



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-15-00176-CV

**IN THE MATTER OF THE MARRIAGE OF
CHRISTINA LYNN FLETCHER AND ROBERT HUGH FLETCHER**

On Appeal from the 237th District Court
Lubbock County, Texas
Trial Court No. 2014-510,128, Honorable Abe Lopez, Presiding by Assignment

March 28, 2016

MEMORANDUM OPINION

Before QUINN, C.J., and HANCOCK and PIRTLE, JJ.

Robert Hugh Fletcher appeals from a divorce decree dissolving his marriage to Christina Lynn Fletcher (Christina) and dividing their property. Through a single issue, Robert contends that the trial court failed to properly characterize property and, in the property division, divested Robert of his separate property. In so doing, the trial court committed reversible error. We will reverse in part and affirm in part.

Factual and Procedural Background

Robert and Christina married on November 1, 2011. The divorce action was filed on February 6, 2014. During the trial of the divorce, the evidence reflected that there were two lots at issue, both located in Wolfforth, Texas. They were referred to during the testimony as the “auction business” lot and the “veterinary” lot. Deeds were admitted into evidence that reflected that Robert purchased the “veterinary” lot on June 5, 1986, and the “auction business” lot on May 2, 1988.

In the Final Decree of Divorce, the trial court awarded the “veterinary” lot to Christina, along with any debt thereon as of March 1, 2015. It is this award of which Robert complains.

Standard of Review

As a reviewing court, we review a trial court’s characterization of marital property under an abuse of discretion standard. *In re Marriage of Glynn*, No. 07-13-00095-CV, 2014 Tex. App. LEXIS 13952, at *12 (Tex. App.—Amarillo Dec. 31, 2014, no pet.) (mem. op.) (citing *Boyd v. Boyd*, 131 S.W.3d 605, 617 (Tex. App.—Fort Worth 2004, no pet.)). The trial court abuses its discretion if the court acts without reference to guiding rules or principles, or if its action is arbitrary or unreasonable. *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007). Under an abuse of discretion standard, legal and factual sufficiency are not independent grounds for error; rather, they are relevant factor in assessing whether the trial court abused its discretion. *See Diaz v. Diaz*, 350 S.W.3d 251, 254 (Tex. App.—San Antonio 2011, pet. denied). A trial court does not abuse its

discretion if there is some evidence of substantive and probative character to support the decision or if reasonable minds could differ as to the result. *See id.*

Applicable Law

In the trial of a divorce, the trial court has the responsibility to divide the community estate of the parties in a just and right manner, considering the rights of the parties. *See* TEX. FAM. CODE ANN. § 7.001 (West 2006).¹ In considering the property on hand at the time of the divorce, we begin with a presumption that all property on hand at the time of dissolution of the marriage is community property. *See* § 3.003(a) (West 2006). To rebut this presumption, the property's separate character must be proven by clear and convincing evidence. § 3.003(b). In order to sustain the burden of proving the separate nature of a claimed asset, the party making the claim must trace and clearly identify the property as separate by clear and convincing evidence. *See Pearson v. Fillingim*, 332 S.W.3d 361, 363 (Tex. 2011) (per curium). To trace the property in question, the party claiming the property as separate must establish the separate origin of the property through evidence showing the time and means by which said property was acquired. *See Moroch v. Collins*, 174 S.W.3d 849, 856-57 (Tex. App.—Dallas 2005, pet. denied). The character of the property as community or separate is established by the inception of title doctrine. *See John Hancock Mut. Life Ins. Co. v. Bennett*, 128 S.W.2d 791, 795 (Tex. 1939). To properly support an assertion that property is separate, the proponent must introduce documentary evidence sufficient to overcome the presumption of the community nature of the property. *See Boyd*, 131 S.W.3d at 611. Once the separate property character attaches to property, that

¹ Further reference to the Texas Family Code will be by reference to "section ____" or "§ ____."

character does not change because community funds are spent to improve the property. *In re Marriage of Collier*, 419 S.W.3d 390, 403 (Tex. App.—Amarillo 2011, no pet.).

Analysis

With the standard of review and applicable law in mind, we now turn to an analysis of the trial court's ultimate finding, as evidenced by its decree of divorce. In the division of the marital estate portion of the decree, the trial court awards to Christina "[t]he real property in Lubbock County, Texas further described on Exhibit 'B' and attached hereto and incorporated herein as if set forth verbatim, together with all debt thereon as of March 1, 2015." A review of the description of the property on the attached Exhibit "B" reveals that it is the same property description as shown on Respondent's Exhibit 2: the tract of land known during the trial as the "veterinary" lot. Thus, from the record, we see that Robert introduced documentary evidence that the lot in question was purchased on June 5, 1986, a date well in advance of the date of marriage. In addition, Robert testified that this was the lot on which his auctioneering business stood and from which he operated that business until sometime after he and Christina married.

Christina posits that she furnished some of the funds used to remodel the building in question after the marriage and, therefore, that debt is community. Based upon this contention, Christina then asserts that an asset purchased with borrowed funds is presumptively community. *See Sprick v. Sprick*, 25 S.W.3d 7, 11 (Tex. App.—El Paso 1999, pet. denied). The *Sprick* opinion is not applicable to the fact pattern

before the Court. In *Sprick*, the issue was a trial court's failure to determine that certain indebtedness was a fraud on the community estate. See *id.* *Sprick* also addressed the trial court's characterization of a debt as a community debt. See *id.* at 13. As such, *Sprick* does nothing to address the trial court's characterization of the "veterinary" property as community as a result of incurring community debt to improve the property.

A complete review of the record reveals that Christina never claimed to have an ownership interest in the "veterinary" property from the perspective of inception of title. Rather, Christina wanted the use of the property because she had established a going commercial concern at that location. There was some testimony regarding expenditure of funds to modify the property; however, a close reading of the record leads to the conclusion that Christina was actually talking about spending funds to remodel the "Elmwood" property that became the community home.

From our review of the entire record, Robert proved that the "veterinary" property was his separate property by clear and convincing evidence. § 3.003(b). His proof was documentary in nature, through deeds which were filed of record. See *Boyd*, 131 S.W.3d at 611. The property did not lose its separate character on account of community funds being used to remodel the structure located on it. See *In re Marriage of Collier*, 419 S.W.3d at 403. Accordingly, the trial court erred in awarding the property to Christina as her sole and separate property. See *Moroch*, 174 S.W.3d at 856-57. When the trial court takes a spouse's separate property and awards it to another spouse, not only is error demonstrated but also harm is presumed and such action requires a reversal of the trial court's judgment. See *Tate v. Tate*, 55 S.W.3d 1, 7 (Tex. App.—El Paso 2000, no pet.) (citing *Eggemeyer v. Eggemeyer*, 554 S.W.2d 137, 140

(Tex. 1977)). Accordingly, the trial court abused its discretion in awarding the “veterinary” property to Christina. See *Low*, 221 S.W.3d at 614.

Frivolous Appeal

Christina has alleged that Robert’s appeal was frivolous and warranted the imposition of damages. Obviously, since we have found that a reversal is warranted, an allegation that the appeal is frivolous is not well founded. Accordingly, it is overruled.

Conclusion

Having determined that the trial court abused its discretion in awarding the “veterinary” property to Christina, we reverse the trial court’s division of the marital estate and remand that portion of the case back to the trial court for further proceedings. We affirm the granting of the divorce on the grounds of insupportability, as found by the trial court.

Mackey K. Hancock
Justice