



**In The  
Court of Appeals  
Seventh District of Texas at Amarillo**

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No. 07-18-00281-CV

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**IN THE INTEREST OF E.F., A CHILD**

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On Appeal from the 69th District Court  
Dallam County, Texas  
Trial Court No. 12091, Honorable Jack M. Graham, Presiding

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October 15, 2018

**MEMORANDUM OPINION**

Before QUINN, C.J., and CAMPBELL and PARKER, JJ.

This case involves the termination of “Cindy’s” parental rights to her son “Ely.”<sup>1</sup> The trial court terminated Cindy’s parental rights on the grounds of endangering conditions, endangerment, and failure to comply with a court order that established actions necessary to retain custody of the child. See TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O) (West Supp. 2018).<sup>2</sup> The court also found that clear and

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<sup>1</sup> To protect the privacy of the parties involved, we will refer to the appellant mother as “Cindy,” the father as “Stan,” and the child as “Ely.” See TEX. FAM. CODE ANN. § 109.002 (d) (West Supp. 2018); TEX. R. APP. P. 9.8(b). Stan executed an affidavit of relinquishment of parental rights on the morning of trial. He does not appeal.

<sup>2</sup> Further references to provisions of the Texas Family Code will be by reference to “section \_\_\_” or “§ \_\_\_.”

convincing evidence demonstrated that termination was in the best interest of Ely. See § 161.001(b)(2). In two issues, Cindy contends that the trial court abused its discretion in denying her motion for an extension of the statutory dismissal date and in denying a stay of the termination suit until the resolution of criminal charges. We affirm the trial court's order of termination.

Because Cindy does not question the sufficiency of the evidence underlying the order of termination, we will only discuss the facts necessary to resolve the specific issues raised on appeal.

### Analysis

#### Request for extension under § 263.401(b)

In her first issue, Cindy contends the trial court abused its discretion by failing to grant her request for extension under section 263.401(b). A trial court's denial of an extension request under section 263.401(b) is reviewed for an abuse of discretion. *In re D.W.*, 249 S.W.3d 625, 647 (Tex. App.—Fort Worth 2008), pet. denied, 260 S.W.3d 462 (Tex. 2008) (per curiam). Under an abuse of discretion standard, an appellate court may reverse the trial court's ruling only if the trial court acted without reference to any guiding rules and principles, such that its ruling is arbitrary and unreasonable. *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241-42 (Tex. 1985). Merely because a trial court may decide a matter within its discretion in a different manner than an appellate court would in a similar circumstance does not demonstrate that an abuse of discretion has occurred. *Id.*

The trial court may extend the dismissal deadline if the movant shows “extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child.” § 263.401(b) (West Supp. 2018). “The focus is on the needs of the child, whether extraordinary circumstances necessitate the child remaining in the temporary custody of the Department, and whether continuing such is in the best interest of the child.” *In re A.J.M.*, 375 S.W.3d 599, 604 (Tex. App.—Fort Worth 2012, pet. denied) (en banc). Actions that are “considered to be the parent’s fault” will generally not constitute an extraordinary circumstance. *In re O.R.F.*, 417 S.W.3d 24, 42 (Tex. App.—Texarkana 2013, pet. denied).

Here, the trial court appointed the Department as temporary managing conservator of Ely on August 4, 2017, due to concerns of Cindy’s use of methamphetamine and her previous history with the Department. The trial on the merits was held on July 13, 2018, two weeks prior to the statutory dismissal deadline. The day before the trial, Cindy filed a motion to extend the dismissal date and to retain the case on the court’s docket. Cindy asserted that she was arrested on November 8, 2017, and remains incarcerated in the Dallam County Jail under indictment for murder with a \$1,000,000 bond. The motion further stated that “there is no trial date set on the pending charge,” and she “began working services, but was unable to complete them due to her arrest.” Cindy urged the court to find her incarceration an extraordinary circumstance which necessitates the retention of the case on the docket for six months to give her time to resolve the criminal charges.

Cindy is accused of killing her father, the grandfather of Ely. Ely is ten years old and spent most of his life in the care of his grandfather because Cindy was “in and out and gone for long periods of time.”<sup>3</sup> Ely is aware of Cindy’s involvement with drugs and knows that Cindy is accused of killing his grandfather. Ely’s therapist testified that Ely wants permanency and desires to be adopted by his foster parents. He is bonded with his placement and is “making a lot of progress.” The Department opposed the extension because Cindy “could easily be charged with a capital case, and there is no end in sight as far as when her criminal case will even go to trial.” The guardian ad litem and C.A.S.A. volunteer also objected to the extension. The trial court rejected Cindy’s contention that her incarceration was an extraordinary circumstance meriting an extension. *See In re X.S.*, No. 07-17-00422-CV, 2018 Tex. App. LEXIS 2735, at \*9-10 (Tex. App.—Amarillo April 18, 2018, no pet.) (mem. op.) (no plausible evidence presented that incarceration was an “extraordinary circumstance” or that extension would be in child’s best interest). Based on the nature of the charges and the lack of a trial date, the trial court could have concluded that continuing the trial for six more months would not impact Cindy’s ability to complete her family plan of service or be in the best interest of Ely. We cannot say that the court abused its discretion by denying Cindy’s extension request. Accordingly, we overrule her first issue.

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<sup>3</sup> The Department placed Ely with his maternal grandparents in 2012 due to Cindy’s use of methamphetamine. When the Department became involved again in 2017, Ely was living with Cindy and her husband. Cindy and her husband tested positive for methamphetamine during the investigation of the 2017 case.

Stay of proceedings under § 161.2011

In her second issue, Cindy contends that the trial court should have stayed the termination proceedings pursuant to § 161.2011 because of her pending criminal charges. The record does not indicate that Cindy preserved in the trial court the error she assigns on appeal through this issue. TEX. R. APP. P. 33.1(a).

Section 161.2011(a) of the Family Code provides as follows:

A parent whose rights are subject to termination in a suit affecting the parent-child relationship and against whom criminal charges are filed that directly relate to the grounds for which termination is sought may file a motion requesting a continuance of the final trial in the suit until the criminal charges are resolved. The court may grant the motion only if the court finds that a continuance is in the best interest of the child. Notwithstanding any continuance granted, the court shall conduct status and permanency hearings with respect to the child as required by Chapter 263 and shall comply with the dismissal date under Section 263.401.

TEX. FAM. CODE. ANN. § 161.2011(a) (West 2014).

The day before trial, Cindy filed a motion to extend the dismissal date and to retain the case on court's docket pursuant to section 263.401. At the hearing on the motion, Cindy's counsel argued "[I]f the court proceeds to terminate her parental rights and then she's acquitted of the charge that she's being held on[,] the best interest of this child will not have been served . . . . So we are asking for a continuance based on the pending criminal charge."

To preserve a complaint for appellate review, a party must have presented to the trial court a timely request, objection, or motion that states the specific grounds for the desired ruling, if they are not apparent from the context of the request, objection, or

motion. TEX. R. APP. P. 33.1(a); *In re L.M.I.*, 119 S.W.3d 707, 711 (Tex. 2003). At the hearing on the motion to extend the dismissal date, counsel made no mention of section 161.2011(a), nor does the record indicate that a written motion for continuance was filed. *In re A.H.*, No. 02-17-00222-CV, 2017 Tex. App. LEXIS 10544, at \*32-34 (Tex. App.—Fort Worth November 9, 2017, pet. denied.) (mem. op.) (Tex. R. Civ. P. 251 governs motions filed under § 161.2011(a)); *In re L.T.*, No. 02-10-00094-CV, 2011 Tex. App. LEXIS 1313 (Tex. App.—Fort Worth Feb. 17, 2011, no pet.) (mem. op.) (no abuse of discretion in denying motion for continuance where, among other factors, parent presented no evidence to show when pending criminal charges would be resolved). Accordingly, Cindy has failed to preserve this issue for appeal.

Even if Cindy had properly preserved the issue, she would not prevail. Cindy did not establish when her criminal charge would be resolved or suggest a time frame for completion of her plan of service. *In re J.S.*, No. 12-15-00053-CV, 2015 Tex. App. LEXIS 8421, at \*4 (Tex. App.—Tyler August 12, 2015, no pet.) (mem. op.) (no abuse of discretion in denying motion for continuance under section 161.2011(a) because it was not supported by Rule 251 affidavit and parent did not present any evidence regarding resolution of criminal charges). She did not introduce any evidence that delaying the trial was in the best interest of Ely. See *In re A.H.*, No. 02-17-00222-CV, 2017 Tex. App. LEXIS 10544, at \*33. Further, she concedes that the criminal charges were not “directly related to the initial termination grounds” but asserts the “charges were the exact cause

for her not being able to complete her services resulting in [the] termination of her parental rights.”<sup>4</sup> We overrule issue two.

### Conclusion

The judgment of the trial court terminating Cindy’s parental rights is affirmed.

Judy C. Parker  
Justice

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<sup>4</sup> The caseworker testified that it was Cindy’s history with the Department, including her continual use of methamphetamine, that was the basis of the termination suit, not her pending criminal charges. Cindy signed her family plan of service on August 18, 2017. The only service she completed was the Outreach, Screening, Assessment and Referral.