AFFIRM; and Opinion Filed November 16, 2016.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-15-01141-CV

IN THE INTEREST OF M.J.K., A CHILD

On Appeal from the 469th Judicial District Court
Collin County, Texas
Trial Court Cause No. 469-55553-2009

MEMORANDUM OPINION

Before Justices Fillmore, Brown, and Richter[1]
Opinion by Justice Richter

Appellant Rieko King (Mother) filed a petition to modify a prior order in this suit affecting the parent-child relationship. Appellee James King (Father) filed a counter-petition to modify. Following mediation and arbitration, the trial court signed an "Agreed Order in Suit to Modify Parent-Child Relationship." Mother appeals, complaining of the order's restrictions on international travel. We affirm.

BACKGROUND

Mother and Father, formerly married, are the parents of M.J.K. Mother is a native of Japan, and Mother's parents and other relatives still reside there. Mother's motion to modify sought "additional orders for international travel with the child" as well as other relief. Although

[1] The Hon. Martin Richter, Justice, Court of Appeals, Fifth District of Texas at Dallas, Retired, sitting by assignment.

the decree Mother sought to modify is not included in the appellate record, the trial court's findings of fact and conclusions of law in this proceeding reflect:

- an agreed final decree of divorce was signed on February 28, 2008, and is the order the subject of this modification suit (Finding of Fact No. 2);
- the agreed final decree of divorce "ordered that the child could not travel outside of the United States of America without the written consent of the parent conservator not traveling with the child" (Finding of Fact No. 9); and
- the agreed final decree of divorce "ordered that the child's passport be held by a third party" (Finding of Fact No. 10).

The parties entered into a mediated settlement agreement (the "MSA") on April 22, 2015. The parties expressly agreed that the MSA "shall be binding on the parties and shall not be subject to revocation." The MSA addresses international travel in paragraphs 6, 13, and 23:

- any parent traveling with the child internationally will give at least six weeks advance notice to the other party (paragraph 6);
- a named third party "will continue to hold child's passport" (paragraph 13);
- "Child will be allowed to travel out of US, beginning summer (June 1) 2016, **and TFC provisions for said travel (153.500–503 TFC) are applicable**" (paragraph 23) (emphasis added).

In the MSA, the parties also agreed that "a final order in this case will need to contain more extensive language than is contained in this agreement." They agreed that counsel for Father would prepare the final judgment, and agreed to "use the appropriate forms as set out in the most recent edition of the *Texas Family Law Practice Manual* in drafting the order(s) necessary." The parties appointed the mediator, Coye Conner, Jr., "to arbitrate any disputes which may hereafter arise with regard to the interpretation of this agreement or the language or form of the decree." They agreed that "the arbitrator shall have the exclusive authority to add any and all language for clarification, enforceability, indemnification and/or to effectuate the intent and agreement of the parties, without reservation, and the language inserted by the arbitrator shall be binding on the parties."

Although the record does not reveal the substance of any dispute presented to the arbitrator under the MSA, the record does include an "Arbitration Decision and Award" dated August 26, 2015. The award recites that "unresolved issues were submitted to the arbitrator," and that the agreed order drafted by Father's counsel conformed to the MSA with three exceptions. Without stating the substance of the exceptions, the arbitrator ordered Father's counsel to "make the revisions as agreed to" in Father's written "Response to Issues Submitted for Arbitration," paragraphs 8, 9, and 12. The arbitrator found that with those changes, the agreed order presented by Father to the court conformed to the MSA.

The parties then proceeded to a hearing on Father's motion to enter an "Agreed Order in Suit to Modify Parent-Child Relationship." The proposed order included the following paragraph in a section entitled "Risk of International Abduction":

> IT IS ORDERED that [MOTHER] post a bond or deposit with the Court registry security in the amount of $_____ as a condition precedent to being allowed to remove the child from the United States as set forth herein. This bond shall be forfeited to [FATHER] in the event that [MOTHER] does not timely bring the child back to Texas and turn over possession to [FATHER] when his possession resumes.

At the hearing, Father's counsel provided the court with copies of emails between his office and the arbitrator's office regarding the amount of the bond to be inserted in the blank. Mother's counsel objected that "there's no provision—specific provision in the MSA that supports the setting of a bond." Mother's counsel also objected to the inclusion of the bond amount—$65,000, according to the emails—in the trial court's order. The trial court overruled Mother's objections, inserted "$65,000" in the blank, and signed the order on August 27, 2015.

After administrative transfer of the case,[2] the trial court signed findings of fact and conclusions of law. Findings 14 through 21 provide:

[2] This case was originally filed in the 199th Judicial District Court of Collin County, but was among the family law cases transferred to the 469th Judicial District Court of Collin County effective September 1, 2015.

> 14. The Mediated Settlement Agreement specifically stated that Section 153.500-503 of the Texas Family Code apply in this case.
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> 15. The Mediated Settlement Agreement provided for all disputes arising out of that agreement to be submitted to arbitration with Coye Conner.
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> 16. Coye Conner issued an arbitration award that set forth his decision on the disputed issues that was subsequently filed with the Court.
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> 17. Coye Conner submitted a supplemental award that was contained in an email dated 8/27/2015 provided [sic] his decision on the amount of the bond to be included in the Order. That email was also filed with the Court.
>
> 18. The Court finds that there remains a continued threat to the child of international abduction by her mother and that no material and substantial change has occurred to lift the travel restrictions for the child.
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> 19. The Court finds that there needs to be continued restrictions placed on the international travel of the child with her mother for the safety and welfare of the child.
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> 20. The Court finds that the restrictions imposed by the Arbitration Award and the subsequent Order are reasonable and necessary for the child's protection.
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> 21. The Court finds that the amount of $65,000 is a reasonable bond amount to set in the event that the child is not brought back to the United States by her mother and father is forced to litigate custody and possession of the child in Japan.

Conclusion of law 6 provides that "[i]t is not in the best interest of the child for [M.J.K.] to travel out of the United States of America with [Mother] without a large bond."

Mother requested additional findings of fact and conclusions of law regarding international travel that the trial court did not sign. Mother now appeals the trial court's August 27, 2015 "Agreed Order in Suit to Modify Parent-Child Relationship."

APPLICABLE LAW AND STANDARD OF REVIEW

A trial court may modify a conservatorship order if modification would be in the child's best interest and "the circumstances of the child, a conservator, or other party affected by the order have materially or substantially changed" since the previous order. TEX. FAM. CODE ANN. § 156.101(a) (West 2014); *In re H.N.T.*, 367 S.W.3d 901, 904 (Tex. App.—Dallas 2012, no pet.).

The moving party must show a material and substantial change in circumstances; otherwise, the motion to modify must be denied. *In re H.N.T.*, 367 S.W.3d at 904.

A court may refer a suit affecting the parent-child relationship to mediation or to arbitration. *See* TEX. FAM. CODE ANN. § 153.0071 (a), (c) (West 2014). A mediated settlement agreement is binding on the parties if the agreement provides "in boldfaced type or capital letters or underlined" that the agreement is not subject to revocation, is signed by each party to the agreement, and is signed by the party's attorney "if any, who is present at the time the agreement is signed." TEX. FAM. CODE ANN. § 153.0071(d). A trial court has only limited discretion to deny entry of judgment on a mediated settlement agreement that complies with the statutory requirements. *In re Lee*, 411 S.W.3d 445, 450 (Tex. 2013) (court may refuse to enter judgment on MSA on best interest grounds only when court also finds family violence elements met); *see also In re S.K.D.*, No. 05-11-00253-CV, 2014 WL 3058452, at *2 (Tex. App.—Dallas Jul. 8, 2014, no pet.) (mem. op.) ("It is clear that the MSA statute was enacted with the intent that, when parents have agreed that a particular arrangement is in their child's best interest and have reduced that agreement to a writing complying with section 153.0071, courts must defer to them and their agreement.").

If the parties agree to binding arbitration, the court "shall render an order reflecting the arbitrator's award" unless the court "at a non-jury hearing" determines the award is not in the best interest of the child. TEX. FAM. CODE ANN. § 153.0071(b). The party seeking to avoid rendition on the arbitrator's award bears the burden of proving that the award is not in the child's best interest. *Id.*

Chapter 153, subchapter I of the Texas Family Code addresses "prevention of international parental child abduction." *See* TEX. FAM. CODE ANN. §§ 153.501–153.503 (West 2014); *see also In re Sigmar*, 270 S.W.3d 289, 296–97 (Tex. App.—Waco 2008, orig.

proceeding) (discussing legislative history). These sections of the family code allow a trial court to determine whether there is a risk of international abduction of a child by a parent, and to take action to prevent international abduction, including "order[ing] the parent to execute a bond or deposit security in an amount sufficient to offset the cost of recovering the child if the child is abducted by the parent to a foreign country." TEX. FAM. CODE ANN. §§ 153.501–502; 153.503(6).

We review a trial court's order on a petition to modify conservatorship for an abuse of discretion. *In re W.C.B.*, 337 S.W.3d 510, 513 (Tex. App.—Dallas 2011, no pet.). A trial court abuses its discretion when it acts arbitrarily and unreasonably or without reference to guiding principles. *Id.* (citing *In re A.B.P.*, 291 S.W.3d 91, 95 (Tex. App.—Dallas 2009, no pet.)). In family law cases, the abuse of discretion standard of review overlaps with traditional sufficiency standards of review. *Id.* As a result, legal and factual insufficiency are not independent grounds of reversible error, but instead are factors relevant to our assessment of whether the trial court abused its discretion. *Id.* To determine whether the trial court abused its discretion, we consider whether the trial court had sufficient evidence upon which to exercise its discretion and whether it erred in its exercise of that discretion. *Id.*

DISCUSSION

Mother asserts three issues. She contends the trial court abused its discretion by entering an order (1) with terms not agreed to in the MSA; (2) setting a bond that was not included in the MSA or the arbitration award; and (3) granting relief that Father did not seek.

We note that Mother does not challenge the enforceability of the MSA itself. The MSA meets the statutory requirements for an agreement that is binding upon the parties. *See* TEX. FAM. CODE ANN. § 153.0071(d). Father, therefore, was entitled to judgment on the MSA. *See In re Lee*, 411 S.W.3d at 450; *In re S.K.D.*, 2014 WL 3058452, at *2; *see also* TEX. FAM. CODE

ANN. § 153.0071(e) (if MSA meets statutory requirements, party is entitled to judgment on MSA "notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law"). Mother's issues arise from her contention that the trial court's order includes additional terms not included or agreed to in the MSA.

A. Requirement of bond

Mother's first and second issues challenge the portion of the trial court's order requiring her to post a $65,000 bond as "as a condition precedent to being allowed to remove the child from the United States as set forth herein." The bond requirement is included in a section of the order addressing "risk of international abduction," in which the trial court found "that credible evidence has been presented that there is a potential risk of international abduction of M.J.K. by [Mother]." *See* TEX. FAM. CODE ANN. § 153.503(6) (court may order parent to execute bond or deposit security to offset cost of recovering child if child abducted by parent to foreign country).

The parties' MSA states, in a provision addressing international travel, that "TFC provisions for said travel (153.500–503 TFC) are applicable." Mother does not dispute that the MSA includes this provision.[3] She argues, however, that "[t]his language, though included in the MSA, has no bearing on the actual provisions for travel that are agreed upon by the parties regarding international travel . . . . [and] has no actual effect for purposes of the language to be included in the final order." She argues there is nothing in the MSA indicating that she has engaged in any behavior creating any risk of international abduction, and the MSA does not reflect that the provisions on international travel should apply only to her and not to Father.

[3] Mother correctly points out that there is no section 153.500; the relevant family code sections are numbered 153.501, 153.502, and 153.503. But the erroneous reference to a section "153.500" does not negate or render ambiguous the parties' express agreement that the relevant sections of the family code will govern M.J.K.'s international travel with a parent, where the MSA also cites the correct statutory sections, and does so in a paragraph addressing risk of international abduction. Mother does not argue, and we do not conclude, that the MSA is reasonably susceptible to more than one meaning. *See, e.g., Nicol v. Gonzales*, 127 S.W.3d 390, 394 (Tex. App.—Dallas 2004, no pet.) (contract is ambiguous if it is reasonably susceptible to more than one meaning; determination of ambiguity is question of law).

Mother also argues that Conner, acting either as mediator or arbitrator, had no authority to make the findings of fact required in order to impose any of the "abduction prevention measures" listed in family code section 153.503. She contends that only the trial court could make the necessary findings, and the trial court did not do so here. She concludes that by rendering the order including the bond requirement, the trial court erroneously supplied "additional terms to which the parties have not agreed," citing *Haynes v. Haynes*, 180 S.W.3d 927, 930 (Tex. App.—Dallas 2006, no pet.).

We reject Mother's arguments for several reasons:

- they are contrary to her express agreements;
- Mother did not meet her burden to prove that the international travel restrictions in the 2008 decree warranted modification;
- we have no record of either the substance of the disputes presented to the arbitrator or his resolution of them;
- Mother does not challenge the arbitrator's award on the ground that it is not in the child's best interest;
- the trial court was required to defer to the parties' agreements in the MSA; and
- the trial court's order did not modify the MSA.

We discuss these reasons below.

In her motion to modify, Mother sought specific relief regarding international travel with the child. Although the 2008 decree Mother sought to modify is not in the appellate record, the trial court's findings of fact and conclusions of law in this proceeding reflect that the 2008 decree included restrictions on the child's international travel with one of the parents. The trial court also expressly found in this proceeding that "there remains a continued threat to the child of international abduction by her mother and that no material and substantial change has occurred to lift the travel restrictions for the child." Mother does not contend that she met the burden of proving a material and substantial change in circumstances that would warrant modification of

the 2008 decree. *See In re H.N.T.*, 367 S.W.3d at 904. She argues nonetheless that the trial court was required to hear evidence and make findings before any of the abduction prevention measures of family code section 153.503 could be applied to international travel with the child.

In the MSA, however, Mother expressly agreed:

- to binding mediation of the parties' disputes arising from their motions to modify;
- that the MSA is binding and not subject to revocation;
- international travel with M.J.K. is governed by the family code sections on prevention of international parental child abduction, including section 153.503, which includes in its list of prevention measures a requirement that a parent post a bond or security for international travel with the child;
- the final order incorporating the MSA's terms would "need to contain more extensive language";
- Father's counsel would draft the order using forms from the Texas family law practice manual;
- any disputes about the interpretation of the MSA or the language or form of the decree to be drawn and presented to the court must be submitted to arbitration by the mediator; and
- the arbitrator's decision is not subject to appeal.

As we have explained, if an MSA meets the requirements of family code section 153.0071, a party is entitled to judgment "notwithstanding Rule 11, Texas Rules of Civil Procedure, or another rule of law." *See In re S.K.D.*, 2014 WL 3058452, at *2. "[W]hen parents have agreed that a particular arrangement is in their child's best interest and have reduced that agreement to a writing complying with section 153.0071, courts must defer to them and their agreement." *Id.* (citing *In re Lee*, 411 S.W.3d at 455). When considering a motion to enter judgment on a properly-executed MSA, even a "broad best interest inquiry" by the trial court is foreclosed, "ensuring that the time and money spent on mediation will not have been wasted and that the benefits of successful mediation will be realized." *Id.* The family code does permit a best interest inquiry when the trial court considers a challenge to an arbitrator's award, but here,

Mother made no such challenge. *See* TEX. FAM. CODE ANN. § 513.0071(b) (party seeking to avoid rendition of order based on arbitrator's award bears burden of proof that award not in child's best interest).

And as we explained in *Haynes*,

> The law does not require the parties to dictate and agree to all of the provisions to be contained in all of the documents necessary to effectuate the purposes of the agreement; it only requires the parties to reach an agreement as to all material terms of the agreement and prevents the trial court from supplying additional terms to which the parties have not agreed.

Haynes, 180 S.W.3d at 930 (quoting *McLendon v. McLendon*, 847 S.W.2d 601, 606 (Tex. App.—Dallas 1992, writ denied)). Here, the parties' MSA reflects their agreement on material terms, including their express agreement that specific statutory provisions will govern their international travel with the child. As in *Haynes*, the trial court's order did not modify the MSA. *See id.* at 930–31.

We reached a similar conclusion in *In the Interest of C.W.W.*, No. 05-15-00960-CV, 2016 WL 3548036, at *3–4 (Tex. App.—Dallas Jun. 28, 2016, no pet.) (mem. op.), interpreting an MSA addressing a father's obligation to pay his child's private school tuition. The trial court's order did not deviate from the parties' unambiguous agreement that they share the cost of the child's tuition in future years, and we rejected father's argument to the contrary. *See id.* And in *In re Wolfe*, No. 05-14-01279-CV, 2016 WL 772640, at *5–6 (Tex. App.—Dallas Feb. 29, 2016, no pet.) (mem. op.), we reversed an order that failed to render judgment in accordance with the parties' MSA regarding the right to designate the child's primary residence.

In contrast, in *In the Interest of H.W.G.*, No. 05-15-00114-CV, 2016 WL 1179495, at *4 (Tex. App.—Dallas Mar. 25, 2016, no pet.) (mem. op.), we concluded the trial court "substantially altered" the terms of the parties' MSA requiring that mother's limited possession of the child would occur in four incremental stages, subject to drug testing requirements. Citing

the child's "emotional and mental stability," the trial court found that mother satisfied the final stage even though there was no evidence to support such a finding. *Id.* at *3. We concluded that under family code § 153.0071, the trial court was required to render judgment on the MSA, and erred by substantially altering the terms of the parties' agreement. *Id.* at *4. Here, there is no substantial alteration of the parties' agreement that their international travel with the child will be governed by specific statutory provisions on prevention of international parental child abduction. *See* TEX. FAM. CODE ANN. § 153.501–153.503.

Mother and Father agreed that the arbitrator's decision "**SHALL BE BINDING AND NOT SUBJECT TO APPEAL**." We have no record of the issues presented to the arbitrator or his resolution of them. The "Agreed Order" submitted by Father's counsel was approved by the arbitrator. The order expressly provided for a bond and left a blank for the amount, which was then supplied by the arbitrator. The trial court expressly found that the arbitrator submitted a supplemental award contained in an email that "provided his decision on the amount of the bond to be included in the Order," and also expressly found that the amount of $65,000 "is a reasonable bond amount to set." The parties agreed that the arbitrator "shall have exclusive authority to add any and all language for clarification enforceability, indemnification and/or to effectuate the intent and agreement of the parties, without reservation, and the language inserted by the arbitrator shall be binding on the parties." The trial court did not err by signing the order in accordance with the parties' express agreement. *See, e.g., In re S.K.D.*, 2014 WL 3058452, at *2. We decide Mother's first and second issues against her.

B. Relief requested by Father

In her third issue, Mother complains that the trial court erred by granting Father's "motion to enter" because the motion sought entry of judgment on the MSA, not on the arbitration award. Father's motion recited that "[o]n or about April 22, 2015 the parties attended

Mediation and entered into a Mediated Settlement Agreement for final orders." Mother contends the trial court erroneously rendered judgment on an arbitration award that "was not properly before the court." The actual relief requested in Father's motion, however, was that "the court sign the Agreed Order in Suit to Modify Parent-Child Relationship attached hereto as Exhibit A."

The attached order incorporating the MSA's terms and the arbitrator's resolution of disputes was expressly contemplated in the MSA itself. As quoted above, the MSA provided that a final order would be prepared by Father's counsel and would "contain more extensive language than is contained in this agreement." The parties stipulated that "there may need to be interpretation of this document and an extension of language in this document, and that all the language to be used in the order(s) may not be contained in this [MSA]." Disputes about interpretation of the MSA "or the language or form of the decree" were to be submitted to binding arbitration. The parties expressly agreed "to appear in court at the first available date to present evidence and secure rendition of judgment in accordance with this agreement." Father's motion complies with the requirements of the MSA. And even if the trial court's order was rendered on the arbitrator's award instead of the MSA, Mother bore the burden of proving that the award was not in the child's best interest. TEX. FAM. CODE ANN. § 153.0071(b). Mother offered no evidence or argument on this point. We decide Mother's third issue against her.

CONCLUSION

We overrule Mother's three issues. We affirm the trial court's order.

/Martin Richter/
MARTIN RICHTER
JUSTICE, ASSIGNED

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN THE INTEREST OF M.J.K., A CHILD	On Appeal from the 469th Judicial District Court, Collin County, Texas
No. 05-15-01141-CV	Trial Court Cause No. 469-55553-2009. Opinion delivered by Justice Richter; Justices Fillmore and Brown participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee James King recover his costs of this appeal from appellant Rieko King.

Judgment entered this 16th day of November, 2016.