

**COURT OF APPEALS OF TEXAS, SIXTH APPELLATE DISTRICT AT
TEXARKANA**

In the Interest of J.J. and L.J., Children

No. 06-22-00016-CV (Tex. App.—Texarkana June 2, 2022) · No. No. 06-22-00016-CV · Decided June 2, 2022

SUMMARY

The Texas Court of Appeals for the Sixth District affirmed the termination of Father's parental rights to J.J. and L.J. Father argued that his appointed counsel provided ineffective assistance because counsel had previously represented Mother, creating a conflict of interest. The court held that Father failed to establish either deficient performance or prejudice under the Strickland test.

CASE DETAILS

COURT	Court of Appeals of Texas, Sixth Appellate District at Texarkana
WRITING FOR THE COURT	Charles van Cleef; Morriss, C.J.; Stevens, J.; van Cleef, J.
JURISDICTION	Texas
DECIDED	June 2, 2022
DOCKET	No. 06-22-00016-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Father appealed the judgment terminating his parental rights to J.J. and L.J., asserting ineffective assistance of counsel based on an alleged conflict arising from his appointed counsel's prior joint representation of Mother.
STANDARD OF REVIEW	Ineffective-assistance claims in parental-rights termination cases are evaluated under the two-prong Strickland test. On a first direct appeal, the court gives substantial deference to counsel's choices and generally will not find deficient performance when the record is silent regarding counsel's strategy.
PRECEDENTIAL VALUE	Published intermediate appellate opinion; precedential under the supplied metadata.
PARTIES	Father v. Texas Department of Family and Protective Services

TOPICS

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

PRACTICE AREAS

family law

termination of parental rights

appellate procedure

ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether Father's appointed counsel rendered ineffective assistance by continuing to represent Father after previously representing Mother and allegedly facing a conflict of interest.
2. Whether Father was required to establish prejudice under the second prong of Strickland for an ineffective-assistance claim based on an alleged conflict of interest in a parental-rights termination proceeding.
3. Whether the appellate record affirmatively demonstrated deficient performance or a reasonable probability that the termination result would have been different.

HOLDINGS

1. Father failed to establish that counsel's performance was deficient. The silent record did not affirmatively demonstrate an actual conflict, unreasonable performance, or conduct so outrageous that no competent attorney would have engaged in it.
2. Father was required to show both deficient performance and prejudice. The court declined to recognize an exception to Strickland's prejudice requirement for an alleged conflict of interest in a parental-rights termination case.
3. Father failed to establish prejudice because his own testimony supported multiple statutory termination grounds and the best-interest finding, leaving no reasonable probability that the result would have been different.

KEY QUOTATIONS

“ “[I]n deciding whether there is a conflict of interest between parents opposing termination in a single lawsuit, the trial court must determine whether there is a substantial risk that the appointed counsel’s obligations to one parent would materially and adversely affect his or her obligations to the other parent.” ”
(6)

“In light of Father’s testimony in this case, nothing shows that there was a reasonable probability that his parental rights would not have been terminated absent any alleged ineffective assistance by counsel.” (10)

FACTUAL BACKGROUND

The Department sought termination of Mother's and Father's parental rights after the children tested positive for methamphetamine and marihuana. Mother and Father were initially represented by the same appointed counsel, but counsel withdrew from representing Mother after learning that the parents had permanently separated and the trial court appointed new counsel for her. At trial, Father admitted daily methamphetamine use, alcoholism, serious parenting deficiencies, and that he had allowed the children to remain with Mother, who was also a drug addict; the trial court terminated his parental rights.

PROCEDURAL HISTORY

The Texas Department of Family and Protective Services petitioned to terminate both parents' parental rights. The trial court initially appointed the same attorney for Mother and Father, later appointed separate counsel for Mother after counsel identified a potential conflict, and ultimately terminated Father's parental rights based on statutory endangerment, deferred-adjudication, and failure-to-comply grounds, together with a best-interest finding. Father appealed, raising one ineffective-assistance claim.

DISPOSITION

affirmed

CASES CITED

- In re D.T., 625 S.W.3d 62, 71, 73-74 (Tex. 2021)
- Strickland v. Washington, 466 U.S. 668, 687, 689 (1984)
- In re M.S., 115 S.W.3d 544, 544-45, 545, 550 (Tex. 2003)
- In re K.M.H., 181 S.W.3d 1, 11-12 (Tex. App.—Houston [14th Dist.] 2005, no pet.)
- Johnson v. State, 583 S.W.3d 300, 311 (Tex. App.—Fort Worth 2019, pet. ref'd) (per curiam) (mem. op.)
- Mickens v. Taylor, 535 U.S. 162, 166-74 (2002)
- Lampkin v. State, 470 S.W.3d 876, 897-98 & n.10 (Tex. App.—Texarkana 2015, pet. ref'd)
- Bone v. State, 77 S.W.3d 828, 833, 836 (Tex. Crim. App. 2002)
- Thompson v. State, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999)
- Rylander v. State, 101 S.W.3d 107, 110-11 (Tex. Crim. App. 2003)
- Andrews v. State, 159 S.W.3d 98, 102 (Tex. Crim. App. 2005)
- In re C.H.M., No. 06-19-00108-CV, 2020 WL 1221005, at *2 (Tex. App.—Texarkana Mar. 13, 2020, no pet.) (mem. op.)
- In re J.M.A.E.W., No. 06-14-00087-CV, 2015 WL 1119761, at *3 (Tex. App.—Texarkana Mar. 13, 2015, no pet.) (mem. op.)
- Bermea v. Tex. Dep't of Family & Protective Servs., 265 S.W.3d 34, 43 (Tex. App.—Houston [1st Dist.] 2008, pet. denied)
- In re K.L.L.H., No. 06-09-00067-CV, 2010 WL 87043, at *6, *8 (Tex. App.—Texarkana Jan. 12, 2010, pet. denied) (mem. op.)
- Robinson v. State, 16 S.W.3d 808, 813 n.7 (Tex. Crim. App. 2000)
- In re M.C.T., 250 S.W.3d 161, 172 (Tex. App.—Fort Worth 2008, no pet.)
- Garcia v. State, 57 S.W.3d 436, 440 (Tex. Crim. App. 2001)
- Acosta v. State, 233 S.W.3d 349, 355 (Tex. Crim. App. 2007)
- Cuyler v. Sullivan, 446 U.S. 335, 350 (1980)
- Hurley v. State, 606 S.W.2d 887, 890 (Tex. Crim. App. [Panel Op.] 1980)
- Holloway v. Arkansas, 435 U.S. 475, 483 (1978)
- In re S.J., No. 06-09-00043-CV, 2009 WL 2048078, at *2 (Tex. App.—Texarkana July 16, 2009, no pet.) (mem. op.)

- In re L.G.D., No. 06-17-00061-CV, 2017 WL 4507673, at *3 (Tex. App.—Texarkana Oct. 10, 2017, pet. denied) (mem. op.)
- In re L.E.S., 471 S.W.3d 915, 923 (Tex. App.—Texarkana 2015, no pet.)
- In re O.R.F., 417 S.W.3d 24, 37 (Tex. App.—Texarkana 2013, pet. denied)

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