TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-16-00883-CV

D. F., a/k/a D. M., Appellant

v.

Texas Department of Family and Protective Services, Appellee

FROM THE DISTRICT COURT OF MILAM COUNTY, 20TH JUDICIAL DISTRICT
NO. CV37,031, HONORABLE JOHN YOUNGBLOOD, JUDGE PRESIDING

M E M O R A N D U M O P I N I O N

In two issues, appellant D.F., a/k/a D.M., who is the mother of K.M., challenges the trial court's order terminating the parental rights of J.M., who is K.M.'s father.[1] The trial court signed the order after an affidavit of voluntary relinquishment of J.M.'s parental rights to K.M. was filed. Because we conclude that appellant does not have standing to challenge the termination of J.M.'s parental rights, we dismiss this appeal.

BACKGROUND

In August 2015, the Department filed an original petition for protection of K.M. and appellant's two other children, for conservatorship, and for termination in a suit affecting the parent-child relationship, and appellant's three children were taken into the custody of the

[1] We refer to appellant, the father, and the child by their initials only. *See* Tex. Fam. Code § 109.002(d); Tex. R. App. P. 9.8.

Department.[2] K.M., who was 14 years old, was placed with a maternal aunt. At that time, J.M. lived in Tennessee but had been paying child support to appellant for K.M.'s care.

After J.M. was served with the suit, he had contact over the phone and in person with the Department and with K.M., but he ultimately filed an affidavit of voluntary relinquishment of his parental rights to K.M. on July 28, 2016. *See* Tex. Fam. Code § 161.103 (addressing requirements of affidavits of voluntary relinquishment of parental rights). At a previously scheduled hearing on the day after the affidavit was filed, the trial court signed the order terminating J.M.'s parental rights to K.M. During that hearing, the Department called the caseworker who testified about the Department's contacts with J.M. during the case and his decision to voluntarily relinquish his parental rights to K.M., including the following testimony:

[Department's attorney]:	Did you play a hand—or what was the process in affecting the relinquishment? I believe, actually, that [J.M.] came down from Tennessee a month or so ago, did he not?
[caseworker]:	He did.
[Department's attorney]:	All right. What was the process? Are you . . .
[caseworker]:	He had spoke with—originally at the beginning of this case, he had spoke with [the attorney ad litem] in regards to relinquishing his rights. [The attorney ad litem] had discussed it with him. I asked [the attorney ad litem] to let me discuss it with him. I did, and he stated that he would be willing to stay involved in his daughter's life or stay involved in the case and try to maintain a relationship with his daughter and kind of correct some issues that had happened. He felt like

[2] Appellant's two other children have a different father and are not a subject of this appeal.

> after this last hearing, and after speaking with his daughter on several occasions, his daughter actually requested that she—that he relinquish his rights. I spoke with him in regards to that on about seven different occasions, in person when he was here and then again as well over the phone since he went back to Tennessee. I also spoke with [K.M.], and she did, in fact, tell me that she did ask her dad to do this and this was her wishes as well, that she did not want to live with him and she wanted to stay here and she wanted her dad to relinquish his rights.

After the Department asked the trial court to grant the relinquishment of J.M.'s parental rights during the hearing, the trial court asked if any of the other parties had testimony that they wished to elicit with regard to termination of J.M.'s parental rights. In response, the attorney ad litem said, "No," and appellant's counsel responded, "Not at this time, your Honor." The trial court then approved the relinquishment, found that termination of J.M.'s parental rights was in the best interest of K.M., and signed the order of termination without objection from appellant. *See Stubbs v. Stubbs*, 685 S.W.2d 643, 645–46 (Tex. 1985) (explaining that "legislature intended to make such irrevocable affidavits of relinquishment sufficient evidence on which the trial court could find termination to be in the children's best interests"); *Lumbis v. Texas Dep't of Protective & Regulatory Servs.*, 65 S.W.3d 844, 851 & n.1 (Tex. App.—Austin 2002, pet. denied) (observing that "an affidavit of relinquishment, in and of itself, can provide sufficient evidence that termination is in the child's best interest" and finding that evidence, including statement in affidavit of relinquishment that termination was in child's best interest, was sufficient to support best interest finding). In the order, the trial court also released J.M. from paying child support and for all arrearages. *See* Tex. Fam. Code § 154.001 (authorizing court to order parent to support child).

A few weeks later, appellant filed a "motion for new trial" asking the trial court to reconsider its order terminating J.M.'s parental rights on the following grounds: (l) the parties were not notified of the Department's intent to terminate J.M.'s parental rights prior to the hearing; (2) "the Office of the Attorney General, a party to this suit, was not served with notice of this suit and was not notified of a hearing for termination"; (3) "there are existing orders regarding Medicaid which impact the State's interest in this case"; (4) J.M. "is in arrears for child support owed to Respondent"; and (5) "the termination of [J.M.]'s parental rights is not in the best interest of the child the subject of the suit." After appellant's motion was filed, the Department filed a "Financial Activity Report as of 08/12/2016" from the Child Support Division of the Attorney General of Texas that showed the monthly amounts due and paid by J.M. beginning on September 30, 2008. The report reflects that J.M. paid approximately $23,000 in child support prior to August 2016.

At a hearing on August 22, 2016, the trial court considered appellant's "motion for new trial." Appellant's counsel argued that the trial court should reconsider J.M.'s termination because the Attorney General was not notified prior to the termination and there was a "pending enforcement action on dental and medical coverage" against J.M. and that, although J.M. "for seven years had no engagement with the child" and "[had] been diligent ignoring the child," he did pay child support. Counsel explained that it would be "premature for the Court at this time, because we have not entered a final order, to enter into a termination because with reunification pending, that child's resources—financial resources would be cut off and there's really no need for it." Appellant and the current caseworker also testified at the hearing. Appellant testified that there was a pending motion for modification that she filed with the Attorney General the previous summer concerning

child support and medical and dental insurance, but she did not provide details about what she was seeking other than to testify that K.M. "had [medical and dental insurance] coverage, but [appellant] was not given any kind of information or policy." The caseworker testified about the dental care that the children had received through Child Protective Services after being placed with the Department. The trial court thereafter denied appellant's motion.[3]

K.M. ultimately was returned to appellant, and the Department's suit against appellant was dismissed in December 2016. *See* Tex. Fam. Code § 161.203. In the final order, the trial court recites that the "[p]arental rights of the respondent Presumed Father [J.M.] have been terminated. No further service is required." This appeal followed.

ANALYSIS

Appellant raises two issue on appeal. In her first issue, appellant argues that the trial court erred and violated due process by terminating J.M.'s parental rights "without notice, without trial, and prior to the end of the discovery period" and that the hearing in which the trial court terminated J.M.'s rights was not a "permissible time, place, or manner for a termination trial." She argues that K.M. "has suffered an arbitrary taking by the government, the termination of parental rights, and the financial support by the parent" and that K.M. was "harmed by the removal of a consistent financial resource that directly benefits the child." In her second issue, appellant challenges the sufficiency of the evidence to support the trial court's finding that it was in K.M.'s

[3] A few days after this hearing, the trial court also entered a nunc pro tunc interlocutory decree of termination of J.M.'s parental rights. The substance of the nunc pro tunc order is the same as the original order terminating J.M.'s parental rights, but the title was changed to "Interlocutory Decree of Termination."

best interest to terminate J.M.'s parental rights. *See* Tex. Fam. Code §§ 161.001(1)(K), (2), .103; *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003) (requiring one predicate finding under section 161.001(1) of Texas Family Code and finding that termination was in child's best interest to support termination of parental rights).

Because it is dispositive, we address appellant's standing. *See Finance Comm'n of Tex. v. Norwood*, 418 S.W.3d 566, 580 (Tex. 2013) ("Because standing is required for subject-matter jurisdiction, it can be—and if in doubt, must be—raised by a court on its own at any time."). Standing requires a plaintiff to be personally aggrieved and her alleged injury to be "concrete and particularized, actual or imminent." *Id*. (citation omitted); *see also Texas Ass'n of Bus. v. Texas Air Control Bd.*, 852 S.W.2d 440, 446 (Tex. 1993) (stating general test for standing).

Here, appellant's issues, challenging the termination of J.M.'s parental rights, complain of alleged error that did not injuriously affect her but affected the rights of others, namely J.M. and K.M. *See A.E. v. Texas Dep't of Family & Protective Servs.*, No. 03-14-00414-CV, 2014 WL 7458731, at *4–5 (Tex. App.—Austin Dec. 23, 2014, no pet.) (mem. op.) (concluding that parent did not have standing to complain about children's lack of representation); *In re T.N.*, 142 S.W.3d 522, 525 (Tex. App.—Fort Worth 2004, no pet.) (concluding that mother did not have standing to complain about children's attorney on children's behalf or "standing on appeal to complain about a violation of Father's due process rights"); *In re D.C.*, 128 S.W.3d 707, 713 (Tex. App.—Fort Worth 2004, no pet.) (concluding that mother lacked standing to complain about termination of father's parental rights and explaining that party "may not complain of errors that do not injuriously affect her or that merely affect the rights of others"); *In re B.B.*, 971 S.W.2d 160, 163

(Tex. App.—Beaumont 1998, pet. denied) (providing that mother could not appeal termination of father's rights when father did not appeal), *disapproved on other grounds by In re C.H.*, 89 S.W.3d 17, 26 (Tex. 2002).

At the time of the hearing, the Department had temporary managing conservatorship of K.M. and the right to represent K.M. in this proceeding. *See In re T.N.*, 142 S.W.3d at 524 (observing that Child Protective Services "had temporary managing conservatorship, including the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child" in reaching conclusion that mother lacked standing to assert claim on behalf of child on appeal); *see also* Tex. Fam. Code § 153.371 (listing rights of nonparent appointed as sole managing conservator to include "right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child"). Appellant also does not claim and has not shown that her interests are identical with J.M.'s or K.M.'s interests. *See In re T.N.*, 142 S.W.3d at 524 (explaining exception of "doctrine of virtual representation" that allows party to complain about error that affects rights of other person but that requires "identical interests" for exception to apply). Thus, we conclude that appellant does not have standing to raise her issues that challenge the termination of J.M.'s parental rights.

CONCLUSION

Because we conclude that appellant does not have standing to challenge the termination of J.M.'s parental rights, we dismiss this appeal.

Melissa Goodwin, Justice

Before Justices Puryear, Pemberton, and Goodwin

Dismissed

Filed: April 4, 2017