

SUPREME COURT OF TEXAS

In the Interest of J.O.A., T.J.A.M., T.J.M., and C.T.M., Children

283 S.W.3d 336 (Tex. 2009) · No. No. 08-0379 · Decided May 1, 2009

SUMMARY

The Supreme Court of Texas considered whether indigent parents may raise an ineffective-assistance-of-counsel claim on appeal despite failing to timely file a statement of points under Texas Family Code section 263.405. The Court held that section 263.405(i) is unconstitutional as applied when it prevents review of such a claim or a meritorious challenge to the sufficiency of evidence supporting termination. Although the Court found legally sufficient evidence of endangerment supporting termination of Timothy’s parental rights, it modified the judgment to remand for a new trial on that issue.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	David M. Medina
JURISDICTION	Texas
DECIDED	May 1, 2009
DOCKET	No. 08-0379
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Texas Department of Family and Protective Services petitioned for review of a court of appeals judgment that reversed the termination of Timothy M.'s parental rights in part and remanded for further custody proceedings. The Department challenged the court of appeals' consideration of issues that had not been preserved through a timely statement of points under Texas Family Code section 263.405.
STANDARD OF REVIEW	For legal sufficiency in a parental-rights termination case, the court views all evidence in the light most favorable to the finding and determines whether a reasonable factfinder could have formed a firm belief or conviction that the finding was true, while disregarding evidence a reasonable factfinder could have disbelieved. Factual sufficiency review considers disputed or conflicting evidence in light of the entire record. Ineffective-assistance claims apply the two-pronged Strickland standard.

PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Texas Department of Family and Protective Services v. Timothy M., Trena M.

TOPICS

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QUESTIONS PRESENTED

1. Whether a parent may raise an ineffective-assistance-of-counsel claim on appeal despite failing to file the statement of points required by Texas Family Code section 263.405.
2. Whether section 263.405(i) is unconstitutional as applied when it prevents review of a meritorious challenge to the sufficiency of the evidence supporting termination of parental rights.
3. Whether the evidence was legally insufficient to support termination of Timothy M.'s parental rights on the endangerment ground in Texas Family Code section 161.001(1)(E).
4. What disposition is appropriate when the evidence is factually insufficient to support termination.

HOLDINGS

1. An ineffective-assistance-of-counsel claim may be raised on appeal despite the parent's failure to include it in a timely statement of points under Texas Family Code section 263.405.
2. Section 263.405(i) is unconstitutional as applied to the extent it prevents a court from considering a meritorious ineffective-assistance or insufficiency-of-the-evidence claim arising from counsel's unjustified failure to preserve the issue.
3. The evidence was legally sufficient to support termination of Timothy M.'s parental rights under Texas Family Code section 161.001(1)(E).
4. When the evidence supporting termination is factually insufficient, the appropriate disposition is a new trial on the parent's parental-rights claim.

KEY QUOTATIONS

"We conclude, like the court of appeals, that an ineffective assistance of counsel claim can be raised on appeal despite the failure to include it in a statement of points." (283 S.W.3d at 340)

"We accordingly agree that a parent's use of narcotics and its effect on his or her ability to parent may qualify as an endangering course of conduct." (283 S.W.3d at 347)

"Because a remand is also the appropriate judgment when evidence is found to have been factually insufficient, we modify the court's judgment to remand the cause to the trial court for a new trial on the issue

| *of Timothy's parental rights.*" (283 S.W.3d at 347)

FACTUAL BACKGROUND

Timothy and Trena M. had three children, including twins who tested positive for cocaine at birth, while Trena also tested positive for barbiturates. The Department removed the twins, placed them in foster care, and implemented a service plan after evidence of drug use, domestic violence, and parenting difficulties. Timothy had a history of daily marijuana use, missed drug tests, incarceration on domestic-violence charges, and delinquent child support, although he later obtained employment and improved housing, attended classes, exercised visitation, and passed several drug tests before testing positive for marijuana shortly before trial.

PROCEDURAL HISTORY

The trial court involuntarily terminated Timothy and Trena M.'s parental rights to their twins and appointed the Department managing conservator, while leaving parental rights to their older child intact. Neither parent timely filed the required statement of points because trial counsel moved to withdraw and appellate counsel was appointed after the fifteen-day deadline. The court of appeals held that Timothy's counsel was ineffective, found the evidence legally and factually insufficient as to Timothy, reversed in part, and remanded. The Supreme Court of Texas held that the ineffective-assistance and due-process claims could be reviewed, rejected the legal-insufficiency determination, and modified the judgment to require a new trial on Timothy's parental rights.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court modified the court of appeals' judgment and remanded the cause to the trial court for a new trial on the issue of Timothy M.'s parental rights.

CASES CITED

- In re M.S., 115 S.W.3d 534 (Tex. 2003)
- Strickland v. Washington, 466 U.S. 668 (1984)
- M.L.B. v. S.L.J., 519 U.S. 102 (1996)
- Mathews v. Eldridge, 424 U.S. 319 (1976)
- Santosky v. Kramer, 455 U.S. 745 (1982)
- Rogers v. Clinton, 794 S.W.2d 9, 10 n.1 (Tex. 1990)
- In re H.R., 87 S.W.3d 691, 703 (Tex. App.—San Antonio 2002, no pet.)
- In re R.J.S., 219 S.W.3d 623, 627 (Tex. App.—Dallas 2007, pet. denied)
- Garcia v. State, 57 S.W.3d 436, 440 (Tex. Crim. App. 2001)
- Thompson v. State, 9 S.W.3d 808, 812-13 (Tex. Crim. App. 1999)
- In re J.F.C., 96 S.W.3d 256 (Tex. 2002)

- Tex. Dep't of Human Servs. v. Boyd, 727 S.W.2d 531, 533 (Tex. 1987)
- In re M.N.G., 147 S.W.3d 521, 536 (Tex. App.—Fort Worth 2004, pet. denied)
- In re L.M.I., 119 S.W.3d 707, 712 (Tex. 2003)
- In re S.N., 272 S.W.3d 45, 52 (Tex. App.—Waco 2008, no pet.)
- Toliver v. Tex. Dep't of Family & Protective Servs., 217 S.W.3d 85, 98 (Tex. App.—Houston [1st Dist.] 2006, no pet.)
- In re R.W., 129 S.W.3d 732, 739 (Tex. App.—Fort Worth 2004, pet. denied)

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