Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-18-00213-CV

Maria Eugenia **FREEZE**,
Appellant

v.

Erwin Florentino **RAMIREZ**,
Appellee

From the 224th Judicial District Court, Bexar County, Texas
Trial Court No. 2013-CI-15361
Honorable Michael E. Mery, Judge Presiding

Opinion by: Beth Watkins, Justice

Sitting: Rebeca C. Martinez, Justice
Irene Rios, Justice
Beth Watkins, Justice

Delivered and Filed: May 8, 2019

AFFIRMED

Appellant Maria Eugenia Freeze ("Maria") appeals from the trial court's final judgment in a divorce and suit affecting the parent-child relationship. We affirm the trial court's judgment.

Background

Maria and appellee Erwin Florentino Ramirez ("Erwin") were married in 2005 and are the parents of one child born in 2006. Maria filed an original petition for divorce in 2013. After Erwin answered but failed to appear for a status hearing, the trial court signed a default final decree of divorce on November 20, 2013.

On January 13, 2017, Erwin filed a petition for bill of review. The trial court granted the bill of review and held a bench trial over the course of three days in September and November 2017. The trial court signed a new final decree of divorce on February 28, 2018 ("the Final Decree") and subsequently issued findings of fact and conclusions of law.

In two issues on appeal, Maria challenges the trial court's calculation of Erwin's child support obligation and the trial court's division of the parties' property.

Child Support

In her first issue, Maria challenges the trial court's determination of child support. Maria argues the trial court's findings regarding child support are "manifestly unjust" because: (1) there is no evidence the monthly child support payment Erwin had been making since December 2013 was beyond his means; and (2) Erwin's testimony regarding his monthly income was "so inconsistent as to not be believable." Maria, therefore, challenges the legal and factual sufficiency of the evidence.

A. Relevant facts

Between December 2013 and trial, Maria and Erwin abided by the standard possession order in the default final decree of divorce, and Erwin made monthly child support payments to Maria. Erwin initially made six payments of $500 and then made $600 payments thereafter.[1]

At trial, Erwin testified he is a self-employed contractor who made $2,000 per month in 2017. Erwin filed a financial statement stating his "monthly gross average" income is $2,133.08, his total monthly expenses, excluding child support, are $2,105, and his "total available net income" is $1,768.79 per month. The trial court admitted Erwin's federal income tax returns for 2015 and 2016, each of which included a completed Schedule C profit and loss statement from

[1] Erwin explained: "When the papers of the divorce were signed, I read it and it had a total of 600. That was not the agreement that we had for 500."

Erwin's business. The tax returns reflect Erwin's annual business income, after deductions for ordinary and necessary business expenses, was $3,925 in 2015 and $3,359 in 2016. Erwin deducted car and truck expenses for his business totaling $30,719 in 2015 and $13,191 in 2016. Erwin testified he understands his car and truck expenses may be considered "income" for purposes of calculating child support.

In the Final Decree, the trial court found:

> (1) The net resources of [Erwin] per month are $3,063.58;
>
> (2) The percentage applied to [Erwin's] net resources for child support is 20%; and
>
> (3) If applicable, the specific reasons that the amount of child support per month ordered by the court varies from amount computed by applying the percentage guidelines under section 154.125 or section 154.129, as applicable. [*sic*]

In its findings of fact, the trial court made slightly different findings, noting Erwin's ***gross*** monthly resources are $3,063.58 and his ***net*** monthly resources are $2,372.48:

> 11. The gross resources of [Erwin] per month are $3,063.58.
>
> 12. The net resources of [Erwin] per month are $2,372.48.
>
> 13. The percentage applied to [Erwin's] net resources for child support is 20%.
>
> 14. The amount of child support ordered by the Court is in accordance with the guidelines set out in the Texas Family Code.

Based on those findings, the trial court concluded it is in the child's best interest that Erwin pay $464.50 per month in child support.

B. Standard of review

We review a trial court's orders pertaining to child support for abuse of discretion. *Melton v. Toomey*, 350 S.W.3d 235, 238 (Tex. App.—San Antonio 2011, no pet.). "'The test for abuse of discretion is whether the trial court acted without reference to any guiding rules or principles; in

other words, whether the act was arbitrary or unreasonable.'" *Id.* (quoting *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990)).

While legal and factual sufficiency are not independent grounds of error, they are relevant factors in assessing whether the trial court abused its discretion. *Cruz v. Cruz*, No. 04-17-00594-CV, 2018 WL 6793847, at *4 (Tex. App.—San Antonio Dec. 27, 2018, no pet.) (mem. op.). Where the appellant challenges the legal or factual sufficiency of the evidence supporting a child support determination, we apply a two-step test: (1) first, we determine whether the trial court had sufficient information on which to exercise its discretion; and (2) second, we consider whether the trial court erred in exercising that discretion. *Id.*

C. Analysis

A child support obligor must furnish "information sufficient to accurately identify [the obligor's] net resources and ability to pay child support; and . . . produce copies of income tax returns for the past two years, a financial statement, and current pay stubs." TEX. FAM. CODE ANN. § 154.063. Here, Erwin testified regarding his monthly income and expenses and produced copies of his 2015 and 2016 tax returns, as well as a detailed financial statement.

Maria argues Erwin's testimony about his monthly income and the exhibits he produced regarding his monthly income were "so inconsistent as to not be believable." Specifically, Maria argues it is not credible that Erwin lived on only $3,925 in 2015 and $3,359 in 2016—the amounts Erwin reported as his annual business income in his tax returns—while paying $600 per month in child support between 2013 and 2017. Maria, however, erroneously conflates annual business income for purposes of federal income taxes with net monthly resources for purposes of calculating child support. "The income tax regulations are distinct from the rules in the Family Code, and calculations prepared under one set of rules do not necessarily comply with the requirements of the other." *Powell v. Swanson*, 893 S.W.2d 161, 163 (Tex. App.—Houston [1st Dist.] 1995, no

writ). While a self-employed obligor like Erwin may deduct certain personal expenses as business expenses on his taxes, the trial court may take that into consideration in determining the obligor's actual income is greater than the adjusted gross income listed on his tax returns. *See In re M.A.B.*, No. 11-05-00034-CV, 2006 WL 893613, at *2 (Tex. App.—Eastland Apr. 6, 2006, no pet.) (mem. op.) (citing *Hudson v. Markum*, 948 S.W.2d 1, 3–4 (Tex. App.—Dallas 1997, writ denied)). It is apparent the trial court did so in this case.

Maria does not identify any evidence in the record that Erwin had a different amount of net monthly resources than the amount identified in his financial statement or the higher amount found by the trial court. Maria also does not identify any evidence demonstrating the trial court was not within its discretion to apply the twenty percent statutory guideline to that amount to calculate Erwin's child support obligation. The fact that Erwin previously paid $600 per month in child support, on its own, is insufficient to demonstrate the trial court abused its discretion by calculating Erwin's obligation based on current information regarding his net resources.

Therefore, we conclude the trial court had sufficient information regarding Erwin's monthly resources on which to exercise its discretion and did not err in exercising its discretion based on that information. *See Cruz*, 2018 WL 6793847, at *4; *see also Villalpando v. Villalpando*, 480 S.W.3d 801, 811 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (concluding trial court had necessary information to determine husband's resources where husband produced tax returns and financial statement and wife did not produce any evidence contradicting those documents). Maria's first issue is overruled.

Property Division

In her second issue, Maria argues the trial court abused its discretion in dividing the parties' property. Maria appears to argue the trial court erred in: (1) valuing the parties' real property assets; (2) awarding the community estate a dollar-for-dollar offset for rents Maria received from her

separate property during the marriage; and (3) declining to consider a laches argument. We discuss each argument separately.

A. Relevant facts

In 2008, Maria and Erwin purchased adjoining properties on a single lot located in San Antonio (jointly, "the SW19th Property") and financed the purchase with a loan from the seller. In 2011, Maria's father gifted her $59,727.68 to pay off the purchase loan on the SW19th Property. The trial court determined the SW19th Property is community property with a fair market value of $92,000. The trial court also determined Maria's separate estate is entitled to reimbursement from the community estate totaling $59,727.68. The trial court awarded the SW19th Property to Maria. Finding the value of the community property awarded to Maria exceeded the value of the community property awarded to Erwin by $34,348.16, the trial court awarded Erwin a judgment in that amount, secured by an owelty lien on the SW19th Property.

In 2012, Maria's mother transferred title to another property located in San Antonio ("the San Bernardo Property") to Maria. Beginning in February 2012, Maria collected rental income from the San Bernardo Property in the amount of $800 per month and transferred it to her parents. The trial court determined the San Bernardo Property is Maria's separate property but found the community estate is entitled to reimbursement from Maria's separate estate totaling $55,200—the amount of rents Maria had collected from the property and transferred to her parents by the time of trial.

After offsetting the reimbursement claims, the trial court determined Maria's separate estate is due reimbursement from the community estate totaling $4,527.68—the difference between the SW19th Property reimbursement and the San Bernardo Property reimbursement.

B. Standard of review

The Family Code provides a trial court "shall order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage." TEX. FAM. CODE ANN. § 7.001. We review this division for abuse of discretion. *Garza v. Garza*, 217 S.W.3d 538, 548 (Tex. App.—San Antonio 2006, no pet.). The trial court does not abuse its discretion if there is some evidence of a substantive and probative character that supports its decision. *Id.* at 549. As in the child support context, we review a challenge to the legal and factual sufficiency of the evidence by determining: (1) whether the trial court had sufficient evidence upon which to exercise its discretion; and (2) whether the trial court erred in its application of that discretion. *Id.*

C. Valuation of the SW19th Property

Maria does not dispute the trial court's determination that the SW19th Property is community property or that her separate estate is entitled to reimbursement for the $59,727.68 used to pay off the purchase loan on the SW19th Property. Instead, Maria argues the trial court erred in finding the SW19th Property's fair market value is $92,000 because the trial court failed to consider photographic evidence that the property was "dilapidated" and in a "state of disrepair."

The only evidence in the record reflecting the fair market value of the SW19th Property are photographs of the property introduced by Maria and print-outs from the Bexar County Appraisal District website introduced by Erwin. Erwin's evidence reflects that Bexar County assessed the taxable value of the adjoining properties in 2017 at $71,410 and $32,480, for a total of $103,890. Maria did not object to admission of the tax appraisals. Where tax appraisals are admitted without objection, they constitute some probative evidence on which the trial court can rely to determine the fair market value of real property. *In re Marriage of C.A.S. and D.P.S.*, 405

S.W.3d 373, 390 (Tex. App.—Dallas 2013, no pet.) (citing *Smith v. Grayson*, No. 03-10-00238-CV, 2011 WL 4924073, at *11 (Tex. App.—Austin Oct. 12, 2011, pet. dism'd) (mem. op.)).

The trial court ultimately determined the fair market value of the adjoining properties is $92,000—less than the appraised value. Maria does not identify any evidence in the record demonstrating the SW19th Property is worth less than $92,000. Although the photographs of the property reflect needed repairs, Maria did not introduce any evidence quantifying those repairs. It appears the trial court took Maria's photographs into consideration by valuing the SW19th Property at an amount less than the appraised value. Therefore, we conclude the trial court did not abuse its discretion in valuing the SW19th Property at $92,000.

D. Reimbursement for rental income from the San Bernardo Property

Maria does not appear to dispute that the rental income she received from the San Bernardo Property during the marriage is community property. *See Benavides v. Mathis*, 433 S.W.3d 59, 63 (Tex. App.—San Antonio 2014, pet. denied) ("Earnings from the separate estate of one spouse are community property."). Rather, Maria argues the trial court erred in awarding the community estate reimbursement for the rental income and in offsetting that amount against her separate estate's reimbursement claim. Although Maria suggests the trial court miscalculated the amount of the rental income, she argues: "The true error, however is not in the calculation of months of rent received, but rather how the trial court assigned an offset to the reimbursement claim in a dollar for dollar analysis."

In response, Erwin argues that while "reimbursement" may not have been the proper remedy under the circumstances, the trial court was within its discretion to consider Maria's diversion of rental income in making a just and equitable division of the property. Erwin cites an opinion in which our sister court considered whether the trial court abused its discretion by awarding wife "reimbursement" for rental income husband collected from his separate property

throughout the marriage without wife's knowledge or consent. *Lucy v. Lucy*, 162 S.W.3d 770, 773, 776 (Tex. App.—El Paso 2005, no pet.). Like Maria, the husband in *Lucy* argued on appeal that the trial court had no legal basis for allowing "reimbursement" because the wife had failed to establish an offsetting benefit to the wronged estate. *Id.* at 776–78. The court of appeals held that because "[a]n equitable right of reimbursement arises when the funds or assets of one estate are used to benefit and enhance another estate without itself receiving some benefit," reimbursement was not the proper remedy under the circumstances. *Id.* at 776, 778 (citing *Vallone v. Vallone*, 644 S.W.2d 455, 458 (Tex. 1982)). Regardless, the trial court did not abuse its discretion merely by "attaching a misnomer to the remedy employed." *Id.* at 778. The court of appeals concluded the trial court had discretion to consider the husband's fraud on the community estate in equalizing the division of property and did not abuse its discretion by awarding the wife relief mischaracterized as "reimbursement" for that fraud. *Id.*

Here, too, "reimbursement" was not the proper remedy for Maria's diversion of rental income from the San Bernardo Property because Erwin did not demonstrate any offsetting benefit to the community estate. *See id.* at 776. The trial court nevertheless was within its discretion to consider the rental income in making a just and equitable division of the assets, and the pleadings and the evidence presented at trial supported the trial court's judgment. In his first amended counter-petition, Erwin claimed Maria converted rental income from the San Bernardo Property and specifically requested that the trial court consider this conduct when dividing the community estate. At trial, Maria testified she gave her parents the $800 per month rental income she received from the San Bernardo Property from 2011 onward. Maria argues that even if the community estate were entitled to credit for the rental income, it would not be entitled to a dollar-for-dollar credit because Erwin did not contribute to taxes, upkeep, and insurance for the San Bernardo Property.

However, Maria did not present any evidence quantifying those expenses or demonstrating what amount should be credited to her estate.

Because we conclude the pleadings and the evidence introduced at trial support the trial court's judgment, we cannot conclude the trial court abused its discretion in considering the rental income in making the division of property or in attaching a misnomer to the remedy employed.

E. Laches

Finally, Maria argues that in making a just and equitable division of the assets, the trial court should have considered Erwin's lack of due diligence in pursuing his bill of review. Maria argues Erwin's delay resulted in a windfall to him because the appraised value of the SW19th Property greatly increased between 2013 and 2017. However, Maria does not cite any relevant legal authority supporting her argument, nor does she identify any evidence in the record demonstrating the SW19th Property value increased between 2013 and 2017 in any event. Accordingly, we conclude Maria waived any potential error based on this argument. *See* 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.").

Maria's second issue is overruled.

Conclusion

Because we overrule Maria's issues on appeal, we affirm the trial court's judgment.

Beth Watkins, Justice