NUMBER 13-15-00392-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

CARL H. SHANKLIN, **Appellant,**

v.

MARY JANE SHANKLIN, **Appellee.**

On appeal from the 214th District Court of Nueces County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Garza and Longoria
Memorandum Opinion by Chief Justice Valdez

Appellant Carl Shanklin (Husband) attempts to appeal a Final Decree of Divorce entered by the trial court on June 18, 2015 in trial case number 2015-FAM-1602-F. On January 19, 2016, appellee Mary Jane Shanklin (Wife) filed a motion to dismiss Husband's appeal, arguing that Husband's notice of appeal is untimely and, therefore, fails to invoke this Court's jurisdiction. *See* TEX. R. APP. P. 25.1(b) (providing that failure

to timely file a notice of appeal is jurisdictional). We grant Wife's motion and dismiss Husband's appeal for lack of jurisdiction.

I. Relevant Facts

On April 14, 2015, Wife filed a petition for divorce in the trial court. Shortly thereafter, Wife and Husband entered into a Rule 11 agreement[1] regarding the division of their marital and separate property. On May 1, 2015, less than sixty days after Wife filed her petition for divorce, the trial court signed a divorce decree in accordance with Wife and Husband's Rule 11 agreement.

Thereafter, Husband retained counsel and sought permission from the trial court to withdraw his consent to the divorce under the Rule 11 agreement. The trial court convened a hearing to resolve the matter, at which Husband presented no evidence. Instead, Husband sought permission to withdraw his consent on the basis that the May 1, 2015 divorce decree did not comply with section 6.702(a) of the Texas Family Code because it was entered within sixty days of the date on which Wife filed her petition for divorce. *See* TEX. FAM. CODE ANN. § 6.702(a) (West, Westlaw through 2015 R.S.) (providing that the trial court "may not grant a divorce before the sixtieth day after the date the suit was filed. A decree rendered in violation of this subsection is not subject to collateral attack"). The trial court denied Husband's request to withdraw his consent and signed a Final Decree of Divorce. This decree, signed and dated June 18, 2015, is identical in substance to the one previously entered on May 1, 2015 save for the date on which it was signed.

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[1] A Rule 11 agreement is an agreement between parties to a pending suit. *See* TEX. R. CIV. P. 11. Such agreements are binding on the parties if they are put in writing, signed, and filed with the papers of the court. *See id.*

The next day, on June 19, 2015, Husband filed a motion requesting findings of fact and conclusions of law from the trial court. In his motion, Husband specifically requested findings regarding the following issues on which, according to Husband, "disputed evidence ha[d] been presented": (1) "the characterization of [Husband and Wife's] assets, liabilities, claims, and offsets"; and (2) "the value or amount of the community estate's assets, liabilities, claims, and off-sets." In response to Husband's request, the trial court submitted findings and conclusions stating, in essence, that the Rule 11 agreement governed these issues and was enforceable against Husband.

On August 25, 2015, Husband filed a written notice to appeal the trial court's June 18, 2015 Final Divorce Decree. Wife's motion to dismiss followed.

II. Applicable Law

To invoke appellate court jurisdiction, an appellant must file a timely notice of appeal. *See* TEX. R. APP. P. 25.1(b)*; see also In re Estate of Figueroa-Gomez*, 76 S.W.3d 533, 536 (Tex. App.—Corpus Christi 2002, no pet.). A timely notice of appeal must be filed within thirty days after the judgment is signed by the trial court unless an exception applies to extend the thirty-day deadline, in which case the deadline extends from thirty days to ninety days. *See* TEX. R. APP. P. 26.1(a) (1)-(4) (listing exceptions). One exception that triggers this ninety-day extension applies when the appellant requests findings of fact and conclusions of law from the trial court in a case where such findings "either are required by [Texas Rule of Procedure 296] or, if not required, could properly be considered by the appellate court." *Id.* R. 26.1(a)(4).

Rule of civil procedure 296 states that "[i]in any case *tried* in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law." TEX. R. CIV. P. 296 (emphasis added). For purposes of rule 296,

a case is “tried” to the court when there is an evidentiary hearing before the court upon conflicting evidence. *See Black v. Shor*, 443 S.W.3d 154, 166 (Tex. App.—Corpus Christi 2013, pet. denied). Findings not “required” by rule 296 could “properly be considered” by an appellate court when such findings are “not without purpose” or “may be useful for appellate review”—for example, where the trial court’s judgment is “based in any part on an evidentiary hearing.” *IKB Indus. (Nigeria) Ltd. v. Pro-Line Corp.*, 938 S.W.2d 440, 443 (Tex. 1997) (holding that a request for findings following the trial court’s death penalty sanction dismissing the plaintiff’s suit was useful for appellate review where the trial court considered the “testimony and arguments of counsel” in rendering its judgment, where the trial court’s dismissal “indicate[d] a resolution of disputed factual matters apart from the filings included in the transcript,” and where there “appear[ed] to be a factual dispute over [plaintiff’s] explanations for its alleged discovery abuse”); *cf. Linwood v. NCNB Tex.*, 885 S.W.2d 102, 103 (Tex. 1994) (holding that a request for findings in a case concluded by summary judgment is not useful for appellate review and does not extend appellate deadlines because, by their very nature, summary judgments are decided as a matter of law where no genuine issue of material fact exists). Thus, the key inquiry in determining whether an appellant’s request for findings is required or can be properly considered is whether the trial court held an evidentiary hearing or trial that formed the basis of the judgment being appealed. *See Pro-Line Corp.*, 938 S.W.2d at 443.

III. Discussion

Husband’s August 25, 2015 notice of appeal was filed more than thirty but less than ninety days after the trial court signed the Final Decree of Divorce on June 18, 2015; thus, the issue is whether the findings requested by Husband were required and, if not required, could properly be considered by this Court. *See id.*

Here, Husband requested findings from the trial court based on what he described in his motion as "disputed" evidence regarding the characterization and value of the marital estate. However, nothing in the record before this Court indicates that the trial court based its judgment in any part on an evidentiary hearing or trial—much less one in which disputed evidence was presented regarding the characterization and value of the marital estate. Instead, the trial court's judgment incorporated the Rule 11 agreement and was based on a legal determination that such agreement was valid and enforceable under the circumstances. No trial or evidentiary hearing was held at which Husband disputed any factual matters that formed the basis of the trial court's judgment. *See id.*

Furthermore, Husband does not explain, nor can we discern, how the trial court's findings regarding the enforceability of the Rule 11 agreement are useful in reviewing his appellate issues, which are stated in his appellate brief as follows:

> 1. Were there ex parte, covert court proceedings, off record, convened on April 30, 2015 and May 1, 2015, and in the course of those secret trials did the trial court actually render a series of judgments? If so, what exactly was adjudicated? And why are there multiple judgments when there can be only one?
>
> 2. Was the Appellant deprived of due process by the secret, ex parte proceedings revealed in this case?
>
> 3. Can the Final Decree of Divorce in this case withstand a challenge to the sufficiency of the evidence?

Finally, in response to Wife's motion to dismiss, Husband provides no argument or authority that under the circumstances presented in this case, the findings he requested and received from the trial court were required or could properly be considered by this Court.

We conclude that because the trial court's judgment was based on a Rule 11 agreement and not on an evidentiary hearing or trial, any findings requested by Husband

did not trigger the ninety-day extension for filing his notice of appeal. *See* TEX. R. APP. P. 26.1. Because Husband failed to file his notice of appeal within thirty days after judgment was signed by the trial court, we are without jurisdiction and must dismiss this appeal. *See id.; see also* TEX. R. APP. P. 25.1(b).

IV. Conclusion

We dismiss Husband's appeal.[2]

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

Delivered and filed the
21st day of July, 2016.

[2] On December 9, 2015, Wife filed a previous motion to dismiss Husband's appeal. Having granted her January 19, 2016 motion to dismiss, we dismiss Wife's December 9, 2015 motion as moot.