

Opinion issued May 10, 2016



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-15-01058-CV

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**IN THE INTEREST OF M.V., A CHILD**

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**On Appeal from the County Court at Law  
Washington County, Texas  
Trial Court Case No. CCL8072**

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**MEMORANDUM OPINION**

S.K. and J.V. appeal from the trial court's order terminating their parental rights to their son, M.V. In their sole issue, they contend that the trial court's November 17, 2015 order is void because it was signed after the court's plenary power had expired. Because we conclude that the trial court's November 17, 2015 judgment is void, we vacate the order and dismiss the appeal.

## **Background**

On April 7, 2014, the Department of Family and Protective Services (DFPS) filed an Original Petition for Protection of a Child, for Conservatorship, and for Termination in Suit Affecting the Parent-Child Relationship, with regard to M.V., N.B., and A.B.<sup>1</sup> On July 29, 2015, S.K. executed a Mother's Affidavit for Voluntary Relinquishment of Parental Rights to Licensed Child-Placing Agency with regard to M.V. On August 4, 2015, J.V. signed an affidavit of relinquishment regarding M.V.

On September 21, 2015, the trial court held a pre-trial hearing. At the conclusion of the hearing, the court stated

And based upon the affidavits of relinquishment, considering all of the previous history in this case, incorporating that by reference herein, the Court finds that it's in the best interest of the child, [M.V.], that parental rights of the parents be terminated. It is so ordered.

That same day, the trial court signed an order granting DFPS's request to sever M.V.'s suit from the suit involving N.B. and A.B., as well as a Final Order in Suit Affecting the Parent-Child Relationship appointing DFPS as M.V.'s permanent managing conservator. The order stated "that all relief requested in this case, and not expressly granted, is denied."

On November 17, 2015, the trial court held a placement review hearing at which the court heard testimony regarding M.V.'s foster home placement and

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<sup>1</sup> S.K. is the biological mother of N.B. and A.B. who were eleven and seven years old, respectively, at the time the petition was filed. Their father, C.B., is deceased.

adoption plan. The same day, the trial court signed an order terminating S.K.'s and J.V.'s parental rights to M.V. pursuant to subsections (D), (E), (G), and (I) of Family Code section 161.001(b)(1).<sup>2</sup> S.K. and J.V. timely filed this joint appeal.

### **Standard of Review and Applicable Law**

We review whether a trial court has subject matter jurisdiction de novo. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

A trial court retains jurisdiction over a case for thirty days after it signs a final judgment or order. TEX. R. CIV. P. 329b(d). During this period, the trial court has plenary power to modify its judgment, but, after the thirty days run, the trial court loses its plenary power, and lacks jurisdiction to act in the matter. *Check v. Mitchell*,

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<sup>2</sup> The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence that the parent has:

....

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

....

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;

....

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261.

TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (G), (I) (West 2010).

758 S.W.2d 755, 756 (Tex. 1988). A party can extend the trial court's plenary power, however, by timely filing an appropriate post-judgment motion—either a motion for new trial, TEX. R. CIV. P. 329b(e), or a motion to modify, correct or reform the judgment, TEX. R. CIV. P. 329b(g)—within the thirty days after the trial court signs the final judgment or order.

Judicial action taken after the trial court's plenary power has expired is void. *See State ex. rel Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995). A party affected by void judicial action need not appeal. *Id.* However, if an appeal is taken, the appellate court should declare void any orders the trial court signed after it lost plenary power over the case. *Id.*; *Martin v. Texas Dep't of Family & Protective Servs.*, 176 S.W.3d 390, 392 (Tex. App.—Houston [1st Dist.] 2004, no pet.).

### **Subject Matter Jurisdiction**

In their sole issue, S.K. and J.V. contend that the trial court's Order of Termination signed on November 17, 2015 is void. They argue that the trial court's plenary power expired on October 21, 2015—thirty days after the trial court signed the Final Order in Suit Affecting the Parent-Child Relationship—and, therefore it had no jurisdiction at the time it signed the November order. DFPS concedes that the trial court did not have jurisdiction when it signed the November 17, 2015 order, albeit on different grounds. DFPS asserts that the trial court, as the court of continuing, exclusive jurisdiction in this case, had authority to amend its order but

because there were no live pleadings at the time it signed the November 17 order, it lacked jurisdiction to render the order.

Absent a conventional trial on the merits, an order or judgment is final if “it actually disposes of all claims and parties then before the court, regardless of its language, or it states with unmistakable clarity that it is a final judgment as to all claims and all parties.” *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 192–93 (Tex. 2001). Here, the September 21, 2015 order is titled “final.” Although not dispositive, this language is indicative that the order was intended to be final. *See Cont’l Airlines, Inc. v. Kiefer*, 920 S.W.2d 274, 277 (Tex. 1996). The order’s “Mother Hubbard” language, ordering “that all relief requested in this case, and not expressly granted, is denied,” further indicates the trial court’s intent to make the judgment final. *See Lehmann*, 39 S.W.3d at 195. We also note that the parties on appeal treat the September 21 order as a final order. *See Cont’l Airlines, Inc.*, 920 S.W.2d at 277 (finding that finality “must be resolved by a determination of the intention of the court as gathered from the language of the decree and record as a whole, aided on occasion by the conduct of the parties.”). In light of the above, we conclude that the trial court’s September 21, 2015 order is a final order.

DFPS contends that the trial court is the court of continuing, exclusive jurisdiction, and therefore, it had authority to amend the September 21 order and that the November 17 order is arguably a superseding final order. This argument is

unavailing. Under section 155.001 of the Family Code, “[i]f a court of this state has acquired continuing, exclusive jurisdiction, no other court of this state has jurisdiction of a suit with regard to that child,” with exceptions not relevant here. TEX. FAM. CODE ANN. § 155.001(c) (West 2014). This means that a family court’s jurisdiction remains exclusive over related later-filed proceedings. *See Warren v. Weiner*, 462 S.W.3d 140, 143 (Tex. App.—Houston [1st Dist.] 2015, no pet.). However, a trial court’s continuing and exclusive jurisdiction over matters relating to a child does not alter a trial court’s plenary power. *See Smalley v. Smalley*, 436 S.W.3d 801, 806 (Tex. App.—Houston [14th Dist.] 2104, no pet.) (noting that although probate court’s jurisdiction continues over administration of estate until estate is disposed of, that continuing jurisdiction does not alter court’s plenary power over final judgments).

Because the trial court’s plenary power expired thirty days after it signed the September 21, 2015 order, it did not have jurisdiction to enter the November 17, 2015 order.<sup>3</sup> Thus, the trial court’s order terminating S.K.’s and J.V.’s parental rights to M.V. pursuant to subsections (D), (E), (G), and (I) of Family Code section 161.001(b)(1) is void. *See State ex. rel Latty*, 907 S.W.2d at 486. An appellate court

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<sup>3</sup> No party filed a post-judgment motion to extend the trial court’s plenary power in this case.

should declare post-plenary power orders void and dismiss any appeal. *See Martin*, 176 S.W.3d at 393–94.

### **Conclusion**

We conclude that the trial court lacked plenary power. Thus, its November 17, 2015 order of termination is void, and we vacate the order and dismiss the appeal.

Russell Lloyd  
Justice

Panel consists of Justices Bland, Brown, and Lloyd.