

Opinion issued July 28, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-19-00268-CV

IN THE INTEREST OF D.H. AND L.H., CHILDREN

**On Appeal from the 16th District Court
Denton County, Texas
Trial Court Case No. 2010-10629-16¹**

MEMORANDUM OPINION

In this suit affecting the parent-child relationship, G.M.H. (Father) petitioned the trial court to modify his monthly child-support obligation for his two children,

¹ The Supreme Court of Texas transferred this appeal from the Court of Appeals for the Second District of Texas to this Court pursuant to its docket-equalization authority. *See* TEX. GOV'T CODE § 73.001 (“The supreme court may order cases transferred from one court of appeals to another at any time that, in the opinion of the supreme court, there is good cause for the transfer.”).

D.H. and L.H. Father's ex-wife and the children's mother, M.A.H. (Mother), opposed the modification. Following a bench trial, the trial court denied Father's modification request.

Father raises two issues on appeal in which he contends that the trial court abused its discretion in denying his petition to modify his child-support obligation. Because the record supports the trial court's denial, we affirm.

Background

Mother and Father divorced in May 2012. They each signed the Agreed Final Decree of Divorce, indicating that they consented to and approved the decree. When Mother and Father divorced, their two sons, D.H. and L.H., were seven and five years old. The decree named Mother and Father as joint managing conservators of the children with Mother being given the exclusive right to designate the children's primary residence. The decree sets out a possession schedule in which each parent was given possession of the children 50 percent of the time.

The decree required Father to pay to Mother monthly child support in the amount of \$1,047.95. The decree stated that Father's monthly net resources were \$4,191.81 and that the amount of child support was "in accordance with the percentage guidelines" in Family Code Section 154.125. The decree ordered Mother and Father to split health insurance costs.

In June 2018, Father petitioned the trial court to modify the amount of child-support that he was required to pay. Father claimed that his child-support payments should be modified because “the circumstances of the children or a person affected by the order have materially and substantially changed since the date of the rendition of the [decree].”

In December 2018, the trial court conducted a trial on Father’s request to modify his child-support obligation. The children were then 13 and 11 years old.

Father testified that he and Mother had shared possession of the children on an equal “50-50” basis since their divorce in 2012. Father stated that, at the time of the divorce, he had agreed to pay \$1,047.95 in monthly child support because he was earning \$50,000 to \$55,000 per year as a teacher and football coach, and Mother was making “significantly less.” However, Father did not present any evidence regarding the amount of money Mother earned at the time of the divorce in May 2012 or any other evidence regarding her financial circumstances at that time.

Father testified that he had recently changed jobs to work in real estate. He stated that he was not earning any income from his new profession because it “take[s] a while to build a clientele.” But, for purposes of determining whether his child-support obligation should be modified, Father informed the trial court that he was relying on the salary he had earned from his teaching and coaching job in 2018. Father introduced his August 2018 paycheck from that job showing that his monthly

gross pay was \$5,736.66 and his monthly net pay was \$4,716.26. He also introduced Mother's pay statement from September 2018 showing that Mother's gross monthly pay for that month was \$7,081.26 and her net monthly pay was \$4,834.22.

Father asserted that, given what he claimed each parent's net monthly resources were in 2018, he would be required to pay \$1,042.19 in monthly child support, and Mother would be required to pay \$1,509.09 under the Family Code's child-support guidelines. As an exhibit, he offered a document showing how he had calculated these amounts. Father requested the trial court to eliminate his child-support obligation and order Mother to pay him monthly child support based on the difference between what he alleged each parent was required to pay under the statutory guidelines, that is, the difference between \$1,509.09 and \$1,042.19, which is \$466.90. Father also requested that Mother be required to pay the full amount of the children's health insurance costs.

Mother testified that, since the divorce, she had paid all the unreimbursed medical expenses for the children, even though Father was ordered to pay half the costs. She said that she had asked Father to pay his share, but, because it always turned into an argument, she had stopped asking him. As an example of a cost she had paid, Mother testified that she had paid \$4,884 for D.H.'s orthodontics without financial assistance from Father.

Mother also testified that she paid other expenses for the children relating to school and their activities. She offered into evidence a document summarizing the expenses. These expenses included the children's school supplies, busing, school lunches, haircuts, cell phones, gymnastics, and church camp. She testified that these expenses totaled \$8,837 per year, amounting to \$736.42 per month.

At the end of the hearing, the trial court stated:

I do find it concerning that we have these ongoing costs for [the] children, albeit we're not here on an enforcement action. But the Court has heard testimony.

I think it goes to the best interest of the children when there are expenses related to their care and just things that children need. And I would guess and certainly [with them] getting older that those expenses increase, and that we seem to have no system in place for which those are going to be—those expenses are going to be handled, shared, whatever the case may be.

So I am going to decline to change any child support that was ordered from the 2012 order, and things will remain as they are.

The trial court signed an order denying Father's petition to modify the parent-child relationship. In support of its order, the trial court filed findings of fact and conclusions of law at Father's request. The trial court found that, when Father and Mother divorced in May 2012, Father had been ordered to pay \$1,047.95 in monthly child support plus one half of the cost of the children's health insurance and medical expenses. The court noted that the decree divorce reflected that, in 2012, Father's net monthly resources were \$4,191.81. The trial court found that the evidence

showed that Father's income and net resources had increased from 2012 to 2018. The trial court also found that Mother's income for 2017 was \$72,585.

The court further found that the 2012 divorce decree "contains no information about [Mother's] income" at the time the decree was signed. The trial court stated that Father "contends, without specifics, that the income of [Mother] is greater than it was in 2012." The court determined that the divorce decree "indicates that [Mother's] financial resources were immaterial in setting the initial child support." The trial court found that, since the rendition of the 2012 divorce decree, there had "been no material or substantial change in the circumstances of the parties" other than that Father's "monthly resources have actually increased."

In its only conclusion of law, the trial court stated,

The Court finds that [Father] did not meet his burden of proof pursuant to Family Code 156.401(a)(2) to prove that the monthly amount of the Court ordered child support awarded to [Mother] differed by either 20% or \$100. The evidence reflects that [Father's] monthly resources have actually increased. The Court further finds that there has been no material or substantial change in the circumstances of the children as pertains to this action to warrant a modification of any support Order entered on May 16, 2012.

Modification of Child Support

In two issues, Father challenges the trial court's denial of his request to modify his monthly child-support obligation as ordered in the divorce decree.

A. Standard of Review

We review the trial court's orders regarding child-support modification for an abuse of discretion. *In re T.D.C.*, 91 S.W.3d 865, 872 (Tex. App.—Fort Worth 2002, pet. denied) (op. on reh'g). A trial court abuses its discretion if it acts arbitrarily or unreasonably or if it does not analyze or apply the law properly. *Iloff v. Iloff*, 339 S.W.3d 74, 78 (Tex. 2011).

The legal and factual sufficiency of the evidence supporting the modification order are not independent grounds for asserting error but are relevant factors in deciding whether the trial court abused its discretion. *T.D.C.*, 91 S.W.3d at 872. We review the evidence in the light most favorable to the court's modification ruling and indulge every presumption in the ruling's favor. *In re J.D.D.*, 242 S.W.3d 916, 920 (Tex. App.—Dallas 2008, pet. denied). If some probative and substantive evidence supports the ruling, then there is no abuse of discretion. *Id.* An appellate court cannot conclude that a trial court abused its discretion merely because the appellate court would have ruled differently in the same circumstances. *In re K.R.A.*, No. 02-13-00154-CV, 2014 WL 1691808, at *3 (Tex. App.—Fort Worth Apr. 3, 2014, no pet.) (mem. op.).

B. Material and Substantial Change in Circumstances

A trial court may modify a child-support order if “the circumstances of the child or a person affected by the order have materially and substantially changed” since the date of the rendition of the prior order of child support. *See* TEX. FAM.

CODE § 156.401(a)(1). In his first issue, Father contends that “[t]he trial court abused its discretion in finding that there had not been a material and substantial change of circumstances to justify a modification of child support.” *See* TEX. FAM. CODE § 156.401(a)(1). Father argues that the trial court abused its discretion in making this finding because, at the time the divorce decree was rendered in 2012, Mother’s income was less than his; but, at the time Father sought modification in 2018, the evidence showed that Mother earned more money than him. Father contends that because the evidence showed that the children continued to split equally their time between Mother’s and Father’s homes, as they always had, the increase in Mother’s income was a material and substantial change in circumstances that warranted a modification of his child-support obligation.

To show that the trial court abused its discretion in finding no material or substantial change in the parties’ financial circumstances, Father challenges the trial court’s findings of fact related to Mother’s income. Father asserts that Mother’s 2018 income was higher than \$72,585, the amount found by the trial court to be Mother’s 2017 income. He contends that his evidence showed that Mother’s gross monthly income in 2018 was \$8,557, while his gross monthly income in 2018 was \$5,736. Father asserts that this shows a change in the “income differential” between the parties, which required the trial court to find that there had been a material and substantial change in their financial circumstances. However, even if he is correct

about the parties' 2018 incomes, Father has failed to show that the trial court abused its discretion in denying his petition to modify his child-support obligation.

“To determine whether there has been a substantial and material change, the court must compare the financial circumstances of the child and the affected parties at the time the order was entered with their financial circumstances at the time the modification is sought.” *Melton v. Toomey*, 350 S.W.3d 235, 238 (Tex. App.—San Antonio 2011, no pet.). As the party seeking to modify the child-support order, Father had “the burden to prove by a preponderance of the evidence that a material and substantial change in circumstances [had] occurred,” by presenting evidence of historical and current financial circumstances. *In re T.A.W.*, No. 02-09-00309-CV, 2010 WL 4813356, at *4 (Tex. App.—Fort Worth Nov. 24, 2010, no pet.); *In re S.D.*, No. 02-10-00221-CV, 2011 WL 3847440, at *4 (Tex. App.—Fort Worth Aug. 31, 2011, no pet.) (mem. op.). “Without both sets of data, the court has nothing to compare and cannot determine whether a material and substantial change has occurred.” *In re C.C.J.*, 244 S.W.3d 911, 917–18 (Tex. App.—Dallas 2008, no pet.).

The trial court's findings of fact indicate that the court determined that Father did not meet his burden to prove that a material and substantial change in circumstances for the parties had occurred. The trial court found that “[t]he 2012 Decree of Divorce contains no information about the income of [Mother]. [Father]

contends, without specifics, that the income of [Mother] is greater than it was in 2012.”

The record supports the trial court’s findings regarding Mother’s financial circumstances. As the trial court found, the divorce decree contains no reference to Mother’s income. Father testified that he agreed to pay child support in 2012 because Mother was making “significantly less” than him. He stated that he earned \$50,000 to \$55,000 in 2012. But, Father provided no historical evidence regarding the amount or source of Mother’s income when the divorce was rendered in 2012 or any other evidence related to her financial circumstances at that time. *See In re J.Z.*, No. 02-17-00127-CV, 2018 WL 5289353, at *5 (Tex. App.—Fort Worth Oct. 25, 2018, no pet.) (“The inquiry in a modification proceeding based on changed finances is not whether the relevant person’s income has changed, but is whether the person’s financial circumstances, of which income is a part, have changed materially and substantially.”). Without information regarding Mother’s financial circumstances in 2012, the record supports a determination that the trial court lacked the necessary comparative data to conclude that Mother’s financial circumstances had materially and substantially changed from 2012 to 2018. *See Downey v. Downey*, No. 03-12-00037-CV, 2014 WL 1362642, at *5 (Tex. App.—Austin Apr. 1, 2014, no pet.) (mem. op.) (affirming trial court’s denial of request to modify child support when father offered no evidence of parents’ income at time of divorce decree other than

his testimony that neither he nor mother “[were] making very much money,” and he offered no evidence of children’s financial circumstances, such as child-related expenses); *C.C.J.*, 244 S.W.3d at 918 (reversing trial court’s order increasing father’s monthly child-support obligation because, although evidence showed that father’s income had increased, there was no evidence presented of financial circumstances of mother or children at time of divorce decree). Father’s evidence that Mother earned more than him in 2018 alone does not substitute for proof of Mother’s financial circumstances in 2012.

Father also presented no evidence regarding the financial needs or expenses associated with the children to show whether there had been a material and substantial change in their circumstances. *See London v. London*, 94 S.W.3d 139, 143–45 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (concluding that trial court abused its discretion when court increased father’s child-support obligation without having evidence regarding financial circumstances of children or parties affected by order at time order was rendered). However, Mother offered evidence of the children’s recent expenses that she had been paying without assistance from Father.

Mother testified that these expenses included unreimbursed medical costs, and D.H.’s orthodontics, which cost \$4,884. Mother also testified that she had been paying expenses associated with the children’s education and extracurricular activities, totaling \$8,837 per year or \$736.42 per month. While this evidence alone

is not probative of whether there was a material and substantial change in the children's circumstances from 2012 to 2018, the evidence is supportive of a determination that granting Father's request to eliminate his child-support obligation would not be in the children's best interest. *See Iliff*, 339 S.W.3d at 81 (“[I]n child support decisions, the ‘paramount guiding principle’ of the trial court should always be the best interest of the child.”); *In re S.C.*, No. 02-17-00377-CV, 2018 WL 5289370, at *3 (Tex. App.—Fort Worth Oct. 25, 2018, no pet.) (mem. op.) (“[A] court . . . may modify a child support order if ‘the circumstances of the child or a person affected by the order have materially and substantially changed’ and if the modification is in the child’s best interest.”).

Finally, although the trial court found that the evidence showed a material and substantial change in Father's financial circumstances, the change weighed against eliminating his child-support obligation. The trial court found that Father's “monthly resources have actually increased.” The evidence supports this finding because Father's income increased from \$50,000 to \$55,000 in 2012 to approximately \$68,000 in 2018, based on Father's August 2018 paycheck.

“In sum, the trial court retains broad discretion in making the equitable decision of whether to modify a prior child support order.” *In re R.D.*, No. 02-04-165-CV, 2005 WL 503055, at *2 (Tex. App.—Fort Worth Mar. 3, 2005, no pet.) (mem. op.). Here, because the record supports the trial court's determination that

there had been no material and substantial change of the parties' financial circumstances since the rendition of the divorce decree, we hold that the trial court did not abuse its discretion when it denied Father's petition to modify his child-support obligation on this basis.

We overrule Father's first issue.

C. Support Award Does Not Differ by 20 percent or \$100 from Amount Awarded under Statutory Guidelines

A trial court may modify a child-support order if "it has been three years since the order was rendered or last modified and the monthly amount of the child support award under the order differs by either 20 percent or \$100 from the amount that would be awarded in accordance with the child support guidelines." TEX. FAM. CODE § 156.401(a)(2). In his second issue, Father contends that the trial court abused its discretion when it determined that he "did not meet his burden of proof pursuant to Family Code 156.401(a)(2) to prove that the monthly amount of the Court ordered child support awarded to [Mother] differed by either 20% or \$100." *See id.*

The divorce decree orders Father to pay \$1,047.95 in monthly child support for his two children. Father offered evidence claiming that his monthly net resources in 2018 were \$4,168.75. Under the applicable child-support guidelines, a trial court will presumptively apply a guideline of 25% to the obligor's net resources for two children. *See* TEX. FAM. CODE § 154.125(b). Twenty-five percent of Father's claimed 2018 net resources of \$4,168.75 is \$1,042.19. Thus, the \$1,047.95 in

monthly child support ordered by the trial court in the divorce decree does not differ “by either 20 percent or \$100 from the amount that would be awarded in accordance with the child support guidelines.” *See* TEX. FAM. CODE § 156.401(a)(2); *see also In re C.A.W.*, No. 14-16-00768-CV, 2017 WL 3927235, at *5 (Tex. App.—Houston [14th Dist.] Sept. 7, 2017, no pet.) (mem. op.) (holding that trial court did not abuse its discretion in increasing monthly child support from \$1,562.50 to \$1,710 when statutory guideline amount was \$1,710, and difference between \$1,710 and \$1,562.50 exceeded \$100); *Njeako v. Njeako*, No. 14-04-00991-CV, 2005 WL 3072025, at *5 (Tex. App.—Houston [14th Dist.] Nov. 17, 2005, no pet.) (mem. op) (affirming modification increasing monthly child support from \$180 to applicable guideline amount at time of modification of \$381.14 because guideline amount of \$381.14 constituted more than \$100 difference from \$180 in monthly support that mother had been ordered to pay in divorce decree).

We conclude that the record supports the trial court’s determination that Father did not meet his burden to show that he was entitled to modification of his child-support obligation under Family Code Subsection 156.401(a)(2). We hold that the trial court did not abuse its discretion in declining to modify the child-support order in the divorce decree on that basis.

We overrule Father’s second issue.

Conclusion

Having overruled Father's two issues, we affirm the trial court's order denying Father's modification petition.

Richard Hightower
Justice

Panel consists of Justices Lloyd, Goodman, and Hightower.