



**IN THE
TENTH COURT OF APPEALS**

No. 10-19-00121-CV

**IN THE MATTER OF THE MARRIAGE OF
DANNY LOEHR AND BRENDA ANNETTE LOEHR AND
IN THE INTEREST OF D.L., A CHILD**

**From the County Court at Law No. 2
Brazos County, Texas
Trial Court No. 18-001155-CVD-CCL2**

MEMORANDUM OPINION

Danny Loehr appeals from a final judgment of divorce. The divorce decree did not order his wife Brenda to relinquish her rights to his survivor ERS benefits. On appeal, Danny complains that the trial court erred by divesting him of his separate property interest in his retirement benefits by refusing to order that Brenda be removed as his designated beneficiary. Because we find that we do not have an adequate record to determine Danny's issue, we affirm the judgment of the trial court.

According to the divorce decree, a reporter's record was made of the final

hearing. The parties settled most of the issues in the divorce and a Mediated Settlement Agreement was filed with the trial court which is contained in the clerk's record. However, the issue of whether Brenda was to be ordered to sign an ERS "Transfer and Release of Interest" form which would relinquish her designation as the beneficiary of Danny's ERS survivor benefits plan was not agreed to in the MSA but was reserved for the trial court to determine. Danny avers that a hearing was conducted by the trial court on this issue and has attached an exhibit to his brief which he contends was admitted by the trial court at that hearing. However, Danny did not request a reporter's record to be prepared in this appeal.

The official court reporter for the trial court filed a letter with this Court that no request for a reporter's record had been made. This Court sent Danny a letter informing him of his obligation to arrange for the preparation and payment of the reporter's record pursuant to Rule 35.3 of the Rules of Appellate Procedure. *See* TEX. R. APP. P. 35.3(b). We also informed Danny that the failure to make the proper arrangements for the reporter's record within twenty-one days of our letter would result in this Court proceeding on the clerk's record alone. Danny did not respond to our letter, so we advised him in a subsequent letter that we would be proceeding on the clerk's record alone and he has since filed a brief in this appeal.

The appellant bears the burden to bring forward an appellate record that enables the appellate court to determine whether any complaints made on appeal constitute

reversible error. *See Enter. Leasing of Houston v. Barrios*, 156 S.W.3d 547, 549 (Tex. 2004) (per curiam); *Christiansen v. Prezelski*, 782 S.W.2d 842, 843 (Tex. 1990) (burden is on appellant to present sufficient record to show error requiring reversal). If the appellant desires a reporter's record on appeal, he must request the court reporter to prepare the record and arrange for payment of the reporter's fee for doing so. *See* TEX. R. APP. P. 35.3(b). Because Danny failed to bring forward an appellate record that included a reporter's record from the trial, we have no basis on which to determine whether the trial court was ever apprised of Danny's separate property arguments or how the trial court erred. We will likewise not consider the exhibits Danny attached to his brief because they are not properly before us in the record. Thus, we are unable to determine on the record presented to us that the trial court erred by its order allowing Brenda to remain as the beneficiary of his ERS retirement. We overrule Danny's sole issue.

CONCLUSION

Having found no reversible error, we affirm the judgment of the trial court.

TOM GRAY
Chief Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill

Affirmed

Opinion delivered and filed August 21, 2020
[CV06]

