

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00818-CV

Eugenio Espinoza Martinez, Appellant

v.

Kathleen Anne Lozano Martinez, Appellee

**FROM THE DISTRICT COURT OF WILLIAMSON COUNTY, 425TH JUDICIAL DISTRICT
NO. 12-1114-F425, HONORABLE BETSY F. LAMBETH, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Eugenio Espinoza Martinez appeals the final decree of divorce in the underlying bench trial. We previously abated and remanded this cause to the district court for the entry of the necessary findings of fact and conclusions of law.

In its findings and conclusions, the district court notes that appellant was not notified under the guidelines set forth in *Zuniga v. Zuniga*, 13 S.W.3d 798, 802 (Tex. App.—San Antonio 1999, no pet.), *disapproved on other grounds*, *In re Z.L.T.*, 124 S.W.3d 163, 165 (Tex. 2003), of his opportunity to present evidence by deposition or affidavit as to the issues of the divorce on final trial. The court’s findings state that the court mistakenly believed a “*Zuniga* letter” had been sent to appellant advising him of his right to offer evidence as to the final issues in the divorce, but the letter

did not do so.¹ Further, the court concludes that “[t]he case should be reversed and remanded to the trial court.”

Accordingly, in the interest of justice, and without requiring either of the pro se parties to file briefs, *see* Tex. R. App. P. 2, we affirm the final decree of divorce in part as to the parties’ divorce, but reverse the final decree in part as to the parties’ remaining issues, including property division and conservatorship, and remand this cause to the district court for further proceedings.² *See In re Brown*, No. 07-06-00234-CV, 2006 Tex. App. LEXIS 8930, at *1 n.1 (Tex. App.—Amarillo Oct. 17, 2006, no pet.) (mem. op.) (following similar procedure); *see also McKnight v. McKnight*, 543 S.W.2d 863, 868 (Tex. 1976) (affirming divorce decree but remanding for retrial of property issues); *Lipshy v. Lipshy*, 525 S.W.2d 222, 227 (Tex. Civ. App.—Dallas 1975, writ dism’d) (affirming divorce decree but remanding for retrial of conservatorship issues).

Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Pemberton and Goodwin

Affirmed in Part, Reversed and Remanded in Part

Filed: October 18, 2017

¹ The district court states that the letter sent to appellant “requested evidence only as to the issue of adequate notice.”

² We are dispensing with the requirement of twenty-one days’ notice to the parties because of the disposition of this cause and pursuant to Rule 2 of the Texas Rules of Appellate Procedure. *See* Tex. R. App. P. 2; *In re Brown*, No. 07-06-00234-CV, 2006 Tex. App. LEXIS 8930, at *1 n.1 (Tex. App.—Amarillo Oct. 17, 2006, no pet.) (mem. op.).