

**COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS AT
AMARILLO**

In the Interest of C.H., T.H. and S.H., Children

In re C.H., T.H. & S.H. · No. 07-09-0019-CV · Decided March 19, 2009

SUMMARY

The Texas Court of Appeals for the Seventh District abated an accelerated appeal from an order terminating both parents' parental rights to three children. The court remanded the case to the trial court for entry of findings of fact and conclusions of law concerning the statutory grounds for termination and directed that the appeal be reinstated upon filing of a supplemental clerk's record.

CASE DETAILS

COURT	Court of Appeals for the Seventh District of Texas at Amarillo
WRITING FOR THE COURT	Quinn, C.J.; Campbell, J.; Pirtle, J.
JURISDICTION	Texas
DECIDED	March 19, 2009
DOCKET	07-09-0019-CV
DISPOSITION	remanded
PROCEDURAL POSTURE	Accelerated appeal from an order terminating both parents' parental rights. The mother moved to abate the appeal and remand for findings of fact and conclusions of law after the trial court failed to enter them despite timely requests.
PRECEDENTIAL VALUE	published
PARTIES	Mother of the children, Father of the children v. Texas Department of Family and Protective Services

TOPICS

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

PRACTICE AREAS

- family law
- appellate procedure
- civil procedure

QUESTIONS PRESENTED

1. Whether the accelerated termination appeal should be abated and remanded when the mother timely requested findings of fact and conclusions of law, filed a notice of past-due findings, and the trial court failed to file them.
2. Whether the trial court should be directed to clarify the factual bases for its termination ruling through findings of fact and conclusions of law.

HOLDINGS

1. The appeal should be abated and remanded to the trial court for entry and filing of findings of fact and conclusions of law because the mother timely requested them, timely filed a notice of past-due findings, and the trial court failed to file them; the appellee did not oppose abatement, and the transferred case implicated an Austin Court of Appeals precedent concerning alternatively phrased endangerment findings.

KEY QUOTATIONS

“Accordingly, we abate the appeal and remand the cause to the 395th District Court of Williamson County, Texas.”

“On the filing with this Court of the supplemental clerk’s record containing the findings and conclusions, the appeal will be reinstated.”

FACTUAL BACKGROUND

The trial court terminated both parents' rights to three children and recited findings under Texas Family Code section 161.001, including endangerment grounds under subsections (D) and (E), as well as a finding that termination was in the children's best interest. The termination order phrased the subsection (D) and (E) findings in the alternative and did not include separate findings of fact and conclusions of law.

PROCEDURAL HISTORY

The 395th District Court of Williamson County terminated both parents' parental rights to their three children, finding four statutory grounds and that termination was in the children's best interest. The mother timely requested findings of fact and conclusions of law and filed a notice of past-due findings, but the trial court filed none. The Court of Appeals granted the motion to abate, remanded for findings and conclusions, and directed that the appeal be reinstated after a supplemental clerk's record was filed.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The appeal was abated and remanded to the 395th District Court of Williamson County. The trial judge was directed to execute findings of fact and conclusions of law and file them with the trial court clerk by April 8, 2009. The trial court clerk was directed to prepare and file a supplemental clerk's record containing those

findings and conclusions immediately upon filing. The appeal would be reinstated when the supplemental clerk's record was filed in the Court of Appeals.

CASES CITED

- Juan A__ v. Dallas County Child Welfare, 733 S.W.2d 559 (Tex. Civ. App.—Dallas 1986, no writ)
- W__ H__ v. Moore, 589 S.W.2d 830 (Tex. Civ. App.—Dallas 1979, no writ)
- In re S__ H__, 548 S.W.2d 804 (Tex. Civ. App.—Amarillo 1977, no writ)
- Cervantes-Peterson v. Texas Department of Family & Protective Services, 221 S.W.3d 244 (Tex. App.—Houston [1st Dist.] 2006, no pet.)
- In re M.M.M., 229 S.W.3d 821 (Tex. App.—Fort Worth 2007, no pet.)
- In re A.I.G., 135 S.W.3d 687 (Tex. App.—San Antonio 2003, no pet.)
- Texas Department of Human Services v. E.B., 802 S.W.2d 647 (Tex. 1990)
- Baetz v. Texas Department of Protective and Regulatory Services, No. 03-97-00222-CV, 1998 WL 849394, at *1 n.2 (Tex. App.—Austin Dec. 10, 1998, no pet.)

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