



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

ZILTHAI O. SOTO	§	No. 08-21-00031-CV
Appellant,	§	Appeal from the
v.	§	County Court at Law No. 5
KARLA D. SOTO,	§	of El Paso County, Texas
Appellee.	§	(TC# 2018DCM2503)

OPINION

In this appeal, Zilthai O. Soto (Husband) appeals the trial court's final decree of divorce. By two issues, Husband complains the trial court abused its discretion in awarding spousal maintenance to Appellee Karla D. Soto (Wife) under section 8.051(2)(A) of the Texas Family Code. We affirm.

I. BACKGROUND

Husband and Wife were married in March 2010 and one child was born during their marriage. In April 2018, Husband filed for divorce. Wife responded with an original answer and counter-petition for divorce, requesting post divorce maintenance pursuant to Chapter 8 of the Texas Family Code. The trial court entered temporary orders while the case was pending, and it eventually proceeded to a bench trial.

At trial, three witnesses testified, Husband, Husband's mother, and Wife. The evidence at trial focused on the division of the parties' marital estate, custody of the child, and Wife's request for spousal maintenance. Specific to Wife's request for spousal maintenance, she testified to her educational background, her work history, and health difficulties she had been facing. She described she had been receiving daily dialysis due to renal failure since 2017. Based on her condition, she needed daily dialysis while awaiting a kidney transplant. Her dialysis treatments could be done at her home, but the treatment required her to be physically connected to a machine for up to ten hours. While receiving treatment, she was able to move freely about the house, generally completing tasks and caring for her child.

As educational history, Wife testified she received her bachelor's degree in architecture. She was employed as an architect by a company named Bella Homes, receiving \$12.25 an hour. She worked part time as she was not able to work more than 24 hours a week. If she remained seated more than three or four hours at a time, she experienced swelling in her legs. When she began receiving dialysis treatment, she was not able to work at all for a time. However, once her doctor approved, she was able to return to part time work. At the time of the divorce proceedings, Wife had health insurance through Husband's employment. She relied on the coverage for her medical condition and dialysis treatments. She did not know what she would do without Husband's insurance because she did not have enough money to pay for it on her own. Through her own research, Wife believed the cost for COBRA¹ insurance would be about \$700 a month. As to her monthly expenses, Wife paid utilities, food, and necessities for the child. Although Wife's father paid the monthly house payment, she described that she helped with other expenses of the house.

¹ Consolidated Omnibus Budget Reconciliation Act.

At the close of evidence, the trial court divided the community estate evenly between Husband and Wife. As for the request for spousal maintenance, the trial court ordered Husband to pay Wife the sum of \$800 each month pursuant to section 8.054(b) of the Texas Family Code. Husband filed a timely motion to reconsider, motion to modify, and in the alternative, a motion for new trial, contesting the award of spousal maintenance. At the hearing that followed, Husband testified the award of \$800 a month in spousal maintenance led to an unjust and inequitable division of property as Wife was currently working, and her stepfather was then paying for the mortgage of the home. He also testified it would be very difficult for him to make such payment to Wife each month. The trial court received evidence that Husband was earning a monthly salary of \$5,300 a month. Wife testified her condition had not changed at all since the last hearing. Also, Wife stated she was still only working between 20-25 hours a week and earning \$12.25 an hour. She also testified the dialysis was hard on her and took all her energy. Lastly, she testified she was relying on the awarded spousal maintenance money to pay for her COBRA insurance. At the conclusion of the hearing, the trial court denied Husband's requested relief, after reviewing its findings, the decree, and the requirements of the pertinent statute.

This appeal followed.

II. DISCUSSION

Husband presents two issues on appeal. First, Husband asserts the trial court abused its discretion in awarding spousal maintenance under section 8.051(2)(A) of the Texas Family Code because there was insufficient evidence to calculate the nature and amount of money awarded. Second, Husband asserts the trial court abused its discretion when it awarded spousal maintenance

without determining a duration or review period for the maintenance pursuant to section 8.054(b) of the Texas Family Code. We address each issue in turn.²

A. Standard of Review and Applicable Law

We review a trial court’s award of spousal maintenance for an abuse of discretion. *Kelly v. Kelly*, 634 S.W.3d 335, 364 (Tex. App.—Houston [1st Dist.] 2021, no pet.); *Chafino v. Chafino*, 228 S.W.3d 467, 474 (Tex. App.—El Paso 2007, no pet.). Under the abuse of discretion standard, legal and factual sufficiency of the evidence are not independent grounds for asserting error, but they are relevant factors in assessing whether the trial court abused its discretion. *Brooks v. Brooks*, 257 S.W.3d 418, 425 (Tex. App.—Fort Worth 2008, pet. denied).

Chapter 8 of the Texas Family Code governs spousal maintenance in a divorce proceeding. *See* TEX. FAM. CODE ANN. §§ 8.001–.305. Maintenance is defined as “an award in a suit for dissolution of a marriage of periodic payments from the future income of one spouse for the support of the other spouse.” *See id.* § 8.001(1). Relevant to this appeal, a trial court is permitted to order maintenance for either spouse when “the spouse seeking maintenance will lack sufficient property, including the spouse’s separate property, on dissolution of the marriage to provide for the spouse’s minimum reasonable needs” and the maintenance seeking spouse “is unable to earn sufficient income to provide for the spouse’s minimum reasonable needs because of an incapacitating physical or mental disability[.]” *Id.* § 8.051(2)(A). The term “minimum reasonable needs” is not defined in the Family Code and there are no cases defining the term. *Howe v. Howe*, 551 S.W.3d 236, 256 (Tex. App.—El Paso 2018, no pet.). “A trial court determines whether a party’s minimum reasonable needs are met on a fact-specific, individualized, case-by-case basis.” *Id.*

² Wife did not file an Appellee’s brief.

The Texas Family Code generally limits an award of spousal maintenance based on the length of the marriage. *See* TEX. FAM. CODE ANN. § 8.054(a)(1) (stating time limits of five years, seven years, and ten years in different scenarios). However, if the spouse seeking maintenance is unable to support herself through appropriate employment because of an incapacitating physical or mental disability, the trial court may order spousal maintenance for an indefinite period of time as long as the disability continues. *See id.* § 8.054(b) (“The court may order maintenance for a spouse to whom Section 8.051(2)(A) or (C) applies for as long as the spouse continues to satisfy the eligibility criteria prescribed by the applicable provision.”). “On the request of either party or on the court’s own motion, the court may order the periodic review of its order for maintenance under Subsection (b).” *Id.* § 8.054(c). Section 8.056 provides that the obligation to pay future maintenance terminates on the death of either party, the remarriage of the obligee, or if, after a hearing, the trial court determines that the obligee “cohabits with another person with whom the obligee has a dating or romantic relationship in a permanent place of abode on a continuing basis.” *Id.* § 8.056.

B. Evidence to support the award

In his first issue, Husband asserts Wife failed to prove “the amount she requested would meet her minimum reasonable needs,” and she did not provide sufficient evidence to prove she had an incapacitating disability. Specifically, Husband argues that Wife’s testimony that health insurance coverage through COBRA would cost about \$700 was unsupported by evidence because she did not provide an insurance quote, a website printout, a COBRA document, or an estimate of benefits. Husband asserts Wife did not present the trial court with sufficient information to calculate the amount of support needed based on her income, monthly expenses, and child support. Additionally, Husband also contends Wife failed to establish that her medical condition had caused

her to have an incapacitating disability. As noted by other Texas courts, there is “no authority directly addressing the quantum of evidence required to prove incapacity in a spousal maintenance action.” *Pickens v. Pickens*, 62 S.W.3d 212, 215 (Tex. App.—Dallas 2001, pet. denied). “Without a statutory requirement to the contrary, a fact finder may reasonably infer an individual’s incapacity from circumstantial evidence or the competent testimony of a lay witness.” *Galindo v. Galindo*, No. 04-13-00325-CV, 2014 WL 1390474, at *2 (Tex. App.—San Antonio Apr. 9, 2014, no pet.) (mem. op.). Additionally, “extent and duration of incapacity is an issue that can be proven by lay opinion and does not require medical testimony.” *Id.*

Both Husband and Wife testified to Wife’s medical condition including her need of a kidney transplant. Husband does not dispute Wife’s medical condition. Rather, Husband contends there was no evidence to show her medical condition supported a finding of an incapacitating disability. We acknowledge there is evidence of record that Wife can perform certain tasks including working a part time job and caring for their daughter. However, this evidence does not mean that Wife’s physical disability could not be “incapacitating.” *Brooks*, 257 S.W.3d at 425–26 (holding there was sufficient evidence of wife’s incapacitating disability even though husband disputed that it was incapacitating, and wife was able to perform tasks outside the home). Wife testified her condition keeps her from working full time. Although Wife is working and able to earn an income, the statute requires a showing that she is unable to earn a *sufficient* income to provide for her minimum reasonable needs due to her incapacitating disability. *See* TEX. FAM. CODE ANN. § 8.051(2)(A).

Lastly, Wife presented sufficient evidence for the trial court to conclude her income was not enough to meet her minimum reasonable needs. Her testimony showed the amount she was receiving from the temporary child support was not enough to meet her reasonable expenses. Wife

was asked whether she could support herself with the amount of money she made each month. She replied, “not really,” and further explained she also needed to support their child. Furthermore, Wife demonstrated the estimated cost she needed for her to maintain her current health insurance coverage. On appeal, Husband complains that Wife’s testimony was unsupported because there were no documents or quotes to support the \$700 cost for such insurance coverage. However, Wife testified she did research on obtaining COBRA coverage and testified under oath the cost was about \$700. Husband did not present any countervailing evidence.

Husband cites *Tellez v. Tellez* to support his argument that Wife failed to prove she had an incapacitating physical disability. 345 S.W.3d 689, 692 (Tex. App.—Dallas 2011, no pet.). But we conclude that *Tellez* is distinguishable. There, the trial court ordered the husband to pay wife \$800 in spousal maintenance for a period of thirty-six months. *Id.* at 690. In *Tellez*, wife appealed asserting the amount was too low and the duration should have been indefinite due to her incapacitating physical and mental disability. *Id.* at 692. The appellate court rejected the wife’s complaints. *Id.* at 692–93. Specifically, the court rejected wife’s argument claiming the duration of her awarded support should be indefinite because, although she had significant health issues, she testified she was gainfully employed. *Id.* at 693. The court determined the evidence did not conclusively demonstrate a disability such that she was unable to support herself through appropriate employment, and in any event, extended maintenance was discretionary. *Id.* Here, in contrast, Wife connected her inability to work full time to her medical condition.

We conclude, the trial court, as fact finder, was able to infer Wife’s incapacity from the evidence presented and conclude she qualified for spousal maintenance under the Texas Family Code. *See* TEX. FAM. CODE ANN. § 8.051(2)(A).

Accordingly, we overrule Husband’s first issue.

C. Duration

In his second issue, Husband contends the trial court erred in awarding Wife spousal maintenance for an indefinite period of time. Husband argues, “the purpose and legislative intent of the post-divorce maintenance statute is not to provide an unlimited coffer for the party awarded spousal support,” and he further contends the statute limits such maintenance to not more than three years. Contrary to Husband’s argument, however, the statute only imposes time limits in certain instances, to include: (A) placing a five year limit, when the spouses were married to each other for less than 10 years and the eligibility of the spouse for whom maintenance is ordered is established under section 8.051(1); or, when the spouses were married for at least 10 years but not more than 20 years; (B) placing a seven year limit, if the spouses were married to each other for at least 20 years but not more than 30 years; or (C) placing a limit of 10 years, if the spouses were married for 30 years or more. TEX. FAM. CODE ANN. § 8.054(a)(1). But even so, these time limits do not apply when the trial court orders maintenance pursuant to section 8.051(a)(2)(A). *Id.* § 8.054(a)(2)(A) (providing no limit on the duration of a maintenance order where the ability of the spouse to provide his or her minimum reasonable needs is substantially or totally diminished because of physical or mental disability). Additionally, the statute does not require the trial court to impose parameters for review of such an award under section 8.054(c), as Husband contends. Rather, it allows the trial court to review the order for maintenance under subsection (b) on its own motion or by request of either party. *Id.* § 8.054(c).

Here, the trial court’s order awarded spousal maintenance under section 8.051(2)(A) based on her incapacitating, physical disability. An indefinite award of spousal maintenance under section 8.051(2)(A) is permitted under section 8.054(b) for as long as the spouse continues to satisfy the eligibility criteria. *See id.* § 8.054(b) (“The court may order maintenance for a spouse

to whom Section 8.051(2)(A) or (C) applies for as long as the spouse continues to satisfy the eligibility criteria prescribed by the applicable provision.”).

Accordingly, we overrule Husband’s second issue.

III. CONCLUSION

We affirm.

GINA M. PALAFOX, Justice

November 28, 2022

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