



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

No. 07-22-00058-CV
No. 07-22-00064-CV

**IN THE INTEREST OF J.F. AND L.F., CHILDREN;
IN THE INTEREST OF H.M. AND H.M., CHILDREN**

On Appeal from the County Court at Law No. 2
Potter County, Texas
Trial Court Nos. 94,684-2-FM, 76467D Honorable Matthew H. Hand, Presiding

August 11, 2022

MEMORANDUM OPINION

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

In appellate cause numbers 07-22-00058-CV and 07-22-00064-CV, “Jody” appeals two final judgments terminating her parental rights to four children, J.F., L.F., H.M., and H.M.¹ The appellee is the Texas Department of Family and Protective Services. After a bench trial, the trial judge terminated the parental rights of Jody, Joe, and Tom, and appointed the Texas Department of Family and Protective Services as the

¹ To protect the children’s privacy, we will refer to the appellant mother as “Jody,” the father of J.F. and L.F. as “Joe,” the father of H.M. and H.M. as “Tom,” and to the children by their initials. See TEX. FAM. CODE ANN. § 109.002(d); TEX. R. APP. P. 9.8(b).

children’s managing conservator.² By her appeal, Jody contends the trial court’s jurisdiction expired under subsection 263.401(a) of the Family Code before the trial, and the judgments of termination are void. We affirm the judgments of the trial court.

BACKGROUND

Because Jody does not challenge the sufficiency of the evidence to support the grounds for termination or the best interest finding, we will only discuss the facts necessary to resolve the issue on appeal.

On August 24, 2020, the Department filed its original petition for protection, conservatorship, and termination of the parental rights of Jody and Joe as to their children, J.F. and L.F. A similar petition was filed as to Jody and Tom, and their children, H.M. and H.M. The Department was granted temporary managing conservatorship of all four children and a dismissal date was set. Under section 263.401, the dismissal date was calculated to be August 30, 2021. TEX. FAM. CODE ANN. § 263.401(a)³ (original dismissal date is “the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator. . .”).

The case was scheduled for an initial trial setting on August 25, 2021. When the trial court called for announcements, the Department and Jody announced ready. Tom’s counsel requested a continuance to allow him more time to locate Tom. Joe’s counsel also requested a continuance because he was “surprised” with the exhibits he received

² Joe and Tom did not appeal.

³ Further references to provisions of the Texas Family Code will be by reference to “§ ___” or “section ___.”

the day before, and he and his client needed more time to prepare for trial. The Department's counsel pointed out that Joe's counsel had only been involved in the case for "about two months now." The Department's counsel continued:

The Department would not be opposed to a continuance, but as previously stated would request that it not be a full six-month continuance, that [Joe's counsel] just be allowed time to – to prepare for this. The case would have to be extended. It would give us a new dismissal date of February 25th of 2022 under the one-time extension but we would ask not to go out that far and would ask that it be set within the next 60 days or so.

The trial court then asked Jody's counsel if he joined the motion for continuance.

Jody's counsel replied:

I did not join in it, but in discussing the case with my client, I – I believe she was hope – I – I think I would join. I think based on a conversation I had with my client yesterday, I think I can confidently join, although we didn't completely pin that down.

The attorney ad litem for the children had no objection to the continuance and agreed with the Department's position. The trial court and counsel then discussed availability for various dates for trial. The discussion concluded with the Department's counsel indicating that she would provide an extension order to the court. The court then proceeded with a permanency hearing.

The next day, the trial court signed an order retaining the suit on the court's docket and setting the hearing dates. In that order, the trial court found that "extraordinary circumstances" necessitated the children 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 children. As

a result of this order, the trial court granted a 180-day extension pursuant to section 263.401(b) and reset the dismissal date for February 25, 2022.

The final hearing was held on January 19, 2022. Jody announced “not ready” and requested a continuance. The trial court denied the continuance. After testimony was presented, the trial court terminated Jody’s parental rights on the grounds of endangering conditions, endangerment, constructive abandonment, failure to comply with a court order, and failure to complete a substance abuse treatment program. See § 161.001(b)(1)(D), (E), (N), (O), (P). The trial court also found that clear and convincing evidence demonstrated that termination was in the best interest of the children. See § 161.001(b)(2).

Jody timely filed a notice of appeal.

LAW AND ANALYSIS

By her appeal, Jody contends the trial court’s orders of termination signed on February 7, 2022, are void because the trial on the merits had not commenced before the August 30, 2021 dismissal date and, therefore, Family Code section 263.401 automatically divested the trial court of jurisdiction. According to Jody, the trial court abused its discretion when it issued its August 26, 2021 order continuing and extending the trial and dismissal dates, because no evidence of “extraordinary circumstances” was presented. See § 263.401(b).

A judgment is void when it is apparent that the court rendering judgment lacked jurisdiction over the parties or subject matter, had no jurisdiction to enter the particular judgment, or had no capacity to act. *In re D.S.*, 602 S.W.3d 504, 512 (Tex. 2020). Subject

matter jurisdiction is an issue that cannot be waived and that may be raised for the first time on appeal. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445 (Tex. 1993). Whether a trial court has subject matter jurisdiction is a question of law; we therefore review it de novo. *Tex. Parks & Wildlife Dep't v. Sawyer Tr.*, 354 S.W.3d 384, 388 (Tex. 2011).

Section 263.401(a) of the Texas Family Code provides for the automatic dismissal of a suit filed by the Department requesting termination or conservatorship unless the trial court has commenced the trial on the merits or granted an extension “on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator” § 263.401(a). If the trial does not commence on or before that date, then the suit is automatically dismissed. *Id.* Subsection (b) provides a way to extend the dismissal date by up to 180 days. The trial court may extend the deadline once for 180 days upon finding that “extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the [D]epartment and that continuing the appointment of the [D]epartment as temporary managing conservator is in the best interest of the child.” § 263.401(b). If the court makes those findings, the court may retain the suit on the court’s docket for a period not to exceed 180 days after the time described by subsection (a). *Id.*; see *In re G.X.H.*, 627 S.W.3d 288, 301 (Tex. 2021) (“trial court’s failure to timely extend the automatic dismissal date before that date passes . . . is jurisdictional”).

If the court retains the suit on the court’s docket, the court is required to render an order that contains a new dismissal date and trial date and makes further temporary

orders for the safety and welfare of the children “as necessary” to avoid further delay. § 263.401(b).

In this case, the trial court signed a temporary order appointing the Department as the children’s temporary managing conservator on August 24, 2020. Thus, unless the court commenced a trial on the merits or granted an extension, the automatic dismissal date for the Department’s termination suit was August 31, 2021. See § 263.401(a). On August 25, 2021, five days before the automatic dismissal date, the trial court called the case for trial. After announcements and a brief conference, the Department orally requested a continuance and extension of the dismissal date. See § 263.401(b). The next day, August 26, 2021, the trial court signed an order finding “that extraordinary circumstances necessitate the children 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 children,” setting the new dismissal date for February 25, 2022 (which was 180 days after August 31, 2021), and setting the case for trial on January 19, 2022. See § 263.401(b). The final trial was held on January 19, 2022, which was less than 180 days after August 31, 2021. Because the initial dismissal date was August 31, 2021, the trial court’s written findings in its August 26, 2021 order were timely and operated to extend the jurisdiction period and maintain the case on the court’s docket. See § 263.401(b).

Whether the trial court erroneously granted the oral motion to extend the dismissal deadline while it had subject matter jurisdiction is not a jurisdictional question. See *In re A.E.*, No. 02-19-00173-CV, 2019 Tex. App. LEXIS 8763, at *8 (Tex. App.—Fort Worth, Oct. 1, 2019, pet. denied) (mem. op.); See also *In re P.N.T.*, 580 S.W.3d 331, 338 (Tex.

App.—Houston [14th Dist.] 2019, pet. denied) (“[A] judgment is void only when it is shown that the court had no jurisdiction of the parties or property, no jurisdiction of the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act as a court.” (quoting *Browning v. Placke*, 698 S.W.2d 362, 363 (Tex. 1985) (construing the prior version of § 263.401)). “Nonjurisdictional error, like a trial court’s action in violation of a statute, makes the court’s judgment merely voidable, not void.” *In re A.E.*, 2019 Tex. App. LEXIS 8763, at *8–9. As such, we overrule Jody’s claim that the trial court lacked subject matter jurisdiction.

Jody further asserts that the trial court’s jurisdiction over the case ended on August 31, 2021, because evidence of extraordinary circumstances was not presented. Notably, Jody did not oppose the continuation and extension of the trial date and did not object to the August 26 extension order. While a trial court’s failure to timely extend the automatic dismissal date before that date passes is jurisdictional, claimed defects relating to the other requirements of subsection 263.401(b) are not. See *In re G.X.H.*, 627 S.W.3d at 301. Accordingly, complaints regarding the trial court’s compliance with the requirements in subsection 263.401(b) must be preserved for appellate review. *Id.*; *In re A.E.*, 2019 Tex. App. LEXIS 8763, at *9. To preserve a complaint for appellate review, a party must present to the trial court a timely request, objection, or motion that states the specific grounds for the desired ruling, if not apparent from the request, objection, or motion. See TEX. R. APP. P. 33.1(a)(1)(A). Because Jody did not object to the trial court’s extending the dismissal deadline, she failed to preserve her complaints about defects in the trial court’s extension order. Consequently, we overrule this issue.

CONCLUSION

Having overruled Jody's appellate issues, we affirm the judgments of the trial court.

Judy C. Parker
Justice