

**Affirmed and Opinion Filed April 12, 2018**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-17-01411-CV**

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**IN THE INTEREST OF R.J.B., A CHILD**

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**On Appeal from the 59th Judicial District Court  
Grayson County, Texas  
Trial Court Cause No. FA-16-2007**

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**MEMORANDUM OPINION**

Before Justices Francis, Evans, and Boatright  
Opinion by Justice Francis

Father appeals the trial court's order terminating his parental rights to his two-year-old daughter, R.J.B. In a single issue, Father asserts the trial court abused its discretion by denying his oral motion to extend the statutory one-year dismissal deadline for six months. For reasons set out below, we overrule the issue. We affirm the trial court's order of termination.

R.J.B., then fifteen months old, was removed from her parents' care in November 2016 after the Department of Family and Protective Services investigated allegations that she was living in a dirty home without water service, was malnourished, and her parents were using drugs.

At the fourteen-day hearing, Father admitted using methamphetamine shortly before the CPS investigation. At the time, Father was on probation for possession of a controlled substance out of Freestone County but said he had stopped reporting. He spoke to someone at the probation department two months earlier and was told to come in and report, but had not done so. Father said he understood if he did not "work something out" with the probation department, he would

likely face a motion to revoke his probation, could go to state jail for up to two years, and would not be able to take care of his family. He did not know if a warrant had already issued. He also told the trial court he would leave “straight from here” and report to the probation department.

Six weeks after R.J.B.’s removal, Father was arrested on a traffic violation and held on an outstanding warrant out of Freestone County. He was subsequently sentenced to fourteen months in state jail and remained incarcerated throughout the remainder of these proceedings. During that time, the Department’s goal changed from reunification with the family to adoption by Father’s sister because neither Father nor Mother had initiated or completed any services.

By the time of the November 14, 2017 final hearing, Mother had signed an affidavit relinquishing her parental rights to R.J.B. Father’s counsel requested a six-month extension to give Father the opportunity to perform his services once he was released from state jail. Counsel said Father told him he would be released on December 1, 2017 and, if not then, no later than February 25, 2018. The trial court denied the request.

Sarah Price, the caseworker assigned to the case, testified R.J.B. was removed from her parents’ home on allegations of abuse and neglect, including exposure to drugs. Hair-strand testing on R.J.B. showed “a very high level” of methamphetamine, and Father also tested positive for methamphetamine and amphetamine at “very high levels” suggesting “daily use.” Mother did not test positive for drugs, which Price said indicated R.J.B.’s drug exposure came from Father. Price also said the home in which R.J.B. was living was “very dirty” and had been without water service for two or three months.

Although Father went over his proposed service plan before he was arrested, Price said the plan was not ready for his signature at that time and he had not begun any of the services. She had no certificates to indicate Father attended or performed a program to “alleviate” his drug problem while in state jail, although he did return a packet of information from the “NA-AA group” as well

as “parenting supplemental information.” She acknowledged it was “possible” Father may not have the ability to send her certificates until he is released from jail. But, she said, he could not care for his child at the time of trial because he was incarcerated.

Finally, Price testified R.J.B. was living with her paternal aunt and was doing well. According to Price, the aunt wants to adopt R.J.B. but would not agree to an arrangement where Father was possessory conservator. Price believed R.J.B.’s physical and emotional well-being were endangered by Father exposing her to drugs and by allowing her to remain in the home in the condition it was in. She believed it was in R.J.B.’s best interest for Father’s rights to be terminated.

In addition to Price, CASA supervisor Amy Patterson said CASA visited with the child and her aunt and everything was going “very well.” She recommended R.J.B. remain in her current placement, that Father’s rights be terminated, and the paternal aunt be allowed to adopt her. Patterson said she would be concerned, given the testimony and her familiarity with the case, with what Father would expose the child to if his rights were not terminated. She acknowledged no one with CASA visited Father in jail.

At the conclusion of the evidence, Father’s counsel re-urged his request for an extension so Father could be present to testify about any programs he completed while in jail and the steps he’d taken to remedy the cause for removal. The trial court denied the motion and ordered Father’s parental rights terminated for endangering conditions, endangerment, and failing to comply with a court order establishing the conditions for the return of the child. *See* TEX. FAM. CODE ANN. §§ 161.001(b)(1)(D), (E), & (O) (West Supp. 2017). The trial court also found termination of Father’s rights was in R.J.B.’s best interest. *See id.* § 161.001(b)(2) (West Supp. 2017).

In his sole issue on appeal, Father argues the trial court abused its discretion by denying his oral motion to extend the statutory dismissal deadline set out in section 263.401 of the family

code. He argues his impending release from state jail was an “extraordinary circumstance” to allow the case to remain on the court’s docket beyond the one-year dismissal date.

The statutory dismissal date for this parental termination case was November 27, 2017 unless the trial court granted the extension.<sup>1</sup> *See* TEX. FAM. CODE ANN. § 263.401(a) (West Supp. 2017 (providing that unless court has commenced trial on merits or granted extension on first Monday after first anniversary of date that trial court rendered temporary order appointing Department temporary managing conservator, court’s jurisdiction “is terminated” and case automatically dismissed without court order). A trial court may retain such a suit on its docket for an additional 180 days if the movant shows “extraordinary circumstances [that] necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child.” *Id.* § 263.401(b).

We review a trial court’s decision to deny an extension of the statutory dismissal date for abuse of discretion. *In re A.J.M.*, 375 S.W.3d 599, 604 (Tex. App.—Fort Worth 2012, pet. denied) (op. on mot. for reh’g and mot. for en banc reconsideration). To determine whether a trial court abused its discretion, we must decide whether the trial court acted without any guiding rules or principles; in other words, we must decide whether the act was arbitrary or unreasonable. *In re D.W.*, 249 S.W.3d 625, 647 (Tex. App.—Fort Worth 2008), pet. denied per curiam, 260 S.W.3d 462 (Tex. 2008). In reviewing the ruling, our focus is on the needs of the child, whether extraordinary circumstances necessitate the child remaining in the temporary custody of the Department, and whether continuing such is in the best interest of the child. *Id.* A parent’s incarceration is generally considered to be the parent’s fault and not an extraordinary circumstance.

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<sup>1</sup> In his brief, Father asserts the Department was appointed temporary managing conservator of the child on December 22, 2016. The record, however, shows the trial court issued emergency orders on November 22, 2016 naming the Department temporary sole managing conservator of the child.

*In re G.P.*, No. 10-13-00062-CV, 2013 WL 2639243, at \*1 (Tex. App.—Waco June 6, 2013, no pet.) (mem. op.); *see In re A.J.M.*, 375 S.W.3d at 603–05.

Here, the record shows R.J.B. tested positive for methamphetamine after being exposed to the drug by Father, whose testing levels suggested daily use at the time of R.J.B.’s removal. At the fourteen-day hearing, Father told the trial court he had stopped reporting to probation and also acknowledged using methamphetamine shortly before the CPS investigation. Weeks later, Father was arrested and sentenced to fourteen months in a state jail facility. He remained in jail, and no evidence shows he completed any of his services either in the six weeks before he was incarcerated or during his time in jail. During that time, R.J.B. was first in foster care and then placed with her paternal aunt, who wants to adopt her. Evidence showed she is doing well in the aunt’s care.

The statute’s clear preference is to complete the process within the one-year period. *In re A.J.M.*, 375 S.W.3d at 605. The legislature recently amended the statute to make this requirement jurisdictional. *See* Act of May 26, 2017, 85th Leg., R.S., ch. 317, § 27, 2017 Tex. Gen. Laws 615, 623. Given this preference and the fact that a parent’s incarceration is generally considered to be the parent’s fault and not an extraordinary circumstance, we cannot say the trial court abused its discretion in denying Father’s request for extension. We overrule the sole issue.

We affirm the trial court’s order of termination.

/Molly Francis/  
MOLLY FRANCIS  
JUSTICE



**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

IN THE INTEREST OF R.J.B., A CHILD,

No. 05-17-01411-CV      V.

On Appeal from the 59th Judicial District  
Court, Grayson County, Texas

Trial Court Cause No. FA-16-2007.

Opinion delivered by Justice Francis;

Justices Evans and Boatright participating.

In accordance with this Court's opinion of this date, the trial court's order of termination is **AFFIRMED**.

Judgment entered April 12, 2018.