**Reverse and Remand; Opinion Filed April 5, 2016.**

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

**No. 05-14-01247-CV**

## IN THE INTEREST OF R.M.R., III, A MINOR CHILD

On Appeal from the 219th Judicial District Court
Collin County, Texas
Trial Court Cause No. 219-00287-2015

## MEMORANDUM OPINION

Before Justices Francis, Evans, and Stoddart
Opinion by Justice Stoddart

Appellant Mark Campbell appeals from a post-answer default judgment rendered against him in a suit to enforce a child-support lien. Campbell argues the evidence is legally and factually insufficient to support the judgment. We conclude the evidence is insufficient to show the notice of lien satisfied the statutory requirements to establish a valid child-support lien. We reverse the judgment and remand for further proceedings.

The child-support obligation arises out of an agreed order for arrearages between Richard Rise, Jr. (Father) and Leslie Rise-Brannon (Mother). Father owns real property located in Louisiana and rented that property to Campbell and Katherine Garvey in 2013.

Mother filed this action as a motion for damages for failure to honor a child-support lien in the underlying suit affecting the parent-child relationship. She served her motion on Campbell and Garvey by certified mail. Campbell and Garvey filed pro se answers with the trial court, but

did not challenge the trial court's personal jurisdiction of them or their property.[1] *See* TEX. R. CIV. P. 120a. Campbell's answer stated he received a notice of child-support lien in September 2013 and did not pay any rent to Father after he received it. He and Garvey opened a savings account and put the money in the account. When they later received a notice from the mortgage company, they made plans to leave the property because of interference with their "peaceable possession" and dissolved the savings account.

On April 23, 2014, a month after Campbell filed his answer, Mother set her motion for hearing. The hearing was scheduled for May 22, 2014. Campbell did not appear in person or by attorney at the hearing. Garvey, however, retained an attorney who filed a motion for continuance on her behalf.

On May 22, 2014, the trial court conducted a hearing on the motion for damages and on Garvey's motion for continuance. At that time, Garvey's counsel indicated to the court he did not represent Campbell even though Campbell and Garvey had married. Mother requested a default judgment against Campbell. The record of the hearing contains only the arguments of counsel regarding the motion for continuance. Mother did not present any witnesses or written evidence at the hearing.

The trial court granted Garvey's motion for continuance and took the request for a default judgment against Campbell under advisement. On July 1, 2014, the trial court granted the motion for damages and signed an order granting judgment against Campbell. Campbell filed a motion for new trial, which was denied after a hearing.

## STANDARD OF REVIEW

"A post-answer default judgment occurs when a defendant answers but fails to appear at

[1] Garvey retained an attorney and filed a motion for continuance at the hearing on the motion for damages. The trial court granted the continuance and severed the action against Campbell into a separate suit.

trial." *Bechem v. Reliant Energy Retail Servs., LLC*, 441 S.W.3d 839, 846 (Tex. App.–Houston [14th] 2014, no pet.) (citing *Stoner v. Thompson*, 578 S.W.2d 679, 682 (Tex. 1979)). "[A] post-answer default 'constitutes neither an abandonment of the defendant's answer nor an implied confession of any issues thus joined by the defendant's answer.'" *Paradigm Oil, Inc. v. Retamco Operating, Inc.*, 372 S.W.3d 177, 183 (Tex. 2012) (quoting *Stoner*, 578 S.W.2d at 682). If the defendant files an answer, "a trial court may not render judgment on the pleadings and the plaintiff is required to offer evidence and prove all aspects of its claim." *Dolgencorp of Tex., Inc. v. Lerma*, 288 S.W.3d 922, 930 (Tex. 2009) (per curiam); *Armstrong v. Benavides*, 180 S.W.3d 359, 362 (Tex. App.—Dallas 2005, no pet.).

A party against whom a post-answer default judgment has been granted may challenge the legal and factual sufficiency of the evidence to support the judgment on appeal. *See Norman Commc'ns v. Tex. Eastman Co.*, 955 S.W.2d 269, 270 (Tex. 1997) (per curiam); *see also* TEX. R. APP. P. 33.1(d) (in nonjury cases, legal or factual insufficiency complaints may be raised for the first time on appeal). Mother argues that the correct standard of review is abuse of discretion because this case arises out of a family law matter. We disagree. This case does not involve any of the discretionary rulings involved in family cases. *See Strong v. Strong*, 350 S.W.3d 759, 764–65 (Tex. App.—Dallas 2011, pet. denied) (trial court's decision regarding child custody, control, possession, and visitation reviewed for abuse of discretion). This case concerns whether there is evidence to support a post-answer default judgment. Therefore, we apply the traditional standard of review for legal and factual sufficiency of the evidence. *See Norman Commc'ns*, 955 S.W.2d at 270; *Brown v. Ogbolu*, 331 S.W.3d 530, 535 (Tex. App.—Dallas 2011, no pet.) (party may challenge legal and factual sufficiency of evidence on appeal from post-answer default). Even so, the result in this case would be the same because legal and factual sufficiency of the evidence is a relevant factor in assessing abuse of discretion. *See Strong*, 350 S.W.3d at 765.

In default judgment cases, the remedy for legal and factual insufficiency of the evidence is the same: remand for a new trial. *See Dolgencorp,* 288 S.W.3d at 930. Because the remedy is the same, we need not address Campbell's legal sufficiency arguments. *Id.*; *Brown*, 331 S.W.3d at 535.

Campbell requested, but the trial court did not file, findings of fact and conclusions of law. Campbell does not complain about the failure to file findings on appeal. When findings of fact and conclusions of law are not filed or requested in a nonjury trial, all findings necessary to support the judgment will be implied provided the proposition is raised by the pleadings and supported by the evidence. *See Holt Atherton Indus., Inc. v. Heine*, 835 S.W.2d 80, 83–84 (Tex. 1992). If a record of the evidence is brought forward, these implied findings may be challenged for legal and factual sufficiency of the evidence. *Id.*; *Roberson v. Robinson*, 768 S.W.2d 280, 281 (Tex. 1989) (per curiam). We have a record of the hearing on the motion for damages.

When a party without the burden of proof challenges the factual sufficiency of the evidence, the party must demonstrate that there is insufficient evidence to support the adverse finding. *Westech Eng'g, Inc. v. Clearwater Constructors, Inc.*, 835 S.W.2d 190, 196 (Tex. App.—Austin 1992, no writ). We consider and weigh all of the evidence and set aside the finding only if the evidence supporting it is so weak that the finding is clearly wrong and manifestly unjust. *Sanders v. Total Heat & Air, Inc.*, 248 S.W.3d 907, 912 (Tex. App.—Dallas 2008, no pet.).

**ANALYSIS**

The family code establishes the requirements for perfecting a child-support lien against property of the obligor. *See* TEX. FAM. CODE ANN. §§ 157.311–.331. A child-support lien arises by operation of law against real and personal property of the obligor for all amounts of child support due and owing "subject to the requirements of this subchapter for perfection of the lien."

*Id.* § 157.312(d). One method of perfecting a child-support lien is delivering a statutory child-support lien notice to "any other individual or organization believed to be in possession of real or personal property of the obligor." *Id.* §§ 157.314(b)(3), .316(a). A child-support lien attaches to all nonexempt real and personal property of the obligor on or after the date the lien notice is delivered to a third party in possession or control of property of the obligor. *Id.* § 157.317(a), (a–1). The notice of a child-support lien must contain specific information required by statute. *See id.* § 157.313(a). When used by an individual, the lien notice must be verified. *Id.* § 157.313(c), (e). The language of these sections indicates that a child-support lien arises without action by a court, "as long as the notice complies with the statutory requirements." *Herzfeld v. Herzfeld*, 285 S.W.3d 122, 127 (Tex. App.—Dallas 2009, no pet.).

Mother's motion for damages alleged that Campbell violated section 157.324 of the family code. Section 157.324 provides:

> A person who knowingly disposes of property subject to a child support lien or who, after a foreclosure hearing, fails to surrender on demand nonexempt personal property as directed by a court under this subchapter is liable to the claimant in an amount equal to the value of the property disposed of or not surrendered, not to exceed the amount of the child support arrearages for which the lien or foreclosure judgment was issued.

TEX. FAM. CODE ANN. § 157.324.

A necessary requirement of a claim under section 157.324 is that the property was subject to a child-support lien. *See id.* To establish that a valid child-support lien was perfected, the claimant must show that the lien notice "complies with the statutory requirements." *Herzfeld*, 285 S.W.3d at 127; *see also* TEX. FAM. CODE ANN. § 157.313(a).[2] In addition, a claimant must establish the specific elements of section 157.324 that a person "knowingly disposes of property

[2] The required information includes the name and address of the person to whom notice is sent, the court of continuing jurisdiction, the obligor, the obligee, the amount of child support or arrearages owed, the name of the person asserting the lien, and statements that the lien attaches to all nonexempt real and personal property of the obligor located in or recorded in the state, that unpaid future support constitutes a final judgment for the amount due and owing, and that obligor is being provided with a copy of the lien notice. *Id.*

subject to a child support lien" and the value of the property disposed of. TEX. FAM. CODE ANN. § 157.324.[3]

We begin by noting that the trial court's order contains language about a no-answer default. The order recites: "Defendant Mark Campbell failed to appear and wholly made default. Accordingly, Defendant, Mark Campbell has admitted the truth of the allegations." But the record establishes that Campbell filed an answer and did not admit the truth of the allegations in Mother's pleading. *See Paradigm Oil*, 372 S.W.3d at 183; *Stoner*, 578 S.W.2d at 682. Thus, the trial court could not render judgment on the pleadings and Mother was required to offer evidence and prove all aspects of her claim. *Dolgencorp*, 288 S.W.3d at 930.

Mother was required to prove the lien notice complied with the statutory requirements. *Herzfeld*, 285 S.W.3d at 127. However, no evidence was offered at the hearing on Mother's motion for damages. *See Tex. G & S Invs., Inc. v. Constellation Newenergy, Inc.*, 459 S.W.3d 252, 258 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (reversing post-answer default judgment where trial court heard no evidence at trial and stating that affidavits filed after trial did not contain all elements of claim even if they could be considered as evidence to support the judgment). The record of that hearing focused almost entirely on Garvey's motion for continuance. No witnesses testified and no documents were admitted in evidence. The record is silent as to the contents of the lien notice served on Campbell. The notice is not in evidence and there is no other evidence to show that the notice served on Campbell met the requirements of section 157.313(a). S*ee* TEX. FAM. CODE ANN. § 157.313(a).

Mother argues, however, that Campbell's answer contained judicial admissions that are evidence to support the order. In his answer, Campbell stated he received a notice of child-

[3] There is no evidence in the record of a foreclosure proceeding on the lien notice sent to Campbell and Mother does not rely on the language regarding the failure to surrender property on demand after a foreclosure hearing. *See id.* § 157.324.

support lien, but expressly denied violating section 157.324 and stated he was not liable to Mother. He further stated no funds were distributed to Father after Campbell received the notice of lien.

Mother relies particularly on Campbell's statement that he "had the lien reviewed by Louisiana council [sic]. It was deemed a legal lien by Louisiana attorneys and therefore it was on legal recommendation that all lease payments discontinue." Mother argues this statement is a judicial admission that the lien was legal. We disagree. The statement is evidence only that Campbell was told by a Louisiana attorney the lien was legal; it is not evidence that the notice sent to Campbell actually contained all the requirements of section 154.313(a).

Furthermore, a legal conclusion—such as the legality of a lien—is not a proper subject for a judicial admission. *See Tempo Tamers, Inc. v. Crow–Houston Four, Ltd.*, 715 S.W.2d 658, 668 (Tex. App.—Dallas 1986, writ ref'd n.r.e.) (opinion concerning legal effect of letter cannot be considered judicial admission "because it is not a statement of *fact*"); *Jackson v. Tex. S. Univ.–Thurgood Marshall Sch. of Law*, 231 S.W.3d 437, 440 (Tex. App.—Houston [14th Dist.] 2007, pet. denied) (noting "a conclusion of law [is] not subject to judicial admission"). Even if this statement amounted to more than a scintilla of evidence that the lien notice complied with the statutory requirements, it is so weak that the implied finding that the notice was in compliance is clearly wrong and unjust. *Sanders*, 248 S.W.3d at 912.

Campbell's answer evidences that he took steps to comply with the lien notice. He did not make any rent payments to Father after receiving the notice. In response to Mother's allegation of gross negligence and request for punitive damages, Campbell alleged he and Garvey:

> opened a separate, personal savings account at J.P. Morgan Chase Bank to hold the monthly, agreed lease amount of $3,750 while waiting for [Father] to resolve his personal matters. . . . Once the mortgage representative served an urgent notice in person to Katherine Garvey on February 22, 2014, the account was

> dissolved, and plans to leave the property began for lack of peaceable possession and hardship. Mark Campbell and Katherine Garvey are in the early phase of seeking residency elsewhere.

Mother claims this is a judicial admission of liability for disposing of property subject to a child support lien in violation of section 157.324. TEX. FAM. CODE ANN. § 157.324. But this is evidence of nothing more than that Campbell dissolved his personal savings account.

Mother equates the term "dissolved" with the term "disposes of" used in section 157.324. We do not agree. Section 157.324 does not define the term "dispose of," therefore, we give it its plain and ordinary meaning. *See TGS-NOPEC Geophysical Co. v. Combs*, 340 S.W.3d 432, 439 (Tex. 2011); *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625–26 (Tex. 2008). "To 'dispose of' ordinarily means to sell or alienate." *Moore v. Wardlaw*, 522 S.W.2d 552, 557–58 (Tex. Civ. App.—Austin 1975, writ ref'd n.r.e.) (citing *Lowe v. Ragland*, 297 S.W.2d 668, 674 (Tex. 1957)); *see Disposition*, BLACK'S LAW DICTIONARY (10th ed. 2014) ("The act of transferring something to another's care or possession, esp. by deed or will; the relinquishing of property <a testamentary disposition of all the assets>."); *cf. Dissolution*, BLACK'S LAW DICTIONARY (10th ed. 2014) ("1. The act of bringing to an end; termination. 2. The cancellation or abrogation of a contract, with the effect of annulling the contract's binding force and restoring the parties to their original positions.").

By the simple statement that Campbell dissolved his savings account, we cannot know whether he transferred or alienated any property to another. Inferring a disposition of property from this statement would be mere speculation. It is just as likely that Campbell retained control of the money and put it in another bank account. Evidence that Campbell dissolved his savings account is so weak it cannot support the implied finding that he "dispose[d] of property subject to a child support lien."

## CONCLUSION

We conclude the evidence in this record, consisting entirely of the statements in Campbell's answer, is insufficient to establish the elements of Mother's claim under section 157.324. We sustain Campbell's first issue, reverse the trial court's order, and remand this case for further proceedings.

/Craig Stoddart/
CRAIG STODDART
JUSTICE

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# Court of Appeals
# Fifth District of Texas at Dallas

## JUDGMENT

IN THE INTEREST OF R.M.R., III, A MINOR CHILD

No. 05-14-01247-CV

On Appeal from the 219th Judicial District Court, Collin County, Texas
Trial Court Cause No. 219-00287-2015.
Opinion delivered by Justice Stoddart.
Justices Francis and Evans participating.

In accordance with this Court's opinion of this date, the trial court's July 1, 2014 Order on Motion for Damages for Failure to Honor Child Support Lien is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings.

It is **ORDERED** that appellant Mark Campbell recover his costs of this appeal from appellee Leslie Rise-Brannon.

Judgment entered this 5th day of April, 2016.