In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-15-00234-CV

IN THE INTEREST OF T.V.S., A.N.N., CHILDREN

On Appeal from the County Court at Law
Moore County, Texas
Trial Court No. CL141-99, Honorable Delwin T. McGee, Presiding

June 15, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

Appellant Adam Nanez, proceeding *pro se*, appeals the trial court's order confirming a child support arrearage. He challenges the order through two issues. We will affirm.

Background

The Office of the Attorney General of Texas, as the state's Title IV-D agency,[1] brought suit against Adam Nanez seeking modification of the child support provisions of the August 2000 divorce decree that ended his marriage to Candace Michelle

[1] *See* TEX. FAM. CODE ANN. § 231.001 (West 2017).

Svenningson, formerly Candace Michelle Deatherage, and seeking confirmation of, and judgment for, a child support arrearage. Nanez is the father of Svenningson's two children, T.V.S. and A.N.N. The decree ordered Nanez to pay child support of $325.00 per month and then $260.00 per month when T.V.S. reached majority age.

Nanez has been incarcerated since 2002. The Attorney General's financial activity report for Nanez's account reflects a child support payment only on one occasion, in January 2006. We will discuss that payment later in our opinion.

At trial of the case, the Attorney General did not pursue its request for modification, noting the older child had reached adulthood and the younger child was soon to do so. After hearing evidence, the trial court granted a cumulative judgment in the amount of $40,350.11.[2] On appeal, Nanez challenges the order confirming the child support arrearage.

Analysis

Both the issues Nanez raises on appeal challenge the jurisdiction of the trial court to adjudicate his child support arrearage.

Standard of Review

Subject-matter jurisdiction is essential to the authority of a court to decide a case. *Kendall v. Kendall,* 340 S.W.3d 483, 495 (Tex. App.—Houston [1st Dist.] 2011, no pet.), (citing *Bland Indep. Sch. Dist. v. Blue,* 34 S.W.3d 547, 553-54 (Tex. 2000)). Whether a court has jurisdiction is a question of law that is reviewed *de novo. City of Elsa v.*

[2] *See* TEX. FAM. CODE ANN. § 157.263 (West 2017) (confirmation of arrearages).

Gonzalez, 325 S.W.3d 622, 625 (Tex. 2010); *Holmes v. Williams,* 355 S.W.3d 215, 218 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

Jurisdiction

The facts underlying Nanez's jurisdictional issues are undisputed. Nanez first argues that the trial court lacked jurisdiction to hear the Attorney General's suit because it amounted to an impermissible appeal of a prior order of the trial court. We cannot agree. The Attorney General's suit asked the court to modify the child support provisions of the divorce decree signed August 14, 2000, and to confirm and enter judgment for the child support arrearage. *See* TEX. FAM. CODE Ann. § 156.001 (court with continuing, exclusive jurisdiction may modify order that provides for support); § 157.005(b) (time limitations on confirmation of child support arrearages and money judgment for past-due support); §157.263 (confirmation of child support arrearages). The suit was not an appeal.

By Nanez's second contention, he argues the court lacked jurisdiction to confirm an arrearage because his child support obligation had expired with respect to both his children. The governing statute states otherwise. Family Code section 157.005(b) reads:

> (b) The court retains jurisdiction to confirm the total amount of child support arrearages and render a cumulative money judgment for past-due child support, as provided by [Family Code section] 157.263, if a motion for enforcement requesting a cumulative money judgment is filed not later than the 10th anniversary after the date:
>
> > (1) the child becomes an adult; or
> >
> > (2) on which the child support obligation terminates under the child support order or by operation of law.

TEX. FAM. CODE ANN. § 157.005(b) (West 2017).

The record indicates Nanez's children were born in 1995 and 1997, respectively. The petition in this case containing the motion to confirm the support arrearage was filed February 27, 2014. At the hearing the Attorney General conceded the older child "moved out of the house before she turned 18." The Attorney General presented the court with the amount of credit due against the arrearage by virtue of the child's move from her mother's home, and Nanez does not challenge the amount of the credit the court gave. Nanez contends his younger child also had moved from her mother's home, and that her doing so deprived the trial court of jurisdiction to adjudicate the arrearage. As is seen from a reading of section 157.005(b), the court retains jurisdiction to confirm an arrearage and render a money judgment if the motion requesting a judgment is filed within ten years after the child becomes an adult or the child support obligation terminates. In this case, the Attorney General's motion was filed well within the statutory period. The actions of Nanez's children did not deprive the trial court of jurisdiction to adjudicate the arrearage. *See also* TEX. FAM. CODE ANN. § 157.269 (West 2015) (court retains jurisdiction to enforce child support order until all arrearages have been paid); *In the Interest of C.D.B.,* No. 14-13-00718-CV, 2015 Tex. App. LEXIS 2729, at *8-9 (Tex. App.—Houston [14th Dist.] March 24, 2015, no pet.) (mem. op.) (applying §§ 157.005(b), 157.269)).

We resolve Nanez's two issues against him.

At trial, Nanez presented another argument, based on his 2006 agreement with Svenningson. Although it is unclear that Nanez presents this argument on appeal, we address it in the interest of justice.

The record shows that Nanez was in arrears on child support in the amount of $25,394.33 in January 2006. He received funds in settlement of claims arising from the wrongful death of his mother and grandmother. By agreement with Svenningson, Nanez paid a lump sum of $20,000 from the settlement to the Attorney General, in exchange for a release, signed by Svenningson, of "any and all claims that I [Svenningson] have under any child support order now or in the future with regard to my children against Adam Nanez." The release was filed with the trial court, but the court was not asked to take any action on it. Nonetheless, records indicate the Attorney General gave Nanez credit both for the $20,000 paid and the $5,394.33 released.[3] Nanez's arrearage was reduced to zero, but began to accumulate again with the support due for February 2006.[4]

Pointing to the language of the release stating it applied to future claims for child support, Nanez argued to the trial court he could have no arrearage. The Attorney General cited the opinion of the Texas Supreme Court in *Williams v. Patton*, 821 S.W.2d 141, 145 (Tex. 1991), as prohibiting the court from enforcing a private agreement to eliminate future child support obligations, and the court agreed the 2006

[3] The Attorney General's financial activity report for Nanez's account shows both the $20,000 and the $5,394.33 as "collections."

[4] The court agreed with the Attorney General's calculation of the arrearage that accrued beginning in February 2006, with the credit resulting from the adulthood of the older child, and Nanez does not challenge the calculation.

release could not be given that effect. The trial court made its ruling before the Texas Supreme Court issued its opinion in *Ochsner v. Ochsner*, No. 14-0638, 2016 Tex. LEXIS 569, at *4 (Tex. June 24, 2016), but its ruling is entirely consistent with that opinion.[5] The court there held that in a proceeding under Chapter 157 of the Family Code, a trial court cannot enforce a private agreement by which a child-support obligor attempts to agree with the obligee to reduce or eliminate the child support obligation, nor can the court rely on such a private agreement to reduce an arrearage. *Id*. at *17. The court drew the distinction between such a private agreement to reduce the child support obligation and instances in which the obligor has made direct payments that satisfy the obligation. The trial court may consider such direct payments when confirming the amount of an arrearage. *Id*. Here, by the earlier actions of the Attorney General, Nanez received credit for the $20,000 payment and even for the $5,394.33 his former wife released. He can have no complaint with the trial court's treatment of the 2006 transaction.

Having overruled Nanez's appellate issues, we affirm the trial court's judgment.

James T. Campbell
Justice

[5] The court in *Ochsner* cited *Williams*' holding that "the Family Code prohibits settlement agreements purporting to 'prospectively modify[] court-ordered child support without court approval.'" 2016 Tex. LEXIS 569, at *18 (quoting *Williams*, 821 S.W.2d at 143). It noted the prohibition reflects legislative recognition of "the key tenet that child support is a duty owed by a parent to a child, not a debt owed to the other parent." *Id*. (citation omitted).