

**Affirmed; and Opinion Filed October 5, 2017.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-16-00113-CV**

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**IN THE INTEREST OF R.N. AND R.N., MINOR CHILDREN**

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**On Appeal from the 303rd Judicial District Court  
Dallas County, Texas  
Trial Court Cause No. DF-12-07618**

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**MEMORANDUM OPINION**

Before Justices Lang, Evans, and Schenck  
Opinion by Justice Lang

Richie N. Ako, appearing pro se,<sup>1</sup> appeals the trial court's order in a suit affecting the parent-child relationship. Ako enumerates two issues, but asserts four points arguing the trial court erred when it: (1) denied his motion for a continuance; (2) assessed child support; (3) denied him a jury trial; and (4) excluded evidence at trial. We conclude the trial court did not err. The trial court's order is affirmed.

**I. PROCEDURAL CONTEXT**

Ako and Ann Enow Agbor, the mother of R.N. and R.N., were in a relationship, but separated. On April 20, 2012, Agbor filed a petition to adjudicate the parentage of the children,

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<sup>1</sup> An appellate court liberally construes pro se pleadings and briefs. See *In re R.M.H.*, No. 05-13-01426-CV, 2014 WL 5581042, at \*1 (Tex. App.—Dallas Nov. 4, 2014, no pet.) (mem. op.); *Washington v. Bank of N.Y.*, 362 S.W.3d 853, 854 (Tex. App.—Dallas 2012, no pet.). However, appellate courts hold pro se litigants to the same standards as licensed attorneys and require them to comply with applicable laws and rules of procedure. See *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184–85 (Tex. 1978); *In re R.M. H.*, 2014 WL 5581042, at \*1; *Washington*, 362 S.W.3d at 854. To do otherwise would give a pro se litigant an unfair advantage over a litigant who is represented by counsel. See *Mansfield*, 573 S.W.2d at 184–85; *In re R.M. H.*, 2014 WL 5581042, at \*1; *Washington*, 362 S.W.3d at 854.

seeking to establish the parent-child relationship between Ako and the children and requesting, in part, an order for the support of the children. On May 7, 2012, Ako answered and filed a counter petition, also seeking, in part, the establishment of paternity and to be made the sole managing conservator. In addition, Ako requested an order of support for the children. On July 3, 2014, the trial court signed a default judgment against Ako because he failed to appear for trial. On July 22, 2014, Ako filed a motion for new trial, which the trial court granted on October 3, 2014.

On December 3, 2014, Agbor filed her first amended petition is a suit affecting the parent-child relationship. On November 9, 2015, immediately before the start of the trial, Ako sought a continuance, arguing: (1) his “lawyer was just released over the weekend”; and (2) Ako had just had eye surgery. The trial court denied Ako’s motion for continuance after noting:

[Y]ou come to court every time we have trial, except for the one time you didn’t come to trial at all and you were defaulted and I granted a Motion for New Trial. And every time you come in either with a mask on your face, a filing for bankruptcy, which I understand has been dismissed.

....

And then glasses and then no attorney. The case is literally three years old. You are moving forward today.

Ako also claimed that he paid a jury fee and told the trial court he wanted a jury trial. However, Agbor’s trial counsel responded that, during an earlier pretrial hearing, Ako’s former trial counsel indicated that “they were not interested in having a jury trial, but wanted a bench trial.”

The trial court denied Ako’s request for a jury trial and proceeded with a one-day bench trial. During the trial, Ako claimed, “I’m bleeding. I’m dying here.” As a result, the trial court noted the following:

And just for the record to reflect Mr. Ako has had no trouble whatsoever navigating the courtroom. He had earlier a stack of papers in front of him through which he was shuffling. He represented to the Court that he was bleeding from his eyes, showed me the tissues, there is absolutely no color whatsoever on those tissues. They are white tissues. I just want the record to be clear about what is

actually happening in the courtroom, notwithstanding what Mr. Ako is saying for the record. Okay.

The trial court concluded the trial on November 9, 2015, and took the case under advisement. Ako filed a motion for new trial on November 11, 2015. Then, on December 10, 2015, the trial court signed an order in the suit affecting the parent-child relationship in favor of Agbor and an order denying Ako's motion for new trial.

## **II. MOTION FOR CONTINUANCE**

In issues one and two, Ako argues the trial court erred when it denied his motion for continuance. He claims this was "an inhumane act and prevented justice to take its rightful course."

Motions for continuance are governed by Texas Rule of Civil Procedure 251. That rule provides a motion for continuance shall not be granted except for sufficient cause supported by affidavit, consent of the parties, or by operation of law. TEX. R. CIV. P. 251; *see In re A.M.*, 418 S.W.3d 830, 838 (Tex. App.—Dallas 2013, no pet.); *Strong v. Strong*, 350 S.W.3d 759, 762 (Tex. App.—Dallas 2011, pet. denied). The record shows Ako orally made requests for continuance immediately before and during trial. No written motion for continuance and affidavit in support was filed as required by rule 251. We conclude Ako has failed to preserve this argument for appeal. *See In re A.M.*, 418 S.W.3d at 838; *Strong*, 350 S.W.3d at 762.

Issues one and two are decided against Ako.

## **III. CHILD SUPPORT**

Although not a separately enumerated issue, Ako argues the trial court erred as to the amount of child support it assessed. Agbor does not respond to this argument.

### ***A. Standard of Review***

A trial court has discretion to set child support within the parameters provided by the Texas Family Code. *See Iliff v. Iliff*, 339 S.W.3d 74, 78 (Tex. 2011); *In re A.T.*, No. 05-16-

00539-CV, 2017 WL 2351084, at \*12 (Tex. App.—Dallas May 31, 2017, no pet.) (mem. op.). Most appealable issues in a family law case are evaluated under an abuse of discretion standard. *See Iliff*, 339 S.W.3d at 78 (child support); *see also In re A.T.*, 2017 WL 2351084, at \*11. A trial court abuses its discretion when it acts arbitrarily or unreasonably, or without reference to any guiding rules or principles. *See Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990); *see also In re A.T.*, 2017 WL 2351084, at \*11. To determine whether the trial court abused its discretion, an appellate court considers whether the trial court: (1) had sufficient evidence upon which to exercise its discretion; and (2) erred in its application of that discretion. *See In re T.W.G.*, No. 05-16-00213-CV, 2017 WL 1427695, at \*2 (Tex. App.—Dallas Apr. 19, 2017, pet. filed) (mem. op.).

### ***B. Application of the Law to the Facts***

Ako claims that the trial court abused its discretion when determining the amount of child support because it failed to take into account that he has a total of seven children, four in the United States and three in Cameroon, he was attending school full time, his “income” was from Pell grants and student loans, he was indigent, and he had disabilities. However, Ako does not direct us to the record where any testimony or evidence of this kind was admitted at trial, nor could we find any.<sup>2</sup> An appellate court cannot consider factual assertions in a party’s brief that are unsupported by the record. *See Unifund CCR Partners v. Weaver*, 262 S.W.3d 796, 797 (Tex. 2008) (per curiam); *In re R.M.H.*, No. 05-13-01426-CV, 2014 WL 5581042, at \* 2 (Tex. App.—Dallas Nov. 4, 2014, no pet.) (mem. op.). Accordingly, we conclude the trial court did not err when it assessed child support.

This argument on appeal is decided against Ako.

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<sup>2</sup> During the hearing on attorney’s fees, Ako asked Agbor’s attorney if he remembered seeing a photograph of his four children in the United States.

#### IV. JURY TRIAL

Although not a separately enumerated issue, at various places in his brief, Ako argues the trial court erred when it denied him a jury trial. However, Ako does not support his contention by providing citations to the record or to legal authority. Agbor does not respond to this argument.<sup>3</sup> Texas Rule of Appellate Procedure 38.1(i) requires an appellant's brief to "contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record." TEX. R. APP. P. 38.1(i). Accordingly, because we conclude that Ako has failed to adequately brief this argument on appeal, there is nothing for us to review on this point.

#### V. EXCLUSION OF EVIDENCE

Once again, although not a separately enumerated issue, at various places in his brief, Ako argues the trial court erred when it excluded evidence at trial. Specifically, he complains that the trial court did not admit or consider "critical video and audio evidence that was presented at trial."

An appellate court may not address the merits of an issue that has not been preserved for appeal. To preserve error for appellate review, the complaining party must make a timely, request, objection, or motion and obtain a ruling on the request, objection or motion. *See* TEX. R. APP. P. 33.1. To preserve error as to the exclusion of evidence, a party must: (1) attempt during the evidentiary portion of the trial to introduce the evidence; (2) if an objection is lodged, specify the purpose for which the evidence is offered and give the trial court reasons why the evidence is admissible; (3) obtain a ruling from the court; and (4) if the court rules the evidence inadmissible, make a record, through an offer of proof or bill of exceptions, of the precise

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<sup>3</sup> The record shows that Ako asserted this issue to the trial court immediately before trial. Agbor's trial counsel orally responded that, although Ako had requested and paid for a jury trial, Ako's former trial attorney had "represented [pretrial] that they were not interested in having a jury trial, but wanted a bench trial and that's why it was set on the trial docket today." During the trial, when Ako again claimed that he had requested and paid for a jury trial, the trial court stated "[T]he last time that you were here, Mr. Ako, you stated that you did not want a jury trial." Also, the trial court's order in the suit affecting the parent-child relationship states that "[a] jury was waived, and all questions of fact and law were submitted to the [trial] [c]ourt." Ako filed a motion for new trial arguing, in part, that he had requested a jury trial, which the trial court denied.

evidence the party desires admitted. See TEX. R. EVID. 103(a)(2); *B.O. v. Tex. Dep't of Family & Protective Servs.*, No. 03-12-00676-CV, 2013 WL 1567452, at \*3 (Tex. App.—Austin Apr. 12, 2013, no pet.) (mem. op.); *Ulogo v. Villanueva*, 177 S.W.3d 496, 501–02 (Tex. App.—Houston [1st Dist.] 2005, no pet.).

The record does show Ako advised the trial court he had video evidence. However, the record does not show he offered any such video evidence he contends should have been admitted. As a result, Ako has failed to preserve his complaint for review. See TEX. R. EVID. 103(a)(2); TEX. R. APP. P. 33.1; *B.O.*, 2013 WL 1567452, at \*3.

This argument on appeal is decided against Ako.

## VI. CONCLUSION

The trial court did not err.

The trial court's order in a suit affecting the parent-child relationship is affirmed.

/Douglas S. Lang/  
DOUGLAS S. LANG  
JUSTICE

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**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

IN THE INTEREST OF R.N. AND R.N.,  
MINOR CHILDREN

No. 05-16-00113-CV

On Appeal from the 303rd Judicial District  
Court, Dallas County, Texas  
Trial Court Cause No. DF-12-07618.  
Opinion delivered by Justice Lang. Justices  
Evans and Schenck participating.

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

It is **ORDERED** that appellee ANN ENOW AGBOR recover her costs of this appeal from appellant RICHIE N. AKO.

Judgment entered this 5th day of October, 2017.