Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00107-CV

Justin V. **HAYNES**,
Appellant

v.

Alicia Bryan **HAYNES**,
Appellee

From the 166th Judicial District Court, Bexar County, Texas
Trial Court No. 2012-CI-14023
Honorable David A. Canales, Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: May 31, 2017

AFFIRMED IN PART; REVERSED AND RENDERED IN PART; REVERSED AND REMANDED IN PART

Justin V. Haynes appeals the trial court's judgment awarding Alicia Bryan Haynes's indemnity under the parties' post-nuptial agreement. We affirm in part and reverse in part.

BACKGROUND

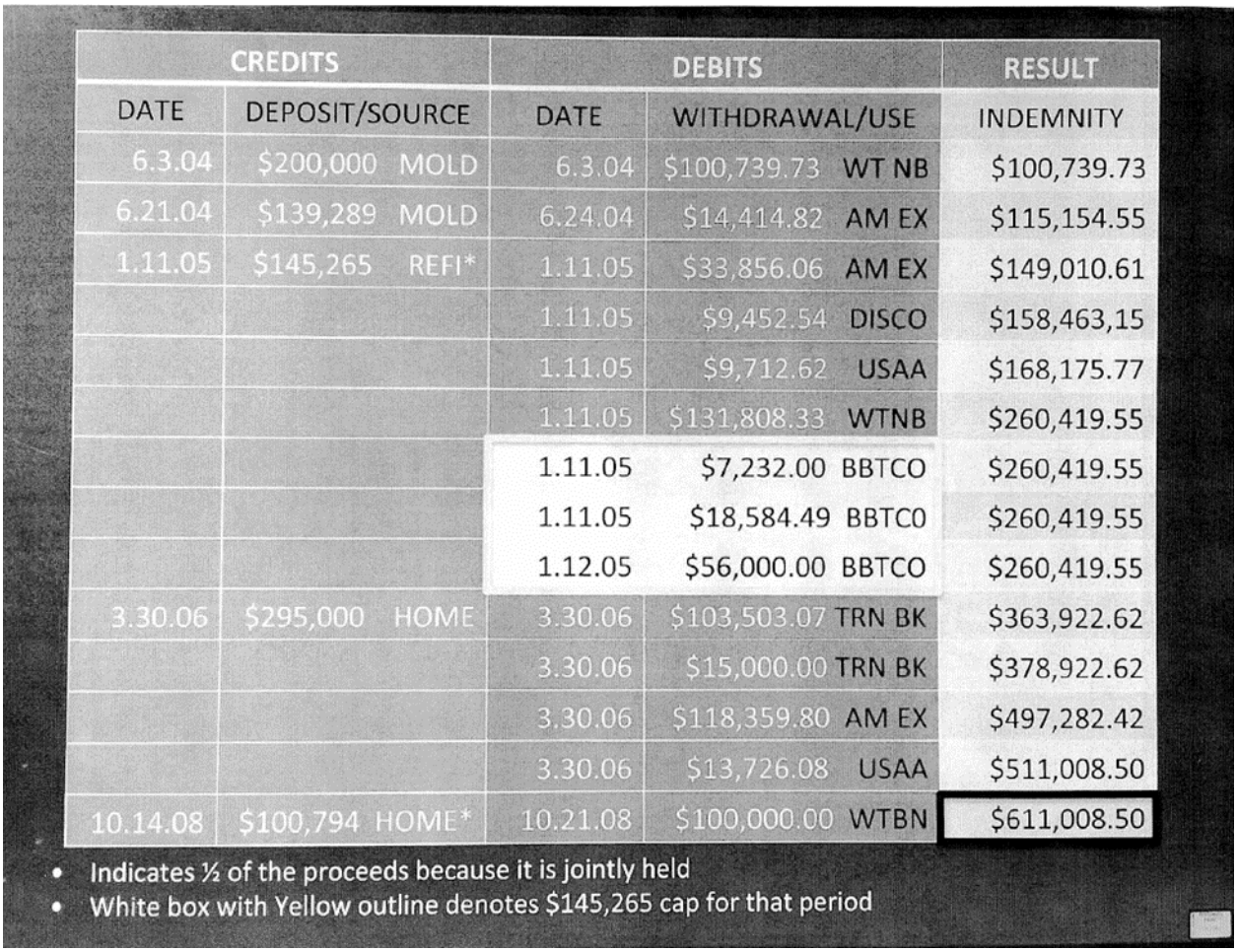
Justin and Alicia married in March 2003. A year later, they executed a post-nuptial contract called the Marital Agreement. In the Marital Agreement, Justin and Alicia agreed that, in the event of a dissolution of the marriage: (1) there would be no community property; (2) neither party would be entitled to reimbursement; and (3) each spouse would indemnify the other if the separate

property debt of one spouse was paid with the separate property funds of the other. Section V of the Marital Agreement, which is titled "Debts," provides:

> **A. Related to Separate Property**. A party may owe and be liable for certain debts, obligations or expenses which were contracted or are to be contracted by that party in connection with his or her separate property. The known financial obligations of each party are set forth on the appropriate Schedule attached hereto. Each party agrees that any and all debts, obligations or expenses, including those not listed on a Schedule, any renewals or extensions thereof, and any subsequent debts, obligations, or expenses incurred in connection with his or her separate property, together with any interest on such debts, obligations, or expenses are to be paid from his or her separate property. Each party agrees that any federal tax liabilities, along with any interest or penalties thereon, incurred by a party due to actions before the marriage shall remain the separate property liability of the incurring party and the other party's separate property shall not be liable for such liability. Each party further agrees that the other party's separate property shall not be charged with such debts, obligations or expenses, and further agrees to indemnify the other party if any of such debts, obligations or expenses are paid from the other party's separate property.
>
> **B. Future Debt.** Where either party enters into any transaction without the joinder of the other party wherein credit is extended to such party, or such party becomes liable or obligated, contingent or otherwise, for the repayment of credit extended by any third party, then such obligation or obligations shall be satisfied wholly from his or her separate property and shall be treated between the parties as the separate debt of the contracting party. Neither party shall be obligated by debt created by the other party, unless both parties agree to be bound in the instrument or instruments pursuant to which the debt is created. Each of the parties hereto agrees that he or she shall do all things necessary to insure that any creditor of such party's separate estate agrees to look solely to that party's separate property or estate for repayment of such creditor. The party incurring such obligation shall indemnify the other party in the event the other party is ever required to satisfy the same.

Exhibits A and B listed the separate property—assets and liabilities—of each party. Justin owned a residence located at 501 E. Sul Ross Avenue in Alpine, Texas. Alicia owned a residence at 438 E. Rosewood in San Antonio, Texas. Justin's liabilities were listed on Exhibit A as follows: Note payable—WTNB $55,000; Note payable—WTNB $100,000; Note payable—TransPecos Bank $294,132; Note payable—Jeff Haynes $186,000; Note payable—Comercia [sic] Bank $724,000.

On August 27, 2012, Alicia filed a petition for divorce and asked for a division of community property. Justin responded that the Marital Agreement precluded the formation of any community estate subject to division. Alicia denied the Agreement's enforceability, but the trial court[1] held that the Agreement was valid and enforceable as a matter of law. Alicia then asserted claims for breach of contract and for indemnity under the Marital Agreement, requesting approximately $611,000. In support, she submitted the following damage model alleging five deposits of her separate property were used to pay fourteen debits from the couple's joint checking account in satisfaction of Justin's separate debts:



CREDITS		DEBITS		RESULT
DATE	DEPOSIT/SOURCE	DATE	WITHDRAWAL/USE	INDEMNITY
6.3.04	$200,000 MOLD	6.3.04	$100,739.73 WT NB	$100,739.73
6.21.04	$139,289 MOLD	6.24.04	$14,414.82 AM EX	$115,154.55
1.11.05	$145,265 REFI*	1.11.05	$33,856.06 AM EX	$149,010.61
		1.11.05	$9,452.54 DISCO	$158,463,15
		1.11.05	$9,712.62 USAA	$168,175.77
		1.11.05	$131,808.33 WTNB	$260,419.55
		1.11.05	$7,232.00 BBTCO	$260,419.55
		1.11.05	$18,584.49 BBTC0	$260,419.55
		1.12.05	$56,000.00 BBTCO	$260,419.55
3.30.06	$295,000 HOME	3.30.06	$103,503.07 TRN BK	$363,922.62
		3.30.06	$15,000.00 TRN BK	$378,922.62
		3.30.06	$118,359.80 AM EX	$497,282.42
		3.30.06	$13,726.08 USAA	$511,008.50
10.14.08	$100,794 HOME*	10.21.08	$100,000.00 WTBN	$611,008.50

- Indicates ½ of the proceeds because it is jointly held
- White box with Yellow outline denotes $145,265 cap for that period

[1] The Honorable Larry Noll, formerly presiding judge of the 408th Judicial District Court, Bexar County, Texas, heard the motion for summary judgment and signed the order on the motion for summary judgment.

The contract dispute was tried to the bench on September 22-29, 2014. The trial court adopted Alicia's damage model, except for the "result" column. In its subsequent Findings of Fact and Conclusions of Law, the trial court made Finding of Fact No. 22 regarding the damage model:

> The five dates (left-most column) on this chart depict five separate deposits as indicated under the heading "Deposit/Source." Each of the Deposits, according to the Agreement and the admitted evidence, was the separate property of Alicia. Exhibits admitted at trial corroborate the separate property nature of the funds: The $200,000 check, the $139,289 check and the $295,000 check were all clearly sourced from Alicia's separate property home. The $145,265 in refinancing proceeds came in the form of a check drawn payable to Justin and Alicia, jointly, from the refinancing of [the Sul Ross house] that both parties represented to the lender was jointly owned. The $100,794 in proceeds came from the sale of [the Sul Ross house] that was jointly owned. The Agreement includes terms to the effect that, if there was no agreement otherwise, that the parties would hold jointly owned assets as Tenants in Common. There was no statute of frauds defense plead.

After various modifications, the trial court ultimately signed a final monetary judgment and final decree of divorce awarding Alicia $451,051.13 in indemnity (less a $38,000.00 credit for amounts paid by Justin for temporary support during the divorce and interim attorney's fees) for the following payments:

1. $100,739.73 to West Texas National Bank on June 2, 2004 made from proceeds from a mold settlement on Alicia's separate property home;
2. $131,808.33 to West Texas National Bank on January 11, 2005 made from funds received from refinancing (home equity loan) Justin's Sul Ross house;
3. $103,503.07 to TransPecos Bank on March 30, 2006 made from proceeds from the sale of Alicia's home;
4. $15,000 to TransPecos Bank on March 30, 2006, made from proceeds from the sale of Alicia's home; [2] and
5. $100,000 payment to TransPecos Bank on October 21, 2008 made from proceeds from the sale of Justin's Sul Ross house.

The final modified judgment also awarded Alicia $150,000 in attorney's fees, as well as contingent appellate fees.

[2] Justin does not challenge the $15,000 award on appeal.

Justin perfected his appeal and requested preparation of the reporter's record. The reporter's record was filed, but 51 trial exhibits were missing. Justin filed a motion for new trial, contending that inaccuracies in the reporter's record warranted a new trial. In response, Alicia filed a "TRAP 34.6 Motion to Determine Accurate Copies of 'Lost' Exhibits." At a hearing on Alicia's motion, the court reporter produced duplicates of the missing exhibits. The trial court ruled that the court reporter could determine which copies were accurate duplicates of the missing exhibits, and then substituted the copies for the missing originals in the reporter's record in accordance with Rule 34.6(e)(2). TEX. R. APP. P. 34.6(e)(2). On April 21, 2016, the trial court signed its Findings of Facts and Conclusions of Law.

In eight issues on appeal, Justin argues the trial court erred in: (1) denying his motion for new trial, (2) awarding Alicia a judgment for indemnity, and (3) awarding attorneys' fees to Alicia.

REPORTER'S RECORD

In his first issue, Justin argues the trial court erred in denying his motion for new trial and in granting Alicia's "TRAP 34.6 Motion to Determine Accurate Copies of 'Lost' Exhibits" and substituting copies of the 51 exhibits that were missing from the reporter's record after trial. We review the trial court's ruling on a motion for new trial for an abuse of discretion. *Roberts v. Roper*, 373 S.W.3d 227, 235 (Tex. App.—Dallas 2012, no pet.).

Under Rule 34.6(f), a party is entitled to a new trial under the following circumstances:

> (1) if the appellant has timely requested a reporter's record;
> (2) if, without the appellant's fault, a significant exhibit or a significant portion of the court reporter's notes and records has been lost or destroyed or—if the proceedings were electronically recorded—a significant portion of the recording has been lost or destroyed or is inaudible;
> (3) if the lost, destroyed, or inaudible portion of the reporter's record, or the lost or destroyed exhibit, is necessary to the appeal's resolution; and
> (4) if the lost, destroyed or inaudible portion of the reporter's record cannot be replaced by agreement of the parties, or the lost or destroyed exhibit cannot be replaced either by agreement of the parties or with a copy determined by the trial court to accurately duplicate with reasonable certainty the original exhibit.

TEX. R. APP. P. 34.6(f). The movant is not entitled to a new trial unless all four circumstances are present. The Rule also contains a harm analysis, meaning that if the missing portion of the record is not necessary to the appeal's resolution, then the loss of that portion of the record is harmless and a new trial is not required. *Issac v. State*, 989 S.W.2d 754, 757 (Tex. Crim. App. 1999); *Gavrel v. Rodriguez*, 225 S.W.3d 758, 761 (Tex. App.—Houston [14th Dist.] 2007, pet. denied).

At the hearing on Alicia's motion, Alicia's attorney recounted that at trial, he gave Justin's trial counsel "a two-volume set of all the premarked and in-a-binder exhibits. I presented one set to the Court as a courtesy copy. One set is an original copy for the reporter; and a copy for myself." Justin's trial counsel confirmed that the copies in the notebooks were duplicates of the pre-admitted original trial exhibits based on a comparison with copies of the exhibits contained in the set of notebooks in his possession; however, counsel noted that the pre-admitted exhibits were not identical to the versions of one or more of the documents actually used at trial. At the conclusion of the hearing, the trial court stated that it would order the court reporter to look at the witness copies of the trial exhibits and determine which ones were accurate copies of what was admitted in trial and then order the court reporter to certify that the copies are accurate and to prepare a conforming record. There was no further objection by Justin's appellate counsel. The trial court signed an order providing that copies of "Petitioner's trial exhibits numbered 1, 8, 9, 12-44, and 52-66 attached to Petitioner's Motion are hereby determined with reasonable certainty to be accurate copies of the original Petitioner's Exhibits 1, 8, 9, 12-44, and 52-66 offered and admitted at trial." The trial court further directed the court reporter to certify the accuracy of said copies and to submit the same in a supplemental reporter's record.

We cannot agree that Justin is entitled to a new trial under Rule 34.6. Mere inaccuracies in the record do not require a new trial. Rule 34.6(e) provides that the trial court must settle a dispute concerning record inaccuracies. TEX. R. APP. P. 34.6(e)(2). "If the court finds any

inaccuracy, it must order the court reporter to conform the reporter's record (including text and any exhibits) to what occurred in the trial court, and to file certified corrections in the appellate court." *Id*. This is exactly what occurred here. In any event, Justin has not shown how he was harmed by any inaccurate or lost exhibits. Accordingly, we conclude the trial court did not abuse its discretion in denying Justin's motion for new trial. Justin's first issue is overruled.

INDEMNIFICATION UNDER THE MARITAL AGREEMENT

In his next five issues, Justin argues the trial court erred in addressing the indemnification claims.

Applicable Law and Standard of Review

The construction of an unambiguous contract is a question of law for the court, which we consider under a de novo standard of review. *Tawes v. Barnes*, 340 S.W.3d 419, 425 (Tex. 2011); *Chrysler Ins. Co. v. Greenspoint Dodge of Houston, Inc.*, 297 S.W.3d 248, 252 (Tex. 2009); *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983). When discerning the contracting parties' intent, courts must examine the entire agreement and give effect to each provision so that none is rendered meaningless. *Seagull Energy E & P, Inc. v. Eland Energy, Inc*., 207 S.W.3d 342, 345 (Tex. 2006); *Stine v. Stewart*, 80 S.W.3d 586, 589 (Tex. 2002) (per curiam). "No single provision taken alone will be given controlling effect; rather, all the provisions must be considered with reference to the whole instrument." *Coker*, 650 S.W.2d at 393.

We review the trial court's findings of fact using the same standard as applied when reviewing the sufficiency of the evidence supporting a jury's findings. *See Int'l Freight Forwarding, Inc. v. Am. Flange*, 993 S.W.2d 262, 269 (Tex. App.—San Antonio 1999, no pet.). We review findings "in the light most favorable to the finding and indulge every reasonable inference that supports" the finding. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005); *In re Estate of Cantu*, No. 04-11-00229-CV, 2012 WL 2336248, at *2 (Tex. App.—San Antonio

June 20, 2012, no pet.) (mem. op.). As the party challenging the legal sufficiency of the evidence, Justin must demonstrate that there is no evidence to support the adverse findings. *See Ruiz v. Guerra*, 293 S.W.3d 706, 718 (Tex. App.—San Antonio 2009, no pet.) (citing *Croucher v. Croucher*, 660 S.W.2d 55, 58 (Tex. 1983); *Collins & Aikman Floorcoverings, Inc. v. Thomason*, 256 S.W.3d 402, 407 (Tex. App.—San Antonio 2008, pet. denied)). A legal sufficiency or "no evidence" challenge is sustained when: (1) the record discloses a complete absence of evidence of a vital fact; (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact; (3) the evidence offered to prove a vital fact is no more than a mere scintilla; or (4) the evidence establishes conclusively the opposite of the vital fact. *Rosas v. Comm'n for Lawyer Discipline*, 335 S.W.3d 311, 316 (Tex. App.—San Antonio 2010, no pet.). To succeed on his factual sufficiency challenge, Justin must demonstrate on appeal that the trial court's findings are against the great weight and preponderance of the evidence. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001).

Indemnification

Under the Marital Agreement, Justin and Alicia agreed that there would be no community estate and that neither party's separate estate would be entitled to reimbursement from the other party's separate property. They did agree, however, to indemnify one another in two situations: 1) when one party incurs a debt, obligation, or expense "in connection with" his or her separate property and the other person pays such debt, obligation, or expense from the other party's separate property (paragraph V.A. of the Marital Agreement); and 2) when one party, without the other joining in the transaction, becomes obligated to repay credit and the other party is subsequently "required" to pay off that debt (paragraph V.B. of the Marital Agreement). With these provisions of the Marital Agreement in mind, we review the indemnity awards ordered by the trial court.

1. $131,808.33 payment to West Texas National Bank and $100,000 to TransPecos Bank, i.e., payments toward Justin's debt that Alicia claims were made from her half of the proceeds from the refinancing and sale of Justin's Sul Ross house

Justin purchased the home at 501 E. Sul Ross Avenue before marrying Alicia in March 2003. In 2005, he refinanced the home; both he and Alicia signed the loan documents as borrowers. The check for proceeds of the loan was made payable to both Justin and Alicia and was deposited into the couple's joint checking account on January 11, 2005. That same day, a payment in the amount of $131,808.33 was made from the joint checking account to West Texas National Bank.

In 2008, Justin sold the Sul Ross house to his family's company, Big Bend Telecom, Ltd. The deed lists the grantor as "Justin Van Aiken Haynes and wife, Alicia Haynes." The sale proceeds were deposited into the couple's joint checking account on October 14, 2008. One week later, a payment in the amount of $100,000 was made from the joint checking account to TransPecos Bank.

Alicia claimed that she was entitled to indemnity for the payments to West Texas National Bank and TransPecos Bank because her separate property (i.e., one half of the proceeds of the refinancing loan and one half of the proceeds of the house sale) was used to pay Justin's separate debt. The trial court granted her claims, finding, in part, that the character of the Sul Ross house "changed" from separate to jointly owned during the marriage; therefore, the parties jointly owned the house as tenants in common under the terms of the Marital Agreement. On appeal, Justin argues the Sul Ross house remained his separate property under the inception of title rule and thus the trial court erred in finding that the character of the home changed and in awarding to Alicia a net indemnity amount that included the $131,808.33 and $100,000 payments.

Exhibit A of the Marital Agreement lists the residence at 501 E. Sul Ross Avenue as the separate property of Justin. Paragraph I.A.1. provides that real property that Justin currently owns

and that is described in Schedule A "is and shall remain Justin's separate property." Paragraph I.A.4. provides that "[a]ll property that was acquired before marriage by either party shall remain the separate property of the one acquiring it." Paragraph I.A.8. of the Marital Agreement provides that "[a]ll property acquired with or traceable to any separate property owned by a party before or after the marriage of the parties shall remain that party's separate property." Nevertheless, in Finding of Fact No. 27, the trial court found that the Sul Ross house was originally Justin's separate property but that its character "changed during the marriage" based on remodeling activities and the fact that Alicia and Justin both signed refinancing documents.

Separate property includes "property owned or claimed by the spouse before marriage" and "property acquired by the spouse during marriage by gift, devise, or descent." TEX. FAM. CODE ANN. § 3.001 (West 2006); *see also* TEX. CONST. art. XVI, § 15. The characterization of property as "separate" or "community" is determined by its character at inception. *Leax v. Leax*, 305 S.W.3d 22, 33 (Tex. App.—Houston [1st Dist.] 2009, pet. denied); *McClary v. Thompson*, 65 S.W.3d 829, 834 (Tex. App.—Fort Worth 2002, pet. denied).

With regard to Alicia's argument that the refinancing changed the separate property character of the property, "[t]he character of property does not change because both parties sign a note, or because the names of both parties are on the deed of trust." *Rivera v. Hernandez*, 441 S.W.3d 413, 420 (Tex. App.—El Paso 2014, pet. denied) (quoting *Leighton v. Leighton*, 921 S.W.2d 365, 367 (Tex. App.—Houston [1st Dist.] 1996, no writ)). In *Girard v. Girard*, 521 S.W.2d 714, 716 (Tex. Civ. App.—Houston [1st Dist.], 1975, no writ), husband and wife borrowed money from a lending institution to build a home on the husband's separate property. Both spouses signed the note for which the realty served as collateral. *Id.* While the community estate may well have had a claim for reimbursement, it had no right, title or interest to the land. *Id.* at 717; *see also In re Marriage of Jordan*, 264 S.W.3d 850, 856 (Tex. App.—Waco 2008, no pet.), *overruled on*

other grounds by In re Marriage of Ramsey & Echols, 487 S.W.3d 762 (Tex. App.—Waco 2016, pet. denied) (fact that home was refinanced during marriage does not alter character of separate property). Even the execution by both parties of a home equity loan does not convert separate property to community property. *Langston v. Langston*, 82 S.W.3d 686, 687-88 (Tex. App.—Eastland 2002, no pet.) (reversing where trial court ruled that a community property interest in real estate was created by the execution of the note evidencing the loan). Therefore, the refinancing activities did not change the character of the Sul Ross property as a matter of law.

With regard to Alicia's argument that Justin gifted her a one-half interest in the Sul Ross house, a gift of real property may be made in two ways: either by deed or by oral gift. Generally, a conveyance of real property must "be in writing" and "subscribed and delivered by the conveyor" or his agent. TEX. PROP. CODE ANN. § 5.021 (West 2014) ("Instrument of Conveyance"); *see also* TEX. BUS. & COM. CODE ANN. § 26.01(a), (b)(4) (West 2015) ("Statute of Frauds"). To establish an oral gift of an interest in real property, 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. *In re Estate of McNutt*, 405 S.W.3d 194, 199 (Tex. App.—San Antonio 2013, no pet.) (Marion, J., dissenting); *Thompson v. Dart*, 746 S.W.2d 821, 825 (Tex. App.—San Antonio 1988, no writ). To be a gift in praesenti, the donor must, at the time he makes it, intend an immediate divestiture of the rights of ownership out of himself and a consequent immediate vesting of such rights in the donee. *Thompson*, 746 S.W.2d at 825. Three elements are necessary to establish the existence of a gift: (1) intent to make a gift; (2) delivery of the property; and (3) acceptance of the property. *Id.* Further, the owner must release all dominion and control over the property. *Id.* The person claiming the gift bears the burden of establishing these elements. *Id.*

Here, there was absolutely no evidence presented at trial that Justin executed a deed to Alicia. *See McCuen v. Huey*, 255 S.W.3d 716, 728 (Tex. App.—Waco 2008, no pet.). Moreover, there was no evidence of an oral gift of the home by Justin to Alicia. In order for Alicia to establish that Justin gifted her the Sul Ross house, she had to establish that Justin released all dominion and control over one half of the Sul Ross house. *See Thompson*, 746 S.W.2d at 825. This Alicia has failed to do. Thus, we conclude as a matter of law that the Sul Ross house remained Justin's separate property.

Having determined as a matter of law that the Sul Ross house was Justin's separate property acquired before marriage and that it remained so during the marriage, we hold Alicia's damage model incorrectly lists half of the proceeds of the home equity loan and half of the proceeds from the sale of the Sul Ross house as her separate property. As such, her separate property was not used to satisfy the $131,808.33 and $100,000 payments. Accordingly, the trial court erred in awarding Alicia a net indemnity award that included the $131,808.33 and $100,000 payments.

2. $100,739.73 payment to West Texas National Bank made from proceeds of mold settlement on Alicia's Rosewood house

On or about June 2, 2004, Alicia received $200,000 in proceeds from a mold settlement on her separate property home and deposited it into the couple's joint checking account. On June 3, 2004, a payment in the amount of $100,739.73 was made to West Texas National Bank from the joint checking account. The settlement proceeds were undisputedly Alicia's separate property. Justin argues, however, that Alicia is not entitled to indemnification because the West Texas National Bank loan was not taken out "in connection with" his separate property under paragraph V.A. of the Marital Agreement. We disagree.

The $100,739.73 payment was paid to West Texas National Bank on loan #6774; the original amount financed was $100,000. This loan was listed on Exhibit A as Justin's separate

liability. At trial, Justin admitted that note #6774 was his separate obligation and further stipulated in regards to the loan, "I will pay - - I will pay out of - - all the notes that I signed out of my separate property." In Request for Admission number 6, Justin admitted that check number 11506, dated June 3, 2004, in the amount of $100,739.73, and payable to West Texas National Bank, was made in payment of a financial obligation belonging to his separate estate. Thus, the foregoing evidence supports the trial court's finding that Alicia's separate property funds were used to pay Justin's separate debt.[3] We therefore affirm the trial court's indemnity award as it relates to the $100,739.73 payment.

3. $103,503.07 payment to TransPecos Bank made from proceeds of sale of Alicia's Rosewood house

On March 30, 2006, Alicia deposited $295,000 in proceeds from the sale of her separately owned home into the couple's joint checking account. The same day, a payment was made to TransPecos Bank in the amount of $103,503.07. It is undisputed that the sale proceeds are her separate property. As above, Justin again disputes that the TransPecos Bank loan was taken out "in connection with" his separate property pursuant to paragraph V.A. of the Marital Agreement. Again, we disagree.

The evidence at trial showed that the $103,503.07 payment was made to satisfy Justin's separate debt. Exhibit A lists a note payable to TransPecos Bank in the amount of $249,132 as Justin's separate liability. In Request for Admission number 11, Justin admitted that check number 10508, dated March 20, 2006, in the amount of $103,503.07, and payable to TransPecos Bank, was made in payment of a financial obligation belonging to his separate estate. Thus, the foregoing

[3] Because we conclude Alicia was entitled to indemnity under paragraph V.A. of the Marital Agreement, we need not address Justin's argument related to paragraph V.B.

evidence supports the trial court's finding that this payment related to Justin's separate debt.[4] We therefore affirm the trial court's indemnity award as it pertains to the $103,503.07 payment.[5]

ATTORNEY'S FEES

Finally, Justin complains the trial court erred in awarding Alicia $150,000 in attorney's fees because this included fees her lawyers expended trying to get the Marital Agreement declared unenforceable and because her demand was excessive, her fees were not properly segregated, and her attorneys did not act in good faith. Justin also argues the trial court erred in denying his request for attorney's fees. Having determined that some of the indemnity awards made by the trial court were erroneous, we reverse the portion of the judgment awarding attorney's fees and remand the cause to the trial court for a redetermination of the amount of reasonable and necessary attorney's fees, if any, to be awarded to the parties. *See Bossier ChryslerDodge II, Inc. v. Rauschenberg*, 238 S.W.3d 376, 376 (Tex. 2007); *Barker v. Eckman*, 213 S.W.3d 306, 314-15 (Tex. 2006); *see also Powell Elec. Sys., Inc. v. Hewlett Packard Co.*, 356 S.W.3d 113, 129 (Tex. App.—Houston [1st Dist.] 2011, no pet.) ("Because we have meaningfully reduced the amount of HP's damages on appeal, we must reverse the attorney's fees award and remand for a determination of attorney's fees."); *Prudential Ins. Co. v. Durante*, 443 S.W.3d 499, 515 (Tex. App.—El Paso 2014, pet. denied) (reversing and remanding award of attorney's fees in view of fact that appellant was partially successful on appeal).

[4] Because we conclude Alicia was entitled to indemnity under paragraph V.A. of the Marital Agreement, we need not address Justin's argument related to paragraph V.B.

[5] In his sixth issue, Justin asks that, as a matter of equity, we remand the cause for a new trial so that his indemnity claims may be considered. Because Justin failed to cite applicable authority and failed to provide substantive analysis in relation to this issue, nothing is presented for our review. *See* TEX. R. APP. P. 38.1(i).

CONCLUSION

We reverse the portion of the trial's court judgment awarding Alicia $451,051.13 in indemnity, less a $38,000 credit, render judgment that Alicia take nothing on her claims for indemnification in the amounts of $131,808.33 and $100,000, and modify the trial court's judgment to award Alicia $219,242.80 in indemnity, less a $38,000 credit for temporary support. We further reverse the portion of the trial court's judgment awarding Alicia $150,000 in attorney's fees and remand the cause to the trial court for a redetermination of the amount of reasonable and necessary attorney's fees, if any, to be awarded to the parties. In all other respects, we affirm the judgment of the trial court.

Rebeca C. Martinez, Justice