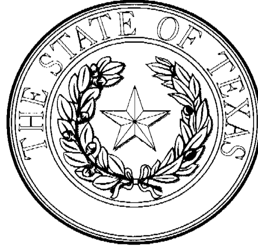
Opinion issued August 10, 2023



In The

Court of Appeals

For The

First District of Texas

NO. 01-21-00283-CV

C.L.W., Appellant

V.

R.V.W., Appellee

On Appeal from the 257th District Court
Harris County, Texas
Trial Court Case No. 2017-84605

MEMORANDUM OPINION

After a bench trial, the trial court entered a final divorce decree dissolving the marriage of C.L.W. (Mother), a Canadian citizen, and R.V.W. (Father), an American citizen, and appointing them as joint managing conservators of their child, with Father having the exclusive right to designate the child's primary residence in the

United States. Mother appealed pro se. In ten issues, she contends the trial court abused its discretion by:

- determining the conservatorship issues in a manner contrary to the child's best interest;
- refusing to consider or giving insufficient weight to Father's pattern or history of family violence against Mother, his former partner, and his former partner's children;
- restricting Mother's possession of and access to the child to supervised visitation and ordering her to pay a bond or deposit security based on its erroneous finding that there is a risk Mother will abduct the child to a foreign country;
- placing a geographic restriction on the child's primary residence that constitutes a de facto termination of her parental rights;
- improperly calculating child support; and
- failing to divide the community estate in a just and right manner.

Because we find no reversible error, we affirm the trial court's decree.

I. Background

Mother, a Canadian citizen, and Father, an American citizen, met in Calgary, Canada and began living together there in 2015. Father had overstayed his visitor's visa. Although the parties married in January 2017, Father was denied permission to remain in Canada because of his criminal record. In the year before he met Mother, Father was convicted of assaulting his former girlfriend. Canadian court records also show that, in the year after he met Mother, Father refused to provide a breath sample in connection with a traffic offense.

Father returned to the United States in February 2017. Mother followed Father to Texas, where their child was born that September. The parties dispute whether they intended to reside permanently in Texas, but Father's deportation prevented him from re-entering Canada.

The parties experience conflict and separate after they move to Texas

The parties' relationship deteriorated not long after they moved to Texas. In Mother's view, the parties' marriage became insupportable because Father drank too much alcohol; sometimes stayed out all night or disappeared for days, causing her to worry; was verbally abusive and violent; and involved his family in the marriage, which escalated the marital conflict and exposed Mother to threats, harassment, and physical harm from Father's family. But in Father's view, the relationship suffered because Mother verbally and physically abused him and regularly threatened to take their child to Canada, where Father could not see the child.

The parties separated after a fight on December 13, 2017. According to Father, he called police because Mother hit him in the face "a few times." But according to Mother, the fight happened when Father pushed her against a couch, causing her to push him back defensively. The fight expanded to include Father's niece, whom Mother claimed pushed her over the couch and threatened her. The police were called, and the officer's incident report described the events as follows:

> [Father] stated he and [Mother] had been getting into verbal arguments the last several days and that this was not the first time things had gotten

> out of hand. [Father] stated today, the arguing escalated into a minor physical altercation when [Mother] pushed him a bit and hit him in the face two-three times. [Father] stated he felt pain but did not wish to pursue charges. . . . [H]e just wanted [Mother] to leave for the night.
>
> [Mother] stated she and [Father] had been arguing the last few days about silly things. [Mother] stated things got out of hand today when [Father] pushed her up against their couch. After being pushed, [Mother] stated she pushed [Father] back to defend herself and that was the end of it. [Mother] stated she did not wish to pursue charges and just wanted [Father] to leave the house for the night. . . .
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> Neither party had any visible injuries and no one wished to pursue charges. After discovering [Father] was unable to leave due to misplacing his keys in Colorado, [Mother] agreed to leave the house for the night.[[1]]

Mother left the home for a cooling-off period. The child stayed with Father. When Mother returned one and a half days later, Father moved with the child into his sister's house and denied Mother contact with the child for three weeks. He

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[1] A supplemental incident report included Mother's allegations against Father's niece:

> Mother "stated that while she was having a dispute with [Father] . . . [Father's niece] pushed her over the couch in her living room and said "I'm going to fuck you up!" [Mother] stated that was the only physical contact between her and [Father's niece] . . . . [Mother] advised she had received several threats and harassing messages via social media (snap chat), and text from both [Father's niece] and [another family member]. [Mother] stated she blocked all the phone numbers she was receiving the messages from and also blocked the social media profiles . . . . [She] stated no actions had been taken towards fulfilling the threats that were made.

claimed this was because he feared Mother would take the child to Canada, as she had threatened to do before.

The parties fail to reconcile and begin divorce proceedings in Texas

One week after the December incident, Father petitioned a Texas court for a divorce and proposed a joint managing conservatorship in which he had the exclusive right to determine the child's primary residence. Father alleged a risk that Mother would flee with the child to Canada and asked for relief to prevent an international child abduction. Later the same month, Mother filed a suit affecting the parent-child relationship (SAPCR). She also proposed a joint managing conservatorship, but one that would give her the right to determine the child's primary residence. The two proceedings were consolidated.

The parties reconciled for about two weeks in January 2018. But the reconciliation ended with another altercation. Each party described the other as the aggressor, and again the police were called. The police officer's narrative in the incident report reads:

> [Father] stated . . . he arrived home after going out for a few beers with friends and [Mother] started yelling at him about his drinking. [Father] stated that he wanted to play with his [child] as he hadn't seen [the child] all day. When [Father] tried to grab [the child] from [Mother], [Mother] refused and an argument ensued. . . . [H]e and [Mother] argued over the child for several minutes and things started to get bad until [Mother] locked herself in the bedroom. [Father] stated there was nothing physical, and he just wanted to play with [the child].

. . .

> [Mother] stated things got out of hand today when [Father] came home drunk. At one point, . . . [Father] pushed her to the ground causing her pain on her buttocks. [Mother] stated she was still holding [the child] but was unable to explain how that was possible without injuring the child. [Mother] stated she wanted to pursue charges against [Father] for assaulting her. [Mother] did not have any red marks or bruising and was not complaining of pain.
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> Deputies have been to this residence multiple times due to conflicts between [Father] and [Mother] over custody of their child. Both [Father] and [Mother] have shown willingness to lie and be deceptive . . . . I did not find either party credible during this incident. [Mother] agreed to leave the residence for the night but wanted to take [the child,] who was currently with [Father]. I advised [Mother] that [the child] would remain with [Father] as [Father] refused to give up the child.
>
> I contacted the [district attorney] . . . who declined charges due to the history at the location and neither party being credible. While [I was] on the phone with [an assistant district attorney], [Father] set the child down on the bed to go to the restroom. While [Father was] in the restroom, [Mother] grabbed the child and refused to give him up after being advised to leave the child with [Father]. [Father] came out of the bathroom and while [Mother] was packing her belongings, attempted to grab the child away from her. I was forced to grab the child from both parties and detain them as they were both being uncooperative. After both parties calmed down, [Father] and [Mother] came to an agreement and the child was allowed to go with [Mother].

Mother takes the child to Canada and begins new legal proceedings there

Days after the January 2018 fight, Mother left the United States and took the child to Canada without Father's consent. Even though a proceeding to decide custody of the child was already pending in Texas, Mother obtained an ex parte order

from a Canadian court temporarily granting her sole guardianship of the child and restraining Father from contacting her.

Father petitioned in Canada for the child's return to Texas under the Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention).[2] Mother opposed Father's petition, arguing that returning the child to Texas would expose the child to physical or psychological harm or place the child in an intolerable situation.[3] She raised three concerns: (1) Father's alcohol abuse and the risk it could pose to the child, (2) Father's physical abuse of his former girlfriend, and (3) Father's withholding of the child from Mother.

The Hague court[4] ordered Mother to return the child to Texas, finding that the child habitually resided there and was wrongfully removed. Although the Hague

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[2] The Hague Convention "protect[s] children internationally from the harmful effects of their wrongful removal or retention" and "establish[es] procedures to ensure their prompt return to the state of their habitual residence." *Guimaraes v. Brann*, 562 S.W.3d 521, 534 (Tex. App.—Houston [1st Dist.] 2018, pet. denied) (quotation omitted); *see* Convention of the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 1434 U.NT.S. 48, reprinted in 51 FED. REG. 10,494 (1986); *Asvesta v. Petroutsas*, 580 F.3d 1000, 1003 (9th Cir. 2009) (Hague Convention tried to address a "particular type of kidnapping scenario: one in which a person, usually a parent, removes a child to, or retains a child in, a country that is not the child's habitual residence in order to obtain a right of custody from the authorities of the country to which the child has been taken." (quotation omitted)).

[3] The Hague Convention provides an exception to return when "there is a grave risk that that [the child's] return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation." Hague Convention, art. 13(b), 51 Fed. Reg. at 10,499.

[4] We refer to the court which applied the Hague Convention, here the Court of Queen's Bench in Alberta, as the Hague court. *See Guimaraes*, 562 S.W.3d at 533–

court found Mother's concerns about returning the child to Texas were "not baseless" and expressed reservations about Father's suitability as a parent, it concluded that the grave-risk exception that would allow the child to stay in Canada was not met. Custody-related questions were left to the Texas court.

Mother appealed the Hague court's ruling, which was affirmed by a Canadian appeals court. The appeals court held that Mother had not shown error in that ruling; that she had to return the child to Texas; and that Father should pay $1500 to defray the cost of returning the child to the United States and $2500 in monthly support until further order of the Texas court.

Mother brings the child back to Texas, but only temporarily

After the Canadian appeals court issued its decision, Mother returned with the child to Texas in July 2019, and the parties entered a band-aid agreement for possession of and access to the child. The band-aid agreement continued Father's support obligation and compelled the parties to attend mediation.

In September 2019, the parties entered a Mediated Settlement Agreement (MSA) for temporary orders. Neither parent was designated as having the temporary exclusive right to establish the child's residence. Instead, temporarily, the child's

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34 (referring to Brazilian court addressing the Hague Convention as the Hague court).

residence was restricted to Harris County, Texas. The MSA required Father to pay support "[b]eginning October 1, 2019[,] and through January 2020."

After the mediation, Mother returned to Canada for a few months, leaving the child in Father's sole care until she returned to Texas in January 2020.[5] She and Father followed the agreed MSA schedule for the next couple of months, rotating the child between them. During this time, Mother did not allege that Father could not care for the child because of alcohol abuse or an otherwise unsafe environment.

Things changed around the time the novel coronavirus COVID-19 struck in March 2020.[6] For a second time, Mother took the child to Canada without Father's consent. This time, Mother did not bring the child back to Texas for more than a year, until after the trial, which was conducted via Zoom and so did not require Mother's physical presence in Texas, ended. Mother's refusal to return the child to Texas before the end of trial was despite her agreement in the MSA that child should

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[5] Mother returned to Texas because she anticipated beginning trial, but the trial was postponed.

[6] On March 13, 2020, Governor Abbott declared a state of disaster throughout Texas due to the "imminent threat" posed by COVID-19. *See* Governor of the State of Tex., Proclamation No. 41-3720, 45 Tex. Reg. 2094, 2095 (2020). That same day, and in subsequent orders issued throughout the COVID-19 pandemic, the Supreme Court of Texas issued emergency orders regarding the state of disaster, which allowed Texas courts to, among other things, conduct certain proceedings by teleconferencing, videoconferencing, or other means. *See, e.g.*, First Emergency Order Regarding the COVID-19 State of Disaster, 596 S.W.3d 265 (Tex. 2020).

reside in Texas and the temporary orders, entered by the court in May 2020 in accordance with the MSA, requiring the same.

At trial, the parties gave conflicting testimony about the conflict in their relationship, the source of the conflict, each party's responsibility for it, and the alleged altercations between them. For his part, Father testified that he wanted a divorce because Mother was verbally and physically abusive. Father admitted that he assaulted his ex-girlfriend in November 2014, which resulted in a family violence conviction in Canada. He testified that Mother was aware of the conviction because he was facing deportation when they wed. When Mother alleged at trial that Father had not just physically abused his ex-girlfriend but also sexually abused his ex-girlfriend's children, Father denied that allegation. It was undisputed that he was never charged with any offense against his ex-girlfriend's children. Father also denied harming his own child or Mother. During trial, he submitted to court-ordered drug and alcohol testing, which was negative.

In Father's view, Mother refused to return the child to Texas because she did not want to reside there and felt Canada was the child's home. Father testified that he could provide a safe and stable home for the child in Texas. As some evidence of his suitability as a parent, Father claimed to be the parent who first noticed the child had developmental delays, including with speech, and sought testing and a diagnosis of that condition. According to Father, while he had exclusive possession of the child

from October 2019 to January 2020, the child was diagnosed with autism. Father testified that he facilitated contact between Mother and the child's doctor about the diagnosis.

For her part, Mother claimed that she took the child to Canada the first time because she was fleeing physical, emotional, and financial abuse by Father. She testified that Father had a propensity toward anger, a history of violence, and a drinking problem that put both her and the child at risk. She claimed she left with the child to Canada the second time because she was concerned about the developing COVID-19 pandemic and did not have a job or health insurance in Texas.

Mother disputed the child's autism diagnosis, though she acknowledged the child had delayed speech and difficulty with expression, comprehension, and pronunciation. According to Mother, the child was thriving in Canada and had shown improvements in speech and socialization at school and in sessions with a speech pathologist. In Mother's opinion, it was in the child's best interest to remain in Canada.

The trial court heard testimony that because of his deportation Father cannot enter Canada. In contrast, Mother testified that she could enter the United States temporarily for up to six months in one year as a tourist. Mother explained that although she is self-employed and works from home to support her online business, she is not authorized to work in the United States and cannot financially support

herself in both places, making long-term travel difficult. Mother added that when she and Father were still together, Father agreed to sponsor her for permanent United States residence (a green card). Because her green card application was based on her marriage to Father, however, it was no longer an option.

The trial court also heard some testimony from Father's ex-girlfriend and one of her daughters. Father's ex-girlfriend testified that she lived with Father in Canada for four years, from 2011 to 2015. Her two daughters, both minors then, also lived in the house. But the ex-girlfriend's testimony was limited on Father's objection that testimony about a non-party relationship and events occurring more than two years ago was not relevant under the Family Code. So Mother presented the ex-girlfriend's testimony about violence in her relationship with Father in an offer of proof.

The trial court allowed the former girlfriend's daughter to testify. She testified that she was between the ages of 8 and 12 when Father lived with her mother. She described Father as "charismatic" and "likeable" at times, but as "smell[ing] of liquor," "very aggressive," "very violent," and "sexually inappropriate" at other times. She recalled witnessing Father act violently toward her mother. Asked to explain what she meant when she said Father was "sexually inappropriate," she explained that Father tried to teach her "how to do certain things[,] like kiss him properly," and touched her in "inappropriate places":

> [Father] would say sit on his lap, and . . . he would say, I'm like your father so you should give me a kiss. So I would give him a kiss, like a

> little one, and he would say, that's not good enough. So it would keep going and going and going until it involved tongue . . .

On cross-examination, she clarified that the alleged incidents did not involve penetration, oral intercourse, or removal of any clothing.

She testified that she suffers from Post Traumatic Stress Disorder because of Father and uses therapy and medication to cope. She told her mother and a school administrator about the abuse, and social services were called. Neither she nor her younger sister were ever removed from the home with Father.

Trial court's rulings

The trial court signed a decree dissolving the parties' marriage on the ground of insupportability and made fact findings, several of which addressed the weight and credibility of the evidence. While the trial court found both Mother and Father credible, it noted that some of Mother's allegations "were not supported by testimony of other witnesses" and that her "negative statements" about Father's "present circumstances" were "exaggerated." As for Father's alleged sexual abuse of his ex-girlfriend's daughter, the trial court found:

> [W]hen asked repeatedly to describe with specificity the acts constituting alleged abuse, [the ex-girlfriend's daughter] denied any penetration, any nakedness on [Father's] part or her part, [and] that she was touched underneath her clothing inappropriately. She did describe "wrestling" (in which [the ex-girlfriend] also participated). She appeared unwilling to support [Mother's] version of the "criminal" nature of the alleged sexual abuse or the "inappropriate" conduct. She did describe being ordered by [Father] to kiss him ("like he was her daddy"), which she described as making her uncomfortable. It should

> be noted that [Father] and the witness'[s] mother shared a household for about 5 years when the witness was between the age of approximately 8 and 12. She is now 19. She indicated she did report discomfort to her school administrator. She also claims she has been in counseling/therapy for the past 2 years or so[,] which could or could not be related to earlier abuse. Social services reportedly investigated . . . at or near the time alleged abuse occurred. It is significant that there was no removal, safety plan or subsequent involvement reported. The witness confirmed that her mother ([Father's ex-girlfriend]), as well as [Father] had a drinking problem during that time in question[,] which she indicated contributed significantly to the then couple having an extremely volatile relationship.

In the final decree,[7] the trial court named the parties as joint managing conservators of the child, with Father having the exclusive right to designate the child's primary residence in the United States[8] and to apply for and maintain the child's passport. Among other things, the trial court determined:

- Mother had engaged in conduct constituting international child abduction by wrongfully removing the child from Texas in violation of the MSA and orders of the Canadian and Texas courts;
- there was a risk of international abduction of the child by Mother based on her lack of citizenship and ties to the United States and because she did not comply with multiple court orders for the child's return to Texas and for possession of and access to the child;

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[7] The trial court entered its initial divorce decree in May 2021 and then, one year later, entered a final decree nunc pro tunc.

[8] The final decree gave Father the right to designate the child's primary residence within the continental United States unless Mother established a residence in Harris County, Texas or contiguous counties. If Mother did so, Father was restricted to designating a primary residence within Harris County or the contiguous counties.

- Mother's periods of possession of the child should be supervised until the court finds supervision is no longer necessary; and
- Mother should execute a bond or deposit security in the amount of $25,000 to offset the cost of recovering the child if she again abducted the child.

The trial court also ordered Mother to pay $300 per month in child support by adjusting the Family Code guidelines downward to account for her travel expenses.

As for the division of the marital estate, the trial court awarded to each party the personal property and debt in their own names. The trial court also awarded to Mother, as her separate property, power washing equipment and supplies and a utility trailer, which she contended she purchased to help Father start a power washing business.

II. Standard of Review

Mother challenges the trial court's (1) decisions on conservatorship, possession of, and access to the child; (2) refusal to consider certain evidence; (3) child support order; and (4) property division. The standard of review for each of these rulings—abuse of discretion—is deferential to the trial court. *See Reddick v. Reddick*, 450 S.W.3d 182, 187 (Tex. App.—Houston [1st Dist.] 2014, no pet.) (most appealable issues in family-law cases are reviewed for abuse of discretion); *see, e.g.*, *Syed v. Masihuddin*, 521 S.W.3d 840, 847 (Tex. App.—Houston [1st Dist.] 2017, no pet.) (conservatorship); *Patterson v. Brist*, 236 S.W.3d 238, 239–40 (Tex. App.—Houston [1st Dist.] 2006, pet. dism'd) (possession of and

access to child); *Rawls v. Rawls*, No. 01-13-00568-CV, 2015 WL 5076283, at *7 (Tex. App.—Houston [1st Dist.] Aug. 27, 2015, no pet.) (mem. op.) (admissibility of evidence); *Wilson v. Wilson*, 132 S.W.3d 533, 536 (Tex. App.—Houston [1st Dist.] 2004, pet. denied) (property division); *In re L.R.P.*, 98 S.W.3d 312, 313 (Tex. App.—Houston [1st Dist.] 2003, pet. dism'd) (child support). A trial court abuses its discretion by acting in an arbitrary or unreasonable manner or without reference to any guiding rules or legal principles. *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007); *In re J.J.G.*, 540 S.W.3d 44, 55 (Tex. App.—Houston [1st Dist.] 2017, pet. denied).

Legal and factual sufficiency are not independent grounds for assertion of error, but the sufficiency of the evidence is relevant to whether the trial court abused its discretion. *In re J.J.G.*, 540 S.W.3d at 55; *Stamper v. Knox*, 254 S.W.3d 537, 542 (Tex. App.—Houston [1st Dist.] 2008, no pet.) ("In a sufficiency review, appellate courts apply a hybrid analysis because sufficiency-of-the-evidence and abuse-of-discretion standards of review often overlap in family law cases."). Evidence is legally sufficient when it would enable a factfinder reasonably to form a firm belief or conviction that its finding is true.[9] *See In re J.F.C.*, 96 S.W.3d 256,

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[9] Evidence is legally insufficient when the record shows that: (1) there is a complete absence of evidence of a vital fact, (2) rules of law or evidence bar the court from giving weight to the only evidence offered to prove a vital fact, (3) the evidence offered to prove a vital fact is no more than a scintilla, or (4) the evidence establishes

266 (Tex. 2002). When reviewing the legal sufficiency of evidence on appeal, we consider the evidence in the light most favorable to the trial court's judgment. *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). Evidence is factually sufficient when, considering all the evidence, the judgment is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986).

"To determine whether there has been an abuse of discretion because the evidence is legally or factually insufficient to support the trial court's decision, we consider (1) whether the trial court had sufficient evidence upon which to exercise its discretion and (2) whether it erred in its application of that discretion." *Smith v. Payandeh*, No. 01-18-00463-CV, 2019 WL 2528197, at *5 (Tex. App.—Houston [1st Dist.] June 20, 2019, no pet.) (mem. op.). "'An abuse of discretion does not occur when the trial court bases its decisions on conflicting evidence,'" or when there is "some evidence of substantive and probative character to support the trial court's decision." *In re J.J.G.*, 540 S.W.3d at 55 (quoting *In re M.M.M.*, 307 S.W.3d 846, 849 (Tex. App.—Fort Worth 2010, no pet.)). In a bench trial, the trial court is the sole judge of the credibility of the witnesses and the weight to be given their

conclusively the opposite of the vital fact. *City of Keller v. Wilson*, 168 S.W.3d 802, 810 (Tex. 2005).

testimony. *Nelson v. Najm*, 127 S.W.3d 170, 174 (Tex. App.—Houston [1st Dist.] 2003, pet. denied).

III. Conservatorship, Possession, and Access

Mother contends that the trial court abused its discretion in determining conservatorship and possession of and access to the child by appointing joint managing conservators despite credible evidence that Father had a history of domestic violence—the alleged physical abuse of Mother and a former girlfriend and the alleged sexual abuse of the ex-girlfriend's child. Mother also asserts that the trial court's rulings on possession of and access to the child are contrary to the child's best interest and a de facto termination of her parental rights.

A. Applicable law

Generally, Texas encourages "co-parenting." *See C.C. v. L.C.*, No. 02-18-00425-CV, 2019 WL 2865294, at *16 (Tex. App.—Fort Worth July 3, 2019, no pet.) (mem. op.) ("[T]he [F]amily [C]ode embodies the policy of co-parenting with its rebuttable presumption that joint managing conservatorship is in the best interest of the child."). It is the "public policy of this state . . . [to] assure that children will have frequent and continuing contact with [their] parents" and to "encourage parents to share in the rights and duties of raising their child after the parents have separated." TEX. FAM. CODE § 153.001(a)(1), (3). Thus, there is "a rebuttable

presumption that the appointment of the parents of a child as joint managing conservators is in the best interest of the child." *Id.* § 153.131(b).

But this presumption is removed—and the trial court is prohibited from appointing the parents as joint managing conservators—if the trial court makes "[a] finding of a history of family violence involving the parents of a child."[10] *Id.* §§ 153.004, 153.131(b); *see id.* §153.005(c)(1) (in appointing sole or joint managing conservator, trial court must consider whether "party engaged in a history or pattern of family violence"). Courts have observed that this exception seems "to be based on the assumption that two people cannot be expected to cooperate to the extent necessary to co-parent when one of the parents has abused the other parent or a child." *C.C.*, 2019 WL 2865294, at *16 (discussing Section 153.131(b) along with related provision in Section 153.004(b) that prohibits joint managing conservatorship upon family violence finding).

Otherwise, though, the party seeking to be appointed as sole managing conservator bears the burden to rebut the joint-managing-conservatorship

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[10] Although "family violence" is not defined in Section 153.131, related provisions of the Family Code use the definition provided in Section 71.004, which defines "family violence" to include, as relevant here, "an act by a member of family or household against another member of the family or household that is intended to result in physical harm, bodily injury, [or] assault" or "is a threat that reasonably places the member in fear of imminent physical harm, bodily injury, [or] assault," with "defensive measures to protect oneself" excluded. TEX. FAM. CODE § 71.004(1); *see id.* § 153.131(b).

presumption. *J.A.S. v. A.R.D.*, No. 02-17-00403-CV, 2019 WL 238118, at *4 (Tex. App.—Fort Worth Jan. 17, 2019, no pet.) (mem. op.); *Hinkle v. Hinkle*, 223 S.W.3d 773, 779 (Tex. App.—Dallas 2007, no pet.). Considering the policy interests involved, this burden is a weighty one. *See* TEX. FAM. CODE § 153.001(a)(1), (3).

B. Appointment of joint managing conservators

In her second, third, and fourth issues, Mother argues that the trial court could not appoint joint managing conservators because she presented credible evidence of a history or pattern of physical abuse committed by Father. She asserts that the trial court either disregarded or gave insufficient weight to the evidence that Father physically abused her and his ex-girlfriend and sexually abused his ex-girlfriend's daughter.

Section 153.004 of the Family Code guides the courts in determining how family violence and abuse impacts the appointment of joint managing conservators. *See id.* § 153.004; *C.C.*, 2019 WL 2865294, at *5. Relevant here, Section 153.004(b) provides:

> The court may not appoint joint managing conservators if credible evidence is presented of a history or pattern of past or present . . . physical or sexual abuse by one parent directed against the other parent, a spouse, or a child . . . .

TEX. FAM. CODE § 153.004(b).

As the sole judge of the weight and credibility of the evidence, the trial court had broad discretion to determine what constitutes credible evidence of a history or

pattern of physical abuse under Section 153.004(b). *Id.*; *see Alexander v. Rogers*, 247 S.W.3d 757, 761, 764 (Tex. App.—Dallas 2008, no pet.) (factfinder determines weight given to evidence presented); *Coleman v. Coleman*, 109 S.W.3d 108, 111 (Tex. App.—Austin 2003, no pet.) (same). Because Section 153.004 does not define "history" or "pattern," courts use a factual analysis, considering both the number and kinds of acts involved when determining whether the appointment of joint managing conservators is barred. TEX. FAM. CODE § 153.004(b); *see Hinojosa v. Hinojosa*, No. 14-11-00989-CV, 2013 WL 1437718, at *4 (Tex. App.—Houston [14th Dist.] Apr. 9, 2013, no pet.) (mem. op.). A single incident of abuse or violence may support, but does not compel, a finding under Section 153.004(b). *See C.C.*, 2019 WL 2865294, at *17 (concluding that a single act may, but does not conclusively, constitute a "history of family violence" and explaining that "the word 'history' . . . leaves the trial court with the discretion to decide whether a parent's acts rise to the level of a history that disqualifies him or her from being appointed as a joint managing conservator"). The trial court may consider the participants' explanations of what occurred and the time that elapsed since that incident in determining whether a history or pattern of abuse is shown. *See Alexander*, 247 S.W.3d at 762–63.

In support of her contention that Father has a history or pattern of abuse and violence, Mother cites certain evidence outside the scope of the Section 153.004(b)'s inquiry—(1) her testimony that Father punched a guest at their wedding, (2) her

testimony and text messages expressing concern for Father's drinking and resulting verbal abuse, and (3) the evidence of physical violence or threats of physical violence from Father's family. While this evidence may be probative of other aspects of the conservatorship determination, including the child's best interest, it is not evidence of a history or pattern of *physical or sexual abuse* against Mother or a child *by Father* that limited the trial court's discretion to name Father a joint managing conservator under Section 153.004(b). *See* TEX. FAM. CODE § 153.004(b) (limiting consideration to "past or present child neglect, or physical or sexual abuse by one parent directed against the other parent, a spouse, or a child"); *see also St. Luke's Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex. 1997) (courts should give words used in statute their plain meaning if statutory language is unambiguous).

As for Father's alleged history of physical abuse against Mother, the evidence conflicted. Mother points to the ex parte restraining order she obtained from the Canadian court and her own testimony that Father shoved her four times:

- In March 2017, when she was pregnant with the child, Father pushed her off a chair and "threatened to punch [her] in the face" after a fight over a laptop;
- In October or November 2017, Father pushed her and locked her out of the house after he had been drinking and started a kitchen fire;
- In December 2017, Father pushed her against a couch; and
- In January 2018, Father pushed her to the ground when she was holding the child and caused a door to close on her knee and hip.

Nothing in the record suggests that the trial court did not consider this evidence of the physical abuse alleged by Mother, but there was conflicting evidence. Father denied physically abusing Mother and provided more testimony about the volatile nature of their relationship. He testified that he had never been charged with any offense against Mother, and he gave contradictory accounts of their altercations. For instance, Father testified that he called police in connection with the December 2017 incident because Mother had physically abused him when she hit him in the face "a few times." Father also described Mother as the physical aggressor in the January 2018 incident. And the police reports for these incidents tell a third story.

Evidence of "altercations and confrontations" does not automatically prevent the trial court from appointing joint managing conservators. *See In re T.G.*, No. 05-12-00460-CV, 2013 WL 3154975, at *8 (Tex. App.—Dallas June 19, 2013, no pet.) (mem. op.). When, as here, the parties offer conflicting evidence of the same encounters, the trial court as factfinder is the sole judge of the weight and credibility of the evidence. *See Alexander*, 247 S.W.3d at 764. The trial court had discretion to determine that Mother's testimony, even if true, was not a history or pattern of physical abuse that disqualified Father from being a joint managing conservator. *See Lowth v. Lowth*, No. 14-03-00061-CV, 2003 WL 22996939, at *6 (Tex. App.—Houston [14th Dist.] Dec. 23, 2003, pet. denied) (mem. op.) (trial court could

reasonably conclude evidence of one "looming" incident, two pushing incidents, and one incident of father threatening mother did not rise to level of history or pattern of abuse); *Jackson v. Jackson*, No. 05-01-01719-CV, 2022 WL 31513388, at *1 (Tex. App.—Dallas Nov. 13, 2002, no pet.) (mem. op., not designated for publication) (trial court had discretion to determine uncontroverted evidence father "pushed or shoved" mother several times was not credible evidence of history or pattern of abuse).

The trial court likewise had discretion to find that the disputed evidence of Father's alleged sexual abuse of his ex-girlfriend's daughter either was not credible or was not a pattern or history that disqualified him from being a joint managing conservator.[11] *See Nelson*, 127 S.W.3d at 174 (factfinder, as sole judge of weight and credibility of evidence, may consider all evidence and accept or reject any part); *Lowth*, 2003 WL 22996939, at *6.

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[11] We note there is no evidence that Father physically or sexually abused his own child. Mother's allegations concern sexual abuse of a different child—his ex-girlfriend's daughter. We agree with Mother that these allegations fall within Section 153.004(b)'s scope. *See* TEX. FAM. CODE § 153.004(b) (instructing that court may not appoint joint managing conservators if there is "credible evidence . . . of a history or pattern of past or present . . . sexual abuse by [one] parent directed against . . . *a child*" (emphasis added)); *C.W. v. B.W.*, 2020 WL 4517325, at *5 (Tex. App.—Fort Worth Aug. 6, 2020, no pet.) (mem. op.) (rejecting argument that Section 153.004(b) "restricts the trial court's consideration of sexual abuse to abuse committed by one parent against only his or her own child").

In short, because of the conflicting evidence, nothing in the record undisputedly shows a history or pattern of abuse. *See Lowth*, 2003 WL 22996939, at *6. Therefore, we cannot conclude that Section 153.004(b) prohibited Father's appointment as a joint managing conservator. *See* TEX. FAM. CODE § 153.004(b).

We also cannot conclude that the trial court abused its discretion by disregarding evidence of Father's conviction for assaulting his ex-girlfriend or violence in that relationship, as Section 153.004(c) requires in determining his access to the child. *See id.* § 153.004(c). The trial court heard testimony about the prior conviction, admitted conviction related documents, and heard from the ex-girlfriend's daughter that she witnessed physical abuse in Father's prior relationship.[12]

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[12] To the extent Mother's third issue is a complaint about the trial court's failure to admit additional evidence of Father's assault of his ex-girlfriend, Mother has not addressed all of Father's objections to that evidence. Mother correctly points out that Father objected at trial that the testimony she sought to elicit from his ex-girlfriend was too remote to be admissible under Section 153.004(a) of the Family Code. But Father made other objections to the former girlfriend's testimony under Section 153.004, including that the evidence should be excluded because she was not a party, his spouse, or a parent of the child who is the subject of this appeal. *See* TEX. FAM. CODE § 153.004(a) (instructing trial court to consider "evidence of the intentional use of abusive physical force, or evidence of sexual abuse, by a party directed against *the party's spouse, a parent of the child, or any person younger than 18 years of age*") (emphasis added)), (b) (making relevant "credible evidence" of "a history or pattern of past or present . . . physical or sexual abuse by one parent directed against *the other parent, a spouse, or a child*") (emphasis added)), (c). Mother has not addressed those objections on appeal, and therefore the issue is waived. *See, e.g., Cantu v. Horany*, 195 S.W.3d 867, 871 (Tex. App.—Dallas 2006, no pet.) ("[W]hen an appellee urges several objections to a particular piece of evidence and, on appeal, the appellant complains of its exclusion on only one of

We overrule Mother's second, third, and fourth issues.

C. Geographic restriction on child's primary residence

In her fifth issue, Mother contends that the geographical restriction on the child's primary residence violates the child's right to travel to Canada, where the child has dual citizenship, and is a de facto termination of her parental rights because "she is inadmissible to the [United States]" and "lack[s] any ability to remain in Texas for any duration." These contentions are unsupported by the record, considering Mother's own testimony that she can enter the United States without a visa for up to six months each year, and they are also unsupported by adequate briefing.

The Family Code requires that when parents are appointed joint managing conservators, the court must designate the parent "who has the exclusive right to determine the primary residence of the child," either with or without geographic limitations. *Id.* § 153.134(b)(1). Mother cited no legal authorities supporting her contention that the geographic restriction here violates either her or the child's rights. The only legal authorities Mother cites regard the standard for modifying a conservatorship or possession of and access to a child when the circumstances of the

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those bases, the appellant has waived that issue for appeal because he has not challenged all possible grounds for the trial court's ruling that sustained the objection.").

child or a conservator have materially changed, *see id.* § 156.101, which is not something this Court may decide in the first instance and must be adjudicated by the trial court. *See, e.g.*, *Tex. Nat'l Bank v. Karnes*, 717 S.W.2d 901, 903 (Tex. 1986) (court of appeals cannot make original fact findings).

Texas Rule of Appellate Procedure 38.1(i) requires Mother to provide appropriate citations to authorities. *See* TEX. R. APP. P. 38.1(1) (requiring an appellant's brief to "contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record"). The rule is not satisfied by "brief conclusory statements, unsupported by legal citations." *Tesoro Petroleum Corp. v. Nabors Drilling USA, Inc.*, 106 S.W.3d 118, 128 (Tex. App.—Houston [1st Dist.] 2002, pet. denied); *see also Barham v. Turner Constr. Co. of Tex.*, 803 S.W.2d 731, 740 (Tex. App.—Dallas 1990, writ denied) (appellant bears burden of discussing asserted error). Mother's failure to analyze this issue or cite appropriate authorities waives her complaint on appeal.[13] *See* TEX. R. APP. P. 38.1(i); *Patriot Contracting, LLC v. Shelter Prods., Inc.*, 650 S.W.3d 627, 648 n.24 (Tex. App.—

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[13] We recognize that Mother is representing herself in this appeal. Although we liberally construe their briefs, we hold self-represented litigants to the same standards as licensed attorneys and require them to comply with the applicable law and procedural rules. *See Mansfield Bank v. Cohn*, 573 S.W.2d 181, 184–85 (Tex. 1978). Otherwise, self-represented litigants have an unfair advantage over parties who are represented by counsel. *Palma v. Harris Cnty. Appraisal Review Bd.*, No. 01-17-00705-CV, 2018 WL 3355052, at *1 (Tex. App.—Houston [1st Dist.] July 10, 2018, pet. denied) (mem. op.); *Valadez v. Avitia*, 238 S.W.3d 843, 845 (Tex. App.—El Paso 2007, no pet.).

Houston [1st Dist.] 2021, pet. denied) ("A failure to provide substantive analysis of an issue or cite appropriate authority waives a complaint on appeal."); *see also Fredonia State Bank v. Gen. Am. Life Ins. Co.*, 881 S.W.2d 279, 284–85 (Tex. 1994) (issue that is inadequately briefed is waived on appeal).

We overrule Mother's fifth issue.

D. Best Interest of the Child

In her first issue, Mother argues that the trial court's rulings on conservatorship and possession of and access to the child are an abuse of discretion because they are not in the child's best interest.

"The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child." TEX. FAM. CODE § 153.002. The trial court has wide latitude to determine what is in a child's best interest, *Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex. 1982), and may use a non-exhaustive list of factors to aid in the determination, *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976).

The factors include (1) the child's desires; (2) the child's emotional and physical needs now and in the future; (3) the emotional and physical danger to the child now and in the future; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist these individuals to promote the best interest of the child; (6) the plans for the child by these individuals or the agency

seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions of the parent which may show that the existing parent-child relationship is not a proper one; and (9) any excuse for the act or omissions of the parent. *Holley*, 544 S.W.2d at 371–72. No single factor is controlling. *See In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). The factfinder need not consider each factor, and the presence of a single factor may be enough to support a best interest finding. *Smith*, 2019 WL 2528197, at *6; *M.C. v. Tex. Dep't of Fam. & Protective Servs.*, 300 S.W.3d 305, 311 (Tex. App.—El Paso 2009, pet. denied).

Mother argues the trial court ruled contrary to the child's best interest by designating Father as the joint managing conservator with the exclusive right to determine the child's primary residence in the United States. Mother contends that the evidence at trial established that it was in the child's best interest to remain with her in Canada.[14] She asserts that she is an engaged and capable parent who acts

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[14] In challenging the trial court's best interest finding, Mother cites letters from (1) the child's teacher and (2) the child's and Mother's primary doctor in Canada. These items were attached to Mother's appendix and later, while this appeal was pending, filed in the trial court and included in a supplemental clerk's record. They are dated after trial, and the appellate record does not show that they were considered by the trial court. We thus do not consider them in this appeal. *See Fryday v. Michaelski*, 541 S.W.3d 345, 352 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) (appellate court may not consider evidence that was not before the trial court at the time it ruled); *Ameripath, Inc. v. Herbert*, 447 S.W.3d 319, 345 (Tex. App.—Dallas 2014, pet. denied) (court "will not consider documents that were not properly part of the trial court's record in this cause"); *see In re E.W.*, No. 05-01-01463-CV, 2002 WL 1265541, at *3 (Tex. App.—Dallas June 7, 2002, pet. denied) (not designated for publication) ("[R]ule 34.5(c) [does not] permit the clerk's record in

according to what is best for the child. Mother testified that the child thrived with her in Canada, where the child enjoyed bonded relationships with Mother's family and was doing well in school. In her view, Canada provides more opportunities for the child because she "can legally work, maintain steady employment from home, has an amazing support system and is capable of receiving exceptional health care services for both her and [the child]." In contrast, she cannot parent successfully in Texas because she lacks "emotional and familial support," healthcare, and the ability to work there. She also expressed concern that she may face additional abuse by Father and his family.

As is often true in custody disputes, there are no perfect solutions. The trial court had to make a difficult decision affecting Mother, Father, and their child. *See generally Fuentes v. Jasso*, No. 08-03-00109-CV, 2004 WL 1078498, at *2–3 (Tex. App.—El Paso May 13, 2004, no pet.) (mem. op.) (recognizing the "painful reality" that hard decisions on custody must be made when parents divorce). That task is made even more difficult when, as here, the parties reside in different countries and do not enjoy unrestricted freedom of movement between them. But our job is not to second-guess the trial court's decision or express how we might have ruled

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an appeal to be supplemented unless it is clear that the item to be considered was on file when the trial court rendered judgment.").

differently; instead, our job is to ensure that the trial court did not act unreasonably, arbitrarily, or without reference to guiding principles of law.

We must abide by a standard of review that requires deference to the trial court as the sole arbiter of the credibility of the witnesses and the weight to be given the evidence. *See Nelson*, 127 S.W.3d at 174. What that means here is that we may not view the evidence from the perspective that Mother was truthful and Father was not or to rely on Mother's testimony when it is disputed by substantive and probative evidence to the contrary. Mother's argument views the evidence favorable to her as most significant and ignores other evidence of a substantive and probative character that was more favorable to Father. But the trial court was not required to assign greater weight to Mother's testimony about her fitness as a parent, her ability to advocate for the child's special needs, or her opinion that Canada was a more suitable place for the child to live. Rather, the trial court had wide discretion to give equal or greater weight to the substantive and probative evidence of Father's advocacy for a diagnosis of the child's developmental delays, ability to provide a stable environment for the child in Texas, and involvement in the child's life. *See Coleman*, 109 S.W.3d at 111.

In this case, the *Holley* factors do little to differentiate the abilities of these two parents. From the evidence presented at trial, the trial court could reasonably conclude several things about both parents. That they both contributed to the

volatility in their relationship. And that, after their separation, they both demonstrated competent parenting abilities, that they could provide for the emotional and physical needs of the child now and in the future, that they could provide a stable home for the child, that they have support systems to help care for the child, and that they have plans for the child to promote the child's best interest.

But other factors—namely, public policy of the state—are also relevant. The public policy of Texas includes ensuring that children have frequent and continuing contact with divorced but fit parents. *See* TEX. FAM. CODE § 153.001. Evidence at trial showed that Mother twice removed the child to a foreign country that Father cannot enter. By doing so, Mother deprived Father of possession of and access to the child for extended periods despite multiple court orders and the parties' agreement requiring the child to remain in Texas. The trial court could reasonably conclude from this evidence that Mother sought to limit Father's contact with the child and was less likely to share in the rights and duties of raising the child after the dissolution of the marriage. *See Coleman*, 109 S.W.3d at 111 (trial court is in better position to determine what is in child's best interest because it faced parties and witnesses, observed their demeanor, and had opportunity to evaluate parents' claims). This weighs in favor of the trial court's decree.

After reviewing the record, we conclude the trial court had sufficient evidence on which to exercise its discretion and, based on the evidence on all relevant

circumstances at the time of the bench trial, did not abuse that discretion in finding that it was in the child's best interest for Father to be designated the conservator with the exclusive right to determine the child's primary residence.

We overrule Mother's first issue.

IV. Prevention of parental child abduction to a foreign country

Mother challenges the trial court's finding that she presents a risk of international child abduction and that certain measures should be taken to prevent her from taking the child again, including supervised visitation and a bond to offset Father's potential recovery costs.

A. Applicable law

The Family Code gives the trial courts a statutory basis for assessing the risk of an international child abduction by a parent and authorizes certain preventive measures based on that risk. *See* TEX. FAM. CODE §§ 153.501–.503. Section 153.502 sets out a two-step process: the trial court should (1) determine whether there is credible evidence of a risk of abduction and, (2) if so, evaluate the risk. *Id.* § 153.502.

For the first step, the trial court must determine whether there is a risk of abduction considering the factors in Section 152.502(a), which ask whether the parent:

> (1) has taken, enticed away, kept, withheld, or concealed a child in violation of another person's right of possession of or access to the

child, unless the parent presents evidence that the parent believed in good faith that the parent's conduct was necessary to avoid imminent harm to the child or the parent;

(2) has previously threatened to take, entice away, keep, withhold, or conceal a child in violation of another person's right of possession of or access to the child;

(3) lacks financial reason to stay in the United States, including evidence that the parent is financially independent, is able to work outside of the United States, or is unemployed;

(4) has recently engaged in planning activities that could facilitate the removal of the child from the United States by the parent, including:

(A) quitting a job;

(B) selling a primary residence;

(C) terminating a lease;

(D) closing bank accounts;

(E) liquidating other assets;

(F) hiding or destroying documents;

(G) applying for a passport or visa or obtaining other travel documents for the parent or the child; or

(H) applying to obtain the child's birth certificate or school or medical records;

(5) has a history of domestic violence that the court is required to consider under Section 153.004; or

(6) has a criminal history or a history of violating court orders.

Id. § 153.502(a). The court does not have to find that all six of these "subsection (a) factors" exist; an affirmative finding of only one is enough to proceed to the second step of the analysis. *See Arredondo v. Betancourt*, 383 S.W.3d 730, 740–43

(Tex. App.—Houston [14th Dist.] 2012, no pet.); *Chen v. Hernandez*, No. 03-11-00222-CV, 2012 WL 3793294, at *10-11 (Tex. App.—Austin Aug. 28, 2012, pet. denied) (mem. op.); *Elshafie v. Elshafie*, No. 13-10-00393-CV, 2011 WL 5843674, at *5 (Tex. App.—Corpus Christi Nov. 22, 2011, no pet.) (mem. op.).

If the trial court finds that there is credible evidence of a risk that the child will be abducted by a parent, the trial court then must evaluate the extent of the risk. *See* TEX. FAM. CODE § 153.502(b), (c). There are two mandatory factors in Section 153.502(b) that the court must consider in evaluating the extent of the risk:

> (1) whether the parent has strong familial, emotional, or cultural ties to another country . . . ; and
>
> (2) whether the parent lacks strong ties to the United States, regardless of whether the parent is a citizen or permanent resident of the United States.

Id. § 153.502(b). There are also four discretionary factors the court may consider in Section 153.502(c), many of which overlap with subsection (b). *See id.* § 153.502(c)(1)–(4).

Once the court has determined that a risk of international abduction exists under subsection (a) and evaluated the extent of that risk using the subsection (b) and (c) factors, the court may order certain measures to prevent the child's abduction by a parent to a foreign country. *Id.* § 153.503. Relevant here, under Section 153.503, the trial court may require the parent to have supervised visitation or to execute a bond or deposit security to offset the cost of recovering the child from the foreign

country. *Id*. § 153.503(2), (6). In deciding whether to take any of these measures, the trial court must consider:

> (1) the public policies of this state described by Section 153.001(a) and the consideration of the best interest of the child under Section 153.002;
>
> (2) the risk of international abduction of the child by a parent of the child based on the court's evaluation of risk factors described by Section 153.502;
>
> (3) any obstacles to locating, recovering, and returning the child if the child is abducted to a foreign country; and
>
> (4) the potential physical or psychological harm to the child if the child is abducted to a foreign country.

Id. § 153.501(b)(1)–(4).

We review a court's decision to impose international abduction prevention measures under the abuse of discretion standard. *See Karenev v. Kareneva*, No. 2-06-269-CV, 2008 WL 755285, at *1 n.5 (Tex. App.—Fort Worth Mar. 20, 2008, no pet.) (mem. op.); *see also In re Sigmar*, 270 S.W.3d 289, 297–98 (Tex. App.—Waco 2008, orig. proceeding).

B. Abduction risk factors

The trial court made affirmative findings of two subsection (a) risk factors: that Mother (1) had "taken, enticed away, kept, withheld, or concealed [the] child in violation of [Father's] right of possession of or access to the child" and (2) has "a history of violating court orders." TEX. FAM. CODE § 153.502(a)(1), (6). These findings were supported by the evidence that:

- Mother removed the child to Canada in January 2018 in violation of Father's rights of possession of and access to the child, as determined by the Hague Court;
- although Mother at first returned with the child to Texas after her unsuccessful appeal of the Hague Court's ruling, she removed the child to Canada again in March 2020, in violation of the Hague Court's ruling and without Father's consent;
- when she did so, she acted contrary to the parties' MSA restricting the child's residence to "Harris County[,] [Texas] and/or contiguous counties," enjoining her from "[h]iding or secreting the child" from Father, and providing for Father's possession of and access to the child until further orders of the trial court; and
- when the trial court entered temporary orders in May 2020 imposing the same restriction on the child's residence, Mother failed to return the child to Texas for more than a year.

Mother disputes that her conduct creates a risk of international child abduction. According to Mother, the evidence showed that she had no choice but to take the child to Canada both times she did so. *See id.* § 152.502(a)(1) (allowing court to consider whether parent believed in good faith that her conduct was necessary to avoid imminent harm to herself or the child). She asserts she took the child the first time because her marriage to Father was violent and unstable. She took the child the second time because she feared being stuck in Texas without health insurance during the COVID-19 pandemic, which made border crossings harder. But Father testified that Mother had threatened more than once to take the child to Canada, where he could not follow because of his deportation, to deny him access to the child. As the sole judge of the weight and credibility of the evidence, the trial

court could disbelieve Mother and believe Father in determining that Mother did not have a good-faith belief that her conduct was necessary to avoid imminent harm to the child or herself under subsection 153.502(a)(1). *See Allen v. Allen*, 475 S.W.3d 453, 458 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (appellate court should defer to trial court's resolution of underlying facts and credibility determinations).

For the same reason, the trial court could give greater weight to Mother's violation of the court orders requiring the child's return to Texas, which was undisputed. *See id.* Indeed, the trial court's finding that there was no credible evidence that Mother "intended to ever comply with the orders of any [c]ourt, domestic or foreign," shows it did so.

Because the trial court's affirmative findings of two abduction risk factors are supported, the trial court had to evaluate the abduction risk by considering the subsection (b) factors and could also consider the subsection (c) factors. *See* TEX. FAM. CODE § 153.502(b)–(c). Relevant here, the trial court found that the abduction risk was "significant" based on Mother's lack of ties to the United States and because she is not an American citizen. These findings also have support in the evidence. Mother testified that she had no intention to reside permanently in the United States, had no pathway to doing so, and lacked a support system and the ability to work in the United States. Thus, we conclude that the trial court did not abuse its discretion by finding that Mother posed a significant risk of international child abduction.

We overrule Mother's tenth issue.

C. Abduction prevention measures

Based on its abduction risk findings, the trial court ordered protective measures prescribed in Section 153.503, including supervised visitation and a bond or security deposit. *See id.* §§ 153.503(2) (court may "require supervised visitation of the parent . . . until the court finds under Section 153.501 that supervised visitation is no longer necessary"), .503(6) (court may "order the parent to execute a bond or deposit security in an amount sufficient to offset the cost of recovering the child if the child is abducted by the parent to a foreign country"). Mother contends these preventive measures are an abuse of the trial court's discretion. We disagree.

1. Supervised visitation

Mother argues the supervised visitation requirement is an abuse of discretion because it (1) endangers and impairs the child's emotional health and development and (2) is not in the child's best interest.

In support of her first argument, Mother cites Family Code Section 153.004's instruction that a court may allow a parent with "a history or pattern of committing family violence during the two years preceding the filing of the suit or during the pendency of the suit" to have access to a child only if the court finds it "would not endanger the child's physical health or emotional welfare and would be in the best interest of the child." *See id.* § 153.004(d)(1), (d–1)(1). But the restriction of

Mother's possession of and access to the child is not based on a history or pattern of family violence; it is a preventive measure to guard against the risk of international child abduction. *See id.* § 153.503(2). Section 153.503(2) specifically authorizes a trial court to "require supervised visitation of the parent . . . until [it] finds under Section 153.501 that supervised visitation is no longer necessary." *Id.* We find no authority for Mother's position that evidence allowing access to a child under Section 153.004(d–1) limits the trial court's discretion to prevent the risk of child abduction under Section 153.503.

Mother's second argument—that supervised visitation is not in the child's best interest—is rooted in statutory text. When deciding whether to impose abduction prevention measures, a court must consider the best interest of the child. *Id.* § 153.501(b)(1); *see In re Sigmar*, 270 S.W.3d at 304 (considering the *Holley* factors in evaluating whether abduction prevention measures are in the child's best interest). For the reasons we have already stated in affirming the trial court's decision to designate Father as the conservator with the right to designate the child's primary residence, we conclude the trial court had sufficient evidence to conclude that supervised visitation with Mother was in the child's best interest. The evidence showed that Mother has abducted the child to a foreign country more than once and ignored multiple court orders and the parties' agreement by refusing to return the child before the trial concluded. We therefore hold that the trial court did not abuse

its discretion by ordering supervised visitation as a measure to prevent further abduction of the child.

We overrule Mother's sixth issue.

2. Bond or security deposit

Mother also contends the trial court abused its discretion by requiring her to execute a bond or deposit security in the amount of $25,000 to offset Father's anticipated retrieval costs if she again abducts the child to Canada. Mother asserts this Court must strike or reduce the bond requirement because (1) the bond amount is unreasonable and exceeds her ability to pay; (2) the trial court did not offset the bond amount with the amount of Father's alleged unpaid child support and spousal maintenance obligations; and (3) Father did not request a bond. These assertions are waived because of inadequate briefing.

Section 153.503(6) of the Family Code authorizes the trial court to "order the parent to execute a bond or deposit security in an amount sufficient to offset the cost of recovering the child if the child is abducted by the parent to a foreign country." TEX. FAM. CODE § 153.503(6). Mother's brief lacks any citation to legal authority in support of her argument that this statutory provision incorporates reasonableness, offset, and pleading requirements, and therefore the argument is waived. *See* TEX. R. APP. P. 38.1(i); *Patriot Contracting*, 650 S.W.3d at 648 n.24; *see also Fredonia State Bank*, 881 S.W.2d at 284–85.

We overrule Mother's seventh issue.

V. Child Support

In her eighth issue, Mother argues that the trial court's child support order is an abuse of discretion because it requires her to pay too much and Father to pay nothing at all.

A. Mother's child support obligation

Mother contends the trial court's finding that she must pay $300 per month in child support is an abuse of discretion because it (1) is based on an amount of net resources unsupported by the record, (2) should be offset by what it costs her to travel to Texas to visit the child, and (3) is more than Father requested.

The child support guidelines in the Family Code help the courts determine "an equitable amount of child support." TEX. FAM. CODE § 154.121. Section 154.062(a) obligates the trial court to "calculate net resources for the purpose of determining child support liability[.]" *Id.* § 154.062(a). "Resources" include self-employment income and other specifically enumerated forms of income, but do not include certain sums expressly excluded from the "resources" analysis. *Id.* § 154.062(b), (c). Once certain deductions are made, the remaining amount constitutes an obligor's "net resources," from which the trial court determines an obligor's child support liability. *Id.* § 154.062(a), (d); *see also id.* § 154.125 (application of guidelines to net resources). The trial court's application of the

Family Code's child support guidelines to an obligor's "net resources" is presumed to be reasonable and in the best interest of the child. *Id.* § 154.122(a). Once guideline support is established, the trial court has discretion to deviate from the guidelines when the evidence rebuts the presumption that application of the guidelines is in the best interest of the child. *Id.* § 154.123(a); *see also id.* § 154.123(b) (relevant factors for the trial court to consider in deviating from guidelines).

Mother contends the trial court made two miscalculations in determining her monthly resources by (1) failing to credit two income tax returns, showing she earned $9,781 (Canadian) in 2018 and $11,771.59 (Canadian) in 2019, as conclusive evidence of her net resources, or (2) failing to adjust to account for the weaker Canadian dollar. By statute, Mother was required to furnish information sufficient to accurately identify her net resources and ability to pay child support. *Id.* § 154.063; *Garner v. Garner*, 200 S.W.3d 303, 306 (Tex. App.—Dallas 2006, no pet.), *disapproved of on other grounds by Iliff v. Iliff*, 339 S.W.3d 74, 79 (Tex. 2011). But the trial court was not required to accept her evidence of income and net resources as true. *Moore v. Moore*, No. 01-13-00182-CV, 2014 WL 2538555, at *8 (Tex. App.—Houston [1st Dist.] June 5, 2014, no pet.) (mem. op.); *Garner*, 200 S.W.3d at 308. The trial court could determine that Mother had higher net resources than alleged based on other evidence in the record. *Moore*, 2014 WL 2538555, at *8; *Burney v. Burney*, 225 S.W.3d 208, 214 (Tex. App.—El Paso 2006, no pet.).

The evidence included Mother's third amended financial information sheet. On that sheet, Mother listed $3000 in net monthly resources. She confirmed at trial that the amounts stated on the financial information sheet were accurate and had been converted from Canadian dollars to U.S. dollars. The trial court did not abuse its discretion in crediting the amount Mother reported on her financial information sheet and confirmed in her testimony at trial in determining her net monthly resources. *Cf. Villalpando v. Villalpando*, 480 S.W.3d 801, 811 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

The record also does not show that the trial court abused its discretion by finding that a downward variance from the Family Code's guidelines was justified by the travel costs Mother will incur to visit the child in Texas. *See* TEX. FAM. CODE § 154.123(b)(14) (listing the cost of travel to exercise possession of and access to a child among the factors a court should consider in determining whether applying the child support guidelines would be unjust and inappropriate in a particular case). While Mother agrees that a downward variance was justified, she asserts that the amount of her child support should have been reduced even more because she presented evidence that she will incur at least $14,000 annually in travel costs. According to Mother, her child support obligation must be reduced to fully credit those costs. We find no support in the statutory language for Mother's argument that the trial court had no discretion but to offset all her anticipated travel expenses from

the amount of child support. Unlike Section 154.062 which requires a mathematical application of the guidelines to net resources, Section 154.0123(b) gives the trial court considerable discretion in determining whether the application of the guidelines would be unjust or inappropriate under the circumstances considering the enumerated factors. *Compare id.* §154.062, *with id.* § 154.0123; *cf. In re A.R.W.*, No. 05-18-00201-CV, 2019 WL 6317870, at *1 (Tex. App.—Dallas Nov. 26, 2019, no pet.) (mem. op. on reh'g) ("By granting trial courts discretion to establish support obligations in the child's best interest, . . . the Family Code gives trial courts the ability to fashion appropriate resource allocations to determine 'an equitable amount of child support' depending on the particular facts and circumstances in those individual situations[.]").

Finally, Mother argues that the trial court had no discretion to award more child support than Father requested. Mother's brief lacks any citation to legal authority in support of this argument, and thus it is waived. *See* TEX. R. APP. P. 38.1(i); *Patriot Contracting*, 650 S.W.3d at 648 n.24; *see also Fredonia State Bank*, 881 S.W.2d at 284–85.

C. Father's retroactive child support obligation

Mother also asserts that the trial court abused its discretion by failing to calculate the amount of unpaid child support Father owed under the Canadian appeals court order and MSA. The trial court filed findings of fact and conclusions

of law here but did not make any finding or conclusion on whether Father owed unpaid child support by order or agreement. Mother did not request additional findings. After the trial court files original findings of fact and conclusions of law, any party may file a request for specific additional or amended findings or conclusions within ten days after the filing of the original findings and conclusions by the trial court. TEX. R. CIV. P. 298. The failure to request amended or additional findings or conclusions waives the right to complain on appeal about the trial court's failure to make the omitted findings or conclusions. *Villalpando*, 480 S.W.3d at 810. Because Mother failed to request additional findings and conclusions, she has waived her complaint that the trial court erred by failing to make any omitted findings on the amount of unpaid child support owed by Father. *See id.*

Having concluded that Mother's arguments under her eighth issue do not show an abuse of the trial court's discretion in ordering child support, we overrule her eighth issue.

VI. Property Division

In her ninth issue, Mother contends the trial court abused its discretion in dividing the community estate. Mother argues that she should have been given a disproportionate share of the community property because Father's conduct forced

her to flee to Canada with only “the clothes on her back.” Mother also asserts that she was entitled to reimbursement of a $17,000 (Canadian dollars) loan to Father.[15]

A. Applicable law

In a divorce decree, the trial court must “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 any children of the marriage.” TEX. FAM. CODE § 7.001; *see Bradshaw v. Bradshaw*, 555 S.W.3d 539, 543 (Tex. 2018) (defining “just,” “right,” and “due regard”). The trial court has wide discretion in dividing the marital estate. *See Schlueter v. Schlueter*, 975 S.W.2d 584, 589 (Tex. 1998); *Murff v. Murff*, 615 S.W.2d 696, 698 (Tex. 1981). We presume the trial court exercised its discretion properly, and we will not disturb the trial court’s property division on appeal absent a clear abuse of discretion. *Murff*, 615 S.W.2d at 698–99; *Mathis v. Mathis*, No. 01-17-00449-CV, 2018 WL 6613864, at *2 (Tex. App.—Houston [1st Dist.] Dec. 18, 2018, no pet.) (mem. op.). The trial court’s ultimate division need not be equal if it is equitable. *Murff*, 615 S.W.2d at 698–99; *Zieba v. Martin*, 928 S.W.2d 782, 790 (Tex. App.—Houston [14th Dist.] 1996, no writ) (op. on reh’g). There must be

[15] For the first time in her reply brief, Mother also complains that Father’s pressure washing business was community property that should have been divided equally. We do not consider this complaint. Texas Rule of Appellate Procedure 38.3 restricts a reply brief to addressing matters raised in the appellee’s brief. TEX. R. APP. P. 38.3; *see In re M.D.G.*, 527 S.W.3d 299, 303 (Tex. App.—El Paso 2017, no pet.). A reply brief may not be used to present a new issue. *M.D.G.*, 527 S.W.3d at 303.

some reasonable basis for an unequal property division. *See Fuentes v. Zaragoza*, 555 S.W.3d 141, 162 (Tex. App.—Houston [1st Dist.] 2018, no pet.).

In dividing the estate, the trial court may consider many factors, including the spouses' earning capacities, disparity of income and abilities, education, business opportunities, relative physical condition, relative financial condition, disparity of ages, size of separate estates, nature of the property, and the benefits the spouse who did not cause the marriage breakup would have enjoyed had the marriage continued. *Murff*, 615 S.W.2d at 699. "The circumstances of each marriage dictate what factors should be considered in division of the marital estate." *Roberts v. Roberts*, 531 S.W.3d 224, 232 (Tex. App.—San Antonio 2017, pet. denied).

A trial court does not abuse its discretion if its decision rests on conflicting evidence or if there is some evidence of a substantial and probative character to support the property division. *Zieba*, 928 S.W.2d at 787. The appellant must show that the trial court's abuse of discretion caused a division of property so disproportionate that it is manifestly unjust and unfair. *Hedtke v. Hedtke*, 248 S.W. 21, 23 (Tex. 1923).

B. Distribution of marital property

The trial court here awarded each party all the property in their possession or control and debts in their own name, except that Mother was also awarded a power washer and trailer in Father's possession as her separate property. Neither the trial

court's decree nor its findings of fact and conclusions of law state the value the court assigned to each asset or liability. Because the trial court did not make any valuation findings, we do not know what share of the marital estate either party received or whether it was disproportionate. Ordinarily, to determine whether the trial court divided the marital estate in a "just and right" manner, we must have the trial court's fact findings on the value of the community property. *See Vasudevan v. Vasudevan*, No. 14-14-00765-CV, 2015 WL 4774569, at *4 (Tex. App.—Houston [14th Dist.] Aug. 13, 2015, no pet.) (mem. op.); *see also Wells v. Wells*, 251 S.W.3d 834, 841 (Tex. App.—Eastland 2008, no pet.) ("It is difficult—if not impossible—to determine whether the trial court abused its discretion by dividing the marital estate when we do not know what percentage of the marital assets either party received."). Without such findings, we cannot know the basis for the division, the values assigned to the community assets, or the percentage of the marital estate that each party received. *Vasudevan*, 2015 WL 4774569, at *4. The trial court could have considered any number or combination of factors to arrive at the arrangement it did. *Id.* Because we do not know what value the trial court assigned to the community property asserts or the percentage of the property awarded to each party, we cannot conclude that the trial court abused its discretion in dividing the community property. *Id.*

C. Loan

Mother's request for reimbursement of an alleged $17,000 loan to Father is also undermined by a lack of findings and conclusions. The trial court did not make any finding or conclusion on Mother's claim for reimbursement of the loan, and Mother did not request any additional findings on the loan. *See* TEX. R. CIV. P. 298. The failure to request amended or additional findings or conclusions waives the right to complain on appeal about the trial court's failure to make the omitted findings or conclusions. *Villalpando*, 480 S.W.3d at 810. Because Mother failed to request additional findings and conclusions, she has waived her complaint that the trial court erred by failing to order reimbursement of the alleged loan to Father. *See id*

Having concluded that Mother's arguments under her ninth issue do not show an abuse of the trial court's discretion in dividing property, we overrule her ninth issue.

Conclusion

We affirm the trial court's decree.

Sarah Beth Landau
Justice

Panel consists of Justices Landau, Countiss, and Guerra.