

No. 21-6696

ORIGINAL

Supreme Court, U.S.
FILED

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In the

Supreme Court of the United States

LAUREN M. WILLIAMS, PETITIONER, PRO'SE

vs.

**TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE
SERVICE, RESPONDENT**

CASE NO. 2018PA01964

CASE NO. 04-20-00368-CV

Appeal from the Court of Appeals for the Fourth District of
Texas at Bexar County, Texas

PETITION FOR WRIT OF CERTIORARI

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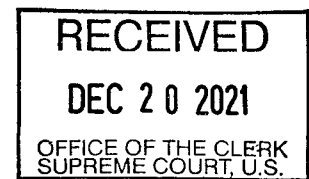
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QUESTIONS PRESENTED

1. Did trial court commence prior to losing jurisdiction under Tex. Fam. Code § 263.401
2. Did an agreed Recess of trial to allow Respondent to continue with services constitutes an extension of deadlines prohibited by Tex. Fam. Code § 263.402
3. Did extension of the Tex. Fam. Code § 263.401 (a) deadline prohibited by Tex. Fam. Code 263.402 render a subsequent order void or voidable.
4. Did Petitioner's failure to address Tex. Fam Code § 263.402 on appeal Constitute a Waiver of Rights or a Forfeiture of rights. United States V. Olano, 507 U.S. 725, 733 (1993) (quoting Johnson V. Zerbst, 304 U.S. 658, 646 (1938).



PARTIES OF THE CASE

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TABLE OF AUTHORITIES

1. Browning v. Prostok, 165 S.W. 336 (Tex. 2005)
2. Conventional Coffee Prods. Co. V. Casarez, 979 S.W. 2d 444 (Tex. 1996)
3. In re D.S 455 S.W. 3d 750 (Tex. App. Amarillo 2015, no pet.)
4. In re R. E. Jr., No. 04-17-00582 – CV, 2018 Tex. App, LEXIS 1849, 2018 WL 1308542 (Tex. App. San Antonio Mar. 14, 2018, no pet) (mem. Op)
5. In re R. J. Jr., 568 S.W. 3d 734 (Tex. App. Houston (1st Dist.) 2019, denied)
6. In re H.B.C. No. 05-19-00907-CV, 2020 Tex. App. LEXIS 669, 2020 WL 400162 (Tex. App. Dallas Jan. 23, 2020, no pet.)
7. In re H.S. 550 S.W. 3d 151 (Tex. 2018)
8. In re L. E. No. 07-19-00317-CV, 2020 WL 55464 (Tex. App. Amarillo Jan. 3, 2020 (no pet.)
9. In re M.E. No. 14-19-00964-CV, 2020 Tex. App. LEXIS 4199, 2020 WL 2832166 (Tex. App. Houston (14th Dist.) May 28, 2020, pet. Denied)
10. In re X.J.R. No. 04-20-00368-CV 2021 Tex. App. LEXIS 247, 2021 WL 112175 (Tex. App. San Antonio Jan 13, 2021.
11. McEwen V. Harrison, 345 S.W. 3d 706 (Tex. 1961)
12. S.A. v Tex. Dept of Fam & Prot. Servs. No. 13-19-00884-CV, 2020 Tex. App. LEXIS 3580, 2020 WL 2832166 (Tex. App. Austin, April 29, 2020, no pet)
13. Travelers Ins v. Joachin, 315 S.W. 3d 860 (Tex. 2010)
14. Tullos V. Eaton Corp 695 S. W. 2d 568 (Tex. 1985
15. Dikeman v. Snell, 490 S.W. 2d 183, 186-87 (Tex. 1973)

PETITION FOR WRIT OF CERTIORAR

Petitioner, Lauren M. Williams respectfully submits this Petition for a Write of Certiorari to review the judgment of the Court of Appeals for the Fourth District of Texas, at Bexar Country, Texas

OPINIONS AND ORDERS BELOW

The Texas Supreme Courts orders refusing Discretionary review was denied and unreported, May 14, 2021. The Opinion of the Court of Appeals for the Fourth District of Texas, at Bexar County, Texas is reports as in re X.J.R. Tex. App. LEXIS 247, 2021 WL 112175 (tex. App. San Antonio, Jan. 13, 2021) and was affirmed on January 13, 2021. The judgment entered by the 408th Judicial District Court of Bexar County, Texas. Order for Termination on July 18, 2020.

JURISDICTION

Petitioner, Lauren Williams, Petition for Discretionary Review to the Texas Supreme Court was denied on May 14, 2021. Petitionary, Ms. Williams respectfully invokes the Honorable Courts Jurisdiction under 28 U.S.C. 1257 (1) having timely filed this petition for a Writ of Certiorari within ninety (90) days of the Texas Supreme Court's Judgment.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

- United States Constitution, Amendment V
- United State Constitution, Amendment VII
- United States Constitution, Amendment XIV
- Tex. Const. Art. 1 §19
- Tex. Fam. Code Ann § 263.401
- Tex. Fam. Code Ann. § 263.402
- Tex. R. App. P.56.1
- 18 U.S. Code § 241
- 18 U.S. Code § 242
- Tex. Govt. Code Ann § 311.021 (1), (2), (3), (4), (5)

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment IV:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizure, shall not be violated and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be search, and the persons or things to be seized.

United States Constitution, Amendment V:

In Part: Nor shall any states deprive any person of life, liberty, or property without due process of law.

United States Constitution Amendment VIII:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

United States Constitution Amendment XIV:

All persons born or naturalized in the United States, and subject to the Jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No State shall make enforce any law which shall abridge the privilege or immunities of citizens of the United States deprive any person of life, liberty, property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Tex. Const. Art. 1 § 19:

No citizen of this State shall be deprived of life, liberty, property, privilege or immunities or in any manner disfranchised, except by the due course of the law of the land.

STATUTORY PROVISION INVOLVED

18 U.S. Code § 241 – Conspiracy against rights if two or more persons conspire to injure, oppress, threaten or intimidate any person in any State, Territory, Commonwealth, Possession or District in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States or because of his having so exercised the same.

18 U.S. Code § 242 - Deprivation of rights under color of law whoever, under color of any law, statute, ordinance, regulation or custom, willfully subject any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privilege or immunities secured or protected by the constitution or laws of the United States, or to be different punishments, pains, or penalties on account of such person being an alien, or by reason of his color, or race, then are prescribed for the punishment of citizens, shall be fined under this title or imprison not more than one year or both; and if bodily injury results from the acts committed in violation of this Section if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of his Section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or attempt to kill, shall be fined under the title, or imprison for any term of life or both.

18 U.S. Code § 286 - Conspiracy to defraud the U.S. Government whoever enters into any agreement, combination, or conspiracy to defraud the United States, or department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious, or fraudulent claim, shall be fined under this title or imprison not more than ten years, or both.

Tex. Govt. Code Ann §311.021 (1), (2), (3), (4), (5) –

In enacting a statute, it is presumed that:

- (1) Compliance with the Constitution of this States and the United States is intended.
- (2) The entire statue is intended to be effective
- (3) A just and reasonable result is intended.
- (4) A result feasible of execution is intended; and
- (5) Public interest is favored over any private interest.

Tex. Fam. Code § 263.40 (a)

Unless the Court has commenced the trial on the merits or granted an extension under subsection (b) or (b-1) on the first Monday after the first anniversary of the date of the Court rendered a temporary managing conservator, the Courts Jurisdiction over the suit affect the parent-child relationship filed by the department that requests termination of the parent-child relations or request that the department be name conservator of the child is terminated and the suit is automatically dismissed without court order.

Tex. Fam. Code § 236.402

The parties to a suit under this chapter may not extend the deadlines set by the Court under this subchapter by agreement or otherwise.

STATEMENT OF CASE

X.J.R. and **A.W.R.** are children born to Petitioner **L.W.** and father **G.R.** In 2013, Petitioner **L.W.** and father of Petitioners three younger children, **L.B.** began a romantic relationship and over the course of their relationship; three children were born: **Z.N.D.**, **L.K.B.**, and **G.E.B.** On **August 17, 2018**, the Texas Department of Family and Protective Services allegedly received two referrals for the alleged physical abuse of **X.J.R.** and **A.W.R.** On **August 30, 2018**, the Department filed Affidavit in Support of Non-Exigent Removal. On **September 11, 2018**, the Department was named Temporary Managing Conservator, over Petitioners five children.

The Petitioner's Original twelfth month dismissal date was set for **September 2, 2019**. On **September 10, 2019**, on **Order and Notice of Trial Setting** was filed and signed by Monitoring Judge, AARON HASS, who set **Trial on The Merits** for **October 21, 2019**, at 8:30 a.m. in the 28th District Court. On **July 31, 2019**, a **Motion for Continuance and Request for Mediation** was filed and signed by Presiding Judge Norman Gonzales of the 131st Judicial District Court, Bexar Country, Texas, who extended the **September 2, 2019**, mandatory dismissal deadline to **February 29, 2020**. Due to new **February 29, 2020**, mandatory dismissal date falling on a Saturday. **Trial on the Merits** was set for **February 18, 2020**, before Honorable Judge Angelica Jimenez then presiding over the 408th Judicial District Court of Bexar County, Texas. Under trial cause No. 2018-PA-01964 After an agreement was reached, trial court recessed until **June 8, 2020**. On **July 18, 2020**, Judge Angelica Jimenez signed a Judgement terminating the parental rights of both **L.B.** and Petitioner **L.W.** See Judgment terminating parent rights in **Re X.J.R. No. 2018-PA-01964 (408th District Court, Bexar County, Tex. July 28, 2020)**. On **July 20, 2020**, Petitioner **L.W.** appealed the judgement of the trial court to the Fourth Court of Appeals (Cause Number 04-20-00368-CV). On **January 13, 2021**, the Court of Appeal affirmed the Judgment of the trial Court. In **re X.J.R. et. Alk No. 04-20-00368-CV, 2021 Tex. App. LEXIS 247, 2021 WL 112175 (Tex. App. San Antonio, Jan. 13, 2021)**.

Review is of great importance in this case because it is a case of first impression before the United States Supreme Court. This case involved Texas Family Code Section 263.401, Texas Family Code Section 263.402, and whether trial commenced for purpose of the Statue on February 18, 2020, or whether the parties utilized a perfunctory agreement to dodge the dismissal date contemplated by Texas Family code 263.401. The United States Supreme Court should exercise Jurisdiction over the case and grant this Petition for Writ of Certiorari because there is a conflict between the Courts of Appeals on the application and analysis concerning commencement of the trial under Texas Family Code Section 263.401 and the application of the newly amended Section 263.402. Tex. R. App. P 56.1 (a)(2). Furthermore, the trial court and Fourth Court of Appeals ruling in this case would lead to absurd results as applied. Tax.R.App.P.561.1(a)(5)(6).

1. FACTS

On August 30, 2018, the Department's filed Affidavit in Support of Non-Exigent Removal was granted and on September 11, 2018; the Department was named Temporary managing Conservator over all five children; and et an original deadline of September 2, 2019, to commence trial. See Tex. Fam. Code Ann. § 263.401. The Trial Court signed on extension under Section 263.401(b) extending the deadline by 180 days, to February 29, 2020.

On February 18, 2020, the parties entered into an agreement to enter a two-to-three-month recess for Petitioner L.W. to continue to engage in services to show the Department a change in her behavior if she is still working towards her children. R.R., V.2. P.12, 13. The parties did not return to the court until June 8, 2020, when Respondent began the presentation of evidence in favor of the termination of Petitioner's right to her children.

2. Issue 1: Whether the Court Commenced Trial prior to losing Jurisdiction under the Texas Family Code Section 263.401(a)

Petitioner's parental rights were terminated by the Trial Court. Termination of parental rights implicates important Constitutional and personal right of a parent to raise and act in the best interested of their child without the interference of a governing entity. The first issue presented before this Honorable Court is whether the Trial Court commenced trial for purpose of Section 263.4019(a) of the Texas Family Code. Texas Family Code Section 263.401(a) Provides:

(a) Unless the Court has commenced the trial on the merits or granted an extension under subsection (b) or (b-1) on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the courts jurisdiction over the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or request that the department be named Conservator of the child is terminated and suit is automatically dismissed without court order.

The decision in in re. H.B.C., No. 05-19-00907-CV, 2020 Tex. App. LEXIS 669, 2020 WL 400162 (Tex. App. Dallas, Jan 23, 2020, no pet). Establishes the rule cited in most opinions analyzing whether trial commenced under Section 263.401. In H.B.C., the court analyzed the few cases dealing with this issue, and concluded with the following statement: Here, there is no suggestion that the actions of the trial court and counsel on January 28, 2019, were merely perfunctory feigned or superficial, undertaken solely or primarily for the purpose of avoiding an automatic statutory dismissal. *Id* at 33 (emphasis added). In that case, the Court clearly provides that there may be circumstances where the parties actions could amount to an attempt to avoid the automatic dismissal date and were so superficial as to amount to a perfunctory attempt at commencing trial for the purpose of the statue and avoiding on order for continuance under Section 263.401 (b) or (b-1).

The decision in this case turns on whether trial commenced on February 18, 2020, were merely a perfunctory attempt at avoiding the automatic dismissal date contemplated by

Section 263.401(c) cited above. Respondents' decisions have focused their analysis on how far trial courts proceeded with activities associated with trial, such as making announcements or opening statements or calling witnesses. Such analysis avoids consideration of the intent of the parties and court when recessing or performing these actions, although they maybe evidence of such intent. For example, in *in re D.S.*, 455 S.W. 3d 750 (Tex. App. Amarillo 2015, no pet.) a parental rights termination case, the trial court merely called the attorney representing the parties to the bench....and made inquiry into the length and time a trial would take. *Id.* At 752. Once informed the Trial Court recessed the proceedings and told counsel to obtain a subsequent trial date from the Court Coordinator. *Id.* In *re D.S.*, no readiness announcements were made, pre-trial matters addressed, witnesses sworn in of testimony taken matters the appeals court indicated would have changed its resolution had they taken place. Other cases where trial-like activities without looking at the intentions behind those activities, despite relying on the rules established in *in re D.S.* and in *re H.B.C.* See *In re R.F. Jr.*, No. 04-17-00582-CV, 2018 Tex. App. LEXIS 1849, 2018 WL 1308542 (Tex. App. San Antonio Mar. 14, 2018, no pet.) (mem. Op.) In *re R.J. Jr.*, 568 S.W. 3d 734 (Tex. App. Houston 1st District 2019, pet, denied). In *re R.F. Jr.* was a termination case in which the Fourth Court of Appeals briefly analyzed what constitutes commencement of trial for purposes of Section 263.401 (a). In *re R.J. Jr.*, the Fourth Court merely points to the fact that on December 19, 2016, the parties made their respective announcements, and the Department called it's first witness. In *re R.F. Jr.*, No 04-17-00582-CV, 2018 WLK 1308542(Tex. App. San Antonio Mar. 14, 2018, no pet.) (mem. Op.) In *re R.J. Jr.*, the Trial Court called the case to trial, swore in witnesses, obtained announcements from the various parties and heard testimony from the Department's first witness, who briefly testified before the court recessed. 568 S.W. 3d at 747. However, the findings of the courts in these cases can be distinguished from the facts at issue here. In *R.F. Jr.*, and *R.J. Jr.*, the court both note that court sworn in witnesses and the Department called their first witnesses, aside from merely obtaining announcements from the parties and presenting brief opening statement and agreed to recess for purposes of continuing services with Petitioner. *R.R.*, vol. 2. The only witnesses sworn were the parents, solely for the purpose of notifying the agreement to set the trial date for more time to work services. Further, in the instant case, the parties memorialized their intent in agreeing to a recess for the purpose of establishing new temporary orders and continuing the CPS case after this dismissal deadline. In *re M.F.* No. 14-19-00964-CV, 2020 Tex, App, LEXUS 4199, 2020 WL 2832166 Tex. App, Houston 14th Dist. May 28, 2020, pet. denied), is another recent case that lends to the analysis of whether trial commenced in this case. Here, the court ruled that trial had commenced for purposes of Section 263.401 because witness had been sworn in, the court ruled on various pre-trial matters, parties announced, and testimony was taken. *Id.* at *13, 14; See also in *re H.B.C.*, 2020 WL 400162 at *13, 3 (trial commenced when trial called the case for trial, counsel announced ready, the court considered various pre-trial matters raised by Counsel and a witness was sworn and briefly testified). *S.A.V. Tex. Dept. of Fam 4 Prot. Servs.* No. 03-19-00884-CV, 2020 Tex. App LEXIS 3580 at *13 (Tex. App. Austin Apr. 29, 2020, no pet.) (finding trial had commenced because the parties announced, and the Department called two witnesses both of whom were cross examined by counsel).

3. Did an agreed recess of trial to allow Respondent to continue with services constitutes an “extension of deadline” prohibited by Texas Family Code Section 263.402

Even if trial commenced the agreement to enter by the parties at the February 18, 2020, hearing amounted to a prohibited extension of deadlines under Texas Family Code Section 263.402. Section 263.402 provides: The parties to a suit under this chapter may not extend the deadlines set by the Court under this Subchapter by agreement or otherwise. In re L.E., No. 07-19-00317-CV, 2020 WL 54464 (Tex. App. Amarillo Jan. 3, 2020, no pet.); no evidence or findings were made regarding whether another three months were the best interest of the child. See 2020 WL 54464 at *13, House Comm. On Human Servs., Bill Analysis, Tex. S.B. 359, 75th Leg., R.S. (1997) at pg. 8. This legislative intent and history support a strict construction of Section 263.401 if the Texas Family Code, and strict application of its deadline. The Texas 85th Legislature made these changes to Section 263.402, removing the ability of the parties to waive the right to a dismissal of filing a motion to dismiss prior to commencement of trial. Rather, this rule is not a blanket prohibition against agreements to extend the deadlines set by the court.

Whether or not the deadline was February 29, 2020, or March 2, 2020, any Trial Set on the Merits passed February 29, 2020, would have automatically caused the Trial Court to lose Jurisdiction without court order. Trial on the Merits began June 8, 2020, and ended June 11, 2020.

If trial did not commence on February 18, 2020, the Trial Court automatically lost Jurisdiction without Court Order under, Tex. Fam Code. § 263.401 making June 8, 2020, Trial on the Merits and June 11, 2020, Termination Order void.

Dikeman v. Snell, 490 S.W. 2d 183, 186-87 (Tex. 1973)

(Holding an order entered after the Trial Court losing Jurisdiction is facially void)

REASON FOR GRANTING THE WRIT

A. TO AVOID ERRONEOUS DEPRIVATIONS OF THE FOURTEENTH AMMENDMENT OF THE UNITED STATES CONSITUTION. This Honorable Supreme Court should clarify whether a "Sworn Witness" who briefly testimony before Court recessed constituted commencement.

There is not one specific case that specifically points to a single or no general "standard" regarding commencement cases states in the petition have stated the fact that "The calling of a Sworn Witness" who testified briefly before recess, constituted commencement. In this case, no witness was sworn in to give a brief testimony on the case therefore, conflicting with what constitutes commencing the court. Termination of Parental Rights is a national issue, and to cease State courts from manipulating the system, a stricter standard of commencing is needed.

If court has not commenced, rectification isn't just due to this Petitioner and her children, but for those who maybe affected in later suit.

CONCLUSION

The petition for a Writ of Certiorari should be granted

Respectfully submitted,

Steven M. Willis
