

Affirmed and Memorandum Opinion filed September 7, 2017.



In the

Fourteenth Court of Appeals

NO. 14-16-00768-CV

IN THE INTEREST OF C.A.W. AND C.H.W., CHILDREN

**On Appeal from the 306th District Court
Galveston County, Texas
Trial Court Cause No. 15-FD-2599**

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

This is an appeal from the trial court’s SAPCR¹ order granting a child support modification in favor of appellee C.A.T. (“Mother”). Appellant R.W. (“Father”) contends the trial court abused its discretion by: (1) “setting the periodic child support obligation in excess of the statutory [c]hild [s]upport [g]uidelines” and (2) “finding a material and substantial change of circumstances affecting either the parents or the children that would warrant a modification of [Father’s] existing child support obligation.” We affirm.

¹ Under the Texas Family Code, a suit affecting the parent-child relationship or SAPCR is defined as a suit “in which the appointment of a managing conservator or a possessory conservator, access to or support of a child, or establishment or termination of the parent-child relationship is requested.” Tex. Fam. Code Ann. § 101.032(a) (West 2014).

I. BACKGROUND

Father and Mother were divorced by final decree in July 2013 in Harris County, Texas. The divorce decree represents a merger of a mediated settlement agreement between Father and Mother. Father and Mother were named joint managing conservators of their two children, C.A.W. and C.H.W. Father was awarded periods of possession and ordered to pay \$1,875.00 in monthly child support to Mother for the benefit of their two children until, for instance, a child reached 18 years of age. Father would then pay \$1,562.50 for the benefit of one child.

In June 2015, Father filed an amended petition seeking relief regarding C.A.W. By the time of trial, C.A.W. turned eighteen and Father did not pursue his request for relief. In November 2015, Mother filed a first-amended counter-petition to modify parent-child relationship, seeking child support above the statutory guideline from Father for the benefit of C.H.W.² This suit was transferred to Galveston County, Texas, and assigned to the trial court.

The case was tried before the trial court in August 2016. The following facts were adduced at trial. C.H.W. resided with Mother. Father stopped fully exercising his periods of possession of C.H.W. Mother's net monthly income is \$2,116.29 and Father's net monthly income is \$23,200. C.H.W.'s needs were itemized in Exhibit 6, which is entitled "Child[]'s Needs List" (the "List"). The List also itemized the anticipated monthly expenses for C.H.W.'s needs while residing with Mother. The List reflected that C.H.W.'s needs totaled \$5,291.65 per month. Mother did not have the ability to meet C.H.W.'s monthly needs exceeding \$1,700.

At the conclusion of the bench trial, the trial court announced that increasing

² C.H.W. turned eighteen in February 2017.

child support for C.H.W. was in his best interest:

I find that it is in [C.H.W.'s] best interest—and based on the facts have been presented to me—the child support should be payable in the amount of \$3,500 per month; and I base this upon—I took the \$1,700, which is the maximum; I figured out how much more was over and above the 1710; and I divided it equally between the two of you. Okay? So child support at \$3,500.

The trial court signed a final order on August 30, 2016, ordering Father to pay \$3,500 in monthly child support.

Father requested findings in support of the trial court's order by tracking the language of section 154.130³ of the Texas Family Code. Specifically, Father requested findings regarding whether application of the child support guidelines would be unjust or inappropriate, his monthly net resources, Mother's monthly net resources, the percentage applied to the first \$8,550 of his monthly net resources for child support, and the specific reasons that the amount of support varied from the amount computed by applying the section 154.125⁴ percentage guidelines.

³ Section 154.130, Findings in Child Support Order, provides:

(b) If findings are required by this section, the court shall state whether the application of the guidelines would be unjust or inappropriate and shall state the following in the child support order:

“(1) the net resources of the obligor per month are \$_____;

“(2) the net resources of the obligee per month are \$_____;

“(3) the percentage applied to the obligor's net resources for child support is _____%; and

“(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.”

Tex. Fam. Code Ann. § 154.130 (West 2014).

⁴ Section 154.125, Application of Guidelines to Net Resources, provides:

(a) The guidelines for the support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are not

The trial court issued findings of fact and conclusions of law. The court's section 154.130 fact findings stated:

1. The application of the percentage guidelines in this case would be unjust or inappropriate.
2. The net resources of [Father] per month are \$23,200.00.
3. The net resources of [Mother] per month are \$2,166.29.
4. The percentage applied to the first \$8,550.00 of [Father's] net resources for child support is twenty percent.
5. The specific reasons that the amount of support per month ordered by the Court varies from the amount computer by applying the percentage guidelines of section 154.125 of the Texas Family Code are as follows:
 - a. Evidence was offered that the child's needs exceed \$5,000 per month;
 - b. Evidence was offered that [Father] does not exercise all of his

greater than \$7,500 or the adjusted amount determined under Subsection (a-1), whichever is greater.

(a-1) The dollar amount prescribed by Subsection (a) is adjusted every six years as necessary to reflect inflation. The Title IV-D agency shall compute the adjusted amount, to take effect beginning September 1 of the year of the adjustment, based on the percentage change in the consumer price index during the 72-month period preceding March 1 of the year of the adjustment, as rounded to the nearest \$50 increment. The Title IV-D agency shall publish the adjusted amount in the Texas Register before September 1 of the year in which the adjustment takes effect. For purposes of this subsection, "consumer price index" has the meaning assigned by Section 341. 201, Finance Code.

- (b) If the obligor's monthly net resources are not greater than the amount provided by Subsection (a), the court shall presumptively apply the following schedule in rendering the child support order:

CHILD SUPPORT GUIDELINES

BASED ON THE MONTHLY NET RESOURCES OF THE OBLIGOR

1 child 20% of Obligor's Net Resources

Tex. Fam. Code Ann. § 154.125 (West 2014 & Supp. 2016). Effective September 1, 2013, "the guidelines for the support of a child apply to situations in which the obligor's monthly net resources are not greater than \$8,550." 39 Tex. Reg. 4647 (2013) (Off. of the Att'y Gen.).

periods of possession;

- c. Evidence was offered that [Father] has the ability to contribute an amount exceeding the guidelines; and
- d. After considering guideline child support, the child's needs, and the ability of each party to meet those needs, guideline child support would be unjust or inappropriate.

Father timely appealed.

II. ANALYSIS

A. Standard of review for Father's two issues

A trial court's order setting or modifying child support will not be disturbed on appeal unless the complaining party can demonstrate a clear abuse of discretion. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990) (per curiam); *In re A.M.P.*, 368 S.W.3d 842, 846 (Tex. App.—Houston [14th Dist.] 2012, no pet.). Courts abuse their discretion when they act arbitrarily or unreasonably, or without reference to guiding rules or principles. *Worford*, 801 S.W.2d at 109. There is no abuse of discretion where some evidence of a substantive and probative character supports the court's exercise of its discretion. *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.* We review the trial court's findings of fact for legal and factual sufficiency of the evidence by the same standards applied in reviewing the evidence supporting a jury's finding. *Catalina v. Blasdel*, 881 S.W.2d 295, 297 (Tex. 1994). When reviewing for legal sufficiency, we consider the evidence in the light most favorable to the finding and indulge every reasonable inference that supports the challenged finding. *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). We credit favorable evidence if a reasonable factfinder could

and disregard contrary evidence unless a reasonable factfinder could not. *Id.* at 827. A legal-sufficiency challenge must be sustained when (1) the record shows a complete absence of evidence of a vital fact, (2) the court is barred 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 mere scintilla, or (4) the evidence establishes conclusively the opposite of the vital fact. *Id.* at 810. When reviewing a factual-sufficiency point, we consider and weigh all the evidence. *London v. London*, 192 S.W.3d 6, 14 (Tex. App.—Houston [14th Dist.] 2005, pet. denied). We will set aside the finding only if it is so contrary to the overwhelming weight of the evidence that it is clearly wrong and unjust. *Id.*

B. No abuse of discretion

In his first issue, Father contends that the judgment should be reversed because the trial court abused its discretion in ordering Father to pay monthly child support for the benefit of C.H.W. in excess of the presumptive support obligation because there was “no evidence of proven needs.”

When, as here, the obligor’s monthly net resources exceed \$8,500, the trial court “shall presumptively apply the percentage guidelines to the portion of the obligor’s net resources that does not exceed that amount.” Tex. Fam. Code Ann. § 154.126 (West 2014); *see also id.* § 154.125 (setting cap at \$7,500); 39 Tex. Reg. 4647 (2013) (Off. of the Att’y Gen.) (increasing cap to \$8,500). The trial court may then “order additional amounts of child support as appropriate, depending on the income of the parties and the proven needs of the child.” Tex. Fam. Code Ann. § 154.125 (West 2014 & Supp. 2016).

What constitutes “needs” of the child has not been defined by statute. *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.*; *Rooney v. Rooney*,

No. 14-10-01007-CV, 2011 WL 3684618, at *5 (Tex. App.—Houston [14th Dist.] Aug. 23, 2011, no pet.) (mem. op.). In evaluating the needs of the child, the paramount guiding principle is the best interest of the child. *Rodriguez*, 860 S.W.2d at 417 n.3. The managing conservator is generally in the best position to know the child’s needs. *Scott v. Younts*, 926 S.W.2d 415, 421, 423 (Tex. App.—Corpus Christi 1996, writ denied). 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.). The trial court is not required to delineate every need of the child; rather, the trial court is required only to state specific reasons why the application of guidelines is inappropriate. *Rooney*, 2011 WL 3684618, at *5; *Scott*, 926 S.W.2d at 421, 423.

The parties agree that Father’s monthly net resources exceed \$8,500. Applying section 154.125, Father’s presumptive support obligation for C.H.W. is \$1,710 per month. *See* Tex. Fam. Code Ann. § 154.125. The trial court considered the List, which segregates C.H.W.’s expenses from those of Mother. The List includes expenses for C.H.W.’s food and toiletries, gasoline, clothing, car lease, allowance, medical expenses, and half of Mother’s mortgage. The title of the List (which, again, is “Child[]’s Needs List”) indicates that these expenses are for C.H.W.’s “needs.” While Father’s presumptive support obligation is \$1,710 per month, the monthly expenses for C.H.W.’s needs exceed \$5,000. Mother testified that her monthly income is \$2,166.29 and that she does not have the ability to meet C.H.W.’s monthly expenses exceeding \$1,700.

Father argues that Mother “has merely shown in the trial court what her monthly expenses may be at this time” and failed to “establish[] that these expenses exist because of some need for the child.” We disagree. The List clearly itemized

C.H.W.’s needs, the expenses for each need, and segregated each of C.H.W.’s needs from those of Mother.⁵

There was more than a scintilla of evidence for the court to exercise its discretion in finding the List’s items were proven needs provided to C.H.W. in his best interest, and that the monthly expenses for those needs exceeded Father’s presumptive support obligation. Further, the findings were not contrary to the overwhelming evidence—much less contrary to any evidence. Accordingly, the trial court did not abuse its discretion in setting Father’s monthly child-support obligation above the presumptive amount. *Flowers*, 407 S.W.3d at 457 (no abuse of discretion where some evidence supports the court’s exercise of its discretion).

C. Mother was not required to prove a material and substantial change.

In his second issue, Father contends the judgment should be reversed because the trial court abused its discretion in ordering modification where there “is no evidence of a material and substantial change of circumstances affecting the child or one of the parents.”

To prevail in a modification suit, a party seeking relief must show one of the

⁵ Father also argues that child support should not be allocated towards the monthly mortgage payment on the house where Mother and C.H.W. reside because the house was awarded to Mother in the divorce. First, Father did not object at trial to the admission of the List, which includes half of the mortgage expense. Nor did he raise this argument below. Accordingly, Father has not preserved this issue for appellate review. *See* Tex. R. App. P. 33.1 (timely, specific objection required to preserve issue for appellate review). Assuming Father properly preserved this issue, the inclusion of the mortgage expense was not an abuse of discretion. Father cites no Texas case or statute prohibiting such child-support award. Mother testified that she lives in the house with C.H.W. The List reflects that a need of C.H.W. is half of her mortgage payment. The trial court, in its broad discretion, could have found that housing C.H.W. is a proven need. The trial court could have then accounted for the half-mortgage expense in computing its child-support order. *See Coburn v. Moreland*, 433 S.W.3d 809, 836 (Tex. App.—Austin 2014, no pet.) (holding that allocations of one-third of mortgage expense to children was reasonable); *see also In re T.A.W.*, No. 02-09-00309-CV, 2010 WL 4813356, at *7 (Tex. App.—Fort Worth Nov. 24, 2010, no pet.) (portion of a mother’s mortgage expense was proven need of children).

following two subsections under section 156.401(a) of the Family Code: (1) the circumstances of the child or a person affected by the order have materially and substantially changed since the date of the divorce decree; or (2) three years have passed since the divorce decree and the monthly child support obligation differs from the amount that would be awarded under the statutory child-support guidelines by 20% or \$100. *See* Tex. Fam. Code Ann. § 156.401(a)(1)–(2) (West 2014 & Supp. 2016); *Scruggs v. Linn*, 443 S.W.3d 373, 377 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

The parties' divorce decree was rendered on July 9, 2013, more than three years before the trial court modified the child support order. Per the divorce decree, Father's child-support obligation for one child was \$1,562.50. Because Father's net monthly resources exceeded \$8,550 at the time of the modification, child support under the statutory guideline would be 20% of \$8,550, or \$1,710. *See* Tex. Fam. Code Ann. §§ 156.401(a), 154.125(a). The difference between \$1,710 and \$1,562.50 exceeds \$100. Because three years had passed since the original order was rendered, and the monthly child-support obligation differs from the amount that would be awarded by more than \$100, Mother met her burden under subsection 156.401(a)(2). Accordingly, Mother did not have the burden to prove a material and substantial change in the circumstances of the child or a person affected by the order under section 156.401(a)(1).

The trial court did not abuse its discretion in modifying the child-support order. We overrule Father's second issue.

III. CONCLUSION

Having overruled Father's two issues, we affirm the trial court's judgment.

/s/ Marc W. Brown
Justice

Panel consists of Justices Christopher, Brown, and Wise.