**Reverse and Remand in part; and Affirm in apart; and Opinion Filed February 4, 2016**

**In The**
# Court of Appeals
# Fifth District of Texas at Dallas

**No. 05-14-00655-CV**

**DAVID C. MEYER, Appellant/Cross-Appellee**
**V.**
**KAREN MOORE MEYER, Appellee/Cross-Appellant**

**On Appeal from the 254th Judicial District Court**
**Dallas County, Texas**
**Trial Court Cause No. DF-08-05419-R**

## MEMORANDUM OPINION

Before Justices Francis, Evans, and Stoddart
Opinion by Justice Francis

This is an appeal from the trial court's judgment on Karen Moore Meyer's petition for clarification and enforcement, alleging her ex-husband, David C. Meyers, failed to disclose three assets during their divorce – two seat options at Cowboys Stadium, shares and warrants in a company, and a coin collection. After hearing the evidence, the trial court determined David failed to disclose the Cowboys seat options and awarded Karen $300,000 for the value of the options and $25,320.80 for attorney's fees, expenses, and costs. The trial court did not grant relief to Karen on the other two assets. Both sides appealed.

In two issues, David challenges the trial court's determination on the seat options and complains the trial court did not make findings of fact and conclusions of law. In four issues, Karen complains the trial court erred by failing to award her the shares and warrants, failing to

award actual damages on the sold coin collection, and awarding an amount of attorney's fees that is "too low." For reasons set out below, we conclude the trial court abused its discretion in the amount it awarded for the value of the seats and remand to determine the value on the date of the divorce. We affirm the trial court's judgment in all other respects.

Karen and David were divorced on February 19, 2009. The divorce decree, signed four months later, contains a provision referred to by the parties as a "residuary clause." The provision addressed assets and liabilities that the parties failed to disclose:

**XII.**

> IT IS ORDERED that any asset not listed herein is awarded to the party who is not in possession of the asset, and the party in possession shall pay all reasonable and professional fees and costs incurred by the party not in possession in locating and taking possession and control of the asset and in bringing an action or other proceeding to enforce this provision, if necessary[.]
>
> IT IS FURTHER ORDERED that an unpaid liability that is not listed herein will be the sole responsibility of the party who incurred or may hereafter incur such liability, and the party who incurred that liability is ORDERED to timely pay that liability and hold the other party and his or her property harmless from it[.]

Several months after the divorce was finalized, Karen learned that David purchased two seat options at the new Dallas Cowboys Stadium (now AT&T Stadium) during the pendency of the divorce without disclosing them. The two seats were located on the fifty-yard line in the Founders Club area. Each seat license cost $150,000 and gave David the option of purchasing tickets for Cowboys games and other events at the stadium. Karen filed a petition for clarification and enforcement of the prior decree and ultimately amended the petition numerous times. She asserted the seat options existed on the date of the divorce, were not listed in the decree, and were in David's possession. Relying on the residuary clause of the decree, she asked that the options or their value be awarded to her "free and clear" of any debt. Karen also asserted causes of action against David for intentional infliction of emotional distress, breach of fiduciary duty, and fraud. In her fourth amended petition, filed one month before trial, she dropped those

causes of action and added allegations that David failed to disclose shares and warrants in Sustainable Modular Management, Inc., and a collection of valuable coins.

The trial court heard two days of testimony regarding the seat options, stock, and coin collection. Beginning with the seat options, David admitted he bought two season ticket seat options for $300,000 in July 2008, while the divorce was pending, but did not disclose them on any of his filed inventories. David said he made a $60,000 down payment, which he borrowed from his company, and Cowboys Stadium, LP financed the remaining balance of $240,000 over thirty years. He purchased season tickets for the first two years before Karen learned of the options and brought this proceeding. Within weeks of suit being filed, David offered to turn over the options to Karen but told her she would have to take over the debt. Karen rejected the offer, taking the position the options were hers under the first paragraph of the residuary clause but the debt belonged to David under the clause's second paragraph. A few months later, while this proceeding was pending, David forfeited the options by missing a regularly scheduled payment. David also testified that in fall of 2008, the stock market collapsed. That fall and the winter of 2009, he said he attempted to determine the value or prospective value of the options. He said he looked at the Dallas Morning News daily for three months and looked at eBay every other day for three or four months. He said he noticed that "a lot of them" were for sale, but he never saw one sell. He testified the "asking prices" were "substantially less" than what he had originally paid, he but did not testify what those prices were.

Karen also claimed David owned undisclosed shares and warrants in SMM, a company created during the pendency of the divorce. She presented evidence of a preferred stock transfer ledger, a warrant ledger, a pre-printed stock certificate, and a lost warrants affidavit, all of which suggested David was issued stock and warrants in November 2008. David acknowledged that SMM was "his idea" and that he "organized the team" and found investors. However, David

testified he did not purchase the stocks and warrants until after the divorce was finalized and produced a banking statement to support his testimony. He also presented evidence that the documents relied on by Karen were created years after the fact by a paralegal attempting to create the company's ownership history.

Finally, Karen claimed David owned and failed to disclose a "second coin collection." As evidence, she relied on an amended tax return for 2008, filed by David, that amended capital gains and losses to reflect the sale of a coin collection on October 1, 2008 for $1.08 million. In the return, David reported the coins were acquired on "various" dates, had a cost basis of $998,000, and had a gain of $82,000.

David testified there was no second coin collection; the return was intended to convey a long-term capital gain on coins acquired in 2005, 2006, and 2008 that had not been reported to the IRS. David testified he disclosed $934,750 worth of coin sales during the divorce, and the coins were the subject of at least two hearings during the divorce proceeding. He filed an amended return because he feared Karen was going to "have him jailed" for tax avoidance, and he "panicked" when he realized he had not reported the sale of the coins. He said he only purchased coins from O'Connor Numismatics, and he introduced O'Connor's records showing all the invoices of coins purchased and sold during the parties' marriage. The exhibit reflected purchases of $987,500, and sales of $1,075,600, which he said he "rounded up" to $1.08 million on the amended tax return.

After hearing the evidence, the trial court found in Karen's favor on the seat options and against her on the corporate stock and coin collection. The trial court signed an amended rendition that explained its rulings and then reduced its findings to judgment. As relevant to this appeal, the trial court's judgment "modified, reformed and clarified" the divorce decree to reflect that (1) the Cowboys Stadium seat options acquired by David in his name were awarded to

Karen by the terms of Article XII of the decree and (2) the debt incurred by David to Cowboys Stadium L.P. was awarded to David per the terms of Article XII. The judgment awarded Karen $300,000 "as compensatory damages for David C. Meyer's failure to disclose and transfer to her the Cowboys Stadium, L.P. Seat Options awarded her" by the divorce decree and also awarded her just over $25,000 for attorney's fees, expenses, and costs. Both Karen and David appealed.

Under the family code, a trial court that rendered a divorce decree retains the power to clarify and enforce the decree's property division. *See* TEX. FAM. CODE ANN. §§ 9.002, 9.006(a), & 9.008 (West 2006 & Supp. 2015); *In re W.R.W.*, 370 S.W.3d 799, 803 (Tex. App.—Fort Worth 2012, orig. proceeding). To enforce a division in a divorce decree of specific, existing property, the trial court may order the property to be delivered. TEX. FAM. CODE ANN. § 9.009 (West Supp. 2015). But when delivery of the property awarded in the decree is no longer an adequate remedy, the trial court may render a money judgment for the damages caused by that failure to comply. *Id.* § 9.010 (West 2006); *DeGroot v. DeGroot*, 369 S.W.3d 918, 922 (Tex. App.—Dallas 2012, no pet.).

Generally, we review the trial court's ruling on a post-divorce motion for enforcement or clarification for an abuse of discretion. *Beshears v. Beshears*, 423 S.W.3d 493, 499 (Tex. App.—Dallas 2014, no pet.). A trial court abuses its discretion when it acts arbitrarily or unreasonably or without any reference to guiding rules and principles. *Id.* In family law cases, legal and factual sufficiency challenges are not independent grounds for asserting error but are relevant factors in assessing whether the trial court abused its discretion. *Id.* To determine whether the trial court abused its discretion because the evidence is legally or factually insufficient to support the decision, we consider whether the trial court had sufficient evidence upon which to exercise its discretion and erred in applying that discretion. *Id.* We conduct the applicable sufficiency review when considering the first prong of the test. *Id.* We then

determine whether the trial court made a reasonable decision based on the evidence. *Id.* A trial court does not abuse its discretion if there is some evidence of a substantive and probative character to support its decision. *Id.*

In his first issue, David asserts that "[f]or many different reasons, the trial court erred in awarding $300,000 related to the seat options." He begins by arguing the options were not "assets" as required by the language of the residuary clause because the property was "encumbered" by debt.

As legal support for his proposition, David relies on the definition of "asset" found in chapter 24 of the Texas Business and Commerce Code, the Uniform Fraudulent Transfer Act, and a case applying that definition in a fraudulent transfer case. Under chapter 24, the term "asset" does not include property to the extent it is encumbered by a valid lien. TEX. BUS. & COM. CODE ANN. § 24.002(2) (West Supp. 2015).

This case, however, does not involve allegations of fraudulent transfer; rather, the issue is whether the options were an "asset" under the residuary clause in the parties' divorce decree. Consequently, David's reliance on a statutory definition in an inapplicable statute is unpersuasive. The term "asset" is commonly understood to mean "a valuable person or thing" or "something that is owned by a person, company, etc." *Asset*, www.merriam-webster.com/dictionary/asset (last visited Jan. 21, 2016); *see also Asset*, Webster's Third New International Dictionary (1981) (defining "asset" as "an item of value owned"). Here, the evidence showed David bought the options for $300,000 six months before the divorce. We therefore reject his argument that the options were not an "asset" under the terms of the residuary clause.

David makes several other arguments related to the "encumbrance" and the measure of damages awarded by the trial court, but none of these arguments are supported by any legal

authority. For example, he asserts the asset cannot be separated from the related debt; another provision in the decree controlled; the trial court was limited to awarding, at most, no more than $66,379.98 ($300,000 minus the $233,620.02 encumbrance); and Karen waived any right to recovery because David offered her the seats before he forfeited them. A party must provide legal authority and substantive analysis pertinent to the legal issue that we must decide. *Bullock v. Am. Heart Ass'n*, 360 S.W.3d 661, 665 (Tex. App.—Dallas 2012, pet. denied); *Bolling v. Farmers Branch Indep. Sch. Dist.*, 315 S.W.3d 893, 896 (Tex. App.—Dallas 2010, no pet.). By failing to support these arguments with any legal authority, David has waived them on appeal.

We do, however, agree with David that no evidence shows the options were valued at $300,000 on the date the parties were divorced, February 19, 2009; rather, the evidence presented established the options were valued at $300,000 six months earlier when David purchased them. Below and on appeal, the parties agreed the relevant date for determining the value of the asset was the date of divorce, February 19, 2009.

In post-argument briefing, Karen directs us to petitioner's exhibit 7, which is a settlement proposal letter from David's attorney to Karen's attorney offering to turn over the options to Karen with the understanding she would assume the debt. The letter contains a stipulation that the value of the seats was $300,000 on the date of divorce. At the time the letter was offered, David's counsel said he had no objection but wanted the trial court to understand the letter was "written and proffered for purpose of settlement . . . and was not written or intended to be a confession of value of anything on the date of divorce." The trial court admitted the letter "but not for the truth of the matters asserted therein." Immediately thereafter, Karen's counsel had David read aloud the contents of the letter, and in particular, the stipulation.

In post-submission briefing, Karen argues, without legal authority, that because David read from the letter without objecting, the stipulation became substantive evidence. Given the

trial court's express ruling, we cannot agree (1) David needed to object when the trial court had just ruled on how it would consider the letter or (2) that by failing to object, the letter's contents became admissible for all purposes.

To the extent Karen asserts the time period between purchase of the seats and the date of divorce is "not significant," we cannot agree. There was evidence presented the stock market declined significantly during this time, and David testified he investigated the asking price of seat options on the secondary market and they were "substantially less" than what he originally paid. He did not, however, testify to any particular amount and specifically did not testify the options were without value.

Because no evidence establishes the seat options were valued at $300,000 on the date of the divorce, we conclude it was not reasonable for the trial court to award that amount. The evidence shows the options were valued at $300,000 six months earlier and no evidence shows the options had lost *all* of their value on the date of the divorce; consequently, we remand to the trial court to determine the value of the asset on the date of divorce.

In his second issue, David asserted he was harmed by the trial court's failure to file findings of fact and conclusions of law. As a general rule, a trial court has a mandatory duty to issue findings of fact and conclusions of law when properly requested, and the failure to issue them is harmful if an appellant is left to guess at the reasons the trial court ruled against him. *Larry F. Smith, Inc. v. The Weber Co.*, 110 S.W. 611, 614 (Tex. App.—Dallas 2003, pet. denied). If there is only a single ground of recovery or defense, an appellant does not usually have to guess at the reasons for the trial court's judgment. *Id.*

Here, there was one ground for recovery—the residuary clause. The trial court had to determine whether it applied and, if so, the remedy to be afforded, given that David defaulted on the options contract. The evidence was undisputed that David purchased the seat options during

the divorce and did not disclose them. Moreover, the trial court issued a first amended rendition to explain its rulings, and both parties rely on this rendition in their briefing. We have remanded this cause on the issue of the value of the seat options. We conclude David has not been left to guess as to the reasons for the trial court's ruling. We overrule the second issue.

We now turn to Karen's appeal. In her first two issues, she contends the trial court erred by failing to award her the SMM stocks and warrants and the value of the coin collection.

Beginning with the SMM stock and warrants, in its amended rendition, the trial court acknowledged Karen presented documents that "reference in one way or another" that David was a shareholder in SMM in November 2008 "because pre-printed stock certificates said he was and corporate documents created some years after the creation of the corporation said he was." Nevertheless, the trial court found that no document evidenced payment for the shares and warrants until April 6, 2009, two months after the parties' divorce.

On appeal, Karen does not dispute that David purchased the stocks and warrants after the divorce but contends the date of purchase is "irrelevant to the analysis." She argues shares and warrants are issued on the date the "consideration for the shares and warrants is received" by the corporation. She then argues David planned to invest funds after the divorce was finalized and obligated himself to do so during the pendency of the divorce; thus, she contends, SMM received consideration prior to the date of issuance of the shares and warrants in the form of David's "promise to pay." As authority, she generally relies on sections 21.157 and 21.159 of the Texas Business Organization Code. She does not, however, provide any legal support for her position that David's agreement to purchase stocks and warrants after the divorce was finalized is the equivalent to tendering consideration for the purchase, nor do we agree with such a suggestion under the facts of this case.

Under section 21.157, a corporation may issue shares for consideration if authorized by the board of directors of the corporation. TEX. BUS. ORGS. CODE ANN. § 21.157(a) (West 2012). Further, shares may not be issued until the consideration has been paid or delivered as required in connection with authorization of the shares. *Id.* § 21.157(b). When the consideration is paid or delivered, the shares are considered to be issued; the subscriber or other person entitled to receive the shares is a shareholder with respect to the shares; and the shares are considered fully paid and nonassessable. *Id*. Section 21.159 provides that shares with or without par value may be issued for the following types of consideration: (1) a tangible or intangible benefit to the corporation; (2) cash; (3) a promissory note; (4) services performed or a contract for services to be performed; (5) a security of the corporation or any other organization; and (6) any other property of any kind or nature. *Id*. § 21.159. (West 2012).

Evidence in this case showed SMM required its investors to pay $100,000 as consideration for issuance of shares and warrants. Brian Schaefer, president and corporate representative of SMM, testified that to be an investor in SMM, David had to pay the investment amount of $100,000. He testified David invested in April 2009. Timothy Vaughn, corporate counsel for SMM, testified the corporation required receipt of consideration for the shares to be issued. Vaughn explained that petitioner's exhibit 10, a unanimous consent decree of SMM's board of directors, authorized the issuance of preferred stocks and warrants but was not, in and of itself, a "conveyance" document.

The consent document authorized the corporation to issue preferred shares and warrants to specifically identified persons, one being David, for "the consideration specified opposite their respective names[.]" Next to David's name was $100,000, which the consent decree identified as "Aggregate Consideration." The consent document further provided that "upon issuance of certificates evidencing the Preferred Shares against the Corporation's receipt of the consideration

stated above, such Preferred Shares shall be deemed duly and validly issued, fully paid and nonassessable."

Thus, the corporation required $100,000 in consideration for issuance of the shares and warrants, not a promise to pay, and the terms required issuance was to occur upon receipt of the consideration. David said he purchased the shares and warrants in April 2009, two months after the divorce, and produced a banking document showing $100,000 deposited into SSM's operating account on April 6, 2009. Given the evidence, we conclude the trial court did not abuse its discretion in determining David did not own the asset prior to the divorce. We overrule Karen's first issue.

In her second issue, Karen contends the trial court erred when it failed to award her damages for the coin collection that she claimed was undisclosed during the divorce. In its amended rendition, the trial court found the coin sales took place between 2005 and 2008, the money was deposited into specifically identified accounts, and David's filing of an amended tax return was an "effort to allay any later IRS claim that the coin sales were not reported for capital gains purposes."

In her only argument on appeal, Karen claims David is "estopped from claiming that [he] provided false information to the IRS and that [he] did not actually own the coins at the time of the divorce." As authority, she relies on cases regarding quasi estoppel, which forbids a party from "accepting the benefits of a transaction or statute and then subsequently taking an inconsistent position to avoid the corresponding obligations or effects." *See Davidson v. Davidson*, 947 F.2d 1294, 1297 (5th Cir. 1991); *Neiman-Marcus Group, Inc. v. Dworkin*, 919 F.2d 368, 371 (5th Cir. 1990).

Initially, we note Karen has not directed this Court to any place in the record where she raised the issue of estoppel prior to the trial court's ruling; consequently, it is waived. *See* TEX.

R. APP. P. 33.1. Regardless, the purpose of the amended return was to claim a capital gain on the coins, and David did not dispute that fact. David testified, and other evidence supported, that he sold the coins over a period of time between 2005 and 2008. Specifically, the evidence showed David sold $78,750 in coins in 2005, $62,100 in coins in 2006, and $934,750 in coins in 2008, which totals $1,075,600. David testified he "rounded up" the total number to $1,080,000 on the amended return. Finally, the evidence showed the sale of these coins was known to the parties during divorce. Under these circumstances, we conclude Karen has not shown David accepted the benefits of a transaction and then took an inconsistent position to avoid the corresponding obligations or effects. We overrule the second issue.

In her third issue, Karen argues the trial court erred when it awarded substantially less attorney's fees than she requested. Specifically, Karen's attorney testified she had incurred attorney's fees of $440,551.25, but the trial court awarded Karen $25,320.80 for attorney's fees, expenses, and costs.

A trial court may award reasonable attorney's fees in a proceeding to clarify and enforce a property division under a divorce decree. TEX. FAM. CODE ANN. § 9.014 (West Supp. 2015). A trial court's decision to grant attorney's fees in such a case is reviewed for an abuse of discretion. *Cook v. Cameron*, 733 S.W.2d 137, 141 (Tex. 1987); *Seabron v. Seabron*, No. 04-12-00482-CV, 2013 WL 4685440, at *6, (Tex. App.—San Antonio Aug. 30, 2013, pet. denied) (mem. op.). Generally, the party seeking to recover attorney's fees carries the burden of proof. *Stewart Title Guar. Co. v. Sterling*, 822 S.W.2d 1, 10 (Tex. 1991).

A reasonable fee is one that is moderate and fair but not excessive or extreme. *Garica v. Gomez*, 319 S.W.3d 638, 642 (Tex. 2010); *Russell v. Russell*, No. 14-13-01100, 2015 WL 5723109, at *8 (Tex. App.—Houston [14th Dist.] Sept. 29, 2015, no pet.). In awarding attorney's fees, the trial court, as trier of fact, should take into account various factors, such as

the time, labor and skill required to properly perform the legal service; the novelty and difficulty of the questions involved; the customary fees charged in the local legal community for similar legal services; the amount involved and the results obtained; the nature and length of the professional relationship with the client; and the experience, reputation and ability of the lawyer performing the services. *Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 818 (Tex. 1997); *Messier v. Messier*, 458 S.W.3d 155, 166 (Tex. App.—Houston [14th Dist.] 2015, no pet.). The trial court does not need to hear evidence on each factor but can consider the entire record, the evidence presented on reasonableness, the amount in controversy, the common knowledge of the participants as lawyers and judges, and the relative success of the parties. *Messier*, 458 S.W.3d at 166.

In her brief, Karen directs us to her attorney's testimony about the legal work performed, that is, drafting and filing petitions; drafting and serving written discovery; reviewing the discovery responses and documents received from opposing counsel; drafting, filing, and arguing a motion to compel discovery; drafting responses to written discovery; obtaining discovery from nonparties; drafting a response to David's motion to dismiss that was subsequently withdrawn; and preparing for trial. Additionally, she recites her lawyers had to subpoena bank records, depose corporate counsel and SMM's corporate representative, and draft responses to two summary judgment motions filed by David that were denied.

Karen asserts she offered the only evidence as to her attorney's fees, suggesting no evidence supports the reduction, and argues we should render the amount requested or, alternatively, remand for a new determination of attorney's fees.

The record, however, shows Karen's attorney was extensively cross-examined about the amount of time spent on the case and the heavily redacted attorney's fee statements. For instance, David's attorney asked about the amount of "billable time" spent on Karen's

allegations of breach of fiduciary duty, intentional infliction of emotional distress, and fraud—all causes of actions pleaded early on in the case and dropped before trial. Karen's attorney testified he did not know. David's attorney also highlighted a three-week-period between November 14, 2011 and December 14, 2011 where an attorney billed $54,857.50 and another four-month period from October 18, 2013 and February 10, 2014 where a legal assistant billed 461 hours.

Further, in its amended rendition, the trial court noted "several problems" with Karen's request for attorney's fees. First, the trial court explained a "significant amount of the legal effort" went to the issues of the stock and warrants and coin sales for which Karen had no recovery and which was not even pleaded until ten days before trial. In contrast, the court noted the seat option claim was "largely admitted by [David] within one month" of the filing of the petition. As the trial court stated, there was disagreement on the value of the options and whether the asset could be severed, but neither issue was "so convoluted as to require something more than three years to resolve."

Additionally, the trial court noted that while Karen's attorney testified that all of the fees and costs incurred were reasonable and necessary, the exhibits supporting his testimony were so "heavily redacted that it is impossible to determine what time and effort was devoted to establishing the claim on which they prevailed and what time and effort was devoted to the claims on which they did not prevail as well as the myriad tort claims" that Karen had abandoned by her final fourth amended petition. Consequently, the trial court "assumed" the fees generated on July 19, 2011 statement included "the most work/time devoted" to the seat options, and awarded that amount as the reasonable and necessary fees.

Having reviewed the record, we conclude it shows the trial court took into account the circumstances of the case and the various relevant factors when it reduced the amount of

attorney's fees request. We therefore conclude the trial court did not abuse its discretion in the award of attorney's fees. We overrule the third issue.

Karen's fourth issue also concerns attorney's fees and is conditioned on the success of her first two issues, both of which we have determined against her. Accordingly, we need not address this issue.

We reverse the trial court's judgment awarding Karen $300,000 as damages for David's failure to disclose and transfer to her the Cowboys Stadium seat options and remand to the trial court to determine the value of the seat options on the date of the divorce. We affirm the trial court's judgment in all other respects.

/Molly Francis/
MOLLY FRANCIS
JUSTICE

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# Court of Appeals
# Fifth District of Texas at Dallas

## JUDGMENT

DAVID C. MEYER, Appellant/Cross-Appellee

No. 05-14-00655-CV V.

KAREN MOORE MEYER, Appellee/Cross-Appellant

On Appeal from the 254th Judicial District Court, Dallas County, Texas
Trial Court Cause No. DF-08-05419-R.
Opinion delivered by Justice Francis; Justices Evans and Stoddart participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED** in part and **REVERSED** in part. We **REVERSE** that portion of the trial court's judgment awarding appellee Karen Moore Meyer $300,000 in compensatory damages and **REMAND** for the trial court to determine the value of the Cowboys Stadium seat options on the date of the divorce. In all other respects, the trial court's judgment is **AFFIRMED**.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered February 4, 2016.