

NO. 12-10-00366-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

<i>IN THE INTEREST OF</i>	§	<i>APPEAL FROM THE 1ST</i>
<i>C.K.C., A CHILD</i>	§	<i>JUDICIAL DISTRICT COURT</i>
	§	<i>SAN AUGUSTINE COUNTY, TEXAS</i>

MEMORANDUM OPINION

C.P.C. appeals the termination of his parental rights. In four issues, C.P.C. challenges the order of termination. We affirm.

BACKGROUND

C.P.C. is the father of C.K.C. born July 25, 2005. When C.K.C. was approximately five years old, his mother, K.A.P., filed an original petition to terminate C.P.C.'s parental rights. At the conclusion of the trial on the merits, the trial court found, by clear and convincing evidence, that C.P.C. had engaged in one or more of the acts or omissions necessary to support termination of his parental rights, and that termination of the parent-child relationship between C.P.C. and C.K.C. was in the child's best interest. Based on these findings, the trial court ordered that the parent-child relationship between C.P.C. and C.K.C. be terminated. This appeal followed.

ISSUES ON APPEAL

In four issues, C.P.C. argues that the trial court erred by sustaining the contest to his affidavit of indigency, and failing to appoint an attorney ad litem to represent the interests of the child. He further contends that the evidence is legally and factually insufficient to support a finding that he failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition, and to support a finding

that termination of the parent-child relationship was in the child's best interest. K.A.P., Appellee, argues that all of the issues presented require this court to review the evidence, which we cannot do absent a reporter's record.

The Reporter's Record

After the trial on the merits, C.P.C. filed a request for a reporter's record, an affidavit of indigency, and a notice of appeal, stating that he was appealing the judgment of the trial court. C.P.C. states in his brief that the court reporter filed a contest to his affidavit of indigency, although the contest does not appear in the clerk's record. After a hearing, the trial court sustained the contest, finding that C.P.C. had the ability to pay the costs or a part thereof if he wanted to and made a good faith effort to do so.

Correspondence from this court informed C.P.C. that the reporter's record had not been filed because the reporter's preparation fee had not been paid. We informed C.P.C. that the appeal would be submitted on the clerk's record alone unless proof of full payment to the reporter was provided to us by a certain date. No court reporter's record was filed, and C.P.C. did not respond to this court's letter. Thus, we informed C.P.C. that his case would be submitted on the clerk's record alone. Consequently, we can consider and decide only those issues or points that do not require a reporter's record for a decision. *See* TEX. R. APP. P. 37.3(c) (providing that appellate court may determine issues not requiring reporter's record if one has not been filed because appellant failed to pay or make arrangements to pay reporter's preparation fee and appellant is not entitled to proceed without payment of costs).

Effect of Failure to File Reporter's Record

When no reporter's record is filed, we must presume the missing evidence supports the trial court's ruling. *Bryant v. United Shortline Inc. Assurance Servs., N.A.*, 972 S.W.2d 26, 31 (Tex. 1998); *In re Marriage of Spiegel*, 6 S.W.3d 643, 646 (Tex. App.—Amarillo 1999, no pet.). Further, when, as here, no findings of fact and conclusions of law are requested or filed, we must presume the trial court made all the necessary findings to support its judgment. *Holt Atherton Indus., Inc. v. Heine*, 835 S.W.2d 80, 83 (Tex. 1992); *Roberson v. Robinson*, 768 S.W.2d 280, 281 (Tex. 1989). Further, we may consider findings of fact recited in the judgment unless supplanted by separate findings. *Daybreak Express, Inc. v. Lexington Ins. Co.*, 342 S.W.3d 795, 799 n.1 (Tex. App.—Houston [14th Dist.] 2011, pet. filed) (citing *In re C.A.B.*, 289 S.W.3d 874, 880-81 (Tex. App.—Houston [14th Dist.] 2009, no pet.)).

Reviewing a challenge to the trial court's order sustaining the court reporter's contest to his affidavit of indigency and to the sufficiency of the evidence to support the termination order necessarily entails a review of a reporter's record since without one we do not know what evidence, if any, was presented to the trial court. *See In re D.D.H.*, No. 09-07-00139-CV, 2008 WL 4509343, at *2 (Tex. App.—Beaumont Oct. 9, 2008, no pet.) (mem. op.) (quoting *In re Marriage of Spiegel*, 6 S.W.3d at 646. Therefore, we must presume that the evidence is legally and factually sufficient to support (1) the trial court's order sustaining the contest to C.P.C.'s affidavit of indigency and (2) the termination order.

C.P.C. also contends that the trial court erred by failing to appoint an attorney ad litem to represent the interests of the child. In a suit requesting termination of the parent-child relationship that is not filed by a governmental entity, the court shall, unless the court finds that the interests of the child will be represented adequately by a party to the suit whose interests are not in conflict with the child's interests, appoint either an amicus attorney or an attorney ad litem. *See* TEX. FAM. CODE ANN. § 107.021(a-1) (West 2008). In this case, the trial court found, in its order of termination, that K.A.P., the child's mother and a party to the suit, had no interest adverse to the child and would adequately represent the interest of the child. Thus, the trial court stated "[n]o attorney ad litem or amicus attorney was necessary, and none was appointed." In the absence of a reporter's record and separate findings of fact, we must presume that all findings made by the trial court in the judgment were supported by evidence at the trial. *See Holt Atherton Indus., Inc.*, 835 S.W.2d at 84; *Roberson*, 768 S.W.2d at 281; *Daybreak Express, Inc.*, 342 S.W.3d at 799 n.1. Therefore, the trial court did not err in failing to appoint an attorney ad litem to represent the interest of the child because it found that a party to the suit, K.A.P., adequately represented the interests of the child.

C.P.C.'s first, second, third, and fourth issues are overruled.

DISPOSITION

Having overruled all of C.P.C.'s issues in this appeal, the judgment of the trial court is *affirmed*.

SAM GRIFFITH
Justice

Opinion delivered December 30, 2011.

Panel consisted of Worthen, C.J., Griffith, J., and Hoyle, J.

(PUBLISH)