NUMBER 13-18-00491-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

IN THE INTEREST OF J.C.R. AND J.R., CHILDREN

On appeal from the 389th District Court of Hidalgo County, Texas.

MEMORANDUM OPINION

Before Chief Justice Contreras and Justices Benavides and Longoria
Memorandum Opinion by Justice Benavides

By sixteen issues, which we consolidate, appellant J.R.[1] challenges the trial court's custody determinations of his children, J.C.R. (Child 1) and J.R. (Child 2),[2] in favor of his ex-wife, appellee N.V. J.R. claims that: (1) the trial court erred by not issuing written findings under the Texas Rules of Civil Procedure 296 and 298; (2-3) the trial court failed

[1] Due to the nature of the case, we will refer to the parties by their initials and the children as Child 1 and Child 2 due to Child 2 having the same initials as the appellant.

[2] At the time of the bench trial, Child 1 was thirteen years old and Child 2 was twelve years old. The children are now sixteen and fifteen years old respectively.

to make written best interest findings, other than in the final order, under the Texas Family Code § 153.072; (4-9) the evidence was legally and factually insufficient to allow N.V. the exclusive right to direct the children's moral and religious training; (10) the trial court erred by removing J.R. as a joint possessory conservator because the best interest presumption was not rebutted; (11) there was legally and factually insufficient evidence to rebut the presumption that joint custody was in the children's best interest; (12) the trial court erred by limiting and restricting J.R.'s rights and duties because he was not given notice that his rights could be limited or restricted; (13) the trial court abused its discretion by failing to appoint J.R. as joint managing conservator or giving J.R. the same or more access to the children; and (14-16) the evidence was legally and factually insufficient to support the portion of the order that disallows J.R.'s significant other from attending the children's school functions. We affirm.

I. BACKGROUND

A. Procedural History

The parties in this case initially entered into an agreed final decree of divorce in October 2009, which provided the initial terms regarding custody of the children. The first modification to the decree affecting the parent-child relationship in this case was signed on September 24, 2013. N.V. filed a second motion to modify on December 16, 2015. The trial court conducted a bench trial on April 25, 2017, and the parties presented additional evidence on August 15, 2017. The second order modifying the decree was signed by the trial court on June 19, 2018. J.R. requested findings of fact and conclusions

of law on July 9, 2018 and again on August 7, 2018.[3] He also filed a motion for new trial in July 2018, which was denied in October 2018. This appeal followed.

B. Factual History

At the bench trial, evidence was presented from J.R., N.V., a counselor, the children's guardian ad litem, and a police officer. The parties stipulated that N.V. would have the exclusive right to determine the children's primary residence.

Roxanne Trevino, a counselor, testified about her interactions with the children from May 2013 through February 2014. She saw the children individually and also had family counseling sessions with the parents. Trevino stated she had more sessions with N.V. than J.R., and J.R. eventually stopped attending sessions because he felt "they were doing better and that work was interfering with attending counseling." Trevino did not agree that the children were "doing better." Trevino felt the children were fearful of J.R. and had frequent nightmares. She explained the children had told her they had witnessed domestic violence incidents prior to the divorce, as well as discussed incidents where J.R. lost his temper with the children. These themes were repeated in multiple sessions. Trevino felt the children found J.R.'s anger to be unpredictable and they were initially reluctant to talk about it for "fear of retaliation," but they were able to work through the reluctance as the sessions progressed. Trevino found Child 1 to be "very withdrawn" with some "anger outbursts" and they worked on "how to express himself and deal with his emotions." Child 2 had more "behavioral concerns" Trevino also felt that the children did not have concerns or fear of N.V. Trevino stopped seeing the family completely because

[3] The trial court never responded to J.R.'s requests for findings of fact and conclusions of law.

they could not participate in the family counseling, which she explained took place at 2:00 or 3:00 in the afternoon, biweekly. Trevino agreed that there was a conflict between scheduled hours and J.R.'s employment.

Daniel Rodriguez, a McAllen Police Department officer, discussed an incident from January 2014. He stated that N.V. reported an incident where J.R. had "struck the child [Child 2] on the left ear with his open right hand." Rodriguez said he spoke to the children and observed some bruising on Child 2's left ear. He notified child protective services as required and the McAllen Police Department juvenile division conducted a follow-up investigation. According to investigators, the children explained that Child 2 had fallen and was injured on a piece of furniture. Rodriguez stated that from his understanding, the case was dropped and no charges were filed. He reiterated that when he initially spoke to both children, they stated that J.R. struck Child 2 while trying to discipline him.

N.V. testified and explained that J.R. and she split custody 50/50 but she wanted it changed. N.V. said that the parties had agreed that she would determine the children's primary residence, restricted to within Hidalgo County. N.V. was requesting more limited visitation for J.R. than is allowed by the standard possession order. N.V. told the trial court that currently she had the children Monday and Wednesday and alternating weekends and that J.R. had them on Tuesday and Thursday with the alternate weekend to hers.

According to N.V., it was her idea to take the children to counseling and she felt their behavior improved while they were in counseling. She said she felt the children's behavior became more withdrawn when they stopped attending counseling sessions. N.V. also felt that J.R. was telling the children certain information that would cause them

to be upset with her. For example, when he told the children about the motion for modification, they were angry and did not want to talk to her anymore because they felt she "was bringing them to court to take them away from their dad." N.V. also believed that J.R. spoke to her children about her relationship with another female. She said that, prior to the motion to modify being filed, the children had a good relationship with C.Q., her significant other. However, following the filing of the motion to modify, the children started saying "they didn't want to be there at the house with me being in a relationship with [C.Q.]." N.V. had a conversation with Child 1, who stated to her the relationship was "something that was evil and disgusting."

N.V. also spoke about issues regarding communication with the children when they were with J.R. in 2017. N.V. stated that it took J.R. days to return calls or texts, but she allows the children to talk to J.R. whenever he calls or they want. She tries to encourage the relationship between the children and J.R. but she does not feel that J.R. does the same. N.V. also discussed an incident in 2016 where Child 1 was angry with her due to a lost cell phone. She did not allow the children to have a cell phone at her home because she did not have full access to it, but J.R. allowed them to have one. N.V. stated the cell phone was never found, but Child 1 was told that N.V. had taken the phone. Child 1 was angry and yelling at N.V. and N.V. ended up calling the police because "[Child 1] was being very aggressive," which she clarified to the trial court meant [Child 1] was "raising [Child 1's] voice," "screaming and yelling and [Child 1] was being very disrespectful," and then "called me a bitch." The trial court asked N.V. if Child 1 ever struck her or took a position like Child 1 was going to hit her, and N.V. stated no, that she called police

because Child 1 called her a derogatory word. N.V. also discussed another incident in 2015 where she contacted police after Child 2 returned from a trip with J.R. where Child 2 fell at the swimming pool and ended up with bruises. Child 2 had told her the kids were unattended while J.R. was with his girlfriend in the hotel room. N.V. also said Child 1's arm got burned from an iron while with J.R. in 2015.

N.V. also discussed her understanding of how the children spent their time when J.R. had possession of the children but was at work. J.R. worked at the outlet mall and the children would either go to work with him and stay in another office or walk around the outlets without supervision because J.R. did not have anywhere else to leave them while he was working. She said the children have told her they would stay in an office or walk to the food court and "ask for food to whoever they know there." N.V. said she had once seen them walking at the outlet mall and followed them but did not confront them or J.R. because he has belittled her in front of the children previously. She said J.R. got into an argument with her at Child 2's graduation the year before, because her girlfriend attended whereas he was told there was not enough tickets for his girlfriend. N.V. said the principal told them there was extra space and enough room for N.V.'s girlfriend, but he was angry and caused a scene that embarrassed the children.

N.V. explained that J.R. caused issues with the children's ability to participate in extracurricular activities, such as an engineering program, karate, and baseball. N.V. stated that J.R. did not try to work with the children's schedules and did not ask for their input in what they wanted to do, like she did. She said they were unable to communicate and meet in the middle in terms of the children and the children had been unable to

participate in certain activities due to J.R.'s unwillingness to compromise.

J.R. testified regarding his side of the events discussed. He said he is the director of security at the outlet mall. J.R. explained that when he has his children and must work, that the children are not without supervision. J.R. has a "team of 18 employees that do interior and exterior patrols" that monitor the children if they go to the food court and, otherwise, the children stay in a secure conference room in the office. He explained that he orders them food from the food court and the children walk to the food court to pick up the orders and bring it back to the office. In relation to the custody arrangement, J.R. asked the court to consider a one week with mom, one week with dad arrangement. He felt the children would gain "more consistency if they're somewhere at least more than one day" and the family would be better able to plan events, activities, and vacations. He explained that the children expressed to him that this is what they wanted too. He agreed that, currently, he and N.V. split custody 50/50 and the arrangement he was requesting would keep that custody split the same.

J.R. agreed with the trial court that when the children are with him, he does not consult N.V. regarding what activities they are going to participate in. He stated that N.V. also does not consult him when she has possession. J.R. believes the week on/week off custody arrangement would also help the parties improve their communication. J.R. told the trial court that he completed both an anger management program and a parenting skills class. He also explained that in the past year, around when N.V. filed the second modification request, he took the children to a different counselor to help with the issues going on in the family, but he could not financially afford to continue after six sessions.

He was also in agreement that the children should remain in the Edinburg school district.

J.R. discussed an incident where he was asked to come to the McAllen Police Department with Child 2 regarding an incident N.V. had filed a complaint about. He saw N.V. sitting in the parking lot of the police department, but she texted him twenty minutes after he left the police department requesting to speak with Child 2. J.R. explained that he had just picked up the children for the beginning of his visitation and wanted to talk to them; he told her the children were fine and they could talk to their mother the following day when she got them back for her visitation. When he saw N.V. at the police department, Child 2 said "No, let's go," when asked whether Child 2 wanted to go talk to N.V.

The guardian ad litem was the final witness. She recommended that the children be continued to be "allowed to visit" the parents to the same extent they had been. She stated that Child 1 wanted to spend time with J.R. and enjoyed his company and has a "lot of resentment" towards N.V. because he feels she was "overexaggerating the case and that he feels like he's being punished." She believed that a change in the schedule would lead to Child 1 feeling like "either he's at fault or Mom's to blame." Child 1 is also "resentful at the lack of the ability of the parents to communicate" and he is "embarrassed" by his mother's relationship at school. The ad litem said Child 1 has improved his communication with N.V. and her partner, but it is still an issue at school.

She said Child 2 "seems to be fine" but was having issues with bullying at school. He told her he liked spending time with both parents, but did not like going back and forth every day. The ad litem agreed with the trial court that an alternating-weeks custody

arrangement would not work if the parents cannot communicate; however, she did not want to recommend an option that would limit visitation from either parent. She did not believe the children were abused by J.R. because the motion to modify was filed almost a full year after the alleged incident where J.R. struck Child 2's ear. The guardian ad litem also stated that the children stated that J.R. would get angry in the past but not hit the children, and that the children have not disclosed to her that they are fearful of J.R. currently.

The trial court stated on the record that neither parent was allowed to bring any significant other to the children's school events. The court also said that because of the stipulation that N.V. would decide the children's primary residence, she was "going to make decisions concerning health, welfare, dental, all the things. . . ."

At the August hearing, J.R. requested that visitation stay the same, with the children changing parents every other day. J.R. explained that the parents communicated during the summer via e-mail. He explained that the children told him that N.V. recorded the phone calls they made to J.R.

The trial court decided to order extended standard visitation and to require J.R. to pay monthly child support. The order stated the following:

> Conservatorship
>
> The Court finds that the following orders relating to the appointment of conservators and the rights and duties of each conservator with respect to the children are in the children's best interest.
>
> IT IS ORDERED THAT [N.V.] AND [J.R.] are appointed Joint Managing Conservators of the following children: [Child 1] and [Child 2].
>
> . . . .

[N.V.] rights & duties during periods of possession

3. IT IS ORDERED that [N.V.], as parent joint managing conservator, has the following rights and duties during her periods of possession:

   a. The right to consent for the children to medical and dental care not involving an invasive procedure.

   b. The right to direct the children's moral and religious training.

   c. The duty of care, control, protection, and reasonable discipline of the children.

   d. The duty to support the children, including providing the children with clothing, food, shelter, and medical and dental care not involving an invasive procedure.

There was not a similar section in the order that granted J.R. the same rights during his period of possession.

At the motion for new trial hearing, J.R. argued that the trial court had essentially stripped his rights away and made N.V. the sole managing conservator, although there were no previous pleadings filed that requested that. The trial court disagreed with J.R.'s arguments and denied the motion for new trial. This appeal followed.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

By his first, second, and third issues, J.R. argues that the trial court erred when it failed to issue the requested findings of fact and conclusions of law. J.R. asks this Court to abate the case and remand back to the trial court for such findings.

Rule of civil procedure 296 provides that in "any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law." TEX. R. CIV. P. 296. Once properly requested, a trial court has

twenty days to file its findings of fact and conclusions of law, and if the trial court fails to do so, then the requesting party must notify the trial court within thirty days after filing the original request. *Id*. 297.

If the party timely files its request for findings and conclusions and timely notifies the trial court of past-due findings and conclusions, and the trial court fails to file findings and conclusions, then "the court of appeals must presume the trial court made all the findings necessary to support the judgment." *AD Villarai, LLC v. Chan Il Pak*, 519 S.W.3d 132, 135 (Tex. 2017) (per curiam); *Harris County v. Ramirez*, 581 S.W.3d 423, 426–27 (Tex. App.—Houston [14th Dist.] 2019, no pet.). A party may rebut the presumption by establishing that the evidence does not support the presumed findings that are necessary to support the judgment. *AD Villarai, LLC*, 519 S.W.3d at 135. But when the facts are disputed, the burden of rebutting all presumed findings may be so burdensome that it effectively "prevent[s the appellant] from properly presenting its case to the court of appeals . . . ." *Id.* (internal quotation marks omitted). In such cases, harm is presumed, unless the record affirmatively shows that the complaining party has suffered no injury, and a reviewing court may abate the appeal and remand the case to the trial court with instructions to file the findings and conclusions. *Id.* at 135-36. When a party is not prevented from properly presenting its case to the court of appeals, the failure to file findings and conclusions is harmless. *See Graham Cent. Station, Inc. v. Pena*, 442 S.W.3d 261, 263 (Tex. 2014) (per curiam).

In this case, the record includes reporter's records from multiple hearings and the clerk's record. The testimony presented to the trial court was substantial and J.R. has

been able to effectively present his sufficiency challenge to the court. We conclude there is no need for abatement and that any error in failing to file the findings and conclusions is thus harmless. *See id.* We overrule J.R.'s first three issues.[4]

III. SUFFICIENCY OF THE EVIDENCE

By his sixth, seventh, eighth, and eleventh issues, J.R. claims the trial court abused its discretion, relying on legally and factually insufficient evidence, in making its findings regarding the children's moral and religious training and visitation.

A. Standard of Review

"Most of the appealable issues in a family law case are evaluated against an abuse of discretion standard, be it the issue of property division incident to divorce or partition, conservatorship, visitation, or child support." *Sandone v. Miller-Sandone*, 116 S.W.3d 204, 205 (Tex. App.—El Paso 2003, no pet.). A trial court's determination of what is in the best interest of the child "will be reversed only when it appears from the record as a whole that the court has abused its discretion." *Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex. 1982); *In re A.C.M.*, 593 S.W.3d 894, 897–98 (Tex. App.—El Paso 2019, no pet.). A trial court abuses its discretion when it acts arbitrarily or unreasonably, without reference to any guiding principles, or when it fails to correctly analyze the law. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985); *In re M.V.*, 583 S.W.3d 354, 360 (Tex. App.—El Paso 2019, no pet.). "A trial court does not abuse its discretion if there is

[4] Texas Family Code § 153.072 states that the "court may limit the rights and duties of a parent appointed as a conservator if the court makes a written finding that the limitation is in the best interest of the child." TEX. FAM. CODE. ANN. § 153.072. J.R. did not raise this issue before the trial court, and even if he had, the trial court's order contained a written finding that the modifications were in the "best interest" of the children.

some evidence of a substantive and probative character to support [its] decision." *Garza v. Garza*, 217 S.W.3d 538, 549 (Tex. App.—San Antonio 2006, no pet.).

"Because in family law cases the abuse of discretion standard of review overlaps with the traditional sufficiency standards of review, legal and factual insufficiency are not independent grounds of reversible error; instead they constitute factors relevant to our assessment of whether the trial court abused its discretion." *Id.* "Therefore, in considering whether the trial court abused its discretion because the evidence is legally or factually insufficient, we apply a two-prong test: (1) did the trial court have sufficient evidence upon which to exercise its discretion, and (2) did the trial court err in its application of that discretion?" *Id.*; *see also Smith v. Hickman*, No. 04-19-00182-CV, 2020 WL 1442663, at *1 (Tex. App.—San Antonio Mar. 25, 2020, no pet. h.) (mem. op.).

In the absence of findings of fact and conclusions of law, we imply all necessary findings of fact to support the trial court's order. *In re M.V.*, 583 S.W.3d at 361; *In re T.M.P.*, 417 S.W.3d 557, 563 (Tex. App.—El Paso 2013, no pet.). If, however, the appellate record includes a reporter's record, the trial court's implied findings may be challenged for legal and factual sufficiency. *In re M.V.*, 583 S.W.3d at 361; *In re T.M.P.*, 417 S.W.3d at 563.

Whether there is legally sufficient evidence is determined by "view[ing] the evidence in the light favorable to the verdict, crediting favorable evidence if reasonable jurors could, and disregarding contrary evidence unless reasonable jurors could not." *City of Keller v. Wilson*, 168 S.W.3d 802, 807 (Tex. 2005). "When reviewing the factual sufficiency of the evidence, we consider and weigh all the evidence, and will set aside a

finding only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust." *In re M.V.*, 583 S.W.3d at 361. If there is a conflict in the evidence, we must presume that the fact finder resolved the inconsistency in favor of the order if a reasonable person could do so. *Id.* If there is evidence of a substantive and probative character supporting the trial court's decision, we cannot conclude that the court abused its discretion in reaching that decision. *Id.*

B. Applicable Law and Discussion

Because the appellate record contains transcripts of the hearings, we can evaluate the trial court's implied findings to determine if there was an abuse of discretion. *See id*. The first question we are asked to consider is if the trial court had sufficient evidence upon which to exercise its discretion. *Garza*, 217 S.W.3d at 549. The trial court heard testimony from both parents, as well as a counselor and the guardian ad litem who had met with the children. That evidence showed that the children in the case were stuck between two parents who were unable to communicate effectively and acted in ways that best suited them. At the hearing in August to sign the orders, the trial court even stated that it gave the parties time to work on their abilities to communicate in order to not disrupt the children's lives, but it found that the parents were unable to work together. The parties had previously agreed that N.V. would be the primary conservator. The trial court gave her all rights and responsibilities regarding the children when it determined that the parents were unable to set any personal differences aside. There was sufficient evidence presented for the trial court to exercise its discretion in making a decision about the children's moral and religious training. *See id*.

The second question we then address is whether the trial court erred in its application of its discretion. *See id*. As stated above, the trial court gave the parties a substantial amount of time to try to work together. The evidence was presented in April 2017, but the order was not signed until June 2018. In June 2018, the trial court stated to both J.R. and N.V. that in June 2018 there was still not proof that they communicate properly for the best interest of their children. Based on the evidence presented at both hearings, and the trial court giving the parents the opportunity to prove better communication but failing, we conclude the trial could did not abuse its discretion regarding the duties bestowed to N.V. We overrule J.R.'s sixth, seventh, eighth, and eleventh issues.

IV. CONSTITUTIONAL CLAIM

By his fourth and fifth issues, J.R. claims that the trial court unconstitutionally erred by ordering that N.V. would have the exclusive right to determine the children's moral and religious training because (1) N.V.'s pleadings did not request this relief and (2) J.R. did not have notice that this right "was in peril." By his ninth and twelfth issues, J.R. argues that this order violated his rights under the Fourteenth Amendment to the United States Constitution.

> A suit properly invoking the jurisdiction of a court with respect to custody and control of a minor child vests that court with decretal powers in all relevant custody, control, possession[,] and visitation matters involving the child. The courts are given wide discretion in such proceedings. Technical rules of practice and pleadings are of little importance in determining issues concerning the custody of children.

Leithold v. Plass, 413 S.W.2d 698, 791 (Tex. 1967) (internal citations omitted); *see also In re B.J.H.-T.*, No. 12-09-00157-CV, 2011 WL 721511, at *2 (Tex. App.—Tyler Mar. 2,

2011, pet. denied) (mem. op.) (nothing that, "in cases affecting the parent-child relationship, . . . the best interest of the child is always the overriding consideration."). Trial courts are given wide latitude in determining the best interests of a minor child. *Gillespie*, 644 S.W.2d at 451; *Scoggins v. Trevino*, 200 S.W.3d 832, 836 (Tex. App.—Corpus Christi–Edinburg 2006, no pet.); *In re J.P.*, No. 13-18-00648-CV, 2020 WL 103858, at *9 (Tex. App.—Corpus Christi Jan. 9, 2020, pet. denied) (mem. op.). "Texas is a 'fair notice' state, which means that all parties are entitled to fair notice of a claim." *In re M.G.N.*, 491 S.W.3d 386, 406 (Tex. App.—San Antonio 2016, pet. denied) (quoting *In re Russell*, 321 S.W.3d 846, 855 (Tex. App.—Fort Worth 2010, orig. proceeding [mand. denied]). The Texas Family Code specifically requires parties to include in their pleadings a "statement describing what action the court is requested to take concerning the child and the statutory grounds on which the request is made." TEX. FAM. CODE. ANN. § 102.008(b)(10). Without proper pleadings and evidence, a trial court exceeds its authority if it modifies or reforms previous orders affecting the custody of a child. *In re M.G.N.*, 491 S.W.3d at 406.

J.R., who was represented by counsel, sought no finding and raised no legal argument before the trial court about a constitutional claim. The trial court held multiple hearings following the bench trial in which the trial court declared it was apparent that N.V. was "given all the things" a primary conservator could determine. At no time was it apparent from the context of the hearings that J.R. was attempting to raise a due process challenge. Under the Texas Rules of Appellate Procedure, a party must present to the trial court a timely request, motion, or objection, state the specific grounds therefor, and

obtain a ruling. TEX. R. APP. P. 33.1; *In re L.M.I.*, 119 S.W.3d 707, 708 (Tex. 2003) ("[A]dhering to our preservation rules isn't a mere technical nicety; the interests at stake are too important to relax rules that serve a critical purpose."); *Lynch v. Port of Hous. Auth.*, 671 S.W.2d 954, 957 (Tex. App.—Houston [14th Dist.] 1984, writ ref'd n.r.e.) ("Even constitutional challenges not expressly presented to the trial court by written motion, answer or other response. . . will not be considered on appeal as grounds for reversal."). Requiring parties to preserve their complaints in family-law cases furthers the legislative intent that such cases be resolved expeditiously and with finality. *In re A.L.E.*, 279 S.W.3d 424, 431 (Tex. App.—Houston [14th Dist.] 2009, no pet.). Both the United States and Texas Supreme Courts have held that constitutional error was waived in comparable circumstances. *See Webb v. Webb,* 451 U.S. 493, 496–97 (1981) (holding that constitutional error was waived, even though petitioner repeatedly used the phrase "full faith and credit," because petitioner did not cite to the federal Constitution or to any cases relying on the Full Faith and Credit Clause of the federal Constitution); *Tex. Dep't of Protective & Regulatory Servs. v. Sherry,* 46 S.W.3d 857, 860–61 (Tex. 2001) (holding that alleged biological father who sought to establish paternity waived constitutional error, though it was undisputed that father had received no notice or hearing on prior paternity adjudication that created bar). Accordingly, we hold that the due process argument that J.R. raises here was not preserved below. Although N.V. did not specifically request to direct the children's moral and religious training, her petition for modification asked for modification that would protect the children's physical and emotional well-being. Because the trial court was asked to consider the children's emotional well-being in N.V.'s

pleadings and given wide latitude in determining the best interest of the children, the trial court's determination that N.V. dictate the children's moral and religious education was within its discretion. *See Gillespie*, 644 S.W.2d at 451; *Leithold*, 413 S.W.2d at 791; *see also In re B.J.H.-T.*, 2011 WL 721511 at *2; *Scoggins v. Trevino*, 200 S.W.3d at 836; *In re J.P.*, 2020 WL 103858 at *9. We overrule J.R.'s fourth, fifth, ninth, and twelfth issues.

V. BEST INTEREST FINDING

By his tenth issue, J.R. challenges the trial court's determination that designating N.V. the exclusive rights to determine the children's moral and religious training was in the best interest of the children. By his thirteenth issue, J.R. states that the trial court abused its discretion when it failed to appoint him as a joint managing conservator and by failing to order a visitation order that gave him the same or more access to his children.

The trial court appointed both N.V. and J.R. as joint managing conservators of the children and found this to be in the best interest of the children, contrary to J.R.'s argument. Texas Family Code § 101.016 states that "joint managing conservatorship" means "the sharing of the rights and duties of a parent by two parties, ordinarily the parents, even if the exclusive right to make certain decisions may be awarded to one party." TEX. FAM. CODE ANN. § 101.016. Even when both parents are appointed as joint managing conservators, the trial court still must specify the rights and duties that each parent is to have. *Id*. § 153.071. The trial court *can limit* the rights and duties of a parent appointed a conservator if it makes a finding that the determinations are in the children's best interest. *Id*. § 153.072 (emphasis added).

With regard to issues of custody, control, possession, child support, and visitation, we give the trial court wide latitude and will reverse the trial court's order only if it appears from the record as a whole that the trial court abused its discretion. *Garza*, 217 S.W.3d at 551. Because the trial court is faced with the parties and their witnesses and observes their demeanor, it is in a better position to evaluate what will be in the best interest of the children. *Id*. at 551–52.

Here, the trial court, upon hearing the evidence presented by both parties, appointed the parents as joint managing conservators, laid out the rights and duties of each parent in the order, and determined that the assignment of those rights and duties was in the children's best interest. *See* TEX. FAM. CODE ANN. §§ 153.071, 153.072. Due to the ongoing disagreement and discord between N.V. and J.R., the trial court determined that N.V. would have the exclusive right to determine the children's education and moral and religious training, among other things. The trial court determined that the parents should be joint managing conservators with N.V. having more rights and duties, and that situation was in the best interest of the children.

Additionally, while there is a statutory presumption that the parents be appointed joint managing conservators, there is no statutory presumption that joint managing conservators be awarded equal periods of possession. *Garza*, 217 S.W.3d at 552. The trial court also heard evidence that J.R. was uncooperative with the children's extra-curricular activities during his times of possession, left the children alone in a room at his work, and allowed them to walk to the food court at the outlet malls unattended to pick up food. The trial court had the discretion to determine the periods of possession based on

the testimony before it. We conclude that, by entering a possession order that did not provide for equal possession periods, the trial did not abuse its discretion. We overrule J.R.'s tenth and thirteenth issue.

VI. SIGNIFICANT OTHER RESTRICTIONS

By his fourteenth, fifteenth, and sixteenth issues, J.R. argues that the trial court abused its discretion and there was insufficient evidence to support a restriction of his girlfriend's ability to attend the children's school functions.

The order contains the following restriction:

> IT IS ORDERED that regardless of which joint managing conservator has possession of the child, measures shall be taken to minimize disruption of the child's education, daily routine, and association with friends. A party's significant other will not be allowed to attend any school related functions, UNLESS the minor children desire the significant others to be present.

The trial court specifically addressed both parties, stating that the restriction would apply equally to both of them and if there was a change in marital status, that the parties could move for modification and revisit the issue at that time. Again, the trial court heard evidence that Child 1 especially was uncomfortable with N.V.'s relationship, and in order to alleviate any additional stress on the children, the trial court told the parties that the children's school was the place where the children could determine who came with their parents. The restriction allows for both significant others to attend school functions with the child's permission. "A trial court does not abuse its discretion if there is some evidence of a substantive and probative character to support [its] decision." *Garza*, 217 S.W.3d at 549. We overrule J.R.'s fourteenth, fifteenth, and sixteenth issues.

VII. CONCLUSION

We affirm the trial court's judgment.

GINA M. BENAVIDES,
Justice

Delivered and filed the
18th day of June, 2020.