

Reversed and Rendered and Opinion filed October 18, 2001.



In The
Fourteenth Court of Appeals

NO. 14-00-00086-CV

SHARON SUE PONDER, Appellant

V.

ROBERT BELLEN and his Employer, RDA TRADING, INC., Appellees

**On Appeal from the 257th District Court
Harris County, Texas
Trial Court Cause No. 1,148,934**

OPINION

This is an appeal from the trial court's withdrawal of a judicial writ of withholding for child support arrearage entered in favor of appellant, Sharon Sue Ponder. In seven points of error, Sharon Ponder complains: (1) the trial court had jurisdiction to enter a judicial writ of withholding; (2) appellees waived any rights they may have had to stay or contest the writ of withholding by failing to timely file a motion to stay or object to its issuance; and (3) the judgment cannot be sustained when it is wholly unsupported by the trial court's findings of fact and conclusions of law. We reverse and reinstate the judicial writ of withholding.

Factual and Procedural Background

Sharon Sue Ponder, an unmarried woman, gave birth to Kimberly Michaele Ponder on December 18, 1976. On November 22, 1977, Robert Arthur Bellen (“Bellen”) was judicially declared to be the legitimate father of Kimberly Ponder. As possessory conservator, Bellen had the duty to provide the child with clothing, food, and shelter. On August 15, 1979, the trial court issued an order modifying its prior order in a suit affecting the parent-child relationship, and ordered Bellen to begin making monthly child support payments. These payments were increased on October 13, 1981, when the trial court issued another order modifying its prior order.

Kimberly Ponder became an adult on December 18, 1994. Alleging that Bellen had not paid child support since April 1983, and was thus \$158,763.65 in arrears on his payments, Sharon Ponder filed a request for a writ to withhold income on April 28, 1999. The request was granted on May 25, 1999, and RDA Trading, Inc. (“RDA”), Bellen’s employer, was directed to withhold \$5,000 per month from his earnings. Following receipt of the writ, RDA filed an employer’s motion for hearing on the applicability of the writ of withholding on June 22, 1999. Thereafter, on July 6, 1999, Bellen filed a motion to withdraw the writ of withholding. Following a hearing on both motions, the trial court withdrew the writ to withhold income on November 10, 1999.

On November 29, 1999, Sharon Ponder filed a request for findings of fact and conclusions of law. Amongst other findings, the trial court concluded that the writ of withholding was properly issued, that neither RDA’s nor Bellen’s motions were timely filed, and that Sharon Ponder’s claim was not barred by a statute of limitations.¹ Nevertheless, the trial court did not reinstate the wage withholding, and Sharon Ponder appeals.

¹ The record reflects the parties and court below both refer to Section 158.102 of the Family Code as a “statute of limitations.” However, we find, as further explained in this opinion, that the Family Code provision defines the temporal jurisdiction of the court.

Subject Matter Jurisdiction

In her first two points of error, Sharon Ponder contends the trial court had subject matter jurisdiction to issue a judicial writ of withholding, and thus the court erred as a matter of law in withdrawing the writ of withholding. Specifically, Sharon Ponder argues that the trial court was not prevented from adjudicating her claim under the jurisdictional parameters in effect at the time her request was filed on April 28, 1999. In their cross point, however, RDA and Bellen contend the trial court lost jurisdiction to issue a writ of withholding under the Family Code provision in effect before September 1, 1997.

In 1995, section 158.102 of the Family Code provided:

The court retains jurisdiction to render an order that provides for income to be withheld from the disposable earnings of the obligor if the motion for income withholding is filed not later than the fourth anniversary of the date:

- (1) the child becomes an adult
- (2) the child support obligation terminates as provided in the order or by operation of law; or
- (3) an order of withholding was rendered or a writ of withholding was issued and arrearages have not been fully discharged.

TEX. FAM. CODE ANN. § 158.102 (Vernon 1996). In addition, section 158.305 of the Family Code provided:

A notice of withholding must be filed not later than the fourth anniversary of the date:

- (1) the child becomes an adult;
- (2) the child support obligation terminates as provided in the decree or order or by operation of law; or
- (3) an order of withholding was rendered or a writ of withholding was issued and arrearages have not been discharged.

Id. § 158.305 (Vernon 1996). Under these statutes, therefore, Sharon Ponder's time for filing and noticing a judicial writ of withholding expired on December 18, 1998, or four

years after Kimberley Ponder's eighteenth birthday. Here, the writ was not filed until April 28, 1999, well after the four-year period had expired.

Sharon Ponder contends, however, that these statutes do not apply. Rather, she argues that the request for a judicial writ of withholding is in the nature of a new suit and is thus subject to the statute of limitations in effect at the time of its filing. As amended, effective September 1, 1997, Section 158.102 read as follows at the time Sharon Ponder filed her request:

The court retains jurisdiction to render an order that provides for income to be withheld from the disposable earnings of the obligor until all current support and child support arrearages, including interest, have been paid.²

TEX. FAM. CODE ANN. § 158.102 (Vernon Supp. 1997). If the 1995 statute applies, therefore, the trial court had no jurisdiction to issue the writ of withholding; if the 1997 statute applies, the trial court did have jurisdiction.

The 1997 amendments to the Family Code were not retroactive. The application and effectiveness provisions of the chapter provide:

The change in law made by this Act does not affect a proceeding under the Family Code pending on the effective date of this Act. A *proceeding* pending on the effective date of this Act is governed by the law in effect at the time the proceeding was commenced, and the former law is continued in effect for that purpose.

TEX. FAM. CODE ANN. § 156.401 historical note (Vernon Supp. 1997) [Act of May 21, 1997, 75th Leg., R.S., ch. 911 § 98(b), 1997 Tex. Gen Laws 2893] (emphasis added). Sharon

² Effective September 1, 1999, the statute was again amended to read:

An order or writ for income withholding under this chapter may be issued until all current support and child support arrearages, interest, and any applicable fees and costs, including attorney's fees and court costs, have been paid.

TEX. FAM. CODE ANN. § 158.102 (Vernon Supp. 2001). As Sharon Ponder filed her request for a writ to withhold income on April 28, 1999, we need not consider the import of these most recent changes.

Ponder contends her request for a writ of withholding is a new “proceeding”; because it was filed after the effective date of the amendment, she contends the court had jurisdiction. Bellen, on the other hand, seems to contend the proceeding was commenced when he was declared to be the father of the child and ordered to pay child support. When the district court, on November 22, 1977, declared Bellen to be the father of the child, the court acquired continuing, exclusive jurisdiction over all matters affecting the parent-child relationship. *Hudson v. Markum*, 931 S.W.2d 336, 338 (Tex. App.—Dallas 1996, no writ). We do not, however, equate mere “jurisdiction” as being synonymous with a “proceeding.” See TEX. FAM. CODE ANN. § 158.001 (Vernon Supp. 2001) (where an order, modification, or enforcement of child support payments is referred to as a “proceeding”).³ Accordingly, we find Sharon Ponder instituted a new proceeding when she requested the issuance of a judicial writ of withholding on April 28, 1999.

³ In its common usage, “proceeding” means:

In a general sense, the form and manner of conducting juridical business before a court or judicial officer. Regular and orderly progress in form of law, *including all possible steps in an action from its commencement to the execution of judgment*. Term also refers to administrative proceedings before agencies, tribunals, bureaus, or the like.

An act which is done by the authority or direction of the court, agency, or tribunal, express or implied; an act necessary to be done in order to obtain a given end; a prescribed mode of action for carrying into effect a legal right. *All the steps or measures adopted in the prosecution or defense of an action*. . . . The word may be used synonymously with “action” or “suit” to describe the entire course of an action at law or suit in equity from the issuance of the writ or filing of the complaint until the entry of final judgment, *or may be used to describe any act done by authority of a court of law and every step required to be taken in any cause by either party*. The proceedings of a suit embrace *all* matters that occur in its progress judicially.

Term “proceeding” may refer not only to a complete remedy but also to a mere procedural step that is part of a larger action or special proceeding. . . . *In a more particular sense, any application to a court of justice, however made, for aid in the enforcement of rights for relief, for redress of injuries, for damages, or for any remedial object*.

BLACK’S LAW DICTIONARY 1204 (6th ed. 1990) (emphasis added).

Under the 1995 Family Code, the court’s continuing jurisdiction was to continue until December 18, 1998. *See* TEX. FAM. CODE ANN. § 158.102 (Vernon 1996). Before the court’s jurisdiction expired, however, the legislature amended the Family Code to extend the court’s jurisdiction until all arrearages have been paid. *See* TEX. FAM. CODE ANN. § 158.102 (Vernon Supp. 1997). Because the court never lost jurisdiction, and the arrearage has not been paid, the court had jurisdiction to issue the writ of withholding and its judgment was not erroneous as a matter of law. *Cf. In the Interest of S.C.S.*, 48 S.W.3d 831 (Tex. App.—Houston [14th Dist.] 2001, no pet. h.) (holding legislature had power to reinvest trial court with jurisdiction by amending section 157.005 of Family Code to expand the temporal parameters of its jurisdiction); *but cf. In the Interest of A.D.*, 8 S.W.3d 466 (Tex. App.—Beaumont 2000, review granted) (holding that the recovery of child support arrears under an administrative writ of withholding issued in 1998 was time barred when, at the time the child turned eighteen in 1990 “an action to reduce arrears to judgment and judicial writs of withholding were both subject to four-year statutes of limitations,” and “[t]hose statutes remained in effect four years later”). Accordingly, Sharon Ponder’s first and second points of error are sustained.

In light of our holding, we need not address Sharon Ponder’s third, fourth, and fifth points of error.

Findings of Fact and Conclusions of Law

In her sixth and seventh points of error, Sharon Ponder asserts the judgment of the trial court must be reformed as it is neither supported by the trial court’s findings of fact and conclusions of law nor sustained by legally and factually sufficient evidence. Sharon Ponder thus argues that the judicial writ of withholding must be reinstated so as to conform the judgment to the court’s findings that the writ was properly issued and that a valid order exists on which income may be withheld.

Under Rule 299 of the Texas Rules of Civil Procedure, the judgment of the court should conform to its findings of fact. TEX. R. CIV. P. 299; *see also Light v. Wilson*, 663 S.W.2d 813, 814-15 (Tex. 1983); *Lone Star Ford, Inc. v. McGlashan*, 681 S.W.2d 720, 726 (Tex. App.—Houston [1st Dist.] 1984, no writ). Here, however, despite finding that the judicial writ of withholding was properly issued on May 25, 1999, and that a valid order exists on which income may be withheld, the trial court did not reinstate the writ. We therefore find the trial court erred in entering a judgment inconsistent with its own findings.

We reverse the judgment of the trial court and render judgment reinstating the judicial writ of withholding granted May 25, 1999.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed October 18, 2001.

Panel consists of Justices Anderson, Hudson, and Frost.

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