Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-19-00318-CV

Leticia R. **BENAVIDES**,
Appellant

v.

Cristina B. **ALEXANDER**, as Permanent Guardian of the Person of Carlos Y. Benavides, Jr.; Carlos Y. Benavides, III; Rancho Viejo Cattle Company, Ltd.; Benavides Management, LLC; and Linda Cristina Alexander and Guillermo Benavides, as Managers of Benavides Management, LLC,
Appellees

From the 49th Judicial District Court, Webb County, Texas
Trial Court No. 2012CVQ-000161-D1
Honorable Jose A. Lopez, Judge Presiding

Opinion by: Beth Watkins, Justice

Sitting: Rebeca C. Martinez, Chief Justice
Patricia O. Alvarez, Justice
Beth Watkins, Justice

Delivered and Filed: November 3, 2021

REVERSED AND RENDERED IN PART; AFFIRMED AS MODIFIED IN PART

Appellant/cross-appellee Leticia R. Benavides and appellees/cross-appellants Linda Cristina Benavides Alexander, Carlos Y. Benavides III, Guillermo Benavides, Rancho Viejo Cattle Company, Ltd., and Benavides Management LLC appeal portions of a final judgment rendered after a jury trial. We reverse the trial court's judgment in part and render judgment that the residential property at issue in this appeal belonged to Carlos Y. Benavides, Jr. ("Carlos") as his

sole and separate property. We also modify the judgment in part and affirm the remainder of the judgment as modified.

FACTUAL BACKGROUND

At the time of trial, Leticia was Carlos's wife.[1] Alexander, Carlos III, and Guillermo are Carlos's adult children from a previous marriage. Carlos and his children served as principals of Rancho Viejo Cattle Company, Ltd. and Benavides Management, LLC, and Carlos's children remain in those roles.

Carlos and Leticia married on September 11, 2004, and they lived in a home that Carlos purchased in 2001 ("the O'Meara Circle residence"). Leticia agrees that after the wedding, she signed a property agreement between spouses. While cross-appellants contend Leticia also signed a premarital agreement, she disputes this and maintains she never saw the alleged premarital agreement until several years after her marriage.

Leticia testified that after they married, Carlos made an oral gift to her of all his property by telling her "*todo lo mio es tuyo*," which was translated at trial as "all that I have is yours." She testified Carlos repeated this phrase to her throughout their marriage, including a few days after their wedding when they opened a joint account with right of survivorship. She also testified he gifted the O'Meara Circle residence to her "as [of] the day we got married . . . [b]y parol gift."

In the fall of 2005, a San Antonio doctor diagnosed Carlos with dementia. Neither Carlos nor Leticia told Carlos's children about that diagnosis.

In 2006 and 2007, Carlos added Leticia's name to some of his pre-marriage banking and investment accounts, and he designated the bank accounts as joint accounts with right of

[1] In a different proceeding, the trial court signed a final decree of divorce dissolving Carlos and Leticia's marriage. Leticia's appeal of that decree is pending in this court. *See In the Matter of the Marriage of Benavides*, No. 04-20-00599-CV (Tex. App.—San Antonio filed Dec. 8, 2020). Carlos passed away on December 23, 2020.

survivorship. He also signed a warranty deed conveying an office building to Leticia. During this time, Carlos and Leticia jointly signed a settlement statement and a deed of trust refinancing the mortgage on the O'Meara Circle residence. The settlement statement identified both spouses as borrowers, but the warranty deed remained in Carlos's name only. In December of 2007, Carlos and Leticia opened another joint account with right of survivorship.

Leticia testified that Carlos gave her "full authority" over the joint accounts and did not exercise any control over her withdrawals. Between 2008 and 2012, Leticia wrote herself checks totaling $958,000 from the joint accounts, which she deposited into her separate, pre-marriage bank account.

Carlos's children testified that in 2008 or 2009, they "saw [him] declining in different ways." They testified that Carlos had always been an active participant in their family businesses, but his participation started to taper off in 2009. On September 2, 2011, Carlos's children filed an application to appoint a guardian of his person and estate. Alexander testified they filed the application because they could not operate their family businesses without Carlos's participation. Leticia testified that she believed Carlos's children sought a guardianship because he refused to sign off on a loan they wanted to obtain for a project he disapproved of. The parties agree that Carlos's children initially asked Leticia to serve as guardian and she refused.

On October 14, 2011, the guardianship court appointed Shirley Hale Mathis temporary guardian of Carlos's person and estate. Leticia testified Carlos was upset about the guardianship, so she hired two attorneys to contest it. She paid the attorneys with three checks totaling $73,512.10 out of the joint bank accounts. Carlos signed the first two checks himself, and both Leticia and Carlos signed the third check.

Mathis served as Carlos's temporary guardian until March 6, 2013, when the guardianship court appointed her permanent guardian of Carlos's estate and Alexander permanent guardian of

his person. After she became permanent guardian of Carlos's person, Alexander removed Carlos from the O'Meara Circle residence, but Leticia continued to live there. On October 19, 2016, the guardianship court appointed Alexander successor guardian of Carlos's estate, making her the guardian of both Carlos's person and his estate.

PROCEDURAL HISTORY

The litigation that led to this appeal originated as a 2012 interpleader action that several financial entities filed against Mathis and Leticia to determine which of them was entitled to the funds held in certain accounts. The trial court granted interpleader relief and discharged the financial entities from the suit. By that time, Leticia, cross-appellants, and Mathis had filed their own claims, counterclaims, and defenses in the interpleader case.

The parties tried their claims to a Webb County jury in May and June of 2018. On February 13, 2019, the trial court signed a final judgment that incorporated several pre-verdict summary dispositions and was largely consistent with the jury's verdict. Leticia and cross-appellants timely filed notices of appeal, but Mathis did not.

ANALYSIS

Leticia challenges the declaration in the judgment that "Carlos Y. Benavides, Jr., acting through the guardian of his estate, is entitled to possession and control of the funds" in several joint accounts with right of survivorship. Cross-appellants challenge: (1) the award of the O'Meara Circle residence to Leticia; (2) the judgment's recital "that on the date of the parol gift of [the O'Meara Circle residence], August 2011-to [*sic*] January 20, 2013, Carlos Y. Benavides Jr. did ***not*** lack mental capacity to understand the nature and effect of the act in which he was engaged, and the business he was transacting"; and (3) the take-nothing judgment on fraud and breach of fiduciary duty claims cross-appellants asserted against Leticia.

Leticia's Issues

Leticia asserts two challenges to the portion of the trial court's judgment declaring that Carlos, acting through the guardian of his estate, was entitled to possession and control of the funds in the joint accounts. First, she argues Mathis's and Alexander's pleadings do not support this relief. Second, she argues the trial court's declaration improperly disturbs "a purely personal right belonging to" Carlos by disregarding the right of survivorship designation on the accounts.

Whether the Judgment Is Supported by the Pleadings

Standard of Review and Applicable Law

Rule interpretation is a question of law over which the trial court has no discretion, and "which we review de novo by applying the same canons of construction applicable to statutes." *Zorrilla v. Aypco Constr. II, LLC*, 469 S.W.3d 143, 155 (Tex. 2015); *MedFin Manager, LLC v. Stone*, 613 S.W.3d 624, 628 (Tex. App.—San Antonio 2020, no pet.). Texas Rule of Civil Procedure 301 provides, "The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity." TEX. R. CIV. P. 301. "[A] party may not be granted relief in the absence of pleadings to support that relief." *Cunningham v. Parkdale Bank*, 660 S.W.2d 810, 813 (Tex. 1983).

"A prayer for general relief will support any relief raised by the evidence and consistent with the allegations in the petition." *Salomon v. Lesay*, 369 S.W.3d 540, 553 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (internal quotation marks omitted); *see also Sanchez v. Sanchez*, No. 04-06-00469-CV, 2007 WL 1888343, at *5 (Tex. App.—San Antonio July 3, 2007, pet. denied) (mem. op.) (affirming permanent injunction not specifically requested in pleadings because "the prayer for general relief, the allegations and requests within the petition, and the evidence presented authorized the trial court to order" that relief). "The trial judge is not constrained to enter

judgment only in a form specified by one of the parties," so long as its judgment conforms to the pleadings and evidence and correctly applies the law to the jury's verdict. *Salomon*, 369 S.W.3d at 553–54. When a party challenges an award of declaratory relief, the declaration is not reversible on grounds that the prevailing party did not specifically request it if the record shows the judgment "faithfully memorialize[s] [the trial court's] determination of the legal effect of the jury's verdict, in light of the pleadings on file and the evidence adduced at trial." *Id.* at 554. When the complaining party did not file special exceptions, "we liberally construe the pleadings in the pleader's favor." *Bos v. Smith*, 556 S.W.3d 293, 306 (Tex. 2018).

Application

Leticia first argues that the original guardian of Carlos's estate, Mathis, "asserted no claim for declaratory relief." However, Mathis filed a live answer and counterclaim alleging that the funds in the joint accounts were either Carlos's separate property or were community property under his sole management and control and Leticia therefore "would have no interest in or control over these funds." Mathis also alleged that the rights Leticia claimed were controlled by contracts between Leticia, Carlos, and the relevant financial institutions, and she argued that "the premarital agreements between Leticia and [Carlos] preclude any community property interests." Mathis did not specifically cite the Uniform Declaratory Judgments Act, but she requested "a final judgment decreeing [Carlos] to be the owner of all the funds interpled by the financial institutions"—i.e., the funds in the joint accounts. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 37.004; *see also Canales v. Zapatero*, 773 S.W.2d 659, 661 (Tex. App.—San Antonio 1989, writ denied) ("There is no particular type of pleading required for the Declaratory Judgments Act.").

Because Leticia did not specially except to these pleadings, we are required to construe them liberally in Mathis's favor. *See Bos*, 556 S.W.3d at 306. Liberally construed, Mathis's pleadings asked the trial court to declare how the parties' respective rights to the funds in the joint

accounts were affected by various contracts and this state's marital property laws. *See* TEX. CIV. PRAC. & REM. CODE § 37.004. That request "falls within the scope of the Declaratory Judgments Act." *Canales*, 773 S.W.2d at 661; *see also In re Estate of Pandozy*, No. 05-19-00755-CV, 2021 WL 711500, at *7 (Tex. App.—Dallas Feb. 22, 2021, no pet.) (mem. op.). Moreover, the jury found that the funds in the joint accounts belonged to Carlos, and that finding is consistent with Leticia's testimony that she had no independent source of income during the marriage. Based on this record, the trial court's declaration that Carlos, "acting through the guardian of his estate, is entitled to possession and control of the funds" in the joint accounts is consistent with Mathis's pleadings, the evidence presented at trial, and the jury's verdict. *See Salomon*, 369 S.W.3d at 553–54.

Leticia argues, however, that Mathis's pleadings cannot support the judgment because "Mathis was no longer the guardian of [Carlos]'s estate at the time of trial, and thus, she could not seek any relief on [Carlos]'s behalf." As support for this proposition, she cites *Embrey v. Royal Insurance Co. of America*, 22 S.W.3d 414 (Tex. 2000). However, *Embrey* notes only that "[a]n estate itself is not a legal entity and therefore cannot sue or be sued. But, if the personal representative of an estate participates in the case, the judgment involving the estate may be valid." *Embrey*, 22 S.W.3d at 415 n.2 (internal citation omitted). Here, Mathis had the power to "bring and defend suits by or against" Carlos at the time the relief in question was requested, and Alexander had that power at the time that relief was granted. *See* TEX. EST. CODE ANN. § 1151.101(a)(4). Because either Mathis or Alexander were parties to this case at all relevant times, a "personal representative" for the guardianship estate participated in all stages of this case. *See Embrey*, 22 S.W.3d at 415 n.2.

Despite Leticia's reliance on it, *Embrey* does not hold that a mid-litigation change in a ward's guardian will invalidate pleadings the previous guardian filed on the ward's behalf.

Moreover, such a result would be inconsistent with the plain language of the Estates Code, which provides that "[a] successor guardian has the rights and powers and is subject to all the duties of the predecessor" and "may . . . make himself or herself, and be made, a party to a suit prosecuted by or against the successor's predecessor[.]" TEX. EST. CODE ANN. § 1203.202(a), (c)(1). Even assuming arguendo that Alexander's pleadings did not request declaratory relief, none of Leticia's cited authority supports a conclusion that the trial court erred by granting Carlos relief that Mathis requested on his behalf while she was his guardian.

Finally, while Leticia contends Alexander "did not plead *any claims* for declaratory relief," Alexander's pleadings included a request for general relief. That request is sufficient to support any relief raised by the evidence and consistent with the allegations in Alexander's pleadings. *See Salomon*, 369 S.W.3d at 553–54. Alexander's pleadings alleged that Leticia's claims to the joint accounts were barred because Carlos "continues to own the [joint] account[s] during his lifetime." As was the case with Mathis's pleadings, we must liberally construe these allegations because there is no indication that Leticia specially excepted to them. *See Bos*, 556 S.W.3d at 306. Additionally, as noted above, Leticia testified she did not make any contributions to the joint accounts. She also testified that she knew the trial court's judgment would resolve the parties' respective claims to the money in those accounts. *See The Huff Energy Fund, L.P. v. Longview Energy Co.*, 482 S.W.3d 184, 195 (Tex. App.—San Antonio 2015), *aff'd*, 533 S.W.3d 866 (Tex. 2017) (pleading sufficiently states a claim if "an opposing attorney of reasonable competence, on review of the pleadings, can ascertain the nature and the basic issues of the controversy"). Moreover, once she became the guardian of Carlos's estate, Alexander had both a right and a duty to take possession of and manage Carlos's property as a matter of law. TEX. EST. CODE § 1151.101(a)(1); *see also* TEX. EST. CODE ANN. § 1151.152(a). Under these circumstances,

Alexander's request for general relief is sufficient to support the trial court's judgment. *See Salomon*, 369 S.W.3d at 553–54; *see also* TEX. R. CIV. P. 301.

We overrule Leticia's first issue.

Purely Personal Right

In her second issue, Leticia argues the right of survivorship designation on the joint accounts is a purely personal right belonging to Carlos that his guardian should not be allowed to revoke in his stead. As support for this argument, she cites cases holding that certain penalties sought against an individual or causes of action brought by an individual were extinguished by that individual's death. *See Johnson v. Rolls*, 79 S.W. 513, 513–14 (Tex. 1904); *First Nat'l Bank of Kerrville v. Hackworth*, 673 S.W.2d 218, 220–21 (Tex. App.—San Antonio 1984, no writ). She also contends, citing *Weatherly v. Byrd*, 566 S.W.2d 292 (Tex. 1978), that the Texas Supreme Court has held "a guardian may not exercise the purely personal elective rights of his ward." Finally, she contends the Texas Estates Code does not permit a guardian to revoke a ward's will. *See* TEX. EST. CODE ANN. § 253.002.

After reviewing Leticia's cited authorities, we conclude they are inapposite under these facts. The jury found that the funds in the joint accounts belonged solely to Carlos, and Leticia has not challenged that finding on appeal. None of Leticia's cited authority establishes that the guardian of a living ward's estate lacks authority to possess and control funds belonging to the ward if those funds are held in a joint account with right of survivorship. Indeed, such a result would be directly contrary to the Estates Code. *See* TEX. EST. CODE ANN. § 113.102 ("During the lifetime of all parties to a joint account, the account belongs to the parties in proportion to the net contributions by each party to the sums on deposit unless there is clear and convincing evidence of a different intent."); TEX. EST. CODE § 1151.101(a)(1) (guardian of the estate of a ward is entitled to "possess and manage all property belonging to the ward"); TEX. EST. CODE § 1151.152(a)

("Immediately after receiving letters of guardianship, the guardian of the estate shall collect and take possession of the ward's personal property[.]").

It is true that the *Weatherly* court held the "personal right" at issue in that case—there, the right to revoke a trust—was, absent an agreement to the contrary, "a purely personal right of the [ward] and does not vest in the guardian." *Weatherly*, 566 S.W.2d at 293. Leticia argues this holding mandates a conclusion that Alexander "should not have any authority to change the wishes of the account owner" regarding the right of survivorship designation. However, the *Weatherly* court also held the guardian in that case could "apply to a court of competent jurisdiction for authorization to revoke the trust." *See id*. Leticia has not disputed that the judgment at issue here was signed by "a court of competent jurisdiction." As a result, *Weatherly* does not support Leticia's challenge to the portion of that judgment authorizing Carlos, acting through Alexander, to exercise possession or control of the funds in the joint accounts.

We overrule Leticia's second issue. Having overruled both of Leticia's issues, we affirm the portion of the trial court's judgment declaring that "Carlos Y. Benavides, Jr., acting through the guardian of his estate, is entitled to possession and control of the funds" in the joint accounts.

Cross-Appellants' Issues

Cross-appellants argue the trial court erred by: (1) reciting in the judgment that Carlos "did not lack mental capacity" from August 2011 to January 20, 2013; (2) refusing to disregard the jury's finding that Carlos made an oral gift of the O'Meara Circle residence to Leticia; and (3) failing to disregard the jury's findings of zero damages arising out of Leticia's fraud and breach of fiduciary duty. In their first issue, cross-appellants request a reformation of the judgment, and in their second and third, they seek rendition of judgment in their favor. We consider cross-appellants' rendition points first. *See, e.g.*, *Bradley's Elec., Inc. v. Cigna Lloyds Ins. Co.*, 995 S.W.2d 675, 677 (Tex. 1999).

Refusal to Disregard the Oral Gift Finding

Cross-appellants argue the trial court should have disregarded the jury's oral gift finding in Leticia's favor because it is undisputed that Carlos did not convey the O'Meara Circle residence to Leticia in writing. As support for this assertion, cross-appellants rely on: (1) the generally applicable statute of frauds; and (2) the terms of the premarital agreement and post-marital property agreement between spouses. Because the premarital agreement and property agreement between spouses answer this question, we confine our analysis to those agreements.

Standard of Review

This court reviews a trial court's ruling on a motion to disregard a jury's finding as a legal sufficiency challenge. *See Tanner v. Nationwide Mut. Fire Ins. Co.*, 289 S.W.3d 828, 830 (Tex. 2009); *In re Guardianship of Litoff*, No. 04-11-00800-CV, 2013 WL 1223629, at *1 (Tex. App.—San Antonio Mar. 27, 2013, pet. denied) (mem. op.). We review the evidence in the light most favorable to the jury's finding, considering only the evidence that supports the jury's answer. *BNSF Ry. Co. v. Phillips*, 485 S.W.3d 908, 910 (Tex. 2015). "If more than a scintilla of evidence supports the verdict, it must be upheld." *Gharda USA, Inc. v. Control Sols., Inc.*, 464 S.W.3d 338, 347 (Tex. 2015). However, we "may not ignore contrary evidence that is conclusive." *Phillips*, 485 S.W.3d at 910.

Applicable Law

Cross-appellants argue the evidence conclusively proves the opposite of the jury's oral gift finding because Carlos and Leticia entered into marital property agreements that precluded Carlos from making an oral gift of the O'Meara Circle residence. *See Rubio v. Walsh*, No. 03-13-00698-CV, 2015 WL 4908585, at *2 (Tex. App.—Austin Aug. 13, 2015, no pet.) (parol gift claim is "a creation of common law"); *Sedona Contracting, Inc. v. Ford, Powell & Carson, Inc.*, 995 S.W.2d 192, 195–96 (Tex. App.—San Antonio 1999, pet. denied) (holding party waived a common law

right by contract). Texas courts generally interpret marital property agreements like other written contracts. *See McGoodwin v. McGoodwin*, 671 S.W.2d 880, 882 (Tex. 1984); *Williams v. Williams*, 246 S.W.3d 207, 210 (Tex. App.—Houston [14th Dist.] 2007, no pet.). The enforceability of a contract is normally a question of law to be resolved by the trial court. *See, e.g.*, *Komet v. Graves*, 40 S.W.3d 596, 601 (Tex. App.—San Antonio 2001, no pet.); *America's Favorite Chicken Co. v. Samaras*, 929 S.W.2d 617, 622 (Tex. App.—San Antonio 1996, writ denied). While ratification of a prior contract is often a mixed question of law and fact, a court may decide a ratification issue as a matter of law when the facts are uncontroverted. *BPX Operating Co. v. Strickhausen*, -- S.W.3d --, No. 19-0567, 2021 WL 2386141, at *4 (Tex. June 11, 2021). "Ratification occurs when a party recognizes the validity of a contract by . . . affirmatively acknowledging it." *Massey v. Galvan*, 822 S.W.2d 309, 315 (Tex. App.—Houston [14th Dist.] 1992, writ denied). "Express ratification—in writing, for example—typically makes the parties' intentions clear." *Strickhausen*, 2021 WL 2386141, at *5.

"In construing a written contract, the primary concern of the court is to ascertain the true intentions of the parties as expressed in the instrument." *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983); *Wheeler, Tr. of L&P Children's Tr. v. San Miguel Elec. Coop.*, 610 S.W.3d 60, 65 (Tex. App.—San Antonio 2020, pet. denied). "'If the written instrument is so worded that it can be given a certain or definite legal meaning or interpretation, then it is not ambiguous and the court will construe the contract as a matter of law.'" *Wheeler*, 610 S.W.3d at 65 (quoting *Coker*, 650 S.W.2d at 393).

Application

There are two marital property agreements at issue here: a premarital agreement and a post-marriage property agreement between spouses. The premarital agreement provides that any property belonging to Carlos before the marriage would remain his separate property, and requires

any modification or waiver of that agreement to be made in a writing that is signed by both parties and to "specifically identif[y] the waiver, abandonment, modification, amendment, discharge, or termination." Because there is conflicting evidence about whether Leticia signed the premarital agreement itself, the enforceability of that agreement might require a factfinder's resolution if it were the only contract at issue. *See In re S.M.H.*, 523 S.W.3d 783, 795 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (where dispute exists over whether parties mutually understood and assented to agreement, "determination of the existence of a contract is a question of fact for the finder of fact to decide").

However, Leticia acknowledges she signed the property agreement between spouses. That agreement expressly states, "The spouses desire to ratify their Premarital Agreement." Additionally, Article 3 of the property agreement between spouses is entitled "Ratification of Premarital Agreement" and provides, "This agreement, as well as being a contract in its own right, is a ratification of the Premarital Agreement previously executed by the spouses before their marriage." These provisions unambiguously show that by signing the property agreement between spouses, Leticia and Carlos intended to ratify the premarital agreement. *See Massey*, 822 S.W.2d at 315; *see also Strickhausen*, 2021 WL 2386141, at *4–5; *Coker*, 650 S.W.2d at 393. Accordingly, the trial court was required to construe the property agreement between spouses as a matter of law. *See Wheeler*, 610 S.W.3d at 65.

Despite this express ratification, Leticia contends the trial court could not find that she ratified the prenuptial agreement as a matter of law because she "didn't know all of [the premarital agreement's] material terms" and "[t]he premarital agreement is incomplete on its face." However, "[a]bsent fraud, misrepresentation, or deceit, a party is bound by the terms of the contract he signed, regardless of whether he read it or thought it had different terms." *In re McKinney*, 167

S.W.3d 833, 835 (Tex. 2005). Here, in addition to the express ratification language above, the property agreement between spouses provides that Leticia:

- "completely underst[oo]d the provisions of this agreement concerning its nature, subject matter, and legal effect";
- "had the opportunity to consult or retain independent counsel to represent her in connection with this agreement";
- had "been completely informed of the facts relating to the subject matter of this agreement, including the fact that by signing this agreement [she was] permanently surrendering rights to income and property [she] would otherwise have under Texas law"; and
- "underst[oo]d that by executing this agreement [she] may be adversely affecting [her] marital rights and property."

The property agreement between spouses also makes multiple references to "the Premarital Agreement previously executed by the spouses" and "the Premarital Agreement previously entered into by the spouses" and states, "The spouses presently own as separate property the real and/or personal property described in Schedules A and B of the Premarital Agreement."[2] Because Leticia has not alleged any fraud, misrepresentation, or deceit surrounding the signing of the property agreement between spouses, that agreement's plain language bars her, as a matter of law, from claiming she did not know the material terms or effect of either that agreement or the premarital agreement it expressly ratified. *See id.*

The uncontroverted evidence shows Leticia signed a document that: (1) expressly ratified the premarital agreement; (2) noted that the premarital agreement defined certain assets, including real property, as the parties' respective "sole and separate" property; and (3) provided that she had been "completely informed of the facts relating to the subject matter of this agreement." *See Wheeler*, 610 S.W.3d at 65; *see also Strickhausen*, 2021 WL 2386141, at *4–5. A gift of the

[2] It is undisputed that Schedule A includes "[a]ll real property . . . in the name of [Carlos]." It is further undisputed that the O'Meara Circle residence was titled solely in Carlos's name at all times relevant to this case.

O'Meara Circle residence to Leticia would effectively constitute a waiver or abandonment of the premarital agreement's terms that the residence would remain Carlos's separate property after the marriage. Because the premarital agreement provided that a writing signed by both parties was required to waive or abandon its terms and Leticia expressly ratified that agreement, the evidence conclusively shows that any gift of the O'Meara Circle residence had to be made in writing. *See Coker*, 650 S.W.2d at 393; *Wheeler*, 610 S.W.3d at 65. It is undisputed that Carlos did not gift the O'Meara Circle residence to Leticia in writing. Because we may not ignore this conclusive evidence, we hold the trial court erred by denying cross-appellants' motion to disregard the jury's finding that Carlos orally gifted the O'Meara Circle residence to Leticia. *See Phillips*, 485 S.W.3d at 910; *McClary v. Thompson*, 65 S.W.3d 829, 837 (Tex. App.—Fort Worth 2002, pet. denied) ("A premarital agreement should be interpreted in accordance with the true intentions of the parties as expressed in the instrument.").

Accordingly, we sustain cross-appellants' second issue, reverse the portion of the trial court's judgment awarding the O'Meara Circle residence to Leticia, and render judgment that that property belonged to Carlos as his sole and separate property. As a result of this disposition, we need not consider the parties' arguments on the statute of frauds or the required elements of an oral gift of real property. TEX. R. APP. P. 47.1.

Zero Damages Finding

In their third issue, cross-appellants complain that while the jury found Leticia's conduct constituted fraud and breach of fiduciary duty, it also found that conduct caused zero dollars in damages. Cross-appellants argue the trial court should have disregarded the zero damages findings because "the evidence establishes as a matter of law that Leticia harmed her husband's estate by writing three checks totaling $73,512.10 to her attorneys and having them signed by her husband when he was incapacitated."

Standard of Review and Applicable Law

As noted above, we review a trial court's ruling on a motion to disregard jury findings for legal sufficiency. *See Tanner*, 289 S.W.3d at 830. When a party challenges the legal sufficiency of the evidence supporting an adverse finding on which she bore the burden of proof at trial, she must show the evidence establishes, as a matter of law, all vital facts in support of the issue. *Zuniga v. Velasquez*, 274 S.W.3d 770, 773 (Tex. App.—San Antonio 2008, no pet.). We review the evidence in the light most favorable to the finding and ignore all evidence to the contrary. *Id.* "If there is no evidence to support the finding, we then examine the entire record to determine if the contrary proposition is established as a matter of law." *Id.* This court may not reverse a judgment on legal insufficiency grounds unless the contrary proposition is conclusively established. *Id.*

In reviewing a challenge to the sufficiency of the evidence, we defer to the factfinder as the sole judge of the credibility of the witnesses and the weight to give their testimony, recognizing that the factfinder may choose to believe some witnesses and disbelieve others. *City of Keller v. Wilson*, 168 S.W.3d 802, 818–19 (Tex. 2005). We may not substitute our judgment for the factfinder's, "even if the evidence would clearly support a different result." *United Parcel Serv., Inc. v. Rankin*, 468 S.W.3d 609, 615 (Tex. App.—San Antonio 2015, pet. denied). In deciding an amount to award as damages, a factfinder "is afforded considerable discretion." *McGalliard v. Kuhlmann*, 722 S.W.2d 694, 697 (Tex. 1986); *Medistar Corp. v. Schmidt*, 267 S.W.3d 150, 162 (Tex. App.—San Antonio 2008, pet. denied) (rejecting challenge to a jury's zero damages finding). "Unless the subject matter is solely for experts, jurors are capable of forming their own opinions from the record as a whole." *Uniroyal Goodrich Tire Co. v. Martinez*, 977 S.W.2d 328, 339 (Tex. 1998).

Application

Cross-appellants argue that because the jury found Leticia committed fraud and breached her fiduciary duty, it was required to also find that the three checks to the attorneys: (1) damaged Carlos; and (2) that damage was proximately caused by Leticia's fraud and breach of fiduciary duty. We note, as a threshold matter, that the liability questions the jury answered on cross-appellants' fraud and breach of fiduciary duty claims did not ask the jury to consider any specific conduct. While broad-form submission is favored in Texas, *see* TEX. R. CIV. P. 277, the broad-form liability questions used in this case mean we have no way of knowing what specific conduct the jury found constituted fraud or breach of fiduciary duty.

We know, however, that the jury found Leticia's tortious conduct did not proximately cause any harm that fell within the specific damage models the court's charge asked it to consider. On the fraud finding, the only measure of damages the charge instructed the jury to consider was:

> Payments for Leticia Benavides's attorneys' fees from Carlos Y. Benavides, Jr. during the temporary guardianship [i.e., the three checks at issue].

On the breach of fiduciary duty finding, the only measures of damage the charge instructed the jury to consider were:

> Payments for Leticia Benavides's attorneys' fees from Carlos Y. Benavides, Jr. during the temporary guardianship.
>
> Transfers of property or deposits, transfers, or expenditure of funds by Leticia Benavides for the primary purpose of depriving her spouse of the use and enjoyment of the assets or use of the funds.

The jury answered "0" to each of these questions. In considering cross-appellants' legal sufficiency challenge to these answers, we must determine if reasonable people could differ in their conclusions about whether Leticia's tortious conduct proximately caused damage in the amount of the three checks. *See City of Keller*, 168 S.W.3d at 816.

Because we hold reasonable people could disagree on this question, we must reject cross-appellants' assertion that the evidence conclusively establishes the opposite of the jury's findings. *See id.* Leticia testified Carlos "was furious" and "very upset" about the guardianship application and that she promised him she would hire attorneys to contest it. Leticia's testimony on this point tends to show she paid the attorneys to contest the guardianship because she believed Carlos himself wanted to do so. This testimony is more than a scintilla of evidence to support a conclusion that Leticia neither defrauded Carlos nor breached her fiduciary duty to him by asking him to sign the three checks made out to the attorneys she hired to perform that work. *See Lundy v. Masson*, 260 S.W.3d 482, 492, 501 (Tex. App.—Houston [14th Dist.] 2008, pet. denied) (listing required elements of fraud and breach of fiduciary duty); *see also W & T Offshore, Inc. v. Fredieu*, 610 S.W.3d 884, 898 (Tex. 2020) ("If more than a scintilla of competent evidence supports the judgment, the jury's verdict must be upheld."). Stated differently, the jury could have reasonably determined that the negotiation of the three checks simply did not constitute fraud or breach of fiduciary duty. While it is true, as cross-appellants note, that Carlos was under a temporary guardianship when he signed the checks in question and that the guardianship court found Leticia was adverse to him during the relevant time, cross-appellants have not cited any authority demonstrating that the negotiation of the three checks under those circumstances conclusively satisfies the required elements of their fraud and breach of fiduciary duty claims. As a result, even if we assume arguendo that the signing of the three checks harmed Carlos, cross-appellants have not conclusively shown that harm was proximately caused by Leticia's fraud or breach of fiduciary duty.

Moreover, because cross-appellants did not object to the wording of the charge on this issue, we must evaluate the sufficiency of the evidence based on the charge as it was submitted. *Osterberg v. Peca*, 12 S.W.3d 31, 55 (Tex. 2000). Here, the record shows the jury received

evidence upon which it could have concluded that Leticia's torts arose out of conduct wholly unrelated to the damage models set out in the charge. If the jury concluded that any harm proximately caused by Leticia's conduct could not be measured by the only damage models the charge permitted it to consider, then it had no choice but to answer "0" to the damages questions. *See id.*; *see also Golden Eagle Archery, Inc. v. Jackson*, 116 S.W.3d 757, 771 (Tex. 2003) (we must presume the jury followed the instructions in the charge).

For these reasons, the trial court did not err by deferring to the jury's findings and denying cross-appellants' motion to disregard those findings on this issue. We therefore overrule cross-appellants' third issue and affirm the trial court's take-nothing judgment on cross-appellants' fraud and breach of fiduciary duty claims.

"Did Not Lack Mental Capacity"

Finally, cross-appellants challenge the following recital in the judgment:

> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that on the date of the parol gift of the residential property identified as 108 O'Meara Circle, Laredo, Webb County, Texas, August 2011-to [*sic*] January 20, 2013, Carlos Y. Benavides, Jr. did ***not*** lack mental capacity to understand the nature and effect of the act in which he was engaged, and the business he was transacting.

The parties agree that Carlos's "lack of capacity" was only presented to the jury as a defense to Leticia's parol gift claim and that cross-appellants bore the burden of proof on that issue. Cross-appellants have not challenged the jury's "no" answer to the "lack of capacity" question. Instead, they argue this recital in the judgment is erroneous because, inter alia, the jury did not make an affirmative finding of capacity or any findings about when the purported gift was made.

Standard of Review and Applicable Law

As noted above, Texas Rule of Civil Procedure 301 provides that the trial court's judgment must conform to the pleadings, the evidence, and the verdict. TEX. R. CIV. P. 301. We review the trial court's application of the Rules of Civil Procedure de novo. *See Zorrilla*, 469 S.W.3d at 155;

MedFin Manager, 613 S.W.3d at 628. A trial court's recital of findings "beyond the scope of the jury's verdict" may support reformation of the judgment. *See Freedman v. Briarcroft Prop. Owners, Inc.*, 776 S.W.2d 212, 218 (Tex. App.—Houston [14th Dist.] 1989, writ denied).

Application

It is undisputed that the jury did not make—and was not asked to make—findings on whether Carlos lacked capacity on any date more specific than "the date of the gift." The challenged recital states Carlos "did not lack mental capacity" between August 2011 and January 20, 2013.[3] With the exception of the date range, the challenged recital appears at first glance to track the jury's "no" answer to Question 2 of the charge, which asked, "On the date of the gift, did Carlos Y. Benavides, Jr. lack mental capacity to make the gift found in question No. 1 [the O'Meara Circle residence]?"

However, the charge instructed the jury: "A 'yes' answer must be based on a preponderance of the evidence unless you are told otherwise. . . . If you do not find that a preponderance of the evidence supports a 'yes' answer, then answer 'no.'" We must presume the jury followed that instruction. *See, e.g.*, *Golden Eagle Archery*, 116 S.W.3d at 771. Accordingly, we must presume that the jury's "no" answer does not represent a finding of anything, but is instead only a failure or refusal to find that cross-appellants carried their burden of proof on Carlos's lack of capacity on the date of the purported gift. *See id.*

Cross-appellants' argument on this issue rests in the difference between a failure or refusal to find that they met their burden on the "lack of capacity" defense and an affirmative finding that Carlos did not lack capacity—essentially, that he had capacity at the relevant time. We agree with cross-appellants that the challenged recital is an affirmative finding that Carlos did not lack

[3] This date range corresponds to renovations Leticia made to the O'Meara Circle residence. Leticia presented evidence of those renovations in support of her oral gift claim.

capacity during the specified date range, as opposed to simply tracking the jury's answer to Question 2. *See C. & R. Transp., Inc. v. Campbell*, 406 S.W.2d 191, 194–95 (Tex. 1966) (holding court of appeals erred by treating jury's "no" answer to question about whether plaintiff "drove his pickup truck from the shoulder of the highway onto the highway" as an affirmative finding that he did not do so; "the [no] answer is nothing more than a failure or refusal by the jury to find from a preponderance of the evidence that [he did so] and means, in law, that the defendant failed to carry its burden of proving the fact"); *see also Walker v. Easton*, 643 S.W.2d 390, 391 (Tex. 1982) (discussing a jury's "definitive finding that [grantor] 'did not have sufficient mental capacity'"). As a result, the challenged recital includes two findings the jury did not make: (1) an affirmative finding of capacity; and (2) a date range applicable to that finding.

Leticia relies on Texas Rule of Civil Procedure 279 to argue that the trial court did not err by making additional findings on these two issues. Rule 279 provides in part:

> When a ground of recovery or defense consists of more than one element, if one or more of such elements *necessary to sustain* such ground of recovery or defense, and necessarily referable thereto, are submitted to and found by the jury, and one or more of such elements are omitted from the charge, without request or objection, and there is factually sufficient evidence to support a finding thereon, the trial court, at the request of either party, may after notice and hearing and at any time before the judgment is rendered, make and file written findings on such omitted element or elements in support of the judgment.

TEX. R. CIV. P. 279 (emphasis added). Because the jury rejected cross-appellants' lack of capacity defense, it did not find any elements necessary to sustain that defense. Moreover, even if we assume affirmative findings on Carlos's capacity and/or the date of the purported gift were necessary to sustain Leticia's oral gift claim, we have already held the evidence conclusively negates that claim. *See id.* (additional written findings are only permitted if "there is factually sufficient evidence to support a finding thereon"); *see also Orr v. Broussard*, 565 S.W.3d 415, 422

(Tex. App.—Houston [14th Dist.] 2018, no pet.) (a finding is immaterial if the issue "should not have been submitted at all").

Under these circumstances, Rule 279 did not permit the trial court to make additional written findings on either Carlos's capacity or the specific date of the purported gift. *See* TEX. R. CIV. P. 279; *Mandel v. Lewisville Indep. Sch. Dist.*, 499 S.W.3d 65, 74 (Tex. App.—Fort Worth 2016, pet. denied) (appellate courts "apply rules of civil procedure in accordance with their plain language"). The trial court therefore erred by including the challenged recital in the judgment. *See C. & R. Transp.*, 406 S.W.2d at 194; *see also Double Diamond, Inc. v. Saturn*, 339 S.W.3d 337, 345–46 (Tex. App.—Dallas 2011, pet. denied). Accordingly, we sustain cross-appellants' first issue and modify the judgment to remove the challenged recital.

CONCLUSION

We affirm the portion of the trial court's judgment declaring that Carlos, acting through the guardian of his estate, was entitled to possession and control of the funds in the joint accounts. We also affirm the trial court's take-nothing judgment on cross-appellants' fraud and breach of fiduciary duty claims. We reverse the portion of the trial court's judgment that awards the O'Meara Circle residence to Leticia, and render judgment that the O'Meara Circle residence belonged to Carlos as his sole and separate property. Finally, we modify the judgment to delete the paragraph regarding Carlos's capacity at the time of the purported gift of the O'Meara Circle residence.

Beth Watkins, Justice