TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00584-CV
NO. 03-16-00585-CV

In the Interest of M. T. R.

FROM COUNTY COURT AT LAW NO. 4 OF WILLIAMSON COUNTY
NO. 13-1834-FC4, HONORABLE JOHN B. MCMASTER, JUDGE PRESIDING

MEMORANDUM OPINION

After the Williamson County court at law[1] signed its "Order in Suit for Modification of Support Order and to Confirm Support Arrearage" in August 2016, pro se appellant Dustin Shane Reininger filed two notices of appeal. We affirm the Williamson County court at law's order.

Procedural and Factual Summary

In 2003, the Travis County district court signed an agreed divorce degree dissolving the marriage between Reininger and Jenny Lee Gillespie. In the decree, Reininger was appointed sole managing conservator of their then-four-year-old son, M.T.R., and Gillespie was named possessory conservator with the right to visitation "as mutually agreed to by the parties." In 2009, both parties filed motions to modify the conservatorship and child-support arrangements, and in June

[1] This cause was heard by an associate judge, who signed the order on August 19, 2016. No request for a de novo hearing was filed, and the associate judge's order therefore became the order of the Williamson County court at law by operation of law. Tex. Fam. Code § 201.1041(a).

2009, the matter was transferred to San Patricio County on Reininger's motion. In January 2011,[2] the district court in San Patricio County ("the San Patricio court") signed an order naming Reininger and Gillespie joint managing conservators, giving Gillespie the right to designate M.T.R.'s primary residence, awarding Reininger visitation, and ordering him to pay $400 a month in child support.[3] The order recited that Reininger failed to appear "although duly and properly cited."[4]

In April 2013, the Office of the Attorney General filed a suit for child-support modification, a motion to confirm Reininger's child-support arrearage, and a motion to transfer, asserting that Gillespie and the child had moved to Williamson County.[5] *See* Tex. Fam. Code

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[2] Although information contained in the clerk's record shows that the order was signed in January 2011 and there is no dispute that the order was signed in 2011, it is dated "January 14, 2010." Reininger insists that the erroneous date is error on the face of the record that requires reversal of the order. However, the courts have repeatedly held that if a trial court writes the wrong signature date on a judgment or order, such an error is merely clerical and does not affect the substance of the order or judgment. *See, e.g.*, *Rawlins v. Rawlins*, 324 S.W.3d 852, 857 n.7 (Tex. App.—Houston [14th Dist.] 2010, no pet.); *Claxton v. (Upper) Lake Fork Water Control & Improvement Dist. No. 1*, 220 S.W.3d 537, 543 (Tex. App.—Texarkana 2006, pet. denied) (op. on reh'g); *Ortiz v. O.J. Beck & Sons, Inc.*, 611 S.W.2d 860, 863 (Tex. Civ. App.—Corpus Christi 1980, no writ) (per curiam); *Nolan v. Bettis*, 562 S.W.2d 520, 522-23 (Tex. Civ. App.—Austin 1978, no writ).

[3] The order provided that child support payments should be "made through the state disbursement unit at Texas Child Support Disbursement Unit" and that they would in turn be remitted to Gillespie. The Child Support Division of the Office of the Attorney General then began tracking Reininger's arrearage.

[4] The record does not reflect that Travis County acted on the petitions to modify or that any petitions or motions were filed in San Patricio County before the January 2011 order. We conclude that the January 2011 order addressed the parties' petitions to modify, filed in Travis County in 2009.

[5] The Office of the Attorney General is Texas's designated Title IV-D agency, *see* Tex. Fam. Code § 231.001, and therefore has standing to seek enforcement of the child support order, *see, e.g., id.* §§ 102.007, 157.311(2)(B), 231.002(e); *Attorney Gen. of Tex. v. Lavan*, 833 S.W.2d 952, 955 (Tex. 1992) (State has standing to bring suit affecting parent-child relationship); *In re C.D.E.*, No. 14-14-00086-CV, 2015 WL 452195, at *3 (Tex. App.—Houston [14th Dist.] Jan. 27, 2015, no pet.) (state's designated Title IV–D agency may enforce child support orders).

§ 155.201 (mandatory transfer of suit).[6] In May 2013, Reininger filed a "Motion to Suspend Arrears and Support Obligations Retroactively," representing that he had been convicted of an unspecified crime in New Jersey "on or about the year 2010," that he had been sentenced to five years' imprisonment in November 2011, that he was incarcerated in that state until the middle of 2014, that he did not get notice of the January 2011 hearing or order, and that Gillespie did not take possession of M.T.R. until mid-2011. In June 2013, the case was transferred to Williamson County. The Attorney General filed a notice of nonsuit of the modification action in December 2013, stating that "legal action is no longer appropriate."

In December 2015, the Attorney General filed another "Motion for Enforcement of Child Support Order." Reininger responded with a "Motion to Modify Child Support, for Current Modification, and Retroactive Modification" and a "Petition to Modify the Parent Child Relationship" in which he sought shared possession and a modified visitation schedule. The Williamson County court at law held a hearing in August 2016, and Reininger appeared via telephone. Reininger testified that he had not been served with notice of the January 2011 hearing. He also testified that he had been paralyzed in late 2014 and that he was confined to a nursing facility and unable to work. The court explained that it could not retroactively modify the child-support obligation. *See id.* § 157.263(b-1) ("In rendering a money judgment under this section, the court may not reduce or modify the amount of child support arrearages but, in confirming the amount of arrearages, may

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[6] The Attorney General asked that the trial court "order all support withheld from disposable earnings pursuant to Texas Family Code § 158.006" and "order all payments of support processed pursuant to Texas Family Code Chapter 231 for distribution." *See* Tex. Fam. Code §§ 158.006 ("Income Withholding in Title IV-D Suits"), 231.001-.211 ("Administration of Title IV-D Program," "Services Provided by Title IV–D Program," and "Payment of Fees and Costs").

allow a counterclaim or offset as provided by this title.”). The court also explained that it could not consider whether Reininger was given notice of the January 2011 hearing and that such issues had to be raised in a separate proceeding. The court signed an order confirming a $29,809.92 child-support arrearage from February 2011 through July 2016 and ordering $200 monthly payments of that arrearage. The court found that Reininger's disability rendered him unable to earn income and that he should no longer be required to pay child support. Reininger filed two notices of appeal, although his complaints are largely related to the January 2011 order.[7]

Discussion

Reininger did not bring a direct appeal or a bill of review from the San Patricio court's January 2011 order. Instead, despite raising a few complaints related to the Williamson County court at law's order, Reininger is in the main attempting to collaterally attack the January 2011 order in this appeal, mostly arguing that the San Patricio court lacked "jurisdiction" to sign it.[8]

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[7] In cause number 03-16-00584-CV, Reininger filed an "appeal and petition for motion to set aside default judgment," asking us to set aside the January 2011 order. In cause number 03-16-00585-CV, he filed an "appeal and motion to set aside judgment to modify child support," asking us to set aside the August 2016 order. His briefing in both cause numbers is identical, however, and mainly attempts to collaterally attack the validity of the January 2011 order.

[8] Reininger argues that the San Patricio court lacked jurisdiction to enter the January 2011 judgment because Reininger did not know of the hearing or that Gillespie had filed a motion "for any Hearing" and because neither party had lived in San Patricio County in the previous six months, and the San Patricio court should not have entered a judgment that "created a liability [for past-due child support] in a no answer case." He further argues that: Gillespie committed fraud by stating that Reininger had been served with notice of the hearing in 2011 and by using an incorrect address for Reininger in July 2013; the San Patricio court should have taken Reininger's financial situation into account when determining child support; Gillespie withheld evidence that Reininger was unemployed; the courts have "ignored" Reininger's filings; Reininger should not be held accountable for his inability to pay child support; it is in M.T.R.'s best interest to have Reininger's child-support obligation changed retroactively; the Attorney General is wasting state resources because Reininger

As explained below, Reininger has not established that the San Patricio court lacked jurisdiction to sign the order.

"'Jurisdiction' refers to a court's authority to adjudicate a case, and "[i]n general, as long as the court entering a judgment has jurisdiction of the parties and the subject matter and does not act outside its capacity as a court, the judgment is not void." *Reiss v. Reiss*, 118 S.W.3d 439, 443 (Tex. 2003). "[A] litigant may attack a void judgment directly or collaterally, but a voidable judgment may only be attacked directly." *PNS Stores, Inc. v. Rivera*, 379 S.W.3d 267, 271 (Tex. 2012). In other words, an order "is void for purposes of a collateral attack only if the court had no jurisdiction over the parties or property, no jurisdiction of the subject matter, no jurisdiction to enter the [order], or no capacity to act as a court," and any other kind of error may at most make the order "merely voidable" and "may only be corrected through direct attack." *In re D.L.S.*, No. 05-08-00173-CV, 2009 WL 1875579, *2 (Tex. App.—Dallas July 1, 2009, no pet.) (mem. op.) (citing *Toles v. Toles*, 113 S.W.3d 899, 914 (Tex. App.—Dallas 2003, no pet.)).

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is "unemployed, disabled, and or incarcerated"; "someone in the Trial Courts [should have] read Court Filings even of those filed by Parents whom have no idea how to represent themselves"; the courts should have given Reininger a hearing on his motions; and the Attorney General should have given Reininger guidance of how to modify his child support obligation.

We will address Reininger's arguments related to jurisdiction, as best as we can discern them, but any others he may be attempting to raise are waived due to insufficient briefing. *See* Tex. R. App. P. 38.1(i) (brief must provide citation to authorities and record); *see also Wheeler v. Green*, 157 S.W.3d 439, 444 (Tex. 2005) ("pro se litigants are not exempt from the rules of procedure"); *Gonzalez v. Magana*, No. 03-14-00387-CV, 2015 WL 4997868, at *2 (Tex. App.—Austin Aug. 18, 2005, pet. denied) (mem. op.) (we construe pro se pleadings and briefs liberally but "hold pro se litigants to the same standards as licensed attorneys and require them to comply with applicable laws and rules of procedure"). Further, Reininger's arguments related to evidence presented in January 2011 or the substance of the January 2011 order and his allegations of fraud in 2011 and 2013 are not proper issues in this proceeding.

This is not a case in which the trial courts' jurisdiction is in question. Rather, this is a suit affecting the parent-child relationship ("SAPCR"), over which the courts retain continuing, exclusive jurisdiction over matters related to the child. *See* Tex. Fam. Code §§ 101.032 (SAPCR is suit requesting conservatorship, access to or support of child, or establishment or termination of parent-child relationship), 155.001 (court acquires continuing, exclusive jurisdiction over SAPCR matters on rendition of final order), 155.002 (court with continuing, exclusive jurisdiction retains jurisdiction of parties and SAPCR matters), 155.201 (on timely motion, proceeding shall be transferred if child has resided in other county for six months or longer), 155.206 (transferee court gains continuing, exclusive jurisdiction, and all proceedings continue as if brought there originally).

Travis County issued the original divorce decree, which included a SAPCR order, thus acquiring continuing jurisdiction over the parties. *See id.* §§ 155.001, .002. Both Reininger and Gillespie filed petitions to modify in Travis County in 2009, and Reininger also filed a motion to transfer, asserting that M.T.R. had resided in San Patricio County for more than six months. The proceeding was transferred on Reininger's motion, at which point the San Patricio court acquired continuing, exclusive jurisdiction over the parties and matters raised in the petitions to modify. *See id.* §§ 155.002, .206. The January 2011 order addressed the parties' dueling petitions, filed in Travis County and transferred to San Patricio County, and Reininger does not dispute that he knew both that the cause had been transferred and that he and Gillespie had filed petitions for modification.[9] Although it is true that a party who has filed an answer in a SAPCR proceeding has a right to be

[9] In his filings here and before the trial court, Reininger repeatedly states that he did not have notice of the January 2011 hearing or order but does not deny that he knew Gillespie had filed a motion to modify in Travis County, which was transferred to San Patricio County on his motion.

notified of hearing settings, *see Schulz v. Schulz*, 726 S.W.2d 256, 258 (Tex. App.—Austin 1987, no writ), this is not a case in which the San Patricio court lacked personal or subject-matter jurisdiction, *see* Tex. Fam. Code §§ 155.002, .206. Therefore, whether Reininger received notice of the January 2011 hearing was an issue that had to be raised by direct attack, such as an appeal, a motion for new trial, or a bill of review, the latest time for which expired in January 2015. *See PNS Stores*, 379 S.W.3d at 272-75 & n.7; *see also Carlson v. Schellhammer*, No. 02-15-00348-CV, 2016 WL 6648754, at *4 (Tex. App.—Fort Worth Nov. 10, 2016, no pet.) (mem. op.) ("lack of notice of a trial setting, although it might cause the judgment to be voidable, does not render the judgment void").

Further, "[w]hen attacked collaterally, a judgment is presumed valid," and that presumption holds unless the face of the record establishes a jurisdictional defect. *PNS Stores*, 379 S.W.3d at 273; *see Alfonso v. Skadden*, 251 S.W.3d 52, 53, 55 (Tex. 2008) ("courts must indulge all reasonable presumptions favorable to a judgment under collateral attack" unless record affirmatively reveals jurisdictional defect). The January 2011 order recites that Reininger, "although duly and properly cited, did not appear and wholly made default." Other than that recitation, the record from the 2011 proceeding does not include evidence related to the notice provided to Reininger, if any. Reininger filed certifications in May and October 2013,[10] but they simply state that he was unaware of the 2011 hearing setting (Reininger did not provide any other information, such

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[10] Reininger's certifications state that he certified that his representations "are true and correct, and if any have been known to have been willfully false I am subject to punishment as prescribed by law." Even taking that statement as a sufficient recitation that the certification was subscribed as true under penalty of perjury, Reininger did not include his date of birth, his address or location of his incarceration, or his inmate identifying number, if any, all of which are required by section 132.001, which sets out requirements for an unsworn declaration filed in lieu of a sworn declaration, certification, or affidavit. *See* Tex. Civ. Prac. & Rem. Code § 132.001.

as his whereabouts in late 2010 or early 2011 or whether he had moved from the address he provided in his 2009 motion to transfer) and do not affirmatively demonstrate a jurisdictional defect on the face of the record that renders void the January 2011 order. *See PNS Stores*, 379 S.W.3d at 273; *see also Carlson*, 2016 WL 6648754, at *4 (order may be "voidable" if no notice given of hearing but is not "void").[11]

Conclusion

Although we are sympathetic to his unfortunate circumstances, Reininger has not shown that the January 2011 judgment was void or that the Williamson County court at law erred in entering its August 2016 judgment confirming a child-support arrearage accruing between February 2011 and August 2016. We affirm the Williamson County court at law's August 2016 order.

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David Puryear, Justice

Before Justices Puryear, Pemberton, and Goodwin

Affirmed

Filed: June 21, 2017

[11] Further, even in bill of review proceedings, in which extrinsic evidence may be considered, courts have held that a plaintiff who testifies that he was never served with citation (thus calling the trial court's jurisdiction into question) must provide evidence to corroborate his testimony. *See Caldwell v. Barnes*, 154 S.W.3d 93, 97-98 & n.3 (Tex. 2004); *Garza v. Attorney Gen. of Tex.*, 166 S.W.3d 799, 810 (Tex. App.—Corpus Christi 2005, no pet.).