Affirmed and Memorandum Opinion filed December 7, 2017.

In The

Fourteenth Court of Appeals

NO. 14-16-00144-CV

ROSALE VICTORIA DUFFEY, Appellant

V.

CURRY PATRICK DUFFEY, Appellee

On Appeal from the 328th District Court
Fort Bend County, Texas
Trial Court Cause No. 09-DCV-173048

M E M O R A N D U M O P I N I O N

A mother of two children challenges the trial court's final order granting the father's petition to modify the parent-child relationship. The mother asserts that (1) the presiding judge of the trial court erred in signing a final order that conflicted with the prior final order signed by the associate judge who presided over the trial; (2) the associate judge failed to give effect to the father's purported judicial admission that the father sexually abused one of the children, (3) the associate judge reversibly erred in changing the mother from the children's sole

managing conservator to a joint managing conservator who does not have the right to designate the children's primary residence; (4) the associate judge abused his discretion in awarding the father reasonable attorney's fees; (5) the mother did not effectively waive her right to appeal the associate judge's judgment after trial to the presiding judge of the district court; and (6) the associate judge reversibly erred in failing to issue the additional findings of fact and conclusions of law requested by the mother. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Appellant Rosale Victoria Duffy and appellee Curry Patrick Duffy are the parents of two minor children, Mary and John.[1] Rosale and Curry were divorced in a decree rendered in November 2010. In that decree, the court appointed Rosale as the children's sole managing conservator and Curry as their possessory conservator. The court found that Curry had a history or pattern of committing family violence during the two-year period preceding the filing of the divorce suit or during the pendency of the suit and that awarding Curry access to the children would not endanger their physical health or emotional welfare and would be in their best interest. The trial court further ordered that Curry's periods of visitation with the children be under the supervision of Rosale or one of several other named individuals.

In August 2012, Curry was having supervised visitation with the children at Rosale's house in Rosale's presence. The following paragraph describes Curry's trial testimony regarding the events of that day.

Before Curry's visit, Rosale had called him and told him to make sure to ask the children about their glow-light toys. When Curry arrived at Rosale's house for

[1] "Mary" and "John" are not the children's names; however, we refer to them using these pseudonyms in an attempt to protect their privacy.

the visitation, the children were very excited to see Curry, and Rosale asked the children to go upstairs to get their glow-light toys so they could show these toys to Curry. The children never before had been excited to show Curry a toy. The children went upstairs, retrieved their glow-light toys, and came downstairs to show them to Curry. Rosale stated that they needed to go into a dark room to see the toys glow, and Rosale suggested that they go into a bathroom. Curry asked if Rosale wanted to go into the bathroom, and Rosale said there was not enough room for her, so only Curry and the children entered the bathroom with the lights turned off. Mary turned on her glow-light toy, but John had trouble turning on his toy. John asked his mother how to turn on the toy. Rosale, who was standing just outside the door, explained to John how to switch on the toy. Mary turned John's toy on, and Curry and the children looked at the lights for about thirty seconds. After that, they left the bathroom, and Curry went into the living room with John, while Rosale went to the kitchen with Mary. Rosale and Mary then entered the living room, and Rosale said that she wanted to tell Curry something that Mary had just told her. Rosale announced that Mary had just said that Curry touched John's penis. Curry was shocked that Mary would say something like that. Rosale told Curry not to worry and that she knew that was not something that Curry would ever do. Curry asked Mary why she would say that. Mary responded that she had not said that. Mary said that she had told Rosale something about a toy, and Mary hid behind Rosale.

Evidence at trial showed that, in September 2012, Rosale contacted the Texas Department of Family and Protective Services (the "Department") to report this "outcry." In the fall of 2012, Rosale started taking Mary to a therapist. Curry continued with his supervised visitation through the end of March 2013. That month, Mary made an outcry of alleged sexual abuse by Curry to the therapist, and the therapist reported the outcry to authorities. The Department conducted an

investigation of this outcry.

Shortly after this outcry, Rosale initiated this lawsuit by filing a petition to modify the parent-child relationship. Curry filed a counterpetition. Curry testified that he did not have any visitation at all with his children until March 2014, when he began supervised visitation with the children through Guardians of Hope. Evidence at trial showed that Rosale took acts that resulted in Curry not being able to see the children during this one-year period. According to Curry, when he started seeing the children again, their behavior toward him was hostile and different from before. They made growling sounds at him, and would not look him in the eyes. The children told Curry they hated him and never wanted to see him again, and they asked how much longer they had to have these visits.

Rosale contacted law-enforcement authorities twice regarding Curry's alleged sexual abuse of one of the children. Curry was not arrested or charged with any sexual abuse of the children. Evidence showed that Rosale decided to take the children to a new therapist in December 2014, in violation of an injunction contained in temporary orders. As a result of this action, the new therapist made an additional report to the Department about the same sexual-abuse allegations. Despite various reports and investigations of Curry's alleged sexual abuse of the children, the final result of all of the Department's investigation has been either "Ruled Out" or "Unable to Determine." The Department records admitted into evidence at trial reflect that (1) "Ruled Out," means that based on the available information, it was reasonable to conclude that the alleged abuse or neglect did not occur; and (2) "Unable to Determine" means that there was insufficient information to conclude whether the alleged abuse or neglect did or did not occur.[2]

[2] Initially the Department made a final disposition of "Reason to Believe" as to the alleged abuse of Mary, meaning that a preponderance of the evidence supports that the alleged abuse or neglect did occur. The Department later changed this disposition to "Unable to Determine."

Rosale and Curry entered into an agreement under Texas Rule of Civil Procedure 11 to waive any objection to an associate judge conducting the trial on the merits and to waive the right to appeal the associate judge's rulings and recommendations to the referring court. After Rosale nonsuited her petition to modify, the parties proceeded to a trial on Curry's petition before the associate judge. After the bench trial, on November 20, 2015, the associate judge signed an "Order on Motion to Modify." Within thirty days, the associate judge signed a final order in the suit to modify the parent-child relationship. The associate judge found that it was in the children's best interest to modify the conservatorship so that Curry and Rosale are joint managing conservators and Curry has the exclusive right to designate the children's primary residence as well as other exclusive rights. The associate judge ordered this modification, ordered Rosale to pay child support, and ordered Rosale to pay $65,000 to Curry's attorneys for reasonable attorney's fees and expenses incurred by Curry. The associate judge issued findings of fact and conclusions of law. Though Rosale requested that the associate judge issue additional findings of fact and conclusions of law, the associate judge did not do so.

II. ISSUES AND ANALYSIS

Acting pro se, Rosale has perfected and prosecuted this appeal from the trial court's final order.[3] Rosale presents seven appellate issues.

A. Claimed Error Based on the November 20, 2015 Order

In her first issue, Rosale asserts that the presiding judge of the trial court erred in signing the final order on December 18, 2015, because that order

[3] Pro se litigants must comply with the applicable procedural rules, and we hold them to the same standards that apply to licensed attorneys. *See Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 185 (Tex. 1978) (holding that litigants who represent themselves must comply with procedures established by the rules even though they are not licensed attorneys).

conflicted with the order the associate judge signed on November 20, 2015. Rosale notes that the presiding judge of the trial court did not preside over the bench trial, and Rosale asserts that by signing the latter order, the presiding judge created two final judgments, in violation of Texas Rule of Civil Procedure 301's requirement that there be only one final judgment in any case, except where it is otherwise specially provided by law. *See* Tex. R. Civ. P. 301.

The record reflects that the presiding judge of the trial court did not sign the December 18, 2015 order; rather, the associate judge signed both orders. Presuming for the sake of argument that both orders are final orders and that the latter order conflicts with the former, as Rosale asserts, the associate judge signed the second order while the trial court still had plenary power to modify or vacate the first order, and by signing the second order the associate judge effectively vacated and replaced the first order with the second order. *See* Tex. R. Civ. P. 329b(d); *Urelift Gulf Coast, L.P. v. Bennett*, No. 14-13-00949, 2015 WL 495020, at *2 (Tex. App.—Houston [14th Dist.] Feb. 5, 2015, no pet.) (concluding that, by rendering a final judgment that was inconsistent with a prior interlocutory judgment, the trial court necessarily vacated its prior judgment) (mem. op.); *Quanaim v. Frasco Rest. & Catering,* 17 S.W.3d 30, 39–40 (Tex. App.—Houston [14th Dist.] 2000, pet. denied) (holding that second judgment vacated first judgment with which second judgment was inconsistent, even though trial court did not refer to first judgment or expressly state an intention to vacate the prior judgment in the second judgment). Thus, there is only one final order in this case, and the associate judge did not violate Rule 301 as Rosale asserts. We overrule Rosale's first issue.

B. Claimed Error Based on an Alleged Judicial Admission by Curry

In her second issue, Rosale asserts that the associate judge abused his

discretion by failing to consider an answer that Curry gave while testifying at trial; Rosale asserts that this answer constitutes a judicial admission by Curry that Curry sexually abused Mary.

Under the unambiguous language of the December 18, 2015 order, the associate judge considered all of the trial evidence, which includes the alleged judicial admission. Therefore, the associate judge considered this evidence. When Curry made the alleged judicial admission, he was testifying on direct examination at trial, and his counsel had presented him with an exhibit containing Rosale's original petition to modify. In describing the reason given by Rosale in the petition for seeking a modification, Curry stated "Because of what I did to [Mary]." This statement was not a clear, deliberate, and unequivocal statement by Curry that he sexually abused Mary so as to constitute a judicial admission. *See Regency Advantage Ltd. P'ship v. Bingo Idea–Watauga, Inc.,* 936 S.W.2d 275, 278 (Tex. 1996); *In re S.A.M.,* 321 S.W.3d 785, 790, n. 1 (Tex. App.—Houston [14th Dist.] 2010, no pet.). Curry testified at trial that he did not molest Mary. The associate judge did not err in failing to treat this statement as a judicial admission that Curry sexually abused Mary. *See Regency Advantage Ltd. P'ship,* 936 S.W.2d at 278; *In re S.A.M.,* 321 S.W.3d at 790, n. 1.

We overrule Rosale's second issue.

C. Alleged Error in Appointing Curry Primary Joint Managing Conservator

In her third issue, Rosale asserts that the associate judge abused his discretion by finding it was in the best interest of the children to modify the conservatorship so that Curry and Rosale are joint managing conservators and Curry has the exclusive right to designate the children's primary residence as well as other exclusive rights.

In determining issues of conservatorship and possession and access, the primary consideration is always the best interest of each child. *See* Fam. Code Ann. § 153.002 (West, Westlaw through 2017 1st C. S.); *Lenz v. Lenz*, 79 S.W.3d 10, 14 (Tex. 2002). A court may use the following non-exhaustive list of factors to determine the best interest of each child: (1) the desires of the child; (2) the emotional and physical needs of the child now and in the future; (3) the emotional and physical danger to the child now and in the future; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist these individuals to promote the best interest of the child; (6) the plans for the child by the individuals seeking custody; (7) the stability of the home; (8) the acts or omissions of the parent that may indicate that the existing parent-child relationship is not proper; and (9) any excuse for the acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976).

We review a trial court's decision to modify an order as to conservatorship or the terms of possession of and access to a child under an abuse-of-discretion standard. *See Baltzer v. Medina*, 240 S.W.3d 469, 474–75 (Tex. App.—Houston [14th Dist.] 2007, no pet.). A trial court abuses its discretion if it acts arbitrarily, unreasonably, or without reference to any guiding rules or principles. *See Flowers v. Flowers*, 407 S.W.3d 452, 457 (Tex. App.—Houston [14th Dist.] 2013, no pet.). Under an abuse-of-discretion standard, legal and factual insufficiency are not independent grounds of error, but rather are relevant factors in assessing whether the trial court abused its discretion. *Id.* There is no abuse of discretion as long as some evidence of a substantive and probative character exists to support the trial court's exercise of its discretion. *Id.*

When reviewing the legal sufficiency of the evidence, we consider the evidence in the light most favorable to the challenged finding and indulge every

reasonable inference that would support it. *City of Keller v. Wilson*, 168 S.W.3d 802, 823 (Tex. 2005). We must credit favorable evidence if a reasonable factfinder could and disregard contrary evidence unless a reasonable factfinder could not. *See id.* at 827. We must determine whether the evidence at trial would enable reasonable and fair-minded people to find the facts at issue. *See id.* The factfinder is the only judge of witness credibility and the weight to give to testimony. *See id.* at 819.

When reviewing the factual sufficiency of the evidence, we examine the entire record, considering both the evidence in favor of, and contrary to, the challenged finding. *Maritime Overseas Corp. v. Ellis*, 971 S.W.2d 402, 406–07 (Tex. 1998). The trier of fact is the sole judge of the credibility of the witnesses and the weight to be given to their testimony. *GTE Mobilnet of S. Tex. v. Pascouet*, 61 S.W.3d 599, 615–16 (Tex. App.—Houston [14th Dist.] 2001, pet. denied). We may not substitute our own judgment for that of the trier of fact, even if we would reach a different answer on the evidence. *Maritime Overseas Corp.*, 971 S.W.2d at 407.

In his findings of fact and conclusions of law, the associate judge determined that (1) Curry will best provide for the children's psychological and emotional needs and development, now and in the future; (2) Curry has a stable home; (3) Curry's plans for the children include continuing to engage them in counseling with Dr. Mellor-Crummey (a psychologist who has been providing counseling to the children under court order) and to show the children a "family-type atmosphere" in his relationship with Rosale; (4) Curry has demonstrated a willingness to cooperate with Rosale in "raising" the children, attending to their needs, and co-parenting with Rosale; (5) Curry has exhibited appropriate parenting skills with the children, particularly in light of the effects of the abuse allegations, and in his cooperation with Dr. Mellor-Crummey; and (6) Curry wants to maintain

and promote family relationships between the children and their mother and extended family. Rosale has not challenged these determinations on appeal, and legally and factually sufficient trial evidence supports them.

The associate judge found that Rosale sought out a counselor other than Dr. Mellor-Crummey even though temporary orders prohibited this action. On appeal Rosale challenges this finding and asserts that there was no restriction preventing her from consulting other counselors. In agreed modified temporary orders signed by the associate judge on November 26, 2014, the parties were enjoined from "[t]aking the children to any other therapist or mental health provider other than Dr. Cynthia Mellor-Crummey, while this case is pending or until further Order of the Court." Prior temporary orders, signed on February 19, 2014, did not contain this injunction. Rosale testified that in December 2014, she took the children to see a therapist other than Dr. Cynthia Mellor-Crummey and that the therapist that they saw called the Department. The trial evidence is legally and factually sufficient to support the associate judge's finding that Rosale sought out a counselor other than Dr. Mellor-Crummey in violation of temporary orders that prohibited this action.

The associate judge also determined that (1) Rosale has fostered an environment of wanting to sever relationships with Curry and his side of the family; (2) Rosale's conduct seems designed to estrange Curry and the children rather than to foster a positive relationship; and (3) Rosale poses an emotional danger to the children, now and in the future, by her repeated allegations of sexual abuse against Curry, and her repeated failure to want the children to receive proper counseling and follow through on the counselor's recommendations. Rosale has challenged these determinations on appeal. We presume, without deciding, that the evidence is legally insufficient to support the determinations as to Rosale's

alleged repeated failure to want the children to receive proper counseling and follow through on the counselor's recommendations.

Evidence at trial showed that Rosale reported alleged sexual abuse of one of the children by Curry to the Department or to a law-enforcement agency several times. As to the sexual-abuse allegations Rosale reported to the Department, the evidence showed that the Department either "Ruled Out" the sexual-abuse allegation or determined that there was insufficient information to conclude whether the alleged abuse did or did not occur. The evidence shows that the district attorney did not pursue criminal charges against Curry for any alleged abuse of the children.

The trial evidence would enable reasonable and fair-minded people to find that Rosale took actions that resulted in Curry not being able to see the children from April 2013 through March 2014. After Curry began supervised visitation with the children following this hiatus, the children exhibited hostility towards Curry, and the evidence at trial supports a reasonable inference that this hostility was at least in part due to statements Rosale made to the children about Curry. Curry testified that Rosale started this litigation because she wanted Curry out of the children's lives. Curry testified that he was concerned that the children were being brainwashed into not having anything to do with him. Rosale testified at trial that she was hoping that a therapist she saw would call the Department, presumably to report sexual-abuse allegations against Curry.

Curry testified that the children, who were six and eight years old at the time of trial, generally sleep with Rosale in her bed when they are at her house. Curry stated that both Dr. Mellor-Crummey and Curry asked Rosale to insist that the children sleep in their own beds, but that Curry has no reason to believe that anything has changed.

Rosale testified that she knows what Mary said when she came out of the bathroom in August 2012, but Rosale admitted that her story as to what Mary said when she came out of the bathroom has changed at least three times. Rosale testified that if Curry did what Mary said he did, then Rosale did not think that Curry should see Mary or John. The trial evidence would enable reasonable and fair-minded people to find that (1) Rosale has fostered an environment of wanting to sever relationships with Curry and his side of the family; (2) Rosale's conduct seems designed to estrange Curry and the children rather than to foster a positive relationship; and (3) Rosale poses an emotional danger to the children, now and in the future, by her repeated allegations that Curry sexually abused the children.

Rosale argues that if there is a finding of family violence, which according to Rosale arguably includes sexual abuse, Family Code section 153.0071(e-1) allows a court to decline to render judgment on a mediated settlement agreement.[4] *See* Fam. Code Ann. § 153.0071(e-1) (West, Westlaw through 2017 1st C. S.). Rosale then asserts that, under a high-court precedent, this statute trumps Family Code section 153.002. *See* Fam. Code Ann. § 153.002. Therefore, Rosale posits, it was an abuse of discretion for the associate judge to order that Rosale no longer be the children's primary managing conservator, even though today's case does not involve a mediated settlement agreement. Family Code section 153.0071(e-1) does not apply to this case, in which there is no issue of rendition of judgment on a mediated settlement agreement. *See* Fam. Code Ann. § 153.0071. Rosale's argument based on an analogy to this statute is unpersuasive.[5]

[4] The statute provides in pertinent part that a court may decline to render judgment on a mediated settlement agreement if the court finds that (1) a party to the agreement was a victim of family violence, and that circumstance impaired the party's ability to make decisions; and (2) the agreement is not in the child's best interest. *See* Fam. Code Ann. § 153.0071(e-1) (West, Westlaw through 2017 1st C. S.).

[5] On appeal, Rosale also poses the question, "did the associate judge in Appellant's case fail to

Under the applicable standard of review, we conclude that the associate judge did not abuse his discretion by finding it was in the children's best interest to modify the conservatorship so that Curry and Rosale are joint managing conservators and Curry has the exclusive right to designate the children's primary residence as well as the other exclusive rights given to Curry in the modification order.[6] *See In re H.D.C.*, 474 S.W.3d. 758, 766–67 (Tex. App.—Houston [14th Dist.] 2014, no pet.); *In re J.W.H.*, No. 14-09-00143-CV, 2010 WL 1541679, at *7 (Tex. App.—Houston [14th Dist.] Apr. 20, 2010, no pet.) (mem. op.).

We overrule Rosale's third issue.

D. Alleged Error in Awarding Attorney's Fees

The associate judge ordered Rosale to pay $65,000 to Curry's attorneys for reasonable attorney's fees and expenses incurred by Curry. In her fourth issue, Rosale asserts that the associate judge abused his discretion in making this award because these fees and expenses were unreasonable, unjustifiable, unnecessary, and inequitable. In her fifth issue Rosale asserts that the associate judge reversibly erred in making this award because Curry failed to segregate proof of the attorney's fees in the modification action from proof of (1) attorney's fees for defending Curry from Rosale's attempt to have Curry held in contempt of court for failure to pay child support, and (2) attorney's fees related to the criminal investigation of Curry's alleged sexual abuse of the children.

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review and apply the requirements of [Family Code section 153.004]?". Rosale asserts the query in passing, without any citations to the appellate record and without any argument or citation of legal authorities. Even construing Rosale's appellate brief liberally, we cannot conclude that she adequately briefed any argument under Family Code section 153.004. *See San Saba Energy, L.P. v. Crawford*, 171 S.W.3d 323, 337 (Tex. App.—Houston [14th Dist.] 2005, no pet.).

[6] Rosale cites various parts of the record in support of her third issue. These parts of the record do not show that the associate judge abused his discretion in finding it was in the children's best interest to modify the conservatorship as the associate judge ordered.

Under Family Code section 106.002, the court in a modification action may render judgment for reasonable attorney's fees and expenses and order the judgment and postjudgment interest to be paid directly to an attorney. *See* Fam. Code Ann. § 106.002(a) (West, Westlaw through 2017 1st C. S.). The associate judge had broad discretion in awarding fees under this statute. *In re J.O.A.*, No. 14-14-00968-CV, 2016 WL 1660288, at *10 (Tex. App.—Houston [14th Dist.] Apr. 26, 2016, no pet.) (mem. op.).

Curry prevailed on his counter-petition to modify the parent-child relationship, and the trial court did not abuse its discretion in deciding to order Rosale to pay Curry's attorneys the reasonable attorney's fees and expenses Curry incurred in the modification action. *See In re M.A.N.M.*, 231 S.W.3d 562, 566-567 (Tex. App.—Dallas 2007, no pet.). In the final order, the associate judge ordered Rosale to pay $65,000 as Curry's reasonable attorney's fees and expenses in this modification action. In its findings of fact and conclusions of law, the associate judge concluded that "ATTORNEY FEES WERE PROPERLY PROVED UP."[7] Though the associate judge could have issued more specific and detailed findings, we conclude that the associate judge necessarily found that $65,000 constituted reasonable attorney's fees and expenses incurred by Curry in this modification action.

Curry submitted billing invoices describing the work performed and specifying the person performing the work, the billing rate, and the amount charged Curry for attorney's fees and expenses.[8] Curry's lead counsel testified that Curry had incurred $178,771.25 in attorney's fees in this matter and that the circumstances in this case made these attorney's fees reasonable and necessary to

[7] The text in the original has all capital letters.

[8] These invoices contained some redactions.

protect the children's best interest. Counsel testified that Curry had paid $122,700 as of the time of counsel's testimony. Rosale stipulated to the qualifications of Curry's lead counsel to testify as an expert, and though Rosale was represented by counsel at trial, Rosale did not proffer evidence as to the amount of Curry's reasonable fees or expenses in this case.

Rosale complains on appeal that Curry failed to segregate proof of the attorney's fees in the modification action from proof of (1) attorney's fees for defending Curry from Rosale's attempt to have Curry held in contempt of court for failure to pay child support, and (2) attorney's fees related to the criminal investigation of Curry's alleged sexual abuse of the children. Though the invoices from Curry's attorneys do have some work descriptions that appear to relate to the child-support matter or the criminal-investigation issue, most of the work deals with the modification action, and the associate judge was able to review the time worked, the description of the work, and the amount charged. Trial evidence showed that Curry had incurred $178,771.25 in attorney's fees and expenses, and Curry's counsel testified that this amount was reasonable and necessary. Nonetheless, the associate judge ordered Rosale to pay only $65,000. We conclude that the trial evidence is legally and factually sufficient to support the trial court's finding that $65,000 constituted reasonable attorney's fees and expenses incurred by Curry in this modification action. *See In re J.O.A.*, 2016 WL 1660288, at *10; In *re M.A.N.M.*, 231 S.W.3d at 566–67. The associate judge did not abuse his discretion by ordering Rosale to pay reasonable attorney's fees and expenses of $65,000 under Family Code section 106.002. *See* Fam. Code Ann. § 106.002(a); *In re J.O.A.*, 2016 WL 1660288, at *10; *In re M.A.N.M.*, 231 S.W.3d at 566–67.

We overrule Rosale's fourth and fifth issues.

E. Alleged Error as to Rule 11 Agreement

In her sixth issue, Rosale asserts that either the presiding judge of the trial court or the associate judge reversibly erred in failing to admonish Rosale as to the consequences of the Rule 11 agreement, in which Rosale waived any objection to a trial on the merits before the associate judge and the right to appeal the associate judge's rulings and recommendations to the referring court. Under Rule 11's unambiguous language, there is no requirement that either the presiding judge of the trial court or the associate judge admonish Rosale as to the consequences of the Rule 11 agreement. *See* Tex. R. Civ. P. 11; *Fortis Benefits v. Cantu,* 234 S.W.3d 642, 651 (Tex. 2007). Because the Rule 11 agreement is in writing and was signed by counsel for the parties, and filed as part of the trial court record, the trial court had a duty to enforce the Rule 11 agreement. *See* Tex. R. Civ. P. 11; *Fortis Benefits,* 234 S.W.3d at 651. Rosale waived her right to object to a trial before the associate judge, and she had no right to appeal the associate judge's order to the presiding judge of the trial court. *See* Fam. Code Ann. § 201.005(a),(b) (West, Westlaw through 2017 1st C. S.); Tex. R. Civ. P. 11; *Fortis Benefits,* 234 S.W.3d at 651.

We overrule Rosale's sixth issue.

F. Failure to File Additional Findings of Fact and Conclusions of Law

In her seventh issue, Rosale asserts that the associate judge reversibly erred by failing to file additional findings of fact and conclusions of law that she timely requested him to make under Texas Rule of Civil Procedure 298. *See* Tex. R. Civ. P. 298. We presume, without deciding, that the associate judge erred in failing to file additional findings of fact and conclusions of law. *See id*. A trial court's refusal to make findings of fact does not require reversal if the record before the appellate court affirmatively shows that the complaining party suffered no harm.

See Nicholas v. Evironmental Sys. (Int'l) Ltd., 499 S.W.3d 888, 894 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). Error is harmful if it prevents the appellant from properly presenting a case to the appellate court. *See id*.

Rosale has been able to present her first six issues to this court. Rosale asserts that the associate judge violated his duty to make the findings required by Family Code section 154.130. *See* Fam. Code Ann. § 154.130 (requiring under certain circumstances that the trial court make findings as to the parties' net resources and whether the application of the child-support guidelines would be unjust or inappropriate) (West, Westlaw through 2017 1st C. S.). Rosale suggests that she is unable to challenge the trial court's order that she pay monthly child support. We presume, without deciding, that the associate judge was required to make these findings under Family Code section 154.130 and erred in failing to do so. *See* Fam. Code Ann. § 154.130 (a),(b). The trial evidence does not contain sufficient evidence to calculate Rosale's net resources, and thus the associate judge had to order child support based on the presumption that Rosale has income equal to the federal minimum wage for a forty-hour work week. *See* Fam. Code Ann. §§ 154.062(b), 154.068 (West, Westlaw through 2017 1st C. S.). The trial evidence showed that Rosale works as a school teacher, and there was no trial evidence showing that Rosale's income is less than the federal minimum wage for a forty-hour work week. *See* Fam. Code Ann. §§ 154.062(b), 154.068. Rosale was able to challenge the amount of the child support the associate judge ordered. Yet, Rosale did not do so. Even if she had, we would have found this challenge to lack merit.

Rosale asserts that there is a lack of findings to explain the differences between the November 20, 2015 order and the December 18, 2015 order. The differences between these two orders are not material to the question of whether the lack of additional findings or conclusions prevents Rosale from properly presenting a case to this court on appeal from the December 18, 2015 order.

Rosale also asserts that several of the associate judge's findings were erroneous. But, Rosale does not explain how she is unable to challenge these alleged errors without additional findings or conclusions.

We conclude that the associate judge's presumed error in failing to file additional findings of fact and conclusions of law was harmless because it did not prevent Rosale from properly presenting a case to this court. *See Nicholas*, 499 S.W.3d at 894; *In re J.O.A.*, 2016 WL 1660288, at *10; *In re H.D.C.*, 474 S.W.3d. at 768–69.

We overrule Rosale's seventh issue.

Having overruled all of Rosale's appellate issues, we affirm the trial court's judgment.

/s/ Kem Thompson Frost
Chief Justice

Panel consists of Chief Justice Frost and Justices Brown and Jewell.