

**Affirmed in Part, Reversed and Remanded in Part, and Memorandum Opinion  
filed May 25, 2023**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-22-00313-CV**

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**MARA D. ALEMAN, Appellant**

**V.**

**HECTOR SAMUEL ALEMAN, Appellee**

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**On Appeal from the 308th District Court  
Harris County, Texas  
Trial Court Cause No. 2019-83869**

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**MEMORANDUM OPINION**

Appellant Mara D. Aleman appeals the trial court's judgment. In three issues she contends we should reverse and remand the case to the trial court for a new trial. We affirm the trial court's judgment in part and reverse and remand in part.

**JUST AND RIGHT DIVISION**

In her third issue, appellant contends that the trial court abused its discretion in the division of the community property. Appellant contends that because she

proved that appellee was cruel and unfaithful, the trial court should have awarded her a greater share of the community property in the division.

### **A. General Legal Principles**

“In a decree of divorce or annulment, the court shall order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage.” Tex. Fam. Code § 7.001. In dividing the estate of the parties, the trial court has “wide discretion” and should only be corrected on appeal when an abuse of that discretion has been demonstrated. *Bradshaw v. Bradshaw*, 555 S.W.3d 539, 543 (Tex. 2018) (citing *Murff v. Murff*, 615 S.W.3d 696, 698 (Tex. 1981)). “The division ‘should be corrected on appeal only where an abuse of discretion is shown in that the disposition made of some property is manifestly unjust and unfair.’” *Id.* (quoting *Hedtke v. Hedtke*, 112 Tex. 404, 411 (1923)). “A determination of whether the property division decreed in a divorce constitutes an abuse of discretion presents a legal rather than a factual question for appellate review.” *Mann v. Mann*, 607 S.W.2d 243, 244 (Tex. 1980). “We presume on appeal that the trial court correctly exercised its discretion when dividing property in a divorce proceeding, and the appellant bears the burden to show from the record that the division is so disproportionate, and thus unfair, that it constitutes an abuse of discretion.” *O’Carolan v. Hopper*, 414 S.W.3d 288, 311 (Tex. App.—Austin 2013, no pet.).

### **B. Background**

At trial, appellant testified that appellee had many extramarital affairs throughout their marriage. She testified that appellee had beaten her after a surgery and caused her stitches to break open, and she had to return to the doctor to fix her stitches. Upon returning home, appellee again started hitting appellant, breaking a recliner. Appellant testified that she crawled into the kitchen to defend herself from

appellee with a kitchen knife because she was worried about her stitches breaking open again. She testified that she did not stab him purposely and retreated back to the kitchen wall, but she was holding it in front of her when appellee came into her face and “just the point of the knife” cut him. Appellant testified that appellee stabbed himself by his own actions by getting into her face while she was holding the knife in front of her body. Appellant testified that the wound only needed a band aid, but that appellee went to the doctor to document the injury to use against her later. Appellant testified that appellee would often choke her, throw her against the wall, and pull her around by her hair.

On cross-examination, appellant testified that she had no text messages, pictures, receipts, or any other documentation of the alleged affairs that appellee was having throughout their marriage. She did not bring her own phone records to show that appellee’s “paramours” had been contacting her repeatedly and harassing her. She did not have or provide any documentation regarding any injuries that she alleged appellee caused.

Appellee testified that appellant was physically and verbally abusive to him, she was a very jealous woman, and she would harass him about her “delusions” of him being unfaithful. He testified that appellant would also harass his coworkers, and it affected his employment. Appellee testified that he has anxiety over appellant’s actions and accusations. Appellee testified that he had never had any romantic relationship with anyone over the course of the marriage. Appellee testified that he never kicked appellant or pulled her by her hair. He testified that she had abused him on a few occasions by slapping him across the face. Appellee further testified that appellant stabbed him with a knife when she confronted him about having an affair. He denied the affair and then she lunged at him with the knife, cutting his arm. Appellee introduced medical record evidencing that he

obtained medical attention and stitches to close the wound. Appellee testified that on one occasion appellant drugged him so that he could be hypnotized. Appellant did not deny that she did this but argued that she was giving him his blood pressure medication. Appellee testified that appellant would call him derogatory names and make fun of him for being molested as a child. He testified that this devastated his mental health.

Appellee also called his daughter-in-law to testify. She testified that appellant often accused appellee of having affairs. She testified that appellant had taken her to a parking lot to wait for appellee to show up with his girlfriend, but they never saw appellee while they waited. She never witnessed appellee calling appellant names but admitted that appellant had played a recording for her where she could hear them both fighting and appellee calling appellant names.

After considering all of the evidence, the trial court awarded appellant forty-nine percent of the community estate and appellee fifty-one percent of the community estate.

### **C. Analysis**

Appellant argues that the “record is replete with evidence of [appellee’s] cruelty.” Based on her testimony, appellant argues that “overwhelming evidence exists demonstrating [appellee’s] fault in breaking up the marriage through cruelty and infidelity, and the district court erred in not awarding [appellant] a greater share of the community property.”

The fact finder is the sole judge of the credibility of the witnesses and the weight to give to their testimony. *Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 761 (Tex. 2003). Here, appellant focuses solely on her own testimony and does not consider appellee’s testimony and that he denied doing any of the things

that appellant accused him of. Appellant seemingly admitted to some of the allegations that appellee made against her—such as drugging him for hypnosis. Appellee further provided additional corroboration of his claims of appellant’s abuse. The trial court was free to consider all of the evidence and weigh such evidence in making its award of the community estate. On this record, we cannot say that the trial court’s division was manifestly unjust or unfair.

We overrule appellant’s first issue.

### **NO-EVIDENCE SUMMARY JUDGMENT**

In her first issue, appellant contends that the trial court erred in granting appellee’s no-evidence summary judgment motion. We agree.

Appellee filed a no-evidence motion for summary judgment on appellant’s claims for spousal maintenance. In his motion he argued that there was no evidence of “one or more of the following elements” and listed every element of appellant’s claim for spousal maintenance. However, filing a no-evidence motion that asserts a plaintiff has no evidence to support “one or more” or “any of” the elements is insufficient under the Rules of Civil Procedure. *See* Tex. R. Civ. P. 166a(i); *see also* *Cnty. Health Sys. Prof’l Servs. Corp. v. Hansen*, 525 S.W.3d 671, 695 (Tex. 2017).

Rule 166a(i) requires that a no-evidence motion specifically state the element or elements for which there is no evidence. Tex. R. Civ. P. 166a(i). This rule is strictly enforced. *Hansen*, 525 S.W.3d at 695. “Thus, a no-evidence motion that lists each element of the plaintiff’s claim and then asserts that the plaintiff has no evidence to support ‘one or more’ or ‘any of’ those elements is insufficient to support summary judgment because this language does not clearly identify which elements, whether some or all, are challenged.” *Id.* at 695–96.

Appellee argues that his no-evidence motion complied with the rules of procedure but does not directly address the *Hansen* holding. We conclude *Hansen* is on point. As a result, the no-evidence motion is insufficient as a matter of law, and the trial court erred in granting summary judgment on this ground.<sup>1</sup> *See id.* Appellee further argues that appellant waived this argument because she did not present it to the trial court. However, “on appeal, the nonmovant need not have answered or responded to the motion to contend that the movant’s summary judgment proof is insufficient as a matter of law to support summary judgment.” *Cuyler v. Minns*, 60 S.W.3d 209, 212 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). A challenge to a no-evidence motion due to lack of specificity may be presented for the first time on appeal. *Id.* at 213.

We sustain appellant’s first issue.<sup>2</sup>

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<sup>1</sup> Appellee also moved for, and the trial court granted, no-evidence summary judgment on appellant’s claims for waste, fraud, reimbursement of the community estate, and claims of separate property. Appellant does not raise any argument that the trial court erred in granting summary judgment on these claims, and we do not consider them on appeal.

<sup>2</sup> Appellant’s second issue is whether the trial court erred in granting the no-evidence summary judgment on her claims for spousal maintenance because she provided more than a scintilla of evidence supporting each element of her claim. Because we sustain appellant’s first issue, we need not reach appellant’s second issue. *See Tex. R. App. P. 47.1.*

## CONCLUSION

Having overruled appellant's third issue and sustained appellant's first issue, we affirm the trial court's division of the estate of the parties and reverse and remand the trial court's judgment on spousal maintenance.

/s/ Ken Wise  
Justice

Panel consists of Justices Wise, Jewell, and Poissant.