

SUPREME COURT OF TEXAS

In the Interest of B.C., a Child

No. 19-0306 (Tex. Dec. 20, 2019) · No. No. 19-0306 · Decided December 20, 2019

SUMMARY

The Supreme Court of Texas held that a parent seeking appointed counsel in a government-initiated termination proceeding must file an affidavit of indigence before the trial court is required to determine indigency. The court nevertheless affirmed the remand for a new trial because the trial court failed to provide the repeated statutory admonishments regarding the right to counsel required by Texas Family Code section 263.0061. The court concluded that this noncompliance was not harmless under the circumstances.

CASE DETAILS

COURT	Supreme Court of Texas
JURISDICTION	Texas
DECIDED	December 20, 2019
DOCKET	No. 19-0306
DISPOSITION	affirmed
PROCEDURAL POSTURE	Petition for review of a court of appeals judgment reversing an order terminating parental rights and remanding for a new trial.
STANDARD OF REVIEW	Statutory construction is reviewed by determining and giving effect to legislative intent as expressed in the statute's plain language, considering both the specific provision and the statute as a whole. The court applied the reversible-error standard under Texas Rule of Appellate Procedure 61.1 to the statutory-admonishment violation.
PRECEDENTIAL VALUE	published and precedential opinion of the Supreme Court of Texas
PARTIES	Mother v. Texas Department of Family and Protective Services

TOPICS

termination of parental rights

parental rights

family law procedure

statutory interpretation

appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether section 107.013 of the Texas Family Code required the trial court to conduct an indigency inquiry and appoint counsel when Mother had not filed an affidavit of indigence.
2. Whether the trial court violated section 263.0061 of the Texas Family Code by failing to inform Mother of her right to counsel at the status hearing and subsequent permanency hearings.
3. Whether the failure to provide the mandatory statutory admonishments was harmless or required reversal and a new termination trial.

HOLDINGS

1. A parent must file an affidavit of indigence before the trial court is authorized to conduct an indigency hearing, and appointment of counsel under section 107.013 is required only after the affidavit is filed and the court determines that the parent is indigent.
2. At the status hearing and at each permanency hearing held after the Department is appointed temporary managing conservator, the trial court must inform each unrepresented parent of the right to legal representation and, if indigent and opposing the suit, the right to court-appointed counsel.
3. The trial court's noncompliance with section 263.0061 was not harmless under the circumstances and required reversal of the termination order and remand for a new trial.

KEY QUOTATIONS

“But the trial court is not authorized to hold a hearing to determine the indigency status of “a parent who claims indigence under Subsection (a)” until the parent “file[s] an affidavit of indigence” with the court.” (at 4)

“At the status hearing and at each permanency hearing after the Department is appointed temporary managing conservator, trial courts must inform unrepresented parents about their right to legal representation, including the right to court-appointed counsel.” (at 6)

“Following the repeated failure to properly admonish Mother, she remained unrepresented at trial and her relationship with her child was permanently severed.” (at 7)

FACTUAL BACKGROUND

The Department removed B.C. from Mother's home based on allegations of drug use and sales, lack of electricity and running water, and ongoing domestic violence. Mother appeared without counsel at the removal hearing and at subsequent permanency hearings, but the trial court did not repeatedly admonish her about her right to counsel as required by statute. Mother did not file an affidavit of indigence until after the bench trial, at which she was absent and unrepresented; the trial court then terminated her parental rights.

PROCEDURAL HISTORY

The trial court terminated Mother's parental rights after she appeared without counsel and had not filed an affidavit of indigence. After trial, Mother filed an affidavit of indigence and a notice of appeal; the trial court found her indigent and appointed appellate counsel. The court of appeals rejected Mother's notice issue, did not reach her sufficiency challenge, and reversed and remanded for a new termination trial based on the denial of appointed counsel. The Supreme Court of Texas affirmed the judgment, though it rejected the court of appeals' reasoning that the trial court had to conduct an indigency inquiry without an affidavit, and instead held that the trial court's failure to provide repeated statutory admonishments required a new trial.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The judgment reversing the termination order and remanding for a new termination trial was affirmed. The trial court must conduct a new termination trial.

CASES CITED

- *Gunn v. McCoy*, 554 S.W.3d 645, 672 (Tex. 2018)
- *In re Lee*, 411 S.W.3d 445, 451 (Tex. 2013)
- *Perryman v. Spartan Tex. Six Capital Partners, Ltd.*, 546 S.W.3d 110, 131 (Tex. 2018)
- *In re J.S.*, 09-15-00150-CV, 2015 WL 5731643, at *10 (Tex. App.—Beaumont Oct. 1, 2015, no pet.) (mem. op.)
- *In re S.G.*, 02-14-00245-CV, 2015 WL 392772, at *1-3 (Tex. App.—Fort Worth Jan. 29, 2015, no pet.) (mem. op.)
- *J.E. v. Tex. Dept. of Family & Protective Servs.*, 03-14-00164-CV, 2014 WL 4536569, at *8 (Tex. App.—Austin Sept. 10, 2014, no pet.) (mem. op.)
- *In re K.L.L.H.*, 06-09-00067-CV, 2010 WL 87043, at *5 (Tex. App.—Texarkana Jan. 12, 2010, pet. denied) (mem. op.)
- *In re K.L.C.*, 990 S.W.2d 242, 243 (Tex. 1999)