Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-22-00014-CV

IN RE THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES,
Relator

Original Mandamus Proceeding[1]

Opinion by: Irene Rios, Justice

Sitting: Rebeca C. Martinez, Chief Justice
Irene Rios, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: July 27, 2022

PETITION FOR WRIT OF MANDAMUS CONDITIONALLY GRANTED

In this original mandamus proceeding, the Texas Department of Family and Protective Services ("the Department") challenges sanctions orders requiring the Department to pay more than $1,632,500.00 in sanctions for its failure to find a foster home placement for N.P., the fourteen-year-old child who is the subject of the underlying proceedings. We conclude the trial court abused its discretion because: (1) the Department did not have notice that the provision requiring a foster home placement was in effect; (2) the trial court failed to make the required predicate finding of bad faith; and (3) the sanctions were not "just" as required by law. We further conclude the Department has no adequate remedy by appeal. Therefore, we conditionally grant mandamus relief.

[1] This proceeding arises out of Cause No. 2017-PA-01702, styled *In the Interest of N.P., a Child*, pending in the 288th Judicial District Court, Bexar County, Texas, the Honorable Mary Lou Alvarez presiding.

BACKGROUND

The Department was appointed N.P.'s permanent managing conservator on December 5, 2018. As required by statute, the trial court holds periodic hearings to review N.P.'s placement and her permanency status. *See* TEX. FAM. CODE ANN. § 263.501.

Permanency Proceedings

On February 10, 2020, a permanency hearing was held before the Honorable Associate Judge Richard Garcia. After this hearing, the trial court signed an order stating: "[Child Protective Services] to find a foster home with one child or two at most within 20 days."

Another permanency hearing was held on September 29, 2020 before the Honorable Judge Peter Sakai. At the time, N.P. was not living in a foster home. She was living in an emergency center, where she had been since July 17, 2020. During the hearing, the trial court stated: "[I]n order to accomplish what I believe everybody is trying to say, I've got to release all these conditions and order that this child move to another placement, period." The trial court also stated: "I'm staying whatever restrictions have been imposed by Judge Garcia."[2] The docket sheet entry[3] from the hearing states:

> [Child] is at intense level of care. Court will allow placement at Guiding Light RTC [residential treatment center] or therapeutic foster home. Court stays children's court's restrictions & allows RTC [residential treatment center] or more restrictive placement. Court orders placement staffing instanter. Family Tapestry is ordered to seek contracted services or placement to meet educational and emotional needs of child. Child has severe special needs.

Thereafter, on January 5, 2021, the Department filed a permanency report with the trial court stating N.P. was currently placed in a residential treatment center and she had been there

[2] Judge Sakai further stated: "[O]bviously, [N.P.] is not only an intense level, she is a child [who] has really some unique needs, and I think the Court has been able to observe that today."

[3] Section 101.026 of the Texas Family Code "permits trial courts to render orders orally in the presence of the court reporter or in writing on its docket sheet or by a separate written instrument." *In re G.X.H.*, 627 S.W.3d 288, 299 (Tex. 2021); *see also* TEX. FAM. CODE ANN. § 101.026.

since November 18, 2020. On January 25, 2021, the trial court held a permanency hearing. Following this hearing, the trial court signed an order stating: "The Court finds that the child['s] current placement is necessary, safe and appropriate for meeting the child's needs."

On June 15, 2021, the Department filed a permanency report with the trial court stating that N.P. was currently placed in an adoptive placement and she had been there since June 4, 2021. On June 28, 2021, the trial court held a permanency hearing. Following this hearing, the trial court signed an order stating: "The Court finds that the child['s] current placement is necessary, safe and appropriate for meeting the child's needs."

On December 6, 2021, a permanency hearing was held before the Honorable Judge Mary Lou Alvarez. N.P.'s caseworker testified that the Department's permanency goal for N.P. was adoption by a non-relative; N.P. had recently engaged in dangerous conduct and had to be admitted to a psychiatric hospital on November 25, 2021; N.P. was expected to be discharged from the hospital later that day; and even though the Department did not have a placement arranged for N.P., the Department would continue looking for a placement for her in a residential treatment center and pursuing adoption options.

After the caseworker testified, the trial court stated: "Here are the additional orders in this case: . . . I need this child to be placed. You're going to come back . . . I'm not going to have this child be [without a placement] for Christmas or for the end of the year. You've got to get her placed." The trial court also stated: "I am a little bit shocked that this is where this case is at."

At this point, the child's attorney[4] told the trial court: "Judge, just so you're aware, Judge Garcia ordered about two years ago now the Department [to] get a one-on-one special contract for this child, and it's never happened. That order's been in place for years now." In response, the trial

[4] The trial court appointed an attorney and guardian ad litem to represent N.P.

court stated: "I need a motion for enforcement and for contempt, and that's going to be taken up with the status hearing as well."

Sanctions Proceedings

On December 8, 2021, the child's attorney filed an amended motion for enforcement of placement asking the trial court to enforce the provision in the February 10, 2020 order requiring "[Child Protective Services] to find a foster home with one child or two at most within 20 days." The motion alleged a total of fourteen violations of the February 10, 2020 order, ranging from March 2, 2020 to December 6, 2021;[5] however, the amended motion did not ask the trial court to hold the Department in contempt. Instead, the amended motion asked the trial court to order the Department "to secure a special contract to locate an appropriate placement for [N.P.] with no more than two children in the home immediately" and "[u]pon any future failure to comply with the [c]ourt's order on placement" to "assess an appropriate fine and/or sanctions against the [Department]." Alternatively, the amended motion asked the trial court to clarify the provisions of the February 10, 2020 order so that it would have "the requisite specificity to be enforced by contempt and grant [the Department] a reasonable amount of time to comply."

On December 13, 2021, the trial court held a hearing on the amended motion for enforcement. Multiple Department employees testified. Department caseworker, Jahaira Sanchez, testified that she had been one of N.P.'s caseworkers for two or three months, she was aware of

[5] For example, the amended motion for enforcement stated in part:

> Violation 1: Child was placed at an emergency shelter on March 2, 2020. This placement consisted of more than two children and was not a foster home.
>
> Violation 2: Child was placed at a RTC on March 28, 2020. This placement consisted of more than two children and was not a foster home.
>
> Violation 3: Child was placed in an emergency shelter on July 17, 2020. This placement consisted of more than two children and was not a foster home.

the February 10, 2020 order requiring N.P. be placed in a foster home with no more than two children, N.P. had been in fifteen placements since February 10, 2020, and none of the placements were a foster home with no more than two children.

Another Department employee, Melissa Hanning, testified she was unaware of the February 10, 2020 order requiring N.P. be placed in a foster home with no more than two children. However, she further testified she had searched for placements for N.P., but she could not find any placement options for N.P. All the available placements had age restrictions and would not take teenagers. Hanning stated it was difficult to find a placement for N.P. because of the high level of care she required.

Another Department employee, Jessica Mueske, also testified she was unaware of the February 10, 2020 order requiring N.P. be placed in a foster home with no more than two children. Her responsibility was to search for residential treatment centers for youths in Bexar County. Although she had contacted potentially qualified providers, based on N.P.'s age and required level of care, no offers for placement had been extended to N.P. at that time. According to Mueske, N.P.'s case had already been referred for a child-specific contract.

Finally, Ann Proo, an adoption supervisor for the Department, testified she was involved in the Department's efforts to find a placement for N.P. Proo was aware of the February 10, 2020 order; however, the Department was never able to find this type of placement for N.P. Proo characterized N.P.'s level of care as "intense" and she noted that foster homes were not equipped to handle N.P.'s intense level of care. According to Proo: "There has not been a foster home found for [N.P.] with intense level of care needs." Proo further testified that even though the Department was unable to find a foster home for N.P., the Department did find residential treatment centers where N.P. had been placed and N.P.'s attorney had approved of these placements.

After hearing the evidence, the trial court stated:

> And here are my orders regarding the enforcement. I don't find that due diligence has been done up to this point. I am fining the Department $1,000.00 a day since March 1st, 2020 for failing to comply with an existing court order of February 10th, 2020. The fine is to be placed in an account with this—for this child.
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> . . . .[T]he funds need to get deposited on or before December 31st, 2021. Again, the date by which the fines begin are March 1st, 2020, and continuing every day thereafter until this child is placed in a foster home with one child or two at most as ordered by the court on February 10th, 2020.

Thereafter, the trial court signed two orders reflecting its sanctions ruling.

The first order, titled "Interim Order for Deposit," ordered the Department to open a bank account, in trust, and deposit portions of the sanctions ordered, "$213,000 (for dates of March 1, 2020 to September 29, 2020)" and "$8,000 (for dates of December 13, 2021 to December 21, 2021)" on or before December 31, 2021 at 5:00 p.m. It further ordered the Department "to pay $1,000 out of the above-sanctions to [the child's] attorney and guardian ad litem . . . to be used for [the child's] Christmas on or before 4:00 p.m. on December 23, 2021."

The second order, titled "Order on Motion to Enforce," contains a single finding: "The Court finds NO DUE DILIGENCE by the Department regarding finding an appropriate placement that meets Judge Garcia's order from February 10, 2020." The second order also (1) sanctioned the Department $1,000 a day starting March 1, 2020 through December 13, 2021; (2) ordered "the fine of $653,000.00 be placed into an account for [N.P.] by December 31, 2021"; (3) ordered the fine of $1,000.00 a day continue until N.P. was placed in a foster home with one to two children as ordered on February 10, 2020; (4) ordered a Department employee to work on this case exclusively; (5) ordered another employee to make sure the contracts comply with the existing order and to make efforts to find a placement for N.P.; and (6) ordered the Department to find a placement for N.P. by Monday, December 20, 2021, at 4:00 p.m. Because the second order incorporates the first order by reference, we will refer to these orders collectively as "the first sanctions order."

On December 23, 2021, the Department filed a "Motion for Reconsideration/Rehearing and Motion for Stay," requesting the trial court either vacate or stay its "Interim Order for Deposit" and "Order on Motion to Enforce." On January 13, 2022, the Department filed an amended petition for writ of mandamus in this court and requested emergency relief to stay the first sanctions order. On January 19, 2022, we granted the Department's request for temporary emergency relief and stayed the first sanctions order challenged in the Department's amended mandamus petition.

On January 14 and January 20, 2022, the trial court held a hearing on the Department's "Motion for Reconsideration/Rehearing and Motion for Stay." On February 4, 2022, the trial court signed an order titled "Order on Department's Motion to Reconsider/Stay." In this order, the trial court made a finding that Judge Sakai's September 29, 2020 order stayed Judge Garcia's February 10, 2020 order, "but only until N.P. was removed from . . . [an emergency placement center] on November 18, [2020]." The trial court also made a finding "that the February 10, 2020 order entered by Judge Garcia was a valid order, the Department didn't comply with the order, and there was no valid excuse for [the] Department not to comply with the order." This order denied the Department's motion for reconsideration and amended the previously assessed sanctions of $1,000 a day against the Department to $2,500.00 a day starting from March 1, 2020 through September 29, 2020 and continuing to accrue from November 19, 2020 until N.P. is placed in compliance with Judge Garcia's order.[6] This order also stated if we conclude in this original proceeding that Judge Sakai's September 29, 2020 order stayed Judge Garcia's February 10, 2020 order, then sanctions would start from December 6, 2021 and continue "until compliance with [Judge Garcia's] order is accomplished." We refer to the trial court's "Order on Department's Motion to Reconsider/Stay" as "the second sanctions order." We subsequently granted the

[6] In its motion for review of further orders, the Department represented the second sanctions order imposed over $1.63 million in sanctions against the Department.

Department's request to review the second sanctions order in this original proceeding. *See* TEX. R. APP. P. 29.6 ("Review of Further Orders").

In its amended mandamus petition, the Department argues the trial court abused its discretion because: (1) the Department did not have notice that the February 10, 2020 order remained in effect after it was stayed on September 29, 2020; (2) the trial court failed to make the necessary finding of bad faith to support the sanctions orders; and (3) the sanctions orders are not "just" because (a) no nexus exists between the purported wrongful conduct and the monetary sanctions imposed, and (b) the monetary sanctions are excessive.[7] The Department further argues that it has no adequate remedy by appeal.

The child's attorney filed a response and an amended response, arguing the trial court did not abuse its discretion.

STANDARD OF REVIEW

Mandamus is an extraordinary remedy available only when the trial court abuses its discretion and the relator has no adequate remedy by appeal. *See In re ExxonMobil Corp.*, 635 S.W.3d 631, 634 (Tex. 2021) (orig. proceeding).

We review the trial court's imposition of sanctions for an abuse of discretion. *In re Bennett*, 960 S.W.2d 35, 40 (Tex. 1997) (orig. proceeding). A trial court abuses its discretion when it acts without reference to guiding rules and principles such that its ruling is arbitrary or unreasonable. *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007). "A trial court has no 'discretion' in determining what the law is or applying the law to the facts[,]" and "a clear failure by the trial court to analyze or apply the law correctly will constitute an abuse of discretion[.]" *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding); *see also In re State*, 556 S.W.3d 821, 827 (Tex. 2018)

[7] The Department presents additional arguments, but we do not address them because they are unnecessary to our disposition in this proceeding.

(orig. proceeding). In reviewing a sanctions order, we independently review the entire record to determine whether the trial court abused its discretion. *Am. Flood Rsch., Inc. v. Jones*, 192 S.W.3d 581, 583 (Tex. 2006).

"Whether a clear abuse of discretion can be adequately remedied by appeal depends on a careful analysis of costs and benefits of interlocutory review." *In re McAllen Med. Ctr., Inc.*, 275 S.W.3d 458, 464 (Tex. 2008) (orig. proceeding). When a case involves a child in the Department's custody and it is unknown when a final appealable order will be rendered, a relator has no adequate remedy by appeal. *See In re Dep't of Fam. & Protective Servs.*, 273 S.W. 3d 637, 645 (Tex. 2009) (orig. proceeding).

ABUSE OF DISCRETION

The Department argues the trial court's sanctions orders constitute an abuse of discretion for multiple reasons.

Lack of Notice

The Department first argues that the trial court abused its discretion because it "had no notice that Judge Garcia's foster home order was in effect after September 29, 2020, or that it would be subject to sanctions for noncompliance [with] this order."

"The power to sanction is of course limited by the due process clause of the United States Constitution." *In re Bennett*, 960 S.W.2d at 40 (recognizing due process was satisfied when parties sanctioned for subverting a random court assignment system "were fully aware" of the purpose of the system). Obviously, a party cannot be sanctioned for failing to comply with an order that was not in effect. *See State Farm Ins. Co. v. Pults*, 850 S.W.2d 691, 693 (Tex. App.—Corpus Christi–Edinburg 1993, no writ) (holding the trial court erred in granting a motion to enforce and imposing sanctions for failure to comply with a discovery order when the purported order was not in effect); *see also In re J.G.*, No. 05-99-01979-CV, 2001 WL 1452464, at *2 (Tex. App.—Dallas Nov. 16,

2001, pet. denied) (mem. op.) (concluding the trial court did not err by denying a motion to enforce an order because the order had been vacated by the trial court).

Under the Texas Family Code, a trial court may orally pronounce its ruling on a matter in the presence of a court reporter or it may make its ruling in writing on the court's docket sheet. TEX. FAM. CODE ANN. § 101.026. Generally, in non-family law cases, docket sheet entries are insufficient to constitute a decree of the court. *In re G.X.H.*, 627 S.W.3d 288, 297 (Tex. 2021). "But the Texas Family Code alters this general rule in suits affecting the parent-child relationship. . . ." *Id*. at 298–99. "Family Code section 101.026 expressly provides that a court may pronounce or render an order on its docket sheet." *Id*. at 298. In this case, the reporter's record from the September 29, 2020 hearing shows that Judge Sakai made an oral pronouncement in open court staying Judge Garcia's foster home placement requirement. The docket sheet entry from the September 29, 2020 hearing also shows that Judge Sakai stayed Judge Garcia's foster home placement requirement.

Additionally, the record shows the trial court held permanency hearings on January 25, 2021, and June 28, 2021, and that N.P. was not in a foster home placement at the time either of these hearings took place. Nevertheless, after each of these hearings, the trial court signed an order stating: "The Court finds that the child['s] current placement is necessary, safe and appropriate for meeting the child's needs."

N.P.'s attorney argues the Department had notice that Judge Garcia's foster home order was in effect because the written order[8] entered by the trial court on January 19, 2022, "clearly shows that [the stay] was meant to be temporary." We disagree. First, because the written order was not entered until January 19, 2022—which was after the alleged wrongful conduct took

[8] On January 19, 2022, after a hearing on a motion to enter, Judge Alvarez signed a written order reflecting the stay pronounced by Judge Sakai on September 29, 2020.

place—it could not have given the Department notice that Judge Garcia's foster home order was still in effect. Second, the written order entered on January 19, 2022 states in relevant part: "IT IS ORDERED that this Court STAYS all prior [o]rders with placement restrictions imposed by Judge Garcia in order to accomplish the child being removed from [an emergency placement center]." Nothing in the plain language of the January 19, 2022 order limits the duration of the stay imposed by Judge Sakai.

Based on the information available to the Department—Judge Sakai's oral ruling staying Judge Garcia's foster home order at the September 29, 2020 hearing, the docket sheet entry from the September 29, 2020 hearing, and the trial court's subsequent approval of non-foster home placements—we conclude the Department did not have notice that Judge Garcia's foster home order was in effect after September 29, 2020. Therefore, to the extent the sanctions orders are based on the Department's conduct prior to December 6, 2021, they constitute an abuse of discretion.[9]

No Finding of Bad Faith

The Department also argues the trial court abused its discretion because its sanctions orders are not predicated on a finding of bad faith.

In this case, the parties agree that the source of the trial court's sanction authority was its inherent power. "A trial court has inherent power to sanction bad faith conduct during the course of litigation that interferes with [the] administration of justice or the preservation of the court's dignity and integrity." *In re Tex. Dep't of Fam. & Protective Servs.*, 415 S.W.3d 522, 529 (Tex. App—Houston [1st Dist.] 2013, orig. proceeding). "The power may be exercised to the extent necessary to deter, alleviate, and counteract bad faith abuse of the judicial process, such as

[9] The second sanctions order states if we determine in this original proceeding that Judge Sakai's oral ruling stayed Judge Garcia's foster home order, then sanctions are imposed at $2,500 a day starting on December 6, 2021 and continue to accrue until the Department is in compliance with Judge Garcia's foster home order.

any significant interference with the traditional core functions of the court." *Id*. "These core functions, include hearing evidence, deciding issues of fact raised by the pleadings, deciding questions of law, rendering final judgments, and enforcing judgments." *Id*. "The inherent power to sanction, however, has limits." *Id*. "Because inherent power is shielded from direct democratic controls, it must be exercised with restraint and discretion." *Id*. at 530 (internal quotation marks and alterations omitted).

Recently, the Texas Supreme Court reaffirmed that "sanctions issued pursuant to a court's inherent powers are permissible . . . to deter, alleviate, and counteract bad-faith abuse of the judicial process." *Brewer v. Lennox Hearth Products, L.L.C.*, 601 S.W.3d 704, 708 (Tex. 2020). "[I]nvocation of the court's inherent power to sanction necessitates a finding of bad faith." *Id*. at 718. "Bad faith is not just intentional conduct but intent to engage in conduct for an impermissible reason, willful noncompliance, or willful ignorance of the facts." *Id*. at 718–19. "Bad faith includes conscious doing of a wrong for a dishonest, discriminatory, or malicious purpose." *Id*. at 719 (internal quotation marks omitted). "Errors in judgment, *lack of diligence*, *unreasonableness*, negligence, or even gross negligence—without more—do not equate to bad faith." *Id*. (emphasis added).

Here, the trial court expressly found in the first sanctions order that the Department exercised "no due diligence" in finding a foster home placement for the child and found in the second sanctions order that the Department had "no valid excuse" for not finding a foster home placement for the child. However, neither sanctions order contained a finding that the Department engaged in bad faith.

Moreover, at the sanctions hearing, no evidence was presented to show that the Department engaged in the "conscious doing of a wrong for a dishonest, discriminatory, or malicious purpose." *Id.* at 719. To the contrary, the trial court heard testimony stating the Department attempted to find

a foster home placement for N.P., but it has been difficult to find any placement for N.P. due to the required level of care she needs. Proo testified N.P.'s level of care is intense, "no foster homes [are] licensed for an intensive care child[,]" and "[t]here has not been a foster home found for [N.P.] with intense level of care needs." Therefore, the evidence presented at the sanctions hearing could not have supported a finding of bad faith. *Id.* at 719; *see also Onwuteaka v. Gill*, 908 S.W.2d 276, 281 (Tex. App.—Houston [1st Dist.] 1995, no writ) (reversing a sanction order because the record contained no evidence that the offender acted in bad faith). In the absence of a predicate finding of bad faith, the trial court's sanctions orders constitute an abuse of discretion. *See Brewer*, 601 S.W.3d at 718.

Sanctions Must be "Just" and not Excessive

The Department further argues the trial court abused its discretion because the sanctions ordered are not "just."

"[I]n order to safeguard constitutional due process rights, a sanction must be neither unjust nor excessive." *Nath v. Tex. Child.'s Hosp.*, 446 S.W.3d 355, 363 (Tex. 2014). A sanction is "just" if a direct relationship exists between the offensive conduct and the sanction imposed. *Spohn Hosp. v. Mayer*, 104 S.W.3d 878, 882 (Tex. 2003); *TransAmerican. Nat. Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991). A direct relationship exists if the sanction is directed against the true offender and is tailored to remedy the prejudice caused by the offender. *Spohn Hosp.*, 104 S.W.3d at 882. To be just, a sanction must not be excessive; it "should be no more severe than necessary to satisfy its legitimate purposes." *TransAmerican*, 811 S.W.2d at 917; *see Spohn Hosp.*, 104 S.W.3d at 883. Finally, the record must reflect that the trial court considered the availability of lesser sanctions to promote compliance and, in all but the most exceptional cases, actually tested the lesser sanctions. *See Petroleum Sols., Inc. v. Head*, 454 S.W.3d 482, 489 (Tex. 2014); *Spohn Hosp.*, 104 S.W.3d at 883; *TransAmerican*, 811 S.W.2d at 917.

Here, no direct relationship exists between the Department's purported wrongful conduct—its failure to find a foster home placement for N.P.—and the monetary sanctions imposed by the trial court. *See Spohn Hosp.*, 104 S.W.3d at 882; *TransAmerican*, 811 S.W.2d at 917. The evidence established that the child requires an extremely high level of care and no foster home placements were available to meet her needs. There was no evidence the Department engaged in bad faith. *See Kutch v. Del Mar Coll.*, 831 S.W.2d 506, 513 (Tex. App.—Corpus Christi–Edinburg 1992, no writ) ("An additional factor supporting severe sanctions is a finding of callous disregard for the rules or flagrant bad faith."). Furthermore, the Department's success in placing the child in a foster home is contingent on the agreement of a third party, the foster caregiver. The imposition of a $2,500 per day sanction—or even $1,000 per day sanction under the first sanctions order—on the Department will not ensure that an appropriate foster home placement becomes available for N.P. The sanctions ordered—over $1.6 million and increasing at the rate of $2,500.00 a day[10]—are more severe than necessary to serve any legitimate purpose. *See Spohn Hosp.*, 104 S.W.3d at 883; *TransAmerican*, 811 S.W.2d at 917. The amount of the sanctions is excessive.[11] *See Spohn Hosp.*, 104 S.W.3d at 883; *TransAmerican*, 811 S.W.2d at 917. Moreover, the record demonstrates that the trial court did not consider and test the availability of less stringent alternatives prior to ordering these excessive monetary sanctions. *See Petroleum Sols.*, 454 S.W.3d at 489; *Spohn Hosp.*, 104 S.W.3d at 883; *TransAmerican*, 811 S.W.2d at 917.

Because the sanctions are unjust and excessive, the trial court's sanctions orders constitute an abuse of discretion.

[10] The sanctions amount stopped accumulating on February 15, 2022, when we granted the Department's second motion for temporary emergency relief and stayed the second sanctions order.

[11] During the hearing, Judge Alvarez asked the child's attorney for the "parameters to sanction the Department per day that this child has not been placed," and the attorney replied: "I would say your imagination. I don't think there are any limits."

NO ADEQUATE REMEDY BY APPEAL

The Department argues that it has no adequate remedy by appeal. Because of the nature of the underlying proceedings, it is unknown when the trial court will render a final order in this case thereby allowing the Department to appeal the sanctions order. *See Dep't of Fam. & Protective Servs.*, 273 S.W.3d at 645. "The [Texas] Supreme Court has previously held that an appeal is inadequate because the children, the subject of the suit, would remain in the Department's custody and it was unknown when the trial court would issue a final order subject to appeal." *In re T.R.B.*, 350 S.W.3d 227, 231 (Tex. App.—San Antonio 2011, orig. proceeding) (citing *Dep't of Fam. & Protective Servs.*, 273 S.W.3d at 645).

We conclude that the Department has no adequate remedy by appeal.

CONCLUSION

Because the trial court abused its discretion and the Department has no adequate remedy by appeal, we conditionally grant mandamus relief. The trial court is directed to vacate its "Interim Order for Deposit," its "Order on Motion to Enforce," and its "Order on Department's Motion to Reconsider/Stay." The writ will issue only if the trial court fails to comply within fourteen days of the date of this opinion.

Irene Rios, Justice