

NO. 01-21-00100-CV

**IN THE FIRST COURT OF APPEALS
AT HOUSTON, TEXAS**

DALE CLAUDER DUNN

Appellant

VS.

COURTNEY BROOKE GARCIA

Appellee

APPELLANT'S BRIEF

**APPEAL FROM THE 306TH DISTRICT COURT OF
GALVESTON COUNTY, TEXAS
HONORABLE ANNE DARRING, PRESIDING**

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Oral Argument Requested

IDENTITY OF PARTIES AND COUNSEL

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Trial Judge: The Honorable Judge Anne Darring
306th Judicial District Court
Galveston County, Texas

REQUEST FOR ORAL ARGUMENT

Appellant respectfully requests oral argument.

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REFERENCE CITATION GUIDE

The Parties

Appellant, Dale Clauder Dunn
Respondent in trial below

“Father”

Appellee, Courtney Brooke Garcia
Petitioner in trial below

“Mother”

The Record on Appeal

This Brief will refer to the record as follows:

Clerk’s Record

“CR 1:___” (volume number:
page)

Reporter’s Record for bench trial, temporary order hearing.

Galveston County

“G-RR__[volume], (page and
line)”

Scurry County

“S-RR__[volume], (page and
line)”

Note on Galveston County Court Reporter’s Record and Exhibits:

The court reporter did not number the pages of the trial exhibits, which are contained in G-RR11-14 (Petitioner’s exhibits) and G-RR15-16 (Respondent’s exhibits). Unfortunately, those volumes of exhibits do not have page numbers added by the court reporter to the pages, so references to page numbers in this brief are to the PDF page numbers displayed in the PDF viewer.

STATEMENT OF THE CASE

Nature of the Case: This is an appeal of a child custody modification trial

Trial Court: 306th District Court of Galveston County, Texas, the Honorable Anne Darring, Presiding.

Proceedings Below: Trial was conducted on January 28 - 30, 2020, February 5 - 6, 2020 and February 12, 2020. Judge Darring issued her rendition on April 15, 2020. (CR 194). Appellant filed a Motion for New Trial on December 23, 2020. (CR 192). The Trial Court signed the Order in Suit to Modify Parent-Child Relationship on December 4, 2020. (CR 402). Appellant filed his Notice of Appeal on February 24, 2021. (CR 453). The Trial Court made Findings of Fact and Conclusions of Law on February 9, 2021(CR 443).

Trial Court's Disposition: Order in Suit to Modify Parent-Child Relationship on December 4, 2020. (CR 402).

ISSUES PRESENTED

- Issue No. 1 There was factually and legally insufficient evidence to support the trial court's finding of material and substantial change of circumstances, therefore the trial court erred in granting Appellee's request for modification.
- Issue No. 2 The Trial Court erred by finding changes of circumstances which were not material or substantial or which were anticipated at the time of the 2017 order.
- Issue No. 3 The trial court erred because the modification granted is not connected to or limited to the change of circumstances, if any, which the trial court found to have occurred.

STATEMENT OF FACTS

This is an appeal of a child custody modification order entered after a bench trial. Dale Dunn (hereafter "Father") and Courtney Garcia ("Mother") are the parents of three children: M.B.D. (now age 9), D.B.D. (now age 8) and E.B.D. (now age 6). This case began with an agreed order in Scurry County in July 2017 and ended with bench trial in early 2020 in Galveston County, which resulted in the December 4, 2020 order being appealed here. These are the pertinent dates and events relevant

to this case and this appeal:

July 19, 2017

The 132nd District Court in Scurry County entered an “Agreed Order in Suit Affecting the Parent-Child Relationship,” which the parties had agreed to.¹ The order appointed the parents joint managing conservators of the children and granted Father the exclusive rights to determine the children’s primary residence (restricted to Texas for the first year and then no restriction was placed on the children’s residence), receive child support, apply for and maintain the children’s passports, make educational decisions, and consent to medical and psychiatric care of the children. Mother was granted less than standard possession of the children. Mother was granted one weekend a month that she could designate 30 days in advance, two 14 day periods of possession in the summer and standard Christmas and Thanksgiving holidays as well

¹ A copy of the July 19, 2017 order was admitted into evidence as Petitioner’s Exhibit 2, G-RR11, Page 30. However, Scurry County did not send a copy of this order to Galveston County when the case was transferred (CR 6) and a copy of the order is not included in the Clerk’s Record.

as Mother's Day weekend and two hours on a child's birth date. Mother was ordered to provide health insurance for the children and to pay \$500.00 per month to Father for child support.²

At the time of the agreed 2017 order, Mother lived in Snyder, Texas and Father owned a house in Snyder, Texas. Mother worked as a nurse at the hospital in Snyder, Texas and Father worked as an emergency room physician out of town - in Nacogdoches, Big Spring and Center, Texas.³ This is still the situation today.

July 28, 2017

Nine days after she agreed to the above order, Mother married Tanner Garcia.⁴ Mother testified that she was living with Tanner Garcia when the 2017 order was entered and then she married him shortly thereafter to avoid violating the "morality clause" injunction in the 2017

²

³ G-RR5 - page 5, line 25, page 6, line 1.

⁴ Pet. Ex 42, G-RR13, page 6, lines 7-9.

order.⁵

August 23, 2017

A Child Protective Services (CPS) report was made by Mother saying that Father was emotionally abusive to the children.⁶ Regarding the CPS complaints made by Mother against Father on August 23, 2017, CPS investigated the complaint, interviewed the children and parents, and ruled out the allegations. CPS wrote Father:⁷

Mailing Date: 10/22/2017

Re: Case# 45435742; Notice of Findings of CPS Investigation

Dear Dale Dunn :

The Department of Family and Protective Services (DFPS) has completed its investigation of alleged abuse or neglect reported on 8/23/2017 involving one or more children in your family and made the following findings:

<i>Alleged Perpetrator</i>	<i>Alleged Type of Abuse or Neglect</i>	<i>Alleged Victim</i>	<i>Finding</i>
Dunn,Dale	Emotional Abuse	Dunn, [REDACTED]	Ruled Out
Dunn,Dale	Emotional Abuse	Dunn, [REDACTED]	Ruled Out
Dunn,Dale	Emotional Abuse	Dunn, [REDACTED]	Ruled Out
Dunn,Dale	Sexual Abuse	Dunn, [REDACTED]	Ruled Out
Dunn,Dale	Sexual Abuse	Dunn, [REDACTED]	Ruled Out
Dunn,Dale	Sexual Abuse	Dunn, [REDACTED]	Ruled Out

This investigation is now closed and there will be no further agency involvement with your family unless we receive another report of abuse or neglect, which, by law, we would need to investigate.

October 27, 2017

Someone from Snyder school district called CPS to report a possible sexual abuse.⁸

⁵ G-RR2 - page 52, lines 13-15.

⁶

⁷ G-RR11, Pet. Ex. 10, page 208.

⁸ G-RR2, page 102, lines 22-25.

October 30, 2017 M.B.D. was forensically interviewed at the Children's Assessment Center and the child did not make any outcry.⁹

October 31, 2017 - November 4, 2017 Some time in this period, five year old M.B.D. told Father that seven year old A.W. (a son of a friend of Father's) had touched her on the outside of her clothes.¹⁰ After M.B.D. made her disclosure to her father, Father did not allow the children to be around A.W.¹¹ Father did not inform Mother of this allegation nor did Father make a report to CPS or police (see discussion on pages 29 - 34 below as to why Father was not legally required to make a report).

November 4, 2017 Father withdrew M.B.D. (who was in kindergarten) from the Snyder school district as he had decided to home school the child.¹² M.B.D. was enrolled in the Texas Tech University ISD.¹³

⁹ G-RR2, page 107, lines 21-25.

¹⁰ G-RR5, page 56, lines 2 - 3.

¹¹ G-RR6, page 87, lines 8 - 12.

¹² G-RR5, page 14, lines 7 - 11.

¹³ Pet. Ex. 23, G-RR12 page 124.

November 4, 2017

As permitted by the agreed July 2017 order, Father moved with the children to Friendswood, Texas in Galveston County.¹⁴ At first, he moved with the children into his parents' large home in Friendswood. Then Father leased his own home in the town.¹⁵ At the 2018 temporary order hearing in Scurry County (transcript entered into evidence at the final trial in Galveston as Pet. 23 and 24), Father testified that he had no family members in Scurry County but in Galveston County he had, "My parents and children's grandparents, two brothers, three sisters, and their children, approximately 23 nephews."¹⁶

Mother testified in the final trial that a move by Father and the children out of Scurry County was anticipated when she agreed to the July 2017 order.¹⁷

¹⁴ G-RR5 - page 20, lines 17-19.

¹⁵ Pet. Ex. 23, G-RR12, page 175.

¹⁶ S-RR3, Page 128, lines 13-19.

¹⁷ G-RR4 - page 93, lines 1-4 and lines 16-20.

November 22, 2017 Mother made a police report in Snyder saying that M.B.D. made an outcry of inappropriate touching identifying the person as A.W., which was also reported to CPS.¹⁸ After M.B.D. told Mother about the inappropriate touching by A.W. when leaving a Walmart, Mother testified she did not feel the need to inform Father of what the child told her even though Mother was fearful A.W. would continue being around M.B.D.¹⁹ Mother did not tell Father about this outcry and she waited five days to report to police.²⁰

The police contacted CPS and were told:

On Friday, November 24, 2017, at approximately 3:30PM, I was contacted by Angie Cross with CPS. Angie advised me CPS already had an open case on Dale Dunn. Angie stated CPS has talked to the children involved several time and they have never made an outcry. Angie informed me Billy, another CPS worker, informed Garcia they would have a meeting on the prior case next week. Angie informed me at this time, CPS is closing the case Ofc Rojas called in reference too.

(See Pet. Ex. No. 15).²¹

¹⁸ G-RR2, page 122-123, lines 17-25, lines 1-6.

¹⁹ G-RR3, page 111-112, lines 19-25, lines 1-5.

²⁰ G-RR4, page 10, line 15 - page 11, line 12.

²¹ G-RR11, Pet. Ex. 15, page 239.

June 1 & 2, 2018

Mother took E.B.D. to the Emergency Room for vaginal bleeding.²² Mother testified that she noticed lacerations on E.B.D.'s vagina before taking her to the ER but was concerned about the yeast infection.²³ The ER refused to see her daughter, so the next medical visit was to a walk-in clinic in Snyder.²⁴ The clinic doctor noted there was no active bleeding and the medical record says the doctor reported normal appearing external vagina anatomy, no discharge, and "I was unable to appreciate any laceration or abrasions to the area."²⁵ Upon returning home, Mrs. Garcia made a report to CPS, claiming there were lacerations even though the doctor noted he did not see any.²⁶ Regarding the June 2, 2018 CPS complaint Mother lodged against Father, CPS again investigated and ruled out the

²² G-RR3, page 85, lines 16-25.

²³ G-RR3, page 87, lines 6-25.

²⁴ G-RR3, page 91, lines 1-17.

²⁵ G-RR3, page 95, lines 2-12.

²⁶ G-RR3, page 95, lines 20-24.

allegations. CPS sent Father this letter:²⁷

Mailing Date: 8/9/2018

Re: Case# 46597847; Notice of Findings of CPS Investigation

Dear Dale Dunn:

The Department of Family and Protective Services(DFPS) has completed its investigation of alleged abuse or neglect reported on 6/2/2018 involving one or more children in your family and made the following findings:

<i>Alleged Perpetrator</i>	<i>Alleged Type of Abuse or Neglect</i>	<i>Alleged Victim</i>	<i>Finding</i>
	Sexual Abuse	Dunn, [REDACTED]	Ruled Out
Dunn,Dale	Physical Abuse	Dunn, [REDACTED]	Ruled Out
Dunn,Dale	Physical Abuse	Dunn, [REDACTED]	Ruled Out
Dunn,Dale	Physical Abuse	Dunn, [REDACTED]	Ruled Out

June 5, 2018 Mother filed a Petition to Modify Parent-Child Relationship.²⁸

July 27 &
August 15, 2018 Hearing in Scurry County on Mother's motion for temporary orders. Visiting Judge Harrison granted Mother's motion and issued temporary orders which switched custody and granted Mother the exclusive right to determine the children's primary residence, granted Father possession according to a Standard Possession Order and

²⁷ G-RR16, Resp. Ex. 26, page 712.

²⁸ CR 49-55.

ordered Father to pay child support to Mother.²⁹ It seems clear that the judge changed primary custody on a temporary basis because he felt Father should have reported the single touching incident of M.B.D. by A.W.³⁰ As discussed below at pages 29-34, Texas law did not require Father to report the incident based on what he was told. The judge also granted a motion to transfer the case to Galveston County.³¹

December 14, 2018 Mother filed an incident report with the local sheriff's department against Father for failure to report child abuse.³² Father was "no billed" by a Scurry county grand jury on the allegation of failure to report child abuse.³³ A December 2018 CPS record admitted as part of Resp. Ex. 39, summarized the many complaints made against Father which had been ruled out:³⁴

²⁹ CR 9 - 29.

³⁰ Pet. Ex. 23, G-RR12, pages 415-416.

³¹ CR 56- 57.

³² G-RR3, page 7, lines 11-16.

³³ G-RR4, page 107, lines 15 - 24.

³⁴ G-RR26 Pages 741-2.

DALE DUNN

CPS History:

Case Name: Dale Dunn

Case ID: 48597847

8/24/2017-11/21/2017

Intake:

FA's behavior is resulting in obvious emotional distress on 5yo, 4yo, and 2yo children. 5yo, 4yo, and 2yo children displaying inappropriate sexualized behaviors.

Findings:

Ruled out Sexual Abuse and Emotional abuse allegations on E [REDACTED], M [REDACTED], and D [REDACTED] Dunn by Dale Dunn

Childme have no marks, cuts or bruises

Children made no outcries during his interview that would indicate/relate to emotional abuse. D [REDACTED] was not withdrawn, afraid or upset when he was with his father.

Children appeared very happy to be with his dad at home and he was dressed appropriately

ate: 6/28/2019

D.F.P.S.

Page 9 of 13

DFPS.RMG000059

ATTENTION: You are reading a REDACTED copy of the record. Do not share with anyone not entitled under confidential laws.

D. investigator Juniel was at the Dunn Residence when Dale Dunn came home from work and observed how excited and happy children was to see their father.

Children made no outcries of sexual abuse and presented no indications of sexual abuse.

Children had no marks, cuts or bruises that were apparent to the investigator.

C. Dale Sr. stated he does not abuse his children and there was nothing to indicate SXAB of children.

Children demonstrated no signs of being a sexual abused child, she was not withdrawn, angry, scared or upset when she was observed around her father. Children appeared to be very happy child of privilege who was happy, playing and to love their father.

3/16/2018-3/28/2018

Ruled Out and admin closure of sexual abuse and neglectful supervision on M [REDACTED] Dunn by Dale Dunn

Mr. Dunn and Ms. Ramsel denied that M [REDACTED] and A [REDACTED] were acting out sexually. The allegation against Mr. Dunn was investigated at the end of 2017

06/2/2018-7/17/2018

Ruled out Physical Abuse allegations on E [REDACTED], M [REDACTED], and D [REDACTED] Dunn by Dale Dunn

Ruled out of Sexual abuse on E [REDACTED] Dunn by Dale Dunn

Intake:

Children ages 6, 5 and 3 are safe in the care of MO until 6/16/18. FA demonstrates a pattern of ongoing physical abuse including preventing airway and confinement. Behaviors of FA place the children in immediate threat of harm when in his care.

Findings:

Child made no outcry.

Parents denied allegations in full.

At this time there is not sufficient enough evidence to determine the parent is an inappropriate caregiver at this time.

This is the second time these children have been subjected to a forensic interview and the children made no outcry of sexual abuse by their father. There is no preponderance of evidence to substantiated physical abuse, there were no marks or bruises on the children.

There is a custody battle with the parents [REDACTED]

December 19, 2018 Mother made a CPS report accusing Father of neglectful supervision.³⁵ Regarding the December 19, 2018 complaint Mother made against Father, CPS investigated and ruled out the allegation. CPS wrote Father a letter:³⁶

Mailing Date: 04/23/2019

Re: Case# 47563979; Notice of Findings of CPS Investigation

Dear Dale Dunn :

The Department of Family and Protective Services (DFPS) has completed its investigation of alleged abuse or neglect reported on 12/19/2018 involving one or more children in your family and made the following findings:

<i>Alleged Perpetrator</i>	<i>Alleged Type of Abuse or Neglect</i>	<i>Alleged Victim</i>	<i>Finding</i>
Dunn,Dale	Neglectful Supv.	Dunn [REDACTED]	Ruled Out

January 28-30, Trial before Judge Darring in the 306th District Court of

February 5-6,12, 2020 Galveston County.

April 15, 2020 Judge Darring issued her ruling.³⁷

December 4, 2020 Judge Darring signed the Order in Suit to Modify Parent-Child Relationship.³⁸ Judge Darring's Order, which is being appealed here, appoints the parents Joint Managing

³⁵

³⁶ G-RR16, Resp. Ex. 11, page 443.

³⁷ CR 194-195.

³⁸ CR 402-436.

Conservators and grants Mother the exclusive rights to determine the children's primary residence in Scurry or Galveston counties, receive child support, and, after consultation to make educational decisions, consent to psychological/psychiatric care and invasive medical or dental care.

Judge Darring ordered that during the regular school term that the children shall spend school nights in Scurry County or a contiguous county. (CR 413). The parties were granted alternating weeks of possession year round. (CR 413). Holiday possession was split evenly between the parties. (CR 413-415). Changes of possession were ordered to take place at Mother's residence. (CR 415). Father was ordered to pay Mother child support of \$2,565.00 per month. (CR 417).

December 23, 2020 Father filed a Motion for New Trial.³⁹

February 24, 2021 Father filed a Notice of Appeal.⁴⁰

³⁹ CR 439-440.

⁴⁰ CR 453-454.

In summary, the agreed **July 2017** order gave Father the exclusive right to determine the children's primary residence any where in Texas (any where on the planet after one year) and granted Father the exclusive rights to make important decisions about the children's education and medical care. The **December 2020** order being appealed her gives Mother the exclusive rights to determine the children's primary residence in Scurry or Galveston County and grants to Mother the important parental rights related to education, medical care and psychological care. Father is now ordered to pay Mother child support. While the agreed **July 2017** order gave Mother limited visitation, the **new 2020** order grants the parents each 50% possession of the children and the parents alternate weeks of possession. The 2020 order being appealed here requires Father to exercise his periods of possession during the school year in Scurry or contiguous counties.

SUMMARY OF THE ARGUMENT

Mother failed to meet her burden to prove a material and substantial change of circumstances for a parent or the children which was not anticipated at the time of the July 2017 order. The Trial Court's Findings of Fact refer to seven changes of circumstances, but the evidence does not support those findings.

Mother admitted that a move away from Scurry County by Father and the children was allowed by the July 2017 order and anticipated at that time. The 2017 order gave Father the exclusive right to determine the children's primary residence in Texas for the first year and with no limit after a year. Father in November 2017 moved the children to Friendswood, Texas where many of his relatives live. The only testimony about this move shows the move was anticipated in 2017 and so it cannot justify the Trial Court's modifications.

Father's work schedule and the locations where he worked as a physician did not change after the 2017 order. Mother did marry Mr. Garcia eight days after the 2017 order was signed but she was living with him already when the order was signed. Father did take the oldest child out of public school kindergarten in 2018 and home school her, but the child was not in school at all in 2017, so this was not a change of circumstances. Moreover, the 2017 order allowed Father to make educational decisions and the child was not required by Texas law to attend

kindergarten. It is true that eight months before Mother filed her petition to modify, that five year old M.B.D. told her father than a seven year old boy had touched her once on the outside of her clothes in her groin area. Father did not report this incident to authorities because without any sign of emotional or physical injury, Texas law did not require him to report the event. Father did make sure that his children were never around that other boy again.

Mother did make multiple CPS reports (including alleged sexual abuse) and police complaints against Father but the complaints were all investigated and ruled out. A grand jury no billed Father for failure to report sexual abuse. Those false reports by Mother do not justify the Trial Court's modification switching primary custody to Mother.

The Trial Court clearly did not see Father as any threat to children because the Trial Court granted equal possession to the parents to be exercised on alternating weeks.

There is no evidence or insufficient evidence to support the Trial Court's findings of a material and substantial change of circumstances. Mother failed to provide evidence of the circumstances as they existed as of July 2019. Any changes of circumstances were anticipated at the time of the 2017 order or are not related to the relief granted by the Trial Court. The Trial Court abused its discretion and should

be reversed.

ARGUMENT & AUTHORITIES

- Issue No. 1 There was factually and legally insufficient evidence to support the trial court's finding of material and substantial change of circumstances, therefore the trial court erred in granting Appellee's request for modification.
- Issue No. 2 The Trial Court erred by finding changes of circumstances which were not material or substantial or which were anticipated at the time of the 2017 order.
- Issue No. 3 The trial court erred because the modification granted is not connected to or limited to the change of circumstances, if any, which the trial court found to have occurred.

A. Standard of Review

This Court stated the standard of review for an appeal of a modification order as follows:

Because the "trial court is given wide latitude in determining the best interests of a minor child," we review a modification order under an abuse of discretion standard. The test for abuse of discretion is whether the trial court acted without reference to any guiding rules or principles; in other words, whether the act was arbitrary or unreasonable. Under an abuse of discretion standard, legal and factual insufficiency are not independent

grounds for asserting error but are relevant factors in assessing whether a trial court abused its discretion. Because it has no discretion when determining the applicable law, the trial court also abuses its discretion when it clearly fails to analyze and determine the law correctly or applies the law incorrectly to the facts. We review the trial court's conclusions of law de novo.

Smith v. Karanja, 546 S.W.3d 734, 737-38 (Tex. App.-Houston [1st Dist.] 2018, no pet.)(citations omitted).

B. Texas Law Requires a Material and Substantial Change of Circumstances to Modify a Child Custody Order

Texas Family Code section 156.101 sets out the grounds for modifying a conservatorship order:

(a) The court may modify an order that provides for the appointment of a conservator of a child, that provides the terms and conditions of conservatorship, or that provides for the possession of or access to a child if modification would be in the best interest of the child and:

(1) the circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed since the earlier of:

(A) the date of the rendition of the order; or

(B) the date of the signing of a mediated or collaborative law settlement agreement on which the order is based .

Tex. Fam. Code § 156.101(a).

A modification order alters an agreed final order in a custody proceeding. Such an agreed order is contractual, final, and "res judicata of the best interests of a minor child as to conditions then existing." *Knowles v. Grimes*, 437 S.W.2d 816, 817 (Tex. 1969); see *Toler v. Sanders*, 371 S.W.3d 477, 480 (Tex. App.-Houston [1st Dist.] 2012, no pet.). "As a matter of public policy, there should be a high degree of stability in the home and surroundings of a young child, and, in the absence of materially changed conditions, the disturbing influence of re-litigation should be discouraged." *Knowles*, 437 S.W.2d at 817.

"The change-in-circumstances requirement is a threshold issue for the trial court and is based on a policy of preventing constant re-litigation with respect to children." *Smith v. Karanja*, 546 S.W.3d 734, 738 (Tex. App.- Houston [1st Dist.] 2018, no pet.).

To demonstrate that a material and substantial change in circumstances has occurred, the evidence must show the conditions that existed at the time of the prior order as compared to the conditions that existed at the time of the hearing on the motion to modify. *In re L.C.L.*, 396 S.W.3d 712, 718 (Tex. App.-Dallas 2013, no

pet.); *In re W.C.B.*, 337 S.W.3d 510, 514 (Tex. App.-Dallas 2011, no pet.) (stating that, to determine if material and substantial change has occurred, "the trial court compares the evidence of the conditions that existed at the time of the entry of the prior order with the evidence of the conditions that existed at the time of the hearing on the petition to modify").

Zeifman v. Michels, 212 S.W.3d 582, 594 n. 1 (Tex. App. - Austin 2006, pet. denied) stated that the record "must contain both historical and current evidence of the relevant circumstances" and that "[w]ithout both sets of data, the court has nothing to compare and cannot determine whether a change has occurred."

C. A Change Anticipated at the Time of the First Order is NOT a Material and Substantial Change of Circumstances

This Court of Appeals has held, "If a circumstance was sufficiently contemplated at the time of an original agreement, its eventuality is not a changed circumstance, but instead an anticipated circumstance that cannot be evidence of a material or substantial change of circumstances." *Smith v. Karanja*, 546 S.W.3d 734, 740 (Tex. App.- Houston [1st Dist.] 2018, no pet.)(citing *Wiese v. AlBakry*, No. 03-14-00799-CV, 2016 WL 3136874, at *3 (Tex. App.—Austin June 1, 2016, no pet.) (mem. op.), which held. "[A] change in circumstance may be so anticipated and

factored into the original decree that the eventuality of the change does not constitute a material or substantial change of circumstances").

D. The Trial Court's Findings

The Trial Court made these findings of fact regarding change of circumstances:

18.

- b. The circumstances of the children, a conservator of other party affected by the original Order have materially and substantially changed since July 19, 2017, the date of the original Order. Specifically, Dale Dunn has relocated from Scurry County, Texas to Friendswood, Texas, and that Dale Dunn intended, at the time he relocated to Friendswood, Texas, to establish his primary residence in Galveston County, Texas.
- c. Further, Courtney Garcia has married Tanner Garcia since July 19, 2017, the date of the original Order, and Courtney Garcia has given birth to two (2) children with her spouse, Tanner Garcia, since July 19, 2017, the date of the original Order, which children are the half-siblings of the children the subject of this suit.
- d. Madeline Dunn was enrolled by Dale Dunn for Kindergarten in Snyder Independent School District for the 2017-18 school year. On or about October 30, 2017, Dale Dunn checked the child out of school early and notified the school that the child, Madeline Dunn, would not be returning to school at Snyder Independent School District. Thereafter, Dale Dunn "homeschooled" the children, and Madeline Dunn was enrolled in the Texas Tech University school for children for a period of time.
- e. After the ruling of the 132nd Judicial District Court on August 15, 2018, the children were enrolled in Snyder Independent School District by Courtney Garcia.
- f. It is in the best interest of the children that Courtney Garcia be named as

the joint managing conservator with the exclusive right to designate the primary residence of the children and that the residence of the children should be within Scurry County, Texas or Galveston County, Texas (where the parties presently reside).

- g. Dale Dunn was notified of inappropriate touching of the child, Madeline Dunn, and that Dale Dunn did not notify authorities or comply with the mandated reporting of such an incident, despite his position as a licensed M.D. which mandates the reporting of such incidents.
- h. Dale Dunn's relocation and change of residence to Friendswood, Texas, has caused Courtney Garcia to incur increased costs when Courtney Garcia is required to transport the children to the residence of Dale Dunn before and/or after a period of possession.
- i. Dale Dunn's profession as a Medical Doctor, and his current employment, require him to travel to different cities across the State of Texas to render his employment services. As such, Dale Dunn's schedule is inconsistent and he commonly works 24-hour shifts, not allowing himself to be available during those shifts to care for the children.⁴¹

E. No Changes of Circumstances were Proven

The Trial Court's Findings of Fact on regarding a change of circumstances quoted above are not supported by sufficient evidence or do not support the modification order because the changes were anticipated at the time of the July 2017 order.

1. Move to Friendswood

Father did move with the children from Snyder to Friendswood, but that move was allowed by the July 2017 order and was contemplated when that order was made.

⁴¹ C.R. 445-446.

Mother testified:

Q. So, in July of 2017, not only did you agree that they should live with Dr. Dunn, you agreed that there would be a domicile restriction to the entire state of Texas for one year, correct?

A. Yes.

Q. And so it was contemplated in June of 2017 that Dr. Dunn may move outside of Snyder, right?

A. Yes.

Q. And, in fact, it was contemplated in 2017 that after one year Dr. Dunn may move to anywhere in the United States, right?

A. Yes.

Q. And you agreed to that, correct?

A. Yes.⁴²

Mother also testified:

Q. Okay. You went to the Court -- so, okay. You said in October Dr. Dunn contacted you and said he was moving to Friendswood, right?

A. Yes.

....

⁴² G-RR4 - page 32 line 15 - page 33 line 3.

Q. So, he moved to Friendswood, right?

A. Yes.

Q. And a move that you knew about and you knew it was contemplated in July when you agreed to it, right?

A. Yes.⁴³

At the July 27 and August 15, 2018 temporary order hearing in Scurry County (transcript entered into evidence at the final trial in Galveston as __), Father testified:

Q. And so at the time that that last final order was entered, was it contemplated about a move from Scurry County, Texas?

A. Yes.⁴⁴

Given that the July 2017 order required Mother to pick up and return the child to Father's residence to start and end her periods of possession, any increase in travel cost for Mother because of Father's move should have been anticipated in 2017 just as his move away from Snyder County was contemplated as noted above.

2. Marriage to Tanner Garcia

Mother testified that she was living with Tanner Garcia when the 2017 order was entered and then she married him shortly thereafter to avoid violating the

⁴³ G-RR4 - page 93, lines 1 - 4 and lines 16-20.

⁴⁴ S-RR3, Page 129, lines 4 - 7; Pet. Ex23, G-RR12 at page 129.

“morality clause” injunction in the 2017 order.⁴⁵

Tanner Garcia testified in his deposition (which was admitted into evidence as Petitioner Ex No 41) that he married Mother on July 28, 2017.⁴⁶ The order that was modified in this case was entered on July 19, 2017.

Father testified:

Q. I'm sorry -- July of 2017. Where were you residing at that time?

A. I was in Snyder, Texas.

Q. And where were the children residing at that time?

A. With me.

Q. And did you own the same home that you own now in Snyder?

A. I owned the home, yes.

Q. Okay. And do you know in July of 2017 where Ms. Garcia was residing?

A. Yes.

Q. And where was she residing?

A. Highway 208.

Q. And do you know who she was residing with?

A. Tanner Garcia.

Q. And is that the same gentleman that she's with now?

⁴⁵ G-RR2 - page 52, lines 13-15.

⁴⁶ Pet. Ex 42, G-RR13, page 6, lines 7-9.

A. Yes, sir.⁴⁷

The evidence shows that Mother married Mr. Garcia eight days after the July 2017 order was entered, but she was already living with him at that time of that order. Mother's marriage to Mr. Garcia was presumably contemplated at the time of the July 2017 order, but it certainly was not a substantial change given that they already lived together.

3. M.B.D. and Kindergarten

M.B.D. had started kindergarten by the time Ms. Garcia filed her petition to modify. A change in a child's age and educational level is not a material and substantial change because it is anticipated that a child will grow older and move up to higher grades. *Zeifman v. Michels*, 212 S.W.3d 582, 594 (Tex. App. - Austin 2006, pet. denied). At the time of the 2017 order, M.B.D. was not in school yet and so Father's decision a year later to home school his child for kindergarten (which is not compulsory in Texas) was not a material or substantial change of circumstances.

There was no testimony about the quality of Father's home schooling versus kindergarten in Snyder and no evidence that M.D.D. was harmed in any way by the home schooling.

⁴⁷ G-RR6 - page 25, lines 1- 19.

4. Father's work schedule

Father testified:

Q. You and Ms. Garcia stood before the Court in July of 2017 and told the Court under oath that that order was in the children's best interest; is that correct?

A. Yes, sir.

Q. Now, at that time you and Ms. Garcia -- well, what was your work schedule -- or what were you doing for a living in July of 2017?

A. I was doing exactly what I do now is travel ER.

Q. And was Ms. Garcia aware that you were a traveling ER doctor when she agreed to this order in July of 2017?

A. Since 2015 she has been aware.

Q. Okay. So, was she aware in 2017?

A. Yes, sir.⁴⁸

Mother did not testify that Father's work schedule or the nature of his work changed after July 2017.

Father testified at the temporary order hearing and the transcript of that hearing was admitted as Pet. Ex. 23 in the final trial. Father testified:

Q. Okay. Traveling to work at these different hospitals by airplane, can you please

⁴⁸ G-RR6 - Page 20, line 24 - page 21, line 13.

tell us, has that changed since the last order was entered in July of 2017?

A. No, ma'am.

Q. Okay. With regard to working approximately 60 hours per week, has that changed since the last order was entered in July of 2000 --

A. No, ma'am.⁴⁹

Father's work schedule was unchanged and could not have been a change of circumstances.

5. Father did not report touching of M.B.D.

Father Dunn testified that sometime between October 31, 2017 and November 4, 2017 that five year old M.B.D. told him that seven year old A.W. had touched her on the outside of her clothes.⁵⁰ After M.B.D. made her disclosure to her father, Father did not allow the children to be around A.W.⁵¹ Based on what the child said to her Father, there was no legal requirement to report a single act of touching on the outside of clothes between two very young children if there was no emotional or physical injury apparent.

Father testified:

⁴⁹ S-RR3, pages 127, line 10 - page 128, line 10; Pet. Ex. 23, G-RR12 page 128.

⁵⁰ G-RR5, page 56, lines 2 - 3.

⁵¹ G-RR6, page 87, lines 8 - 12.

Q. Exactly what did [M.B.D.] tell you happened to her?

A. Yes, sir. She told me that she was inappropriately touched by [A.W.].

Q. She used those words?

A. Best I can recall.

Q. She didn't tell you how?

A. She did.

Q. How did she tell you he touched?

A. She and I discussed what had happened and she said that she was touched over her clothes on the groin and by the boy.

. . . .

Q. (By Mr. Morris) Do you believe that [A.W.] -- your daughter reporting -- how old was your daughter at the time?

A. They were five and seven.

Q. So, she's five, he's seven, right?

A. Yes, sir.

Q. Do you believe that a five-year-old telling you that she was inappropriately touched by a seven-year-old who put his -- touched her groin over her clothes is not reportable?

A. It's not reportable.⁵²

⁵² G-RR5 - page 60, lines 19 - 25, page 61, lines 1 - 25.

Father also testified:

Q. Did [M.B.D.] tell you how many times [A.W.] inappropriately touched her?

A. Once. She told me it was only once.⁵³

The Texas Family Code Sec. 261.101 requires all persons and professionals to report abuse of a child. Sec. 261.101(a) states, “A person having cause to believe that a child's physical or mental health or welfare has been adversely affected by abuse or neglect by any person shall immediately make a report as provided by this subchapter.” Sec. 261.101(b) requires a professional to report within 48 hours “If a professional has cause to believe that a child has been abused or neglected or may be abused or neglected, or that a child is a victim of an offense under Section 21.11, Penal Code, and the professional has cause to believe that the child has been abused as defined by Section 261.001.”

The incident involving MB.D. did not fall into the definition of “abuse” in the statute:

Sec. 261.001. DEFINITIONS. In this chapter:

(1) "Abuse" includes the following acts or omissions by a person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological

⁵³ G-RR5 - page 75, lines 7 - 9.

functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including compelling or encouraging the child in

a manner that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section 43.02(b), Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;

(I) the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;

(J) causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;

(K) causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code;

(L) knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections; or

(M) forcing or coercing a child to enter into a marriage.

Father explained what he did after M.B.D. told him about being touched:

Q. And, so, based on that, what did you believe was best -- in your training as a medical doctor, what did you believe needed to be done to address this issue at this time?

A. Well, put it in context. I left the door open for her to discuss with me at any time her concerns but that I wasn't going to force her to talk about it again And if I thought that she was concerned about it again or if I saw evidence of emotional impairment, as the law would say, that we would address it. We'd go to counseling, whatever had -- had to happen.

Q. Did you monitor her and the situation?

A. Yes.⁵⁴

Father did not report a seven year old's single act of touching his five year old's groin over her clothes to CPS or the police because there was no evidence of physical or emotional injury to M.B.D. A five year old being touched on the outside of her clothes one time by a seven year old was simply not required to be reported by the statute.

CPS and the Snyder Police Department investigated the issue of AW. touching M.B.D. and M.B.D. was interviewed and CPS closed the case because "Cps has talked to the children involved several time and they have never made an outcry."⁵⁵

⁵⁴ G-RR6, page 91, lines 8 - 20.

⁵⁵ G-RR11, Pet. Ex. 15, page 239.

Father did not tell mother about the touching incident involving A.W.⁵⁶ Likewise, when Mother herself found about the touching incident, she did not tell Father about it either, and Mother waited five days before she reported the incident to CPS.⁵⁷

6. Parents did not get along or communicate well

While not noted in the trial court's finding of facts as a change of circumstances, the trial record is replete with instances of the parties not communicating about the children. Both parents testified about what they felt were rude or false communications from the other parent and failures to share important information. However, there was no testimony that this was any change from the circumstances in 2017. Even if this was a change, it does not relate to the relief granted by the trial court. Requiring the parties to reside at least half the time in the small town of Snyder, Texas and dividing possession evenly between the parents on alternating weeks would require more communication and not address any change in the communication between the parents.

7. Father's use of nannies who cared for the child

At the 2018 temporary order hearing in Scurry County (transcript entered into

⁵⁶

⁵⁷ G-RR4, page 10, line 15 - page 11, line 12.

evidence at the final trial in Galveston as Pet. Ex. 23), Father testified:

Q. And with regard to care of the children, the manner in which the children are cared for while you are at work currently, has that changed from the manner in which the children were cared for at the time that the last order was entered in July of 2017?

A. It remains unchanged.

Q. Okay. So with regard to nannies and babysitters and that type of thing, that was the same thing that was going on back then?

A. Yes.

Q. Okay. At the time that that order was entered in July of 2017, was Courtney aware of the nannies and the babysitters assisting you in the care of the children?

A. Yes.

Q. Okay. Have there been occasions in which nannies and/or babysitters have actually made the exchange of the children for you?

A. Yes.

Q. Okay. Traveling to work at these different hospitals by airplane, can you please tell us, has that changed since the last order was entered in July of 2017?

A. No, ma'am.

Q. Okay. With regard to working approximately 60 hours per week, has that changed since the last order was entered in July of 2000 --

A. No, ma'am. ⁵⁸

8. Mother Failed to Provide Evidence of Circumstances as of July 2, 2017.

To demonstrate that a material and substantial change in circumstances has occurred, the evidence must show the conditions that existed at the time of the prior order as compared to the conditions that existed at the time of the hearing on the motion to modify. *In re L.C.L.*, 396 S.W.3d 712, 718 (Tex. App.-Dallas 2013, no pet.)

Mother provided testimony of what she claimed happened after the July 2017 order she sought to modify, but she did not present evidence of the conditions for her or the children or for Father at the time of the order. This is yet another reason there is no evidence or insufficient evidence to support the Trial Court's findings on changes of circumstances.

F. The Relief Granted Was Not Connected to or Limited to the Changed Circumstances, If Any

This Court of Appeals recently held:

This Court has held that the substantial and material change that is relied on as the basis for modification must be material to the modification sought. *Smith* [v. *Karanja*, 546 S.W.3d 734, 741-2 (Tex. App.-Houston [1st Dist.] 2018, no pet.)(citations omitted)]. Identifying a change in one circumstance to seek a

⁵⁸ S-RR3, pages 127, line 10 - page 128, line 10; Pet. Ex. 23, G-RR12, page 128.

modification of another aspect of the custody arrangement improperly avoids the Legislature's requirement that a substantial and material change be established to open the custody terms to modification. *Id.* The requested modification must be "somehow connected to the changed circumstances" to permit reexamination of the custody terms. *Id.* (stating, by example, that "a remarriage may require some changes but does not mean that the trial court may now modify other provisions in the original divorce decree unrelated to the remarriage").

In re A.T.E., No. 01-19-00481-CV (Tex. App. - Houston [1st Dist.] 9/20/2020, no pet.)(mem. op.).

In other words, the fact that Mother married eight days after the July 2017 order was signed may be a change of circumstances, but that change must be related to the modification sought by Mother and connect to the relief granted by the trial court.

Here, the Trial Court granted the parents equal possession of the child in the form of alternating weeks of possession to be exercised in Scurry County during the school year. Even if Father's failure to report the single incident of a seven year old touching five year old M.B.D. over her clothes was a material and substantial change of circumstances, it is not related to the relief granted by the Trial Court. How does equal possession time in one particular location relate to a single failure to report

touching that was not required by law to be reported?

Likewise, Father taking M.B.D. out of kindergarten in Snyder to home school her in Friendswood as the 2017 order allowed him to do, is not connected to the relief granted. The Trial Court's order does not require Mother to enroll the children in public and school and we all know for some time in 2020-2021, the children were educated from home because of Covid.

G. Conclusion: The Trial Court Abused Its Discretion

The Trial Court ordered a total change of the custody and possession arrangement based on "changes of circumstances" that were not really changes, or which were anticipated at the time of the 2017 order or which were not related to the Trial Court's order. The Trial Court abused its discretion and should be reversed.

REQUEST FOR RELIEF

Appellant requests that this Court of Appeals reverse the trial court and render a final order that Mother's requested modification is denied. Alternatively, the case should be reversed and remanded for further proceedings.

Appellant requests recovery of costs and all other relief to which he is entitled.

By: /S/ Greg B. Enos
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CERTIFICATE OF SERVICE

I certify that a complete copy of the above motion was e-served on the following counsel on June 27, 2021

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/S/ Greg B. Enos
Attorney for Appellant

CERTIFICATION

I certify that this filing complies with the word count and font size limitations as provided by Rule 9 of the Texas Rules of Appellate Procedure and that there are 7,266 words beginning with the Statement of the Case through this page, per the word counter feature of WordPerfect.

/S/ Greg B. Enos
Attorney for Appellant

NO. 01-21-00100-CV

**IN THE FIRST COURT OF APPEALS
AT HOUSTON, TEXAS**

DALE CLAUDER DUNN

Appellant

VS.

COURTNEY BROOKE GARCIA

Appellee

APPELLANT'S APPENDIX 1

**Order in Suit to Modify
Parent-Child Relationship**

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CAUSE NO. 18FD2521

IN THE INTEREST OF



CHILDREN

§
§
§
§
§
§
§

IN THE DISTRICT COURT

306th JUDICIAL DISTRICT

GALVESTON COUNTY, TEXAS

ORDER IN SUIT TO MODIFY PARENT-CHILD RELATIONSHIP

On January 28th - 30th, 2020; February 5th - 6th, 2020; February 12, 2020 and April 13th, 2020 the Court heard this case.

Appearances

Petitioner, Courtney Garcia, appeared in person and through attorney of record, Phillip W. Morris, and announced ready for trial.

Respondent, Dale Clauder Dunn, appeared in person and through attorney of record, Matthew Mahoney, and announced ready for trial.

Jurisdiction

The Court, after examining the record and the evidence and argument of counsel, finds that it has jurisdiction of this case and of all the parties and that no other court has continuing, exclusive jurisdiction of this case. All persons entitled to citation were properly cited.

Jury

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

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Record

The record of testimony was duly reported by the court reporter for the 306th Judicial District Court.

Children

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

Name: [REDACTED] Dunn
Sex: Male
Birth date: [REDACTED]/2012
Home state: Texas
Social Security number: xxx-xx-x975

Name: [REDACTED] Dunn
Sex: Male
Birth date: [REDACTED]
Home state: Texas
Social Security number: xxx-xx-x875

Name: [REDACTED] Dunn
Sex: Female
Birth date: [REDACTED]
Home state: Texas
Social Security number: xxx-xx-x622

Findings

The Court finds that the material allegations in the petition to modify are true and that the requested modification is in the best interest of the children. IT IS ORDERED that the requested modification is GRANTED.

Parenting Plan

The Court finds that the provisions in these orders relating to the rights and duties of the parties with relation to the children, possession of and access to the

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children, child support, and optimizing the development of a close and continuing relationship between each party and the children constitute the parenting plan established by the Court.

Conservatorship

The Court finds that the following orders are in the best interest of the children.

IT IS ORDERED that Courtney Garcia and Dale Clauder Dunn remain Joint Managing Conservators of the following children: [REDACTED]

IT IS ORDERED that, at all times, Courtney Garcia and Dale Clauder Dunn, as parent joint managing conservators, shall have the following rights:

1. the right to receive information from any other conservator of the children concerning the health, education, and welfare of the children;
2. the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the children;
3. the right of access to medical, dental, psychological, and educational records of the children;
4. the right to consult with a physician, dentist, or psychologist of the children;
5. the right to consult with school officials concerning the children's welfare and educational status, including school activities;
6. the right to attend school activities, including school lunches, performances, and field trips;
7. the right to be designated on the children's records as a person to be notified in case of an emergency;

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8. the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the children; and
9. the right to manage the estates of the children to the extent the estates have been created by the parent or the parent's family.

IT IS ORDERED that, at all times, Courtney Garcia and Dale Clauder Dunn, as parent joint managing conservators, shall each have the following duties:

1. the 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;
2. the duty to inform the other conservator of the children if the conservator resides with for at least thirty days, marries, or intends to marry a person who the conservator knows is registered as a sex offender under chapter 62 of the Texas Code of Criminal Procedure or is currently charged with an offense for which on conviction the person would be required to register under that chapter. IT IS ORDERED that notice of this information shall be provided to the other conservator of the children as soon as practicable, but not later than the fortieth day after the date the conservator of the children begins to reside with the person or on the tenth day after the date the marriage occurs, as appropriate. IT IS ORDERED that 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. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE;
3. the duty to inform the other conservator of the children if the conservator 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. IT IS ORDERED that notice of this information shall be provided to the other conservator of the children as soon as practicable, but not later than the thirtieth day after the date the conservator establishes residence with the person who is the subject of the final protective order. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE

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CONSERVATOR FAILS TO PROVIDE THIS NOTICE;

4. the duty to inform the other conservator of the children if the conservator 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 sixty-day period following the date the final protective order is issued. IT IS ORDERED that notice of this information shall be provided to the other conservator of the children as soon as practicable, but not later than the ninetieth day after the date the final protective order was issued. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE; and
5. the duty to inform the other conservator of the children if the conservator is the subject of a final protective order issued after the date of the order establishing conservatorship. IT IS ORDERED that notice of this information shall be provided to the other conservator of the children as soon as practicable, but not later than the thirtieth day after the date the final protective order was issued. WARNING: A CONSERVATOR COMMITS AN OFFENSE PUNISHABLE AS A CLASS C MISDEMEANOR IF THE CONSERVATOR FAILS TO PROVIDE THIS NOTICE.

IT IS ORDERED that, during their respective periods of possession, Courtney Garcia and Dale Clauder Dunn, as parent joint managing conservators, shall have the following rights and duties:

1. the duty of care, control, protection, and reasonable discipline of the children;
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;
3. the right to consent for the children to medical and dental care not involving an invasive procedure; and
4. the right to direct the moral and religious training of the children.

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IT IS ORDERED that Courtney Garcia, as a parent joint managing conservator, shall have the following rights and duty:

1. the exclusive right to designate the primary residence of the children within Scurry County, Texas or Galveston County, Texas, subject to the provisions for *Geographic Restriction* below;
2. the exclusive right, after meaningful consultation with the other parent conservator, to consent to medical, dental, and surgical treatment involving invasive procedures;
3. the exclusive right, after meaningful consultation with the other parent conservator, to consent to psychiatric and psychological treatment of the children;
4. the exclusive right to receive and give receipt for periodic payments for the support of the children and to hold or disburse these funds for the benefit of the children;
5. the independent right to represent the children in legal action and to make other decisions of substantial legal significance concerning the children;
6. the right, subject to the agreement of the other parent conservator, to consent to marriage and to enlistment in the armed forces of the United States;
7. the exclusive right, after meaningful consultation with the other parent conservator, to make decisions concerning the children's education;
8. except as provided by section 264.0111 of the Texas Family Code, the independent right to the services and earnings of the children;
9. except when a guardian of the children's estates or a guardian or attorney ad litem has been appointed for the children, the independent right to act as an agent of the children in relation to the children's estates if the children's action is required by a state, the United States, or a foreign government; and
10. the independent duty to manage the estates of the children to the extent the estates have been created by community property or the joint property of the parent.



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IT IS ORDERED that Dale Clauder Dunn, as a parent joint managing conservator, shall have the following rights and duty:

1. the independent right to represent the children in legal action and to make other decisions of substantial legal significance concerning the children;
2. the right, subject to the agreement of the other parent conservator, to consent to marriage and to enlistment in the armed forces of the United States;
3. except as provided by section 264.0111 of the Texas Family Code, the independent right to the services and earnings of the children;
4. except when a guardian of the children's estates or a guardian or attorney ad litem has been appointed for the children, the independent right to act as an agent of the children in relation to the children's estates if the children's action is required by a state, the United States, or a foreign government; and
5. the independent duty to manage the estates of the children to the extent the estates have been created by community property or the joint property of the parents.

Geographic Restriction

The Court finds that, in accordance with section 153.001 of the Texas Family Code, it is the public policy of Texas to assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child, to provide a safe, stable, and nonviolent environment for the child, and to encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage. IT IS ORDERED that the primary residence of the children shall be within Scurry County, Texas or Galveston County, Texas and the parties shall not remove the children from Scurry County, Texas or

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Galveston County, Texas for the purpose of changing the primary residence of the children until this geographic restriction is modified by further order of the court of continuing jurisdiction or by a written agreement that is signed by the parties and filed with that court.

IT IS FURTHER ORDERED that Courtney Garcia shall have the exclusive right to designate the children's primary residence within Scurry County, Texas or Galveston County, Texas.

Notwithstanding any provision in this order to the contrary, IT IS ORDERED that Courtney Garcia shall have the exclusive right to enroll the children in school. Each conservator, during that conservator's period of possession, is ORDERED to ensure the children's attendance in the schools in which Courtney Garcia has enrolled the children.

Passport Provisions

IT IS ORDERED that if a parent's consent is required for the issuance of a passport, that parent shall provide that consent in writing no later than ten days after receipt of the consent documents.

IT IS ORDERED that Courtney Garcia and Dale Clauder Dunn shall each have the right to applied for and/or maintain possession of any passports of the child, [REDACTED] Dunn, subject to the requirements for delivery of the passport and all other requirements set forth below.

The parent conservator in current physical possession of the children's passport is ORDERED to deliver or cause to be delivered to the other parent the original, valid

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passport of [REDACTED] Dunn,
within ten days of their receipt of the other parent's notice of intent to have the child
travel outside the United States during a period of possession of the other parent.

IT IS ORDERED that if a conservator intends to have the child travel outside the
United States during the conservator's period of possession of the child, the conservator
shall provide written notice to the other conservator. IT IS ORDERED that this written
notice shall include all the following:

1. any written consent form for travel outside the United States that is
required by the country of destination, countries through which travel will occur, or the
intended carriers;
2. the date, time, and location of the child's departure from the United States;
3. a reasonable description of means of transportation, including, if
applicable, all names of carriers, flight numbers, and scheduled departure and arrival
times;
4. a reasonable description of each destination of the intended travel,
including the name, address, and phone number of each interim destination and the
final travel location;
5. the dates the child is scheduled to arrive and depart at each such
destination;
6. the date, time, and location of the child's return to the United States;

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7. a complete statement of each portion of the intended travel during which the conservator providing the written notice will not accompany the child; and

8. the name, permanent and mailing addresses, and work and home telephone numbers of each person accompanying the child on the intended travel other than the conservator providing the written notice.

If the intended travel is a group trip, such as with a school or other organization, the conservator providing the written notice is ORDERED to provide with the written notice all information about the group trip and its sponsor instead of stating the name, permanent and mailing addresses, and work and home telephone numbers of each person accompanying the child.

IT IS FURTHER ORDERED that this written notice shall be furnished to the other conservator no less than twenty-one days before the intended day of departure of the child from the United States.

Courtney Garcia and Dale Clauder Dunn are each ORDERED to properly execute the written consent form to travel abroad and any other form required for the travel by the United States Department of State, passport authorities, foreign nations, travel organizers, school officials, or public carriers; when applicable, to have the forms duly notarized; and, within ten days of that conservator's receipt of each consent form, to deliver the form to the conservator providing the written notice.

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IT IS ORDERED that any conservator who violates the terms and conditions of these provisions regarding the child's passport shall be liable for all costs incurred due to that person's noncompliance with these provisions. These costs shall include, but not be limited to, the expense of nonrefundable or noncreditable tickets, the costs of nonrefundable deposits for travel or lodging, attorney's fees, and all other costs incurred seeking enforcement of any of these provisions.

Possession and Access1. Modified Possession Order

IT IS ORDERED that each conservator shall comply with all terms and conditions of this Modified Possession Order. IT IS ORDERED that this Modified Possession Order is effective April 26th, 2020 or as soon as Doctor Dunn feels it is safe to exercise possession. and applies to all periods of possession occurring on and after April 26th, 2020. IT IS, THEREFORE, ORDERED:

(a) Definitions

1. In this Modified Possession Order "school" means the elementary or secondary school in which the child is enrolled or, if the child is not enrolled in an elementary or secondary school, the public school district in which the child primarily resides.

2. In this Modified Possession Order "child" includes each child, whether one or more, who is a subject of this suit while that child is under the age of eighteen years and not otherwise emancipated.

(b) Mutual Agreement or Specified Terms for Possession

IT IS ORDERED that the conservators shall have possession of the child at times mutually agreed to in advance by the parties, and, in the absence of mutual agreement, it is ORDERED that the conservators shall have possession of the child under the specified terms set out in this Modified Possession Order.

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(c) Modified Possession Order Regardless of Distance

Except as otherwise expressly provided in this Modified Possession Order, Dale Clauder Dunn and Courtney Garcia shall have the right to possession of the children regardless of how far Dale Clauder Dunn resides from the primary residence of the children as follows:

1. Alternating Weekly Possession by Dale Clauder Dunn -

IT IS ORDERED that Dale Clauder Dunn shall have possession of the children every other week, beginning at 6:00 p.m. on Sunday April 26th, 2020, and ending at 6:00 p.m. on Sunday May 3rd, 2020 and alternating on every other Sunday at 6:00 p.m. thereafter.

IT IS ORDERED, that during the regular school term, the children shall spend the night within Scurry County, Texas or a county contiguous to Scurry County, Texas during Dale Clauder Dunn's periods of possession on each night preceding a day when the children's school is in session. Overnight means: Between the Hours of 10:00 pm and 6:00 am.

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2. Alternating Weekly Possession by Courtney Garcia -

IT IS ORDERED that Courtney Garcia shall have possession of the children every other week, beginning at 6:00 p.m. on Sunday May 3rd, 2020, and ending at 6:00 p.m. on Sunday May 10th, 2020 and alternating every other Sunday at 6:00 p.m. thereafter.

3. Spring Vacation in Even-Numbered Years - In even-numbered years Dale Clauder Dunn shall has possession of the children, beginning at 6:00 p.m. on the day the child is dismissed from school for the school's spring vacation and ending at 6:00 p.m. on the day before school resumes after that vacation.

4. Spring Vacation in Odd-Numbered Years - In odd-numbered years Courtney Garcia shall have possession of the children, beginning at 6:00 p.m. on the day the child is dismissed from school for the school's spring vacation and ending at 6:00 p.m. on the day before school resumes after that vacation.

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(d) Holidays Unaffected by Distance

Notwithstanding the alternating weekly periods of possession of Dale Clauder Dunn and Courtney Garcia, Courtney Garcia and Dale Clauder Dunn shall have the right to possession of the children as follows:

1. Christmas Holidays in Odd-Numbered Years - In odd-numbered years, Dale Clauder Dunn shall have the right to possession of the child beginning at 6:00 p.m. on the day the child is dismissed from school for the Christmas school vacation and ending at noon on December 28, and Courtney Garcia shall have the right to possession of the child beginning at noon on December 28 and ending at 6:00 p.m. on the day before school resumes after that Christmas school vacation.

2. Christmas Holidays in Even-Numbered Years - In even-numbered years, Courtney Garcia shall have the right to possession of the child beginning at 6:00 p.m. on the day the child is dismissed from school for the Christmas school vacation and ending at noon on December 28, and Dale Clauder Dunn shall have the right to possession of the child beginning at noon on December 28 and ending at 6:00 p.m. on the day before school resumes after that Christmas school vacation.

3. Thanksgiving in Even-Numbered Years - In even-numbered years, Dale Clauder Dunn shall have the right to possession of the child beginning at 6:00 p.m. on the day the child is dismissed from school for the Thanksgiving holiday and ending at 6:00 p.m. on the Sunday following Thanksgiving.

4. Thanksgiving in Odd-Numbered Years - In odd-numbered years, Courtney Garcia shall have the right to possession of the child beginning at 6:00 p.m. on the day the child is dismissed from school for the Thanksgiving holiday and ending at 6:00 p.m. on the Sunday following Thanksgiving.

5. Child's Birthday - If a parent is not otherwise entitled under this Modified Possession Order to present possession of a child on the child's birthday, that parent shall have possession of the child and the child's minor siblings beginning at 6:00 p.m. and ending at 8:00 p.m. on that day, provided that that parent picks up the children from the other parent's residence and returns the children to that same place.

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6. Father's Day - Dale Clauder Dunn shall have the right to possession of the child each year, beginning at 6:00 p.m. on the Friday preceding Father's Day and ending at 6:00 p.m. on Father's Day, provided that if Dale Clauder Dunn is not otherwise entitled under this Modified Possession Order to present possession of the child, he shall pick up the child from Courtney Garcia's residence and return the child to that same place.

7. Mother's Day - Courtney Garcia shall have the right to possession of the child each year, beginning at 6:00 p.m. on the Friday preceding Mother's Day and ending at 6:00 p.m. on Mother's Day, provided that if Courtney Garcia is not otherwise entitled under this Modified Possession Order to present possession of the child, she shall pick up the child from Dale Clauder Dunn's residence and return the child to that same place.

(e) Undesignated Periods of Possession

Courtney Garcia shall have the right of possession of the children at all other times not specifically designated in this Modified Possession Order for Dale Clauder Dunn.

(f) General Terms and Conditions

Except as otherwise expressly provided in this Modified Possession Order, the terms and conditions of possession of the child that apply regardless of the distance between the residence of a parent and the child are as follows:

1. Surrender of Child by Courtney Garcia - Courtney Garcia is ORDERED to surrender the child to Dale Clauder Dunn at the beginning of each period of Dale Clauder Dunn's possession at the residence of Courtney Garcia.

2. Return of Child by Dale Clauder Dunn - Dale Clauder Dunn is ORDERED to return the child to the residence of Courtney Garcia at the end of each period of possession.

3. Surrender of Child by Dale Clauder Dunn - Dale Clauder Dunn is ORDERED to surrender the child to Courtney Garcia, if the child is in Dale Clauder Dunn's possession or subject to Dale Clauder Dunn's control, at the beginning of each period of Courtney Garcia's exclusive

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periods of possession, at the place designated in this Modified Possession Order.

4. Return of Child by Courtney Garcia - Courtney Garcia is ORDERED to return the child to Dale Clauder Dunn, if Dale Clauder Dunn is entitled to possession of the child, at the end of each of Courtney Garcia's exclusive periods of possession, at the place designated in this Modified Possession Order.

5. Personal Effects - Each conservator is ORDERED to return with the child the personal effects that the child brought at the beginning of the period of possession.

6. Designation of Competent Adult - Each conservator may designate any competent adult to pick up and return the child, as applicable. IT IS ORDERED that a conservator or a designated competent adult be present when the child is picked up or returned.

7. Inability to Exercise Possession - Each conservator is ORDERED to give notice to the person in possession of the child on each occasion that the conservator will be unable to exercise that conservator's right of possession for any specified period.

8. Written Notice - Written notice, including notice provided by electronic mail or facsimile, shall be deemed to have been timely made if received or, if applicable, postmarked before or at the time that notice is due. Each conservator is ORDERED to notify the other conservator of any change in the conservator's electronic mail address or facsimile number within twenty-four hours after the change.

This concludes the Modified Possession Order.

2. Right of First Refusal During Regular School Term

Right of First Refusal During the Regular School Term - IT IS ORDERED that if the parent in current possession of the child(ren) will be absent or unable to have actual possession of the child(ren) for six hours, or more, while the children are in that parent's care, then that parent shall notify the other parent as soon as they become aware of their inability to exercise actual physical possession of the child(ren), and the other parent will have the right to care for the child(ren) during that absence.

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3. Duration

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.

4. Noninterference with Possession

Except as expressly provided herein, IT IS ORDERED that neither conservator shall take possession of the children during the other conservator's period of possession unless there is a prior written agreement signed by both conservators or in case of an emergency.

5. Electronic Communication

IT IS ORDERED that the conservator:

- a. Who has possession of the children shall make the children available by videoconferencing (via a program such as Zoom, facetime, Skype etc.) beginning at 6:00 p.m. on every Tuesday and Thursday for a period of 20 minutes.
- b. If a message is left from the parent who is not with the children, the other parent shall assist the children in returning the call.

6. Termination of Orders

The provisions of this order relating to conservatorship, possession, or access terminate on the marriage of Courtney Garcia to Dale Clauder Dunn unless a nonparent or agency has been appointed conservator of the children under chapter 153 of the Texas Family Code.

Child Support

IT IS ORDERED that Dale Clauder Dunn is obligated to pay and shall pay to Courtney Garcia child support of Two Thousand Five Hundred Sixty Five Dollars and 00/100 (\$2,565.00) per month, with the first payment being due and payable on January 1, 2021 and a like payment being due and payable on the first day of each month thereafter until the first month following the date of the earliest occurrence of one of the

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events specified below:

1. any child reaches the age of eighteen years or graduates from high school, whichever occurs later, subject to the provisions for support beyond the age of eighteen years set out below;
2. any child marries;
3. any child dies;
4. any child enlists in the armed forces of the United States and begins active service as defined by section 101 of title 10 of the United States Code; or
5. any child's disabilities are otherwise removed for general purposes.

Thereafter, Dale Clauder Dunn is ORDERED to pay to Courtney Garcia child support of Two Thousand One Hundred Thirty-Seven Dollars and 50/100 (\$2,137.50) per month, due and payable on the first day of the first month immediately following the date of the earliest occurrence of one of the events specified above for that child and a like sum of \$2,137.50 due and payable on the first day of each month thereafter until the next occurrence of one of the events specified above for another child for whom Dale Clauder Dunn remained obligated to pay support under this order.

Thereafter, Dale Clauder Dunn is ORDERED to pay to Courtney Garcia child support of One Thousand Seven Hundred Ten Dollars and 00/100 (\$1,710.00) per month, due and payable on the first day of the first month immediately following the date of the earliest occurrence of one of the events specified above for that child and a like sum of \$1,710.00 due and payable on the first day of each month thereafter until the next occurrence of one of the events specified above for another child for whom Dale Clauder Dunn remained obligated to pay support under this order.

If the child is eighteen years of age and has not graduated from high school and Dale Clauder Dunn's obligation to support the child has not already terminated, IT IS



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ORDERED that Dale Clauder Dunn's obligation to pay child support to Courtney Garcia shall not terminate but shall continue for as long as the child is enrolled-

1. under chapter 25 of the Texas Education Code in an accredited secondary school in a program leading toward a high school diploma or under section 130.008 of the Education Code in courses for joint high school and junior college credit and is complying with the minimum attendance requirements of subchapter C of chapter 25 of the Education Code or
2. on a full-time basis in a private secondary school in a program leading toward a high school diploma and is complying with the minimum attendance requirements imposed by that school.

Withholding from Earnings

IT IS ORDERED that any employer of Dale Clauder Dunn shall be ordered to withhold the child support payments ordered in this order from the disposable earnings of Dale Clauder Dunn for the support of Madeline Brooke Dunn, Dale Benson Dunn, and Elizabeth Brooke Dunn.

IT IS FURTHER ORDERED that all amounts withheld from the disposable earnings of Dale Clauder Dunn by the employer and paid in accordance with the order to 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 Dale Clauder Dunn, and it is hereby ORDERED that Dale Clauder Dunn pay the balance due directly as specified below.

On this date the Court signed an Income Withholding for Support.



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Payment

IT IS ORDERED that all payments shall be made through the state disbursement unit at Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, Texas 78265-9791, and thereafter promptly remitted to Courtney Garcia for the support of the children. IT IS ORDERED that all payments shall be made payable to the Office of the Attorney General and include the ten-digit Office of the Attorney General case number (if available), the cause number of this suit, Dale Clauder Dunn's name as the name of the noncustodial parent (NCP), and Courtney Garcia's name as the name of the custodial parent (CP). Payment options are found on the Office of the Attorney General's website at <https://www.texasattorneygeneral.gov/cs/payment-options-and-types>.

IT IS ORDERED that each party shall pay, when due, all fees charged to that party by the state disbursement unit and any other agency statutorily authorized to charge a fee.

Change of Employment

IT IS FURTHER ORDERED that Dale Clauder Dunn shall notify this Court and Courtney Garcia by U.S. certified mail, return receipt requested, of any change of address and of any termination of employment. This notice shall be given no later than seven days after the change of address or the termination of employment. This notice or a subsequent notice shall also provide the current address of Dale Clauder Dunn and the name and address of his current employer, whenever that information becomes



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available.

Clerk's Duties

IT IS ORDERED that, on the request of a prosecuting attorney, the title IV-D agency, the friend of the Court, a domestic relations office, Courtney Garcia, Dale Clauder Dunn, or an attorney representing Courtney Garcia or Dale Clauder Dunn, the clerk of this Court shall cause a certified copy of the Income Withholding for Support to be delivered to any employer.

Health Care

1. IT IS ORDERED that Courtney Garcia and Dale Clauder Dunn shall each provide medical and dental support for each child as set out in this order as additional child support for as long as the Court may order Courtney Garcia and Dale Clauder Dunn to provide support for the child under sections 154.001 and 154.002 of the Texas Family Code. Beginning on the day Courtney Garcia and Dale Clauder Dunn's actual or potential obligation to support a child under sections 154.001 and 154.002 of the Family Code terminates, IT IS ORDERED that Courtney Garcia and Dale Clauder Dunn are discharged from the obligations set forth in this medical support order and dental support order with respect to that child, except for any failure by a parent to fully comply with those obligations before that date. IT IS FURTHER ORDERED that the additional child support payments for costs of health and dental insurance ordered below are payable through the state disbursement unit or as directed below and subject to the provisions for withholding from earnings provided above for other child support



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payments.

2. Definitions -

"Health Insurance" means insurance coverage that provides basic health-care services, including usual physician services, office visits, hospitalization, and laboratory, X-ray, and emergency services, that may be provided through a health maintenance organization or other private or public organization, other than medical assistance under chapter 32 of the Texas Human Resources Code.

"Reasonable cost" means the total cost of health insurance coverage for all children for which Courtney Garcia is responsible under a medical support order that does not exceed 9 percent of Courtney Garcia's annual resources, as described by section 154.062(b) of the Texas Family Code.

"Dental insurance" means insurance coverage that provides preventive dental care and other dental services, including usual dentist services, office visits, examinations, X-rays, and emergency services, that may be provided through a single service health maintenance organization or other private or public organization.

"Reasonable cost" of dental insurance means the total cost of dental insurance coverage for all children for which Courtney Garcia is responsible under a medical support order that does not exceed 1.5 percent of Courtney Garcia's annual resources, as described by section 154.062(b) of the Texas Family Code.

"Health-care expenses" include, without limitation, medical, surgical, prescription drug, mental health-care services, dental, eye care, ophthalmological, and

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orthodontic charges but do not include expenses for travel to and from the provider or for nonprescription medication.

"Health-care expenses that are not reimbursed by insurance" ("unreimbursed expenses") include related copayments and deductibles.

"Furnish" means -

- a. to deliver the document to the recipient at the recipient's electronic mail address as follows:

Courtney Garcia: ventruoc24@hotmail.com

Dale Clauder Dunn: dcdunnmd@yahoo.com

and in the event of any change in either recipient's electronic mail address, that recipient is ORDERED to notify the other recipient of such change in writing within twenty-four hours after the change.

3. Findings on Availability of Health Insurance - Having considered the cost, accessibility, and quality of health insurance coverage available to the parties, the Court finds:

Health insurance is available or is in effect for the children through Courtney Brooke Garcia's employment or membership in a union, trade association, or other organization at a reasonable cost of **\$72.06 per month**.

IT IS FURTHER FOUND that the following orders regarding health-care coverage are in the best interest of the children.



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4. Provision of Health-Care Coverage -

As child support, Courtney Garcia is ORDERED to continue to maintain health insurance for each child who is subject of this suit that covers basic health-care services, including usual physician services, office visits, hospitalization, laboratory, X-ray, and emergency services.

Courtney Garcia is ORDERED to maintain health insurance in full force and effect on each child who is the subject of this suit as long as child support is payable for that child. Courtney Garcia is ORDERED to convert any group insurance to individual coverage or obtain other health insurance for each child within fifteen days of termination of her employment or other disqualification from the group insurance. Courtney Garcia is ORDERED to exercise any conversion options or acquisition of new health insurance in such a manner that the resulting insurance equals or exceeds that in effect immediately before the change.

The parties are ORDERED to furnish the other party a true and correct copy of the health insurance policy or certification and a schedule of benefits within 15 days of signing of this order. Courtney Garcia is ORDERED to furnish Dale Clauder Dunn the insurance cards and any other forms necessary for use of the insurance within 15 days of the signing of this order. Each party is ORDERED to provide, within 3 days of receipt by them, to the other party any insurance checks, other payments, or explanations of benefits relating to any medical expenses for the children that the incurring party paid or incurred.

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Pursuant to section 154.182 of the Texas Family Code, Dale Clauder Dunn is ordered to pay Courtney Garcia cash medical support for reimbursement of health insurance premiums, as additional child support, of Seventy-Two Dollars and Six Cents (\$72.06) per month, with the first installment being due and payable on January 1, 2021 and a like installment being due and payable on or before the 1st day of each month thereafter until the termination of current child support for all children under this order.

IT IS FURTHER ORDERED that the Income Withholding Order for Support authorized above in this order shall include the cash medical support payments ordered herein.

IT IS FURTHER ORDERED that all cash medical support payments shall be made through the state disbursement unit at Texas Child Support Disbursement Unit, P.O. Box 659791, San Antonio, Texas 78265-9791, and thereafter promptly to Courtney Garcia for the support of the children.

IT IS ORDERED that the cash medical support provisions of this order shall be an obligation of the estate of Dale Clauder Dunn and shall not terminate on his death.

5. Allocation of Unreimbursed Expenses -

Pursuant to section 154.183 (c) of the Texas Family Code, the reasonable and necessary health-care expenses of the children that are not reimbursed by health insurance are allocated as follows: Courtney Garcia is ORDERED to pay 50 percent and Dale Clauder Dunn is ORDERED to pay 50 percent of the unreimbursed health-care

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expense if, at the time the expenses are incurred, Courtney Garcia is providing insurance as ordered.

The conservator who incurs a health-care expense on behalf of a child is ORDERED to furnish to the other conservator all forms, receipts, bills, statements, and explanations of benefits reflecting the uninsured portion of the health-care expenses within thirty days after the incurring conservator receives them. If the incurring conservator furnishes to the nonincurring conservator the forms, receipts, bills, statements, and explanations of benefits reflecting the unreimbursed portion of the health-care expenses within thirty days after the incurring conservator receives them, the nonincurring conservator is ORDERED to pay the non-incurring conservator's percentage of the unreimbursed portion of the health-care expenses either by paying the health-care provider directly or by reimbursing the incurring conservator for any advance payment exceeding the incurring conservator's percentage of the unreimbursed portion of the health-care expenses within thirty days after the nonincurring conservator receives the forms, receipts, bills, statements, and/or explanations of benefits. If the incurring conservator fails to furnish to the nonincurring conservator the forms, receipts, bills, statements, and explanations of benefits reflecting the unreimbursed portion of the health-care expenses within thirty days after the incurring conservator receives them, the nonincurring conservator is ORDERED to pay the nonincurring conservator's percentage of the unreimbursed portion of the health-care expenses either by paying the health-care provider directly or by reimbursing the

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incurring conservator's percentage of the unreimbursed portion of the health-care expenses within 120 days after the nonincurring conservator receives the forms, receipts, bills, statements, and/or explanations of benefits.

These provisions apply to all unreimbursed health-care expenses of a child who is the subject of this suit that are incurred while child support is payable for any child.

6. Secondary Coverage - IT IS ORDERED that if a party provides secondary health insurance coverage for the children, both parties shall cooperate fully with regard to the handling and filing of claims with the insurance carrier providing the coverage in order to maximize the benefits available to the children and to ensure that the party who pays for health-care expenses for the children is reimbursed for the payment from both carriers to the fullest extent possible.

Compliance with Insurance Company Requirements - Each party is ORDERED to conform to all requirements imposed by the terms and conditions of any policy of health insurance covering the children in order to assure the maximum reimbursement or direct payment by any insurance company of the incurred health-care expense, including but not limited to requirements for advance notice to any carrier, second opinions, and the like. Each party is ORDERED to use "preferred providers," or services within the health maintenance organization or preferred provider network, if applicable. Disallowance of the bill by a health insurance company shall not excuse the obligation of either party to make payment. Excepting emergency health-care expenses Incurred on behalf of the children, if a party incurs health-care expenses for the children using "out-of-

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network" health-care providers or services, or fails to follow the health insurance company procedures or requirements, that party shall pay all such health-care expenses incurred absent (1) written agreement of the parties allocating such health-care expenses or (2) further order of the Court.

7. Claims - Except as provided in this paragraph, the party who is not carrying the health insurance policy covering the children is ORDERED to furnish to the party carrying the policy, within fifteen days of receiving them, all forms, receipts, bills, and statements reflecting the health expenses the party not carrying the policy incurs on behalf of the children. In accordance with Section 1204.251 and 1504.055(a) of the Texas Insurance Code, IT IS ORDERED that the party who is not carrying the health insurance policy covering the children, at that party's option, or others as authorized by law, may file any claims for health-care expenses directly with the insurance carrier with and from whom coverage is provided for the benefit of the children and receive payments directly from the insurance company. Further, for the sole purpose of section 1204.251 of the Texas Insurance Code, Dale Clauder Dunn is designated the managing conservator or possessory conservator of the children.

The party who is carrying the health insurance policy covering the children is ORDERED to submit all forms required by the insurance company for payment or reimbursement of health-care expenses incurred by either party on behalf of a child to the insurance carrier within fifteen days of that party's receiving any form, receipt, bill or statement reflecting the expenses.

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8. Constructive Trust for Payments Received - IT IS ORDERED that any insurance payments received by a party from the health insurance carrier as reimbursement for health-care expenses incurred by or on behalf of a child shall belong to the party who paid those expenses. IT IS FURTHER ORDERED that the party receiving the insurance payments is designated a constructive trustee to receive any insurance checks or payments for health-care expenses paid by the other party, and the party carrying the policy shall endorse and forward the checks or payments, along with any explanation of benefits received, to the other party within three days of receiving them.

9. WARNING - A PARENT ORDERED TO PROVIDE HEALTH INSURANCE OR TO PAY THE OTHER PARENT ADDITIONAL CHILD SUPPORT FOR THE COST OF HEALTH INSURANCE WHO FAILS TO DO SO IS LIABLE FOR NECESSARY MEDICAL EXPENSES OF THE CHILDREN. WITHOUT REGARD TO WHETHER THE EXPENSES WOULD HAVE BEEN PAID IF HEALTH INSURANCE HAD BEEN PROVIDED, AND FOR THE COST OF HEALTH INSURANCE PREMIUMS OR CONTRIBUTIONS, IF ANY, PAID ON BEHALF OF THE CHILDREN.

10. Notice to Employer - On this date a Medical Support Notice was authorized to be issued by the Court. For the purpose of section 1169 of title 29 of the United States Code, the party not carrying the health insurance policy is designated the custodial parent and alternate recipient's representative.

11. WARNING - A PARENT ORDERED TO PROVIDE HEALTH INSURANCE OR DENTAL INSURANCE OR TO PAY THE OTHER PARENT



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ADDITIONAL CHILD SUPPORT FOR THE COST OF HEALTH INSURANCE OR DENTAL INSURANCE WHO FAILS TO DO SO IS LIABLE FOR NECESSARY MEDICAL EXPENSES OF THE CHILDREN, WITHOUT REGARD TO WHETHER THE EXPENSES WOULD HAVE BEEN PAID IF HEALTH INSURANCE OR DENTAL INSURANCE HAD BEEN PROVIDED, AND FOR THE COST OF HEALTH INSURANCE PREMIUMS, DENTAL INSURANCE PREMIUMS, OR CONTRIBUTIONS, IF ANY, PAID ON BEHALF OF THE CHILDREN.

Miscellaneous Child Support Provisions

Support as Obligation of Estate

IT IS ORDERED that the provisions for child support in this order shall be an obligation of the estate of Dale Clauder Dunn and shall not terminate on the death of Dale Clauder Dunn. IT IS ORDERED that payment received by Courtney Garcia for the benefit of the children due to the death of Dale Clauder Dunn, including payments from the Social Security Administration, Department of Veterans Affairs or other governmental agency or life insurance proceeds, annuity payments, trust distributions, or retirement survivor benefits, shall be a credit against this obligation. Any remaining balance of the child support is an obligation of Dale Clauder Dunn's estate.

Termination of Orders on Marriage of Parties but Not on Death of Obligee

The provisions of this order relating to current child support terminate on the marriage of Courtney Garcia to Dale Clauder Dunn unless a nonparent or agency has been appointed conservator of the children under chapter 153 of the Texas Family Code.

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

An obligation to pay child support under this order does not terminate on the death of Courtney Garcia but continues as an obligation to Madeline Brooke Dunn, Dale Benson Dunn, and Elizabeth Brooke Dunn.

Optimizing Development of Relationship between Parties and Children

IT IS ORDERED that the parties are to notify the other parent conservator immediately regarding all medical and educational issues that may arise.

Required Information

The information required for each party by section 105.006(a) of the Texas Family Code is as follows:

Name: Courtney Garcia

Social Security number: xxx-xx-x466
Driver's license number: xxxxx154 Issuing state: Texas
Current residence address: 2576 CR 317, Snyder, Texas 79549
Home telephone number: (325) 436-3991
Name of employer: Cogdell Memorial Hospital
Address of employment: 1700 Cogdell Blvd., Snyder, Texas 79549
Work telephone number: (325) 574-7150

Name: Dale Clauder Dunn

Social Security number: xxx-xx-x925
Driver's license number: xxxxx154 Issuing state: Texas
Current residence address: 3119 Indian Summer Trail, Friendswood, Texas 77546
Home telephone number: (325) 207-4353
Name of employer: Envision Physician Services
Address of employment: _____
Work telephone number: _____

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

Required Notices

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.

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.

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.

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 this Court or by registered or certified mail addressed to the Galveston County District Clerk at 601 59th Street, Room 4001, Galveston, Texas 77550. Notice shall be given to the state case registry by mailing a copy of the notice to State Case Registry, Contract Services Section, MC046S, P.O. Box 12017, Austin, Texas 78711-2017.

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,

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

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.

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

- (1) THE CIRCUMSTANCES OF THE CHILD OR A PERSON AFFECTED BY THE ORDER HAVE MATERIALLY AND SUBSTANTIALLY CHANGED;
OR
- (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 FROM THE AMOUNT THAT WOULD BE AWARDED IN ACCORDANCE WITH THE CHILD SUPPORT GUIDELINES.

Warnings

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.

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Attorney's Fees

IT IS ORDERED that attorney's fees are to be borne by the party who incurred them.

Costs

IT IS ORDERED that costs of court are to be borne by the party who incurred them.

Discharge from Discovery Retention Requirement

IT IS ORDERED that the parties and their respective attorneys are discharged from the requirement of keeping and storing the documents produced in this case in accordance with rule 191.4(d) of the Texas Rules of Civil Procedure.

Replacement of Prior Orders

It is ORDERED that the terms of this Order in Suit to Modify Parent-Child Relationship are intended to wholly replace the following orders:

1. Agreed Order in Suit Affecting the Parent Child Relationship, dated July 19, 2017, signed by the 132nd Judicial District Court of Scurry County, Texas under Cause No. 25746; and
2. Temporary Orders in Suit to Modify Parent-Child Relationship, dated September 26, 2018, signed by the 132nd Judicial District Court of Harris County, Texas under Cause No. 25746.

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Date of Order

This order judicially PRONOUNCED AND RENDERED in the 306th Judicial District Court, Galveston County, Texas, on April 15, 2020 and further noted on the court's docket sheet on the same date but signed on December 4, 2020.



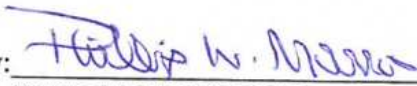
JUDGE PRESIDING



NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

APPROVED AS TO FORM ONLY:

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By: 

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ATTORNEY FOR DALE CLAUDER DUNN

NO. 01-21-00100-CV

**IN THE FIRST COURT OF APPEALS
AT HOUSTON, TEXAS**

DALE CLAUDER DUNN

Appellant

VS.

COURTNEY BROOKE GARCIA

Appellee

APPELLANT'S APPENDIX 2

Findings of Fact and Conclusions of Law

FILED



CAUSE NO. 18FD2521

2021 FEB 11 AM 10:43

IN THE INTEREST OF

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§

IN THE DISTRICT COURT

MADELINE [REDACTED] DUNN,
DALE [REDACTED] DUNN, AND
ELIZABETH [REDACTED] DUNN

DISTRICT CLERK
GALVESTON COUNTY, TEXAS
306TH JUDICIAL DISTRICT

CHILDREN

GALVESTON COUNTY, TEXAS

**TRIAL COURT'S
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

1. FINDINGS OF FACT

1. Dale Dunn and Courtney Garcia entered into an Agreed Order in Suit Affecting Parent-Child Relationship ("original Order") filed under Cause No. 25746 and signed by the 132nd District Court of Scurry County on July 19, 2017.

2. The original Order appointed Dale Dunn as the joint managing conservator with the exclusive right to designate the primary residence of the children within the State of Texas for one year from July 19, 2017, and with no geographic restriction thereafter.

3. The original Order further provided that Dale Dunn have the exclusive right to consent to medical, dental, and surgical treatment involving invasive procedure, with notice to Courtney Garcia; the exclusive right to consent to psychiatric and psychological treatment of the children, with notice to Courtney Garcia; the exclusive right to receive and give receipt for periodic payments for support of the children and to hold or disburse the funds for the benefit of the children; the independent right to represent the children in legal action and to make other decisions of substantial legal significance concerning the children; the right, subject to the agreement of the other parent conservator, to consent to marriage and to enlistment in the armed forces of the United States; the exclusive right to make decisions concerning the children's education, with notice to Courtney Garcia; the independent right to services and earnings of the children; and the independent right to act as an agent for the children.

4. The original Order provided that Courtney Garcia have the independent right to represent the children in legal action and to make other decisions of substantial legal significance concerning the children; the right, subject to the agreement of the other parent conservator, to consent to marriage and to enlistment in the armed forces of the United States; the independent right to services and earnings of the children; and the independent right to act as an agent for the children.

5. The original Order further provided that Courtney have the right to one weekend period of possession per month, along with an extended period of possession for summer vacation, and alternating holiday periods of possession.

6. The original Order required Courtney Garcia to pay Dale Dunn child support in the amount of \$500 per month until the youngest child reached the age of 18 years and graduated from high school.

7. On June 15, 2018, Courtney Garcia filed a Petition to Modify Parent-Child Relationship under Cause No. 25746 in the 132nd District Court of Scurry County, Texas, the court of continuing jurisdiction at the time of filing. The Petition to Modify included, as an attachment to the Petition, a supporting affidavit detailing why the children's present circumstances may endanger their physical health or significantly impair their emotional development, and Courtney Garcia also sought a Temporary Orders hearing as a request in her Petition to Modify.

8. On June 22, 2018, Courtney Garcia filed a First Amended Petition to Modify Parent-Child Relationship. The First Amended Petition also contained a supporting affidavit with additional facts and support detailing why the children's present circumstances may endanger their physical health or significantly impair their emotional development.

9. On July 27, 2018 and August 15, 2018, the 132nd District Court of Scurry County heard Courtney Garcia's request for Temporary Orders and found that based on Dale Dunn's dismissive of a very serious outcry (of inappropriate sexual touching) by his own child, it was in the best interest of the children that temporary orders be entered to change the designation of the joint managing conservator who designated the primary residence of the children, finding that continuing as it is (with Dale Dunn being the joint managing conservator with the exclusive right to designate the primary residence of the children) would significantly impair the children's physical health or emotional development.

10. As a result of the finding by the 132nd District Court of Scurry County, the Court ordered that the parties were appointed temporary joint managing conservators.

11. The Court further ordered that Courtney Garcia was appointed as the conservator with the exclusive right to designate the primary residence of the children on a temporary basis; the Court ordered that Dale Dunn would have the right to possession of the children pursuant to a Standard Possession Order as outlined in the Texas Family Code, and Dale Dunn further made the elections for alternative beginning and ending times.

12. The Court ordered that the parent exercising their possession of the children should be responsible for picking up the children from the other parent at the beginning of that period of possession.

13. The Court ordered Dale Dunn to pay Courtney Garcia child support in the amount of \$2,565 per month.

14. The Court ordered that Courtney Garcia have the exclusive right to make educational decisions for the children after giving notice to Dale Dunn.

15. The parties operated under the Temporary Orders made by the 132nd District Court of Scurry County until Trial on January 28-30, 2020, February 5-6, 2020, February 12, 2020, and finally concluding on April 13, 2020.

16. On August 15, 2018, after making Temporary Orders, the 132nd District Court of Scurry County heard Respondent's Motion to Transfer Venue. After hearing evidence and argument of counsel, the 132nd District Court of Scurry County found that the residence of the children for the 6 months preceding the filing of the motion to modify was Galveston County, Texas, and the 132nd District Court of Scurry County therefore granted the Motion to Transfer Venue and transferred the case to Galveston County, Texas.

17. The case was transferred into the 306th District Court of Galveston County, Texas under Cause No. 18FD2521.

18. The 306th District Court of Galveston County, Texas held a final Trial on January 28-30, 2020, February 5-6, 2020, February 12, 2020, and finally concluding on April 13, 2020. After hearing evidence and argument of counsel, the 306th District Court of Galveston County makes the following findings:

a. The order Courtney Garcia seeks to modify is not based on a mediated or collaborative law settlement agreement.

b. The circumstances of the children, a conservator of other party affected by the original Order have materially and substantially changed since July 19, 2017, the date of the original Order. Specifically, Dale Dunn has relocated from Scurry County, Texas to Friendswood, Texas, and that Dale Dunn intended, at the time he relocated to Friendswood, Texas, to establish his primary residence in Galveston County, Texas.

c. Further, Courtney Garcia has married Tanner Garcia since July 19, 2017, the date of the original Order, and Courtney Garcia has given birth to two (2) children with her spouse, Tanner Garcia, since July 19, 2017, the date of the original Order, which children are the half-siblings of the children the subject of this suit.

d. [REDACTED] Dunn was enrolled by Dale Dunn for Kindergarten in Snyder Independent School District for the 2017-18 school year. On or about October 30, 2017, Dale Dunn checked the child out of school early and notified the school that the child, [REDACTED] Dunn, would not be returning to school at Snyder Independent School District. Thereafter, Dale Dunn "homeschooled" the children, and [REDACTED] Dunn was enrolled in the Texas Tech University school for children for a period of time.

e. After the ruling of the 132nd Judicial District Court on August 15, 2018, the children were enrolled in Snyder Independent School District by Courtney Garcia.

f. It is in the best interest of the children that Courtney Garcia be named as the joint managing conservator with the exclusive right to designate the primary residence of the children and that the residence of the children should be within Scurry County, Texas or Galveston County, Texas (where the parties presently reside).

g. Dale Dunn was notified of inappropriate touching of the child, ~~Madeline~~ Dunn, and that Dale Dunn did not notify authorities or comply with the mandated reporting of such an incident, despite his position as a licensed M.D. which mandates the reporting of such incidents.

h. Dale Dunn's relocation and change of residence to Friendswood, Texas, has caused Courtney Garcia to incur increased costs when Courtney Garcia is required to transport the children to the residence of Dale Dunn before and/or after a period of possession.

i. Dale Dunn's profession as a Medical Doctor, and his current employment, require him to travel to different cities across the State of Texas to render his employment services. As such, Dale Dunn's schedule is inconsistent and he commonly works 24-hour shifts, not allowing himself to be available during those shifts to care for the children.

19. Dale Dunn earns income that would be in excess of a net of \$8,550 per month, and that at the time of the filing of the Petition to Modify Parent-Child Relationship on June 15, 2018, a net income of \$8,550 was the amount on which child support would be based pursuant to the guidelines in the Texas Family Code. The Court FINDS that application of the guidelines results in Dale Dunn's child support obligation being \$2,565 per month for three children, and reducing to \$2,137.50 for two children, and then to \$1,710 for one child.

20. Dale Dunn requested that the Court make a finding that Courtney Garcia committed perjury. The Court FINDS that no evidence was presented at Trial that Courtney Garcia committed perjury, and therefore, the Court makes no such finding.

21. Any finding of fact that is a conclusion of law shall be deemed a conclusion of law.

2. CONCLUSIONS OF LAW

22. Subsections (a) and (b) of Section 156.102 of the Texas Family Code requires that if a party files a suit to modify a prior order within one year of the date of the signing of a final order, the filing party must include an affidavit, along with supporting facts, containing certain allegations, one of which may be that the child's present environment may endanger the child's physical health or significantly impair the child's emotional development.

23. Section 156.102(c) of the Texas Family Code further requires that the court shall deny the relief sought and refuse to schedule a hearing for modification under this section unless the court determines, on the basis of the affidavit, that facts adequate to support an allegation listed in Subsection (b) are stated in the affidavit. If the court determines that the facts stated are adequate to support an allegation, the court shall set a time and place for the hearing.

24. On July 19, 2017, Dale Dunn and Courtney Garcia entered into an Agreed Order in Suit Affecting Parent-Child Relationship. On June 15, 2018, Courtney Garcia filed a Petition to Modify Parent-Child Relationship under Cause No. 25746 in the 132nd District Court of Scurry County, Texas, which contained the requisite affidavit for filing within one year of the order sought to be modified. On June 22, 2018, Courtney Garcia filed a First Amended Petition to Modify Parent-Child Relationship which contained an updated affidavit pursuant to the requirements of the Texas Family Code. On the basis of the affidavit of Courtney Garcia, the 132nd District Court determined that the facts stated were adequate to support an allegation, and the court set a time and place for the hearing. A hearing was then conducted on July 27, 2018 and completed on August 15, 2018.

25. On July 27, 2018 and August 15, 2018, the 132nd District Court of Scurry County heard Courtney Garcia's request for Temporary Orders and found that based on Dale Dunn's dismissive of a very serious outcry (of inappropriate sexual touching) by his own child, it was in the best interest of the children that temporary orders be entered to change the designation of the joint managing conservator who designated the primary residence of the children, finding that continuing as it is (with Dale Dunn being the joint managing conservator with the exclusive right to designate the primary residence of the children) would significantly impair the children's physical health or emotional development. The 132nd District Court of Scurry County made certain orders, as outlined in Paragraphs 10 through 14 herein.

26. The parties operated under the Temporary Orders made by the 132nd District Court of Scurry County until Trial on January 28-30, 2020, February 5-6, 2020, February 12, 2020, and finally concluding on April 13, 2020.

27. For the purpose of the Court making modifications to custody at final trial, Texas Family Code section 156.101 permits a court to modify an order that provides for the appointment of a conservator of a child, that provides the terms and conditions of

conservatorship, or that provides for the possession of or access to a child if modification would be in the best interest of the child and the circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed since the earlier of the date of the rendition of the order sought to be modified. Pursuant to this section and based on the Court's finding that the circumstances of the children, a conservator of other party affected by the original Order have materially and substantially changed since July 19, 2017, the Court granted certain modifications requested by Courtney Garcia to conservatorship and possession and access and finds the modifications to be in the children's best interest.

28. The Court finds that Courtney Garcia established that a material and substantial change of circumstances occurred after the rendition of the agreed order in 2017.

29. Texas Family Code section 153.134(a) provides that court may render an order appointing the parents joint managing conservators only if the appointment is in the best interest of the child, considering the following factors:

- (1) whether the physical, psychological, or emotional needs and development of the child will benefit from the appointment of joint managing conservators;
- (2) the ability of the parents to give first priority to the welfare of the child and reach shared decisions in the child's best interest;
- (3) whether each parent can encourage and accept a positive relationship between the child and the other parent;
- (4) whether both parents participated in child rearing before the filing of the suit;
- (5) the geographical proximity of the parents' residences;
- (6) if the child is 12 years of age or older, the child's preference, if any, regarding the person to have the exclusive right to designate the primary residence of the child; and
- (7) any other relevant factor.

30. Texas Family Code section 153.134(b) provides that in rendering an order appointing joint managing conservators, the court shall:

- (1) designate the conservator who has the exclusive right to determine the primary residence of the child and (A) establish, until modified by further order, a geographic area within which the conservator shall maintain the child's primary residence; or (B) specify that the conservator may determine the child's primary residence without regard to geographic location;
- (2) specify the rights and duties of each parent regarding the child's physical care, support, and education;
- (3) include provisions to minimize disruption of the child's education, daily routine, and association with friends;
- (4) allocate between the parents, independently, jointly, or exclusively, all of the remaining rights and duties of a parent as provided by Chapter 151; and

(5) if feasible, recommend that the parties use an alternative dispute resolution method before requesting enforcement or modification of the terms and conditions of the joint conservatorship through litigation, except in an emergency.

31. To minimize disruption of the child's education, daily routine, and association with friends, the Court made orders to ensure the children remained physically in Scurry County, Texas (where they are enrolled in school) on nights prior to school days. This restriction only applies to periods of time during the regular school term.

32. The Court made orders for conservatorship with regard to the rights of the parties for decision-making regarding needs of the children, many of which were exclusive to Courtney Garcia, due to the parties having a history of an inability to work together or co-parent on decisions involving the children. This is especially applicable to decisions regarding medical treatment for the children, psychological treatment for the children, and educational decisions.

33. Based on these findings, the 306th District Court of Galveston County ordered that the parties should remain joint managing conservators of the children. The Court further ordered that Courtney Garcia shall have the exclusive right to designate the primary residence of the children within Scurry County, Texas or Galveston County, Texas; the exclusive right, after meaningful consultation with the other conservator, to consent to medical, dental, and surgical treatment involving invasive procedures; the exclusive right, after meaningful consultation with the other conservator, to consent to psychiatric and psychological treatment of the children; the exclusive right to receive and give receipt for periodic payments for the support of the children and to hold or disburse these funds for the benefit of the children; exclusive right, after meaningful consultation with the other conservator, to make decisions regarding the children's education.

34. The Court ordered that Courtney Garcia and Dale Dunn should each have the independent right to represent the children in legal action and to make other decisions of substantial legal significance concerning the children; the right, subject to the agreement of the other parent conservator, to consent to marriage and to enlistment in the armed forces of the United States; the independent right to services and earnings of the children; and the independent right to act as an agent for the children.

35. Texas Family Code Section 153.256 provides factors for the Court to consider when making orders for possession and access other than a standard possession order. Pursuant to this section, the Court should consider the following guidelines: (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.

36. Section 156.103(a) of the Texas Family Code states that if a change of residence results in increased expenses for a party having possession of or access to a child, the court may render appropriate orders to allocate those increased expenses on a

fair and equitable basis, taking into account the cause of the increased expenses and the best interest of the child. Pursuant to this section, and based on the Court's finding that Dale Dunn moved from Scurry County, Texas to Friendswood, Texas since July 19, 2017, the Court granted certain modifications requested by Courtney Garcia to the location where the children should be exchanged by the parties at the beginning and end of the parties' periods of possession of the children. The Court finds the modifications to be in the children's best interest.

37. The Court ordered a modified possession order, granting Dale Dunn the right to possession of the children every other week (week periods beginning and ending on Sundays at 6:00 p.m.).

38. The Court finds that Dale Dunn has a history of traveling between Scurry County, Texas and Friendswood, Texas during his periods of possession of the children. As the children are all of school age or quickly approaching, the Court finds that it is in the children's best interest that possession of the children be exercised within Scurry County, Texas, local to their schools, on nights immediately preceding school days for the children. As such, the Court requires that during the regular school term, the children shall spend the night within Scurry County, Texas or a county contiguous to Scurry County, Texas during Dale Dunn's periods of possession on each night preceding a day when the children's school is in session. For the purposes of this requirement, "overnight" means between the hours of 10:00 p.m. and 6:00 a.m.

39. The Court ordered that Courtney Garcia have the right to possession of the children for the alternating weeks when Dale Dunn is not entitled to possession. The Court further ordered that the parties alternate Spring Vacation and holiday periods of possession. The Court ordered that the pickup and drop off location for exchanges occur at the residence of Courtney Garcia. The Court further ordered that Courtney Garcia shall have the right to possession of the children at all times not specifically designated for Dale Dunn in the modified possession order.

40. The Court ordered a right of first refusal during the school term, giving the parent not in possession of the children the right to care for the children if the parent in possession will be absent for a period of 6 hours or more. The Court further ordered that the parent not in possession of the children shall have the right to electronic communication with the children on Tuesdays and Thursdays.

41. Texas Family Code section 156.401 provides that a court may modify an order that provides for the support of a child, including an order for health care coverage under Section 154.182 if the circumstances of the child or a person affected by the order have materially and substantially changed since the earlier of the date of the order's rendition. Pursuant to this section and based on the Court's finding that the circumstances of the children, a conservator of other party affected by the original Order have materially and substantially changed since July 19, 2017, the date of the original Order, the Court granted certain modifications requested by Courtney Garcia to child

support and health care provisions for the children and finds the modifications to be in the children's best interest.

42. Chapter 154 of the Texas Family Code provides the guidelines for calculating child support. Section 154.122(a) of the Texas Family Code provides that the calculation under the guidelines *in effect at the time of the hearing* is presumed to be reasonable and an order of support conforming to the guidelines is presumed to be in the best interest of the child. At the time of the Trial in this case, the Section 154.122(b) provides that a Court may determine the application of the guidelines would be unjust or inappropriate, in which case the Court may make other orders for child support.

43. The guidelines, as they existed at the time of Trial provide that the child support percentages should be applied to the first \$9,200 of the obligor's net resources. The guidelines, as they existed at the time of that Courtney Garcia filed her petition to modify in June 2018, provided that the child support percentages should be applied to the first \$8,550 of the obligor's net resources. The net resources of the obligor, Dale Dunn, were in excess of \$9,200 at the time of Trial. The Court based the child support calculation on the guidelines as they existed on the date of Courtney Garcia's filing of the Petition to Modify Parent-Child Relationship on June 15, 2018.

44. The Court further considered the factors outlined in section 154.123 of the Texas Family Code, including but not limited to the age and needs of the children, the ability of the parents to contribute to the support of the children, the amount of possession of the children, the amount of the obligee's net resources, and other reasons consistent with the best interest of the children and taking into consideration the circumstances of the parents.

45. The guidelines at the time of filing and at the time of Trial provide that the child support percentage for 3 children is 30% of the obligor's net resources, 25% for 2 children, and 20% for 1 child; provided there are no other minor children for whom the obligor has a legal duty to support. Dale Dunn has no minor children or other children for whom he has a legal duty to support; thus, the child support percentages stated above are applied. Pursuant to the guidelines set forth in the Texas Family Code, the Court made orders for child support as described herein.

46. Dale Dunn failed to provide income documents at Trial, but did testify that he earns in excess of \$8,550 net income per month. Dale Dunn is a licensed Medical Doctor and provides medical services as a Doctor in multiple hospitals in the State of Texas, including in Nacogdoches, Texas, and in Scurry County, Texas. Dale Dunn owns a personal airplane, owns a home in Scurry County, Texas, rents a home in Friendswood, Texas located at 3119 Indian Summer Trail, Friendswood, Texas, owns multiple vehicles that he leaves at airports to provide transportation to and from airports when traveling by plane, and takes numerous vacations throughout the year with the children. On the other hand, Courtney Garcia works as a nurse and earns a monthly gross income of \$4,141.85. Additionally, Courtney Garcia has two minor children for whom she has a legal duty to support, in addition to the three children the subject of this suit. The Court therefore

FINDS that despite the parties exercising a possession schedule that allows Dale Dunn the right to possession of the children 50 percent of the time, it is necessary that Dale Dunn pay guideline child support to Courtney Garcia to equalize the income of the parties and to ensure the needs of the children are met when they are with both parents.

47. The Court finds that the application of the child support guidelines would be unjust and inappropriate, considering the age and needs of the children, the ability of the parents to contribute to the support of the children, the amount of possession of the children, the amount of the Courtney Garcia's net resources, and other reasons consistent with the best interest of the children and taking into consideration the circumstances of the parents. The Court applied the child support percentages to \$8,550. As such, the Court ordered Dale Dunn to pay child support to Courtney Garcia in the amount of \$2,565 per month (for three children), and ordered that the child support reduce to \$2,137.50 and then to \$1,710 as each child emancipates.

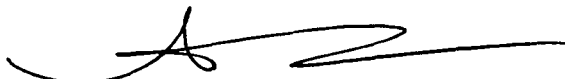
48. The Court ordered that Courtney Garcia maintain health insurance coverage for the children and that Dale Dunn reimburse Courtney Garcia the sum of \$72.06 per month for the cost of coverage, payable until child support is no longer payable for any child the subject of this suit. The Court further ordered the parties to each pay 50 percent of the child's uninsured healthcare expenses.

49. Finally, the Court ordered each party to pay the attorney's fees and court costs incurred by him- or herself.

50. Section 37.02 of the Texas Penal Code details that perjury is committed if a person, with the intent to deceive and with knowledge of the statement's meaning either (1) he makes a false statement under oath or swears to the truth of a false statement previously made and the statement is required or authorized by law to be made under oath; or (2) he makes a false unsworn declaration under Chapter 132, Civil Practice and Remedies Code. No evidence was presented by Dale Dunn to support his allegation that Courtney Garcia committed perjury.

51. In conclusion, the Court finds and concludes based on the governing law that the orders made for conservatorship, possession and access, support, and injunctions are in the best interest of the children the subject of this suit.

Signed: February 9, 2021



ANNE B. DARRING – PRESIDING JUDGE