Affirmed and Opinion Filed October 14, 2020

In the
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00757-CV

IN THE INTEREST OF M.W.M., JR., A MINOR CHILD

On Appeal from the 256th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-07-04168

MEMORANDUM OPINION

Before Chief Justice Burns, Justice Carlyle, and Justice Browning
Opinion by Justice Carlyle

This appeal involves enforcement of a judgment in a family law controversy. Following Father and Mother's 2010 divorce, Mother obtained two judgments against Father relating to his obligations under the divorce decree, but Father made no payment on those judgments.

Upon Mother's application, the trial court signed an order that "charged" Father's interest in certain entities with Mother's judgments and ordered those entities not to pay Father any money or "expend any money for [his] personal benefit" until the judgments are paid. Father and the entities appeal that order. We affirm in this memorandum opinion. *See* TEX. R. APP. P. 47.7.

Background

After unsuccessfully attempting to collect on her judgments against Father, Mother filed a May 2017 "Application for Charging Order." The application asserted Father "has a position of authority in each of the following business organizations": Driskill Energy Partners, LP; Michael W. Mitchell Family LP; Mitchell Energy Partners, LLC; Mitchell Energy Advisors, LLC; and M2 Investment Properties, LLC (collectively, the Mitchell Entities). The application also stated:

> 4. Upon information and belief, [Father] receives distributions from one or more of those business organizations. Distributions to [Father] are in the form of both (a) funds disbursed directly to him and (b) funds expended by those business organizations for [Father's] personal living costs. Applicant seeks to have [Father's] access to and use of those funds "charged" with her judgment, until such time as the judgment is fully paid.
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> 5. In order to collect the balance owed . . . , Applicant requests an order that until the judgment is fully satisfied, (a) [Father's] interest in each of these business organizations is charged in favor of and for the benefit of Applicant; [(b)] that no moneys be distributed to [Father]; (c) that no moneys be used to pay any personal living expenses of [Father] until the judgment has been fully satisfied; and (d) that any sums payable or distributable to [Father] be directly paid to Applicant, instead.

Father filed a response stating he holds an ownership interest in Michael W. Mitchell Family LP (MWMFLP), but "does not have any interest in any of" the other four entities listed in the application (collectively, the four disputed entities). He contended there is thus "no basis to impose a charging order" on any of the four disputed entities.

At the hearing on the application, Mother's counsel introduced into evidence (1) Father's personal tax returns for 2015, 2016, and 2017; (2) 2016 Texas Franchise Tax Public Information Reports pertaining to the four disputed entities, each of which was signed by Father as "Manager" and listed owners of interests of 10% or more and entities in which the four disputed entities held interests of 10% or more; and (3) MWMFLP's 2016 Texas Franchise Tax Public Information Report, which described Father as "GP" and listed entities in which it owned 10% or more.[1]

Following that hearing, the trial court signed the complained-of order, which is titled "Charging Order" and describes the Mitchell Entities as "business organizations owned, operated, or controlled by [Father]." The order provides (1) "the interest of [Father] in any and all of the Mitchell Entities is hereby subjected to a charging order in favor of and for the benefit of [Mother]"; (2) "[a]ny money due or to become due to [Father] by reason of his interest in the partnership shall be paid directly to [Mother]"; and (3) "none of the Mitchell Entities shall (a) pay any money to [Father], (b) pay any personal living expenses of [Father], or (c) expend

[1] The ownership designations in the Mitchell Entities' Texas Franchise Tax Public Information Reports are inconsistent. Mitchell Energy Partners, LLC (1) listed "M Mitchell Family LP" as holding a 100% interest in it and (2) stated it held 100% ownership interests in both "Mitchell Energy Advisors" and "M2 Inv Properties, LLC." Mitchell Energy Advisors, LLC listed Mitchell Energy Partners, LLC as holding a 100% interest in it, but M2 Investment Properties LLC listed "Mike Mitchell Family LP" as holding a 99% interest in it. Driskill Energy Partners, LP listed no entities holding an interest of 10% or more and stated it owns 99% of "M Mitchell Family LP." But MWMFLP listed no entities owning an interest of 10% or more and stated it owns a 99% interest in Driskill Energy LP and a 100% interest in Mitchell Energy Partners, LLC.

any money for [Father's] personal benefit, so long as any portion of this Court's [judgments] remains unpaid."

The four disputed entities filed a "Motion to Modify Charging Order," asserting, "Because the Business Organizations Code does not entitle a judgment creditor to a charging order over entities for which the judgment debtor merely works, whether in a position of authority or not, the Non-Owned Entities respectfully request that the Court modify the Charging Order so that it only affects Michael W. Mitchell Family, LP—the only entity in which [Father] holds a membership interest." The motion to modify cited Texas Business Organizations Code sections 101.112 (charging orders regarding limited liability companies) and 153.256 (charging orders regarding limited partnerships). In a declaration attached to the motion, Father stated, "Although I may hold manager or director positions in [the four disputed entities], I do not hold direct partnership, membership, or shareholder interests in any of those entities." After a hearing, the trial court denied the motion to modify.

Analysis

Every court having jurisdiction to render a judgment "has the inherent power to enforce its judgments" and "may employ suitable methods" to do so. *Arndt v. Farris*, 633 S.W.2d 497, 499 (Tex. 1982) (orig. proceeding). Those methods include, among other things, charging orders and injunctive relief. *See* TEX. BUS. ORGS. CODE §§ 101.112, 153.256; *Jaycap Fin., Ltd. v. Neustaedter*, No. 13-17-00680-CV, 2019

WL 6793825, at *3 (Tex. App.—Corpus Christi–Edinburg Dec. 12, 2019, no pet.) (mem. op.).

We review post-judgment charging orders and injunctive relief under an abuse of discretion standard. *Goodman v. Compass Bank*, No. 05-15-00812-CV, 2016 WL 4142243, at *10 (Tex. App.—Dallas Aug. 3, 2016, no pet.) (mem. op.); *Lagos v. Plano Econ. Dev. Bd., Inc.*, 378 S.W.3d 647, 650 (Tex. App.—Dallas 2012, no pet.); *TCAP Corp. v. Gervin*, 320 S.W.3d 549, 553 (Tex. App.—Dallas 2010, no pet.). We reverse a trial court for abusing its discretion only if we find the court acted in an unreasonable or arbitrary manner or without reference to any guiding rules or principles. *E.g.*, *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991). When, as here, findings of fact and conclusions of law are not requested or filed, we imply all findings necessary to support the trial court's ruling if there is evidence in the record to support them. *TCAP Corp.*, 320 S.W.3d at 552.

In their sole issue on appeal,[2] appellants contend the trial court "erred when it subjected [the four disputed entities] to a charging order." In three subparts to their

[2] In a "Statement Regarding Appellate Jurisdiction" in their appellate brief, appellants assert the complained-of order is appealable, but state in the alternative that to the extent this Court "finds that it does not have appellate jurisdiction over this matter," they "respectfully request a writ of mandamus directing [the trial judge] to vacate the Charging Order." Mother does not specifically address jurisdiction.

Though post-judgment orders made for the purpose of enforcing an already-entered judgment are generally not subject to appeal, "some post-judgment orders, like charging orders, may be appealable if an appeal is statutorily authorized or if the order resolves property rights and imposes obligations on the judgment creditor or interested third parties." *Spates v. Office of Attorney Gen.,* 485 S.W.3d 546, 551 (Tex. App.—Houston [14th Dist.] 2016, no pet.) (citing *Schultz v. Fifth Judicial Dist. Court of Appeals*, 810 S.W.2d 738, 740 (Tex. 1991), *abrogated on other grounds by In re Sheshtawy*, 154 S.W.3d 114 (Tex. 2004)). Appellants assert the complained-of order resolves property rights, acts as an injunction, and is otherwise final in all respects. We agree and thus conclude the order is appealable. *See id*. at 552.

issue, appellants assert (1) there is no evidence Father holds an ownership interest in the four disputed entities; (2) the order "is void and must be vacated" because it "exceeded the court's statutory authority" under the business organizations code; and (3) the order "interferes with [Father's] interest in his current wages and, therefore, violates the Texas Constitution."

We begin with appellants' complaint regarding lack of evidence that Father holds an "ownership interest" in the four disputed entities. According to appellants, "[t]he threshold requirement for a charging order is that the debtor must have an ownership interest in the entity on which the charging order is imposed," and "[a]bsent such an ownership interest," it was "improper" for the trial court to "impose a charging order." But the complained-of order's qualifying language charges only "the interest of [Father] in any and all of the Mitchell Entities." Pursuant to the order's qualifying provision, if Father owns no interest in a particular entity, the trial court's order charges nothing as to that entity. Nothing in the charging statutes specifically prohibits such application. *See* TEX. BUS. ORGS. CODE §§ 101.112, 153.256; *see also Goodman*, 2016 WL 4142243, at *11 ("We will not read into the charging statutes a limitation not expressly imposed by the legislature."). Because the order does not purport to charge an interest in entities in which Father has no ownership interest, we conclude the complained-of lack of evidence of ownership interest in the four disputed entities is immaterial. *See* TEX.

R. APP. P. 44.1 (stating no judgment may be reversed on appeal unless error complained of probably caused rendition of improper judgment).

In their second subpart, appellants contend the complained-of order "exceeded the court's statutory authority" and is "void" because "[a]lthough the Business Organizations Code gives judgment creditors a lien on any distributions made to a debtor on account of the debtor's ownership interest in an entity, the trial court's order in this case far oversteps that limitation." This voidness argument was not asserted in the trial court.

Even assuming without deciding this complaint can be raised on appeal, the business organizations code was not the trial court's sole means to enforce its judgments. Appellants state in their opening appellate brief that the trial court's order "not only places a lien on any distributions that [Father] would be entitled to receive (assuming that he had an ownership interest in the Non-Owned Entities)," but also "acts as an injunction" in that it "purports to preclude the entities from paying [Father]" as a non-owner. Injunctive relief is an available means to enforce a judgment. *See Jaycap*, 2019 WL 6793825, at *3. Though Mother's application did not use the word "injunction," her requested relief included enjoining payments to Father or payment of his living expenses by the Mitchell Entities, and the trial court granted that requested relief. *See In re Brookshire Grocery Co.*, 250 S.W.3d 66, 72 (Tex. 2008) (orig. proceeding) (nature of motion is determined by its substance, not title); *Mathes v. Kelton*, 569 S.W.2d 876, 878 n.3 (Tex. 1978) (substance of order

controls over title). To the extent appellants argue the trial court lacked "authority" to do so, we disagree.[3] *See Jaycap*, 2019 WL 6793825, at *3.

We also reject appellants' contention in their third subpart that the trial court's order violates the Texas Constitution's garnishment provision. That provision states, "No current wages for personal service shall ever be subject to garnishment, except for the enforcement of court-ordered: (1) child support payments; or (2) spousal maintenance." TEX. CONST. art. 16, § 28. According to appellants, the "practical effect" of the complained-of order "is to preclude [Father] from receiving any compensation from any of the Non-Owned Entities, in any form whatsoever," and "[t]his implicates the exact concern the Texas Constitution addresses."

Appellants rely on *McLendon v. Mandel*, No. 05-96-00160-CV, 1996 WL 403974 (Tex. App.—Dallas July 9, 1996, no writ) (not designated for publication). In that case, several creditors of debtor Gordon B. McLendon, Jr. sought "an injunction against [debtor] from taking any further money or property" from three specified entities in which he held interests. *Id*. at *1. The trial court signed an order

[3] In their appellate reply brief, appellants argue for the first time that the trial court erred by granting injunctive relief because (1) Mother's application did not comply with Texas Rule of Civil Procedure 682, which requires a sworn petition for a writ of injunction; (2) her counsel "never referred to or requested injunctive relief in making his argument to the [trial] court"; and (3) there is no "evidentiary support" for the elements generally applicable to injunctive relief. Appellants did not assert those complaints in the trial court or in their opening appellate brief. Thus, those complaints present nothing for this Court's review. *See Anchia v. DaimlerChrysler AG*, 230 S.W.3d 493, 500 n.1 (Tex. App.—Dallas 2007, pet. denied) ("The Texas Rules of Appellate Procedure do not allow an appellant to include in a reply brief a new issue not raised in the appellant's original brief."); *Tex. Health Mgmt., LLC v. Healthspring Life & Health Ins. Co.*, No. 05-18-01036-CV, 2020 WL 3071729, at *8 (Tex. App.—Dallas June 10, 2020, no pet.) (mem. op.) ("Parties may raise a legal sufficiency challenge for the first time on appeal; however, we may not consider arguments raised for the first time in a reply brief.").

enjoining the debtor "from receiving or taking any money or property" from those entities "by loans, bonuses, wages, distributions or in any other form or manner until further order of the Court." *Id*. at *2.

The debtor appealed, asserting in part that "to the extent [the injunction] prevents him from receiving current wages," "that portion of the injunction constitutes an unconstitutional garnishment of his wages." *Id.* at *4. This Court disagreed, stating "the injunction does not violate article XVI, section 28 of the Texas Constitution" because "[t]he injunction does not place McLendon's current wages in the hands of a third party or take them from a third party." *Id*.[4]

Here, as in *McLendon*, nothing in the trial court's order places any wages of Father in "the hands of a third party" or "take[s] them from a third party." *See id*. Thus, we disagree with appellants' position that the complained-of order violates the Texas Constitution's garnishment provision and affirm the trial court's order. *Id*.; *see also Wease v. Bank of Am.*, No. 05-14-00867-CV, 2015 WL 4051974, at *2 (Tex. App.—Dallas July 2, 2015, no pet.) (mem. op.) ("Garnishment is a statutory proceeding whereby the property, money, or credits of a debtor in the possession of

[4] This Court then considered and agreed with Mr. McLendon's argument that the injunction constituted a "seizure" of his wages precluded under Texas Property Code section 42.001(b). *See McLendon*, 1996 WL 403974, at *4; TEX. PROP. CODE § 42.001(b). To the extent appellants' reliance on *McLendon* is based on that portion of the ruling, they did not assert any property code violation in the trial court or in their opening appellate brief. They cite property code section 42.001(b) for the first time in their appellate reply brief and thus present no property code violation for our review. *See Anchia*, 230 S.W.3d at 500 n.1; *Tex. Health Mgmt.*, 2020 WL 3071729, at *8.

another are applied to the payment of the debt." (citing *Bank One, Tex., N.A. v. Sunbelt Sav., F.S.B.*, 824 S.W.2d 557, 558 (Tex. 1992)).

/Cory L. Carlyle/
CORY L. CARLYLE
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN THE INTEREST OF M.W.M., JR., A MINOR CHILD	On Appeal from the 256th Judicial District Court, Dallas County, Texas Trial Court Cause No. DF-07-04168.
No. 05-19-00757-CV	Opinion delivered by Justice Carlyle. Chief Justice Burns and Justice Browning participating.

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

It is **ORDERED** that appellee Helen Austin recover her costs of this appeal from appellants Michael William Mitchell, Driskill Energy Partners LP, Michael W. Mitchell Family, LP, Mitchell Energy Partners, LLC, Mitchell Energy Advisors, LLC, and M2 Investment Properties, LLC.

Judgment entered this 14th day of October, 2020.