Opinion issued December 14, 2021

In The

Court of Appeals

For The

First District of Texas

NO. 01-20-00729-CV

BERNARD STANLEY WILLIAMS, Appellant

V.

PATRICE NICOLE PAUL, Appellee

On Appeal from the 425th District Court
Williamson County, Texas[1]
Trial Court Case No. 15-2168-F425

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[1] This case was transferred to this Court from the Court of Appeals for the Third District of Texas.

MEMORANDUM OPINION

After this Court affirmed a summary judgment in a suit to modify his child-support order,[2] appellant, Bernard Stanley Williams, filed another motion to modify the parent-child relationship in which he sought to (1) change the conservatorship of the minor child, B.Z.W., so that he, Williams, had the exclusive right to designate the child's primary residence, and (2) reduce the child support he owed to appellee, Patrice Nicole Paul. He also filed motions (3) to have Paul held in civil contempt for alleged violations of the existing custody order and (4) asserting civil fraud.[3] After a bench trial, the trial court again denied the relief he requested. Williams brings this appeal, alleging that the trial court's rulings are an abuse of its discretion. We affirm.

BACKGROUND

The background facts, as set forth in this Court's previous opinion, are as follows:

> On February 17, 2017, the trial court ordered that Williams, with respect to his minor child, B.Z.W., pay child support of $465.00 monthly, from March 1, 2017 until June 30, 2017, and $507.00 monthly, beginning July 1, 2017 and thereafter, along with medical support.
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> Subsequently, Williams, citing a material and substantial change in his circumstances based on a decrease in salary at his new job, filed a

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2 *See Williams v. Paul*, No. 01-18-00560-CV, 2019 WL 438596, at*3 (Tex. App.—Houston [1st Dist.] Feb. 5, 2019, no pet.) (mem. op).

3 It is unclear whether Williams was seeking damages for fraud or whether he was seeking sanctions based on Paul's alleged fraud on the trial court.

petition to modify the parent-child relationship, seeking to decrease the amount of child support that he was ordered to pay.

On October 10, 2017, the trial court signed an "Agreed Order Clarifying and Confirming Support Arrearage and Final Order in Suit for Modification," modifying its February 17, 2017 order. The trial court found that "guideline child support" was $507.00 per month, found that a deviation from the guideline was appropriate in this case, and ordered that Williams pay total current child support in the amount of $707.00 per month. The trial court included a judgment against Williams for arrearages in the amount of $4,302.33 and for medical support in the amount of $341.72.

Days later, on October 16, 2017, Williams filed a "First Amended" petition to modify the parent-child relationship, seeking to decrease the amount of child support that he was ordered to pay under the trial court's October 10, 2017 order. In his petition, Williams asserted that he "wishe[d] to provide proof of change of employment/income[,] [a]s well as modify current order in regards to child care and life insurance."

On December 11, 2017, Paul served Williams with interrogatories and requests for production. Subsequently, asserting that Williams's responses were deficient, Paul filed a motion to compel Williams to properly answer discovery and for sanctions, i.e., striking Williams's pleadings and ordering him to pay attorney's fees. The record shows that Paul provided Williams with a detailed list of deficiencies. After a hearing, the trial court granted Paul's motion, ordering that Williams "fully and properly respond" to discovery by February 28, 2018, or the modification suit would be dismissed, and awarding Paul attorney's fees in the amount of $418.00.

After Williams did not answer discovery as ordered, the trial court dismissed the modification suit and ordered that Williams pay attorney's fees as previously ordered. Williams filed a motion to set aside the judgment, asserting that he was not afforded proper notice of the hearing on Paul's motion to compel. The trial court set aside the judgment and reinstated the case.

Paul then filed a motion for summary judgment, arguing that she was entitled to judgment on Williams's motion to modify support because

> there was no evidence of a material and substantial change in circumstances of the child or of the conservators. In response, Williams filed a "Respondent's Original Answer," in which he "enter[ed] a general denial" and did not attach evidence. After a hearing on May 29, 2018, the trial court granted summary judgment in favor of Paul.

See Williams v. Paul, No. 01-18-00560-CV, 2019 WL 438596, at *1 (Tex. App.—Houston [1st Dist.] Feb. 5, 2019, no pet.) (mem. op.) (footnotes omitted). On February 5, 2019, this Court affirmed the no-evidence summary judgment, noting that Williams did not attach any evidence to his summary-judgment response. *Id.* at *3.

On May 1, 2020, Williams filed another Petition to Modify the Parent-Child Relationship, in which he sought to change the custodial provisions of the October 2017 custody order so that the minor child would live primarily with him and Paul would receive the standard visitation rights. He also sought a reduction in child support. Around same time, Williams filed two motions: a "Motion for Civil Contempt" and a "Motion for Civil Fraud."[4]

[4] Neither of these motions are in the clerk's record, and it appears from the record that they were filed in separate proceedings and then transferred to the 425th District Court and consolidated with Williams's motion to modify.

On May 21, 2020, the trial court held a bench trial on Williams's pending motion to modify and motions for civil contempt and civil fraud. Both Williams and Paul appeared, pro se.[5]

After the trial, the trial court left the exclusive right to determine the child's primary residence with Paul but modified the previous order to (1) impose a geographic restriction for the child's primary residence to Williamson or any contiguous county and (2) give Williams an expanded standard possession schedule—he now has possession of the child on Thursday nights in addition to the weekends he had been granted in the previous order. The trial court denied Williams's request to modify his child-support obligations, as well as his motions requesting findings of civil contempt and civil fraud.

This appeal followed.

PROPRIETY OF TRIAL COURT'S ORDER

In four issues, Williams contends that the trial court erred in (1) failing to modify the physical custody of the child after he presented sufficient evidence to show a material and substantial change in the circumstances of the child; and (2) "not allowing factual, sufficient income evidence to be admitted and reviewed to

[5] Paul's attorney had previously withdrawn, and Williams chose to represent himself pro se. Each was given 40 minutes to present their case, which was done with very little interruption from the trial court or the opposing party. Williams was allowed to introduce exhibits #1-9.

prove fraud and in order to recalculate and modify [his] child support and arrears." Williams also argues that the trial court erred in not (3) holding Paul in contempt of court and/or (4) holding her accountable for fraud based on her "abuse of discovery and her unethical behavior." The first two issues apply to the trial court's ruling on Williams's motion to modify, and the second two issues apply to the trial court's denial of his motions for civil contempt and civil fraud. We will address each respectively.

Standard of Review and Applicable Law

To ensure stability and continuity for children, Texas law has imposed "significant hurdles" before a conservatorship order may be modified. *See Jenkins v. Jenkins*, 16 S.W.3d 473, 478 (Tex. App.—El Paso 2000, no pet.). Specifically, a trial court may modify a conservatorship order if modification would be in the child's best interest and "the circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed" since the previous order. TEX. FAM. CODE § 156.101(a)(1)(A). As a threshold determination, then, the moving party must show a material and substantial change in circumstances; otherwise, the petition must be denied. *See Zeifman v. Michels*, 212 S.W.3d 582, 589 (Tex. App.—Austin 2006, pet. denied).

Because a trial court has broad discretion to decide the best interest of a child in family law matters such as custody, visitation, and possession, we review a

decision to modify conservatorship for a clear abuse of that discretion. *See Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex. 1982). A trial court abuses its discretion when it acts arbitrarily or unreasonably, or when it clearly fails to correctly analyze or apply the law. *See In re D.S.*, 76 S.W.3d 512, 516 (Tex. App.—Houston [14th Dist.] 2002, no pet.).

We remain mindful that the trial court is best able to observe and assess the witnesses' demeanor and credibility, and to sense the "forces, powers, and influences" that may not be apparent from merely reading the record on appeal. *Niskar v. Niskar*, 136 S.W.3d 749, 753 (Tex. App.—Dallas 2004, no pet.). Therefore, we defer to the trial court's resolution of underlying facts and to credibility determinations that may have affected its determination, and we will not substitute our judgment for the trial court's judgment. *George v. Jeppeson*, 238 S.W.3d 463, 468 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

Legal and factual insufficiency challenges are not independent grounds for asserting error in custody determinations but are relevant factors in assessing whether the trial court abused its discretion. *Niskar*, 136 S.W.3d at 753; *D.S.*, 76 S.W.3d at 516. An abuse of discretion does not occur if some evidence of a substantive and probative character exists to support the trial court's decision. *Bates v. Tesar*, 81 S.W.3d 411, 424–25 (Tex. App.—El Paso 2002, no pet.). We consider only the evidence most favorable to the trial court's ruling, and we will uphold its

judgment on any legal theory supported by the evidence. *Worford v. Stamper,* 801 S.W.2d 108, 109 (Tex. 1990); *Niskar,* 136 S.W.3d at 753–54.

Motion to Modify Possession

Williams contends that the trial court erred in denying his motion to modify the custody provisions regarding possession of the child because he produced evidence of a change in in the circumstances of the child. Specifically, Williams contends that he presented evidence showing a pattern of Paul's "refusal to properly co-parent and comply with the court order on the grounds of conservatorship" and that Paul "on multiple occasions, violat[ed] the visitation order."

At trial, Williams testified about an incident in May 2017, when he picked up the child from school and noticed that the child had been bitten. He testified that Paul did not tell him about the incident until he asked and that she did not take the child to the hospital, as the school had advised her. Paul denied that the school had advised her to take the child to the hospital for the bite.

Williams also put on evidence that whenever he asked about how the child was doing in school, Paul replied "good," but he later found out from the school that the child, who was in the Head Start program at the time, seemed to be having difficulty and had been banging his head on a wall.

Paul testified that she does not tell Williams about everything that happens at school, such as the biting incident or the head banging at school, because she

believed that Williams was getting the same information from the school that she was. She acknowledged, however, that she does not always respond to Williams's requests for information, "because no matter what I tell him, he doesn't believe." As an example, Paul testified that when she took the child to the hospital because the child slammed his finger in the car door, Williams did not believe her and asked the doctor if it was even "possible for a child to slam their own finger in the car door." Paul testified that she talked to her pediatrician about the head-banging and was told it was a form of "self-soothing."

Williams also testified that the child reported that Paul told him that Williams "was a bad person" and that she talked "bad" about Williams "all the time." Paul denied talking "bad" about Williams and testified "I go outside of my way to make sure that I don't talk bad about [Williams] because it will affect [my son]."

There was also testimony from Williams about an instance when Paul took the child during his time of possession. Paul acknowledged taking the child on that "one weekend" because she was going out of town, but she testified that she informed Williams ahead of time so that he could come by and visit the child. Paul also testified that, "[w]hen Mr. Williams has not been available to get his child, I have been flexible when he can't get him on the weekend that he's scheduled[.]"

Finally, there was evidence that, on one occasion, the child fell and scratched himself during a pillow fight with Paul. Williams was upset because Paul did not tell

him about the injury and did not let the child call Williams when it happened. Paul admitted that she did not let the child call Williams on this occasion, but she stated that there were many times when the child did not want to talk to Williams, but she made him call, saying, "Just call daddy and make sure that you tell him that you love him."

In short, the trial court was presented with differing versions of several events by both the parents. Undoubtedly, communication and cooperation between the parents was lacking at times. To minimize this, the trial court ordered the parties to communicate with each other through a co-parenting application entitled AppClose.

Being mindful that the trial judge is best able to observe and assess the witnesses' demeanor and credibility, we conclude that the trial court did not abuse its discretion in denying Williams's request for a modification of the custody order as it relates to possession of the child.

We overrule issue one.

Motion to Modify Child Support

Williams also contends that the trial court abused its discretion by not reducing the amount of child support that he was required to pay. Specifically, he claims that he had evidence of changed circumstances regarding his income and that he was not allowed to introduce it.

In determining whether a modification in child-support payments is appropriate, the trial court should examine the circumstances of the child and parents at the time the prior decree was rendered, in relation to the circumstances existing at the time modification of the prior order is sought. *Trammell v. Trammell*, 485 S.W.3d 571, 576 (Tex. App.—Houston [1st Dist.] 2016, no pet.). The burden is on the requesting party to show the requisite change in circumstances. *Id.* The record must contain both historical and current evidence of the relevant person's financial circumstances. *London v. London*, 192 S.W.3d 6, 15 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). Without both sets of data, the court has nothing to compare and cannot determine whether a material and substantial change has occurred. *Id.*

In his brief, Williams claims that the trial court did not allow "factual, sufficient income evidence, to be admitted and review[ed] to . . . recalculate and modify [his] child support and arrears." Contrary to Williams's assertion that the trial court prevented him from admitting his financial information by telling him "I'm going to need you to wrap it up, your time is up," the record shows that Exhibits 7 & 9, Williams's pay stubs and W-2's, were admitted into evidence.

However, Williams's evidence was all from the previous motion to modify—evidence that Williams did not attach to his response to summary judgment, thus resulting in a judgment against him at that time, which we upheld upon appeal. *See Williams*, 2019 WL 438596 at *3. None of Williams's evidence related to his current

financial situation at the time of trial, which the trial court pointed out to him, stating, "Well, there was no evidence regarding the child support issue." Indeed, Williams conceded, "No, I did not present current financial documentation at all, no I did not[.]"

Because there was no evidence of Williams's current financial circumstances, the trial court did not abuse its discretion in denying his request to modify his child support. *See London*, 192 S.W.3d at 15.

We overrule issue two.

Motions for Civil Contempt and Civil Fraud

Williams also filed Motions for Civil Contempt and Civil Fraud, which the trial court heard and denied along with his motion to modify. Although not in the clerk's record, it seems that these motions were based on Williams's belief that Paul and her counsel had misrepresented to the trial court that he had failed to respond to discovery propounded in connection with his previous motion to modify, which, he contends, "led the court to granting an unjust ruling in favor of [Paul]."

We begin by noting that, if the "unjust ruling" to which Williams refers is the 2018 dismissal, the trial court set that judgment aside. Thus, any action taken by Paul did not cause an "unjust ruling" in her favor. *See Williams*, 2019 WL 438596, at *1. If, however, the "unjust ruling" to which Williams refers is the 2018 summary

judgment, that ruling was a result of Williams's failure to provide any evidence in response to Paul's no-evidence motion for summary judgment. *See id.* at *3.

Regarding his Motion for Civil Contempt, Williams cites no authority holding that a trial court abuses its discretion by *refusing* to hold a party in civil contempt. Indeed, there is authority that, while a litigant may request civil contempt, they have no standing to ensure its enforcement. *See Cadle Co. v. Lobingier*, 50 S.W.3d 662, 670 (Tex. App.—Fort Worth 2001, pet. denied). Because his argument is not supported by applicable argument or authority, we overrule issue three. *See Knoll v. Neblett*, 966 S.W.2d 622, 629 (Tex. App.—Houston [14th Dist.] 1998, pet. denied) ("A point of error must be supported by argument and authorities to be properly before the court on appeal").

Regarding his Motion for Civil Fraud, we note that fraud requires "a material misrepresentation, which was false, and which was either known to be false when made or was asserted without knowledge of its truth, which was intended to be acted upon, which was relied upon, and which caused injury." *Formosa Plastics Corp. USA v. Presidio Engs. & Contractors, Inc.*, 960 S.W.2d 41, 47 (Tex. 1998) (quoting *Sears, Roebuck & Co. v. Meadows*, 877 S.W.2d 281, 282 (Tex. 1994)).

Williams's fraud claim rests on his assertion that Paul made a misrepresentation to the trial court when she filed an affidavit in support of her Motion for No-Evidence Summary Judgment, in which she averred, "Non-movant

BERNARD S. WILLIAMS JR. has never responded to PATRICE NICOLE PAUL'S First Set of Interrogatories."

Again, Williams claims that he was "den[ied] [] his opportunity to present his evidence to prove fraud and show the discovery request was filed in bad faith." Again, we note that Williams was not prevented from introducing evidence regarding his response to Paul's discovery requests. Williams's discovery responses were admitted as Exhibit 8 at trial. However, Williams's evidence does not support his assertion that Paul made a misrepresentation to the trial court. Exhibit 8 is Williams's response to Paul's Requests for Production of Documents; it is not a response to her Request for Interrogatories. Consistent with her affidavit in support of her Motion for No-Evidence Summary Judgment, Paul testified at trial, "Mr. Williams never responded to any of the interrogatories. On January 17 [2018], the motion to compel discovery after sanction[s] were filed and the [answers to the requests for production] were received January 26th, 2018. There was [sic] still not interrogatories" and "he did not answer those interrogatories. Period."

There being no evidence that Paul made a material misrepresentation in her affidavit to the trial court, the trial court did not abuse its discretion in denying Williams's motion requesting a finding of civil fraud.

We overrule issue four.

CONCLUSION

We affirm the trial court's judgment.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Kelly and Landau.