

Opinion issued July 27, 2017



In The
Court of Appeals
For The
First District of Texas

NO. 01-16-00951-CV

IN RE MIGUEL ZARAGOZA FUENTES, Relator

Original Proceeding on Petition for Writ of Mandamus

MEMORANDUM OPINION

Miguel Zaragoza Fuentes seeks mandamus relief from the trial court's modified temporary orders pending appeal of the underlying divorce decree between Miguel and real party in interest, Evangelina Lopez Guzman Zaragoza.¹ In an earlier original proceeding, this court conditionally granted

¹ The underlying case is *In the Matter of the Marriage of Evangelina Lopez Guzman Zaragoza and Miguel Zaragoza Fuentes, et al.*, cause number 2014–30215, pending in the 245th District Court of Harris County, the Honorable Roy L. Moore presiding

Miguel’s request for mandamus relief challenging temporary orders requiring Miguel to pay \$350,000 per month in temporary spousal support and attorney’s fees during Miguel’s appeal of the divorce decree. *See In re Fuentes*, 506 S.W.3d 586 (Tex. App.—Houston [1st Dist.] 2016, orig. proceeding [mand. denied]). Because the temporary spousal benefits were not supported by the evidence, we ordered the trial court to modify its temporary orders consistent with our opinion. *Id.* at 594. Miguel’s current mandamus petition arises from the trial court’s subsequent modifications to the temporary orders. He challenges the modified orders, contending that the trial court abused its discretion by:

- 1) exceeding the scope of this court’s limited remand to “modify its order of temporary support and attorney’s fees consistent with” the court’s earlier opinion;
- 2) awarding \$250,000 in monthly support during the appeal;
- 3) awarding \$100,000 in monthly attorney’s fees during the appeal;
- 4) awarding approximately \$6.4 million in lump-sum attorney’s fees during the appeal; and
- 5) appointing a receiver.

Evangelina filed a joint response to this petition as well as to two separate motions and petitions filed by Miguel and other appellants seeking

enforcement of the supersedeas bond posted by Miguel.²

Background

Because the facts of the underlying case have been discussed in our concurrent and previous opinions, we do not recount them here except as relevant to this proceeding. *See In re Fuentes and In re Anchondo and Eagle Ridge Properties, LLC*, 01-16-00952-CV (Tex. App.—Houston [1st Dist.] July 27, 2017, orig. proceeding) (conditionally granting mandamus relief enforcing supersedeas bond); *Fuentes v. Zaragoza*, 01-17-00112-CV (Tex. App.—Houston [1st Dist.] July 27, 2017, no pet. h.) (vacating appointment of receiver); *Fuentes v. Zaragoza*, No. 01-16-00251-CV, 2017 WL 976079 (Tex. App.—Houston [1st Dist.] Mar. 14, 2017, order) (denying motion to dismiss intervenor appellants); *In re Fuentes*, 506 S.W.3d 586 (Tex. App.—Houston [1st Dist.] 2016, orig. proceeding [mand. denied]) (conditionally granting mandamus relief regarding temporary orders); *Fuentes v. Zaragoza*, No. 01-

² Miguel filed a “Rule 24 Motion to Enforce Supersedeas Bond or, In the Alternative, Petition for Writ of Mandamus” in the underlying appeal of the divorce decree. Elsa Esther Carrillo Anchondo and her solely owned company, Eagle Ridge Properties, LLC filed a similar “Petition for Writ of Mandamus, or Alternatively, For Writ of Injunction and Motion to Enforce Supersedeas Under Rule 24.4” in the appeal and commenced an original proceeding pending as *In re Elsa Esther Carrillo Anchondo and Eagle Ridge Properties, LLC*, Case No. 01-16-00952-CV.

16-00251-CV, 2016 WL 3023811 (Tex. App.—Houston [1st Dist.] May 26, 2016, order) (granting motion to reduce supersedeas bond).

On December 21, 2015, the trial court signed a final decree granting Evangelina a divorce against Miguel. The decree awarded Evangelina one-half of the marital estate and \$537 million in fraud-on-the-community damages, including cash in the amount of \$537,680,823, real and personal property, and “[a]ll shares and all interest of any kind in and to” several international business entities that the trial court found to be Miguel’s alter egos.

Miguel moved for a new trial. Several intervenors in the proceedings filed written notices of appeal, including Laura Zaragoza Rodriguez de Reyes, Dade Aviation, Inc., Abbingdon Marine, Inc., Ezar Management, LLC, Ezar Properties, L.P., Eagle Ridge Properties, LLC, and Elsa Esther Carrillo Anchondo. After the trial court denied Miguel’s motion for new trial, Miguel filed a notice of appeal on March 18, 2016.

The Original Temporary Orders

On April 1, 2016, fourteen days after Miguel filed his notice of appeal, the trial court issued temporary orders pursuant to Family Code Section 6.709, requiring Miguel to pay \$350,000 per month to Evangelina, consisting of \$300,000 for monthly support and \$50,000 for monthly attorney’s fees. *See*

TEX. FAM. CODE § 6.709(a) (allowing trial court to render temporary orders during appeal no later than 30 days after appeal perfected). Miguel filed a petition for writ of mandamus claiming that the trial court lacked jurisdiction to enter the temporary orders because, according to Miguel, they were entered more than 30 days after an appeal was perfected from the underlying case. *In re Fuentes*, 506 S.W.3d at 588–90. Although the temporary orders were entered within 30 days of Miguel’s appeal, Miguel argued that the 30-day deadline began when the intervenor appellants had filed their earlier notices of appeal. *Id.* at 590–91. Alternatively, Miguel argued that the trial court abused its discretion because the awards lacked evidentiary support. *Id.* at 592.

We conditionally granted the petition for writ of mandamus. *Id.* at 594. In our opinion, we rejected Miguel’s argument that the 30-day deadline for issuing temporary orders began when the intervenor appellants filed notices of appeal; instead, we held that the trial court had jurisdiction to issue the orders because they were filed within 30 days of Miguel’s notice of appeal. *Id.* at 590–91. But, although the trial court had jurisdiction to issue the temporary orders, we held that the trial court abused its discretion because the award amounts were not supported by evidence. *Id.* at 591, 593–94. Our opinion initially directed the trial court to “vacate its order of temporary

support and for attorney's fees and to conduct a hearing and enter new temporary orders within 30 days.”

Miguel moved for rehearing, arguing that the trial court did not have jurisdiction to issue new orders, conduct another hearing, or take new evidence more than 30 days after Miguel perfected his appeal. We denied rehearing, but withdrew the earlier opinion and issued a substitute opinion. *Id.* at 588 n.1. The substitute opinion removed the directive to hold a hearing, and instead directed the trial court to “modify its order of temporary support and attorney's fees consistent with this opinion within 30 days.” *Id.* at 594.

The Modified Temporary Orders

The trial court set another evidentiary hearing for November 1, 2016. Miguel objected to the hearing, contending that orders were issued outside of the trial court's jurisdiction. He requested that the trial court “decline from exercising jurisdiction over temporary orders at this juncture.” In the alternative, Miguel claimed that if the trial court exercised jurisdiction to modify its temporary orders, then it must do so with the evidence before it and could not hear new evidence. On this point, Miguel argued that (1) the court lacked jurisdiction to conduct another hearing or take new evidence more than 30 days after Miguel's appeal was perfected and (2) “the trial court's only authority was to ‘modify its order of temporary support and attorney's fees

consistent with” this Court’s opinion. The trial court overruled Miguel’s objections and proceeded to conduct a two-day evidentiary hearing.

At the conclusion of the hearing, the trial court announced that it was awarding Evangelina \$250,000 in monthly support pending appeal (a reduction of \$50,000 from the earlier order), \$100,000 in monthly attorney’s fees pending appeal (an increase of \$50,000 from the earlier order), and approximately \$6.4 million in lump-sum attorney’s fees.

Miguel then filed a petition for writ of mandamus, again challenging the temporary orders. We granted Miguel’s request for a stay of the orders pending our determination of the mandamus petition. Although Miguel challenges the appointment of a receiver in his mandamus petition, Miguel also filed an interlocutory appeal of the receivership appointment that is pending in our court under case number 01-17-00112-CV. The appeal of the decree is pending under appellate cause number 01-16-00251-CV, and we decide that appeal concurrently with our resolution of this proceeding.

Discussion

I. Standard of Review

Mandamus is an extraordinary remedy that is available when a trial court clearly abuses its discretion and there is no adequate remedy at law. *See In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig.

proceeding); *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding). A trial court has no discretion in determining what the law is and applying it to the facts and abuses its discretion if it fails to analyze or apply the law correctly. *In re Cerberus Capital Mgmt., L.P.*, 164 S.W.3d 379, 382 (Tex. 2005) (orig. proceeding); *Walker*, 827 S.W.2d at 840. A trial court abuses its discretion concerning factual matters if the record establishes that the trial court could have reached only one conclusion. *Walker*, 827 S.W.2d at 841; see *In re Allen*, 359 S.W.3d 284, 288 (Tex. App.—Texarkana 2012, orig. proceeding) (citing *Walker*, 827 S.W.2d at 839–40) (“Where, as here, a relator seeks to overrule a decision based on factual issues or matters committed to the trial court’s discretion, [relator] has the burden to show the trial court could have reached only one decision on the facts.”). In regard to a factual issue, we may not substitute our judgment for that of the trial court. *Walker*, 827 S.W.2d at 840.

We review awards of spousal maintenance for an abuse of discretion. See *Dunn v. Dunn*, 177 S.W.3d 393, 396 (Tex. App.—Houston [1st Dist.] 2005, pet. denied). A trial court abuses its discretion when it rules arbitrarily, unreasonably, without regard to guiding legal principles, or without supporting evidence. See *Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998); *Dunn*, 177 S.W.3d at 396. In this context, “legal and factual sufficiency of the

evidence are not independent grounds for asserting error, but they are relevant factors in assessing whether the trial court abused its discretion.” *Dunn*, 177 S.W.3d at 396. Because of the overlap between the abuse-of-discretion and sufficiency-of-the-evidence standards of review, we determine whether the trial court (1) had sufficient information on which to exercise its discretion and (2) erred in its application of that discretion. *Stamper v. Knox*, 254 S.W.3d 537, 542 (Tex. App.—Houston [1st Dist.] 2008, no pet.).

II. Adequate Remedy by Appeal

In our earlier opinion deciding the appeal from the trial court’s temporary orders, we held that Miguel lacked an adequate remedy to challenge temporary orders requiring the payment of spousal support and attorney’s fees to be made before the conclusion of the appeal. *See In re Fuentes*, 506 S.W.3d at 591–92; *see also Bowers v. Bowers*, 510 S.W.3d 571, 583 (Tex. App.—El Paso 2016, no pet.); *In re Merriam*, 228 S.W.3d 413, 416 (Tex. App.—Beaumont 2007, orig. proceeding). For the same reasons, we hold that Miguel lacks an adequate remedy by appeal regarding the spousal support and attorney fee awards.

Unlike the earlier proceeding, however, the mandamus petition in this proceeding challenges the trial court’s appointment of a receiver, which is new relief that the trial court granted on remand. On the same day Miguel filed

his petition for writ of mandamus challenging the modified temporary orders, including the appointment of the receiver, Miguel also filed a notice of appeal from the appointment of the receiver. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(1) (allowing appeal of interlocutory order that “appoints a receiver or trustee”). Because an interlocutory appeal is authorized and has been filed, we conclude that Miguel has an adequate remedy for challenging that relief. *See id.*; *see also In re Ortiz*, No. 13-15-00602-CV, 2016 WL 747744, at *1 (Tex. App.—Corpus Christi Feb. 22, 2016, orig. proceeding) (denying mandamus petition because relator failed to demonstrate lack of adequate remedy by appeal due to filing of interlocutory appeal regarding appointment of receiver); *In re McCafferty*, No. 05-15-01345-CV, 2015 WL 6751078, at *1 (Tex. App.—Dallas Nov. 5, 2015, orig. proceeding) (denying mandamus relief challenging order appointing receiver because relator failed to demonstrate that available interlocutory appeal would be inadequate remedy). Accordingly, we deny mandamus relief challenging the appointment of a receiver because Miguel has an adequate remedy by appeal.

III. Temporary Orders

Miguel challenges the trial court’s jurisdiction and authority to modify its temporary orders based on new evidence and further challenges the

sufficiency of the evidence supporting the amount of spousal support and attorney's fees.

A. Jurisdiction and scope of remand

Miguel first contends that the court lacked jurisdiction to (1) hold the evidentiary hearing upon which the modified temporary orders are based and (2) issue the modified temporary orders more than 30 days after the date of our opinion. Miguel argues that the trial court lacked jurisdiction under section 6.709 to conduct another evidentiary hearing. Even if it had jurisdiction, Miguel alternatively argues, the hearing exceeded the scope of our court's directive on remand.

Miguel argues that the trial court lacked jurisdiction to conduct the hearing under section 6.709 because it was held more than 30 days after Miguel's appeal was perfected. *See* TEX. FAM. CODE § 6.709(a). Although the hearing was held outside of section 6.709(a)'s 30-day deadline for entering temporary orders, section 6.709(b) provides the trial court with continuing jurisdiction to enforce its timely issued temporary orders. *See* TEX. FAM. CODE § 6.709(b) ("The trial court retains jurisdiction to enforce a temporary order under this section unless the appellate court, on a proper showing, supersedes the trial court's order."). Miguel continues to challenge whether the trial court's original orders were timely based on the filing of his notice of appeal,

a contention that we rejected in the first proceeding relating to spousal support. *See In re Fuentes*, 506 S.W.3d at 590–91. He does not address whether the evidentiary hearing associated with the modified orders fell within the trial court’s continuing jurisdiction under section 6.709(b).

Instead, Miguel focuses on an alternative argument that the trial court lacked authority to hold the hearing because it conflicts with the directions in our opinion. A trial court may have jurisdiction, but lack the authority to take actions inconsistent with an appellate court’s mandate on remand. *See Phillips v. Bramlett*, 407 S.W.3d 229, 234 (Tex. 2013). When an appellate court remands a case to the trial court, the trial court is authorized to take all actions necessary to give full effect to the appellate court’s judgment and mandate. *Id.* The trial court has no authority to take action inconsistent with or beyond what is necessary to give effect the judgment and mandate. *Id.* The limits a mandate imposes on the trial court’s authority are not jurisdictional. *See id.* (“While we agree that our mandate and judgment limited the trial court’s authority on remand, such limits are not ‘jurisdictional’ in the true sense of that word.”). But when a trial court exceeds the authority conferred on it by a mandate, the resulting judgment is erroneous. *See id.* Our revised opinion directed the trial court to modify its temporary orders consistent with our

opinion. We directed the trial court to issue revised temporary orders supported by the evidence and did not direct another evidentiary hearing.

Even if the trial court had jurisdiction (under section 6.709(b)) and authority on remand to conduct the hearing, we conclude that mandamus relief is warranted because the relief awarded by the trial court is again not supported by the governing law and the evidence. As we discuss below, a review of the evidence presented at the hearing establishes that it again fails to support the spousal maintenance ordered by the trial court. Further, the trial court lacked any jurisdiction to award the \$6.4 million lump-sum of attorney's fees.

B. Evidentiary support for the modified temporary orders

1) Spousal maintenance

The trial court awarded Evangelina \$250,000 a month for spousal maintenance during the appeal. As with the original temporary orders, it was Evangelina's burden to prove the amount of temporary support with evidence. *In re Fuentes*, 506 S.W.3d at 593–94. In our previous mandamus opinion, we explained that temporary spousal support is intended to provide funds for necessary expenses. *In re Fuentes*, 506 S.W.3d at 593. There, we rejected Evangelina's argument that "the temporary support awarded should be sufficient to maintain her standard of living before the divorce." *Id.* In

concluding that the trial court abused its discretion in awarding \$300,000 a month for spousal support in the original temporary orders, we found that Evangelina failed to provide evidence regarding which expenses had been actually incurred by her and necessary for her maintenance. *Id.* Rather than remedying the problems addressed in our earlier opinion, the evidence presented at the hearing and the modified award of \$250,000 in monthly spousal support continues these errors.

Evangelina has no minor children. In her revised financial information statement filed with the trial court, Evangelina claimed that she is entitled to spousal support of \$396,116.65 per month in expenses and also a lump-sum allotment of previously incurred expenses totaling \$4,301,342.59. These expenses include \$125,000 per month for travel; \$92,000 per month for food, clothing, and personal expenses; \$38,500 in monthly expenses and property taxes associated with a home in Houston owned by one of her adult daughters; approximately \$6,500 in monthly expenses associated with another home in Juarez owned by the same daughter; \$5,000 in monthly expenses associated with a home in Costa Rica owned by another adult daughter; approximately \$23,000 in monthly expenses and property taxes associated with multiple properties in El Paso; \$86,472.30 per month for personal security in Houston; an additional \$16,000 per month for personal security in Mexico and Costa

Rica; \$10,000 per month for family vacations; and \$32,000 per month for medical care.

As with the original temporary orders, these requests for support are impermissibly based upon maintaining a particular standard of living; no evidence was presented that Evangelina was actually incurring these expenses and the support was necessary for her maintenance. *In re Fuentes*, 506 S.W.3d at 593. Instead of demonstrating that Evangelina is without personal means or that her basic needs were not being met, evidence offered at the evidentiary hearing established the opposite. Evangelina testified that, throughout the pendency of the divorce action, including the appeal, she has had “a nice place to live,” “food,” “[c]lothing,” “[m]edical care,” and “the ability to travel— [though] maybe not as much as [she] want[s].” Evangelina testified that some of her expenses have been paid by her children and she is seeking temporary support to reimburse them. One of her daughters testified that Evangelina’s children do not expect to be reimbursed during the appeal, and agreed that waiting to be reimbursed at the conclusion of the appeal will not change “what [they’re] doing” or Evangelina’s “current lifestyle or how she’s able to take care of herself.”

The evidence offered by Evangelina at the evidentiary hearing related to maintaining a particular standard of living rather than her personal expenses

or needs. For instance, Evangelina failed to justify the necessity for requesting \$92,000 per month for clothing, food, and personal expenses, and admitted that the amount included making donations and treating family members to dinner. Evangelina similarly requests \$10,000 a month to pay for both herself and other family members to go on family vacations. Evangelina failed to offer evidence demonstrating the necessity for \$125,000 a month in travel expenses and admitted that the amount was not just for her, but includes travel expenses for her companions:

Q. Ms. Zaragoza, you represent to the Court in P1 that it is necessary that you have 125,000 US dollars for purposes of travel. Is that what you're representing to the Court?

THE INTERPRETER: The interpreter ask – “travel”?

COUNSEL: Yes.

Q. (By Counsel) Is this an amount that you have documents to support?

A. No. I don't have documents.

Q. How did you determine \$125,000 to put on P1?

A. Because more or less, every time we went for travel, that was what my husband used to spend, more or less.

Q. Is this amount that you represent on P1 include only you, or does it include family members?

A. Well, somebody had to come along with me because I'm not going to travel alone by myself.

Q. So to be clear, this number you've included at \$125,000 per month includes other people other than yourself?

A. Somebody has to come along with me, yes, somebody else.

The record demonstrates other instances in which Evangelina's requests for support include expenses that are not her own. Evangelina's requests for support include costs associated with various properties that she admittedly does not own and has no obligation to pay, including monthly living expenses of \$28,000 for a vacation home owned by one of her daughters. Evangelina testified that this amount relates to costs for all occupants at the residence. Evangelina admitted that she does not need to pay those expenses to live in the home; rather, she "want[s] to contribute because [her] son-in-law has no obligation to support his mother." Evangelina requests \$10,500 to reimburse her daughter for monthly property taxes on the home. She testified that she does not need to pay the property taxes on her daughter's home, but wants to pay them:

Q. Ms. Zaragoza, why – I'm sorry. You state on P1 that you want this Court to award you \$10,500 a month to pay property taxes on a house owned by your daughter. Is that what you're requesting?

A. Because I want to help her that way because my husband has enough in order to support me.

Q. But it's not necessary for you to pay the property tax at Cedar Creek, it's just something you'd like to do?

A. I want.

Q. And in total related to you staying at Cedar Creek, you're asking the Court for \$38,500 a month just to stay there; is that what you're asking the Court to award you?

A. Yes

Evangelina similarly requests \$6,537.18 in monthly expenses for a home in Juarez owned by her daughter for the last 20 years that Evangelina has visited twice in the last year.

Finally, Evangelina requests expenses with respect to three properties in El Paso awarded to her in the decree and upon which she executed and took possession prior to the decree becoming final and Miguel posting his supersedeas bond. Evangelina's possession of these properties is challenged in a related original proceeding. *See In re Fuentes and In re Anchondo and Eagle Ridge Properties, LLC*, 01-16-00952-CV (Tex. App.—Houston [1st Dist.] July 27, 2017, orig. proceeding). In conjunction with our decision in this proceeding, we have issued an opinion conditionally granting mandamus relief. Accordingly, expenses related to these properties are not necessary expenses for which Evangelina requires monthly support.

Outside of seeking to reimburse her children for expenses that have been paid, the bills that Evangelina claims are currently unpaid are two personal credit card bills—consisting of a \$200,000 bill from Neiman Marcus and a \$52,450 bill from Charlotte's—and possibly \$40,000 in medical bills. The credit card charges were incurred before the decree. No evidence was offered as to their necessity during the appeal or Evangelina's lack of ability to pay them. The testimony regarding unpaid medical bills conflicted:

Evangelina testified that her medical bills were paid in full, but one daughter testified that \$40,000 in medical expenses remains unpaid.

Because the record fails to provide evidence that Evangelina requires \$250,000 in monthly temporary support to maintain her needs and it is undisputed that her basic needs are being met during the appeal, the trial court abused its discretion in awarding monthly spousal support.

2) Attorney's fees

The Family Code allows the trial court to “render a temporary order necessary for the preservation of the property and for the protection of the parties during the appeal, including an order to . . . require the payment of reasonable attorney’s fees and expenses” TEX. FAM. CODE § 6.709(a). The trial court ordered Miguel to pay Evangelina \$100,000.00 in monthly attorney’s fees plus a lump-sum of attorney’s fees totaling more than \$6.4 million.

A trial court is authorized to award appellate attorney’s fees when it is necessary and equitable to protect the parties or preserve the property during the appeal. *See In re Garza*, 153 S.W.3d 97, 101 (Tex. App.—San Antonio 2004, no pet.); TEX. FAM. CODE § 6.709(a)(2). “As long as there is a credible showing of the need for [appellate] attorney’s fees in the amount requested and the ability of the opposing spouse to meet that need, the trial court has

authority by temporary orders to require payment of such fees.” *Halleman v. Halleman*, 379 S.W.3d 443, 454 (Tex. App.—Fort Worth 2012, no pet.) (quoting *Herschberg v. Herschberg*, 994 S.W.2d 273, 279 (Tex. App.—Corpus Christi 1999, no pet.)). The party seeking to recover attorney’s fees has the burden of proving those fees are “reasonable and necessary.” *Doncaster v. Hernaiz*, 161 S.W.3d 594, 606 (Tex. App.—San Antonio 2005, no pet.).

Although the award of attorney’s fees is reviewed for an abuse of discretion, the reasonableness and necessity of the fees is reviewed for sufficiency of the evidence. *Id.* (citing *Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998)). As discussed below, there is insufficient evidence to support the reasonableness and necessity of the attorney’s fees awarded in the temporary order.

a. Monthly attorney’s fees

There is no evidence that Evangelina needs Miguel’s assistance to pay her attorney or that she lacks the necessary funds. Instead, the record demonstrates that Evangelina’s attorney’s fees have been and will continue to be paid. At the evidentiary hearing, Evangelina agreed that “all of these [attorney’s fees] bills to date have been paid by someone.” Further, as before, “[t]here is no evidence in the record that Evangelina will incur [\$100,000.00]

in monthly attorney's fees on appeal or that such an amount is reasonable and necessary." *In re Fuentes*, 506 S.W.3d at 594.

b. Lump-sum payment of past attorney's fees

The trial court's lump-sum award of \$6,412,700 for attorney's fees and expenses consists of the following line-item reimbursements requested by Evangelina:

- \$300,000.00 for legal fees and expenses in Switzerland;
- \$600,000.00 for legal fees and expenses in Costa Rica;
- \$3,900,000.00 for legal fees and expenses to Cervantes Sainz;
- \$1,046,000.00 for legal fees and expenses to Greenberg Traurig;
- \$137,901.12 for legal fees and expenses to Jeanne McDowell;
- \$250,000.00 for legal fees and expenses to Rios & Parada;
- \$27,757.50 for legal fees and expenses to Jeff Minor;
- \$35,000.00 for legal fees and expenses to Magdalena Sing Soto; and
- \$116,042.35 for legal fees and expenses to Susan Forbes.

Miguel argues that this lump-sum award of attorney's fees and expenses lacks evidentiary support, and includes "unsegregated fees (1) not incurred during the appeal, (2) related to Evangelina's unlawful efforts to execute on the superseded decree, and (3) incurred in connection with the two appellate proceedings in which Miguel prevailed."

Unlike the trial court's modifications to its monthly awards for maintenance and attorney's fees, its lump-sum award of past attorney's fees is relief that was not included in the original temporary orders. Section 6.709(b) of the Family Code provides trial courts with continuing jurisdiction

to enforce its temporary orders. But the power to enforce a judgment does not confer jurisdiction to materially change or supplement an earlier judgment. *See Matz v. Bennion*, 961 S.W.2d 445, 452 (Tex. App.—Houston [1st Dist.] 1997, pet. denied) (“The only limit on a trial court’s authority to enforce its acts is that ‘enforcement orders may not be inconsistent with the original judgment and must not constitute a material change in substantial adjudicated portions of the judgment.’”) (citation omitted); *Beluga Chartering, B.V. v. Timber S.A.*, 294 S.W.3d 300, 306 (Tex. App.—Houston [14th Dist.] 2009, no pet.). In this case, the trial court’s additional award of a lump sum payment of \$6.4 million in attorney’s fees is both new relief and a material change to its original temporary orders. Section 6.709(b) therefore does not apply, and the trial court’s jurisdiction to grant such relief under section 6.709(a) expired 30 days after the perfection of Miguel’s appeal. *See* TEX. FAM. CODE § 6.709(a), (b).

Even if the trial court had jurisdiction to grant the lump-sum award of attorney’s fees in its modified orders, the record indicates that these past fees have been paid. Further the record reveals that several groups of fees awarded by the trial court lacked evidentiary support, including: \$300,000.00 for legal fees and expenses in Switzerland; \$600,000.00 for legal fees and expenses in Costa Rica; \$35,000.00 for legal fees and expenses to Magdalena Sing Soto;

and \$116,042.35 for legal fees and expenses to Susan Forbes. Nor did any witness with personal knowledge testify that the awarded fees were reasonably incurred or necessary for Evangelina's defense of the divorce decree on appeal, or as to any of the required factors prescribed by case law. *See Arthur Andersen & Co. v. Perry Equip. Corp.*, 945 S.W.2d 812, 819 (Tex. 1997).

Absent such proof, the trial court abused its discretion by awarding these amounts to Evangelina. *See In re Fuentes*, 506 S.W.3d at 594; *see also Benoit v. Benoit*, No. 01-15-00023-CV, 2015 WL 9311401, at *15 (Tex. App.—Houston [1st Dist.] Dec. 22, 2015, no pet.) (mem. op.) (“We hold that, without supporting evidence showing the reasonableness of the fees, the trial court abused its discretion by awarding appellate attorney’s fees of \$5,000.”).

Finally, Family Code section 6.709 authorizes trial courts to “render a temporary order necessary for the preservation of the property and for the protection of the parties *during the appeal*, including an order to . . . require the payment of reasonable attorney’s fees and expenses.” TEX. FAM. CODE § 6.709(a) (emphasis added). But the lump-sum attorney’s fees requested by Evangelina and awarded by the trial court include fees incurred before the appeal. No attempt was made to segregate Evangelina’s fees or to limit those fees to amounts incurred during the appeal. Because section 6.709 requires

that fees be necessary for the preservation of property or protection of the parties during the appeal, the trial court erred by awarding fees not incurred during the appeal.

Conclusion

We conditionally grant the petition for writ of mandamus in part and direct the trial court to vacate its temporary orders awarding monthly spousal support, monthly attorney's fees, and lump-sum payment of attorney's fees. We deny mandamus relief challenging the appointment of the receiver. We are confident that the trial court will promptly comply with our opinion, and our writ will issue only if it does not.

Jane Bland
Justice

Panel consists of Chief Justice Radack and Justices Higley and Bland.