# In the
# Court of Appeals
# Second Appellate District of Texas
# at Fort Worth

---

No. 02-17-00451-CV

---

ANTHONY ALCEDO, Appellant

V.

JANET ALCEDO, Appellee

---

On Appeal from the 233rd District Court
Tarrant County, Texas
Trial Court No. 233-591171-16

---

Before Kerr and Pittman, JJ., and Gonzalez, J.[1]
Memorandum Opinion by Justice Pittman

---

[1]The Honorable Ruben Gonzalez, Judge of the 432nd District Court of Tarrant County, sitting by assignment of the Chief Justice of the Texas Supreme Court pursuant to section 74.003(h) of the Government Code. *See* Tex. Gov't Code Ann. § 74.003(h).

## MEMORANDUM OPINION

The simple question presented by this unfortunately necessary appeal in a divorce case is whether a trial court can, without a plausible basis—ignoring or disregarding the parties' stipulations, admissions, sworn inventories, and uncontested evidence regarding their separate property—unilaterally treat all property as community and proceed to divide all the property as if it were community. Because it is fundamental to our family law jurisprudence that a trial court cannot make such an unsupported determination, for the reasons set forth below, we reverse and remand.

### BACKGROUND

The circumstances of this case and the underlying divorce proceedings are undisputed. Appellant Anthony Alcedo (Tony) and Janet Alcedo (Janet) were married on June 11, 2005. This was a later-in-life marriage for the couple; Tony was 57 years old and Janet was 42 when they married. Janet and Tony had both been married before; Janet was Tony's third wife and Tony was Janet's second husband. During the underlying proceedings and now on appeal, it was and is agreed or uncontested that both Janet and Tony brought separate property into their marriage.

Throughout this divorce, filed on February 5, 2016, which should have been relatively straightforward, Janet and Tony continually and consistently asserted that they had extensive separate property. They pled and testified that they had separate property, and neither disputed that the other party had separate property. Indeed, they each submitted sworn inventories and appraisements admitting the other party

had separate property. In addition, Janet and Tony submitted separate property documentation proving their separate property, and both filed proposed property divisions as required by Local Rule 4.05(3) of the Tarrant County Family Courts, judicially admitting that the other party had separate property. Tarrant (Tex.) Loc. R. 4.05(3); s*ee, e.g.*, *Gana v. Gana*, No. 14-05-00601-CV, 2007 WL 1191904, at *6 (Tex. App.—Houston [14th Dist.] Apr. 24, 2007, no pet.) (mem. op. on reh'g). In fact, at no time during the divorce proceedings did any party dispute or contest the other party's separate property allegations. The only disputed issues before the trial judge at the bench trial on June 29, 2017 were how to divide Janet's retirement account—because it was earned during the marriage—and whether either party had reimbursement claims against the other's separate property.

Perplexingly, at the conclusion of the divorce proceedings, the trial court issued a letter ruling on August 1, 2017 ("Letter Ruling") that divided all of Tony's and Janet's assets as if they were community property and ignored the parties' agreements, stipulations, and uncontested submissions. Quite flummoxed, Tony filed a motion asking the trial court to reconsider its Letter Ruling. Despite agreeing to or not contesting Tony's separate property throughout the proceedings, Janet, who received the lion's share of Tony's separate property in the Letter Ruling, filed a cursory half-page response in opposition, devoid of legal authority and merely contending, "Just because [Tony] is unhappy with the Court's decisions, does not give rise for the Court

to reconsider all the evidence. This is a delay tactic on the part of [Tony], and such a tantrum should not be rewarded."[2]

At the conclusion of the subsequent hearing on the motion to reconsider its Letter Ruling, the trial court declined to reconsider its ruling and said that neither party had proved up separate property by clear and convincing evidence, stating, "I did not find separate property. . . . I do not find that separate property has been proven by clear and convincing evidence." The trial court then entered a final decree of divorce in accordance with the Letter Ruling without confirming either party's undisputed and uncontested separate property.

---

[2]Apparently, Janet was content with her bonanza and chose to resort to inflammatory invective rather than defend the Letter Ruling on any legal basis. Of course, such attacks are unprofessional and should not be tolerated. As the late Judge Eldon Mahon wisely observed after many decades on the federal bench, "[N]ame-calling and personal attacks, like those present in several of the parties' filings, do little to advance a party's position and only serve to cloud the real issues before the Court." *U.S. Fleet Servs. v. City of Fort Worth*, 141 F. Supp. 2d 631, 634 (N.D. Tex. 2001). Indeed, the Texas Lawyers Creed explicitly mandates that lawyers "will be courteous, civil, and prompt in oral and written communications"; "will not, without good cause, attribute bad motives or unethical conduct to opposing counsel nor bring the profession into disrepute by unfounded accusations of impropriety"; "will avoid disparaging personal remarks or acrimony towards opposing counsel, parties and witnesses"; "will not be influenced by any ill feeling between clients"; and "will abstain from any allusion to personal peculiarities or idiosyncrasies of opposing counsel." *Texas Lawyer's Creed—A Mandate for Professionalism*, *reprinted in Texas Rules of Court* 735–37 (2018), *available at* https://www.texasbar.com/AM/Template.cfm?Section=Ethics_Resources&Template=/CM/ContentDisplay.cfm&ContentID=30309 (last viewed May 23, 2019).

## DISCUSSION

Not surprisingly since Janet was awarded a large percentage of Tony's undisputed separate property, Tony followed with this appeal. He presents three related, overlapping issues challenging the trial court's division of property. In Issue One, he contends that the trial court erred by failing to confirm separate property when the parties stipulated that they had separate property. Similarly, in Issue Three, he contends that the trial court improperly divested him of his separate property. In Issue Two, Tony contends that the trial court abused its discretion by failing to make a just and right division of the marital estate.

Presumably hoping to keep her windfall, Janet filed a perfunctory response contesting Tony's issues on appeal, just as she did in response to his motion to reconsider the Letter Ruling in the trial court. But she makes no real attempt to distinguish Tony's recitation of the facts or the parties' stipulations and uncontested evidence regarding their separate property. Essentially, Janet argues that this court should ignore the parties' stipulations, agreements, and submissions and the uncontested evidence at the divorce trial and uphold the final decree of divorce because "**neither party** rebutted the community-property presumption by clear and convincing evidence."[3]

[3]On October 30, 2018 at 10:00 a.m., this court held oral argument, but only Tony's attorney appeared. Even though Janet requested oral argument and at least two of her attorneys were notified of the argument setting, without explanation, no

Because the trial court clearly abused its discretion in ignoring the parties' stipulations and admissions and the uncontested evidence regarding their undisputed separate property, for the reasons set forth below, we reverse and remand this matter for further proceedings.

## I. A Trial Court Has Discretion to Divide the Community Estate But Has No Discretion to Deprive a Spouse of His Separate Property.

We review a trial court's division of property in a divorce case under an abuse-of-discretion standard. *Murff v. Murff*, 615 S.W.2d 696, 698 (Tex. 1981); *In re the Marriage of Ramsey & Echols*, 487 S.W.3d 762, 766 (Tex. App.—Waco 2016, pet. denied); *Smith v. Smith*, 143 S.W.3d 206, 212 (Tex. App.—Waco 2004, no pet.). A trial court is presumed to have properly exercised its discretion in dividing the assets of a marriage. *Murff*, 615 S.W.2d at 699. But, a trial court abuses its discretion when it acts without reference to any guiding rules or principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985); *Barton v. Barton*, No. 08-15-00110-CV, 2018 WL 4659568, at *7 (Tex. App.—El Paso Sept. 28, 2018, no pet.). Further, a trial court abuses its discretion when it rules without supporting evidence. *See In re P.M.B.*, 2 S.W.3d 618, 621 (Tex. App.—Houston [14th Dist.] 1999, no pet.).

---

one appeared on Janet's behalf. Also, none of Janet's attorneys notified the court pursuant to Local Rule 4(D) that Janet had waived oral argument. *See* 2nd Tex. App. (Fort Worth) Loc. R. 4(D); *see also Dondi Props. Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 287 (N.D. Tex. 1988) (en banc) ("A lawyer owes, to the judiciary, candor, diligence and utmost respect.").

In Texas, all property on hand at the dissolution of marriage is presumed to be community property. Tex. Fam. Code. Ann. § 3.003(a); *see Tate v. Tate*, 55 S.W.3d 1, 4 (Tex. App.—El Paso 2000, no pet.). This is a rebuttable presumption, requiring a spouse claiming assets as separate property to establish their separate character by clear and convincing evidence. Tex. Fam. Code. Ann. § 3.003(b); *see Tate*, 55 S.W.3d at 4. "Clear and convincing evidence" means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. Tex. Fam. Code Ann. § 101.007. While the proof must weigh heavier than merely the greater weight of the credible evidence, there is no requirement that the evidence be unequivocal or undisputed. *Boyd v. Boyd*, 131 S.W.3d 605, 611 (Tex. App.—Fort Worth 2004, no pet.).

Community property consists of all property, other than separate property, acquired by either spouse during the marriage. Tex. Fam. Code Ann. § 3.002; *Tate*, 55 S.W.3d at 4. Under Texas law, it is fundamental that property owned before marriage, or acquired during marriage by gift, devise or descent, is separate property and remains the spouse's separate property during and after the marriage. Tex. Const., art XVI, § 15; Tex. Fam. Code. Ann. § 3.001. A trial court has **no** discretion to divest a party of his or her separate property via a divorce decree. *Vickery v. Vickery*, 999 S.W.2d 342, 371 (Tex. 1999); *Cameron v. Cameron*, 641 S.W.2d 210, 213–20 (Tex. 1982); *Eggemeyer v. Eggemeyer*, 554 S.W.2d 137, 140 (Tex. 1977). Indeed, in

Texas, the marital "estate of the parties" is construed to mean only the community property of the parties. *Cameron*, 641 S.W.2d at 213; *Eggemeyer*, 554 S.W.2d at 139.

## II. Stipulations Are Binding on the Parties, the Trial Court, and the Reviewing Court.

"A stipulation is an agreement, admission, or [other] concession made in a judicial proceedings by the parties or their attorneys." *Shepherd v. Ledford*, 962 S.W.2d 28, 33 (Tex. 1998); *Fed. Lanes, Inc. v. City of Houston*, 905 S.W.2d 686, 689 (Tex. App.—Houston [1st Dist.] 1995, writ denied). A stipulation constitutes a binding contract between the parties and the court. *McCuen v. Huey*, 255 S.W.3d 716, 726 (Tex. App.—Waco 2008, no pet.); *Fed. Lanes*, 905 S.W.2d at 689. The issues to be tried in any lawsuit may be limited or excluded by stipulation. *Hansen v. Acad. Corp.*, 961 S.W.2d 329, 336 (Tex. App.—Houston [1st Dist.] 1997, writ denied) (op. on reh'g). "Where a stipulation limits the issues to be tried or considered . . . , those issues are excluded from consideration." *Rosenboom Mach. & Tool, Inc. v. Machala*, 995 S.W.2d 817, 822 (Tex. App.—Houston [1st Dist.] 1999, pet. denied); *see Fed. Lanes*, 905 S.W.2d at 689. Importantly, a stipulation "obviates the need for proof on [the] litigable issue." *Hansen*, 961 S.W.2d at 335. Because stipulations constitute judicial admissions, they are conclusive on the issues addressed, and they estop the parties from claiming to the contrary. *See Shepherd*, 962 S.W.2d at 33. Moreover, a stipulation of fact is also binding on the reviewing court. *M.J.R.'s Fare of Dallas, Inc. v. Permit & License Appeal Bd. of Dallas*, 823 S.W.2d 327, 330 (Tex. App.—Dallas 1991, writ denied). As the trial

court correctly stated in the underlying proceedings, "[T]here's extensive case law that says that a sworn inventory, as far as characterization, is a judicial admission and it's conclusive."

## III. The Trial Court Abused Its Discretion in Dividing the Community and Erred by Divesting Tony of His Separate Property.

In the trial of this case, both Tony and Janet made extensive stipulations on the record that they were not disputing the other's claims for separate property. Indeed, in this divorce case involving a later-in-life marriage, Tony and Janet consistently took the position that each one had his or her own separate property. They also filed sworn inventories and appraisements and stipulated that each party had separate property. Both parties submitted proposed property divisions or proposed final decrees of divorce requesting that the other party's separate property be confirmed as that other party's separate property. As such, it was admitted, uncontroverted, or undisputed before the trial court that both parties had separate property. *See Dutton v. Dutton*, 18 S.W.3d 849, 853–54, 856 (Tex. App.—Eastland 2000, pet. denied) (holding where husband characterized property as community in sworn inventory filed with court, "did not attempt to contend at trial that the property was anything but community property, and . . . did not withdraw the statement made in his inventory," he was bound to statement as judicial admission); *Roosevelt v. Roosevelt*, 699 S.W.2d 372, 374 (Tex. App.—El Paso 1985, writ dism'd) (holding wife's sworn inventory characterizing jewelry as partly separate, partly community was judicial admission of

the community status of the latter); *see also Russell v. Russell*, No. 01–04–00984–CV, 2006 WL 241476, at *3 (Tex. App.—Houston [1st Dist.] Feb. 2, 2006, no pet.) (mem. op.) (holding wife's sworn inventory characterizing assets as husband's separate property was judicial admission where designation was clear and unequivocal, the parties and the court relied on the inventory at trial, and "at no time did [wife] challenge the accuracy of the inventory").[4] The trial court was not at liberty to jettison undisputed evidence, stipulations, and admissions.[5]

---

[4]Also instructive to this holding is the decision of the Fourteenth Court of Appeals in *Gana*, where it held in a divorce case that the wife judicially admitted that the husband had separate property when the husband testified that "he purchased the property before he and [the wife] married, he identified it as his separate property in a proposed property division that was admitted into evidence without objection, and most significantly, . . . [the wife] testified on direct examination that [the husband] owned the property when they married." 2007 WL 1191904, at *5.

[5]Of course, Janet's contention that this court, like the trial court, should overlook the parties' stipulations, agreements, and submissions and the uncontested evidence at the divorce proceedings and uphold the final decree of divorce because "neither party rebutted the community-property presumption by clear and convincing evidence" is both erroneous and nonsensical. *See Jackson v. Louisiana*, 980 F.2d 1009, 1011 n.7 (5th Cir. 1993) (noting that a party cannot renounce a stipulation on appeal). Certainly, the trial court was not at liberty to simply ignore this conclusive evidence, even if he disagreed with the evidence or disliked one of the parties. *See Houston Lighting & Power Co. v. City of Wharton*, 101 S.W.3d 633, 641 (Tex. App.—Houston [1st Dist.] 2003, pet. denied) ("A stipulation serves as proof on an issue that otherwise would be tried," it is "conclusive on the issue addressed," and "the parties are estopped from claiming to the contrary.").

As the Texas Supreme Court explained, quoting Justice Robert Calvert's sixty-year-old seminal work on the subject, fact-finders (in this case the trial court), are not at liberty to "'disregard undisputed evidence that allows of only one logical inference.' By definition, such evidence can be viewed in only one light, and [fact-finders] can

In short, the trial court made an unjust division of the marital estate by mischaracterizing undisputedly separate property as community property and by then awarding Janet a large percentage of the marital estate.[6] A trial court cannot make a just and right division of the marital estate when it lumps all property, separate and community, together and then makes a division. *Osborn v. Osborn*, 961 S.W.2d 408, 414 (Tex. App.—Houston [1st Dist.] 1997, pet. denied). For this reason, we must conclude that the trial court clearly abused its discretion and erred by divesting Tony of his separate property. *See Gana*, 2007 WL 1191904, at *7 ("When a court mischaracterizes separate property as community property, the error requires reversal."); *McElwee v. McElwee*, 911 S.W.2d 182, 185 (Tex. App.—Houston [1st Dist.] 1995, writ denied) (same). We sustain Tony's first, second, and third issues.

---

reach only one conclusion from it. [Fact-finders] are not free to reach a verdict contrary to such evidence; indeed, uncontroverted issues need not be submitted to a [fact-finder] at all." *City of Keller v. Wilson*, 168 S.W.3d 802, 814–15 (Tex. 2005) (quoting Robert W. Calvert, *"No Evidence" & "Insufficient Evidence" Points of Error*, 38 Tex. L. Rev. 36, 363–64 (1960)); *see A. Duda & Sons Coop. Ass'n v. United States*, 504 F.2d 970, 975 (5th Cir. 1974) (op. on reh'g) ("It is well settled that stipulations of fact fairly entered into are controlling and conclusive, and courts are bound to enforce them.").

[6]The trial court's decision to disregard all the conclusive and undisputed evidence is all the more troubling when one considers that Local Rule 4.01(4) of the Tarrant County Family Courts specifically mandates that "[i]t is the responsibility of each attorney to stipulate all accurate facts not in dispute, and to waive formal proof as to any document to be introduced about which there is no reasonable dispute as to authenticity." Tarrant (Tex.) Loc. R. 4.01(4).

## CONCLUSION

Having sustained Tony's issues, we affirm the parties' divorce, but we reverse the remainder of the trial court's judgment and remand this case to allow the current judge of the trial court to make a just and right division of the marital estate of the parties and to confirm the separate estates in accordance with the parties' stipulations and admissions and the undisputed and uncontested evidence.

/s/ Mark T. Pittman
Mark T. Pittman
Justice

Delivered: May 30, 2019