

**Affirmed and Memorandum Opinion filed April 20, 2010.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-09-00143-CV**

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**IN THE INTEREST OF J.W.H. AND A.L.H.**

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**On Appeal from the County Court No. 3  
Galveston County, Texas  
Trial Court Cause No. 07FD2806**

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**MEMORANDUM OPINION**

Suzanne Williams appeals the trial court's order modifying the parent-child relationship and appointing Jeffrey Hancher the sole managing conservator of their two children. In her first issue, Williams challenges the trial court's jurisdiction over the modification proceeding. In her remaining issues, she asserts the trial court abused its discretion in (1) retaining the case, allowing Hancher to "forum shop" and obtain relief to which he was not entitled; (2) modifying the out-of-state custody order because Hancher did not present legally and factually sufficient evidence to show that there was a change in circumstances sufficient to warrant modification and that it was in the best interest of the children to appoint Hancher as sole managing conservator and Williams as possessory

conservator; and (3) construing the vague terms of the out-of-state custody order against Williams and concluding that Williams repeatedly denied or interfered with Hancher's possession of the children. We affirm.

### **Background**

In July 2003, Williams and Hancher were divorced in Maryland. The parties were awarded joint legal custody of their two children, J.W.H. and A.L.H. Williams was the primary custodial parent, with the right to designate the residence of the children. In May 2005, Williams sought modification of the original custody order because she planned to relocate to Texas with her then fiancé. In June 2006, the Maryland court awarded Williams primary residential custody of the children and permitted her to take the children to Texas; the trial court additionally entered an order detailing Hancher's visitation rights. Williams and the children relocated to Texas in August 2006.

On October 25, 2007, Hancher filed a petition to modify the out-of-state custody order in Galveston County, alleging a change in circumstances. In December, Williams filed a plea to the jurisdiction and general denial. In the alternative, she asked the Galveston County judge to stay the proceedings while a custody action was filed in the Maryland court. Williams then filed a modification proceeding in the Maryland court.<sup>1</sup> On March 20, 2008, the Maryland court entered an order dismissing Williams's modification proceeding and finding that Texas was the "more appropriate forum" to decide issues involving modification of custody and visitation of the children.<sup>2</sup> Williams

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<sup>1</sup> Although no copy of her Maryland petition is included in the record, the Maryland order dismissing her petition is part of the record.

<sup>2</sup> According to the Galveston court's docket sheet, on March 14, 2008, the Galveston judge spoke with the judge of the Maryland court and informed him that this case was pending in Texas.

then filed a counter-petition to modify the parent-child relationship in Galveston County on May 22, 2008.<sup>3</sup>

In July 2008, Hancher filed a petition for a writ of habeas corpus in Galveston County, seeking to have the children returned to him because Williams refused to return them as required under the Maryland orders. After a hearing, the trial court ordered Williams to return the children to Hancher, ordered Williams to reimburse Hancher for his travel expenses, and awarded Hancher attorney's fees. The children remained with Hancher for the remainder of the court-ordered visitation, but returned to Williams for the start of the 2008 school year.

The modification proceeding was tried to the court on December 5, 2008. At the hearing, Hancher's mother, Betty, testified. She described several occasions in which Williams appeared in Maryland while the children were in Hancher's possession seeking visitation with the children. According to Betty, Williams came to her place of employment on three separate occasions looking for the children. She also stated that she was present on several occasions when Hancher was unable to talk on the telephone to the children when they were with Williams. She testified to her availability to assist Hancher with the children should the trial court name him sole managing conservator; she stated that she is retired and both she and Hancher's father live in Hancher's home. Betty further explained that Hancher has a close relationship with his children and described the schools and church the children would attend should they relocate to the Maryland area.

Hancher testified and described various changes in circumstances the children have experienced since the Maryland court's 2006 order. He explained that the children have moved to Texas, started new schools, gotten a new stepfather, and moved to a new home.

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<sup>3</sup> Williams also filed a motion for enforcement of the Maryland court's child support order, alleging that Hancher had failed to provide numerous court-ordered support payments, which was served on Hancher when he appeared for a June 17, 2008 hearing on temporary orders set by Williams. Williams's attorney passed this hearing, and Williams later non-suited this enforcement proceeding.

He also detailed the circumstances surrounding the habeas corpus proceeding that occurred in 2008. After the habeas proceeding, he described Williams's actions as follows:

Well, she was in Maryland about — she was on a flight about three hours after us and then I know that within a day or two, I'd have to look at the exact dates, but within two days she was already sending e-mails demanding the kids, saying that, you know, she's not doing anything wrong. It was a pretty long-winded e-mail that time.

He further detailed Williams's behavior during his periods of possession in the summer of 2007 after Williams moved to Texas with the children:

What would generally happen is she would either call at 6:55 to 7:00 in the morning, which I just wouldn't answer the phone, then. And she would come by the house, knock on the door. And then I believe after that she would head right over to my mom's work and then she would, after she didn't find the kids there, she would come back to my house. We weren't there the second time. We were going on a hike or doing something because I didn't want the confrontation. So there's a lot of 7:00 a.m. hikes we were taking just so we wouldn't have to be there.

He provided copies of emails between him and Williams, which described difficulties he had in both exercising his summer visitation without her involvement and in visiting the children in Texas.<sup>4</sup>

According to Hancher, Williams had a pattern of scheduling extra-curricular activities for times he planned to come to Texas to visit the children; he provided a chart detailing the occasions he attempted to visit the children in Texas, the date he notified Williams of his impending visit, and the actual amount of time he was able to spend with the children when he was in Texas. Hancher testified that, other than the week after

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<sup>4</sup> Hancher described a particular incident in February of 2007 when he had taken the children for a long weekend at Disney World in Orlando, Florida. Hancher stated that he had purchased tickets for the children and him to fly from Orlando to Houston. Without Hancher's permission or knowledge, Williams's husband, Brian Chance Williams, an employee of Southwest Airlines, changed the children's reservations to an earlier flight from Orlando to Houston and changed Hancher's reservations from Orlando to Houston to a flight from Orlando to Baltimore, Maryland. Hancher notified Southwest Airlines about this change of reservations, and Southwest Airlines personnel changed the flights back to his original reservations. Brian Williams corroborated Hancher's description of this incident.

Hurricane Ike, every other time he has made arrangements to come to the Houston area to visit the children, Williams scheduled events for the children that interfered with his visitation.

He described the difficulties he has had in speaking with the children on the telephone after the parties entered into a Rule 11 agreement regarding telephone contact. According to Hancher, Williams refused to follow the terms of the Rule 11 agreement regarding telephone contact. He testified that he had not been provided important medical information regarding the children, including Williams's decision to take his son, J.W.H., to a psychologist. In addition, he stated that Williams was required to provide him copies of report cards and progress reports under the terms of the Maryland custody order, but she either did not provide them at all, or failed to provide them in a timely fashion.

Hancher testified that, if he were awarded primary custody of the children in Maryland, he would do his best to make the children available to Williams when she visits. He emphasized that he would not interfere with Williams's possession of the children. He explained that all the extra-curricular activities the children were involved with in Texas were also available in the Maryland area and that the children have numerous relatives and cousins who live within a few hours of his residence in Maryland. Finally, in response to his attorney's question regarding any possibility that he and Williams would be able to work together, cooperate, and make decisions for the children, Hancher stated, "This has been getting worse and worse over the last five years, and . . . even now we have . . . a Rule 11 agreement, very simple guidelines from it that she won't abide by. . . . And I think somebody needs to be able to make the decisions. . . ."

Williams described events rather differently than Hancher. She testified that, although she did travel to Maryland frequently while the children were visiting Hancher, her Maryland attorney had advised her that she was entitled to "reasonable access" to the children when they were visiting their father. She explained that she now understands that she is not permitted access to the children when Hancher has possession of them.

However, Williams also stated that the majority of the times she attempted to visit the children when they were in Maryland with their father, Hancher actually invited her to do so. She explained that, “[v]erbally he would say, ‘Come down,’ and then send a[ contradictory] email[.]”

Williams described the activities in which the children were involved, including both school-related and extracurricular activities. She testified that she provided Hancher with schedules for all the extracurricular activities in which the children were involved, but was unable to locate the email in which she gave him that information. She also stated that she did not deny Hancher access to the children when he came to the Houston area, asserting that she’s “always made a point to give access to the children when he travels down.” According to Williams, Hancher was invited to attend extra-curricular events with the children when he came to the Houston area to visit, but declined. Williams testified that she did not deliberately schedule events to conflict with Hancher’s periods of possession and that she refused to permit Hancher to keep the children overnight when he came to visit because it would disrupt their schedules.

Williams stated that she had not refused to allow Hancher telephone contact with the children. Instead, according to Williams, Hancher frequently interfered with her telephone contact with the children by refusing to answer her calls, supervising the children during the conversations, and distracting the children when she was talking to them. Williams expressed concern that Hancher seemed unwilling to recognize that their son, J.W.H., had been diagnosed with dysgraphia and ADHD. She testified that she always provided Hancher copies of report cards and progress reports, but that Hancher often refused to accept them.

According to Williams, the problems she and Hancher have had regarding the children were generated by Hancher. She stated that Hancher has been “disagreeable” with everything, from getting special assistance for their son in school to extracurricular activities. She also testified that she has never done anything intentionally to “alienate”

the children from their father and that Hancher had at least twice threatened to keep the children longer than he was permitted under the custody order. She stated that Hancher was “notorious” for limiting her access to the children when he had possession of them, limiting her telephone access to them, and behaving in a “very controlling” manner. According to Williams, the children were “flourishing” in Texas, and, other than entering a standard Texas possession order, she requested that the custody situation remain the same.

Williams also presented several other witnesses, all of whom testified that she was a very good mother and a trustworthy person. None of these witnesses, however, knew Hancher or had observed any interactions between Hancher and Williams or between Hancher and the children.

On January 28, 2009, the trial court entered an order naming Hancher sole managing conservator of the children and naming Williams possessory conservator. The trial court entered a standard possession order and ordered Williams to pay \$300 per month in child support. Both parents were permanently enjoined from making disparaging remarks about the other parent or that parent’s family and discussing this litigation with or in the presence of the children. On February 3, 2009, the trial court made the following findings of fact:

- The Maryland court has declined jurisdiction over this matter.
- The circumstances of the children, a conservator, or other party affected by the order to be modified have materially and substantially changed since the date of rendition of the order to be modified.
- Suzanne Williams has repeatedly denied and/or interfered with possession of the children by [Hancher].
- Suzanne Williams has repeatedly and intentionally acted to harm the relationship between [Hancher] and the children.
- Suzanne Williams has repeatedly demonstrated that she is not able to put the best interests of the children first.

- Suzanne Williams has repeatedly failed to share relevant information with [Hancher] concerning the children and has intentionally scheduled activities to interfere with [Hancher]’s possession of the children.
- It is in the best interest of the children that Jeffrey William Hancher be appointed the sole managing conservator of the children and that Suzanne Williams be appointed the possessory conservator of the children.

Based on these findings, the trial court concluded that “Hancher should be named sole managing conservator of [J.W.H.] and [A.L.H.], and . . . Williams should be named possessory conservator of [the children].” Williams timely appealed the trial court’s custody modification order.

### **Jurisdiction**

In her first issue, Williams asserts that the trial court lacked jurisdiction over this matter because, at the time Hancher filed his petition to modify in Galveston County, the Maryland court retained jurisdiction over the matter. We review legal questions, such as those involving subject matter jurisdiction, de novo. *See Tex. Natural Resource Conservation Comm’n v. Davy*, 74 S.W.3d 849, 855 (Tex. 2002); *Saavedra v. Schmidt*, 96 S.W.3d 533, 541 (Tex. App.—Austin 2002, no pet.).

Except as provided in the emergency jurisdiction statute,<sup>5</sup> a Texas court may not modify a child custody determination made by a court of another state unless the Texas court has jurisdiction to make an initial determination and (1) the court of the other state determines that it no longer has continuing exclusive jurisdiction or that the Texas court is the more convenient forum or (2) a court of Texas or another state determines that the child, the child’s parents, and any person acting as a parent do not presently live in the other state. TEX. FAM. CODE ANN. § 152.203 (Vernon 2008); *see also In re Forlenza*, 140 S.W.3d 373, 375 n.3 (Tex. 2004) (orig. proceeding); *Saavedra*, 96 S.W.3d at 541.

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<sup>5</sup> Tex. Fam. Code Ann. § 152.204.



Williams does not dispute that a Texas court would have had jurisdiction to make an initial determination; instead, she contends that, at the time the modification proceeding was filed, the Maryland court retained exclusive, continuing jurisdiction over the matter. But, as noted above, before the Texas court modified the child custody determination made by the Maryland court, the Maryland court determined that Texas was a more appropriate forum to decide the issues raised in this case. *See* TEX. FAM. CODE ANN. §§ 152.203(1), 152.207(a); *cf. Saavedra*, 96 S.W.3d at 541 (stating that, *absent the issuing court's relinquishment of exclusive continuing jurisdiction*, the Texas court was without jurisdiction to modify the issuing court's custody orders). Thus, we overrule Williams's first issue.

In her second issue, Williams asserts that the trial court abused its discretion in retaining this case because it allowed Hancher to “forum shop” and obtain relief to which he was not entitled. First, we note that Williams provides no legal authority in support of this argument. *See* TEX. R. APP. P. 38.1(h); *Trenholm v. Ratcliff*, 646 S.W.2d 927, 934 (Tex. 1983) (“Points of error must be supported by argument and authorities, and if not so supported, the points are waived.”). Rather than arguing that the trial court abused its discretion in this section of her brief, Williams focuses on Hancher's behavior; for example she states, “Hancher's behavior shows that he deceived the Texas court into granting him relief which the Maryland courts had refused to give him in the 2003 order, the 2006 order, and the 2007 appellate opinion.” Moreover, the record supports the trial court's finding that the Maryland court declined jurisdiction in favor of the Texas court in this case. Under these circumstances, we cannot say the trial court abused its discretion in “retaining” this case, and we overrule her second issue.

## **Modification**

### **A. Standard of Review**

Because a trial court has broad discretion to decide the best interest of a child in family law matters such as custody, visitation, and possession, we review a decision to

modify conservatorship for a clear abuse of that discretion. *See Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex. 1982). A trial court abuses its discretion when it acts arbitrarily or unreasonably, or when it clearly fails to correctly analyze or apply the law. *See In re D.S.*, 76 S.W.3d 512, 516 (Tex. App.—Houston [14th Dist.] 2002, no pet.). Under the abuse-of-discretion standard, legal and factual sufficiency of the evidence are not independent grounds of error, but are factors in assessing whether the trial court abused its discretion. *See id.*

## **B. Change in Circumstances and Best Interest of Children**

In her third and fourth issues, Williams asserts that the trial court abused its discretion in modifying the Maryland custody order because Hancher failed to present legally and factually sufficient evidence to show a change in circumstances and that the modification order was in the best interest of the children. A trial court may modify a conservatorship order only if modification would be in the children’s best interest and “the circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed” since the previous order. TEX. FAM. CODE ANN. § 156.101 (Vernon 2008).

In deciding whether a material and substantial change of circumstances has occurred, a trial court is not confined to rigid or definite guidelines. *In re A.L.E.*, 279 S.W.3d 424, 429–30 (Tex. App.—Houston [14th Dist.] 2009, no pet.); *In re Z.B.P.*, 109 S.W.3d 772, 779 (Tex.App.—Fort Worth 2003, no pet.). Such a change may include (1) the marriage of one of the parties, (2) poisoning of a child’s mind by one of the parties, (3) change in the home surroundings, (4) mistreatment of a child by a parent or step-parent, or (5) a parent’s becoming an improper person to exercise custody. *In re A.L.E.*, 279 S.W.3d at 428–29. Additionally, a course of conduct pursued by a managing conservator that hampers a child’s opportunity to favorably associate with the other parent may suffice as grounds for redesignating managing conservators. *See In re Marriage of Chandler*, 914

S.W.2d 252, 254 (Tex. App.—Amarillo 1996, no writ); *Gunther v. Gunther*, 478 S.W.3d 821, 829 (Tex. Civ. App.—Houston [14th Dist.] 1972, writ ref'd, n.r.e.).

The best interest of the children is always of paramount importance in making any custody determination. See TEX. FAM. CODE ANN. § 153.002; *In re V.L.K.*, 24 S.W.3d 338, 342 (Tex. 2000). A court may use the following non-exhaustive list of *Holley* factors to determine the children's best interests: (1) the desires of the children; (2) the emotional and physical needs of the children now and in the future; (3) the emotional and physical danger to the children 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 children; (6) the plans for the children by the individuals seeking custody; (7) the stability of the home; (8) the acts or omissions of the parent that may indicate that the existing parent-child relationship is not proper; and (9) any excuse for the acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). In the context of custody modification, other factors to be considered include the children's need for stability and the need to prevent constant litigation in child-custody cases. *In re V.L.K.*, 24 S.W.3d at 343.

Our record does not contain any information regarding several of the *Holley* factors. For example, there is no information regarding the desires of the children. Further, the record contains little information regarding any programs available to assist Williams or Hancher in promoting the best interest of the children. But as detailed above, the record reflects that, since the move to Texas, Hancher had numerous problems exercising his visitation rights with the children. The record additionally reflects that Williams repeatedly attempted to interfere with Hancher's periods of possession of the children. Further, Williams has not challenged the following factual findings:

- [Williams] has repeatedly and intentionally acted to harm the relationship between [Hancher] and the children.

- [Williams] has repeatedly demonstrated that she is not able to put the best interests of the children first.
- [Williams] has repeatedly failed to share relevant information with [Hancher] concerning the children and has intentionally scheduled activities to interfere with [Hancher]’s possession of the children.

These unchallenged factual findings are binding on this court, unless the contrary is established as a matter of law or there is no evidence to support them. *See McGalliard v. Kuhlmann*, 722 S.W.2d 694, 696 (Tex. 1986); *Raman Chandler Props., L.C. v. Caldwell’s Creek Homeowners Ass’n, Inc.*, 178 S.W.3d 384, 390 (Tex. App.—Fort Worth 2005, pet. denied). Hancher’s testimony, summarized above, supports these findings.

We conclude that Williams’s behavior hampered the children’s opportunities to favorably associate with Hancher. *See Chandler*, 914 S.W.2d at 254. Further, the unchallenged findings support the trial court’s determination that a material and substantial change in circumstances existed and that the modification was in the best interest of the children.<sup>6</sup> Thus, the trial court did not abuse its discretion in modifying the Maryland custody order, and we overrule Williams’s third and fourth issues.

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<sup>6</sup> Williams states in her brief:

The entire argument under the legal and factual sufficiency challenges hangs on Jeffrey Hancher’s credibility, as his mother is an interested witness and he provided no disinterested witnesses. If Jeffrey Hancher is credible, then his version of the circumstances surrounding the custody issues should stand, and the Court should overrule Suzanne Williams’s points challenging the sufficiency of the evidence to support the modification. But if Jeffrey Hancher is not credible, the Court should reverse the trial court’s judgment.

Yet, the trial court, as factfinder, was the sole judge of the credibility of the witnesses’ testimony and the weight to be given to their testimony. *See City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005). By its findings, the trial court indicated that it found Hancher’s testimony to be more credible than Williams’s. Further, although Williams suggests that the testimony of the “disinterested” witnesses she presented should be given significant weight, none of these witnesses had ever observed any interactions between Hancher and the children, or between Williams and Hancher.

### **C. Construction of Maryland Order**

In her fifth and final issue, Williams complains that the trial court abused its discretion in construing the “vague terms of the Maryland court order” against her and concluding that she repeatedly denied or interfered with Hancher’s possession of the children. Williams has cited no legal authority in support of this issue. We additionally note that the Maryland court stated in its custody order:

Although there is always some real change and potential disruption of any children’s social lives when they are relocated, in this case that change will be temporary and minimal if all parties work together to minimize and cushion it by maximizing access and communication by and with the children and the non-custodial parent, Mr. Hancher. *This puts a special burden and responsibility on [Williams] to facilitate this contact.*

(emphasis added). As detailed above, Hancher described the problems he had in exercising his visitation with the children and Williams’s interference with his periods of possession and his telephonic contact with the children. Under these circumstances, we cannot say the trial court abused its discretion in finding that Williams repeatedly denied or interfered with Hancher’s possession of the children. We therefore overrule Williams’s fifth issue.

### **Conclusion**

Having overruled each of Williams’s issues, we affirm the trial court’s judgment.

/s/ Leslie B. Yates  
Justice

Panel consists of Justices Yates, Frost, and Brown.