Opinion issued April 27, 2021

In The

Court of Appeals

For The

First District of Texas

NO. 01-19-00287-CV

XOCHYTL DIANE GREER, Appellant

V.

WESLEY MICHAEL MELCHER, Appellee

On Appeal from the 245th District Court
Harris County, Texas
Trial Court Case No. 2017-41808

MEMORANDUM OPINION

Appellant, Xochytl Diane Greer, challenges the trial court's final judgment and award of attorney's fees, entered after a bench trial, in her suit for child support against appellee, Wesley Michael Melcher. In two issues, Greer contends that the

trial court erred in reforming the judgment rendered by the then-presiding trial judge and in awarding attorney's fees and costs to Melcher.[1]

We affirm.

Background

In June 2017, Greer filed her original petition to adjudicate the parentage of her child, I.J.G. In her second amended petition, Greer alleged that Melcher was the father of her child and that Melcher had submitted to genetic testing, and she requested that he be adjudicated as the father of I.J.G. She also asked that she be appointed as I.J.G.'s sole managing conservator and that "appropriate orders be made for access to [I.J.G.] and the allocation of the rights and duties of the conservators." And she sought "appropriate orders . . . for [the] support of [I.J.G.]," including "retroactive child support" and reimbursement for an "equitable portion of prenatal and postnatal health-care expenses of [Greer] and [I.J.G.]," as well as temporary orders for child support and attorney's fees.

In his answer, Melcher admitted that he was the father of I.J.G. and requested an order adjudicating him to be the father. He also sought attorney's fees and costs.

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[1] Although Melcher did not file an appellee's brief, we nevertheless review Greer's issues on their merits to determine whether reversal is warranted. *See Yeater v. H-Town Towing LLC*, 605 S.W.3d 729, 731–32 (Tex. App.—Houston [1st Dist.] 2020, no pet.); *see also Sullivan v. Booker*, 877 S.W.2d 370, 373 (Tex. App.—Houston [1st Dist.] 1994, writ denied) ("Appellee's failure to respond to appellants does not entitle appellants to a reversal.").

Following a contentious discovery period, the parties reached an agreement as to some issues and tried the remainder of the case to the trial court on May 22, 2018, August 30, 2018, and August 31, 2018.

Greer's counsel filed a proposed "Order Adjudicating Parentage and Suit Affecting Parent-Child Relationship" (the "original final judgment") with the trial court on November 19, 2018. Two days later, the trial court sent the parties an email with "No. 2017-41808; In Re I.J.G.—Rendition" in the subject line, which stated:

> Based upon the pleadings on file, the evidence presented and arguments of counsel, the Court makes the following findings and orders:
>
> All stipulations set forth on the record are approved and adopted[.]
>
> Monthly Child Support: $3,300.00 per month[.]
>
> [Greer] to provide Health and Dental Insurance for [I.J.G.]
>
> [Melcher] to pay cash medical support of $270.50 per month[.]
>
> 50/50 Uninsured medical expenses[.]
>
> A Judgement for attorney's fees and costs is awarded in favor of . . . Greer against . . . Melcher in the amount of $46,000.00 for which let execution issue. Judgement to accrue interest at a rate of 5% per annum.
>
> ENTRY: December 7, 2018 @10am
>
> Roy L. Moore
> Judge, 245th District Court

(Emphasis omitted.) A printed copy of the trial court's email was filed with the trial court clerk on November 21, 2018.

The record does not show any action was taken in the case on December 7, 2018. On December 13, 2018, Greer filed a proposed "revised" final judgment (the "revised final judgment"). The parties dispute whether Melcher was given an opportunity to review and object to the revised final judgment's terms, and the parties did not appear in court for entry of the judgment. On December 30, 2018, the trial court signed the revised final judgment. On the last page of the revised final judgment, Greer's counsel's signature appears on a signature block reflecting that he approved the judgment "as to form only." A corresponding signature block follows for Melcher's counsel, but it is unsigned.

On December 31, 2018, the trial court's term ended, as did the term of the trial judge who had presided over the parties' bench trial.[2]

On January 29, 2019, Melcher moved to modify, correct, and reform the revised final judgment, asserting that there were "numerous and substantial discrepancies between the trial court's rendition of judgment and the written [revised] final judgment ultimately signed by the trial court." Specifically, Melcher explained that certain terms in the revised final judgment were based on agreements reached by the parties, while others were tried to the court, and that the trial court's November 21, 2018 email constituted a written memorandum of its rulings on the

[2] The Honorable Roy L. Moore presided over the bench trial.

parties' disputes. Still other terms in the revised final judgment, he asserted, were not consistent with what the parties' discussions and negotiations and were not addressed in the trial court's email. These inconsistent terms included:

- A $40,002.00 judgment for retroactive child support;
- The provisions ordering Melcher to reimburse Greer for medical and dental insurance premiums in a monthly total amount of $316.48;
- The provision characterizing the life insurance policy Melcher agreed to maintain as an "additional child support" obligation and requiring "the establishment of a trust"; and
- The awards for conditional appellate attorney's fees and attorney's fees in the event of a bankruptcy filing.

In addition to reformation of the revised final judgment, Melcher requested attorney's fees incurred in connection with his motion. On January 29, 2019, Melcher also moved for a partial new trial on the issues of his prospective child support obligation and the order to pay Greer $46,000.00 in attorney's fees.

In her response, Greer asserted that the trial court "acted within its authority and discretion to award additional relief not included within the rendition into the [revised] final [judgment]," and that Melcher waived any objection by not making it before entry of the revised final judgment.

On March 13, 2019, the trial court signed a reformed final judgment.[3] It contains much of the same language used in the revised final judgment, except that: (1) the provisions in the revised final judgment awarding retroactive child support were stricken; (2) the provision addressing the life insurance award was revised to omit references to the insurance as "additional child support" and the requirement that it be made payable to a trust; and (3) the provision awarding conditional appellate attorney's fees and attorney's fees in the event of a bankruptcy filing was stricken.

On April 10, 2019, Melcher filed motion for partial new trial related to the trial court's March 13, 2019 reformed final judgment. On April 22, 2019, the trial court signed a second reformed final judgment that restored some of the language about life insurance previously contained in the December 30, 2018 revised final judgment and later removed in the March 13, 2019 reformed final judgment. On April 29, 2019, Melcher filed a motion for partial new trial related to the second reformed final judgment, which was overruled by operation of law. On August 5, 2019, the trial court signed an order awarding Melcher attorney's fees and costs incurred in reforming the final judgment in the amount of $9,133.95.[4]

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[3] The Honorable Tristan H. Longino signed the reformed final judgment.

[4] On July 17, 2019, Greer filed a motion to reconsider the award of attorney's fees and costs to Melcher, which recites that "[o]n July 16, 2019 [the trial court] rendered attorney's fees in favor of [Melcher] in the amount of $9,133.95." The record does

Modification of Judgment

In her first issue, Greer argues that the trial court erred in modifying the revised final judgment signed by the predecessor trial judge—the Honorable Roy L. Moore—because the successor trial judge—the Honorable Tristan H. Longino—did not have "the authority to make substantive changes to an order that required a determination of facts presented to be able to rule on . . . retroactive child support."

The trial court's authority to modify the revised final judgment turns on whether the email sent to the parties by the predecessor trial judge, who presided over the parties' trial, constitutes a rendition of judgment and whether the trial court's later modifications to the judgment are faithful to that writing.

Another judge exercising a judicial role in the same court is not authorized to render judgment without hearing any of the evidence on which the judgment is based. *W.C. Banks, Inc. v. Team, Inc.*, 783 S.W.2d 783, 785–86 (Tex. App.—Houston [1st Dist.] 1990, no writ); *see Malone v. PLH Group, Inc.*, 570 S.W.3d 292, 295 (Tex. App.—Houston [1st Dist.] 2018, pet. denied); *Masa Custom Homes, LLC v. Shahin*, 547 S.W.3d 332, 336 (Tex. App.—Dallas 2018, no pet.) (fact issues presented in bench trial must be "determined solely by the trier of fact who heard the evidence" because "[t]here is no rule which allows rendition of a judgment

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not contain either the rendition or an order awarding attorney's fees other than the August 5, 2019 order.

following a bench trial by a judge who has heard no evidence"); *Hull v. S. Coast Catamarans, L.P.*, 365 S.W.3d 35, 41 (Tex. App.—Houston [1st Dist.] 2011, pet. denied); *see also Ad Villarai, LLC v. Chan Il Pak*, 519 S.W.3d 132, 139–40 (Tex. 2017) (following defeat of predecessor judge in election, successor judge was not authorized to make findings of fact in case presided over by predecessor). But after a trial court has rendered judgment, the subsequent reduction of the rendered judgment to a writing signed by the trial court is a purely ministerial act, one that a successor judge has the authority to perform even though the successor judge did not preside over the trial. *Townsend v. Vasquez*, 569 S.W.3d 796, 804 (Tex. App.—Houston [1st Dist.] 2018, pet. denied).

"The rendition of judgment is a present act, either by spoken word or signed memorandum, which decides the issues upon which the ruling is made." *S & A Rest. Corp. v. Leal*, 892 S.W.2d 855, 858 (Tex. 1995) (internal quotations omitted). "Generally, a judgment is rendered when the decision is officially announced orally in open court, by memorandum filed with the clerk, or otherwise announced publicly." *Garza v. Tex. Alcoholic Beverage Comm'n*, 89 S.W.3d 1, 6 (Tex. 2002). A trial court's email may be a rendition, "provided it is filed with the clerk and clearly indicates the intent to render judgment at the time the words are expressed, not at some future time." *Sheets v. Autogrp. Premier, Inc.*, No. 14-18-00279-CV, 2020 WL 548366, at *3 (Tex. App.—Houston [14th Dist.] Feb. 4, 2020, no pet.)

(mem. op.) (internal quotations omitted); *see also Genesis Prod. Co., L.P. v. Smith Big Oil Corp.*, 454 S.W.3d 655, 659 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (trial court's letter may constitute rendition of judgment if it is in sufficient detail to state court's decision on all matters at issue and is filed with clerk). Yet, no matter how it is recorded, a pronouncement does not constitute a rendition of judgment "if essential issues remain pending when the pronouncement is made." *McShane v. McShane*, 556 S.W.3d 436, 442 (Tex. App.—Houston [1st Dist.] 2018, pet. denied).

Greer argues that the trial court's November 21, 2018 email did not constitute a rendition of judgment because it did not dispose of all claims and lacked finality language. Greer confuses a rendered judgment with a signed judgment; they are not synonymous. *See Sheets*, 2020 WL 548366, at *3. Finality language is important in a signed judgment because "appeal is taken from the signed judgment, which initiates deadlines for post-trial motions and appeals, provided the judgment disposes of all claims and parties." *Id.*

Greer also asserts that although the parties tried the issues of retroactive child support and attorney's fees, the trial court's November 21, 2018 email did not address the issues of retroactive child support or post-judgment attorney's fees. But the trial court's email, entitled "Rendition," lists the relief it ordered. It is not vague because it does not list the relief that it did not order. Even a signed judgment does not necessarily itemize the requests for relief that a trial court denied. It may simply

recite, as the one drafted by Greer does, that "all relief requested in this case and not expressly granted is denied." And, while this language is important in a signed judgment to demonstrate its finality, its absence from the trial court's email does not prevent the email from being a rendition of judgment.

In addition, Greer points out that the predecessor trial judge's email did not contain specifics concerning the trial's start date, a start date for child support, I.J.G.'s birth date, and the date suit was initiated. But the lack of these specific details does not prevent the November 21, 2018 email from constituting a rendition of judgment. There is no dispute as to I.J.G.'s birth date, the date suit was filed, or the date trial began. *See Malone*, 570 S.W.3d at 295 (explaining successor judge not authorized to render judgment based on disputed facts). And absent a different, specified start date for permanent child support, the date of the signed judgment controls when the child-support payments begin.[5]

We have not previously demanded the specificity that Greer urges for a trial court's pronouncement to constitute a rendition of judgment. *See, e.g., Maldonado v. Rosario*, No. 01-12-01071-CV, 2013 WL 1316385, at *3 (Tex. App.—Houston [1st Dist.] Apr. 2, 2013, no pet.) (mem. op.) (rendition where trial court stated in open court that it had reviewed and accepted mediated settlement agreement

[5] The record indicates that Melcher was already paying child support.

("MSA") and pronounced "this divorce is granted," and docket entry stated, "MSA, divorce granted" (internal quotations omitted)). Here, the predecessor trial judge's November 21, 2018 email reflects a complete disposition of the disputed facts tried before the court. A printed copy of the email was filed with the trial court clerk. Thus, we conclude that the email constitutes a rendition of judgment. The trial court's second reformed final judgment is faithful to the predecessor trial judge's resolution of the disputed facts in the case. We hold that the trial court did not err in modifying the revised final judgment. *See Townsend*, 569 S.W.3d at 804.

We overrule appellant's first issue.

Attorney's Fees

In her second issue, Greer argues that the award of attorney's fees to Melcher is void because the trial court lacked plenary power when it made the award.

Judicial action taken after the trial court's plenary power has expired is void. *See State ex. rel Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995). Greer's assertion that the trial court's plenary power had expired relies in part on the success of her other assertion that the trial court lacked the authority to modify the revised final judgment. But, as we have already held, the trial court had the authority to reform the revised final judgment to make it consistent with the predecessor trial judge's rendition of judgment.

The trial court retains plenary power over a case for thirty days after it has signed a final judgment. TEX. R. CIV. P. 329b(d); *Lane Bank Equip. Co. v. Smith S. Equip.*, Inc., 10 S.W.3d 308, 310 (Tex. 2000). If a judgment is modified while the trial court has plenary power, plenary power is extended, and the appellate timetable is restarted when the new judgment is signed. TEX. R. CIV. P. 329b(h). Additionally, a trial court retains plenary power over a case for thirty days after it overrules a timely filed motion for new trial or motion to modify, correct, or reform a judgment. *See* TEX. R. CIV. P. 329b(e); *In re Brookshire Grocery, Co.*, 250 S.W.3d 66, 72 (Tex. 2008). A motion for new trial or a motion to modify, correct, or reform a judgment is overruled by operation of law if the trial court does not sign an order ruling on the motion within seventy-five days after the judgment is signed. TEX. R. CIV. P. 329b(c).

The trial court signed the revised final judgment on December 30, 2018. On January 29, 2019, Melcher timely filed a motion to modify, correct, or reform the revised final judgment and a motion for partial new trial, thereby extending the trial court's plenary power. On March 13, 2019, the trial court signed the reformed final judgment, and on April 10, 2019, Melcher timely filed a motion for partial new trial related to the reformed final judgment, extending the trial court's plenary power. On April 22, 2019, while it still had plenary power, the trial court entered the second reformed judgment. On April 29, 2019, Melcher filed a motion for partial new trial

related to the trial court's second reformed judgment. The trial court did not expressly deny Melcher's motion for partial new trial related to the second reformed judgment before the passage of seventy-five days from the date of the judgment, and it was overruled by operation of law on July 8, 2019. *See* TEX. R. CIV. P. 4 ("Computation of Time"); *see also* TEX. R. APP. P. 4(a). The trial court retained plenary power for thirty days after the partial-new-trial motion was overruled by operation of law. *See* TEX. R. CIV. P. 329b(b), (c), (e), (g); *L.M. Healthcare, Inc. v. Childs*, 929 S.W.2d 442, 444 (Tex. 1996).

On August 5, 2019, the trial court signed an order awarding Melcher the attorney's fees he incurred in seeking reformation of the revised final judgment in the amount of $5,200.00. The trial court did not lose its plenary power until after August 7, 2019.[6] We conclude that the trial court had plenary power when it issued its order awarding attorney's fees and costs to Melcher, and thus, the order is not void. Thus, we hold that the trial court did not err in awarding attorney's fees and costs to Melcher.

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[6] In her brief, Greer challenges the second reformed final judgment's effectiveness in extending the trial court's plenary power and complains about the basis for the cost award, but she cites no authority to support her arguments on either of these issues, so they are waived due to inadequate briefing. *See* TEX. R. APP. P. 38.1(i); *Abdelnour v. Mid Nat'l Holdings, Inc.*, 190 S.W.3d 237, 241 (Tex. App.—Houston [1st Dist.] 2006, no pet.); *Trammell v. Frost Nat'l Bank*, No. 01-05-00216-CV, 2006 WL 3513596, at *1–2 (Tex. App.—Houston [1st Dist.] Dec. 7, 2006, no pet.) (mem. op.).

We overrule Greer's second issue.

Conclusion

We affirm the final judgment of the trial court.

Julie Countiss
Justice

Panel consists of Justices Countiss, Rivas-Molloy, and Guerra.