



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-15-00619-CV

IN THE INTEREST OF R.J.P. and A.R.P.

From the 79th Judicial District Court, Jim Wells County, Texas
Trial Court No. 00-01-38161-CV
Honorable Michael V. Garcia, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice
Jason Pulliam, Justice

Delivered and Filed: December 30, 2016

AFFIRMED

This case stems from the trial court's order confirming support arrearages. The trial court ordered A.P.'s monthly payments reduced from \$462.00 to \$285.00. On appeal, S.R.T. contends the trial court erred in excluding critical evidence and failing to require A.P to submit financial records of his monthly income; she also contends the evidence is legally and factually insufficient to support the trial court's findings regarding A.P.'s monthly income. We affirm the trial court's order.

FACTUAL AND PROCEDURAL BACKGROUND

On July 1, 2015, the Texas Attorney General filed a motion in Jim Wells County District Court to confirm A.P.'s child support and medical support arrearage. At the time of the hearing,

the children in question were over the age of eighteen years old and all monies owed were arrearages.

On September 21, 2015, the matter was called for trial. A.P. testified, without objection, that his monthly income was \$925.00 and the Attorney General was withholding \$462.00 per month, leaving him with “nothing to live on, just paying bills.” A.P. requested the trial court lower the monthly payments to \$100.00.

The only other witness called to testify was S.R.T. She requested the trial court require A.P. to continue the payments as previously ordered. S.R.T. testified that she believed A.P. was capable of making the payments each month. She explained that “[h]e’s been working under the table for most of the year” to avoid making the payments. A.P. denied the allegation.

The State did not make a recommendation on monthly payments, but requested the trial court set the amount no lower than “Interest plus \$50 each month.” In other words, the State requested the trial court set the minimum payment at \$85.00 per month. The trial court ordered A.P. to make payments of \$285.00 per month; court costs for the proceeding were ordered to be entered into A.P.’s payment plan. S.R.T. appealed.

We address each of S.R.T.’s issues below.

EXCLUSION OF EVIDENCE AND A.P.’S FAILURE TO SUBMIT FINANCIAL RECORDS

In her first issue on appeal, S.R.T. contends the trial court erred in excluding critical evidence. S.R.T., however, does not identify what specific evidence was excluded by the trial court. Moreover, a review of the reporter’s record, does not reveal any evidence offered by either party that was excluded by the trial court.

This court “review[s] and evaluate[s] pro se pleadings with liberality and patience, but otherwise appl[ies] the same standards applicable to pleadings drafted by lawyers.” *Champion v. Robinson*, 392 S.W.3d 118, 128 (Tex. App.—Texarkana 2012, pet. denied) (citing *Foster v.*

Williams, 74 S.W.3d 200, 202 n.1 (Tex. App.—Texarkana 2002, pet. denied)). This issue is not adequately briefed under Texas Rule of Appellate Procedure 38.1. See TEX. R. APP. P. 38.1(i) (“The brief must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record.”); *Marx v. FDP, LP*, 474 S.W.3d 368, 375 (Tex. App.—San Antonio 2015, pet. denied) (briefing waiver). Accordingly, we do not address this issue.

In her third issue, S.R.T. asserts the trial court erred in reducing A.P.’s monthly payments without requiring A.P. to submit financial records. Our review of the record does not show this particular argument was brought before the trial court and S.R.T. does not direct our attention to any such argument before the trial court. Because S.R.T. did not raise this issue before the trial court, she failed to preserve the error for appellate review. See TEX. R. APP. P. 33.1 (requiring record show a “complaint was made to the trial court by a timely request, objection, or motion”); *In re T.K.D-H.*, 439 S.W.3d 473, 479 (Tex. App.—San Antonio 2014, no pet.) (failure to preserve error). Accordingly, S.R.T. waived appellate review on this issue.

SUFFICIENCY OF THE EVIDENCE

A. Standard of Review

“A court’s order of child support will not be disturbed on appeal unless the complaining party can show a clear abuse of discretion.” *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990) (per curiam); accord *In re M.P.M.*, 161 S.W.3d 650, 654 (Tex. App.—San Antonio 2005, no pet.); see also *Moreno v. Perez*, 363 S.W.3d 725, 735 (Tex. App.—Houston [1st Dist.] 2011, no pet.). A trial court’s ruling is an abuse of discretion if it is arbitrary, unreasonable, or without reference to any guiding rules or principles. See *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985).

“Under the abuse of discretion standard, legal and factual sufficiency of the evidence are not independent grounds for asserting error.” *In re M.P.M.*, 161 S.W.3d at 654; accord *In re*

T.K.D-H., 439 S.W.3d at 481. “When an appellant challenges the legal and factual sufficiency of the evidence in cases where the proper standard is abuse of discretion, we engage in a two-prong analysis.” *In re T.K.D-H.*, 439 S.W.3d at 481; *accord Moreno*, 363 S.W.3d at 735. We consider “(1) whether the trial court had sufficient information upon which to exercise its discretion; and (2) whether the trial court erred in its application of discretion.” *In re T.K.D-H.*, 439 S.W.3d at 481; *Moreno*, 363 S.W.3d at 735.

If “the trial court does not file findings of fact and conclusions of law, we imply all necessary findings of fact to support the trial court’s order.” *Lesem v. Mouradian*, 445 S.W.3d 366, 373 (Tex. App.—Houston [1st Dist.] 2013, no pet.); *accord Worford*, 801 S.W.2d at 109; *In re L.L.*, 341 S.W.3d 22, 24 (Tex. App.—San Antonio 2010, no pet.).

In considering whether the trial court had legally sufficient information to support an adverse finding on which the challenger did not have the burden of proof, we consider all of the evidence in the light most favorable to the implied finding, “credit[ing] favorable evidence if [a] reasonable [factfinder] could, and disregard[ing] contrary evidence unless [a] reasonable [factfinder] could not.” *City of Keller*, 168 S.W.3d at 827; *accord In re M.P.M.*, 161 S.W.3d at 654. If there is some evidence to support the implied finding, the evidence is legally sufficient. *In re M.P.M.*, 161 S.W.3d at 654; *Moreno*, 363 S.W.3d at 735.

In considering whether the trial court had factually sufficient information to support an adverse finding on which the challenger did not have the burden of proof, we consider all the evidence, and we “will sustain a factual sufficiency challenge only if we conclude that the evidence supporting the finding is so weak that the [implied] finding is clearly wrong and manifestly unjust.” *In re M.P.M.*, 161 S.W.3d at 655 (citing *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986) (per curiam)); *accord Lesem*, 445 S.W.3d at 373.

B. Arguments of the Parties

In her second issue on appeal, S.R.T. contends the evidence is factually insufficient to support the trial court's reduction of A.R.'s monthly arrearage payments from \$462.00 to \$235.00.

C. Texas Family Code Section 158.009

The Texas Family Code restricts any employment withholding order in excess of 50% of the obligor's "disposable earnings." Specifically, section 158.009 provides as follows:

An order or writ of withholding shall direct that any employer of the obligor withhold from the obligor's disposable earnings the amount specified up to a maximum amount of 50 percent of the obligor's disposable earnings.

TEX. FAM. CODE ANN. § 158.009 (West 2014).

D. Analysis

A.P. testified that his only source of income was monthly Social Security payments of \$925.00. Although S.R.T. asserted A.P. was earning additional money "under the table," she offered no proof of such. The question of A.P.'s monthly income was a question of fact to be determined by the factfinder.

As the factfinder, the trial court is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *See City of Keller*, 168 S.W.3d at 819. The trial court may believe or disbelieve the testimony of a witness, in whole or in part, and it "may resolve inconsistencies in any witness's testimony." *Dwairy v. Lopez*, 243 S.W.3d 710, 713 (Tex. App.—San Antonio 2007, no pet.). We may not pass upon the credibility of the witnesses, or substitute our judgment for that of the trial court, "even if the evidence would clearly support a different result." *Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402, 407 (Tex. 1998).

In finding that A.P.'s monthly income is \$925.00, the trial court could have reasonably believed the testimony of A.P. and disbelieved the testimony of S.R.T. *See Dwairy*, 243 S.W.3d at 713. At the time of the hearing, A.P. was paying \$462.00 per month in arrearages. The trial

court was within its discretion to award any reasonable amount, not to exceed 50% of A.P.'s disposable earnings. *See* TEX. FAM. CODE ANN. § 158.009; *Ayala v. Ayala*, 378 S.W.3d 721, 734 (Tex. App.—Houston [1st Dist.] 2011, no pet.). As the State explains, the trial court essentially split the monthly payments between the \$100.00 requested by A.P. and the \$462.00 requested by S.R.T.

After a review of the record, and considering all the evidence supporting and contradicting the trial court's findings, we conclude the trial court had legally and factually sufficient information on which to exercise its discretion and it acted within its discretion when it determined A.P.'s monthly income and set the monthly arrears payment amount. *See In re T.K.D.H.*, 439 S.W.3d at 481; *Moreno*, 363 S.W.3d at 735. Accordingly, we overrule S.R.T.'s final issue on appeal.

Having overruled all of S.R.T.'s issues on appeal, we affirm the trial court's order.

Patricia O. Alvarez, Justice