



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-19-00443-CV

IN THE INTEREST OF X.A.F., A CHILD

**On Appeal from the 316th District Court
Hutchinson County, Texas
Trial Court No. 43,349, Honorable James M. Mosley, Presiding**

June 1, 2020

MEMORANDUM OPINION

Before PIRTLE and PARKER and DOSS, JJ.

Appellants T.F. (the father) and A.N.B. (the mother) appeal the trial court's final order terminating their parental rights to their child, X.A.F.¹ Appellee is the Texas Department of Family and Protective Services. In their briefs, the father and mother argue, among other issues, that the trial court lost jurisdiction over the underlying case because it failed to comply with the Family Code's one-year deadline for commencing or extending trial of a termination suit brought by the Department.² In its brief, the

¹ To protect the child's privacy, we will refer to Appellant as "Father" and to the child by his initials. See TEX. FAM. CODE ANN. § 109.002(d) (West Supp. 2019); TEX. R. APP. P. 9.8(b). The mother's parental rights to X.A.F. were also terminated by the termination order

² See TEX. FAM. CODE ANN. § 263.401 (West Supp. 2019).

Department concedes the trial court lacked subject matter jurisdiction to enter the final order. After having reviewed the record and applicable authorities, we agree. We vacate the trial court's judgment and dismiss the case.

Because this termination suit was filed after September 1, 2017, the current version of section 263.401 of the Texas Family Code applies to this case. See *In re A.M.*, No. 07-19-00391-CV, 2020 Tex. App. LEXIS 2128, at *3 (Tex. App.—Amarillo Mar. 11, 2020, no pet.) (mem. op.). Here, the trial court extended the statutory dismissal deadline of April 29, 2019 to October 29, 2019, six calendar months after the original dismissal date. However, under the applicable section 263.401, the trial court was only authorized to extend the suit “for a period not to exceed 180 days” after the statutory dismissal deadline, viz. October 26, 2019. As October 26, 2019, fell on a Saturday, the dismissal deadline was extended to Monday, October 28, 2019. See TEX. GOV'T CODE ANN. § 311.014(a), (b) (West 2013). Here, the trial commenced on October 29, 2019, one day after the deadline imposed by the statute.

Despite the Department's concession, we must analyze the jurisdictional question because subject matter jurisdiction is a power that exists only by operation of law and may not be conferred by agreement or waiver. *Dubai Petroleum Co. V. Kazi*, 12 S.W.3d 71, 76 (Tex. 2000). Whether a trial court possesses subject matter jurisdiction is a question of law we review de novo. *In re A.M.*, 2020 Tex. App. LEXIS 2128, at *3-4.

Here, there is no question that the trial court did not commence a trial on the merits by the dismissal deadline, October 28, 2019. Neither is there any support in the record that the trial court held a hearing, made the necessary findings, and extended the deadline beyond that date under section 263.401(b). *Id.* at *6. As such, the trial court automatically

lost jurisdiction over the Department's underlying suit, per application of section 263.401(b). *Id.* at *6-8.

“An order resulting from judicial action that is rendered after the trial court loses jurisdiction is void.” *Id.* at *6 (collected cases cited therein). A judgment is void when “the court rendering judgment has no jurisdiction of the parties or property, no jurisdiction of the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act.” *PNS Stores, Inc. V. Rivera*, 379 S.W.3d 267, 272 (Tex. 2012) (citation omitted).

This means, and we further conclude, the trial court's “Order of Termination” signed by the trial judge on December 30, 2019, is void and without effect. When appeal is taken from a void judgment, the appellate court has no jurisdiction to consider the merits of the appeal but has jurisdiction to declare the judgment void and dismiss the case. *In re A.M.*, 2020 Tex. App. LEXIS 2128, at *7-8. Accordingly, we vacate the trial court's order of termination and dismiss the underlying case. Because resolution of this issue disposes the appeal, it is unnecessary to address the Appellants' remaining issues. TEX. R. APP. P. 47.1.

Conclusion

We vacate the trial court's order of termination and dismiss the Department's underlying termination suit.

Lawrence M. Doss
Justice