

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**

ORDER AND MEMORANDUM OPINION

PER CURIAM

Eugenio Espinoza Martinez appeals the final decree of divorce in the underlying bench trial. He has filed a motion to abate this appeal for the entry of findings of fact and conclusions of law that were not issued by the district court after his timely filed request for them and his notice to the court that they were past due. *See* Tex. R. Civ. P. 296.

The family code provides that, upon timely request, the trial court shall make written findings of fact and conclusions of law when the trial court has rendered judgment dividing the parties' estate in a divorce suit, when the court varies from the standard possession order, and when the court renders a child support order. *See* Tex. Fam. Code §§ 6.711, 153.258, 154.130. When a trial court does not comply with a proper and timely request for findings and conclusions, harm is presumed unless the contrary appears on the face of the record. *Tenery v. Tenery*, 932 S.W.2d 29, 29 (Tex. 1996) (noting that trial court refused three requests to make findings of fact and conclusions

of law as to division of marital estate and amount of child support); *Limbaugh v. Limbaugh*, 71 S.W.3d 1, 7 & n.2 (Tex. App.—Waco 2002, no pet.) (noting that whether property was divided in just and right manner under family code is ultimate and controlling issue in property division upon divorce). Error is harmful if it prevents an appellant from properly presenting a case to the appellate court. *Tenery*, 932 S.W.2d at 30 (citing predecessor to Tex. R. App. P. 44.1(a)(2)).

Here, Martinez contends that the lack of the requested findings and conclusions “requires him to guess as to the reasons that the trial court used to derive [] its decision.” Having reviewed this record, we conclude that Martinez’s request for findings of fact and conclusions of law and his notice of past due findings and conclusions were timely filed, that the face of the record does not negate the presumed harm from the lack of such findings and conclusions, and that it appears such findings and conclusions are necessary for proper presentation of this appeal.

Accordingly, we grant Martinez’s motion in part, abate this appeal, and remand this cause to the trial court for the entry of the necessary findings of fact and conclusions of law. *See* Tex. Fam. Code §§ 6.711, 153.258, 154.130. A supplemental clerk’s record containing the findings and conclusions shall be filed with this Court thirty days from the date of this order. This appeal will be reinstated after the supplemental clerk’s record is filed.

It is ordered on August 25, 2017.

Before Chief Justice Rose, Justices Pemberton and Goodwin

Abated and Remanded

Filed: August 25, 2017