
APPEALS

Legal Overview of Appeals

Texas Family Code
Title 5. The Parent-Child Relationship & the Suit Affecting the Parent-Child Relationship
Chapter 263. Review of Placement of Children under Care of Department of Family and
Protective Services
Subchapter E. Final Order for Child under DFPS Care

An appeal of a final order rendered under [Tex. Fam. Code Chapter 263, Subchapter E](#) is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure and the appellate court must render its final order or judgment with the least possible delay. [Tex. Fam. Code § 263.405\(a\)](#). Also, the final order must contain the following prominently displayed statement in boldfaced type, in capital letters, or underline:

“A PARTY AFFECTED BY THIS ORDER HAS THE RIGHT TO APPEAL. AN APPEAL IN A SUIT IN WHICH TERMINATION OF THE PARENT-CHILD RELATIONSHIP IS SOUGHT IS GOVERNED BY THE PROCEDURES FOR ACCELERATED APPEALS IN CIVIL CASES UNDER THE TEXAS RULES OF APPELLATE PROCEDURE. FAILURE TO FOLLOW THE TEXAS RULES OF APPELLATE PROCEDURE FOR ACCELERATED APPEALS MAY RESULT IN THE DISMISSAL OF THE APPEAL.” [Tex. Fam. Code § 263.405\(b\)](#).

- A. Specific Grounds Must Be Stated in Trial Court Judgment**
- B. Parent Deemed Indigent on Appeal**
- C. Attorney Ad Litem Required to Remain on Case**
- D. Trial Court Clerk Has Specific Time-Sensitive Duties**
- E. Application of Tex. Civ. Prac. & Rem. Code § 13.003 Prohibited**
- F. Effective Assistance of Counsel**
- G. Order or Judgment Termination Parent-Child Relationship May Not Be Suspended During Pendency of Appeal**
- H. Notice of Appeal / Appellant Duties**
- I. Case Law Update**

A. Specific Grounds Must Be Stated In Trial Court Judgment

The Texas Rules of Civil Procedure require the judge to state the specific grounds in the judgment supporting the termination or the appointment of the managing conservator. [Tex. R. Civ. P. 306](#).

B. Parent Deemed Indigent on Appeal

Pursuant to [Tex. Fam. Code § 107.013\(e\)](#), parents deemed indigent in the trial court are presumed indigent on appeal, subject to challenges laid out in [Tex. R. App. P. 20.1](#).

C. Attorney Ad Litem Required to Remain on Case

Pursuant to [Tex. Fam. Code § 107.016\(3\)](#), the attorney ad litem appointed to represent the parent at trial is required to remain on the case until the case is dismissed, the date all appeals in relation to any final order terminating parental rights are exhausted or waived, or until relieved of the duty or replaced by another attorney after a finding of good cause is rendered by the court on the record. [Tex. Fam. Code § 107.016\(3\)](#).

D. Trial Court Clerk Has Specific, Time-sensitive Duties

The Texas Rules of Appellate Procedure require the trial court clerk to immediately send a copy of the notice of appeal to the appellate court clerk and to the court reporter(s) responsible for preparing the record. [Tex. R. App. P. 25.1\(f\)](#).

The Texas Rules of Appellate Procedure require the trial court to direct the official or deputy reporter to commence the preparation of the reporter's record and arrange for a substitute reporter, if necessary. There are extensions of time available under certain circumstances. [Tex. R. App. P. 28.4\(b\)\(1\)](#).

E. Application of Tex. Civ. Prac. & Rem. Code § 13.003 Prohibited

The Texas Rules of Appellate Procedure prohibit the application of [Tex. Civ. Prac. & Rem. Code § 13.003](#) (Free Transcript of Statement of Facts on Appeal) to an appeal from a parental termination or child protection case. [Tex. R. App. P. 28.4\(b\)\(3\)](#).

F. Effective Assistance of Counsel

Case law has established that if a parent is entitled to court-appointed counsel, the parent is entitled to effective assistance of counsel. *In re J.O.A., et. al.*, [283 S.W. 3d 336, 347](#) (Tex. 2009).

G. Order or Judgment Termination Parent-Child Relationship May Not Be Suspended During Pendency of Appeal

Although a court may suspend other orders under the Family Code, the court may not suspend the operation of an order or judgment terminating the parent child relationship in a suit brought by the state or a political subdivision of the during the pendency of the appeal. [Tex. Fam. Code § 109.001\(d\)](#).

H. Notice of Appeal and Appellant Duties

The Texas Rules of Appellate Procedure require the notice of appeal to state whether it is a parental termination or child protection case subject to rules of acceleration under [Tex. R. App. P. 28.4](#). [Tex. R. App. P. 25.1\(d\)\(6\)](#).

The Texas Rules of Appellate Procedure also require the appellant to file in the appellate court a docketing statement upon filing the notice of appeal and it must state whether the appeal is an appeal of a parental termination or child protection case as defined in [Tex. R. App. P. 28.4](#). [Tex. R. App. P. 32.1\(g\)](#).

I. Case Law Update

Each year, DFPS produces a case law update of select child protection cases. The 2017 update includes the following cases:

JURISDICTION

In re J.I.M., [516 S.W.3d 674](#) (Tex. App.—Texarkana 2017, no pet.).

TRANSFER OF CONTINUING, EXCLUSIVE JURISDICTION

In re D.W. and K.W., [No. 06-16-00076-CV](#) (Tex. App.—Texarkana Mar. 31, 2017, pet. filed) (op. on reh'g.)

DILIGENCE REQUIRED FOR SERVICE BY PUBLICATION

In re E.C.Q.L., [No. 12-16-00297-CV](#) (Tex. App.—Tyler Apr. 28, 2017, no pet.) (mem. op.).

PARTICIPATION CONSTITUTES APPEARANCE

In re K.A.M., [No. 04-16-00093-CV](#) (Tex. App.—San Antonio July 27, 2016, no pet.) (mem. op.)

PRE-TRIAL MATTERS

Due Process: *In re G.A.C.*, [499 S.W.3d 138](#) (Tex. App.—Amarillo 2016, pet. denied).

Standing to Request Genetic Testing: *In re D.L.D.*, [No. 05-16-00523-CV](#) (Tex. App.—Dallas Oct. 13, 2016, no pet.) (mem. op.)

Grandmother Standing Limited: *P.R.M. v. Tex. Dep't of Family and Protective Servs.*, [No. 03-16-00065-CV](#) (Tex. App.—Austin Aug. 26, 2016, no pet.) (mem. op.).

Request for Guardian *Ad Litem*: *In re K.B. and K.R.B.*, [No. 07-16-00438-CV](#) (Tex. App.—Amarillo Apr. 12, 2017, pet. denied) (mem. op.).

Right to Appointed Counsel: *In re J.R. and I.R.*, [No. 11-16-00203-CV](#) (Tex. App.—Eastland Jan 17, 2017, no pet.) (mem. op.).

Right to Jury: *In re J.M.B. and T.A.D.B.*, [No. 05-16-01311-CV](#) (Tex. App.—Dallas Apr. 27, 2017, no pet. h.) (mem. op.).

EVIDENCE

Soft Sciences and Expert Testimony: *In re J.R., S.R., C.R., and C.R.*, [501 S.W. 3d 738](#) (Tex. App.—Waco 2016, no pet.).

Denial of Expert Witnesses: *In re A.A.T.*, [No. 04-16-00344-CV](#) (Tex. App.—San Antonio Dec. 28, 2016, no pet.) (mem. op.).

DISCOVERY

Failure to Supplement: *In re M.F.D.*, [No. 01-16-00295-CV](#) (Tex. App.—Houston [1st Dist.] Dec. 8, 2016, no pet.) (mem. op.).

TERMINATION GROUNDS

[TFC § 161.001\(b\)\(1\)\(C\)](#) parent voluntarily left the child alone or in the possession of another without providing for the adequate support of the child and remained away for a period of at least six months. *In re H.S.*, [No. 05-16-00950-CV](#) (Tex. App.—Dallas Dec. 6, 2016, no pet.) (mem. op.).

[TFC § 161.001\(b\)\(1\)\(D\)](#) parent knowingly placed or allowed the child in conditions or surroundings which endangered the child's physical or emotional well-being. *In re Z.W.*, [No. 10-16-00015-CV](#) (Tex. App.—Waco July 13, 2016, no pet.) (mem. op.).

[TFC § 161.001\(b\)\(1\)\(E\)](#) parent has engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child. *In re S.D.*, [No. 02-16-00280-CV](#) (Tex. App.—Fort Worth Jan. 5, 2017, no pet.) (mem. op.). Father's Knowledge of Mother's Drug Use: *In re A.B. and A.A.D.*, [Nos. 12-16-00275-CV & 12-16-00276-CV](#) (Tex. App.—Tyler March 22, 2017, no pet.) (mem. op.).

[TFC § 161.001\(b\)\(1\)\(F\)](#) parent's failure to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition. *In re N.G.G., N.M.G., and N.G.G.*, [No. 05-16-01084-CV](#) (Tex. App.—Dallas Feb. 17, 2017, no pet.) (mem. op.).

[TFC § 161.001\(b\)\(1\)\(H\)](#) parent has: (1) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth; (2) failed to provide adequate support or medical care for the

mother during the period of abandonment before the birth of the child; and (3) remained apart from the child or failed to support the child since birth. *In re Baby V.*, [No. 04-16-00754-CV](#) (Tex. App.—San Antonio, Mar. 29, 2017, no pet. h.) (mem. op.).

[TFC § 161.001\(b\)\(1\)\(L\)](#) parent has been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under specific provisions of the Texas Penal Code. *In re M.A.S. and K.D.S.*, [No. 06-16-00059-CV](#) (Tex. App.—Texarkana Dec. 22, 2016, no pet.) (mem. op.).

[TFC § 161.001\(b\)\(1\)\(N\)](#) parent has constructively abandoned the child who has been in the temporary managing conservatorship of the Department for not less than six months, and: (i) the Department has made reasonable efforts to return the child to the parent; (ii) the parent has not regularly visited or maintained significant contact with the child; and (iii) the parent has demonstrated an inability to provide the child with a safe environment. *In re J.M.*, [No. 11-16-00092-CV](#) (Tex. App.—Eastland, Sept. 22, 2016, no pet.) (mem. op.); *In re A.K.L. and S.A.A.P.*, [No. 01-16-00489-CV](#) (Tex. App.—Houston [1st Dist.] Dec. 8, 2016, pet. denied) (mem. op.).

[TFC § 161.001\(b\)\(1\)\(O\)](#) parent failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Service for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child. *In re L.A.M.*, [No. 08-16-00157-CV](#) (Tex. App.—El Paso Dec. 7, 2016, no pet.).

[TFC § 161.001\(b\)\(1\)\(Q\)](#) parent knowingly engaged in criminal conduct that resulted in the parent's (i) conviction of an offense; and (ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition. *In re A.O.*, [No. 07-16-00331-CV](#) (Tex. App.—Amarillo Mar. 3, 2017, pet. filed) (mem. op.); *In re J.M.G.*, [No. 07-16-00202-CV](#) (Tex. App.—Amarillo Oct. 27, 2016, no pet.) (mem. op.).

[TFC § 161.004](#) Material Change in Circumstance *In re M.J.W.*, [No. 14-16-00276-CV](#) (Tex. App.—Houston [14th Dist.] Aug. 9, 2016, pet. denied) (mem. op.); *In re J.R. & M.D.N.S.T.*, [Nos. 01-16-00491-CV & 01-16-00535-CV](#) (Tex. App.—Houston [1st Dist.] Dec. 13, 2016, pet. denied) (mem. op.).

BEST INTEREST – HOLLEY FACTORS

Desires of the Child. *In re G.N.*, [510 S.W. 134](#) (Tex. App.—El Paso Sept. 21, 2016, no pet.) (mem. op.)

Improvements in Foster Home Supports Desires Factor. *In re G.R.*, [No. 07-16-00277-CV](#) (Tex. App.—Amarillo Oct. 25, 2016, no pet.) (mem. op.).

Mother's Parenting Ability. *In re E.K.H. and K.L.H.*, [No. 04-16-00374-CV](#) (Tex. App.—San Antonio Nov. 9, 2016, no pet.) (mem. op.).

The Stability of the Home or Proposed Placement. *In re A.A.B. and A.B.*, [Nos. 14-16-00855-CV & 14-16-00918-CV](#) (Tex. App.—Houston [14th Dist.] April 11, 2017, pet. denied) (mem. op.).

VISITATION

In re J.Y., G.Y., and B.Y., No. 06-16-00084-CV (Tex. App.—Texarkana Apr. 28, 2017, no pet.).

POST-TRIAL MATTERS

“[b]ecause there is no indication in the record before us that [Father] agreed to waive his right to a de novo hearing, we hold the referring district court erred in denying same.” The case was reversed and remanded for further proceedings. *In re J.A.P. and B.A.R., Children*, 510 S.W.3d 722 (Tex. App.—San Antonio 2016, no pet.).

You can link to the 2017 DFPS case law update here:

<http://texaschildrenscommission.gov/media/83509/dfps-2017-case-law-update.pdf>