

Affirmed in Part and Reversed and Remanded in Part and Opinion filed June 7, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00568-CV

**TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES,
Appellant**

V.

LOUISE PERRY, Appellee

**On Appeal from the 315th District Court
Harris County, Texas
Trial Court Cause No. 98-06499J**

OPINION

Appellant, Texas Department of Protective and Regulatory Services (“TDPRS”), appeals the trial court’s decree of termination appointing appellee, Louise Perry (“Perry”), possessory conservator of J.M.W. and R.K.P. In four points of error, TDPRS asserts that, 1) the trial court lacked authority to appoint Perry as possessory conservator because Perry’s pleadings never requested that she be named possessory conservator; 2) the trial court’s order granting possession rights to Perry is so vague and uncertain as to make such terms unenforceable; 3) the trial court abused its discretion in appointing Perry as possessory conservator without first determining her suitability in a home-study; and 4) the trial court abused its discretion in

appointing Perry as possessory conservator when there was no evidence that such an appointment was in the children's best interest. TDPRS' second point of error, however, controls the outcome of this opinion, and as such, we will not discuss TDPRS' other points of error. We affirm in part and reverse and remand in part.

On October 9, 1998, TDPRS filed suit to terminate the parent-child relationship between J.M.W. and R.K.P. and their mother, Jimmie Lee Perry ("Jimmie Lee"). Perry, Jimmie Lee's mother and the children's maternal grandmother, intervened and sought appointment as sole managing conservator. On December 15, 1999, the termination hearing was held before Sherry Van Pelt ("Van Pelt"), Master for the 315th District Court. On December 29, 1999, Van Pelt made her recommendation that, 1) the parental rights between Jimmie Lee Perry and J.M.W and R.K.P. be terminated; 2) Perry be appointed as possessory conservator; and 3) the terms of the possession be conditioned on the completion of a home-study by January 15, 2000. On January 20, 2000, five days after the date the home-study was to have been completed, the trial judge adopted and approved Van Pelt's recommendation. The record fails to indicate that a home-study was ever begun, much less completed by January 15, 2000.

"A judgment must be sufficiently definite and certain to define and protect the rights of all litigants, or it should provide a definite means of ascertaining such rights, to the end that ministerial officers can carry the judgment into execution without ascertainment of facts not therein stated." *Stewart v. USA Custom Paint & Body Shop, Inc.*, 870 S.W.2d 18, 20 (Tex. 1994); *Steed v. State*, 183 S.W.2d 458, 460 (Tex. 1944). "Thus, a judgment cannot condition recovery on uncertain events or base its validity on what the parties might or might not do post-judgment." *Hinde v. Hinde*, 701 S.W.2d 637, 639 (Tex. 1985). A purported judgment which leaves a question or issue essential to the determination of the controversy between the parties, is void for vagueness and uncertainty. *See Stewart*, 870 S.W.2d at 20; *see also Taylor v. Hicks*, 691 S.W.2d 839, 841 (Tex. App.—Fort Worth 1985, no writ); *American Casualty & Life Ins. Co. v. Boyd*, 394 S.W.2d 685, 688 (Tex. Civ. App.—Tyler 1965, no writ).

The decree of termination as it relates to the appointment of Perry as possessory

conservator violates all of the above-cited authority regarding the validity of judgments. The decree of termination regarding the appointment of Perry as possessory conservator lacks any definiteness or certainty so as to protect the rights of the litigants, or even ascertain such rights.

First, the trial court conditions the terms of possession on the completion of a home-study. If the home-study is approved, then the standard possessory order, as set out in exhibits A and B to the decree of termination, shall be effective on January 15, 2000. Perry would have full visitation rights with J.M.W., and graduated visitation rights with R.K.P., becoming full visitation rights on or before April 1, 2000. However, if the home-study is not approved, then visitation between Perry and J.M.W. and R.K.P. shall be mutually agreed upon and supervised. The judgment, and the record, make no mention of whether the home-study was approved. Therefore, it is unclear which provisions in the decree of termination are controlling.

Second, even assuming that the home-study was approved, and that the standard possessory order controlled in defining Perry's rights to possession of the children, that portion of the judgment is still void for uncertainty. The standard possessory order has several places in the order that must be "checked" to establish the possessory conservator's right to the possession of the child. The standard possessory order attached to the decree of termination has no marks to indicate Perry's right to the possession of J.M.W. and R.K.P. Accordingly, the decree of termination fails to provide any means of ascertaining Perry's rights to possession.

Lastly, even if Perry's rights to possession of J.M.W. and R.K.P. could be determined from the judgment, the judgment contains language that conflicts with its earlier language concerning possession.

It is further ordered that Texas Department of Protective and Regulatory Services shall provide to Louise Perry no later than January 15, 2000, all services necessary to have [J.M.W.] and [R.K.P.] placed with her. If Ms. Perry fails to successfully complete all services on or before June 1, 2000, visitation with

[J.M.W.] and [R.K.P.] shall cease immediately.

This paragraph in the decree of termination immediately follows the paragraph which discusses Perry's rights to possession of the children if the home-study is not approved. The language "placed with her" seems to conflict with language in the order that provides that if the home-study is not approved, visitation between Perry and the children shall only be as mutually agreed upon and supervised. It is unclear how the children can be placed with her and, at the same time, her visitation be limited and supervised.

For these reasons, we find the provisions in the decree of termination concerning the appointment of Perry as possessory conservator of J.M.W. and R.K.P. void for vagueness and uncertainty. Accordingly, we vacate those portions of the trial court's judgment appointing Perry possessory conservator and enunciating Perry's rights to possession of J.M.W. and R.K.P., and remand this cause to the trial court for further proceedings consistent with this opinion. The remainder of the judgment, regarding the termination of Jimmie Lee's parental rights, remains unchanged and is affirmed.

/s/ Paul C. Murphy
Senior Chief Justice

Judgment rendered and Opinion filed June 7, 2001.

Panel consists of Justices Edelman, Frost, and Murphy.*

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* Senior Chief Justice Paul C. Murphy sitting by assignment.