COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00133-CV

B.F. APPELLANT

V.

A.F. APPELLEE

FROM THE 16TH DISTRICT COURT OF DENTON COUNTY
TRIAL COURT NO. 2013-40603-362

MEMORANDUM OPINION[1]

Appellant B.F. appeals from the trial court's final decree of divorce, arguing in two issues that the trial court abused its discretion as to the amount of child support it ordered and that it reversibly erred by failing to make findings in accordance with Texas Family Code section 154.130(a)(3) (West 2014). We affirm.

[1]*See* Tex. R. App. P. 47.4.

I. BACKGROUND

B.F. and A.F. were married in July 2004. K.F., their only child, was born in 2006. On August 2, 2013, B.F. filed an original petition for divorce, and shortly thereafter, A.F. filed an original counterpetition for divorce. The parties waived their right to a jury, and the matter proceeded to a final bench trial beginning on August 17, 2015. On March 18, 2016, the trial court entered its final decree of divorce. Two aspects of that decree are pertinent to this appeal. First, the court appointed B.F. as K.F.'s sole managing conservator and A.F. as possessory conservator. And second, it provided that A.F. "shall not be ordered to pay child support to [B.F.]."

II. B.F.'S CHILD-SUPPORT ISSUE

In his first issue, B.F. argues that the trial court erred by not ordering A.F. to pay child support within the guidelines of section 154.125(b) of the family code. We will not disturb a trial court's order on child support unless the complaining party can show a clear abuse of discretion—that is, that the trial court acted without reference to any guiding rules or principles. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990); *Pirzada v. Rice*, No. 02-14-00145-CV, 2015 WL 1743461, at *3 (Tex. App.—Fort Worth Apr. 16, 2015, no pet.) (mem. op.). It is the appellant's burden to provide a record demonstrating an abuse of discretion. *See Ledbetter v. Soliven*, No. 2-02-060-CV, 2003 WL 151968, at *2 (Tex. App.—Fort Worth Jan. 23, 2003, pet. denied) (citing *Simon v. York Crane & Rigging Co.*, 739 S.W.2d 793, 795 (Tex. 1987)). Absent such a

record, we presume that the evidence before the trial court was adequate to support its decision. *See id.*

The final decree of divorce states that the trial court held a final hearing on August 17 and 18, 2015, and that the record of testimony was duly reported by the court reporter. B.F., however, has not supplied us with a reporter's record. We must therefore presume that the evidence before the trial court was adequate to support its decision on the issue of A.F.'s payment of child support. *See id.*; *see also In re N.M.D.*, No. 04-13-00849-CV, 2014 WL 3339627, at *2 (Tex. App.—San Antonio July 9, 2014, no pet.) (mem. op.) (holding trial court did not abuse discretion in modifying amount of child support because appellant's failure to provide reporter's record resulted in presumption that evidence presented during modification hearing supported trial court's order). We overrule B.F.'s first issue.

III. B.F.'S SECTION 154.130(a)(3)-FINDINGS ISSUE

In his second issue, B.F. argues that the trial court reversibly erred by failing to make findings under sections 154.130(a)(3) and 154.130(b) of the family code. Section 154.130(a)(3) provides,

> (a) Without regard to Rules 296 through 299, Texas Rules of Civil Procedure, in rendering an order of child support, the court shall make the findings required by Subsection (b) if:
>
> > (3) the amount of child support ordered by the court varies from the amount computed by applying the percentage guidelines under Section 154.125 or 154.129, as applicable.

Tex. Fam. Code Ann. § 154.130(a)(3). B.F. argues that the trial court's order that A.F. "shall not be ordered to pay child support to [B.F.]" varied from the amount that would result from applying section 154.125's guidelines, and thus section 154.130(a)(3) required the trial court to make the findings required by section 154.130(b).[2] He contends that the trial court did not make those findings. And he cites to *Tenery v. Tenery*, 932 S.W.2d 29, 30 (Tex. 1996), for the proposition that when findings are required under section 154.130(a)(3) and the trial court fails to make them, harmful error occurs. We conclude B.F.'s reliance on *Tenery* is misplaced for multiple reasons. We note that the appellant in *Tenery* provided a record that demonstrated the amount of appellant's net resources, which enabled the supreme court to determine whether the trial court's child-support award varied from the statutory percentage guidelines. *Tenery*, 932 S.W.2d at 30; *see also* Tex. Fam. Code Ann. § 154.125 (basing an obligor's presumptive child-support obligation on the amount of the obligor's net resources as calculated under section 154.062). Here, by contrast, because B.F. has not provided us with a complete record, he has failed to demonstrate that the trial court's child-support award varies from the applicable statutory percentage guidelines, thereby triggering section 154.130(a)(3)'s requirement that the trial

[2]Section 154.130(b) requires the trial court to make findings specifying the amount of the child-support obligor and obligee's monthly net resources; the percentage applied to the obligor's net resources for child support; and the specific reasons why the amount of monthly child support the trial court ordered varies from the amount computed by applying the applicable percentage guidelines. *Id.* § 154.130(b).

court make the findings in section 154.130(b).[3] *See Finley v. Finley*, No. 02-11-00045-CV, 2015 WL 294012, at *6–7 (Tex. App.—Fort Worth Jan. 22, 2015, no pet.) (mem. op.) (holding that because there was no indication in the record that trial court's child-support award varied from the statutory percentage guidelines, the trial court was not required to make findings under section 154.130(a)(3)).

We will not reverse a trial court's judgment on appeal based upon an error in the trial court unless the appellant shows that the error caused him harm, that is, that the error probably caused the rendition of an improper judgment or probably prevented the appellant from properly presenting the case to this court. Tex. R. App. P. 44.1(a); *Romero v. KPH Consolidation, Inc.*, 166 S.W.3d 212, 225 (Tex. 2005). Relying on *Tenery*, B.F. contends that when section 154.130(a)(3) requires a trial court to make findings but the trial court does not do

[3]We recognize that when it comes to calculating a party's net resources for child-support purposes, the family code provides that "[i]n the absence of evidence of a party's resources . . . the court shall presume that the party has income equal to the federal minimum wage for a 40-hour week to which the support guidelines may be applied." Tex. Fam. Code Ann. § 154.068(a) (West Supp. 2016). But we cannot apply this presumption in this appeal. This is not an appeal in which the record demonstrates that no evidence of a child-support obligor's resources was presented in the trial court. *See Omodele v. Adams*, No. 14-01-00999-CV, 2003 WL 133602, at *4–5 (Tex. App.—Houston [14th Dist.] Jan. 16, 2003, no pet.) (mem. op.) (applying section 154.068(a)'s presumption because appellate record affirmatively demonstrated that no evidence of child-support obligor's resources had been presented in the trial court). Rather, this is an appeal in which the appellant, B.F., opted not to provide a reporter's record. Without a sufficient record, we cannot conclude that no evidence of A.F.'s resources was presented in the trial court.

so, that failure is harmful. Once again, we disagree with B.F.'s application of *Tenery* under the facts of this case.

In *Tenery*, the trial court entered a child-support award that varied from the applicable statutory percentage guidelines. 932 S.W.2d at 30. Pursuant to rule 296 of the Texas Rules of Civil Procedure, the appellant timely filed a request for "findings explaining why the amount of child support per month ordered by the court varied from the amount computed under section 154.125['s] guidelines." *Id.* The trial court did not make the findings. *See id.* Because the trial court's child-support award varied from statutory percentage guidelines, the supreme court concluded that section 154.130(a)(3) required the trial court to make the prescribed findings. *See id.* Its failure to do so, the supreme court held, was error. *See id.*

Because the appellant in *Tenery* had timely requested findings under rule 296 of the Texas Rules of Civil Procedure, the supreme court conducted its harm analysis under that rule. *Id.* Under rule 296, "harm to the complaining party is presumed unless the contrary appears on the face of the record when the party makes a proper and timely request for findings and the trial court fails to comply." *Id.* (citing *Cherne Indus., Inc. v. Magallanes*, 763 S.W.2d 768, 772 (Tex. 1989)). The supreme court concluded that the trial court's failure to enter the findings harmed the appellant because that failure prevented him from effectively contesting the trial court's deviation from the statutory percentage guidelines. *Id.*

Unlike the appellant in *Terney*, B.F. did not request any findings in this case regarding the amount of child support the trial court ordered, and thus rule 296's presumed-harm analysis is inapplicable. Other than his presumed-harm argument, B.F. has made no attempt to show that the error he complains of in his second issue probably caused the rendition of an improper judgment or probably prevented him from properly presenting his case to this court. *See* Tex. R. App. P. 44.1(a); *Romero*, 166 S.W.3d at 225. Thus, we conclude that even assuming the trial court erred by failing to make findings under section 154.130(a)(3), B.F. has not demonstrated that such error caused him harm. We overrule B.F.'s second issue.

IV. CONCLUSION

Having overruled all of B.F.'s issues, we affirm the trial court's judgment. *See* Tex. R. App. P. 43.2(a).

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: WALKER, MEIER, and GABRIEL, JJ.

DELIVERED: June 1, 2017