



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

No. 07-19-00161-CV

IN THE INTEREST OF A.G., A.R., AND K.C., CHILDREN

On Appeal from the 364th District Court
Lubbock County, Texas
Trial Court No. 2018-531,664, Honorable William R. Eichman II, Presiding

June 8, 2020

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

This is an appeal from an order dismissing a bill of review proceeding. Because we conclude that the trial court did not err, we affirm the dismissal.

Background

Appellant, G.R., is the maternal grandmother of the minor children A.G., A.R., and K.C.¹ In 2016, the Department of Family and Protective Services was granted temporary managing conservatorship over the three children. The Department eventually sought to terminate the parent-child relationship between the children and their mother (“Mother”).

¹ To protect the privacy of the children, we will refer to the petitioner and the children by their initials. See TEX. FAM. CODE ANN. § 109.002(d) (West 2014); TEX. R. APP. P. 9.8(b).

G.R. filed a petition in intervention in the termination proceedings, seeking sole managing conservatorship of the children.

In 2017, Mother signed an irrevocable affidavit of voluntary relinquishment of her parental rights. All parties, including G.R., signed an agreement and stipulations related to the relinquishment of Mother's parental rights. The trial court signed an order terminating Mother's parental rights based on its findings that she voluntarily executed the affidavit and termination was in the best interest of the children. The Department was designated as the managing conservator of the children. Mother later appealed to this Court, and we affirmed the trial court's order of termination. See *In re A.G.*, No. 07-17-00298-CV, 2018 Tex. App. LEXIS 243, at *6 (Tex. App.—Amarillo Jan. 9, 2018, pet. denied) (mem. op.).

Shortly before our opinion issued, on December 18, 2017, a placement hearing was held. The associate judge denied G.R.'s request that the children be placed with her. G.R. filed a request for a de novo placement hearing, which was held on March 28, 2018. The trial court denied the request for a hearing, based on a lack of jurisdiction.

G.R. then filed a petition for bill of review and an amended petition for bill of review in the trial court, seeking to set aside the portion of the order of termination disposing of her request for conservatorship. She claimed that the Department committed fraud and misrepresented her rights, particularly alleging that the Department induced her not to pursue sole managing conservatorship of the children "based on a promise of a placement hearing that was illegal." Following a hearing, the trial court denied G.R.'s petition for bill of review. G.R., proceeding pro se, brought this appeal.

Analysis

Bill of Review

A bill of review is an independent equitable cause of action brought by a party to a former action seeking to set aside a judgment which is not void on the face of the record and is no longer appealable or subject to challenge by a motion for new trial or appeal. *King Ranch, Inc. v. Chapman*, 118 S.W.3d 742, 751 (Tex. 2003) (citing *Baker v. Goldsmith*, 582 S.W.2d 404, 406 (Tex. 1979)). It is a separate and independent suit, brought in the same court that entered the judgment it attacks. Generally, a bill of review is available only if a party has exercised due diligence in pursuing all adequate legal remedies against a former judgment and, through no fault of its own, has been prevented from making a meritorious claim or defense by the fraud, accident, or wrongful act of the opposing party. *Wembley Inv. Co. v. Herrera*, 11 S.W.3d 924, 927 (Tex. 1999) (per curiam).

To succeed on a bill of review, the petitioner must allege and prove: (1) a meritorious defense to the cause of action alleged to support the judgment, (2) which the petitioner was prevented from making by fraud, accident, or wrongful act of the opposing party, (3) unmixed with any fault or negligence of the petitioner. *King Ranch, Inc.*, 118 S.W.3d at 751-52. The law places a heavy burden on a bill of review petitioner to set aside a judgment because it is fundamentally important that judgments be accorded some finality. *Id.* at 751. Courts narrowly construe the grounds on which a plaintiff may obtain a bill of review due to Texas's fundamental public policy favoring the finality of judgments. *Mabon Ltd. v. Afri-Carib Enters., Inc.*, 369 S.W.3d 809, 812 (Tex. 2012) (per curiam). Consequently, a bill of review seeking relief from an otherwise final judgment must be

scrutinized by reviewing courts “with extreme jealousy, and the grounds on which interference will be allowed are narrow and restricted.” *Montgomery v. Kennedy*, 669 S.W.2d 309, 312 (Tex. 1984) (quoting *Alexander v. Hagedorn*, 226 S.W.2d 996, 998 (Tex. 1950)).

We review the denial of a bill of review under an abuse of discretion standard. *Morris v. O’Neal*, 464 S.W.3d 801, 806 (Tex. App.—Houston [14th Dist.] 2015, no pet.). A trial court abuses its discretion when it acts arbitrarily or unreasonably or without reference to any guiding rules or principles. *Id.*

Application

In her brief, G.R. raises four arguments. Her first three arguments encompass complaints related to the children’s circumstances, the voluntariness of Mother’s affidavit of relinquishment, and alleged failings of her attorney. Because a petition for a bill of review is an independent proceeding, the scope of our review is limited to G.R.’s appeal of the trial court’s order denying her petition for a bill of review. See *In re A.A.S.*, 367 S.W.3d 905, 909 (Tex. App.—Houston [14th Dist.] 2012, no pet.). Accordingly, we do not address G.R.’s first three issues.

In her fourth issue, G.R. asserts that her request for conservatorship of the children was not fully addressed when the trial court entered its final order terminating Mother’s parental rights. We will liberally construe the fourth issue of G.R.’s pro se appellate brief to include the arguments presented in her bill of review petition and to interpret it as seeking relief from the dismissal of the same. See, e.g., *Sterner v. Marathon Oil Co.*, 767 S.W.2d 686, 690 (Tex. 1989) (a reviewing court construes points of error liberally to obtain a just, fair, and equitable adjudication of the parties’ rights).

The basis of G.R.'s complaint is that, when the agreement related to Mother's relinquishment of parental rights was signed, G.R. was led to believe that she would still be considered as a placement for the children.² She alleges that her request for conservatorship was never fully adjudicated. G.R. seeks to set aside a portion of the judgment that was entered in 2017, in a proceeding in which she was represented by counsel and fully participated, which was subsequently affirmed on appeal in 2018.

On this record, we cannot conclude that the district court abused its discretion in denying G.R.'s petition for bill of review. Generally, bill of review relief is available only if a party has exercised due diligence in pursuing all adequate legal remedies against a former judgment. *Wembley Inv. Co.*, 11 S.W.3d at 927. If legal remedies were available but ignored, relief by equitable bill of review is unavailable. *Id.*

In the proceedings below, G.R. was a present, participating party. The trial court's order terminating Mother's parental rights did not grant G.R.'s request to be designated as sole managing conservator. G.R. did not pursue the legal remedy available to her, i.e., an appeal of that order.

Therefore, there was evidence supporting the district court's implied finding that, at a minimum, G.R. failed to exercise due diligence in pursuing available appellate remedies following the trial court's entry of the termination order. Further, G.R. has not shown that she was prevented from asserting her claim for managing conservatorship by any fraud or wrongful act of the Department. The record indicates that G.R. expected to, and did, make her case at the placement hearing.

² G.R. admits that the promised hearing did, in fact, occur, but she contends that the court "did not carry out due process."

Ordinarily, a party must exercise due diligence to pursue all legal remedies against a former judgment before filing a bill of review. *Caldwell v. Barnes*, 975 S.W.2d 535, 537 (Tex. 1998). If available legal remedies were ignored, relief by equitable bill of review is not available. *Nguyen v. Intertex, Inc.*, 93 S.W.3d 288, 293 (Tex. App.—Houston [14th Dist.] 2002, no pet.). Because G.R. did not avail herself of an appeal or other remedy, her challenge to the termination order must fail.

Accordingly, the trial court did not abuse its discretion in dismissing the bill of review. See *id.* (when trial court does not file findings of fact or conclusions of law, judgment will be sustained on any legal theory supported by the evidence).

Conclusion

The trial court did not abuse its discretion in dismissing G.R.'s petition for bill of review. Therefore, we affirm the trial court's order.

Judy C. Parker
Justice