IN THE SUPREME COURT OF TEXAS

NO. 14-0638

PRESTON A. OCHSNER, PETITIONER,

v.

VICTORIA V. OCHSNER, RESPONDENT

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTEENTH DISTRICT OF TEXAS

Argued November 2, 2015

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.

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

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

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

Children get only one childhood. Unfortunately, acrimony between divorced couples is common, and when those couples have children, Texas law commendably tries to blunt the impact of grown-ups' hostility. One key way to reduce parental bickering—and protect kids caught in the crossfire—is through a child-support order that specifies how the noncustodial parent is to provide financial support. If the order is violated, the Family Code provides enforcement options.

In this case, a child-support order required Preston Ochsner to make certain payments to his daughter's school, and when she switched schools, to make payments through a registry.

Instead, Preston paid the new school directly, with payments totaling more than $20,000 beyond what the original order contemplated. After almost a decade under this arrangement, his ex-wife Victoria sued to recover the balance that was not paid through the registry.

The trial court held that the direct tuition payments more than satisfied Preston's child-support obligation. The court of appeals reversed, holding that failure to satisfy the payment particularities specified in the order meant the trial court could not consider payments that discharged the tuition obligation Victoria had incurred for their daughter's benefit.

We disagree. A trial court in a child-support *enforcement* proceeding (Family Code Chapter 157)—a wholly separate action from the initial child-support *order* proceeding (Family Code Chapter 154)—may consider evidence of direct payments like those that were undisputedly made here when confirming the amount of arrearages. Preston's direct tuition payments satisfied—indeed, *exceeded*—his child-support obligation. The trial court did not abuse its discretion in finding that the above-and-beyond support Preston provided via this amicable, efficient arrangement discharged his obligation. Accordingly, we reverse the court of appeals' judgment and render judgment for Preston.

Factual background.

The pertinent facts are undisputed. Preston and Victoria Oschner divorced in December 2001, and the trial court entered a divorce decree that included a child-support order for their daughter. The order specified that Preston would pay Victoria $240 each month in two installments and would also pay $563 each month directly to Enron Kid's Center for their daughter's preschool. The order also stated that after the daughter stopped attending Enron, Preston was to pay Victoria $400 twice a month. However, the order required Preston to pay Victoria through a registry—the

Harris County Child Support Office—and noted that failure to comply with this place and manner requirement "may result in the party not receiving credit for making the payment."

The Ochsners' daughter stopped attending the Enron center, and Preston continued to make monthly child-support payments of $240 per month directly to Victoria, as well as payments directly to various private schools rather than to Victoria via the registry. Victoria, however, was the parent contractually obliged to pay the tuition. It is undisputed that Preston paid a total amount of almost $80,000 towards the upbringing of his daughter—more than $20,000 above the total amount that the child-support order contemplated through the registry.

However, almost a decade after her daughter stopped attending Enron, Victoria brought a child-support enforcement action against Preston, arguing that he was in arrears and seeking a money judgment for the balance plus interest, attorney fees, and costs. The trial court found for Preston, holding that he had discharged his child-support obligation, in part because the divorce decree did not contain decretal language ordering Preston to pay child support after the child stopped attending the Enron preschool. The court of appeals reversed, holding that the decree did order Preston to continue to make payments after the child left the Enron preschool. On remand, the trial court, presided over by the same able judge who rendered the divorce decree, once again found that Preston was not in arrears. A divided court of appeals reversed, holding that the trial court had impermissibly enforced a private agreement to modify a child-support order.[1] The court

[1] 436 S.W.3d 378.

of appeals held that the trial court was barred from considering Preston's direct tuition payments when confirming the amount of arrearages.[2] This appeal followed.

The Family Code directs a trial court in an enforcement proceeding to determine the amount of unmet child-support obligation, and in no way removes a court's discretion to consider direct tuition payments made outside the registry.

Various interrelated Family Code provisions dictate how courts calculate and confirm arrearages.

Section 157.263(b-1) provides:

> In rendering a money judgment under this section, the Court may not reduce or modify the amount of child support arrearages but, in confirming the amount of arrearages, may allow a counterclaim or offset as provided by this title.[3]

Sections 157.008–.009 authorize an offset or credit in two circumstances, neither applicable here: (1) "the obligee voluntarily relinquished to the obligor actual possession and control of a child" in excess of any court-ordered periods of possession, during which period the obligor provided actual support to the child,[4] or (2) the obligor's disability resulted in a lump-sum payment to the obligee as representative of the child.[5] In this case, it is uncontested that Victoria did not voluntarily relinquish actual possession and control of her daughter, nor has Preston become disabled. As we discuss below, these provisions do not alone exhaust a trial court's ability

[2] *Id.* at 382.

[3] TEX. FAM. CODE § 157.263(b-1).

[4] *Id*. § 157.008(d).

[5] *Id*. § 157.009. JUSTICE BOYD suggests that the Court relies on one of these offsets in rendering judgment for Preston. As we make clear here and below, we do not suggest that this offset provision is implicated in this case. Rather, a trial court that *enforces* a child-support order is not—because of that fact alone (and as both dissents imply)—*modifying* that order.

to consider evidence of an obligor's discharge of his child-support obligation in an enforcement proceeding.

Our interpretive focus is on section 157.263, the central provision of the child-support enforcement statute:

> (a) If a motion for enforcement of child support requests a money judgment for arrearages, the court shall confirm the amount of arrearages and render one cumulative money judgment.
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> (b) A cumulative money judgment includes:
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> (1) unpaid child support not previously confirmed;
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> (2) the balance owed on previously confirmed arrearages or lump sum or retroactive support judgments;
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> (3) interest on the arrearages; and
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> (4) a statement that it is a cumulative judgment.[6]

"Where text is clear, text is determinative."[7] An "arrearage" is "[t]he quality, state, or condition of being behind in the payment of a debt or the discharge of an obligation."[8] Thus an arrearage in the child-support context occurs when an obligor has not satisfied his obligation. According to section 157.263, however, the trial court is not merely to "confirm the arrearages"; rather it must "confirm *the amount* of arrearages."[9] An "amount," in the realm of arrearage, is "a principal sum and the interest on it."[10] "Amount" therefore denotes a quantity that can be broken into fractions and taken in the aggregate.[11] The "amount of arrearages" refers to the quantity, taken

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[6] *Id.* § 157.263.

[7] *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 437 (Tex. 2009) (quoting *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 866 (Tex. 1999)).

[8] BLACK'S LAW DICTIONARY (10th ed. 2014).

[9] TEX. FAM. CODE § 157.263 (emphasis added).

[10] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (Philip G. Gove ed. 1961).

[11] That "amount" denotes an aggregate quantity is clear from its ability to modify mass nouns as opposed to count nouns. *Compare* "we owe a great amount of deference to the legislature" *with* "we have deferred to the

in the aggregate, of that fraction of the child-support obligation that remains unmet. Finally, the verb "to confirm" means "to give *new* assurance of the truth or validity" of some state of affairs.[12] Thus a trial court instructed to "confirm the amount of arrearages" is to determine the *quantity* of the child-support obligation that the obligor has failed to meet.[13] The court that issued the support order in the first instance determined the total dollar value of the support obligation. The text of the enforcement statute indicates that the trial court must calculate which aggregated sub-fraction of this value stands unpaid.

JUSTICE BOYD states that a motion for enforcement must include the amount owed as provided in the order, because that amount provides the basis for determining the amount of arrearage. We fully acknowledge this statutory command. That section, entitled "Contents of Motion,"[14] provides:

> A motion for enforcement of child support:
> (1) must include the amount owed as provided in the order, the amount paid, and the amount of arrearages . . . .[15]

This provision dictates that a court considering a motion for enforcement of a child-support obligation must consider the monetary sum owed—indeed, a sum that is provided in the order.

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legislature on a great amount of occasions." The latter sentence is poorly formed, since "occasion" is a count noun, unlike "deference," which is a mass noun denoting a quantity whose constituent fractions can be taken in the aggregate. Similarly, a court can discern a fraction of unpaid child-support, and aggregate that sub-part, in confirming the amount of arrearages.

[12] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (Philip G. Gove ed. 1961) (emphasis added).

[13] *See also Buzbee v. Buzbee*, 870 S.W.2d 335, 340 (Tex. App.—Waco 1994, no writ) (noting a "strictly arithmetic procedure: What the obligor owes less what the obligor has paid").

[14] As the title suggests, this section relates to the nature and specificity of the contents of a motion for enforcement, as opposed to the mode of determining the amount of arrearages in the enforcement proceeding itself.

[15] TEX. FAM. CODE § 157.002(b)(1).

However, looking at the rest of the sentence, it is clear that the statute requires a trial court in a child-support enforcement action to also take into account the "amount paid" and the "amount of arrearages." The "amount of arrearages," therefore, cannot be simply the "amount owed as provided in the order." These sums—as reflected in the Legislature's decision to separately refer to them—are distinct. One refers to the amount that a child-support order deems to be paid, and the other refers to the balance that a court in an enforcement proceeding finds to be an unmet obligation in an enforcement action.

Fealty to the clear meaning of the statutory text, then, indicates that the trial court may consider the obligor's regular and long-term payments of tuition that the obligee was obliged to make.

"The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means."[16] We look to the statutory scheme as a whole in order to establish the meaning of the arrearage provision, not to snippets taken in isolation.[17]

First, the Code gives a trial court in a Chapter 154 proceeding considerable discretion to dictate the manner of payment when it issues the initial child-support order.[18] Pursuant to federal law,[19] where a trial court orders income to be withheld for child support, the trial court must order

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[16] ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 56 (2012).

[17] *Jaster v. Comet II Constr., Inc.*, 438 S.W.3d 556, 562 (Tex. 2014) ("While we must consider the specific statutory language at issue, we must do so while looking to the statute as a whole, rather than as isolated provisions.") (citations omitted); ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 167 (2012) ("The text must be construed as a whole.").

[18] TEX. FAM. CODE § 154.003 (providing that periodic payments, lump-sum payments, annuity purchase, setting aside property, and any combination of these are all options).

[19] 42 U.S.C. §§ 654a(e), 654b.

that these funds be "paid to the state disbursement unit of this state, or if appropriate, the state disbursement unit of another state."[20] But nothing in the statute requires that payments made voluntarily, as opposed to payments withheld from income, must be made through a state registry.

Second, the structure of the enforcement statute confirms the view that a trial court may consider direct payments that discharge the obligee's own obligation to provide the funds. Indeed, the trial court in a subsequent Chapter 157 enforcement suit presides over an entirely different proceeding from the one resulting in the issuance of the child-support order under Chapter 154.[21] The trial court in an enforcement action is to confirm the amount of arrearages as a finding of fact. Nothing in the statute suggests that the trial court can consider only payments made through the registry in determining the amount of child support that an obligor has paid, and thus the amount for which the obligor is in arrears.[22] The *manner* of payment that the original order specifies does not, as JUSTICE BOYD would have it, hamstring the enforcement court in determining the amount

[20] TEX. FAM. CODE § 154.004(b).

[21] *Id.* at chs. 154, 157. JUSTICE JOHNSON ignores this statutory distinction and focuses—almost entirely—on the language of the divorce decree. But our focus is properly on what the Legislature has written, and not exclusively on a trial court's order in an entirely distinct divorce proceeding. Where statutes are concerned, courts must be attentive to, and give effect to, purposeful statutory distinctions.

[22] Victoria contends that because the *child-support order* states that failure to make support payments via the registry "may" bar the obligor from receiving credit for the payment, the *trial court* in the enforcement action is somehow bound by this language. This argument fails. First, it ignores the permissive connotation of "may"—the word does not mean "must." *See, e.g.*, *Dallas Cty. Cmty. Coll. Dist. v. Bolton*, 185 S.W.3d 868, 874 (Tex. 2005) (noting that "may" is interpreted to have a permissive meaning). More importantly, the trial court in the enforcement action must follow its statutory command and "confirm the amount of arrearages." The pertinent element of the support order, then, is the payment obligation it creates. The trial court in an enforcement action need not be blinkered and ignore evidence of payments made in a manner unspecified by the support order when it confirms the aggregate fraction of the child-support obligation that has not been discharged. Nowhere does the statute impose such a restriction on the court's discretion.

of arrearages. Rather, the statute contemplates that the trial court has discretion to consider direct payments either to the other parent or to a third party in deciding whether an arrearage exists.

Stated differently, nowhere does the Code indicate that the discretion of the court in a *Chapter 154* proceeding supplants the discretion of the court presiding over a *Chapter 157* proceeding.[23] Indeed, Chapter 157 specifically provides that a trial court can consider the payment record in calculating "cumulative arrearage over time,"[24] and also notes that the court may consider such evidence "controverting the contents of a payment record" as the obligor decides to provide.[25] The trial court has discretion to consider a range of evidence. The trial court must determine the quantity of the child-support obligation that is unmet—a fresh factual finding. And in making this determination, it may, in appropriate cases, consider tuition payments that discharge the obligee's own obligation to pay the child's school fees. JUSTICE BOYD would appear to limit a parent's ability to controvert the payment record as reflected in the registry to clerical errors, apparently believing that a direct payment of child support can never count as a payment under the decree if the decree specifies payments to the registry. But we see nothing in a common-sense reading of the Code that

[23] JUSTICE JOHNSON suggests that we are writing around the Code. However, the Code is clear, from both its text and its structure, that a trial court adjudicating a child-support enforcement proceeding (a separate proceeding from the one in which the child-support order was issued) is able to consider tuition payments—payments that discharged an obligation incurred by the obligee herself—in "confirming the amount of arrearages."

[24] TEX. FAM. CODE § 157.162(c)(3).

[25] *Id.* § 157.162(c-1).

requires such a narrow construction of "payment record" under section 157.162 or "arrearage" under section 157.263.[26]

Victoria cites the statutory provision that a trial court "may not reduce or modify the amount of child support arrearages" except when the specifically enumerated offsets apply,[27] and contends an impermissible reduction or modification occurred here. The trial court committed no such error. The plain language of this provision means that a trial court in an enforcement action cannot alter the amount deemed payable in the original child-support order. But the trial court in an enforcement action is permitted to *consider* tuition payments made in a manner not specified in the order in confirming the amount of arrearages. On the one hand, the court could conclude, given the payments that were made, that the obligor has not satisfied the child-support obligation imposed by the original order. On the other hand, the court could conclude, as it did here, that under all the circumstances the obligor made thousands of dollars in direct support payments in excess of the amount the order required, and in doing so satisfied the obligee's obligation. The court may consider such payments in determining the quantity, stated in the aggregate, of that fraction of the child support the obligor failed to meet.

An analysis of the pertinent parts of the Family Code, then, leads to the conclusion that in a child-support enforcement action, a trial court may consider the various payments made by the obligor, regardless of what precise manner an earlier court—presiding over a distinct proceeding—specified in the child-support order. This is not to say the obligor should flout the system. The

[26] *Id.* §§ 157.162, .263.

[27] *Id.* § 157.263.

statute requires the trial court to confirm the amount of arrearages, based on the amount the child-support order required the obligor to pay, and in light of various payments the court finds that the obligor made. There is no statutory requirement that child-support payments travel via registry, though the court that issued the support order thought it appropriate. The trial court in an enforcement action, therefore, may, in the appropriate case, consider the obligor's satisfaction of the obligee's tuition obligation in confirming the amount of arrearages.

Our precedent forbids private arrangements that allow a child-support obligor to shirk his obligation, but that has not happened here.

We have never held that a trial court, when adjudicating a child-support enforcement action, cannot consider evidence of direct payments that were not precisely compliant with the original support order. Rather, our cases have been limited to situations where child-support obligors have attempted to privately agree with the obligee to reduce—or indeed entirely eliminate—the obligation. In those situations, the trial court cannot in a Chapter 157 proceeding enforce these private agreements, or rely on them to reduce the arrearages. But where the obligor has made direct payments, albeit to the school attended by the child and for which the child receives direct benefit, that satisfy an obligation to pay school tuition incurred by the obligee, the facts are materially different. On such facts, the trial court is permitted to consider direct payments when confirming the amount of arrearages.

In *Williams v. Patton*,[28] we held that former section 14.41(a) of the Family Code bars parents from settling claims for child-support arrearages.[29] In that case, Houson Williams was in

[28] 821 S.W.2d 141 (Tex. 1991).

[29] *Id*. at 143.

arrears by over $9,000, and Patton initiated court proceedings to recover the unpaid money. While that proceeding was pending, Williams executed an agreement to pay $2,850 up-front and $325–$350 monthly thereafter.[30] As part of the proposed settlement agreement, he attempted to secure release from his child-support obligation in consideration for these payments.[31]

We held that the Family Code prohibits settlement agreements purporting to "prospectively modify[] court-ordered child support without court approval."[32] The Legislature requires courts to consider whether the proposed parental agreements serve the child's best interests—a recognition of the key tenet that child support is a duty owed by a parent to a child, not a debt owed to the other parent.[33]

Our decision in *Williams* was guided by the acknowledgment that the obligee parent may suffer significant financial hardship following divorce and thus might be tempted to accept, for example, an offer of a lump-sum payment instead of the court-ordered regimen of payments even though over time the court-ordered scheme would provide more money towards the child's upbringing.[34] Our concern was the risk of private downward modification of child-support payments, either unilaterally or by "agreement," to shirk parental duty.

Today's case is not a suit brought to enforce a private agreement to modify a child-support order; it is a child-support enforcement action. The rule in *Williams* is not that the trial court can

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[30] *Id*. at 142.

[31] *Id.*

[32] *Id*. at 143.

[33] *Id.* at 144–45 (citing *Adair v. Martin*, 595 S.W.2d 513 (Tex. 1980)).

[34] *Id*. at 144 (citations omitted).

consider payments that the obligor contributed toward the child's upbringing only if they were made under the support order's precise terms. Rather, the trial court may consider these and decide whether—and how much of—the obligation has been discharged. The court may determine that the payments did not contribute to the satisfaction of the obligor's child-support obligation, or it could conclude that the obligor has satisfied his duty, as it did here. *Williams* does not bar a trial court in a child-support enforcement case from considering tuition payments such as these in confirming the amount of arrearages.[35] Today's case is about *made* payments, not *missed* payments.

We have also highlighted the dangers of espousing doctrines that would allow an obligor to escape his obligation in ways that were not at issue in *Williams*.[36] In *Office of Attorney General of Texas v. Scholer*, a father signed paperwork that purported to terminate his parental rights in exchange for a release from his child-support obligation.[37] The mother, however, did not file the paperwork in court, meaning that the father was still one of the child's legal parents.[38] We held that the father's parental rights—and obligations—had not come to an end, and that estoppel cannot be used as an affirmative defense in child-support enforcement actions.[39] Where a parent fails to support a child, we do not "compromise the welfare of a child who is at the mercy of his

[35] *See also* 436 S.W.3d 378, 384 (Christopher, J., dissenting) (noting that for the trial court to so hold "is not a reduction or a modification of Preston's child support obligations but instead is merely a finding by the court that Preston complied with his child support obligations").

[36] *Office of Att'y Gen. of Tex. v. Scholer*, 403 S.W.3d 859 (Tex. 2013).

[37] *Id.* at 861.

[38] *Id.*

[39] *Id.* at 862.

parents' choices."[40] We again stated that child support is not a debt owed by one parent to the other,[41] and that "parents, regardless of their quarrels, iniquities, or mutual agreements, must nevertheless satisfy their duty to the child."[42] JUSTICE BOYD takes note that "[e]ven though [an arrangement may] reflect[] the parents' agreement, it is enforceable only as a judgment, and is "not enforceable as a contract." But we do not hold today that there was some kind of "contract" between Preston and Victoria. Rather, we merely observe that a court presiding over a child-support enforcement action may consider tuition payments made directly to a school—payments that discharged an obligation that the obligee herself incurred—when determining the amount of arrearages.

JUSTICE BOYD also contends that we are misreading *Scholer* because that decision limited affirmative defenses to those provided by statute. *Scholer* so held, rejecting the affirmative defense of estoppel.[43] But in an enforcement action the movant must still establish that an arrearage exists. We recognize today, as we did in *Scholer*, that the court hearing an enforcement action must "confirm the amount of arrearages" under section 157.263.[44] *Scholer* did not hold that a direct payment in lieu of a payment to a registry can never be considered in calculating the arrearage.

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[40] *Id*. at 866.

[41] *Office of Att'y Gen. of Tex. v. Scholer*, 403 S.W.3d 859, 866 (Tex. 2013).

[42] *Id*. In the sense that the trial court cannot just write off a child-support obligation, it does indeed "act[] as a mere scrivener." *Lewis v. Lewis*, 853 S.W. 2d 850, 854 (Tex. App.—Houston [14th Dist.] 1993, no writ).

[43] *Scholer*, 403 S.W. 3d at 862–67.

[44] *Id*. at 863.

Scholer does not foreclose a parent from averring, "I paid," when an enforcement action is brought against him. To hold otherwise would mean the movant would always win an enforcement action.

Preston Ochsner paid more than $78,000 towards his child's tuition. It is undisputed that he paid over $20,000 more than the divorce decree required—all of which contributed to his daughter's upbringing. But he did not pay the required installments through the registry. He has nonetheless covered the costs of schooling his daughter, a far cry from abdicating his parental responsibility. Thus our concerns in *Williams* and *Scholer*—that private parental agreements, executed or otherwise, to reduce a child-support obligation will result in children being harmed—do not apply here. Trial courts may consider payments such as Preston's when they assess arrearages.[45]

Several courts of appeals have reached the same conclusion.[46] For example, in *In re C.S.*, a father urged the trial court to hold that the Office of the Attorney General was incorrect to have found him in arrears.[47] That finding was based on a six-year period during which the father voluntarily increased the payment amount, but did not make payments via the county clerk.[48] On appeal the court held that the trial court was permitted to consider these payments when confirming

[45] As noted above, an enforcement proceeding is distinct from an action to modify a child-support order. Thus, if a trial court takes regular tuition payments into account when it confirms the amount of arrearages, it is not impermissibly modifying the child-support order.

[46] *In re C.S.*, No. 11-12-00294-CV, 2014 WL 972310, at *4 (Tex. App.—Eastland Mar. 6, 2014, no pet.) (mem. op.); *In re J.C.T.*, No. 05-12-01290-CV, 2014 WL 3778909 (Tex. App.—Dallas 2014, pet. pending); *Higgins v. Higgins*, No. 05-98-02014-CV, 2000 WL 1264636, at *3–4 (Tex. App.—Dallas Sept. 7, 2000, no pet.) (not designated for publication); *Buzbee v. Buzbee*, 870 S.W.2d 335, 339 (Tex. App.—Waco 1994, no writ); *Niles v. Rothwell*, 793 S.W.2d 77, 79 (Tex. App.—Eastland 1990, no writ).

[47] 2014 WL 972310, at *1.

[48] *Id.*

the amount of arrearages.[49] We agree.[50] Neither dissent in today's case cites decisional authority that a trial court, in a post-decree action to enforce child support or other post-decree proceeding, is categorically barred from considering direct payments that were not sent to the registry specified in the decree.

Preston paid over $20,000 more than the original child-support order contemplated, and the trial court had discretion to consider this in confirming the amount of arrearage.

Our fear in *Williams* was that custodial parents facing financial stress might accept an obligor's offer for a portion of a child-support arrearage "in settlement of the entire amount due."[51] Of critical importance is the protection of monies available to fund the child's necessary expenses, including "food, clothing, education, and home environment."[52] The need to cover the costs of education, including tuition, therefore features prominently in the concern over the harm that downward negotiation of child support might inflict upon a child.[53] Here, Preston was paying down the tuition obligation that Victoria incurred for their daughter. Such payment does not implicate

[49] *Id.* at *4.

[50] Victoria makes much of a supposed distinction between payments the obligor makes directly to the obligee, and payments made indirectly to the obligee, for example, by paying tuition. This is not a relevant distinction. There is no reason why a trial court should be barred from considering tuition payments that relieved the obligee's burden to pay them when the court confirms the amount of arrearages. *See also Higgins*, 2000 WL 1264636, at *3–4 (noting that the trial court can consider direct payments made to third parties on behalf of the obligee in confirming the amount of arrearages, notwithstanding a registry payment requirement in the child-support order).

[51] *Williams v. Patton*, 821 S.W.2d 141, 144 (Tex. 1991).

[52] *Id*. at 145.

[53] Indeed, the Family Code provides that a court can order the payment of child support past the child's 18th birthday when the child is enrolled "on a full-time basis in a private secondary school in a program leading toward a high school diploma." TEX. FAM. CODE § 154.002. The statutory guidelines mention the relevance of "special or extraordinary educational . . . expenses" to child-support orders. *Id*. § 154.123. *See also In re Marriage of Grossnickle*, 115 S.W.3d 238, 247 (Tex. App.—Texarkana 2003, no pet.) (noting that contribution to tuition is a valid type of child support).

our concern that private agreements concerning child-support arrangements might harm the child, and the trial court was correct to consider it in confirming the amount of arrearages. Covering a cost that plainly benefits the child and that reduces the financial burden on the obligee is a fact a trial court may consider in a child-support enforcement proceeding. An amicable arrangement that reduces the financial pressures on the former spouse is the opposite of what the Court feared in *Williams*.[54]

That Preston made payments in order to discharge Victoria's obligation to pay their daughter's tuition distinguishes this case from *Chenault v. Banks*,[55] upon which the court of appeals heavily relied. The court of appeals construed *Chenault* to mean that a trial court confirming the amount of arrearages simply cannot consider any obligor payments that are not 100 percent compliant with the support order.[56] In *Chenault* the obligor made a tuition payment, just for a single year, and no evidence showed that the payment was the obligee's obligation.[57] Thus the *Chenault* court of appeals held that the trial court could not reduce the arrearage amount, reasoning that the private arrangement allowed the obligor to shirk his monthly obligation and contributed to the financial pressures that weighed upon the obligee.[58]

The facts in *Chenault* are different from those in this case, since here by relieving some of the obligee's duties to provide for their daughter's education—relief that was ongoing, as opposed

[54] 821 S.W.2d at 144.

[55] 296 S.W.3d 186 (Tex. App.—Houston [14th Dist.] 2009, no pet.).

[56] 436 S.W.3d at 383.

[57] *Chenault*, 296 S.W.3d at 188–89.

[58] *Id.*

to irregular—the direct payment of tuition furthered the child's interests. *Chenault* stands for the proposition that the "trial court's child support calculations must be based on the payment evidence presented, not the trial court's assessment of what is fair or reasonable."[59] There is no reason, even under the court of appeals' own logic in *Chenault*, why the trial court here could not have considered evidence of Preston's regular and direct tuition payments in confirming the amount of arrearages.

Neither law nor logic limits the trial court to the registry record. In confirming the alleged arrearage, the court was authorized to credit testimony and supporting documentary evidence.

The dissent incorrectly looks only to the original child-support order—a decree issued in a proceeding governed by an entirely different chapter of the Family Code.

JUSTICE JOHNSON contends that our analysis is inconsistent with section 157.216 of the Family Code under which each failure to make a child-support payment warrants final judgment for payment of the balance. Our analysis, though, focuses on section 157.263, governing the "amount of arrearages," and for the reasons given above, judgment against Preston is not warranted because there were no "arrearages." Preston owed no child support, having paid the tuition obligation his ex-wife incurred for their daughter.

JUSTICE JOHNSON also urges that Preston's payments to the Enron day care center and other tuition payments were not child support under the explicit terms of the divorce decree. We disagree with such a counter-intuitive reading of the decree. Under the heading "Child Support," the decree requires Preston to pay Victoria "child support in the amount of $240 per month," until the earliest of several events, including when "the child no longer attends Enron Kid's Center day care." At

[59] *Id.* at 190.

that point, the child-support obligation was to increase to $800 per month. However, under the heading "Payment of Day Care," Preston was separately obliged to pay $563 per month to the Enron Kid's Center. The common-sense reading of the two provisions, taken together, is that the Enron preschool tuition, unambiguously, was a form of child support. After the child left preschool, the general child-support obligation increased, by almost the exact amount previously dedicated to the preschool tuition, to cover other child-care expenses—expenses that could of course include other tuition payments as the child progressed in her schooling. *Even if* we strictly focus on the divorce decree, then, we conclude that the trial court did enforce the prior judgment by finding that Preston had fully discharged his child-support obligation under that order's unambiguous terms.

Finally, JUSTICE JOHNSON claims that our decision will promote gamesmanship between former spouses, accusing the Court of green-lighting emotion-filled swearing contests. This concern is inherently highly speculative, and nowhere does the Code suggest that courts must focus on second-guessing whether their judgments will encourage or discourage parties from raising "he-said she-said" arguments in an enforcement proceeding. Indeed, gamesmanship can work both ways, particularly in divorce- and custody-related matters, and trial courts are capable of ferreting it out. A trial court may well conclude that an "agreed" arrangement forced a struggling parent's hand and diminished the support benefiting the child, or otherwise harmed the child's best interest. Or a trial court may decide the opposite. These are fact-bound inquiries, and trial courts are competent to make case-by-case findings. Here, Victoria waited nearly a decade to sue for over $50,000 plus interest, attorney fees, and costs, despite Preston's having paid almost $80,000

towards their daughter's tuition—a fact that renders the dissent's fear of gamesmanship misplaced (or at least misdirected).

* * *

Our decision today should be confined to the facts presented. It should not be read to hold that tuition payments always qualify as child support. Further, it should not be read to encourage spouses to make direct payments and thereby bypass the registry or other payment mechanisms set forth in the divorce decree. At a minimum such behavior may needlessly complicate proceedings. It carries risks regarding matters of proof, and under different circumstances a trial court might well be within its discretion in refusing to consider such payments. But for the reasons discussed, in today's case Preston's direct payments discharged his child-support obligation.

Navigating divorce is an adult responsibility, and Texas family law laudably aims to reduce marital strife. Parents need not seek court intervention to bless each and every tuition payment where it satisfies the other parent's school fee obligation or otherwise clearly serves a child's best interests. This divorce decree did not bar the trial court from concluding that Preston Ochsner's direct tuition payments—non-registry payments to which Victoria assented—satisfied his child-support obligation. He was not attempting to reduce the amount he owed. Indeed, he paid more than $20,000 above the total amount contemplated in the support order, and in doing so discharged

an obligation that Victoria had incurred on behalf of their daughter. The trial court did not abuse its discretion in finding that he made all his court-ordered payments.

Accordingly, we reverse the court of appeals' judgment and render judgment for Preston Ochsner.

Don R. Willett
Justice

OPINION DELIVERED: June 24, 2016