

AFFIRMED and Opinion Filed July 29, 2020



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

No. 05-18-00985-CV

**ALAA MOHAMAD WEISS, Appellant
v.
THE STATE OF TEXAS, Appellee**

**On Appeal from the County Criminal Court of Appeals No. 2
Dallas County, Texas
Trial Court Cause No. M0474358**

MEMORANDUM OPINION

Before Justices Whitehill, Osborne, and Carlyle
Opinion by Justice Carlyle

Alaa Weiss appeals the trial court's denial of his petition for nondisclosure. *See* TEX. GOV'T CODE § 411.071 *et seq.* We conclude we have jurisdiction over this appeal and affirm in this memorandum opinion. *See* TEX. R. APP. P. 47.4.

This court has jurisdiction over appeals in civil cases when the amount in controversy is greater than \$250. *See* TEX. CONST. art. V, § 6(a); TEX. GOV'T CODE § 22.220(a); TEX. CIV. PRAC. & REM. CODE § 51.012. The record in this case includes Mr. Weiss's affidavit indicating he has suffered losses in excess of \$250, and thus we have jurisdiction. *See Holland v. State*, No. 05-18-00933-CV, 2020 WL 1129972, at *2 & n.5 (Tex. App.—Dallas Mar. 9, 2020, no pet.) (mem. op.) (citing

TEX. GOV'T CODE § 22.220(c) (“Each court of appeals may, on affidavit or otherwise, as the court may determine, ascertain the matters of fact that are necessary to the proper exercise of its jurisdiction.”)).¹

We review the trial court’s denial of the motion for nondisclosure de novo because whether Mr. Weiss was entitled to petition for nondisclosure hinges on statutory interpretation. *See Holland*, 2020 WL 1129972, at *3 (citing *Liberty Mut. Ins. Co. v. Adcock*, 412 S.W.3d 492, 494 (Tex. 2013), and *Boston v. State*, 410 S.W.3d 321, 325 (Tex. Crim. App. 2013)).

In 2004, Mr. Weiss was placed on deferred adjudication based on his no-contest plea to prostitution, a misdemeanor. *See* TEX. PENAL CODE § 43.02(b). The trial court discharged him in 2005. In 2007, Mr. Weiss was convicted of assault family violence, a misdemeanor. *See* TEX. PENAL CODE § 22.01. He filed the petition for nondisclosure in 2017 in reference to the 2004 prostitution case.

We apply the current version of Government Code section 411.074 to this case to determine Mr. Weiss’s eligibility to petition for nondisclosure. *See* Act of May 27, 2017, 85th Leg., R.S., ch. 877 (H.B. 3016), § 13 (effective date of September 1, 2017). Though Mr. Weiss filed his motion in August 2017, before this version became effective, the 2017 act added a specific provision directing that the nondisclosure subchapter applies “to the issuance of an order of nondisclosure of

¹ In *Holland*, the Court invited a financial affidavit from Mr. Holland after oral argument, and he provided it shortly thereafter. Here, Mr. Weiss attached his affidavit in the appendix to his brief.

criminal history record information for an offense committed before, on, or after September 1, 2017.” *See id.* § 1, adding TEX. GOV’T CODE § 411.0716(a). Mr. Weiss committed the offense in 2004, before September 1, 2017, and the trial court did not issue a written, final order until after this Court’s August 2019 remand. *See* TEX. GOV’T CODE § 411.0716(a). Also, because the language refers to “an order of nondisclosure”² instead of “an order *granting [or denying]* nondisclosure,” interpreting the language to give each word meaning as we must, *see Boston*, 410 S.W.3d at 325, we conclude section 411.0716(a) means the current version of the nondisclosure subchapter applies to this order denying nondisclosure.

We apply this current version to determine Mr. Weiss’s entitlement to petition for the nondisclosure. Section 411.074(b)(1) states that

A person may not be granted an order of nondisclosure of criminal history record information under this subchapter and is not entitled to petition the court for an order of nondisclosure under this subchapter if: (1) the person requests the order of nondisclosure for, or the person has been previously convicted of or placed on deferred adjudication community supervision for

any of four listed categories of offenses, which includes “(D) any other offense involving family violence, as defined by Section 71.004, Family Code.” *See* TEX. GOV’T CODE § 411.074(b)(1)(D). Mr. Weiss agrees he was convicted of an “other offense involving family violence,” but suggests “previously” means prior to the

² Emphasis added.

offense for which he seeks nondisclosure. We disagree based on the statute’s plain language.

The Legislature wrote section 411.074(b)(1) with a focus on (1) the court granting the order and (2) the petitioner’s entitlement to petition.³ In this case, focusing on either one to inform what “previously” means leads to the conclusion that Mr. Weiss is both not entitled to an order of nondisclosure and not entitled to petition for it. This is so because he was convicted of assault family violence *previous to* the court’s order and *previous to* filing his petition.⁴ The plain language of section 411.074(b)(1) leads inescapably to this conclusion, and we need look no further to complete our interpretive task. *See Timmins v. State*, No. PD-0867-18, 2020 WL 3067573, at *2 & n.9 (Tex. Crim. App. June 10, 2020) (courts give effect to plain meaning of statute when meaning “should have been plain to the legislators,” which extinguishes the need to “look beyond the statute’s text and context to discern its meaning”) (citing *Boykin v. State*, 818 S.W.2d 782, 785 (Tex. Crim. App. 1991)).

Finally, we reject Mr. Weiss’s invitation to apply the rule of lenity to allow a nondisclosure to a person convicted of a nondisclosure-disqualifying offense because the disqualifying conviction occurred after the otherwise qualified offense.

³ We contrast section 411.074’s focus with section 411.0716(a)’s focus on when the offense was committed. *See* TEX. GOV’T CODE § 411.0716(a) (“this subchapter applies to the issuance of an order of nondisclosure of criminal history record information *for an offense committed before, on, or after September 1, 2017.*” (emphasis added)).

⁴ We note that we would come to the same conclusion under the prior version of section 411.074, which does not meaningfully differ as relevant to the facts and circumstances presented here. *See* Act of May 27, 2015, 84th Leg., R.S., ch. 1279 (S.B. 1902), § 6 (effective date September 1, 2015).

The rule of lenity applies to “a statute or rule that creates or defines a criminal offense or penalty,” TEX. GOV’T CODE § 311.035(a), and because the nondisclosure scheme does neither, this rule is inapplicable. *See also United States v. Santos*, 553 U.S. 507, (2008) (discussing the rule’s applicability to interpreting penal statutes).

Having overruled Mr. Weiss’s sole issue, we affirm.

/Cory L. Carlyle/

CORY L. CARLYLE
JUSTICE

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

JUDGMENT

ALAA MOHAMAD WEISS,
Appellant

No. 05-18-00985-CV V.

THE STATE OF TEXAS, Appellee

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Opinion delivered by Justice Carlyle.

Justices Whitehill and Osborne
participating.

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

Judgment entered this 29th day of July, 2020.