Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-21-00084-CV

IN THE INTEREST OF J.A.V., a Minor Child

From the 408th Judicial District Court, Bexar County, Texas
Trial Court No. 2018-CI-08139
Honorable John D. Gabriel, Jr., Judge Presiding

Opinion by: Lori I. Valenzuela, Justice

Sitting: Rebeca C. Martinez, Chief Justice
Patricia O. Alvarez, Justice
Lori I. Valenzuela, Justice

Delivered and Filed: February 9, 2022

AFFIRMED

In twelve issues on appeal, appellant, Marcus D., appeals from the trial court's Order in Suit Affecting the Parent-Child Relationship and Adjudicating Parentage ("SAPCR order"). We affirm.

BACKGROUND

Marcus D. and Cynthia T. are the parents of the minor child J.A.V.[1] Marcus and Cynthia began dating while both were college students. After Cynthia became pregnant, she dropped out of school and began to work full-time. While in college, Marcus was drafted by the New Orleans Saints, he received an $8 million signing bonus, and signed a $13.75 million contract with a five-year option. In 2019, he earned an unspecified performance bonus.

[1] J.A.V. was born on October 21, 2017.

In May 2018, Marcus filed a petition to adjudicate parentage, establish custody and access; child support; and health insurance for the child. Discovery and depositions ensued. A bench trial on the merits commenced August 25, 2020. During trial, the parties stipulated that Marcus paid Cynthia $72,995.00 in child support from February 2017 through July 27, 2021. Following trial, the court signed the SAPCR order adjudicating Marcus as J.A.V.'s father, and among other things, appointing Marcus and Cynthia as joint managing conservators, and establishing possession and access. The court further ordered Marcus to pay $4,000 per month in child support beginning September 1, 2020, $12,000 in retroactive child support by December 31, 2020, $2,129.48 in unreimbursed medical expenses, and Cynthia's attorney's fees in the amount of $25,000. Marcus requested findings of fact and conclusions of law. He later filed this appeal.

STANDARD OF REVIEW

Trial courts have wide discretion when deciding matters of custody, control, possession, support, or visitation, and we review such matters for an abuse of discretion. *In re J.H. III*, 538 S.W.3d 121, 123 (Tex. App.—El Paso 2017, no pet.) (recognizing trial court has broad discretion in determining best interest of a child in family law matters); *see generally In re Doe 2*, 19 S.W.3d 278, 281-82 (Tex. 2000) (holding abuse of discretion is proper standard of review).

To determine whether a trial court has abused its discretion in a SAPCR proceeding, we engage in a two-pronged inquiry: (1) did the trial court have sufficient information upon which to exercise its discretion and (2) did the trial court err in its application of discretion. *In re T.M.P.*, 417 S.W.3d 557, 562 (Tex. App.—El Paso 2013, no pet.); *see also In re C.M.V.*, 479 S.W.3d 352, 358 (Tex. App.—El Paso 2015, no pet.). We consider challenges to the legal and factual sufficiency of the evidence as relevant factors in determining whether the trial court had sufficient information upon which to exercise its discretion under the first prong of our analysis, rather than as independent grounds of error. *See T.M.P.*, 417 S.W.3d at 563. In determining whether there is

legally sufficient evidence, we consider the evidence in the light most favorable to the finding if a reasonable fact finder could, and disregard evidence contrary to the finding unless a reasonable fact finder could not. *Id.* When reviewing the factual sufficiency of the evidence, we consider and weigh all the evidence, and will set aside the finding only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and manifestly unjust. *Id.* When the evidence is conflicting, we must presume the fact finder resolved the inconsistency in favor of the order if a reasonable person could do so. *Id.*

The trial court is in the best position to observe the witnesses and their demeanor, and therefore, the trial court does not abuse its discretion if evidence of a substantive and probative character exists to support its decision. *Id.* We will only find that the trial court abused its discretion in determining a child's best interest if, in light of the evidence presented to it, the trial court acted arbitrarily or unreasonably, without reference to any guiding principles, or if it otherwise failed to correctly analyze the law. *Id.* at 562. Accordingly, the mere fact that we might have decided an issue differently than the trial court does not establish an abuse of discretion. *Id.* at 563.

TRIAL COURT FINDINGS

Marcus first contends that because the trial court ordered child support in an amount that varied from the amount computed by applying the Family Code percentage guidelines, the court erred by not making the mandatory statutory findings under Family Code sections 154.126(b) and 154.130(b). Under this argument, Marcus includes a multitude of contentions. These additional contentions are arguably multifarious. *See In re S.K.A.*, 236 S.W.3d 875, 894 (Tex. App.—Texarkana 2007), *pet. denied*, 260 S.W.3d 463 (Tex. 2008) (per curiam) (observing a multifarious issue or point of error is one that raises more than one specific ground of error). Courts may disregard any assignment of error that is multifarious. *Id.* However, a reviewing court may

consider a multifarious issue if it can determine, with reasonable certainty, the error about which the appellant wants to complain. *Id.* Here, we address only Marcus's specific complaint that the trial court failed to make the statutory findings.

Section 154.126(b) does not require the trial court to enter findings. However, section 154.130 states that, "[w]ithout regard to Rules 296 through 299, Texas Rules of Civil Procedure, in rendering an order of child support, the court shall make the findings required by Subsection (b) if: (1) a party files a written request with the court before the final order is signed, but not later than 20 days after the date of rendition of the order; (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 under Section 154.125 or 154.129, as applicable*." TEX. FAM. CODE § 154.130(a) (emphasis added). "If findings are required by this section, the court shall state whether the application of the guidelines would be unjust or inappropriate and shall state the following in the child support order:

> "(1) the net resources of the obligor per month are $_____;
> "(2) the net resources of the obligee per month are $_____;
> "(3) the percentage applied to the obligor's net resources for child support is _____%; and
> "(4) if applicable, the specific reasons that the amount of child support per month ordered by the court varies from the amount computed by applying the percentage guidelines under Section 154.125 or 154.129, as applicable."

Id. § 154.130(b). "Findings under Subsection (b)(2) are required only if evidence of the monthly net resources of the obligee has been offered." *Id.* § 154.130(c).

Although Marcus timely filed a request for findings, the trial court did not issue separate findings. Instead, the court included the section 154.130(b) findings in the SAPCR order. In its order, the trial court found as follows:

> The Court finds the application of the guidelines in this case would be unjust or inappropriate under the circumstances.
> The Court finds the following variance from the guidelines is just and appropriate

> and in the best interest of the child under the circumstances.
> The net resources of [Marcus] per month are $49,445.00.
> The percentage applied to [Marcus's] net resources for child support by the actual ordered rendered by the Court is 8 percent.

The court then stated eight "specific reasons that the amount of child support per month ordered by the court varies from the amount computed by applying the percentage guidelines under Section 154.125 or 154.129, as applicable." Marcus does not assert it was an abuse of discretion to include the findings in the SAPCR order. And, we conclude the court did not abuse its discretion by doing so. *See Martinez Jardon v. Pfister*, 593 S.W.3d 810, 824-25 (Tex. App.—El Paso 2019, no pet.) ("mere inclusion of findings in the Final Decree is not error and we are not precluded from considering those findings").

TRIAL EXHIBITS

Interwoven through several related issues, Marcus argues the court erred by accepting into evidence Cynthia's trial exhibit, amended R-9. Marcus also complains the trial court committed reversible error by sustaining Cynthia's objection to his exhibit 14.

A. Cynthia's Amended Exhibit R-9

Prior to her deposition, Cynthia provided her exhibit R-9, which listed J.A.V.'s monthly expenses. According to Marcus, Cynthia was deposed and he prepared for trial based on those expenses. On the afternoon of trial, Cynthia submitted amended exhibit R-9, which listed J.A.V.'s expenses. This exhibit was admitted into evidence. Marcus asserts the trial court erred by admitting amended exhibit R-9 because Cynthia did not show good cause for her late supplementation of discovery.

Marcus called Cynthia to testify during his case-in-chief, at which time the original exhibit R-9 was admitted.[2] Marcus's attorney then began to question Cynthia about amended exhibit R-

[2] This exhibit is not contained in the record on appeal.

9, at which time Cynthia's attorney asked the trial court to clarify whether amended exhibit R-9 had been admitted. Marcus's counsel replied, "I'm not opposed if the Court wants to admit the R-9, then it's admitted. I'm not opposed to that." The following then occurred:

> Court: Okay. Ms. Espronceda, [Cynthia's counsel] say that again. Should we admit that at this time?
> Ms. Espronceda: Right, Your Honor, we'd like to have amended R-9. At least if Mr. Brown [Marcus's counsel] is going to question the witness on similarities that it be published to the witness when he's questioning the witness on R-9.
> Court: All right. By agreement the Court will admit [Cynthia's] Exhibit 9 as amended.

Later, there appeared to be some confusion over which version of amended R-9 was before the court.[3] Marcus's attorney then withdrew his earlier acceptance of the amended R-9.

Under Texas Rule of Civil Procedure 193.6, a party who fails to make, amend, or supplement a discovery response in a timely manner may not introduce in evidence the material or information that was not timely disclosed, or offer the testimony of a witness who was not timely identified unless the trial court finds that (1) there was good cause for the failure to timely make, amend, or supplement the discovery response; or (2) the failure to timely make, amend, or supplement the discovery response will not unfairly surprise or unfairly prejudice the other parties. TEX. R. CIV. P. 193.6(a). The party seeking to introduce the evidence or call the witness has the burden of establishing good cause or lack of unfair surprise or prejudice. *Id.* 193.6; *see Humphrey v. Yancey*, No. 05-15-00653-CV, 2016 WL 3568042, at *4 (Tex. App.—Dallas June 30, 2016, pet. denied) (mem. op.) (observing that Rule 193.6 provides exceptions to the exclusionary rule). "A finding of good cause or of the lack of unfair surprise or unfair prejudice must be supported by the record." TEX. R. CIV. P. 193.6(b). But even an erroneous evidentiary ruling is still subject to a harm analysis; we will not reverse an entire judgment based upon an erroneous evidentiary ruling

[3] It appears there was more than one amendment to the original R-9.

unless the ruling probably caused the rendition of an improper judgment. *U–Haul Int'l, Inc. v. Waldrip*, 380 S.W.3d 118, 136 (Tex. 2012); *Reliance Steel & Aluminum Co. v. Sevcik*, 267 S.W.3d 867, 871 (Tex. 2008).

Assuming without deciding the trial court erred by admitting amended R-9 into evidence, we conclude the error was harmless. The record on appeal contains a copy of an exhibit with the notation "Trial Exhibit R-9." We are unable to determine whether this is the original R-9 or the amended R-9 about which Marcus complains. Therefore, we are unable to determine which expenses on the amendment were not on the original. On appeal, Marcus contends he was "ambushed" and unfairly surprised and prejudiced. However, he does not explain specifically why or how he was harmed. Furthermore, at trial, Marcus questioned Cynthia extensively about the expenses listed on an exhibit referred to as "amended."

On this record, we cannot conclude the trial court's ruling probably caused the rendition of an improper judgment.

B. Marcus's Exhibit 14

Prior to trial, Marcus filed a motion to take judicial notice of "the United States Army Pay Schedule, Basic Allowance for Subsistence and Basic Housing Allowance," his exhibit 14. Marcus wanted to introduce the exhibit for the purpose of showing Cynthia's husband's income "for the sole purpose of justifying paid and incurred monthly expenses of J.A.V. . .." The clerk's record contains no pre-trial ruling on Marcus's motion. During trial, Marcus began to ask Cynthia about her husband's income when Cynthia's counsel objected that a spouse's income is not admissible evidence in a child support calculation under Family Code section 154.069. The trial court sustained the objection. On appeal, Marcus argues that not less than one-half of Cynthia's husband's resources, given her unemployment status, should be considered towards J.A.V.'s alleged total expenses.

"We review a trial court's decision to admit or exclude evidence for an abuse of discretion." *D & M Marine, Inc. v. Turner*, 409 S.W.3d 693, 699 (Tex. App.—Houston [1st Dist.] 2013, pet. denied). A trial court cannot consider a spouse's income when calculating net resources for child support. TEX. FAM. CODE § 154.069;[4] *see also In re Knott*, 118 S.W.3d 899, 905 (Tex. App.—Texarkana 2003, no pet.) (agreeing "the statutory method for calculating child support was not designed to impose a duty on an obligor's spouse to support the obligor's children using the income of the obligor's spouse); *Starck v. Nelson*, 878 S.W.2d 302, 306 (Tex. App.—Corpus Christi 1994, no writ.) ("Permitting the court to deviate from child support guidelines because the obligor's new spouse contributes to their joint living expenses allows the court to do indirectly what the statute directly prohibits."). Under these circumstances, we conclude the trial court did not act without reference to any guiding rules and principles and, therefore, did not abuse its discretion by excluding Marcus's exhibit 14.

PROVEN NEEDS

Marcus's arguments on appeal regarding "proven needs" ranges over a variety of complaints. Therefore, we narrow our discussion to only those complaints about expenses he specifically states in his brief: (1) educational expenses based on J.A.V.'s alleged attendance at a private school; (2) unreimbursed healthcare expenses; and (3) vacations, birthdays, and extra-curricular activities expenses.

The Texas Family Code provides a bifurcated analysis in setting child support depending on whether an obligor has net monthly resources above or below $9,200.[5] *Id.* §§ 154.125, 154.126;

[4] "(a) The court may not add any portion of the net resources of a spouse to the net resources of an obligor or obligee in order to calculate the amount of child support to be ordered. [and] (b) The court may not subtract the needs of a spouse, or of a dependent of a spouse, from the net resources of the obligor or obligee." TEX. FAM. CODE § 154.069.
[5] Under Family Code 154.061(b), the Office of the Attorney General of Texas, as the Title IV-D agency, promulgates tax charts to assist courts in establishing the amount of a child support order. *Id.* § 154.061(b). "Effective September 1, 2019 the adjusted amount determined under [section 154.125] Subsection (a-1) is $9,200.00." *Id.* § 154.061 n.5.

Nordstrom v. Nordstrom, 965 S.W.2d 575, 578-79 (Tex. App.—Houston [1st Dist.] 1997, pet. denied). In determining support obligations of a person, such as Marcus, who has more than $9,200 in net monthly resources, the trial court must first presumptively apply the statutory percentage guidelines to the first $9,200 in monthly net resources, and it can only divert away from those guidelines based on its determination of the existence of the factors listed in section 154.123(b). Once the trial court has determined whether to apply the statutory guidelines to the first $9,200, it may then decide whether to order any additional child support based only on the proven needs of the child and income of the parties. *Id.* § 154.126(b).

To impose child support beyond the guidelines, the record must contain evidence of the "proven needs" of the child. *Id.* § 154.126. The Family Code does not define the "proven needs" of a child. However, "Texas law has always held, that 'needs' is not limited to bare necessities of life." *Rodriguez v. Rodriguez*, 860 S.W.2d 414, 417 n.3 (Tex. 1993) (interpreting predecessor child-support statute). Thus, "the 'needs of the child' includes more than the bare necessities of life, but is not determined by the parents' ability to pay or the lifestyle of the family." *Id.* In determining a child's needs, courts "follow the paramount guiding principle: the best interest of the child." *Id.*; *see also Iliff v. Iliff*, 339 S.W.3d 74, 81 (Tex. 2011).

A court "may order periodic child support payments in an amount other than that established by the guidelines if the evidence rebuts the presumption that application of the guidelines is in the best interest of the child and justifies a variance from the guidelines." TEX. FAM. CODE § 154.123(a). "In determining whether application of the guidelines would be unjust

Appellant concedes, on appeal, that he has net monthly resources of $49,445 and his resources exceed $9,200 per month.

or inappropriate under the circumstances, the court shall consider evidence of" various relevant factors, including those listed in subsection (b) of section 154.123. *Id.* § 154.123(b). [6]

If the court determines that the proven needs of the child exceed the presumptive award provided by the statutory guidelines, the court must then allocate the responsibility to meet the additional needs between the parties depending on the circumstances of the parents. TEX. FAM. CODE § 154.126(b). The trial court has "broad discretion" to determine the needs of a child. *In re Marriage of Grossnickle*, 115 S.W.3d 238, 248 (Tex. App.—Texarkana 2003, no pet.).

A. Educational Expenses

Marcus first asserts that to the extent the court's "proven needs" finding includes J.A.V.'s attending a private school, the finding fails as a matter of law. He contends there is no evidence

[6] "In determining whether application of the guidelines would be unjust or inappropriate under the circumstances, the court shall consider evidence of all relevant factors, including:"
(1) the age and needs of the child;
(2) the ability of the parents to contribute to the support of the child;
(3) any financial resources available for the support of the child;
(4) the amount of time of possession of and access to a child;
(5) the amount of the obligee's net resources, including the earning potential of the obligee if the actual income of the obligee is significantly less than what the obligee could earn because the obligee is intentionally unemployed or underemployed and including an increase or decrease in the income of the obligee or income that may be attributed to the property and assets of the obligee;
(6) child care expenses incurred by either party in order to maintain gainful employment;
(7) whether either party has the managing conservatorship or actual physical custody of another child;
(8) the amount of alimony or spousal maintenance actually and currently being paid or received by a party;
(9) the expenses for a son or daughter for education beyond secondary school;
(10) whether the obligor or obligee has an automobile, housing, or other benefits furnished by his or her employer, another person, or a business entity;
(11) the amount of other deductions from the wage or salary income and from other compensation for personal services of the parties;
(12) provision for health care insurance and payment of uninsured medical expenses;
(13) special or extraordinary educational, health care, or other expenses of the parties or of the child;
(14) the cost of travel in order to exercise possession of and access to a child;
(15) positive or negative cash flow from any real and personal property and assets, including a business and investments;
(16) debts or debt service assumed by either party; and
(17) any other reason consistent with the best interest of the child, taking into consideration the circumstances of the parents.
Id. § 154.123(b).

that shows "something special that makes [J.A.V.] need or especially benefit from some aspect of non-public schooling."

Here, the trial court did not make a specific finding regarding private school or public school. Instead, the court listed, as one of its reasons for ordering child support that varied from the guidelines, "[t]he proven educational needs of the child, including future school tuition, books, and extra-curricular activities." Marcus speculates that the inclusion of a school uniform and tuition "would seem to suggest private school."

To establish private school as a proven need, the evidence must show something special that makes the particular child need or especially benefit from some aspect of non-public schooling. *In re M.A.M.*, 346 S.W.3d 10, 17 (Tex. App.–Dallas 2011, pet. denied); *see also In re Pecht*, 874 S.W.2d 797, 801-02 (Tex. App.—Texarkana 1994, no writ) (evidence supported private school as proven need for child with severe learning disabilities).

At trial, Marcus stated he would like to be consulted about academic decisions for J.A.V. He also stated: "Well, they like to say that he's special and has these certain needs but I don't necessarily like the way they word it and all that. But, shoot, I do. I would like to see him have the best and be in the best environment so that way if he does, you know, need to learn certain things, he's better suited, better able and capable." When Cynthia was asked about the $5,000-line item for "tuition" in her list of J.A.V.'s education expenses, she stated she provided Marcus with all the information about "this school" which J.A.V. was on a waiting list to attend. She testified Marcus agreed to the school. Later, when asked specifically about U-GRO Learning Centres ("U-GRO"), she said J.A.V. had just started at the school and the tuition was about $5,000. She said U-GRO was different from day-care because it had a curriculum. No further testimony by either party was adduced regarding J.A.V.'s schooling.

The record reflects Marcus (1) conceded J.A.V. "may have an Expressive Speech problem, which was identified by the Office of Child Development and Early Learning (OCDEL) in April 2020, and/or that J.A.V. attending [U-GRO], or daycare, [would] be beneficial for J.A.V."; (2) he agreed the expense of $380.92 per month for U-GRO, or a similar daycare educational curriculum, is related to a proven need of J.A.V.; (3) he did not object to J.A.V.'s attendance at U-GRO; and (4) he did not raise the possibility of having J.A.V. attend a public school or any school other than U-GRO. We therefore conclude the trial court did not abuse its discretion in basing its calculation of child support on the "proven needs of the child, including future school tuition [and] books." *See In re S.G.*, 08-19-00008-CV, 2020 WL 103971, at *6 (Tex. App.—El Paso Jan. 9, 2020, no pet.) (mem. op.) (concluding that "Because Father never raised the possibility of having S.G. attend a public school, and since he instead acquiesced in the decision to have S.G. attend a private school, he cannot now be heard to complain for the first time on appeal that the trial court should have considered the possibility of sending her to a public school. . . . [T]herefore . . . the trial court did not abuse its discretion in ordering Father to pay a portion of S.G.'s private school tuition as a proven need of the child.").

B. Health-Care Expenses

Marcus concedes on appeal the court had sufficient information on which to exercise its discretion with regard to health-care expenses. At trial, Marcus testified he agreed to pay the health insurance premium and maintain J.A.V. on his insurance. However, on appeal, he asserts the court's finding regarding J.A.V.'s health-care expenses amounts to a double recovery for Cynthia. Marcus's complaint appears to be that the trial court is requiring him to pay for what he characterizes as the following "uninsured health expenses," which Cynthia listed as "health expenses" for J.A.V.: Miralax $6.89, Nose Frida filter $4.99, Humidifier $33.94, Tubby Todd

chest rub $16, Vaporizing liquid $15.83, Be Cool soft gel cooling sheets for fever $4.99, Oilogic vapor bath $6.97, Motrin $5.99, Benadryl (night) $12, and Zyrtec (day) $15.

The trial court ordered that Cynthia and Marcus "shall each provide medical and dental support for the child." The SAPCR order contains the following two definitions:

> "Health-care expenses" include, without limitation, medical, surgical, prescription drug, mental health-care services, dental, eye care, ophthalmological, and orthodontic charges but do not include expenses for travel to and from the provider or for nonprescription medication.
>
> "Health-care expenses that are not reimbursed by insurance" ("unreimbursed expenses") include related copayments and deductibles.

The court found that health and dental insurance was available to J.A.V. through Marcus's employment or membership in a union, trade association, or other organization at a reasonable cost. Therefore, the court ordered Marcus to maintain health insurance and dental insurance for J.A.V. so long as child support was payable for the child. The court also ordered Marcus to pay 100% of the unreimbursed health-care expenses for J.A.V.

Because the trial court specifically defined "health-care expense" as not including "nonprescription medication," defined "unreimbursed expenses" as insurance copayments and deductibles, and nothing in the record or the SAPCR order indicates Marcus should pay for health-related items recommended by a physician or otherwise purchased over-the-counter by Cynthia, we conclude the trial court's determination that Marcus maintain health and dental insurance for J.A.V. and that he pay 100% of unreimbursed health-care expenses does not amount to a double recovery for Cynthia.

C. Vacations, Birthdays, and Extra-Curricular Expenses

The trial court did not base its "proven needs" finding on vacations, birthdays, and extracurricular activities. Instead, the trial court found that Marcus "has additional financial resources available to contribute to the support of the child, such as [the] $8,000,000.00 he received

in 2018 as a signing bonus when he entered the National Football League." Although Marcus acknowledges a child's needs are not limited to the "bare necessities" of life, he contends expenses for vacations, birthdays, and extra-curricular activities should not be determined based on his ability to pay or Cynthia's lifestyle. Marcus contends many of the expenses listed in Cynthia's exhibit establish "wants" and not "proven needs" and are based on Cynthia's lifestyle choices. He argues no evidence was introduced to establish that Cynthia's vacations and birthdays with J.A.V. or the extracurricular activities were proven needs. He concludes that, absent evidence establishing that vacations, birthdays, and extracurricular activities are proven needs, these expenses cannot be factored into a child support calculation, nor may the court consider his financial condition when making the calculation.

Among the various expenses related to J.A.V. that Cynthia included in her evidence at trial were expenses related to swimming and jujutsu, birthday parties, and vacations in San Jose, California and Cancun, Mexico. Cynthia and Marcus both testified about these expenses. Marcus agreed J.A.V. should learn to swim and be in a martial arts class of some sort, but he did not believe these activities were necessities. Cynthia testified she used a portion of the child support Marcus paid to her to pay for the child's two birthday parties and Marcus contributed additional amounts towards the parties apart from the money she used from the child support payments. She stated she included the vacations on her exhibit merely to indicate expenses related to J.A.V. and she believed it was important that J.A.V. "maintain a lifestyle growing up." However, she agreed Marcus should not pay for the two vacations and she did not want to be reimbursed for those expenses.

Because the record does not establish the trial court considered vacations, birthdays, and extracurricular activities such as swimming and martial arts classes when it calculated the amount

of child support to be paid by Marcus, we conclude Marcus has not established the court abused its discretion.

DUE PROCESS RIGHTS

Marcus next contends the trial court's award to Cynthia of retroactive child support violated his due process rights. Specifically, Marcus argues (1) the court's failure to enter findings of fact under Texas Rules of Civil Procedure 296 and 297 harmed him because he is left to guess the basis for the court's order and (2) the trial court's failure to credit him with child support payments prior to entry of an order violated his due process rights.

A trial court's failure to issue findings upon proper request is presumed reversible error unless the record affirmatively shows the requesting party suffered no harm. *In re S.V.*, No. 05-18-00037-CV, 2019 WL 516730, at *3 (Tex. App.—Dallas Feb. 11, 2019, no pet.) (mem. op.). Generally, a complainant has been harmed if the trial court's failure to make findings causes him to have to guess at the reason the trial court ruled against him or prevents him from properly presenting his case to the appellate court. *Id.*

We have already concluded the trial court's including Family Code section 154.130(b) findings in the SAPCR order was not an abuse of discretion. On appeal, Marcus does not explain why these findings are not sufficient to allow him to properly present his case to this appellate court. Nor does he articulate how that harm occurred, stating no more in his brief than that he is left to guess why the trial court failed to credit him for his past child support payments. Also, Marcus does not explain with any authoritative support an argument that the trial court was required to make findings pursuant to Rules 296 and 297 *in addition* to the Family Code's statutory findings.

We do not see how the trial court's failure to make any additional findings and conclusions caused Marcus to guess at the basis for the court's ruling or prevented him from properly

presenting his case to this court. The SAPCR order is just under thirty-five pages long and contains a great deal of information about how the court arrived at the order. We have not been hindered in our evaluation of Marcus's claims by the lack of findings of fact and conclusions of law. We therefore conclude the trial court's failure to issue additional findings of fact and conclusions of law pursuant to Rules 296 and 297 did not leave Marcus to guess the basis for the trial court's rulings and did not prevent him from making a proper presentation of his case to this court.

As to his due process complaints, Marcus merely states in conclusory fashion that his rights were violated. Marcus quotes (1) various U.S. Supreme Court opinions that have nothing to do with SAPCR proceedings or a failure to enter findings of fact and (2) various Family Code sections. "An appellant has a duty to cite specific legal authority and to provide legal argument based upon that authority." *In re J.J.A.*, No. 14-18-00530-CV, 2018 WL 6614236, at *5 (Tex. App.—Houston [14th Dist.] Dec. 18, 2018, no pet.) (mem. op.) ("It is not [this] court's role to fashion a legal argument and supply the authorities to support it for an appellant when the appellant has failed to do so."). Therefore, we conclude Marcus waived his due process complaints by failing to properly brief them.

Furthermore, to preserve a complaint for appellate review, a party must present to the trial court a timely request, motion or objection, state the specific grounds therefor, and obtain an adverse ruling. TEX. R. APP. P. 33.1(a); *In re S.V.*, 599 S.W.3d 25, 40 (Tex. App.—Dallas 2017, pet. denied). Even constitutional complaints must be presented to the trial court to be preserved for appellate review. *See In re L.M.I.*, 119 S.W.3d 707, 711 (Tex. 2003) (constitutional complaints must be preserved in the trial court, even in cases concerning termination of parental rights); *S.V.*, 599 S.W.3d at 40 (appellant failed to preserve complaint because he did not argue in the trial court that injunctions constituted a prior restraint on his right to free speech); *In re F.E.N.*, 542 S.W.3d 752, 768 (Tex. App.—Houston [14th Dist.] 2018), *pet. denied*, 579 S.W.3d 74 (Tex. 2019) (per

curiam) ("Due process violations must be raised in the trial court for them to be preserved on appeal.").

On appeal, Cynthia contends a hearing was held on her motion to enter judgment and Marcus failed to raise his constitutional complaints at the hearing. Marcus did not provide this court with a reporter's record from that hearing. However, the clerk's record contains a copy of his motion for new trial, in which he did not raise his constitutional arguments. Because there is no indication Marcus presented and received an adverse ruling on the constitutional complaints he now asserts on appeal, he failed to preserve them for appellate review.

ATTORNEY'S FEES

The trial court awarded Cynthia $25,000 for her reasonable attorney's fees, expenses, and costs. On appeal, Marcus contends Cynthia's attorney spent time developing untimely-supplemented discovery, and inflated and/or false expenses.[7]

In SAPCR proceedings, the Family Code allows for an award of reasonable attorney's fees and expenses. *See* TEX. FAM. CODE § 106.002(a). Whether to award those fees lies within the discretion of the trial court. *Bruni v. Bruni*, 924 S.W.2d 366, 368 (Tex. 1996). The party seeking fees must prove both the reasonableness and necessity of the fees sought. *Sims v. Sims*, 623 S.W.3d 47, 66 (Tex. App.—El Paso 2021, no pet. h.). "The reasonableness of an award of attorney's fees is a question of fact, for which competent evidence must be put forth." *Id.* However, documentary evidence is not a prerequisite to an award of attorney's fees. *See, e.g., In re A.B.P.*, 291 S.W.3d 91, 99 (Tex. App.—Dallas 2009, no pet.). Instead, testimony from a party's attorney is taken as true as a matter of law and is alone sufficient to support an award of attorney's fees if the testimony

[7] Marcus raised similar complaints in his motion for new trial. However, he admits on appeal that a hearing on the motion was not set until after the trial court's plenary power expired.

is clear, positive, direct, and free from contradiction. *Id.* at 98. This is especially true where the opposing party had the means and opportunity to disprove the testimony but failed to do so. *Id.*

At the end of the trial, Cynthia's attorney testified in the narrative about her fees and expenses and she submitted an exhibit as proof of time spent and fees and expenses incurred. Marcus's attorney did not ask her any questions or object to the exhibit. Moreover, Marcus did not submit any conflicting evidence, or otherwise controvert, Cynthia's attorney's testimony that her reasonable and necessary attorney's fees for trial were $25,000. Instead, when the trial court asked Marcus's attorney if he had any objection to the exhibit, counsel responded, "I will withhold – I'm not going to at this point cross-examine. If I have any real issues, I'll challenge it later but right at this point I have no questions for Ms. Espronceda." The court again asked counsel if he had any objections to the exhibit and counsel responded, "Not at this time, no."

On this record, we conclude the trial court had sufficient uncontroverted evidence upon which to exercise its discretion to award Cynthia $25,000 in reasonable attorney's fees, expenses, and costs.

CONCLUSION

We overrule Marcus's issues on appeal and affirm the trial court's judgment.

Lori I. Valenzuela, Justice