

TERMINATION CASE LAW UPDATE 2025

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I. PRE-TRIAL ISSUES

A. TFC § 263.401(b-3) – SUFFICIENT PROOF OF “GOOD FAITH EFFORT”

On appeal, Mother challenged the trial court’s denial of her request to extend the court’s jurisdiction pursuant to TFC § 263.401(b-3).

TFC § 263.401(a) provides that trial must commence no later than the first Monday after the first anniversary of the date the court rendered a temporary order appointing the Department as temporary managing conservator. TFC § 263.401(b) permits the trial court to extend the dismissal deadline if the movant shows that “extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child.” TFC § 263.401(b-3) provides that the trial court must grant an extension under Subsection (b) if: (1) the parent has made a good faith effort to successfully complete the service plan but needs additional time; and (2) on completion of the service plan the trial court intends to return the child to the parent.

At a May 28, 2024 permanency hearing, the caseworker reported that Mother had completed a number of services, including parenting classes, a psychological evaluation, a psychosocial evaluation, a drug and alcohol assessment, domestic violence counseling, tested negative on random drug screenings, had encouraging visits with the child, and remained engaged in counseling services. Mother and Father were living in appropriate and stable housing, and Mother was employed.

The caseworker reported that Mother lacked a mental health assessment and needed to engage in a second drug and alcohol assessment—due to Mother’s request to change service providers—and substance abuse counseling. The Department’s goal was family reunification, and the trial court expressed a desire and likelihood that the child would be returned to Mother’s care.

On June 15, 2024, Father was arrested for assaulting Mother and an emergency protective order was issued.

At the August 27, 2024 trial setting, Mother requested an extension of the dismissal deadline. She informed the trial court that following her altercation with Father, she fled to Oklahoma to live with her mother, and this “caused a disruption in her services and an inability ... to complete her service plan [requirements].” The trial court denied Mother’s request and found there were no extraordinary circumstances pursuant to TFC § 263.401(b) because Mother had at least nine months to complete her service plan.

At trial, the Department’s caseworker testified that Mother remained in contact with her counselor and was engaged with MHMR in Oklahoma but had not maintained steady employment or housing, did not complete her substance abuse course or mental health assessment before moving, and did not regularly exercise virtual visits with the child. The caseworker testified the child would not be safe in Mother’s current home environment but admitted she had not visited the home, which was no fault of Mother’s. Mother testified she sought mental health services in Oklahoma and told them she needed recommendations for services; however, MHMR told Mother they

provided emergency intervention rather than recommendations. Mother further testified she never refused visits and participated in video chats with the child when offered. Mother reurged her request for an extension during the Department's case-in-chief and at the close of evidence. Both requests were denied.

On appeal, relying on TFC § 263.401(b-3), Mother argued that she made a good faith effort to complete her service plan requirements.

The Court of Appeals noted that the phrase "good faith effort" is also found in TFC § 161.001(d) regarding a parent's compliance with their service plan, and interpretations of the phrase pursuant to that subsection are relevant for the purposes of § 263.401(b-3). However, the Court stated that, while "good faith effort" necessarily entails a lack of culpability for a parent's noncompliance, the Court found it significant that, unlike TFC § 161.001(d), TFC § 263.401(b-3) does not have a "no-fault" requirement on the part of the parent. The Court pointed out that it and its sister courts have routinely found that "a parent's obstinance, apathy, intentional delay, or outright refusal to engage in services is the antithesis" of a "good faith effort". However, citing to case law, the Court stated that a parent's compliance with his or her service plan "'as far as [they are] able to under the circumstances' will generally constitute 'good faith efforts.'"

Turning to the facts of the case, the Court noted that, while Mother moved from Texas to Oklahoma during the pendency of the case, she did so following Father's assault of her and to avoid future physical altercations with him and had already complied with most of her service

plan requirements. The Department described the incident as "a spectacular physical blow-up" where Father "brutally assaulted" Mother. The Court stated that "this attack alone could arguably have been deemed an extraordinary circumstance in and of itself." Citing to *In re R.J.G.*, 681 S.W.3d 370 (Tex. 2023), the Court further stated that, while in Oklahoma, based on her counselor's and caseworker's direction, Mother located local mental health services—"just not in the way that suited the Department." Next, the Court pointed out that the caseworker "conceded that she was not 'able to give a judgment on' the safety and stability of [Mother's] current living arrangement because she 'was giving [Mother] some time ... to kind of get settled.'"

The Court stated that Mother's situation was "not a typical scenario in which a parent chose and intended not to comply with their service plan" and credited Mother's "genuine attempts" and "affirmative steps to comply with the provisions of her court-ordered service plan pursuant to Section 263.401(b-3)(1)." While declining to hold that "parental fault" is a relevant consideration under Subsection (b-3), the Court further stated that Mother cannot be said to have created the circumstances that necessitated her extension requests. Accordingly, the Court held that "the uncontroverted evidence shows that [Mother] made a 'good faith effort' to comply with the requirements of her service plan and needed additional time to do so."

The Court further emphasized that the trial court "expressed a clear intention to return [the child] to [Mother] upon [Mother's] completion of her service plan requirements" and found that Subsection (b-3)(2) had been met. As such, the Court of Appeals held that, under

TFC § 263.401(b-3), the trial court was “required” to find that extraordinary circumstances existed for the child to remain in the temporary custody of the Department and its failure to do so was an abuse of discretion. The Court of Appeals reversed the trial court’s order terminating Mother’s parental rights and remanded for further proceedings. *In re X.M.B.E.*, 706 S.W.3d 714 (Tex. App.—Eastland 2025, no pet.).

B. VENUE AND TRANSFER – TFC § 103.001

In a private custody case filed by Father in Erath County, Mother argued the trial court erred in denying her motion to transfer venue to McCulloch County under TFC § 103.001. TFC § 103.001(a) provides, *inter alia*, that a suit affecting the parent-child relationship must be filed in the county where the child resides. TFC § 103.001(c)(2) states that when the parents of the child do not reside in the same county and if a managing conservator has not been appointed, then the child resides in the county where the parent having actual care, control, and possession of the child resides.

At the trial court’s hearing on the motion, Mother asserted that Erath County was not the county of proper venue because Mother was the parent with actual care, control, and possession of the child, and she and the child had moved to McCulloch County two days before Father filed suit. Both Mother and Father testified they had lived together in Erath County for approximately a year, during which time the child was born. Father testified he initially took the child with him to his parents’ house but returned the child to Mother after she threatened him. Father stated he was unaware Mother intended to leave the county. Mother

testified she and the child moved to her parents’ home in McCulloch County on July 18, 2022. In response, Father filed suit on July 20, 2022. After testimony and arguments, the trial court orally denied Mother’s motion to transfer venue.

On appeal, Mother argued the trial court erroneously applied TFC § 103.001 by (a) imposing a time requirement in determining she had not lived in McCulloch County long enough to conclusively establish permanent residency, (b) rejecting that she had a “fixed place of abode” in McCulloch County, and (c) determining that Father resided in Erath County when he also recently moved to his parents’ home there and had a long-term plan to move to Pecos County.

The Court of Appeals acknowledged that TFC § 103.001 does not expressly provide a time frame for purposes of determining “residency” and agreed it is inappropriate to infer one when it is not included in the plain language of the statute. However, the Court cited to *Snyder v. Pitts*, 150 Tex. 407, 241 S.W.2d 136, 140 (1951), in which the Texas Supreme Court held that the elements of residency under the general civil venue statute include “whether the residence is (1) a fixed place of abode within the possession of the party, (2) occupied or *intended to be occupied consistently over a substantial period of time*, and (3) *permanent* rather than temporary”.

Further, the Court pointed out that in determining residency under the Family Code, other Texas courts have held that the element of permanency is necessary and must exist before a party can be considered a resident of a county. The Court went on to say, “[t]hus, we conclude, as some of our sister courts have,

that to establish residency in another county under Section 103.001, a party must show ‘an *intention* to establish a *permanent* domicile or home, and the intention must be accompanied by some act done in the execution of the intent.’” The Court agreed with its sister courts that “intention” may be shown by a party’s presence in the county for an extended period or by some agreement by the party with the right to control the child’s residence for the child to stay in the new county for an extended period, and that such intention must be established at the time the original suit is filed.

Overruling Mother’s assertion that she “resided” in McCulloch County when the original suit was filed, the Court determined the record did not show Mother established residency as “there [was] no evidence that Mother (1) paid any rent to her parents, (2) paid for any utilities, (3) sought any form of employment in McCulloch County, or (4) had any right of possession to her parents’ home in McCulloch County.” Because Mother failed to show she intended to remain in McCulloch County for an extended period or made any arrangements to ensure she and the child would remain in McCulloch County for any extended period, the Court held there existed no basis to transfer Father’s suit under TFC § 103.001. The Court concluded that “simply staying with her parents in McCulloch County for two days before the [suit] was filed is not enough to establish she had a ‘fixed place of abode’” sufficient to establish permanent residency.

Finally, in rejecting Mother’s assertion that Father failed to establish that venue was proper in Erath County, the Court reiterated that “it is Mother’s county of residence—not Father’s—that is challenged and is the primary focus of this venue determination” and noted that

Father resided in Erath County when he filed suit and remained in Erath County throughout the pendency of the proceedings.

Accordingly, the Court concluded the trial court did not err in determining that both Father and Mother “resided” in Erath County at the time the suit was filed. *In re B.G.J.*, 702 S.W.3d 886 (Tex. App—Eastland 2024, no pet.).

C. TFC § 263.401 - DISMISSAL DEADLINE INAPPLICABLE TO PRIVATE INTERVENTIONS

On appeal, Mother and Father argued that the trial court’s order terminating their parental rights and appointing Intervenor as permanent managing conservators of the children was void because the trial on the merits did not begin until after the Department’s statutory dismissal deadline.

The Court of Appeals noted that in a parental rights termination case brought by the Department, the trial on the merits must commence by the first Monday after the first anniversary of the date the court renders a temporary order appointing the Department as temporary managing conservator of the child. TFC § 263.401(a). The trial court, however, may grant a one-time extension and retain the suit on the court’s docket for a period not to exceed 180 days if extraordinary circumstances necessitate the child remaining in the Department’s temporary managing conservatorship and continuing the Department’s appointment as temporary managing conservator is in the best interest of the child. TFC § 263.401(b). Thereafter, if the trial court does not commence the trial before the new dismissal date, the court’s jurisdiction

over the Department's suit is terminated, and the suit is automatically dismissed. TFC § 263.401(c). In contrast, the Court observed "the same is not true" for individuals who have intervened in a Department suit and seek affirmative relief.

In this case, the Department filed an original petition seeking termination of Mother's and Father's parental rights on December 29, 2020, and the trial court rendered an order appointing the Department as the children's temporary managing conservator that same day and calculated the original dismissal deadline as January 3, 2022. Prior to this date, Mother's attorney filed a motion to extend the dismissal deadline, which the trial court granted, and determined the new dismissal date to be July 2, 2022. On March 3, 2022, Intervenors filed a Petition in Intervention, requesting that Mother and Father's parental rights be terminated and that they be appointed the children's permanent managing conservators. The Court characterized their pleading as a request for affirmative relief independent of the Department's cause of action.

The Court concluded that while the Department's suit was dismissed on July 2, 2022, the independent pleading for affirmative relief filed by Intervenors survived the Department's dismissal because the trial court initially had subject matter jurisdiction over the Department's suit. The Court pointed out that as private individuals, the statutory jurisdictional deadline applicable to Department-initiated termination cases did not apply to Intervenors' claims. Accordingly, it held that the trial court retained jurisdiction to enter an order on September 20, 2023, terminating the parental rights of Mother and Farther and appointing Intervenors as

managing conservators of the children. *In re T.S.*, No. 10-23-00311-CV (Tex. App.—Waco July 11, 2024, pet. denied) (mem. op. on reh'g).

D. TFC § 263.401 - COMMENCEMENT WHEN DEPARTMENT IS PERMANENT MANAGING CONSERVATOR

The Department filed its *Original Petition for Protection of a Child, Conservatorship, and for Termination* on October 29, 2021, which included the Department's intent to terminate Father's parental rights. The trial convened on September 7, 2022 and concluded on January 19, 2023. On January 20, 2023, the Department filed a *Notice of Nonsuit as to Father*, and the trial court signed an order granting the Department's nonsuit without prejudice. On February 28, 2023, the trial court signed an order terminating Mother's parental rights to the child and appointing the Department as the child's permanent managing conservator.

On March 7, 2023, the Department filed a new petition to terminate Father's parental rights. After a trial on March 11, 2024, the trial court signed a final order terminating Father's parental rights to the child. On appeal, Father argued, in part, that the trial court lost jurisdiction over him when the case commenced twenty-seven months after the trial court granted the Department temporary managing conservatorship of the child.

The Court of Appeals observed that TFC § 263.401 pronounces the time within which a termination must be commenced when "the date the court rendered a temporary order appointing the department as *temporary managing conservator....*" but says nothing of

a situation where the Department holds the position of a *permanent* managing conservator. The Court interpreted TFC § 263.401 as excluding circumstances where the Department acts as the child's permanent managing conservator and concluded the several-year delay between the appointment of the Department as the child's permanent managing conservator and termination of Father's parental rights did not result in the trial court losing jurisdiction to act.

In overruling Father's issue, the Appellate Court observed that the clerk's record indicated that the Department had previously been appointed the child's permanent managing conservator when Mother's rights were terminated as to the child, and the appointment occurred before the filing of the new petition to terminate Father's parental rights. The Court also observed that the reporter's record showed that on March 11, 2024, when the trial court terminated Father's parental rights, it reiterated that the Department "is already the permanent managing conservator of [the child]." Affirmed. *In re A.S.*, No. 09-24-00116-CV (Tex. App.—Beaumont Sept. 19, 2024, pet. denied.) (mem. op.).

E. TFC § 263.4011 - DEADLINE NOT JURISDICTIONAL

Mother argued that because the trial court failed to enter a final order until over a year after trial commenced, it lacked jurisdiction to enter the order pursuant to TFC § 263.4011. The Court of Appeals disagreed.

The Court concluded that TFC § 263.4011(a)'s requirement to render a final order "not later than the 90th day after trial commences" is not

jurisdictional. The Court noted that in construing statutes, we "presume that statutory requirements are not jurisdictional absent 'clear contrary legislative intent'" and nothing in the statute indicates a legislative intent to impose a limit on the trial court's jurisdiction.

Specifically, the Court pointed to TFC § 263.4011(d), which provides that a party may file a mandamus proceeding if the trial court fails to render a final order within the time required by Subsection (a). The Court reasoned that by authorizing parties to file a mandamus proceeding in Subsection (d), "the Legislature contemplated that a court of appeals may enter an order directing the trial court to issue the final order that the trial court failed to enter within the time limit prescribed by subsection (a)." The Court continued, "It would make no sense for an appellate court to compel a trial court to enter an order that the trial court has no jurisdiction to enter." Accordingly, the Court concluded that the Legislature did not intend for the deadline in Subsection (a) to be jurisdictional and, as such, Mother was required to raise the issue in the trial court, which she failed to do. Therefore, the Court determined Mother waived the issue. *In re G.L.J.*, No. 05-23-01296-CV (Tex. App.—Dallas May 24, 2024, no pet.) (mem. op.).

II. TRIAL ISSUES

A. NO ABUSE OF DISCRETION EVEN WHEN GRANTED RELIEF NOT PLED

The Department pleaded for termination of Mother's and Father's parental rights. At the final hearing, the Department did not seek termination of the parents' rights; instead, the Department, the child's attorney, and the

guardian ad litem recommended that the trial court permanently place the child with Father in Boston. The child's attorney ad litem reported that the child had expressed a desire to live with Father and have visitation with Mother. The trial court ruled orally that termination was not appropriate and stated, "I think it's more like treating this as a modification, so I think in the best interest of the child it would be best to try living with [F]ather". The trial court then appointed Mother and Father as joint managing conservators of the child, with Father having certain exclusive rights.

On appeal, Mother argued that the trial court abused its discretion by appointing Mother and Father as joint managing conservators when such relief was not requested by the Department or any other party, and the issue was not tried by consent. She argued that the only relief sought was termination of Mother's and Father's parental rights, and upon denying this relief, the trial court could not make conservatorship determinations without violating her right to due process.

The Court of Appeals disagreed. The Court noted that TFC § 161.205 provides that in parental termination cases, "if the court does not order termination of the parent-child relationship, the court shall: (1) deny the petition; or (2) render any order in the best interest of the child." The Court further noted that Texas courts have routinely affirmed trial court orders denying termination that also made conservatorship determinations. The Court pointed out that TFC § 153.131(a) requires the trial court to appoint both parents as joint managing conservators of the child unless such appointment would not be in the child's best interest because it would

significantly impair the child's physical health or emotional development.

The Court then held the following: "Thus, given (1) the Department's clear reunification goals, (2) its pleading for the trial court to consider custody issues, (3) TFC § 161.205's mandate for the trial court to 'render any order' in [the child's] best interest, (4) the requirement that parents be named joint managing conservators unless it is not in the child's best interest, and (5) the wide latitude given to trial courts to make custody determinations, we hold that the trial court did not abuse its discretion and that Mother's due-process rights were not violated when it named the parents joint managing conservators of [the child]." *In re S.I.*, No. 02-24-00109-CV (Tex. App.—Fort Worth Aug. 29, 2024, no pet.) (mem. op.).

B. ARBITRARY TIME LIMITS DURING TRIAL PREVENTED EFFECTIVE PRESENTATION OF CASE

The case proceeded to a jury trial in November 2023. Seven parties participated in the trial. At the pre-trial conference, the trial court informed the parties that the three days allocated for trial "gets divided by y'all" with each party receiving "about three and a half hours total."

Before the parties began their opening statements, the trial court stated that "whatever time" each party took for their opening statement would be deducted from "your three hours and 15 minutes." The jury heard testimony from 12 witnesses.

The Department began presenting its witnesses, starting with Mother. After

Mother's testimony, the trial court recapped everyone's remaining time; Mother had "two hours, 45 minutes and 51 seconds" remaining. The trial court again recapped everyone's remaining time after the Department examined its second witness, informing Mother that she had "two hours, 20 minutes, and 44 seconds" remaining.

On the second day of trial, the Department was examining its seventh witness when the trial court recapped the parties' remaining time. After stating that Mother had "42 minutes and 49 seconds remaining," Mother's counsel objected on the basis that it had not put on its case and likely would be unable to do so in forty-five minutes. After the second day's proceedings, the trial court informed the parties of their remaining allocated time—Mother had 24 minutes remaining.

At the beginning of the third day of trial, Mother's counsel asked for additional time to present Mother's case-in-chief. The trial court denied Mother's request.

The trial court permitted Mother's counsel to make an offer of proof concerning three witnesses she could not question, as she had exhausted her allotted time. After the offer of proof, the trial court subsequently gave Mother's counsel an additional fifteen minutes for each of the three witnesses.

Among Mother's issues on appeal was her contention that she was denied due process because the trial court's timekeeping decisions prevented her from fully presenting her case and inhibited her ability to cross-examine witnesses effectively.

The Court of Appeals first concluded that Mother's fundamental liberty interest in maintaining custody and control of the children, the risk of permanent loss of the parent-child relationship, and Mother's and the children's interests in a just and accurate decision weighed heavily in favor of finding that Mother was denied adequate constitutional safeguards "via arbitrary time limitations imposed in an arbitrary manner."

In examining the Department's interest in the challenged proceeding, the Appellate Court noted that all seven parties received the same allotted time, but only Mother was defending against allegations that her parental rights to the children should be terminated. Further, the Court observed that the trial court's repeated enforcement of the time limits over Mother's objections prevented Mother's counsel from effectively presenting Mother's case, and although Mother was permitted additional time to question three witnesses, the record shows she was not given enough time to elicit the evidence she referenced in her offers of proof.

The Court of Appeals also concluded that the trial court's "arbitrary and unclear time limitations" posed a significant and "unacceptable" risk of erroneously depriving Mother of her parental rights.

Finally, the Court determined Mother's denial of her due process rights constituted harmful error. It concluded that "it would have benefited the jury to hear additional evidence regarding the care Mother had been providing [the children] and the care she planned to provide them in the future" and would have permitted the jury to "fully evaluate the living arrangements available to [the children] and determine which arrangement best served [the

children’s] best interests,” but due to the trial court’s imposition of the time limits, “Mother’s counsel was prevented from eliciting testimony on these points.”

The Court of Appeals concluded Mother was denied procedural due process, reversed the trial court’s final decree, and remanded the case for further proceedings. *In re I.S. and X.S. a/k/a X.R.*, 699 S.W.3d 610 (Tex. App.—Houston [14th Dist.] 2024, no pet.), reh’g denied (Oct. 31, 2024).

C. TESTIMONY OF UNDISCLOSED WITNESS WAS HARMLESS

TEX. R. CIV. P. 193.6 provides, in pertinent part, that a party who fails to make a discovery response, including a required disclosure, in a timely manner may not offer the testimony of a witness (other than a named party) who was not timely identified, unless the court finds that (1) there was good cause for the failure to timely make the discovery response; or (2) the failure to timely make the discovery response will not unfairly surprise or unfairly prejudice the other parties. TEX. R. APP. P. 44.1 provides that no judgment shall be reversed on appeal unless the Court of Appeals determines the complained-of error “probably caused the rendition of an improper judgment” or “probably prevented the appellant from properly presenting the case to the court of appeals.”

During the final hearing, the trial court permitted the attorney ad litem to present an undisclosed witness—the child’s foster mother—without making a determination of either good cause, or a lack of unfair surprise or prejudice to Mother. At trial, both Mother and the Department’s caseworker also

testified, in which the following evidence was elicited: (a) Mother had a significant and ongoing history of substance abuse; (b) Mother’s parental rights as to her older children were previously terminated due in large part to her substance abuse; and (c) the subject children were doing well and thriving in their foster placement. The trial court terminated Mother’s parental rights to the subject children.

On appeal, Mother argued the trial court erred in admitting the foster mother’s testimony under TEX. R. CIV. P. 193.6. In evaluating the potential influence or impact of the purported error on the trial court’s final judgment, the Court of Appeals concluded the admission of the foster mother’s testimony “neither caused the rendition of an improper judgment, nor prevented [Mother] from presenting her case”. The Court found the trial court, in pronouncing its rulings, expressly relied on Mother’s Department history and ongoing drug abuse.

In overruling Mother’s argument, the Court cited to case law reiterating that the erroneous admission of evidence that is merely cumulative of other properly admitted evidence is harmless error and stated, “[t]he trial court’s findings and its termination of [Mother]’s parental rights are supported by clear and convincing evidence, even without the admission of the foster mother’s testimony . . . It is clear from the record that the trial court’s termination decision was based primarily on [Mother’s] actions, and how they affected her children’s well-being, rather than solely, if at all, on the foster mother’s testimony . . . in particular, evidence that the children were doing well and thriving in foster care was elicited through [the Department caseworker].” Termination was affirmed. *In*

re C.M., No. 11-24-00009-CV (Tex. App—Eastland June 27, 2024, no pet.) (mem. op.).

III. TERMINATION GROUNDS

A. TFC § 161.001(b)(1)(D) and (E)

1. Fear for Own Safety Does Not Excuse Failure to Protect Child

Mother challenged the termination of her parental rights under TFC §§ 161.001(b)(1)(D) and (E), which respectively allow a trial court to order termination if it finds by clear and convincing evidence that the parent has knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child, or engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child.

The evidence reflected that prior to their removal, the children lived with Father because Mother could not provide them a home. Mother testified she knew Father was abusing and neglecting the children but did not report him because she feared retribution. Mother told a friend about the abuse, hoping the friend would report Father, but Mother did not report the abuse herself. Prior to the Department's involvement, Mother physically attacked Father in response to his abuse of one of the children; this resulted in Mother's arrest.

The Department's investigator testified that at one point, Mother brought the children a dog to protect them from Father. Upon her arrival, the residence smelled of urine and feces for which Father blamed the youngest child. Father proceeded to place the child in

“bathwater that was either too hot or too cold, to the extent it caused the child to scream.”

The evidence further reflected that Mother witnessed Father place two of the children in a closet; Mother then left for work and admitted she did not know how long the children were kept inside. Mother admitted she knew Father provided the children a THC vape pen to calm them. Mother further testified that Father punished the youngest child by tying her legs together, placing her in the corner, and refusing to change her diaper for days; an older child testified that the child would then be spanked for having a soiled diaper. Mother admitted she feared the youngest child would die if left in the care of Father. The evidence further reflected that two of the other children reported they were beaten by Father and Mother.

The Department's investigator noted several visible signs of abuse on the children. Specifically, the youngest child was underweight, her legs were swollen and discolored, she had bruising throughout her face and body, severe diaper rash, and signs of malnutrition. The medical practitioner who examined the child testified she was “malnourished to the point that her growth had become stunted, indicating long term neglect.” Another child was observed with bruising on her arms and legs.

The Court of Appeals held that, while Mother “testified she feared retribution by [Father], she was unable to find a way to protect her children or to demonstrate an ability to house them apart from him.” The Court continued: “We are mindful of the position [Mother] was in, but the evidence shows that she let her fear for her own safety prevent her from taking action to protect her children despite seeing the

kind of treatment detailed here.” The Court noted that Mother also engaged in the physical abuse of the older children and allowed the older children to witness the abuse and neglect of the younger children.

Accordingly, the Court of Appeals affirmed the trial court’s TFC §§161.001(b)(1)(D) and (E) findings. *In re W.T., A.T., R.T., S.B., E.B.*, No. 04-24-00164-CV (Tex. App.—San Antonio Aug. 28, 2024, no pet.) (mem. op.).

2. Child’s Outcries Sufficient

Father challenged the termination of his parental rights under TFC §§ 161.001(b)(1)(D) and (E).

The evidence reflected that the child made an outcry of sexual abuse at school and again in a forensic interview. The child’s teacher testified as to the behavioral changes the child exhibited leading up to her May 4, 2022 outcry statement. The child’s vice principal testified that, following her outcry, the child demonstrated a fear of Father, resisted going home with him, and screamed as he carried her out of the school.

Father testified he was incarcerated at the time of the termination trial and awaiting a criminal trial for aggravated sexual assault of the child but invoked his Fifth Amendment right against self-incrimination when questioned about the allegations, which, the court instructed the jury, allowed an inference that Father’s answers would have been adverse to Father.

The Department’s caseworker testified the Department discontinued Father’s parent-child visits due to safety concerns based on the outcries, and the caseworker’s supervisor

testified that while Father completed many services, there were none that he could complete that would make the Department feel safe in returning the child and her sibling to him.

A recording of the forensic interview was admitted into evidence, during which the child made an outcry that Father touched the inside of her private part with his hand while she was in the bath. Foster Mother testified the child displayed sexually inappropriate behavior when she was initially placed with her. Mother and the child’s guardian ad litem expressed concerns about the child’s younger sibling returning to Father because he was nonverbal and unable to protect himself.

In finding the evidence legally sufficient to support the jury’s TFC §§ (D) and (E) findings, the Court of Appeals stated that the child’s “outcry statement alone is sufficient to support the jury’s findings.”

On appeal, Father questioned the credibility and reliability of the child’s outcry statements. Specifically, Father argued the testimony about the sexual abuse came almost exclusively from forensic interview videos; the outcry statements always preceded court dates; the child did not acknowledge the difference between a truth and a lie; the child made statements that people were wearing invisible jewelry and a door opened by itself; the interviewer led the child during questioning; the child would avoid responding, choosing instead to play; the child only answered to get the interviewer to play with her; the sexual assault the child described was physically impossible; and another child stated in his interview that Mother told him things about the abuse and Mother was not credible.

In rejecting Father’s argument, the Court of Appeals cited to *In re C.E.*, 687 S.W.3d 304 (Tex. 2024) and stated that the Texas Supreme Court explained it is the core function of the jury to resolve conflicts in testimony, weigh evidence, and draw reasonable inferences and, in doing so, may consider circumstantial evidence, weigh witness credibility, and draw reasonable inferences from evidence they choose to believe. The Appellate Court stated that it was not permitted to stand in the role of a thirteenth juror but, rather, must “consider the entire record and determine whether the disputed evidence the jury could not reasonably have credited in favor of its endangerment findings is so significant that the jury could not reasonably have formed a firm belief or conviction that Father endangered the children”. Accordingly, the Court held that the evidence was also factually sufficient to support the jury’s endangerment findings. *In re G.M.S. and G.W.S.-S.*, No. 09-24-00207-CV (Tex. App.—Beaumont Oct. 31, 2024, pet. denied) (mem. op.).

3. Conscious Disregard of Substantial Risk of Harm When Parent is Also Victim of Abuse

Mother challenged the trial court’s termination of her parental rights pursuant to TFC §§ 161.001(b)(1)(D) and (E).

The Department’s involvement began after Mother publicized her suicidal ideations on Facebook and vocalized frequent homicidal ideations targeted at the child’s older sibling. The Court of Appeals noted that while the child’s sibling was in the Department’s care after the child was born, Mother broadcasted Father’s ongoing aggression and violence on

social media, rather than attempting to protect the child from it. Mother also admitted to “physically fighting” with Father, and Father testified that at least one of their arguments involved “pushing” and “shoving.” In addition, Father’s aggression extended to the child at least once when he held a blanket over her. The Court further noted that, at the final hearing, Father ultimately denounced his actions as “really stupid,” whereas Mother was devoid of any commensurate remorse for taking to social media and “announcing” Father’s conduct, rather than removing the blanket.

The Court observed that Mother exhibited a continuing pattern of abusive and unstable behavior outside of her relationship with Father—she assaulted her mother, was convicted and confined in jail, missed several drug test appointments, and tested positive for illegal substances before and during the Department’s involvement. Citing to Justice Young’s concurrence in the Texas Supreme Court case *In re A.P.*, 672 S.W.3d 132 (Tex. 2023), the Court stated that “although Appellant was a victim of the father’s abuse, her conscious disregard of a substantial risk to [the child] that flows from such conduct does not convert Appellant’s ‘status as an abuse victim into a de facto basis for termination’ under these circumstances.” Accordingly, the Court concluded that Mother’s voluntary, deliberate, and conscious acts constituted more than a single instance of conduct and posed a substantial risk of harm to the child. The Court of Appeals affirmed the trial court’s order terminating Mother’s parental rights. *In re A.H.*, No. 11-24-00075-CV (Tex. App.—Eastland Aug. 21, 2024, pet. denied) (mem. op.).

4. Non-Compliance with Mental Health Medication Considered as Pattern of Refusal to Consider Consequences

As part of its analysis of Mother's challenge of the trial court's TFC § 161.001(b)(1)(E) finding, the Court of Appeals determined there was no evidence that Mother's decision to stop taking her medication "simply because she did not feel like taking it," directly caused her to jeopardize the children's well-being, as there was no evidence produced as to how Mother was affected by stopping said medication. However, the Court went on to explain, "this evidence can be considered as part of a pattern of behavior—specifically, Mother's inability or unwillingness to complete services . . . , follow through with recommendations, or consider likely consequences for her actions—that contributed to endangerment." Accordingly, the Court concluded that the trial court could have considered the fact that Mother stopped taking her medication without medical advice, "especially when combined with her inconsistency in attending counseling and her failure to attend her MHMR evaluation appointment, in determining whether Mother had provided a stable environment for the children." Affirmed. *In re J.H.*, No. 02-24-00215-CV (Tex. App.—Fort Worth Oct. 17, 2024, no pet.) (mem. op.).

5. Insufficient Evidence of Father's Knowledge of Abuse

Father argued the evidence was insufficient to support the trial court's termination of his parental rights under TFC § 161.001(b)(1)(D). The Court of Appeals agreed.

At trial, the evidence showed the Department became involved upon learning that Mother had engaged in persistent physical and emotional abuse of the child. Father, Mother, and the child resided in Georgia, but sometime after the child turned two, Mother absconded with the child, moving to several different states over the next several years before settling in Texas. Father, who was on federal probation and unable to leave Georgia until 2016, testified that upon successful completion of probation, he was unable to locate Mother and the child. Father further testified that he remained in Georgia and had not seen the child in over seven years. While Father acknowledged he noticed Mother was "different" and had observed her "treat [her older kids] like she was in the military", he reasoned she was stern because of her military background and stated he never saw Mother abuse any of her children. Father repeatedly testified he did not know, or suspect Mother was abusing the child.

The Court noted the record further showed the Department's caseworker did not dispute Father's testimony and conceded Father did not harm the child or directly contribute to the child's endangering environment created by Mother. The Court pointed out that the Department did not present any evidence that Father knew about Mother's abusive behavior toward the child. In concluding the Department failed to meet its burden of proving by clear and convincing evidence that Father *knowingly* allowed the child to remain in an endangering environment, the Court stated, "The trial court's finding under statutory ground (D) did not hinge on credibility determinations in the face of conflicting evidence; rather, the evidence was conclusively insufficient to justify termination

on that ground because there was no evidence that Father knew or should have known that Mother's conduct would create an endangering environment for the child." The Court of Appeals modified the termination order to delete the Subsection (D) finding and affirmed as modified. *In re A.F.M.*, No. 04-24-00405-CV (Tex. App.—San Antonio Dec. 4, 2024, no pet.) (mem. op.).

6. Failure to Recognize Risk of Serious Mental Health Issues

Father appealed an order terminating his parental rights to the child pursuant to TFC §§ 161.001(b)(1)(D) and (E).

On the day the child was born, the Department received a referral due to concerns Mother could not parent the child. The Department investigator reported Mother was "very incoherent" and could not follow their conversation. Father admitted to the investigator that Mother's mental health issues affected her ability to parent. The Department implemented a safety plan prohibiting Mother from being with the child unsupervised; however, the child was removed after that safety plan was violated.

The Appellate Court observed that Father knew Mother: had schizoaffective and bipolar disorders; refused to take her prescribed medications; used methamphetamine before and during her pregnancy with the child's older sibling; thought the older sibling was a snake who wanted to kill her; was hospitalized for mental health treatment while pregnant with the older sibling; relinquished her parental rights to the older sibling; and did not want to have another baby. The Court noted that,

despite this knowledge, Father pursued a second pregnancy with Mother.

Father testified he did not believe Mother would be dangerous to either child; however, the Court pointed to evidence which showed Mother believed she was again pregnant with a snake that was trying to kill her, continued having hallucinations, was hospitalized for mental health treatment after the child's birth, and did not believe she needed to be supervised with the child.

The Court further considered that Father denied he and Mother were in a relationship; however, Mother testified Father told her they were living apart only temporarily so he could obtain the return of the child and Mother believed she would be an integral part of the child's life.

Father's service plan noted Father did not feel Mother needed medication and did not agree Mother's mental health concerns warranted concern for his own protective capacity, and the CASA supervisor testified Father failed to make any effort or utilize the resources provided to better understand Mother's mental health. Consistent with this assessment, the Court pointed out that Father failed to attend classes to learn about living with someone with a serious mental illness or individual therapy to learn about unhealthy romantic relationships.

The Court held that it may neither ignore Father's "failures and inability to protect [the child] from the effects of Mother's mental illness and drug use," nor "endorse [Father's] willful ignorance of the significant risk that Mother's untreated mental health concerns pose to the child." Accordingly, the Court of Appeals affirmed the trial court's TFC §§

161.001(b)(1) (D) and (E) findings. *In re O.O.*, No. 05-24-00456-CV (Tex. App.—Dallas Oct. 4, 2024, pet. denied) (mem. op.).

7. *Poverty versus Conscious Choice as Basis for Termination*

Prior to removal, the subject children were residing in an inoperable SUV with Mother, Father, two dogs, and three other children. The conditions in the SUV were unsanitary, and the children were covered in fleabites and open wounds, some of which were infected. Both children appeared to be malnourished, which was later reinforced by the children demonstrating signs of food insecurity and an inability to tolerate food without digestive distress. There was conflicting evidence regarding whether Mother's living conditions were suitable at the time of trial. It was undisputed that Mother received multiple eviction notices during the case. She admitted her income was "limited" and her employment was unstable.

In considering the sufficiency of the evidence supporting the trial court's Subsection (D) finding, the Court stated, "[w]hile poverty is not a basis for terminating parental rights, the preceding evidence indicates that the mother's living circumstances continued to be unstable through trial and that the recurrence of homelessness or something close to it was quite possible." The Appellate Court pointed out that the evidence of instability is not limited to "financial distress", relating "while the mother's lease violations include late payment of rent, they also involve other issues that reflect conscious choices rather than mere financial hardship or misfortune. The record contains evidence that there is a pattern of instability resulting from conscious choices."

In re A.B.-G., No. 01-24-00509-CV (Tex. App.—Houston [1st Dist.] Dec. 5, 2024, pet. denied) (mem. op.).

8. *"Too Little Too Late"*

Termination of Mother's parental rights was sustained under TFC §§ 161.001(b)(1)(D) and (E) based, in part, on evidence that Mother's recent achievements, such as having safe and appropriate parent-child visits, having acquired a "somewhat stable job" and appropriate residence at the time of trial, engagement in therapy, and lack of recent hospitalizations, "were accomplished too late to have shown a successful pattern of stability." *J.B. v. Tex. Dep't of Family and Protective Services*, No. 03-24-00159-CV (Tex. App.—Austin Aug. 23, 2024, no pet.) (mem. op.).

9. *Inappropriate Foods*

The Court of Appeals found the evidence was sufficient to support termination of Mother's parental rights under TFC §§ 161.001(b)(1)(D) and (E). As part of its analysis, the Court considered the evidence which showed that Mother regularly brought excessive amounts of sugary snacks and sodas to visits, even after the Department suggested healthier alternatives. *In re C.N.*, No. 12-24-00275-CV (Tex. App.—Tyler Dec. 20, 2024, pet. denied) (mem. op.).

10. *Insufficient Evidence When Endangering Conduct Occurred Before Awareness of Pregnancy*

Father challenged the, *inter alia*, termination of his parental rights under TFC § 161.001(b)(1)(E). At trial, the Department

relied almost exclusively on the evidence that Father was responsible for introducing Mother to methamphetamine and that his incarceration at the time of trial was due to possession of methamphetamine.

The record reflected that Father committed the offense of possession of methamphetamine more than five months before the child was born. The Court of Appeals pointed out that the Department failed to present any testimony relating to when Father introduced Mother to methamphetamine: “There was no testimony from the mother or the father or other evidence verifying that statement, and there was no evidence that the father knew the mother was pregnant or that she was using drugs during her pregnancy.” Because there was no evidence Father knew of or encouraged drug use by Mother during pregnancy or ever used drugs in the child’s presence, and there was only a single conviction for possession of methamphetamine, which occurred five months before the child’s birth, the Court of Appeals held the evidence was insufficient to support termination of parental rights under Subsection (E). *In re K.R.*, No. 11-24-00014-CV (Tex. App.—Eastland July 11, 2024, no pet.) (mem. op.).

11. Infinite Potential Danger

“[P]ersistent drug use by parents poses infinite potential dangers to their children.” *In re S.B.*, No. 11-24-00267-CV (Tex. App.—Eastland Mar. 27, 2025, no pet.) (mem. op.); *see also In re R.F.*, No. 11-24-00271-CV (Tex. App.—Eastland Apr. 3, 2025, pet. denied) (mem. op.).

12. Turning to Criminal Conduct After Birth of Children

In analyzing the sufficiency of the evidence under TFC § 161.001(b)(1)(E), the Court of Appeals concluded that the evidence Father “turned to criminal conduct less than a month after the birth of each of his children” established an endangering course of conduct. Among other things, the Court noted Father’s criminal record showed a pattern of conduct, not an isolated incident, and his repeated criminal episodes and excessive substance use were the bases for his denial of parole. The Court observed that Father did not stop engaging in criminal activity after the oldest child was born when he should have been aware that criminal conduct risked separating him from that child; and other than the first month of the youngest child’s life, Father had been an absent parent because of his incarceration. *In re K.O. and K.Q.*, No. 07-23-00440-CV (Tex. App.—Amarillo June 26, 2024, no pet.) (mem. op.).

13. Sleeping During Visits

Under its TFC § 161.001(b)(1)(E) analysis, the Court of Appeals considered that Mother fell asleep during supervised visits with the children. The Court reasoned that “while the supervision ameliorated danger to the children during the visits, falling asleep during the visit raised concerns about the safety of the children if left in her unsupervised care.” *L.C. v. Texas Dep’t of Family and Protective Servs.*, No. 03-24-00322-CV (Tex. App.—Oct. 3, 2024, no pet.) (mem. op.).

14. Competing Experts and Unexplained Injuries

On appeal, Mother and Father challenged the sufficiency of the evidence to support the trial court's endangerment findings under TFC §§ 161.001(b)(1)(D) and (E) through which their rights were terminated to their twin daughters, Child1 and Child2. The evidence reflected that the twins came into the Department's care at three months old with unexplained injuries suspected to be non-accidental based on the children's skeletal surveys. Child1 sustained a brain injury involving extensive bilateral subdural hematomas which required a surgical procedure to drain them. The Department learned the parents were the children's primary caregivers, and they reported generally maintaining a rotating work schedule that allowed one parent to watch the children while the other parent worked. During the Department case, the parents questioned whether the children's injuries could have been the result of a genetic disorder or birth defect.

At the final bench trial, the Department called three expert witnesses: Dr. David Garrett, Dr. Kayla Washuta, and Dr. Megan Lyle, and Mother called her own expert witness, Dr. John Galaznik. These expert witnesses each offered opinions on the potential causes and timing of the children's various injuries. Mother and Father maintained that they did not know how the children's injuries occurred, and that the Department's involvement was unnecessary.

Dr. Washuta, a physician board-certified in pediatric medicine and employed with Baylor Scott & White hospital in pediatric orthopedics, explained that fractures become more visible on an x-ray after seven to fourteen days when they begin healing and develop a

callous. Dr. Washuta reviewed the children's imaging from two separate dates approximately nineteen days apart, and personally examined the twins thereafter. Based on her review of Child1's imaging, Dr. Washuta concluded that she had suffered a liver laceration, multiple rib fractures without any indication of healing and one rib fracture that was healing. A third follow-up image about a month after the second revealed Child1 "had no issues."

Dr. Washuta noted Child2's initial imaging showed that she had a healing wrist fracture which she ruled out as caused by the insertion of an IV. The second image revealed Child2 had healing rib fractures and a possible tibial corner fracture, and the follow-up image showed her wrist had continued to heal and the tibial fracture was no longer visible. When asked about genetic or other medical conditions as a cause, Dr. Washuta stated osteogenic imperfecta could cause the injuries, but the children did not have this diagnosis. Further, there was no sign of rickets in any of the children's imaging, and they would have continued to sustain fractures with untreated rickets. She also ruled out vitamin D deficiency as a possible cause. Dr. Washuta opined the fractures that these children sustained required "a decent amount of force" which would have caused the children "a significant amount of pain" and were "highly suspicious for some sort of non-accidental trauma."

Dr. Garrett, a board-certified neurosurgeon with significant experience in pediatric neurosurgery, testified that trauma is "overwhelmingly the most common cause" of subdural hematomas like those sustained by Child1 and could not have been caused by birth

trauma because those “[a]lways go away within a month.” Dr. Garrett further determined that Child1 had hemorrhages and fractures of different ages. He also ruled out birth trauma as the cause of Child2’s subarachnoid hemorrhage because these types of hemorrhages disappear after about three weeks. He therefore opined that Child1’s subdural hematoma and Child2’s subarachnoid hemorrhage could only have been caused by blunt force trauma to the head.

Dr. Lyle, board-certified physician in pediatric hematology, among other things, testified that she did not find any bleeding or clotting disorders with either child. Dr. Lyle opined that Child1’s extensive bleeding and internal liver lacerations were indicative of trauma and Child2’s bleeding as “consistent with shearing trauma,” which she described as a “shaking back and forth of the head.” She further ruled out birth trauma and inherited conditions as possible causes.

Mother called Dr. Galaznik, a physician board-certified in pediatrics who reviewed the children’s medical records and imaging. Dr. Galaznik opined that “trauma is not required to explain the children’s head injuries and [...] not really indicated by the objective findings[.]” He also testified that there was “no demonstrated brain injury” in Child1’s imaging and he could not rule out the possibility that her condition occurred in utero or at birth but could also not discount blunt trauma as the cause. Dr. Galaznik testified Child1’s rib imaging was “entirely consistent with the rib findings of perinatal rickets of an infant who was born Vitamin D deficient” and Child2’s wrist fracture could have been caused by starting her IV at the hospital. He disagreed that Child1 sustained liver lacerations. Dr.

Galaznik ultimately agreed that the children’s conditions “could be consistent with child abuse” but that this cause was not more likely than the other causes he had discussed.

On appeal, Mother and Father argued that Dr. Galaznik’s medical testimony offering natural causes for the children’s injuries rendered the evidence insufficient to support the endangerment findings. The Court of Appeals disagreed, explaining that conflict in testimony as to the cause of the children’s injuries is a matter of credibility left to the determination of the trial court. Citing to the Texas Supreme Court’s opinion in *C.E.*, the Court noted that the factfinder may weigh witness credibility, consider circumstantial evidence, and draw reasonable inferences from the evidence it chooses to believe. *In re C.E.*, 687 S.W.3d 304, 309 (Tex. 2024). Further, the Court pointed out that the Department’s expert witnesses ruled out each alternative explanation proffered by Mother and Father, including rickets, vitamin D deficiency, and birth trauma, while Dr. Galaznik could not rule out blunt trauma as the cause of the brain injuries. Dr. Galaznik also agreed that the children’s injuries could be consistent with child abuse. Moreover, the Court noted that the trial court found that the children were in the possession of their parents during the time they sustained these injuries, and the evidence showed that neither child sustained new fractures during the eighteen months they were in the Department’s care. Thus, “[i]t was within the province of the trial court to find, based on the evidence presented, that the children’s injuries could only be explained by traumatic injury that was not sustained at birth.”

Moreover, the trial court was entitled to consider, as additional evidence of endangerment, both that the trial court was entitled to disbelieve the parents' claims of ignorance regarding the children's injuries, and their failure to provide the children with appropriate medical care for these injuries. The Court accordingly found that the evidence was legally and factually sufficient to support the trial court's termination of Mother and Father's parental rights under Subsections (D) and (E). *In re K.P.-A. and K.P.-A.*, No. 10-24-00381-CV (Tex. App.—Waco May 22, 2025, no pet. h) (mem. op.).

15. Inference Child Injured in Parents' Care

The undisputed evidence established that the children entered Department care after doctors discovered they had suffered severe physical injuries which were in different stages of healing. Father argued the evidence was insufficient to support the trial court's TFC § 161.001(b)(1)(E) finding because the evidence only established that the children were injured and not how they were injured or by whom. He asserted that no evidence showed that he engaged in endangering conduct, specifically arguing he did not have a history of violence, no one saw him abuse the children, and he was supportive of their medical care.

The Court of Appeals rejected Father's assertion that there was insufficient evidence that he was the perpetrator of the children's injuries. The Court noted that the evidence not only established that Father and Mother were the children's sole caregivers before the injuries occurred, but also that the children had suffered no further injuries since entering Department care. The Court reasoned that the

"record thus supports a reasonable inference that the injuries occurred when the children were with Father or Mother or both."

The Court then considered that although Father and Mother offered alternative explanations for the children's injuries, the trial court was free to disbelieve those theories. The Court determined that from the evidence, the trial court could reasonably conclude that Father either physically abused the children or failed to protect them from Mother's abuse, resulting in serious injuries to both children.

The Court, therefore, concluded that there was legally and factually sufficient evidence supporting the trial court's TFC § 161.001(b)(1)(E) finding. *In re N.G.-M.*, No. 01-24-00379-CV (Tex. App.—Houston [1st Dist.] Nov. 14, 2024, no pet.) (mem. op.).

B. TFC § 161.001(b)(1)(K) – PRESSURE INSUFFICIENT TO SET ASIDE AFFIDAVIT

Father challenged the sufficiency of the evidence supporting his termination under TFC § 161.001(b)(1)(K), which allows a trial court to order termination if it finds by clear and convincing evidence that the parent has executed an unrevoked or irrevocable affidavit of relinquishment of parental rights. Father argued his affidavit was obtained through coercion, duress, or fraud.

The parties attended mediation in July 2024. The child's foster parents brought the child to the mediation, surprising all parties. At the end of mediation, Father entered into a mediated settlement agreement and signed an affidavit of voluntary relinquishment of his parental rights to the child.

At the final hearing in August 2024, the Department informed the trial court that Father was “having second thoughts” about the MSA and relinquishment. Father claimed he signed the documents because he was bribed, coerced, and threatened at mediation. The Department offered the MSA and affidavit of relinquishment into evidence, which were admitted without objection, and the trial court signed an order terminating Father’s parental rights under Subsection (K). Father’s filed a motion for a new trial alleging he was threatened, coerced, and bribed at mediation to sign the MSA and affidavit; the motion was denied by the trial court following a hearing.

The Court of Appeals noted that to terminate parental rights pursuant to Subsection (K), the affidavit of relinquishment must comply with the requirements of TFC § 161.103, and a voluntary relinquishment in proper form is *prima facie* evidence of its validity. It further noted that, under TFC § 161.211(c), the affidavit may only be set aside upon proof, by a preponderance of the evidence, that it was executed as a result of fraud, duress, or coercion.

On appeal, Father argued he met this burden when he informed the trial court that he felt “pressured to sign the documents based on representations that he could interact with the child if he signed the documents” and “threatened by representations that he would not see the child again if he did not sign the documents.” However, the Court of Appeals noted that “[c]ourts have consistently held that a parent’s feeling pressured, emotionally upset, or under stress while signing the affidavit of relinquishment, as Father described here, does not render the affidavit involuntary.” It further

considered the language used in the affidavit and MSA, including that Father signed the affidavit “solely out of love and affection for the child,” the agreement was “made voluntarily,” and Father “freely, voluntarily, and permanently” relinquished his rights to the child. Based on the evidence, the Court concluded that Father voluntarily executed the affidavit of relinquishment. Accordingly, the Court found the evidence was legally and factually sufficient to support termination. *In re R.C.*, No. 10-24-00291-CV (Tex. App.—Waco Jan. 30, 2025, no pet.) (mem. op.).

C. TFC § 161.001(b)(1)(L) – SERIOUS BODILY INJURY

Father challenged the legal and factual sufficiency of the evidence supporting the trial court’s order terminating his parental rights pursuant to TFC § 161.001(b)(1)(L).

TFC § 161.001(b)(1)(L) allows for termination if the trial court finds by clear and convincing evidence that the parent has been convicted or has been placed on community supervision, including deferred adjudication, for being criminally responsible for the death or serious injury of a child under one of several sections of the Penal Code, including § 22.04 (injury to a child, elderly individual, or disabled individual).

At the termination trial, evidence was introduced regarding Father’s April 2015 conviction for injury to a child pursuant to Penal Code § 22.04(a)(3). In challenging his termination under Subsection (L), Father argued the Department failed to prove he inflicted “serious bodily injury” on the victim child, as defined in the Penal Code.

The Court of Appeals noted that termination under Subsection (L) requires: (1) the parent to have committed acts constituting a violation of one of the statutorily enumerated crimes listed; (2) the parent's guilt to have been adjudicated or deferred; and (3) the parent, in committing the acts that underlie the crime, to have been responsible for a child's death or serious injury. Citing to its opinion in *In re Z.W.*, No. 02-18-00190-CV (Tex. App.—Fort Worth Sept. 13, 2018, no pet.) (mem. op.), the Court stated that, because the Family Code does not define "serious injury" under Subsection (L), its ordinary meaning applies. Relying on precedent, the Court noted that "serious" means "having important or dangerous possible consequences," while "injury" means "hurt, damage, or loss sustained." The Court stated that "serious injury" under Subsection (L) does not require a showing of "serious bodily injury" as defined in the Penal Code. It further noted that psychological or emotional injuries are relevant when determining whether a child has sustained "serious injury" as it relates to Subsection (L).

Turning to the current case, the Court pointed out that evidence admitted at trial included: (1) a certified copy of Father's conviction for injury to a child; (2) an indictment alleging Father intentionally or knowingly caused bodily injury to a child younger than fifteen by "striking or hitting [the child] with a cord"; (3) an arrest affidavit in which a peace officer declared a six-year-old girl made an outcry that Father struck her with "a cord from the TV in her mom's room while her clothes were off"; and (4) photographs of the child's injuries which showed "multiple curved marks across the girl's back and side."

In rejecting Father's argument, the Court of Appeals stated that to prove termination under Subsection (L), "[a]ll that is required is a showing of 'serious injury'—a showing of 'hurt, damage, or loss sustained' that has 'important or dangerous possible consequences.'" Accordingly, the Court held that a reasonable factfinder could have formed a firm belief or conviction that Father, in committing the act of causing bodily injury to a child, was responsible for causing serious injury to the child. Father's argument was overruled. *In re O.S.*, No. 02-24-00295-CV (Tex. App.—Fort Worth Nov. 14, 2024, pet. denied) (mem. op.).

D. TFC § 161.001(b)(1)(P) – "HOLISTIC ENDANGERMENT REVIEW"

On appeal, Mother challenged the legal and factual sufficiency of the evidence supporting the trial court's finding under TFC § 161.001(b)(1)(P) that she used a controlled substance in a manner that endangered the children's health and safety. Pursuant to Subsection (P), a trial court may terminate the parent-child relationship if it finds by clear and convincing evidence that the parent used a controlled substance in a manner that endangered the health or safety of the children and failed to complete a court-ordered substance abuse treatment program. Mother acknowledged the children's hair follicle tests were positive for methamphetamine, but argued this evidence did not demonstrate endangerment because a Department caseworker testified that the children's substance exposure did not require any medical intervention. Mother also pointed out that her only positive drug test occurred after the children were removed from her care.

Quoting *R.R.A.*, the Court of Appeals observed that the Texas Supreme Court has made clear that Subsection (P) does not “require[] direct evidence that [a parent’s] drug use resulted in physical injury to [her] children.” *In re R.R.A.*, 687 S.W.3d 269 (Tex. 2024). Further, “[a] court need not require physical injury from these risks to materialize to find that the children’s health and safety have been endangered by them; a pattern of illegal drug use in such a context is evidence from which a factfinder may infer endangerment.” *Id.* Thus, “[a] parent’s pattern of illegal use of a controlled substance like methamphetamine supports a finding of endangerment under (P) when the evidence shows it adversely affected the parent’s ability to parent, presenting a substantial risk of harm to the child[ren]’s health and safety.”

The evidence established that Mother admitted to using drugs before the termination suit was filed and repeatedly refused drug testing during the case. Mother tested positive for amphetamine, methamphetamine, and cocaine on the only test she took. Further, the evidence showed that Mother admitted the children were exposed to severe domestic violence, she failed to follow a safety plan through which she could have protected the children, and she refused the caseworker’s assistance to go to a homeless shelter. When the children were removed, they were unbathed and smelled like urine, Mother did not have any money for diapers, and she had not provided the children with medical and dental care. The Court concluded that, “[b]ased on the close temporal relationship between [Mother’s] conduct and her illegal drug use, the factfinder could reasonably infer that [Mother’s] difficulties in caring for her two small children were related to her illegal drug use.”

Therefore, the Court concluded that from this evidence, the factfinder could have reasonably inferred that Mother engaged in a pattern of illegal drug use, which adversely affected her ability to parent, presenting a substantial risk to the children’s health and safety. Accordingly, the Court held that the evidence was legally and factually sufficient to support the trial court’s termination of Mother’s parental rights under Subsection (P). *In re L.L.Y.B.*, No. 04-24-00426-CV (Tex. App—San Antonio Dec. 18, 2024, no pet.) (mem. op.); *see also In re J.D.R.*, No. 04-24-00337-CV (Tex. App—San Antonio Sept. 25, 2024, pet. denied) (mem. op.) (holding in reliance on *R.R.A.* that the evidence was sufficient to support Subsection (P) where, among other things, Father did not submit to requested drug tests during the case, stayed with friends Father admitted were using drugs, and fell asleep while holding the baby at a recent visit); *In re A.V.*, 697 S.W.3d 657 (Tex. 2024) (explaining that *R.R.A.* requires a “holistic endangerment review”).

E. TFC § 161.001(b)(1)(Q) – INSUFFICIENT EVIDENCE OF FATHER’S ABILITY TO PROVIDE CARE DURING INCARCERATION

In a private termination suit, Mother filed a petition to terminate Father’s parental rights after he was arrested and convicted of possession of child sex abuse images, distribution of child sex abuse images, indecent exposure, and violation of privacy.

Father appealed the judgment terminating his parental rights to the child pursuant to § 161.001(b)(1)(Q), which allows the trial court to order termination if it finds by clear and convincing evidence that the parent knowingly

engaged in criminal conduct that has resulted in the parent's (1) conviction of an offense, and (2) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition. On appeal, Father asserted the evidence was legally and factually insufficient to support termination under Subsection (Q).

The undisputed evidence established that Father was convicted of crimes that resulted in his incarceration for a minimum of two years. The burden then shifted to Father to produce evidence showing how he would provide care for the child during his incarceration.

The Appellate Court considered the evidence that Father had not provided any financial support since his arrest, which Father did not dispute and asserted his indigence on appeal. While Father testified he would send the child letters and gifts while incarcerated, the Court noted that Mother testified that "even before his incarceration, Father was a 'hands off' parent, meaning he did not help with basic childcare duties." Accordingly, the Court of Appeals affirmed the trial court's termination of Father's parental rights under Subsection (Q). *R.V. v. S.V.*, No. 03-23-00810-CV (Tex. App.—Austin Aug. 30, 2024, pet. denied) (mem. op.), cert. denied, No. 24-6985 (U.S. June 16, 2025) (mem. op.).

F. TFC § 161.002

TFC § 161.002(b) allows for termination of the parental rights of an alleged father. In a private termination suit, the Court of Appeals determined Mother met her burden under TFC § 161.002(b) to terminate any parental rights Father had as an alleged father by producing

and filing his affidavit relinquishing his parental rights and waiving services, because section 161.002(b) "does not have a requirement that termination be in the best interests of the child." *K.R. v. E.M.O.*, No. 14-23-00157-CV (Tex. App.—Houston [14th Dist.] June 18, 2024, no pet.) (mem. op.).

IV. BEST INTEREST

A. PHYSICAL AND EMOTIONAL NEEDS / PHYSICAL AND EMOTIONAL DANGER

1. Unconvincing Explanation for Injuries

Mother was granted overnight visitation with the child during a monitored return. The child returned from several visits with bruises to his eye, forehead, ears, and penis. Mother's explanations included that the child fell on a toy car, that the child's sister had "sucked on his earlobe", the child had a lactose allergy, and the transporter or foster parents were responsible. The caseworker testified these explanations were unconvincing. The Court of Appeals determined the evidence was sufficient to support the second and third *Holley* factors, holding: "This physical abuse, and Mother's unconvincing explanation for [the child's] injuries, underscore the fact that even if Mother did not inflict the injuries to [the child] herself, she cannot keep him safe." *In re M.G.*, No. 02-24-00026-CV (Tex. App.—Fort Worth June 27, 2024, no pet.) (mem. op.).

2. Outcry of Sexual Abuse and "Transactional" Interactions

On appeal, Father challenged the legal sufficiency of the evidence supporting the trial court's finding that termination was in the

children's best interest, arguing primarily that the oldest daughter's allegations of physical and sexual abuse against him lacked credibility.

The second *Holley* factor considers the emotional and physical needs of the child now and in the future. The evidence reflected that Father and Mother had a volatile relationship characterized by emotional abuse, Mother's long-term substance abuse, and Father's alcohol issues, which necessitated repeated interactions with the Department and law enforcement. Police reports spanning several years documented Mother's many unsubstantiated claims that Father sexually abused the children, as well as reported that neither Father nor Mother appeared to be credible from their many dealings with them.

The children were ultimately removed in 2023 after the oldest child came to school with burn marks on her chest and neck and told school personnel that Father had burned her and that he was sexually abusing her.

During the case, Father appeared to favor the youngest daughter, and the CASA expressed concerns that he was engaging in possible grooming behaviors with her. During visits, Father made a "huge point" of bringing excessive gifts and telling the youngest daughter how much these gifts cost. On one occasion, Father brought a gift only for the youngest child and told her not to share it with her sisters. While the youngest child had developed a "therapeutic relationship" with her parents, her interactions with them were "transactional" as she wanted "things" and was focused on how and when she would get them. The CASA supervisor characterized Father as "very agreeable" about giving the youngest

child the things she wanted and that she received the most "stuff" of the three children. Further, about a month before the trial, the oldest child became increasingly focused on material things, especially the items she anticipated she would receive when she returned home. The CASA found this new preoccupation to be "strange" and expressed concern that the children were "being manipulated through buying them things" and that they were feeling pressured as a result.

In concluding the evidence was legally sufficient to support the trial court's best interest finding, the Court of Appeals observed that the physical and sexual abuse allegations did not form the "crux" of the evidence. Instead, the Court pointed out, among other things, that Father "failed to recognize [the children's] emotional needs, choosing to relate to them by giving them material things". *In re A.A.*, Nos. 02-24-00162-CV, 02-24-00163-CV (Tex. App.—Fort Worth Aug. 29, 2024, no pet.) (mem. op.).

B. PLANS AND PROGRAMS AVAILABLE - DISHONESTY

The Court of Appeals considered evidence of Mother's dishonesty under two *Holley* factors: (1) the programs available to assist her to promote her children's best interest; and (2) her plans for the children should they be returned to her care.

Multiple witnesses testified that Mother was dishonest with the Department and others to such an extent that it made it impossible to work with her to achieve reunification. The Court noted evidence that Mother herself acknowledged misleading the Department about the birth of her seventh child during the

pendency of the suit. The caseworker explained that Mother's dishonesty made it impossible to know what was actually happening or to assist Mother in regaining custody. The Court concluded that while the evidence was disputed as to some other instances of dishonesty, the trial court, as factfinder, was entitled to disbelieve Mother's account and conclude that she had misled the Department about such fundamental matters as whether she and Father continued to live together.

The Court reasoned, "[Mother's] dishonesty implicates these factors because evidence of dishonesty so significant as to hinder the Department from working with her to rectify the issues prompting removal indicates that she cannot benefit from any available programs that could assist her in promoting her children's best interest and that any trust placed in her future ostensible plans for her children would be misplaced." Affirmed. *In re A.B.-G., and D.B.*, No. 01-24-00509-CV (Tex. App.—Houston [1st Dist.] Dec. 5, 2024, pet. denied) (mem. op.); *see also In re H.M.Q.*, No. 01-24-00817-CV (Tex. App.—Houston [1st Dist.] Apr. 8, 2025, no pet. h.) (mem. op.); *In re G.J.*, No. 02-24-00368-CV (Tex. App.—Fort Worth Feb. 6, 2025, no pet.) (mem. op.).

C. OTHER BEST INTEREST CONSIDERATIONS

1. *Disregard of Protective Boundaries Supports Conservatorship Finding*

At trial, the Department sought termination of Mother's parental rights to three children—two girls and one boy—and alternatively, sole managing conservatorship of the two girls whose guardian ad litem had advocated against

termination. On appeal, Mother argued that the trial court abused its discretion by naming the Department as the sole managing conservator of the children.

The Court of Appeals recognized that the trial court may render a final order appointing the Department as managing conservator without terminating the parent's rights if the court finds that appointment of a parent as managing conservator would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development; and it would not be in the best interest of the child to appoint a relative of the child or another person as managing conservator. TFC § 263.404(a). If the trial court does not appoint a parent as a managing conservator, it shall appoint the parent as possessory conservator "unless it finds that the appointment is not in the best interest of the child and that parental possession or access would endanger the physical or emotional welfare of the child." TFC § 153.191.

The Court began its analysis by noting that the trial court found that the Department had proven four statutory predicate grounds for termination as to Mother but did not find that termination was in the best interest of the two girls. Consequently, the court appointed the Department as their sole managing conservator. Mother, however, was not appointed a possessory conservator. Instead, she was required to complete her service plan and a psychological assessment and for any visits with the girls to be "in a therapeutic setting following the commencement of therapy services."

The evidence showed that Mother had a history of not respecting boundaries related to the children. When the younger daughter was hospitalized during the Department case, Mother checked her out of the hospital, and the Department had to obtain a writ of attachment to regain custody of her. On another occasion, the younger daughter ran away, and Mother retrieved her from law enforcement without mentioning she was in foster care and then was unresponsive to the Department's efforts to get her back. Additionally, Mother and Father provided a cell phone to the younger daughter despite the restriction on her internet access and their awareness that the concerns were based on her history of watching inappropriate material.

Mother also obtained the contact information for the children's foster parents, even though that information was supposed to remain confidential. During the case, Mother sought out the foster parents through direct contact or having items delivered to their homes instead of going through the caseworker.

The children's caseworker expressed concern that Mother's actions would cause emotional harm to the children because she manipulated them, and they tended to believe her as their mother. Mother's sister, her mother, and the foster placement for the boy child were concerned that Mother would not follow court orders concerning possession of and access to the children if her parental rights remained intact.

Based on this evidence, the Court concluded Mother had not alleviated the Department's concerns which resulted in the children's removal, she had repeatedly disregarded boundaries established to protect the children

in their placements, and each prospective placement for the children expressed concern over Mother's lack of regard for these boundaries. Accordingly, the Court held that sufficient evidence supported the trial court's decision not to name Mother as a possessory conservator because such appointment was not in the children's best interest and "parental possession or access would endanger the physical or emotional welfare of the children." *In re L.S. and O.S.*, No. 01-24-00106-CV (Tex. App.—Houston [1st Dist.] Dec. 19, 2024, pet. filed) (mem. op.).

2. "Faking Good"

Under its best interest finding, the Court of Appeals considered that Mother was "faking good" during her psychological assessment, "trying to present unrealistically virtuous." As a result, the psychologist was unable to make any recommendations or diagnoses. *In re L.M.C., R.C., and R.W.C., Jr.*, No. 12-24-00227-CV (Tex. App.—Tyler Nov. 20, 2024, no pet.) (mem. op.).

3. Child's Best Interest Should Not Rest on Hope

Mother challenged the trial court's finding that termination of her parental rights was in the children's best interest. In its analysis, the Court of Appeals acknowledged that the evidence suggested Mother had improved, noting, however, that Mother waited over a year to begin her services and "continued to use drugs as the clock ticked toward the hearing to determine whether her parental rights would be terminated." As such, the Court opined, "[o]ne can hope for improvement. But the best interests of children should not rest on hope, belated caring by a

parent, and tardy, incomplete effort by that same parent.” Affirmed. *In re J.G., D.G., and A.G.*, No. 07-24-00291-CV (Tex. App.—Amarillo Jan. 28, 2025, pet. denied) (mem. op.).

4. Parental Indifference – Parent Prioritized Drug Use Over Visitation

In affirming the trial court’s best interest finding, the Court of Appeals pointed, in part, to evidence that Mother evaded all but two required drug screens despite the Department’s efforts to accommodate her misrepresentations of travel plans, transportation issues, and work schedule; refused to submit to required drug testing despite knowing she needed to provide clean drug tests in order to resume visitation; and failed to address her drug use, thereby demonstrating an unwillingness or inability to meet the children’s needs. The Court stated: “[b]y her own actions, the trial court could rationally infer that [Mother] chose to continue drug use rather than regain in-person visitation with her children”. The Court held that this “significant evidence of parental indifference” weighed heavily in favor of the trial court’s best interest determination. *In re E.M., I.M., W.M., E.M., and M.M.*, No. 11-24-00248-CV (Tex. App.—Eastland Feb. 27, 2025, pet. denied) (mem. op.).

V. OTHER REQUIRED TERMINATION FINDINGS

A. TFC § 161.001(f)

Mother and Father challenged the trial court’s finding that the Department made reasonable efforts to return the child pursuant to TFC § 161.001(f). TFC § 161.001(f) provides that the

court may not order termination of the parent-child relationship unless it finds by clear and convincing evidence and describes in writing with specificity in a separate section of the order that: (1) the Department made reasonable efforts to return the child to the parent before commencement of a trial on the merits and despite those reasonable efforts, a continuing danger remains in the home that prevents the return of the child to the parent; or (2) reasonable efforts to return the child to the parent, including the requirement for the Department to provide a service plan, have been waived due to a finding of aggravated circumstances under TFC § 262.2015.

The Court of Appeals noted that, although Mother and Father did not challenge their termination under TFC § 161.001(b)(1)(N), which requires proof the Department “made reasonable efforts to return the child to the parent”, the trial court’s finding under Subsection (N) is not dispositive of Mother’s and Father’s challenge to TFC § 161.001(f).

The Court stated that statutory terms should be interpreted consistently and pointed to the use of the phrase “reasonable efforts to return the child to the parent” in Subsection (N). The Court presumed that the Texas Legislature enacted TFC § 161.001(f) with knowledge of the prevailing judicial understanding of “reasonable efforts to return the child to the parent” under Subsection (N) and stated that such judicial determinations were also relevant to the current analysis.

Citing well-established authority, the Court stated that while the Department’s implementation of a service plan is generally considered a reasonable effort to return the child, it is not the exclusive means of doing so.

The Court further stated that the issue is whether the Department made reasonable efforts, not ideal efforts.

On appeal, Mother and Father argued the evidence was insufficient to support a finding that the Department made reasonable efforts to return the child because the caseworker failed to facilitate services for Mother and Father while they were incarcerated. However, the Court stated that while the Department did not make “ideal efforts” during Mother’s and Father’s incarceration, the issue was “whether the Department’s reunification efforts were reasonable under the circumstances.” The evidence reflected the caseworker sent service referrals and supervised weekly parent-child visits before Mother’s and Father’s incarceration, met with them in jail monthly, had them sign releases of information, and ensured they completed the Child Placement Resources Form.

The Court further stated that implementation of a service plan is not required to demonstrate reasonable efforts were made; instead, efforts to place the child with relatives may also support a finding of reasonable efforts. The evidence reflected that the Family-Based Safety Services caseworker testified she made reasonable efforts to avoid a removal, citing the Department’s supportive and patient oversight during the FBSS case. The Appellate Court rejected Mother’s and Father’s argument that Section 161.001(f) requires the trial court to focus only on Department efforts made after the filing of an original petition for conservatorship and stated that “the trial court need not disregard the Department’s earnest commitment to preserving the parent-child relationship prior to initiating suit.”

The Court stated that, while the Department is not “absolved of its suboptimal diligence to implement [Mother’s and Father’s] service plans during their confinement,” the caseworker maintained consistent contact with them, contacted nearly a dozen relatives for potential placement, and the status hearing order admitted into evidence contained a finding that the Department’s efforts to identify, locate, and provide information to each adult regarding the option to participate in the care and placement of the child were sufficient.

The Court of Appeals further stated that the “reasonableness of the Department’s reunification efforts must also be considered against the backdrop of [Mother’s and Father’s] recent history and engagement, or lack thereof, with the Department and its reunification efforts.” The evidence reflected that Mother’s and Father’s parental rights to their other children were recently terminated pursuant to TFC § 161.001(b)(1)(D), (E), and (O), after they failed to acquire a legal source of income and safe housing, continued using drugs, and failed to engage in counseling, the child in the current case tested positive for drugs at birth and again after the Department implemented a safety plan with supervised parent-child contact to avoid removal, and they had unsupervised contact with the child, including during their arrest for shoplifting. The evidence further reflected Mother’s and Father’s incarceration rendered them unable to care for the child, they provided no appropriate placement options, and the Department was unable to locate a safe, stable adult relative to care for the child until their release.

The Court of Appeals stated: “Given the unique circumstances of this case, we conclude

that the trial court could have formed a firm conviction or belief that the Department made reasonable efforts to return [the child] to [Mother and Father], but a continuing danger prevented the child's return." Mother's and Father's arguments were overruled. *In re M.N.M.*, 708 S.W.3d 321 (Tex. App.—Eastland 2025, pet. denied).

B. TFC § 263.404(a)

Shortly before trial, the Department abandoned its request for termination, instead seeking a monitored return of the child to Mother and supervised visitation by Father. The Department asked to be dismissed from the suit.

After a bench trial, the trial court appointed the Department as the child's permanent managing conservator and appointed Mother and Father as the child's possessory conservators. On appeal, the Department argued the trial court abused its discretion by appointing the Department as the child's permanent managing conservator.

The Court of Appeals considered TFC § 263.404(a), which only permits the trial court to appoint the Department a child's managing conservator without also terminating the rights of the child's parents if the court finds that: "(1) appointment of a parent as managing conservator would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development; and (2) it would not be in the best interest of the child to appoint a relative of the child or another person as managing conservator."

The Court noted the trial court judge did not make the two required TFC § 263.404(a) findings in the final order, nor did the appellate record contain separate findings of fact. The Court assumed without deciding that the necessary TFC § 263.404(a) findings could be implied from the judge's ruling. The Court then determined the necessary question was "whether the judge's decision is unreasonable because the necessary implied findings are unsupported by the evidence."

The Court ultimately concluded the evidence was insufficient to support a finding that appointing Father as the child's managing conservator would significantly impair the child's physical health or emotional development. In reaching this conclusion, the Court considered the uncontroverted testimony of Father that he had never had a Department case filed against him, had no criminal record, and had never been accused of neglectful supervision or abuse of a child. The Court noted that although Father was absent from the child's life before the child's removal from Mother, there was no evidence he neglected the child at any point, and the evidence was uncontroverted that Father and the child strongly bonded during the pendency of the case. The Court acknowledged that while Father had a single positive hair follicle drug test for cocaine during the case, this positive result was insufficient to support a finding that Father's appointment as managing conservator would significantly impair the child's physical health or emotional development. The Court reasoned that although the evidence supported a conclusion that Father used drugs at some point during the case, there were no additional facts showing how often Father used drugs or that he ever used them in a way or time that would pose any danger to the child. The Court

also noted that Mother did not testify to any facts showing that appointing Father as a managing conservator would significantly impair the child's physical health or emotional development.

The Court, therefore, held that the trial court abused its discretion by appointing the Department as the child's managing conservator, reversed the final order, and remanded the case for further proceedings consistent with its opinion. *In re A.A.R.*, No. 05-25-00002-CV (Tex. App.—Dallas Apr. 23, 2025, no pet. h.) (mem. op.).

C. ABUSE OF DISCRETION IN RESTRICTING VISITATION

Following the trial court's denial of the Department's petition to terminate Mother's parental rights, it appointed the Department as the child's sole managing conservator and Mother possessory conservator. Mother argued on appeal that the trial court abused its discretion by ordering she may have visitation only when the child's therapist allowed.

Testimony at trial indicated that the child did not want to have visitation with Mother. However, the Department testified that the child "still wanted to see" and "love[d] [Mother]", but "felt like [Mother] didn't understand her." The Department told Mother visitation was still available, but "it would be up to [the child] if she chose to attend or not." Evidence also demonstrated Mother had completed services, had been drug-free throughout the case, and that her home was safe.

The trial court's order stated Mother's visitation with the child would be "at times

mutually agreed to in advance by the parties." In absence of an agreement, Mother's visitation with the child would be "determined by [the child]'s therapist."

Mother argued placing her access to the child within the child's control was improper and the order's language was not "plain and unambiguous." The Department conceded that the trial court abused its discretion.

The Court relied on *In re J.Y.*, 528 S.W.3d 679 (Tex. App.—Texarkana 2017, no pet.) and *In re J.J.R.S.*, 627 S.W.3d 211 (Tex. 2021), which held that an order limiting a parent's access to a child must be based on the best interest of the child and must be sufficiently specific regarding the times and conditions for a parent's access to a child.

Reversing the part of the trial court's order requiring the child's therapist to determine Mother's visitation in the absence of an agreement of the parties, the Court reasoned that the order as written "could effectively deny any visitation" and was not "sufficiently specific as to the times and conditions" of Mother's access to the child. *In re J.H.*, No. 13-24-00235-CV (Tex. App.—Corpus Christi-Edinburg Aug. 8, 2024, no pet.) (mem. op.).

VI. TFC § 161.004

A. PLEADING

In December 2022, the trial court entered a final order naming the Department as permanent managing conservator of the children, with Mother named as possessory conservator.

In May 2023, the Department filed its *Original Petition to Modify Prior Order in Suit Affecting the Parent-Child Relationship*. At the conclusion of a bench trial, Mother's parental rights were terminated pursuant to TFC §§ 161.001(b)(1)(D), (E), and (O), and a finding that termination was in the children's best interest.

On appeal, Mother challenged, *inter alia*, the sufficiency of the evidence supporting the trial court's TFC § 161.001(b)(1)(D) finding. She further argued that the trial court was barred by the doctrine of *res judicata* from terminating her parental rights under Family Code § 161.004, as there had been no material and substantial change in circumstances since the December 2022 final order.

The Court of Appeals noted that although the Department's original petition to modify sought termination pursuant to both section 161.001 and 161.004, the termination order cited only section 161.001 as the basis for termination and made no findings as to the elements of section 161.004. Consequently, the Court determined that its review of the sufficiency of the evidence to support termination was confined to section 161.001. Moreover, the Court noted that "a trial court can terminate the parent-child relationship, even though it previously denied termination in another order, using section 161.001 alone if termination is sought on *evidence of acts or omissions having occurred since the earlier order in which termination was denied*."

Regarding Mother's Subsection (D) challenge, the Court pointed out that the relevant period for a finding of endangerment under the subsection is *before removal*. In this case, the record indicated that since the children were

removed by the Department, they had been in the care of a foster family and never returned to live with Mother after the previous denial of termination. The Court reiterated that its review of the evidence under section 161.001 was limited to acts or omissions that occurred since the previous denial of termination. The Court, therefore, concluded, "The record contains no 'new' evidence, not previously presented to the trial court, that would support a finding that subsection (D) supported termination of Mother's parental rights." The Court sustained Mother's Subsection (D) challenge and modified the trial court's judgment to delete the finding. *In re O.S.G., O.N.V., O.H.V.*, No. 12-24-00214-CV (Tex. App.—Tyler Nov. 20, 2024, pet. denied) (mem. op.).

B. MATERIAL AND SUBSTANTIAL CHANGE

The trial court signed an order in December 2021 denying the Department's request for termination. The court named the Department permanent managing conservator of the children and denied Mother's and Father's access to the children, as it would not be in the children's best interest and would endanger their physical or emotional welfare. Neither Mother nor Father appealed this decree. The court did not alter its ruling regarding visitation, even after reviewing the issue of Mother's and Father's possible visitation or other contact with the children periodically after the final order.

The Department filed a petition to modify in October 2022, seeking to terminate the parents' rights to the children under TFC §§ 161.004 and 161.001(b)(1)(D) and (E), among other grounds. The trial was held over two days in May and August 2024.

Mother argued on appeal that the Department failed to show, by clear and convincing evidence, that a material and substantial change occurred under TFC § 161.004; therefore, the trial court should not have considered evidence of the predicate grounds for termination that happened before the initial decree denying termination of her parental rights.

Here, the Appellate Court stated that the “most clear and obvious evidence of a change in circumstances” was the children’s “significant progress” in foster care, the foster parents’ desire for the children, and the oldest child’s desire to remain with her foster parents. The Court also considered that Mother and Father did not demonstrate compliance with all “psychiatric, therapeutic, psychological, and substance abuse requirements” to regain contact with the children. Accordingly, Mother and Father had no contact with the children for nearly three years between the trial court’s prior order and the second order terminating their parental rights. As such, the Court concluded that, given this evidence, a reasonable factfinder could have formed a firm belief or conviction that the material and substantial change in circumstances finding was true. Affirmed. *In re C.G. and J.M.*, No. 14-24-00784-CV (Tex. App.—Houston [14th Dist.] Apr. 10, 2025, no pet. h.) (mem. op.).

VII. POST-TRIAL

A. MOTION FOR NEW TRIAL

Mother appealed, *inter alia*, alleging that the trial court erred in determining her motion for new trial did not raise an ineffective assistance of counsel claim. The Court of Appeals cited

to TEX. R. CIV. P. 321 for the proposition that a written motion for new trial must specify each ground relied upon “in such a way that the objection can be clearly identified and understood by the court.” The Court also cited to TEX. R. CIV. P. 322 and stated, “[g]eneralit[ies are] to be avoided,” and “grounds of objections couched in general terms . . . shall not be considered by the court.”

The Court of Appeals then turned to Mother’s motion for new trial and stated it was “full of generalities” and she “broadly asserted that she had a ‘meritorious defense to the cause of action alleged’ without identifying which pivotal termination finding her meritorious defense purportedly undermined.” Mother also claimed that “[j]ustice w[ould] not be properly served unless a new trial [wa]s granted” and left the trial court to “guess how or why.” The Appellate Court stated that the only portion of Mother’s motion that pinpointed a specific error was her contention that Mother “did not receive notice of the final trial from her attorney and was unaware that the matter was being held in person” and her motion alluded to the alleged harm that there was “[unidentified] evidence as to completion of her court-ordered services that was not presented by her attorney at trial”. The Court pointed out that at the new trial hearing, both the trial court and the Department interpreted Mother’s motion as being limited to the notice issue. Mother did not refute this interpretation, except for claiming that a lack of notice would include the issue of whether her attorney was keeping her apprised; however, she also admitted that ineffective assistance is a separate issue. Mother attempted to introduce evidence of ineffective assistance of counsel, but that evidence was rejected because it was outside the scope of the motion. At the

conclusion of the hearing, Mother claimed that the ineffective assistance issue was implied by her motion.

The Court of Appeals rejected this claim. The Court cited to TEX. R. CIV. P. 320-21 to reinforce that a movant must clearly identify grounds for a new trial in writing and ambiguous or implied arguments are insufficient to require the trial court's consideration. The Court stated that Mother's motion "did not assert her trial court's presentation of the case had been deficient, nor did it use the well-worn phrase 'ineffective assistance.' It did not invoke the constitution, nor cite to any relevant case law. And it did not attach any related evidence." "In short, the motion did not 'clearly identif[y]' ineffective assistance as a ground for new trial." The Court of Appeals accordingly determined that the issue of ineffective assistance of counsel was not within the motion's scope and the trial court did not abuse its discretion. *In re A.B.*, No. 02-24-00558-CV (Tex. App.—Fort Worth May 1, 2025, no pet. h.) (mem. op.).

B. FINALITY

The case began when the trial court ordered Mother and Father to participate in services after the Department filed a petition for temporary orders. The Department thereafter filed a separate petition to terminate the parental rights of Mother and Father and to obtain conservatorship of the child. A few days later, Mother filed a motion to consolidate the two suits. Mother and Father each filed an original answer and counter-petitions in both suits, as well as a motion for sanctions, asserting that the Department's claims were frivolous and brought in bad faith. In response

to these filings, the Department moved to nonsuit all its claims.

The Department appeared before the court to request that it enter an order dismissing the Department's claims in response to its motion to nonsuit. The court advised the Department that, despite the nonsuit, "I am having a sanctions hearing later this month, and I'm still going to have it." The trial court subsequently signed the Department's proposed dismissal order ("the Dismissal Order").

After the trial court signed an order granting Mother's motion to consolidate the two cases, it held a hearing on Mother's and Father's motions for sanctions. Taking the motions under advisement, the court entered an order granting the sanctions motions, finding that the Department's claims were groundless and brought in bad faith, and ordering the Department to pay the attorneys' fees and costs of Mother and Father ("the Sanctions Order").

The Department appealed the Sanctions Order. The Court of Appeals dismissed the appeal and vacated the Sanctions Order as void, reasoning that "[b]y dismissing 'this cause' and directing the Clerk of Court to 'remove this cause from the Court's docket,' " the Dismissal Order "expressly disposed of the entire case, and the order was final." The Appellate Court concluded that the Dismissal Order "trigger[ed] the running of the trial court's plenary power," which expired on the date of the hearing on the sanctions' motions and nine days before the court entered the Sanctions Order. The Texas Supreme Court granted Father's petition for review.

The Supreme Court observed that to constitute a final judgment, "the trial court's 'intent to

finally dispose of the case must be unequivocally expressed in the words of the order itself.” The Court further observed that a “trial court may express its intent to render a final judgment by describing its action as (1) final, (2) a disposition of all claims and parties, and (3) appealable.”

The Supreme Court disagreed with the Department’s contention that the Dismissal Order “clearly and unequivocally express[ed] the trial court’s intent to dismiss all pending claims and parties and enter a final judgment.” The Supreme Court explained that the Dismissal Order’s: (1) title referred only to the Department’s motion to terminate the temporary order for services; (2) introductory paragraph stated that only that specific request “was heard”; (3) found only that the temporary order “is no longer needed”; and (4) only relief granted was to terminate the temporary order and relieve the attorney ad litem of his duties. It, therefore, concluded the Dismissal Order lacked the necessary “host of indicia” of finality, and its language referring to the dismissal of the “cause” and its removal from the docket, standing alone, did not clearly and unequivocally express the trial court’s intent to enter a final judgment disposing of all claims and parties. The Court noted that the Sanctions Order also did not contain language that clearly and unequivocally expressed an intent to enter a final judgment.

Accordingly, the Supreme Court agreed that the Appellate Court lacked jurisdiction over the Department’s appeal from the Sanctions Order because the trial court did not enter a final judgment. However, it determined that because the Dismissal Order was not a final judgment, the trial court did not lose plenary power before the issuance of the Sanctions

Order. Consequently, the Court granted review, reversed the Court of Appeals’ judgment vacating the Sanctions Order and dismissing the appeal, and remanded the case to the trial court for further proceedings. *In re C.K.M.*, 709 S.W.3d 613 (Tex. 2025).