TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-15-00130-CV

Bryan Douglas Forbes, Appellant

v.

Sarah Ustane Forbes, Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 345TH JUDICIAL DISTRICT
NO. D-1-FM-10-002896, HONORABLE ORLINDA NARANJO, JUDGE PRESIDING

NO. 03-15-00337-CV

Bryan Douglas Forbes, Appellant

v.

Sarah Ustane Forbes, Appellee

FROM THE DISTRICT COURT OF TRAVIS COUNTY, 345TH JUDICIAL DISTRICT
NO. D-1-FM-10-002896, HONORABLE KARIN CRUMP, JUDGE PRESIDING

MEMORANDUM OPINION

Pro se appellant Bryan Douglas Forbes appeals from a protective order entered against him in an ongoing child custody proceeding (cause number 03-15-00130-CV) and from an order modifying the terms of child custody and visitation and an order denying his motion to vacate the protective order (cause number 03-15-00337-CV). We affirm the trial court's orders.

Factual and Procedural Background

Bryan and appellee Sarah Ustane Forbes were married in 2000 and had two children, daughter T.F., born in 2006, and son H.F., born in 2009. In 2010, Sarah filed for divorce, and in October 2011, the trial court signed a final decree of divorce. Sarah and Bryan were named joint managing conservators, and Sarah was given the right to determine the children's primary residence. The trial court found that there was credible evidence that Bryan was suffering from mental-health problems but that Bryan denied he had mental-health issues and refused to engage in psychotherapy, group therapy, or psychiatric treatment. The court found that Bryan had not followed recommendations from the court-appointed psychologist, who "strongly recommended" individual and group therapy and psychiatric treatment. The court ordered supervised visitation and enjoined Bryan from going near the children's schools other than for special events. The court provided that Bryan could seek review after one year if he engaged in individual therapy and obtained psychiatric treatment.

In February 2013, Sarah obtained a protective order that allowed Bryan to call the children on Saturday afternoons, to continue with supervised visitation, and to attend special school events. That order was modified in August 2014 to allow Bryan supervised visitation every other week and to cease the court-ordered weekly phone calls between Bryan and the children. In October 2014, the order was again modified to suspend Bryan's visitation and bar him from attending school activities or having other contact with the children. On February 12, 2015, the trial court signed a new protective order barring Bryan from having contact with the children or Sarah; unless it is extended by the court, that order will expire in February 2017.

In late 2014, Sarah sought to be named sole managing conservator, and the trial court held a hearing on that motion on March 30, 2015. At that time, Bryan had not had contact with his children since mid-October 2014. Bryan testified about his conflicts with Tania Glenn & Associates, the agency initially given the duty of supervising his visitations, and said that his visits were terminated when he could not afford to pay $180 for each three-hour visit. After Tania Glenn declined to work with Bryan any longer, he and Sarah started using LifeSteps for supervised visits. He had one visit, but when a mix-up occurred about the location of the second visit, which he testified should have resulted in a lower supervision fee, he asked to speak to a supervisor, was told to calm down, and then was told that the visit was canceled and that he had to leave. Bryan next used Planet Safe for visitation supervision. He testified that Planet Safe's employees were nice and that the company charged only $20 a visit, but he said that Planet Safe was "for people that have committed child abuse or spousal abuse," and that by agreeing to it, he felt there was a "connotation" that he was "of that crowd." He said Planet Safe visits took place in a locked room, in a locked building, with overly bright fluorescent lights and that T.F. came to dislike the visits because she did not like the setting and because she felt like H.F. was getting all the attention. He said he asked whether he could alternate having one-on-one visits, but nothing ever came of his request.

Bryan admitted that in May 2012, he received a criminal trespass notice telling him to stay away from the Tania Glenn offices; police records related that Tania Glenn's director said Bryan was harassing employees and was calling and emailing despite being notified that the agency would no longer work with him. Bryan also admitted that he was arrested in 2013 for violating the protective order; that in February 2014, he was told he was not allowed to return to the

U.S. Attorney's office building; and that in October 2014, he was told he could not come back to the Office of Parental Representation.

Bryan testified about his attempts to seek mental-health treatment. He said that he was uncomfortable with psychologist Stephen Thorne, who evaluated him in relation to the original divorce decree, so he went to psychiatrist Brian Earthman, who diagnosed him as having adult attention deficit disorder. Dr. Earthman recommended Adderall or Ritalin, but Bryan refused, saying he was uncomfortable taking medication and wanted to do therapy instead. Bryan could not afford Dr. Earthman's hourly fee, so he went to third doctor twice but again could not afford to continue those sessions. Bryan then went twice to a counselor at the Austin Family Institution, but stopped because he thought "this is just silly." Bryan was also evaluated by the county's mental-health department, who told him that he was not suffering from anything they could treat and that he would have to pay for private treatment. Most recently, Bryan had been seeing a therapist at Bluebonnet Trails Community Services.

Therapist Mark Viator testified that he had worked with T.F. since early 2011. He said that T.F. has vacillated in her feelings of whether she wanted to see her father and that he had not seen any ill effects since contact was ceased about seven months earlier. Viator said T.F. "loves [Bryan], she wants to spend time with him, but she feels a little conflicted because it's been so problematic at times and she has seen, you know, some of his angry outbursts. So there's some fear there." T.F. also thought Bryan sometimes gave H.F. more attention than he gave her. Viator testified, "My chief concern is just the level of conflict that has remained at a very high level from the period of the divorce proceedings up to now. Her interactions with her dad when they're together are not—I haven't seen them as problematic. It's everything that happens around that. It's the fact

that—you know, from what I've witnessed over time, dad has not respected the boundaries that are set, the personal boundaries and the legal boundaries, you know." Viator believed it would be in T.F.'s best interest to have visits with Bryan if the conflict between Bryan and Sarah abated, but he had "serious doubts" about whether Bryan was able to discontinue the conflict.

Marilyn Holloway, director of H.F.'s preschool (the same preschool T.F. attended before beginning elementary school), testified that in 2013, before the protective order was signed barring him from contacting the children's schools, Bryan would call to speak to his children multiple times a day. When Holloway asked him to stop calling so often because it was disrupting the children's schedules and keeping their teachers from other tasks they had to perform, Bryan started reporting her to the Better Business Bureau and calling her repeatedly. Holloway also said that H.F.'s behavior tended to worsen during periods in which he had visitation with Bryan and that H.F. would act aggressively toward others and refuse to follow directions.

Sarah testified about Bryan's numerous violations of court orders, usually related to him going to T.F.'s school or calling, emailing, and texting Sarah after being ordered not to do so. She said T.F. was asked to leave one preschool because the staff felt threatened and intimidated by Bryan. Sarah testified that in the eighteen months between the second attempted visit at LifeSteps and the beginning of visits at Planet Safe, Bryan sent her multiple emails and texts seeking visitations. This concerned Sarah because "[i]t was as if he wasn't able to absorb what the Court's orders had said and have any recognition of what had been going on with the children and with the two visitation companies." She also described one call he made in which he said he was in a park waiting for her and the children and then got "a very dark tone to his voice, and then he carried on rambling, talking about the court system, talking about the legal situation that was going on

between us, and—and was ranting. I did feel concern with that phone call." Sarah said she sought the protective order in January 2013 for multiple reasons, including: he sent her over 400 emails in one year; he came to her house, blocked her from shutting the door, shouted "happy birthday" to H.F., whose birthday was two months earlier, and threw something over her head into the house; and he came to the house again on Christmas day. Sarah testified about the Christmas incident as follows:

> I'd arranged for the children's grandparents to come and visit. I have tried to keep a relationship going with the grandparents. They came to visit and . . . they asked if they could take the children out for a little walk, just outside the house, up and down the street. I felt that that was okay and so I carried on cooking Christmas dinner. The next thing I knew was my ex-mother-in-law coming through the house—through the door crying with her hands to her head saying, "Sarah, I'm sorry, I'm sorry, I'm sorry." The children were—I ran outside and saw [Bryan] leading the children to the car. I didn't know what was going on, but knew that [Bryan] was not supposed to be there, and I did not have that control because the children were over there with him. I asked the children to go inside. . . . I'd called the police because per the injunction he wasn't allowed to be that close to my property. The police came and arrested him.

Sarah said that during the time that Bryan was allowed weekly phone calls with the children, he disregarded the restrictions on when he was allowed to call, and that T.F. would get very distressed because Bryan talked inappropriately about the case and did not listen to her. She also testified that, from March 2013 to October 2013, when the children were having regular visits with Bryan at Planet Safe, the children's behavior changed for the worse: T.F. was initially excited about having visitations but gradually grew withdrawn and uncommunicative until she finally started telling Sarah she did not want to go to visits; T.F. came out of the later visits "sobbing, and she would sob the whole way home because she was so torn. She loved him, and yet she didn't want to see him"; H.F. started acting out at preschool; and both children started having trouble sleeping

through the night. Sarah therefore decided in October 2014 to ask for the supervised visits to be halted. Since the visits and other contact have stopped, the children are stable again, they are sleeping through the night in their own beds, and their behavior and moods have improved.

At the conclusion of the hearing, the trial court stated that it did not want to deny Bryan all access to the children. It ruled that Bryan would be allowed to have visitation, starting with supervised visitation every other week, increasing in frequency and duration throughout 2015 provided that Bryan continued with regular individual and family therapy sessions. The court ordered Sandra Aguilar & Associates to provide the family therapy and to supervise the visits, noting that Aguilar has a sliding scale for fees, but provided that the parties could agree on another supervisor if they wished. The court and Sarah's attorney cautioned Bryan that he might not get to see the children immediately because the children might have to see the family therapist separately from Bryan but during his periods of possession. Finally, the court left in place the protective order's provisions related to the children's schools until its expiration, at which time Bryan "should be able to go to the school during school activities any time you want"; in the meantime, Bryan was only allowed to attend special school events that occurred during his possession periods.

On April 22, 2015, the trial court signed an order conforming with its oral rulings. The order appointed Sarah as sole managing conservator, named Bryan possessory conservator, and provided that Bryan could attend only special activities at the children's school during his periods of possession and only if he gave notice. Bryan was ordered to participate in individual therapy at Bluebonnet once a week through June, at least once a month from July through December 2015, and then to continue until his successful discharge by the treating professional. He was also ordered to participate in family therapy with Aguilar, and any family sessions that required the children's

participation had to occur during Bryan's possession periods. Bryan was ordered to provide written documentation of his therapy sessions from Bluebonnet.

If Bryan complied with the requirements related to therapy, he would be permitted to have visitation with the children every other Saturday, supervised by Aguilar or another provider agreed to by the parties. The order set out a schedule that scaled up over time the number of visits Bryan would be permitted and warned that if a therapist or visitation supervisor discontinued services due to Bryan's behavior, Bryan's possession and access would cease until further court order. If, as of January 1, 2016, Bryan had met all conditions set out in the order, he was to have standard possession with supervised exchanges. Bryan was made responsible for the costs of supervised visitation, supervised exchanges, and individual and family therapy.

Discussion

In his filings in the two cause numbers,[1] Bryan complains that he cannot afford Aguilar's services and asks to be able to use Bluebonnet or another visitation supervisor called LifeWorks for supervised visitations and for family counseling.[2] He also seeks to have his visitations

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[1] Bryan's issues are somewhat difficult to discern, and he generally fails to present substantive arguments or citations to authorities or the record. *See* Tex. R. App. P. 38.1(i) (briefing must include "argument for the contentions made, with appropriate citations to authorities and to the record"); *see also Lee v. Kaufman*, No. 03-10-00148-CV, 2011 WL 3796175, at *3 (Tex. App.—Austin Aug. 26, 2011, no pet.) (mem. op.) (issue lacked "arguments, legal authority, or citations to the record" and was therefore waived). Although we attempt to hold pro se appellants to the same standards as parties represented by counsel, in the interest of justice we will address Bryan's complaints as best we can. *See Stewart v. Texas Health & Human Servs. Comm'n*, No. 03-09-00226-CV, 2010 WL 5019285, at *1 n.1 (Tex. App.—Austin Dec. 9, 2010, no pet.) (mem. op.).

[2] Bryan asks that Planet Safe be used for exchanges on dates when the children cannot be picked up from and returned to their after-school or summer care providers.

changed from being on Saturday and, eventually Sunday under the increasing schedule of visits, to Tuesday and, eventually, Wednesday, stating that those entities are only available during business hours on weekdays. He wants visitation to occur after school and proposes that, after each visitation period, the children would be returned to their after-school provider until Sarah can pick them up, thus allowing the parents to avoid being near each other and easing the transitions for the children. He also requests that he be named a joint managing conservator, that he be named the children's after-school and summer daycare provider, and that he be given the right to consent to the children's psychiatric and psychological care. As for the protective order, Bryan asks to be allowed to call or mail the children as often as he believes is "reasonably necessary for pursuit of happiness and peaceful assembly family visitation planning"; to be allowed to attend all school activities; and for his parents or sister to supervise visitations. Finally, he asserts that Aguilar has made unreasonable demands and is requiring him to sign a contract that violates his rights, questions his innocence, and impairs his family's functioning.[3]

In reading all of Bryan's filings as liberally as possible, his complaints seem to fall into the general areas of (1) contesting the trial court's modification to the conservatorship

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[3] Bryan attached this "contract," titled, "Supervised Visitation Guidelines," to his filings. It simply sets out Aguilar's policies and fees and cautions the signing parent that failure to comply with the guidelines could result in the termination of visitations. Bryan has also attached confirmations from Bluebonnet and LifeWorks that he has been attending regular counseling sessions and emails between him and Aguilar in which he seems to be asking Aguilar to charge a lower rate or let another agency supervise visitations. These documents were not made a part of the record and are not properly before this Court. *See Guajardo v. Conwell*, 46 S.W.3d 862, 864 (Tex. 2001) (not considering document attached to petition but not contained in clerk's record); *Dashtgoli v. Eye Care of Austin, P.A.*, No. 03-06-00744-CV, 2008 WL 2852286, at *3 (Tex. App.—Austin July 23, 2008, no pet.) (mem. op.) ("We cannot consider documents attached to briefs that were not before the trial court and are not part of the record.").

relationships, which named Sarah as sole managing conservator and Bryan as possessory conservator; (2) contesting the trial court's order providing that Aguilar should be the entity charged with supervising the visitations and providing family therapy; and (3) asserting that the protective order was improperly restrictive in limiting the contact he may have with the children and in barring him from going to the children's school other than for special events.

A trial court may modify conservatorship and possession if the petitioning parent shows that the circumstances of the child, a conservator, or some other affected party have materially and substantially changed and that modification would be in the child's best interest. Tex. Fam. Code § 156.101. We review a trial court's modification of conservatorship for an abuse of discretion. *Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex. 1982); *Zeifman v. Michels*, 212 S.W.3d 582, 587 (Tex. App.—Austin 2006, pet. denied). The trial court observes the witnesses' demeanor and personalities and does not abuse its discretion if some substantive and probative evidence supports the decision. *Zeifman*, 212 S.W.3d at 587. There is a rebuttable presumption that the family code's standard possession order is in a child's best interest. Tex. Fam. Code § 153.252. However, if the standard order would be unworkable or inappropriate, the trial court may exercise its discretion in deviating from the standard order. *See id.* §§ 153.253 ("The court shall render an order that grants periods of possession of the child as similar as possible to those provided by the standard possession order if the work schedule or other special circumstances of the managing conservator, the possessory conservator, or the child, or the year-round school schedule of the child, make the standard order unworkable or inappropriate."), .256 (in deviating from standard order, trial court should consider child's age, developmental status, circumstances, needs, and best interest; parents' circumstances; and other relevant factors); *In re S.A.H.*, 420 S.W.3d 911, 930-31 (Tex.

App.—Houston [14th Dist.] 2014, no pet.) (mother did not show trial court abused discretion in deviating from standard order).

The evidence was that Bryan showed poor judgment with regard to boundaries, calling, emailing, and texting Sarah to the point that she felt compelled to seek a protective order, doing the same to the children's preschool, a visitation supervisor, and other entities to the point that he was asked to stop contacting the preschool, was issued a criminal trespass notice at the visitation agency, and was asked to leave the premises of at least two other places of business. At the time of the hearing, he had not yet shown that he would regularly pursue mental-health treatment; instead, he had a history of seeing a doctor or therapist once or twice and then discontinuing treatment and seeking a new provider. Finally, there was evidence that the children's behavior changed for the worse during periods of regular visitation and that Bryan's behavior caused T.F. emotional distress.

Based on this record, we cannot hold that the trial court abused its discretion in deciding that Bryan should be named possessory conservator or in limiting Bryan's visitations with his children, at least at first, with a scaling-up of contact over time, if Bryan showed he was regularly seeking mental-health treatment and was able to comply with the terms of the modification and protective orders. As for his requests about naming a new visitation supervisor or family therapist or about changing the date or times of his visits, those requests must be addressed by the trial court. We note, however, that the modification order allowed the parties to "agree to use another supervised exchange provider"[4] and that the trial court stated that if a problem arose with Aguilar not wanting

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[4] The trial court made similar oral statements, expressing an intent that the parties use a "mutually agreed upon supervisor." Planet Safe and LifeWorks were mentioned as alternatives, and Sarah asked repeatedly to use Planet Safe, but Bryan stated that he wanted to explore Aguilar's offerings because he did not like Planet Safe's environment. The court noted Aguilar's sliding scale

to be the supervisor, the parties should reset the case on the court's docket. Finally, considering the evidence about how disruptive Bryan was for the children's schools, we cannot hold that it was an abuse of discretion to restrict Bryan from school activities except for special events during his periods of possession while the protective order is in effect.

Conclusion

We have reviewed the record and have found no abuse of discretion by the trial court in either its modification order or in the protective order. To the contrary, the trial court seems to have tried to accommodate Bryan and to assist him in eventually regaining regular and increasing contact with his children. Any concerns Bryan has about Aguilar as source for therapy or visitation supervision need to be raised with the trial court, which is in a better position to determine who would be an appropriate service provider. Similarly, Bryan's proposals about changing the time or date of his visitations must be addressed by the trial court. We affirm the trial court's modification order and the protective order.

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David Puryear, Justice

Before Justices Puryear, Goodwin, and Bourland

Affirmed

Filed: February 12, 2016

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but stated, "[I]n the event that Ms. Aguilar is either too expensive or inconvenient for the father, the default will be Planet Safe as long as they are willing and able to facilitate those supervised visits."