



**In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana**

No. 06-08-00120-CV

IN THE MATTER OF THE MARRIAGE OF
RICHARD MASON KING, JR., AND
MECHELE R. KING

On Appeal from the 6th Judicial District Court
Lamar County, Texas
Trial Court No. 76685

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Justice Carter

MEMORANDUM OPINION

Richard Mason King, Jr., has appealed from an order divorcing him from Mechele R. King. He filed the petition for divorce, and sought to have the divorce granted and property divided based on his affidavit setting out evidence.

The procedural history of this case is unique. King, who is incarcerated, initially served citation on a Mechele R. King Caldwell. It became apparent that she was not the correct person, as she had been married to Kenneth Petty for over twenty years. Citation was then posted at the courthouse door on June 6, 2008. King also filed a document stating that a copy of the petition had been received by Mechele Caldwell by certified mail at the named address on either September 15 or 16, 2007 (with copy attached). Mechele R. King Caldwell did not file an answer.

According to the petition, King and Mechele had a child together in 1994—who has since been adopted by another named individual. King alleges in his petition that he and Mechele were married March 14, 1994, but in his affidavit states that they were "married by lawful recognition by Judge J.D. Lovett Presiding Judge of the 6th District Court in Lamar County, Texas, during child custody proceedings on or about March 12, 1994."¹

¹Our clerk's office received a telephone call from a person claiming to be Mechele Caldwell, appellee. She was confused about the entire proceeding, stating that she was never married to King, although they had a child together thirteen years ago, and did not understand how this inmate could obtain a divorce in the absence of a marriage. Neither do we, but since she did not answer the suit for divorce, we have no record or evidence on this matter, and it has never been raised before a court. Based on King's petition, it is likely these parties were never formally married since he only alleges the marriage resulted from "recognition" by Judge Lovett.

The court signed a decree of divorce September 4, 2008. King does not complain about the divorce, but does complain about the property division. The form used by the judge is one submitted to the trial court by King. It orders all property in the possession of a party to remain with that party. It also orders that King is not required to pay any debt incurred after October 27, 1997 (the date of their separation), and contains a laundry list of additional types of debts that King was not liable for—obviously taken from a form, and with no blanks filled in. The types of debts referenced are real estate debts and any liability on vehicle loans.

The decree divides the estate of the parties, by stating that they are equally responsible for tax liabilities from the date of the marriage through the end of 2006, and providing other relief as to federal tax liabilities.

King appeals from the entry of the decree which he provided. His argument is based on his allegations seeking specific dollar amounts of

\$7,500.00, or half of all tax returns filed during the years 1997 to 2008; \$2,500.00, or half of the value of the vehicles purchased and/or sold between the years 1995 to the year 2008; and \$2,500.00, or half of all furnishings, stocks, bonds, checking accounts, savings accounts, trust fund accounts, possessions and funds, whichever is less.

Those amounts are requested, not in his petition for divorce, but in a letter written to the court August 25, 2008 (the amounts stated there differ somewhat from those specified in his brief).

King contends that the trial court abused its discretion and violated his rights to a fair and impartial division of the marital estate. In a divorce decree, the trial court divides the community

property of the parties in a manner that the court deems just and right. TEX. FAM. CODE ANN. § 7.001 (Vernon 2006). Such a property division need not be equal and may take into consideration many factors, such as the spouses' respective abilities, benefits that the party not at fault would have derived from a continuation of the marriage, business opportunities, education, relative physical condition, relative financial condition and obligations, disparity in age, size of separate estates, the nature of the property, and disparity in income and earning capacity. *Murff v. Murff*, 615 S.W.2d 696, 699 (Tex. 1981).

We review a trial court's division of property under an abuse of discretion standard. *Moroch v. Collins*, 174 S.W.3d 849, 857 (Tex. App.—Dallas 2005, pet. denied). A trial court abuses its discretion when it acts without reference to any guiding rules or principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985).

In a divorce proceeding, legal and factual sufficiency challenges are not treated as independent grounds of reversible error but, instead, are considered as factors relevant to our assessment of whether the trial court abused its discretion. *Wells v. Wells*, 251 S.W.3d 834, 838 (Tex. App.—Eastland 2008, no pet.); *Boyd v. Boyd*, 131 S.W.3d 605, 611 (Tex. App.—Fort Worth 2004, no pet.). To determine whether the trial court abused its discretion because the evidence is legally or factually insufficient, we consider whether the court (1) had sufficient evidence upon which to exercise its discretion and (2) erred in the application of that discretion. *Lindsey v. Lindsey*, 965 S.W.2d 589, 592 (Tex. App.—El Paso 1998, no pet.).

All of these rules of analysis are based on one underlying premise: that there is evidence before the court. In this case, there is none. It is impossible to show that the court incorrectly ruled on the division of any marital estate because there is no evidence to show what, if anything, the marital estate consisted of. King evidently wanted the trial court to issue orders awarding him specified sums of money, or alternatively, half of whatever Mechele had accumulated. The trial court did not err in failing to award properties that may or may not even exist—and about which there is no evidence. We find no error.

We affirm.

Jack Carter
Justice

Date Submitted: November 26, 2008
Date Decided: December 2, 2008