

Affirm and Opinion Filed March 19, 2026



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-24-00870-CV

IN THE INTEREST OF R.D.E., A CHILD

**On Appeal from the County Court at Law No. 1
Rockwall County, Texas
Trial Court Cause No. 1-22-0193**

MEMORANDUM OPINION

Before Justices Smith, Miskel, and Barbare
Opinion by Justice Barbare

Appellee¹ obtained a guardianship over R.D.E. in Iowa when R.D.E. was three years old. Approximately eighteen months later, in May 2020, she transferred the Iowa guardianship to Texas. She then filed a Suit Affecting the Parent-Child Relationship (SAPCR) in February 2022. After the SAPCR began, R.D.E.'s mother (Mother) filed an Application for Termination of Guardianship; the record does not contain an order on this application. The trial court subsequently consolidated the guardianship and SAPCR proceedings into a single cause number. A bench trial was

¹ Appellee is not R.D.E.'s parent and has no blood relationship to the child.

held and, on June 3, 2024, the trial court issued its Order in Suit Affecting the Parent-Child Relationship. Mother subsequently filed this appeal

In five issues, Mother argues: (1) the guardianship is no longer in effect, and the June 3 2024 Order in Suit Affecting the Parent-Child Relationship is the only valid and enforceable order; (2) the trial court had jurisdiction over both the guardianship and the SAPCR, but it failed to properly exercise this jurisdiction; (3) appellee, a non-parent, did not overcome the parental presumption; (4) the trial court effectively made appellee the sole managing conservator despite using language indicating that appellee and Mother were joint managing conservators; and (5) appellee did not overcome the presumption that the standard possession schedule is in R.D.E.'s best interest.²

FACTUAL BACKGROUND

At the beginning of the bench trial, the judge explained the procedural posture of the case: “this is a combined companion case along with the guardianship that this Court has in the matter that was originally filed in the State of Iowa which has been transferred, and this Court is the court of continuing jurisdiction for that guardianship as well as in this case.” The cases “were together so that we wouldn’t

² After Mother filed her initial brief, the Court notified her about briefing deficiencies, including that her statement of facts and arguments did not contain appropriate citations to the record as required by Texas Rule of Appellate Procedure 38.1(g), (i). Although Mother filed an amended brief, her amended brief also does not contain record citations. The Court has endeavored to consider each of Mother’s issues. To the extent Mother intended to raise issues or arguments other than those addressed in this opinion, we consider those waived. TEX. R. APP. P. 38.1(i). We also note that appellee appears pro se on appeal.

have conflicting orders in this case. . . I didn't want to have a conservatorship and a guardianship with conflicting orders in this case.”

The evidence presented at trial showed that R.D.E. was born in August 2015, and her father died shortly thereafter. In April 2017, Mother contacted appellee to help her care for R.D.E. Appellee, who lived in Iowa, “went to Texas, picked up [R.D.E], and brought her back to Iowa.” Two or three times after that, Mother requested R.D.E. be returned to her. Each time, appellee gathered R.D.E.’s belongings that she had purchased, took the child to Texas, and gave her to Mother. Appellee testified: “That happened about two or three times until [Mother] contacted me and stated that a CPS³ case was pending on her and they wanted to take her kids and asked if I will take custody of [R.D.E].” Agreeing to do so, appellee again, “went to Texas, picked up [R.D.E], [and] brought her back to Iowa. Each time that we brought [R.D.E] back, she had no possessions. So we had to provide clothing at that time, diapers, toys, anything that she needed.” At the time of trial, appellee lived in a home in Royce City, Texas, and photos of the inside of her house were admitted. She testified that R.D.E. was in third grade, and that she is “very involved” in R.D.E.’s education and healthcare.

R.D.E.’s aunt (Aunt) provided testimony consistent with appellee’s testimony. In 2017, after R.D.E.’s father died, Mother contacted Aunt and asked “if

³ CPS is not defined in the record, and we presume it refers to the Child Protective Services Unit of the Texas Department of Family and Protective Services.

I could get [R.D.E.] because something happened with CPS and they were trying to take not only [R.D.E.] but her daughter [name omitted] as well. That did not happen. I did not get [R.D.E.]. Instead, [R.D.E.] went to Iowa for some time with [appellee].” The next year, R.D.E. returned to Texas and lived with Mother “for some time.” In the summer or fall of 2018, R.D.E. returned to Iowa. Aunt thought that the child had “a lot of stability” living with appellee.

In 2018, appellee obtained a guardianship over R.D.E. in Iowa. A document titled “Consent by Mother” and dated December 18, 2018, was filed in an Iowa district court and admitted as evidence at trial in this matter. The document states:

I, [Mother], am the natural mother of [R.D.E.], and respectfully state that I hereby consent to the Guardianship by [appellee].

I acknowledge that I have been given notice of these proceedings and an opportunity to object.

I further state and consent to the Guardianship freely and voluntarily, without coercion of any type and that I have been advised to seek legal representation.

I certify under penalty of perjury and pursuant to the laws of the State of Iowa that the proceeding is true and correct as I verily believe.

At trial, Mother testified that she drove to Iowa in 2018 and told the Iowa trial court that she did not agree to the guardianship. However, she acknowledged that she signed the consent in December 2018 and did so because CPS had become involved in her life due to domestic violence with her son’s father.⁴ She explained: “I just knew there was no way that I could afford an attorney or fight for one child

⁴ Her son’s father is not R.D.E.’s father.

when I have to do CPS case services to get the other one back.” She was “under the impression that it [the guardianship] was the only option I had in order for my daughter to be able to go to school and do what she needed to do.” Mother believed the guardianship would last for no more than one year.

Mother experienced homelessness in 2018. However, she secured housing in November 2019 and continued living at the same location through March 2024 when the bench trial occurred. She explained that she contacted appellee in November 2019 when she obtained housing: “I was letting her know that the - - you know, as we agreed that when I get on my feet, [R.D.E.] would come back home. So I told her, you know, I’m back in my own place and what are the next steps so she can come back home.” Mother testified that, for the next two years, she begged appellee to return the child to her, but appellee refused.

Appellee domesticated the guardianship order when she moved to Texas in 2020. She testified that she quickly notified Mother about her move. However, Mother testified that she only discovered that appellee and R.D.E. had relocated to Texas when she received court documents indicating that the guardianship was being transferred to Texas. Mother contacted appellee at that time and was upset because she did not know about appellee’s move with R.D.E. to Texas. She decided to take action. In November 2022, she went to Aunt’s house to pick up the child.⁵ Mother

⁵ It appears that Mother picked up R.D.E. without appellee’s permission, although the record does not explicitly say so.

testified that when she arrived at the house, Aunt opened the door “with a gun in her hand and a newborn baby”; Mother also stated that the house smelled like marijuana. Mother was concerned that appellee permitted R.D.E. to stay with Aunt, and she took R.D.E. with her. R.D.E. stayed with Mother for “a couple of weeks” before appellee retrieved the child from school.

Appellee testified that she filed the SAPCR in February 2022 because she wanted the parties to have a possession schedule. Although she allowed Mother to see R.D.E., Mother rarely attended the scheduled meetings and sometimes months passed between her visits with the child. When asked at trial how many visits Mother had missed in the preceding six months, appellee stated: “Multiple times. Just about every visit.” However, Mother testified that she only missed one weekday visit, and she never missed a weekend visit.

Mother usually has trouble picking up R.D.E. because she does not own a vehicle. Appellee testified: “I’ve even [sic] was fair to meet at a train station versus the police station due to her not being able to afford an Uber or have transportation to get to Rockwall.”

Appellee recounted that on one weekday when Mother was scheduled to have visitation, Mother told appellee that she could not have R.D.E. because she needed to attend a parent-teacher conference for a different child. However, Mother made a Facebook post that led appellee to believe that she was not at a parent-teacher conference. Appellee testified about the post: “my concern is you couldn’t afford to

get an Uber to come see your daughter on your Thursday scheduled visit, but you can afford a three-hour-and-something ride to go see your husband in prison.” Appellee testified that, at a different time, Mother took R.D.E. to the prison to visit a man who is not her father and she told R.D.E. to call the incarcerated man “Daddy Nick.” Appellee did not think that going to a prison was a positive experience for a child, and she had concerns about the impression the prison left on R.D.E. Mother testified that she had never taken R.D.E. to visit anyone in prison.

Appellee remained concerned about Mother’s ability to provide for the child. Mother changed jobs at least three times in 2023 and has had periods of unemployment. Additionally, appellee testified: “[s]ince we started the possession schedule in February of 2023, most of [R.D.E.’s] needs have not been met. There are still things that [R.D.E.] needs at [Mother’s] home that still hasn’t come to par [sic].” When R.D.E. does spend time with Mother, the child is argumentative and angry when she returns home, even though she was not before seeing Mother. Additionally, appellee testified that, on one occasion, R.D.E. returned home from Mother’s house with two containers: one held candy and the other melatonin. Mother gave melatonin to R.D.E. because she believed R.D.E. had trouble sleeping. However, Mother did not tell appellee that she gave melatonin to the child or sent a container of it home. Appellee was concerned that Mother gave medication to a child without consulting a doctor or appellee. Mother testified that melatonin is an over-

the-counter item that her son’s pediatrician recommended for him when he has trouble sleeping, and she gave R.D.E. a “toddler dosage.”

Mother did not believe that appellee has been cooperative with her, and she stated that appellee refused to provide information about R.D.E.’s schooling and medical appointments. Mother testified: “She says that the lawyer says that I’m not allowed to have that information, I’m not allowed to talk to anybody at her school or even be around her school.”

Appellee testified that, prior to the SAPCR proceedings, Mother never sought to challenge the guardianship or obtain legal possession of R.D.E. Mother contradicted this testimony, stating she has been trying to regain custody of R.D.E. since November 2019.

Following the trial, the court entered the Order in Suit Affecting the Parent-Child Relationship as well as findings of fact and conclusions of law.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Mother requested findings of fact and conclusions of law, which the trial court entered. The findings include:⁶

2. Guardianship: The Court finds that:

- a. [Appellee] is the guardian of [R.D.E.].
- b. that the Guardianship of the child was established with the consent of Respondent [Mother] on December 18, 2018[,] in the State of Iowa
- c. That the guardianship was properly transferred to Rockwall County on May 8, 2020.

⁶ Grammatical, punctuation, and capitalization errors and inconsistencies are original in the trial court’s findings of fact and conclusions of law.

d. The Guardianship under cause number GR1-008 is still in effect.

3. Jurisdiction: The Court finds that:

- a. this Court has partial jurisdiction as a result of the existing Guardianship;
- b. all persons entitled to citation were properly cited.

4. Non-Parent: The Court finds that:

- a. [Appellee] is a non-parent of the subject child.
- b. pursuant to the Tex. Fam. Code § 153.373, [Mother] voluntarily relinquished actual care, control and possession of the child to [appellee], a nonparent[,] for a period exceeding one year.

5. Conservatorship: The Court finds that is in the best interest of the child:

- a. [Appellee] and [Mother] be appointed joint managing conservators

...

7. Possession and Access § 153.258, the Court finds that it is in the best interest of the child:

- a. That periods of possession ordered for [Mother] vary from the Standard Possession Order for the following reasons:
 1. [Mother's] inability to exercise possession consistently
 2. [Mother's] lack of consistent transportation
 3. The distance between [Mother's] home and [appellee's] home.
 4. The child's school schedule
 5. The current development of the child, emotionally, academically, physically
 6. [Mother's] ability to care for the child
 7. The long periods of time throughout the child's life when [Mother] did not exercise any possession.
 8. [Mother's] conduct in communicating with [appellee.]

The trial court's conclusions of law include:

9. Non-Parent

1. That the parental presumption was rebutted pursuant to Tex. Fam. Code § 153.373

...

10. Guardianship

1. That the existing Guardianship cannot be modified pursuant to the Suit Affecting Parent Child Relationship

LAW & ANALYSIS

A. Guardianship Remains in Effect

In her first issue, Mother argues that, once the trial court issued its order in the SAPCR, “it effectively dissolved the guardianship.” Accordingly, she believes, the Iowa guardianship and the order transferring and modifying the guardianship are no longer effective, and the June 3, 2024 order in the SAPCR is the only valid and enforceable order in this case.

After appellee transferred the guardianship to Texas and filed the SAPCR, Mother sought to terminate the guardianship. On February 8, 2023, Mother filed an Application for Termination of Guardianship, arguing that the guardianship should be terminated because the Notice of the Application for Receipt and Acceptance of Foreign Guardianship was defective, she was no longer incapacitated, there was a pending SAPCR, and terminating the guardianship was in the best interest of the child. We interpret Mother's first issue as an assertion that the trial court erred by not granting her Application for Termination of Guardianship and by concluding that the guardianship remains in effect.

Although Mother sought to terminate the guardianship, she never obtained a ruling on her Application for Termination of Guardianship. To preserve a complaint for appellate review, the record must show that a party submitted to the trial court a timely request, objection, or motion that states the grounds for the ruling with sufficient specificity to make the trial court aware of the complaint, and that the trial court either ruled on the request, objection, or motion or refused to do so. TEX. R. APP. P. 33.1(a); *In re C.T.H.*, No. 05-22-01202-CV, 2025 WL 3285467, at *3 (Tex. App.—Dallas Nov. 25, 2025, no pet.) (op. on reh’g). Although Mother filed the application to terminate the guardianship, the record does not show that the trial court ruled or refused to rule on her request.⁷ We conclude that Mother did not preserve this complaint for appellate review.

Even if Mother had preserved this complaint for appellate review or if her first issue intends to assert that the final order in the SAPCR had the legal effect of terminating the guardianship without any action on her part, we would conclude her argument is without merit. The only authorities that Mother cites to support her argument are section 1022.008(a) and (c) of the Texas Estates Code. Section 1022.008 states:

⁷ This Court requested and obtained two supplemental clerk’s records from the Clerk of the County Court at Law 1 of Rockwall County in an attempt to determine whether the trial court ruled on this application. None of the documents received from the clerk indicate that the trial court ruled or refused to rule on Mother’s Application for Termination of Guardianship. Likewise, Mother’s Request for Clerk’s Record did not include a request that the clerk of court provide a copy of its order on Mother’s Application for Termination of Guardianship. We must conclude, then, that no ruling on that application was made.

(a) If an interested person contests an application for the appointment of a guardian of the person of a minor or an interested person seeks the removal of a guardian of the person of a minor, the judge, on the judge's own motion, may transfer all matters related to the guardianship proceeding to a court of competent jurisdiction in which a suit affecting the parent-child relationship under the Family Code is pending.

(b) The probate court that transfers a proceeding under this section to a court with proper jurisdiction over suits affecting the parent-child relationship shall send to the court to which the transfer is made the complete files in all matters affecting the guardianship of the person of the minor and certified copies of all entries in the judge's guardianship docket. The transferring court shall keep a copy of the transferred files. If the transferring court retains jurisdiction of the guardianship of the estate of the minor or of another minor who was the subject of the suit, the court shall send a copy of the complete files to the court to which the transfer is made and shall keep the original files.

(c) The court to which a transfer is made under this section shall apply the procedural and substantive provisions of the Family Code, including Sections 155.005 and 155.205, in regard to enforcing an order rendered by the court from which the proceeding was transferred.

TEX. ESTATES CODE ANN. § 1022.008.

Section 155.005 of the Texas Family Code, titled "Jurisdiction Pending Transfer," states that during the transfer of a suit from a court with continuing, exclusive jurisdiction, the transferring court retains jurisdiction to render temporary orders and "[t]he jurisdiction of the transferring court terminates on the docketing of the case in the transferee court." TEX. FAM. CODE ANN. § 155.005. Family code provision 155.205, titled "Transfer of Child Support Registry," discusses how child support payments are handled following an order transferring jurisdiction to another court. *See generally id.* § 155.205.

Mother’s brief does not explain how the trial court allegedly violated section 1022.008 of the estates code or sections 155.005 and 155.205 of the family code, and we have not discovered any violations. None of these provisions support Mother’s argument that once the trial court entered the order in the SAPCR, “it affectively [sic] dissolved the guardianship.” Rather, section 1022.008 of the estates code addresses transferring guardianships and specifically permits a court to transfer a guardianship proceeding to another court “in which a suit affecting the parent-child relationship under the Family Code is pending.” TEX. ESTATES CODE ANN. § 1022.008(a). If the legislature intended for such a transfer to dissolve the guardianship, then it would have stated as much. *See Davis v. Guerrero*, 64 S.W.3d 685, 690 (Tex. App.—Austin 2002, no pet.) (rejecting arguments similar to Mother’s). It did not.

Mother has not cited any legal authority showing that entry of the final SAPCR order had the legal effect of dissolving the guardianship. Accordingly, we overrule Mother’s first issue to the extent that it is preserved for appellate review.

B. Trial Court’s Jurisdiction

In her second issue, Mother argues that the trial court had “full jurisdiction” of both the guardianship and SAPCR in accordance with sections 103.001, 152.201, and 155.005(b) of the family code. Mother appears to challenge the trial court’s third finding of fact, which states: “this Court has partial jurisdiction as a result of the

existing Guardianship.” The findings of fact do not provide any additional context for this finding.⁸

We note that, at the start of the bench trial, the judge explained the procedural posture of the case: “this is a combined companion case along with the guardianship that this Court has in the matter that was originally filed in the State of Iowa which has been transferred, and this Court is the court of continuing jurisdiction for that guardianship as well as in this case.” The cases “were together so that we wouldn’t have conflicting orders in this case.” The record reflects the trial court intended to resolve all issues in the guardianship and SAPCR proceedings that were before it.

Mother does not assert that the guardianship and order in the SAPCR conflict, nor she does identify any unresolved pending issues.⁹ Mother agrees that Rockwall County was the proper venue for the SAPCR, and she does not argue that it was not the proper venue for the guardianship proceeding. Additionally, the record includes an Agreed Order to Consolidate, signed by counsel for both parties and the trial court judge. As discussed above, since Mother’s argument is that the trial court failed to

⁸ Family code section 6.308, titled “Exercising Partial Jurisdiction” states that “[a] court in which a suit for dissolution of a marriage is filed may exercise its jurisdiction over those portions of the suit for which it has authority.” TEX. FAM. CODE ANN. § 6.308. This provision does not apply to guardianship proceedings or SAPCRs, and we have not identified a provision of the family code or any case law providing for partial jurisdiction in guardianship proceedings.

⁹ To the extent Mother may believe that any pending issues were not resolved, she does not point to any place in the record where she made the trial court aware of her complaint and asked that the trial court address her concerns. Accordingly, we conclude she has not preserved a complaint about pending, unresolved issues for appellate review. *See* TEX. R. APP. P. 33.1.

rule on her Application for Termination of Guardianship, she has not preserved this complaint for appellate review. *See* TEX. R. APP. P. 33.1.

Unable to discern a complaint in Mother's second issue, we conclude that it presents nothing for this Court's consideration, and it is therefore overruled.

C. Parental Presumption

In her third issue, Mother argues that appellee did not overcome the parental presumption. As is relevant here, section 153.131 of the Texas Family Code requires that a child's parent "be appointed sole managing conservator" unless "the court finds that appointment of the parent or parents would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development." TEX. FAM. CODE ANN. § 153.131(a); *In re A.V.*, No. 05-20-00966-CV, 2022 WL 2763355, at *4–7 (Tex. App.—Dallas July 15, 2022, no pet.) (mem. op.). However, the presumption that a parent should be appointed as the managing conservator of the child can be rebutted if the court finds that (1) "the parent has voluntarily relinquished actual care, control, and possession of the child to a nonparent . . . for a period of one year or more," a portion of which occurred within 90 days preceding the date of intervention in or filing of the suit and (2) the appointment of the nonparent is in the best interest of the child. TEX. FAM. CODE ANN. § 153.373; *see also In re A.V.*, 2022 WL 2763355, at *4 (listing ways to overcome parental presumption, including parent voluntarily relinquished care, control, and possession of a child to a nonparent for one year or more). "The party

seeking appointment as sole managing conservator has the burden to rebut the presumption.” *In re R.R.*, No. 05-14-00773-CV, 2015 WL 5813391, at *6 (Tex. App.—Dallas Oct. 6, 2015, no pet.) (mem. op.) (citing *Lide v. Lide*, 116 S.W.3d 147, 152 (Tex. App.—El Paso 2003, no pet.)). “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(a).

“As a general rule, we give wide latitude to a trial court’s decision on custody, control, possession, and visitation matters.” *In re I.J.N.*, No. 05-21-00738-CV, 2023 WL 2674079, at *2 (Tex. App.—Dallas Mar. 29, 2023, no pet.) (citing *In re C.P.J.*, 129 S.W.3d 573, 576 (Tex. App.—Dallas 2003, pet. denied)). Trial court findings concerning conservatorship are reviewed for an abuse of discretion under a preponderance-of-the-evidence standard. *In re A.V.*, 2022 WL 2763355, at *3 (citing *In re J.A.J.*, 243 S.W.3d 611, 616 (Tex. 2007)). Legal and factual sufficiency are not independent grounds of error in conservatorship cases but are relevant factors in determining whether an abuse of discretion occurred. *Id.* To determine whether the trial court abused its discretion because the evidence was insufficient to support its decision, we consider whether the trial court (1) had sufficient evidence upon which to exercise its discretion and (2) erred in its exercise of that discretion. *Id.* We conduct the applicable sufficiency review with regard to the first question. *Id.* We then determine whether, based on the elicited evidence, the trial court made a

reasonable decision. *Id.* The trial court is the sole judge of the credibility of the witnesses and the weight to be given their testimony. *Id.*

Conservatorship determinations by their very nature are inherently fact-intensive. 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.” *In re Z.R.G.*, No. 05-23-00218-CV, 2025 WL 699728, at *6 (Tex. App.—Dallas Mar. 4, 2025, no pet.) (mem. op.) (citing *In re J.J.R.S.*, 627 S.W.3d 211, 218 (Tex. 2021)). Consequently, an abuse of discretion does not occur when the trial court bases its decisions on conflicting evidence. *Id.* (citing *Valdez v. Valdez*, 930 S.W.2d 725, 731 (Tex. App.—Houston [1st Dist.] 1996, no writ)). Furthermore, an abuse of discretion does not occur as long as some evidence of a substantive and probative character exists to support the trial court’s decision. *Id.* (citing *A.D.H.*, 979 S.W.2d 445, 447 (Tex. App.—Beaumont 1998, no writ)).

In this case, the trial court’s findings of fact state that, “pursuant to Tex. Fam. Code § 153.373, [Mother] voluntarily relinquished actual care, control and possession of the child to [appellee], a nonparent[,] for a period exceeding one year.” Mother challenges this finding on appeal and argues that, even if she voluntarily relinquish possession of R.D.E. to appellee, “she terminated that relinquishment dozens of times starting from November 2019.” The trial court’s finding is supported by the record. Appellee and Aunt testified that R.D.E. began living with appellee at

Mother's request in 2017. She initially was returned to Mother's care several times. In December 2018, Mother executed a document titled "Consent by Mother," in which she consented, "freely and voluntarily, without coercion of any type," to the guardianship. Mother signed the document under penalty of perjury. Although Mother testified that she believed the guardianship would only last for one to two years and she requested that appellee return R.D.E. to her beginning in November 2019, the trial court was free to disbelieve this testimony and instead credit appellee's testimony that Mother did not seek return of R.D.E. until the SAPCR was filed in February 2022. We conclude that there were sufficient facts upon which the trial court could have concluded that appellee met her burden to show that Mother "voluntarily relinquished actual care, control, and possession of the child to a nonparent . . . for a period of one year or more," a portion of which was within 90 days preceding the date of the filing of the SAPCR. *See* Tex. FAM. CODE ANN. § 153.373.

We next turn to the best interest of the child. Courts have broad discretion when determining what is in the child's best interest. *In re Z.R.G.*, 2025 WL 699728, at *5–6 (citing *Coleman v. Coleman*, 109 S.W.3d 108, 110 (Tex. App.—Austin 2003, no pet.)). Texas courts typically utilize the *Holley* factors in cases requiring a best interest analysis. *Holley v. Adams*, 544 S.W.2d 367, 371–72 (Tex. 1976). These factors include: (1) the desires of the child; (2) the emotional and physical needs of the child now and in the future; (3) the emotional and physical danger to the child

now and in the future; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist these individuals to promote the best interest of the child; (6) the plans for the child by these individuals or the agency seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions of the parent. *Id.* Proof of best interest is not limited to these factors, nor do all factors always apply in every case. *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). The parties do not discuss the *Holley* factors in their briefs.

R.D.E. was eight years old at the time of trial. The record does not include any evidence of her desires, her emotional and physical needs now or in the future, the emotional and physical dangers to her now or in the future, the programs available to assist Mother, or any party's plans for the child. The record does show that appellee and Aunt believed the child's current placement with appellee was stable. R.D.E. has lived with appellee for most of her life, and appellee described herself as "very involved" with R.D.E.'s education and medical care. Photos of appellee's home and family were admitted at trial. Conversely, Mother had at least three jobs in 2023 and experienced periods of unemployment. Mother admitted that, in 2018, she was "dealing with CPS" and "was in a domestic violence - - domestically violent relationship." However, CPS had not been involved in her life

again since 2018. Further, Mother has experienced homelessness before obtaining stable housing for several years.

According to appellee, Mother has missed many scheduled visits with R.D.E. Appellee believed she missed one specific visit because Mother chose to visit her husband in prison; appellee also testified that Mother had taken R.D.E. to the prison and told R.D.E. to call the man “Daddy Nick.” Appellee testified that Mother has been unable to provide for R.D.E.’s needs since they implemented a possession schedule in February of 2023, testifying: “There are still things that [R.D.E.] needs at [Mother’s] home that still hasn’t come to par [sic].” R.D.E. is argumentative and angry after spending time with Mother. And, on one occasion, R.D.E. returned home with a bottle of melatonin, which Mother had not told appellee she had provided.

Having reviewed the evidence in the record and considering the *Holley* factors, we conclude that the trial court did not abuse its discretion by determining that a preponderance of the evidence shows that remaining with appellee is in R.D.E.’s best interest. Because Mother voluntarily relinquished actual care, control, and possession of R.D.E. to appellee, a nonparent, for a period of one year or more, a portion of which was within 90 days preceding the date of the SAPCR filing, and the evidence is sufficient to show that living with appellee is in R.D.E.’s best interest, we conclude that appellee rebutted the presumption that a parent should be appointed as the managing conservator of the child. We overrule Mother’s third issue.

D. Presumption for Joint Managing Conservators

In her fourth issue, Mother argues that, although the trial court named the parties joint managing conservators, it effectively made appellee the sole managing conservator because it gave appellee the right to make all vital decisions. The trial court found that it is in R.D.E.'s best interest for Mother and appellee to be appointed joint managing conservators. The court awarded appellee the exclusive right to designate R.D.E.'s primary residence within Rockwall County and contiguous counties and to make all medical decisions.

The trial court may appoint a sole managing conservator or joint managing conservators. TEX. FAM. CODE ANN. § 153.005(a). The family code defines joint managing conservatorship as “the sharing of the rights and duties of a parent by two parties, ordinarily the parents, even if the exclusive right to make certain decisions may be awarded to one party.” *Id.* § 101.016. A nonparent may be appointed as a joint managing conservator with one of the child’s parents. *See id.* § 153.372(a).¹⁰

When the trial court appoints joint managing conservators, it must designate the conservator who has the exclusive right to determine the child’s primary residence; specify the rights and duties of each conservator regarding the child’s physical care, support, and education; include provisions to minimize disruption of the child’s education, daily routine, and association with friends; and allocate the

¹⁰ The procedural and substantive standards regarding a court-ordered joint managing conservatorship apply to a nonparent joint managing conservator. TEX. FAM. CODE ANN. § 153.372(b).

remaining rights and duties between the conservators. *Id.* § 153.134(b). We review a trial court's decisions regarding conservatorship, including a determination of which conservator will have the right to establish the child's primary residence, for an abuse of discretion. *In re J.A.J.*, 243 S.W.3d at 616.

In her third issue, Mother does not argue that the trial court erred by appointing appellee as a conservator. Rather, she appears to argue that the trial court erred by awarding appellee the exclusive right to designate R.D.E.'s primary residence and make R.D.E.'s medical decisions.

The family code required the trial court to render an order designating which conservator has the exclusive right to determine the child's primary residence and specifying the rights and duties of each parent regarding, among other things, the child's physical care. *See* TEX. FAM. CODE ANN. § 153.134(b)(1), (2). The family code does not specify the standard the trial court should apply to make these determinations, but the best interests 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." *Id.* § 153.002; *Lenz v. Lenz*, 79 S.W.3d 10, 14 (Tex. 2002). The *Holley* factors and their application in this case are discussed above in consideration of Mother's third issue, and we need not repeat that analysis here. *See* TEX. R. APP. P. 47.1.

Beyond her mistaken belief that appellee did not overcome the parental presumption and Mother's desire to be the sole managing conservator, she does not

explain how she believes the trial court abused its discretion by allowing appellee, who has a guardianship over R.D.E., to determine the child's primary residence and make her medical decisions. After reviewing the record, we cannot conclude that the trial court abused its discretion by finding it was in R.D.E.'s best interest for appellee to be designated the conservator with the exclusive right to determine her primary residence and make her medical decisions. Accordingly, we overrule Mother's fourth issue.

E. Presumption for Standard Possession Schedule

In her fifth issue, Mother asserts the presumption that the standard possession schedule is in the child's best interest was not rebutted or overcome, and she also challenges the evidence supporting the trial court's seventh finding of fact. Mother does not specify which provisions of the Order in the Suit Affecting the Parent Child Relationship she objects to. As to possession, the Order states:

IT IS ORDERED that each conservator shall comply with all terms and conditions of this Standard Possession Order. IT IS ORDERED that this Standard Possession Order is effective immediately and applies to all periods of possession occurring on and after the date the Court signs this Standard Possession Order.

Furthermore, the Order sets forth the terms for possession of and access to R.D.E. To the extent that the possession order differs from a standard possession order, Mother has failed to identify which provision(s) she objects to and, therefore, she has waived her complaint. This court does not have a duty to review a voluminous record without guidance from an appellant to determine whether her assertion of

reversible error is valid. *Keyes Helium Co. v. Regency Gas Sers., L.P.*, 393 S.W.3d 858, 861 (Tex. App.—Dallas 2012, no pet.). Failure to cite to relevant portions of the record waives appellate review. *Id.* (citing TEX. R. APP. P. 38.1(i)).

In her final issue, Mother also challenges the sufficiency of the evidence supporting the trial court's findings that: (1) she could not exercise possession consistently; (2) she lacks consistent transportation; (3) the distance between her home and appellee's; (4) R.D.E.'s school schedule; (5) R.D.E.'s current development, emotionally, academically, and physically; (6) her ability to care for the child; (7) the long periods in R.D.E.'s life when Mother did not exercise possession; and (8) Mother's conduct in how she communicated with appellee. These findings are part of the trial court's seventh finding of fact, which states: "That periods of possession ordered for [Mother] vary from the Standard Possession Order for the following reasons."

Evidence in the record shows that Mother voluntarily relinquished R.D.E. to appellee when R.D.E. was about two years old. Mother then would intermittently exercise possession of R.D.E., and she always returned R.D.E. without her belongings. Mother later consented to the guardianship and did not attempt to regain possession of R.D.E. until the SAPCR was filed. In November 2021, Mother took R.D.E. from Aunt's house because she did not think she was being permitted adequate access.

Appellee testified that Mother rarely came to pre-arranged visitations and sometimes months passed between visits. Specifically, appellee testified that there was a six-to-eight month time frame when Mother “chose not to communicate with her daughter or me with any visitation. Anytime that she did text me, she was being rude. And this is repeated behavior throughout the years that I have had her.” In the six months preceding trial, Mother missed multiple visits. When R.D.E. did visit Mother, she returned home angry and upset. Further, appellee testified: “[s]ince we started the possession schedule in February of 2023, most of [R.D.E.’s] needs have not been met. There are still things that [R.D.E.] needs at [Mother’s] home that still hasn’t come to par [sic].” However, Mother did provide R.D.E. with a container of melatonin but did not notify appellee that she had done so.

The record does not show how far apart Mother and appellee live from one another nor does it contain evidence about R.D.E.’s school schedule. Appellee testified that Mother did not have her own vehicle, and appellee would meet her at a train station or police station because Mother could not afford to pay a rideshare; however, appellee believed that Mother did pay for an Uber to visit a man in prison three hours away. Mother took the child to the prison to visit a man that she called “Daddy Nick.”

Of further note, Mother has had experienced some family violence, CPS involvement, homelessness, and unemployment issues in the past. And, finally, the

record contains numerous text messages between Mother and appellee in which Mother consistently used vulgar and threatening language.

Viewing the record as a whole, we conclude that the trial court did not abuse its discretion when it deviated from the standard possession order based on its findings. While Mother provided conflicting testimony, the trial judge was the sole judge of the witnesses' credibility and the weight to be given to the evidence. We overrule Mother's fifth issue.

CONCLUSION

We affirm the trial court's June 3, 2024 Order in Suit Affecting the Parent-Child Relationship.

/Cynthia Barbare/

CYNTHIA BARBARE
JUSTICE