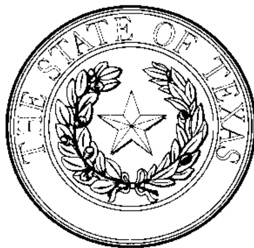
Opinion issued March 29, 2022



In The

Court of Appeals

For The

First District of Texas

NO. 01-20-00589-CV

STEVEN FOREMAN, Appellant

V.

JESSIE P. FOREMAN, Appellee

On Appeal from the 270th District Court
Harris County, Texas
Trial Court Case No. 2018-56778

MEMORANDUM OPINION

Appellant, Steven Foreman, brought a suit against appellee, Jessie P. Foreman, under the Declaratory Judgments Act ("DJA"),[1] seeking to "quiet title" to two properties in Houston, Texas. After the trial court denied Steven's request for

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[1] *See* TEX. CIV. PRAC. & REM. CODE §§ 37.001–.011.

declaratory relief, he appealed. In two issues, Steven challenges the legal and factual sufficiency of the evidence supporting the trial court's judgment and contends that the trial court erred in "refusing to quiet title" to the properties at issue.

We affirm.

Background

It is undisputed that Smith Phillips[2] owned two adjacent parcels of land:

(1) Lot Three, Block Two, Section 3, Hillebrenner Addition, known as 12234 Old Foltin Road, Houston, Texas ("Parcel #1"); and

(2) Lot Two, Block Two, Section 3, Hillebrenner Addition, known as 12242 Old Foltin Road, Houston, Texas ("Parcel #2").

In 1993, Steven purchased a "bungalow-style house" ("house") that needed to be moved from its location. Phillips allowed Steven, who was planning to buy both parcels, to move the house onto the parcels and to begin living in the house. Before Steven's purchase of the parcels was finalized, however, Phillips died. On April 24, 1996, Steven and Jessie jointly purchased Parcel #1. On July 20, 1996, Steven and Jessie were married, and Jessie moved into the house with Steven.

In 1999, Steven and Jessie divorced. In a default decree, the trial court found that Steven had failed to appear, granted a divorce, appointed Steven and Jessie the joint managing conservators of their child, and granted Jessie the right to establish the primary residence of the child. In the decree, the trial court also noted the Jessie

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[2] Not a party to this case.

and the child resided at Parcel #1, and it awarded Parcel #1 and the house to Jessie as her sole and separate property, and divested Steven of all right, title, and interest, as follows:

> IT IS ORDERED AND DECREED that the wife, [Jessie], is awarded the following as her sole and separate property, and the husband is divested of all right, title, interest, and claim in and to that property:
>
> W-1 The following real property . . . :
>
> The residence commonly known as 12234 Old Foltin Rd, Houston, Texas 77086 and more particularly described as: Lot Three (3), Block Two (2), Section 3, Hillebrener Addition, an addition in Harris County. . . .

In 2000, Steven purchased Parcel #2 from Janie Green.[3]

In 2003, Steven and Jessie jointly purchased Parcel #3, which is unrelated to Parcels #1 and #2. The deed states that, on May 12, 2003, French Equities, Inc. conveyed to "Steven Dwyane Foreman, Sr. and Wife, Jessie P. Foreman," Lot 57, Block 3, Highland Homes Place, known as 12715 Ann Louise Road ("Parcel #3").

Fifteen years later, in 2018, Steven filed the instant Petition for Declaratory Judgment, asking the trial court to:

> Award the property located at 2715 Ann Louise Road [Parcel #3] and 12242 Old Foltin Road [Parcel #2] to [Steven] as his sole and separate property and divest [Jessie] of all right title and interest.

Jessie answered with a general denial and did not assert affirmative defenses.

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[3] Not a party to this case.

After a bench trial in June 2020, the trial court denied Steven's request for declaratory relief. Steven filed a motion for new trial, asserting that the trial court erred in finding that he "was not the sole owner" of the (1) "[house] located at 12242 Old Foltin Rd. [Parcel #2]," (2) "land located underneath the [house] located at 12242 Old Foltin Rd. [Parcel #2]," and (3) "land and improvements located at [Parcel #3]." He complained that that the trial court erred by sua sponte conducting a Google search during trial regarding Jessie's testimony about the location of the house, but refusing to conduct a similar search regarding his testimony, and erred by failing or refusing to issue findings of fact and conclusions of law. Steven asked the trial court to "enter an order vacating the judgment in this cause and grant [him] a new trial." The trial court granted his motion, as follows: "The judgment in this cause is vacated and a new trial is hereby ordered."

In July 2020, the trial court held a new bench trial. At trial, Steven sought to discuss the exhibits "admitted at the last trial." The trial court explained: "This is all fresh and new. It's a whole new trial. So everything starts from zero." Thereafter, Steven introduced, and the trial court admitted into evidence, two exhibits: (1) the 2000 deed to Parcel #3 ("Exhibit 4"); and (2) the 1993 deed to the house to be moved, i.e., an unrecorded Special Warranty Deed, dated June 13, 1993 and notarized in 2011, in which George E. Foreman conveyed to Steven a "house only," described as a 1961 "single family bungalow-style house" ("Exhibit 5").

Steven testified that he acquired the "land" at "12242 Old Foltin Road," i.e., Parcel #2, in 1993 from Smith Phillips. Also in 1993, he acquired the house from George Foreman and had it "placed on [his] property." And, "three years later in 1996," he married Jessie and "moved her into that home." He testified that, in 1999, he and Jessie divorced and that she "was not awarded the home in the divorce decree." He testified that he had paid the taxes on the property since 1993.

Steven further testified that he purchased Parcel #3 in 2003 and that Jessie had fraudulently induced him to add her name as a grantee by misrepresenting that they were still married. He testified that he would not have added her for any other reason and that there were no ancillary agreements between them. He testified that he alone paid the property taxes. Over time, however, the taxes became delinquent in the amount of $20,000 and, on December 16, 2019, Parcel #3 was sold at a tax sale for approximately $90,000. Steven sought a declaration that, based on Jessie's fraud, he owned Parcel #3 to Jessie's exclusion and was alone entitled to the residual proceeds from the sale.

Jessie's sister, Jaclyn Joubert, testified that Jessie and Steven were still living together in 2003 and that they held themselves out as a married couple. Jaclyn testified that she first learned about the divorce at a funeral in 2005, when she overheard Jessie talking with other attendees. When Jaclyn asked Steven about the

divorce, he stated that he thought he was still married to Jessie. Jessie then confronted Jaclyn about telling Steven, and a physical altercation ensued.

Steven's brother, Jeral Foreman, testified that, in 2003, he believed that Jessie and Steven were still married. He noted that, at the time, Jessie was still wearing her wedding ring and that she and Steven held themselves out as a married couple and attended church services and family celebrations together. He noted, however, that he "was at the first divorce hearing" in 1998 as a witness, at the behest of "Steve and his lawyer."

Jessie testified that Parcels #1 and #2 are adjacent, and were never formally consolidated, and that "the house actually sits on both properties." She noted: "You couldn't tell the difference if you drove by today or if you even look at it that it's on two pieces of property. You have no idea." She explained that one of the parcels had to be designated for addressing, and they chose "12234 Old Foltin," i.e., Parcel #1. She and Steven lived in the house from 1996 to 1999, when she was awarded Parcel #1 and the house in the divorce, and she has lived there for the 20 years since. She noted that she was not awarded Parcel #2.

Jessie further testified that, after their divorce, she and Steven stayed amicable for the sake of their child. She testified that she found Parcel #3, that she asked Steven to help her buy it, that they purchased it together and were both present at the closing, that she paid the down payment, and that, accordingly, they are both listed

on the deed. She testified that, although the deed also identifies her as Steven's "wife," such identification is superfluous and that they both knew that they were divorced. Jessie testified that she and Steven agreed that she would earn money for school by renting out horse stalls on the property. She testified that she paid the taxes on Parcel #3 from 2003 to 2013, when Steven denied her access to the property. And, thereafter, Steven failed to pay the taxes, the taxes became delinquent, and the property was sold in 2019 at a tax sale. She noted that "there's over $73,000 actually sitting in the account to be disbursed."

At the close of trial, the trial court signed a final judgment denying Steven's requests for declaratory relief. The record does not reflect that findings of fact and conclusions of law were requested or filed.

Declaratory Judgment

In his first and second issues, Steven argues that the trial court erred in denying his requests for a declaratory judgment to "quiet title" to Parcels #2 and #3.

A. Nature of the Claims

As a threshold matter, we consider the nature of Steven's claims. In the trial court, he filed a "Petition for Declaratory Judgment," in which he asked the trial court to "[a]ward" the property located at 12242 Old Foltin Road, i.e., Parcel #2, and at 2715 Ann Louise Road, i.e., Parcel #3, "as his sole and separate property and divest [Jessie] of all right title and interest." On appeal, he asserts that "[t]his is a

suit for a Declaratory Judgment" and that the trial court erred in "refusing to quiet title" in his favor to Parcels #2 and #3.

"A suit to clear title or quiet title—also known as a suit to remove cloud from title—relies on the invalidity of the defendant's claim to the property." *Essex Crane Rental Corp. v. Carter*, 371 S.W.3d 366, 388 (Tex. App.—Houston [1st Dist.] 2012, pet. denied). "A cloud on title exists when an outstanding claim or encumbrance is shown, which on its face, if valid, would affect or impair the title of the owner of the property." *Id.* (internal quotations omitted). "[A] legal action to quiet title is traditionally one in which the superior title holder seeks to *remove a challenge* to that title." *Brumley v. McDuff*, 616 S.W.3d 826, 835 (Tex. 2021) (emphasis added); *see, e.g.*, *Carter*, 371 S.W.3d at 388 (discussing suit to remove lien).

With respect to Parcel #2, Steven's pleadings do not identify any claim or encumbrance that Jessie advances against his title that he seeks to "remove." *See Brumley*, 616 S.W.3d at 835. Rather, the record shows that Steven seeks to affirmatively establish that the house at issue belongs to him because it is actually situated within the boundaries of his deed to Parcel #2. Jessie asserts, in response, that the house, in which she has been living for over 20 years, belongs to her on Parcel #1. It is undisputed that neither deed expressly mentions the house. Thus, the essence of the parties' dispute concerns the geographical location of the house,

as between their two adjacent parcels. And, Steven's claim with respect to Parcel #2 is, in essence, a boundary dispute that cannot be resolved with silent titles.

Historically, a dispute concerning rival claims to the same property had to be brought as a trespass-to-try-title action. "A trespass to try title action is the method of determining title to lands, tenements, or other real property." TEX. PROP. CODE § 22.001; *see Brumley*, 616 S.W.3d at 832 (noting that, by statute, "a trespass-to-try-title action is the exclusive remedy for resolving overarching claims to legal title"); *Lance v. Robinson*, 543 S.W.3d 723, 736 (Tex. 2018) (holding that trespass-to-try-title action is proper procedural vehicle "when the claimant is seeking to establish or obtain the claimant's ownership or possessory right in the land at issue" (emphasis omitted)). In *Martin v. Amerman*, the supreme court held that a boundary dispute must be resolved through a trespass-to-try-title action, rather than a petition for a declaratory judgment. 133 S.W.3d 262, 265–67 (Tex. 2004) ("A boundary determination necessarily involves the question of title, else the parties would gain nothing by the judgment.").

After *Martin*, however, the legislature amended the DJA to provide that, notwithstanding the trespass-to-try-title statute, an interested person under a deed may obtain a determination of the proper boundary line between adjoining properties, as follows:

> (a) A person interested under a deed . . . may have determined any question of construction or validity arising under the instrument,

> . . . and obtain a declaration of rights, status, or other legal relations thereunder.
>
> . . . .
>
> (c) *Notwithstanding Section 22.001, Property Code*, a person described by Subsection (a) may obtain a determination under this chapter *when the sole issue concerning title to real property is the determination of the proper boundary line between adjoining properties*.

TEX. CIV. PRAC. & REM. CODE § 37.004 (emphasis added); *see also* TEX. PROP. CODE § 22.001 (governing trespass-to-try-title actions); *Brumley*, 616 S.W.3d at 833 n.36.

Because the sole issue Steven raises concerning his title to Parcel #2 is the determination of the proper boundary line between it and the adjoining Parcel #1, as the boundary line between the parties' lands determines the ownership of the disputed improvement, i.e., the house, his claim is properly resolved under section 37.004(c). *See* TEX. CIV. PRAC. & REM. CODE § 37.004(c); *see also Plumb v. Stuessy*, 617 S.W.2d 667, 669 (Tex. 1981) (holding that action is one for boundary "[i]f there would have been no case but for the question of boundary," even though title questions might be involved); *Puga v. Salesi*, No. 01-14-00724-CV, 2015 WL 3877755, at *5 (Tex. App.—Houston [1st Dist.] June 23, 2015, no pet.) (mem. op.).

With respect to Parcel #3, it is undisputed that the property was sold at a tax sale in 2019 and that Steven and Jessie no longer have, and are not seeking to establish, present title or possession. "The plaintiff in a quiet-title suit must prove, as a matter of law, that he has a right of ownership and that the adverse claim is a

cloud on the title that equity will remove." *Brumley*, 616 S.W.3d at 835 (internal quotations omitted). The plaintiff in a trespass-to-try-title claim "must allege and prove the right to present possession." *Lance*, 543 S.W.3d at 736. Steven explained at trial that he seeks a declaration that Jessie defrauded him into listing her as a grantee in the deed existing prior to the tax sale and thus he has the exclusive right to the residual proceeds of the tax sale. This claim may be resolved under the DJA, section 37.004(a). *See* TEX. CIV. PRAC. & REM. CODE § 37.004(a) (authorizing person interested under deed to have determined any question of construction or validity arising under instrument and obtain a declaration of rights, status, or other legal relations thereunder); *Lance*, 543 S.W.3d at 737 (holding claimants seeking declaration of non-possessory interest could properly pursue relief under DJA); *Florey v. Est. of McConnell*, 212 S.W.3d 439, 448–49 (Tex. App.—Austin 2006, pet. denied) (finding no bar to availability of DJA in suit seeking adjudication of validity of deed as it impacted entitlement to proceeds from sale of property because there was only "indirect impact" on title).

B. Standard of Review and Legal Principles

The purpose of the DJA is "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations; and it is to be liberally construed and administered." TEX. CIV. PRAC. & REM. CODE § 37.002(b). A trial court "may refuse to render or enter a declaratory judgment or decree if the

judgment or decree would not terminate the uncertainty or controversy giving rise to the proceeding." *Id.* § 37.008.

We review declaratory judgments under the same standards as other judgments and decrees and look to the procedure used to resolve the issue at trial to determine the appropriate standard of review. *See id*. § 37.010; *City of Galveston v. Giles*, 902 S.W.2d 167, 170 (Tex. App.—Houston [1st Dist.] 1995, no writ). When, as here, the trial court does not issue findings of fact and conclusions of law, we imply all facts necessary to support the judgment that are supported by the evidence. *BMC Software Belg., N.V. v. Marchand*, 83 S.W.3d 789, 795 (Tex. 2002); *Fenlon v. Harris Cty.*, 569 S.W.3d 783, 791 (Tex. App.—Houston [1st Dist.] 2018, no pet.). When the appellate record includes a reporter's record, as here, the trial court's implied findings may be challenged for legal and factual sufficiency. *Fenlon*, 569 S.W.3d at 791.

When a party challenges the legal sufficiency of an adverse finding on an issue on which he had the burden of proof, he must demonstrate on appeal that the evidence establishes, as a matter of law, all vital facts in support of the issue. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001). We consider the evidence in the light most favorable to the trial court's judgment and indulge every reasonable inference that supports it. *City of Keller v. Wilson*, 168 S.W.3d 802, 826–27 (Tex. 2005).

When a party challenges the factual sufficiency of an adverse finding on an issue on which he had the burden of proof, he must demonstrate that the adverse finding is against the great weight and preponderance of the evidence. *Francis*, 46 S.W.3d at 242. We consider all of the evidence in a neutral light and set aside the finding only if the finding is so contrary to the overwhelming weight of the evidence that it is clearly wrong and manifestly unjust. *Id*.

In a bench trial, the trial court is the sole judge of the witnesses' credibility and the weight to be given their testimony. *See Zenner v. Lone Star Striping & Paving L.L.C.*, 371 S.W.3d 311, 314 (Tex. App.—Houston [1st Dist.] 2012, pet. denied). In resolving factual disputes, the trial court may choose to believe one witness and disbelieve others, and it may resolve any inconsistencies in a witness's testimony. *Id.*

An appellant may not challenge a trial court's conclusions of law for factual sufficiency, but we may review the legal conclusions drawn from the facts to determine their correctness. *Marchand*, 83 S.W.3d at 794. We review the trial court's conclusions of law de novo and uphold them if they can be sustained on any legal theory supported by the evidence. *Id.*; *Zenner*, 371 S.W.3d at 314–15.

C. Scope of Review

Steven dedicates significant portions of his brief to argument based on testimony, evidence, and matters occurring in the original trial. Although the trial

court subsequently granted Steven's motion for a new trial, he asserts that this Court should consider the records from both the original and the new trial "when ruling in this case." Steven asserts that the trial court granted a "Supplemental New Trial."

Granting a new trial has the legal effect of vacating the original judgment and returning the case to the docket as though there had been no previous trial. *Markowitz v. Markowitz*, 118 S.W.3d 82, 88 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). "Thus, when the trial court grants a motion for new trial, the court essentially wipes the slate clean and starts over." *Wilkins v. Methodist Health Care Sys.*, 160 S.W.3d 559, 563 (Tex. 2005); *see In re Walker*, 265 S.W.3d 545, 553 (Tex. App.—Houston [1st Dist.] 2008, orig. proceeding) (plaintiff's assertion that it had introduced its evidence at previous trial overlooked procedural posture of case, namely, that granting of new trial had legal effect of returning case to docket as though there had been no previous trial).

Here, Steven, in his motion for new trial, asked the trial court to "enter an order vacating the judgment in this cause and grant[ing] [him] a new trial." And, the trial court granted the motion, as follows: "The judgment in this cause is vacated and a new trial is hereby ordered." Thus, the trial court granted a new trial. And, the transcript of the new trial reflects that when Steven sought to discuss the exhibits "admitted at the last trial," the trial court explained: "This is all fresh and new. It's a whole new trial. So everything starts from zero."

In reviewing the merits of a trial court's decision, we are limited to the evidence that was before it at the time that it ruled. *Amigos Meat Distribs., L.P. v. Guzman*, 526 S.W.3d 511, 523 (Tex. App.—Houston [1st Dist.] 2017, pet. denied). Thus, we confine our review to the evidence that the record of the new trial shows that the trial court considered, as discussed below.[4]

D. Analysis

1. Parcel #2

In his first issue, Steven argues, in substance, that the trial court erred in denying his request for a declaration that he owns the house. He asserts that the trial court erred in "interpret[ing] the language of the divorce decree to cover it." He asserts that "both the [b]ungalow and the land [citing Parcel #2] were purchased at times that the parties were not married"; that "both the bungalow and the land it was set on are separate property"; and that the "decree cannot operate to award these properties to [Jessie]" because the trial court that issued the decree had "no discretion to award separate property." He challenges the legal and factual sufficiency of the evidence supporting the trial court's implied findings against him.

As the party asserting a claim for affirmative relief, Steven had the burden to establish his entitlement to the requested declaratory judgment. *See Alanis v. US*

[4] Steven asserts that the trial court "consulted her 'exhibit book'" from the original trial. The record shows, however, that the trial court consulted her exhibit book only to review Exhibit 4.

Bank Nat'l Ass'n, 489 S.W.3d 485, 500 (Tex. App.—Houston [1st Dist.] 2015, pet. denied). When there is a dispute involving the boundary line between two adjacent tracts, as here, it is the plaintiff's burden to locate the true boundary line on the ground. *See Brown v. Eubank*, 378 S.W.2d 707, 711 (Tex. Civ. App.—Tyler 1964, writ ref'd n.r.e.). The question of where boundaries are on the ground is a question of fact to be determined from the evidence. *See TH Invs., Inc. v. Kirby Inland Marine, L.P.*, 218 S.W.3d 173, 203 (Tex. App.—Houston [14th Dist.] 2007, pet. denied); *Silver Oil & Gas, Inc. v. EOG Res.*, Inc., 246 S.W.3d 197, 202–03 (Tex. App.—San Antonio 2007, no pet.).

Steven testified that, in 1993, he acquired the house from George Foreman. Also in 1993, he acquired the "land" at "12242 Old Foltin Road," i.e., Parcel #2, from Phillips and had the house "placed on [his] property." And, "three years later in 1996," he married Jessie and "moved her into that home." He testified that, in 1999, he and Jessie divorced and that she "was not awarded the home in the divorce decree." He also testified that he had paid the taxes on the property since 1993.

The trial court admitted an unrecorded Special Warranty Deed, dated June 13, 1993, but not notarized until 2011, in which George E. Foreman conveyed to Steven a "house only," described as a 1961 "single family bungalow-style house." The record does not reflect that the trial court admitted a copy of the deed to Parcel #2 at the new trial. *See In re Walker*, 265 S.W.3d at 553. However, the transcript shows

that, during trial, the trial court read the deed that was admitted at the original trial. The deed to Parcel #2, which is filed in the appeal, states that, on January 3, 2000, Janie Green conveyed to Steve Foreman:

> Property (including any improvements) Address: 12242 Old Foltin Rd. Houston Tx. 77086
>
> Legal Description: Tr 2, Blk 2, Hillebrenner.

Steven also states in his brief that he "purchase[d] the property from a successor in interest, Janie Green"; that "the deed to 42 [Parcel #2] was not executed until after the divorce"; and that "the deed itself shows the purchase date as January 3, 2000."

Jessie testified that Parcels #1 and #2 are adjacent, and were never formally consolidated, and that "the house actually sits on both properties." She noted: "You couldn't tell the difference if you drove by today or if you even look at it that it's on two pieces of property. You have no idea." She explained that one of the parcels had to be designated for addressing, and they chose "12234 Old Foltin," i.e., Parcel #1. She and Steven lived in the house from 1996 to 1999, when she was awarded Parcel #1 and the house in the divorce, and she has lived there for the 20 years since. She noted that she was not awarded Parcel #2.

The deed to Parcel #1 was not admitted into evidence at the new trial. The record shows that, during trial, the trial court reviewed page 30 of the divorce decree, which reflects that, in 1999, the divorce court awarded Parcel #1 and the house to

Jessie as her sole and separate property, and divested Steven of all right, title, and interest, as follows:

> IT IS ORDERED AND DECREED that the wife, [Jessie], is awarded the following as her sole and separate property, and the husband is divested of all right, title, interest, and claim in and to that property:
>
> W-1 The following real property . . . :
>
> **The residence** commonly known as 12234 Old Foltin Rd, Houston, Texas 77086 and more particularly described as: Lot Three (3), Block Two (2), Section 3, Hillebrener Addition, an addition in Harris County. . . .

(Emphasis added.)

As the party asserting a claim for affirmative relief, Steven had the burden to establish his entitlement to the requested declaratory judgment by establishing the true boundary line on the ground. *See Alanis*, 489 S.W.3d at 500; *Brown*, 378 S.W.2d at 711. There was no evidence presented at the new trial affixing the geographic location of the house on the ground. *See, e.g.*, *Stribling v. Millican DPC Partners*, *LP*, 458 S.W.3d 17, 23 (Tex. 2015) (metes and bounds and deed descriptions); *Eggemeyer v. Hughes*, 621 S.W.3d 883, 891 (Tex. App.—El Paso 2021, no pet.) (surveys and expert testimony); *Puga*, 2015 WL 3877755, at *2, 5 (surveys); *TH Invs.*, 218 S.W.3d at 203–05, 207 (surveys and field notes).

From the evidence presented, the trial court could have reasonably discredited Steven's testimony that he moved the house onto Parcel #2 in 1993 because the deed reflects that he did not purchase Parcel #2 until 2000. *See Zenner*, 371 S.W.3d at

314 (holding that trial court may resolve any inconsistencies in witness's testimony). Although, as Steven argues, the 1993 Special Warranty Deed to the bungalow lists his address as Parcel #2, the document is unrecorded and was not notarized until 2011. Thus, the trial court could have discredited it. *See id*. (holding that trial court is sole judge of witnesses' credibility and weight to be given their testimony).

Further, the trial court could have reasonably found, based on the decree awarding Jessie the "residence" on Parcel #1 and the undisputed testimony that she has lived in the house undisturbed since 1996, that the house is located on Parcel #1. *See id*. Notably, although the deed to Parcel #1 was not admitted into evidence at the new trial, Steven concedes on appeal that he and Jessie purchased Parcel #1 in 1996 and that they were both named in the deed.

Steven asserts on appeal that he is the sole owner of the house because the evidence shows that he solely purchased it in 1993. It is undisputed, however, that he affixed it to the land. Generally, improvements become part of the land and belong to the landowner, absent evidence of (1) an understanding between the parties that improvements should not become permanently affixed to the land, or (2) intent at the time of the improvements that they were to remain personalty and that the improver retained a right of removal. *Travis Cent. Appraisal Dist. v. Signature Flight Support Corp*., 140 S.W.3d 833, 838 (Tex. App.—Austin 2004, no pet.) (citing *Dennis v. Dennis*, 256 S.W.2d 964, 966 (Tex. Civ. App.—Amarillo 1952, no

writ) (absent agreement, son's house moved onto land owned by mother became affixed and belonged to mother)). There is no evidence presented in this case of any such agreements. And, the decree shows that Steven was divested of any interest he had in the divorce.

Viewing the evidence in the light most favorable to the trial court's judgment and indulging every reasonable inference that would support it, we conclude that the evidence supports the trial court's implied finding that Steven did not establish that the house is within the boundaries of Parcel #2. *See Wilson*, 168 S.W.3d at 822, 827; *Francis*, 46 S.W.3d at 241. In addition, having considered all the evidence in a neutral light, we conclude that the trial court's implied finding is not so contrary to the overwhelming weight of the evidence that it is clearly wrong and manifestly unjust. *See Francis*, 46 S.W.3d at 242. We hold that the trial court's implied findings are supported by legally and factually sufficient evidence and that the trial court did not err in denying Steven's request for a declaratory judgment.

We overrule Steven's first issue.

2. *Parcel #3*

In his second issue, Steven asserts that the trial court erred denying his request for a declaration that he owned Parcel #3 to the exclusion of Jessie. He asserts that "it is undisputed that [Parcel #3] was purchased after the divorce"; that the evidence is "overwhelming" that Jessie concealed her divorce from him at the time of the

purchase; and that the evidence is "undisputed" that he "would not have allowed [her] name to be on the deed if he had known they were divorced." He asserts that the trial court's implied finding that they had an agreement to jointly purchase the property is "of no effect" because the trial court "ignored the evidence that the agreement was induced by fraud."

As the party asserting a claim for affirmative relief, Steven had the burden to establish his entitlement to the requested declaratory judgment. *See Alanis*, 489 S.W.3d at 500. Fraudulent inducement is a species of common-law fraud that shares the same basic elements: (1) a material misrepresentation, (2) made with knowledge of its falsity or asserted without knowledge of its truth, (3) made with the intention that it should be acted on by the other party, (4) that the other party relied on and (5) that caused injury. *Anderson v. Durant*, 550 S.W.3d 605, 614 (Tex. 2018). Fraud requires a showing of actual and justifiable reliance. *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 923 (Tex. 2010); *Wilmot v. Bouknight*, 466 S.W.3d 219, 227 (Tex. App.—Houston [1st Dist.] 2015, pet. denied).

The record shows that the trial court admitted a Warranty Deed, dated March 12, 2003, in which French Industries, Inc. conveyed Parcel #3 to "Steven Dwayne Foreman, Sr. and wife, Jessie P. Foreman." Steven testified that he added Jessie to the deed as his "wife," despite their 1999 divorce, because she had deceived him into believing that they were still married. He testified that he would not have added her

for any other reason and that there were no ancillary agreements between them. He further testified that he alone paid the taxes on the property. He conceded, however, that the taxes became delinquent in the amount of $20,000 and that, on December 16, 2019, Parcel #3 was sold at a tax sale for approximately $90,000. He seeks the residual proceeds from the sale.

Jaclyn testified that Jessie held herself out in 2003 as still being married to Steven and that Jessie and Steven were still living together. At a funeral in 2005, Jaclyn learned that they were divorced when she overheard Jessie talking with other attendees. When she asked Steven about the divorce, he stated that he thought they were still married. Shortly after, Jessie confronted Jaclyn about telling Steven, and a physical altercation ensued.

Jeral testified that, in 2003, he believed that Jessie and Steven were still married. He noted that, at the time, Jessie was still wearing her wedding ring and that she and Steven had held themselves out as being married and had attended church services and family celebrations together. He noted that he "was at the first divorce hearing" in 1998 as a witness, at the behest of "Steve and his lawyer."

Jessie testified that Steven moved out of the house in 1998. She noted, however, that they stayed amicable for the sake of the child. She testified that she found Parcel #3, that she asked Steven to help her buy it, that they purchased it together and were both present at the closing, that she paid the down payment, and

that, accordingly, they are both listed on the deed. She testified that, although the deed also identifies her as Steven's "wife," such identification is superfluous and that they both knew that they were divorced. Jessie testified that she and Steven agreed that she would earn money for school by renting out horse stalls on the property. She testified that she paid the taxes on Parcel #3 from 2003 to 2013, when Steven denied her access to the property. And, thereafter, Steven failed to pay the taxes, the taxes became delinquent, and the property was sold in 2019 at a tax sale. She noted that "there's over $73,000 actually sitting in the account to be disbursed."

The trial court is the sole judge of the witnesses' credibility and the weight to be given their testimony. *See Zenner*, 371 S.W.3d at 314. In resolving factual disputes, it may choose to believe one witness and disbelieve others, and it may resolve any inconsistencies in a witness's testimony. *Id.* Here, the trial court could have reasonably chosen to believe Jessie's testimony that Steven knew that they were no longer married when they purchased the property together in 2003. It is undisputed that Steven moved out of the house in 1998. And, Jeral testified that he "was at the first divorce hearing" in 1998 as a witness, at the behest of "Steve and his lawyer." The trial court could have chosen to believe Jessie's testimony that she and Steven stayed amicable after the divorce for the sake of their child and that they had simply agreed to purchase Parcel #3 together as an investment. Steven did not dispute that Jessie had paid the down payment on Parcel #3. Further, based on the

evidence, the trial court could have reasonably chosen to disbelieve the testimony of Steven, Jaclyn, and Jeral that Steven did not know that he was divorced. *See id.*; *see also Wilson*, 168 S.W.3d at 820 (noting that factfinders may disregard even uncontradicted and unimpeached testimony from disinterested witnesses).

Thus, the trial court could have reasonably concluded that Jessie did not misrepresent the status of their marriage to Steven in purchasing Parcel #3. *See Anderson*, 550 S.W.3d at 614. The trial court could have also concluded that Steven's purported reliance on any such representation was not justifiable. *See Wilmot*, 466 S.W.3d at 227. We will not disturb the trial court's resolution of evidentiary conflicts that turn on credibility determinations. *Weatherford Artificial Lift Sys., Inc. v. A&E Sys. SDN BHD*, 470 S.W.3d 604, 609 (Tex. App.—Houston [1st Dist.] 2015, no pet.).

Viewing the evidence in the light most favorable to the trial court's judgment and indulging every reasonable inference that would support it, we conclude that the evidence supports the trial court's implied finding that Jessie did not fraudulently induce Steven to include her as a grantee in executing the deed to Parcel #3. *See Wilson*, 168 S.W.3d at 822, 827; *Francis*, 46 S.W.3d at 241. In addition, having considered all the evidence in a neutral light, we conclude that the trial court's implied finding is not so contrary to the overwhelming weight of the evidence that it is clearly wrong and manifestly unjust. *See Francis*, 46 S.W.3d at 242. We hold

that the trial court's implied findings are supported by legally and factually sufficient evidence and that the trial court did not err in concluding that Steven was not entitled to his request for declaratory relief with respect to Parcel #3.

We overrule Steven's second issue.

Sanctions

Jessie contends that Steven's appeal is frivolous, and she requests that this Court award her appellate attorney's fees in the amount of $8,000. *See* TEX. R. APP. P. 45 (providing for damages for frivolous appeals in civil cases).

We may award just damages to a prevailing party if we objectively determine, after considering "the record, briefs, or other papers filed in the court of appeals," that an appeal is frivolous. *Id.*; *Smith v. Brown*, 51 S.W.3d 376, 381 (Tex. App.—Houston [1st Dist.] 2001, pet. denied). An appeal is frivolous if the record, viewed from the perspective of the advocate, does not provide reasonable grounds for the advocate to believe that the case could be reversed. *Smith*, 51 S.W.3d at 381. The decision to grant appellate sanctions is a matter of discretion that an appellate court exercises with prudence and caution and only after careful deliberation. *Id.* Rule 45 does not require the Court to award just damages in every case in which an appeal is frivolous. *Glassman v. Goodfriend*, 347 S.W.3d 772, 782 (Tex. App.—Houston [14th Dist.] 2011, pet. denied).

After a review of the record, briefing, and other papers filed in this Court, we deny Jessie's request for damages. *See* TEX. R. APP. P. 45; *Smith*, 51 S.W.3d at 381.

Conclusion

We affirm the trial court's judgment.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Kelly and Landau.