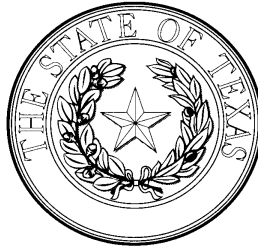


Opinion issued January 4, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-16-00854-CV

FRANCISCO ARELLANO, Appellant
V.
KATHERINE ARELLANO, Appellee

On Appeal from the 312th District Court
Harris County, Texas
Trial Court Case No. 2015-09767

MEMORANDUM OPINION

Appellant, Francisco Arellano, appeals the portion of a divorce decree that awarded spousal maintenance to appellee, Katherine Arellano. In two issues on appeal, Francisco argues that (1) Katherine failed to rebut the presumption against

spousal maintenance and (2) the trial court erred in awarding spousal maintenance for the maximum duration.

We affirm.

BACKGROUND

Katherine and Francisco were formally married on November 26, 2005.¹ Francisco filed for divorce on February 19, 2015. Although the parties were not formally married until 2005, Katherine testified that she and Francisco married in 1999 when she was 16-years old. During the marriage, Katherine and Francisco had two children, ages 13 and 10.

Starting at age 16, Katherine lived in a home with Francisco and her step-son. Throughout the marriage, Katherine testified that Francisco prohibited her from working outside the home, Francisco paid for all of the bills and food, and she handled the housecleaning and cooking. She also attended parent-teacher meetings for her step-son.

Although Katherine testified that Francisco never allowed her to work outside the home, she finished high school, earned credits at the Houston Community College, and started classes at the Coleman College for Health Sciences to become

¹ One of the primary issues at trial concerned whether the parties had informally married prior to 2005. *See* TEX. FAM. CODE ANN. § 2.401 (West 2006). Because neither party requested findings of fact or conclusions of law, the record is unclear whether the trial court found an informal marriage.

a surgical technologist. Katherine stated that she nearly finished the surgical-technology program, but Francisco prevented her from finishing her classes. When asked if she could return to this program, she testified that she could not because students cannot return if they dropped out after finishing half the program.

After Francisco filed for divorce in 2015, Katherine started working as a waitress for a Saltgrass restaurant. By the time of trial, she had changed jobs to work at Babies R Us. She testified that she receives \$1,553.57 in monthly income and that her expenses are between \$3,800 and \$3,389. She explained that even including \$500 a month in child support, she would not have enough money to reach her reasonable needs. She agreed that her current job does not allow her to pay for her reasonable minimal needs and that she currently does not have the educational background to get a better job. When asked if she had researched what it would take to educate herself to get a better job so she can earn enough money to afford her reasonable minimal needs, Katherine answered “yes,” and explained that she has researched several programs to find better jobs. She elaborated that an educational program would take two years to complete if she could attend full-time, but because she is working and caring for two children, her best guess is that the educational program would take “maybe five, maybe six years because of the rotations, the clinical hours.”

She also testified that earlier in the divorce, CPS required her to obtain full-time employment, which prevented her from retraining herself or looking for another job. And, if she stopped working at Babies R Us, she would have been in violation of CPS's service plan.

On cross-examination, Katherine testified that since working at Babies R Us, she had only applied for one other job, but she did not get a return phone call or interview. She agreed that since August of last year, she had not applied for other jobs that paid more than her current wage of \$11.22 an hour. She also clarified she had to drop out of the educational program because she had missed so many days. When asked whether Francisco caused her to not finish the program, Katherine testified, "I'm not going to blame anybody, but it definitely would have helped if he had let me go to school and finish the program." She admitted that since January of 2015, she has not tried to start any new educational programs.

Francisco testified that Katherine never cooked for him. Francisco also disagreed that he did anything to stop her from attending school or finishing school. Francisco claimed that she missed school because she was drunk, and he stopped her from going to school one time because she was drunk. He testified that he never stopped her from getting a job and that since she had been working at Babies R Us, he has not prevented her from getting another job.

The trial court granted the parties a divorce, divided the marital estate, and ordered Francisco to pay Katherine \$1,305.43 per month in spousal maintenance. Francisco appeals the spousal maintenance award.

SPOUSAL MAINTENANCE

Standard of Review

We review a trial court's ruling on spousal maintenance under an abuse of discretion standard. *Day v. Day*, 452 S.W.3d 430, 433 (Tex. App.—Houston [1st Dist.] 2014, pet. denied). A trial court abuses its discretion when it acts in an arbitrary or unreasonable manner, or when it acts without reference to any guiding principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985).

The abuse-of-discretion standard of review overlaps with traditional sufficiency standards of review in family law cases. *See In re S.N.Z.*, 421 S.W.3d 899, 908–09 (Tex. App.—Dallas 2014, pet. denied). As a result, legal and factual sufficiency challenges are not independent grounds for reversal; rather, these challenges constitute factors relevant to the assessment of whether the trial court abused its discretion. *See Wilson v. Wilson*, No. 09–07–484–CV, 2008 WL 2758147, at *1 (Tex. App.—Beaumont July 17, 2008, no pet.) (referencing *Granger v. Granger*, 236 S.W.3d 852, 856 (Tex. App.—Tyler 2007, pet. denied)); *Moroch v. Collins*, 174 S.W.3d 849, 857 (Tex. App.—Dallas 2005, pet. denied). “Accordingly,

to determine whether there has been an abuse of discretion because the evidence is legally or factually insufficient to support the trial court's decision, we engage in a two-pronged inquiry: (1) did the trial court have sufficient evidence upon which to exercise its discretion and (2) did the trial court err in its application of that discretion?" *Boyd v. Boyd*, 131 S.W.3d 605, 611 (Tex. App.—Fort Worth 2004, no pet.).

With respect to the first question, we apply the appropriate sufficiency standard. *In re B.P.R.*, No. 09–12–00575–CV, 2014 WL 5306530, at *5 (Tex. App.—Beaumont Oct. 16, 2014, no pet.). With respect to the second question, we determine whether, based on the evidence presented at trial, the trial court made a reasonable decision. *Id.* (citing *Moroch*, 174 S.W.3d at 857). “Stated inversely, we must conclude that the trial court’s decision was neither arbitrary nor unreasonable.” *Boyd*, 131 S.W.3d at 611.

In determining whether legally sufficient evidence supports a finding, we examine the record and credit evidence favorable to the finding if a reasonable factfinder could and disregard evidence contrary to the finding unless a reasonable fact finder could not. *See City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). A trial judge does not abuse his discretion if some evidence of a substantial and probative character exists to support the decision. *Wilson*, 2008 WL 2758147, at *1 (citing *Granger*, 236 S.W.3d at 855–56).

In a factual sufficiency review, we consider all the evidence supporting and contradicting the factfinder's finding. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001). The evidence is factually insufficient if the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. *Id.* When sitting as factfinder, the trial court is in the best position to judge and weigh all the evidence presented and resolve the substantial conflicts in the evidence. *See Wilson*, 2010 WL 2545579, at *5–6.

In the absence of findings of fact and conclusions of law, as here, we are required to uphold the trial court's judgment on any pleaded theory supported by legally and factually sufficient evidence, and all required facts are deemed found in support of the trial court's judgment. *E.g., Point Lookout West, Inc. v. Whorton*, 742 S.W.2d 277, 279 (Tex. 1987) (per curiam).

Presumption Against Spousal Maintenance

In his first issue on appeal, Francisco argues that Katherine failed to rebut the presumption against spousal maintenance. Specifically, Francisco argues that the evidence is insufficient to rebut the presumption because Katherine made only one attempt to find a better job.

A trial court may exercise its discretion and award spousal maintenance if the party seeking maintenance meets specific eligibility requirements found in Family Code section 8.051, entitled “Eligibility for Maintenance.” TEX. FAM. CODE ANN. § 8.051 (West Supp. 2016). Family Code section 8.051 provides:

In a suit for dissolution of a marriage or in a proceeding for maintenance in a court with personal jurisdiction over both former spouses following the dissolution of their marriage by a court that lacked personal jurisdiction over an absent spouse, the court may order maintenance for either spouse only if the spouse seeking maintenance will lack sufficient property, including the spouse’s separate property, on dissolution of the marriage to provide for the spouse’s minimum reasonable needs and:

...

(2) the spouse seeking maintenance:

...

(B) has been married to the other spouse for 10 years or longer and lacks the ability to earn sufficient income to provide for the spouse’s minimum reasonable needs; or

...

Id. 8.051(2)(B).

Francisco did not contest at trial or on appeal that Katherine is not eligible to receive spousal maintenance as detailed in section 8.051(2)(B). However, Francisco does dispute whether Katherine overcame the rebuttable presumption in section 8.053, which provides,

(a) It is a rebuttable presumption that maintenance under Section 8.051(2)(B) is not warranted unless the spouse seeking maintenance has exercised diligence in:

- (1) earning sufficient income to provide for the spouse's minimum reasonable needs; or
- (2) developing the necessary skills to provide for the spouse's minimum reasonable needs during a period of separation and during the time the suit for dissolution of the marriage is pending.

Id. § 8.053(a)(1)(2) (West Supp. 2016).

To rebut the presumption, a spouse eligible for maintenance under section 8.051(2)(B) must show that she has “exercised diligence” in “earning sufficient income to provide for the spouse’s minimum reasonable needs” or in “developing the necessary skills to provide for the spouse’s minimum reasonable needs.” *Id.* § 8.053; *see Day*, 452 S.W.3d at 434–35.

The September 26, 2016 divorce decree provides that Katherine is eligible for maintenance under Texas Family Code section 8.051, Francisco shall pay as maintenance the sum of \$1,305.43 per month to Katherine, with the first payment being due on October 1, 2016, and a like amount being due on the first day of each consecutive month until the earliest of (1) September 1, 2021; (2) death of either Francisco or Katherine; (3) remarriage of Katherine; or (4) further orders of the Court affecting the spousal maintenance obligation.

Here, since age 16, Katherine tended to the house, prepared meals, and cared for their children, including her step-son. Katherine, who has a high school education, attempted to bolster her education during the marriage. Katherine

testified that Francisco caused her to miss classes while Francisco claimed she missed classes because she was drunk. The trial court also heard conflicting evidence about whether Francisco allowed Katherine to work outside the home. The trial court had discretion to resolve the conflicting evidence in Katherine's favor. *See Munters Corp. v. Swissco–Young Indus., Inc.*, 100 S.W.3d 292, 299 (Tex. App.—Houston [1st Dist.] 2002, pet. dism'd).

After the parties separated, Katherine worked at a restaurant and later changed jobs to work at a baby store. She also applied for at least one other job, although she never received a response from the employer. She further testified that she looked for a better job, but she lacked the educational background. Although she researched educational programs that would enable her to earn a higher income, she stated that the programs would take many years to complete and that because of CPS involvement in the case, she had to maintain steady employment.

From the evidence presented, we cannot say that the trial court abused its discretion by concluding that Katherine overcame the statutory presumption against spousal maintenance because she provided evidence that she exercised diligence in earning sufficient income to provide for her reasonable needs but that her efforts were hindered by her lack of education. The evidence also showed that Katherine exercised diligence in attempting to develop the necessary skills to provide for her minimum reasonable needs, which were also hindered by CPS's requirement for her

to be employed. We therefore conclude that the evidence is legally and factually sufficient to rebut the section 8.053 presumption against maintenance and that the trial court did not abuse its discretion in awarding spousal maintenance. *See In re Marriage of Eilers*, 205 S.W.3d 637, 646 (Tex. App.—Waco 2007, pet. denied) (overcoming spousal maintenance presumption based on evidence that spouse had high-school education, low-paying job, and lack of transportation and child-rearing responsibilities prevented spouse from pursuing job training); *Giesler v. Giesler*, No. 03-08-00734-CV, 2010 WL 2330362, at *10 (Tex. App.—Austin June 10, 2010, no pet.) (concluding that trial court did not abuse its discretion in awarding spousal maintenance when spouse had sole care of children, worked part-time, could not get better job with current job skills and that divorce proceedings, court-ordered classes, and children’s illnesses prevented her from working full time or getting different job).

We overrule Francisco’s first issue on appeal.

Duration of Spousal Maintenance

In his second issue on appeal, Francisco argues that the trial court abused its discretion by awarding maintenance to Katherine for the maximum duration provided by the Family Code.

Family Code section 8.054 provides that a court:

- (2) shall limit the duration of a maintenance order to the shortest reasonable period that allows the spouse seeking

maintenance to earn sufficient income to provide for the spouse's minimum reasonable needs, unless the ability of the spouse to provide for the spouse's minimum reasonable needs is substantially or totally diminished because of:

- (A) physical or mental disability of the spouse seeking maintenance;
- (B) duties as the custodian of an infant or young child of the marriage; or
- (C) another compelling impediment to earning sufficient income to provide for the spouse's minimum reasonable needs.

TEX. FAM. CODE ANN. § 8.054(a)(2)(A),(B), (C) (West Supp. 2016).

Here, the trial court ordered that spousal maintenance would end five years from the date of the divorce decree unless other circumstances occurred earlier. *See id.* § 8.054(a)(1)(A)(i) (court may not order maintenance that remains in effect for more than five years after the date of the order if spouses were married to each other for less than 10 years or spouses married to each other for at least 10 years but not more than 20 years). Francisco does not dispute that the trial court could award spousal maintenance for five years. Instead, Francisco argues that the trial court should have ordered spousal maintenance to end earlier than five years and that Katherine presented no evidence of when she could earn sufficient income to provide for her reasonable minimum needs.

Contrary to Francisco's argument, Katherine testified that to earn more money and to get a better job, she would need to start an educational program that would take five years to complete, due to having a required job and the responsibility of taking care of two children. Because the trial court heard evidence that it would take five years to complete her educational program, which would allow her to earn more money, we conclude that the trial court did not abuse its discretion in ordering spousal maintenance to last for five years.

We overrule Francisco's second issue on appeal.

CONCLUSION

We affirm the judgment of the trial court.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Higley and Bland.