

COURT OF APPEALS OF TEXAS, FOURTEENTH DISTRICT

In the Interest of G.W.P.

In re G.W.P. · No. 14-08-00035-CV · Decided August 20, 2009

SUMMARY

The Fourteenth Court of Appeals of Texas affirmed the termination of Beverly Powell’s parental rights to G.W.P. The court held that Powell failed to preserve her factual-sufficiency challenge because her statement of appellate points did not specifically challenge each independent termination ground or the child’s best-interest finding as required by Texas Family Code section 263.405(i).

CASE DETAILS

COURT	Court of Appeals of Texas, Fourteenth District
WRITING FOR THE COURT	Leslie B. Yates; Justice Guzman; Justice Sullivan
JURISDICTION	Texas
DECIDED	August 20, 2009
DOCKET	14-08-00035-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order terminating Beverly Powell's parental rights. Powell challenged the factual sufficiency of the evidence, and the appellate court considered whether that issue was preserved under Texas Family Code section 263.405(i).
STANDARD OF REVIEW	A factual-sufficiency challenge in a parental-rights termination case may be reviewed only if it was specifically presented in a timely statement of appellate points or in a statement combined with a motion for new trial, as required by Texas Family Code section 263.405(i).
PRECEDENTIAL VALUE	Published memorandum opinion; precedential status beyond the information stated in the source is not independently verified.
PARTIES	Beverly Powell v. In the Interest of G.W.P.

TOPICS

- termination of parental rights
- parental rights
- preservation of error
- appellate procedure
- family law procedure

PRACTICE AREAS

family law

parental rights

termination of parental rights

appellate procedure

QUESTIONS PRESENTED

1. Whether Powell preserved her factual-sufficiency challenge to the termination order by specifically identifying the challenged statutory predicate findings and best-interest finding in her statement of appellate points under Texas Family Code section 263.405(i).

HOLDINGS

1. A statement of appellate points does not preserve a factual-sufficiency challenge to a parental-rights termination order under Texas Family Code section 263.405(i) unless it specifically challenges each independently sufficient statutory predicate act found by the trial court or specifically challenges the finding that termination is in the child's best interest. Powell's general assertions of no evidence, legal insufficiency, and factual insufficiency, together with an unclear reference to her service plan, did not satisfy that requirement.
2. Because Powell failed to preserve her sole appellate issue, the court overruled that issue and affirmed the trial court's judgment.

KEY QUOTATIONS

“The appellate court may not consider any issue that was not specifically presented to the trial court in a timely filed statement of the points on which the party intends to appeal or in a statement combined with a motion for new trial.”

FACTUAL BACKGROUND

The trial court terminated Beverly Powell's parental rights to G.W.P. The court found that Powell had independently engaged in three acts supporting termination, including endangering the child, engaging in or exposing the child to endangering conduct, and failing to comply with a court order establishing the actions necessary to obtain the child's return. The court also found that termination was in G.W.P.'s best interest.

PROCEDURAL HISTORY

The 315th District Court of Harris County terminated Powell's parental rights to G.W.P. The trial court found that Powell committed three independently sufficient statutory predicate acts and that termination was in the child's best interest. Powell filed a statement of appellate points and appealed, but the Fourteenth Court of Appeals held that her factual-sufficiency challenge was not stated with sufficient specificity and affirmed.

DISPOSITION

affirmed

CASES CITED

- In re J.L., 163 S.W.3d 79, 84 (Tex. 2005)
- Adams v. Tex. Dep't of Family & Protective Servs., 236 S.W.3d 271, 273, 276-78 (Tex. App.—Houston [1st Dist.] 2007, no pet.)
- In re S.T., 263 S.W.3d 394, 398-99 (Tex. App.—Waco 2008, pet. denied)
- In re J.W.H., 222 S.W.3d 661, 662 (Tex. App.—Waco 2007, no pet.)

OPINION

PER CURIAM.

Affirmed and Memorandum Opinion filed August 20, 2009. In The Fourteenth Court of Appeals _____ NO. 14-08-00035-CV _____ IN THE INTEREST OF G.W.P. On Appeal from the 315th District Court Harris County, Texas Trial Court Cause No. 2006-08330J M E M O R A N D U M O P I N I O N This is an appeal from a trial court=s termination of appellant Beverly Powell=s parental rights to G.W.P.

In her sole issue, Powell contends that the evidence is factually insufficient to support the trial court=s termination order. Because Powell did not preserve this issue for our review, we affirm. To terminate Powell=s parental rights under Texas Family Code section 161.001, the trial court had to make two findings: first, that Powell committed at least one of the acts prohibited under section 161.001(1) of the Texas Family Code, and second, that the termination of her parental rights was in G.W.P.=s best interest.

Tex. Fam. Code Ann. ' 161.001(1)B(2) (Vernon 2008); In re J.L., 163 S.W.3d 79, 84 (Tex. 2005). Here, the trial court made both required findings in its termination order. The trial court specifically determined that Powell engaged in the following three acts, which were each independently sufficient to support the first required finding: (1) knowingly placed or knowingly allowed G.W.P. to remain in conditions or surroundings which endangered his physical or emotional well-being,[1] (2) engaged in conduct or knowingly placed G.W.P. with persons who engaged in conduct which endangered his physical or emotional well-being,[2] and (3) failed to comply with the provisions of a court order that specifically established the actions necessary for her to obtain the return of G.W.P., who was in the conservatorship of the Department of Family and Protective Services for not less than nine months as a result of his removal due to her abuse or neglect.[3] As a threshold matter, we must address the State=s argument that Powell=s statement of appellate points did not present her factual sufficiency challenge to the trial court with sufficient specificity to preserve that issue for appellate review under Texas Family Code section 263.405(i).

Tex. Fam. Code Ann. ' 263.405(i) (Vernon 2008). That section states: The appellate court may not consider any issue that was not specifically presented to the trial court in a timely filed statement of the points on which the party intends to appeal or in a statement combined with a motion for new trial.

For purposes of this subsection, a claim that a judicial decision is contrary to the evidence or that the evidence is factually or legally insufficient is not sufficiently specific to preserve an issue for appeal. *Id.* A statement of appellate points does not preserve an evidentiary sufficiency challenge for appellate review under section 236.405(i) if it does not specifically challenge either (1) each act found by the trial court that independently supports the first required finding, or (2) the best interest of the child finding.

See *Adams v. Tex. Dep't of Family & Protective Servs.*, 236 S.W.3d 271, 273, 276B78 (Tex. App.CHouston [1st Dist.] 2007, no pet.) (holding evidentiary review of two acts found by trial court under section 161.001(1) unnecessary where statement of appellate points did not preserve error by specifically challenging independent termination ground, but addressing evidentiary sufficiency challenge of court=s best interest finding because it was specifically challenged in statement of appellate points); cf. *In re S.T.*, 263 S.W.3d 394, 398B99 (Tex.

App.CWaco 2008, pet. denied) (holding that where the trial court found that the parent engaged in multiple acts under section 161.001(1), each of which would have independently supported a finding of termination, statement of appellate points specifically challenging evidentiary sufficiency regarding parent=s commission of each act found by the trial court was sufficient to preserve challenge to the sufficiency of the evidence supporting termination); see also House Comm. on Juvenile Justice and Family Issues, Bill Analysis, Tex. H.B.

409, 79th Leg., R.S. (2005) (stating section 263.405(i) accomplishes the legislative policy of decreasing postjudgment delay in termination cases by allowing the trial court to order a new trial immediately if a party points out a mistake warranting that remedy).

Here, Powell timely filed a statement of appellate points, which reads in relevant part: 2.A. Appellant alleges that the [trial] [c]ourt erred in terminating [m]ovant=s parental rights because there was no evidence to support the trial court=s ruling. 2.B. Appellant alleges that the [trial] [c]ourt erred in terminating [m]ovant=s parental rights because there was legally insufficient evidence to support the [trial] [c]ourt=s ruling.

2.C. Appellant alleges that the [trial] [c]ourt erred in terminating [m]ovant=s parental rights because there was factually insufficient evidence to support the [trial] [c]ourt=s ruling. 2.D. Witnesses testified at trial that Appellant had completed a substantial part of her service plan and continues to work on her service plan. This was not sufficiently specific to comply with section 263.405(i) and preserve Powell=s sole issue for appellate review.

See *Adams*, 236 S.W.3d at 273, 276B78. Points 2.A. and 2.C. do not specifically challenge any of the trial court=s findings. See Tex. Fam. Code Ann. ' 263.405(i); *Adams*, 236 S.W.3d at 278. It is unclear whether point 2.D. was meant to apply to Powell=s factual sufficiency complaint or some other, unspecified issue. But even if we assume that point 2.D. was meant to apply to Powell=s

factual sufficiency challenge and was specific enough to preserve Powell=s challenge to the trial court=s finding that she failed to comply with its order, Powell=s appellate points contain no specific challenge to the trial court=s other findings that independently justified termination: that she committed other acts enumerated under section 161.001(1) and that termination was in G.W.P.=s best interest under section 161.001(2).[4] See Tex. Fam.

Code Ann. ' 161.001(1)B(2); In re J.L., 163 S.W.3d at 84 (stating that to terminate parental rights the trial court need only find that the parent committed one of the acts under section 161.001(1) and that termination is in the child=s best interest under section 161.001(2)).

Therefore, Powell failed to preserve her factual sufficiency challenge for our review. See Tex. Fam. Code Ann. ' 263.405(i); Adams, 236 S.W.3d at 278; cf. In re S.T., 263 S.W.3d at 398B99; see also In re J.W.H., 222 S.W.3d 661, 662 (Tex. App.CWaco 2007, no pet.) (overruling all of appellant=s issues for failure to comply with section 263.405(i)).

We overrule Powell=s sole issue. Having overruled Powell=s sole issue, we affirm the trial court=s judgment. /s/ Leslie B. Yates Justice Panel consists of Justices Yates, Guzman, and Sullivan. [1] See Tex. Fam. Code Ann. ' 161.001(1)(D) (Vernon 2008).

[2] See id. ' 161.001(1)(E). [3] See id. ' 161.001(1)(O). [4] Therefore, even if point 2.D. was both meritorious and sufficiently specific regarding the trial court=s finding that Powell failed to comply with a court order, it would not have alerted the trial court to a mistake warranting a new trial.

As a result, addressing Powell=s appellate issue on the merits would contravene the legislature=s intent in enacting section 263.405(i)Cfurthering the legislative policy of decreasing postjudgment delay in termination cases. See House Comm. on Juvenile Justice and Family Issues, Bill Analysis, Tex. H.B. 409, 79th Leg., R.S.

(2005).