Affirm in part, Reverse in part and Render; Opinion Filed April 16, 2018.

In The

Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00385-CV

SCOTT STEWART RILEY, Appellant
V.
MICHELLE MANSOUR RILEY, Appellee

On Appeal from the 254th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-14-09932

MEMORANDUM OPINION

Before Justices Lang, Fillmore, and Schenck
Opinion by Justice Lang

Scott Stewart Riley appeals the trial court's judgment in a post-divorce proceeding initiated by his former wife, Michelle Mansour Riley, for enforcement of their agreed final decree of divorce (the "divorce decree"). In five issues, Scott contends the trial court (1) erred by signing a judgment that "substantively did not conform to the Trial Court's rendition"; (2) erred by modifying the substantive division of property approved in the divorce decree; (3) erred by awarding "actual damages" and "costs incurred enforcing and collecting the judgment" because such damages and costs "were not pleaded for or proven"; and (4) abused its discretion by awarding attorney's fees to Michelle.

We decide in favor of Scott on his fourth issue. His remaining issues are decided against him. We reverse the portion of the trial court's judgment awarding Michelle "all costs, fees, and

expenses" incurred in the enforcement and collection of the judgment and render judgment denying Michelle's request for such. The trial court's judgment is otherwise affirmed.

I. FACTUAL AND PROCEDURAL CONTEXT

The parties' divorce decree is dated December 19, 2016, and states in part as follows[1]:

> **Property to Wife**
> IT IS ORDERED AND DECREED that the wife, Michelle Mansour Riley, is awarded the following as her sole and separate property, and the husband, Scott Stewart Riley, is divested of all right, title, interest, and claim in and to that property:
> . . . .
> W-11. The sum of $200,000, which Scott Stewart Riley, or his authorized agent, shall tender and deliver to Michelle Mansour Riley's counsel, Shamoun & Norman, LLP, courtesy of its authorized agent(s) . . . by check, written in the amount of two hundred thousand dollars and no/100 ($200,000.00), made payable to Shamoun & Norman, LLP, , [sic] and such payment shall be tendered and delivered by Scott Stewart Riley, or his authorized agent, by no later than the date of the entry of this Agreed Final Decree of Divorce.
> . . . .
> **Debts to Husband**
> IT IS ORDERED AND DECREED that the husband, Scott Stewart Riley, shall pay, as a part of the division of the estate of the parties, and shall indemnify and hold the wife and her property harmless from any failure to so discharge, these items:
> . . . .
> H-11. The sum of $200,000, which Scott Stewart Riley, or his authorized agent, shall tender and deliver to Michelle Mansour Riley's counsel, Shamoun & Norman, LLP, courtesy of its authorized agent(s) . . . by check, written in the amount of two hundred thousand dollars and no/100 ($200,000.00), made payable to Shamoun & Norman, LLP, and such payment shall be tendered and delivered by Scott Stewart Riley, or his authorized agent, by no later than the date of the entry of this Agreed Final Decree of Divorce.

On December 20, 2016, Michelle filed a "Motion For Enforcement and For An Order to Show Cause Why Respondent Should Not Be Held In Contempt" (the "Motion"). Therein, Michelle (1) contended Scott had not tendered and delivered the sum of $200,000.00 as described in the divorce decree; (2) sought to have Scott held in criminal contempt based on his failure to

[1] The clerk's record and reporter's record in this case are sealed. In this opinion, we limit our recitation of facts to those described in the parties' appellate briefs, which were not filed under seal.

comply with the divorce decree; and (3) requested that Scott "be ordered to pay all reasonable and necessary attorney's fees, expenses, and costs incurred and that will be incurred by Petitioner in having to file and prosecute this Motion." Additionally, in her prayer for relief in the Motion, Michelle requested a judgment in her favor against Scott for "all attorneys' fees, court costs, and pre-judgment and post-judgment interests" and "such other and further relief to which she may show herself to be justly entitled."

Following a hearing on the Motion, the trial court stated in a February 13, 2017 letter to the parties' counsel,

> Court denies Petitioner's request to hold the Respondent in criminal contempt. This Court grants a judgment in favor of Petitioner against Respondent in the amount of $200,000 plus pre judgment [sic] and post judgment interest. Additionally, this Court finds the Petitioner's attorney's fees and costs for prosecuting this action to be reasonable and necessary in the amount of $16,375.00 and the Court grants a judgment in favor of Petitioner against Respondent in that amount plus interest. . . . Attorney for the Petitioner, please draft and circulate the Order.

Subsequently, the trial court signed a March 21, 2017 "Judgment in Aid of Enforcement of Agreed Final Decree of Divorce" in which it granted Michelle's Motion, in part, and stated,

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED, without affecting the finality of the Final Decree, that Petitioner [Michelle] shall have and recover from and against Respondent [Scott], pursuant to . . . the Final Decree, and in order to enforce, carry into effect, and aid in the collection of the Final Decree, specifically, this Court's just, right, and equitable division of the Parties' community estate . . . , and in connection with Respondent's failure and refusal to pay and deliver to Petitioner or her counsel, Shamoun & Norman, LLP, on December 19, 2016 (or on any date), a check made payable to Shamoun & Norman, LLP (or to anyone), in the amount of $200,000.00 (or for any amount), in violation of . . . the Final Decree, the following sums:
>
> > a. Actual damages in the amount of TWO HUNDRED THOUSAND DOLLARS AND ZERO CENTS ($200,000.00);
> >
> > b. Prejudgment interest on the actual damages amount . . . ;
> >
> > c. Postjudgment interest on the actual damages amount . . . ;
> >
> > d. Reasonable and necessary attorney's fees in the amount of SIXTEEN THOUSAND THREE HUNDRED SEVENTY FIVE DOLLARS AND

> ZERO CENTS ($16,375.00) . . . which are awarded to [Michelle] in connection with, arising from, on account of, and stemming from her having to file and prosecute the Motion against [Scott]; and
>
> e. Postjudgment interest on the attorney's fees amount . . . .
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Petitioner [Michelle] shall have and recover from and against Respondent [Scott] all costs, fees, and expenses, including reasonable and necessary attorneys' fees, incurred by Petitioner [Michelle] in the enforcement and collection of this Judgment.

This appeal timely followed.

II. APPELLANT'S ISSUES

A. Standard of Review

We review the trial court's ruling on a post-divorce motion for enforcement or clarification of a divorce decree under an abuse-of-discretion standard. *Hollingsworth v. Hollingsworth*, 274 S.W.3d 811, 815 (Tex. App.—Dallas 2008, no pet.). A court abuses its discretion when it acts unreasonably, arbitrarily, or without reference to guiding rules and principles. *See Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990); *Beshears v. Beshears*, 423 S.W.3d 493, 499 (Tex. App.—Dallas 2014, no pet.). A trial court does not abuse its discretion when there is some evidence of a substantive and probative character to support its decision. *In re A.E.R.*, No. 05-15-00019-CV, 2016 WL 4205683, at *1 (Tex. App.—Dallas Aug. 9, 2016, pet. denied) (mem. op.).

When, as here, a trial court makes no separate findings of fact or conclusions of law, we must draw every reasonable inference supported by the record in favor of the trial court's judgment. *Hollingsworth*, 274 S.W.3d at 815. Additionally, "the judgment of the trial court must be affirmed if it can be upheld on any legal theory that finds support in the evidence." *Id.* "Nonetheless, in cases in which the appellate record includes the reporter's record, the trial court's implied fact findings are not conclusive and may be challenged for legal and factual sufficiency of the evidence supporting them." *Id.*

In family law cases, legal and factual sufficiency challenges do not constitute independent grounds for asserting error, but are relevant factors in determining whether the trial court abused its discretion. *McCafferty v. McCafferty*, No. 05-16-00587-CV, 2017 WL 3124470, at *1 (Tex. App.—Dallas July 24, 2017, no pet.) (mem. op.). To determine whether the trial court abused its discretion because the evidence is legally or factually insufficient to support the trial court's decision, we consider whether the trial court (1) had sufficient evidence upon which to exercise its discretion and (2) erred in its application of that discretion. *Id*. A trial court's findings are reviewable for legal and factual sufficiency of the evidence under the same standards that are applied in reviewing evidence supporting a jury's answer. *Id*. In evaluating a legal sufficiency challenge, we credit evidence that supports the finding if a reasonable factfinder could and disregard contrary evidence unless a reasonable factfinder could not. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005); *In re A.E.R*., 2016 WL 4205683, at *1. The test for legal sufficiency is "whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review." *City of Keller*, 168 S.W.3d at 827.

B. Applicable Law

Subchapter A of Chapter 9 of the Texas Family Code is titled "Suit to Enforce Decree." *See* TEX. FAM. CODE ANN. §§ 9.001–.014 (West 2006 & Supp. 2017). Section 9.001 of that subchapter provides in part that a party affected by a decree of divorce providing for a division of property "may request enforcement of that decree by filing a suit to enforce . . . in the court that rendered the decree." *Id*. § 9.001. Except as otherwise provided in Chapter 9, "the proceedings shall be as in civil cases generally." *Id*.; *see also id*. § 9.005 (party may not demand jury trial if procedures of subchapter A are invoked). "[T]he court may render further orders to enforce the division of property made or approved in the decree of divorce . . . to assist in the implementation of or to clarify the prior order." *Id*. § 9.006. However, "[a] court may not amend, modify, alter, or

change the division of property made or approved in the decree of divorce." *Id.* § 9.007. An order that amends, modifies, alters, or changes "the actual, substantive division of property made or approved in a final decree of divorce" is "beyond the power of the divorce court" and "unenforceable." *Id.*

Section 9.010, titled "Reduction to Money Judgment," provides in part as follows:

> (a) If a party fails to comply with a decree of divorce . . . and delivery of property awarded in the decree is no longer an adequate remedy, the court may render a money judgment for the damages caused by that failure to comply.
>
> (b) If a party did not receive payments of money as awarded in the decree of divorce . . . , the court may render judgment against a defaulting party for the amount of unpaid payments to which the party is entitled.
>
> (c) The remedy of a reduction to money judgment is in addition to the other remedies provided by law.
>
> (d) A money judgment rendered under this section may be enforced by any means available for the enforcement of judgment for debt.

Id. § 9.010. Further, the court "may award reasonable attorney's fees in a proceeding under [subchapter A]," *id.* § 9.014, and "may award costs in a proceeding to enforce a property division under [subchapter A] as in other civil cases," *id.* § 9.013.

We construe orders and judgments under the same rules of interpretation as those applied to other written instruments. *Payless Cashways, Inc. v. Hill*, 139 S.W.3d 793, 795 (Tex. App.—Dallas 2004, no pet.) (citing *Lone Star Cement Corp. v. Fair*, 467 S.W.2d 402, 404–05 (Tex. 1971)); *Hahn v. Sw. Double D Ranch, LP*, No. 05-16-00111-CV, 2017 WL 1832505, at *1 (Tex. App.—Dallas, May 8, 2017, no pet.) (mem. op.). If an order or judgment is unambiguous, we must construe it in light of the literal meaning of the language used. *Payless Cashways*, 139 S.W.3d at 795.

C. Application of Law to Facts

1. Alleged Award of "Additional" Amounts

We begin by addressing together Scott's first, second, and third issues. In his first issue, Scott contends the trial court reversibly erred because its March 21, 2017 judgment "substantively did not conform to the . . . rendition contained in the [February 13, 2017] Memorandum Ruling." Specifically, Scott asserts (1) "the Trial Court's filing of its Memorandum Ruling constitutes rendition of the order on [the Motion]"; (2) therefore, Scott "is entitled as a matter of law to the entry of a written order that is in complete conformity to the Memorandum Ruling"; (3) "[g]iven the phrasing of the language from the Judgment that the actual damages are to compensate Appellee for enforcing, carrying into effect, and aiding in the collection of the funds owed in the Decree, the award contained within the Judgment is an award **additional** to the funds owed by Appellant pursuant to the Decree and reduced to a judgment in the Memorandum Ruling" (emphasis original); (4) "[a]ccordingly, rather than issuing a judgment which Appellee would then be able to execute upon as rendered in the Trial Court's Memorandum Ruling, the Judgment created a whole new award for Appellee—one of damages compensating Appellee for her difficulties in securing payment"; and (5) "[t]he Judgment, therefore, facially does not conform to the Memorandum Ruling."

Further, in his second issue, Scott contends the trial court erred because the judgment "changes the substantive division of property approved in the [divorce decree]." Specifically, according to Scott, (1) "[t]he Judgment amounts to a substantive modification of the property division in that it effectively awards the Appellee an **additional** $200,000.00" (emphasis original) and (2) this "changes the substantive property division" and therefore the judgment is unenforceable.

Additionally, in his third issue, Scott contends the trial court erred because it "awarded actual damages when actual damages were not pleaded for or proven." Specifically, Scott asserts,

> True, Appellant owes Appellee $200,000.00 pursuant to the award in the Decree, however, Appellee did not **also** incur an **additional** $200,000.00 in damages **as a**

> **result of Appellant's failure to pay** for which Appellant should be obligated to compensate her.
>
> Significantly, in addition to not pleading any facts to establish $200,000.00 in economic damages she incurred as a result of Appellant's failure to pay, there was also no evidence whatsoever presented at trial that she incurred $200,000.00 in economic damages as a result of Appellant's failure to pay.

(emphasis original). According to Scott, "The Judgment was therefore entered in error, is [sic] harmful as it effectively doubles the amount owed to Appellee."

Michelle responds in part "Appellant has chosen to grossly misread the trial court's Judgment . . . to claim that it somehow orders Appellant to pay $400,000—which it manifestly does not." According to Michelle, "The trial court's Judgment is clearly and unequivocally a reduction of that $200,000 required payment in the Decree into a money judgment under Section 9.010, which will then allow for that amount to be enforced and collected." Further, Michelle asserts the trial court's February 13, 2017 letter "is not a final order as a matter of law."

"Generally, courts have not accorded final-judgment status to letter rulings." *In re B.W.S.*, No. 05-15-01207-CV, 2016 WL 7163866, at *2 (Tex. App.—Dallas Nov. 28, 2016, no pet.) (mem. op.) (concluding letter from trial court expressing trial court's rulings and instructing prevailing party to prepare final order was not final judgment). Moreover, we disagree with Scott's position that the trial court's judgment "did not conform" to the February 13, 2017 letter ruling, but rather awarded Michelle "an additional $200,000.00" beyond the $200,000.00 amount described in the letter ruling and divorce decree. As described above, Scott bases his argument on "the phrasing of the language from the Judgment that the actual damages are to compensate Appellee for enforcing, carrying into effect, and aiding in the collection of the funds owed in the Decree." However, the judgment does not state that the amount awarded is intended to "compensate Appellee for enforcing" the divorce decree. Rather, as described above, the judgment states the "award of actual damages in the amount of [$200.000.00]" was made to Michelle (1) "pursuant to . . . the Final Decree"; (2) "in order to enforce, carry into effect, and aid in the collection of the Final Decree,

specifically, this Court's just, right, and equitable division of the Parties' community estate"; and (3) "in connection with [Scott's] failure and refusal to pay and deliver to [Michelle] or her counsel . . . a check . . . in the amount of $200,000.00 (or for any amount), in violation of . . . the Final Decree." Based on "the literal meaning of the language used," we conclude the trial court's judgment unambiguously awarded Michelle the amount to which she was entitled pursuant to the divorce decree and did not award "an additional $200,000.00" beyond that amount. *See Payless Cashways*, 139 S.W.3d at 795. Consequently, we decide Scott's first, second, and third issues against him. *See id.*; *see also* TEX. R. APP. P. 44.1(a) (no judgment may be reversed on appeal on ground that trial court made error of law unless error "probably caused the rendition of an improper judgment").

2. Award of Costs, Fees, and Expenses for Enforcement and Collection

In his fourth issue, Scott contends the trial court erred by awarding Michelle "costs incurred enforcing and collecting the judgment" when such costs "were not pleaded for or proven." Specifically, Scott argues (1) the Motion "does not plead or pray for future costs, fees, and expenses, including attorney's fees, to be incurred in future collections actions," and (2) the trial court "entered a judgment for future costs, expenses, and fees despite the fact that no pleadings or evidence was offered in support of such an award." Additionally, in his reply brief in this Court, Scott asserts the legal sufficiency portion of this complaint can be raised for the first time on appeal.

Michelle contends (1) "Appellant's complete failure to object in any way in the trial court waives any argument that the trial court somehow erroneously included this language in its Judgment" and (2) even if Scott preserved this complaint, "[t]he trial court certainly had the power to enter orders regarding enforcement and collection of a judgment when the party against whom the judgment was rendered has specifically refused to pay amounts owed under the Decree."

Texas Rule of Appellate Procedure 33.1(d) provides in part, "In a civil nonjury case, a complaint regarding the legal or factual insufficiency of the evidence . . . may be made for the first time on appeal in the complaining party's brief." TEX. R. APP. P. 33.1(d). Therefore, we conclude Scott's complaint of "no evidence" to support "future costs, fees, and expenses" was not "waived." Even assuming without deciding that the language in the Motion can be construed to constitute a pleading for future costs, fees, and expenses incurred in enforcement and collection of the trial court's judgment, family code sections 9.013 and 9.014 allow only for costs and attorney's fees "in a proceeding under this subchapter." *See* FAM. §§ 9.013, 9.014. Further, Michelle cites no evidence in the record, and we have found none, respecting future costs, fees, and expenses. On this record, we conclude the trial court abused its discretion by awarding Michele "all costs, fees, and expenses, including reasonable and necessary attorneys' fees, incurred by [her] in the enforcement and collection of this Judgment." *See Schwartzott v. Maravilla Owners Ass'n, Inc.*, 390 S.W.3d 15, 22 (Tex. App.—Houston [14th Dist.] 2012, pet. denied) (concluding trial court's award of prospective fees for collection of judgment was improperly overbroad and not supported by evidence).

We decide in favor of Scott on his fourth issue.

3. Attorney's Fees in This Proceeding

In his fifth issue, Scott challenges the trial court's award to Michelle of $16,375.00 in attorney's fees incurred in this proceeding. According to Scott, the trial court abused its discretion in awarding those attorney's fees because (1) Michelle's request for contempt "was not premised on the law" and "was denied"; (2) "the eventual judgment was offered by Appellant from the outset as a settlement solution"; and (3) "Appellee's suit was only necessary as a result of her own lawyer's drafting deficiencies." In support of his position, Scott cites *de la Garza v. de la Garza*, 185 S.W.3d 924, 931 (Tex. App.—Dallas 2006, no pet.).

De la Garza involved a lawsuit by a former wife, Alicia, to enforce cash payments awarded in a divorce decree and alimony payments under an ancillary agreement. *Id*. at 926. The trial court granted summary judgment in favor of Alicia's former husband on all of Alicia's claims. *Id*. On appeal, this Court concluded that because Alicia did not prevail in her suit to enforce the divorce decree, the trial court did not abuse its discretion in not awarding her attorney's fees under family code section 9.014. *Id*. at 931.

In the case before us, Scott argues "the standard of *de la Garza*" demonstrates the trial court "acted without reference to any guiding principles when it awarded Appellee attorney's fees for [the Motion]." However, unlike *de la Garza*, the case before us does not involve a party seeking attorney's fees after a judgment against her on all of her claims. Rather, the record shows (1) the Motion requested contempt solely for the purpose of enforcement of the divorce decree and (2) Michelle prevailed on the enforcement portion of the Motion. Consequently, we do not find *de la Garza* instructive.

As described above, section 9.014 does not require that a party must prevail on its claims to receive an award of attorney's fees. *See* FAM. § 9.014. Rather, by its express language, the statute's only requirements are that the award be "reasonable" and in a proceeding under subchapter A. *Id*. Further, "[a] prevailing party is one who is vindicated by the judgment rendered on the main issue or issues even if not to the extent of his or her original contentions." *Douglas v. Douglas*, 454 S.W.3d 591, 602 (Tex. App.—El Paso 2014, no pet.); *see also In re S.E.C.*, No. 05-08-00781-CV, 2009 WL 3353624, at *3 (Tex. App.—Dallas Oct. 20, 2009, no pet.) (mem. op.) (party can be prevailing party entitled to attorney's fees even where amount recovered is offset by amount awarded to opposing party). Accordingly, to the extent Scott contends the trial court abused its discretion in awarding Michelle attorney's fees because she was not granted her requested finding of contempt, we disagree. *See In re S.E.C.*, 2009 WL 3353624, at *3.

Additionally, Scott argues that "[h]ad the Decree been drafted as a judgment and issuance of execution, Appellee could have sought collection remedies directly" and "therefore could have wholly avoided this suit." However, Scott cites no authority, and we have found none, that requires an agreed final decree of divorce to be drafted as "a judgment and issuance of execution." *See* FAM. §§ 9.001–.014 (providing for "Suit to Enforce Decree" and "Reduction to Money Judgment").

Finally, in support of his assertion respecting his purported offer of a "settlement solution," Scott cites excerpts from a March 21, 2017 trial court hearing on Michelle's motion to enter judgment in this proceeding. Therein, Scott's counsel described to the trial court language proposed by him for the judgment Michelle's counsel had drafted pursuant to the trial court's February 13, 2017 letter described above. Scott cites no other "settlement solution" proposed by him. On this record, we conclude the trial court did not abuse its discretion by awarding Michelle attorney's fees of $16,375.00 in this proceeding. *See* FAM. § 9.014; *In re S.E.C.*, 2009 WL 3353624, at *3. We decide against Scott on his fifth issue.

III. CONCLUSION

We decide in favor of Scott on his fourth issue and against him on his remaining issues. We reverse the portion of the trial court's judgment awarding Michelle "all costs, fees, and expenses" incurred in the enforcement and collection of the judgment and render judgment denying Michelle's request for such. The trial court's judgment is otherwise affirmed.

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/Douglas S. Lang/
DOUGLAS S. LANG
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

SCOTT STEWART RILEY, Appellant	On Appeal from the 254th Judicial District Court, Dallas County, Texas
No. 05-17-00385-CV V.	Trial Court Cause No. DF-14-09932.
MICHELLE MANSOUR RILEY, Appellee	Opinion delivered by Justice Lang, Justices Fillmore and Schenck 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 Michelle Mansour Riley "all costs, fees, and expenses" incurred in the enforcement and collection of the judgment and **RENDER** judgment denying appellee's request for such. 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 this 16th day of April, 2018.