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

No. 02-19-00029-CV

J.F., Appellant

V.

J.F., Appellee

On Appeal from the 462nd District Court
Denton County, Texas
Trial Court No. 16-02854-393

Before Kerr, Birdwell, and Bassel, JJ.
Memorandum Opinion by Justice Birdwell

MEMORANDUM OPINION

Appellant Husband challenges the trial court's divorce decree. In his first two issues, he disputes the trial court's award of spousal maintenance to Wife. Because the evidence does not support the trial court's conclusion that Wife suffered an incapacitating disability, we agree that the trial court abused its discretion by granting spousal maintenance.

In his third issue, Husband contests the trial court's valuation and division of certain community assets. We find no abuse of discretion in the property division. We therefore reverse and render in part and affirm in part.

I. BACKGROUND

Husband and Wife were married in 2000, and they had two children. In 2016, Husband petitioned for divorce. Wife counterpetitioned for divorce in 2017. Among other relief, both parties sought a division of the marital estate and a custody determination. The case went to trial in summer 2018, and the trial court rendered a final divorce decree that fall.

The parties now dispute two sets of provisions in the decree. In one set, the trial court awarded Wife spousal maintenance of $1,500 per month for four years. In its findings and conclusions, the trial court determined that spousal maintenance was warranted because Wife had borderline personality disorder, which the trial court viewed as a disability. In another set of provisions, the trial court valued and divided certain community property, including the family residence and the family business,

Texas Silicate Distributors, LLC ("Texas Silica"). Husband urged the trial court to change these rulings, first in a motion to reconsider and then in a motion for new trial, but neither was successful. Husband brings this appeal.

II. ACCEPTANCE OF BENEFITS

In her pro se brief, Wife argues that under the acceptance-of-benefits doctrine, Husband should be estopped from challenging the divorce decree. Wife asserts that after the divorce decree was issued, Husband availed himself of the property that was awarded to him under the decree, and he should therefore be precluded from challenging the decree because he accepted its benefits.

The acceptance-of-benefits doctrine bars an appeal if the appellant voluntarily accepts the judgment's benefits and the opposing party is thereby disadvantaged. *Kramer v. Kastleman*, 508 S.W.3d 211, 217 (Tex. 2017). "[T]he acceptance-of-benefits doctrine is a fact-dependent, estoppel-based doctrine focused on preventing unfair prejudice to the opposing party." *Id.* at 213. Before denying a merits-based resolution to a dispute, courts must evaluate whether, by asserting dominion over assets awarded in the judgment under review, the appealing party clearly intended to acquiesce in the judgment; whether the assets have been so dissipated as to prevent their recovery if the judgment is reversed or modified; and whether the opposing party will be unfairly prejudiced. *Id.* at 227. "[M]erely using, holding, controlling, or securing possession of community property awarded in a divorce decree does not constitute clear intent to

acquiesce in the judgment and will not preclude an appeal absent prejudice to the nonappealing party." *Id.* at 228.

Wife asserts that she was prejudiced when Husband exercised dominion over community property such as insurance proceeds and gold and platinum coins, among other things. While Wife has provided a wealth of record citations in an attempt to substantiate her allegations, these citations do not support the majority of her assertions concerning Husband's post-divorce conduct, and we find no evidence in the record that would bear out these contentions. Because nothing in the record supports these assertions, they do not tend to show acceptance of benefits. *See Mallia v. Mallia*, No. 14-07-00695-CV, 2009 WL 909588, at *1 (Tex. App.—Houston [14th Dist.] Apr. 7, 2009, no pet.) (mem. op.) (rejecting a plea to apply this doctrine because a pro se appellee in a divorce proceeding offered nothing to show "that appellants have accepted benefits under the judgment").[1]

However, the record does support Wife's allegation that Husband spent income and liquidated assets from the family business. At the hearing on Husband's motion for new trial, Husband testified that since the divorce decree's issuance, Texas Silica's

[1]In her pro se surreply brief, Wife also asserts, "Equitable estoppel and Judicial estoppel has occurred [sic] given the fact that Husband and his counsel voluntarily accepted the platinum coins by violation of prior orders and agreements." In addition to the fact that Wife raised these arguments for the first time in a reply brief, *see Flores v. Deutsche Bank Nat'l Tr. Co.*, No. 02-12-00033-CV, 2014 WL 4109645, at *17 (Tex. App.—Fort Worth Aug. 21, 2014, no pet.) (mem. op.), Wife offers no further elaboration and no legal or factual support for these arguments. *See* Tex. R. App. P. 38.1(i). We deem them inadequately briefed. *See id.*

income had largely dried up due to shifts in the market. To survive, he had sold a Toyota belonging to Texas Silica and had devoted some of Texas Silica's accounts receivable to his and the children's living expenses. Wife contends that by depleting some of Texas Silica's assets, Husband created a situation where if he prevailed on appeal and the marital estate were subject to a new division, Wife would be prejudiced if the business were awarded to her.

But as the evidence at trial established, awarding Texas Silica to Wife was not a realistic possibility because the business would have value only if it were awarded to Husband. Husband testified that he was the sole manager of Texas Silica, that it was his livelihood, and that he was one of the only people who worked for the business. Tax returns established that under Husband's management, the business had gross profits of over $350,000 as recently as 2015. By contrast, Wife conceded that without Husband, Texas Silica would be worth "[n]othing." In light of the bitter conflict that existed between Husband and Wife, it seems unlikely that Husband would work for Texas Silica if the business were awarded to Wife. Thus, the business was (1) a valuable asset in Husband's hands, but (2) essentially worthless if it were awarded to Wife. Given that state of affairs, if the trial court were called upon to divide the community property anew, the only rational course of action would be to once again award Texas Silica to Husband. Therefore, even though there was evidence that Husband depleted some of Texas Silica's assets, there was no realistic possibility that this depletion would prejudice Wife. Wife produced no evidence that Husband took any other sorts of actions that

might prejudice her. We therefore conclude that Wife has not carried her burden to show that the acceptance-of-benefits doctrine bars Husband's appeal.

III. SPOUSAL MAINTENANCE

In his first issue, Husband raises a variety of arguments against the trial court's award of spousal maintenance. To begin, he challenges the evidence to support the award. He argues that Wife produced no evidence to show that she suffered from an incapacitating disability that prevented her from working. Because we agree that the evidence is lacking, we do not consider Husband's other arguments concerning spousal maintenance.

We review a trial court's ruling on spousal maintenance for an abuse of discretion, asking whether the trial court had sufficient information on which to exercise its discretion and whether the trial court erred in its application of that discretion. *W.D. v. R.D.*, No. 02-18-00328-CV, 2019 WL 2635563, at *8 (Tex. App.—Fort Worth June 27, 2019, no pet.) (mem. op.). Under the abuse of discretion standard, legal and factual sufficiency of the evidence are not independent grounds for asserting error, but they are relevant factors in assessing whether the trial court abused its discretion. *Brooks v. Brooks*, 257 S.W.3d 418, 425 (Tex. App.—Fort Worth 2008, pet. denied). A trial court abuses its discretion by ruling without supporting evidence. *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012).

"[T]he Family Code allows spousal-maintenance awards only under very narrow and very limited circumstances." *Dalton v. Dalton*, 551 S.W.3d 126, 130 (Tex. 2018)

(internal quotation marks omitted). The trial court has discretion to award spousal maintenance only if the party seeking it meets specific statutory requirements. *In re Marriage of McCoy*, 567 S.W.3d 426, 429 (Tex. App.—Texarkana 2018, no pet.). Under the facts of this case, post-divorce spousal maintenance would have been appropriate only if Wife lacked sufficient property to provide for her minimum reasonable needs and could not earn sufficient income to provide for her minimum reasonable needs due to "an incapacitating physical or mental disability." *See* Tex. Fam. Code Ann. § 8.051(2)(A).

The trial court found that Wife's borderline personality disorder was an incapacitating mental disability that qualified her for spousal maintenance. At trial, various witnesses attributed Wife with this disorder and explained what it entails. The appointed child custody evaluator, Sharon Lopez, concurred with Dr. Benjamin Albritton's pretrial assessment of Wife, in which he found that Wife had many hallmarks of the disorder: emotional instability; pronounced dependency; erratic, poorly directed thought processes; propensity to depression; uninhibited behavior and thought; risk taking; and antagonism. Lopez relayed the comments of the family's therapist Tricia Phelps, who found Wife to be "frighteningly unstable" and offered several examples of her erratic behavior.[2]

[2]Among the more notable incidents, Wife told her daughter that she wished she had had an abortion instead of giving birth to her; Wife pressed one of the children against a wall by the neck; Wife made "an obviously false allegation of physical abuse"

Another witness, Dr. Mark Foster, also discussed Dr. Albritton's conclusion that Wife's "symptomology is compatible with" borderline personality disorder, and he explained that its symptoms—impulsivity, poorly focused anger, difficulty thinking rationally, difficulty in placing the needs of the children before her own—can make it "extraordinarily difficult" to coparent with those who suffer from the disorder.

Wife's condition was described informally and in plainer terms by the spouse of Yancy, a man with whom Wife was having an affair. Yancy's spouse explained that Wife contacted her claiming to be Yancy's therapist, and Wife gave a series of increasingly bizarre explanations concerning her relationship with Yancy. According to Yancy's spouse, Wife's explanations "sounded a little crazy. And then the more I talked to her, the more I realized there was probably a screw loose there."

Witnesses also testified concerning Wife's unemployment. Wife testified that she had sent out resumes but that she had not heard back from any employer. Wife further testified that she intended to start her own business as a process server but had not yet done so. Husband believed that Wife had not looked for a long-term job during the case and was not enrolled in school.

However, while there was testimony describing Wife's disorder and, separately, her lack of employment at the time of trial, there was nothing to demonstrate that Wife's unemployment was more than just a temporary situation or that it could be causally

---

against Husband; and Wife held a knife to her own throat, to the point that the police were called.

attributed to an incapacitating mental condition. Just the opposite, Husband denied that Wife was disabled or had any condition that would prohibit her from working. Wife also expressly denied that she was disabled. When Wife was asked whether there was "something impeding [her] ability to work," she identified Husband—not her disorder—as the problem, saying that Husband had made things "difficult every step of the way." Moreover, there was evidence that Wife had held multiple jobs while she had borderline personality disorder: Husband testified that Wife had worked for the postal service during the marriage and that she had held a part-time job at one point while the divorce was pending. In sum, there was no evidence that Wife's personality disorder qualified as an incapacitating disability that prevented her from earning sufficient income—and there was ample evidence to the contrary.

In *W.D.*, we cited a similar lack of evidence as a basis for affirming the trial court's denial of spousal maintenance: "even though the trial court found that [the wife] suffers from an undiagnosed mental illness or disorder, she failed to meet her burden to prove that her medical and mental conditions were incapacitating or prevented her from providing for her reasonable minimum needs." 2019 WL 2635563, at *9 (footnote omitted). Likewise, in *Chafino v. Chafino*, a wife testified that she suffered from an array of medical conditions including unspecified "emotional problems," but her bid for spousal maintenance was rejected because she made no effort to explain "why her ailments prevent her from returning to work." 228 S.W.3d 467, 475 (Tex. App.—El Paso 2007, no pet.). And in *Roberts v. Roberts*, the court held that a wife's

testimony concerning a "variety of ambiguous and vague symptoms and ailments which she asserted collectively created her 'disability'" was insufficient to support an award of spousal maintenance without some evidence showing "a causal link between the sum of the asserted ailments and any inability to obtain gainful employment." 531 S.W.3d 224, 230 (Tex. App.—San Antonio 2017, pet. denied).

We reach the same conclusion as the *Roberts* court. Witnesses testified that Wife's disorder came with a host of negative symptoms. But in the absence of any probative evidence to show that these "symptoms collectively amount to an incapacitating disability" that prevented her from working, we hold that the trial court abused its discretion in granting spousal maintenance. *See id.* We sustain Husband's first issue. This renders it unnecessary to consider his second issue, in which he offers a fallback position: that even if the trial court was initially justified in granting spousal maintenance, that justification ended once Wife moved in with her then-boyfriend Yancy. *See* Tex. Fam. Code Ann. § 8.056(b).

IV. PROPERTY DIVISION

In his third issue, Husband challenges the division of community property. He asserts that the trial court abused its discretion by overvaluing two assets that were apportioned to him: the family business and the family home.

A trial court is charged with dividing a marital estate in a "just and right" manner, considering the rights of both parties. Tex. Fam. Code Ann. § 7.001; *Chi Hua Lee v. Linh Hoang Lee*, No. 02-18-00006-CV, 2019 WL 3024478, at *2 (Tex. App.—Fort

Worth July 11, 2019, no pet.) (mem. op.). A trial court has wide discretion in dividing the marital estate upon divorce, and we will not disturb the trial court's division of the marital estate unless the complaining party demonstrates from evidence in the record that the division was so unjust and unfair as to constitute an abuse of discretion. *Neyland v. Raymond*, 324 S.W.3d 646, 649 (Tex. App.—Fort Worth 2010, no pet.). The values of individual items are evidentiary to the ultimate issue of whether the trial court divided the properties in a just and right manner. *Todd v. Todd*, 173 S.W.3d 126, 129 (Tex. App.—Fort Worth 2005, pet. denied); *Zeptner v. Zeptner*, 111 S.W.3d 727, 740 (Tex. App.—Fort Worth 2003, no pet.) (op. on reh'g). A trial court abuses its discretion if it acts without reference to any guiding rules or principles. *Chi Hua Lee*, 2019 WL 3024478, at *2.

We begin with Husband's arguments concerning the family business. The trial court determined that Texas Silica was worth $66,000. As support, the trial court cited Husband's own appraisal of the business's assets: Husband's proposed division, which was entered into evidence, stated that the business's assets were worth $66,000 and that the business had roughly $33,000 in liabilities.

Husband maintains that the trial court's valuation misstates the business's true worth because it does not account for the business's debts. He argues that the trial court cherry-picked this amount, selectively relying on his gross valuation of the business assets but ignoring what he listed as the business's liabilities. Husband

maintains that taking account of these debts, the actual value of Texas Silica was the net figure of $32,839.80, not the gross figure of $66,000.

Husband also argues that the trial court's calculations were inaccurate in another sense. He points out that to arrive at the figure of $66,000, he totaled the value of various assets including a Toyota Sequoia that he valued at $31,000. However, Husband observes that in the divorce decree, the trial court also awarded him the Toyota as his personal property. Husband contends that because the Toyota was awarded to him as personal property and as part of the value of Texas Silica, the Toyota was essentially double counted against his half of the community property.

Husband pointed out both of these discrepancies to the trial court in his motion for new trial. However, in its findings, the trial court stated that despite these issues, it continued to believe that $66,000 was an appropriate valuation for Texas Silica. The court explained that it placed great reliance on the value of $66,000 from Husband's proposed division and that it deemed this statement to be an admission. The court further explained that it discounted Husband's evidence of Texas Silica's debts because Husband produced no other evidence to substantiate these debts, and any information regarding the existence and nature of the debts was "in the sole control of" Husband. The court also noted that while Husband had listed various debts, "completely missing from the exhibit [was] any listing of accounts receivable."

"Most importantly," the trial court found, was the fact that the business's own tax returns placed a much higher value on Wife's share of the business; the tax returns

valued Wife's capital account for her 51% interest in Texas Silica at $177,941 in 2016 and $119,107 in 2017. The trial court further found that whereas Husband had previously been a 49% owner in the business, Husband was obtaining a 100% stake in and control over the business, which warranted a "premium for majority control."

As for the Toyota, the trial court expressly disclaimed that it had taken the vehicle into account in valuing the business because the parties had treated the vehicle as a personal asset, not a business asset. There was testimony that wife was using the vehicle daily for "family and personal concerns," and it was undisputed that Wife did no work for the business. In light of these factors, the trial court found that a valuation of $66,000 was therefore warranted even "independent of the valuation of the Toyota . . . and the alleged debts of the business."

While we might have ruled differently, case law shows that the trial court's ruling—and the findings to justify its ruling—were nonetheless sound. First, as a general premise, the trial court properly relied on asset values as an indication of the closely held business's worth. In the absence of sales showing a market value for ownership in a closely held company, the value of the interest is predicated upon the market value of the assets of the company after deducting its liabilities. *Pabich v. Kellar*, 71 S.W.3d 500, 509 (Tex. App.—Fort Worth 2002, pet. denied) (op. on reh'g). Second, the trial court was entitled to rely on husband's admission of the value of those assets. *See Campbell v. Perez*, No. 02-14-00248-CV, 2015 WL 1020842, at *2 (Tex. App.—Fort Worth Mar. 5, 2015, no pet.) (mem. op.) (citing *Mendoza v. Fid. & Guar. Ins. Underwriters,*

Inc., 606 S.W.2d 692, 694 (Tex. 1980)). Third, the trial court was equally entitled to disbelieve Husband's evidence concerning the company's debts. As the sole judge of the weight and credibility to be given the evidence, the trial court could have rationally found that Husband gave an inaccurate picture of the debts, especially when (1) these debts were otherwise unsubstantiated and (2) he omitted any mention of accounts receivable that might have offset the debts. *See Chi Hua Lee*, 2019 WL 3024478, at *9. Fourth, the trial court fairly concluded that the business's capital account figures betrayed a higher worth than what was being reported by Husband. *See In re Marriage of C.A.S. & D.P.S.*, 405 S.W.3d 373, 385 (Tex. App.—Dallas 2013, no pet.) (considering capital accounts as a touchstone for a business's value in a divorce division); *Nieto v. Nieto*, No. 04-11-00807-CV, 2013 WL 1850780, at *11–12 (Tex. App.—San Antonio May 1, 2013, pet. denied) (mem. op.) (same). Fifth, as the trial court found, Husband was obtaining majority control of the company, something for which a control premium was appropriate. *See Magnin v. C.I.R.*, 81 T.C.M. (CCH) 1126, at *14 (2001) ("Control is an element which must be taken into account for purposes of determining the fair market value of corporate stock, over and above the value attributable to the corporation's underlying assets . . . ."); *see also Beavers v. Beavers*, 675 S.W.2d 296, 299 (Tex. App.—Dallas 1984, no writ) (explaining that "[i]n assigning values to closely held corporations in contested divorce actions," it was "appropriate" to weight the assets based on "the realities of corporate control"). Sixth, as for the supposed double counting of the Toyota, the trial court deemed that Husband had admitted that $66,000

was the value of Texas Silica's assets. However, we know of no rule holding that in order for the trial court to rely on Husband's admission that Texas Silica's gross worth was $66,000, the trial court also had to adopt the specific reasoning that Husband used to reach the figure admitted. Because the trial court's valuation and supporting findings were valid, the trial court's division of the business does not tend to show an abuse of discretion. *See Todd*, 173 S.W.3d at 129.

Next, we consider Husband's arguments concerning the family home. In his proposed division, Husband submitted that the value of the home was roughly $782,500. From this, he asked the trial court to deduct various sums including the mortgage and property taxes, leaving a total equity of approximately $205,000.

However, in its findings, the trial court rejected Husband's request to deduct $18,000 for the 2018 property taxes, stating that "the Court did not believe that the adjustment" was "appropriate." Thus, the trial court found that Husband was receiving roughly $223,000 in total equity for the home.

On appeal, Husband argues that by refusing the adjustment for the 2018 property taxes, the trial court arbitrarily inflated the value of the home by $18,000. He observes that the final decree of divorce was rendered on November 2, 2018, but according to Husband, the property taxes had already been assessed "in the middle of 2018." Husband asserts that the timing of the taxes and the divorce decree shows that he should have been granted a deduction.

But a trial court is generally within its rights to apportion community tax liability to one party. "[A] court may take tax liability into consideration in the division of property upon divorce[] and may even require one party to assume the other's tax liability." *Mullins v. Mullins*, 785 S.W.2d 5, 7 (Tex. App.—Fort Worth 1990, no writ). A divorce court has authority and discretion to impose the entire tax liability of the parties on one spouse. *Benedict v. Benedict*, 542 S.W.2d 692, 698 (Tex. App.—Fort Worth 1976, writ dism'd).

And contrary to Husband's argument, we find further support for the trial court's ruling in the timing of the relevant milestones. Husband offers no valid record support for his assertion that the property taxes were assessed in the "middle of 2018." Instead, if the Texas Tax Code was followed, the assessment for the 2018 property taxes was likely sent to Husband "by October 1 or as soon thereafter as practicable." *See* Tex. Tax Code Ann. § 31.01(a). By that time, Wife had long since moved out of the family home, and the trial court had already completed the divorce trial (as of August 17, 2018) and made a lengthy docket entry in which it fully stated the substance of its rulings in the case (as of August 31, 2018), including awarding the house to Husband with a net equity value of $223,000. The trial court relied on the same valuation when it rendered final judgment and made its findings in November 2018.

Because the house was very nearly Husband's sole property by the time the taxes were likely assessed, and because Wife had long since stopped enjoying the benefit of the property, the trial court did not abuse its wide discretion in denying Husband a

deduction for taxes on the property. *See Morris v. Morris*, 894 S.W.2d 859, 863 (Tex. App.—Fort Worth 1995, no writ) (holding that the trial court did not abuse its discretion by requiring husband to pay debt owed for taxes on husband's retirement pay from which wife did not benefit).

None of Husband's complaints concerning the division of property have merit. We therefore overrule Husband's third issue.

V. CONCLUSION

Based upon the evidence presented, we hold the trial court abused its discretion when it concluded that Wife suffered from an incapacitating disability that justified spousal maintenance. We reverse the divorce decree to the extent that it awards spousal maintenance and render judgment denying Wife's request for maintenance. We affirm the decree in all other respects.

/s/ Wade Birdwell

Wade Birdwell
Justice

Delivered: July 23, 2020