

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-22-00099-CV

A. N., Appellant

v.

Texas Department of Family and Protective Services, Appellee

**FROM THE 453RD DISTRICT COURT OF HAYS COUNTY
NO. 20-0971, THE HONORABLE MELISSA MCCLENAHAN, JUDGE PRESIDING**

MEMORANDUM OPINION

A.N. (Mother) appeals from a judgment terminating her parental rights to two children, aged nine and two.¹ She argues that the judgment is void because the district court lost jurisdiction over the case before rendering judgment. *See* Tex. Fam. Code § 263.401(a) (providing automatic dismissal deadline for certain cases involving children). We affirm.

BACKGROUND

Section 263.401 provides for automatic dismissal of cases where the Department requests termination of parental rights or permanent conservatorship of a child:

Unless the court has commenced the trial on the merits or granted an extension under Subsection (b) or (b-1), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary

¹ We refer to appellant and the children's fathers by initials or fictitious names. *See* Tex. Fam. Code § 109.002(d); Tex. R. App. P. 9.8(b).

managing conservator, the court’s jurisdiction over the suit . . . is terminated and the suit is automatically dismissed without a court order.

Id. § 263.401(a). A court may extend the dismissal deadline for no more than 180 days for extraordinary circumstances or if the court grants a motion for new trial, mistrial or the case is remanded by an appellate court. *See id.* § 263.401(b), (b–1). If the trial court “grants an extension under Subsection (b) or (b-1) but does not commence the trial on the merits before the dismissal date, the court’s jurisdiction over the suit is terminated and the suit is automatically dismissed without a court order.” *Id.* § 263.401(c). The court “may not grant an additional extension that extends the suit beyond the required date for dismissal under Subsection (b) or (b-1).” *Id.* However, the supreme court has issued a series of emergency orders in response to the COVID-19 pandemic that “permit[] trial courts to suspend the deadlines and procedures in Section 263.401.” *C.C. v. Texas Dep’t of Fam. & Protective Servs.*, No. 03-21-00587-CV, 2022 WL 1121428, at *2 (Tex. App.—Austin Apr. 15, 2022, no pet.) (mem. op.).

In March of 2020, the Department of Family and Protective Services received an intake alleging that Mother was unable to care for the children. On May 13, 2020, the Department filed a suit affecting the parent child relationship seeking conservatorship of the children and termination of Mother’s rights.² On the same day, the district court entered an order appointing the Department managing conservator of the children. Pursuant to Section 263.401, the order scheduled the initial dismissal date for May 17, 2021. On April 13, 2021, the district court signed an order extending the dismissal date to November 13, 2021. *See* Tex. Fam. Code § 263.401(b).

² The Department also sought termination of the rights of C.M.—the father of the eldest child—and the unknown father of the youngest. The district court subsequently terminated the rights of all three parents.

On August 18, 2021, the Department moved for a second extension of the deadline pursuant to the emergency order in effect at the time. *See Fortieth Emergency Order Regarding COVID-19 State of Disaster*, 629 S.W.3d 911, 912 (Tex. 2021) (order). On October 8, 2021, the district court signed an order extending the dismissal date to February 1, 2022 and setting the case for trial on January 26, 2022. The week before trial, two of the attorneys involved tested positive for COVID-19. On February 1, 2022, the regional presiding judge further extended the dismissal deadline for thirty days, at the request of the district court, to March 1, 2022. *See Forty-Seventh Emergency Order Regarding COVID-19 State of Disaster*, No. 22-9005, ___ S.W.3d ___, ___, 2022 WL 175669, at *2 (Tex. Jan. 19, 2022) (order) (authorizing regional presiding judge to grant further extensions “upon good cause shown by the requesting trial court”). The parties tried the case to a jury from February 15–18, 2022. On February 22, 2022, the district court rendered judgment on the jury’s findings that several statutory grounds for termination existed and that termination was in the children’s best interest. *See* Tex. Fam. Code §§ 161.001(b)(1)(D), (E), (O), (b)(2), .003. Mother appealed.

DISCUSSION

Mother argues in a single issue that the judgment is void because the district court lost jurisdiction when it failed to commence trial on the merits before February 1, 2022.

We review questions of subject matter jurisdiction and statutory interpretation *de novo* as a question of law. *See Southwestern Elec. Power Co. v. Lynch*, 595 S.W.3d 678, 682 (Tex. 2020); *Hegar v. American Multi-Cinema, Inc.*, 605 S.W.3d 35, 40 (Tex. 2020). “When interpreting statutes, we look to the plain meaning of the enacted text” and enforce it “as written.” *KMS Retail Rowlett, LP v. City of Rowlett*, 593 S.W.3d 175, 183 (Tex. 2019). Similarly, we interpret court

orders, including the supreme court’s emergency orders, “according to the plain meaning of their terms.” *Kim v. Ramos*, 632 S.W.3d 258, 269 (Tex. App.—Houston [1st Dist.] 2021, no pet); *accord West Harwood 334B Land Tr. v. Clement*, No. 02-20-00216-CV, 2021 WL 1229973, at *5 (Tex. App.—Fort Worth Apr. 1, 2021, no pet.) (mem. op.); *Green v. Villas on Town Lake Owners Ass’n, Inc.*, No. 03-20-00375-CV, 2021 WL 4927414, at *9 (Tex. App.—Austin Oct. 22, 2021, pet. filed) (mem. op.).

Mother acknowledges that the second and third extensions of the dismissal date—to February 1, 2022 and March 1, 2022, respectively—were pursuant to the supreme court’s emergency orders. However, she argues that the regional presiding judge granted the third extension after district court’s jurisdiction terminated on February 1, 2022, because the district court did not commence trial on the merits before that dismissal date. In other words, she argues that Section 263.401’s requirements continue to apply even if when a court extends the dismissal deadline pursuant to an emergency order. *See* Tex. Fam. Code § 263.401(c) (terminating trial court’s jurisdiction if it “*grants an extension under Subsection (b) or (b-1)* but does not commence the trial on the merits before the dismissal date” (emphasis added)).

We disagree. Mother’s argument omits that the statutory language specifies that Subsection 263.401(c) applies when a court “grants an extension under Subsection (b) or (b-1).” *Id.* As noted, the district court granted the first extension of the deadline under Section 263.401(b) or (b-1). To extend the deadline a second time, the court invoked the supreme court’s Fortieth Emergency Order, which states that in any proceeding that, “on May 26, 2021 had been previously retained on the court’s docket pursuant only to Section 263.401(b) or (b-1), the court may extend the dismissal date for a stated period ending no later than February 1, 2022.” *Fortieth Emergency Order*, 629 S.W.3d at 912. Nothing in that provision requires courts to comply with Section

263.401's procedural requirements, such as beginning trial before the dismissal date, when granting a second extension.³ Instead, it merely allows courts to extend the dismissal date for a period ending no later than February 1, 2022. By contrast, for a case that "is filed on or after May 26, 2021, the court may extend the initial dismissal date as calculated under Section 263.401(a) only as provided by Section 263.401(b) or (b-1)." *Id.* This is consistent with the supreme court's previous emergency orders, which specified that an initial extension of the dismissal deadline must comply with the statutory requirements of Section 263.401 but did not require such compliance for subsequent extensions granted under the emergency orders.⁴ See *R.C.C. v. Texas Dep't of Fam. & Protective Servs.*, No. 03-21-00687-CV, 2022 WL 2231306, at *9 (Tex. App.—Austin June 22, 2022, no pet. h.) (mem. op.) ("[A]lthough the Eighteenth

³ The forty-third order had superseded the fortieth when the district court granted the Department's motion on October 8, 2021. We cite to the fortieth order for convenience because it is materially identical to the forty-third order. See *Forty-Third Emergency Order Regarding COVID-19 State of Disaster*, 629 S.W.3d 929, 930 (Tex. 2021) (order) (providing that for "any such proceeding that, on May 26, 2021, had been previously retained on the court's docket pursuant only to Section 263.401(b) or (b-1), the court may extend the dismissal date for a stated period ending no later than February 1, 2022").

⁴ The concurrence argues that Fortieth Emergency Order is different from previous emergency orders because it provides that in cases where the Department seeks termination of parental rights, "all deadlines and procedures must not be modified or suspended, unless permitted by statute, except the dismissal date may be extended as follows[.]" *Post* at 2 (citing *Fortieth Emergency Order Regarding COVID-19 State of Disaster*, 629 S.W.3d 911, 912 (Tex. 2021) (order)). In contrast, the previous emergency orders authorized extensions "[s]ubject only to constitutional limitations." *Id.* (citing *Eighteenth Emergency Order Regarding COVID-19 State of Disaster*, 609 S.W.3d 122–123 (Tex. 2020) (order)). As already discussed, the Fortieth Emergency Order expressly requires courts to comply with section 263.401 when granting extensions in some cases but not others. If the supreme court intended in the Fortieth Emergency Order to require all courts to comply with section 263.401 in granting extensions, it would have expressly said so. *Cf. Hogan v. Zoanni*, 627 S.W.3d 163, 169 (Tex. 2021) ("[W]e 'presume the Legislature chose statutory language deliberately and purposefully,' and that it likewise excluded language deliberately and purposefully." (quoting *Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 390 (Tex. 2014))).

Emergency Order and subsequent orders required that the extension of the initial dismissal date comply with Section 263.401, the orders did not require compliance with Section 263.401 for additional extensions[.]” (citing *C.C.*, 2022 WL 1121428, at *3)).

Mother argues that our sister court reached the opposite result on similar facts. *See In re J.R.*, 622 S.W.3d 602, 603 (Tex. App.—Fort Worth 2021, orig. proceeding [mand. disp’d]). There, the trial court extended the initial dismissal date to February 8, 2021, based on an agreed order, not under any of the supreme court’s emergency orders. *See id.* On the dismissal day, the Department filed a motion to extend the dismissal date again pursuant to the governing emergency order. *Id.* at 603–04 (citing *Thirty-Third Emergency Order Regarding COVID-19 State of Disaster*, 629 S.W.3d 179, 180 (Tex. 2021) (order)). The trial court granted an extension by order the same day. *Id.* at 604. Our sister court held that the trial court’s jurisdiction terminated on February 8, 2021, because it “had not commenced a trial on the merits or further extended the dismissal date” by that date. *Id.* at 605–06 (citing Tex. Fam. Code 263.401(c), applicable to extensions granted “under Subsection (b) or (b-1)”). *J.R.* thus concerned the expiration of an *initial* dismissal date extension, which must comply with the procedural requirements in Section 263.401. By contrast, Mother complains about the expiration of a subsequent dismissal-date extension granted under the Fortieth Emergency Order, which extension need not comply with the procedural requirements of Section 263.401. The case is therefore inapposite, and Mother has offered us no other authorities requiring us to conclude that Section 263.401 terminated the district court’s jurisdiction on February 1, 2022.

We conclude that the plain language of the Fortieth Emergency Order did not require the district court to commence trial on the merits before February 1, 2022 or lose jurisdiction. The district court therefore retained jurisdiction on February 1, 2022 when the

regional presiding judge granted a third extension pursuant to the Forty-Seventh Emergency Order.⁵ We overrule A.N.’s sole issue.

CONCLUSION

We affirm the district court’s judgment.

Edward Smith, Justice

Before Chief Justice Byrne, Justices Kelly and Smith
Concurring Opinion by Justice Kelly

Affirmed

Filed: August 23, 2022

⁵ The concurrence asserts that this analysis was unnecessary because the extension “under the Forty Seventh Emergency Order from February 1 to March 1 was proper even though the extension order was signed on the then dismissal date of February 1 because such orders may be signed on the dismissal date even though by statute the trial otherwise must start ‘before’ the dismissal date.” *Post* at 1. (citing *In re G.X.H.*, 627 S.W.3d 288, 300–01 (Tex. 2021)). However, the trial court in *G.X.H.* made a docket entry granting a motion for extension several weeks before the initial dismissal date. *See id.* at 297–98 (holding this was effective to grant extension because Family Code permits court to render order through docket entry). The supreme court then expressly rejected the argument that Section 263.401(b) required the trial court to issue further orders to grant a valid extension. *See id.* at 300 (holding that trial court’s docket entry satisfied statutory requirements for extension). *G.X.H.* does not support that extensions may be “signed on the dismissal date.” *Post* at 1.