

IN THE SUPREME COURT OF TEXAS

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No. 07-0698
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IN THE INTEREST OF M.N., A CHILD

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ON PETITION FOR REVIEW FROM THE
COURT OF APPEALS FOR THE ELEVENTH DISTRICT OF TEXAS
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JUSTICE WILLETT, dissenting.

For better or for worse, the Legislature in Family Code section 263.405(b) set a firm fifteen-day deadline for filing a statement of points for appeal. Reasonable people can dispute the efficacy of this hard-and-fast deadline, but few can dispute its clarity.

I fully understand the Court's desire for leniency in enlarging the fifteen-day deadline beyond the statute's terms. Appealing the termination of one's parental rights is serious business, and having such rights vanish because of a counsel's (or pro se litigant's) mis-calendaring is nigh unfathomable. On the other hand, every day of childhood is irreplaceable, and society benefits when children are placed in safe, secure and loving homes as quickly as possible.

The Legislature wanted these cases to proceed with alacrity, reducing post-judgment delay by barring appellate consideration of tardy points. I would take lawmakers at their word: fifteen days means fifteen days. Squeezing out delay, however, does not permit squeezing out due process. It is one task to honor a fast-tracking statute's unambiguous text and refuse to judicially rewrite it under the guise of construction. It is quite another to examine whether that text, however plain,

unconstitutionally restricts due process or other guarantees. Terminating parental rights cannot warrant terminating constitutional rights.

I would (1) hold that court-made rules of procedure do not trump the Family Code's fifteen-day deadline and then, assuming preservation, (2) confront head-on whether this statutory deadline violates Durham's due-process rights or any other constitutional provision.¹ Because the Court does neither, I respectfully dissent.

Don R. Willett
Justice

OPINION DELIVERED: August 29, 2008

¹ The Court today has granted a petition for review that challenges the fifteen-day deadline on constitutional grounds. *In re J.O.A.*, 51 Tex. Sup. Ct. J. ____ (Aug. 29, 2008). In that case, where preservation of the constitutional issues is clear, each parent's trial counsel withdrew from the case after the trial court entered judgment. They never filed a statement of points before withdrawing, and appellate counsel was not appointed until after the fifteen-day deadline had passed.