Affirmed and Opinion filed April 27, 2000.

In The

Fourteenth Court of Appeals

NO. 14-97-00888-CV

JOHN RASHEED SHIKE, Appellant

V.

SABA HAMEED SHIKE, Appellee

On Appeal from the 309th District Court
Harris County, Texas
Trial Court Cause No. 93-049911

O P I N I O N

John Shike appeals from a divorce decree entered in favor of Saba Hameed Shike. In two points of error, he contends that the trial court erred by commenting on the weight of the evidence and instructing the jury that he and Mrs. Shike were married. We affirm the judgment of the trial court.

Background

John and Saba Shike married in 1992. A few months later, Mrs. Shike left her husband after he had beaten her son. In September 1992, Mr. Shike filed a pro se petition

for divorce. He received a default judgment in May 1993; the judgment, however, was set aside after both parties filed an affidavit requesting the court to allow them to work on their marriage. Two months after the two reconciled, Mrs. Shike left again when Mr. Shike broke her finger and beat her. In November 1996, a jury found that the parties should be divorced. They awarded Mrs. Shike actual damages totaling $447,000 for various torts committed by Mr. Shike and exemplary damages totaling $1,125,000.

Comments on the Weight of the Evidence

In his first point of error, Mr. Shike contends the trial court committed reversible error by commenting on the weight of the evidence during trial. In support of his contention, Mr. Shike cites several instances where the trial court made improper comments. He concedes that he objected to only one of these comments.

An improper comment on the weight of the evidence is waived in the absence of a timely objection or request for a curative instruction. *See Pacesetter Corp. v. Barrickman*, 885 S.W.2d 256, 261 (Tex. App.–Tyler 1994, no writ); *LaCoure v. LaCoure*, 820 S.W.2d 228, 237 (Tex. App.–El Paso 1991, writ denied). Thus, we hold that Mr. Shike waived error for each comment not followed by an objection. Moreover, we find the comments were not so egregious and harmful that they could not have been rendered harmless by proper curative instruction. The trial court must be afforded considerable discretion in controlling the orderly progress of the trial. Most of the comments were not comments on the weight of the evidence, but merely court admonishments requiring Mr. Shike to follow the courts instructions.

Mr. Shike did object to a statement regarding whether he legally adopted Mrs. Shike's children. He offered a xerox copy of what was purported to be an official Pakistani document relating to his alleged adoption of Mrs. Shike's children. Mrs. Shike's counsel objected to the authenticity of the document. The trial judge stated that he had concerns about the document: it was not certified, it contained inaccurate statements about United

States law, and it was not given to Mrs. Shike until after three years of litigation on the issue. The court told the jury that they could consider the testimony that there were documents, but that there was no evidence that the children were legally adopted.

Mr. Shike objected to the court's comments regarding the lack of proper certification and authenticity of the document. On appeal, he offers a different objection. He claims that the court commented on the weight of the evidence. Again, we find that appellant waived any error. Mr. Shike's objections at trial do not comport with the point of error raised on appeal. An objection stating one legal theory may not be used to support a different legal theory on appeal. *See Rhodes v. Batilla*, 848 S.W.2d 833, 847 (Tex. App.–Houston [14th Dist.] 1993, writ denied).

Although the court should have refrained from making the comment about the document in front of the jury, the comment was not incurable error and could be rendered harmless by proper instruction. *See Pacesetter Corp,* 885 S.W.2d at 261. Further, any prejudice Mr. Shike received resulted from his own comments and testimony during trial. For instance, there was evidence that Mr. Shike wanted to videotape the proceedings so he could send the tape to Pakistan to have an Islamic death warrant issued against Mrs. Shike. He considered the issuance of such a warrant appropriate since he was a Muslim. He refused to refrain from making side-bar comments despite the courts instructions and admonitions. He repeatedly violated court orders and criticized opposing counsel, other witnesses, and Mrs. Shike. He misrepresented the truth in several instances during the trial. The evidence also showed that he stalked his wife, threatened to kidnap her children, assaulted her, and assaulted her son.

We overrule Mr. Shike's first point of error.

Directed Verdict

In his second point of error, Mr. Shike contends that the trial court committed reversible error when it instructed the jury that John Shike and Saba Hameed Shike were

married. The instruction resulted from a directed verdict requested by Mrs. Shike. Mr. Shike argues that a directed verdict was improper because he introduced evidence to show that he never intended to marry Mrs. Shike. We find the trial court did not err by granting a directed verdict; the evidence conclusively proves that Saba and John Shike were, in fact, married.

Standard of Review

A movant is entitled to a directed verdict when (1) the evidence conclusively proves a fact that establishes her right to judgment as a matter of law, or (2) negates the right of the nonmovant to judgment, or (3) the adverse evidence offered is insufficient to raise a fact issue on the cause of action. *See Metzger v. Sebek*, 892 S.W.2d 20, 40 (Tex. App.–Houston [1st Dist.] 1994, writ denied). In reviewing the granting of a directed verdict, we must determine whether there is any evidence of probative force to raise fact issues on material questions. *See Szczepanik v. First S. Trust Co.*, 883 S.W.2d 648, 649 (Tex.1994); *Metzger*, 892 S.W.2d at 41. We consider all the evidence in the light most favorable to the party against whom the verdict was directed and disregard all contrary evidence and inferences. *Szczepanik*, 883 S.W.2d at 649; *Metzger*, 892 S.W.2d at 40. If, however, the probative force of certain testimony is so weak that only a mere surmise or suspicion is raised as to the existence of essential facts, here, the non-existence of a valid marriage, we will uphold the trial court's ruling on the directed verdict. *See I.T.T. Consumer Fin. Corp. v. Tovar*, 932 S.W.2d 147, 160 (Tex. App.–El Paso, writ denied).

Agreement to be Married

Mr. Shike argues that he never agreed to be married to Mrs. Shike. To show an agreement to be married, the evidence must show that the parties intended to have a present, immediate, and permanent marital relationship and that they agreed to be husband and wife. *See Winfield v. Renfro*, 821 S.W.2d 640, 645 (Tex. App.–Houston [1st Dist.] 1991, writ denied). Proof of an agreement to be married, however, is only necessary when establishing the existence of an informal marriage. The evidence, in this case, conclusively proves that

John and Saba Shike did not enter into an informal marriage, but followed the procedures for a ceremonial marriage.

Ceremonial Marriage

Mr. Shike obtained an application for a marriage license on April 1, 1992. He asked Judge Sharolyn Wood to waive the 72 hour waiting period. The period was waived and Mr. Shike took the license to Hafiz Iqbal, his pastor. Iqbal did not perform a ceremony. He determined the two had already been married in Pakistan. Prior to her arrival in Texas, the parties were married in a Muslim ceremony known as Nikkha, but neither was aware the ceremony was actually a marriage ceremony. They both thought the Nikkha signified their engagement. Because the ceremony had been performed, Iqbal signed the marriage license. The license was executed on April 3, 1992.

Prior to trial, the court found that a ceremony was not performed on April 2, 1992. The evidence at trial also showed that a ceremony was not performed on that date. The validity of the marriage license, however, was not affected by this mistake. *See* TEX. FAMILY CODE § 2.301 (Vernon 1998). Both parties had previously entered into marriage in Pakistan through the performance of a Muslim marriage ceremony. They followed the proper procedures to obtain a marriage license in Texas. After the parties were informed that a Nikkha was a recognized marriage ceremony, they continued forward with the process and did not object to Hafiz Iqbal signing the license. Therefore, we find Iqbal's signing of the license without performing a ceremony did not affect the validity of the already existent marriage between John and Saba Shike; it merely confirmed it in accordance with Texas law.

Furthermore, Mr. Shike's claim that he did not intend to be married finds little support in the record: he listed Mrs. Shike as his wife on his 1992 tax return; he sent her cards asking her to work on their marriage; his pleadings asserted that he had been married to Mrs. Shike in Goat Mattchi, Sadakabad, Pakistan; he previously filed a pro se divorce petition that stated he was married on or about April 3, 1992; he requested the court to set aside the

divorce so they could give their marriage another chance; he shared a bedroom with Mrs. Shike; he introduced her as his wife; the lease for his apartment had both his name and Mrs. Shike's name; he signed a mental health warrant, referring to Mrs. Shike as his wife, to have her committed.[1]

Because the evidence conclusively proves that the Shike's were married, the trial court did not commit reversible error by instructing the jury that they were, in fact, married. We overrule Mr. Shike's second point of error.

Having addressed all Mr. Shike's points of error, we affirm the judgment of the trial court.

/s/ Joe L. Draughn
Justice

Judgment Affirmed and Opinion filed April 27, 2000.

Panel consists of Justices Cannon, Draughn and Lee.[*]

Do Not Publish — TEX. R. APP. P. 47.3(b).

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[1] Mr. Shike was convicted for the offense of making an unwarranted mental health commitment.

[*] Senior Justices Bill Cannon, Joe L. Draughn, and Norman Lee sitting by assignment.