



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-21-00298-CV

Gilbert Anthony SAUCEDO,
Appellant

v.

Monica AGUILAR-SAUCEDO,
Appellee

From the 288th Judicial District Court, Bexar County, Texas
Trial Court No. 2020-CI-10080
Honorable Mary Lou Alvarez, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: September 28, 2022

AFFIRMED AS MODIFIED

In this divorce proceeding, appellant Gilbert Anthony Saucedo contends insufficient evidence supports the trial court's award of spousal maintenance to appellee Monica Aguilar-Saucedo. We agree.

BACKGROUND

Gilbert and Monica were married almost thirteen years and had one child together when Monica filed her petition for divorce. In her petition, Monica requested, among other requests, post-divorce spousal maintenance for a reasonable period. Gilbert counterclaimed, and the trial

ensued over the matters the parties did not agree upon, including spousal maintenance. In the final decree, the trial court ordered Gilbert to pay spousal maintenance in the amount of \$2,000 per month for twelve months and then \$1,200 a month for twenty-four months. Gilbert appeals the trial court's award of spousal maintenance.¹

STANDARD OF REVIEW

We review the trial court's decision to award spousal maintenance under an abuse of discretion standard of review. *See Diaz v. Diaz*, 350 S.W.3d 251, 254 (Tex. App.—San Antonio 2011, pet. denied). Absent clear abuse of discretion, we do not disturb the trial court's decision to award spousal maintenance. *Amos v. Amos*, 79 S.W.3d 747, 749 (Tex. App.—Corpus Christi—Edinburg 2002, no pet.). Under this standard of review, the appropriate inquiry is whether the trial court's assessment of spousal maintenance was arbitrary or unreasonable. *Garcia v. Garcia*, 170 S.W.3d 644, 649 (Tex. App.—El Paso 2005, no pet.) (citing *Smithson v. Cessna Aircraft Co.*, 665 S.W.2d 439, 443 (Tex. 1984)). Therefore, we must “determine whether, based on the elicited evidence, the trial court made a reasonable decision. Stated inversely, we must conclude that the trial court's decision was neither arbitrary nor unreasonable.” *Garcia*, 170 S.W.3d at 649.

Because Gilbert did not have the burden of proof on the issue of spousal maintenance, his no-evidence complaints challenge the legal sufficiency of the evidence supporting the trial court's exercise of its discretion. *See In re Marriage of McCoy*, 567 S.W.3d 426, 429 (Tex. App.—Texarkana 2018, no pet.). The evidence is legally insufficient if no more than a mere scintilla of evidence is offered to prove a vital fact. *Jelinek v. Casas*, 328 S.W.3d 526, 532 (Tex. 2010). More than a scintilla of evidence exists when the evidence rises to a level enabling reasonable and fair-minded people to differ in their conclusions. *Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d

¹ It is undisputed appellant's appeal only pertains to the trial court's award of spousal maintenance in the trial court's final divorce decree.

706, 711 (Tex. 1997). “Less than a scintilla of evidence exists when the evidence is ‘so weak as to do no more than create a mere surmise or suspicion’ of a fact.” *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003) (quoting *Kindred v. Con/Chem, Inc.*, 650 S.W.2d 61, 63 (Tex. 1983)).

APPLICABLE LAW

“Spousal maintenance is allowed ‘only under very narrow’ and ‘very limited circumstances.’” *Kelly v. Kelly*, 634 S.W.3d 335, 363 (Tex. App.—Houston [1st Dist.] 2021, no pet.) (quoting *Dalton v. Dalton*, 551 S.W.3d 126, 130 (Tex. 2018) (citations omitted)). Under section 8.051 of the Texas Family Code, the trial court may in its discretion order spousal maintenance if the party seeking maintenance meets specific eligibility requirements. TEX. FAM. CODE ANN. § 8.051. When, as here, a divorce is sought in a marriage lasting ten years or longer, a spouse is eligible to seek spousal maintenance if the spouse lacks (1) sufficient property, including property awarded to the spouse in the divorce proceeding, to meet the spouse’s minimum reasonable needs, and (2) the ability to earn sufficient income to provide for the spouse’s minimum reasonable needs. *Id.* § 8.051(2)(B); *see also Diaz*, 350 S.W.3d at 254.

ANALYSIS

The trial court ordered Gilbert pay Monica \$1,458.24 per month in child support and cover all insurance for their child. At the time of trial, Monica, a nurse, worked at a med spa, averaging thirty-two hours a week, earning \$30.00 per hour. She testified she made between \$1,700 to \$1,800 every two weeks. Prior to working for the med spa, Monica explained she earned \$35.00 to \$36.00 per hour at other facilities. Monica stated she could not currently work more hours because the med spa at that time was only open four days a week.

Monica provided more information about the assets she received from the divorce based on her and Gilbert’s agreement. Monica received 100% of an IRA valued at approximately

\$21,684.30 and one-half of another account (known as the Robinhood account), for which the amount was not defined at trial. Monica also received \$41,568.39 cash from the sale of the marital residence.

With respect to her monthly expenses, Monica pays \$1,650 a month for rent. While Monica received the 2016 GMC Acadia in the divorce, the car has a note with a monthly payment of approximately \$850.00 a month. The note was set to be paid off by the end of 2021, the year of the trial. Although she did not quantify any amounts, Monica also stated she has expenses for utilities, insurance, and food. Monica explained she has \$60,000 in student loans, but at the time of trial the payments were deferred, and she estimated payments would be \$400.00 per month if she had to begin payments. She also testified she needs to establish her credit and wants to go back to school to obtain a nurse practitioner degree, claiming it would take her about three years to complete. However, Monica provided little information in addition to her desire to return to school. She also acknowledged she had no credit card debt at the time of trial.

Monica testified she lived with her three children, one twenty-year-old adult and not a child of the marriage with Gilbert; a seventeen-year-old also not a child of the marriage with Gilbert; and her twelve-year-old, who is Gilbert's child. The twenty-year-old does not contribute to the payment of rent or utilities. With respect to the seventeen-year-old, a child-support order directs that child's father pay Monica \$400.00 per month.

Monica testified that during the duration of the marriage she worked as a nurse and that she was not disabled in any way. When asked why she did not think she could earn sufficient income to support herself, Monica stated she had "never said that." Rather, Monica based her request for spousal maintenance on the need to "help [her] get on [her] feet to build up [her] credit[.]" and "basically it's just to help [her] rebuild [herself] and be able to afford to live the way we had been living before." Monica testified, "I just want to get us back to where we were."

Gilbert, on the other hand, testified that he believed Monica could support herself because she had always had a job during their marriage.

At the conclusion of the trial, the trial court ordered Gilbert pay Monica \$2,000 a month for twelve months, and then \$1,200 a month for twenty-four months in spousal maintenance.

The final divorce decree awarded Monica a total of \$63,252.69—\$41,568.39 (proceeds from sale of home) + \$21,684.30 (IRA)—in assets, plus one-half of the Robinhood account that had an unknown value. Monica's approximate monthly income totals \$5,249.90—\$1,458.24 (child support) + \$3,791.66 (her average monthly income)—not counting the \$400.00 additional child support for her seventeen-year-old; \$5,649.90 with the \$400.00 child support. The monthly expenses for which Monica identified totals \$2,500.00—\$1,650.00 (rent) + \$850.00 (car payment). Her debts include the \$60,000.00 in deferred student loans.

The assets awarded to Monica in the final divorce decree clearly exceed her debt. Monica's monthly income exceeds her monthly expenses by \$2,749.90 – \$3,149.90 depending on the additional \$400.00 child support she is to receive. And, even considering other monthly insurance, utilities, and food expense, for which Monica provided absolutely no evidence as to these amounts, Monica failed to establish she lacked the ability to pay those expenses.

Under Monica's and Gilbert's circumstances—married for more than ten years—spousal maintenance is to provide temporary support for a spouse who lacks sufficient property to meet *minimum* reasonable needs and lacks the ability to earn sufficient income to provide for *minimum* reasonable needs. TEX. FAM. CODE ANN. § 8.051(2)(B) (emphasis added). It was never intended to maintain a lifestyle a spouse had been accustomed to living. *See Fuentes v. Zaragoza*, 555 S.W.3d 141, 171 (Tex. App.—Houston [1st Dist.] 2018, no pet.) (reversing an award of spousal maintenance after trial court focused on the spouse's standard of living prior to divorce rather than the spouse's minimum reasonable needs); *O'Carolan v. Hopper*, 71 S.W.3d 529, 533 (Tex. App.—

Austin 2002, no pet.) (stating purpose of spousal maintenance is “to provide temporary and rehabilitative support for a spouse whose ability for self-support is lacking or has deteriorated over time while engaged in homemaking activities and whose capital assets are insufficient to provide support”). Monica worked, as a nurse, for the duration of the marriage, and she did not show she was incapable of providing for her minimum reasonable needs.

Accordingly, we conclude the evidence is legally insufficient to support a finding that Monica lacks sufficient property on the dissolution of the marriage and the earning ability to provide for her minimum reasonable needs. *See Watson v. Watson*, 286 S.W.3d 519, 525 (Tex. App.—Fort Worth 2009, no pet.); *see also Howe v. Howe*, 551 S.W.3d 236, 257 (Tex. App.—El Paso 2018, no pet.) (“Based on the sparse testimony of the minimal reasonable needs for the [w]ife, we conclude that the trial court abused its discretion in awarding spousal support[.]”). Thus, the trial court abused its discretion by awarding Monica spousal maintenance. *See Watson*, 286 S.W.3d at 525. We sustain Gilbert’s first appellate issue.

Because we sustain Gilbert’s first issue—that Monica failed to provide sufficient evidence demonstrating she lacked sufficient property and earnings to meet her minimum reasonable needs, and thus is not entitled to spousal maintenance—we need not address his remaining issues challenging the award of spousal maintenance.

CONCLUSION

Having sustained Gilbert’s first issue, we modify the trial court’s final divorce decree to delete all awards of spousal maintenance and affirm the judgment as modified. *See TEX. R. APP. P. 43.2(b)*.

Irene Rios, Justice