Affirmed and Memorandum Opinion filed February 13, 2018.

In The

Fourteenth Court of Appeals

NO. 14-17-00024-CV

IN THE INTEREST OF J.S., R.S. AND M.J.S., CHILDREN

On Appeal from the 257th District Court
Harris County, Texas
Trial Court Cause No. 2013-32576

M E M O R A N D U M O P I N I O N

In this appeal from the trial court's ruling on a motion to confirm a child-support arrearage, the mother of J.S., R.S., and M.J.S. asked the trial court to confirm an arrearage of $71,222.17 as of October 31, 2016. The children's father contends that the evidence is legally and factually insufficient to support the trial court's denial of his request for possession credit and the award of attorney's fees. We affirm.

I. BACKGROUND

In 2000, a California court rendered a stipulated judgment requiring Father to pay child support of $352.00 per month. In 2001, Mother caused a second suit

affecting the parent-child relationship to be filed in the 257th District Court of Harris County, Texas. That suit, Cause No. 2001-57434, is referenced in this case, but it is not at issue.

Mother brought the present suit, Cause No. 2013-32576, in Harris County in 2013 by registering the California judgment and moving to enforce it. At the hearing for confirmation of the child-support arrearage, Father's counsel elicited testimony from Mother that the 2001 Texas case resulted in an order establishing the parent-child relationship but that the order later was held to be void. Also at the hearing, Father testified that his daughter J.S. lived with him for a thirty-one-month period between 2002 and 2005. Based on that testimony, he sought possession credit to reduce the arrearage. Mother and Mother's sister testified that J.S. lived with Mother during that time and merely visited Father on weekends.

In addition to the arrearage and accrued interest, Mother sought attorney's fees of $4,500.00, representing twenty-two hours of legal services since 2013.

The trial court rendered judgment that Father had failed to pay $32,070.71 in child support for the period of February 2000 through November 2013, and that the accrued interest as of October 31, 2016 was $39,151.46. The court held Father liable for total arrearage and interest of $71,222.17 plus post-judgment interest, and ordered Father to pay Mother's attorney Carole Riggs attorney's fees of $4,500.00. On appeal, Father challenges the denial of possession credit and the award of attorney's fees.

II. STANDARD OF REVIEW

We review a trial court's confirmation of an arrearage amount for abuse of discretion. *See In re B.M.M.*, No. 14-05-00700-CV, 2006 WL 3072055, *2 (Tex. App.—Houston [14th Dist.] Oct. 31, 2006, no pet.) (mem. op.). The trial court also

has broad discretion in awarding attorney's fees in such an action. *See Scruggs v. Linn*, 443 S.W.3d 373, 381 (Tex. App.—Houston [14th Dist.] 2014, no pet.); *see also* TEX. FAM. CODE ANN. § 157.167 (West 2014). A trial court abuses its discretion when it acts in an arbitrary or unreasonable manner, without reference to any guiding rules or principles. *See Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990). Under the abuse-of-discretion standard, legal and factual sufficiency are not independent grounds of error, but are merely factors to be considered in determining whether the trial court abused its discretion. *See London v. London*, 94 S.W.3d 139, 143–44 (Tex. App.—Houston [14th Dist.] 2002, pet. denied). The trial court does not abuse its discretion if some evidence of a substantive and probative character supports the trial court's decision. *In re B.M.M.*, 2006 WL 3072055, at *2.

In a matter tried without a jury and in which no findings of fact or conclusions of law were made or requested, we presume that the trial court made all the necessary findings to support its judgment. *Holt Atherton Indus., Inc. v. Heine*, 835 S.W.2d 80, 83–84 (Tex. 1992). The trial court's implied findings are reviewed under the same legal and factual sufficiency standards applicable to jury findings. *See Shields Ltd. P'ship v. Bradberry*, 526 S.W.3d 471, 480 (Tex. 2017). To evaluate the legal sufficiency of the evidence supporting a finding, we review all of the evidence in the light most favorable to the finding, crediting favorable evidence if a reasonable factfinder could and disregarding contrary evidence unless a reasonable factfinder could not. *See City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). We presume that the factfinder decided all credibility questions in support of its findings. *See id.* at 819. To overcome an implied adverse finding on which the complaining party bore the burden of proof, the party must establish that the evidence conclusively establishes the proposition. *See Associated Indem. Corp. v. CAT Contracting, Inc.*, 964 S.W.2d 276, 284 n.7 (Tex. 1998). When reviewing for factual

sufficiency, an appellate court will set aside the finding "only if, after considering and weighing all of the evidence in the record pertinent to that finding, it determines that the credible evidence supporting the finding is so weak, or so contrary to the overwhelming weight of all the evidence, that the answer should be set aside." *Crosstex N. Tex. Pipeline, L.P. v. Gardiner*, 505 S.W.3d 580, 615 (Tex. 2016).

III. POSSESSION CREDIT

In arguing that the evidence is legally and factually insufficient to support the trial court's denial of his request for possession credit, Father cites only his own testimony. The evidence, however, was conflicting, and as the factfinder, the trial court is the sole judge of the witnesses' credibility and the weight to be given to their testimony. *See London v. London*, 192 S.W.3d 6, 14 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). Regarding J.S.'s residence, the trial court properly could have found—and presumably did find—the testimony of J.S.'s mother and aunt more credible than the testimony of J.S.'s father. The testimony of Mother and Mother's sister is not so weak, or so contrary to the overwhelming weight of the evidence, that we should set aside the trial court's implied finding that J.S. resided with Mother throughout the contested period.

We overrule Father's first issue, and we conclude that the trial court did not abuse its discretion in denying Father's request for possession credit.

IV. ATTORNEY'S FEES

In Father's second issue, he challenges the award of attorney's fees. Where, as here, the trial 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." TEX. FAM. CODE ANN. § 157.167(a). With some exceptions, and for good cause shown, a trial court

may waive the requirement to award the fees if it states the reasons supporting such a finding. *See id.* § 157.167(c). No such finding was made here.

Father asserts that the trial court erred in finding that Mother incurred attorney's fees; however, Mother's counsel Carole Riggs testified that she, Riggs, had performed more than twenty-two hours' work on the case for which she charged Mother $200 per hour. A trial court may take judicial notice of the usual and customary attorney's fees and the contents of the case file, and we presume that the trial court did so. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 38.004 (West 2015); *Ross v. 3D Tower Ltd.*, 824 S.W.2d 270, 273 (Tex. App.—Houston [14th Dist.] 1992, writ denied).

Father additionally argues that Mother filed a second child-support action in Texas even though she already had a valid California child-support order, and that the second child-support action was eventually dismissed because the California court retained jurisdiction and Mother had failed to transfer the case. Father argues that Mother should not be rewarded by an award of attorney's fees that she would not have incurred had she properly registered the foreign judgment.

Father's argument assumes that the judgment in this case includes an award of attorney's fees incurred in the 2001 Texas child-support action, but that assumption is not established by the record. The record shows the present case is an action to confirm an arrearage based on the California judgment, which has been registered in Texas—the very act that Father contends Mother should have taken. This case was instituted in 2013 and Mother's counsel testified that the attorney's fees were for only twenty-two hours of work "on this case" beginning in 2013. The evidence concerning the 2001 Texas case, however, is only that it resulted in an order establishing a parent-child relationship and that the order was later declared

void. The record does not establish that the trial court awarded fees in this case that were incurred in a different case.

Because we cannot say that the trial court clearly abused its discretion in rendering judgment against Father for Mother's attorney's fees, we overrule Father's second issue.

V. CONCLUSION

Having overruled both issues presented for our review, we affirm the trial court's judgment.

/s/ Tracy Christopher
Justice

Panel consists of Justices Christopher, Donovan, and Jewell.