COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00367-CV

E.R. APPELLANT

V.

B.R. APPELLEE

FROM THE 442ND DISTRICT COURT OF DENTON COUNTY
TRIAL COURT NO. 15-09679-442

MEMORANDUM OPINION[1]

I. INTRODUCTION

This is an appeal from a corrected final decree of divorce following a bench trial. In three issues, Appellant E.R. (Edgar)[2] argues that the trial court abused

[1]*See* Tex. R. App. P. 47.4.

[2]Because this is an appeal from a suit affecting the parent-child relationship involving the parties' minor child, as well as a suit for the dissolution of marriage, we use fictitious names to protect the anonymity of the parties. *See* Tex. Fam. Code Ann. § 109.002(d) (West 2014).

its discretion by ordering him to pay interim attorney's fees and attorney's fees assessed as sanctions and that the trial court erred by including in the corrected final decree of divorce a finding that he had failed to make the August 2016 child support payment. We will affirm.

II. BACKGROUND

The appellate record contains numerous motions filed by the parties and the reporter's records of several hearings held in this contested divorce case prior to the entry of the corrected final decree of divorce. Because the only portions of the corrected final decree of divorce that Edgar challenges on appeal are the award of attorney's fees and the finding of a missed child support payment, we set forth only the background facts pertinent to those items.

The trial court's January 15, 2016 temporary orders contain a section titled "Equalization of Attorney's Fees." In that section, the trial court ordered that if Edgar made an attorney's fees payment to his attorney, he "shall [also] remit a payment in the same amount to [Brenda's] attorney." During a subsequent combined hearing on Edgar's motion for mediation and Brenda's motion for interim attorney's fees, Brenda's attorney testified that "[Edgar's attorney] told me in the parking lot . . . that because you had ordered an equalization Order, that he no longer was going to charge [Edgar] so that [Edgar] didn't have to pay us any additional attorney's fees." At the conclusion of the hearing, the trial court orally ordered Edgar to pay Brenda's attorney $4,000 in interim attorney's fees

because Edgar had gone through two attorneys and was now representing himself pro se. The trial court memorialized this oral order in a docket entry.

On July 20, the day before the final hearing, the trial court held a hearing on Brenda's motion to set aside a purported rule 11 agreement that had settled the case, motion for sanctions, and request for attorney's fees. At this hearing, Brenda's attorney explained that on April 18, 2016, he had sent Edgar, who was pro se at the time, a proposed rule 11 agreement settling the case. But, the following day, Edgar had rejected the settlement offer proposed via the rule 11 agreement and had submitted a counter-proposal. Edgar subsequently hired new counsel, and the new attorney inquired whether the previously proposed offer of settlement via the April rule 11 agreement was still good. Brenda's attorney sent a courtesy copy of the rule 11 agreement to Edgar's new counsel because he was not in the case at the time the rule 11 agreement was proposed and informed Edgar's new counsel that the rule 11 offer of settlement was no longer "on the table." Nonetheless, on July 12, 2016, Edgar and/or his attorney filed a signed copy of the rule 11 agreement and a motion to enter a final divorce decree because Edgar had "decided to accept the rule 11 agreement." Edgar also paid monies to Brenda's attorney in an effort to effectuate the rule 11 agreement. Brenda's attorney explained that he had then filed the motion for sanctions and that Edgar's attorney had responded by filing motions attempting to set aside the filed rule 11 agreement and to cancel the hearing on his motion to enter a final divorce decree. According to Edgar's attorney, there was some

confusion between himself and Edgar. Brenda's attorney testified that Brenda had incurred $5,781.25 in attorney's fees as a result of the motion to set aside the rule 11 agreement. The trial court granted Brenda's motion to set aside the rule 11 agreement, found good cause to award Brenda attorney's fees and costs in the amount of $5,781.25, and ordered Edgar and his attorney jointly and severally to pay $5,781.25 to Brenda's attorney.

The next day, the trial court conducted the final hearing. During the final hearing, Edgar testified that he had not paid the $4,000 in interim attorney's fees that he was ordered to pay in April. At the conclusion of the final hearing, the trial court verbally ordered Edgar to pay Brenda $10,581.25 out of his IRA and clarified that this amount constituted the total sum of "all the previous judgment[s] that [were] ordered." The trial court signed an August 31, 2016, final decree of divorce awarding, in part, $10,581.25 from Edgar's Fidelity IRA account to Brenda made payable to Brenda's attorney for her attorney's fees; ordering that each party was responsible for his or her own attorney's fees; and including a finding that Edgar had failed to make an August 1, 2016 child support payment.

Approximately two weeks later, Brenda filed a motion to modify, correct, or reform the judgment, and the trial court signed a corrected final decree of divorce. The corrected final decree removed the Fidelity IRA from the property awarded to Brenda and instead set forth the following under the "Attorney's Fees" heading:

> To effect an equitable division of the estate of the parties and as a part of the division, and for services rendered in connection with conservatorship and support of the child, each party shall be responsible for his or her own attorney's fees, expenses, and costs incurred as a result of legal representation in this case, save and except the sum of Ten Thousand Five Hundred Eighty-One dollars and Twenty-Five cents ($10,581.25), from [Edgar's] Fidelity IRA account ending 814, made payable to LOUGHMILLER HIGGINS, P.C., 6401 S. Custer Road, Suite 2000, McKinney, Texas 75070, for the benefit [of Brenda's] attorney's fees, in the form of cash, cashier's check[,] or money order, no later than August 20, 2016. [Edgar] shall receive a credit against the $10,581.25 judgment for any and all monies paid to LOUGHMILLER HIGGINS, P.C. pursuant to the *Order on Respondent [Brenda's] Motion to Set Aside Purported Rule 11 Agreement, Withdrawal of Consent to Purported Rule 11 Agreement, Motion for Sanctions[,] and Request for Attorney's Fees* rendered on July 20, 2016[,] and further signed by this Court on July 25, 2016.

The corrected final decree also included a finding that Edgar had failed to pay child support on August 1, 2016. Edgar approved the corrected final decree only as to form.[3] This appeal followed.

[3]Brenda argues that "because [Edgar] approved the Agreed Decree as to both substance and form, this Court should overrule all of [Edgar's] issues." But because Edgar approved the corrected final decree only as to form, he has not waived his right to appeal the corrected final decree. *See Baw v. Baw*, 949 SW.2d 764, 766–67 (Tex. App.—Dallas 1997, no writ) (stating that for a valid consent judgment, each party must explicitly and unmistakably give its consent and that a party who approves only the form of a judgment forfeits no right to appeal). *See generally* Robinson C. Ramsey*, "In Form" Consent: Appealing "Approved" Judgments*, 9 App. Advoc. 3, 3 (1995) (stating that party who approves judgment as to form only does not waive the right to appeal the judgment because approval as to form indicates only that the written judgment accurately reflects the court's ruling).

III. AWARD OF ATTORNEY'S FEES

In his first issue, Edgar argues that the trial court abused its discretion by ordering him to pay $4,000 in interim attorney's fees because there was no evidence to support the award and because the award was arbitrary and unreasonable. In his second issue, Edgar argues that the trial court abused its discretion by ordering him to pay $5,781.25 in attorney's fees as sanctions. Edgar prays that this court would "reverse the final decree of the awards of $4,000 and $5,871.25." As set forth and quoted above, however, the "Attorney's Fees" section of the corrected final decree of divorce does not itemize the amounts of $4,000 or $5,871 and does not specify that any portion of the $10,581.25 of Brenda's attorney's fees that Edgar is ordered to pay is attributable to interim attorney's fees or to sanctions. Consequently, we will review the award of attorney's fees as a whole to determine whether it is supportable on any ground. *See, e.g.*, *Guar. Cty. Mut. Ins. Co. v. Reyna*, 709 S.W.2d 647, 648 (Tex. 1986) ("We must uphold a correct lower court judgment on any legal theory before it, even if the court gives an incorrect reason for its judgment.").

The trial court has broad discretion in deciding to award reasonable attorney's fees in a suit for dissolution of a marriage and in a suit affecting the parent-child relationship (SAPCR). *See* Tex. Fam. Code Ann. § 6.708(c) (West Supp. 2016), §§ 106.001, .002 (West 2014); *Diaz v. Diaz*, 350 S.W.3d 251, 256 (Tex. App.—San Antonio 2011, pet. denied); *see also In re Moore*, 511 S.W.3d 278, 288 (Tex. App.—Dallas 2016, no pet.); *In re M.A.N.M.*, 231 S.W.3d 562, 567

(Tex. App.—Dallas 2007, no pet.); *Capellen v. Capellen*, 888 S.W.2d 539, 545 (Tex. App.—El Paso 1994, writ denied) (explaining that a suit for divorce in which the parties are parents of minor children necessarily includes a SAPCR and that in any SAPCR proceeding, the court may award costs, which include reasonable attorney's fees). The reasonableness of the fee is a question of fact that must be supported by evidence. *See, e.g.*, *Vazquez v. Vazquez*, 292 S.W.3d 80, 86 (Tex. App.—Houston [14th Dist.] 2007, no pet.). A judgment awarding attorney's fees may be supported solely by the attorney's testimony. *See id.*

Here, Brenda's attorney testified at the final hearing that he had been licensed to practice law for more than twenty years; that he had practiced exclusively family law for fifteen years; that he is familiar with the reasonable and customary rates for attorneys in North Texas; that his hourly rate is $375 per hour; that his associate's rate is $325 per hour; that his paralegals' hourly rates range from $110 to $175 per hour; that all of the preceding hourly rates are reasonable; and that "all of the tasks that we've had to perform on [Brenda's] case, given the issues that have been brought up in this case, have all been reasonable and necessary." Over Edgar's objection, the trial court admitted into evidence a five-page, single-spaced "Detail Transaction File List" offered by Brenda's attorney showing the dates on which work was performed on this case, the hourly rate of the person who performed the work, the amount of time spent on the work, and a description of the work performed. The trial court also admitted into evidence a one-page summary of the legal fees that Brenda had

incurred in this case, which reflects total legal fees of $35,700.35 less costs of $825.35 for total attorney's fees of $34,875. Edgar did not object to the admission of the one-page summary, and no contrary evidence was presented.

Because the family code gives trial courts broad discretion in awarding attorney's fees in suits like this one and because the amount of attorney's fees assessed by the trial court is reasonable and is supported by evidence, we hold that the trial court did not abuse its discretion by requiring Edgar to pay $10,581.25 of Brenda's attorney's fees. *See* Tex. Fam. Code Ann. §§ 6.708(c), 106.001, 106.002; *M.A.N.M.*, 231 S.W.3d at 568 (holding that trial court did not abuse its discretion by awarding $20,000 in attorney's fees, which was less than the amount requested, based on attorney's testimony).[4] Accordingly, we overrule Edgar's first and second issues.

IV. FINDING INCLUDED IN THE JUDGMENT

In his third issue, Edgar argues that the trial court erred by finding that he had failed to pay child support on August 1, 2016, and by including this finding in the corrected final decree of divorce. Edgar argues that the trial court should have credited his August 2016 daycare payment against his August 2016 child

[4]Although the attorney's fees section in the corrected final decree states that attorney's fees are being assessed "[t]o effect an equitable division of the estate of the parties and as a part of the division," Edgar does not challenge on appeal the trial court's property division, which is another legal theory to support the trial court's award of attorney's fees. *See, e.g.*, *Murff v. Murff*, 615 S.W.2d 696, 699 (Tex. 1981) (stating that attorney's fees are among many factors courts may consider in making a just and right division of the marital estate).

support obligation. But Edgar points to no provision in the decree allowing for this proposed offset, nor does he cite any authority for his argument. Consequently, this complaint is not properly before us, and we decline to address it. *See* Tex. R. App. P. 38.1(i) (requiring appellant's brief to "contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record"); *Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284–85 (Tex. 1994).

With regard to Edgar's argument that the trial court erred by including the finding in the final decree, the record reflects that after the trial court signed the initial final decree of divorce on August 31, 2016, which included the finding that Edgar had failed to pay child support on August 1, 2016, Edgar took no action to alert the trial court that he believed this finding was in error. When the finding was then carried over into the corrected final decree of divorce that was signed on September 12, 2016, Edgar again took no action to present his complaint about the finding to the trial court. Because Edgar failed to present this complaint to the trial court, it is not preserved for our review. *See* Tex. R. App. P. 33.1(a); *Banda v. Garcia*, 955 S.W.2d 270, 272 (Tex. 1997) (stating that appellate court cannot reverse based on a complaint not raised in the trial court); *Bushell v. Dean*, 803 S.W.2d 711, 712 (Tex. 1991) (op. on reh'g).[5]

[5]Additionally, neither party requested findings of fact and conclusions of law under Texas Rules of Civil Procedure 297 and 298, nor were any separate findings made under rules 297 and 298 that could possibly conflict with the findings in the corrected final decree of divorce. *See generally In re C.A.B.*, 289

We overrule Edgar's third issue.

V. CONCLUSION

Having overruled Edgar's three issues, we affirm the trial court's corrected final decree of divorce.

PER CURIAM

PANEL: WALKER, GABRIEL, and SUDDERTH, JJ.

DELIVERED: September 21, 2017

S.W.3d 874, 881 (Tex. App.—Houston [14th Dist.] 2009, no pet.) ("If, as in this case, the findings contained in the judgment are not supplanted by findings filed separately under Rules 297 and 298, findings improperly included in a judgment still have probative value and are valid as findings.").