Affirmed and Memorandum Opinion filed August 23, 2011.

In The

Fourteenth Court of Appeals

NO. 14-10-01007-CV

JAMES JOSEPH ROONEY, Appellant

V.

SANDRA ROONEY, Appellee

On Appeal from the 387th District Court
Fort Bend County, Texas
Trial Court Cause No. 08-DCV-162786

MEMORANDUM OPINION

In this suit affecting the parent-child relationship, appellant James Joseph Rooney appeals from a portion of the trial court's 2010 Order in Suit to Modify Parent-Child Relationship raising James's child support for his three children from $2,000 to $3,710, an amount that exceeds the statutory guidelines set forth in the Texas Family Code. In five issues, James contends that the trial court abused its discretion in entering the Order because (1) appellee Sandra Rooney did not prove a material and substantial change in circumstances or that the children have unmet needs; (2) the trial court considered Sandra's standard of living in awarding child support and did not set forth its reasoning

for awarding child support above the statutory guidelines; and (3) the award of child support constitutes a prohibited double recovery for Sandra. Sandra counters that this court does not have jurisdiction to hear the appeal because James consented to entry of the Order. We hold that we have jurisdiction over the appeal and affirm.

Background

James and Sandra divorced in 2005. They have three children of the marriage, and James has one minor child from a previous marriage. Under the divorce decree, to which the parties agreed, the court ordered James to pay Sandra monthly child support of $2,000 from October 1, 2005 forward.

James filed this lawsuit seeking modification of several provisions of the divorce decree, regarding possession and access, choice of nannies, life insurance policies, and the children's passports, and seeking a permanent injunction. At trial, James requested dismissal of his request for injunctive relief, which the trial court granted. Sandra brought a counterclaim asking the court to increase child support.

The case was tried to the bench. During trial, both parties agreed to the modifications sought by James; thus, the primary issue at trial was child support. Sandra testified that the children's needs had increased since the divorce decree was entered as the children had gotten older. James's counsel admitted at trial that James makes more than $50,000 per month which was a material and substantial change in circumstances. Sandra sought child support from James at trial of $10,000 per month plus 100% of the uninsured medical expenses for the children. Sandra presented as an exhibit a chart entitled "Allocation of Cost Needs of the Children," which she testified represented the children's monthly expenses, totaling $14,129.13. The document also allocated monthly expenses between Sandra and the children. The trial court found that the children's needs were $5,366.87 per month, including $3,313.74 over the amount of child support computed by the percentage guidelines set forth in the Family Code, and that James and Sandra were each responsible for paying 50% of the children's excess needs, or $1,656.87.

The trial court found true the material allegations in both James's petition and Sandra's counterpetition and signed the Order, which, among other things, requires James to pay Sandra child support of $3,710 per month[1] and includes findings, in pertinent part, that James has net resources of $50,000 per month, the amount of Sandra's net resources per month is unclear, and both Sandra and James are expected to support the children. The court specified that the amount of child support varies from the statutory guidelines because, among other things, James earns above guideline income, Sandra is intentionally unemployed or underemployed with an unknown income and her expenses are "grossly overstated," and the shortage of the children's needs above guideline support is $3,313.74. The trial court also awarded Sandra retroactive child support of $10,570, but applied a credit of $5,290.64, and ordered James to pay the balance of $5,279.36.

The trial court subsequently entered Additional Findings of Fact and Conclusions of Law. The trial court found, among other things:

> - To support her increase in child support, Sandra testified, in part, to spending $400.00 for "pole dancing classes"; she has been unemployed, except for a brief period, since 2008; has made limited effort to become employed; currently conducts a dog breeding business in her home; spends $1,300.00 monthly for daycare even when she is at home during the children's summer vacation; has not paid the $3,859.16 monthly house payment in more than a year; the children's needs totaled in excess of $14,000 monthly; and requested $10,000.00 monthly child support.
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> . . . .
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> - Mickey[2] pays other expenses of the children and of Sandra that are not reflected in the child support calculations.
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> . . . .

[1] This amount represents the total of the amount required under the statutory guidelines, $2,053.13, plus James's half of the children's excess needs, $1,656.87.

[2] James also answers to the nickname Mickey.

- Even though Sandra has not paid house payments and only sporadically paid other necessities such as utilities, the children still need the benefit of necessaries[.]

Jurisdiction

We address as an initial matter Sandra's contention that this court lacks jurisdiction over the appeal because James approved the Order as to form and substance, thus, as Sandra asserts, making the Order a consent judgment. For a judgment to be considered an agreed or consent judgment, such that no appeal can be taken therefrom, either the body of the judgment itself or the record must indicate that the parties came to some agreement as to the case's disposition; simple approval of the form and substance of the judgment does not suffice. *DeClaris Assocs. v. McCoy Workplace Solutions, L.P.*, 331 S.W.3d 556, 560 (Tex. App.—Houston [14th Dist.] 2011, no pet.). Here, there is no indication in the body of the Order or otherwise in the record that the parties agreed to the case's disposition with regard to child support.[3] In fact, whether child support should be increased and in what amount was vigorously contested throughout the proceedings, including trial. *See id*. Consequently, James did not abandon his right to appeal by signing the Order, and this court has jurisdiction over the appeal. *See id.*

Abuse of Discretion

In five issues, James argues that the trial court abused its discretion by ordering child support above the statutory guidelines in the Family Code because (1) Sandra did not present evidence of a material and substantial change in circumstances or that the children had unmet needs, (2) the trial court improperly considered Sandra's lifestyle in increasing child support and did not specifically delineate what needs it credited to support the child support award; and (3) the child support award constitutes a double recovery to Sandra.

[3] The parties did agree to the terms of the Order disposing of other issues in the case, but these issues are not before us on appeal.

We review a trial court's determination of child support under an abuse-of-discretion standard. *Newberry v. Bohn-Newberry*, 146 S.W.3d 233, 235 (Tex. App.—Houston [14th Dist.] 2004, no pet.); *Evans v. Evans*, 14 S.W.3d 343, 345–46 (Tex. App.—Houston [14th Dist.] 2000, no pet.). A trial court abuses its discretion when it acts arbitrarily, unreasonably, or without reference to any guiding rules or principles. *Newberry*, 146 S.W.3d at 235. Under the abuse-of-discretion standard, legal and factual sufficiency challenges are not independent grounds of error, but are relevant factors in assessing whether the trial court abused its discretion. *Id.*; *Zieba v. Martin*, 928 S.W.2d 782, 786 (Tex. App.—Houston [14th Dist.] 1996, no writ). When an appellant alleges the trial court abused its discretion because the evidence is insufficient, this court employs a two prong test. *Newberry*, 146 S.W.3d at 235. First, we must ask whether the trial court had sufficient information on which to exercise its discretion, and second, we determine whether the trial court abused its discretion by causing the child support order to be manifestly unjust or unfair. *Id.*; *Evans*, 14 S.W.3d at 346.

The trial court does not abuse its discretion when it bases its decision on conflicting evidence or when some evidence of a probative and substantive character exists to support the child support order. *Newberry* 146 S.W.3d at 235; *Zieba*, 928 S.W.2d at 787. Conversely, a trial court does abuse its discretion when there is no evidence to support its decision. *Anderson v. Carranza*, No. 14-10-00600-CV, 2011 WL 1631792, at *4 (Tex. App.—Houston [14th Dist.] Apr. 28, 2011, no pet.) (mem. op.). In conducting our review, we view the evidence in the light most favorable to the trial court's decision and indulge every reasonable presumption in favor of the trial court's judgment. *Newberry*, 146 S.W.3d at 235.

1. Material and Substantial Change of Circumstances

In his first issue, James argues that the trial court abused its discretion by modifying the child support order because Sandra failed to show a material and substantial change of circumstances since entry of the divorce decree. Sandra counters that James conceded a material and substantial change of circumstances and, regardless,

Sandra presented sufficient evidence showing the children's needs have increased since the divorce. We agree with Sandra.

A court may modify a child support order "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." Tex. Fam. Code § 156.401(a)(1)(A). To determine whether modification of child support is warranted, the court must examine and compare the circumstances of the parents and any minor children at the time of the initial order with the circumstances existing at the time of trial in the modification suit. *In re D.S.*, 76 S.W.3d 512, 520 (Tex. App.—Houston [14th Dist.] 2002, no pet.). The record should contain both historical and current evidence of the relevant person's financial circumstances. *London v. London*, 192 S.W.3d 6, 15 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). But a court's determination as to whether a material change of circumstances has occurred is not guided by rigid or definite rules and is fact-specific. *In re A.L.E.*, 279 S.W.3d 424, 428 (Tex. App.—Houston [14th Dist.] 2009, no pet.). A breakdown of the children's expenses at the time of the initial order and at the time of the modification hearing is not necessary to show a material and substantial change of circumstances when evidence shows a substantial increase in the designated expenses for the children, in the absence of showing any decrease in expenses. *Arndt v. Arndt*, 685 S.W.2d 769, 770 (Tex. App.—Houston [1st Dist.] 1985, no writ); *see also In re Marriage of Hamer*, 906 S.W.2d 263, 267 (Tex. App.—Amarillo 1995, no writ) (acknowledging that as children grow into teenagers, their expenses increase); *Sheldon v. Marshall*, 768 S.W.2d 852, 856 (Tex. App.—Dallas 1989, no writ) ("[A]n increase in the needs of Daughter is sufficient to justify an increase in support if Father is able to pay.").

A judicial admission is a formal waiver of proof usually found in pleadings or the parties' stipulations. *Aguirre v. Vasquez*, 225 S.W.3d 744, 756 (Tex. App.—Houston [14th Dist.] 2007, no pet.). A judicial admission is conclusive on the party making it and relieves the opposing party of its burden of proving the admitted fact. *Id.* The admission must be clear and unequivocal. *Holy Cross Church of God in Christ v. Wolf*, 44 S.W.3d

562, 568 (Tex. 2001). Any fact so admitted is conclusively established in the case without the introduction of the pleading or presentation of other evidence. *Aguirre*, 225 S.W.3d at 756. It not only relieves the opposing party from proving the admitted fact but bars the admitting party from disputing it.[4] *Id*. The policy underlying this rule is that it would be unjust to permit a party to recover after it has negated its right to recover by clear, unequivocal evidence. *Id.* at 756–57.

At trial, James's counsel agreed numerous times to stipulate that James made over $50,000 per month at the time of trial. James's counsel also clearly, unequivocally, and adamantly asserted that this fact showed a material and substantial change in James's circumstances and Sandra needed to focus only on proving the needs of the children: "But the case law, Your Honor, this is the situation, has there been a material and substantial change. It's their burden. We stipulate that there has been." In objecting to the admission of evidence including James's bank statements and income, James's counsel stated that Sandra's counsel "has finally agreed to our stipulation that our client makes over $50,000 a month in child support. And under 156 under modification, once that's established, *then the burden shifts to proving needs* . . . ." (Emphasis added.) We hold that, under these circumstances, James judicially admitted a material and substantial change in his financial circumstances, relieved Sandra of proving that fact, and is barred from disputing it.[5] *See Aguirre*, 225 S.W.3d at 756; *see also Baucom v. Crews*, 819 S.W.2d 628, 631 (Tex. App.—Waco 1991, no writ) ("Baucom himself pleaded that a material and substantial change in his circumstances had occurred sufficient to warrant a

[4] A party's testimonial declaration, by contrast, is a quasi-admission that is not conclusive—the trier of fact determines the amount of weight to be given to such admissions. *Aguirre*, 225 S.W.3d at 756.

[5] Sandra's counsel never agreed to the stipulation, seeking to prove that James made closer to $100,000 per month. We note that the contents of a stipulation constitute judicial admissions, *Manning v. Enbridge Pipelines (E. Tex.) L.P.*, No 09-10-00205-CV, 2011 WL 2732226, at *5 (Tex. App.—Beaumont July 14, 2011, no pet. h.), but a party also may make a judicial admission outside of the context of a stipulation (or a pleading). *See Aguirre*, 225 S.W.3d at 756 (acknowledging judicial admissions are *usually* found in pleadings or stipulations). Thus, whether Sandra agreed to stipulate to the amount of James's income is irrelevant to whether James judicially admitted a material and substantial change in his financial circumstances.

decrease in his monthly child-support obligations. His pleadings constitute a judicial admission that there has been a substantial and material change of his circumstances.").

Sandra also presented evidence of a material and substantial change in the children's circumstances. When the divorce decree was entered, the children were seven-, four-, and two-years-old. When the Order was entered, the children were twelve-, nine-, and seven-years-old, so the two youngest had grown from pre-school- to school-aged children. Sandra testified that as the children have gotten older, their needs have increased. They are involved in more extracurricular activities and eat out more often, the cost of groceries has increased, the children have a greater need for a tutor due to their special needs,[6] and gasoline is not only more expensive but there is a greater need for it, as the children must be transported to their extracurricular activities. We hold that the trial court did not abuse its discretion in finding a material and substantial change in circumstances that would merit an increase in child support. *See Arndt*, 685 S.W.2d at 770.

We overrule James's first issue.

2. Unmet Needs of the Children

In his second issue, James contends that the trial court abused its discretion by increasing his child support obligation because Sandra failed to prove that the children had unmet needs. Specifically, James complains about the amount of child support Sandra sought for nanny expenses, tutorial expenses and private school tuition, birthday parties, extracurricular activities, over-the-counter medicine, and food and groceries. Because the trial court clearly took into account the amount of child support sought, weighed that against the evidence of the children's needs, and, finding that the expenses claimed by Sandra were "grossly overstated," significantly reduced the amount of child support awarded as compared to that sought, we decline to find that the trial court abused its discretion.

[6] Sandra testified that two of the children have learning disabilities that necessitate the use of a tutor.

Once the court determines a material and substantial change has occurred, the extent of the alteration of the amount of child support also lies within the court's discretion. *Nordstrom v. Nordstrom*, 965 S.W.2d 575, 578 (Tex. App.—Houston [1st Dist.] 1997, pet. denied). The Family Code provides a bifurcated analysis in setting child support, depending on whether an obligor has net monthly resources above or below $7,500. Tex. Fam. Code §§ 154.125, 154.126; *see Nordstrom*, 965 S.W.2d at 579. If the obligor's net monthly resources are below $7,500, the court must apply a presumptive award based on a percentage of the obligor's net resources and the number of children. Tex. Fam. Code §§ 154.125. But Family Code section 154.126(a) grants the court discretion to order additional amounts over and above the presumptive award when the obligor's net monthly resources exceed $7,500, depending on the income of the parties and the proven needs of the child. Tex. Fam. Code § 154.126(a); *see also London*, 192 S.W.3d at 15. If the court awards more than the guideline amount, subsection (b) requires that the court first determine the proven needs of the child. Tex. Fam. Code § 154.126(b). If the needs of the child exceed the presumptive award, the court must subtract the presumptive award from those needs. *Id.* The court must then allocate between the parties the responsibility to meet the additional needs of the child, depending on the circumstances of the parties. *Id.* However, the court is forbidden from requiring the obligor to pay more than 100% of the proven needs of the child. *Id.*

What constitutes "needs" of the child has not been defined by statute or by case law. *See Rodriguez v. Rodriguez*, 860 S.W.2d 414, 417 n.3 (Tex. 1993). However, the needs of the child are not limited to the "bare necessities of life." *Id.* In evaluating the needs of the child, and, thus, the exercise of the court's discretion in determining those needs, we are guided by the paramount principle in child support decisions: the best interest of the child. *Id.* Thus, the Family Code gives an expansive view of the needs of a child and does not require the trial court to delineate every need of the child. *Scott v. Younts*, 926 S.W.2d 415, 421, 423 (Tex. App.—Corpus Christi 1996, writ denied). Rather, the court is required only to state specific reasons why the application of the

guidelines is inappropriate. *Id*. at 423. The managing conservator is generally in the best position to know the child's needs, and the trier-of-fact is the sole judge of the credibility of the witnesses and the evidence. *Id*. at 421. Estimates and projections of future expenses and needs of the child are as relevant and probative as past and current expenses and needs. *Zajac v. Penkava*, 924 S.W.2d 405, 409 (Tex. App.—San Antonio 1996, no writ). The child's needs should be segregated from those of the parent. *Lide v. Lide*, 116 S.W.3d 147, 158 (Tex. App.—El Paso 2003, no pet.).

At trial, Sandra sought to increase James's child-support obligation to $10,000 per month plus 100% of the children's uninsured medical expenses. She based her testimony, in part, on a chart she had created that allocated between the children and her separate expenses in several categories, such as mortgage payments, housekeeping and nanny expenses, tutoring, groceries, and other things. Sandra testified that she relied on bank statements, which were admitted at trial, and real costs incurred to determine the monthly expenses of the children as reflected on the chart, which was admitted at trial. She also allocated expenses between herself and the children and explained why she allocated these percentages in the way she did.[7] Sandra testified that she did not include her personal expenses in these amounts. The trial judge, as the sole judge of the credibility of the evidence presented by Sandra, was entitled to accept or reject the numbers and percentages allocated by Sandra. *See Scott*, 926 S.W.2d at 421.

The trial judge found that the expenses presented by Sandra were "grossly overstated." He further found that the children's needs were $5,366.87 per month, which is just over half of the expenses sought by Sandra. In addition, he ordered James and Sandra to split the cost of the children's needs over the presumptive amount so that each is responsible for $1,656.87 per month, finding that "[b]oth parties are expected to help support these children."

[7] For example, Sandra allocated the mortgage payment between herself and the children at 30% for herself and 70% for the children, explaining that if she lived alone, she would live in her old townhome at a lower cost, and she allocated groceries at 25% for herself and 75% for the children based on the fact that she has three children.

James specifically complains that the following expenses are not "needs": nanny expenses when Sandra is unemployed; tutorial expenses and private school tuition when the children attend public school and certain tutoring is free;[8] and expenses for elaborate birthday parties, extracurricular activities, over-the-counter medicine, and food and groceries. We note that when the trial judge decreased the amount of support Sandra sought, he may have disregarded the great majority of the expenses about which James complains. Subtracting *all* of these expenses from Sandra's chart—including all of the food and groceries, extracurricular activities, and costs of medicine—still leaves a total of $4,954.39. The trial court, in its discretion, may have done that and then added a small amount to account for necessities such as food and groceries, but in any event, the court deeply reduced the amount of child support sought by Sandra.[9] Even assuming for argument's sake that we might somehow have reached a different result than the trial court, we may not substitute our opinion for that of the trier of fact. Keeping in mind the best interests of the children, as we must, we decline to hold under these circumstances that the trial court abused its discretion in ordering James to pay $3,710 per month in child support.[10] *See Roosth v. Roosth*, 889 S.W.2d 445, 455 (Tex. App.—Houston [14th Dist.] 1994, writ denied) (finding no abuse of discretion by trial court in requiring father to pay $3,000 per month in child support when record contained evidence that children's monthly expenses were over $9,000 per month).

We overrule James's second issue.

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[8] Sandra argues that the children need tutoring in addition to what the public school provides and that the children would perform better in private school due to their special needs.

[9] James urges us to hold that the evidence does not show that the children need to attend private school. But the trial court may have disregarded private school tuition in reaching its determination of the extent of the children's needs. Sandra, moreover, testified that the children would perform better in a private school environment because of their special needs. The trial court was entitled to accept or reject this testimony. *See Scott*, 926 S.W.2d at 421.

[10] James also urges us to hold that the trial court abused its discretion because James had at times voluntarily paid more child support than required by the divorce decree. But James's voluntary payment of child support does not necessarily mean that he was paying an amount that was consistent with the best interests of the children or that James would continue to volunteer additional child support. *See Kurtz v. Kurtz*, 158 S.W.3d 12, 20 (Tex. App.—Houston [14th Dist.] 2004, pet. denied).

3. Sandra's Lifestyle

In his third issue, James argues that the trial court abused its discretion by considering Sandra's lifestyle rather than the children's unmet needs in ordering the increase in James's child-support obligation. We have found nothing in the record to indicate that the trial court awarded child support to supplement Sandra's lifestyle.

Child support awarded out of an obligor spouse's net monthly resources that exceeds the statutory guideline amount must be based solely on the needs of the child, and the trial court may not consider a parent's ability to pay or the lifestyle of the obligee. *See Rodriguez*, 860 S.W.2d at 417–18; Tex. Fam. Code § 156.405. In determining whether application of the statutory guideline amounts would be unjust or inappropriate, a trial court must consider "the amount of the obligee's net resources, including the earning potential of the obligee if the actual income of the obligee is significantly less than what the obligee could earn because the obligee is intentionally unemployed or underemployed." Tex. Fam. Code § 154.123(5).

James complains that because Sandra was unemployed at the time of trial, she was attempting to obtain more child support to pay her personal expenses. James in fact urges us to consider Sandra's lifestyle in considering the propriety of the trial court's child-support award. But we may only look to James's and Sandra's income (taking into account their actual earning potential and not just employment status) and the proven needs of the children to determine whether the trial court abused its discretion by awarding child support in excess of the statutory guidelines. *Id.* §§ 154.123(5), 154.126(a).

In its Order, the trial court expressly based the child support award on these two factors—the proven needs of the children and James's and Sandra's incomes—and explicitly disregarded Sandra's personal expenses. The trial court found that at the time of trial Sandra (1) had been intentionally unemployed or underemployed, except for a brief period, since 2008; (2) had "grossly overstated" the children's expenses; (3) spent $400 on "pole dancing classes"; (4) had "made limited effort to become employed";

(5) spent $1,300 per month on daycare even when she was at home; and (6) had not made house payments in over a year. But the court concluded that "[e]ven discounting Sandra's personal expenses," the children's needs were substantially more than the presumptive amount. And despite Sandra's unemployment status, the court ordered Sandra and James to split the cost of the children's needs over the presumptive amount. We hold that the trial court did not increase the child support award to support Sandra's lifestyle, but instead based the award on the proper factors set forth in the Family Code.

We overrule James's third issue.

4. The Trial Court's Findings

In his fourth issue, James complains that the trial court abused its discretion by failing to delineate what proven needs it credited to support the Order. We disagree.

The Family Code sets out exactly what the trial court must include in its findings in rendering a child support order:

> [T]he court shall state whether the application of the guidelines would be unjust or inappropriate and shall state the following in the child support order:
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> "(1) the net resources of the obligor per month are $_____;
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> "(2) the net resources of the obligee per month are $_____;
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> "(3) the percentage applied to the obligor's net resources for child support is _____%; and
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> "(4) if applicable, the specific reasons that the amount of child support per month ordered by the court varies from the amount computed by applying the percentage guidelines under Section 154.125 or 154.129, as applicable."

Id. § 154.130(b). The trial court, moreover, is not required to delineate every need of the child, but is only required to state specific reasons why application of the guidelines is inappropriate. *Scott*, 926 S.W.2d at 421, 423.

Here, the trial court made the following findings in accordance with the Family Code's requirement[11]:

> 1) The amount of net resources available to Petitioner per month is $50,000.00.
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> . . . .
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> 3) The amount of net resources available to Respondent per month is unclear.[12]
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> . . . .
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> 6) The percentage applied to the first $7,500.00 of Petitioner's net resources is 27.38%.
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> 7) The specific reasons that the amount of support per month ordered by the Court varies from the amount computed by applying the percentage guidelines of section 154.129 of the Texas Family Code:
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> a. Petitioner earns above guideline income,
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> b. Respondent is intentionally unemployed/under employed,
>
> c. Petitioner supports another child,
>
> d. Respondent's income is unclear, she claims to have a dog breeding business,
>
> e. Respondent's expenses are grossly over stated,
>
> f. The shortage of the children's needs after guideline support is $3,313.74.
>
> g. Both parties are expected to help support these children.

The court later supplemented its findings to clarify that James and Sandra are each responsible for 50% of the children's proven needs over the presumptive amount, or $1,656.87, and that James is responsible for a total of $3,710 monthly child support. We hold that the trial court included all of the information required by the Family Code to be

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[11] The Order did not include the court's statement of whether the application of the guidelines would be unjust or inappropriate, as required by the Family Code. But James complains only that the court's findings should have set out specifically the amounts of the children's proven needs, which is the only part of the Order at issue. Thus, we need not address whether the Order is sufficient in this respect. *See Archambault v. Archambault*, 846 S.W.2d 359, 361 (Tex. App.—Houston [14th Dist.] 1992, no writ) (noting, in context of summary judgment appeal, "issues not presented cannot be considered on appeal").

[12] This finding is sufficient, as the trial court explained that it could not ascertain the amount of Sandra's net resources. *See Roosth*, 889 S.W.2d at 453.

in its findings in support of the Order.[13] *See Roosth*, 889 S.W.2d at 452–53 (holding findings were sufficient to comply with Family Code even though trial court could not compute a percentage to be applied to net resources, but court specified why order varied from guideline amount). The court was not required to provide a breakdown of each cost showing the dollar amount of each proven need of the children, but was only required to state why the child support award varies from the statutory guidelines, which it did. *Scott*, 926 S.W.2d at 421, 423.

We overrule James's fourth issue.

5. Double Recovery

In his remaining issue, James argues that the Order awarded Sandra a double recovery because separate provisions in the divorce decree from the child-support provision require James to pay $150 per month for the children's extracurricular activities and to reimburse Sandra for the cost of a nanny on weekends when James does not exercise his visitation rights. Specifically, James complains that the Order is unclear as to whether these provisions in the divorce decree remain intact after entry of the Order and "[f]or fear of contempt," James is continuing to comply with those provisions.[14] James has not preserved this issue for our review because he did not bring this alleged error to the attention of the trial court by filing a motion for new trial or motion to modify judgment. *See Ortiz v. Collins*, 203 S.W.3d 414, 427 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (observing to preserve complaint for appellate review regarding alleged defect in final judgment, party must first present issue to trial court through motion for new trial or motion to modify judgment) (citing Tex. R. App. P. 33.1(a)). Thus, he has waived this issue on appeal. *Id*.

[13] The case that James cites in support of his argument that the court's findings are insufficient is inapposite because in that case the trial court did not make any findings of fact or conclusions of law, despite two requests for them. *See In re T.N.H.*, No. 2-06-074-CV, 2007 WL 495162, at *2 (Tex. App.—Fort Worth Feb. 15, 2007, no pet.) (mem. op.).

[14] We note that if James is confused about the effect of the Order, he may file a motion at any time asking the trial court, as a court of continuing jurisdiction over matters involving the children, to clarify whether these provisions remain intact. *See* Tex. Fam. Code §§ 155.001, 157.421.

We overrule James's fifth issue.

Conclusion

Having determined that the trial court did not commit error, we overrule appellant's issues on appeal. The judgment of the trial court is affirmed.

/s/ Martha Hill Jamison
Justice

Panel consists of Justices Frost, Jamison, and McCally.