Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-17-00374-CV

IN THE INTEREST OF A.N.S. and J.J.S.

From the 224th Judicial District Court, Bexar County, Texas
Trial Court No. 2015-PA-02243
Honorable Richard Garcia, Associate Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Karen Angelini, Justice
Rebeca C. Martinez, Justice
Luz Elena D. Chapa, Justice

Delivered and Filed: October 11, 2017

AFFIRMED

Appellant Christine D. appeals the trial court's final order in a suit affecting the parent-child relationship. We affirm.

In October 2015, the Department of Family and Protective Services ("the Department") filed a petition seeking termination of Christine D.'s parental rights to her children, A.N.S. and J.J.S. After a bench trial, the trial court found that the evidence overcame the parental presumption pursuant to section 153.131(a)-(b) of the Texas Family Code. Section 153.131(a) provides that "unless the court finds that appointment of the parent or parents would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development, a parent shall be appointed sole managing conservator or both parents shall be appointed as joint managing conservators of the child." TEX. FAM. CODE ANN.

§ 153.131(a) (West 2014). Section 153.131(b) provides that "[i]t is a rebuttable presumption that the appointment of the parents of a child as joint managing conservators is in the best interest of the child. . . ." *Id.* § 153.131(b). The trial court then appointed the paternal grandparents, Juan S. and Maria S., as sole managing conservators of the children. Appellant Christine D. was appointed possessory conservator of the children.

On appeal, Christine D. argues that the trial court erred in appointing nonparties as sole managing conservators of the children. She emphasizes that Juan S. and Maria S. did not file a pleading in the case and that she did not consent to their addition as parties during trial. For support, Christine D. points to Rule 301 of the Texas Rules of Civil Procedure, which requires the judgment of the court to conform to the pleadings. *See* TEX. R. CIV. P. 301.

Christine D. admits that our decision in *In re A.D.*, 480 S.W.3d 643 (Tex. App.—San Antonio 2015, pet. denied), controls this case, but argues it is "wrongly decided and creates an unworkable standard for parents like Appellant." In *In re A.D.*, we considered whether the trial court erred in appointing grandparents, who were not parties to the case, as sole managing conservators. *Id.* at 644. We explained that the "standing provisions of the Family Code are not applicable to cases instituted by the Department for the protection of children." *Id.* at 645. We stressed that before the final hearing, the Department had pleadings on file requesting that the appellant's rights to her children be terminated and that the children be permanently placed with a relative or other suitable person as the sole permanent managing conservator. *Id.* We also noted that both grandmothers had been identified in the permanency plan as appropriate relative caregivers for the children. *Id.* Thus, we concluded that the grandparents were not required "to either be parties to the case or file pleadings in the case before the trial court could appoint them as managing conservators." *Id.* In so holding, we pointed to other relevant provisions in the Family Code supporting our conclusion, including sections 161.205 and 153.131(a)-(b) of the Texas

Family Code. *Id.* We noted that pursuant to section 153.131(a)-(b), the trial court had "made a finding that appointment of a parent as managing conservator would not be in the best interest of A.D. because the appointment would significantly impair the child's physical health or emotional development." *In re A.D.*, 480 S.W.3d at 646. We emphasized that the appellant had not challenged the finding on appeal. *Id.* Therefore, we held the trial court had not erred in appointing nonparties as sole managing conservators. *Id.*

Similarly, in this case, the Department's petition requested that "if the children [could] not safely be reunited with either parent, but [could] be permanently placed with a relative or other suitable person," such relative or suitable person be appointed "as permanent sole managing conservator of the children." Two weeks after the filing of the petition, a Kinship Assessment was performed and the children were placed with their paternal grandparents, Maria S. and Juan S. The family service plan signed by Christine D. listed kinship adoption as one possible goal of the proceeding. Every permanency plan filed noted that the children were placed with relatives, and the trial court's permanency hearing order stated the trial court had reviewed the Department's efforts to identify relatives with whom to place the children, and found the current placement appropriate. Finally, in its final order, the trial court made a finding that the evidence had overcome the parental presumption pursuant to section 153.131(a)-(b). Christine D. does not challenge this finding. Following our precedent in *In re A.D.*, we hold that the trial court did not err in appointing nonparties as sole managing conservators of the children.

Finally, in her brief at the end of her discussion of her sole issue about nonparties being named sole managing conservator, Christine D. states the following: "Additionally, the final order in this case is inadequate." She stresses that the final order in this case is handwritten and contains

many abbreviations.[1] She points to this Court's opinion in *In re A.R.G.*, 420 S.W.3d 841 (Tex. App.—San Antonio 2013, no pet.), for support and argues that the handwritten final order in this case is similar to the one in *In re A.R.G.* However, *In re A.R.G.* is distinguishable from the present case.

In *In re A.R.G.*, 420 S.W.3d at 841, the appellant argued the evidence was legally and factually insufficient to support the trial court's findings. We noted that the handwritten final order was missing much information, including explicit findings necessary to termination of parental rights. *Id.* at 842. We explained that although the handwritten order was a "final appealable termination order," "the lack of a best interest finding, the lack of any identifying information, and the trial court's use of vague abbreviations for the grounds of termination place[d] this Court in the position of reviewing the evidence in support of findings about which we must speculate because the findings [were] either vague or totally absent." *Id.* We concluded that "[b]ecause we [could] not conduct a proper review of the evidence based on this order," we "reverse[d] that portion of the order terminating appellant's parental rights and remand[ed] for further proceedings in the interest of justice." *Id.*

However, in the present case, we *have* been able to determine the merits of Christine D.'s issue. As noted, Christine D. has not challenged the trial court's findings, and nothing in her argument about the handwritten order being "inadequate" has prevented this Court from determining her issue on appeal. Although Christine D. complains about the trial court's

[1] As this Court has noted in previous opinions, the "associate judges who hear child protection cases in Bexar County appear to have adopted a practice of rendering and signing handwritten orders that terminate parental rights and award conservatorship soon following the trial on the merits." *In re E.K.C.*, 486 S.W.3d 614, 617 (Tex. App.—San Antonio 2016, no pet.). Frequently, as in this case, "the handwritten order, called the "Associate Judge's Report and Order,' is signed by the presiding judge of the district court as being 'so adopted and ordered.'" *Id.* "Weeks and on occasion months later, a more formal and detailed typed 'Final Order' is signed." In this case, the handwritten order was signed on June 5, 2017. The more formal and detailed typed order was not signed until September 7, 2017, long after the trial court's plenary power had expired. Thus, the final order in this case is the handwritten June 5, 2017 order. *See id.*

abbreviations of "S.M.C." and "P.C.," unlike the order in *In re A.R.G.*, these abbreviations are not "vague." It is apparent from the context that "S.M.C." refers to sole managing conservator, and "P.C." refers to possessory conservator. The final handwritten order contains many other details. For example, it states that access will be 1-3 hours weekly at a neutral location decided by the sole managing conservator, that access will be supervised at all times, and that access "may continue at Kidshare at mother's expense." The order also requires Christine D. to pay child support of $300 per month beginning on June 15, 2017. And, in the order, the court found that the evidence "overc[ame the] parental presumption" pursuant to "§ 154.131 (a), (b)." Thus, unlike in *In re A.R.G.*, Christine D. cannot point to vagueness in the handwritten final order preventing this Court from determining her issue on appeal.

We therefore affirm the trial court's order of June 5, 2017.

Karen Angelini, Justice