In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-18-00277-CV

IN THE INTEREST OF K.B.D.

On Appeal from the 1st District Court
Jasper County, Texas
Trial Cause No. 36495

MEMORANDUM OPINION

Mother (*Kerry*) [1] appeals from a judgment rendered in a suit affecting her parent-child relationship with her daughter K.B.D., whom we will call *Kate,*[2] and the man the trial court ruled is her father, whom we will call *John*. In five appellate issues, Kerry argues judgment should be reversed. In four issues, Kerry argues the trial court erred by (1) exercising subject-matter jurisdiction over the lawsuit; (2)

[1] We identify the parties to the suit and the minor who was the subject of the suit with aliases to protect their identities. *See* Tex. R. App. P. 9.9(a)(3).

[2] We use the name Kate to refer to Kerry's daughter, K.B.D.

rendering judgment on the agreement she reached with John just before the trial court announced its verdict on several of the disputed issues; (3) excluding evidence she offered in the trial, which she argues shows Kate has a presumed father, whom we will call *Bill*[3] when she was born; and (4) by rejecting her claim that John's petition alleging he is Kate's father is barred by the four-year statute of limitations she argues the court should have applied to John's paternity claim. In a fifth issue, Kate argues the trial court applied the law and Rules of Evidence during trial in a manner that violated her rights to equal protection, due process and to freely exercise her religion under the law.

We conclude Kerry has not shown the trial court erred based on the arguments she presents to support her appeal. We will affirm.

Background

Around nine years after Kate's birth, in June 2017, Kerry sued John for paternity. In her original petition, Kerry alleged Kate had no presumed, acknowledged, or adjudicated father and that John is Kate's father. John answered and asked the trial court to order Kerry to pay the attorney's fees he incurred in the suit.

[3] Also identified with an alias to protect the parties' identities. *Id*.

Kerry changed her mind about suing John in August 2017. That month, she moved to dismiss the suit, alleging she did not want to prosecute it. But before the trial court could decide her motion, John filed a formal counterclaim for paternity, and he asked the trial court to appoint him and to appoint Kerry as Kate's joint-managing conservators. He also sued Kerry for attorney's fees.

Based on John's request for temporary orders, the trial court conducted an evidentiary hearing in September 2017. During that hearing, John offered several exhibits into evidence, including (1) a copy of Kate's birth certificate,[4] (2) a copy of a search performed at his request by the Texas Department of State Health Services on the Department's paternity registry,[5] and (3) a DNA report, completed by the DNA Diagnostics Center from DNA testing the lab performed in August 2017 on biological specimens provided for testing by Kerry, John, and Kate.[6] This DNA test, the first of several discussed in court,

[4] Kate's birth certificate has a blank for the identity of her father.

[5] A certificate from the Department reporting the results from its search states the Department found "no notice of intent to claim paternity has been located concerning [Kate]."

[6] The DNA results are from specimens the parties provided to a lab for testing in August 2017. Under Texas law, DNA test results in SAPCRs create a rebuttable presumption based on the results of the test. *See* Tex. Fam. Code Ann. § 160.505(a) ("A man is rebuttably identified as the father of a child under this chapter if the genetic testing complies with this subchapter and the results disclose: (1) that the man has at least a 99 percent probability of paternity, using a prior probability of 0.5, as calculated by using the combined paternity index obtained in the testing; and (2) a combined paternity index of at least 100 to 1.").

showed a 99.99999% probability that John fathered Kate. In the temporary orders hearing, John testified that he and Kerry engaged in "unprotected sex" during a period consistent with his claim that he fathered Kate. John also explained that, in late October 2007, his relationship with Kerry ended. John stated that in 2007 he heard from another that Kerry was pregnant, he called her, but she did not return his calls. John explained that later, he heard another rumor that Kerry told others someone named *Phillip* fathered Kate.

According to John, one of Kerry's family members called him in February 2017 and asked if he would take a DNA test to determine whether he fathered Kate. He explained that Kerry's relative told him a DNA test on a specimen Phillip provided to a lab came back as showing that Phillip is not Kate's father. John provided a specimen so a test could be performed on his DNA. The lab that performed that test, DNA Diagnostics Center, issued a report in August 2017. The August 2017 report shows John is highly likely—over a 99 percent chance—to be Kate's father.

In September 2017, the trial court considered John's request for temporary orders. During the hearing, John relied in part on the results of the DNA test reported in the August 2017 test. Following the hearing, the trial court signed temporary orders, finding John is Kate's father and finding that

Kate did not have a presumed, adjudicated, or acknowledged father. In its order, the trial court found a parent-child relationship existed between Kate and John, appointed Kerry and John as Kate's temporary joint-managing conservators, and it gave Kerry the exclusive right to designate Kate's residence. Otherwise, the temporary orders track those used for standard possession orders, except the temporary order at issue phased in John's rights to possession gradually and not all at once. At Kerry's request, and based on her claim alleging the August 2017 DNA test was invalid, the trial court agreed to require John to provide a lab a second biological specimen for further testing on his DNA.[7]

In November 2017, the trial court conducted another hearing relevant to the issues Kerry has raised in her appeal. In the November 2017 hearing, the trial court signed an order requiring John to provide a lab with a biological

[7] Kerry challenged the trial court's September 2017 order in a petition for mandamus, filed in this Court, in September 2017. *See In re Dubois*, No. 09-17-00349-CV, 2017 WL 4195748, at *1 (Tex. App.—Beaumont Sept. 21, 2017, mand. denied) (mem. op.). We denied her petition and allowed the trial court's September order to stand. Additionally, when Kerry filed this appeal, she filed a motion claiming the court reporter did not include some of the evidence she offered into evidence in the trial. We ordered the trial court to conduct a hearing to resolve Kerry's claim alleging the reporter's record was incomplete. In March 2019, the trial court conducted the hearing we requested. After that hearing, the trial court signed an order that contains the court's findings. They reflect the trial court found Kerry failed to offer the exhibits during the trial that she had claimed in her appeal that the reporter failed to include in the record of the proceedings below.

sample for further DNA testing.[8] John did so. Several weeks later, the lab reported the results. That DNA test, reported in November 2017, reflects there is a 99.99956711% probability that John fathered Kate.

In December 2017, the trial court conducted another status hearing in the case. Following that hearing, the trial court amended its temporary orders and once again found John is Kate's father and that Kate "has no presumed, adjudicated or acknowledged father."

In March 2018, Kerry moved to dissolve the trial court's temporary orders. In her motion, Kerry challenged John's standing, asserting he lacked standing to sue for paternity because Kate, when she was born, had a presumed father, Bill. According to Kerry's motion, she and Bill married at common law before Kate was born. Arguing Texas law provides putative fathers must sue for paternity within four years of a child's birth if the child has a presumed father, Kerry argued John's suit for paternity was barred by the four-year statute of limitations applicable to his claims.

In March 2018, the trial court heard Kerry's motion to dissolve the trial court's temporary orders. The parties presented evidence during the March 2018

[8] For reasons not apparent from the record, it does not appear John provided a second specimen for DNA testing after the September 2017 hearing and before the hearing before the trial court in November 2017.

hearing. Following the hearing,[9] the trial court denied Kerry's claim alleging John lacked standing to sue Kerry for paternity. The trial court also found that Kerry's evidence failed to support her claim alleging that Kerry and Bill had an existing common law marriage when Kate was born.[10]

In June 2018, the trial court called the case to trial. Kerry represented herself in the trial. In opening statements, Kerry told the trial court she intended to show Kate had a presumed father at her birth, Bill. John argued the evidence included more than one DNA test, and they established he is Kate's father. John bore the burden of proving he fathered Kate since he was suing for paternity, the trial court allowed him to go first. First, he asked the trial court to admit all the exhibits that he had introduced in the prior evidentiary hearings the trial court had conducted in the case. The trial court agreed, and Kerry did not object. John then called four witnesses to testify in his case in chief, Kerry, John, *Jill* (his wife), and his attorney, who testified about the reasonableness

[9] The reporter's record shows Kerry did not tender any exhibits into evidence during the March 2018 hearing. The trial court's order reflects the trial court ruled on Kerry's motion to dissolve "[a]fter considering the motion and reviewing the record and evidence in support of the motion, if any[.]"

[10] Kerry also sought mandamus relief from this Court from the trial court's March 2018 order. This Court denied that petition seeking mandamus as well, allowing the trial court's March 2018 order to stand. *See In re Dubois*, No. 09-18-00112-CV, 2018 WL 1527775, at *1 (Tex. App.—Beaumont Mar. 29, 2018, mand. denied) (mem. op.).

of the attorney's fees John had incurred in the case.

Kerry testified she lives with her parents, her children, and with Bill, "when he's home." According to Kerry, Bill has a dual citizenship in the United States and Bulgaria. She last lived with Bill in the same house in December 2016, when he left the country. Kerry explained she was not employed and that she has not worked since June 2007. Kerry agreed Kate's birth certificate does not list a father, and that because of that, Kate goes by Kerry's surname. Kerry testified generally about her relationship with Kate, her concerns about whether John is a suitable father, and about Kate's needs.

John and his wife testified mostly about their relationship with Kate and what she needs. According to them, they can provide for Kate and give her a healthy environment sufficient for her needs. John's attorney testified that $13,650 represents a reasonable attorney's fee for his work.[11]

Kerry asked the trial court to admit four exhibits to support her claim that she and Bill were married at common law when Kate was born. John objected to them on various grounds, and the trial court sustained John's objections and did not admit the exhibits into evidence during the trial. The exhibits the trial court excluded consisted of the following:

[11] *See* Tex. Fam. Code Ann. § 160.363(c).

(1) a certificate accompanied by an affidavit, signed by Kerry's sister, which represents a document attached to the affidavit titled "Covenant of Marriage" is a copy of the original. The Covenant of Marriage represents Kerry and Bill married before a rabbi in August 2007.

(2) a photocopy of a handwritten note, which accompanied the affidavit signed by one of Kate's family members who Kate claimed was unavailable to testify in the trial. The affidavit states the photocopy of pages from a bible came from a family bible used to record marriages and births. The photocopy has one entry that shows Kerry married Bill on a date consistent with the one found in the Covenant of Marriage.

(3) Certified copies of two affidavits that Kerry filed in Jasper County's miscellaneous open records. One of these bears Kerry's signature, while the other is purportedly an affidavit signed by Bill. Both represent Kerry and Bill established a common law marriage in August 2007.

(4) Photocopies of two pages from a notary's book. The pages list the instruments and names of people who signed documents in the notary's presence. The entries on these pages purport to show the notary certified the authenticity of Kerry's and Bill's signatures on the affidavits acknowledging their alleged common law marriage.

After both parties rested, the trial court took a brief recess, and instructed the parties to determine whether there were any issues on which they could agree. Upon returning to court, John's attorney announced the parties had agreed on several matters in dispute. John's attorney then recited the terms of the agreements the parties reached with each other into the record.[12] After that, John's attorney

[12] *See* Tex. R. Civ. P. 11.

called John and then called Kerry to testify about their agreement. After Kerry testified, the trial court asked her "is this your agreement?" Kerry answered: "Yes." That said, Kerry also testified she feared the unknown and that no one had threatened to harm her or promised to give her anything to induce her to agree to the settlement John's attorney announced in open court.

Under the terms John outlined about the parties' agreement, the parties agreed to serve as Kate's joint-managing conservators with their duties shared equally. They agreed Kerry would have the right to establish Kate's residence, as long as her residence was within the Kirbyville Independent School District or a specific private school Kerry wanted to send Kate to in Kirbyville. The agreement gave John various rights consistent with the rights in an expanded standard possession order. It included agreed pick-up and drop-off locations. And John agreed he would pay Kerry child support. The parties also agreed to allow the trial court to enjoin from disparaging each other and from filing any requests to change Kate's name. John agreed to waive his claim for attorney's fees.

Before recessing, the trial court said:

> THE COURT: Here is what happens. [John's attorney] prepares the order. He will submit it to [the ad litem] and to you for your inspection. Now if -- if there's something in it that is not what was in our agreement, then I know that you will read it and you will give

your objections to me. I'm not worried about that. But ultimately, I will set it for an entry of judgment; and hopefully y'all will go back and forth. You will get the agreement signed by everyone, and then I will sign it. If you can't come to an agreement on that, then I will come back and I will have an entry of judgment to see if the judgment conforms to the agreement here today. Okay. Let me see if I have this correct.

At this time I will approve your agreement, I will award joint managing -- permanent -- well, it won't be temporary. It will be joint managing conservatorship.

[Kerry], you'll have the primary right to determine the residence; but it will be within the Kirbyville Independent School District. You will have expanded visitation we spoke about, first, third and fifth weekends from Thursday at school until Monday at school. I believe that order generally reads if there's a holiday on Monday then it's Tuesday.

. . .

THE COURT: Summer is different. There's a standard summer visitation, and what generally happens -- tell me if I'm still right [referring to John's attorney] -- sometime in May you will say the times that you want in the summer or you will send a letter that says the times you want in the summer. If you don't send a letter, you get the month of July.

. . .

THE COURT: So you will have the weekend of July 13th through 15th.

. . .

THE COURT: . . . [I]f there's a need for pick up and drop off, it will be at the Buna Valero or the [Brookshire Brothers in] Kirbyville[.]

. . .

THE COURT: . . . [Referring to John,] you're going to provide child support and health care. Anything unpaid will be split fifty-fifty[.]

. . .

The child will stay in the -- or will attend and reside in the [specified] Independent School District but she may be enrolled [there] in [a specified private school.]

. . .

THE COURT: [Referring to Kerry,] if you send her to [the specified private school], [Kerry] will be responsible for the tuition. There will be injunctions as to bad remarks about each or their families and no remarks about the litigation.

I'm not going to change her name unless she herself comes to court and asks me to.

. . .

KERRY: That is a standard possession order?

THE COURT: It's called expanded standard.

. . .

THE COURT: [John's attorney] will waive his [claim for] fees.

Three days later, Kerry moved to set aside the agreement and asked the trial court to grant a new trial. In her motion to set aside the settlement, Kerry argued she did not enter into the agreed settlement voluntarily because she made the agreement while under duress. Kerry also objected to the written

judgment John asked the trial court to sign, arguing she never agreed to settle her claim alleging John lacked standing to sue for paternity or that her claim that John had not fathered Kate.

The trial court reminded Kerry that she denied she had been induced or forced to agree to the settlement outlined in court on the last day of the trial. Explaining what she meant by her claim of duress, Kerry argued she agreed to the proposed settlement because she thought the trial court might rule against her and she might some lose some of her rights to Kate.

The trial court conducted an evidentiary hearing to resolve Kerry's claim seeking to avoid the settlement. In the hearing, the trial court noted the issue of parentage had been determined in other evidentiary proceedings conducted before the trial. The court also noted that Kerry had reserved her right to have the trial court decide whether John should have to pay retroactive child support. John argued that, because Kerry had not mentioned retroactive child support in the agreed settlement or brought them up in the trial, Kerry had waived her claim for retroactive child support as well as for reimbursement of certain expenses she claimed she incurred on Kate's behalf. Then, the trial court rejected Kerry's claims alleging her settlement with John was not a legally enforceable agreement. The trial court also refused Kerry's requests seeking to reopen the evidence and her

request for a new trial.

Standing

In her first issue, Kerry argues the trial court lacked subject-matter jurisdiction over John's claims because John failed to prove he had standing to file a SAPCR. Section 102.003(a)(8) of the Family Code addresses the standing requirements applicable to putative fathers. It creates standing when "a man allege[s] [he is] the father of a child filing in accordance with Chapter 160, subject to the limitations of that chapter, but not otherwise[.]"[13] In turn, section 160.602(3) of the Texas Family Code creates standing when a man alleges he is "the biological father of the child in question and seek[s] an adjudication that he is the father of that child."[14] As a man alleging that he is the putative biological father in proceedings under Chapter 160, John also had the right to join his SAPCR with his proceeding to adjudicate whether he is Kate's father.[15] We overrule Kerry's first issue.

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[13] *See* Tex. Fam. Code Ann. § 102.003(a)(8).

[14] *In re E.Y.H.*, 2019 WL 6755594, at *4 (Tex. App.—Beaumont Dec. 12, 2019, no pet.) (mem. op.) (citing *In re Sullivan*, 157 S.W.3d 911, 919 (Tex. App.—Houston [14th Dist.] 2005, orig. proceeding)); Tex. Fam. Code Ann. § 160.602(3).

[15] *See* Tex. Fam. Code Ann. § 160.610 ("[A] proceeding to adjudicate parentage may be joined with a proceeding for ... possession of or access to a child, child support, ... or another appropriate proceeding.").

Finality of Judgments

In her second issue, Kerry contends the trial court erred by rendering a written judgment based on a settlement agreement based on her argument she withdrew her consent to the agreement before the trial court memorialized the settlement in its written judgment. But Kerry's argument presumes the trial court rendered judgment on her claims when the court signed the decree. While Kerry concedes a court may render final judgments in open court based on oral settlements,[16] she suggests the trial court did not render judgment on the last day of trial because the settlement's terms did not include all the issues covered by the judgment the trial court signed. And she claims it was unclear to her that the trial court was rendering judgment based on the announcements the trial court made on the last day of the trial.

A trial court renders judgment when it officially announces its decision in open court.[17] After a court renders judgment, the parties cannot revoke the consent they gave to agree to a settlement without first obtaining permission from the trial court to do so.[18] Kerry argues the judgment was not final because the

[16] *See S & A Rest. Corp. v. Leal,* 892 S.W.2d 855, 857 (Tex. 1995).

[17] *Samples Exterminators v. Samples,* 640 S.W.2d 873, 875 (Tex. 1982) (The trial court rendered judgment by ordering the parties to sign and follow the agreement recited in open court.).

[18] *Becker v. Becker,* 997 S.W.2d 394, 395 (Tex. App.—Beaumont 1999, no pet.).

agreement she made occurred while she was under duress and includes matters not covered by the settlement, pointing to the trial court's holding that John is Kate's father. But the record shows the trial court found John is Kate's father based on the evidence from the earlier hearings, as it allowed Kerry to present her evidence about that issue in the trial. The trial court decided to resolve the dispute about whether John fathered Kate based on that evidence, and it ruled in John's favor on that claim even before the parties settled their remaining claims. When the trial court accepted the agreement, the trial court announced that it would enter judgment on the agreement regarding conservatorship, residence, choice of education, possession, transfer of possession, child support, medical support, insurance, the request for the permanent injunction, and attorney's fees. The statements the trial court made show the trial court intended to render a full, final, and complete judgment on the case on the last day of the trial. While the trial court advised the parties it would allow Kerry to compare the written judgment with the court's rulings before it signed the written judgment, and conduct a hearing to hear her objections should the final judgment, when reduced to writing, not conform to the court's oral pronouncement, it also advised the parties that it intended to make any proposed written judgment conform to the agreements the parties announced in open court. The statements the trial court made about how it intended to proceed fit

the statements the court made in the hearing it conducted on Kerry's motion seeking to set aside her agreement with John.

While the terms of the settlement agreement did not include Kerry's agreement to settle with John on her claim that he was not Kate's father or her claim that Kate had a presumed father, her agreement on those subjects was not required because the parties introduced evidence on them in prior hearings and at trial, which allowed the trial court to resolve those claims as well. For the most part, those issues are matters that the trial court had resolved when it issued earlier interlocutory orders, and the record shows those orders merged into the final judgment in the SAPCR.[19] We overrule Kerry's second issue.

Alleged Constitutional Violations

Kerry's third and fourth issues argue the trial violated her constitutional rights. In issue three, Kerry specifically argues the trial court violated her rights to equal protection by applying the Rules of Evidence and excluding her evidence showing Bill is Kate's presumed father. Kerry's arguments hinge on the four exhibits she offered during the trial, which the trial court excluded based on the hearsay and authentication objections John made to them at trial. We described these four exhibits when describing the background facts that led to

[19] *See Roccaforte v. Jefferson Cty.*, 341 S.W.3d 919, 924 (Tex. 2011) (Unless modified, interlocutory orders merge into the final judgment.).

Kerry's appeal.[20] In issue four, Kerry argues the trial court violated her rights to due process, freedom of speech, freedom of religion, and equal protection by applying certain provisions of the Family Code and Rules of Evidence to her evidence during the trial.[21]

Kerry's third and fourth issues raise constitutional claims that she failed to advance or obtain rulings on at trial. Generally, we cannot address claims an appellant seeks to raise for the first time in an appeal.[22] The general rule applies here, and we hold Kerry failed to preserve her third and fourth issues for our review.[23]

Limitations

In her fifth issue, Kerry argues the evidence in the trial established that Bill is Kate's presumed father and that John's claim of paternity is barred by limitations.[24] Kerry points to several documents in the record to support these

[20] In her appeal, Kerry has not argued the trial court violated the Rules of Evidence by excluding her exhibits. Instead, she argues the Rules of Evidence are unconstitutional given the way they were applied in the trial.

[21] *See generally* Tex. Fam. Code Ann. §§ 2.001 (Marriage License); 2.202 (Persons Authorized to Conduct Ceremony); 2.404 (Recording of Certificate or Declaration of Informal Marriage).

[22] *In the Interest of K.A.F.*, 160 S.W.3d 923, 928 (Tex. 2005); *Tex. Dep't of Protective & Regulatory Servs. v. Sherry*, 46 S.W.3d 857, 861 (Tex. 2001).

[23] *See* Tex. R. App. P. 33.1(a)(1).

[24] *See* Tex. Fam. Code Ann. § 160.607(a) (providing a four-year period of

arguments, but the trial court ruled these documents were inadmissible during the trial.[25] While Kerry argues the court violated her constitutional rights by applying provisions in the Family Code and the Rules of Evidence to her in the trial, she has not claimed the documents were properly authenticated or complied with an exception to the Rule of Evidence prohibiting the admission of hearsay. We have also explained how Kerry failed to preserve issues three and four complaining the trial court violated her constitutional rights for our review. Simply put, Kerry has not challenged the trial court's rulings excluding her exhibits because the rulings violated the Rules of Evidence or the Family Code. Moreover, as the finder of fact, the trial court did not have to believe Kerry that she and Bill established a common law marriage based on her testimony that "[b]y August 25th[,] I was married to someone else" or her testimony that she resides with her "husband [Bill] when he's home."

A party asserting a limitations defense bears the burden to plead, prove, and secure the findings required to sustain the defense.[26] In a bench trial, the trial court acts as the factfinder, which allows the trial court to act as the sole judge

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limitations that begins from the child's birth for a suit filed by an individual seeking to adjudicate a claim of parentage to "a child having a presumed father").

[25] *See* Tex. R. Evid. 802 (The Rule Against Hearsay), 901 (Authenticating or Identifying Evidence), 1002 (Requirement of the Original), 1005 (Copies of Public Records to Prove Content) and 1008 (providing that "[o]ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a [public document]").

[26] *Woods v. William M. Mercer, Inc.*, 769 S.W.2d 515, 517 (Tex. 1988).

of the credibility of any witnesses.[27] The record before us contains multiple DNA tests. The DNA tests before us all show that Kate is John's biological child. The trial court could also find that, based on the evidence admitted in the trial, Kerry presented no reliable evidence to show that she and Bill had an existing common law marriage when Kate was born.

In a factual sufficiency review, the reviewing court examines the entire record relevant to the findings that the appellant is challenging in the appeal. Our task in reviewing an appeal is to determine whether the trial court's findings that are being challenged were unreasonable.[28] And we may not overturn the trial court unless the finding being challenged is so contrary to the overwhelming weight of the evidence that it is clearly wrong and unjust.[29]

Kerry suggests there is evidence showing that she and Bill entered into a common law marriage before Kate's birth. But the question we must decide is whether the evidence the trial court considered shows the finding to the contrary is clearly wrong and unjust.[30] Moreover, Kerry bore the burden to show that Kate had a presumed father to support the elements she needed to

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[27] *See City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005).

[28] *See Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986).

[29] *See Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986); *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 242 (Tex. 2001).

[30] *See Woods*, 769 S.W.2d at 517.

establish on her four-year statute of limitations defense.[31] Kerry needed to produce properly authenticated documents to support that claim as well as documents that on their face show they complied with the requirements that apply to informal marriages. Or, she could have produced overwhelming, credible evidence showing she and Bill agreed to be married, lived together in Texas as husband and wife, and represented to others they were married.[32] We conclude the record shows Kerry failed to meet the requirements needed to prove that an error occurred.

Kerry has not argued in this appeal that the trial court abused its discretion by excluding her exhibits at trial under the Rules of Evidence or the Family Code. We simply cannot make these arguments for her.[33] Kerry has also challenged none of the trial court's specific findings of fact as relevant to its rulings finding her exhibits to be hearsay and finding she failed to properly authenticate them. And under a sufficiency review, the trial court's findings are binding unless the record contains admissible evidence establishing a common law marriage existed between Bill and Kerry as a matter of law or

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[31] *See* Tex. Fam. Code Ann. § 160.607(a).

[32] *See id*. § 2.401(a).

[33] Tex. R. App. P. 38.1(i) (requiring the appellant's brief to "contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record").

shows no admissible evidence is in the record to support the trial court's finding that Kate had no presumed father.[34]

The record before us does not show the trial court's findings are wrong. For that reason, we overrule Kerry's fifth issue.

Conclusion

We conclude Kerry has failed to show the trial court's judgment should be reversed. The judgment is therefore

AFFIRMED.

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HOLLIS HORTON
Justice

Submitted on April 3, 2020
Opinion Delivered July 30, 2020
Before McKeithen, C.J., Kreger and Horton, JJ.

[34] *McGalliard v. Kuhlmann*, 722 S.W.2d 694, 696 (Tex. 1986); *Teate v. CBL/Parkdale Mall, L.P.*, 262 S.W.3d 486, 490 (Tex. App.—Beaumont 2008, no pet.).