In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-21-00061-CV
No. 07-21-00062-CV

IN THE INTEREST OF L.J.L.C., A CHILD;

GLORIA RAIN DETTON, APPELLANT

V.

QUANAH ARTURO CEDILLO, APPELLEE

On Appeal from the 320th District Court
Potter County, Texas
Trial Court Nos. 90,726-D-FM, 94,718-D-FM, Honorable Pamela C. Sirmon, Presiding

August 11, 2022

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

Appellant, Gloria Rain Detton, appeals from two orders issued after a bench trial in consolidated suits seeking modification of the parent-child relationship and a Chapter 7A protective order under the Code of Criminal Procedure. Detton, the mother of the child the subject of the suits, contends that the trial court erred by denying her application for a protective order in favor of L.J.L.C. and against appellee, Quanah Arturo Cedillo, the

father of L.J.L.C.[1] Then, in her appeal of the modification order, Detton raises six issues. In her first two issues, Detton asserts the trial court erred by failing to file additional findings of fact and conclusions of law and refusing to find there was a history or pattern of abuse. In her next four issues, Detton asserts the trial court abused its discretion in appointing Cedillo as a possessory conservator, by issuing a possession order based solely on Cedillo's agreement, by failing to issue an order of nondisclosure of identifying information, and in failing to grant a name change for L.J.L.C. Cedillo did not file a brief in these appeals. We affirm the trial court's modification order and reverse the denial of the protective order and remand that issue to the trial court.

BACKGROUND

Detton and Cedillo are the parents of L.J.L.C., who was born in March of 2013. On September 29, 2017, the parties and the Office of Attorney General entered into a child support review order. In this order, the parents were named joint managing conservators, Detton was given the right to designate L.J.L.C.'s residence, Cedillo was ordered to pay child support and cash medical support, and the parents were awarded alternating weeks of possession of L.J.L.C.

On February 2, 2018, L.J.L.C. made an outcry of sexual abuse by Cedillo. As a result, a criminal complaint was filed alleging that Cedillo sexually assaulted L.J.L.C. on January 24, 2018. On April 4, 2018, Cedillo bonded out of jail on conditions that included no contact with L.J.L.C. or any child under seventeen years of age. Cedillo was later

[1] Because the parties' child is under eighteen, we will refer to her by her initials to protect her privacy.

indicted for aggravated sexual assault of a child and indecency with a child by sexual contact.[2]

On August 28, 2020, Detton filed a petition to modify the parent-child relationship and sought a Chapter 7A protective order. Detton's application for a protective order requested protection for herself, L.J.L.C., and two other children in Detton's household. The application alleged that Cedillo "committed acts that were intended by [Cedillo] to result in physical harm, bodily injury, assault, or sexual assault or were threats that reasonably placed [a]pplicant or a protected child in fear of imminent physical harm, bodily injury, assault, or sexual assault" and the acts of abuse that constitute family violence include "sexual conduct that was harmful to the mental, emotional, or physical welfare of a protected child under [s]ection 22.021 and [s]ection 21.11(a)(1) of the Texas Penal Code." The application requested permanent protective orders prohibiting Cedillo from communicating with or directing conduct toward a protected person, and prohibiting him from going near a residence, school, and other specified locations of a protected person. The petition for modification sought modification of child support, conservatorship, and possession and access; a name change; and a request for permanent injunction.

The hearing on the application for protective order and the petition to modify were held on November 2, 2020. Prior to the court receiving any evidence, Cedillo's counsel announced his agreement to the following relief requested by Detton's petition to modify: removal as a joint managing conservator and appointment of Detton as sole managing

[2] Those indictments were not admitted into evidence or included in the record.

conservator; no contact or no visitation with L.J.L.C.; and permanent injunctive language.[3] No agreement was reached on the protective order, nondisclosure of contact information, or surname change for the child.

Trial testimony showed that approximately a month before L.J.L.C.'s fifth birthday, Detton attempted to wake L.J.L.C. for preschool by splashing "a little bit of water on her." L.J.L.C. responded by saying, "Don't pee on me; don't pee on me." Detton told her it was time to get up. As L.J.L.C. was sitting on her bed, she told Detton, "Sometimes my daddy makes me lick his butt to make the lotion come out." L.J.L.C. further stated, "[S]ometimes he does it on [my] hands and sometimes he does it on [my] feet." Detton reported the child's statements to law enforcement and L.J.L.C. was interviewed at the Bridge Children's Advocacy Center. The Bridge referred L.J.L.C. to counseling at Jennings & Associates Counseling Services.[4] The Department of Family and Protective Services conducted an investigation and instituted a safety plan that prohibited Cedillo from having contact with L.J.L.C. According to Detton, after L.J.L.C. was interviewed, she was "very aggressive" and did not want to be around people. When L.J.L.C. started kindergarten, Detton was called several times because L.J.L.C. was behaving inappropriately. L.J.L.C. has experienced bad dreams of "her dad and what had happened."

L.J.L.C. made additional statements regarding Cedillo's sexual abuse to Bobbi Britto. Britto, a licensed professional counselor, testified as an expert in the field of

[3] During trial, the parties entered into an agreement concerning Cedillo's child support and medical support arrearages and a payment plan on those arrearages.

[4] L.J.L.C.'s first counselor was Amanda Durst. In April of 2018, Bobbi Britto became L.J.L.C.'s counselor after Durst relocated outside the area.

cognitive behavioral therapy for trauma victims. Over the course of her therapy, L.J.L.C. disclosed to Britto that she "was not safe at her dad's, her daddy. She said he was bad and now he's in jail." L.J.L.C. told Britto, "[Cedillo] makes me lick his pee pee. He does it all the time. He locks the door. I tell him I don't want to, but he says if I don't, I can't do whatever I want. I was licking his pee pee, and it was disgusting." Britto testified that L.J.L.C. stated that Cedillo warned her not to tell anyone about what he was doing to her, even threatening to kill L.J.L.C.'s dogs if she told. L.J.L.C. did not quantify how often the sexual abuse happened, "but she indicated it was pretty regular." According to Britto, L.J.L.C. has been consistent in this outcry throughout her therapy.

Britto further testified that L.J.L.C. experienced behaviors associated with child sexual abuse victims: L.J.L.C. was aggressive at school; she exhibited separation anxiety and did not want to leave her mother's care or stay with anyone else; she did not want to go to school; she had been inappropriately exploring and touching other children in her family; and she frequently talked about having pictures in her head from what "Daddy did." According to Britto, L.J.L.C. has experienced a range of feelings over the past couple of years: scared, angry, mad, disgusted, and sad. Britto diagnosed L.J.L.C. with post-traumatic stress disorder stemming from her allegations of sexual abuse. However, L.J.L.C. has shown "a lot of improvement in the last year."

On cross-examination, Britto agreed with Cedillo's counsel that there are instances in which a parent coaches a child to make false outcries, and "there [are] no hard-and-fast procedures to objectively determine whether or not a child has been abused." She answered "possibly" to a question inquiring if there is a chance that L.J.L.C. could have a

false memory, agreed that "sometimes" children exaggerate, but maintained she had not seen any "red flags" that L.J.L.C. had been coached.

In his testimony,[5] Cedillo expressed his concern about the hearing proceeding before the resolution of the criminal charges, stating, "This is my life here." Cedillo pleaded not guilty to the charges and has been waiting for his day in court for almost three years. During that time, Cedillo completed counseling as requested during the CPS investigation. He has not visited with L.J.L.C. or had any contact with her since the end of January of 2018. Cedillo testified a protective order is not necessary because "for three years now, I've been on bond which already prevents me from being anywhere near [Detton] or [L.J.L.C.] . . . [a]nd I've followed it to the T, and I plan on continuing doing that." Cedillo testified that he has not been accused of violating any of the conditions of his bond, and he has never been convicted of any assaultive crimes. Cedillo denied that he posed a risk to L.J.L.C.'s or Detton's safety. He agreed that while the criminal case is pending, Detton be awarded sole managing conservatorship of L.J.L.C. and that he would not exercise any visitation or make any contact with her.

After the agreed order in September of 2017, Cedillo testified that he "was speaking [his] mind more often" because "[Detton] was not able to keep [L.J.L.C.]" from him. This created conflict between him and Detton. In mid-January of 2018, Cedillo claimed L.J.L.C. as an exemption when he filed his tax return and it caused an argument between him and Detton. Within days, the sexual abuse allegations were made. Cedillo

[5]At the outset of his testimony, Cedillo asserted his Fifth Amendment rights concerning any facts relating to his pending criminal charges.

confirmed there were no civil actions filed against him by Detton after the allegations were made until the present cases were filed on August 28, 2020.

The trial court granted the modification in part and denied the protective order.[6] The trial court issued findings of fact and conclusions of law. Detton timely filed her appeal in both causes.

PROTECTIVE ORDER

We first consider the trial court's denial of the protective order. Detton challenges the trial court's finding that "there was not reasonable grounds to believe [L.J.L.C.] was the victim of sexual assault or abuse, [or] indecent assault" as being against the great weight and preponderance of the evidence. This is a challenge to the factual sufficiency of the evidence supporting the trial court's denial of the protective order requested by Detton. We can review a trial court's decision to grant or deny a Chapter 7A protective order for legal and factual sufficiency of the evidence. *State ex rel. P.B. v. V.T.,* 575 S.W.3d 921, 924 (Tex. App.—Austin 2019, no pet.); *Webb v. Schlagal,* 530 S.W.3d 793, 802 (Tex. App.—Eastland 2017, pet. denied).

In reviewing a factual sufficiency challenge,[7] we examine all the evidence and set aside the finding only if the evidence is so weak or the finding so against the great weight and preponderance of the evidence that it is clearly wrong and unjust. *Zieben v. Platt*, 786 S.W.2d 797, 799 (Tex. App.—Houston [14th Dist.] 1990, no writ); *see also Cain v.*

[6] The order signed by the trial court on December 30, 2020, denied the application for a protective order under Title 4 of the Texas Family Code and Chapter 7A of the Code of Criminal Procedure.

[7] Appellant challenges only the factual sufficiency of the evidence supporting the denial of the Chapter 7A protective order.

Bain, 709 S.W.2d 175, 176 (Tex. 1986) (per curiam). When conducting a factual sufficiency review, we must not substitute our judgment for that of the factfinder, who "is the sole judge of the credibility of witnesses and the weight to be given their testimony." *Golden Eagle Archery, Inc. v. Jackson,* 116 S.W.3d 757, 761 (Tex. 2003).

Applicable Law

At the time of trial, Chapter 7A of the Code of Criminal Procedure authorized an applicant to obtain a protective order on behalf of a victim of certain crimes, including aggravated sexual assault and indecency with a child, against an alleged offender who committed those crimes. TEX. CODE CRIM. PROC. ANN. art. 7A.01(a)(1).[8] If, after a hearing, the trial court finds that "there are reasonable grounds to believe that the applicant is the victim of sexual assault or abuse, indecent assault, stalking, or trafficking," then the court "shall issue" a protective order. *Id.* art. 7A.03(a), (b). "No additional showings beyond status as a crime victim are required to obtain the order." *R.M. v. Swearingen,* 510 S.W.3d 630, 633 (Tex. App.—El Paso 2016, no pet.); *see also Lopez v. Occhiogrosso,* No. 14-17-00324-CV, 2019 Tex. App. LEXIS 534, at *8 (Tex. App.—Houston [14th Dist.] Jan. 29, 2019, no pet.) (mem. op.) (no requirement under Chapter 7A that a criminal conviction be obtained before a protective order may be entered). The protective order may last up to the duration of the lives of the offender and the victim or for any shorter period stated in the order. TEX. CODE CRIM. PROC. ANN. art. 7A.07(a).

[8] Chapter 7A was repealed effective January 1, 2021, and its provisions were recodified in Chapter 7B of the Code of Criminal Procedure. *See* Act of June 7, 2019, 86th Leg., R.S., ch. 469, § 3.01, 2019 Tex. Gen. Laws 1065,1151 (repealed 2019); *see also* TEX. CODE CRIM. PROC. ANN. art. 7B.001(a)(1) (authorizing issuance of protective order on behalf of victim of sexual assault crime). Citations to Chapter 7A in this opinion refer to the provisions in effect during the trial court proceedings.

As relevant here, a person commits the offense of aggravated sexual assault of a child younger than fourteen years of age if the person intentionally or knowingly causes the penetration of the mouth of a child by the sexual organ of the actor. TEX. PENAL CODE ANN. § 22.021(a). A person commits indecency with a child by sexual contact when the child is younger than seventeen and the person, with intent to arouse or gratify the sexual desire of any person, causes the child to touch any part of the genitals of a person. TEX. PENAL CODE ANN. § 21.11(a)(1), (c).

Analysis

Here, Detton had the burden to prove reasonable grounds to believe L.J.L.C. was the victim of sexual assault or abuse, or indecent assault. *See* TEX. CODE CRIM. PROC. ANN. art. 7A.01; *Netaji v. Roberts,* No. 03-19-00840-CV, 2021 Tex. App. LEXIS 9224, at *11–12 (Tex. App.—Austin Nov. 12, 2021, no pet.) (mem. op.). "Reasonable grounds to believe" is not defined by the Code of Criminal Procedure. We will construe "reasonable grounds to believe" in accordance with its usual meaning. In doing so, we conclude that the trial court erred in finding "there was not reasonable grounds to believe [L.J.L.C.] was the victim of sexual assault or abuse [or] indecent assault . . . ."

In this case, the undisputed evidence showed that L.J.L.C. made statements to Detton and a counselor indicating that Cedillo sexually abused her. Although L.J.L.C. did not testify at the hearing, Detton testified to an unsolicited statement by L.J.L.C. that "sometimes my daddy makes me lick his butt to make the lotion come out." The child's counselor, Britto, testified that L.J.L.C. reported, "[Cedillo] makes me lick his pee pee." Cedillo's counsel did not object to the testimony relating the child's statements, which

indicated that Cedillo's "butt" and penis contacted the child's tongue and "more than generally insinuated that sexual abuse occurred." *See Woody v. State,* Nos. 07-16-00312-CR, 07-16-00313-CR, 07-16-00314-CR, 2018 Tex. App. LEXIS 5577, at *7 (Tex. App.—Amarillo 2018, no pet.) (mem. op.). Unobjected-to hearsay is, as a matter of law, probative evidence. *See* TEX. R. EVID. 802 ("Inadmissible hearsay admitted without objection may not be denied probative value merely because it is hearsay."); *In re R.H.W. III,* 542 S.W.3d 724, 734 (Tex. App.—Houston [14th Dist.] 2018, no pet.). A trial court may consider unobjected to hearsay no differently than other testimony that the factfinder may either accept or reject. *Brown v. State,* No. 01-04-00642-CR, 2005 Tex. App. LEXIS 3501, at *6 (Tex. App.—Houston [1st Dist.] May 5, 2005, no pet.) (mem. op.). It is well-established that a child victim's outcry statement alone may be sufficient to support a conviction for aggravated sexual assault or indecency with a child. *Rodriguez v. State*, 819 S.W.2d 871, 873 (Tex. Crim. App. 1991) (en banc). There is no requirement that properly admitted outcry testimony be corroborated or substantiated by the victim or independent evidence. *Id.* at 874. The acts described by L.J.L.C. constitute sexual abuse. *See Williamson v. State*, No. 01-19-00136-CR, 2020 Tex. App. LEXIS 5202, at *6 & n.3 (Tex. App.—Houston [1st Dist.] July 14, 2020, pet. ref'd) (mem. op., not designated for publication) (forcing victim to touch appellant's penis is indecency with a child through sexual contact; forcing victim to lick penis is aggravated sexual assault).

The testimonies of Detton and Britto were uncontroverted at the hearing, and Cedillo did not present any evidence that L.J.L.C.'s allegations were false, coached, or

exaggerated.[9] L.J.L.C. has been in therapy for more than two years and Britto testified that L.J.L.C. has been consistent in her description of the sexual abuse. Britto further testified that L.J.L.C. experienced behaviors consistent with child sexual assault victims, including aggression, separation anxiety, and sexually acting out with other children. Britto saw no indication that L.J.L.C. had been coached. Britto diagnosed L.J.L.C. with post-traumatic stress disorder stemming from allegations of sexual abuse.

While the trial court sitting as factfinder generally may disbelieve a witness's testimony in whole or part, it cannot simply disregard the uncontradicted testimony of an interested witness that is clear, positive, and direct, otherwise credible, free from contradictions and inconsistencies, and which readily could have been controverted. *See City of Keller v. Wilson*, 168 S.W.3d 802, 820 (Tex. 2005). The fact that L.J.L.C. made statements describing Cedillo's sexual abuse to two different people, the consistency of her statements during her ongoing therapy, and her reported behaviors after the allegations, establish "reasonable grounds to believe" that L.J.L.C. was the victim of sexual assault or abuse, or indecent assault, which supports issuance of a protective order under Chapter 7A. *See Pool v. Ford Motor Co.,* 715 S.W.2d 629, 635 (Tex. 1986) (when reversing on insufficiency grounds, court of appeals should detail evidence relevant to issue in consideration and clearly state why the finding is so against the great weight and preponderance of the evidence as to be manifestly unjust).

We have thoroughly reviewed the record and have been unable to identify any evidence to support the trial court's finding that "there was not reasonable grounds to

[9] Cedillo asserted his Fifth Amendment right not to testify about the specific allegations of sexual assault or abuse.

believe [L.J.L.C.] was the victim of sexual assault or abuse [or] indecent assault." Cedillo did not testify regarding L.J.L.C.'s allegations and he did not offer any evidence refuting the testimony of Detton and Britto. After examining the entire record, considering both the evidence in favor of and contrary to the trial court's finding that there were no reasonable grounds to believe that L.J.L.C. was the victim of sexual assault or abuse, we conclude that this finding is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *See Cain*, 709 S.W.2d at 176. We sustain Detton's sole issue.

Detton's brief prays that we "reverse the trial court's ruling and issue a protective order for the protection of L.J.L.C. to last for the lifetime of Cedillo as pled." However, the remedy for a factual sufficiency challenge is to remand the case for a new trial. *See State v. J.D.*, No. 01-20-00316-CV, 2022 Tex. App. LEXIS 807, at *36 (Tex. App.—Houston [1st Dist.] Feb. 3, 2022, no pet.) (remanding for new trial when evidence in Chapter 7A protective order case found factually insufficient). Consequently, we remand trial court cause number 94,718-D-FM for a new trial.[10]

SUIT TO MODIFY PARENT-CHILD RELATIONSHIP

We now turn to Detton's appeal from the trial court's order in cause number 90,726-D-FM, the suit to modify the parent-child relationship.

[10] Nothing in this opinion should be construed to opine on whether the evidence in this case would be sufficient to prove beyond a reasonable doubt that Cedillo sexually assaulted or abused L.J.L.C. as required to convict him of a criminal offense.

Applicable Law

A trial court has broad discretion to decide the best interest of a child in family law matters such as custody, visitation, and possession. Accordingly, we review a decision to modify conservatorship for an abuse of discretion. *Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex. 1982). A trial court may modify a conservatorship order if modification would be in the best interest of the child, and the circumstances of the child, a conservator, or another party affected by the order have materially and substantially changed since the date of the rendition of the prior order. TEX. FAM. CODE ANN. § 156.101(a)(1)(A).[11] We will not disturb a trial court's decision in a modification case unless the complaining party shows a clear abuse of discretion, meaning the trial court acted in an arbitrary and unreasonable manner or without reference to guiding principles. *In re A.M.,* 604 S.W.3d 192, 196–97 (Tex. App.—Amarillo 2020, pet. denied). In our review of a modification order under an abuse of discretion standard, legal and factual sufficiency challenges to the evidence are not independent grounds of error but are relevant factors in assessing whether the trial court abused its discretion. *Id.* An appellate court applies a two-prong analysis when it determines whether legal or factual insufficiency has resulted in an abuse of discretion: (1) whether the trial court had sufficient information upon which to exercise its discretion, and (2) whether the trial court erred in applying its discretion. *Id.* The sufficiency review is related to the first inquiry. If it is revealed in the first inquiry that there was sufficient evidence, then we must determine whether the trial court made a reasonable decision, and that involves a conclusion that

[11] Further references to provisions of the Texas Family Code will be by reference to "section __" or "§ __."

the trial court's decision was neither arbitrary nor unreasonable. *Id.* The trial court's exercise of discretion will withstand appellate scrutiny unless clearly abused. *In re Marriage of Hamer*, 906 S.W.2d 263, 265 (Tex. App.—Amarillo 1995, no writ).

Background

At the outset of the hearing, Cedillo's counsel announced Cedillo did not oppose the following relief requested in Detton's petition: appointment of Detton as sole managing conservator; removal of Cedillo as a joint managing conservator; no contact between Cedillo and L.J.L.C.; and permanent injunctive language.[12] However, Cedillo requested that the trial court withhold a finding of family violence because of his pending criminal charges and deny a surname change for the child as premature. During trial, the parties agreed to a confirmation of medical and child support arrearages. The trial court's modification order appoints Detton as a sole managing conservator, removes Cedillo as a joint managing conservator, and appoints Cedillo as a possessory conservator. Because Cedillo is subject to bond conditions which prevent him from contacting L.J.L.C., and because Cedillo agreed not to contact the child, the trial court ordered that Cedillo "shall have no possession of or access to the child." The trial court denied Detton's request for a protective order and an order to change L.J.L.C.'s surname.

[12] The permanent injunction prohibits Cedillo from the following: (1) communicating with Detton or L.J.L.C. in any manner using vulgar, profane, obscene, or indecent language, or in a coarse or offensive manner; (2) threatening Detton or L.J.L.C. to take unlawful action against any person; (3) placing telephone calls anonymously or without a legitimate purpose of communication; (4) causing bodily injury to Detton or L.J.L.C.; (5) threatening imminent bodily injury to Detton or L.J.L.C.; (6) destroying or reducing the value of property of Detton or L.J.L.C.; (7) disturbing the peace of Detton or L.J.L.C.; (8) going within 200 yards of any residence, place of employment, or school of Detton or L.J.L.C.; and (9) going within 200 yards of any location where Detton or L.J.L.C. is known to be.

Detton timely requested findings of fact and conclusions of law. The trial court found, among other things, that Cedillo had pending charges of aggravated sexual assault and indecency with a child by contact arising out of allegations made by L.J.L.C.; Cedillo's bond conditions prevent him from having any contact with L.J.L.C.; a CPS safety plan prohibits Cedillo from having any contact with L.J.L.C.; Cedillo has not attempted to contact L.J.L.C. or Detton since January of 2018; Cedillo agreed that Detton should be appointed sole managing conservator and he would not have any contact with L.J.L.C.; Cedillo agreed that the temporary injunction should be made permanent; it is in the best interest of L.J.L.C. that Detton be named managing conservator and Cedillo be named possessory conservator; and it is in the best interest of L.J.L.C. that Cedillo's rights and duties be limited as follows: Cedillo shall have no contact with L.J.L.C.

In addressing Detton's modification issues, we are mindful that trial courts are given broad discretion to determine what is in a child's best interest, including the ability to craft orders that are dictated by the facts presented during trial. *See White v. Adcock,* 666 S.W.2d 222, 225 (Tex. App.—Houston [14th Dist.] 1984, no writ).

Analysis

A. Findings and Conclusions

In her first issue, Detton challenges the trial court's failure to issue additional findings of fact and conclusions of law. According to Detton, the trial court erred because it did not "explicitly rule on each of the fundamental questions" posed by her petition. Specifically, Detton complains that the trial court failed to address: (1) whether credible evidence was presented of a history or pattern of past or present child neglect or physical

or sexual abuse by Cedillo against L.J.L.C.; (2) whether the appointment of Cedillo as a possessory conservator is in the best interest of L.J.L.C.; (3) whether Cedillo's possession or access would endanger the physical or emotional welfare of L.J.L.C.; (4) whether the denial of Cedillo's possession of the child is necessary to protect the best interest of the child; (5) whether it is in the best interest of L.J.L.C. to limit Cedillo's rights and duties; (6) whether the disclosure of identifying information is likely to cause Detton or L.J.L.C. harassment, abuse, serious harm, or injury; and (7) what were the major changes in circumstances since the entry of the 2017 Child Support Review Order.

A trial court's duty to enter additional findings of fact and conclusions of law is limited to additional findings and conclusions on ultimate or controlling issues. *In re Jameson*, No. 07-02-00476-CV, 2004 Tex. App. LEXIS 1220, at *2 (Tex. App.—Amarillo Feb. 9, 2004, pet. denied) (mem. op.). Findings that are evidentiary in nature do not fall within that scope. *Id.* at *3. Ultimate or controlling issues or facts are those essential to the cause of action. *In re M.M.M.,* 229 S.W.3d 821, 823 (Tex. App.—Fort Worth 2007, no pet.). If the fact is necessary to form the basis of the judgment, it is an ultimate or controlling fact. *Id.* In contrast, an evidentiary fact is one that may be considered by the factfinder in deciding the controlling issue. *Id.* In a Chapter 156 modification case, the controlling issues are whether the circumstances of the child or a conservator have materially and substantially changed since the date of a previous court order or mediated settlement agreement, and whether modification is in the best interest of the child. *See In re S.E.K.,* 294 S.W.3d 926, 929 (Tex. App.—Dallas 2009, pet. denied). If the refusal to file additional findings does not prevent a party from adequately presenting an argument on appeal, there is no reversible error. *Pakdimounivong v. City of Arlington*,

219 S.W.3d 401, 412 (Tex. App.—Fort Worth, 2006 pet. denied). If the requested findings will not result in a different judgment, the findings need not be made. *Id.* A court need not make findings of fact on undisputed matters. *Limbaugh v. Limbaugh*, 71 S.W.3d 1, 5–6 (Tex. App.—Waco 2002, no pet.).

Here, Detton requested a number of additional findings, none of which, if found, would have resulted in a different judgment. The additional findings requested by Detton concern evidentiary issues, not controlling issues. As such, they are unnecessary. *See Knight Renovations, LLC v. Thomas,* 525 S.W.3d 446, 454 (Tex. App.—Tyler 2017, no pet.) (court has no duty to make additional or amended findings unnecessary to judgment). Moreover, Detton presents no argument as to how the trial court's failure to make additional findings caused her to suffer injury, and we cannot discern any injury. Notably, several requested findings are subsumed within the trial court's original findings and conclusions, and thus, the trial court did not reversibly err in failing to make these requested findings. Accordingly, we overrule issue one.

B. Failure to Find History or Pattern of Abuse

In her second issue, Detton argues that the trial court is required under the provisions of section 153.004 of the Family Code to make a finding of a history or pattern of sexual abuse and its failure to do so is against the great weight and preponderance of the evidence.

With respect to conservatorship, subsection 153.004(a) provides that in determining whether to appoint a party as a sole or joint managing conservator, the court shall consider evidence of sexual abuse by a party committed within the two-year period

preceding the filing of a suit or during the pendency of the suit. *See* § 153.004(a). Further, the trial court is prohibited from naming a party as a joint managing conservator if "credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by one parent directed against . . . a child . . . ." § 153.004(b). With respect to possession of and access to a child, subsection 153.004(c) mandates that a trial court consider the commission of family violence, without reference to any specific time frame, when determining whether to deny, restrict, or limit the possession of a child by a parent who is appointed as a possessory conservator. § 153.004(c).[13] Finally, subsection 153.004(f) requires a trial court to consider whether a protective order was rendered against the parent during the two-year period preceding the filing of the suit or during the pendency of the suit in determining whether there is credible evidence of a history or pattern of child abuse. § 153.004(f).

Detton cites no authority obligating the trial court to make the finding she requests under the facts of this case. "In drafting the Family Code (and other statutes as well), the Legislature often requires judges to 'find' certain matters before taking certain actions, but only occasionally requires those findings to be made in writing." *In re J.P.,* 136 S.W.3d 629, 630–31 (Tex. 2004) (footnotes omitted). Because section 153.004 makes no requirement of a written finding, such a finding does not need to be in writing. *See In re G.R.W.,* 191 S.W.3d 896, 899 (Tex. App.—Tyler 2006, no pet.) ("Because [subsection] 153.131(a) makes no requirement of a written finding, such a finding need not be in writing.").

[13] The Family Code's definition of family violence includes sexual assault of a member of the family or household. § 71.004(1).

Certainly, evidence of sexual abuse must be considered in determining the best interest of a child in a modification proceeding. *In re S.E.K.,* 294 S.W.3d at 929. However, in this case, a finding of a history or pattern of abuse was not necessary to Detton's appointment as sole managing conservator or to Cedillo's appointment as possessory conservator. Here, the 2017 order already named both parents as joint managing conservators. Cedillo did not seek to be appointed as a sole or joint managing conservator and did not dispute Detton's appointment as sole managing conservator. *See* § 153.004(a), (b). Likewise, Detton's request that Cedillo have no possession of or access to L.J.L.C. was uncontested by Cedillo. Thus, even if we agree with Detton that the evidence supports a finding of a history of sexual abuse, she has not established that such a finding would entitle her to any greater relief than she has already received.

Detton's stated basis for pursuing this finding is to prevent Cedillo from seeking a future modification of possession and access if he is found not guilty of his pending criminal charges. Whether Cedillo is appointed a possessory conservator or not, any party could seek a future modification of the conservatorship order, and the trial court has discretion to grant the modification if it is in the child's best interest and the parent's or child's circumstances have materially and substantially changed since the order was rendered. *See* §§ 102.003(a)(1), 156.001–.002, 156.101; *Chad Lee S. v. Melinda A. S.,* No. 02-14-00135-CV, 2015 Tex. App. LEXIS 12325, at *36–37 (Tex. App.—Fort Worth Dec. 3, 2015, no pet.) (mem. op.). Because Detton has demonstrated no harm in the absence of this finding, we overrule issue two.

C. Appointment of Cedillo as Possessory Conservator

By her third issue, Detton claims the trial court's implicit finding that Cedillo's possession of or access to L.J.L.C. would not endanger her physical or emotional welfare is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As a result, she argues the trial court abused its discretion by appointing Cedillo as a possessory conservator.

If a managing conservator is appointed, as was done here, the court may appoint a possessory conservator. § 153.006(a). When a parent is not appointed as a managing conservator, the Family Code requires the parent to be appointed as a possessory conservator unless both of the following two conditions are met: (1) the appointment of the parent as a possessory conservator is not in the best interest of the child, and (2) parental possession or access would endanger the physical or emotional welfare of the child. § 153.191. Here, the trial court declined to find either condition was met. Detton expressly challenges only the second condition, i.e., the trial court's failure to find that "parental possession or access would endanger the physical or emotional welfare of the child."[14] *Id.*

The trial court had before it undisputed evidence concerning L.J.L.C.'s statements alleging sexual abuse, the child's statement to Britto that she was "not safe" with Cedillo,

[14] While Detton's issue challenges only the second condition, we must liberally construe her argument so as "to obtain a just, fair[,] and equitable adjudication of the rights of the litigants." *Strong v. Brooks,* No. 07-21-00004-CV, 2022 Tex. App. LEXIS 562, at *2 n.2 (Tex. App.—Amarillo Jan. 26, 2022, no pet.) (mem. op) (quoting *Sterner v. Marathon Oil Co.,* 767 S.W.2d 686, 690 (Tex. 1989)). We conclude that a liberal construction of Detton's argument relating to her third issue presents a challenge to the trial court's failure to find both of section 153.191's conditions. Therefore, we will address the merits of that argument.

the child's documented behaviors indicating that she had been sexually abused, L.J.L.C.'s improvement during the time she has been in counseling, and Britto's testimony that it could cause L.J.L.C. to regress in her healing and cause further trauma if she were "forced to encounter" Cedillo. We agree that an implicit finding that Cedillo's possession of or access to L.J.L.C. would not endanger her physical or emotional welfare is against the great weight and preponderance of the evidence. However, this does not necessarily mean that the trial court abused its discretion in appointing Cedillo as a possessory conservator because a trial court has discretion to appoint a parent as a possessory conservator and to deny the parent possession and access to a child. *Brandon v. Rudisel,* 586 S.W.3d 94, 106–07 (Tex. App.—Houston [14th Dist.] 2019, no pet.); *see C.W. v. B.W.,* No. 02-19-00270-CV, 2020 Tex. App. LEXIS 6243, at *13–14 (Tex. App.—Fort Worth Aug. 6, 2020, no pet.) (mem. op.) (given father's conviction for sexual abuse and incarceration, it was no abuse of discretion to appoint him possessory conservator while denying him possession and access); *In re S.A.J.,* No. 14-20-00216-CV, 2020 Tex. App. LEXIS 6380, at *8 (Tex. App.—Houston [14th Dist.] Aug. 13, 2020, pet. denied) (mem. op.) ("[I]n some cases, the trial court's limitation [of the rights of a possessory conservator] may amount to a complete denial of possession and access, especially where, as here, there was evidence of family violence."); *In re F.A.,* No. 02-16-00156-CV, 2017 Tex. App. LEXIS 1369, at *17–18 (Tex. App—Fort Worth Feb. 16, 2017, no pet.) (mem. op.) (trial court did not abuse its discretion by appointing father as possessory conservator and

denying him all rights to possession and access based on his history of sexual abuse). We overrule Detton's third issue.[15]

D. Possession and Access

In her fourth issue, Detton contends the trial court abused its discretion by issuing a possession order based solely on Cedillo's agreement and the status of his criminal cases rather than the safety and best interest of the child. Detton points to section 153.004(d-1)(1) and our decision in *In re Marriage of Collier*, 419 S.W.3d 390 (Tex. App.—Amarillo 2011, no pet.), in support of her contention.

First, subsection 153.004(d-1)(1) does not apply in this case.[16] The evidence before the trial court concerned allegations of sexual abuse which were more than two and a half years old and neither party was requesting any access by Cedillo. As such, there was no finding required by subsection 153.004(d-1)(1) that awarding "access to the child would not endanger the child's physical health or emotional welfare and would be in the best interest of the child."

[15] In the conclusion to the argument of her third issue Detton contends that, "If this Court finds, as a matter of law, that there is credible evidence that Cedillo sexually assaulted or abused L.J.L.C., then based on the expert opinion of the child's counselor and the concession of Cedillo, this Court should further find that Cedillo's possession of or access to the child would endanger the physical or emotional welfare of the child and that it is not in the best interest of L.J.L.C. to appoint Cedillo as a possessory conservator." However, our role as an appellate court is not to "find facts"—the trial court is the factfinder. *See J.A.T. v. C.S.T.,* 641 S.W.3d 596, 610 (Tex. App—Houston [14th Dist.] 2022, pet. filed).

[16] Subsection 153.004(d) provides that, "The court may not allow a parent to have access to a child for whom it is shown by a preponderance of the evidence that: (1) there is a history or pattern of committing family violence *during the two years preceding the date of the filing of the suit or during the pendency of the suit.* . . ." (emphasis added). Subsection 153.004 (d-1) provides that, "Notwithstanding [s]ubsection (d), the court may allow a parent to have access to a child if the court: (1) finds that awarding the parent access to the child would not endanger the child's physical health or emotional welfare and would be in the best interest of the child . . . ."

Second, Detton contends that our holding in *Collier* established that "a court cannot appoint a parent as a possessory conservator while at the same time denying all possession; if even restricted visitation would endanger a child, then the parent would not qualify to be appointed a possessory conservator." Detton misconstrues our holding in *Collier.* In *Collier*, the trial court made a finding of family violence, appointed the father as a possessory conservator, and ordered that his visitation was to be "solely at the discretion" of the mother. *Collier*, 419 S.W.3d at 395. On appeal, the dispositive issue was whether the trial court's order, which effectively denied the father access to the child, was in the best interest of the child and enforceable by contempt, not the propriety of appointing a possessory conservator. *Id.* at 397–400. Thus, our holding in *Collier* does not apply to the instant appeal.

The Family Code sets out several directives to which a trial court must adhere when determining issues involving possession and access to a child. We begin with a rebuttable presumption that the standard possession order is in the best interest of the child and provides the reasonable minimum level of possession and access for a parent named possessory conservator. *See* § 153.252. When determining whether to deviate from the standard possession order, a court may consider "(1) the age, developmental status, circumstances, needs, and best interest of the child; (2) the circumstances of the managing conservator and of the parent named as possessory conservator; and (3) any other relevant factor." § 153.256. The terms of an order that denies possession of a child to a parent or imposes restrictions or limitations on a parent's right to possession of or access to a child may not exceed those that are required to protect the best interest of the child. § 153.193. Further, a court shall consider the commission of sexual abuse in

determining whether to deny, restrict, or limit possession of the child by a parent who is appointed a possessory conservator. § 153.004(c).

Here, Detton urged the trial court to deny Cedillo possession and access and testified that this was in the best interest of L.J.L.C. Cedillo agreed and did not contest this issue. We hold the trial court properly exercised its discretion in deviating from a standard possession order and the terms did not exceed those that are required to protect the best interest of the child. *See* §§ 153.193; 153.252; 153.256. Having advocated for Cedillo to have no possession of or access to L.J.L.C., Detton is estopped from complaining on appeal that the modification order includes such relief. *See Phillips v. Tex. Dep't of Family & Protective Servs.,* No. 03-11-00418-CV, 2012 Tex. App. LEXIS 2760, at *20 (Tex. App.—Austin Apr. 4, 2012, no pet.) (mem. op.).

The trial court could not have issued a more restrictive order than the complete denial of possession and access that it ordered in this case. A possessory conservator should not be denied visitation except in extreme circumstances. *Brandon,* 586 S.W.3d at 107. ("[T]he law permits courts to order a complete denial of possession of and access to a parent's children only in extreme circumstances."). This is one of those rare situations where it is in the best interest of the child for the trial court to deny a parent a possessory conservator's possession and access. *See In re J.J.R.S.*, 627 S.W.3d 211, 220 (Tex. 2021). Our review of the record establishes that Detton has not demonstrated that the trial court abused its discretion. We overrule issue four.

E. Order of Nondisclosure

In her fifth issue, Detton contends that the trial court abused its discretion "by failing to limit Cedillo's rights" to access L.J.L.C.'s personal information and "to order that Detton's and child's information not be disclosed."

A trial court may limit the rights and duties of a parent appointed as a possessory conservator if the court makes a written finding that the limitation is in the best interest of the child. *See* § 153.072. The trial court made such a finding in conclusion of law number four, stating, "It is in the best interest of [L.J.L.C.] that the rights and duties of Cedillo should be limited as follows: Cedillo shall have no contact with [L.J.L.C.]."[17] At trial, Detton requested that Cedillo have only the duty to pay child support and medical support, but "no other rights to the child." *See* § 153.075 ("The court may order a parent not appointed as a managing or a possessory conservator to perform other parental duties, including paying child support."). Citing section 153.073, Detton now complains that Cedillo has full access to L.J.L.C.'s records, including her address and counseling records.

Texas Family Code section 105.006 provides that parties to a suit affecting the parent-child relationship are required to exchange and update their contact information unless the trial court finds "after notice and hearing" that disclosure of such information by one party to the other party is "likely to cause the child or a conservator harassment, abuse, serious harm, or injury . . . ." § 105.006(c).

[17] Although this finding appears among the conclusions of law, the designation is not controlling and we may treat it as a finding of fact. *See In re Marriage of Stein,* 153 S.W.3d 485, 488 (Tex. App.—Amarillo 2004, no pet.).

Initially, we note that Detton did not seek an order of nondisclosure in her petition to modify the parent-child relationship and thus arguably failed to preserve any error. During the hearing, Detton's counsel asked Detton, "Are you asking that your and [L.J.L.C.'s] identifying information not be disclosed to Mr. Cedillo?" Detton answered, "Yes, ma'am." Other than this statement, Detton's counsel failed to elicit any testimony "that requiring a party to provide the information required by [section 105.006(c)] to another party is likely to cause the child or a conservator harassment, abuse, serious harm, or injury . . . ." *Id.* Moreover, the trial court heard undisputed testimony that Cedillo had not contacted or attempted to contact Detton or L.J.L.C. since the sexual abuse allegations were made in January of 2018, a period just shy of three years. Further, Cedillo agreed to an extensive permanent injunction that prohibits, among other things, offensive communication, threats, injury, disturbing the peace of Detton or L.J.L.C., and going within 200 yards of Detton or L.J.L.C. Given this evidence, we decline to find the trial court abused its discretion. We overrule issue five.

F. Name Change

By her sixth issue, Detton argues that the trial court abused its discretion by failing to grant a name change for L.J.L.C.[18]

The trial court may order the name of a child changed if change is in the best interest of the child. § 45.004(a)(1). It is in the court's discretion whether to grant a

[18] Although not raised as a separate issue, within issue six, Detton challenges finding of fact number 20. In finding of fact number 20, the court found that the petition for name change was not verified, as required by section 45.002. In our review of the record, a verification of the name change is in fact included in Detton's petition to modify.

request to change a child's name. *Werthwein v. Workman*, 546 S.W.3d 749, 755 (Tex. App.—Houston [1st Dist.] 2018, no pet.) (applying an abuse of discretion standard to name change of a child). The interests and desires of the parents are irrelevant. *Id.* at 754. In determining whether a name change is in the best interest of the child, the following nonexclusive list of factors are considered:

- whether the changed name or original name would best avoid embarrassment, inconvenience, or confusion for the child;
- the length of time the child has carried the original name;
- the degree of community respect or disrespect associated with the original and changed names;
- whether the change will positively or adversely affect the bond between the child and the parent or the parent's families;
- the preference, maturity, and age of the child;
- whether the party seeking the name change is motivated by concerns other than the best interest of the child.

Id; C.W., 2020 Tex. App. LEXIS 6243, at *14–15.

The party seeking the name change has the burden of proof. *In re A.E.M.,* 455 S.W.3d 684, 690 (Tex. App.—Houston [1st Dist.] 2014, no pet.). As the parent seeking the name change, Detton was required to present evidence of a substantial and probative character that the change would be in L.J.L.C.'s best interest. The testimony specific to the name change was scant. When asked why a surname change was in L.J.L.C.'s best interest, Detton testified, "To me, I feel like she shouldn't have a connection to him because of what happened, or that he could find her." Given the lack of evidence addressing the relevant best interest factors, we conclude the trial court did not abuse its discretion in denying the name change. We overrule issue six.

CONCLUSION

Having carefully considered the arguments briefed by Detton on appeal, we reverse and remand the protective order case for a new trial and we affirm the order in the suit for modification of the parent-child relationship.

Judy C. Parker
Justice

Doss, J., concurs in the result.