Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00257-CV

Ralph D. **KNOWLTON**,
Appellant

v.

Brenda L. **KNOWLTON**,
Appellee

From the 408th Judicial District Court, Bexar County, Texas
Trial Court No. 2016-CI-06309
Honorable Antonia Arteaga, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Karen Angelini, Justice
Marialyn Barnard, Justice
Rebeca C. Martinez, Justice

Delivered and Filed: May 16, 2018

AFFIRMED

Ralph D. Knowlton appeals from a final decree of divorce. The dispute in this appeal involves the characterization of approximately five acres of real property ("the property"). Ralph and his former spouse, Brenda L. Knowlton, had lived on the property in a mobile home during their marriage. After a bench trial, the trial court confirmed that the property was community property and awarded one-half of it to Ralph and the other half to Brenda. Ralph contends the trial court erred in awarding half of the property to Brenda because it was his sole and separate property. We affirm.

BACKGROUND

At trial, Ralph asserted that the property was his separate property because it was a gift given to him by his mother, Jessie Knowlton. Brenda challenged this assertion. Brenda testified that, in 2013, she and Ralph began the process of obtaining an equity loan to do repairs on the property. On November 18, 2013, Jessie signed a deed quitclaiming the property to Ralph. Brenda explained that she had printed the quitclaim deed "off the Internet," they had filled it out, and her mother-in-law had signed it. Brenda testified that the intent was for "Ralph to get the property so that Brenda and Ralph could obtain an equity loan to do repairs on the real property." But during the loan application process, the bank would not recognize the quitclaim deed because it claimed the deed lacked a legal description of the property. Therefore, on March 19, 2014, Jessie executed a second deed, a general warranty deed, which conveyed the property to both Ralph and Brenda. Additionally, on September 28, 2015, an attorney filed a statutory correction affidavit correcting the legal description on the warranty deed.[1] According to Brenda, the warranty deed and correction affidavit were done so that both Brenda and Ralph could "properly be owners of the property."

Ralph testified that he considered the property to be his upon receipt of the quitclaim deed from his mother. Ralph further testified that he did not intend for Brenda to have any ownership interest in the property, or to gift to any part of the real property to Brenda. Ralph explained that the only reason he had "participated" in the warranty deed, which added his wife to the property as a grantee, was to obtain the home equity loan. On cross-examination, Ralph acknowledged that during the loan process he had signed affidavits in which he stated that the property was community property.

[1]In the correction affidavit, the attorney states that he is filing the correction affidavit to correct the legal description in the general warranty deed because the metes and bounds form of the legal description was omitted from the general warranty deed.

The quitclaim deed, the warranty deed, the correction affidavit, and several other documents related to the home equity loan were admitted into evidence.

In arguing that the property was his separate property, Ralph relied on the quitclaim deed executed by Jessie. Ralph argued the quitclaim deed showed that the property was a gift from his mother to him. Ralph also argued that the subsequent warranty deed was invalid because Jessie had already conveyed all of her interest in the property to him. In arguing that the property was not Ralph's separate property, Brenda relied on both the quitclaim deed and the warranty deed as well as her testimony about the facts and circumstances surrounding the execution of these deeds. Brenda further argued that the quitclaim deed was invalid because it lacked a legal description.

After considering the arguments and the evidence presented, the trial court characterized the property as community property and concluded that it was "a just and right division of the parties' estate to divide the property equally between the parties." The trial court ordered that the property be sold, that the net proceeds from the sale be used to repay the home equity loan, and that the balance of the sale proceeds be divided equally between the parties.

The trial court made findings of fact and conclusions of law. In its findings of fact, the trial court found that Ralph and Brenda had acquired the property during their marriage when the parties were applying for a loan; that Ralph's mother had transferred the property to Ralph by quitclaim deed; that because the quitclaim deed did not contain a legal description of the property, the bank had required a warranty deed to both Ralph and Brenda; and that Ralph's mother had executed a warranty deed to both Ralph and Brenda. In its conclusions of law, the trial court concluded that it was a just and right division of the marital estate that the property be divided equally between the parties, that the property be sold, that the sale proceeds be used to repay the loan, and that the remaining proceeds be divided equally between Ralph and Brenda.

REBUTTING THE GIFT PRESUMPTION

In his first issue, Ralph argues the trial court erred by failing to find that the quitclaim deed was a valid gift from his mother to him. In his second issue, Ralph argues the trial court erred in failing to apply the presumption of gift. In his third issue, Ralph argues the trial court erred in failing to require Brenda to prove that the quitclaim deed was not a gift by clear and convincing evidence. In his fifth issue, Ralph argues the trial court erred in finding the evidence was sufficient to rebut the presumption of gift. Because these issues overlap, we address them together.

1. Standard of Review

We review the trial court's characterization of property on dissolution of marriage for an abuse of discretion. *In the Matter of the Marriage of Skarda*, 345 S.W.3d 666, 671 (Tex. App.—Amarillo 2011, no pet.); *see Garza v. Garza*, 217 S.W.3d 538, 548-49 (Tex. App.—San Antonio 2006, no pet.). In family law cases, the abuse of discretion standard overlaps with traditional sufficiency of the evidence standards of review. *Garza*, 217 S.W.3d at 549; *Moroch v. Collins*, 174 S.W.3d 849, 857 (Tex. App.—Dallas 2005, pet. denied). Therefore, legal and factual sufficiency are not independent grounds of reversible error, but instead are factors relevant to our assessment of whether the trial court abused its discretion. *Garza*, 217 S.W.3d at 549; *Moroch*, 174 S.W.3d at 857.

To determine whether the trial court abused its discretion because the evidence was legally or factually insufficient to support the trial court's decision, we engage in a two-pronged test: (1) did the trial court have sufficient evidence upon which to exercise its discretion; and (2) did the trial court err in its application of that discretion? *Garza*, 217 S.W.3d at 549; *Moroch*, 174 S.W.3d at 857. The applicable sufficiency review comes into play with regard to the first question. *Moroch*, 174 S.W.3d at 857. We then proceed to determine whether, based on the elicited evidence, the trial court made a reasonable decision. *Garza*, 217 S.W.3d at 449; *Moroch*, 174 S.W.3d at 857.

When, as here, the burden of proof at trial is by clear and convincing evidence, we employ a higher standard in performing our legal and factual sufficiency review. *Moroch*, 174 S.W.3d at 857. 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. TEX. FAM. CODE ANN. § 101.007 (West 2014). This intermediate standard falls between the preponderance of the evidence standard in ordinary civil proceedings and the reasonable doubt standard in criminal proceedings. *Moroch*, 174 S.W.3d at 857. Notwithstanding the clear and convincing evidence standard, the evidence need not be unequivocal or undisputed. *Id*. at 857-58.

In reviewing the evidence for legal sufficiency under the clear and convincing evidence standard, we look at all the evidence in the light most favorable to the judgment to determine if the trier of fact could reasonably have formed a firm belief or conviction that its finding was true. *In the Interest of J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002). We must assume that the fact finder resolved disputed facts in favor of its finding if a reasonable fact finder could do so. *Id*. In reviewing the evidence for factual sufficiency, we must give due consideration to evidence that the fact finder could reasonably find to be clear and convincing and then determine whether, based on the entire record, a fact finder could reasonably form a firm conviction or belief that the allegations were proven. *In the Interest of C.H.*, 89 S.W.3d 17, 25-27 (Tex. 2002).

2. Applicable Law

Only community property is subject to division by the trial court in a divorce proceeding. *Jacobs v. Jacobs*, 687 S.W.2d at 731, 733 (Tex. 1985); *Skarda*, 345 S.W.3d at 671. Property possessed by spouses during or on the dissolution of marriage is presumed to be community property. TEX. FAM. CODE ANN. § 3.003(a) (West 2006). Property a spouse acquires during

marriage by gift is separate property. TEX. FAM. CODE ANN. § 3.001(2) (West 2006); *see* TEX. CONST. art. XVI, § 15.

A gift is a voluntary transfer of property to another made gratuitously and without consideration. *Magness v. Magness*, 241 S.W.3d 910, 912 (Tex. App.—Dallas 2007, pet. denied). To establish a gift, the donee must establish (1) the intent to make a gift, (2) the delivery of the property, and (3) its acceptance. *Id*. The donor's intent is the principal issue in determining whether a gift was made. *Skarda*, 345 S.W.3d at 671. Generally, the burden of proving a gift is on the party claiming that a gift was made. *Woodworth v. Cortez*, 660 S.W.2d 561, 564 (Tex. App.—San Antonio 1983, writ ref'd n.r.e.). However, when a parent conveys property to his or her child, a presumption arises that the parent intended to make a gift to the child. *Id*. This presumption can be rebutted by clear and convincing evidence showing the absence of donative intent. *Cornett v. Cornett*, No. 12-16-00247-CV, 2017 WL 2570069, at *1 (Tex. App.—Tyler June 14, 2017, no pet.). In determining whether a gift was intended by the execution of a deed, we look to the facts and circumstances surrounding the execution of the deed and the recitations in the deed itself. *William v. Kaufman*, 275 S.W.3d 637, 641 (Tex. App.—Beaumont 2009, no pet.); *Woodworth*, 660 S.W.2d at 564.

3. Application

In this case, the evidence showed that Ralph's mother, Jessie, executed a deed quitclaiming her interest in some property to Ralph. Because of the presumption that a deed executed by a parent in favor of her child is a gift, the burden was on Brenda to prove by clear and convincing evidence that by executing the quitclaim deed, Jessie did not intend to convey the property to Ralph as a gift. *See Cornett*, 2017 WL 2570069, at *1. To determine whether the trial court abused its discretion in finding that Brenda rebutted the presumption of gift, we review the evidence to determine if Brenda met her burden. *See id.*, at *3.

At trial, Brenda provided testimony about the facts and circumstances surrounding the execution of the deeds. Brenda testified that, in 2013, she and Ralph began the process of obtaining a loan to do repairs on the property. Brenda further testified that her mother-in-law, Jessie, signed a deed quitclaiming her interest in the property to Ralph to assist Ralph and Brenda in obtaining the loan. Brenda explained that she had printed the quitclaim deed "off the Internet," they had filled it out, and Jessie had signed it. Brenda also testified that the intent was for Ralph to get the property so that Brenda and Ralph could obtain an equity loan to do repairs on the property. However, according to Brenda, the banks refused to recognize the quitclaim deed during the loan process because it lacked a legal description. Therefore, Jessie executed a general warranty deed so that both Brenda and Ralph could "properly be owners of the property."

Ralph did not testify about his mother's intent in executing the quitclaim deed. Instead, Ralph testified that *he* did not intend to gift the property to Brenda. However, Ralph's intent was irrelevant. In this case, the question was whether Jessie possessed the required donative intent, that is, whether Jessie intended to give the property to Ralph as a gift. *See Rosensky v. Rosensky*, No. 01-09-01029-CV, 2011 WL 743164, at *5 (Tex. App.—Houston [1st Dist.] March 3, 2011, no pet.) ("In determining whether a transaction constitutes a gift, we look to whether the *donor* … intended to make a gift.") (emphasis in original).

In the quitclaim deed, Jessie released and quitclaimed to Ralph "the property located in [B]exar County, Texas, described as: CB 4141 P-62C ABS 25 REFER TO; 8100-014-0235" "[f]or and *in consideration of the sum of Ten Dollars ($10.00) and other good and valuable consideration*, the receipt and sufficiency of which is hereby acknowledged…." (emphasis added). On its face, the quitclaim deed shows that the conveyance was not a gift. By definition, a gift is a voluntary transfer of property to another made gratuitously and *without consideration*. *Magness*, 241 S.W.3d at 912.

The evidence further showed that Jessie subsequently executed a second deed, the warranty deed, because the banks contended that the quitclaim deed lacked a legal description of the property.[2] *See Hahn v. Love*, 394 S.W.3d 14, 25 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) ("To be valid, a conveyance of real property must contain a sufficient description of the property to be conveyed."). The warranty deed, in which Jessie conveyed the property for "[c]ash and other valuable consideration" to both Ralph and Brenda, further supports a finding that Jessie lacked the donative intent required for a gift. *See Magness*, 241 S.W.3d at 912.

We conclude the record contains ample evidence upon which the trial court could have exercised its discretion. The quitclaim deed, the warranty deed, and Brenda's testimony all rebutted the presumption that Jessie had intended to give the property to Ralph as a gift. Both the quitclaim deed and the warranty deed state that Jessie conveyed the property for valuable consideration, indicating the conveyances were not gifts. The warranty deed, which conveys the property to both Ralph and Brenda, also shows that Jessie did not intend to convey the property solely to Ralph. Additionally, Brenda's testimony about the context in which Jessie signed the quitclaim deed and the warranty deed—that Jessie did so for the purpose of assisting Brenda and Ralph in obtaining a home equity loan—was further evidence rebutting the presumption of gift. *See Cornett*, 2017 WL 2570069, at *3 (concluding the trial court could have reasonably formed a firm belief or conviction that the presumption of gift was rebutted based on testimony that the property was not intended as a gift). Based on the evidence presented, the trial court could have formed a firm belief or conviction that Brenda rebutted the presumption that the quitclaim deed

[2]To the extent Ralph's brief might be construed as presenting an issue that the quitclaim deed was valid because it contained a sufficient description of the property, we conclude this issue is inadequately briefed and presents nothing for our review. An appellant's brief is required to "contain a clear and concise argument for the contentions made, with appropriate citations to authorities…." TEX. R. APP. P. 38.1(i). Ralph does not present a clear argument for this contention and he does not cite any cases or other authority to support this contention. *See id.*; *In the Estate of Blankenship*, 392 S.W.3d 249, 259 (Tex. App.—San Antonio 2012, no pet.) (holding an issue was inadequately briefed and presented nothing for review when the appellant's brief cited no cases or other authority to support her issue).

was a gift. We conclude that the trial court did not abuse its discretion in deciding that Brenda rebutted the presumption of gift.

REMAINING ISSUES

In his fourth issue, Ralph argues the trial court erred in finding that the documents related to the loan—the warranty deed and the correction affidavit—were sufficient to rebut the presumption of gift. However, the record does not show that the trial court's decision was based on the warranty deed and the correction affidavit alone. As previously discussed, other evidence was presented to rebut the presumption of gift, including the recitation of consideration in the quitclaim deed and Brenda's testimony about the facts and circumstances surrounding Jessie's execution of the deeds. Ralph further argues the trial court erred in concluding that the characterization of the property was changed by Ralph and Brenda's use of the property as collateral for the loan. *See Rivera v. Hernandez*, 441 S.W.3d 413, 420 (Tex. App.—El Paso 2014, pet. denied) ("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."). Again, the record does not show that the trial court's decision was based on the theory that property's use as collateral somehow changed the characterization of the property.

In his sixth issue, Ralph re-asserts that the property was given to him as a gift by his mother and argues that the trial court abused its discretion by divesting him of his separate property. A presumption exists that property possessed by spouses on the dissolution of marriage is community property. TEX. FAM. CODE ANN. § 3.003(a). In this case, no proof was presented to rebut the presumption that the property was community property. *See Pearson v. Fillingim*, 332 S.W.3d 361, 363-64 (Tex. 2011) (providing that in the absence of proof that property possessed by either spouse upon divorce is separate property, the property must be characterized as community

property). We conclude the trial court did not abuse its discretion in confirming the property as community property.

CONCLUSION

The judgment of the trial court is affirmed.

Karen Angelini, Justice