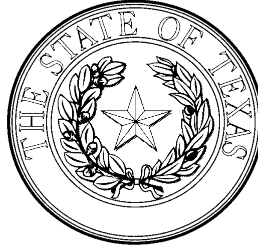
Opinion issued June 12, 2018



In The

Court of Appeals

For The

First District of Texas

NO. 01-17-00147-CV

PAMELA J. HAZELWOOD, Appellant

V.

KEITH L. HAZELWOOD, Appellee

On Appeal from the 310th District Court
Harris County, Texas
Trial Court Case No. 2015-49239

MEMORANDUM OPINION

Pamela J. Hazelwood appeals from the trial court's order on her petition for post-divorce division of property. She asserted that her former husband, appellee Keith L. Hazelwood, failed to disclose assets during their divorce in 2011. Pamela and Keith entered into an irrevocable mediated settlement agreement concerning

the omitted assets, and the trial court entered an order based on their settlement, which awarded almost all of the omitted assets to Pamela.

Representing herself on appeal, Pamela presents eleven issues. Some are inadequately briefed, and some fail to show that the trial court erred. None are meritorious. We therefore affirm.

Background

Pamela and Keith Hazelwood divorced in 2011. At that time, they entered into a mediated settlement agreement, and the trial court entered a divorce decree. In 2015, Pamela discovered documents that suggested Keith had concealed several retirement accounts and other assets during their divorce. She filed a petition for post-divorce division of the omitted assets. *See* TEX. FAMILY CODE § 9.201. Before mediation on Pamela's post-divorce petition, her attorney filed a supplemental petition, which asserted that she was entitled to a bill of review because Keith had committed fraud.

On October 12, 2016, Pamela and Keith entered into a second mediated settlement agreement (the MSA), which resolved the issues of the omitted property. Under the MSA, all of the omitted property would be awarded to Pamela, "excluding Wood Forest Bank Account in [Keith's] name ending in 1698 and excluding Wood Forest Bank Account ending in 8465 subject to section 1 of this agreement being satisfied." Keith owned the account ending in 1698, and he was a

signatory on the other account, which belonged to his mother. The MSA also required Keith to execute documents, such as a transfer of title or limited power of attorney, as needed to effectuate the parties' agreement.

After the parties signed the MSA, Keith realized that there was an error in the identification of his mother's account at Woodforest Bank. In an affidavit made about two weeks after the parties signed the MSA, he averred that the final order "contained a routing number that was incorrectly shown as the account number. The routing number for this Woodforest National Bank account is [*****]8465 and the account number is [***]6074. This affidavit is to correct this error and clarify the account number."

On November 7, 2016, the court entered a final order based on the MSA. This final order referred to the two accounts at Woodforest Bank as ending in "1698" and "8465." The next day, the parties' lawyers filed an agreed motion to reform the final order to correct the error in accordance with Keith's affidavit, which was attached to the motion. On December 2, 2016, the trial court entered the reformed final order, correcting the last four digits of Keith's mother's Woodforest Bank account to read "6074" instead of "8465."

In mid-December, Pamela's attorney filed a motion to withdraw from the representation. The trial court granted the motion after a hearing on December 16, 2016.

Representing herself, Pamela filed a motion for new trial, which she amended once. In the amended motion for new trial, Pamela asserted that she did not agree to the reformation of the final order, that it had the effect of diminishing her award, and that her lawyer lacked authority to represent her when the agreed motion to reform the final order was filed. She also argued that she was not served with proper notice of the supplemental petition, which her lawyer filed prior to the mediation, and that she had discovered new evidence after the court signed the final order on November 7, 2016. This allegedly new evidence was a progress report on oil production from investments made by a partnership in which Keith had been a partner during the marriage. The report was dated 2009, addressed to the "Riley James 2007 Acquisition Program, LP Partners," and was comprised of a one-page letter with four pages of graphical seismic data. In the 2011 agreement that formed the basis of the original divorce decree, Keith averred that he was a partner in Riley James, but that he never received any distributions or royalties from the partnership. Pamela argued that Keith had transferred some retirement and life insurance assets to Riley James, but she did not attach any evidence to her motion for new trial to support this assertion.

The trial court held a hearing on the motion for new trial. Pamela made arguments, but she did not introduce any evidence at the hearing. The trial court denied the motion for new trial.

Pamela appealed.

Analysis

Although we liberally construe pro se pleadings and briefs, we nonetheless require pro se litigants to comply with applicable laws and rules of procedure. *See Wheeler v. Green*, 157 S.W.3d 439, 444 (Tex. 2005); *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184–85 (Tex. 1978). "Having two sets of rules—a strict set for attorneys and a lenient set for pro se parties—might encourage litigants to discard their valuable right to the advice and assistance of counsel." *Wheeler*, 157 S.W.3d at 444. "Litigants who represent themselves must comply with the applicable procedural rules, or else they would be given an unfair advantage over litigants represented by counsel." *Mansfield State Bank*, 573 S.W.2d at 185.

An appellant is required to present a brief that concisely states all issues for review and the facts pertinent to the issues presented, supported by references to the appellate record. TEX. R. APP. P. 38.1(f), (g). The brief also must include a clear and concise argument for each issue raised, with appropriate citations to legal authority and to the record. TEX. R. APP. P. 38.1(i). An appellate court has no duty to perform an independent review of the record and applicable law to determine whether there was error in the lower court. *See, e.g.*, *Maranatha Temple, Inc. v. Enter. Prods. Co.*, 893 S.W.2d 92, 106 (Tex. App.—Houston [1st Dist.] 1994, writ denied). Ordinarily, an appellant may not raise an issue in the court of appeals

unless the issue was preserved by a timely and specific objection, request or motion to the trial court on which there was a ruling. *See* TEX. R. APP. P. 33.1(a). When any appellant fails to meet the procedural requirements for presenting issues on appeal, the issue is waived. *See, e.g.*, *Izen v. Comm'n for Lawyer Discipline*, 322 S.W.3d 308, 322 (Tex. App.—Houston [1st Dist.] 2010, pet. denied).

I. Preservation of error

Pamela's first issue challenges the original 2011 divorce decree on the ground that it did not comport with the original mediated settlement agreement. "On appeal, a party may not enlarge a ground of error or an argument to include a claim not raised before the trial court." *In re J.D.D.*, 242 S.W.3d 916, 920 (Tex. App.—Dallas 2008, pet. denied); *see also* TEX. R. APP. P. 33.1(a). Pamela did not make this argument in the trial court. This issue is waived.

II. Adequacy of briefing

Several of Pamela's issues are waived due to inadequate briefing. *See* TEX. R. APP. P. 38.1. In her second issue, Pamela contends that the final order on her post-divorce petition did not comport with the parties' 2016 MSA. In her third issue, Pamela contends that the trial court erred by failing to enforce a request for production directed to certain banks. In her ninth issue, Pamela argues that the trial court erred by failing to hold a hearing on her allegation that Keith applied for a homestead exemption on the marital home, which was awarded to her—the

argument primarily focuses on her attempt to refinance the house. In her tenth issue, Pamela asserts that the trial court erred by "not making a special exception at trial from the extrinsic fraud in the Motion to Enforce and Motion to Withdraw Motion to Enforce for financial releases." In her eleventh issue, Pamela asserts that the trial court erred by failing to award attorney's fees, but she did not support her argument with any authority that demonstrates she was entitled to attorney's fees. Instead she argues that Keith should reimburse her or be sanctioned for the cost of attorney's fees incurred due to his delays and fraud with regard to the omitted assets.

Pamela has not provided a clear and concise argument or citation to authority to support these contentions. We overrule issues 2, 3, 9, 10, and 11 as inadequately briefed. *See* TEX. R. APP. P. 38.1.

III. Failure to demonstrate error

Pamela has not shown that the court erred in regard to issues 4, 5, and 6. In her fourth issue, Pamela argues that she did not authorize the filing of a supplemental petition by her attorney. She contends that the trial court erred by failing to vacate her supplemental petition, which sought a bill of review. The final order based on the MSA provided: "This is a final appealable order. Pamela J. Hazelwood is authorized all necessary writs and post judgment relief necessary to give full effect to this order. . . . All relief requested and not granted herein is

denied." This language demonstrates that the court intended for the reformed final order to be final. *See McFadin v. Broadway Coffeehouse, LLC*, 539 S.W.3d 278, 283 (Tex. 2018). Thus the court denied the request for a bill of review. Pamela's argument on this issue fails to explain how the alleged error impacted the reformed final order. This issue is also waived by inadequate briefing. *See* TEX. R. APP. P. 38.1.

In her fifth issue, Pamela argues that the trial court erred by failing to send her notice that the final order was signed on November 7, 2016. Pamela was represented by counsel until January 2017. She acknowledges that her attorney received notice of the final order and reformed final order. A court does not err by communicating with a represented party through her attorney. *See* TEX. R. CIV. P. 8, 21a. We overrule this issue.

Similarly, in her sixth issue, Pamela argues that her attorney lacked authority to represent her when he filed the agreed motion to reform the final order because the scope of the engagement excluded post-judgment work. Pamela raised this issue in her motion for new trial. A general presumption exists that an attorney is acting with authority, but that presumption is rebuttable. *Pessarra v. Seidler*, No. 01-06-01035-CV, 2008 WL 2756589, at *5 (Tex. App.—Houston [1st Dist.] July 17, 2008, pet. denied) (mem. op.). Pamela was represented by counsel when the agreed motion to reform the final order was filed. At the motion-for-new-trial

stage, she did not provide any evidence to rebut the presumption of authority. We overrule this issue.

IV. Motion for new trial

Pamela's seventh and eighth issues relate to the trial court's denial of her motion for new trial. A trial court may grant a new trial for good cause, on the motion of a party or on the court's own motion. TEX. R. CIV. P. 320. We review a trial court's denial of a motion for new trial under an abuse-of-discretion standard. *Waffle House, Inc. v. Williams*, 313 S.W.3d 796, 813 (Tex. 2010). A trial court abuses its discretion if it acts without reference to any guiding rules or principles or fails to correctly analyze or apply the law. *Celestine v. Dep't of Family & Protective Servs.*, 321 S.W.3d 222, 235 (Tex. 2010).

When a judgment is rendered based on the parties' agreement, a party who seeks to set it aside must prove that her attorney did not have authority to make the settlement. *Miller v. Ferguson*, No. 05-98-01246-CV, 2001 WL 845764, at *1 (Tex. App.—Dallas July 27, 2001, no pet.) (not designated for publication). When a party seeks a new trial on grounds of newly discovered evidence, she must demonstrate to the trial court that (1) the evidence has come to her knowledge since the trial; (2) her failure to discover the evidence sooner was not due to lack of diligence; (3) the evidence is not cumulative; and (4) the evidence is so material it

would probably produce a different result if a new trial were granted. *Waffle House*, 313 S.W.3d at 813.

In her seventh issue, Pamela asserts that the court should have given her some relief from the agreed reformed order because her attorney acted without authority in filing the agreed motion to reform, because she had no notice of the entry of the final order or the agreed motion to reform, and because Keith's affidavit about the account number of Woodforest Bank account was made in bad faith. In her eighth issue, Pamela asserts that the trial court erred by failing to hold a hearing on the allegation of newly discovered evidence she raised in her motion for new trial.

The trial court held a hearing on Pamela's motion for new trial on February 9, 2017. Pamela did not introduce evidence to controvert Keith's affidavit or to rebut the presumption that her attorney had authority to act on her behalf. She also failed to introduce any evidence to justify a new trial based on newly discovered evidence. *See id*. Because Pamela failed to show that her attorney lacked authority and that she was entitled to a new trial based on newly discovered evidence, we conclude that the trial court did not abuse its discretion by denying the motion for new trial. We overrule the seventh and eighth issues.

Conclusion

We affirm the order of the trial court.

PER CURIAM

Panel consists of Chief Justice Radack and Justices Massengale and Brown.