

**COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS AT
AMARILLO**

In the Interest of M.A.L., a Child

No. 07-19-00113-CV (Tex. App.—Amarillo Dec. 17, 2019) · No. No. 07-19-00113-CV · Decided December 17, 2019

SUMMARY

The Texas Seventh Court of Appeals affirmed an order appointing the father, mother, and stepfather as joint managing conservators and granting the stepfather authority to designate the child's primary residence. The court held that the parental presumption under Texas Family Code section 153.131 applies to original custody proceedings, not modification proceedings, and that the stepfather established standing under sections 156.002 and 102.003 based on his possession of the child for more than six months.

CASE DETAILS

COURT	Court of Appeals for the Seventh District of Texas at Amarillo
WRITING FOR THE COURT	Brian Quinn, Chief Justice; Pirtle, Justice; Parker, Justice
JURISDICTION	Texas
DECIDED	December 17, 2019
DOCKET	No. 07-19-00113-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed an order modifying the parent-child relationship that appointed Father, Mother, and Stepfather as joint managing conservators and granted Stepfather the power to designate the child's primary residence.
PRECEDENTIAL VALUE	Published memorandum opinion
PARTIES	Father v. Stepfather, Mother

TOPICS

- child custody
- family law procedure
- statutory interpretation
- appellate procedure

PRACTICE AREAS

- family law
- child custody
- appellate procedure

QUESTIONS PRESENTED

1. Whether the parental presumption in Texas Family Code section 153.131 applied to Stepfather's suit to modify a prior custody order.
2. Whether Stepfather established standing to file the modification suit under Texas Family Code sections 102.004, 102.003, and 156.002.

HOLDINGS

1. Section 153.131(a)'s parental presumption applies only in original custody proceedings, not in proceedings to modify a prior custody order; therefore, the statute was inapposite to Stepfather's modification proceeding.
2. Stepfather had standing to initiate the modification suit because section 156.002(b) permits a person who has standing under Chapter 102 to file a modification suit, and section 102.003(9) grants standing to a person who has had actual care, control, and possession of the child for at least six months ending no more than 90 days before filing.

KEY QUOTATIONS

“The presumption in question is that specified in § 153.131 of the Texas Family Code. It provides that, “unless the court finds that appointment of the parent or parents would not be in the best interest of the child because the appointment would significantly impair the child’s physical health or emotional development, a parent shall be appointed sole managing conservator or both parents shall be appointed as joint managing conservators of the child.”” (2)

“The apposite provision is actually found at § 156.002 of the same Code.” (3)

FACTUAL BACKGROUND

The proceeding sought modification of a prior order concerning the parent-child relationship, identified as an order confirming a non-agreed child support review order rendered in August 2009. The trial court found that Stepfather had continually possessed the child for at least the two years preceding the suit. Stepfather testified that the child had lived with him for approximately two and one-half to three years before the hearing, and Father did not contest the possession finding.

PROCEDURAL HISTORY

Stepfather filed a suit to modify a prior custody order. The trial court appointed Father, Mother, and Stepfather as joint managing conservators and granted Stepfather the power to designate the child's primary residence. Father appealed, arguing that Stepfather failed to rebut the parental presumption and lacked standing. The court of appeals overruled both issues and affirmed.

DISPOSITION

affirmed

CASES CITED

- In re V.L.K., 24 S.W.3d 338, 342 (Tex. 2000)
- In re K.D.B., No. 01-18-00840-CV, 2019 Tex. App. LEXIS 7954, at *32–33 (Tex. App.—Houston [1st Dist.] Aug. 29, 2019, no pet.) (mem. op.)
- In re C.E.M.-K., 341 S.W.3d 68, 78–79 (Tex. App.—San Antonio 2011, pet. denied)

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