



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

No. 07-15-00392-CV

**IN THE MATTER OF THE MARRIAGE OF JULIE MAREE STEGALL AND KERRY
DEAN STEGALL AND IN THE INTEREST OF T.J.S., A CHILD**

On Appeal from the 316th District Court
Hutchinson County, Texas
Trial Court No. 41,095, Honorable David L. Gleason, Presiding

June 15, 2016

ABATEMENT AND REMAND

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

Appellant, Julie Stegall, appeals the trial court's judgment by which the court divided the community estate in connection with her divorce from appellee, Kerry Stegall. In her brief, appellant challenges the trial court's division of property and characterization of certain property as appellee's separate property. Ultimately, the trial court's division of the marital estate was so unjust and unfair, she contends, that it constituted an abuse of discretion. We will abate and remand the cause.

Background

Following the trial court's judgment, on August 10, 2015, appellant filed her request for findings of fact and conclusions of law. No findings or conclusions were filed. Then, on September 9, 2015, appellant filed her notice of past due findings of fact and conclusions of law. Still, no findings or conclusions were filed. This appeal followed.

On appeal, appellant points to several types of property that the trial court characterized as separate property, such as cattle, cattle feeding and veterinary supplies and equipment, firearms, and ammunition. She contends that the trial court abused its discretion by dividing the estate in the manner it did because the evidence was legally and factually insufficient to overcome the presumption that the property was community property. We will abate the cause and remand it to the trial court for entry of findings of fact and conclusions of law.

Applicable Law

When properly requested, the trial court has a mandatory duty to file findings of fact. TEX. R. CIV. P. 296, 297; *Nev. Gold & Silver, Inc. v. Andrews Indep. Sch. Dist.*, 225 S.W.3d 68, 77 (Tex. App.—El Paso 2005, no pet.). The purpose of Rule 296 is to give a party the right to findings of fact and conclusions of law following a conventional bench trial on the merits. *Willms v. Ams. Tire Co., Inc.*, 190 S.W.3d 796, 801 (Tex. App.—Dallas 2006, pet. denied). If a trial court does not file findings, it is presumed harmful unless the record affirmatively shows the appellant suffered no harm. See, e.g., *Tenery v. Tenery*, 932 S.W.2d 29, 30 (Tex. 1996) (per curiam); *Cherne Indus., Inc. v.*

Magallanes, 763 S.W.2d 768, 772 (Tex. 1989). When the trial court's reasons for its judgment are apparent from the record, the presumption of harm is rebutted. See *Landbase, Inc. v. Tex. Emp't Comm'n*, 885 S.W.2d 499, 501–02 (Tex. App.—San Antonio 1994, writ denied).

Furthermore, “fact findings are not necessary when the matters in question are not disputed.” *Barker v. Eckman*, 213 S.W.3d 306, 310 (Tex. 2006). Accordingly, “where the facts are undisputed and the only matters presented on appeal are legal issues to be reviewed de novo, the failure to file findings of fact and conclusions of law is harmless error.” *Rollins v. Am. Express Travel Related Servs. Co.*, 219 S.W.3d 1, 5 (Tex. App.—Houston [1st Dist.] 2006, no pet.); see *Lubbock Cty. Cent. Appraisal Dist. v. Contrarez*, 102 S.W.3d 424, 426 (Tex. App.—Amarillo 2003, no pet.) (noting no need for abatement when record shows no factual dispute and reasons for ruling are clear from record). The test for harm looks to whether the reasons for the trial court's ruling are obvious from the record. See *Sheldon Pollack Corp. v. Pioneer Concrete of Tex., Inc.*, 765 S.W.2d 843, 845 (Tex. App.—Dallas 1989, writ denied).

If harm exists from the court's failure to issue findings of fact and conclusions of law, the appropriate remedy is to abate the appeal and direct the trial court to correct its error pursuant to Rule 44.4 of the Texas Rules of Appellate Procedure. See TEX. R. APP. P. 44.4; *Acad. Corp. v. Interior Buildout & Turnkey Constr., Inc.*, 21 S.W.3d 732, 739 n.1 (Tex. App.—Houston [14th Dist.] 2000, no pet.). Rule 44.4 provides as follows:

(a) *Generally.* --A court of appeals must not affirm or reverse a judgment or dismiss an appeal if:

(1) the trial court's erroneous action or failure or refusal to act prevents the proper presentation of a case to the court of appeals; and

(2) the trial court can correct its action or failure to act.

(b) *Court of Appeals Direction if Error Remediable.* --If the circumstances described in (a) exist, the court of appeals must direct the trial court to correct the error. The court of appeals will then proceed as if the erroneous action or failure to act had not occurred.

TEX. R. APP. P. 44.4.

Analysis

On review of the record, we find the matters in question concerning characterization and division of property are not undisputed, and the reasons for the trial court's particular division of the property are not obvious from the record. See *Barker*, 213 S.W.3d at 310; *Sheldon Pollack Corp.*, 765 S.W.2d at 845. As appellee himself observes in his brief, "without the trial court's findings as to the specific cattle confirmed, the values of those specific cattle, and the value of the firearms and ammunition, this Court cannot determine if the trial court improperly characterized the challenged property as separate property, whether the community estate was divided evenly, or if disproportionately, how much so, and for which party." That being so, the trial court's failure to file properly requested findings of fact and conclusions of law "prevents the proper presentation of [this] case to the [C]ourt." See TEX. R. APP. P. 44.4(a)(1). On remand, the trial court can correct this failure. See TEX. R. APP. P. 44.4(a)(2).

Accordingly, we must abate this appeal and remand the cause to the trial court for the execution of findings of fact and conclusions of law. See TEX. R. APP. P. 44.4(b); *Lopez v. Bailon*, No. 07-14-00442-CV, 2015 Tex. App. LEXIS 5161, at *3-4 (Tex.

App.—Amarillo May 20, 2015, no pet.) (per curiam) (abating and remanding for entry of findings and conclusions under similar circumstances).

The trial court's findings and conclusions shall be filed with the Clerk of this Court, via a supplemental clerk's record, on or before August 1, 2016. Upon the filing of the supplemental clerk's record containing said findings and conclusions, this appeal will be reinstated and will proceed forthwith.

It is so ordered.

Per Curiam