



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

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No. 07-21-00196-CV

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**IN THE MATTER OF THE MARRIAGE OF  
BRANDOUN JOHN BRISCO AND  
COURTNEY MARIE BRISCO AND IN THE  
INTEREST OF E.J.B. AND N.M.B., CHILDREN**

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On Appeal from the County Court at Law No. 1  
Randall County, Texas  
Trial Court No. 78,341-L1, Honorable James W. Anderson, Presiding

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July 28, 2022

**MEMORANDUM OPINION**

Before QUINN, C.J., and PARKER and DOSS, JJ.

Acting pro se, Courtney Marie Brisco appeals from the trial court's *Final Decree of Divorce* dissolving her marriage with Brandoun John Brisco. Through her eight issues and their sub-points, she questions the trial court's denial of her motion for new trial under Federal Rule of Civil Procedure 59 and the admission of certain evidence at trial.

## ***Background***

Courtney and Brandoun married in 2008, had a son and a daughter, and separated in November 2019. At the time of trial, Brandoun served in the United States Army while Courtney had no job outside the home.

Courtney asked Brandoun to leave their home for what she alleged was domestic violence committed against her. In July 2020, he filed for divorce and for a temporary restraining order; Courtney counter-petitioned for divorce. The trial court entered temporary orders, ordered Brandoun to pay child support and temporary spousal support, and ordered Courtney to pay rent, all utilities, normal maintenance on the home, and the debt on their 2012 Mazda she continued to possess.

In January 2021, Brandoun filed a *Motion for Enforcement* alleging that Courtney had failed to comply with certain provisions of the temporary orders. She defaulted on rent, utility payments, and car payments, which were all in Brandoun's name. To avoid credit issues and interference with his security clearance at work, he paid the delinquencies. Brandoun also alleged that Courtney did not allow him to retrieve items of personal property from the home, including military gear and weaponry granted him by the trial court. So too did he aver that she did not comply with the visitation schedule.<sup>1</sup>

The final hearing was held on June 2, 2021, via Zoom. The trial court simultaneously heard evidence on the motion to enforce and the divorce proceeding. Brandoun presented testimony from two coworkers. Courtney, represented by counsel, was her sole witness.

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<sup>1</sup> Although not relevant to this appeal, the trial court ultimately held Courtney in contempt of court and sentenced her to six months in jail, which sentence it suspended.

Brandoun's company commander testified that Courtney reported numerous allegations of domestic violence. During several investigations of those allegations, the commander instructed Brandoun to stay away from Courtney and her home. The investigations resulted in a finding that the allegations were unsubstantiated, "not provable," or "unfounded." The commander testified that on several occasions Courtney sought military protective orders, which orders were denied her.

Brandoun's station commander testified that he accompanied Brandoun to the home to retrieve his personal belongings and witnessed a verbal altercation when Courtney refused to allow Brandoun to retrieve his army gear and weapon. Courtney was the aggressor, according to the witness, who also encouraged Brandoun to leave before the situation escalated. The witness further testified that he always accompanied Brandoun for visitation exchanges and confirmed that Courtney failed to appear at the specified location for Thursday exchanges. This witness also saw Brandoun with his children on numerous occasions and described him as loving and attentive toward them. The children, in turn, were happy when in their father's care.

Brandoun denied committing any acts of domestic violence against Courtney. He also described her as controlling and prone to rages and outbursts, a claim corroborated in her texts and during her testimony. In one of many texts, she threatened to "scorch the earth" during the divorce proceedings.

Other of Brandoun's testimony illustrated that Courtney was not adhering to the court's temporary orders. For instance, when she defaulted on utility and car debt obligations, he satisfied them to avoid injuring his credit.

Brandoun further explained that Courtney impeded his visitation with the children for six months because she failed to appear at the location selected to exchange the children. She attributed her default to car issues. And, when asked why he did not simply pick up the children at Courtney's home, he clarified that his commander had directed him not to go to the home or be around Courtney while he was under investigation for accusations levied by Courtney. Eventually, the parties began meeting at a fast-food restaurant within walking distance to Courtney's home.

Other evidence involved Brandoun's concern with his children's well-being. They had been in virtual learning due to the COVID-19 pandemic, and Courtney kept them at home for a year and a half. Brandoun also learned from his son's school principal that the youth's grades had fallen, and that Courtney failed to take him to school for mandatory state testing. Instances of physical abuse by Courtney directed at the children were also mentioned by Brandoun.

Additionally, Brandoun expressed concerns about Courtney being the primary conservator. Even though he had been paying her child support, she could not meet her financial obligations. When they separated, she was unemployed. During the course of the proceedings, she secured employment as a pharmacy technician working from home but took medical leave after a few months. During her testimony, she explained that although she was working from home for a short time, she was unable to perform her duties due to an autoimmune disorder and other ailments causing her pain. In turn, Brandoun believed that Courtney simply chose not to work.

Regarding the marital estate, Brandoun testified that Courtney received an \$8,000 refund from their 2019 joint tax return and all the government stimulus money paid during

the pandemic. He allegedly received none of those funds. So too did he testify about a pension plan being allocated to his survivors, a Roth account with a balance approximating \$5,000, and a survivor's benefit plan.

During her testimony, Courtney acknowledged that she violated the temporary orders and admitted to having ADHD and violent outbursts. But, she claimed her conduct was in response to misconduct by Brandoun. She also (1) recognized that her text messages to Brandoun were "belligerent" and "embarrassing," (2) accused him of being the aggressor in their quarrels, (3) disputed the testimony of Brandoun's commander about her interfering with Brandoun's retrieval of certain personalty, (4) accused the commander of lying, (5) denied failing to pay financial obligations imposed on her by the temporary orders, and (6) denied that her children had failing grades at school.

After hearing the testimony, the trial court granted the parties a divorce, deemed the evidence of domestic violence by Brandoun non-credible, and appointed the parties joint managing conservators. However, it designated Brandoun the primary conservator, ordered Courtney to pay monthly child support payments of \$280.28, ordered Brandoun to pay spousal support for three years, awarded Courtney forty-five percent of Brandoun's Army pension and Brandoun the remaining fifty-five percent, and awarded Brandoun one hundred percent of his Army Survivor's Benefit Plan and his Roth plan. The motion to enforce against Courtney was granted as well, resulting in her being sentenced to jail and the suspension of that sentence.

The trial court also observed that the "children's grades [had] suffered" while in the care of Courtney and "court orders were not followed allowing [Brandoun] proper visitation." The record further illustrates that as the trial court rendered its decision,

Courtney accused the judge of taking her children away because of their grades. So too did she continue to interrupt the court, which resulted in the court placing her in a Zoom waiting room. Courtney subsequently moved for a new trial.

### ***Issues***

Regarding the division of the marital estate, Courtney complains that the division was not equal.<sup>2</sup> Yet, a trial court need not divide the estate equally. *In re Marriage of Wallis*, No. 07-20-00247-CV, 2021 Tex. App. LEXIS 3927, at \*9 (Tex. App.—Amarillo May 19, 2021 no pet.) (mem. op.). It need only divide it in a just and right manner. *Id.* And, the trial court concluded that it did here. Thus, the burden lay with Courtney to illustrate that the division was so unjust and unfair as to constitute an abuse of discretion. *Id.* at \*9–10. That would necessarily entail her addressing the reason why the trial court opted to forgo an “equal” split. As the court stated in its findings of facts and legal conclusions, the “disproportionate share of BRANDOUN JOHN BRISCO’s pension plan was awarded in order to compensate BRANDOUN . . . for COURTNEY’s . . . receipt of nonpayment of the utilities, nonpayment of the . . . Mazda 5, nonpayment of children’s dental bill, nonpayment of BRANDOUN’s . . . portion of the 2019 tax refund and nonpayment for BRANDOUN’s . . . stimulus payments.” Given this conclusion, the evidence supporting it, and the minimal effort by Courtney to either discuss the conclusion or illustrate why the division struck was unjust and unfair, we cannot say that the trial court abused its discretion in dividing the estate as it did.

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<sup>2</sup> We note that Courtney treats the obligation to pay Brandoun \$2,500 in attorney’s fees as part of the estate’s division. Yet, those fees were awarded in conjunction with his receipt of a favorable outcome on the motion to enforce the temporary orders. They had nothing to do with the marital estate.

Regarding Courtney's issue about physical abuse by Brandoun, the trial court expressly found "[t]he evidence of domestic violence . . . not credible." So too did it find that she (1) "engaged in a consistent pattern of harassment and duress of [Brandoun] . . . and [his] chain of command, his employer, and co-workers in attempt to destroy [his] career and attempted to interfere with his security clearance" and (2) "made relentless claims which were proven to be false." If nothing else, this illustrates that the trial court did not believe Courtney, and it had the discretion to do so under the standard of review. *Hamilton v. Maestas*, No. 07-18-00320-CV, 2020 Tex. App. LEXIS 2911, at \*5 (Tex. App.—Amarillo Apr. 7, 2020, no pet.) (mem. op.) (noting that in a bench trial, the court is the sole judge of the credibility of the witnesses and the weight to be given to the testimony); *Wiedenfeld v. Markgraf*, 534 S.W.3d 14, 19 (Tex. App.—San Antonio 2017, no pet.) (stating that the trial court was free to believe or disbelieve any witness's testimony). So, we must defer to its credibility choices.

Regarding her issue about the conservatorship of the children, Courtney complains of the trial court's refusal to interview her son about his desire to reside with her. Section 153.009(a) of the Texas Family Code provides that in a non-jury trial, the trial court *shall* interview a child in chambers who is twelve years of age or older ***on application*** of a party. TEX. FAM. CODE ANN. § 153.009(a). But, as found by the court here, "[t]here was no motion properly filed under the Texas Family Code 153.009." Thus, the trial court did not err. See *In re A.M.*, 604 S.W.3d 192, 199 (Tex. App.—Amarillo 2020, pet. denied) (holding that a trial court does not abuse its discretion in failing to conduct an interview under the statute when no written application has been filed).

Regarding Courtney's suggestion that she should have received a new trial because her witnesses were unavailable due to the COVID-19 pandemic, nothing in the record supports that assertion. Nor did she move for a continuance on those grounds.

Regarding her suggestion about the purported need for a new trial due to newly discovered evidence, the burden lay with her as complainant to demonstrate that: (1) the evidence came to her knowledge since the trial; (2) her failure to discover it sooner was not due to lack of diligence; (3) the evidence was not cumulative of other evidence; and (4) it was so material it would probably produce a different result if a new trial were granted. See *In re Estate of McQuigg*, No. 07-15-00421-CV, 2016 Tex. App. LEXIS 11462, at \*4–5 (Tex. App.—Amarillo Oct. 20, 2016, pet. denied) (mem. op.) (mentioning those items as the elements to securing retrial due to newly discovered evidence). Courtney made no effort to address each of those elements in her appellate brief.

Regarding her complaint about a new trial and Brandoun's counsel violating the Texas Disciplinary Rules of Professional Conduct, the supposed misconduct involved counsel stating that his client lost security clearance due to Courtney's failure to pay bills. This occurred during closing argument. By then, Brandoun testified that Courtney's actions risked his loss of that clearance. He also mentioned that he had such clearance "once again." Whether that meant he had lost and then regained it is unclear, but it could be so construed. Yet, even if counsel mistakenly interpreted that as indicating his client's clearance was lost, at one time, no one uttered a contemporaneous objection as required by Texas Rule of Appellate Procedure 33. TEX. R. APP. P. 33.1(a)(1) (requiring a timely objection to preserve a complaint for appellate review). Moreover, the trial court did not find that Brandoun lost his security clearance, but, rather, that Courtney attempted to



interfere with it. This and the entirety of the record is of import since Courtney's appellate obligation included the duty to prove harm arising from the purported error. *Brinker v. Evans*, 370 S.W.3d 416, 421–22 (Tex. App.—Amarillo 2012, pet. denied) (stating that the burden lies with the appellant to not only prove an instance of abused discretion but also harm arising from it). Given the evidence of her interference with Brandoun's clearance, we cannot say counsel's argument caused her harm even if counsel misinterpreted the evidence during argument.

As for the remaining complaints about the supposed inaccuracies in counsel's closing argument, no one objected at the time. Additionally, the trial court could have likened them to the summation of evidence and engaging in reasonable deductions from the evidence. Such are legitimate areas of argument. *Froseth v. State*, No. 07-15-00342-CR, 2016 Tex. App. LEXIS 8227, at \*5–6 (Tex. App.—Amarillo July 29, 2016, pet. ref'd) (mem. op., not designated for publication) (noting that areas of proper argument include summarizing evidence and engaging in reasonable deductions from the evidence).

Regarding Courtney's complaints about the admission of evidence, the first concerns screenshots of Facebook messages without pertinent "metadata." The screenshots comprised Petitioner's Exhibit B, to which her counsel announced "[n]o objection" when proffered for admission. Thus, she failed to preserve her complaint for review. See TEX. R. APP. P. 33.1(a)(1) (requiring a timely objection to preserve a complaint for appellate review).

As for the second area of concern, it encompassed Petitioner's Exhibit A. The latter consisted of a memorandum describing Courtney's allegations to the military about Brandoun. It also contained the conclusion that the allegations, upon investigation, were

unfounded. To the extent that the exhibit was admissible, Brandoun's company commander had already testified to the memorandum's contents without objection. Admission elsewhere and without objection of the complained of evidence rendered harmless her current complaint, even if found correct. See *Hartman Income REIT PPTY Holdings, LLC v. Dallas Cent. Appraisal Dist.*, No. 07-11-00079-CV, 2012 Tex. App. LEXIS 8835, at \*6 (Tex. App.—Amarillo Oct. 23, 2014, pet. denied) (mem. op.) (holding that one is not harmed by the admission of purportedly objectionable evidence when it was admitted elsewhere without objection).

We overrule each issue and affirm the final judgment.

Per Curiam