

Affirm and Opinion Filed May 7, 2025



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

No. 05-24-00519-CV

OVIDIO MONTEMAYOR, Appellant
V.
ORALIA MONTEMAYOR, Appellee

**On Appeal from the 330th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-22-05915**

MEMORANDUM OPINION

Before Justices Garcia, Breedlove, and Jackson
Opinion by Justice Breedlove

This is an appeal from the trial court's final decree of divorce between appellant Ovidio Montemayor (Husband) and appellee Oralia Montemayor (Wife). In one issue, Husband complains that the trial court erred in denying his claim for reimbursement of the community estate. Concluding the trial court did not abuse its discretion in denying husband's reimbursement claim, we affirm the trial court's decree.

BACKGROUND

Husband and Wife were married in 1973. Wife filed for divorce in 2022, and Husband filed a counterpetition for divorce. Wife sought a disproportionate share of the community estate, and Husband sought reimbursement, alleging Wife used community funds to benefit her separate estate. The parties tried their competing claims in a short bench trial. Husband and Wife were the only witnesses at trial. The trial court signed a final decree of divorce that did not include any reimbursement and denied all relief not expressly granted. This appeal followed.

STANDARD OF REVIEW

A trial court is charged with dividing the community estate in a “just and right” manner, considering the rights of both parties. TEX. FAM. CODE ANN. § 7.001; *Chavez v. Chavez*, 269 S.W.3d 763, 766 (Tex. App.—Dallas 2008, no pet.) (citing *Moroch v. Collins*, 174 S.W.3d 849, 855 (Tex. App.—Dallas 2005, pet. denied)). Trial courts are afforded wide discretion in dividing marital property upon divorce and, absent an abuse of discretion, we will not disturb the property division. *Chavez*, 269 S.W.3d at 766 (citations omitted) (trial court’s property division may not be disturbed on appeal unless complaining party demonstrates from evidence in record that division was so unjust and unfair to constitute abuse of discretion). We indulge every reasonable presumption in favor of the trial court’s proper exercise of discretion in dividing the community estate. *Id.* (citing *Vannerson v. Vannerson*, 857 S.W.2d 659, 669 (Tex. App.—Houston [1st Dist.] 1993, writ denied)). We reverse

only if the record demonstrates the trial court clearly abused its discretion, and the error materially affected the just and right division of the community estate. *Id.* (citing *Jacobs v. Jacobs*, 687 S.W.2d 731, 732–33 (Tex. 1985)). In family law cases, the traditional sufficiency standard of review overlaps with the abuse of discretion standard of review; therefore, legal and factual insufficiency are not independent grounds of error but are relevant factors in our assessment of whether the trial court abused its discretion. *Id.* (citing *Moroch*, 174 S.W.3d at 857; *Boyd*, 131 S.W.3d at 611).

When the burden of proof at trial is by clear and convincing evidence, we apply a higher standard of legal and factual sufficiency review. *Id.* (citing *Moroch*, 174 S.W.3d at 857; *Boyd*, 131 S.W.3d at 611). In reviewing the evidence for factual sufficiency, we must give due consideration to evidence that the fact finder could reasonably have found to be clear and convincing and then determine whether, based on the entire record, a fact finder could reasonably form a firm conviction or belief that the allegations in the petition were proven. *Id.* (citing *Moroch*, 174 S.W.3d at 857; *Boyd*, 131 S.W.3d at 611).

DISCUSSION

In his sole issue on appeal, Husband argues that the trial court erred in denying his claim for reimbursement. Specifically, Husband argues that the trial court misapplied the law for reimbursement of the community estate when the judge told

the parties the following in response to Husband's allegations that Wife took money from the sale of two marital properties in 2016:

You-all it does not matter, because whatever she took with her [in 2016] the marriage was still ongoing and whatever monies he made over at the car lot, they were still married. I cannot go back in time and fix that. If they wanted a divorce in 2016 they would have got a divorce in 2016. Give me something that I can do with the division of these assets that are before this court today, please.

Husband argues that this constitutes a misstatement of the law because there are statutory and equitable rules that govern reimbursement, which exist to correct acts such as the one described above.¹

The right of reimbursement is not an interest in property or an enforceable debt, *per se*. *Burton v. Bell*, 380 S.W.2d 561, 564 (Tex. 1964). It arises when the community estate in some way improves the separate estate of one of the spouses (or vice versa). *Vallone v. Vallone*, 644 S.W.2d 455, 458 (Tex. 1982). The rule of reimbursement is purely an equitable right that arises upon dissolution of the marriage. *Colden v. Alexander*, 141 Tex. 134 (1943). Courts apply equitable principles to determine whether to recognize the claim for reimbursement and to order a division of the claim for reimbursement, if

¹ It is unclear from Husband's brief on appeal what specifically he finds objectionable about the trial court's statements or what specific portions of the statement represent a misstatement of the law. Regardless, we need not address whether the trial court's statements constituted an incorrect statement of the law because we conclude the record does not contain evidence to support Husband's reimbursement claim. *See TEX. R. APP. P. 47.1*.

appropriate, in a manner the court considers just and right. TEX. FAM. CODE ANN. § 7.007(2).

Reimbursement lies within the discretion of the court. See *Chavez*, 269 S.W.3d at 768 (citing *Humphrey v. Humphrey*, 593 S.W.2d 824, 827 (Tex. App.—Houston [14th Dist.] 1980, writ dism'd)). Great latitude must be accorded to the trial court in applying equitable principles to determine reimbursement claims. *Id.* (citing *Nelson v. Nelson*, 193 S.W.3d 624, 632 (Tex. App.—Eastland 2006, no pet.)). The discretion to be exercised in evaluating a claim for reimbursement is equally as broad as the discretion exercised by a trial court in making a just and proper division of the community estate. *Id.* (citing *Lucy v. Lucy*, 162 S.W.3d 770, 776 (Tex. App.—El Paso 2005, no pet.)). In reviewing the actions of the trial court, the appellate court will presume the trial court exercised its discretion properly. *Id.* (citing *Murff v. Murff*, 615 S.W.2d 696, 698 (Tex. 1981)). The trial court's discretion will not be disturbed on appeal unless a clear abuse has been shown. *Bell v. Bell*, 513 S.W.2d 20, 22 (Tex. 1974).

The party claiming the right of reimbursement has the burden of pleading and proving that the expenditures and improvements were made and that they are reimbursable. *Lindsay v. Clayman*, 151 Tex. 593 (1952). See also *Vallone*, 644 S.W.2d at 459 (party seeking reimbursement must establish contribution was made by one marital estate to another, contribution was reimbursable, and value of the contribution); *Chavez*, 269 S.W.3d at 767 (citing *In re Marriage of Gill*, 41 S.W.3d

255, 258 (Tex. App.—Waco 2001, no pet.) (party claiming right of reimbursement has burden of proof on amount of reimbursement)).

Husband had the burden of proof on the issue of whether he was entitled to reimbursement. *See Lindsay*, 151 Tex. 593. The record contains no evidentiary support for Husband’s claims for reimbursement. Husband testified that upon the parties’ separation, Wife sold two community property parcels of land and emptied two community bank accounts. According to Husband, he never received any portion of these sales proceeds or account funds. But Husband provides no evidence that Wife used these community funds to benefit her separate estate, particularly because these acts allegedly occurred in 2016, years before the couple filed for divorce. Further, a trial court “may not recognize a marital estate’s claim for reimbursement for...the living expenses of a spouse...,” and Husband introduced no evidence to demonstrate that Wife used the community funds for any purpose other than her living expenses. *See* TEX. FAM. CODE ANN. § 3.409(2); *see also Elmakiss v. Elmakiss*, No. 12-06-00405-CV, 2008 WL 2358221, at *2 (Tex. App.—Tyler June 11, 2008, no pet.) (mem. op.) (citation omitted). We conclude there is insufficient evidence in the record to support Husband’s reimbursement claim. Thus, the trial court did not abuse its discretion in not awarding reimbursement. *See Chavez*, 269 S.W.3d at 768. We overrule Husband’s sole issue on appeal.

CONCLUSION

We affirm the trial court's judgment.

/Maricela Breedlove/

MARICELA BREEDLOVE
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

OVIDIO MONTEMAYOR,
Appellant

No. 05-24-00519-CV V.

ORALIA MONTEMAYOR,
Appellee

On Appeal from the 330th Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DF-22-05915.
Opinion delivered by Justice
Breedlove. Justices Garcia and
Jackson participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee ORALIA MONTEMAYOR recover her costs of this appeal from appellant OVIDIO MONTEMAYOR.

Judgment entered this 7th day of May, 2025.