

Opinion issued November 6, 2008



In The
Court of Appeals
For The
First District of Texas

NO. 01-07-00056-CV

RONNIE H. STOKER, Appellant

V.

DIANE FISCHER STOKER, Appellee

**On Appeal from the 310th District Court
Harris County, Texas
Trial Court Cause No. 2003-19746**

MEMORANDUM OPINION

Appellant, Ronnie H. Stoker, appeals from a judgment awarding property to his wife, Diane Fischer-Stoker, appellee. In five issues on appeal, Ronnie argues that

(1) the division of property is contrary to the express provisions in the parties' marital agreement; (2) the trial court mischaracterized property in contravention of the parties' marital agreement; (3) the trial court mischaracterized a portion of Ronnie's separate estate; (4) the trial court erred in failing to award Ronnie his claim for economic contribution; and (5) the trial court erred in awarding Diane a judicial lien with a right of foreclosure against Ronnie's separate property homestead.

We affirm.

Background

The parties were married on July 20, 1991 and filed for divorce in April 2003. The first trial ended in a division of the estate in which Diane appealed to this Court, contending that the trial court awarded a portion of her separate property to Ronnie. We agreed that the trial court awarded Diane's separate property to Ronnie, and we remanded the community estate to the trial court to conduct a just and right division based upon the correct characterization of the property.¹

Pursuant to our remand instructions, the trial court conducted a new trial on September 27, 2006 and rendered a "Final Decree of Divorce After Remand From The Court of Appeals." Ronnie appeals from this decree of divorce.

¹ See generally *Fischer-Stoker v. Stoker*, 174 S.W.3d 272 (Tex. App.—Houston [1st Dist.] 2005, pet. denied).

Analysis

Marital Agreement

In his first issue, Ronnie argues that the division of property was contrary to the express provisions in the parties' marital agreement.

In a decree of divorce, the court shall order a division of the community estate in a manner that the court deems just and right, having due regard for the rights of each party. TEX. FAM. CODE ANN. § 7.001 (Vernon 2006); *Rafferty v. Finstad*, 903 S.W.2d 374, 376 (Tex. App.—Houston [1st Dist.] 1995, writ denied). In effecting a just and right division of the community estate, section 7.001 of the Family Code vests the trial court with broad discretion that will not be reversed on appeal unless the complaining party shows that the trial court clearly abused its discretion. *Murff v. Murff*, 615 S.W.2d 696, 698 (Tex. 1981); *Rafferty*, 903 S.W.2d at 377. The test of whether the trial court abused its discretion is whether the court acted arbitrarily or unreasonably, and without reference to any guiding principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985); *Rafferty*, 903 S.W.2d at 376.

Ronnie did not request findings of fact. We must, therefore, presume that the trial court made all the necessary findings to support its judgment. *Pharo v. Chambers County, Tex.*, 922 S.W.2d 945, 948 (Tex. 1996). If the trial court's implied findings are supported by the evidence, we must uphold the judgment on any theory

of law applicable to the case. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990). In determining whether some evidence supports the judgment and implied findings of fact, we consider only that evidence most favorable to the issue and disregard entirely any contrary evidence. *Id.*

We conclude that Ronnie has waived this issue by not arguing “with appropriate citations to authorities and to the record.” *See* TEX. R. APP. P. 38.1(h). Ronnie merely states, “The trial court in rendering its judgment clearly did not divide the parties’ community estate 50/50 as agreed to by the parties, as there was no division of bank accounts, or items. These were categorically awarded to Diane. As such, this award should be set aside.” Ronnie continues,

The trial court further abused its discretion in awarding essentially the entire community property estate to DIANE. At trial, the trial court admitted every trial exhibit proffered. These exhibits detail the values of bank accounts, jewelry, and other tangible assets which were awarded outright, with few exceptions to DIANE. The court’s rendition of its decision concerning the property division in this case is almost a complete 180 degree turn from any of its prior decisions concerning the property division. There was no testimony presented that should cause such a great variance in the awards by the court during the first trial and the second trial. As such, the award to DIANE should be set aside.

For this issue, Ronnie’s brief contains no citation to authority, no explanation for how the trial court’s division is not in accordance with the parties’ marital agreement, and no citations to the record to show that the trial court abused its discretion. Accordingly, we conclude that Ronnie has waived this issue. *See* TEX. R. APP. P. 38.1(h).

Even to the extent that the issue has not been waived, we conclude that Ronnie has not shown that the trial court clearly abused its discretion.

Paragraph nine of the parties' marital agreement provides,

In the undesired event that our marriage is dissolved by divorce, each party shall receive the following:

- (a) all separate property belonging to that party; and
- (b) one-half (1/2) of all community assets.

Ronnie argues that "there was no division of bank accounts, or items." Ronnie also argues that the trial court abused its discretion in "awarding essentially the entire community property estate to Diane."²

We disagree with Ronnie's contention that bank accounts were not divided or that essentially all of the community property estate was awarded to Diane. The decree of divorce shows that the trial court awarded to Ronnie:

- H-1 All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, electronics, and equipment in the possession of the husband subject to his sole control.
- H-2 All clothing, jewelry, and other personal effects in the possession of the husband or subject to his control.
- H-3 All policies of life insurance insuring the husband's life.
- H-4 The 1997/1998 Ford F-150 motor vehicle, together with all

² Ronnie does not specify which bank accounts or items were not evenly distributed in accordance with the parties' marital agreement. Nor does Ronnie specify how the community estate was "essentially" awarded to Diane.

prepaid insurance, keys, and title documents

- H-5 50% of the Internal Revenue Service tax refund check in the amount of \$14,374.0.
- H-6 In connection with Klein Bank **** and Compass Bank ****, 50% of the sums on deposit in these accounts, as of December 12, 2003, is awarded to Diane Fischer-Stoker and 50% to Ronnie H. Stoker.
- H-7 100% of the proceeds from the sale of the 1981 Gibson Houseboat in the amount of \$14,338.48.

The trial court also awarded to Diane H-1 through H-3 of those items that were in her possession. The trial court also awarded Diane:

- W-4 The 2003 Chevrolet Suburban motor vehicle, and the 1996 Ford Explorer motor vehicle, together with all prepaid insurance, keys, and title documents.
- W-5 All right, title and interest in the 4 Rodeo Season Tickets;
- W-6 100% of the MAC Steel Service Center USA 401(k) Account in the name of Diane Stoker, as of December 12, 2003, and all dividends, income, increases, and decreases on said 100% thereafter;
- W-7 100% of the TAD Metals 401(k) Plan Fidelity Investments, in the name of Diane Stoker ****, as of December 12, 2003, and all dividends, income, increases, and decreases on said 100% thereafter;
- W-8 \$524 of the funds in the Wells Fargo Bank Account **** in the name of Diane Fischer-Stoker, as of December 12, 2003, and dividends, income, increases and decreases on said 100% thereafter;
- W-9 \$327 of the funds in the Wells Fargo Bank Account **** in the name of Diane Fischer-Stoker, as of December 12, 2003, and

dividends, income, increases and decreases on said 100% thereafter.

The trial court also awarded Diane 50% of the Internal Revenue refund check and 50% of the funds in the Klein and Compass Bank accounts just as Ronnie received 50% of these accounts.

The parties presented exhibits regarding the values of the marital property.³ The trial court's decree of divorce appears to divide the assets in a 50-50 split, but in instances where it did not, other divisions seem to create an equal split. Based on the record, the trial court could have impliedly found that one-half of the community assets were awarded to Ronnie. Therefore, Ronnie has not demonstrated that the division was a clear abuse of discretion.

We overrule Ronnie's first issue on appeal.

Ronnie's Ring and Guns

In his second issue on appeal, Ronnie argues that the trial court erred by awarding his separate property to Diane. Specifically, Ronnie contends that the trial court erroneously awarded to Diane as community property a 1.7-karat ring and guns that were listed as his separate property in the parties' marital agreement. In his third

³ In his appellate brief, Ronnie contends that the parties stipulated to the values of the property awarded. Diane counters that the parties did not stipulate. The appellate record does not support Ronnie's contention that the parties stipulated to values of assets. The exhibits in the record show that the parties placed different values on the assets.

issue on appeal, Ronnie argues that the trial court's substantial mischaracterization of separate property as community property requires this Court to remand.

The Texas Family Code provides that spouses may agree to partition or exchange any part of their community property as they desire. TEX. FAM. CODE ANN. § 4.102 (Vernon 2006); *Winger v. Pianka*, 831 S.W.2d 853, 859 (Tex. App.—Austin 1992, writ denied). To exchange such property, the parties must do so by written agreement. TEX. FAM. CODE ANN. § 4.104 (Vernon 2006); *Winger*, 831 S.W.2d at 859. A premarital agreement should be interpreted in accordance with the true intentions of the parties as expressed in the instrument. *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983); *Pearce v. Pearce*, 824 S.W.2d 195, 200 (Tex. App.—El Paso 1992, writ denied). If the agreement is so worded that it can be given a certain legal meaning, it is not ambiguous and the courts will construe it as a matter of law. *Coker*, 650 S.W.2d at 393.

Parties to a contract intend that each clause should have an effect. *See Heritage Res. v. NationsBank*, 939 S.W.2d 118, 121 (Tex. 1996). Contract terms should be given their plain, ordinary, and generally accepted meaning unless the agreement shows that they are intended in a different or technical sense. *See id.*; *Western Reserve Life Ins. Co. v. Meadows*, 152 Tex. 559, 261 S.W.2d 554, 557 (1953). Courts construe marital property agreements narrowly in favor of the community estate. *See, e.g., Byrnes v. Byrnes*, 19 S.W.3d 556, 558 (Tex. App.—Fort

Worth 2000, no pet.). A trial court lacks authority to divest a party of separate property in a divorce decree. *See Cameron v. Cameron*, 641 S.W.2d 210, 220 (Tex. 1982).

The parties' marital agreement listed the following items as Ronnie's separate property:

11. 14 karat gold mounting with 1.07 karat emerald cut center diamond and 2 karat baguettes, appraised value \$10,000.
12. Miscellaneous rifles, shotguns, and pistols in the husband's possession.

In its divorce decree, the trial court set aside separate property belonging to Ronnie, which included, "[a]ll jewelry in his possession" and "[a]ll rifles, shotguns, and pistols in the husband's possession." The trial court also set aside separate property belonging to Diane, which included "[a]ll jewelry in the possession of Diane Fischer-Stoker." Ronnie requested neither findings of fact nor conclusions of law regarding these items. Nor did Ronnie present any evidence that the ring was not in his possession. He also presented no evidence that any of the guns were not in his possession.

The decree of divorce does not give any guns to Diane. Rather, the trial court properly awarded the guns to Ronnie as specified in the parties' marital agreement. As for the jewelry, the trial court could have found that the jewelry was in Ronnie's possession. Therefore, we conclude that Ronnie has not shown that the trial court

mischaracterized his separate property as Diane's community property.⁴

We overrule Ronnie's second and third issues on appeal.

Economic Contribution

In his fourth issue, Ronnie argues that the trial court erred in failing to grant Ronnie an offset for economic contribution from the award of Diane's home. Ronnie notes that the trial court's final judgment makes no mention of Ronnie's claim for economic contribution and therefore the judgment is unfair.

Diane responds that section eight of their premarital agreement waives any claims for economic reimbursement and that section 3.410 of the Texas Family Code extends "the effect of such a waiver to claims for economic contribution. . . ." We agree.

Paragraph eight of the marital property agreement provides,

Any payment or contribution by one of us to satisfy the debts or otherwise benefit the separate estate of the other shall not give rise to a claim for reimbursement or an interest in any property purchased by those payments unless we otherwise agree in writing. Any right of reimbursement that may arise during our marriage for payments or contributions made to the other's separate estate to the extent any payment is made by one for the benefit of the other shall be presumed to be a gift to the other party's separate estate.

Section 3.410 provides,

⁴ Because the trial court did not mischaracterize Ronnie's separate property, we need not consider Ronnie's claim that the trial court ignored the inception of title doctrine. *See* TEX. R. APP. P. 47.7.

A premarital or marital property agreement, whether executed before, on, or after September 1, 1999, that satisfies the requirements of Chapter 4 is effective to waive, release, assign, or partition a claim for economic contribution under this subchapter to the same extent the agreement would have been effective to waive, release, assign, or partition a claim for reimbursement under the law as it existed immediately before September 1, 1999, unless the agreement provides otherwise.

TEX. FAM. CODE ANN. § 3.410 (Vernon 2006).

Section eight of the parties' marital property agreement provides that any payment to benefit the separate estate of the other will not result in a claim for reimbursement. Section 3.410 extends the parties' marital agreement to waive economic contribution claims. Therefore, Ronnie had no claim for economic contribution. We conclude that the trial court did not err in failing to award Ronnie economic contribution.

Moreover, Ronnie neither cites any authority to support his argument nor explains how he is entitled to economic contribution. *See* TEX. R. APP. P. 38.1(h).

We overrule Ronnie's fourth issue on appeal.

Judgment Lien

In his fifth issue on appeal, Ronnie argues that the trial court erred in granting a judgment lien on his new home with a right of foreclosure in favor of Diane and against Ronnie. Ronnie argues that the lien violates article XVI, section 50 of the Texas Constitution.

Section 50 of article XVI of the Texas Constitution protects a person's

homestead from forced sale for the payment of most debts except those enumerated in subsection (a).⁵ *Stringer v. Cendant Mortg. Corp.*, 23 S.W.3d 353, 354 (Tex. 2000). Ronnie argues that none of the subsection (a) exceptions applies and therefore the lien against his new home is void. Diane responds that Ronnie did not present evidence that the property was Ronnie's homestead. We agree with Diane's argument.

To establish homestead rights, the claimant must show a combination of both overt acts of homestead usage and the intention on the part of the owner to claim the land as a homestead. *Sanchez v. Telles*, 960 S.W.2d 762, 770 (Tex. App.—El Paso 1997, writ denied) (citations omitted). The party claiming the homestead exemption has the burden of establishing the homestead character of the property. *Id.*; *NCNB Texas Nat'l Bank v. Carpenter*, 849 S.W.2d 875, 879 (Tex. App.—Fort Worth 1993, no writ).

At trial, Ronnie did not present evidence that the property on which the trial court attached a lien was his homestead.⁶ At best, Ronnie described the property as his home. Because Ronnie presented no evidence to show that the property was his homestead, the trial court did not abuse its discretion in granting an equitable lien on

⁵ The Texas Constitution specifically protects homesteads from forced sale except to satisfy liens securing purchase money, tax, or home improvement debts. *See* TEX. CONST. art. XVI, § 50; *see also* TEX. PROP. CODE ANN. § 41.002 (Vernon 2000).

⁶ Diane requested an equitable lien on Ronnie's property during closing argument. Ronnie did not assert to the trial court that his property was a homestead.

Ronnie's property. *See Parker v. Dodge*, 98 S.W.3d 297, 302 n.2 (Tex. App.—Houston [1st Dist.] 2003, no pet.) (stating that appellant presented no proof that lien existed on homestead and issue waived because it was not argued to trial court).

We overrule Ronnie's fifth issue on appeal.

Conclusion

We affirm the judgment of the trial court.

Evelyn V. Keyes
Justice

Panel consists of Justices Taft, Keyes, and Alcalá.