Appendix A

Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-19-00571-CV

IN THE INTEREST OF J.J.R.S. and L.J.R.S., Children

From the 37th Judicial District Court, Bexar County, Texas
Trial Court No. 2018PA01865
Honorable Charles E. Montemayor, Judge Presiding

Opinion by: Patricia O. Alvarez, Justice

Sitting: Sandee Bryan Marion, Chief Justice
Patricia O. Alvarez, Justice
Irene Rios, Justice

Delivered and Filed: February 12, 2020

AFFIRMED

In this parental rights case, the trial court determined it was in the children's best interests to appoint Mom's sister and husband (Aunt and Uncle) as permanent managing conservators and to appoint Mom as a possessory conservator.[1] Mom argues there was insufficient evidence to support the order, the order was void for vagueness, and Family Code section 262.201(o) is facially unconstitutional. We affirm the trial court's order.

BACKGROUND

On August 11, 2018, Mom was allegedly prostituting herself, and when her boyfriend came into the motel room and attempted to rob the client, an altercation ensued.[2] Officers from the San

[1] We use aliases to protect the children's identities. *See* TEX. FAM. CODE ANN. § 109.002(d); TEX. R. APP. P. 9.8(b).
[2] Mom and Dad were appointed as possessory conservators, but Dad did not appeal. We recite only the facts pertaining to Mom and the children.

Antonio Police Department responded. The officers found the two children, then ages ten and eight, in the same motel but in another room. In that room, the officers found methamphetamine, marijuana, glass pipes, and an unsecured weapon. Mom stated the weapon was hers.

While the officers were still at the motel, either the San Antonio Police Department or Mom called Aunt (Mom's sister) to come and take the children. Aunt took the children to her home where they have been living with Aunt and Uncle.

Although the children were safe and doing well with Aunt and Uncle, on August 20, 2018, the Department sought temporary managing conservatorship of the children in case Mom tried to take the children back from Aunt and Uncle. The trial court granted temporary orders which appointed the Department as temporary managing conservator of the children, and the Department chose for the children to remain with Aunt and Uncle.

Sometime before the September 12, 2018 section 262.201 hearing, the Department talked with Mom and tried to serve her, but Mom was not served before the hearing. At the conclusion of the adversary hearing, the trial court again appointed the Department as temporary managing conservator of the children. Mom was served by citation by publication on September 18, 2018.

Mom received a service plan created by the Department, but Mom did not complete her plan.[3] She failed to complete her psychological evaluation, drug assessment, drug testing, or substance abuse treatment program; she did not attend most scheduled visits with the children or provide proof of stable housing and employment. Mom was authorized twenty-three visits with her children; she attended four but did not provide any reason for missing the other visits. She was ordered to complete twelve drug tests; she completed none.

[3] The record on Mom's service plans is not clear. Mom's first service plan in the record shows a "Plan Completed/Conference Date" of September 13, 2018, but at the September 12, 2018 adversary hearing, the Department case worker testified that the Department sought temporary managing conservatorship because Mom refused to sign her service plan.

Although the children's ad litem and the CASA volunteer recommended that the trial court terminate Mom's parental rights, the Department did not request termination because of the children's love for their mother and their ongoing desire to see her.

Taking the children's desires into consideration, the trial court appointed Aunt and Uncle as permanent managing conservators and Mom as a possessory conservator. But it ordered that, for now, Mom have no visits with the children unless Aunt and Uncle approved. Mom appeals.

INSUFFICIENT EVIDENCE FOR CONSERVATORSHIP ORDER

In her first issue, Mom argues there was insufficient evidence to support the trial court's conservatorship order. Mom argues that the Department did not present any evidence that Mom lacked stable housing, was not employed, or used illegal drugs. Mom also insists that the Department's witness produced only conclusory statements that are, in legal effect, no evidence.

The Department contends that the evidence was legally and factually sufficient to support the trial court's order.

We briefly recite the evidentiary and appellate review standards.

A. Standard of Review

"Conservatorship determinations . . . are subject to review only for abuse of discretion, and may be reversed only if the decision is arbitrary and unreasonable." *In re J.A.J.*, 243 S.W.3d 611, 616 (Tex. 2007); *accord In re L.G.R.*, 498 S.W.3d 195, 207 (Tex. App.—Houston [14th Dist.] 2016, pet. denied). "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; *accord In re J.A.J.*, 243 S.W.3d at 614. In its conservatorship determination, the trial court has broad discretion to decide the best interest of the child. *In re A.L.E.*, 279 S.W.3d 424, 427 (Tex. App.—Houston [14th Dist.] 2009, no pet.) (citing *Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex. 1982)).

Although an appellant may raise sufficiency of the evidence issues, "[l]egal and factual insufficiency challenges are not independent grounds for asserting error in custody determinations, but are relevant factors in assessing whether the trial court abused its discretion." *In re A.L.E.*, 279 S.W.3d at 427 (citing *Niskar v. Niskar*, 136 S.W.3d 749, 753 (Tex. App.—Dallas 2004, no pet.)). "A trial court does not abuse its discretion if there is some evidence of a substantive and probative character to support its decision." *In re K.S.*, 492 S.W.3d 419, 426 (Tex. App.—Houston [14th Dist.] 2016, pet. denied); *accord In re A.L.E.*, 279 S.W.3d at 428.

B. Evidentiary Standard

In a conservatorship determination, an order appointing a nonparent as a managing conservator must meet only a preponderance-of-the-evidence standard. *See* TEX. FAM. CODE ANN. § 105.005; *In re J.A.J.*, 243 S.W.3d at 616; *In re W.M.*, 172 S.W.3d 718, 724 (Tex. App.—Fort Worth 2005, no pet.).

C. Discussion

At trial, the Department's representative testified regarding Mom's and the children's circumstances that the trial court could use to evaluate the best interests of the children. *See* TEX. FAM. CODE ANN. § 263.307 (statutory factors[i]); *Holley v. Adams*, 544 S.W.2d 367, 371 (Tex. 1976) (*Holley* factors[ii]).

The children were removed because Mom was prostituting herself, her boyfriend attempted to rob her client, and the young children were found in a room with methamphetamine, marijuana, glass pipes, and an unsecured weapon. *See* TEX. FAM. CODE ANN. § 263.307 (factors (1), (3), (8), (12)); *Holley*, 544 S.W.2d at 371–72 (factors (B), (C), (D), (G), (H)). The representative also testified that Mom attended only four of her scheduled twenty-three visits with her children; she did not complete any of her twelve ordered drug tests; she failed to complete her psychological evaluation, drug assessment, drug testing, and substance abuse treatment program; and she failed

to provide proof of stable housing and employment. *See* TEX. FAM. CODE ANN. § 263.307 (factors (8), (10), (11), (12)); *Holley*, 544 S.W.2d at 371–72 (factors (B), (C), (D), (G), (H), (I)). The representative testified that Mom could not meet the children's needs, the children are bonded to their current placement (Aunt and Uncle), and Aunt and Uncle are meeting all the children's needs now and will be able to continue to do so. *See* TEX. FAM. CODE ANN. § 263.307 (factors (2), (6), (13)); *Holley*, 544 S.W.2d at 371–72 (factors (A), (B), (C), (F), (G)).

Mom did not object to the testimony, and she did not present any evidence to rebut the Department's evidence.

We conclude the evidence was legally and factually sufficient to support the trial court's conservatorship order, and the trial court acted within its discretion. *See In re K.S.*, 492 S.W.3d at 426; *In re A.L.E.*, 279 S.W.3d at 428. We overrule Mom's first issue.

CONSERVATORSHIP ORDER VOID FOR VAGUENESS

In her second issue, citing section 153.006, Mom argues the conservatorship order was void for vagueness because it does not state the times and conditions for visitation and the Department failed to show good cause why a specific order is not in the children's best interests. *See* TEX. FAM. CODE ANN. § 153.006 (Appointment of Possessory Conservator). Mom also asserts that because the order places sole discretion on granting visits in the Aunt and Uncle, her rights to her children are being effectively terminated.

The Department contends the trial court stated on the record why specific orders were not in the children's best interests and the order meets the good cause exception. *See id.* § 153.006(c).

A. Applicable Law

The Family Code establishes guidelines for the trial court to use in determining possession for a possessory-conservator parent:

> In ordering the terms of possession of a child under an order other than a standard possession order, the court shall be guided by the guidelines established by the standard possession order and may consider:
>
> (1) the age, developmental status, circumstances, needs, and best interest of the child;
>
> (2) the circumstances of the managing conservator and of the parent named as a possessory conservator; and
>
> (3) any other relevant factor.

TEX. FAM. CODE ANN. § 153.256; *accord In re K.A.M.S.*, 583 S.W.3d 335, 344 (Tex. App.—Houston [14th Dist.] 2019, no pet.).

If possession is contested and the order varies from the standard possession order, "on request by a party, the court shall state in writing the specific reasons for the variance from the standard order." TEX. FAM. CODE ANN. § 153.258; *accord In re K.A.M.S.*, 583 S.W.3d at 344. If no party requests the findings, we will "imply all findings necessary to support the trial court's judgment." *In re K.A.M.S.*, 583 S.W.3d at 344; *accord Pickens v. Pickens*, No. 12-13-00235-CV, 2014 WL 806358, at *2 (Tex. App.—Tyler Feb. 28, 2014, no pet.) (mem. op.) (citing *Roberson v. Robinson*, 768 S.W.2d 280, 281 (Tex. 1989) (per curiam)).

B. Discussion

1. Trial Court's Order

The trial court's order appointed Aunt and Uncle as permanent managing conservators and Mom as a possessory conservator; it also states as follows:

> IT IS ORDERED that the conservators shall have possession of the children at times mutually agreed to in advance by the parties and, in the absence of mutual agreement, as specified in Attachment A to this order, which is incorporated herein as if set out verbatim in this paragraph.

In Attachment A, the following subparagraph addresses Mom's possession of, and access to, the children:

> 18.1 [Mom shall have] supervised visitation with the children, under the terms and conditions agreed to in advance by the managing conservator, provided that the

> managing conservator or other placement shall have 48 hours advance notice of intent to exercise the visitation. The managing conservator or designee shall supervise the visitation.

Immediately after subparagraph 18.1 is the following handwritten interlineation:

> Only if managing conservator agrees to visitation. Sole discretion.

2. Written Findings Not Requested

Although possession of the children was contested and the trial court varied from the standard possession order, the record does not show that Mom asked the trial court to state its findings in writing. *See* TEX. FAM. CODE ANN. § 153.258; *In re K.A.M.S.*, 583 S.W.3d at 344. Thus, we will "infer that the trial court made all the necessary findings to support its judgment." *See Pickens*, 2014 WL 806358, at *2 (citing *Roberson*, 768 S.W.2d at 281).

3. Section 153.006 Compliance

The order does not "specify and expressly state . . . the times and conditions for possession of or access to the child[ren]," *see* TEX. FAM. CODE ANN. § 153.006, but that does not end our analysis, *see In re A.N.*, No. 10-16-00394-CV, 2017 WL 4080100, at *8 (Tex. App.—Waco Sept. 13, 2017, no pet.) (mem. op.).

The Department's representative testified that Mom was scheduled for twenty-three visits, but she only showed up for four, and the representative testified about how Mom's failure to attend visits was harming the children emotionally. The children cried when Mom did not show up for the visits, and "when [Mom] doesn't show up, [the older child] is fearful that something's happened to [Mom]. She could be dead. She could be hurt. And so that lack of stability is extremely emotionally traumatizing for them."

The trial court expressly stated it was "deviating from the standard possession order based on the testimony and evidence the Court heard and the reasons for CPS intervention, and the

recommendations" from the CASA and the children's ad litem that Mom's parental rights be terminated.

4. Specific Orders Not in Best Interest of Children

Having reviewed the evidence in the record, we infer that the trial court found that ordering specific times and conditions for Mom's possession was not in the children's best interests, *see* TEX. FAM. CODE ANN. § 153.006; *In re K.A.M.S.*, 583 S.W.3d at 344, and we cannot conclude the trial court abused its discretion in deciding not to state specific times and conditions for Mom's visits but instead ordered that Aunt and Uncle set those times and conditions, *see In re K.A.M.S.*, 583 S.W.3d at 344 ("A trial court does not abuse its discretion in restricting a parent's possession when the record contains some evidence to support a finding that such restrictions are in the child's best interest."); *In re A.N.*, 2017 WL 4080100, at *8.

5. Restrictions on Access and Possession

In the second part of her second issue, Mom argues that the trial court's order effectively terminates her parental rights, but her argument is not persuasive.

First, the CASA volunteer and the children's ad litem both recommended Mom's parental rights be terminated—which would give Mom no access to the children. The Department did not ask for Mom's rights to be terminated because of the children's love for and bond with Mom, but it opposed *any* visitation by Mom for now based on the emotional trauma her no-shows caused the children. Although conditioning Mom's visitation rights on Aunt and Uncle's approval could be a severe restriction, "a severe restriction or limitation, even one that amounts to a denial of access, is permissible if it is in the best interest of the child." *In re A.N.*, 2017 WL 4080100, at *7 (quoting *In re Walters*, 39 S.W.3d 280, 286 n.2 (Tex. App.—Texarkana 2001, no pet.)).

Second, as *In re J.A.J.* noted, "[t]he Family Code . . . guards against that possibility [because] [t]he trial court retains jurisdiction to modify a conservatorship order if it is in the child's

best interest, and the parent's or child's circumstances have materially and substantially changed since the order was rendered." *In re J.A.J.*, 243 S.W.3d 611, 617 (Tex. 2007). Mom was represented at trial by court-appointed counsel, and Mom was present at trial. Mom heard the trial court limit her access to her children and explain the reasons for the limitations, and Mom's counsel arguably had a duty to advise Mom that if her circumstances materially changed, she could petition the court for greater access. *See* TEX. FAM. CODE ANN. § 156.001; *In re J.A.J.*, 243 S.W.3d at 617.

We conclude the trial court's order was supported by the evidence and was not unreasonable or arbitrary. *See In re J.A.J.*, 243 S.W.3d at 617. We overrule Mom's second issue.

CITATION BY PUBLICATION

In her third issue, Mom contends Family Code section 262.201(o) is facially unconstitutional because she was not served before the full adversary hearing and was thus denied her due process right to notice and to be heard.

The Department concedes it did not serve Mom before the adversary hearing but argues Mom's appearance at subsequent hearings made the failure to serve Mom harmless error.

A. Additional Background

From the August 11, 2018 motel incident, Aunt took Mom's two children at Mom's request. On August 20, 2018, the Department petitioned for temporary managing conservatorship of the children to prevent Mom from taking the children back from Aunt and Uncle, and the trial court appointed counsel to represent Mom.

Although the adversary hearing and trial testimony was quite limited, it appears that sometime before the September 12, 2018 section 262.201 hearing (adversary hearing), the Department talked with Mom, but it did not successfully serve her. To try to serve Mom, the Department worker went to the motel where Mom had been living, but Mom was not in the room,

and the motel's front desk clerk said Mom no longer lived there. The Department called Mom on her phone and sent her text messages, but Mom did not respond. The Department asked Aunt if she knew where Mom was living, but Aunt did not know.

At the adversary hearing, the trial court acknowledged Mom's counsel's statement that Mom had not been personally served, but the court noted section 262.201(o) authorized the court to issue a temporary order before citation by publication was published if Mom's location was unknown. The trial court admonished the Department to keep trying to locate Mom so she could be personally served, but it also advised the Department to proceed with citation by publication.

The children's ad litem recommended that the children stay with Aunt and Uncle and asked the court for "an order protecting [the children] so that the parents can't come and pick them up."

The trial court's September 12, 2018 temporary order appointed the Department as temporary managing conservator of the children before Mom was served. Six days later, on September 18, 2018, the trial court signed an Order for Substituted Service by Posting, and Mom was served by citation by publication.

At the October 15, 2018 status hearing, Mom made a special appearance[4] and announced not ready. At the February 11, 2019, and May 13, 2019 status hearings, Mom appeared in person with counsel and announced ready. At the August 8, 2019 trial on the merits, Mom appeared in person with counsel but announced not ready, which was denied.

B. Applicable Law

Section 262.201(o) reads as follows:

[4] On September 23, 2018, Mom petitioned this court for a writ of mandamus—arguing that the trial court abused its discretion by removing Mom as primary managing conservator of her children before Mom was served. The petition also raised facial and as-applied challenges to section 262.201(o). In December 2018, this court denied Mom's petition and her motion for en banc reconsideration. Subsequently, Mom raised the same issues in the Texas Supreme Court and the Supreme Court of the United States; neither court granted her requested relief.

> (o) When citation by publication is needed for a parent . . . in an action brought under this chapter because the location of the parent . . . is unknown, the court may render a temporary order without delay at any time after the filing of the action without regard to whether notice of the citation by publication has been published.

TEX. FAM. CODE ANN. § 262.201(o).

When we review a constitutional challenge to a statute, "we begin . . . with a presumption that the statute is valid." *Tenet Hosps. Ltd. v. Rivera*, 445 S.W.3d 698, 701 (Tex. 2014); *accord Nootsie, Ltd. v. Williamson Cty. Appraisal Dist.*, 925 S.W.2d 659, 662 (Tex. 1996) ("We presume that a statute passed by the Legislature is constitutional.").

C. Facial Challenge

"A facial challenge claims that a statute, by its terms, always operates unconstitutionally." *Tenet Hosps.*, 445 S.W.3d at 702 (citing *United States v. Salerno*, 481 U.S. 739, 745 (1987)). To prevail in a facial challenge, the challenger "must demonstrate that the statute always operates unconstitutionally." *Wilson v. Andrews*, 10 S.W.3d 663, 670 (Tex. 1999); *accord In re R.J.S.*, 219 S.W.3d 623, 628 (Tex. App.—Dallas 2007, pet. denied). "A party seeking to invalidate a statute 'on its face' bears a heavy burden of demonstrating that the statute is unconstitutional in all of its applications." *HCA Healthcare Corp. v. Tex. Dep't of Ins.*, 303 S.W.3d 345, 349 (Tex. App.—Austin 2009, no pet.) (citing *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008)). "Whether a statute is facially constitutional is a question of law that we review *de novo*." *Ex parte Lo*, 424 S.W.3d 10, 14 (Tex. Crim. App. 2013); *accord Tex. Alcoholic Beverage Comm'n v. Live Oak Brewing Co., LLC*, 537 S.W.3d 647, 654 (Tex. App.—Austin 2017, pet. denied).

D. Discussion

Mom argues that section 262.201(o) is facially unconstitutional because it "instructs courts to deprive Texans of their fundamental parenting rights before personal service or service by

publication has taken place."[5] We presume that the statute is constitutional, *see Tenet Hosps.*, 445 S.W.3d at 701, and it is Mom's burden to show it is not, *see Wilson*, 10 S.W.3d at 670.

But Mom cannot meet her high burden "of demonstrating that the statute is unconstitutional in all of its applications," *see HCA Healthcare Corp.*, 303 S.W.3d at 349; *accord Wilson*, 10 S.W.3d at 670, because, inter alia, the statute's plain language is permissive, not mandatory, *see* TEX. FAM. CODE ANN. § 262.201(o). The statute states "the court *may* render a temporary order without delay at any time after the filing of the action without regard to whether notice of the citation by publication has been published." *Id.* (emphasis added). The statute does not compel the trial court to render a temporary order before citation by publication has been published. Instead, the trial court has discretion to consider the facts in each case and determine whether the circumstances warrant issuing a temporary order before citation by publication has been published. *See id.*

The statute gives the trial court discretion to render a temporary order *after* it considers whether the Department has been diligent in its efforts to locate the parent, the parent's location and locating information is not known, *see In re E.R.*, 385 S.W.3d at 560–61, 564, citation by publication is appropriate, and citation by publication has been published. *See* TEX. FAM. CODE ANN. § 262.201(o) (permissive, not mandatory, order). The statute does not require the trial court to issue a temporary order before citation by publication is published. *See id.*

In the instance recited above, the parent's due process rights would not be violated, and thus Mom has not met her high burden to "demonstrate[e] that the statute is unconstitutional in all of its applications." *See HCA Healthcare*, 303 S.W.3d at 349; *see also Tenet Hosps.*, 445 S.W.3d at 702; *Wilson*, 10 S.W.3d at 670. We overrule Mom's third issue.

[5] We agree that Mom's challenge is not moot because it is capable of repetition but evading review. *See Spencer v. Kemna*, 523 U.S. 1, 17 (1998); *Murphy v. Hunt*, 455 U.S. 478, 482 (1982).

CONCLUSION

Having reviewed the record, we conclude the evidence was legally and factually sufficient to support the trial court's conservatorship order, the trial court found good cause to not issue a dates-and-times specific order for Mom's visitation, and Family Code section 262.201(o) is not facially unconstitutional. Therefore, we affirm the trial court's order.

Patricia O. Alvarez, Justice

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[i] Statutory Factors for Best Interest of the Child. The Texas legislature codified certain factors courts should consider in determining the best interest of a child:

(1) the child's age and physical and mental vulnerabilities;
(2) the frequency and nature of out-of-home placements;
(3) the magnitude, frequency, and circumstances of the harm to the child;
(4) whether the child has been the victim of repeated harm after the initial report and intervention by the department;
(5) whether the child is fearful of living in or returning to the child's home;
(6) the results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home;
(7) whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home;
(8) whether there is a history of substance abuse by the child's family or others who have access to the child's home;
(9) whether the perpetrator of the harm to the child is identified;
(10) the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision;
(11) the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time;
(12) whether the child's family demonstrates adequate parenting skills; . . . and
(13) whether an adequate social support system consisting of an extended family and friends is available to the child.

TEX. FAM. CODE ANN. § 263.307(b); *see In re A.C.*, 560 S.W.3d 624, 631 (Tex. 2018) (recognizing statutory factors).

[ii] *Holley* Factors. The Supreme Court of Texas identified the following factors that courts have used to determine the best interest of a child:

(A) the desires of the child;
(B) the emotional and physical needs of the child now and in the future;
(C) the emotional and physical danger to the child now and in the future;
(D) the parental abilities of the individuals seeking custody;
(E) the programs available to assist these individuals to promote the best interest of the child;
(F) the plans for the child by these individuals or by the agency seeking custody;
(G) the stability of the home or proposed placement;
(H) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and
(I) any excuse for the acts or omissions of the parent.

Holley v. Adams, 544 S.W.2d 367, 371–72 (Tex. 1976) (footnotes omitted); *accord In re E.N.C.*, 384 S.W.3d 796, 807 (Tex. 2012) (reciting the *Holley* factors).

Appendix B

IN THE SUPREME COURT OF TEXAS

No. 20-0175

IN THE INTEREST OF J.J.R.S. AND L.J.R.S., CHILDREN

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS

Argued October 28, 2020

JUSTICE DEVINE delivered the opinion of the Court.

This parental rights case presents two questions: (1) whether, and under what circumstances, a trial court may order that a parent's access to a child is solely at the discretion of the managing conservator; and (2) whether the trial court's issuance of an ex parte temporary order pursuant to Texas Family Code section 262.201(o) is unconstitutional on its face or as applied to Mother.

The court of appeals determined that the evidence was legally and factually sufficient to support the terms of the visitation order and that the terms of the order were permissible under the Family Code upon a finding that they were in the best interest of the children. 607 S.W.3d 400, 405–08 (Tex. App.—San Antonio 2020). It also denied Mother's constitutional challenge to Texas Family Code section 262.201(o). *Id.* at 408–10.

We hold that the trial court did not abuse its discretion in imposing a restriction on Mother's right of access because the court could have reasonably concluded that such a severe restriction was in the children's best interest. *See* TEX. FAM. CODE § 153.193. We decline to address Mother's constitutional challenges to Texas Family Code section 262.201(o) because they were rendered moot by the trial court's issuance of a final order. Accordingly, we affirm the judgment of the court of appeals.

I

In August 2018, law enforcement responded to an aggravated robbery at a San Antonio motel. According to Mother, the incident began when one of her clients asked her to perform certain acts with which she was uncomfortable while prostituting herself. A struggle ensued, and Mother's boyfriend entered the room with a firearm and proceeded to take the client's clothes and money. The client chose not to press charges.

In a nearby motel room, law enforcement found Mother's two children, J.J.R.S. and L.J.R.S. Between both rooms, law enforcement retrieved three bags of methamphetamine less than a gram each, a small amount of marijuana, glass pipes, and small, clear baggies.[1] The boyfriend claimed the drugs were his. Mother stated that the unregistered firearm belonged to her but denied any attempt to rob her client. Mother stated that she and her children were from Florida and had been living in the motel for eight months. Police made no arrests during the incident, but Mother called her sister—the children's maternal aunt—to watch the children that night. The children have been residing with Aunt and Uncle since.

[1] The record is unclear whether the drugs were found in the children's room or the other room.

Shortly after the incident, law enforcement referred the case to the Texas Department of Family and Protective Services. The Department investigator first interviewed both children, whom he perceived as wanting to protect Mother because they "[did] not want her to get into trouble." The Department next interviewed Aunt, who described her relationship with Mother as estranged. Six months before the incident, Mother had contacted Aunt for the first time in two years, asking for money to pay for a motel room. According to Aunt, the children lived in Puerto Rico with Mother before moving to Florida and were likely born addicted to drugs. Aunt stated she was willing to take care of the children.

The investigator then separately interviewed both Mother and her boyfriend. During his interview, the boyfriend—who is not the biological father of J.J.R.S. or L.J.R.S.—denied any attempt to rob the client and denied possessing a firearm. He admitted using marijuana but refused to sign an acknowledgment-of-substance-use form. Mother also admitted using marijuana but refused a drug test. She admitted to prostituting herself but denied any attempted robbery, stating that her boyfriend was trying to protect her from an abusive client. Mother stated that she called her sister only because she was not sure if she was going to jail.

To avoid legal action, the Department attempted to place the children with Aunt and Uncle. Mother, however, refused to sign a Parental Child Safety Placement form and refused to comply with services. The Department remained concerned for the children's safety, believing that they would be in immediate danger if returned to Mother because of her illegal activities, including drug use, robbery, and prostitution.

The Department filed its original petition against Mother on August 20, 2018, requesting orders pursuant to Texas Family Code section 262.101 for temporary sole managing

conservatorship of the children pending final disposition of the lawsuit. *See* TEX. FAM. CODE §§ 262.201, 105.001(a)(1), (h). If reunification could not be achieved, the Department sought termination of Mother's parental rights. *Id.* § 161.001(b).

The day the lawsuit was filed, the trial court issued a temporary emergency order naming the Department temporary sole managing conservator and noticed a full adversary hearing to be held nine days later.[2] The court appointed an attorney ad litem for Mother and a separate attorney ad litem and guardian ad litem for the children. A full adversary hearing pursuant to chapter 262 was held on September 12. *Id.* § 262.201. Mother was not served with a citation prior to this hearing and was not present at the hearing, but the court nonetheless entered an order naming the Department temporary managing conservator for the pendency of the lawsuit. *See id.* § 262.201(o) ("When citation by publication is needed for a parent . . . in an action brought under this chapter because the location of the parent . . . is unknown, the court may render a temporary order without delay at any time after the filing of the action without regard to whether notice of the citation by publication has been published."). The order restricted Mother's visitation to two visits per month until the final trial. Mother was eventually served by publication on September 18, after the Department stated it could not locate her.

The Department established a family service plan for Mother and the children's biological Father, who lived in Florida when the lawsuit was initiated.[3] Mother was uncooperative with the Department and failed to complete any service plan goals, including demonstrating the ability to

[2] The hearing was pushed beyond nine days and was eventually held on September 12.

[3] When the lawsuit began, Father's exact whereabouts in Florida were unknown to the Department. Eventually, Father made contact with the Department and was amenable to engaging in services and having a relationship with his children. Because only Mother appeals here, information regarding Father's parental rights is omitted unless relevant.

stay sober, providing basic necessities to the children, completing therapy for her diagnosed mental health conditions, and finding stable housing. Mother did not make contact with the Department to acknowledge her service plan or visit her children until May 1, 2019—eight months after the lawsuit was filed. Mother arranged visitation with her children but regularly missed meetings, attending only four visits with her children over the life of the lawsuit. By contrast, while in the care of Aunt and Uncle, the children began attending school for the first time in two years and regularly attended therapy, showing improvements in their physical and emotional development.

At the final trial, Department supervisor Kimberly Barnhill testified, stating that the children had bonded with Aunt and Uncle, who were meeting their emotional needs. Barnhill further testified that Mother could not meet the physical and emotional needs of the children because she failed to maintain any stability, permanent housing, or contact with the children throughout the case. Even so, Barnhill believed it was in the children's best interest to have limited visitation with Mother because the children missed their mom and were sad about the situation.

On cross-examination, Barnhill testified that she was opposed to once-a-month visits with Mother at a supervised facility, instead preferring supervised visits at Aunt's discretion because of the "emotional and . . . drug-influenced state that Mother has been in throughout the case." When pressed if procedures such as clean drug tests could alleviate these concerns, Barnhill stated they would not alleviate the concerns stemming from Mother acting "highly hysterical" on some phone calls and not showing up to visits, which was hard on the children. Making the children wait for Mother in the Department's lobby was "not a very good environment . . . especially when they're excited to see their mom," Barnhill believed. The "lack of stability," she testified, is "extremely emotionally traumatizing for them."

Mother offered no evidence at the final trial.

Because of the children's bond with Mother and Father's attempt to maintain a relationship, the Department recommended the trial court not terminate their parental rights. The guardian ad litem recommended termination of Mother's parental rights but stated he would be amenable to possessory conservatorship with visitation "possibly later with a lot of services." The court appointed special advocate (CASA) representative recommended termination of Mother's rights. Based on those recommendations, the court named Aunt and Uncle permanent managing conservators and named Mother and Father possessory conservators. The court orally stated it was deviating from the standard possession order based on the testimony and evidence presented by the Department.

With regard to Mother, the final order stated that she "shall have possession of the children at times mutually agreed to in advance by the parties." In the absence of mutual agreement, Mother could have "supervised visitation with the children, under the terms and conditions agreed to in advance by the managing conservator," with 48 hours' advance notice. Below this, in handwriting, the trial court added, "[o]nly if the managing conservator agreed to visitation. Sole discretion." The court orally stated that its order was in the best interest of the children.

Mother appealed, arguing there was insufficient evidence to support the order, the order was void for vagueness, and Family Code section 262.201(o) is facially unconstitutional. The court of appeals affirmed. 607 S.W.3d at 405–08. First, the court determined that the trial court had good cause to deviate from the standard possession order because Mother's "failure to attend visits was harming the children emotionally." *Id.* at 407. Thus, requiring specific times and conditions for Mother's possession and access was not in the children's best interest. *Id.* at 407–08. The court

further stated that a "severe restriction or limitation, even one that amounts to a denial of access, is permissible if it is in the best interest of the child." *Id.* at 407 (quoting *In re A.N.*, No. 10-16-00394-CV, 2017 WL 4080100, at *7 (Tex. App.—Waco Sept. 13, 2017, no pet.)). Here, the court concluded, the evidence was legally and factually sufficient to support the order. *Id.* at 405. As such, the court of appeals held, the trial court did not abuse its discretion in "deciding not to state specific times and conditions for Mom's visits but instead ordered that Aunt and Uncle set those times and conditions." *Id.* (citing *In re K.A.M.S.*, 583 S.W.3d 335, 344 (Tex. App.—Houston [14th Dist.] 2019, no pet.)). To gain greater access, the court explained, Mother may petition the trial court in the future if her or the children's circumstances materially or substantially change. *Id.* at 407–08 (citing TEX. FAM. CODE § 156.001).

Mother filed a petition for review, arguing in this Court that (1) the court of appeals erred in holding that vesting Aunt and Uncle with complete discretion over her access rights to the children was permissible under the Family Code, and (2) the trial court violated her due process rights by naming the Department temporary managing conservator, pursuant to Texas Family Code section 262.201(o), before she received notice of the suit.

While we understand the gravity of imposing a severe restriction or limitation on access to one's children, we nevertheless conclude that the trial court did not abuse its discretion in vesting the managing conservators with complete discretion over Mother's access to the children. We do not reach the merits of Mother's constitutional arguments regarding Texas Family Code section 262.201(o) because they are moot.

II

The final order naming Mother possessory conservator gave her "possession of the children at times mutually agreed to in advance by the parties." In the absence of such mutual agreement, Mother could have supervised visitation with the children in the managing conservators' "[s]ole discretion." Mother argues that such an order effectively denies her the right of access to her children.

For reasons explained below, we disagree.

A

"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 § 153.002. As conservatorship determinations are "intensely fact driven," *Lenz v. Lenz*, 79 S.W.3d 10, 19 (Tex. 2002), the trial court is in the best position to "observe the demeanor and personalities of the witnesses and can 'feel' the forces, powers, and influences that cannot be discerned by merely reading the record," *Echols v. Olivarez*, 85 S.W.3d 475, 477 (Tex. App.—Austin 2002, no pet.). A trial court's determination of what is in the child's best interest, specifically the establishment of terms and conditions of conservatorship, is a discretionary function. *MacCallum v. MacCallum*, 801 S.W.2d 579, 582 (Tex. App.—Corpus Christ–Edinburg 1990, writ denied). The trial court's judgment will be reversed only when it appears from the record as a whole that the court has abused its discretion. *Gillespie v. Gilliespie*, 644 S.W.2d 449, 451 (Tex. 1982). A trial court abuses its discretion when it acts "without reference to any guiding rules or principles; or in other words, [when it acts] arbitrarily or unreasonably." *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990) (per curiam).

Mother's contention that the trial court abused its discretion presumes that the trial court lacked the authority to tailor the visitation order as it did. The Family Code sets out a series of directives to which a trial court must adhere when determining the appropriateness of a visitation order. Under the Family Code, "a parent shall be appointed sole managing conservator" unless a court finds that the appointment would not be in the best interest of the child "because the appointment would significantly impair the child's physical health or emotional development." TEX. FAM. CODE § 153.131(a). A parent who is not appointed managing conservator "shall" be appointed possessory conservator, "unless [the court] finds that the appointment is not in the best interest of the child and that parental possession or access would endanger the physical or emotional welfare of the child." *Id.* § 153.191. A court, based on these parameters, must then determine the conservators' appropriate level of possession and access.

There is a rebuttable presumption that the standard possession order provides the reasonable minimum level of possession and access for a parent named possessory conservator and is in the best interest of the child. *Id.* § 153.252. When determining whether to deviate from the standard possession order, a court may consider "(1) the age, developmental status, circumstances, needs, and best interest of the child; (2) the circumstances of the managing conservator and of the parent named as a possessory conservator; and (3) any other relevant factor." *Id.* § 153.256. Importantly, the terms of an order that deviates from the standard possession order—that is, an order that "denies possession of a child to a parent or imposes restrictions or limitations on a parent's right to possession of or access to a child"—"may not exceed those that are required to protect the best interest of the child." *Id.* § 153.193. Further, a court must "specify and expressly state in the order the times and conditions for possession of or access to the child,

unless a party shows good cause why specific orders would not be in the best interest of the child." *Id.* § 153.006(c) (emphasis added).[4]

Nonspecific orders issued pursuant to section 153.006(c) can vary, based on the needs of the case, as to the level of specificity provided by the trial court and the amount of discretion left to the parties. *See id.* § 153.193. The type of nonspecific order at issue in this case—an "as agreed" visitation order—falls on the opposite end of the spectrum from the standard possession order, leaving visitation to the managing conservator's complete discretion.

Neither party argues that the trial court lacked good cause to deviate from the standard possession order. *See id.* § 153.006(c). Thus, we address whether section 153.006(c) of the Texas Family Code relaxes the specificity requirement for possession and access orders to the point of permitting an "as agreed" order as the one issued here. We conclude that it does.

B

Mother argues that Texas Family Code section 153.006(c) must have intended to permit courts to issue less specific orders, if specificity is not in the child's best interest, but that less specificity does not mean *no* specificity. Conversely, the Department argues that the propriety of any restriction or limitation imposed on possession or access rights depends on whether such restrictions are in the best interest of the child. In other words, once a trial court determines that good cause exists for a nonspecific order, the only question left is whether the extent of the restriction or limitation under section 153.193 is in the best interest of the child. *See In re K.A.M.S.*, 583 S.W.3d at 344 ("A trial court does not abuse its discretion in restricting a parent's possession

[4] On request by a party, the court shall state in writing the specific reasons for the variance from the standard possession order. TEX. FAM. CODE § 153.258(a). Here, Mother did not request findings nor does she complain on appeal that the trial court failed to make them.

when the record contains some evidence to support a finding that such restrictions are in the child's best interest."). The Department argues that here, no visitation until Mother "get[s] her act together" was in the best interest of the children because Mother's failure to show up to scheduled meetings caused "extreme disappointment" for the children, "manifested by crying after waiting in the CPS lobby for long periods of time."

Mother's contention that the trial court lacked the authority to issue an "as agreed" visitation order is a matter of statutory construction. "When interpreting statutes, we presume the Legislature's intent is reflected in the words of the statute and give those words their fair meaning." *In re H.S.*, 550 S.W.3d 151, 155 (Tex. 2018) (citing *In re C.J.N.–S.*, 540 S.W.3d 589, 591 (Tex. 2018) (per curiam)). We analyze statutes "as a cohesive, contextual whole, accepting that lawmaker-authors chose their words carefully, both in what they included and in what they excluded." *Id.* (quoting *Sommers v. Sandcastle Homes, Inc.*, 521 S.W.3d 749, 754 (Tex. 2017)); *see also R.R. Comm'n of Tex. v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 628 (Tex. 2011) ("When the Legislature uses a word or phrase in one portion of a statute but excludes it from another, the term should not be implied where it has been excluded.").

When interpreting statutes, we start with the words of the statute and look first to the "plain and common meaning of the statute's words," *State v. Gonzalez*, 82 S.W.3d 322, 327 (Tex. 2002), "unless a different meaning is supplied by legislative definition," *Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010). Section 153.006(c) of the Family Code allows the trial court to issue a nonspecific order regarding a possessory conservator's possession and access when "good cause" exists, *see* TEX. FAM. CODE § 153.006(c), while section 153.193 places an outer limit on the permissible scope of restrictions on a parent possessory conservator's

rights: such "restrictions or limitations on a parent's right to possession of or access to a child may not exceed those that are required to protect the best interest of the child," *id.* § 153.193. Thus, in rare cases, a severe restriction or limitation is permissible if it is in the best interest of the child. *See In re Walters*, 39 S.W.3d 280, 286 n.2 (Tex. App.—Texarkana 2001, no pet.).

Mother argues that the trial court's order in this case, which authorized supervised visitation with the children at Aunt and Uncle's sole discretion, amounts to a wholesale denial of access that section 153.193 does not authorize, regardless of best interest. Mother asserts that under section 153.193, the court may "den[y] possession of a child to a parent" but may only impose "restrictions or limitations" on a parent's access to a child. TEX. FAM. CODE § 153.193. We disagree with Mother's characterization of the trial court's order as a denial of access and thus need not decide whether section 153.193 authorizes such an order.

Because the Family Code does not define these terms, we begin with the commonly understood meanings of "deny," "restriction," and "limitation." To "deny" is "to not allow someone to have or do something."[5] A "restriction" is something that "confines within bounds" or "restrains,"[6] and a "limitation" is something that "bounds, restrains, or confines."[7] In other words, a denial is an outright refusal to allow certain conduct to occur, whereas a restriction or limitation confines conduct to certain bounds. The trial court's visitation order in this case falls into the latter category. By its terms, Mother can obtain access to her children either (a) when she and the managing conservators agree or, if they cannot reach an agreement, (b) when the managing

[5] *Deny*, CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/us/dictionary/english/deny (last visited May 27, 2021).

[6] *Restrict* and *restriction*, MERRIAM-WEBSTER, https://www merriam-webster.com/dictionary/restrict (last visited May 27, 2021).

[7] *Limitation* and *limit*, MERRIAM-WEBSTER https://www merriam-webster.com/dictionary/limit (last visited May 27, 2021).

conservators consent to access. In other words, the order *restricts* and *limits* Mother's access to her children to supervised visitation at the managing conservators' discretion. The restriction is undoubtedly a severe one, permissible only if necessary to protect the children's best interest, but it is not an outright denial that forecloses all access.

This case resembles *In re A.N.*, which concerned an "as agreed" visitation order nearly identical to the one at issue here. 2017 WL 4080100, at *7. In *A.N.*, Mother's parental rights to one of her daughters were terminated based on endangerment and neglect, but she was named possessory conservator of her other daughter. *Id.* at *5, *3. The visitation order stated that "in the absence of mutual agreement," Mother "shall have no visitation with the child . . . due to present conditions and the safety concerns regarding [Mother]," unless the child's caregivers determine "in their sole discretion that visitation between [Mother] and [the child] is in the best interest of the child." *Id.* at *7. Mother appealed, arguing that the trial court abused its discretion by creating an "unenforceable visitation schedule." *Id.* at *6. Specifically, Mother argued that: (1) visitation must be in the child's best interest because she was appointed possessory conservator; (2) visitation could only occur if the managing conservators determined it was in the child's best interest, amounting to no visitation at all; and (3) the terms of visitation in the trial court's order were ambiguous. *Id.*

The court of appeals determined there was sufficient evidence to find that a severe restriction was in the child's best interest. *Id.* at *7–8. Though it recognized that an "as agreed" order should be used only in rare circumstances, the court disagreed that the terms of the order were "tantamount to no visitation at all." *Id*. The court noted record evidence that the child's caregivers were willing to allow supervised contact with Mother if that contact was positive,

concluding that the order's language suggested that "it is not in [the child's] best interest for [Mother] to have access in the near term due to 'present conditions' and 'safety concerns.'" *Id.* Thus, "visitation was not completely denied, as [the child's] caregivers were authorized to resume visitation" when they believed it would be in her best interest. *Id.* at *8.

As in *A.N.*, the record here contains legally sufficient evidence to support a finding that it was in the best interest of J.J.R.S. and L.J.R.S. to impose a severe restriction on Mother's access. For one, the incident leading to the children's removal involved Mother soliciting with an armed boyfriend while her children waited in another motel room. Evidence collected from the scene included drug paraphernalia that could have been accessible by the children. Once the lawsuit was filed, Mother failed to participate in or acknowledge the lawsuit for eight months, attending only four scheduled visits with her children. Mother's failure to attend most visits was very hard on the children, causing J.J.R.S. to worry about Mother's safety and wonder if she was hurt. Prior to their removal, both children had been out of school for nearly two years and showed signs of social and emotional developmental issues. Mother refused all drug tests, failed to complete any part of her service plan, and failed to obtain stable housing or a job throughout the entirety of the lawsuit. Notably, that same lack of stability prior to the removal had been "extremely emotionally traumatizing for [the children.]" This case presents extreme circumstances warranting a severe restriction.

We hold that Texas Family Code sections 153.006(c) and 153.193, read in conjunction, permit the kind of "as agreed" order at issue in this case in the narrow circumstance where such a severe restriction is necessary to protect the child's best interest. We further hold that legally sufficient evidence supported the terms of the trial court's order here.

C

Mother next argues that if a total denial of access serves the children's best interest, the trial court must terminate the parent–child relationship instead of creating a possessory conservatorship that amounts to an effective denial of access. Again, the trial court's order was not a denial of access. Even if it were, Mother's argument leads to the perverse result that a court, upon concluding that the kind of severe restriction imposed here is necessary to protect a child's best interest, must irrevocably terminate a parent's rights rather than restrict those rights and give the parent the opportunity to seek to increase her access rights in the future.

Requiring termination of parental rights rather than a conservatorship with severe access restrictions would place trial courts in an unimaginable bind. Such a harsh rule would force a trial court to either allow access to a child by a possessory conservator who may immediately endanger that child's physical or emotional wellbeing, or conversely, force the trial court to prematurely sever the parent–child relationship out of fear that immediate access may cause irreparable harm to the child. Such a proposition is antithetical to the purpose of visitation orders, which strive to balance the rights of parents with the importance of protecting children. *See* TEX. FAM. CODE § 153.001(a).

For the same reason, Mother's argument that an order that specifies "an amount of days" is preferable over an otherwise "completely unworkable" possession order is also unavailing.[8] Whether a set of broad, enforceable guidelines is preferable to an order granting discretion to the managing conservators requires a case-by-case basis determination of the child's best interest.

[8] For this proposition, Mother relies on *Pickens v. Pickens*, No. 12-13-00235-CV, 2014 WL 806358 (Tex. App.—Tyler Feb. 28, 2014, no pet.), but her reliance is misplaced. *Pickens* did not involve an "as agreed" order, nor did the *Pickens* court consider whether a complete denial of access was in the best interest of the child or permissible under Texas Family Code section 153.006(c). *See id.* at *1, *4.

Further, Mother's reliance on *In re A.P.S.*, 54 S.W.3d 493 (Tex. App.—Texarkana 2001, no pet.), is misplaced. In that case, Mother appealed the trial court's modification order that named her possessory conservator and awarded her possession of the children "at reaasonable [sic] times and places as determined by [Father]." *Id.* at 495. After reviewing the record, the court of appeals concluded that a "complete denial of access was not warranted and, from an examination of the order, was not intended by the trial court." *Id.* at 498. Further, Father offered no evidence to show good cause, as required by Texas Family Code section 153.006(c), to issue a nonspecific order deviating from the standard possession order. *Id.* As such, the court of appeals remanded with instructions to provide more specificity because without a showing of good cause or even the trial court's intent to give Father total discretion over Mother's access rights, the trial court was required to "fashion an order that specifically articulates the times and conditions" of Mother's access. *Id.* at 499. The court did not hold that possessory conservators are entitled to a certain level of access by virtue of *the appointment* alone. We decline to adopt Mother's view that the appointment of a parent as possessory conservator entitles the parent to a certain level of access without regard to what is in the child's best interest.

Here, the CASA representative and the children's guardian ad litem recommended termination of Mother's rights, but the Department recommended possessory conservatorship with access at the managing conservators' discretion. The Department's recommendation rested on the children's love for their Mother. Given the evidence, the trial court arguably could have terminated Mother's rights, but it chose to preserve the bond between Mother and her children while still protecting their physical and emotional needs.

We do not sit here to question why the trial court made the choice it did except to determine whether it was an abuse of discretion. *Jones v. Strayhorn*, 321 S.W.2d 290, 295 (Tex. 1959). The Family Code permits a restriction or limitation to the extent necessary to protect the children's best interest. *See* TEX. FAM. CODE § 153.193. It does not require termination when a severe restriction or limitation on access can also be in the best interest of the child while preserving the possibility that the parent and child may continue to have a relationship in the future. That is, so long as the trial court made the necessary findings that the restriction or limitation is in the children's best interest, the terms of the order are permissible.

D

Lastly, Mother urges that "as agreed" visitation orders are an impermissible delegation of judicial authority. Specifically, Mother suggests that a growing minority of courts of appeals take the position that placing complete discretion over parental access in the hands of a managing conservator results in orders unenforceable by contempt.[9] Mother argues that such "as agreed" orders leave the aggrieved parent with no recourse in the event the managing conservator arbitrarily and capriciously withholds access because the orders are unenforceable without objective standards. While Mother has not attempted to hold Aunt and Uncle in contempt, she argues she could not successfully enforce this order if Aunt and Uncle denied her access to her children. The Department disagrees, arguing that no disagreement among the Texas courts of appeals exists because the variation in the outcomes of conservatorship cases can be explained by what the trial court believed was in the best interest of the children in those cases.

[9] *See, e.g.*, *infra*, notes 11–14.

We have long held that "for a person to be held in contempt for disobeying a court decree, the decree must spell out the details of compliance in clear, specific and unambiguous terms so that such person will readily know exactly what duties or obligations are imposed upon him." *Ex parte Slavin*, 412 S.W.2d 43, 44 (Tex. 1967) (collecting cases). Indeed, the power to enforce an order by contempt is "an essential element of judicial independence and authority." *Ex parte Gorena*, 595 S.W.2d 841, 845 (Tex. 1979) (citing *Ex parte Browne*, 543 S.W.2d 82, 86 (Tex. 1976)). But "[w]hether or not a decree is enforceable by contempt depends, not on statutory authority, but on the nature of the decree itself." *Id.* For example, in *Ex parte Slavin* we held that a Father's child-support obligations in a divorce decree were so indefinite that they could not be enforced by contempt. 412 S.W.2d at 45. We did not render the order void for vagueness, however. *Id*. Thus, while an order must be "clear, specific, and unambiguous" to be enforceable by contempt, *id.* at 44, it does not follow that every order less than that is invalid.

Applying the same logic to visitation orders, when the facts are so egregious so as to warrant a nonspecific order under which access to the children is in the sole discretion of the managing conservator, the nature of the "as agreed" visitation order is by definition nonspecific. *See* TEX. FAM. CODE §§ 153.006(c), .193. Stated another way, while the Family Code provides that conservators may be subject to contempt for disobeying a court order, *see id.* § 157.001(b), the Code does not require—nor have we ever held—that trial courts must issue orders that are always enforceable by contempt. Thus, whether a conservator may enforce an order by contempt depends on the contents of the order and the facts and circumstances of the particular case.[10]

[10] For example, in *Hale v. Hale*, No. 04-05-00314-CV, 2006 WL 166518, at *3 (Tex. App.—San Antonio Jan. 25, 2006, pet. denied), the Court remanded an order for greater specificity because though the "trial court concluded that it was in [the child's] best interest not to visit with her father until a therapist

In cases where the record indicates the trial court's intent was to issue an order imposing specific conditions or restrictions, the "judgment must state in clear and unambiguous terms what is required for the conservator to comply." *Hale,* 2006 WL 166518, at *3 (citing *Ex parte Brister*, 801 S.W.2d 833, 834 (Tex. 1990)). But where, as here, the trial court intended to issue an "as agreed" order per Texas Family Code sections 153.006(c) and 153.193 due to the severity of Mother's conduct and impact on the children's physical and emotional wellbeing, the order was intentionally nonspecific. Because such an order is permitted by Texas Family Code sections 153.006(c) and 153.193, lack of specificity is not erroneous unless the trial court failed to make the necessary findings of good cause and best interest. *See* TEX. FAM. CODE §§ 153.006(c), .193.

Accordingly, we agree with the Department that the apparent disagreement among the courts of appeals is illusory and that the disparate outcomes in the cases on which Mother relies depend on a host of factors. For example, courts of appeals have required greater specificity in visitation orders because (1) the trial court did not make the best-interest finding needed to restrict or limit access;[11] (2) a showing of "good cause" to deviate from the standard possession order was lacking;[12] (3) the order, as written, effectively denied all access, but the record revealed the trial

recommended otherwise . . . [t]he order [did] not name a therapist or provide any guidelines to ensure that the best interests of the child are protected in these circumstances." *Id.*

[11] *In re J.Y.*, 528 S.W.3d 679, 690–91 (Tex. App.—Texarkana 2017, no pet.).

[12] *A.P.S.*, 54 S.W.3d at 498; *In re P.M.W.*, 559 S.W.3d 215, 222 n.4 (Tex. App.—Texarkana 2018, pet. denied).

court did not intend that result;[13] or (4) the trial court may have intended to severely restrict access, but the facts of the case did not rise to the level of an extreme circumstance.[14]

Finally, Mother is not without a remedy. If Mother, Aunt, and Uncle are unable to reach any agreement for access, Mother can move for a modification of the original order if the circumstances have materially or substantially changed and if a modification would be in the best interest of the children. *See* TEX. FAM. CODE § 156.101(1).

III

In her second issue, Mother mounts both facial and as-applied constitutional challenges to section 262.201(o) of the Family Code.

When a governmental entity takes possession of a child without prior notice or a hearing under Texas Family Code section 262.101—as was done here—a court generally must hold a full adversary hearing within fourteen days. TEX. FAM. CODE § 262.201(a). At this hearing—colloquially known as a "Chapter 262 hearing"—the parents are informed that the court may temporarily restrict or terminate their parental rights unless they are willing and able to provide the child with a safe environment. *Id*. § 262.201(m). At the conclusion of the hearing, the court may issue temporary orders under chapter 105 of the Texas Family Code. *Id*. § 262.102(a); *see id.* § 105.001. While the Family Code generally entitles parents to notice before this adversary

[13] For example, in *In re J.S.P.*, 278 S.W.3d 414, 422–23 (Tex. App.—San Antonio 2008, no pet.), the Court remanded an order because the part pertaining to possession was "not specific enough to be enforceable." *Id.* at 423. The trial court fashioned an order requiring Father to participate in a transitory program led by a therapist, but the order did not contain a "reporting schedule or other deadline." *Id.* Without such a timeline, the Court held the order did not meet the standards of enforceability. *Id.* Thus, while the trial court's intent was to issue an order with guidelines for Father to follow, the language of the order missed the mark. *Id.*; *see also Hale*, 2006 WL 166518, at *2–3; *In re J.Y.*, 528 S.W.3d at 691.

[14] *Fish v. Lebrie*, No. 03-09-00387-CV, 2010 WL 5019411, at *10 (Tex. App.—Austin Dec. 10, 2010, no pet.).

hearing, *see id.* § 262.109(a), a trial court may issue ex parte temporary orders if a parent's whereabouts are unknown and the Department is unable to serve the parent with notice before the hearing takes place, *id.* § 262.201(o).

Mother argues that section 262.201(o) is facially unconstitutional because it deprives parents of procedural due process rights to notice before the Chapter 262 hearing. Mother argues that the provision can never be applied constitutionally because it always operates to deprive notice to transient parents who lack stable housing. Mother also argues the provision is unconstitutional as applied to her because she was not served with citation, either personally or by publication, before the trial court issued a temporary order to remove her children. The court of appeals, addressing only Mother's facial challenge, held the statute constitutional because "the statute's plain language is permissive, not mandatory." 607 S.W.3d at 409.

We do not reach the merits of the Mother's arguments, however, because the final order in the suit moots Mother's constitutional challenges to the temporary order rendered pursuant to section 262.201(o).[15]

A case is moot when a justiciable controversy between the parties ceases to exist or when the parties cease to have a "legally cognizable interest in the outcome." *State v. Harper*, 562 S.W.3d 1, 6 (Tex. 2018) (quoting *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001)). Put simply, a case is moot when the court's action on the merits cannot affect the parties' rights or interests. *Heckman v. Williamson County*, 369 S.W.3d 137, 162 (Tex. 2012). Any ruling on the merits of a moot issue constitutes an advisory opinion, which we lack jurisdiction to issue. *See* TEX. CONST.

[15] Courts may raise jurisdictional issues *sua sponte* for the first time on appeal. *See Wells Fargo Bank, N.A. v. Murphy*, 458 S.W.3d 912, 916 (Tex. 2015) (citing *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445–46 (Tex. 1993)).

art. II, § 1; *Speer v. Presbyterian Children's Home & Serv. Agency*, 847 S.W.2d 227, 229 (Tex. 1993).

Here, the Department filed its original petition on August 20, 2018, and the trial court issued temporary emergency orders the same day naming the Department temporary sole managing conservator. On September 12, the trial court conducted the Chapter 262 hearing on the emergency removal. The Department stated it could not locate Mother to serve her with citation prior to the hearing. The trial court in turn exercised jurisdiction pursuant to Texas Family Code section 262.201(o) and issued an ex parte order naming the Department temporary managing conservator. Mother's appointed counsel objected to the temporary order on the ground that Mother had not received citation. The court advised that Mother could move for reconsideration of the temporary order once she was located. After Mother was served, however, she did not seek reconsideration of the temporary order in the trial court, electing instead to seek mandamus relief in the court of appeals and this Court, which was denied. *In re Reina S.C.*, No. 04-18-00682-CV, 2018 WL 6331053, at *1 (Tex. App.—San Antonio Dec. 5, 2018, orig. proceeding [mand. denied]).

Mother again seeks review of the constitutionality of section 262.201(o)—the basis for the temporary order authorizing the emergency removal of her children—but the trial court has since rendered a final judgment regarding Mother's parental rights. As such, any action on the merits related to the prior temporary order would not affect Mother's rights or interests. *See Heckman*, 369 S.W.3d at 162; *In re E.R.W.*, 528 S.W.3d 251, 257 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding).

* * *

We conclude that section 153.006(c) of the Texas Family Code permits trial courts to issue nonspecific visitation orders and that section 153.193 allows restrictions or limitations on a possessory conservator's access to the extent necessary to "protect the best interest of the child." Here, the trial court did not abuse its discretion in imposing a severe restriction on Mother's access rights where the evidence reveals it was in the best interest of her children. Further, the trial court's final judgment in this proceeding rendered Mother's complaints about the temporary orders moot.

Accordingly, the court of appeals' judgment is affirmed.

_____

John P. Devine
Justice

OPINION DELIVERED: June 4, 2021

Appendix C

DOCUMENT SCANNED AS FILED

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2018PA01865 -D037

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

CAUSE NO. 2018-PA-01865

IN THE INTEREST OF	§	**IN THE DISTRICT COURT OF**
[redacted]	§ § §	**BEXAR COUNTY, TEXAS**
CHILDREN	§ §	**37TH JUDICIAL DISTRICT**

FINAL ORDER IN SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

On August 8, 2019, the Court heard this case.

1. **Appearances**

1.1. The Department of Family and Protective Services ("the Department") appeared through **KIMBERLY BARNHILL**, caseworker, and by attorney, **CAITLIN IRWIN** and announced ready.

1.2. Respondent Mother **REINA** [redacted], appeared in person and through attorney of record **ALANA PEARSALL** and announced ready, denied.

1.3. Respondent Presumed Father **JOSUE** [redacted] appeared ~~in person~~ not and through attorney of record Lionel Richardson for **MAUREEN LLANAS** and announced ready.

1.4. Richard Gaona for **SHAWN SHEFFIELD**, appointed by the Court as Attorney and Guardian Ad Litem for the children the subject of this suit, appeared and announced ready.

2. **Findings**

2.1. The Court, having examined the record and heard the evidence and argument of counsel, finds that this Court has jurisdiction of this case and of all the parties and that no other court has continuing, exclusive jurisdiction of this case.

2.2. The Court, having examined the record and heard the evidence and argument of counsel, finds that the State of Texas has jurisdiction of this case pursuant to Subchapter C, Chapter 152, Texas Family Code, by virtue of the fact that Texas is the home state of the children.

2.3. All persons entitled to citation were properly cited.

2.4. The Court finds that **JOSUE** [redacted] is the father of the child [redacted] **AND** [redacted]

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2.5. The Court finds that this order sufficiently defines the rights and duties of the parents of the children pursuant to § 153.603, Texas Family Code, and no further parenting plan is appropriate or necessary.

3. Jury

A jury was waived, and all questions of fact and of law were submitted to the Court.

4. Record

The record of testimony was duly reported by ELVA CHAPA, the court reporter for the Associates Judges Court, Room 3.06 of Bexar County.

5. The children

The Court finds that the following children are the subject of this suit:

5.1.
Name: [redacted]
Sex: **Male**
Birth Date: [redacted]
Social Security Number: **Unknown**
Present Residence: **Relative's Home**
Driver's License Number: **n/a**

5.2.
Name: [redacted]
Sex: **Female**
Birth Date: [redacted]
Social Security Number: **Unknown**
Present Residence: **Relative's Home**
Driver's License Number: **n/a**

6. Managing Conservatorship: [redacted]

6.1. The Court finds that appointment of a parent or both parents as managing conservator would not be in the best interest of the child [redacted], because the appointment would significantly impair the child's physical health or emotional development.

6.2. The Court finds that the nonparents **LUZ AND REY** [redacted] was informed of the rights and duties of a nonparent appointed as the Permanent Managing Conservator of a child, as stated in § 153.371, Texas Family Code.

6.3. **IT IS THEREFORE ORDERED** that **LUZ AND REY** [redacted] is appointed Permanent Managing Conservators of the child [redacted], with the rights and duties specified in § 153.371, Texas Family Code; the Court finds this appointment to be in the best interest of the child.

6.4. **IT IS FURTHER ORDERED** that **LUZ AND REY** [redacted] has the authority to:

6.4.1. Authorize immunization of the child or any other medical treatment that requires parental consent;

6.4.2. Obtain and maintain health insurance coverage for the child and automobile insurance coverage for the child, if appropriate;

6.4.3. Enroll the child in a daycare program or school, including pre-kindergarten;

6.4.4. Authorize the child to participate in school-related or extracurricular or social activities, including athletic activities;

6.4.5. Authorize the child to obtain a learner's permit, driver's license, or state-issued identification card;

6.4.6. Authorize employment of the child;

6.4.7. Apply for and receive public benefits for or on behalf of the child; and

6.4.8. Obtain legal services for the child and execute contracts or other legal documents for the child.

6.5. **IT IS FURTHER ORDERED** that **LUZ AND REY** [redacted] shall, each twelve months after the date of this order, file with the Court a report of facts concerning the child's welfare, including the child's whereabouts and physical condition, as required by § 153.375, Texas Family Code.

6.6. **IT IS FURTHER ORDERED** that as of the date of the signing of this judgment, the **DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** is **REMOVED** as a Managing and/or Possessory Conservator of the child at issue in this case and is **RELEASED** from any further duties, or responsibilities pursuant to any designation or authority that this court may have granted to the Department during the pendency of this case and prior to the date of this judgment.

7. **Managing Conservatorship:** [redacted]

7.1. The Court finds that appointment of a parent or both parents as managing conservator would not be in the best interest of the child [redacted] because the appointment would significantly impair the child's physical health or emotional development.

7.2. The Court finds that the nonparents **LUZ AND REY** [redacted] was informed of the rights and duties of a nonparent appointed as the Permanent Managing Conservator of a child, as stated in § 153.371, Texas Family Code.

7.3. **IT IS THEREFORE ORDERED** that **LUZ AND REY** [redacted] is appointed Permanent Managing Conservators of the child [redacted], with the rights and duties specified in § 153.371, Texas Family Code; the Court finds this appointment to be in the best interest of the child.

7.4. **IT IS FURTHER ORDERED** that **LUZ AND REY** [redacted] has the authority to:

7.4.1. Authorize immunization of the child or any other medical treatment that requires parental consent;

7.4.2. Obtain and maintain health insurance coverage for the child and automobile insurance coverage for the child, if appropriate;

7.4.3. Enroll the child in a daycare program or school, including pre-kindergarten;

7.4.4. Authorize the child to participate in school-related or extracurricular or social activities, including athletic activities;

7.4.5. Authorize the child to obtain a learner's permit, driver's license, or state-issued identification card;

7.4.6. Authorize employment of the child;

7.4.7. Apply for and receive public benefits for or on behalf of the child; and

7.4.8. Obtain legal services for the child and execute contracts or other legal documents for the child.

7.5. **IT IS FURTHER ORDERED** that **LUZ AND REY** [redacted] shall, each twelve months after the date of this order, file with the Court a report of facts concerning the child's welfare, including the child's whereabouts and physical condition, as required by § 153.375, Texas Family Code.

7.6. **IT IS FURTHER ORDERED** that as of the date of the signing of this judgment, the **DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** is **REMOVED** as a Managing and/or Possessory Conservator of the child at issue in this case and is **RELEASED** from any further duties, or responsibilities pursuant to any designation or authority that this court may have granted to the Department during the pendency of this case and prior to the date of this judgment.

7.7. **IT IS ORDERED** that each parent, who has not previously done so, provide information regarding the medical history of the parent and parent's ancestors on the medical history report form, pursuant to § 161.2021, Texas Family Code.

8. Parties Granted Possession or Access

8.1. Respondent Mother **REINA** [redacted] is appointed possessory conservator of the children, [redacted] **AND** [redacted]. The Court finds that such appointment is in the best interest of the children, and possession and access shall be as provided by this order, and does not exceed the restrictions needed to protect the best interest of the children.

8.2. Respondent Father **JOSUE** [redacted] is appointed possessory conservator of the child [redacted] **AND** [redacted] The Court finds that such appointment is in the best interest of the child, and possession and access shall be as provided by this order, and does not exceed the restrictions needed to protect the best interest of the child.

8.3. **Rights of Parent at All Times Pursuant to § 153.073, Texas Family Code:**

8.3.1. Unless limited by court order, a parent appointed as a conservator of the children has at all times the right:

8.3.1.1. to receive information from any other conservator of the children concerning the health, education, and welfare of the children;

8.3.1.2. to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the children;

8.3.1.3. of access to medical, dental, psychological, and educational records of the children;

8.3.1.4. to consult with a physician, dentist, or psychologist of the children;

8.3.1.5. to consult with school officials concerning the children's welfare and educational status, including school activities;

8.3.1.6. to attend school activities;

8.3.1.7. to be designated on the children's records as a person to be notified in case of an emergency;

8.3.1.8. to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the children; and

8.3.1.9. to manage the estate of the children to the extent the estate has been created by the parent or the parent's family.

8.4. **Rights and Duties During Period of Possession Pursuant to § 153.074, Texas Family Code:**

8.4.1. Unless limited by court order, a parent appointed as a conservator of the children has the following rights and duties during the period that the parent has possession of the children:

8.4.1.1. the duty of care, control, protection, and reasonable discipline of the children;

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

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

8.4.1.4. the right to direct the moral and religious training of the children.

8.5. **Duty to Provide Information Pursuant to § 153.076, Texas Family Code:**

8.5.1. **IT IS ORDERED** that each conservator of the children has a duty to inform the other conservator of the children in a timely manner of significant information concerning the health, education, and welfare of the children.

8.5.2. **IT IS ORDERED** pursuant to § 153.076(b), Texas Family Code, that each conservator of the children has the duty to inform the other conservator if the conservator resides with for at least 30 days, marries, or intends to marry a person who the conservator knows:

8.5.2.1. is registered as a sex offender under Chapter 62, Code of Criminal Procedure; or

8.5.2.2. is currently charged with an offense for which on conviction the person would be required to register under that chapter.

8.5.3. The notice required to be made under § 153.076(b), Texas Family Code, must be made as soon as practicable but not later than the 40th day after the date the conservator of the children begins to reside with the person or the 10th day after the date the marriage occurs, as appropriate. The notice must include a description of the offense that is the basis of the person's

requirement to register as a sex offender or of the offense with which the person is charged.

8.5.4. **IT IS ORDERED** pursuant to §153.076(b-1), Texas Family Code, that each conservator of [redacted] **AND** [redacted] has the duty to inform the other conservator of the children if the conservator:

8.5.4.1. Establishes a residence with a person who the conservator knows is the subject of a final protective order sought by an individual other than the conservator that is in effect on the date the residence with the person is established; or

8.5.4.2. Resides with, or allows unsupervised access to a child by, a person who is the subject of a final protective order sought by the conservator after the expiration of the 60 day period following the date the final protective order is issued; or

8.5.4.3. Is the subject of a final protective order issued after the date of the order establishing conservatorship.

8.5.5. The notice required to be made under §153.076(b-1), Texas Family Code, must be made as soon as practicable but not later than:

8.5.5.1. The 30th day after the date the conservator establishes residence with the person who is the subject of the final protective order, if notice is required by subsection 7.5.4.1 above; or

8.5.5.2. The 90th day after the date the final protective order was issued, if notice is required by subsection 7.5.4.2 above; or

8.5.5.3. The 30th day after the date the final protective order was issued, if notice is required by subsection 7.5.4.3 above.

8.5.6. A CONSERVATOR COMMITS AN OFFENSE IF THE CONSERVATOR FAILS TO PROVIDE NOTICE IN THE MANNER REQUIRED BY SUBSECTIONS (b) AND (c), OR SUBSECTIONS (b-1) AND (c-1), AS APPLICABLE, OF § 153.076, TEXAS FAMILY CODE. AN OFFENSE UNDER § 153.076 (d) IS A CLASS C MISDEMEANOR.

8.6. **IT IS ORDERED** that the conservators shall have possession of the children at times mutually agreed to in advance by the parties and, in the absence of mutual agreement, as specified in **Attachment A** to this order, which is incorporated herein as if set out verbatim in this paragraph. The periods of possession ordered above apply to each child the subject of this suit while that child is under the age of eighteen years and not otherwise emancipated.

9. Child Support

9.1. **IT IS ORDERED** that the parents shall pay child support for the children as set forth in **Attachment B** to this Order, which is incorporated herein as if set out verbatim in this paragraph.

9.2. Child support arrearage owed to the Department for child support not paid by **REINA** [redacted] during the pendency of this suit **IS NOT** waived.

9.3. Child support arrearage owed to the Department for child support not paid by **JOSUE** [redacted] during the pendency of this suit **IS NOT** waived.

10. Statement On Modification

THE COURT MAY MODIFY THIS ORDER THAT PROVIDES FOR THE SUPPORT OF CHILDREN, IF:

10.1. THE CIRCUMSTANCES OF THE CHILDREN OR A PERSON AFFECTED BY THE ORDER HAVE MATERIALLY AND SUBSTANTIALLY CHANGED; OR

10.2. IT HAS BEEN THREE YEARS SINCE THE ORDER WAS RENDERED OR LAST MODIFIED AND THE MONTHLY AMOUNT OF THE CHILD SUPPORT AWARD UNDER THE ORDER DIFFERS BY EITHER 20 PERCENT OR $100.00 FROM THE AMOUNT THAT WOULD BE AWARDED IN ACCORDANCE WITH THE CHILD SUPPORT GUIDELINES.

11. Medical Support and Health Insurance

IT IS ORDERED that the parents shall provide for the medical support of the children as set forth in **Attachment C** to this Order, which is incorporated herein as if set out verbatim in this paragraph.

12. Required Information and Notices Regarding the Parties and Children

12.1. **EXCEPT FOR THOSE PERSONS SPECIFICALLY EXEMPTED FROM SUCH DISCLOSURE BELOW, EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR**

COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.

12.2. THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

12.3. NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE TERMS OF CHILD CUSTODY SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CLAIM, CIVIL OR OTHERWISE, REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THE ORDER THAT RELATE TO CHILD CUSTODY. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $ 10,000.

12.4. FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

12.5. Notice shall be given to the other party by delivering a copy of the notice to the party by registered or certified mail, return receipt requested. Notice shall be given to the Court by delivering a copy of the notice either in person to the clerk of the Court or by registered or certified mail addressed to the clerk. Notice to the State Case Registry shall not be required until the registry is established and procedures for notification published by the Title IV-D agency under Chapter 234, Texas Family Code.

12.6. The children's information is provided above; the information required of each party not exempted from such disclosure is:

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12.6.1. Name: **REINA** [redacted]
Social Security number: ______
Driver's License: ______
Current address: **MOTEL 6, 9447 I-10 W , SAN ANTONIO, TX 78230**
Home telephone number: ______
Name of employer: ______
Address of employment: ______
Work telephone number: ______

12.6.2. Name: **JOSUE** [redacted]
Social Security number: ______
Driver's License: ______
Current address: ______
Home telephone number: ______
Name of employer: ______
Address of employment: ______
Work telephone number: ______

13. Warnings to Parties

FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO $500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY'S NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.

FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.

14. Dismissal of Other Court-Ordered Relationships

Except as otherwise provided in this order, any other existing court-ordered relationships with the children the subject of this suit are hereby terminated and any parties claiming a court-ordered relationship with the children are **DISMISSED** from this suit.

15. Denial of Other Relief

IT IS ORDERED that all relief requested in this case, and not expressly granted, is denied.

16. WARNING: APPEAL OF FINAL ORDER, PURSUANT TO § 263.405, TEXAS FAMILY CODE

A PARTY AFFECTED BY THIS ORDER HAS THE RIGHT TO APPEAL. AN APPEAL IN A SUIT IN WHICH TERMINATION OF THE PARENT-CHILD RELATIONSHIP IS SOUGHT IS GOVERNED BY THE PROCEDURES FOR ACCELERATED APPEALS IN CIVIL CASES UNDER THE TEXAS RULES OF APPELLATE PROCEDURE. FAILURE TO FOLLOW THE TEXAS RULES OF APPELLATE PROCEDURE FOR ACCELERATED APPEALS MAY RESULT IN THE DISMISSAL OF THE APPEAL.

17. NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS:

YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE TERMS OF CHILD CUSTODY SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CLAIM, CIVIL OR OTHERWISE, REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THE ORDER THAT RELATE TO CHILD CUSTODY. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000.

SIGNED and ENTERED this _____ day of AUG 8 2019, 2019.

JUDGE PRESIDING

CHARLES MONTEMAYOR
ASSOCIATE JUDGE

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APPROVED AS TO FORM:

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Attorney for Petitioner, Department of Family and Protective Services
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for

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ATTACHMENT A

Possession of and Access to the Children

18. **IT IS ORDERED** that Respondent Mother, **REINA** [redacted] named as possessory conservator of the children [redacted] **AND** [redacted] shall have possession and access as follows:

18.1. supervised visitation with the children, under the terms and conditions agreed to in advance by the managing conservator, provided that the managing conservator or other placement shall have 48 hours advance notice of intent to exercise the visitation. The managing conservator or designee shall supervise the visitation. only if managing conservator agrees to visitation. sole discretion.

19. **IT IS ORDERED** that Respondent Father, **JOSUE** [redacted] named as possessory conservator of the child [redacted] **AND** [redacted], shall have possession and access as follows:

19.1. supervised visitation with the children, under the terms and conditions agreed to in advance by the managing conservator, provided that the managing conservator or other placement shall have 48 hours advance notice of intent to exercise the visitation. The managing conservator or designee shall supervise the visitation.

19.2. if agreement cannot be reached, with two (2) weeks notice, visitation will be once a month.

19.3. available once a week telephonic access.

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ATTACHMENT B

Child Support

20. Child Support Obligation: REINA [redacted]

20.1. The Court finds that **REINA [redacted]** is obligated to support [redacted], children the subject of this suit, pursuant to §154.001, Texas Family Code.

20.2. **Monthly Payments**

20.2.1. **IT IS ORDERED** that **REINA [redacted]** is obligated to pay and shall pay child support to **LUZ AND REY [redacted]** of $ 100.00 per month for the support of [redacted], with the first payment being due and payable on the 1st day November and a like payment being due and payable on the 1st day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

20.2.1.1. EITHER child reaches the age of eighteen years, provided that, if the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma, the periodic child support payments shall continue to be due and paid until the end of the month in which the child graduates;

20.2.1.2. EITHER child marries;

20.2.1.3. EITHER child dies;

20.2.1.4. EITHER child's disabilities are otherwise removed for general purposes;

20.2.1.5. further order modifying this child support;

20.2.1.6. EITHER child is dismissed from this action; or

20.2.1.7. the date on which the child begins active service in the armed forces, as defined by 10 U.S.C., Section 101.

20.2.2. Thereafter, **REINA [redacted]** is **ORDERED** to pay child support of $ 100.00, per month, due and payable on the 1st day of the first month immediately following the date of the earliest occurrence of one of the events specified in items listed under **Monthly**

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Payments above and a like sum of $ 100.00 due and payable on the 1st day of each month thereafter until the next occurrence of one of the specified events.

20.3. **Notice of Change of Employer**

IT IS FURTHER ORDERED that **REINA** [redacted] and her employer shall notify this Court and the Managing Conservator of the children the subject of this suit by U.S. certified mail, return receipt requested, of any termination of employment. This notice shall be given no later than seven days after the termination of employment, and shall include the current, or last known address of **REINA** [redacted] and the name and address of the new employer, if known. **REINA** [redacted] shall inform any subsequent employer of this support obligation and the withholding order.

21. Child Support Obligation: JOSUE [redacted]

21.1. The Court finds that **JOSUE** [redacted] is obligated to support [redacted] **AND** [redacted] **SANDOVAL**, children the subject of this suit, pursuant to §154.001, Texas Family Code.

21.2. **Monthly Payments**

21.2.1. **IT IS ORDERED** that **JOSUE** [redacted] is obligated to pay and shall pay child support to **LUZ AND REY** [redacted] of $ 284.13 per month for the support of [redacted] **AND** [redacted] with the first payment being due and payable on the 1st day of November and a like payment being due and payable on the 1st day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below

21.2.1.1. EITHER child reaches the age of eighteen years, provided that, if the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma, the periodic child support payments shall continue to be due and paid until the end of the month in which the child graduates;

21.2.1.2. EITHER child marries;

21.2.1.3. EITHER child dies;

21.2.1.4. EITHER child's disabilities are otherwise removed for general purposes;

21.2.1.5. further order modifying this child support;

21.2.1.6. EITHER child is dismissed from this action; or

21.2.1.7. the date on which the child begins active service in the armed forces, as defined by 10 U.S.C., Section 101.

21.2.2. Thereafter, **JOSUE** [redacted] is **ORDERED** to pay child support of $ 284.13, per month, due and payable on the 1st day of the first month immediately following the date of the earliest occurrence of one of the events specified in items listed under **Monthly Payments** above and a like sum of $ 284.13 due and payable on the 1st day of each month thereafter until the next occurrence of one of the specified events.

21.3. **Notice of Change of Employer**

IT IS FURTHER ORDERED that **JOSUE** [redacted] and his employer shall notify this Court and the Managing Conservator of the child the subject of this suit by U.S. certified mail, return receipt requested, of any termination of employment. This notice shall be given no later than seven days after the termination of employment, and shall include the current, or last known address of **JOSUE** [redacted] and the name and address of the new employer, if known. **JOSUE** [redacted] shall inform any subsequent employer of this support obligation and the withholding order.

22. Place and Manner of Payment of Child Support

22.1. **IT IS ORDERED** that all child support payments are to be made through the Texas Child Support State Disbursement Unit, P.O. Box 659791, San Antonio, Texas 78265-9791, for distribution according to law.

23. Statement on Guidelines

To the extent that any support obligation specified above varies from the amount computed by applying the percentage guidelines in Chapter 154, Texas Family Code, the Court finds that the application of the percentage guidelines would be unjust or inappropriate, as more particularly shown in this Court's Findings on Child Support Order with respect to each obligor, which findings are incorporated herein as if set out verbatim in this paragraph.

24. Statement On Modification

THE COURT MAY MODIFY THIS ORDER THAT PROVIDES FOR THE SUPPORT OF CHILDREN, IF:

24.1. THE CIRCUMSTANCES OF THE CHILDREN OR A PERSON AFFECTED BY THE ORDER HAVE MATERIALLY AND SUBSTANTIALLY CHANGED; OR

24.2. **IT HAS BEEN THREE YEARS SINCE THE ORDER WAS RENDERED OR LAST MODIFIED AND THE MONTHLY AMOUNT OF THE CHILD SUPPORT AWARD UNDER THE ORDER DIFFERS BY EITHER 20 PERCENT OR $100.00 FROM THE AMOUNT THAT WOULD BE AWARDED IN ACCORDANCE WITH THE CHILD SUPPORT GUIDELINES.**

25. Termination of Duty of Support

Pursuant to §154.006, Texas Family Code, unless otherwise agreed in writing or expressly provided in the order or as provided by Subsection (b), the child support order terminates on

25.1. EITHER child reaches the age of eighteen years, provided that, if the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma, the periodic child support payments shall continue to be due and paid until the end of the month in which the child graduates;

25.2. EITHER child marries;

25.3. EITHER child dies;

25.4. EITHER child's disabilities are otherwise removed for general purposes;

25.5. further order modifying this child support;

25.6. EITHER child is dismissed from this action; or

25.7. the date on which the child begins active service in the armed forces, as defined by 10 U.S.C., Section 101.

Appendix D

C3/3.06

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

CAUSE NO. 2018-PA-01865

IN THE INTEREST OF	§	**IN THE DISTRICT COURT OF**
	§	
[redacted]	§	
ET AL	§	**BEXAR COUNTY, TEXAS**
	§	
CHILDREN	§	**37TH JUDICIAL DISTRICT**

TEMPORARY ORDER FOLLOWING ADVERSARY HEARING

On **September 12, 2018**, a full Adversary Hearing pursuant to § 262.201, Texas Family Code, was held in this cause.

1. Appearances

1.1. The Department of Family and Protective Services ("the Department") appeared through [redacted] **JR**, caseworker, and by attorney, **KEVIN TERRILL** by Alexandra Jackson and announced ready.

1.2. Respondent Mother, **REINA** [redacted] ~~appeared in person~~ did not appear and through attorney of record **ALANA PEARSALL** and announced ~~ready~~. She was making special appearance not ready which was denied.

1.3. Respondent Presumed Father, [redacted], father of the child [redacted] **JANIEL REYES SANDOVAL AND** [redacted] **SANDOVAL** ~~appeared in person~~ did not appear and through attorney of record **RICHARD SALDIVAR** and announced ~~ready~~. not ready which was denied.

1.4. **SHAWN SHEFFIELD**, appointed by the Court as Attorney and Guardian Ad Litem of the children the subject of this suit, appeared and announced ready

2. Jurisdiction

The Court, after examining the record and hearing the evidence and argument of counsel, finds that all necessary prerequisites of the law have been satisfied and that this Court has jurisdiction of this case and of all the parties.

3. Indian Child Welfare Act

The Court has inquired whether the children's family has Native American heritage and identified any Native American Tribe with which the children may be associated.

#6

4. Findings

4.1. Having examined and reviewed the Department's pleadings and the sworn affidavit accompanying the petition and based upon the facts contained therein and the evidence presented to this Court at the hearing conducted on this date, the Court finds there is sufficient evidence to satisfy a person of ordinary prudence and caution that: (1) there was a danger to the physical health or safety of the children which was caused by an act or failure to act of the person entitled to possession. The Court further finds that it is contrary to the welfare of the children, [redacted] AND [redacted] to remain in the home of **REINA** [redacted] or of [redacted], and; (2) the urgent need for protection required the immediate removal of [redacted] **AND** [redacted] and reasonable efforts consistent with the circumstances and providing for the safety of [redacted] were made to eliminate or prevent the removal of [redacted] **AND** [redacted]; and (3) reasonable efforts have been made to enable [redacted] **AND** [redacted] to return home of **REINA** [redacted] or of [redacted], but there is a substantial risk of a continuing danger if [redacted] **AND** [redacted] are returned home of **REINA** [redacted] or of [redacted].

4.2. Findings for Appointment of Managing and Possessory Conservator

4.2.1. The Court finds that appointment of the parent or parents as managing conservator of the children is not in the best interest of the children because the appointment would significantly impair the children's physical health or emotional development.

4.2.2. The Court finds that it is in the best interest of children to limit the rights and duties of **REINA** [redacted] appointed as possessory conservator.

4.2.3. The Court finds that it is in the best interest of children to limit the rights and duties of [redacted] appointed as possessory conservator.

4.3. The Court finds that the placement of the children with the children's noncustodial parent, with a relative of the children, or with another designated caregiver is inappropriate and not in the best interest of the children.

4.3.1. If the children have not been placed with a relative or other designated caregiver, the Court finds that the Department has provided the reasons for

not placing the children and the actions, if any, to be taken to place the children.

4.4. The Court finds that the following orders for the safety and welfare of the children are in the best interest of the children.

5. Conservatorship

5.1. **IT IS ORDERED** that the Department of Family and Protective Services is appointed Temporary Managing Conservator of the following children:

5.1.1. Name: [redacted]
Sex: **Male**
Birthplace: **PUERTO RICO**
Birth Date: [redacted]
Indian Child Status: **All parties deny that the child has Indian heritage**

5.1.2. Name: [redacted]
Sex: **Female**
Birthplace: **PUERTO RICO**
Birth Date: [redacted]
Indian Child Status: **All parties deny that the child has Indian heritage**

5.2. In accordance with § 262.116, Texas Family Code, the Court finds that the Department of Family and Protective Services did not take possession of the children under this subchapter based on evidence that the parents:

5.2.1. homeschooled the child;

5.2.2. is economically disadvantaged;

5.2.3. has been charged with a nonviolent misdemeanor other than:

5.2.3.1.an offense under Title 5, Penal Code;

5.2.3.2.an offense under Title 6, Penal Code; or

5.2.3.3.an offense that involves family violence, as defined by Section 71.004 of this code;

5.2.4. provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code; or

5.2.5. declined immunization for the child for reasons of conscience, including a religious belief.

5.3. **IT IS ORDERED** that the Temporary Managing Conservator shall have all the rights and duties set forth in § 153.371, Texas Family Code.

5.3.1. **IT IS ORDERED** that, in addition to the rights and duties listed in § 153.371, Texas Family Code, the Department is authorized to consent to medical care for the subject children, pursuant to § 266.004, Texas Family Code.

5.4. **IT IS THEREFORE ORDERED** that **REINA** [redacted] is appointed Temporary Possessory Conservator of the children, [redacted] **AND** [redacted] **IS** [redacted] with the limited rights and duties set forth in **Attachment A**.

5.5. **IT IS THEREFORE ORDERED** that [redacted] is appointed Temporary Possessory Conservator of the child, [redacted] **AND** [redacted] **IS** [redacted] with the limited rights and duties set forth in **Attachment A**.

6. Possession and Access

6.1. The Court finds that the application of the guidelines for possession of and access to the children, as set out in Subchapter F, Chapter 153, Texas Family Code, is not in the children's best interest. **IT IS ORDERED** that **REINA** [redacted] shall have limited access to and possession of the children as set forth in **Attachment A,** which includes orders relating to the Temporary Visitation Schedule.

6.2. The Court finds that the application of the guidelines for possession of and access to the children, as set out in Subchapter F, Chapter 153, Texas Family Code, is not in the children's best interest. **IT IS ORDERED** that [redacted] shall have limited access to and possession of the children as set forth in **Attachment A,** which includes orders relating to the Temporary Visitation Schedule.

7. Child Support

7.1. **IT IS ORDERED** that **REINA** [redacted] shall provide child support for the children as set forth in **Attachment B.**

7.2. **IT IS ORDERED** that [redacted] shall provide child support for the children as set forth in **Attachment B.**

8. Release of Medical and Mental Health Records

8.1. **IT IS ORDERED** that Respondents **REINA** [redacted] and [redacted] execute an authorization for the release of medical and mental health records to the Department, and provide the Department with a list of the names and addresses of the physicians and mental health providers who have treated the Respondents. The Respondents shall execute the authorization and deliver it, together with the list of physicians and mental health providers, to the Department within 15 days of the date of this hearing.

8.2. The Court finds that a health care professional has been consulted regarding a health care service, procedure, or treatment for a [redacted]. The Court accepts the recommendation of the health care professional.

9. Required Home Study/ Social Study

9.1. The Court finds that Respondent Mother, **REINA** [redacted], ~~has~~/**has not** submitted the Child Placement Resources Form required under § 261.307, Texas Family Code.

9.2. The Court finds that Respondent Father, [redacted], ~~has~~/**has not** submitted the Child Placement Resources Form required under § 261.307, Texas Family Code.

9.3. The Court finds that [redacted] is currently placed with a relative or other designated caregiver.

9.4. The Court finds that [redacted] **IS** [redacted] is currently placed with a relative or other designated caregiver.

9.5. **IT IS ORDERED** that each Parent, Alleged Father or Relative of the subject children before the Court complete the Child Placement Resources Form provided under § 261.307, and file the completed Form with the Court if the form has not previously filed. **IT IS FURTHER ORDERED** that each Parent, Alleged Father or Relative provide the Department with a copy of the completed Form and the full name and current address or whereabouts and phone number of any absent parent, alleged father or relative of the subject children, pursuant to § 262.201, Texas Family Code.

9.6. **IT IS ORDERED** that the Texas Department of Family and Protective Services shall prepare a social/home study into the circumstances and condition of the child and of the home of Luz Villegas and any other person requesting managing conservatorship or possession of the child. Such studies shall be filed with the Court on or before the earlier of: (1) the seventh day after the day the social study is completed or (2) the fifteenth day before the date of the next hearing in this cause. A Social/Home Study will not be conducted on any individual with a criminal history or with any validated CPS history. A criminal check will be conducted on all members of the household age 14 and up.

10. Finding and Notice

THE COURT FINDS AND HEREBY NOTIFIES THE PARENTS THAT EACH OF THE ACTIONS REQUIRED OF THEM BELOW ARE NECESSARY TO OBTAIN THE RETURN OF THE CHILDREN, AND FAILURE TO FULLY

COMPLY WITH THESE ORDERS MAY RESULT IN THE RESTRICTION OR TERMINATION OF PARENTAL RIGHTS.

11. Psychological or Psychiatric Evaluation

IT IS ORDERED that that the parties shall participate in a psychological or psychiatric evaluation as scheduled by the Department.

12. Counseling

IT IS ORDERED that the parties shall participate in counseling as scheduled by the Department.

13. Parenting Classes

IT IS ORDERED that the parties shall participate in parenting classes as scheduled by the Department.

14. Drug and Alcohol Assessments and Testing

14.1. IT IS ORDERED **that the parties shall participate in drug and alcohol assessments and testing as scheduled by the Department.**

15. Compliance with Service Plan

15.1. **REINA** [redacted] is **ORDERED**, pursuant to § 263.106 Texas Family Code, to comply with each requirement set out in the Department's original, or any amended, service plan during the pendency of this suit.

15.2. [redacted] is **ORDERED**, pursuant to § 263.106 Texas Family Code, to comply with each requirement set out in the Department's original, or any amended, service plan during the pendency of this suit.

15.3. The court finds that this order, as supplemented by the service plan to be approved at the Status Hearing under Texas Family Code §263.201, sufficiently defines the rights and duties of the parents of the child pursuant to Texas Family Code § 153.602 and satisfies the requirements of a parenting plan. To the extent there is evidence demonstrating that the children have been exposed to harmful parental conflict, the court orders that the Department address this issue in the Family Plan of Service.

16. Required Information

16.1. **IT IS ORDERED** that each Respondent to this cause provide to the Department and the Court, no later than thirty days from the date of this hearing, the information detailed below.

16.2. **IT IS ORDERED** that each Parent furnish information sufficient to accurately identify that parent's net resources and ability to pay child support along with copies of income tax returns for the past two years, any financial statements, bank statements, and current pay stubs, pursuant to § 154.063, Texas Family Code.

16.3. **IT IS ORDERED** that each Respondent provide the Department and the Court information sufficient to establish the parentage and immigration status of the children, including but not limited to marriage records, birth or death certificates, baptismal records, social security cards, records of lawful permanent residence ("green cards"), naturalization certificates, and any records from the United States Citizenship and Immigration Services, and records of Indian Ancestry or Tribal Membership.

16.4. **IT IS ORDERED** that each Respondent provide the Department with any information regarding whether the children or the children's family has Native American heritage and identify any Native American Tribe with which the children may be associated and provide all available family history information relevant to determination of Indian child status on request.

16.5. **IT IS ORDERED** that each Respondent furnish to the Department all information necessary to ensure the Department has an adequate medical history for the children, including but not limited to the immunization records for the children and the names and addresses of all physicians who have treated the children.

16.6. **IT IS ORDERED** that each Respondent provide the Department information regarding the medical history of the parent and parent's ancestors on the medical history report form, pursuant to § 161.2021, Texas Family Code.

16.7. **IT IS ORDERED** that each Respondent to this cause provide to the Department and the Court a current residence address and telephone number at which each can be contacted.

16.8. **IT IS ORDERED** that each Respondent to this cause notify the Department and the Court of any change in his or her residence address or telephone number within five (5) days of a change of address or telephone number.

16.9. **IT IS ORDERED** that each Respondent provide the Department information regarding the medical history of the parent and parent's ancestors on the medical history report form, pursuant to § 161.2021, Texas Family Code.

17. Duty To Provide Information

17.1. **IT IS ORDERED** pursuant to § 153.076(a), Texas Family Code that each conservator of a child has a duty to inform the other conservator of the child

in a timely manner of significant information concerning the health, education, and welfare of the child.

17.2. **IT IS ORDERED** pursuant to § 153.076(b), Texas Family Code, that each conservator of the child has the duty to inform the other conservator if the conservator resides with for at least 30 days, marries, or intends to marry a person who the conservator knows:

17.2.1. is registered as a sex offender under Chapter 62, Code of Criminal Procedure; or

17.2.2. is currently charged with an offense for which on conviction the person would be required to register under that chapter.

17.3. The notice required to be made under § 153.076(b), Texas Family Code, must be made as soon as practicable but not later than the 40th day after the date the conservator of the child begins to reside with the person or the 10th day after the date the marriage occurs, as appropriate. The notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged.

17.4. **IT IS ORDERED** pursuant to §153.076(b-1), Texas Family Code, that each conservator of [redacted] **AND** [redacted] has the duty to inform the other conservator of the children if the conservator:

17.4.1. Establishes a residence with a person who the conservator knows is the subject of a final protective order sought by an individual other than the conservator that is in effect on the date the residence with the person is established, pursuant to §153.076(b-1)(1), Texas Family Code; or

17.4.2. Resides with, or allows unsupervised access to a child by, a person who is the subject of a final protective order sought by the conservator after the expiration of the 60 day period following the date the final protective order is issued, pursuant to §153.076(b-1)(2), Texas Family Code; or

17.4.3. Is the subject of a final protective order issued after the date of the order establishing conservatorship, pursuant to §153.076(b-1)(3), Texas Family Code.

17.5. The notice required to be made under §153.076(b-1), Texas Family Code, must be made as soon as practicable but not later than:

17.5.1. The 30th day after the date the conservator establishes residence with the person who is the subject of the final protective order, if notice is required by §153.076(b-1)(1), Texas Family Code; or

17.5.2. The 90th day after the date the final protective order was issued, if notice is required by §153.076(b-1)(2), Texas Family Code; or

17.5.3. The 30th day after the date the final protective order was issued, if notice is required by §153.076(b-1)(3), Texas Family Code.

17.6. A CONSERVATOR COMMITS AN OFFENSE IF THE CONSERVATOR FAILS TO PROVIDE NOTICE IN THE MANNER REQUIRED BY SUBSECTIONS (b) AND (c), OR SUBSECTIONS (b-1) AND (c-1), AS APPLICABLE, OF § 153.076, Texas Family Code. AN OFFENSE UNDER THIS SUBSECTION (d) IS A CLASS C MISDEMEANOR.

The Court finds that all parties have waived any objections to the hearing by an Associate Judge and do hereby waive their right to de novo review pursuant to Section 201.015 of the Texas Family Code.

18. Notice of Status Hearing and Pre-Trial Conference

IT IS ORDERED that this cause is set for a Status Hearing, pursuant to § 263.201 Texas Family Code, on 10/15/18 **at** 1:30 **o'clock** p**.m. in the Master's Courtroom, Room 3.06, located in the Bexar County Courthouse, 100 Dolorosa / 3rd Floor, San Antonio, Texas 78205.**

19. All said Temporary Orders shall continue in force during the pendency of this suit or until further order of the Court.

SIGNED this _____ day of SEP 1 2 2018, 2018.

____
JUDGE PRESIDING

C3/3.06

APPROVED AS TO FORM:

FOR

Kevin Terrill
Attorney for Petitioner, Department of Family and Protective Services
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C3/3.06

Quincy Brannen for

Richard Saldivar
Attorney for the Presumed Father [redacted]
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State Bar # 24080311
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fax: (469) 547-0686

ATTACHMENT A - TEMPORARY VISITATION

20. Rights and Duties of Temporary Possessory Conservators

20.1. Each Temporary Possessory Conservator appointed in this Order shall have the following rights:

20.1.1. the right to receive information concerning the health, education, and welfare of the children;

20.1.2. the right to access to medical, dental, psychological, and educational records of the children;

20.1.3. the right to consult with a physician, dentist, or psychologist of the children;

20.1.4. the right to consult with school officials concerning the children's welfare and educational status, including school activities;

20.1.5. the right, during times of unsupervised possession, to consent for the child to medical, dental, and surgical treatment during an emergency involving immediate danger to the health and safety of the children;

20.1.6. the right, during times of possession, to direct the moral and religious training of the children;

20.2. Each Temporary Possessory Conservator appointed in this Order shall have the following duties:

20.2.1. the duty, during periods of possession of the children which are not supervised by the Department or its designee, of care, control, protection, and reasonable discipline of the children;

20.2.2. the duty to support the children, including providing the children with clothing, food, and shelter during periods of possession of the children which are not supervised by the Department or its designee;

21. Temporary Visitation Schedule: REINA [redacted]

21.1. The Court approves the Temporary Visitation Schedule presented by the Department. The Temporary Visitation Schedule shall remain in effect until the Visitation Plan is developed.

21.2. **IT IS ORDERED** that **REINA [redacted]** shall have visitation as follows: Twice monthly supervised visitation, supervised by the Texas Department of Family and Protective Services, ~~provided that the parent is testing negative for drug use~~.

22. Temporary Visitation Schedule: [redacted]

22.1. The Court approves the Temporary Visitation Schedule presented by the Department. The Temporary Visitation Schedule shall remain in effect until the Visitation Plan is developed.

22.2. **IT IS ORDERED** that [redacted] shall have visitation as follows: Twice monthly supervised visitation, supervised by the Texas Department of Family and Protective Services, ~~provided that the parent is testing negative for drug use~~.

ATTACHMENT B

Child Support

23. Child Support Obligation: REINA [redacted]

23.1. The Court finds that **REINA [redacted]** is obligated to support [redacted], [redacted] **AND** [redacted], children the subject of this suit, pursuant to §154.001, Texas Family Code.

23.2. **Monthly Payments**

23.2.1. **IT IS ORDERED** that **REINA [redacted]** is obligated to pay and shall pay child support to the Department of $ 100.00 per month for the support of [redacted] and [redacted], with the first payment being due and payable on the 1st day of December, 2018 and a like payment being due and payable on the 1st day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

23.2.1.1. Either child reaches the age of eighteen years, provided that, if the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma, the periodic child support payments shall continue to be due and paid until the end of the month in which the child graduates;

23.2.1.2. Either child marries;

23.2.1.3. Either child dies;

23.2.1.4. Either child's disabilities are otherwise removed for general purposes;

23.2.1.5. further order modifying this child support;

23.2.1.6. Either child is dismissed from this action; or

23.2.1.7. the date on which the child begins active service in the armed forces, as defined by 10 U.S.C., Section 101.

23.3. Withholding from Earnings for Child Support

23.3.1. **IT IS ORDERED** that income shall be withheld from the disposable earnings of **REINA [redacted]** under this order for payment of child support.

23.3.2. **IT IS FURTHER ORDERED** that all amounts withheld from the disposable earnings of **REINA** [redacted] [redacted] by the employer and paid in accordance with the order by that employer shall constitute a credit against the child support obligation. Payment of the full amount of child support ordered paid by this order through the means of withholding from earnings shall discharge the child support obligation. If the amount withheld from earnings and credited against the child support obligation is less than 100 percent of the amount ordered to be paid by this order, the balance due remains an obligation of **REINA** [redacted] [redacted], and it is hereby **ORDERED** that **REINA** [redacted] [redacted] pay the balance due directly to the registry specified above.

23.3.3. On this date the Court signed an "Employer's Order to Withhold from Earnings for Child Support" with respect to each obligor under this order.

23.3.4. **IT IS ORDERED** that an employer **REINA** [redacted] [redacted], current and subsequent, withhold income from the disposable earnings of **REINA** [redacted] [redacted] under the "Employer's Order to Withhold from Earnings for Child Support".

23.3.5. **IT IS ORDERED** that, on the request of the Department, a prosecuting attorney, the Title IV-D Agency, or the parent obligated to pay support, the clerk of this Court shall cause a certified copy of the appropriate "Employer's Order to Withhold from Earnings for Child Support" to be delivered to the employer of any obligor. **IT IS FURTHER ORDERED** that the clerk of this Court shall attach a copy of subchapter C of chapter 158 of the Texas Family Code for the information of any employer.

23.3.6. **IT IS ORDERED** that **REINA** [redacted] [redacted], provide any subsequent employer a copy of the "Employer's Order to Withhold from Earnings for Child Support".

24. Child Support Obligation: [redacted]

24.1. Pursuant to Section 154.001, Texas Family Code, the Court finds that Respondent Father [redacted] is obligated to support [redacted], [redacted] **AND** [redacted] **IS** [redacted] a child the subject of this suit.

24.2. **Monthly Payments**

24.2.1. **IT IS ORDERED** that [redacted] is obligated to pay and shall pay child support to the Department of $ 100.00 per month for the support of [redacted], [redacted] and [redacted] **IS** [redacted], with the first payment being due and payable on the 1st day of December, 2018 and a like payment being due and payable on the 1st day of each month

thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

24.2.1.1. Either child reaches the age of eighteen years, provided that, if the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma, the periodic child support payments shall continue to be due and paid until the end of the month in which the child graduates;

24.2.1.2. Either child marries;

24.2.1.3. Either child dies;

24.2.1.4. Either child's disabilities are otherwise removed for general purposes;

24.2.1.5. further order modifying this child support;

24.2.1.6. Either child is dismissed from this action; or

24.2.1.7. the date on which the child begins active service in the armed forces, as defined by 10 U.S.C., Section 101.

24.3. Withholding from Earnings for Child Support

24.3.1. **IT IS ORDERED** that income shall be withheld from the disposable earnings of [redacted] [redacted] [redacted] under this order for payment of child support.

24.3.2. **IT IS FURTHER ORDERED** that all amounts withheld from the disposable earnings of [redacted] [redacted] [redacted] by the employer and paid in accordance with the order by that employer shall constitute a credit against the child support obligation. Payment of the full amount of child support ordered paid by this order through the means of withholding from earnings shall discharge the child support obligation. If the amount withheld from earnings and credited against the child support obligation is less than 100 percent of the amount ordered to be paid by this order, the balance due remains an obligation of [redacted] [redacted] [redacted], and it is hereby **ORDERED** that [redacted] [redacted] [redacted] pay the balance due directly to the registry specified above.

24.3.3. On this date the Court signed an "Employer's Order to Withhold from Earnings for Child Support" with respect to each obligor under this order.

24.3.4. **IT IS ORDERED** that an employer [redacted] [redacted] [redacted], current and subsequent, withhold income from the disposable earnings of [redacted] [redacted] [redacted] under the "Employer's Order to Withhold from Earnings for Child Support".

24.3.5. **IT IS ORDERED** that, on the request of the Department, a prosecuting attorney, the Title IV-D Agency, or the parent obligated to pay support, the clerk of this Court shall cause a certified copy of the appropriate "Employer's Order to Withhold from Earnings for Child Support" to be delivered to the employer of any obligor. **IT IS FURTHER ORDERED** that the clerk of this Court shall attach a copy of subchapter C of chapter 158 of the Texas Family Code for the information of any employer.

24.3.6. **IT IS ORDERED** that [redacted], provide any subsequent employer a copy of the "Employer's Order to Withhold from Earnings for Child Support".

25. Place and Manner of Payment

IT IS FURTHER ORDERED that all child support payments are to be made through the Office of the Attorney General, Texas Child Support State Distribution Unit, P.O. Box 659791, San Antonio, Texas 78265-9791 and then remitted by that agency to the Department of Family and Protective Services for the support of the children.

26. Order to Employer Entered

26.1. On this date an "Employer's Order to Withhold from Earnings for Child Support" was entered by the Court. However, each parent obligated and ordered to support a child, subject of this suit, is responsible for and is **ORDERED** to make payment of all child support until an employer complies with the "Employer's Order," or if an employer fails to comply with that order at any time.

26.2. The Court **ORDERS** the Clerk of the Court, upon request, to cause a certified copy of the Employer's Order to Withhold Earnings for Child Support, with a copy of Chapter 158, Texas Family Code attached, to be delivered to the Respondents' employer(s) whether current or subsequent. The Court **ORDERS** the Respondents to provide any subsequent employer(s) with a copy of the Employer's Order to Withhold Earnings for Child Support filed herein.

Appendix E

IN THE SUPREME COURT OF TEXAS

No. 20-0175

IN THE INTEREST OF J.J.R.S. AND L.J.R.S., CHILDREN

ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE FOURTH DISTRICT OF TEXAS

Argued October 28, 2020

JUSTICE DEVINE delivered the opinion of the Court.

This parental rights case presents two questions: (1) whether, and under what circumstances, a trial court may order that a parent's access to a child is solely at the discretion of the managing conservator; and (2) whether the trial court's issuance of an ex parte temporary order pursuant to Texas Family Code section 262.201(o) is unconstitutional on its face or as applied to Mother.

The court of appeals determined that the evidence was legally and factually sufficient to support the terms of the visitation order and that the terms of the order were permissible under the Family Code upon a finding that they were in the best interest of the children. 607 S.W.3d 400, 405–08 (Tex. App.—San Antonio 2020). It also denied Mother's constitutional challenge to Texas Family Code section 262.201(o). *Id.* at 408–10.

We hold that the trial court did not abuse its discretion in imposing a restriction on Mother's right of access because the court could have reasonably concluded that such a severe restriction was in the children's best interest. *See* TEX. FAM. CODE § 153.193. We decline to address Mother's constitutional challenges to Texas Family Code section 262.201(o) because they were rendered moot by the trial court's issuance of a final order. Accordingly, we affirm the judgment of the court of appeals.

I

In August 2018, law enforcement responded to an aggravated robbery at a San Antonio motel. According to Mother, the incident began when one of her clients asked her to perform certain acts with which she was uncomfortable while prostituting herself. A struggle ensued, and Mother's boyfriend entered the room with a firearm and proceeded to take the client's clothes and money. The client chose not to press charges.

In a nearby motel room, law enforcement found Mother's two children, J.J.R.S. and L.J.R.S. Between both rooms, law enforcement retrieved three bags of methamphetamine less than a gram each, a small amount of marijuana, glass pipes, and small, clear baggies.[1] The boyfriend claimed the drugs were his. Mother stated that the unregistered firearm belonged to her but denied any attempt to rob her client. Mother stated that she and her children were from Florida and had been living in the motel for eight months. Police made no arrests during the incident, but Mother called her sister—the children's maternal aunt—to watch the children that night. The children have been residing with Aunt and Uncle since.

[1] The record is unclear whether the drugs were found in the children's room or the other room.

Shortly after the incident, law enforcement referred the case to the Texas Department of Family and Protective Services. The Department investigator first interviewed both children, whom he perceived as wanting to protect Mother because they "[did] not want her to get into trouble." The Department next interviewed Aunt, who described her relationship with Mother as estranged. Six months before the incident, Mother had contacted Aunt for the first time in two years, asking for money to pay for a motel room. According to Aunt, the children lived in Puerto Rico with Mother before moving to Florida and were likely born addicted to drugs. Aunt stated she was willing to take care of the children.

The investigator then separately interviewed both Mother and her boyfriend. During his interview, the boyfriend—who is not the biological father of J.J.R.S. or L.J.R.S.—denied any attempt to rob the client and denied possessing a firearm. He admitted using marijuana but refused to sign an acknowledgment-of-substance-use form. Mother also admitted using marijuana but refused a drug test. She admitted to prostituting herself but denied any attempted robbery, stating that her boyfriend was trying to protect her from an abusive client. Mother stated that she called her sister only because she was not sure if she was going to jail.

To avoid legal action, the Department attempted to place the children with Aunt and Uncle. Mother, however, refused to sign a Parental Child Safety Placement form and refused to comply with services. The Department remained concerned for the children's safety, believing that they would be in immediate danger if returned to Mother because of her illegal activities, including drug use, robbery, and prostitution.

The Department filed its original petition against Mother on August 20, 2018, requesting orders pursuant to Texas Family Code section 262.101 for temporary sole managing

conservatorship of the children pending final disposition of the lawsuit. *See* TEX. FAM. CODE §§ 262.201, 105.001(a)(1), (h). If reunification could not be achieved, the Department sought termination of Mother's parental rights. *Id.* § 161.001(b).

The day the lawsuit was filed, the trial court issued a temporary emergency order naming the Department temporary sole managing conservator and noticed a full adversary hearing to be held nine days later.[2] The court appointed an attorney ad litem for Mother and a separate attorney ad litem and guardian ad litem for the children. A full adversary hearing pursuant to chapter 262 was held on September 12. *Id.* § 262.201. Mother was not served with a citation prior to this hearing and was not present at the hearing, but the court nonetheless entered an order naming the Department temporary managing conservator for the pendency of the lawsuit. *See id.* § 262.201(o) ("When citation by publication is needed for a parent . . . in an action brought under this chapter because the location of the parent . . . is unknown, the court may render a temporary order without delay at any time after the filing of the action without regard to whether notice of the citation by publication has been published."). The order restricted Mother's visitation to two visits per month until the final trial. Mother was eventually served by publication on September 18, after the Department stated it could not locate her.

The Department established a family service plan for Mother and the children's biological Father, who lived in Florida when the lawsuit was initiated.[3] Mother was uncooperative with the Department and failed to complete any service plan goals, including demonstrating the ability to

[2] The hearing was pushed beyond nine days and was eventually held on September 12.

[3] When the lawsuit began, Father's exact whereabouts in Florida were unknown to the Department. Eventually, Father made contact with the Department and was amenable to engaging in services and having a relationship with his children. Because only Mother appeals here, information regarding Father's parental rights is omitted unless relevant.

stay sober, providing basic necessities to the children, completing therapy for her diagnosed mental health conditions, and finding stable housing. Mother did not make contact with the Department to acknowledge her service plan or visit her children until May 1, 2019—eight months after the lawsuit was filed. Mother arranged visitation with her children but regularly missed meetings, attending only four visits with her children over the life of the lawsuit. By contrast, while in the care of Aunt and Uncle, the children began attending school for the first time in two years and regularly attended therapy, showing improvements in their physical and emotional development.

At the final trial, Department supervisor Kimberly Barnhill testified, stating that the children had bonded with Aunt and Uncle, who were meeting their emotional needs. Barnhill further testified that Mother could not meet the physical and emotional needs of the children because she failed to maintain any stability, permanent housing, or contact with the children throughout the case. Even so, Barnhill believed it was in the children's best interest to have limited visitation with Mother because the children missed their mom and were sad about the situation.

On cross-examination, Barnhill testified that she was opposed to once-a-month visits with Mother at a supervised facility, instead preferring supervised visits at Aunt's discretion because of the "emotional and . . . drug-influenced state that Mother has been in throughout the case." When pressed if procedures such as clean drug tests could alleviate these concerns, Barnhill stated they would not alleviate the concerns stemming from Mother acting "highly hysterical" on some phone calls and not showing up to visits, which was hard on the children. Making the children wait for Mother in the Department's lobby was "not a very good environment . . . especially when they're excited to see their mom," Barnhill believed. The "lack of stability," she testified, is "extremely emotionally traumatizing for them."

Mother offered no evidence at the final trial.

Because of the children's bond with Mother and Father's attempt to maintain a relationship, the Department recommended the trial court not terminate their parental rights. The guardian ad litem recommended termination of Mother's parental rights but stated he would be amenable to possessory conservatorship with visitation "possibly later with a lot of services." The court appointed special advocate (CASA) representative recommended termination of Mother's rights. Based on those recommendations, the court named Aunt and Uncle permanent managing conservators and named Mother and Father possessory conservators. The court orally stated it was deviating from the standard possession order based on the testimony and evidence presented by the Department.

With regard to Mother, the final order stated that she "shall have possession of the children at times mutually agreed to in advance by the parties." In the absence of mutual agreement, Mother could have "supervised visitation with the children, under the terms and conditions agreed to in advance by the managing conservator," with 48 hours' advance notice. Below this, in handwriting, the trial court added, "[o]nly if the managing conservator agreed to visitation. Sole discretion." The court orally stated that its order was in the best interest of the children.

Mother appealed, arguing there was insufficient evidence to support the order, the order was void for vagueness, and Family Code section 262.201(o) is facially unconstitutional. The court of appeals affirmed. 607 S.W.3d at 405–08. First, the court determined that the trial court had good cause to deviate from the standard possession order because Mother's "failure to attend visits was harming the children emotionally." *Id.* at 407. Thus, requiring specific times and conditions for Mother's possession and access was not in the children's best interest. *Id.* at 407–08. The court

further stated that a "severe restriction or limitation, even one that amounts to a denial of access, is permissible if it is in the best interest of the child." *Id.* at 407 (quoting *In re A.N.*, No. 10-16-00394-CV, 2017 WL 4080100, at *7 (Tex. App.—Waco Sept. 13, 2017, no pet.)). Here, the court concluded, the evidence was legally and factually sufficient to support the order. *Id.* at 405. As such, the court of appeals held, the trial court did not abuse its discretion in "deciding not to state specific times and conditions for Mom's visits but instead ordered that Aunt and Uncle set those times and conditions." *Id.* (citing *In re K.A.M.S.*, 583 S.W.3d 335, 344 (Tex. App.—Houston [14th Dist.] 2019, no pet.)). To gain greater access, the court explained, Mother may petition the trial court in the future if her or the children's circumstances materially or substantially change. *Id.* at 407–08 (citing TEX. FAM. CODE § 156.001).

Mother filed a petition for review, arguing in this Court that (1) the court of appeals erred in holding that vesting Aunt and Uncle with complete discretion over her access rights to the children was permissible under the Family Code, and (2) the trial court violated her due process rights by naming the Department temporary managing conservator, pursuant to Texas Family Code section 262.201(o), before she received notice of the suit.

While we understand the gravity of imposing a severe restriction or limitation on access to one's children, we nevertheless conclude that the trial court did not abuse its discretion in vesting the managing conservators with complete discretion over Mother's access to the children. We do not reach the merits of Mother's constitutional arguments regarding Texas Family Code section 262.201(o) because they are moot.

II

The final order naming Mother possessory conservator gave her "possession of the children at times mutually agreed to in advance by the parties." In the absence of such mutual agreement, Mother could have supervised visitation with the children in the managing conservators' "[s]ole discretion." Mother argues that such an order effectively denies her the right of access to her children.

For reasons explained below, we disagree.

A

"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 § 153.002. As conservatorship determinations are "intensely fact driven," *Lenz v. Lenz*, 79 S.W.3d 10, 19 (Tex. 2002), the trial court is in the best position to "observe the demeanor and personalities of the witnesses and can 'feel' the forces, powers, and influences that cannot be discerned by merely reading the record," *Echols v. Olivarez*, 85 S.W.3d 475, 477 (Tex. App.—Austin 2002, no pet.). A trial court's determination of what is in the child's best interest, specifically the establishment of terms and conditions of conservatorship, is a discretionary function. *MacCallum v. MacCallum*, 801 S.W.2d 579, 582 (Tex. App.—Corpus Christ–Edinburg 1990, writ denied). The trial court's judgment will be reversed only when it appears from the record as a whole that the court has abused its discretion. *Gillespie v. Gilliespie*, 644 S.W.2d 449, 451 (Tex. 1982). A trial court abuses its discretion when it acts "without reference to any guiding rules or principles; or in other words, [when it acts] arbitrarily or unreasonably." *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990) (per curiam).

Mother's contention that the trial court abused its discretion presumes that the trial court lacked the authority to tailor the visitation order as it did. The Family Code sets out a series of directives to which a trial court must adhere when determining the appropriateness of a visitation order. Under the Family Code, "a parent shall be appointed sole managing conservator" unless a court finds that the appointment would not be in the best interest of the child "because the appointment would significantly impair the child's physical health or emotional development." TEX. FAM. CODE § 153.131(a). A parent who is not appointed managing conservator "shall" be appointed possessory conservator, "unless [the court] finds that the appointment is not in the best interest of the child and that parental possession or access would endanger the physical or emotional welfare of the child." *Id.* § 153.191. A court, based on these parameters, must then determine the conservators' appropriate level of possession and access.

There is a rebuttable presumption that the standard possession order provides the reasonable minimum level of possession and access for a parent named possessory conservator and is in the best interest of the child. *Id.* § 153.252. When determining whether to deviate from the standard possession order, a court may consider "(1) the age, developmental status, circumstances, needs, and best interest of the child; (2) the circumstances of the managing conservator and of the parent named as a possessory conservator; and (3) any other relevant factor." *Id.* § 153.256. Importantly, the terms of an order that deviates from the standard possession order—that is, an order that "denies possession of a child to a parent or imposes restrictions or limitations on a parent's right to possession of or access to a child"—"may not exceed those that are required to protect the best interest of the child." *Id.* § 153.193. Further, a court must "specify and expressly state in the order the times and conditions for possession of or access to the child,

unless a party shows good cause why specific orders would not be in the best interest of the child." *Id.* § 153.006(c) (emphasis added).[4]

Nonspecific orders issued pursuant to section 153.006(c) can vary, based on the needs of the case, as to the level of specificity provided by the trial court and the amount of discretion left to the parties. *See id.* § 153.193. The type of nonspecific order at issue in this case—an "as agreed" visitation order—falls on the opposite end of the spectrum from the standard possession order, leaving visitation to the managing conservator's complete discretion.

Neither party argues that the trial court lacked good cause to deviate from the standard possession order. *See id.* § 153.006(c). Thus, we address whether section 153.006(c) of the Texas Family Code relaxes the specificity requirement for possession and access orders to the point of permitting an "as agreed" order as the one issued here. We conclude that it does.

B

Mother argues that Texas Family Code section 153.006(c) must have intended to permit courts to issue less specific orders, if specificity is not in the child's best interest, but that less specificity does not mean *no* specificity. Conversely, the Department argues that the propriety of any restriction or limitation imposed on possession or access rights depends on whether such restrictions are in the best interest of the child. In other words, once a trial court determines that good cause exists for a nonspecific order, the only question left is whether the extent of the restriction or limitation under section 153.193 is in the best interest of the child. *See In re K.A.M.S.*, 583 S.W.3d at 344 ("A trial court does not abuse its discretion in restricting a parent's possession

[4] On request by a party, the court shall state in writing the specific reasons for the variance from the standard possession order. TEX. FAM. CODE § 153.258(a). Here, Mother did not request findings nor does she complain on appeal that the trial court failed to make them.

when the record contains some evidence to support a finding that such restrictions are in the child's best interest."). The Department argues that here, no visitation until Mother "get[s] her act together" was in the best interest of the children because Mother's failure to show up to scheduled meetings caused "extreme disappointment" for the children, "manifested by crying after waiting in the CPS lobby for long periods of time."

Mother's contention that the trial court lacked the authority to issue an "as agreed" visitation order is a matter of statutory construction. "When interpreting statutes, we presume the Legislature's intent is reflected in the words of the statute and give those words their fair meaning." *In re H.S.*, 550 S.W.3d 151, 155 (Tex. 2018) (citing *In re C.J.N.–S.*, 540 S.W.3d 589, 591 (Tex. 2018) (per curiam)). We analyze statutes "as a cohesive, contextual whole, accepting that lawmaker-authors chose their words carefully, both in what they included and in what they excluded." *Id.* (quoting *Sommers v. Sandcastle Homes, Inc.*, 521 S.W.3d 749, 754 (Tex. 2017)); *see also R.R. Comm'n of Tex. v. Tex. Citizens for a Safe Future & Clean Water*, 336 S.W.3d 619, 628 (Tex. 2011) ("When the Legislature uses a word or phrase in one portion of a statute but excludes it from another, the term should not be implied where it has been excluded.").

When interpreting statutes, we start with the words of the statute and look first to the "plain and common meaning of the statute's words," *State v. Gonzalez*, 82 S.W.3d 322, 327 (Tex. 2002), "unless a different meaning is supplied by legislative definition," *Tex. Lottery Comm'n v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010). Section 153.006(c) of the Family Code allows the trial court to issue a nonspecific order regarding a possessory conservator's possession and access when "good cause" exists, *see* TEX. FAM. CODE § 153.006(c), while section 153.193 places an outer limit on the permissible scope of restrictions on a parent possessory conservator's

rights: such "restrictions or limitations on a parent's right to possession of or access to a child may not exceed those that are required to protect the best interest of the child," *id.* § 153.193. Thus, in rare cases, a severe restriction or limitation is permissible if it is in the best interest of the child. *See In re Walters*, 39 S.W.3d 280, 286 n.2 (Tex. App.—Texarkana 2001, no pet.).

Mother argues that the trial court's order in this case, which authorized supervised visitation with the children at Aunt and Uncle's sole discretion, amounts to a wholesale denial of access that section 153.193 does not authorize, regardless of best interest. Mother asserts that under section 153.193, the court may "den[y] possession of a child to a parent" but may only impose "restrictions or limitations" on a parent's access to a child. TEX. FAM. CODE § 153.193. We disagree with Mother's characterization of the trial court's order as a denial of access and thus need not decide whether section 153.193 authorizes such an order.

Because the Family Code does not define these terms, we begin with the commonly understood meanings of "deny," "restriction," and "limitation." To "deny" is "to not allow someone to have or do something."[5] A "restriction" is something that "confines within bounds" or "restrains,"[6] and a "limitation" is something that "bounds, restrains, or confines."[7] In other words, a denial is an outright refusal to allow certain conduct to occur, whereas a restriction or limitation confines conduct to certain bounds. The trial court's visitation order in this case falls into the latter category. By its terms, Mother can obtain access to her children either (a) when she and the managing conservators agree or, if they cannot reach an agreement, (b) when the managing

[5] *Deny*, CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/us/dictionary/english/deny (last visited May 27, 2021).

[6] *Restrict* and *restriction*, MERRIAM-WEBSTER, https://www merriam-webster.com/dictionary/restrict (last visited May 27, 2021).

[7] *Limitation* and *limit*, MERRIAM-WEBSTER https://www merriam-webster.com/dictionary/limit (last visited May 27, 2021).

conservators consent to access. In other words, the order *restricts* and *limits* Mother's access to her children to supervised visitation at the managing conservators' discretion. The restriction is undoubtedly a severe one, permissible only if necessary to protect the children's best interest, but it is not an outright denial that forecloses all access.

This case resembles *In re A.N.*, which concerned an "as agreed" visitation order nearly identical to the one at issue here. 2017 WL 4080100, at *7. In *A.N.*, Mother's parental rights to one of her daughters were terminated based on endangerment and neglect, but she was named possessory conservator of her other daughter. *Id.* at *5, *3. The visitation order stated that "in the absence of mutual agreement," Mother "shall have no visitation with the child . . . due to present conditions and the safety concerns regarding [Mother]," unless the child's caregivers determine "in their sole discretion that visitation between [Mother] and [the child] is in the best interest of the child." *Id.* at *7. Mother appealed, arguing that the trial court abused its discretion by creating an "unenforceable visitation schedule." *Id.* at *6. Specifically, Mother argued that: (1) visitation must be in the child's best interest because she was appointed possessory conservator; (2) visitation could only occur if the managing conservators determined it was in the child's best interest, amounting to no visitation at all; and (3) the terms of visitation in the trial court's order were ambiguous. *Id.*

The court of appeals determined there was sufficient evidence to find that a severe restriction was in the child's best interest. *Id.* at *7–8. Though it recognized that an "as agreed" order should be used only in rare circumstances, the court disagreed that the terms of the order were "tantamount to no visitation at all." *Id*. The court noted record evidence that the child's caregivers were willing to allow supervised contact with Mother if that contact was positive,

concluding that the order's language suggested that "it is not in [the child's] best interest for [Mother] to have access in the near term due to 'present conditions' and 'safety concerns.'" *Id.* Thus, "visitation was not completely denied, as [the child's] caregivers were authorized to resume visitation" when they believed it would be in her best interest. *Id.* at *8.

As in *A.N.*, the record here contains legally sufficient evidence to support a finding that it was in the best interest of J.J.R.S. and L.J.R.S. to impose a severe restriction on Mother's access. For one, the incident leading to the children's removal involved Mother soliciting with an armed boyfriend while her children waited in another motel room. Evidence collected from the scene included drug paraphernalia that could have been accessible by the children. Once the lawsuit was filed, Mother failed to participate in or acknowledge the lawsuit for eight months, attending only four scheduled visits with her children. Mother's failure to attend most visits was very hard on the children, causing J.J.R.S. to worry about Mother's safety and wonder if she was hurt. Prior to their removal, both children had been out of school for nearly two years and showed signs of social and emotional developmental issues. Mother refused all drug tests, failed to complete any part of her service plan, and failed to obtain stable housing or a job throughout the entirety of the lawsuit. Notably, that same lack of stability prior to the removal had been "extremely emotionally traumatizing for [the children.]" This case presents extreme circumstances warranting a severe restriction.

We hold that Texas Family Code sections 153.006(c) and 153.193, read in conjunction, permit the kind of "as agreed" order at issue in this case in the narrow circumstance where such a severe restriction is necessary to protect the child's best interest. We further hold that legally sufficient evidence supported the terms of the trial court's order here.

C

Mother next argues that if a total denial of access serves the children's best interest, the trial court must terminate the parent–child relationship instead of creating a possessory conservatorship that amounts to an effective denial of access. Again, the trial court's order was not a denial of access. Even if it were, Mother's argument leads to the perverse result that a court, upon concluding that the kind of severe restriction imposed here is necessary to protect a child's best interest, must irrevocably terminate a parent's rights rather than restrict those rights and give the parent the opportunity to seek to increase her access rights in the future.

Requiring termination of parental rights rather than a conservatorship with severe access restrictions would place trial courts in an unimaginable bind. Such a harsh rule would force a trial court to either allow access to a child by a possessory conservator who may immediately endanger that child's physical or emotional wellbeing, or conversely, force the trial court to prematurely sever the parent–child relationship out of fear that immediate access may cause irreparable harm to the child. Such a proposition is antithetical to the purpose of visitation orders, which strive to balance the rights of parents with the importance of protecting children. *See* TEX. FAM. CODE § 153.001(a).

For the same reason, Mother's argument that an order that specifies "an amount of days" is preferable over an otherwise "completely unworkable" possession order is also unavailing.[8] Whether a set of broad, enforceable guidelines is preferable to an order granting discretion to the managing conservators requires a case-by-case basis determination of the child's best interest.

[8] For this proposition, Mother relies on *Pickens v. Pickens*, No. 12-13-00235-CV, 2014 WL 806358 (Tex. App.—Tyler Feb. 28, 2014, no pet.), but her reliance is misplaced. *Pickens* did not involve an "as agreed" order, nor did the *Pickens* court consider whether a complete denial of access was in the best interest of the child or permissible under Texas Family Code section 153.006(c). *See id.* at *1, *4.

Further, Mother's reliance on *In re A.P.S.*, 54 S.W.3d 493 (Tex. App.—Texarkana 2001, no pet.), is misplaced. In that case, Mother appealed the trial court's modification order that named her possessory conservator and awarded her possession of the children "at reaasonable [sic] times and places as determined by [Father]." *Id.* at 495. After reviewing the record, the court of appeals concluded that a "complete denial of access was not warranted and, from an examination of the order, was not intended by the trial court." *Id.* at 498. Further, Father offered no evidence to show good cause, as required by Texas Family Code section 153.006(c), to issue a nonspecific order deviating from the standard possession order. *Id.* As such, the court of appeals remanded with instructions to provide more specificity because without a showing of good cause or even the trial court's intent to give Father total discretion over Mother's access rights, the trial court was required to "fashion an order that specifically articulates the times and conditions" of Mother's access. *Id.* at 499. The court did not hold that possessory conservators are entitled to a certain level of access by virtue of *the appointment* alone. We decline to adopt Mother's view that the appointment of a parent as possessory conservator entitles the parent to a certain level of access without regard to what is in the child's best interest.

Here, the CASA representative and the children's guardian ad litem recommended termination of Mother's rights, but the Department recommended possessory conservatorship with access at the managing conservators' discretion. The Department's recommendation rested on the children's love for their Mother. Given the evidence, the trial court arguably could have terminated Mother's rights, but it chose to preserve the bond between Mother and her children while still protecting their physical and emotional needs.

We do not sit here to question why the trial court made the choice it did except to determine whether it was an abuse of discretion. *Jones v. Strayhorn*, 321 S.W.2d 290, 295 (Tex. 1959). The Family Code permits a restriction or limitation to the extent necessary to protect the children's best interest. *See* TEX. FAM. CODE § 153.193. It does not require termination when a severe restriction or limitation on access can also be in the best interest of the child while preserving the possibility that the parent and child may continue to have a relationship in the future. That is, so long as the trial court made the necessary findings that the restriction or limitation is in the children's best interest, the terms of the order are permissible.

D

Lastly, Mother urges that "as agreed" visitation orders are an impermissible delegation of judicial authority. Specifically, Mother suggests that a growing minority of courts of appeals take the position that placing complete discretion over parental access in the hands of a managing conservator results in orders unenforceable by contempt.[9] Mother argues that such "as agreed" orders leave the aggrieved parent with no recourse in the event the managing conservator arbitrarily and capriciously withholds access because the orders are unenforceable without objective standards. While Mother has not attempted to hold Aunt and Uncle in contempt, she argues she could not successfully enforce this order if Aunt and Uncle denied her access to her children. The Department disagrees, arguing that no disagreement among the Texas courts of appeals exists because the variation in the outcomes of conservatorship cases can be explained by what the trial court believed was in the best interest of the children in those cases.

[9] *See, e.g.*, *infra*, notes 11–14.

We have long held that "for a person to be held in contempt for disobeying a court decree, the decree must spell out the details of compliance in clear, specific and unambiguous terms so that such person will readily know exactly what duties or obligations are imposed upon him." *Ex parte Slavin*, 412 S.W.2d 43, 44 (Tex. 1967) (collecting cases). Indeed, the power to enforce an order by contempt is "an essential element of judicial independence and authority." *Ex parte Gorena*, 595 S.W.2d 841, 845 (Tex. 1979) (citing *Ex parte Browne*, 543 S.W.2d 82, 86 (Tex. 1976)). But "[w]hether or not a decree is enforceable by contempt depends, not on statutory authority, but on the nature of the decree itself." *Id.* For example, in *Ex parte Slavin* we held that a Father's child-support obligations in a divorce decree were so indefinite that they could not be enforced by contempt. 412 S.W.2d at 45. We did not render the order void for vagueness, however. *Id*. Thus, while an order must be "clear, specific, and unambiguous" to be enforceable by contempt, *id.* at 44, it does not follow that every order less than that is invalid.

Applying the same logic to visitation orders, when the facts are so egregious so as to warrant a nonspecific order under which access to the children is in the sole discretion of the managing conservator, the nature of the "as agreed" visitation order is by definition nonspecific. *See* TEX. FAM. CODE §§ 153.006(c), .193. Stated another way, while the Family Code provides that conservators may be subject to contempt for disobeying a court order, *see id.* § 157.001(b), the Code does not require—nor have we ever held—that trial courts must issue orders that are always enforceable by contempt. Thus, whether a conservator may enforce an order by contempt depends on the contents of the order and the facts and circumstances of the particular case.[10]

[10] For example, in *Hale v. Hale*, No. 04-05-00314-CV, 2006 WL 166518, at *3 (Tex. App.—San Antonio Jan. 25, 2006, pet. denied), the Court remanded an order for greater specificity because though the "trial court concluded that it was in [the child's] best interest not to visit with her father until a therapist

In cases where the record indicates the trial court's intent was to issue an order imposing specific conditions or restrictions, the "judgment must state in clear and unambiguous terms what is required for the conservator to comply." *Hale,* 2006 WL 166518, at *3 (citing *Ex parte Brister*, 801 S.W.2d 833, 834 (Tex. 1990)). But where, as here, the trial court intended to issue an "as agreed" order per Texas Family Code sections 153.006(c) and 153.193 due to the severity of Mother's conduct and impact on the children's physical and emotional wellbeing, the order was intentionally nonspecific. Because such an order is permitted by Texas Family Code sections 153.006(c) and 153.193, lack of specificity is not erroneous unless the trial court failed to make the necessary findings of good cause and best interest. *See* TEX. FAM. CODE §§ 153.006(c), .193.

Accordingly, we agree with the Department that the apparent disagreement among the courts of appeals is illusory and that the disparate outcomes in the cases on which Mother relies depend on a host of factors. For example, courts of appeals have required greater specificity in visitation orders because (1) the trial court did not make the best-interest finding needed to restrict or limit access;[11] (2) a showing of "good cause" to deviate from the standard possession order was lacking;[12] (3) the order, as written, effectively denied all access, but the record revealed the trial

recommended otherwise . . . [t]he order [did] not name a therapist or provide any guidelines to ensure that the best interests of the child are protected in these circumstances." *Id.*

[11] *In re J.Y.*, 528 S.W.3d 679, 690–91 (Tex. App.—Texarkana 2017, no pet.).

[12] *A.P.S.*, 54 S.W.3d at 498; *In re P.M.W.*, 559 S.W.3d 215, 222 n.4 (Tex. App.—Texarkana 2018, pet. denied).

court did not intend that result;[13] or (4) the trial court may have intended to severely restrict access, but the facts of the case did not rise to the level of an extreme circumstance.[14]

Finally, Mother is not without a remedy. If Mother, Aunt, and Uncle are unable to reach any agreement for access, Mother can move for a modification of the original order if the circumstances have materially or substantially changed and if a modification would be in the best interest of the children. *See* TEX. FAM. CODE § 156.101(1).

III

In her second issue, Mother mounts both facial and as-applied constitutional challenges to section 262.201(o) of the Family Code.

When a governmental entity takes possession of a child without prior notice or a hearing under Texas Family Code section 262.101—as was done here—a court generally must hold a full adversary hearing within fourteen days. TEX. FAM. CODE § 262.201(a). At this hearing—colloquially known as a "Chapter 262 hearing"—the parents are informed that the court may temporarily restrict or terminate their parental rights unless they are willing and able to provide the child with a safe environment. *Id*. § 262.201(m). At the conclusion of the hearing, the court may issue temporary orders under chapter 105 of the Texas Family Code. *Id*. § 262.102(a); *see id.* § 105.001. While the Family Code generally entitles parents to notice before this adversary

[13] For example, in *In re J.S.P.*, 278 S.W.3d 414, 422–23 (Tex. App.—San Antonio 2008, no pet.), the Court remanded an order because the part pertaining to possession was "not specific enough to be enforceable." *Id.* at 423. The trial court fashioned an order requiring Father to participate in a transitory program led by a therapist, but the order did not contain a "reporting schedule or other deadline." *Id.* Without such a timeline, the Court held the order did not meet the standards of enforceability. *Id.* Thus, while the trial court's intent was to issue an order with guidelines for Father to follow, the language of the order missed the mark. *Id.*; *see also Hale*, 2006 WL 166518, at *2–3; *In re J.Y.*, 528 S.W.3d at 691.

[14] *Fish v. Lebrie*, No. 03-09-00387-CV, 2010 WL 5019411, at *10 (Tex. App.—Austin Dec. 10, 2010, no pet.).

hearing, *see id.* § 262.109(a), a trial court may issue ex parte temporary orders if a parent's whereabouts are unknown and the Department is unable to serve the parent with notice before the hearing takes place, *id.* § 262.201(o).

Mother argues that section 262.201(o) is facially unconstitutional because it deprives parents of procedural due process rights to notice before the Chapter 262 hearing. Mother argues that the provision can never be applied constitutionally because it always operates to deprive notice to transient parents who lack stable housing. Mother also argues the provision is unconstitutional as applied to her because she was not served with citation, either personally or by publication, before the trial court issued a temporary order to remove her children. The court of appeals, addressing only Mother's facial challenge, held the statute constitutional because "the statute's plain language is permissive, not mandatory." 607 S.W.3d at 409.

We do not reach the merits of the Mother's arguments, however, because the final order in the suit moots Mother's constitutional challenges to the temporary order rendered pursuant to section 262.201(o).[15]

A case is moot when a justiciable controversy between the parties ceases to exist or when the parties cease to have a "legally cognizable interest in the outcome." *State v. Harper*, 562 S.W.3d 1, 6 (Tex. 2018) (quoting *Williams v. Lara*, 52 S.W.3d 171, 184 (Tex. 2001)). Put simply, a case is moot when the court's action on the merits cannot affect the parties' rights or interests. *Heckman v. Williamson County*, 369 S.W.3d 137, 162 (Tex. 2012). Any ruling on the merits of a moot issue constitutes an advisory opinion, which we lack jurisdiction to issue. *See* TEX. CONST.

[15] Courts may raise jurisdictional issues *sua sponte* for the first time on appeal. *See Wells Fargo Bank, N.A. v. Murphy*, 458 S.W.3d 912, 916 (Tex. 2015) (citing *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445–46 (Tex. 1993)).

art. II, § 1; *Speer v. Presbyterian Children's Home & Serv. Agency*, 847 S.W.2d 227, 229 (Tex. 1993).

Here, the Department filed its original petition on August 20, 2018, and the trial court issued temporary emergency orders the same day naming the Department temporary sole managing conservator. On September 12, the trial court conducted the Chapter 262 hearing on the emergency removal. The Department stated it could not locate Mother to serve her with citation prior to the hearing. The trial court in turn exercised jurisdiction pursuant to Texas Family Code section 262.201(o) and issued an ex parte order naming the Department temporary managing conservator. Mother's appointed counsel objected to the temporary order on the ground that Mother had not received citation. The court advised that Mother could move for reconsideration of the temporary order once she was located. After Mother was served, however, she did not seek reconsideration of the temporary order in the trial court, electing instead to seek mandamus relief in the court of appeals and this Court, which was denied. *In re Reina S.C.*, No. 04-18-00682-CV, 2018 WL 6331053, at *1 (Tex. App.—San Antonio Dec. 5, 2018, orig. proceeding [mand. denied]).

Mother again seeks review of the constitutionality of section 262.201(o)—the basis for the temporary order authorizing the emergency removal of her children—but the trial court has since rendered a final judgment regarding Mother's parental rights. As such, any action on the merits related to the prior temporary order would not affect Mother's rights or interests. *See Heckman*, 369 S.W.3d at 162; *In re E.R.W.*, 528 S.W.3d 251, 257 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding).

* * *

We conclude that section 153.006(c) of the Texas Family Code permits trial courts to issue nonspecific visitation orders and that section 153.193 allows restrictions or limitations on a possessory conservator's access to the extent necessary to "protect the best interest of the child." Here, the trial court did not abuse its discretion in imposing a severe restriction on Mother's access rights where the evidence reveals it was in the best interest of her children. Further, the trial court's final judgment in this proceeding rendered Mother's complaints about the temporary orders moot.

Accordingly, the court of appeals' judgment is affirmed.

_____

John P. Devine
Justice

OPINION DELIVERED: June 4, 2021

Appendix F

FILE COPY

RE: Case No. 20-0175 DATE: 9/3/2021
COA #: 04-19-00571-CV TC#: 2018PA01865
STYLE: PT CASE: IN RE J.J.R.S., ET AL., CHILDREN

Today the Supreme Court of Texas denied the motion for rehearing in the above-referenced cause.

MR. GURNEY F. PEARSALL III
PEARSALL LAW FIRM, P.C.
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SAN ANTONIO, TX 78230
* DELIVERED VIA E-MAIL *

Appendix G

REPORTER'S RECORD

VOLUME 1 OF 1 VOLUME(S)

COURT CAUSE NO. 2018-PA-01865

IN THE INTEREST OF	)	IN THE DISTRICT COURT
	)	
J.J.R.S.,	)	37th JUDICIAL DISTRICT
	)	
ET AL CHILDREN	)	BEXAR COUNTY, TEXAS

****

MANDAMUS HEARING

****

On the 12TH day of September, 2018, the following proceedings came on to be heard in the above-entitled and numbered cause before the HONORABLE CHARLES MONTEMAYOR, Presiding Judge, held in San Antonio, Bexar County, Texas, before Elva G. Chapa, CSR in and for the State of Texas, reported by stenographic and computer-aided transcription.

* * * * *

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MANDAMUS HEARING

WITNESSES

STATE'S WITNESS(S)	**DIRECT**	**CROSS**	**VOIR DIRE**	**VOL.**
(No Witnesses)				

EXHIBIT INDEX

EXHIBIT(S) NO.	**DESCRIPTION**	**OFFERED**	**ADMITTED**	**VOL.**
(No Exhibits)				

P R O C E E D I N G

THE COURT: The Court's going to call Cause No. 2018-PA-01865, In The Interest of [redacted] Set today for a 262.

Let's take announcements, Ms. Jackson.

MS. JACKSON: Alli Jackson for the Department; ready.

THE COURT: Mr. Sheffield.

MR. SHEFFIELD: Children; ready, Your Honor.

THE COURT: Mr. Brannan.

MR. BRANNAN: Yes, Judge. Quiency Brannan, standing in for Richard Saldivar. I'm announcing not ready, Judge. We've had no contact with the client. There's no service.

THE COURT: Very good.

Ms. Pearsall.

MS. PEARSALL: Alana Pearsall. I'm making a special appearance for the mother, [redacted] who has not been served.

THE COURT: Very good.

MS. PEARSALL: I am not ready. I have attempted to send a letter to her. It has not been returned to me, but I haven't --

THE COURT: Very good.

Worker, raise your right hand.

(The witness was sworn in by the Court.)

THE COURT: Your attorney indicated that y'all don't know where the parents are, I believe. And they're going from motel to hotel; is that true?

THE WORKER: Yes, sir.

THE COURT: Do you have any idea where they are?

THE WORKER: No, sir.

THE COURT: When were the kids brought into care, more or less?

THE WORKER: (No verbal response).

THE COURT: Well, the suit was filed when?

THE WORKER: August 11th.

THE COURT: Okay. So these kids have been with relatives or in State's care or CPS involvement since August 11th, a month ago?

THE WORKER: Yes, sir.

THE COURT: And they're with their relatives now?

THE WORKER: Yes, sir.

THE COURT: Here in Texas?

THE WORKER: Yes, sir.

THE COURT: But you believe the parents are where?

THE WORKER: They've just been jumping from motel to motel.

THE COURT: In Texas or in Florida?

THE WORKER: No, here in San Antonio.

THE COURT: Mr. Sheffield, the kids have been with this relative pretty uninterrupted since this time?

MR. SHEFFIELD: Yes, Your Honor.

THE COURT: All right. Well, we're going to go forward today. The not readies are denied.

Pursuant to 262.201(O) of the Texas Family Code, which reads, and I quote: When citation by publication is needed for a parent or alleged -- or probable father, in an action brought under this chapter -- this is 262.201(O). That's the name 262 -- is brought in an action brought under this chapter, because the location of the parent, which both of these are, is unknown, the Court may render a temporary order, which I'm prepared to do, without delay at any time after the filing of the action without regard to whether notice of citation by publication has been published.

I would suggest to the Department, you do citation by publication, continue your diligence, along with the court appointed Ad Litem to locate the parents. And we've got two children, I believe, here, [redacted] and

[redacted] ages 11 and 7 that have been residing, at least under the temporary care with a lawsuit pending. And when these parents are ready to parent these two children that are in the CPS care, we'll be ready. I'll be happy to have them come forward. And we'll have motions to reconsider, motions to modify, motions to vacate, whatever they want once they present themselves to the Court.

But pursuant to that provision of the Family Code, I'm going to issue a temporary order, which I'm authorized to do. We're going to go forward.

Let me have all potential witnesses please stand and be sworn.

THE COURT: We did that already, didn't we?

THE REPORTER: Just him, yeah.

THE COURT: Yeah, just him.

Is he the only witness, Ms. Jackson?

MS. JACKSON: Yes, Judge.

THE COURT: Go forward, please.

JOSE MARTINEZ,

having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. JACKSON

Q Please state your name for the record.

A Jose Martinez.

Q How are you involved in this case?

A We got involved back in August 11, 2018, when a referral came in.

Q And what was the referral for?

A Neglectful supervision.

Q Okay. So what happened? What was the lack of supervision described?

MS. PEARSALL: Objection; hearsay.

THE COURT: What was the question?

MS. JACKSON: What was the lack of supervision described?

THE COURT: I'll allow it. Go ahead.

A Well, the case came in, because apparently law enforcement got involved in regards to a temporary -- aggravated robbery. Apparently, the parents --

MS. PEARSALL: Objection, Judge. Hearsay. No personal knowledge.

THE COURT: Overruled.

A The mom and boyfriend were attempting to rob a client that she had in her room.

Q (MS. JACKSON) Okay. What kind of client?

A I believe the report says that she was prostituting.

Q Okay. And where were the children when this

happened?

A They were in a different room.

Q At the same motel?

A Yes, ma'am.

Q Okay. Were there any drugs involved?

A Yes. Law enforcement found --

MS. PEARSALL: Objection. That's hearsay. No personal knowledge.

THE COURT: That's sustained.

MS. JACKSON: Okay.

THE COURT: The first question was: Why -- involved the issues. Now, we're getting into the details of these circumstances. I'm going to allow that.

Q (MS. JACKSON) Okay. Did the Department believe that there's an immediate danger to the children?

A Yes.

Q And were they removed for their safety at that point?

A Yes, ma'am.

Q And where are the children now?

A They're placed with maternal aunt.

Q Okay. And is that here in San Antonio or just somewhere in Texas?

A Here in San Antonio.

Q Okay. Do you believe that it's contrary to their welfare to go back to their parents at this point?

A Yes.

Q What reasonable efforts have you made to locate the parents?

A By going to the motel that they were staying at, calling them on her phone, leaving text messages.

Q Have they been in communication with you or the Department at all?

A No.

Q Okay. And with the maternal aunt, are their needs currently being met there?

A Yes.

Q And are there any services that you would recommend for the children at this point?

A Counseling.

Q What's your recommendation if you do get in contact with the parents for visitation?

A Supervised and drug tests the parents.

Q And what are you asking that the Court do at this time as far as conservatorship?

A That they grant us temporary custody.

Q Temporary managing conservator?

A Yes, ma'am.

Q And do you believe this is the best interest

for the children at this point?

A Yes.

Q And for the record, what are the children's names and ages?

A It's [redacted] and [redacted] And their ages are ten and eight.

MS. JACKSON: Pass the witness.

THE COURT: Mr. Sheffield.

CROSS EXAMINATION

BY MR. SHEFFIELD

Q How are the children doing at their current placement?

A They're doing good.

Q Any issues?

A No.

Q And regarding the parents, you stated that you have their phone number?

A I have her phone number.

Q Okay. And is it working, to your knowledge?

A Yes.

Q Okay. Have you left messages for her?

A Yes, I have.

Q And has she tried to contact you?

A No.

MR. SHEFFIELD: I'll pass the witness,

Your Honor.

THE COURT: Mr. Brannan.

MR. BRANNAN: Pass the witness, Your Honor.

THE COURT: Ms. Pearsall.

CROSS EXAMINATION

BY MS. PEARSALL

Q The children are placed with mom's sister or mom's aunt?

A Mom's sister.

Q And did you ask mom to provide you with potential relatives?

A At the time when I met her, yes. And she --

Q And she gave you the name of her sister?

A The kids were already placed with the sister before we got involved.

Q So prior to your involvement, the children were already residing with the sister?

A That's correct.

Q Okay. So your involvement didn't, in fact, change these children's placement?

A No.

Q So you didn't remove them to protect them? You removed them because mom didn't want to sign the safety plan?

A No.
Q No?
A (Moves head side to side).
Q Mom wanted to sign the safety plan?
A She didn't want to sign the safety plan.
Q Okay. And that's why you removed them?
A Oh, yes. Sorry.
Q Okay. But, in fact, you didn't remove the children?
A No.
Q So in reality, whether this case was -- or not, these children are with the aunt?
A That's correct.
Q How do you know that mom moved from her hotel room?
A When I went to got visit her to serve her with removing papers, she was not living at the motel anymore.
Q So you never gave her notice of removal?
A No. I couldn't find her.
Q How do you know she was no longer living in that hotel?
A I went to her room. No one answered. And I went to the front desk, and they said that she wasn't living at the motel anymore.

Q Is it true that she was residing in that motel for eight months prior to your involvement?

A That's correct.

Q Have you asked her sister where she's at now?

A Yes, and they don't have any recollection of where she's at.

Q Have they had any contact with her?

A No.

Q She hasn't attempted to come by and pick up the children?

A No.

Q And what do you think would happen if she did come by to pick up the children? What do you think her sister would do?

A Be a protective aunt. She knows to call law enforcement and not let the kids go with her.

Q Okay. So you feel that the sister is protective?

A Yes.

MS. PEARSALL: I'll pass the witness.

THE COURT: Anything else?

MS. JACKSON: No, the State rests.

THE COURT: Witnesses, Mr. Sheffield?

MR. SHEFFIELD: None, Your Honor. Rest.

THE COURT: Witnesses, Mr. Brannan?

MR. BRANNAN: No, Judge.

THE COURT: Witnesses, Ms. Pearsall?

MS. PEARSALL: No, Your Honor.

THE COURT: All parties rest.

Anything to add in closing?

What do you think, Mr. Sheffield?

AD LITEM:

MR. SHEFFIELD: Your Honor, I think these children need to remain with these relatives. And we need an order protecting them so that the parents can't come and pick them up. I think that is needed in this case, Your Honor.

THE COURT: Anything else in comment?

MS. PEARSALL: Judge, one: I still think it's a violation of these parents rights to go forward. Two: I don't believe the Department has --

THE COURT: What would be your response to this provision I read, though?

MS. PEARSALL: I think it needs to be appealed to the Supreme Court, quite frankly. I think it's unconstitutional.

THE COURT: Okay. You petition Austin legislature, I'll back you, but I've got to follow the law.

MS. PEARSALL: Judge, I also don't think

the State has met its burden. These children were safe before CPS got involved. They're still safe in their placement. And the placement is protective. There's absolutely no reason for the Department to be involved in this case.

THE COURT: Was this done by an emergency?

MS. JACKSON: Yes.

THE COURT: Or a 113, do you know?

MS. PEARSALL: It was done as an emergency for no reason.

MS. JACKSON: It was non-exigent. But I believe the police removed them, and then CPS was involved after the police removed the children.

THE COURT: So the police determined it was important.

Okay. The Court's going to grant the 262, making the Department temporary managing conservator; mom and dad, temporary possessory conservator. Visitation will be twice per month supervised. It's not contingent on anything, but UA's and hair follicles are authorized. Child support is $100 per month, starting 12/1/18.

The sixty day will be 10/15/18 at 1:30.

CASA, I think it would be appropriate here for the sake of the children.

Whose the worker going to be?

THE WORKER: I am, Your Honor.

THE COURT: Yes, sir. I've got three things you need to do: Start talking to this aunt about kinship and PCA. Do your diligence to best serve the parents and notify them with the circumstances. Continue your diligence towards that. And therapy for the kids. Be sure it's trauma based as well. Get them started on that right away. Those are the three things.

Is there anything else?

We'll see y'all 10/15/18 at 1:30.

P R O C E E D I N G C O N C L U D E D

THE STATE OF TEXAS)

COUNTY OF BEXAR)

I, ELVA G. CHAPA, Certified Shorthand Reporter in and for the County of Bexar, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $_____ and will be paid by The STATE OF TEXAS, BEXAR COUNTY.

WITNESS MY OFFICIAL HAND this the 19TH day of SEPTEMBER, 2018.

/s/Elva G. Chapa
Elva G. Chapa, Texas CSR 5422
Expiration Date: 12/31/18
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COURT CAUSE NO. 2018-PA-01865,
ITIO J.J.R.S., ET AL, CHILDREN,
MANDAMUS HEARING OF 091218