COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-16-00251-CV

IN THE INTEREST OF G.G., A CHILD

FROM THE 16TH DISTRICT COURT OF DENTON COUNTY
TRIAL COURT NO. 2012-10883-16

MEMORANDUM OPINION[1]

In three issues, Appellant S.G. (Father) appeals from an order holding him in contempt for failing to pay child support, granting Appellee T.G. (Mother) a judgment for arrearages, and suspending commitment. We will affirm.

The trial court signed a final decree of divorce on August 7, 2013, dissolving the marriage between Mother and Father. Among other things, the decree ordered Father to pay Mother monthly child support in the amount of $643.00 beginning on January 1, 2012, approximately nineteen months before the divorce decree was signed. Several years later, Mother filed a motion to

[1]*See* Tex. R. App. P. 47.4.

enforce the support order, seeking to hold Father in contempt for failing to pay child support over the course of numerous months, including from January 2012 to August 2013—the nineteen-month period before the trial court signed the divorce decree. After a hearing, the trial court signed an order on April 19, 2016, (i) holding Father in criminal contempt for failing to comply with his child-support obligation; (ii) ordering him confined in county jail for 180 days for each separate violation; (iii) suspending the confinement and placing Father on community supervision for 120 months, conditioned upon his making monthly arrearage payments; and (iv) awarding Mother a judgment for arrearages in the amount of $20,201.66 plus interest. The trial court held Father in contempt not only for failing to pay child support for certain months after August 2013, but also for each month between January 2012 and August 2013.

In his first issue, Father argues that the April 19, 2016 order is void because the trial court could not have found him in contempt for failing to comply with any purported support obligations before the divorce decree was signed, i.e., from January 2012 to August 2013. Insofar as Father specifically challenges the contempt order, we lack jurisdiction to consider the issue. *See In re A.T.*, No. 02-16-00283-CV, 2016 WL 7010935, at *1 (Tex. App.—Fort Worth Dec. 1, 2016, no pet.) (mem. op.) ("Decisions in contempt proceedings cannot be reviewed on appeal because contempt orders are not appealable, even when appealed along with a judgment that is appealable.") (quoting *In re Office of Attorney Gen. of Tex.*, 215 S.W.3d 913, 915 (Tex. App.—Fort Worth 2007, orig. proceeding)). To

the extent that Father's issue somehow implicates the judgment for arrearages, his argument is unpersuasive. *See In re B.A.T.*, No. 05-10-00593-CV, 2010 WL 3991426, at *1 (Tex. App.—Dallas Oct. 11, 2010, no pet.) (mem. op.) ("Although a party may not challenge a judgment of contempt by direct appeal, a party may appeal a final arrearage order provided the notice of appeal is timely filed.").

The record demonstrates that Father represented himself in the underlying divorce proceeding; that he prepared the divorce decree that the trial court ultimately signed on August 7, 2013, including the provision requiring Father to begin making monthly child support payments in January 2012; and that Father never made any attempt to modify or correct the supposedly erroneous January 2012 date. At the hearing on Mother's enforcement action, the trial court explained,

> First of all, as I explained to both lawyers, the fact that this divorce was handled by the parties pro se, and the fact that a date was included for which child support should start that was prior to the date that the final decree was entered, in and of itself, does not make that invalid.
>
> If it was a mistake, then that is a risk that anyone undertakes if they're going to represent themselves. If a lawyer had handled that, and there was a mistake, I would presume a lawyer would have gotten that corrected. Here we are four years later. It wasn't corrected. It is what the . . . final decree says.

The trial court's statements were spot on. Courts construe orders and judgments under the same rules of interpretation as those applied to other written instruments. *Payless Cashways, Inc. v. Hill*, 139 S.W.3d 793, 795 (Tex. App.—

Dallas 2004, no pet.). If an order is unambiguous, it must be construed in light of the literal meaning of the language used. *Id.*

The divorce decree unambiguously ordered Father to begin paying Mother child support on January 1, 2012. If Father thought the date was erroneous, then he should have taken steps to correct it, but he never did, and seeking to avoid its effect for the first time in a separate enforcement action is akin to launching an impermissible collateral attack against an otherwise valid judgment. *See Akers v. Simpson*, 445 S.W.2d 957, 959 (Tex. 1969) ("A collateral attack on a judgment is an attempt to avoid its binding force in a proceeding not instituted for such purpose."). The trial court had no option but to construe the plain language of the divorce decree as it did. We overrule Father's first issue.

In his second issue, Father argues that in calculating the amount of interest that accrued on the child support arrearages, the trial court should not have included the pre-August 2013 amounts that he failed to pay Mother. Father contends that the trial court should have instead calculated interest to begin accruing as of September 2013. Contrary to the rules of appellate procedure, *see* Tex. R. App. P. 38.1(i), Father includes not one citation to any relevant authority, so we can only assume that his argument is premised upon the same line of reasoning as his first issue. Father's second issue is therefore unpersuasive for the same reason that his first issue is. We overrule Father's second issue.

In his third issue, Father argues that instead of "cut[ting] his testimony short," the trial court should have allowed him to present evidence that he had, in effect, made child support payments by making payments towards a mortgage. The record demonstrates that Father testified after Mother testified. Father's attorney questioned him about pay stubs, deductions from his paycheck, and the divorce decree. On cross-examination, Mother's attorney questioned Father about the dates that he had not paid Mother child support. After Father asked to consult with his attorney, which the trial court permitted, the trial court asked to speak with the attorneys in chambers, and the court went off the record. When the proceedings resumed, the trial court announced its ruling, permitted Mother's counsel to testify about attorney's fees, and ruled on Father's request to appoint an attorney ad litem. There is nothing in the record indicating that the trial court "cut [Father's] testimony short" and prohibited him from testifying about mortgage payments. "It is elementary that, with limited exceptions not material here, an appellate court may not consider matters outside the appellate record." *Carlisle v. Philip Morris, Inc.*, 805 S.W.2d 498, 501 (Tex. App.—Austin 1991, writ denied). We overrule Father's third issue. Insofar as we do not lack jurisdiction, we affirm the trial court's order.

/s/ Bill Meier
BILL MEIER
JUSTICE

PANEL: MEIER, SUDDERTH, and PITTMAN, JJ.

DELIVERED: June 29, 2017