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MEMORANDUM OPINION
Court of Appeals of Texas,
Beaumont.

In the Interest of J.E., S.L., and N.L.

No. 09–09–00476–CV.
|
December 16, 2010.

West KeySummary

1 **Child Custody**
Previous Abandonment or Relinquishment by Custodian

Child Custody
Presumption in Favor of Parent

Trial court did not abuse its discretion by appointing mother as managing conservator of her children, as it was in the children's best interest. Mother gave the children to caregivers as part of a written agreement that the children would remain in their custody until mother could provide a safe environment. Although caregivers argued the parents voluntarily left the children in their care for over six months, sufficient to rebut the parental presumption, the evidence showed mother only intended the arrangement to be temporary, tried to retrieve her children and was told she had no legal recourse and there was a restraining order in place. Further, the evidence showed the mother was now able to provide a safe home for the children. V.T.C.A., Family Code §§ 153.131, 153.002.

Cases that cite this headnote

On Appeal from the 88th District Court Hardin County, Texas, Trial Cause No. 48315, Earl B. Stover III, Judge.

Attorneys and Law Firms

James P. Spencer, II, Law Office of James P. Spencer, II, Lumberton, for appellants.

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Before McKEITHEN, C.J., GAULTNEY and KREGER, JJ.

MEMORANDUM OPINION

STEVE McKEITHEN, Chief Justice.

***1** Appellants Jacque C. and Jonathan C. (hereafter "Jacque," "Jonathan," or "appellants"), who are not the biological parents of the minor children J.E., S.L., and N.L., appeal the trial court's order naming the children's biological mother, A.L., the managing conservator of the children, and naming D.L., the biological father of S.L. and N.L., the possessory conservator of those two children. [1] In three issues, appellants argue that they presented sufficient evidence to overcome the parental presumption, the trial court failed to make proper findings of fact and conclusions of law, and the trial court inappropriately applied the parental presumption to the biological father of S.L. and N.L. We affirm the trial court's judgment.

Background

On November 20, 2007, appellants filed an original petition in a suit affecting the parent-child relationship. In their petition, they alleged that the children's biological parents "voluntarily left the children with Petitioners for over six months and without providing any support for the children."They sought appointment as sole managing conservators of the children, and they alleged that appointment of the parents as joint managing conservators would not be in the children's best interest. A.L. filed a counter-petition, in which she alleged that appointing her the children's sole managing conservator would be in the children's best interest.

Jonathan testified that he and Jacque are married, and that J.E., S.L., and N.L. are currently in their care. Jonathan explained that he is not biologically related to the children, but he and Jacque took the children in October 2006, when A.L. asked them to do so. When A.L. asked appellants

to care for the children, the parties did not immediately memorialize the agreement in writing. However, on February 1, 2007, Jacque, Jonathan, A.L., and D.L. entered into an agreement that gave Jacque and Jonathan permission to seek medical treatment for the children. According to Jonathan, the agreement "was acknowledging my wife and myself as the temporary guardians for the three children."Jonathan explained that D.L. asked him to include a provision in the agreement that the children could not return to A.L. until both D.L. and A.L. agreed "that the environment that they were going back to was a safe and secure environment."

According to Jonathan, A.L. "forcibly took her children back in ... the second week of January of 2007."However, the children were returned to Jacque and Jonathan in February 2007. Jonathan testified that upon their return, the children were "a little more disheveled[,]" and "it was not obvious that they had been cared for fully, supervised fully."Jonathan testified that since February 1, 2007, with the exception of allowed visits with A.L., he and Jacque have had continuous possession of the children. According to Jonathan, in January 2008, he and Jacque sought temporary orders from the trial court concerning their possession of the children, which A.L.'s mother supported. Jonathan testified that he did not recall A.L. demanding the return of her children between February 1, 2007, and February 1, 2008.

***2** Jonathan testified that he and his wife have a three-bedroom home, in which J.E. has his own room, and S.L. and N.L. share a room. According to Jonathan, CPS visited their home in October of 2008 and required them to clean the house. Jonathan testified that since that visit, he and his wife have kept the house properly, and the children have never been removed due to unsafe or unsanitary conditions. Jonathan testified that Jacque stays home with the children. According to Jonathan, when the children first came to live with them, J.E. was "a nervous wreck[,]" had "problems sleeping at night[,]" and "was constantly waking up in the middle of the night crying regarding his mother."Jonathan testified that he and Jacque had to calm J.E. down and assure him that he was safe. According to Jonathan, J.E. has, on multiple occasions, voiced concern about being afraid to live with his mother.

Jonathan explained that workers from the Garth House instructed him and Jacque to take J.E. to see a counselor, Polly Butler, after "[h]e had what they called an outcry."According to Jonathan, after the Garth House interviewed J.E., "[t]hey had no finding either way."In addition, CPS found insufficient evidence to substantiate any abuse. Jonathan testified that J.E.'s problems continued, so J.E. remained in counseling with Butler. According to Jonathan, J.E. exhibited inappropriate sexual behaviors. Jonathan stated that J.E.'s visits with Butler were "[t]oo numerous to count at this point[,]" and that the counseling sessions seemed to help J.E. with his fears and problems.

According to Jonathan, he and Jacque allowed A.L. to have supervised visits with the children. Jonathan testified that on January 9, 2008, the trial court ordered A.L. to pay child support of $200 per month, but A.L. had missed a number of payments. Jonathan explained that he and his wife seek sole managing conservatorship of the children because the children have been with them for over two years, and A.L. failed to support the children. Jonathan testified that A.L. "would bring over a package of diapers sporadically[,]" and D.L. sporadically brought items such as diapers or formula. A.L.'s mother also sometimes brought things for the children, such as diapers, formula, and clothing. Jonathan opined that the proposed parenting plan is in the best interest of the children.

During cross-examination, Jonathan testified that he is the stepfather of Jacque's grown sons, A.H. and J.H. Jonathan testified that A.H. had been arrested for distribution of narcotics, and he received probation. According to Jonathan, A.H. has been in jail "multiple times[.]" Jonathan explained that A.H. stayed with him and Jacque for about two weeks when J.E., S.L., and N.L. first came to live with them. Jonathan also testified that J.H. has been to drug rehabilitation. Jonathan testified that J.H. has periodically been around the children. According to Jonathan, Jacque also has a third adult son, C.H. Jonathan explained that Jacque has three children by three different fathers, and that he and Jacque have no children of their own.

***3** Jacque testified that she takes medications for attention deficit disorder and anxiety, and is under the care of a psychiatrist. Jacque also testified that because she lost sight in her right eye, she does not have a Texas driver's license. Jacque testified that she does not ordinarily drive with the children in the car. However, Jacque admitted that she recently drove with the children and had an accident when she attempted to move into the right lane when it was unsafe to do so. Jacque explained that when J.E. was two years old he overdosed on medication at her home when she was babysitting for A.L. Jacque testified that the prescription medication was a sample packet, and it was in a bag on the

coffee table. In addition, Jacque testified that while S.L. was living with her and Jonathan, S.L. had to have surgery under general anesthesia to drain an abscess on her buttocks. Jacque explained that the abscess was diagnosed as an antibiotic-resistant staph infection. Jacque testified that S.L. had also sustained a cut on her foot that required stitches. S.L. also broke her wrist while under Jacque's care. Jacque testified that the parenting plan she and Jonathan filed with the trial court was in the best interest of the children.

D.L. testified that he is the father of S.L. and N.L., and is currently married to A.L. D.L. explained that he and A.L. married in March of 2005, and N.L. was born in 2006. According to D.L., he and A.L. stayed together for approximately one year before they separated. D.L. explained that he and A.L. reconciled after a few months. When the children went to live with appellants in October 2006, D.L. and A.L. were separated. D.L. explained that he approved of appellants taking the children, and he believed they were providing a safe and stable environment for the children. According to D.L., he and A.L. had not reconciled in February 2007, when they returned the children to appellants and signed papers naming appellants the children's temporary guardians.

D.L. testified that since February 2007, he and A.L. have not jointly attempted to regain possession of the children. D.L. explained that in February or March 2007, he and A.L. reconciled and intended to "make things work out and be a family again," but things did not work out. D.L. testified that he and A.L. separated again in approximately December 2007, and again reconciled in February 2008. According to D.L., he and A.L. stayed together for about nine months, and although they were building a home and intended to retrieve the children, "[i]t didn't go all the way through."D.L. indicated that he and A.L. separated for the final time in December 2008. D.L. testified that he believes that A.L. "went to jail for something." D.L. also testified that A.L. has thrown things such as beer bottles and cigarette butts at him, but he stated that these incidents did not occur in the children's presence. D.L. testified that he has been to jail for driving while intoxicated, and was arrested for possession of marijuana before he met A.L. D.L. explained that he does not believe there is currently a suitable living environment for the children with A.L. According to D.L., the best place for the children is with appellants, who provide a safe, suitable place for the children. When asked directly whether the children are safe with A.L., D.L. testified, "I can't answer that truthfully because I don't know."

***4** A.L.'s mother, R.W., testified that she was recovering from multiple surgeries when A.L. and D.L. separated, so she was unable to take care of the children for A.L. R.W. testified that she trusted appellants, and she wanted to ensure that the children stayed together. According to R.W., when A.L. and D.L. separated, A.L. "ended up in a one-bedroom trailer with three kids all in one room, all four of them, and she agreed that it was not the right thing for the kids and voluntarily with her husband agreed with [appellants] for a short period of time to take the kids. It was for their safety."R.W. explained that A.L. was experiencing financial difficulties at that time.

R.W. testified that she would always put her grandchildren's interest ahead of A.L.'s interest if they were ever in conflict with one another. R.W. explained that "once I got well ..., and I had a nice visit with C.P.S .... the last statement that they made to me, [was] to make sure I told [A.L.] she had not lost her rights as a mother and to get a copy of the report."R.W. testified that she had not seen any evidence that A.L. had ever abused or neglected the children, nor had she ever seen A.L. behave inappropriately or unsafely around the children. In addition, R.W. testified that she has never seen J.E. act out or behave inappropriately, and that J.E. has never mentioned anything to her about sex.

R.W. also testified that J.E. has never had a problem with nightmares or bedwetting at her home. According to R.W., when the children come to visit A.L., "they get out of the car screaming and running straight to her."R.W. testified that during visitations with A.L., the children never hesitate to come to A.L. R.W. explained that when J.E. has to leave A.L., "[t]here's times that he don't want to go; but it's been so many times we've told him he has to leave, that he's learned not to even ask to stay anymore."According to R.W., appellants sometimes did not permit A.L. to see the children. R.W. retained counsel for A.L. because A.L. wanted her children back. A.L. requested and received court-ordered visitation with her children in April 2009. R.W. testified that A.L. only missed one scheduled visitation with the children, and A.L. missed that visit due to illness. According to R.W., A.L. currently has a "wonderful home" with A.L.'s fiancé, R.D., and his two children. R.W. testified that A.L. "was lost after she turned the kids over. She had a hole in her stomach, her heart."R.W. explained that since February 2007, A.L. has become more responsible, calmer, and "she just wants her family and she's a good mamma."R.W. testified that A.L. would put her children first, is stable, and can protect the children.

R.W. testified that she has only seen appellants' home cleaned "one time as many times as I've been there, and usually I can't get past. You have to walk through a trail."According to R.W., when she picked up the children from the residence, "[i]t would take ... 20 minutes, 30 minutes just to find clothes to put on the kids so I could leave with them[,]" and "[t]hey would apologize and move stuff off the sofa so I could sit down."R.W. testified that the house was "very cluttered" and "dangerous[.]" In addition, R.W. testified that Jonathan had been injured by the clutter in the home. R.W. also recalled when J.E. overdosed on prescription medication, while in appellant's care. She testified that A.L. refused to allow him to return to appellant's home until the house was cleaned.

***5** R.W. testified that in retrospect, she wondered whether being around Jacque's son, A.H., might have influenced J.E.'s accounts of sexual abuse by his mother. According to R.W., Jacque asked A.H. to leave their home because A.L. did not want the children around A.H. because of A.H.'s "problems with drugs and the robberies, problems he was having going in and out of jail."R.W. testified that Jacque's other son, J.H., had drug problems and had been to drug rehabilitation. According to R.W., J.H. and his friends lived in appellants' garage while the children were living with appellants.

During cross-examination, R.W. testified that A.L. was arrested for possession of marijuana when A.L. was seventeen years old, but that R.W. has never seen A.L. take drugs. R.W. testified that A.L. is still married to D.L., and that "[t]hey know they have to get a divorce.... They're waiting for this to be over."In addition, R.W. testified that A.L. did not finish high school and she has not obtained a G.E.D.

R.W. testified that Jacque had offered A.L. $10,000 to have a baby for her and Jonathan, and R.W. opined that when A.L. refused, appellants tried to create a family with A.L.'s children because they never had children of their own. In addition, R.W. opined that appellants have tried to turn the children against A.L. and her family. R.W. explained, "I think it's been a scheme. She met my daughter working at Motherhood. That's for pregnant women, in the mall. I think it's been a scheme all along."When asked what is in the best interest of the children, R.W. testified that "[t]hey need to go home with ... their family, their mother, and the rest of us."

A.L.'s fiancé, R.D., testified that he is currently divorced, and he has custody of his two children. R.D. testified that A.L. cares for his children while he is at work, and she cooks breakfast for them each morning. R.D. explained that A.L. also homeschools R.D.'s four-year-old for an hour every morning. R.D. testified that the allegation that J.E. is afraid to be with A.L. is "ridiculous." According to R.D., he has been present for many of A.L.'s visits with the children, and the children "get out of that vehicle running to their mamma. They don't run back."R.D. also testified that he loves A.L.'s children as though they were his own. R.D. explained that he lives in a four-bedroom house, and if the court awarded custody of the children to A.L., S.L. and N.L. would share a room, J.E. would share a room with R.D.'s younger son, and R.D.'s oldest child would have his own room. R.D. also testified that the school the children would attend is "an unbelievable school. The student/teacher relationships are awesome."R.D. described A.L. as happy, loving, and outgoing, and he opined that she deserves the children because "she's missing that one thing in her life."R.D. explained that he has never seen A.L. do anything inappropriate or unsafe around any children, and he stated, "she's amazing with my kids." R.D. further testified that if A.L. is awarded custody of the children, they intend for A.L. to be a stay-at-home mother.

***6** A.L. testified that she did not intend to have the children live with appellants permanently. A.L. explained, "My intentions were only to get back on my feet."When asked what was in the children's best interest, A.L. responded, "[they] need to be home with me."A.L. denied abusing J.E., and then testified, "I believe my son was very rehearsed. I believe that he was schooled, he was coached."A.L. testified that J.E. never experienced bedwetting or nightmares while in her care.

A.L. explained that she tried "multiple times" to get her children back, and that she would knock on appellants' door, and the children would be "standing right behind the door," but Jacque would not open the door despite the children screaming "Mamma, Mamma[.]" A.L. testified that she also sought help from law enforcement, but when the officers asked her whether she had signed something, they told her there was nothing they could do. A.L. also explained that Jacque told her that if she attempted to see the children, she might go to jail because a restraining order had been entered against her. A.L. testified that she now knows there was no restraining order.

In addition, A.L. testified that Jacque became violent with her on one occasion when she went to pick up the children for a visit. A.L. testified that appellants wanted her to have

a baby for them, and that they had also asked her to give N.H. to them. A.L. opined that appellants have tried to turn the children against her. A.L. testified, "I believe my kids are very unsafe and they need to be back home where they are safe."A.L. explained, "I want my babies. I want them."On cross-examination, A.L. explained that she failed to pay child support to appellants because she was very upset about what appellants were trying to do to her. A.L. denied having problems with drugs, but admitted that she was arrested when she was seventeen years old. When asked whether she would have to stay with her mother if she were asked to leave R.D.'s home, A.L. testified, "I'm not ever going to get kicked out, because that's our home. We have made our home; and I do not plan on leaving, because my kids would be very happy there."

Butler testified that she began seeing J.E. as a patient on May 21, 2008, after the Garth House referred J.E. to her. Butler stated that she had met with J.E. forty-three or forty-four times during a period of fifteen to seventeen months. [2] Butler testified that appellants provided a history concerning J.E. Butler testified that J.E. was "very aggressive" and exhibited "a lot of anger[.]" According to Butler, J.E. usually reported that he enjoyed being at appellants' home. Butler testified that during J.E.'s visit on May 28, 2008, J.E. told Butler that "mom ... did sex on me. She go up and down[.]" J.E. indicated that "this occurred ... a long, long time ago, a bunch of times [.]" Butler testified that J.E. called A.L. "mom" and called Jacque "me-maw [,]" so J.E.'s statement referred to A.L. According to Butler, J.E. made several more similar statements on three or four occasions. Butler testified that when J.E. went for an overnight visit with A.L., Jonathan informed her that J.E. began acting out sexually again upon his return, and he began suffering from bedwetting and nightmares again. According to Butler, appellants "complain[ed] that the behavior was following visits with [A.L.]."

***7** Butler contacted Child Protective Services (CPS) concerning J.E.'s statements. Butler testified, "I don't think that [CPS] found anything. I think that they closed the cases, but I'm not certain."Later, on cross-examination, Butler testified, "I never received a report [from CPS], but it was my understanding that the claims were unsubstantiated."Butler explained that she did not have an opportunity to meet with A.L. Butler testified that she had no reason to believe that appellants influenced J.E.'s reporting of sexual abuse by A.L. Butler also testified that she understands the concept of parental alienation, and she stated, "I have never heard or observed [appellants] to make any kind of allegations against [J.E.'s] mother." Butler testified that she was concerned about J.E.'s declining grades, difficulty getting along with other children, anxieties, nightmares, and bedwetting, as well as the allegations of abuse and his acting out sexually. According to Butler, these behavioral issues raise concerns about the possibility of abuse. Butler opined that appellants are gentle with J.E. and are kind to him. In addition, Butler testified that J.E. reported "being happy" with appellants, and J.E. is "very concerned that he would have to leave there. He wants to stay there."

Butler explained that she referred J.E. to a psychologist, Dr. Kaimann, for an evaluation because J.E. "could not focus and concentrate at school."Butler received a copy of Kaimann's report, dated February 17, 2009. Butler testified that Kaimann diagnosed J.E. with posttraumatic stress disorder, attention deficit/hyperactivity disorder, and as a "victim of neglect." According to Butler, Kaimann's report also stated, "rule out a victim of sexual and/or physical abuse."Butler testified that at the end of the report, Kaimann opined that J.E. should "be remanded to the permanent care of his guardians, Jonathan and Jacque.... If at all possible, suggested that the three children be adopted by their guardians."

Butler opined that J.E.'s "prognosis would be good if he could be in a stable, loving environment. I think as long as he has a lot of structure, he does well. I think when he doesn't have a lot of structure and things keep changing, he tends to regress."Butler testified that appellants are providing the necessary structure, and that significant stressors for J.E. "are the abuse and the concerns about where he's going to live."Butler explained that J.E. reported "that his mom has told him to keep secrets and that she doesn't want him discussing her with me and that she frequently asks him where he wants to live."When asked what is in J.E.'s best interest, Butler stated, "I can't make that decision. I have never met his mother. However, he keeps repeating the same allegations to me. If I were erring on the side of safety, I would say that he appears to be in a safe environment at this time."On cross-examination, Butler testified that Kaimann's report stated that J.E. denied sexual abuse, "even when confronted with details that his guardian had told this examiner regarding [J.E.] alleging sexual abuse by his mother."Butler also testified that Kaimann's report states that "no definitive indicators were present on the current test results to suggest sexual abuse."In addition, Butler stated that if she was questioning a child concerning sexual abuse, she would not suggest the details.

According to Butler, J.E. never exhibited inappropriate sexual behaviors during his counseling sessions.

***8** The trial court signed an order that appointed A.L. sole managing conservator of all three children, and appointed D.L. possessory conservator of S.L. and N.L. The order provided that A.L. "is entitled to immediate possession of the minor children upon the entry of this final order."Appellants filed a request for findings of fact and conclusions of law, followed by a notice of past-due findings of fact and conclusions of law. The trial court signed findings of fact and conclusions of law, in which it found as follows, in pertinent part:

> 5. Any finding of fact that is a conclusion of law shall be deemed a conclusion of law.
>
> ***Conclusions of Law***
>
> 6. Jonathan ... and Jacque ... have not met their burden of proof to overcome the parental presumption contained in Texas Family Code 153.131.
>
> 7. The appointment of [A.L.] as sole managing conservator of [J.E.] is in the best interest of [J.E.].
>
> 8. The appointment of [A.L.] as sole managing conservator and [D.L.] as the possessory conservator of [S.L.] and [N.L.] is in the best interest of [S.L.] and [N.L.].
>
> Appellants filed a request for additional findings of fact and conclusions of law, but the trial court did not make additional findings.

Appellants' Issues

In issue one, appellants argue that they presented sufficient evidence to overcome the parental presumption, and they contend that because the trial court limited its findings and conclusions to section 153.131 of the Family Code, "[t]he court has specifically excluded any and all consideration of setting aside the parental presumption under Texas Family Code § 153.004, § 153.373[,] and the corresponding Texas case law."In issue two, they assert that the trial court failed to make proper findings of fact and conclusions of law. Specifically, they argue that the trial court's findings of fact are "nothing more than a restatement of the Court's Final Order" and are "so lacking in both facts and conclusions as to constitute a 'non-response.' " In issue three, they contend that the trial court inappropriately applied the parental presumption to D.L. because D.L. had voluntarily relinquished the children for more than one year and had failed to support them. We address these issues together.

"The best interest of the child shall always be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child."Tex. Fam.Code Ann. § 153.002 (West 2008); *see also In re Z.B.P.*, 109 S.W.3d 772, 778 (Tex.App.-Fort Worth 2003, no pet.). The Texas Supreme Court has identified the following non-exhaustive list of factors a court may consider in deciding what is in the child's best interest: (1) the desires of the child; (2) the emotional and physical needs of the child now and in the future; (3) the emotional and physical danger to the child now and in the future; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist these individuals to promote the best interest of the child; (6) the plans for the child by these individuals or by the agency seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions of the parent. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex.1976).

***9** Section 153.131(a) of the Family Code provides that "unless the court finds that appointment of the parent or parents would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development, a parent shall be appointed sole managing conservator or both parents shall be appointed as joint managing conservators of the child."Tex. Fam.Code Ann. § 153.131(a) (West 2008)."It is a rebuttable presumption that the appointment of the parents of a child as joint managing conservators is in the best interest of the child. A finding of a history of family violence involving the parents of a child removes the presumption under this subsection."*Id.* § 153.131(b).

> The presumption that a parent should be appointed or retained as managing conservator of the child is rebutted if the court finds that:
>
> (1) the parent has voluntarily relinquished actual care, control, and possession of the child to a nonparent ... for a period of one year or more, a portion of which was within 90 days preceding the date of intervention in or filing of the suit; and

(2) the appointment of the nonparent ... as managing conservator is in the best interest of the child.

Id.§ 153.373.

We review conservatorship orders for abuse of discretion. *In re A.C.S.*, 157 S.W.3d 9, 20 (Tex.App.-Waco 2004, no pet.).“A trial court abuses its discretion if it acts arbitrarily and unreasonably or without reference to guiding principles.”*In re T.D.C.*, 91 S.W.3d 865, 872 (Tex.App.-Fort Worth 2002, pet. denied) (citing *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex.1985)). As long as some substantive, probative evidence exists to support the trial court's decision, the trial court does not abuse its discretion. *Holley v. Holley*, 864 S.W.2d 703, 706 (Tex.App.-Houston [1st Dist.] 1993, writ denied). The trial court is in a better position to evaluate the evidence because it faced the parties and their witnesses, observed their demeanor, and had the opportunity to evaluate the claims made by the parties.*In re J.R.D.*, 169 S.W.3d 740, 743 (Tex.App.-Austin 2005, pet. denied).

The trial court heard evidence that the parties entered into a temporary guardianship agreement that gave appellants permission to seek medical treatment for the children and provided that the children would not return to A.L. until D.L. and A.L. agreed that A.L. could provide a safe and secure environment for them. In addition, the trial court heard evidence that J.E. suffered from nervousness, nightmares, and bedwetting, and that J.E. had told Butler his mother had sexually abused him. The trial court also heard evidence that neither the Garth House, CPS, nor Kaimann found evidence that J.E. had been sexually abused by A.L., and that when Kaimann evaluated J.E., J.E. denied that any abuse had occurred. The trial court heard R.W. and A.L. testify that someone had influenced J.E. and caused J.E. to make the allegations of sexual abuse. A.L. testified that she believed appellants attempted to turn the children against her.

***10** In addition, the trial court heard evidence that A.L. only intended for the children to remain with appellants until she got back on her feet, and that A.L. had attempted to regain possession of the children, but was told that she had no legal recourse, and that a restraining order had been entered against her. The trial court heard evidence that A.L. had failed to support the children. A.L. testified that she refused to make child support payments to appellants because she was upset about what they were attempting to do to her. D.L. testified that he and A.L. agreed to appoint appellants as the children's temporary guardians. D.L. initially opined that A.L. cannot currently provide a suitable living environment for the children, but later testified that he could not truthfully say whether the children would be safe with A.L. because he did not know. D.L. testified that A.L. had thrown beer bottles and cigarette butts at him on a few occasions, but that such incidents did not occur in the children's presence. R.W., R.D., and A.L. testified that A.L. is currently living with R.D. in a home that is suitable for the children.

Based upon the evidence before it, the trial court did not abuse its discretion by appointing A.L. as the sole managing conservator of J.E. and as managing conservator of S.L. and N.L., nor did it abuse its discretion by appointing D.L. as the possessory conservator of S.L. and N.L. *See*Tex. Fam.Code Ann. §§ 153.002, 153.131, 153.373 (West 2008); *Holley*, 864 S.W.2d at 706; *Holley*, 544 S.W.2d at 371–72. With respect to the adequacy of the trial court's findings of fact and conclusions of law, we reject appellants' argument that because the trial court explicitly mentioned section 153.131 of the Family Code in its findings of fact and conclusions of law, the trial court must have failed to consider other sections of the Family Code. In addition, “[w]hen the trial court gives express findings on at least one element of a claim or affirmative defense, but omits other elements, implied findings on the omitted unrequested elements are deemed to have been made in support of the judgment.”*Chavez v. Chavez*, 148 S.W.3d 449, 460 (Tex.App.-El Paso 2004, no pet.). On appeal, appellants must attack both the express and implied findings. *Id.* In this case, the trial court found that appellants failed to overcome the parental presumption, and that appointing A.L. as managing conservator of the children is in the children's best interest, and the record contains evidence supporting the trial court's findings. We conclude that any other findings and conclusions necessary to support the trial court's judgment are implied. *See id.*

We overrule appellants' issues and affirm the trial court's judgment.

AFFIRMED.

All Citations

Not Reported in S.W.3d, 2010 WL 5232977

Footnotes

1 The biological father of J.E. is deceased.

2 The trial court admitted Butler's notes concerning J.E. into evidence.