



NUMBER 13-18-00237-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

IN RE P.B.

On Petition for Writ of Mandamus.

MEMORANDUM OPINION

**Before Chief Justice Valdez and Justices Benavides and Longoria
Memorandum Opinion by Chief Justice Valdez¹**

On May 1, 2018, relator P.B. filed a petition for writ of mandamus seeking to compel the trial court to dismiss the parental termination case filed against P.B. by the Texas Department of Family and Protective Services.² We deny relief.

¹ See TEX. R. APP. P. 52.8(d) (“When granting relief, the court must hand down an opinion as in any other case,” but when “denying relief, the court may hand down an opinion but is not required to do so.”); TEX. R. APP. P. 47.4 (distinguishing opinions and memorandum opinions).

² Given the nature of this original proceeding, we use initials to refer to relator. See TEX. FAM. CODE ANN. § 109.002(d) (West, Westlaw through 2017 1st C.S.); TEX. R. APP. P. 9.8.

Through this original proceeding, relator contends dismissal is required because the parental termination case was not completed by the statutory deadline imposed by the Texas Family Code. See *Procedures for a Suit Affecting the Parent–Child Relationship Involving a Child in The Conservatorship of the Department of Family and Protective Services*, 80th Leg., R.S., ch. 866, §§ 2–6, 2007 TEX. SESS. LAW SERV. Ch. 866 (West, Westlaw) (amended 1997, 2001, 2005, 2007, 2015, 2017) (current version at TEX. FAM. CODE ANN. §§ 263.401-.402 (West, Westlaw through 2017 1st C.S.)). Relator also filed a motion for emergency stay and temporary relief seeking to stay all trial court proceedings pending resolution of this petition for writ of mandamus. See TEX. R. APP. P. 52.10(b).

By order issued on May 2, 2018, this Court granted relator’s motion for emergency stay and temporary relief and ordered all trial court proceedings, including the trial of this matter set for May 7, 2018, to be stayed. See *id.* We also requested that the real parties in interest, the Department of Family and Protective Services; B.N.G. and L.V.B., minor children represented by attorney ad item Pamela Alexander and guardian ad litem Carmen Ramirez; intervenors Priscilla Gonzalez and Edelmira and Jose Manda; and respondent Ruben Gonzalez Jr.; or any others whose interest would be directly affected by the relief sought, file a response to the petition for writ of mandamus on or before the expiration of ten days from the date of this order. See *id.* R. 52.2, 52.4, 52.8. Minor children B.N.G. and L.V.B., acting by and through attorney ad litem Pamela Alexander, have filed a response to the petition for writ of mandamus.³

³ The Texas Department of Family and Protective Services has filed a motion for extension of time seeking an additional twenty days to file its response to the petition for writ of mandamus. Given our disposition of this original proceeding, we dismiss the motion for extension of time as moot. Further, relator has filed an “objection”

Mandamus is an extraordinary remedy. *In re H.E.B. Grocery Co.*, 492 S.W.3d 300, 302 (Tex. 2016) (orig. proceeding) (per curiam). Mandamus relief is proper to correct a clear abuse of discretion when there is no adequate remedy by appeal. *In re Christus Santa Rosa Health Sys.*, 492 S.W.3d 276, 279 (Tex. 2016) (orig. proceeding). The relator bears the burden of proving both of these requirements. *In re H.E.B. Grocery Co.*, 492 S.W.3d at 302; *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (orig. proceeding). An abuse of discretion occurs when a trial court's ruling is arbitrary and unreasonable or is made without regard for guiding legal principles or supporting evidence. *In re Nationwide Ins. Co. of Am.*, 494 S.W.3d 708, 712 (Tex. 2016) (orig. proceeding); *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 578 (Tex. 2012). We determine the adequacy of an appellate remedy by balancing the benefits of mandamus review against the detriments. *In re Essex Ins. Co.*, 450 S.W.3d 524, 528 (Tex. 2014) (orig. proceeding); *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding).

“In termination cases, judicial economy is not just a policy—it is a statutory mandate.” *In re B.L.D.*, 113 S.W.3d 340, 353 (Tex. 2003); see *In re J.F.C.*, 96 S.W.3d 256, 274 (Tex. 2002) (stating that parents and children have an interest in resolving termination proceedings as expeditiously as possible). Thus, in cases involving the termination of parental rights, the statutory dismissal deadline is mandatory, and mandamus is appropriate if a trial court denies a timely motion to dismiss filed pursuant to Section 263.401. See *In re Dep't of Family & Protective Servs.*, 273 S.W.3d 637, 643–45 (Tex. 2009) (orig. proceeding); *In re Tex. Dep't of Family & Protective Servs.*, 210 S.W.3d 609 (Tex. 2006) (orig. proceeding); see also *In re Fletcher*, No. 11-17-00045-CV,

to the designation of the record that will apparently be filed by the Department. We dismiss relator's objection as moot.

2017 WL 962682, at *2 (Tex. App.—Eastland Mar. 9, 2017, orig. proceeding) (mem. op. per curiam). However, the Texas Supreme Court has held that the version of section 263.401 applicable to this case did not make the deadlines it set out jurisdictional, that is, the trial court did not lose jurisdiction when the identified time periods lapsed. *In re Dep't of Family & Protective Servs.*, 273 S.W.3d at 642; *see also F.R. v. Tex. Dep't of Family & Protective Servs.*, No. 03-17-00487-CV, 2017 WL 6503082, at *4 (Tex. App.—Austin Dec. 15, 2017, no pet.) (mem. op.). Accordingly, under the prior law applicable to this case, an objection to the failure to dismiss could be waived. See Act of May 28, 1997, 75th Leg., R.S., ch. 600, § 17, 1997 TEX. GEN. LAWS 2108, 2113–14 (amended 1997, 2001, 2005, 2007, 2015, 2017); *In re B.H.R.*, 535 S.W.3d 114, 119 (Tex. App.—Texarkana 2017, no pet.).

The Court, having examined and fully considered the petition for writ of mandamus, the record, the response, and the applicable law, is of the opinion that relator has not shown herself entitled to the relief sought. While we agree with relator's contention that the lapse of time in this case is extraordinary and contravenes the public and private interests in attaining the expeditious resolution of parental termination cases, the trial in this case has commenced and the record indicates that relator did not object prior to the commencement of trial or during the two-year interval between the inception of trial and the filing of her motion to dismiss the case. Further, relator filed her own motion for continuance of the trial of this case after the trial court set a date to reconvene the trial proceedings. Accordingly, we lift the stay previously imposed in this case. See TEX. R. APP. P. 52.10. We deny the petition for writ of mandamus. See TEX. R. APP. P. 52.8(a).

/s/ Rogelio Valdez
ROGELIO VALDEZ
Chief Justice

Delivered and filed this
18th day of May, 2018.