NUMBER 13-14-00565-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

THE ESTATE OF FRANCIS W. SINATRA, JR., DECEASED, **Appellant,**

v.

CYNTHIA SINATRA, **Appellee.**

On appeal from the 329th District Court of Wharton County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Rodriguez and Benavides
Memorandum Opinion by Chief Justice Valdez

Appellant, the estate of Frank W. Sinatra Jr., appeals from a divorce decree. By five issues, the Estate complains that (1) the evidence is legally and factually insufficient to support the trial court's finding that Frank and appellee, Cynthia Sinatra, had a common law marriage, (2) the evidence was legally and factually insufficient to support characterizing property known as the Hensal Road home as community property, (3) the

evidence is legally and factually insufficient to support the trial court's finding that Frank had possession and control of $1 million in unspent cash and earnings paid during the marriage, and the trial court then had no basis to award to Cynthia $500,000 to equalize the division of the marital estate, (4) the trial court's mischaracterization of the Hensal Road house as community property and the $500,000 equalization award to Cynthia caused the trial court's division of the marital estate to be manifestly unfair, unjust, and disproportionate, and (5) the evidence is legally and factually insufficient to support the trial court's award to Cynthia of spousal maintenance of $5,000 per month. We reverse and render.

I. BACKGROUND

Frank and Cynthia were divorced on March 29, 2001, but according to Frank, they "remained close" after the divorce. After the divorce, Frank and Cynthia traveled together, and Frank visited Cynthia and her children in Wharton. Frank claimed that after the 2001 divorce, he continued to support Cynthia and her children because he felt it was the appropriate thing to do. Frank claimed that Cynthia's financial demands required him to take loans from his sister in order to pay Cynthia spousal support ordered by the trial court in the 2001 divorce decree and that he was out of money.[1]

Cynthia claimed that after the 2001 divorce, she and Frank entered into a common law marriage. Therefore, she filed for a divorce in 2013. After a bench trial, the trial court concluded that a common law marriage existed and granted the divorce. This appeal followed.

[1] The 2001 divorce decree ordered Frank to pay Cynthia spousal support of $5,000 per month for twenty-four months or, until she remarried, or either one died.

II. SUFFICIENCY OF THE EVIDENCE SUPPORTING COMMON LAW MARRIAGE

By its first issue, the Estate contends that the evidence is insufficient to support the trial court's conclusion that a valid common law marriage existed. The Estate challenges the factual findings supporting each element required to find a common law marriage.

A. Standard of Review and Applicable Law

When examining a legal sufficiency challenge, an appellate court reviews the evidence in the light most favorable to the challenged finding and indulges every reasonable inference that would support it. *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). An appellant attacking the legal sufficiency of an adverse finding on which it did not have the burden of proof at trial, must demonstrate that there is no evidence to support the adverse finding. *See Exxon Corp. v. Emerald Oil & Gas Co., L.C.*, 348 S.W.3d 194, 215 (Tex. 2011). The ultimate test for legal sufficiency is whether the evidence would enable a reasonable and fair-minded fact finder to reach the verdict under review. *City of Keller*, 168 S.W.3d at 827.

The three elements of a common-law marriage are: (1) an agreement to be married; (2) after the agreement, living together in Texas as husband and wife; and (3) representing to others in Texas that they are married. *Winfield v. Renfro*, 821 S.W.2d 640, 645 (Tex. App.—Houston [1st Dist.] 1991, writ denied). "[A]n agreement to be "informally" married may be established by direct or circumstantial evidence." *Russell v. Russell*, 865 S.W.2d 929, 931 (Tex. 1993). However, courts are no longer permitted "to infer or imply the couple's marriage agreement from evidence which established cohabitation and public representation." *Id.* at 932. Thus,

> [a] finding that there is legally and/or factually sufficient evidence of cohabitation and public representation will not necessarily constitute legally and/or factually sufficient evidence of an agreement to be married. There must also be legally and/or factually sufficient evidence of an agreement to be married which may include direct and/or circumstantial evidence.

Id. at 933 (concluding that even assuming legally and factually "sufficient evidence of cohabitation and public representation existed, the [lower] court [of appeals] erroneously failed to consider whether there was legally or factually sufficient evidence of an agreement to be married and erroneously inferred an agreement to be married").

B. An Agreement to Be Married

The Estate challenges the trial court's finding that the couple had an agreement to be married after the 2001 divorce. Specifically, the Estate argues that "[t]here is not a single card, letter, email, taped telephone conversation or any other indicia that Frank and Cynthia celebrated an alleged second marriage." Cynthia responds by pointing to her testimony wherein the trial court asked, "You're sitting here in court telling me today that you and Frank, despite your divorce, agreed to continue your marriage," and she responded, "Yes . . . that's what I'm saying." Cynthia further points to evidence that Frank referred to her as his wife at social events and that the couple cohabitated for many years after the divorce.

Although we are mindful that an agreement to be married may be shown by circumstantial evidence, we must not infer that an agreement existed merely through evidence that the couple held out to others that they were married and that they cohabitated. *See id.* Without circumstantial evidence of the agreement, we may not find the evidence legally sufficient to support a finding that the couple agreed to be married. *See id.* Moreover, a marital "agreement [cannot] be implied contrary to direct evidence

which definitely shows that there was no agreement." *Clack v. Williams*, 189 S.W.2d 503, 505 (Tex. Civ. App.—San Antonio 1945, writ ref'd w.o.m.). "[W]here there is direct evidence that the requisite agreement to henceforth be husband and wife was never reached by the parties," none can be inferred. *Ferrell v. Celebrezze*, 232 F.Supp. 281, 283 (S.D. Tex. 1964). And, "[t]his is particularly the case where there is evidence that what was intended was essentially a relationship of convenience and a status terminable at the will of either party." *Id.*

Here, assuming, without deciding, that there is some evidence that Frank and Cynthia held out to others that they were married and cohabitated during that time, we find no evidence either direct or circumstantial that Frank ever intended to be married to Cynthia after the 2001 divorce or that he actually agreed to be married.[2] Cynthia claims that her testimony supports a finding that the couple agreed to enter a common law marriage after the divorce. However, Cynthia did not testify that Frank ever agreed to be married. In fact, when asked on direct-examination, when Frank agreed to enter into a common-law marriage with her, Cynthia stated that she believed that Frank had agreed shortly after the 2001 divorce because according to Cynthia, nothing had changed in their relationship after the divorce. Cynthia believed that after a legal divorce, if the relationship does not change, then the marriage continues.[3] However, an agreement to create a

[2] Cynthia claims that the couple agreed to be married on the date of their divorce in 2001.

[3] Cynthia also stated that "definitely a certain day that everybody would remember" that marked the start of a common-law marriage was in April of 2002 when Frank "had [her] stand up and [she] was introduced as his wife." This testimony supports a finding that the couple held themselves out as husband and wife; however, it does not support a finding that Frank agreed to be married after the divorce. *See Russell v. Russell*, 865 S.W.2d 929, 932 (Tex. 1993) (explaining that courts are not permitted "to infer or imply the couple's marriage agreement from evidence which established cohabitation and public representation").

common marriage must be specific and mutual. *See Gary v. Gary*, 490 S.W.2d 929, 932 (Tex. Civ. App.—Tyler 1973, writ ref'd n.r.e.). Here, it is clear from Cynthia's testimony that she believed that the couple entered a common law marriage because the couple continued their relationship and not because Frank had agreed or shown an intent to enter into a common law marriage.[4] *See id.* (explaining that agreement must be mutual); *see also Burden v. Burden*, 420 S.W.3d 305, 308–09 (Tex. App.—Texarkana 2013, no pet.) (concluding that as a matter of law there was no evidence that the couple agreed to enter into a common law marriage even though one party testified that the couple continued cohabitating after their divorce and that her ex-spouse told her that their previous divorce "meant nothing" and that "everything would be the same").

And, although when asked by the trial court if she was telling the court that she and Frank, despite their divorce, "*agreed to continue the marriage*," Cynthia generally stated, "Yes," she could not and did not specify when Frank agreed to be married and did not provide any evidence that Frank had an intent to be married to her after the 2001 divorce.[5] Therefore, we conclude that Cynthia's answer to the trial court's question regarding whether she claimed the coupled agreed to continue the marriage constitutes no evidence to support the trial court's finding that Frank intended to enter into a common-law marriage with Cynthia and agreed to the marriage because it is meager circumstantial evidence. *See Jelinek v. Casas*, 328 S.W.3d 526, 538 (Tex. 2010) (citing *City of Keller*, 168 S.W.3d at 814); *Lozano v. Lozano*, 52 S.W.3d 141, 148 (Tex. 2001) (holding that a

[4] Frank testified that he did not agree to enter into a common law marriage with Cynthia.

[5] Cynthia stated, "I understand that we were married and then we were divorced and that the common-law marriage began as soon as the divorce was final." However, although Cynthia testified that she believed that the marriage continued after the divorce, she did not state that Frank agreed to the marriage.

jury may not reasonably infer an ultimate fact from meager circumstantial evidence where circumstantial evidence is slight, and something else must be found in record to corroborate probability of fact's existence). Moreover, the uncontroverted evidence shows that, despite her testimony that she believed that the couple had agreed to continue the marriage, when it came to legal matters neither Cynthia nor Frank claimed to be married. For example, evidence was presented that Cynthia and Frank purchased a home together after the divorce listing them as *single* tenants in common, each party filed separate tax returns with Frank filing as *single* and Cynthia filing as *head of household*,[6] and Frank filed gift tax returns for approximately $4.7 million that he gave to Cynthia after the divorce wherein he labeled her as his ex-spouse. In addition, as pointed out by the Estate, although Cynthia believed that the couple had agreed to continue the marriage on or about March 29, 2001, Frank continued paying spousal support as ordered by the March 2001 divorce decree to Cynthia, and she continued accepting the payments for the full two-year term, which ended in March of 2003. The evidence also shows that Cynthia and her tax preparer, Phil Stephenson, were aware that Frank paid gift taxes on money he gave her in 2007 because she emailed Frank's financial representative O'Conner concerning the money. O'Conner responded by stating that Stephenson "[could] be assured by me that all cash given to you (except the recent invoice we received) were claimed as gifts on Frank's tax return. If Phil needs anything additional have him call me." Cynthia forwarded O'Conner's email to Stephenson "for [his] records." A logical inference can be made that Cynthia had not informed Stephenson of her belief

[6] Cynthia's expert witness testified that generally a married person is not allowed to file her tax returns as head of household.

that she and Frank had agreed to continue the marriage from this evidence because Stephenson as a certified public accountant should have known that gifts from one spouse to another are tax exempt.[7] Finding no evidence of a mutual agreement to be married, we conclude that the evidence is legally insufficient to support the judgment. Accordingly, we sustain the Estate's first issue.[8]

III. CONCLUSION

We reverse the trial court's judgment and render judgment for the Estate.

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

Delivered and filed the
28th day of July, 2016.

[7] The Internal Revenue Service provides that generally one spouse may gift another spouse an unlimited amount of cash without tax consequences. *See* IRS website "Frequently Asked Questions on Gift Taxes" at https://www.irs.gov/businesses/small-businesses-self-employed/frequently-asked-questions-on-gift-taxes (last visited on July 25, 2016). In addition, at trial, Frank's expert witness, Randal R. O'Connor testified that Frank was required to file gift taxes for any gifts to non-spouses, which included filing a gift tax for any gifts of cash to Cynthia.

[8] Because we sustain Frank's first issue, we need not address the Estate's second through fifth issues as they are not dispositive of this appeal. *See* TEX. R. APP. P. 47.1.