
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). The Supreme Court has held that the right to appointed counsel extends to proceedings in the Supreme Court including a Petition for Review as well as an *Anders* brief and motion to withdraw. *In re P.M.*, [520 S.W.3d 24](#) (Tex. 2016).

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 2019 Termination Case Law Update was prepared by the DFPS Appellate Unit: Michael D. Becker, Leslie Capace, Brenda L. Kinsler, Jerry L. Reyes, Rebecca L. Safavi, Eric T. Tai, and Mark T. Zuniga.

The 2019 update includes the following cases:

COMMENCEMENT OF TRIAL

In re R.J., [568 S.W.3d 734](#) (Tex. App.—Houston [1st Dist.] 2019, no pet.).

EVIDENCE

In re M.M. and C.M., [No. 14-18-00881-CV](#) (Tex. App.—Houston [14th Dist.] March 28, 2019, no pet.) (mem. op.). (TRE 605)

T.W. v. Tex. Dep't. of Family and Protective Servs., [No. 03-18-00347-CV](#) (Tex. App.—Austin Aug. 29, 2018, no pet.) (mem. op.). (TRE 803(8))

JURISDICTION

In re S.H., [No. 13-18-00240-CV](#) (Tex. App.—Corpus Christi Sept. 27, 2018, no pet.) (mem. op.).

In re E.N., K.N., and M.N., [No. 06-18-00019-CV](#) (Tex. App.—Texarkana Jul. 12, 2018, no pet.) (mem. op.).

In re Tex. Dep't of Family and Protective Servs., [Nos. 01-18-00717-CV, 01-18-00718-CV, 01-18, 00719-CV](#) (Tex. App.—Houston [1st Dist.] Oct. 2, 2018, no pet.). (Adversary Hearing timeline not jurisdictional).

JURY TRIAL

In re A.L.M.-F., [No. 17-0603](#), 62 Tex. Sup. Ct. J. 910, 2019 Tex. LEXIS 426 (May 3, 2019). (No right to jury trial on timely requested De Novo Hearing)

PRE-TRIAL MATTERS

Appointment of Counsel

In re A.R., [No. 07-18-00350-CV](#) (Tex. App.—Amarillo Jan. 28, 2019, no pet.) (mem. op.). (Determination of indigence).

In re B.C., [No. 13-18-00440-CV](#), (Tex. App—Corpus Christi-Edinburg Jan. 28, 2019, pet. filed) (mem. op.). (Court Responsibility to Inquire Further).

In re A.J., [559 S.W.3d 713](#) (Tex. App.—Tyler 2018, no pet.). (Admonishment required).

Bench Warrant and Motion to Continue

In re L.N.C. and K.N.M., [573 S.W.3d 309](#) (Tex. App.—Houston [14th Dist.] 2019, no pet.).

STANDING

In re H.S., [550 S.W.3d 151](#) (Tex. 2018). (A nonparent has “actual care, control, and possession of the child” under section 102.003(a)(9) if, for the requisite six-month time period, if the nonparent served in a parent-like role by (1) sharing a principle residence with the child, (2) providing for the child’s daily physical and psychological needs, and (3) exercising guidance, governance, and direction similar to that typically exercised on a day-to-day basis by parents with their children. Accordingly, the Court concluded, the Family Code recognizes that a narrow class of nonparents, who have served in a parent-like role to a child over a lengthy period, may come to court and seek to preserve that relationship over a parent’s objections.

In re Schick, [No. 04-18-00839-CV](#) (Tex. App.—San Antonio Dec. 19, 2018, orig. proceeding) (mem. op.); *In re A.G.*, [No. 05-18-00725-CV](#) (Tex. App.—Dallas Dec. 12, 2018, no pet.) (mem. op.).

TERMINATION GROUNDS

[TFC § 161.001\(b\)\(1\)\(C\)](#)

In re A.R., A.R. and A.R., [No. 02-18-00311-CV](#) (Tex. App.—Fort Worth Mar. 14, 2019, no pet. h.) (mem. op.).

[TFC § 161.001\(b\)\(1\)\(E\)](#)

Lack of concern: In re Z.J.B., [No. 14-18-00759-CV](#) (Tex. App.—Houston [14th Dist.] Jan. 29, 2019, pet. denied) (mem. op.).

Unwillingness to seek prenatal care: In re Z.Q.N., [No. 14-17-00434-CV](#) (Tex. App.—Houston [14th Dist.] Feb. 21, 2019, no pet. h.) (mem. op.).

Not guilty conviction not dispositive: *In re A.C.S. and T.R.L., Children*, [No. 14-18-00890-CV](#) (Tex. App.—Houston [14th Dist.] Mar. 21, 2019, no pet. h.) (mem. op.).

[TFC § 161.001\(b\)\(1\)\(L\)](#)

In re S.G. and D.D.-G.P., No. 01-18-00728-CV (Tex. App.—Houston [1st Dist.] Apr. 2, 2019, pet. filed) (mem. op.).

TFC § 161.001(b)(1)(N)

No Reasonable Efforts: In re M.A.S.L. and K.J.L., No. 04-18-00496-CV (Tex. App.—San Antonio Dec. 19, 2018, no pet.) (mem. op.).

Reasonable Efforts: In re K.C., No. 07-18-00282-CV (Tex. App.—Amarillo Dec. 21, 2018, pet. denied) (mem. op.)

TFC § 161.001(b)(1)(Q)

In re D.L.A. Jr., D.L.A.R., B.B.R., B.L.A.R., and J.R., No. 04-18-00182-CV (Tex. App.—San Antonio Sept. 18, 2018, pet. denied) (mem. op.); Also, *In re I.G.*, No. 13-18-00114-CV (Tex. App.—Corpus Christi June 21, 2018, no pet.) (mem. op.).

TFC § 161.001(b)(1)(R)

In re A.M.S., No. 04-18-00650-CV (Tex. App.—San Antonio Jan. 9, 2019, no pet.) (mem. op.).

TFC § 161.001(d)

In re N.W.L.T. and J.A.C., No. 14-18-00497-CV (Tex. App.—Houston [14th Dist.] Nov. 29, 2018, pet. denied) (mem. op.). (Affirmative defense must be shown for each failed task).

In re B.L.H., No. 14-18-00087-CV (Tex. App.—Houston [14th Dist.] Jul. 12, 2018, no pet.) (mem. op.).

In re L.L.N.-P., No. 04-18-00380-CV (Tex. App.—San Antonio Nov. 21, 2018, pet. denied) (mem. op.). (Father cannot use incarceration as excuse)

BEST INTEREST – HOLLEY FACTORS

Desires of the Child

In re F.M.E.A.F., A.A.F.H., and A.J.F.H., 572 S.W.3d 716 (Tex. App.—Houston [14th Dist.] 2019, no pet. h.). (Sufficient maturity).

In re J.T.T.J., K.A.T., and R.D.R.T., No. 13-18-00319-CV (Tex. App.—Corpus Christi Nov. 1, 2018, pet. denied) (mem. op.). (Children desire to stay together)

Emotional and Physical Needs and Emotional and Physical Danger

In re J.D.G., 570 S.W.3d 839 (Tex. App.—Houston [1st Dist.] 2018, pet. denied). (Child's improvement while in care)

Parent Abilities

In re C.W., D.T., J.T., and A.T., No. 14-18-00427-CV (Tex. App.—Houston [14th Dist.] Nov. 13, 2018, no pet.) (mem. op.).

Other Considerations

In re J.I.T., No. 01-17-00988-CV (Tex. App.—Houston [1st Dist.] June 27, 2018, pet. denied) (mem. op.).

In re T.R. and P.H., No. 01-18-00834-CV (Tex. App.—Houston [1st Dist.] Feb. 14, 2019, pet. dismissed w.o.j.) (mem. op.).

In re A.C., J.Y., J.Y Jr., L.B., and E.B., 560 S.W.3d 624 (Tex. 2018).

CONSERVATORSHIP

In re C.L.J.S., No. 01-18-00512-CV (Tex. App.—Houston [1st Dist.] Nov. 29, 2018, no pet.)

POST-TRIAL MATTERS

Ineffective Assistance of Counsel

In re B.H., No. 05-18-00291-CV (Tex. App.—Dallas Sept. 18, 2018, no pet.) (mem. op.).

In re G.N.H., No. 04-18-00154-CV (Tex. App.—San Antonio Nov. 14, 2018, no pet.) (mem. op.).

In re J.A.B., 562 S.W.3d 726 (Tex. App.—San Antonio 2018, pet. denied).

Appellate

In re J.M., No. 12-18-00157-CV (Tex. App.—Tyler Oct. 10, 2018, no pet.) (mem. op.)

In re Z.M.R. and Z.D.B., 562 S.W.3d 783 (Tex. App.—Houston [14th Dist.] 2018, no pet.).

In re N.G., No. 18-0508 (Tex. 2019). (Sufficient evidence on best interest)

INDIAN CHILD WELFARE ACT

In re D.E.D.L., 568 S.W.3d 261 (Tex. App.—Eastland 2019, no pet.). (Qualified Expert Witness)

In re A.M., 570 S.W.3d 860 (Tex. App.—El Paso 2018, no pet.). (Section 1912 findings not required in a temporary order).

UCCJEA

In re T.M.E., A.J.E., and R.J.E., 565 S.W. 3d 383 (Tex. App.—Texarkana 2018, no pet.);

You can link to the 2019 DFPS case law update here:

<http://texaschildrenscommission.gov/media/84121/2019-case-law-update-bench-book.pdf>