Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00239-CV

IN THE INTEREST OF J.D., a Child

From the 408th Judicial District Court, Bexar County, Texas
Trial Court No. 2017CI17644
Honorable Michael E. Mery, Judge Presiding

Opinion by: Luz Elena D. Chapa, Justice

Sitting: Luz Elena D. Chapa, Justice
Beth Watkins, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: August 12, 2020

DISMISSED AS MOOT IN PART, AFFIRMED IN PART

This is an appeal from the child support and conservatorship provisions of a final order in a divorce action and suit affecting the parent–child relationship (SAPCR). Because the child, J.D., has turned eighteen, we dismiss the issues relating to conservatorship as moot. We affirm the trial court's order requiring appellant to pay child support.

BACKGROUND

In September and October 2017, Darrell Darden and his wife, Debora, filed cross-petitions for divorce. Each alleged they had one child together, J.D., who was born in September 2001. Darrell alleged he expected the parties to reach an agreement as to conservatorship, and generally

requested that the trial court determine the issues of conservatorship, possession, access, and support. Debora requested that the court appoint the parties as J.D.'s joint managing conservators.

The case proceeded to a bench trial on November 19, 2018. Before the admission of any evidence, the parties informed the court they had reached an agreement regarding conservatorship. Debora stated she agreed to the proposed conservatorship orders, but also stated she had "no choice." The agreement was read into the record. The trial court ruled the agreement would become the order of the court. After hearing testimony from both Debora and Darrell, the trial court found Debora at fault, ordered "a 55-45 split" of the community property, and recessed to give the parties additional time to provide a final inventory and appraisement.

The trial resumed on December 14, 2018, by which time Debora retained new counsel. The trial court granted Debora's request to substitute counsel and sua sponte ruled not to reopen the evidence. Several exhibits that had been offered and admitted into evidence, including Darrell's requests for admissions from Debora, were withdrawn. The trial court ruled the parties were divorced and granted Debora's request to change her name.

On January 4, 2019, Darrell filed a "motion to sign" a final order. On January 15, 2019, Debora filed a "motion to reopen evidence and reconsider judgment or motion for new trial." Darrell's motion was heard on January 18, 2019. The trial court declined to consider or hear Debora's motion because the trial court had previously ruled it was not reopening the evidence and had denied Debora's request to set her motion for a hearing. The trial court signed the final order, which among other matters required Debora to pay $400 in child support each month and prohibited her from having contact with J.D. until J.D. turned eighteen years old. Debora filed a timely notice of appeal.

On appeal, Debora does not challenge the divorce or division of the property. She challenges only the provisions of the final order regarding child support and conservatorship of J.D. We begin by considering Debora's issues regarding conservatorship.

CONSERVATORSHIP

"A controversy must exist between the parties at every stage of the legal proceedings, including appeal." *In re N.J.D.*, No. 04-13-00293-CV, 2014 WL 555915, at *1 (Tex. App.—San Antonio Feb. 12, 2014, pet. denied) (mem. op.) (per curiam). When a child turns eighteen years old, issues of conservatorship become moot. *See id.*; *see also Overturf v. Garcia*, No. 03-18-00777-CV, 2019 WL 6646690, at *1 (Tex. App.—Austin Dec. 6, 2019, no pet.) (mem. op.) ("Because [the child] recently reached the age of majority, there is no longer a live controversy, rendering [the] appeal moot."); *Ngo v. Ngo*, 133 S.W.3d 688, 692 (Tex. App.—Corpus Christi 2003, no pet.) (holding the exceptions to the mootness doctrine generally do not apply to conservatorship issues).

Debora's brief primarily addresses the "no contact" order prohibiting her from communicating with J.D. while J.D. "is under the age of eighteen." However, Debora's brief more broadly challenges "all issues regarding the child," and seeks a reversal and remand for a new trial. J.D. was born in September 2001, and turned eighteen years old in September 2019. Because J.D. is now eighteen years old, the no contact order is no longer in effect and all other conservatorship issues in this appeal have become moot. *See Overturf*, 2019 WL 6646690, at *1; *N.J.D.*, 2014 WL 555915, at *1, 2; *Ngo*, 133 S.W.3d at 692. We therefore dismiss Debora's issues relating to conservatorship as moot.

CHILD SUPPORT

Debora also challenges the part of the final order requiring her to pay child support. She argues: (1) she never agreed to pay child support; (2) alternatively, she withdrew her consent to the SAPCR provisions of the final order; and (3) there is no evidence to support the order requiring

her to pay child support because there is no evidence "regarding income or net resources." We will assume without deciding that Debora never agreed to pay child support or withdrew her agreement before the trial court rendered judgment, and consider whether the evidence supports the child support order.

"We review a trial court's decisions pertaining to . . . child support for abuse of discretion." *Garcia v. Benavides*, No. 04-19-00451-CV, 2020 WL 214758, at *2 (Tex. App.—San Antonio Jan. 15, 2020, no pet. h.) (mem. op.). "The trial court abuses its discretion . . . by rendering a decision without sufficient supporting evidence." *Id.* "While the trial court has wide discretion in fixing the amount of child support payments and while each case must stand on its own facts, the determination of that amount must be supported by evidence that the parent obligated for child support is able to pay, and can pay, the amount specified in the order." *In re J.M.*, 585 S.W.2d 854, 856 (Tex. Civ. App.—San Antonio 1979, no writ).

The amount of child support specified in the order was $400 a month for ten months; starting in December 2018 and ending in September 2019, when J.D. turned eighteen. Although there was no witness testimony regarding Debora's ability to pay or net resources, the parties agreed to submit inventories of their marital property to the court. An inventory and other exhibits were withdrawn as evidence, but Darrell's counsel discussed the inventory, stating it showed the value of the community estate was $319,147.12. Debora was to be awarded 45% of the community estate. The parties' attorneys discussed and disputed the parties' finances in the trial court, and neither side objected to the trial court considering the information the attorneys provided. *See Banda v. Garcia*, 955 S.W.2d 270, 272 Tex. (1997) (per curiam) ("Normally, an attorney's statements must be under oath to be considered evidence . . . [but] the opponent of the testimony can waive the oath requirement by failing to object when the opponent knows or should know that

an objection is necessary."). On this record, we cannot say the trial court abused its discretion by ordering Debora to pay child support of $400 for ten months.

CONCLUSION

We dismiss Debora's issues regarding conservatorship and affirm the trial court's order requiring her to pay child support. We do not disturb the unchallenged parts of the final order.

Luz Elena D. Chapa, Justice