

AFFIRMED; Opinion Filed May 27, 2020



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

No. 05-19-00867-CV

IN THE INTEREST OF J.A., C.D.A., AND T.A., CHILDREN

**On Appeal from the 382nd Judicial District Court
Rockwall County, Texas
Trial Court Cause No. 1-09-785**

MEMORANDUM OPINION

Before Justices Myers, Partida-Kipness, and Reichel
Opinion by Justice Myers

Father appeals the trial court's order determining the amount of his child-support arrearage. Father brings fourteen issues on appeal. However the only issue relevant to the order on appeal is that the trial court erred in its determination of the amount of the child-support arrearage. We affirm the trial court's judgment.

BACKGROUND

Mother and Father were married in 1997 and divorced in 2009. At the time of the divorce, they had six minor children. The divorce decree ordered Father to pay child support of \$1,500 per month until the final child reached the age of

eighteen years. The decree also ordered Father to pay Mother contractual alimony of \$1,165 per month. The decree required Father to provide the children's health insurance.

On October 10, 2018, Father filed this suit to modify the divorce decree requesting that the amount of child support be reduced. Father asserted his income was reduced and he was paying more child support than would be required by the statutory guidelines. By this time, two of the children had reached the age of eighteen, and a third turned eighteen ten days later.

On October 23, 2018, Mother filed a general denial to Father's petition and a counterpetition and motion for enforcement of the decree, alleging Father was \$10,500 in arrears for child support, had never paid the contractual alimony, and was \$126,036 in arrears for alimony.

On April 2, 2019, the Office of Attorney General (OAG) filed a counterpetition in the suit alleging Father owed child support of \$18,309.86. The OAG requested that the trial court enter judgment against Father for the child support.

The trial court held a bench trial on July 16, 2019. Father testified that he had filed for disability payments with the Social Security Administration and was determined to be disabled from April 2018. Mother testified she was receiving

checks from the Administration for \$417 per month for child support.¹ Mother testified she had also received a lump-sum payment of \$3,300 in December 2018 for child support from the Administration.² Father ceased to pay the children's health insurance in April 2018, and the children were enrolled in Medicaid.

The trial court determined that Father's child-support arrearage was \$10,585.37. The trial court offset that amount by the Administration's \$3,300 lump-sum payment to Mother, and the court determined the arrearage he owed was \$7,285.37. The trial court ordered Father to pay that amount at \$70 per month. The court also ordered Father to pay Mother \$25 per month for medical support. Because Mother received \$417 per month as child support from the Administration due to Father's disability, the trial court modified the amount of Father's child support to \$0.

MODIFICATION OF CHILD SUPPORT

In his fourteenth issue, Father contends the trial court erred by determining Father's child-support arrearage was \$7,285.37.

Standard of Review

A trial court's determination of child-support arrearages is reviewed for an abuse of discretion. *See Beck v. Walker*, 154 S.W.3d 895, 901 (Tex. App.—Dallas 2005, no pet.). A trial court abuses its discretion when it acts “without reference to

¹ This amount was disputed. Father testified Mother received \$556 per month.

² Father argues Mother received a lump-sum payment of \$4,760.

any guiding rules and principles”; in other words, if it acts arbitrarily or unreasonably. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985). Legal and factual sufficiency are factors that can be considered in determining whether an abuse of discretion has occurred. *In re C.H.C.*, 396 S.W.3d 33, 55–56 (Tex. App.—Dallas 2013, no pet.).

To determine whether the trial court abused its discretion because the evidence is insufficient to support its decision, we apply a two-prong analysis. *Moroch v. Collins*, 174 S.W.3d 849, 857 (Tex. App.—Dallas 2005, pet. denied). First, we consider whether the trial court had sufficient evidence upon which to exercise its discretion. *Id.* We then determine whether, based on the evidence, the trial court erred in its exercise of that discretion. *Id.* We conduct the applicable sufficiency review with regard to the first question. *Gonzalez v. Gonzalez*, 331 S.W.3d 864, 867 (Tex. App.—Dallas 2011, no pet.). We then determine whether, based on the elicited evidence, the trial court made a reasonable decision. *Id.*

A legal sufficiency challenge may be sustained only when (1) the record discloses a complete absence of evidence of a vital fact, (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact, (3) the evidence offered to prove a vital fact is no more than a mere scintilla, or (4) the evidence establishes conclusively the opposite of a vital fact. *City of Keller v. Wilson*, 168 S.W.3d 802, 810 (Tex. 2005). In determining

whether there is legally sufficient evidence to support the finding under review, we must consider evidence favorable to the finding if a reasonable fact-finder could, and disregard evidence contrary to the finding unless a reasonable fact-finder could not. *Id.* at 827.

When reviewing the evidence for factual sufficiency, we consider and weigh all the evidence presented and will set aside the trial court's findings only if they are so contrary to the overwhelming weight of the evidence such that they are clearly wrong and unjust. *Plas-Tex, Inc. v. U.S. Steel Corp.*, 772 S.W.2d 442, 445 (Tex. 1989); *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986). When the evidence conflicts, we must presume that the factfinder resolved any inconsistencies in favor of the order if a reasonable person could do so. *City of Keller*, 168 S.W.3d at 821. The trial court does not abuse its discretion if evidence of a substantive and probative character exists in support of its decision. *In re Moore*, 511 S.W.3d 278, 283 (Tex. App.—Dallas 2016, no pet.).

A trial court is required to follow particular procedures in entering a final judgment in a proceeding seeking child-support arrearages. *In re G.L.S.*, 185 S.W.3d 56, 59 (Tex. App.—San Antonio 2005, no pet.). First, the trial court must tally the amount of the arrearage based on the payment evidence presented. *Beck v. Walker*, 154 S.W.3d 895, 903 (Tex. App.—Dallas 2005, no pet.); *Lewis v. Lewis*, 853 S.W.2d 850, 854 (Tex. App.—Houston [14th Dist.] 1993, no writ). After this calculation is made, the final judgment is to be rendered only after

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