Opinion issued March 28, 2023

In The

Court of Appeals

For The

First District of Texas

NO. 01-21-00609-CV

JAMSHID BANAKAR, Appellant/Cross-Appellee

V.

ULRIKE KRAUSE, Appellee/Cross-Appellant

On Appeal from the 308th District Court
Harris County, Texas
Trial Court Case No. 2016-88890

O P I N I O N

Appellant/cross-appellee, Jamshid Banakar, challenges the trial court's order, entered after a bench trial, denying Banakar's petition to modify a previous order in a suit affecting the parent-child relationship and granting, in part, the second amended counterpetition of appellee/cross-appellant, Ulrike Krause, to modify a

previous order in a suit affecting the parent-child relationship. In two issues, Banakar contends that the trial court erred in ordering his child support obligation increased and failing to timely file findings of fact.

In her two issues on cross-appeal, Krause contends that the trial court erred in denying her request to redirect to her the federal social security benefits for the children received as part of Banakar's social security old age benefits (the "children's [s]ocial [s]ecurity benefits")[1] and denying her request for attorney's fees.

We affirm.

Background

In 2017, Banakar and Krause signed an Agreed Final Decree of Divorce (the "agreed divorce decree") that included terms for visitation, child support, and health insurance coverage for their two minor children, C.K.B. and K.K.B. (the "children"). The agreed divorce decree named Banakar and Krause joint managing conservators of the children, with Krause having the exclusive right to designate the children's primary residence. The agreed divorce decree required Banakar, the noncustodial parent, to pay $800.00 as his child support obligation each month beginning on March 1, 2017.

[1] *See* 42 U.S.C. § 402(d).

In 2018, the trial court entered an Agreed Child Support Review Order (the "2018 agreed child support order"), which, pursuant to an agreement between Banakar and Krause, ordered Banakar to pay $1,893.00 as his child support obligation each month beginning on September 1, 2018. The trial court also ordered Krause to provide health insurance coverage for the children, which was available through her employment. And it required Banakar to pay Krause "cash medical support, as additional child support," in the amount of $13.32 each month to cover the cost of maintaining health insurance coverage for the children.

On March 10, 2020, Banakar filed a petition to modify the 2018 agreed child support order, alleging that since the 2018 agreed child support order was entered, "[t]he circumstances of the children or a person affected by the order ha[d] materially and substantially changed . . . , and the [child] support payments previously ordered should be decreased." Banakar, thus, requested a reduction in his monthly child support obligation.

Krause answered, generally denying the allegations in Banakar's petition. Krause also filed a counterpetition to modify the 2018 agreed child support order. In her second amended counterpetition to modify the 2018 agreed child support order, Krause alleged that "[t]he circumstances of the children or a person affected" by the 2018 agreed child support order "ha[d] materially and substantially changed since the date of the rendition of th[at] order," and "the [child] support payments

previously ordered should be increased." Krause requested an increase in Banakar's monthly child support obligation and that the trial court "order that the [children's] [s]ocial [s]ecurity [benefits] be redirected to [Krause]."

Krause further alleged that Banakar had repeatedly violated the 2018 agreed child support order by "fail[ing] to pay child and medical support."[2] She requested that the trial court "confirm[] . . . child and medical support arrearages," and she sought a "judgment for the arrearages." Krause also requested that the trial court order Banakar's income to be withheld for the "child and medical support arrearages." And she requested that the trial court award her reasonable attorney's fees, expenses, and costs.

Banakar responded to Krause's second amended counterpetition by filing combined special exceptions and a motion to strike evidentiary facts from Krause's second amended counterpetition, in which, among other things, he stated that he "earn[ed] at or near the cap on monthly net resources prescribed in [Texas Family Code section 154.066]."

At trial, Banakar testified that he was nearly sixty-nine years old and was a mechanical engineer with expertise in glass used for aerospace applications. He had been working in the aerospace glass field "[s]ince 1990" and was one of only "eight

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[2] Krause attached to her second amended counterpetition a copy of an Office of the Attorney General Child Support Disbursement Unit Payment Record.

people in the world" with such expertise. Banakar "work[ed] very close[ly] with" two NASA aerospace glass experts. He had worked on the "space shuttle program" for windows and window design.

According to Banakar, when he filed his petition to modify the 2018 agreed child support order in October 2019, he had been "laid off" from a contract job that had been funded by NASA.[3] Most recently, Banakar had worked from April 2020 to March 2021 on a NASA-funded project with Engineering Resources and Consulting, Inc. ("ERC") in Huntsville, Alabama. Banakar was "laid off" when the ERC project concluded because no more funding for it was available from NASA.

Banakar further explained that if there were a new project that required his expertise, NASA would "call [him] to go work as a [NASA] contractor." Banakar was actively seeking new employment. He "ha[d] been in contact" with NASA "since [he] got laid off," but he had not yet obtained a new job.

Banakar testified that, in the several months leading to trial, he had been paying "more than $2,300[.00]" a month as his child support obligation. He acknowledged that for about five months beginning in late 2019, he did not pay the full amount of his child support obligation. He paid the child and medical support arrearages he owed in full in April 2020, after he began his job with ERC.

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[3] During trial, the trial court admitted certain evidence showing that Banakar's gross total wages in 2020 were $83,231.47, Banakar's gross total income in 2019 was $105,206.00, and Banakar's gross total income in 2018 was $114,294.00.

Banakar testified that he had prepared a financial information sheet, a copy of which the trial court admitted into evidence. The financial information sheet showed that, at the time of trial, Banakar was receiving $1,874.28 a month in social security retirement benefits, $2,491.00 a month in retirement benefits from Boeing, and $83.33 a month in dividends from a Goldman Sachs investment account. The financial information sheet also listed the following assets for Banakar:

Member's Choice Credit Union (held for benefit of children):	$29,700.00
JSC Credit Union	$30,000.00
Investment accounts	$669,500.00
Individual Retirement Account	$440,273.00
Home	$380,000.00

Banakar stated that in addition to retirement benefits from Boeing, he previously received "around $13[,000.00] to [$]15,000 a year" in dividends. But Boeing stopped paying dividends in April 2020 "due to [the] COVID[-19] [pandemic]."[4] Banakar owned his home outright. But he had no earnings on his assets, which were valued at approximately $1 million.

Banakar further testified that he received about $925.00 in social security benefits for each child monthly. He deposited the children's social security benefits

[4] *See generally Kim v. Ramos*, 632 S.W.3d 258, 261 n.5, 266 n.13 (Tex. App.—Houston [1st Dist.] 2021, no pet.) (discussing COVID-19 pandemic).

in the Member's Choice Credit Union account. He denied using that account for his own benefit. The Member's Choice Credit Union account balance at the time of trial was $33,000.00. Banakar's IRS Form SSA-1099 – Social Security Benefit Statement showed that in 2020, Banakar received a total of $22,491.40 in social security benefits for the children.

Banakar acknowledged during his testimony that in June 2020, he made a child support payment of $6,428.46 because he had been behind on his child support obligation and had been served with a petition for enforcement. He also acknowledged that $785.00 a month was being garnished from his social security retirement benefits for partial payment of his child support obligation.

Banakar testified that from April 2020 until approximately two months before trial began, Banakar was earning $9,873.00 in gross monthly wages from ERC. He received $2,491.00 a month in retirement benefits from Boeing and approximately $1,900.00 a month for the children's social security benefits. During that time, Banakar's child support obligation was $1,892.00 per month.

Banakar requested that the trial court find that his current net resources were $3,835.00 per month and order him to pay $1,054.06 a month as his child support obligation. Banakar asserted that he should be allowed to keep the children's social security benefit payments and pay $1,054.06 a month as his child support obligation. Yet he acknowledged that the amount of the child support obligation that he

proposed was not quite half of the children's social security benefits that he received each month.

Krause testified that she was fifty-one years old and was not employed. She had been a project manager for Chevron for eleven years until she lost her job in late January 2021 as a result of the COVID-19 pandemic. She received a severance package from Chevron at the time of the layoff. Since then, she had been seeking new employment.

Krause requested that the trial court order Banakar to pay $2,300.00 a month as his child support obligation. She testified that she did not have access to the Member's Choice Credit Union account that Banakar maintained for the children's benefit. If the trial court were to "redirect" the children's social security benefits from Banakar to her, she wanted the trial court to order "[w]hatever" the amount was "to make up the difference" between the amount of the children's social security benefits and the $2,300.00 monthly child support payment she was requesting.

According to Krause, when she and Banakar negotiated the first child support obligation as part of the agreed divorce decree, Krause agreed to allow Banakar to be the payee for the children's social security benefits because Banakar had "argued that" without those benefits, "he would not be able to live" on the income he had. Krause "was working full-time at the time and was afraid of" having a "long drawn-out lawsuit." Banakar "found work" about "one month after" the agreed

"[d]ivorce [d]ecree was finalized," yet he did not make any "child support [payments] until [seventeen] months later." Because Banakar did not consistently pay his court-ordered child support obligation, Krause had an income withholding order served on the Social Security Administration ("SSA").

As to attorney's fees, Krause's trial attorney testified about the attorney's fees incurred by Krause in the proceeding. Based on her trial attorney's testimony and her attorney's billing records, Krause requested that the trial court award her attorney's fees "in the range of $13[,000.00] to $14,000.00."

In its oral rendition of judgment immediately following trial, the trial court denied Krause's request for attorney's fees as well as her request to "redirect" to her the children's social security benefits that the SSA was sending to Banakar. The trial court then ordered "that Banakar's child support obligation be increased to $2,300.00 per month."

The same day that the bench trial was held and the trial court rendered judgment, Banakar filed a "Request for Findings In Child Support Order," in which he requested, "[p]ursuant to [Texas Family Code section] 154.130," that the trial court "state the following in the child support order":

1. whether the application of the guidelines would be unjust or inappropriate;
2. the net resources of the obligor per month;
3. the net resources of the obligee per month;

4. the percentage applied to the obligor's net resources for child support; and

5. if applicable, the specific reasons that the amount of child support per month ordered by the [c]ourt varies from the amount computed by applying the percentage guidelines under [Texas Family Code section 154.125 or 154.129].

On May 24, 2021, Banakar filed a "Notice of Past Due Findings of Fact and Conclusions of Law." Citing Texas Family Code section 154.130 and, for the first time, Texas Rule of Civil Procedure 297,[5] Banakar gave "notice to the [c]ourt that a timely [r]equest for [f]indings of [f]act and [c]onclusions of law was filed," "[f]indings and conclusions were due to be filed by the [c]ourt on or before May 21, 2021[] but ha[d] not been filed." And Banakar "request[ed] that the clerk of the [c]ourt immediately call" his notice "to the attention of the [c]ourt pursuant to [Texas] Rule [of Civil Procedure] 297" and that "the [c]ourt cause copies of its findings and conclusions to be transmitted to each party in the suit as required by [Texas] Rule [of Civil Procedure] 297."

On August 31, 2021, the trial court signed its Order in Suit to Modify Parent-Child Relationship, denying Banakar's petition to modify the 2018 agreed child support order and granting, in part, Krause's second amended counterpetition to modify the 2018 agreed child support order. The trial court ordered Banakar to

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[5] Under Texas Family Code section 154.130, the trial court must make the findings, if required, "[w]ithout regard to [Texas Rules of Civil Procedure] 296 through 299." *See* TEX. FAM. CODE ANN. § 154.130(a).

pay Krause "child support of [$2,300.00] per month," beginning on June 2, 2021. It also memorialized the findings it had "made in open court" during the bench trial, namely:

> 1. The amount of child support ordered by the [c]ourt is in accordance with the percentage guidelines.
>
> 2. The net resources of [Banakar] per month are or exceed $9,200.00.
>
> 3. The net resources of [Krause] per month are unknown.
>
> 4. The percentage applied to the first [$9,200.00] of [Banakar's] net resources for child support is twenty-five percent (25%), with the required step-down to twenty percent (20%) when a child emancipates.

Further, the trial court required Krause to maintain health insurance and dental insurance coverage for each child and required Banakar to pay Krause, "as additional child support, [$125.25] per month for the cost of health and dental insurance." Further, assuming compliance with those requirements, the trial court ordered that Banakar and Krause each pay "fifty percent of the unreimbursed health-care expenses" of the children.

On January 26, 2022, the trial court signed a "Findings in Child Support Order,"[6] in which it found:

> 1. The amount of child support ordered by the [c]ourt [wa]s in accordance with the percentage guidelines.

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[6] *See* TEX. FAM. CODE ANN. § 154.130.

2. The net resources of [Banakar] per month [we]re or exceed[ed] $9,200.00.

3. The net resources of [Krause] per month [we]re unknown.

4. The percentage applied to the first $9,200[.00] of [Banakar's] net resources for child support [wa]s twenty-five percent (25%), with the required step-down to twenty percent (20%) when a child emancipates.

5. The amount of child support per month ordered by the [c]ourt d[id] not vary from the amount computed by applying the percentage guidelines under Texas Family Code [s]ections 154.125 and 154.129.

(Emphasis omitted.)

Child Support

In his first issue, Banakar argues that the trial court erred in increasing his child support obligation to $2,300.00 a month based on its finding that he had monthly net resources of at least $9,200.00 because he established that he was "retired" and "unemployed and [did] not have [income-producing] assets."

Trial courts have wide discretion in determining issues of custody, control, possession, support, and visitation matters involving children. *See Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex. 1982); *In re K.R.P.*, 80 S.W.3d 669, 674 (Tex. App.—Houston [1st Dist.] 2002, pet. denied); *In re K.M.B.*, 606 S.W.3d 889, 894 (Tex. App.—Dallas 2020, no pet.) ("The trial court has broad discretion to set or modify child support."). Most of the appealable issues in a family-law case, including issues related to child support, are reviewed for an abuse of discretion.

Reddick v. Reddick, 450 S.W.3d 182, 187 (Tex. App.—Houston [1st Dist.] 2014, no pet.). Thus, we will not disturb a trial court's modification of a child support obligation absent a clear abuse of discretion. *See In re K.M.B.*, 606 S.W.3d at 894; *In re H.J.W.*, 302 S.W.3d 511, 513 (Tex. App.—Dallas 2009, no pet.); *Holley v. Holley*, 864 S.W.2d 703, 706 (Tex. App.—Houston [1st Dist.] 1993, writ denied). A trial court abuses its discretion when it acts arbitrarily or unreasonably, or without any reference to guiding rules and principles. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990). In making this determination, we view the evidence in the light most favorable to the trial court's decision and indulge every legal presumption in favor of its judgment. *In re K.M.B.*, 606 S.W.3d at 894; *Holley*, 864 S.W.2d at 706.

Under an abuse-of-discretion standard, legal and factual sufficiency are not independent grounds of error but are relevant factors in assessing whether the trial court abused its discretion. *In re K.M.B.*, 606 S.W.3d at 894; *Bush v. Bush*, 336 S.W.3d 722, 729 (Tex. App.—Houston [1st Dist.] 2010, no pet.). Review in this context is two-pronged: an appellate court determines whether the trial court (1) had sufficient information on which to exercise its discretion and (2) erred in applying its discretion because it made an unreasonable decision. *Stamper v. Knox*, 254 S.W.3d 537, 542 (Tex. App.—Houston [1st Dist.] 2008, no pet.); *Zeifman v. Michels*, 212 S.W.3d 582, 588 (Tex. App.—Austin 2006, pet. denied). Traditional sufficiency review comes into play under the first prong. *Stamper*, 254 S.W.3d at

542; *Zeifman*, 212 S.W.3d at 588. We then determine whether, based on the evidence, the trial court made a reasonable decision. *Radler v. Philavanh*, No. 01-19-00931-CV, 2021 WL 2793475, at *4 (Tex. App.—Houston [1st Dist.] July 6, 2021, no pet.) (mem. op.); *Zeifman*, 212 S.W.3d at 558. A trial court does not abuse its discretion if some evidence of substantive and probative character supports its decision. *Whitworth v. Whitworth*, 222 S.W.3d 616, 623 (Tex. App.—Houston [1st Dist.] 2007, no pet.); *Holley*, 864 S.W.2d at 706.

Here, the trial court issued findings of fact. A trial court's findings of fact have the same force and dignity as a jury's answers to jury questions, and we review the legal and factual sufficiency of the evidence supporting those findings using the same standards that we apply to jury findings. *Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994); *Anderson v. City of Seven Points*, 806 S.W.2d 791, 794 (Tex. 1991). When the appellate record contains a reporter's record, findings of fact on disputed issues are not conclusive and may be challenged for evidentiary sufficiency. *Super Ventures, Inc. v. Chaudhry*, 501 S.W.3d 121, 126 (Tex. App.—Fort Worth 2016, no pet.).

In a bench trial, the trial court, as the fact finder, is the sole judge of the witnesses' credibility and the weight to be given their testimony. *Hatteberg v. Hatteberg*, 933 S.W.2d 522, 530 (Tex. App.—Houston [1st Dist.] 1994, no writ). The trial court may choose to believe some witnesses over others. *Radler*, 2021 WL

2793475, at *5. We are 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." *In re A.L.E.*, 279 S.W.3d 424, 427 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (internal quotations omitted).

The Texas Family Code establishes guidelines for setting monthly child support obligations in suits affecting the parent-child relationship. *See Grotewold v. Meyer*, 457 S.W.3d 531, 534 (Tex. App.—Houston [1st Dist.] 2015, no pet.). The first step in determining a monthly child support obligation is to calculate, if feasible, the gross annual resources of the obligor parent. *See* TEX. FAM. CODE ANN. § 154.061(a) (requiring, when feasible, calculation of gross income on annual basis); *Stringfellow v. Stringfellow*, 538 S.W.3d 116, 118 (Tex. App.—El Paso 2017, no pet.); *Grotewold*, 457 S.W.3d at 534; *see also* TEX. FAM. CODE ANN. § 154.062(b) (listing income to be included in calculation of parent's resources). Resources include several types of income, including "all other income actually being received." TEX. FAM. CODE ANN. § 154.062(a), (b); *Radler*, 2021 WL 2793475, at *5; *see also In re P.C.S.*, 320 S.W.3d 525, 537 (Tex. App.—Dallas 2010, pet. denied) (language of Texas Family Code section 154.062(b) indicates legislature intended "all receipts of money that are not specifically excluded by the statute . . . , whether

nonrecurring or periodic, whether derived from the obligor[] [parent's] capital or labor or from that of others, must be included in the definition of 'resources'").

The amount of an obligor parent's average gross monthly resources is determined from the parent's gross annual resources. *See* TEX. FAM. CODE ANN. § 154.061(a); *Grotewold*, 457 S.W.3d at 534. To make that determination, the trial court first divides the gross annual resources of the obligor parent by twelve to reach his average gross monthly resources. *See* TEX. FAM. CODE ANN. § 154.061(a); *Stringfellow*, 538 S.W.3d at 118. Next, from the gross monthly resources, certain tax deductions are made. *See* TEX. FAM. CODE ANN. § 154.062(d); *Stringfellow*, 538 S.W.3d at 118. The Office of the Attorney General is responsible for annually promulgating charts that compute net monthly income from gross monthly income by deducting certain taxes from gross monthly wages. *See* TEX. FAM. CODE ANN. § 154.061(b) (requiring Title IV-D agency to annually promulgate tax charts); *Stringfellow*, 538 S.W.3d at 118; *Grotewold*, 457 S.W.3d at 534; *see also* TEX. FAM. CODE ANN. § 231.001 (designating Office of Attorney General as Title IV-D agency in Texas). Once net monthly resources are determined, the Texas Family Code allows certain further deductions. *See* TEX. FAM. CODE ANN. § 154.062(d); *Stringfellow*, 538 S.W.3d at 118; *Grotewold*, 457 S.W.3d at 534.

After the final net monthly resources are computed, the trial court applies the child support percentage guidelines under the Texas Family Code to set the amount

owed. *See* TEX. FAM. CODE ANN. § 154.125(b). For two children, the guidelines set an obligor parent's child support obligation at twenty-five percent of the obligor parent's net monthly resources. *See id.*; *see also id.* § 154.122(a) (amount of support determined by child support guidelines is presumed to be appropriate amount of support). "[A]n order of child support conforming to the guidelines is presumed to be in the best interest of the child." *Id.* § 154.122(a); *see also id.* § 154.12(a).

Pertinent here, when children "receive[] benefits as a result of" their obligor parent's entitlement to social security old age benefits, the court must "apply the guidelines by determining the amount of child support that would be ordered under the child support guidelines and subtracting from that total the amount of benefits or the value of the benefits paid to or for the child[ren] as a result of the obligor's receipt of social security old age benefits." *See id.* § 154.133; *see also In re H.J.W.*, 302 S.W.3d 511, 513 (Tex. App.—Dallas 2009, no pet.) (explaining application of Texas Family Code section 154.132, which provides comparable rule for calculation of child support when child receives benefits because of obligor parent's entitlement to social security disability benefits).

We first determine whether the trial court properly divided Banakar's gross annual resources by twelve to reach his average gross monthly resources. *See* TEX. FAM. CODE ANN. § 154.061(a). The undisputed evidence shows that in the year before trial, Banakar's gross earnings from his job with ERC were $9,873.00 per

month. Banakar's monthly income also included $1,874.28 in social security retirement benefits, $2,491.00 in retirement benefits from Boeing, and $83.33 monthly in dividends from an investment account. Banakar does not quarrel with the trial court's application of Texas Family Code section 154.061(a) in determining the amount of his monthly child support obligation. *See* TEX. FAM. CODE ANN. § 154.061 ("Computing Net Monthly Income"). "The amount of a periodic child support payment established by the child support guidelines in effect in this state at the time of the hearing is presumed to be reasonable, and an order of support conforming to the guidelines is presumed to be in the best interest of the child." TEX. FAM. CODE ANN. § 154.122(a); *see also In re A.M.P.*, 368 S.W.3d 842, 846 (Tex. App.—Houston [14th Dist.] 2012, no pet.). If evidence is admitted that rebuts those statutory presumptions, the trial court may deviate from the child support guidelines. *See* TEX. FAM. CODE ANN. § 154.123; *In re C.W.*, No. 07-04-0543-CV, 2006 WL 118937, at *1 (Tex. App.—Amarillo Jan. 17, 2006, no pet.) (mem. op.).

Banakar attempts to rebut the presumptions by asserting that the loss of his contract job six weeks before trial means that his ERC earnings should not have been considered in determining his gross monthly resources. But Banakar testified at trial that he was one of only "eight people in the world" with expertise in aerospace glass applications, had worked closely with two NASA employees involved in aerospace glass projects, and was actively looking for employment. Viewed in the light most

favorable to the trial court's ruling, this testimony supports a reasonable inference that Banakar was likely to obtain new contract work. *See In re K.M.B.*, 606 S.W.3d at 894; *Holley*, 864 S.W.2d at 706. Further, Banakar cites no authority to support his assertion that the trial court erred in applying Texas Family Code section 154.061(a) to calculate his child support obligation under those circumstances. *See* TEX. FAM. CODE ANN. § 154.061 ("Computing Net Monthly Income"). A failure to provide substantive analysis of an issue or cite appropriate authority waives a complaint on appeal. *See Marin Real Estate Partners, L.P. v. Vogt*, 373 S.W.3d 57, 75 (Tex. App.—San Antonio 2011, no pet.); *Huey v. Huey*, 200 S.W.3d 851, 854 (Tex. App.—Dallas 2006, no pet.);. Thus, we conclude that the trial court did not err in considering Banakar's ERC earnings in determining his gross monthly resources.

Banakar next argues that to the extent that the trial court considered the social security benefits that he receives as the representative payee for the children, it erred in doing so, because such benefits were not his "net resources." In doing so, Banakar relies on *In re Hidalgo*, 938 S.W.2d 492 (Tex. App.—Texarkana 1996, no writ). In that case, after the death of the child's father, the child's stepmother received social security death benefits on behalf of the child between September 1995 and April 1996. *In re Hidalgo*, 938 S.W.2d at 499. Because the stepmother received the social security benefits while the child was living elsewhere, the trial court ordered the

stepmother to reimburse the child for the amounts she had received. *Id.* On appeal, the stepmother argued that the trial court lacked the authority to order reimbursement "because any rights involving federal benefits [we]re wholly controlled by federal statutes," and therefore preempted. *Id.* The stepmother further noted that federal statutes prohibited the transfer or assignment "of a person's right to future payment." *Id.* (quoting 42 U.S.C. § 407 (internal quotation omitted)).

The court of appeals disagreed. It observed that the social security benefits "were paid to [the stepmother] as fiduciary for the benefit of the child." Accordingly, the trial court's order that the stepmother transfer the funds to the child's managing conservator did not conflict with federal law. *Id.*

Since *Hidalgo* was decided, the Legislature has enacted Texas Family Code section 154.133, which provides:

> In applying the child support guidelines for an obligor who is receiving social security old age benefits and who is required to pay support for a child who receives benefits as a result of the obligor's receipt of social security old age benefits, the court shall apply the guidelines by determining the amount of child support that would be ordered under the child support guidelines and subtracting from that total the amount of benefits or the value of the benefits paid to or for the child as a result of the obligor's receipt of social security old age benefits.

TEX. FAM. CODE ANN. § 154.133. Banakar does not cite to this provision of the family code, the meaning of which, we believe, controls our analysis of his argument. In interpreting statutes, we "look to the plain language, construing the text in light of the statute as a whole." *Silguero v. CSL Plasma, Inc.*, 579 S.W.3d

53, 59 (Tex. 2019). We rely on the plain meaning of a statute's text "as expressing legislative intent unless a different meaning is supplied by legislative definition or is apparent from the context, or the plain meaning leads to absurd results." *Fort Worth Transp. Auth. v. Rodriguez*, 547 S.W.3d 830, 838 (Tex. 2018).

Banakar receives $1,900.00 a month as the representative payee for the children's social security benefits. Federal statute authorizes the SSA Commissioner to appoint an individual to serve as a beneficiary's representative payee upon finding that "the interest of . . . [the beneficiary] would be served thereby." 42 U.S.C. § 405(j)(1)(A). A representative payee is responsible for "us[ing] the benefits received on [the beneficiary's] behalf only for [the beneficiary's] use and benefit in a manner and for the purposes he or she determines" to be in the beneficiary's "best interest." 20 C.F.R. § 404.2035(a). If the representative payee does not live in the same household as the beneficiary, he must "[k]eep any benefits received on [the beneficiary's] behalf separate from his or her own funds . . . ." *Id.* § 404.2035(b).

Banakar asserts that he is entitled to deposit the children's social security benefits into the Member's Choice Credit Union account instead of sending them to Krause as child support and still subtract the amount of those benefits from his child support obligation. But Banakar cannot have it both ways. Texas Family Code section 154.133 requires the trial court to subtract the amount of the children's social security benefits from the obligor's child support obligation "for a child who

receives benefits as a result of the obligor's receipt of social security old age benefits." TEX. FAM. CODE ANN. § 154.133 (emphasis added). Conversely, if the children do not receive such benefits, the obligor may not subtract that amount from his child support obligation. *See id.*; *see also* 20 C.F.R. § 404.2040(a)(1) (SSA will consider that payments "certif[ied] to a representative payee have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current maintenance," which "includes cost incurred in obtaining food, shelter, clothing, medical care, and personal comfort items"); *Hidalgo*, 938 S.W.2d at 499 (trial court did not err in ordering stepmother who received social security benefits for child who did not live with her to reimburse child by transferring social security benefits to child's managing conservator).

The record also contains some evidence that Banakar has treated at least some portion of the children's social security benefits as personal resources. Krause testified that in the negotiations that led to the child support obligation that Banakar was ordered to pay under the agreed divorce decree, she agreed to allow Banakar to be the payee for the children's social security benefits even though he was the non-custodial parent because Banakar had "argued that he would not be able to live" on the income he had. Banakar also identified the Member's Choice Credit Union account as a personal asset on his financial information sheet. Further, the balance of the Member's Choice Credit Union account at the time of trial was $33,000.00,

yet Banakar had been receiving the children's social security benefits since at least 2017, when he and Krause negotiated the first child support obligation as part of the agreed divorce decree. The record does not show the amount of children's social security benefits that Banakar received in 2017, 2018, or 2019, but in 2020, Banakar received social security benefits totaling $22,491.40 for the children. Thus, Banakar could not have deposited all the children's social security benefits that he had received since the divorce in the Member's Choice Credit Union account. Banakar did not provide any explanation for the apparent discrepancy between the total amount of children's social security benefits he had received since the divorce and the amount deposited in the Member's Choice Credit Union account. All this evidence supports a reasonable inference that Banakar used some of the children's social security benefits to pay other expenses that he incurred.[7] The 2018 agreed child support order, which modified the initial child support agreement in the agreed divorce decree, does not suggest any change as to how Banakar and Krause treated the children's social security benefits for purposes of determining Banakar's child support obligation.

[7] To the extent that Banakar's prior payments of his child support obligation met or exceeded the amount of the children's social security benefits that he received as the children's representative payee, the trial court could have properly presumed that Banakar complied with his federal fiduciary obligations as a representative payee. *See* 20 C.F.R. § 404.2040(a)(1).

Under these unusual circumstances, we conclude that, to the extent that the trial court considered the children's social security benefits as resources under Banakar's control that were available to pay his child support obligation, it did not err in doing so. The trial court's August 31, 2021 Order in Suit to Modify Parent-Child Relationship did not require Banakar to pay $2,300.00 in addition to disbursing the children's social security benefits, and nothing in the order prohibited Banakar from using the children's social security benefits to discharge all but $450.00 of his child support obligation. This result is consistent with the goal of Texas Family Code section 154.133, which is to credit the child support obligor for social security benefits received by the children as a result of the obligor's social security old age benefits. *See* TEX. FAM. CODE ANN. § 154.133; *see also In re H.J.W.*, 302 S.W.3d at 513.

We overrule Banakar's first issue.

Findings of Fact

In his second issue, Banakar argues that the trial court erred in failing to make the findings of fact required by Texas Family Code section 154.130(b) because it did not do so by the deadline required "by Tex[as] Fam[ily] Code [section] 154.130(a-1)."

Texas Family Code section 154.130(a-1), which, when in effect, had imposed a fifteen-day deadline for the trial court to make findings of fact after it received a

party's request in a child-support case, was repealed by the Legislature in 2017, well before Banakar filed his May 2021 request for findings of fact. *See* TEX. FAM. CODE ANN. § 154.130 (stating subsection (a-1) repealed); *In re S.V.*, No. 05-17-01294-CV, 2019 WL 1529379, at *2 n.4 (Tex. App.—Dallas Apr. 9, 2019, no pet.) (mem. op.) (explaining Texas Family Code section 154.130(a-1), which previously required trial court to make and enter findings of fact within fifteen days of party's request, was repealed effective September 1, 2017). Thus, Texas Family Code section 154.130(a-1) does not apply to Banakar's request, and the trial court could not have erred by failing to comply with any deadline imposed by it.

Further, Texas Family Code section 154.130 imposes no time limit on the trial court to make any required findings. The trial court made its January 26, 2022 "Findings in Child Support Order," which were substantially the same as those it had made in its rendition of judgment and its August 31, 2021 Order in Suit to Modify Parent-Child Relationship, while it had plenary power.

To the extent that Banakar asserts that the trial court, in the manner it issued its findings of fact, somehow prevented him from "effectively contesting the trial court's deviat[ion] from the child support guidelines," he does not explain how. "An appellate brief is meant to acquaint the court with the issues in a case and to present argument that will enable the court to decide the case." *Schied v. Merritt*, No. 01-15-00466-CV, 2016 WL 3751619, at *2 (Tex. App.—Houston [1st Dist.] July

12, 2016, no pet.) (mem. op.) (internal quotations omitted). And Texas Rule of Appellate Procedure 38.1(i) requires that an appellant's brief "contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." TEX. R. APP. P. 38.1(i). "This is not done by merely uttering brief conclusory statements, unsupported by legal citations." *Tesoro Petroleum Corp. v. Nabors Drilling USA, Inc.*, 106 S.W.3d 118, 128 (Tex. App.—Houston [1st Dist.] 2002, pet. denied); *see also Barham v. Turner Constr. Co. of Tex.*, 803 S.W.2d 731, 740 (Tex. App.—Dallas 1990, writ denied) (appellant bears burden of discussing his assertions of error). The failure to provide substantive analysis of an issue or cite appropriate authority waives a complaint on appeal. *Marin Real Estate Partners*, 373 S.W.3d at 75; *Huey*, 200 S.W.3d at 854.

Banakar may not obtain appellate review of an issue by making bare assertions of error and failing to provide legal authority supporting his complaint. *See* TEX. R. APP. P. 38.1; *M&E Endeavors LLC v. Air Voice Wireless LLC*, Nos. 01-18-00852-CV, 01-19-00180-CV, 2020 WL 5047902, at *7 (Tex. App.—Houston [1st Dist.] Aug. 17, 2020, no pet.) (mem. op.) ("The briefing requirements are mandatory . . . ."); *Richardson v. Marsack*, No. 05-18-00087-CV, 2018 WL 4474762, at *1 (Tex. App.—Dallas Sept. 19, 2018, no pet.) (mem. op.) ("Our appellate rules have specific requirements for briefing," including requiring "appellants to state concisely their complaints, to provide succinct, clear, and

accurate arguments for why their complaints have merit in law and fact, to cite legal authority that is applicable to their complaints, and to cite appropriate references in the record."); *Huey*, 200 S.W.3d at 854 ("We have no duty to brief appellant's issue for [him]. Failure to cite to applicable authority or provide substantive analysis waives an issue on appeal."); *Strange v. Cont'l Cas. Co.*, 126 S.W.3d 676, 677–78 (Tex. App.—Dallas 2004, pet. denied) (appellate court cannot remedy deficiencies in appellant's brief and argue case for appellant).

Accordingly, we hold that Banakar has waived his second issue on appeal because it is inadequately briefed. *See Bolling v. Farmers Branch Indep. Sch. Dist.*, 315 S.W.3d 893, 895 (Tex. App.—Dallas 2010, no pet.) ("Only when we are provided with proper briefing may we discharge our responsibility to review the appeal and make a decision that disposes of the appeal one way or the other.").

Representative Payee for Social Security Benefits

In her first issue on cross-appeal, Krause argues that the trial court erred in denying her request to remove Banakar and install her as the representative payee of the children's social security benefits because Krause originally "agreed . . . that [Banakar] could be the representative payee of the children[']s social security benefits based upon [his] promise to timely and consistently pay his full child support," Krause "is the primary parent that takes care of the children's needs," "[t]here is no financial support other than the child support [Krause] sometimes

receives from [Banakar],” and Krause “would not have agreed to [Banakar] being able to receive [the children’s] [s]ocial [s]ecurity benefits at the time of the divorce if she knew that [Banakar] would pay child support only when he felt like it.”

The authority to appoint an individual to serve as a social security beneficiary’s representative payee belongs solely to the SSA Commissioner. *See* 42 U.S.C. § 405(j)(1)(A). Krause does not identify any Texas law that would give similar authority to the trial court and, if there were such a statue, it would violate the Supremacy Clause of the United States Constitution, which declares that federal law is the “supreme Law of the Land.” U.S. CONST. art. VI, cl. 2; *Great Dane Trailers, Inc. v. Estate of Wells*, 52 S.W.3d 737, 743 (Tex. 2001) (“If a state law conflicts with federal law, it is preempted and has no effect.”). Because the trial court lacked the authority to change the representative payee for the children’s social security benefits, we hold that it did not err in denying Krause’s request for appointment.

We overrule Krause’s first issue on cross-appeal.

Attorney’s Fees

In her second issue on cross-appeal, Krause argues that the trial court erred in not awarding her attorney’s fees because the evidence of the reasonableness and necessity of the fees she incurred was “conclusive, free from contradiction and could have been controverted.”

The trial court has broad discretion to award attorney's fees and costs in a suit affecting the parent-child relationship. *See* TEX. FAM. CODE ANN. § 106.002(a); *Bruni v. Bruni*, 924 S.W.2d 366, 368 (Tex. 1996). Under the abuse-of-discretion standard, legal and factual sufficiency are not independent grounds of error but are merely factors to be considered in determining whether the trial court abused its discretion. *London v. London*, 94 S.W.3d 139, 143–44 (Tex. App.—Houston [14th Dist.] 2002, pet. denied).

Neither party in a family law proceeding is entitled to an award of attorney's fees as a matter of right. *In re C.S.D.*, No. 05-20-00383-CV, 2022 WL 4092430, at *7 (Tex. App.—Dallas Sept. 7, 2022, no pet.); *McCord v. Watts*, 777 S.W.2d 809, 813 (Tex. App.—Austin 1989, no writ). And the trial court need not award attorney's fees but instead may order each party to pay his or her own attorney's fees. *In re C.S.D.*, 2022 WL 4092430, at *7; *McCord*, 777 S.W.2d at 813.

Here, both Banakar and Krause petitioned for relief and neither party wholly prevailed. Krause asserts that she proved the reasonableness and necessity of her fees, but she does not explain how the trial court erred in allowing each party to bear his or her own attorney's fees. *See* TEX. R. APP. P. 38.1(i). Because Krause fails to show that the trial court erred in exercising its discretion in this manner, we conclude that the trial court did not err in declining to award attorney's fees to Krause.

We overrule Krause's second issue on cross-appeal.

Conclusion

We affirm the trial court's order.

Julie Countiss
Justice

Panel consists of Justices Goodman, Countiss, and Farris.