Supreme Court of Texas

No. 21-0691

Bramlette Holland Browder,
Petitioner,

v.

Rachel Moree and Clarence Dean Hinds, Jr.,
Respondents

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

PER CURIAM

In this suit affecting the parent-child relationship, petitioner Bramlette Holland Browder seeks conservatorship and possession of Kelly,[1] the biological daughter of respondents Rachel Moree and Clarence Dean Hinds, Jr. After Hinds abandoned Moree and Kelly, Moree began a relationship with Browder, and she and Kelly lived with him for six years. At issue in this appeal, among other things, is whether the trial court erred by denying Browder a jury trial. Although we have

[1] We refer to the child at issue using the court of appeals' pseudonym.

denied Browder's petition and deny his motion for rehearing, we disapprove the court of appeals' holding that after the trial court has denied a party's demand for a jury trial, the party must also object to that ruling to preserve the issue for appellate review.

Browder disputes when the bench trial in the underlying case began. On November 26, 2018, Hinds appeared for the first time and requested a continuance, and the trial court agreed to "recess the case" until early March. Before doing so, however, the court heard the testimony of Browder's first witness.

On February 1, 2019, Browder filed a written demand for a jury trial. The trial court denied his demand in a letter ruling, reasoning that Browder had waived his jury demand by failing to make it before the bench trial began. The court of appeals affirmed for a different reason, holding that Browder failed to preserve the jury issue for appellate review "because he did not object to the trial court's denial of his request or to the trial proceeding before the bench when the trial resumed on March 4, 2019, and he did not otherwise raise the issue with the trial court." ___ S.W.3d ___, 2021 WL 2231253, at *9 (Tex. App.—Austin June 2, 2021). Browder's petition raises issues including the timeliness of his demand and how complaints regarding the denial of a jury are preserved for review.

We conclude that the trial court did not abuse its discretion in ruling that Browder's jury demand was untimely. But we disagree with the court of appeals' holding on preservation, which is inconsistent with our decision in *Citizens State Bank of Sealy v. Caney Investments*, 746 S.W.2d 477 (Tex. 1988). There, the court of appeals determined that the

plaintiff, which had perfected its right to a jury trial and notified the trial court that it had paid a jury fee, waived its right to a jury trial because it "did not insist upon a jury trial or object when the court proceeded to hear testimony without a jury." 733 S.W.2d 581, 587 (Tex. App.—Houston [1st Dist.] 1987). We reversed, holding that the trial court erred in denying the plaintiff its right to a jury trial. 746 S.W.2d at 478-79.

This holding follows from our common-sense approach to error preservation. *See Thota v. Young*, 366 S.W.3d 678, 690 (Tex. 2012). "A party preserves error by a timely request that makes clear—by words or context—the grounds for the request and by obtaining a ruling on that request, whether express or implicit." *In re Commitment of Hill*, 334 S.W.3d 226, 229 (Tex. 2011) (citing TEX. R. APP. P. 33.1); *see also State Dep't of Highways & Pub. Transp. v. Payne*, 838 S.W.2d 235, 241 (Tex. 1992) (framing preservation inquiry as "whether the party made the trial court aware of the complaint, timely and plainly, and obtained a ruling").

If a trial court indicates that it will proceed with a bench trial in a case where a jury demand was timely perfected, a demanding party that still wishes to have a jury trial must ensure that the court is aware of the demand. But neither our procedural rules nor this Court's decisions require a party that has obtained an adverse ruling from the trial court to take the further step of objecting to that ruling to preserve it for appellate review. Once the trial court denied Browder's request for a jury trial, Browder had no choice but to go forward with the bench trial. *See Coleman v. Sadler*, 608 S.W.2d 344, 346 (Tex. App.—Amarillo

1980, no writ); *cf. Bonsmara Nat. Beef Co. v. Hart of Tex. Cattle Feeders, LLC*, 603 S.W.3d 385, 396 n.22 (Tex. 2020) ("If simply adhering to an adverse order while continuing to litigate waived review of that order on appeal from a final judgment, there would be few orders left to review."). Browder did not need to renew that request or object to the court's adverse ruling to preserve his complaint regarding the denial of a jury trial for appellate review. *See* TEX. R. APP. P. 33.1(c) (providing that "a formal exception to a trial court ruling" is not "required to preserve a complaint for appeal").

With these observations, we deny Browder's motion for rehearing.

OPINION DELIVERED: June 24, 2022