Opinion issued August 21, 2008

In The
Court of Appeals
For The
First District of Texas

NO. 01-07-00226-CV

CRAIG P. LONGHURST, Appellant

V.

LINDA K. CLARK, Appellee

On Appeal from the 257th District Court
Harris County, Texas
Trial Court Cause No. 1992-03711

MEMORANDUM OPINION

In 2006, Linda K. Clark filed an amended motion requesting that the trial court render judgment against her former husband, Craig P. Longhurst, for previously confirmed and unconfirmed child support arrearages, plus interest, owed under the

trial court's 1992 order. The trial court granted Linda's motion and rendered a cumulative judgment against Craig. On appeal, Craig challenges the trial court's judgment in seven issues. We modify that part of the trial court's judgment granting a cumulative judgment in Linda's favor and affirm the judgment as modified.

Background

In 1988, Linda and Craig were divorced in Colorado. The Colorado court entered a child support order and granted Linda custody of the couple's five minor children. Following the divorce, Linda and the children moved to Utah and Craig moved to Texas. In 1992, at the request of the State of Utah, the Attorney General of Texas brought a notice of registration and motion to enforce the Colorado child support order in Texas. The 257th District Court of Harris County entered a default order against Craig.[1] In that order, the court rendered a judgment confirming that Craig owed $121,902.00 in arrearages.[2] The court also modified Craig's support obligations, ordering him to make monthly payments of $1,642.00 from May 1992 until all of the children were 18 years old, or later if any child over 18 was still enrolled in a program leading toward a high school diploma.

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[1] The trial court's 1992 default order will be referred to as the "1992 Texas order."

[2] The trial court's 1992 judgment for accrued child support arrearages will be referred to as the "1992 judgment."

In 2004, Linda filed a motion against Craig and the State of Texas to revive and enforce the 1992 judgment and to confirm all unpaid child support arrearages owed by Craig. The Attorney General filed a motion asking that the State of Texas be dismissed as a party. The court entered another default judgment against Craig and dismissed all of Linda's claims against the State of Texas. Craig filed a motion for new trial, which the court granted.

In 2006, Craig filed his original answer. After Linda filed an amended motion to revive and enforce the 1992 judgment and to confirm all unpaid child support arrearages, Craig filed an untimely response, which was struck. During the bench trial, Craig sought to introduce evidence of a 1993 child support order issued by the State of Utah and evidence that he had made payments pursuant to that order. The trial court excluded the evidence, and, following trial, rendered a cumulative judgment against Craig for $464,796.00, inclusive of interest. The court made findings of fact and conclusions of law upon Craig's request. Craig filed a motion for new trial and requested additional and amended findings of fact and conclusions of law. The trial court denied Craig's motion for new trial and request for additional and amended findings. Craig now appeals.

Standing

We begin with Craig's sixth issue, in which he contends that the trial court erred

in granting Linda's motion because she lacked standing to enforce the 1992 Texas order.

Because standing is a component of subject-matter jurisdiction, we review a trial court's determination of standing de novo. *Phillips v. Phillips*, 244 S.W.3d 433, 435 (Tex. App.—Houston [1st Dist.] 2007, no pet.). Standing may be raised for the first time on appeal. *Austin Nursing Center, Inc. v. Lovato*, 171 S.W.3d 845, 849 (Tex. 2005). In analyzing issues of standing, we determine "whether a party has a sufficient relationship with the lawsuit so as to have a 'justiciable interest' in its outcome." *Id.* at 848. In Texas, the standing doctrine requires that there be (1) "a real controversy between the parties," that (2) "will be actually determined by the judicial declaration sought." *Id.* at 849. We construe the petition in favor of the plaintiff and review the entire record to determine whether any evidence supports standing. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993).

In order to enforce Craig's support obligations across state lines, Linda utilized the Revised Uniform Reciprocal Enforcement of Support Act ("RURESA").[3] It appears from the record that Linda assigned her rights to receive child support under the Colorado order to the State of Utah, which in turn requested that the State of Texas

[3] *See generally* Act of July 19, 1987, 70th Leg., 2d C.S., ch. 49, § 1, 1987 Tex. Gen. Laws 145, *amended by* Act of May 26, 1993, 73rd Leg., R.S., ch. 970, § 1, 1993 Tex. Gen. Laws 4212, 4212–31 *repealed by* Act of April 6, 1995, 74th Leg., R.S., ch. 20, § 2, 1995 Tex. Gen. Laws 113, 282.

enforce the order against Craig. The Texas Attorney General then brought a motion to register and enforce the Colorado order on Linda's behalf.

Craig asserts that, pursuant to statute, an application to the Attorney General to provide child support services acts as an assignment of any rights to support the applicant had.[4] He also contends that the Attorney General has since terminated its assignment of Linda's child support. Craig argues that, without a reassignment from the Attorney General of Texas to Linda, or from the Attorney General of Texas to the State of Utah to Linda, Linda is not a judgment creditor with a right to enforce payment and lacks standing to enforce the 1992 Texas order. We disagree.

In her original and amended motions for enforcement, Linda alleged that the State of Texas brought the 1992 motion to confirm and enforce on her behalf, making her the beneficiary of the judgment awarded to the Attorney General in the 1992 Texas order. The Attorney General's motion to register and enforce the Colorado order was brought on Linda's behalf and the 1992 Texas order indicates that Linda appeared through the Attorney General.[5] While Linda could have enforced Craig's support

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[4] *See* Act of July 14, 1989, 71st Leg., 1st C.S., ch. 25, § 38, 1989 Tex. Gen. Laws 74, 89, *repealed by* Act of April 6, 1995, 74th Leg., R.S., ch. 20, § 2, 1995 Tex. Gen. Laws 113, 282; Act of June 1, 1987, 70th Leg., R.S., ch. 1052, § 7.05, 1987 Tex. Gen. Laws 3546, 3579, *repealed by* Act of April 6, 1995, 74th Leg., R.S., ch. 20, § 2, 1995 Tex. Gen. Laws 113, 282.

[5] At the time the Attorney General brought the 1992 motion, former section 76.007 of the Human Resources Code applied, which specifically gave the Attorney General authority to represent a party "in a suit to establish or modify a child support obligation [or] collect child support." Act of July

obligations in her own name, the record shows that she instead utilized RURESA and had the Attorney General represent her. *See In re B.I.V.*, 923 S.W.2d 573, 573 (Tex. 1996). Accordingly, we hold that there is evidence that Linda has standing to enforce the 1992 judgment and child support order stemming from the 1992 Texas order. *See Tex. Ass'n of Bus.*, 852 S.W.2d at 446.

We overrule Craig's sixth issue.

Revival of Judgment Based on Past-Due Child Support

In his fourth issue, Craig contends that the trial court erred in enforcing the 1992 judgment because it was dormant and Linda did not properly revive it.

If a writ of execution is not issued within 10 years after the rendition of a judgment, the judgment is dormant and execution may not be issued on the judgment unless it is revived. TEX. CIV. PRAC. & REM. CODE ANN. § 34.001(a) (Vernon 2008). A dormant judgment may be revived by a writ of scire facias or by an action of debt brought not later than the second anniversary of the date that the judgment becomes dormant. *Id.* § 31.006 (Vernon 2008). Thus, the Civil Practice and Remedies Code provides a 12-year "residual" limitations period for final judgments. *Burnett-Dunham v. Spurgin*, 245 S.W.3d 14, 17 (Tex. App.—Dallas 2007, no pet.).

14, 1989, 71st Leg., 1st C.S., ch. 25, § 6, 1989 Tex. Gen. Laws 74, 75, *repealed by* Act of April 6, 1995, 74th Leg., R.S., ch. 20, § 2, 1995 Tex. Gen. Laws 113, 282; *see also Attorney General of Texas v. Steen*, 833 S.W.2d 175, 177 (Tex. App.—Austin 1992, no writ).

The record does not show that a writ of execution was issued within 10 years of the rendition of the 1992 judgment. Accordingly, the 1992 judgment was dormant and required revival before it could be enforced. We must determine whether Linda timely revived the judgment.

It is undisputed that Linda's petition was not a writ of scire facias. Linda asserts, however, that her petition was an action of debt brought within the 12-year period. Craig argues that, because child support is not "debt," her suit did not constitute an "action of debt." We disagree with Craig.

A new suit based on an original judgment brought against the judgment debtor is "action of debt." *In re Brints*, 227 B.R. 94, 96 (Bankr. N.D. Tex. 1998). It is well settled that a child support obligation is not considered a debt, but a legal duty. *Ex parte Hall*, 854 S.W.2d 656, 658 (Tex. 1993). Likewise, the obligation does not become a debt after arrearages are reduced to a judgment. *Dryden v. Dryden*, 97 S.W.3d 863, 866 (Tex. App.—Corpus Christi 2003, pet. denied). Nevertheless, the Family Code provides that a money judgment for child support arrearages "may be enforced by any means available for the enforcement of a judgment for debts." TEX. FAM. CODE ANN. § 157.264(a) (Vernon Supp. 2008). Under the facts of this case, we

conclude that Linda's suit was an action of debt,[6] reviving the 1992 judgment. Because it was properly revived, we hold that the trial court did not err in enforcing the 1992 judgment.

We overrule Craig's fourth issue.

Collateral Attack

In his first issue, Craig attempts to collaterally attack the 1992 Texas order, which he claims is void. He contends the order is void because (1) it was based on the original 1988 Colorado order, which was never properly registered, (2) the trial court lacked subject matter jurisdiction in 1992 to modify the Colorado order, and (3) the trial court lacked personal jurisdiction over Craig.

A collateral attack, unlike a direct attack, does not attempt to secure the rendition of a single, correct judgment in the place of a former judgment. *Armentor v. Kern*, 178 S.W.3d 147, 149 (Tex. App.—Houston [1st Dist.] 2005, no pet.). Instead, it is an attempt to avoid the effect of a judgment in a proceeding brought for some other purpose. *Id.*

A party may collaterally attack a judgment of a court of general jurisdiction in another court of equal jurisdiction if the underlying judgment is void. *Id.* A trial

[6] Linda's petition explicitly states that it is an "action for debt" against Craig seeking the enforcement, and if necessary, the revival, of the 1992 judgment including interest.

court's judgment is void only if the court had no jurisdiction over the parties or the property, no jurisdiction over the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act as a court. *Id.* All errors other than jurisdictional deficiencies render the judgment voidable, and must be corrected on direct attack. *Id.* The party collaterally attacking the judgment bears the burden of demonstrating that the judgment under attack is void. *Id.* (citing *Stewart v. USA Custom Paint & Body Shop, Inc.*, 870 S.W.2d 18, 20 (Tex. 1994)).

Registration of Foreign Support Order

Craig first contends that the 1992 Texas order is void because it is based on the 1988 Colorado order, which he argues was never properly registered in Texas. Under the applicable version of RURESA, an obligee seeking to register a foreign support order in Texas *shall* transmit three certified copies of the foreign support order to the prosecuting attorney, who shall transmit them to the clerk of the court; once the clerk files the foreign support order in the court's registry of foreign support orders, the order is registered and enforceable in Texas.[7]

[7] *See* Act of July 19, 1987, 70th Leg., 2d C.S., ch. 49, § 1, 1987 Tex. Gen. Laws 145, 151–52, *amended by* Act of July 14, 1989, 71st Leg., 1st C.S., ch. 25, § 33, 1989 Tex. Gen. Laws 74, 88, *amended by* Act of Apr. 29, 1991, 72nd Leg., R.S., ch. 186 § 8, 1991 Tex. Gen. Laws 808, 811, *amended by* Act of May 26, 1993, 73rd Leg., R.S., ch. 970, § 1, 1993 Tex. Gen. Laws 4212–31, *repealed by* Act of April 6, 1995, 74th Leg., R.S., ch. 20, 1995 Tex. Gen. Laws 113, 282.

In its order, the Texas trial court found that a June 24, 1988 Colorado support order had been registered and confirmed. However, no such order appears in the Attorney General's motion to register and enforce, even though the motion expressly indicates that a June 24, 1988 Colorado support order is attached. Craig argues that, because the procedural requirements for registration are mandatory, the Colorado order's absence prevented the trial court from having subject matter jurisdiction to enter any judgment based on the order.[8] We disagree.

"Jurisdiction" refers to a court's authority to adjudicate a case. *Reiss v. Reiss*, 118 S.W.3d 439, 443 (Tex. 2003). RURESA does not indicate that a foreign support order must be properly registered before a court has jurisdiction to act on the order, but instead states, "Jurisdiction of any proceeding under this chapter is vested in the district court and any other court authorized to order support for children."[9] Registration of a foreign support order is simply a statutory prerequisite to enforcement of the order in Texas. "[A] court's action contrary to a statute . . . means

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[8] Craig additionally argues that there is no support for the 1992 Texas order's recognition that the Colorado court confirmed arrearages in the amount of $8,981.28. We interpret this complaint as a challenge to sufficiency of the evidence, and, because sufficiency challenges must be brought by direct attack, we do not consider this argument.

[9] *See generally* Act of July 19, 1987, 70th Leg., 2d C.S., ch. 49, § 1, 1987 Tex. Gen. Laws 145, 147, *amended by* Act of May 26, 1993, 73rd Leg., R.S., ch. 970, § 1, 1993 Tex. Gen. Laws 4212–31, *repealed by* Act of April 6, 1995, 74th Leg., R.S., ch. 20, 1995 Tex. Gen. Laws 113, 282.

the action is erroneous or 'voidable,'" not void. *Mapco, Inc. v. Forrest*, 795 S.W.2d 700, 703 (Tex. 1990).

Here, the trial court had jurisdiction of any proceeding under RURESA; assuming that the court erred by relying on an unregistered order, such error could only be challenged by direct attack. *See Reiss*, 118 S.W.3d at 443.[10]

Modification of Foreign Support Order

Craig next argues that the 1992 Texas order is void because the Texas court lacked subject matter jurisdiction to modify and clarify Craig's continuing child support obligation described in the Colorado order.

Craig relies on *Thompson v. Thompson*, in which we held that a Texas court lacked subject matter jurisdiction to modify a foreign support order. 893 S.W.2d 301, 302 (Tex. App.—Houston [1st Dist.] 1995, no writ). According to Craig, only Colorado and Utah, as the residence of the children, had authority to modify the support order.

In *Thompson*, the trial court's modification of a foreign support order occurred after Texas had replaced RURESA with the Uniform Interstate Family Support Act

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[10] Craig further points to Utah's reciprocal enforcement of child support statute, which was attached to its packet, in contending that Utah did not have authority to ask Texas to enforce the Colorado order because nothing in the record shows that the Colorado order was ever registered in Utah. However, the sections of the Utah statute to which Craig directs us do not state that the Colorado order must be registered in Utah before Utah has jurisdiction to ask another state to register and enforce the order. *See* UTAH CODE ANN. §§ 77-31-14, -33, -37 (1981) (repealed 1997).

("UIFSA"), which specifically prohibits modification of a registered foreign support order where the issuing state maintains continuing, exclusive jurisdiction of the order. *Id.*; *see also* TEX. FAM. CODE ANN. § 159.603(c) (Vernon 2002). However, RURESA was in effect at the time of the 1992 proceeding, and did not expressly prohibit modification of a foreign order. *See* Act of July 19, 1987, 70th Leg., 2d C.S., ch. 49, § 1, 1987 Tex. Gen. Laws 145, 152, *amended by* Act of May 26, 1993, 73rd Leg., R.S., ch. 970, § 1, 1993 Tex. Gen. Laws 4212–31, *repealed by* Act of April 6, 1995, 74th Leg., R.S., ch. 20, 1995 Tex. Gen. Laws 113, 282. Therefore, Craig has not met his burden of proving that the trial court lacked jurisdiction to modify the order. Without proving that the trial court's modification is void, Craig has also not proven that the trial court's clarification of the order is void, because any clarification could have been allowed as a modification. *See In re V.M.P.*, 185 S.W.3d 531, 534–35 (Tex. App.—Texarkana 2006, no pet.) (upholding trial court's "clarification" order because the clarification would have been allowed as a modification).

Craig also asserts that the 1992 Texas order is void because the Attorney General's pleadings did not request modification of the Colorado order. A default judgment must be supported by the pleadings. *Stoner v. Thompson*, 578 S.W.2d 679, 682 (Tex. 1979). A party may not be granted relief in the absence of pleadings to support that relief. *Cunningham v. Parkdale Bank*, 660 S.W.2d 810, 813 (Tex. 1983).

However, a judgment not supported by the pleadings is *erroneous*, not void. *See id.* Therefore, the court's modification of the support order without a pleading requesting such relief was merely erroneous and is not subject to collateral attack. *See Berry v. Berry*, 786 S.W.2d 672, 673 (Tex. 1990).

Personal Jurisdiction

Finally, Craig asserts that the 1992 Texas order is void because he was not served with the underlying motion, depriving the trial court of personal jurisdiction over him. However, "[i]t is the firmly established rule in Texas that a defendant who is not served and who does not appear may not, as a matter of public policy, attack the verity of a judgment in a collateral proceeding; the jurisdictional recitals import absolute verity." *Akers v. Simpson*, 445 S.W.2d 957, 959 (Tex. 1969); *see also Armentor*, 178 S.W.3d at 150. Here, the trial court expressed in the 1992 Texas order that it has jurisdiction of the parties. Craig may not collaterally attack the verity of the court's default judgment.

We overrule Craig's first issue.

Untimely Response

In his fifth issue, Craig claims that the trial court erred in excluding his response to Linda's amended motion to revive and enforce the 1992 judgment and to confirm all unpaid child support arrearages.

We review a trial court's ruling striking a pleading for an abuse of discretion. *See Cherry v. McCall*, 138 S.W.3d 35, 43 (Tex. App.—San Antonio 2004, pet. denied). A party's response to another party's pleadings "offered for filing within seven days of the date of trial or thereafter . . . shall be filed only after leave of the judge is obtained, which leave shall be granted by the judge unless there is a showing that such filing will operate as a surprise to the opposite party." TEX. R. CIV. P. 63.

Craig's response was filed within seven days of the date of trial, and Linda objected to going to trial on Craig's untimely filed response. Because Craig did not seek leave of court to file his response, the trial court did not err in sustaining Linda's objection to his response. *Id.*; *see also Forest Lane Porsche Audi Assocs. v. G & K Servs., Inc.*, 717 S.W.2d 470, 472–73 (Tex. App.—Fort Worth 1986, no writ) ("The court did not err in striking appellant's second amended original answer because the amendment was filed without seeking leave of court").

We overrule Craig's fifth issue.

Exclusion of Evidence

In his second issue, Craig argues that the trial court erred in excluding evidence of a 1993 Utah child support order and payments that he made pursuant to that order.

We review a trial court's admission or exclusion of evidence under an abuse-of-discretion standard. *E.I. du Pont de Nemours & Co., Inc. v. Robinson*, 923 S.W.2d

549, 558 (Tex. 1995). The test for abuse of discretion is whether the trial court acted without reference to any guiding rules or principles. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985).

Craig argues that UIFSA[11] required the trial court to credit his payments made pursuant to the Utah order: "A tribunal of this state shall credit amounts collected for a particular period under a support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this or another state." TEX. FAM. CODE ANN. § 159.209 (Vernon Supp. 2008).

We point out that the trial court did not allow Craig to testify that he had made payments pursuant to the terms of the Utah order because he did not file a pleading claiming that payments were made. "Payment" is an affirmative defense that must be pled in order to be raised at trial. *See* TEX. R. CIV. P. 94 & 95. Because Craig did not plead payment, we hold that the trial court did not abuse its discretion in excluding evidence of these payments.[12]

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[11] UIFSA was in effect at the time Linda filed her original and amended motions to confirm arrearages and revive the 1992 judgment.

[12] Craig also complains of the trial court's exclusion of his evidence of payments made pursuant to the Utah order as part of his seventh issue. Craig notes that section 157.002 requires that a motion for enforcement of child support include the amount of child support paid. TEX. FAM. CODE ANN. § 157.002(b)(1) (Vernon 2002). He also points out that the rule governing affirmative defenses concludes, "provided that nothing herein shall be construed to change the burden of proof on such issue as it now exists." TEX. R. CIV. P. 94. Therefore, according to Craig, Linda had the burden of pleading the amount of payments she received pursuant to the Utah order, and his general denial was sufficient to place the issue of payment before the trial court. Craig misconstrues Rule 94, citing to

We overrule Craig's second issue.

Spousal Support Arrearages

In his third issue, Craig argues that the trial court erred in including the entire amount of the 1992 judgment in its cumulative child support arrearage judgment because the 1992 judgment included an amount for unpaid spousal support and interest. Furthermore, Craig challenges as contrary to the evidence the trial court's finding of fact stating that the "the balance owed by [Craig] on the previously confirmed child support arrearages of $121,902.00 plus interest, is $298,835.00, inclusive of unpaid confirmed support and accrued interest," and finding of fact and conclusion of law in which the court found and concluded that the cumulative amount of unpaid accrued child support, including interest, owed by Craig is $464,796.00.

We review a trial court's confirmation of the arrearages amount under an abuse of discretion standard. *See Attorney General of Texas v. Stevens*, 84 S.W.3d 720, 722 (Tex. App.—Houston [1st Dist.] 2002, no pet.). The court's judgment will not be disturbed on appeal unless the complaining party can show a clear abuse of discretion. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990) (per curiam). The test for abuse of discretion is whether the trial court acted without reference to any guiding

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language that only refers to an insurer's obligation to assert that the insured's loss stems from a specific cause listed in the insurance contract as an exception to liability. *See id.*; *see also Venture Encoding Serv., Inc. v. Atlantic Mut. Ins. Co.*, 107 S.W.3d 729, 733 (Tex. App.—Fort Worth 2003, pet. denied).

rules or principles; in other words, whether the act was arbitrary or unreasonable. *Id.* In determining whether an abuse of discretion has occurred, we view the evidence in a light most favorable to the court's decision and indulge every legal presumption in favor of its judgment. *Holley v. Holley*, 864 S.W.2d 703, 706 (Tex. App.—Houston [1st Dist.] 1993, writ denied). A trial court's failure to analyze or apply the law correctly constitutes an abuse of discretion. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding).

The 1992 judgment expressly ordered Craig to pay $121,902.00 at an interest rate of 10 percent per annum as "child support." However, Craig directs us to a portion of the 1992 Texas order stating: "The Court finds that the judgment herein contains the following itemized amounts of unpaid support: The Court finds that Obligor owes [$]73,014.00 in unpaid child support and [$]48,888.00 in unpaid spousal support." These amounts add up to $121,902.

Craig argues that the 1992 judgment is tainted by the inclusion of spousal support arrearages and interest, chiefly because spousal support, unlike child support, is treated as debt and therefore accrues interest at a different rate than child support. Craig cites Family Code section 157.265,[13] dealing with child support, and Finance

[13] TEX. FAM. CODE ANN. § 157.265 (Vernon Supp. 2008).

Code section 304.003,[14] dealing with general money judgments. Section 157.265, however, only governs the postjudgment interest rate on child support arrearages reduced to judgment on or after January 1, 2002. TEX. FAM. CODE ANN. § 157.265(f). Craig provides no support to establish what the postjudgment interest rate on child support arrearages may have been at the time the 1992 judgment was granted. He has not shown that the child support and spousal support arrearages accrued interest at different rates at the time of the 1992 judgment, and therefore, he has not shown that both types of support arrearages should not have been grouped together in the trial court's 2006 cumulative judgment or findings of fact and conclusions of law as "child support." Accordingly, we hold that the trial court did not abuse its discretion in including the entire amount of the 1992 judgment in its cumulative judgment.

We overrule Craig's third issue.

Cumulative Judgment

In his seventh and final issue, Craig argues that the trial court erred in calculating the amount of its cumulative judgment. As part of his challenge, Craig asserts that there is no evidence to support several of the court's findings of fact and conclusions of law.

[14] TEX. FIN. CODE ANN. § 304.003 (Vernon 2006).

As in Craig's third issue, we review a trial court's confirmation of the arrearages amount under an abuse of discretion standard. *Stevens*, 84 S.W.3d at 722. Under the abuse of discretion standard, legal and factual sufficiency of the evidence are not independent grounds for asserting error, but they are relevant factors in assessing whether the trial court abused its discretion. *Pickens v. Pickens*, 62 S.W.3d 212, 214 (Tex. App.—Dallas 2001, pet. denied); *see also Lindsey v. Lindsey*, 965 S.W.2d 589, 592–93 (Tex. App.—El Paso 1998, no pet.). We must defer to factual resolutions by the trial court that are based on conflicting evidence, as well as any credibility determinations that may have affected those factual resolutions, and we may not substitute our judgment for that of the trial court in those matters. *George v. Jeppeson,* 238 S.W.3d 463, 474 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

In an appeal from a bench trial, a trial court's findings of fact have the same weight as a jury's verdict. *Brown v. Brown*, 236 S.W.3d 343, 347 (Tex. App.—Houston [1st Dist.] 2007, no pet.). Therefore, we apply the same standards when reviewing the sufficiency of the evidence supporting the trial court's fact findings as we do when reviewing the evidence supporting a jury's answer. *Id.* at 348.

In determining whether legally sufficient evidence supports the finding under review, we must consider evidence favorable to the finding if a reasonable fact finder could consider it, and disregard evidence contrary to the finding unless a reasonable

fact finder could not disregard it. *See City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005).

We review a trial court's conclusions of law de novo, and will uphold them on appeal if the judgment can be sustained on any legal theory supported by the evidence. *How Serv., Inc. v. Hallwood Realty Partners, L.P.*, 190 S.W.3d 108, 111 (Tex. App.—Houston [1st Dist.] 2005, no pet.).

The trial court signed its cumulative judgment on December 19, 2006, and made its findings of fact and conclusions of law a few weeks later.[15] The findings of fact challenged by Craig provide:

> g. Respondent has failed to pay the arrearage child support of $121,902.00 plus interest at the rate of 10% per annum as ordered in the judgment signed on May 8, 1992.
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> h. Respondent has further failed to pay the regular child support payments of $1,642.00 per month as ordered in the judgment signed on May 8, 1992.

[15] The trial court made an oral pronouncement in open court on October 12, 2006 concerning the amounts of arrearages Craig owes. However, during its oral pronouncement, the court also specifically invited Linda to confirm the amount of interest it stated had accrued on the 1992 judgment. Therefore, to the extent Craig argues that the court's written judgment differs from the court's oral pronouncement, or that the court erred in awarding pre-judgment interest that accrued after its oral pronouncement, we conclude that the oral pronouncement was not intended to be the official judgment. *See In re Marriage of Joyner*, 196 S.W.3d 883, 886–87 (Tex. App.—Texarkana 2006, pet. denied) ("In order to be an official judgment, the trial court's oral pronouncement must indicate intent to render a full, final, and complete judgment at that point in time[, and] must evince a present, as opposed to future, act that effectively decides the issues before the court.").

i. The balance owed by Respondent on the previously confirmed child support arrearages of $121,902.00 plus interest, is $298,835.00, inclusive of unpaid confirmed support and accrued interest.

j. The additional amount of $75,532.00 is owed by Respondent because of his failure to pay the regular monthly child support of $1,642.00 per month as ordered in the judgment signed on May 8, 1992.

k. As of November 10, 2006, interest had accrued, at the applicable rates, in the amount of $90,428.00 on the previously unconfirmed support arrearage of $75,532.00.

l. As of November 10, 2006, the total child support arrearages plus interest owed by Respondent because of Respondent's failure to pay the regular monthly child support payments of $1,642.00 ordered in the judgment signed on May 8, 1992 is $165,960.00.

m. The total cumulative unpaid accrued child support, including accrued interest, as of November 10, 2006, is $464,796.00.

Craig also challenges the trial court's conclusions d, e, and f:

d. Petitioner should have a judgment for cumulative child support arrearages, including accrued interest, against Respondent, Craig P. Longhurst in the amount of $464,796.00.

e. The judgment should bear interest at the rate of six (6%) percent simple interest per year.

f. The judgment is cumulative and includes the unpaid support balances and interest due under this Court's prior order.

We begin by addressing Craig's contention that the challenged findings of fact and conclusions of law are not supported by the evidence because they do not take into

account his testimony that he made three payments toward the 1992 judgment in the amount of $625.00.

The trial court, as the sole decider of the candor, demeanor, and credibility of the witnesses, and as fact finder, may decline to accept as true the testimony of an interested witness even if uncontradicted. *See Glassman & Glassman v. Somoza*, 694 S.W.2d 174, 176 (Tex. App.—Houston [14th Dist.] 1985, no writ). Testimony from an interested witness may establish a fact as a matter of law only if the testimony could be readily contradicted if untrue, and is clear, direct, and positive, and there are no circumstances tending to discredit or impeach it. *LMC Complete Automotive, Inc. v. Burke*, 229 S.W.3d 469, 483 (Tex. App.—Houston [1st Dist.] 2007, pet. denied).

While Craig's testimony could have been readily contradicted if untrue, and was not discredited or impeached, it is not clear, direct, and positive. While Craig testified that he made three payments pursuant to the "1992 judgment" in the amount of $625.00, it is not clear whether these payments were made toward the 1992 judgment or toward his regular child support payments. Likewise, as Craig concedes in his brief, it is unclear whether he made three payments for a total of $625.00, or three

payments of $625.00 each. Accordingly, the court did not abuse its discretion in disregarding Craig's testimony.[16]

We next address Craig's complaint that there is no evidence supporting the finding of fact that Craig owes a total of $298,835.00 on the 1992 judgment of $121,902.00, meaning that the court awarded $176,933.00 as interest on the 1992 judgment. However, the trial court took judicial notice of its 1992 Texas order, ordering the arrearages judgment in the amount of $121,902.00 with interest set at 10 percent per annum. Therefore, there is some evidence to support the trial court's finding that Craig owed $298,835.00 on the 1992 arrearages, inclusive of interest.

Similarly, Craig challenges the sufficiency of the evidence supporting the findings of fact in which the trial court found that Craig owed $75,532.00 in

[16] Craig contends that Linda acknowledged these payments because her counsel, when arguing against Craig's motion for directed verdict, stated, "[T]he record supports that [Craig] has not made any payments to the registry of the Court, other than the three that we have talked about," and because Linda expresses in her appellate brief, "[Craig] admitted that he had knowledge of the 1992 proceeding since, under the instruction of his Utah attorney, he made payments under the 1992 Order." These statements are too vague to be judicial admissions that Craig paid $625 pursuant to the 1992 order. *See Regency Advantage Ltd. P'ship v. Bingo Idea-Watauga, Inc.*, 936 S.W.2d 275, 278 (Tex. 1996) ("A judicial admission must be clear, deliberate, and unequivocal.").

previously unconfirmed child support arrearages,[17] and accrued interest on these arrearages in the amount of $90,428.00.

Because the trial court took judicial notice of the 1992 Texas order, there is some evidence supporting the court's finding on the amount of previously unconfirmed child support arrearages. In fact, Craig recognizes that, using the dates and monthly child support obligation stated in the 1992 Texas order, 46 monthly payments of $1,642.00 were owed from May 1992 to February 1996, for a total of $75,532.00.[18]

Furthermore, to determine the amount of interest owed on the previously unconfirmed child support arrearages, the court only needed to turn to the Family Code, which governs such interest rates. *See* TEX. FAM. CODE ANN. § 157.265. Craig

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[17] Additionally, Craig asserts that, because Linda pled $73,890, the trial court erred in finding that he owed an amount for unpaid child support not supported by the pleadings. Because the record does not show that Craig pointed out to the trial court that the judgment was not supported by the pleadings, he has waived this argument. *See* TEX. R. CIV. P. 90; *see also A.V.A. Servs., Inc. v. Parts Indus. Corp.*, 949 S.W.2d 852, 853 (Tex. App.—Beaumont 1997, no writ) ("[A] claim that the judgment is not supported by the pleadings may not be raised for the first time on appeal.").

[18] Craig additionally asserts two arguments for why the court incorrectly calculated when his child support obligations under the 1992 Texas order ended. First, Craig notes that the 1992 Texas order provided for support after the youngest child's eighteenth birthday as long as the child was enrolled in high school. Craig argues that the trial court could not determine exactly when the support obligations ended without knowing the date the child graduated. However, because the youngest child's date of birth was included in the 1992 Texas order, we hold that the trial court did not abuse its discretion in selecting the child's 18th birthday as the date Craig's support obligation ended.

Second, Craig points out that the record indicates that he and Linda's actual youngest child, Quinn, was not mentioned in any Texas order, but should have been taken into consideration when considering when the youngest child became 18 years old. Because this issue wad not raised in the trial court, it is waived on appeal. *See* TEX. R. APP. P. 33.1(a).

contends that the trial court erred by calculating interest on the entire amount of previously unconfirmed child support arrearages at a 12 percent rate, because the statutory interest rate for unpaid child support arrearages became six percent on January 1, 2002. *See id.* § 157.265(a), (e). However, in its findings of fact the court found that interest accrued, "at the *applicable rates*, in the amount of $90,428.00." (emphasis added). Therefore, Craig's argument that a 12 percent interest rate was used to determine the whole amount of interest owed is not reflected by the trial court's findings of fact.[19]

Accordingly, we hold that there is some evidence supporting the trial court's findings that Craig owes $298,835.00 on the 1992 judgment plus interest, and $165,960.00 on the previously unconfirmed child support arrearages plus interest. However, because these amounts combined equal $464,795.00, we modify the court's cumulative judgment of $464,796.00 to reflect that the total cumulative unpaid child

[19] Craig also asserts that the court erred in denying his request for an amended finding of fact reflecting the interest rate applied and calculation used in determining interest on the unconfirmed child support arrearages. However, because there is no further analysis or citation to any legal authority, this particular argument is inadequately briefed and will not be considered. TEX. R. APP. P. 38.1(h); *see also Saudi v. Brieven*, 176 S.W.3d 108, 120 (Tex. App.—Houston [1st Dist.] 2004, pet. denied) (declining to reach, for lack of adequate briefing, appellate challenge lacking citation to authority and having insufficient analysis).

support owed as of November 10, 2006 is $464,795.00.[20] We hold that the cumulative judgment, as modified, is supported by some evidence in the record.

We overrule Craig's seventh issue.

Conclusion

We modify the trial court's cumulative judgment of $464,796.00 to reflect that the total cumulative unpaid child support and interest owed is $464,795.00. We affirm the judgment of the trial court as modified.

George C. Hanks, Jr.
Justice

Panel consists of Justices Nuchia, Alcala, and Hanks.

[20] Craig further argues that there is no evidence to support the trial court's order that he pay $2,500 per month toward the cumulative judgment or pleadings to support that payment is to be made at Linda's attorney's office. While the record shows that the trial court ordered Craig's employer to withhold $2,500 per month, the order indicates that the amount withheld cannot exceed 50 percent of Craig's disposable earnings. Therefore, we hold that the trial court did not abuse its discretion in ordering Craig's payments toward the cumulative judgment. *See* TEX. FAM. CODE ANN. §§ 158.005, .009 (Vernon 2002). Further, because Craig did not point out to the trial court that the place of payment was not supported by the pleadings, he has waived this argument. *See* TEX. R. CIV. P. 90; *see also A.V.A. Servs.*, 949 S.W.2d at 853.