Affirmed and Opinion filed March 16, 2000.

In The

Fourteenth Court of Appeals

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NO. 14-98-00989-CV

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MICHELLE KIZZEE MEDLOCK and VERDELL ENGLISH, Appellants

V.

EULA C. ENGLISH, Appellee

On Appeal from the 411th District Court
Trinity County, Texas
Trial Court Cause No. 17,365

O P I N I O N

Eula C. English and Manous English, Jr. obtained a divorce in 1997. Eula later filed suit against Manous, his brother Verdell, and their niece, Michelle Kizzee Medlock, alleging that shortly before the divorce, Manous fraudulently transferred three pieces of real property to Verdell, who subsequently transferred two of them to Michelle, in order to remove them from the community estate. Eula asked that the deeds be voided, that title be restored to her and Manous, that the lots then be partitioned, and that she receive money damages.

None of the defendants answered the suit, and Eula obtained the relief she sought. An interlocutory default judgment was entered against all three defendants. Restoring Eula's interest in the tracts, the

judgment voided the deeds and gave Manous and Eula each a one-half interest in the lots. Manous filed a motion for new trial, which was granted. Eula non-suited Manous. The Court then heard evidence on damages emanating from the fraud . In addition to voiding the deeds, the Court found against Michelle for $5,000.00 in actual damages and $2,500.00 in exemplary damages and against Verdell for $15,000.00 in actual damages and $10,000 in exemplary damages.

On appeal, Michelle and Verdell bring three issues. First, they contend the petition did not state a cause of action upon which relief can be granted. Second, they claim the evidence is not legally and factually sufficient to support the award of damages. Finally, they contend the award of damages violated the one satisfaction rule.

Fraud on the Community

The first issue raised by appellants is whether Eula's petition states a proper cause of action to support the judgment. Appellants contend the petition alleges a fraud on the community which is not an independent cause of action in Texas and, therefore, cannot be asserted outside a suit for divorce. However, we have recently considered this precise issue and resolved it against appellants' position. *See Mayes v. Stewart*, No. 14-98-00579-CV, slip op. at 3-4, 2000 WL 64038, at *5-6 (Jan. 27, 2000). Thus, appellants' contention is overruled.

Sufficiency of the Evidence

Appellants' second issue is whether there was sufficient evidence, legally and factually, to support the award of damages. If a no-answer default judgment is entered, the non-answering party is deemed to have admitted the facts properly pled and the justice of the opponent's claim. *See Stoner v. Thompson*, 578 S.W.2d 679, 682 (Tex.1979). However, this presumption does not apply to unliquidated damages. *See Schwartz v. Pinnacle Communications*, 944 S.W.2d 427, 436 (Tex. App.–Houston [14 th Dist.] 1997, no writ). In a default judgment, where claims of legal or factual sufficiency concern damages, the appellant is entitled to a review of the evidence produced. *See Rubalcaba v. Pacific/Atlantic Crop Exchange, Inc.*, 952 S.W.2d 552, 555 (Tex. App.–El Paso 1997, no writ).

When "no evidence" and "factual insufficiency" points of error are raised on appeal, the appellate court will address the "no evidence" or legal insufficiency point first. *See Glover v. Texas Gen. Indem. Co.*, 619 S.W.2d 400, 401 (Tex.1981). If there is any evidence of probative force to support the finding, a "no evidence" point must be overruled and the finding upheld. *See Leitch v. Hornsby*, 935 S.W.2d 114, 118 (Tex.1996).

Eula testified that her damages included the loss of the property itself. She placed the value of the two lots at $4000-$5000 each; the lot with the home at $35,000 to $45,000; and the home itself at $35,000. Appellant argues that these values do not constitute proper evidence because they were not based on personal knowledge. However, as an owner of the property, Eula is competent to evaluate its worth. Moreover, her former husband, whose business is buying and selling property, testified as to the value of the various assets.

Eula's damages also included the loss of income from the properties and a tax deficiency caused by her being unable to raise money by mortgaging or selling the properties. Evidence of the value of the properties is directly related to the amount of these damages. Finally, Eula had personal damages which included loss of sleep, mental anguish, and ulcers serious enough to require a doctor's care. This is clearly evidence of probative force, and it is legally sufficient to support the award of damages.

Appellants put on no evidence as to the amount of damages, so we are left with only Eula's testimony. After considering and weighing all of the evidence, we do not find the evidence so weak or the result so against the great weight and preponderance of the evidence that it is clearly wrong and unjust. Accordingly, we hold that the evidence is factually sufficient to support the award of damages.

The "One Satisfaction" Rule

Appellant's final issue is whether the award of compensatory damages, when combined with the return of the land, violates the "one satisfaction" rule. A plaintiff is entitled to only one satisfaction or recovery for an injury. *See Vickery v. Vickery*, 999 S.W.2d 342, 373 (Tex. 1999) (citing *Stewart Title Guar. Co. v. Sterling*, 822 S.W.2d 1, 7 (Tex.1991)). Appellants argues that they committed a single act, the fraudulent transfer, which caused a single injury, the loss of the land. Ms. English testified,

however, that her damages included loss of the property itself, loss of income from the properties, a cash flow problem caused by her being unable to unable to mortgage or sell the properties, a tax deficiency caused by her inability to raise funds, loss of sleep and mental anguish, and ulcers serious enough to require a doctor's care. Since there are multiple injuries, the one satisfaction rule is inapplicable.

Accordingly, appellants final contention is overruled, and the judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed March 16, 2000.

Panel consists of Justices Yates, Hudson and Fowler.

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