

Opinion issued July 23, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-19-00502-CV

MIRAJUR RAHMAN, Appellant
V.
DILARA PARVIN, Appellee

On Appeal from the 309th District Court
Harris County, Texas
Trial Court Case No. 2017-73885

MEMORANDUM OPINION

This is an appeal from the trial court's final decree of divorce. Dilara Parvin and Shahidur Rahman were married in 2003 and purchased real property (the Home) in 2014. In 2017, Shahidur and Dilara signed a warranty deed conveying the Home to Shahidur's brother, Mirajur Rahman. After they signed the deed,

Shahidur continued to live at the Home, but he ordered Dilara to leave, accusing her of infidelity and claiming she had no right to stay because she no longer had any interest in the Home.

Dilara filed a petition for divorce, naming Shahidur and Mirajur as respondents, and requesting that the trial court set aside the deed for fraud. Dilara alleged that Shahidur fraudulently induced her to sign the deed by falsely representing that the deed was a document authorizing Mirajur to sell the Home on their behalf. After a bench trial, the trial court signed a final decree of divorce that (1) set aside the deed, (2) found the Home to be community property, and (3) ordered that the Home be sold, with the proceeds split between Dilara and Shahidur. Mirajur then filed this appeal.

In five issues, Mirajur contends that (1) the trial court erred by prematurely deciding to set aside the deed and treat the Home as community property before hearing all the evidence, (2) the trial court's premature decisions and evidentiary rulings show the court was unfairly biased against him and amount to judicial misconduct, (3) the trial court erred by failing to file findings of fact and conclusions of law in support of its decision to set aside the deed, (4) the evidence is insufficient to support the trial court's implicit finding that the deed was induced by fraud, and (5) the evidence is insufficient to support the trial court's express finding that the Home was community property.

We affirm.

Background

In this divorce case, the central dispute is whether the husband, Shahidur, fraudulently conveyed the Home to his brother, Mirajur, to prevent his wife, Dilara, from receiving her interest in the Home upon the division of their martial estate.

Shahidur and Dilara were both born in Bangladesh, but each eventually moved to the United States. They met each other in 2003 when their families (back in Bangladesh) arranged for their marriage. They were married in New York later that year. They had a daughter in 2009, moved to Texas in 2011, and had another daughter in 2012.

In 2014, Shahidur and Dilara purchased the Home. The parties dispute how exactly the purchase was financed and whether Shahidur and Dilara were the only parties to acquire an interest in the Home. It is undisputed, however, that Shahidur and Dilara were the only parties listed on the deed.

Around three years later, in February 2017, Shahidur and Dilara signed a warranty deed conveying the Home to Mirajur. The parties dispute the circumstances under which the deed was signed. Dilara alleges that Shahidur falsely represented that the document was a power of attorney authorizing Mirajur to sell the Home on their behalf. Shahidur and Mirajur allege that Shahidur

truthfully represented that the document was a deed conveying the Home to Mirajur. It is undisputed that Mirajur did not pay any consideration for the conveyance.

About a month later, in March 2017, Dilara moved out of the Home. Again, the parties dispute the circumstances under which Dilara left. Dilara alleges that Shahidur ordered her to leave due to her alleged infidelity. Dilara further alleges that Shahidur claimed she had no right to stay because she no longer held title to the Home. According to Dilara, she left reluctantly and out of fear that Shahidur would physically abuse her if she stayed. Shahidur alleges that he and Dilara jointly agreed to divorce and that Dilara would move out to live with her alleged boyfriend. It is undisputed that, after Dilara left, she did not move in with another man and eventually sought refuge at a women's homeless shelter.

In November 2017, Dilara filed a petition for divorce, naming Shahidur and Mirajur as respondents. Dilara requested that she and Shahidur be divorced on the ground of insupportability; that she be appointed sole managing conservator of their two children; and that she be awarded a disproportionate share of the marital estate. Dilara alleged that Shahidur had engaged in a history or pattern of family violence and had "violently beat[en]" her in July 2016 during a family vacation to Bangladesh. Dilara further requested that the deed conveying the Home to Mirajur be set aside for fraud. Dilara alleged that the Home was community property and

that Shahidur had fraudulently conveyed the Home to Mirajur to deprive her of her interest in it. Dilara's theory was that Shahidur came to believe she was cheating on him, decided to kick her out of the house, and then tricked her into signing the deed.

Shahidur filed an answer and a counterpetition for divorce. Mirajur filed an answer, which asserted a general denial but no affirmative defenses. In his answer, Mirajur alleged that he owned the Home and requested that the trial court confirm the Home as his separate property in its final decree of divorce.

The case was tried to the bench in two days. On the first day, Dilara presented her case in chief and was examined on a number of issues.

Dilara testified about her marriage to Shahidur. She testified that, in 2013, she and Shahidur began to experience marital problems with Shahidur accusing her of infidelity. Dilara testified that Shahidur became verbally and physically abusive. Dilara testified that, in July 2016, she and Shahidur took their daughters on a family vacation to Bangladesh. They stayed at Shahidur's parents' house. While there, Shahidur confronted her in their bedroom, accused her again of infidelity, and began to beat her with an iron rod. Dilara testified that he did not stop until their daughters entered the room unexpectedly. Dilara testified that, as a result of the beating, she suffered a broken wrist and several broken teeth. She supported her testimony with the medical bills for treatment she received for such injuries.

Dilara testified about the circumstances under which she signed the deed conveying the Home to Mirajur. Dilara testified that, one day in February 2017, Shahidur told her that she needed to come with him to the bank to sign and notarize a document. Dilara testified that, while on their way to the bank, Shahidur handed her the document (which, unbeknownst to her, was a warranty deed conveying the Home to Shahidur's brother, Mirajur). Dilara reviewed the document, said she "didn't get it," and asked Shahidur what it was. Shahidur then explained that it was a document authorizing Mirajur to sell the Home on their behalf. Dilara testified that Shahidur told her that he was planning on selling the Home that summer and that since they were going to be out of the country at that time, they needed to sign the document to give Mirajur the authority to sell the Home on their behalf. Dilara testified that she believed Shahidur's explanation and signed the document. Dilara testified that when they left the bank after signing and notarizing the document, she was unaware that the Home was no longer hers.

Finally, Dilara testified about the circumstances under which she left the Home. Dilara testified that, later that March, after they had signed the deed, Shahidur told her that she had to vacate the Home due to her alleged infidelity and claimed that she had no right to stay because she no longer held title to the Home.

On the second day of trial, Shahidur and Mirajur presented their cases in chief. Shahidur denied ever having hit Dilara and testified that their marriage "fell

apart because of her adultery.” Shahidur testified that, in 2014, he purchased the Home with his brother and father and explained that the Home was meant to be “the family house.”

Shahidur testified that he, Dilara, and their two daughters were supposed to spend summer 2017 in Europe. He explained that, because he was going to be in Europe, and because the Home was a “family house,” he decided to transfer the Home to Mirajur so that Mirajur could do with it as he saw fit. Shahidur testified that he retained a real estate attorney to draft a deed conveying the Home to Mirajur. Shahidur testified that the attorney told him that the deed needed to be signed by Dilara because the Home was community property. Shahidur testified that he explained all this to Dilara. Shahidur testified that Dilara knew the Home was the “family house” and agreed to transfer title to Mirajur. Shahidur denied that he was trying to defraud her when he asked her to sign the deed. Shahidur further testified that, after he and Dilara signed the deed, they decided to divorce and agreed that Dilara would leave the house. Shahidur insisted that Dilara left the house not because she was afraid of him, but because she wanted to be with her boyfriend.

Mirajur did not present any material testimony or documentary evidence of his own.

After the trial, the trial court entered a final decree of divorce ordering that (1) Dilara and Shahidur be divorced on the ground of insupportability, (2) the deed be set aside, (3) the Home be treated as community property, and (4) the Home be sold, with 60% of the proceeds awarded to Dilara and the remaining 40% awarded to Shahidur.

After the trial court entered its decree, Mirajur filed a request for findings of fact and conclusions of law in support of the trial court's order setting aside the deed. The trial court did not comply with the request, and Mirajur then filed a notice of past due findings of fact and conclusions of law. The trial court never filed any findings of facts or conclusions of law.

Mirajur now appeals.

Validity of the Deed

We begin with Mirajur's fourth issue, in which he contends the evidence is legally and factually insufficient to support the trial court's implicit findings of fact in support of its order to set aside the deed.

A. Standard of review

When, as here, the trial court does not file findings of fact and conclusions of law after a bench trial, all facts necessary to support the judgment and supported by the evidence are implied. *See McShane v. McShane*, 556 S.W.3d 436, 440 (Tex. App.—Houston [1st Dist.] 2018, pet. denied). When the appellate record includes

the reporter's and clerk's records, these implied findings are not conclusive and may be challenged for legal and factually sufficiency. *Id.* at 440–41.

Under the legal-sufficiency standard, we must credit evidence that supports the judgment if a reasonable factfinder could, and we must disregard contrary evidence unless a reasonable factfinder could not. *Id.* at 441. Evidence is legally insufficient to support an implied finding when (1) the record bears no evidence of a vital fact, (2) the court is barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact, (3) the evidence offered to prove a vital fact is no more than a mere scintilla, or (4) the evidence conclusively establishes the opposite of a vital fact. *Id.* In reviewing the factual sufficiency of the evidence, we consider all the evidence and will set aside an implied finding only if the evidence supporting the finding is so weak or so against the overwhelming weight of the evidence that the finding is clearly wrong and unjust. *Id.*

B. Analysis

Dilara requested that the deed conveying the Home to Mirajur be set aside for fraud, constructive fraud, and violations of the Uniform Fraudulent Transfer Act. We consider first the evidence in support of Dilara's claim for fraud.

“To establish fraud, a plaintiff must show that: (1) the defendant made a false, material representation; (2) the defendant knew the representation was false

or made it recklessly as a positive assertion without any knowledge of its truth; (3) the defendant intended to induce the plaintiff to act upon the representation; and (4) the plaintiff justifiably relied on the representation, which caused the plaintiff injury.” *Barrow-Shaver Res. Co. v. Carrizo Oil & Gas, Inc.*, 590 S.W.3d 471, 496 (Tex. 2019).

At trial, Dilara testified about the circumstances under which she signed the deed. Dilara testified that, one day in February 2017, Shahidur told her that she needed to come with him to the bank to sign and notarize a document. Dilara testified that, while on their way to the bank, Shahidur handed her the document. Dilara testified that she read through the document, said she “didn’t get it,” and asked Shahidur what it was. According to Dilara, Shahidur then explained that it was a document authorizing Mirajur to sell the Home on their behalf (when in fact the document was a warranty deed conveying the Home to Mirajur). Shahidur told her that he was planning on selling their Home that summer and that since they were going to be out of the country at that time, they needed to sign the document to give Mirajur the authority to sell the Home on their behalf. Dilara testified that she believed Shahidur’s explanation and signed the document. Dilara testified that when they left the bank after signing and notarizing the document, she was unaware that the Home was no longer hers. Dilara further testified that, later that

March, Shahidur told her that she had to leave the Home because it had been sold to Mirajur and was no longer in her name.

Shahidur also testified about the circumstances under which Dilara signed the deed. His account differed from Dilara's. Shahidur testified that, in 2014, he purchased the Home with his brother and father and that the Home was meant to be "the family house." Shahidur testified that he, Dilara, and their two daughters were supposed to spend summer 2017 in Europe, so he decided to transfer the Home to Mirajur so that Mirajur could live in it or sell it. Shahidur testified that he retained a real estate attorney to draft the deed conveying the Home to Mirajur and that the attorney told him that the deed needed to be signed by Dilara because the Home was community property. Shahidur testified that he explained all this to Dilara. According to Shahidur, Dilara knew the Home was a "family house," and she agreed to transfer title to Mirajur. Shahidur denied that he was trying to defraud her when he asked her to sign the deed. Shahidur testified that Dilara understood what she was doing and did so willingly. Shahidur admitted that Mirajur paid no consideration for the Home when he took title to it.

Shahidur further testified that, after Dilara and he signed the deed, they decided to divorce and that Dilara would leave the house. Shahidur testified that Dilara left the house not because she was afraid of him, but because she wanted to be with her boyfriend.

Mirajur, for his part, did not present any material testimony or documentary evidence.

This evidence is legally and factually sufficient to support a finding of fraud.

First, the evidence is sufficient to show Shahidur made a false material representation to Dilara. Dilara testified that Shahidur represented that the document was a power of attorney authorizing Mirajur to sell the Home on their behalf. The representation was false. The document was a deed, not a power of attorney. The representation was material. In deciding to sign a power of attorney authorizing a third party to sell real property, it would obviously be important to the person signing the document that the document is actually a power of attorney and not a deed transferring title to the property.

Second, the evidence is sufficient to support Shahidur knew the representation was false. The document did not simply authorize Mirajur to sell the Home but instead transferred title to the Home to him. Shahidur admitted that he retained an attorney to draft the deed and that he intended to transfer the Home to Mirajur. From these facts, it can be reasonably inferred that Shahidur knew his representation that the deed was a power of attorney was false when he made it.

Third, the evidence is sufficient to show Shahidur intended to induce Dilara to act upon the representation. It is undisputed that Shahidur was responsible for creating the deed and knew it conveyed the Home to Mirajur. But Dilara testified

that Shahidur represented that the document was not a deed but a power of attorney authorizing Mirajur to sell the Home on their behalf. And Dilara further testified that shortly after signing the deed, Shahidur ordered her to leave the Home, claiming that she had no right to stay because she no longer had an interest in the Home. From this evidence, it can be reasonably inferred that Shahidur intended to induce Dilara to sign the deed under the mistaken belief that it was a power of attorney as part of a plan to create a legal justification for evicting her from the Home months later and preventing her from receiving an interest in the Home upon the division of their marital estate.

Further, the transaction was marked by various “badges of fraud” indicative of fraudulent intent. Badges of fraud include such things as the transfer of property to a related party, retention of possession or control of the property by the transferor after its transfer, the threat of litigation against the transferor before the transfer, and inadequate consideration for the property’s transfer. *See Mladenka v. Mladenka*, 130 S.W.3d 397, 405 (Tex. App.—Houston [14th Dist.] 2004, no pet.). Each of these badges is present in this case. The transfer was to Shahidur’s brother. Shahidur continued to live at the Home after the parties signed the deed. The transfer occurred shortly before Dilara filed for divorce. Mirajur paid no consideration.

Fourth, the evidence is sufficient to show Dilara justifiably relied on the representation, causing her injury. Dilara's reliance on Shahidur's oral representation was justified due to their relationship as husband and wife. In an arm's length transaction, a party alleging fraud must exercise ordinary care to protect her own interests and cannot blindly rely on the defendant's representations, particularly oral representations as to a written contract's unambiguous terms. *See Mercedes-Benz USA, LLC v. Carduco, Inc.*, 583 S.W.3d 553, 563 (Tex. 2019); *JPMorgan Chase Bank, N.A. v. Orca Assets G.P., L.L.C.*, 546 S.W.3d 648, 658 (Tex. 2018). But this was not an arm's length transaction. As Dilara's spouse, Shahidur owed Dilara a fiduciary duty with respect to their community property. *See Puntarelli v. Peterson*, 405 S.W.3d 131, 137 (Tex. App.—Houston [1st Dist.] 2013, no pet.). Dilara was justified in relying on Shahidur's oral representation and was not required to review the deed to verify whether Shahidur was telling the truth. Dilara's reliance caused her injury: the loss of her interest in the Home.

We hold the evidence is legally and factually sufficient to show that Shahidur fraudulently induced Dilara into signing the deed conveying the Home to

Mirajur. Because Shahidur fraudulently induced Dilara into signing the deed, the deed was voidable and the trial court therefore did not err in setting it aside.¹

We overrule Mirajur's fourth issue.

Status of the Home

In his fifth issue, Mirajur contends the evidence is legally and factually insufficient to support the trial court's express finding that the Home was community property.

"Community property consists of the property, other than separate property, acquired by either spouse during marriage." TEX. FAM. CODE § 3.002. "Property possessed by either spouse during or on dissolution of marriage is presumed to be community property." *Id.* § 3.003(a). "The degree of proof necessary to establish that property is separate property is clear and convincing evidence." *Id.* § 3.003(b).

Shahidur and Dilara acquired and possessed the Home during their marriage. Therefore, the Home is presumed to be community property. Mirajur contends the presumption was overcome at trial by "undisputed evidence" that he and his father

¹ To the extent Mirajur contends he was a bona fide purchaser, he was required to assert this status as an affirmative defense but did not do so. *See Madison v. Gordon*, 39 S.W.3d 604, 606 (Tex. 2001). Even if he had done so, the evidence is sufficient to show Mirajur was not, in fact, a bona fide purchaser. To be a bona fide purchaser, one must acquire property for value. *See id.* Shahidur testified and it is undisputed that Mirajur did not pay consideration for the conveyance. Moreover, a bona fide purchaser must acquire property in good faith and without notice of any third-party claim or interest. *See id.* The badges of fraud, detailed above, show Mirajur knew Dilara's signature was fraudulently induced.

“invested” in the “purchase” of the Home. But Mirajur does not cite to that evidence in the record or otherwise explain what that evidence is. He has therefore failed to rebut the presumption that the Home is community property.

We overrule Mirajur’s fifth issue.

Premature Rulings

In his first issue, Mirajur contends that the trial court erred in prematurely ruling on whether the warranty deed should be set aside and whether the Home was community property.

The case was tried to the bench in two days. Dilara presented her case on the first day, and Shahidur and Mirajur presented their cases on the second day. At the conclusion of the first day, the trial court stated that it was “going to set aside the deed” and that the Home was “going to be community property.” Mirajur characterizes these statements as rulings. He argues that they are erroneous because they were made before either he or Shahidur had the opportunity to present evidence. Mirajur’s argument fails for at least three reasons.

First, when the trial court made these purported rulings, Mirajur did not object or otherwise argue that the rulings were premature. Because Mirajur did not object to the allegedly premature timing of the trial court’s rulings, he has failed to preserve the issue for appellate review. *See* TEX. R. APP. P. 33.1(a); TEX. R. EVID.

103(a)(1); *Samson Expl., LLC v. T.S. Reed Props, Inc.*, 521 S.W.3d 766, 782 (Tex. 2017).

Second, the trial court's statements at the conclusion of the first day of the trial were not actually rulings. By stating that it was "going to set aside the deed" and that the Home was "going to be community property," the trial court did not rule on these matters; rather, it stated how it intended to rule based on the evidence it had considered thus far. Immediately after making the statements, the trial court explained that it believed there were "some funny things going on" when Dilara signed the deed, but it also acknowledged that it had not yet heard Shahidur's or Mirajur's cases in chief and encouraged the parties to settle the matter privately instead of "putting it in [its] hand[s]" when the trial reconvened. At the conclusion of the second day of trial, after the parties had rested and made their closing arguments, the trial court expressly ordered that the deed be set aside and expressly found the Home to be community property.

Third, even if the trial court had made these rulings at the conclusion of the first day of trial, the record does not show that Mirajur was prevented from presenting evidence in support of the deed and moving the trial court to reconsider its rulings on the second day. Thus, the record does not show the trial court's allegedly premature rulings were harmful.

For these reasons, we overrule Mirajur's first issue.

Judicial Bias

In his second issue, Mirajur contends that certain adverse rulings of the trial court show that the trial court was unfairly biased against him and amount to judicial misconduct.

“To reverse a judgment on the ground of improper conduct or comments of the judge, we must find (1) that judicial impropriety was in fact committed, and (2) probable prejudice to the complaining party.” *Metzger v. Sebek*, 892 S.W.2d 20, 39 (Tex. App.—Houston [1st Dist.] 1994, writ denied). However, “judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 240 (Tex. 2001) (per curiam) (quoting *Liteky v. United States*, 510 U.S. 540, 555 (1994)). “Only in the rarest circumstances are judicial rulings demonstrative of the degree of favoritism or antagonism required to show that a fair and impartial trial is impossible.” *Markowitz v. Markowitz*, 118 S.W.3d 82, 87 (Tex. App.—Houston [14th Dist.] 2003, pet. denied).

Here, Mirajur contends that the trial court demonstrated a degree of favoritism or antagonism sufficient to require reversal by (1) prematurely deciding to set aside the deed and treat the Home as community property, (2) improperly sustaining objections limiting Shahidur’s testimony regarding the money he received to purchase the Home before he and Dilara took title to it, and (3)

improperly sustaining objections limiting Shahidur's testimony regarding the transfer of the Home from Shahidur and Dilara to Mirajur. We disagree for two reasons.

First, the trial court did not prematurely decide to set aside the deed and treat the Home as community property. As discussed, the trial court's statements at the end of the first day of trial were not actually rulings. By stating that it was "going to set aside the deed" and that the Home was "going to be community property," the trial court did not rule on these matters; rather, it stated how it intended to rule based on the evidence it had considered thus far.

Second, Mirajur has failed to explain why the trial court's allegedly improper evidentiary rulings were in fact improper. Without such an explanation, we cannot conclude that this is one of those rare circumstances in which the trial court's rulings alone are sufficient to show judicial bias. We hold that Mirajur has failed to show that "judicial impropriety was in fact committed." *Metzger*, 892 S.W.2d at 39.

We overrule his second issue.

Failure to File Findings of Fact and Conclusions of Law

In his third issue, Mirajur contends that the trial court erred in failing to file findings of fact and conclusions of law in response to his timely request and notice of past due findings. *See* TEX. R. CIV. P. 296, 297. Assuming without deciding the

trial court was required to file findings of fact and conclusions of law, we conclude that its failure to do so was harmless.

A trial court's failure to comply with a proper request for findings of fact and conclusions of law is presumed harmful unless the record affirmatively shows the appellant suffered no harm. *Holmes v. Williams*, 355 S.W.3d 215, 222 (Tex. App.—Houston [1st Dist.] 2011, no pet.). The test for harm is whether the circumstances of the case require an appellant to guess the reason for the trial court's ruling and therefore prevent the appellant from properly presenting his appeal. *See id.* Thus, when only a single ground of recovery or a single defense is presented to the trial court, the record affirmatively shows the appellant has suffered no harm because he is not forced to guess the reasons for the trial court's judgment. *Willms v. Americas Tire Co., Inc.*, 190 S.W.3d 796, 801–02 (Tex. App.—Dallas 2006, pet. denied).

Dilara asserted one ground for setting aside the deed: fraud. And that ground involved one key issue of disputed fact: whether Shahidur fraudulently induced Dilara into signing the deed conveying the Home to Mirajur by falsely representing that the deed was a power of attorney authorizing Mirajur to sell the Home on their behalf. *See Rollins v. Am. Exp. Travel Related Servs. Co.*, 219 S.W.3d 1, 6 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (trial court's failure to file findings of fact and conclusions of law was not harmful when “only issue for the trial court to

decide was a question of law,” which required court to make one “necessary” finding); *Smale v. Williams*, No. 06-18-00055-CV, 2019 WL 490136, at *3 (Tex. App.—Texarkana Feb. 8, 2019, no pet.) (mem. op.) (trial court’s failure to file findings of fact and conclusions of law did not harm plaintiff when only ground for dismissal asserted by defendant was res judicata); *Goggins v. Leo*, 849 S.W.2d 373, 379–80 (Tex. App.—Houston [14th Dist.] 1993, no writ) (trial court’s failure to file findings of facts and conclusions of law in forcible detainer action involving condominium did not harm defendant when there was only one possible theory of recovery for plaintiff and implied findings necessary for recovery were supported by evidence).

Thus, the circumstances of this case do not require Mirajur to guess at the reasons for the trial court’s decision to set aside the deed. It is clear that the trial court believed Dilara and not Shahidur and Mirajur. We hold that the record affirmatively shows Mirajur was not harmed by the trial court’s failure to enter findings of fact and conclusions of law.

We overrule Mirajur’s third issue.

Conclusion

We affirm.

Gordon Goodman
Justice

Panel consists of Justices Goodman, Landau, and Hightower