

Opinion issued July 16, 2020



In The
Court of Appeals
For The
First District of Texas

NO. 01-18-01119-CV

ALI REZA KHALIGH, Appellant
V.
SHAHLA KHALIGH, Appellee

On Appeal from the 310th District Court
Harris County, Texas
Trial Court Case No. 1980-26848

MEMORANDUM OPINION

Ali Reza Khaligh, the father of Shahla Khaligh, appeals from an order granting his adult daughter levies of child support liens and a judicial writ of withholding from his earnings. He contends that the trial court lacked subject-matter jurisdiction under Texas Family Code section 157.005 and that his daughter lacked

standing to enforce child support. He also argues that the trial court erred by: (1) concluding that he did not timely file a motion to stay issuance of the writ of withholding; (2) prohibiting him from presenting affirmative defenses; and (3) ordering him to pay attorney's fees. We affirm.

Background

In 1980, appellant Ali Khaligh ("Ali") and Sherilyn Khaligh divorced in Harris County, Texas. Ali was ordered to pay \$250 per month as child support for the benefit of appellee Shahla Khaligh ("Shahla"), the couple's only child. Ali failed to pay his child support obligation as ordered. Sherilyn Khaligh initiated an enforcement action against Ali to collect unpaid child support in 2011, but she died on June 13, 2016. The trial court did not hear her enforcement action.

On October 18, 2017, 41-year-old Shahla served a notice of application for judicial writ of withholding on Ali. The notice contained a sworn child support arrearage amount of \$229,089.20 as of October 3, 2017. On November 15, 2017, Ali filed a motion to stay the issuance of the income withholding order. Shahla answered and requested affirmative relief, arguing among other things that Ali failed to timely contest the notice of application for judicial writ of withholding and that the arrearages sworn to in the notice were determined as a matter of law. She attached the divorce decree, Harris County child support payment record, and the Texas Child

Support State Disbursement Unit payment record showing a calculation of missed support payments and interest.

In September 2018, the case proceeded to a bench trial. The court took judicial notice of the pleadings and exhibits attached. The court found that Ali failed to make all his required child support payments and that he did not timely file his motion to stay. The court granted Shahla's request for a judicial writ of withholding and ordered that Shahla could enforce the child support amount through child support lien. The court awarded attorney's fees, conditional appellate attorney's fees, and costs against Ali. The trial court issued findings of facts and conclusions of law, and Ali appealed.

Jurisdiction

In his first issue, Ali contends that section 175.005(b)* deprived the trial court of jurisdiction to determine and render a judgment for child support arrearages because more than 10 years passed since the child support obligation terminated when his daughter turned 18. Shahla responds that she did not seek a cumulative money judgment, but instead sought other remedies to enforce child support that are not time-barred. We agree.

* Unless otherwise stated, all statutory references in this opinion are to the Texas Family Code.

A. Standard of Review

In construing a statute, courts must “ascertain and give effect to the Legislature’s intent.” *HCBeck, Ltd. v. Rice*, 284 S.W.3d 349, 352 (Tex. 2009). We begin with the “plain and common meaning of the statute’s words.” *Id.* (quoting *Tex. Dep’t of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 642 Tex. 2004)). We consider the statute as a whole and not its provisions in isolation. *City of Waco v. Kelley*, 309 S.W.3d 536, 542 (Tex. 2010). We also consider the objective the Legislature sought to achieve through the statute as well as the consequences of a particular construction. *HCBeck*, 284 S.W.3d at 352 (citing TEX. GOV’T CODE § 311.023(1), (5)). An appellate court reviews de novo questions of statutory construction. *MCI Sales & Serv., Inc. v. Hinton*, 329 S.W.3d 475, 500 (Tex. 2010). Similarly, an appellate court reviews de novo questions of subject-matter jurisdiction. *City of Elsa v. Gonzalez*, 325 S.W.3d 622, 625 (Tex. 2010).

B. Analysis

If an obligor fails to satisfy an obligation to pay child support, the obligee may seek various cumulative remedies, including (1) an order holding the obligor in contempt of court, (2) a cumulative money judgment of the arrearages that can be executed and enforced as any other judgment, (3) enforcement of the obligee’s child support lien against the obligor’s nonexempt property, (4) a judicial writ of withholding from the obligor’s earnings, and (5) an administrative writ of

withholding from the obligor's earnings. *Isaacs v. Isaacs*, 338 S.W.3d 184, 187 (Tex. App.—Houston [14th Dist.] 2011, pet. denied). Section 157.005 states that the court retains jurisdiction to confirm the total amount of child support arrearages and render a cumulative money judgment, as provided by section 157.263, if a motion for enforcement requesting such judgment is filed not later than the 10th anniversary after the child becomes an adult or the child support obligation terminates. TEX. FAM. CODE § 157.005(b). “The plain language of section 157.003(b) unambiguously indicates that it applies only to cumulative money judgments for past-due child support as provided by section 157.263.” *Holmes v. Williams*, 355 S.W.3d 215, 219 (Tex. App.—Houston [1st Dist.] 2011, no pet). Under section 157.263, if a party files a motion for enforcement of child support and requests a cumulative money judgment for arrearages, then the court shall confirm the amount and render a cumulative money judgment. TEX. FAM. CODE § 157.263(a).

This litigation is not prompted by a motion for the enforcement of child support requesting a money judgment for arrearage. “The jurisdiction of the trial court to impose [an order holding the obligor in contempt or a cumulative money judgment for arrearages] expires after a specific period of time.” *Isaacs*, 338 S.W.3d at 188 (citing TEX. FAM. CODE § 157.005(a), (b)). In contrast, liens, judicial writs of withholding, and administrative writs of withholding remain available until various

items, including all child support and arrearages have been completely paid. *Id.* (citing TEX. FAM. CODE §§ 157.318(a), 158.102, 158.502).

Shahla did not seek, and the trial court did not grant, relief under section 157.263. Shala sought a child support lien and a judicial writ of withholding. Section 157.318(a) expressly provides that a child support “lien is effective until all current support and child support arrearages, including interest, any costs and reasonable attorney’s fee . . . for which the obligor is responsible, have been paid or the liens otherwise released as provided by this subchapter.” TEX. FAM. CODE § 157.318(a). As to the judicial writ of withholding, an order or writ for income withholding “may be issued until all current child support and child support arrearages, interest, and any applicable fees and costs, including ordered attorney’s fees and court costs, have been paid.” *Id.* § 158.102. Under its unambiguous language, section 157.005(b) does not limit the trial court’s jurisdiction to grant the relief that it granted in the judgment from which Ali appeals. *See Isaacs*, 338 S.W.3d at 188 (holding same). We conclude that section 157.005(b) limits jurisdiction only over actions brought pursuant to section 157.263—cumulative money judgments for past due child support—and that it does not preclude jurisdiction here. The trial court had jurisdiction under sections 157.318(a) and 158.102. We overrule Ali’s first issue.

Standing

Ali next contends that Shahla does not have standing to enforce child support because she is not the obligee and because section 154.013, enacted in 2001, cannot be applied retroactively to child support that accrued earlier.

“To establish standing, a person must show a personal stake in the controversy.” *In re B.I.V.*, 923 S.W.2d 573, 574 (Tex. 1996). The Family Code defines an “obligee” as a “person . . . entitled to receive payments of child support. . . .” TEX. FAM. CODE § 101.021. An obligee may pursue unpaid child support by income withholding. *Id.* § 158.301(b)(4). Payment of child support arrearages compensates for “the wrong to the child at least as much as it reimburses the custodial parent for monies spent on the child.” *Williams v. Patton*, 821 S.W.2d 141, 145 (Tex. 1991). Section 154.013 states that a child support obligation does not terminate on the death of the obligee but continues as an obligation to the child named in the support order. TEX. FAM. CODE § 154.013(a).

Ali argues that section 154.013, enacted in 2001, cannot be applied retroactively to allow Shahla to enforce the child support obligation. The Texas Constitution’s ban on retroactive laws forbids statutes that “create new obligations, impose new duties, or adopt new disabilities in respect to transactions or considerations past.” *In re A.D.*, 73 S.W.3d 244, 248 (Tex. 2002) (quoting *Ex parte Abell*, 613 S.W.2d 255, 260 (Tex. 1981) (orig. proceeding)); see TEX. CONST. art. I,

§ 16. A writ of withholding for delinquent child support does not seek to impose a new legal liability on the obligor to support his children, but instead it is one of several methods the Family Code provides as a remedy to secure performance of a previously adjudicated liability. *See In re A.D.*, 73 S.W.3d at 248–49. The writ at issue imposes no new substantive obligations on Ali. It is a remedy for Ali’s repeated and continuing violation of the 1980 divorce decree that ordered him to pay a specific amount for Shahla’s support. *See id.* Applying section 154.013 to this case does not violate the Texas Constitution’s prohibition of retroactive laws. *See* TEX. CONST. art. I, § 16.

Ali also argues that Shahla lacks standing to enforce unpaid child support because she did not get an assignment from her deceased mother. Ali has not cited any authority for this proposition. As the only child of Ali and Sherilyn Khaligh, Shahla is the only person entitled to receive payments of child support. *See* TEX. FAM. CODE § 101.021 (defining “obligee” as a person entitled to receive child support payments). She is an obligee and has standing to enforce the child support arrearage through a writ of withholding. We overrule Ali’s second issue.

Timing of Motion to Stay

Ali argues that the trial court erred by not allowing him to contest the amount of arrearages. He argues that the trial court erred in finding that he received notice by either October 19 or October 24, 2017 rather than one date certain. Shahla

responds that under either calculation there was sufficient evidence to support that Ali did not timely file his motion to stay the issuance of the writ of withholding. We agree.

A. Standard of Review and Applicable Law

Issues regarding the payment of child support, including a determination of child support arrearages, are reviewed for an abuse of discretion. *See Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990). The trial court abuses its discretion when it acts without reference to any guiding rules or principles. *Worford*, 801 S.W.2d at 109. The trial court issued findings of fact and conclusions of law. Findings of fact in a case tried to the court have the same force and effect as a jury's verdict on questions and are reviewed for legal and factual sufficiency under the same standards that govern jury findings. *Anderson v. City of Seven Points*, 806 S.W.2d 791,794 (Tex. 1991); *Min v. Avila*, 991 S.W.2d 495, 500 (Tex. App.—Houston [1st Dist.] 1999, no pet.). A party appealing from a non-jury trial in which the court makes findings of facts directs its attack to the sufficiency of the evidence to specific findings of fact, rather than the judgment as a whole. *Thompson & Knight LLP. v. Patriot Expl. LLC*, 444 S.W.3d 157, 162 (Tex. App.—Dallas 2014, no pet.).

In applying the legal sufficiency standard, we must credit evidence that supports the judgment if reasonable jurors could, and we must disregard contrary evidence unless reasonable jurors could not. *City of Keller v. Wilson*, 168 S.W.3d

802, 827 (Tex. 2005). Accordingly, we review the evidence in the light most favorable to the verdict and disregard all contrary evidence that a reasonable jury could have disbelieved. *Ysleta Indep. Sch. Dist. v. Monarrez*, 177 S.W.3d 915, 917 (Tex. 2005) (citing *City of Keller*, 168 S.W.3d at 812). If the evidence falls within the zone of reasonable disagreement, we may not invade the factfinding role of the trial judge, who alone determines the credibility of the witnesses, the weight to give their testimony, and whether to accept or reject all or any part of that testimony. *See City of Keller*, 168 S.W.3d at 822.

A writ of income withholding may be issued until all child support arrearages have been paid. TEX. FAM. CODE § 158.102. A notice of application of judicial writ of withholding may be filed by an obligee if a delinquency occurs in child support payments in an amount equal to or greater than the total support due for one month. *Id.* § 158.301. The notice shall state the amount of arrearages and the amount of wages that are to be withheld in accordance with a judicial writ of withholding. *Id.* § 158.302(1). The notice may be delivered to the obligor by first-class mail, and if so, it is considered received on the 10th day after the date the notice was mailed. *Id.* § 158.306(a)(2), (c)(3).

Section 158.307 states that an obligor may stay the issuance of a judicial writ of withholding by filing a motion to stay disputing the amount of arrearages with the clerk of court “not later than the 10th day after the date the notice of application for

judicial writ of withholding was received.” TEX. FAM. CODE § 158.307(a). The filing of a motion to stay prohibits the clerk of the court from delivering the judicial writ of withholding to the obligor’s employer before a hearing is held. *Id.* § 158.308. Once the motion has been filed, it is the trial court’s duty to set a hearing on the motion and notify the parties of the date of the hearing. *Id.* § 158.309(a). The purpose of the hearing is to decide any contest on the issue of arrearages. *Id.* at (b), (c).

B. Analysis

At the hearing, Shahla’s attorney testified that the notice of judicial writ of withholding was mailed to Ali on October 19, 2017 by first-class mail, offering into evidence an exhibit showing the same. On October 24, 2017, Ali called Shahla’s attorney and indicated that he had received the notice of application for judicial writ of withholding and the lien that was on file. On the same date, Shahla filed the notice of application of judicial writ of withholding with the court. Ali filed a motion to stay the issuance of the writ on November 15, 2017. The court also took judicial notice of the pleadings.

The trial court made several findings of fact related to the timing of the notice and Ali’s response. The trial court found that (1) Shahla served her sworn notice of application for judicial writ of withholding to Ali on October 19, 2017; (2) Ali contacted Shahla’s counsel on October 24, 2017 to discuss the notice he had received; (3) Ali received the notice no later than October 24, 2017; (4) Ali did not

file a verified motion to stay the issuance and delivery of the judicial writ of withholding within ten days of October 24, 2017; (5) Ali received the sworn notice on October 29, 2017 under section 158.306; (6) Ali did not file a verified motion to stay the issuance of the writ within ten days of October 29, 2017; (7) Ali filed a motion to stay on November 15, 2017.

There is sufficient evidence to support the trial court's findings. The court heard testimony that the notice was served by first-class mail on October 19, 2017 and that Ali contacted Shahla's counsel on October 24, 2017. The record shows that the notice was filed with the court on October 24, 2017 and that Ali did not file a motion to stay before that date. Ali filed a verified motion to stay the writ on November 15, 2017. The evidence is sufficient to support the court's factual finding that Ali did not file a motion to stay within ten days of receiving the notice. *See* TEX. FAM. CODE § 158.307(a). We overrule Ali's issue related to the timing of his motion to stay.

Affirmative Defenses

Ali argues that the trial court erred by not allowing him to present evidence of the affirmative defenses of payment and voluntary relinquishment. Shahla argues that Ali waived his right to assert these defenses because he failed to timely file a motion to stay. We agree.

The trial court found that Ali did not file his motion to stay issuance of the judicial writ of withholding until November 15, 2017, more than ten days after he received notice. In her response, Shahla objected to Ali's motion to stay, contending that it was filed too late. *See* TEX. FAM. CODE § 158.307(a). On appeal, Shahla contends that because Ali failed to properly file a motion to stay, he cannot complain on appeal about the amount of arrearages determined by the trial court. We agree.

The trial court did not abuse its discretion in deciding the child support arrearage amount as a matter of law after Ali failed to file a timely motion to stay. *See Cobb v. Gordy*, No. 01-09-00764-CV, 2011 WL 494801, at *4 (Tex. App.—Houston [1st Dist.], Feb. 10, 2011, no pet.) (mem. op.) (trial court did not abuse discretion in concluding obligor had not properly invoked right to challenge arrearages and in deciding them as matter of law). Ali argues that *Cobb* is distinguishable because in that case the appellate court did not have a reporter's record and the trial court did not make findings of fact and conclusions of law, but this court's analysis of the law in *Cobb*, regarding the obligor's untimely motion to stay, did not depend on findings of fact and conclusions of law or a reporter's record. *Id.* We overrule Ali's issue related to his ability to present affirmative defenses.

Attorney's Fees

Ali contends that the trial court erred in awarding attorney's fees because the Family Code does not provide for such an award with the issuance of a judicial writ

of withholding. “The availability of attorney’s fees under a particular statute is a question of law for the court.” *Holland v. Wal-Mart Stores*, 1 S.W.3d 91, 94 (Tex. 1999). We therefore review this issue de novo. *Arrow Marble, LLC v. Estate of Killion*, 441 S.W.3d 702, 705 (Tex. App.—Houston [1st Dist.] 2014, no pet.).

Shahla sought and was awarded two remedies to enforce child support: a judicial writ of withholding of Ali’s earnings and enforcement of child support liens against Ali’s nonexempt property. *See* TEX. FAM. CODE §§ 157.323, 158.309. The trial court awarded attorney’s fees pursuant to section 157.167 which states, “If the court finds that the respondent has failed to make child support payments, the court shall order the respondent to pay the movant’s reasonable attorney’s fees and all court costs in addition to the arrearages.” *Id.* § 157.167(a). Ali argues that because the court did not have jurisdiction to issue a money judgment confirming the total arrearage under section 157.005(b), the court could not award attorney’s fees. But section 157.167(a) does not limit recovery of attorney’s fees to certain remedies. *Id.* While the Family Code does not specifically authorize attorney’s fees when a writ of withholding is issued, it specifically authorizes attorney’s fees for child support liens. *See* TEX. FAM. CODE § 157.323. In enforcing Shahla’s child support liens, the trial court had jurisdiction to “render judgment against the obligor for the amount due, plus costs and reasonable attorney’s fees” and to order any official authorized to levy execution to “satisfy the lien, costs, and attorney’s fees by selling any

property” on which a child support lien is established. *See* TEX. FAM. CODE § 157.323(c) (1–2). The trial court did not err in awarding attorney’s fees. We overrule Ali’s issue related to attorney’s fees.

Conclusion

We affirm the judgment of the trial court.

Peter Kelly
Justice

Panel consists of Chief Justice Radack and Justices Kelly and Goodman.