

SUPREME COURT OF TEXAS

In the Interest of S.A.P.

156 S.W.3d 574 (Tex. 2005) · No. 04-0473 · Decided January 21, 2005

SUMMARY

The Texas Supreme Court held that the respondents waived an estoppel defense in a parental-rights termination proceeding because it was neither pleaded nor submitted to the jury. The court also concluded that the agency's letters did not conclusively establish estoppel or require dismissal of the termination proceeding. The court reversed the court of appeals' judgment and remanded for consideration of the remaining issues.

CASE DETAILS

COURT	Supreme Court of Texas
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Texas
DECIDED	January 21, 2005
DOCKET	04-0473
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The parents sought reversal of a court of appeals judgment that reversed the trial court's termination of their parental rights based on an estoppel defense. The Supreme Court of Texas reviewed whether the estoppel argument was preserved and conclusively established.
STANDARD OF REVIEW	The court viewed the evidence in the light most favorable to the jury's verdict and considered whether estoppel was conclusively established. It also applied preservation and waiver rules to the unpleaded and unsubmitted defense.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Scott Peterson, Rebecca Peterson v. Texas Department of Protective and Regulatory Services

TOPICS

termination of parental rights

parental rights

affirmative defenses

preservation of error

appellate procedure

PRACTICE AREAS

family law

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the parents preserved an equitable-estoppel defense when they did not plead estoppel as an affirmative defense.
2. Whether the estoppel issue was tried by consent or otherwise preserved when it was not submitted to the jury.
3. Whether the agency's letters conclusively estopped it from seeking termination of the parents' parental rights.
4. Whether the letters alone required the agency, as a matter of law, to return S.A.P. to the parents and await a subsequent failure.

HOLDINGS

1. Equitable estoppel was waived because the parents did not plead it as an affirmative defense.
2. Even if an unpleaded issue is tried by consent, it must be submitted to the jury; because estoppel was not submitted, it was waived.
3. The letters did not conclusively estop the agency from seeking termination of the parents' parental rights.

KEY QUOTATIONS

"If estoppel is not pleaded, it is waived." (576)

"But even if the doctrine might apply in some parental termination case, it cannot be applied conclusively here." (577)

"Accordingly, without hearing oral argument, we reverse the court of appeals' judgment and remand to that court for consideration of the other issues raised on appeal." (578)

FACTUAL BACKGROUND

S.A.P. was born on June 8, 2001, and the Texas Department of Protective and Regulatory Services obtained custody of him almost immediately. Both parents had extensive histories involving child-welfare agencies, prior termination proceedings, abuse or neglect concerns, and other serious personal or behavioral problems. A jury found that both parents had engaged in conduct endangering S.A.P.'s physical or emotional well-being and that termination of their parental rights was in his best interest. The agency had sent each parent a letter stating that an investigation had ruled out the parent's role in reported abuse or neglect and offering removal of role information from agency records.

PROCEDURAL HISTORY

A jury found by clear and convincing evidence that statutory grounds existed to terminate both parents' parental rights to S.A.P. and that termination was in the child's best interest. The trial court rendered judgment on the

verdict. The court of appeals reversed, relying on letters from the Texas Department of Protective and Regulatory Services, although estoppel had not been pleaded or submitted to the jury. The Supreme Court of Texas reversed the court of appeals and remanded for consideration of the other issues raised on appeal.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court of appeals was directed to consider the other issues raised on appeal.

CASES CITED

- Phillips v. Phillips, 820 S.W.2d 785, 789 (Tex. 1991)
- Concord Oil Co. v. Alco Oil & Gas Corp., 387 S.W.2d 635, 639 (Tex. 1965)
- Boyles v. Kerr, 855 S.W.2d 593, 601 (Tex. 1993)
- Leeco Gas & Oil Co. v. Nueces County, 736 S.W.2d 629, 630 (Tex. 1987)
- City of Hutchins v. Prasifka, 450 S.W.2d 829, 836 (Tex. 1970)
- Champlin Oil & Refining Co. v. Chastain, 403 S.W.2d 376, 384 (Tex. 1965)
- Johnson & Higgins of Texas, Inc. v. Kenneco Energy, Inc., 962 S.W.2d 507, 515-16 (Tex. 1998)
- In re J.F.C., 96 S.W.3d 256, 266 (Tex. 2002)