NUMBER 13-15-00486-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN THE INTEREST OF D.C., A CHILD

On appeal from the 197th District Court of Cameron County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Rodriguez and Garza
Memorandum Opinion by Justice Garza

This case involves the award of monthly child support to care for an adult disabled child. *See* TEX. FAM. CODE ANN. § 154.302 (West, Westlaw through 2015 R.S.). By seven issues, appellant Rodolfo Canales Jr. ("Rodolfo")[1] contends that the trial court erred by,

[1] In their briefs, the parties refer to themselves and their son by initials only. However, the parties have not asked us to do so in our opinion, and we decline to do so on our own motion. *See* TEX. FAM. CODE ANN. § 109.002(d) (West, Westlaw through 2015 R.S.) ("On the motion of the parties or on the court's own motion, the appellate court in its opinion may identify the parties by fictitious names or by their initials only."). Moreover, this is not a case where the use of an alias is required by the appellate rules. *Cf*. TEX. R. APP. P. 9.8(b)(2) (providing that, in an opinion in a parental-rights termination case, we must "use an alias to refer to a minor, and if necessary to protect the minor's identity, to the minor's parent or other family

among other things, denying his motion to terminate the support obligation owed to his ex-wife, appellee Juanita Cabrera ("Juanita"), for the care of their autistic son Daniel. We affirm.

I. BACKGROUND

A. Procedural Background

Rodolfo and Juanita were married in 1995 and separated in 2002. Prior to the marriage, the parties had two children, including Daniel, who was born in 1988. The final decree of divorce, rendered on March 25, 2003, ordered Rodolfo to pay $775 per month in child support until one of the children becomes ineligible, and $620 per month thereafter until the other child becomes ineligible.[2] The decree further stated that Daniel "requires

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member"); TEX. R. APP. P. 9.8(c)(2) (providing that, in an opinion in a juvenile delinquency proceeding under title 3 of the family code, we must "use an alias to refer to a minor and to the minor's parent or other family member").

[2] The decree specifically stated as follows:

> IT IS ORDERED that [Rodolfo] is obligated to pay to [Juanita] child support of $775.00 per month, with the first payment being due and payable on February 1, 2003 and a like payment being due and payable on the 1st day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:
>
> 1. any child reaches the age of eighteen years, provided that, if the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma or enrolled in courses for joint high school and junior college credit pursuant to Section 130.008 of the Texas Education Code, the periodic child support payments shall continue to be due and paid until the end of the month in which the child graduates from high school;
> 2. any child marries;
> 3. any child dies;
> 4. any child's disabilities are otherwise removed for general purposes;
> 5. [Juanita] and [Rodolfo] remarry each other; or
> 6. further order modifying this child support.
>
> Thereafter, [Rodolfo] is ORDERED to pay to [Juanita] child[ ]support of $620.00 per month, due and payable on the 1st day of the first month immediately following the date of the earliest occurrence of one of the events specified in items 1. through 4. above and a like sum of $620.00 amount due and payable on the 1st day of each month thereafter until the next occurrence of one of the events specified above.

substantial care and personal supervision because of a mental or physical disability and will not be capable of self-support, that payments for the support of this child should be continued after the child's eighteenth birthday for an indefinite period, and that both parents have a duty to support the child." *See id.* Accordingly, the decree ordered Rodolfo to pay "additional support" of $200 per month to Juanita for Daniel's care "until further order modifying this child support." Neither party appealed the decree.

Rodolfo filed two motions with the trial court in 2014 seeking to terminate the support obligation in light of an alleged material and substantial change in circumstances. The motions, entitled "Motion to Modify the Child Support Obligation" and "Amended Motion to Modify Parent-Child Relationship," contended specifically that Daniel "no longer requires substantial care and personal supervision because of a mental or physical disability and has been capable of self-support for several years." Juanita filed a counter-motion requesting increased support.

B. Trial Testimony

At a bench trial on June 2, 2015, Juanita testified that Daniel is twenty-six years old and lives with her in Santa Rosa in Cameron County, Texas. She found out "something was wrong" when Daniel "began to regress" in his development at nine months old. When Daniel was two years old, a neurologist advised Juanita and Rodolfo that he would need to be institutionalized and that they would be unable to take care of him.

Despite this, Daniel has been successful academically, and he graduated high school and college. In high school, Daniel was not personally supervised by a teacher, but he was assisted by other students. He participated in football, cheerleading, and

cross-country. Juanita stated that Daniel has an IQ of 101, but she explained that Daniel

> is very intelligent in certain areas, okay? It's as though his brain functions in certain areas only, in the area of special interest, let's say, where he's learning something in school psychology because that's what he is studying. He is going to be able to give you all the facts. He is going to give you dates, details, and everything about it down to a T because that is the subject matter he likes, and that's all that he is going to be able to do.

She stated Daniel is not physically or intellectually disabled, but he has autism, which is a "neurological disability." According to Juanita, when there is a change in his routine or something out of the ordinary, Daniel will often have "meltdowns" during which he is unable to control his emotions. Occasionally, "[h]e will scratch himself, he will pull his hair, he will beat himself, he will hit his head against the wall because he's frustrated."

After he graduated high school, Daniel attended Texas A&M University–Kingsville, where he lived in a dormitory, without a roommate but "with supervision" by a friend. Juanita stated that "Daniel is unable to handle living" with someone outside of his family, but he needs help or supervision with everyday activities, including cooking, eating, and crossing the street. Juanita recounted an incident where Daniel, attempting to cross a street, misjudged the speed of a vehicle and had to be held back by another student in order to avoid being hit by the vehicle. He is physically able to bathe himself but will not do so without direction. According to Juanita, she "constantly" drove to Kingsville to check on Daniel, but she agreed that, "even had [she] not gone over there, Daniel would have been all right." She paid Daniel's friend $150 per week to take care of him and to drive him home to Santa Rosa. He graduated with a double major in psychology and sociology.

Daniel started a four-and-a-half-year master's degree program in 2014 at the University of Texas–Pan American with the intention of becoming a professor. According to Juanita, when and if he is able to become a professor, Daniel will "not need any

financial support from his father any more." During the week, Daniel lives with his sister Kassandra in an apartment in Edinburg near the university, and on the weekends he lives with Juanita in Santa Rosa. Juanita characterized herself as a "helicopter parent" and Kassandra as a "second mother" to Daniel. Juanita stated that she spends at least two days per week in Edinburg, but is there "all week" occasionally, such as during final exams. She stated that she "[does not] have to work" "because [she is] a housewife" and her current husband provides for the family, including Daniel. She stated Daniel cannot currently hold a job because "[h]e has not acquired those skills yet."

Juanita testified that Daniel "will probably have certain areas that are worked on" with "board-certified behavioral analysts," who "charge $150 an hour." She stated that she herself is working toward becoming a board-certified behavioral analyst, that she received a master's degree in educational diagnostics in 2000, that she received an "autism intervention certificate" in 2011, and that she is an "autism specialist." She is not employed anywhere but has done contract work for 12 or 13 years, including as an "autism consultant" at Edcouch-Elsa School District, where she earned about $2,000 per month.

Juanita stated that she has a power of attorney for Daniel but has not sought a guardianship. She stated that Daniel is not eligible for financial aid grants at the university because of his age, and he was previously ineligible "because of [her] husband's income." Later, she noted that Daniel is receiving financial aid in the form of loans, and "already owes [$]89,000." When asked whether she had applied on behalf of Daniel for social security benefits, Juanita replied "No, because there are repercussions from social security." She agreed that applying for such benefits would "impede his ability to get a

job." However, Juanita explained that she would apply for social security disability benefits if Daniel is not able to obtain a master's degree, "because I've exhausted everything that I could do." She explained:

> That's why all of this was done because we didn't take the easy way, the way everybody else does. I could have just said, "You know what, this is high school, that's it," and sent him to a day home the way everybody in this world does. I took my time and I tried to teach him. I gave up my life so that my son can have a life. And that way he is a good example of what you can do in this world with the proper guidance. . . .

Juanita stated that Daniel's living expenses are "about a thousand dollars" per month and that he attends weekly counseling sessions. She testified that, in 2003 when the divorce decree was issued, she did not expect that Daniel would be able to achieve what he has achieved since then; however, she stated that Daniel still needs the same type of care he received in elementary school, high school, and college. If he did not have family members to help him, she would have to "put him in a group home."

Kassandra testified that she is in the same master's degree program as Daniel, she plans on graduating at the same time as Daniel, and she hopes to be able to find a job where Daniel can be her co-worker. Kassandra stated that, when she is living with Daniel during the week, she never leaves Daniel alone. She stated that she does not need to help Daniel with everyday tasks such as bathing, but she does need to "constantly remind" him to do those things. She testified that, even if Daniel were not her brother, she would think that he was someone that would need to be "constantly watched." She stated he is not independent and is not currently capable of supporting himself with a job.

Rodolfo testified that he has only had "very limited" contact with Daniel since 2003. He stated that he wants to continue to support Daniel, but he does not "want to be told by the attorney general to do it." Rodolfo opined that Daniel can function on his own but has

"never been given the opportunity to do so." Rodolfo stated that he feels "excluded" from Daniel's life and that, should the court continue to order that he pay support, he would also want an order for visitation. On cross-examination, Rodolfo conceded that he did not exercise his visitation rights in the past, and did not spend any overnight periods with Daniel. He explained that this was because he could "clearly see" that Daniel was uncomfortable in the house with Rodolfo's new family. Rodolfo also conceded that, without his mother and sister by his side, Daniel would not have been able to graduate college. He agreed that Daniel has autism and that he needs care, but he disagreed that Daniel needed "substantial care." He stated that it would be in Daniel's best interest for the trial court to order no child support because "[i]f he came to me, I would give him the money." Rodolfo stated that, if the court orders support, he would not object to paying the support directly to Daniel as permitted by statute. *See id*. § 154.302(2)(b).

C. Supplemental Motions

Following trial, the trial court directed the parties to produce financial statements and recommended that Juanita "look at" the possibility of applying for social security benefits, although the trial court remarked that it did not have the authority to order Juanita to do so. The trial court took the child support and visitation issues under advisement and reset the case.

On September 8, 2015, more than three months after the bench trial, Rodolfo filed a "Motion for Judgment Terminating Child Support" noting that the trial court had made no ruling as of yet and arguing that the 2003 divorce decree failed to comply with section 154.306 of the family code because it did not "establish an amount" of support to be paid after Daniel's eighteenth birthday. *See id.* § 154.306 (West, Westlaw through 2015 R.S.)

(requiring a trial court to "determine and give special consideration to" certain factors when determining the amount of support to be paid after a child's eighteenth birthday). The motion asserted that "[o]n June 5, 2009, the year [Daniel] graduated from high school, an Administrative Writ of Withholding was issued to [Rodolfo's employer] to require withholding $820.00 per month" but that this "amount was not determined in accordance with the mandatory provisions of [section] 154.306 of the Texas Family Code." The motion argued that Rodolfo has paid over $40,000 in support for Daniel to Juanita since 2007, and that "the facts and circumstances have substantially changed which merit the termination of child support to Daniel." Specifically, the motion alleged that there was no evidence to support the claim that Daniel requires "substantial care and personal supervision," and that Juanita's testimony was "self-serving" and not credible. Rodolfo's motion further requested "a refund or credit for paying an arbitrary and capricious amount of child support since [Daniel] turned 18."

Rodolfo filed a supplement to this motion on September 22, 2015, noting that, during the previous month, two applications for social security benefits had been filed on behalf of Daniel but were rejected. According to a letter from the Social Security Administration which was attached as an exhibit to Rodolfo's supplemental motion, Daniel's application for Supplemental Security Income ("SSI") was denied "because you have too much income to be eligible for SSI." The letter specified that Daniel's "unearned income of $820.00" was considered in figuring his eligibility, and that because Daniel was determined to be ineligible, the agency did not determine whether or not he was disabled. A second letter stated that Daniel's application for Retirement, Survivors and Disability Insurance was denied "because you have not worked long enough under Social Security."

D. Ruling and Findings

On October 10, 2015, the trial court rendered an order: (1) denying Rodolfo's request to terminate child support and for reimbursement of payments already made; (2) finding that Daniel "continues to require substantial care and personal supervision because of a mental or physical disability"; (3) ordering Rodolfo to pay to Juanita $620 per month "plus an additional $200.00 per month for the support of Daniel . . . until further order modifying this child support"; (4) ordering Juanita "to apply for all government services for [Daniel] that may qualify for[,] specifically Social Security Benefits, but not limited to Social Security Benefits"; (5) stating that "once [Daniel] begins to receive Social Security Benefits or government assistance, [Juanita] is ordered to notify [Rodolfo] and at that time the parties may return to court for further orders"; and (6) ordering that Rodolfo "continue to have visitations" with Daniel. Pursuant to Rodolfo's request, the trial court later issued findings of fact and conclusions of law reiterating the findings and conclusions set forth in the order. The trial court additionally concluded that Rodolfo had the burden of proof on his motion to terminate child support to show that Daniel did not require substantial care and personal supervision and would be capable of self-support. *See id.* § 154.302. Rodolfo filed a motion for additional findings of fact and conclusions of law, but none were issued. This appeal followed.

II. Discussion

A. Findings of Fact and Conclusions of Law

By two issues on appeal, Rodolfo contends that the trial court erred by making inadequate findings of fact and conclusions of law.

Rodolfo argues by his fourth issue that the trial court failed to make "mandatory" findings under family code section 154.130. He notes correctly that, under this statute, when a trial court orders child support that varies from the amount called for by the application of statutory guidelines, certain findings must be made. *Id.* § 154.130(a)(3) (West, Westlaw through 2015 R.S.); *In re S.B.S.*, 282 S.W.3d 711, 717 (Tex. App.—Amarillo 2009, pet. denied); *see* TEX. FAM. CODE ANN. §§ 154.125, .129 (West, Westlaw through 2015 R.S.) (establishing guidelines for calculation of child support). Among the findings that the trial court must make in this situation are: (1) whether the application of the guidelines would be unjust or inappropriate; (2) the net monthly resources of the obligor and obligee; (3) the percentage applied to the obligor's net monthly resources that resulted in the amount ordered; and (4) the specific reasons why the amount ordered varies from the amount called for by the guidelines. *See* TEX. FAM. CODE ANN. § 154.130(b). These findings are mandatory and the failure to make them when required constitutes reversible error. *In re S.B.S.*, 282 S.W.3d at 717; *Hanna v. Hanna*, 813 S.W.2d 626, 628 (Tex. App.—Houston [1st Dist.] 1991, no writ).

We disagree that the trial court was required to make the findings called for by section 154.130. The order that set the amount of child support was the divorce decree rendered in 2003, which was not challenged on appeal by either party and is therefore not reviewable in this appeal. *See Baxter v. Ruddle*, 794 S.W.2d 761, 762 (Tex. 1990) ("If an appeal is not timely perfected from the divorce decree, res judicata bars a subsequent collateral attack. . . . Errors other than lack of jurisdiction render the judgment merely voidable and must be attacked within the prescribed time limits."). Although the decree was rendered before Daniel reached the age of eighteen, it stated

that the support obligation would continue indefinitely. The order on appeal in this proceeding is the October 10, 2015 order denying Rodolfo's request to terminate child support. Rodolfo cites no authority, and we find none, establishing that the trial court must make section 154.130 findings when it denies a request to terminate child support that was ordered years before.[3] We overrule Rodolfo's fourth issue.

Next, Rodolfo argues by his seventh issue that the trial court abused its discretion by denying his motion for additional findings of fact and conclusions of law. A party may request specific additional or amended findings of fact and conclusions of law within ten days after the filing of the original findings and conclusions. TEX. R. CIV. P. 298. The court "shall file any additional or amended findings and conclusions that are appropriate within ten days after such request is filed," and refusal of the court to do so is reviewable on appeal. TEX. R. CIV. P. 299.

Rodolfo's motion for additional and amended findings and conclusions contained 92 proposed findings and 18 proposed conclusions. On appeal, Rodolfo does not point to any particular findings and conclusions which he believes are "appropriate" in light of the record; instead, he sets forth the same list of 110 items contained in his motion and asserts that they all were "appropriate and supported by the record." We disagree. The proposed findings and conclusions, if adopted, would have essentially constituted a full reconsideration of the trial court's ruling.[4] Other proposed findings have no apparent

[3] Even if the 2003 divorce decree were reviewable in this appeal, there is no indication in the record that the amount of child support awarded therein varied from the statutory guidelines. *See* TEX. FAM. CODE ANN. § 154.130(a)(3) (West, Westlaw through 2015 R.S.) (stating that the specified findings are required only "if (1) a party files a written request with the court not later than 10 days after the date of the hearing; (2) a party makes an oral request in open court during the hearing; or (3) the amount of child support ordered by the court varies from the amount computed by applying the percentage guidelines . . . .").

[4] For example, Rodolfo proposed a finding that "[Rodolfo] has been paying an arbitrary and capricious amount of child support to [Juanita] that was not set in accordance with the requirements in § 154.306 of the Texas Family Code." Among the proposed conclusions were that "[Juanita] has the burden

basis in the record.[5] For the reasons discussed further herein, the trial court did not abuse its discretion by ruling in the manner that it did. We conclude that the trial court did not abuse its discretion in declining to issue these proposed additional findings and conclusions. Rodolfo's seventh issue is overruled.

B. Denial of Motions to Terminate Child Support

Rodolfo's remaining issues challenge the substance of the trial court's order denying his motions to terminate child support.

1. Standard of Review

We generally review a trial court's order on child support for an abuse of discretion. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990) (per curiam). The test for an abuse of discretion is not whether, in the opinion of the reviewing court, the facts present an appropriate case for the trial court's action, but whether the court acted without reference to any guiding rules and principles. *E.I. du Pont de Nemours & Co. v. Robinson*, 923 S.W.2d 549, 558 (Tex. 1995). However, when our review concerns a pure matter of law—for example the applicability of a statutory provision—we follow a de novo standard. *See In re J.M.C.*, 395 S.W.3d 839, 844–45 (Tex. App.—Tyler 2013, no pet.).

Under the abuse of discretion standard, legal and factual insufficiency are not independent reversible grounds, but are relevant components in assessing whether the trial court erred. *See In re L.R.P.*, 98 S.W.3d 312, 313 (Tex. App.—Houston [1st Dist.] 2003, pet. dism'd); *Farish v. Farish*, 921 S.W.2d 538, 542 (Tex. App.—Beaumont 1996,

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to prove by a preponderance of the evidence that a disability exists that requires substantial care and personal supervision"; that "[Juanita] has the burden to prove by a preponderance of the evidence that [Daniel] is not capable of self-support"; and that "[t]he $820 amount of child support in the final judgment was not set in accordance with Section 154.306 of the Texas Family Code."

[5] For example, Rodolfo proposed a finding that "[Daniel] has refused to cooperate with [Rodolfo] to purchase medical insurance," which is an issue that was not addressed at trial.

no writ). In determining whether an abuse of discretion has occurred because the evidence is legally or factually insufficient to support the trial court's decision, we ask: (1) whether the trial court had sufficient information upon which to exercise its discretion; and (2) whether the trial court erred in the application of its discretion. *Gonzalez v. Villarreal*, 251 S.W.3d 763, 774 n.16 (Tex. App.—Corpus Christi 2008, pet. dism'd); *In re T.D.C.*, 91 S.W.3d 865, 872 (Tex. App.—Fort Worth 2002, pet. denied). The sufficiency review is related to the first inquiry. *In re T.D.C.*, 91 S.W.3d at 872. 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. *Id*.

In making our determination, we view the evidence in the light most favorable to the actions of the trial court and indulge every legal presumption in favor of the judgment. *Smith v. Smith*, 115 S.W.3d 303, 306 (Tex. App.—Corpus Christi 2003, no pet.). The trial court does not abuse its discretion if there is some evidence of a substantive and probative character to support the decision or if reasonable minds could differ as to the result. *Id*. at 305.

2. Applicable Law

Section 154.302 of the Texas Family Code provides:

> (a) The court may order either or both parents to provide for the support of a child for an indefinite period and may determine the rights and duties of the parents if the court finds that:
>
> (1) the child, whether institutionalized or not, requires substantial care and personal supervision because of a mental or physical disability and will not be capable of self-support; and
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> (2) the disability exists, or the cause of the disability is known to exist, on or before the 18th birthday of the child.
>
> (b) A court that orders support under this section shall designate a parent of the child or another person having physical custody or

> guardianship of the child under a court order to receive the support for the child. The court may designate a child who is 18 years of age or older to receive the support directly.

TEX. FAM. CODE ANN. § 154.302.[6]

A trial court may modify a child support order only if "the circumstances of the child or a person affected by the order have materially and substantially changed" since the order was rendered. *Id*. § 156.401(a)(1), (a-1) (West, Westlaw through 2015 R.S.).[7] Circumstances may exist after a disabled child turns eighteen that could entirely relieve a parent of the duty to pay adult child support. *In re J.M.C.*, 395 S.W.3d at 846 (citing *Valaque v. Valaque*, 574 S.W.2d 608, 610 (Tex. Civ. App.—San Antonio 1978, no writ)). "[I]n child support decisions, the paramount guiding principle of the trial court should always be the best interest of the child." *Iliff v. Iliff*, 339 S.W.3d 74, 81 (Tex. 2011).

3. Analysis

Rodolfo argues by his first issue that the trial court "misconstrued" family code section 154.302 because it "did not use the common, ordinary meaning of undefined words" such as "substantial," "and," "personal supervision," "because," "disability," "will not," "capable," and "support." By his second issue, he contends that the evidence was insufficient to support the findings of fact and conclusions of law. These issues both appear to argue the same fundamental point—i.e., that the trial court erred in determining that Daniel "requires substantial care and personal supervision because of a mental or

[6] "Child" is defined in the statute as "a son or daughter of any age." *Id*. § 154.301(1) (West, Westlaw through 2015 R.S.).

[7] The statute also allows a child support order to be modified upon a showing that "it has been three years since the order was rendered or last modified and the monthly amount of the child support award under the order differs by either 20 percent or $100 from the amount that would be awarded in accordance with the child support guidelines." *Id*. § 156.401(a)(2) (West, Westlaw through 2015 R.S.). Rodolfo did not assert this as a ground for modification in his pleadings.

physical disability and will not be capable of self-support." *See* TEX. FAM. CODE ANN. § 154.302.

We note, however, that the immediate issue before the trial court was whether Daniel's circumstances had "materially and substantially changed" since the time the divorce decree was issued such that termination of child support was in Daniel's best interest. *See id*. § 156.401(a)(1), (a-1); *Iliff*, 339 S.W.3d at 81. Without that threshold showing, the court would lack the authority to modify the child support order. *See* TEX. FAM. CODE ANN. § 156.401(a)(1), (a-1). And, crucially, as the party moving for modification, Rodolfo bore the burden to show the requisite change in circumstances by a preponderance of the evidence. *Trammell v. Trammell*, 485 S.W.3d 571, 576 (Tex. App.—Houston [1st Dist.] 2016, no pet.); *Coburn v. Moreland*, 433 S.W.3d 809, 829 (Tex. App.—Austin 2014, no pet.); *In re L.R.*, 416 S.W.3d 675, 678 (Tex. App.—Houston [14th Dist.] 2013, no pet.); *In re C.H.C.*, 392 S.W.3d 347, 349 (Tex. App.—Dallas 2013, no pet.); *Melton v. Toomey*, 350 S.W.3d 235, 238 (Tex. App.—San Antonio 2011, no pet.).

Here, the evidence established that Daniel is a high-functioning autistic adult who is "intelligent in certain areas" and has been able to successfully complete high school and obtain an undergraduate degree. However, Daniel has been able to accomplish these things only because of the continued intense and devoted support of his mother and sister, as well as the support of other friends. While Daniel was in college, Juanita paid a friend $150 per week to care for and supervise Daniel. Juanita testified that Daniel will probably need treatment from a board-certified behavioral analyst, and that such analysts charge $150 per hour. She stated that Daniel needs the same type of care that

he received in high school and college and that, without the support of his family, Daniel would need to live in a "group home."

Since he started his master's degree program in 2014, Kassandra has lived with Daniel on weekdays in their apartment in Edinburg. Kassandra stated that when she lives with Daniel, she does not leave him alone. She needs to "constantly remind" him to do daily tasks such as bathing, otherwise he will not do them. He is unable to independently perform basic activities such as cooking or crossing the street. Both Juanita and Kassandra testified that Daniel often has "meltdowns" or "temper tantrums" where he is unable to control his emotions and behavior.[8]

Importantly, the evidence unanimously established that, although Daniel is working to obtain a degree that would help him to someday seek employment as a professor, he is not currently able to support himself with a job.

In his brief and at oral argument on appeal, Rodolfo emphasizes that Juanita testified that Daniel is not "mentally or physically disabled." But it is apparent from Juanita's trial testimony that she equated "mental disability" with "mental retardation"—and Juanita adamantly maintained that Daniel did not suffer from the latter condition. Juanita characterized Daniel's condition instead as a "neurological disability." It was not an abuse of discretion for the trial court to have concluded, despite this testimony, that Daniel continues to "require[] substantial care and personal supervision because of a

[8] At oral argument, Rodolfo's appellate counsel stated that Daniel is his nephew, that he knows Daniel personally and that he has never seen Daniel have a "meltdown." Counsel also reported that, the day before Thanksgiving, Daniel called Rodolfo to say that he never wanted to talk to Rodolfo again, and that Rodolfo could hear Juanita coaching Daniel to say that. Counsel's remarks were inappropriate, as they have no basis in the record. *See* TEX. R. APP. R. 39.2 (stating that, at oral argument, "[a] party should not refer to or comment on matters not involved in or pertaining to what is in the record"). We do not consider these remarks in our analysis.

mental or physical disability[9] and will not be capable of self-support." *See* TEX. FAM. CODE ANN. § 154.302.

Rodolfo additionally argues that the testimony of Juanita and Kassandra, though not objected to at trial, was "conclusory," "speculative," and "baseless" and therefore cannot support the judgment. *See, e.g., City of San Antonio v. Pollock*, 284 S.W.3d 809, 816 (Tex. 2009) ("Bare, baseless opinions will not support a judgment even if there is no objection to their admission in evidence."). We disagree. The testimony was based on the witnesses' personal observations derived from having provided daily care for Daniel over the course of many years.

Rodolfo further argues that the trial court's finding that Daniel has autism is without sufficient evidentiary support because "(1) no findings of fact and conclusions of law were filed after the 2003 trial and (2) the term 'Autism' is missing from the divorce decree." Rodolfo is correct that the divorce decree did not specify Daniel's disability. However, as noted, no party appealed the divorce decree, and the propriety of the decree's provisions is therefore not at issue in this case. *See Baxter*, 794 S.W.2d at 762. In any event, the evidence adduced at the trial on Rodolfo's motions to terminate child support was sufficient to establish the nature and extent of Daniel's condition.

We conclude that the trial court did not abuse its discretion in determining that Rodolfo failed to meet his burden to show a material and substantial change in Daniel's

[9] Rodolfo addresses the definition of "disability" extensively in his brief, his reply brief, and a post-submission brief. He notes that the term, while undefined in the family code, is defined by Black as "[a]n objectively measurable condition of impairment, physical or mental, esp[ecially] one that prevents a person from engaging in meaningful work," BLACK'S LAW DICTIONARY 559 (10th ed. 2014); and by the federal Social Security Act as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C.A. § 423(d)(1)(A) (West, Westlaw through P.L. 114-181). Under either definition, the trial court did not abuse its discretion in determining that Daniel remains mentally or physically disabled.

circumstances such that termination of child support would be in Daniel's best interests. *See* TEX. FAM. CODE ANN. § 156.401(a)(1), (a-1); *Iliff*, 339 S.W.3d at 81. Further, the trial court did not err in determining that Daniel continues to "require[] substantial care and personal supervision because of a mental or physical disability and will not be capable of self-support." *See* TEX. FAM. CODE ANN. § 154.302. These findings were supported by sufficient evidence and were not unreasonable. *See In re T.D.C.*, 91 S.W.3d at 872. Rodolfo's first two issues are overruled.

By his third issue, Rodolfo argues that the trial court abused its discretion because it "failed to statutorily construe and apply" family code section 154.306. That statute provides as follows:

> In determining the amount of support to be paid after a child's 18th birthday, the specific terms and conditions of that support, and the rights and duties of both parents with respect to the support of the child, the court shall determine and give special consideration to:
>
> (1) any existing or future needs of the adult child directly related to the adult child's mental or physical disability and the substantial care and personal supervision directly required by or related to that disability;
>
> (2) whether the parent pays for or will pay for the care or supervision of the adult child or provides or will provide substantial care or personal supervision of the adult child;
>
> (3) the financial resources available to both parents for the support, care, and supervision of the adult child; and
>
> (4) any other financial resources or other resources or programs available for the support, care, and supervision of the adult child.

TEX. FAM. CODE ANN. § 154.306.

Rodolfo claims that "[t]here is no evidence in the record that the trial court applied [section] 154.306" when it denied his motions to terminate support. We disagree. The

record shows that the trial court was presented with ample evidence regarding each of the four factors enumerated in the statute. In particular, Juanita and Kassandra testified extensively regarding Daniel's "existing [and] future needs" as well as the "substantial care and personal supervision directly required by or related to" his condition, *see id.* § 154.306(1); Juanita testified as to what aspects of Daniel's care and supervision she would need to pay for and which she would be able to provide personally, *see id.* § 154.306(2); Juanita testified as to other resources and programs available for Daniel's care, *see id.* § 154.306(4); and the trial court required that the parties provide statements regarding their financial resources. *See id.* § 154.306(3); *In re L.J.M.*, No. 13-13-00367-CV, 2014 WL 3053209, at *1 (Tex. App.—Corpus Christi July 3, 2014, no pet.) (mem. op.) (reviewing an order increasing support obligation for adult disabled child and concluding that the movant "presented ample evidence touching on each of the four factors" and that the trial court therefore did not fail to consider the factors); *see also Thompson v. Smith*, 483 S.W.3d 87, 95 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (finding that "the trial court had sufficient evidence before it to consider the section 154.306 factors in exercising its discretion to impose the support obligation"). We overrule Rodolfo's third issue.

Rodolfo's fifth issue argues that the trial court abused its discretion by "prohibiting [Daniel] from qualifying for [Social Security disability benefits]." He notes that, according to the letter from the Social Security Administration attached to his supplemental motion to terminate child support, Daniel was declared ineligible for SSI because he has "too much income." Rodolfo argues that, even though the trial court ordered Juanita to apply for social security benefits, the order precludes Daniel from being eligible for such benefits because it maintains the current amount of child support. He cites *In re B.A.L.*, in which

it was found that the trial court did not abuse its discretion in awarding zero child support because "a court-ordered payment of child support and the attendant reduction in SSI benefits would not be in [the child]'s best interest." No. 07-11-00109-CV, 2012 WL 627985, at *5 (Tex. App.—Amarillo Feb. 27, 2012, no pet.) (mem. op.). However, here, there was no evidence before the trial court as to what benefits Daniel would be actually entitled to if the child support obligation were to be terminated. Moreover, the Social Security Administration letter stated that, because Daniel was determined to have "too much income," the agency never determined whether Daniel was actually "disabled." Therefore, even if the child support obligation were terminated, it is unclear whether Daniel would be entitled to any benefits at all. We cannot conclude that the trial court abused its discretion in this regard. Rodolfo's fifth issue is overruled.

Finally, Rodolfo argues by his sixth issue that the trial court erred by denying his claim for reimbursement of previously-paid child support. He asserts that Juanita "unjustly received an additional $355 per month" between 2007 and 2009 (the year Kassandra graduated from high school), and she "unjustly received $820 per month" between 2009 and 2015. The only pleading setting forth the reimbursement claim was Rodolfo's motion for judgment terminating child support, filed after the June 2, 2015 trial, which argued that the amount awarded in 2003 was "arbitrary and capricious" and therefore did not comply with family code section 154.306. We have already rejected the argument that the trial court was required, but failed, to comply with that statute. To the extent Rodolfo contends he is entitled to reimbursement on any other grounds, he has not preserved any issue for our review. *See* TEX. R. CIV. P. 301 (The judgment of the

court shall conform to the pleadings . . . ."); TEX. R. APP. P. 33.1(a). We overrule Rodolfo's sixth issue.

III. CONCLUSION

The trial court's judgment is affirmed.[10]

DORI CONTRERAS GARZA
Justice

Delivered and filed the
21st day of July, 2016.

[10] In his reply brief, Rodolfo contends that Juanita's appellate counsel "intentionally plagiarized [his] brief and misrepresented the factual record and legal authorities" and asks that we assess sanctions including attorney's fees. *See Merrell Dow Pharms., Inc. v. Havner*, 953 S.W.2d 706, 732 (Tex. 1997) ("Courts possess inherent power to discipline an attorney's behavior."). We deny the request.