



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00052-CV

IN THE INTEREST OF B.P.C., a Child

From the 224th Judicial District Court, Bexar County, Texas
Trial Court No. 2015-PA-02000
Honorable Charles E. Montemayor, Judge Presiding

Opinion by: Sandee Bryan Marion, Chief Justice

Sitting: Sandee Bryan Marion, Chief Justice
Rebeca C. Martinez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: June 7, 2017

AFFIRMED

The Texas Department of Family and Protective Services initially filed the underlying lawsuit seeking to terminate the parents' rights to B.P.C.; however, the trial court ultimately entered an order appointing M.L.H., B.P.C.'s father, as sole managing conservator, and appointing L.C.H., B.P.C.'s mother, as possessory conservator. L.C.H. appeals the trial court's order asserting the trial court abused its discretion by severely limiting her possession and access. We affirm the trial court's order.

BACKGROUND

The Department filed its petition in the underlying lawsuit after L.C.H. abandoned B.P.C., who was twelve years old, by leaving him with a credit card to purchase food and instructions on how to pay bills. L.C.H. did not plan to return, but she did phone the police upon arriving at a

homeless shelter to inform them of her intentions. L.C.H. was arrested and charged with abandonment, but she was not convicted. During the course of the termination proceedings, the Department decided not to seek termination. Instead, the Department sought the appointment of M.L.H. as sole managing conservator and of L.C.H. as possessory conservator with limited possession and access.

After a bench trial, the trial court signed an order appointing M.L.H. as sole managing conservator and appointing L.C.H. as possessory conservator. With regard to L.C.H.'s possession and access, the order provided L.C.H. would have possession and access as mutually agreed to in advance by the parties with visitation supervised by M.L.H. or a person he designates. In the absence of a mutual agreement, L.C.H. was allowed a two hour monthly visit at a supervised monitoring service in the location where B.P.C. lived. The order further provided the visitation would be at L.C.H.'s expense; however, the trial court did not order L.C.H. to pay any child support to facilitate her ability to pay the travel and visitation expenses. At the time of trial, B.P.C. was residing with M.L.H. in Louisiana. The order gave M.L.H. the right to designate B.P.C.'s residence without regard to geographic location.

L.C.H. appeals asserting the trial court abused its discretion in limiting her possession and access.

RESTRICTIONS ON POSSESSION AND ACCESS AND STANDARD OF REVIEW

A trial court has the discretion to restrict or limit a possessory conservator's possession of or access to a child as necessary to protect the child's best interest. *Messier v. Messier*, 389 S.W.3d 904, 910 (Tex. App.—Houston [14th Dist.] 2012, no pet.); TEX. FAM. CODE ANN. § 153.193 (West 2014). "This includes the authority to determine the frequency and duration of visits, as well as the limitations and safeguards to be placed on such visits." *In re L.M.M.*, No. 03-04-00452-CV, 2005 WL 2094758, at *9 (Tex. App.—Austin Aug. 31, 2005, no pet.) (mem. op.). When a trial

court determines a standard possession order is not in the best interest of a child, the trial court may “fashion an order that restricts possession or access so as to eliminate any danger to the physical or emotional welfare of the child.” *In re Walters*, 39 S.W.3d 280, 286 (Tex. App.—Texarkana 2001, no pet.).

We review a trial court’s order determining conservatorship under an abuse of discretion standard. *In re A.L.E.*, 279 S.W.3d 424, 427 (Tex. App.—Houston [14th Dist.] 2009, no pet.). Under that standard, we defer to the trial court’s resolution of the credibility of the witnesses. *Id.* “An abuse of discretion does not occur if some evidence of a substantive and probative character exists to support the trial court’s decision.” *Id.* at 428. Accordingly, a trial court does not abuse its discretion in placing restrictions on a possessory conservator’s possession and access “if the record contains evidence to support a finding that such restrictions are in the best interest of the children.” *In re P.A.C.*, 498 S.W.3d 210, 219 (Tex. App.—Houston [14th Dist.] 2016, pet. denied).

DISCUSSION

As previously noted, the Department became involved when L.C.H. abandoned B.P.C. A bench trial was held on January 13, 2017. L.C.H. did not personally appear at the trial but was represented by counsel.

The Department’s caseworker testified L.C.H. was scheduled for a four hour visit with B.P.C. in October of 2016; however, she ended the visit after one hour, stating the hour was sufficient for her. The caseworker testified L.C.H. has mental health issues, including bipolar, anxiety, and depression, for which she takes medication. B.P.C. is autistic. Although L.C.H. was given the opportunity to become more educated about B.P.C.’s condition, the caseworker had not seen any improvement in L.C.H.’s visits with B.P.C. The caseworker recommended visits continue to be supervised based on L.C.H. ending visits early and to ensure L.C.H. remains on her medication.

M.L.H. testified he drove B.P.C. from Louisiana to Texas for one of L.C.H.'s visits. The visit was scheduled for one hour; however, L.C.H. ended the visit after one-half hour. M.L.H. testified the drive from Louisiana is eight or nine hours one way. With regard to whether he would be able to agree with L.C.H. regarding visitation, M.L.H. testified he had no problem with L.C.H. visiting with B.P.C. M.L.H. stated he believed they might be able to agree to meet halfway, and he was willing to work with L.C.H. to facilitate visits. M.L.H. expressed a willingness to allow B.P.C. to visit L.C.H. during the summer when he was out of school. M.L.H. had purchased B.P.C. his own cell phone and stated he had no problem with L.C.H. calling B.P.C. Although B.P.C. enjoyed his visits with L.C.H., M.L.H. stated B.P.C. "doesn't really talk a lot about his mom."

Based on the foregoing, the trial court could have believed the parties would reach an agreement regarding visitation. In the event an agreement was not reached, the trial court could have believed supervised visitation was in B.P.C.'s best interest given: (1) L.C.H.'s tendency to cut short her allotted visitation; (2) L.C.H.'s lack of progress in handling B.P.C.'s autism; and (3) L.C.H.'s failure to appear at trial. Based on the evidence presented, we hold the trial court did not abuse its discretion in limiting L.C.H.'s possession and access.

CONCLUSION

The trial court's order is affirmed.

Sandee Bryan Marion, Chief Justice