
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

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

C. Attorney Ad Litem Required to Remain on Case

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 2020 Termination Case Law Update was prepared by the DFPS Appellate Unit: Michael D. Becker, Leslie Capace, Caroline Carow, Kellie Starr Price, Jerry L. Reyes, Rebecca L. Safavi, and Eric T. Tai.

The [2020 DFPS Termination Case Law Update](#) is available online.¹⁴

The 2020 update includes the following cases:

APPOINTMENT OF COUNSEL

Burden is on Parent to Prove Indigence

In re S.C., [No. 02-18-00422-CV](#) (Tex. App.—Fort Worth June 13, 2019, pet.denied) (mem. op.)

Mandatory Duty to Admonish Parent Regarding Appointment of Attorney at Every Hearing

In re B.C., [592 S.W.3d 133](#) (Tex. December 20, 2019). *See also In re S.R. Jr.*, [No. 10-19-00235-CV](#) (Tex. App.—Waco December 31, 2019, pet. filed) (mem. op.)

Denial of Appointment of Counsel

In re J.F., II, [589 S.W.3d 325](#) (Tex. App.—Amarillo 2019, no pet.)

COMMENCEMENT OF TRIAL

Failure to Timely Commence

In re A.F., W.J., A.J., and J.J., [No. 02-19-00117-CV](#) (Tex. App.—Fort Worth Sept. 24, 2019, no pet.)

New Judge Does Not Divest Court of Jurisdiction

S.A. v. Texas Dep't of Family and Protective Servs., [No. 03-19-00884-CV](#) (Tex. App.—Austin Apr. 29, 2020, no pet. hist.) (mem. op.)

Court Timely Commenced Trial

In re Z.S., C.S.-T., T.S.-T., T.S.-T., and T.S.-T., [No. 14-19-00891-CV](#), [S.W.3d __](#) (Tex. App.—Houston [14th Dist.] Apr. 28, 2020, no pet. h.)

INTERVENTION UNDER TFC § 102.004

In re M.B., [No. 09-19-00247-CV](#) (Tex. App.—Beaumont Oct. 3, 2019, orig.proceeding) (mem. op.)

PRE-TRIAL MATTERS

Insufficient Evidence of Reasonable Efforts Under 262.201

In re K.L.M., [No. 14-19-00713-CV](#) (Tex. App.—Houston [14th] Nov. 14, 2019, orig. proceeding) (mem. op.)

Guardian Ad Litem for Parent in Termination Case Not Authorized

In re J.P.-L., [592 S.W.3d 559](#) (Tex. App.—Fort Worth, Dec. 19, 2019, pet. denied) (mem. op.)

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.).

TERMINATION GROUNDS

TFC § 161.001(b)(1)(C)

In re B.C.H., [No. 09-18-00437-CV](#) (Tex. App.—Beaumont May 2, 2019, no pet.)

TFC § 161.001(b)(1)(D) and (E)

Scalp Infection

In re I.W., [No. 12-19-00027-CV](#) (Tex. App.—Tyler June 28, 2019, pet. denied) (mem. op.)

Exposing Child to Second-Hand Smoke

In re A.J.S., [No. 13-19-00126-CV](#) (Tex. App.—Corpus Christi Edinburg Aug. 1, 2019, no pet.) (mem. op.)

Health Effects of Drug Use

In re A.G., [No. 14-18-01089-CV](#) (Tex. App.—Houston [14th Dist.] June 6, 2019, pet. denied) (mem. op.)

Failure to Take Responsibility

In re A.S. and S.S., [No. 02-19-00429-CV](#) (Tex. App.—Fort Worth Apr. 30, 2020, no pet.) (mem. op.)

Economic Disadvantage

In re A.F., A.F., and A.F., Jr., [No. 10-19-00335-CV](#) (Tex. App.—Waco Mar. 19, 2020, no pet. h.) (mem. op.)

Children's Improvements

In re A.K.C.K., In re I.G.K., [Nos. 14-19-00549-CV, 14-19-00551-CV](#) (Tex. App.—Houston [14th Dist.] Jan. 7, 2020, no pet.) (mem. op.)

Medical Neglect of Unborn Child

In re B.G.G., a/k/a A.G. and J.G.G., a/k/a J.G., [No. 14-19-00278-CV](#) (Tex. App.—Houston [14th] June 20, 2019 no pet.) (mem. op.)

TFC § 161.001(b)(1)(L)

In re Z.N., No. 19-0590, (Tex. 2020)

TFC § 161.001(b)(1)(N)

No Reasonable Efforts Necessary

In re X.A.S., No. 05-19-01082-CV (Tex. App.—Dallas Mar. 3, 2020, no pet.) (mem. op.)

Safe and Stable Environment

In re F.L.B., A.C.B., J.G.B., and E.B.M., No. 13-19-00319-CV (Tex. App.— Corpus Christi-Edinburg Dec. 5, 2019, no pet.) (mem. op.)

Inability to Provide Care

In re A.H., No. 09-19-00167-CV (Tex. App.—Beaumont Oct. 3, 2019, no pet.) (mem. op.)

Ability to Provide Long-Term Care

In re B.C and P.C., No. 07-19-00098-CV (Tex. App.—Amarillo July 30, 2019, no pet.) (mem. op.)

Significant Contact, Reasonable Efforts, Safe Environment

In re N.A.V., P.A.V., A.J.V., L.V. and J.G., No. 04-19-00646-CV (Tex. App.—San Antonio Mar. 17, 2020, no pet.) (mem. op.)

TFC § 161.001(b)(1)(O)

Specificity of Order

In re A.J.W., J.W.Jr., R.L.A.W., and J.L.W., No. 04-19-00346-CV (Tex. App.—San Antonio Nov. 27, 2019, no pet.) (mem. op.)

In re D.K.J.J., D.K.D.J., D.D.J., Jr., D.Q.D.J., D.K.J.J., and B.B.B., No. 01-18-01081-CV (Tex. App—Houston [1st Dist.] June 13, 2019, pet. denied) (mem. op.); see also *In re S.B.*, No. 07-19-00146-CV (Tex. App.— Amarillo Nov. 5, 2019) (mem. op.)

Affirmative Defense Burden of Proof

In re A.H., F.H., K.H., and C.H., No. 11-19-00028-CV (Tex. App.— Eastland, July 18, 2019, no pet.) (mem. op.)

Evidence Sufficient Where No Service Plan in Record

In re V.A.G., C.M.G., and M.R.G., No. 04-19-00449-CV (Tex. App.—San Antonio Nov. 13, 2019, no pet.) (mem. op.)

TFC § 161.001(b)(1)(R)

In re L.A.J., No. 14-18-01039-CV (Tex. App.—Houston [14th] May 30, 2019, pet. denied) (mem. op.)

TFC § 161.003

In re M.A., [No. 04-19-00648-CV](#) (Tex. App. — San Antonio Feb. 26, 2020, no pet.) (mem. op.)

TRIAL

Trial by Consent

In re C.J.G., [No. 04-19-00237-CV](#) (Tex. App.—San Antonio Oct. 30, 2019, no pet.)

Questions for Jury Improper

In re J.T., [594 S.W.3d 782](#) (Tex. App—Waco 2019, no pet.)

No Right to Self-Representation

In re T.W. and X.W., [No. 10-18-00379-CV](#) (Tex. App.—Waco May 22, 2019, pet. denied) (mem. op.)

Possessory Conservatorship Appointment Must Be Supported by Evidence

In re A.M., [No. 05-19-00412-CV](#) (Tex. App.—Dallas Aug. 29, 2019, no pet.) (mem. op.)

TRE 803(6)

In re E.B. and M.B., [No. 11-19-00001-CV](#) (Tex. App.—Eastland Aug. 22, 2019, no pet.) (mem. op.)

Failure of Order to Comport with Pleadings

In re J.O., [No. 04-19-00381-CV](#) (Tex. App.—San Antonio Dec. 11, 2019, no pet.) (mem. op.)

BEST INTEREST

Desires of the Child

In re Z.H., [No. 14-19-00061-CV](#) (Tex. App.—Houston [14th Dist.] June 27, 2019, no pet.)

Emotional and Physical Needs and Emotional and Physical Danger

Testimony from Children Balanced against Mother's Actions

In re K.H., Q.H., Q.H., and S.R., [No. 02-19-00247-CV](#) (Tex. App.—Fort Worth Nov. 22, 2019, no pet.) (mem. op.)

Parents Minimizing Medical Needs

In re A.D.K., C.D.K., and J.Z.K., [No. 06-19-00019-CV](#) (Tex. App.—Texarkana May 15, 2019, pet. denied) (mem. op.)

Parenting Abilities

In re E.A.R., a Child, [583 S.W.3d 898](#) (Tex. App.—El Paso 2019, pet. denied)

Other Considerations

Threats to Return to Unsafe Location

In re F.R. aka F.R. aka F.R., A.L.R., I.R.L. aka I.R.L., [No. 07-19-00215-CV](#) (Tex. App.—Amarillo Nov. 4, 2019, pet. denied)

Differentiating Parents

In re A.M. and A.M., [No. 06-19-00037-CV](#) (Tex. App.—Texarkana July 25, 2019, no pet.) (mem. op.)

Parentification

In re E.O., [No. 01-19-00207-CV](#) (Tex. App.—Houston [1st Dist.] Aug. 27, 2019, no pet.) (mem. op.)

POST-TRIAL

In re E.O., [No. 01-19-00207-CV](#) (Tex. App.—Houston [1st Dist.] Aug. 27, 2019, no pet.) (mem. op.)

INDIAN CHILD WELFARE ACT

Failure to Comply with Expert Witness Requirement

In re D.L.N.G., [No. 05-19-00206-CV](#) (Tex. App.—Dallas July 17, 2019, no pet.) (mem. op.)

Strict Adherence to Notice Provisions Required

In re A.E., [No. 02-19-00173-CV](#) (Tex. App.—Fort Worth Oct. 1, 2019, pet. denied) (mem. op.)

No Error in Refusal to Transfer to Tribal Court

In re Navajo Nation, [587 S.W.3d 884](#), (Tex. App.—Amarillo Sept. 10, 2019, no pet.)

Notice Provisions

In re S.J.H., [594 S.W.3d 682](#) (Tex. App.—El Paso 2019, no pet.)

UCCJEA

Substantial Compliance

J.W. v. Texas Dep't of Family & Protective Servs., [No. 03-19-00260-CV](#) (Tex. App.—Austin Aug. 20, 2019, pet. denied) (mem. op.)

