

COURT OF APPEALS OF TEXAS, TENTH COURT OF APPEALS

In the Interest of D.R.O., a Child

No. 10-17-00378-CV · No. No. 10-17-00378-CV · Decided April 17, 2019

SUMMARY

The Tenth Court of Appeals of Texas affirmed the dismissal of the Herreras' petition seeking termination of parental rights and adoption of D.R.O. The court assumed without deciding that the Herreras had standing and held that their complaints concerning inadequate notice, due process, and dismissal with prejudice were not preserved for appellate review.

CASE DETAILS

COURT	Court of Appeals of Texas, Tenth Court of Appeals
WRITING FOR THE COURT	Rex D. Davis; Chief Justice Gray; Justice Davis; Justice Neill
JURISDICTION	Texas
DECIDED	April 17, 2019
DOCKET	No. 10-17-00378-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the dismissal with prejudice of a petition seeking termination of the biological parents' parental rights, joined with a petition for adoption.
STANDARD OF REVIEW	Complaints about lack of notice, due process, and the form of the dismissal order are reviewed for preservation of error; a party must make a timely and specific request, objection, or motion and obtain a ruling. Unpreserved complaints are waived unless they involve fundamental error.
PRECEDENTIAL VALUE	Published memorandum opinion; precedential status is identified in the supplied metadata as Published.
PARTIES	Monica Kincaid Herrera, Adam Mitchell Herrera v. Deserae Nicole Williams, Michael Laroy Ortega, D.R.O.

TOPICS

termination of parental rights

adoption

standing

appellate procedure

due process

PRACTICE AREAS

family law

civil procedure

appellate procedure

constitutional law

QUESTIONS PRESENTED

1. Whether the trial court erred by converting a hearing on temporary orders into a trial on the merits without the notice required by the Fourteenth Amendment and Texas Rule of Civil Procedure 245.
2. Whether the trial court erred in determining that the Herreras lacked standing to bring the termination and adoption suit.
3. Whether the trial court erred by dismissing the termination and adoption suit on the merits and with prejudice.

HOLDINGS

1. The Herreras waived any complaint concerning the lack of specific notice because they did not timely and specifically object in the trial court to the court's consideration of the merits or to the alleged Rule 245 and due-process deficiency.
2. The Herreras waived any error arising from the trial court's dismissal with prejudice because they did not object to the oral ruling or written order and did not file a post-judgment motion for new trial or to amend or correct the judgment.
3. The court assumed without deciding that the Herreras had standing and affirmed on the independent ground that their remaining complaints were waived.

KEY QUOTATIONS

“Only fundamental errors may be raised in the appellate court if not first raised in the trial court, and such errors exist only “in those rare instances in which the record shows the court lacked jurisdiction or that the public interest is directly and adversely affected as that interest is declared in the statutes or the Constitution of Texas.”” (at 5)

“Because the Herreras failed to timely object, they waived any error that may have arisen out of the trial court’s failure to provide specific notice that it was considering the merits of the Herreras’ claims and that may have arisen out of the trial court dismissing their suit with prejudice.” (at 8)

FACTUAL BACKGROUND

D.R.O. was born to Deserae and Michael on November 15, 2016. In March 2017, Deserae left D.R.O. with Monica and Adam Herrera, although the parties disputed the duration and circumstances of the child's stay. In September 2017, Monica refused to allow Michael to take D.R.O. from the Herreras' home, after which Deserae contacted police and the Herreras filed the termination and adoption suit. The trial court found that neither parent had voluntarily left the child with the Herreras under any of the pleaded statutory grounds.

PROCEDURAL HISTORY

The Herreras filed a termination and adoption suit and requested temporary orders. At the hearing set for temporary orders, the trial court questioned standing, heard testimony and exhibits, and dismissed the case after finding that the parents had not voluntarily left the child with the Herreras under the alleged statutory grounds. The trial court signed an order dismissing the case with prejudice. The Herreras appealed, challenging notice, standing, and the merits of the dismissal.

DISPOSITION

affirmed

CASES CITED

- Wal-Mart Stores, Inc. v. McKenzie, 997 S.W.2d 278, 280 (Tex. 1999)
- M.M.V. v. Tex. Dep't of Fam. & Protective Serv.'s, 455 S.W.3d 186, 190 (Tex. App.—Houston [1st Dist.] 2014, no pet.)
- In re K.A.F., 160 S.W.3d 923, 928 (Tex. 2005)
- Keith v. Keith, 221 S.W.3d 156, 163 (Tex. App.—Houston [1st Dist.] 2006, no pet.)
- In re L.M.I., 119 S.W.3d 707, 708 (Tex. 2003)
- In re B.L.D., 113 S.W.3d 340, 353-54 (Tex. 2003)
- Ex parte R.L.S., No. 10-16-00278-CV, 2018 WL 1866983, at *2 (Tex. App.—Waco Apr. 18, 2018, no pet.) (corrected mem. op.)
- Wal-Mart Stores, Inc. v. Alexander, 868 S.W.2d 322, 328 (Tex. 1993)
- In re M.T., 290 S.W.3d 908, 910 (Tex. App.—Tyler 2009, no pet.) (op. on reh'g)
- In re K.M.L., 443 S.W.3d 101, 112 (Tex. 2014)
- In re J.R., 501 S.W.3d 738, 741 (Tex. App.—Waco 2016, no pet.)
- Santosky v. Kramer, 455 U.S. 745, 758-59, 102 S. Ct. 1388, 1397, 71 L. Ed. 2d 599 (1982)
- In re A.J., 559 S.W.3d 713, 720 (Tex. App.—Tyler 2018, no pet.)
- In re Marriage of Parker, 20 S.W.3d 812, 818 (Tex. App.—Texarkana 2000, no pet.)
- Barcroft v. Walton, No. 12-16-00110-CV, 2017 WL 3910911, at *10 (Tex. App.—Fort Worth Sept. 7, 2017, no pet.) (mem. op.)
- Arrow Marble, LLC v. Estate of Killion, 441 S.W.3d 702, 707 (Tex. App.—Houston [1st Dist.] 2014, no pet.)
- Travelers Ins. Co. v. Joachim, 315 S.W.3d 860, 863 (Tex. 2010)
- El Paso Pipe & Supply Co. v. Mountain States Leasing, Inc., 617 S.W.2d 189, 190 (Tex. 1981) (per curiam)
- Bird v. Kornman, 152 S.W.3d 154, 161 (Tex. App.—Dallas 2004, pet. denied)