



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-16-00105-CV

IN THE INTEREST OF A.M.W., a Child

From the 57th Judicial District Court, Bexar County, Texas
Trial Court No. 1995EM501946
The Honorable Nick Catoe, Jr., Judge Presiding

Opinion by: Rebeca C. Martinez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: May 24, 2017

AFFIRMED

Jerry Weatherspoon, Jr. appeals from the trial court's "Order Foreclosing Child Support Lien." We affirm the judgment of the trial court.

BACKGROUND

Weatherspoon's parentage of A.M.W. was established by order signed on May 16, 1995. In the same order, the trial court entered a judgment against Weatherspoon in favor of the Office of the Attorney General (OAG) in the amount of \$2,080 with interest at a rate of 12% per year. At the time, Weatherspoon was incarcerated. To satisfy the retroactive child support obligation, monthly payments in the amount of \$35 were ordered to commence on the 30th day after Weatherspoon's release from incarceration. Weatherspoon was also ordered to pay current support in the amount of \$130 per month to commence on the 30th day after his release.

Weatherspoon remained incarcerated for 17 years. At the time of his release, A.M.W. was emancipated and thus no current support obligation ever commenced. Weatherspoon was released from incarceration for approximately two years, during which time he made payments totaling \$4,866.08 on the arrearage.

On June 16, 2015, after Weatherspoon was re-incarcerated, the OAG notified Weatherspoon that it had filed a lien against his inmate trust account and that a foreclosure action may be initiated. On August 13, 2015, the OAG filed a petition to foreclose the lien. A hearing was held on February 11, 2016; Weatherspoon participated by telephone. At the hearing, Weatherspoon admitted that he owed the arrearage, but claimed that the May 16, 1995 order excused him from paying on the arrearage while incarcerated. At the close of the hearing, the trial court granted the OAG's petition to foreclose on the lien. The trial court subsequently signed "Order Foreclosing Child Support Lien" confirming an arrearage in the amount of \$1,653.28 as of February 10, 2016 and granting judgment against Weatherspoon and in favor of the OAG in the amount of \$1,653.28 with interest. The trial court also ordered Weatherspoon to make monthly payments of \$35 beginning March 1, 2016. Weatherspoon timely appealed.

DISCUSSION

Construing his issues on appeal liberally, Weatherspoon appears to contend that: (1) the interest rate on the arrearage should be reduced from 12% to 6% in accordance with section 157.265 of the Family Code; (2) the trial court erred in failing to file findings of fact and conclusions of law; and (3) he should not be ordered to make payments on the arrearage while incarcerated.

Before January 2002, the interest on a cumulative money judgment for child support and arrearages was twelve percent simple interest. *See* Act of May 6, 1993, 73rd Leg., R.S., ch. 150, §§ 1, 3, 1993 Tex. Gen. Laws 302, 302 (amended 1995, 1999, 2001 & 2005). In 2001, the

Legislature amended the pertinent statute, Family Code section 157.265, with an effective date of January 1, 2002.¹ *See* TEX. FAM. CODE ANN. § 157.265 (West 2014). This amendment reduced the interest on child support from twelve percent to six percent. *See id.* The effective date language of the 2001 statute provided that the new interest rate applied to unpaid child support that has not been judicially confirmed and reduced to judgment. *See id.* The Texas Supreme Court has held that the effective date language of the 2001 amendment to section 157.265, when read in its entirety, does *not* require retroactive application of the interest rate. *In re M.C.C.*, 187 S.W.3d 383, 385 (Tex. 2006). Because Weatherspoon was ordered to pay the arrearage on May 16, 1995, and because section 157.265 does not apply retroactively, we cannot agree that the trial court erred in continuing interest at twelve percent. We overrule Weatherspoon’s first issue.

Weatherspoon next asserts that the trial court abused its discretion in failing to file findings of fact and conclusions of law pursuant to his request. *See* TEX. R. CIV. P. 297. However, Rule 297 requires not only an initial request for findings of fact and conclusions of law, but also a “Notice of Past Due Findings of Fact and Conclusions of Law” if the trial court fails to timely file the requested findings and conclusions. *See id.* The record does not reflect that Weatherspoon filed this past due “reminder.” Thus, he has waived his right to complain of the error on appeal. *See Pierson v. GFH Fin. Servs. Corp.*, 829 S.W.2d 311, 314 (Tex. App.—Austin 1992, no writ). We accordingly overrule his second issue.

¹ The effective date language provides:

- (a) This Act takes effect January 1, 2002.
- (b) The change in law made by this Act applies only to:
 - (1) a child support payment that becomes due on or after the effective date of this Act; and
 - (2) unpaid child support that became due before the effective date of this Act and for which a court has not confirmed the amount of arrearages and rendered a money judgment.
- (c) A money judgment for child support rendered before the effective date of this Act is governed by the law in effect on the date the judgment was rendered, and the former law is continued in effect for that purpose.

TEX. FAM. CODE ANN. § 157.265 (“Historical and Statutory Notes”).

Finally, Weatherspoon argues that he is not required to make payments on the arrearage while incarcerated and thus the trial court erred in granting the OAG's request to foreclose the child support lien. The May 16, 1995 order provides that the retroactive child support payments shall commence 30 days after Weatherspoon's release from incarceration. Weatherspoon was released from incarceration in 2012 and made payments for the next two years until he was again incarcerated. The 1995 order does not provide that payments shall be abated or suspended upon re-incarceration. Thus, the trial court did not err in ordering the child support lien foreclosed. We overrule Weatherspoon's final issue on appeal.

CONCLUSION

Having overruled all of Weatherspoon's issues on appeal, we affirm the judgment of the trial court.

Rebeca C. Martinez, Justice