Opinion Summaries
February 4, 2022

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FAMILY LAW
Termination of Parental Rights

In the Interest of C.L.E.E.G., a Child, — S.W.3d —, 2022 WL — (Tex. Feb. 4, 2022) [21-0245]

The issue presented in this case was whether the record contained sufficient evidence to support the trial court's finding that G.G. (Father) would not receive parole from his prison sentence and would be unable to care for C.L.E.E.G. (the Child) for at least two years.

The Department of Family and Protective Services placed the Child in foster care after she tested positive for methamphetamines at birth. When the Child was six months old, Father was imprisoned after pleading guilty to four felony charges, including possession of a controlled substance with intent to deliver and felon in possession of a firearm. He received concurrent seven-year sentences. The Department moved to terminate Father's parental rights under Texas Family Code Section 161.001(b)(1)(Q), which allows for termination with clear and convincing evidence the parent will be imprisoned and unable to care for the child for at least two years. The trial court terminated Father's parental rights and he appealed, arguing the evidence was legally and factually insufficient to support the trial court's findings. The court of appeals reversed, concluding that Father presented testimony he would be paroled in the near future and the Department failed to refute that evidence.

The Court reversed in a per curiam opinion and reinstated the trial court's judgment terminating Father's parental rights. Although evidence of the availability of parole is relevant when considering termination under subsection (Q), the factfinder is free to assess the demeanor of witnesses and disregard a parent's parole-related testimony, especially when it amounts to mere conjecture. Looking to the record, the Court concluded that sufficient evidence supported the trial court's finding that Father would be ineligible for parole within two years. Father testified he "knew

for a fact" he would not serve the full seven years because he had enrolled in a gang-disassociation program, was studying to obtain his GED, and had good behavior, and because the COVID-19 pandemic could also increase his chance of parole. Contradicting this testimony, Father conceded that the parole board would consider his lifelong criminal history and multiple convictions, that he had previously had his community supervision revoked, and that he had already been denied parole once. The court of appeals substituted its judgment for that of the trial court, which could reasonably have found that Father would not be paroled. And given Father's testimony that he had no family members he would want the Child placed with during his incarceration, and his failure to provide any names to the Department for background checks, the trial court could reasonably have found he was unable to care for the Child during his imprisonment. Thus, sufficient evidence existed to support the trial court's termination of his parental rights under subsection (Q).

In re M.P., — S.W.3d —, — WL — (Tex. Feb. 4, 2022) (per curiam) [21-0360]

The issue in this parental termination case was whether the appellate court should remand for a new trial when it affirms on one ground for termination but reverses on other grounds. The trial court terminated the parental rights of Father on several grounds under Section 161.001(b) of the Family Code. The grounds included failure to comply with a court-ordered service plan (subsection O), endangering conditions (subsection D), and endangering conduct (subsection E). The court of appeals affirmed under (O) but concluded that the evidence was factually insufficient to support termination under (D) and (E). The court of appeals was required to review the sufficiency of the evidence under (D) and (E), even though it could affirm the termination of parental rights under (O), because the Supreme Court had held that such review is required. *In re N.G.*, 577 S.W.3d 230 (Tex. 2019). Due process concerns require such review because termination under (D) and (E) can affect parental rights as to other children.

The court of appeals, after concluding that the evidence was factually insufficient under (D) and (E), remanded the case to the trial court for a new trial on those grounds. The Supreme Court reversed the part of the court of appeals' judgment remanding the case. The Supreme Court held that in these circumstances the court of appeals should dispose of the case by affirming the termination under (O) and striking the (D) and (E) findings. A remand was inappropriate because it would delay the proceedings and could not change the result that Father's parental rights were terminated on ground (O). Accordingly, the Court reversed the part of the court of appeals' judgment remanding the case for a new trial and rendered judgment striking the trial court's findings on grounds (D) and (E).

JURISDICTION
Jurisdictional Discovery

In re Christianson Air Conditioning & Plumbing, LLC, —S.W.3d—, (Tex. February 4, 2022) [20-0384]

This issue in this mandamus proceeding is whether permissible discovery under Texas Rule of Civil Procedure 120a(3) must relate exclusively to the jurisdictional question.

Plumbing installer Christianson Air Conditioning and Plumbing, LLC and homebuilder Continental Homes of Texas, LP (together, "Christianson") sued pipe-manufacturer NIBCO, alleging that NIBCO's brand of PEX pipe leaked after installation in thousands of Texas homes. Christianson also brought claims against Canadian engineering firm Jana Corporation, claiming that Jana helped NIBCO reformulate defective PEX pipe and obtain certification for the Texas market. Jana filed a special appearance contesting personal jurisdiction under Rule 120a. Christianson successfully moved to compel the depositions of two corporate representatives over Jana's objections that Christianson's proposed list of thirty deposition topics impermissibly touched the merits of the case.

Jana filed a petition for writ of mandamus in the Third Court of Appeals, challenging nine of the deposition topics. The court of appeals granted Jana mandamus relief as to eight of the topics, holding that the trial court abused its discretion by compelling jurisdictional discovery of information not exclusively related to the jurisdictional question. Christianson then filed this mandamus proceeding, challenging the court of appeals' conclusions regarding six of the deposition topics. Christianson argued that the court of appeals read Rule 120a(3) too narrowly, and that topics targeting the "purposeful availment" element of jurisdiction may necessarily include overlap with merits issues.

Rejecting the court of appeals' standard, the Court held that a trial court does not abuse its discretion merely by compelling discovery on topics that overlap with merits issues. Instead, when a plaintiff requests jurisdictional discovery under Rule 120a(3), the information sought must be essential to prove at least one part of the plaintiff's theory of personal jurisdiction. Thus, when a stream-of-commerce-plus theory of personal jurisdiction is at issue, proposed deposition topics must target either the defendant's purposeful availment of the Texas forum or the relatedness between the alleged forum contacts and the litigation. The Court also noted that the topics proposed must also comport with principles limiting the scope of discovery generally. In reviewing Christianson's proposed topics, the Court concluded that the challenged topics, in addition to being overbroad or duplicative under general discovery principles, encompass some matters essential to establishing purposeful availment or relatedness, but also encompass matters non-essential to either factor. Finding that mandamus relief was proper, the Court conditionally granted mandamus relief, directed the court of appeals to vacate its mandamus order, and

instructed the trial court to apply the Court's new standard to the remaining disputed deposition topics.

OIL AND GAS
Royalty Payments

Nettye Engler Energy, LP v. BlueStone Nat. Res. II, LLC, ___ S.W.3d ___ (Tex. Feb. 4, 2022) [20-0639]

This mineral dispute involves the construction of an oil-and-gas deed with respect to the delivery point for calculating a royalty. The issue is whether and to what extent a royalty interest bears a proportionate share of postproduction costs.

The predecessors of Nettye Engler Energy, LP conveyed a tract of land, reserving a one-eighth nonparticipating in-kind royalty interest in minerals. The relevant deed language states the royalty is "free of cost in the pipe line, if any, otherwise free of cost at the mouth of the well or mine." Such an interest is free of production costs but bears its proportional share of postproduction costs from the point of delivery to the royalty interest holder unless the conveyance specifies otherwise. Initially, the wellsite operator that preceded BlueStone Natural Resources II, LLC sold Engler's share of production, valuing it at the point of sale to the gas purchaser's pipeline, which rendered the royalty free of postproduction costs. But when BlueStone assumed operations, it began valuing Engler's share of production in the onsite gathering pipeline, thus burdening the royalty with postproduction costs from that point forward. Engler's royalty payments decreased, and Engler sued BlueStone for common-law conversion and money had and received. The parties agreed that some gas pipeline exists and that the royalty is free of production costs and postproduction costs incurred before delivery into that pipeline, but they disagreed about the location of the pipeline. Engler argued that the deed could only refer to offsite pipelines, like downstream transportation or distribution pipelines, because a gathering pipeline is not a "pipe line" as the term is used in the deed. BlueStone argued that gathering pipelines are pipelines in both ordinary and trade meaning, so it was proper to calculate the royalty interest as bearing postproduction costs after that point.

On cross-motions for summary judgment, the trial court held Engler's royalty interest was free of cost in the transportation pipeline, and thus free of some but not all postproduction costs. The court awarded Engler $88,849.33 in actual damages. BlueStone appealed, and the court of appeals reversed and rendered judgment in BlueStone's favor. The court viewed *Burlington Resources Oil & Gas Co. v. Texas Crude Energy* as establishing a rule equating "into the pipeline" deed language with a delivery or valuation point "at the wellhead or nearby." For this reason, and because the court concluded that a gathering system is a pipeline, the court held that the deed language at issue essentially created a delivery point at the wellhead. The Supreme

Court affirmed but disagreed that *Burlington Resources* established such a rule, concluding instead that the opinion merely emphasized that all contracts, including mineral conveyances, are construed as a whole to ascertain the parties' intent from the language they used to express their agreement. Thus, when construing an oil-and-gas deed, the standard rules of contract construction apply, and a deed's language is given its plain meaning unless the instrument shows the parties agreed otherwise. An expert affidavit opining on the meaning of the deed language did not elucidate the understanding of the words at the time the deed was executed and would only have impermissibly added limiting language to modify the terms. Accordingly, the Court did not consider it.

Following the standard rules of contract construction, the Court observed that a gas gathering pipeline is a "pipe line" in common, industry, and regulatory parlance. Case law further confirms that mineral conveyances commonly contemplate delivery into onsite pipelines "connected to the well." The absence of similar limiting language in the deed did not narrow the ordinary meaning of the term "pipe line." The deed did not exclude a gathering pipeline from the usual meaning of the term, specify a particular pipeline, or otherwise negate delivery at or near the wellsite. Accordingly, BlueStone satisfied its obligation to deliver Engler's share of production "free of cost in the pipe line" by deducting postproduction costs incurred after delivery in the gas gathering system from gross sales proceeds in accounting for the value of Engler's nonparticipating royalty interest.