Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00595-CV

IN THE INTEREST OF A.M.G., J.H.G., and A.J.G., Children[1]

From the 63rd Judicial District Court, Val Verde County, Texas
Trial Court No. 24205
Honorable Enrique Fernandez, Judge Presiding

Opinion by: Beth Watkins, Justice

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

Delivered and Filed: November 10, 2021

AFFIRMED

Appellant Cindy Hernandez appeals the trial court's take-nothing judgment in favor of appellee Pedro Garcia. In a single issue on appeal, she argues the trial court erred in finding there was no contract requiring Garcia to pay post-majority support for their children. We affirm the trial court's judgment.

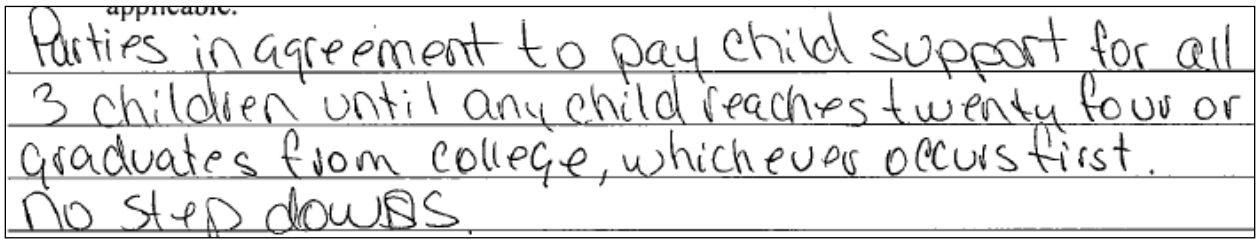
BACKGROUND

When Hernandez and Garcia divorced in 2002, they had three children, A.M.G., J.H.G., and A.J.G. Their original divorce decree ordered Garcia to pay child support and stepped down that obligation as each child turned eighteen. It called for Garcia to pay $200 per month in child

[1] The style of the pleadings, judgment, and notice of appeal in this case identify one of the parties' children as "J.R.H." However, the contents of those documents show that child's correct initials are J.H.G.

support until "the first month following the date of the earliest occurrence of one of the following specified events: (1) any child reaches the age of 18 years . . .; (6) until further order of the Court." Then, it required Garcia to pay $150 per month until the earliest of the same six events. Finally, it ordered Garcia to pay $130 per month until the earliest of the same six events. In 2005, the trial court modified that obligation to $400, then $300, then $200 per month in the same stepped-down manner.

On March 24, 2017, Hernandez and Garcia, both appearing pro se, participated in a "negotiation conference" with a Child Support Review Officer from the Texas Attorney General's Office. At the time, A.M.G. was twenty-one, J.H.G. was twenty, and A.J.G. was seventeen. Hernandez, Garcia, an attorney from the Attorney General's Office, and a Child Support Review Officer signed a Child Support Review Order. A handwritten section on page four of the CSRO provided:



This term appeared to end Garcia's obligation to pay $843 per month in child support as soon as *any child* turned twenty-four or graduated from college. The parties also edited page eight of the CSRO to read:

CURRENT CHILD SUPPORT

PEDRO T GARCIA is ORDERED to pay *CINDY REBECCA HERNANDEZ* current child support of $ ~~1465.00~~ 843.00 each month beginning the 1st day of April, 2017, payable on or before that date and on or before the same day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

1. any child reaches the age of ~~eighteen~~ twenty four years or graduates from ~~high school~~ College, whichever occurs ~~later~~ first, subject to the provisions for support beyond the age of eighteen years set out below;
2. any child marries;
3. any child dies;
4. any child enlists in the armed forces of the United States and begins active service as defined by sections 101 of title 10 of the United States Code; or
5. any child's disabilities are otherwise removed for general purposes.

Thereafter, *PEDRO T GARCIA* is ORDERED to pay *CINDY REBECCA HERNANDEZ* child support of $ ~~1034.00~~ 843.00 each month beginning the same day of the first month following the last month in which support was payable according to the preceding paragraph, payable on or before that date and on or before the same day of each month thereafter until the next occurrence of one of the events specified above for the other/another child.

Thereafter, *PEDRO T GARCIA* is ORDERED to pay *CINDY REBECCA HERNANDEZ* child support of $ 843.00 each month beginning the same day of the first month following the last month in which support was payable according to the preceding paragraph, payable on or before that date and on or before the same day of each month thereafter until the next occurrence of one of the events specified above for the other/another child.

This term appeared to obligate Garcia to pay $843 per month in child support until *the youngest child* turned twenty-four or graduated from college, whichever occurs first. Another preprinted provision on page eight provided:

> If a child is eighteen years of age and has not graduated from highschool, IT IS ORDERED that the obligation to pay child support for that child shall not terminate but shall continue for as long as the child is enrolled:
>
> 1. under chapter 25 of the Texas Education Code in an accredited secondary school in a program leading toward a high school diploma or under section 130.008 of the Education Code in courses for joint high school and junior college credit and is complying with the minimum attendance requirements of subchapter C of chapter 25 of the Education Code, or
> 2. on a full-time basis in a private secondary school in a program leading toward a high school diploma and is complying with the minimum attendance requirements imposed by that school.

This term appeared to obligate Garcia to pay $843 per month in child support until the youngest child turned eighteen and, essentially, graduated from high school. An associate judge signed the CSRO on April 20, 2017, and it became the order of the referring court by operation of law.

In April of 2019, Hernandez filed a motion to enforce and clarify the CSRO. By then, A.M.G. was twenty-three, J.H.G. was twenty-two, and A.J.G. was nineteen. Hernandez alleged Garcia owed $21,075 in child support arrearages and asked the trial court to "clarify or correct" the reference on page eight of the CSRO—requiring Garcia to pay $843 per month until "any child reaches the age of twenty four years or graduates from College"—to read until "[t]he last child reaches the age of twenty-four years or graduates from College." Garcia denied owing arrearages and Hernandez ultimately amended her petition to allege that Garcia "has breached the [CSRO] agreement by failing to pay" as described in the CSRO.

During a one-day bench trial in October of 2020, the trial court took judicial notice of the CSRO, received testimony from both Hernandez and Garcia, and admitted a financial activity report from the Attorney General's Office showing that Garcia owed no child support through August of 2017—the month the youngest child turned eighteen. The trial court signed a take-nothing judgment that found "there is no contract between the parties because there is ambiguity of the terms." In a single issue on appeal, Hernandez argues the trial court erred in finding there was no contract.

ANALYSIS

Standard of Review

In construing a contract, a court must ascertain the true intentions of the parties as expressed in the writing itself. *J.M. Davidson, Inc. v. Webster*, 128 S.W.3d 223, 229 (Tex. 2003). "To achieve this objective, courts should examine and consider *the entire writing* in an effort to harmonize and give effect to *all the provisions* of the contract so that none will be rendered meaningless." *Coker v. Coker*, 650 S.W.2d 391, 393 (Tex. 1983). "If provisions in the contract appear to conflict, they should be harmonized, if possible, to reflect the intentions of the parties." *Henry v. Gonzalez*, 18 S.W.3d 684, 688 (Tex. App.—San Antonio 2000, pet. dism'd by agr.).

"Therefore, we cannot strike down any portion of the contract unless there is an irreconcilable conflict." *Id*. An irreconcilable conflict exists if "one part of the instrument destroys in effect another part." *Woods v. Sims*, 273 S.W.2d 617, 621 (Tex. 1954). Although we "must favor an interpretation that affords some consequence to each part of the instrument so that none of the provisions will be rendered meaningless," *Coker*, 650 S.W.2d at 394, we "need not embrace strained rules of interpretation in order to avoid [a fatal] ambiguity at all costs." *See Tecore, Inc. v. AirWalk Commc'ns, Inc*., 418 S.W.3d 374, 380 (Tex. App.—Dallas 2013, pet. denied). Similarly, "[i]f a contract is not clear and certain as to all essential terms, it will fail for indefiniteness." *Sadeghi v. Gang*, 270 S.W.3d 773, 776 (Tex. App.—Dallas 2008, no pet.). "Although Texas courts favor validating contracts, we may not create a contract where none exists." *Lamajak, Inc. v. Frazin*, 230 S.W.3d 786, 793 (Tex. App.—Dallas 2007, no pet.). "Whether a particular agreement constitutes an enforceable contract is generally a question of law." *Sadeghi*, 270 S.W.3d at 776.

Applicable Law

Absent circumstances not present here, a trial court may order one or both parents to pay child support only "until the child is 18 years of age or until graduation from high school, whichever occurs later. . .." TEX. FAM. CODE ANN. § 154.001(a)(1). Parties "may enter into a written agreement containing provisions for support of the child and for modification of the agreement, including variations from the child support guidelines. . .." TEX. FAM. CODE ANN. § 154.124(a). Such agreements, once made an order of the court, "may be enforced by all remedies available for enforcement of a judgment, including contempt, but are not enforceable as a

contract." *Id.* § 154.124(c).[2] However, section 154.124(c) does not prohibit parties from entering into an agreement to provide post-majority support and enforcing that agreement as a contract. *Bartlett*, 465 S.W.3d at 749–51; *In Interest of B.M.Y.*, No. 05-16-00475-CV, 2017 WL 3275505, at *2 (Tex. App.—Dallas July 26, 2017, no pet.) (mem. op.). "As a rule, parties have the right to contract as they see fit as long as their agreement does not violate the law or public policy." *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 129 (Tex. 2004).

A breach of contract claim is the proper vehicle by which a party may seek reimbursement of post-majority expenses. *Mann v. Propst*, No. 05-19-00432-CV, 2020 WL 1472212, at *7 (Tex. App.—Dallas Mar. 26, 2020, no pet.) (mem. op.); *In Interest of B.M.Y.*, 2017 WL 3275505, at *2–3; *Seabourne v. Seabourne*, 493 S.W.3d 222, 228 (Tex. App.—Texarkana 2016, no pet.); *see also Abrams v. Salinas*, 467 S.W.3d 606, 608, 614 (Tex. App.—San Antonio 2015, no pet.) (applying contract law to interpret provision in agreed divorce decree obligating parents to share equally in daughter's college expenses). To recover on a breach of contract claim, a plaintiff must prove, inter alia, the existence of an enforceable contract. *BoRain Capital, LLC v. Hashmi*, 533 S.W.3d 32, 36 (Tex. App.—San Antonio 2017, pet. denied). Creation of an enforceable contract requires: (1) an offer; (2) acceptance in strict compliance with the terms of the offer; (3) a meeting of the minds; (4) each party's consent to the terms; and (5) execution and delivery of the contract with the intent that it be mutual and binding. *Id.* "Although often treated as a distinct element, meeting of the minds is a component of both offer and acceptance measured by what the parties said and did and not on their subjective state of mind." *MedFinManager, LLC v. Salas*, No. 04-20-00051-CV, 2021 WL 3742681, at *3 (Tex. App.—San Antonio Aug. 25, 2021, no pet. h.) (mem. op.)

[2] Under a previous version of this statute, child support agreements could be enforced by contract only if the agreement itself provided for contractual enforcement. *See Bartlett v. Bartlett*, 465 S.W.3d 745, 751 n.5 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (discussing *Bruni v. Bruni*, 924 S.W.2d 366, 367–68 (Tex. 1996)).

(internal quotation marks omitted). "The parties must agree to the same thing, in the same sense, at the same time." *Id*. (internal quotation marks omitted).

Application

Here, the trial court concluded that irreconcilable ambiguities in the CSRO prevented a contract from being formed. We agree. This unique order did not step down the amount of Garcia's obligation, so he was required to pay $843 per month in child support until the CSRO expired. For that reason, the date the CSRO expired is a material term. But different provisions of the CSRO obligated Garcia to pay $843 per month in child support until:

- any child reaches twenty-four or graduates from college, whichever occurs first; or
- the youngest child reaches twenty-four or graduates from college, whichever occurs first; and
- the youngest child reaches eighteen and, essentially, graduates from high school.

Below, Hernandez asked the trial court to clarify or correct the CSRO to require Garcia to pay child support until the youngest child "reaches the age of twenty-four years or graduates from College, whichever occurs first." She offers no legal argument or authority to support her request to judicially amend a material term in the CSRO. And just as a court may not change the substantive provisions of a child support order via a section 157.421 clarification, a court cannot rewrite a parties' contract or add to or subtract from its language. *URI, Inc. v. Kleberg Cty.*, 543 S.W.3d 755, 770 (Tex. 2018); *see also* TEX. FAM. CODE ANN. §§ 157.421, 157.423.

The absence of agreement to the material terms of the CSRO prevents a court from enforcing it. *See T.O. Stanley Boot Co. v. Bank of El Paso*, 847 S.W.2d 218, 221 (Tex. 1992) ("The material terms of the contract must be agreed upon before a court can enforce the contract."). Here, it is apparent that the parties did not "agree to the same thing, in the same sense, at the same time." *Salas*, 2021 WL 3742681, at *3. For that reason, we conclude that the trial court did not

err when it concluded there was no contract between the parties. We therefore overrule Hernandez's sole issue on appeal.

CONCLUSION

We affirm the trial court's take-nothing judgment.

Beth Watkins, Justice