

Affirmed and Opinion Filed June 13, 2018.



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

No. 05-17-00652-CV

IN THE INTEREST OF J.D.G., a Child

**On Appeal from the 256th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-13-11903**

MEMORANDUM OPINION

Before Justices Lang, Myers, and Stoddart
Opinion by Justice Lang

Oscar Lee Dunn III, pro se, appeals the trial court's default order confirming child support arrearage in the amount of \$10,742.25 as of June 1, 2017. Dunn raises four issues on appeal,¹ arguing: (1) he was not properly served with notice of the hearing; (2) the trial court abused its discretion when it rendered a default order against him that was based on "misinformation"; (3) the trial court "falsely ordered [] Dunn to surrender settlements based upon a default [order]"; and (4) "Dunn receives SSI^[2] as his only income." Neither the Office of the Attorney General of Texas nor the mother have filed a brief in this appeal. We conclude the trial court did not err. The trial court's order confirming child support arrearage is affirmed.

¹ In Dunn's "Statement of Issues," he lists three issues, but in the "Argument" section of his brief on appeal he addresses four issues.

² The record and brief only refer to "SSI." We understand Dunn to be referring to supplemental security income, a federal income supplement program.

I. PROCEDURAL CONTEXT

The record shows that on September 25, 2013, the trial court signed an order establishing the parent-child relationship finding that Dunn is the biological father of the child. It also ordered Dunn to pay child support and retroactive child support. On August 25, 2016, Dunn filed a “petition to terminate the parent-child relationship based on mistaken paternity.” On August 26, 2016, Dunn filed a motion for genetic testing. Then, on December 1, 2016, Dunn filed a “motion to modify child support and [for] termination of [his] obligation to pay child support.” On March 14, 2017, the trial court granted Dunn’s motion for genetic testing. On June 2, 2017, after a hearing for which Dunn failed to appear, the trial court signed an order confirming child support arrearage in the amount of \$10,742.25 as of June 1, 2017.

II. NOTICE OF HEARING

In issues one and two, Dunn argues he did not receive notice of the hearing and the trial court abused its discretion when it rendered a default judgment against him that was based on “misinformation.” He claims that he has never lived at the residence where he was allegedly served and was not present at that address on the date and time the return states he was served. Also, he contends the trial court’s order incorrectly states that he received notice of the hearing. Further, Dunn argues the “director of server operations” told him that the process server who allegedly served Dunn had been “terminated due to not serving citations.”

The trial court’s order confirming child support arrearage states that Dunn has been duly notified of the hearing. Also, at the beginning of the hearing, the trial court noted on the record that Dunn had been “given notice that if he failed to appear a default could be taken against him” and the “[h]alls h[ad] been called three times” with no response. Dunn does not cite the record where any evidence supporting his contention may be found. Moreover, to the extent Dunn’s complaint requires extrinsic evidence, a motion for new trial filed in the trial court is a prerequisite

to complaining on appeal that a default judgment should be set aside. *See Ginn v. Forrester*, 282 S.W.3d 430, 432 (Tex. 2009); *Bowling v. Dahlheimer*, No. 05-16-01196-CV, 2017 WL 5166998, at *5 (Tex. App.—Dallas Nov. 21, 2017, pet. denied) (mem. op.).

Issues one and two are decided against Dunn.

III. CHILD SUPPORT ORDER

In issues three and four, Dunn argues the trial court “falsely ordered [] Dunn to surrender settlements based upon a default [order]” and “Dunn receives SSI as his only income.” He claims that he was not proven to be the child’s father until April 11, 2017. As a result, Dunn contends that trial court’s September 25, 2013 default order establishing the parent-child relationship between Dunn and the child, and ordering him to pay child support and retroactive child support was “wrongfully entered.” Also, Dunn argues that since he receives SSI, he “can[not] be forced to pay child support.”

On appeal, Dunn’s arguments do not challenge the trial court’s June 2, 2017 order confirming child support arrearage. Instead, his arguments collaterally attack the underlying September 25, 2013 default order establishing the parent-child relationship between Dunn and the child and ordering him to pay child support, including retroactive child support. However, Dunn’s arguments do not raise a jurisdictional challenge to the September 25, 2013 default order establishing the parent-child relationship.³ Also, as noted above, Dunn does not cite the record where any evidence may be found supporting his contention. Further, to the extent Dunn’s complaint requires extrinsic evidence, a motion for new trial filed in the trial court is a prerequisite to complaining on appeal that a default judgment should be set aside. *See Ginn*, 282 S.W.3d at 432; *Bowling*, 2017 WL 5166998, at *5.

³ We note that the September 25, 2013 default order establishing the parent-child relationship, recites that although Dunn was duly notified, he did not appear and that the trial court found it had jurisdiction over the parties and subject matter of the suit. *See In re D.L.S.*, No. 05-08-00173-CV, 2009 WL 1875579, at *2 (Tex. App.—Dallas July 1, 2009, no pet.) (mem. op.) (collateral attack fails if judgment contains jurisdictional recitals even if other parts of record show lack of jurisdiction).

Issues three and four are decided against Dunn.

IV. CONCLUSION

Dunn has not shown that he did not receive notice of the hearing. The trial court did not err when it rendered a default order confirming child support arrearage against Dunn.

The trial court's order confirming child support arrearage is affirmed.

/Douglas S. Lang/

DOUGLAS S. LANG
JUSTICE

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

JUDGMENT

IN THE INTEREST OF J.D.G., A CHILD

No. 05-17-00652-CV

On Appeal from the 256th Judicial District
Court, Dallas County, Texas

Trial Court Cause No. DF-13-11903.

Opinion delivered by Justice Lang. Justices
Myers and Stoddart participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellees The Office of the Attorney General of Texas and Saporina Wynise Young recover their costs of this appeal from appellant Oscar Lee Dunn III.

Judgment entered this 13th day of June, 2018.