AFFIRMED IN PART AS MODIFIED; CONDITIONAL GRANT IN PART; and Opinion Filed September 27, 2023

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-20-00338-CV

IN THE INTEREST OF S.B., A CHILD

Appeal and Original Proceeding from the 468th Judicial District Court
Collin County, Texas
Trial Court Cause No. 468-51319-2019

MEMORANDUM OPINION ON REHEARING[1]

Before Justices Pedersen, III, Goldstein, and Smith
Opinion by Justice Pedersen, III

In this consolidated appeal and mandamus proceeding after a non-jury trial, appellant-relator ("Father") challenges two trial court orders, one modifying possession and child support and the other enforcing a modification order.[2] Father brings thirteen appellate issues challenging both orders. We modify and affirm both orders on appeal. Father brings four mandamus issues challenging the enforcement

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[1] Appellant-Relator ("Father") filed a motion for rehearing. We deny Father's motion for rehearing. On our own motion, we withdraw our March 31, 2023 memorandum opinion and vacate the judgment of that date. This opinion is now the opinion of the Court.

[2] This Court ordered Father's appeal, No. 05-20-00338-CV, and his petition for writ of mandamus, No. 05-20-00721-CV, consolidated into cause number 05-20-00338-CV.

motion. We conditionally grant, in part, mandamus relief and modify the enforcement order. We deny mandamus relief not expressly granted.

Father's Appeal

Background

Father and Mother married and had one child, S.B.[3] They divorced in 2014. Their divorce decree was modified in 2018. Subsequently, Mother filed an enforcement action and a modification action, both of which are appealed here.

In the trial below, Mother testified that Father's treatment of S.B. worsened every day after the previous order, on several occasions causing S.B. to return from Father crying and telling how he had treated her. S.B. sometimes cries before visiting Father and asks not to visit him. S.B. has cried after speaking with Father on the telephone. S.B. takes several days to recover from her depressed state after interacting with him.

S.B. has a condition related to A.D.H.D. and to Tourette Syndrome. S.B. was diagnosed after the 2018 order and has required prescription medicine. When S.B. experiences increased stress, her condition worsens. Father's conduct increased S.B.'s stress. Mother testified S.B. must have constant access to her prescription medication to avoid increased symptoms, but Father failed to consistently make it

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[3] To protect the privacy of the minor involved in this case, we identify the parents as "Father" and "Mother" and refer to the child as "S.B."

available. S.B. told her therapist that she was not receiving medication during summer visitation with Father. When Father's conduct concerning medication was negative, S.B. would get so nervous that her symptoms would markedly worsen. S.B. experienced significant turmoil related to her medication and access to it. S.B.'s symptoms typically were exacerbated by stress, which caused S.B. to cry at her therapist's office. S.B.'s friends noticed her condition, making S.B. uncomfortable. S.B. was very upset and did not understand the upsetting events concerning her medication. S.B. told her therapist that Father did not believe S.B. has a legitimately diagnosed medical condition or needs medication. Meanwhile, Mother is incurring increased expenses related to S.B.'s emotional and medical conditions.

Mother testified that Father caused S.B. considerable public anxiety at her school by alerting school officials that S.B. possessed a telephone and prescription medication. During these episodes, Father recorded the incident, which apparently involved teachers and other students, spoke loudly, caused S.B. to be embarrassed or anxious, and failed to comfort S.B. He testified others had provided comfort to S.B. during one such incident, and his providing comfort to S.B. at that time "was not on my to do list."

Mother testified that Father interfered with S.B.'s communication with her during his summer possession. He discarded or disassembled S.B.'s telephone and accompanying SIM card Mother had provided to S.B. Father disassembled the phone in S.B.'s presence, which caused her to cry.

Mother testified that Father engages Mother's present husband in an adversarial manner. Father causes conflict in S.B.'s presence while "[S.B.] is crying and asking him not to do it." Mother testified S.B. witnessed Father's banging on her car at a police station and screaming and yelling. Police had Father leave the police department before Mother and S.B left.

Mother testified that when Father communicates with S.B.'s doctors, teachers, and coaches, he provides false information. S.B.'s neurologist's office was so upset with Father that the office considered stopping treatment of S.B. Father provided false information to S.B.'s school, which caused postponement of a meeting to address S.B.'s accommodations. The meeting was delayed until lawyers intervened.

S.B.'s therapist, Tricia Phelps, testified that after the 2018 order, S.B. began therapy with her every week for more than a year. Phelps testified S.B. will do things either detrimental to herself or inconsistent with her own desires to please Father. She testified that Father has difficulty making good judgment calls about what is developmentally appropriate for S.B. Phelps noted Father is much more likely to criticize than praise, which is not healthy for S.B.'s development. Phelps noted S.B. was devastated, angered, hurt, and confused when Father told her that a special dress for a choir concert was too big and did not look good on her. S.B. could not understand why he was negative about the dress. Mother testified S.B. needs her therapist as a person S.B. can trust and with whom S.B. can talk without being

punished. She testified Father told S.B. "bad things" about her therapist, which was "not beneficial for [S.B.].

Phelps testified that Father asked for her latest drug test results. Father also asked her for any board complaints and any other complaints filed against her. Father asked her to produce the information within four days. Phelps suggested Father thinks it might be better if she stopped counseling S.B. at least until matters were cleared up. She took Father's demands as threats to her livelihood and her license and said Father's communications felt as if they were designed only to somehow shape or inhibit her testimony.

Mother and Phelps testified that Father had taken S.B. to Sekrit Theater, an event venue in Austin, Texas. Father left S.B. unattended outdoors in the dark at one part of the facility while he attended a star-watching event at another part of the facility. Phelps thought Father's leaving S.B. unattended was too late in the day and dangerous for S.B. She testified S.B. was unable to seek help if left unattended there, which "was very unsettling to me." She would not recommend that a parent leave a child unattended there, as Father had. Phelps testified Father allowed S.B. to go unattended to another park. Phelps testified,

> The park as I understand it is well over a mile away. There is clearly no sight line. When [Father] stays at home trying to finish up a project and she is at that park and it's about a mile away, she can't run home if there is danger. She . . . didn't have a cell phone.

Procedural Posture; Proceedings Below

The trial court held a non-jury trial in a consolidated proceeding on the modification and enforcement suits. The trial court signed modification and enforcement orders. The modification order appointed Mother and Father joint managing conservators of S.B. Mother was given the exclusive right to designate the primary residence of S.B. The modification order limited Father's possession to the first Saturday of each month, beginning at 9:00 a.m. Saturday and ending at noon the following Sunday, to be continuously exercised within Collin County, Texas, and its contiguous counties.[4] The modification order provided if Father met specified conditions, then he would possess S.B. under the standard possession order. The modification order provided that Father not interfere in specific respects with S.B.'s attendance and participation in her activities. The trial court ordered Father to pay $1,400.00 per month child support. The trial court ordered Mother to provide health insurance for S.B. and Father to pay Mother cash medical support for reimbursement of health insurance premiums as additional child support. As for unreimbursed health care costs, the trial court ordered Mother to open a health savings account for S.B. and Father to deposit $450.00 into the account each month. Mother and Father each were ordered to pay fifty percent of unreimbursed health expenses of S.B. above the first $450.00 deposited monthly by Father. The modification order enjoined Father from engaging in specified conduct related to S.B. The trial court

[4] Father resides in Austin, Texas.

awarded Mother $21,862.75 in attorney's fees, expenses, and costs associated with the modification suit.

The enforcement order included an order that Father pay Mother $4,656.70 for unpaid, unreimbursed medical child support. The trial court found Father had failed to comply with the 2018 order by failing to return S.B. to Mother on time after extended summer possession, resulting in Mother's incurring change fees for new airplane flights; destroying or discarding a telephone intended for S.B.'s use; and refusing delivery of a telephone for S.B.'s use, for which the trial court ordered Father to pay $1,120.00. The trial court also found Father violated the 2018 order by interfering with S.B.'s communication with Mother while S.B. was on summer visitation with Father, or his family in Ukraine, and for directly communicating with Mother. The trial court ordered Father to pay $18,568.75 in attorney's fees related to the enforcement order. The trial court ordered Father confined for a period not to exceed 180 days or until he complied with orders to pay Mother and her attorneys. The trial court suspended commitment and placed Father on community supervision for four years, conditioned on his paying Mother and her attorneys and on his complying with the order in the suit to modify.

Father appeals the modification and enforcement orders.

Father's Appellate Issues

We understand Father's issues to be: (1) the evidence was insufficient to support modification of possession; (2) limitation of conservatorship rights was an abuse of the trial court's discretion and not supported by sufficient evidence; (3) deviation from the standard possession order was not supported by sufficient evidence; (4) the possession order was vague, ambiguous, and unenforceable; (5) the trial court abused its discretion, and there was insufficient evidence to support the medical support order; (6) the trial court abused its discretion, and there was insufficient evidence to support injunctive relief; (7) the evidence was insufficient to support the medical-support order due to failure of conditions precedent; (8) the evidence was insufficient—as a whole—to support the medical-support order; (9) the award of attorney's fees in the enforcement order is void; (10) the evidence was legally and factually insufficient to support consequential damages in the enforcement order; (11) the evidence was insufficient to support findings of violations of a previous order; (12) the trial court incorrectly assessed post-judgment interest and allowed attorney's fees to be assessed as costs; and (13) attorney's fees associated with the enforcement and modification proceedings should be stricken. To the extent Father sought to raise any other issues, those issues have been waived for inadequate briefing. TEX. R. APP. P. 38.1(i).

Standard Of Review

We review a trial court's rulings in motions to enforce and in motions to modify custody, possession, and visitation under an abuse of discretion standard. *See Holland v. Holland*, No. 05-21-00597-CV, 2022 WL 371452, at *1 (Tex. App.—Dallas Aug. 29, 2022, no pet.) (mem. op.) (enforcement); *In re B.M.B.*, No. 05-20-00852-CV, 2011 WL 3226277, at *2 (Tex. App.—Dallas Aug. 10, 2022, pet. filed) (mem. op.) (modification). A trial court abuses its discretion when it acts arbitrarily, unreasonably, or without reference to any guiding rules or principles. *See Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985). "The mere fact that a trial judge may decide a matter within his discretionary authority in a different manner than an appellate judge in a similar circumstance does not demonstrate that an abuse of discretion has occurred." *Id.* at 242.

Father largely casts his issues as challenges to the sufficiency of the evidence. In family law cases, the abuse of discretion standard of review overlaps with the traditional sufficiency standards of review; as a result, legal and factual sufficiency are not independent grounds of reversible error, but instead constitute factors relevant to our assessment of whether the trial court abused its discretion. *See Moroch v. Collins*, 174 S.W.3d 849, 857 (Tex. App.—Dallas 2005, pet. denied). To determine whether the trial court abused its discretion we consider whether the trial court (i) had sufficient evidence on which to exercise its discretion and (ii) erred in its exercise of that discretion. *See In re A.B.P.*, 291 S.W.3d 91, 95 (Tex. App.—

Dallas 2009, no pet.). The applicable sufficiency review comes into play with the first question. *See Moroch*, 174 S.W.3d at 857. We then determine whether, based on the elicited evidence, the trial court made a reasonable decision. *See id.* An abuse of discretion generally does not occur if some evidence of a substantive and probative character exists to support the trial court's decision. *See In re S.M.V.*, 287 S.W.3d 435, 450 (Tex. App.—Dallas 2009, no pet.). Because the trial court has "full opportunity to observe witness testimony first-hand," it is "the sole arbiter when assessing the credibility and demeanor of witnesses." *See In re A.B.*, 437 S.W.3d 498, 503 (Tex. 2014).

Findings of fact made after a bench trial are of the same force and dignity as a jury's verdict upon special issues. *In re C.H.C.*, 392 S.W.3d 347, 349–50 (Tex. App.—Dallas 2013, no pet.). The trial court's findings of fact are reviewable for factual and legal sufficiency of the evidence under the same standards as applied in reviewing the sufficiency of the evidence supporting a jury's answer to a special issue. *Id.* at 350. In determining whether there is legally sufficient evidence to support a finding, we examine the record and credit evidence favorable to the finding if a reasonable fact finder could, and we disregard evidence contrary to the finding unless a reasonable fact finder could not. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). "We sustain a no-evidence challenge when the record reveals either (1) a complete absence of evidence of a vital fact, (2) the court is barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact,

(3) the evidence offered to prove a vital fact is no more than a scintilla of evidence, or (4) the evidence establishes conclusively the opposite of a vital fact." *See In re. M.H.A.*, No. 05-20-00787-CV, 2022 WL 2527003, at *2 (Tex. App.—Dallas July 7, 2022, no pet.) (mem. op.). In a factual sufficiency review, we consider the entire record and will set aside the finding only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986) (per curiam); *Cameron v. Cameron*, 158 S.W.3d 680, 683 (Tex. App.—Dallas 2005, pet. denied).

Modification Of Support, Possession, And Access

Father complains in his first issue that the evidence is insufficient to support the modification of "child support" and "non-child support (including conservatorship, possession, and all ancillary matters pertaining to the Child)." He argues there is insufficient evidence of a material and substantial change of

circumstances after rendition of the 2018 order. Father cites two sections of the family code, section 156.101(a)[5] and section 156.401(a-1).[6]

The modification order recited the following finding: "The Court finds that the material allegations in the petition to modify are true and that the requested modification is in the best interest of the child." Mother's live petition to modify the parent-child relationship alleged, under the heading "modification of conservatorship, possession and access" that "The circumstances of the child, a conservator, or other party affected by the order to be modified have materially and substantially changed since the date of rendition of the order to be modified." Under the heading "support," the petition alleged, "The circumstances of the child or a

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[5] Section 156.101(a) of the Texas Family Code provides, in part:

> The court may modify an order that provides for the appointment of a conservator of a child, that provides the terms and conditions of conservatorship, or that provides for the possession of or access to a child if modification would be in the best interest of the child and:
>
> (1) the circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed since . . .
>
> (A) the date of the rendition of the order . . . .

TEX. FAM. CODE § 156.101(a).

[6] Section 156.401(a-1) provides:

> If the parties agree to an order under which the amount of child support differs from the amount that would be awarded in accordance with the child support guidelines, the court may modify the order only if the circumstances of the child or a person affected by the order have materially and substantially changed since the date of the order's rendition.

FAM. § 156.401(a-1).

person affected by the order have materially and substantially changed since the date of the rendition of the order to be modified . . . ."

The determination of whether there has been a material and substantial change in circumstances is a fact-intensive inquiry that is not guided by rigid rules. *See In re C.F.M.*, No. 05-17-00141-CV, 2018 WL 2276351, at *2 (Tex. App.—Dallas May 18, 2018, no pet.) (mem. op.). "In considering whether a material and substantial change in circumstances has occurred, the trial court compares the evidence of the conditions that existed at the time of the entry of the prior order with the evidence of the conditions that existed at the time of the hearing on the petition to modify." *In re H.N.T.*, 367 S.W.3d 901, 904 (Tex. App.—Dallas 2012, no pet.).

First, Father argues there is no material and substantial change in circumstances, because his relationships with Mother and S.B. were bad at the time of the previous order and remained bad. Father's briefing describes the evidence as "an ongoing pattern of disdain." The trial court heard testimony about S.B.'s symptoms and the various issues surrounding her medical and related emotional condition, including: Mother's increased expenses; Father's exacerbation of S.B.'s medical condition; Father's undermining S.B.'s educational, social, therapy, and extracurricular relationships; and S.B.'s need for weekly therapy. Father cites to *A.P.B.*, but this opinion is distinguishable. *See In re A.B.P.*, 291 S.W.3d 91. In that opinion, this Court concluded "there is no evidence that the difficulty was new or different since the entry of the prior order." *Id.* at 96. As noted above, testimony

supports the trial court's finding of material and substantial changes in S.B.'s circumstances since the 2018 order.

Second, Father argues his change of residence from North Texas to Austin, Texas, was contemplated when the previous order was entered. Father cites *Hoffman v. Hoffman*, No. 03-02-00062-CV, 2003 WL 22669032, at *6 (Tex. App.—Austin Nov. 13, 2003, no pet.) (mem. op.) (noting, geographic move was contemplated at time of original agreement so that ". . . the move itself cannot be evidence of a material or substantial change in this case."). As noted above, the trial court heard evidence of more than Father's "move itself."

Third, Father argues, "The child had been diagnosed with ADHD and [other symptoms], but has exhibited all the signs of the same prior to the 2018 Order." Mother testified S.B.'s diagnosis and original prescription occurred after the previous order. The trial court is in the best position to observe the witnesses and their demeanor and is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *See Interest of A.C.D.*, No. 0516-00779-CV, 2016 WL 6835725, at *3 (Tex. App.—Dallas Nov. 3, 2016, no pet.) (mem. op.).

Fourth, Father argues the evidence is insufficient to support a modification in Father's child support. He posits there was no evidence "as to increases in costs for the child or for either party due to any allegations asserted at trial." The testimony outlined above revealed increased costs related to S.B.'s diagnosed medical

condition, including medical costs, prescription drug costs, and the costs of S.B.'s approximately fifty therapy visits.

Fifth, Father argues he "was seemingly 'maxed out' in terms of child support at the modification hearing, whereas previously the parties had agreed to a below guidelines child support amount." Father fails to provide authority or an explanation of how a below-guidelines child support agreement precludes a subsequent substantial and material change in circumstances. He also asserts a material and substantial change in circumstances cannot be based on his income alone but must be based on consideration of broader financial circumstances. *See In re J.Z.*, No. 02-17-00127-CV, 2018 WL 5289353, at *5 (Tex. App.—Fort Worth Oct. 25, 2018, no pet.) (mem. op.) ("The inquiry in a modification proceeding based on changed finances is not whether the relevant person's income has changed, but is whether the person's financial circumstances, of which income is a part, have changed materially and substantially. TEX. FAM. CODE ANN. § 156.401."). The trial court heard evidence, discussed above, relevant to financial circumstances not limited to income.

We conclude the record contains sufficient evidence of a material and substantial change in circumstances. *See* FAM. §§ 156.101(a); 156.401(a-1). We overrule Father's first issue.

Denial Of Informational Rights

In his second issue, Father argues the trial court abused its discretion and that no evidence supports the order's denial of certain "informational rights" enumerated in section 153.073(a) of the Texas Family Code. *See* FAM. § 153.073(a).

Father cites inapposite authority. *See Brandon v. Rudisel*, 586 S.W.3d 94, 106 (Tex. App.—Houston [14th Dist.] 2019, no pet.). In *Brandon,* the trial court rejected a mother's appointment as possessory conservator. *See id.* at 99. The order prohibited any possession, access, or contact with her children. *See id.* The Fourteenth Court of Appeals held the evidence did not show parental unfitness so extreme that even supervised or limited parental contact or visitation would be contrary to the children's best interest. *Id.* at 109. *Brandon* is distinguishable because this case does not involve possessory conservatorship. The order here appointed Father joint managing conservator. *Brandon* also is distinguishable because the modification order here does not preclude Father from all possession, access, or contact with S.B. Moreover, *Brandon* observed: "Nor does . . . other record evidence suggest circumstances that would warrant denying Mother the Informational Rights." *Id.* at 107. Here, Mother testified:

> [Father] is ruining every relationship I had with the doctors, teachers, coaches. It doesn't matter who it is, he will call and harass those people like he did with the neurologist. He was calling and giving them false information that he has rights to do medical decisions when he didn't. And the neurologist was so upset and the office was so upset with the situation that they were about to stop treating [S.B.] because they cannot – I mean, the office cannot deal with . . . ."

The trial court could reasonably have concluded Mother's testimony evidenced adverse consequences of Father's conduct and communications with S.B.'s neurologist, therapist, educators, and coaches.

Father asserts Mother did not introduce documents or recordings of his interactions with doctors, teachers, and coaches. However, Mother provided relevant testimony. S.B.'s therapist testified about Father's communications to her, corroborating parts of Mother's testimony. *See Interest of A.C.D.*, 2016 WL 6835725, at *3 (noting trial court is in best position to observe witnesses and their demeanor and is sole judge of their credibility and weight to be given their testimony).

We conclude the trial court heard sufficient evidence to support its order limiting Father's informational rights. In light of the evidence, we reject Father's assertion that Mother was only concerned about the impact of Father's actions on the therapist. We also reject Father's assertion that "[t]his concern could have been resolved in a less restrictive way than stripping Father of his 153.073 Rights[]"—particularly when Father fails to demonstrate how the trial court might accomplish that. The trial court did not abuse its discretion. We overrule Father's second issue.

Deviation From Standard Possession Order

In his third issue, Father argues that the trial court's deviation from the standard possession order was not supported by sufficient evidence. A child's best interest is always the primary consideration of the court in determining issues of

possession and access. *See* FAM. § 153.002. The trial court has broad discretion in fashioning restrictions on a parent's possession and access that are in the best interest of the child. *See In re S.A.H.*, 420 S.W.3d 911, 928 (Tex. App.—Houston [14th Dist.] 2014 no pet.). The trial court does not abuse its discretion if the record contains evidence to support a finding that a restriction is in the child's best interests. *See id.* at 928.

There is a rebuttable presumption that the standard possession order (1) provides reasonable minimum possession of a child for a parent named as a possessory conservator or joint managing conservator; and (2) is in the best interest of the child. *See* FAM. § 153.252. The terms of an order that denies possession of a child to a parent or imposes restrictions or limitations on a parent's right to possession of or access to a child may not exceed those that are required to protect the best interest of the child. *See* FAM. § 153.193; *In re P.A.C.*, 498 S.W.3d 210, 216 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) (citing to section 153.193 in case involving joint conservatorship).

The trial court ordered that Father have possession of S.B. on the first Saturday of every month throughout the year, beginning at 9:00 a.m. Saturday and ending at 12:00 p.m. on the following Sunday, to be continuously exercised within Collin County, Texas, and counties contiguous to Collin County. Additionally, the order contained conditions that, if met by Father, would provide him rights pursuant to the standard possession order.

Father argues that nothing "had happened" since the 2018 order to warrant a change in his possession order. We rejected Father's first point of error complaining that insufficient evidence supported the trial court's finding of a material and substantial change in circumstances since the 2018 order. We reject the repeated argument here.

Father argues that the limited rights to possession exceed those necessary to protect S.B.'s interest. In support, Father cites four inapposite opinions. *See In re A.G.*, 531 S.W.3d 329, 332 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (involving order for visitation limited by supervision of third party and therefore addressing circumstances and concerns not raised here); *In re the Marriage of Koenig*, No. 14-16-00319-CV, 2017 WL 2704081, at *4-6 (Tex. App.—Houston [14th Dist.] June 22, 2017, no pet.) (mem. op.) (stating Father's proposition that a limitation on possession must not be excessive, but upholding "right of access to the children [that] was limited as set out in six steps, which if completed permitted the reinstitution of a standard possession order"), *superseded by statute on other grounds as stated in In re N.H.N.*, 580 S.W.3d 440, 445 (Tex. App.—Houston [14th Dist.] 2019, no pet.); *In re H.D.C.*, 474 S.W.3d 758, 764-65 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (noting less burdensome restriction could serve trial court's reasonable requirement that children be properly supervised at all times); and *Newell v. Newell*, 349 S.W.3d 717, 721-23 (Tex. App.—Fort Worth 2011, no pet.) (involving random alcohol testing).

Father repeatedly and generally asserts or implies that changes to the previous order are not in S.B.'s best interest. The testimony summarized above provided the trial court a reasonable basis to modify the order in S.B.'s best interest. The trial court expressly found good cause to deviate from the standard possession order because it was unworkable or inappropriate under the circumstances. The court also found that placing conditions and limitations on Father's possession time was in S.B.'s best interest.

Father, who resides in Austin, argues there is "no evidence" to support the order's requirement that he exercise visitation in Collin County and its contiguous counties. He argues that "the city of Austin, Texas, was not found or attested to as being an inherently dangerous place . . . ." His argument overlooks the testimony of Mother and S.B.'s therapist that S.B.'s activities are important to her. The activities are positive experiences for her. The activities took place near Mother's residence in Collin County. Father did not allow S.B. to engage in her activities during his possession of her in Austin. S.B.'s therapist testified that Father's conduct related to S.B.'s activities was upsetting to S.B., such as his cutting her hair despite her modeling agreement and his criticism of her choir dress. He apparently attended only one of S.B.'s activities. Phelps testified that Father's leaving S.B. unattended at Sekrit Theater and at the park a mile away from his house in Austin while he worked from home were dangerous to S.B.'s safety. The trial court could reasonably infer Father's possession of S.B. in Collin County and its contiguous counties is in her

best interest because her activities are there, continued engagement in those activities provide her emotional stability and growth, and she was in danger while unsupervised at Sekrit Theater and at the park while Father worked from his Austin home a mile away.

Father argues there is no evidence of emotional, sexual, or physical abuse to S.B. The modification order recites:

> The Court finds that there is good cause exists [sic] to deviate from the Standard Possession Order contained in the Texas Family Code at sections 153.311 through 153.317, as the Standard Possession Order is unworkable or inappropriate under the circumstances. The Court finds that it is in the best interest of the child and to protect the child's *emotional* welfare that the following conditions and restrictions be placed on [Father's] periods of possession of the child.

(Emphasis added.) Again, the trial court heard testimony about S.B.'s diagnosed and developing medical condition. Father downplayed the existence of any medical condition. S.B.'s condition caused her to suffer *emotionally* with anxiety. S.B.'s condition and anxiety worsened as Father interacted with S.B.'s physicians, therapists, educators, and coaches. S.B. was prescribed medication. Father did not think she required medication. He failed to consistently provide her with medication. He exacerbated S.B.'s anxiety by criticizing her choir dress, his publicly calling attention to S.B. at her school for having a telephone or medicine in her backpack, his cutting her hair during his summer visitation in Ukraine, his criticizing her piano practice until she could no longer cry, and his conduct during a parental exchange of S.B. at a police station.

We conclude the trial court heard sufficient evidence and did not abuse its discretion in deviating from the standard possession order in S.B.'s best interests.

Father additionally complains the evidence is insufficient to support the ordered conditions for Father to transition to the standard possession order. Father does not contend such conditions are categorically unauthorized. *See In re the Marriage of Koenig*, 2017 WL 2704081, at *5 (cited by Father and noting, ". . . [Father's] right of access to the children was limited as set out in six steps, which if completed permitted the reinstitution of a standard possession order."). We already concluded the evidence is sufficient to support the trial court's limitation of Father's time of possession. The trial court had the discretion to order documented counseling and education for the protection of the emotional welfare of S.B. and in furtherance of her best interest. *See id*. (cited by Father). Father objects to the condition that he comply with court orders. There is evidence, noted above, of incidents initiated by Father and his failure to follow court orders. The trial court heard sufficient evidence to find the conditions are "in the best interest of the child and to protect the child's emotional welfare . . . ."

We overrule Father's third issue.

Specificity Of Possession Order

In his fourth issue, Father complains that the conditions imposed on him to transition to a standard possession order are vague, ambiguous, and unenforceable. An appellate court reviews de novo the question of whether a possession order is

ambiguous. *See In re H.D.C.*, 474 S.W.3d 758, 763 (Tex. App.—Houston [14th Dist.] 2014, no pet.). When a court places restrictions or conditions on a parent's possession rights, the court must define those terms specifically. *See id.* (citing *In re A.L.E.*, 279 S.W.3d 424, 432 (Tex. App.—Houston [14th Dist.] 2009, no pet.)). The judgment must state in clear and unambiguous language, what is required for the parent to comply, and the terms must be specific enough for the court to enforce in contempt. *See id.* (citing *In re A.L.E.*, 279 S.W.3d at 432). We construe orders under the same rules of interpretation as those applied to other written instruments. *Payless Cashways, Inc. v. Hill,* 139 S.W.3d 793, 795 (Tex. App.—Dallas 2004, no pet.) (citing *Lone Star Cement Corp. v. Fair*, 467 S.W.2d 402, 404-05 (Tex. 1971)). We look to the order as a whole and construe it in a way that gives each provision meaning. *See In re Mittelsted*, No. 14-22-00480-CV; 2022 WL 2379422, at *4 (Tex. App.—Houston [14th Dist.] July 1, 2022, orig. proceeding) (mem. op.).

The modification order limits Father's unsupervised possessory rights until Father meets four conditions. Father must successfully (1) complete "individual counseling," (2) complete "parenting classes," (3) complete "co-parenting classes," and (4) "[f]or a continuous period of six (6) months, avoid a single altercation or incident initiated by [Father] including but not limited to [Father's] failure to comply with an Order of the Court." The order provides Father will transition to the standard possession order on fulfilling the conditions.

Father argues this case is similar to *In re Collier*, 419 S.W.3d 390 (Tex. App.—Amarillo 2011, pet. denied), and *Hale v. Hale*, No. 04-05-00314-CV, 2006 WL 166518 (Tex. App.—San Antonio Jan. 25, 2006, pet. denied) (mem. op.). In *Collier*, a possession order vested mother with complete discretion over father's possession. *See Collier*, 419 S.W.3d at 398–99. Consequently, the possession order could effectively deny father any access to his child while also denying father the remedy of contempt against wife. *See id*. In *Hale*, a possession order that denied a possessory conservator any access to his child until a therapist recommended otherwise and that provided no guidelines was unenforceable by contempt and, therefore, was an abuse of discretion. *See Hale*, 2006 WL 166518, at *3.

Father first complains about the order's conditional provision for individual counseling. He complains the order does not identify an individual counselor. He concedes the order provides that he himself select the counselor. The order vests discretion in Father, distinguishing this case from *Collier* or *Hale.* Put another way, Father need rely on no one else to return to the standard possession order. He is in total control of his compliance with the trial court's orders. He complains the trial court ordered that he "participate in individual counseling at a frequency determined by the therapist . . . ." He complains the order fails to provide therapy guidelines. Here, the order vests discretion with Father to discuss possible counseling with potential counselors and to agree to therapy guidelines and the frequency of treatment. The trial judge left counseling protocol to Father and his chosen

professional counselor. Again, Father's discretion distinguishes his case from *Collier* or *Hale.* Father recites the order's provision for "individual counseling by a licensed professional therapist (with all the credentials of a Licensed Professional Counselor) . . . ." Father fails to explain why this provision is ambiguous, unclear, or unspecific. *See In re H.D.C.*, 474 S.W.3d at 763. We may not and do not make Father's arguments for him. *See, e.g., Gonzales v. Thorndale Coop. Gin & Grain Co.*, 578 S.W.3d 655, 657 (Tex. App.—Houston [14th Dist.] 2019, no pet.) ("As the appellant, Gonzales bore the responsibility to frame the issues and argument for his appeal; and we have no discretion to create an issue or argument not raised in appellant's brief.").

Father complains of the order's condition that he participate in treatment "for a period of six (6) consecutive months, or until successfully discharged by the therapist." Father asserts that "or until successfully discharged by the therapist" could provide for therapy "until the end of days." The plain meaning of the word "or" is "alternative." *Or*, WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (1st ed. 1985). We use the plain meaning of "or" and interpret the order to provide that Father participate, if he wishes, in counseling until the first of either of two "alternative" occurrences: (1) Father participates in counseling for a period of six consecutive months "or" (2) a therapist successfully discharges him from counseling. We conclude that no provision in the order concerning conditional individual counseling is vague, ambiguous, or unspecific.

Father next complains the parenting class condition is vague and ambiguous because first, the order does not identify a specific parenting class or counselor. The order allows Father to select "parenting classes" addressing "parenting issues." As before, it is Father who has discretion to select a class, also making Father's *Hale* and *Collier* opinions inapposite. Father complains of the condition that he attend classes "for a period of six (6) months, or until successfully discharged by the class coordinator(s)." We concluded the similar time requirement concerning conditional individual counseling was not vague or ambiguous and do so here with the time provision in the conditional parenting classes. Father complains the order is vague and ambiguous by providing a parenting class "duration from start to finish [that] spans an approximate six (6) months." We concluded the individual counseling and parenting class duration, addressed above, ends on the earlier of (1) six consecutive months of counseling or six months of classes or (2) successful discharge by a counselor or class coordinator. Looking at the order as a whole and construing it in a way that gives each provision meaning,[7] we construe "duration from start to finish span[ning] an approximate six (6) month period" consistently with other language in the order to mean a class that ends upon the first of either (1) Father's participation in class for a period of six months or (2) a class coordinator's successfully discharging Father from class. Father complains that the order provides the parenting

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[7] *See In re Mittelsted*, 2022 WL 2379422, at *4.

class "must be approved by both parties' (sic) of record." He argues this places discretion in a third party "who could withhold approval for any number of reasons." However, the order provides for (1) a parenting class (2) addressing parenting issues (3) lasting until the occurrence of either six months of class participation or successful discharge of Father by a class coordinator. We do not discern third-party discretion to disapprove a proposed class meeting the order's specifications.

Father complains of the order's conditional requirements of a co-parenting class. Father complains for reasons "analogous" to those contained in his complaints regarding parenting classes. We have rejected Father's analogous reasons and reject his complaints about the order's provisions concerning conditional co-parenting classes here.

Father complains the order's good-behavior condition lacks specificity because it requires, "For a continuous period of six (6) months, there is not a single altercation or incident initiated by [Father] including but not limited to [Father's] failure to comply with an Order of the Court." Father does not argue how "failure to comply with an Order of the Court" lacks specificity, and we see no such argument to be made.

We focus on the order's provision concerning Father's initiation of an "altercation or incident" including "but not limited to" violation of court order. Mother argues, "Father cannot legitimately claim to be unaware of his obligation under the trial court's order" and that "Father should know from this order exactly

what is expected of him." We conclude Father must guess what constitutes a prohibited "altercation or incident." Application of the law and rules of interpretation, addressed above, fail to resolve the order's lack of specificity.

We sustain Father's fourth issue as to his complaint concerning the modification order's condition that he not initiate or continue altercations or incidents. We modify the modification order to delete all provisions that Father not be involved in, initiate, cause, or continue altercations or incidents. *See, e.g., In re C.L., Jr.*, No. 05-14-01520-CV, 2015 WL 682159, at *2 (Tex. App.—Dallas Feb. 18, 2015, no pet.) (mem. op.) (noting this Court has authority to modify a judgment when it has necessary information to do so, citing TEX. R. APP. P. 43.2(b), and modifying decree to remove void provisions). We overrule the fourth issue as to the remainder of Father's complaints in all other respects.

Medical Support Order

In his fifth issue, Father complains there is insufficient evidence to support the trial court's medical support order and that the trial court abused its discretion in rendering the order. First, Father complains the trial court abused its discretion by requiring him to pay an increase in health insurance premiums for S.B. because it did not "assign a value" to the payment. In conjunction with his first argument, he briefly asserts the evidence is insufficient to support the ordered payment of premiums. Second, Father complains that the trial court abused its discretion by requiring him to contribute $450.00 per month into a health savings account on

S.B.'s behalf to pay for unreimbursed medical expenses. In conjunction with his second argument, he argues there is no evidence to support the order.

A trial court's order pertaining to health insurance for a child will not be reversed on appeal unless the complaining party can show a clear abuse of discretion. *See Sink v. Sink*, 364 S.W.3d 340, 347, (Tex. App.—Dallas 2012, no pet.).

First, Father complains that the order does not state an amount he must pay for S.B.'s health insurance premiums and is "void." Here, the trial court ordered Father to pay Mother child support. Additionally, the trial court ordered Mother to obtain health insurance for S.B. pursuant to section 154.1826 of the Texas Family Code. *See* FAM. § 154.1826. In this circumstance, section 154.182(b-1) provides: "If the parent ordered to provide health insurance under Subdivision (b)(1) or (2) is the obligee [as Mother is here], the court shall order the obligor to pay the obligee, as additional child support, an amount equal to the actual cost of health insurance for the child, but not to exceed a reasonable cost to the obligor." "Reasonable cost" has the meaning assigned by Section 154.181(e). *See* FAM. § 154.182(c)(2). Section 154.181(e) provides: "In this section, 'reasonable cost' means the cost of health insurance coverage for a child that does not exceed nine percent of the obligor's annual resources, as described by Section 154.062(b), if the obligor is responsible under a medical support order for the cost of health insurance coverage for only one child." The order and the Texas Family Code provides Father's cost for S.B.'s health insurance shall be its actual cost and shall not exceed a "reasonable" amount, as

statutorily defined. Father fails to provide authority that the order—based on provisions of the Texas Family Code—is void, unauthorized, or an abuse of discretion, and we reject his argument. He briefly suggests, "*Any sum* differing from [the amount he was ordered to pay for premiums under the previous order] *would be* unsupported by the evidence." (Emphases added.) Father's argument is facially hypothetical and without evidentiary basis. The trial court did not abuse its discretion. The assertion of factual insufficiency of the amount of premiums to be paid is overruled.

Second, Father complains of the trial court's order to deposit $450.00 per month into a "health savings account" for "health care expenses of [S.B.] that are not reimbursed by insurance." The order states the requirement was entered pursuant to Texas Family Code section 154.183(c). *See* FAM. § 154.183(c). Father argues: "*By the letter of the statute*, an unreimbursed cost does not exist until the child has seen the doctor and the health insurance coverage determined." (Emphasis added.) We understand Father to argue section 154.182 does not authorize the trial court to have allocated health-care costs to him unless an insurer first refuses to reimburse the costs.

We interpret statutes in light of their plain language and do not read terms into a statute that do not exist in the text. *See Bertrand v. Holland*, No. 01-16-00946-CV, 2018 WL 1720742, at *3 (Tex. App.—Houston [1st Dist.] Apr. 10, 2018, pet. denied) (mem. op.). When interpreting statute, we give effect to every word, clause,

and sentence contained therein. *See LMV-AL Ventures, LLC v. Tex. Dept. of Aging & Disability Servs.*, 520 S.W.3d 113, 122 (Tex. App.—Austin 2017, pet. denied) (when interpreting statute, courts should begin with plain language, derived from entire act and not just isolated portions, and should read a statute as whole and interpret it so as to give effect to every part) (citing *Mid-Century Ins. Co. v. Ademaj*, 243 S.W.3d 618, 621 (Tex. 2007)).

We conclude that Father's interpretation of section 154.183 ignores the statute's plain language. Section 154.183 begins, "As additional child support, the court shall allocate between the parties, according to their circumstances: (1) the reasonable and necessary health care expenses, of the child . . . ." *See* FAM. § 154.183(c)(1). The plain text of section 154.183(c)(1) does not limit itself to allocation of medical expenses only if reimbursement has been refused for services rendered. We may not rewrite the statute as Father suggests. *See In re Quality Cleaning Plus, Inc.*, No. 05-22-01053-CV, 2022 WL 16549069, at *3 (Tex. App.—Dallas Oct. 31, 2022, orig. proceeding) (mem. op.) (this Court is not permitted to rewrite a statute's text). Moreover, sections 154.183(c)(1) and (2) provide examples of expenses that may be allocated.

> . . . , *including* vision and dental expenses, of the child *that are not reimbursed* by health or dental insurance or are not otherwise covered by the amount of cash medical support ordered under Section 154.182; and

> (2) amounts paid by either party as deductibles or copayments in obtaining health care or dental care services for the child covered under a health insurance or dental insurance policy.

FAM. § 154.183(c) (emphases added). The examples in 154.183(c)(1) and (2)—including unreimbursed health or dental insurance—are not exclusive. *See* TEX. GOV'T CODE ANN. § 311.005(13) ("'Includes' and 'including' are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded."); *Tex. West Oaks Hosp., LP v. Williams*, 371 S.W.3d 171, 179 (Tex. 2012) (holding that legislature's use of the word "including" provided that statutory definition was nonexclusive). We conclude the plain language of section 154.183(c) authorized the trial court to enter the home-savings-account order to provide for the reasonable and necessary health care expenses of S.B. The trial court did not abuse its discretion.

Father briefly asserts, "The evidence certainly did not support a finding that the Child's uninsured expenses exceeded $450.00 per month." Mother argues, "Father had a long history of not paying medical expenses." The trial court found twenty-two instances in which Father failed to timely reimburse Mother for S.B.'s medical expenses. The trial court found and confirmed Father was in arrears for unreimbursed medical child support of S.B. in the amount of $4,656.70 and entered judgment in favor of Mother for that amount. Mother argues Father earned four times her salary. The trial court could reasonably have determined from the evidence that the health-savings-account order was in the best interest of S.B., which Father does

not contest, and was reasonably necessary for S.B.'s obtaining medical and related services. Moreover, the trial court—which limited Father's possession and informational rights and enjoined him from conduct related to S.B. and Mother—observed and judged Father's character. "The trial court was in a position of being able to judge, better than anyone else, the credibility of the witnesses, their demeanor and conduct during the trial and evaluating the virtues and general character of the parties involved." *See Troutman v. Troutman*, 443 S.W.2d 931, 933 (Tex. App.—Amarillo 1969, no writ). Based on the entire record, there was sufficient evidence to support the trial court's health-savings-account order. The trial court did not abuse its discretion.

We overrule Father's fifth issue.

Injunctions Against Father

In his sixth issue, Father complains the evidence was insufficient to support injunctions against Father and that the court abused its discretion in entering the injunctions.

We review a grant of a permanent injunction under an abuse of discretion standard. *See Messier v. Messier*, 389 S.W.3d 904, 908 (Tex. App.—Houston [14th Dist.] 2012, no pet.). A trial court has broad discretion in determining the best interest of a child in family law matters. *See id.* (citing *In re Doe 2*, 19 SW.3d 278, 231 (Tex. 2000)).

The order states: "The Court finds that, because of the conduct of [Father], permanent injunctions against him should be granted as appropriate relief because there is no adequate remedy at law." The trial court's order contained seventeen injunctions. Father generally lists seven injunctions here.[8] Father specifically refers to four injunctions in his argument. We address those four.

First, Father argues no injunction is authorized because there is insufficient evidence of a change in circumstances since the previous order. We have already rejected this argument when resolving Father's first issue against him by concluding that there was sufficient evidence of substantial and material changes in circumstances.

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[8] Father refers to the following seven injunctions, which are stated more fully here, as in the order, rather than as stated in Father's appellant's brief:

1. Communicating in any manner with the employees, staff, or agents of the child's school, church, doctor's offices, therapist's office, extracurricular activities, or other sponsor of an activity in which the child participates;
2. Going to or near, or within 150 feet of, any location of where [Mother and others] are known by [Father] to be and from remaining within 150 feet after [Father] becomes aware of [certain persons' presence];
3. Going to or near the school, church, medical or dental offices which the child normally attends or goes to, except when [Father] is attending a public activity of the child and only after three (3) days written notice before the start of the child's activity is given to [Mother] on Our Family Wizard of his desired attendance;
4. Interfering with or going to or near any activities of the child including but not limited to, and by way of example, peer birthday parties, girl scouts, any sports activities, practices, championships, church activities, modeling, school sponsored activities, recitals, award ceremonies, choir, orchestra, band, and softball, or otherwise, except when [Father] is attending a public activity of the child and only after three (3) days written notice before the start of the child's activity is given to [Mother] on Our Family Wizard of his desired attendance;
5. Consuming alcohol or a controlled substance within the twelve (12) hours before or during the period of access to the child;
6. Taking the child to Sekrit Theatre, located at 1145 Perry Road, Austin, Texas 78721; and
7. Directly contacting or consulting with the child's physician, dentist, psychologist or therapist.

Second, Father argues the injunctions must meet the usually rigorous requirements for injunctive relief in other civil suits. Father cites two opinions—*Messier* and *King*—in support of his argument that injunctive relief not related to "custody, control, possession, or visitation of a child" may be awarded only when allowed in other civil cases. *See Messier*, 389 S.W.3d at 908; *King v. Lyons*, 457 S.W.3d 122, 131 (Tex. App.—Houston [1st Dist.] 2014, no pet.). The *King* court explained,

> We also have acknowledged the wide discretion the trial courts have in fashioning conditions to serve the best interest of the child in matters concerning custody, control, possession, and visitation. . . . This is not that sort of case. The problematic aspect of this injunction is that it does not directly relate to custody, control, possession, and visitation, but instead it relates to keeping the parties physically separated *and restrains their conduct in ways that have no relation to the child.* As such, the more deferential standards that we ordinarily apply in cases in which the trial court enjoys broad discretion to fashion remedies to advance the best interest of the child are inapplicable.

King, 457 S.W.3d at 134 (emphasis added, citations omitted). Unlike the injunction in *King*, the injunctions here relate to the child, S.B. *See id.* The court below heard evidence that Father created conflict and acted inappropriately and detrimentally to S.B.'s emotional well-being in conjunction with her school, counseling, medical providers, extracurricular activities, church, Mother, and Mother's current husband, S.B.'s step-father. S.B.'s therapist testified she would not recommend taking S.B. to Sekrit Theater and leaving her alone under the conditions that Father did. The injunctions are reasonably related to S.B. and to protecting her best interests.

The "more deferential standards that apply in cases in which the trial court enjoys broad discretion to fashion remedies to advance the best interest of the child" are applicable here. *Id. King* relies on an opinion of this Court, *Peck v. Peck*, 176 S.W.3d 26 (Tex. App.—Dallas 2005, pet. denied). In *Peck*, this Court rejected a complaint of insufficient evidence to support the traditional requirements of a permanent injunction: a wrongful act, imminent harm, irreparable injury, and no adequate remedy at law. *Id.* at 36. "[W]here the best interests of the child are at issue as they are here, sufficiency of the evidence is not the correct standard of review." *Id.* We have reviewed the record relevant to the injunctions, above, and find no abuse of discretion.

We overrule Father's sixth issue.

Medical Support Judgment:
Conditions Precedent And Sufficiency Of The Evidence

In his seventh issue, Father complains the evidence was insufficient to support the medical support judgment because Mother failed to satisfy the conditions precedent to payment, as set forth in the previous order. The previous order provided,

> The party who incurs a health-care expense on behalf of the child is ORDERED to furnish to the other party forms, receipts, bills, statements, and explanations of benefits reflecting the uninsured portion of the health-care expenses within thirty (30) days after the incurring party *receives* them, via OFW.
>
> . . .
>
> The nonincurring party is ORDERED to pay the nonincurring party's percentage of the uninsured portion of the health-care expenses either by paying the health-care provider directly or by reimbursing the incurring party for any advance payment exceeding the incurring

> party's percentage of the uninsured portion of the health-care expenses within thirty (30) days after the nonincurring party receives the forms, receipts, bills, statements, *and/or* explanations of benefits, via OFW.

(Emphasis added.)

Mother testified she forwarded to Father all the relevant health-related documents she had received. She testified, "I submitted all bills and all the documents that I had for [Father] in a timely manner." Moreover, "I haven't had those [explanations of benefits] in my possession. I had no documents available to submit for [Father]." She testified, "I submitted everything that I had," and, "I told [Father] that I submitted everything I had." Concerning the decree, she testified, "It says—it states the documents I have to submit and I submitted everything, what I had. And obviously, when I don't have something, I cannot submit it." We conclude Mother's testimony provided sufficient evidence that she sent all relevant documents to Father pursuant to the previous order.

Moreover, we disagree that the previous order required that Father receive explanations of benefits as a condition precedent to his obligation to pay his share of S.B.'s unreimbursed health-care expenses. As noted, the previous order provided his duty was contingent on receiving enumerated types of documents "*and/or* explanations of benefits," not "*and* explanations of benefits." We construe orders under the same rules of interpretation as those applied to other written instruments. *Namdarkhan v. Glast, Phillips & Murray, P.C.*, No. 05-18-00802-CV, 2020 WL 1969507, at *8 (Tex. App.—Dallas Apr. 24, 2020, pet. denied) (mem. op.); *Payless*

Cashways, Inc. v. Hill, 139 S.W.3d 793, 795 (Tex. App.—Dallas 2004, no pet.). If an order is unambiguous, we must construe the order in light of the literal meaning of the language used. *See Payless Cashways, Inc.*, 139 S.W.3d at 795. We conclude the plain language of the previous order, emphasized above, did not require that Father receive explanations of benefits from Mother as a condition precedent to his obligation to pay unreimbursed health care expenses.

The trial court did not abuse its discretion.

We overrule Father's seventh issue.

In his eighth issue, Father complains the evidence "in whole" was insufficient to support the medical support judgment. Mother testified fifty percent of unreimbursed medical expenses equaled $5,339.24. The order awarded Mother $4,656.70 for alleged non-payment violations one through twelve and fifteen through twenty-four. The trial court did not award Mother relief for other alleged violations.

Father first argues the trial court, when confirming child support arrearages, was not authorized to reduce or modify the amount of arrearages and cites section 157.263(b-3) of the family code:

> In rendering a money judgment under this section, the court may not reduce or modify the amount of child support, medical support, or dental support arrearages but, in confirming the amount of arrearages, may allow a counterclaim or offset as provided by this title.

FAM. § 157.263(b-3). Father also cites *Chenault v. Banks*, 296 S.W.3d 186, 189-90 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (noting "the trial court's discretion is very limited . . . . The trial court acts as a mere scrivener in mechanically tallying up the amount of arrearage."), and *In re E.C.*, No. 13-04-002-CV, 2005 WL 1244615, at *5 (Tex. App.—Corpus Christi-Edinburg May 26, 2005, no pet.) (mem. op.) ("The trial court could not have abused its discretion if it confirmed the exact amount requested and the amount was not controverted at trial").

Here, although Mother testified to $5,339.24 in arrearages, the trial court did not award all amounts Mother sought. Instead, the trial court confirmed only alleged violations one through twelve and fifteen through twenty-four for which the trial court awarded $4,656.70. The trial court heard testimony and admitted evidence relevant to arrearages. The difference was not a "modification or reduction" of the amount due as Father asserts. The trial court simply did not grant all bases of relief Mother alleged. *See Lawrence v. Kinser*, No. 05-10-00173-CV, 2011 WL 6318025, at *2 (Tex. App.—Dallas Dec. 15, 2011, no pet.) (mem. op.) (noting, "the fact finder is entitled to accept or reject any testimony it wishes, as well as decide the weight to be given the testimony" (quoting *Plas-Tex, Inc. v. U. S. Steel Corp.*, 772 S.W.2d 442, 443 (Tex. 1989)).

Father next argues the evidence is insufficient to support the award of $4,656.70 for his share of unreimbursed health-care costs of S.B. He asserts, "[T]he record provided almost no evidence as to a medical support arrearage." This

statement by Father and his complaint of insufficient evidence "as a whole" lead us to understand he complains of the factual sufficiency of the evidence. We follow the standard of review stated above when reviewing for abuse of discretion. *See, e.g., In re J.D.A.*, No. 05-17-00053-CV, 2017 WL 6503094, at *2 (Tex. App.—Dallas Dec. 19, 2017, no pet.) (mem. op.) (stating, "We review a trial court's child support order for abuse of discretion," and "legal and factual sufficiency of the evidence are not independent grounds of error but are relevant factors as to whether a trial court abused its discretion.").

Father and Mother cite to her testimony that he failed to pay $5,339.24 for unreimbursed medical expenses. Father does not attack Mother's testimony itself. We give the trial court, which observes the witnesses and their demeanor, great latitude to determine the best interest of the child. *Id.* (citing *Iliff v. Iliff*, 339 S.W.3d 74, 82 (Tex. 2011)). In addition to Mother's testimony, the trial court admitted other evidence of unreimbursed expenses. If evidence of a "substantive and probative character" supports a trial court's judgment, it cannot be arbitrary or unreasonable. *Id.* (citing *In re J.G.L.*, 295 S.W.3d 424, 426-27 (Tex. App.—Dallas 2009, no pet.)). As noted above, the trial court found most allegations of non-payment to be true and others not to be true and reduced the amount Mother requested accordingly. The trial court, as the trier of fact, was the sole judge of the credibility of the witnesses and entitled to resolve conflicts in the evidence, including deciding whether to believe a witness. *See Austin Tapas, LP v. Performance Food Group, Inc.*, 2019 WL 3486574,

at *4 (Tex. App.—Austin Aug. 1, 2019, no pet.) (mem. op.). We conclude the trial court did not abuse its discretion in awarding Mother $4,656.70 for Father's unpaid share of unreimbursed health-care costs of S.B.

We overrule Father's eighth issue.

Enforcement Attorney's Fees

In his ninth issue, Father briefly complains of the trial court's awarding attorney's fees to Mother for the enforcement action. Father frames his issue, "The Award of Attorney's Fees Within the Enforcement Order is Void."

In support of his contention that the award is void, Father cites to one opinion, *In re Newby*, 370 S.W.3d 463, 470 (Tex. App.—Fort Worth 2012, orig. proceeding).[9] *Newby* involved contempt proceedings for failure to pay child support and unreimbursed health-care expenses. *Id.* at 468-70. The trial court required Newby to pay a lump-sum amount of attorney's fees to purge himself of civil contempt. *Id.* at 470. But the unsegregated fee amount was partly based on some alleged violations for which the trial court had found Newby not guilty. *Id*. Because the court of appeals could not determine what amount of attorney's fees were awarded based on conduct

[9] Father's ninth issue solely presents the "void" order issue addressed by *In re Newby*. He bases his argument on *In re Newby*. He casts his issue as "The Award of Attorney's fees Within the Enforcement Order is Void." He seeks the remedy allowed by *In re Newby*—holding an order to be void—in appropriate cases. Moreover, Father does not complain of the sufficiency of the evidence supporting the award of attorney's fees. He does not address reasonableness or necessity of the attorney's fees awarded. He does not cite to or apply *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469 (Tex. 2019) (providing analysis for determining whether attorney's fees are legally authorized and reasonable and necessary) or its progeny. *See, e.g.*, *Branch v. McCaskill*, No. 05-21-00758-CV, 2022 WL 17974677 (Tex. App.—Dallas Dec. 28, 2022, no pet.) (mem. op.) (applying *Rohrmoos* analysis).

of which Newby was not guilty, it held that the entire order related to attorney's fees was void. *Id.*

Newby is inapposite. The court below did not assess Father attorney's fees for conduct in which he did not engage. Consequently, unlike *Newby*, there is no need to modify the amount of attorney's fees the court below awarded in its enforcement order, and any issue of voidness of the attorney's fees award is not implicated.

We overrule Father's ninth issue.

Consequential Damages

In his tenth issue, Father complains the evidence is legally and factually insufficient to support the enforcement order's award of consequential damages of $1,120.00. The trial court awarded the damages for Father's destroying or failing to return cell phones and for causing increased travel costs.

The Cell Phones

The trial court found that Father dismantled S.B.'s cell phone at an airport before S.B. travelled to Ukraine, resulting in damages of $100. It also found Mother had shipped a cell phone to Ukraine for S.B.'s use but that it was refused and was not returned from Ukraine with S.B., resulting in damages of $100.

Father argues the record contains no evidence of the value of either of the two cell phones. In response, Mother responds and cites to the appellate record. But her record cites do not address the cell phones or their value. We note Mother testified she sought damages related to the cell phones. But she merely stated she sought the

amount listed in an evidentiary summary. She failed to testify about the monetary value of the phones. The trial court did not have sufficient evidence to exercise its discretion to award damages for destruction or non-return of the phones. The trial court abused its discretion in awarding $100.00 in damages for each of the two telephones, a total of $200.00. We modify the judgment to delete the award of $200.00 for damage to the two cell phones. *See, e.g., Superior Derrick Servs., Inc. v. Anderson*, 831 S.W.2d 868, 869 (Tex. App.—Houston [14th Dist.] 1992, writ denied) ("Because we find no evidence supporting the trial court's award of damages for one of the masts, we modify the judgment to delete the award of damages for this mast.").

Change Fees For The Airplane Ticket

The trial court found that Father unilaterally decided to return S.B. to Mother late from visitation, causing Mother to pay $920.00 in change fees for rescheduled airplane flights. Father contests the sufficiency of the evidence to support damages of $920.00.

Mother testified Father returned S.B. at 10 p.m. S.B. was to have been returned earlier. She testified she and S.B. had to miss their scheduled flights. She testified she sought reimbursement for the change fees to schedule a later flight for herself and S.B. An exhibit that purports to be an airline confirmation and receipt, dated August 5, 2018—the day after S.B. was exchanged late in the evening—indicates additional fees for Mother and S.B. totaling $920.00.

We conclude there is sufficient evidence supporting the trial court's order awarding Mother $920.00 for increased airfare. The trial court did not abuse its discretion in awarding $920.00 to Mother for change fees.

We sustain Father's tenth issue as to his complaint concerning the total award of $200.00 for damaging or not accepting delivery of telephones. We overrule the tenth issue in all other respects.

Interference With S.B.'s Contacting Mother

In his eleventh issue, Father complains the evidence is insufficient to support violations thirty-one through thirty-four contained in the enforcement order. Father's issue is composed of four sentences. He cites no authority. He cites twice to the enforcement order. He does not cite to the reporter's record or other evidence. He makes no argument. He does not refer to the wording of the violations. He asserts, "No evidence at all, was produced to support Father's interference with the Child's ability to communicate with her Mother, being the basis of violations 31–34."

The court entered findings of fact concerning violations thirty-one through thirty-four that on various dates "[Father] interfered with [S.B.'s] ability to call [Mother] while the child was in [Father's] possession." Mother testified Father took S.B.'s telephone and removed its SIM card at an airport as she was about to depart for Ukraine. She testified she was unable to contact S.B. for seven to ten days while she was in Ukraine. Father testified, "I wouldn't allow S.B. to have her mother's electronics on that trip."

We reject Father's assertion that no evidence supported violations 31 through 34. Moreover, we conclude that the trial court did not abuse its discretion in finding violations thirty-one through thirty-four. *See In re A.B.P.*, 291 S.W.3d at 95.

Post-Judgment Interest and Costs

In his twelfth appellate issue, Father complains the trial court abused its discretion by (1) applying an incorrect post-judgment rate in both the modification order and the enforcement order and (2) erroneously assessing the judgment and attorney's fees as costs.

First, Father briefly asserts the orders erroneously provide for post-judgment interest on attorney's fees at six percent interest. Father contends the correct interest rate was five percent. He states section 304.003 of the Texas Finance Code provides a money judgment, including court costs, earns post-judgment interest at five percent if the prime rate is less than five percent. *See* TEX. FIN. CODE ANN. § 304.003. But Father presented no evidence in the trial court of the prime rate of interest. Mother notes he failed to request that we take judicial notice of the prime rate. "The party that complains of abuse of discretion has the burden to bring forth a record showing such abuse." *TDIndustries, Inc. v. My Three Sons, LTD*, No. 05-13-00861-CV, 2014 WL 1022453, at *2 (Tex. App.—Dallas Feb. 14, 2014, no pet.) (mem. op.). Father has failed to bring forward a record evidencing an allegedly correct rate of interest and failed to demonstrate an abuse of discretion. We reject his argument.

We also reject Father's complaint concerning excessive post-judgment interest because he did not object to it in the trial court. *See* TEX. R. APP. P. 33.1(a)(1); *Sellers v. San Antonio Steel Co., Inc.*, No. 04-99-00241-CV, 2000 WL 294833, at *3 (Tex. App.—San Antonio Mar. 22, 2000, no pet.) (mem. op.) (holding complaint of excessive post-judgment interest raised for first time on appeal was not preserved for appeal).

Second, Father complains that the trial court improperly awarded attorney's fees in the enforcement order and the modification order as costs. Father cites to *In re M.A.M.*, No. 05-14-00040-CV, 2015 WL 5863833, at (Tex. App.—Dallas Oct. 8, 2015, pet. denied) (mem. op.) (discussing assessment of attorney's fees as costs in modification proceeding pursuant to Rule 143 of the Texas Rules of Civil Procedure). Father does not cite to an objection in the trial court to the assessment of attorney's fees as costs. Nor do we detect such an objection in the record. Any error by the trial court in the manner of awarding fees is not preserved for appellate review and is waived on appeal. *See* TEX. R. APP. P. 33.1(a)(1); *In re T.R.*, No. 05-20-01032–CV, 2022 WL 2338917, at *2 n.1 (Tex. App.—Dallas June 29, 2022, pet. denied) (mem. op.) (any error by trial court in awarding judgment for fees instead of assessing them as costs pursuant to section 156.005 of the Texas Family Code not objected to at trial court and waived, citing TEX. R. APP. P. 33.1(a)(1)). We reject Father's argument.

We overrule Father's twelfth issue.

Prevailing Party Attorney's Fees

In his thirteenth issue, Father complains that attorney's fees awarded in the enforcement and modification orders should be stricken. Father relies on *London v. London*, 192 S.W.3d 6, 19 (Tex. App.—Houston [14th Dist.] 2005, writ denied) ("Because Leticia is not the prevailing party on appeal on any issue, we reverse the award of attorney's fees and remand to the trial court for the court to hear evidence on whether good cause supports the award of attorney's fees to the non-prevailing party."). Father bases his argument on the presumption that Mother would not prevail "on any issue" on appeal. To the contrary, we upheld the enforcement order in all but one respect: the $200 awarded to Mother for the total cost of two telephones. We upheld the modification order except for its provision that Father not initiate or continue incidents or altercations as a condition to transitioning to the standard possession order. We conclude the minor corrections do not support striking the award of attorney's fees in the orders. We overrule Father's thirteenth issue.

Father's Mandamus Issues

Father seeks mandamus relief. He brings four issues. We conditionally grant partial mandamus relief. We deny mandamus relief in all other respects.

Mandamus Standards

Mandamus is an extraordinary remedy that is available only in limited circumstances. *See Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig.

proceeding). Mandamus relief is available when the trial court clearly abuses its discretion and there is no adequate remedy by appeal. *See In re Deere & Co.*, 299 S.W.3d 819, 820 (Tex. 2009) (orig. proceeding) (per curiam). A trial court abuses its discretion if it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law or if it clearly fails to analyze the law correctly or to apply the law correctly to the facts. *See* *In re Cerberus Cap. Mgmt. L.P.*, 164 S.W.3d 379, 382 (Tex. 2005) (orig. proceeding) (per curiam). A relator need not show it does not have an adequate remedy by appeal when the complained-of order is void. *See In re Banigan*, 660 S.W.3d 307, 312 (Tex. App.—Dallas 2023, orig. proceeding) (citing *In re Sw. Bell Tel. Co.*, 35 S.W.3d 602, 605 (Tex. 2000) (orig. proceeding) (per curiam)).

Father's Mandamus Issues

Father brings four issues:

1. The imposition of contempt for alleged violations that pre-date the 2018 order renders the contempt order void.

2. The 2018 order fails to meet the specificity requirement (all contemptible violations).

3. The motion for enforcement fails to provide Father with notice of the alleged violations (all violations).

4. The errors contained in the contempt order render it wholly void.

Pre-Order Violations

In his first mandamus issue, Father argues, "The Contempt Order is void in finding Father in contempt for [three] violations that occurred prior to and outside of the [May 3,] 2018 order." He also argues the motion violates section 157.002 of the Texas Family Code. *See* FAM. § 157.002.

Mother's enforcement motion alleged twenty-five violations of failing to reimburse medical expenses. The trial court's enforcement order held Father in contempt for twenty-two of those alleged violations, including the three of which Father complains. The three complained-of findings are

> Violation 1. Respondent has failed to timely reimburse Petitioner after written notice by Petitioner on December 20, 2017 via OFW, fifty percent (50%) of the unreimbursed health care expenses of the child in the amount of $67.13 due on or before January 19, 2018. Respondent reimbursed Petitioner on May 12, 2019, sixteen (16) months after the date the reimbursement was due. See attached correspondence and invoices as Exhibit "C".
>
> Violation 2. Respondent has failed to timely reimburse Petitioner after written notice by Petitioner on January 31, 2018 via OFW, fifty percent (50%) of the unreimbursed health care expenses of the child in the amount of $340.39 due on or before March 2, 2018. Respondent reimbursed Petitioner on April 10, 2018, thirty-nine (39) days after the date the reimbursement was due. See attached correspondence and invoices as Exhibit "C".
>
> Violation 3. Respondent has failed to timely reimburse Petitioner after written notice by Petitioner on March 12, 2018 via OFW, fifty percent (50%) of the unreimbursed health care expenses of the child in the amount of $31.87 due on or before April 11, 2018. Respondent reimbursed Petitioner on May 7, 2019, twelve (12) months after the date the reimbursement was due. See attached correspondence and invoices as Exhibit "C".

Father argues the violations alleged in violations one through three are alleged to have occurred before entry of the May 3, 2018 order to be enforced. He argues the motion fails to identify any previous order that he allegedly violated. He asserts the enforcement order is therefore void.

Among the due process rights accorded an alleged contemnor is the right to reasonable notice of each alleged contumacious act. *See In re Mann*, 162 S.W.3d 429, 432 (Tex. App.—Fort Worth 2005, orig. proceeding) (citing *Ex parte Barlow*, 899 S.W.2d 791, 797 (Tex. App.—Houston [14th Dist.] 1995, orig. proceeding)). Texas courts have been very strict in requiring that proper notice be given before a person may be held in contempt for actions done outside the presence of the court. *See id.* (citing *Ex parte Eureste*, 614 S.W.2d 647, 648 (Tex. App.—Austin 1981, orig. proceeding)). When proper notice is not given, then the contempt order is invalid. *See id.* (citing *Ex parte Eureste*, 614 S.W.2d at 648).

Section 157.002 of the Texas Family Code addresses notice to be provided in a motion for enforcement. Section 157.002 provides, in part:

> (a) A motion for enforcement must, in ordinary and concise language:
>
> (1) identify the provision of the order allegedly violated and sought to be enforced;
>
> (2) state the manner of the respondent's alleged noncompliance.
>
> (b) A motion for enforcement of child support:

> (1) must include the amount owed as provided in the order, the amount paid, and the amount of arrearages;
>
> (2) if contempt is requested, must include the portion of the order allegedly violated and, for each date of alleged contempt, the amount due and the amount paid, if any . . . .

FAM. § 157.002(a)(1), (2), (b)(1), (2). Section 154.183(c)(1) of the Texas Family Code provides, "as additional child support" the court shall allocate between the parties, the reasonable and necessary health care expenses that are not reimbursed by health insurance. *See* FAM. § 154.183(c)(1).

Moreover, a contemnor cannot be held in constructive contempt of court for conduct that occurred before the court's order is reduced to writing. *See In re Sellers*, 982 S.W.2d 85, 87 (Tex. App.—Houston [1st Dist.] 1998, orig. proceeding) (citing *Ex parte Chambers*, 898 S.W.2d 257, 262 (Tex.1995) (orig. proceeding), and *Dunn v. Street*, 938 S.W.2d 33, 35 n.3 (Tex. 1997) (orig. proceeding) (per curiam)).

The motion to enforce included an exhibit "A," the May 3, 2018 order that Mother sought to have enforced. The motion stated exhibit "A" was incorporated into the motion for all purposes. The motion sets forth verbatim and at length provisions of the May 3, 2018 order's health-care provisions. The motion states violations one through three violated the May 3, 2018 order. But, as addressed above, the motion expressly alleges violations one through three occurred on dates prior to the May 3, 2018 order. And the motion fails to identify or to otherwise set forth provisions of a decree or order in force prior to May 3, 2018.

Consequently, the enforcement order's findings and award related to alleged violations one through three are void. *See* FAM. § 157.002(a), (b); *In re Mann*, 162 S.W.3d at 432 (citing *Ex parte Thompson*, 803 S.W.2d 876, 877 (Tex. App.—Corpus Christi-Edinburg 1991, orig. proceeding)); *see also In re Sellers*, 982 S.W.2d at 87 (citing *Ex parte Chambers*, 898 S.W.2d at 262, and *Dunn v. Street*, 938 S.W.2d at 35 n. 3).

Father argues the contempt order is void "in whole." He asserts the order cannot be corrected by striking the contempt findings for alleged violations one through three. He cites to *Ex parte Davila*, 718 S.W.2d 281, 282 (Tex. 1986), and *In re Corbett*, No. 02–11–00430–CV, 2012 WL 386744, at *2 (Tex. App.—Fort Worth Feb. 8, 2012, orig. proceeding) (mem. op.). Those opinions are distinguishable. In *Davila*, the Supreme Court held that when a trial court finds multiple instances of contempt, but one of those instances of contempt is invalid, and requires relator to pay a lump sum to be released for all of the instances of contempt, even the invalid one or ones, the entire order is void because the appellate court cannot tell the dollar amounts the trial court had attributed to each count of contempt. *See Davila*, 718 S.W.2d at 282 (noting, "Nor does the order make any attempt to assess separate penalties for each separate contemptuous act."). What happened here is more like what happened in *In re Patillo*, 32 S.W.3d 907 (Tex. App.—Corpus Christi-Edinburg 2000, orig. proceeding), and *Ex parte Williams*, 866 S.W.2d 751 (Tex. App.—Houston [1st Dist.] 1993, orig. proceeding). In those cases, the appellate

courts modified the civil coercive contempt parts of the orders to delete the additional amounts that the relators were required to pay to purge themselves of contempt, retaining only the amounts for which the relators were actually held in contempt, because the courts were able to calculate what the purging amounts should be. *See Patillo*, 32 S.W.3d at 909 ("Where a trial court lists each failure to comply with an order separately and assesses a separate punishment for each failure to comply, only the invalid portion of the contempt order is void and the remainder of the contempt order is enforceable."); *Ex parte Williams*, 866 S.W.2d at 753. As noted, trial court's enforcement order here found Father in contempt for failing to reimburse Mother on specific days and for specific amounts.

Moreover, our sister court in Fort Worth has disapproved, in part, *In re Corbett*. *See In re Newby*, 370 S.W.3d at 470 ("[W]e believe that although *Corbett* was correct in its determination that part of the civil contempt order in that case was void, we should have modified the civil contempt part of that order to reflect the amounts for which the relator was actually held in contempt rather than hold the entire civil contempt part of the order void under *Davila*. *Davila* is factually distinguishable from this case; this case is more similar to *Patillo* and *Williams*, both of which rely on an exception to *Davila*."). In *In re Newby*, the court of appeals modified the civil coercive contempt part of the order to reflect the correct health care reimbursement. *See In re Newby*, 370 S.W.3d at 470. ("Therefore, having found error, we will modify the civil coercive contempt

part of the order to reflect the correct child support and health care reimbursement arrearage for which relator was actually held in contempt, $10,188.32.").

Here, the enforcement order found Father was in arrears in the amount of $4,656.70 for violations one through twelve and fifteen through twenty-four. Guided by *Newby*, we deduct the amounts attributed in the enforcement order to violations one through three—$439.39—from the enforcement order's award of $4,656.70. We reform the enforcement order's award to Mother for unreimbursed medical expenses from $4,656.70 to $4,217.31. We strike from the enforcement order the contempt findings for alleged violations one through three as void. *See id.*

We sustain Father's first mandamus issue and conditionally grant mandamus relief only to the extent expressly addressed above. All other relief sought in Father's first mandamus issue is denied.

The Medical Reimbursement Order

In his second mandamus issue, Father asserts the 2018 medical reimbursement order is not clear, specific, and unequivocal and that it impermissibly rests on implication or conjecture. In support, Father cites to three judicial opinions. *See Ex parte Chambers*, 898 S.W.2d 257, 260 (Tex. 1995) ("A court order is insufficient to support a judgment of contempt only if its interpretation requires inferences or conclusions about which *reasonable* persons might differ. . . . Only the existence of *reasonable* alternative constructions will prevent enforcement of the order.") (emphases in original); *Ex parte Reese*, 701 S.W.2d 840, 841-42 (Tex. 1986) (orig. proceeding) ("A proper judgment must spell out the details of compliance in clear and unambiguous terms so that the person will know exactly what he is expected to do."); *Ex parte Slavin*, 412 S.W.2d 43, 44 (Tex. 1967) (orig. proceeding) ("It is an accepted rule of law that for a person to be held in contempt for disobeying a court decree, the decree must spell out the details of compliance in clear, specific and unambiguous terms so that such person will readily know exactly what duties or obligations are imposed upon him.").

Father argues the May 3, 2018 decree's provisions concerning reimbursement of health-care expenses are unclear, unspecific, and ambiguous. He asserts, "The 2018 Order provide for two sets of obligations regarding the uninsured medical expenses: one placed upon the obligee and the other upon the obligor." The 2018 decree provides:

> *The party who incurs a health-care expense on behalf of the child is ORDERED to furnish to the other party forms, receipts, bills, statements, and explanations of benefits* reflecting the uninsured portion of the health-care expenses within thirty (30) days after the incurring party receives them, via OFW. The nonincurring party is ORDERED to pay the nonincurring party's percentage of the uninsured portion of the health-care expenses either by paying the health-care provider directly or by reimbursing the incurring party for any advance payment exceeding the incurring party's percentage of the uninsured portion of the health-care expenses within thirty (30) days *after the nonincurring party receives the forms, receipts, bills, statements, and/or explanations of benefits, via OFW*.

(Emphases added.)

He asserts, "[Mother'] duties, which initiate the obligor's duty to pay, do not mirror one another, creating an inherent conflict. Further the 'and/or' certainly muddies the proverbial waters, rendering the Medical Support Orders too fishy such as to support a contempt hearing."

Courts construe orders and judgments under the same rules of interpretation as those applied to other written instruments. *See Payless Cashways, Inc.*, 139 S.W.3d at 795; *Azbill v. Dall. Cnty. Child Protective Servs.*, 860 S.W.2d 133, 136 (Tex. App.—Dallas 1993, no writ). We interpret court orders according to the plain meaning of their terms. *See US Anesthesia Partners v. Robinson*, No. No. 01-21-00572-CV, 2022 WL 4099835, at *6 (Tex. App.—Houston [1st Dist.] Sept. 8, 2022, pet. filed) (mem. op.). The plain meaning of the construction "and/or" is "to indicate that two words or expressions are to be taken together or individually." *And/or*, MERRIAM-WEBSTER.COM DICTIONARY, accessed June 18, 2023,

https://www.merriam-webster.com/dictionary/and%2For. The plain meaning of the word "or" is "alternative." *Or*, WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY (1st ed. 1985).

Father asserts the 2018 order is ambiguous concerning when his obligations to reimburse commence. The May 3, 2018 order expresses Father's obligation in plain terms. The order does not support reasonable alternative constructions, *see Ex parte Chambers*, 898 S.W.2d at 260, is clear and unambiguous, *see Ex parte Reese*, 701 S.W.2d at 841-42, and is such that Father readily knows exactly what duties or obligations are imposed on him, *see Ex parte Slavin*, 412 S.W.2d at 44. The 2018 order provides Father's obligations arise within thirty days after he receives any one of the following categories of medical-expense documents: forms, receipts, bills, statements, or explanations of benefits.

We reject Father's second mandamus issue. Father fails to demonstrate the enforcement order is void. The trial court did not abuse its discretion. *See In re Cerberus Cap. Mgmt. L.P.*, 164 S.W.3d at 382. We deny all mandamus relief requested in Father's second mandamus issue.

Notice Of Alleged Violations

In his third mandamus issue, Father asserts, "The motion for enforcement failed to provide Father with 'reasonable notice of each alleged contumacious act.'" He cites to *In re Mann*, 162 S.W.3d at 432, *Ex parte Barlow*, 899 S.W.2d at 794, and *In re Houston*, 92 S.W.3d 870, 876 (Tex. App.—Houston [14th Dist.] 2002,

orig. proceeding). He argues, "As such, Father was unable to fully 'explain and defend' against the allegations, rendering he (sic) contempt judgment a nullity." He cites to *Ex parte Gordon*, 584 S.W.2d 686, 688 (Tex. 1979) (orig. proceeding), and *Ex parte Edgerly*, 441 S.W.2d514, 516 (Tex. 1969) (orig. proceeding). Father's argument concerns alleged violations for unreimbursed medical reimbursement.[10]

Father more specifically argues the motion "fails to provide Father with notice of the alleged failure to make payment." He acknowledges the motion for enforcement "provides an alleged starting date, an alleged failure date, and a sum of money allegedly owed." In light of his acknowledgement, he fails to demonstrate the motion failed to provide notice of "failure to make payment." We note the motion's alleged violations recite a failure to reimburse, a date of Mother's written notice to Father, the means by which Mother transmitted written notice, the monetary amount to be reimbursed, and a date on which reimbursement was due. Moreover, Father fails to cite legal authority supporting his specific argument. We reject it.

Father asserts exhibit "C" is not incorporated into the motion. He argues there is no "explicit correlation" between the allegations in the motion and exhibit "C." Our conclusion, above, that Father failed to demonstrate the motion itself provided

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[10] Due to our disposition of mandamus issue one—concerning alleged violations one through three for unreimbursed medical expenses—we consider here only the remaining nineteen alleged violations for similar nonpayment.

inadequate notice pretermits necessity of considering the correlation of exhibits to the motion.

Father argues, "[T]he Motion for Enforcement fails to apprise Father of the actual date his obligation began . . . ." He cites to section 157.002(a)(1) of the Texas Family Code. *See* FAM. § 157.002(a)(1). The plain terms of section 157.002(a)(1) do not require an enforcement motion to contain the actual date an obligation begins. *See id.*; *and see In re Quality Cleaning Plus, Inc.*, 2022 WL 16549069, at *3 (this Court is not permitted to rewrite a statute's text). Moreover, the enforcement motion contained provisions of the May 3, 2018 order to be enforced that Father is obligated to reimburse Mother thirty days after receiving from Mother forms, receipts, bills, statements, or explanations of benefits via a specified electronic platform. The enforcement motion alleged for each alleged violation a date on which Mother provided the requisite documentation. Father does not argue he did not receive written notice from Mother. We conclude the provisions of the enforcement motion provided Father adequate notice of when his reimbursement obligations arose—thirty days after having received written notice from Mother. Father asserts a related argument that the motion does not provide adequate notice of the amounts of medical reimbursement owed. The motion sets forth precise monetary amounts of unreimbursed health care expenses for each alleged violation. We reject Father's arguments.

Father fails to demonstrate the motion to enforce did not provide "reasonable notice of each alleged contumacious act." Consequently, the order to enforce is not void as Father contends. The trial court did not abuse its discretion. *See In re Cerberus Cap. Mgmt. L.P.*, 164 S.W.3d at 382. We reject Father's third mandamus issue and deny all relief sought therein.

Miscellaneous Complaints

In his fourth mandamus issue, Father argues several errors contained in the contempt order render it void.

First, Father argues, "The correct judgment owed for uninsured medical expenses was, per the wording of the enforcement order actually $4,051.24. R. 5–8." Hence, he seems to argue, the trial court erroneously found Father in contempt for nonpayment of $4,656.70 in unpaid medical expenses. He argues that "purge conditions cannot include terms that the contemnor was not held in contempt for." Initially, we reject Father's argument because his record citation does not bear out his argument. Moreover, he relies on inapposite judicial opinions. He cites to *In re Newby*, 370 S.W.3d at 469 ("Relator could have been properly subject to coercive confinement only until he paid the amount for which he was actually held in contempt.") (paraphrasing *In re Corbett*, No. 02-11-00430-CV, 2012 WL 386744, at *2 (Tex. App.—Fort Worth, Feb. 8, 2012, orig. proceeding) (mem. op.), as stating, "In other words, in *Corbett*, as in this case, the trial court conditioned the relator's release on paying more than *the amount the trial court had found* the relator in

contempt for failing to pay.") (emphasis added). *In re Newby* and *In re Corbett* addressed an issue different than Father's issue—the relators there were erroneously ordered to pay for violations the trial courts had expressly found not to have occurred. *Id.* Here, the trial court expressly found Father in contempt of twenty-two alleged violations. Those twenty-two violations amounted to $4,656.70 in unreimbursed medical expenses. The trial court ordered Father to pay $4,656.70 for the twenty-two violations. This case presents no *In re Newby* or *In re Corbett* issue. We reject Father's argument.

Second, Father argues "the terms of civil commitment are based on non-contemptible matters in that . . . the Contempt Order mandates that Father pay $10,000 in attorney's fees, a payment for which he was not found in contempt." He again argues "purge conditions cannot include terms that the contemnor was not held in contempt for."

The trial court found reasonable and necessary attorney's fees for Mother totaled $18,568.75. The trial court's order provides the judgment for attorney's fees is enforceable by any means available for enforcement of child support, including contempt. The trial court ordered as civil contempt that Father be confined in county jail for 180 days or until he timely pays $10,000 for attorney's fees. The order also provides Father's commitment be suspended and that he be placed on community supervision on condition he timely pays $18,568.75 attorney's fees.

But the trial court did not hold Father in contempt for failure to pay attorney's fees. This Court addressed this situation in *In re O'Keeffe*, No. 05-18-00371, 2018 WL 2296495, at *3 (Tex. App.—Dallas May 21, 2018, orig. proceeding) (mem. op.) (agreeing with relator that attorney's fees incurred to obtain contempt order should not be included in amount required to purge contempt because relator was not held in contempt for failing to pay attorney's fees) (citing *In re Patillo*, 32 S.W.3d at 910 (striking portions of contempt order requiring relator to remain incarcerated until he pays costs that relator was not actually held in contempt for failing to pay)).

Following this Court's precedent, *see id.*, we conclude the provision of the enforcement order making payment of attorney's fees a condition to purge Father of civil contempt is void. We also conclude the order's provision conditioning "suspension of commitment and community supervision" on Father's payment of attorney's fees is void. *See id.* We strike the two provisions from the trial court's order. *See id.* We do not otherwise disturb the trial court's award of attorney's fees.

Third, Father asserts the contempt order violates his "due process right to know of the 'when, how, and by what means' he was found in contempt." He specifically asserts the order failed "to reference the violated order." *See* FAM. § 157.166(a)(1) ("An enforcement order must include in ordinary and concise language the provisions for the order for which enforcement was requested . . . ."). Father cites to *In re Celestine*, No. 14–14–00133–CV, 2014 WL 1390387, at *3 (Tex. App.—Houston [14th Dist.] Apr. 8, 2014, orig. proceeding) (mem. op.) (per

curiam) ("Part of the purpose of this statutory provision is to ensure that a contemnor is provided sufficient due process—i.e., notice of the when, how, and by what means the contemnor was guilty of contempt."). Father argues, "Much like the analysis under [mandamus] Issue 1, the Contempt Order finds Father in contempt for matters that pre-date the 2018 Order, being the only order referenced within the Contempt Order." In our disposition of Father's first mandamus issue, we struck the void contempt findings and monetary award for alleged violations one through three. We ordered reformation of the enforcement order. Our disposition of the first mandamus issue pretermits consideration of Father's similar argument here that the enforcement order is void.

We conditionally grant mandamus relief sought by Father in his fourth mandamus point to the extent expressly stated above. The trial court did not otherwise abuse its discretion, s*ee In re Cerberus Cap. Mgmt. L.P.*, 164 S.W.3d at 382, and the enforcement order is not otherwise void as Father asserts in his fourth mandamus issue. We deny all other relief sought in Father's fourth mandamus issue.

. . .

We conditionally grant mandamus relief to the extent expressly addressed above and as reflected in the Court's judgment of this date. All mandamus relief not expressly addressed above is denied.

Conclusion

Because no evidence supports the trial court's finding that Mother suffered $200.00 consequential damages related to two telephones, the trial court shall delete the two $100.00 amounts from the court's findings and from all monetary amounts that include that $200.00 award in the enforcement order. We conclude the following provisions of the modification order lack specificity and are void: (1) "altercation or incident initiated by Stanislav Bilder including but not limited to Stanislav Bilder's," (2) "and/or he causes an altercation," (3) "initiate further altercations between the parties, including but not limited to Stanislav Bilder's," (4) "and so long as there are no continued altercations initiated by Stanislav Bilder including but not limited to Stanislav Bilder's failure to comply with an Order of the Court," and (5) "and so long as there are no continued altercations (including but not limited to Stanislav Bilder's failure to comply with an Order of the Court) initiated by Stanislav Bilder"; we order the trial court to delete the provisions from the modification order. As modified, we affirm on appeal the modification order and the enforcement order.

We conditionally grant Father's requested mandamus relief, in part. The trial court shall delete findings in the enforcement order for alleged violations one

through three, totaling $439.39, concerning medical child support and shall reduce all monetary amounts referenced in the enforcement order that include the $439.39 amount for alleged violations one through three by the amount of $439.39. Moreover, the trial court shall delete all provisions in the enforcement order related to Father's payment of attorney's fees under the enforcement order's headings "civil contempt" and "suspension of commitment and community supervision." We do not otherwise disturb the trial court's award of attorney's fees. All requested mandamus relief not expressly stated above is denied.

We order the trial court to modify the enforcement order and modification order within thirty days of the issuance of this opinion. We are confident the trial court will comply, and the writ will issue only if the trial court fails to do so.

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/Bill Pedersen, III/
BILL PEDERSEN, III
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN THE INTEREST OF S.B., A CHILD, Stanislav Bilder, Appellant	On Appeal from the 468th Judicial District Court, Collin County, Texas Trial Court Cause No. 468-51319-2019.
No. 05-20-00338-CV V.	Opinion delivered by Justice Pedersen, III. Justices Goldstein and Smith participating.
Olga Lesya Sytnianska Zedrick, Appellee	

On the Court's own motion, we **WITHDRAW** our opinion and **VACATE** our judgment of March 31, 2023. This is now the judgment of the Court.

In accordance with this Court's opinion of this date, the Order on Petitioner's Third Amended Motion for Enforcement of Order in Suit to Modify Parent-Child Relationship and Breach of Contract and the Order in Suit to Modify Parent-Child Relationship are **ORDERED** to be **MODIFIED** as follows:

The Order on Petitioner's Third Amended Motion for Enforcement of Order in Suit to Modify Parent-Child Relationship and Breach of Contract is **MODIFIED** to delete the two $100.00 amounts concerning two telephones from the court's findings and from all monetary amounts that include that $200.00 award in the enforcement order.

The Order in Suit to Modify Parent-Child Relationship is **MODIFIED** to delete provisions that (1) "altercation or incident initiated by Stanislav Bilder including but not limited to Stanislav Bilder's," (2) "and/or he causes an altercation," (3) "initiate further altercations between the parties, including but not limited to Stanislav Bilder's," (4) "and so long as there are no continued altercations initiated by Stanislav Bilder including but not limited to Stanislav Bilder's failure to comply with an Order of the Court," and (5) "and so long as there are no continued

altercations (including but not limited to Stanislav Bilder's failure to comply with an Order of the Court) initiated by Stanislav Bilder."

It is **ORDERED** that, as modified, the Order on Petitioner's Third Amended Motion for Enforcement of Order in Suit to Modify Parent-Child Relationship and Breach of Contract and the Order in Suit to Modify Parent-Child Relationship of the trial court are **AFFIRMED**.

It is **ORDERED** that appellee Olga Lesya Sytnianska Zedrick recover her costs of this appeal from appellant Stanislav Bilder.

Judgment entered this 27th day of September, 2023.