In The

Court of Appeals

Ninth District of Texas at Beaumont

NO. 09-17-00001-CV

IN THE INTEREST OF T.R.H. JR.

On Appeal from the 75th District Court
Liberty County, Texas
Trial Cause No. CV0901264

MEMORANDUM OPINION

D.H., the paternal grandmother of the minor child T.R.H. Jr.,[1] appeals from the trial court's order denying her motion to modify/intervene in a suit affecting the parent-child relationship, as well as the trial court's order of dismissal on the grounds

[1] We will refer to the minor child's grandmother as "D.H.", the minor child as "T.R.H. Jr.", the minor child's mother as "Mother", and the minor child's father as "Father." *See* Tex. R. App. P. 9.8(b)(1)(A), (B) (stating that a minor child, the minor's parents, and other family members must be identified by an alias to protect the minor's identity).

that she lacks standing to initiate or intervene in such a lawsuit.[2] We reverse and remand to the trial court.

Background

D.H. has an extensive history of involvement in the litigation regarding T.R.H. Jr. It began in January 2009, when the child's mother ("Mother") initiated a Suit Affecting the Parent-Child Relationship ("SAPCR") and for paternity against the child's father ("Father"). T.R.H. Jr. was born in April 2008, and the parents were never married. After a hearing in August 2009, the trial court signed an order in the SAPCR on June 16, 2010, naming Mother and Father as joint managing conservators of T.R.H. Jr., with Mother as primary. Despite the fact that D.H. was not a party to the original SAPCR and did not intervene in the suit, the trial court and parties included the following provisions in the final order, signed by the trial court:

[2] D.H., acting *pro se*, initially filed a motion to grant visitation, then amended it to a motion to modify and grant visitation and later, upon the advice of the trial court, amended it again to include a motion to intervene. No special exceptions were sustained by the trial court to any of D.H.'s pleadings. In determining the nature of claims in a petition to which the trial court sustained no special exceptions, this court must construe the pleadings liberally in the pleader's favor and construe the petition to include all claims that reasonably may be inferred from the language used in the petition, even if the petition does not state all the elements of the claim in question. *See London v. London*, 192 S.W.3d 6, 13 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (concluding that if the trial court has not sustained any special exceptions as to a petition, then it should be liberally construed).

> **14. <u>Special Provision Regarding Grandmother Visitation.</u>** [D.H.], the mother of [Father], shall have a two (2) week visitation period annually provided that she give written notice to [Mother] on or before January 31 of each year.
>
> **15. <u>Special Provision Regarding Grandmother's Right of First Refusal.</u>** [D.H.], the mother of [Father], shall have the right of first refusal should [Mother] desire to place the child in a daycare facility.

Both Mother and Father signed and stipulated their agreement to the order.

In September 2010, Mother sought to modify the SAPCR order of June 16, 2010. D.H. was named as a joint-petitioner with Mother. Shortly thereafter, D.H. filed a petition seeking a writ of attachment for T.R.H. Jr. seeking to enforce her right of visitation with the child as provided in the order. As a result, the trial court signed an order on October 12, 2010, ordering Mother to comply with the order of June 16, 2010, and allow D.H. visitation with T.R.H. Jr., expressly ordering Mother to relinquish possession of the child to D.H. on specific dates.

In December 2015, D.H. filed a motion to grant visitation, which was later amended to a motion to modify and grant visitation. Mother then filed a motion to dismiss for lack of standing. A review of the record reveals that, despite recognizing that the court's order granted rights of possession/visitation with T.R.H. Jr. to D.H., the trial court did not view D.H. as a party affected by a prior order. Instead, the trial court treated the order as void. As a result, D.H. was never allowed to present any evidence to the court, and the trial court sustained the challenge to her standing.

Shortly thereafter, Mother filed her own motion to modify the order of June 16, 2010, to remove D.H.'s right to possession/visitation with T.R.H. Jr., and D.H. was served with citation as part of that modification suit. D.H. then filed a motion seeking reconsideration of her own motions. Without allowing D.H. to present any evidence, the trial court denied her motions. The trial court once again found that D.H. had no standing. The trial court held a bench trial on November 30, 2016, without including D.H. as a party or allowing her to participate, and entered an order modifying the prior order and removing D.H.'s rights to possession/visitation. D.H. timely filed her Notice of Appeal.

Standard of Review

Standing is a prerequisite to subject-matter jurisdiction, which is essential to a court's power to decide a case. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 553–54 (Tex. 2000). A trial court's determination as to whether a party has standing is reviewed *de novo*. *See Tex. Dep't of Transp. v. City of Sunset Valley*, 146 S.W.3d 637, 646 (Tex. 2004). Standing is a constitutional prerequisite to suit in both federal courts and the courts of Texas. *Id.*; *Williams v. Lara*, 52 S.W.3d 171, 178 (Tex. 2001). Nonetheless, the judge-made criteria regarding standing do not apply when the Texas Legislature has conferred standing through a statute. *Williams*, 52 S.W.3d at 178. "In statutory standing cases, such as [the one now under review], the analysis

is a straight statutory construction of the relevant statute to determine upon whom the Texas Legislature conferred standing and whether the claimant in question falls in that category." *In re Sullivan*, 157 S.W.3d 911, 915 (Tex. App.—Houston [14th Dist.] 2005, orig. proceeding); *see also Tex. Dep't of Protective and Regulatory Servs. v. Sherry*, 46 S.W.3d 857, 859–61 (Tex. 2001). "This court must interpret and construe the statute as written[.]" *Sullivan*, 157 S.W.3d at 920.

Matters of statutory construction are questions of law, and we review the trial court's interpretation of applicable statutes *de novo*. *See Johnson v. City of Fort Worth*, 774 S.W.2d 653, 656 (Tex. 1989); *In Guardianship of Burley*, 499 S.W.3d 196, 199 (Tex. App.—Houston [1st Dist.] 2016, pet. denied). In construing a statute, the court's objective is to determine and give effect to legislative intent. *Nat'l Liab. & Fire Ins. Co. v. Allen*, 15 S.W.3d 525, 527 (Tex. 2000). If possible, we must ascertain that intent from the language the legislature used in the statute and not look to extraneous matters for an intent not stated in the statute. *Id.* If the statutory language is unambiguous, we adopt the interpretation supported by the plain meaning of the provision's words. *See St. Luke's Episcopal Hosp. v. Agbor*, 952 S.W.2d 503, 505 (Tex. 1997). We must not engage in forced or strained construction, but instead, we must yield to the plain sense of the words the legislature chose. *See*

id. (citing *RepublicBank Dallas, N.A. v. Interkal, Inc.*, 691 S.W.2d 605, 607 (Tex. 1985)).

Analysis

D.H. filed her initial pleading seeking enforcement of the prior order of the court and modification of her periods of possession and access to T.R.H. Jr. D.H. subsequently amended her pleadings to clarify that she was seeking to modify the order of the trial court of June 16, 2010. D.H. asserts she has standing pursuant to § 156.002 of the Texas Family Code. *See* Tex. Fam. Code Ann. § 156.002 (West 2014).

Under § 156.002(a) of the Texas Family Code, modification suits may be brought by "[a] party affected by an order[.]" Tex. Fam. Code Ann. § 156.002(a). To be a "party," a person must be a party to the order that the person seeks to modify. *In re S.A.M.*, 321 S.W.3d 785, 789–90 (Tex. App.—Houston [14th Dist.] 2010, no pet.). To have standing under section 156.002(a), D.H. must be a party to the order. The order states that D.H. made an appearance, and she was named in the order as a party granted visitation and possession rights to the T.R.H. Jr. Later, D.H. successfully brought a motion to enforce the rights to visitation and possession of T.R.H. Jr. against Mother. Finally, when Mother filed her motion to modify seeking to remove D.H.'s rights of visitation and possession under the Order, Mother served

D.H. as a party to such order. Under the unambiguous language of the order, D.H. is a party to the order. *See In re S.A.M.*, 321 S.W.3d at 791.

To have standing to seek modification, D.H. must not only be a party to the order, but also must be "affected" by the order. *See* Tex. Fam. Code Ann. § 156.002(a); *In re S.A.M.*, 321 S.W.3d at 791. "[A] party to an order regarding conservatorship [can] seek modification of the prior order under section 156.002(a) even though the party was given no conservatorship rights under that order." *In Re S.A.M.*, 321 S.W.3d at 790–91. When a party was expressly granted only telephone access with the children, courts have held that to be "important to the children's well-being," concluding the party had "sufficient interests" in the children to maintain standing as a party "affected" by the order. *Id.* at 792; *see also In Shifflet*, 462 S.W.3d 528, 532 (Tex. App.—Houston [1st Dist.] 2015, no pet.).

Under the order, D.H. received important rights, i.e., visitation and possession of T.R.H. Jr., and D.H. has admittedly had substantial contact with the child. Without question, the order produced an effect upon D.H. Thus, under the plain meaning of section 156.002(a) of the Texas Family Code, D.H. is a "party affected by an order" and therefore, she has standing to pursue her modification suit. *See* Tex. Fam. Code § 156.002(a); *In re Shifflet*, 462 S.W.3d at 540–41; *In re S.A.M.*, 321 S.W.3d at 791. The trial court erred in dismissing D.H.'s suit for lack of standing.

Further evidence that D.H. was a "party affected by an order" under section 156.002(a) is that when Mother subsequently filed her suit to modify the order of June 16, 2010, seeking to remove any rights of D.H. to the T.R.H. Jr., Mother named D.H. as a party entitled to notice by citation pursuant to section 156.003 and had citation issued and served upon her. All previous concerns of D.H.'s lack of standing were set aside when Mother named D.H. as a party to the motion to modify. As such, D.H. was a necessary party to such motion, and the trial court erred by excluding D.H. from the bench trial on the motion to modify and refused to allow her to present evidence. *See In re Shifflet*, 462 S.W.3d at 541. "Due process at a minimum requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner." *Univ. of Tex. Med. Sch. at Houston v. Than*, 901 S.W.2d 926, 930 (Tex. 1995). Therefore, the trial court's order in Suit to Modify Parent-Child Relationship of November 30, 2016, and Nunc Pro Tunc Order in Suit To Modify Parent-Child Relationship dated February 16, 2017, but made effective as of November 30, 2016, are void for lack of due process. We sustain issues 2, 3, 7, and 17 and do not address Appellant's other issues as they would afford no greater relief.

Conclusion

Having determined that D.H. has standing as a "party affected by an order" under section 156.002(a) of the Texas Family Code, we sustain issues 2, 3, 7, and

17. *See* Tex. Fam. Code § 156.002(a). We reverse the trial court's Order in Suit to Modify Parent-Child Relationship of November 30, 2016, and Nunc Pro Tunc Order in Suit to Modify Parent-Child Relationship dated February 16, 2017, but made effective as of November 30, 2016, and remand to the trial court for a new trial.

REVERSED AND REMANDED.

CHARLES KREGER
Justice

Submitted on December 19, 2017
Opinion Delivered May 17, 2018

Before Kreger, Horton, and Johnson, JJ.