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

No. 02-23-00004-CV

MARIA D. RODRIGUEZ, Appellant

V.

SAMUEL RODRIGUEZ CORTEZ, Appellee

On Appeal from the 231st District Court
Tarrant County, Texas
Trial Court No. 231-716579-22

Before Bassel, Wallach, and Walker, JJ.
Memorandum Opinion by Justice Walker

MEMORANDUM OPINION

In this restricted appeal, Appellant Maria D. Rodriguez contends that the pleadings and evidence did not support the trial court's division of community property in its Default Final Decree of Divorce (Final Decree). *See* Tex. R. App. P. 30 (outlining requirements for restricted appeals). We will affirm the trial court's judgment in part, reverse it in part, and remand the case for a new property division.

I. BACKGROUND

In April 2022, Appellee Samuel Rodriquez Cortez petitioned for a divorce from Maria. His pleading was a form petition entitled "Original Petition for Divorce (Divorce Set 1 – Uncontested, No Minor Children, No Real Property)." Regarding the property division, Samuel pleaded:

> My spouse and I will try to make an agreement about how to divide the personal property and debts we acquired during our marriage. If we cannot agree, I ask the Court to divide our personal property and debts according to Texas law.

The petition did not identify any specific debts or property owned by Samuel or Maria—whether personal or real. Neither did it plead a claim for reimbursement or an owelty lien.

Maria was served with Samuel's petition but did not answer. A default divorce hearing was held at which only Samuel appeared and testified. Samuel testified about certain retirement accounts and vehicles to be divided among the parties. He also testified concerning "the house"—which was not otherwise described in any way.

Samuel's attorney—reading from the proposed default final decree of divorce that had been submitted to the trial court ahead of the hearing—asked Samuel: "And [Maria] receives the house, correct?" Samuel responded "yes," and then he proceeded to testify that during their marriage the couple had made approximately $114,000 worth of home improvements. The improvements included various renovations, cement work, the addition of fencing, and an upgrade to the air conditioning system. Samuel testified that he was owed half of this amount—$57,350. Additionally, he testified that he had paid $36,000 "out of [his] pocket" towards the house's mortgage principal. He requested that a lien be placed against the house to recover these amounts.

The Final Decree ordered the parties divorced and that each party retain the personal property in their possession, including retirement accounts and vehicles. However, it also awarded the "marital residence"[1] to Maria and a $57,350 owelty lien against the residence to Samuel. Pursuant to the owelty lien, Maria was ordered to sign a promissory note and deed of trust to ensure that she made monthly payments, with interest, to Samuel until the debt was fully paid.

The Final Decree was signed on July 19, 2022. Maria did not file any postjudgment motions, a request for findings of fact and conclusions of law, or a

[1]This is the first time in the record that any real property was described as part of the marital estate. And, apart from Samuel's petition alleging that Maria could be served with process at the house's address, the Final Decree is the first time that an address and property description for the house appear in the record.

notice of appeal pursuant to Rule 26.1(a). *See* Tex. R. App. P. 26.1, 30. Instead, on January 4, 2023, Maria filed a notice of restricted appeal under Rule 30. *See* Tex. R. App. P. 30.

II. DISCUSSION

Maria argues on appeal that the trial court abused its discretion because neither the pleadings nor the evidence supported the trial court's division of real property and its award of reimbursement and an owelty lien to Samuel. She asks us to affirm the parties' divorce but to reverse the judgment in part and to remand the case to the trial court for a new division of the community estate. Samuel did not file an appellate response. We agree that the pleadings did not support the judgment's property division.

A. RESTRICTED APPEAL

To "sustain" a restricted appeal, the filing party must show that (1) she filed notice of the restricted appeal within six months after the judgment was signed, (2) she was a party to the underlying lawsuit, (3) she did not participate in the hearing that resulted in the judgment complained of and did not timely file any postjudgment motions or requests for findings of fact and conclusions of law, and (4) error is apparent on the face of the record. *Ex parte E.H.*, 602 S.W.3d 486, 495 (Tex. 2020); *see* Tex. R. App. P. 30. "Review by restricted appeal affords an appellant the same scope of review as an ordinary appeal." *E.H.*, 602 S.W.3d at 495. The face of the record consists of all papers on file in the appeal, including the reporter's record.

Watson v. Watson, 286 S.W.3d 519, 522 (Tex. App.—Fort Worth 2009, no pet.) (citing *Norman Comms. v. Tex. Eastman Co.*, 955 S.W.2d 269, 270 (Tex. 1997)).

Maria has clearly met the first three restricted-appeal elements. She filed her notice of restricted appeal on January 4, 2022—less than six months after the Final Decree was signed on July 19, 2021. She was a party to the divorce action—having been Samuel's duly-served spouse—but did not appear or participate in the divorce hearing. Further, she did not file any postjudgment motions or requests for findings and conclusions. And, for the reasons explained below, we conclude that error is apparent on the face of the record and sustain her sole issue on appeal. *See E.H.*, 602 S.W.3d at 496–97 (holding that an analysis of the fourth restricted-appeal element goes to the merits of the appeal and must be established "to prevail in the restricted appeal").

B. RELEVANT LAW

A default judgment must be supported by the pleadings. *Stoner v. Thompson*, 578 S.W.2d 679, 682 (Tex. 1979); *see* Tex. R. Civ. P. 301 ("The judgment of the court shall conform to the pleadings."); *In re Marriage of Day*, 497 S.W.3d 87, 90 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) ("This rule is a specific application of the more general principal that a party may not be granted relief in the absence of pleadings to support that relief, unless the request for relief is tried by consent—a situation that cannot occur in the context of a default judgment."). "A trial court abuses its discretion by awarding relief to a person who has not requested such relief

in a live pleading." *Day*, 497 S.W.3d at 89; *see Cunningham v. Parkdale Bank*, 660 S.W.2d 810, 813 (Tex. 1983). Though the petition should be liberally construed in the pleader's favor, it must also be sufficient to provide fair notice so that the opposing party can "ascertain the nature and basic issues of the controversy and the relevant testimony." *Taylor v. Taylor*, 337 S.W.3d 398, 401 (Tex. App.—Fort Worth 2011, no pet.).

"The party claiming the right of reimbursement has the burden of pleading and proving that the expenditures and improvements were made and that they are reimbursable." *Vallone v. Vallone*, 644 S.W.2d 455, 459 (Tex. 1982); *see* Tex. Fam. Code Ann. § 3.402 (outlining when a party is entitled to reimbursements and offsets). The party must also plead and prove that the funds expended on behalf of the community estate were the party's separate funds. *Hinton v. Burns*, 433 S.W.3d 189, 196 (Tex. App.—Dallas 2014, no pet.); *see Bishop v. Bishop*, No. 14-02-00132-CV, 2003 WL 21229476, at *5 (Tex. App.—Houston [14th Dist.] May 29, 2003, no pet.) (holding that equitable lien would not be imposed when spouse failed to plead for it).

C. INSUFFICIENT PLEADINGS

Samuel's petition was insufficient to sustain the Final Decree with regard to its division of the purported real property and the award of reimbursement and owelty lien. The petition did not allege that there was any real property within the marital estate or ask the trial court to make any real-property divisions. In fact, it explicitly stated in its title that there was no real property at issue and it asked the trial court to

divide only the parties' personal property and debts. Samuel also pleaded no request for reimbursement of his separate funds or for an owelty lien. In sum, the pleadings were insufficient to support relief upon these claims, and the trial court abused its discretion in making any determinations as to any real property or reimbursement to Samuel. *See Day*, 497 S.W.3d at 89. We sustain Maria's issue.

III. CONCLUSION

Having determined that there was reversible error that materially affects the trial court's just and right division of the martial property, we must remand the entire community estate for a new division. *See Jacobs v. Jacobs*, 687 S.W.2d 731, 733 (Tex. 1985). Accordingly, we affirm that portion of the Final Decree granting the parties a divorce but reverse that portion of the Final Decree regarding the community-property division and remand the entire community estate for a new division. *See Touponse v. Touponse*, No. 02-20-00285-CV, 2021 WL 2753504, at *6 (Tex. App.—Fort Worth July 1, 2021, no pet.) (mem. op.) (affirming divorce but reversing and remanding for new division of community estate).

/s/ Brian Walker

Brian Walker
Justice

Delivered: July 27, 2023