer relationship;[2] it was not necessary to the resolution of that claim to determine what other relationship may have existed.

In addition, the trial court subsequently entered a finding of fact specifically stating that "there was never an agreement by [Rios] to sell the subject property to [Gutierrez]." If findings recited in a judgment conflict with separately filed findings, the latter findings control. TEX. R. CIV. P. 299a; *see Howe v. Howe*, 551 S.W.3d 236, 247 (Tex. App.—El Paso 2018, no pet.). For this reason, to the extent that the judgment finding discussed above conflicts with the separate finding that Rios did not agree to sell the house to Gutierrez, this latter finding controls. *See* TEX. R. CIV. P. 299a.

The trial court's separate finding goes beyond finding that Gutierrez did not meet his burden of proof; it affirmatively states that there was no contract for sale. Thus, the trial court did not, as Gutierrez contends, abdicate its responsibility to determine the credibility of the witnesses

[2] We note that the trial court's finding that there was no meeting of the minds and its conclusion that there was no contract for the purchase and sale of the house encompasses a finding that Gutierrez's payments were not purchase money. It was not necessary for the court to make a separate express finding on this issue.

and which party's version of the transaction to accept. Again, the controlling question before the court was whether the parties agreed to a purchase and sale of the house. Gutierrez's version was "yes"; Rios's version was "no." By finding there was no agreement to sell, the trial court impliedly found Rios's testimony on the subject to be credible and accepted her version of the transaction.

2. Failure to file additional findings and conclusions

In his fifth issue on appeal, Gutierrez contends that the trial court abused its discretion by refusing to adopt his requested proposed findings "that would have proven up his oral agreement to purchase the subject property." But a court has no obligation to enter findings of fact that are contrary to other findings and to its judgment. *See Honeywell*, 441 S.W.3d at 506. Here, the trial court found that there was no oral agreement to purchase the house and entered a take-nothing judgment accordingly. It did not abuse its discretion by refusing to enter Gutierrez's proposed contrary findings.

Gutierrez also contends that the trial court abused its discretion by refusing to adopt his proposed findings that "[t]here was no written or oral lease between the parties in connection with the subject property[,]" and that "[t]he statute of frauds was not pled or otherwise raised by [Rios] and was therefore waived . . . ." But a court also has no obligation to enter findings on undisputed issues. *Barker*, 213 S.W.3d at 310. No party asserted that any oral or written lease existed, and Rios does not assert that she pleaded or raised the statute of frauds. The trial court did not abuse its discretion by refusing to enter these proposed findings. Gutierrez's second and fifth issues are overruled.

3. Findings concerning tenancies

In his fourth issue on appeal, Gutierrez challenges the evidentiary support for the trial

court's finding, recited in its judgment, that the parties' conduct was consistent with a tenancy at will or a holdover tenancy. "A tenant who continues to occupy leased premises after expiration or termination of its lease is a 'holdover tenant.'" *Coinmach Corp. v. Aspenwood Apt. Corp*., 417 S.W.3d 909, 915 (Tex. 2013). "A tenant at will is a holdover tenant who 'holds possession with the landlord's consent but without fixed terms (as to duration or rent).'" *Id.*

Gutierrez argues that he was not a holdover tenant because Rios admitted that the parties never entered a lease agreement. He then urges that, because he was not a holdover tenant, he also could not be a tenant at will. We believe that Gutierrez reads *Coinmach* too narrowly. This Court has previously held that "[o]ne in lawful possession of premises by permission of the owner or landlord and for no fixed term is a tenant at will." *ICM Mortg. Corp. v. Jacob*, 902 S.W.2d 527, 530 (Tex. App.—El Paso 1994, writ denied); *see Fandey v. Lee*, 880 S.W.2d 164, 169 (Tex. App.—El Paso 1994, writ denied). Thus, one's status as a tenant at will is not dependent on the existence, and termination, of a lease agreement.

The record contains evidence that Gutierrez was in possession of the house with Rios's permission and consent, and that there were no fixed terms concerning either the duration of that possession or the rent to be paid. There is, therefore, evidence to support the trial court's finding that the parties' actions were consistent with a tenancy at will. *See Coinmach*, 417 S.W.3d at 915; *ICM Mortg.*, 902 S.W.2d at 530; *Fandey*, 880 S.W.2d at 169.

It does appear that a holdover tenancy logically would require an expired or terminated lease from which the tenant is holding over. *See Coinmach*, 417 S.W.3d at 915. Given that it is undisputed that Rios and Gutierrez never entered into a lease agreement, the trial court's finding that the parties' actions were consistent with a holdover tenancy is not supported by the record.

Nevertheless, Gutierrez has not demonstrated any harm resulting from this error. *See* TEX. R. APP. P. 44.1.

Gutierrez argues that, in the absence of the findings concerning a holdover tenancy or tenancy at will, the court "would have been left with no choice but to find that the agreement regarding the subject property was a purchase/sale agreement . . . ." But we have concluded that the trial court's finding that the parties' actions were consistent with a tenancy at will is supported by the record. In addition, Gutierrez's argument assumes the existence of an agreement between the parties, *i.e.*, a meeting of the minds. This, however, is precisely what the trial court found was lacking in its separately-filed findings of fact: "there was never an agreement by [Rios] to sell the subject property to [Gutierrez]. There was no meeting of the minds . . . ."

Gutierrez's argument creates a conflict between the finding recited in the judgment and the separately filed finding. In that situation, the separately filed finding prevails. *See* TEX. R. CIV. P. 299a (if there is conflict between findings of fact recited in a judgment and findings of fact made pursuant to Rules 297 and 298, the latter findings control). Regardless of whether Gutierrez's possession of the house was, or could be, identified as any particular type of tenancy, the trial court's finding that there was no meeting of the minds on a sale of the house controls and renders any error in the conflicting finding harmless. Gutierrez's fourth issue is overruled.

V. CONCLUSION

The evidence is legally and factually sufficient to support the trial court's finding that there was no contract for the purchase and sale of the house because there was no meeting of the minds concerning such a sale. In addition, Gutierrez has not demonstrated error concerning the trial court's findings of fact and conclusions of law.

The judgment of the trial court is affirmed.

GINA M. PALAFOX, Justice

April 8, 2021

Before Rodriguez, C.J., Palafox, and Alley, JJ.