COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-17-00049-CR

DAVID MICHAEL CHURCH — APPELLANT

V.

THE STATE OF TEXAS — STATE

FROM THE 97TH DISTRICT COURT OF ARCHER COUNTY
TRIAL COURT NO. 2015-0024A-CR

MEMORANDUM OPINION[1]

Appellant David Michael Church appeals the trial court's judgment revoking his community supervision, adjudicating him guilty of injuring a child with the intent to cause bodily injury, and sentencing him to ten years' confinement in the penitentiary. In one issue, Church contends the evidence is insufficient to support the trial court's findings that he violated his probation

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

conditions.[2] We overrule Church's issue but modify the judgment and the bill of costs to correctly reflect that the trial court did not assess any fine when pronouncing sentence.

Standard of Review

We review a trial court's determination on a motion to adjudicate in the same manner as on a motion to revoke probation; both are governed by an abuse-of-discretion standard. *See* Tex. Code Crim. Proc. Ann. art. 42A.108(b) (West 2018); *Rickels v. State*, 202 S.W.3d 759, 763 (Tex. Crim. App. 2006); *Cardona v. State*, 665 S.W.2d 492, 493 (Tex. Crim. App. 1984). In a revocation proceeding, the State must prove by a preponderance of the evidence that the defendant violated a probation condition. *Cobb v. State*, 851 S.W.2d 871, 873 (Tex. Crim. App. 1993). The trial court is the sole judge of the witnesses' credibility and the weight to be given their testimony, and we review the evidence in the light most favorable to the trial court's ruling. *Garrett v. State*, 619 S.W.2d 172, 174 (Tex. Crim. App. [Panel Op.] 1981); *Manuel v. State*, No. 02-17-000079-CR, 2018 WL 651221, at *1 (Tex. App.—Fort Worth Feb. 1, 2018, pet. ref'd) (mem. op., not designated for publication). If the trial court revokes probation despite the State's not having met its burden, the trial court abuses its discretion. *Cardona*, 665 S.W.2d at 493–94.

[2]Courts use the terms "probation" and "community supervision" interchangeably. *See Maslyk v. State*, No. 02-16-00295-CR, 2017 WL 2289098, at *1 n.2 (Tex. App.—Fort Worth May 25, 2017, pet. ref'd) (mem. op., not designated for publication).

Proof by a preponderance of the evidence that the defendant violated any one of his probation conditions suffices to support a revocation order. *Moore v. State*, 605 S.W.2d 924, 926 (Tex. Crim. App. [Panel Op.] 1980); *Sanchez v. State*, 603 S.W.2d 869, 871 (Tex. Crim. App. [Panel Op.] 1980). Consequently, when there is one sufficient ground, we do not need to address the other contentions. *See Sanchez*, 603 S.W.2d at 871; *Long v. State*, No. 02-12-00090-CR, 2013 WL 1337975, at *2 n.7 (Tex. App.—Fort Worth Apr. 4, 2013, pet. ref'd) (mem. op., not designated for publication).

Discussion

The State alleged that Church had violated his probation conditions on 23 separate occasions. Finding 21 of those 23 allegations true, the trial court revoked his probation, adjudicated him guilty, and sentenced him.

Condition (a) of Church's probation required him to "[c]ommit no offense against the laws of this State . . . ." When moving to adjudicate guilt, the State alleged that Church had violated condition (a) on or about September 17, 2016, when he intentionally, knowingly, or recklessly caused bodily injury to Summer Church (Church's wife) by hitting her in the stomach and shoving her on a bed. The State alleged an assault. *See* Tex. Penal Code Ann. § 22.01(a)(1) (West Supp. 2017).

At the hearing on the State's motion, Church's wife testified that when the police came to her house on September 17, 2016, she told them that Church had punched her in the stomach and shoved her on a bed. Acknowledging having filed a nonprosecution affidavit, she explained that she did so not because it did

not happen—it did—but because she did not want her husband prosecuted.[3] Testifying in his own defense, Church denied hitting his wife on September 17, 2016, and asserted that she had no physical signs of injury when the police arrived.

Continuing that contention on appeal, Church argues that the trial court erroneously relied on his wife's testimony because she was not credible, because he denied committing the offense, and because there were no marks supporting her allegations. Whom to believe, however, was the trial court's prerogative, and to find the allegation true, it necessarily believed Church's wife. *See Garrett*, 619 S.W.2d at 174. As for the lack of marks, "bodily injury" does not require a visible injury; physical pain suffices. *See* Tex. Penal Code Ann. § 1.07(a)(8) (West Supp. 2017). Although Church's wife did not expressly state that she felt pain, a factfinder might reasonably infer from the evidence that she felt pain when Church hit her in the stomach and threw her on a bed. *See Randolph v. State*, 152 S.W.3d 764, 774 (Tex. App.—Dallas 2004, no pet.). Viewing the evidence in the light most favorable to the judgment, we hold that it is sufficient to support the trial court's finding that the State proved by a preponderance of the evidence that Church assaulted his wife and thereby violated probation condition (a). *See Cardona*, 665 S.W.2d at 493. Because one violation suffices to support the judgment, we need not address Church's other contentions. *See Sanchez*, 603 S.W.2d at 871. We overrule Church's sole issue.

[3]Defendant's Exhibit 1 shows numerous photos of Church with his wife and three young children.

Clerical Error

We note that the judgment reflects an $840 fine and that the bill of costs reflects a $2,000 fine. The record shows that the trial court assessed a $2,000 fine when it initially placed Church on deferred-adjudication community supervision, but the record also shows that when the trial court revoked his probation, adjudicated him guilty, and sentenced him, it did not orally assess any fine.

When a trial court adjudicates guilt, its new order sets aside the previous order deferring adjudication, including any previously imposed fine. *See Taylor v. State*, 131 S.W.3d 497, 502 (Tex. Crim. App. 2004); *see Lewis v. State*, 423 S.W.3d 451, 459 (Tex. App.—Fort Worth 2013, pet. ref'd). And when the judgment and oral pronouncement conflict, the oral pronouncement controls. *See Taylor*, 131 S.W.3d at 502. Because the trial court assessed no fine when sentencing Church, the judgment erroneously reflects a fine. *See id.*

An appellate court has the authority to modify a judgment to make it speak the truth. *French v. State*, 830 S.W.2d 607, 609 (Tex. Crim. App. 1992). The truth is the trial court never assessed a fine. Consistent with our authority, we modify the judgment to delete the $840 fine and reform it to reflect no fine. *See Taylor*, 131 S.W.3d at 502.

In other cases where the judgment incorrectly reflected a fine and where we modified the judgment, we also ordered the fine deleted from the bill of costs and the order to withdraw funds from the inmate's trust account. *See Cox v. State*, No. 02-13-00596-CR, 2015 WL 831544, at *1 (Tex. App.—Fort Worth Feb.

26, 2015, no pet.) (mem. op., not designated for publication) (deleting fine from both); *see also Mitchell v. State*, No. 02-17-00112-CR, 2017 WL 6759032, at *1–2 (Tex. App.—Fort Worth Dec. 28, 2017, no pet.) (mem. op., not designated for publication) (deleting fine from latter). We thus also modify the bill of costs to delete the $2,000 fine and to reflect no fine.[4] *See Cox*, 2015 WL 831544, at *1.

Conclusion

Exercising our authority to have the judgment and the bill of costs speak the truth, we delete the fines appearing in them and modify both to correctly show that the trial court assessed no fine. Having overruled Church's sole issue and having modified the judgment, we affirm the trial court's judgment as modified.

/s/ Elizabeth Kerr
ELIZABETH KERR
JUSTICE

PANEL: MEIER, GABRIEL, and KERR, JJ.

DO NOT PUBLISH
Tex. R. App. P. 47.2(b)

DELIVERED: August 31, 2018

[4]Church's judgment contains a box that the trial court could have checked to incorporate the order withdrawing funds into the judgment, but the trial court did not check it.