



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

No. 07-17-00101-CV

CODY LYNN CLINARD, APPELLANT

V.

JANI LYN CLINARD, APPELLEE

**On Appeal from the 66th Judicial District
Hill County, Texas
Trial Court No. 51,540, Honorable F. B. "Bob" McGregor, Presiding**

September 11, 2017

MEMORANDUM OPINION

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

Cody Lynn Clinard appeals, *pro se*, from a final divorce decree. Through that decree, the trial court ended Cody's marriage to Jani Lyn Clinard, divided the property of the marital estate, and established conservatorship over and possessory rights to the couple's children. He raises multiple issues for review. We affirm.¹

¹ Because this appeal was transferred from the Tenth Court of Appeals, we are obligated to apply its precedent when available in the event of a conflict between the precedents of that court and this court. See TEX. R. APP. P. 41.3.

Preliminarily, we note that the corrected appellant's brief filed by Cody fails to comport with the Texas Rules of Appellate Procedure. That is, he generally omitted citation to legal authority and the appellate record in support of his issues.² Such citation to authority and the appellate record is required by Texas Rule of Appellate Procedure 38.1(i), and the failure to provide it results in waiver of the argument. See *Betts v. Cty. of Freestone*, No. 10-09-00220-CV, 2011 Tex. App. LEXIS 4788, at *2-4 (Tex. App.—Waco June 22, 2011, no pet.) (mem. op.), quoting *Strange v. Cont'l Cas. Co.*, 126 S.W.3d 676, 677-78 (Tex. App.—Dallas 2004, pet. denied).

The same is true of his argument. The brief must contain a clear and concise argument explaining the nature of his complaint; conclusory statements do not satisfy this obligation. *Id.*, quoting *Taylor v. Meador*, 326 S.W.3d 682, 684 (Tex. App.—El Paso 2010, no pet.). The argument provided us here is often conclusory, as well, such as why the property division was improper. And, that Cody acts *pro se* does not free him from the duty to comply with the briefing rules contained in 38.1 of the Texas Rules of Appellate Procedure. *Id.* at *2.

Cody's initial brief also failed to comport with the Texas Rules of Appellate Procedure. We noted that, informed him of its defective nature, afforded him opportunity to correct the defects, and told him of the consequences of his failure to comply with the rules of appellate procedure in a letter dated May 1, 2017. His corrected appellant's brief filed on May 24, 2017, seemed to be an effort to fix the deficiencies. Yet, it did not. Given these circumstances, we conclude that his complaints were waived or present nothing for review.

² What appear to be two opinions of courts outside Texas seem to be copied verbatim in the front of his brief. So too does he provide several cites to Texas caselaw at the end of the document. Yet, the opinions were not referenced in his argument. Nor did he attempt to explain their pertinence.

Additionally, our reading of his complaints and their comparison to authority and the record would also require us to reject them. For instance, he complains about “not get[ting] the standard time with [his] kids per the Texas state law.” Yet, the trial court decreed that “the following provisions of *this Standard Possession Order* are intended to and do comply with the requirements of Texas Family Code sections 153.311 through 153.317” and “each conservator shall comply with all terms and conditions of this Standard Possession Order.” (Emphasis added). Moreover, the parties agreed to this mode of possession before entry of the decree. So, the record belies the suggestion that the decree denies Cody the “standard time” to which he is entitled “per the Texas state law.”

Other of his complaints involve compliance (or lack thereof) with the final decree and implicate factual matters outside the appellate record. Whether an ex-spouse has abided by the property division or interfered with the other’s right to possess the children as ordered by the court are matters over which the trial court has continuing jurisdiction. See TEX. FAM. CODE ANN. § 9.002 (West Supp. 2016) (stating that “[t]he court that rendered the decree of divorce or annulment retains the power to enforce the property division . . . including a property division and any contractual provisions under the terms of an agreement incident to divorce . . . that was approved by the court”); *Smith v. Burt*, ___ S.W.3d___, ___, 2017 Tex. App. LEXIS 3914, at *6 (Tex. App.—El Paso Apr. 28, 2017, no pet.) (stating that the “court that renders a divorce decree retains continuing subject-matter jurisdiction to enforce and clarify the decree’s property division”); see also *Harrell v. State*, 286 S.W.3d 315, 321 n.30 (Tex. 2009) (stating that “all trial courts have inherent authority to enforce their own judgments”).

As for Cody's suggestion that Texas law requires the marital estate to be divided "50/50," he is mistaken. The division need only be just and right; it need not be equal. *In re Marriage of Luna*, No. 07-16-00065-CV, 2016 Tex. App. LEXIS 12432, at *4-5 (Tex. App.—Amarillo Nov. 18, 2016, no pet.) (mem. op.).

In sum, Cody's arguments, such as they are, suggest that he views an appeal as simply an opportunity to relitigate issues. That is not the function of an appellate court. We generally review purported error occurring prior to the entry of a final judgment. We are not simply a forum for another trial.

The issues raised in Cody's corrected brief are overruled for the reasons stated above. Accordingly, the trial court's judgment is affirmed.

Per Curiam