



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00583-CV

In the Interest of **V.R.G.**, J.L.G., and M.G., Children

From the 288th Judicial District Court, Bexar County, Texas
Trial Court No. 2016PA00842
Honorable Charles E. Montemayor, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Karen Angelini, Justice
Luz Elena D. Chapa, Justice
Irene Rios, Justice

Delivered and Filed: February 14, 2018

AFFIRMED

R.R., the mother of three minor children, V.R.G., J.L.G., and M.G., appeals from a final order in a suit affecting the parent-child relationship. In a single issue, R.R. argues the trial court abused its discretion in limiting her possession and access to the children. We affirm.

BACKGROUND

The Department of Protective and Family Services initiated this suit by filing an original petition for the protection of the children, for conservatorship, and for termination of parental rights. At the time, the children were living with R.R. The Department created a family service plan, and R.R. and the children's father, M.G., agreed to engage in services. After R.R. tested positive for methamphetamines and amphetamines and other concerns were raised about the children's safety, the children were removed from R.R.'s home and the Department was appointed

their temporary managing conservator. Upon removal, the children were placed in a shelter. The children eventually went to live with their father, M.G.

By the time the case went to trial, the Department was no longer seeking conservatorship of the children or termination of R.R. and M.G.'s parental rights. The case was tried to the court on September 6, 2017. The trial court announced its decision from the bench and later signed a final order. The order appointed M.G. sole managing conservator and R.R. possessory conservator. Additionally, the order provided that R.R. would have possession and access to the children, at a minimum, every first, third, and fifth Saturday from 10:00 a.m. to 7:00 p.m. until December 1, 2017, and that R.R. and M.G. would exchange the children at Kidshare.¹ The order further provided that if there were "no negative incidents concerning R.R. and the children" or violations of its prior order, after December 1, 2017, R.R. would have possession and access to the children in accordance with the standard possession order.² R.R. appealed.

DISCUSSION

In arguing that the trial court abused its discretion in limiting her possession and access, R.R. emphasizes that it is the public policy of this state to "assure that children" "have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child," TEX. FAM. CODE ANN. § 153.001 (West 2014), and "to encourage frequent contact between a child and each parent for periods of possession that optimize the development of a close and continuing relationship between each parent and child." *Id.* § 153.251. R.R. asks us to set aside the portion of the final order restricting her possession and access to the children and to remand the case to the trial court for further orders regarding possession and access.

¹Additionally, the order provided that R.R. could have possession and access to the children as mutually agreed by R.R. and M.G., but that M.G. could end the agreement unilaterally.

²The record before us does not indicate whether or not R.R. complied.

Trial courts have broad discretion regarding custody, control, possession, support, and visitation matters concerning children. *In the Interest of E.B.*, 04-13-00039-CV, 2014 WL 2547598, at *4 (Tex. App.—San Antonio June 4, 2014, no pet.). Therefore, we review a trial court’s orders concerning possession and access for an abuse of discretion. *Id.* A trial court abuses its discretion if it acts arbitrarily or unreasonably. *Villasenor v. Villasenor*, 911 S.W.2d 411, 419 (Tex. App.—San Antonio 1995, no writ). A trial court does not abuse its discretion when some evidence of substantive and probative character supports its decision. *In the Interest of B.P.C.*, 04-17-00052-CV, 2017 WL 2457055, at *2 (Tex. App.—San Antonio June 7, 2017, no pet.). We will not reverse the trial court’s decision concerning possession and access absent a clear abuse of discretion. *Interest of S.G.S.*, 02-05-211-CV, 2006 WL 1791668, at *5 (Tex. App.—Fort Worth June 29, 2006, pet. denied).

The primary consideration in determining issues related to possession and access is the best interest of the child. TEX. FAM. CODE ANN. § 153.002. There is a rebuttable presumption that the standard possession order “provides reasonable minimum possession of a child for a parent named as a possessory conservator” and “is in the best interest of the child.” *Id.* § 153.252.

In this case, the record shows that the presumption in favor of the standard possession order was rebutted. *See id.* The evidence showed that about a month before trial, on August 3, 2017, the police were called to R.R.’s home because she had refused to return the children to their father after a visit. M.G. testified that he, R.R., and the children went to the store to pick up a birthday cake because it was the oldest child’s birthday. R.R. wanted to discuss the case, but M.G. did not want to have the discussion in front of the children. M.G. and R.R. began to argue. Eventually, R.R. informed M.G. that she was not going to return the children to him and that the children were going to stay with her now. One of the children was very upset, and she yelled at her parents to stop arguing. R.R. removed the children from the car and took them into her house. M.G. tried to

calm R.R. down for thirty or forty-five minutes, but he eventually called the police because he felt he was not going to get the children back. M.G. called both the Department caseworker and the CASA volunteer during the incident.

A Department caseworker testified that after receiving a call from M.G. on August 3, 2017, she went to R.R.'s home to assist the police in returning the children to M.G. R.R. was very angry and did not seem coherent. R.R. "went at" M.G. and screamed at the caseworker to get off her property. The children witnessed the incident and they were extremely upset. The children later told the caseworker that they did not like how R.R. was so mad at their dad, that R.R. had kicked the car, that R.R. had screamed at them in the car, and that R.R. had told them to get out of the car and go into her house. The children also told the caseworker that the incident was uncomfortable and that they did not like seeing their mother that way. One of the children was extremely worried and concerned about R.R.'s emotional state.

The CASA volunteer testified that she had received a phone call from M.G. during the August 3, 2017 incident, and she spoke with both M.G. and R.R. on the phone. The CASA volunteer tried to persuade R.R. to calm down and to allow M.G. to take the children, but she was not successful. The CASA volunteer felt that nothing would calm R.R. down. The incident was very intense and R.R. was not in a good state. The August 3, 2017 incident was not the only one that raised concerns about R.R. being able to control her emotions. R.R. had become angry during several home visits and it had taken R.R. a while to calm herself down.

In announcing its ruling, the trial court expressed its concern about the August 3, 2017 incident and the effect it had on the children, who were ages ten, eight, and three. The trial court indicated that it was unfortunate that one of the children's birthdays "culminat[ed] with fighting, screaming" and calls to the police. The trial court further commented that the children no doubt

“internalized” the incident and that having the children be concerned about R.R.’s mental and emotional state was “a lot to put on them.”

The record shows that the trial court’s decision to place limitations on R.R.’s possession and access was based on the children’s best interest. Based on the record presented, we cannot say the trial court abused its discretion in limiting R.R.’s possession and access for a relatively brief period before ordering possession and access in accordance with the standard possession order. We, therefore, overrule R.R.’s issue and affirm the trial court’s judgment.

Karen Angelini, Justice