In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-15-00175-CV

IN THE INTEREST OF L.B., A CHILD

On Appeal from the 46th District Court
Wilbarger County, Texas
Trial Court No. 26,377, Honorable Dan Mike Bird, Presiding

December 31, 2015

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ.

To paraphrase *Jerry Mcguire*, the parties to an appeal should "help us help them." We say this in reference to the need for adequate briefing. Only the appellant filed a brief here.[1] Both parties filing briefs most certainly helps the court assure that it arrives at an accurate disposition of the appeal.

C.F., mother of L.B., appeals from the final order modifying the parent-child relationship. Under that order, C.F. and Q.B. (L.B.'s father) were appointed joint

[1] This court has had to address a growing number of appeals where the appellee failed to provide a brief. It should not be our job to do the work of an appellee; nonetheless, there is little recourse we have since we lack the authority to interpret the appellee's default as acquiescing to the arguments of the appellant.

managing conservators.[2] Q.B. was also granted the right to designate the child's primary residence without regard to any geographic limitation. C.F. argues that the trial court abused its discretion in ordering the modifications and in denying her motion for new trial. We reverse.

Modification

Here, C.F. argues that the trial court abused its discretion in finding that the best interests of the child were not furthered. Her argument is founded upon the application of the *Holley* factors as well as § 153.004(b) of the Texas Family Code.[3]

It is a well-settled proposition that a trial court is afforded great latitude in determining the best interests of a child. *In re Marriage of Stein*, 153 S.W.3d 485, 488 (Tex. App.—Amarillo 2004, no pet.). Furthermore, that decision will be reversed only when the record illustrates that the court's discretion was abused. *Id.* And, as we held in *Stein*, the failure to comply with § 153.004(b) constitutes an instance of abused discretion. *Id.* at 489 (involving the predecessor to the current § 153.004(b) and stating that "[t]he court may not appoint joint managing conservators if credible evidence is presented of a history or pattern of past or present . . . physical . . . abuse by one parent directed against the other parent").

Currently, § 153.004(b) of the Family Code provides that: "[t]he court may not appoint joint managing conservators if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by one parent directed against the other parent, a spouse, or a child, including a sexual assault in

[2] C.F. was originally designated sole managing conservator of L.B.

[3] The *Holley* factors are a non-exclusive list of indicia mentioned by the Supreme Court in *Holley v. Adams*, 544 S.W.2d 367 (Tex. 1976) and used to assess the best interests of the child.

violation of Section 22.011 or 22.021, Penal Code, that results in the other parent becoming pregnant with the child." TEX. FAM. CODE ANN. § 153.004(b) (West 2014). The record before us contains Q.B.'s acknowledgment that he was arrested, convicted, and imprisoned for committing family violence. The victim of the violence was C.F., that is, his previous spouse and parent of L.B. So too did he acknowledge being imprisoned for injuring a child. Being acknowledged by Q.B., the foregoing is credible evidence of a history of past physical abuse by one parent (that is, Q.B.) directed against the other parent and a child. *See In re Stein*, 153 S.W.3d at 489 (stating that "although a single act of violence or abuse may not constitute a pattern, it can amount to a history of physical abuse"). Consequently, § 153.004(b) prohibited the trial court from appointing joint managing conservators at bar, and because it did so, it abused its discretion and erred. *Id.* The error is harmful because it created a conservatorship prohibited by statute and to which neither C.F. nor L.B. could be subjected.

The order modifying the parent-child relationship is reversed, and the cause is remanded. Having reversed the order, C.F.'s second issue has been rendered moot.

Brian Quinn
Chief Justice

Campbell, J., concurs in the result.