

ATTORNEY'S FEES

In her sole issue, Appellant contends that the evidence is legally insufficient to support the trial court's assessment of attorney's fees. She argues that the trial court found her indigent and that status has not changed.

A trial court has the authority to assess attorney's fees against a criminal defendant who received court appointed counsel. TEX. CODE CRIM. PROC. ANN. art. 26.05(g) (West Supp. 2015). Unless a material change in a criminal defendant's financial resources is established by competent legal evidence, once that defendant has been found to be indigent, she is presumed to remain indigent for the remainder of the proceedings. TEX. CODE CRIM. PROC. ANN. art. 26.04(p) (West Supp. 2015). Before any imposition of attorney's fees, the trial court must determine that the defendant has financial resources which enable her to offset, in whole or in part, the cost of the legal services provided, and that determination must be supported by a factual basis in the record. *Johnson v. State*, 405 S.W.3d 350, 354 (Tex. App.—Tyler 2013, no pet.). If the record does not show that the defendant's financial circumstances materially changed after the previous determination that she was indigent, the evidence will be insufficient to support the imposition of attorney's fees. TEX. CODE CRIM. PROC. ANN. art. 26.04(p); *Mayer v. State*, 309 S.W.3d 552, 553 (Tex. Crim. App. 2010). An appellant's complaint about the sufficiency of the evidence of her financial resources and ability to pay is not waived by her failure to raise the complaint in the trial court. *Mayer*, 309 S.W.3d at 556.

The record shows that the trial court found Appellant indigent and appointed counsel. However, the judgment indicates that Appellant was ordered to pay \$750.00 in attorney's fees. Moreover, there is no evidence in the record of a change in Appellant's financial situation. Therefore, the trial court erred in ordering Appellant to pay the attorney's fees. We sustain Appellant's sole issue.

DISPOSITION

Where the evidence is insufficient to support a court's order of reimbursement of attorney's fees, the proper remedy is to reform the judgment by deleting the court appointed attorney's fees. See *Cates v. State*, 402 S.W.3d 250, 252 (Tex. Crim. App. 2013). Accordingly, we *modify* the trial court's judgment to delete the order that Appellant pay \$750.00 in attorney's fees. As *modified*, we *affirm* the trial court's judgment.

JAMES T. WORTHEN
Chief Justice

Opinion delivered July 6, 2016.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.

(DO NOT PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JULY 6, 2016

NO. 12-15-00112-CR

MELISSA BROWNING HERNANDEZ,

Appellant

V.

THE STATE OF TEXAS,

Appellee

Appeal from the 392nd District Court
of Henderson County, Texas (Tr.Ct.No. B-21,601)

THIS CAUSE came on to be heard on the appellate record and the briefs filed herein; and the same being inspected, it is the opinion of the Court that the trial court's judgment below should be **modified and, as modified, affirmed**.

It is therefore ORDERED, ADJUDGED and DECREED that the trial court's judgment below be **modified** to delete the order that Appellant pay \$750.00 in attorney's fees; **and as modified**, the trial court's judgment is **affirmed**; and that this decision be certified to the trial court below for observance.

James T. Worthen, Chief Justice.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J.