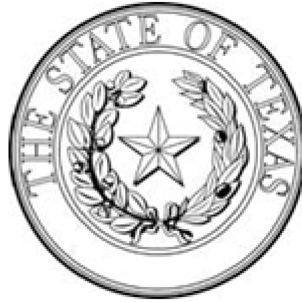
Reversed and Rendered in Part, Reversed and Remanded in Part, and Opinion filed January 23, 2025.



In the

Fourteenth Court of Appeals

NO. 14-24-00302-CV

YANA ALEXANDRA HALE, Appellant

V.

LEONARD ALLAN HALE, Appellee

On Appeal from the 245th District Court
Harris County, Texas
Trial Court Cause No. 2022-58955

O P I N I O N

In this appeal from a final decree of divorce, Mother seeks reversal of those portions of the judgment (1) imposing measures to reduce the risk of her international abduction of the couple's child, and (2) characterizing 50% of the marital homestead as Father's separate property and ordering the home sold and the sales proceeds divided. As for imposing measures to reduce the risk of international abduction, Mother is correct that the trial court first had to find credible evidence

that Mother posed a risk of international abduction, but the trial court made no such finding, nor would the evidence have supported one. Regarding the property division, the trial court found that Mother made a gift to Father, as Father's separate property, of fifty percent of the marital residence, which was otherwise Mother's separate property. But as Mother points out, Father never claimed that Mother made such a gift and no evidence supports the finding. Thus, we reverse both challenged parts of the judgment. We render judgment in part by deleting the portions of the judgment (a) divesting Mother of her separate property, (b) ordering the marital homestead sold, (c) barring the child from traveling to countries that are not parties to the Hague Convention on International Child Abduction,[1] and (d) requiring any party traveling with the child to Russia to post a bond in an unspecified amount. Finally, we order a limited remand of the case solely for the trial court to make a just and right division of the community estate, taking into account that the marital homestead is Mother's separate property.

I. BACKGROUND

Mother was born in Russia. In 2012, she and her son from a prior relationship moved to the United States and Mother married Father. The couple bought a house, and a few months later, they executed and recorded a Partition and Exchange Deed by which Father conveyed to Mother all of his interest in the house and agreed that she would own it as her separate property. The couple had a child together, and soon after, Mother and Father took out a home equity loan on the marital residence.

After ten years of marriage, Mother petitioned, and Father counter-petitioned, for divorce.

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[1] All references herein to the "Hague Convention" refer to the Convention of the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 1434 U.NT.S. 48, *reprinted in* 51 Fed. Reg. 10,494 (1986).

The trial court found that "the parties properly executed a partition agreement that awarded the marital home to [Mother] as her sole and separate property." Father did not allege that Mother later made a gift to him of any share of the house; he did not identify it, even in part, as his separate property, and he offered no evidence of any means by which the property, once partitioned, could have become his separate property. Nevertheless, the trial court found that Mother "gifted fifty percent of her 100% separate property interest" in the home to Father. Further, the trial court ordered the property sold and the net proceeds of the sale to be equally divided.

In his pleadings, Father had asked the trial court to determine whether there was a risk of Mother's international abduction of their child, and if so, to take such measures as are necessary to protect the child. The trial court did not make a finding that Mother posed such a risk. Nevertheless, the trial court ordered that "the child shall not travel to any non-Hague Convention countries" and "a bond shall b[e] posted by any party traveling with the child to Russia for any period of time."

Mother moved for new trial or for modification of the judgment, and she requested findings of fact and conclusions of law separate from those included in the judgment. The trial court signed an amended decree, but the challenged provisions described above were unchanged. Mother again requested findings of fact and conclusions of law, and both parties filed proposed findings of facts and conclusions of law. Mother further notified the trial court when the requested findings were past due, but the trial court made no findings or conclusions other than those included in the amended final decree. Mother now appeals the judgment.

II. Issues Presented

In her first issue, Mother asks whether the appeal should be abated for the trial court to make findings of fact and conclusions of law separate from those included in the judgment. Abatement is unnecessary. Because the findings contained in the

judgment have not been supplanted by separately filed findings, the findings of fact included in the judgment "are valid as findings." *In re C.A.B.*, 289 S.W.3d 874, 881 (Tex. App.—Houston [14th Dist.] 2009, no pet.).

Of Mother's two remaining issues, we first address Mother's challenge to the travel restrictions preventing the child's travel to countries that are not parties to the Hague Convention and requiring any party traveling to Russia with the child to post a bond in an unspecified amount. We then address Mother's contention that the trial court erred in characterizing 50% of the marital homestead as Father's separate property and requiring the parties to sell the property and equally divide the net proceeds.

III. MEASURES TO REDUCE THE RISK OF INTERNATIONAL ABDUCTION

In his pleadings, Father asked the trial court to determine whether the couple's child was at risk of international abduction by Mother and to take such measures as are necessary to protect the child. Although the trial court did not make a finding that the child was at risk of international abduction, the trial court nevertheless ordered that (a) the child shall not travel to any non-Hague Convention countries, and (b) "a bond shall be posted by any party traveling with the child to Russia for any period of time." Mother contends that the trial court abused its discretion by imposing these two restrictions because the trial court made no finding of an international-abduction risk, and the evidence would not support such a finding. We agree.

By statute, trial courts follow a two-step process for assessing and mitigating the risk of a parent's international abduction of a child. First, the trial court must consider the statutory factors that determine "if credible evidence is presented indicating a potential risk" of a parent's international abduction of a child. TEX. FAM. CODE §§ 153.501(a), 153.502(a), and 153.502(a-1). Second, "*if the court finds* that

there is credible evidence of a risk of abduction of the child by a parent of the child based on the court's consideration of the factors in [section 153.502(a)]," the court must evaluate the risk and determine whether to take any of the preventive measures described in section 153.503 of the Texas Family Code. *Id.* § 153.502(b) (emphasis added), (c); *id.* § 153.503; *Gerges v. Gerges*, 601 S.W.3d 46, 57–59 (Tex. App.—El Paso 2020, no pet.).

The requirements of the first step in this process were not satisfied. The trial court made no finding of a credible evidence of a risk of international abduction. The trial court also made no affirmative findings of any of the risk factors that the trial court is required to consider, which are as follows:

> To determine whether there is a risk of the international abduction of a child by a parent of the child, the court shall consider evidence that the parent:
>
> (1) has taken, enticed away, kept, withheld, or concealed a child in violation of another person's right of possession of or access to the child, unless the parent presents evidence that the parent believed in good faith that the parent's conduct was necessary to avoid imminent harm to the child or the parent;
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> (2) has previously threatened to take, entice away, keep, withhold, or conceal a child in violation of another person's right of possession of or access to the child;
>
> (3) lacks financial reason to stay in the United States, including evidence that the parent is financially independent, is able to work outside of the United States, or is unemployed;
>
> (4) has recently engaged in planning activities that could facilitate the removal of the child from the United States by the parent, including:
>
> (A) quitting a job;
>
> (B) selling a primary residence;
>
> (C) terminating a lease;
>
> (D) closing bank accounts;

(E) liquidating other assets;

(F) hiding or destroying documents;

(G) applying for a passport or visa or obtaining other travel documents for the parent or the child; or

(H) applying to obtain the child's birth certificate or school or medical records;

(5) has a history of domestic violence that the court is required to consider under Section 153.004; or

(6) has a criminal history or a history of violating court orders.

TEX. FAM. CODE § 153.502(a).

Although the trial court "need only find the existence of credible evidence to support a finding that one of the factors exists,"[2] the trial court made no such findings. Even assuming, without deciding, that such findings can be implied if supported by the evidence, such evidence is lacking here.

As for the first factor, there is no evidence that Mother had "taken, enticed away, kept, withheld, or concealed" the child "in violation of another person's right of possession of or access to the child." The parties originally worked out possession and access between themselves, but then Mother claimed that Father returned the child a week late and thereafter denied Father possession and access to the child for some months before trial. But as the trial court pointed out, no temporary orders were then in place specifying which parent had rights of possession and access at any given time; thus, it cannot be said that Mother violated Father's rights inasmuch as neither party had a superior right to possession and access during that time. For example, in *Elshafie v. Elshafie*, the father challenged the trial court's finding that he had taken or withheld a child in violation of the mother's right of possession or

[2] *Gerges*, 601 S.W.3d at 58.

access. No. 13-10-00393-CV, 2011 WL 5843674, at *6 (Tex. App.—Corpus Christi–Edinburg Nov. 22, 2011, no pet.) (mem. op.). The mother pointed to evidence from two occasions. *See id.* On the first occasion, the father emailed the mother that he would return the children on December 26 but later texted her that he decided to keep the children longer, though he did not specify a return date. *See id.* The reviewing court held that noncompliance with this informal agreement did not establish a violation of the mother's rights. *See id.* On the second occasion, the father again kept the children past the agreed return date, but unlike the earlier, informal agreement, the date for the children's return had been memorialized in a Rule 11 agreement. *See id.* The reviewing court held that the trial court did not abuse its discretion in finding credible evidence of a risk of abduction based on the violation of the Rule 11 agreement. *See id.* at *7. Here, only informal agreements defined the parties' rights during the time at issue.

There also is no evidence of any of the remaining factors. Mother has not threatened to withhold possession and access to the child in violation of Father's rights; to the contrary, she testified that Father is a good parent, and she did not ask the trial court to eliminate Father's access to the child or even ask for supervised visitation. There is no evidence that Mother lacks financial reasons to remain in the United States. Mother is employed and has never returned to Russia since she emigrated in 2012.[3] The child's ongoing medical issues from a birth defect are covered by Medicaid and his health care providers are all in this country. There is no evidence that Mother has any assets in Russia, receives support from any source

[3] Aside from Father and the child they share, only two other relatives of Mother's were mentioned at trial. Mother's own mother used to divide her time between her own home in Russia and living with Mother and Father in the United States, but she has passed away. The only remaining relative mentioned at trial was Mother's son from a previous relationship, who moved with her to the United States and is now an adult.

there, or has ever worked there. There is no evidence that Mother has engaged in planning activities that could facilitate the child's removal from the country, or that she has a history of violating court orders or engaging in criminal activity or domestic violence. Indeed, the trial court failed to find any history of family violence by either party and instead named them joint managing conservators, which would be inconsistent with an implied finding of a history of domestic violence.

Moreover, Father did not contend at trial that Mother poses a risk of international abduction. When asked at trial why he asked for controls regarding international travel, Father's only response was, "I'm afraid for the safety of my son especially with what's going on in the world today. I don't want him anywhere near a war zone or in the country of Russia because it would be very difficult for me to retrieve him even with State Department contacts." But this is putting the cart before the horse. Under the statute, "[*i*]*f the court finds that there is credible evidence of a risk of abduction* . . . based on the court's consideration of the factors [in Texas Family Code section 153.502(a)]," then the court "*shall* also consider" whether the country to which a parent has ties "is not a signatory to or compliant with the Hague Convention on the Civil Aspects of International Child Abduction" and "*may* also consider evidence regarding . . . whether the country to which the parent has ties . . . is engaged in any active military action or war . . . ." TEX. FAM. CODE § 153.502(b)(1), (c)(4)(G) (emphasis added). Because there is no credible evidence of a risk of abduction, the trial court would not have reached that point in the analysis.

We conclude that the trial court abused its discretion in barring the child from traveling to any country that is not a party to the Hague Convention or in requiring a parent who travels with the child to Russia to post a bond in an unstated amount. Thus, we sustain this issue.

IV. CHARACTERIZATION OF THE MARITAL HOMESTEAD

In a divorce decree, the trial court must order a division of the marital estate in a manner that is just and right, having due regard for the rights of each party. *See* TEX. FAM. CODE § 7.001. The trial court has wide discretion in making this division, but that discretion does not extend to taking the separate property of one spouse and awarding it to the other spouse. *See* TEX. CONST. art. XVI, § 15; *Eggemeyer v. Eggemeyer*, 554 S.W.2d 137, 142 (Tex. 1977). Mother contends that the marital homestead is solely her separate property and that the trial court reversibly erred by characterizing the home as being 50% Father's separate property and in ordering the home sold. We agree.

Because the homestead is included among the "[p]roperty possessed by either spouse during or on dissolution of marriage," our analysis begins with the statutory presumption that the home is community property. TEX. FAM. CODE § 3.003(a). As the party claiming that the home is her separate property, Mother bore the burden to rebut this presumption by clear and convincing evidence. *Id.* § 3.003(b); *Pearson v. Fillingim*, 332 S.W.3d 361, 363 (Tex. 2011) (per curiam).

Mother satisfied that burden. Mother and Father bought the marital homestead in 2013, but they later executed and recorded a Partition and Exchange Deed by which Father conveyed to Mother all of his interest in the house and agreed that she

would own it as her separate property. The Partition and Exchange Deed stated:

Partition and Exchange

The parties agree that Yana A. Hale will own, possess, and enjoy as her sole and separate estate, free from any claim of Leonard Allan Hale, the Property herein conveyed. Leonard Allan Hale partitions and exchanges to Yana A. Hale all his community-property interest in and to the Property, together with all insurance policies covering the property and all escrow accounts that relate to it. Leonard Allan Hale grants, releases, and confirms to Yana A. Hale and to her heirs and assigns all right, title, and interest in and claims to the property, to have and to hold the same, with all and singular the hereditaments and appurtenances thereto belonging forever.

Property (including any improvements):

LOT TWO (2), IN BLOCK ONE (1), OF CANYON LAKES AT STONEGATE, SECTION THREE (3), A SUBDIVISION IN HARRIS COUNTY, TEXAS ACCORDING TO THE MAP OR PLAT THEREOF, RECORDED IN FILM CODE sO. 519296 OF THE MAP RECORDS OF HARRIS COUNTY, TEXAS.

Commonly known as 10207 Palisade Lakes Drive, Houston, Texas 77095

"[S]pouses may partition or exchange between themselves all or part of their community property," and the property or property interest that a spouse transfers becomes the other spouse's separate property. TEX. FAM. CODE § 4.102. Unlike most other contracts, no consideration is required. *Id.* § 4.104. Moreover, a signed partition agreement is presumptively enforceable. *See In re Eaton*, No. 02-14-00239-CV, 2014 WL 4771608, at *4 (Tex. App.—Fort Worth Sept. 25, 2014, no pet.) (mem. op.). The spouse seeking to avoid enforcement of the agreement must prove that he or she did not sign the agreement voluntarily or the agreement was unconscionable. *Id.* § 4.105.

This was Father's approach. At trial, he maintained that he had signed the partition agreement involuntarily inasmuch as he was under duress, so that the agreement was unenforceable and the house continued to be community property. The trial court rejected Father's "duress" defense to enforcement. The trial court did not characterize the home as community property but instead found that "the parties

properly executed a partition agreement that awarded the marital home to [Mother] as her sole and separate property." Father did not contend that there was any post-partition change in the ownership or that he had a separate-property interest in the house, and no such issues were tried by consent.

But the trial court misinterpreted the effect of the following evidence about a later home equity loan.

After the home was free of encumbrances, the parties took out a home equity loan for $135,000. The only documentary evidence of the loan is a monthly statement addressed to both Father and Mother and showing that as of December 4, 2023, the balance was $91,047.87. None of the loan documents were offered as evidence, but Father testified as follows:

> Q. How were you able to enter into that home equity loan?
>
> A. Because there was equity in the home because it was paid in full.
>
> Q. Do you recall going to a finance company or a title company?
>
> A. It was a title company.
>
> Q. And at the time, did you have to show any type of ownership in that home?
>
> A. I was listed as the borrower, you know, the primary owner –
>
> Q. Okay.
>
> A. -- at that time.

Based on this, the trial court wrote as follows:

> The COURT FURTHER FINDS that *once the equity line of credit was taken out in both parties' names* [Mother] gifted fifty percent of her 100% separate property interest, in the property, to [Father]. THEREFORE, THE COURT FINDS each party is awarded an equal fifty percent interest.[4]

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[4] Emphasis added.

The trial court then ordered the house sold and the net sales proceeds equally divided between Mother and Father.

The trial court's reasoning is apparent from the italicized language. In the expression, "once the equity line of credit was taken out in both parties' names," the word "once" is a conjunction meaning, "at the moment when: as soon as."[5] Thus, the trial court appears to have assumed that the act of taking out a home-equity loan constituted a gift to Father of part of Mother's separate-property interest in the house.[6] Although labeled as a finding, this is actually a conclusion of law.

But the trial court is mistaken. Although a rebuttable presumption of an interspousal gift arises from a conveyance such as a new deed identifying both spouses as owners,[7] the existence of such a conveyance is not itself presumed, and there are no such documents in the record. Moreover, Father did not identify the document in which he was listed as "the primary owner." Inasmuch as he made this statement in answer to the question whether he "ha[d] to *show* [the title company] any type of ownership in that home,"[8] Father's answer appears to refer to a document already in existence (such as the house's original purchase and mortgage documents

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[5] WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 824 (9th ed. 1991); *see also* NEW OXFORD AMERICAN DICTIONARY 1224 (Angus Stevenson & Christine Lindberg eds., 3d ed. 2010) (defining the conjunction "once" to mean "[a]s soon as; when").

[6] In statements on the record, the trial court stated this explicitly. At a hearing on Mother's motion for new trial, Mother's counsel stated that

> [W]hat *Rivera v. Hernandez* makes clear is that the home equity loan itself and the interest in the property are kind of two separate issues, but I actually want to get to kind of the core of what I think Your Honor is raising, which is your statement that this was a gift [of Mother's interest in the property].

The trial court responded, "That was the result of the transaction, Counsel. That is what I'm saying."

[7] *See In re J.Y.O.*, No. 22-0787, –S.W.3d–, 2024 WL 5250363, at *5 (Tex. Dec. 31, 2024).

[8] Emphasis added.

from 2013, which indeed would have shown him as an owner and borrower). The trial court could not properly presume that the document to which Father referred was a post-partition conveyance, and then further presume that the conveyance was a gift.

In doing so, the trial court seems to have accepted the unsupported representation of Father's counsel that "both parties' names are on the home equity loan"[9] and lenders "require both parties to own that home to extend a home equity loan." But this, too, is incorrect as a matter of law. "[I]f a property serves as the family's homestead, a spouse has vested rights even when that homestead is the other spouse's *separate* property." *Taylor Morrison of Tex., Inc. v. Ha*, 660 S.W.3d 529, 534 (Tex. 2023) (per curiam) (emphasis in original). And even though the homestead is one spouse's separate property, that spouse may not "encumber the homestead without the joinder of the other spouse." TEX. FAM. CODE § 5.001. The protection of a person's homestead interest in a spouse's separate property is not solely a matter of statutory law; it is guaranteed by the Texas Constitution. If the homestead secures a home-equity loan, the Texas Constitution protects the homestead from forced sale unless the lien was "created under a written agreement with the consent of each owner *and each owner's spouse*." TEX. CONST. art. XVI, § 50 (emphasis added). And a lender may require the consent of the homeowner's spouse to the loan in addition to the consent required for the lien. 25 TEX. ADMIN. CODE § 153.2. *See also Leighton v. Leighton*, 921 S.W.2d 365, 367 (Tex. App.—Houston [1st Dist.] 1996, no writ) ("Once the separate property character attached, it was immaterial that the deed was in both names, community funds had been spent, or that a community debt existed."); *see also Eggemeyer*, 554 S.W.2d at 141 (declining to extend former

[9] In fact, the evidence shows only that a monthly statement was addressed to both parties.

spouse's "right to a continued use of separate property as homestead to a right to divest title in separate property").

In sum, absent evidence of a conveyance giving rise to the gift presumption, a different rule applies: "Simply stated, the fact that Husband and Wife borrowed funds during marriage for which the real estate served as collateral has no effect on its characterization whatsoever." *Rivera v. Hernandez*, 441 S.W.3d 413, 420 (Tex. App.—El Paso 2014, pet. denied)); *accord*, *Haynes v. Haynes*, No. 04-15-00107-CV, 2017 WL 2350970, at *5–6 (Tex. App.—San Antonio May 31, 2017, pet. denied) (mem. op.) ("Even the execution by both parties of a home equity loan does not convert separate property to community property.").

Father nevertheless argues that the property division can be affirmed by a presumption in favor of the judgment, either on the ground that the partition agreement is invalid because he executed it under duress or on the ground that Mother made a parol gift to him of a 50% interest in the property.

His duress argument fails because a judgment may not be supported upon appeal by a presumed finding upon any ground of recovery or defense, no element of which has been included in the findings of fact. TEX. R. CIV. P. 299. Father bore the burden to prove that he did not sign the agreement voluntarily,[10] and no such finding was made or requested. *See also Jones v. Smith*, 291 S.W.3d 549, 554 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (trial court's express findings of fact "cannot be extended by implication to cover further independent issuable facts"). To the contrary, Father requested a finding that the parties "properly executed" the partition agreement that awarded the property to Mother "as her sole and separate property"—a finding that the trial court included in the judgment.

[10] *See* TEX. FAM. CODE § 4.105(a)(1).

The property division also cannot be upheld on the theory that Mother made a parol gift of 50% of the property. To establish a valid parol gift of real estate in equity, a party must show: (1) a gift *in praesenti,* that is, a present gift; (2) possession under the gift by the donee with the donor's consent; and (3) permanent and valuable improvements by the donee with the donor's consent or other facts demonstrating that the donee would be defrauded if the gift were not enforced. *Estate of Wright*, 482 S.W.3d 650, 656–57 (Tex. App.—Houston [14th Dist.] 2015, pet. denied). But this theory was not even litigated. Even assuming that this theory might apply to an alleged spousal gift of a homestead in which both spouses already reside, Father contended only that the partition agreement was invalid so that the house remained community property. He offered no evidence that Mother intended to part with half of her interest in the home, or that she in fact gave such a gift to Father.

We sustain this issue. Because the evidence does not support a finding or a presumption that Mother gifted half of her separate-property interest in the marital homestead to Father, the trial court reversibly erred by divesting Mother of half of her separate-property interest and ordering the property sold. We accordingly reverse the property-division portion of the judgment and remand the community estate for the trial court to make a just and right division of the community property.

V. CONCLUSION

There being no express finding, and no evidence to support an implied finding, that there is credible evidence of a risk that Mother will abduct the child to another country, we reverse the portion of the judgment in which the trial court stated, "IT IS ORDERED that the child shall not travel to any non-Hague Convention countries. IT IS FURTHER ORDERED that a bond shall be posted by any party traveling with the child to Russia for any period of time." As to this portion of the divorce decree, we render judgment deleting these sentences from the judgment.

Concerning the section of the judgment that appears under the heading, "Marital Residence," we leave intact the first sentence, "The COURT FINDS that the parties properly executed a partition agreement that awarded the marital home to YANA ALEXANDRA HALE as her sole and separate property." Because Father neither alleged nor proved that Mother subsequently "gifted fifty percent of her 100% separate property interest" to Father as stated in the judgment, we reverse the property-division portion of the judgment and render judgment deleting the remainder of the "Marital Residence" section of the judgment, in which the trial court improperly divested Mother of her separate property and ordered the property sold. Because the trial court's division of the community estate was based in part on an erroneous characterization of the marital homestead, we likewise reverse the sections of the judgment that appear under the headings, "Property Awarded to Petitioner," "Property Awarded to Respondent," "Additional Division of Property," "Debt of the Parties," and "Unawarded Property," and we order a limited remand for the trial court to make a just and right division of the community estate, which does not include the marital homestead. *See Jacobs v. Jacobs*, 687 S.W.2d 731, 733 (Tex. 1985).

/s/ Tracy Christopher
Chief Justice

Panel consists of Chief Justice Christopher and Justice Wilson.[11]

[11] This case was originally submitted on December 4, 2024, for oral argument to a panel consisting of Chief Justice Christopher and Justices Bourliot and Wilson. Justice Bourliot's term of office subsequently terminated on December 31, 2024. By operation of Texas Rule of Appellate Procedure 41.1, the case may now be decided by the two remaining justices who participated in oral argument and who agree on the judgment. *See* TEX. R. APP. P. 41.1(b).