COURT OF APPEALS
SECOND DISTRICT OF TEXAS
FORT WORTH

NO. 02-15-00360-CV

IN THE INTEREST OF S.H., A
MINOR CHILD

FROM THE 324TH DISTRICT COURT OF TARRANT COUNTY
TRIAL COURT NO. 324-555105-14

MEMORANDUM OPINION[1]

Appellant T.A.R. (Mother) and Appellee E.S.H. (Father) are S.H.'s biological parents. In 2014, Mother initiated an original suit affecting the parent-child relationship (SAPCR), and Father filed a counterpetition. Following a bench trial, the trial court signed its final order, which (1) grants Father the exclusive

[1]*See* Tex. R. App. P. 47.4.

right to designate S.H.'s primary residence; (2) grants Father the exclusive right to make educational decisions concerning S.H.; (3) restricts S.H.'s residence with Father and Mother to within a ten-mile radius of Father's then-current residence; and (4) establishes a week-on, week-off possession schedule. In what we construe as four issues, Mother argues that each of these four orders constitutes an abuse of discretion. We affirm.

I. BACKGROUND

Mother initiated this SAPCR on April 9, 2014. On June 26, 2014, the trial court signed temporary orders appointing Father and Mother as temporary joint managing conservators of S.H. and granting Mother the exclusive rights to designate S.H.'s primary residence within Tarrant County and to make decisions concerning her education. The case proceeded to a final bench trial on the merits on July 23, 2015, and August 21, 2015. After both parties finished their closing arguments, the trial court did not render judgment but instead informed the parties that it would send a rendition of judgment to them once it had reached a decision.

On August 25, 2015, the trial court sent its rendition of judgment to the parties, which included an order that Father and Mother would have a week-on, week-off possession schedule. Mother filed a request for findings under section 153.258 of the family code on the ground that the week-on, week-off possession order substantially deviated from the standard possession order set forth in the

family code. *See* Tex. Fam. Code Ann. § 153.258 (West 2014). The trial court entered its findings. Mother now appeals.

II. STANDARD OF REVIEW

All of Mother's issues concern matters of conservatorship and custody and are therefore subject to an abuse-of-discretion standard of review. *See In re J.A.J.*, 243 S.W.3d 611, 616 (Tex. 2007); *Halleman v. Halleman*, 379 S.W.3d 443, 447 (Tex. App.—Fort Worth 2012, no pet.). Under that standard, we will not disturb the trial court's conservatorship or custody determinations unless it acted without reference to any guiding rules or principles in making them—unless, in other words, those determinations were arbitrary or unreasonable. *See J.A.J.*, 243 S.W.3d at 616; *Halleman*, 379 S.W.3d at 447.

In determining issues of conservatorship and custody, the trial court's primary consideration must be the best interest of the child. *See* Tex. Fam. Code Ann. § 153.002 (West 2014); *In re J.F.*, No. 02-14-00324-CV, 2015 WL 6556969, at *2 (Tex. App.—Fort Worth Oct. 29, 2015, no pet.) (mem. op.). In our review of a trial court's conservatorship and custody determinations under an abuse-of-discretion standard, challenges to the legal and factual sufficiency of the evidence to support those determinations do not present independent grounds for review; rather, legal and factual sufficiency are simply factors we consider in determining whether the trial court abused its discretion. *See J.F.*, 2015 WL 6556969, at *1; *In re W.M.*, 172 S.W.3d 718, 725 (Tex. App.—Fort Worth 2005, no pet.). To determine whether a trial court abused its discretion because the

evidence is legally or factually insufficient to support a trial court's conservatorship or custody determination, we consider (1) whether the trial court had sufficient information upon which to exercise its discretion and (2) whether it erred in its application of that discretion. *In re M.M.M.*, 307 S.W.3d 846, 849 (Tex. App.—Fort Worth 2010, no pet.); *W.M.*, 172 S.W.3d at 725. The traditional sufficiency review is involved in answering the first question, and whether the trial court made a reasonable decision is involved in answering the second. *M.M.M.*, 307 S.W.3d at 849; *W.M.*, 172 S.W.3d at 725.

III. THE TRIAL COURT'S FINDINGS

In its rendition, the trial court found that the following orders were in S.H.'s best interest:

> 1. [Mother] and [Father] are appointed as joint managing conservators.
>
> 2. . . . [Father] is ordered to have the exclusive right to make educational decisions [for S.H.] after consultation or reasonable efforts to consult with [Mother].
>
> 3. Neither party is ordered to have the right to establish the primary residence of [S.H.]; however, [S.H.'s] residences are to be located within a ten (10) mile radius of [Father's] current residence unless the parties mutually agree otherwise in writing.

In its findings for variance from standard possession order, the trial court made the following findings:

> 1. The Court finds that it is in [S.H.'s] best interest that the parties should be named as joint managing conservators of [her].

2. The Court finds that the rights as set forth in §151.001 of the Texas Family Code should be equally allocated between [Father and Mother].

3. The Court finds that the parties sharing equally the rights as set forth in §151.001 would encourage and cause the parties to accept a positive relationship between [S.H.] and the other parent.

4. The Court finds that [Father and Mother] participated in the rearing of [S.H.] before the filing of this suit.

5. The Court finds that it would be in the best interest of [S.H.] for [Father and Mother] to have a geographical restriction in the establishment of a residence so as to insure the continued participation of both [Father and Mother] in the parenting of [S.H.].

6. The Court finds that the geographical restriction as set forth in its rendition letter is an appropriate restriction to insure the continuing participation of [Father and Mother] in the parenting of [S.H.].

7. Under [section 153.134(b)(1) of the family code], it is mandatory that, absent an agreed parenting plan, the Court designate the conservator who has the exclusive right [to] determine the primary residence of [S.H.]. The court finds, and only because of this statute, that [Father] should have that exclusive right[,] as the Court has found that it is in the best interest of [S.H.] for him to have the exclusive right to make educational decisions for [S.H.] after consultation or reasonable efforts to consult with [Mother].

8. The Court finds that [Mother] did not consistently encourage a co-parenting relationship with [Father] during the pendency of this case.

9. The Court finds that [Mother] attempted to deprive [Father] of possession of [S.H.] on more than one occasion during the pendency of this case and, without good cause, prevented access by [Father] with [S.H.].

10. The Court finds that there are concerns that [Mother] will not encourage a positive relationship between [S.H.] and [Father] if she should have more rights or more possession time of [S.H.] than does [Father].

> 11. The Court finds that there are concerns that [Mother], if she perceives that she has a superior position to [Father] insofar as [S.H.] is concerned, will withhold possession of [S.H.] from [Father] if he should disagree with her on day to day issues regarding [S.H.].
>
> 12. The Court finds that the parties will more likely foster a good co-parenting relationship if neither party is awarded what either would consider to be a superior position to the other as to their rights or possession time.
>
> 13. The Court also finds that, for the reasons set forth above, the parties should have equal possession of [S.H.] under the terms as set forth in the Court's rendition letter dated August 25, 2015.

IV. SUMMARY OF EVIDENCE

Father and Mother met in December 2009 when Mother, a property manager at an apartment complex, hired Father to be the complex's lead maintenance man. At the time they met, Mother had a three-year-old child, I.R., from a previous relationship. After they met, Father went to work elsewhere, and Father and Mother began dating. In May or June 2010, Father moved in with Mother. While they were living together, S.H. was conceived. However, when Mother was about five months pregnant with S.H., Father and Mother separated, and Father moved into his parents' home. Father moved back in with Mother about two weeks before S.H. was born.

In late 2011, when S.H. was about six months old, Mother asked Father to move out, and Father again moved back in with his parents. Father and Mother initiated a custody proceeding shortly thereafter.[2] The court entered a temporary

[2]In Father's brief, he stated this custody proceeding was ultimately nonsuited after he and Mother reconciled.

50/50 possession order in that proceeding, and it also ordered Father and Mother to attend an anger management class. Though unintentional, they ended up taking the same class. During the course of taking that class, Father and Mother began dating again, and in March or April 2012, they again began living together. Shortly after, Father bought a house in Haslet, and Mother moved in with him. The parties again separated in April 2014. Mother moved out of Father's house and into a nearby house that she had rented. That same month, Mother initiated this SAPCR.

In May 2014, the trial court entered temporary orders naming Father and Mother as temporary joint managing conservators of S.H; awarding Mother the temporary exclusive rights to designate S.H.'s primary residence in Tarrant County and to make educational decisions concerning S.H.; and establishing a temporary expanded possession schedule. Part of the temporary possession schedule provided that Father and Mother would each have possession of S.H. for two 15-day periods during the summer.

At trial, Mother testified that in raising S.H. between two households, it would be important for her and Father to be flexible and to cooperate with each other. She acknowledged, however, that she had not been flexible or cooperative with Father when he attempted to designate his summer periods of possession under the trial court's May 2014 temporary orders. Under the trial court's temporary orders, Father was to designate his summer periods of possession no later than May 16, 2014, to avoid set default dates if no

designation was made. The evidence showed that Father had sent Mother an email at 8:31 a.m. on May 17, 2014, stating,

> Sorry I [didn't] get this to you yesterday, but these are the dates that I want [S.H.] for summer. June 23 - July 7 (15 days) and July 23 [-] August 6 (15 days).
>
> Let me know you got this.
>
> Thanks,
> [Father]

On May 19, 2014, Father sent Mother another email in which he stated, "I haven't heard from you[,] so I am sending this again." On May 20, 2014, Mother sent Father an email in which she stated,

> I did receive [your May 17, 2014 email]. However, we are supposed to be going by court orders right now saying that you are supposed to let me know by May 16th.
>
> So[,] the dates for the Summer that you can have [S.H.] are July 1st [-] July 16th and August 1st [-] August 16th.
>
> Thanks,
>
> [Mother]

Mother admitted that her refusal to accommodate Father's barely-late summer-possession request reflected that she was not very flexible. She also conceded that she agreed this incident showed that she did not try to co-parent with Father.

The evidence also showed that on Wednesday, August 27, 2014, Father communicated to Mother that he intended to pick up S.H. the following day, take her to daycare the following Friday morning, and then pick her back up from

daycare that afternoon, as it was the fifth Friday of the month. In response, Mother emailed Father, stating,

> My current understanding is that an Expanded Standard Possession Order is controlled by Section 153.317 of the Texas Family Code, which says that possession begins and ends at time a child's school is regularly dismissed and when it resumes and daycare does not satisfy the legal definition of school. Since [S.H.] is not in "school," it is not possible to pick her up and return her when her "school" is regularly dismissed or when it resumes.

The record further reflects, however, that as of August 27, 2014, the governing temporary orders provided that during the regular school term of the public school district in which S.H. primarily resided, Father was entitled to possession of S.H. (1) from the time that public school district regularly dismissed on Thursdays until it resumed on Friday morning and (2) on the first, third, and fifth weekends.[3] Despite these temporary orders, Mother emailed Father the following:

> The temporary orders are signed by the Judge. The Associate Judge report as well does not say expanded school for daycare. [S.H.] is to be returned to me tomorrow[, Thursday, August 28, 2014,] at 8:00 pm, or you will be in contempt. Punishable by jail time. If you do not return [S.H.] tomorrow evening, I will send a peace officer to your house.

Mother testified that she had learned to be more flexible in co-parenting with Father. Yet, the trial court heard evidence of another incident relevant to the issue of Mother's ability to effectively co-parent with Father that happened the

[3]Mother admitted during her testimony that the public school district in which S.H. primarily resided was back in session as of August 27, 2014.

weekend before trial. Mother had possession of S.H., and the evidence reflects that both Father and Mother believed—mistakenly, it turns out—that Father was to take possession of S.H. at 6:00 p.m. on Sunday, July 19, 2015. Mother delivered S.H. to Father at about 6:30 p.m. that evening. Believing she had encroached upon Father's possession time, Mother offered to let Father have an extra night of possession of S.H. on a date when he would not ordinarily have such possession. Mother rescinded that offer, however, after she learned that Father was actually supposed to take possession of S.H. on July 20, 2015, instead of July 19, 2015. Mother testified that she rescinded her offer because she was not willing to allow Father to have an extra night of possession if she did not mistakenly encroach upon his established possession time.

Additionally, Mother agreed that it was important for her children to have a consistent residence so that they could continue to attend the same school and daycare. She also agreed that it was not good for her children to bounce between daycares, schools, or residences. Yet on the personal-data form for a court-ordered social study, Mother indicated that in the prior five years, she had moved from Fort Worth to Grapevine to Southlake to Haslet. And she testified that S.H. had attended six different daycares across Southlake, Trophy Club, and Tarrant County. Additionally, Mother testified that she resided about one mile away from Father in Haslet, that she intended to move and had looked at options in Carrollton and Richardson, and that if she moved, S.H. would attend a school near her new residence. She estimated that moving to either one of those cities

would put her about thirty-five miles away from Father's residence in Haslet. She said that the reason she wanted to move to the Dallas area was so that her oldest daughter could be close to her father, who lived in Dallas. And she further stated that she realized that if she moved to Dallas and Father remained in Haslet, S.H. would have to commute in rush-hour traffic when it came time for her to go to school.

Father testified that before he met Mother, she had lived on separate occasions on her parents' kitchen floor, with a boyfriend, and in two apartments in Plano. He also testified that during the time they were together, Mother had relocated five times in four years, and each relocation required her older child, I.R., to change schools. Like Mother, he stated that he did not want S.H. to bounce around from house to house or school to school. He said that education was very important to him and that he and Mother had chosen the house he purchased in Haslet specifically because of the school district in which it was located. Father testified that a child's ability to continue attending the same school was very important and that he would be better able than Mother to support S.H.'s educational needs. He stated that S.H. would be attending a very good school in Haslet. And he testified that he was seeking the right to make educational decisions concerning S.H. because he and Mother had already made that determination when together they chose a residence in Haslet specifically because of the school it would allow S.H. to attend.

V. THE TRIAL COURT'S PRIMARY-RESIDENCE AND EDUCATIONAL-DECISION DETERMINATIONS

In what we construe as Mother's first issue, she argues that the trial court abused its discretion in awarding Father the exclusive right to designate S.H.'s primary residence because the evidence is legally and factually insufficient to support a finding that granting Father that right was in S.H.'s best interest. In what we construe as Mother's second issue, she argues that the trial court abused its discretion in awarding Father the exclusive right to make education decisions concerning S.H. because the evidence is legally and factually insufficient to support its finding that granting Father that right was in S.H.'s best interest. Both of these issues are interrelated, so we discuss them together.

A. EDUCATIONAL-DECISION DETERMINATION

In its findings, the trial court stated that it granted Father the exclusive right to designate S.H.'s primary residence because it had found that it was in S.H.'s best interest for Father to have the exclusive right to make educational decisions concerning her. So we turn first to consider Mother's second issue—that the trial court abused its discretion in granting Father the exclusive right to make education decisions concerning S.H. because the evidence is legally and factually insufficient to support its finding that granting Father that right was in S.H.'s best interest.

In her argument challenging that determination, Mother highlights evidence in the record that, according to her, conflicts with the trial court's finding that

granting Father the exclusive right to make educational decisions concerning S.H. was in her best interest. Mother points to the personal-data form Father completed for the court-ordered social study, noting that Father stated he believed both he and Mother should have the right to make educational decisions for S.H. She points to the court-ordered social study, which she argues demonstrates Father's instability with respect to his living situation. And she points to other evidence that she suggests shows her ability to make sound educational decisions for S.H. Because of this conflicting evidence, Mother contends the trial court's decision to award Father the exclusive right to make educational decisions concerning S.H. was arbitrary and unreasonable.

A trial court does not abuse its discretion by basing its decision on conflicting evidence. *M.M.M.*, 307 S.W.3d at 849. Moreover, if some evidence of substantive and probative character supports the trial court's determination, then no abuse of discretion occurs. *Id.* We find such substantive and probative evidence here. Based on the evidence summarized above, the trial court could have reasonably concluded that it was in S.H.'s best interest to have the stability of attending the same school rather than being transferred to different schools and that, given Mother's history of moving and transferring S.H. to a new daycare on multiple occasions, coupled with her then-present intent to move to Carrollton or Richardson, Father was more likely to provide that stability than Mother. We therefore conclude that evidence of a substantive and probative character supports the trial court's finding that granting Father the exclusive right to make

educational decisions concerning S.H. was in her best interest, and thus the trial court did not abuse its discretion in granting Father that right. *See id.* We overrule Mother's second issue.

B. PRIMARY-RESIDENCE DETERMINATION

In what we construe as Mother's first issue, she argues that the trial court abused its discretion in awarding Father the exclusive right to designate S.H.'s primary residence because the evidence is legally and factually insufficient to support a finding that granting Father that right was in S.H.'s best interest. In its August 25, 2015 rendition, the trial court ordered that "[n]either [Father nor Mother] is ordered to have the right to establish the primary residence of [S.H.]." Upon Mother's request for findings pursuant to section 153.258 of the family code, the trial court made the following finding:

> 7. Under [section 153.134(b)(1) of the family code], it is mandatory that, absent an agreed parenting plan, the Court designate the conservator who has the exclusive right [to] determine the primary residence of the child. The court finds, and only because of this statute, that [Father] should have that exclusive right[,] as the Court has found that it is in the best interest of [S.H.] for him to have the exclusive right to make educational decisions for [S.H.] after consultation or reasonable efforts to consult with [Mother].

Mother contends that this finding shows that the trial court granted Father the right to designate S.H.'s primary residence not because it found that doing so was in her best interest, but only because it concluded that the family code required it to name one of S.H.'s conservators as the conservator who had that right. *See* Tex. Fam. Code Ann. § 153.134(b)(1) (West 2014). A trial court's

decision to grant one conservator the exclusive right to designate a child's primary residence only because the family code requires it to do so, Mother argues, is arbitrary and unreasonable, and thus constitutes an abuse of discretion.

We disagree with Mother's characterization of the finding at issue. It is certainly evident that the mandatory nature of section 153.134(b)(1) of the family code factored into the trial court's decision to award either Father or Mother the exclusive right to designate S.H.'s primary residence. But it does not follow that the trial court's decision to grant that right to Father rather than Mother was arbitrary or unreasonable. Indeed, the finding at issue demonstrates the opposite. It reflects that the trial court grounded its decision to grant Father that right on its conclusion that it was in S.H.'s best interest for Father to have the exclusive right to make educational decisions for her, a conclusion that we held above was not an abuse of discretion. This rationale was neither arbitrary nor unreasonable because the designation of a child's primary residence often determines which public schools the child may attend. *See In re Cole*, No. 03-14-00458-CV, 2014 WL 3893055, at *3 (Tex. App.—Austin Aug. 8, 2014, orig. proceeding) (mem. op.) (noting that "by designating the child's 'primary residence,' the person with the right to do so has also identified in which public school the child has the right to enroll," but also cautioning against the conclusion that "the person with the exclusive right to designate the child's residence also

necessarily has the exclusive right to choose the public school the child will attend").

As she did with respect to the trial court's decision to grant Father the exclusive right to make educational decisions concerning S.H., Mother also argues that the trial court's decision to grant Father the exclusive right to designate S.H.'s primary residence was an abuse of discretion by pointing to evidence in the record that she contends supports her having that right instead of Father. We reiterate, however, that a trial court does not abuse its discretion by basing its decision on conflicting evidence. *M.M.M.*, 307 S.W.3d at 849. Moreover, if some evidence of substantive and probative character supports the trial court's determination, then no abuse of discretion occurs. *Id.* And we find such evidence here. From Father's testimony that the reason why he and Mother decided upon the specific house he purchased in Haslet was so that S.H. could attend a school in the district where the house was located; the evidence showing Mother's history of frequent relocations; Mother's testimony that she intended to move out of the school district in which Father's house was located; and Mother's testimony that she intended to enroll S.H. in a school near her new residence; the trial court could reasonably have concluded that it was in S.H.'s best interest for Father to have the exclusive right to designate her primary residence, given its finding that it was in S.H.'s best interest for Father to have the exclusive right to make educational decisions concerning her. We therefore conclude that evidence of a substantive and probative character supports a

finding that granting Father the exclusive right to designate S.H.'s primary residence was in her best interest, and thus the trial court did not abuse its discretion in granting Father that right. *See id.* We overrule Mother's first issue.

VI. THE TRIAL COURT'S WEEK-ON, WEEK-OFF POSSESSION ORDER

In what we construe as her third issue, Mother argues that the evidence with respect to the trial court's week-on, week-off possession schedule is legally and factually insufficient to rebut the family code's presumption that a standard possession order is reasonable and in the best interest of the child.

The family code provides that when, as here, a trial court appoints a child's parents as joint managing conservators, there is a rebuttable presumption that the standard possession order set forth in sections 153.3101–153.317 (1) provides reasonable minimum possession of the child for a parent joint managing conservator and (2) is in the best interest of the child. Tex. Fam. Code Ann. § 153.252 (West 2014); *In re N.P.M.*, 509 S.W.3d 560, 564 (Tex. App.—El Paso 2016, no pet.). When, however, sufficient evidence rebuts this presumption, the trial court may order a possession schedule that deviates from the standard possession order. *See* Tex. Fam. Code Ann. § 153.256 (West 2014); *N.P.M.*, 509 S.W.3d at 564. In so deviating, the trial court must be guided by the guidelines established by the standard possession order and may consider (1) the age, developmental status, circumstances, needs, and best interest of the child; (2) the circumstances of the managing conservator and of the parent named as a possessory conservator; and (3) any other relevant factor.

Tex. Fam. Code Ann. § 153.256; *N.P.M.*, 509 S.W.3d at 564. A reviewing court's holding that a trial court did not abuse its discretion implies that the evidence contained in the record rebutted the presumption that the standard possession order was reasonable and in the child's best interest. *N.P.M.*, 509 S.W.3d at 564.

As we set forth above, the trial court made thirteen findings regarding its decision to order a week-on, week-off possession schedule. In her third issue, Mother challenges only three of those findings, arguing that they fail to rebut the section-153.252 presumption. She does not, however, challenge the following findings in her argument on this issue:

> 8. The Court finds that [Mother] did not consistently encourage a co-parenting relationship with [Father] during the pendency of this case.
>
> 9. The Court finds that [Mother] attempted to deprive [Father] of possession of [S.H.] on more than one occasion during the pendency of this case and, without good cause, prevented access by [Father] with [S.H.].
>
> . . . .
>
> 11. The Court finds that there are concerns that [Mother], if she perceives that she has a superior position to [Father] insofar as [S.H.] is concerned, will withhold possession of [S.H.] from [Father] if he should disagree with her on day to day issues regarding [S.H.].

When findings of fact are filed and are unchallenged, they occupy the same position and are entitled to the same weight as a jury's verdict; they are binding on an appellate court unless the contrary is established as a matter of law or there is no evidence to support the finding. *McGalliard v. Kuhlmann*,

722 S.W.2d 694, 696 (Tex. 1986); *Inimitable Grp., L.P. v. Westwood Grp. Dev. II, Ltd.*, 264 S.W.3d 892, 902 & n.4 (Tex. App.—Fort Worth 2008, no pet.). Thus, we defer to unchallenged findings of fact that are supported by some evidence. *Tenaska Energy, Inc. v. Ponderosa Pine Energy, LLC*, 437 S.W.3d 518, 523 (Tex. 2014).

The trial court had evidence before it showing that Mother declined to accommodate Father's requested periods of possession for the summer 2014; that she interfered with his possession of S.H. on Thursday, August 29, 2014, and the weekend of August 29, 2014, through September 1, 2014; and that she was unwilling to be flexible in co-parenting S.H. with Father by, for example, allowing him extra possession of S.H. for special occasions, such as taking her to a family reunion or taking her to "some place cool" when a unique opportunity to do so arose. This evidence supports findings eight, nine, and eleven, and consequently, we defer to those findings. *See id.* at 523. And given those findings, we cannot say that the trial court abused its discretion in determining that a week-on, week-off possession schedule was in S.H.'s best interest.

Finally, Mother complains that the trial court failed to adhere to the "normal civil procedure" of having her counsel, rather than Father's counsel, draft final orders and that the trial court's final judgment does not accurately reflect the parenting plan the trial court established. However, Mother did not raise these arguments in the trial court. *See* Tex. R. App. P. 33.1. Moreover, the record reflects that Mother's counsel agreed to the form of the trial court's final

judgment. A party who agrees to the form of the trial court's order indicates that the order accurately sets forth the trial court's ruling. *See In re Cauley*, 437 S.W.3d 650, 658 (Tex. App.—Tyler 2014, orig. proceeding) (citing *Bexar Cty. Criminal Dist. Attorney's Office v. Mayo*, 773 S.W.2d 642, 644 (Tex. App.—San Antonio 1989, no writ)). We conclude, therefore, that Mother has waived on appeal her complaint regarding the form of the trial court's written judgment.

We overrule Mother's third issue.

VII. THE TRIAL COURT'S RESIDENCY RESTRICTION

In what we construe as her fourth issue, Mother challenges the sufficiency of the evidence to support the geographical restriction the trial court placed upon S.H.'s residency, contending it imposes an undue burden on her (Mother), is arbitrarily and unreasonably restrictive, and fails to take into consideration the public-policy imperatives of the family code.

In its rendition, the trial court ordered S.H.'s residences "to be located within a ten (10) mile radius of [Father's] current residence unless the parties mutually agree otherwise in writing," finding that such order was in S.H.'s best interest. And as noted earlier, the trial court also made the following findings of fact:

> 4. The Court finds that [Father and Mother] participated in the rearing of [S.H.] before the filing of this suit.
>
> 5. The Court finds that it would be in the best interest of [S.H.] for [Father and Mother] to have a geographical restriction in the establishment of a residence so as to insure the continued participation of both [Father and Mother] in the parenting of [S.H.].

> 6. The Court finds that the geographical restriction as set forth in its rendition letter is an appropriate restriction to insure the continuing participation of [Father and Mother] in the parenting of [S.H.].
>
> . . . .
>
> 8. The Court finds that [Mother] did not consistently encourage a co-parenting relationship with [Father] during the pendency of this case.
>
> 9. The Court finds that [Mother] attempted to deprive [Father] of possession of [S.H.] on more than one occasion during the pendency of this case and, without good cause, prevented access by [Father] with [S.H.].

We have already concluded that findings eight and nine are supported by some evidence. We also conclude that some evidence supports findings four, five, and six. Mother testified that she and the father of her other child, I.R., had a good co-parenting relationship but that co-parenting S.H. with Father had been unlike her good co-parenting relationship with I.R.'s father. She stated that it had been hard to co-parent S.H. with Father because she and Father were not very good with communication. Father testified similarly, stating that both he and Mother were good parents but that they did not work well together. Mother also stated that she and Father would like to improve their co-parenting of S.H. This testimony supports the trial court's finding that continued participation by both Father and Mother in parenting S.H. was in her best interest.

Of course, the trial court's findings that continued participation by both Father and Mother in parenting S.H. was in her best interest are consistent with this state's public policy not only of assuring that children will have frequent and

continuing contact with parents who have shown the ability to act in their best interest, but also of encouraging parents to share in the rights and duties of raising their child after the parents have separated. *See* Tex. Fam. Code Ann. § 153.001(a)(1), (3) (West 2014). Considering the trial court's finding that Mother did not consistently encourage a co-parenting relationship with Father during the pendency of this case, along with its finding that continued participation by both Father and Mother in parenting S.H. was in her best interest, the trial court could have reasonably concluded that placing the geographical limitation on S.H.'s residence would foster a better co-parenting relationship between Father and Mother. The geographical restriction was designed by the court to facilitate maximum involvement of both parents with minimum hardship to S.H. and the trial court's implicit conclusion that any burden on Mother's desire to move was outweighed by the benefit of the stable environment for S.H was supported by the evidence. Thus, we cannot say that the trial court abused its discretion in ordering the geographical restriction on S.H.'s residency. We overrule Mother's fourth issue.

VIII. CONCLUSION

Having overruled all of Mother's issues, we affirm the trial court's judgment. *See* Tex. R. App. P. 43.2(a).

/s/ Lee Gabriel

LEE GABRIEL
JUSTICE

PANEL: WALKER, MEIER, and GABRIEL, JJ.

DELIVERED: July 6, 2017