AFFIRM; and Opinion Filed July 29, 2016.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-15-00234-CV

IN THE INTEREST OF M.G. AND S.G., CHILDREN

On Appeal from the 330th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DF-13-12223

MEMORANDUM OPINION

Before Justices Lang, Brown, and Whitehill
Opinion by Justice Brown

Following a trial before the court, Husband appeals the trial court's final decree of divorce. In five issues, he contends the trial court erred in 1) denying him a new trial because he did not speak sufficient English to understand the trial proceedings, 2) awarding Wife a disproportionate share of the marital estate, 3) ordering him to pay more than standard child support for the two minor children of the marriage, 4) appointing Wife sole managing conservator of the children, and 5) ordering that he have less than standard access to the children. We affirm the trial court's judgment.

BACKGROUND

Husband and Wife were married in Africa in 1981 and later moved to Texas. Husband and Wife have two minor children, ages fourteen and seven at the time of trial. In June 2013, Wife filed her original petition for divorce. She amended her petition to add a third-party

defendant, Tombossa Negusse. She sought to recover money Negusse allegedly borrowed from her and Husband. Husband filed a counter-petition for divorce.

The trial court held a one-day nonjury trial in April 2014. Husband, Wife, Wife's attorney, and Negusse were the only witnesses. Husband testified about real property, including a house and a condominium used as rental property, and automobiles purchased during the marriage. Husband described himself as "the breadwinner of the house." He testified about various jobs he had held including, welding, mowing lawns, driving a taxi, working at a gas station, and buying and selling cars. He testified his Wife worked doing housekeeping, but he did not know where. Bank statements from different joint accounts Husband and Wife had were admitted into evidence. They used money orders to pay for the utilities and cash to pay for groceries. Husband gave Wife cash to pay for things. He testified that because he was a taxi driver he always had cash.

In June 2013, Husband went to Africa until September 2013. Before he left, he sold the taxi he had been driving. He did not tell Wife he was planning to sell it. The last time Husband had spoken to his fourteen-year-old daughter was in June 2013 before he left for Africa. Husband had seen his seven-year-old son twice since he had been back from Africa. The couple also has an adult son Husband had not seen since before his trip. Husband testified that he had an eight-year-old daughter in Africa by another woman. That child was born during Husband's marriage to Wife. That child and her mother, along with Husband's mother, live in a house he purchased. Husband claimed he sends money, about $200 every six months, to his African child and her mother.

Husband testified that in 2009 he loaned $90,000 to his friend Negusse. Part of the $90,000 was cash he had at the house, and the other part he took from a bank account. Negusse agreed to pay him back $100,000 within one year. Wife did not know about the loan. Husband

testified that Negusse made a $5,000 payment on the loan the following year and had paid him the full amount slowly over time. Sometimes Negusse paid in cash, and sometimes he paid with a check.

Husband identified Wife's Exhibit No. 1 as the loan agreement he and Negusse executed. It is a handwritten document dated September 10, 2009, stating that Husband is loaning Negusse $90,000 "to be paid back in one year in the amount of $100,000." A handwritten notation at the bottom of the exhibit indicated that Negusse paid $5,000 by check on April 10, 2010, and that the remaining balance was $95,000. Husband identified another document, Wife's Exhibit No. 4, as a document he signed before he left for Africa in June 2013. The handwritten document, titled "End of Contract," states that Husband had accepted full payment from Negusse in the amount of $100,000. It is signed by Husband and Negusse and is undated. Husband could not explain why the document had a fax legend at the top dated August 18, 2013. He was in Africa on that date and denied faxing the document.

Wife testified that she and Husband paid lots of bills in cash. She testified that their monthly expenses were about $4,500. For the duration of the marriage, Wife worked part time cleaning one house and made $400 a month. When Husband went to Africa the previous year, he left without telling her. She learned from a friend that he had left. In 2009, Wife learned about Husband's other child in Africa from Husband's brother. Wife also testified that in 2009, they had $90,000 in cash at their house. One day, she noticed it was missing, and Husband told her he had loaned the money to someone. Husband showed her a piece of paper that Negusse signed about the loan. Wife testified that Negusse's brother came to her house and brought her a piece of paper. She identified her Exhibit No. 7 as that document. The exhibit was a copy of the "End of Contract" document without the fax legend at the top.

Negusse identified the promissory note and said he wrote it. He stated he borrowed money from Husband to facilitate his business. He testified he paid Husband in full, but that it took him more than a year to do so. Negusse testified he wrote several checks for $4,000 and $5,000 in repayment of the loan. He also made cash payments. Negusse said he gave records documenting these payments to his lawyer. He identified several exhibits purporting to show he had repaid the debt. One exhibit is a duplicate carbon copy of a check to Husband, and others are stubs from Negusse's checkbook indicating payments to Husband. When asked what he did with the $90,000, Negusse stated he "probably put it in the bank." He did not bring any bank records to prove that. When asked why a fax legend dated August 2013 was at the top of the document showing the loan had been fully paid, Negusse testified that he had faxed the document to his brother to give to Wife to show he had paid Husband.

In a decree signed December 1, 2014, the court granted the divorce, divided the marital estate, and made orders for conservatorship, possession, access to, and support of the two children. The divorce decree contained various fact findings. The court found that Husband did not provide substantive credible evidence of his income and found that he is paid in cash and pays most of the bills in cash or cashier's checks to attempt to secret assets from Wife. The court further found that Husband had committed fraud on the community. The court also found that Husband breached his fiduciary duty to Wife by depleting the community estate of assets and determined that Wife was entitled to a disproportionate share of the marital estate. The court found that Husband breached his fiduciary duty to the community estate by "loaning" Negusse $90,000. The court found there was no credible evidence to indicate the loan had been repaid. The court ordered a take-nothing judgment on Wife's claim against Negusse. However, the

court found that the estate should be reconstituted to account for the missing money.[1] The court further found Husband breached his fiduciary duty to the community by secreting and diverting community assets to Africa to build a home for his "concubine and child."

Husband filed a motion for new trial in which, among other things, he alleged for the first time that he did not sufficiently understand English to comprehend the questions posed to him at trial. The trial court denied the motion after a hearing. On March 11, 2015, more than three months after the trial court signed the decree, Husband filed a request for findings of fact and conclusions of law and later filed notice of past due findings and conclusions. The trial court did not make any separate findings of fact or conclusions of law. This appeal followed. Wife has not filed a brief.

DENIAL OF MOTION FOR NEW TRIAL

In his first issue, Husband contends the trial court erred in denying him a new trial when he was not able to speak sufficient English to understand the proceedings and also because his attorney did not show up to a court setting to object to the proposed final decree. In his two-sentence briefing of this issue, Husband directs us to his motion for new trial, a portion of the hearing on the motion for new trial, and a motion for the appointment of an interpreter he filed the day before the new trial hearing. Even if it was appropriate for Husband to wait until his motion for new trial to raise these complaints, *see* TEX. R. APP. P. 33.1(a)(1), he does not cite any law in support of this issue. An appellant's brief is required to contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record. *Id.* 38.1(i). An appellate issue that is not supported by substantive argument or citation to any legal authority presents nothing for this Court to review. *Strange v. Cont'l Cas. Co.*, 126 S.W.3d 676,

[1] Under the family code, "reconstituted estate" means "the total value of the community estate that would exist if an actual or constructive fraud on the community had not occurred." TEX. FAM. CODE ANN. § 7.009(a) (West Supp. 2015).

678 (Tex. App.—Dallas 2004, pet. denied); *see Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284 (Tex. 1994). Accordingly, we overrule Husband's first issue.

DIVISION OF COMMUNITY ESTATE

In his second issue, Husband contends the trial court erred in awarding Wife a disproportionate share of the marital estate. We disagree.

In a divorce case, the trial court shall order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and the children of the marriage. TEX. FAM. CODE ANN. § 7.001 (West 2006). The court has wide discretion in dividing a marital estate. *Young v. Young*, 609 S.W.2d 758, 762 (Tex. 1980); *Toles v. Toles*, 45 S.W.3d 252, 264 (Tex. App.—Dallas 2001, pet. denied). Texas recognizes the concept of fraud on the community, which is a wrong by one spouse that the court may consider in its division of the estate of the parties and that may justify an unequal division of the property. *Schlueter v. Schlueter*, 975 S.W.2d 584, 588 (Tex. 1998); *see* TEX. FAM. CODE ANN. § 7.009 (West Supp. 2015) (division of property and fraud on community). In addition, the trial court may consider many other factors, including fault, disparity of incomes or earning capacities, the spouses' capacities and abilities, benefits the party not at fault would have derived from continuation of the marriage, business opportunities, education, relative physical conditions, relative financial condition and obligations, disparity of ages, size of separate estates, and the nature of the property. *Young*, 609 S.W.2d at 762; *Toles*, 45 S.W.3d at 264 (citing *Murff v. Murff*, 615 S.W.2d 696, 699 (Tex. 1991)). Equality in the division is not required, and this Court indulges every reasonable presumption in favor of the proper exercise of discretion by the trial court in dividing the community estate. *Toles*, 45 S.W.3d at 264.

Husband contends the evidence was insufficient to prove Wife was defrauded and also argues that she spent a lot of the couple's money. There was probative evidence that Husband

committed fraud on the community and breached his fiduciary duties to Wife. It was undisputed that during the marriage Husband fathered a child with another woman. He sent money to Africa to support them and left the country for three months to visit them without telling Wife. Further, the court found that Husband operated in cash to secret money from Wife. And because the trial court was in the best position to evaluate the credibility of the witnesses, we defer to its finding that the $90,000 loan was not in fact a loan, but rather a way to divert money from Wife. These factors, as well as Husband's fault in the breakup of the marriage and the parties' unequal earning capacities, support the trial court's decision to award Wife a disproportionate share of the property. The trial court did not abuse its discretion in dividing the community estate. We overrule appellant's second issue.

CHILD SUPPORT

In his third issue, Husband contends the trial court erred by ordering him to pay an amount greater than standard child support without sufficient evidence or without making findings of fact and conclusions of law. We disagree.

A trial court has discretion to set child support within the parameters provided by the family code. *Iliff v. Iliff*, 339 S.W.3d 74, 78 (Tex. 2011). A court's order of child support will not be disturbed on appeal unless the complaining party can show a clear abuse of discretion. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990). When, as here, the trial court does not sign findings of fact, it is implied that the trial court made all the findings necessary to support its judgment. *Id.*

Child support is generally determined by calculating the child support obligor's monthly net resources and applying the statutory guidelines to that amount. *In re B.Q.T.*, No. 05-14-00480-CV, 2016 WL 861633, at *1 (Tex. App.—Dallas Mar. 7, 2016, no pet.) (mem. op.); *see* TEX. FAM. CODE ANN. §§ 154.062, 154.125, 154.129 (West 2014 & Supp. 2015). When an

obligor's monthly net resources are not more than $7,500, the family code guideline for an obligor with two children is child support equal to 25% of monthly net resources. TEX. FAM. CODE ANN. § 154.125. The court may order support in an amount that varies from the guidelines, but is required to make certain findings to support any such variance. *Id.* §§ 154.123, 154.130(a)(3) (West 2014). Even if the child support is within the guidelines, the court is required to make specific findings if a party files a written request with the court not later than ten days after the date of the hearing. *Id.* § 154.130(a)(1).

The obligor is required to furnish information sufficient to accurately identify his net resources and ability to pay child support. *In re N.T.*, 335 S.W.3d 660, 666 (Tex. App.—El Paso 2011, no pet.); *see* TEX. FAM. CODE ANN. § 154.063 (West 2014). Resources include all wage and salary income and net rental income, as well as other types of income. TEX. FAM. CODE ANN. § 154.062(a). To determine net resources, the court shall deduct certain items, including social security taxes and federal income taxes, from resources. *Id.* § 154.062(b). Courts may nevertheless calculate net resources on imprecise information. *Ayala v. Ayala*, 387 S.W.3d 721, 727 (Tex. App.—Houston [1st Dist.] 2011, no pet.); *see In re T.G.*, No. 05-12-00460-CV, 2013 WL 3154975, at *6 (Tex. App.—Dallas June 19, 2013, no pet.) (mem. op.).

Here, Husband did not timely request section 154.130 findings. He contends the trial court was nevertheless required to make the findings because the child support order exceeded the statutory guidelines. He asserts the amount of child support ordered is between 39 and 44% of his *income*.[2]

The decree does not specify what Husband's net resources are or what percentage of those net resources he was ordered to pay as child support. The court ordered Husband to pay $1,150 in child support each month. $1,150 is 25% of $4,600. Thus, the amount of child

[2] Husband's brief refers to percentages of his income instead of his net resources.

support ordered corresponds to an implied finding that Husband's net resources were $4,600. There is some evidence to support such an implied finding. As stated, the trial court found that Husband failed to provide any substantive credible evidence of his current income and that Husband is paid in cash and pays most of the bills in cash or cashier's checks to attempt to secret assets from Wife. Husband did not provide any income tax returns or pay stubs. He was evasive when asked about his financial situation at trial. When Husband was questioned by Wife's attorney about how much money he put into the bank each month, he answered, "I don't know" or "No comment." Wife provided evidence of the couple's joint bank statements. Statements for the year 2012 showed an average of $2,900 was deposited into the accounts each month. Wife indicated that in addition to the money in the bank accounts, each month Husband gave her $1,700 in cash to pay bills. Thus, the testimony and bank statements showed Husband had an average of $4,600 available to him each month. Although imprecise, this is some evidence that Husband's net resources were $4,600 a month and some evidence to support the trial court's child support award. *See, e.g., Bello v. Bello*, No. 01-11-00594-CV, 2013 WL 4507876, at *4 (Tex. App.—Houston [1st Dist.] 2013, no pet.) (mem. op.) (where obligor failed to produce evidence of net resources, trial court's implied finding of net resources was supported by testimony and account statements); *In re N.T.*, 335 S.W.3d at 666–67 (where obligor failed to produce documentation of his earnings, trial court chose to accept mother's evidence of his income and evidence was sufficient to support trial court's findings regarding support).

Husband also maintains the support guideline should have been 22.5% instead of 25% due to his child in Africa. *See* TEX. FAM. CODE ANN. § 154.129 (West 2014) (method of computing support for children in more than one household). He bore the burden to prove he owed a duty of support to additional children. *See Luckman v. Zamora*, No. 01-13-00001-CV, 2014 WL 554630, at *4 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (mem. op.); *see also*

TEX. FAM. CODE ANN. § 156.406 (West 2014) ("if the obligor has the duty to support children in more than one household, the court shall apply the percentage guidelines for multiple families"). At the April 2014 trial, Husband testified that he sent the child that was born and lived in Africa money every few months, but he did not attempt to conclusively prove he had a formal duty to support that child. In closing arguments, Wife's attorney argued to the court that the applicable guideline was 25%. *See* TEX. FAM. CODE ANN. § 154.125 (support guideline for two children is 25% of obligor's net resources). Husband made no argument at that time that, due to his child in Africa, support should be limited to 22.5%. He waited until the January 2015 hearing on his motion for new trial to mention the figure 22.5%. Appellant has not shown the trial court's decision to apply the standard 25% guideline was an abuse of discretion. *See Luckman*, 2014 WL 554630, at *4 (where father did not provide evidence of conclusive duty to support other children and waited until hearing on motion for new trial to inform court it failed to account for them, there was no abuse of discretion in applying standard guidelines).

To the extent Husband argues that the trial court erred in not requiring him to furnish information sufficient to identify his net resources as required by section 154.063 of the family code, he did not make this argument in the trial court and has therefore failed to preserve it for our review. TEX. R. APP. P. 33.1(a); *Moroch v. Collins*, 174 S.W.3d 849, 869 (Tex. App.—Dallas 2005, pet. denied). On this record, we cannot conclude the trial court abused its discretion in ordering child support of $1,150 per month. Nor was the court required to make findings under family code section 154.130. We overrule Husband's third issue.

CONSERVATORSHIP

In his fourth issue, Husband contends the trial court erred in appointing Wife sole managing conservator of the children and appointing him possessory conservator. Husband

maintains the trial court abused its discretion in appointing him a possessory conservator without any findings of family violence, sexual abuse, or harm by him against anyone.

We review a trial court's order regarding child custody, control, possession, and visitation for an abuse of discretion. *Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex. 1982); *In re L.C.L.*, 396 S.W.3d 712, 716 (Tex. App.—Dallas 2013, no pet.). In family law cases, the abuse of discretion standard overlaps with traditional standards of review. *In re L.C.L.*, 396 S.W.3d at 716. As a result, legal and factual insufficiency are factors relevant to whether there was an abuse of discretion. *Id.* We consider whether the trial court had sufficient evidence on which to exercise its discretion. As long as there is some probative evidence to support the trial court's judgment, we will not substitute our judgment for that of the trial court. *Id.* In custody matters, where personal observation and evaluation of the parties is so valuable, we give great deference to the trial court's determination regarding conservatorship. *See Doyle v. Doyle*, 955 S.W.2d 478, 481–82 (Tex. App.—Austin 1997, no pet.); *see also Whitworth v. Whitworth*, 222 S.W.3d 616, 623 (Tex. App.—Houston [1st Dist.] 2007, no pet.).

The best interest of the child is always the court's primary consideration in determining issues of conservatorship and possession of and access to the child. TEX. FAM. CODE ANN. § 153.002 (West 2014). The court may appoint joint managing conservators or a sole managing conservator. *Id.* § 153.005 (West Supp. 2015). There is a rebuttable presumption that appointment of both parents as joint managing conservators is in the best interest of the child. *Id.* § 153.131(b) (West 2014). A history of family violence involving the parents of a child removes this presumption. *Id.*

Husband argues that because the court did not make a finding of family violence or sexual abuse, it abused its discretion in appointing him a possessory conservator. The family code provides, however, that if no written agreed parenting plan is filed with the court, the court

may appoint both parents joint managing conservators only if the appointment is in the best interest of the child considering the following factors:

> (1) whether the physical, psychological, or emotional needs and development of the child will benefit from the appointment of joint managing conservators;
>
> (2) the ability of the parents to give first priority to the welfare of the child and reach shared decisions in the child's best interest;
>
> (3) whether each parent can encourage and accept a positive relationship between the child and the other parent;
>
> (4) whether both parents participated in child rearing before the filing of the suit;
>
> (5) the geographical proximity of the parents' residences;
>
> (6) if the child is 12 years of age or older, the child's preference, if any, regarding the person to have the exclusive right to designate the primary residence of the child; and
>
> (7) any other relevant factor.

Id. § 153.134 (West 2014).

Thus, it is possible to overcome the presumption in favor of joint managing conservators without a finding of family violence, which automatically removes the presumption. Husband does not mention the above factors in his brief. We conclude that several of those factors weigh in favor of the trial court's decision. *See In re R.R.*, No. 05-14-00773-CV, 2015 WL 5813391, at *7 (Tex. App.—Dallas Oct. 6, 2015, no pet.) (mem. op.). There was evidence Husband had not spoken to his fourteen-year-old daughter in almost a year and had seen his young son only twice during that time. Further, he left the country for three months to visit his other child, born out of an extramarital affair, without telling the children's mother he was leaving. There was some probative evidence to overcome the presumption that joint managing conservatorship was in the children's best interest. We give great deference to the trial court's determination that Husband should be a possessory conservator. *See Doyle*, 955 S.W.2d at 481–82. We overrule Husband's fourth issue.

ACCESS TO AND POSSESSION OF THE CHILDREN

In his fifth issue, Husband contends the trial court erred in ordering that he have less than standard access to and possession of the children. There is a rebuttable presumption that the standard possession order provides reasonable minimum possession of a child for a parent named as a possessory conservator or joint managing conservator and is in the best interest of the child. TEX. FAM. CODE ANN. § 153.252 (West 2014). In ordering the terms of possession under an order other than a standard possession order, the court may consider the age, developmental status, circumstances, needs, and best interest of the child, the circumstances of the managing conservator and of the parent named as a possessory conservator, and any other relevant factor. *Id.* § 153.256 (West 2014).

The facts mentioned in connection with the previous issue regarding conservatorship, also are relevant here. Under these facts, we defer to the trial court's determination of this issue. We cannot conclude the trial court abused its discretion in ordering that Husband have less than standard access to and possession of his children. We overrule Husband's fifth issue.

We affirm the trial court's judgment.

/Ada Brown/
ADA BROWN
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN THE INTEREST OF M.G. AND S.G., CHILDREN	On Appeal from the 330th Judicial District Court, Dallas County, Texas Trial Court Cause No. DF-13-12223.
No. 05-15-00234-CV	Opinion delivered by Justice Brown, Justices Lang and Whitehill participating.

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

It is **ORDERED** that appellee Lemlem Gebremichael recover her costs of this appeal from appellant Woldemichael Endrias.

Judgment entered this 29th day of July, 2016.