Opinion issued January 19, 2017

In The

Court of Appeals

For The

First District of Texas

NO. 01-15-00860-CV

FERNANDO HAFFID CAMERO, Appellant

V.

SAMANTHA JO CAMERO, Appellee

On Appeal from the 300th District Court
Brazoria County, Texas
Trial Court Case No. 76468-F

MEMORANDUM OPINION

In this divorce case, the trial court signed a judgment that (1) dissolved the marriage between Fernando Haffid Camero and Samantha Jo Camero, (2) determined issues related to the conservatorship, possession, and access to the

couple's two minor children, and (3) resolved property issues. Acting pro se, Fernando appeals the divorce decree, presenting what we construe as two issues.

We affirm.

Background

On March 24, 2014, Samantha filed a pro se petition of divorce, seeking dissolution of her marriage to Fernando. At that time, a protective order was already in place, prohibiting Fernando from coming within 500 feet of Samantha's residence. The protective order indicated that Fernando had been arrested for aggravated assault with a deadly weapon.

Fernando, who was incarcerated, filed a pro se answer to Samantha's petition in March 2015. Samantha, represented by legal aid counsel, filed an amended petition on July 1, 2015. In the amended petition, Samantha averred that she and Fernando "were married on or about February 15, 2010 and ceased to live together as husband and wife on or about February 28, 2014." Samantha requested a divorce from Fernando on the ground that the marriage had "become insupportable because of discord or conflict of personalities" between them. Samantha also alleged that Fernando "is guilty of cruel treatment toward [her]." She further averred, "Since the marriage, [Fernando] has been convicted of a felony; has been imprisoned for at least one year in the Texas Department of Criminal Justice[.]"

Samantha asserted that "[t]here is no community property for division." She averred that she owned "certain separate property that is not part of the community estate of the parties."

Samantha also stated that she and Fernando are the parents of two children. The oldest child was born in 2011, and the youngest child was born in 2012. She requested that she be named the children's sole managing conservator and that Fernando have no access to the children. Samantha asserted that Fernando had "a history or pattern of committing family violence during the two-year period preceding the date of filing of this suit." In support of this assertion, Samantha attached her affidavit to the amended petition.

In her affidavit, Samantha testified as follows:

> While separated in January, 2014 Fernando Camero kidnapped myself and our children and held us in Danbury, Texas and assaulted me daily. He threatened to kill me and both of our children and he said he would make us watch the others be killed. He had a lady . . . helping him hold me and the kids at the house. Fernando Camero left one day and left us alone with the [lady] and I was finally able to wrestle the telephone away from her and made a telephone call and had my babysitter come pick us up. Fernando Camero was arrested February 28, 2014 and charged with Aggravated Assault with a Deadly Weapon which was lowered to Attempted Aggravated Assault with a Deadly Weapon and he was charged with Possession of a Controlled Substance <1 gram and Unlawful restraint for holding the children. He was sentenced to 3 years in July 2014. Since being in prison he has managed to get a cell phone and call my telephone number 15 times in a row and then called my Mother's telephone number 15 times in a row. I have had to change my telephone number and hide my address to protect myself and my children. I am concerned for our safety and that once he is out of prison he will either try to kill us or

> kidnap us and take us to Mexico as he has threatened to [do] both in the past.

The case was tried to the bench on July 29, 2015. Samantha attended trial with her attorney. Fernando, who was still incarcerated for the offense of attempted aggravated assault, did not appear at trial, nor was he represented by counsel.

Samantha was the only witness to testify at trial. Samantha stated that she and Fernando were married on February 9, 2010 and that they have two children, who were three and four years old. Samantha stated that Fernando abducted her and their two children on January 20, 2014. She testified that she and her children were able to free themselves from Fernando on February 28, 2014. She stated that criminal charges were brought against Fernando related to the abduction, and Fernando was convicted of an offense arising from the charges. Samantha confirmed that Fernando was in prison for that conviction.

Samantha also testified that Fernando had "an extensive history with drugs." She reaffirmed her affidavit testimony that had been offered in support of her amended petition, testifying not only that Fernando had abducted her and the children but that Fernando had a history of violence against his family. Samantha stated that Fernando had mentally abused the children and had threatened to beat the children, who were only three and four years old. In addition, Samantha testified that Fernando had family in Mexico and had threatened to take the

children to Mexico and "disappear with them." She also indicated that Fernando continued to harass her by calling her from prison, requiring her to change her telephone number. Samantha requested that she be awarded sole custody of the children and that Fernando not be permitted to have any contact with them.

Samantha also testified that she and Fernando had no marital property to split. She requested that each of them be awarded his or her own "personal property."

At the end of the hearing, the trial court ruled as follows:

> Based on your testimony, I will find the marriage has become insupportable because of discord or conflict of personalities. I will grant the divorce, terminate the marriage relationship as of today.
>
> Based upon the conviction and the findings in that matter, I will find family violence has occurred and as a result of that will not appoint the parties as joint managing conservators.
>
> I'll appoint Mrs. Camero as the sole managing conservator, Mr. Camero as possessory conservator and will not order any visitation at this time, nor any child support, since none is requested.
>
> I will order the division of the property that you've requested, find that to be fair, reasonable, and equitable; and I'll grant the divorce, terminate the marriage as of today, pronounce and render today.

The trial court signed a final decree of divorce, conforming to its oral rendition. In the decree, the trial court ordered that "the marriage between [Samantha and Fernando] is dissolved on the grounds of cruelty and felony conviction." The trial court appointed Samantha as the children's sole managing

conservator and appointed Fernando as possessory conservator. The trial court found that Fernando "has a history or pattern of committing family violence during the two-year period preceding the filing of this suit or during the pendency of this suit." The trial court ordered that Fernando "shall have no possession or access to the children the subject of this suit."

Acting pro se, Fernando now appeals the trial court's decree. Fernando does not list specific issues in his appellate brief. We can discern only two points in his brief in which Fernando expressly argues that the trial court erred. We will consider these points as two appellate issues.

In the first issue, Fernando contends that the trial court abused its discretion when it ordered that he not have access or visitation with his children. As the second issue, Fernando asserts that the trial court abused its discretion when it did not permit him, an inmate, "to proceed by affidavit[,] deposition, telephone, or other effective means." Other than these two issues, Fernando's brief complains of Samantha's actions in the trial court but does make any argument to show how those actions resulted in an improper ruling by the trial court or an erroneous judgment. *See* TEX. R. APP. P. 38.1(f), (h)–(i) (providing that briefs must "contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record," "must state concisely all issues or points

presented for review," and "contain a succinct, clear, and accurate statement of the arguments made in the body of the brief").

Visitation with Children

In what we construe as Fernando's first issue, Fernando asserts that the trial court abused its discretion "by refusing [him] possession or access to the children" because he was named the children's possessory conservator.

A. Standard of Review

We review a trial court's decision on custody, control, possession, and visitation matters for an abuse of discretion; and we reverse a trial court's order only if we determine, from reviewing the record as a whole, that the trial court's decision was arbitrary and unreasonable. *Patterson v. Brist*, 236 S.W.3d 238, 239–40 (Tex. App.—Houston [1st Dist.] 2006, pet. dism'd) (citing *Turner v. Turner*, 47 S.W.3d 761, 763 (Tex. App.—Houston [1st Dist.] 2001, no pet.)). Under an abuse-of-discretion-standard, we view the evidence in the light most favorable to the trial court's decision and indulge every legal presumption in favor of its judgment. *Holley v. Holley*, 864 S.W.2d 703, 706 (Tex. App.—Houston [1st Dist.] 1993, writ denied). We will reverse if the trial court abused its discretion by acting without reference to any guiding rules or principles. *See Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990). There is no abuse of discretion if "some evidence of

a substantive and probative character" supports the decision. *Holley*, 864 S.W.2d at 706.

B. Analysis

A trial court is required to "consider the commission of family violence in determining whether to deny, restrict, or limit the possession of a child by a parent who is appointed as a possessory conservator." TEX. FAM. CODE ANN. § 153.004(c) (Vernon 2014). The Family Code further requires,

> The [trial] court may not allow a parent to have access to a child for whom it is shown by a preponderance of the evidence that . . . there is a history or pattern of committing family violence during the two years preceding the date of the filing of the suit or during the pendency of the suit[.]

Id. § 153.004(d).

Here, the trial court found that Fernando "has a history or pattern of committing family violence during the two-year period preceding the filing of this suit or during the pendency of this suit." Based on this finding, the trial court ordered, in compliance with Section 153.004(d), that Fernando "shall have no possession or access to the children the subject of this suit." *See id.*

Fernando does not dispute that Samantha's testimony supported the family-violence finding. Samantha testified that Fernando (1) abducted his family and held them against their will for over one month, (2) had a history of violence against his family, and (3) made threats of violence against his young children.

Samantha also testified that Fernando was convicted of criminal charges arising from these acts and that Fernando is currently serving a prison sentence for that conviction. She stated that she had obtained a protective order against Fernando after the incident. Samantha further indicated that Fernando continued to call and harass her from prison.

Fernando also acknowledges that, related to Samantha's allegations, he was convicted of the offense of attempted aggravated assault with a deadly weapon and sentenced to three years in prison. Nonetheless, he asserts on appeal that the trial court abused its discretion in denying him access to the children because Samantha's testimony regarding the abduction is not credible. We, however, are not in a position to assess Samantha's credibility; rather, the trial court was best able to observe and assess her demeanor and her credibility. *See Allen v. Allen*, 475 S.W.3d 453, 458 (Tex. App.—Houston [14th Dist.] 2015, no pet.). For this reason, we defer to the trial court's resolution of underlying facts and to credibility determinations affecting its decision, and we will not substitute our judgment for that of the trial court in such matters. *See id.*

Fernando also points out that the trial court's final decree identifies another finding, in addition to the family-violence finding, as support for its order prohibiting Fernando's access to the children. Specifically, the trial court also found that "awarding [Fernando] access to the children would further endanger the

children's physical health or emotional welfare and would not be in the best interest of the children." On appeal, Fernando asserts that insufficient evidence supports this finding.

As discussed, the trial court's finding that Fernando "has a history or pattern of committing family violence during the two-year period preceding the filing of this suit or during the pendency of this suit" supported its order prohibiting Fernando from having access to the children. *See* FAM. CODE § 153.004(d). No additional findings were necessary, making the trial court's endangerment finding superfluous to the trial court's determination regarding access and visitation. Because the trial court's family-violence finding supports the judgment, and that finding is supported by sufficient evidence, there was no reversible error in making the superfluous endangerment finding.[1] *See Merry Homes, Inc. v. Chi Hung Luu*, 312 S.W.3d 938, 950–51 (Tex. App.—Houston [1st Dist.] 2010, no pet.); *see also* TEX. R. APP. P. 44.1(a).

We overrule Fernando's first issue.

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[1] We note that a trial court may allow access to a child by a parent against whom a family-violence finding has been made if (1) the trial court finds that awarding the parent access to the child would not endanger the child's physical health or emotional welfare and would be in the best interest of the child, and (2) the trial court renders a possession order that is designed to protect the safety and well-being of the child and any other person who has been a victim of family violence committed by the parent. TEX. FAM. CODE ANN. § 153.004(d-1) (Vernon 2014). In making the endangerment finding *against* Fernando, the trial court may have been employing a belt-and-suspenders approach to support its order prohibiting Fernando from having access to the children. However, as discussed, the endangerment finding was superfluous and resulted in no reversible error.

Appearance by Alternate Means

In what we construe as his second issue, Fernando contends that the trial court abused its discretion by not allowing him, an inmate, "to proceed by affidavit[,] deposition, telephone, or other effective means."

The case was tried to the bench on July 29, 2015. The trial court signed the final divorce decree on August 10, 2015. On August 17, 2015, Fernando filed a "Motion for Hearing by Conference Call" in which he stated that he was currently incarcerated. He further averred, "I am unable to personally appear before the Court and give testimony in this cause and respectfully request the Court to hold a hearing by telephone conference call with me by calling [phone number provided]." Fernando did not identify the purpose of the hearing referenced in the Motion for Hearing by Conference Call or otherwise reference any pending motion for which he was requesting a hearing. The record shows that Fernando did not file a motion for new trial or any other post-trial motion to challenge the final divorce decree.

Although a party may not be denied access to the courts merely because he is incarcerated, it is well established that there is no absolute right for an inmate to appear personally in court in a civil case. *In re Z.L.T.*, 124 S.W.3d 163, 165 (Tex. 2003). To be entitled to appear through an alternate means, such as telephonic or video communications technology, the burden rests on the inmate to request access

to the court through these alternate means. *See Graves v. Atkins*, No. 01–04–00423–CV, 2006 WL 3751612, at *3 (Tex. App.—Houston [1st Dist.] Dec. 21, 2006, no pet.) (mem. op.) (citing *In re Z.L.T.*, 124 S.W.3d at 166). Here, the record shows that, although he was aware of the trial date, Fernando made no request before trial to appear by alternative means, such as by telephone conference, deposition, or affidavit.[2] Fernando's post-trial motion for a telephonic hearing does not preserve any complaint by Fernando that he was not allowed to participate in the trial by an alternate means. *See Britton v. Aimco Sandalwood L.P.*, No. 14–04–00985–CV, 2005 WL 3359711, at * 2 (Tex. App.—Houston [14th Dist.] Dec. 6, 2005, pet. denied) (mem. op.) (holding that no issue was preserved for appeal when no motion seeking alternate means of appearance was presented to trial court).

We overrule Fernando's second issue.

[2] On July 8, 2015—21 days before trial—Fernando filed a letter with the trial court in which he requested the court to continue the July 29, 2015 trial because he was still in the process "of gathering evidence to present to the court that Samantha [] has committed fraud against the State of Texas . . . ." Fernando made no request for a continuance on the ground that he sought to appear by alternate means at trial. Fernando also does not argue on appeal that the trial court abused its discretion when it did not grant the continuance.

Conclusion

We affirm the judgment of the trial court.

Laura Carter Higley
Justice

Panel consists of Justices Keyes, Higley, and Lloyd.