

COURT OF APPEALS FOR THE FIRST DISTRICT OF TEXAS

M.P.G. v. Department of Family and Protective Services; In the
Interest of R.R., a Child

No. 01-10-01069-CV · No. 01-10-01069-CV · Decided October 20, 2011

SUMMARY

The First Court of Appeals of Texas affirmed the termination of a mother's parental rights to R.R. The court rejected challenges concerning a continuance, admission of family-service-plan and medical records, caseworker testimony, trial procedure, appointment of counsel, and the legal and factual sufficiency of the evidence supporting the child's best interest. The court concluded that the mother's failure to protect the child from abuse, delay in obtaining medical care, and lack of safe and stable caregiving supported termination.

CASE DETAILS

COURT	Court of Appeals for the First District of Texas
WRITING FOR THE COURT	Jane Bland; Chief Justice Radack; Justice Bland; Justice Huddle
JURISDICTION	Texas
DECIDED	October 20, 2011
DOCKET	01-10-01069-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	In an accelerated appeal from a judgment terminating the mother's parental rights to R.R., the mother challenged the denial of a continuance, evidentiary rulings, trial-management decisions, the failure to appoint counsel, and the legal and factual sufficiency of the evidence supporting the child's best-interest finding.
STANDARD OF REVIEW	Denial of a motion for continuance and admission or exclusion of evidence are reviewed for abuse of discretion. Legal sufficiency is reviewed by considering evidence supporting the finding, while factual sufficiency is reviewed in light of the entire record to determine whether disputed evidence is so significant that a reasonable factfinder could not form a firm belief or conviction. The Department bore the burden of proving termination was in the child's best interest by clear and convincing evidence.
PRECEDENTIAL VALUE	published

TOPICS

termination of parental rights

parental rights

writ of certiorari

evidence

PRACTICE AREAS

family law

appellate procedure

evidence

civil procedure

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by denying the mother's motion for continuance.
2. Whether the mother's challenges to the admission of Department exhibits were preserved and, for preserved objections, whether the family service plan and medical records were admissible.
3. Whether the trial court abused its discretion by allowing the caseworker to testify about facts reflected in R.R.'s medical records.
4. Whether the trial court improperly deviated from the traditional order of witnesses and trial procedure.
5. Whether the trial court was required to appoint an attorney ad litem or other counsel for the mother before trial.
6. Whether the evidence was legally and factually sufficient to support the finding that termination of the mother's parental rights was in R.R.'s best interest.

HOLDINGS

1. The mother preserved her challenge to the denial of the continuance because counsel presented specific grounds and secured an express or implicit ruling in the record.
2. The trial court did not abuse its discretion in denying the mother's motion for continuance based on counsel's late retention, the mother's alleged confusion, and the asserted need for additional preparation.
3. The mother's challenges to exhibits 1, 2, 6, and 7 were waived because she failed to make timely and specific objections at trial.
4. The trial court acted within its discretion in admitting the family service plan because it qualified as a public record and was required by statute to be filed with the court.
5. The trial court did not abuse its discretion in admitting R.R.'s medical records as business records.
6. The trial court did not err in allowing McCartney to testify about facts reflected in R.R.'s medical records because she did not offer independent medical opinions, and the mother also waived the objection by allowing the same or similar evidence without objection.
7. The mother presented no preserved appellate issue concerning the trial court's management of the order of witnesses.
8. The trial court was not required to appoint counsel for the mother because she did not seek appointment, did not file an affidavit of indigence, and appeared with counsel at trial.

9. The evidence was legally and factually sufficient to support the trial court's finding by clear and convincing evidence that termination of the mother's parental rights was in R.R.'s best interest.

KEY QUOTATIONS

“a fair reading of the record in context shows that counsel presented specific grounds for his motion for continuance and secured a ruling on it.” (Discussion I.A)

“We find that the evidence in this case is legally and factually sufficient for the trial court to have formed a firm belief or conviction that termination was justified.” (Discussion V.B)

FACTUAL BACKGROUND

When R.R. was five months old, the mother left him with his father, whom she knew to be abusive, while she worked. After discovering that R.R.'s leg was swollen, the mother waited nine days before obtaining medical treatment; doctors diagnosed a broken femur, multiple skull fractures, and a subdural hematoma, with injuries consistent with abuse or neglect. After R.R. was placed with another caregiver selected by the mother, he sustained another leg fracture. R.R. was placed in foster care, where evidence showed that he bonded with the foster family, received extensive medical and developmental treatment, and improved.

PROCEDURAL HISTORY

The trial court granted the Department temporary conservatorship after R.R. suffered serious injuries while in the mother's care and later sustained another injury while placed with a caregiver chosen by the mother. The Department filed a petition to terminate the parents' rights, and the trial court ultimately terminated both parents' parental rights. The mother appeared with counsel at trial, moved for a continuance, and appealed after the trial court proceeded with trial and entered judgment against her.

DISPOSITION

affirmed

CASES CITED

- In re R.R., 209 S.W.3d 112, 114 (Tex. 2006)
- Villegas v. Carter, 711 S.W.2d 624, 626 (Tex. 1986)
- Downer v. Aquamarine Operators, Inc., 701 S.W.2d 238, 241–42 (Tex. 1985)
- Holley v. Holley, 864 S.W.2d 703, 706 (Tex. App.—Houston [1st Dist.] 1993, writ denied)
- Whitworth v. Whitworth, 222 S.W.3d 616, 623 (Tex. App.—Houston [1st Dist.] 2007, no pet.)
- O'Connor v. O'Connor, 245 S.W.3d 511, 516 (Tex. App.—Houston [1st Dist.] 2007, no pet.)
- Walker v. Packer, 827 S.W.2d 833, 839–40 (Tex. 1992)
- In re L.M.I., 119 S.W.3d 707, 711 (Tex. 2003)
- Whirlpool Corp. v. Camacho, 298 S.W.3d 631, 638 (Tex. 2009)
- Jelinek v. Casas, 328 S.W.3d 526, 539 (Tex. 2010)

- *Bowie Mem'l Hosp. v. Wright*, 79 S.W.3d 48, 51–52 (Tex. 2002) (per curiam)
- *Owens-Corning Fiberglas v. Malone*, 972 S.W.2d 35, 43 (Tex. 1998)
- *Volkswagen of Am., Inc. v. Ramirez*, 159 S.W.3d 897, 907 (Tex. 2004)
- *Sylvia M. v. Dallas Cnty. Child Welfare Unit of Tex. Dep't of Human Servs.*, 771 S.W.2d 198, 205 (Tex. App.—Dallas 1989, no writ)
- *In re L.M.*, 104 S.W.3d 642, 647 (Tex. App.—Houston [1st Dist.] 2003, no pet.)
- *In re G.M.*, 596 S.W.2d 846, 847 (Tex. 1980)
- *In re C.H.*, 89 S.W.3d 17, 27–28 (Tex. 2002)
- *Adams v. Tex. Dep't of Family & Protective Servs.*, 236 S.W.3d 271, 280 (Tex. App.—Houston [1st Dist.] 2007, no pet.)
- *Clark v. Dearen*, 715 S.W.2d 364, 367 (Tex. App.—Houston [1st Dist.] 1986, no writ)
- *Yonko v. Dep't of Family & Protective Servs.*, 196 S.W.3d 236, 243 (Tex. App.—Houston [1st Dist.] 2006, no pet.)
- *In re C.T.E.*, 95 S.W.3d 462, 467 (Tex. App.—Houston [1st Dist.] 2002, pet. denied)
- *In re J.F.C.*, 96 S.W.3d 256, 266–67 (Tex. 2002)
- *Jordan v. Dossey*, 325 S.W.3d 700, 730 (Tex. App.—Houston [1st Dist.] 2010, pet. denied)
- *In re T.M.J.*, 315 S.W.3d 271, 278–79 (Tex. App.—Beaumont 2010, no pet.)
- *In re J.H.G.*, 313 S.W.3d 894, 895–96 (Tex. App.—Dallas 2010, no pet.)
- *M.C. v. Texas Dep't of Family and Protective Servs.*, 300 S.W.3d 305, 311 (Tex. App.—El Paso 2009, pet. denied)

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