Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00094-CV

Roger Scott **LADWIG** and Wayne Ramsay,
Appellants

v.

Theresa Marie **GRAF**,
Appellee

From the 438th Judicial District Court, Bexar County, Texas
Trial Court No. 2019-CI-15269
Honorable Rosie Alvarado, Judge Presiding

Opinion by: Beth Watkins, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Luz Elena D. Chapa, Justice
Beth Watkins, Justice

Delivered and Filed: December 2, 2020

AFFIRMED

Appellants Roger Scott Ladwig and Wayne Ramsey challenge the trial court's rulings awarding appellee Theresa Marie Graf child and spousal support arrearages and attorney's fees. We affirm the trial court's orders.

BACKGROUND

Ladwig and Graf divorced in Minnesota in 2004, and a Minnesota support order required Ladwig to pay Graf monthly child and spousal support payments. On July 31, 2019, Graf filed a request for registration and enforcement of the support order in Bexar County pursuant to the

Uniform Interstate Family Support Act ("UIFSA"). The request included Graf's verification that as of July 30, 2019, Ladwig owed her $60,238.71 in child support arrearages and $156,350.79 in spousal support arrearages. Although not in the record on appeal, both parties agree Graf filed a Notice of Application for Judicial Writ of Withholding regarding the arrearages.

On August 13, 2019, Ladwig received Graf's notice, and on August 21, 2019, a process server served Ladwig with Graf's request for registration and enforcement of the support order. On August 26, 2019, Ladwig filed a pro se Proposed Motion to Stay Issuance and Delivery of Judicial Writ of Withholding, contesting the arrearage amounts. At a November 14, 2019 hearing presided over by Judge Rosie Alvarado, Graf argued Ladwig failed to timely request a hearing to contest the registration of the support order as required by UIFSA, and therefore, the support order must be confirmed by operation of law. Ladwig, who appeared pro se, argued he timely filed a motion to stay contesting the arrearage amounts. The trial court concluded Ladwig waived his right to contest the support order because he failed to timely request a hearing. In its Order Registering Judgment Under UIFSA and on Arrears, the court confirmed the support order and awarded Graf child and spousal support arrearages in the amounts she sought as well as attorney's fees.

Ladwig, represented by attorney Wayne Ramsey, filed a motion for new trial and argued Graf's action was barred by the Minnesota and Texas statutes of limitations and the award of support arrearages and attorney's fees to Graf violated his constitutional rights. Ladwig also filed a motion to recuse Judge Alvarado based on a campaign contribution she received from Graf's attorney. Graf filed a response and request for sanctions and reasonable attorney's fees, arguing Ladwig's recusal motion was not verified and groundless. After a hearing, Presiding Administrative Judge Sid Harle denied Ladwig's recusal motion and awarded trial and conditional appellate attorney's fees as sanctions against Ladwig's attorney—Ramsey. Judge Alvarado then

heard and denied Ladwig's motion for new trial. Ladwig now appeals the trial court's orders confirming the support order and denying his motion for new trial. Ladwig and Ramsey also appeal the portion of the trial court's order awarding attorney's fees as sanctions against Ramsey. They do not appeal the portion of the order denying Ladwig's recusal motion.

ANALYSIS

Order Registering Judgment Under UIFSA and On Arrears

In multiple issues, Ladwig challenges the trial court's Order Registering Judgment Under UIFSA and On Arrears. He first argues the trial court erred by confirming the support order. According to Ladwig, he did not waive his right to contest the support order because the trial court had a duty to set a hearing on his motion to stay enforcement of the support order and allow him to present defenses pursuant to section 158.309 of the Texas Family Code ("the Code"). As defenses, Ladwig argues Graf's request for child and spousal support is time-barred under Minnesota and Texas law and constitutes an unreasonable seizure.

Graf contends the trial court did not err because UIFSA required the court to confirm the support order as a matter of law in the absence of a timely request for a hearing to contest its validity or enforcement. Graf argues Ladwig was required to request a hearing within twenty days after receiving notice of Graf's request to register the support order, and Ladwig's motion to stay was not a proper request for a hearing. Graf further asserts Ladwig waived his defenses by not timely requesting a hearing.

Standard of Review

We generally review a trial court's order regarding child and spousal support for an abuse of discretion. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990) (child support); *Wiedenfeld v. Markgraf*, 534 S.W.3d 14, 18 (Tex. App.—San Antonio 2017, no pet.) (spousal support). Under

this standard, we must determine whether the court acted arbitrarily or unreasonably without any reference to any guiding principles. *Worford*, 801 S.W.2d at 109; *Wiedenfeld*, 534 S.W.3d at 18.

When, as here, the issue involves statutory construction, we review that issue de novo. *Molinet v. Kimbrell*, 356 S.W.3d 407, 411 (Tex. 2011). Our primary objective is to give effect to the Legislature's intent by applying the plain meaning of the statute's text unless a different meaning is apparent from the context or the plain meaning would lead to absurd results. *Id.*

UIFSA

UIFSA, codified in Chapter 159 of the Code, provides that a party may register an out-of-state support order in Texas for enforcement. TEX. FAM. CODE ANN. § 159.601; *Kendall v. Kendall*, 340 S.W.3d 483, 495 (Tex. App.—Houston [1st Dist.] 2011, no pet.). Registration of another state's support order occurs when the registering party files the order with Texas's registering tribunal, which enforces the order as if a Texas court originally issued it. TEX. FAM. CODE § 159.603. A nonregistering party seeking to contest the enforcement of the out-of-state support order must request a hearing within twenty days of notice of the registration. *Id*. §§ 159.605(b)(2), 159.606(a). If the nonregistering party does not contest the enforcement of the out-of-state order in a timely manner, "the order is confirmed by operation of law." TEX. FAM. CODE § 159.606(b). If the nonregistering party timely requests a hearing, then the trial court shall schedule the hearing, and the nonregistering party bears the burden of proving one or more of eight enumerated defenses. *Id*. §§ 159.606(c), 159.607(a).

Application

To contest the enforcement of the order, Ladwig was required to request a hearing within twenty days of the date he received notice of Graf's request for registration and enforcement of the support order. TEX. FAM. CODE ANN. §§ 159.605(b)(2), 159.606(a). Ladwig did not request a hearing. Therefore, the trial court was required to confirm the support order and award arrearages

to Graf. *See* TEX. FAM. CODE § 159.606(b); *Worford*, 801 S.W.2d at 109; *Wiedenfeld*, 534 S.W.3d at 18.

Ladwig, however, contends he was not required to request a hearing because he filed a motion to stay enforcement of the order, and the filing of that motion shifted the burden to the trial court to set a hearing on his motion within thirty days under section 158.309 of the Code. For support, Ladwig relies on *In re R.G.* and *In re D.W.G.*, in which this court recognized section 158.309(a) imposes a duty on the trial court to set a hearing within thirty days when a party files a motion to stay. *In re D.W.G.*, 391 S.W.3d 154, 164 (Tex. App.—San Antonio 2012, no pet.); *In re R.G.*, 362 S.W.3d 118, 121–23 (Tex. App.—San Antonio 2011, pet. denied); *see also* TEX. FAM. CODE ANN. § 158.309(a) (providing "the court shall set a hearing on the motion" if a motion to stay is filed). Neither of those cases involved an out-of-state support order, so UIFSA did not apply. Since this is a Minnesota support order, the child support withholding requirements codified in Chapter 159's UIFSA—and not the child support withholding provisions that govern Texas support orders in Chapter 158—control. TEX. FAM. CODE ANN. 159.001 (providing that Chapter 159 controls if it conflicts with another Texas statute or law); *In re B.C.*, 52 S.W.3d 926, 928 (Tex. App.—Beaumont 2001, no pet.).

Here, the plain language of UIFSA expressly sets out the procedures to contest the validity or enforcement of an out-of-state support order, specifying that "[a] nonregistering party seeking to contest the validity or enforcement of a registered support order in this state shall request a hearing" within twenty days after receiving notice of the registered order. TEX. FAM. CODE §§ 159.605(b)(2), 159.606(a); *Molinet*, 356 S.W.3d at 411; *In re A.W.D.*, No. 07-12-00329-CV, 2014 WL 3697057, at *2 (Tex. App.—Amarillo July 23, 2014, no pet.) (mem. op.) (concluding plain meaning of UIFSA's contest procedures include requirement to request hearing within 20 days after notice of registration). Since Ladwig failed to timely request a hearing to contest the

enforcement of the support order, we hold the trial court did not err by confirming the order and awarding arrearages.[1] *See* TEX. FAM. CODE § 159.606(b).

Limitations

We now turn to Ladwig's third and fourth assertions that Graf's request for child and spousal support is barred by the statute of limitations under Minnesota and Texas law. "[S]ection 159.606 explicitly ties the assertion of defenses under section 159.607 to the contest procedures, including the requirement to request a hearing within [twenty] days after notice of registration." *In re A.W.D.*, 2014 WL 3697057, at *2; *see* TEX. FAM. CODE §§ 159.606(c), 159.607(a). Accordingly, Ladwig's failure to comply with UIFSA's requirement that he request a hearing within twenty days precluded him from raising a limitations defense. *See* TEX. FAM. CODE §§ 159.606(c), 159.607(a); *In re A.W.D.*, 2014 WL 3697057, at *2 (holding husband's failure to timely request hearing within twenty days precluded him from raising defenses to support order). We therefore overrule Ladwig's arguments concerning his limitations defense.

Unreasonable Seizure

Ladwig also contends the trial court's award of arrearages constitutes an unreasonable seizure in violation of the Fourth Amendment of the U.S. and Texas Constitutions. We conclude these defenses likewise are waived by Ladwig's failure to contest the UIFSA registration by timely requesting a hearing. *See In re A.W.D.*, 2014 WL 3697057, at *2 (holding claim that UIFSA's registration process violates due process was waived by failure to timely request a hearing). Ladwig's seventh issue is overruled.

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[1] To the extent Ladwig argues Graf misled him by providing him with a motion to stay form, we disagree. Section 158.302 of the Code required Graf to include "a suggested form for the motion to stay" with the Notice of Application for Judicial Writ of Withholding. *See* TEX. FAM. CODE ANN. § 158.302(8). Yet, "the plain language of sections 159.602 and 159.609 of the Texas Family Code require a foreign support order be registered in Texas as a prerequisite to enforcement or modification." *Kendall*, 340 S.W.3d at 498. We therefore reject Ladwig's implication that Graf's compliance with section 158.302 excused his own failure to comply with the requirements Chapter 159 imposes on a nonregistering party.

Wage Garnishment and Seizure of Retirement Account

Labeled as his fifth argument, Ladwig argues the trial court's confirmation of the support order conflicts with *Dalton v. Dalton*, which prohibits wage garnishment and seizure of retirement accounts to satisfy spousal support payments. *See* 551 S.W.3d 126 (Tex. 2018). The trial court's order, however, specifically provides only child support arrearages shall be payable through wage withholdings—it makes no reference to retirement accounts and does not order spousal arrearages to be paid by wage garnishment or seizure of Ladwig's retirement account. Ladwig's fifth issue is overruled.

Motion for New Trial

Ladwig also argues the trial court erred when it denied his motion for new trial on the ground that the motion was not verified. According to Ladwig, his motion for new trial was not required to be verified because it was not based on newly discovered evidence. Graf contends, however, the court properly denied Ladwig's motion because it improperly raised arguments that were untimely and waived.

We review a trial court's ruling on a motion for new trial for an abuse of discretion. *Dolgencorp of Tex., Inc. v. Lerma*, 288 S.W.3d 922, 926 (Tex. 2009). Here, Ladwig filed a Motion to Modify Judgment or for New Trial, asserting Graf's request for support arrearages was time barred under Minnesota and Texas law and the trial court's order improperly allowed garnishment of his wages and retirement accounts and violated his constitutional rights. At the motion for new trial hearing, Ladwig admitted his motion was not verified, and the trial court allowed him to present his arguments without introducing any new evidence. After hearing each of Ladwig's arguments, however, the trial court pointed out each of those arguments had been waived since Ladwig failed to timely request a hearing in accordance with UIFSA. It then signed an order denying the motion for new trial without specifying a reason for denying relief. Having determined

above that Ladwig's failure to comply with the timing requirements of UIFSA precluded him from raising defenses, we conclude the trial court did not abuse its discretion in denying the motion for new trial. *See Dolgencorp*, 288 S.W.3d at 926; *In re A.W.D.*, 2014 WL 3697057, at *2.

Attorney's Fees

Finally, Ladwig and Ramsey challenge the trial court's order awarding attorney's fees, including conditional appellate fees, to Graf as sanctions against Ramsey for filing the motion to recuse. They argue such sanctions were improper because the recusal motion was not groundless or made in bad faith since it was supported by case law. Graf contends, however, that since the motion was not supported by *Texas* case law, the trial court acted within its discretion.

Standard of Review and Applicable Law

We review a trial court's imposition of sanctions for an abuse of discretion. *Cire v. Cummings*, 134 S.W.3d 835, 838 (Tex. 2004); *In re T.K.W.*, No. 04-09-00048-CV, 2010 WL 546584, at *4 (Tex. App.—San Antonio Feb. 17, 2010, no pet.) (mem. op.). Whether sanctions constitute an abuse of discretion requires an examination of the entire record. *Herring v. Welborn*, 27 S.W.3d 132, 143 (Tex. App.—San Antonio 2000, pet. denied). "A trial court abuses its discretion in imposing sanctions for frivolous pleadings or motions if the order is based on an erroneous view of the law or a clearly erroneous assessment of the evidence." *Loeffler v. Lytle Indep. Sch. Dist.*, 211 S.W.3d 331, 347–48 (Tex. App.—San Antonio 2006, pet. denied).

Texas Rule of Civil Procedure 13 authorizes a trial court to impose sanctions against an attorney for filing a groundless pleading brought in bad faith or for the purpose of harassment. *In re T.K.W.*, 2010 WL 546584, at *5. A pleading is groundless if it has "no basis in law or fact and [is] not warranted by good faith argument for the extension, modification, or reversal of existing law." TEX. R. CIV. P. 13. A pleading is also groundless if "counsel failed to make an objectively reasonable inquiry into the legal and factual basis of the claims at the time the pleading was filed."

Mann v. Kendall Home Builders Constr. Partners I, Ltd., 464 S.W.3d 84, 92 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

Application

At the recusal hearing, Graf argued Texas courts, including this court, have repeatedly held the mere acceptance of a campaign contribution from a lawyer involved in a case is not a ground for recusal. Ramsey admitted he was unfamiliar with Texas law regarding recusals and campaign contributions and did not have any Texas authority to support his recusal motion. Instead, Ramsey relied on Utah caselaw. Ramsey further admitted he did not have any personal knowledge that Judge Alvarado showed any bias or impartiality at the underlying trial.

When reviewing the entire record, we cannot conclude the trial court imposed sanctions based on an erroneous view of the law or erroneous assessment of the evidence. *See Loeffler*, 211 S.W.3d at 348; *Herring*, 27 S.W.3d at 143. Here, Ramsey admitted the recusal motion was not based on Texas law and he failed to make an objectively reasonable inquiry into the legal or factual basis for his claim. *See* TEX. R. CIV. P. 13; *Elkins v. Stotts-Brown*, 103 S.W.3d 664, 668–69 (Tex. App.—Dallas 2003, no pet.) (stating party acts in bad faith when it does not make reasonable inquiry into facts before filing). Additionally, the award of conditional appellate fees was designed to compensate Graf for the expenses of defending the trial court's award. *See Loeffler*, 211 S.W.3d at 351. Accordingly, the trial court did not abuse its discretion by concluding the recusal motion was groundless and brought in bad faith, and we overrule Ladwig and Ramsey's final issue. *See Cire*, 134 S.W.3d at 838; *In re T.K.W.*, 2010 WL 546584, at *5.

CONCLUSION

We affirm the trial court's orders.

Beth Watkins, Justice