

**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.)

OPINION

PER CURIAM.

NO. 07-09-0019-CV IN THE COURT OF APPEALS FOR THE SEVENTH DISTRICT OF TEXAS AT AMARILLO PANEL D MARCH 19, 2009 _____ IN THE INTEREST OF C.H., T.H. AND S.H., CHILDREN _____ FROM THE 395TH DISTRICT COURT OF WILLIAMSON COUNTY; NO. 07-1763-F395; HON. MICHAEL JERGINS, PRESIDING _____ Before QUINN, C.J., and CAMPBELL and PIRTLE, JJ. ORDER ABATING APPEAL This is an accelerated appeal from an order terminating the parental rights of both parents to their three children.

Both parents timely filed statements of points and notices of appeal. The clerk's record was filed on January 28, 2009, and the reporter's record was filed on February 26. Also on February 26, the mother of the children filed a motion requesting abatement of the appeal and remand to the trial court for entry of findings of fact and conclusions of law.

The mother informs us she timely filed a request for findings of fact and conclusions of law pursuant to Rule of Civil Procedure 296. See Tex. R. Civ. P. 296. She also informs us she timely filed a notice of past due findings of fact and conclusions of law pursuant to Rule 297. See Tex. R. Civ. P. 297.

The clerk's record supports the mother's statements. The trial court did not file findings or conclusions, and the mother now argues the appeal should be abated and remanded for entry of findings of fact and conclusions of law.

The termination order recites the trial court found four grounds for termination of the mother's parental rights, and found termination was in the best interest of the children. See Tex. Fam. Code Ann. § 161.001 (Vernon 2008) (listing grounds for involuntary termination). Two of the grounds are those described in §§ 161.001(1)(D) and 161.001(1)(E).

The termination order contains statements that the trial court found by clear and convincing evidence that the mother "knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endanger the physical or emotional well-being of the children" and that she "engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangers the physical or emotional well-being of the children[.]" In support of her motion to abate, the mother cites *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), and our opinion in *In re S__ H__*, 548 S.W.2d 804 (Tex.Civ.App.–Amarillo 1977, no writ), for the proposition that findings under subsections (D) and (E) of § 161.001(1) worded in the alternative are improper because they do not state which of the alternatives occurred.

See, e.g., *In re S__ H__*, 548 S.W.2d at 806 (stating a finding the parents engaged in endangering conduct or knowingly placed the children with persons who engaged in such conduct is not a finding that either occurred). By its use of such alternative wording, the mother asserts, the trial court's order does not state the facts on which the trial court relied to support its termination order.

It is not clear to us that *In re S__ H__*, *Juan A__*, and *W__ H__* reflect current requirements concerning the findings necessary to support an order terminating parental rights. See *Cervantes-Peterson v. Texas Dep't of Family & Protective Services*, 221 S.W.3d 244, 252 (Tex.App.–Houston [1st Dist.] 2006, no pet.) (distinguishing findings required by rules of civil procedure and those required by Family Code § 161.206); *In re M.M.M.*, 229 S.W.3d 821, 823 (Tex.App.–Fort Worth 2007, no pet.) (best interest finding); *In re A.I.G.*, 135 S.W.3d 687, 694 (Tex.App.–San Antonio 2003, no pet.); cf. *Texas Dep't of Human Servs. v. E.B.*, 802 S.W.2d 647, 649 (Tex.

1990) (for jury charge purposes, controlling question was whether parent-child relationship should be terminated). Nevertheless, we will grant the mother's motion here, for two reasons. First, appellee, the Texas Department of Family and Protective Services, has filed a response stating it does not oppose the motion.

Second, this case was transferred to us from the Austin Court of Appeals District. A panel of the Austin court, as recently as 1998, cited *Juan A__* and *In re S__ H__* in support of a statement that an endangering conduct finding was "improperly phrased in the alternative." *Baetz v. Texas Dep't of Protective and Regulatory Servs.*, No. 03-97-00222-CV, 1998 WL 849394 *1 n.2 (Tex.App.–Austin Dec.10, 1998, no pet.).

See Tex. R. App. P. 41.3. Accordingly, we abate the appeal and remand the cause to the 395th District Court of Williamson County, Texas. We direct the judge of the trial court to execute findings of fact and conclusions of law.

Because the appeal is accelerated, we also direct the judge to file the findings and conclusions with the trial court clerk on or before April 8, 2009, and further direct the trial court clerk to prepare and file a supplemental clerk's record, containing the findings and conclusions, with the clerk of this Court immediately on their filing with the trial court clerk.

On the filing with this Court of the supplemental clerk's record containing the findings and conclusions, the appeal will be reinstated. It is so ordered. Per Curiam