

Question 6 Selected Answer

- 1.) No, the trial court did not err in denying Carmen's request for a greater share of the community property. In Texas, the trial court has wide discretion in determining the "right & just division" of the marital estate. Its decision will only be reversed when there is a clear abuse of discretion. The presumption is that a just & right division included  $\frac{1}{2}$  of the community property to each spouse and the separate property of each spouse to the respective spouse. This presumption can be deviated from if the trial court decides that such a deviation is warranted based on the totality of the factors. Here, Carmen received more than  $\frac{1}{2}$  the community estate. This indicates that the court considered the factors and divided the estate as it saw fit in the interest of justice. The court will look at factors such as age, health, length of marriage, fault, etc. Here, Alex was at fault and the length of the marriage was long. Courts in Texas are split on whether fault should be considered in a no-fault action but here Carmen filed on the grounds of adultery so the court was right to consider it. Nonetheless, the court's division indicates that it considered all the relevant factors, including fault. Consequently, Carmen is not entitled to a larger share solely as a punitive measure if the trial court does not deem it warranted.
- 2.) No. Carmen is not entitled to spousal maintenance. In Texas, a court may award spousal maintenance when the couple has been married for at least 10 years, the spouse asking for support cannot make his or her monthly expenses out of their separate funds and award of the just & right division, and 1) due to disability, the spouse cannot work or 2) due to lack of education, the spouse cannot work. Here, Carmen and Alex were married the requisite amount of time. Also, Carmen claims to not be able to make her monthly expenses out of her monthly income check. The court, however, must take all of Carmen's property into account in determining whether a spousal maintenance award is warranted and not just her retirement account. Finally, Carmen cannot meet the last element required for a court to award spousal maintenance. Carmen has worked for 35 years and took an early retirement. She cannot claim that she can no longer work due to disability or lack of education. Even though Carmen worked at low-paying jobs while Alex developed his career, there is nothing in the facts to indicate that Carmen was prevented from developing her own career over the course of the previous 35 years. Also, even though Carmen has devoted her time to household matters since her retirement and not sought job training, there is again nothing in the facts to indicate that Carmen was prevented from seeking job training or was in any way required to devote time to household matters. Consequently, Carmen is not entitled to an award of spousal maintenance.

SELECTED ANSWER

6)

1. The Court did not err in denying Carmen's request for a greater share of the community. In a divorce action, the trial court has great discretion in dividing the community estate of the parties. Texas does not follow an equal division plan for divorces. Rather, the Texas Family Code allows the trial court to divide the estate of the parties in a just and right division. In determining the just and right division the trial court can consider many factors, including:

- fault in the breakup of the marriage;
- age of the spouses;
- health of the spouses;
- comparable work history and ability to earn of the spouses;
- the amount of debt in the community estate;
- the needs of any children of the marriage;
- the amount of separate property each party owns;
- the amount of attorney's fees to be paid;
- whether a spouse has committed fraud;
- whether temporary support was paid to a spouse during the pendency of the suit.

Absent a clear abuse of discretion by the trial court judge, an appellate court will not disturb a trial court's division of property.

Here, the court properly considered, the ages of the spouses, the fact that Carmen is now retired, the length of the parties marriage, that fact that now minor children need to be cared for, the fact that the parties had accumulated a moderate estate, and the adultery as a factor in the fault in the break up of the marriage. The fact that Alex committed adultery, no matter how morally wrong that may have been, does not entitle Carmen to be awarded 100% of the community estate. Rather, it is a factor in determining a just a right division. Although not a requirement, trial courts typically will start with the presumption that a fifty-fifty division is just a right. From there, they listen to and weigh th evidence regarding whether or not to order a disproportionate share of the estate to one party or the other. Here, taking into consideration the adultery (and other relevant factors) was all the trial court was required to do. Thus, it is unlikely that an appellate court would overturn this division of assets because there is not clear abuse of discretion. (For example, say that Carmen had been awarded 50% based upon the facts provided, then she would have a god argument that the trial court abused its discretion in light of the fact that fault was conclusively established through testimony - but such is not the case here.)

2. The trial Court probably did not err in denying Carmen's request for spousal maintenance. The party seeking maintenance must as a threshold for considering eligibility for spousal maintenance prove that (1) the parties have been married for 10 years; and (2) the requesting spouse is without the ability to meet her minimum monthly needs. Here, Carmen and Alex had been married in excess of 30 years. Also, Carmen proffered evidence of the fact that her retirement check was insufficient to meet her minimum monthly needs. Thus, meeting the threshold requirements, the Court must further examine Carmen's needs for spousal support considering the following factors for eligibility:

1. Whether or not Carmen suffers from a disability prohibiting her from gaining employment;
2. Whether Carmen has a child under her care who requires full time care such that Carmen is without the ability to work;
3. Whether Carmen has the ability to gain employment; and
4. Whether the division of the community estate is such that in addition to her monthly income, Carmen has adequate assets available to her with which to meet her minimum monthly expenses.

Here, the facts do not indicate that Carmen suffers from any disability or that she has a child in her custody whom requires full time care thus prohibiting her from gaining employment. With regard to the fact of whether or not Carmen has the ability to gain employment, the facts provided are scarce. We know she took an early retirement suggesting that her age does not prevent her from gaining employment. The fact that she has been out of the work force for two years will probably not prohibit her from being able to gain some type of employment to supplement her income. While Carmen may argue that the jobs she can perform do not pay as much as Alex's - well, that is her unfortunatley her problem. There was no evidence that Carmen was prevented from eveloping her career. Thus, while she may want to be retired, Carmen may have to face the fact that without being married she will have to supplement her income with some type of employment.

Lastly, the Court will consider the division of the community estate when determining whether or not to pay spousal support. Here the Court is likely to find that by awarding Carmen 60% of the community estate, she will have the ability to supplement her monthly needs. Unfortunatley, Carmen did not offer evidence of exatly how much of the community estate she would need to be able to support herself so with the testimony given, the trial court judge was within his discretion to find that \$300,000.00 of assets would supplement her income. A more detailed analysis could be given with more facts regarding whether or not her monthly expenses are reasonable. It is likely that information would be available to a trial court judge for consideration.

SELECTED ANSWER

6)

1)

The trial court did not err in denying Carmen's request for a greater share of the community estate. Under Texas law, a spouse can file for a fault divorce under the grounds for adultery and cruel treatment. Additionally, a spouse can file for a no-fault divorce alleging that the marriage has become insupportable and there is no potential for reconciling. Upon making a division of the property, a court must make a just and right division of the community estate. Under a fault divorce, the court is permitted to distribute the property unequally based on the relative fault of one spouse. But under a no fault divorce, the court is usually bound to make equal distributions, but it is unclear from case law whether the judge can consider fault in a no-fault divorce proceeding when distributing assets.

Here, Carmen alleges both no-fault (insupportability) and fault divorce (adultery and cruel treatment). The fact that Carmen was awarded more assets than Alex indicates that either the judge was basing his decision on a fault divorce or considered Alex's relative fault for the insupportability of the marriage. Regardless of the distinction, the judge did not err. A judge has wide discretion to make a just and fair division of property because the judge hears all the testimony and sees all the evidence at trial. He is only overturned on appeal if the judge has committed an abuse of discretion. Considering the judge awarded Carmen a disproportionate amount of the estate, the judge likely took that into consideration Alex's adultery when dividing the estate. The fact that Alex continually denied the adultery does not give added weight to a claim for a greater share in the division of property. Carmen has provided no evidentiary support for a greater claim of the estate. Therefore, the judge did not err in awarding 60% of the estate to Carmen and 40% to Alex.

2)

The trial court did not err in denying Carmen's request for spousal maintenance. Under Texas law, alimony is prohibited and spousal maintenance is only awarded under limited circumstances. A spouse is entitled to spousal maintenance in Texas if: (i) the couple was married for more than 10 years; (ii) the spouse seeking spousal maintenance does not have adequate property to provide for her support; and (iii) either the spouse is disabled, is caring for a child that is disabled, or the spouse lacks the relative skill, education, and experience to earn a living. Even if the court awards spousal maintenance, the spouse is only limited the time

necessary to obtain the necessary skill, education, or experience to support herself, but not more than three years. And finally, the spouse is entitled to no more than \$2,500 per month.

Here, although the couple was married for more than 10 years, Carmen does not satisfy any of the other requirements. Carmen had worked for thirty-five years and had taken early retirement. Even though her retirement benefits are not enough to support her current lifestyle, this does not give rise to a claim for spousal maintenance. Additionally, Carmen is not disabled or caring for a disabled child. She presumably has skills and experience necessary to earn a living because she had been working for the past 35 years, even though she has spent the last two years devoted to household matters. Finally, Carmen has enough property to support herself until she can find a job. The trial judge awarded Carmen \$300,000 in community assets.

The fact that Alex was the dominant provider does not give anymore weight to Carmen's arguments. And the fact that Carmen worked in low-paying jobs or that her monthly expenses exceeded her available retirement income also gives little or no weight to her argument. Therefore, Carmen is not entitled to spousal maintenance and the trial court did not err in denying her claim.

**END OF EXAM**