



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00160-CV

Genesis Tamara **ULLOA**,
Appellant

v.

Juan Pablo **RODRIGUEZ**,
Appellee

From the 288th Judicial District Court, Bexar County, Texas
Trial Court No. 2014-CI-10118
Honorable Renée Yanta, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Jason Pulliam, Justice

Delivered and Filed: January 13, 2016

AFFIRMED

Genesis Tamara Ulloa appeals a final decree of divorce asserting the trial court's division of the martial estate was not equitable because: (1) the trial court failed to consider "critical evidence" contained in a motion to dismiss; and (2) appellee Juan Pablo Rodriguez and his attorney made false statements to the trial court. We affirm the trial court's judgment.

In a divorce decree, a trial court is required to divide the estate of the parties in a manner that it deems is "just and right." TEX. FAM. CODE ANN. § 7.001 (West 2006). Although a trial court does not have to divide the martial estate equally, it must do so equitably. *Alonso v. Alvarez*,

409 S.W.3d 754, 758 (Tex. App.—San Antonio 2013, pet. denied); *O’Carolan v. Hopper*, 71 S.W.3d 529, 532 (Tex. App.—Austin 2002, no pet.). We review the trial court’s division of property under an abuse of discretion standard. *Landis v. Landis*, 307 S.W.3d 393, 394 (Tex. App.—San Antonio 2009, no pet.). “Under this standard, the appropriate inquiry is whether the ruling was arbitrary or unreasonable.” *Id.*

The divorce decree states “Ulloa, although duly and properly cited, did not appear and wholly made default.” Ulloa does not challenge this recital or otherwise dispute that she had proper notice and did not appear. Instead, Ulloa contends the trial court abused its discretion because she mailed a motion to dismiss to the trial court before the hearing containing “critical evidence” for it to consider in dividing the marital estate. Even if Ulloa’s motion had been timely filed,¹ however, the motion is only a pleading, and pleadings, even if sworn or verified, cannot be considered as evidence. *Laidlaw Waste Sys. (Dallas), Inc. v. City of Wilmer*, 904 S.W.2d 656, 660 (Tex. 1995). Therefore, the trial court could not have considered Ulloa’s motion to dismiss as evidence.

Ulloa next contends Rodriguez and his attorney falsely stated no marital property existed to divide except the parties’ personal effects which the trial court awarded to the respective party who was in possession of them. The record in this case, however, contains no evidence to contradict the statements made by Rodriguez and his attorney; therefore, the trial court did not abuse its discretion in dividing the marital estate based on the evidence presented.

Finally, Ulloa alludes to her inability to attend the trial court’s proceedings in Bexar County due to financial hardship. The only document in the clerk’s record referencing these difficulties, however, is appellant’s motion to dismiss in which she stated, “Respondent has had difficulty with

¹ Although Ulloa contends her motion was delivered to the district clerk’s office on February 13, 2015 at 9:56 a.m., the motion was not file-stamped until February 17, 2015, the day of the hearing, at 2:50 p.m.

employment, has financial hardship, and cannot attend Bexar County Court hearings.” Nothing in the record indicates Ulloa sought to appear by telephone or other alternative means. Although Ulloa was not in prison, even pro se prison inmates have the burden to request to appear through alternative means. *See In re T.R.C., Jr.*, No. 13-11-00616-CV, 2012 WL 3537828, at *3 (Tex. App.—Corpus Christi Aug. 16, 2012, no pet.) (mem. op.) (holding appellant waived complaint regarding inability to appear by alternative means because no request presented to trial court); *Baugh v. Baugh*, No. 14-07-00391-CV, 2008 WL 2068081, at *2 (Tex. App.—Houston [14th Dist.] May 15, 2008) (mem. op.) (same). Because the record does not establish Ulloa filed a request for permission to appear in court through alternative means, she has waived any complaint regarding her inability to attend the trial court’s hearing.

The trial court’s judgment is affirmed.

Sandee Bryan Marion, Chief Justice