Affirmed and Memorandum Opinion filed August 6, 2020.

In The

Fourteenth Court of Appeals

NO. 14-18-00797-CV

IN THE MATTER OF THE MARRIAGE OF MARINA VERONICA LOPEZ AND CARLOS DIEGO LOPEZ

On Appeal from the 507th District Court
Harris County, Texas
Trial Court Cause No. 2017-19867

MEMORANDUM OPINION

Appellant Marina Veronica Lopez appeals the trial court's final divorce decree dividing the equity from the sale of the marital home equally between her and appellee, Carlos Diego Lopez. Appellant contends that the marital property is her separate property because appellee signed over his interest to her in a quitclaim deed. Appellee contends that he only signed the quitclaim deed under duress because his wife threatened him with criminal prosecution. Appellant complains that the evidence is legally and factually insufficient to support the trial court's conclusion that appellee was under duress when he signed the quitclaim deed. Appellant argues that because the evidence is insufficient to support appellee's

defense of duress, the trial court erred in awarding appellee any equity from her separate property. We affirm.

I. BACKGROUND

Husband and wife were married in 1994 and separated March 2017. During the marriage they purchased a home. Around the time of their separation, the parties agreed that wife would get the home in exchange for releasing husband from any child support obligation. This agreement was never put into writing, and husband testified that he changed his mind because he found out that his wife had been unfaithful to him.

Wife testified that she asked husband for a divorce in February 2017, and husband was "crushed" by her request. The parties ceased living together in March 2017. Wife remained in the marital home and husband moved into an apartment. Wife petitioned for divorce on March 23, 2017. According to wife's testimony, on April 15, 2017, husband came over to the house, kicked the door and threatened to kill wife, wife's boyfriend, and wife's grandmother. Wife called the police and reported the incident. Wife and her boyfriend both "pressed charges" against husband.

Husband testified that he agreed to give wife the house so that his children would be taken care of. He changed his mind because he found out that wife had been having an affair. According to husband's testimony, on April 15, 2017, their daughter called to tell him that wife had a man at the home. Husband came to the home, stood outside, and began yelling that he would "kick the [expletive] out of" wife's boyfriend. Husband denied that he threatened either wife or wife's grandmother, or ever tried to gain entry to the house. Husband testified that he was upset that wife had a male stranger in the home with their sixteen-year-old daughter.

Wife testified that she believed husband had been arrested two or three days after the incident. Husband testified that he was not arrested, but that he found out from his son that the police had been called. Husband testified that his bond was $50,000 and that he had a hearing on the criminal case set for April 19, 2017. Husband further testified that wife told him that he had to sign something to give her the house and an affidavit in exchange for her and her boyfriend dropping the charges. On April 18, 2017, husband signed a quitclaim deed transferring all his interest in the marital home to wife and signed an affidavit placing all fault for the divorce on himself. The affidavit recited that because of husband's "inexcusable behavior, poor judgment, and bad decisions, I have made [my wife] miserable in our marriage for at least the past 10 years. . . . [My wife] has done nothing wrong during our 27-year marriage, and I firmly believe that she has never been unfaithful or behaved inappropriately in any way during that time." Wife testified that she drafted the affidavit and that her boyfriend "supervised" what she wrote.

Husband testified that he was scared because he did not have the money to pay the bond and that wife took advantage of the situation to make him sign the documents. Husband would not have signed the affidavit or quitclaim deed except that he felt desperate. Wife testified that she contacted the district attorney's office to have the criminal charges dismissed because she did not really believe that husband would kill her, her boyfriend, or her grandmother. Text messages showed that wife told husband to sign over the house through a quitclaim deed and sign an affidavit "describing the worst moments of our marriage for the past ten years," and then she would ask her boyfriend to dismiss the charges. Additional text messages showed that wife contacted the district attorney's office on the same day that husband signed the quitclaim deed and affidavit. The criminal trial court dismissed the charges against husband by order entered on May 31, 2017.

After a bench trial and in the final divorce decree, the trial court concluded that husband signed the quitclaim deed under duress and voided the deed. The trial court concluded that the proceeds from the sale of the marital home were community property and divided the proceeds equally between the parties. In the findings of fact and conclusions of law, the trial court found that wife was not a credible witness, the parties acquired the marital home during the marriage, and the quitclaim deed was void because husband signed it under duress. The trial court concluded that the proceeds from the sale of the marital home were characterized as community property and divided the proceeds equally between the parties.

II. DURESS

In her first point of error, wife complains that the evidence is legally and factually insufficient to support the conclusion that the deed was signed by appellee under duress. Wife contends that the marital home is her separate property because of the quitclaim deed that husband executed. First, appellant argues that as a matter of law, the source of the duress stemmed from a third party and that the threat of criminal prosecution does not constitute an imminent threat. Second, appellant argues that there is no evidence that wife threatened or committed any act for which she had no legal right because she is legally permitted to pursue criminal charges if husband committed a crime. Third, appellant argues that because husband signed other legal documents at the same time as the quitclaim deed that he did not attempt to rescind, that there is "no explanation on the record as to how [husband's] free will was overcome with respect to the signing of one document, but not the others." Fourth, appellant argues that because husband's testimony establishes other circumstances, absent duress, in which he would have signed a quitclaim deed to appellant, that husband's free will

was "not overcome to such an extent that he did that which he would not otherwise do."

A. Applicable Law

We review the trial court's decision for legal sufficiency of the evidence by the same standards applied in reviewing the evidence supporting a jury's finding. *Wood v. Kennedy*, 473 S.W.3d 329, 334 (Tex. App.—Houston [14th Dist.] 2014, no pet.). A party attacking legal sufficiency relative to an adverse finding on which it did not have the burden of proof must demonstrate that no evidence supports the finding. *Exxon Corp. v. Emerald Oil & Gas Co.*, 348 S.W.3d 194, 215 (Tex. 2011). We review the entire record to determine if the contrary proposition is established as a matter of law only if there is no evidence to support the judgment. *See id.* Anything more than a scintilla of evidence is legally sufficient to support the judgment. *See City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). The final test for legal sufficiency is whether the evidence would enable reasonable and fair-minded people to reach the verdict under review. *Id.* at 827. The factfinder is the sole judge of witness credibility and the weight to give witnesses' testimony. *Id.* at 819.

In reviewing factual sufficiency, we examine the entire record, considering both the evidence in favor of and contrary to the challenged findings. *2900 Smith, Ltd. v. Constellation NewEnergy, Inc.*, 301 S.W.3d 741, 746 (Tex. App.—Houston [14th Dist.] 2009, no pet.). When a party challenges the factual sufficiency of the evidence supporting a finding on which it did not have the burden of proof, we may set aside the finding only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Schear Hampton Drywall, LLC v. Founders Commercial, Ltd.*, 586 S.W.3d 80, 86 (Tex. App.—Houston [14th Dist.] 2019, no pet.). If we determine the evidence is factually insufficient, we must

detail the evidence relevant to the issue and state in what regard the contrary evidence greatly outweighs the evidence supporting the trial court's judgment; we need not do so when affirming the judgment. *Id.*

What constitutes duress is a question of law for the court. *Matthews v. Matthews*, 725 S.W.2d 275, 278 (Tex. App.—Houston [1st Dist.] 1986, writ ref'd n.r.e.). However, whether duress exists in any given situation is a question of fact dependent on the circumstances, including the mental effect on the party claiming duress. *Id*. We review the trial court's legal conclusions de novo. *BMC Software Belgium, N.V. v. Marchland*, 83 S.W.3d 789, 794 (Tex. 2002).

Duress has been characterized as "the result of threats which render persons incapable of exercising their free agency and which destroy the power to withhold consent." *Dallas Cty. Comm. Coll. Dist. v. Bolton*, 185 S.W.3d 868, 877 (Tex. 2005). "A common element of duress in all its forms . . . is improper or unlawful conduct or threat of improper or unlawful conduct that is intended to and does interfere with another person's exercise of free will and judgment." *Id*. at 879. Such compulsion must be actual and imminent, and not merely feigned or imagined. *Id*. "The restraint must be imminent and such as to destroy free agency without present means of protection." *Ward v. Scarborough*, 236 S.W.434, 437 (Tex. Com. App. 1922).

It is never duress to threaten to do what one has a legal right to do. *Bolton*, 185 S.W.3d at 877. "However, a vice arises when one employs extortive measures or, lacking good faith, makes improper demands." *Id*. The "majority" position in Texas, and other states, is that the "threat of criminal prosecution to pressure someone to execute a contract is itself a wrongful use of the criminal justice process that may constitute duress sufficient to void the resulting agreement." *Weinberg v. Baharav*, 553 S.W.3d 131, 135 (Tex. App.—Houston [14th Dist.]

2018, no pet.) (citing *Sims v. Jones*, 611 S.W.2d 461, 462 Tex. App.—Dallas 1980, no writ)). This is true even if the threatened party is guilty of the offense. *Sims*, 611 S.W.2d at 462; *Pierce v. Estate of Haverlah*, 428 S.W.2d 422, 425 (Tex. App.—Tyler 1968, writ ref'd n.r.e.).

B. Analysis

Appellant first argues that because the charges had already been filed with the district attorney's office, that the threat came from a third party and not from her. *See Kalyanaram v. Burck*, 225 S.W.3d 291,302 (Tex. App.—El Paso 2006, no pet.) (no duress as a matter of law where contracting party had already initiated criminal prosecution because the "threat" of criminal prosecution was from third-party district attorney and not from the party to the contract); *Kalyanaram v. Univ. of Tex. Sys.*, No. 03-05-00642-CV, 2009 WL 1423920, at *6 (Tex. App.—Austin May 20, 2009, no pet.) (mem. op.) ("[C]riminal prosecution and deportation could only be carried out by the [] District Attorney and the Immigration and Naturalization Service; the [defendant] itself could not prosecute or deport [plaintiff].").

In *Burck*, the plaintiff alleged duress in the execution of a settlement agreement with the defendant. *Burck*, 225 S.W.3d at 302. The plaintiff alleged that the defendant had threatened him with criminal prosecution. *Id*. However, the defendant forwarded criminal allegations to the district attorney more than two years before entering into the settlement agreement with the plaintiff. *Id*. A grand jury indicted the plaintiff more than a year and a half before the settlement agreement. *Id*. at 295. The plaintiff attested that he signed the settlement agreement based on the defendant's assurances that the criminal accusations would

be abandoned.[1] *Id.* There is no indication whether such terms were put forth by the defendant to settle the dispute, or whether the defendant had used the criminal prosecution to its advantage as part of its negotiations in arriving at the settlement agreement. As part of the settlement agreement, the plaintiff resigned his employment with the defendant and received a "sum certain" to be paid in settlement of the claims. *Id.* at 295. The court concluded that the threat of criminal prosecution emanated from a third party and was, thus, not a threat leveled at the plaintiff by the defendant as required for duress. *Id.* at 302.

In *University of Texas Systems*, a related case, nearly the same fact pattern arose. *See Univ. of Tex. Sys.*, 2009 WL 1423920, at *6. The defendant forwarded the criminal allegations to the district attorney nearly two years before the settlement agreement was executed. *Id.* The court concluded that because the defendant "could not itself carry out any of the threats that allegedly caused duress, [the plaintiff] did not present more than a scintilla of evidence" of his defense. *Id.*

In *Saenz v. Martinez*, another appellate court focused not on where the threat was coming from, but whether such threat was imminent. *Saenz v. Martinez*, No. 04-07-00339-CV, 2008 WL 4809217, at *6 (Tex. App.—San Antonio Nov. 5, 2008, no pet) (mem. op.). The criminal complaint had already been made to the district attorney's office prior to mediation and no evidence showed that during mediation any threatened continued pursuit of criminal charges would follow upon refusal to settle. *Id.* The evidence showed that the party claiming duress requested that the criminal complaints be withdrawn. *Id.* The court concluded that there was no evidence of an imminent threat at the time the contract was executed. *Id.*; *see also FDIC v. White*, 76 F. Supp. 2d 736, 739 (N.D. Tex. 1999) (concluding

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[1] It is unclear from the opinion whether such terms were included in the settlement agreement.

settlement agreement was not the product of duress when the FDIC had already made criminal referral, told opposing party that the referral once made was the "province of the FBI and the U.S. Attorney, not the FDIC," and reiterated the point several times throughout litigation, and the mediator raised the criminal liability issue in negotiations, but neither the FDIC nor the mediator ever made subtle or overt threats).

Unlike the above cases, the incident, timing of the charges, demands made by wife, and lingering possibility of husband going to jail were all within days. Wife initiated and directed the terms of the exchange of marital property and affidavit. Husband did not receive any monetary consideration for the exchange of his interest in the martial property. The threat to pursue or not pursue the criminal charges based upon whether husband accepted her demands related to their divorce proceeding is an improper use of the criminal justice process. *See Weinberg*, 553 S.W.3d at 135; *Robertson v. Shinn Grocery Co.*, 34 S.W.2d 367, 372 (Tex. App.—Austin 1930, writ ref'd) ("Not only did the agreement in question contemplate a concealment of facts of the defalcation from the grand jury, but obviously the use of what influence [the parties] could exert before the grand jury to prevent an indictment after the facts had become known."); *see also Hartford Fire Ins. Co. v. Kirkpatrick*, 20 So. 651, 654 (Ala. 1896) ("It was never contemplated in the law that either the actual or threatened use or misuse of criminal process, legal or illegal, should be resorted to for the purpose of compelling the payment of a mere debt, although it may be justly owing and due, or to coerce the making of contracts or agreement from which advantage is to be derived by the party employing such threats."); Restatement (Second) of Contracts § 176 cmt. c (1981) ("The threat [of criminal prosecution] involves a misuse, for personal gain, of power given for

other legitimate ends."). That criminal charges had already been filed does not render the defense of duress unavailable to husband as a matter of law.

Wife next argues that because she is legally permitted to pursue criminal charges against husband if he committed an illegal act, as a matter of law she has not done anything without "legal justification." However, threats of criminal prosecution, even when a party is guilty of an offense, does not preclude the defense of duress as a matter of law. *See Weinberg*, 553 S.W.3d at 135; *Pierce v. Haverlah's Estate*, 428 S.W.2d 422, 425 (Tex. App.—Tyler 1968, writ ref'd n.r.e.) ("Formerly it was held that threats of a lawful arrest and prosecution did not constitute such duress as to avoid a contract, but the modern view is that the threatened prosecution need not be for a crime or offense of which the party threatened is not guilty, but that duress may arise from threats of prosecution for an offense of which the party threatened is actually guilty."); *Greene v. Bates*, 424 S.W.2d 5, 10 (Tex. App.—Houston [1st Dist.] 1968, no writ) ("[D]uress may be predicated upon a threat of lawful imprisonment where the purpose of the threat is to exact a consideration wholly disconnected from the offense for which prosecution is threatened; where the purpose and effect of the threat is to exact an unconscionable bargain . . . .").

Wife also contends that there is legally and factually insufficient evidence because: (1) wife did not act without "legal justification"; (2) husband testified at trial that he believed that wife's boyfriend was motivating the transaction that the threat was not considered imminent; (3) husband signed other documents on the same day as the quitclaim deed, the validity of which were not challenged, so husband failed to show that his free will was overcome in the signing of the quitclaim deed; and (4) husband's testimony establishes other circumstances, absent duress, in which he would have signed a quitclaim deed to wife, so

husband's free will was "not overcome to such an extent that he did that which he would not otherwise do."

Wife did not simply file criminal charges and allow them to run their course or otherwise establish that she would have withdrawn the charges whether or not husband agreed to her demands. Instead, the evidence demonstrated that wife texted husband a list of demands in exchange for dropping the charges only three days after the incident at the home and just prior to a hearing on his criminal charges. The demands were wholly unrelated to the criminal charges lodged at husband but, instead, involved dividing the marital property and assigning blame for the parties' divorce. Wife made these demands and implicitly threatened the continuation of the criminal proceedings even though she testified that she did not believe that husband would harm her or anyone else. On the same day that husband signed the quitclaim deed and affidavit, wife contacted the district attorney's office to have the charges dropped.

The evidence showed that wife admitted to sending messages to husband in an effort to "reconfirm the first . . . agreement" wherein husband agreed to deed the property to wife but changed his mind. Wife drafted the affidavit. Wife, not her boyfriend, accepted the benefit of the quitclaim deed and affidavit. Wife sent the messages on the eve of husband's court appearance. Husband testified that he was scared because he did not have the money to pay the bond, that he felt weak, and that wife and her boyfriend took advantage of these facts. Husband testified that he would not have signed the quitclaim deed or the affidavit and only did so because of his fear of going to jail and the pending criminal charges. Wife demanded that husband sign the deed and affidavit, then she would have the charges dismissed.

Husband signed the quitclaim deed, the affidavit, and the couple's 2016 tax return on the same day in the presence of wife and a notary. Husband testified that prior to the separation he agreed to give wife his interest in the marital property for the benefit of the children, and wife would not seek child support from him. Husband changed his mind before executing any agreement or documents to that effect and was thus not bound by law to deed the property to wife. Husband testified that before learning of the affair he would have deeded the property to wife, but now he would no longer consider doing so.

Wife has failed to show that there is no evidence supporting the trial court's finding of duress. *See Exxon Corp.*, 348 S.W.3d at 215. Based on the evidence and giving deference to the fact finder's determination of witness credibility, we cannot say that the finding of duress is so contrary to the overwhelming weight of the evidence as to be clearly wrong or unjust. *See Schear Hampton Drywall, LLC*, 586 S.W.3d at 86.

We overrule wife's first issue on appeal.

III. CHARACTERIZATION OF REAL PROPERTY

In her second issue wife argues that because husband deeded her the marital home, the home is her separate property, and the trial court erred when it awarded husband an interest in the proceeds from the sale of the marital home. Wife's argument is premised on the quitclaim deed she received from husband.

A. Applicable Law

In a divorce proceeding, the trial court shall order a division of the estate of the parties in a manner it deems just and right. Tex. Fam. Code § 7.001. The trial court has broad discretion in the division of marital property. *Bradshaw v. Bradshaw*, 555 S.W.3d 539, 543 (Tex. 2018). That discretion will not be

overturned on appeal absent a showing the court has clearly abused its discretion by ordering a manifestly unjust and unfair division. *Id.* Only community property is subject to the trial court's division of the marital estate, and in making its division, the trial court may not divest one party of his or her separate property. *Robles v. Robles*, 965 S.W.2d 605, 614 (Tex. App.—Houston [1st Dist.] 1998, pet. denied).

"Property possessed by either spouse during or on dissolution of the marriage is presumed to be community property." Tex. Fam. Code § 3.003(a). Clear and convincing evidence is required to establish that any such property is separate in character. *Id.* § 3.003(b). The issue of whether property is separate or community is determined by the facts that give character to the property. *Robles*, 965 S.W.2d at 615.

B. Analysis

Here, wife's argument is premised on the quitclaim deed. Wife did not present any other evidence to show that the marital home was her separate property. Because we held that the trial court did not err in concluding that husband was under duress, and as a result voided the deed, we conclude that wife has not overcome her burden to show that the marital home is her separate property. Wife does not raise an issue about the just and right division of the community property. We overrule wife's second issue on appeal.

IV. CONCLUSION

Having overruled all of wife's issues on appeal, we affirm the judgment of the trial court.

/s/ Ken Wise
Justice

Panel consists of Justices Wise, Jewell, and Poissant.