

Affirm and Opinion Filed February 24, 2025



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

No. 05-23-00928-CV

IN THE INTEREST OF S.S. AND S.S., CHILDREN

**On Appeal from the 468th Judicial District Court
Collin County, Texas
Trial Court Cause No. 468-50353-2021**

MEMORANDUM OPINION

Before Justices Miskel, Breedlove, and Barbare
Opinion by Justice Barbare

Appellant Father and Appellee Mother share two children, S.S. and S.S.¹ The parents' divorce decree established that both parents have the authority to consent to non-invasive medical treatment for S.S. during their respective periods of possession, while granting Mother the exclusive right to enroll S.S. in school. Father raises two issues on appeal, contending that the trial court abused its discretion in making these determinations. We affirm the trial court's ruling.

¹ Only the younger child is the subject of this appeal, and all references to S.S. in this opinion refer to the younger child.

STANDARD OF REVIEW

The best interest of the child shall always be the court’s primary consideration when determining the issues of conservatorship and possession of and access to the child. TEX. FAM. CODE ANN. § 153.002. A trial court’s determination of what is in the child’s best interest, specifically the establishment of terms and conditions of conservatorship, is a discretionary function. *In re J.J.R.S.*, 627 S.W.3d 211, 218 (Tex. 2021). We reverse the trial court’s judgment only when it appears from the record that the court has abused its discretion by acting without reference to any guiding rules or principles. *See id.* As conservatorship determinations are “intensely fact driven,” the trial court is in the best position to “observe the demeanor and personalities of the witnesses and can ‘feel’ the forces, powers, and influences that cannot be discerned by merely reading the record.” *Id.*

A. Medical Decisions

In his first issue, Father argues the trial court ignored S.S.’s best interests by creating a conservatorship structure that allows each parent the independent right to administer medications to S.S. during that parent’s periods of possession.

1. Relevant Facts

S.S. has been diagnosed with autism spectrum disorder, level two severity; ADHD; intellectual, developmental disorder with mild severity; and combined presentation and language disorder. The parents disagree about whether S.S.’s treatment should include prescription medications and behavioral therapy.

Dr. Farid Din, a child neurologist, observed that S.S. is unruly and uncontrollable, hyperactive, does not follow instructions, and sometimes hits Father. While Father reported that S.S. displayed similar behavior while in his possession, Mother reported that S.S. is well behaved at home and during therapy sessions, not hyperactive, and follows instructions.

Dr. Din prescribed medications for S.S. to address hyperactivity and aggressive behaviors. He testified that prescription medications should be administered daily to optimize their effectiveness. Father adheres to that regimen; however, Mother does not because she struggles to believe that S.S. needs or should be given medication. As a result, S.S. receives medications during Father's periods of possession and not during Mother's. Dr. Din testified that sporadic administration of the medications would cause the levels of medications in S.S.'s body to fluctuate, which reduces their beneficial effects, and he believed S.S.'s unruly behavior continued because Mother did not administer medications. However, he confirmed that intermittent administration of the medications would not harm S.S. or cause him to experience side effects or withdrawal symptoms.

Father argues the trial court should have ordered both parents to administer the prescribed medications to S.S. because "medication is not optional," and S.S. could have made more progress if Mother administered the medications. Father wants Mother to have a more limited possession schedule because Mother does not administer the prescription medications; Father testified, "[h]is life depends on it. If

he is not able to get the medication that he needs, he is not better to me and better to society. He needs the care now[,] not later on. . . . he needs his medication.”

Dr. Levi Armstrong, a clinical neuropsychologist who completed a neuropsychological evaluation of S.S., recommended “ABA therapy² that is kind of integrated into an overall treatment plan of speech therapy, physical therapy, and occupational therapy in addition to consideration for medication for ADHD.”

Mother testified that S.S. does not display behavioral problems at her house. She believes ABA therapy is helping S.S. However, she notices that S.S. regresses when he spends time with his father. For example, in July 2022, approximately eight months before the trial, the children stayed with their father for a month, and S.S. did not receive ABA therapy during that month. Mother testified that S.S. regressed during that time.

Doretha Garman, a behavioral analyst, has provided ABA therapy to S.S. for nearly five years. Garman testified she spends about three hours per week with S.S. and conducts assessments every six months. Garman believes S.S.’s behavior showed both growth and regression during the eighteen months before trial. Teachers at S.S.’s school reported they saw growth, and she and her employees see that S.S. can now do things he could not before. Garman testified her program requires consistency to work best; she stated, “[S.S.] does best on a schedule. He

² The term ABA therapy is used throughout the record but is not defined.

does best for [sic] consistent schedule and consistent therapy. Because when you don't receive consistent therapy, we do see regression.”

Garman also testified S.S. misses sessions when he is in Father's possession for long periods of time. She testified that after spending a month with Father in July 2022, S.S. did not settle back into his routine for a couple of weeks. During that time, she saw “an increase in behaviors . . . when he's becoming acclimated to it again.”

2. *Analysis*

The undisputed evidence shows S.S. has several diagnoses, including autism spectrum disorder and ADHD, for which treatment is appropriate. Medication and behavioral therapy, in addition to physical, occupational, and speech therapies, have been prescribed to help the child progress. Each therapeutic intervention is most effective when administered consistently, and inconsistent administration prevents the interventions from providing their full benefits. However, because Mother and Father disagree about the best way to treat S.S., they both refuse to administer the therapeutic intervention chosen by the other parent. Father's proposed solution is that he should be given the exclusive right to make S.S.'s medical decisions, and Mother should be required to follow his treatment plan; Father does not explain why his proposed resolution would be superior to awarding Mother the exclusive right to make S.S.'s medical decisions and requiring him to follow Mother's treatment plan.

Some evidence shows that Father's medication-based treatment plan for S.S. could be more effective if implemented consistently. Conversely, evidence also

shows that Mother's behavioral therapy-based treatment plan has been effective and could be more successful if implemented consistently. However, neither Mother's failure to administer prescription medications nor Father's failure to ensure S.S. receives Garman's services is life threatening to S.S. Rather, Mother's and Father's respective unwillingness to continue the chosen treatment of the other parent merely inhibits the effectiveness of each treatment program. The record does not show that either treatment protocol alone is better for S.S., but it does contain evidence that consistently providing one or both treatments to S.S. could improve his overall outcome.

Having heard evidence about S.S.'s diagnoses, the treatment protocols and their effectiveness, and the reasons for the parents' disagreements, we conclude the trial court acted within its discretion when it awarded each parent the right to consent to non-invasive medical treatment for S.S. during the parent's respective periods of possession. We overrule Father's first issue.

B. School Choice

In his second issue, Father argues that the trial court abused its discretion by giving Mother the exclusive right to make educational decisions for S.S.

1. Relevant Facts

Mother chose for S.S. to attend public school in Plano where he is in general and special education classes. An assistant accompanies him to his general education classes. His special education case manager, Tracy Jennings, testified that she does

not find S.S. to be a danger to himself or others, and he is not hyperactive. She continued: “[S.S.] has a behavioral intervention plan to address some of his behaviors. He has time in [a] special ed setting to address those behaviors to help him to be able to generalize those learned skills in the general ed setting.” He has been responsive to the educational plan and is developing: “I would say he’s made tremendous growth over the past year.”

During the year and a half before the trial, S.S. had fewer “meltdowns” at school and learned better coping skills. Jennings testified that S.S. has developed verbal skills to express his wants, needs, and feelings, and he is learning to regulate his emotions. As a result, S.S. is excelling scholastically.

Father proposes that S.S. attend the Winston School, where Father believes S.S. will receive “the therapy he needs, ABA, occupational, speech therapy, and all of the therapists [sic].” Father testified: “[S.S.] is a special needs child. From day one, [M]om has prevented him from going to a special school where his needs can be met in times of physical, mental, and also health wise [sic].” He believes the Winston School is a better choice because S.S. would receive one-on-one attention from a therapist who would come to the classroom and provide services. Father believes S.S. “needs to be in a better school environment where he gets the support that he needs. He needs almost one-on-one attention. . . he’s operating at 30 to 40 percent capacity, which means he’s not sitting and learning. . . . So [S.S.] is a special needs child with special care. We heard that he’s making progress but very little

progress. Unless you provide him the right support at this time, he is not going to make it.”

To effectuate S.S. attending the Winston School, Father argues the trial court should have assigned him the exclusive right to choose S.S.’s school.

2. *Analysis*

The undisputed evidence shows S.S. has several learning and intellectual disabilities and requires special education and therapies. Mother has chosen a school for S.S. where he receives individualized attention, is thriving, is having fewer “meltdowns,” is developing coping skills, is improving his ability to express his wants and needs, and has experienced “tremendous growth.” The record shows that S.S.’s current school meets his needs, and that he is making progress. Thus, we cannot conclude that the trial court abused its discretion by awarding Mother the exclusive right to enroll S.S. in school. We overrule Father’s second issue.

CONCLUSION

After evaluating the arguments and evidence presented, the trial court’s August 29, 2023 Final Decree of Divorce is affirmed. The court’s decisions were made with careful consideration of the child’s best interest and align with applicable legal standards.

/Cynthia M. Barbare/
CYNTHIA M. BARBARE
JUSTICE



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

JUDGMENT

IN THE INTEREST OF S.S. AND
S.S., CHILDREN

No. 05-23-00928-CV

On Appeal from the 468th Judicial
District Court, Collin County, Texas
Trial Court Cause No. 468-50353-
2021.

Opinion delivered by Justice Barbare.
Justices Miskel and Breedlove
participating.

In accordance with this Court's opinion of this date, the trial court's August 29, 2023 Final Decree of Divorce is **AFFIRMED**.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 24th day of February 2025.