

Failure of trial court to properly admonish child prior to plea or trial requires an objection to preserve error for appellate review. [In the Matter of S.A.](15-1-4B)

The Texarkana Court of Appeals held that by failing to object at trial, as required by TFC 54.03(i), juvenile failed to preserve error related to the failure of the trial court to admonish her on her right to confront witnesses.

¶ 15-1-4B. **In the Matter of S.A.**, MEMORANDUM, No. 06-14-00055-CV, 2014 WL 7442507 (Tex.App.-Texarkana, 12/31/14).

Facts: In the first five months of 2014, fifteen-year-old Sandra had, let's say, a tumultuous relationship with her sixty-five-year-old father, marked by three documented instances in which Sandra assaulted or injured him. The first two instances resulted in Sandra's probation.

The final confrontation occurred the afternoon of May 10, 2014. That afternoon, Sandra was listening to music on a cellular telephone while she sunbathed outside her home. Wanting to hear different music, Sandra went inside to download more music from the computer. Since the conditions of Sandra's existing probation forbade her to use the computer, her father sought to stop her. Her father, who had broken his foot several days before, stumbled as he tried to get between Sandra and the computer. As he sought to stop her, he grabbed the base of the back of her neck. At about the same time, Sandra stomped his broken foot, which was in a cast, on top and at the ankle, and kicked his shin. Her mother then restrained her as her father tried to get out of the door. As she was being restrained, she slung her telephone with its charger, and it struck and cut her father's arm.

At Sandra's June 12, 2014, hearing, Sandra's mother appeared at trial, sat at the counsel table with Sandra, and was ultimately called as a witness by the State. Sandra's mother's testimony generally confirmed the testimony of Sandra's father—that Sandra had assaulted him on the occasion in question.

On appeal, Sandra complains that the trial court did not appoint a guardian ad litem because her mother was incapable of making decisions in her best interest. Sandra asserts that her mother had an inherent conflict of interest because she was the victim's wife, a witness to the incident, and a key witness for the State. At the hearing below, Sandra did not ask for a guardian ad litem to be appointed or point to any conflict of interest her mother may have had. Nevertheless, Sandra maintains that the right to a guardian ad litem is a “waivable only” right and that the right to a guardian ad litem is on par with the right to counsel. She cites no authority, however, and we have found none, that has so held when a parent is present at the hearing.

Held: Affirmed

Memorandum Opinion: Sandra also complains that the trial court did not admonish her regarding her right to confront witnesses. Sandra is correct in asserting that the trial court had a duty to admonish her regarding her right to confront witnesses. The trial court is obligated, at the beginning of the hearing, to explain to the child and her parent, inter alia, “the child’s right ... to confrontation of witnesses.” TEX. FAM.CODE ANN. § 54.03(b)(4) (West 2014). The failure of a trial court to give any of the admonishments in Section 54.03 is error. See *In re C.O.S.*, 988 S.W.2d 760, 763 (Tex.1999). To preserve the error for appeal, however, “the failure of the court to provide the child the explanation required by Subsection (b), the attorney for the child must comply with Rule 33.1, Texas Rules of Appellate Procedure, before testimony begins.... ” TEX. FAM.CODE ANN. § 54.03(i) (West 2014) (emphasis added); *In re M.D.T.*, 153 S.W.3d 285, 288–89 (Tex.App.—El Paso 2004, no pet.). Rule 33.1 of the Texas Rules of Appellate Procedure requires a “timely request, objection, or motion” be made to the trial court that

(A) states the grounds for the ruling that the complaining party sought from the trial court with sufficient specificity to make the trial court aware of the complaint, unless the specific grounds were apparent from the context; TEX.R.APP.P. 33.1(a)(1)(A).

Conclusion: Neither Sandra nor her trial counsel complained about any deficiency in the statutory admonishments before testimony began. Thus, we hold that Sandra failed to preserve any error related to the failure of the trial court to admonish her on her right to confront witnesses. We affirm the judgment of the trial court.