

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-15-00449-CV**

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**IN THE INTEREST OF R.L.R.**

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**On Appeal from the 418th District Court  
Montgomery County, Texas  
Trial Cause No. 07-06-06608-CV**

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**MEMORANDUM OPINION**

This is an appeal from an order discontinuing the child support paid by R.L.R.'s father (Father) under a divorce decree dated in 2007 to zero due to a change in circumstances that resulted when the trial court changed the possessory rights of R.L.R.'s parents so that Father had R.L.R. in his possession most of the year. Mother appealed from the order modifying the right she enjoyed under the 2007 decree awarding her child support. Mother raises five issues in her appeal, arguing that (1) the trial court failed to support its order modifying her possessory rights with written

findings; (2) sufficient evidence was not admitted in the modification proceeding to support the trial court's ruling to modify the requirement created in 2007 that she be paid child support; (3) the trial court abused its discretion by determining that Mother voluntarily relinquished R.L.R. to her Father; (4) the trial court abused its discretion by failing to properly apply the factors that govern whether she is entitled to child support under the requirements of section 156.401 of the Texas Family Code; and (5) the trial court erred when it relied on Mother's failure to plead that she wanted the trial court to continue to require Father to pay her child support in concluding that she was no longer entitled to be paid child support. We conclude that Mother's issues have no merit, and we affirm the trial court's judgment.

### Background

Mother and Father married in 2000. In 2007, they had a daughter, which they named R.L.R. Shortly after R.L.R. was born, Mother sued Father for a divorce. When the divorce was granted, the trial court named Mother and Father as R.L.R.'s joint managing conservators, gave Mother the exclusive right to establish R.L.R.'s primary residence, gave Mother and Father possessory rights based on a standard possession order, and required that Father pay Mother \$1,200 a month in child support.

In October 2014, Father filed a petition seeking to modify the terms of the possession order and to discontinue the requirement that he pay Mother child support. Mother responded to Father's petition by filing a general denial, which includes a prayer in which she asked the trial court to grant any general relief to which she showed she was entitled.

In September 2015, the parties, through mediation, settled most of the disputed issues that Father raised in the modification proceeding; however they did not agree on the issue of who should be required to pay whom child support. The parties also could not agree on which parent should be required to obtain a health insurance policy covering R.L.R. The matters the parties were unable to resolve by agreement were then tried in a bench trial, and Mother and Father were the only witnesses who testified in the trial. When the trial concluded, the trial court modified the parties' possessory rights in three ways: (1) the court ordered that neither parent would be required to pay child support to the other parent; (2) the trial court took away Mother's right to designate R.L.R.'s primary residence, and decreed that neither parent had that right; and (3) the trial court modified the parties' possessory rights by making Father R.L.R.'s custodial parent for the majority of the year. Like the original decree, the modified order required that Father maintain a health insurance policy covering R.L.R.'s basic health-care needs.

Approximately one month after the bench trial, the trial court reduced its findings and conclusions to writing. With respect to the issues required to dispose of the appeal, the trial court found that:

- the parties agreed “there had been a material and substantial change in circumstances [regarding R.L.R.] since the date of the [trial court’s] last order, that the agreements were in the best interest of the child, and that [Mother and Father] were asking the court to make these agreements binding on the parties.”
- “there had been a material and substantial change in circumstances, and that the agreements that had been reached and read into the record were in the best interest of the child.”
- Mother had no pleading “on file requesting any affirmative relief.”
- Mother, based on her agreement, received “an expanded standard possession order during the school year, and that holidays and summers would be shared equally. [Mother] admitted that [Father] would have more time with the child during the school year. The fact that [Father] would have more time with the child than [Mother] was uncontroverted by the evidence.”
- “[d]espite a lack of affirmative pleadings, [Mother] testified that she was asking the court to ‘net out’ the child support that she would owe [Father]

from the amount she believed he would owe to her for child support, leaving a remaining sum that [she claimed that Father] should pay to her in child support. [Mother] gave no testimony as to why the court should award child support to her, the parent with less possession of the child.”

- under a stipulation between the parties and based on the child support guidelines, Father’s child support obligation would be \$1,710 per month and Mother’s would be \$588.
- “[Father’s] pleadings were sufficient to raise the issue of whether he was entitled to receive child support paid by [Mother].”
- although the trial court did not follow the child support guidelines in modifying the parents’ support obligations, applying the guidelines under the circumstances to R.L.R.’s parents “would be unjust or inappropriate[.]”
- the trial court considered “the factors set forth in Section 154.123 of the Texas Family Code, including but not limited to Section 154.123(b)(1, 2, 3, 4, 6, 7 and 17)” in reducing Father’s child support payments to zero. Additionally, the trial court found Mother, if required to pay monthly child support based on the support guidelines, would have monthly expenses that exceeded her monthly income, making “the application of the guidelines to be unjust or inappropriate, and not in the best interest of the child.”

- Mother failed to present evidence sufficient to justify her “request that [Father] pay child support to her, the parent having less possession time with the child.” Mother’s request to net out the child support obligations of the parents is “a request to deviate from the Texas Family Code guidelines. [Mother] did not provide sufficient evidence to support a deviation from the guidelines in this manner.”
- “The circumstances of a child, a conservator, or other party affected by the order have materially and substantially changed since the rendition of the final divorce decree.”
- “It is in the best interest of the child for [Father’s] prior child support obligation to be terminated, and for [Mother] to pay \$0 in child support to [Father].”
- “The evidence presented at trial, including but not limited to the relevant factors in Section 154.123 of the Texas Family Code that were considered by the court, rebuts the presumption that the application of the guidelines to the calculation of [Mother’s] child support obligation is in the best interest of the child, and justifies a variance from the guidelines.”

## Standard of Review

Trial courts enjoy broad discretion in ruling on a motion seeking to modify a prior child support order if the party seeking the modification establishes that material and substantial changes in circumstances have occurred since the trial court rendered a previous order. *See In re C.H.C.*, 392 S.W.3d 347, 349 (Tex. App.—Dallas 2013, no pet.); Tex. Fam. Code Ann. § 156.401(a) (West Supp. 2016) (providing that trial court may modify a child support order). A trial court’s decision modifying a previous child support order will not be disturbed in an appeal absent a showing that the trial court clearly abused its discretion. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990); *In re C.H.C.*, 392 S.W.3d at 349.

Mother’s issues challenging the modified order are phrased as evidentiary challenges, but under the abuse of discretion standard that applies to our review of such orders, legal and factual sufficiency are not independent grounds of error, but are instead factors that are relevant in assessing whether the trial court abused its discretion. *See In re C.H.C.*, 392 S.W.3d at 349; *see also Brejon v. Johnson*, 314 S.W.3d 26, 30 (Tex. App.—Houston [1st Dist.] 2009, no pet.). In determining whether a trial court abused its discretion in modifying a previous decision regarding the payment of child support, we look first to whether the trial court had sufficient evidence upon which to exercise its discretion and then examine whether, given the

evidence the trial court considered and the legal standards that apply whether the trial court erred in applying its discretion. *See In re S.N.Z.*, 421 S.W.3d 899, 908 (Tex. App.—Dallas 2014, pet. denied). A trial court does not abuse its discretion if the record before the trial court includes evidence of a substantial and probative character to support the trial court’s decision to modify the amount that a parent is required to pay for child support. *See In re S.E.K.*, 294 S.W.3d 926, 930 (Tex. App.—Dallas 2009, pet. denied).

#### Analysis

Because issues two through four revolve around the trial court’s exercise of discretion when it discontinued the requirement in its previous order obligating Father to pay Mother \$1,200 per month in child support, we address issues two through four first. In these three issues, Mother argues that Father failed to present sufficient evidence in the modification proceeding to justify the trial court’s decision to discontinue the requirement that Father pay Mother for child support.

A court may modify its prior child support order if “the circumstances of the child or a person affected by the order have materially and substantially changed since . . . the date of the order’s rendition[.]” Tex. Fam. Code Ann. § 156.401(a)(1)(A) (West Supp. 2016) (establishing the grounds for modification of a child support order). If a trial court determines that modifying a prior child support



order is appropriate, “the trial court should examine the circumstances of the child and parents at the time the prior decree was rendered, in relation to the circumstances existing at the time modification of the prior order is sought.” *Brejon*, 314 S.W.3d at 30 (quoting *Holley v. Holley*, 864 S.W.2d 703, 706 (Tex. App.—Houston [1st Dist.] 1993, writ denied)). The party requesting that a trial court modify his child support obligation bears the burden to show that there has been a material and substantial change in circumstances justifying his request. *See Rumscheidt v. Rumscheidt*, 362 S.W.3d 661, 666-67 (Tex. App.—Houston [14th Dist.] 2011, no pet.).

In her appeal, Mother does not challenge the trial court’s findings that Father, under the terms of the modified possession order, would have R.L.R. in his possession during the majority of the year. Additionally, Mother does not argue that given Father’s increased role in raising R.L.R., he would not be spending more money to support R.L.R. than he had been paying in child support before the trial court modified the possession order. Additionally, Mother agreed to the changes made in the possession order, which gave Father the right to have R.L.R. in his possession most of the year. She also agreed that changing the terms of the possessory periods was in R.L.R.’s best interest. Mother does not dispute that

material and substantial changes in R.L.R.'s circumstances had occurred since she and Father divorced.

We conclude the record before the trial court contains substantial evidence showing that the circumstances involving R.L.R. had materially and substantially changed since 2007, the date the trial court rendered its original possession order. *See Labowitz v. Labowitz*, 542 S.W.2d 922, 925 (Tex. Civ. App.—Dallas 1976, no writ) (indicating that the trial court could consider that children were living with their father when their mother was their managing conservator in modifying a child support award). Given that Father had greater powers based on the modifications the trial court made to the possession order, it was not unreasonable for the trial court to infer that the expenses Mother would incur to support R.L.R. would decrease under the terms of the modified possession order. The trial court could also reasonably conclude that Mother's actual expenditures to support R.L.R. would be less than the amount that it could have ordered Mother to pay Father in child support. Based on the changes the trial court made to its order defining when R.L.R. would be in each parent's custody, Father will have R.L.R. in his possession for between three and four days of the five days that she is in school. The trial court could reasonably infer from the evidence that Father is now the parent facing more of the burdens associated with R.L.R.'s schooling and education. The trial court was entitled to credit Father's

testimony that he had been, and intended to continue, providing R.L.R. with everything that she needed, and to infer that Father's expenses would increase given that she would be living in his home more than her Mother's.

In this case, the record contains credible evidence that Father's expenses had actually increased once R.L.R. began to live in his home most of the time. For example, Father testified that he began paying for one after-school activity after R.L.R. began living primarily in his home, and that he intended to enroll R.L.R. in additional after-school activities at his sole expense. Father also testified that R.L.R., at his sole expense, sees a counselor approximately twice a month.

In deciding to deviate from the child support guidelines, the trial court's written findings indicate that it considered R.L.R.'s age and needs, the ability of R.L.R.'s parents to support her, the financial resources available to R.L.R.'s parents, the relative amounts of time that R.L.R.'s parents would have possession of her under the terms of the modified possession order, the fact that, to maintain his employment, Father indicated that he would be required to pay for additional after-school activities during the school year, Mother's obligations that required her to care for two children who did not belong to Father, Father's obligation to provide health insurance for R.L.R., and Father's testimony that he was the parent who was actually paying for R.L.R.'s counseling. *See* Tex. Fam. Code Ann. § 154.123 (West

2014). In our opinion, the record contains substantial evidence supporting the trial court's decision to modify the parent's support obligations in a manner that varied from the child support guidelines. Substantial evidence is also in the record showing that material and substantial changes in conditions had occurred in R.L.R.'s circumstances since 2007 that justified modifying the terms of the trial court's original possession and support order.

In issue three, Mother complains that Father failed to show that she voluntarily relinquished her right to serve as R.L.R.'s primary caregiver. However, the trial court's written findings do not indicate that it relied on section 156.101(a)(3) as the basis for the decision it made to modify the parties' possessory rights. *See* Tex. Fam. Code Ann. § 156.101(a)(3) (West 2014) (proving that if the party with the exclusive right to determine a child's primary residence voluntarily relinquishes that right to another person for a period of at least six months, a trial court may modify its prior orders providing for possession of or access to a child). Instead, the trial court's findings reflect that it relied on section 156.101(a)(1) of the Family Code to modify the terms in its original possession order. *Compare* Tex. Fam. Code Ann. § 156.101(a)(1) (allowing a trial court to modify a prior child support order if the modification is in the child's best interest and the circumstances of the child or a

conservator have materially and substantially changed since the date the trial court rendered its prior order), *with* Tex. Fam. Code Ann. § 156.101(a)(3).

In her fourth issue, Mother argues the trial court did not have sufficient grounds to justify reducing Father's child support payment to zero. Section 156.401 provides the various grounds on which a trial court may modify a child support order. *See* Tex. Fam. Code Ann. § 156.401 (West Supp. 2016). Under section 156.401, a trial court may modify a child support order if "the circumstances of the child or a person affected by the order have materially and substantially changed since" the date the prior order was rendered. Tex. Fam. Code Ann. § 156.401(a)(1)(A).

In this case, assuming a 180 day school year, the trial court's order allows Father to have R.L.R. in his possession approximately 126 days during the school year. While Mother and Father agreed to joint possession, which prevented the trial court from making Father the child's managing conservator, it is clear from the trial court's findings and from the evidence presented in the hearing that the trial court viewed Father as the parent with significantly greater responsibilities, the types of responsibility like those that are typically given to the parent the trial court designates as the child's managing conservator. The evidence allowed the trial court to view Father as the parent with the greater role and responsibility to support R.L.R. Since Mother also has her obligation to support R.L.R. and the trial court could have

ordered Mother to pay Father child support, the trial court also had the discretion to reject Mother's claim that Father should pay her child support. *See generally Labowitz*, 542 S.W.2d at 925.

On this record, we cannot say that the trial court abused its discretion when it decided that neither Mother nor Father should pay the other child support. *Id.* We conclude that Mother's complaints in issues two through four complaining that the trial court did not have sufficient evidence to support its ruling are without merit, and they are overruled.

In issue five, Mother argues that the trial court abused its discretion because it modified the order based on its finding that Mother failed to file a pleading seeking child support. However, the trial court's findings and conclusions do not show that the trial court's decision was based on Mother's failure to file pleadings seeking affirmative relief. Instead, the record shows the trial court considered evidence and stipulations addressing the net resources available to R.L.R.'s parents under the child support guidelines in resolving whether the parents should be ordered to pay child support. While the trial court's findings note that Mother did not have pleadings on file seeking affirmative relief, its findings also include findings on Mother's and Father's net resources and a finding that Mother failed to present evidence justifying her request for child support. The trial court's written findings further reflect that its

determination that Mother should not be required to pay child support was based, in part, on the evidence showing that Mother was having financial difficulty meeting her bills. Thus, while the trial court noted that Mother failed to plead that she was seeking an award of child support, the trial court's other findings, when considered with its conclusions, reflect that the trial court's decision to order that Father pay Mother nothing in child support was not a decision that it based on Mother's failure to file pleadings seeking affirmative relief. We overrule issue five.

Last, we consider Mother's first issue, which argues the trial court failed to reduce its findings to writing. After the parties filed their briefs, we abated the appeal and required the trial court to provide us with its written findings of fact and conclusions of law. The trial court subsequently reduced its findings and conclusions to writing, and the parties filed supplemental briefs. In her supplemental brief, Mother did not reassert her complaint about the trial court's failure to initially provide the parties with its written findings; however, Mother also did not expressly waive the complaint that she raised in issue one about the trial court's failure to render written findings. In this case, because the trial court provided its written findings on the issues that were decided in the modification proceeding, Mother's first issue became moot. Issue one is overruled. *See In re K.A.R.*, 171 S.W.3d 705, 717 n.8 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

Having carefully considered each of Mother's issues, we hold that the trial court did not abuse its discretion by modifying the child support award. We overrule Mother's issues, and we affirm the trial court's judgment.

AFFIRMED.

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HOLLIS HORTON  
Justice

Submitted on May 23, 2017  
Opinion Delivered September 21, 2017

Before McKeithen, C.J., Kreger and Horton, JJ.