



NUMBER 13-22-00262-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

JORGE I. CASTILLO POLANCO,

Appellant,

v.

EVANGELINA RODRIGUEZ,

Appellee.

**On appeal from the 357th District Court
of Cameron County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Contreras and Justices Benavides and Longoria
Memorandum Opinion by Justice Longoria**

Appellant Jorge I. Castillo Polanco¹ challenges the trial court's final decree of divorce awarding appellee Evangelina Rodriguez possession of 3791 Magali Circle,

¹ We note that throughout the record and in the briefing, the parties refer to appellant as Jorge Castillo or Mr. Castillo. For the sake of uniformity, we will refer to appellant as Castillo throughout this memorandum opinion.

Brownsville, Texas (subject property). On appeal, Castillo argues: (1) the trial court erred when it refused to submit a jury charge in accordance with the Texas Family Code; and (2) the submitted jury questions constituted a comment on the weight of the evidence and caused the jury to render an improper verdict. We affirm.

I. PROCEDURAL HISTORY

On August 14, 2019, Castillo filed his petition for divorce, alleging his marriage to Rodriguez had become insupportable and that Rodriguez had committed fraud on the marriage. In his pleading, Castillo requested a disproportionate share of the parties' estate. In an amended petition, Castillo requested the trial court to "[c]onfirm that the [subject property] is part separate property of [Castillo]" and sought to set aside a gift warranty deed transferring the subject property solely to Rodriguez, stating that it was "done by mistake, undue influence and under duress." Rodriguez denied the allegations of mistake or fraud and filed a counterpetition for divorce, wherein she alleged that Castillo was "guilty of cruel treatment toward [her] of a nature that renders further living together insupportable." Rodriguez also requested a disproportionate share of the property, including "the exclusive use and possession of" the subject property.

II. TRIAL

At trial, Castillo testified² that he and Rodriguez were married on February 11, 2018. Prior to the marriage, Castillo, with his separate funds, purchased the subject property with the intent to use it as marital property. According to Castillo, because he did not yet have legal status in the United States and he believed that his immigration status

² Castillo testified through a Spanish interpreter. Castillo does not speak, read, or write the English language.

did not allow him to purchase property in the United States, the deed to the subject property was put solely in Rodriguez's name on December 4, 2017. On May 28, 2018, a deed was executed listing both parties as joint owners of the subject property. Castillo explained that this was done in preparation for him to obtain his legal status in the United States. He testified that he and Rodriguez met with notary public Alicia Castro, per Rodriguez's suggestion, who prepared his green card paperwork. According to Castillo, Alicia told him for immigration purposes that he was also supposed to have a joint bank account with Rodriguez, insurance for their cars, pictures of them together, and other things that verified he and Rodriguez were a legitimate couple.

Castillo explained that at first, the marriage was "all honey" and that everything seemed perfect. He testified that he never asked Rodriguez to quit her job, or to stay home and not work. He did not keep her on a "budget" or control her spending. Castillo also paid off an existing mortgage that Rodriguez had on another home and purchased a Chevrolet Tahoe for Rodriguez. Castillo explained that Rodriguez wanted the vehicle to be solely in her name and that Rodriguez stated that the information received from Alicia regarding having both names on their property to assist in obtaining his U.S. Citizenship was not true. He testified that during the course of the marriage he paid for "everything," including purchasing a vacant lot near the subject property for Rodriguez's son to build on. When Rodriguez's son decided not to use the property, they sold the land and used the money to buy Rodriguez's Tahoe.

Castillo said that Rodriguez also told him that the subject property should just be in her name, because she was a United States Citizen. He explained that he was trying

to save his marriage and keep Rodriguez happy, so he transferred his interest in the subject property to her. When the transfer deed was prepared by Melissa Castro, Castillo stated that it was not translated into Spanish, so he testified that he never read the document, he just signed it as he was “told” to do.

Melissa testified that she is a notary public who also assists with immigration paperwork by helping people translate documents and fill out forms. Alicia is her stepmother who runs a different business separate from Melissa. Melissa did not prepare Castillo’s immigration paperwork. Melissa prepared the gift warranty deed, and she testified that Castillo requested the deed be drafted and paid for the service. Melissa presented her notary public logbook and receipt from the transaction which contained Castillo’s and Rodriguez’s signatures. Melissa testified that when the couple arrived at her office that day, they told her what they wanted done, she prepared the deed in front of them, and they signed it. Melissa explained that she is fluent in Spanish and read the document to Castillo in Spanish and he confirmed that he wanted to gift the home to his wife, as well as the Tahoe. She did not see any signs that Castillo was being forced to sign the document or that he did so against his will.

Rodriguez testified that she and Castillo had a good marriage for at least the first year. During that time, he paid off her loan on her home so that she could stop working, which she testified was what Castillo wanted. When they purchased the subject property, she believed it was intended to be their marital home, but she recalled that Castillo wanted the property to be in her name so that she would have property in her own name. Rodriguez explained that the subject property was a “wedding gift” to her when it was first

purchased. She understood, per discussions between herself and Castillo, that he intended to pay all of their joint bills. When she stopped working, he refused to give her money at first and then she stated that he “decided to give [her] \$300 a month for, well, [her] stuff, but in a very, like, humiliating way.”

Rodriguez explained that they initially went to see Alicia for assistance with Castillo’s immigration paperwork. Rodriguez stated that Castillo met someone at “La Pulga” who recommended Alicia. Alicia suggested to the couple that the subject property needed to be under both of their names, so that each party owned half of the property. Rodriguez testified that in July 2019, after their marriage began suffering problems, Castillo suggested he give her the marital home; she stated that she “never, never ever asked him to do that.” Rodriguez explained that Castillo’s behavior toward her changed after the gift warranty deed was signed in that he became more aggressive and seemed to her to be “unstable.” She believed that he signed the gift warranty deed to her as he “felt bad for the whole situation” because of how he had treated her. She explained that Castillo repeatedly stated, during the week leading up to the transfer, that he was going to put the home solely in her name. As of that time, they had not discussed divorce. She testified she never threatened him or coerced him to put the subject property in her name, and she had no doubt in her mind that he intended the transfer to be a gift.

Rodriguez stated that the discussion of divorce began in August 2019 when she returned from a trip. She explained that prior to the trip, there was a disagreement about Castillo not going on the trip. The trip was a “Make-A-Wish”-type of sponsored trip for Rodriguez’s granddaughter. When the foundation asked the granddaughter who she

wanted to attend, she did not include Castillo, which meant he could not stay in the same location as those on the foundation-sponsored trip. Rodriguez testified that Castillo told her, “If you go on this trip, I’m going to leave you.” When she returned from the trip, Castillo was “already gone” and had emptied their bank account; he filed for divorce three days later.

At the close of evidence, the trial court granted a partial directed verdict in favor of Rodriguez, finding no evidence that the property transfer was the result of duress or accident. The trial court then conducted a charge conference, wherein it denied Castillo’s request that the jury be instructed to first characterize the subject property. The trial court also denied Rodriguez’s request for additional language to the effect of: “Just because a transaction is later regretted does not mean the transaction should be nullified.” The parties were instructed to prepare a charge that effectuated the rulings of the trial court. After being read the charge and hearing closing arguments, the jury returned a verdict finding that Castillo executed a deed conveying his interest in the subject property to Rodriguez and that such transaction was not the result of fraud or mistake. A final decree of divorce was entered, which awarded Rodriguez sole possession of the subject property. This appeal followed.

III. CHARGE ERROR

By two issues, Castillo argues that the trial court erred when it submitted a jury charge that “changed the questions contrary to the characterization requirements” of the Texas Family Law Pattern Jury Charge, resulting in a comment on the weight of the evidence.

A. Standard of Review

The trial court shall submit instructions and definitions to the jury that are necessary to enable the jury to render a verdict. TEX. R. CIV. P. 277. An instruction is proper if it finds support in any evidence of probative value and if it might be of some assistance to the jury in answering the questions submitted. *La.-Pac. Corp. v. Knighten*, 976 S.W.2d 674, 676 (Tex. 1998) (per curiam). We review the trial court's submission of instructions and jury questions under an abuse of discretion standard. *Toles v. Toles*, 45 S.W.3d 252, 263 (Tex. App.—Dallas 2001, pet. denied).

The court shall not in its charge comment directly on the weight of the evidence or advise the jury of the effect of their answers, but the court's charge shall not be objectionable on the ground that it incidentally constitutes a comment on the weight of the evidence or advises the jury of the effect of their answers when it is properly a part of an instruction or definition.

TEX. R. CIV. P. 277. To constitute a comment on the weight of the evidence, the instruction must indicate the trial court's opinion on the truth of the matter in question. *Harris v. Gen. Motors Corp.*, 924 S.W.2d 187, 188 n.1 (Tex. App.—San Antonio 1996, writ denied); see *Schack v. Prop. Owners Ass'n of Sunset Bay*, 555 S.W.3d 339, 355 (Tex. App.—Corpus Christi—Edinburg 2018, pet. denied). An impermissible comment on the weight of the evidence occurs when the judge assumes the truth of a material controverted fact or exaggerates, minimizes, or withdraws some pertinent evidence from the jury's consideration. *Halmos v. Bombardier Aerospace Corp.*, 314 S.W.3d 606, 617 (Tex. App.—Dallas 2010, no pet.); see *Schack*, 555 S.W.3d at 355.

B. Analysis

1. Jury Questions

The jury charge included the following two questions: (1) “Do you find that Jorge Castillo executed a deed conveying his separate property interest in the [subject property] on July 8, 2019?”; and (2) “Do you find Jorge Castillo executed the deed conveying his separate property interest in the [subject property] dated July 8, 2019, as a result of either [fraud or mistake]?” There was no question asking the jury to characterize the nature of the subject property, i.e. whether it was separate property or community property. Castillo argues that the trial court erred in refusing to submit a question to the jury related to the characterization of the property, “as required by Family Law PJC 202.12.” Specifically, Castillo requested the following question be proposed to the jury as question one:

QUESTION NO. 1

What percentage, if any, of the marital home at 3792 Magali Circle is the separate property of Jorge Castillo, Evangelina Rodriguez, or of both, and what percentage, if any, is the community property of the parties?¹

An item may be community property, separate property of one spouse, separate property of the other spouse, or any combination of these.

Answer by stating the percentage that is the separate property of Jorge Castillo the percentage that is the property of Evangelina Rodriguez and the percentage that is community property. The percentages in your answer must total 100 percent for each item. To find all or part of an item to be the separate property of a party, you must do so by clear and convincing evidence.

The term "clear and convincing evidence" is that measure or degree of proof that produces a firm belief or conviction that the allegations sought to be established are true.

Any percentage of an item that is not the separate property of a party is community property.

Jorge Castillo's Separate Property	Evangelina Rodriguez Separate Property	Community Property
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Magali Circle _____% + _____% + _____% = 100%

¹ PJC 202.12

By his first issue, Castillo argues that the trial court's failure to include the characterization question constitutes error. A party is entitled to a jury question, instruction, or definition if the pleadings and evidence raise an issue. TEX. R. CIV. P. 278. Here, Castillo's live pleading requested confirmation of separate property, stating:

[Castillo] prays the Court [c]onfirm that the marital residence at 3792 Magali Circle, Brownsville, Texas, is part separate property of [Castillo]. [Castillo] further prays the Court set aside the last conveyance of July [8], 2019, as said conveyance was done by mistake, undue influence and under duress, and further order the property sold and award [Castillo] his separate property and his share of the community estate.

While the pleadings raised a question as to the characterization of the subject property, the only relevant disputed issue at trial regarded whether the July 8, 2019 gift warranty deed was valid. The evidence at trial created a question for the jury to determine whether a conveyance was properly made, without mistake or fraud, and that is what the charge of the court instructed the jury to determine. Castillo's counsel, in closing arguments, specifically told the jury that all they needed to answer was whether the conveyance was a mistake or fraud, telling the jury to answer "yes" to question one and "yes" to question two.

Question one of the jury charge indicates that the subject property was, prior to the conveyance on July 8, 2019, at least partly the separate property of Castillo. However, it was undisputed that Castillo later signed a gift warranty deed conveying his interest in the subject property to Rodriguez. After the conveyance was made, presuming it was valid, the property was solely in Rodriguez's name and was no longer part separate property of Castillo. See TEX. CONST. art. XVI, § 15; TEX. FAM. CODE ANN. § 3.001(2) (providing that a spouse's separate property includes property acquired by the spouse during the

marriage by “gift, devise, or descent”). The jury was tasked with determining whether the conveyance was void because it was done by mistake or fraud. The jury found that the conveyance was properly made. Submission of an improper jury question can be harmless if the jury’s answers to other questions render the improper question immaterial. *City of Brownsville v. Alvarado*, 897 S.W.2d 750, 752 (Tex. 1995). Because the jury found that Castillo had gifted the property in the final conveyance, the status of his property prior to the conveyance is immaterial and therefore, error, if any, for failure to submit his question is harmless. We overrule Castillo’s first issue.

2. Comment on the Weight of the Evidence

An impermissible comment on the weight of the evidence occurs when, after examining the entire charge, it is determined that the judge assumed the truth of a material controverted fact or exaggerated, minimized, or withdrew some pertinent evidence from the jury’s consideration. *Redwine v. AAA Life Ins.*, 852 S.W.2d 10, 14 (Tex. App.—Dallas 1993, no writ); see TEX. R. CIV. P. 277. An instruction also will be held to be an improper comment on the weight of the evidence if it suggests to the jury the trial judge’s opinion concerning the matter about which the jury is asked. *Redwine*, 852 S.W.2d at 14. Reversal is required if an improper comment on the weight of the evidence is one that was calculated to cause and probably did cause the rendition of an improper judgment. *Id.* In making this determination, this Court must consider the pleadings of the parties, the evidence presented at trial, and the charge in its entirety. *Tex. Mut. Ins. v. Boetsch*, 307 S.W.3d 874, 880 (Tex. App.—Dallas 2010, pet. denied). Alleged error will be deemed reversible only if, when viewed in the light of the totality of these

circumstances, it amounted to such a denial of the rights of the complaining party as was reasonably calculated to cause and probably did cause the rendition of an improper judgment. TEX. R. APP. P. 44.1(a)(1); see *Island Recreational Dev. Corp. v. Republic of Tex. Sav. Ass'n*, 710 S.W.2d 551, 555 (Tex. 1986).

Castillo complains on appeal that the charge as given to the jury “assumed that [he] was outright conveying his property without ever considering what had been his real, true intent.” However, Castillo testified to that exact sentiment. He explained in his testimony that he transferred the property solely to Rodriguez’s name in an effort to save his marriage and make Rodriguez happy. Further, his counsel, in closing remarks, specifically asked the jury to answer “yes” to the first question, admitting that the conveyance was made.

As to question two, Castillo argues that question one “precluded the [j]ury from considering the parties’ prior conduct and the prior conveyances.” We disagree. The jury received exhibits and testimony related to all of the prior conduct and conveyances and was not limited in considering those documents and testimony in their deliberations. The issue before the jury was whether the final conveyance was valid. Castillo, in this issue on appeal, raises largely the same arguments as in his issue regarding the denied question as to characterization of the property. Having already determined there was no error in denying Castillo’s requested characterization question, we decline to readdress the issue here.

After reviewing the record as a whole, we cannot conclude the trial court’s charge constituted a comment on the weight of the evidence. We overrule Castillo’s second

issue.

IV. CONCLUSION

The judgment of the trial court is affirmed.

NORA L. LONGORIA
Justice

Delivered and filed on the
4th day of January, 2024.