Opinion issued June 11, 2019

In The

Court of Appeals

For The

First District of Texas

NO. 01-17-00969-CV

CYNTHIA ANN GARCIA, Appellant

V.

VICENTE RUIZ, JR., Appellee

On Appeal from the 312th District Court
Harris County, Texas
Trial Court Case No. 2015-23612

MEMORANDUM OPINION

This is an appeal of the trial court's division of Cynthia Ann Garcia and Vicente Ruiz, Jr.'s marital estate. In two issues, Garcia contends the trial court erred because it failed to divide one community asset (a lease of recreational property) and

unfairly allocated community debt (federal income tax liability). Agreeing with Garcia that the trial court's property division was erroneous, we reverse and remand.

Background

Cynthia Ann Garcia and Vicente Ruiz, Jr. were married in 2000. Fifteen years later, Garcia filed for divorce on the ground that the marriage had become insupportable. *See* TEX. FAM. CODE § 6.001 (authorizing divorce "without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marital relationship and prevents any reasonable expectation of reconciliation"). After a bench trial, the trial court granted the divorce, named Garcia and Ruiz as joint managing conservators of their children, and divided the marital estate.

Garcia appealed, contending that the trial court made two errors in its property division. Specifically, she asserts the trial court erred by (1) failing to include the lease of a ranch Ruiz uses recreationally as part of the community estate and (2) unfairly allocating more than $430,000 Ruiz owed to the Internal Revenue Service (IRS) for unpaid taxes on income from his roofing business.[1]

[1] The trial court allocated 100% of the tax debt to Ruiz. According to Garcia, "while the trial court justifiably and rightfully assigned the income tax liability . . . to [Ruiz] . . . , the trial court then erroneously used that same tax liability to offset the value of community property assets awarded to [Ruiz] in calculating a fair and equitable division of the estate."

Regarding the ranch lease, the evidence at trial was that, in June 2011, Ruiz executed a written agreement to lease recreational property in Pattison, Texas from Mateo Campa, a friend who had owned the property for about five years. The ranch is 32 acres of land with improvements, including a house, a gazebo, a barn, and a large, stocked pond. According to Campa, Ruiz helped Campa build or enhance some of the improvements. When asked how Ruiz used the ranch, Campa indicated that Ruiz overnighted in the house, kept horses on site, and enjoyed four-wheeling and jet skiing on the property. Though the ranch lease was for a 10-year period, Campa suggested in his testimony that Ruiz could extend the lease indefinitely for so long as he continued to pay $1,600 monthly in rent. Campa was willing to sell the ranch to Ruiz for $100,000 less than he would sell to a third party if Ruiz wanted to buy the ranch.

Garcia contended at trial that this evidence showed Ruiz was more than a lessee and was actually owner of the ranch, whose ownership interest was being hidden from the IRS by Ruiz and Campa's lease scheme. The evidence was undisputed that, during the marriage, Ruiz incurred more than $430,000 in tax liability. The debt arose largely from the operation of a roofing business Ruiz founded several years before he married Garcia. Once he and Garcia married, Ruiz added Garcia's name to the business. That arrangement did not last long though. In Ruiz's own words, Garcia wanted out of the business after three years because she

"didn't like the way the business was run." Garcia filed a document with the county clerk abandoning any record ownership interest in the roofing company and thereafter filed her individual income tax returns using the "married filing separately" designation.

The record suggests that, about a month after the bench trial concluded, the trial court announced its property-division decision to the parties; however, the trial court's initial rendition of judgment is not included in the appellate record. Instead, the only suggestion of rendition memorialized in the record is in Garcia's motion for reconsideration, which challenged a finding that, contrary to Garcia's theory at trial, Ruiz does not own the ranch and, with reference to that finding, urged the trial court to assign Ruiz at least $100,000 in its property division for his "perpetual lease" of and "option to buy" the ranch.[2]

The trial court rejected Garcia's suggestion regarding the ranch lease, writing in the final divorce decree now on appeal:

> [T]here is no evidence to confirm that the [ranch] is part of the marital estate of the parties and the Court makes no findings or awards as to that property and hereby denies in whole . . . Garcia's request for division of that property as part of the marital estate.

[2] The $100,000 value Garcia assigned to the ranch lease is the difference in the price at which Campa indicated he would sell to a third-party and to Ruiz. Garcia also urged alternative calculations of up to $500,000, which she contended was the fair market value of a fee simple interest in the ranch.

The divorce decree includes a division of the property determined to be within the marital estate, including an assignment of the tax liability to Ruiz.

Ranch Lease

In her first issue, Garcia contends the trial court erred by failing to include Ruiz's ranch lease in the division of the marital estate.

A. Legal standard for division of community property

The Family Code requires the trial court to divide the "estate of the parties" to the marriage as "the court deems just and right, having due regard for the rights of each party." TEX. FAM. CODE § 7.001; *see Hailey v. Hailey*, 176 S.W.3d 374, 380 (Tex. App.—Houston [1st Dist.] 2004, no pet.). The "estate of the parties" has been construed to mean the parties' community property. *See Vickery v. Vickery*, 999 S.W.2d 342, 371 (Tex. 1999). "Community property consists of the property, other than separate property, acquired by either spouse during marriage." TEX. FAM. CODE § 3.002. "Property possessed by either spouse during or on dissolution of marriage is presumed to be community property" unless its characterization as separate property is proved by "clear and convincing evidence." *Maldonado v. Maldonado*, 556 S.W.3d 407, 414 (Tex. App.—Houston [1st Dist.] 2018, no pet.) (citing TEX. FAM. CODE § 3.003(a)–(b)).

We review property-division issues for an abuse of discretion. *Wilson v. Wilson*, 132 S.W.3d 533, 536 (Tex. App.—Houston [1st Dist.] 2004, pet. denied);

see Mann v. Mann, 607 S.W.2d 243, 245 (Tex. 1980) (explaining that party challenging improper division of community estate has burden of showing from evidence that trial court's division was so unjust and unfair as to constitute abuse of discretion). The trial court's discretion in dividing community property is broad; as a reviewing court, we must indulge every reasonable presumption in favor of the trial court's proper exercise of its discretion. *Schlueter v. Schlueter*, 975 S.W.2d 584, 589 (Tex. 1998); *Murff v. Murff*, 615 S.W.2d 696, 698 (Tex. 1981); *Mathis v. Mathis*, No. 01-17-00449-CV, 2018 WL 6613864, at *2 (Tex. App.—Houston [1st Dist.] Dec. 18, 2018, no pet.) (mem. op.).

"If the trial court mischaracterizes property, and that property has value that would have affected its division of the community estate, then the mischaracterization is harmful and we must remand the entire community estate to the trial court for a just and right division of the correctly characterized community property." *Robles v. Robles*, 965 S.W.2d 605, 615 (Tex. App.—Houston [1st Dist.] 1998, pet. denied); *see Jacobs v. Jacobs*, 687 S.W.2d 731, 733 (Tex. 1985) (observing that, if appellate court finds reversible error that materially affects trial court's "just and right" division of property, then it must remand entire community estate for new property division). "However, if the mischaracterized property had only a *de minimis* effect on the trial court's division, then the trial court's error is not an abuse of discretion." *Robles*, 965 S.W.2d at 615.

B. The ranch lease is community property

Because it concluded that the ranch *itself* was not a part of the marital estate, the trial court did not include the ranch, or any interest therein, in its property division. Presumably, the trial court was unpersuaded by Garcia's theory at trial that Ruiz's true interest in the ranch was an ownership interest. Garcia has not carried that theory forward on appeal. Instead, she rests her appellate challenge on the evidence that Ruiz acquired at least a leasehold interest in the ranch during the parties' marriage, which the trial court should have included in its property division. We agree.

When a party acquires a lease of property owned by a third party during marriage, the lease is subject to division upon divorce unless it is shown by clear and convincing evidence to be one or the other spouse's separate property. *See Young v. Young*, 168 S.W.3d 276, 285 (Tex. App.—Dallas 2005, no pet.) (holding that boat slip lease obtained during marriage was community property because husband did not establish by clear and convincing evidence that lease was his separate property); *Tirado v. Tirado*, 357 S.W.2d 468, 474 (Tex. Civ. App.—Texarkana 1962, writ dism'd) (concluding that master's findings that the apartment lease and the improvements and furnishings within apartment were wife's separate property were supported by sufficient evidence); *see also Dingler v. Ferguson*, 193 So. 3d 644, 650 (Miss. Ct. App. 2015) (retail lease was marital property even though only one spouse

was party to lease agreement); *England v. England*, 865 N.E.2d 644, 648–49 (Ind. Ct. App. 2007) (residential lease was marital asset); *Wilson v. Prentiss*, 140 P.3d 288, 291 (Colo. App. 2006) ("Leasehold interests acquired during the marriage are classified as marital property.").

The record here includes undisputed evidence that the parties were married in 2000, Ruiz signed a written lease agreement in 2011, and, by its own terms, the ranch lease extended beyond the dissolution of the parties' marriage in 2017. Because the record contains evidence that Ruiz acquired the ranch lease during the parties' marriage, the community-property presumption applied to his leasehold interest. *See* TEX. FAM. CODE § 3.003(a) ("Property possessed by either spouse during or on dissolution of marriage is presumed to be community property."). Neither party presented evidence or argument that the ranch lease was separate property. *See id.* § 3.003(b) ("The degree of proof necessary to establish that property is separate property is clear and convincing evidence."); *see also Young*, 168 S.W.3d at 285; *Robles*, 965 S.W.2d at 616 (affirming trial court's conclusion that real property was part of marital estate when evidence was insufficient to rebut community-property presumption).

On this record, the trial court had no discretion to determine the ranch lease was not community property. However, the ranch lease's characterization as community property is not the end of our inquiry. We must consider whether the

ranch lease had sufficient value to affect a just and right division of the marital estate. *See Robles*, 965 S.W.2d at 621–22 (explaining that, if undivided or mischaracterized property would have "only a *de minimis* effect on the trial court's just and right division," error is not abuse of discretion).

C. There is no valuation evidence for the ranch lease

Because the trial court did not consider the ranch lease a part of the marital estate, it did not assign any value to the lease in the divorce decree. Even had the trial court properly characterized the ranch lease, however, it could not have determined the lease's value from the evidence the parties presented.

As a general rule, community property that is to be divided in a divorce proceeding is valued according to its "market value." *R.V.K. v. L.L.K.*, 103 S.W.3d 612, 618 (Tex. App.—San Antonio 2003, no pet.). "Fair market value has been consistently defined as the amount that a willing buyer, who desires to buy, but is under no obligation to buy would pay to a willing seller, who desires to sell, but is under no obligation to sell." *Wendlandt v. Wendlandt*, 596 S.W.2d 323, 325 (Tex. Civ. App.—Houston [1st Dist.] 1980, no writ). If the property does not have a market value, the parties may show the actual value of the property to the owner. *R.V.K.*, 103 S.W.3d at 618.

Here, Garcia elicited testimony about the fair market value of the *ranch itself* from Campa and that Ruiz had the option to purchase the ranch for less than the fair

market value. But that was evidence in support of Garcia's theory, which she has abandoned on appeal, that Ruiz owned the ranch outright. That testimony presented no evidence of the ranch's value as a leasehold interest. As to that value, the record is silent.

The evidence at trial established Ruiz's obligation to pay Campa rent of $1,600 each month. It may be the case that Ruiz negotiated a sweetheart deal from Campa, meaning he obtained the right to access, possess, and enjoy the land and its improvements for less than another willing lessee could have obtained those same rights in the marketplace. Or it may be the case that the value of the lease is less than the monthly rent obligation, which, over the course of the lease's 10-year term, would approach $200,000. We cannot answer those questions on this record. The absence of evidence of the ranch lease's value forecloses any determination of whether, as Garcia asserts, the lease is a community asset; whether, because it imposes a monthly payment obligation, it is a community debt; or whether, regardless of the ranch lease's status as a community asset or community debt, its value is so inconsequential that it has no more than a *de minimis* effect on the trial court's property division.

We recognize the cases holding that each spouse bears the responsibility to provide the trial court with sufficient evidence of the value of the community estate to enable the court to make a just and right division. *See, e.g.*, *Murff*, 615 S.W.2d at

698–99; *Finch v. Finch*, 825 S.W.2d 218, 221 (Tex. App.—Houston [1st Dist.] 1992, no writ). Some of our sister courts have held that when a party does not provide valuation evidence for the property to be divided, that party may not complain on appeal that the trial court lacked sufficient evidence to properly divide the property. *See, e.g.*, *Deltuva v. Deltuva*, 113 S.W.3d 882, 887 (Tex. App.—Dallas 2003, no pet.). Garcia's contention on appeal is not a sufficiency-of-the-evidence complaint; it is a complaint about the trial court's failure to assign any value to the ranch lease. But these principles apply with equal force here.

Such a waiver ruling may be appropriate in cases where there is some evidence of the value of the contested item or estate, *see Mata v. Mata*, 710 S.W.2d 756, 758 (Tex. App.—Corpus Christi 1986, no writ), or in cases where the only unvalued items would obviously have little effect on the overall division. It would not be appropriate in this case, however, where community property remains undivided and there is no evidence of its value. *See Sandone v. Miller-Sandone*, 116 S.W.3d 204, 207–08 (Tex. App.—El Paso 2003, no pet.); *O'Neal v. O'Neal*, 69 S.W.3d 347, 349–50 (Tex. App.—Eastland 2002, no pet.). The Family Code requires the trial court to make a just and right division of the community estate. *See* TEX. FAM. CODE § 7.001. The failure of the parties to put on evidence as to value does not absolve the trial court of fulfilling this duty. *See Sandone*, 116 S.W.3d at 207–08. No "just and right" division can be achieved where the trial court has no evidence

of what exactly it is dividing. *See id.* ("Without the ability to determine the size of the community pie, we can make no determination that the slices awarded to each spouse were just and right.").

Accordingly, we hold that the record shows an abuse of discretion, and we sustain Garcia's first issue.

Conclusion

We affirm the portion of the trial court's decree that grants the parties a divorce and designates them the joint managing conservators of their children, with all the attendant rights and responsibilities. However, we reverse the division of property. In a divorce proceeding, a trial court must order a division of the marital estate in a manner the court deems just and right. The trial court disregarded undisputed evidence that Ruiz entered an agreement to lease a ranch during the parties' marriage. This was error. And, on this record, we cannot determine whether the failure to include the ranch lease in the marital estate had only a *de minimis* effect on the trial court's just and right division.

When a trial court commits error in dividing property in a divorce, a court of appeals is not permitted to render a different division or to remand only certain portions of the marital property for a new division; rather, the reviewing court must remand the entire marital estate for a new division. *Jacobs v. Jacobs*, 687 S.W.2d 731, 733 (Tex. 1985). Therefore, we reverse in its entirety the property division and

remand for further proceedings consistent with this opinion. *See Mathis*, 2018 WL 6613864, at *10–11 (remanding for new division of community estate where parties did not submit sufficient evidence of challenged asset's value).

Because we are reversing and remanding for a new property division, it is unnecessary to reach the other appealed issue in this case concerning Ruiz's tax liability. *See* TEX. R. APP. P. 47.1.

Sarah Beth Landau
Justice

Panel consists of Justices Lloyd, Landau, and Countiss.