

COURT OF APPEALS OF TEXAS, FIFTH DISTRICT AT DALLAS

In re E.M.V.

312 S.W.3d 288 (Tex. App.—Dallas 2010) · Decided May 7, 2010

SUMMARY

The Texas Court of Appeals reviewed a restricted appeal from a default divorce judgment involving visitation and division of community property. The court held that the evidence sufficiently supported restrictions on the father's visitation but was legally insufficient to support the property division because the record contained no evidence of the properties' values. The judgment was affirmed in part, reversed as to the division of residential community property, and remanded.

CASE DETAILS

COURT	Court of Appeals of Texas, Fifth District at Dallas
WRITING FOR THE COURT	Justice O'Neill; Francis; Murphy; O'Neill
JURISDICTION	Texas
DECIDED	May 7, 2010
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Jose Vargas brought a restricted appeal from a default judgment granting a divorce, dividing community property, and determining custody and visitation of the parties' child.
STANDARD OF REVIEW	For legal sufficiency, the court considered only evidence and reasonable inferences supporting the trial court's findings and disregarded contrary evidence and inferences. The property division was reviewed for abuse of discretion, with the requirement that the division have a reasonable basis and be equitable.
PRECEDENTIAL VALUE	Published appellate opinion
PARTIES	Jose Vargas v. Eva

TOPICS

- family law procedure
- appellate procedure
- divorce
- community property
- visitation

PRACTICE AREAS

- family law
- appellate procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether Vargas satisfied the requirements for a restricted appeal.
2. Whether legally sufficient evidence supported the restriction of Vargas's visitation and access to E.M.V.
3. Whether legally sufficient evidence supported the trial court's division of the parties' community property.

HOLDINGS

1. Vargas satisfied the requirements for a restricted appeal because he filed within six months, was a party, did not participate in the decision-making event resulting in judgment, and alleged error apparent on the face of the record.
2. The evidence was legally sufficient to support restricting Vargas's access to E.M.V. and requiring supervised visitation.
3. The property division was unsupported because the record contained no evidence of the properties' values; the trial court therefore abused its discretion, and the division of the residential community property had to be reversed and remanded.

KEY QUOTATIONS

“For purposes of a restricted appeal, the face of the record consists of all the papers on file in the appeal, including the reporter’s record.” (290)

“Therefore, even if the respondent fails to file an answer, the petitioner must adduce proof to support the material allegations in the petition.” (291)

“Thus, the trial court had insufficient evidence to divide the property fairly and equitably, and this error is apparent from the face of the record.” (291)

FACTUAL BACKGROUND

The trial court entered a default divorce decree involving Jose Vargas and Eva. Eva testified that Vargas was violent toward her on multiple occasions during the preceding two years, that her daughter witnessed some of the violence, and that Vargas agreed to restricted access to the parties' child, E.M.V., with supervised visitation. The decree awarded Eva two houses in Dallas County and awarded Vargas a house and three lots in Mexico, but the record contained no evidence of the properties' values.

PROCEDURAL HISTORY

The trial court signed a final divorce decree on January 12, 2009, after Vargas, although duly cited, failed to appear and wholly defaulted. Vargas filed a notice of restricted appeal on March 6, 2009. The court of appeals held that the requirements for a restricted appeal were satisfied, affirmed the restrictions on visitation, and reversed and remanded the property division.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the divorce decree as to the division of the residential community property and remand to the trial court for consideration. Affirm the judgment in all other respects.

CASES CITED

- Osteen v. Osteen, 38 S.W.3d 809, 811-12 (Tex. App.—Houston [14th Dist.] 2001, no pet.)
- Norman Commc'ns v. Tex. Eastman Co., 955 S.W.2d 269, 270 (Tex. 1997)
- Wal-Mart Stores, Inc. v. Gonzalez, 968 S.W.2d 934, 936 (Tex. 1998)
- Considine v. Considine, 726 S.W.2d 253, 254 (Tex. App.—Austin 1987, no writ)
- Sandone v. Miller-Sandone, 116 S.W.3d 204, 207 (Tex. App.—El Paso 2003, no pet.)
- O'Neal v. O'Neal, 69 S.W.3d 347, 350 (Tex. App.—Eastland 2002, no pet.)

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