

AFFIRMED and Opinion Filed June 18, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-18-01350-CV

IN THE INTEREST OF N.E.C., A CHILD

**On Appeal from the 301st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-97-20578**

MEMORANDUM OPINION

**Before Justices Osborne, Partida-Kipness, and Pedersen, III
Opinion by Justice Osborne**

The trial court rendered an order enforcing a previous award of child support for N.E.C. Father appeals, arguing that the trial court abused its discretion. Because there was sufficient evidence to support the trial court's order, we conclude the trial court did not abuse its discretion. Accordingly, we affirm.

BACKGROUND

N.E.C. is over the age of 18, but she is disabled. Mother and Father were divorced in 1999, and in the years following, have disagreed about the amount Father must pay for N.E.C.'s support. This appeal arises from the trial court's order of

August 6, 2018, finding Father \$43,896.39 in arrears for N.E.C.'s support and \$6,850.00 in arrears for N.E.C.'s medical support (the "Enforcement Order").

In February 2017, Mother filed a "Petition for Enforcement of Child Support and Medical Support as of March 31, 2012 by Contempt." In her petition, Mother alleged that the parties' final decree of divorce ordered Father to pay Mother child support in specific monthly amounts with additional monthly amounts "for special needs of [N.E.C.]." Mother alleged that beginning in November, 1998, Father failed to pay some or all of the amounts due under the decree. Her motion included charts showing amounts paid and amounts due beginning in November 1998 and ending in March 2012. Mother also alleged that specific amounts for medical support were past due. In total, Mother alleged that Father failed to pay \$62,257.82 in child support and \$6,850.00 in medical support. In a later response, she alleged a total of \$53,146.39 due.

The trial court heard Mother's motion on April 5, 2018. Mother and Father testified. Mother testified in detail to the amounts past due, culminating in a total of \$43,896.39 in past due child support for a period ending on March 31, 2012, and past due medical support of \$6,850. The trial court admitted exhibits into evidence to support Mother's testimony, and Mother was cross-examined at length by Father's attorney.

Father testified that the trial court's order required him to pay \$500 per month in child support, reduced from \$1000 per month after another child's emancipation.

He denied that the reduced amount was \$800 per month as Mother contended. He also denied that the arrearage was \$43,896.39. Father admitted that he had not paid for N.E.C.'s health insurance since 2007 even though he had been ordered by the court to do so.

An attorney from Child Support Division of the Texas Attorney General's office also appeared. The trial court admitted two "financial activity reports" as Attorney General's exhibits. AG Exhibit 1, a report as of August 31, 2017, showed \$43,896.39 due as of March 2012. AG Exhibit 2, a report as of April 4, 2018, showed \$35,936.98 due as of March 31, 2012, based on the assumption that Father's support obligation for N.E.C. ended on her eighteenth birthday. The trial court heard extended argument from all counsel regarding which figure was correct and why.

The trial court made a memorandum ruling on May 31, 2018:

MEMORANDUM RULING

Judgment granted for child support and medical support arrearages against Father and in favor of Mother as follows:

Child support arrearage confirmed at \$43,896.39 as of 3/31/12.

Medical support arrearage confirmed at \$6,850.00 as of 9/30/13.

Mother awarded judgment for \$12,000 in attys fees.

On June 5, 2018, Mother filed a "Motion to Sign and Enter Order of Enforcement." She attached a proposed order to her motion. The proposed order included a finding that Father owed \$43,896.39 in child support and \$6,850.00 in medical support, for a total arrearage of \$50,746.39, consistent with the trial court's memorandum ruling. On August 6, 2018, the trial court signed the Enforcement

Order, finding arrearages in the same amounts shown in the memorandum ruling and in Mother's proposed order.

On November 6, 2018, however, the trial court signed findings of fact and conclusions of law.¹ The trial court found arrearages in Father's child support obligations:

For the period April 15, 2000 through May 31, 2001, [Father] should have paid \$12,412.57 in child support. [Father] failed to pay the full amount of child support in the amount of \$12,412.57, plus 6% interest of \$111.53 for a total of \$12,524.10; however, [Father] paid \$8,860.00 thereby making [Father's] arrearages as of May 31, 2001 \$3,664.10.

....

For the period June 1, 2001 to March 31, 2012, [Father] should have paid \$117,899.01 in child support. For the period June 1, 2001 through March 31, 2012, [Father] failed to pay the full amount of child support in the amount of \$117,899.01, plus 6% interest in the amount of \$2,369.00 for a total of \$120,268.01; however, [Father] paid \$81,310.00 thereby making his arrearages as of March 31, 2012 \$38,958.01.

After each of these paragraphs, there is a table showing Father's payment record, with columns for transaction date, activity type, transaction amount, amount due, and amount applied. The first table begins on April 15, 2000, ends on May 31, 2001, and shows a balance due of \$3,552.57. The second table begins on June 4, 2001, ends on March 31, 2012, and shows a balance of \$43,896.39.

¹ In his brief, Father cites findings and conclusions dated August 16, 2018, that are not relevant to this appeal because they address child support for N.E.C. during a different time period. The substance of Father's argument challenges the amounts in the November 6, 2018 findings and conclusions.

In one issue, Father argues the trial court abused its discretion in awarding a judgment for child support arrears because there is a mathematical error in the judgment.

STANDARD OF REVIEW

We review the award of a judgment for child support arrears under an abuse of discretion standard. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990) (per curiam). We reverse the trial court's judgment only when it appears from the record as a whole that the trial court abused its discretion. *In re L.A.F.*, 270 S.W.3d 735, 737–38 (Tex. App.—Dallas 2008, pet. denied). A trial court abuses its discretion as to factual matters when it acts unreasonably or arbitrarily. *Id.* at 738. A trial court abuses its discretion as to legal matters when it acts without reference to any guiding rules or principles. *Id.* Legal and factual sufficiency of the evidence are not independent grounds of error but are relevant factors in assessing whether the trial court abused its discretion. *Id.* We review the record to determine whether some evidence exists to support the judgment. *Id.* The judgment will be upheld on any legal theory that finds support in the evidence. *Id.*

The trial court is the sole judge of the credibility of the witnesses and the evidence. *Reisler v. Reisler*, 439 S.W.3d 615, 620 (Tex. App.—Dallas 2014, no pet.) (trial court is sole judge of witnesses' credibility in family law bench trial).

DISCUSSION

In his sole issue, Father argues the trial court made a mathematical error in determining the amount of the arrearages. He argues that correct calculations show he actually overpaid the amounts due under the trial court's original divorce decree. Mother argues that Father has waived his complaint by failing to raise the issue in a motion for new trial. But Father's complaint is that the trial court abused its discretion because the evidence does not support the amount of the arrearages in the findings and judgment. Complaints about the sufficiency of the evidence may be made for the first time on appeal in a civil nonjury case. TEX. R. APP. P. 33.1(d).

The party seeking past due child support—here, Mother—has the burden of establishing the dollar amount of arrears owed. *In re C.Z.B.*, 151 S.W.3d 627, 630 (Tex. App.—San Antonio 2004, no pet.) (citing TEX. FAM. CODE § 157.162). Once Mother presented evidence of the amount of the arrearage, the burden shifted to Father to show any amount claimed as an offset. *See id.* at 631.

Mother presented evidence, through her testimony and exhibits, showing arrearages in the amount of \$43,896.39 in child support and \$6,850 in medical support. The trial court's Enforcement Order shows the same amounts. The trial court's subsequent findings of fact and conclusions of law show the amounts we have quoted above: total arrearages of \$42,622.11 (\$3,664.10 + \$38,958.01) in the text paragraphs on pages 6 and 8 of the findings of fact, and total arrearages of

\$47,448.96 (\$3,552.57 + \$43,896.39) in the tables on pages 7 to 17 of the findings of fact.

When a trial court makes findings of fact, the findings “shall form the basis of the judgment upon all grounds of recovery and of defense embraced therein.” TEX. R. CIV. P. 299. If there is a conflict between findings of fact and the judgment, the findings of fact control. TEX. R. CIV. P. 299a. But we will not set aside a judgment because of conflicting findings of fact if the conflict can be reconciled. *Yazdani-Beioky v. Sharifan*, 550 S.W.3d 808, 822 (Tex. App.—Houston [14th Dist.] 2018, pet. denied); *see also Grossnickle v. Grossnickle*, 935 S.W.2d 830, 841 (Tex. App.—Texarkana 1996, writ denied) (“Texas law requires that an effort be made to reconcile conflicts in findings of fact.”). “An appellate court should determine what the trial court adjudicated from a fair reading of all of the judgment’s provisions.” *Davis v. Mangan*, No. 14-04-00650-CV, 2005 WL 1692048, at *6 (Tex. App.—Houston [14th Dist.] July 21, 2005, no pet.) (mem. op.) (also quoting *Wilde v. Murchie*, 949 S.W.2d 331, 333 (Tex. 1997) for the proposition that ““Like other judgments, courts are to construe divorce decrees as a whole toward the end of harmonizing and giving effect to all that is written.””). Here, the findings contain total arrearage amounts both higher and lower than the amount awarded in the judgment, as well as the exact amount awarded in the judgment. The judgment itself is clear.

Father argues that “[u]sing basic mathematical skills” we must conclude the trial court abused its discretion. He argues that if we multiply the monthly amounts due by the number of months, then subtract the amounts he paid, we would conclude either that he has overpaid or that the arrearage is less than \$43,896.39. Father made similar arguments to the trial court, but the trial court’s findings, conclusions, and Enforcement Order reflect that the trial court determined Mother’s evidence to be more credible. *See Reisler*, 439 S.W.3d at 620. Because there was sufficient evidence to support the trial court’s judgment, the trial court did not abuse its discretion in awarding Mother \$43,896.39 in arrears for N.E.C.’s support and \$6,850.00 for N.E.C.’s medical support. *See Gross v. Gross*, 808 S.W.2d 215, 220–21 (Tex. App.—Houston [14th Dist.] 1991, no writ) (where there was evidence of probative value to support findings and conclusions and findings were not so against the great weight and preponderance of the evidence as to be manifestly unjust or erroneous, there was legally and factually sufficient evidence to support trial court’s findings and conclusions on amount of child support arrearages).

We decide Father’s sole issue against him.

CONCLUSION

We affirm the trial court’s order.

/Leslie Osborne/
LESLIE OSBORNE
JUSTICE



**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

IN THE INTEREST OF N.E.C., A
CHILD

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On Appeal from the 301st Judicial
District Court, Dallas County, Texas
Trial Court Cause No. DF-97-20578.
Opinion delivered by Justice
Osborne. Justices Partida-Kipness
and Pedersen, III participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee Deborah Denise Canady recover her costs of this appeal from appellant Robert Canady, III.

Judgment entered June 18, 2020