

COURT OF APPEALS OF TEXAS, FOURTH DISTRICT, SAN ANTONIO

In the Interest of P.P.M.I., a Child

318 S.W.3d 905 (Tex. App.—San Antonio 2010) · No. 04-10-00096-CV · Decided April 21, 2010

SUMMARY

The Texas Court of Appeals affirmed the termination of the mother’s parental rights after she failed to file the statement of appellate points required by Texas Family Code section 263.405(b)(2). The court held that, because she did not assert any of the issues recognized as exceptions in *In re J.O.A.*, it could not consider her sufficiency challenges.

CASE DETAILS

COURT	Court of Appeals of Texas, Fourth District, San Antonio
WRITING FOR THE COURT	Marialyn Barnard, Justice; Catherine Stone, Chief Justice; Karen Angelini, Justice
JURISDICTION	Texas
DECIDED	April 21, 2010
DOCKET	04-10-00096-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	After a bench trial, the trial court entered an order terminating the parental rights of P.P.M.I.'s mother and father. The mother appealed, but she had not filed the statement of appellate points required by Texas Family Code section 263.405(b)(2).
STANDARD OF REVIEW	The court did not reach the merits of the sufficiency-of-the-evidence issues because Texas Family Code section 263.405(i) barred consideration of issues not timely presented in a statement of appellate points, subject to the exceptions recognized in <i>In re J.O.A.</i>
PRECEDENTIAL VALUE	published
PARTIES	Darleen Marie Ibarra v. Texas Department of Family and Protective Services

TOPICS

- termination of parental rights
- family law procedure
- preservation of error
- appellate procedure
- parental rights

PRACTICE AREAS

family law

appellate procedure

parental rights

QUESTIONS PRESENTED

1. Whether the court of appeals could consider the mother's sufficiency-of-the-evidence issues when she failed to file the statement of appellate points required by Texas Family Code section 263.405(b)(2).
2. Whether either exception recognized in *In re J.O.A.*—an ineffective-assistance claim or an as-applied constitutional challenge permitting sufficiency points—allowed review despite the absence of a statement of appellate points.

HOLDINGS

1. Under Texas Family Code section 263.405(i), the appellate court may not consider issues that were not specifically presented in a timely filed statement of appellate points or in a statement combined with a motion for new trial, except for the issues recognized by *In re J.O.A.* Because Ibarra filed no statement of appellate points and invoked neither *J.O.A.* exception, the court could not review her sufficiency challenges and affirmed the termination judgment.

KEY QUOTATIONS

“Section 263.405(i) provides the appellate court “may not consider any issue that was not specifically presented to the trial court in a timely filed statement of the points on which the party intends to appeal or in a statement combined with a motion for new trial.”” (-2-)

*“Accordingly, in the absence of a statement of appellate points or the assertion of any of the issues allowed by *J.O.A.*, we must affirm the trial court’s judgment of termination.” (-3-)*

FACTUAL BACKGROUND

Following a bench trial, the trial court terminated the parental rights of P.P.M.I.'s mother and father. The mother intended to challenge the sufficiency of the evidence supporting findings that she failed to comply with a court order specifying actions necessary to obtain the child's return and that appointing her as permanent managing conservator would significantly impair the child's physical or emotional development. She did not file the required statement of appellate points and did not assert that section 263.405 was unconstitutional as applied to her or that she received ineffective assistance of counsel.

PROCEDURAL HISTORY

The termination proceeding was instituted by the Texas Department of Family and Protective Services in the 73rd Judicial District Court of Bexar County. Following a bench trial, the trial court entered an order terminating both parents' rights. On appeal, the mother sought to challenge the sufficiency of the evidence, but she had not filed a statement of appellate points and did not invoke either exception recognized in *In re J.O.A.*; the court therefore affirmed.

DISPOSITION

affirmed

CASES CITED

- In re R.J.S., 219 S.W.3d 623, 626-27 (Tex. App.—Dallas 2007, pet. denied)
- In re S.E., 203 S.W.3d 14, 15 (Tex. App.—San Antonio 2006, no pet.)
- In re J.O.A., 283 S.W.3d 336, 339 (Tex. 2009)

OPINION

BARNARD, J.

iiiiii OPINION No. 04-10-00096-CV IN THE INTEREST OF P.P.M.I., A Child, From the 73rd Judicial District Court, Bexar County, Texas Trial Court No. 2008-PA-01458 Honorable Associate Judge Charles Montemayor, Judge Presiding¹ Opinion by: Marialyn Barnard, Justice Sitting: Catherine Stone, Chief Justice Karen Angelini, Justice Marialyn Barnard, Justice Delivered and Filed: April 21, 2010 AFFIRMED Following a bench trial, the trial court entered an order terminating the parental rights of P.P.M.I.'s mother and father.

The mother, Darleen Marie Ibarra, timely perfected an appeal. We affirm. Because the termination was instituted by the Texas Department of Family and Protective Services, section 263.405 of the Texas Family Code governs this appeal. See TEX. FAM. CODE ANN. §§ 263.002, 263.405(a) (Vernon 2008). Section 263.405(b)(2) requires that a party who intends to 1 ... Upon filing, this case was assigned to the 73rd Judicial District Court, which at the time of filing was presided over by the Honorable Andy Mireles.

The 73rd Judicial District Court is now presided over by the Honorable Renée F. McElhaney. However, the order of termination, which forms the subject of this appeal, was signed by Associate Judge Charles Montemayor. 04-10-00096-CV appeal a termination order must file “a statement of the point or points on which the party intends to appeal.” Id. § 263.405(b)(2).

Section 263.405(i) provides the appellate court “may not consider any issue that was not specifically presented to the trial court in a timely filed statement of the points on which the party intends to appeal or in a statement combined with a motion for new trial.” Id. § 263.405(i). Until recently, the failure to file the required statement of appellate points precluded appellate review of any issue, and the appellate court had no choice but to affirm.

See, e.g., In re R.J.S., 219 S.W.3d 623, 626-27 (Tex. App.—Dallas 2007, pet. denied); In re S.E., 203 S.W.3d 14, 15 (Tex. App.—San Antonio 2006, no pet.). However, in J.O.A., the supreme court held an ineffective assistance of counsel complaint could be raised on appeal even if it was not included in a statement of appellate points under section 263.405(i).

In re J.O.A., 283 S.W.3d 336, 339 (Tex. 2009). The court also held that an assertion that the statute is unconstitutional as applied to the party, so as to allow the party to raise sufficiency points, also could be raised even if it was not included in the statement of appellate points. *Id.* In this case, Ibarra did not file a statement of appellate points as required by section 263.405(b)(2).

To determine whether she intended to raise any of the issues permitted by J.O.A. in the absence of a statement of appellate points, we ordered her to file a document in this court, advising us of the issues she intended to raise on appeal.

In response to our order, Ibarra filed a document entitled “List of Issues That Appellant Raises In This Appeal.” In that document, Ibarra states she intends to contest the sufficiency of the evidence to support the trial court’s findings that she “failed to comply with the provisions of a court Order that specifically established the actions necessary for the mother to obtain the return of the child,” and that “appointment of [Ibarra] as permanent managing conservator of the child is not in the child’s best interest because the -2- 04-10-00096-CV appointment would significantly impair the child’s physical or emotional development.” Ibarra does not assert that she intends to claim the statute requiring a statement of appellate points is unconstitutional as applied to her, nor does she contend she was deprived of effective assistance of counsel.

Accordingly, in the absence of a statement of appellate points or the assertion of any of the issues allowed by J.O.A., we must affirm the trial court’s judgment of termination. We affirm the trial court’s judgment. Marialyn Barnard, Justice -3-