



NUMBER 13-18-00603-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

ROGELIO GONZALEZ,

Appellant,

v.

NINFA ALICIA CORTINA,

Appellee.

**On appeal from the 444th District Court
of Cameron County, Texas.**

MEMORANDUM OPINION

**Before Justices Benavides, Longoria, and Perkes
Memorandum Opinion by Justice Benavides**

By one issue, appellant Rogelio Gonzalez argues the trial court erred by denying his petition for a bill of review. Gonzalez attempted to challenge his previous divorce decree to appellee Ninfa Alicia Cortina as void upon learning of Cortina's lack of a prior divorce. We reverse and remand.

I. BACKGROUND

Gonzalez and Cortina were married on October 3, 2014. They were divorced on September 26, 2016. The divorce decree divided the community estate. Almost a year later, Gonzalez discovered that Cortina was most likely still married to her previous husband, Jose Luis Guerrero.

After discovering there was no “acta de divorcio” between Cortina and Guerrero in Mexico, Gonzalez filed a petition for a bill of review on May 12, 2017. The trial court held a hearing on Gonzalez’s petition on November 16, 2017. On July 5, 2018, the trial court denied the petition for bill of review and issued findings of fact and conclusions of law on October 8, 2018.

II. BILL OF REVIEW

By his sole issue, Gonzalez argues that the trial court abused its discretion by denying his petition for a bill of review.

A. Standard of Review

A bill of review is an independent, equitable action to set aside a judgment that is no longer appealable or subject to a motion for new trial. *Caldwell v. Barnes*, 154 S.W.3d 93, 96 (Tex. 2004) (per curiam); *Johnson v. Greunepointe 1 Kerens, LLC*, No. 13-18-00337-CV, 2020 WL 2213949, at *1 (Tex. App.—Corpus Christi—Edinburg May 7, 2020, no pet. h.) (mem. op.). “A bill of review is designed to prevent manifest injustice, but the fact that an injustice may have occurred is not sufficient cause to justify relief by bill of review.” *Nelson v. Williams*, 135 S.W.3d 202, 205 (Tex. App.—Waco 2004, pet. denied) (citing *Alexander v. Hagedorn*, 226 S.W.2d 996, 998 (Tex. 1950)).

We review the granting or denial of a bill of review under an abuse of discretion standard. *Temple v. Archambo*, 161 S.W.3d 217, 224 (Tex. App.—Corpus Christi—Edinburg 2005, no pet.). A trial court abuses its discretion if its actions were arbitrary and unreasonable or if it acted without reference to any guiding rules of principles. *Id.* However, when an issue concerns a question of law, we review the trial court’s decision de novo. *Id.*

B. Applicable Law and Discussion

Traditionally, in order to state a claim for a bill of review, the petitioner must allege: (1) a meritorious defense to the cause of action supporting the judgment; (2) which he was prevented from making by the fraud, accident, or wrongful act of the opposing party; (3) unmixed with any fault or negligence of his own. *Mowbray v. Avery*, 76 S.W.3d 663, 682 (Tex. App.—Corpus Christi—Edinburg 2002, pet. denied). The bill of review petitioner must allege with particularity sworn facts sufficient to constitute a defense or claim. *Martin v. Martin*, 840 S.W.2d 586, 591 (Tex. App.—Tyler 1992, no pet.). The petitioner then, as a pre-trial matter, must present prima facie proof to support the claims of a meritorious defense or claim. *Beck v. Beck*, 771 S.W.2d 141, 142 (Tex. 1989); *Petro-Chem. Transport v. Carroll*, 514 S.W.2d 240, 244–46 (Tex. 1974); *Fonseca v. Perez*, No. 13-05-00586-CV, 2006 WL 2371353, *2 (Tex. App.—Corpus Christi—Edinburg August 17, 2006, no pet.) (mem. op.). A prima facie defense or claim is presented if it is determined by the trial court that the petitioner’s claim or defense is not barred as a matter of law, and that he will be entitled to judgment on re-trial if no contrary evidence is offered. *Baker v. Goldsmith*, 582 S.W.2d 404, 409 (Tex. 1979).

Prima facie proof may be comprised of documents, answers to interrogatories, admissions, and affidavits on file along with such other evidence that the trial court may receive in its discretion. The bill of review defendant may respond with like proof showing that the defense is barred as a matter of law, but factual questions arising out of factual disputes are resolved in favor of the complainant for the purposes of this pretrial, legal determination. If the court determines that a prima facie meritorious defense has not been made out, the proceeding terminates and the trial court shall dismiss the case.

Id.

If a meritorious claim or defense at the pre-trial hearing is shown, only then should the trial court proceed to the adjudication of the remaining two issues. *Martin*, 840 S.W.2d at 591. To establish the remaining two requisites for the granting of a bill of review, the petitioner must do more than offer prima facie proof of their existence. *Id.* at 592. The petitioner must assume the burden of proving to the fact finder by a preponderance of the evidence that the judgment was rendered as a result of the fraud, accident, or wrongdoing of the opposite party or official mistake, unmixed with the fault or negligence of the petitioner. *Baker*, 582 S.W.2d at 409. It must be remembered that only prima facie proof is required to establish a meritorious claim or defense, whereas the rendition of an improper judgment because of the fraud or wrongful act of the successful party unmixed with the fault or negligence of the petitioner must be shown by a preponderance of the evidence. *Martin*, 840 S.W.2d at 592.

Gonzalez alleged that he was unaware that Cortina was still married to Guerrero at the time he married Cortina, and he only learned that she was still married to Guerrero after Gonzalez and Cortina finalized their divorce. Although he alleged that Cortina committed fraud, Gonzalez argued that the divorce would also be void if it was shown

that Cortina's lack of previous divorce was due to accident or a wrongful act. After a pre-trial hearing before the trial court, it issued the following findings of fact and conclusions of law.

Findings of Fact:

A. Petition for Bill of Review

1. On May 12, 2017, Petitioner Rogelio Gonzalez filed his petition for bill of review alleging that [Gonzalez] was prevented from asserting his rights against [Cortina] finding no marriage between them and prevented from asserting his rights to set aside the deed transferring an interest in [Gonzalez]'s separate property to [Cortina] due to such transfer being fraudulently procured by [Cortina].

B. Answer to the Bill of Review

1. On June 5, 2017, [Cortina] filed her answer and general denial. [Cortina] asserted that at the time of the marriage between her and [Gonzalez] (October 3, 2014), she believed to be divorced from her ex-husband Jose Luis Guerrero. Included in her answer and general denial was a certificate of divorce from Mexico which had been translated to English. The certificate of divorce was for Ninfa Alicia Cortina and Jose Luis Guerrero and was dated November 22, 2013. Respondent's answer further alleges that the gift deed transferring to her a half interest in [Gonzalez]'s property was not obtained by fraud. At the time of the transfer she was not living with [Gonzalez]. [Cortina] had filed felony charges against [Gonzalez] and he had a felony criminal trial set for October 5, 2015 under cause no. 2015-DCR-1043. [Gonzalez] induced [Cortina] to return to his home and to drop the charges. [Gonzalez] gifted [Cortina] the one-half interest in the property on September 28, 2015 just a few days before the felony criminal trial.

C. Petitioner's Filings of Foreign Language Documents

1. On September 11, 2017, [Gonzalez] filed with the court a Notice of Filing of Foreign Language Documents. There was a Mexican marriage certificate between Jose Luis Guerrero and Ninfa Alicia Cortina dated July 3, 2009. The other document was a divorce decree between Gustavo Felix Mora vs. Maria de los Angeles Garcia Peralta dated August 14, 2013. This is the alleged actual divorce

decree obtained using the certificate number of the divorce decree produced by the [Cortina].

D. Bill of Review Hearing

1. On November 16, 2017, the Court held a hearing on [Gonzalez]'s Petition for Bill of Review. [Gonzalez]'s prior filings (the divorce decree from Mexico and the marriage certificate from Mexico) were admitted without objection. [Gonzalez] did not know that [Cortina] was still married when he married her and that he did not find out about this until after the divorce. [Gonzalez] claims he could not present a proper defense in his divorce.
2. [Cortina] was not aware that her divorce to Jose Luis Guerrero was fraudulent. She hired a person she believed was an attorney in Mexico to do the divorce for her. [Gonzalez] filed this bill of review, she retained Omar H. Masso and [sic] attorney licensed to practice law in Mexico to investigate whether she was indeed divorced from Jose Luis Guerrero. [Cortina] found out she was defrauded and filed a formal complaint in Mexico against this alleged Mexican attorney. Her testimony was corroborated by an official copy of her complaint which was translated from Spanish to English and which was admitted over [Gonzalez]'s objection. [Cortina] was not aware she was not divorced from Jose Luis Guerrero until now. She requested that Attorney Omar H. Masso file a divorce for her immediately in Mexico. Attorney Omar H. Masso filed and obtained a divorce for [Cortina] from Jose Luis Guerrero. [Cortina] offered proof of her actual divorce, which had been translated from Spanish to English and was admitted over [Gonzalez]'s objections. Attorney Omar H. Masso was present in the courtroom and ready to testify but had been excused earlier by the parties.
3. [Gonzalez] had previously filed for divorce from [Cortina] under cause no. 2015-DCL-3064. [Cortina] was not living with [Gonzalez] during the pendency of this divorce. Felony Assault charges were pending against [Gonzalez] and the criminal case was scheduled for Trial on October 3, 2014. [Gonzalez] convinced [Cortina] to return to the home and drop the charges against him. [Gonzalez] agreed to and gifted [Cortina] a one-half interest in [Gonzalez]'s home. [Gonzalez] non-suited the divorce.

4. [Gonzalez] filed for divorce a second time under cause no. 2016-DCL-2045. The property was not awarded as part of the divorce but was now [Cortina's] separate property and her one-half interest in the home was reduced to a payment of \$80,000.00 from [Gonzalez].
5. On September 10, 2018, the Court denied [Gonzalez]'s Petition for Bill of Review.

Conclusions of Law:

- A. A bill of review is an equitable proceeding wherein a prior judgment may be set aside provided that the petitioner can prove (1) a meritorious defense to the cause of action alleged to support the judgment, (2) which he was prevented from making by the fraud, accident or wrongful act of the opposite party, (3) unmixed with any fault or negligence of his own. *Garcia et al. v. Ramos et al.*, *Tex.Civ.App.*, 208 S.W.2d 111.
 1. [Gonzalez] seeks to set aside the divorce decree wherein [Cortina] is awarded the sum of \$80,000. Said sum was awarded to her based on [Gonzalez]'s gift of a one-half interest in his home. [Gonzalez] cannot present a meritorious defense to a property to which he gifted and was not divided pursuant to the community estate.
 2. [Gonzalez] cannot and did not show any fraud, accident or wrongful act on the part of the [Cortina]. [Cortina] was a victim herself of a fraud and therefore had no knowledge or intent to defraud [Gonzalez].
 3. There was no evidence presented by [Gonzalez] that [Cortina] intended to defraud him or married him in order to defraud him.

Here, the trial court's findings of fact and conclusions of law support granting Gonzalez's bill of review. Gonzalez established that he was unaware that Cortina's previous marriage was still in effect, and she had not gotten divorced prior to their union. Those facts establish a prima facie showing since Gonzalez had no knowledge of the facts regarding Cortina's lack of divorce prior to their divorce proceedings and therefore,

he possessed a meritorious defense. See *Beck*, 771 S.W.2d at 142.

Once Gonzalez established a meritorious defense, the trial court must continue its evaluation into the remaining two requirements. Gonzalez must assume the burden of proving to the fact finder by a preponderance of the evidence that the judgment was rendered as a result of the fraud, accident, or wrongdoing of the opposite party or official mistake, unmixed with the fault or negligence of the petitioner. *Baker*, 582 S.W.2d at 409. Although the trial court finds that Cortina was a “victim of fraud,” that finding establishes that Gonzalez and Cortina’s divorce judgment was issued either due to accident or wrongdoing by the parties not having knowledge that Cortina was not properly divorced. See *id.* Gonzalez was unaware that Cortina was not divorced from Guerrero, either at the time Gonzalez and Cortina were married, or at the time they were divorced. Therefore, Gonzalez meets the three requirements to a petition for a bill of review being granted.¹ See *id.*; *Mowbray*, 76 S.W.3d at 682; *Martin*, 840 S.W.2d at 591–92. We hold that the trial court erred by denying Gonzalez’s petition for a bill of review. We sustain Gonzalez’s sole issue.

¹ Although Cortina argues that she should be considered a “putative spouse,” the trial court did not make any findings regarding a “putative spouse” in the previous hearing and we find it is better addressed in the bill of review hearing. The “good faith of the putative spouse is generally a fact question.” *Garduno v. Garduno*, 760 S.W.2d 735, 740 (Tex. App.—Corpus Christi–Edinburg 1998, no pet.). Because the determination of a putative spouse can dictate how property is divided and relies on good faith, the trial court is in the best position to hear argument from the parties on this issue. See *id.* at 738–39.

III. CONCLUSION

We reverse the trial court's judgment and remand to the trial court in accordance with this opinion.²

GINA M. BENAVIDES,
Justice

Delivered and filed the
16th day of July, 2020.

² Any and all pending motions will be dismissed as moot.