NUMBER 13-17-00682-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

JOSE GUADALUPE RUBIO, **Appellant,**

v.

MARIA LUISA RUBIO, **Appellee.**

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

MEMORANDUM OPINION

Before Justices Hinojosa, Perkes, and Tijerina
Memorandum Opinion by Justice Perkes

In this property dispute between former spouses, appellant Jose Guadalupe Rubio submits that: (1) the judgment declaring appellee Maria Luisa Rubio as the "sole and legal owner" of the subject property was an impermissible collateral attack on the parties'

divorce decree; and (2) the trial court erred by "effectively applying the doctrine of after acquired title." We affirm.

I. BACKGROUND

A. The Dispute

The parties married in 1976. In 1986, they began constructing a home at 8636 N. Oklahoma, Brownsville, Texas. Construction was completed in 1988, and the parties resided there with their three children until their divorce in 1990.

The divorce suit was filed in the 107th District Court, and each party was represented by counsel. The parties agreed to the terms of the decree,[1] which contains the following recital: "The Court finds that the following is a just and right division of the parties' marital estate, having due regard for the rights of each property." As part of the division of their marital estate, Maria was awarded "[t]he 3.5 acres located at 8636 Oklahoma, Brownsville, Cameron County, Texas, together with any and all improvements thereon," and Jose was awarded "[t]he 10 acres located at Brownsville, Cameron County, Texas." The decree failed to provide any further description of these properties. Under the decree, each party was "divested of all right, title, interest, and claim" in the property awarded to the other party. The decree also provided that "[Jose] and [Maria] shall execute and deliver all documents, including deeds and certificates of title necessary to effect the transfer of property as ordered in this Decree."[2]

[1] Although the decree does not contain a recital to that effect, both parties testified in this case that the terms of the decree, including the division of the marital estate, were agreed to by the parties.

[2] The record is silent regarding whether any documents were thereafter executed and delivered by and between the Rubios.

The parties agree that the "3.5 acres" awarded to Maria under the parties' agreed divorce decree did not accurately describe the property owned by the marital estate, but the parties disagree as to what that "3.5 acres" encompassed. Maria contends that the "3.5 acres" encompassed two contiguous tracts of land totaling 2.9865 acres, while Jose contends that the marital estate only had an interest in the tract consisting of .556 acres (Tract A). The other tract, consisting of 2.4305 acres (Tract B), which is the subject of this appeal, was deeded to Jose by his aunt Amada Martinez in 1997, seven years after the divorce. Jose argues that because neither party held legal title to Tract B at the time of the parties' divorce, the marital estate had not acquired any interest in the property; therefore, Tract B could not be subject to a division of the marital estate in 1990.

It is undisputed, however, that at the time of their divorce, neither party had acquired legal title to Tract A, Tract B, or the "10 acres" awarded to Jose. Instead, legal title to each property was held by various members of Jose's family. Jose's aunt Virginia Rubio conveyed Tract A to Maria by warranty deed within three months of the divorce, and the "10 acres" was deeded to Jose by his brothers in 2000.

It is also undisputed that the marital home currently straddles Tracts A and B, with the attached garage resting on Tract B and the remainder of the house resting on Tract A. Jose agrees that the marital home was awarded to Maria as part of Tract A but argues that the attached garage was added after the parties' divorce. Maria disputes this fact, contending that the attached garage was part of the original construction completed in 1988.

In the years leading up to the lawsuit, both parties represented to the appraisal district that they owned Tract B. In 2012, Maria filed a copy of the divorce decree in the public land records as proof of ownership. Jose filed a suit to quiet title and for declaratory judgment against Maria in 2016, and Maria countersued for the same relief. A bench trial was held in September 2017.

B. The Trial

1. Jose's Testimony

Jose testified that there was no agreement with his aunt to purchase Tract B during his marriage to Maria. Instead, Jose's aunt verbally agreed to convey the property to him in 1993 or 1994, several years after the parties' divorce, if Jose paid the property tax arrearages on the property. Jose provided tax receipts showing that he began paying the property taxes on Tract B in 1994, including back taxes owed for the years 1990 through 1992. Jose also testified that, after the agreement, he made numerous improvements on the property, including the construction of two small dwellings, a drainage ditch, septic tanks, and an access road. According to Jose, Maria did not make any financial contributions to these improvements.

Additionally, Jose testified that there was a fence that separated Tracts A and B that he removed in May or June of 1997, after his aunt indicated she would finally be conveying the property to him in July of 1997. He further testified that he allowed his cousin to move a trailer on to Tract B in 1999 and collected monthly rent in the amount of $250. Jose subsequently placed another trailer on Tract B and rented the trailer to another tenant. Although the two small dwellings on Tract B were originally occupied by the

parties' daughters, Jose rented the dwellings to tenants after their daughters moved out. At all times, Jose, not Maria, collected the rent from the various tenants.

Jose acknowledged that the "10 acres" awarded to him as his sole and separate property in the decree was not deeded to him until 2000. During his cross-examination, the following exchange occurred:

> [Maria]: I'm going to show you, sir, what I've marked as Respondent's Exhibit 1. This is a warranty deed, is that correct, dated March 20, 2000." Is that true?
>
> [Jose]: Yes, I'm looking at it.
>
> [Maria]: Okay. And this is a deed where your brothers give you 9.886 acres.
>
> [Jose]: Uh-huh. Yes.
>
> [Maria]: And your testimony before was that in 1990, when you were divorced, those acres were given to you as your sole and separate property. But it's not until 2000 that you actually get a deed; is that true? That's the way the Rubios do business, right?
>
> [Jose]: Okay.
>
> [Maria]: You have—excuse me. You have verbal agreements over real estate, and then later you do the paperwork; isn't that true?
>
> [Jose]: Could be.

2. Maria's Testimony

Maria testified that before construction began on the marital home in the mid-1980s, Jose represented to her that he was purchasing Tract B from his aunt. When Maria agreed to the terms on the division of property in the decree, she believed that the parties "owned" all the real property being awarded and that she was receiving both Tracts A and

B. She explained that both Tracts A and B were commonly known as 8636 N. Oklahoma at the time of the divorce and that the couple did not own any other property that fit that description; the only other property the couple "owned" was the 9.886 acres awarded to Jose.

Maria testified that construction on the marital home began in 1986 and was complete by August 1988, the month the parties' son was born. She produced receipts totaling approximately $12,000 for building materials that she says were purchased with community funds.

Maria also largely disputed Jose's testimony about when the improvements to Tract B were made. She stated that most of the improvements that he testified about were made prior to their divorce and that these improvements were made with community funds. She also testified that she paid some of the taxes on Tract B over the intervening years, as well as all the utilities.

Maria explained that she was able to obtain a deed to Tract A within months of the divorce because Virginia Rubio lived in the area. Amada Martinez, on that other hand, lived in Florida at that time, and Maria was not well acquainted with her. According to Maria, these factors prevented her from acquiring legal title to Tract B after the divorce.

3. The Garage

One of the major points of contention at trial was the garage attached to the marital home. It is undisputed that the marital home now straddles the property line between Tracts A and B with the attached garage situated on Tract B and the remainder of the house on Tract A. The parties disagreed, however, about when the garage was

constructed. Jose gave conflicting testimony on this point. He stated several times that it was constructed after the agreement with his aunt in the mid-1990s, but also admitted at one point that "[the garage] was already there" when the parties were divorced in 1990. Maria, on the other hand, testified unequivocally that the garage was part of the original construction completed in 1988. The following picture of the house, taken within six months of the trial, was admitted into evidence:

Maria testified that this picture is an accurate depiction of the house's structure in 1990, including its materials and roof line. Maria contends that this fact supports her position because, according to Maria, the parties would not have partially constructed their home on Tract B unless they had purchased the property.

C. The Judgment

At the conclusion of the trial, consistent with the relief requested in her counterpetition, Maria asked the trial court to "confirm" that the divorce decree awarded her Tract B and to declare her the owner of the property. The trial court rendered a judgment denying all the relief sought by Jose and declaring Maria "sole and legal owner" of Tract B.

Among others, the trial court issued the following findings of fact:

> 3. At the time of the divorce, the couple and their children had been living at 8636 N. Oklahoma, Brownsville, Texas in a house that had been constructed on 2 adjacent parcels of land. In addition to the homestead[,] other improvements had been made and structures added by the community. The couple also had an interest in 10 (sic) acres across Oklahoma Road.
>
> 4. The adjacent parcels of land consisted of (a) .556 of an acre acquired from Virginia Rubio; and (b) 2.4305 acres acquired from Amada Rubio.
>
> 5. From 1987 to the date of divorce, the Parties, in addition to the construction of the homestead, added other buildings to the 2.4305 acre tract, cleared the tracts and put up a fence. Payments for the property were made during the marriage. Payments of ad valorem taxes on both parcels were made by the community.
>
> 6. In the Final Decree of Divorce, [Maria] was awarded: "3.5 (sic) acres located at 8636 Oklahoma, Brownsville, Cameron County, Texas, together with all improvements thereon . . ." and [Jose] was awarded ". . . the 10 acres located at Brownsville, Cameron County, Texas . . ."
>
> 7. At the time of the divorce[,] the address to both parcels was 8636 N. Oklahoma, Brownsville, Texas and was the only property answering the description and as such was identified with reasonable certainty.

The trial court also made the following conclusions of law:

1. [Jose] failed to meet his burden of proof in asserting a suit to quiet title under Texas law given that [Maria] has a valid claim to the property.

2. A successful suit to quiet title declares invalid or ineffective the defendant's claim to title. [Jose] has failed to provide proof necessary to establish his superior equity and right to relief.

3. [Jose's] request for declaratory judgment in his Original Petition in this case was a fraudulent attempt to collaterally attack the division of assets in the Final Decree of Divorce of 1990.

4. A judgment finalizes a divorce and division of marital property. Re-litigation of the property division even when the decree incorrectly characterizes or divides the property is an impermissible collateral attack.

5. A [j]udgment may be wrong or premised on a legal principle that is subsequently overruled but that does not affect the application of [*r*]*es* [*j*]*udicata*.

6. [Jose's] request for a declaratory judgment that he is the rightful owner of the subject property and that [Maria] has no title or interest in the property is [d]enied.

7. A request for declaratory judgment is remedial in nature and dependent upon the assertion of viable causes of action. [Jose] has no viable suit to quiet tile. [Jose's] request for declaratory judgment is denied.

Jose now appeals from the trial court's judgment.

II. STANDARD OF REVIEW

In a bench trial, the trial court assumes the role of the jury as the trier of fact. *Yturria v. Kimbro*, 921 S.W.2d 338, 343 (Tex. App.—Corpus Christi–Edinburg 1996, no writ). A trial court's findings of fact have the same force and effect as an answer to a jury question. *In re A.E.A.*, 406 S.W.3d 404, 414 (Tex. App.—Fort Worth 2013, no pet.) (citing *Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994)). "Although findings of facts are reviewable

for legal and factual sufficiency of the evidence to support them, unless the trial court's findings of facts are challenged by a point of error on appeal, they are binding upon the appellate court." *Nw. Park Homeowners Ass'n, Inc. v. Brundrett*, 970 S.W.2d 700, 704 (Tex. App.—Amarillo 1998, pet. denied) (citing *Whitehead v. Univ. of Tex.*, 854 S.W.2d 175, 178 (Tex. App.—San Antonio 1993, no writ)).

We review the trial court's conclusions of law de novo. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002) (citing *Hitzelberger v. Samedan Oil Corp.*, 948 S.W.2d 497, 503 (Tex. App.—Waco 1997, pet. denied)). Legal conclusions cannot be challenged for factual sufficiency; however, we may review the legal conclusions drawn from the facts to determine their correctness. *Id.* (citing *Templeton v. Dreiss*, 961 S.W.2d 645, 656 n.8 (Tex. App.—San Antonio 1998, pet. denied)). "If the reviewing court determines a conclusion of law is erroneous, but the trial court rendered the proper judgment, the erroneous conclusion of law does not require reversal." *Id.* (citing *Scholz v. Heath*, 642 S.W.2d 554, 559 (Tex. App.—Waco 1982, no writ)). Instead, we will uphold the judgment if it can be sustained on any legal theory supported by the evidence. *Pagel v. Whatley*, 82 S.W.3d 571, 575 (Tex. App.—Corpus Christ–Edinburg 2002, pet. denied) (citing *Harlingen Irrigation Dist. Cameron Cty. No. 1 v. Caprock Comm. Corp.*, 49 S.W.3d 520, 530 (Tex. App.—Corpus Christi–Edinburg 2001, pet. denied)).

III. ANALYSIS

By his first issue, Jose contends that the declaratory judgment in favor of Maria was an impermissible collateral attack on the parties' divorce decree. By his second issue, he contends the trial court erred by "effectively applying the doctrine of after acquired

title." We address these issues together.

A. Applicable Law

1. Division of the Marital Estate

"In a divorce decree or annulment, the court shall order a division of the estate of the parties in a manner that the court deems just and right . . . ." TEX. FAM. CODE ANN. § 7.001 "[T]he phrase 'estate of the parties' encompasses the community property of the marriage." *Pearson v. Fillingim*, 332 S.W.3d 361, 362 (Tex. 2011) (per curiam); *see also Eggemeyer v. Eggemeyer*, 554 S.W.2d 137, 139 (Tex. 1977) ("The only 'estate of the parties' is community property."). "A judgment finalizing a divorce and dividing marital property bars relitigation of the property division, even if the decree incorrectly characterizes or divides the property." *Pearson*, 332 S.W.3d at 363 (citing *Reiss v. Reiss*, 118 S.W.3d 439, 443 (Tex. 2003)).

However, "a court that renders a divorce decree retains continuing subject-matter jurisdiction to clarify and to enforce the decree's property division." *Murray v. Murray*, 276 S.W.3d 138, 144 (Tex. App.—Fort Worth 2008, pet. dism'd) (citing TEX. FAM. CODE ANN. §§ 9.0002, 9.008); *Johnson v. Ventling*, 132 S.W.3d 173, 178 (Tex. App.—Corpus Christi–Edinburg 2004, no pet.) (citing *McGehee v. Epley*, 661 S.W.2d 924, 926 (Tex. 1983) (per curiam)). The divorce court's continuing jurisdiction to enforce the property division is not exclusive, though; a court of general jurisdiction, like the court in this case, may enforce a party's rights to property that were acquired based on the terms of a decree. *Chavez v. McNeely*, 287 S.W.3d 840, 844–45 (Tex. App.—Houston [1st Dist.] 2009, no pet.) (noting that § 9.001's language is permissive, rather than mandatory, and, unlike other provisions in the family code, the legislature did not provide divorce courts

with “exclusive” continuing jurisdiction to enforce the division of property); *see also Ishee v. Ishee*, No. 09-15-00197-CV, 2017 WL 2293150, at *4 (Tex. App.—Beaumont, May 25, 2017, no pet.) (mem. op.).

2. Suit to Quiet Title

A suit to quiet title, also known as a suit to remove cloud from title, is an equitable action that “enable[s] the holder of the feeblest equity to remove from his way to legal title any unlawful hinderance having the appearance of better title.” *Thomson v. Locke*, 1 S.W. 112, 115 (Tex. 1886). “A cloud on title has been generally defined as a semblance of title, either legal or equitable, which is, in fact, invalid or would be inequitable to enforce.” *Vanguard Equities, Inc. v. Sellers*, 587 S.W.2d 521, 525 (Tex. App.—Corpus Christi–Edinburg 1979, no writ). The plaintiff must prove and recover on the strength of their own title, not the weakness of their adversary’s title. *Fricks v. Hancock*, 45 S.W.3d 322, 327 (Tex. App.—Corpus Christi–Edinburg 2001, no pet.) (citing *Alkas v. United Sav. Ass’n of Tex.*, 672 S.W.2d 852, 857 (Tex. App.—Corpus Christi–Edinburg 1984, writ ref’d n.r.e)); *but see Essex Crane Rental Corp. v. Carter*, 371 S.W.3d 366, 388 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) (explaining that a suit to quiet title “relies on the invalidity of the defendant’s claim to the property” (quoting *Longoria v. Lasater*, 292 S.W.3d 156, 165 n.7 (Tex. App.—San Antonio 2009, pet. denied))). The plaintiff in a quiet-title suit “must prove, as a matter of law, that he has a right of ownership and that the adverse claim is a cloud on the title that equity will remove.” *Essex Crane*, 371 S.W.3d at 388. When an action for declaratory relief and a suit to quiet title are based on the same facts and request similar relief, they are both treated as one suit to quiet title. *Sw. Guar. Trust Co.*

v. Hardy Rd. 13.4 Joint Venture, 981 S.W.2d 951, 957 (Tex. App.—Houston [1st Dist.] 1998, pet. denied).

B. Application

Jose contends that "[t]he divorce court was without authority to convey the real property which was owned, at the time of the divorce, by a third party."[3] *See Hagen v. Hagen*, 282 S.W.3d 899, 910 (Tex. 2009) (Brister, J., dissenting) (noting that although a decree is generally not susceptible to a collateral attack, "any decree can be collaterally attacked if the court issuing it had no jurisdiction" (citing *Reiss v. Reiss*, 118 S.W.3d 439, 443 (Tex. 2003))). In other words, Jose submits that the award of Tract B to Maria was a nullity, and as such, the decree cannot serve as the legal basis for the trial court in this case to declare Maria owner of Tract B. To declare Maria owner of Tract B now, Jose reasons, is tantamount to relitigating the division of property, which would be an impermissible collateral attack on the decree. *See id.* § 9.007(a); *Fillingim*, 332 S.W.3d at 363.

Jose's argument assumes that legal title is the only interest the community could have acquired in Tract B, and without legal title, there was nothing conveyed to Maria by the decree. However, a divorce court has the authority to characterize the parties' respective equitable interests as community or separate property and include equitable community property in the division of the marital estate even if neither party held legal title to the property. *Jones v. Jones*, 804 S.W.2d 623, 625 (Tex. App.—Texarkana 1991, no

[3] On appeal, Jose does not challenge the trial court's clarification that the "3.5 acres" awarded in the decree included Tract A and Tract B even though their combined acreage is slightly less than 3 acres. Instead, he only challenges the divorce court's authority to award Tract B to Maria in the first instance.

writ) (concluding that evidence supported a finding that equitable title to real estate was community property even though record title was in the name of husband's brother); *see also Deacetis v. Wiseman*, No. 14-09-000308-CV, 2010 WL 2731040, at *4 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (mem. op.). Indeed, the family code contemplates that the community estate may acquire an equitable, rather than a legal, interest in real property. *See* TEX. FAM. CODE ANN. § 4.001(2) (defining "property" in the context of premarital and marital property agreements to include a "legal or equitable" interest in real property). For example, when the marital home is encumbered by a mortgage, the award of the property to one spouse as their sole and separate property is necessarily based on the community estate's equitable interest in the property. *See Flag-Redfern Oil Co. v. Humble Exploration Co.*, 744 S.W.2d 6, 8 (Tex. 1987) ("When a mortgagor executes a deed of trust the legal and equitable estates in the property are severed. The mortgagor retains the legal title and the mortgagee holds the equitable title."). Therefore, we reject Jose's premise that the community must hold legal title to real property before the property is subject to a divorce court's "division of the estate of the parties." *See* TEX. FAM. CODE ANN. § 7.001.

The question, then, is whether the community estate acquired an equitable interest in Tract B and whether that interest, awarded to Maria as her sole and separate property, is superior to any interest Jose may have acquired in 1997. *See Hancock*, 45 S.W.3d at 327 (explaining that a plaintiff must "establish superior title as an element of his claim" to quiet title). We conclude that the record supports a conclusion that the community estate acquired equitable title to Tract B, and such title, being superior to Jose's after-acquired

legal title, entitled Maria to relief on her suit to quiet title.

Although the parties gave conflicting accounts of what transpired over thirty years ago, the trial court, as the trier of fact, was the sole judge of the witnesses' credibility, and we must view the evidence in the light that supports the judgment. *See City of Keller v. Wilson*, 168 S.W.3d 802, 821 (Tex. 2005); *Kimbro*, 921 S.W.2d at 343. Maria testified that Jose purchased Tract B from his aunt during the marriage, and the trial court made factual findings that Tract B was "acquired from Amada Rubio" and the "[p]ayments for the property were made during the marriage." *See Cadle Co. v. Harvey*, 46 S.W.3d 282, 287 (Tex. App.—Fort Worth 2001, pet. denied) ("It is well-settled that a purchaser under a contract of sale for real property acquires an equitable interest in the property." (citing *Johnson v. Wood*, 157 S.W.2d 146, 148 (Tex. 1941))). The trial court also found, consistent with Maria's testimony, that the parties took possession of Tract B during the marriage and made several valuable improvements to the property, including construction of the marital home. *See id.* (explaining that equitable title vests when the purchaser takes possession of the property (citing *Leeson v. City of Houston*, 243 S.W. 485, 488–90 (Tex. Comm'n App. 1922, judgm't adopted))). No written contract to purchase Tract B was produced at trial, but even if there was only a verbal agreement to purchase the property, our analysis would not change. *See Alfalfa Lumber Co. v. Mudgett*, 199 S.W. 337, 340 (Tex. App.—Amarillo, 1917 no writ) (recognizing an exception to the statute of frauds in which equitable title vests in a party who, acting in reliance on a verbal agreement to purchase real property, pays the entire consideration, takes possession of the property, and makes valuable improvements on the property).

Because "equitable title is superior to legal title," the equitable title necessarily awarded to Maria in the divorce decree was superior to any subsequent legal title purportedly conveyed to Jose by his aunt in 1997. *See Harvey*, 46 S.W.3d at 287 (citing *Johnson*, 157 S.W.2d at 148); *Hancock*, 45 S.W.3d at 327. Thus, the 1997 deed constitutes a cloud on Maria's title. *See Sellers*, 587 S.W.2d at 525. Having concluded that the trial court's judgment is based on a valid legal theory supported by the evidence, we overrule both of Jose's issues. *See Whatley*, 82 S.W.3d at 575.

IV. CONCLUSION

The judgment is affirmed.

GREGORY T. PERKES
Justice

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