FILE COPY

RE: Case No. 17-0760 DATE: 12/8/2017
COA #: 13-15-00309-CV TC#: D140717F
STYLE: GROSS v. DANNATT

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

NUMBER 13-15-00309-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

ROBERT GROSS, **Appellant,**

v.

JEANINE DANNATT, **Appellee.**

On appeal from the 391st District Court of Tom Green County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Longoria and Hinojosa
Memorandum Opinion by Chief Justice Valdez

Acting pro se, appellant Robert Gross appeals from a final divorce decree. By two issues, appellant contends that the trial court improperly awarded his separate property to his ex-wife, appellee Jeanine Dannatt, and that his trial counsel rendered ineffective assistance. We affirm.[1]

---

[1] This case is before the Court on transfer from the Third Court of Appeals in Austin, Texas pursuant to a docket equalization order issued by the Supreme Court of Texas. *See* TEX. GOV'T CODE ANN. § 73.001

I. PROPERTY DIVISION

By his first issue, appellant contends that the trial court erred by divesting him of his separate property. Appellant complains that the trial court improperly awarded some of his separate real property and separate bank accounts to appellee. Appellee responds that appellant consented to the trial court's judgment, and therefore, he may not appeal.

A. Standard of Review and Applicable Law

We review property division incident to divorce under an abuse of discretion standard. *Garcia v. Garcia*, 170 S.W.3d 644, 648 (Tex. App.—El Paso 2005, no pet.). A trial court abuses its discretion if it acts without reference to any guiding rules and principles. *Id.* at 649; *See Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985). Under the abuse of discretion standard applied in family law cases, legal and factual sufficiency of the evidence are not independent grounds of error, but are relevant factors for determining whether the trial court abused its discretion. *Boyd v. Boyd*, 131 S.W.3d 605, 611 (Tex. App.—Fort Worth 2004, no pet.).

B. Discussion

Here, when the trial court stated that it would follow the parties' proposed decree, appellant stated that he agreed with "everything in the decree" except those matters that he had contested.[2] At trial, appellant contested the appraised value of some of the real property, disagreed on the nature of a loan to his brother-in-law, and claimed an interest

---

(West, Westlaw through 2015 R.S.).

[2] We note that standing alone the phrase in a judgment stating, "approved as to form and substance" does not transform a judgment into a consent judgment. *See Baw v. Baw*, 949 S.W.2d 764, 766 (Tex. App.—Dallas 1997, no writ). Instead, to have a valid consent judgment, each party must explicitly and unmistakably give its consent on the record indicating that the parties came to some agreement as to the disposition of the case. *See DeClaris Assocs. v. McCoy Workplace Sols., L.P.*, 331 S.W.3d 556, 560 (Tex. App.—Houston [14th Dist.] 2011, no pet.).

in appellee's bank account.[3] Appellant does not complain of the trial court's rulings on these matters. And, appellant did not contest, and explicitly agreed, to the division of the property as stated in the divorce decree.[4] Therefore, because appellant agreed to the divorce decree regarding the complained-of property, he has waived error, if any.[5] *See Baw v. Baw*, 949 S.W.2d 764, 766 (Tex. App.—Dallas 1997, no pet.) ("A party's consent to the trial court's entry of judgment waives any error, except for jurisdictional error, contained in the judgment, and that party has nothing to properly present for appellate review."); *see also DeClaris Assocs. v. McCoy Workplace Sols., L.P.*, 331 S.W.3d 556, 560 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (providing that consent to judgment may be indicated in the record or in the judgment). We overrule appellant's first issue.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

By his second issue, appellant complains that his trial counsel rendered ineffective assistance. However, the doctrine of ineffective assistance of counsel does not extend to civil cases. *McCoy v. Tex. Instruments, Inc.*, 183 S.W.3d 548, 553 (Tex. App.—Dallas 2006, no pet.). Accordingly, we overrule appellant's second issue.

---

[3] The trial court also determined that it could not order either party to pay an outstanding debt to the Internal Revenue Service. Appellant does not appeal this determination.

[4] Appellant references an inventory in the record stating that certain property constituted his separate property. However, as stated above, appellant consented to the trial court's division of the complained-of property as set out in the divorce decree. The record shows that the trial court did not find that appellant's separate property constituted community property. Instead, the trial court divided the property as agreed to by appellant and appellee.

[5] The agreed final decree of divorce further states that appellant "appeared telephonically and through attorney of record, Gerald R. Ratliff, and has agreed to the terms of this Agreed Final Decree of Divorce, as evidenced by Respondent's and Respondent's attorney's signatures below." The trial court further stated in the judgment the following: "The Court finds that the parties have entered into a written agreement as contained in this decree by virtue of having approved this decree as to both forma and substance. To the extent permitted by law, the parties stipulate the agreement is enforceable as a contract. The Court approves the agreement of the parties as contained in this Agreed Final Decree of Divorce." *See id.* (providing that either the record or judgment may indicate that the parties' consented to the judgment).

III. DAMAGES FOR FRIVOLOUS APPEAL

Contending that this appeal is frivolous, appellee requests that we impose sanctions on appellant. *See* TEX. R. APP. P. 45 (allowing a court of appeals to impose sanctions in frivolous appeals). Pursuant to rule 45, if we determine that this appeal is frivolous, we may award just damages to the prevailing party. *Id.*; *see Durham v. Zarcades*, 270 S.W.3d 708, 720 (Tex. App.—Fort Worth 2008, no pet.). "Whether to award damages is within this [C]ourt's discretion," and "[s]anctions should be imposed only in egregious circumstances." *Durham*, 270 S.W.3d at 720. We decline to impose monetary sanctions under rule 45 in this case. *See id.* We deny appellee's request for sanctions.

IV. CONCLUSION

We affirm the trial court's judgment.

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

Delivered and filed the
22nd day of June, 2017.

FILE COPY

Court of Appeals

Thirteenth District of Texas

NUECES COUNTY COURTHOUSE
901 LEOPARD, 10TH FLOOR
CORPUS CHRISTI, TEXAS 78401
361-888-0416 (TEL)
361-888-0794 (FAX)

HIDALGO COUNTY
COURTHOUSE ANNEX III
100 E. CANO, 5TH FLOOR
EDINBURG, TEXAS 78539
956-318-2405 (TEL)
956-318-2403 (FAX)

www.txcourts.gov/13thcoa

August 24, 2017

Mr. Robert Gross
#28352077
Federal Correctional Institute
1900 Simler Ave.
Big Spring, TX 79720

Hon. Dana D. Banks
Smith Rose Finley, PC
P. O. Box 2540
San Angelo, TX 76902-2540
* DELIVERED VIA E-MAIL *

Re: Cause No. 13-15-00309-CV
Tr.Ct.No. D140717F
Style: Robert Gross v. Jeanine Dannatt

Appellant's motion for rehearing in the above cause was this day DENIED by this Court.

Very truly yours,

Dorian E. Ramirez

Dorian E. Ramirez, Clerk

Additional material from this filing is available in the Clerk's Office.