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# APPEALS

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## 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**

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## **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).

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## 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 2018 Termination Case Law Update was prepared by the DFPS Appellate Unit: Michael Becker, Leslie Capace, Brenda Kinsler, Jerry Reyes, Rebecca Safavi, Eric Tai, and Mark Zuniga.

The 2018 update includes the following cases:

### JURISDICTION

*In re L.S., S.V., and C.W.*, [No. 06-17-00113-CV](#), (Tex. App.—Texarkana Mar. 9, 2018, no pet.).

### JURY ISSUES

Striking Jury Demand: *In re L.G.T.*, [No. 04-17-00526-CV](#) (Tex. App.—San Antonio Jan. 10, 2018, no pet.) (mem. op.).

Allocation of Jury Strikes: *S.B. v. Texas Dep't of Family and Protective Servs.*, [No. 03-17-00431-CV](#) (Tex. App.—Austin Dec. 22, 2017, pet. denied) (mem. op.).

Batson Challenge: *D. G. v. Texas Dep't of Family and Protective Services*, [No. 03-17-00366-CV](#) (Tex. App.—Austin Oct. 26, 2017, no pet.) (mem. op.).

### CONDUCT OF PROCEEDINGS

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*In re K.R., A.R., and G.L.C.*, [No. 13-17-00281-CV](#) (Tex. App.—Corpus Christi Oct. 26, 2017, pet. denied) (mem. op.).

## JUDICIAL BIAS

*In re L.S.*, [No. 02-17-00132-CV](#) (Tex. App.—Fort Worth Sept. 21, 2017, no pet.) (mem. op.).

## PRE-TRIAL MATTERS

Immunizations Over Objection of Parents: *In re Womack*, [No. 10-17-00336-CV](#), (Tex. App. — Waco 2017, orig. proceeding [mand. pending]).

Right to Appointed Counsel: *N.T. v. Texas Dep't of Family and Protective Services*, [No. 03-17-00573-CV](#) (Tex. App.—Austin Nov. 29, 2017, no pet.) (mem. op.).

## TERMINATION GROUNDS

### [TFC § 161.001\(b\)\(1\)\(C\)](#)

*R.M. v. D.R. and B.R.*, [No. 03-17-00605-CV](#) (Tex. App.—Austin Mar. 6, 2018, no pet.) (mem. op.) (father's parental rights terminated in private case which alleged father voluntarily left child alone without providing adequate support and remained away for at least six months. COA stated that the six-month minimum is a period of six months consecutively).

### [TFC § 161.001\(b\)\(1\)\(D\)](#)

*In re K.A.R.*, [No. 04-17-00723-CV](#) (Tex. App.—San Antonio Apr. 11, 2018, no pet.) (mem. op.) (Parent knowingly placed or allowed the child in conditions or surroundings which endangered the child's physical or emotional well-being). Also, *In re A.M.*, [No. 07-17-00094-CV](#) (Tex. App.—Amarillo Sept. 21, 2017, pet. denied) (mem. op.); *In re A.M.*, [No. 07-17-00094-CV](#) (Tex. App.—Amarillo Sept. 21, 2017, pet. denied) (mem. op.) (mother's ingesting drugs that affected her ability to stay awake and care for child had potential for endangering the child).

### [TFC § 161.001\(b\)\(1\)\(E\)](#)

*In re W.R.C.*, [No. 10-17-00250-CV](#) (Tex. App.—Waco Dec. 20, 2017, no pet.) (mem. op.) (threats, comments and actions show course of conduct that endangers child's emotional well-being). Also, *In re A.R.M.*, [No. 05-17-00539-CV](#) (Tex. App.—Dallas Mar. 30, 2018, pet. pending) (mem. op.) (evidence suggesting that Mother coached Daughter to make false sex abuse outcries, otherwise attempted to undermine relationship between Father and Daughter, and violated both court orders and supervised visitation rules supports the endangerment finding); *In re Z.O.*, [No. 02-17-00166-CV](#) (Tex. App.—Fort Worth Sept. 7, 2017, no pet.) (mem. op.) (emotional abuse alone supports endangerment finding); *In re B.F., P.M.F. a/k/a P.F.*, [No. 14-17-00421-CV](#) (Tex. App.—Houston [14th Dist.] Nov. 16, 2017, no pet.) (mem. op.)

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(presence of drugs in child's system harmed child); *In re G.H.*, [No. 02-17-00193-CV](#) (Tex. App.—Fort Worth Oct. 19, 2017, no pet.) (mem. op.) (lack of income not excuse for neglect); *In re K.K.D.B.*, [No. 14-17-00302-CV](#) (Tex. App.—Houston [14th Dist.] Oct. 5, 2017, pet. denied) (mem. op.) (court not required to ignore old criminal history).

### [TFC § 161.001\(b\)\(1\)\(N\)](#)

*In re R.I.D. and L.J.M.*, [543 S.W.3d 422](#) (Tex. App.—Houston [14th Dist.] 2018, no pet.) (inability provide safe environment); Also, *In re J.G.S.*, [No. 08-17-00192-CV](#) (Tex. App.—El Paso Feb. 14, 2018, no pet.) (Reasonable Efforts shown in absence of service plan); *In re F.E.N.*, [542 S.W.3d 752](#) (Tex. App.—Houston [14th Dist.] 2018, no pet.) (reasonable efforts not shown in absence of service plan).

## **DIRECT OR COLLATERAL ATTACK ON TERMINATION ORDER**

[TFC § 161.211\(c\)](#) *In re K.S.L.*, [538 S.W.3d 107](#) (Tex. 2017) (Regardless of what a trial court must find under TFC § 161.001, TFC § 161.211(c) limits appellate review to fraud, duress, and coercion); Also, *In re R.P.R., Jr.*, [No. 14-17-00760-CV](#) (Tex. App.—Houston [14th Dist.] March 1, 2018, pet. filed) (mem. op.) (complaint that the affidavit of relinquishment does not comply with TFC § 161.013 barred by TFC § 161.211(c)); *In re D.S. and In the Matter of the Marriage of G.S. and A.G.*, [Nos. 05-17-01066-CV and 05-17-01068-CV](#), (Tex. App.—Dallas Apr. 18, 2018, no pet. h.) (collateral attack on the termination order based on a lack of subject matter jurisdiction is not barred by TFC § 161.211(c)).

## **BEST INTEREST – HOLLEY FACTORS**

### **A. Desires of the Child**

*Behavioral Issues* - *In re J.C.C., Jr., L.H.M.C., and J.Z.M.*, [No. 04-17-00120-CV](#) (Tex. App.—San Antonio Aug. 30, 2017, no pet.) (mem. op.); *see also In re A.F. and A.F.*, [No. 14-17-00394-CV](#) (Tex. App.—Houston [14th Dist.] Oct. 19, 2017, no pet.) (mem. op.) (trial court can properly consider the continued damaging consequences the children suffered from time spent with their parents under the desires factor).

*Negative Impact of Failing to Visit* - *In re E.J.M.*, [No. 04-17-00569-CV](#) (Tex. App.—San Antonio Jan. 3, 2018, no pet.) (mem. op.).

### **B. Emotional and Physical Needs and Emotional and Physical Danger**

*Misdemeanor Criminal Convictions* - *In re C.M., Jr.*, [No. 14-17-00507-CV](#) (Tex. App.—Houston [14th Dist.] Nov. 30, 2017, pet. denied) (mem. op.)

*Failure to Protect from Drug Use Due to Incarceration* - *In re L.J.T.*, [No. 04-17-00567-CV](#) (Tex. App.—San Antonio Feb. 28, 2018, no pet.) (mem. op.).

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*Evidence of Termination Improving Children’s Situation Not Sufficient - In re J.E.M.M. and L.A.M.M.*, [532 S.W.3d 874](#) (Tex. App.—Houston [14th Dist.] 2017, no pet.).

*Allowing Lapse of Medicaid Supports Inability to Provide for Emotional and Physical Needs - C.S. v. Texas Department of Family and Protective Services*, [No. 03-17-00229-CV](#) (Tex. App.—Austin Aug. 9, 2017, no pet.) (mem. op.)

### **C. Parent Abilities**

*Children Running Away at Parent’s Request - In re H.L.H.*, [No. 10-16-00254-CV](#) (Tex. App.—Waco Mar. 14, 2018, no pet.) (mem. op.).

*Parent Unable to Learn from Classes - In re S.J.R.-Z, J.C.Z., A.R.Z., I.L.L., K.K.H., and J.G.H. III*, [537 S.W.3d 677](#) (Tex. App.—San Antonio 2017, no pet.).

### **D. Stability of Proposed Placement**

*Providing Name of Possible Kinship Placement Not Sufficient - In re D.D.P., C.L.C., E.L.C., and J.M.J.*, [No. 04-17-00444-CV](#) (Tex. App.—San Antonio April 4, 2018, no pet.) (mem. op.).

## **CONSERVATORSHIP**

### **A. TFC § 153.131 - Conservatorship**

*In re R.F., Jr.*, [No. 04-17-00582-CV](#) (Tex. App.—San Antonio Mar. 14, 2018, no pet.) (mem. op.) (trial court did not abuse discretion in refusing to appoint father as managing conservator instead of possessory because father knew of mother’s behavior and activities which significantly impaired the child’s physical health or emotional development).

### **B. Specificity in Visitation Order**

*In re A.N. and I.R.N.*, [No. 10-16-00394-CV](#) (Tex. App.—Waco Sept. 13, 2017, no pet.) (mem. op.).

### **C. Jury Question**

*In re J.W.G.*, [No. 14-17-00389-CV](#) (Tex. App.—Houston [14th Dist.] Nov. 9, 2017, pet. denied) (mem. op.).

## **POST-TRIAL MATTERS**

### **A. De Novo Mandatory**

*In re R.R.*, [537 S.W.3d 621](#) (Tex. App.—Austin 2017, orig. proceeding).

### **B. Parent Lacks Standing to Challenge Attorney Ad Litem Representation**

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*In re B.M., J.M., D.M., and L.M.*, No. 13-17-00467-CV (Tex. App.—Corpus Christi Nov. 30, 2017, pet. denied) (mem. op.); see also *In re J.E.G., A.R.G., P.N., Jr., and R.I.N.*, No. 06-17-00064-CV (Tex. App.—Texarkana Oct. 6, 2017, pet. denied) (mem. op.) (concluding Mother lacked standing under doctrine of virtual representation to proceed with ineffective assistance claim against children’s attorney *ad litem* because her interests were not aligned with those of children).

**C. TFC § 161.211(a) – Bill of Review**

*In re M.E.*, No. 07-16-00039-CV (Tex. App.—Amarillo Jan. 8, 2018, no pet.) (mem. op.).

**INDIAN CHILD WELFARE ACT**

**A. Intervention by Tribe**

*In re J.J.T.*, 544 S.W.3d 874 (Tex. App.—El Paso 2017, no pet.).

**B. Necessity of Expert Witness**

*S.P. v. Texas Dep’t of Family and Protective Services*, No. 03-17-00698-CV (Tex. App.—Austin Mar. 9, 2018, no pet.) (mem. op.).

You can link to the 2018 DFPS case law update here:

<http://texaschildrenscommission.gov/media/83944/2018-termination-case-law-update-bench-book-et.pdf>