



NUMBER 13-15-00415-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN THE INTEREST OF C.J.C., A CHILD

**On appeal from the 197th District Court
of Willacy County, Texas.**

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Rodriguez and Garza
Memorandum Opinion by Chief Justice Valdez**

In this 2014 suit affecting the parent-child relationship (SAPCR), paternity testing established that appellant Oscar Rodriguez fathered a child, C.J.C., in 1997 with his then-coworker, appellee Cynthia Cisneros. Cisneros requested that the trial court order Rodriguez to pay child support retroactively from the time of the child's birth in 1997 to the 2014 SAPCR. After conducting an evidentiary hearing on the matter, the trial court found in favor of Cynthia and ordered Rodriguez to pay retroactive child support from 1997 to 2014, totaling \$60,951.21 based on his net resources. By four issues, Rodriguez contends that the trial court erred in ordering retroactive child support pursuant to section

154.131 of the Texas Family Code. See TEX. FAM. CODE ANN. § 154.131 (West, Westlaw through 2015 R.S.). We affirm.

I. Retroactive Child Support

By his first, third, and fourth issues, Rodriguez contends that subsections (c) and (d) of family code section 154.131 prohibited the trial court from awarding retroactive child support in excess of four years of his support obligation. We review the trial court's decision to award retroactive child support for an abuse of discretion, reversing only if the trial court acted in an unreasonable and arbitrary manner or acted without reference to guiding rules. See *Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991).

Read together, subsections (c) and (d) provide that retroactive child support not exceeding four years of the obligor's support obligation is presumed to be reasonable and in the best interest of the child; however, this presumption may be rebutted if: (1) the obligor "knew or should have known" that he was the child's father; and (2) the obligor "sought to avoid the establishment of a support obligation to the child." TEX. FAM. CODE ANN. § 154.131(c)-(d).

Rodriguez argues that the trial record does not support a finding that he knew or should have known that he fathered C.J.C. or that he sought to avoid a child support obligation, and therefore, the trial court erred in ordering retroactive child support in excess of four years of his support obligation. However, the record shows that Cisneros and Rodriguez had sexual relations in the latter part of 1996 while they were coworkers; that Cisneros informed Rodriguez in January 1997 that she was pregnant and that he was the father; that Rodriguez tried to convince Cisneros to terminate the pregnancy; that Rodriguez threatened to obtain "custody" of C.J.C. if Cisneros sought child support from

him; and that Rodriguez told Cisneros when C.J.C. was two years old that he wanted “proof” that he was the father.

Based on this evidence, the trial court could have reasonably found that: (1) Rodriguez knew or should have known that he fathered C.J.C. because Cisneros told him so both before and after the child’s birth; and (2) Rodriguez sought to avoid a child support obligation when he threatened to obtain custody of C.J.C. if Cisneros sought child support from him. See *In re A.B.*, 368 S.W.3d 850, 858 (Tex. App.—Houston [14th Dist.] 2012, no pet.) (holding that father’s threat to mother—that he would take their child away if she sought child support from him—constituted avoidance of a support obligation justifying retroactive child support in excess of four years of father’s support obligation under section 154.131). Based on this evidence, we conclude that the trial court did not abuse its discretion in ordering retroactive child support in excess of four years of Rodriguez’s support obligation under family code section 154.131. See TEX. FAM. CODE ANN. § 154.131. We therefore overrule Rodriguez’s first, third, and fourth issues.

II. Undue Financial Hardship

By his second issue, Rodriguez contends that the trial court abused its discretion in ordering retroactive child support payable in installments of \$537.50 per month on the basis that such an amount imposes an “undue financial hardship” on him and his family pursuant to family code section 154.131(b)(3). See *id.*

Family code section 154.131(b)(3) provides that the trial court, in ordering retroactive child support, must consider the net resources of the obligor and whether retroactive child support will impose an “undue financial hardship on the obligor or the obligor’s family.” *Id.*

Here, the record shows that Rodriguez’s annual income is \$34,000 and that his wife’s annual income is \$32,000. Regarding monthly expenses, Rodriguez testified that he maintains a mortgage, pays child support for a child from a previous marriage, and owes credit card bills. Rodriguez also testified, among other things, that he and his family live on a budget, that they cannot afford to buy “new” cars or go on annual family vacations, and that they cannot afford to enjoy dinner at a restaurant and a movie except for once a month. However, Rodriguez presented no specific evidence that he was unable to provide for himself or his family and no specific evidence that retroactive child support in the amount ordered by the trial court would create a financial hardship. Without more specific information regarding the “hardship,” we cannot say that the trial court abused its discretion in finding that Rodriguez could afford to pay retroactive support for C.J.C. free of an undue financial hardship. See *In re A.B.*, 368 S.W.3d at 856 (concluding that the trial court did not abuse its discretion in finding that father was capable of paying retroactive child support when father presented no specific evidence demonstrating financial hardship). We overrule Rodriguez’s second issue.

III. Conclusion

We affirm the trial court’s judgment.

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

Delivered and filed the
21st day of December, 2016.