Affirmed and Memorandum Opinion filed February 28, 2017.

In The

Fourteenth Court of Appeals

NO. 14-15-00758-CV

THEODORE EVERETT LADD-KELLER, Appellant

V.

CRYSTAL L. LADD, Appellee

On Appeal from the 247th District Court
Harris County, Texas
Trial Court Cause No. 1998-22041

M E M O R A N D U M O P I N I O N

Appellant Theodore Ladd-Keller failed to comply with a show cause order to appear at a hearing on appellee Crystal L. Ladd's motion for enforcement of a child support order. After the evidentiary hearing, the trial court signed a default judgment awarding Crystal child support arrearages, plus interest. Theodore challenges the default judgment on the ground that he did not receive notice of the hearing consistent with his due process rights. Because the record shows Theodore

was afforded the statutorily required notice of the hearing, we affirm the trial court's judgment.

Background

Theodore and Crystal were divorced in 1999. The final divorce decree reflects that they had one child. In the divorce decree, the trial court ordered Theodore to pay child support of $429.76 per month, beginning February 1, 1999, and continuing until the child reached eighteen years of age. In October 2014, about five months after the child's eighteenth birthday, Crystal filed a motion for enforcement of the child support order contained in the divorce decree. In her motion, Crystal asserted that Theodore violated the trial court's child support order and owed arrearages of $79,075.84, plus interest of $38,107.30, for a total of $117,183.14. Crystal sought confirmation of, and judgment for, the arrearages plus interest.

In connection with Crystal's motion for enforcement, the trial court signed a show cause order to appear, requiring that Theodore appear in court on June 3, 2015, and respond to Crystal's motion for enforcement. A process server personally served Theodore with the motion and show cause order on May 20, 2015, at Theodore's Oregon address. Theodore filed a pro se general denial on June 2, 2015. He failed to appear at the June 3, 2015 hearing, and Crystal introduced evidence of the arrearages. On June 15, 2015, the trial court signed a default judgment against Theodore for child support arrearages, including accrued interest.

Theodore filed a motion to set aside the default judgment in July. After a hearing, the trial court denied the motion. This appeal timely followed.

Analysis

In a single issue, Theodore contends he was deprived of due process of law because he never received notice of the June 3, 2015 hearing, despite his timely filing of an answer. We disagree.

Citing Texas Rule of Civil Procedure 245, Theodore asserts that the trial court was required to provide "reasonable notice of not less than forty-five days" before conducting a hearing on Crystal's motion for enforcement. He further relies on post-answer default judgment cases to support his claim of a due process violation. *See, e.g.*, *LBL Oil Co. v. Int'l Power Servs., Inc.*, 777 S.W.2d 390, 390-91 (Tex. 1989) ("Once a defendant has made an appearance in a cause, he is entitled to notice of the trial setting as a matter of due process. . . .").

Contrary to Theodore's argument, child support enforcement proceedings are governed by the Texas Family Code. *See* Tex. Fam. Code § 157.001(c) ("The court may enforce a temporary or final order for child support as provided in this chapter."); *see also* Tex. R. Civ. P. 308a. Specifically, Texas Family Code section 157.062 addresses the notice and hearing requirements for a motion for enforcement. *See* Tex. Fam. Code § 157.062; *In re Hathcox*, 981 S.W.2d 422, 425 (Tex. App.—Texarkana 1998, no pet.) (determining that section 157.062, rather than the Rules of Civil Procedure, govern the notice and hearing requirements for motions to enforce).

Under section 157.062, if a motion for enforcement of a child support order is joined with another claim, the Texas Rules of Civil Procedure applicable to the filing of an original lawsuit apply and a hearing may not be "held before 10 a.m. on the first Monday after the 20th day after the date of service." *See* Tex. Fam. Code § 157.062(d); *see also Hathcox*, 981 S.W.2d at 425. Conversely, if the motion for enforcement is *not* joined with another claim, section 157.062 requires

only that a respondent be personally served with a copy of the motion and notice "not later than the 10th day before the date of the hearing." Tex. Fam. Code § 157.062(c).

In this case, Crystal's motion for enforcement was not joined with another claim; thus section 157.062 mandated personal service on Theodore at least ten days before the hearing. *Id.* The record reflects that Theodore was personally served with the trial court's show cause order to appear, as well as Crystal's motion to enforce, on May 20, 2015, more than ten days before the date of the June 3, 2015 hearing.[1] *Cf. Ex parte Davis*, 344 S.W.2d 153, 155 (Tex. 1961) (orig. proceeding) ("[T]he holding of the hearing in less than ten days after service of notice may constitute a denial of due process.").

Further, the record shows that Crystal complied with Texas Rule of Civil Procedure 308a. "When the court has ordered child support or possession of or access to a child and it is claimed that the order has been violated, the person claiming that a violation has occurred shall make this known to the court." Tex. R. Civ. P. 308a. Crystal did precisely what rule 308a required: she notified the court of continuing, exclusive jurisdiction of her claim that Theodore had violated the trial court's 1999 child support order via her motion to enforce. *See* Tex. Fam. Code § 157.001(d).

Despite receiving the show cause order to appear and motion to enforce fourteen days before the hearing, Theodore failed to appear at the June 3 enforcement hearing. *Cf. Davis*, 344 S.W.2d at 155-56 ("The person charged may not ignore the show cause order as he might ignore citation in a civil suit. He is commanded by the court to appear, and if he ignores the command he may be

[1] Theodore acknowledged in an affidavit attached to his motion to set aside the default judgment that he received the motion for enforcement and order to appear.

brought in under a capias."). And when, as here, a party personally served with the statutorily required notice to appear at an enforcement hearing does not appear "at the designated time, place, and date to respond to a motion for enforcement of an existing court order," the court "may, on proper proof, grant default judgment for the relief sought." Tex. Fam. Code § 157.066.

In sum, Theodore received more than the statutorily required notice of the enforcement hearing. *Id.* § 157.062(c). The trial court ordered Theodore to appear at this hearing, yet Theodore failed to appear. *Cf. Davis*, 344 S.W.2d at 155-56. After the evidentiary hearing on Crystal's motion to enforce, the trial court properly signed a default judgment awarding Crystal arrearages, plus interest, pursuant to the original child support order. Tex. Fam. Code § 157.066. Finally, the authority upon which Theodore relies for the proposition that he was entitled to forty-five days' notice of the hearing is inapplicable to the motion for enforcement and show cause order to appear at issue in this case. *See Hathcox*, 981 S.W.2d at 425.

Conclusion

Under these circumstances, Theodore has not established that his due process rights were violated. We therefore overrule his sole appellate issue, and affirm the trial court's judgment.

/s/ Kevin Jewell
Justice

Panel consists of Justices Jamison, Wise, and Jewell.