

REVERSE and REMAND; and Opinion Filed May 6, 2016.



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

No. 05-14-01217-CV

IN THE INTEREST OF P.G.G., B.N.G., AND R.T.G., MINOR CHILDREN

**On Appeal from the 254th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-05-03154**

MEMORANDUM OPINION

Before Justices Fillmore, Stoddart, and Schenck
Opinion by Justice Schenck

In five issues, Kay Warrick George (“Kay”) contends the trial court erred by (1) finding her former husband Jeffrey Thomas George’s (“Jeffrey”) child-support and medical-support obligations were abated while he was incarcerated; (2) setting the amount of child-support arrearage for the period of June 29, 2006, through September 6, 2011, at \$16,302.09; and (3) setting the amount of medical-support arrearage for the period of June 29, 2006, through September 6, 2011, at \$0. We reverse the trial court’s order and remand the case for proceedings consistent with this opinion. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

FACTUAL & PROCEDURAL BACKGROUND

Kay and Jeffrey were married in 1994 and had three children, P.G.G., B.N.G., and R.T.G. They divorced in June 2006, at which time Jeffrey was ordered to pay \$1,800 per month in child support and to provide medical support to the children by furnishing health insurance, if health

insurance was available to him, or by paying the premium for health insurance available in connection with Kay's employment. The divorce decree also provided:

Should Jeffrey Thomas George be incarcerated in a full detention facility that prevents him from any employment for a period in excess of thirty days, his child support and medical support shall be abated from the date of his incarceration until the first day of the month next after his release.

Jeffrey was incarcerated in the federal prison system in October 2006. He was released to a halfway house in November 2009 and released on "probation" in May 2010. While Jeffrey was incarcerated, he was required to work at various prison jobs and was minimally compensated for the work. While he was living in the halfway house, he was employed in a seasonal job for a tax-preparation company. He did not pay any child support or medical support while he was incarcerated or while he was living in the halfway house.

After he was released from the halfway house, Jeffrey paid some child support, but not the full amount ordered by the decree. In December 2010, the trial court granted Jeffrey's motion to reduce his support obligations and ordered him to pay \$495 per month for both child support and medical support, beginning January 2011. Kay then filed a motion to enforce, seeking to hold Jeffrey in contempt of court for not paying all the required child support and medical support from the time the divorce was granted and to confirm child support and medical support arrearages. At trial, Kay testified she believed the amount of the child-support arrearage between June 29, 2006, and September 6, 2011, was \$92,587.36 and the medical-support arrearage for the same period was \$8,860.

The trial court held Jeffrey in contempt of court for failing to pay ordered child support on seven occasions between August 26, 2010, and January 1, 2011, and for failing to pay medical support in January 2010 and February 2010, and ordered Jeffrey confined in the Dallas County jail for sixty days for each violation with the confinement on each violation to run

concurrently.¹ The trial court also confirmed a child-support arrearage of \$92,587.36 for the period of August 26, 2010, through January 1, 2011, and a medical-support arrearage of \$8,860.00 for the period of January 2010 through February 2010. The trial court ordered Jeffrey's confinement to be suspended on the conditions that Jeffrey pay (1) \$400 per month toward the child-support arrearage, (2) \$100 per month toward the medical-support arrearage, (3) \$2,500 in attorney's fees to Kay's attorney by May 31, 2012, and (4) all current child support and medical support as ordered by the court.

Jeffrey appealed the above order, arguing in two issues on appeal that the trial court erred by confirming the child-support and medical-support arrearages because (1) "there is no support in the reporters record" for the amount of arrearages awarded for the time periods set out in the order, and (2) under the terms of the divorce decree, Jeffrey's support obligations were abated while he was incarcerated. *See In re P.G.G.*, No. 05-12-01001-CV, 2013 WL 5890113, at *2 (Tex. App.—Dallas Oct. 31, 2013, no pet.) (mem. op.). This Court concluded the trial court did not abuse its discretion in determining there was a child-support and medical-support arrearage for the period between August 26, 2010, and January 1, 2011. *Id.*, at *3. However, we also concluded the record did not support the trial court's determination that the amount of child-support arrearage for the period of August 26, 2010, through January 1, 2011, was \$92,587.36 or that the amount of medical-support arrearage for the period of January 2010 through February 2010 was \$8,860.00. *Id.* Accordingly, we concluded the trial court abused its discretion, resolved Jeffrey's first issue in his favor, reversed the order, and remanded the case to the trial

¹ We note that this judgment is not in the record in case number 05-14-01217-CV. However, it is in the record of a previous appeal involving the same parties. *See In re P.G.G.*, No. 05-12-01001-CV, 2013 WL 5890113 (Tex. App.—Dallas Oct. 31, 2013, no pet.) (mem. op.). This Court will take judicial notice of its judgments and records in the same or related cases. *Buckner Orphans Home v. Berry*, 332 S.W.2d 771, 775 (Tex. Civ. App.—Dallas 1960, writ ref'd n.r.e.).

court to determine the amount of child-support arrearage and medical-support arrearage to which Kay was entitled. *Id.*

On remand, the trial court conducted another hearing at which Jeffrey argued his support obligations should have been abated while he was in prison. Kay countered that there was evidence to support the amounts awarded by the previous order, but not for the time periods listed in the trial court's order. At the conclusion of the hearing, the trial judge stated he believed the language in the decree—"any employment"—was ambiguous, commenting that the phrase "any employment" was different than saying "gainful employment or employment that earns at \$10 an hour or employment that earns him \$200 a month or 50 cents a month."

The trial court issued a "Revised Rendition Following Dallas Court of Appeals Judgment Reversing and Remanding Enforcement Decision of April 20, 2012" in which it found the language of the decree to be clear, but found little discussion at trial of whether Jeffrey was incarcerated in a "full detention facility" or whether the types of jobs Jeffrey was assigned constituted "any employment" within the meaning of the decree. The trial court ultimately determined the previous trial judge intended that Jeffrey's support obligations would be abated under the circumstances presented in this case. Finally, relying on the Attorney General's record of amounts due and amounts paid (admitted as an exhibit during the hearing), along with calculations to remove payment obligations pursuant to temporary orders, the trial court determined Jeffrey's unpaid child-support obligation at the time of the trial was \$16,302.09.

The trial court later entered a Reformed Order Granting Judgment for Child Support Arrearage. In that reformed order, the trial court made the following findings.

- Jeffrey was ordered to pay \$1,800 per month in child support between June 29, 2006, and December 31, 2010.
- Effective January 1, 2011, Jeffrey's obligation to pay child support and medical support was reduced to \$495 per month.

- Based on the foregoing findings and Kay's testimony, Jeffrey's child-support arrearage from June 29, 2006, through September 6, 2011, was \$92,587.36, and the amount of his medical-support arrearage for the same time period was \$8,860.00.

The trial court went on to further find that "it does appear logical that [the judge who signed the divorce decree] intended that during [Jeffrey's] period of incarceration his support obligations were ABATED. Accordingly, the amount of [Jeffrey's] child-support arrearage for the period of June 29, 2006, through September 6, 2011, is \$16,302.09."

Kay filed a motion for new trial, requesting a new trial on the grounds there was no evidence or insufficient evidence to support the trial court's findings regarding the amounts of child-support or medical-support arrearages or the abatement of Jeffrey's support obligations during the time he was incarcerated. The same day, she timely filed her notice of appeal.

DISCUSSION

On appeal, Kay raises five issues. First, she contends the trial court erred by finding Jeffrey's child-support and medical-support obligations were abated while he was in prison. In her second and third issues, Kay complains the trial court abused its discretion in determining Jeffrey's child-support arrearage for the time period from June 29, 2006, through September 6, 2011, was \$16,302.09, and there is no evidence to support such determination. In her fourth and fifth issues, she complains respectively that the trial court abused its discretion in determining Jeffrey's medical-support arrearage for the time period from June 29, 2006, through September 6, 2011, was \$0, and there is no evidence to support such determination.

I. THE DIVORCE DECREE

Kay argues the clear, unambiguous language of the divorce decree provides that Jeffrey's incarceration would abate his obligations only if his incarceration prevented him from any employment. Jeffrey responds that although the trial court found the language at issue to be ambiguous, he contends it is not. Instead, he argues his incarceration prevented him from "any

employment” other than what he was assigned to do by prison personnel because he was not free to become employed at any other job he might contract for. He relies on the Texas Labor Code to argue what he performed was not employment because he did not contract for employment but was instead assigned duties to perform. *See* TEX. LAB. CODE ANN. § 201.041 (West 2015) (defining “employment” under the Texas Unemployment Compensation Act). He also relies on several decisions from federal courts to argue that as a prisoner he was not an employee for the purposes of the Fair Labor Standards Act. Finally, he asserts the trial court correctly interpreted the decree in light of the other provisions in the decree that contemplated his incarceration, including the provision that in the event of his incarceration, his rights to possession of the children were deemed waived, and the provision that the restriction on the locality of the children’s residence automatically expired upon his incarceration.

We interpret a divorce decree like any other judgment, reading it as a whole and effectuating the order in light of the literal language used if that language is unambiguous. *Reiss v. Reiss*, 118 S.W.3d 439, 441 (Tex. 2003). When the language of the decree is unambiguous, we interpret it literally. *Id.* at 441–42. Only when a decree is subject to more than one reasonable interpretation do we adopt the construction that correctly applies the law. *Id.* at 442. Whether a decree is ambiguous is a question of law that we review de novo. *Shanks v. Treadway*, 110 S.W.3d 444, 447 (Tex. 2003). We determine whether a decree is ambiguous by looking at the agreement as a whole in light of the circumstances surrounding its formation. *See Coker v. Coker*, 650 S.W.2d 391, 394 (Tex. 1983).

Here, the decree included the following provision whose meaning is at issue.

Should Jeffrey Thomas George be incarcerated in a full detention facility that prevents him from any employment for a period in excess of thirty days, his child support and medical support shall be abated from the date of his incarceration until the first day of the month next after his release.

The intent here is plain. The parties and the trial court understood that Jeffrey was fully incarcerated and would be unable to earn employment wages during that period. The record reflects Jeffrey's employment while incarcerated consisted of assigned jobs for which he was compensated with as little as \$25 per month and as much as \$70 per month, and if he failed to perform his assignment, he was punished with solitary confinement. When he was released to the halfway house, he obtained a part-time, seasonal position with a tax preparation company that ended April 2010.

We agree with the trial court's conclusion that Jeffrey's payment obligations were abated during his incarceration. The evidence Jeffrey presented regarding his "employment" while incarcerated does not qualify as employment within the plain meaning of the decree or governing law to trigger an obligation to pay. TEX. LAB. CODE ANN. § 201.041. It would be absurd to conclude Jeffrey's obligations continued when the decree openly contemplated his incarceration would prevent him from gaining employment during that period of time. Accordingly, under the circumstances presented by the record, we conclude the trial court did not err in finding Jeffrey's child-support and medical-support obligations were abated while he was in prison. We overrule Kay's first issue.

II. CHILD-SUPPORT AND MEDICAL-SUPPORT ARREARAGE

In her second issue, Kay complains the trial court abused its discretion in determining Jeffrey's child-support arrearage for the time period from June 29, 2006, through September 6, 2011, was \$16,302.09, and in her third issue, she argues there is no evidence to support such determination. In her fourth issue, she complains the trial court abused its discretion in determining Jeffrey's medical-support arrearage for the time period from June 29, 2006, through September 6, 2011, was \$0, and in her fifth issue, she contends there is no evidence to support such determination.

We review a trial court's award of arrearages under an abuse of discretion standard. *In re L.A.F.*, 270 S.W.3d 735, 737 (Tex. App.—Dallas 2008, pet. denied). A judgment is reversed only when it appears from the record as a whole that the trial court abused its discretion. *Id.* at 738. A trial court abuses its discretion as to legal matters when it fails to act without reference to any guiding principles. *Id.* And a trial court abuses its discretion as to factual matters when it acts unreasonably or arbitrarily. *Id.*

Under this standard of review, legal and factual sufficiency reviews of the evidence are not independent grounds of error but are relevant factors in assessing whether the trial court abused its discretion. *Id.* To determine whether the trial court abused its discretion because the evidence is insufficient to support its decision, we consider whether the trial court (1) had sufficient evidence upon which to exercise its discretion, and (2) erred in its exercise of that discretion. *Gonzalez v. Gonzalez*, 331 S.W.3d 864, 867–68 (Tex. App.—Dallas 2011, no pet.).

We note that in its rendition, the trial court refers to one of Kay's exhibits from the trial conducted on January 2012. At that trial, Kay testified the exhibit was the pay history provided by the Attorney General's office, along with notes from her attorney that subtracted the amounts Jeffrey had paid pursuant to temporary orders that predated that divorce decree. Kay testified that if the trial court decided to abate Jeffrey's child support during his period of incarceration, the amount per the exhibit would be the amount she asked the trial court to award her in child-support arrearage. The exhibit in question reflects the total amount recorded was \$16,302.09, which is the amount awarded by the trial court.

However, we also note the exhibit in question shows amounts due and applied extending beyond the date of September 6, 2011, up to and through January 10, 2012. Furthermore, we note Kay testified the reduced support amount of \$495 included Jeffrey's obligation to reimburse her for health insurance, or medical support, in addition to his child-support obligation.

Additionally, the trial court's order states that "effective January 1, 2011, [Jeffrey's] obligation to pay child support and medical support was reduced to \$495.00 per month." The evidence in the record does not support the trial court's finding that the amount of Jeffrey's child-support arrearage for the period of June 29, 2006, through September 6, 2011, is \$16,302.09. Accordingly, we sustain Kay's second issue and pretermit her third issue. *See* TEX. R. APP. P. 47.4.

The trial court's order does not include a finding of any medical-support arrearage. However, from the absence of such finding and from the fact the order states "All relief requested and not expressly granted is denied," we conclude the trial court impliedly found Jeffrey's medical-support arrearage to be \$0. *See Moore v. First Fin. Resolution Enters., Inc.*, 277 S.W.3d 510, 515–16 (Tex. App.—Dallas 2009, no pet.) ("When a reporter's record is part of the record before the appellate court, the legal and factual sufficiency of implied findings may be challenged on appeal the same as a trial court's findings of fact."). We note there is no evidence in the record to support the trial court's implied finding that the amount of Jeffrey's medical-support arrearage for the period of June 29, 2006, through September 6, 2011, is \$0. Accordingly, we sustain Kay's fourth and fifth issues.

CONCLUSION

We reverse the trial court's order and remand the case to the trial court for proceedings consistent with this opinion.



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

JUDGMENT

IN THE INTEREST OF: P.G.G., B.N.G.,
AND R.T.G., MINOR CHILDREN,

No. 05-14-01217-CV

On Appeal from the 254th Judicial District
Court, Dallas County, Texas
Trial Court Cause No. DF-05-03154.
Opinion delivered by Justice Schenck.
Justices Fillmore, and Stoddart participating.

In accordance with this Court's opinion of this date, the order of the trial court is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that appellant Kay Warrick George and appellee Jeffrey Thomas George bear their own costs of appeal.

Judgment entered this 6th day of May, 2016.