



TEXAS CENTER
FOR THE JUDICIARY

Child Welfare Case Law Update
Justice Michael Massengale
First Court of Appeals
2016 Child Welfare Judicial Conference
November 15, 2016, Austin

M.D. v. Abbott

- Lawsuit filed pursuant to 42 U.S.C. § 1983
- Alleges management of DFPS violates children's 14th Amendment rights



TEXAS
Department of Family
and Protective Services

***M.D. v. Abbott*: overview of Texas foster care**

- TMC vs. PMC
- Various residential settings for PMC children



***M.D. v. Abbott*: TMC vs. PMC**

- Different court and DFPS deadlines
- Attorneys ad litem
- CASAs
- Caseworker visits
- “the State effectively deprives many PMC children of an individual advocate”



***M.D. v. Abbott*: residential settings for PMC**

- Foster family homes (1-6 children)
 - Kinship placements
- Foster group homes (7-12 children)
- General residential operations (>12 children)
 - Residential treatment centers



***M.D. v. Abbott*: general class + 2 subclasses**

- General class: all children now, or in the future, in PMC
- “Licensed Foster Care” subclass
- “Foster Group Home” subclass



***M.D. v. Abbott*: general class findings**

- DFPS is deliberately indifferent toward caseload levels
- DFPS substantially departs from professional judgment toward primary conservatorship caseworkers



***M.D. v. Abbott*: “Licensed Foster Care” findings**

- Insufficient oversight
- State maintains an inadequate placement array



M.D. v. Abbott: “Foster Group Home” findings

- DFPS is deliberately indifferent toward foster group homes
- DFPS substantially departs from professional judgment toward foster group homes



M.D. v. Abbott: remedy

- injunction
- special master
- goals



In re P.M.

2016 WL 1274748 (Tex. Apr. 1, 2016).

Issue: Indigent parent's right to counsel includes proceedings in Supreme Court of Texas.



In re A.M.

495 S.W.3d 573 (Tex. App.—
Houston [1st Dist.] 2016, pet. filed).

Issue: Appointed counsel filing
Anders brief not permitted to
withdraw.

***In re P. R. J. E.***

2016 WL 3901911 (Tex. App.—
Houston [1st Dist.] July 14, 2016,
pet. filed).

Issue: Biological father deprived
due process by failure to serve
termination petition.



Terminating alleged biological father (§ 161.002)

(c-1) The termination of the rights of an alleged father under Subsection (b)(2) or (3) rendered on or after January 1, 2008, does not require personal service of citation or citation by publication on the alleged father, and there is no requirement to identify or locate an alleged father who has not registered with the paternity registry under Chapter 160.



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NOTICE OF INTENT TO CLAIM PATERNITY

INSTRUCTIONS/INFORMATION

1. Carefully read the information provided on the reverse of this form. The information provided is not designed to be legal advice. Questions concerning paternity, presumptions of paternity, or rights and responsibilities of a parent should be directed to an attorney.
2. Please type or print neatly.
3. All information in Part 1 concerning the father is required. Do not leave any of these items blank.
4. Complete Part 2 and Part 3 to the best of your ability. If any item is unknown, leave the space blank.
5. The child's name, date of birth, place of birth, and mother's maiden name are very critical to linking the Notice of Intent to Claim Paternity with an actual child. The more complete the information you provide, the more effective the paternity registry can be.

Part 1 MAN'S INFORMATION TO BE INCLUDED IN PATERNITY REGISTRY:

1. FULL NAME FIRST		MIDDLE	LAST
2. DATE OF BIRTH (MM/DD/YYYY)	3. SOCIAL SECURITY NUMBER		4. DRIVER'S LICENSE NUMBER STATE NUMBER



Sufficiency of relinquishment – § 161.001(b)(1)(K)

Affidavit alone sufficient evidence of best interest?

- **YES:** *In re A.L.H.*, 468 S.W.3d 738, 742 (Tex. App.—Houston [14th Dist.] 2015, no pet.)
- **NO:** *In re K.D.*, 471 S.W.3d 147 (Tex. App.—Texarkana 2015, no pet.)



Sufficiency of relinquishment – § 161.211(c)

A direct or collateral attack on an order terminating parental rights based on an unrevoked affidavit of relinquishment of parental rights or affidavit of waiver of interest in a child is limited to issues relating to fraud, duress, or coercion in the execution of the affidavit.

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Sufficiency of relinquishment – § 161.211(c)

Challenge to best interest element *barred* on appeal:

- *In re J.H.*, 486 S.W.3d 190, 198 (Tex. App.—Dallas 2016, no pet.)
- *In re R.W.*, 11-15-00234-CV, 2016 WL 1729647, at *2 (Tex. App.—Eastland Mar. 22, 2016, no pet.)



Sufficiency of relinquishment – § 161.211(c)

Challenge to best interest element *not barred* on appeal:

- *In re K.S.L.*, 04-16-00020-CV, 2016 WL 3727952, at *3 (Tex. App.—San Antonio July 6, 2016, no pet.) (2-1 decision)