



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-16-00285-CV

IN THE INTEREST OF K.B.L., A CHILD

On Appeal from the 108th District Court
Potter County, Texas
Trial Court No. 80,184-E, Honorable Douglas Woodburn, Presiding

October 24, 2017

MEMORANDUM OPINION

Before QUINN, C.J., and CAMPBELL and HATCH,¹ JJ.

Appellant, A.L., appeals the trial court's Order in Suit to Modify Parent-Child Relationship that appointed K.B. sole managing conservator of K.B.L. while appointing A.L. as possessory conservator with supervised visitation. A.L. contends that the evidence fails to establish a material and substantial change in circumstances and fails to establish the granted modification is in the child's best interest. We disagree with A.L. and will affirm the trial court's judgment.

¹ Honorable Les Hatch, Judge, 237th District Court, sitting by assignment.

Factual and Procedural Background

After the trial court entered an Order in Suit to Modify Parent-Child Relationship on March 10, 2014, K.B. filed his Petition to Modify Parent-Child Relationship on May 15, 2014. In his petition, K.B. sought to be named sole managing conservator of K.B.L. and sought to deny A.L. access to the child. His petition claims that A.L. had exhibited a history or pattern of neglect of K.B.L. that constituted a material and substantial change of circumstances since the court rendered the prior modification order. K.B. also requested the trial court enter temporary orders regarding access to and possession of K.B.L. while the modification was pending.

The trial court entered its temporary order on June 18, 2014. By it, K.B. was named joint managing conservator with the right to designate K.B.L.'s residence. A.L. was named joint managing conservator with the right to exercise one hour of supervised visitation each week.

On April 27, 2016, the trial court held a final hearing on the modification petition. At this hearing, a Sergeant with the Amarillo Police Department testified that A.L. had taken K.B.L. to the hospital on two occasions where A.L. alleged that K.B. had sexually assaulted K.B.L. On both occasions, the Sexual Assault Nurse Examination was negative for sexual abuse. The Sergeant also testified that he investigated two other incidents where he believed that A.L. was attempting to frame K.B. for crimes so that K.B. would be arrested. Both of these incidents occurred after the March 10, 2014 prior order.

K.B.L.'s therapist testified that K.B.L. exhibits no signs of a child that has been sexually abused. She also testified that K.B.L. has stated to her that A.L. told her to tell people that her daddy had hurt her. Such coaching by A.L. could affect K.B.L. for the rest of her life with regard to trust issues and having healthy relationships, and could develop into depressive or post-traumatic stress symptoms, according to K.B.L.'s therapist. The therapist believes A.L.'s continued supervised one hour a week visitation is in K.B.L.'s best interest.

A.L. denied coaching K.B.L. to make allegations against K.B. and believes the limited supervised visitation under the temporary order limits her ability to provide companionship, care, and management of K.B.L. She discussed how limited K.B.L.'s contact is with all her maternal relatives and that she should be K.B.L.'s primary conservator.

K.B.L.'s elementary school principal testified that K.B.L. was doing very well in school following the temporary order giving K.B. the right to establish K.B.L.'s residence.

At the close of the hearing, the trial court rendered judgment appointing K.B. as sole managing conservator of K.B.L. and allowing A.L. one hour of supervised visitation with K.B.L. each week. A.L. filed a motion for new trial, which was expressly denied. A.L. then filed notice of appeal.

By her appeal, A.L. presents two issues. By her first issue, A.L. challenges the trial court's modification order because insufficient evidence was presented to establish that there had been a material and substantial change of the parties' or K.B.L.'s

circumstances. By her second issue, A.L. contends that the evidence is insufficient to establish that the modification order is in K.B.L.'s best interests.

Law and Analysis

A trial court may order a modification of a prior order when modification would be in the best interest of the child and the circumstances of the child or conservator have materially and substantially changed since rendition of the prior order. See TEX. FAM. CODE ANN. § 156.101(a) (West 2014). A.L. challenges the sufficiency of the evidence to support each of these conditions. The best interest of the child shall always be the primary consideration of the court when considering issues of conservatorship. See § 153.002 (West 2014).

The Court reviews a trial court's ruling on a motion to modify under an abuse of discretion standard of review. *In re M.S.F.*, 383 S.W.3d 712, 715 (Tex. App.—Amarillo 2009, no pet.). Absent a clear abuse of discretion, the trial court's order modifying the prior order will not be disturbed on appeal. *Id.*; *Zeifman v. Michels*, 212 S.W.3d 582, 587 (Tex. App.—Austin 2006, pet. denied)(citing *Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex. 1982)). This is so because the trial court is in the best position to observe the witnesses and evaluate the witnesses' demeanor and credibility. *In re M.S.F.*, 383 S.W.3d at 716.

A trial court abuses its discretion when it acts in an arbitrary and unreasonable manner without any regard to guiding rules or principles. *Id.* (citing *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985)). There is generally, however, no abuse of discretion when there is some evidence to support the trial court's

decision; thus, a trial court abuses its discretion when it could reasonably have reached only one decision and fails to do so. *Id.* (citing *Walker v. Packer*, 827 S.W.2d 833, 839-40 (Tex. 1992)). When applied to an abuse of discretion standard, traditional challenges to the legal and factual sufficiency of the evidence are not considered independent grounds of error, but rather, are relevant factors in assessing whether the trial court abused its discretion. *Id.* (citing *Zeifman*, 212 S.W.3d at 587).

A.L.'s first issue contends that the evidence failed to establish a material and substantial change in circumstances since the trial court's entry of the June 18, 2014 temporary order. However, under the Texas Family Code, the evidence must establish that there has been a material and substantial change in circumstances in the period between the entry of the prior final order, March 10, 2014, and the May 15, 2014 filing of the petition to modify. See TEX. FAM. CODE ANN. § 156.101(a)(1); *Gibbs v. Greenwood*, 651 S.W.2d 377, 379 (Tex. App.—Austin 1983, no writ) (citing *Bukovich v. Bukovich*, 399 S.W.2d 528, 529 (Tex. 1966)). Consequently, A.L.'s brief, which addresses the time period from the temporary order of June 18, 2014 and the final hearing of April 27, 2016, wholly fails to address whether there was a material and substantial change of circumstance during the relevant period under the statute. As such, we must overrule A.L.'s first issue.

A.L.'s second issue contends that the evidence fails to establish that the modification order entered by the trial court is in K.B.L.'s best interest. The child's best interest is always the primary consideration in determining issues of conservatorship. See TEX. FAM. CODE ANN. § 153.002. To determine whether a modification is in the child's best interest, courts are to consider a number of factors, including the emotional

and physical danger to the child now and in the future, the parental abilities of the individuals seeking custody, and the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one. *See Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976). In the present case, evidence was presented that A.L. caused K.B.L. to undergo two separate SANE exams in an eight month period and that the results were negative on both occasions. K.B.L.'s therapist testified that K.B.L. was being emotionally damaged by A.L. coaching the child to say that her father was sexually assaulting her, and that K.B.L. is at too young an age to have unsupervised visitation with A.L. Testimony was presented that A.L. took steps toward attempting to frame K.B. in order that he might be arrested. Furthermore, there was testimony presented that K.B.L. was doing well since the trial court's temporary order requiring A.L.'s visitation to be supervised. When all of the evidence is considered, there is sufficient evidence to support our conclusion that the trial court did not abuse its discretion by its May 13, 2016 modification order. Consequently, we overrule A.L.'s second issue.

Conclusion

Having overruled A.L.'s issues, we affirm the trial court's modification order.

Les Hatch
Justice