In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-10-00220-CV

IN THE INTEREST OF R.F.

On Appeal from the 1-A District Court
Jasper County, Texas
Trial Cause No. 28319

MEMORANDUM OPINION

Appellant J.F. appeals from an order adjudicating parentage of R.F., a child born to J.F. and appellee M.F. Specifically, J.F. appeals the trial court's order denying J.F.'s request to change R.F.'s surname to reflect his own. In one issue, appellant complains that the trial court erred in excluding J.F.'s testimony regarding why the trial court should change R.F.'s name. We affirm the trial court's judgment.

BACKGROUND

J.F. and M.F. had a relationship that resulted in the conception and birth of their

child, R.F. They did not marry, and M.F. gave birth to R.F. on May 24, 2007. A few weeks after R.F's birth, J.F. filed a petition to adjudicate parentage to establish his paternal rights to the child and his support obligations. J.F. and M.F. agreed on nearly every term of the adjudication order, including that J.F. was the father of R.F., but they could not agree on the surname of the child.

Prior to the final hearing in this case, appellee filed a motion in limine requesting the trial court to preclude the parties from introducing evidence concerning the benefits R.F. would gain by having her name changed. At the final hearing, the trial court heard argument regarding the name change issue. At that time, the trial court granted appellee's motion in limine. Appellant's counsel then argued to the trial court:

> [Petitioner's Counsel]: Towards the very end of the order, you'll notice that there is a blank line that would offer the Court an opportunity to change the child's name if you so wanted. That is the only remaining issue that we have.
>
> So, quite honestly, if the Court does not want to hear any testimony about that issue, we're done. I suppose? I mean, I would need to be able to put my client on the stand and have him tell you why he would like the child's name to be changed.
>
> THE COURT: It's your hearing.
>
> [Petitioner's Counsel]: It's my hearing, but you granted the motion in limine. So, there is no evidence since you granted that motion in limine.
>
> [Respondent's Counsel]: We could write it in there. I forget how--
>
> [Petitioner's Counsel]: I would like to be clear for the record, though. [J.F.] does want his child's name to have the last name of [F]. That is something we've asked the Court to do since we filed it shortly after the child was born.

> He was not allowed to be there when the birth certificate was filled out and was not asked that. We just feel like that's in the best interest of the child, your Honor.
>
> . . . .
>
> THE COURT: I don't see that inconsistent with the motion in limine.

Appellant's counsel never put J.F. on the stand to testify as to why he thought it was in R.F.'s best interest for the court to grant his name change request. At the conclusion of the hearing, the trial court denied appellant's request for R.F.'s name to be changed. Appellant timely filed a motion for new trial, which the trial court denied. Appellant did not file a formal bill of exception.

PRESERVATION OF ERROR

Appellee claims error is not preserved for our review. To preserve error for appeal, an appellant must timely object, state the grounds for the objection with sufficient specificity and obtain an adverse ruling. Tex. R. App. P. 33.1.

The purpose of a motion in limine is to require an offering party to approach the bench and inquire into the admissibility of the evidence prior to introducing the evidence to the fact finder. *See Hartford Acc. & Indem. Co. v. McCardell*, 369 S.W.2d 331, 335 (Tex. 1963), *abrogated on other grounds by Bay Area Healthcare Group, Ltd. v. McShane*, 239 S.W.3d 231 (Tex. 2007). A trial court's ruling on a motion in limine is not a final ruling as to the admissibility of the evidence. *See Johnson v. Garza*, 884 S.W.2d 831, 834 (Tex. App.—Austin1994, writ denied). As such, granting or denying a motion in limine will not

constitute reversible error. *Id.* Rather, "[t]o preserve error concerning the exclusion of evidence, the complaining party must offer the evidence and secure an adverse ruling from the court." *Id.* The complaining party must show the substance of the excluded evidence by an offer of proof, unless it is apparent from the context of the questions asked. Tex. R. Evid. 103(a)(2); *see also Fletcher v. Minn. Min. & Mfg. Co.*, 57 S.W.3d 602, 606-607 (Tex. App.—Houston [1st Dist.] 2001, pet. denied). When a party fails to make an offer of proof before the trial court, then the party must introduce the excluded testimony into the record by a formal bill of exception. *Bobbora v. Unitrin Ins. Servs.*, 255 S.W.3d 331, 335 (Tex. App.—Dallas 2008, no pet.); *see also* Tex. R. App. P. 33.2.

Our review of the record indicates that appellant's counsel failed to offer any evidence, obtain an adverse ruling on the admissibility of the evidence, or otherwise make a record of the proposed evidence by a bill of exception. Thus, we conclude appellant has not preserved anything for our review. *See* Tex. R. App. P. 33.1. We overrule appellant's sole issue and affirm the trial court's judgment.

AFFIRMED.

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CHARLES KREGER
Justice

Submitted on March 10, 2011
Opinion Delivered March 31, 2011

Before McKeithen, C.J., Kreger and Horton, JJ.