Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00348-CV

IN THE INTEREST OF V.R.J.

From the 131st Judicial District Court, Bexar County, Texas
Trial Court No. 1997EM504318
Honorable Antonia Arteaga, Judge Presiding

Opinion by: Beth Watkins, Justice

Sitting: Luz Elena D. Chapa, Justice
Beth Watkins, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: May 20, 2020

AFFIRMED

Appellant Fernando Corona, Jr. appeals the trial court's order denying his motion to modify an order requiring him to continue paying child support for the benefit of his adult child, appellee V.R.J. We affirm the trial court's order.

BACKGROUND

V.R.J. is the twenty-two-year-old daughter of Corona and appellee Grace VanDyne. When V.R.J. was a year old, the trial court ordered Corona to pay child support. On November 23, 2015, approximately four months after V.R.J. turned eighteen, the trial court modified Corona's child support obligation, finding V.R.J.:

> requires substantial care and personal supervision because of a mental or physical disability and will not be capable of self-support, that the disability existed or its cause was known to exist before or on the child's eighteenth birthday, that

> payments for the support of this child should be continued for an indefinite period, and that both parents have a duty to support the child.

The November 23, 2015 modification ("the support order") did not indicate the nature of the mental or physical disability found by the trial court. It required Corona to continue paying child support for V.R.J.'s benefit, maintaining health insurance for her, and paying half of her unreimbursed medical expenses. It also indicated both Corona and VanDyne "agreed to the entry of these orders." Neither Corona nor VanDyne appealed the support order.

Four months later, Corona filed a petition to modify the support order. He alleged "[t]he circumstances of the child or a person affected by the order have materially and substantially changed since the date of the rendition of the order" because "the child no longer requires substantial care and personal supervision because of a mental or physical disability and . . . is now capable of self-support." When Corona filed his modification petition, V.R.J. was still attending high school.[1] On December 13, 2017—after V.R.J. graduated—Corona amended his modification petition to allege that V.R.J. "is not currently and has never been afflicted by a physical or mental disability that requires substantial care and personal supervision."

The parties tried Corona's amended modification petition to the bench. Corona presented evidence that V.R.J. had received disability-based Social Security benefits as a child but had been denied those benefits as an adult. The trial court also heard testimony that V.R.J. cannot work due to a diagnosed mood disorder and cannot be left alone because she experiences unexplained seizures. It also heard testimony that V.R.J.'s mood disorder has remained fairly constant since she was a child and that her physical conditions—which include scoliosis, intestinal problems, loose joints, back pain, and seizures—have worsened since then.

[1] Corona's brief states that V.R.J. graduated from high school "on June 3, 2015[,] some 4 months prior to" rendition of the support order. The evidence, however, shows V.R.J. graduated high school in June of 2016.

On March 1, 2019, the trial court signed an order denying Corona's modification petition, and later signed findings of fact and conclusions of law disposing of VanDyne's enforcement motion and her claim for attorney's fees and stating "all other relief not expressly granted was denied."[2] The court specifically found Corona "failed to show that the circumstances of his adult disabled child or a person affected by the order had materially and substantially changed since the rendition of the prior order." It also found Corona failed to show V.R.J. "did not require substantial care and personal supervision because of mental or physical disability and would be capable of self-support." This appeal followed.

ANALYSIS

Standard of Review

We review a trial court's ruling on a motion to modify a child support obligation for abuse of discretion. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990); *In re E.J.G.*, No. 04-18-00499-CV, 2019 WL 2439109, at *1 (Tex. App.—San Antonio June 12, 2019, no pet.) (mem. op.). A trial court abuses its discretion if it acts arbitrarily, unreasonably, or without reference to guiding rules or principles. *Melton v. Toomey*, 350 S.W.3d 235, 238 (Tex. App.—San Antonio 2011, no pet.). Under this standard, challenges to the legal and factual sufficiency of the evidence are not independent grounds of error, but are factors to be considered in determining whether the trial court abused its discretion. *In re J.D.D.*, 242 S.W.3d 916, 920 (Tex. App.—Dallas 2008, pet. denied). A trial court does not abuse its discretion if some evidence of a substantive and probative

[2] "In determining the validity of a judgment, it is substance and not the label or form that is controlling." *Mathes v. Kelton*, 569 S.W.2d 876, 878 n.3 (Tex. 1978). Here, although the April 15, 2019 document memorializing the trial court's findings of fact and conclusions of law is not expressly styled as a "final judgment," it disposes of all parties and claims and is therefore the final judgment in this case. *See id.*; *see also Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 200 (Tex. 2001).

character supports its decision. *In re Guardianship of C.E.M.-K.*, 341 S.W.3d 68, 80 (Tex. App.—San Antonio 2011, pet. denied).

Where, as here, an appellant challenges the legal sufficiency of the evidence supporting an adverse finding on which he had the burden of proof at trial, he must show the evidence conclusively establishes the facts in his favor. *In re T.K.D.-H.*, 439 S.W.3d 473, 481 (Tex. App.—San Antonio 2014, no pet.). "We first examine the record for evidence to support the finding. If there is no evidence to support the finding, we then examine the entire record to determine if the contrary position is established as a matter of law." *Id.* (internal citation omitted). In conducting this review, we indulge every reasonable presumption in favor of the challenged finding, "crediting favorable evidence if a reasonable fact-finder could and disregarding contrary evidence unless a reasonable fact-finder could not." *Id.* at 481–82.

When an appellant challenges the factual sufficiency of the evidence supporting an adverse finding on which he bore the burden of proof, he must show the finding is against the great weight and preponderance of the evidence. *Id.* at 482. We consider and weigh all the evidence, but will set aside the challenged finding only if it is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. *Id.*

Applicable Law

A trial court "may order either or both parents to provide for the support of a child for an indefinite period and may determine the rights and duties of the parents if the court finds that: (1) the child, whether institutionalized or not, requires substantial care and personal supervision because of a mental or physical disability and will not be capable of self-support; and (2) the disability exists, or the cause of the disability is known to exist, on or before the 18th birthday of the child." TEX. FAM. CODE ANN. § 154.302(a); *see also id.* § 154.301(2) (defining "child" as "a son or daughter of any age"). A trial court may not modify an existing child support order unless

the movant shows that "the circumstances of the child or a person affected by the order have materially and substantially changed since the earlier of: (A) the date of the order's rendition; or (B) the date of the signing of a mediated or collaborative law settlement agreement on which the order is based." *Id.* § 156.401(a)(1); *Melton*, 350 S.W.3d at 238.

Application

As a threshold matter, to the extent Corona believes V.R.J.'s disabilities *never* satisfied the requirements of section 154.302—as he alleged in his live modification petition—that issue is not properly before us. The factual basis for a previous child support order must be challenged in a direct appeal of that order and may not be collaterally attacked in a modification proceeding. *See In re D.C.*, No. 13-15-00486-CV, 2016 WL 3962713, at *5 (Tex. App.—Corpus Christi–Edinburg July 21, 2016, pet. denied) (mem. op.). Because Corona did not appeal the support order, he may not challenge its underlying findings now. *See id.*

Corona contends the evidence is legally insufficient to support the trial court's refusal to modify the support order because "any previous disability must now be legally presumed to be resolved as no ongoing disability is diagnosed to the level required by the Family Code." He also argues the evidence is factually insufficient to show V.R.J. still suffers from a disability "that meet[s] Family Code standards." We note that Corona's approach to these issues in his brief sometimes misplaces the burden of proof. As non-movants, V.R.J. and VanDyne did not bear any burden to show V.R.J. still requires substantial care and personal supervision due to a mental and physical disability. Instead, it was Corona's burden to demonstrate that a material and substantial change in V.R.J.'s condition occurred after rendition of the support order. TEX. FAM. CODE § 156.401(a)(1); *In re D.C.*, 2016 WL 3962713, at *7. If he did not satisfy that burden, the trial court could not modify the support order. *In re D.C.*, 2016 WL 3962713, at *7.

It is well-established that a litigant seeking to modify a child support order based on changed circumstances must present evidence of the parties' circumstances at both the time of the previous order and the time of the modification hearing. *See Melton*, 350 S.W.3d at 238. This is because "[w]ithout both sets of data, the court has nothing to compare and cannot determine whether a change has occurred." *Zeifman v. Michels*, 212 S.W.3d 582, 594 n.1 (Tex. App.—Austin 2006, pet. denied). Here, the support order did not specify the nature of the mental or physical disability that formed the basis for its finding that V.R.J. requires substantial care and personal supervision and was not capable of self-support. However, the record in the modification proceeding reveals some limited information about V.R.J.'s condition at the relevant time. For example, it is undisputed that V.R.J. has long suffered from scoliosis and back pain resulting from scoliosis. Additionally, a December 19, 2017 medical record shows that V.R.J. had had "a history of intractable seizures" for three years—i.e., since 2014. That record also indicates V.R.J. was hospitalized because of a mood disorder in 2014.

The trial court also heard testimony from V.R.J.'s psychiatrist, Dr. Soad Michelson. Dr. Michelson has treated V.R.J. since she was twelve years old, approximately six years before rendition of the support order. She testified V.R.J.'s "most significant problem" is a mood disorder that impedes her ability to cope in situations where she is required to interact with other people. She also noted V.R.J. had been hospitalized "three or four" times for treatment of her mood disorder. Dr. Michelson testified V.R.J. "might be reactive, easily angered, or become easily anxious[,] affecting her interaction with other people." This is consistent with an October 23, 2015 report from one of V.R.J.'s high school teachers, which indicates that interacting and relating with others "is the area [V.R.J.] struggles with the most. . . . [A]t times she is clearly frustrated and disappointed by problems connecting with her peers."

This evidence of V.R.J.'s scoliosis, seizures, and mood disorder is some evidence of V.R.J.'s circumstances on the date the support order was rendered. *See In re T.K.D.-H.*, 439 S.W.3d at 481. We must therefore determine whether the trial court abused its discretion by concluding that Corona did not show these circumstances materially and substantially changed after rendition of the support order. *See id.* The evidence Corona identifies on this issue can be separated into three categories: (1) V.R.J.'s medical, academic, and employment history; (2) the Social Security Administration's determinations of V.R.J.'s entitlement to federal disability benefits; and (3) VanDyne's and V.R.J.'s testimony about V.R.J.'s needs.

V.R.J.'s medical, academic, and employment history

Corona contends the evidence conclusively shows a material and substantial change because Dr. Michelson was the only expert to testify at trial and she "ma[d]e no finding of any physical disability."[3] He also notes that the medical records in evidence do not "ha[ve] any mention of physical disability." As noted above, however, it is undisputed that V.R.J. has suffered from scoliosis and resulting back pain since before rendition of the support order, and her medical records show she has experienced unexplained seizures since at least 2014. Corona does not point to any evidence showing that those conditions materially and substantially changed since rendition of the support order. Instead, he appears to argue that those conditions are not severe enough to support the *initial* finding that V.R.J. requires substantial care and personal supervision and is not capable of self-support. This is an impermissible collateral attack on the support order. *See In re D.C.*, 2016 WL 3962713, at *5.

[3] Corona's brief implies Dr. Michelson evaluated V.R.J. for a physical disability and found none. However, Dr. Michelson, a psychiatrist, testified she "cannot speak to [V.R.J.'s] physical incapacities" because V.R.J.'s primary care physician or neurologist "is the one that can give the physical condition." Corona presented no testimony from V.R.J.'s primary care physician or neurologist.

Corona also notes that after rendition of the support order, V.R.J. earned good grades in her senior year of high school, graduated, and was accepted into college. However, there is no evidence that the support order's findings were based on any intellectual or academic disabilities, and Corona did not present any evidence about V.R.J.'s intellectual or academic abilities at the time of the support order. *See In re T.K.D.-H.*, 439 S.W.3d at 481 (without evidence of historical circumstances, trial court has no way to determine whether change occurred).

Corona also contends there is "[n]o diagnosis of mental disability in the record at present," and V.R.J.'s diagnosed mood disorder "does not rise to the level of a disability under the [Family] Code." Again, we must determine whether Corona conclusively showed V.R.J.'s condition had materially and substantially changed since November 23, 2015. TEX. FAM. CODE § 156.401(a)(1); *Melton*, 350 S.W.3d at 238. Dr. Michelson testified "[V.R.J.'s] mood disorder continues to be the same" as when she began treatment as a child and has remained fairly constant. She explained V.R.J.'s mood disorder negatively affects her ability to deal well with others and "[a]t the present moment," that condition renders her incapable of working. She also stated that her opinion of V.R.J.'s ability to work has not changed since 2015. While it is true Dr. Michelson stated she does not believe V.R.J.'s inability to work is permanent, she testified that inability would persist for six months or more and explained, "We are still trying to find the right treatment to stabilize her mood."

Dr. Michelson's testimony is consistent with V.R.J.'s testimony that she "had a lot of anxiety" while dealing with co-workers and customers during one of two short-term jobs she has held. V.R.J. testified she was fired from one of her jobs, a stocking position at Wal-Mart, after a month because she "was in the restroom a lot" managing her anxiety. While V.R.J. did not report any specific problems with her second job, an eight-week internship with the San Antonio Housing Authority, the only details the trial court heard about that job are that V.R.J. "put things in

alphabetical order and shredded papers" and earned $8.50 an hour. Corona did not attempt to show that such an experience constituted a material and substantial change in her ability to support herself. Furthermore, while Corona contends the trial court ignored a "report from the Texas Workforce Commission indicating that [V.R.J.] is able to and can find employment through their agency," the document he cites for this proposition shows only that V.R.J. "has been actively participating in [the] TWC-VR program since August 2015"—i.e., since before rendition of the support order—and "continues to participate in planned services and activities that will assist her in reaching her employment goal." That document is no evidence that V.R.J.'s ability to work has changed since rendition of the support order.

Based on this evidence, the trial court could have reasonably concluded that V.R.J.'s medical, academic, and employment conditions had not materially and substantially changed since rendition of the support order and continue to render her incapable of self-support. *See In re T.K.D.-H.*, 439 S.W.3d at 481. Those findings are not so against the great weight and preponderance of the evidence so as to be clearly wrong and unjust. *See id.* at 482.

The Social Security Administration's determinations

Corona relies heavily on a November 29, 2017 "Notice of Decision—Unfavorable" report from the Social Security Administration, which he identifies as "the single best evidence in this case" to show that a material and substantial change occurred after rendition of the support order. That report shows that when V.R.J. was a child, she received Social Security disability benefits for unspecified reasons. However, she was required to "have [her] disability redetermined under the rules for disability used for adults" when she reached the age of eighteen. When V.R.J. turned eighteen and sought redetermination of her benefits, the Social Security Administration determined that "as of November 1, 2015," she did not qualify as disabled under the rules applicable to adults. The report shows, however, that the Social Security Administration made that

determination on November 10, 2015—a date that preceded the trial court's November 23, 2015 rendition of the support order. Because this determination occurred before rendition of the support order, the Social Security Administration's November 10, 2015 determination does not, as a matter of law, show that V.R.J.'s condition materially and substantially changed after rendition of the support order. *Cf. In re D.S.G.*, No. 13-10-00683-CV, 2011 WL 3366368, at *5 (Tex. App.—Corpus Christi–Edinburg Aug. 4, 2011, no pet.) (mem. op.) (holding event that occurred prior to challenged order "cannot be considered a material and substantial change in the circumstances occurring *after* the entry of the order") (emphasis in original).

The November 29, 2017 "Notice of Decision" also explains that V.R.J. and VanDyne sought reconsideration of the November 2015 determination, and, as a result, the administrative law judge assigned to V.R.J.'s case reviewed additional, updated information after November of 2015. The administrative law judge noted that the updated evidence he reviewed "shows that [V.R.J.] is more limited in her abilities than previously concluded." Nevertheless, he reiterated the Social Security Administration's prior conclusion that "[V.R.J.]'s disability ended on November 1, 2015." We hold that this confirmation of the Social Security Administration's previous ruling is not evidence of a material and substantial change. To the contrary, it conclusively shows that the administration reached the same conclusion about V.R.J.'s adult entitlement to federal disability benefits both before and after rendition of the support order.

Corona contends the Social Security Administration's requirements for adult disability benefits are "analogous with the standards set forth in the Family Code" and as a result, "all of the evidence should be viewed in this light and supporting [Corona] herein." The November 29, 2017 "Notice of Decision" indicates that the Social Security Act defines "disability" as:

> the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment or combination of impairments that

> can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

However, while the Social Security Act specifically defines "disability," the Texas Family Code does not. *See* TEX. FAM. CODE § 154.302; *In re D.C.*, 549 S.W.3d 136, 137 (Tex. 2018) (Guzman, J., concurring in denial of petition for review) ("The Family Code does not define mental or physical disability or specify the type of proof required to meet the statutory standard."). Instead, the Family Code gives a trial court discretion to order child support if it finds an adult child "requires substantial care and personal supervision because of a mental or physical disability and will not be capable of self-support." TEX. FAM. CODE § 154.302(a)(1). Unlike the Social Security Act, the Family Code does not explicitly require a showing of inability to engage in *any* substantial gainful activity. *See id.* Nor does it require a showing that the adult child's disability is "medically determinable" or that it will persist for a specific length of time. *See id.*

Here, the trial court heard Dr. Michelson's testimony that while she does not believe V.R.J.'s inability to work is permanent, that inability: (1) has not changed since before the date of the support order; (2) presently exists; and (3) will persist for at least six more months. Because the Social Security Act's definition of "disability" requires a showing that the inability to work will persist for at least twelve months, that testimony might be insufficient to support a finding that V.R.J. is entitled to disability benefits from the federal government. However, we hold that under the plain language of the Texas Family Code, the trial court did not abuse its discretion by relying on Dr. Michelson's testimony to find that V.R.J.'s need for assistance from her own parents has not materially and substantially changed since rendition of the support order. TEX. FAM. CODE §§ 154.302(a)(1), 156.401(a)(1)(A). We decline Corona's invitation to hold that the trial court behaved arbitrarily, unreasonably, or without reference to guiding rules or principles by refusing

to apply the Social Security Administration's rules to a determination that is controlled by the Texas Family Code.

VanDyne's and V.R.J.'s testimony about V.R.J.'s needs

Corona also contends the evidence shows V.R.J. does not require substantial care or personal supervision because VanDyne leaves V.R.J. alone when she goes to work. However, this assertion is not supported by the record. VanDyne testified that her brother or sister-in-law "come by the house and stay with" V.R.J. while she is at work, and if those relatives are not available, then V.R.J. goes to a cousin's house. VanDyne testified she does not leave V.R.J. alone because "I'm never sure when she's going to have a seizure." This testimony is consistent with V.R.J.'s medical records, which indicate that her doctors have instructed her not to bathe without assistance.

Additionally, V.R.J. testified she experienced three seizures in the two months before trial. Although she has been prescribed seizure prevention medication, that medication does not work "because we don't know what kind [the seizures] are." Furthermore, while V.R.J. has a driver's license, she testified she does not drive because her neurologist told her she must "go three months without a seizure" to drive safely. She also testified that she "can't really walk or sit for a long time and stand for a long time," that she missed at least 20 days of her senior year of high school, and that she does not believe she can maintain a full-time job. While V.R.J. testified she can feed and dress herself "[m]ost days," she also explained she "eat[s] a lot of cereal" and it is "hard for [her] to bend to put on pants or underwear or socks and shoes."

Finally, VanDyne testified V.R.J.'s needs adversely affect VanDyne's own ability to keep a job, and she has lost at least one job "because of my need to take care of my daughter." She also testified she previously worked as a home health-care aide and the help V.R.J. requires is similar "to a person who I would be taking care of as a home health aide."

We hold the evidence in this case, taken as a whole, does not conclusively demonstrate a material and substantial change in V.R.J.'s circumstances since rendition of the support order. *See In re T.K.D.-H.*, 439 S.W.3d at 481–82. Nor does it show that the trial court's finding that V.R.J.'s circumstances did not materially and substantially change is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. *Id.* at 482. Accordingly, we hold the trial court did not abuse its discretion by denying Corona's petition to modify the support order. We therefore overrule Corona's challenges to that order.

CONCLUSION

We affirm the trial court's order.

Beth Watkins, Justice