In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-08-00058-CV

IN THE INTEREST OF B.L.T., A CHILD

On Appeal from the 62nd Judicial District Court
Franklin County, Texas
Trial Court No. 10,596

Before Morriss, C.J., Carter and Moseley, JJ.
Memorandum Opinion by Chief Justice Morriss

MEMORANDUM OPINION

Rickey Thompson and Sara Stokley appeal from the termination of their parental rights to B.L.T. There is an initial problem that we must address before examining the single point of error raised by counsel, whether we have jurisdiction to consider the point of error at all.

An appellate court reviewing a termination of parental rights on the State's petition "may not consider any issue that was not specifically presented to the trial court in a timely filed statement of the points on which the party intends to appeal . . . ." TEX. FAM. CODE ANN. § 263.405(i) (Vernon Supp. 2008). To be timely, the statement of points must be filed within fifteen days of the date of the final order; but a statement of points may be combined with a motion for new trial. TEX. FAM. CODE ANN. § 263.405(b), (b-1) (Vernon Supp. 2008).

After judgment, Thompson and Stokley filed with the trial court only a motion for new trial. Though a statement of points may be made part of the same document as a motion for new trial, a motion for new trial that does not specifically include such a statement of points is not sufficient to allow our review of a termination. *See In re J.M.*, No. 12-07-00371-CV, 2008 Tex. App. LEXIS 4871 (Tex. App.—Tyler June 30, 2008, pet. dism'd) (mem. op., not designated for publication). This motion for new trial made no effort to include a statement of points on appeal. Thus, we have no jurisdiction.

Even if we were allowed to imply a statement of points on appeal from the arguments made in the motion for new trial, this appeal must fail. The only portion of the motion for new trial that

could be said to raise a statutorily sufficient and specific contention for a point on appeal, even under a lenient standard, states that the evidence was insufficient to show that Thompson and Stokley were "responsible for any of the events that allegedly put the child in danger."

By contrast, the sole point of error raised in the appellants' brief attacks the trial court's ruling "because medical testimony was put before the jury without expert testimony." On reviewing the substance of the argument, we glean that counsel complains the court erred by allowing the adoptive mother, a lay witness who professed to no medical expertise, to testify that the children had contracted sexually transmitted diseases.

The substance of the issue gleaned from the motion for new trial differs completely from the substance of the issue briefed on appeal. We could not stretch the issue raised in the motion for new trial sufficiently to cover the contention currently raised on appeal. As a result, even if we were allowed to consider an issue solely from a motion for new trial, we could not address the sole issue raised in Thompson and Stokley's brief.

We affirm the judgment of the trial court.

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Josh R. Morriss, III
Chief Justice

Date Submitted: November 25, 2008
Date Decided: November 26, 2008