Supreme Court of Texas
Family Law Topics

Ochsner v. Ochsner
No. 14-0638
Case Summary written by Garrett Foote, Staff Member.

JUSTICE WILLETT delivered the opinion of the Court, in which CHIEF JUSTICE HECHT, JUSTICE GREEN, JUSTICE GUZMAN, JUSTICE LEHRMANN, JUSTICE DEVINE, and JUSTICE BROWN joined.

In December 2001, Preston and Victoria Ochsner divorced and the trial court entered a divorce decree. The divorce decree included child support for their daughter specifying that Preston would pay Victoria $240 each month in two installments and $563 per month for their daughter's daycare, paid directly to Enron Kid's Center. It also specified that if the daughter stopped attending Enron, Preston was then to pay Victoria $800 per month in two installments. The order stated that Preston would make the payments to a registry, Harris County Child Support Office, and that a failure to comply could result in not receiving credit for the payment. When the daughter stopped attending Enron, Preston continued to make the monthly payments of $240 per month to Victoria and paid the tuition directly to the private schools their daughter attended thereafter. In the end, Preston paid approximately $80,000 in child support, which was $20,000 above what the divorce decree required to be paid through the registry. A decade after the daughter stopped attending Enron, Victoria filed a child-support enforcement action claiming that Preston was in arrears.

Issue: Can the trial court look at child support payments made outside of a court ordered registry to determine whether the father has discharged his child support obligation?

The trial court found that Preston discharged his child-support obligation because the divorce decree did not order how the child support payments must be made after the daughter stopped attending Enron Center. The court of appeals then reversed, holding that the divorce decree ordered Preston to continue making payments after the child stopped attending Enron Center. On remand, the trial court again found that Preston was not in arrears due to the fact that he continued

making payments to the daughter's private schools after Enron and, in fact, paid $20,000 above what the divorce decree required of him. On appeal, the court of appeals again reversed holding that the trial court could not allow a private agreement to modify a child-support order and, therefore, was barred from considering Preston's direct tuition payments to confirm the amount of arrearages.

The Supreme Court of Texas held that the trial court was permitted to consider the tuition payments made outside of the registry and that Preston discharged his child-support obligation. The Court focused on section 157.263 of the Family Code. In considering whether the child support obligation was unmet the Court determined that the trial court could consider tuition payments that discharge the obligee's (Victoria's) obligation to pay the child's school fees. The Court held that the trial court did not reduce or modify the amount of child support arrearages in the enforcement proceeding and that there was no statutory requirement that the child support payments be made through the registry. The Court acknowledged that in a Chapter 157 proceeding the trial court cannot enforce private agreements to reduce or eliminate the obligation. However, the Court ruled that the trial court is permitted to consider direct payments made to the school attended by the child when it is the obligee's obligation to pay. Preston's payments and private agreement with Victoria did not reduce his child support obligation and therefore was not harmful to the child since the payments were regular and furthered the child's interests. Lastly the Court stated that direct tuition payments that bypass a court ordered registry should not always satisfy the child support obligation, but that the specifics in this case allowed them to qualify.

JUSTICE GUZMAN delivered a concurring opinion, in which JUSTICE LEHRMANN joined.

Justice Guzman concurred fully with the majority opinion but wrote separately to emphasize the following: 1) under section 157.162(c-1) of the Family Code the trial court could accept proof of Preston's payments directly to his daughter's private schools; 2) this case was unique but fully supported by the evidence; and 3) obligors who do not pay through the court-ordered method are doing so at their own risk. Guzman reiterated that the trial court, in considering direct payments made outside of the registry, did not modify the obligation of the obligor.

JUSTICE JOHNSON delivered a dissenting opinion, in which JUSTICE BOYD joined.

Justice Johnson dissented stating that when a divorce decree is not ambiguous, then it should be adhered to strictly. Johnson felt that since the divorce decree clearly stated that payments were to be made through the registry, payments made outside of the registry should not be considered. Justice Johnson worried that allowing payments to be considered, that do not follow the specifications of the divorce decree, will lead to confusion and havoc, which will be damaging to the child.

JUSTICE BOYD delivered a dissenting opinion, in which JUSTICE JOHNSON joined.

Justice Boyd dissented stating that it was unjust to allow Preston to fulfill his child-support obligation in a way not permitted in the divorce decree, especially when Victoria stated that she never agreed that Preston's direct tuition payments would replace his obligation to make payments as the decree required. Justice Boyd agrees with Justice Johnson that the language of the Family Code provides that a child-support enforcement action should strictly enforce the provisions of the child-support order. Although Boyd stated that it could be unfair to Preston (who actually paid more than required by the decree), he stated that the trial court abused its discretion in not strictly adhering to the language of the decree, which stated that payments were to be made to a registry.

In re the Guardianship of the Person and Estate of Ryan Keith Tonner

NO. 14-0940

Case Summary written by Ryley T Bennett, Staff Member.

PER CURIAM.

In 2003, Beatriz Burton was appointed guardian of the person and estate of her grandson, Ryan Keith Tonner, age 17, who was incapacitated due to an intellectual disability and had been living with her. Burton was granted with "all of the duties, powers and limitations . . . granted to a guardian by the laws of this state." The guardianship was to continue until Tonner reached the age of majority

or until the Court determined that the matter should be terminated. Tonner was then placed in the Austin State School, but in 2005 he was transferred to the Lubbock State Supported Living Center ("Living Center") operated by the Texas Department of Aging and Disability Services. In 2007, Burton passed away and Tonner continued to reside at the Living Center. Community placement was not allowed because Tonner could not consent to placement and medical treatment.

In 2012, an investigator, appointed by the county court of Lubbock County, obtained an order transferring the guardianship to Lubbock County. A month later, Disability Rights Texas, a non-profit, filed an application on Tonner's behalf to fully or partially restore his capacity. Living Center doctors and staff testified that Tonner had the ability to make informed decisions regarding his residence, contractual obligations, employment, applications for government assistance, bank accounts, voting, and marriage. However, a court-appointed psychiatrist testified that Tonner's condition had not changed and that he could not make financial decisions for himself, and he would always require assistance and supervision. During this time, Tonner did not apply for, nor was he appointed a successive guardian.

Issue: Whether the 2003 guardianship order has become unduly restrictive in violation of section 1001.001 of the Texas Estates Code.

The Court affirmed the court of appeals' and trial court's refusal to restore the petitioner's capacity. However, the Court concluded that the lower courts could not determine whether petitioner's capacity should be partly restored without appointing a successor guardian. Although Section 1202.051(3) authorizes a ward to apply for an order finding that he is only partly incapacitated and then ask to limit a guardian's powers or duties, a court cannot determine whether a guardian's powers should be restricted or remain unchanged when there is no guardian.