
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**

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\(2\)](#), 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\(2\)](#).

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 2016 update includes the following cases:

JURISDICTION

In re J.P. and J.E.B., [No. 04-15-00145-CV](#) (Tex. App.—San Antonio July 29, 2015, no pet.) (mem. op.)

PRE-TRIAL MATTERS

Due Process: Attendance at Trial In re D.W., [No. 01-15-01045-CV](#) (Tex. App.—Houston [1st Dist.] May 17, 2016, no pet.)

Right to Counsel—No Opportunity for Trial Court to Admonish Parents E.T. and T.T. v. Tex. Dep't of Family and Protective Servs., [No. 03-15-00274-CV](#) (Tex. App.—Austin Sept. 29, 2015, no pet.) (mem. op.)

Denial of Bench Warrant In re K.D., [No. 11-14-00326-CV](#) (Tex. App.—Eastland May 15, 2015, no pet.) (mem. op.)

Monitored Return: Oral Rendition Sufficient In re A.H.J., A.H., and A.H., [No. 05-15-00501-CV](#) (Tex. App.—Dallas Oct. 8, 2015, pet. denied) (mem. p.)

TRIAL PRACTICE

Parents Entitled to Present Rebuttal Evidence In re S.F., [No. 11-15-00055-CV](#) (Tex. App.—Eastland Sept. 10, 2015, no pet.) (mem. op.)

Non-Parent Does not Have Burden of Proof In re R.A., [No. 10-14-00352-CV](#) (Tex. App.—Waco June 11, 2015, no pet.) (mem. op.)

EVIDENCE

Admissibility of Child Hearsay Statements In re E.M. and J.M., [No. 10-14-00313-CV](#) (Tex. App.—Waco May 28, 2015, pet. denied)

Res Judicata Inapplicable Where Suits Severed In re D.L.W., [No. 07-15-00243-CV](#) (Tex. App.—Amarillo Dec. 4, 2015, no pet.) (mem. op.)

Rule of Optional Completeness — Error in the Admission of the Entire Report In re C.C., M.C., L.O., and H.P., [476 S.W.3d 632](#) (Tex. App.—Amarillo 2015, no pet.)

No Spousal Privilege Regarding Child Abuse or Neglect In re L.E.S., [471 S.W.3d 915](#) (Tex. App.—Texarkana 2015, no pet.)

TERMINATION GROUNDS

[TFC §§ 161.001\(b\)\(1\)\(D\) and \(E\)](#) In re R.S. and A.S., [No. 02-15-00137-CV](#) (Tex. App.—Fort Worth Oct. 1, 2015, no pet.) (mem. op.)

[TFC §§ 161.001\(b\)\(1\)\(E\) i.](#) Failure to Protect Non-Biological Child Before Birth of Subject Child Supports, In re J.S., [No. 12-15-00053-CV](#) (Tex. App.—Tyler Aug. 12, 2015, no pet.) (mem. op.)

Leaving Children with Caretaker Known to be Unsafe In re L.D.F., [No. 04-15-00399-CV](#) (Tex. App.—San Antonio Dec. 9, 2015, no pet.) (mem. op.)

Scienter not Required In re J.N.G., [No. 14-15-00389-CV](#) (Tex. App.—Houston [14th Dist.] Sept. 24, 2015, no pet.) (mem. op.)

Drugs in Child’s Body Demonstrates Actual Injury In re S.H., [No. 07-15-00177-CV](#) (Tex. App.—Amarillo Sept. 16, 2015, no pet.) (mem. op.)

Medical Neglect of Autistic Child In re K.S., [No. 05-15-01294-CV](#) (Tex. App.—Dallas Apr. 21, 2016, pet. denied) (mem. op.)

Frequent Incarcerations and Knowledge of Drug Use In re J.B., [No. 06-15-00040-CV](#) (Tex. App.—Texarkana Jan. 22, 2016, no pet.) (mem. op.)

[TFC § 161.001\(b\)\(1\)\(F\)](#) In re Z.W.M., [No. 07-15-00316-CV](#) (Tex. App.—Amarillo Feb. 9, 2016, no pet.) (mem. op.)

[TFC § 161.001\(b\)\(1\)\(L\)](#) In re W.J.B. and In re A.L.F., D.P.F.-A., E.E.F., B.E.H., Jr., and R.F.B., [Nos. 01-15-00802-CV, 01-15-00803-CV](#) (Tex. App.—Houston [1st Dist.] Mar. 31, 2016, no pet.) (mem. op.)

[TFC § 161.001\(b\)\(1\)\(O\) i.](#) Excuses Insufficient In re A.M.M., [No. 04-15-00638-CV](#) (Tex. App.—San Antonio Apr. 6, 2016, no pet.) (mem. op.)

Date for Compliance In re B.S., [No. 13-15-00281-CV](#) (Tex. App.—Corpus Christi Nov. 12, 2015, no pet.) (mem. op.)

Prior Removal for Abuse In re J.H., [No. 09-15-00171-CV](#) (Tex. App.—Beaumont Aug. 31, 2015, no pet.) (mem. op.)

Removal of the Children from Non-Parent In re A.L.W. and A.N.W., [No. 01-14-00805-CV](#) (Tex. App.—Houston [1st Dist.] July 14, 2015, no pet.) (mem. op.)

[TFC §§ 161.001\(b\)\(1\)\(Q\) i.](#) Mere Conviction of Strict-Liability Offense Does Not Prove Scienter Element In re A.R., [No. 06-15-00056-CV](#) (Tex. App.—Texarkana Nov. 9, 2015, no pet.)

Scienter Established In re A.R., L.R. and R.Q. Jr., [No. 09-15-00473-CV](#) (Tex. App.—Beaumont April 14, 2016, no pet.) (mem. op.)

Inability to Provide Safe Environment In re S.R., [No. 13-15-00114-CV](#) (Tex. App.—Corpus Christi June 11, 2015, no pet.) (mem. op.)

Ability to Care During Imprisonment In re A.G. and A.G., [No. 05-15-01298-CV](#) (Tex. App.—Dallas Mar. 1, 2016, no pet.) (mem. op.)

[TFC § 161.001\(b\)\(1\)\(R\)](#) In re L.G.R., [No. 14-16-00047-CV](#) (Tex. App.—Houston [14th] June 7, 2016, no pet. h)

BEST INTEREST AND RELINQUISHMENT OF PARENTAL RIGHTS

[TFC §161.211\(c\)](#) Bars Appellate Review of Best Interest Finding In re J.H. and J.H., [486 S.W. 3d 190](#) (Tex. App.—Dallas 2016, no pet.)

Affidavit of Relinquishment Is Sufficient Evidence of Best Interest In re A.L.H., [468 S.W.3d 738](#) (Tex. App.—Houston [14th Dist.] 2015, no pet.)

Affidavit of Relinquishment Alone is Insufficient to Support Best Interest Finding In re K.D., [471 S.W.3d 147](#) (Tex. App.—Texarkana 2015, no pet.)

MSA Supports the Best Interest Finding In re J.R.W. and J.L.W, [No. 05-15-00493-CV](#) (Tex. App.—Dallas Aug. 27, 2015, pet. denied) (mem. op.)

MSA Insufficient Evidence of Best Interest In re K.D., [471 S.W.3d 147](#) (Tex. App.—Texarkana 2015, no pet.)

BEST INTEREST – HOLLEY FACTORS

Children’s Desires to Stay with Mother Did Not Outweigh Other Evidence Supporting Determination In re A.R.M., [No. 04-15-00314-CV](#) (Tex. App.—San Antonio Nov. 4, 2015, no pet.) (mem.op.)

Child’s Fear of Father Relevant in Determining Her Desires In re A.K, [487 S.W. 3d 679](#) (Tex. App.—San Antonio 2016, no pet.)

Emotional and Physical Needs and Danger—Failure to Complete Services In re K.N.M.M., [No. 07-15-00080-CV](#) (Tex. App.—Amarillo July 13, 2015, no pet.) (mem. op.)

Programs Available—Completion of a Service Plan Does Not Guarantee Reunification J.R. v. Tex. Dep’t of Family and Protective Servs., [No. 03-15-00108-CV](#) (Tex. App.—Austin July 30, 2015, pet. denied) (mem. op.)

The Stability of the Home or Proposed Placement—The Same Home Does Not Equal A Stable Home In re K.D., [471 S.W.3d 147](#) (Tex. App.—Texarkana 2015, no pet.)

ICWA

What Constitutes an “Indian Child” for Purposes of ICWA? In re T.R., [No. 04-15-00639-CV](#) (Tex. App.—San Antonio Apr. 4, 2016, no pet.)

ICWA Notice Requirement Triggered In re D.D., [No. 12-15-00192-CV](#) (Tex. App.—Tyler Feb. 29, 2016, no pet.) (mem. op.)

[25 U.S.C.A. § 1912\(f\)](#) Requires Testimony of a Qualified Expert Witness In re V.L.R., [No. 08-15-00250-CV](#) (Tex. App.—El Paso Nov. 18, 2015, no pet.)

Beyond a Reasonable Doubt Standard in an ICWA Case Limited to [25 U.S.C.A. § 1912\(f\)](#) In re G.C., M.C., and H.C., [No. 10-15-00128-CV](#) (Tex. App.—Waco Aug. 13, 2015, no pet.) (mem. op.)

JURY CHARGE

Broad Form Submission of Termination Question In re E.G., [No. 14-14-00967-CV](#) (Tex. App.—Houston [14th Dist.] Mar. 22, 2016, no pet.) (mem. op.)

POST-TRIAL MATTERS

Oral Rendition is Sufficient to Start TFC §102.006(c) Timeline In re M.P., [No. 02-14-00032-CV](#) (Tex. App.—Fort Worth Aug. 7, 2014, no pet.) (mem. op.)

Associate Judge’s Report and Order is a Final, Appealable Order In re E.K.C., [486 S.W. 3d 614](#) (Tex. App.—San Antonio 2016, no pet.)

APPEALS

Appointment of Counsel Through Final Appeal In re P.M., [59 Tex. Sup. J. 582](#) (Tex. Apr. 1, 2016) (per curiam) (not yet released for publication)

You can link to the 2016 case law update here:

<http://texaschildrenscommission.gov/media/71845/Case-Law-Update-2016-Final.pdf>