

COURT OF APPEALS OF TEXAS, SEVENTH DISTRICT AT AMARILLO

In the Interest of C.C. and I.C., Children

No. 07-15-00185-CV (Tex. App.—Amarillo May 13, 2015) · No. No. 07-15-00185-CV · Decided May 13, 2015

SUMMARY

The Seventh District Court of Appeals of Texas abated and remanded an accelerated appeal from an order terminating the appellant's parental rights. The court directed the trial court to determine whether the appellant wished to pursue the appeal, remained indigent, required appointed counsel, and why the reporter's record was overdue.

CASE DETAILS

COURT	Court of Appeals of Texas, Seventh District at Amarillo
WRITING FOR THE COURT	Per Curiam; Campbell, J.; Hancock, J.; Pirtle, J.
JURISDICTION	Texas
DECIDED	May 13, 2015
DOCKET	No. 07-15-00185-CV
DISPOSITION	remanded
PROCEDURAL POSTURE	Accelerated appeal by a parent from an order terminating her parental rights. The notice of appeal was untimely, but the court accepted Appellant's explanation and determined that jurisdiction existed. Because the reporter's record was overdue and Appellant appeared to be without appointed appellate counsel, the court abated the appeal and remanded to the trial court for factual findings and corrective action.
PRECEDENTIAL VALUE	published
PARTIES	E.V.

TOPICS

termination of parental rights parental rights appellate procedure family law procedure constitutional law

PRACTICE AREAS

family law appellate procedure constitutional law civil procedure

QUESTIONS PRESENTED

1. Whether the appeal should be abated and remanded when an indigent parent in a parental-rights-termination case is apparently unrepresented by appointed appellate counsel and the reporter's record is overdue.
2. Whether the trial court must determine the parent's desire to pursue the appeal, continued indigency, entitlement to appointed counsel, possible abandonment by existing counsel, and the reason the reporter's record was not filed.

HOLDINGS

1. A parent whose parental rights have been terminated must have a meaningful right of appeal, and appointed counsel's duty in a termination proceeding continues after trial until the judgment becomes final or counsel is expressly discharged by the trial court.
2. When an appellant in an accelerated parental-rights-termination appeal is apparently unrepresented by appointed counsel and the reporter's record is past due, the appellate court may abate the appeal and remand to the trial court to determine the appellant's wishes, indigency, entitlement to counsel, counsel's possible abandonment, and the reason for the missing reporter's record.
3. The court accepted Appellant's reasonable explanation for filing the notice of appeal after the accelerated-appeal deadline and determined that jurisdiction over the appeal existed.

KEY QUOTATIONS

“A parent whose parental rights have been terminated must have a right of appeal that is meaningful.” (at 2)

“This Court has held that trial counsel’s duty to represent the interests of an indigent parent in a termination proceeding does not end with trial but, instead, continues until the judgment becomes final or until counsel is expressly discharged by the trial court.” (at 2)

FACTUAL BACKGROUND

The trial court terminated E.V.'s parental rights to her two children and ordered that appointed counsel continue representing her through the exhaustion or waiver of appeals. E.V. filed a pro se notice of appeal and explained that trial counsel had incorrectly advised her that she had thirty days to appeal rather than twenty. Although the appellate court accepted that explanation, the reporter's record became overdue and appointed counsel had not entered an appearance or taken steps to represent E.V. on appeal.

PROCEDURAL HISTORY

The Potter County district court signed an order terminating E.V.'s parental rights to her two children on March 31, 2015. E.V. filed a pro se notice of appeal on April 24, 2015, four days after the deadline for an accelerated appeal; the Court of Appeals accepted her explanation for the delay. The clerk's record had been filed, but the reporter's record was overdue, and appointed trial counsel had not entered an appearance or otherwise acted as appellate counsel. The Court of Appeals abated the appeal and remanded for the trial court to determine whether E.V. wished to pursue the appeal, remained indigent, needed new counsel, and why the reporter's record had not been filed.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court must immediately determine: (1) whether E.V. still desires to prosecute the appeal; (2) whether she remains indigent and is entitled to appointed appellate counsel; (3) whether George Harwood abandoned the appeal and whether E.V. is entitled to new appointed counsel; and (4) why the reporter's record has not been filed. If new counsel is appointed, the trial court must provide counsel's identifying and contact information to the appellate clerk. The trial court must execute findings of fact and conclusions of law and include them, along with any necessary orders, in a supplemental clerk's record filed by May 26, 2015. If Harwood remains counsel, he must immediately enter an appearance and take all necessary action to ensure that the reporter's record is filed.

CASES CITED

- Jones v. City of Houston, 976 S.W.2d 676, 677 (Tex. 1998)
- Verburgt v. Dorner, 959 S.W.2d 615, 617 (Tex. 1997)
- Santosky v. Kramer, 455 U.S. 745, 758–59 (1982)
- Holick v. Smith, 685 S.W.2d 18, 20 (Tex. 1985)
- In re S.K.A., 236 S.W.3d 875, 890 (Tex. App.—Texarkana 2007, pet. denied)
- In the Interest of J.O.A., 262 S.W.3d 7, 18 (Tex. App.—Amarillo 2008), modified, 283 S.W.3d 336 (Tex. 2009)

OPINION

PER CURIAM.

In The Court of Appeals Seventh District of Texas at Amarillo _____ No. 07-15-00185-CV _____ IN THE INTEREST OF C.C. AND I.C., CHILDREN On Appeal from the 320th District Court Potter County, Texas Trial Court No. 85,000-D; Honorable Don Emerson, Presiding May 13, 2015 ABATEMENT AND REMAND Before CAMPBELL and HANCOCK and PIRTLE, JJ. Appellant, E.V., filed a pro se notice of appeal on April 24, 2015, challenging the trial court's order terminating her parental rights to her two children.

The termination order was signed on March 31, 2015, and, as an accelerated appeal, the notice of appeal was due on or before April 20, 2015.¹ Appellant was directed to provide a reasonable explanation for the untimely filed notice. See Jones v. City of Houston, 976 1 In an accelerated appeal, the notice of appeal must be filed within twenty days after the judgment or order is signed.

See TEX. R. APP. P. 26.1(b) S.W.2d 676, 677 (Tex. 1998). See also Verburgt v. Dorner, 959 S.W.2d 615, 617 (Tex. 1997); TEX. R. APP. P. 26.3. Appellant, still acting pro se, timely filed a

response explaining that her court- appointed trial counsel advised her that she had thirty days to appeal, and she later learned the deadline was twenty days from the date the trial court signed the termination order.

Appellant's explanation was accepted by this Court and jurisdiction over the appeal exists. The clerk's record has been filed but the reporter's record is now past due and no extension has been requested. Termination of parental rights is an issue of constitutional dimension. See *Santosky v. Kramer*, 455 U.S. 745, 758-59 (1982). See also *Holick v. Smith*, 685 S.W.2d 18, 20 (Tex.

1985). Paragraph 13.1 of the trial court's Order of Termination provides as follows: IT IS THEREFORE ORDERED that GEORGE HARWOOD earlier appointed to represent [E.V.] shall continue in that capacity until all appeals of a final order terminating parental rights are exhausted or waived unless otherwise Ordered by the Court. A parent whose parental rights have been terminated must have a right of appeal that is meaningful.

In re S.K.A., 236 S.W.3d 875, 890 (Tex. App.—Texarkana 2007, pet. denied). This Court has held that trial counsel's duty to represent the interests of an indigent parent in a termination proceeding does not end with trial but, instead, continues until the judgment becomes final or until counsel is expressly discharged by the trial court.

In the Interest of J.O.A., 262 S.W.3d 7, 18 (Tex. App.—Amarillo 2008), modified, 283 S.W.3d 336 (Tex. 2009). 2 Copies of correspondence from this Court with Appellant in resolving the untimely filed notice of appeal were provided to Mr. Harwood. Those copies notwithstanding, he has not taken any action to designate himself as lead counsel in this appeal or enter an appearance to represent Appellant in an appeal of constitutional import.

TEX. R. APP. P. 6.1(c), 6.2. The reporter's record is now past due and no extension has been requested, possibly indicating that a record has not been designated or requested. Because Appellant is unrepresented by court-appointed counsel at this critical stage of her appeal, and given the accelerated nature of termination proceedings, we now abate this appeal and remand the cause to the trial court for further proceedings.

Upon remand, the trial court shall utilize whatever means necessary to immediately determine the following: 1. whether Appellant still desires to prosecute this appeal; 2. whether Appellant remains indigent and is entitled to appointed counsel to pursue this appeal; 3. whether Mr. Harwood has abandoned the appeal and Appellant is entitled to new appointed counsel; and 4. why the reporter's record has not been filed.

Should it be determined that Appellant does want to continue the appeal and the trial court determines she is entitled to new appointed counsel, the name, address, telephone number, email address and state bar number of newly appointed counsel shall be provided to the Clerk of this Court.

The trial court shall execute findings of fact and conclusions of law, and shall cause its findings, conclusions, and any necessary 3 orders to be included in a supplemental clerk's record to be filed with the Clerk of this Court by May 26, 2015. Should Mr. Harwood be permitted to remain as Appellant's appointed counsel he is hereby ordered to immediately enter an appearance in this Court and take whatever action is necessary to ensure the filing of the reporter's record.

It is so ordered. Per Curiam 4