Supreme Court of Texas

No. 20-0940

Texas Department of Family and Protective Services,
Petitioner,

v.

N.J.,
Respondent

On Petition for Review from the
Court of Appeals for the Third District of Texas

JUSTICE HUDDLE delivered the opinion of the Court.

JUSTICE LEHRMANN filed a concurring opinion.

In this parental termination case, the Department of Family and Protective Services filed a petition for review seeking to reinstate a decree terminating the parental rights of N.J. The court of appeals reversed, concluding the trial court lacked personal jurisdiction because N.J., herself a minor, was never served in the trial court. After the Department filed its petition here, N.J. turned 18 and voluntarily executed an affidavit relinquishing her parental rights, mooting the Department's appeal. The Department delayed notifying the Court of

this development for over a year, during which time we requested merits briefing, granted the Department's petition, and set the case for oral argument. Shortly before oral argument, the Department moved to (1) dismiss the appeal on the ground that the relinquishment affidavit rendered the case moot, (2) vacate the court of appeals' judgment and opinion, and (3) vacate the trial court's judgment in part. We grant the Department's motion in part.

The Department began termination proceedings against N.J. three months after she gave birth, when N.J. was 15.[1] The Department concedes that N.J. was not served with citation of the petition. *See* TEX. FAM. CODE § 102.009(a)(7) (requiring service of citation on each parent as to whom parental rights have not been terminated and process has not been waived). But the trial court appointed N.J. an attorney ad litem, who filed an answer on N.J.'s behalf and personally appeared with N.J. at several preliminary hearings. The child's paternal grandmother, L.S., intervened, seeking appointment as sole managing conservator.

The trial court conducted a three-day jury trial in January 2020. N.J. testified and asked the jury not to terminate her parental rights and to place her child with L.S. L.S. also testified, asking the jury to appoint her as managing conservator. The jury returned a verdict terminating N.J.'s parental rights and appointing the Department as the child's managing conservator. The trial court signed a final "Decree

[1] The Department also sued to terminate the alleged father's parental rights. The trial court's judgment terminated his parental rights in accordance with the jury's verdict, and he did not appeal.

of Termination" in accordance with the verdict. N.J. timely appealed, but L.S. did not.

The court of appeals reversed the trial court's judgment and remanded the case for a new trial, concluding that the trial court lacked personal jurisdiction over N.J. 613 S.W.3d 317, 319 (Tex. App.—Austin 2020). The court held that N.J. could not waive service or consent to the court's jurisdiction, even through her voluntary appearance, because minors are *non sui juris*, meaning they lack the capacity to sue or consent to suit. *Id.* at 321. The court of appeals concluded that, because neither N.J., nor N.J.'s parent, nor a person designated as her legal guardian or "next friend" was ever served with citation, the trial court never acquired personal jurisdiction over her. *Id.* at 322.

The Department petitioned this Court for review in December 2020. We ultimately granted the Department's petition and set this case for oral argument on February 24, 2022. Ten days before argument, the Department moved to dismiss. The Department's motion explained, for the first time, that N.J. had executed an affidavit of voluntary relinquishment of her parental rights more than a year earlier, after she reached the age of majority. *See* TEX. FAM. CODE § 161.103. The Department's motion requested that we (1) dismiss the appeal as moot, (2) vacate the court of appeals' judgment, (3) vacate the trial court's judgment "to the extent it depended on personal jurisdiction over [N.J.]," and (4) vacate the court of appeals' opinion. N.J. filed a response in which she agreed that the appeal is moot and should be dismissed but opposed the Department's request to vacate the court of appeals' opinion.

We agree with the parties that the appeal is moot. A case is moot when a justiciable controversy no longer exists between the parties or when the parties no longer have a legally cognizable interest in the outcome. *In re J.J.R.S.*, 627 S.W.3d 211, 225 (Tex. 2021). A case may become moot at any time, including on appeal. *In re Guardianship of Fairley*, ___ S.W.3d ___, 2022 WL 627776, at *5 (Tex. Mar. 4, 2022). Because courts lack subject-matter jurisdiction to decide a moot controversy, *see State ex rel. Best v. Harper*, 562 S.W.3d 1, 6 (Tex. 2018), we must dismiss a case that is moot for want of jurisdiction. *Heckman v. Williamson County*, 369 S.W.3d 137, 162 (Tex. 2012).

N.J.'s appeal challenged the trial court's judgment terminating her parental rights. Following the court of appeals' judgment remanding the case for a new trial, N.J. executed an affidavit agreeing to "the termination of my parental rights." In light of N.J.'s decision to voluntarily relinquish her parental rights, a justiciable controversy between the parties no longer exists. Accordingly, N.J.'s appeal is moot, and we dismiss the portion of the case that N.J. appealed. *See* TEX. R. APP. P. 56.2 ("If a case is moot, the Supreme Court may . . . dismiss the case or the appealable portion of it . . . .").

We also vacate the court of appeals' judgment. When a case becomes moot on appeal, a court must vacate any previously issued order or judgment associated with it. *Heckman*, 369 S.W.3d at 162 ("If a case is or becomes moot, the court must vacate any order or judgment previously issued . . . ."). Our "usual practice" is to vacate the court of appeals' judgment when a case become moot on appeal to this Court. *Morath v. Lewis*, 601 S.W.3d 785, 789 (Tex. 2020); *see also City of Krum*

v. Rice, 543 S.W.3d 747, 750 (Tex. 2017) (vacating court of appeals' judgment after case was "rendered moot by changes in the law").

The Department also asks that we vacate "in part" the trial court's judgment. The final termination decree (1) terminated N.J.'s parental rights based on the jury's verdict, (2) terminated the parental rights of the child's father based on the jury verdict, and (3) appointed the Department as the child's permanent managing conservator. The Department asks that we vacate the trial court's judgment "to the extent it depended on" that court's "personal jurisdiction over [N.J.]."

The court of appeals reversed the portion of the trial court's judgment terminating N.J.'s parental rights, but while the Department's petition was pending, N.J. voluntarily terminated those rights. That action mooted the appeal, but it ultimately will result in the same judgment as to N.J. (termination of her parental rights) and has no effect on the other relief granted by the trial court (termination of the father's parental rights and appointment of the Department as permanent managing conservator). Accordingly, without addressing the merits of the appeal, we vacate the portion of the trial court's judgment terminating N.J.'s parental rights. *See Hous. Mun. Emps. Pension Sys. v. Ferrell*, 248 S.W.3d 151, 153 (Tex. 2007) ("[B]ecause Ferrell's case is now moot, we vacate the court of appeals' judgment as to Ferrell and the trial court's orders to the extent that they affect Ferrell's claims . . . .").

The only disputed issue between the parties is whether to vacate the court of appeals' opinion. Dismissing a case for mootness typically does not include vacatur of the court of appeals' *opinion*. *See Morath*, 601 S.W.3d at 790 ("Unlike in federal practice, . . . Texas practice

contemplates that a court of appeals' judgment may be vacated without also vacating the corresponding opinion."). Instead, our "usual procedure" is to leave the court of appeals' opinion in place. *Ritchey v. Vasquez*, 986 S.W.2d 611, 612 (Tex. 1999).

The Department argues that this case falls within the exception we recognized in *Morath*. There, we explained that vacatur of a court of appeals' opinion in a moot case is "a discretionary equitable remedy" appropriate only when we "conclude[] that the public interest would be served by a vacatur." *Morath*, 601 S.W.3d at 791 (quoting *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 26 (1994)). We held that vacatur of the court of appeals' opinion in that case served the public interest because (1) mootness was "wholly the result of voluntary action by the party who prevailed below," (2) the legal issues were "potentially of consequence to schools across Texas and to the government's defense of *ultra vires* claims in other contexts," and (3) the nonsuit "came only after at least three judges of this Court decided the case was sufficiently worthy of further examination to request merits briefs." *Id.* at 792. We noted the possibility of gamesmanship by parties who may seek to preserve favorable appellate precedent through strategically timed nonsuits. *Id.*

Considering both our usual procedure and *Morath*, we decline the Department's invitation to vacate the court of appeals' opinion. Although the appeal became moot wholly as a result of voluntary action by the party who prevailed below—N.J.—this case is unlike *Morath* in that we do not perceive that a parent's decision to voluntarily terminate his or her parental rights would be motivated by a desire to manipulate

precedent or any gamesmanship whatsoever. *See id.* (noting timing of nonsuit suggested it could have been filed "in hopes of preserving a favorable appellate precedent after this Court showed interest in reviewing it"). And the Department's long delay in notifying the Court of the events that rendered the appeal moot does not help its request for discretionary equitable vacatur.[2] On these facts, without regard to the case's merits, we conclude that vacatur of the court of appeals' opinion does not serve the public interest.

For the above reasons, we grant the Department's motion to dismiss in part and deny it in part. Without hearing oral argument, and without regard to the merits, we dismiss the appealed portion of the case as moot, vacate the court of appeals' judgment, vacate the trial court's judgment in part, and remand the case to the trial court for further proceedings. *See* TEX. R. APP. P. 56.2.

Rebeca A. Huddle
Justice

OPINION DELIVERED: April 22, 2022

[2] N.J. signed the affidavit of relinquishment in January 2021. The Department asked the trial court to "withhold accepting" the relinquishment affidavit because of the pending petition for review in this Court. The record does not reveal the basis for this request, but the Department's failure to notify this Court of the affidavit's existence for over a year after N.J. signed it resulted in the Court and its dedicated staff spending dozens of hours on a case the Department presumably knew was moot. We encourage more prompt communication regarding such case-turning developments from all litigants, but particularly from a state agency that frequently appears in our courts.