



IN THE
TENTH COURT OF APPEALS

No. 10-20-00150-CV

IN RE J.L.B. AND L.M.B.

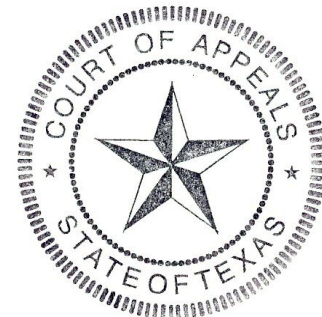
Original Proceeding

MEMORANDUM OPINION

Relators' Petition for Writ of Mandamus is denied.

REX D. DAVIS
Justice

Before Chief Justice Gray,
Justice Davis, and
Justice Neill
(Chief Justice Gray concurs with a note)
Petition denied
Opinion delivered and filed July 31, 2020
[OT06]



Chief Justice Gray concurs in the denial of the petition for writ of mandamus. A separate opinion will not issue but he provides the following note. "I do not understand how the Department could have initially concluded an investigation in which a sexual abuse of a child occurred in the home with a finding of "reason to believe" and then allow the child and the alleged perpetrator to return to the home by closing the case. If the Department thought there was reason to believe, why close the case putting perpetrator and victim back in the same house with no ability to monitor or control the situation. Moreover, why an order for temporary removal would contain findings and order provisions regarding other children in the home, health care, and even discovery/disclosure of medical information of other members of the family escapes me. This was a hearing to justify an emergency removal of one child. The scope of the temporary order goes far beyond that issue. While the Department acknowledges that the order could be read to be applicable to the parents' unsupervised parenting of their other three children, the Department contends that clearly it does not mean that. But that is precisely what it says. It is not vague. And the Relators, by being in and caring for their remaining children in their home, are in violation of the order. These parents are already dealing with the Department's vacillation with regard to the removal of one child. Accordingly, I do not find it unreasonable that they would want the order clarified with regard to whether they are prohibited from caring for their other children in their home. Rather than resist clarification of the order, I would expect the Department to agree that the scope of the order as written covers issues unnecessary and inappropriate for the temporary order and that it needs to be appropriately narrowed and tailored to the situation in which the Department has inserted itself. However, I recognize that these collateral issues are not well briefed, but then I wonder how well they should have to be briefed given how overbroad the order is. With these comments I will join the denial of the petition so that the single child that is the subject of the temporary order is protected, notwithstanding my great concern about the manner and extent to which the Department has unnecessarily complicated the life of all the members of this family, until this can be sorted out in further proceedings."