DISMISS and Opinion Filed October 25, 2017

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00794-CV

IN THE INTEREST OF R.R.K., A CHILD

On Appeal from the 469th Judicial District Court
Collin County, Texas
Trial Court Cause No. 469-54529-2013

MEMORANDUM OPINION

Before Chief Justice Wright, Justice Francis, and Justice Stoddart
Opinion by Chief Justice Wright

Appellant appeals from the trial court's April 25, 2017 order on appellee's petition to modify the parent-child relationship. The Court questioned its jurisdiction over this appeal as it appeared the notice of appeal was untimely. We instructed the parties to file letter briefs addressing our concern. The parties complied.

The trial court conducted a bench trial on October 12 and 16, 2016. The trial court signed a memorandum on December 12, 2016. The memorandum which was filed with the trial court clerk contains the case name, case number, and trial court name. The body of the memorandum states:

> After considering the testimony and evidence presented in the above referenced case, the ruling of the Court is as follows:
>
> - The Court finds that there has been a material and substantial change.
>
> - It is ORDERED that Mother and Father will remain joint managing conservators of the child subject of this suit.

- It is ORDERED that Father will have the right to establish the primary residence of the child within Frisco Independent School District, regardless of whether or not the child has reached school age.

- It is ORDERED that the possession and access schedule will be a week on week off schedule with exchanges occurring on Mondays of each week at the time school would start or at 6:00 p.m. if not in school.

- It is ORDERED that the holiday possession schedule will follow the Texas Family Code for Christmas and Thanksgiving.

- It is ORDERED that the parties will continue the two weeks on, two weeks off possession period during the summer break based upon the Frisco ISD school calendar regardless of whether or not the child has reached school age.

- The Right of First Refusal provision is hereby eliminated.

- It is ORDERED that all exchanges will take place upon the drop off of the child at the start of school day, if the child is of school age. If the child has not yet reached school age, all exchanges are to take place at Adventure Kids with a 15 minute grace period before AND after the scheduled drop off time. However, once the child has been dropped off and the other parent has arrived for pick-up of the child, the parent dropping off the child must vacate the premises, including the parking lot of the building, within five minutes.

- An offset of child support is hereby ORDERED based on Father's monthly gross income of $11,364.00 and Mother's monthly gross income of $2,125.44.

- It is ORDERED that the child support modification is effective October 15, 2016.

- Father is ORDERED to continue maintaining and paying for the health insurance for the child ($343.63/month). Mother is ORDERED to reimburse Father 50% of the cost of the monthly health insurance premium for the child in the amount of $171.82 effective October 15, 2016.

- Each party is ORDERED to pay 50% of the uninsured and unreimbursed medical expenses for the child.

- The parties are ORDERED to continue communications using OurFamilyWizard.com.

- The provision requiring Father to submit to random drug and alcohol testing is hereby eliminated.

- The morality clause is hereby eliminated.
- Each party is ORDERED to pay for his/her own respective attorney fees.
- Any and all relief not expressly granted is hereby DENIED.

Appellant filed a request for findings of fact and conclusions of law on October 28, 2016. Appellee filed a motion to enter on January 27, 2017. Appellant filed a response to the motion to enter on March 27, 2017. The trial court signed the order in suit to modify the parent-child relationship on April 25, 2017. Appellant filed another request for findings of fact and conclusions of law on April 20, 2017 and motion for new trial on May 25, 2017. She filed her notice of appeal on June 14, 2017.

A memorandum ruling will be accorded final judgment status triggering appellate deadlines if it substantially complies with the requisites of a formal judgment. *See In re CAS Cos., LP*, 422 S.W.3d 871, 875 (Tex. App.—Corpus Christi 2014, orig. proceeding); *In re Newby*, 266 S.W.3d 557, 558 (Tex. App.—Amarillo 2008, orig. proceeding) (per curiam). Specifically, a letter may constitute an order if: (1) it describes the decision with certainty as to parties and effect; (2) it requires no further action to memorialize the ruling; (3) it contains the name and cause number of the case; (4) the court's diction is affirmative rather than anticipatory of a future ruling; (5) it bears a date; (6) it was signed by the court; and (7) it was filed with the district clerk. *See In re CAS Cos., LP*, 422 S.W.3d at 875.

In her letter brief, appellant asserts that the memorandum does not meet the requisites of a formal judgment because (1) it did not dispose of all issues, (2) the trial court did not intend the memorandum to be a final judgment, and (3) the memorandum did not "describe the decision of the trial court with certainty as to the parties and effect."

Appellant contends the memorandum is not a final judgment because it did not address six issues that were addressed in the April 25th order. These issues include possession on

holidays, the date the week on / week off possession schedule starts, orders regarding the child's passport, extracurricular activities, injunctive provisions regarding alcohol, illegal drugs, and making disparaging remarks, and orders relating to the appointment of a parenting facilitator. In his second supplemental petition, appellee sought to be named the person who has the right to designate the primary residence of the child within the attendance zone of Frisco Independent School District, modification of the 50/50 possession schedule to include week on / week off, modification of the holiday schedule to be consistent with that provided in the Texas Family Code, modification of child support, modification of prior order holding appellee in contempt of court by eliminating all conditions requiring any drug or alcohol testing, and attorney's fees. As noted above, the trial court's memorandum disposes of each of appellee's claims. Thus, we find appellant's argument that the memorandum is interlocutory lacks merit.

Appellant next asserts the memorandum is not final because the trial court did not intend for it to be a final order. She states in her brief that, if the trial court intended the memorandum to be final, "there would have been no need to entertain and have a hearing [on appellee's motion to enter] to discuss modifications of the rulings and the language to include in a final order as the Court's plenary power would have long since expired." The trial court's memorandum followed a bench trial and is presumed to be final. *See Vaughn v. Drennon*, 324 S.W.3d 560, 561 (Tex. 2010) (per curiam) (any judgment after conventional trial on the merits is presumed final for appeal purposes).

Additionally, as set out above, the memorandum describes the decision with certainty, it requires no further action to memorialize the ruling, it contains the name and cause number of the case, the diction is affirmative, it is signed, dated, and filed with the district clerk. Despite the trial court's hearing to consider appellee's motion to sign an order and its subsequent order,

we conclude the memorandum substantially complies with the requisites of a formal judgment to be accorded final judgment status triggering the appellate deadline.

Because the memorandum substantially complies with the requisites of a formal judgment, the request for findings of fact and conclusions of law filed prematurely on October 28, 2016 served to extend the deadline for filing a notice of appeal to March 12, 2017. TEX. R. APP. P. 26.1(a). The trial court's order signed on April 25, 2017 is void because it was signed after the expiration of the trial court's plenary power. *See State ex rel. Latty v. Owens*, 907 S.W.2d 484, 486 (Tex. 1995) (judicial action taken after the court's plenary power has expired is void). Appellant filed a notice of appeal on June 14, 2017, more than three months past the deadline. Without a timely notice of appeal, this Court lacks jurisdiction. *See* TEX. R. APP. P. 25.1(b). Accordingly, we dismiss the appeal for want of jurisdiction. *See* TEX. R. APP. P. 42.3(a).

/Carolyn Wright/
CAROLYN WRIGHT
CHIEF JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

IN THE INTEREST OF R.R.K., A CHILD

No. 05-17-00794-CV

On Appeal from the 469th Judicial District Court, Collin County, Texas
Trial Court Cause No. 469-54529-2013.
Opinion delivered by Chief Justice Wright.
Justices Francis and Stoddart participating.

In accordance with this Court's opinion of this date, the appeal is **DISMISSED**.

It is **ORDERED** that appellee Tad Kirkpatrick recover his costs of this appeal from appellant Beverly Suzanne Riggs.

Judgment entered October 25, 2017.