

**Affirmed in Part and Reversed and Remanded in Part and Memorandum Opinion filed July 15, 2025.**



**In The  
Fourteenth Court of Appeals**

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**NO. 14-23-00810-CV**

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**HONGFEI LIU, Appellant**

**V.**

**MIN LI, Appellee**

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**On Appeal from the 246th District Court  
Harris County, Texas  
Trial Court Cause No. 2020-75847**

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**MEMORANDUM OPINION**

Appellant Hongfei Liu (“Hongfei”) appeals a final divorce decree terminating his marital union to appellee Min Li (“Min”). In three issues, Hongfei argues that the trial court erred in (1) finding that Hongfei committed fraud or constructive fraud on the community; (2) finding that Min’s real property in Jibo City, China was her separate property; and (3) including an award of attorney’s fees to Min in its division of the marital estate. Because we conclude the trial court

erred in its finding that the property in Jibo City is Min's separate property and in awarding Min's debt for reasonable attorney's fees in the underlying divorce lawsuit to Hongfei, we reverse the portion of the final divorce decree dividing the marital estate. We remand for a new hearing on Min's attorney's fees and for the trial court to exercise its discretion in a new division of the marital estate in light of this opinion. We affirm the remainder of the trial court's final divorce decree.

## **I. BACKGROUND**

Hongfei and Min married in December of 2007 and have two children. Hongfei also has two children from a prior relationship, William and Wilshire, that lived with them during the marriage and who are now adults. In 2020, Min filed her original petition for divorce, and Hongfei filed a counter petition. In their live pleadings, Min and Hongfei both allege that the other had committed constructive and actual fraud on the community estate.

The parties' petitions for divorce were tried before the bench, and the trial court signed a final divorce decree on September 26, 2023. In relevant part, the divorce decree confirmed a piece of real property located in Jibo City, Shandong Province, China, as Min's separate property; provided that both Min and Hongfei committed "waste" and actual fraud of the community estate and that the reconstituted community estate's value was \$1,059,605.14; awarded Min fifty-five percent of the community estate; and awarded Hongfei with Min's debt for the attorney's fees incurred during the divorce proceedings.

The trial court subsequently issued findings of fact and conclusions of law. Hongfei filed a motion for new trial, which was overruled by operation of law, and this appeal followed.

## II. STANDARD OF REVIEW

The trial court has wide discretion in making a just and right division of the community estate, *see Schlueter v. Schlueter*, 975 S.W.2d 584, 589 (Tex. 1998), and we will only disturb the trial court's division upon a showing that the trial court clearly abused its discretion. *See Murff v. Murff*, 615 S.W.2d 696, 699 (Tex. 1981); *Willis v. Willis*, 533 S.W.3d 547, 551 (Tex. App.—Houston [14th Dist.] 2017, no pet.). We engage in a two-pronged inquiry when deciding whether the trial court abused its discretion: first, we consider whether the trial court had sufficient evidence upon which to exercise its discretion; and second, we consider whether the trial court erred in its application of that discretion. *See Cruz v. Cruz*, No. 14-19-00016-CV, 2019 WL 2942630, at \*3 (Tex. App.—Houston [14th Dist.] July 9, 2019, no pet.) (mem. op.).

The first prong draws on our traditional standards for legal and factual sufficiency review. Under the legal sufficiency standard, we credit all evidence and inferences favorable to the trial court's decision if a reasonable factfinder could, and we disregard all evidence contrary to that decision unless a reasonable factfinder could not. *See City of Keller v. Wilson*, 168 S.W.3d 802, 828 (Tex. 2005). The evidence is legally insufficient if the evidence at trial would not allow reasonable and fair-minded people to find the fact at issue. *Id.* at 827. Under the factual sufficiency standard, we examine all of the evidence in a neutral light and consider whether the trial court's decision is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. *See Dow Chem. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001) (per curiam).

With the second prong, we consider whether the trial court made a reasonable decision based on the admitted evidence. *Key v. Key*, 712 S.W.3d 697, 702 (Tex. App.—Houston [14th Dist.] Feb. 6, 2025, no pet.). Stated inversely, we

must determine whether there is some basis for concluding that the trial court's decision was neither arbitrary nor unreasonable. *Id.* If there is no evidence in support of the trial court's division of the community estate, or if the division is manifestly unjust and unfair, then we must conclude that the trial court abused its discretion. *Id.*

Generally, an appellant must challenge all independent bases or grounds that fully support the complained-of judgment. *Gross v. Carroll*, 339 S.W.3d 718, 723 (Tex. App.—Houston [1st Dist.] 2011, no pet.). Otherwise, if an independent ground fully supports the judgment, but the appellant fails to challenge the independent ground by presenting a legal argument for appellate review, we must affirm the judgment. *See Britton v. Tex. Dep't of Crim. Just.*, 95 S.W.3d 676, 681 (Tex. App.—Houston [1st Dist.] 2002, no pet.).

### **III. FRAUD ON THE COMMUNITY**

In his first issue, Hongfei argues the trial court erred in its division of the marital estate because the evidence does not support a finding that he committed actual fraud or constructive fraud on the community estate.

#### **A. COMMUNITY PROPERTY**

“Property possessed by either spouse during or on dissolution of marriage is presumed to be community property.” Tex. Fam. Code Ann. § 3.003(a). To rebut this presumption, the person seeking to prove the separate character of the property must do so by clear and convincing evidence. *Id.* § 3.003(b). “Clear and convincing” evidence means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. *In re J.F.C.*, 96 S.W.3d 256, 264 (Tex. 2002).

Separate property is the property owned before marriage as well as “property

acquired . . . during marriage through gift, devise, or descent.” Tex. Fam. Code Ann. § 3.001. All other property that is not separate property is community property. *Id.* § 3.002; *Nguyen v. Pham*, 640 S.W.3d 266, 271 (Tex. App.—Houston [14th Dist.] 2021, pet. denied); *see Barnett v. Barnett*, 67 S.W.3d 107, 111 (Tex. 2001). The trial court’s division of the community estate must be just and right, having due regard for the rights of each spouse. *See* Tex. Fam. Code Ann. § 7.001. A just and right division need not be equal, but it must be equitable. *See Marin v. Marin*, No. 14-13-00749-CV, 2016 WL 1237847, at \*2 (Tex. App.—Houston [14th Dist.] Mar. 29, 2016, no pet.) (mem. op.).

Certain community property, referred to as “special community property,” is treated similarly to separate property. *Yamin v. Carroll Wayne Conn, L.P.*, 574 S.W.3d 50, 58 (Tex. App.—Houston [14th Dist.] 2018, pet. denied); *see, e.g., Montemayor v. Ortiz*, 208 S.W.3d 627, 644 (Tex. App.—Corpus Christi–Edinburg 2006, pets. denied). Special community property is the community property that is subject to one spouse’s sole management, control, and disposition. Tex. Fam. Code Ann. § 3.102(a); *Montemayor*, 208 S.W.3d at 643–44. Such special community property includes, among other things, a spouse’s personal earnings, revenue from a spouse’s separate property, and “the increase and mutations of, and the revenue from, all property subject to the spouse’s sole management, control, and disposition.” Tex. Fam. Code Ann. § 3.102(a). Property held in the name of one spouse is presumed to be under that spouse’s sole management, control, and disposition. *Id.* § 3.104(a). Nevertheless, that spouse’s disposition of his special community property must still be fair to the other spouse, and the managing spouse has the burden to show that the disposition of the property was fair. *Massey v. Massey*, 807 S.W.2d 391, 402 (Tex. App.—Houston [1st Dist.] 1991, writ denied); *see also Mazique v. Mazique*, 742 S.W.2d 805, 807–08 (Tex. App.—Houston [1st

Dist.] 1987, no writ) (“In the absence of fraud on the other spouse, the managing spouse has the sole right of control and disposition of the community property as he or she sees fit.”).

## **B. CONSTRUCTIVE FRAUD**

The Family Code recognizes both actual fraud and constructive fraud as independent bases for fraud on the community. *See* Tex. Fam. Code Ann. § 7.009(a). Constructive-fraud claims are based on the fiduciary duties that exist between spouses and are sometimes labeled as claims for breach of fiduciary duty or waste. *See Puntarelli v. Peterson*, 405 S.W.3d 131, 137–38 (Tex. App.—Houston [1st Dist.] 2013, no pet.); *Zieba v. Martin*, 928 S.W.2d 782, 789 (Tex. App.—Houston [14th Dist.] 1996, no writ). Unlike actual fraud, constructive fraud does not require the intent to deceive. *Puntarelli*, 405 S.W.3d at 138; *see Akukoro v. Akukoro*, No. 01-12-01072-CV, 2013 WL 6729661, at \*4 (Tex. App.—Houston [1st Dist.] Dec. 19, 2013, no pet.) (mem. op.). Instead, a presumption of constructive fraud arises when a claimant spouse shows that the other spouse has disposed of community property without the claimant spouse’s knowledge or consent. *Key*, 712 S.W.3d at 705; *Boothe v. Boothe*, 681 S.W.3d 916, 924 (Tex. App.—Houston [14th Dist.] 2023, no pet.); *see Cantu v. Cantu*, 556 S.W.3d 420, 427 (Tex. App.—Houston [14th Dist.] 2018, no pet.); *Jean v. Tyson-Jean*, 118 S.W.3d 1, 9 (Tex. App.—Houston [14th Dist.] 2003, pet. denied).

Once the presumption arises, the burden of proof shifts to the disposing spouse to rebut the presumption by showing that the disposal was fair. *See Cantu*, 556 S.W.3d at 427; *Puntarelli*, 405 S.W.3d at 138; *Zeiba*, 928 S.W.2d at 789. When analyzing whether the disposal of community property is “fair,” the court can consider (1) the size of the property in relation to the total size of the community estate, (2) the adequacy of the remaining estate, and (3) the

relationship of the parties involved in the transaction, or in the case of a gift, the relationship of the donor spouse to the donee. *Knight v. Knight*, 301 S.W.3d 723, 731 (Tex. App.—Houston [14th Dist.] 2009, no pet.).

### **C. ANALYSIS**

Under his first issue, Hongfei challenges through various arguments the trial court’s finding of fraud and constructive fraud necessary to support the division of the marital estate. Specifically, Hongfei argues: the trial court only made a finding of actual fraud, and thus the judgment cannot be upheld on a finding of constructive fraud; there is legally and factually insufficient evidence that community funds were spent without Min’s knowledge or consent; and Min failed to show that the complained-of transactions were not fair.

#### **1. The trial court made a finding of constructive fraud**

We first address Hongfei’s contention that the judgment cannot be affirmed on a constructive-fraud basis because the trial court did not make a finding of constructive fraud.

Here, in relevant part, the trial court issued findings of fact and conclusions of law under sections titled “*Division of the Marital Estate—Fraud on the Community—Family Code § 7.009.*” Under these sections, the trial court provided: Hongfei “wrongfully conveyed community property valued at approximately \$571,114.14 to third parties without Min Li’s knowledge or consent”; Min “wrongfully conveyed community property valued at approximately \$84,643.02 to a third party without Hongfei Liu’s knowledge or consent”; and “[t]he value of the reconstituted community estate was \$1,059,605.14.” The trial court further found that Hongfei and Min “had a fiduciary relationship during their marriage” and that it took “[f]raud and waste of the community” into consideration when dividing the

community estate. Finally, the trial court also found that both Hongfei and Min “committed actual fraud against the community estate.”

As noted, “fraud on the community” in the family code includes both constructive fraud and actual fraud, and the terms “waste” and “fiduciary duty” refer to constructive fraud. *See* Tex. Fam. Code Ann. § 7.009(a); *Puntarelli*, 405 S.W.3d at 137–38; *Zieba*, 928 S.W.2d at 789. The trial court’s statements that Hongfei and Min had a fiduciary relationship; that Hongfei acted without Min’s knowledge or consent in wrongfully conveying community property (as opposed to a finding that he acted with an intent to deprive Min of community property); and that it considered fraud and waste of the community in making its division of the marital estate clearly support a conclusion that the trial court found that Hongfei committed constructive fraud. *See Puntarelli*, 405 S.W.3d at 137–38; *Zieba*, 928 S.W.2d at 789; *see, e.g., Key*, 712 S.W.3d at 705 (“The trial court stated in both its decree and its findings of fact and conclusions of law that the fraud amount was being divided as part of Stephanie’s ‘waste claim’—and waste is simply another term for constructive fraud.”); *Boothe*, 681 S.W.3d at 924 (“Waste, or constructive fraud, is one form of fraud on the community . . .”). Therefore, we reject Hongfei’s argument on appeal that the trial court did not make a finding that he committed constructive fraud.

## **2. There is sufficient evidence of Min’s lack of knowledge or consent**

Next, we address Hongfei’s challenges to the legal and factual sufficiency of the evidence supporting a finding that he spent community funds without Min’s knowledge or consent. The final divorce decree provides that Hongfei committed the following constructive fraud on the community:

- |   |          |
|---|----------|
| 1. Payment of William’s Tuition:        | \$46,152 |
| 2. Payment of William’s Accommodations: | \$18,000 |



3. Transfer to William:	\$36,000
4. Allowance to William:	\$31,200
5. Payment of Wilshire's Tuition:	\$44,990
6. Payment of Wilshire's Accommodations:	\$94,220
7. Transfers to Wilshire:	\$19,000
8. Allowance to Wilshire:	\$31,200
9. Support of Mother:	\$85,000
10. Transfers to Mother:	\$160,000
11. Transfer/Check to Sister:	\$5,352

As to William and Wilshire's college tuition and related expenses, Hongfei argues there is legally insufficient evidence that he paid for those expenses without Min's knowledge or consent. Specifically, Hongfei argues the evidence is legally insufficient because Min's testimony as to whether she knew or consented to these expenses was ambiguous.

The record indicates that Min is originally from China and testified through an interpreter, and Hongfei relies on this particular piece of her testimony for his argument:

[Hongfei's counsel]: Did you ever knew [sic] or gave consent to [Hongfei] in using community money to pay for the accommodations of his adult children while they were in university?

[Min]: I don't know. I don't agree either.

Hongfei argues that there is no other evidence supporting a finding that he used community funds without Min's knowledge, and thus the evidence is legally insufficient. *See United Rentals N. Am., Inc. v. Evans*, 668 S.W.3d 627, 642 (Tex. 2023) ("Testimony that gives 'rise to any number of inferences, none more probable than another,' is legally insufficient to support the inference of a fact." (quoting *Hammerly Oaks, Inc. v. Edwards*, 958 S.W.2d 387, 392 (Tex. 1997)));

*Wal-Mart Stores, Inc. v. Gonzalez*, 968 S.W.2d 934, 936 (Tex. 1998) (“[M]eager circumstantial evidence from which equally plausible but opposite inferences may be drawn is speculative and thus legally insufficient to support a finding.”); *Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex. 1983) (“When the evidence offered to prove a vital fact is so weak as to do no more than create a mere surmise or suspicion of its existence, the evidence is no more than a scintilla and, in legal effect, is no evidence.”).

Contrary to Hongfei’s argument, Min’s sworn inventory was also admitted into evidence, and it provides that Hongfei “wasted” a total of \$781,884.00 of community funds and itemizes alleged expenses under a sub header titled “Waste of Community Funds *without knowledge and consent of wife*.” (emphasis added). In this section of the inventory, Min lists William and Wilshire’s college tuition and related expenses, as well as the additional financial support Hongfei provided to them and his transfers of community property to them. The inventory also lists the support Hongfei provided to his mother, as well Hongfei’s transfer of community funds to his mother and sister. The constructive fraud found by the trial court matches Min’s allegations of constructive fraud as asserted in her sworn inventory. Therefore, we conclude that Min’s inventory is some evidence that Hongfei made the transactions listed in the divorce decree without Min’s knowledge or consent and reject Hongfei’s legal-sufficiency challenge to this element. *See Kindred*, 650 S.W.2d at 63 (“[T]here is some evidence, more than a scintilla, if the evidence furnishes some reasonable basis for differing conclusions by reasonable minds as to the existence of the vital fact.”); *Warriner v. Warriner*, 394 S.W.3d 240, 248 (Tex. App.—El Paso 2012, no pet.) (“A sworn inventory is simply another form of testimony.”); *Nowzaradan v. Nowzaradan*, No. 01-05-00094-CV, 2007 WL 441709, at \*5 (Tex. App.—Houston [1st Dist.] Feb. 8, 2007,

no pet.) (mem. op.) (“Because the inventory . . . was . . . properly sworn and admitted into evidence, the document constituted probative evidence, sufficient to overcome the community-property presumption . . . .”); *see also Lozano v. Lozano*, 52 S.W.3d 141, 148 (Tex. 2001) (C.J., Phillips, concurring) (“[I]n cases with only slight circumstantial evidence, something else must be found in the record to corroborate the probability of the fact’s existence or non-existence.”).

Hongfei also argues the evidence is factually insufficient to support a finding that he paid for William and Wilshire’s college tuition and related expenses without Min’s knowledge and consent because he testified that he and Min visited colleges and discussed William and Wilshire’s college education. Hongfei also broadly challenges the factual sufficiency of Min’s knowledge and consent as to the other instances of constructive fraud found by the trial court. Hongfei, however, fails to address or provide any argument concerning the other additional evidence in the record that supports the trial court’s finding. *See* Tex. R. App. P. 38.1(i); *Fredonia State Bank v. Gen. Am. Life Ins.*, 881 S.W.2d 279, 284 (Tex. 1994); *see also Arthur v. Blackburne & Brown Mortg. Fund*, No. 14-21-00396-CV, 2023 WL 2711379, at \*6 (Tex. App.—Houston [14th Dist.] Mar. 30, 2023, no pet.) (mem. op.) (“[T]his court has no duty to search a voluminous record without guidance from appellant to determine whether an assertion of reversible error is valid.”); *In re D.R.L.*, No. 01-15-00733-CV, 2016 WL 672664, at \*10 (Tex. App.—Houston [1st Dist.] Feb. 18, 2016, no pet.) (mem. op.) (indicating that parent waived challenge to legal and factual sufficiency of evidence supporting predicate finding due to lack of meaningful argument or analysis).

Contrary to Hongfei’s argument, there is evidence in the record that Hongfei and Min agreed to keep separate bank accounts and that Min did not have access or knowledge of a Chase bank account under Hongfei and his mother’s name used for

many of these transactions, including withdrawals from William and Wilshire’s universities. It was reasonable for the trial court to infer that Hongfei controlled the accounts from which the expenses occurred and that he paid for the listed expenses without Min’s knowledge and consent. *See Christensen v. Christensen*, No. 01-16-00735-CV, 2018 WL 1747260, at \*7 (Tex. App.—Houston [1st Dist.] Apr. 12, 2018, no pet.) (mem. op.). Viewing all of the evidence in a neutral light, we cannot conclude that the trial court’s finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. *See Dow Chem.*, 46 S.W.3d at 242. Therefore, we conclude there is factually sufficient evidence that Hongfei took the listed transactions without Min’s knowledge or consent.

### **3. Use of Community Funds**

Hongfei also argues the evidence is legally and factually insufficient to support the trial court’s finding of constructive fraud because Min “presented no contrary testimony showing that these expenditures were made from the community estate.” Specifically, Hongfei challenges the sufficiency of the evidence underpinning the trial court’s finding that he used community funds (1) to pay for William and Wilshire’s education and (2) in the transfer of \$160,000.00 to his mother and the \$85,000.00 he provided to her in financial support.

It is undisputed that Hongfei and Min married in 2007 and that Hongfei paid for William and Wilshire’s college tuition and related expenses starting in 2014 and 2015—during the marriage. The money used to pay for William and Wilshire’s college tuition and related expenses from 2014 through 2019 was “[p]roperty possessed by either spouse during . . . marriage,” and thus it is presumed to be community property. *See Tex. Fam. Code Ann.* § 3.003(a).

The general rule is that to discharge the burden imposed by the

statute, a spouse . . . must trace and clearly identify property claimed as separate property, and that when the evidence shows that separate and community property have been so commingled as to defy resegregation and identification, the burden is not discharged and the statutory presumption that the entire mass is community controls its disposition.

*Tarver v. Tarver*, 394 S.W.2d 780, 783 (Tex. 1965).

It was Hongfei's burden to prove the separate character of the funds used to pay for William and Wilshire's college expenses, but he failed to do so. *See* Tex. Fam. Code Ann. § 3.003(b); *Cockerham v. Cockerham*, 527 S.W.2d 162, 167 (Tex. 1975) ("In order to overcome [the community-property] presumption, the party asserting separate ownership must clearly trace the original separate property into the particular assets on hand during the marriage."); *Nguyen*, 640 S.W.3d at 272 ("Any doubt as to the character of property should be resolved in favor of the community estate."). Thus, we conclude there is legally sufficient evidence that Hongfei used community funds to pay for William and Wilshire's tuition and related expenses.

As to factual sufficiency, Hongfei testified that he established a 529 education-fund account for William and another for Wilshire before the marriage in 2004. Hongfei stated he closed the 529 accounts in 2012 with a total balance of around \$150,000.00. Although Hongfei testified he could not recall why he closed the accounts, he stated that he thought he sent part of the money to China "to do some other investment." According to Hongfei, the money had "already come back" from China and had been spent on William and Wilshire's education expenses. Hongfei, however, did not present any documentation supporting these assertions, and he points to no evidence tracing the funds used for the tuition and related expenses to his separate property. *See McKinley v. McKinley*, 496 S.W.2d 540, 544 (Tex. 1973) ("To come to any conclusion about the property status of the

\$16,000 certificate would require surmise and speculation.”); *Zagorski v. Zagorski*, 116 S.W.3d 309, 316 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (“The spouse claiming certain property as ‘separate’ must trace and clearly identify the property claimed to be separate.”). Furthermore, there is evidence that Hongfei deposited at least a portion of his check from his employment into accounts without Min, including a checking account with Chase under his and his mother’s names; some college-related expenses were withdrawn from this Chase account; and large transfers of funds were made to William and Wilshire from this Chase account. Viewing all of the evidence in a neutral light, we conclude there is factually sufficient evidence that Hongfei used community funds to pay for William and Wilshire’s college tuition and related expenses. *See Dow Chem.*, 46 S.W.3d at 242; *Cockerham*, 527 S.W.2d at 167; *see also Pearson v. Fillingim*, 332 S.W.3d 361, 363 (Tex. 2011) (“This is not a divestiture of separate property, but a necessary classification of property as set by the community presumption.”); *In re Marriage of Everse*, 440 S.W.3d 749, 751 (Tex. App.—Amarillo 2013, no pet.) (“The burden of tracing is a difficult, but not impossible, burden to sustain. As a general rule, mere testimony that funds came from a separate source, without any tracing of the funds, will not constitute the clear and convincing evidence necessary to rebut the community presumption.”).

As to the transactions concerning Hongfei’s mother, Min alleged that Hongfei transferred \$160,000.00 to her in 2018 and 2019 through a series of transfers from the Chase bank account under Hongfei and his mother’s name. In support, Min submitted bank statements. Hongfei did not deny that the transactions identified by Min totaling \$160,000.00 were monetary transfers to his mother, and we cannot conclude that he conclusively traced these funds to any of his separate property. Hongfei also conceded during his testimony that he had previously

testified during his deposition that he sent his mother monthly support of \$500 during the marriage, and Min's affidavit states that he provided a total of \$85,000.00 to his mother in support during the fourteen years and two months of marriage. Because these funds were "[p]roperty possessed by either spouse during . . . marriage," they are presumed to be community property, *see* Tex. Fam. Code Ann. § 3.003(a), and we conclude there is legally sufficient evidence supporting the trial court's finding that Hongfei committed constructive fraud by transferring \$160,000.00 of the community estate to his mother and by providing \$85,000.00 in financial support to her from the community estate.

As to the factual sufficiency of the evidence of these transactions concerning Hongfei's mother, Hongfei argues "the *only* evidence regarding the source of these expenditures comes from [Hongfei's] testimony." We note that an argument must be supported by both appropriate citations to legal authorities and record references. Tex. R. App. P. 38.1(i) ("The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record."). This rule is essential to our justice system because we would be abandoning our role as judges and become an advocate for that party if we were to undertake our own search for authorities or evidence that might favor a party's position. *Gopalan v. Marsh*, 706 S.W.3d 650, 662–63 (Tex. App.—Austin 2025, pet. filed); *Bolling v. Farmers Branch Indep. Sch. Dist.*, 315 S.W.3d 893, 895 (Tex. App.—Dallas 2010, no pet.). Thus, "[a] party attacking the factual sufficiency of a finding on appeal must 'demonstrate on appeal that the adverse finding is against the great weight and preponderance of the evidence.'" *Lion Copolymer Holdings, LLC v. Lion Polymers, LLC*, 614 S.W.3d 729, 733 (Tex. 2020) (per curiam) (quoting *Dow Chem. Co.*, 46 S.W.3d at 242). In the absence of guidance from Hongfei as to where additional relevant evidence can be found

supporting his contention that the evidence is factually insufficient, we are not required to sift through the record in search of such evidence. *See Zoanni v. Hogan*, No. 01-16-00584-CV, \_\_ S.W.3d \_\_, \_\_, 2024 WL 5248863, at \*30 (Tex. App.—Houston [1st Dist.] Dec. 31, 2024, pet. filed) (“An appellate court has no duty—or even right—to perform an independent review of the record and applicable law to determine whether there was error.”).

As argued by Hongfei on appeal, he testified that he wired his mother \$174,000.00 in 2002 and later sent this money to one of his realtors in China, Wang Hai (“Hai”), to be invested for his mother. Hongfei also testified that he was unsure when the funds were returned, but that they returned in 2014, 2015, or 2017, even though the transfers to his mother occurred in 2018 and 2019. The relevant bank statements in evidence show that the transfers Min complained of were made from the Chase account under Hongfei and his mother’s name, in which numerous credits and debits of large amounts occurred, and where Hongfei’s check was at least at times partially deposited into the account. On this voluminous record, Hongfei’s citation and reliance on only his trial testimony, without any substantive analysis of the other evidence in the record, does not reveal that the evidence is factually insufficient as to the findings challenged, and we reject his factual sufficiency challenge to these findings. *See Zoanni*, \_\_ S.W.3d at \_\_, 2024 WL 5248863, at \*30; *see, e.g., Gopalan*, 706 S.W.3d at 662.

## **6. Fairness**

Because there is evidence that Hongfei spent the identified community funds without Min’s consent and knowledge, Min raised a presumption of constructive fraud, and the burden shifted to Hongfei to show that the transactions were fair to the community estate. *See Knight*, 301 S.W.3d at 731. Hongfei, however, presented no evidence at trial—nor does he present any argument on appeal—



showing the fairness of these expenditures. *See* Tex. R. App. P. 38.1(i). Instead, Hongfei argues in his appellate brief that there was no evidence that the transactions were unfair; however, this argument misconstrues the law of constructive fraud and erroneously attempts to shift his burden to show that the transaction was fair to Min. Because Hongfei owed fiduciary duties to Min as her spouse, and because there was evidence he disposed of community property without her knowledge or consent, it was Hongfei's burden to show that the complained-of transactions were fair. *See Puntarelli*, 405 S.W.3d at 138; *Zieba*, 928 S.W.2d at 789. Hongfei fails to argue and present any substantive discussion on appeal addressing the fairness of these transactions. *See* Tex. R. App. P. 38.1(i). Accordingly, we reject this argument.

We overrule Hongfei's first issue.

#### **IV. SEPARATE PROPERTY**

In his second issue, Hongfei argues the trial court erred in finding that Min's real property in Jibo City, China was her separate property. Specifically, Hongfei argues that Min did not establish by clear and convincing evidence that this was her separate property because the testimony of Min's sibling was not enough without documentary evidence.

##### **A. APPLICABLE LAW**

Whether property is separate or community in nature is a mixed question of law and fact. *Maldonado v. Maldonado*, 556 S.W.3d 407, 414 (Tex. App.—Houston [1st Dist.] 2018, no pet.); *see Irvin v. Parker*, 139 S.W.3d 703, 708 (Tex. App.—Fort Worth 2004, no pet.) (“Whether the presumption as to the community character of marital property is overcome is a question for the jury.”); *see also Callaway v. Clark*, 200 S.W.2d 447, 449 (Tex. App.—Texarkana 1947, writ ref'd)

(“[T]estimony raised a question of fact as to whether the property was paid for with separate or community funds, and was properly submitted to the jury by the trial court.”). Real property acquired by gift from a third party or by devise or descent (i.e., by will or intestate succession) is the separate property of the recipient. *See* Tex. Const. art. 16, § 15; Tex. Fam. Code Ann. § 3.001(2); *see, e.g., Howe v. Howe*, 551 S.W.3d 236, 255–56 (Tex. App.—El Paso 2018, no pet.) (concluding that house was wife’s separate property because husband “admitted at trial that the home was fully purchased with Wife’s inheritance”). Nevertheless, real property purchased during marriage is presumed to be community property. *See* Tex. Fam. Code Ann. § 3.002; *see, e.g., In re Marriage of Nash*, 644 S.W.3d 683, 699–700 (Tex. App.—Texarkana 2022, no pet.). The burden of overcoming the community-property presumption is on the party asserting otherwise, and the party must overcome the presumption by clear and convincing evidence. *Nguyen*, 640 S.W.3d at 271; *Licata v. Licata*, 11 S.W.2d 269, 272–73 (Tex. App.—Houston [14th Dist.] 1999, pet. denied).

Mere testimony that property was purchased with separate property funds, without any tracing of funds, is generally insufficient to rebut the community presumption. *Zagorski*, 116 S.W.3d at 316; *Robles v. Robles*, 965 S.W.2d 605, 614 (Tex. App.—Houston [1st Dist.] 1998, pet. denied); *see also, e.g., Viera v. Viera*, 331 S.W.3d 195, 207–08 (Tex. App.—El Paso 2011, no pet.) (“Carmelo’s mere testimony and lack of supporting documentation are insufficient to trace the funding of his TSP and FERS accounts to any property owned before marriage, and we therefore find that he failed to prove by clear and convincing evidence that the FERS pension is part of his separate estate.”). To overcome this presumption, the spouse claiming certain property as separate property must trace and clearly identify the property claimed to be separate. *Smith v. Smith*, 22 S.W.3d 140, 144

(Tex. App.—Houston [14th Dist.] 2000, no pet.); *see McElwee v. McElwee*, 911 S.W.2d 182, 189 (Tex. App.—Houston [1st Dist.] 1995, writ denied). Tracing involves establishing the separate origin of the property through evidence showing the time and means by which the spouse originally obtained possession of the property. *Smith*, 22 S.W.3d at 144; *see, e.g., Johnson v. Johnson*, 804 S.W.2d 296, 300–01 (Tex. App.—Houston [1st Dist.] 1991, no writ) (concluding that testimony guns were inherited was insufficient to rebut presumption without documentation distinguishing those guns from other guns listed on inventory).

## **B. ANALYSIS**

Hongfei testified that Min did not disclose the Jibo City property in her discovery disclosures in the underlying divorce suit and only disclosed it after Hongfei discovered it, at which point she amended her sworn inventory and listed the Jibo City property as her separate property. Hongfei further testified that Min did not produce any evidence of the current value or any document supporting her claim that the property purchased during the marriage was her separate property, either by inheritance or gift. *See* Tex. Fam. Code Ann. § 3.003(a). According to Hongfei, Min informed him that the property was purchased during the marriage, “starting in 2014/2015,” had a mortgage, and “was registered in 2017.”

In support of her claim that the China property was her separate property, Min offered the testimony of her sibling, Yan Li (“Yan”). Yan testified that the property in China “was purchased by me and my mama through the – processing the formality before my mom passed away.” But Yan also testified that “[t]he house was left by my parents to me and to my younger sister in November, 2014, with a loan of 228,000 RMB; and in term -- was a term of 25 years” and that “after my mother passed, the house was purchased; and after my mother passed away, when [Min] came back, we told her that this is the mother’s instruction to let her

have the house for living when she's back . . . ." According to Yan, Min's mother and Yan paid for the property after the family received "a certain kind of money for compensation and subsidy to buy a new house" following the demolition of their parents' old home. Yan, however, also testified that the house was currently unoccupied because "that house was located in a very remote area, nobody wants to rent it." Yan testified half of the money was then gifted to Min; that the money was used to pay for the new house and the monthly installments on the mortgage; and that Min only used funds received as a gift from her parents in purchasing the townhome and paying the mortgage. Yan also stated that Min did not sign any documents but that there was a written contract for the purchase of the property and its financing. Finally, Yan was unsure who had custody of the records because "[a]fter my mother passed away, I'm not sure whether that was what somebody sent her or did not send her. I don't know."

Because the real property in Jibo City, China was purchased during the marriage, it was Min's burden to rebut the community-property presumption by clear and convincing evidence to prove it was her separate property. *See* Tex. Fam. Code Ann. § 3.003(a). As noted, this standard is generally not satisfied by testimony that items possessed at the time the marriage are separate property when that testimony is contradicted or unsupported by documentary evidence tracing the asserted separate nature of the items. *See Eckhardt v. Eckhardt*, 695 S.W.3d 883, 891 (Tex. App.—Houston [1st Dist.] 2024, no pet.) ("[A] party's unsupported and contradicted testimony may not meet the clear and convincing standard."); *Monroe v. Monroe*, 358 S.W.3d 711, 718 (Tex. App.—San Antonio 2011, pet. denied) (same); *Pace v. Pace*, 160 S.W.3d 706, 714 (Tex. App.—Dallas 2005, pet. denied) (same); *see also, e.g., Michelena v. Michelena*, No. 13-09-00588-CV, 2012 WL 3012642 (Tex. App.—Corpus Christi—Edinburg June 6, 2012, no pet.) (memo op.)

(concluding that no reasonable juror could have formed firm belief that account was husband's separate property because husband's testimony was contradicted by documentary evidence).

Here, Yan's testimony is contradictory and unclear, and Yan is Min's sibling. *See Nguyen*, 640 S.W.3d at 272 ("Nguyen does cite a series of deeds that were admitted as exhibits at trial. These deeds, however, raise more questions than they provide answers."); *Kelly v. Kelly*, 634 S.W.3d 335, 351 (Tex. App.—Houston [1st Dist.] 2021, no pet.) ("Even though a witness may be interested in the outcome of the proceedings, as long as the testimony is 'clear, direct and positive, and free from contradiction, inaccuracies, and circumstances tending to cast suspicion thereon, it is taken as true, as a matter of law."); *Graves v. Tomlinson*, 329 S.W.3d 128, 140 (Tex. App.—Houston [14th Dist.] 2010, pet. denied) ("Tomlinson's testimony is contradicted by his own sworn inventory and by Graves's inventory."). Additionally, there is evidence that Min failed to disclose this property in her sworn inventory until confronted about it and failed to provide any documentary evidence supporting her separate-property claim. Under these facts, we cannot conclude that a reasonable fact finder could find that there is clear and convincing evidence to overcome the community property presumption and establish that the property in Jibo City, China was Min's separate property. *See In re J.F.C.*, 96 S.W.3d at 264; *Kelly*, 634 S.W.3d at 351; *Eckhardt*, 695 S.W.3d at 891 ("When a trial court is left to speculate, based on testimony and spotty records, what part of an account is original separate-property principal and what part is community, the community presumption prevails."); *see, e.g., Robles v. Robles*, 965 S.W.2d 605, 619–20 (Tex. App.—Houston [1st Dist.] 1998, pet. denied) (concluding that testimony that property was purchased with inherited funds was insufficient without copy of will); *see also Evans v. Evans*, 14 S.W.3d 343, 346

(Tex. App.—Houston [14th Dist.] 2000, no pet.) (“A party may not overcome the presumption merely by showing that separate property was used to pay all or some of the installments on a note for property acquired during marriage; the payments create a right to reimbursement for the spouse, but not a separate property interest.”).

Because the trial court mischaracterized the real property in Jibo City, China, as Min’s separate property, the trial court did not consider it or divide it in its division of the marital estate. The trial court found that the value of the reconstituted community estate is \$1,059,605.14, and Hongfei provided in his sworn inventory that the property has a value of \$110,762.00.<sup>1</sup> Accordingly, we conclude that the trial court’s erroneous finding that the property in Jibo City, China was Min’s separate property had more than a de minimis effect on the trial court’s just and right division of the marital estate. *See Knight*, 301 S.W.3d at 733 (“Given the court’s errors on Monica’s reimbursement claims and in its valuation of her separate estate, we find that the trial court could not properly exercise its discretion in making a just and right division of the community estate.”); *McElwee*, 911 S.W.2d at 190 (concluding that a mischaracterization of property valued at \$45,000 that resulted in a 64%/36% division of property instead of the 61%/39% division intended by the trial court, had more than a de minimis effect on the trial court’s just and right division).

We sustain Hongfei’s second issue.

## **V. ATTORNEY’S FEES**

In his third issue, Hongfei argues the trial court erred when it awarded him with Min’s debt for attorney’s fees incurred in the divorce proceedings without

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<sup>1</sup> Yan testified that purchase price of the property was “340,000.00 RMB.”

evidence that the fees were reasonable.

#### **A. APPLICABLE LAW**

In a suit for dissolution of a marriage, the court may award reasonable attorney’s fees and expenses. Tex. Fam. Code Ann. § 6.708(c). Whether the requested attorney’s fees are reasonable is a question of fact to be determined by the fact finder and must be supported by the evidence. *See Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469, 489 (Tex. 2019); *Kelly*, 634 S.W.3d at 369. To support an award of attorney’s fees, evidence should be presented on the hours spent on the case, the nature of preparation, complexity of the case, experience of the attorney, and the prevailing hourly rates’ in the community. *Kelly*, 634 S.W.3d at 369; *see Rohrmoos Venture*, 578 S.W.3d at 501–02; *Seitz v. Seitz*, 608 S.W.3d 272, 279 (Tex. App.--Houston [1st Dist.] 2020, no pet.); *London v. London*, 94 S.W.3d 139, 147–49 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

#### **B. ANALYSIS**

Here, the divorce decree awarded Hongfei with Min’s “reasonable and necessary attorney fees incurred in this matter up through and including the entry of judgment . . . .” However, Min presented no evidence that the fees were reasonable; thus, we must conclude that the trial court erred when it awarded Hongfei with Min’s debt for her attorney’s fees. *See Rohrmoos Venture*, 578 S.W.3d at 503–05 (“Without detail about the work done, how much time was spent on the tasks, and how he arrived at the \$ 800,000 sum, [the attorney’s] testimony lacks the substance required to uphold a fee award.”)

Without citation to authority, Min argues on appeal that “this award in the Final Decree is not the award of attorney fees, but the account payable as of the

date of the Decree which happens to be owing to the attorneys of the parties.” *See* Tex. R. App. P. 38.1(i). Contrary to Min’s argument, the plain language of the divorce decree provides that the debt awarded to Hongfei is for reasonable and necessary attorney’s fees Min incurred in the divorce. Thus, we reject Min’s argument.

As relief, Hongfei asks this Court to delete the award of Min’s debt for attorney’s fees from the divorce decree. However, because the award of attorney’s fees was authorized but the evidence was insufficient to support the amount awarded, the proper remedy is to reverse the award and remand for a new hearing on fees. *See Rohrmoos Venture*, 578 S.W.3d at 506; *see, e.g., Sloane v. Goldberg B’Nai B’Rith Towers*, 577 S.W.3d 608, 622 (Tex. App.—Houston [14th Dist.] 2019, no pet.) (“The proper remedy in cases where the evidence fails to satisfy the standards for determining fees under the lodestar method is to remand the issue for a redetermination of fees.”). We therefore reject Hongfei’s request to delete the award from the divorce decree and instead remand the case for a redetermination of attorney’s fees and a new division of the marital estate. *See Kelly*, 634 S.W.3d at 370 (“In conducting its division of the parties’ marital estate on remand, the trial court should consider whether ordering Tom to pay Sherry’s attorney’s fees is still appropriate.”); *Henry v. Henry*, 48 S.W.3d 468, 481 (Tex. App.—Houston [14th Dist.] 2001, no pet.) (“[T]o the extent the [attorney’s] fees were awarded as part of the division of the property, the trial court should reexamine the award on remand as a part of making a just and right division of the property.”).

We sustain Hongfei’s third issue.

## VI. CONCLUSION

We reverse the part of the divorce decree dividing the community estate and awarding Hongfei the debt of Min’s reasonable and necessary attorney’s fees in the



underlying divorce lawsuit. We remand for the trial court to exercise its discretion in a new division of the marital estate in light of this opinion and for a new hearing on Min's attorney's fees. We affirm the remainder of the trial court's final divorce decree.

/s/     Brad Hart  
Justice

Panel consists of Justices Wise, Jewell, and Hart.