AFFIRM in part, REVERSE and REMAND in part and Opinion Filed March 13, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-23-00684-CV

IN THE INTEREST OF S.G.B., A CHILD

On Appeal from the 469th Judicial District Court
Collin County, Texas
Trial Court Cause No. 469-55752-2017

MEMORANDUM OPINION

Before Justices Smith, Jackson, and Lee
Opinion by Justice Lee

Following both jury and bench trials, the trial court rendered a final order modifying the parent-child relationship and denying appellant Mother's breach of contract claim. Mother appeals the order, arguing that the trial court erred in submitting appellee Father's affirmative defenses to her contract claim and in finding changed circumstances under § 156.101 of the family code. The trial court also rendered an order awarding attorney's fees as sanctions against counsel for Mother. Counsel for Mother separately appeals this order, arguing the trial court failed to make required findings supporting the court's exercise of its inherent power to

sanction. We affirm the former order and reverse the latter in this memorandum opinion.

I. Background

On March 23, 2018, the trial court entered an order in the parties' suit affecting the parent-child relationship. Mother and Father were appointed joint managing conservators of their child, S.B. Mother had the exclusive right to designate the child's primary residence within Collin County and contiguous counties. A phased possession order was adopted, under which Father had the right to access to the child for up to eight hours on the first, third, and fifth weekends of each month between 10 a.m. and 4 p.m., supervised by Mother or another adult agreed to by the parties. Father's weekend access periods increased in total hours and available window as the child aged each year, until the child turned four, at which point a standard possession order applied.

On December 2, 2020, the parties filed with the trial court a rule 11 agreement. Under the agreement, the parties modified their rights to possession and access to the child as set forth in the aforementioned order. Until the child turned sixteen years old, Father would have access to the child for up to eight total hours on the Saturday and Sunday immediately following the first, third, and fifth Friday of each month between 10 a.m. and 4 p.m., with Mother's or another agreed-to adult's supervision. Section 3 of the agreement provided as follows:

Future Litigation

a. Mother and father will exercise reasonable attempts at counseling to resolve any issue relating to the child or child support before turning to litigation.

b. Father will not attempt to modify the parent-child relationship to eliminate supervision of his access to the child before the child reaches 16 years of age.

c. Mother will not seek enforcement of the child support order by requesting jail time.

d. If either party files suit in violation of this agreement, that party shall pay all attorney's fees and expenses incurred by the other party in responding to such suit, regardless of the ultimate outcome.

On January 12, 2022, Father filed a petition to modify the parent-child relationship. Father alleged the circumstances of the child or other party affected by the order to be modified had materially and substantially changed since the date the order was rendered. Among other things, he requested that the parties remain joint managing conservators and sought an expanded standard possession schedule.

On January 17, 2023, Mother filed a first amended counterpetition, asserting a claim for breach of contract and seeking to modify the parent-child relationship. Regarding the former, Mother alleged Father breached the rule 11 agreement by filing a petition seeking to modify the parent-child relationship before first exercising reasonable attempts at counseling to resolve the issues and by attempting to modify the parent-child relationship before the child reached sixteen years of age. As to the modification, Mother alleged in her counterpetition that "[t]he

circumstances of the child, a conservator, or other party affected by the order to be modified have materially and substantially changed since the date of rendition of the order to be modified." She alleged the basis for the change was that Father had committed an act of family violence against her, which "warrant[ed] further restrictions to [Father's] rights" and not, as Father sought, additional rights to the child. Mother requested that Father "not be entitled to visit with the child" or that his visits be supervised at all times. She requested to be appointed sole managing conservator with Father as possessory conservator.

In an answer to the counterpetition, Father alleged Mother had repudiated the rule 11 agreement, and he asserted the affirmative defenses of release, estoppel, failure of consideration, fraud, illegality, and waiver.

Before trial, the trial court granted Father's motion in limine as to, among other things, any reference to alleged criminal conduct pertaining to Father without first establishing its relevance; any reference to allegations of abuse by Father without first establishing its relevance; and any reference that Father committed or was convicted of any act of domestic violence towards Mother or the child. Under the trial court's order, the attorneys were instructed not to mention, refer to, or bring before the jury the matters covered by the order unless and until the matters had first been called to the trial court's attention out of the jury's presence and a favorable ruling had been received on the matters' admissibility.

The trial court conducted a jury trial beginning February 13, 2023, the transcripts of which do not appear in the record before us. After counsel for Mother violated the court's order on the motion in limine by questioning Father as to whether he had assaulted a past girlfriend years ago, Father moved for a mistrial, which the trial court granted.

On February 28, 2023, the trial court gave notice of allegations of contempt and ordered counsel for Mother to appear for a show cause hearing. On March 2, 2023, Father filed a motion for sanctions for Mother's counsel's violation of the order on the motion in limine and requested that he be awarded attorney's fees against counsel for Mother.

On March 15, 2023, a hearing was held on both the show cause order and Father's motion for sanctions. At the commencement of the hearing, the trial court asked whether the show cause hearing or the motion for sanctions should be considered first. After counsel chose to proceed on the motion for sanctions, the show cause order was not considered further.

On April 7, 2023, Father filed a stipulation

> stipulat[ing] to the relief sought by first amended answer filed on October 17, 2022, and by counterclaim filed on January 3, 2023, by [Mother] that [Mother] be appointed sole managing conservator without geographic restriction and that [Father] be appointed possessory conservator of the child the subject of this suit, S.G.B. Therefore, there shall be no jury question on the issue of changing conservatorship from joint managing conservatorship to sole managing conservatorship or whether a geographic restriction should be in ordered [sic].

On April 11, 2023, the trial court again conducted a jury trial on the breach of contract issues. After the close of evidence, the trial court asked the parties whether there was any objection to the proposed jury charge. After two questions on whether Father breached the rule 11 agreement—by failing to exercise reasonable attempts at counseling to resolve any issue relating to the child before turning to litigation and by attempting to modify the parent-child relationship to eliminate the supervision requirement before the child turned sixteen—the charge included the following question on Father's affirmative defenses:

> Was [Father's] failure to comply, if any, excused?
>
> a. Failure to comply by [Father], if any, is excused by [Mother's] prior repudiation of the Rule 11 Agreement dated December 2, 2020 ("the agreement"). A party repudiates an agreement when he/she indicates by his/her words or actions that he/she is not going to perform his/her obligations under the agreement in the future, showing a fixed intention to abandon, renounce, and refuse to perform the agreement. The repudiation must be absolute and unconditional. Or,
>
> b. Failure to comply by [Father] is excused if compliance is waived by [Mother]. Waiver is an intentional surrender of a known right or intentional conduct inconsistent with claiming the right. Or,
>
> c. Failure to comply by [Father] is excused by [Mother's] previous failure to comply with a material obligation of the Rule 11 Agreement dated December 2, 2020, ("the agreement").

Mother objected to the inclusion of this question, arguing that her claims for breach of contract were based upon section three of the rule 11 agreement, whereas the prior breaches alleged by Father (Mother's alleged failure to surrender possession of the

child) related to other sections of the agreement that represented "independent covenants." In support of this contention, she argued that section 3 of the agreement was not mutually dependent with sections 1 or 2 but operated independently. Mother also objected to the waiver instruction because, she argued, no evidence had been presented supporting it, and to the prior material breach instruction because it was not pleaded. The trial court overruled these objections.

The jury found that Father failed to comply with the rule 11 agreement by failing to exercise reasonable attempts at counseling to resolve any issues before turning to litigation and by attempting to modify the parent-child relationship to eliminate supervision of his access to the child before the child reached sixteen years of age. However, the jury also found that Father's failure to comply was excused.

On April 12, 2023, the trial court held a bench trial on the remaining modification questions.

On May 24, 2023, the trial court signed an order granting Father's motion for sanctions. The trial court found that counsel for Mother willfully and intentionally violated the trial court's order on Father's motion in limine and ordered counsel to pay Father's attorney's fees of $4,880.

On June 2, 2023, the trial court rendered a final order modifying the parent-child relationship and denying Mother's breach of contract claims. The order recited that the jury found for Father on Mother's breach of contract claims "on the ground of the affirmative defense of excuse arising from prior repudiation, waiver, or

previous failure to comply with a material obligation by" Mother. The court removed Mother and Father as joint managing conservators and appointed Mother sole managing conservator, with Father as possessory conservator. The court adopted a standard possession order for the parties. This appeal followed.

II. Discussion

In two broad issues, Mother contends the trial court erred in submitting the question on Father's affirmative defenses to the jury for five reasons, and in modifying the order on the parent-child relationship because there was no evidence of a material and substantial change in circumstances. And in one issue, counsel for Mother challenges the trial court's award of sanctions against him.

A. Mother's appeal

1. Jury charge on affirmative defenses

Mother makes five separate complaints about the jury charge in this case. We have previously articulated the standard of review and applicable law as follows:

> Trial courts have broad discretion in formulating a charge to submit disputed issues to the jury. The standard of review for jury charge error is abuse of discretion. A trial court abuses its discretion if it acts in an arbitrary or unreasonable manner, or if it acts without reference to guiding rules or principles. To determine whether an alleged error in the jury charge is reversible, we must consider the pleadings of the parties, the evidence presented at trial, and the charge in its entirety. We do not reverse for jury charge error in the absence of harm. For harm to result, the error must probably cause the rendition of an improper judgment.
>
> The rules of civil procedure require the trial court to submit the cause upon broad form questions when feasible, and to submit such instructions and definitions as shall be proper to enable the jury to

> render a verdict. A proper instruction is one that assists the jury, correctly states the law, and is supported by the pleadings and evidence. The trial court has broad discretion in submitting explanatory instructions and definitions as long as the charge is legally correct. After the jury has retired for deliberations, the trial court may supplement its instructions "touching any matter of law." The trial court may also supplement its instructions in response to a question from the jury during deliberations.

Wal-Mart Stores Tex., LLC v. Bishop, 553 S.W.3d 648, 673–74 (Tex. App.—Dallas 2018, pet. granted w.r.m.) (citations omitted).

Mother first contends the trial court erred in submitting Father's affirmative defenses to the jury because, she argues, the section of the rule 11 agreement breached by Father is an independent covenant, and therefore, any alleged breach by Mother of other sections of the agreement should not excuse Father's performance. A prerequisite to the remedy of excuse of performance is that covenants in a contract must be mutually dependent promises. *Hanks v. GAB Bus. Services, Inc.*, 644 S.W.2d 707, 708 (Tex. 1982). Breach of a "dependent" covenant of a contract may give the non-breaching party an election to terminate the contract, while breach of an "independent" covenant will not. *Lazy M Ranch, Ltd. v. TXI Operations, LP*, 978 S.W.2d 678, 681 (Tex. App.—Austin 1998, pet. denied). With the latter, the non-breaching party may only recover for the breach in a separate cause of action. *Id.* For example, a landlord's covenant to repair the premises and the tenant's covenant to pay rent are independent covenants such that "a tenant is still under a duty to pay

rent even though his landlord has breached his covenant to make repairs." *Davidow v. Inwood N. Prof'l Group–Phase I*, 747 S.W.2d 373, 375 (Tex. 1988).

Whether a covenant is dependent or independent depends on the parties' intention at the time the contract is made. *Lazy M Ranch, Ltd., LP*, 978 S.W.2d at 681. Generally, "when a covenant goes only to part of the consideration on both sides and a breach may be compensated for in damages, it is to be regarded as an independent covenant, unless this is contrary to the expressed intent of the parties." *Hanks*, 644 S.W.2d at 708. "The parties' intention is, however, not always discernable from the contract language and the parties often neglect entirely to consider whether they intend a particular covenant to be dependent or independent." *Lazy M Ranch, Ltd., LP*, 978 S.W.2d at 681. In such cases, "it is better to drop any talk about the intention of the parties when they express none and rest doctrines of [constructive dependence] solely on their fairness[.]" *Id.* Furthermore, in cases of doubt as to intent, we presume that promises are "dependent rather than independent, since such a construction ordinarily prevents one party from having the benefit of his contract without performing his own obligation." *Nutt v. Members Mut. Ins. Co.*, 474 S.W.2d 575, 578 (Tex. App.—Dallas 1971, writ ref'd n.r.e.). When each covenant is such an indispensable part of what the parties intended such that "the contract would not have been made without the covenant, they are mutual conditions and dependent, in the absence of clear indications to the contrary." *John R. Ray &*

Sons, Inc. v. Stroman, 923 S.W.2d 80, 86 (Tex. App.—Houston [14th Dist.] 1996, writ denied).

Here, the rule 11 agreement does not specify whether the various obligations of the parties under the agreement are mutually dependent or independent. We cannot conclude that Mother's obligations under the first section of the agreement relating to Father's possession of or access to the child were not such an indispensable part of what the parties intended such that they would not have entered the agreement without that section. Thus, we conclude Mother's obligations under the agreement were mutually dependent with Father's section 3 obligations. Moreover, to the extent there is any doubt, we presume the various obligations are dependent. *See Nutt*, 474 S.W.2d at 578. Accordingly, we conclude the trial court did not err in submitting Father's excuse question on this basis. We overrule this portion of Mother's issue concerning the charge.

Mother next complains the trial court erred in submitting the affirmative defense of repudiation to the jury because the instruction omitted "lack of excuse" and "damages" elements, which she further argues were not supported by evidence. We conclude this complaint is not preserved for our review. The rules of civil procedure provide that the "failure to submit a definition or instructions shall not be deemed a ground for reversal of the judgment unless a substantially correct definition or instruction has been requested in writing and tendered by the party complaining of the judgment." TEX. R. CIV. P. 278; *Rothenberg v. Tucker*, No. 05-

92-00558-CV, 1993 WL 155878, at *7 (Tex. App.—Dallas May 10, 1993, no writ) (overruling appellant's complaint when he failed to comply with rule 278). Thus, to complain of the trial court's failure to submit an instruction, a party must tender the requested instruction in writing in substantially correct form. *de Leon v. Red Wing Brands of Am., Inc.*, No. 05-15-01517-CV, 2017 WL 3699654, at *5 (Tex. App.—Dallas Aug. 28, 2017, no pet.) (mem. op.); *see also Sky Interests Corp. v. Moisdon*, No. 05-18-00160-CV, 2019 WL 3423279, at *5 (Tex. App.—Dallas July 30, 2019, no pet.) (mem. op.). There is no written request for an instruction on these additional elements in the record before us, and additionally, without a written instruction in the record or even an oral dictation of a requested instruction, we cannot determine whether the requested instruction was submitted in substantially correct form. *See de Leon*, 2017 WL 3699654, at *5.

Furthermore, we observe that the trial court's instruction on repudiation tracked the pertinent pattern jury charge. The repudiation instruction was given as follows:

> Failure to comply by [Father], if any, is excused by [Mother's] prior repudiation of the Rule 11 Agreement dated December 2, 2020 ('the agreement'). A party repudiates an agreement when he/she indicates by his/her words or actions that he/she is not going to perform his/her obligations under the agreement in the future, showing a fixed intention to abandon, renounce, and refuse to perform the agreement. The repudiation must be absolute and unconditional.

This instruction tracks language from the Texas Pattern Jury Charges. *See Texas Pattern Jury Charges: Business, Consumer, Insurance & Employment* PJC 101.23

(2020). Given this, we cannot conclude the trial court abused its discretion. *See Hagan v. Pennington*, No. 05-18-00010-CV, 2019 WL 2521719, at *16 (Tex. App.—Dallas June 19, 2019, no pet.) (mem. op.) (noting that the failure to include requested instruction was not abuse of discretion when trial court followed pattern jury charge). We overrule this portion of Mother's issue concerning the jury charge.

Mother also contends the trial court erred in submitting an instruction on waiver to the jury because no evidence showed she did not waive her rights to enforce section 3 of the rule 11 Agreement. Waiver is an affirmative defense available against a party who either (1) intentionally relinquishes a known right, or (2) engages in intentional conduct inconsistent with claiming that right. *Martin v. Birenbaum*, 193 S.W.3d 677, 681 (Tex. App.—Dallas 2006, pet. denied). If there is some evidence raising an issue, the trial court must submit the issue even though the evidence may be insufficient to support an affirmative finding. *See Med. Imaging Sols. Group, Inc. of Tex. v. Westlake Surgical, LP*, 554 S.W.3d 152, 161 (Tex. App.—San Antonio 2018, no pet.).

Father presented evidence through his testimony that Mother, beginning in the summer of 2021, stopped honoring her duties under the rule 11 agreement and stopped communicating with him. Despite requesting visits, Father testified he did not see the child for nearly one year due to Mother's non-compliance with the agreement. Father presented evidence through his testimony and text messages sent by the parties that Mother's demands attempting to condition access to the child went

beyond the agreement and would have "change[d] the agreement completely." He testified that, before filing his petition to modify, he did not believe Mother was willing to comply with the rule 11 agreement. We conclude this is "some evidence" raising waiver—intentional conduct inconsistent with claiming rights under the parties' agreement—such that the trial court did not abuse its discretion in submitting the waiver instruction. We overrule this portion of Mother's issue concerning the jury charge.

Mother next argues the trial court erred in submitting an instruction on prior material breach because this defense was not pleaded by Father. The "fair notice" standard for pleading looks to whether the opposing party can ascertain from the pleading the nature and basic issues of the controversy and what testimony will be relevant. *Elite Door & Trim, Inc. v. Tapia*, 355 S.W.3d 757, 766 (Tex. App.—Dallas 2011, no pet.). In determining a pleading's adequacy, we examine whether an opposing attorney of reasonable competence, on review of the pleading, can ascertain the nature and the basic issues of the controversy. *Id.* When no special exceptions are filed, we construe pleadings liberally in favor of the pleader. *Id.* Here, although Mother specially excepted to Father's affirmative defenses, she failed to obtain a ruling on her special exceptions; consequently, we will construe Father's pleadings liberally in his favor. *See id.*

As noted above, Father pleaded, among other things, failure of consideration as an affirmative defense to Mother's claim for breach of contract. The jury charge

instruction at issue was based upon PJC 101.22, which provides as follows: "Failure to comply by *Don Davis* is excused by *Paul Payne*'s previous failure to comply with a material obligation of the same agreement." *See Texas Pattern Jury Charges: Business, Consumer, Insurance & Employment* PJC 101.22 (2020) (identifying this defense as "Plaintiff's Material Breach (Failure of Consideration)"). Plaintiff's material breach is "commonly referred to as failure or partial failure of consideration." Comm. on Texas Pattern Jury Charges, State Bar of Tex., *Texas Pattern Jury Charges: Business, Consumer, Insurance & Employment* PJC 101.22 (2020) (noting, however, that the "Committee considers the latter designation inappropriate and confusing . . . because it suggests issues relating to contract formation"). Given this, and construing Father's pleading liberally in his favor, we conclude his pleading supported the instruction on prior material breach. *See id.*; *701 Katy Bldg., L.P. v. John Wheat Gibson, P.C.*, No. 05-16-00193-CV, 2017 WL 3634335, at *12 (Tex. App.—Dallas Aug. 24, 2017, pet. denied) (mem. op.) (noting that party pleaded the affirmative defense of prior material breach as "failure of consideration"). We overrule this portion of Mother's jury charge issue.

In her final complaint regarding issues submitted to the jury, Mother contends the trial court erred in not submitting to the jury the issue of whether Father had a history of family violence under TEX. FAM. CODE § 153.004 ("History of Domestic Violence or Sexual Abuse"). Before jury selection on April 10, counsel for Father argued that, in light of Father's pretrial stipulation as to conservatorship, no jury

questions remained in the suit affecting the parent-child relationship. Counsel for Mother responded that the jury should nevertheless decide whether there had been a history or pattern of family violence. In response, counsel for Father argued there was no authority for submitting a jury question solely on the issue of a history or pattern of domestic violence if there are no jury questions to be answered with regard to conservatorship. Counsel argued that the issue of family violence should go to the trial court in ruling upon terms and conditions of possession and access. Counsel for Mother responded, pointing to family code § 105.003 (providing that, "[e]xcept as otherwise provided by this title, proceedings shall be in civil cases generally") in support of his argument and argued Mother had a right to a jury trial on all fact issues unless specifically prohibited. The trial court stated that, given that Father's stipulation had been accepted, it did not believe there was a right to jury trial based on the family violence allegation and ruled the issue would be tried to the court.

On appeal, Mother generally directs us to TEX. FAM. CODE § 105.002(c) (enumerating certain issues on which a party is entitled to a jury verdict and certain issues on which the court may not submit questions to the jury, including "a specific term or condition of possession of or access to the child") and § 105.003 (captioned "Procedure for Contested Hearing," providing that "[e]xcept as otherwise provided by this title, proceedings shall be as in civil cases generally"). Mother otherwise acknowledges she is "unable to cite to any authority in support of or opposition to this" issue.

Because Mother fails to identify a standard of review for this issue or develop her argument beyond the citation of general authorities that she acknowledges do not resolve this issue, we conclude this issue is inadequately briefed, and we overrule it. *See* TEX. R. APP. P. 38.1(i); *Huey v. Huey*, 200 S.W.3d 851, 854 (Tex. App.—Dallas 2006, no pet.) (stating that failure to provide substantive analysis waives an issue on appeal).

We therefore overrule Mother's issue regarding the jury charge.

2. Modification of conservatorship

Next, Mother argues the trial court erred in modifying the order in the suit affecting the parent-child relationship because there was no evidence of a material and substantial change in circumstances. 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 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 or 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)(1). To demonstrate that a material and substantial change of circumstances has occurred, the evidence must show what conditions existed at the time of the entry of the prior order as compared to the circumstances existing 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.). "One party's allegation of changed circumstances of the parties constitutes a judicial admission of the common element of changed circumstances of the parties in the other party's similar pleading." *Id.*; *see also In re V.K.H.H.*, 647 S.W.3d 476, 479 (Tex. App.—Texarkana 2022, no pet.); *In re A.E.A.*, 406 S.W.3d 404, 410 (Tex. App.—Fort Worth 2013, no pet.). And admissions in trial pleadings are regarded as judicial admissions in the case the pleading was filed, require no proof of the admitted fact, and authorize the introduction of no evidence to the contrary. *In re L.C.L.*, 396 S.W.3d at 718.

Here, Mother alleged in her counterpetition that "[t]he circumstances of the child, a conservator, or other party affected by the order to be modified have materially and substantially changed since the date of rendition of the order to be modified." Thus, Mother judicially admitted the element about which she now complains on appeal, and she is consequently barred on appeal from challenging the sufficiency of the evidence of a material and substantial change in circumstances. *See In re A.E.A.*, 406 S.W.3d at 410. In reaching this conclusion, we necessarily reject Mother's contention that her factual allegations of changed circumstances were different than those alleged by Father and that she therefore did not judicially admit changed circumstances. In *L.C.L.*, for example, the bases for the parties' allegations of changed circumstances differed and they sought different relief in their petitions to modify. 396 S.W.3d at 718. Despite this, their modification claims "contained a common essential element" and so constituted "a judicial admission of

that same essential element" of changed circumstances. *Id.* So, too, here. Mother's issue is overruled.

B. Counsel's appeal

Finally, we address counsel for Mother's challenge to the trial court's sanctions imposed against him. As described above, although the trial court gave notice of contempt allegations, it never held counsel in contempt and instead only granted Father's motion for sanctions. The sanctions order found that counsel "willfully and intentionally violated the Court's Order on Petitioner's Motion in Limine entered November 15, 2022." The order described counsel's conduct and explained how it violated the motion in limine but did not make any further findings.

We first consider Father's argument that counsel for Mother should have brought his appeal in a separate proceeding from this one. Father acknowledges counsel's right to appeal from the imposition of sanctions against him, *see Onstad v. Wright*, 54 S.W.3d 799, 804 (Tex. App.—Texarkana 2001, pet. denied), but contends he must do so separately. We do not agree.

The notice of appeal before us states it was filed by both Mother and counsel, "a person affected by the orders in this proceeding." It further states that Mother desires to appeal from an order signed June 11, 2023, and counsel for Mother desires to appeal from an order signed on May 24, 2023. Thus, counsel for Mother joined Mother's notice of appeal and properly appeals the sanctions order. *See, e.g.*, *Sluder v. Ogden*, No. 03-10-00280-CV, 2011 WL 116058, at *2 (Tex. App.—Austin Jan. 13,

2011, pet. denied) (mem. op.) ("We agree with other courts of appeals that have held that an attorney who wishes to appeal sanctions must either join in a party's notice of appeal or file his own."). That makes this case different from, for example, *Matbon, Inc. v. Gries*, where a sanctioned law firm failed to join the appellant's notice of appeal and, as a result, the court of appeals lacked jurisdiction to consider the firm's challenge to the imposed sanctions. 287 S.W.3d 739, 740 (Tex. App.—Eastland 2009, no pet.). We conclude counsel for Mother properly filed a notice of appeal and that we have jurisdiction to consider his complaint.

We now turn to the merits of counsel for Mother's complaint. Counsel argues, among other things, that the trial court failed to make necessary findings to support the sanctions order. We agree. Courts possess inherent powers that aid the exercise of their jurisdiction, facilitate the administration of justice, and preserve the independence and integrity of the judicial system. *Brewer v. Lennox Hearth Products, LLC*, 601 S.W.3d 704, 718 (Tex. 2020); *see also Union Carbide Corp. v. Martin*, 349 S.W.3d 137, 147 (Tex. App.—Dallas 2011, no pet.). This includes the power to discipline an attorney's behavior, "even when the offensive conduct is not explicitly prohibited by statute, rule, or other authority." *Brewer*, 601 S.W.3d at 718. Such power is limited by due process and so sanctions must be just and not excessive and exercised with restraint, discretion, and great caution. *Id.*

"To that end, invocation of the court's inherent power to sanction necessitates a finding of bad faith." *Id.* As the supreme court explained, bad faith

> is not just intentional conduct but intent to engage in conduct for an impermissible reason, willful noncompliance, or willful ignorance of the facts. Bad faith includes conscious doing of a wrong for a dishonest, discriminatory, or malicious purpose. Errors in judgment, lack of diligence, unreasonableness, negligence, or even gross negligence—without more—do not equate to bad faith. Improper motive, not perfection, is the touchstone. Bad faith can be established with direct or circumstantial evidence, but absent direct evidence, the record must reasonably give rise to an inference of intent or willfulness.

Id. at 718–19 (footnotes and internal quotation marks omitted). Furthermore, in exercising its inherent power to impose sanctions, the trial court must make factual findings, based on evidence, that the conduct complained of significantly interfered with the court's legitimate exercise of its core functions. *See Union Carbide Corp.*, 349 S.W.3d at 148 (concluding trial court abused discretion in sanctioning party "pursuant to the trial court's inherent authority where there is no finding supported by evidence that [party's] conduct interfered with the trial court's legitimate exercise of its core functions").

The record before us reflects that the trial court failed to make the required findings to invoke its inherent power to sanction. Although the trial court's order included a finding that counsel for Mother intentionally and willfully violated the order on the motion in limine, the order does not reflect a finding of bad faith or that the conduct in question significantly interfered with the court's legitimate exercise of its core functions. Nor were such findings made elsewhere in the record.

Accordingly, we sustain counsel's issue challenging the sanctions order and reverse the order. *See Frenkel v. Courtney*, No. 05-21-01114-CV, 2023 WL 3914549,

at *7 (Tex. App.—Dallas June 9, 2023, pet. denied) (mem. op.) (reversing sanctions award when trial court failed to make finding of bad faith in sanctions order); *In re Estate of Powell*, No. 05-19-00689-CV, 2020 WL 4462666, at *7 (Tex. App.—Dallas Aug. 4, 2020, no pet.) (mem. op.) (reversing sanctions award when trial court made finding of bad faith but "did not also find or conclude that [parties'] bad faith conduct significantly interfered with the court's 'legitimate exercise of its core functions'").

III. Conclusion

We affirm the trial court's final order modifying parent-child relationship and denying Mother's breach of contract claims, and we reverse the trial court's sanctions order and remand for proceedings not inconsistent with this opinion.

/Mike Lee/
MIKE LEE
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN THE INTEREST OF S.G.B., A CHILD	On Appeal from the 469th Judicial District Court, Collin County, Texas Trial Court Cause No. 469-55752-2017. Opinion delivered by Justice Lee. Justices Smith and Jackson participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED** in part and **REVERSED** in part. We **REVERSE** the trial court's May 24, 2023 sanctions order and **REMAND** for proceedings not inconsistent with this opinion. In all other respects, the trial court's judgment is **AFFIRMED**.

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered this 13th day of March, 2025.