



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-21-00328-CV

Mayra Marlene **JAUREGUI**,  
Appellant

v.

Emilio **JAUREGUI**,  
Appellee

From the 37th Judicial District Court, Bexar County, Texas  
Trial Court No. 2020CI11899  
Honorable Martha Tanner, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

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

Delivered and Filed: October 26, 2022

**AFFIRMED IN PART; REVERSED AND REMANDED IN PART**

Appellant Mayra Marlene Jauregui appeals a final divorce decree dissolving her marriage to appellee Emilio Jauregui. On appeal, Mayra argues the trial court abused its discretion by denying her motion for continuance; the evidence supporting the trial court's findings regarding spousal maintenance and real property valuation and characterization is factually and legally insufficient; and the trial court erred in its division of the community estate. Because we conclude the trial court erred in its property division, we reverse the portion of the divorce decree relating

to the division of the community estate and remand the case for further proceedings consistent with this opinion; we affirm the remainder of the divorce decree.

### **BACKGROUND**

Mayra and Emilio married in 2000. During their marriage, they had two children and acquired a marital residence and several rental properties. On July 1, 2020, Emilio filed an original petition for divorce seeking, among other things, confirmation of three properties as his separate property and a just and right division of the community estate. Mayra responded by filing a general denial and counterpetition for divorce. The trial court set the case for trial on October 7, 2020, and on that day, Mayra moved for a continuance and requested mediation.

Mayra and Emilio ultimately agreed to reset the trial date, and over the next few months, they entered into a series of Rule 11 agreements, concerning discovery and their children. They also agreed to mediate. However, during mediation, the parties were unable to reach an agreement. The trial court reset the case for trial on April 28, 2021, and on the day before trial, Mayra moved for a second continuance, arguing she needed additional time to depose Emilio about the marital estate. The trial court rescheduled the trial for May 6, 2021, and Mayra requested a third continuance, arguing she did not have sufficient time to review an appraisal report she had recently received from Emilio and needed time to conduct her own appraisal of the marital residence.

The trial court denied Mayra's motion, and the case proceeded to trial. The trial court heard testimony from eight witnesses, including Emilio and Mayra. At the trial's conclusion, the trial court: 1) granted the divorce, 2) ordered the three properties Emilio identified in his original petition confirmed as his separate property, 3) awarded Emilio four properties, consisting of three rental properties and the marital residence, as his separate property; 4) ordered one property confirmed as Mayra's separate property; and 5) awarded Mayra six rental properties as her separate property. Although Mayra requested spousal maintenance, the trial court did not award the

maintenance. The trial court also entered several findings of fact regarding its spousal maintenance determination, real property valuation and characterization, and overall division of the marital assets. Mayra now appeals.

### MOTION FOR CONTINUANCE

#### *Standard of Review and Applicable Law*

We review a trial court's denial of a continuance motion for an abuse of discretion. *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 161 (Tex. 2004); *Waters v. Waters*, No. 04-16-00690-CV, 2017 WL 6345223, at \*3 (Tex. App.—San Antonio Dec. 13, 2017, no pet.) (mem. op.). A trial court abuses its discretion when it acts in an arbitrary or unreasonable manner or without reference to any guiding rules or principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985). We may not substitute our own judgment for the trial court's judgment with respect to matters committed to the trial court's discretion. *McAleer v. McAleer*, 394 S.W.3d 613, 617 (Tex. App.—Houston [1st Dist.] 2012, no pet.).

Texas Rule of Civil Procedure 251 governs continuances and provides a trial court may not grant a continuance “except for sufficient cause supported by affidavit, or by consent of the parties, or by operation of law.” TEX. R. CIV. P. 251. “A motion for continuance must be in writing, state the specific facts supporting the motion, and be verified or supported by an affidavit.” *Serrano v. Ryan's Crossing Apts.*, 241 S.W.3d 560, 564 (Tex. App.—El Paso 2007, pet. denied).

#### *Application*

The record shows the trial court had reset the case twice after Mayra requested a continuance and the mediation. On the morning of the final trial setting, Mayra filed a third continuance motion, arguing she needed additional time to review Emilio's appraisal report of the marital residence. She explained she received Emilio's report on April 30, 2021—six days before trial, and she needed to conduct her own independent appraisal because she believed Emilio's

report undervalued the property. She further argued when she asked Emilio for a copy of the report on April 7, Emilio sent her “a hodgepodge of insurance documents” and only some portions of the report. Emilio, however, argued he sent Mayra the complete report on April 21—fifteen days before trial—and Mayra could have acquired an appraisal of her own at any time. After hearing these arguments, the trial court noted the case had been pending since July 7, 2020 and denied Mayra’s continuance motion.

Here, the trial court based its decision to deny Mayra’s continuance motion on the length of time the case had been on file. Mayra, however, contends the case “ha[d] not been going on very long,” but we cannot substitute our own judgment for the trial court’s judgment on matters within its discretion, such as its duty to expeditiously dispose of cases and manage its docket. *See McAleer*, 394 S.W.3d at 617; *see also Trevino v. Trevino*, 64 S.W.3d 166, 170 (Tex. App.—San Antonio 2001, no pet.) (explaining a trial court has a “duty to schedule its cases in such a matter as to expeditiously dispose of them” and is given “wide discretion in managing its docket.” (quoting *Clanton v. Clark*, 639 S.W.2d 929, 931 (Tex. 1982))). Mayra further contends the trial court ordered Emilio to provide an appraisal by April 7, but other than judge’s notes, which form no part of the record, the record does not include an order regarding the appraisal. *See Vo v. Vo*, No. 04-18-00194-CV, 2018 WL 5808303, at \*1 (Tex. App.—San Antonio Nov. 7, 2018, no pet.) (mem. op.). Accordingly, we hold the trial court did not abuse its discretion in denying Mayra’s continuance motion, and we overrule this issue. *See Joe*, 145 S.W.3d at 161.

## SUFFICIENCY OF THE EVIDENCE

### *Standard of Review*

We review a trial court’s ruling on spousal maintenance and property division for an abuse of discretion. *Roberts v. Roberts*, 531 S.W.3d 224, 227, 231 (Tex. App.—San Antonio 2017, pet. denied). “Absent a clear abuse of discretion, we do not disturb the trial court’s decision to award

spousal maintenance.” *Id.* at 227. We further afford a trial court in a divorce proceeding “wide latitude in the exercise of its discretion to divide the marital estate.” *Id.* at 231. And as indicated above, a trial court abuses its discretion when it acts in an arbitrary or unreasonable manner or without reference to any guiding principles. *Downer*, 701 S.W.2d at 241–42.

When, as here, the legal and factual sufficiency of the evidence supporting the trial court’s findings of fact are challenged, we review the findings for sufficiency under the same legal standards applied to review jury verdicts. *Desta v. Anyaoha*, 371 S.W.3d 596, 598 (Tex. App.—Dallas 2012, no pet.) (citing *Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex. 1996); *Anderson v. City of Seven Points*, 806 S.W.2d 791, 794 (Tex. 1991)). In family law cases, the abuse of discretion standard overlaps with traditional sufficiency standards of review. *Garza v. Garza*, 217 S.W.3d 538, 549 (Tex. App.—San Antonio 2006, no pet.). As a result, legal and factual insufficiency challenges are not independent grounds for reversal; rather, these challenges constitute factors relevant to the assessment of whether the trial court abused its discretion. *Id.* “Therefore, in considering whether the trial court abused its discretion because the evidence is legally or factually insufficient, we apply a two-prong 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?” *Id.* “We then consider whether, based on the evidence, the trial court made a reasonable decision.” *Id.*

### ***Spousal Maintenance***

Mayra contends the evidence is legally and factually insufficient to support the trial court’s finding she was not entitled to spousal maintenance. According to Mayra, Emilio did not produce any evidence besides testimonial evidence showing the rental properties awarded to her generated enough rental income to cover her needs.

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)) (internal quotation marks omitted). Section 8.051(2) of the Texas Family Code authorizes a trial court to order spousal maintenance if the party seeking maintenance meets certain eligibility requirements. *See* TEX. FAM. CODE § 8.051; *Benoit v. Benoit*, No. 01-15-00023-CV, 2015 WL 9311401, at \*4 (Tex. App.—Houston [1st Dist.] Dec. 22, 2015, no pet.) (mem. op.). 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. TEX. FAM. CODE § 8.051(2)(B). “The Family Code also presumes that spousal maintenance is not warranted unless the spouse requesting it has exercised diligence in seeking suitable employment or developing the necessary skills to become self-supporting during the period of separation or the time the divorce is pending.” *Howe v. Howe*, 551 S.W.3d 236, 257 (Tex. App.—El Paso 2018, no pet.) (citing TEX. FAM. CODE § 8.053(a)).

Here, the trial court entered the following finding: Mayra “will have sufficient income to provide for her needs as a result of the property awarded to her.” The divorce decree shows the trial court awarded Mayra six rental properties, Emilio’s retirement account (valued at \$60,000) and two vehicles, including her primary vehicle and a vehicle her friend was using. The evidence at trial established Emilio managed the couple’s rental properties and was solely responsible for collecting the rents, maintaining the properties, and paying the taxes. He testified the six rental properties awarded to Mayra generated \$3,600 in monthly rental income. He further testified he

was unable to produce copies of any rental agreements because Mayra stole them and several other documents from him.

Mayra did not dispute this testimony. Instead, she testified Emilio controlled the couple's finances, and since their separation, she had been living in a property gifted to her by her parents. She testified she currently does not work, but at the beginning of the marriage, she worked as a stripper and a microfilm clerk in a hospital until she had the couple's first child. She also testified she needed \$4,500 in spousal maintenance.

Here, there is nothing in the record detailing how the property awarded to Mayra did not meet her minimum reasonable needs. *See Howe*, 551 S.W.3d at 257 (reforming final divorce decree to delete spousal maintenance award from date of final decree forward because record did not show wife's minimal reasonable needs were not met without spousal support). Beyond her request for \$4,500 in spousal maintenance, there is no development of her monthly fixed and variable expenses. *See id.* We must also presume spousal maintenance is not warranted because Mayra did not produce any evidence showing she was incapable of providing for her minimum reasonable needs or exercised diligence in finding suitable employment or developing the necessary skills to become self-supporting. *See id.; see also Saucedo v. Aguilar-Saucedo*, No. 04-21-00298-CV, 2022 WL 4492099, at \*3 (Tex. App.—San Antonio Sept. 28, 2022, no pet. h.) (mem. op.) (holding trial court abused discretion in awarding spousal maintenance when wife failed to show she was incapable of providing for her minimum reasonable needs). To the extent Mayra disputes Emilio's testimonial evidence regarding the amount of rent generated by the six properties awarded to her, we must defer to the trial court's credibility determinations. *See Slicker v. Slicker*, 464 S.W.3d 850, 857 (Tex. App.—Dallas 2015, no pet.) (providing we must give deference to trial court's credibility determinations when reviewing sufficiency of findings).

Accordingly, we hold based on this evidence, the trial court made a reasonable decision in entering its finding.

### *Valuation of Real Property*

Mayra next argues the evidence is legally and factually insufficient to support the trial court's findings regarding the properties' valuations, including the marital residence's valuation, in the community estate. Mayra argues Emilio requested the properties' values, except the marital residence's value, be based on Bexar County Appraisal District's valuations. However, he failed to produce any evidence showing the District's valuations. Mayra further contends Emilio failed to produce any evidence as to the marital residence's valuation. As a result, the trial court's valuation errors affected the just and right division of the community estate.

In general, "[a]n owner may testify about the market value of [his or her] property." *In re Marriage of C.A.S. and D.P.S.*, 405 S.W.3d 373, 390 (Tex. App.—Dallas 2013, no pet.). This general rule has limitations. *Banker v. Banker*, 517 S.W.3d 863, 871 (Tex. App.—Corpus Christi—Edinburg 2017, pet. denied). To testify on valuation, an owner:

must provide the factual basis on which his opinion rests. This burden is not onerous, particularly in light of the resources available today. Evidence of price paid, nearby sales, tax valuations, appraisals, online resources, and any other relevant factors may be offered to support the claim. But the valuation must be substantiated; a naked assertion of "market value" is not enough.

*Nat. Gas Pipeline Co. v. Justiss*, 397 S.W.3d 150, 159 (Tex. 2012); *Banker*, 517 S.W.3d at 871.

With respect to the properties, the trial court entered Amended Finding 10, which listed fourteen properties, including the marital residence, and their respective values. As Mayra points out, the only evidence regarding these valuations consisted of Emilio's testimony. Emilio testified he believed all the properties, except the marital residence, should be valued pursuant to the valuations given by Bexar County Appraisal District. Emilio testified five of the properties,



including the marital residence, had a total valuation of \$569,410 based on the District's valuation and the six properties awarded to Mayra had a total valuation of \$326,430.

Beyond Emilio's naked assertion, there is no testimony specific as to each of the properties' valuations. He did not provide any testimony about each of the properties' purchase prices, nearby sales, tax valuations, appraisals, or any other relevant factors to support the trial court's finding. At most, Emilio testified he purchased two of the properties in June of 2000 for \$43,000. The record also shows Emilio's counsel voluntarily withdrew all the admitted exhibits. *See Barnett v. Barnett*, No. 2-04-259-CV, 2005 WL 3244278, at \*2 (Tex. App.—San Antonio Dec. 1, 2005, no pet.) (mem. op.) (concluding record did not include any exhibits when counsel voluntarily withdrew exhibits). We therefore conclude Emilio's testimony is a naked assertion of the properties' market value and it is unsubstantiated because it fails to provide a factual basis for his opinion. *See Justiss*, 397 S.W.3d at 159 (explaining owner may not simply state number to substantiate value claim and must provide factual basis on which opinion is based). Accordingly, because there is no evidence supporting any of the properties' valuations, we hold the valuations set out in the trial court's Amended Finding 10 constitute an abuse of discretion. *See Mata v. Mata*, 710 S.W.2d 756, 760 (Tex. App.—Corpus Christi 1986, no writ) (“A division based on values not within evidence is an abuse of discretion.”).

“Valuation errors, standing alone, do not constitute an abuse of discretion.” *In re Marriage of Hardin*, 572 S.W.3d 310, 313 (Tex. App.—Amarillo 2019, no pet.). Such errors require reversal only if they “render the trial court's division manifestly unjust.” *Id.*; *see In re Marriage of Collier*, 419 S.W.3d 390, 402 (Tex. App.—Amarillo 2011, pet. denied). This is because section 7.001 of the Texas Family Code requires the trial court to divide the estate of the parties in a manner that the court deems just and right, and “the values of the properties in the community estate are evidentiary to the ultimate issue of whether the trial court divided the properties in a just and right

manner.” *Collier*, 419 S.W.3d at 402 (citing TEX. FAM. CODE § 7.001 and *Finch v. Finch*, 825 S.W.2d 218, 221 (Tex. App.—Houston [1st Dist.] 1992, no writ)).

Here, the trial court’s failure to sufficiently support the properties’ valuations substantially affects the “just and right” division of the community estate. *Hardin*, 572 S.W.3d at 315 (holding trial court’s valuation error as to retirement asset substantially affected just and right division of estate). We must therefore remand the entire community estate for a new division. *See id.* (remanding division of community estate because trial court’s erroneous valuation of retirement asset); *see also Jacobs v. Jacobs*, 687 S.W.2d 731, 733 (Tex. 1985) (“Once reversible error affecting the ‘just and right’ division of the community estate is found, the court of appeals must remand the entire community estate for a new division.”).

### ***Characterization of Real Property***

Mayra further complains the evidence is legally and factually insufficient to support the trial court’s findings regarding three of the properties’ characterizations. Specifically, Mayra challenges the trial court’s Amended Finding 10, which characterizes the property located at 842 Leal as community property, and Amended Finding 11, which characterizes the properties located at 2707 Salinas and 2710 Salinas as Emilio’s separate property.

“Community property is property acquired by either spouse during the marriage that is not separate property.” *Roberts v. Roberts*, 402 S.W.3d 833, 838 (Tex. App.—San Antonio 2013, no pet.) (citing TEX. FAM. CODE § 3.002). “Separate property includes property owned by a spouse before marriage and acquired by a spouse during marriage by gift, devise, or descent.” *Id.* (citing TEX. FAM. CODE § 3.001). In Texas, there is a rebuttable presumption that all property possessed by either spouse during or on dissolution of marriage is community property. TEX. FAM. CODE § 3.003; *Pearson v. Fillingim*, 332 S.W.3d 361, 364 (Tex. 2011) (per curiam). Whether property is characterized as separate or community is determined at its inception. *Barnett v. Barnett*, 67

S.W.3d 107, 111 (Tex. 2001). When a challenging party asserts the separate character of property, they must prove its separate character by clear and convincing evidence. TEX. FAM. CODE § 3.003(b); *Pearson*, 332 S.W.3d at 363; *Roberts*, 402 S.W.3d at 838. This standard is generally not satisfied by mere testimony stating certain property is separate if that testimony is contradicted or unsupported by documentary evidence tracing the asserted separate nature of the property. *Roberts*, 402 S.W.3d at 839.

The trial court is without authority to divest a spouse of his or her separate property. *Pearson*, 332 S.W.3d at 364. If the trial court mischaracterizes property and “the mischaracterized property has value that would have affected the just and right division of the community estate, then the mischaracterization is harmful, and we must remand the entire community estate for a just and right division based upon the correct characterization of the property.” *Kelly v. Kelly*, 634 S.W.3d 335, 349 (Tex. App.—Houston [1st Dist.] 2021, no pet.). However, if the mischaracterization has only a *de minimis* effect on the just and right division, then we do not need to remand the case to the trial court. *Id.*

At the dissolution of the marriage, Mayra and Emilio’s property was presumed to be community. *See* TEX. FAM. CODE § 3.003; *Pearson*, 332 S.W.3d at 364; *Roberts*, 402 S.W.3d at 839. Turning to the property located at 842 Leal, both Mayra and Emilio testified Mayra inherited the property from her parents. This uncontradicted testimony sufficiently traces the separate nature of the property. *See Roberts*, 402 S.W.3d at 839. We therefore hold the trial court abused its discretion in characterizing 842 Leal as community property in Amended Finding 10. Furthermore, having determined the record is devoid of any evidence setting forth the property’s value, we cannot ascertain the magnitude of the mischaracterization’s effect on the just and right division. *See id.* at 840 (determining mischaracterization’s effect on just and right division by reviewing asset’s value in relation to community estate’s value). Therefore, we must remand the

entire community estate for a just and right division based on the correct characterization of the property located at 842 Leal. *See Kelly*, 634 S.W.3d at 349.

Turning to the properties located at 2707 Salinas and 2710 Salinas, Amended Finding 11 characterized these properties as Emilio's separate property. It was Emilio's burden to prove the properties' separate nature by clear and convincing evidence. *See TEX. FAM. CODE § 3.003(b); Pearson*, 332 S.W.3d at 363; *Roberts*, 402 S.W.3d at 838. The record shows Emilio and Mayra married on August 1, 2000, and Emilio testified he purchased the properties in June of 2000 from Rosita Hernandez with cashier's checks dated June 26, 2000. He further confirmed Hernandez conveyed the properties to him by deeds recorded on June 27, 2000. Emilio's testimony, however, is unsupported by documentary evidence tracing the asserted separate nature of the property. Again, the record shows all admitted exhibits were ultimately withdrawn. Moreover, it is unclear from the record whether Hernandez fully owned the Salinas properties when she conveyed them to Emilio. Emilio testified several of Hernandez's relatives executed various deeds to him regarding the properties in October of 2000, after his marriage to Mayra, but it was his understanding Hernandez "sold everything to me."

Based on this record, we conclude Emilio did not clearly and convincingly establish the separate nature of the Salinas properties, and thus failed to overcome the presumption of community property. We therefore hold the trial court abused its discretion in characterizing 2707 Salinas and 2710 Salinas as Emilio's separate property, and we remand the entire community estate for a just and right division based on the correct characterization of the property.

#### ***Omission of Bank Accounts***

Mayra next contends the trial court erred in omitting three bank accounts—a Frost Bank account, a Credit Human account, and a Wells Fargo account, from its findings of fact. Section 6.711(a) of the Family Code provides in a suit for dissolution of marriage, on request by a party,

the court shall state in writing its findings of fact and conclusions of law concerning (1) the characterization and value of each party's assets, liabilities, claims, and offsets on which disputed evidence has been presented, and (2) the characterization and value of the community estate's assets, liabilities, claims, and offsets on which disputed evidence has been presented. TEX. FAM. CODE § 6.711(a).

At trial, Emilio testified the Frost Bank account belonged to his mother, and he managed the account for her as a "tutor." He testified he only deposited his mother's Social Security check into the account, and he never deposited community funds into the account. With respect to the Credit Human and Wells Fargo accounts, Emilio testified each account had approximately \$5,000, and he agreed the accounts were community property. Mayra did not present any evidence regarding the accounts. The trial court ultimately divided the three bank accounts equally between Mayra and Emilio. Because the accounts were undisputed, the trial court was not required to make a finding as to the accounts. *See C.A.S. and D.P.S.*, 405 S.W.3d at 380–81 (concluding trial court was not required to make findings of fact as to amounts of tax liability when amount was undisputed). Accordingly, we overrule Mayra's contention concerning the bank account omissions from the findings.

#### CONCLUSION OF LAW

Finally, Mayra argues the trial court erred in concluding its property division was just and right irrespective of the parties' property characterization. According to Mayra, the trial court's mischaracterization of property directly impacted the trial court's division; thus, the trial court's just and right division was not conducted irrespective of the parties' property characterization.

"We review the trial court's conclusions of law de novo." *Stavinoha v. Stavinoha*, 126 S.W.3d 604, 608 (Tex. App.—Houston [14th Dist.] 2004, no pet.). We must determine whether

the conclusions of law drawn from the facts are correct, and we will uphold a conclusion if the judgment can be sustained on any legal theory the evidence supports. *Id.*

We agree with Mayra. “When the court mistakenly characterizes property that constitutes the main asset of the parties, the error is of such a magnitude that it materially affects the just and right division of the community estate.” *Id.* at 617. Here, the parties’ estate consists primarily of the several properties, including their marital residence, and the trial court’s insufficient findings regarding the properties’ valuations and its mischaracterizations materially affects the equitable division made by the trial court. *See id.* (holding trial court’s mischaracterization of disputed benefits had more than a *de minimis* effect of trial court’s just and right division). We therefore hold the trial court’s conclusion—specifically Amended Conclusion of Law 9—is erroneous as a matter of law. *See id.* at 617–18 (holding trial court’s conclusion that property division was just and right irrespective of characterization was erroneous as a matter of law when trial court failed to make sufficient findings on valuation and characterization of assets).

#### CONCLUSION

Having determined the trial court abused its discretion in the valuation and characterization of property and thus committed reversible error, we reverse the portion of the divorce decree relating to the division of property and remand the case for a just and right division of the community estate based upon the proper valuations and correct characterization of the property. We affirm the remaining portion of the divorce decree.

Luz Elena D. Chapa, Justice