AFFIRM; and Opinion Filed June 9, 2017.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-15-00841-CV

IN THE INTEREST OF B.H.W., L.A.W., AND R.L.W.

On Appeal from the 219th Judicial District Court
Collin County, Texas
Trial Court Cause No. 219-56186-2010

MEMORANDUM OPINION

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

Husband appeals a final decree of divorce. In five issues, Husband contends (1) the evidence is legally and factually insufficient to support the jury's finding of informal marriage, (2) the trial court abused its discretion in admitting hearsay, (3) an "Agreement in Contemplation of Marriage" was enforceable as a post-marital agreement, (4) the trial court abused its discretion in failing to award Husband reimbursement for separate funds he expended on the marital residence, and (5) the trial court abused its discretion in enjoining him from having female guests in his home after 10:00 p.m. For the following reasons, we affirm the final decree.

INTRODUCTION

Husband and Wife were married in 2003. During the marriage, Wife gave birth to triplets. In 2010, Husband filed for divorce. Husband asserted the parties were married during a wedding ceremony on August 1, 2003, and requested the trial court to enforce the provisions of a

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

July 23, 2003 "Agreement in Contemplation of Marriage" ("Agreement"). Under the terms of that agreement, no community property would be created during their marriage. Husband also asserted it would not be in their children's best interests for him and Wife to be appointed joint managing conservators of the children and requested the trial court to appoint him as their sole managing conservator.

Wife filed a counter-petition for divorce asserting the Agreement was executed after the parties were informally married. Thus, the Agreement was not a premarital agreement and did not prevent the creation of a community estate. Wife agreed it would not be in the best interests of the children for her and Husband to be appointed joint managing conservators, but requested she be appointed their sole managing conservator.

A jury trial was held to determine the date of the parties' marriage. The jury found in Wife's favor and specifically that the parties were informally married on July 1, 2003. A trial before the court followed with respect to property division and conservatorship of the children. The trial court awarded Husband all of the property he had prior to the marriage and almost all of the property the parties acquired during the marriage, including the marital residence. To equalize the division, the trial court awarded Wife a judgment for $541,000. In its findings of fact and conclusions of law, the trial court found the marital residence was community property and had a net value of approximately $1,210,000. The trial court appointed Husband sole managing conservator of the children and Wife possessory conservator. The trial court also permanently enjoined the parties from having "unrelated members of the opposite sex in the same abode between the hours of 10:00 p.m. and 7:00 a.m." during their respective periods of possession. Husband appeals.

INFORMAL MARRIAGE

In his first issue, Husband asserts the evidence to support the jury's finding of informal marriage was legally and factually insufficient. At the jury trial, Wife presented evidence that she met Husband in February 2003 through an online dating service. At that time, Wife lived in Texarkana, Texas and was a registered nurse, working "a four days on, four days off" schedule. Husband was a business owner, living and working in Dallas.

Wife testified the relationship quickly became serious and, on June 8, 2003, after attending church together in Dallas, she and Husband agreed to be married and began living together as husband and wife. She said, that afternoon, they started looking for houses together.

A few weeks later, on June 30, Wife discovered she was pregnant. She said she and Husband were both happy. A few days later, over the Fourth of July holiday, she said they announced the news to Husband's family, celebrating with a bottle of champagne. Wife acknowledged they did not expressly tell Husband's family they were married, but in her mind that was a "given" because they were living together and excited to be having a baby.

Wife testified that although she was living in Dallas, she still had not quit her job in Texarkana because she was taking a large amount of paid time off she had accrued. In mid-July, Wife returned to Texarkana to work her last four days and move out of the house she had been renting. Before she did so, Husband gave Wife both an engagement ring and a wedding band so everyone would know she was "taken." On July 19, Husband went to Texarkana to help Wife move.

After they returned to Dallas, on July 21, Wife testified she and Husband attended her first prenatal appointment. Wife testified that sometime before that appointment, Husband gave her a health insurance card and told her he had added her to his policy as his spouse. She had the

card at the time of the July appointment. Wife also testified she was insured under her married name and the insurance was effective as of July 1.

Wife's medical records from the July 21 appointment were admitted into evidence. They show Wife was using Husband's surname at that time, they mark her marital status as "married," and they specifically identify Husband as her spouse. According to Wife, she and Husband provided that information to the intake nurse together.

That same night, Wife testified, Husband came home from work and, for the first time, mentioned a "prenuptial" agreement. Wife said she was concerned, but Husband told her the agreement was to reassure some employees and he would make it "go away" later. Two days later, on the morning of July 23, Husband took Wife to his lawyer's office to sign the Agreement. According to Wife, that was the first time she saw the Agreement and she signed it without being given the opportunity to read it.

The Agreement contained a "stipulation" stating that "Husband and Wife, who are not now married, intend to become husband and wife by ceremony to be performed on *August 1, 2003* at *Lake Tahoe, NV/CA*." The words in italics were in handwriting. Wife said there was nothing in the lines when she signed and identified the handwriting as Husband's.

Under the terms of the Agreement, no community property would be created as a result of the marriage. The Agreement also had schedules attached listing Husband's and Wife's respective separate property. Husband's checking account at Frost Bank was listed on his schedule.

Immediately after they signed the agreement, Husband took Wife to Frost Bank to add her to that checking account. At that time, he affirmatively represented to the bank that Wife was his spouse. In addition, Husband and Wife also executed a "Community Property with Right of Survivorship Agreement." It states, "We, as husband and wife and parties to the

Account, hereby agree that the community property funds in the above mentioned-account shall vest and become the property of the surviving spouse upon the death of the other spouse . . . ." Wife used Husband's surname when she signed that agreement and the signature card for the checking account.

Wife testified that night, Husband planned a trip to Lake Tahoe for an August 1 wedding ceremony. Wife testified that during their marriage, she and Husband celebrated their wedding anniversary on the date of that wedding.

Husband's testimony sharply conflicted with Wife's in several regards. According to Husband, he and Wife did not agree, and would not have agreed, to become married without a wedding ceremony. Husband also claimed that he and Wife did not begin "cohabitating" until she moved out of her house in Texarkana. However, he acknowledged that Wife was staying with him in Dallas prior to that time. He claimed she was on "vacation," but her "legal residence" remained in Texarkana, where she received her mail. Nevertheless, he acknowledged she only returned to Texarkana briefly to work a few days and vacate her house. Husband also could not recall when he ordered Wife's engagement and wedding rings, but he acknowledged he received them both around July 11. However, he said he did not give Wife the wedding band until August 1.

According to Husband, Wife started working for his company immediately after her last day of work in Texarkana, "probably that first Monday," and was added to his company's health insurance policy as an employee. However, he could not remember whether she was hired full time. Husband denied that he attended Wife's first appointment with the obstetrician. He said he did not go because he did not know about it.

Husband admitted that immediately after they executed the Agreement, he took Wife to his bank and represented that they were married. He claimed he did so so they could "open" a

household account because they had planned a "wonderful wedding" and wanted to have everything "done" when they returned. However, he admitted that they did not finalize the plans for the ceremony until that night. He said they had to get their "ducks in a row" before they sent in a deposit.

Husband's brother and mother testified that over the Fourth of July holiday, Husband and Wife announced Wife was pregnant and they were "planning" on getting married. They both denied that either Husband or Wife made any statements that indicated they were already married. However, Husband's mother acknowledged that, shortly after that weekend, she sent a note to Husband and Wife expressing her happiness that Husband had found the "perfect one" and signed it "Love you both, Mom." She said she wanted Wife to "feel like she was accepted into the family, when, you know, when they got married."

On rebuttal, Wife testified she did not work for Husband in 2003 and that she received no tax forms from Husband's company that would indicate she was an employee. The trial court then admitted Wife's health insurance card over Husband's hearsay objection. The card corroborated Wife's testimony that she was insured under her married name effective as of July 1, 2003.

Wife's sister, Karen Ashley, also testified on rebuttal. Ashley testified that she saw both Husband and Wife in Texarkana in July 2003, the weekend Wife moved out of her rental house. Ashley testified that Wife was wearing both her engagement ring and her wedding ring at that time and that she and her girlfriend specifically commented on Wife's wedding band. Ashley also testified she heard Husband refer to Wife as his "wife."

After hearing the evidence, the jury found Husband and Wife were informally married on July 1, 2003. In his first issue, Husband asserts the evidence is legally and factually insufficient to support the jury's finding of informal marriage.

A. Applicable Law

The three elements of a common-law marriage are: (1) the couple agreed to be married; (2) after the agreement, they lived together in Texas as husband and wife; and (3) they represented to others that they are married. *See* TEX. FAM. CODE ANN. § 2.401(a)(2) (West 2006); *Russell v. Russell*, 865 S.W.2d 929, 932 (Tex. 1993). Representations to others or "holding out" may be established by the parties' conduct, words, and/or actions. *See In re Estate of Marek*, 05-13-01008-CV, 2014 WL 3057479, at *4 (Tex. App.—Dallas July 7, 2014, no pet.) (mem. op.); *Winfield v. Renfro*, 821 S.W.2d 640, 645 (Tex. App.—Houston [1st Dist.] 1991, writ denied). Isolated references to a person as one's spouse are generally insufficient to show a common-law marriage. *Smith v. Deneve*, 285 S.W.3d 904, 910 (Tex. App.—Dallas 2009, no pet.); *see also Claveria's Estate v. Claveria*, 615 S.W.2d 164, 166 (Tex. 1981) (when two persons not living together occasionally refer to each other as a spouse, their isolated references have been held, in some instances as a matter of law, not to have established a common-law marriage). The circumstances of each case must be determined based upon its own facts. *Claveria's Estate*, 615 S.W.2d at 166.

B. Standard of Review

In evaluating a legal sufficiency challenge, we credit evidence that supports the finding if a reasonable fact finder could and disregard contrary evidence unless a reasonable fact finder could not. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). The test for legal sufficiency is "whether the evidence at trial would enable reasonable and fair-minded people to reach the verdict under review." *Id*. at 827. In a factual sufficiency review, we examine all the evidence in the record, both supporting and contrary to the trial court's finding, and reverse only if the finding is so against the great weight of the evidence as to be clearly wrong and unjust. *Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex. 1996) (per curiam); *In re Marriage of C.A.S. and*

D.P.S., 405 S.W.3d 373, 382–83 (Tex. App.—Dallas 2013, no pet.). When reviewing both the legal and factual sufficiency of the evidence, we are mindful that the jury, as fact finder, was the sole judge of the credibility of the witnesses and the weight to be given their testimony. *Helping Hands Home Care, Inc. v. Home Health of Tarrant Cty., Inc.*, 393 S.W.3d 492, 505–06 (Tex. App.—Dallas 2013, pet. denied).

C. Application

In this issue, Husband challenges only whether Wife showed they held themselves out to the public as being married. Husband relies heavily on Wife's failure to present evidence she and Husband had a reputation in the community as being married. He also claims she presented evidence of only a few "instances of holding out" prior to July 23, 2003. Husband's argument appears to be based on the assumption that a common-law marriage requires proof of multiple representations or instances of "holding out."

We agree a couple's isolated references to each other, particularly in a social setting, are generally insufficient to constitute a representation to the public that a marriage exists. *Nichols v. Lightle*, 153 S.W.3d 563, 571 (Tex. App.—Amarillo 2004, pet. denied) (isolated references are not evidence of "holding out" to others that a marriage exists). Nevertheless, the family code does not require multiple representations or multiple instances of "holding out." Rather, the question is whether the parties' conduct, words, or actions are sufficient to constitute a representation to the public that a marriage exists. *Ex parte Threet*, 160 Tex. 482, 333 S.W.2d 361, 364 (1960); *Winfield*, 821 S.W.2d at 651.

Here, Wife presented evidence of direct affirmative representations of marital status and conduct that clearly and unmistakably would communicate such status. *Cf. Russell*, 865 S.W.2d at 932 (convincing evidence of holding out such as "[a] forthright assertion of marriage with the consequence of liability (as when an alleged spouse seeks admission of the other to a hospital)"

may constitute circumstantial evidence of a tacit agreement to be married). Specifically, after Wife and Husband agreed to be married, she began using his surname and wearing the wedding band he gave her. Husband also obtained health insurance for Wife as his spouse through his company. Moreover, Husband and Wife jointly made representations to Wife's healthcare providers that they were married. Finally, Husband and Wife also represented to Husband's bank in legal documents that they were married. We conclude the evidence is both legally and factually sufficient to support the jury's finding that Wife and Husband represented to others they were married.

In reaching this conclusion, we reject Husband's suggestion that Wife was required to prove they had a "reputation in the community" for being married. As a general rule, a reputation in the community is a "significant factor" in determining whether a couple has held themselves out to the public as husband and wife. *Eris v. Phares*, 39 S.W.3d 708, 715 (Tex. App.—Houston [1st Dist.] 2001, pet. denied). Such a reputation is relevant because it indicates that the couple's conduct to each other was viewed by the public as a representation that they were married. *See In re Estate of Giessel*, 734 S.W.2d 27, 31 (Tex. App.—Houston [1st Dist.] 1987, writ ref'd n.r.e.); *see also Grigsby v. Reib*, 105 Tex. 597, 153 S.W. 1124, 1130 (1913) (the cohabitation must be public so that by the couple's conduct towards each other they may be known as husband and wife). Nevertheless, it is not itself an element of common-law marriage. Further, under the circumstances of this case, Wife's failure to present evidence that she and Husband acquired a reputation in the community for being married in the brief time before the ceremonial marriage is not particularly indicative that no marriage existed. *See Claveria's Estate*, 615 S.W.2d at 166 (circumstances of each case must be determined on its own facts).

We also reject Husband's assertion that recitations in the Agreement constitute overwhelming evidence that he and Wife did not represent to others they were married.

Specifically, Husband relies on statements in the Agreement in which he and Wife acknowledged they were not married as of July 23 and intended to become during a wedding ceremony on August 1.[2] However, recitations in a private agreement between spouses or prospective spouses have little probative value on whether Husband and Wife represented to *others* that they were married. *Cf. Eris*, 39 S.W.3d at 716-17 (evidence factually insufficient to support plaintiff's claim of informal marriage when only evidence of holding out showed isolated social introductions and plaintiff executed warranty deed verifying defendant was a "single woman"). Those recitations tended to controvert Wife's evidence that she and Husband agreed to be married prior to that time, but the jury resolved those conflicts in her favor. Regardless, Husband does not challenge the sufficiency of the evidence to support the jury's finding there was such an agreement. We resolve the first issue against Husband.

HEARSAY

Husband next contends the trial court abused its discretion in admitting Wife's health insurance card into evidence. During her case in chief, Wife testified that in July 2003, before her first prenatal appointment, Husband gave her a health insurance card and told her that he had added her to his policy as his wife. She said the insurance was under her married name and was effective as of July 1, 2003. Husband also testified that he obtained health insurance for Wife. Although Husband did not remember when he requested Wife be added, he did not deny the insurance was effective as of July 1 or that he obtained the insurance for Wife under her married name. Instead, in an effort to explain why Wife was insured under his policy at that time, he claimed she began working for him at the end of July 2003. On rebuttal, Wife testified that she

[2] As noted above, Wife testified the August date was written in after she and Husband executed it. Of note, the Agreement also had a "schedule" attached that stated it was an "Agreement Between Spouses." The "Agreement Between Spouses" states Husband and Wife "were married on *Aug.1, 2003*," but it was executed on July 23, 2003.

did not work for Husband in 2003. At that time, the trial court also admitted Wife's insurance card into evidence over Husband's hearsay objection.[3]

Husband asserts the trial court abused its discretion in admitting the card because it was the out-of-court statement of the insurance company and was offered to show Wife "was insured under the name [Wife] as of July 1, 2003." We begin by noting the insurance card was not offered to prove Wife was actually insured or to show what her name was. Rather, it was offered to show that Husband caused Wife to be added to his health insurance policy under her married name and that he did so before July 23, 2003. Nevertheless, assuming the trial court abused its discretion in admitting the card, we conclude the error was harmless.

We may not reverse a judgment on the basis of evidentiary error unless we conclude the error probably caused rendition of an improper judgment. *See* TEX .R. APP. P. 44.1(a)(1); *Dallas Cty. Sheriff's Dep't. v. Gilley*, 114 S.W.3d 689, 694–95 (Tex. App.—Dallas 2003, no pet.) A "successful challenge to evidentiary rulings usually requires the complaining party to show that the judgment turns on the particular evidence excluded or admitted." *Tex. Dep't of Transp. v. Abl*e, 35 S.W.3d 608, 617 (Tex. 2000). We consider the entire record in determining whether an erroneous evidentiary ruling was harmful. *State v. Cent. Expressway Sign Assocs.*, 302 S.W.3d 866, 870 (Tex. 2009); *Boulle v. Boulle*, 254 S.W.3d 701, 707 (Tex. App.—Dallas 2008, no pet.).

According to Husband, error in the admission of the insurance card was harmful because it was the "only evidence" to support the jury's finding that the parties were married on "July 1." However, for the complained-of error to have caused the rendition of in improper judgment, the Husband must show the jury probably would have found he and Wife were married on or after

[3] A validation certificate was also initially admitted over Husband's hearsay objection. The certificate was issued by Husband's insurance company on July 3, 2003 and shows Wife was added to Husband's policy as his spouse. After the certificate was admitted into evidence, Husband moved to strike it on the grounds that it had not been property authenticated. The trial court sustained that objection, struck the exhibit from the record, and instructed the jury not to consider it.

July 23.[4] Moreover, the insurance card showed only that Husband had caused Wife to be insured under her married name and that it was effective July 1. That evidence was cumulative of Wife's testimony, which was also consistent with her medical records that show she received healthcare under her married name. Finally, Husband did not deny that he obtained insurance for Wife under her married name or that it was effective as of July 1. We conclude Husband has failed to show admission of the insurance card probably led to the rendition of an improper judgment. We resolve the second issue against Husband.

POST-MARITAL AGREEMENT

In his third issue, Husband contends that he proved, as a matter of law, the existence of a valid post-marital agreement. *See* TEX. FAM. CODE ANN. § 4.103 (West 2006). At the time the parties executed the Agreement, they also executed a "schedule" attached to that agreement which was entitled "Property Agreement between Spouses." That agreement contained a provision in which the parties agreed that income arising from the parties' separate property during the marriage would be their separate property. In this issue, Husband contends the trial court failed to enforce that provision.

Husband has not, however, shown any income from his separate property existed at the time of the divorce. Thus, he has not shown the trial court divested him of any separate property or that any mischaracterization of property caused the trial court to abuse its discretion in dividing the marital estate. Nor has he otherwise shown the trial court did not enforce the

[4] Because the parties did not dispute they were married, the jury was asked only to determine the date of their marriage. According to Husband, they were "ceremonially" married on August 1, 2003 in Lake Tahoe. Of note, Husband does not direct us to any evidence that that ceremony resulted in a formal marriage or that he and Wife made any efforts to ensure that it would.

Agreement between Spouses.[5] *See Jacobs v. Jacobs*, 687 S.W.2d 731, 733 (Tex. 1985). We conclude this issue presents no reversible error.

REIMBURSEMENT

In his fourth issue, Husband asserts the trial court abused its discretion by not granting him reimbursement for separate property funds he contends he used to pay down the debt on the marital residence. A reimbursement claim arises when the funds or assets of one estate are used to benefit and enhance another estate without itself receiving some benefit. *Vallone v. Vallone*, 644 S.W.2d 455, 459 (Tex. 1982). The party seeking reimbursement has the burden of pleading and proving that the expenditures were made and that they are reimbursable. *Id.* When a spouse asserts a separate property claim for reimbursement against the community estate, the burden of proof is by clear and convincing evidence. *Moroch*, 174 S.W.3d at 855. When a party seeks reimbursement from the community, he must clearly trace the original separate property into a particular asset on hand during the marriage. TEX. FAM. CODE ANN. § 3.003(b) (Vernon 2006); *Hinton v. Burns*, 433 S.W.3d 189, 196 (Tex. App.—Dallas 2014, no pet.). Tracing involves establishing the separate origin of the property through evidence showing the time and means by which the spouse originally obtained possession of the property. *Id.* As a general rule, mere testimony that property was purchased with separate funds, without any tracing of the funds, is insufficient to rebut the community property presumption. *Sink v. Sink*, 364 S.W.3d 340, 345 (Tex. App.—Dallas 2012, no pet.); *Moroch*, 174 S.W.3d at 856. Any doubt as to the character of property should be resolved in favor of the community estate. *Sink*, 364 S.W.3d 345.

[5] In its findings of fact and conclusions of law, the trial court found that the marital residence was not acquired with income from Husband's separate property. Thus, if anything, the record suggests the trial court either did enforce the post-marital agreement or that it had no bearing on its property division.

Here, the question is not whether the evidence would support a claim for reimbursement, but whether clear and convincing evidence mandates such an award.[6] *See Sprick v. Sprick*, 25 S.W.3d 7, 13 (Tex. App.—El Paso 1999, pet. denied) ("This case presents a unique situation in that an appellant is challenging a non-finding where the appellant bore the burden of proof by clear and convincing evidence."). Nevertheless, Husband does not discuss the evidence in light of his heavy burden to present clear and convincing evidence of tracing. Instead, he generally contends the trial court was not at liberty to ignore his uncontroverted testimony that he used separate property to pay down the debt on the marital residence. *See Johnson v. Johnson*, 09-13-00537-CV, 2014 WL 5855916, at *2 (Tex. App.—Beaumont Nov. 13, 2014, no pet.); s*ee also, e.g., Sink*, 364 S.W.3d at 346 (husband lacked any expertise or understanding of tracing rules). Further, although Husband claims his testimony was supported by "documentary evidence," he fails to discuss how any document or documents show his separate property funds were used to pay the debt on the marital residence. *See Sink*, 364 S.W.3d at 346 (husband's general citation to exhibits did not show he presented clear and convincing evidence of tracing). We cannot conclude the trial court abused its discretion in denying Husband's claim for reimbursement. *Id.* We resolve the fourth issue against Husband.

INJUNCTION

Husband's final issue concerns a restriction the trial court placed on his conduct during his periods of possession of the children. Specifically, he asserts the trial court abused its discretion in enjoining him from having unrelated females in his home between 10:00 p.m. and 7:00 a.m. during his periods of possession. The trial court placed a similar restriction on Wife.

[6] When we are asked to review an alleged characterization error, we must determine not only whether the trial court's finding of separate property is supported by clear and convincing evidence, but also whether the characterization error, if established, caused the trial court to abuse its discretion. *Prague v. Prague*, 190 S.W.3d 31, 38 (Tex. App.—Dallas 2005, pet. denied) (emphasis added). Thus, contrary to Husband's assertion, a trial court's characterization of property is not reviewed for an abuse of discretion.

At the time of trial, the couples' children were nine years old and the record shows this was an extremely high-conflict custody case. By agreement of the parties, the trial court appointed Christy Bradshaw Schmidt, a licensed professional counselor, to conduct an investigation into the circumstances of the children and the homes of Wife and Husband and to prepare a social study. Over the course of a year, Schmidt conducted an extensive investigation and filed a 186-page social study prior to trial. The report outlined Schmidt's concerns about both Husband and Wife, the substantial conflict between them, and the harm it was causing the children. *In re Lee*, 411 S.W.3d 445, 449 (Tex. 2013) (recognizing children involved in high-conflict custody cases "can face perpetual emotional turmoil, alienation from one or both parents, and increased risk of developing psychological problems"). The report also discussed Husband's relationship with his girlfriend and some of the concerns Schmidt had, particularly with the speed in which Husband introduced her to the children and the manner in which he presented that relationship to Wife. In her conclusion, Schmidt made several detailed recommendations. They included a recommendation that Husband be appointed sole managing conservator of the children, that Wife be granted standard visitation, and that both Husband and Wife be permanently enjoined from having "unrelated members of the opposite sex in the same abode between the hours of 10:00 p.m. and 7:00 a.m." and from the use of corporal punishment on the children.

At trial, Husband called Schmidt as a witness and, at his request, the social study was admitted into evidence. In closing, Husband generally urged the trial court to follow Schmidt's recommendations. He asserted Schmidt did an "extensive, extensive job and made recommendations to [the court] on what she felt like was in the best interest of the children." Husband argued if the Court did not follow Schmidt's recommendations, it would have to "discount everything that she spent a year and 186 pages in creating." Husband specifically

requested the trial court follow her recommendation that he be appointed sole managing conservator. The trial court followed that recommendation, as well as Schmidt's recommendation that the parties be enjoined from having guests of the opposite sex in their homes after 10:00 p.m. at night. The trial court's findings of fact and conclusions of law did not address this issue and Husband did not request any additional findings or voice any complaint about the injunction in the trial court.

On appeal, Husband complains the trial court abused its discretion by ordering the injunctive relief because there was no testimony about "any need to bar overnight visitors, or any effect that such visitors might have on the children." Husband relies primarily on *In re A.A.N*, 02-13-00151-CV, 2014 WL 3778215 (Tex. App.—Fort Worth July 31, 2014, no pet.) to support his contention that such testimony is necessary to support an injunction in a family law case. In that case, the Fort Worth Court of Appeals, applying the standards applicable to permanent injunctions in civil cases generally, vacated an injunction prohibiting overnight guests because the wife failed to show imminent harm or irreparable injury. *See id.* at *2.

In *Peck v. Peck*, 172 S.W.3d 26, 35 (Tex. App.—Dallas 2005, pet. denied), this Court held those standards did not apply in family law cases and that a trial court had the discretion to impose restrictions on parents that it determined were in the best interests of the children. We specifically upheld an injunction prohibiting the parents from having overnight guests of the opposite sex during their respective periods of possession. According to Husband, *Peck* is distinguishable because the wife in that case testified that, in her opinion, it was not in the child's best interest for the husband's girlfriend to spend the night with husband when the children were present. The only basis for her opinion was that they were not married. We concluded the trial court could have found the injunction was in the best interests of the children based on that testimony as well as its experience with and understanding of the individuals involved in the

case. *See, e.g., Peck*, 172 S.W.3d at 35 (trial court considered age of the children in granting injunction). Thus, we found no abuse of discretion.

Here, neither Wife nor Schmidt testified that prohibiting overnight guests would be in in the best interest of the children. However, Schmidt's social study was in evidence. *See Green v. Remling*, 608 S.W.2d 905, 909 (Tex. 1980) (trial court may consider conclusory findings and conclusions in social study). Husband acknowledged that the social study was based on Schmidt's extensive investigation and represented what she believed was in the children's best interests. While Husband may disagree with some of Schmidt's opinions, we cannot agree they were made without any basis.[7] Having reviewed the record and the social study, we find no abuse of discretion. In this issue, Husband also asserts the trial court had no authority to enter the injunction because there were no pleadings to support it. Husband acknowledges this Court has decided this precise issue against him. *See Peck*, 177 S.W.3d at 35-36. We resolve the fifth issue against Husband.

We affirm the trial court's judgment.

/Ada Brown/
ADA BROWN
JUSTICE

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[7] For the first time in his reply brief, Husband complains the injunction was not limited to female guests, but would also prohibit him from having a female babysitter. A reply brief may not be used to raise new arguments or issues. *Dallas Cty. v. Gonzales*, 183 S.W.3d 94, 104 (Tex. App.—Dallas 2006, pet. denied).

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN THE INTEREST OF B.H.W., L.A.W., AND R.L.W., CHILDREN

No. 05-15-00841-CV

On Appeal from the 219th Judicial District Court, Collin County, Texas
Trial Court Cause No. 219-56186-2010.
Opinion delivered by Justice Brown. Justices Fillmore and Richter participating.

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

It is **ORDERED** that appellee Tammy Gail Wells recover her costs of this appeal from appellant Barry Holland Wells.

Judgment entered this 9th day of June, 2017.