

**AFFIRMED and Opinion Filed July 1, 2020**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-19-00989-CV**

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**WILLIE L. SUMMERVILLE, Appellant**

**V.**

**SUSAN SUMMERVILLE BRIGHT, Appellee**

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**On Appeal from the 330th Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DF-18-24783**

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**MEMORANDUM OPINION**

Before Justices Whitehill, Osborne, and Carlyle  
Opinion by Justice Osborne

The trial court rendered a decree of divorce between appellant Willie L. Summerville (“Husband”) and appellee Susan Summerville Bright (“Wife”). In three issues, Husband challenges the decree’s provisions for spousal maintenance and division of proceeds from the sale of community property. We affirm the trial court’s judgment.

**BACKGROUND**

After notice and on appellant’s motion, we ordered this appeal submitted without a reporter’s record. *See* TEX. R APP. P. 37.3(c). Thus, we draw the facts

solely from the clerk's record. *See Aguilar v. Willems*, No. 05-19-00060-CV, 2020 WL 2552880, at \*1 (Tex. App.—Dallas May 20, 2020, no pet. h.) (mem. op.).

Husband and Wife were married in 2003. Wife filed a petition for divorce in 2018. The trial court ordered the parties to mediation; Husband appeared but Wife did not. The case was set for trial before the court to resolve contested issues of “property/debt division” and “spousal support/maintenance.” Both parties appeared pro se at trial, and the trial court rendered judgment on August 8, 2019.

In paragraph 6I of the judgment, the trial court ordered Husband to pay Wife a portion of the proceeds from the sale of their community property home:

6I. Husband is to pay Wife \$10,500.00 (ten thousand five hundred dollars) representing 1/2 of the proceeds of the sale of the community home, that were left over after separation, which Husband controlled.

In paragraph 6J of the judgment, the trial court ordered Husband to pay spousal maintenance:

6J. Spousal Maintenance

- 1.) Due to the gross disparity in earning capacities of the parties, the very little community estate to distribute, the wife's inability to earn sufficient income to provide basic, minimal, reasonable needs (due to physical disability), and that the marriage lasted over ten years, the Court awards spousal maintenance as follows:
- 2.) The spousal maintenance herein shall continue until further Order of the Court. *See* Family Code § 8.054(b)
- 3.) Spousal support/maintenance to be paid is \$2,000.00 (two thousand dollars) per month, payable on the first of each month
- 4.) If Wife desires a wage withholding order, she needs to provide an appropriate order to the Court.

Husband timely filed a notice of appeal. In three issues, he challenges sections 6I and 6J of the trial court's judgment.

## DISCUSSION

### 1. Standard of review and scope of appellate record

We review both the trial court's decision to award spousal maintenance and its division of property for abuse of discretion. *Tellez v. Tellez*, 345 S.W.3d 689, 691 (Tex. App.—Dallas 2011, no pet.) (spousal maintenance); *Moroch v. Collins*, 174 S.W.3d 849, 857 (Tex. App.—Dallas 2005, pet. denied) (division of property). The trial court abuses its discretion when it acts arbitrarily or unreasonably, or without any reference to guiding rules and principles. *Tellez*, 345 S.W.3d at 691. The trial court does not abuse its discretion if there is some evidence of a substantive and probative character to support the decision. *Id.*

When an appellant fails to bring forward a reporter's record, the appellate court must presume the evidence presented was sufficient to support the trial court's judgment. *Willms v. Americas Tire Co., Inc.*, 190 S.W.3d 796, 803 (Tex. App.—Dallas 2006, pet. denied); *see also Vasquez v. Firebird SFE I, LLC*, No. 05-19-00057-CV, 2020 WL 2059913, at \*1 (Tex. App.—Dallas Apr. 29, 2020, no pet. h.) (mem. op.). But we will consider questions of law even without a reporter's record. *In re L.C.H.*, 80 S.W.3d 689, 691 (Tex. App.—Fort Worth 2002, no pet.).

We also note that the appendix to Husband's brief includes documents that are not included in the appellate record. An appellate court may not consider

documents attached to an appellate brief that are not part of the record. *In re A.A.M.*, No. 05-18-01314-CV, 2020 WL 477109, at \*2 (Tex. App.—Dallas Jan. 29, 2020, no pet.) (mem. op.). We recognize that Husband is appearing before the court pro se, but as we explained in *In re A.A.M.*, on appeal as at trial, a pro se appellant must properly present his case by complying with the applicable laws and rules of procedure. *See id.* Accordingly, those documents attached to Husband’s appendix that are not part of the appellate record will not be considered. *Id.* (citing TEX. R. APP. P. 34.1, providing that the appellate record consists of the clerk’s and reporter’s records).

## **2. Property division**

In his first issue, Husband argues that the \$10,500.00 award to Wife in section 6I of the decree should be “reduced or eliminated” because the trial court failed to consider that Wife “had been irresponsible with finances and had to clear up unnecessary debt that was created solely by her and hidden by her.” He also argues that the sale of the property in question took place two years before the decree was rendered. He relies, however, on attachments to his brief that are not included in the appellate record and that we may not consider. *See In re A.A.M.*, 2020 WL 477109, at \*2.

Because a reporter’s record is necessary for us to review the factual premise underlying Husband’s argument—that Wife hid and paid “unnecessary debt” with

community property—we decide Husband’s first issue against him. *See Aguilar*, 2020 WL 2552880, at \*1–2.

### 3. Spousal maintenance

In his second and third issues, Husband challenges the trial court’s award of spousal maintenance in paragraph 6J of the judgment. Family code section 8.051 governs a spouse’s eligibility for maintenance:

#### § 8.051. Eligibility for Maintenance

In a suit for dissolution of a marriage . . . the court may order maintenance for either spouse only if the spouse seeking maintenance will lack sufficient property, including the spouse’s separate property, on dissolution of the marriage to provide for the spouse’s minimum reasonable needs and: . . .

(2) the spouse seeking maintenance:

(A) is unable to earn sufficient income to provide for the spouse’s minimum reasonable needs because of an incapacitating physical or mental disability; [or]

(B) has been married to the other spouse for 10 years or longer and lacks the ability to earn sufficient income to provide for the spouse’s minimum reasonable needs . . .

In accordance with section 8.051, the trial court made express findings regarding Wife’s eligibility for maintenance, including the “gross disparity in earning capacities of the parties,” “very little community estate to distribute,” and Wife’s “inability to earn sufficient income to provide basic, minimal, reasonable needs (due to physical disability).” In his second issue, Husband challenges these findings, arguing that although Wife appeared at trial using a walker and wearing a

back brace, these were temporary problems following recent back surgeries. He argues that Wife has been cleared to return to work but has chosen not to do so even though her earning potential was unlimited and could equal or exceed Husband's. He also argues that the amount awarded, \$2,000.00 per month, is excessive and creates a financial burden on him because it "represents approximately 33% of my income." As with Husband's first issue, these complaints present questions of fact that we may not review absent a reporter's record. *See Aguilar*, 2020 WL 2552880, at \*1–2. We presume the evidence is sufficient to support the trial court's findings on these matters. *See Willms*, 190 S.W.3d at 803. We decide Husband's second issue against him.

In his third issue, Husband argues that the trial court erred by failing to set an end date to the maintenance payments. He relies on family code section 8.054, subsection (a), that limits the duration of a maintenance order to five years for spouses who were married for at least ten years but not more than twenty years. *See* TEX. FAM. CODE § 8.054(a)(ii). The trial court, however, cited subsection (b) of section 8.054 in its order, which provides that "[t]he court may order maintenance for a spouse to whom Section 8.051(2)(A) or (C) applies for as long as the spouse continues to satisfy the eligibility criteria prescribed by the applicable provision." TEX. FAM. CODE § 8.054(b). As we have discussed, the trial court made express findings of Wife's eligibility for maintenance under section 8.051(2)(A), and

consequently did not err by failing to set an end date for the payments.<sup>1</sup> We decide Husband's third issue against him.

### CONCLUSION

The trial court's judgment is affirmed.

/Leslie Osborne/

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LESLIE OSBORNE  
JUSTICE

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<sup>1</sup> Family code subsections 8.054(c) and (d) permit review and modification of maintenance orders, either on the court's own motion or a party's motion to modify. *See* TEX. FAM. CODE § 8.054(c) ("On the request of either party or on the court's own motion, the court may order the periodic review of its order for maintenance under Subsection (b)."); *id.* § 8.054(d) ("The continuation of maintenance ordered under Subsection (b) is subject to a motion to modify as provided by Section 8.057."). Although Husband may in the future file a motion in the trial court to request review and modification of the maintenance order, this relief is beyond the scope of this appeal.



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

WILLIE L. SUMMERVILLE,  
Appellant

No. 05-19-00989-CV      V.

SUSAN SUMMERVILLE BRIGHT,  
Appellee

On Appeal from the 330th Judicial  
District Court, Dallas County, Texas  
Trial Court Cause No. DF-18-24783.

Opinion delivered by Justice  
Osborne. Justices Whitehill and  
Carlyle participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee Susan Summerville Bright recover her costs of this appeal from appellant Willie L. Summerville.

Judgment entered July 1, 2020