

Affirmed and Memorandum Opinion filed February 24, 2011.



In The

Fourteenth Court of Appeals

NO. 14-10-00628-CV

IN THE INTEREST OF J.L.E.O., a child

**On Appeal from the 306th District Court
Galveston County, Texas
Trial Court Cause No. 09FD01631**

MEMORANDUM OPINION

This is an appeal from the denial of declaratory relief. Appellant, The Children’s Center (“the Center”), brought this action on behalf of J.L.E.O. (“the child”) pursuant to 8 U.S.C. § 1101(a)(27)(J), the Immigration and Nationality Act, as amended by the Trafficking Victims Protection and Reauthorization Act of 2008, (collectively, “the Act”).¹ The Center sought findings necessary to enable the child to petition the United States

¹ According to the Act, a “special immigrant” includes:

(J) an immigrant who is present in the United States--

(i) who has been declared dependent on a juvenile court located in the United States . . . and whose reunification with 1 or both of the immigrant’s parents is not viable due to abuse, neglect, abandonment, or a similar basis found under State law;

(ii) for whom it has been determined in administrative or judicial proceedings that it would not be in the alien's best interest to be returned to the alien’s or parent’s previous country of nationality or country of last habitual residence; and

(iii) in whose case the Secretary of Homeland Security consents to the grant of special immigrant juvenile status

8 U.S.C. § 1101(a)(27)(J).

Citizenship and Immigration Services for Special Immigrant Juvenile Status (“SIJS”) under the Act, which allows alien minors who have been determined to be abused, neglected or abandoned to stay in the United States and apply for a permanent visa. *See* 8 C.F.R. § 204.11. As a prerequisite to applying for SIJS, a state juvenile court must make findings that the immigrant child (1) is under twenty-one years of age; (2) is unmarried; (3) has been declared dependent upon a juvenile court; (4) has been deemed eligible by the juvenile court for long-term foster care;² (5) continues to be dependent upon the juvenile court and eligible for long-term foster care, and (6) it would not be in the child’s best interest to be returned to the country of nationality. *See* 8 C.F.R. § 204.11(c).

On June 25, 2009, the Center filed a petition in a suit affecting the parent-child relationship (“SAPCR”) in the 306th District Court in Galveston.³ *See* Tex. Fam. Code. § 101.032. In the petition, the Center asserted that it had actual care, control and possession of the child since December of 2008, and his parents are deceased. The Center asked the court to name it as the child’s sole managing conservator, and declare that the child is dependent on the court and it is not in the child’s best interest to be returned to Honduras, his country of nationality. The child who is the subject of this suit was born August 4, 1991. When this action was initiated, the child was seventeen and would be eighteen in less than two months.

The trial court conducted an evidentiary hearing on July 27, 2009. During the hearing, the court indicated that the Center had not provided sufficient evidence to support the requested findings and expressed concern that the child would be eighteen shortly. On

² According to the statute, “eligible for long-term foster care” means that “a determination has been made by the juvenile court that family reunification is no longer a viable option. A child who is eligible for long-term foster care will normally be expected to remain in foster care until reaching the age of majority, unless the child is adopted or placed in a guardianship situation. For the purposes of establishing and maintaining eligibility for classification as a special immigrant juvenile, a child who has been adopted or placed in guardianship situation after having been found dependent upon a juvenile court in the United States will continue to be considered to be eligible for long-term foster care.” 8 C.F.R. § 204.11(a).

³ The 306th District Court is a family district court, and juvenile matters in Galveston County are docketed in the 306th District Court. *See* Tex. Gov’t Code § 24.614(b).

August 3, 2009, the trial court notified the Center that the requested relief was denied. Our record contains no signed order denying relief.

In April of 2010, the Center filed a request for a declaratory judgment seeking the SIJS findings. When the declaratory action that is the subject of this appeal was filed, the child was eighteen. No evidentiary hearing was conducted. The court considered the Center's brief and the child's affidavit. The court denied declaratory relief on June 1, 2010, and this appeal followed. On appeal, the Center raises one issue, asserting that the trial court erred in refusing to make the requested findings so that the child may pursue his application for SIJS.

The Act delegates the authority to make the necessary findings of fact regarding children eligible for SIJS to state juvenile courts.⁴ *See* 8 C.F.R. § 204.11(a), (d)(2). Under the Act, a juvenile court is “any court having jurisdiction under State law to make judicial determinations about the custody and care of juveniles.” 8 C.F.R. § 204.11(a). In Texas, family district courts have jurisdiction over child welfare, custody, support, dependency neglect, and delinquency, among other matters. *Tex. Gov't Code* § 24.601(b). Therefore, family district courts are considered juvenile courts under the Act.

The Texas Family Code provides that in suits affecting the parent-child relationship, a “child” is “a person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.” *Tex. Fam. Code* § 101.003(a). It is undisputed that J.L.E.O. was eighteen years old on August 4, 2009. Because J.L.E.O. was no longer a child as defined by the Texas Family Code when the Center's request for declaratory relief was filed and considered by the court, the juvenile

⁴ In Texas, a juvenile court has exclusive jurisdiction over all proceedings involving delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a “child” when the person engaged in the conduct. *See Tex. Fam. Code* § 51.04(a). The Act's definition of juvenile court is broader, however, and includes the jurisdiction granted to Texas family district courts.

court no longer had jurisdiction over the person to make the requested findings.⁵ *See Sheng v. Pogash*, 415 F. Supp. 2d 550, 560 (S. D. Tex. 2006) (recognizing urgency of child’s request for injunction to permit him to proceed in state court before his eighteenth birthday when the court would lose jurisdiction over him). Moreover, the trial court properly refused to make the requested findings because J.L.E.O. is an adult under Texas law. Therefore, he is not dependent on the juvenile court, one of the statutory prerequisites. *See* 8 C.F.R. § 204.11(c).

We reject the Center’s contention that the juvenile court retained continuing, exclusive jurisdiction pursuant to Sections 155.002 and 155.003 of the Texas Family Code, providing for the retention and exercise of continuing, exclusive jurisdiction over conservatorship matters. Section 155.001 provides that a court acquires continuing, exclusive jurisdiction over child conservatorship matters “*on the rendition of a final order.*” Tex. Fam. Code § 155.001(a) (emphasis supplied). No final order had been rendered in these proceedings before the child’s eighteenth birthday. Therefore, the juvenile court did not acquire continuing, exclusive jurisdiction over J.L.E.O.

The trial court did not err in denying the requested relief. Accordingly, the trial court’s order is affirmed.

PER CURIAM

Panel consists of Chief Justice Hedges and Justices Frost and Christopher.

⁵ We note that in some states, the court’s jurisdiction over juveniles may be extended. *See e.g.*, Fla. Stat. § 39.013(2); *In re Amend. to Fla. R. Juv. P.*, 951 So.2d 804, 812 (Fla. 2007) (“If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings shall be set solely for the purpose of determining the status of the petition and application. The court’s jurisdiction shall terminate on the final decision of the federal authorities, or on the immigrant child’s 22nd birthday, whichever occurs first.”) Texas has no similar provision.