Texas ALP appreciates the time and expertise provided by the following speakers

Friday, May 2, 2014

10:45 am—11:45 am	*Immigration Law* Presented by Paola Ledesma
1:45 pm—2:45 pm	*Bankruptcy Basics* Presented by Sam Gregory
4:15—5:15 pm	*Legal Communication* Presented by Stacy Barber

Saturday, May 3, 2014

9:00 am—10:00 am	*Contested Divorce* Presented by Matthew Harris
10:15 am—11:15 am	*Paralegal Ethics* Presented by Joseph Kline
1:15 pm—2:15 pm	*Legal Writing* Presented by Wendy Adele Humphrey
2:30 pm—3:30 pm	*Human Trafficking* Presented by Sarah Gunter

Paola Ledesma
Attorney at Law

Paola is from Culiacan, Sinaloa, Mexico. She obtained her Master of Laws (LL.M) from Duke University School of Law. She is admitted to the New York State Bar and a member of the Lubbock Area Bar Association and the American Immigration Lawyers Association (AILA). She received her law degree (JD equivalent) from the Autonomous University of Tamaulipas in July of 2000. She worked for 5 years at the Secretary of Economy in the State of Tamaulipas and moved to the United States in 2006.

Paola is the Managing Member (Solo Practitioner) at Ledesma Immigration Law Office in Lubbock, where she represent clients in family and business immigration, as well as deportation proceedings defense. Paola is strongly involved and committed to help the Hispanic and minority communities in the United States. She worked as an Associate Attorney at Hatch Immigration Law Office in Greenville, North Carolina, helping clients to obtain a variety of immigration benefits. She also worked at the Business and Economic Development Center of the University of Washington, School of Business, where she created programs for minority business owners, reaching over 200 small business owners, helping the minority business community to grow and become more competitive.

At Duke University School of Law, Paola focused on immigration, business, and civil rights. She has volunteered at the North Carolina Justice Center Immigrants Legal Assistance Project, a small Raleigh immigration law firm, the Public Defender's Office in Greenville, NC, and Legal Aid of North Carolina. She is a member of the Association of Mexicans in North Carolina (AMEXCAN).

Bar Admission: New York State

Memberships: New York State Bar Association, Lubbock Area Bar Association (LABA) and the American Immigration Lawyers Association (AILA).

Immigration Law Basics

PAOLA LEDESMA, ESQ.
LEDESMA IMMIGRATION LAW OFFICE
MAY 2, 2014

Government Agencies

- US Dept. of Homeland Security (DHS)
  1. US Citizenship and Immigration Services (CIS)
  2. US Immigration and Customs Enforcement (ICE)
  3. US Customs and Border Protection (CBP)
- US Dept. of State (DOS)
- US Dept. of Labor (DOL)
- US Dept. of Justice (DOJ) - Executive Office for Immigration Review (EOIR)

Control

- Inadmissibility: health-related, economic, criminal (CIMT and drugs), prior removal, unlawful presence, misrepresentation, false claim, terrorism
- Deportability: unlawful presence, failure to maintain status, marriage fraud, false documents, false claim, terrorism, criminal (CIMT, drugs, and Agg Fel)
- Non-immigrant visas
- Immigrant visas

Enforcement

- ICE
- 287(g) program (Carrollton Police Department, Harris County Sheriff's Office)
- Secure Communities program
- EOIR
  - Immigration Court
  - Board of Immigration Appeals

Major Pathways to Permanent Resident Status

- Family
- Employment
- Asylum

Family-Based Immigration Categories

- Immediate Relatives: Spouse, Parent, or Child of US Citizen
- Preference Categories: (1) Unmarried Sons and Daughters of US Citizens, (2) Spouses and Children and Unmarried Sons and Daughters of Permanent Residents, (3) Married Sons and Daughters of Citizens, (4) Brothers and Sisters of Adult Citizens.

Employment-Based Immigration (Selected Categories)

- (1) Extraordinary Ability, Outstanding Professor, Outstanding Researcher
- (2) Advanced Degree, National Interest Waiver
- (3) Professional, Skilled, and Other Workers
- Religious Workers
- Investors

Asylum

- Suffered persecution
- Persecution based on race, religion, nationality, political opinion, or social group
- File within one year after entry
- Affirmative: file with Asylum Office (DHS)
- Defensive: file with Immigration Court (EOIR)

Quotas

- Numerical limits for categories and countries
- One country cannot exceed 7% of limits
- Causes backlogs

Visa Bulletin for February 2014

Family-Sponsored	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
F1	08MAR07	08MAR07	08MAR07	15NOV93	01FEB02
F2A	08SEP13	08SEP13	08SEP13	15APR12	08SEP13
F2B	01FEB07	01FEB07	01FEB07	15MAY93	22JUN03
F3	01SEP03	01SEP03	01SEP03	01JUL93	01MAR93
F4	08DEC01	08DEC01	08DEC01	01DEC96	01NOV90

Visa Bulletin for February 2014

Employment-Based	All Chargeability Areas Except Those Listed	China - mainland born	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2nd	C	15APR09	15NOV04	C	C
3rd	01OCT12	01OCT12	01OCT03	01OCT12	01NOV07
Other Workers	01OCT12	01OCT12	01OCT03	01OCT12	01NOV07
4th	C	C	C	C	C
Religious and 5thEB-5	C	C	C	C	C

Family Immigration Details

- Get in line - first file I-130 with CIS
- When visa is available, file for Permanent Resident Status
  - In US, use Forms I-485, I-765, and I-131 (if eligible)
  - Outside US, use National Visa Center (DOS)
- Concerns: Legal entry, criminal history, status issues

Employment Immigration Details

- Depends on category
- Get in line - unless excepted, first file Labor Certification with DOL
- Once Labor Certification is approved, file I-140 with CIS
- When visa is available, file for Permanent Resident Status
  - In US, use Form I-485, I-765, and I-131 (if eligible)
  - Outside US, use National Visa Center (DOS)
- Concerns: Legal entry, criminal history, status issues

Citizenship

Obtained at Birth:

- Born in US
- Born to US Citizen parents
- Born to one US Citizen parent

Naturalization:

- Permanent Resident through marriage to US Citizen and remain married for 3 years
- Permanent Resident for 5 years

Naturalization Requirements

Statutory:

- Be 18 years or older
- Be a Permanent Resident for requisite time (either 3 or 5 years)
- Reside for 3 months in the state where application is filed
- Be physically present in US for one half of the requisite time
- Be a person of good moral character for the requisite time - no deportability issues
- Knowledge of English language and US civics

Victims

- VAWA
- U visas
- T visas

Padilla v. Commonwealth of Kentucky, 559 U.S. 356 (2010)

- Failure of a defendant's attorney to advise him about the potential immigration consequences of pleading guilty to a deportable criminal offense constitutes ineffective assistance of counsel.
- Potential implications of that decision for state criminal court judges in: (1) taking a guilty plea; (2) appointing counsel for indigent defendants; (3) assuring fairness for unrepresented defendants; and (4) becoming familiar with Federal immigration law.

Comprehensive immigration reform proposal
Immigrant visas

- Registered Provisional Immigrant Status (RPI)
- The Development, Relief, and Education for Alien Minors (DREAM) Act (we already have DACA)
- Earned Status Adjustment of Agricultural Workers - Blue Card Status
- Future Immigration - Family-based, Employment-based, and Merit-based

New Procedures (Executive Orders)

- Deferred Action for Childhood Arrival (DACA, June 15, 2012)
- I-601A Waiver (March 4, 2013)

Questions?

PAOLA LEDESMA
LEDESMA IMMIGRATION LAW OFFICE
806-589-3090
INFO@LEDESMAIMMIGRATION.COM
3223 S. LOOP 289, SUITE 240-T
LUBBOCK, TX 79423
LEDESMAIMMIGRATION.COM

SAM C. GREGORY
bankruptcy attorney

Sam C. Gregory

Biography / C.V.

SAM C. GREGORY

Attorney at Law
Board Certified,
Consumer Bankruptcy Law -
Texas Board of Legal
Specialization
2742 82nd Street
Lubbock, TX 79423
Phone: (806) 687-4357
Fax: (806) 687-1866
sam@samcgregory.com

Education

- B.B.A., Accounting - Texas Tech University - 1991
- M.B.A., General Business - Texas Tech University - 1994
- J.D., Law - Texas Tech University School of Law - 1994

Certifications and Special Training

- Board Certified, Consumer Bankruptcy Law - Texas Board of
- Legal Specialization
- O. Max Gardner's Bankruptcy Boot Camp

Memberships

- National Association of Consumer Bankruptcy Attorneys
- West Texas Bankruptcy Bar Association (Past President and member)
- Lubbock County Bar Association
- State Bar of Texas
- American Bankruptcy Institute
- Committee Member - Farm, Ranch & Agri-Business Bankruptcy Institute - 1997 to 2010
- Committee Member - U.S. Bankruptcy Court for the Northern District of Texas Case Management / Electronic Case Filing (CM/ECF) Attorney Advisory Group – 2002

Speaking Engagements and Scholarly Papers

- Electronic Filings using CM/ECF presented to the 19th Annual Farm, Ranch & Agri-Business Bankruptcy Institute in 2003
- Chapter 7 Cases under BAPCPA presented to the 21st Annual Farm, Ranch & Agri-Business Bankruptcy Institute in 2005
- The Practical Side of Representing Debtors under BAPCPA presented to the University of Texas 24th Annual Bankruptcy Conference in 2005
- Handling Consumer Chapter 13 Cases under BAPCPA presented to the 2006 Northern District of Texas Bankruptcy Bench/Bar Conference in 2006
- Hot Topics in Chapter 13 presented to the 22nd Annual Farm, Ranch & Agri-Business Bankruptcy Institute in 2006
- What to Do When a New Client Walks In – Beginning a New Consumer Bankruptcy Case presented to the University of Texas 2nd Annual Consumer Bankruptcy Practice Conference in 2006
- Recent Cases of Interest in Chapter 13 presented to the 25th Annual Farm, Ranch & Agri-business Institution in 2009
- "Inglorious BAPCPA" – 5 years later presented to the 2010 Northern District of Texas Bankruptcy Bench/Bar Conference in 2010
- Exemptions under Texas and Federal Law presented to the monthly meeting of the Lubbock County Bar Association in 2010

Personal

- Born in Lubbock, Texas in 1967
- Married with two children
- Member of LakeRidge United Methodist Church
- Enjoys playing the Euphonium

Bankruptcy Basics

- Disclaimer 1 – FAQ's are materials I give out to prospective clients
- Disclaimer 2 -- focus of talk will be on individual bankruptcies, not corporate cases
- Disclaimer 3 – I am a "debt relief agent"
- Overview of Chapters 7, 11,12,13
- Property of the Estate (Sec. 541)
- Exemptions (Sec. 522)
- Automatic Stay (Sec. 362)
- Co-debtor Stay in chapter 13 (Sec. 1301)
- Who may be a debtor (and debt limits) (Sec. 109)
- What is a Trustee and what do they do
- Claim Classification (Secured, Priority & Unsecured)
- Claim filing deadlines
- Discharge
- Exceptions to Discharge (Sec. 523)
- Effect of filing on individual's credit

- Effect of a bankruptcy on co-debtors' credit
- Timeline of a typical Chapter 7 case
- Timeline of a typical Chapter 13 case
- What is a creditor's meeting (341)

Significant Changes in Law Beginning 10/17/2005

- Means Testing
- Credit Counseling
- Credit Education
- Limitations on Re-filing (Auto Stay and Discharge Limitations)

BANKRUPTCY

CHAPTER 7

(aka “Discharge” or “Liquidation”)

ANSWERS

TO THE MOST COMMONLY

ASKED QUESTIONS

Compliments of:

Sam C. Gregory, PLLC

2742 82nd Street

Lubbock, Texas 79423

(806) 687-4357

1. What is chapter 7 and how does it work?

Chapter 7 is that part of the federal bankruptcy law that permits you to discharge certain debts by filing a case in the bankruptcy court, turning all of your non-exempt property over to a trustee (while retaining certain items of exempt property), and obeying the orders and rules of the court. A person who files under chapter 7 is called a debtor.

2. Who may file under chapter 7?

Any person who resides in, who does business in, or who has property in the United States may file under chapter 7, except a person who has been involved in another bankruptcy case that was dismissed within the last 180 days on certain grounds. Additionally, before filing, a person must have consulted an approved credit counseling agency and received advice from them regarding his or her financial situation.

3. Why do I have to get credit counseling if I already know I want to file chapter 7?

While chapter 7 is a powerful tool to use when you have debt problems, it is not always the only option available to you. Congress wants to make sure you have explored all of the possible options you may have. Therefore, Congress requires that within the 180 day period before filing a bankruptcy, you must have requested and completed a briefing session (with very limited exceptions) from an approved credit counseling agency whose duty is to outline the opportunities for credit counseling and assist you in performing a budget analysis.

4. What is the "Means Test" and why is it so important?

The "Means Test" is a mathematical formula designed to identify people filing under chapter 7 who can afford to repay their debts. If your household income is below average, the "Means Test" will not prevent you from receiving a discharge under chapter 7. However, if your household income is above average and the "Means Test" indicates you can pay more than $125 / month towards your general unsecured debt (after taking into consideration payments for your home, car and other essential living expenses), your case may be presumed abusive. Abusive cases are subject to dismissal by the Court unless one can show that special circumstances exist which overcome the presumption of abuse established by the "Means Test." If the "Means Test" reveals that you have a presumptively abusive case which cannot be overcome by a showing of special circumstances, filing a chapter 13 is the next option to consider.

5. How much does it cost to file Bankruptcy?

The chapter 7 filing fee is $306.00 (effective November 1, 2011) regardless of whether you are filing bankruptcy individually or jointly with your spouse. The attorney's fees vary with regard to the complexity of the case.

6. What is a chapter 7 discharge?

It is a court order releasing you from all of your dischargeable debts and ordering creditors not to attempt to collect them from you. A debt that is dischargeable is one that you are released from and do not have to pay. Some debts, however, are not released by a chapter 7 discharge, and some persons are not eligible for a chapter 7 discharge.

7. What must I do to obtain a chapter 7 discharge?

While there are certain reasons the court can deny a discharge, almost all of those reasons are related to dishonest conduct (such as incurring debt through misrepresentation or without the intent to repay). In order to receive a discharge, a person must be truthful, honest, and cooperative with the court and the trustee (the person assigned to administer the case). You can not have received a previous

chapter 7 discharge in a case filed within eight (8) years of the present one. Lastly, you must complete an instructional course concerning personal financial management offered by an approved provider within a short period of time after filing your case. Your attorney can direct you to an approved provider.

8. What debts are not released by a chapter 7?

All debts of any kind or amount, including debts incurred in other states, are generally released by a chapter 7 discharge. However, as with any law, there are certain exceptions such as those listed below:

(1) debts for certain taxes, including taxes that became due within the last three years;
(2) if the creditor files a complaint and if the court so rules, debts for obtaining money, property, services, or credit by means of false pretenses, fraud, or a false financial statement (included here are certain debts for luxury goods or services and for certain cash advances made within 70 - 90 days before the case is filed);
(3) debts not listed on your chapter 7 papers, unless the creditor knew of the case in time to file a claim;
(4) if the creditor files a complaint and if the court so rules, debts for embezzlement, or larceny;
(5) debts for domestic support obligations (alimony, maintenance, or support);
(6) if the creditor files a complaint and if the court so rules, debts for intentional or malicious injury to the person or property of another;
(7) debts for certain fines or penalties payable to a governmental unit;
(8) debts for student loans or educational assistance, unless not discharging the debt would impose an undue hardship on you and your dependents;
(9) debts arising from a judgment or court decree entered against you for damages resulting from the operation of a motor vehicle, vessel, or aircraft while legally intoxicated;
(10) debts that were or could have been listed in a previous bankruptcy case of yours in which your were denied a discharge;
(11) debts arising from any act of fraud while acting in a fiduciary capacity committed with respect to depository institutions or credit unions;
(12) debts for malicious or reckless failure to fulfill any commitment by the debtor to a Federal depository institution's regulatory agency to maintain capital of an insured depository institution;
(13) debts for any payment of an order of restitution issued under the United States Code;
(14) debts incurred to pay a tax to the United States, or other governmental unit, that would be non-dischargeable pursuant to number (1) above; or
(15) any other additional debts falling under the descriptions contained in 11 U.S.C. §523(a)(15) - (a)(18).

9. Under what conditions should a husband and wife both file under chapter 7?

Both husband and wife should file if some of the debts to be discharged are owed by both spouses. In a community property state, such as Texas, debts incurred during the marriage may be the joint responsibility of each spouse (depending on the nature of the debt incurred) even if only one spouse's name is on the debt. If both spouses are liable for some of the debts and if only one spouse files under chapter 7, the creditors often try to coerce the non-filing spouse into paying the debts, even if he or she has no income or assets.

10. How does filing under chapter 7 affect lawsuits that have already been filed against me?

If you have never filed bankruptcy before, the filing of a chapter 7 case automatically stays or stops most lawsuits that have been filed against you (there are some exceptions). A few days after a chapter 7 case is filed, the court will mail a notice to all creditors ordering them to refrain from any further action against the debtor. If you cannot wait this long, it is permissible for you or your attorney to notify one or more of the creditors of the filing of the case. The most common actions not affected by the filing of a chapter 7 case are criminal proceedings, paternity actions, and collection of domestic support obligations (child support) through wage withholding.

11. How does filing under chapter 7 affect my credit rating?

Your credit rating is a record of all your past credit performances. The fact that you filed a chapter 7 will be reflected on your credit report and will remain there for ten years in contrast to most other information remaining on your credit report for seven years. However, some financial institutions openly solicit business from persons who have recently filed under chapter 7, in part, because of the decreased debt load you have after filing. If there are compelling reasons for filing under chapter 7 that are not within your control (such as an illness or injury), some credit rating agencies may take that into account in rating your credit after filing.

12. Will I lose all of my property if I file under chapter 7?

Under State and Federal Laws certain property is declared to be exempt and cannot be taken by a person's creditors, except those creditors with valid mortgages or liens when the payments are not being made. You can generally keep exempt property provided you are current on any payment due a lender for a valid lien. All nonexempt property must be turned over to the trustee for liquidation. The Texas and Federal exemptions are as follows:

THE STATE OF TEXAS:

(a) Homestead, subject to purchase money or improvement liens thereon, consisting of a lot or lots not exceeding ten (10) acres if located in town, or 100 acres if home is rural (200 acres for family); and

(b) Personal property having a value not in excess of $30,000.00 for single person or $60,000.00 for a family comprising of the following items:
- (1) Household furnishings;
- (2) Provisions for consumption;
- (3) Farming or ranching vehicles and implements;
- (4) Tools of your trade or profession;
- (5) Clothing;
- (6) Jewelry not to exceed 25% of the values listed above;
- (7) Two firearms;
- (8) Sporting equipment;
- (9) One passenger car or light truck for each family member that is a licensed driver;
- (10) Household pets and a limited number of farm animals;
- (11) Present value of life insurance to the extent that a member of the family of the insured claiming this exemption is a beneficiary of the policy;
- (12) Current wages;
- (13) Professionally prescribed health aids;
- (14) Alimony, maintenance or support received or to be received; and
- (15) Other very specific types of property.

FEDERAL (PER PERSON):

(1) $22,975.00 in value in real or personal property used as a residence;
(2) Up to $3,675.00 in any one motor vehicle;
(3) Up to $575.00 in value in any particular item of household furnishings, or wearing apparel, up to a total of $12,250.00;
(4) Up to $1,550.00 in jewelry held for personal use;
(5) Up to $2,300.00 in tools of trade;
(6) Any unmatured life insurance contract on the Debtor other than credit life;
(7) Professionally prescribed health aids;
(8) The right to receive certain support and disability payments;
(9) The right to receive certain payments as a result of personal injury or wrongful death proceedings; and
(10) Any property selected by Debtor in an amount not exceeding $1,225.00 plus any unused amount of the $22,975 listed in (1) above, up to $11,500.00. This can include income tax refunds.

13. Where is a chapter 7 case filed?

In the office of the clerk of the bankruptcy court in the district where you have lived, maintained your principal place of business, or had the greatest part of your assets for the greatest portion of the 180 days before filing. The bankruptcy court is a federal court and is a unit of the United States District Court.

14. Are the names of persons who file under chapter 7 published?

When a chapter 7 case is filed, it becomes a public record which any one has access to. Credit reporting agencies will reflect in their reports that you have filed a chapter 7. Also, some newspapers will list all filings made in any court on a regular basis. Therefore, it is likely that your name will be published at least once in the local paper.

15. Do I lose any of my legal rights by filing under chapter 7?

No. Filing under chapter 7 is not a criminal proceeding, and you do not lose any of your civil or constitutional rights by filing.

16. May employers or government agencies discriminate against me for filing under chapter 7?

It is illegal for either private or governmental employers to discriminate against a person as to employment solely because that person has filed under chapter 7. It is also illegal for local, state, or federal governmental units to discriminate against a person as to the granting of licenses (including a driver's license), permits, and similar grants because that person has filed under chapter 7.

17. When will I go to court in a chapter 7 case and what do I do there?

Generally, you will only have to appear in court once. It will be about a month after your case has been filed for what is called “The First Meeting of Creditors”. There you will be put under oath and questioned about your bankruptcy papers and your assets by the trustee in bankruptcy. In all probability few, if any, of your creditors will appear.

18. What happens after the meeting of creditors?

After the meeting of creditors, the trustee may contact you regarding the collection or existence of non-exempt property, and the court may issue orders to you. These orders will be sent by mail and may require you to turn certain property over to the trustee, or provide the trustee with certain information. You should contact your attorney if there is any question with regard to any of these matters.

19. What is a trustee in a chapter 7 case, and what does he or she do?

The trustee is an officer of the court, usually an attorney, appointed by the bankruptcy court to administer your case. The law gives the trustee in bankruptcy the power and the means to perform his or her duties, the principal one of which is to collect, on behalf of your creditors, any non-exempt property. A trustee is appointed in a chapter 7 case, even if you have no property for the trustee to collect.

20. What are my responsibilities to the trustee?

The law requires you to cooperate with the trustee in the administration of a chapter 7 case, including the collection by the trustee of your non-exempt property. If you refuse to cooperate with the trustee, then your case may be dismissed and your debts may not be discharged.

21. What happens to the property that I turn over to the trustee?

It is usually converted into cash, which is later used to pay the administrative expenses of the trustee and to pay the claims of creditors. The trustee is permitted to pay himself a fee, which is based on a percentage of the amount collected from you.

22. What happens if I have no non-exempt property for the trustee to collect?

If you have no money or property having value over the exemptions allowed by law, your case will be considered a "no-asset" case. If your case is a no-asset case, your discharge will be granted a short time later, unless a creditor files an objection to your discharge. Your case will probably be closed shortly after your discharge is granted.

23. What if I wish to repay one or more of my discharged debts after filing under chapter 7 (and What is a Reaffirmation Agreement)?

You may repay as many of your discharged debts as you wish after filing under chapter 7. By repaying one creditor, you do not become legally obligated to repay any other creditor. The only debts that you are legally obligated to repay after filing under chapter 7 are those which you have elected to reaffirm. A Reaffirmation Agreement is a binding agreement entered into between you and a creditor which effectively removes that debt from your discharge. A Reaffirmation Agreement must meet certain requirements of the law in order to be valid. Among other things the Reaffirmation Agreement must be made prior to the date the discharge is granted and must contain the statement that it may be rescinded at any time prior to the discharge or within sixty (60) days after it is filed with the court.

24. What should I do if a creditor attempts to collect a debt that was discharged in my chapter 7?

When a discharge is granted, the court enters an order prohibiting your creditors from attempting to collect from you any debt that was discharged in the case. If a creditor violates this court order he may be held in contempt of court. If a creditor attempts to collect a discharged debt, you should give the creditor a copy of the order of discharge and inform him that the debt has been discharged under chapter 7. If the creditor persists, you should contact your attorney. If the creditor files lawsuit against you, it is important to not ignore the matter, because even though any judgment entered against you on a discharged debt can later be voided, voiding the judgment may require the services of an attorney, which could be costly to you.

25. Does a chapter 7 discharge affect the liability of other parties who may be liable to a creditor on a discharged debt?

A chapter 7 discharge releases only the debtor. The liability of any other party on a debt (such as a non-filing spouse or other co-signers) is not affected by a chapter 7 discharge.

26. What is the role of the attorney for a consumer debtor in a chapter 7 case?

The debtor's attorney performs the following functions in a chapter 7 case of a typical consumer:

(1) Analyze the amount and nature of the debts owed by the debtor and determine the best remedy for the debtor's financial problems;
(2) Advise the debtor of the relief available under both chapter 7 and chapter 13 of the bankruptcy laws, and of the advisability of proceeding under each chapter;
(3) Assemble the information and data necessary to prepare the chapter 7 forms for filing;

(4) Prepare the petitions, schedules, statements and other chapter 7 forms for filing with the bankruptcy court;
(5) File the chapter 7 petition, schedules, statements, and other forms with the bankruptcy court, and, if necessary, notify certain creditors of the commencement of the case;
(6) If necessary, assist the debtor in redeeming certain personal property and in setting aside certain mortgages or liens against exempt property;
(7) Attend the meeting of creditors with the debtor;
(8) If necessary, prepare and file amended schedules and certain statements and other documents with the bankruptcy court in order to protect the rights of the debtor; and
(9) If necessary, attend the discharge and reaffirmation hearing with the debtor and assist the debtor in reaffirming certain debts and in overcoming obstacles to the granting of his chapter 7 discharge.

The fee paid, or agreed to be paid, to an attorney representing a debtor in a chapter 7 case must be disclosed to the bankruptcy court and must be approved by the court. The court will allow the attorney to charge only a reasonable fee for representing the debtor. It is customary for the debtor's attorney to collect the entire fee before the case is filed.

BANKRUPTCY

CHAPTER 13

(aka “Bill Consolidation” or “Reorganization”)

ANSWERS

TO THE MOST COMMONLY

ASKED QUESTIONS

Compliments of:

Sam C. Gregory, PLLC

2742 82nd Street

Lubbock, Texas 79423

(806) 687-4357

1. What is chapter 13 and how does it work?

Chapter 13 is that part of the federal bankruptcy law that permits you to repay all or a portion of your debts under the supervision and protection of the bankruptcy court. Under chapter 13, the person filing the case, who is called the debtor, submits a plan for the repayment of all or a portion of his debts to the court. The court must approve the plan for it to become effective. The court prohibits creditors from attempting to collect their claims from the debtor and permits the debtor to make regular payments in the amounts called for in the debtor's plan to the chapter 13 trustee for the period of time specified in the plan. The chapter 13 trustee collects the money paid in by the debtor and disburses it to the creditors as set forth in the debtor's plan. Upon the completion of the payments called for in the plan, the debtor is discharged from any liability for the remainder of his debts (with very limited exceptions).

2. What is a chapter 13 plan?

It is a written plan presented to the bankruptcy court by a debtor that states which of the debtor's debts should be paid, how much should be paid on each debt, how much of the debtor's earnings or other property should be paid to the chapter 13 trustee, how long the payments should continue, which debts should be paid outside of the plan, and certain other technical matters.

3. What is a chapter 13 trustee?

A chapter 13 trustee is an officer of the court appointed to collect payments from the debtor, make payments to creditors in the manner set forth in the debtor's chapter 13 plan, and administer the chapter 13 case until it is closed. The chapter 13 trustee is required to perform certain other technical duties in a chapter 13 case. The debtor is required to cooperate with the chapter 13 trustee.

4. What is a chapter 13 discharge?

A discharge is a court order releasing a debtor from all of his or her dischargeable debts and ordering the creditors not to attempt to collect them from the debtor. A debt that is discharged is one that the debtor is released from and does not have to pay. There are two types of chapter 13 discharges: one that is granted to a debtor who has completed all of the payments called for in his plan, and one that is granted to a debtor who is unable to complete the payments called for in his plan due to circumstances for which he should not justly be held accountable.

5. How do I get a chapter 13 discharge?

You must comply with your plan by making all of the payments called for. Additionally, you must show that all "domestic support obligations" (alimony, maintenance & support) coming due during the life of the plan have been made. Lastly, you must have completed an instructional course concerning personal financial management (your attorney can direct you to an approved provider of such courses).

6. What debts are not released by a chapter 13 discharge?

The chapter 13 discharge granted after the completion of all payments under a chapter 13 plan generally releases a debtor from all debts except:

(1) debts that are paid outside of the plan;
(2) debts for certain types of taxes;
(3) debts for "domestic support obligations" (alimony, maintenance, or support);
(4) unlisted debts;
(5) debts incurred for educational purposes;
(6) debts incurred in a fraudulent manner;
(7) debts as a result of death or personal injury caused by the debtor's operation of a motor vehicle if debtor was intoxicated;
(8) installment debts whose last payment is due after the completion of payments under the plan;

(9) restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; and
(10) debts incurred during the time the plan was in effect that were not paid under the plan.

The chapter 13 discharge granted when a debtor is unable to complete the payments under a plan due to circumstances for which he should not justly be held accountable releases the debtor from fewer debts than the discharge granted upon completion of all payments.

7. What debts may be paid under a chapter 13 plan?

Any debts whatsoever, whether they are secured or unsecured. Even debts that are non-dischargeable, such as debts for alimony, maintenance, or support, may be paid under a chapter 13 plan.

8. Must all debts be completely paid off under a chapter 13 plan?

No. while certain debts (such as debts for taxes and fully secured debts) must be paid in full under a chapter 13 plan, only what you are deemed to afford must be paid on most unsecured debts. The unpaid balance of most debts not paid in full under a chapter 13 plan may be discharged upon the completion of the plan.

9. How long does a chapter 13 last?

A typical chapter 13 case will last anywhere from thirty-six (36) months to no longer than sixty (60) months (five years).

10. Is credit counseling mandatory? Why do I have to get credit counseling if I already know I want to file chapter 13?

While chapter 13 is a powerful tool to use when you have debt problems, it is not always the only option available to you. Congress wants to make sure you have explored all of the possible options you may have. Therefore, Congress requires that within the 180 day period before filing a bankruptcy you must have completed a briefing session (with very limited exceptions) with an approved credit counseling agency. The agency's duty is to outline the opportunities for credit counseling and assist you in performing a budget analysis. If you do not complete such a briefing, you will most likely be ineligible to file chapter 13. Your attorney can direct you to an approved counselor.

11. Where is a chapter 13 case filed?

A chapter 13 case is filed in the bankruptcy court in a federal district where the debtor has lived, had his or her principal place of business located, or had his or her principal assets located, for the greatest portion of the last 180 days. The bankruptcy court is a unit of the United States Federal District Court.

12. Do I lose any of my property in a chapter 13 case?

Usually not. Under chapter 13, debts are normally repaid out of the payments made to the chapter 13 trustee and not out of your property. However, if you have considerable non-exempt property and cannot make sufficient payments to pay enough of your debts to satisfy the court, some of your property may have to be used to pay creditors. Also, if a secured creditor is not being paid under the plan, he may be permitted to repossess the property securing his claim if the debt owed to him is not paid.

13. How does filing under chapter 13 affect lawsuits and attachments against me?

The filing of a chapter 13 case automatically stays (stops) all lawsuits, attachments, garnishments, and other actions by creditors against you and your property for as long as the chapter 13 case lasts. A few days after the case is filed, a notice is mailed to all creditors advising them of the automatic stay. The creditors may be notified sooner by either the debtor or his attorney, if necessary. Creditors are not permitted to file lawsuits or attachments against you during the chapter 13 case, and, if the debtor is granted a chapter 13 discharge, they will be prohibited from attempting to collect any discharged debt from you after the case is closed.

14. How are secured creditors treated under chapter 13?

As a general rule, secured creditors' claims must be paid in full under a chapter 13. However, it is important to realize that certain types of secured creditors are considered to have a secured claim only to the extent of the value of its secured interest (which cannot exceed the "replacement" value of the property securing the claim). For example, if a secured creditor has a purchase money mortgage on an automobile incurred more than 910 days before filing, and if the automobile would cost $500 for debtor to replace, then that creditor has a secured claim for only $500, regardless of how much is owed. The difference in the amount owed and the value of the property is called a deficiency. The deficiency need not be paid in full if you cannot afford to do so.

15. How are debts that have been co-signed, or guaranteed by someone else, handled under chapter 13?

If a consumer debt (non-business) that has been co-signed or guaranteed by another person is being paid in full under a chapter 13 plan, the creditor will be prohibited from collecting the debt from the other person. However, if the debt is not being paid in full under the plan, the creditor will be permitted to collect the unpaid portion of the debt from the other person.

16. How does filing a Chapter 13 affect my student loan debt?

Student loans are not dischargeable except under very limited circumstances. Therefore, if you have a small balance remaining to be paid on your student loan debt (less than five (5) years of repayment), it is advisable to include it in your chapter 13 plan of reorganization. If you are current on your student loan payments and have a large balance remaining (more than five (5) years of repayment), it will probably be necessary for you to continue to pay your student loan debt outside of your chapter 13 plan. If your budget will not allow you to make both your chapter 13 plan payment plus your student loan payment, it may be possible to defer payments on your student loan debt until after you complete your chapter 13 plan. However, interest on your student loan debt will continue to accrue during this period.

17. When do I begin making payments to the chapter 13 trustee and how often must they be made?

Your chapter 13 payments begin 30 days after your chapter 13 case is filed with the court and continue to become due on that day of each month thereafter. The payments must be made regularly and timely. If you are employed and work for wages, you will be required to make the payments through a payroll deduction.

18. How does filing under chapter 13 affect my credit rating?

The fact that you filed a chapter 13 will be reflected as a bankruptcy on your credit report and will remain there for up to ten years. This is in contrast to most other negative information remaining on your credit report for seven years. Additionally, you are not allowed to use credit while going through your chapter 13 plan. Notwithstanding the long time that chapter 13 appears on your credit, most debtors are able to qualify for credit soon after completion of their plan.

19. Are the names of persons who file under chapter 13 published?

When a chapter 13 case is filed, it becomes a public record which any one has access to. Credit reporting agencies will reflect in their reports that you have filed a chapter 13. Also, some newspapers will list all filings made in any court on a regular basis. Therefore, it is likely that your name will be published at least once in the local paper.

20. Do I lose any of my legal rights (such as voting) by filing under chapter 13?

No. Filing under chapter 13 is not a criminal proceeding, and a person does not lose any of his civil or constitutional rights by filing.

21. May employers or government agencies discriminate against me if I file under chapter 13?

It is illegal for either private or governmental employers to discriminate against a person as to employment because that person has filed under chapter 13. It is also illegal for local, state, or federal governmental units to discriminate against a person as to the granting of licenses (including a driver's license), permits, and similar grants because that person has filed under chapter 13.

22. What is required for court approval of a chapter 13 plan?

There are many different tests a plan must pass before being approved by the court. In general, the court will confirm (approve) a chapter 13 plan if:

(1) the plan complies with the legal requirements of chapter 13;
(2) all required fees, charges, and deposits have been paid;
(3) the plan has been proposed in good faith;
(4) each unsecured creditor will receive under the plan at least as much as he would have received had the debtor filed under chapter 7; and
(5) it appears that the debtor will be able to make the required payments and comply with the plan.

23. When do I have to appear in court in a chapter 13 case?

Each debtor is required to attend the first meeting of creditors held in the case. This is the first opportunity any creditors have to question the debtor about the proposed plan of repayment. Debtors are placed under oath and the meeting is presided over by the trustee. Debtors will receive information about the specific date, time, and location of the first meeting of creditors approximately two weeks after the chapter 13 is filed. Debtors whose plans will pay 70% or more to their unsecured creditors (with limited exceptions) do not have to appear at any other hearings. Debtors whose plans will pay less than 70% to their unsecured creditors must attend a confirmation hearing held approximately one month after the meeting of creditors. The purpose of the confirmation hearing is to allow the court to examine the plan and decide whether it meets the requirements outlined in question 22 above.

24. What if the court does not approve my chapter 13 plan?

If the court will not approve a chapter 13 plan proposed by you, you are permitted to modify the plan and seek court approval of the modified plan. If you do not wish to change your proposed plan, you may either convert the case to a chapter 7 case or dismiss the case. If the court refuses to approve a plan, it will usually give the reasons for its disapproval so that the plan may be appropriately modified so as to become acceptable.

25. What is a Proof of Claim? How are the claims of creditors handled under chapter 13?

A Proof of Claim is a document filed with the court by creditors which indicates what type of debt you have and the amount owed. Non-governmental creditors must file their claims with the bankruptcy court within 90 days after the first date set for the meeting of creditors in order for their claims to be

allowed. Governmental creditors have 180 days after the filing of the case in which to file claims. Creditors who fail to file claims within those periods are typically barred from filing a claim, and after the completion of the plan their claims will be discharged (with some limited exceptions). A debtor may file a claim on behalf of a creditor if he wishes to do so. Additionally, when the claims have been filed, the debtor is given an opportunity to file objections to any claim that he disputes.

26. What if I incur new debts or need credit during a chapter 13 case?

The court will not allow the debtor to incur any new debt during the case unless prior approval by the court is given. Therefore, if a debtor needs credit or wishes to incur a debt after the case has been filed, he should obtain the approval of the court beforehand. Only two types of credit obligations or debts incurred after the filing of the case may be included in a chapter 13 plan. These are: (1) debts for taxes that become payable while the case is pending, and (2) consumer debts arising after the filing of the case that are for property or services necessary for the debtor's performance under the plan and that are approved in advance by the court. Any other debts or credit obligations incurred after the case is filed must be paid by the debtor outside the plan.

27. What should I do if I move during the course of a chapter 13 case?

You should immediately notify your attorney, the bankruptcy court, and the chapter 13 trustee in writing of your new address. Most communications in a chapter 13 case are by mail, and if you fail to receive an order of the court or a notice from the chapter 13 trustee because of a faulty address, the case may be dismissed.

28. What if I later decide to discontinue the chapter 13 case?

You have the right to either dismiss a chapter 13 case or convert it to a chapter 7 case at any time, regardless of your reason for doing so. However, you should discuss this matter with your attorney to make certain that it is the best course of action.

29. What happens if I am unable to complete my chapter 13 payments?

A debtor who is unable to complete his chapter 13 payments has three options:

(1) he may dismiss the chapter 13 case;
(2) he may convert the chapter 13 case to a chapter 7 case; or
(3) if he is unable to complete the payments due to circumstances for which he should not justly be held accountable, he may seek to obtain the second type of discharge which was described above.

STACEY S. BARBER

Stacey Barber is a partner at Crenshaw, Dupree & Milam, L.L.P. Prior to joining the firm in 2004, Ms. Barber worked for the Dallas civil litigation defense firm of Matthews, Carlton & Stein. While attending law school, she worked for the Law Offices of Windle Turley, P.C. in Dallas, one of the largest Plaintiff's litigation firms in Texas, focusing on personal injury, aviation, products liability and medical malpractice litigation. Upon receiving her law degree, Ms. Barber spent the next six years as an Assistant District Attorney for the Lubbock County Criminal District Attorney's Office, prosecuting cases at all levels of the trial court, wherein she gained a great deal of experience in both county and district courts as well as extensive jury trial experience. During her last several years as an Assistant District Attorney, she was assigned to the Special Crimes Unit, prosecuting specialized cases involving crimes against children. Ms. Barber then joined the firm of Crenshaw, Dupree & Milam, where she concentrates on family law, insurance defense, and general civil litigation. Ms. Barber graduated from the University of Texas in Austin and obtained her J.D. from Texas Wesleyan University School of Law, completing three semesters of law school at Texas Tech University School of Law.

Ms. Barber is an active member of the community, having served on various community boards including Contact Lubbock, Inc., Child Advocacy Center review panel, Treasurer of Lubbock County Women Lawyers, active member of the Texas and Lubbock County Bars, Chi Omega alumni, participant of the Pro Bono Clinic for Legal Aid of Northwest Texas and judge for Moot Court and Mock Trial competitions at Texas Tech University School of Law.

Areas of Practice

- Family Law
- Insurance Defense
- Civil Litigation

Certified Legal Specialties

- Family Law, Texas Board of Legal Specialization

Bar Admissions

- Texas, 1998

Education

- **Texas Wesleyan University School of Law, Fort Worth, Texas - 1998**
- **Southern Methodist University, Dallas, Texas**
  - Litigation Certification - 1989
- **University of Texas, Austin, Texas**
  - B.S. - 1986

Professional Associations and Memberships

- State Bar of Texas
- Lubbock County Bar Association
- Lubbock County Young Lawyers Association
- Lubbock County Women Lawyers Association
- South Plains Association of Family Law Practice
- Texas County and District Attorneys Association
- College of the State Bar of Texas
- Collaborative Law Institute of Texas

Past Employment Positions

- Lubbock County Criminal District Attorney, Assistant District Attorney, 1998 - 2004
- Law Offices of Windle Turley, P.C., 1988 - 1994
- Law Offices of Matthew, Carlton & Stein, 1987 - 1988

Fraternities / Sororities

- Chi Omega
- Delta Theta Phi

Suzanne Blake, CPA, CRPC®, CDFA™

Investment Management Consultant

Mrs. Blake is the president and co-founder of Blake | Cooper financial strategies in Lubbock, Texas. Prior to founding Blake | Cooper Financial Strategies, Suzanne was a Senior Financial Advisor with Merrill Lynch. Preceding her career in financial advising Suzanne was a Staff Auditor with Arthur Andersen in Dallas, Texas. Suzanne received her Bachelors degree in Accounting from Texas Tech University in 1986 and is a licensed Certified Public Accountant and holds the Certified Retirement Planning Counselor, and Certified Divorce Financial Analyst designations. Suzanne currently serves on numerous boards including the Southwestern University Board of Trustees, Covenant Hospital Systems Board of Directors, and the Lubbock Power and Light board of directors. Suzanne is the President of the Lubbock County Bar Association Collaborative Law Section and is a member of the Collaborative Law Institute of Texas.

THE COLLABORATIVE LAW PROCESS: RESOLVING FAMILY DISPUTES WITH DIGNITY

The court system's litigation process is often not a "family friendly" or a "child friendly" environment to resolve family disputes such as divorce, custody or child support issues. Parents, spouses, relatives and friends are sometimes forced to take sides in a courthouse dispute that pits the parties against each other in a litigation "war."

Families participating in the court system's litigation process risk the destruction of family relationships, financial destruction and long term emotional wounds as a consequence of bitter courtroom battles.

Over the course of the last ten years, lawyers, mental health professionals and financial professionals have been working to develop the collaborative process as an alternative to the litigation process to resolve emotional family disputes such as divorce, custody and child support issues with as little damage to relationships and family finances as possible. The goal of the collaborative process is to provide a way to resolve family disputes that is more "user friendly" than the traditional litigation process.

While there will always be cases where people will need the power and force of the court system to protect and defend rights, there are many family disputes that can be resolved more peaceably and less destructively using the collaborative process.

A. WHAT IS THE COLLABORATIVE PROCESS?

In short, the collaborative process is a settlement process that focuses on helping families resolve their disputes without going to court. The collaborative process focuses on creating a safe environment for the parties to express, negotiate and resolve conflict without going to court.

B. HOW DOES THE COLLABORATIVE PROCESS WORK?

The collaborative process works by using three approaches to resolving family disputes. First the collaborative process has a well defined set of "ground rules" and structure in the form of a written "collaborative law participation agreement" that all parties agree to and sign at the beginning of the case. Second, the collaborative process follows a step by step "road map" that guides the parties through logical and orderly steps to help the parties define, discuss and resolve their conflict. Third, the collaborative law process often involves neutral mental health and financial experts as part of a collaborative team to provide neutral expert advice and guidance to help the parties and their attorneys more efficiently resolve the dispute.

C. THE STRUCTURE - THE WRITTEN COLLABORATIVE LAW PARTICIPATION AGREEMENT

A true "collaborative " case is one where the parties and their attorneys have signed a detailed written "collaborative law participation agreement" that contains the following commitments and agreements:

1. A commitment not to go to court to resolve any dispute between the parties. The parties can "opt out" of this commitment in the event either party becomes dissatisfied with the process or in the event of an impasse.

2. Agreements requiring the parties, the attorneys and other professionals to treat each other with civility, dignity and respect in the collaborative process to create a safe atmosphere to express and resolve conflict in a civil manner.

3. A commitment to concentrate on interest based negotiations verses purely positional bargaining.

4. Commitments requiring full and honest disclosure of financial and other information by both the parties and the attorneys.

5. Commitments which create a structure and time line for the resolution process. Schedules are created by agreement rather than mandated from the court.

6. An agreement that if the parties impasse or opt out of the collaborative process, the collaborative lawyers cannot represent either party in litigation between the parties.

7. Commitments from the parties to not spend funds outside the normal and ordinary course of conduct or make major financial changes without notice and agreement by all parties.

8. Agreements to use only mutually selected neutral experts. These experts cannot testify in future litigation between the parties unless the parties so agree.

D. The Process - A Problem Solving "Road Map"

A major part of the collaborative process is the step by step "road map" that guides the parties toward a resolution. In a nutshell, the collaborative process has six basic steps that take place during a series of joint meetings in which all parties participate:

Step 1. Establishing Ground Rules. The parties discuss and decide whether or not to use the collaborative law process, discuss and agree to the ground rules of the process and sign the detailed collaborative law participation agreement.

Step 2. Determine the Goals, Interests and Concerns of the Parties. The parties spend time developing each party's interests, concerns and goals and the shared interests of both parties. The parties also discuss the interests of the children if children are involved.

Step 3. Handle Temporary Issues. The parties discuss and negotiate resolution of any immediate temporary matters that need to addressed.

Step 4. Gather Information. The parties gather and exchange whatever information is necessary for the parties to develop and evaluate possible settlement options.

Step 5. Brainstorm Options. The parties discuss and develop as many possible solutions and options to resolve the conflict as possible.

Step 6. Evaluate the Options. The parties discuss and evaluate the consequences of the available options and solutions and select from those options the best available option that both parties can agree is acceptable.

E. More than Just Lawyers - A Team Approach to Solving Family Disputes

The collaborative law process often stresses and encourages the use of a "team" approach to resolving family disputes. The team approach attempts to make the best use of each team member's area of expertise.

1. Attorneys. The collaborative "team" will always include an attorney for each of the parties. The collaborative process requires an attorney for each party -one attorney cannot represent both parties. For the process to be successful it is important that both attorneys be trained in the collaborative process. The attorneys participating in the collaborative process serve as legal advisors and advocates for their clients but try to participate in the process more as negotiators, educators and facilitators than gladiators or litigators. Because neither collaborative lawyer can ever appear in court against either party, the lawyers are free to be more candid and conciliatory in their discussions in the collaborative meetings.

2. Neutral Mental Health Professionals. Part of the collaborative process team is often a collaboratively trained mental health professional who serves as a "communications facilitator." The communications facilitator is a mental health professional trained and experienced in helping people manage their emotions and communicate constructively in an emotional atmosphere. There is a saying or concept that "men are from Mars and women are from Venus." When men and women get divorced and when there are emotional issues in that divorce, husband and wife or mom and dad may communicate as if they are a lot further away from each other than Mars and Venus.

Lawyers have little or no formal training in how to help people deal with overwhelming emotions. Much of what lawyers do as a matter of routine affects people in an emotional way that is often unintended by the lawyer. For years, lawyers have been struggling to help clients through an emotional process while for the most part being untrained and unqualified to address emotional issues that confront and at times overwhelm clients.

Some say family law is ten percent legal/financial and ninety percent mental/emotional. If this is so, why not bring someone into the settlement process who is actually trained and skilled at managing the emotions of the parties and their lawyers in the negotiating process?

Having a neutral communications facilitator involved in the joint collaborative meetings can be invaluable. They can serve to enforce the communications and behavioral ground rules, help the parties manage emotional eruptions that develop during the collaborative process and help both the parties and their lawyers

communicate and negotiate more effectively with each other.

3. Neutral Financial Professionals. Another common collaborative process team member is a collaboratively trained neutral financial professional. The financial professional's role is to provide neutral financial advice and financial planning to the parties, help the parties gather financial information and help the parties create and evaluate optimal financial solutions to their problems. Many times using a neutral financial expert can help avoid situations where legitimate, useful settlement options are rejected simply because the idea is "his" idea or "his lawyer's" idea. Sometimes a spouse can better hear a financial idea or financial reality if it is delivered by a neutral voice instead of from one of the parties or their lawyers. Using a neutral financial expert can also help resolve or reduce arguments concerning financial issues such as the value of assets, the character of assets as separate or community property or tax issues in a cost effective manner.

4. Neutral Child Experts. In the collaborative process, the parties routinely involve a collaboratively trained mental health professional with expertise regarding children and divorce to help the parties come up with a workable parenting plan for the children. This neutral mental health professional cannot testify for or against either party. Having a neutral, nontestifying child expert helps reduce emotions by creating an atmosphere that is less blame oriented and more solution and problem solving oriented. The neutral child expert helps the parties focus on finding a plan that will work for the children rather than focusing on each party's faults or assessing blame for the situation with the children.

F. Advantages Of Settling Family Disputes In the Collaborative Process Versus The Litigation Model

There are numerous dispute resolution processes available for people to use to resolve their family law disputes. They range from getting things worked out at the kitchen table to having a full blown jury trial at the courthouse. Regardless of the dispute resolution process used, most family law cases settle without ultimately going to court.

A question that confronts both lawyers and their clients is – if the case is likely going to ultimately settle, which process is better to use to achieve the settlement, the collaborative law process or the litigation process handled with the primary goal of settling?

In many cases it may be more advantageous for the parties to attempt to settle using the collaborative law process. In other cases, abuse or family violence issues, the stubbornness of the opposing party or their lawyer, the existence of an emergency, the viciousness of the dispute or other factors may dictate that the best course for a party lies in staying in the litigation process and keeping the courthouse more accessible.

Collaborative law is one of many dispute resolution options available for parties to resolve their disputes. The best dispute resolution option to use for each case will depend on the facts, finances, goals and personalities involved in each dispute. No one dispute resolution process will be right for every case.

However, in many cases the collaborative law process will have many advantages over trying to resolve the dispute in the litigation process. The following is a list of advantages that are often found in comparing the collaborative law process to the litigation process.

1. In the Collaborative Law Process the Focus is Solely on Settlement.

If most cases settle, why not use a settlement process rather than a litigation process to settle the case? The collaborative law process is designed with the principle goal of helping people increase the chances that they will reach a settlement and settle in a way that is less destructive financially and emotionally to the parties and any children that may be involved. In the litigation process the whole process, in some fashion, is arranged in and around preparing for a trial that ultimately may not occur. Settlement is certainly a part of the litigation process but settlement is not the core principle which grounds the numerous rules and procedures that govern the litigation process.

2. In the Collaborative Law Process Everybody is More Likely to be on the Same Page

Perhaps one of the greatest benefits of the formal collaborative law process is that when the formal collaborative law participation agreement is signed there is no doubt that the parties and their lawyers are serious

about settling the dispute. Signing a formal collaborative law participation agreement commits the parties to obligations of full disclosure and commits the lawyers to withdrawing in the event the process is terminated. This is a serious commitment to attempt to settle from both the parties and their lawyers. In the litigation process, each party's commitment to settling the case may be different, undisclosed or misperceived.

3. The Collaborative Law Process Creates a Road Map for Settlement vs. a Road Map to the Courthouse.

The collaborative process follows a six step process to resolve conflict: 1) establishing ground rules by signing the collaborative law participation agreement; 2) determining each party's goals, interests and concerns; 3) gathering information each party may need or want in order to be in a position to negotiate; 4) addressing temporary issues; 5) brainstorming settlement options and solutions; and 6) evaluating those options and solutions and selecting from the available options the one that best meets as many of the parties' shared and competing goals as possible and that both parties can accept.

In the litigation process, there is no formal "road map" or process to follow for settlement discussions. Settlement discussions in the litigation process usually happen when one party or the other decides to communicate a willingness to discuss settlement or the parties are ordered to mediation by the court. The lack of a settlement "road map" can lead to problems in the settlement process because the parties are not "on the same page" about even how or when to approach settling the dispute. This can lead to misperceptions, misunderstandings and problems. Sometimes it is helpful for parties in distress to know what is going to happen and when things are going to happen. Having a road map for settlement helps people know what to expect and when to expect it.

4. The Collaborative Law Process Creates a Less Emotionally Volatile Atmosphere.

In the collaborative law process the parties commit to follow written "expectations of conduct" aimed at keeping communications during the collaborative process civil, respectful and constructive. The effect of even having these rules and discussing them between the parties helps defuse the emotional atmosphere in the dispute. In the litigation process, discussing or agreeing to such rules if done at all is usually done in a less explicit manner.

5. The Requirement that the Collaborative Lawyers Cannot Later Litigate Defuses the Settlement Atmosphere Dramatically.

In the collaborative law process, the lawyers involved cannot litigate against each other or the parties. This requirement has the effect of enormously defusing the emotional and egotistical tension in the room. Although tensions and egos can get strained in the collaborative process, the collaborative lawyers will never be able to actually fight each other or attack the other party in court. This has the general effect of making both the lawyers and parties approach each other in a more collaborative and conciliatory fashion. Additionally, because the involved lawyers will not be able to personally carry out any courtroom strategy or tactic, when courthouse options or likely results are discussed, they are discussed in a less personal and less emotionally threatening way.

6. The "Team" Approach to the Collaborative Law Process is Better Engineered for Dispute Resolution.

Many collaborative law attorneys encourage their clients to use the "team" approach to the collaborative law process. Under the team approach, a neutral mental health professional serves as a "communications facilitator" and a neutral financial professional serves as a neutral financial expert for the case. Using these neutral professionals provides the process with a neutral voice and perspective throughout the process. The presence of a neutral voice in the process often helps avoid or resolve impasses and helps redirect and diffuse conflict away from the parties involved and at the problem that is in dispute.

The usual role of the neutral mental health professional is to manage the emotional issues of the case, keep the parties and lawyers communicating constructively and the help the parties work through issues involving their children or other emotionally charged situations.

The usual role of the neutral financial expert is to gather, analyze and explain financial information, prepare inventories, prepare spreadsheets, assist the parties in

evaluating the short and long term financial effects of settlement proposals and help in generating financial solutions. Sometimes financial information that has been prepared by a neutral financial expert will be more easily accepted or trusted because the information is coming from a neutral perspective instead on one of the parties or their lawyers.

Because these professionals are neutrals they provide the collaborative process with a neutral voice throughout the process. Many times a solution can be seen or suggested by a neutral that cannot be seen by the parties who are engrossed in their own perspectives. Additionally, sometimes a suggestion for resolving the dispute can be more easily heard by the parties when in comes from a neutral voice rather than one of the parties or their lawyers.

7. The Collaborative Law Process Has More Solution Oriented Tools and Processes for Children's Issues.

In the litigation process, when mental health professionals work with the parties or their children in either a therapeutic or forensic capacity, they are likely to be called as a witness for or against one of the parties if the case ends up going to court. This can often interfere with therapy or problem solving because the parties may be more focused on painting the other side as bad or themselves as good rather than focusing on finding solutions to their children's problems. In a litigation environment, establishing who is to blame for problems is often the central focus of a dispute.

In the collaborative law process, the focus in not on establishing blame – the focus is on solving problems. Because neutral child experts in the collaborative law process cannot be called to testify for or against anybody, the parties and the therapist are better able to focus on problem solving instead of fault finding. The role of a therapist working with children's issues in a collaborative case is not to function as a judge or jury but to function as a facilitator.

The problem solving orientation of the collaborative law process is often especially helpful where children are concerned. In the litigation process, because the parties are never more than a few days away from a possible courthouse confrontation, they have to be constantly concerned on some level about how they are going to attack their opponent and defend themselves. This blame oriented mentality is often tremendously distracting from trying to find solutions for children in distress.

8. The Collaborative Law Process is a Less Destructive Dispute Resolution Process for Businesses.

The litigation process can be very detrimental to the financial health of a family business. Sometimes the expense of litigation, the overwhelming demands for voluminous document production, the effects of having employees being compelled to testify in trials or depositions and other fallout from the litigation process can literally destroy the business the parties are arguing about.

The collaborative process aggressively attempts to help the parties resolve their conflict without having the process destroy or diminish the value of the family business.

9. The Full Disclosure Assurances of the Collaborative Law Process Help Reduce the Risk of Making a Bad Deal.

Collaborative law participation agreements are required by statute to include provisions providing for the "full and candid exchange of information between the parties and their attorneys..." Tex. Fam. Code 6.603(c) and 153.0072(c). The form collaborative law participation agreement approved by the Collaborative Law Institute of Texas has numerous provisions requiring full disclosure. Included in that form collaborative law participation agreement are provisions that:

- Require a party's attorney to terminate the collaborative law process if a party insists on refusing to disclose relevant information.

- Awards to the innocent party 100% of any community assets that are later found to have been intentionally not disclosed.

In the collaborative process, the requirement of full disclosure exists without having to be triggered. In other words, even if the other side does not ask for the information, the information must be disclosed if a party putting him or herself in the other party's shoes would want to know the information prior to making a settlement decision.

In the litigation process, there are rules governing disclosure but they are vastly different than in the collaborative law process. Full disclosure is not an assurance of the litigation process. In the litigation process, full disclosure often depends on first complying with the rules of discovery and procedure. In the litigation process, parties are required to disclose information that has been requested in the proper manner and is not subject to some procedural or evidentiary objection. Parties trying to settle in the litigation process often forgo formal discovery and without formal discovery, there are usually no affirmative duties of full disclosure imposed or required of the parties unless other agreements are made.

The full disclosure obligations of the collaborative process do not guarantee absolute full disclosure in all cases; however, on the whole, the obligations and assurances of full disclosure required by the process create an atmosphere where the parties are attempting to insure they have provided full disclosure. In the litigation process, a goal of at least one of the parties may sometimes be to search for legal and ethical ways to avoid being required to fully disclose critically relevant information.

10. The Collaborative Process Often Leads to a Better Quality Deal for the Parties.

The collaborative law process expressly focuses on interest based negotiations. A significant part of the collaborative process involves probing the parties to understand their goals, interests and concerns. Discussions and negotiations are centered on trying to achieve settlement options which best serve the shared and competing goals, interests and concerns of the parties.

An example often used in the collaborative process to illustrate this point is the story of two ladies fighting over a dozen oranges in the town market. A wise old Judge appears and quickly solves the dispute by awarding each lady six oranges. Both ladies then become furious with the wise old Judge. Before dividing the oranges the judge did not take the time to ask the ladies why they were fighting over the oranges. It turns out that one of the ladies wanted the meat of the oranges to make juice and one lady wanted the rinds of the oranges to make a pie. Had the judge simply asked each of the ladies what their goals, interests and concerns were he would have quickly been able to arrive at a solution where both ladies were totally satisfied.

While interest based negotiations are often a part of negotiations in the litigation process, the collaborative law process embraces this concept as a core concept of the entire process. Many times by focusing on the differing interests and concerns of the parties, a "win/win" resolution can be more easily discovered than by focusing on what a court or jury will or will not do with a certain set of facts.

11. Legal Fees Are More Efficiently Used.

In the collaborative law process, the parties do not pay their lawyers to comply with all the procedural rules that govern discovery and the rules of evidence required by the litigation process. The parties do not spend money for their lawyers to interview witnesses, prepare direct and cross examinations or practice opening and closing statements that never get used.

The money that the parties do spend on their attorneys is all oriented towards actions related to trying to settle the case. The parties do not pay for trial preparation expenses that may never be used.

Overall, experience has shown that the legal fees associated with collaborative cases are substantially less than the legal fees associated with a fully litigated case in the litigation process.

12. The Collaborative Law Process is More Private than the Litigation Process.

Because there are no court hearings, depositions or document requests to third parties in the collaborative law process, there is a better chance the parties' dispute will stay private and confidential. Privacy is a huge concern for many individuals and the confidentiality provisions of the collaborative law participation agreement and the private nature of the process itself help the parties better achieve the privacy they often desire.

13. The Collaborative Process Has a Better Schedule.

Meetings in the collaborative process are all scheduled by agreement. There will never be a situation where a judge is ordering a mediation or

hearing during a party's family vacation or during a party's important business meeting. The scheduling of meetings in the collaborative process are agreed upon by all parties and their attorneys.

14. The Parties and Their Emotions are More Removed from the Courthouse.

Because the parties cannot rush to the courthouse when they run into impasses this allows for a cooling off period to allow parties to more fully consider their options instead of making an emotional decision that puts them in front of a judge three days later. Sometimes family law disputes are set on an irreversible course of destructive litigation because of a temporary hearing that started over a small fire that quickly dissolves into a raging forest fire.

15. The Collaborative Law Process Creates a Better Atmosphere for Creative Brainstorming.

In general, the negotiating atmosphere created in the collaborative process is by design less volatile and less threatening. A goal of the collaborative process is to create a safe process to express and resolve conflict. In general, there is a greater possibility of creative thinking and creative problem solving when people are working in a calmer, more emotionally stable atmosphere than an unstable one.

Negotiations in the litigation process can be more fear based. In the litigation, process the threat of a courthouse showdown or a confrontational deposition is more imminent. There is virtually nothing about the litigation process that causes people to feel more relaxed, less vulnerable or safer. While fear based negotiations can certainly inspire settlement to avoid confrontation, possible creative solutions may be overlooked in a more heated emotional environment.

When attempting to settle in the litigation process, the language the lawyers and parties use is often very different than in the collaborative process. In the litigation process, negotiations are more likely to be conducted with an "us vs. them" or "gotcha" attitude and using battlefield metaphors and language. This adversarial attitude and mentality is often polarizing and can make achieving settlement more difficult. While the parties in the collaborative process are adversaries and have competing interests, the process itself attempts to encourage cooperation and collaboration to discuss and solve problems. The litigation process by its nature is adversarial and negotiations in that process are more likely to become polarizing.

16. In the Collaborative Law Process the Parties are in Control of the Dispute, Not the Lawyers, and There is Less Risk of a Fight Between the Lawyers Overshadowing the Fight Between the Parties.

In the collaborative law process, the parties by design are put in ultimate control of the process. In the litigation process, the court's imposition of litigation oriented deadlines may by necessity create situations where the parties lose control of the litigation process and the lawyers are forced to make decisions which may limit or diminish the control of the parties over their dispute.

Additionally in the litigation process, one lawyer is more likely to get in a disagreement with the other lawyer that gets dealt with by bombarding that lawyer and his or her client with discovery requests, temporary hearings or procedural motions. In such a situation, the parties may feel trapped in a dispute that is more between their battling lawyers than it is between the parties themselves.

G. Differences Between Mediation and the Collaborative Law Process

In the litigation process, the parties often either agree or are ordered by the court to attend mediation. Mediation is another popular settlement alternative to resolving a dispute by going to court. In most mediations, the main negotiator is the mediator instead of one of the attorneys or the clients. In the mediation process, the people with the best command of the facts and their interests, the parties and their lawyers, are usually not allowed to negotiate directly with the other party. As in the children's game of telephone, much is lost in translation.

In the collaborative process, discussions are held in joint meetings with direct communication between all parties and their lawyers and the chances for misunderstanding and miscommunication are greatly reduced. Further the parties are allowed to negotiate directly with the decision makers instead of through an intermediary with limited understanding of the dispute.

Mediations are often a "one-time" marathon settlement conference. Mediation is typically an event rather than a process. In the collaborative process, the discussion and negotiation of a settlement is typically done over the course of several meetings instead of all at once. This allows parties and their attorneys to think things through and give careful consideration to options instead of making important, binding decisions when the parties may be tired and under pressure.

Lastly, in the litigation process, mediations are often held when trial is imminent. This means the parties may have already incurred substantial legal fees and trial preparation costs and these fees and costs can make resolving the already difficult conflict even more challenging. Trial preparation costs are not part of the collaborative process.

H. More Information About The Collaborative Process

If you would like to know more about the collaborative process, a good starting place is the Collaborative Law Institute of Texas. The web site for the Collaborative Law Institute of Texas is www.collablawtexas.org. The Collaborative Law Institute of Texas is a statewide organization attempting to inform the public, attorneys, mental health professionals and financial professionals about the collaborative law process and to identify collaborative law attorneys and other professionals to the public. The Collaborative Law Institute's web site contains contact and background information for collaborative lawyers, mental health professionals and financial professionals. The web site also includes numerous articles and links to other collaborative law web sites.

I. Conclusion

The collaborative law process is not appropriate for all cases and certainly is not a perfect or foolproof process. However, for families having legal disputes who have both real conflict and a desire to settle their differences without going to court, the collaborative process will offer hope for many. In many cases, the collaborative process will be better able than the litigation process to increase the chances that the dispute will be resolved in an acceptable way without the family having to endure the difficulties encountered when family members litigate against each other in open court.

FAMILY CODE

TITLE 1-A. COLLABORATIVE FAMILY LAW

CHAPTER 15. COLLABORATIVE FAMILY LAW ACT

SUBCHAPTER A. APPLICATION AND CONSTRUCTION

Sec. 15.001. POLICY. It is the policy of this state to encourage the peaceable resolution of disputes, with special consideration given to disputes involving the parent-child relationship, including disputes involving the conservatorship of, possession of or access to, and support of a child, and the early settlement of pending litigation through voluntary settlement procedures.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.002. CONFLICTS BETWEEN PROVISIONS. If a provision of this chapter conflicts with another provision of this code or another statute or rule of this state and the conflict cannot be reconciled, this chapter prevails.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.003. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact a collaborative law process Act for family law matters.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.004. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act

(15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)), or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

SUBCHAPTER B. GENERAL PROVISIONS

Sec. 15.051. SHORT TITLE. This chapter may be cited as the Collaborative Family Law Act.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.052. DEFINITIONS. In this chapter:

(1) "Collaborative family law communication" means a statement made by a party or nonparty participant, whether oral or in a record, or verbal or nonverbal, that:

(A) is made to conduct, participate in, continue, or reconvene a collaborative family law process; and

(B) occurs after the parties sign a collaborative family law participation agreement and before the collaborative family law process is concluded.

(2) "Collaborative family law participation agreement" means an agreement by persons to participate in a collaborative family law process.

(3) "Collaborative family law matter" means a dispute, transaction, claim, problem, or issue for resolution that arises under Title 1 or 5 and that is described in a collaborative family law participation agreement. The term includes a dispute, claim, or issue in a proceeding.

(4) "Collaborative family law process" means a procedure intended to resolve a collaborative family law matter without intervention by a tribunal in which parties:

(A) sign a collaborative family law participation agreement; and

(B) are represented by collaborative family law

lawyers.

(5) "Collaborative lawyer" means a lawyer who represents a party in a collaborative family law process.

(6) "Law firm" means:

(A) lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association; and

(B) lawyers employed in a legal services organization or in the legal department of a corporation or other organization or of a government or governmental subdivision, agency, or instrumentality.

(7) "Nonparty participant" means a person, including a collaborative lawyer, other than a party, who participates in a collaborative family law process.

(8) "Party" means a person who signs a collaborative family law participation agreement and whose consent is necessary to resolve a collaborative family law matter.

(9) "Proceeding" means a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and posthearing motions, conferences, and discovery.

(10) "Prospective party" means a person who discusses with a prospective collaborative lawyer the possibility of signing a collaborative family law participation agreement.

(11) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(12) "Related to a collaborative family law matter" means a matter involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative family law matter.

(13) "Sign" means, with present intent to authenticate or adopt a record, to:

(A) execute or adopt a tangible symbol; or

(B) attach to or logically associate with the record an electronic symbol, sound, or process.

(14) "Tribunal" means a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity that, after presentation of evidence or legal argument, has jurisdiction to render

a decision affecting a party's interests in a matter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.053. APPLICABILITY. This chapter applies only to a matter arising under Title 1 or 5.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

SUBCHAPTER C. COLLABORATIVE FAMILY LAW PROCESS

Sec. 15.101. REQUIREMENTS FOR COLLABORATIVE FAMILY LAW PARTICIPATION AGREEMENT. (a) A collaborative family law participation agreement must:

(1) be in a record;

(2) be signed by the parties;

(3) state the parties' intent to resolve a collaborative family law matter through a collaborative family law process under this chapter;

(4) describe the nature and scope of the collaborative family law matter;

(5) identify the collaborative lawyer who represents each party in the collaborative family law process; and

(6) contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative family law process.

(b) A collaborative family law participation agreement must include provisions for:

(1) suspending tribunal intervention in the collaborative family law matter while the parties are using the collaborative family law process; and

(2) unless otherwise agreed in writing, jointly engaging any professionals, experts, or advisors serving in a neutral capacity.

(c) Parties may agree to include in a collaborative family law participation agreement additional provisions not inconsistent with this chapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.102. BEGINNING AND CONCLUDING COLLABORATIVE FAMILY LAW PROCESS. (a) A collaborative family law process begins when the parties sign a collaborative family law participation agreement.

(b) A tribunal may not order a party to participate in a collaborative family law process over that party's objection.

(c) A collaborative family law process is concluded by:

(1) resolution of a collaborative family law matter as evidenced by a signed record;

(2) resolution of a part of a collaborative family law matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or

(3) termination of the process under Subsection (d).

(d) A collaborative family law process terminates:

(1) when a party gives notice to other parties in a record that the process is ended;

(2) when a party:

(A) begins a proceeding related to a collaborative family law matter without the agreement of all parties; or

(B) in a pending proceeding related to the matter:

(i) without the agreement of all parties, initiates a pleading, motion, or request for a conference with the tribunal;

(ii) initiates an order to show cause or requests that the proceeding be put on the tribunal's active calendar; or

(iii) takes similar action requiring notice to be sent to the parties; or

(3) except as otherwise provided by Subsection (g), when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

(e) A party's collaborative lawyer shall give prompt notice in a record to all other parties of the collaborative lawyer's discharge or withdrawal.

(f) A party may terminate a collaborative family law process

with or without cause.

(g) Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative family law process continues if, not later than the 30th day after the date the notice of the collaborative lawyer's discharge or withdrawal required by Subsection (e) is sent to the parties:

(1) the unrepresented party engages a successor collaborative lawyer; and

(2) in a signed record:

(A) the parties consent to continue the process by reaffirming the collaborative family law participation agreement;

(B) the agreement is amended to identify the successor collaborative lawyer; and

(C) the successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

(h) A collaborative family law process does not conclude if, with the consent of the parties to a signed record resolving all or part of the collaborative matter, a party requests a tribunal to approve a resolution of the collaborative family law matter or any part of that matter as evidenced by a signed record.

(i) A collaborative family law participation agreement may provide additional methods of concluding a collaborative family law process.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.103. PROCEEDINGS PENDING BEFORE TRIBUNAL; STATUS REPORT. (a) The parties to a proceeding pending before a tribunal may sign a collaborative family law participation agreement to seek to resolve a collaborative family law matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the agreement after the agreement is signed. Subject to Subsection (c) and Sections 15.104 and 15.105, the filing operates as a stay of the proceeding.

(b) A tribunal that is notified, not later than the 30th day before the date of a proceeding, that the parties are using the collaborative family law process to attempt to settle a collaborative

family law matter may not, until a party notifies the tribunal that the collaborative family law process did not result in a settlement:

(1) set a proceeding or a hearing in the collaborative family law matter;

(2) impose discovery deadlines;

(3) require compliance with scheduling orders; or

(4) dismiss the proceeding.

(c) The parties shall notify the tribunal in a pending proceeding if the collaborative family law process results in a settlement. If the collaborative family law process does not result in a settlement, the parties shall file a status report:

(1) not later than the 180th day after the date the collaborative family law participation agreement was signed or, if the proceeding was filed by agreement after the collaborative family law participation agreement was signed, not later than the 180th day after the date the proceeding was filed; and

(2) on or before the first anniversary of the date the collaborative family law participation agreement was signed or, if the proceeding was filed by agreement after the collaborative family law participation agreement was signed, on or before the first anniversary of the date the proceeding was filed, accompanied by a motion for continuance.

(d) The tribunal shall grant a motion for continuance filed under Subsection (c)(2) if the status report indicates that the parties desire to continue to use the collaborative family law process.

(e) If the collaborative family law process does not result in a settlement on or before the second anniversary of the date the proceeding was filed, the tribunal may:

(1) set the proceeding for trial on the regular docket; or

(2) dismiss the proceeding without prejudice.

(f) Each party shall file promptly with the tribunal notice in a record when a collaborative family law process concludes. The stay of the proceeding under Subsection (a) is lifted when the notice is filed. The notice may not specify any reason for termination of the process.

(g) A tribunal in which a proceeding is stayed under Subsection (a) may require the parties and collaborative lawyers to provide a

status report on the collaborative family law process and the proceeding. A status report:

(1) may include only information on whether the process is ongoing or concluded; and

(2) may not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative family law process or collaborative family law matter.

(h) A tribunal may not consider a communication made in violation of Subsection (g).

(i) A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding based on delay or failure to prosecute in which a notice of collaborative family law process is filed.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.104. EMERGENCY ORDER. During a collaborative family law process, a tribunal may issue an emergency order to protect the health, safety, welfare, or interest of a party or a family, as defined by Section 71.003. If the emergency order is granted without the agreement of all parties, the granting of the order terminates the collaborative process.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.105. EFFECT OF WRITTEN SETTLEMENT AGREEMENT. (a) A settlement agreement under this chapter is enforceable in the same manner as a written settlement agreement under Section 154.071, Civil Practice and Remedies Code.

(b) Notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule or law, a party is entitled to judgment on a collaborative family law settlement agreement if the agreement:

(1) provides, in a prominently displayed statement that is in boldfaced type, capitalized, or underlined, that the agreement is not subject to revocation; and

(2) is signed by each party to the agreement and the

collaborative lawyer of each party.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.106. DISQUALIFICATION OF COLLABORATIVE LAWYER AND LAWYERS IN ASSOCIATED LAW FIRM; EXCEPTION. (a) In this section, "family" has the meaning assigned by Section 71.003.

(b) Except as provided by Subsection (d), a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative family law matter regardless of whether the collaborative lawyer is representing the party for a fee.

(c) Except as provided by Subsection (d) and Sections 15.107 and 15.108, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative family law matter if the collaborative lawyer is disqualified from doing so under Subsection (b).

(d) A collaborative lawyer or a lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

(1) to request a tribunal to approve an agreement resulting from the collaborative family law process; or

(2) to seek or defend an emergency order to protect the health, safety, welfare, or interest of a party or a family if a successor lawyer is not immediately available to represent that party.

(e) The exception prescribed by Subsection (d) does not apply after the party is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of that party or family.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.107. EXCEPTION FROM DISQUALIFICATION FOR REPRESENTATION OF LOW-INCOME PARTIES. After a collaborative family law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified under Section 15.106(b) is associated may

represent a party without a fee in the collaborative family law matter or a matter related to the collaborative family law matter if:

(1) the party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;

(2) the collaborative family law participation agreement authorizes that representation; and

(3) the collaborative lawyer is isolated from any participation in the collaborative family law matter or a matter related to the collaborative family law matter through procedures within the law firm that are reasonably calculated to isolate the collaborative lawyer from such participation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.108. GOVERNMENTAL ENTITY AS PARTY. (a) In this section, "governmental entity" has the meaning assigned by Section 101.014.

(b) The disqualification prescribed by Section 15.106(b) applies to a collaborative lawyer representing a party that is a governmental entity.

(c) After a collaborative family law process concludes, another lawyer in a law firm with which the collaborative lawyer is associated may represent a governmental entity in the collaborative family law matter or a matter related to the collaborative family law matter if:

(1) the collaborative family law participation agreement authorizes that representation; and

(2) the collaborative lawyer is isolated from any participation in the collaborative family law matter or a matter related to the collaborative family law matter through procedures within the law firm that are reasonably calculated to isolate the collaborative lawyer from such participation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.109. DISCLOSURE OF INFORMATION. (a) Except as

provided by law other than this chapter, during the collaborative family law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without formal discovery. A party shall update promptly any previously disclosed information that has materially changed.

(b) The parties may define the scope of the disclosure under Subsection (a) during the collaborative family law process.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.110. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND MANDATORY REPORTING NOT AFFECTED. This chapter does not affect:

(1) the professional responsibility obligations and standards applicable to a lawyer or other licensed professional; or

(2) the obligation of a person under other law to report abuse or neglect, abandonment, or exploitation of a child or adult.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.111. INFORMED CONSENT. Before a prospective party signs a collaborative family law participation agreement, a prospective collaborative lawyer must:

(1) assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative family law process is appropriate for the prospective party's matter;

(2) provide the prospective party with information that the lawyer reasonably believes is sufficient for the prospective party to make an informed decision about the material benefits and risks of a collaborative family law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, including litigation, mediation, arbitration, or expert evaluation; and

(3) advise the prospective party that:

(A) after signing an agreement, if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding

related to the collaborative family law matter, the collaborative family law process terminates;

(B) participation in a collaborative family law process is voluntary and any party has the right to terminate unilaterally a collaborative family law process with or without cause; and

(C) the collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative family law matter, except as authorized by Section 15.106(d), 15.107, or 15.108(c).

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.112. FAMILY VIOLENCE. (a) In this section:

(1) "Dating relationship" has the meaning assigned by Section 71.0021(b).

(2) "Family violence" has the meaning assigned by Section 71.004.

(3) "Household" has the meaning assigned by Section 71.005.

(4) "Member of a household" has the meaning assigned by Section 71.006.

(b) Before a prospective party signs a collaborative family law participation agreement in a collaborative family law matter in which another prospective party is a member of the prospective party's family or household or with whom the prospective party has or has had a dating relationship, a prospective collaborative lawyer must make reasonable inquiry regarding whether the prospective party has a history of family violence with the other prospective party.

(c) If a collaborative lawyer reasonably believes that the party the lawyer represents, or the prospective party with whom the collaborative lawyer consults, as applicable, has a history of family violence with another party or prospective party, the lawyer may not begin or continue a collaborative family law process unless:

(1) the party or prospective party requests beginning or continuing a process; and

(2) the collaborative lawyer or prospective collaborative

lawyer determines with the party or prospective party what, if any, reasonable steps could be taken to address the concerns regarding family violence.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.113. CONFIDENTIALITY OF COLLABORATIVE FAMILY LAW COMMUNICATION. (a) A collaborative family law communication is confidential to the extent agreed to by the parties in a signed record or as provided by law other than this chapter.

(b) If the parties agree in a signed record, the conduct and demeanor of the parties and nonparty participants, including their collaborative lawyers, are confidential.

(c) If the parties agree in a signed record, communications related to the collaborative family law matter occurring before the signing of the collaborative family law participation agreement are confidential.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.114. PRIVILEGE AGAINST DISCLOSURE OF COLLABORATIVE FAMILY LAW COMMUNICATION. (a) Except as provided by Section 15.115, a collaborative family law communication, whether made before or after the institution of a proceeding, is privileged and not subject to disclosure and may not be used as evidence against a party or nonparty participant in a proceeding.

(b) Any record of a collaborative family law communication is privileged, and neither the parties nor the nonparty participants may be required to testify in a proceeding related to or arising out of the collaborative family law matter or be subject to a process requiring disclosure of privileged information or data related to the collaborative matter.

(c) An oral communication or written material used in or made a part of a collaborative family law process is admissible or discoverable if it is admissible or discoverable independent of the collaborative family law process.

(d) If this section conflicts with other legal requirements for disclosure of communications, records, or materials, the issue of privilege may be presented to the tribunal having jurisdiction of the proceeding to determine, in camera, whether the facts, circumstances, and context of the communications or materials sought to be disclosed warrant a protective order of the tribunal or whether the communications or materials are subject to disclosure. The presentation of the issue of privilege under this subsection does not constitute a termination of the collaborative family law process under Section 15.102(d)(2)(B).

(e) A party or nonparty participant may disclose privileged collaborative family law communications to a party's successor counsel, subject to the terms of confidentiality in the collaborative family law participation agreement. Collaborative family law communications disclosed under this subsection remain privileged.

(f) A person who makes a disclosure or representation about a collaborative family law communication that prejudices the rights of a party or nonparty participant in a proceeding may not assert a privilege under this section. The restriction provided by this subsection applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.115. LIMITS OF PRIVILEGE. (a) The privilege prescribed by Section 15.114 does not apply to a collaborative family law communication that is:

(1) in an agreement resulting from the collaborative family law process, evidenced in a record signed by all parties to the agreement;

(2) subject to an express waiver of the privilege in a record or orally during a proceeding if the waiver is made by all parties and nonparty participants;

(3) available to the public under Chapter 552, Government Code, or made during a session of a collaborative family law process that is open, or is required by law to be open, to the public;

(4) a threat or statement of a plan to inflict bodily

injury or commit a crime of violence;

(5) a disclosure of a plan to commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity;

(6) a disclosure in a report of:

(A) suspected abuse or neglect of a child to an appropriate agency under Subchapter B, Chapter 261, or in a proceeding regarding the abuse or neglect of a child, except that evidence may be excluded in the case of communications between an attorney and client under Subchapter C, Chapter 261; or

(B) abuse, neglect, or exploitation of an elderly or disabled person to an appropriate agency under Subchapter B, Chapter 48, Human Resources Code; or

(7) sought or offered to prove or disprove:

(A) a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative family law process;

(B) an allegation that the settlement agreement was procured by fraud, duress, coercion, or other dishonest means or that terms of the settlement agreement are illegal;

(C) the necessity and reasonableness of attorney's fees and related expenses incurred during a collaborative family law process or to challenge or defend the enforceability of the collaborative family law settlement agreement; or

(D) a claim against a third person who did not participate in the collaborative family law process.

(b) If a collaborative family law communication is subject to an exception under Subsection (a), only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(c) The disclosure or admission of evidence excepted from the privilege under Subsection (a) does not make the evidence or any other collaborative family law communication discoverable or admissible for any other purpose.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Sec. 15.116. AUTHORITY OF TRIBUNAL IN CASE OF NONCOMPLIANCE.

(a) Notwithstanding that an agreement fails to meet the requirements of Section 15.101 or that a lawyer has failed to comply with Section 15.111 or 15.112, a tribunal may find that the parties intended to enter into a collaborative family law participation agreement if the parties:

(1) signed a record indicating an intent to enter into a collaborative family law participation agreement; and

(2) reasonably believed the parties were participating in a collaborative family law process.

(b) If a tribunal makes the findings specified in Subsection (a) and determines that the interests of justice require the following action, the tribunal may:

(1) enforce an agreement evidenced by a record resulting from the process in which the parties participated;

(2) apply the disqualification provisions of Sections 15.106, 15.107, and 15.108; and

(3) apply the collaborative family law privilege under Section 15.114.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1048 (H.B. 3833), Sec. 1, eff. September 1, 2011.

Matthew L. Harris, Esq.

Matthew, who actually goes by Matthew instead of "Matt", graduated from Texas Tech University School of Law in 2010 and is admitted to practice in Texas.

Upon licensing, Matthew opened Matthew Harris Law, PLLC, in Lubbock, Texas, where he focused on Civil Litigation, Family Law, Estate Management, and Business Law. Matthew has provided effective representation in a full range of cases; from the successful overturning of a Sheriff's Election, all the way to a client's name change to that of a fairy tale character.

In January 2014, Matthew became an Adjunct Professor at Texas Tech University School of Law, where he teaches a comprehensive Law Office Management course.

Before law school, Matthew served 8 years in the United States Air Force as a TACP (Tactical Air Control Party), and Military Training Leader, where he was awarded the Army Commendation Medal, Air Force Achievement Medal, and Military Outstanding Volunteer Service Medal. In 2005, Matthew also served as a Reserve Police Officer in Clarksville, Tennessee.

Matthew is currently enjoying his 13th year of marital bliss to his high school sweetheart, Carrie, and is also active in the Boy Scouts of America with their 11 year old son, Brett.

Degrees

J.D., Texas Tech University School of Law, 2010
A.A.S., Community College of the Air Force, 2007
B.A., Honors, American Military University, 2006
A.A.S., Community College of the Air Force, 2006

Publications

Matthew writes and/or edits a weekly legal blog that covers the areas of Civil Litigation, Family Law, Criminal Law, Business Law, and Estate Management, which averages 800-900 visits per month.

Speaking Engagements

New Laws and Your Firm – National Association of Legal Professionals (Aug 2013)
Considerations in Texas Adoptions – Lubbock Legal Professionals Association (Jun 2013)
How to Open a Law Firm – TTU Solo Series: Law Practice Management Program (Apr 2013)
Gun Laws Every Texans Should Know – Lubbock Legal Professionals Association (Feb 2013)
Law Office Management & Solo Practice – TTU Lunch Presentation (Mar 2012)
Opening a Law Firm – TTU Solo Series: Law Practice Management Program (Feb 2012)

Contested Divorces

-Matthew L. Harris, Esq.
1001 Main Street, Suite 200, Lubbock, Texas
Blog.MatthewHarrisLaw.com

Matthew Harris Law, PLLC
1001 Main Street, Suite 200, Lubbock, Texas
Blog.MatthewHarrisLaw.com

Vision for this Course

To understand the creation of a marital relationship, and the issues that arise in dissolving it.

OVERVIEW

- What is a Marriage?
- How to Create a Marriage
- The Suit for Divorce
- Fault vs. No-Fault
- Division of Property
- The Final Trial

What is a Marriage?

- Marriage is "the foundation of the family and of society, without which there would be neither civilization nor progress."

  -*Maynard v. Hill*, 125 U.S. 190, 211 (1888)

What is a Marriage?

"The state of being united to a person of the opposite sex as husband or wife in a consensual and contractual relationship recognized by law."

-Merriam-Webster, 2014

What is a Marriage?

In Texas, same-sex marriage is currently not allowed.

"A marriage between persons of the same sex or a civil union is contrary to the public policy of this state and is void in this state."

--Tex. Fam. Code § 6.204(b)

What is a Marriage?

In Texas, same-sex marriage is currently not allowed. (*cont.)*

"Marriage in this state shall consist only of the union of one man and one woman."

-Tex. Const. art. I, § 32(a)

What is a Marriage?

In Texas, same-sex marriage is currently not allowed. (*cont.)*

However, this may not be the case for long.

(Feb 2014 Federal Judge struck as unconst. Awaiting 5th Cir.)

How to Create a Marriage

- Ceremonial Marriage
  - –Also known as Formal Marriage
- Informal Marriage
  - –Also known as Common Law Marriage

How to Create a Marriage

- Ceremonial Marriage
  - –Must obtain a marriage license
  - –Must wait 72 hours (with some exceptions)
  - –Then voluntarily participate in a marriage ceremony within 90 days

How to Create a Marriage

- Informal Marriage
  - –Can go to County Clerk and Declare/Register Informal Marriage

--Tex. Fam. Code § 2.402

How to Create a Marriage

- Informal Marriage (cont.)
  - Or if a man and woman meet certain criteria:
    - Agreed to be Married
    - Lived together as Husband/Wife
    - Held out as Husband/Wife

--Tex. Fam. Code § 2.401

The Suit for Divorce

- Considerations:
  - Jurisdiction
    - Which state is proper?
  - Venue
    - If Texas, then which County is proper?

The Suit for Divorce

- Jurisdiction
  - Court must have personal jurisdiction over the parties and property
  - Where was the Last Marital Residence? (2 year rule)

The Suit for Divorce

- Last Marital Residence
  - "The Family code does not define the term last marital residence, and case law interpreting section 6.305(a)(1) is sparse. In *Casey v. Casey*...the Court noted that one commentator had suggested that last marital residence implies "a permanent place of abode by the spouses." *Goodenbour v. Goodenbour*, 64 §.W.3d 69, 76 (Tex. App.—Austin 2001)

The Suit for Divorce

- Jack and Diane got married in Texas where they lived for 10 years, but Diane moved to North Dakota 6 months ago. Can Jack file suit in Texas?

The Suit for Divorce

- General Residency Requirement
  - Must be domiciliary of this state for preceding 6 month period, &
  - Resident of the county in which the suit is filed for the preceding 90-day period

Tex. Fam. Code § 6.301

The Suit for Divorce

- Special considerations for Military
- Time spent by member, or spouse, outside of county of residence while in service of armed force, is considered as residence in this state and that county.

Tex. Fam. Code § 6.303

The Suit for Divorce

- Children MUST be included!
  - If there are children of the marriage under 18, or otherwise obligated to support, then must be included in the divorce suit.
  - If SAPCR already pending, then must be transferred into the Divorce and consolidated
    - Can't consolidate Divorce into the SAPCR

Tex. Fam. Code §§ 6.406 & 6.407

Fault vs. No-Fault

- The intent of the legislature in enacting no-fault legislation was to avoid the necessity of presenting sordid and ugly details of either spouse's conduct to obtain a divorce.

Fault vs. No-Fault

- No-Fault Grounds:
  - Insupportability
  - Living Apart
  - Confinement in Mental Hospital

Fault vs. No-Fault

- Insupportability:
  - ALWAYS plead the "no-fault" ground of Insupportability into every divorce pleading!
    - Easy to prove at trial
    - Great alternative in case you lose your fault grounds
    - Most divorces in Texas use this ground as sole basis for divorce

Fault vs. No-Fault

- Insupportability:
  - "Insupportable" means unendurable, insufferable, and intolerable.
    Cusack v. Cusak, 491 S.W.2d 714, 720 (Tex. App.—Corpus Christi 1973)
  - Can still be contested!
  - Relieves burden of establishing *fault* but doesn't relieve burden of proving your case at trial.

Fault vs. No-Fault

- Elements of Insupportability:
  - The marriage has become insupportable because of discord or conflict,
  - The discord or conflict destroys the legitimate ends of the marriage, and
  - There is no reasonable expectations of reconciliation

  Tex. Fam. Code § 6.001

Fault vs. No-Fault

- Fault Grounds:
  - Someone's been naughty!
  - Divorce based on fault means one spouse was at fault for the breakup of the marriage

Fault vs. No-Fault

- Fault Grounds:
  - Adultery,
  - Cruelty,
  - Felony Conviction, and
  - Abandonment

Fault vs. No-Fault

- Fault Grounds:
  - Adultery – "The court may grant a divorce in favor of one spouse if the other spouse has committed adultery."

  Tex. Fam. Code § 6.003

Fault vs. No-Fault

- Adultery:
  - What is it? What isn't it?
  - It isn't holding hands, flirting, kissing, etc.
  - It isn't an emotional affair. That's cheating, not adultery.

Fault vs. No-Fault

- Adultery:
  - Defined as "the voluntary sexual intercourse of a married person with one not the husband or wife of the offender."

  In re Marriage of C.A.S., 405 S.W.3d 373, 383 (Tex. App.—Dallas 2013)

Fault vs. No-Fault

- Adultery:
  - Must be clear and positive proof
  - Direct or circumstantial evidence
  - Mere suggestion and innuendo are insufficient

In re C.A.S., 405 S.W.3d at 383

Fault vs. No-Fault

- Adultery:
  - Not limited to actions prior to separation
  - Pictures of hugging, kissing, proof of weekends and trips together was enough evidence

In re C.A.S., 405 S.W.3d at 383

Fault vs. No-Fault

- Fault Grounds:
  - Cruelty – "The court may grant a divorce in favor of one spouse if the other spouse is guilty of cruel treatment toward the complaining spouse of a nature that renders further living together insupportable."

Tex. Fam. Code § 6.002

Fault vs. No-Fault

- Cruelty:
  - Remember, "Insupportable" means unendurable, insufferable, and intolerable.
  - Cruel treatment requires willful and persistent infliction of unnecessary suffering; mere trivial matters or disagreements are not sufficient. (*Ayala v. Ayala*, 387 §.W.3d 721, 733 (Tex. App.—Houston [1st Dist.] 2011))

Fault vs. No-Fault

- Cruelty:
  - The suffering may be mental or physical and may consist of a single act or many different acts or combinations of misconduct, including acts occurring after separation. (*See Ayala*)

Fault vs. No-Fault

- Cruelty:
  - Can also include Adultery
  - El Paso Court of Appeals found that adultery alone can be sufficient to grant divorce for cruelty.

  Newberry v. Newberry, 351 §.W.3d 552, 557 (Tex. App.—El Paso 2011)

Fault vs. No-Fault

- Felony Conviction:
  - "The court may grant a divorce in favor of one spouse if during the marriage the other spouse:
    - Has been convicted of a felony,
    - Has been imprisoned for at least 1 year, and
    - Has not been pardoned

Tex. Fam. Code § 6.004(a)

Fault vs. No-Fault

- Felony Conviction:
  - "The court may grant a divorce in favor of one spouse if during the marriage the other spouse:
    - Has been convicted of a felony,
    - Has been imprisoned for at least 1 year, and
    - Has not been pardoned

Tex. Fam. Code § 6.004(a)

Fault vs. No-Fault

- Felony Conviction:
  - "The court may not grant a divorce under this section against a spouse who was convicted on the testimony of the other spouse."

Tex. Fam. Code § 6.004(b)

Fault vs. No-Fault

- Abandonment:
  - "The court may grant a divorce in favor of one spouse if the other spouse:
    - Left the complaining spouse with the intention of abandonment, and
    - Remained away for at least 1 year

Tex. Fam. Code § 6.005

Fault vs. No-Fault

- Abandonment:
  - Must be voluntary (being drafted into military isn't voluntary)
  - Voluntarily enlisting in military is.

Fault vs. No-Fault

- Abandonment:
  - Being kicked out of the house isn't voluntary abandonment
  - Not abandonment if spouse tries to come home and is refused

Fault vs. No-Fault

- Fault = Someone messed up
- No-Fault = We just shouldn't be married anymore
- Why choose fault? $$$

Property Division

- Duty of the Court
  - Divide & Confirm
- Divide
  - Community Property must be divided
- Confirm
  - Separate Property must be confirmed as separate

Property Division

- General Rule
  - "In a decree of divorce or annulment, the court shall order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage."

  Tex. Fam. Code § 7.001

Property Division

- Division need not be equal
- Court can consider many factors in deciding what is "just and right" in the division of community property

Property Division

- Factors:
  - Nature of marital property
  - Relative earning capacity
  - Relative financial conditions/oblig.
  - Parties' education
  - Size of separate estates
  - Age/health/phys. cond. of parties
  - Benefit innocent spouse would have rec'd had marriage continued

Property Division

- Factors: (cont'd)
  - Probable need for future support
  - Fault in breakup of marriage

Murff v. Murff, 615 S.W.2d 696, 698-99 (Tex. 1981)

Property Division

- Court/Jury has A LOT of leeway in dividing community property
- *In re CAS*, court awarded wife 81%, upheld on appeal

Property Division

- Reimbursement
  - Basically, if one spouse is placed in a better position through use of the community assets, then can claim a reimbursement
    - Use community property to improve separate property
    - Use community property to pay down principal of separate debt

Property Division

- Fraud on Community
  - Basically, if one violates fiduciary duty between spouses and wastes community assets with no benefit to other.
    - Excessive gifts to paramour
    - Transfers made with the primary purpose of depriving the other spouse of that asset

Property Division

- Separate Property
  - "Property possessed by either spouse during or on dissolution of marriage is presumed to be community property."

Tex. Fam. Code § 3.003(a)

Property Division

- What is Separate Property?
  - Property owned prior to marriage
  - Property acquired by gift, devise, or descent during marriage
  - Recovery from Personal Injury (except for loss of earning capacity)

Tex. Fam. Code § 3.001

Property Division

- Separate Property
  - "The degree of proof necessary to establish that property is separate property is clear and convincing evidence."

Tex. Fam. Code § 3.003(b)

Property Division

- Clear and Convincing Evidence
  - The highest burden of proof on the civil side.
  - Same burden of proof required to terminate someone's parental rights.
  - Clear and Convincing Evidence means "the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established."

Tex. Fam. Code § 101.007

The Final Trial

- "In a suit for dissolution of a marriage, either party may demand a jury trial unless the action is a suit to annul an underage marriage."

Tex. Fam. Code § 6.703

The Final Trial

- Jury can decide questions of fact
- Judge decides questions of law
- Jury can be waived and Judge can decide both law and fact

The Final Trial

- Jury can decide
  - –Whether there is fault in the breakup of the marriage
  - –Whether certain property is community/separate
    - Or a certain % of each

The Final Trial

- Jury can decide (cont'd)
  - –Conservatorship over children
    - Sole or Joint
    - If joint, then custody and geographic restrictions
  - -Attorney's Fees

Conclusion

- Marital Relationships are undergoing some changes right now.
- What the law says is a marriage now, may not be the law in 3 years.

Conclusion

- Divorces are messy, ESPECIALLY when they are contested.
- The best we can do is advise our clients and allow them to make informed decisions.

THANK YOU!

Well Prepared? Informative? Helpful?

Would you provide us some useful feedback?

tinyurl.com/MHLFeedback

405 S.W.3d 373 (2013)

In the Matter of the MARRIAGE OF C.A.S. AND D.P.S.

No. 05-11-01338-CV.

Court of Appeals of Texas, Dallas.

June 26, 2013.
Rehearing Dismissed August 6, 2013.

378 *378 Bruce K. Thomas, Law Office of Bruce K. Thomas, Dallas, TX, for Appellant.

Georganna L. Simpson, Dallas, TX, George Parker, McKinney, TX, Steven Morris, Charlottesville, VA, for Appellee.

Rebecca Ann Tillery, Dallas, TX, for Intervenor.

Before Justices LANG-MIERS and FILLMORE.[1]

379 *379 **OPINION**

Opinion by Justice FILLMORE.

Daniel Silvey (Daniel) appeals from a divorce decree dissolving the marriage between him and Cynthia Silvey (Cynthia). In three issues, Daniel argues the trial court erred in dividing the marital property, by granting the divorce on fault grounds, and by failing to make sufficient findings of fact. We affirm the trial court's judgment.

Background

Daniel and Cynthia married in 1999 and separated on March 23, 2009 when Cynthia moved out of the marital home. Cynthia filed for divorce in August 2009 alleging irreconcilable differences but, shortly before trial, filed an amended petition asserting Daniel had committed adultery and seeking a disproportionate share of the community estate. The property division issues were tried to the bench over the course of four nonconsecutive days between April and July 2011.

On July 6, 2011, the trial court sent a letter to the parties stating the divorce was granted on fault grounds and setting out the division of the marital property. On July 22, 2011, Daniel filed a request for findings of fact and conclusions of law pursuant to rules of civil procedure 296 and 297 and, on August 1, 2011, filed a supplemental request for findings of fact and conclusions of law pursuant to section 6.711 of the family code. Daniel filed a motion for new trial on August 5, 2011, a notice of past due findings of fact and conclusions of law on August 12, 2011, and a notice of appeal on October 3, 2011.

On October 13, 2011, the trial court signed a final decree of divorce that specifically divided certain of the community assets and liabilities and ordered that any of the community assets not specifically divided would be divided through alternate selection by Cynthia and Daniel. On November 14, 2011, the trial court made findings of fact and conclusions of law pursuant to section 6.711 of the family code and rules of civil procedure 296 and 297. The trial court found that Daniel had committed adultery and that the divorce was granted on that basis. The trial court also found that Daniel "made a game of this divorce. On the surface it appears that he has made a game of the dissolution of his business, and such conduct on his part constitutes a `mockery of the judicial system.'" The trial court valued a number of the specifically divided assets, as well as some of the assets that were to be divided by alternate selection. Our review of the trial court's findings indicates the marital assets that were specifically divided and valued by the trial court equal $1,646,683.10. Cynthia was awarded $1,334,958.10, or eighty-one percent, of these assets, and Daniel was awarded $311,735.00, or nineteen percent, of these assets. The trial court also listed the factors it considered in making a just and right division of the community estate.

On December 12, 2011, Daniel requested the trial court make additional findings, asserting his counsel had not been notified of the trial court's findings of fact and conclusions of law until December 3, 2011. Daniel specifically requested the trial court make findings as to:

> A. Whether adultery of [Daniel] was at fault for causing the break up of the parties' marriage.
>
> B. Whether the marriage became insupportable because of discord or conflict of personalities that destroyed the legitimate ends of the marital relationship and prevented any reasonable expectation of reconciliation.

380 *380 C. Whether any conduct of [Daniel] as alleged in paragraph 9 of [Cynthia's] Second Amended Petition for Divorce supports the award of a disproportionate share of the community estate in favor of Cynthia.

Daniel specifically requested nineteen additional findings relating to these three subjects.

On January 26, 2012, the trial court signed an amended decree of divorce that did not change the division of community property, but awarded Daniel certain property as his separate property. On February 15, 2012, Daniel again requested findings of fact and conclusions of law and, on March 14, 2012, filed a notice of past due findings of fact and conclusions of law. The trial court did not make any additional findings or conclusions.

Findings of Fact and Conclusions of Law

In his third issue, Daniel contends the trial court erred by failing to make sufficient findings of fact, by failing to timely mail its findings to counsel, and by failing to make additional findings.[2]

Daniel first asserts the trial court's findings failed to comply with section 6.711(a) of the family code because the findings "omit evaluation findings for a third of the items divided in the decree, including

significantly, [Daniel's] tax liability." Daniel's brief contains no further argument pertinent to this complaint, and we question whether it had been adequately briefed. *See* TEX.R.APP. P. 38.1(h), (i). However, we will address the complaint as to the tax liability, the only specific asset or liability raised by Daniel on appeal.

Section 6.711(a) of the family code provides that in a suit for dissolution of marriage, on request by a party, the court shall state in writing its findings of fact and conclusions of law concerning (1) the characterization of each party's assets, liabilities, claims, and offsets on which disputed evidence has been presented, and (2) the value or amount of the community estate's assets, liabilities, claims, and offsets on which disputed evidence has been presented. TEX. FAM.CODE ANN. § 6.711(a) (West 2006). The trial court apportioned the parties' 2009 and 2010 tax liability to Daniel. As to the tax liability, Daniel testified he estimated the tax liability for 2009 was $40,000 and for 2010 was $20,000. Cynthia testified she had been told there was a tax debt for 2009 and 2010, but had not been provided any documents to substantiate that claim. Based on the check register, Cynthia believed $240,000 had been paid toward the 2009 tax liability and that there was an additional $75,000 credit carried forward from the 2008 tax return to be applied to the 2009 tax liability. Daniel agreed that approximately $300,000 had been paid toward the 2009 tax liability. Because the amount of the tax liability was undisputed, the trial court was not required to make a finding as to the amount. *See* TEX. FAM.CODE
381 ANN. § 6.711(a); *Jackson v. Jackson,* No. 03-10-00736-CV, 2011 *381 WL 3373290, at *3 (Tex.App.-Austin Aug. 3, 2011, no pet.) (mem. op.).

Daniel next contends the trial court erred by failing to timely mail its November 14, 2011 findings to Daniel's counsel and by failing to make additional findings as requested by Daniel on December 12, 2011. Daniel argues the original findings fail to (1) state whether the trial court found that adultery caused the dissolution of the marriage or related to pre-or post-separation conduct, (2) state the basis for the trial court's award to Cynthia of more property than she requested, and (3) contained no explanation for the trial court's "harsh rebuke" that Daniel had made a game of the divorce and the dissolution of his business and that his conduct constituted a "mockery of our judicial system." Daniel asserts he is "left guessing" as to the basis for the trial court's ruling and cannot adequately address the findings on appeal. Daniel's complaints necessarily relate to the trial court's failure to make additional findings pursuant to rule of civil procedure 298. *See* *Moore v. Moore*, 383 **S.W.3d** 190, 200-01 (Tex.App.-Dallas 2012, pet. denied) (recognizing distinction between findings of fact under section 6.711 of the family code and findings of fact under rules of civil procedure).

Rule of civil procedure 298 provides that, after a trial court files original findings of fact and conclusions of law, "any party may file with the clerk of the court a request for specified additional or amended findings or conclusions. The request for these findings shall be made within ten days after the filing of the original findings and conclusions by the court." TEX.R. CIV. P. 298. When a party makes an untimely request for additional findings and conclusions, the party waives the right to complain on appeal of the trial court's refusal to enter the additional findings or conclusions. *Edgewater Seed Market v. Magnolia Indep. Sch. Dist.,* No. 11-07-00136-CV, 2008 WL 4512851, at *2 (Tex.App.-Eastland Oct. 9, 2008, no pet.) (mem. op.); *Cities Servs. Co. v. Ellison*, 698 S.W.2d 387, 390 (Tex.App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). In this case, Daniel failed to file his request for additional findings of fact and conclusions of law within ten days after the trial court signed the original findings of

fact and conclusions of law. Although Daniel claims he was prevented from making a timely request for additional findings by the trial court's failure to provide timely notice of the filing of the findings of fact and conclusions of law, he did not obtain a ruling from the trial court as to the date he received notice. *See* TEX.R. CIV. P. 306a; *Florance v. State*, 352 **S.W.3d** 867, 873 (Tex.App.-Dallas 2011, no pet.). Other than Daniel's contention in his request for the additional findings that he had not received notice of the original findings, the record is silent as to when either Daniel or his counsel was notified of the filing of the findings and conclusions.

Daniel had the burden to preserve any error in the trial court. *See* TEX.R.APP. P. 33.1(a). His recitation in his request for additional findings and in his brief that he did not receive notice of the findings of fact and conclusions of law is not sufficient to preserve error.[3] We cannot conclude Daniel preserved his right to complain on appeal about the trial court's failure to make the additional findings.

Further, even if Daniel had preserved this issue for appeal, we conclude he has not shown the trial
382 court abused its discretion by failing to enter the requested additional findings. Additional findings *382 are not required if the original findings and conclusions properly and succinctly relate the ultimate findings of fact and conclusions of law necessary to apprise the party of information adequate for the preparation of the party's appeal. *Pakdimounivong v. City of Arlington*, 219 **S.W.3d** 401, 412 (Tex.App.-Fort Worth 2006, pet. denied). An ultimate fact is one that would have a direct effect on the judgment. *Id.* There is no reversible error if the refusal to file additional findings does not prevent a party from adequately presenting an argument on appeal. *Id.* The controlling issue is whether the circumstances of the particular case require the party to guess at the reasons for the trial court's decision. *White v. Harris-White*, No. 01-07-00521-CV, 2009 WL 1493015, at *6 (Tex.App.-Houston [1st Dist.] May 28, 2009, pet. denied) (mem. op. on reh'g).

The ultimate issue in this case is the just and right division of the estate. *See id.* at *5. The trial court divided the marital property and made findings of fact and conclusions of law involving the court's jurisdiction over the parties, the assets and liabilities of the marital estate, Daniel's adultery, Daniel's conduct during the litigation, and other factors the trial court considered in determining a just and right division of the estate. The additional findings requested by Daniel related to (1) whether Daniel's adultery was at fault in the breakup of the marriage, and (2) the factors the trial court considered in dividing the community estate. However, the trial court had already granted the divorce based on fault and found that Daniel had committed adultery. Further, the trial court was not required to make findings regarding the factors it considered in dividing the estate. *See Wallace v. Wallace*, 623 S.W.2d 723, 726 (Tex.Civ.App.-Houston [1st Dist.] 1981, writ dism'd).

We conclude the trial court's findings of fact and conclusions of law are sufficiently specific to allow Daniel to present his complaints on appeal and, accordingly, Daniel was not harmed by the trial court's failure to make the requested additional findings. We resolve Daniel's third issue against him.

Standard of Review

In his first and second issues, Daniel argues the trial court erred in the division of the marital estate and by granting the divorce on fault grounds. We review both of these issues under an abuse of discretion

standard. *See In re A.B.P.*, 291 **S.W.3d** 91, 95 (Tex.App.-Dallas 2009, no pet.) (most appealable issues in family law cases are evaluated for abuse of discretion). A trial court abuses its discretion when it acts arbitrarily or unreasonably, or without any reference to guiding rules and principles. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex.1990); *see also Gonzalez v. Gonzalez*, 331 **S.W.3d** 864, 866 (Tex.App.-Dallas 2011, no pet).

A trial court's findings are reviewable for legal and factual sufficiency of the evidence under the same standards that are applied in reviewing evidence supporting a jury's answer. *Moroch v. Collins*, 174 **S.W.3d** 849, 857 (Tex.App.-Dallas 2005, pet. denied). In evaluating a legal sufficiency challenge, we credit evidence that supports the finding if a reasonable fact finder could, and disregard contrary evidence unless a reasonable fact finder could not. *City of Keller v. Wilson*, 168 **S.W.3d** 802, 827 (Tex.2005); *Newberry v. Newberry*, 351 **S.W.3d** 552, 555 (Tex.App.-El Paso 2011, no pet.). The test for legal sufficiency is "whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review." *City of Keller*, 168 **S.W.3d** at 827. In a factual sufficiency review, we
383 examine all the evidence *383 in the record, both supporting and contrary to the trial court's finding, and reverse only if the finding is so against the great weight of the evidence as to be clearly wrong and unjust. *Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex.1996) (per curiam); *Newberry*, 351 **S.W.3d** at 555-56.

In family law cases, legal and factual sufficiency challenges do not constitute independent grounds for asserting error, but are relevant factors in determining whether the trial court abused its discretion. *Moore*, 383 **S.W.3d** at 198. To determine whether the trial court abused its discretion because the evidence is legally or factually insufficient to support the trial court's decision, we consider whether the trial court (1) had sufficient evidence upon which to exercise its discretion, and (2) erred in its application of that discretion. *Moroch*, 174 **S.W.3d** at 857. We conduct the applicable sufficiency review when considering the first prong of the test. *Id.* We then determine whether, based on the elicited evidence, the trial court made a reasonable decision. *Id.* A trial court does not abuse its discretion if there is some evidence of a substantive and probative character to support the decision. *Id.*

Fault

In his second issue, Daniel argues the trial court erred by granting the divorce on fault grounds because the evidence is legally and factually insufficient to establish adultery caused the marriage to fail. A trial court "may grant a divorce in favor of one spouse if the other spouse has committed adultery." TEX. FAM.CODE ANN. § 6.003 (West 2006). Adultery means the "voluntary sexual intercourse of a married person with one not the spouse." *In re S.A.A.*, 279 **S.W.3d** 853, 856 (Tex.App.-Dallas 2009, no pet.); *see also Ayala v. Ayala*, 387 **S.W.3d** 721, 733 (Tex.App.-Houston [1st Dist.] 2011, no pet.). Adultery is not limited to actions committed before the parties separated. *Ayala*, 387 **S.W.3d** at 733; *Bell v. Bell*, 540 S.W.2d 432, 435 (Tex.Civ.App.-Houston [1st Dist.] 1976, no writ). Adultery can be shown by direct or circumstantial evidence. *In re S.A.A.*, 279 **S.W.3d** at 856; *Newberry*, 351 **S.W.3d** at 556. However, there must be clear and positive proof and mere suggestion and innuendo are insufficient. *In re S.A.A.*, 279 **S.W.3d** at 856.

Cynthia testified that, after she moved out of the marital residence, she hoped that she and Daniel would reconcile and she asked Daniel to participate in counseling. However, Daniel failed to participate

meaningfully in counseling, and the counselor eventually told Cynthia the marriage was a "lost cause." In June 2009, Cynthia began to suspect that Daniel had committed adultery.

Daniel admitted that he began a personal relationship with Maria Alvarez at the "end of November-December time frame," but "it wasn't until either the last day of January or February when I actually went to visit and — for the first time in 2010, and I wanted to date her at that point." However, in September 2009, Cynthia found a woman's underwear and suitcase in the master bedroom of the marital home. Also in September 2009, a private investigator filmed Daniel and Alvarez kissing and hugging at an airport. In 2010, Daniel and Alvarez spent a number of weekends and took several trips together. Further, although Daniel testified Alvarez later reimbursed him, Daniel also bought Alvarez several expensive gifts.

Although there was conflicting evidence about when the relationship began, Daniel's relationship with Alvarez was undisputed. Accordingly, the evidence is both legally and factually sufficient to support the
384 trial court's finding that Daniel *384 committed adultery, and the trial court did not abuse its discretion by granting the divorce on fault grounds. We resolve Daniel's second issue against him.

Property Division

In his first issue, Daniel asserts the trial court erred in dividing the marital estate because it lacked sufficient valuation evidence to make an equitable and reasonable division. Daniel specifically complains the trial court (1) improperly valued the major asset of the estate, (2) lacked sufficient evidence of Cynthia's attorney's fees, (3) failed to value one-third of the assets and debts divided in the decree, (4) improperly valued the real estate and other assets, (5) awarded to Daniel assets that he liquidated, but did not award Cynthia assets that she liquidated, (6) awarded a grossly disproportionate division to Cynthia without a reasonable basis, (7) considered factors in its division that were not pleaded and for which there was no evidence, (8) failed to include unliquidated claims in its division, and (9) made a punitive division of the property.

In a divorce decree, the trial court shall order a division of the parties' estate in a manner that the court deems just and right, having due regard for the rights of each party. TEX. FAM.CODE ANN. § 7.001 (West 2006). The trial court is afforded broad discretion in dividing the community estate, and we must indulge every reasonable presumption in favor of the trial court's proper exercise of its discretion. *Schlueter v. Schlueter*, 975 S.W.2d 584, 589 (Tex.1998); *Murff v. Murff*, 615 S.W.2d 696, 698 (Tex.1981); *Motley v. Motley*, 390 **S.W.3d** 689, 695 (Tex.App.-Dallas 2012, no pet.).

The property division need not be equal, and a trial court may consider many factors when exercising its broad discretion to divide the marital property. *Murff*, 615 S.W.2d at 699; *Barras v. Barras*, 396 **S.W.3d** 154, 163 (Tex.App.-Houston [14th Dist.] 2013, no pet. h.). Such factors include the nature of the marital property, the relative earning capacity and business opportunities of the parties, the parties' relative financial condition and obligations, the parties' education, the size of separate estates, the age, health, and physical conditions of the parties, fault in breaking up the marriage, the benefit the innocent spouse would have received had the marriage continued, and the probable need for future support. *Murff*, 615 S.W.2d at 699; *Barras*, 396 **S.W.3d** at 163. The party complaining of the division of the

community estate has the burden of showing from the evidence in the record that the trial court's division of the community estate was so unjust and unfair as to constitute an abuse of discretion. *See Mann v. Mann*, 607 S.W.2d 243, 245 (Tex. 1980); *Pappas v. Pappas,* No. 03-12-00177-CV, 2013 WL 150300, at *1 (Tex. App.-Austin Jan. 10, 2013, no pet.) (mem. op.); *Vannerson v. Vannerson*, 857 S.W.2d 659, 672 (Tex.App.-Houston [1st Dist.] 1993, writ denied).

Sufficient Evidence of Partnership Interest

Daniel first argues there was no or insufficient evidence of the value of the community's interest in a partnership at the time of the divorce and that the interest was improperly valued as of the time of a mediation in 2010. Daniel was one of three partners in GP Holdings, a partnership which controlled Atlas Service Link, a corporate tax accounting and technology consulting firm. At the end of 2009, Daniel's two partners told him that they had formed a new partnership that was buying Atlas Service Link from GP Holdings and Daniel's interest in GP Holdings was being eliminated. GP Holdings also
385 placed *385 $1,115,000 into Daniel's capital account, reflecting its assessment of the value of Daniel's interest in the partnership.

Cynthia testified that Daniel had communicated with her about the capital account and said it contained $1.115 million. Daniel also told her that his share of the profits from the partnership for 2009 would be approximately $1,000,000 and that he determined that number based on a schedule K-1 for the partnership. In October 2010, Cynthia, Daniel, and Daniel's former partners participated in mediation in an attempt to settle the value of marital estate's interest in the partnership. At that time, the partnership valued the capital account at $1.115 million.

Daniel offered no contradictory evidence as to the value of the partnership interest, but testified there was a difference between the value of the capital account and the value of his interest in GP Holdings. He admitted a capital account is one method of valuing the interest, but disagreed that it was the correct method to use in this case. He claimed he could not value any interest in the partnership exceeding the amount in the capital account because he had been denied access by the partnership to necessary information. He admitted that an expert he retained agreed with the value placed on the partnership interest by GP Holdings, but contended the expert also was not provided all necessary information.

The value of community assets is generally determined at the date of divorce or as close to it as possible. *Handley v. Handley*, 122 **S.W.3d** 904, 908 (Tex. App.-Corpus Christi 2003, no pet.); *Grossnickle v. Grossnickle*, 935 S.W.2d 830, 837 (Tex.App.-Texarkana 1996, writ denied). However, " [n]earness in time is a matter left to the discretion of the trial court." *Finch v. Finch*, 825 S.W.2d 218, 223 (Tex. App.-Houston [1st Dist.] 1992, no writ) (trial court did not abuse its discretion by considering land appraisal made one year earlier in dividing real estate on date of divorce); *see also Quijano v. Quijano*, 347 **S.W.3d** 345, 349-50 (Tex.App.-Houston [14th Dist.] 2011, no pet.) (trial court did not abuse its discretion by considering six-month-old statement to assess value of checking account when that was best evidence of record concerning value of account). In this case, Cynthia provided the trial court with a value of the partnership approximately six months before trial. The partnership had not been active for over two years, and there was no evidence of any activity by the partnership between

October 2010 and April 2011 that would have increased the value of the community's interest in the partnership.

Daniel claims the partnership interest was improperly valued, but provided no evidence of what he believed the interest was worth. Generally, a party who does not provide to the trial court any value for the property cannot, on appeal, complain of the trial court's lack of information in dividing the community estate. *Deltuva v. Deltuva*, 113 **S.W.3d** 882, 887 (Tex.App.-Dallas 2003, no pet.) (op. on reh'g); *Sereno v. Sereno,* No. 13-08-00691-CV, 2010 WL 5541709, at *2 (Tex. App.-Corpus Christi Dec. 30, 2010, no pet.) (mem. op.); *Todd v. Todd*, 173 **S.W.3d** 126, 129 (Tex.App.-Fort Worth 2005, pet. denied); *Vannerson*, 857 S.W.2d at 670. We conclude the trial court did not abuse its discretion by valuing the partnership interest based on the value of the capital account as of September 2010.

Attorney's Fees

Daniel next asserts the trial court lacked sufficient evidence of Cynthia's attorney's fees to support the award of the partnership interest to compensate her for her fees. Daniel argues the evidence failed to
386 *386 establish the hourly rate charged by Cynthia's attorney, the number of hours incurred, or that legal assistant fees were recoverable; the amount of attorney's fees found by the trial court in its findings of fact was more than the amount testified to by the attorney; and the trial court's award of the entire capital account to Cynthia, to compensate her for the attorney's fees, awarded her more than she sought and, therefore, constituted a windfall.[4]

The record shows both parties expended community funds during the pendency of the divorce to pay attorney's fees and, at the time of trial, there were outstanding attorney's fees that had not been paid. The trial court found that, through trial, Cynthia had incurred unpaid fees of $164,028.92,[5] while Daniel had incurred unpaid fees of $130,000. The trial court found that "[o]rdering [Daniel] to pay [Cynthia's] attorney's fees would simply result in extended litigation. Rather, it is more simple and fair to award [Cynthia] a larger share of the main assets to compensate her for her attorney's fees."

A trial court may consider reasonable attorney's fees, along with the parties' circumstances and needs, in effecting a just and right division of the estate. *Murff*, 615 S.W.2d at 699; *Carle v. Carle*, 149 Tex. 469, 474, 234 S.W.2d 1002, 1005 (1950); *Mandell v. Mandell*, 310 **S.W.3d** 531, 542 (Tex.App.-Fort Worth 2010, pet. denied). "[A] decree that the husband pay all of the wife's attorney's fees may be to award him less of the community estate than that awarded to the wife, but that alone does not condemn it. The attorney's fee is but a factor to be considered by the court in making an equitable division of the estate, considering the conditions and needs of the parties and all the surrounding circumstances." *Carle*, 149 Tex. at 474, 234 S.W.2d at 1005; *see also Tedder v. Gardner Aldrich, LLP,* No. 11-0767, 2013 WL 2150081, at *3-4 (Tex. May 17, 2013). Further, as in its decision to award fees as part of the division, the trial court has broad discretion in determining the amount. *Smith v. Grayson*, No. 03-10-00238-CV, 2011 WL 4924073, at *10 (Tex. App.-Oct. 12, 2011, pet. dism'd) (mem. op.) (citing *Murff*, 615 S.W.2d at 698-99).

Cynthia's trial counsel, George Parker, testified he had been licensed to practice law in Texas since May 1976. He has been board certified in family law since 1985 and practices primarily in Collin County,

Texas. He is familiar with the qualifications of the other attorneys in his firm and the hourly rates that Cynthia contracted to pay in this case. In Parker's opinion, those rates are usual and customary in and around Collin County for the type of work that has been done in the case. Further, the actions taken by counsel on Cynthia's behalf had been necessary.

387 *387 In Parker's opinion, the fees in this case were reasonable. In reaching that opinion, Parker considered that he had been retained late in the case and had to digest a lot of information in a short period of time. Further, there were complicated issues surrounding the partnership interest and there "have been some actions that have occurred through the time I've been representing [Cynthia] that have complicated the property."

Parker testified three legal assistants had worked on the case. One of the legal assistants had been with the firm for approximately twenty-two years and was "certified." A second legal assistant had been with the firm for approximately ten years. In Parker's opinion, the tasks performed by the legal assistants were reasonable and necessary and the hourly rate charged for their work was reasonable and customary in and around Collin County.

Cynthia had incurred attorney's fees of $101,255 and had paid either $23,000 or $25,000 toward that amount. Parker anticipated further work would be necessary to complete the case and estimated another $5,000 in attorney's fees would be incurred by Cynthia. However, in closing argument, Parker indicated Cynthia's attorney's fees were over $115,000, "just to us." The record also demonstrates that counsel was required to perform a significant amount of work on the case after trial.

Daniel argues the evidence is insufficient to support the attorney's fee award because Cynthia's attorney did not introduce evidence that the specific hourly rate charged by each attorney and legal assistant was reasonable. Such specificity, however, is not required. *In re W.M.R.,* No. 02-11-00283-CV, 2012 WL 5356275, at *14 (Tex.App.-Fort Worth Nov. 1, 2012, no pet.) (mem. op.). Instead, "[t]o support a request for reasonable attorney's fees, testimony should be given regarding the hours spent on the case, the nature of preparation, complexity of the case, experience of the attorney, and the prevailing hourly rates." *Hardin v. Hardin*, 161 **S.W.3d** 14, 24 (Tex.App.-Houston [14th Dist.] 2004, no pet.) (citing *Goudeau v. Marquez*, 830 S.W.2d 681, 683 (Tex.App.-Houston [1st Dist.] 1992, no writ)). The trial court does not need to hear evidence on each factor but can "look at the entire record, the evidence presented on reasonableness, the amount in controversy, the common knowledge of the participants as lawyers and judges, and the relative success of the parties." *Hagedorn v. Tisdale*, 73 **S.W.3d** 341, 353 (Tex.App.-Amarillo 2002, no pet.) (citing *Chilton Ins. Co. v. Pate & Pate Enters., Inc.*, 930 S.W.2d 877, 896 (Tex.App.-San Antonio 1996, writ denied)).

Parker's testimony reflected he was familiar with each attorney's and legal assistant's experience and the novelty and difficulty of the issues in this case. In his opinion the hourly rates charged were reasonable and customary for Collin County. *See In re A.S.G.*, 345 **S.W.3d** 443, 451-52 (Tex.App.-San Antonio 2011, no pet.) (attorney's testimony sufficient to support fee award even though she "did not testify to her hourly rate or exact number of hours spent on the case, [but] she did specifically ask for $1,500 in attorney's fees and explained to the trial court their necessity and reasonableness."). We conclude Parker's testimony is a reasonable basis for the award of attorney's fees. *See In re A.B.P.*, 291 **S.W.3d** at 98-99 (concluding attorney's testimony that he believed his fees were reasonable and

necessary, that he was familiar with the customary fees in the community, and that he believed his fees fall within that range was sufficient for attorney's fee award); *In re W.M.R.,* 2012 WL 5356275, at *14.

388 *388 On the record before us, we cannot conclude the trial court abused its discretion by awarding Cynthia a larger share of the "main assets" of the estate in order to compensate her for her attorney's fees.

Other Alleged Valuation Errors

Daniel next contends the trial court erred in valuing the community estate because it failed to make findings of fact as to the value of some assets, improperly valued some of the real estate, improperly valued a model train collection, and included liquidated assets in the property awarded to Daniel without doing so for Cynthia.

No Findings on Value

Daniel first argues the trial court lacked sufficient evidence to divide the marital estate because its findings of fact and conclusions of law omit values for twenty-five assets and debts divided in the decree. As set out above, when the value of an asset is not disputed, the trial court is not required to make a finding of that asset's value. *See* TEX. FAM.CODE ANN. § 6.711(a); *Jackson,* 2011 WL 3373290, at *3. In his brief, Daniel does not argue that any of the listed assets had a disputed value. Accordingly, Daniel has failed to establish that the trial court abused its discretion by failing to make a finding as to those assets' values.

Daniel next asserts the trial court's failure to make a finding as to the value of the parties' 2009 and 2010 tax liability "causes the division of net assets awarded to [Daniel] to be understated." However, as set out above, the amount of the parties' tax liability was undisputed and, therefore, the trial court was not required to make a finding as to the value of the liability. Further, there is nothing in the record to demonstrate the trial court did not consider the undisputed value of the tax liability in making the division of the community estate. *See* *In re S.A.A.*, 279 **S.W.3d** at 857 ("A divorce court also has authority and discretion to impose the entire tax liability of the parties on one spouse."). Finally, a trial court can appropriately assign tax liability to one party or the other without knowing the exact amount of that liability. *See* *Kimsey v. Kimsey*, 965 S.W.2d 690, 695 (Tex.App.-El Paso 1998, pet. denied) (concluding appellate court could not determine whether there was manifest abuse of discretion by trial court in dividing tax liability equally between parties when parties presented no evidence of amount of potential tax liability); *Mullins v. Mullins*, 785 S.W.2d 5, 7-8 (Tex.App.-Fort Worth 1990, no writ) (concluding trial court acted within its discretion in holding husband responsible for potential income tax liability incurred during marriage); *see also* *Young v. Young*, 168 **S.W.3d** 276, 286 (Tex.App.-Dallas 2005, no pet.) (concluding trial court did not err by assigning responsibility for couples' income tax liability to husband where evidence indicated he had failed to report certain income of company found to be husband's alter ego). Consequently, Daniel has not demonstrated the trial court abused its discretion by dividing the community estate without evidence establishing specific amounts for the parties' 2009 and 2010 tax liabilities. *See* *Quijano*, 347 **S.W.3d** at 352.

Daniel also asserts the trial court erred by failing to value the reward miles and points awarded to Cynthia. The trial court awarded to Cynthia (1) the Starwood miles and/or points, (2) the American Express air miles and/or points, and (3) all airline miles and/or points in Cynthia's name. The trial court awarded Daniel all air miles not awarded to Cynthia. In its findings of fact, the trial court determined the
389 following reward miles or points were assets of the community estate: (1) American *389 Airlines miles in Cynthia's name (66,937), (2) Southwest Airlines miles in Cynthia's name (no amount), (3) Starwood points (144,867), (4) American Express Membership points (283,047), (5) Visa Celebrity miles in Cynthia's name (13,201), (6) Visa Edge miles in Cynthia's name (0), (7) Visa Chase miles in Cynthia's and Daniel's names (0), (8) Sears miles in Cynthia's name (23,906), (9) American Airlines miles in Daniel's name (177,461), (10) Southwest Airlines miles in Daniel's name (no amount), (11) Delta Airlines miles in Daniel's name (12,439), (12) Hyatt Points in Daniel's name (0), (13) Hilton Points in Daniel's name (6,436), (14) Marriott Points in Daniel's name (112,709), (15) and Visa Chase Atlas points in Daniel's name (253,010). The first eight categories were awarded to Cynthia and total 531,958 miles and/or points. Categories (9) through (15) were awarded to Daniel and total 565,055 miles and/or points.

The trial court awarded Daniel over fifty percent of the reward miles and/or points and there was no evidence that any particular program was more valuable than another. *See* *Deltuva*, 113 **S.W.3d** at 887; *Sereno,* 2010 WL 5541709, at *2. On this record, Daniel has failed to establish the trial court abused its discretion by not placing a value on the reward miles and/or points awarded to Cynthia.

Daniel finally argues the trial court erred by awarding the contents of Cynthia's safety deposit box to her without evidence of the value of the contents of the box. Cynthia testified the safety deposit box contained her rings and other gifts from Daniel. Neither Cynthia nor Daniel testified about the value of the items in the safety deposit box. Accordingly, Daniel has waived his right to complain of the trial court's lack of information in dividing the contents of the safety deposit box. *Deltuva*, 113 **S.W.3d** at 887; *Sereno,* 2010 WL 5541709, at *2

On this record, we cannot conclude the trial court abused its discretion by failing to make a specific finding of the value of any of the complained-about assets and liabilities.

Real Estate

Daniel contends the trial court overvalued the real estate awarded to him and undervalued the real estate awarded to Cynthia. Daniel specifically complains the tax appraisals relied upon by Cynthia cannot be used to determine the fair market value of real estate and, even if the tax appraisals constituted some evidence of the value of the property, they are factually insufficient to support the trial court's findings.

The trial court awarded the marital residence in Piano to Daniel and a rental property in Richardson to Cynthia. Cynthia offered records from taxing authorities showing the appraised value of the two houses. The trial court initially sustained Daniel's hearsay objections to the records. However, the tax appraisal for the Piano house was admitted into evidence without objection during the cross-examination of Daniel's expert witness and showed a value for the Piano house of $471,754. Cynthia testified without

objection that she used the information from the tax appraisal districts to "at least partially" form the basis for her opinion concerning the value of the properties. Cynthia believed the value of the Piano house was the tax appraised value of $471,754 and the value of the Richardson house was the tax appraised value of $132,970.

Daniel called Russell Nickell, a residential appraiser, to testify about the value of the two houses. In conducting an appraisal, Nickell reviews the tax records and the tax assessments as well as sales of
390 comparable *390 properties. In Nickell's opinion, a tax assessment is generally a lagging indicator of a house's value. However, the taxing authorities are more accurate now than they were historically because the appraisals are done annually. In Nickell's opinion, sometimes the tax assessments are accurate and sometimes they are not accurate. Nickell agreed that the taxing authorities do not always agree with his appraisals.

Nickell used a sales comparison approach to appraise the two houses. According to Nickell, the Piano house's value is $418,000 and the Richardson house's value is $166,000. In conducting his analysis, Nickell gave the Piano house a fair to average rating. If, however, the house was in average condition, the value could increase by $50,000. Nickell agreed the Piano house was not in a condition to "show" at the time he appraised it.

In its findings of fact, the trial court valued the Piano house at $471,754 and the Richardson house at $132,970. Relying on *Kuehn v. Kuehn*, 594 S.W.2d 158 (Tex. App.-Houston [14th Dist.] 1980, no writ), Daniel asserts the evidence is insufficient to support the trial court's findings.

In *Kuehn,* the Houston Fourteenth Court of Appeals concluded the value placed on real estate for taxation purposes without the participation of the owner could not be used to determine the fair market value of the property. *Id.* at 161. The court based its opinion on the fact the appraisals were hearsay and could not support a finding of fact. *Id.* (citing *Perkins v. Springstun*, 557 S.W.2d 343, 345 (Tex.Civ.App.-Austin 1977, writ ref'd n.r.e.) (hearsay evidence admitted without objection has no probative value)). However, both *Kuehn* and *Perkins* were decided before the adoption of the Texas Rules of Evidence. Rule of evidence 802 now provides that unobjected-to hearsay shall not be denied probative value merely because it is hearsay. TEX.R. EVID. 802; *see also City of Keller*, 168 **S.W.3d** at 812 n. 29. Here, the tax appraisal for the Piano house and Cynthia's testimony about the tax appraisal for both houses was admitted without objection and, therefore, could constitute some probative evidence on which the trial court could have relied. *See Smith*, 2011 WL 4924073, at *11.

Further, this is not a case in which the only evidence supporting the trial court's finding is the tax appraisal. An owner may testify about the market value of her property. *Gulf States Util. Co. v. Low*, 79 **S.W.3d** 561, 566 (Tex.2002); *Porras v. Craig*, 675 S.W.2d 503, 504-05 (Tex. 1984). For several years, Cynthia had been engaged in "flipping" houses, which involved buying, remodeling, and then selling a house. She had bought and sold approximately eight houses. Although she relied, in part, on the tax appraisals in reaching an opinion as to the value of the two houses at issue, she was familiar with the market value of houses in the area and was qualified to express her opinion concerning the value of those houses.

Daniel also argues that, in the face of Nickell's testimony, the evidence of the tax appraisals on the

houses is factually insufficient to support the trial court's findings. The value of a community asset on which there is disputed evidence is a question of fact. *See* TEX. FAM.CODE ANN. § 6.711(a)(2). As the trier of fact, it was role of the trial court to judge the credibility of the witnesses, weigh the testimony, accept or reject any testimony, and resolve conflicts in the evidence. *Dewalt v. Dewalt,* No. 14-06-00938-CV, 2008 WL 1747481, at *2 (Tex.App.-Houston [14th Dist.] Apr. 17, 2008, no pet.) (mem. op.)
391 (citing *City of Keller*, 168 **S.W.3d** at 819); *391 *see also Murff*, 615 S.W.2d at 700. We "will not disturb a trial court's resolution of conflicting evidence that turns on the credibility or weight of the evidence." *Ennis v. Loiseau*, 164 **S.W.3d** 698, 706 (Tex. App.-Austin 2005, no pet.) (citing *Benoit v. Wilson*, 150 Tex. 273, 281, 239 S.W.2d 792, 796 (Tex.1951)). As long as the evidence falls "within [the] zone of reasonable disagreement," we cannot substitute our judgment for that of the fact finder. *See City of Keller*, 168 **S.W.3d** at 822.

The trial court heard the conflicting opinions on the value of the houses, rejected Nickell's opinion, and accepted Cynthia's opinion of the value of both houses. On the record before us, we conclude that the evidence of the houses' values was legally and factually sufficient, and in light of the broad discretion vested in the trial court in dividing the property of parties in a divorce, we cannot say that the trial court abused its discretion in its valuation of the Piano and Richardson houses. *See id.; Smith*, 2011 WL 4924073, at *11.

Train Collection

Daniel next contends the trial court's valuation of a model train collection was improperly based on acquisition value. Cynthia testified that Daniel budgeted $200 per month for the purchase of trains during the entire marriage. Daniel testified he did not spend his entire budget every month purchasing trains. He also testified that part of the collection had been sold for $1,700, but offered no other evidence of the collection's value. The trial court valued the collection at $8,800. Because Daniel failed to offer any evidence of the train collection's value, he waived his right to complain on appeal about the trial court's valuation of the property. *Deltuva*, 113 **S.W.3d** at 887; *Sereno,* 2010 WL 5541709, at *2

Liquidated Assets

Daniel also complains the trial court "recaptured" assets that Daniel liquidated by awarding them to Daniel without doing the same for assets that Cynthia liquidated. According to Daniel, Cynthia operated on a cash basis in 2009 and withdrew a large amount of money from the joint bank account and from a retirement fund. Cynthia admitted she made cash withdrawals from the joint bank account in 2009, but testified the money was used to purchase and repair two houses and that she provided invoices to support the withdrawals. After one of the houses was sold, she used the sales proceeds to pay community debt incurred to rehabilitate the property and then placed the remaining funds into the joint bank account. The other house remained a community asset. Cynthia testified that, at some point in the divorce proceedings, she was "strongly encouraged" by the trial court to withdraw money from a retirement account to pay her attorney's fees. She also withdrew money from community accounts in 2010 to pay her living expenses after Daniel stopped transferring money into the joint bank account and canceled her credit cards. Cynthia denied liquidating any other community assets.

Trial began on April 18, 2011 and was recessed until June 29, 2011. In violation of the trial court's standing order, Daniel liquidated a number of assets, including bank stock warrants, antique cars, part of the model train collection, and part of a retirement account shortly before trial recommenced. Some of the cars were sold to Daniel's friends and family members and some were sold at a loss. Further, in Cynthia's opinion, the bank stock warrants would have been much more valuable in the future than they were when Daniel sold them. Daniel admitted the trial court had not given him permission to liquidate
392 *392 any of the assets. Daniel testified that he used the money to pay attorney's fees, repay loans from his brothers, pay the taxes owed due to the parties' withdrawals from retirement accounts, and for living expenses. Daniel admitted he "missed" that at least some taxes had already been withheld when Cynthia withdrew money from one of the retirement funds. Further, some of the attorney's fees paid by Daniel were incurred pursuing Daniel's claims against GP Holdings. The trial court awarded any remaining community interest in the assets liquidated by Daniel to Daniel.

The trial court heard evidence that the only assets liquidated by Cynthia were to pay her living expenses and, at the trial court's encouragement, her attorney fees. Daniel, on the other hand, admitted to having liquidated a number of assets during trial without the trial court's permission, did not establish the assets were sold for market value, and did not fully account for the proceeds from the sales. On this record, we cannot conclude that trial court abused its discretion by awarding the assets liquidated by Daniel to him. *See* *Schlueter*, 975 S.W.2d at 588 (noting one spouse should not suffer just because other spouse has depleted the community estate).

Adultery

Daniel next contends the trial court's finding of adultery does not support a disproportionate division of property because his relationship with Alvarez began after the parties separated and did not constitute fault that caused the breakup of the marriage. As we set out above, adultery does not have to occur pre-separation for it to be a ground for granting a divorce. *See* *Ayala*, 387 **S.W.3d** at 732; *Bell*, 540 S.W.2d at 435. Generally, in a fault-based divorce, the trial court may consider the conduct of the errant spouse in making a disproportionate distribution of the marital estate. *See* *Young v. Young*, 609 S.W.2d 758, 761-62 (Tex.1980); *Ohendalski v. Ohendalski*, 203 **S.W.3d** 910, 914 (Tex.App.-Beaumont 2006, no pet.). Accordingly, the trial court's finding of adultery can support the disproportionate division of the community property.

Unreasonable Division of Property

Daniel next complains the trial court's disproportionate award to Cynthia is not supported by the applicable factors. A trial court may consider various factors in making a property division. *See* *Murff*, 615 S.W.2d at 699. In its findings of fact, the trial court stated that, in dividing the marital property, it considered: (1) fault in the breakup of the marriage, (2) fraud on the community, (3) benefits the innocent spouse may have derived from the continuation of the marriage, (4) disparity of earning power of the spouses and their ability to support themselves, (5) health of the spouses, (6) education and future employability of the spouses, (7) community indebtedness and liabilities, (8) tax consequences of the division of property, (9) ages of the spouses, (10) earning power, business opportunities, capacities

and abilities of the spouses, (11) nature of the property involved in the division, (12) wasting of community assets by the spouses, (13) credit for temporary support paid by a spouse, (14) misconduct, including violation of the court's standing order, (15) attorney's fees to be paid, (16) the size and nature of the separate estates of the spouses, and (17) creation of community property by the efforts or lack thereof of the spouses.

This record establishes a number of circumstances that justify awarding a disproportionate share of the
393 community estate to Cynthia. First, a disparity in the financial condition and earning capacities *393 of the parties is an important factor in dividing their estate. *Murff*, 615 S.W.2d at 699; *Phillips v. Phillips*, 75 **S.W.3d** 564, 574 (Tex.App.-Beaumont 2002, no pet.). Cynthia has a bachelor's degree in marketing and, when she married Daniel, was a marketing manager at Sprint. Daniel had bachelor's degrees in accounting and finance and economics and a master's degree in accounting. In 1998, Daniel started his own consulting business and, in October 2001, Cynthia accepted a severance package from Sprint and began working as an "administrative arm" of Daniel's business. Daniel's business subsequently merged into GP Holdings and, as the business became more successful, Cynthia's services were no longer needed. In 2008, Daniel earned more than $600,000 from the partnership.

Although Daniel testified at trial that his business reputation had been tarnished and he was unable to obtain any clients, he testified at his deposition that he was confident he would have a number of clients as soon as a covenant not to compete with Atlas Service Link expired. Further, in the Fall of 2010, Daniel began performing work as a consultant through Intel McAfee. Daniel grossed approximately $145,000 in 2010 and had grossed between $60,000 and $80,000 during the first half of 2011. Daniel agreed that he also formed a new business entity in April 2010 and performed some consulting work through that entity. Although he failed to provide information on that entity through discovery, he claimed all money he had been paid was deposited into his checking account and that he produced that information in discovery.

By 2009, Cynthia was engaged in flipping houses. However, she was prevented from pursuing this career in 2010 due to Daniel's ceasing to provide support and cancelling her credit cards. Cynthia testified she never made more than $80,000 per year flipping houses. According to Cynthia, she "stunted the growth" of her company and her career to assist Daniel in building his company. Daniel then lost his company due to "his bad behavior," and Daniel's "bad financial decisions" were affecting Cynthia. Cynthia believed Daniel had greater earning potential than she did and that she did not have the same ability as Daniel to pay her debt. Cynthia asked to be made as "liquid" as possible so that she could resume flipping houses and have assets with which to pay her living expenses.

Second, the trial court could consider fault in the breakup of the marriage in dividing the community estate. *Young*, 609 S.W.2d at 762. Cynthia testified that, even though she moved out of the marital home, she hoped the parties would reconcile. She sought counseling to assist her and invited Daniel to attend. Daniel did not meaningfully participate in counseling, and the counselor ultimately told Cynthia the marriage was a "lost cause." In June 2009, Cynthia began to suspect Daniel was committing adultery. In September 2009, Cynthia saw a woman's underwear in the master bedroom of the marital home, and a private investigator filmed Daniel and Alvarez kissing and hugging at an airport. Daniel, however, represented to the trial court that his relationship with Alvarez did not begin until later, a statement the trial court could have found not to be credible.

Third, a court may consider one spouse's wrongful dissipation of community assets when dividing a marital estate. *See* *Schlueter*, 975 S.W.2d at 588-89. Throughout 2010, Daniel expended community assets on trips to see Alvarez in Milwaukee, on trips with Alvarez to the Bahamas and to Europe, and on
394 gifts to Alvarez. Daniel testified that Alvarez reimbursed him for the gifts and that many *394 of the trips to Milwaukee and to Europe were related to seeking work and were often reimbursed. Cynthia, however, testified that she would receive none of the benefit for expenditures that Daniel made to look for work and to build relationships for future work. Daniel also sold a number of community assets after the trial started, some to friends and family. It was unclear whether the assets were sold for fair market value, and Daniel did not fully account for the proceeds from the sales.

Fourth, the trial court could consider misconduct during the divorce proceedings. There was evidence Daniel sold community assets in violation of the trial court's standing order. Further, Cynthia attempted to depose Daniel during the divorce proceedings. Daniel canceled the first deposition on the day it was scheduled, claiming he was too ill to attend. However, Alvarez flew to Dallas later that day and spent the weekend with Daniel at various places in Dallas and Fort Worth. Daniel's second deposition was scheduled on a Monday. He canceled the deposition on the previous Friday, again claiming he was too ill to attend. Daniel, however, flew to Milwaukee that weekend and did not return to Dallas until after the time his deposition was scheduled to begin. Cynthia testified she incurred attorney's fees due to Daniel's actions.

Finally, a court may consider payments made to attorneys from the community estate. *Roever v. Roever*, 824 S.W.2d 674, 676 (Tex.App.-Dallas 1992, no writ). Both parties had paid attorney's fees from community assets. However, Cynthia received permission from the trial court to liquidate community assets to pay the fees, while Daniel did not. There was also evidence that Daniel spent community funds on attorney's fees to pursue a claim against his former partnership. Finally, Cynthia testified that she incurred fees due to Daniel's conduct during the divorce proceedings, including Daniel's failure to appear at scheduled depositions and failure to completely respond to Cynthia's discovery requests.

On this record, we cannot conclude the trial court abused its discretion by making a disproportionate award of the marital property to Cynthia.

Casteel-Type Error

Daniel next argues the trial court committed *Casteel*-type error by weighing factors in the property division for which there was no supporting evidence or pleadings. Daniel specifically asserts that Cynthia did not plead that a disproportionate division of the property was justified based on fraud on the community, health of the spouses, and the ages of the spouses.

The supreme court has held that reversible error is presumed when a broad-form question submitted to the jury incorporates multiple theories of liability and one or more of those theories is invalid, *Crown Life Ins. Co. v. Casteel*, 22 **S.W.3d** 378, 388 (Tex.2000), or when the broad-form question commingles damage elements that are unsupported by legally sufficient evidence, *Harris Cnty. v. Smith*, 96 **S.W.3d**

230, 233-34 (Tex.2002). *See also* *Thota v. Young*, 366 **S.W.3d** 678, 680 (Tex.2012). Without deciding whether *Casteel* or *Harris County* is applicable to a trial court's application of relevant factors in determining the division of a marital estate, we note the San Antonio Court of Appeals has concluded that in order to preserve *Casteel*-type error in a bench trial, the party must request additional or amended findings of fact that specifically draw the trial court's attention to the complaint that one of the elements of damages included in the trial court's broad-form finding was unsupported by the evidence.
395 *Tagle v. Galvan*, *395 155 **S.W.3d** 510, 516 (Tex.App.-San Antonio 2004, no pet.); *see also* *Miranda v. Byles*, 390 **S.W.3d** 543, 552 (Tex.App.-Houston [1st Dist.] 2012, pet. filed) (op. on reh'g) (to preserve error in bench trial, party must request additional findings of fact and conclusions of law asking for detailed apportionment of findings between permissible and impermissible bases for liability). We have concluded that Daniel failed to timely request additional findings of fact from the trial court. Accordingly, Daniel has failed to preserve this complaint for our review. *See* *Tagle*, 155 **S.W.3d** at 516.

Failure to Divide and Award Unliquidated Assets

Daniel next complains the trial court failed to divide the community's interest in GP Holdings that exceeded the money in the capital account. However, the trial court awarded Cynthia:

> One Hundred percent (100%) of the community interest in and to GP Holdings Partnership, a Texas general partnership, including, but not limited to any community interest in and to Atlas Service Link, LLC, or the transmutations, if any, of said partnership or said LLC, including but not limited to, any capital account held by said partnership or said LLC in the name of or for the benefit of Daniel P. Silvey, valuing said capital account as it existed as the time of the failed mediation on October 18, 2010.

We conclude the trial court awarded Cynthia all the community interest in the partnership.

Punitive Division

Daniel argues the property division is punitive and unjust and that punishing him for refusing to settle his claim against the partnership is an impermissible basis for the property division. In support of his argument, Daniel relies only on the trial court's valuing the capital account as of the time of the mediation. As discussed above, the trial court did not abuse its discretion by relying on evidence from the time of the mediation to value the capital account. Further, we see nothing in the record that indicates the trial court's property division was based solely on Daniel's refusal to settle his claim against the partnership. We conclude Daniel failed to establish the trial court's division of the property was punitive. *See* *Halleman v. Halleman*, 379 **S.W.3d** 443, 453 (Tex.App.-Fort Worth 2012, no pet.) (overruling appellant's complaint trial court used property division to punish her because reasonable basis supported disproportionate property division).

Cumulative Error

Daniel finally argues the trial court's cumulative errors in making the property division require reversal. Based on this record, we have concluded the trial court did not err in dividing the marital property. Accordingly, there is no cumulative error that would require reversal of the property division.

Conclusion

The trial court had "the opportunity to observe the parties on the witness stand, determine their credibility, evaluate their needs and potentials, both social and economic." *Murff,* 615 S.W.2d at 700. We conclude the record contains evidence of a substantive and probative character to support the trial court's division of the community property. Further, based on the record before us, we cannot say that the trial court either clearly abused its discretion or made an inequitable division of marital assets.[6] Therefore, we will not *396 disturb the trial court's judgment regarding the property division. We resolve Daniel's first issue against him.

396

We affirm the trial court's judgment.

[1] Justice Mary Murphy was on the panel and participated at the submission of this case but, due to her retirement from this Court on June 7, 2013, did not participate in the issuance of this Opinion. *See* TEX.R.APP. P. 41.1(a), (b).

[2] Daniel's complaints are directed toward the findings of fact and conclusions of law made by the trial court on November 14, 2011. Daniel does not complain about the trial court's failure to enter findings of fact and conclusions of law after the amended divorce decree was signed on January 26, 2012. Further, in his February 16, 2012 request for findings of fact and conclusions of law filed after the amended judgment, Daniel did not request specified additional findings and, therefore, failed to meet the requirements for a request for additional findings. *See* TEX.R. CIV. P. 298; *Heard v. City of Dallas,* 456 S.W.2d 440, 445 (Tex.Civ.App.-Dallas, 1970, writ ref'd n.r.e.) (op. on reh'g); *Vickery v. Comm'n for Lawyer Discipline,* 5 **S.W.3d** 241, 255-56 (Tex.App.-Houston [14th Dist.] 1999, pet. denied)

[3] *See Goodfellow v. Goodfellow,* No. 03-01-00633-CV, 2002 WL 31769028, at *8 (Tex. App.-Austin, Dec. 12, 2002, no pet.) (not designated for publication).

[4] Cynthia initially requested she be awarded $658,000 from the capital account. The trial court found Cynthia had outstanding attorney's fees of $164,028.92. Therefore, Daniel contends, the total amount that could have been awarded to Cynthia from the capital account was $822,000. However, Cynthia testified she had also paid attorney's fees to both her former and trial counsel and requested the trial court order Daniel to pay those fees as well. *See Grossnickle,* 935 S.W.2d at 847 (prior payments out of the community estate to attorneys in the divorce action are to be taken into account in the division of the marital estate); *see also Tucker v. Tucker,* No. 13-11-00056-CV, 2013 WL 268937, at *11 (Tex.App.-Corpus Christi Jan. 24, 2013, no pet. h.) (memo. op).

[5] The trial court found that Cynthia owed $44,038.92 to her former attorney, who had intervened in the divorce proceeding seeking the unpaid fees, and $120,000 to her trial attorney. On appeal, Daniel has complained only about the finding that Cynthia owed $120,000 to her trial attorney.

[6] Because we review each case on its merits, the division of marital estates in other cases does not control our disposition of Daniel's issues. However, we note that similar divisions of marital estates have been upheld on appeal in similar circumstances. *See Rafidi v. Rafidi,* 718 S.W.2d 43, 45-46 (Tex.App.-Dallas 1986, no writ) (85-90% of marital estate to wife); *Morrison v. Morrison,* 713 S.W.2d 377, 379 (Tex.App.-Dallas 1986, writ dism'd) (83.5%); *Ohendalski,* 203 **S.W.3d** at 914-15(81%); *Faram v. Gervitz-Faram,* 895 S.W.2d 839, 844 (Tex.App.-Fort Worth 1995, no pet.) (72.9%); *Golias v. Golias,* 861 S.W.2d 401, 403 (Tex.App.-Beaumont 1993, no writ) (79%); *Oliver v. Oliver,* 741 S.W.2d 225, 228-29 (Tex.App.-Fort Worth 1987, no writ) (80%); *Huls v. Huls,* 616 S.W.2d 312, 317-18 (Tex.Civ.App.-Houston [1st Dist.] 1981, no writ) (85%).

405 S.W.3d 373 (2013)

In the Matter of the MARRIAGE OF C.A.S. AND D.P.S.

No. 05-11-01338-CV.

Court of Appeals of Texas, Dallas.

June 26, 2013.
Rehearing Dismissed August 6, 2013.

378 *378 Bruce K. Thomas, Law Office of Bruce K. Thomas, Dallas, TX, for Appellant.

Georganna L. Simpson, Dallas, TX, George Parker, McKinney, TX, Steven Morris, Charlottesville, VA, for Appellee.

Rebecca Ann Tillery, Dallas, TX, for Intervenor.

Before Justices LANG-MIERS and FILLMORE.[1]

379 *379 **OPINION**

Opinion by Justice FILLMORE.

Daniel Silvey (Daniel) appeals from a divorce decree dissolving the marriage between him and Cynthia Silvey (Cynthia). In three issues, Daniel argues the trial court erred in dividing the marital property, by granting the divorce on fault grounds, and by failing to make sufficient findings of fact. We affirm the trial court's judgment.

Background

Daniel and Cynthia married in 1999 and separated on March 23, 2009 when Cynthia moved out of the marital home. Cynthia filed for divorce in August 2009 alleging irreconcilable differences but, shortly before trial, filed an amended petition asserting Daniel had committed adultery and seeking a disproportionate share of the community estate. The property division issues were tried to the bench over the course of four nonconsecutive days between April and July 2011.

On July 6, 2011, the trial court sent a letter to the parties stating the divorce was granted on fault grounds and setting out the division of the marital property. On July 22, 2011, Daniel filed a request for findings of fact and conclusions of law pursuant to rules of civil procedure 296 and 297 and, on August 1, 2011, filed a supplemental request for findings of fact and conclusions of law pursuant to section 6.711 of the family code. Daniel filed a motion for new trial on August 5, 2011, a notice of past due findings of fact and conclusions of law on August 12, 2011, and a notice of appeal on October 3, 2011.

On October 13, 2011, the trial court signed a final decree of divorce that specifically divided certain of the community assets and liabilities and ordered that any of the community assets not specifically divided would be divided through alternate selection by Cynthia and Daniel. On November 14, 2011, the trial court made findings of fact and conclusions of law pursuant to section 6.711 of the family code and rules of civil procedure 296 and 297. The trial court found that Daniel had committed adultery and that the divorce was granted on that basis. The trial court also found that Daniel "made a game of this divorce. On the surface it appears that he has made a game of the dissolution of his business, and such conduct on his part constitutes a `mockery of the judicial system.'" The trial court valued a number of the specifically divided assets, as well as some of the assets that were to be divided by alternate selection. Our review of the trial court's findings indicates the marital assets that were specifically divided and valued by the trial court equal $1,646,683.10. Cynthia was awarded $1,334,958.10, or eighty-one percent, of these assets, and Daniel was awarded $311,735.00, or nineteen percent, of these assets. The trial court also listed the factors it considered in making a just and right division of the community estate.

On December 12, 2011, Daniel requested the trial court make additional findings, asserting his counsel had not been notified of the trial court's findings of fact and conclusions of law until December 3, 2011. Daniel specifically requested the trial court make findings as to:

> A. Whether adultery of [Daniel] was at fault for causing the break up of the parties' marriage.
>
> B. Whether the marriage became insupportable because of discord or conflict of personalities that destroyed the legitimate ends of the marital relationship and prevented any reasonable expectation of reconciliation.

380 *380 C. Whether any conduct of [Daniel] as alleged in paragraph 9 of [Cynthia's] Second Amended Petition for Divorce supports the award of a disproportionate share of the community estate in favor of Cynthia.

Daniel specifically requested nineteen additional findings relating to these three subjects.

On January 26, 2012, the trial court signed an amended decree of divorce that did not change the division of community property, but awarded Daniel certain property as his separate property. On February 15, 2012, Daniel again requested findings of fact and conclusions of law and, on March 14, 2012, filed a notice of past due findings of fact and conclusions of law. The trial court did not make any additional findings or conclusions.

Findings of Fact and Conclusions of Law

In his third issue, Daniel contends the trial court erred by failing to make sufficient findings of fact, by failing to timely mail its findings to counsel, and by failing to make additional findings.[2]

Daniel first asserts the trial court's findings failed to comply with section 6.711(a) of the family code because the findings "omit evaluation findings for a third of the items divided in the decree, including

significantly, [Daniel's] tax liability." Daniel's brief contains no further argument pertinent to this complaint, and we question whether it had been adequately briefed. *See* TEX.R.APP. P. 38.1(h), (i). However, we will address the complaint as to the tax liability, the only specific asset or liability raised by Daniel on appeal.

Section 6.711(a) of the family code provides that in a suit for dissolution of marriage, on request by a party, the court shall state in writing its findings of fact and conclusions of law concerning (1) the characterization of each party's assets, liabilities, claims, and offsets on which disputed evidence has been presented, and (2) the value or amount of the community estate's assets, liabilities, claims, and offsets on which disputed evidence has been presented. TEX. FAM.CODE ANN. § 6.711(a) (West 2006). The trial court apportioned the parties' 2009 and 2010 tax liability to Daniel. As to the tax liability, Daniel testified he estimated the tax liability for 2009 was $40,000 and for 2010 was $20,000. Cynthia testified she had been told there was a tax debt for 2009 and 2010, but had not been provided any documents to substantiate that claim. Based on the check register, Cynthia believed $240,000 had been paid toward the 2009 tax liability and that there was an additional $75,000 credit carried forward from the 2008 tax return to be applied to the 2009 tax liability. Daniel agreed that approximately $300,000 had been paid toward the 2009 tax liability. Because the amount of the tax liability was undisputed, the trial court was not required to make a finding as to the amount. *See* TEX. FAM.CODE
381 ANN. § 6.711(a); *Jackson v. Jackson,* No. 03-10-00736-CV, 2011 *381 WL 3373290, at *3 (Tex.App.-Austin Aug. 3, 2011, no pet.) (mem. op.).

Daniel next contends the trial court erred by failing to timely mail its November 14, 2011 findings to Daniel's counsel and by failing to make additional findings as requested by Daniel on December 12, 2011. Daniel argues the original findings fail to (1) state whether the trial court found that adultery caused the dissolution of the marriage or related to pre-or post-separation conduct, (2) state the basis for the trial court's award to Cynthia of more property than she requested, and (3) contained no explanation for the trial court's "harsh rebuke" that Daniel had made a game of the divorce and the dissolution of his business and that his conduct constituted a "mockery of our judicial system." Daniel asserts he is "left guessing" as to the basis for the trial court's ruling and cannot adequately address the findings on appeal. Daniel's complaints necessarily relate to the trial court's failure to make additional findings pursuant to rule of civil procedure 298. *See* *Moore v. Moore*, 383 **S.W.3d** 190, 200-01 (Tex.App.-Dallas 2012, pet. denied) (recognizing distinction between findings of fact under section 6.711 of the family code and findings of fact under rules of civil procedure).

Rule of civil procedure 298 provides that, after a trial court files original findings of fact and conclusions of law, "any party may file with the clerk of the court a request for specified additional or amended findings or conclusions. The request for these findings shall be made within ten days after the filing of the original findings and conclusions by the court." TEX.R. CIV. P. 298. When a party makes an untimely request for additional findings and conclusions, the party waives the right to complain on appeal of the trial court's refusal to enter the additional findings or conclusions. *Edgewater Seed Market v. Magnolia Indep. Sch. Dist.,* No. 11-07-00136-CV, 2008 WL 4512851, at *2 (Tex.App.-Eastland Oct. 9, 2008, no pet.) (mem. op.); *Cities Servs. Co. v. Ellison*, 698 S.W.2d 387, 390 (Tex.App.-Houston [14th Dist.] 1985, writ ref'd n.r.e.). In this case, Daniel failed to file his request for additional findings of fact and conclusions of law within ten days after the trial court signed the original findings of

fact and conclusions of law. Although Daniel claims he was prevented from making a timely request for additional findings by the trial court's failure to provide timely notice of the filing of the findings of fact and conclusions of law, he did not obtain a ruling from the trial court as to the date he received notice. *See* TEX.R. CIV. P. 306a; *Florance v. State*, 352 **S.W.3d** 867, 873 (Tex.App.-Dallas 2011, no pet.). Other than Daniel's contention in his request for the additional findings that he had not received notice of the original findings, the record is silent as to when either Daniel or his counsel was notified of the filing of the findings and conclusions.

Daniel had the burden to preserve any error in the trial court. *See* TEX.R.APP. P. 33.1(a). His recitation in his request for additional findings and in his brief that he did not receive notice of the findings of fact and conclusions of law is not sufficient to preserve error.[3] We cannot conclude Daniel preserved his right to complain on appeal about the trial court's failure to make the additional findings.

Further, even if Daniel had preserved this issue for appeal, we conclude he has not shown the trial
382 court abused its discretion by failing to enter the requested additional findings. Additional findings *382 are not required if the original findings and conclusions properly and succinctly relate the ultimate findings of fact and conclusions of law necessary to apprise the party of information adequate for the preparation of the party's appeal. *Pakdimounivong v. City of Arlington*, 219 **S.W.3d** 401, 412 (Tex.App.-Fort Worth 2006, pet. denied). An ultimate fact is one that would have a direct effect on the judgment. *Id.* There is no reversible error if the refusal to file additional findings does not prevent a party from adequately presenting an argument on appeal. *Id.* The controlling issue is whether the circumstances of the particular case require the party to guess at the reasons for the trial court's decision. *White v. Harris-White*, No. 01-07-00521-CV, 2009 WL 1493015, at *6 (Tex.App.-Houston [1st Dist.] May 28, 2009, pet. denied) (mem. op. on reh'g).

The ultimate issue in this case is the just and right division of the estate. *See id.* at *5. The trial court divided the marital property and made findings of fact and conclusions of law involving the court's jurisdiction over the parties, the assets and liabilities of the marital estate, Daniel's adultery, Daniel's conduct during the litigation, and other factors the trial court considered in determining a just and right division of the estate. The additional findings requested by Daniel related to (1) whether Daniel's adultery was at fault in the breakup of the marriage, and (2) the factors the trial court considered in dividing the community estate. However, the trial court had already granted the divorce based on fault and found that Daniel had committed adultery. Further, the trial court was not required to make findings regarding the factors it considered in dividing the estate. *See Wallace v. Wallace*, 623 S.W.2d 723, 726 (Tex.Civ.App.-Houston [1st Dist.] 1981, writ dism'd).

We conclude the trial court's findings of fact and conclusions of law are sufficiently specific to allow Daniel to present his complaints on appeal and, accordingly, Daniel was not harmed by the trial court's failure to make the requested additional findings. We resolve Daniel's third issue against him.

Standard of Review

In his first and second issues, Daniel argues the trial court erred in the division of the marital estate and by granting the divorce on fault grounds. We review both of these issues under an abuse of discretion

standard. *See In re A.B.P.*, 291 **S.W.3d** 91, 95 (Tex.App.-Dallas 2009, no pet.) (most appealable issues in family law cases are evaluated for abuse of discretion). A trial court abuses its discretion when it acts arbitrarily or unreasonably, or without any reference to guiding rules and principles. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex.1990); *see also Gonzalez v. Gonzalez*, 331 **S.W.3d** 864, 866 (Tex.App.-Dallas 2011, no pet).

A trial court's findings are reviewable for legal and factual sufficiency of the evidence under the same standards that are applied in reviewing evidence supporting a jury's answer. *Moroch v. Collins*, 174 **S.W.3d** 849, 857 (Tex.App.-Dallas 2005, pet. denied). In evaluating a legal sufficiency challenge, we credit evidence that supports the finding if a reasonable fact finder could, and disregard contrary evidence unless a reasonable fact finder could not. *City of Keller v. Wilson*, 168 **S.W.3d** 802, 827 (Tex.2005); *Newberry v. Newberry*, 351 **S.W.3d** 552, 555 (Tex.App.-El Paso 2011, no pet.). The test for legal sufficiency is "whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review." *City of Keller*, 168 **S.W.3d** at 827. In a factual sufficiency review, we
383 examine all the evidence *383 in the record, both supporting and contrary to the trial court's finding, and reverse only if the finding is so against the great weight of the evidence as to be clearly wrong and unjust. *Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex.1996) (per curiam); *Newberry*, 351 **S.W.3d** at 555-56.

In family law cases, legal and factual sufficiency challenges do not constitute independent grounds for asserting error, but are relevant factors in determining whether the trial court abused its discretion. *Moore*, 383 **S.W.3d** at 198. To determine whether the trial court abused its discretion because the evidence is legally or factually insufficient to support the trial court's decision, we consider whether the trial court (1) had sufficient evidence upon which to exercise its discretion, and (2) erred in its application of that discretion. *Moroch*, 174 **S.W.3d** at 857. We conduct the applicable sufficiency review when considering the first prong of the test. *Id.* We then determine whether, based on the elicited evidence, the trial court made a reasonable decision. *Id.* A trial court does not abuse its discretion if there is some evidence of a substantive and probative character to support the decision. *Id.*

Fault

In his second issue, Daniel argues the trial court erred by granting the divorce on fault grounds because the evidence is legally and factually insufficient to establish adultery caused the marriage to fail. A trial court "may grant a divorce in favor of one spouse if the other spouse has committed adultery." TEX. FAM.CODE ANN. § 6.003 (West 2006). Adultery means the "voluntary sexual intercourse of a married person with one not the spouse." *In re S.A.A.*, 279 **S.W.3d** 853, 856 (Tex.App.-Dallas 2009, no pet.); *see also Ayala v. Ayala*, 387 **S.W.3d** 721, 733 (Tex.App.-Houston [1st Dist.] 2011, no pet.). Adultery is not limited to actions committed before the parties separated. *Ayala*, 387 **S.W.3d** at 733; *Bell v. Bell*, 540 S.W.2d 432, 435 (Tex.Civ.App.-Houston [1st Dist.] 1976, no writ). Adultery can be shown by direct or circumstantial evidence. *In re S.A.A.*, 279 **S.W.3d** at 856; *Newberry*, 351 **S.W.3d** at 556. However, there must be clear and positive proof and mere suggestion and innuendo are insufficient. *In re S.A.A.*, 279 **S.W.3d** at 856.

Cynthia testified that, after she moved out of the marital residence, she hoped that she and Daniel would reconcile and she asked Daniel to participate in counseling. However, Daniel failed to participate

meaningfully in counseling, and the counselor eventually told Cynthia the marriage was a "lost cause." In June 2009, Cynthia began to suspect that Daniel had committed adultery.

Daniel admitted that he began a personal relationship with Maria Alvarez at the "end of November-December time frame," but "it wasn't until either the last day of January or February when I actually went to visit and — for the first time in 2010, and I wanted to date her at that point." However, in September 2009, Cynthia found a woman's underwear and suitcase in the master bedroom of the marital home. Also in September 2009, a private investigator filmed Daniel and Alvarez kissing and hugging at an airport. In 2010, Daniel and Alvarez spent a number of weekends and took several trips together. Further, although Daniel testified Alvarez later reimbursed him, Daniel also bought Alvarez several expensive gifts.

Although there was conflicting evidence about when the relationship began, Daniel's relationship with Alvarez was undisputed. Accordingly, the evidence is both legally and factually sufficient to support the
384 trial court's finding that Daniel *384 committed adultery, and the trial court did not abuse its discretion by granting the divorce on fault grounds. We resolve Daniel's second issue against him.

Property Division

In his first issue, Daniel asserts the trial court erred in dividing the marital estate because it lacked sufficient valuation evidence to make an equitable and reasonable division. Daniel specifically complains the trial court (1) improperly valued the major asset of the estate, (2) lacked sufficient evidence of Cynthia's attorney's fees, (3) failed to value one-third of the assets and debts divided in the decree, (4) improperly valued the real estate and other assets, (5) awarded to Daniel assets that he liquidated, but did not award Cynthia assets that she liquidated, (6) awarded a grossly disproportionate division to Cynthia without a reasonable basis, (7) considered factors in its division that were not pleaded and for which there was no evidence, (8) failed to include unliquidated claims in its division, and (9) made a punitive division of the property.

In a divorce decree, the trial court shall order a division of the parties' estate in a manner that the court deems just and right, having due regard for the rights of each party. TEX. FAM.CODE ANN. § 7.001 (West 2006). The trial court is afforded broad discretion in dividing the community estate, and we must indulge every reasonable presumption in favor of the trial court's proper exercise of its discretion. *Schlueter v. Schlueter*, 975 S.W.2d 584, 589 (Tex.1998); *Murff v. Murff*, 615 S.W.2d 696, 698 (Tex.1981); *Motley v. Motley*, 390 **S.W.3d** 689, 695 (Tex.App.-Dallas 2012, no pet.).

The property division need not be equal, and a trial court may consider many factors when exercising its broad discretion to divide the marital property. *Murff*, 615 S.W.2d at 699; *Barras v. Barras*, 396 **S.W.3d** 154, 163 (Tex.App.-Houston [14th Dist.] 2013, no pet. h.). Such factors include the nature of the marital property, the relative earning capacity and business opportunities of the parties, the parties' relative financial condition and obligations, the parties' education, the size of separate estates, the age, health, and physical conditions of the parties, fault in breaking up the marriage, the benefit the innocent spouse would have received had the marriage continued, and the probable need for future support. *Murff*, 615 S.W.2d at 699; *Barras*, 396 **S.W.3d** at 163. The party complaining of the division of the

community estate has the burden of showing from the evidence in the record that the trial court's division of the community estate was so unjust and unfair as to constitute an abuse of discretion. *See Mann v. Mann*, 607 S.W.2d 243, 245 (Tex. 1980); *Pappas v. Pappas,* No. 03-12-00177-CV, 2013 WL 150300, at *1 (Tex. App.-Austin Jan. 10, 2013, no pet.) (mem. op.); *Vannerson v. Vannerson*, 857 S.W.2d 659, 672 (Tex.App.-Houston [1st Dist.] 1993, writ denied).

Sufficient Evidence of Partnership Interest

Daniel first argues there was no or insufficient evidence of the value of the community's interest in a partnership at the time of the divorce and that the interest was improperly valued as of the time of a mediation in 2010. Daniel was one of three partners in GP Holdings, a partnership which controlled Atlas Service Link, a corporate tax accounting and technology consulting firm. At the end of 2009, Daniel's two partners told him that they had formed a new partnership that was buying Atlas Service Link from GP Holdings and Daniel's interest in GP Holdings was being eliminated. GP Holdings also
385 placed *385 $1,115,000 into Daniel's capital account, reflecting its assessment of the value of Daniel's interest in the partnership.

Cynthia testified that Daniel had communicated with her about the capital account and said it contained $1.115 million. Daniel also told her that his share of the profits from the partnership for 2009 would be approximately $1,000,000 and that he determined that number based on a schedule K-1 for the partnership. In October 2010, Cynthia, Daniel, and Daniel's former partners participated in mediation in an attempt to settle the value of marital estate's interest in the partnership. At that time, the partnership valued the capital account at $1.115 million.

Daniel offered no contradictory evidence as to the value of the partnership interest, but testified there was a difference between the value of the capital account and the value of his interest in GP Holdings. He admitted a capital account is one method of valuing the interest, but disagreed that it was the correct method to use in this case. He claimed he could not value any interest in the partnership exceeding the amount in the capital account because he had been denied access by the partnership to necessary information. He admitted that an expert he retained agreed with the value placed on the partnership interest by GP Holdings, but contended the expert also was not provided all necessary information.

The value of community assets is generally determined at the date of divorce or as close to it as possible. *Handley v. Handley*, 122 **S.W.3d** 904, 908 (Tex. App.-Corpus Christi 2003, no pet.); *Grossnickle v. Grossnickle*, 935 S.W.2d 830, 837 (Tex.App.-Texarkana 1996, writ denied). However, " [n]earness in time is a matter left to the discretion of the trial court." *Finch v. Finch*, 825 S.W.2d 218, 223 (Tex. App.-Houston [1st Dist.] 1992, no writ) (trial court did not abuse its discretion by considering land appraisal made one year earlier in dividing real estate on date of divorce); *see also Quijano v. Quijano*, 347 **S.W.3d** 345, 349-50 (Tex.App.-Houston [14th Dist.] 2011, no pet.) (trial court did not abuse its discretion by considering six-month-old statement to assess value of checking account when that was best evidence of record concerning value of account). In this case, Cynthia provided the trial court with a value of the partnership approximately six months before trial. The partnership had not been active for over two years, and there was no evidence of any activity by the partnership between

October 2010 and April 2011 that would have increased the value of the community's interest in the partnership.

Daniel claims the partnership interest was improperly valued, but provided no evidence of what he believed the interest was worth. Generally, a party who does not provide to the trial court any value for the property cannot, on appeal, complain of the trial court's lack of information in dividing the community estate. *Deltuva v. Deltuva*, 113 **S.W.3d** 882, 887 (Tex.App.-Dallas 2003, no pet.) (op. on reh'g); *Sereno v. Sereno,* No. 13-08-00691-CV, 2010 WL 5541709, at *2 (Tex. App.-Corpus Christi Dec. 30, 2010, no pet.) (mem. op.); *Todd v. Todd*, 173 **S.W.3d** 126, 129 (Tex.App.-Fort Worth 2005, pet. denied); *Vannerson*, 857 S.W.2d at 670. We conclude the trial court did not abuse its discretion by valuing the partnership interest based on the value of the capital account as of September 2010.

Attorney's Fees

Daniel next asserts the trial court lacked sufficient evidence of Cynthia's attorney's fees to support the award of the partnership interest to compensate her for her fees. Daniel argues the evidence failed to
386 *386 establish the hourly rate charged by Cynthia's attorney, the number of hours incurred, or that legal assistant fees were recoverable; the amount of attorney's fees found by the trial court in its findings of fact was more than the amount testified to by the attorney; and the trial court's award of the entire capital account to Cynthia, to compensate her for the attorney's fees, awarded her more than she sought and, therefore, constituted a windfall.[4]

The record shows both parties expended community funds during the pendency of the divorce to pay attorney's fees and, at the time of trial, there were outstanding attorney's fees that had not been paid. The trial court found that, through trial, Cynthia had incurred unpaid fees of $164,028.92,[5] while Daniel had incurred unpaid fees of $130,000. The trial court found that "[o]rdering [Daniel] to pay [Cynthia's] attorney's fees would simply result in extended litigation. Rather, it is more simple and fair to award [Cynthia] a larger share of the main assets to compensate her for her attorney's fees."

A trial court may consider reasonable attorney's fees, along with the parties' circumstances and needs, in effecting a just and right division of the estate. *Murff*, 615 S.W.2d at 699; *Carle v. Carle*, 149 Tex. 469, 474, 234 S.W.2d 1002, 1005 (1950); *Mandell v. Mandell*, 310 **S.W.3d** 531, 542 (Tex.App.-Fort Worth 2010, pet. denied). "[A] decree that the husband pay all of the wife's attorney's fees may be to award him less of the community estate than that awarded to the wife, but that alone does not condemn it. The attorney's fee is but a factor to be considered by the court in making an equitable division of the estate, considering the conditions and needs of the parties and all the surrounding circumstances." *Carle*, 149 Tex. at 474, 234 S.W.2d at 1005; *see also Tedder v. Gardner Aldrich, LLP,* No. 11-0767, 2013 WL 2150081, at *3-4 (Tex. May 17, 2013). Further, as in its decision to award fees as part of the division, the trial court has broad discretion in determining the amount. *Smith v. Grayson*, No. 03-10-00238-CV, 2011 WL 4924073, at *10 (Tex. App.-Oct. 12, 2011, pet. dism'd) (mem. op.) (citing *Murff*, 615 S.W.2d at 698-99).

Cynthia's trial counsel, George Parker, testified he had been licensed to practice law in Texas since May 1976. He has been board certified in family law since 1985 and practices primarily in Collin County,

Texas. He is familiar with the qualifications of the other attorneys in his firm and the hourly rates that Cynthia contracted to pay in this case. In Parker's opinion, those rates are usual and customary in and around Collin County for the type of work that has been done in the case. Further, the actions taken by counsel on Cynthia's behalf had been necessary.

387 *387 In Parker's opinion, the fees in this case were reasonable. In reaching that opinion, Parker considered that he had been retained late in the case and had to digest a lot of information in a short period of time. Further, there were complicated issues surrounding the partnership interest and there "have been some actions that have occurred through the time I've been representing [Cynthia] that have complicated the property."

Parker testified three legal assistants had worked on the case. One of the legal assistants had been with the firm for approximately twenty-two years and was "certified." A second legal assistant had been with the firm for approximately ten years. In Parker's opinion, the tasks performed by the legal assistants were reasonable and necessary and the hourly rate charged for their work was reasonable and customary in and around Collin County.

Cynthia had incurred attorney's fees of $101,255 and had paid either $23,000 or $25,000 toward that amount. Parker anticipated further work would be necessary to complete the case and estimated another $5,000 in attorney's fees would be incurred by Cynthia. However, in closing argument, Parker indicated Cynthia's attorney's fees were over $115,000, "just to us." The record also demonstrates that counsel was required to perform a significant amount of work on the case after trial.

Daniel argues the evidence is insufficient to support the attorney's fee award because Cynthia's attorney did not introduce evidence that the specific hourly rate charged by each attorney and legal assistant was reasonable. Such specificity, however, is not required. *In re W.M.R.,* No. 02-11-00283-CV, 2012 WL 5356275, at *14 (Tex.App.-Fort Worth Nov. 1, 2012, no pet.) (mem. op.). Instead, "[t]o support a request for reasonable attorney's fees, testimony should be given regarding the hours spent on the case, the nature of preparation, complexity of the case, experience of the attorney, and the prevailing hourly rates." *Hardin v. Hardin*, 161 **S.W.3d** 14, 24 (Tex.App.-Houston [14th Dist.] 2004, no pet.) (citing *Goudeau v. Marquez*, 830 S.W.2d 681, 683 (Tex.App.-Houston [1st Dist.] 1992, no writ)). The trial court does not need to hear evidence on each factor but can "look at the entire record, the evidence presented on reasonableness, the amount in controversy, the common knowledge of the participants as lawyers and judges, and the relative success of the parties." *Hagedorn v. Tisdale*, 73 **S.W.3d** 341, 353 (Tex.App.-Amarillo 2002, no pet.) (citing *Chilton Ins. Co. v. Pate & Pate Enters., Inc.*, 930 S.W.2d 877, 896 (Tex.App.-San Antonio 1996, writ denied)).

Parker's testimony reflected he was familiar with each attorney's and legal assistant's experience and the novelty and difficulty of the issues in this case. In his opinion the hourly rates charged were reasonable and customary for Collin County. *See In re A.S.G.*, 345 **S.W.3d** 443, 451-52 (Tex.App.-San Antonio 2011, no pet.) (attorney's testimony sufficient to support fee award even though she "did not testify to her hourly rate or exact number of hours spent on the case, [but] she did specifically ask for $1,500 in attorney's fees and explained to the trial court their necessity and reasonableness."). We conclude Parker's testimony is a reasonable basis for the award of attorney's fees. *See In re A.B.P.*, 291 **S.W.3d** at 98-99 (concluding attorney's testimony that he believed his fees were reasonable and

necessary, that he was familiar with the customary fees in the community, and that he believed his fees fall within that range was sufficient for attorney's fee award); *In re W.M.R.,* 2012 WL 5356275, at *14.

388 *388 On the record before us, we cannot conclude the trial court abused its discretion by awarding Cynthia a larger share of the "main assets" of the estate in order to compensate her for her attorney's fees.

Other Alleged Valuation Errors

Daniel next contends the trial court erred in valuing the community estate because it failed to make findings of fact as to the value of some assets, improperly valued some of the real estate, improperly valued a model train collection, and included liquidated assets in the property awarded to Daniel without doing so for Cynthia.

No Findings on Value

Daniel first argues the trial court lacked sufficient evidence to divide the marital estate because its findings of fact and conclusions of law omit values for twenty-five assets and debts divided in the decree. As set out above, when the value of an asset is not disputed, the trial court is not required to make a finding of that asset's value. *See* TEX. FAM.CODE ANN. § 6.711(a); *Jackson,* 2011 WL 3373290, at *3. In his brief, Daniel does not argue that any of the listed assets had a disputed value. Accordingly, Daniel has failed to establish that the trial court abused its discretion by failing to make a finding as to those assets' values.

Daniel next asserts the trial court's failure to make a finding as to the value of the parties' 2009 and 2010 tax liability "causes the division of net assets awarded to [Daniel] to be understated." However, as set out above, the amount of the parties' tax liability was undisputed and, therefore, the trial court was not required to make a finding as to the value of the liability. Further, there is nothing in the record to demonstrate the trial court did not consider the undisputed value of the tax liability in making the division of the community estate. *See* *In re S.A.A.*, 279 **S.W.3d** at 857 ("A divorce court also has authority and discretion to impose the entire tax liability of the parties on one spouse."). Finally, a trial court can appropriately assign tax liability to one party or the other without knowing the exact amount of that liability. *See* *Kimsey v. Kimsey*, 965 S.W.2d 690, 695 (Tex.App.-El Paso 1998, pet. denied) (concluding appellate court could not determine whether there was manifest abuse of discretion by trial court in dividing tax liability equally between parties when parties presented no evidence of amount of potential tax liability); *Mullins v. Mullins*, 785 S.W.2d 5, 7-8 (Tex.App.-Fort Worth 1990, no writ) (concluding trial court acted within its discretion in holding husband responsible for potential income tax liability incurred during marriage); *see also* *Young v. Young*, 168 **S.W.3d** 276, 286 (Tex.App.-Dallas 2005, no pet.) (concluding trial court did not err by assigning responsibility for couples' income tax liability to husband where evidence indicated he had failed to report certain income of company found to be husband's alter ego). Consequently, Daniel has not demonstrated the trial court abused its discretion by dividing the community estate without evidence establishing specific amounts for the parties' 2009 and 2010 tax liabilities. *See* *Quijano*, 347 **S.W.3d** at 352.

Daniel also asserts the trial court erred by failing to value the reward miles and points awarded to Cynthia. The trial court awarded to Cynthia (1) the Starwood miles and/or points, (2) the American Express air miles and/or points, and (3) all airline miles and/or points in Cynthia's name. The trial court awarded Daniel all air miles not awarded to Cynthia. In its findings of fact, the trial court determined the
389 following reward miles or points were assets of the community estate: (1) American *389 Airlines miles in Cynthia's name (66,937), (2) Southwest Airlines miles in Cynthia's name (no amount), (3) Starwood points (144,867), (4) American Express Membership points (283,047), (5) Visa Celebrity miles in Cynthia's name (13,201), (6) Visa Edge miles in Cynthia's name (0), (7) Visa Chase miles in Cynthia's and Daniel's names (0), (8) Sears miles in Cynthia's name (23,906), (9) American Airlines miles in Daniel's name (177,461), (10) Southwest Airlines miles in Daniel's name (no amount), (11) Delta Airlines miles in Daniel's name (12,439), (12) Hyatt Points in Daniel's name (0), (13) Hilton Points in Daniel's name (6,436), (14) Marriott Points in Daniel's name (112,709), (15) and Visa Chase Atlas points in Daniel's name (253,010). The first eight categories were awarded to Cynthia and total 531,958 miles and/or points. Categories (9) through (15) were awarded to Daniel and total 565,055 miles and/or points.

The trial court awarded Daniel over fifty percent of the reward miles and/or points and there was no evidence that any particular program was more valuable than another. *See* *Deltuva*, 113 **S.W.3d** at 887; *Sereno,* 2010 WL 5541709, at *2. On this record, Daniel has failed to establish the trial court abused its discretion by not placing a value on the reward miles and/or points awarded to Cynthia.

Daniel finally argues the trial court erred by awarding the contents of Cynthia's safety deposit box to her without evidence of the value of the contents of the box. Cynthia testified the safety deposit box contained her rings and other gifts from Daniel. Neither Cynthia nor Daniel testified about the value of the items in the safety deposit box. Accordingly, Daniel has waived his right to complain of the trial court's lack of information in dividing the contents of the safety deposit box. *Deltuva*, 113 **S.W.3d** at 887; *Sereno,* 2010 WL 5541709, at *2

On this record, we cannot conclude the trial court abused its discretion by failing to make a specific finding of the value of any of the complained-about assets and liabilities.

Real Estate

Daniel contends the trial court overvalued the real estate awarded to him and undervalued the real estate awarded to Cynthia. Daniel specifically complains the tax appraisals relied upon by Cynthia cannot be used to determine the fair market value of real estate and, even if the tax appraisals constituted some evidence of the value of the property, they are factually insufficient to support the trial court's findings.

The trial court awarded the marital residence in Piano to Daniel and a rental property in Richardson to Cynthia. Cynthia offered records from taxing authorities showing the appraised value of the two houses. The trial court initially sustained Daniel's hearsay objections to the records. However, the tax appraisal for the Piano house was admitted into evidence without objection during the cross-examination of Daniel's expert witness and showed a value for the Piano house of $471,754. Cynthia testified without

objection that she used the information from the tax appraisal districts to "at least partially" form the basis for her opinion concerning the value of the properties. Cynthia believed the value of the Piano house was the tax appraised value of $471,754 and the value of the Richardson house was the tax appraised value of $132,970.

Daniel called Russell Nickell, a residential appraiser, to testify about the value of the two houses. In conducting an appraisal, Nickell reviews the tax records and the tax assessments as well as sales of
390 comparable *390 properties. In Nickell's opinion, a tax assessment is generally a lagging indicator of a house's value. However, the taxing authorities are more accurate now than they were historically because the appraisals are done annually. In Nickell's opinion, sometimes the tax assessments are accurate and sometimes they are not accurate. Nickell agreed that the taxing authorities do not always agree with his appraisals.

Nickell used a sales comparison approach to appraise the two houses. According to Nickell, the Piano house's value is $418,000 and the Richardson house's value is $166,000. In conducting his analysis, Nickell gave the Piano house a fair to average rating. If, however, the house was in average condition, the value could increase by $50,000. Nickell agreed the Piano house was not in a condition to "show" at the time he appraised it.

In its findings of fact, the trial court valued the Piano house at $471,754 and the Richardson house at $132,970. Relying on *Kuehn v. Kuehn*, 594 S.W.2d 158 (Tex. App.-Houston [14th Dist.] 1980, no writ), Daniel asserts the evidence is insufficient to support the trial court's findings.

In *Kuehn,* the Houston Fourteenth Court of Appeals concluded the value placed on real estate for taxation purposes without the participation of the owner could not be used to determine the fair market value of the property. *Id.* at 161. The court based its opinion on the fact the appraisals were hearsay and could not support a finding of fact. *Id.* (citing *Perkins v. Springstun*, 557 S.W.2d 343, 345 (Tex.Civ.App.-Austin 1977, writ ref'd n.r.e.) (hearsay evidence admitted without objection has no probative value)). However, both *Kuehn* and *Perkins* were decided before the adoption of the Texas Rules of Evidence. Rule of evidence 802 now provides that unobjected-to hearsay shall not be denied probative value merely because it is hearsay. TEX.R. EVID. 802; *see also City of Keller*, 168 **S.W.3d** at 812 n. 29. Here, the tax appraisal for the Piano house and Cynthia's testimony about the tax appraisal for both houses was admitted without objection and, therefore, could constitute some probative evidence on which the trial court could have relied. *See Smith*, 2011 WL 4924073, at *11.

Further, this is not a case in which the only evidence supporting the trial court's finding is the tax appraisal. An owner may testify about the market value of her property. *Gulf States Util. Co. v. Low*, 79 **S.W.3d** 561, 566 (Tex.2002); *Porras v. Craig*, 675 S.W.2d 503, 504-05 (Tex. 1984). For several years, Cynthia had been engaged in "flipping" houses, which involved buying, remodeling, and then selling a house. She had bought and sold approximately eight houses. Although she relied, in part, on the tax appraisals in reaching an opinion as to the value of the two houses at issue, she was familiar with the market value of houses in the area and was qualified to express her opinion concerning the value of those houses.

Daniel also argues that, in the face of Nickell's testimony, the evidence of the tax appraisals on the

houses is factually insufficient to support the trial court's findings. The value of a community asset on which there is disputed evidence is a question of fact. *See* TEX. FAM.CODE ANN. § 6.711(a)(2). As the trier of fact, it was role of the trial court to judge the credibility of the witnesses, weigh the testimony, accept or reject any testimony, and resolve conflicts in the evidence. *Dewalt v. Dewalt,* No. 14-06-00938-CV, 2008 WL 1747481, at *2 (Tex.App.-Houston [14th Dist.] Apr. 17, 2008, no pet.) (mem. op.)
391 (citing *City of Keller*, 168 **S.W.3d** at 819); *391 *see also Murff*, 615 S.W.2d at 700. We "will not disturb a trial court's resolution of conflicting evidence that turns on the credibility or weight of the evidence." *Ennis v. Loiseau*, 164 **S.W.3d** 698, 706 (Tex. App.-Austin 2005, no pet.) (citing *Benoit v. Wilson*, 150 Tex. 273, 281, 239 S.W.2d 792, 796 (Tex.1951)). As long as the evidence falls "within [the] zone of reasonable disagreement," we cannot substitute our judgment for that of the fact finder. *See City of Keller*, 168 **S.W.3d** at 822.

The trial court heard the conflicting opinions on the value of the houses, rejected Nickell's opinion, and accepted Cynthia's opinion of the value of both houses. On the record before us, we conclude that the evidence of the houses' values was legally and factually sufficient, and in light of the broad discretion vested in the trial court in dividing the property of parties in a divorce, we cannot say that the trial court abused its discretion in its valuation of the Piano and Richardson houses. *See id.; Smith*, 2011 WL 4924073, at *11.

Train Collection

Daniel next contends the trial court's valuation of a model train collection was improperly based on acquisition value. Cynthia testified that Daniel budgeted $200 per month for the purchase of trains during the entire marriage. Daniel testified he did not spend his entire budget every month purchasing trains. He also testified that part of the collection had been sold for $1,700, but offered no other evidence of the collection's value. The trial court valued the collection at $8,800. Because Daniel failed to offer any evidence of the train collection's value, he waived his right to complain on appeal about the trial court's valuation of the property. *Deltuva*, 113 **S.W.3d** at 887; *Sereno,* 2010 WL 5541709, at *2

Liquidated Assets

Daniel also complains the trial court "recaptured" assets that Daniel liquidated by awarding them to Daniel without doing the same for assets that Cynthia liquidated. According to Daniel, Cynthia operated on a cash basis in 2009 and withdrew a large amount of money from the joint bank account and from a retirement fund. Cynthia admitted she made cash withdrawals from the joint bank account in 2009, but testified the money was used to purchase and repair two houses and that she provided invoices to support the withdrawals. After one of the houses was sold, she used the sales proceeds to pay community debt incurred to rehabilitate the property and then placed the remaining funds into the joint bank account. The other house remained a community asset. Cynthia testified that, at some point in the divorce proceedings, she was "strongly encouraged" by the trial court to withdraw money from a retirement account to pay her attorney's fees. She also withdrew money from community accounts in 2010 to pay her living expenses after Daniel stopped transferring money into the joint bank account and canceled her credit cards. Cynthia denied liquidating any other community assets.

Trial began on April 18, 2011 and was recessed until June 29, 2011. In violation of the trial court's standing order, Daniel liquidated a number of assets, including bank stock warrants, antique cars, part of the model train collection, and part of a retirement account shortly before trial recommenced. Some of the cars were sold to Daniel's friends and family members and some were sold at a loss. Further, in Cynthia's opinion, the bank stock warrants would have been much more valuable in the future than they were when Daniel sold them. Daniel admitted the trial court had not given him permission to liquidate
392 *392 any of the assets. Daniel testified that he used the money to pay attorney's fees, repay loans from his brothers, pay the taxes owed due to the parties' withdrawals from retirement accounts, and for living expenses. Daniel admitted he "missed" that at least some taxes had already been withheld when Cynthia withdrew money from one of the retirement funds. Further, some of the attorney's fees paid by Daniel were incurred pursuing Daniel's claims against GP Holdings. The trial court awarded any remaining community interest in the assets liquidated by Daniel to Daniel.

The trial court heard evidence that the only assets liquidated by Cynthia were to pay her living expenses and, at the trial court's encouragement, her attorney fees. Daniel, on the other hand, admitted to having liquidated a number of assets during trial without the trial court's permission, did not establish the assets were sold for market value, and did not fully account for the proceeds from the sales. On this record, we cannot conclude that trial court abused its discretion by awarding the assets liquidated by Daniel to him. *See* *Schlueter*, 975 S.W.2d at 588 (noting one spouse should not suffer just because other spouse has depleted the community estate).

Adultery

Daniel next contends the trial court's finding of adultery does not support a disproportionate division of property because his relationship with Alvarez began after the parties separated and did not constitute fault that caused the breakup of the marriage. As we set out above, adultery does not have to occur pre-separation for it to be a ground for granting a divorce. *See* *Ayala*, 387 **S.W.3d** at 732; *Bell*, 540 S.W.2d at 435. Generally, in a fault-based divorce, the trial court may consider the conduct of the errant spouse in making a disproportionate distribution of the marital estate. *See* *Young v. Young*, 609 S.W.2d 758, 761-62 (Tex.1980); *Ohendalski v. Ohendalski*, 203 **S.W.3d** 910, 914 (Tex.App.-Beaumont 2006, no pet.). Accordingly, the trial court's finding of adultery can support the disproportionate division of the community property.

Unreasonable Division of Property

Daniel next complains the trial court's disproportionate award to Cynthia is not supported by the applicable factors. A trial court may consider various factors in making a property division. *See* *Murff*, 615 S.W.2d at 699. In its findings of fact, the trial court stated that, in dividing the marital property, it considered: (1) fault in the breakup of the marriage, (2) fraud on the community, (3) benefits the innocent spouse may have derived from the continuation of the marriage, (4) disparity of earning power of the spouses and their ability to support themselves, (5) health of the spouses, (6) education and future employability of the spouses, (7) community indebtedness and liabilities, (8) tax consequences of the division of property, (9) ages of the spouses, (10) earning power, business opportunities, capacities

and abilities of the spouses, (11) nature of the property involved in the division, (12) wasting of community assets by the spouses, (13) credit for temporary support paid by a spouse, (14) misconduct, including violation of the court's standing order, (15) attorney's fees to be paid, (16) the size and nature of the separate estates of the spouses, and (17) creation of community property by the efforts or lack thereof of the spouses.

This record establishes a number of circumstances that justify awarding a disproportionate share of the
393 community estate to Cynthia. First, a disparity in the financial condition and earning capacities *393 of the parties is an important factor in dividing their estate. *Murff*, 615 S.W.2d at 699; *Phillips v. Phillips*, 75 **S.W.3d** 564, 574 (Tex.App.-Beaumont 2002, no pet.). Cynthia has a bachelor's degree in marketing and, when she married Daniel, was a marketing manager at Sprint. Daniel had bachelor's degrees in accounting and finance and economics and a master's degree in accounting. In 1998, Daniel started his own consulting business and, in October 2001, Cynthia accepted a severance package from Sprint and began working as an "administrative arm" of Daniel's business. Daniel's business subsequently merged into GP Holdings and, as the business became more successful, Cynthia's services were no longer needed. In 2008, Daniel earned more than $600,000 from the partnership.

Although Daniel testified at trial that his business reputation had been tarnished and he was unable to obtain any clients, he testified at his deposition that he was confident he would have a number of clients as soon as a covenant not to compete with Atlas Service Link expired. Further, in the Fall of 2010, Daniel began performing work as a consultant through Intel McAfee. Daniel grossed approximately $145,000 in 2010 and had grossed between $60,000 and $80,000 during the first half of 2011. Daniel agreed that he also formed a new business entity in April 2010 and performed some consulting work through that entity. Although he failed to provide information on that entity through discovery, he claimed all money he had been paid was deposited into his checking account and that he produced that information in discovery.

By 2009, Cynthia was engaged in flipping houses. However, she was prevented from pursuing this career in 2010 due to Daniel's ceasing to provide support and cancelling her credit cards. Cynthia testified she never made more than $80,000 per year flipping houses. According to Cynthia, she "stunted the growth" of her company and her career to assist Daniel in building his company. Daniel then lost his company due to "his bad behavior," and Daniel's "bad financial decisions" were affecting Cynthia. Cynthia believed Daniel had greater earning potential than she did and that she did not have the same ability as Daniel to pay her debt. Cynthia asked to be made as "liquid" as possible so that she could resume flipping houses and have assets with which to pay her living expenses.

Second, the trial court could consider fault in the breakup of the marriage in dividing the community estate. *Young*, 609 S.W.2d at 762. Cynthia testified that, even though she moved out of the marital home, she hoped the parties would reconcile. She sought counseling to assist her and invited Daniel to attend. Daniel did not meaningfully participate in counseling, and the counselor ultimately told Cynthia the marriage was a "lost cause." In June 2009, Cynthia began to suspect Daniel was committing adultery. In September 2009, Cynthia saw a woman's underwear in the master bedroom of the marital home, and a private investigator filmed Daniel and Alvarez kissing and hugging at an airport. Daniel, however, represented to the trial court that his relationship with Alvarez did not begin until later, a statement the trial court could have found not to be credible.

Third, a court may consider one spouse's wrongful dissipation of community assets when dividing a marital estate. *See* *Schlueter*, 975 S.W.2d at 588-89. Throughout 2010, Daniel expended community assets on trips to see Alvarez in Milwaukee, on trips with Alvarez to the Bahamas and to Europe, and on
394 gifts to Alvarez. Daniel testified that Alvarez reimbursed him for the gifts and that many *394 of the trips to Milwaukee and to Europe were related to seeking work and were often reimbursed. Cynthia, however, testified that she would receive none of the benefit for expenditures that Daniel made to look for work and to build relationships for future work. Daniel also sold a number of community assets after the trial started, some to friends and family. It was unclear whether the assets were sold for fair market value, and Daniel did not fully account for the proceeds from the sales.

Fourth, the trial court could consider misconduct during the divorce proceedings. There was evidence Daniel sold community assets in violation of the trial court's standing order. Further, Cynthia attempted to depose Daniel during the divorce proceedings. Daniel canceled the first deposition on the day it was scheduled, claiming he was too ill to attend. However, Alvarez flew to Dallas later that day and spent the weekend with Daniel at various places in Dallas and Fort Worth. Daniel's second deposition was scheduled on a Monday. He canceled the deposition on the previous Friday, again claiming he was too ill to attend. Daniel, however, flew to Milwaukee that weekend and did not return to Dallas until after the time his deposition was scheduled to begin. Cynthia testified she incurred attorney's fees due to Daniel's actions.

Finally, a court may consider payments made to attorneys from the community estate. *Roever v. Roever*, 824 S.W.2d 674, 676 (Tex.App.-Dallas 1992, no writ). Both parties had paid attorney's fees from community assets. However, Cynthia received permission from the trial court to liquidate community assets to pay the fees, while Daniel did not. There was also evidence that Daniel spent community funds on attorney's fees to pursue a claim against his former partnership. Finally, Cynthia testified that she incurred fees due to Daniel's conduct during the divorce proceedings, including Daniel's failure to appear at scheduled depositions and failure to completely respond to Cynthia's discovery requests.

On this record, we cannot conclude the trial court abused its discretion by making a disproportionate award of the marital property to Cynthia.

Casteel-Type Error

Daniel next argues the trial court committed *Casteel*-type error by weighing factors in the property division for which there was no supporting evidence or pleadings. Daniel specifically asserts that Cynthia did not plead that a disproportionate division of the property was justified based on fraud on the community, health of the spouses, and the ages of the spouses.

The supreme court has held that reversible error is presumed when a broad-form question submitted to the jury incorporates multiple theories of liability and one or more of those theories is invalid, *Crown Life Ins. Co. v. Casteel*, 22 **S.W.3d** 378, 388 (Tex.2000), or when the broad-form question commingles damage elements that are unsupported by legally sufficient evidence, *Harris Cnty. v. Smith*, 96 **S.W.3d**

230, 233-34 (Tex.2002). *See also* *Thota v. Young*, 366 **S.W.3d** 678, 680 (Tex.2012). Without deciding whether *Casteel* or *Harris County* is applicable to a trial court's application of relevant factors in determining the division of a marital estate, we note the San Antonio Court of Appeals has concluded that in order to preserve *Casteel*-type error in a bench trial, the party must request additional or amended findings of fact that specifically draw the trial court's attention to the complaint that one of the elements of damages included in the trial court's broad-form finding was unsupported by the evidence.
395 *Tagle v. Galvan*, *395 155 **S.W.3d** 510, 516 (Tex.App.-San Antonio 2004, no pet.); *see also* *Miranda v. Byles*, 390 **S.W.3d** 543, 552 (Tex.App.-Houston [1st Dist.] 2012, pet. filed) (op. on reh'g) (to preserve error in bench trial, party must request additional findings of fact and conclusions of law asking for detailed apportionment of findings between permissible and impermissible bases for liability). We have concluded that Daniel failed to timely request additional findings of fact from the trial court. Accordingly, Daniel has failed to preserve this complaint for our review. *See* *Tagle*, 155 **S.W.3d** at 516.

Failure to Divide and Award Unliquidated Assets

Daniel next complains the trial court failed to divide the community's interest in GP Holdings that exceeded the money in the capital account. However, the trial court awarded Cynthia:

> One Hundred percent (100%) of the community interest in and to GP Holdings Partnership, a Texas general partnership, including, but not limited to any community interest in and to Atlas Service Link, LLC, or the transmutations, if any, of said partnership or said LLC, including but not limited to, any capital account held by said partnership or said LLC in the name of or for the benefit of Daniel P. Silvey, valuing said capital account as it existed as the time of the failed mediation on October 18, 2010.

We conclude the trial court awarded Cynthia all the community interest in the partnership.

Punitive Division

Daniel argues the property division is punitive and unjust and that punishing him for refusing to settle his claim against the partnership is an impermissible basis for the property division. In support of his argument, Daniel relies only on the trial court's valuing the capital account as of the time of the mediation. As discussed above, the trial court did not abuse its discretion by relying on evidence from the time of the mediation to value the capital account. Further, we see nothing in the record that indicates the trial court's property division was based solely on Daniel's refusal to settle his claim against the partnership. We conclude Daniel failed to establish the trial court's division of the property was punitive. *See* *Halleman v. Halleman*, 379 **S.W.3d** 443, 453 (Tex.App.-Fort Worth 2012, no pet.) (overruling appellant's complaint trial court used property division to punish her because reasonable basis supported disproportionate property division).

Cumulative Error

Daniel finally argues the trial court's cumulative errors in making the property division require reversal. Based on this record, we have concluded the trial court did not err in dividing the marital property. Accordingly, there is no cumulative error that would require reversal of the property division.

Conclusion

The trial court had "the opportunity to observe the parties on the witness stand, determine their credibility, evaluate their needs and potentials, both social and economic." *Murff,* 615 S.W.2d at 700. We conclude the record contains evidence of a substantive and probative character to support the trial court's division of the community property. Further, based on the record before us, we cannot say that the trial court either clearly abused its discretion or made an inequitable division of marital assets.[6] Therefore, we will not *396 disturb the trial court's judgment regarding the property division. We resolve Daniel's first issue against him.

396

We affirm the trial court's judgment.

[1] Justice Mary Murphy was on the panel and participated at the submission of this case but, due to her retirement from this Court on June 7, 2013, did not participate in the issuance of this Opinion. *See* TEX.R.APP. P. 41.1(a), (b).

[2] Daniel's complaints are directed toward the findings of fact and conclusions of law made by the trial court on November 14, 2011. Daniel does not complain about the trial court's failure to enter findings of fact and conclusions of law after the amended divorce decree was signed on January 26, 2012. Further, in his February 16, 2012 request for findings of fact and conclusions of law filed after the amended judgment, Daniel did not request specified additional findings and, therefore, failed to meet the requirements for a request for additional findings. *See* TEX.R. CIV. P. 298; *Heard v. City of Dallas,* 456 S.W.2d 440, 445 (Tex.Civ.App.-Dallas, 1970, writ ref'd n.r.e.) (op. on reh'g); *Vickery v. Comm'n for Lawyer Discipline,* 5 **S.W.3d** 241, 255-56 (Tex.App.-Houston [14th Dist.] 1999, pet. denied)

[3] *See Goodfellow v. Goodfellow,* No. 03-01-00633-CV, 2002 WL 31769028, at *8 (Tex. App.-Austin, Dec. 12, 2002, no pet.) (not designated for publication).

[4] Cynthia initially requested she be awarded $658,000 from the capital account. The trial court found Cynthia had outstanding attorney's fees of $164,028.92. Therefore, Daniel contends, the total amount that could have been awarded to Cynthia from the capital account was $822,000. However, Cynthia testified she had also paid attorney's fees to both her former and trial counsel and requested the trial court order Daniel to pay those fees as well. *See Grossnickle,* 935 S.W.2d at 847 (prior payments out of the community estate to attorneys in the divorce action are to be taken into account in the division of the marital estate); *see also Tucker v. Tucker,* No. 13-11-00056-CV, 2013 WL 268937, at *11 (Tex.App.-Corpus Christi Jan. 24, 2013, no pet. h.) (memo. op).

[5] The trial court found that Cynthia owed $44,038.92 to her former attorney, who had intervened in the divorce proceeding seeking the unpaid fees, and $120,000 to her trial attorney. On appeal, Daniel has complained only about the finding that Cynthia owed $120,000 to her trial attorney.

[6] Because we review each case on its merits, the division of marital estates in other cases does not control our disposition of Daniel's issues. However, we note that similar divisions of marital estates have been upheld on appeal in similar circumstances. *See Rafidi v. Rafidi,* 718 S.W.2d 43, 45-46 (Tex.App.-Dallas 1986, no writ) (85-90% of marital estate to wife); *Morrison v. Morrison,* 713 S.W.2d 377, 379 (Tex.App.-Dallas 1986, writ dism'd) (83.5%); *Ohendalski,* 203 **S.W.3d** at 914-15(81%); *Faram v. Gervitz-Faram,* 895 S.W.2d 839, 844 (Tex.App.-Fort Worth 1995, no pet.) (72.9%); *Golias v. Golias,* 861 S.W.2d 401, 403 (Tex.App.-Beaumont 1993, no writ) (79%); *Oliver v. Oliver,* 741 S.W.2d 225, 228-29 (Tex.App.-Fort Worth 1987, no writ) (80%); *Huls v. Huls,* 616 S.W.2d 312, 317-18 (Tex.Civ.App.-Houston [1st Dist.] 1981, no writ) (85%).

JOSEPH W. KLINE
Attorney at Law
Professor, Paralegal Studies
South Plains College
819 Gilbert Drive
Lubbock, Texas 79416
(806) 716-4662
jkline@southplainscollege.edu
klinelaw@hotmail.com

ABBREVIATED CURRICULUM VITAE

EDUCATION

B.S. Criminal Justice, University of Cincinnati (1974)
M.P.A. Public Affairs, University of Cincinnati (1976)
J.D., Texas Tech University (1988)

PROFESSIONAL ACTIVITIES

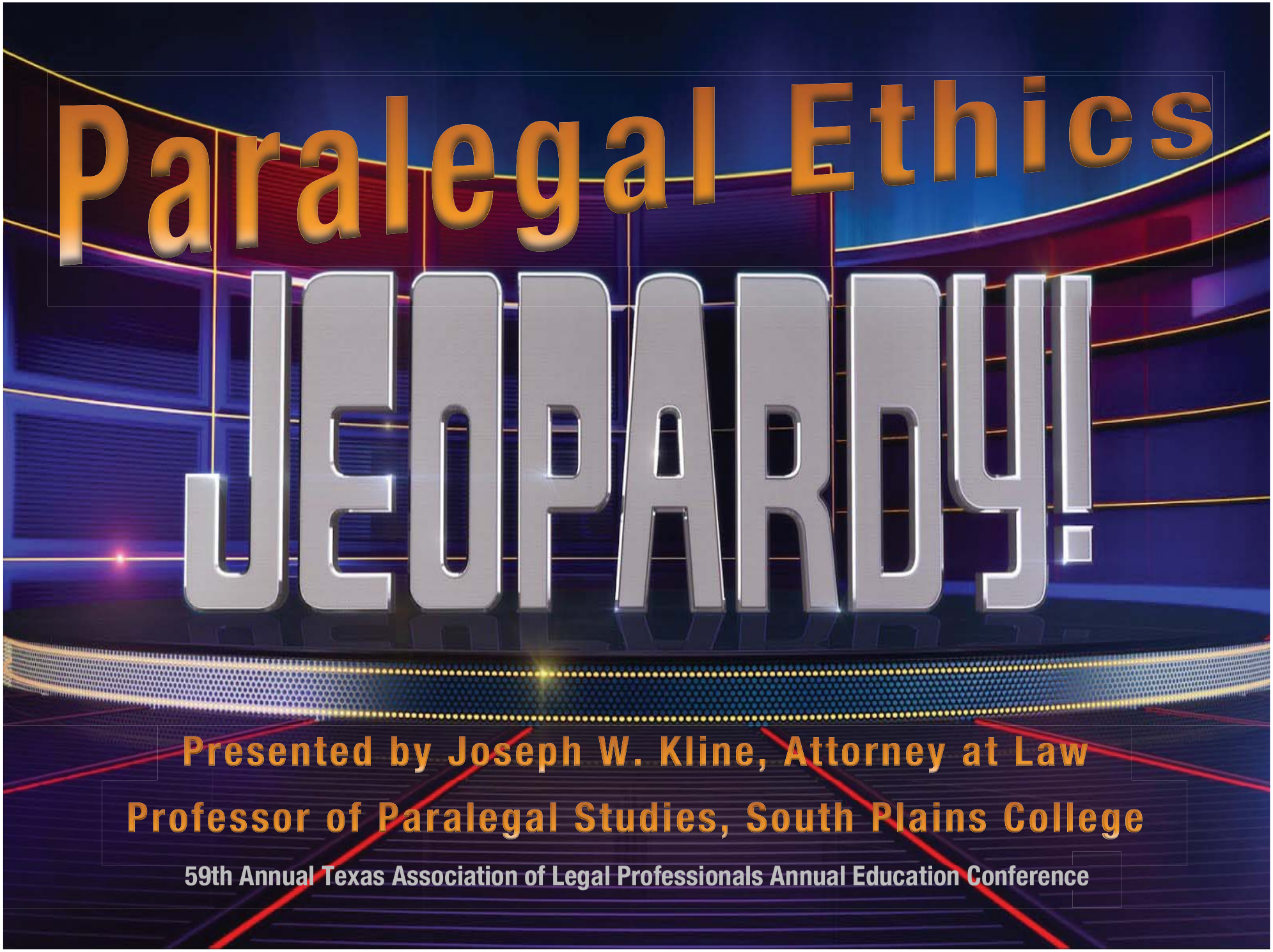
Attorney at Law (1989-Present)
Licensed to Practice Law in Texas, U.S. District Court for the Northern District of Texas, and the Supreme Court of the United States
Program Coordinator/Professor, Paralegal Studies, South Plains College, Lubbock, Texas (2003-Present)
Memberships: State Bar of Texas; Lubbock County Bar Association; College of the State Bar of Texas; Lubbock Legal Professionals Association (Honorary Member)

PUBLICATIONS/PRESENTATIONS

Texas Supplement to "Basic Civil Litigation" (2nd ed.) by Herbert Feuerhake (Aspen Publishers)
Author/Presenter: "Practical Law Office Ethics and Client Relation Skills" presented at Texas Legal Assisting Fundamentals Seminar (February 12, 2009)
Author/Presenter: "Ethical Utilization of Paralegals and Other Non-Lawyer Assistants" presented at College of the State Bar of Texas Summer School, Galveston, Texas (July, 2009) [www.texasbarcle.com/Materials/Events/8211/111612_01.pdf]
"Consideration for the Ethical Utilization of Paralegals, Legal Assistants, and other Non-Lawyer Personnel"; *Lubbock Law Notes* (October, 2009)
Author/Presenter: "Practical Ethics for Paralegals" presented at LLPA Day in Court, October, 2009

OTHER

Frequent Guest Speaker at Texas Tech University School of Law on the topic of Paralegals; Texas "Trained Mediator"



Presented by Joseph W. Kline, Attorney at Law

Professor of Paralegal Studies, South Plains College

59th Annual Texas Association of Legal Professionals Annual Education Conference

Professor Wendy Adele Humphrey

Professor Wendy Adele Humphrey is admitted to practice in Texas and New Mexico, the United States District Courts for the Northern District of Texas and the District of New Mexico, and the United States Courts of Appeals for the Fifth Circuit and the Tenth Circuit.

Professor Humphrey earned her B.A. in Psychology, magna cum laude, from Westminster College in Fulton, Missouri. While at Westminster, she was selected as a Rhodes Scholar finalist. She then earned her M.Ed. in Curriculum & Instruction, summa cum laude, and her J.D. from Texas Tech University. After graduating from law school, she joined the law firm of Lovell, Lovell, Newsom & Isern, L.L.P., where she later became a partner. She focused her litigation practice on commercial law, personal injury law, and appellate law. Among other awards, she was selected by Texas Monthly as a Rising Star in the area of general litigation. She also is a trained mediator.

She joined the faculty at the law school in 2007, where she teaches Legal Practice and serves as a co-director of the Texas Tech University Pre-Law Academy. She also co-coaches the ABA negotiation team, which won the international negotiation competition in 2010.

Professor Humphrey is active in local and state bar organizations. She currently serves as a Director for the Lubbock Area Bar Association. At the state level, she is a member of the State Bar of Texas Local Bar Services Committee, and she is on the Board of Directors for Law-Focused Education, Inc. She is a former TYLA District 3 Director and served as a co-chair of the 2013 TYLA National Trial Competition, which is the most prestigious mock trial competition in the nation. For her extraordinary service to TYLA, Professor Humphrey received the TYLA President's Award of Merit for five years in a row (2009-2013). In addition, she was selected as a 2012 Outstanding Young Lawyer by the Lubbock Area Bar Association.

In the Lubbock community, Professor Humphrey is involved in the Junior League of Lubbock and the Lubbock Junior Women's Club, and she serves as the Finance Advisor for the Texas Tech chapter of Kappa Alpha Theta. She also is a former member of the Board of Directors for Court Appointed Special Advocates (CASA) of the South Plains. In 2010, she was named one of Lubbock's "Top 20 Under 40."

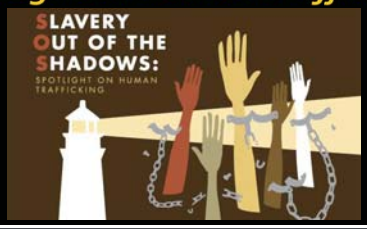
Degrees

B.A., Westminster College, 1995
M.Ed., Texas Tech University, 1997
J.D., Texas Tech University School of Law, 2001

Sarah Gunter was born and raised in the Dallas area. In 1998, she received her Bachelor of Arts from Howard Payne University, where she also graduated from the Douglas MacArthur Academy of Freedom multidisciplinary honors program. In 2001, she received her J.D. from Texas Tech University School of Law. Sarah began her legal career at the Lubbock County District Attorney's Office, where she worked from September 2001 until January 2007. In January of 2007, Sarah began her private practice as a criminal defense attorney.

In addition to her work as a criminal defense attorney, Sarah is an adjunct professor for the Texas Tech University School of Law, where she is currently teaching a course in Trial Advocacy. Sarah is a member of the State Bar of Texas, the Texas Criminal Defense Lawyers Association, the Lubbock Area Bar Association, the Lubbock Criminal Defense Lawyers Association, and the National Trial Lawyers. She is currently a member of the board of the Lubbock Area Bar Association, and she was recently named Top 100 Trial Lawyers by the National Trial Lawyers. She is a past president of the Lubbock Criminal Defense Lawyers Association.

Slavery Out Of The Shadows: *Spotlight on Human Trafficking*

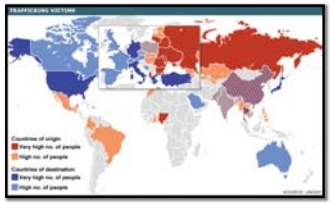


Texas ALP's 59th Annual Education Conference
May 3, 2014

Sarah Gunter

Background - Definition

- Human Trafficking is modern-day ***slavery***.
- Defined by the Trafficking Victims Protection Act
- Two Primary Forms



Background - Common Myths

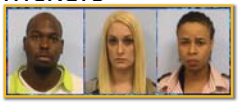
- Movement
- Nationality
- Socioeconomic Levels
- Gender
- Choosing prostitution

Background – The faces of Human Trafficking

- Survivors




- Traffickers

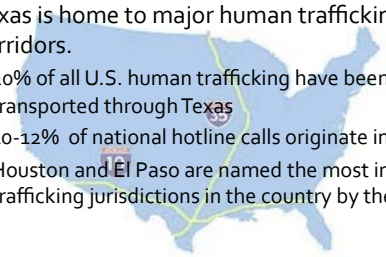



Background - Statistics

- **27 MILLION**
  - Second largest and fastest growing illegal activity in the world.
  - Potential profits are estimated in the BILLIONS
- **It is estimated that 26% of all trafficked people in the world are *children*.**
  - Over 100,000 US children are at risk of sexual exploitation
  - Average age of entry into prostitution is 12-14 for girls and 11-13 for boys and transgender youths.

Background – In Texas

- Texas is home to major human trafficking corridors.
  - 20% of all U.S. human trafficking have been transported through Texas
  - 10-12% of national hotline calls originate in Texas
  - Houston and El Paso are named the most intense trafficking jurisdictions in the country by the DOJ



Why is it so prevalent?

- Basic Economics
- Lack of Awareness/Education
- Victims do not self-identify

Prosecution – Federal Laws

- Trafficking Victims Protection Act 2000
- Subsequent Reauthorizations
  - 2003
  - 2005
  - 2008
- Trafficking Victims Protection Reauthorization Act 2013
  - Passed by both the Senate and the House earlier this year

Prosecution – Texas Laws

- Texas has criminal laws on the books governing both Sex Trafficking and Labor Trafficking.
- Legislature has also:
  - Created Human Trafficking Task Force
  - Required posting of the National Hotline
  - Provided for victim assistance
  - Has made other Civil Remedies available for victims.

Looking Forward

- Legislative Priorities
- Ways you can help
  - Talk about the issue
  - Educate yourself and others
  - Work with current anti-trafficking advocacy organizations
  - Increase and encourage political will

Questions

Human Trafficking Bills Passed in the 83rd Legislative Session

SB 92 (Van de Putte); HB 91 (Senfronia Thompson): Designates a juvenile court and a pre-adjudication diversion program for juveniles alleged to have engaged in delinquent conduct or conduct indicating a need for supervision when there is cause to believe that the child is a human trafficking victim. *Signed by Governor, effective 9/1/13.*

SB 94 (Van de Putte); HB 90 (Senfronia Thompson)**:** Provides opportunity to human trafficking survivors to seek civil remedies from traffickers and publishers of advertisements about their compelled prostitution. *Signed by Governor, effective 9/1/13.*

HB 2725 (Senfronia Thompson); SB 1354 (Van de Putte): Includes shelters that serve human trafficking survivors in the exception that allows shelters to maintain confidential records of the identity their employees and clients, and their location. Requires the Department of Family and Protective Services to adopt minimum standards for residential facilities that provide comprehensive services to survivors of human trafficking. *Passed and enrolled, sent to Governor.*

HB 1272 (SenfroniaThompson); SB 811 (Van de Putte): Requires the Texas Office of the Attorney General's Human Trafficking Prevention Task Force to work with the Texas Education Agency (TEA) and the Health and Human Services Commission to develop curriculum and train medical providers and school personnel to identify human trafficking victims. *Passed and enrolled, sent to Governor.*

HB 432 (Riddle): Allows charitable contributions by state employees to assist domestic victims of human trafficking and makes the Health and Human Services Commission, for the sole purpose of administering this grant program, an eligible charitable organization entitled to participate in the state employee charitable campaign. *Passed and enrolled, sent to Governor.*

HB 8 (Senfronia Thompson); SB 532 (Van de Putte)**:** Broadens class of individuals eligible to file an application for a protective order to all survivors of human trafficking, makes trafficking survivors eligible for reimbursement for relocation and housing expenses, and requires the attorney general to include human trafficking survivors in the address confidentiality program. Adds compelling prostitution to the list of felonies with no statute of limitation concerning when an indictment may be presented and increases penalties for traffickers and "johns," including requiring individuals convicted or adjudicated for solicitation of a minor to register as a sex offender. *Passed and enrolled, sent to Governor.*

SB 12 (Huffman); HB 330 (Riddle): Allows evidence of prior similar offenses to be admitted in cases involving certain sexual offenses against a child, including: Sex Trafficking of a Child; Sexual Assault of a Child; and Online Solicitation of a Minor. Additionally, this bill requires the trial judge to stringently review the evidence in a hearing out of the presence of the jury before the evidence may be admitted. *Passed and enrolled, sent to Governor.*

SB 357 (Hinojosa); HB 1292 (Anchia): Requires the court to issue a protective order when, at the close of a hearing on an application for a protective order, the court finds reasonable grounds to believe that the applicant is a survivor of trafficking or sexual abuse. *Passed and enrolled, sent to Governor.*

HCR 57 (Hunter): Resolution requesting that the lieutenant governor and the speaker of the house of representatives create a joint interim committee to study human trafficking in Texas and submit a full report to the 84th Legislature in January, 2015. *Passed and enrolled, sent to Governor.*

HB 1120 (Riddle); SB 556 (Wendy Davis)**:** Adds "encouraging individuals" to report activity relating to human trafficking to the duties of the Texas Crime Stoppers Council and includes trafficking of persons in list of offenses where financial reward is available. *Passed and enrolled, sent to Governor.*

HB 3241 (Senfronia Thompson): Creates the civil offense of racketeering related to human trafficking, under which the attorney general may bring a suit for damages and injunctive relief. *Passed and enrolled, sent to Governor.*

HB 1206 (Parker): Requires law enforcement to actively investigate the location of a child who, for a period of at least 48 hours, has been taken from a parent and with the purpose of depriving that parent of access to the child. Upon finding the child, it further requires law enforcement to assess the well-being of the child and to follow standard protocol in involving child protective services in the case if the child is suspected to be the victim of abuse or neglect as defined in the Family Code. *Passed and enrolled, sent to Governor.*

HB 2268 (Frullo); SB 1052 (Carona): Amends current law relating to search warrants issued in this state and other states for certain customer data, communications, and other related information held in electronic storage in this state and other states by providers of electronic communications services and remote computing services. Assists law enforcement access information and data vital to prosecute an offense under state law, particularly relating to internet crimes. *Passed and enrolled, sent to Governor.*

HB 2539 (Chris Turner); SB 1190 (Davis): Requires computer technicians to report images of child pornography and provides a criminal penalty. *Passed and enrolled, sent to Governor.*

SB 484 (Whitmire); HB 3377 (Sylvester Turner): Authorizes the establishment of prostitution prevention programs to provide certain prostitution offenders access to information, counseling, and services regarding sex addiction, sexually transmitted diseases, mental health, and substance abuse. *Passed and enrolled, sent to Governor.*