Affirmed and Memorandum Opinion filed April 29, 2025.

In The

Fourteenth Court of Appeals

NO. 14-23-00743-CV

PRASAD PULIGUNDLA, Appellant

V.

LEELA MADIPURI, Appellee

On Appeal from the County Court at Law
Washington County, Texas
Trial Court Cause No. CCL9059

MEMORANDUM OPINION

Appellant Prasad Puligundla appeals the trial court's Final Divorce Decree in three issues. His first two issues relate to the trial court's possession schedule, and the third relates to the court's division of the community estate. His first issue is purely a legal question concerning statutory construction; his last two issues are complaints challenging the legal and factual sufficiency of evidence to support the court's determination on the two matters. Holding that no law impedes the trial court from ordering the week-on/week-off possession schedule, and that the

evidence adduced at trial was legally and factually sufficient to support the trial court's determinations (1) that the week-on/week-off possession schedule was in the best interest of the children and (2) that its division of the community estate was just and right, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

Prasad and Leela are both originally from India. Prasad first came to the United States finding work in Chicago, but shortly thereafter took a job with Germania in Brenham, Texas, where he has been working since October 2000. Subsequently in India, Prasad's parents assisted him in finding a wife. Through this process, Prasad returned to India, met appellee Leela Madipuri and selected her to be his bride. After their 2004 wedding in India, the two returned to Brenham to start a family. They were successful: they had their first son Bihma in 2007, and their second son, Arunja, in May of 2010.[1]

Bihma is described as smart with a good sense of humor who excels academically. Exceptional in his own right, Arunja, born with cerebral palsy, has used various forms of therapy for many years to adapt with his condition; he has refused most aids or concessions from school as he is determined to use the same resources other "normal" students use.

October 29, 2018, Prasad filed his Original Petition for Divorce. Though the timeline is not precise, he filed for divorce within a year or less of learning that Leela had had an affair with his friend Bhoja in India; he asserted adultery as the grounds for the divorce. Prasad asked that both he and Leela be appointed joint managing conservators, and that Prasad be designated as the conservator who has the exclusive right to designate the primary residence of the children. He also

[1] Pseudonyms are used for both children.

requested the exclusive right to make educational and health decisions regarding the children; that Leela be ordered to pay child support; that he be awarded 100% of the marital residence. Leela filed a counterpetition for divorce alleging that Prasad had committed acts of cruelty. Both spouses alleged the other committed fraud to their respective community property rights.

A Washington County jury heard their case over the span of eight days, from August 12, 2022, through August 22, 2022. Going into trial, Prasad and Leela agreed to a joint managing conservatorship and agreed that the primary residence would remain in Washington County, but disputed who would be appointed the joint managing conservator with the exclusive right to designate the primary residence of the children.

The jury found that Leela had committed adultery, and that Prasad had not committed cruelty. The jury also found that both Leela and Prasad had committed fraud with respect to the other's community property rights; that Leela had depleted the estate by $9,300.00 based on money she sent to Bhoja, and that Prasad had depleted the estate by $69,500.00 based on money he wired to his father after filing for divorce. The jury concluded that Prasad should be the joint managing conservator with the exclusive right to designate the primary residence of the children.

The trial court signed a Final Decree of Divorce on August 15, 2023, giving Prasad the exclusive right to designate the primary residence of the children within Washington County, Texas. Both parents were ordered to pay child support. However, after offsets were calculated, Leela was given the exclusive right to receive and give receipt for periodic payments for the support of the children, and Prasad was ordered to pay Leela $1,660.00 per month. Both parents were given the right to 50/50 possession under an alternating weekly schedule, alternating weekly

on a Friday through Friday basis. Leela was then awarded the marital residence.

Prasad timely filed a motion for new trial and notice of appeal and timely requested findings of fact and conclusions of law and filed the respective past-due notice when the trial court had not yet filed the findings and conclusions.

The trial court belatedly filed its findings of fact and conclusions of law on November 7, 2023.

II. IS THE 50/50 POSSESSION SCHEDULE LEGALLY TENABLE?

Prasad first argues that the trial court's 50/50—week-on/week-off—possession schedule constituted an abuse of discretion because it contravened the jury's determination that Prasad should have the exclusive right to designate the children's primary residence in violation of section 105.002 of the Texas Family Code. At the heart his first issue is Prasad's request that we adopt construction of section 105.002—which he contends has been utilized by our sister courts in Corpus Christi and San Antonio—that construes the jury's determination of one parent's "exclusive right to designate the primary residence of the child" to preclude as a matter of law the court from ordering a 50/50 possession schedule. He contends the court's order "effectively establishes *two* primary residences for the boys," and that this renders the jury's determination of his "exclusive right" as having "no practical effect."

We review statutory construction issues de novo. *See Adams v. Starside Custom Builders, LLC*, 547 S.W.3d 890, 894 (Tex. 2018). Courts must apply the statute as written and refrain from rewriting text that lawmakers chose. *Entergy Gulf States, Inc. v. Summers*, 282 S.W.3d 433, 443 (Tex. 2009). In construing a statute, our objective is to determine and give effect to the legislature's intent by looking to the plain and common meaning of a statute's words. *See Ashland Inc. v.*

Harris Cnty. Appraisal Dist., 437 S.W.3d 50, 52-53 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) ("If a statute is worded clearly, we must honor its plain language, unless that interpretation would lead to absurd results."). We strive to effectuate all statutory terms, and we presume that a statute's every word or omission was purposeful. *Redus v. JPMorgan Chase Bank, N.A.*, 698 S.W.3d 46, 52 (Tex. App.—Houston [14th Dist.] 2024, pet. filed); *See Dunham Eng'g, Inc. v. Sherwin-Williams Co.*, 404 S.W.3d 785, 789 (Tex. App.—Houston [14th Dist.] 2013, no pet.). "As a general principle, we eschew constructions of a statute that render any statutory language meaningless or superfluous." *City of Dallas v. TCI W. End, Inc.*, 463 S.W.3d 53, 57 (Tex. 2015).

The Texas Family Code provides:

> a party is entitled to a verdict by the jury…on the issue of… the determination of which joint managing conservator has the exclusive right to designate the primary residence of the child.

Tex. Fam. Code § 105.002(c)(1)(D). Also pertinent to our consideration is subsection (c)(2)(B), which states: "the court may not submit to the jury questions on the issue[] of a specific term or condition of possession of or access to the child." Tex. Fam. Code § 105.002(c)(2)(B). Giving the words of the Family Code their the plain and common meaning, while avoiding making any words meaningless or superfluous, we construe the phrase "exclusive right to designate the primary residence" under (c)(1)(D) to refer to the jury's determination to give one parent the ultimate right to decide the legally recognized principal home where the children stay, and in the context of (c)(2)(B), this ultimate right is determined without regard to a specific term or condition of possession of or access to the child. In this provision the Legislature unambiguously enumerates questions a jury may be asked to decide while also identifying the questions a judge must decide. See Tex. Fam. Code § 105.002. We do not find that (c)(1)(D) and

(c)(2)(B) are in conflict with one another or that this case demands a microscopic analysis of each word used.

We agree with Prasad to the extent that "primary residence," under its plain meaning, signifies more than a mere geographical designation, particularly in that it signifies that there can only be one *primary* residence. ("Primary" is defined by the Oxford English Dictionary as "[o]f the highest rank or importance; principal, chief.") We, however, disagree with Prasad's contention that the trial court's possession schedule rendered meaningless the jury's appointment of Prasad with the exclusive right to designate the primary residence. We briefly address the comparable cases the parties have discussed relevant to the issue.

In *In Interest of W.B.B.*, the jury found the parties should remain joint managing conservators, appointed father with the exclusive right to designate the child's primary residence, and imposed a broad geographical restriction that father could designate the primary residence within the continental United States. No. 05-17-00384-CV, 2018 WL 3434588, at *1 (Tex. App.—Dallas July 17, 2018, no pet.). The trial court incorporated those findings, and made further orders giving father exclusive rights to make educational decisions, devised a week-on/week-off possession schedule, and required father to pay all travel expenses if he moved the primary residence outside of Dallas County. *Id*. On appeal, father argued, as Prasad does here, that the trial court's week-on/week-off schedule "stripped Father of his right to be named as the 'primary' parent as directed by the jury."[2]

The Dallas court of appeals explained:

There is simply no requirement in the Family Code that one joint

[2] Father also argued that he was confined to designate the primary residence in Dallas county because the court had required he pay travel expenses if he moved out of Dallas County and did not include "a standard Family Code provision governing parents who reside more than 100 miles apart".

> managing conservator be given more time of possession of a child because of any particular jury finding.
>
> Nor is there a general prohibition, as Father suggests, against awarding joint managing conservators roughly equal times of possession and access. "Equal time between parents is neither prohibited nor recommended." *Albrecht v. Albrecht*, 974 S.W.2d 262, 265 (Tex. App.—San Antonio 1998, no pet.). And contrary to Father's arguments, such an arrangement neither poses an inherent conflict with a child's having a primary residence or renders the right to designate the primary residence meaningless. Designating a primary residence is necessary for two reasons: to determine residency for purposes of public school enrollment and as a significant factor in the power of relocation. *Doncer v. Dickerson*, 81 S.W.3d 349, 361 (Tex. App.—El Paso 2002, no pet.). Placing the power for those functions in the hands of a single party was intended to achieve stability in custodial issues. *In re R.C.S.*, 167 S.W.3d 145, 148–49 (Tex. App.—Dallas 2005, pet. denied). It is this power that makes Father "primary" as that shorthand term is used, not the number of days he has possession of W.B.B. Thus, even if the calendar determines that in some years Mother has possession of W.B.B. more days than Father does, he retains the exclusive rights awarded him by the jury and the trial court.

In Interest of W.B.B., 2018 WL 3434588, at *3.

In the case Prasad urges us to follow, *In the Interest of Z.K.S.*, the Corpus Christi Court of Appeals faced a similar complaint involving a week-on/week-off possession schedule between two joint managing conservators who lived 240 miles apart. No. 13-19-00011-CV, 2020 WL 103864, at *7 (Tex. App.—Corpus Christi–Edinburg Jan. 9, 2020, no pet.). The Corpus Christi court rejected the Dallas court's reasoning in *W.B.B.*, explaining "it is difficult to imagine any circumstance under which a possession order would contravene a jury's determination regarding primary residence and geographical restriction." *Id*. at *4. Siding with an earlier San Antonio Court of Appeals's holding, the Corpus Christi court held "the 'week-on/week-off' possession order contravenes the jury's finding regarding the

mother's right to establish the child's primary residence because it effectively establishes two primary residences for Z.K.S., separated by 240 miles." *Id*. at *5 citing *Albrecht v. Albrecht,* 974 S.W.2d at 265. The Court concluded that the court's week-on/week-off possession order "effectively established two primary residences" and operated as a de facto geographic restriction, limiting the Mother's ability to establish a primary residence to an area where it would be practical for a weekly exchange.[3]

We align with the rationale provided by the Dallas Court of Appeals. Though we are not inclined to dispute the Corpus Christi court's best interest determination, we do not adopt its legal assessment of the week-on/week-off schedule on the statute. On the facts of this case, where pursuant to the parties' own agreement, the primary residence was restricted to Washington County, where both joint managing conservators live a short driving distance from each other,[4] we cannot conclude that the court's week-on/week-off possession order is contrary to the Family Code, the Texas Constitution, or the jury's verdict awarding Prasad the right to designate the primary residence. *See In Interest of W.B.B.*, 2018 WL

[3] Importantly, the Corpus Christi and San Antonio courts also separately considered whether the possession schedule served the children's best interests and concluded that it did not. *Interest of Z.K.S.*, 2020 WL 103864, at *7 ("We again agree with our sister court's observation that alternating possession periods, especially for parents living far apart, will make it difficult to maintain stable child care, which is not in the child's best interest.") *referring to Albrecht v. Albrecht*, 974 S.W.2d 262, 265 (Tex. App.—San Antonio 1998, no pet.)(finding trial court's 6-months on, 6-months off, possession order an abuse of discretion because its terms and conditions of possession are not in the best interest of the child).

[4] We take judicial notice of the fact that, as of the time of trial, according to Google Maps, Prasad and Leela live 4.3 miles apart. Tex. R. Evid. 201; *see Office of Pub. Util. Counsel v. Public Util. Comm'n*, 878 S.W.2d 598, 600 (Tex. 1994). ("A court of appeals has the power to take judicial notice for the first time on appeal."); *In re Lovell-Osburn*, 448 S.W.3d 616, 617 (Tex. App.—Houston [14th Dist.] 2014, no pet.)(observing the distance between two courthouses) citing *Barber v. Intercoast Jobbers & Brokers*, 417 S.W.2d 154, 158 (Tex. 1967) ("Facts about well known and easily ascertainable geographical facts concerning counties are frequently judicially noticed.").

3434588, at *3; *see also Interest of S.H.*, 590 S.W.3d 588, 595 (Tex. App.—El Paso 2019, pet. denied)(finding 50/50 custody order did not contravene jury verdict).

Accordingly, Prasad's first issue is overruled.

III. Is the possession schedule in the best interest of the children?

In his second issue, Prasad complains that the trial court abused its discretion by entering the week-on/week-off possession schedule because it is not supported by legally and factually sufficient evidence that the schedule is in the best interest of the children.

Trial courts have wide discretion with respect to custody, control, possession, support, and visitation matters. *In re M.S.G.*, No. 14-16-00236-CV, 2017 WL 3611907, at *8 (Tex. App.—Houston [14th Dist.] Aug. 22, 2017, no pet.) (mem. op.); *In re K.S.*, 492 S.W.3d 419, 426 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). The trial court abuses its discretion when it acts arbitrarily, unreasonably, or without reference to any guiding rules or principles. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990). The trial court does not abuse its discretion if there is some evidence of a substantive and probative character to support its decision. *In re A.L.E.*, 279 S.W.3d at 428; *see Worford*, 801 S.W.2d at 109.

Under this abuse-of-discretion standard, legal and factual sufficiency are not independent grounds of error, but instead are relevant factors to determine if the trial court abused its discretion. *In re A.L.E.*, 279 S.W.3d at 427; *see Beaumont Bank, N.A. v. Buller*, 806 S.W.2d 223, 226 (Tex. 1991). When examining legal sufficiency, we review the entire record, considering evidence favorable to the finding if a reasonable factfinder could and disregarding contrary evidence unless a

reasonable factfinder could not. *Gunn v. McCoy*, 554 S.W.3d 645, 658 (Tex. 2018); *In re P.A.C.*, 498 S.W.3d 210, 214 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). We indulge every reasonable inference that would support the challenged finding. *Gunn*, 554 S.W.3d at 658. Evidence is legally sufficient if it would enable reasonable and fair-minded people to reach the decision under review. *Id.* For a factual-sufficiency review, we examine the entire record and consider evidence favorable and contrary to the challenged finding. *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986) (per curiam); *In re P.A.C.*, 498 S.W.3d at 214. We may set aside the judgment only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See Cain*, 709 S.W.2d at 176.

The Family Code provides a standard possession order which is intended to guide the trial court regarding the minimum possession for a joint managing conservator. Tex. Fam. Code § 153.251(a); *see also In Interest of E.E.*, No. 14-16-00685-CV, 2017 WL 4273194, at *2 (Tex. App.—Houston [14th Dist.] Sept. 26, 2017, no pet.). If a court's order varies from the standard possession order, then upon timely written or oral request, "the court shall state in the order the specific reasons for the variance from the standard order." Tex. Fam. Code § 153.258. When a party fails to request specific reasons for a variance from the standard possession order, we apply the same standard of review as when a party fails to make a request for findings of fact under Texas Rules of Civil Procedure 296 through 299. *In re P.A.C.*, 498 S.W.3d at 217; *see also Scott v. Scott*, No. 14-21-00077-CV, 2022 WL 4553336, at *12 (Tex. App.—Houston [14th Dist.] Sept. 29, 2022, no pet.). Here, though Prasad requested findings of fact and conclusion of law on the court's property division, neither party requested specific reasons for the variance from the standard possession order. Therefore, "it is implied that the trial court made all the necessary findings to support its judgment." *In Interest of*

E.E., 2017 WL 4273194, at *2 citing *In re P.A.C.*, 498 S.W.3d at 217. This standard of review requires reviewing the record "to determine whether some evidence supports the judgment and the implied findings, only considering the evidence most favorable to the judgment and upholding the judgment on any legal theory supported by the evidence." *Id.*; *see also Niskar v. Niskar*, 136 S.W.3d 749, 754 (Tex. App.–Dallas 2004, no pet.).

It is the public policy of the state to assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the children; provide a safe, stable, and nonviolent environment for the children; and encourage parents to share in the rights and duties of raising their children after the parents have separated or dissolved their marriage. Tex. Fam. Code § 153.001. *Allen v. Allen*, 475 S.W.3d 453, 457 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

The Family Code provides that "[i]n ordering the terms of possession of a child under an order other than a standard possession order, the court shall be guided by the guidelines established by the standard possession order and may consider. . . (1) age, developmental status, circumstances, needs, and best interest of the child," (2) the circumstances of the joint managing conservators, and (3) "any other relevant factor." See Tex. Fam. Code § 153.256; *see Weldon v. Weldon*, 968 S.W.2d 515, 516 n.2 (Tex. App.—Texarkana 1998, no pet.)(acknowledging that provision explicitly concerning the possessory rights of the "possessory conservator" applies to the joint managing conservators not awarded the right to designate primary residence).

We consider the non-exhaustive list of *Holley* factors to determine the children's best interests: (1) the desires of the children; (2) the emotional and physical needs of the children now and in the future; (3) the emotional and

physical danger to the children 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 children; (6) the plans for the children 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); see also Tex. Fam. Code § 153.134 (non-exhaustive best interest factors promulgated under Texas Family Code).

Prasad brought forward 15 witnesses that had a personal relationship with Prasad who testified favorably about his personal character and abilities as a father. In support of his argument, many testified that they witnessed Prasad acting as the children's primary caregiver.

Leela presented several witnesses supporting the court's deviation from the standard possession order in her favor.

Frist, Megan Burch, a neighbor to Prasad and Leela from approximately 2006 until 2014, testified to facts indicating that Leela had been the children's primary childcare provider and that she had been an active and responsible parent. Burch's two children were close in age to Bihma and Arjuna. Burch's oldest daughter and Bihma were particularly close as they were the same age and in school together. Burch and Leela became close as their children played together most days after school and often on the weekends. While she knew Prasad, Burch was not close to him like she was with Leela.

In coordinating various play dates, Burch only dealt with Leela, not Prasad. Both sets of children also attended classes at the local First Baptist Church. Here too, Bihma and Burch's oldest daughter were in the same classes. Burch spent time

at the school for the various parties and other events held at the school. She recalls seeing Leela at these, though she could not recall ever seeing Prasad at these same events.

As the children got older, Burch saw Leela, not Prasad, take the boys to various activities. For instance, Leela took Bihma to Kumon twice a week in Houston or Katy. Leela took Arjuna to speech therapy sessions as well. Burch summarized her observations of Leela as a mother:

> Q. And from what you saw as a mother of her being a mom to her two boys, can you describe what kind of mom she was or she is?
>
> A. She's a attentive. She always wanted the best for them. I mean, they had everything. Like all of the newest learning toys. I remember the shelves they built for all this stuff in the room and she was excellent. She's an excellent mom.
>
> Q. Would you ever describe her as a passive parent?
>
> A. Absolutely not.
>
> Q. Was she loving to her boys?
>
> A. Absolutely.

Also, Karen Gardner, an occupational therapist in Brenham, who worked with Arjuna beginning in August of 2019 testified about her experience with Leela. Gardner testified that she sees Arjuna weekly for hippotherapy. Weather permitting, Arjuna does hippotherapy every week "because the movement of the horse makes a big difference in his coordination and in his balance." Bearing in mind that she only started seeing Arjuna since Prasad filed for divorce, Gardner did not see any indications that Arjuna suffered from instability in his home.

> Q. Now, does Arunja seem to enjoy riding the horses?
>
> A. He does, absolutely, yes.
>
> Q. And can you describe for the jury -- you've seen him once a week for almost three years -- Arunja's demeanor?

A. I think he's very engaging. I think he is intelligent. He has got a sense of humor, and I think that he's a happy kid.

Q. Okay. And is there anything in your interaction with him to suggest that he does not have stability in his home?

A. No, no.

She explained that Prasad and Leela were actively participating in Arjuna's therapy, but testified that Leela was always the parent who brought Arjuna to therapy.

Additionally, Kim Cantu, who worked for Neurodevelopmental Services ("NTS") from 2006 to 2022 testified about her experience with Arjuna and his parents. NTS provided occupational therapy, physical therapy, and speech therapy for children with disabilities. During her employment with NTS, Cantu acted as the medical coordinator and office manager. In her position, all children who came to NTS had to check in and out through Cantu. Arjuna was a patient for about five years of the time Cantu worked at NTS. Arjuna typically came to therapy two to three times per week for two to three hours each visit.

Cantu testified that she remembers Arjuna as a happy, energetic, and talkative child with a love of baseball. As part of his physical therapy, they would play baseball with him outside. During most of the five years that Arjuna attended therapy at NTS, Cantu never met Prasad, only Leela. Cantu remembers that Leela was active in Arjuna's therapy including participation in the therapy itself when asked and in discussing his progress with the therapist at the end of each session.

Cantu testified that she did not have the opportunity to meet Prasad until about the time he filed for divorce in 2019. At that point, Prasad started bringing Arjuna to his therapy sessions at NTS. Rather than staying at NTS during the therapy sessions, Prasad would simply drop Arjuna off and then leave. Initially, Prasad was often late in coming to pick-up Arjuna after his therapy sessions. At

least once, Prasad was two hours late to pick-up Arjuna.

Cantu's testimony indicated that, unlike Leela, Prasad did not participate in the therapy sessions. Cantu testified that she was surprised that Prasad claimed to not understand that parents could participate in therapy sessions as Arjuna had been coming to therapy sessions at NTS for five years by the time Prasad filed for divorce and started to bring Arjuna. At the same time, Prasad was not speaking to the therapist after the sessions he brought Arjuna to which meant that Prasad was not aware of what aftercare NTS recommended for Arjuna each week.

Amy Seeber, Brenham High School math teacher, both tutored and taught Bihma. Seeber came to know both Leela and Prasad well. Seeber described Bihma as a quiet, serious, fabulous, diligent student. Seeber testified that she had no problem communicating with either Leela or Prasad.

Applying the *Holley* factors to this case, as to factor (1), no evidence was produced as to the desires of the children with respect to either parent, but uncontested evidence showed that Bihma's preference to bathe at Leela's residence was so pronounced that Prasad would drive the child to Leela's to bathe. Under factor (2), Prasad and Leela's youngest child, Arjuna, has cerebral palsy, and there was evidence showing both parents were informed of the symptoms and treatment for cerebral palsy. The evidence showed that Arjuna had coped with the symptoms well under the supervision of both parents' involvement. Leela however, presented significant evidence in support of her ability to address Arjuna's problems.

Though Prasad argues that there was significant evidence under factor (3), in his favor—evidence showing extra time with Leela would present emotional and physical danger to the children now and in the future, the majority of such evidence was based on Prasad's own testimony that was not otherwise corroborated. This evidence comprised primarily of Prasad's own testimony about

Leela's outbursts toward Prasad and the children after Prasad moved out and filed for divorce. However, several witnesses testified favorably towards Leela's maternal disposition, and no disinterested witness gave any testimony to suggest she presented a danger to either child. In weighing the credibility of the respective witnesses, the court was free to discount Prasad's unfavorable testimony or assign more weight to the testimony of others.

Prasad also contends that there was significant evidence under factors (4), (7), and (8) in his favor, but we are reluctant to agree such evidence was of a nature that would disrupt the trial court's modified possession schedule. Even were the trial court to give full credit to the favorable testimony concerning Prasad's parenting capabilities as a parent, the court may well have exercised caution in accepting Prasad's heated testimony against Leela. In its findings of fact the trial court stated:

> a. Leela Madipuri was always the primary caregiver of the children.
>
> b. Before the divorce, Leela Madipuri took the children to and from school, prepared their lunches, cooked dinner, and planned all parties and events.
>
> c. Prasad Puligundla worked outside of the home and was not an active parent prior to the divorce litigation.
>
> d. Prasad Puligundla worked long hours outside of the home before the divorce was filed.
>
> e. Both parties were involved with the children's schooling. Prasad Puligundla, however, only became more involved since he filed for divorce.
>
> f. When [Arunja's] tutor strongly recommended that Arunja have a break from tutoring over the summer break, Prasad Puligundla rejected the advice of [Arunja's] tutor.
>
> g. Prasad Puligundla insisted on scheduling more tutoring during the summer school break for [Arunja], acting against both the advice of [Arunja's] tutor and the wishes of Leela Madipuri.

h. [Arunja] has cerebral palsy.

i. Leela Madipuri has always been, [Arunja's] primary caregiver. Ms. Madipuri took [Arunja] to occupational therapy, physical therapy, tutoring and events before the divorce was filed.

j. Prasad Puligunlda did not regularly attend occupational therapy sessions for [Arunja] prior to filing for divorce.

k. After filing for divorce, when Prasad Puligundla would bring [Arunja] to occupational therapy sessions, Prasad Puligundla simply dropped [Arunja] off for the sessions rather than staying with [Arunja].

l. On some occasions when Prasad Puligundla returned to pick-up [Arunja] at the end of his occupational therapy sessions, Mr. Puligundla would arrive long after [Arunja] had completed his session. Mr. Puligundla' s late pick up resulted in [Arunja] sitting for hours with the reception staff until Prasad Puligundla returned.

m. When Mr. Puligundla brought [Arunja] to his occupational therapy sessions, staff noted that [Arunja's] demeanor was different. [Arunja] was less agreeable, and presented more stressed and irritable when Prasad Puligundla brought him to his sessions.

n. Upon filing for divorce, Prasad Puligundla dictated a schedule regarding the children that he required Leela Madipuri to follow.

o. [Bihma] refuses to shower at Prasad Puligundla's residence and insists on showering at Leela Madipuri's residence before school each day.

p. Prasad Puligundla consistently harassed Leela Madipuri regarding the "rules" at her home, and the children's time and activities during Leela Madipuri's periods of possession.

q. If Prasad Puligundla felt that Leela Madipuri was not following the schedule that he thought best, or if he believed Ms. Madipuri's "rules" and "procedures" in her home were not as he believed they should be, he would engage in persistent, repeated communications towards Ms. Madipuri.

Though the court's findings were filed late, upon review of the record, the findings are supported by the evidence in the record. Both parties have discussed the findings on appeal, and neither party has taken issue with these specific

findings.

Without giving the findings themselves particular deference, but acknowledging the entire record, we conclude the record contains evidence of a substantive and probative character that supports the trial court's possession and access order. *Interest of S.H.*, 590 S.W.3d 588, 595 (Tex. App.—El Paso 2019, pet. denied)(upholding trial court's 50/50 possession schedule concluding deviation was supported by "evidence of a substantive and probative character" where significant evidence in the record concerned the special needs of one of the children). Additionally, when examining the entire record and considering evidence both favorable and contrary to the challenged possession schedule, we cannot conclude the possession schedule is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust.

We therefore overrule Prasad's second issue.

IV. WAS THE COURT'S DIVISION OF THE MARITAL ESTATE JUST AND RIGHT?

In his third and final issue, Prasad complains that the trial court abused its discretion by awarding Leela a grossly disproportionate share of the community estate, which he contends was manifestly unjust and unfair. Though Prasad has not provided an explanation of the proportion in which the trial court actually divided the estate or addressed any particular aspect, value, or characterization in the award, Leela has summarized the court's division. Not counting the Germania Pension Plan which the court found in a post-trial proceeding that Prasad concealed, but nevertheless split 50/50 between the parties, Leela provides the proportion of the marital estate awarded as 47.34% to Prasad and the remaining 52.66% to Leela, or in monetary terms, $621,129.94 to Prasad and $690,802.04 to Leela. In his Reply, Prasad does not dispute these figures. Prasad's argument—that the "trial court's award is not supported by legally and factually sufficient

evidence," is ultimately an argument that the trial court failed to properly analyze the case under section 7.001 of the Family Code and the *Murff* factors.

When dividing property between two divorcing spouses, the trial court is required to "order a division of the estate of the parties in a manner that the court deems just and right, having due regard for the rights of each party and any children of the marriage." Tex. Fam. Code § 7.001; *Murff v. Murff*, 615 S.W.2d 696, 698 (Tex. 1981). We will not disturb the property division on appeal unless the appellant demonstrates that the trial court clearly abused its discretion by a division or an order that is manifestly unjust and unfair. *Willis v. Willis*, 533 S.W.3d 547, 551 (Tex. App.—Houston [14th Dist.] 2017, no pet.). In reviewing the trial court's property division, we must consider (1) whether the trial court had sufficient information upon which to exercise its discretion and (2) whether the trial court abused its discretion by dividing the property in a manner that is manifestly unjust and unfair. *Evans v. Evans*, 14 S.W.3d 343, 346 (Tex. App.—Houston [14th Dist.] 2000, no pet.). The trial court did not lack sufficient information to exercise its discretion and divide the estate's assets and liabilities listed in the Final Divorce Decree.

The property division need not be equal, but it must be equitable, and a trial court may consider numerous factors when exercising its broad discretion to divide the marital property, including the relative earning capacity and business opportunities of the parties, the parties' relative financial condition and obligations, the parties' education, the size of the separate estates, and the probable need for future support. *Murff v. Murff*, 615 S.W.2d at 699; *Marriage of O'Brien*, 436 S.W.3d 78, 81 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

To prevail on a complaint about the division of property, an appellant has the burden of demonstrating, based on evidence in the record, that the division was

so unjust and unfair as to constitute an abuse of discretion. *O'Brien*, 436 S.W.3d at 82. Under the abuse of discretion standard, sufficiency of the evidence is not an independent ground of error but rather is a relevant factor in assessing whether the trial court abused its discretion. *In re Marriage of Penafiel*, 633 S.W.3d 36, 44–45 (Tex. App.—Houston [14th Dist.] 2021, pet. denied).

Prasad timely requested findings of fact and conclusion of law on the court's division of the marital estate, then timely filed notice of past-due findings of fact and conclusions of law, and the trial court failed to file findings in the prescribed timeline under the Rules. Because the trial court filed the findings of fact and conclusions of law sufficiently before Prasad filed is brief on appeal, and because Prasad has not argued nor we can we conclude the trial court's delay in filing its findings and conclusions have prevented Prasad from presenting his complaints on appeal, we consider the findings and conclusions as an aid for understanding the reasons for the court's judgment. *See In re Gillespie*, 124 S.W.3d 699, 703 (Tex. App.—Houston [14th Dist.] 2003, no pet.); *see also Ad Villarai, LLC v. Chan Il Pak*, 519 S.W.3d 132, 141 (Tex. 2017) (recognizing leniency in the Rules to "allow a trial court judge to file late findings on her own volition or at the behest of the court of appeals.")

Prasad's only issue with respect is the trial court's findings and conclusions is his interpretation that "the trial court's reasoning, as set out in its Findings of Fact and Conclusions of Law, appears to hinge solely on Prasad allegedly concealing the existence of a defined benefit retirement account." While we note the trial court was free to consider what the jury found to be Prasad's concealed transfer of $69,500 in funds, we disagree with Prasad's narrow interpretation of the court's findings. Though the trial court made findings in connection with his concealment of funds, the court also explicitly considered the earning power of

both spouses, and found that "Leela Madipuri's earning power is substantially less than Prasad Puligundla's."

Prasad contends that the trial court failed to properly weigh the *Murff* factors. Prasad asserts "that much of the marriage Leela refused to work, practice her skills, and contribute to the family budget." This assertion is based on Prasad's own testimony, and cites a portion of Leela's testimony that does not support this proposition. Leela's testimony does not demonstrate that Leela *refused* to work, but rather that she forfeited work to care for the children; after working at Germania for almost two years, she stopped in the interests of caring for the children at a time when it appeared the family was moving. Although the record showed Leela was educated with a bachelor's degree in computer science engineering and had some experience in the workplace, the balance of the record demonstrates Leela has not worked throughout most of the marriage while undertaking the balance of the duties in connection with children and household. Consistent with the court's findings, the record shows that, Prasad who successfully retained employment at Germania during the entirety of the marriage, has a substantially greater earning power than Leela.

Prasad also challenges the trial court's division for failing to account for the relative fault of Leela's adultery in causing the divorce. The uncontested record establishes that Leela's overseas affair with Prasad's friend was financially costly, and likely painful for Prasad and in turn, the children. Although Texas courts are cautioned against using the division of the estate as a means to punish a spouse at fault, the trial court could have considered Leela's fault, but was not required to consider it or give it particular weight. *See Bishop v. Bishop*, No. 14-02-00132-CV, 2003 WL 21229476, at *4 (Tex. App.—Houston [14th Dist.] May 29, 2003, no pet.); *see also Bradshaw v. Bradshaw*, 555 S.W.3d 539, 543 (Tex. 2018); see

also Young v. Young, 609 S.W.2d 758, 762 (Tex. 1980) ("The division should not be a punishment for the spouse at fault. . .[,] but [fault] may be a consideration in the division."). The court could have, but elected not to assign weight to Leela's fault in causing the divorce. On the record before us, the fact the court did not assign significant weight to Leela's conduct does not rise to the level of an abuse of discretion. The division before us, particularly considering the relative earning capacity of the parents, is not grossly disproportionate. Prasad has not met his burden of demonstrating, based on evidence in the record, that the division was so unjust and unfair as to constitute an abuse of discretion.

We overrule Prasad's third issue.

V. CONCLUSION

Having overruled each of Prasad's three issues, we affirm the trial court's judgment.

/s/ Randy Wilson
Justice

Panel consists of Justices Wilson, Hart, and McLaughlin.