

**Affirmed in Part, Reversed and Remanded in Part, and Opinion filed
November 20, 2025**



In The

Fourteenth Court of Appeals

NO. 14-22-00893-CV

MAGGY HORGAN, Appellant

V.

JOHN HORGAN III, Appellee

**On Appeal from the 387th District Court
Fort Bend County, Texas
Trial Court Cause No. 19-DCV-258949**

OPINION

This is an appeal from a divorce between appellant, Maggy Horgan, and appellee, John Horgan III. By agreement, the parties submitted issues of fraud and reconstitution of the marital estate to the jury, while reserving issues concerning the division of the marital estate for the bench. In three issues on appeal, Maggy challenges the trial court's refusal to disregard certain jury findings, its calculation of the reconstituted estate, and its division of the marital estate. John raises two

issues on cross-appeal, alleging the jury's finding for the amount of fraud committed by Maggy is not supported by the evidence and that the trial court mischaracterized funds held in the court's registry. We conclude that there are several errors that materially affect the trial court's just and right division. We affirm in part and reverse and remand in part.

Background

Maggy and John married in California in May 1991. Maggy worked in the jewelry industry before meeting John, and together they opened their own jewelry business in 1993. The parties moved to Houston together in 2007. They continued their jewelry business under the name Maggio Diamentaires d/b/a Houston Diamond Outlet "Maggio Diamentaires." Maggy and John operated a successful business selling diamonds, engagement rings, and other jewelry for many years. Around 2018, conflict arose in the parties' marriage. Maggy filed for divorce in January 2019, alleging John was guilty of cruel treatment and that the marriage had become insupportable. John answered in February 2019 and filed his counter-petition in April 2019. Litigation ensued for several years before trial commenced on September 12, 2022.

The parties agreed to try certain issues relating to actual and constructive fraud and reconstitution of the community estate to the jury and to try claims relating to the division of the marital estate to the bench. After a four-day jury trial, the parties submitted eight questions to the jury. The first and second questions asked whether John and Maggy committed fraud with respect to the other's community property rights. The jury answered both questions affirmatively. The third and fourth questions requested the jury to determine the value of the fraud committed by both parties. The jury assessed the value of John's fraud at \$0 and Maggy's fraud at \$23,833.83. Under the fifth question of the charge, the jury considered the fairness

of several transactions made by Maggy to her mother, Rene Papas Artin. And in the sixth question, the jury determined that Maggy unfairly depleted the community estate by \$1,269,720.35.¹ The seventh question queried whether John committed constructive fraud. The jury responded “no.” The final question, which was not answered, asked for the amount the community estate was unfairly depleted as a result of John’s constructive fraud. The jury’s verdict was unanimous.

On September 20, the remaining claims related to the division of the marital estate were tried to the bench by agreement. The trial court determined that the reconstituted estate had assets of more than \$4.5 million and debts of more than \$470,000. The trial court allocated 50.51% of the assets to Maggy. The \$1,269,720.35—the value determined by the jury for Maggy’s unfair transactions—constituted over half of the assets allocated to Maggy. The trial court allocated 49.49% of the assets to John, including three properties valued at nearly \$1.9 million and 100% of Maggio Diamentaires, allegedly valued at \$188,666. The trial court allocated 70.34% of the debts to Maggy and 29.66% of the debts to John. After equalizing the division with a cash payment from Maggy to John for \$131,710, Maggy’s share of the reconstituted estate was 45% and John’s share was 55%. Over a year after the trial concluded, the trial court issued findings of fact and conclusions of law in December 2023.

Standard of Review and Governing Law

In a divorce decree, the trial 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. A

¹ This amount represents the total of the transactions the jury found to be unfair. Of the twenty-one transactions presented, the jury found six to be fair, thirteen to be unfair, and two to be duplicate transactions.

“just and right” division does not require a trial court to divide the community estate into equal shares. *See Murff v. Murff*, 615 S.W.2d 696, 698–99 (Tex. 1981); *Boothe v. Boothe*, 681 S.W.3d 916, 923 (Tex. App.—Houston [14th Dist.] 2023, no pet.). The property division, however, must be equitable. *Murff*, 615 S.W.2d at 699; *Marriage of O’Brien*, 436 S.W.3d 78, 81 (Tex. App.—Houston [14th Dist.] 2014, no pet.). A trial court may consider numerous factors when exercising its broad discretion to divide the marital property, including the relative earning capacity and business opportunities of the parties, the parties’ relative financial condition and obligations, the parties’ education, the size of the separate estates, and the probable need for future support. *Murff*, 615 S.W.2d at 699; *O’Brien*, 436 S.W.3d at 81.

These same principles apply even in cases of fraud on the community. *Cantu v. Cantu*, 556 S.W.3d 420, 427 (Tex. App.—Houston [14th Dist.] 2018, no pet.). Claims for waste, fraudulent transfer of community property, or other damage to community property belong to the community itself and also may be considered in the trial court’s division. *Boothe*, 681 S.W.3d at 923. Fraud is presumed whenever one spouse disposes of the other spouse’s one-half interest in community property without that other spouse’s knowledge or consent. *Cantu*, 556 S.W.3d at 427. This presumption can arise not only by evidence of specific transfers or gifts of community assets outside of the community, but also by evidence that community funds are unaccounted for by the spouse in control of those funds. *Key v. Key*, 712 S.W.3d 697, 705 (Tex. App.—Houston [14th Dist.] Feb. 6, 2025, no pet.); *Orzechowski v. Orzechowska*, No. 14-20-00055-CV, 2021 WL 3202679, at *4 (Tex. App.—Houston [14th Dist.] July 29, 2021, no pet.) (mem. op.). Once the presumption of fraud arises, the burden shifts to the disposing spouse to prove the fairness of the disposition. *Key*, 712 S.W.3d at 705–06.

When the trier of fact makes a finding of fraud, the court must perform two

calculations. First, the court must calculate “the value by which the community estate was depleted as a result of the fraud on the community.” Tex. Fam. Code § 7.009(b)(1). Second, the court must calculate “the amount of the reconstituted estate.” *Id.* After performing these calculations, the court must “divide the value of the reconstituted estate between the parties in a manner the court deems just and right.” *Id.* § 7.009(b)(2). The reconstituted estate is defined as “the total value of the community estate that would have existed if an actual or constructive fraud on the community had not occurred.” *Id.* § 7.009(a). In effecting a just and right division of the reconstituted estate, the court may award a disproportionate share of the remaining community assets to the wronged spouse, by awarding a money judgment to the wronged spouse against the spouse who committed the fraud, or by a combination of these two methods. *Id.* § 7.009(c); *Cantu*, 556 S.W.3d at 427.

We review the trial court’s property division for an abuse of discretion and will not disturb the trial court’s property division unless a party shows that the trial court clearly abused its discretion by a division or an order that is manifestly unjust and unfair. *Willis v. Willis*, 533 S.W.3d 547, 551 (Tex. App.—Houston [14th Dist.] 2017, no pet.). Under this abuse of discretion standard, the legal and factual sufficiency of the evidence are not independent grounds of error, but are merely relevant factors in assessing whether the trial court abused its discretion. *Stavinoha v. Stavinoha*, 126 S.W.3d 604, 608 (Tex. App.—Houston [14th Dist.] 2004, no pet.). In reviewing the trial court’s property division, we must consider (1) whether the trial court had sufficient information upon which to exercise its discretion and (2) whether the trial court abused its discretion by dividing the property in a manner that is manifestly unjust and unfair. *Key*, 712 S.W.3d at 702. We must remand the entire community estate for a new division when we find reversible error that materially affects the trial court’s “just and right” division of the property. *Stavinoha*, 126

S.W.3d at 608; Tex. R. App. P. 44.1.

We review a trial court's denial of a motion to disregard a jury finding based on a legal sufficiency challenge de novo. *See Tanner v. Nationwide Mut. Fire Ins. Co.*, 289 S.W.3d 828, 830 (Tex. 2009); *see also Hall v. Hubco, Inc.* 292 S.W.3d 22, 27–28 (Tex. App.—Houston [14th Dist.] 2006, pet. denied). Evidence is conclusive only if reasonable people could not differ in their conclusions, which is a matter that depends on the facts of each case. *See City of Keller v. Wilson*, 168 S.W.3d 802, 816 (Tex. 2005). When evidence contrary to a verdict is conclusive, it cannot be disregarded. *Id.* at 817.

The Appeal

On appeal, Maggy challenges certain aspects of the property division, presenting three issues for appellate review. As her first issue, she contends the trial court erred by refusing to disregard certain jury findings regarding the fairness of select transactions among the twenty-one instances of alleged fraud the parties agreed to submit to the jury. Specifically, she complains of three transactions the jury determined to be unfair: (1) a deposit of \$215,000 into Artin's BBVA account, (2) an agent-assisted transfer of \$250,000 to an undisclosed brokerage account, and (3) a transfer of \$200,000 from the parties' joint Chase account to Artin's Chase account.

In her second issue, Maggy alleges the trial court "invaded the purview" of the jury by including other instances of alleged fraud totaling \$242,528.28 in the reconstituted estate even though the parties expressly agreed as to which questions of fraud to submit to the jury, and the instances of alleged fraud considered by the court were not part of the parties' agreement. The additional amount added by the trial court for alleged instances of fraud not submitted to the jury consisted of: (1) a check for \$110,000 written by Maggy from the parties' joint Chase account payable

to herself, (2) a transfer of \$31,588.46 from the parties' joint Chase account to an account solely in Maggy's name, and (3) the highest balance of \$100,993.82 in a BBVA account in Maggy's name. Under this issue, Maggy also alleges the trial court erred by failing to consider evidence that over \$1 million was returned to the community by her mother. Maggy further alleges that the trial court's judgment and findings of fact are inconsistent, arguing, among other things, that the jury found Maggy committed fraud in the amount of \$23,833.83 but the findings of fact state Maggy committed fraud in the amount of 28,833.33.

Maggy's third issue challenges the trial court's award of Maggio Diamentaires solely to John when there was allegedly insufficient evidence to determine the value of the business. We address each of these issues and their various subparts in turn.

I. Trial Court's Refusal to Disregard Certain Jury Findings

Maggy's first issue, as noted, concerns the sufficiency of the evidence supporting three of the twenty-one transactions the parties agreed to submit to the jury under Question 5 of the charge, which asked whether each transfer from Maggy to her mother, Artin, was fair. Maggy challenges only the jury's response to subparts 11, 13, and 15, which provide:

[Subpart 11] 2/1/2019, Maggy Horgan made an Agent Assisted Transfer to Brokerage Acct [account number redacted] – Undisclosed by Maggy Horgan \$250,000:

Answer: No

[Subpart 13] 1/18/2019, Maggy Horgan deposited \$215,000.00 to open BBVA Compass Bank account [account number redacted] in the name of Rene Papas Artin:

Answer : No

[Subpart 15] 1/22/2019, Maggy Horgan transferred \$200,000.00 from Chase Bank [account number redacted] in the name of Maggy Horgan

and John Horgan into Chase Bank [account number redacted] in the name of Rene Papas Artin:

Answer No:

After the jury’s verdict, Maggy filed a document titled “Motion to Disregard Certain Jury Findings,” insisting that the evidence was insufficient to support the jury’s responses to the specific findings recited above. The trial court did not rule on her motion. She re-urged her complaint in a motion for new trial, which was overruled by operation of law. Therefore, Maggy’s sufficiency complaint was preserved for appellate review. *See In re D.T.*, 625 S.W.3d 62, 75 n.8 (Tex. 2021) (noting the requirements to preserve a legal and factual sufficiency challenge after a jury trial).

We now turn to our discussion regarding the sufficiency of the evidence supporting the specific findings recited above, addressing the challenged transactions in the order raised by Maggy in her opening briefing. First, she alleges that subpart 13—which queried about the fairness of a deposit of \$215,000 into Artin’s BBVA account on January 18, 2019—is a duplicate of subpart 7—which asked about the fairness of a check Maggy wrote for \$65,000 on January 17, 2019—and subpart 14—which questions the fairness of a check Maggy wrote for \$150,000 on January 18, 2019. Maggy suggests that subparts 7 and 14, which total \$215,000, represent the same \$215,000 deposit in subpart 13. Maggy urges that the jury’s unfairness determination for subpart 14 resulted in a “double-counting.” Second, she asserts that there is no evidence to support the jury’s response to subpart 11, which inquired on the fairness of an agent-assisted transfer in the amount of \$250,000, purportedly made by Maggy to an undisclosed brokerage account. Third, she challenges subpart 15, questioning the fairness of a transfer Maggy made for \$200,000 to Artin.

A. Subpart 13: the \$215,000 Deposit

Maggy maintains that the deposit of \$215,000 into Artin’s BBVA account on January 18, 2019, is a duplicate of two other transactions the jury also determined to be unfair in subpart 7—a check Maggy wrote for \$65,000 from the parties’ joint Bank of America account to Artin on January 17, 2019—and subpart 14—a check Maggy wrote for \$150,000 from the parties’ joint Chase account to Artin on January 18, 2019. Maggy suggests that the two checks totaling \$215,000 are the same as the \$215,000 deposit the jury found to be unfair under subpart 13 of the jury charge. Maggy contends that the jury’s fairness determination regarding this finding overrepresented the amount that Maggy unfairly depleted the community estate by \$215,000.

In resolving this issue, we evaluate the evidence presented at trial to determine whether the \$215,000 deposit was in fact a duplicate transaction. At trial, the undisputed evidence shows that Maggy wrote a check for \$65,000 payable to Artin from the parties’ joint Bank of America account. The check was dated January 17, 2019, and a copy of the check was admitted into evidence. It is also undisputed that \$65,000 was deposited into Artin’s BBVA account from the parties’ joint Bank of America account. The undisputed evidence also establishes that Maggy wrote a check for \$150,000 payable to Artin from the parties’ joint Chase account. The check was dated January 18, 2019, and a copy of the check was admitted into evidence. It is likewise undisputed that \$150,000 was deposited into Artin’s BBVA account from the parties’ joint Chase account.

Jaclyn Franks, an expert retained by Maggy to evaluate the transfers between the community accounts and Artin’s accounts, prepared a document titled “Analysis of Transfers of Funds and Community Expenses,” which was admitted into evidence. Franks reviewed over thirty accounts belonging to Maggy, John, and Artin. Due to the volume of the bank statements, the scope of the analysis was

limited to 2018 through August 2021. The analysis corroborates that the amount of \$65,000 was transferred from the parties' joint Bank of America account to Artin's BBVA account and that \$150,000 was transferred from the parties' joint Chase account to Artin's BBVA account. The analysis also indicates that the only deposits into Artin's BBVA account in 2019 were the transactions for \$65,000 and \$150,000, totaling \$215,000. Additionally, a copy of Artin's account summary for her BBVA account from January 18 to February 18, 2019 was admitted into evidence. The account summary demonstrates that a total of \$215,000 was deposited into Artin's BBVA account on January 18, 2019. In a portion of the account summary titled "Activity Summary," there is a line item stating "Deposits/Credits (2)," suggesting that two deposits were credited to Artin's account.

Our review of the evidence establishes that Maggy carried her burden of proving the unfairness of the duplicate transaction. *See Cantu*, 554 S.W.3d at 427. A reasonable factfinder could not disregard the conclusive evidence showing that the \$215,000 deposit (subpart 13) was a duplicate finding of the two checks to Artin also totaling \$215,000 (subparts 7 and 14). *See City of Keller*, 168 S.W.3d at 817 ("When evidence contrary to a verdict is conclusive, it cannot be disregarded."). Therefore, the evidence was legally insufficient to allow reasonable and fair-minded people to find that subparts 7, 13, and 14 were all unfair. *See id.* at 827. Stated differently, it was permissible to find that the transactions in subparts 7 and 14 were unfair *or* a that the transaction in subpart 13 was unfair, but not both. By finding both to be true, the amount that Maggy unfairly depleted the community estate was artificially inflated by \$215,000, resulting in Maggy's share of the community estate decreasing to 42% and John's share increasing to 58%.

We conclude the trial court abused its discretion by failing to disregard the jury's duplicate finding because the evidence is conclusively contrary to the verdict

and leaves no room for reasonable disagreement. *See City of Keller*, 168 S.W.3d at 817; *Key*, 712 S.W.3d at 702.

B. Subpart 11: the \$250,000 Transaction

In her opening brief, Maggy argues that the \$250,000 agent-assisted transfer from the parties' joint Bank of America account to an undisclosed brokerage account was a "mystery transaction" not made by her. She alleges that she unequivocally testified "I didn't do that transfer." According to Maggy, her testimony was "clear, direct, and uncontroverted." She further states that John did not controvert her testimony, and there is no other evidence that would imply she made the transaction. In her reply brief, she asserts that she "does not challenge that the transfer was unfair," and instead clarifies that the evidence was insufficient to support the jury's finding that *she* made the transaction. For the reasons explained, we conclude that this argument is not meritorious.

We reiterate that the charge limited the jury's consideration to twenty-one specific transactions that the parties agreed to submit. Question 5 asked only: "Were the following transfers or transactions made by MAGGY HORGAN to her mother, Rene Papas Artin, fair?" By its very wording, the charge presupposed Maggy's identity as the actor and did not require the jury to determine who made the transfers or transactions. Each of the twenty-one transactions was expressly from Maggy to Artin except the \$250,000 transfer to the brokerage account, and the wording of the charge framed Maggy as the person who made it. In other words, the jury was asked to decide only whether the transactions were fair, not who carried them out. Therefore, there was no need or opportunity for the jury to make a separate finding as to the identity of the actor. Maggy did not object to the submission of the charge in this form, confirming that her identity as the actor was never in dispute.

To the extent that Maggy may be claiming charge error, i.e., that there was no

instruction concerning the actor, this issue was waived. *See* Tex. R. App. P. 33.1; *see also* Tex. R. Civ. P. 272 (“All objections not so presented shall be considered as waived.”), 274 (“Any complaint as to a[n] . . . instruction . . . is waived unless specifically included in the objection.”). We therefore find this charge complaint was not preserved for appellate review. *See In re B.L.D.*, 113 S.W.3d 340, 354 (Tex. 2003).

With regard to the sufficiency of the evidence supporting the unfairness of the \$250,000 transfer, Maggy failed to carry her burden of proving the transaction was fair. *See Cantu*, 556 S.W.3d at 427. The evidence shows that the Bank of America account was in the name of Maggy and John. There was no evidence presented that anyone other than Maggy and John had access to this account. A copy of the bank statement for this account was admitted into evidence. This statement showed two deductions from the account from January 23 to February 19, 2019. The first deduction was \$200,000 on January 23. These funds were transferred to a Chase account belonging to Artin. As it happens, this transaction was also one of the twenty-one alleged unfair transactions presented to the jury.² The jury found this transaction to be unfair. Maggy did not deny making this transaction and does not challenge the jury’s determination on appeal. The second deduction of \$250,000 occurred nine days later on February 1. While the bank statement is not helpful in ascertaining the recipient of the transfer, it establishes that the transaction did occur. Given that the evidence conclusively establishes that the transaction occurred, and Maggy failed to contest the fairness of the transaction, we conclude that the trial court did not abuse its discretion in refusing to disregard the jury’s finding. *See Key*,

² Subpart 10 of Question 5 provided:

1/23/2019, Maggy Horgan made a Teller Transfer to Bank of America checking account ending [account number redacted] in the name of Rene Papas Artin POD Maggy Y Horgan for \$200,000.

712 S.W.3d at 702; *Cantu*, 556 S.W.3d at 426.³

Subpart 15: the \$200,000 Transaction

As a final point, Maggy complains of the sufficiency of the evidence supporting a \$200,000 transfer that occurred on January 22, 2019, from the parties' joint Chase account into a Chase account belonging to Artin. Maggy asserts that there is no evidence that *she* made this transfer.⁴ Based on the complete lack of evidence supporting this transaction, we agree.

Reviewing the voluminous record, there is no evidence that \$200,000 was transferred from *any* Chase account belonging to Maggy and John or solely Maggy into *any* Chase account belonging to Artin on January 22, 2019. In their appellate briefing, Maggy and John both reference a different \$200,000 transfer that occurred on January 23, 2019 from the parties' joint Bank of America account to an account belonging to Artin.⁵ However, this transaction occurred on a different day and from a different account than the transaction involving the Chase account transfer. We have not found and the parties have not directed us to any transaction that occurred on the date and from the account alleged in the charge.

³ Even if Maggy had challenged the fairness of the transaction, the jury could have reasonably disbelieved her testimony that she did not make the transfer. *See City of Keller*, 168 S.W.3d at 819. Her denial does not mean there is a complete absence of evidence. The evidence indeed shows that Maggy was responsible for a similarly large transaction from the same account just days before the disputed transaction occurred. The evidence also demonstrates that Maggy was responsible for several other large transactions from the parties' joint accounts during the same timeframe. To the extent that Maggy suggests her testimony was uncontroverted by John, we note that his testimony was not necessary for the jury to disbelieve Maggy, especially in light of the evidence admitted at trial. *See id.* 819–20.

⁴ To the extent that Maggy complains of the charge and challenges the identity of the actor, we already concluded that any complaint relating to the alleged defect or omission in the charge was not preserved for appellate review, and we see no reason why the same is not true here. *See* Tex. R. App. P. 33.1; *see also* Tex. R. Civ. P. 272, 274.

⁵ In her reply brief, Maggy acknowledged that she cited the \$200,000 from the Bank of America account in error.

In the absence of any evidence establishing that this transaction occurred, we conclude that the trial court abused its discretion by refusing to disregard the jury's finding. *See Key*, 712 S.W.3d 697 (citing *City of Keller*, 168 S.W.3d at 827). Therefore, the amount that Maggy unfairly depleted the community estate was overstated by \$200,000. Taking into account our above conclusion concerning the duplicate amount of \$215,000, Maggy's share of the community estate decreased to 38.8% while John's increased to 61.2%.

Accordingly, we sustain Maggy's first issue in part and overrule it in part. We sustain Maggy's issue to the extent the trial court erred by refusing to disregard the jury's finding concerning the \$215,000 duplicate deposit and the \$200,000 Chase transfer transaction. However, we overrule Maggy's challenge of the \$250,000 transaction.

II. The Reconstituted Estate

In her second issue, Maggy contends that the trial court erred in its calculation of the reconstituted estate for three reasons. First, Maggy alleges the trial court "invaded the purview of the jury" by including instances of fraud in the reconstituted estate that were not submitted to the jury. Second, she asserts that the trial court erred in reconstituting the community estate by failing to consider money that was returned to the estate by Artin. Third, Maggy avers that there is a discrepancy between the trial court's judgment and its findings of fact. We address each of these issues in turn.

A. Fraud Not Submitted to the Jury

Maggy alleges the trial court erred in adding additional amounts of constructive fraud to the reconstituted estate that were not submitted to the jury. The trial court calculated the value of the reconstituted estate to be slightly over \$2

million, which was awarded entirely to Maggy. This amount included, among other things, the amount that the jury determined Maggy unfairly depleted the community estate, as well as three other instances of fraud that were *not* submitted to the jury. These other instances of fraud totaled \$242,582.28 and consisted of the following:

1. A check for \$110,000 written by Maggy from the parties' joint Chase account to herself;
2. A transfer of \$31,588.46 from the parties' joint Chase account to a Chase account in the name of Maggy; and
3. The highest balance of \$100,993.82 in a BBVA account in the name of Maggy.

On appeal, Maggy claims that the parties agreed to submit specific questions concerning fraud to the jury. The jury, as the trier of fact on this issue, determined the amount of constructive fraud to be \$1,269,720.35. She contends that the trial court was not the trier of fact on this issue and abused its discretion by adding the above-mentioned instances of alleged fraud to the reconstituted estate that were not submitted to the jury. We agree.

Fraud occurs, as discussed above, when a spouse wrongfully depletes the community estate of assets without the other spouse's knowledge or consent. *See Cantu*, 556 S.W.3d at 427. In determining whether either spouse has committed fraud, section 7.009 of the Family Code authorizes the *trier of fact* to make this determination before the trial court can calculate the value of the reconstituted estate. *See Tex. Fam. Code* § 7.009(b).

Here, the three disputed transactions are presumed to be fraudulent because they were made by Maggy, and she did not show any evidence that John either knew or consented to these transactions. *See Cantu*, 556 S.W.3d at 427; *see also Miller v.*

Miller, No. 14-17-00293-CV, 2018 WL 3151241 at *5 (Tex. App.—Houston [14th Dist.] 2018, no pet.) (mem. op.) (explaining that a presumption of fraud can arise by evidence that the community funds are unaccounted for by the spouse in control of those funds). A copy of the check for \$110,000 payable to Maggy from the parties’ joint Chase account was admitted into evidence. Additionally, a copy of the account statement for a Chase account solely in Maggy’s name evidences a credit of \$31,588.46 from the parties’ joint account. Lastly, the evidence establishes that the funds deposited in the BBVA account appear to be traceable to the \$215,000 deposited into Artin’s BBVA account on January 18, 2019. While it is unclear what ultimately happened to the funds in this account, the evidence shows that Maggy was the only spouse in control of these funds. *See Miller*, 2018 WL 3151241, at *6.

Because these transactions are presumptively fraudulent, they should have been submitted to the trier of fact, i.e., the jury, to determine whether Maggy in fact committed fraud before the trial court could include those transactions in the reconstituted estate. *See Tex. Fam. Code* § 7.009(b). But they were not. Given that the parties expressly agreed that the jury would serve as the trier of fact on the issue of fraud and these alleged instances were omitted from the jury charge, those claims of fraud were therefore waived. *See Tex. R. Civ. P.* 279. Consequently, the trial court lacked discretion to unilaterally identify or treat additional, unsubmitted transactions as fraudulent in calculating the reconstituted estate. *See Bradshaw v. Bradshaw*, 555 S.W.3d 539, 543 (Tex. 2018) (plurality op.) (citing *Hedtke v. Hedtke*, 112 Tex. 404, 248 S.W. 21, 23 (1923)).

B. Offset of the Fraud Amount

Maggy further argues that the trial court erred in reconstituting the community estate by failing to consider money that was returned to the estate by Artin. Maggy claims that a total of \$1,013,033 was transferred into community estate accounts

from accounts belonging to Artin. In her opening brief, Maggy asserts that the jury should have been instructed on whether the transactions the jury determined to be unfair were ever returned to the community estate.⁶ Stated differently, Maggy suggests that the amount returned by Artin should offset the fraud amount. Maggy however did not cite any authority for this proposition. Oral argument was held, and this court granted leave for the parties to submit a post-submission brief on the issue of whether Maggy was entitled to offset the fraud amount by the amount Artin returned to the community estate.

In her post-submission brief, Maggy cited this court's decision in *Key* for the proposition that fraud can be offset. In *Key*, husband admitted that he wrote two checks to his mother without wife's knowledge or consent but claimed the money was used on household expenses and bills after wife left. 712 S.W.3d at 706. Husband argued that the trial court erred by failing to offset the fraud amount with the liabilities he paid. *Id.* We overruled husband's issue as inadequately briefed, reasoning that he neither explained how the expenses related to the fraud amount nor identified the amount of his claimed expenses. *Id.*

The case at hand is analogous to *Key* but not for the reasons proffered by Maggy. While we certainly have not foreclosed the possibility that the fraud amount could potentially be offset if the funds are reclaimed or otherwise returned to the community, we also explained that the party claiming the offset has the burden of proof. *Id.*; *see also Orzechowski*, 2021 WL 3202679, at *4. Therefore, it was Maggy's burden to show that she was entitled to an offset for the monies returned. *See Key*, 712 S.W.3d at 706; *Orzechowski*, 2021 WL 3202679, at *4. This could be

⁶ To the extent that Maggy may be claiming that the charge omitted an instruction regarding offset, she did not object to the charge at trial and therefore has waived this issue. *See Tex. R. App. P. 33.1; see also Tex. R. Civ. P. 272, 274.*

proven, for example, by providing proof that the returned money is traceable to a benefit to the community. *See Key*, 712 S.W.3d at 706; *Orzechowski*, 2021 WL 3202679, at *4. Although Maggy identified the amount of the offset she sought, she failed to carry her burden to establish that she was entitled to it. *See Key*, 712 S.W.3d at 706; *Orzechowski*, 2021 WL 3202679, at *4. Specifically, she cited no evidence tracing the funds returned by Artin to the community estate. The only explanation offered for the whereabouts of the returned funds was the vague assertion that they “had dissipated through other means.” Such a statement, unsupported by any evidence, is insufficient to meet her burden of proof. *See Key*, 712 S.W.3d at 706; *Orzechowski*, 2021 WL 3202679, at *4. It is not our role to speculate as to what became of the \$1 million returned by Artin, and we therefore overrule this issue as inadequately brief. *See Tex. R. App. P. 38.1(i)*.

C. Inconsistencies Between the Trial Court’s Judgment and its Findings of Fact

Maggy also complains of inconsistencies between the trial court’s judgment and its findings of fact. The primary purpose for findings of fact is to assist the losing party in narrowing her issues on appeal by ascertaining the true basis for the trial court’s decision. *Izen v. Laine*, 614 S.W.3d 775, 794 (Tex. App.—Houston [14th Dist.] 2020, pet. denied). Nevertheless, it is not necessary for the trial court to enter findings of fact on issues decided by the jury. *See Rathmell v. Morrison*, 732 S.W.2d 6, 16–17 (Tex. App.—Houston [14th Dist.] 1987, no writ); *see also Tex. R. Civ. P. 296*. Maggy correctly points out that the jury determined the amount of her actual fraud to be \$23,833.83, and the trial court’s findings state the amount of fraud as \$28,833.33. Nevertheless, Maggy has not directed us to any error in the trial court’s actual judgment. Because the judgment correctly reflects the jury’s finding, we do not find any merit in this complaint.

Accordingly, we sustain Maggy’s second issue to the extent that the trial court erred in calculating the reconstituted estate. We overrule Maggy’s issue to the extent she complains of the offset and findings of fact.

III. Valuation of the Business

In her third issue, Maggy contends the trial court erred in awarding the parties’ community business, Maggio Diamentaires, solely to John because there was no reliable evidence concerning the value of the business. Maggy, however, did not provide the trial court with any valuation of the business. This court has previously held that “each party in a divorce proceeding has a burden to present sufficient evidence of the value of the community estate to enable the trial court to make a just and right division.” *Aduli v. Aduli*, 368 S.W.3d 805, 820 (Tex. App.—Houston [14th Dist.] 2012, no pet) (citing *Murff*, 615 S.W.2d at 698–99). “When a party does not provide values for property to be divided, that party may not complain on appeal that the trial court lacked sufficient information to properly divide the property.” *Id.* (quoting *Deltuva v. Deltuva*, 113 S.W.3d 882, 887 (Tex. App.—Dallas 2003, no pet.)).

Nevertheless, the waiver rule is not without exception. An appellate court will not uphold a property division if there is no evidence in the record to support the trial court’s valuation and division. *See Key*, 712 S.W.3d at 702; *see also Tran v. Hoang*, 703 S.W.3d 419, 425–26 (Tex. App.—El Paso 2023, no pet.) (mem. op.) (explaining when a waiver ruling may be appropriate). Thus, we still must determine if the trial court had sufficient evidence to support the division of the community asset. *See Knight v. Knight*, 301 S.W.3d 723, 728 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (“A trial court does not abuse its discretion if there is some evidence of a substantive and probative character to support the decision.”).

As a general rule, community property that is to be divided in a divorce

proceeding is valued according to its “market value.” *Garcia v. Ruiz*, No. 01-17-00969-CV, 2019 WL 2426167, at *4 (Tex. App.—Houston [1st Dist.] June 11, 2019, no pet.) (citing *R.V.K. v. L.L.K.*, 103 S.W.3d 612, 618 (Tex. App.—San Antonio 2003, no pet.)). “Fair market value” has consistently been defined as “the price at which [property] would change hands between a willing seller, under no compulsion to sell, and a willing buyer, under no compulsion to buy, with both parties having reasonable knowledge of relevant facts.” *R.V.K.*, 103 S.W.3d at 618.

The Property Owner Rule allows a property owner to testify about the value of his property even if he is not qualified as an expert. *See Reid Rd. Mun. Util. Dist. No. 2 v. Speedy Stop Food Stores, Ltd.*, 337 S.W.3d 846, 852–53 (Tex. 2011). This is because the Property Owner Rule “falls within the ambit of Rule 701” and is therefore based on the presumption that a property owner is familiar with his own property and its value. *See id.* at 849. Even so, this rule has limitations. One limitation to the Property Owner Rule is that the property owner-witness must testify about the property’s market value and not some other valuation method. *See Natural Gas Pipeline Co. of Am. v. Justiss*, 397 S.W.3d 150, 155 (Tex. 2012). While the rule permits either spouse to opine on the value of a community asset, the rule applies only if the opining spouse demonstrates familiarity with both the assets and its market value. *See Reid*, 337 S.W.3d at 853; *see also Mathis v. Mathis*, No. 01-17-00449-CV, 2018 WL 6613864, at *7 (Tex. App.—Houston [1st Dist.] Dec. 18, 2018, no pet.). Thus, the opining spouse’s testimony must include factors relevant to the market value, rather than some other speculative value of the property. *See Justiss*, 397 S.W.3d at 155–56. If the opining spouse cannot satisfy this requirement, his “opinion on the asset’s value is conclusory and no evidence.” *See Mathis*, 2018 WL 6613864, at *7.

Here, John testified he calculated the value of Maggio Diamentaires using two

different valuations: the “asset approach” and the “market analysis approach.” The asset approach considered the assets and debts of the business, while the market analysis approach considered the average income from the two most recent years before the divorce action commenced—2020 and 2021. Although John did not expressly state an opinion as to the fair market value of Maggio Diamentaires, he provided testimony bearing on that issue, including evidence of the business’s assets, debts, and average income over the preceding two years. *See Charles Clark Chevrolet Co. v. Garcia*, No. 13-08-00633-CV, 2010 WL 1407103, at *3 (Tex. App.—Corpus Christi–Edinburg Apr. 8, 2010, no pet.) (mem. op.) (explaining that the exact words “market value” need not be used). Through his testimony, John demonstrated both his personal knowledge of and familiarity with Maggio Diamentaires’s financial condition and operations. This testimony, while not a formal valuation, constitutes *some evidence* of the business’s value from which the trial court could reasonably infer a valuation thereof. *See Knight*, 301 S.W.3d at 728; *see also Garcia*, 2019 WL 2426167, at *4.

Accordingly, this case does not fall within the narrow exception to the waiver rule that applies when the record contains *no evidence*. *See Tran*, 703 S.W.3d at 425–26. Because the record contains some evidence supporting the trial court’s valuation, we cannot conclude that the trial court abused its discretion in valuing Maggio Diamentaires. *See Aduli*, 368 S.W.3d at 820. We overrule Maggy’s third issue.

IV. Conclusion

In summary, we conclude that the trial court erred by failing to disregard the jury’s findings relating to the \$215,000 deposit (M59.0 of the trial court’s property division) and the \$200,000 transaction (M62.0 of the trial court’s property division). Accordingly, we reverse the jury’s findings of fraud as to these transactions. We further conclude that the trial court abused its discretion by impermissibly including

additional, unsubmitted alleged fraudulent transactions in the calculation of the reconstituted estate. For these reasons, we also reverse the trial court's findings of fraud associated with those unsubmitted transactions (M63.0, M64.0, and M65.0 of the trial court's property division).

The Cross-Appeal

In the interest of judicial economy, we address the two issues presented by John for appellate review. First, he asserts the jury's finding of the value of Maggy's fraud is not supported by the evidence. According to John, the jury heard testimony that Maggy removed over \$5 million in inventory from Maggio Diamentaires. Second, he contends that the trial court mischaracterized \$250,000 held in the registry of the court. We address each of these issues in turn.

I. The "Missing Diamonds"

John first challenges the jury's finding of the value of Maggy's fraud. Question 2 of the charge queried if Maggy committed fraud with respect to the community property rights of John. The jury responded in the affirmative. Question 4 of the charge asked the value by which the community property estate was depleted as a result of Maggy's fraud. The jury answered "\$23,833.83." John complains that there is no evidence to substantiate this value because the evidence conclusively established that Maggy removed diamonds valued at \$5,018,588.77 from Maggio Diamentaires.

While a factfinder may not arbitrarily assess an amount not authorized or supported by evidence at trial by "pull[ing] figures out of a hat," we will not disregard the factfinder's determination of damages merely because its reasoning in reaching its figures is unclear. *Enright v. Goodman Distrib., Inc.*, 330 S.W.3d 392, 403 (Tex. App.—Houston [14th Dist.] 2010, no pet.). A factfinder generally has

discretion to award damages within the range of evidence presented at trial. *Id.*; see also *Gulf States Utils. Co. v. Low*, 79 S.W.3d 561, 566 (Tex. 2002).

Here, Maggy testified that she did not remove \$5 million worth of diamonds from the business. Maggy, however, did admit to removing some items from a safe that she identified as “my jewelry, my diamond ring[,] and my Rolex watch.” Maggy claimed the jewelry in her possession was her separate property. A document titled “Inventory and Appraisal of Maggy Horgan” was admitted into evidence. In this inventory, Maggy did not provide a value for the jewelry in her possession but did notate that it was her separate property. Another document titled “Maggy’s Proposed Property Division” was also admitted into evidence. In this division, Maggy identified that she had jewelry in her possession but characterized the jewelry as her separate property.

John testified that Maggy removed 947 pieces of jewelry from the business in 2019. Of the items purportedly removed, John asserted that 489 of them were certified diamonds. According to John, the inventory allegedly removed by Maggy represented “about 70%” of the total inventory. John opined the value of these “missing diamonds” was about \$5 million and represented “about 90%” of the total value of the removed inventory. In support of his position, John relied on an inventory list he prepared titled “Fair Market Wholesale Value Certified Diamonds 2022,” which was admitted into evidence. This list identified, among other things, the item,⁷ description, and total average price. John also retained Ben Gordon, a jewelry consultant and appraiser, to “double check” the values John assigned to the alleged missing inventory. Gordon reviewed the list and confirmed the value of the

⁷ The item was represented by a four or five digit number. We have no way of ascertaining whether these numbers are unique to Maggio Diamantaires as part of an internal identification system or part of a universal identification system used in the jewelry industry.

items listed was about \$5 million. Gordon, however, neither verified the existence of the items included in the list nor inspected them. Indeed, his evaluator's appraisal was based solely on the list prepared by John.

On cross-examination, John was presented with Maggio Diamentaires 2019 tax return, focusing specifically on the Schedule L balance sheet. John testified that Maggy was not involved with the preparation of this return. He engaged a CPA firm that prepared the taxes with the information provided by him. Reviewing the balance sheet, John agreed that the value of the inventory at the beginning of 2019 was \$689,102, and the value of the inventory at the end of the year was \$68,910. John was questioned again about the amount of inventory that Maggy allegedly removed, and he reiterated that she removed 90% of the total inventory. John testified that according to the balance sheet, the value of the inventory allegedly removed by Maggy would be about \$620,000.

Our review of the record demonstrates that there was neither testimony elicited, nor evidence presented showing that any of the diamonds claimed as missing by John actually existed. For instance, there were no receipts showing when each item was purchased or photographs establishing that the diamonds were once there. The only evidence of "missing diamonds" came from John himself, who also testified that Maggy removed inventory valued at \$5 million when other evidence suggests that the business began the year with inventory valued at less than \$700,000. *See City of Keller*, 168 S.W.3d at 819. There was also no evidence establishing how much of the \$620,192 (the difference between the value of the inventory at the beginning and end of 2019) was sold. John would have us believe that the business, which he claimed to be profitable, did not sell any jewelry for the entire year.

In light of the evidence presented, there was some evidence establishing a

range for the jury to determine the amount of fraud committed by Maggy. If the jury credited Maggy's testimony completely, the jury would have believed that the jewelry she removed from the business was her separate property, resulting in \$0 for the amount she depleted the community property estate. If the jury credited John's testimony completely, the jury could have determined that the value by which Maggy depleted the community property estate was \$5 million, the value of the missing inventory. But it is evident that the jury did not completely credit Maggy's or John's testimony, as evidenced by the jury's finding of \$23,833.83 for the value the community estate was depleted as a result of Maggy's fraud. We do not speculate how the jury arrived at this amount because the jury has discretion to award damages within the range of evidence presented at trial. *See Price Pfister, Inc. v. Moore & Kimmey, Inc.*, 48 S.W.3d 341, 352 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). The jury's finding in response to Question 4 falls within the range of the evidence. *See id.*

Accordingly, we overrule John's first issue.⁸

II. Characterization of Registry Funds

As his second issue, John contends the trial court failed to divide \$250,000 held in the court's registry. According to John, these funds are presumed to be community property and subject to division by the trial court. Maggy claims the registry funds are her separate property because her mother loaned her the money to post the cash bond.

⁸ To the extent that John relies on *McGee v. Thomas* for the proposition that the jury was not free to "set an arbitrary amount" for the value of Maggy's fraud, this case is readily distinguishable from the present case. 508 S.W.2d 191, 191–92 (Tex. App.—Amarillo 1974, writ ref'd n.r.e.). In *McGee*, the testimony concerning future medical expenses was uncontradicted. *Id.* at 191. Here, John's testimony was contradicted by both himself and Maggy.

The Family Code provides for mandatory division of property in a divorce action. *See* Tex. Fam. Code § 7.001; *DePriest v. DePriest*, No. 14-20-00032-CV, 2022 WL 2205281, at *7 (Tex. App.—Houston [14th Dist.] June 21, 2022, pet. denied). All property possessed by either spouse during or upon dissolution of the marriage is presumed to be community property. Tex. Fam. Code § 3.003(a). The presumption applies to assets and liabilities alike. *See Cockerham v. Cockerham*, 527 S.W.2d 162, 171 (Tex. 1975). Thus, debt acquired by either spouse during the marriage is presumptively a community debt, unless there is proof that the creditor agreed to look solely to the contracting spouse’s separate estate for the satisfaction. *See id.* To overcome this presumption, a spouse claiming separate property assets must establish their character by clear and convincing evidence. Tex. Fam Code § 3.003(b). In determining whether the spouse claiming to rebut the presumption prevails, the trial court must “examine the totality of the circumstances in which the debt arose” and the “consideration of implied assent to the debt by the noncontracting party.” *Cockerham*, 527 S.W.2d at 171.

Here, the record provides little detail, but it appears the trial court found Maggy in criminal contempt of court and ordered that she be committed to Fort Bend County Jail. The trial court, however, permitted Maggy to post a cash bond of \$250,000 in lieu of serving the sentence imposed for criminal contempt. Artin loaned Maggy the money to post the bond, which Maggy paid into the court’s registry. Artin and John, who had asserted various claims against each other, later filed a mutual nonsuit of those claims, and Artin agreed to release any claim she had to the funds in the court’s registry.

There is no dispute that the registry funds were acquired during the marriage. The parties were married in 1991, Maggy posted the cash bond in 2019, and the divorce was not finalized until 2022. As such, these funds were presumed to be

community property and subject to mandatory division by the trial court. *See* Tex. Fam. Code § 3.003(a); *DePriest*, 2022 WL 2205281, at *7. The record shows that Maggy made no attempt to prove by clear and convincing evidence that the funds in the court's registry were her separate property. *See* Tex. Fam. Code § 3.003(b). Nevertheless, the trial court made the following order concerning the registry funds:

\$250,000 in registry was not addressed in the division as the evidence at trial was that the money belonged to Ms. Artin. As such, it is not community property and is to be returned to Ms. Artin.

While the trial court is given wide latitude in determining the just and right division, the trial court does not have discretion to avoid dividing community property. *See id.* § 7.001. The evidence shows that Artin loaned the money to Maggy to post the bond, and Artin subsequently released any claim she had to the loan. Importantly, there is no evidence that Artin looked solely to Maggy's separate estate for repayment of the loan. *See Cockerham*, 527 S.W.2d at 171. Because Maggy did not carry her burden of establishing the registry funds were separate property, they are community property and should have been considered by the trial court in dividing the community estate. *See* Tex. Fam. Code § 3.003(a). Accordingly, we sustain John's second issue.

Conclusion

We affirm the portion of the decree dissolving the marriage of the parties. However, we conclude that the trial court erred by (1) failing to disregard certain jury findings (M59.0 and M62.0 of the trial court's property division); (2) including additional, unsubmitted transactions in the reconstituted estate (M63.0, M64.0, and M65.0 of the trial court's property division); and (3) mischaracterizing certain community property, specifically the registry funds. We therefore reverse the portions of the decree relating to the composition and division of the community

estate and remand the cause to the trial court for a new determination and division of the community estate consistent with this opinion, giving effect to the unchallenged jury findings regarding fraud, excluding the five instances of fraud improperly included in the reconstituted estate, and including the undivided registry funds.

/s/ Maritza Antú
Justice

Panel consists of Chief Justice Christopher and Justices Wise and Antú.