



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

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No. 02-23-00054-CV

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LYNN FRANKLIN COWDEN, Appellant

v.

LISA PERRY COWDEN, Appellee

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On Appeal from the 231st District Court  
Tarrant County, Texas  
Trial Court No. 231-724853-22

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

## MEMORANDUM OPINION

### I. INTRODUCTION

Appellant Lynn Franklin Cowden (Lynn) appeals the trial court's order to clarify and enforce a final divorce decree between himself and Appellee Lisa Perry Cowden (Lisa). In his sole issue, Lynn argues that the trial court abused its discretion by only partially granting his request for clarification and enforcement as to two items of personal property (what we will refer to as the "Bronzes") but denying his request as to certain other items of personal property (what we will refer to as the "Patio Furniture" and the "Dining Room Furniture").<sup>1</sup> We will hold that the trial court did not abuse its discretion by denying Lynn's request for clarification and enforcement with respect to the Patio Furniture but did abuse its discretion by denying his request with respect to the Dining Room Furniture. Accordingly, we will affirm in part and reverse and remand in part.

### II. BACKGROUND

#### A. The Final Divorce Decree and Lynn's Petition for Clarification and Enforcement

Lynn and Lisa were married in June 2015 and divorced in March 2022. Pursuant to their final divorce decree, Lynn was awarded, among other things, the following property:

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<sup>1</sup>We note that Lisa did not file an appellee's brief.

R-1. All household furniture, furnishings, fixtures, goods, art objects, collectibles, appliances, and equipment in the possession of [Lynn] or subject to his sole control, including but not limited to the following:

a. The outdoor furniture (tables, chairs, chaise lounges, outdoor patio propane heaters) purchased from Bobby Gene Starnes, Jr. in 2015,<sup>[2]</sup> located at 2606 Highland Drive, Colleyville, Tarrant County, Texas; [and]

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c. Any and all property that [Lisa] removed from the Breezy Point Ranch (Homestead) located at 9200 CR 25, Skellytown, Texas, including but not limited to the large round wooden dining room table, custom made dining room chairs,<sup>[3]</sup> Grizzly Bear Bronze statue[,] and Big Horn Sheep Bronze statue[.]<sup>4</sup>

In October 2022, Lynn filed a petition for clarification and enforcement of the property division in the final divorce decree. In that petition, Lynn argued that certain items, including the Bronzes, the Patio Furniture, and the Dining Room Furniture, had not been turned over to him by Lisa as ordered by the final divorce decree. Lynn requested that the trial court order that the items be turned over to him by a date certain, and if they were not, that the trial court award him the replacement value of

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<sup>2</sup>In his brief, Lynn collectively calls the “outdoor furniture . . . purchased from Bobby Gene Starnes, Jr.” the “Patio Furniture.” We will do the same.

<sup>3</sup>In his brief, Lynn collectively calls the “large round wooden dining room table” and the “custom made dining room chairs” the “Dining Room Furniture.” We will do the same.

<sup>4</sup>In his brief, Lynn collectively calls the “Grizzly Bear Bronze statue” and the “Big Horn Sheep Bronze statue” the “Bronzes.” We will do the same.

such items. Lisa answered Lynn's petition, and the trial court conducted an evidentiary hearing.

## **B. The Hearing on Lynn's Petition**

At the hearing, Lynn and Lisa presented evidence concerning the Bronzes, the Patio Furniture, and the Dining Room Furniture.<sup>5</sup>

The Bronzes' sculptor testified regarding Lynn's purchase of the Bronzes and their replacement value. Lynn stated that Lisa had not turned over the Bronzes to him. Lisa agreed that she had not done so, stating, "I don't know what those are." But she also testified that she was not in possession of the Bronzes.

A copy of a May 2015 check written by Lynn to Bobby Starnes, Jr. for the Patio Furniture was admitted into evidence.<sup>6</sup> Also admitted into evidence were photographs taken of the outside of the former marital home in Colleyville (the Colleyville Home).<sup>7</sup> Those photographs depict, among other things, certain patio

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<sup>5</sup>In the trial court, Lynn sought relief as to certain other property, and evidence pertaining to that other property was presented at the hearing. However, Lynn does not complain about the trial court's ruling with respect to that other property. We thus limit our discussion to the property that Lynn does complain about on appeal—the Patio Furniture and the Dining Room Furniture. But because Lynn complains that there is a conflict in the trial court's findings regarding the Bronzes and the trial court's findings regarding the Patio Furniture and the Dining Room Furniture, we will also discuss the Bronzes.

<sup>6</sup>That check reflects that Lynn bought the Patio Furniture before he married Lisa.

<sup>7</sup>At some point during the divorce proceeding, the trial court signed temporary orders awarding Lisa sole use of the Colleyville Home.

furniture. Lynn identified that furniture as “the items that [he] bought from Bobby Starnes”—i.e., the Patio Furniture. According to Lynn, sometime after the photographs were made, Lisa took some of the Patio Furniture from the Colleyville Home to her new home in Arlington (the Arlington Home).<sup>8</sup> Lynn stated that Lisa had taken a “fire pit,” some “swivel rockers,” a “love seat,” “some type of little side table,” and “a matching wrought iron settee and chairs that matched the swivel rockers.”<sup>9</sup>

Lisa identified the items depicted in those photographs as “[t]wo iron lounge chairs,” “a piece of wrought iron patio furniture,” “[her] patio furniture, along with [her] cooker and [her] pottery,” “a fire pit,” “wicker furniture,” “[her] rocker,” and a “metal table.” Lisa indicated that she had taken some of the items depicted in the photographs from the Colleyville Home to the Arlington Home: “the fire pit,” “the wrought iron swivel rockers,” “the settee that matches the rockers,” the “side table,” and “items that were [hers].” Lisa maintained, however, that the patio furniture located at the Arlington Home is not the patio furniture that Lynn had purchased from Starnes—i.e., is not the Patio Furniture. Lisa testified that she “came into the marriage” with the patio furniture located at the Arlington Home. She also testified

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<sup>8</sup>Lisa testified that she moved from the Colleyville Home to the Arlington Home in May 2022.

<sup>9</sup>Lynn stated that at the time of the hearing, he possessed “two metal chaise lounges” depicted in the photographs.

that she did not have any of the Patio Furniture and that the Patio Furniture had been returned to Lynn “via the [r]eceiver.”<sup>10</sup>

In an affidavit that was admitted into evidence at the hearing, the receiver stated,

I was present when Lynn Cowden came to the marital residence to load up the outdoor furniture awarded to him. I actually helped him to do so. We put the furniture into what was clearly a “ranch” trailer. At no time did he state anything was missing. At no time did he indicate [Lisa] had kept any items of outdoor furniture, but he said that all of the items were his. I respectfully asked him to take only the items he came for and he complied.

Mr. Cowden and I loaded the furniture which was the only patio furniture I had seen since being appointed. . . . The items removed that day were furniture for seating (couch and chairs) and table and chairs (outdoor) and outdoor heaters.

Lisa testified that she did not interfere with Lynn’s removal of any furniture. She also stated that Lynn had already retrieved “every piece” of the Patio Furniture.

As to the Dining Room Furniture, Lynn identified that furniture as consisting of a dining room table and a set of dining room chairs,<sup>11</sup> all of which he had purchased at a store called The Arrangement. Lynn stated that Lisa had not turned over the Dining Room Furniture to him. He also testified about the replacement

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<sup>10</sup>To that end, from what we can glean from the record, a receiver had been appointed during the pendency of the divorce proceeding to sell the Colleyville Home.

<sup>11</sup>Lynn testified that the set of dining room chairs included two chairs that “had armrests on the sides.”

value of the Dining Room Furniture. Lisa testified that she had not turned over the Dining Room Furniture to Lynn because she had sold it.

**C. The Trial Court's Order on Lynn's Petition and the Trial Court's Findings of Fact and Conclusions of Law**

At the conclusion of the hearing on Lynn's petition, the trial court stated that it was granting the petition with respect to the Bronzes but denying the petition as to all other property, including the Patio Furniture and the Dining Room Furniture.<sup>12</sup> The trial court later signed a written order consistent with its oral rendition.

Lynn requested that the trial court issue written findings of fact and conclusions of law, and the trial court did so. In its written findings, the trial court found that Lisa had possession of the Bronzes but had not surrendered them to Lynn. It also found that there was legally insufficient evidence to determine possession of the Patio Furniture and the Dining Room Furniture. Based on those findings, the trial court concluded that Lynn's request for clarification and enforcement should be granted with respect to the Bronzes but denied with respect to the Patio Furniture and the Dining Room Furniture. This appeal followed.

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<sup>12</sup>As to the Bronzes, the trial court ordered Lisa to deliver them to Lynn's attorney by a date certain, and it stated that failure to deliver the Bronzes would result in a \$23,900 judgment against Lisa in favor of Lynn.

### III. DISCUSSION

In his sole issue, Lynn argues that the trial court abused its discretion by denying his request for clarification and enforcement as to the Patio Furniture and the Dining Room Furniture.

#### A. Applicable Law and Standard of Review

“In a decree of divorce or annulment, the court shall order a division of the estate of the parties in a manner that the court deems just and right.” Tex. Fam. Code Ann. § 7.001. “A judgment finalizing a divorce and dividing marital property bars relitigation of the property division, even if the decree incorrectly characterizes or divides the property.” *Pearson v. Fillingim*, 332 S.W.3d 361, 363 (Tex. 2011). However, “a court that renders a divorce decree retains continuing subject-matter jurisdiction to clarify and to enforce the decree’s property division.” *Murray v. Murray*, 276 S.W.3d 138, 144 (Tex. App.—Fort Worth 2008, pet. dism’d) (citing Tex. Fam. Code Ann. §§ 9.002, 9.008). Specifically, “the court may render further orders to enforce the division of property made or approved in the decree . . . to assist in the implementation of or to clarify the prior order” and “may specify more precisely the manner of effecting the property division previously made or approved if the substantive division of property is not altered or changed.” Tex. Fam. Code Ann. § 9.006(a), (b).

We review a trial court’s ruling on a motion for clarification or enforcement of a divorce decree under an abuse of discretion standard. *Riley v. Riley*, No. 03-21-



00051-CV, 2022 WL 17981970, at \*3 (Tex. App.—Austin Dec. 29, 2022, no pet.) (mem. op.); *Shakouri v. Shakouri*, No. 02-20-00297-CV, 2022 WL 189084, at \*5 (Tex. App.—Fort Worth Jan. 20, 2022, pet. denied) (mem. op.). A trial court abuses its discretion when it acts unreasonably, arbitrarily, or without reference to any guiding rules or principles. *Riley*, 2022 WL 17981970, at \*3; *Shakouri*, 2022 WL 189084, at \*5.

In family law cases, the abuse of discretion standard overlaps with traditional sufficiency standards; therefore, legal and factual sufficiency are not independent grounds of error but are relevant factors in our assessment of whether the trial court abused its discretion. *Lee v. Hoover*, No. 11-22-00201-CV, 2023 WL 6466647, at \*2 (Tex. App.—Eastland Oct. 5, 2023, no pet. h.) (mem. op.); *Watson v. Watson*, 286 S.W.3d 519, 522 (Tex. App.—Fort Worth 2009, no pet.). To determine whether there has been an abuse of discretion because the evidence is legally or factually insufficient to support the trial court’s decision, we engage in a two-pronged inquiry: (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? *Lee*, 2023 WL 6466647, at \*3; *Watson*, 286 S.W.3d at 522–23. The applicable sufficiency review comes into play under the first question. *Lee*, 2023 WL 6466647, at \*3; *Watson*, 286 S.W.3d at 523. We then determine whether, based on the evidence, the trial court made a reasonable decision. *Lee*, 2023 WL 6466647, at \*3. A trial court does not abuse its discretion if there is at least some evidence of a substantive and probative nature to support its decision. *Id.*

Evidence is legally insufficient only when (1) there is a complete absence of a vital fact, (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact, (3) the evidence offered to prove a vital fact is no more than a scintilla, or (4) the evidence conclusively establishes the opposite of a vital fact. *Gunn v. McCoy*, 554 S.W.3d 645, 658 (Tex. 2018); *Watson*, 286 S.W.3d at 523. In a legal sufficiency review, we must consider evidence favorable to the finding if a reasonable factfinder could and disregard evidence contrary to the finding unless a reasonable factfinder could not. *Cent. Ready Mix Concrete Co. v. Islas*, 228 S.W.3d 649, 651 (Tex. 2007); *Watson*, 286 S.W.3d at 523. We must also review all of the evidence in the light most favorable to the finding. *Gunn*, 554 S.W.3d at 658; *Watson*, 286 S.W.3d at 523.

When a party attacks the legal sufficiency of an adverse finding on an issue on which the party had the burden of proof, the party must demonstrate on appeal that the evidence establishes, as a matter of law, all vital facts in support of the issue. *Cath. Diocese of El Paso v. Porter*, 622 S.W.3d 824, 834 (Tex. 2021). In reviewing a “matter of law” challenge, we must first examine the record for evidence that supports the finding, while ignoring all evidence to the contrary. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001). If no evidence supports the finding, then we will examine the entire record to determine if the contrary position is established as a matter of law. *Id.* We will sustain the issue only if the contrary position is conclusively established. *Id.* Evidence conclusively establishes a fact when the

evidence leaves “no room for ordinary minds to differ as to the conclusion to be drawn from it.” *Int’l Bus. Mach. Corp. v. Lufkin Indus., LLC*, 573 S.W.3d 224, 235 (Tex. 2019).

When a party attacks the factual sufficiency of an adverse finding on an issue on which the party had the burden of proof, the party must demonstrate on appeal that the adverse finding is against the great weight and preponderance of the evidence. *Dow Chem. Co.*, 46 S.W.3d at 242. In a factual sufficiency review, we examine the entire record—considering both the evidence supporting and contrary to the trial court’s finding—and reverse only if the judgment is so against the great weight of the evidence as to be clearly wrong and unjust. *Id.*; *Lee*, 2023 WL 6466647, at \*3 (citing *Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex. 1996)).

In any sufficiency review, the factfinder remains the sole judge of witness credibility and evidentiary weight. *Lee*, 2023 WL 6466647, at \*3 (citing *City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005)). In conducting our sufficiency review, we may not substitute our judgment for that of the factfinder. *Id.* (citing *Pace v. Pace*, 160 S.W.3d 706, 711 (Tex. App.—Dallas 2005, pet. denied)). The factfinder may choose to believe all, some, or none of a witness’s testimony. *Id.* (citing *Glenn v. Glenn*, 659 S.W.3d 212, 219 (Tex. App.—El Paso 2002, pet. denied)).

## **B. Analysis**

As to the Patio Furniture, Lynn argues that “the evidence offered at trial was more than sufficient for the [t]rial [c]ourt to determine who did have possession of” it,

pointing to his testimony that he had not received the Patio Furniture from Lisa, to the photographs taken of the Colleyville Home that he claims depict the Patio Furniture, and to Lisa’s testimony that she had taken some of the items depicted in the photographs of the Colleyville Home to the Arlington Home.<sup>13</sup>

But that was not the only evidence before the trial court pertaining to the Patio Furniture. Lisa testified that the patio furniture located at the Arlington Home was not the Patio Furniture, stating that it was furniture that she “came into the marriage” with and that it was not furniture that had been purchased from Starnes. Lisa also testified that she did not have any of the patio furniture purchased from Starnes—i.e., she did not have the Patio Furniture—claiming that the Patio Furniture had been

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<sup>13</sup>Lynn argues that the trial court’s finding that “[t]here is legally insufficient evidence to determine possession” of the Patio Furniture and the Dining Room Furniture is subject to two possible interpretations—that the trial court was unable to determine who *should have* possession or that the trial court was unable to determine who *did have* possession of the items. Lynn’s brief focuses primarily on the second possible interpretation—who *did have* possession. Lynn argues that the first possible interpretation is wrong because he “was explicitly awarded these items in the underlying divorce action” and trial courts are forbidden from “mak[ing] substantive changes to a divorce property division after it becomes final.” We agree with Lynn that the trial court could not revisit who *should have* possession of the Patio Furniture and the Dining Room Furniture in the order on his petition for clarification and enforcement. *See Pearson*, 332 S.W.3d at 363 (“A judgment finalizing a divorce and dividing marital property bars relitigation of the property division, even if the decree incorrectly characterizes or divides the property.”); *Shanks v. Treadway*, 110 S.W.3d 444, 449 (Tex. 2003) (holding that while a trial court may clarify its division of property made in a final divorce decree and enforce compliance of the decree, the court “cannot change the substantive division of property made in the original decree”). We thus focus our analysis on the second possible interpretation—whether sufficient evidence existed for the trial court to determine who *did have* possession of the Patio Furniture and the Dining Room Furniture.

returned to Lynn “via the [r]eceiver” and that Lynn had already retrieved “every piece” of the Patio Furniture. The record also contains the affidavit from the receiver, which indicates that Lynn had removed from the Colleyville Home “the only patio furniture” the receiver had seen “since being appointed” and that Lynn did not complain then that any item was missing or indicate that Lisa had taken any of the Patio Furniture.

Viewing the evidence in the light most favorable to the trial court’s finding, we hold that the evidence does not show as a matter of law that Lisa was in possession of the Patio Furniture and failed to turn it over to Lynn, and we therefore hold that the evidence supports the trial court’s finding as to the Patio Furniture. *See Hargrove v. Hargrove*, No. 03-15-00415-CV, 2016 WL 1039019, at \*3 (Tex. App.—Austin Mar. 9, 2016, no pet.) (mem. op.) (“Based on the only evidence before the trial court—the [conflicting] testimony of Sandra and Gary—we cannot conclude that the trial court erred in its conclusion of law that Gary complied with the terms of the divorce decree or that it abused its discretion in denying Sandra’s petition for enforcement.”). Based on our exacting review of the entire record and giving due deference to the factfinder’s findings, we likewise conclude that the trial court’s finding as to the Patio Furniture is not against the great weight and preponderance of the evidence. *See Woody v. Woody*, 429 S.W.3d 792, 799 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (holding that trial court did not abuse its discretion in denying motion to enforce divorce decree where ex-husband did not demonstrate that finding was against great

weight and preponderance of evidence). Accordingly, we overrule Lynn’s sole issue with respect to the Patio Furniture.<sup>14</sup>

As to the Dining Room Furniture, Lynn argues that “the evidence offered at trial was more than sufficient for the [t]rial [c]ourt to determine who did have possession of the Dining Room Furniture,” pointing to his testimony that Lisa had not turned over the Dining Room Furniture to him, to Lisa’s testimony that she had not turned over the Dining Room Furniture to him, and to Lisa’s admission that she had sold the Dining Room Furniture. We agree with Lynn. Here, the evidence from both Lynn and Lisa was consistent—Lisa had not turned over the Dining Room Furniture to Lynn. And, of course, because Lisa admitted that she had sold the Dining Room Furniture, she had possession of it at the point of sale.

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<sup>14</sup>In his brief, Lynn argues that “there is an irresolvable conflict” between the trial court’s findings with respect to the Bronzes and its findings with respect to the Patio Furniture and the Dining Room Furniture, claiming that “nearly identical evidence was offered by Lynn and Lisa regarding possession of the Bronzes and the Dining Room Furniture and Patio Furniture.” We do not agree that the evidence pertaining to the Patio Furniture was “nearly identical” to the evidence pertaining to the Bronzes and to the Dining Room Furniture. As to the Bronzes, Lisa stated that she did not know what they were and had not returned them to Lynn, and as to the Dining Room Furniture, Lisa stated that she had not returned it to Lynn because she had sold it. But, as to the Patio Furniture, Lisa testified that the Patio Furniture had been returned to Lynn “via the [r]eceiver.” And, in any event, the trial court, as the sole judge of witness credibility and evidentiary weight, was free to believe all, some, or none of Lisa’s testimony. *See Lee*, 2023 WL 6466647, at \*3; *Glenn*, 659 S.W.3d at 219. We thus reject Lynn’s argument that there is an “irresolvable conflict” in the trial court’s findings with respect to the Patio Furniture.

Viewing the evidence in the light most favorable to the trial court's finding, we hold that a factfinder could not have reasonably formed a firm conviction or belief that Lisa was not in possession of the Dining Room Furniture, and we therefore hold that the evidence establishes, as a matter of law, the opposite of the trial court's finding as to the Dining Room Furniture.<sup>15</sup> See *Cath. Diocese of El Paso*, 622 S.W.3d at 834; *Dow Chem. Co.*, 46 S.W.3d at 241. We sustain Lynn's sole issue with respect to the Dining Room Furniture.

#### IV. CONCLUSION

Having overruled Lynn's sole issue with respect to the Patio Furniture but having sustained it with respect to the Dining Room Furniture, we affirm the trial court's order on Lynn's petition for clarification and enforcement of the final divorce decree except for its ruling as to the Dining Room Furniture. We reverse the portion of the order denying Lynn's request for clarification and enforcement as to the Dining Room Furniture, and we remand this case to the trial court for proceedings consistent with this opinion.

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<sup>15</sup>Because we have held that the evidence conclusively establishes the opposite of the trial court's finding with respect to the Dining Room Furniture, we need not address whether the evidence was also factually sufficient with respect to the Dining Room Furniture. See *Tex. R. App. P.* 47.1.

/s/ Dana Womack

Dana Womack  
Justice

Delivered: November 30, 2023