Fourth Court of Appeals
San Antonio, Texas

OPINION

No. 04-21-00495-CV

IN THE INTEREST OF J.O.L. and I.C.L., Children

From the 365th Judicial District Court, Maverick County, Texas
Trial Court No. 12-06-27527-MCVAJA
Honorable Amado J. Abascal III, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Patricia O. Alvarez, Justice
Luz Elena D. Chapa, Justice
Lori I. Valenzuela, Justice

Delivered and Filed: March 1, 2023

REVERSED AND REMANDED

Mother appeals from a judgment in a modification proceeding that changed her parental status from joint managing conservator to possessory conservator and awarded joint managing conservatorship to Intervenors Aunt and Uncle after the trial court declined to apply a fit-parent presumption.

BACKGROUND

In 2016, J.O.L.'s and I.C.L.'s parents entered into a mediated settlement agreement to be appointed joint managing conservators of their children and for Father to be granted the right to designate the children's primary residence.[1] The record shows that Father chose his brother and

[1] We use aliases to protect the children's identities. *See* TEX. FAM. CODE ANN. § 109.002(d); TEX. R. APP. P. 9.8.

sister-in-law's home for the children's primary residence, and that they assumed Father's parenting responsibilities.

In 2017, Mother petitioned to modify the parent-child relationship, asking to be designated primary managing conservator. The petition alleged that Father relinquished control, care, and possession of the children for at least six months. Two months later, paternal Aunt and Uncle intervened for conservatorship, likewise alleging that Father relinquished control, care, and possession to them. Aunt and Uncle asked to be designated sole managing conservators with supervised visitation awarded to Mother. Alternatively, they asked to be designated joint managing conservators with Mother. The cause was set for a jury trial in the Maverick County District Court.

Leading up to trial, Mother challenged Aunt and Uncle's standing to intervene and moved to strike their pleadings. In a hearing before trial, the trial court orally denied Mother's motion. The trial proceeded. A jury was empaneled to decide whether there should be a joint managing conservatorship or a sole managing conservatorship and who should be appointed as managing conservators.

Before the jury was sworn in, Mother argued for a parental presumption in her favor, which would require the jury to appoint her as sole managing conservator *unless* evidence showed that the appointment would significantly impair the children's physical health or emotional development. Aunt and Uncle objected to the presumption as a misstatement of the law, and the trial court sustained the objection. When Mother re-urged the court to apply a parental presumption, Father argued against her. The trial court concluded that the children's best interest was a factual issue for the jury to decide without applying a parental presumption. Mother did not re-urge the parental presumption when the trial court finalized the jury charge. When asked if there were any objections to the jury charge, Mother had none. But later, she attempted to argue

the parental presumption to the jury. Father objected to the argument as a misstatement of the law, and the trial court sustained the objection.

At the conclusion of trial, the jury determined that 1) Aunt and Uncle should be appointed as joint managing conservators and 2) Mother and Father should be designated possessory conservators.

Before the trial court entered a final order, the Texas Supreme Court issued an opinion explicitly incorporating a fit-parent presumption in modification proceedings: "when nonparents seek court-ordered custody of a child subject to an existing order, under which one or both fit parents were appointed managing conservators, that parent or parents retain the presumption that protects their fundamental right to determine their child's best interest. *See In re C.J.C.*, 603 S.W.3d 804, 819 (Tex. 2020). Mother filed a motion for judgment notwithstanding the verdict, arguing that *In re C.J.C.* provided a compelling reason to enter a judgment contrary to the jury's findings. The trial court denied her motion and entered final orders that conformed to the jury's verdict. Mother appealed.

PARTIES' ARGUMENTS

Mother raises three issues on appeal. We address the order of her issues as follows: (1) whether pursuant to *In re C.J.C.*, 603 S.W.3d 804, Mother's fundamental rights were violated by the trial court's refusal to apply a fit-parent presumption in all proceedings, including the jury charge, (2) whether there is legally insufficient evidence to support Mother's removal as J.O.L.'s and I.C.L.'s managing conservator, and (3) whether Uncle and Aunt have no standing because they failed to overcome the fit-parent presumption.

Aunt, Uncle, and Father argue that a fit-parent presumption did not apply, but that even if it did, the evidence is sufficient to support the jury's verdict and the trial court's ruling on their standing to intervene.

FIT-PARENT PRESUMPTION

A. Issue

Mother's first issue requires us to determine if the fit-parent presumption applies pursuant to *In re C.J.C.*, and if it does apply, whether Mother is entitled to that presumption now.

B. Law

1. Does the Fit-Parent Presumption Apply?

Texas jurisprudence supports a parent's right to direct the upbringing of their children, and it presumes "that it is in a child's best interest to be raised by his or her parents." *In re C.J.C.*, 603 S.W.3d at 812 (citing *Taylor v. Meek*, 276 S.W.2d 787, 790 (Tex. 1955)). *In re C.J.C.* incorporated this presumption into the child's best interest determination in modification suits under Texas Family Code chapter 156. *See id*. at 818–19.

Before *In re C.J.C.*, a parental presumption explicitly applied under Family Code sections 153.131 (original SAPCRs) and 153.433 (grandparent possession or access suits), but not under section 156.101 (modification proceedings). *See In re C.J.C.*, 603 S.W.3d at 821 (Lehrmann, J., concurring). Accordingly, the Texas Supreme Court had held that no parental presumption applied in modification proceedings. *See id*. at 810–11 (citing *In re V.L.K.*, 24 S.W.3d 338, 343 (Tex. 2000)). In fact, modification proceedings imposed no burden on nonparent intervenors to overcome a parental presumption even if a parent were already appointed as a child's managing conservator. *See id*. at 816. Therefore, a child's managing conservator in a modification proceeding was potentially forced to compete on equal footing with a nonparent intervenor for the child's best interest. *See id*. The child's best interest in that scenario was set at odds with the parent's right to direct the upbringing of their child. *See id*. at 817.

After *In re C.J.C.*, modification suits under Texas Family Code chapter 156 required nonparent intervenors to overcome a fit parent presumption if one or both parents were already

appointed managing conservator(s). *See id*. As noted by the court, the modification statute already reflected "the understanding that '[t]he first judgment at the time it was entered was res adjudicata of the question of the child's best interest.'" *See id*. at 818. It followed, and the court so concluded, that the question of the child's best interest should be paired with a fit-parent presumption in *any* proceeding in which a nonparent sought conservatorship or access over a fit parent's objection. *See id*. at 817.

2. Is Mother Entitled to a Fit-Parent Presumption?

Not only do we understand the court's conclusion to apply to any prospective proceedings, but also to any past proceedings in cases that were not final when *In re C.J.C*. issued. *See Balderas-Ramirez v. Felder*, 537 S.W.3d 625, 635 (Tex. App.—Austin 2017, pet. denied) (citing *Engelman Irrigation Dist. v. Shields Bros., Inc*., 514 S.W.3d 746, 748–49 (Tex. 2017)). "As a general rule, judicial decisions, including those of the Texas Supreme Court, apply 'retroactively' to preexisting cases that have not yet been concluded by a final judgment and exhaustion of direct appeals." *Id*. With that statement of law in mind, we turn to Mother's case.

C. Analysis

At the time of trial, Mother was one of J.O.L.'s and I.C.L.'s joint managing conservators. She was also the non-relinquishing parent. Because *In re C.J.C.* issued before Mother's case was final, Mother was presumptively fit in the modification proceeding involving J.O.L and I.C.L. *See In re C.J.C*., 603 S.W.3d at 818–19; *see also Balderas-Ramirez*, 537 S.W.3d at 635.

Mother argues the fit-parent presumption should have been included in the jury charge as an instruction. We note, however, that to preserve that issue, Mother was required to object to the jury charge. *See Wackenhut Corp. v. Gutierrez*, 453 S.W.3d 917, 920 (Tex. 2015); *In re B.L.D*., 113 S.W.3d 340, 349 (Tex. 2003) (citing TEX. R. APP. P. 33.1; TEX. R. CIV. P. 274). Because

Mother made no objection to the jury charge, Mother waived her complaint. *See Wackenhut Corp.*, 453 S.W.3d at 920; *In re B.L.D.*, 113 S.W.3d at 349.

Not waived, however, is Mother's complaint that the evidence was legally insufficient to support the jury's verdict because Aunt and Uncle failed to overcome the fit-parent presumption. We address this issue next.

LEGAL SUFFICIENCY

A. Issue

Mother argues that no evidence supported the jury verdict for Aunt and Uncle to be appointed as her children's managing conservators in light of the parental presumption recently applied to modification proceedings in *In re C.J.C.* *See Corrales v. Dep't of Family & Protective Services*, 155 S.W.3d 478, 488 (Tex. App.—El Paso 2004, no pet.) (citing *Lenz v. Lenz*, 79 S.W.3d 10, 16–17 (Tex. 2002)).

B. Law

In re C.J.C. dictates that "when nonparents seek court-ordered custody of a child subject to an existing order, under which one or both fit parents were appointed managing conservators, that parent or parents retain the presumption that protects their fundamental right to determine their child's best interest." *In re C.J.C.*, 603 S.W.3d at 819.

In reviewing the presumption's effect on the legal sufficiency of the evidence, "[w]e will uphold the jury's finding if more than a scintilla of competent evidence supports it." *Tanner v. Nationwide Mut. Fire Ins. Co.*, 289 S.W.3d 828, 830 (Tex. 2009); *accord Corrales*, 155 S.W.3d at 488. "More than a scintilla of evidence exists when the evidence 'rises to a level that would enable reasonable and fair-minded people to differ in their conclusions.'" *CBS Outdoor, Inc. v. Potter*, No. 01-11-00650-CV, 2013 WL 269091, at *7 (Tex. App.—Houston [1st Dist.] Jan. 24,

2013, pet. denied) (mem. op.) (quoting *Transp. Ins. Co. v. Moriel*, 879 S.W.2d 10, 25 (Tex. 1994)). "In contrast, evidence that creates no more than 'a mere surmise or suspicion of its existence' is only a scintilla and, thus, no evidence." *Id*. (quoting *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 601 (Tex. 2004)).

"When a nonparent requests conservatorship or possession of a child, the child's best interest is embedded with the presumption that it is the fit parent—not a court—who makes the determination whether to allow that request." *In re C.J.C*., 603 S.W.3d at 820. But the "degree of evidence necessary to overcome the presumption that a fit parent's decisions are in the best interest of the child when a nonparent who has acted in a parent-like role seeks [a custody order] remains [unsettled]." *Id.* at 823 (Lehrmann, J., concurring) (citing *Troxel v. Granville*, 530 U.S. 57 (2000) (plurality opinion)).

Nearly a year after the Texas Supreme Court issued its opinion in *In re C.J.C*., the Dallas Court of Appeals held: "the existence of the fit-parent presumption necessarily requires that some evidence that a parent is not fit must be offered to rebut it." *In re C.D.C*., No. 05-20-00983-CV, 2021 WL 346428, at *6 (Tex. App.—Dallas Feb. 2, 2021, no pet.) (mem. op.). Six months after that, the Fourteenth Court of Appeals in Houston acknowledged that no standard had been clearly set for a nonparent to overcome a fit-parent presumption. *In re S.D*., No. 14-20-00851-CV, 2021 WL 3577852, at *6 (Tex. App.—Houston [14th Dist.] Aug. 10, 2021, no pet.) (per curiam) (mem. op.). It did not attempt to define a standard to overcome a fit-parent presumption. *See id*. Instead, the court held that whatever evidence is required to overcome the presumption, the grandmother seeking custody modification did not manage to rebut it. *See id*. The following year, the same court reasoned, based on related statutes, that "the fundamental rights of parents cannot be infringed by a court absent some compelling reason, and that reason must typically involve the health and welfare of the child." *Interest of N.H*., 652 S.W.3d 488, 497 (Tex. App.—Houston

[14th Dist.] 2022, pet. filed). It concluded that a nonparent seeking custody must prove, "at a minimum," that the physical health or emotional well-being of the child or children in question would be significantly impaired if the nonparent were not granted custody. *See id*. at 498.

In explicating the "significant impairment" standard in a suit where a nonparent sought visitation rights, the Fourteenth Court of Appeals stated:

> [T]he link between the parent's conduct and harm to the child may not be based on evidence which merely raises a surmise or suspicion of possible harm. We have also recognized that significant impairment has been inferred from uprooting a child from a nonparental caretaker when the removal would be devastating or akin to psychological amputation or cause serious psychological damage, but we further indicated that there must be some evidence explaining how the impairment would manifest as significant.

Id. (citing *In re F.E.N*., 542 S.W.3d 752, 770 (Tex. App.—Houston [14th Dist.] 2018), pet. denied, 579 S.W.3d 74 (Tex. 2019) (per curiam); *In re J.C*., 346 S.W.3d 189, 194–95 (Tex. App.—Houston [14th Dist.] 2011, no pet.)) (internal quotations omitted). The court concluded that the nonparent seeking custody in *Interest of N.H* "failed to carry her burden of proof, and that the trial court abused its discretion when it overruled the wishes of the Mother." *Id*. at 499.

Two days later, the Dallas Court of Appeals issued a memorandum opinion stating that to overcome the fit parent presumption, the grandparents who sought sole managing conservatorship of their daughter's child were required to prove that the presumptively fit mother could not adequately care for her child. *Interest of A.V*., No. 05-20-00966-CV, 2022 WL 2763355, at *5 (Tex. App.—Dallas July 15, 2022, no pet.) (mem. op.). The following month, the Thirteenth Court of Appeals in Corpus Christi also cited the "significant impairment" standard in a case where a grandparent was required to overcome the fit parent presumption to establish standing, stating:

> To overcome the fit-parent presumption and establish standing, a nonparent must present evidence of specific, identifiable behavior or conduct that will probably result in significant impairment to the child's physical health or emotional well-being. Such identifiable

> behavior or conduct may include physical abuse, severe neglect, abandonment, drug or alcohol abuse, or immoral behavior on the part of the parent.

Interest of D.D.L., No. 13-22-00062-CV, 2022 WL 3652496, at *4 (Tex. App.—Corpus Christi–Edinburg Aug. 25, 2022, no pet.) (mem. op.) (citing *Rolle v. Hardy*, 527 S.W.3d 405, 420 (Tex. App.—Houston [1st Dist.] 2017, no pet.)).

We now evaluate the trial record for competent evidence that proves Aunt and Uncle overcame Mother's fit-parent presumption. *See In re C.J.C.*, 603 S.W.3d at 819; *Corrales*, 155 S.W.3d at 488.

C. Analysis

1. Summary of Testimony

At trial, Uncle testified that the children lived with him after Father was awarded the right to determine their primary residence. Aunt's Mother testified that Father "gave" the children to Aunt and Uncle. Father testified that he did not "give" the children to Uncle, but that Uncle was merely helping him out because Father was "going through his own troubles at the time." When asked what his troubles were, Father testified that he did not have his own vehicle or his own place to live: "just little things like that." Father then admitted that he entered a rehabilitation facility on July 20th, 2018, and was released eight months later.

When asked if he had considered that the children should go to Mother's, Father stated: "Why split them up when they're good right here where they're at?" Father admitted that Mother has her own home on the Kickapoo reservation, and that if the children need medical attention while visiting Mother, they go to the tribal clinic. When asked what kind of place Mother's house was, whether it was a "clean place, dirty place, nice place, not nice," Father responded, "It's an all-right place."

Uncle complained that the children returned with lice multiple times after visits with Mother. Mother testified that the children contracted lice from cousins during only one visit, and that she attempted to treat the lice before returning the children to Father.

Father testified that the children returned unbathed and wearing the underwear they had left in. He felt that Mother had neglected the children and that it was not in their best interest to "live like that." Mother testified that the children bathed at night when they visited her, and that she would braid I.C.L.'s hair. Mother stated that she provided clothes for the children, but that she returned the children to Father and his family with the clothes they arrived in so that Father's family would not complain, even though those clothes were often ill-fitting.

Father testified that at times when the children were sick and went to visit their Mother, he did not believe Mother was giving the children their medicine as directed, because "they would return the same way" or, at times, worse. Mother testified that when I.C.L. came to her sick at one point, Mother obtained a prescription for her but that Aunt picked up the medication even though I.C.L. was going to be staying with Mother.

Aunt and Uncle complained that Mother did not always return the children to school after visits. Mother admitted that there were times she took the children to school late because of the distance from the reservation where she lived. She also testified that if her children lived with her, she would enroll them in a nearer school.

Mother testified that she felt purposely excluded from the children's schooling and extra-curricular activities. School employees confirmed that Aunt and Uncle had registered the children at school and not included Mother as a point of contact for the children. The school principal confirmed that Father had given Aunt and Uncle the power of attorney to make decisions about the children's schooling and to act as primary parents at the school.

Father complained that J.O.L. had to be held back in the first grade due to having around thirty absences, and he blamed Mother. The elementary school custodian of records confirmed that J.O.L. had excessive absences and was retained in his grade, though the records did not show which parent was responsible for the absences. Mother testified that J.O.L. was not held back due to his absences, but rather because he was struggling with reading. The other parties attributed the children's academic struggles to Mother.

Father testified that I.C.L. moved forward in school, but he believed I.C.L. "wasn't as prepared as she should have been…[b]ecause she missed a couple of days; pretty much missed a couple of lessons that she shouldn't have." I.C.L.'s teacher confirmed that I.C.L. frequently missed school on Fridays and Mondays, which the teacher understood were Mother's possession days.

Mother confirmed that the children missed school sometimes for tribal visits, though she also testified that she followed proper procedure for taking the kids out of school for tribal leave, that they completed homework during their tribal visits, and that the children attended a tutorial program when they visited. Mother believed that the children's absences due to tribal visits were justified because the children had no participation with the Tribe when Father's family prevented the children from visiting Mother. Mother testified that she believed Father, Aunt, and Uncle were hiding her children from her, and she stated that they kept her from seeing the children for four months.

Father later called the Indian Child Welfare Services Director to testify that Mother has a reputation for untruthfulness. Nevertheless, Father confirmed that when Mother did not show up at the ordered time of 6:00 that his family would prevent Mother from seeing the children at all. Uncle stated they were advised by friends with similar custody orders that if Mother did not show up on time for a child custody exchange that she relinquished her rights to that visit. Father stated,

"I felt she had to follow the court order; if not, then what was the meaning of having a court order?" Father admitted to denying Mother's visits if she did not show up on time. He stated, "It's her loss."

Father testified that the children did not want to go with Mother; he stated that "you can totally tell." Aunt's Mother also testified that the children did not want to visit Mother. I.C.L.'s teacher and school aide confirmed that I.C.L. started crying on days when she was supposed to visit Mother. But the school aide testified that I.C.L. admitted to feeling nervous because she had not seen Mother in a while. This was after a period during which Mother claimed that Aunt and Uncle had prevented her from seeing I.C.L.

Mother testified that she became concerned that her children were confused about their parentage. She stated that I.C.L. asked how she could have been "in [Mother's] stomach and ended up in [Aunt]'s stomach." Father, Aunt, and Uncle confirmed that the children referred to Aunt and Uncle as Mom and Dad and that they referred to Father as Papi Cunko. Father also confirmed there were times when he would pick up the children "for Robert and Brenda" because he anticipated conflict between the parties. Father explained that Mother would not release the children to Aunt and Uncle.

When asked why she wanted to modify her custody agreement with Father, Mother responded, "He gave my children away without my knowledge." When Mother's attorney asked Father whether he was shocked when Aunt and Uncle filed a Motion to Intervene, Father answered "no."

2. Effect of Parental Presumption

At the time of trial, the 2016 order that named Mother as a joint conservator was "res adjudicata of the question of the child's best interest and of the custody." *See In re C.J.C.*, 603 S.W.3d 804, 816 (Tex. 2020) (quoting *Taylor v. Meek*, 276 S.W.2d 787, 790 (Tex. 1955)). In

reviewing the evidence for any change since 2016 that would have made Mother a danger to her children's physical health or emotional development, we note the most significant change to occur after parties agreed to the 2016 joint managing conservatorship order was that Father turned the children over to Aunt and Uncle without communicating this arrangement to Mother. Aunt and Uncle began dictating the terms of Mother's conservatorship and making decisions about the children's schooling over Mother's objection. This situation prompted Mother to file a petition for sole managing conservatorship at a time when she legally maintained a joint managing conservatorship over the children with Father. As stated in *In re C.J.C.*,

> A fit parent does not forgo the right to parent a child by seeking to exercise that right. A child does not become a 'creature of the State,' subject to the court's unfettered determination of the child's best interest, because a presumably fit parent invoked the judicial process to establish his or her conservatorship of the child.

See id. at 820 (citing *Parham v. J. R.*, 442 U.S. 584, 602 (1979)). In considering whether evidence established that Aunt and Uncle overcame Mother's parental presumption, we conclude that it did not. There was no evidence to establish physical abuse, severe neglect, abandonment, drug or alcohol abuse, or immoral behavior. *See Interest of D.D.L.*, No. 13-22-00062-CV, 2022 WL 3652496, at *4 (Tex. App.—Corpus Christi–Edinburg Aug. 25, 2022, no pet.) (mem. op.) (citing *Rolle v. Hardy*, 527 S.W.3d 405, 420 (Tex. App.—Houston [1st Dist.] 2017, no pet.)). Instead, the verdict reflected the jury's parental preference, in contravention of Texas's deeply embedded presumption that "'the best interest of the children' is served 'by awarding them' to a parent." *See In re C.J.C.*, 602 S.W.3d at 812. Accordingly, we sustain Mother's complaint on appeal.

We now turn to Mother's last issue.

STANDING

A. Issue

Mother argued that Aunt and Uncle did not overcome the parental presumption and therefore had no standing to intervene. Standing is a question of law that we review de novo. *In re Vogel*, 261 S.W.3d 917, 921 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (citing *Concerned Cmty. Involved Dev., Inc. v. City of Houston*, 209 S.W.3d 666, 670 (Tex. App.—Houston [14th Dist.] 2006, pet. denied)).

B. Law

Standing to intervene in a SAPCR is established by satisfying the provisions of the relevant Family Code section. *See* TEX. FAM. CODE ANN. § 102.003; *In re M.K.S.-V.*, 301 S.W.3d 460, 464 (Tex. App.—Dallas 2009, pet. denied); *see also In re Shifflet*, 462 S.W.3d 528, 536 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (citing *Guaranty Fed. Sav. Bank v. Horseshoe Operating Co.*, 793 S.W.2d 652, 657 (Tex. 1990)) ("A person can intervene if he could have brought the same action on his own."). The relevant Family Code section in this case was subsection 102.003(a)(9). *See* TEX. FAM. CODE ANN. § 102.003(a)(9); *In Interest of H.S.*, 550 S.W.3d 151, 156 (Tex. 2018).

Section 102.003(a)(9) provides standing for "a person, other than a foster parent, who has had actual care, control, and possession of the child for at least six months ending not more than 90 days preceding the date of the filing of the petition." TEX. FAM. CODE ANN. § 102.003(a)(9); *accord In Interest of H.S.*, 550 S.W.3d at 156. Under section 102.003(a)(9), "pleading a proper basis for standing is sufficient to show standing, unless a party challenges standing and submits evidence showing the non-existence of a fact necessary for standing." *See In re K.D.H.*, 426 S.W.3d 879, 884 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (citing TEX. FAM. CODE ANN. § 102.003(a)(9)); *accord Tex. Dep't of Parks and Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

C. Analysis

Although Mother challenged Aunt's and Uncle's standing under the parental presumption, she submitted no evidence to challenge Aunt's and Uncle's standing under subsection 102.003(a)(9). Under subsection 102.003(a)(9), the trial court found that Aunt and Uncle had "appropriately pled" and therefore established standing.

Establishing standing under subsection 102.003(a)(9) was, in fact, upheld as an independent basis to intervene in *In re C.J.C.*, despite the court's broader application of the parental presumption. *See In re C.J.C.*, 603 S.W.3d at 817. The court implied that its broader application of the parental presumption could affect "what a petitioner must show to obtain the relief she seeks," but not "who may file a suit affecting the parent-child relationship." *See id.* (quoting *In Interest of H.S.*, 550 S.W.3d at 163). Since the standing threshold in subsection (a)(9) was deemed constitutional and unchanged in *In re C.J.C.*, and since Mother submitted no evidence to rebut Aunt's and Uncle's jurisdictional pleading, we conclude that Aunt and Uncle established standing to intervene under the relevant Family Code section. *See* TEX. FAM. CODE ANN. § 102.003(a)(9); *In re K.D.H.*, 426 S.W.3d at 884.

CONCLUSION

In light of intervening authority on how a child's best interest should be analyzed in modification proceedings, we conclude that Mother is entitled to a fit-parent presumption as described in *In re C.J.C.*, 603 S.W.3d 804, 816 (Tex. 2020), and that evidence presented at trial was legally insufficient to overcome that presumption. We reverse the judgment of the trial court and remand the case for a new trial that incorporates the fit-parent presumption into the children's best interest analysis.

Patricia O. Alvarez, Justice