

Opinion issued July 27, 2021



In The
Court of Appeals
For The
First District of Texas

NO. 01-19-00791-CV

SHAUN HALE, Appellant

V.

DAWN MILLER, Appellee

On Appeal from the County Court at Law No. 2
Parker County, Texas
Trial Court Case No. CIV-10-0187

MEMORANDUM OPINION

This is an appeal from a judgment in a suit to modify the parent-child relationship. Appellant Shaun Hale challenges the amount of monthly child support awarded to appellee Dawn Miller for the parties' two children. In his sole issue, Hale

argues that the trial court abused its discretion by awarding child support in an amount that varied from the Family Code child support guidelines for an income equivalent to that of a federal minimum-wage worker for a forty-hour work week because there was no evidence of Hale’s income or an agreement between the parties to support the awarded amount. We affirm.

Background

Miller filed a petition to modify a prior order concerning the conservatorship, support, and possession of and access to the parties’ two children in Parker County.¹ *See* TEX. FAM. CODE § 156.001. The parties were previously appointed joint managing conservators of their two children, who apparently lived with Hale. In her modification petition, Miller requested that the court award her the right to designate the children’s primary residence and award her child support. *See id.* §§ 156.101, 156.401.

At trial, Hale testified that he was employed as a sergeant correctional officer by the State of Colorado and had worked there for the prior nine months. He testified that his “base pay” was approximately \$3,800 or \$3,900 per month plus a \$300 monthly housing allowance. He was required to work overtime, for which he

¹ The Texas Supreme Court transferred this appeal from the Court of Appeals for the Second District of Texas to this Court pursuant to its docket equalization powers. *See* TEX. GOV’T CODE § 73.001. There is no conflict between the precedent of the Second Court of Appeals and that of this Court on any relevant issue. *See* TEX. R. APP. P. 41.3.

received additional pay, and his largest monthly paycheck over the nine months of his employment was more than \$3,900. Hale also testified that he had moved ten times in the prior five years to various places in Texas, Kansas, and Colorado for employment. On cross-examination, Hale testified that he had provided documentation of his income to his attorney and was unaware that the documents had not been produced to Miller.

At the end of trial, the court awarded Miller the right to determine both children's primary residence. The court delayed a ruling on child support, however, because it did not "have a good figure" for Hale's income to calculate child support. Although it had "a \$4,000 range" for Hale's monthly income, the court was unclear whether the range represented Hale's gross or net monthly income. The court "suggest[ed]" that the parties "visit and figure out what that amount is so that child support can be ordered." Finally, the court ordered Miller's counsel to prepare a proposed modification order and serve it to Hale's counsel.

Before filing a proposed modification order, Miller filed a motion to clarify the court's decision regarding Hale's possessory period and set her motion for a hearing. At the end of the hearing on Miller's motion to clarify, the court asked Hale if he had provided documentation of his income to Miller so that she could calculate child support in the proposed order. Hale denied having done so. The court explained to Hale that the amount he actually received in his paycheck was necessary to "at

least have a baseline” to calculate child support, which Hale’s counsel acknowledged.

Miller filed a proposed modification order awarding her \$801 in child support per month. Hale filed written objections to Miller’s proposed order. Hale objected to the proposed amount because the parties had not reached an agreement “as to the amount of [Hale’s] earnings and net resources” or the amount of child support. Hale also objected that the proposed amount was excessive considering Hale’s net monthly resources and the Family Code child support guidelines. *See* TEX. FAM. CODE §§ 154.062, 154.121–.122, 154.125.

The trial court held a second post-trial hearing regarding entry of judgment. At this hearing, the parties disputed whether Miller’s proposed monthly child support amount was appropriate. Miller argued that Hale had not provided requested documentation of his income, which the court acknowledged. Without this documentation, Miller’s counsel stated that she obtained salary information for employees in a similar position from Hale’s employer’s website, which she used to calculate Hale’s net monthly resources and resulting child support obligation under the Family Code guidelines. In response, Hale relied on three pay stubs from the year before trial, which his counsel represented showed Hale’s gross monthly income for three months at \$3,450, \$3,889, and \$4,795. The court stated that, according to Hale’s income as shown in his pay stubs, child support should be set at

\$961.42 per month. The court stated that it was inclined to award \$801 in child support unless Hale could show why that amount was unreasonable. Hale's counsel argued that, according to her calculations based on Hale's income as shown by his pay stubs, child support should be set at \$527.29 per month. The trial court admonished Hale for not having provided documentation of his income. The court also admonished both parties for relying on evidence outside the trial record.

The court ordered the parties to meet off the record in a separate room to attempt to reach an agreement on the amount of child support, stating that “[i]f they can't, the Court will make a ruling.” The record indicates that the court recessed for an unknown period of time before the court stated on the record, “So they're agreeing to the 801 . . . on child support?” Neither party responded, and the court continued, “Okay. The Court's going to sign the order, then, as presented”

The modification order awarded Miller \$801 in monthly child support from Hale. The order did not include any findings regarding either Miller's or Hale's net resources, the percentage applied to Hale's net resources to calculate the child support award, or reasons for a variance, if any, from the child support guidelines. *See* TEX. FAM. CODE § 154.130(a)(3). This appeal followed.

Child Support

In his sole issue, Hale argues that the trial court abused its discretion in awarding Miller \$801 in monthly child support. Hale contends that no evidence supported the child support award.

A. Standard of Review

A trial court has discretion to set child support within the Family Code guidelines, and a reviewing court will not reverse absent a clear abuse of discretion. *Iliff v. Iliff*, 339 S.W.3d 74, 78 (Tex. 2011). A trial court abuses its discretion by acting arbitrarily, unreasonably, or without reference to guiding rules or principles. *Id.* There is no abuse of discretion if some probative and substantive evidence supports the child support order. *Ayala v. Ayala*, 387 S.W.3d 721, 726 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

When, as here, no findings of fact or conclusions of law were requested or filed, it is implied that the trial court made all the findings necessary to support its judgment. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990) (per curiam); *McShane v. McShane*, 556 S.W.3d 436, 440 (Tex. App.—Houston [1st Dist.] 2018, pet. denied). Legal and factual insufficiency are not independent grounds of reversible error under an abuse of discretion standard, but they are relevant in assessing whether the trial court abused its discretion. *Ayala*, 387 S.W.3d at 726.

A party challenging the legal sufficiency of a finding on which it did not have the burden of proof must show that no evidence supports the challenged finding. *Guimaraes v. Brann*, 562 S.W.3d 521, 549 (Tex. App.—Houston [1st Dist.] 2018, pet. denied). In conducting our legal sufficiency review, we credit favorable evidence if a reasonable factfinder could and disregard contrary evidence unless a reasonable factfinder could not. *Id.* We consider the evidence in the light most favorable to the finding under review and indulge every reasonable inference that would support it. *Id.*; *Nguyen v. Nguyen*, 355 S.W.3d 82, 88 (Tex. App.—Houston [1st Dist.] 2011, pet. denied). We will sustain a no-evidence contention only if: (1) the record reveals a complete absence of evidence of a vital fact; (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to prove a vital fact; (3) the evidence offered to prove a vital fact is no more than a mere scintilla; or (4) the evidence establishes conclusively the opposite of the vital fact. *Nguyen*, 355 S.W.3d at 88. We must affirm the judgment if it can be upheld on any legal theory that finds support in the evidence. *Worford*, 801 S.W.2d at 109.

In a bench trial, the trial court is the finder of fact and the sole judge of the witnesses' credibility and the weight to be given their testimony. *Townsend v. Vasquez*, 569 S.W.3d 796, 808 (Tex. App.—Houston [1st Dist.] 2018, pet. denied). The trial court may choose to believe or disbelieve a witness. *Id.* We defer to the

factfinder's determination of the credibility of the witnesses and the weight to accord their testimony. *Id.*; *Guimaraes*, 562 S.W.3d at 549.

B. Governing Law

A court may order either or both parents to support a child. TEX. FAM. CODE § 154.001(a); *see In re L.R.P.*, 98 S.W.3d 312, 313 (Tex. App.—Houston [1st Dist.] 2003, pet. dismiss'd) (“The purpose of child support is to help a custodial parent maintain an adequate standard of living for the child.”). If a court orders child support, it must calculate the obligor's child support liability by first determining the obligor's net monthly resources and then applying a statutory percentage under the Family Code child support guidelines. TEX. FAM. CODE §§ 154.062(a)–(d), 154.121. The guidelines are “intended to guide the court in determining an equitable amount of child support,” and a child support order conforming to the guidelines is presumptively reasonable. *Id.* §§ 154.121, 154.122(a).

To calculate net resources, a court first determines the obligor's gross resources, including all wage and salary income, and then subtracts certain statutory deductions, including social security and federal and state income taxes. *Id.* § 154.062(a)–(d); *see id.* § 154.061(a) (stating that, whenever feasible, gross income should first be computed on annual basis and then recalculated to determine average monthly gross income). This calculation yields the obligor's net resources for purposes of determining child support liability under the child support guidelines.

Id. § 154.062(a). The court must require a party to “furnish information sufficient to accurately identify that party’s net resources and ability to pay child support,” including “copies of income tax returns for the past two years, a financial statement, and current pay stubs.” *Id.* § 154.063. “In the absence of evidence of a party’s resources, . . . the court shall presume that the party has income equal to the federal minimum wage for a 40-hour work week to which the support guidelines may be applied.” *Id.* § 154.068. Courts may calculate net resources on imprecise information. *Ayala*, 387 S.W.3d at 727.

For an obligor in Hale’s income range, the child support guidelines presumptively set child support for two children at 25% of the obligor’s net resources. *See* TEX. FAM. CODE § 154.125(b). A court may vary from the guidelines if the evidence rebuts the statutory presumption that application of the guidelines is in the best interest of the child and justifies a variance from the guidelines. *Id.* § 154.123(a). If a court varies from the guidelines, it must file written findings stating whether application of the guidelines would be unjust or inappropriate as well as stating the obligor’s and obligee’s net resources, the percentage applied to the

obligor's net resources in calculating child support, and the specific reasons for the variance from the guidelines. *Id.* § 154.130(a)(3), (b).²

C. Analysis

Hale first argues that the trial court abused its discretion in awarding Miller \$801 in monthly child support because the evidence was legally insufficient to support the award. Hale contends that no evidence showed his income to which the court could then apply the child support guidelines. In the absence of such evidence, Hale argues that the court should have presumed that he earned an income equivalent to a federal minimum-wage worker for a forty-hour work week, resulting in only \$284 per month in child support under the guidelines. Hale argues that this variance from the guidelines constitutes an abuse of discretion and that the trial court further abused its discretion in not making findings required by statute.

Miller responds that Hale testified about his income at trial, which is evidence of Hale's net resources that supports the trial court's award of child support. She further argues that other evidence was introduced at a post-trial hearing supporting Hale's trial testimony.

² The trial court must also make these findings if a party requests them. TEX. FAM. CODE § 154.130(a)(1)–(2). Hale does not argue on appeal—and the record does not reflect—that either party requested findings.

Hale testified at trial that he was currently employed by the State of Colorado as a correctional officer, a job he had held for the nine months preceding trial. He testified that his “base pay” is \$3,800 or \$3,900 per month and that he receives a \$300 monthly housing allowance. He also testified that he was required to work overtime, for which he earned additional compensation. His largest monthly paycheck over the preceding nine months totaled more than \$3,900. Finally, he testified that he had moved ten times during the preceding five years, some of which were for employment-related reasons.

Hale’s testimony about his own employment and income is some evidence supporting his income. *See Guimaraes*, 562 S.W.3d at 549 (stating that party challenging legal sufficiency of finding on which it did not have burden of proof must show that no evidence supports challenged finding); TEX. FAM. CODE § 154.062(b)(1) (stating that party’s resources include wage and salary income). The trial court was the sole judge of Hale’s credibility and the weight to be given his testimony, and it could choose to believe Hale. *See Townsend*, 569 S.W.3d at 808. We defer to the trial court’s determination of Hale’s credibility and the weight to be given his testimony. *See id.*; *Guimaraes*, 562 S.W.3d at 549. Thus, there is some evidence that Hale’s income was at least \$4,100 per month.

Hale was not asked and did not testify whether \$4,100 was his gross or net monthly income. *See* TEX. FAM. CODE § 154.062(a) (instructing trial courts to apply

child support guidelines to obligor's net income). Hale did testify, however, about his "base pay" and monthly housing allowance, and he stated that he received a different amount directly deposited into his bank account. Assuming without deciding that Hale's "base pay" is his gross pay—an issue which neither the parties nor the record clarify—Hale's testimony about his income referred to his gross monthly pay. In addition to his gross pay, Hale also testified that he was required to work overtime, that he received additional compensation for working overtime, and that his largest paycheck during the nine months preceding trial was for more than \$3,900.

To the extent that Hale argues no documentary evidence proved his net income, it is true that none was admitted at trial. However, the record indicates that Hale was responsible for this lack of documentation. At trial, Miller's counsel asked Hale if he was aware that Miller had requested documentation of Hale's income, and Hale responded that he had sent documentation to his lawyer and was not aware those documents had not been produced to Miller. At the end of trial, the court stated that it did not "have a good figure" for Hale's income because, although it had "a \$4,000 range," the court was unclear whether that range represented Hale's gross or net income. The court suggested the parties meet and agree to an amount of child support to be included in the judgment.

At a post-trial hearing, the parties had not reached an agreement on child support. Miller had filed a proposed modification order. Miller’s counsel told the court that the only issue remaining in the modification order was child support because she had yet to receive documentation or other information from Hale about his income. She further represented that the proposed amount of child support—\$801 per month—was based on information from Hale’s employer’s website regarding the salary of employees in similar positions. *See* TEX. R. CIV. P. 270 (stating that trial court may consider additional evidence at any time when “necessary to the due administration of justice” in bench trial); *Holden v. Holden*, 456 S.W.3d 642, 650 (Tex. App.—Tyler 2015, no pet.) (stating that Rule 270 “does not require a motion by a party, nor have we discovered authority preventing a trial court from reopening the evidence sua sponte”).

Hale disputed the proposed amount at the hearing. His counsel represented to the trial court that she had three of Hale’s paystubs from the prior year showing his gross monthly income for each of three months at \$3,450, \$3,889, and \$4,795. The court admonished Hale for not having produced this documentation to Miller. The court gave the parties a final opportunity to meet off the record and agree to an amount, after which the court stated on the record that the parties had reached an agreement for \$801 in monthly child support.

Thus, to the extent Hale argues no documentary evidence of his income was admitted at trial, he is responsible for the lack of documentation after being given numerous opportunities to produce it or reach an agreement on the amount of child support. Nevertheless, as stated above, Hale's undisputed testimony about his employment and income is legally sufficient to show that his gross resources were at least \$4,100 per month and that his income was likely to continue based on his continued employment. *See Townsend*, 569 S.W.3d at 808; *Ayala*, 387 S.W.3d at 728–29 (holding that trial court did not abuse its discretion in determining child support based solely on one party's uncontroverted testimony about both parties' employment and income); *Bible v. Bible*, 631 S.W.2d 177, 178–79 (Tex. App.—Houston [1st Dist.] 1981, no writ) (concluding that trial court did not abuse its discretion and that sufficient evidence justified modification of child support based on parties' testimony regarding obligor's income); *cf. Marquez v. Moncada*, 388 S.W.3d 736, 739–40 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (concluding that evidence was insufficient to support court's finding of father's net resources where father did not appear for trial or testify as to resources and no other evidence of father's employment or income appeared in record).

Under the guidelines, an obligor with two children presumptively should pay 25% of the obligor's net monthly resources in child support. TEX. FAM. CODE § 154.125(b). The trial court's award of \$801 in monthly child support equals 25% of

\$3,204, which represents the amount the trial court impliedly found was Hale's net monthly resources. *See id.* §§ 154.061(a), 154.062(b)(1); *Worford*, 801 S.W.2d at 109; *McShane*, 556 S.W.3d at 440.

Although the appellate record does not indicate the amount of deductions subtracted from Hale's gross income, the child support award indicates that the trial court made some deduction from \$4,100 per month to calculate Hale's net monthly income of \$3,204.³ *See* TEX. FAM. CODE § 154.062(d). Hale does not argue that the difference between his gross and net income was greater than the approximately \$900 difference between his trial testimony and the court's implied calculation of Hale's net monthly income.

The trial court was permitted to calculate Hale's net resources based on the imprecise information available. *See Ayala*, 387 S.W.3d at 727. Hale's testimony alone is probative and substantive evidence of his income. *See id.* at 726. Furthermore, even though the trial court stated on the record that the parties had agreed to \$801 in monthly child support, that amount is independently supported by

³ The Family Code requires the Office of the Attorney General to promulgate annual tax charts to compute net monthly income from gross monthly income for purposes of determining child support. TEX. FAM. CODE § 154.061(b). The Attorney General's 2019 tax chart for employed persons indicates that a person earning \$4,100 in gross income per month would earn a net monthly income of \$3,432.52. *See Employed Persons 2019 Tax Chart*, OFFICE OF TEXAS ATTORNEY GENERAL, <http://csapps.oag.texas.gov/system/files/2018-12/2019taxcharts.pdf> (last visited July 22, 2021).

Hale’s trial testimony. *See Worford*, 801 S.W.2d at 109 (stating that reviewing court must affirm trial court’s judgment if it can be upheld on any legal theory supported by record evidence).

We hold that the trial court did not abuse its discretion in its award of child support.⁴ We overrule Hale’s sole issue.

Conclusion

We affirm the judgment of the trial court.

April L. Farris
Justice

Panel consists of Chief Justice Radack and Justices Goodman and Farris.

⁴ Our holding moots Hale’s remaining issues that the trial court erred because (1) the court did not make statutory findings based on a variance from the child support guidelines, and (2) the parties did not agree to the amount of child support ordered by the court. *See* TEX. FAM. CODE §§ 154.130(a)(3) (requiring findings when court varies from child support guidelines), 154.124(a) (authorizing parties to enter into written agreement for child support, including variation from child support guidelines, “[t]o promote the amicable settlement of disputes between the parties to a suit”).