Affirmed and Opinion filed October 28, 1999.

In The

Fourteenth Court of Appeals

NO. 14-98-00148-CV

RONALD GENE NACHTMAN, Appellant

V.

MYRIAM CAREY, Appellee

On Appeal from the 309th Judicial District Court
Harris County, Texas
Trial Court Cause No. 93-26224A

O P I N I O N

Appellant, Ronald Gene Nachtman, appeals the denial of his motion to modify conservatorship in a suit affecting the parent-child relationship. We affirm.

In June 1995, appellee, Myriam Carey, was appointed sole managing conservator of her daughter, Nicole Gene Nachtman. Ronald Nachtman was named possessory conservator. In November 1995, Nachtman filed a motion to modify conservatorship. Carey filed a countermotion seeking to have Nachtman's visits supervised, child support increased, and the residence and domicile requirements vacated. The trial court granted Carey's motion. In twelve issues, Nachtman claims the trial court erred:

(1) in not appointing him the managing conservator or joint managing conservator of his child; (2-3) in ordering supervised visitation; (4) in signing a modification order which did not restrict the child's residency and domicile; (5) in signing a modification order because the modifications entered deny his daughter a stable environment as mandated by the Texas Family Code; (6-7) in not finding reports of child abuse made against Ronald Nachtman to be false; (8) in signing the modification order because the judgment does not conform to the pleadings; (9) in admitting the April 1997 Safehouse report because it was an ex parte communication; (10) in not replacing the appointed psychiatrist who repeatedly disobeyed the trial court's order; (11) in refusing to give Nachtman findings of fact and conclusions of law; and (12) in ordering each party to pay $15,000 to the child's ad litem attorney.

Inadequacy of the Record

An appellant cannot challenge the factual sufficiency of the evidence without bringing forth a complete statement of facts. *See Owens-Illinois, Inc. v. Chatham,* 899 S.W.2d 722, 735 (Tex. App.–Houston [14th Dist.] 1995, writ dism'd). "The law in this state is clear: if there is a complaint about the legal or factual insufficiency of the evidence, this burden cannot be discharged in the absence of a complete or agreed statement of facts." *Id*; *see also Christiansen v. Prezelski,* 782 S.W.2d 842, 843 (Tex. 1990) (holding that the appellant has the responsibility to bring forth a complete statement of facts when asserting a no evidence point); *Englander Co. v. Kennedy,* 428 S.W.2d 806 (Tex. 1968)(per curiam). The record before us is incomplete; the only testimony is that of Dr. Joan Anderson.[1] This is insufficient.

Appellant makes challenges to the legal and factual sufficiency of the evidence in every issue except nine and eleven. Appellant's ninth issue questions the admissibility of a report which is similarly missing from the record. Lacking a sufficient record, we cannot reach issues one through ten or issue twelve.

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[1] At oral argument, Nachtman claimed to have filed an affidavit of indigency with the trial court. We have been unable, however, to locate such an affidavit in the record. According to Nachtman, the court reporter disagreed with his status as an indigent and, as a result, only provided approximately one third of the reporter's record.

Findings of Fact and Conclusions of Law

In his eleventh issue, Nachtman argues the trial court erred (1) in not making findings of fact and conclusions of law; (2) when it filed duplicitous findings of fact and conclusions of law; (3) when a copy of the findings of fact and conclusions of law were not served on Nachtman; and (4) when it signed the findings of fact and conclusions of law after the expiration of its plenary power.

The procedural rules establishing the time limits for requesting and filing findings of fact and conclusions of law do not preclude the trial court from issuing late findings. *See Robles v. Robles*, 965 S.W.2d 605, 610 (Tex. App.–Houston [1st Dist.] 1998, pet. denied); *Jefferson County Drainage Dist. v. Lower Neches Valley Auth.*, 876 S.W.2d 940, 959-60 (Tex. App.–Beaumont 1994, writ denied). Unless the appellant can show injury, there is no remedy if a trial court files untimely findings and conclusions. *See Robles*, 965 S.W.2d at 610. "Injury may be in one of two forms: (1) the litigant was unable to request additional findings, or (2) the litigant was prevented from properly presenting his appeal." *Id*. If injury is shown, the appellate court may abate the appeal in order to give the appellant an opportunity to request additional or amended findings in accordance with the rules. *See id*. at 610-11.

While the trial court did not timely file its findings and conclusions, Nachtman has not shown any harm. He was not denied the opportunity to properly present his appeal because, after the record was supplemented, Nachtman was granted leave to file an amended brief addressing the untimely filed findings and conclusions. Because Nachtman suffered no harm, we find no reversible error.

Accordingly, the judgment of the trial court is affirmed.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed October 28, 1999.

Panel consists of Chief Justice Murphy and Justices Hudson and Frost.

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