Termination Case Law Update

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I. PRE-TRIAL ISSUES

A. HOME STATE AND TEMPORARY EMERGENCY JURISDICTION

Mother and the child moved from California to Texas to stay with relatives, but soon after arriving at her relatives' home, Mother left because she claimed the child was unsafe. Mother returned with the child to DFW International Airport, where Mother was later found in an altered mental state prompting law enforcement and medical intervention. The Department investigator worked with Mother for forty-four days, and Mother eventually agreed to allow the child to stay with family friends. Mother then returned to California, leaving the child in Texas, refused to cooperate with the Department, and never returned to Texas or articulated a plan to care for the child. In its order terminating Mother's parental rights to the child, the trial court found "that the State of Texas has jurisdiction of this case pursuant to Subchapter C, Chapter 152, Texas Family Code, by virtue of the fact that Texas is the home state of the child[]."

In her challenge to the trial court's subject-matter jurisdiction, Mother argued that Texas had no jurisdiction to make a custody determination over the child because Texas was not the child's home state on the date the Department filed the original petition. Instead, Mother argued that California was the child's home state.

The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), found in TFC Chapter 152, provides four scenarios under which a Texas court may exercise jurisdiction for an initial custody determination, including that Texas was the child's home state within six months before the commencement of the custody proceeding. *See* TFC § 152.201(a). TFC § 152.102 defines "home state" as "the state in which a child lived with a parent ... for at least six consecutive months immediately before the commencement of a child custody proceeding."

The Court of Appeals noted that the record was devoid of any evidence showing that Texas was the child's home state for six months prior to the commencement of the suit and no argument had been made that any of the other subsections of the Texas Family Code or the UCCJEA supported the trial court's jurisdiction. Therefore, the Court concluded that the trial court did not have jurisdiction under TFC § 152.201(a).

Despite that conclusion, the Court of Appeals agreed with the Department's argument that the trial court had temporary emergency jurisdiction under TFC § 152.204(a), which provides that a "court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse." The Court noted that the trial court made specific findings in its *Order for Protection* that there was an immediate danger to the child and that continuation in Mother's home would be contrary to his welfare. The Court further noted that the affidavit for removal supported this finding, as the affiant related that the child had been in the airport for twenty-four hours without food, money, or diapers; Mother's aggression at the hospital was potentially exacerbated by her methamphetamine use and

caused her to scratch and harm the child as medical personnel attempted to treat Mother; and Mother left the child in Texas without providing a plan for his care. Citing to § 152.204(a), the Court determined that these facts "constituted an emergency necessary to protect [the child] that entitled the trial court to assert temporary emergency jurisdiction."

The Court of Appeals further agreed with the Department's argument that by the time the final order was rendered, the circumstances were such that Texas had become the child's home state pursuant to TFC § 152.204(b). TFC § 152.204(b) states:

> If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under Sections 152.201 through 152.203, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under Sections 152.201 through 152.203. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under Sections 152.201 through 152.203, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

The Court of Appeals observed there was no evidence of an existing custody determination when the trial court issued the initial removal order and no evidence that any custody proceeding had been filed in California during the pendency of the case. Accordingly, the Court held that "Texas had become [the child's] home state and, therefore, when the trial court rendered its final order, the trial court's temporary jurisdiction became permanent." The trial court's order was affirmed. *In re C.W.*, No. 05-25-00991-CV (Tex. App.—Dallas Dec. 23, 2025, no pet.) (mem. op.).

B. Lack of Jurisdiction Due to Other Court of Continuing and Exclusive Jurisdiction

The Department filed a SAPCR against Mother for the protection of her three children. After the final hearing, the trial court issued an order based upon an agreement by the parties, which named Father1 as the managing conservator of Child1 and Child2 and also named him as the non-parent managing conservator of Child3. The final order found that Father2 was the father of Child3 but denied him conservatorship. The final order also named Mother as a conservator for all three children with phased-in visitation for Child2 and Child3 that would eventually step up to standard possession.

Mother appealed, arguing, *inter alia*, that the trial court did not have jurisdiction to enter a final order with respect to Child3. The Department and the Court of Appeals both agreed that although the trial court had jurisdiction to enter emergency orders with respect to Child3, the trial court did not have jurisdiction to enter a final order.

The Court began its analysis by reciting that pursuant to TFC § 155.001, "[o]nce a Texas

court has acquired continuing, exclusive jurisdiction . . . no other court of this state has jurisdiction of a suit with regard to that child except as provided by" Chapter 155 or Chapter 262.

Furthermore, pursuant to TFC § 155.101(a)(1), the Family Code requires the petitioner or trial court to request from the Bureau of Vital Statistics identification of the court that last had continuing, exclusive jurisdiction of the child in a suit, unless the petition alleges that no court has continuing, exclusive jurisdiction of the child and the issue is not disputed by the pleadings. The Court pointed out that although a trial court in the county where the child is found has jurisdiction to enter temporary orders when the Department files a suit under Chapter 262, after a full adversary hearing, the Department "***shall*** request identification of a court of continuing, exclusive jurisdiction as provided by Chapter 155." *Citing to In re D.W.*, 533 S.W.3d 460, 464 (Tex. App.—Texarkana 2017, pet. denied). If the Chapter 262 court then determines that another court has continuing, exclusive jurisdiction in response to that request, then the Chapter 262 court ***"shall*** . . . 'transfer [the termination proceeding] to the court of continuing, exclusive jurisdiction.'"

The Court of Appeals then turned to the procedural history of the case. In 2015, the 211th Judicial District Court of Denton County, Texas, entered a default order establishing the parent-child relationship between Father2 and Child3. The Court noted that the Denton County court therefore became the court of continuing, exclusive jurisdiction with respect to Child3. The Department filed a petition in the County Court at Law in Panola County on June 13, 2024, seeking conservatorship of all three children and termination of parental rights. The petition stated that the Department believed no other court had continuing, exclusive jurisdiction and the Department would request that the Vital Statistics Unit identify any court that has continuing, exclusive jurisdiction over the children pursuant to TFC § 155.101(a). On July 11, 2024, the Department filed its first amended petition; the Department removed the language regarding continuing, exclusive jurisdiction and instead alleged only that Panola County had jurisdiction of the suit. The Department also removed the language stating it would request information from the Vital Statistics Unit and added language stating Father2 is Child3's alleged father.

During the case, the Department sent two requests for jurisdictional information to the Vital Statistics Unit. However, the Department provided incorrect information about Child3 in both of its inquiries. In the first inquiry, Child3's birthplace was listed as Alaska instead of Arkansas, and in the second inquiry, the child's birth year was listed as 2024 instead of 2014. On May 20, 2025, correspondence from the Vital Statistics Unit was filed with the trial court providing Child3 had not been the subject of a suit affecting the parent-child relationship, but the filed document showed the incorrect birth year. Citing TFC § 155.101(a), the Court of Appeals held that "[b]ecause the Department misidentified [Child3], neither of those requests was a proper request for identification of a court of continuing, exclusive jurisdiction".

The Court of Appeals also noted that the trial court was made aware of the possibility of the existence of a court of continuing, exclusive jurisdiction; at the final hearing, Mother's

counsel requested that the child support established by a previous order "out of Arkansas or out of Denton County, Texas," regarding Child3 be redirected to Father1 following the entry of the final order. Despite this, the trial court signed the final order on the date of the final hearing. The Court of Appeals held "[t]he trial court implicitly recognized the existence of another court with jurisdiction over [Child3] when it ordered that 'the current child support order that . . . [Father2] is obligated to pay . . . shall be redirected to be paid to [Father1].'" On October 7, 2025, the Department filed a motion in Denton County to transfer the matter to Panola County, and on October 8, the Denton County court signed an order to effectuate the transfer.

The Court of Appeals ultimately concluded that only the Denton County court had jurisdiction to issue a final order in a matter concerning Child3, as it was the court of continuing, exclusive jurisdiction. Even though the Panola County court had emergency jurisdiction under Chapter 262, the Denton County court remained the court with continuing, exclusive jurisdiction. "Absent a valid transfer from the Denton County Court, the Panola County Court was not permitted to enter a final order as to [Child3]." The Court stated that the continuing, exclusive jurisdiction statutory scheme is "truly jurisdictional", and held that "[b]ecause the Panola County Court did not have jurisdiction to enter the final judgment as to matters concerning [Child3] at the time it entered its final order, the final order is void as to [Child3]." The Court accordingly vacated the trial court's final order with respect to Child3. *In re C.B.*, No. 06-25-00081-CV (Tex. App.—Texarkana Mar. 30, 2026, pet. denied) (mem. op.).

C. Docket Entry Insufficient for TFC § 263.401

The trial court signed an *ex parte* order on September 14, 2023, granting emergency temporary managing conservatorship of the children to the Department and setting the original dismissal date for the case as September 16, 2024. On August 30, 2024, the parties filed a mediated settlement agreement in which they agreed to submit to the trial court a request for extension of the dismissal date to provide Mother with additional time to complete certain services. The parties requested the extension on September 9, 2024, as indicated by the trial court's docket sheet entry for that date, which stated: "The parties mediated and if the court allows, the parties are requesting a continuance of the trial and an extension of this case. The new date of dismissal would be 3/14/2025. We would ask that trial be set for 2/24/2025. . . . I will submit an amended scheduling order if our request is granted." On January 25, 2025, the trial court signed an order retaining the case on its docket and extending the dismissal date to March 14, 2025. The court held a bench trial on February 24, 2025, and subsequently issued an order of termination.

On appeal, Mother argued the trial court's order terminating her parental rights was void because the trial court violated TFC § 263.401 by failing to commence the trial on the merits by the one-year automatic dismissal date or timely extend its jurisdiction.

During its review, the Court of Appeals considered whether the trial court's docket entry reflected the trial court's ruling extending the dismissal deadline, rather than simply the parties' agreement to request the same.

Specifically, the Court focused on whether the trial court's September 9, 2024, docket sheet entry sufficiently reflected the court's ruling to extend the original dismissal date in a timely manner. The Court concluded it did not.

In its analysis, the Court noted that TFC § 263.402 prohibits parties from extending the trial court's deadlines by agreement or otherwise; rather, an extension of jurisdiction requires a ruling by the court. The Court pointed out that TFC § 101.026 authorizes a trial court to render an order on its docket sheet and observed that reviewing courts "have examined docket entries on this issue [and] have accepted cursory statements of court rulings" when the language expressly or clearly indicated a decision by the trial court. The Court emphasized that "[t]he docket sheet entry must show the trial court's intention to render a decision at that time."

In sustaining Mother's issue, the Court concluded that the September 9, 2024 docket entry reflected that the parties made an agreed request for an extension of the dismissal date and proposed deadlines they would ask for "*if* [their] request is granted", but it did not demonstrate that the trial court had taken any action or made any decision on the parties' request. There was no record showing that a hearing was held on that date nor that the trial court orally rendered an extension. As such, the record failed to sufficiently show that the trial court granted a timely extension of the automatic dismissal date under TFC § 263.401. The Court vacated the trial court's order of termination and dismissed the case without prejudice. *Ex parte T.J.A.D.*, No. 05-25-00417-CV (Tex. App.—Dallas June 16, 2025, no pet.) (mem. op.).

D. STANDING UNDER TFC § 102.004(a)(1)

In a Department suit, a jury awarded permanent managing conservatorship to Aunt and Husband following a trial on competing conservatorship claims, and the trial court signed a final order consistent with that verdict. The conservatorship trial involved two relative intervenors, Aunt and Husband, and Great Aunt and Wife, who each sought managing conservatorship of the child. On appeal, Great Aunt and Wife argued that Aunt and Husband did not establish that they had standing to intervene in the matter.

The Court of Appeals began its analysis by reiterating well-established law concerning standing. A party seeking conservatorship of a child must have standing to seek such relief, and standing to intervene in a suit affecting the parent-child relationship is governed by the Texas Family Code. Additionally, the statute serves as the proper framework for a standing analysis when standing has been conferred by statute.

In their petition in intervention, Aunt and Husband only alleged that they had standing under TFC § 102.004(a)(1). In relevant part, TFC § 102.004(a)(1) provides that "a grandparent, or another relative of the child related within the fourth[1] degree by consanguinity, may file an original suit

[1] Of note, the version of the statute applicable to this case provided standing only for relatives within the "third" degree of consanguinity, which is not relevant to this analysis. The Texas Legislature amended TFC § 102.004(a), effective September 1, 2025.

requesting managing conservatorship if there is satisfactory proof to the court that…the order requested is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development." The "present circumstances" of the child are those that existed at the time the intervention was filed.

The Court of Appeals began by noting that Husband was married to the child's maternal aunt and was related to the child only by affinity, not consanguinity, and therefore could not establish standing pursuant to TFC § 102.004(a). As Mother's sister, Aunt met the requisite consanguinity requirement, leaving only the question of whether she presented satisfactory proof that the child's present circumstances at the time of the intervention would significantly impair her physical health or emotional development.

On appeal, Aunt argued that she established standing under TFC § 102.004(a)(1) by showing that the appointment of the child's biological parents as managing conservators would significantly impair her physical health or emotional development. The Court concluded, however, that TFC § 102.004(a)(1) requires the broad consideration of the child's "present circumstances" at the relevant time, not the narrower question of whether her biological parents would have been appropriate conservators.

The Department had placed the child with Great Aunt and Wife following her removal. In an affidavit filed in support of her intervention, Aunt maintained that the child "was placed with a great aunt at the time [of her removal] for which we have concerns with her being placed there." The affidavit did not contain any additional statements about the child's then-present conditions or state that those conditions would significantly impair her physical health or emotional development. Thus, the Court concluded that these conclusory statements in Aunt's affidavit fell short of the "satisfactory proof" necessary to establish her standing under TFC § 102.004(a)(1).

Beyond the affidavit, the record before the trial court showed that the child was six months old when Aunt and Husband intervened in the suit, and she had been living with Great Aunt and Wife since her release from the hospital following her birth. At trial, the Department caseworker testified that she did not have any concerns about Great Aunt and Wife's care of the child, and they had "demonstrated that they're able to provide a safe, stable home environment" for the child and that they had "met all their [sic] needs, basic needs, emotional needs, therapeutic needs."

Aunt's sister testified that when she was a teenager, she heard Great Aunt using corporal punishment to discipline their brother, who was 11 or 12 at the time, but indicated this incident appeared to be isolated. Further, neither her sister nor any other witnesses testified that Great Aunt engaged in similar behavior while caring for the child. Additionally, Aunt's sister testified that she trusted Great Aunt with her own children and that Great Aunt was someone she could contact if she needed something. The Court concluded that Aunt's sister's testimony about an isolated event that occurred approximately twenty years before the child was born was not evidence that the child's placement with Great Aunt and Wife would significantly impair the

child's physical health or emotional development.

During the trial, Aunt and Husband's cross-examination of Great Aunt primarily focused on her relationship with Mother and whether she could have foreseen the danger and provided more protection to the child's older sister, who Mother was charged with murdering. The Court pointed out, however, that when Aunt and Husband intervened—the only time relevant to the standing analysis—Mother was incarcerated and had no access to the child. Further, there was no evidence that Great Aunt or Wife allowed Mother to access or contact the child, and Great Aunt testified that they would not do so. The Court reasoned that the testimony about Great Aunt's actions around the time of the murder did not support a logical inference that any "specific, identifiable behavior or conduct" by Great Aunt would "probably result in [the child] being emotionally impaired or physically harmed." [internal citations omitted].

Accordingly, the Court of Appeals held that Aunt failed to present the satisfactory proof necessary to meet the significant impairment element of TFC § 102.004(a)(1) and sustained Great Aunt and Wife's first issue. *In re O.H.R.S.*, No. 04-25-00503-CV (Tex. App—San Antonio Jan. 28, 2026, no pet.) (mem. op.).

E. Denial of Continuance Due to Father's Delaying Tactics

On appeal, Father argued the trial court abused its discretion when it denied his request for a continuance.

The child was born in March 2023. After neither parent responded to the hospital's calls to pick him up, the Department took custody of the child and placed him in foster care. Father acknowledged paternity shortly after the child's birth, yet avoided service, failed to submit to drug testing, and stopped visiting the child. In June 2023, Father was ordered to submit to DNA testing; however, despite being reminded multiple times over the following year, Father failed to comply. Father did not submit to DNA testing until he was incarcerated following an extension of the case. Father's paternity was adjudicated in November 2024.

Trial took place over three days. Prior to the second day of trial, Father filed a written motion for continuance, seeking additional time to complete services following his release from incarceration. During his argument in favor of granting a continuance, Father's counsel noted that Father was ill and unable to appear in court. Although the trial court acknowledged that Father's absence from court was not through any fault of his own, it denied his motion for continuance.

The Court of Appeals noted there were three different dismissal dates over the course of the case—in March 2024, September 2024, and March 2025. It pointed out that Father did not submit to court-ordered paternity testing until after the September 2024 dismissal date. Citing case law that a trial court does not abuse its discretion by denying a continuance when a parent's failure to comply with a service plan is due to his or her own choices, the Court of Appeals stated that "by stalling on paternity testing, ignoring DFPS's attempts to contact him, and avoiding service of process, Father ran out the clock on any reasonable possibility of completing his services and showing that he was capable of giving [the child] a safe and

stable home." Affirmed. *In re J.M.*, No. 01-25-00195-CV (Tex. App.—Houston [1st Dist.] Sept. 11, 2025, pet. denied) (mem. op.).

F. No Violation of Due Process in Allowing Withdrawal of Court-Appointed Counsel

The trial court granted Mother's court-appointed attorney's motion to withdraw less than two weeks before trial. On appeal, Mother argued the trial court abused its discretion by failing to render a finding of good cause on the record.

At the trial court's hearing on the motion to withdraw, Mother provided testimony regarding her desire to represent herself and refusal to cooperate with court-appointed counsel. Specifically, Mother testified that she did not want another attorney appointed, understood she would be responsible for knowing the rules of evidence and civil procedure, felt completely capable of representing herself, and waived her right to appeal the issue of representing herself at trial. Following the hearing, the trial court noted Mother wished to represent herself and indicated she was prepared to do so. The trial court granted counsel's motion to withdraw.

The Court of Appeals noted that, while Mother's testimony provided sufficient evidence to support a finding of good cause, the trial court failed to render the finding as required by TFC § 107.016(2)(C). Nonetheless, the Court pointed out that the record reflected Mother joined her counsel's request to withdraw, asked that she be allowed to represent herself, testified under cross-examination that she understood she was entitled to court-appointed counsel and would be bound by the rules of evidence and procedure, and clearly and unequivocally reaffirmed her desire to proceed to trial without the assistance of counsel. The Court further noted that, even during trial, Mother was adamant she had no desire to have the trial court appoint her counsel. Based upon this record, the Court of Appeals concluded that "any error occasioned by the trial court's failure to render a good cause finding on the record is waived under the doctrine of invited error."

Turning to Mother's argument that her waiver of her right to court-appointed counsel was not made knowingly and voluntarily, the Court of Appeals pointed out that "Mother's desire to represent herself was thoroughly explored and her testimony under oath supports a finding that her desire to proceed without court-appointed counsel was made knowingly and voluntarily." Accordingly, the Court of Appeals held that the trial court did not abuse its discretion in granting Mother's counsel's motion to withdraw. Mother's issue was overruled. *In re T.L.S.*, No. 05-25-00658-CV (Tex. App.—Dallas Nov. 20, 2025, no pet.) (mem. op.).

G. Right to Counsel at "Critical Stage" of Litigation

The Department became involved in February 2023 and ultimately sought permanent managing conservatorship of the children in August 2023. The final hearing was scheduled to commence on January 7, 2025.

On January 6, 2025, Mother's trial counsel filed a motion for continuance and a motion to withdraw. Neither Mother nor her counsel appeared for the final hearing on January 7.

The trial court denied Mother's motions and proceeded with trial despite their absence. On appeal, Mother asserted that her court-appointed counsel rendered ineffective assistance by failing to appear at the final hearing. The Court of Appeals agreed.

The Court observed that "where a parent's court-appointed trial counsel fails to appear at trial, counsel's absence constitutes ineffective assistance, because no plausible strategic reason may explain counsel's absence during such a critical stage of the litigation." It explained that the record in this case "clearly demonstrated" that, despite his knowledge, Mother's counsel failed to appear at the final hearing, which was "indisputably a 'critical stage' of litigation." The Court held that "[d]ue to the complete absence of any representation at the final hearing, the Department's evidence was not subjected to the meaningful adversarial testing that is required in such proceedings," and such "violation of the [*Strickland v. Washington*, 466 U.S. 668, 687 (1984)] criteria, among other things, rendered the process so unreliable that a presumption of prejudice is indeed warranted in this instance." Accordingly, the Appellate Court sustained Mother's challenge, reversed the trial court's final order terminating her parental rights, and remanded the case to the trial court for further proceedings. *In re M.M.B.*., No. 11-25-00027-CV (Tex. App.—Eastland July 10, 2025, no pet.) (mem. op.).

H. TFC § 262.201(g)(2)

Mother filed a petition for writ of mandamus after the trial court denied the return of her two children, Child1 and Child2, following an adversary hearing.

Mother adopted Child1 and Child2 in July 2025. On September 23, 2025, Child1, who was two years old at the time, suffered burns. According to Mother, she bathed Child1 and Child2, took Child2, who was younger than Child1, from the tub to get dressed, and left Child1 to play in the bath. She believed Child1 accidentally turned on the hot water. The next day, Mother took Child1 to the hospital, where Child1 remained through October 8, having suffered third-degree burns to her bottom, lower back, and right thigh, which required skin grafts.

On September 24, the Department received a priority 1 intake alleging physical abuse of Child1 as a result of the burns. On October 7, the parties participated in a Family Team Meeting, and Mother agreed to a safety plan, which included working Family-Based Safety Services (FBSS) and providing a list of safety monitors to supervise her with the children. Mother signed the safety plan on October 9, and on that same day, Child1 was released from the hospital to Mother. Mother, Child1, and Child2 were then supervised by Grandmother, who was on Mother's list of potential safety monitors.

On November 3, the Department filed its *Petition for Protection of a Child, for Conservatorship, and for Termination in Suit Affecting the Parent-Child Relationship*. The Department removed the children from Grandmother the next day. After the adversary hearing, which occurred over three days from November 17-19, the trial court signed an order making the requisite findings under TFC § 262.201(g), appointing the Department as the temporary managing conservator of the children, and granting Mother visitation up to two hours per week supervised by the

Department. At a status hearing on December 10, the trial court denied Mother's request for a monitored return or placement and declined Mother's request to increase visitation. Mother then filed a petition for writ of mandamus arguing that the trial court abused its discretion by failing to return the children after the adversary hearing.

TFC § 262.201(g) provides that to retain possession of the children following an adversary hearing, the Department is required to present evidence to satisfy a person of ordinary prudence and caution that: (1) there was a danger to the physical health or safety of the children, which was caused by an act or failure to act of the person entitled to possession; (2) the urgent need for protection required the immediate removal of the children and reasonable efforts, consistent with the circumstances and providing for the safety of the children, were made to eliminate or prevent the children's removal; and (3) reasonable efforts have been made to enable the children to return home, but there is a substantial risk of continuing danger if the children are returned home.

The Court of Appeals focused its analysis on Subsection (g)(2), "as it is dispositive. Subsection (g)(2) includes two components: (1) the *urgent* need for protection required the children's *immediate* removal and (2) *reasonable efforts*, consistent with the circumstances and providing for the safety of the children, were made to *eliminate or prevent* the children's removal. We conclude that the evidence in this case does not support either component."

As to the first component, the Court noted that while there was no doubt Child1 suffered serious injury on September 23, the evidence presented at the adversary hearing supported differing conclusions as to whether the child's injuries were accidental. The Court stated, "Importantly, however, the record is silent as to any harm to either child since September 23 or any urgent need for protection that required the children's immediate removal. No evidence suggests that [Mother] was around the children unsupervised in contravention of the safety plan; rather, the evidence reflects that no one from the department, CASA, or FBSS (or the children's teachers) observed any concerns." The Court weighed testimony from the CASA volunteer that she believed the children should be returned to Mother and that the children were not in imminent danger in Mother's care. The Court also noted that the Department investigator admitted that nothing had happened to the children since September 23. The testimony at the status hearing likewise reflected no concerns from the Department caseworker or the CASA representative. The Court therefore concluded, "[h]ere, after several weeks from the injury without incident, the Department did not establish circumstances demonstrating a need for protection of the children that is so urgent that immediate removal of the children was necessary."

The Court also "[took] issue with the 'reasonable efforts' made in this case." The Court pointed out that although Mother was willing to participate in FBSS, FBSS rejected the case the day after the initial meeting. While the FBSS worker complained about the lack of a written safety plan, she admitted that Mother and her counsel planned to confer and further admitted to the potential that the children's safety could be adequately addressed with a written safety plan. Similarly, the Court noted

it was "concerning" that the Department supervisor represented to Mother and her counsel that the Department intended to pursue an order to participate in services, admitted that such an order could have alleviated the Department's concerns and there was no reason she could not pursue this order, yet she never pursued this option. The Court stated, "Certainly, an order to participate would have been a reasonable effort to avoid removal."

The Court also weighed that the safety plan did not expire until after removal, and "the evidence establishes that the *renewal* of the safety plan would have been a reasonable effort to avoid removal." The Court considered that the record did not substantiate the Department's excuses that Mother failed to obtain signatures when the Department represented that they would obtain signatures and never did, or that Mother refused to renew the safety plan when both the Department FBSS worker and supervisor admitted they never sought to renew it.

The Court considered that Mother complied fully with the safety plan and completed a psychological evaluation and sixty parenting classes, which evidenced her willingness to work services. Additionally, Grandmother was an approved safety monitor and the children's caregiver at the time of removal, and there was no evidence that she allowed the children to interact with Mother in violation of the safety plan. The Court stated, "[a]side from speculation, the record is simply devoid of evidence showing that [Grandmother] would not place the children's interests above [Mother's] or provide needed protection for the children, despite any belief that [Mother] could harm the children. The strongest evidence of this fact is the safety plan itself, which apparently kept the children safe. Yet the Department never attempted to conduct a home study for [Grandmother]."

The Court therefore concluded that the Department failed to establish the requirements of TFC § 262.201(g)(2) and conditionally granted Mother's petition for writ of mandamus. *In re L.C.*, No. 12-26-00028-CV (Tex. App.—Tyler Mar. 3, 2026,orig. proceeding) (mem. op.).

II. TRIAL ISSUES

A. "PROFFER" FAILS TO CONSTITUTE SUFFICIENT EVIDENCE

Following a bench trial, the trial court terminated Mother's parental rights pursuant to TFC § 161.001(b)(1)(N), (O), and a finding that termination is in the children's best interest. Mother appealed, alleging the evidence was legally and factually insufficient. The Department filed a letter brief conceding the evidence was legally insufficient, and the Court of Appeals ultimately agreed.

The final hearing occurred on June 13, 2025. Neither Mother nor her attorney appeared, although another attorney did appear on Mother's behalf. With no objection, the trial court entered seventeen exhibits into the record at the Department's request. These exhibits included:

- Pictures of each of the children;
- Returns of citation for Mother and Father;
- Service plans for Mother and Father from meetings held on August 6, 2024,

October 16, 2024, and February 25, 2025;

- An "Update to the Court," indicating that "Family Plans," based on a "Service Plan meeting" held on August 6, 2024, were enclosed, with the attached "Family Plans";
- A "Status Report to the Court" filed on August 8, 2024, providing information to the court about the children's medical status and placement and requesting that the court order Mother and Father to engage in specified activities;
- A "Status Hearing Order" signed by the trial court on September 23, 2024, finding that Mother's visitation with the children must be supervised and adopting the service plan as a court order;
- A "Visitation/Contact/Restriction Plan" filed on July 5, 2024, establishing contact restrictions between Mother and the children;
- Visitation plans for Mother and Father filed on February 3, 2025, February 7, 2025, and March 7, 2025; and
- An "Order on Motion to Consolidate".

The Department's counsel then asked to "proffer the remaining testimony into the record"; there was no objection. The Department "proceeded to represent what the evidence would show if the Department were to call witnesses." The Department's counsel summarized what the testimony and evidence would show, if said evidence was actually entered, and made a brief argument about facts supporting the best interest determination. No witnesses were called.

The Court of Appeals acknowledged that, during the final hearing, counsel for the Department made a number of statements representing what the evidence *would have shown* if the Department had actually called any witnesses. "The Department did not, however, call any witnesses or elicit any testimony from [witnesses]. The statements provided by counsel were not made under oath and did not indicate that counsel was tendering evidence based on counsel's personal knowledge. As a result, we do not consider counsel's statements regarding what the evidence would have shown to be evidence, and we will not treat such statements as evidence."

As the statements made by the Department's counsel were not considered evidence, the Court stated the only evidence consisted of the exhibits admitted at trial. The Court first turned to the evidence supporting Subsection (N), noting the service plan provided that Mother was working some services and had been attending visits regularly. The Court concluded, "[t]he record contains no evidence related to Mother's visitations with the children or her inability to provide the children with a safe environment after the creation of this service plan." Accordingly, as the record indicated Mother had been attending visits regularly, "no reasonable factfinder could have found that Mother failed to regularly visit or maintain significant contact," and the Department likewise failed to provide evidence that Mother demonstrated an inability to provide a safe environment. The Court of Appeals also analyzed the sufficiency of the evidence supporting former Subsection (O), pointing out the record was devoid of evidence concerning the reasons for the children's

removal, and there was no evidence she failed to complete the elements of the service plan.

The Court of Appeals accordingly held that the evidence was legally insufficient to support the termination of Mother's parental rights, reversed the portion of the order that terminated Mother's parental rights, and rendered judgment against the Department. *In re D.G.*., No. 08-25-00180-CV (Tex. App.—El Paso Nov. 24, 2025, no pet.) (mem. op.).

B. TRE 403

Father appealed the trial court's final order terminating his parental rights, arguing, *inter alia*, that the court abused its discretion in overruling his evidentiary objection to Mother's testimony about the facts presented in Father's capital murder trial. Although Father conceded that his murder conviction was relevant in a proceeding to terminate his parental rights, he argued that Mother's detailed testimony regarding how he committed murder should have been excluded under TRE 403 because it resulted in unfair prejudice outweighing its probative value in determining Father's ability to care for the child and the child's best interest. The Court of Appeals disagreed.

TRE 403 permits a trial court to exclude relevant evidence if its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence. Citing to case law, the Court of Appeals observed that, in parental rights termination cases where the best interest of the child is always the trial court's primary consideration, evidence relevant to the child's best interest will rarely be excluded under TRE 403. The Court further noted that TRE 403 carries a presumption that relevant evidence will be more probative than prejudicial and, thus, "the exclusion of evidence under Rule 403 is an extraordinary remedy that should be used sparingly in a parental rights termination case."

Turning to the facts of the case, the Court noted the undisputed evidence that Mother witnessed Father murder two women, resulting in Mother's 20-year prison sentence for her role in disposing of the bodies. The Court further pointed out that the jury already knew Father had been convicted of murder and sentenced to death. Given these facts, and that Father's past violent conduct is relevant to determining the child's best interest, the Court reasoned that Mother's testimony detailing how Father killed the two victims "by putting them each in a chokehold from behind" did not unfairly prejudice the jury against Father "to such a degree that it substantially outweighed the probative value of the evidence." Therefore, the Court concluded that the trial court did not abuse its discretion in overruling Father's TRE 403 objection. *C.M. v. Tex. Dep't of Family and Protective Servs.*, No. 03-25-00015-CV (Tex. App.—Austin May 23, 2025, pet. denied) (mem. op.).

C. Abandonment of Pleadings

A bench trial was held before an associate judge. During the trial's second day, the Department's caseworker, its designated representative, testified that the Department was "seeking to limit and restrict [Mother]'s rights, and give permanent managing conservatorship of [the child] to [Father], and to limit [Mother]'s rights to parent non-conservator with no visitation and

contact." On cross-examination, the caseworker was asked to confirm that the Department was not seeking termination of Mother's rights and instead was seeking to have the trial court name her as a parent non-conservator, to which she responded, "Correct." The Department made neither an opening statement nor a closing argument. During a brief closing, Mother's counsel "ask[ed] the Court not to terminate [Mother's] rights." The child's attorney closed by stating, "Your Honor, I think the Department has met its burden as far as termination …. However, if the court is not inclined to terminate [Mother]'s parental rights, then I would request the court name her a non-possessory conservator." After the *ad litem* finished, the trial court immediately announced the termination of Mother's parental rights and appointed Father as sole managing conservator and later signed a final judgment to that effect.

Mother sought *de novo* review, at which she argued that "the associate judge lacked the authority to terminate [Mother]'s constitutionally protected parental rights when the Department affirmatively abandoned its pleading for termination at trial." The district court adopted the associate court's ruling. Mother appealed, and the court of appeals affirmed. Mother then sought review before the Texas Supreme Court.

The Supreme Court explained that the appellate court recognized that parties may abandon a pleading "by a stipulation, such as an agreement or concession made in a judicial proceeding by the parties or their attorneys respecting some matter incident thereto." It noted that, according to the court of appeals, "[in] interpreting stipulations, courts consider the language used 'and the surrounding circumstances, including the state of the pleadings, the allegations made therein, and the attitudes of the parties toward the issue,'" and "identified the case's larger 'context' as including the termination recommendations from the CASA volunteer and attorney *ad litem*; the presentation of evidence that would support termination; the request by Mother's counsel not to terminate; and the statements abandoning termination coming not from the [D]epartment's counsel but its designated representative." Accordingly, the court of appeals agreed with the Department's contention that, given this "context," the statements expressly withdrawing termination as the Department's requested relief did not have the effect of doing so.

The Supreme Court, stating that "parental-termination cases stand apart from the rest of civil litigation in multiple important ways," declined to consider whether something more precise is required than "the totality of the circumstances" to assess whether previously requested relief or previously asserted affirmative defenses should be deemed abandoned. Instead, the Court considered, simply, "whether the statements by the [D]epartment's designated representative amount[ed] to the department's unequivocal abandonment of termination as a requested remedy."

The Court disagreed with the court of appeals that the Department's representative's statement cannot be "interpret[ed] ... as an unequivocal abandonment of the Department's request for termination", instead, concluding that the Department's representative's "words convey no other possible meaning." Accordingly, it held that an "unequivocal

assertion by the [D]epartment—including its designated representative—that it does not seek termination constitutes withdrawal of a request for that relief unless clearly repudiated."

However, the Supreme Court recognized that "mistakes happen." It declared that "[i]f they do, rapid correction of a misstated departmental position is indispensable, given the gravity of the proceedings." It concluded that because "there was *no* effort at correction here, we need not decide precisely what kind of repudiation is sufficient or just how soon it must come."

The judgment of the court of appeals was reversed, and the portion of the trial court's judgment terminating Mother's parental rights was likewise reversed and remanded to the district court to render judgment according to Mother's request that she be appointed as a parent non-conservator or, alternatively, parent non-possessory conservator. *D.V. v. Texas Dep't of Family and Protective Servs*, 722 S.W.3d 854 (Tex. 2025).

D. Admission of Child Outcry Under TFC § 104.006

On appeal, Father challenged the trial court's admission of two outcry statements over his hearsay objections, while the Department argued they were properly admitted pursuant to TFC § 104.006. The Department removed six-year-old Child1 and two-year-old Child2 after Child1 made an outcry of sexual abuse to a caregiver and during a subsequent forensic interview.

TFC § 104.006 provides an exception to the hearsay rule for "outcry" statements of a child 12 years of age or younger that describe abuse against the child if, in a hearing outside the presence of the jury, the court finds that the time, content, and circumstances of the statement provide sufficient indication of the statement's reliability and either (1) the child is available to testify, or (2) the court determines admission of the statement in lieu of live testimony is necessary to protect the welfare of the child.

The Court of Appeals identified reliability as the first requirement of admissibility for Child1's outcry statements. The Court explained that reliability is determined by examining the *time* the child's statement was made, the *content* of the child's statement, and the *circumstances* surrounding the making of the statement, with a focus on how accurately the witness can recall the outcry statement and whether the testimony is sufficiently trustworthy, rather than on the child's credibility.

Two witnesses testified about Child1's outcry statements, the forensic examiner Victoria, and "Judy", a Bible teacher, former foster mother, and adoptive placement for the children.

Victoria testified that during the forensic interview, Child1 stated that Father "cleaned her pee-pee" and digitally penetrated her vagina and moved her fingers in a circular motion when acting out how the "cleaning" occurred. Child1 also described Father penetrating her anus with his finger and stated that Father sometimes touched her over her underwear. Victoria described Child1's actions as so extreme that the interview recording itself could be considered child sexual abuse material—"she very regularly was touching her vagina in the room and she

was doing things that were not redirectable." Child1 said that Father showed her pornographic videos and took "pictures and videos" of her and Child2 naked.

Victoria further testified that she assessed Child1's ability to discern truth from fiction and screened for alternative explanations such as innocent cleaning. She explained that one minor inconsistency in Child1's statements was expected for her age and "could" be a traumatic response to the sexual abuse. Child1 told Victoria that she had not been coached except that her caregiver, Judy, "told her to tell the truth that day." The Court concluded that the time, content, and circumstances of Child1's statement to Victoria showed sufficient indicia of reliability, including that the statement was made to a professional forensic interviewer trained to ask questions in a neutral, fact-finding manner.

The Court reached a similar conclusion of reliability concerning Child1's statement to Judy. The Court explained the statement was made to someone Child1 had just met—a former foster mother who provided her with love and comfort immediately; the statement was initially made in the context of bathing and the child described inappropriate "cleaning"; portions of her story were directly corroborated by physical evidence consisting of a picture of Child1's underwear showing spotting and mucus-filled discharge; and her behaviors were suggestive of sexual abuse.

The Court then considered the availability element of TFC § 104.006 and agreed with Father that there was no evidence that Child1 was unavailable to testify, while rejecting the Department's argument that Child1's availability must be presumed in the absence of evidence demonstrating her unavailability. The Court declined to apply a presumption of availability for the following reasons: 1) Father's challenge to the availability element triggered an abuse of discretion review that requires some evidence supporting the court's exercise of discretion; 2) the plain language of the statute requires a finding that the witness has testified or is available to testify; and 3) the "availability" requirement in the criminal code's equivalent provision is often satisfied by the child testifying or where the child is present at the courthouse and made available to the defendant, circumstances not present in this case.

However, the Court observed that outcry testimony may still be admissible, despite the child's unavailability to testify, if the court determines the use of the statement in lieu of the child's testimony is necessary to protect the welfare of the child. The Court noted that the trial court heard testimony that both children experienced severe trauma because of the sexual abuse and that Child1 exhibited sexually explicit behaviors when questioned about the abuse. Based on this evidence, the Court concluded that the trial court could have reasonably determined that forcing Child1 to testify would re-traumatize her and would be contrary to her well-being, which supported the implied finding that use of the outcry statement in lieu of live testimony was necessary to protect Child1's welfare.

Accordingly, the Court of Appeals concluded that the trial court did not err by admitting the two outcry statements and overruled Father's sole issue on appeal. *In re R.L.C.*, No. 04-25-00684-CV, __ S.W.3d __ (Tex. App—San Antonio 2026, no pet.).

E. TFC § 153.009

Father argued the trial court violated his right to due process by: (1) conducting an *ex parte* interview of the children addressing substantive sexual and physical abuse allegations against Father; (2) relying upon the children's statements from the interview in determining predicate grounds for terminating Father's parental rights to those children; and (3) denying Father a meaningful opportunity to respond to the children's statements from the interview by providing the transcript only hours before trial and declining a continuance. The Court of Appeals overruled Father's complaints. In addition to initially finding that Father failed to preserve his due process complaints for appellate review by not raising them with the trial court, the Court further held that Father was not deprived of his due process rights because the trial court properly conducted an interview with the children in accordance with TFC § 153.009.

TFC § 153.009(a) provides that, in a nonjury trial or at a hearing, on the application of a party, the amicus attorney, or the attorney *ad litem* for the child, or on the trial court's own motion, the court "shall interview in chambers a child 12 years of age or older and may interview in chambers a child under 12 years of age to determine the child's wishes as to conservatorship[.]" Subsection (b) further provides that the trial court may conduct an interview in chambers "to determine the child's wishes as to possession, access, or any other issue in the suit affecting the parent-child relationship."

In this case, five weeks before the final hearing and upon the children's *ad litem's* request, the trial court conducted a Zoom interview with the children, ages sixteen and ten, with only the *ad litem* present. During the interview, the children described instances of sexual and physical abuse by Father and told the court they did not want any contact with him. On the morning of the final hearing, Father requested a transcript of the Zoom interview of the children and made an oral motion for continuance to allow him time to review and respond. The trial court provided Father with the transcript, denied the continuance, and proceeded with the final hearing. The children did not testify, but law enforcement officers, the Department's investigator and permanency specialists, and the children's counselors each provided testimony detailing the children's outcries against Father as well as Father's pattern of domestic violence against Mother.

In overruling Father's due process complaints, the Appellate Court noted that the trial court's interview of the children was properly conducted under TFC § 153.009. The Court further stated that the trial court's authority pursuant to TFC § 153.009(b) "extended to allegations underlying the potential termination of Father's rights that the trial court could consider in its determination." The Court pointed out that the interview took place over a month before the final hearing, Father "had sufficient time to request the transcript", and "the allegations contained therein were not new and therefore not a surprise to Father." Because Father "already knew such allegations were part of the case and that he would need to prepare to address those allegations", the Court concluded he failed to show any harm or prejudice resulting from the denial of his motion for continuance. Finally, in holding that Father was not deprived of a meaningful opportunity to respond, the Court observed that the trial court had sufficient grounds on which

to terminate Father's parental rights based on the other evidence admitted at the final hearing. Father's issue was overruled and the judgment of the trial court was affirmed. *In re A.T.G.*, No. 07-26-00027-CV (Tex. App.—Amarillo May 13, 2026, no pet. h.) (mem. op.).

III. TERMINATION GROUNDS

A. TFC § 161.001(b)(1)(D) and (E)

1. Unexplained Injuries

Mother and Father appealed the judgment terminating their parental rights following an eight-day jury trial. The jury heard evidence that when the child was seven months old, she suffered several acute leg fractures, showed signs of healing rib fractures, and had a possible thumb fracture while in Mother's and Father's primary care, but also while in the care of Maternal Grandmother for short periods of time.

In addition, the evidence included: (1) testimony from Mother, Father, and Maternal Grandmother—in which all three denied causing the child's injuries; (2) evidence regarding Mother's and Father's changing stories of the days leading to the child's leg fractures and Maternal Grandmother's generally consistent story throughout the case; (3) evidence of Father's admitted, persistent untruthfulness during the investigation and service-plan period; (4) Mother's refusal to consider Father as a potential actor; and (5) voluminous medical records and other exhibits.

After deliberations, ten out of twelve jurors determined that Mother's and Father's parental rights should be terminated but that Maternal Grandmother—who had intervened in the suit—should be named the child's sole managing conservator. Mother and Father appealed; Mother challenged the jury's Subsection (D) finding against her, and Father challenged the jury's Subsections (D) and (E) findings against him.

TFC § 161.001(b)(1)(D) allows 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. TFC § 161.001(b)(1)(E) allows a trial court to order termination if it finds by clear and convincing evidence that the parent has 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 Court of Appeals began its analysis by acknowledging that no expert could say for certain who inflicted the child's injuries, which were not externally visible, and neither Father nor Mother admitted to injuring the child. However, it noted that "for the better part of the case, [Mother and Father] refused to admit that the other might have been responsible, despite the fact that they both later admitted to instances of domestic violence and discord in their relationship—which they had falsely painted as supportive and free of strain." The Court also observed that Mother and Father provided no plausible explanation for how the child had seven broken bones, which included a theory that Grandmother had stepped on the child.

In addition, the Court observed that the Department's caseworker and the CASA volunteer suspected Mother was a victim of financial and emotional abuse, and possibly physical abuse based on Mother's disclosure of details about her relationship with Father, and despite this, "Mother at best chose to doggedly cling to her belief that Grandmother was a liar and manipulative and thus must have been lying about not having injured [the child]—despite the fact that Grandmother had urged Mother and Father to take [the child] to the doctor much earlier than they did," and "[a]t worst, [Mother] and Father knew exactly how and when [the child] had been injured and chose to try to use Grandmother as a scapegoat." The Appellate Court concluded that from this evidence, the jury could have determined that neither Mother nor Father had been appropriately protective of the child.

Finally, the Court considered that instead of immediately taking the child to the doctor when she was "obviously injured and crying inconsolably," Mother and Father took the child home, applied home remedies, and waited hours before taking her to the doctor, which was "indicative of guilt—that they did not want the extent of [the child's] injuries to be discovered." The Court noted that Father admitted lying to the caseworker and CASA and admitted lying under oath, while Mother withheld information from the Department about the seriousness of her mental health condition and her relationship with Father. Further, the Appellate Court observed that Mother and Father did not take their service plans and the placement rules seriously, even though they each had considerable access to the child. Thus, it concluded that the jury was entitled to consider this evidence, which demonstrated that Mother's and Father's conduct showed an awareness of an endangering environment.

Accordingly, the Court of Appeals overruled Mother's and Father's challenges to the jury's endangerment findings. Affirmed. *In re N.L.*, No. 02-25-00205-CV (Tex. App.—Fort Worth Oct. 27, 2025, no pet.) (mem. op.); *see also In re. A.A.*, No. 13-25-00157-CV (Tex. App.—Corpus Christi-Edinburg Aug. 27, 2025, no pet.) (mem. op.) (concluding, in affirming termination of Father's parental rights under Subsections (D) and (E) after one child died from severe head injuries while under Father's supervision, and medical experts testified Father's explanation was inconsistent with the child's injuries, the court could also have reasonably considered the "strikingly similar" head trauma the deceased child had previously sustained and found Father's similar explanation implausible or not credible).

2. Children's Violent Tendencies

On appeal, Mother challenged the termination of her parental rights pursuant to TFC §§ 161.001(b)(1)(D), (E) and (O), and the trial court's best interest determination.

In September 2022, Mother, Father, and the four children moved from Florida to Odessa. The Department investigated the family in June 2023 and found them living in an RV with no electricity or running water. Mother and Father led the Department to believe they would return to Florida. After Mother's and Father's arrests for theft in July 2023, Mother left the children in the care of Father's uncle, who subsequently abandoned them in a metal shed with no air conditioning, electricity, water, food, shoes, or extra clothes. At removal, the children were found to be very

hungry and thirsty, their skin was "matted in dirt," and they were covered in bites and cuts.

All four children were diagnosed with multiple mental health and behavioral disorders. At trial, the caseworker, who had worked for the Department for eleven years, described the children's behaviors as "the most severe significant behaviors that [she has] ever experienced in any child in any case." Child1 was hospitalized twice and required sedation "numerous times" for "telling the staff and the children that she was going to kill them and lash out on them aggressively." Child1 was in a residential treatment facility and required indefinite therapy and services, as well as twenty-four-hour monitoring due to her aggressive behaviors. While transporting Child2, then six years old, to the foster home, Child2 "punched, hit, kicked, spit, bit, called [the caseworker] names on the plane" and ran away after arriving at the airport. Child3 was hospitalized after threatening to harm his teachers and classmates and, prior to his hospitalization, he required constant supervision at school "because he's known to hurt his peers"—poking their eyes, choking, throwing things, and hitting. The caseworker testified that Father admitted he taught the children to box and encouraged them to fight each other, and Mother claimed he was teaching the children "to defend themselves because this world is a cruel place." The children required extensive care while in the conservatorship of the Department, including trauma-focused and behavioral therapies, and specialized assistance or accommodations in school.

The Court of Appeals held that "[t]he children's violent behavior toward their peers, teachers, caregivers, and each other permit the rational inference that they were exposed to violence and aggression in [Mother's and Father's]." The Court further stated that "[t]he children's behaviors and diagnoses permit the strong inference that [Mother] engaged in conduct that endangered the children or knowingly allowed them to remain in an endangering environment." Accordingly, the Court of Appeals affirmed the trial court's termination of Mother's parental rights. *In re L.M.R.*, No. 11-25-00055-CV (Tex. App.—Eastland Aug. 29, 2025, pet. denied) (mem. op.).

3. Escalating Criminal Conduct

Father challenged the termination of his parental rights under Subsection (E).

Father had an extensive history of "escalating" criminal conduct; since 2008, he had been convicted of twelve crimes, including at least five felonies. Father's crimes included family violence, possession of methamphetamine, burglary, theft of a firearm, evading arrest, and credit card abuse. In 2021, six months before the child's removal, Father was convicted on five different counts, including: (1) felon in possession of a firearm; (2) possession of a prohibited weapon; (3) evading arrest; (4) assault of a family member; and (5) possession of methamphetamine. Father was sentenced to five years' incarceration and remained incarcerated at the time his parental rights were terminated by the trial court.

The Court of Appeals pointed out that Father was incarcerated for much of the child's life, including at the time of the child's birth and the child's removal, as well as at the time of termination of his parental rights. At trial, the child's guardian *ad litem* recommended

termination of Father's parental rights because his conduct: " 'subjected [the child] to a life of uncertainty and instability that[ ] endanger[ed] [the child's] physical and emotional wellbeing.' Specifically, Father's repeated incarcerations left [the child] 'in a state of flux' because he did not know if Mother or Father could be 'going to ... jail one day or the next.'"

In its analysis, the Court of Appeals cited to *In re J.F.-G.*, 627 S.W.3d 304, 312-13 (Tex. 2021) to reiterate: " 'mere imprisonment will not, standing alone, constitute engaging in conduct which endangers the emotional or physical well-being of a child, ... incarceration does support an endangerment finding if the evidence, including the imprisonment, shows a course of conduct which has the effect of endangering the physical or emotional wellbeing of the child.' . . . Thus, our [S]upreme [C]ourt has held that '[a] parent's criminal history—taking into account the nature of the crimes, the duration of incarceration, and whether a pattern of escalating, repeated convictions exists—can support a finding of endangerment.' "

The Court of Appeals held that the evidence was factually sufficient to support the trial court's finding that Father engaged in conduct that endangered the child's physical or emotional well-being. The Court concluded that, "as the [S]upreme [C]ourt explained", although mere imprisonment alone is insufficient to support termination, the evidence in this case demonstrated Father repeatedly engaged in a course of escalating criminal activity both before and after the child's birth. The Court pointed to Father's twelve convictions for "increasingly serious crimes" that included "possession of methamphetamine, burglary, theft of a firearm, felon in possession of a firearm, evading arrest, credit card abuse, and family violence assault." The Court also characterized Father's conduct as a "pattern of escalating conduct, continuing for a period of almost 15 years, not an isolated incident." Furthermore, although some of Father's conduct occurred before the child's birth, authority provides that criminal conduct before a child's birth is evidence of an endangering course of conduct. "Importantly, Father did not stop engaging in criminal activity after [the child] was born, 'when he would (or should) have been aware that criminal conduct . . . risked separating him from [the child] for years' ". Father's criminal conduct resulted in him not being able to see the child since 2019, when the child was only three years old, and "[t]his prolonged absence from [the child's] life—a direct result of Father's criminal conduct—necessarily endangers [the child's] physical and emotional well-being." The trial court's termination of Father's parental rights under Subsection (E) was affirmed. *In re N.L.S.*, No. 01-23-00297-CV (Tex. App.—Houston [1st Dist.] Oct. 28, 2025, no pet.) (mem. op.); *see also In re V.A.*, No. 04-25-00396-CV (Tex. App.—San Antonio Nov. 26, 2025, pet. denied.) (mem. op.).

4. Lack of Cooperation with the Department

Finding the evidence sufficient to support the trial court's Subsection (E) finding, the Court of Appeals considered, *inter alia*, evidence of Mother's and Father's failure to cooperate with the Department, including that Mother attended only 24 of her 65 scheduled parent-child visits, frequently leaving after only a few minutes, and Father attended only 16 of his 32 scheduled visits, often smelling of marijuana at

the visits. Although Mother met with the Department regarding her service plan, she failed to attend rehabilitation or counseling, did not complete her psychological evaluation, refused or no-showed for drug testing, and was uncooperative. Father was given multiple service plans but claimed he did not have the time to plan the details with the Department. The Court of Appeals concluded, "[e]ach parent's lack of cooperation with the Department and individual failures to comply with or complete each's service plan support the trial court's endangerment findings." *In re K.J.*, No. 02-25-00093-CV (Tex. App.—Fort Worth June 5, 2025, pet. denied) (mem. op.).

B. TFC § 161.001(b)(1)(F)

In this private SAPCR, Mother challenged the termination of her parental rights under TFC § 161.001(b)(1)(F), which allows a trial court to order termination if it finds by clear and convincing evidence that the parent failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition for termination.

The Court of Appeals cited to caselaw stating that the term "one year" means twelve consecutive months, and the party seeking termination has the burden to show that the parent obligated to provide support had the ability to do so during each of those twelve months. Here, as the petition for termination was filed on July 2, 2021, the relevant twelve-month period began January 2, 2020.

The undisputed evidence reflected that Mother was ordered in 2019 to pay the children's primary caregiver $225.28 in child support; since that time, Mother made no child support payments; Mother received $700 in monthly disability income; and despite the ability to work fifteen hours per week, she failed to do so. In rejecting Mother's argument that she was unable to afford her child support payments, the Court of Appeals pointed out that the record reflected Mother received $700 per month uninterrupted for the last fifteen years, lived alone, and admitted to giving the children money for their birthdays.

The Court further stated that, while it was the primary caregiver's burden as the party seeking termination to prove that Mother had the ability to pay child support during the relevant time period, the caregiver was not required to provide detailed proof of Mother's finances and expenses during that time frame. Instead, the Court stated, the caregiver "was required only to demonstrate that [Mother] had sufficient sources of funds from which to support her children, not to disprove [Mother's] contention she could not financially support herself and the children at the same time." In rejecting Mother's argument that the evidence showed she was barely able to live, the Court noted that the only evidence Mother provided was broad generalizations that she could not afford to pay and "[had] to live, too." The Court pointed out that the trial court, as factfinder, was free to disregard Mother's unsupported contentions in favor of evidence that she had the ability to financially support the children but failed to do so.

Accordingly, the Court of Appeals held that the evidence was legally and factually sufficient to support the trial court's Subsection (F) finding. Mother's issue was overruled. *Hanson v. Garza*, No. 15-25-00166-CV (Tex. App. [15th Dist.] Mar. 26, 2026, no pet.) (mem. op.).

C. TFC § 161.001(b)(1)(L)

Mother was indicted for engaging in conduct that posed "imminent danger of death, bodily injury, or physical or mental impairment" to the child. The conduct allegedly consisted of "being under the influence of a controlled substance, inadequately supervising the child, putting the child at risk for getting hit by a vehicle by aggressively approaching moving vehicles, [ ] leaving the child at a convenience store ... [and] not voluntarily delivering the child to a designated emergency infant care provider under Section 262.302, Family Code." The Court recognized the testimony that someone reported Mother and the child "were at a convenience store … standing in front of the store prohibiting people from getting inside", there was "some concern that the child was left alone at one point, and it was alleged that [Mother] went back to the hotel with someone else and left the child there, which led to Mother's arrest and incarceration." In October 2022, the foregoing resulted in a plea bargain, Mother's plea of guilty to "Abandon Endanger Child Criminal Negligence," the deferral of her adjudication of guilt, and her placement on community supervision. The Court of Appeals observed that the record of Mother's plea hearing was not part of the appellate record, nor did the record contain evidence of the facts to which Mother admitted. As such, the Appellate Court stated it was "left to speculate upon the particular factual accusations, if any, within the indictment and to which [Mother] purportedly admitted or confessed."

Mother's parental rights were terminated solely upon TFC § 161.001(b)(1)(L)(x), which permits termination when a parent has "been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of . . . Section 22.041 (abandoning or endangering a child, elderly individual, or disabled individual)[.]"

On appeal, Mother argued that the Department failed to prove she was placed on community supervision "for being criminally responsible for the death or serious injury of a child." The Court of Appeals agreed. It was undisputed that Mother was placed on deferred adjudication community supervision for violating § 22.041 of the Penal Code. However, the Appellate Court considered the sole dispute to be whether the child being placed *alone* permits a factfinder to reasonably infer Mother was "criminally responsible for … serious injury of a child."

The Court of Appeals distinguished the Supreme Court's holding from Mother's circumstances. In *In re Z.N.*, 602 S.W.3d 541 (Tex. 2020), the Supreme Court held that termination is permitted when the parent is convicted of or granted community supervision for being criminally responsible for the death or serious injury of a child under various sections of the Penal Code, including indecency with a child. The Appellate Court explained that the issue the Supreme Court had to resolve in *Z.N.* was whether 'for the purpose of predicate ground (L), a factfinder may

reasonably infer from a conviction for indecency to a child that a serious injury to the child occurred—such that the conviction itself constitutes legally sufficient evidence . . . or whether additional evidence beyond the conviction itself is required."

In declining to extend the *Z.N.* holding to cases encompassing the abandonment or endangerment of a child under § 22.041 of the Penal Code, the Appellate Court first reasoned that the allegation or conviction in this case was not of a sexual nature. It explained that while the Supreme Court stated that "for the purpose of ground (L), a conviction for an enumerated offense can imply that a serious injury has occurred *based on the nature of the offense and the injury that will likely result*," in this case, "we have neither testimony nor evidence (statistical, expert, or otherwise) indicting a link, if any, between a child's being left in any place without reasonable necessary care . . . or being exposed to imminent danger and a resulting mental or emotional injury."

Next, the Appellate Court observed that "unlike the situation in *In re Z.N.*, we also lack opinion from sister appellate courts providing the absent evidence of the aforementioned link." In contrast, the Court pointed out that the Supreme Court relied on precedent, notably *In re S.G. and D.D.-G.P.*, No. 01-18-00728-CV, (Tex. App.—Houston [1st Dist.] Apr. 2, 2019, pet. denied) (mem. op.), holding that "[s]exual activity with a child is always accompanied by a possibility of important or dangerous consequences, including emotional or psychological hurt."

Finally, the Court of Appeals recognized the Supreme Court's statements in *Z.N.* that the offense of indecency (1) "can involve physical contact that is sexual in nature that the child likely *perceives and remembers* after the offense" or (2) "risks causing the child *to experience* serious emotional or psychological trauma." However, the Appellate Court opined that conduct within the scope of Penal Code §§ 22.041(b) and (c) (abandoning or endangering a child) "may be both fleeting and unperceived by the child victim." The Court reasoned that "being unaware of the misconduct hardly permits one to reasonably infer that the child will or did experience emotional trauma (present or future)." According to the Court, "[t]he link between the misconduct and emotional injury from conduct within Penal Code § 22.041 is not as readily apparent to us as was the link between indecency with a child and ensuing psychological trauma to the Supreme Court."

As such, the Court of Appeals concluded that there was "no evidence from which a person may reasonably infer that the unexplained form of abandonment or endangerment to which [Mother] pleaded guilty resulted in serious injury to [the child]." Accordingly, it held that the evidence was insufficient to support the trial court's finding related to TFC § 161.001(b)(1)(L)(x). The Court consequently reversed the trial court's order and rendered judgment denying the Department's request to terminate Mother's parental rights. *In re X.R.*, 717 S.W.3d 469 (Tex. App.—Amarillo 2025, no pet.).

D. TFC § 161.001(b)(1)(N)

Mother argued that there was insufficient evidence to support termination of her parental rights under Subsection (N) because she regularly visited the child prior to her

incarceration and maintained contact with him via letters thereafter.

TFC § 161.001(b)(1)(N) allows for termination if the trial court finds by clear and convincing evidence that the parent has constructively abandoned the child who has been in the conservatorship of the Department for not less than six months, and: (i) the Department has made reasonable efforts to return the child to the parent; (ii) the parent has not regularly visited or maintained significant contact with the child; and (iii) the parent has demonstrated an inability to provide the child with a safe environment.

The Court of Appeals instructed that "since Mother was not incarcerated throughout the entire case, we must examine Mother's efforts to regularly visit or maintain significant contact with [the child] prior to, and after, her incarceration." In doing so, the Court considered that prior to Mother's incarceration, she attended "almost every single" scheduled virtual visit with the child, and although in-person visits were difficult to schedule, there was no evidence that Mother failed to attend them. The Court further considered that after Mother's incarceration, scheduling of virtual visits ceased, at which point Mother began writing the child letters as directed by the Department. The Court continued, "During the nine months leading up to trial, Mother sent [the child] 25 appropriate, loving, and positive letters."

The Court concluded that "[b]ecause Mother took full advantage of her visitation rights before incarceration and maintained significant contact with [the child] through letters during her incarceration, a reasonable factfinder could not have formed a firm belief or conviction that Mother failed to regularly visit or maintain significant contact with [the child]." The Court, therefore, held that the evidence was legally insufficient to support termination under Subsection (N) and sustained Mother's issue. *In re G.M.M.*, 721 S.W.3d 679 (Tex. App.—San Antonio 2025, no pet.) (mem. op.).

E. TFC § 161.004 – Sufficiency of Material and Substantial Change

TFC § 161.004 provides that a trial court may terminate the parent-child relationship after rendition of an order that previously denied termination if: (1) the petition under this section is filed after the date the order denying termination was rendered; (2) the circumstances of the child, parent, sole managing conservator, possessory conservator, or other party affected by the order denying termination have materially and substantially changed since the date the order was rendered; (3) the parent committed an act listed under Section 161.001 before the date the order denying termination was rendered; and (4) termination is in the child's best interest.

On appeal, Mother challenged the trial court's finding of a material and substantial change. Mother argued that the trial court could not have reasonably concluded that a material and substantial change in circumstances occurred because it considered substantially similar evidence when it initially declined to terminate her parental rights the prior year. In support of her argument, Mother pointed out that she had already failed to complete mental health services or maintain steady housing at the time termination was originally denied.

The Court of Appeals noted that while there are no definite guidelines as to what constitutes a material and substantial change in circumstances under § 161.004, courts have held that a material and substantial change exists when a parent fails to complete their service plan and cannot provide a stable environment for the child, "even where they failed to complete services and were unstable prior to the order denying termination." The Court of Appeals noted that courts have also held that a material and substantial change exists when there has been a change in the child's placement.

In rejecting Mother's argument, the Court stated that the most obvious changes in circumstances since the trial court's initial order denying termination were the suspension of Mother's visits due to her increasing failure to attend, and three of the five children had been moved to a new foster home. The Court noted that the trial court could have also considered Mother's "continued failure" to complete her service plan and "general lack of stability", including her failure to complete mental health counseling and maintain consistent housing.

Accordingly, the Court of Appeals held that the evidence was sufficient to support the trial court's finding that a material and substantial change in circumstances occurred since the initial order denying termination. Mother's issue was overruled. *In re M.R.*, No. 13-25-00271-CV (Tex. App.—Corpus Christi–Edinburg Sept. 25, 2025, no pet.) (mem. op.); *see also In re A.P.L.*, No. 01-23-00725-CV, __ S.W.3d __ (Tex. App.—Houston [1st Dist.] 2025, no pet.) (finding a material and substantial change in circumstances existed in a private divorce modification based, in part, on "the evolving needs" of the children, including educational, medical, psychological, and behavioral issues, as well as one parent's impeding the other's ability to participate in joint decisions regarding those needs).

IV. BEST INTEREST

A. PROGRAMS AVAILABLE

On appeal, Mother challenged the sufficiency of the evidence supporting the trial court's finding that termination was in the children's best interest. In its analysis applying the *Holley* factors to the evidence admitted at trial, the Court of Appeals considered two factors together: (1) the parenting abilities of the parties seeking custody and (2) the programs available to assist these persons.

The evidence reflected that Mother eventually engaged in, and completed, nearly all her required services, including participating in individual counseling and providing negative drug tests; however, she continued to engage in questionable parenting behavior throughout the case during "chaotic" visits with the children. The Court noted that the Department's witnesses described how Mother would arrive late and encourage the children to "say bad words" and "be rude to staff"—behaviors that twice led to the breakdown of the children's foster placements. Further, the Court pointed out the evidence showing that Mother was "resistant to instruction and services", observing how Department staff testified that their attempts to address Mother's behavior was met with her laughter and inability to take their concerns seriously, and Mother's own testimony denying she encouraged the children's bad behavior and "saw no issue with her visitation."

In affirming the trial court's best interest finding, the Court concluded, "This evidence indicates Mother cannot provide appropriate guidance, structure, or discipline needed for healthy growth." *In re J.N.R.*, No. 04-25-00103-CV (Tex. App.—San Antonio August 6, 2025, no pet.) (mem. op.).

B. Parental Abilities

In her sole issue on appeal, Mother challenged the sufficiency of the evidence to support the trial court's findings that termination of her parental rights to Child1 and Child2 was in their best interest. The fourth *Holley* factor considers the parenting abilities of the individuals seeking custody. At trial, the Department's evidence identified Mother's ability to care for Child2's medical needs as one of the concerns with reunifying the children with Mother, which implicated her parenting ability. The Court of Appeals concluded, however, that the only evidence regarding Mother's parental abilities was the Department caseworker's conclusory statement that Mother could not parent the children because she did not visit them more often and did not attend all medical appointments for Child2.

The record reflected that Child2 had cerebral palsy, which caused him to suffer from seizures. He was also nonverbal, had special education needs and stigmatisms, and wore braces on his feet to help him walk. The caseworker testified she was concerned that Mother would not be able to meet Child2's needs, an opinion which seemed to be based on Mother having not taken any classes or education programs to learn about Child2's special needs. The Court pointed out, however, that although Mother was provided with information for such classes or programs, the testimony did not indicate Mother was required by her service plan or otherwise to take these classes or programs regarding Child2's medical needs.

The caseworker testified that Mother only attended "three or so appointments" to learn about Child2's medical needs, though he had "well over three", "did not ask questions or stay engaged" when she did attend, and missed his Admission, Review, and Dismissal (ARD) appointment at school. She later stated that Mother was unable to attend medical appointments because she was working and acknowledged that the Department had not provided Mother with the opportunity to attend them virtually. Mother testified she was initially unaware she could attend Child2's medical appointments because there was a protective order in place. The Court noted that the caseworker faulted Mother for not earning enough income, while criticizing her inability to attend medical visits because she was working. The Court concluded that the Department's position put Mother in an "untenable situation" where satisfying the Department's concerns regarding income caused her to miss some of Child2's medical appointments.

Further, the Court explained that, aside from missed medical appointments, the Department did not present any evidence as to why Mother would be unable to care for the children's medical needs. The caseworker admitted that Mother would ask Foster Mother, a nurse practitioner, to explain Child2's medical needs after appointments, and Foster Mother testified that she had been able to do so. Further, Foster Mother, who was fictive kin, indicated she was

committed to helping Mother with the medical appointments and explaining the children's medical needs in the future if her rights were not terminated. The Court explained that the Department appeared to be trying to hold Mother to a medical professional standard in caring for Child2, but the question before the trial court was whether Mother's actions were such that her relationship with her children should be forever severed, not whether the children might have a better life in the custody of someone else. Thus, while Foster Mother may be more adept at caring for Child2's medical needs, Mother's parental rights could not be terminated because she did not have the training or knowledge of a medical professional and the record did not show that Mother would be unable to meet Child2's needs.

Accordingly, the Court of Appeals reversed the portion of the trial court's final order terminating Mother's parental rights to the children and rendered judgment denying the Department's petition to terminate Mother's parental rights. *In re J.T.W.*, No. 04-25-00021-CV (Tex. App—San Antonio July 2, 2025, no pet.) (mem. op.).

C. Stability

1. Failure to Attend to Own Mental Health Issues

On appeal, Mother argued the evidence was legally and factually insufficient to support the trial court's findings that she violated TFC §§ 161.001(b)(1)(D) and (E) and that termination of her parental rights was in the child's best interest.

There was evidence that Mother was diagnosed with a multitude of mental health issues, which were often left untreated. Mother acknowledged being without her medications for approximately one month when she had custody of the children during the case and was "not the same," "[did] not sleep," and did not "eat the same" when she failed to take her prescription medication. Mother also testified that a cartel was after her, believed she was being stalked by her mother's boyfriend, and posted an image of herself on social media holding a knife as a means of threatening anyone who meant her harm. Mother also believed her mother and her mother's boyfriend were trying to prevent her from gaining custody of the child because they said Mother "was acting all that because [she] was getting" the child back.

In addition, Mother admitted that when she was found walking on the side of the road with the children while behaving erratically, she had mixed her prescription medications with some type of "vitamins" her mother had given her, which caused her to feel "paranoid." Mother also admitted she used synthetic marijuana and Xanax in the past and admitted mixing her prescription medications with other substances.

As part of its analysis of Mother's endangerment challenge pursuant to Subsection (D), the Court of Appeals concluded that the trial court "may have reasonably found that Mother kept [the child] in surroundings that endangered her emotional and physical well-being because despite her mental health issues, Mother used illicit drugs with her prescribed medications and did not consistently take her prescribed medications,

which caused her to be paranoid and behave erratically."

In its best interest analysis, the Court recognized that the child required a lot of stability and medical care due to her own mental issues, and there was evidence that during the pendency of the case, Mother did not tend to her own mental health needs, and when she finally had custody of the child, Mother mixed her medications with an unknown substance, failed to take her prescribed medications, and behaved so erratically, the child became afraid of her. Affirmed. *In re S.A.H.*, No. 13-25-00007-CV (Tex. App.—Corpus Christi-Edinburg June 12, 2025, no pet.) (mem. op.).

2. Recent Housing Instability

Under the seventh *Holley* factor, which considers the stability of the home or proposed placement for the child, the Court of Appeals contrasted uncontroverted evidence in the record demonstrating the stability of the children's placements, with the lack of evidence that Mother's new home was stable and the evidence showing Mother's "recent past was characterized by instability." In concluding this factor weighed in favor of termination, the Court, citing to its opinion in *In re M.S.*, No. 02-21-00007-CV (Tex. App.—Fort Worth June 28, 2021, pet. denied) (mem. op. on reh'g), reasoned that "a parent who is '[u]nstable herself' cannot offer her children stability." *In re Z.R.*, No. 02-25-00268-CV (Tex. App.—Fort Worth Nov. 13, 2025, no pet.) (mem. op.).

D. Excuses for Acts or Omissions – Inappropriate Reliance on Return of Child

The Department sought emergency removal of the child after Mother refused to cooperate with the Department, repeatedly moved between homes and a motel, admitted to smoking marijuana, failed to take the child to counseling appointments, and failed to have the child attend school for several months. On appeal, Mother challenged the sufficiency of the evidence to support the trial court's best interest finding.

Specifically, under the ninth *Holley* factor, which considers excuses for the parent's acts or omissions, the Court pointed out that Mother testified that she lost her job because she lost her housing due to conflict with her roommate, and she failed to work her services "because [she had] been trying to figure out a place to live." The Court emphasized that when Mother was asked to explain to the trial court why her rights to the child should not be terminated, she said, "[M]y life has been falling apart. I'm just trying to figure out how to get it back together. And *if you take him then it's not going to happen.*"

In finding Mother's excuses inadequate and concluding this factor supported the trial court's best interest determination, the Court observed that "Mother's testimony is similar to the testimony" in *In re A.V.*, 697 S.W.3d 657 (Tex. 2024) (per curiam) (orig. proceeding), where the "Father testified that the best way for the parents to stop using drugs was to return the child to them." Affirmed. *In re C.C.*, 720 S.W.3d 41 (Tex. App.—Texarkana 2025, no pet.).

E. Other Best Interest Issues

1. Reversal Considering Long Period of Sobriety

Mother appealed, *inter alia*, the sufficiency of the evidence supporting the trial court's best interest determination concerning Child1 and Child2. After concluding the evidence was sufficient to support the trial court's TFC § 161.001(b)(1)(E) determination, the Court of Appeals turned to the best interest evidence.

It was undisputed that Mother's drug use endangered the children. The Court stated that if her drug use were "considered in isolation", the drug use would weigh in favor of termination. However, Mother tested negative for drugs during the year prior to the final hearing and was so successful in completing her service plan that the Department agreed to a monitored return. The Department's caseworker testified that Mother worked to achieve sobriety, did not pose a danger to the children, and there were no concerns about Mother's parental abilities during the monitored return. Even after the monitored return ended, the Department expressed it did not intend to seek termination of Mother's parental rights until Mother's rights to another child, Child3, were terminated in a separate suit in the interim.

The only witness to testify it was in Child1's and Child2's best interest to terminate parental rights was the Department permanency supervisor, who testified that doing so would provide the children with permanency and "was in line with . . . receiving termination in [Child3's] case."

The Court of Appeals cited to *In re R.R.A.*, 687 S.W.3d 269 (Tex. 2024), and acknowledged that a parent's treatment of other children is a relevant consideration in termination of parental rights. However, "aside from [Mother's] endangering conduct that led to the removal of her children, there was no additional evidence that the termination of [Mother's] parental rights to [Child3] is favored in this case." The Appellate Court recited that Child3's case started a year after Child1 and Child2 were removed and while Child3's placement was an adoptive placement, the placement for Child1 and Child2 was willing to care for them long-term without termination of parental rights. The Court of Appeals characterized the permanency specialist's testimony as "conclusory and unfounded", as she conceded that the current placement's agreement to care for Child1 and Child2 without adoption provided permanency, and these children would be able to continue contact with Child3 regardless of whether termination of parental rights were granted. The Court of Appeals related that the children's *ad litem* agreed that it was "in the realm of possibility" for Mother to demonstrate an ability to parent the children and the current placement's willingness to care for the children long-term supports retaining the parental rights. "Thus, we have found nothing in the record to indicate that the termination of [Mother's] rights to [Child3] has any bearing on [these children's] best interest."

Turning to the *Holley* factors, the Court of Appeals pointed out there was no evidence of the children's desires, but they had spent nights and weekends with Mother while transitioning to a monitored return just a few months before trial. "As established, the sparse record

permits the inference that [Mother] demonstrated her ability and willingness to prioritize her children's well-being and to provide them with a safe, drug-free home environment." The Court specifically pointed to the example that Child3's father resided with Mother and tested positive for drugs during the monitored return; as a result, Mother had him move out of the home in an effort to try and salvage the monitored return. Mother was also attempting to obtain employment and attended most visits and was engaged with the children. The Appellate Court pointed out that just as a disinterested parent poses an emotional and physical danger to the children, "evidence of a parent's willingness and commitment to meet the child's emotional and physical needs now and in the future favors the preservation of the parent child relationship." The Court specifically pointed to the fact that the permanency supervisor testified that aside from Mother's lack of income and resulting housing instability, there were no concerns about Mother. When asked whether the Department would still support termination if Mother could pay for housing, the supervisor testified, "I'm not sure."

The Court of Appeals next considered evidence of the children's physical and emotional well-being. Although there was not much evidence about their needs, the children were receiving services in the foster placement's care. However, "the children's safety and well-being under [the foster mother's] care does not, by itself, show that the children's best interest is served by terminating [Mother's] parental rights altogether . . . Here, the trial court was presented with viable, realistic alternatives to terminating [Mother's] parental rights." The Court of Appeals stated that the stability of the foster placement's home did not support termination of parental rights when weighed against Mother's sustained period of sobriety and improvement in her parenting abilities.

The Court of Appeals ultimately concluded the evidence supporting best interest was factually insufficient:

> Considering all the evidence as it relates to [Mother's] actions and inactions, the absence of evidence indicating emotional and physical danger to the children now and in the future, [Mother's] ability to meet the emotional and physical needs of the children now and in the future, and [Mother's] efforts and improved parental abilities and stability, we hold that the evidence is insufficient to support the trial court's finding that termination of [Mother's] parental rights is in the children's best interest.

Accordingly, Mother's issue was sustained, and the final order was reversed and remanded to the trial court for further proceedings. *In re M.L*, No. 11-25-00287-CV (Tex. App.—Eastland Mar. 26, 2026, no pet.) (mem. op.).

2. *Continued Drug Use Incompatible with Parenthood*

The Appellate Court sustained the jury's finding that appointing Father as managing conservator was not in the child's best interest and would significantly impair the child's physical health or emotional development. Its decision was based, in part, on evidence that the seventeen-month-old child was still in

diapers and unable to provide for or feed himself and, thus, could be in grave danger with a primary caregiver who is under the influence of a mind-altering substance like methamphetamine. The Court of Appeals stated, "Continuing to use drugs indicates an inability or unwillingness to prioritize the burdens and responsibilities of parenthood and is not compatible with the care of a very young child". *In re Z.D.*, No. 02-25-00114-CV (Tex. App.—Fort Worth July 31, 2025, pet. denied) (mem. op.).

3. Cohabitation and Awareness of Drug use

On appeal, Father challenged the legal and factual sufficiency of the evidence supporting the trial court's best interest finding. The evidence presented at trial showed that Father and Mother lived together prior to the child's birth. Mother and the child tested positive for amphetamine when the child was born, and the child's meconium was positive for methamphetamine. The Department tried to contact Father during the investigation, but he did not respond. When the Department investigator met with Mother at their home shortly after the child's birth, Father was present in the home but hid in a bedroom and refused to come out and meet the investigator. The Department ultimately removed the child and the child's older sibling after concluding that neither Mother nor Father could provide a safe, stable home for the children.

In its best interest analysis, the Court of Appeals reasoned that Father and Mother's cohabitation during Mother's pregnancy supported an inference that Father was aware of Mother's illegal drug usage while she was pregnant with the child. Accordingly, the Court concluded that the trial court could have reasonably determined that Father's failure to protect the child from the effects of Mother's illegal drug use endangered the child's physical health and well-being. The trial court's best interest determination was affirmed. *In re T.I.P.*, No. 04-25-00335-CV (Tex. App—San Antonio Nov. 12, 2025, no pet.) (mem. op.); *see also R.C. v. Tex. Dep't of Family and Protective Servs*., No. 03-24-00780-CV (Tex. App—Austin May 8, 2025, no pet.) (mem. op.) (concluding, in its endangerment analysis, that the trial court could have reasonably inferred from the evidence that Father was aware of Mother's drug use during her pregnancy with the child when she was living with him and that Father was actively participating in creating an endangering environment by selling and using drugs).

4. Children's Concerns About Homelessness

Mother and Father had repeated Department involvement with the children spanning many years and in those cases, neither parent had stable employment or housing. Discussing the evidence supporting the trial court's best interest finding, the Court of Appeals noted, "It is clear from the evidence that the parents' financial and housing instability has affected the children. For example, [Child1's] foster mother testified that [Child1] has a fear of being homeless and he expresses that anxiety often. [Child1's foster mother] had to comfort [Child1] and assure him that he is not going to be homeless."

The Court of Appeals determined the evidence was sufficient to support the trial court's best interest finding, considering, *inter alia*, that

given Child1's fears of being homeless, "the trial court could have reasonably concluded that the children are fearful that they will go without basic necessities such as housing if they were returned to [Mother and Father]". *In re J.A.B.*, No. 04-25-00409-CV (Tex. App.—San Antonio Dec. 17, 2025, pet. denied) (mem. op.); *see also In re A.K.*, No. 10-25-00047-CV (Tex. App.—Waco Aug. 14, 2025, no pet.) (considering that Father spent money on alcohol and tobacco for himself when the children did not have enough to eat in support of the Subsection (E) finding).

V. TFC § 161.001(f) AND (g)

A. SPECIFICITY REQUIREMENTS

After a trial on the merits, the trial court entered a final order terminating Father's parental rights to the child under TFC §§ 161.001(b)(1)(N), (O), and (Q), terminating Mother's parental rights to the child under TFC §§ 161.001(b)(1)(D), (E), and (P), and finding that termination of the parent-child relationships were in the child's best interest. Mother and Father appealed, challenging only the trial court's TFC §§ 161.001(f) and (g) findings.

In 2023, the Texas Legislature amended Section 161.001 of the Family Code to require a trial court to make certain written findings as a condition of ordering the termination of parental rights. As amended, TFC §§ 161.001(f) and (g) provide that:

> (f) In a suit for termination of the parent-child relationship filed by the Department of Family and Protective Services, the court may not order termination of the parent-child relationship under Subsection (b)(1) unless the court 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 family service plan to the parent, have been waived under Section 262.2015.
>
> (g) In a suit for termination of the parent-child relationship filed by the Department of Family and Protective Services in which the department made reasonable efforts to return the child to the child's home but a continuing danger in the home prevented the child's return, the court shall include in a separate section of its order written findings describing with specificity the reasonable efforts the department made to return the child to the child's home.

Mother and Father argued that the trial court lacked jurisdiction to terminate their parental rights because the trial court's findings prescribed by TFC §§ 161.001(f) and (g) lacked the specificity required in describing the

Department's reasonable efforts to return the child.

In addressing Mother's and Father's complaints, the Appellate Court observed that Subsection (f) requires that, before ordering the termination of parental rights, a trial court must find by clear and convincing evidence and describe in writing with specificity in a separate section of the order that 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." It further observed that in a separate section of the termination order, the trial court described that it "[found] by clear and convincing evidence that the Department made reasonable efforts to return the child to the parent. However, despite those reasonable efforts to return the child home to the parent, a continuing danger remains in the home that prevents return." Accordingly, the Court held that "the trial court's order specifically stated that it found by clear and convincing evidence that the Department made reasonable efforts to return [the child] to her parents and that a continuing danger remains in the home that prevents her return," and "[b]ecause the trial court made this specific finding," it concluded that the trial court's termination order complied with TFC § 161.001(b)(1)(f).

According to Mother and Father, TFC § 161.001(b)(1)(g) was intended to afford appellate courts "with meaningful findings" that can be used to review the sufficiency of the evidence. The Court of Appeals disagreed, noting that it appeared that Mother and Father were "advocating for a level of detail or particularity that exceeds the statutory requirement." Here, the Court observed that in a separate section of its order, the trial court described that it "specifically [found] that those reasonable efforts include ... [t]he Department [creating] a family service plan that is narrowly tailored to address any specific issues identified" and "[making] a referral for services, provided services, and or paid for services." The Court further noted that the trial court, after the appeal was abated, then made further specific findings that the Department (1) created a family service plan for Father and Mother that was narrowly tailored to address any specific issues identified; (2) made referrals for services, provided services, and paid for services to address the reasons [the child] came into care; (3) discussed safe placement options with Mother, however, all provided relatives were not appropriate for safe placement of [the child]; (4) provided Mother an opportunity to visit with her children weekly, but she missed multiple visits; (5) worked with Father towards reunification, but he engaged in criminal conduct that prevented him from being available to parent [the child]; and (6) made available cab vouchers, bus passes, and virtual services upon request where available.

Accordingly, the Court concluded that "[w]hile Subsection (g) demands specificity, it does not require the heightened standard that [Mother and Father] seek to impose." As such, the Court held that the trial court's findings were "based on testimony and directly related to the Department's reasonable efforts", and its findings "that the Department created a family service plan and made services available to Father and Mother are sufficient—under the facts of this case—to inform us of the reasonable efforts the Department had taken to

return [the child] to her parents, and we conclude that the trial court's findings comport with Subsection (g)'s specificity requirements." Affirmed. *In re Y.K.*, 722 S.W.3d 273 (Tex. App.—Fort Worth 2025, no pet.).

B. Reasonable Efforts Evidence Sufficient

The Department obtained temporary managing conservatorship of the child in January 2024. Mother admitted to using cocaine while the child was not in her care or was in daycare. In addition, Mother did not appear for most of the drug tests requested by the Department in the first half of 2024. However, she did complete a urinalysis (UA) and a hair follicle test in April 2024, both of which were positive for cocaine and marijuana. Mother maintained that she was sober beginning in June 2024, and from then on, all of her random UA screens, which averaged around four per week, were negative for drugs.

In November 2024, the Department received a hair follicle test from Mother that was positive for cocaine. Mother insisted that the positive hair follicle test was an error and requested further hair follicle testing, including segmented hair testing. While her random UA screens continued to return negative, subsequent hair tests in December 2024 and April 2025 returned positive for cocaine in all segments tested. In early 2025, Mother was sharing an apartment with her fiancé, whom she had known for fifteen years. Mother's fiancé provided information so that the Department could run a background check, which showed a criminal history from 2010 that involved "a history of substance use." Mother's fiancé also declined to participate in drug testing. As a result of the November and December positive hair follicle tests and other concerns, including that Mother's fiancé would not engage in drug testing, the Department changed its permanency goal in March 2025 from reunification to adoption. Frustrated with the hair follicle test results, Mother requested a nail test, which came back negative for drugs in May 2025. Further, Mother previously completed OSAR programs but did not complete a subsequent OSAR after her positive hair follicle tests, in contravention of the service plan's requirement that she do so after testing positive for drugs.

In challenging the trial court's TFC § 161.001(f) finding, Mother argued that the "Department's reliance on three positive hair follicle tests that took place after she completed a drug treatment program, while disregarding thirty-one negative UA tests and a negative nail test occurring during the same time frame undermines [the Department's] claim that it made reasonable efforts to reunify the family." She further argued that by making no attempt to explain the differing drug test results and failing to consider the possibility that Mother's dark hair may have impacted her results, the Department failed to show by clear and convincing evidence that it made reasonable efforts to reunify. Disagreeing with Mother's argument, the Court of Appeals reasoned that the Department's unexplained reliance on the hair tests when dozens of UA tests showed different results does not mean that the Department did not engage in reasonable efforts, and the trial court was not required to give greater weight to the conflicting drug testing evidence than to the many other services the Department undisputedly offered to support reunification of the family.

Mother also argued that the trial court relied too heavily on the positive hair follicle tests in finding that a continuing danger existed in her home. However, the Court observed that in addition to Mother's positive hair follicle tests, she stopped attending therapy and did not take steps to complete another drug and alcohol assessment before the final hearing, and before the Department changed its goal from reunification to adoption, and Mother moved in with her fiancé, who did not submit to drug testing, after describing their relationship as "not in her best interest." Affirmed. *C.Q. v. Tex. Dep't of Family and Protective Servs.*, No. 03-25-00638-CV (Tex. App.—Austin Feb. 5, 2026, pet. filed) (mem. op.)[2]; *see also In re T.R.*, No. 01-25-00924-CV, __ S.W.3d __ (Tex. App.—Houston [1st Dist.] 2026, mot'n for reh'g filed) (mem. op.) (reasonable efforts found where Department created service plan to address specific issues, made referrals for services, and discussed placement options; continuing danger also sufficient where Mother persisted in contact with sexual abuser father, Mother had shown lack of protectiveness in the past, Department had concerns about Mother's sobriety, children had significant therapeutic and medical needs, and Mother did not have housing); *In re J.H.*, No. 01-25-00854-CV (Tex. App.—Houston [1st Dist.] Apr. 10, 2026, no pet.) (mem. op.); *In re T.M.*, No. 11-25-00273-CV (Tex. App.—Houston [1st Dist.] Mar. 19, 2026, no pet.) (mem. op.) (evidence supporting "continuing danger" insufficient where caseworker could not articulate factual basis for suspicion that Father could present a continuing danger and it was "just [the] unknown."); *In re Y.K.*, 722 S.W.3d 273 (Tex. App.—Fort Worth 2025, no pet.) (evidence sufficient to support reasonable efforts finding); *In re Z.K.*, No. 14-25-00231-CV (Tex. App.—Houston [14th Dist.] Aug. 28, 2025, pet. denied) (mem. op.); *In re H.B.S.*, No. 12-26-00007-CV (Tex. App.—Tyler Apr. 8, 2026, pet. filed) (mem. op.); *In re W.R.I.F.*, No. 05-25-01458-CV (Tex. App.—Dallas Apr. 13, 2026, pet. filed) (mem. op).

C. Preservation of Error

Father argued that the trial court abused its discretion when it terminated his parental rights without making statutorily required findings and without describing them with specificity in a separate section of the termination order pursuant to TFC § 161.001(b)(1)(f) and (g). Specifically, Father claimed the court failed to specifically describe why a continuing danger remained in the home, preventing the child's return.

The trial court signed the original termination order on August 5, 2025. Father filed his notice of appeal on August 19, 2025. The Court of Appeals noted that the clerk's record did not contain any document showing that Father timely apprised the trial court of its alleged failure either to make the required findings or to state them with greater specificity, and filed no motion for new trial, no request for findings of fact, no request for additional findings of fact, and no other objection apprising the court of the complaint Father raised on appeal. The Appellate Court held that because Father did not object to the trial court's alleged failure to comply with TFC § 161.001(b)(1)(f) and (g), such error cannot be asserted for the first time on appeal. *In re P.Y.*,

[2] A *Petition for Review* was filed in this case; the Department filed its response on June 15, 2026.

No. 14-25-00696-CV, ___ S.W.3d ___ (Tex. App.—Houston [14th Dist.] 2026, no pet.); *see also In re M.S.*, No. 02-25-00704-CV (Tex. App.—Fort Worth Mar. 5, 2026, no pet.) (mem. op.) (Father complained that the final order lacked written Subsection (f) and (g) findings and raised no other appellate issues, including evidentiary-sufficiency complaints. The Court of Appeals concluded Father failed to preserve his complaint for appellate review by failing to raise the issue in the trial court, noting nothing prevented him from raising it there. The Court also rejected Father's argument that he *may have* chosen to attack sufficiency of the findings if the findings had been properly included in the final order, again pointing out that nothing had prevented him from raising the issue anyway, as required by Texas Rule of Appellate Procedure 33.1. The Court of Appeals also noted that Father conceded the trial court's failure to make the requisite findings did not prevent him from presenting his issue to the trial court such that Texas Rule of Appellate Procedure 44.4 would be triggered and abatement appropriate.)

VI. ADDITIONAL SUFFICIENCY CONSIDERATION – PARENTAL INDIFFERENCE

Mother challenged the sufficiency of the evidence supporting the trial court's termination of her parental rights under multiple predicate grounds and its best interest determination.

After Mother was arrested in December 2023 and charged with child abandonment, the Department placed the four children and two older siblings with a maternal aunt. To regain custody of the children, Mother was required to participate in services, maintain stable employment and housing for six months, and provide support items for the children. After the aunt informed the Department in February 2024 that she had received no support from Mother, feared for her own children's safety, and was no longer willing to care for them, the Department filed its petition for termination of Mother's parental rights.

In its analysis of the trial court's TFC § 161.001(b)(1)(E) finding, the Court of Appeals considered, *inter alia*, evidence of Mother's lack of interest in the children's welfare. The Court highlighted Mother's absence at trial, failure to complete any services, failure to communicate with the Department, failure to provide proof of employment or stable housing, and complete lack of "efforts to communicate with the children in any form", including after her bond conditions prohibiting contact were lifted. The evidence further reflected Mother had not provided any support for the children during their time in the aunt's care or after their removal. Accordingly, the Court of Appeals held that the evidence was legally and factually sufficient to support the trial court's termination of Mother's parental rights under Subsection (E).

Turning to best interest, in considering the second and third *Holley* factors regarding the emotional and physical needs and danger to the children now and in the future, the fourth factor regarding parenting abilities, and the eighth factor regarding acts and omissions which may indicate the parent-child relationship is not appropriate, the Court of Appeals again considered Mother's "apparent lack of interest in the children or in improving her parenting abilities" and determined that this evidence suggested that retaining her parental rights threatened the children's well-being. Mother's

challenge to the best interest determination was overruled. *In re K.H.*, No. 14-25-00816-CV (Tex. App.—Houston [14th Dist.] Mar. 19, 2026, pet. filed) (mem. op.); *see also In re S.G.*, No. 11-25-00176-CV (Tex. App.—Eastland Dec. 18, 2025, no pet.) (mem. op.) (finding Father's "knowledge of the dangerous living conditions in which he placed the children and refusal to improve the safety thereof permit the rational inference that he was, at a minimum, indifferent to the children's physical health and emotional well-being" and such indifference heavily supported the best interest finding); *In re I.H.*, No. 02-25-00524-CV (Tex. App.—Fort Worth Jan. 30, 2026, pet. denied) (mem. op.) (evidence that Father exhibited parental indifference to the point of not even giving the child a name supported the trial court's Subsection (E) finding); *In re K.H.*, No. 11-25-00255-CV (Tex. App.—Eastland Feb. 27, 2026, pet. denied) (mem. op.) (concluding that Mother's repeated disregard for the well-being of the children, including becoming increasingly apathetic, ignoring requests for drug testing, sporadic attendance at visitation, and discontinuing communication with her caseworker, demonstrated a pattern of parental indifference and supported the trial court's best interest finding under every *Holley* factor.).

VII. CONSERVATORSHIP

A. APPOINTING DEPARTMENT AS MANAGING CONSERVATOR: TFC § 263.404(a)(2)

Following a final trial in a Department suit, the trial court terminated Father's parental rights to the child, appointed Mother and Foster Mother as possessory conservators, and appointed the Department as the child's managing conservator. Foster Mother, who had intervened in the case, sought to adopt or, in the alternative, be named as the child's managing conservator. On appeal, Foster Mother and the child, through her attorney and guardian *ad litem*, argued the trial court erred by naming the Department, rather than Foster Mother, as the child's sole managing conservator.

TFC § 263.404(a) provides that a court may render a final order appointing the Department as managing conservator of a child without terminating the rights of the child's parent if it finds that (1) the 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.

The evidence presented at trial established that the child had been placed in Foster Mother's home since the beginning of the case. Foster Mother had steady employment as a nurse practitioner and was financially secure. The Department's caseworker testified that there had been no concerns with this placement, and a strong bond had been observed between the child and Foster Mother. Further, Foster Mother testified that her bond with the child was identical to that of a biological mother and the child referred to her as "mama." She ensured the child received appropriate care, including surgical ear tubes for her recurring ear infections. Foster Mother testified that her extended family was available to support her. Her sister was an approved caretaker through 1Hope for Kids, the same foster care agency through which Foster Mother was licensed, and had completed background checks, CPR

training, and required courses to engage with the child.

The record reflected that Grandmother had been involved in the case from the beginning and had attended all hearings. While still living in Ohio, she had reported Mother's arrest to the Department because she did not know the whereabouts of the child. Early in the case, the Department performed a background check and facilitated a home study of Grandmother's home based on her express desire for placement, both of which were approved. Mother then raised concerns about placing the child with Grandmother, which Mother disputed at trial, but the Department did not place the child with Grandmother. Later in the case, Grandmother moved to San Antonio, and a second home study was performed. Grandmother admitted that the Department had some concerns with the second home study, namely that she owned a firearm and her home needed to be childproofed, but she testified she had addressed those issues. There was some dispute about whether Grandmother had refused background checks on people living in her home, but she testified she had lived alone for years. Because she had lived in Ohio, Grandmother initially met the child four weeks before trial and had participated in four 15-minute visits. Grandmother testified she had not been permitted to see the child before those visits. She explained that she maintained regular communication with Mother despite a rocky history, and she wanted to ensure the child remained with family and had the opportunity to develop a relationship with her older sister, who lived in San Antonio with other grandparents. Grandmother indicated a willingness to adopt the child if parental rights were terminated.

The Court of Appeals noted that the trial court made the findings required by TFC § 263.404(a) in a single conclusory sentence. Further, the Court did not find in its review of the record any evidence supporting the second finding that "it would not be in the best interest of the child to appoint a relative of the child or another person." Quoting *In re N.A.O.*, No. 07-21-00247-CV (Tex. App—Amarillo Feb. 18, 2022, no pet.) (mem. op.), the Court observed that the parties presented no evidence depicting Foster Mother or Grandmother as "incapable of adequately exercising conservatorship over the child[,] [n]or did they present evidence touching upon the impact, if any, that their appointment as [ ] managing conservator would have on the child's best interest." The Court further noted that like *N.A.O.*, the parties at trial "were focused on the termination of parental rights" rather than "who would serve as the child's managing conservator if complete termination never occurred." Because the trial court lacked the evidence required to support the second finding, the Court held that the trial court's decision to appoint the Department as the child's managing conservator constituted an abuse of discretion.

Accordingly, the Court reversed the trial court's decision and remanded for the trial court to reconsider conservatorship of the child. *In re M.A.T.T.*, No. 04-25-00294-CV (Tex. App—San Antonio Dec. 10, 2025, no pet. h.) (mem. op.).

B. Denial of Conservatorship and *Stary v. Ethridge*

After a bench trial in a divorce proceeding involving the conservatorship and possession

of the child, the trial court signed a Final Decree of Divorce. Father was named sole managing conservator of the child; Mother was not named as a conservator of the child and was excluded from possession of and access to the child until she addressed her addiction issues. The trial court made the following findings:

> Based on the evidence, the Court finds that appointment of [Mother] as a conservator of the child would endanger the child, significantly impair the child's physical health, emotional development, welfare and wellbeing. The Court finds that appointment of [Mother] as a conservator of the child would not be in the child's best interest. Similarly, the Court finds that ordering a schedule of possession or access for [Mother] with the child would endanger the child, significantly impair the child's physical health, emotional development, welfare and wellbeing and would not be in the child's best interest.
>
> Further, the Court finds that [Mother] should fully and successfully complete a medically reasonable course of inpatient treatment for addiction to drugs and alcohol as recommended by qualified treating professionals prior to setting any future hearing on a petition to modify prior order. Similarly, the Court finds that [Mother] should fully and successfully complete such inpatient treatment prior to seeking any modification of the Court's orders regarding conservatorship or access to or possession of the child.

Mother appealed, relying on *Stary v. Ethridge*, 712 S.W.3d 584 (Tex. 2025), and argued that the divorce decree in this case constituted a *de facto* termination of her parental rights, requiring a heightened evidentiary standard to satisfy due process.

The Court of Appeals observed that in *Stary*, the trial court entered a lifetime protective order prohibiting Mother from any contact or communication with the three children, while still technically retaining some ancillary (non-core) parental rights, such as the ability to receive information about the children's welfare or participate in certain decisions, subject to the other parent's cooperation. The Texas Supreme Court held that such a protective order—even when not labeled a "termination" and while some legal parental rights technically survive—functionally deprives the parent of the fundamental right to care, custody, and control of the child, requiring the same procedural safeguards and clear and convincing evidence standard as a termination of parental rights; and when a court deprives a parent of all contact with their child for more than two years, especially via an order of permanent duration, this constitutes a deprivation of fundamental parental rights—amounting to a de facto termination even though not formally labeled as such. Accordingly, the Supreme Court remanded the case for the trial court to make findings under a clear and convincing evidence standard, recognizing that without such a

standard, long-term protective orders operate as de facto terminations without due process.

The Appellate Court distinguished this case from *Stary* on several grounds. First, it acknowledged that the present case excluded Mother from all statutory parental rights, making the deprivation more comprehensive than in *Stary*. However, the Court noted that the removal of statutory rights in this case was not permanent or absolute. It explained that, unlike in *Stary*, the order provided Mother with an explicit avenue to restore her rights by fulfilling a specific, court-ordered condition: successful completion of inpatient addiction treatment. In contrast, the protective order in *Stary* imposed a lifetime ban on all contact and access for the mother, with only limited statutory review and no path for restoration conditioned on parental conduct or rehabilitation.

Furthermore, the Court observed that in *Stary*, the order was "expressly for the mother's lifetime, unconditional, and not self-modifying," and "[r]einstatement of the mother's rights depended solely on discretionary court review, not the parent's compliance with remedial steps." However, in this case, Mother's "exclusion is indefinite but expressly reversible upon a showing of rehabilitation through the completion of treatment," and there was "no language making the arrangement permanent or suggesting irreversibility;" instead, modification is expressly available upon change of circumstances or compliance with the requirement.

Finally, the Court of Appeals noted that the trial court in this case made extensive findings of fact regarding the best interest of the child to support its order, Father's evidence regarding the danger Mother posed to the child was uncontradicted, and, "[u]nlike in *Stary*, the order in this case is significantly more detailed and specific with regard to the connection between the limitations of [Mother]'s parental rights, the evidence before the court of [Mother]'s behavior, and the specific condition upon which parental rights would be restored."

Accordingly, the Court of Appeals concluded the trial court's order did not constitute "a de facto termination" of Mother's rights under the standards set forth in *Stary*, and "the trial court did not err in applying a preponderance standard and was not required to apply a more stringent standard." The trial court's judgment appointing Father as the child's sole managing conservator and denying Mother's possession and access to the child was affirmed. *In re V.R.C.*, No. 05-25-00161-CV (Tex. App.—Dallas March 25, 2026, no pet.) (mem. op.) (op. on reh'g).

C. VISITATION AND POSSESSION SCHEDULE FAILED TO MEET ENFORCEABILITY STANDARDS

In a private SAPCR initiated in 2015, an agreed order named Mother and Father joint managing conservators of the child and awarded Mother the exclusive right to determine the child's residence within the bounds of a geographical restriction. In the years following, Mother's and Father's relationship was strained, and they made constant accusations against each other and put the child in the middle of their personal disputes. In 2021, Mother sought to modify the prior order to expand the geographical restriction but was denied. Two months later, after the escalation of Mother's erratic and aggressive behavior, Father filed a

temporary restraining order against Mother and a counterpetition to modify the prior order requesting sole managing conservatorship.

After a three-day jury trial in 2023, the trial court granted Father sole managing conservatorship and significantly limited Mother's possession of and access to the child. As a prerequisite to any court-ordered visitation, Mother was ordered to complete twelve sessions with a forensic psychologist within the following six months. If she failed to complete the sessions within the allotted time, Mother would only see the child twice a month for a maximum of two hours. If Mother completed the sessions with the psychologist, the order provided as follows:

> (d) After [Mother's] completion of the twelve sessions, the treating forensic psychologist shall determine a treatment plan, if any, to suit the needs of [Mother] at that time. If the treating forensic psychologist determines that a treatment plan is required or necessary, [Mother] shall participate in the plan if she wishes to be considered for unsupervised access. If she chooses not to participate in the treatment plan as prescribed by her treating forensic psychologist, the opportunity for unsupervised access shall be foreclosed without Court intervention;
>
> (e) If [Mother] complies with the treatment plan, then and only then, may [Father] provide the identity of the child's therapist to the treating forensic psychologist so that the two professionals and [Father] may work together to develop a plan, if any, to reintegrate [Mother] and the subject child[.]

The order then stated that if Mother complied with the treatment plan, Father, along with the child's therapist and Mother's psychologist, "may" develop a plan, "if any," to reestablish the relationship between Mother and the Child. On appeal, Mother argued that the trial court abused its discretion by failing to sufficiently define an "enforceable possession schedule" and "improperly delegating the custody and visitation schedule to Father." Specifically, Mother argued that Subsection (d) of the order did not state "in clear and unambiguous terms what she must accomplish in therapy to comply", and Subsection (e) of the order "improperly delegate[d] part of the decision-making process regarding the development of a plan to reintegrate Mother with [the child] to Father." The Court of Appeals agreed.

The Court observed that while trial courts have the discretion and authority to determine the frequency and duration of, and place restrictions on, parent-child visits, TFC § 153.193 limits a trial court to only those restrictions or limitations required to protect the child's best interest. The Court further noted that if a trial court restricts or conditions a conservator's possession and access to a child, it is the trial court's responsibility to specifically define those terms in its order. The Court of Appeals cited to case law stating that any such order must be clear, unambiguous, and specific enough to allow for future enforcement of the order.

The Court stated that Subsection (d) of the order did not state in clear and unambiguous terms what was required for Mother to comply with the order because it "provided no details regarding what the twelve sessions are to accomplish therapeutically or under what circumstances a treatment plan would be required", and was, therefore, not sufficiently specific. It further noted that "because it requires some undefined, future treatment plan", Subsection (d) could not be enforced by an order of contempt. The Court held that "[b]ecause [S]ubsection (d) does not provide any guidelines to ensure that [the child's] best interests are protected and is bereft of any such guidelines for Mother's therapeutic goals," that portion of the trial court's order did not meet the standards for enforceability.

Turning to Subsection (e) of the order, the Court noted that several appellate courts "have repeatedly concluded that an order giving one parent complete discretion to determine when, where, and if the other parent may have possession and access to a child is unenforceable." The Court stated that, here, even if Mother complied with the treatment plan, Father still had "absolute discretion" under Subsection (e) to provide the identity of the child's therapist to Mother's psychologist. While the Court recognized that "an order may under certain circumstances delegate the decision-making process to develop a reintegration plan to disinterested mental health professionals," Subsection (e) allowed Father "to act as the gatekeeper". If Father decided not to share the information, Mother had no path to reintegration; if Father shared the information, Father and the "two professionals" still had discretion whether to work together to develop a plan for Mother to reintegrate. As such, the Court of Appeals held that the trial court abused its discretion by giving Father "absolute discretion" over potential reintegration plans and concluded that Subsection (e) also failed to meet the standards for enforceability.

Accordingly, the Court of Appeals reversed Subsections (d) and (e) of the "Possession and Access" portion of the trial court's order and remanded the case to the trial court. *In re I.P.P.*, No. 05-23-01152-CV (Tex. App.—Dallas May 2, 2025, no pet.) (mem. op.); *but see*, *Gleason v. Heidemeyer*, No. 03-25-00100-CV (Tex. App.—Austin Oct. 24, 2025, no pet.) (mem. op.) (affirming the trial court's order requiring Mother to complete psychological testing as the first of a five part step-up possession schedule ending in a standard possession order and requiring such possession be supervised until she completed the requirements of the plan where Mother exhibited aggressive, combative, and violent behavior).

VIII. POST-TRIAL

A. REINSTATEMENT OF PARENTAL RIGHTS

TFC § 161.302 allows certain persons to request the trial court to reinstate the parental rights of a former parent whose parental rights were involuntarily terminated. In this case, the trial court signed a final decree of termination on July 7, 2021, that terminated Father's parental rights pursuant to TFC §§ 161.001(b)(1)(D), (E), (O), and (P), and a best interest finding under 161.001(b)(2). Father appealed this judgment, and the Court of Appeals affirmed in March 2022. Thereafter, he filed a petition for review in the Supreme Court of Texas.

Father filed his *Original Petition for Reinstatement of Parental Rights and Request for Temporary Orders* on September 8, 2023. The Department responded by filing a *Motion to Dismiss Father's Petition for Reinstatement of Parental Rights* on October 2, 2023. In its motion, the Department urged the trial court to dismiss Father's petition because it did not meet the standards outlined in TFC § 161.302(b)(2), requiring that no appeals of the underlying termination decree remain pending when the petition to reinstate is filed, a fact which Father did not dispute. However, on October 13, 2023, the Supreme Court denied Father's motion for rehearing, and the Court of Appeals issued its mandate on October 17, 2023. Thereafter, on October 18, 2023, the associate court sent an email denying the Department's motion, noting that the mandate had issued.

On October 20, 2023, the Department filed a request for a *de novo* hearing in the district court based on its contention that the associate court "erred on the record then before it at the time of its October 11 hearing, because [Father], at the time of filing his Original Petition, had not complied with the provisions under section 161.302(b)."

On October 23, 2023, the Department filed its *First Amended Motion to Dismiss Father's Petition for Reinstatement of Parental Rights*, this time asserting that reinstatement was improper because the children were now the subject of an adoption agreement and thus no longer subject to reinstatement under TFC § 161.302(b)(4).

The *de novo* hearing was held on October 24, 2023. On October 29, 2023, the district court signed an order dismissing Father's *Petition for Reinstatement*, finding that a mandate was issued in the underlying termination proceeding on October 17, 2023, and finding that Father's Original Petition for Reinstatement "was defective and failed to meet the requirements listed under TFC § 161.302(b)(1)." The district court also found that the associate court should have immediately rendered a dismissal following its October 11, 2023, hearing. The district court concluded that the associate court's rejection of the Department's Motion to Dismiss was error. It ordered the associate court's order to be modified to show that the district court was granting the Department's Motion to Dismiss and ordered that Father's Petition for Reinstatement was dismissed "under Rule 91a without prejudice of his right to refile when appropriate." Father appealed.

Father brought forth several issues, one of which was that the statutory requirements of TFC § 161.302(b) are not jurisdictional. Therefore, he argued that the district court erred as a matter of law when it dismissed Father's claim on jurisdictional grounds. The Department asked the Court of Appeals to affirm the district court's dismissal for lack of jurisdiction under the ripeness and mootness doctrines. The Appellate Court declined the Department's suggestion to do so and instead addressed Father's claim.

The Court began its analysis recognizing the presumption that the Legislature did not intend to make the requirement jurisdictional, observing that "the principal justification for [the Supreme Court's] general reluctance to view statutory requirements as jurisdictional – ensuring a judgment's finality – is even more pronounced' in cases involving child custody

and parental rights." *See In re D.S.*, 602 S.W.3d 504, 520 (Tex. 2020) (Lehrmann, J., concurring). Next, the Court recognized that "[i]n evaluating whether a statutory requirement is jurisdictional, we consider (1) most importantly, the statute's plain meaning; (2) the presence or absence of specific consequences for noncompliance; (3) the purpose of the statute; and (4) the consequences that result from each possible interpretation." In addition, it noted Tex. Gov't Code § 311.034 provides that "statutory prerequisites to a suit, including the provision of notice, are jurisdictional requirements in all suits against a governmental entity," and the Supreme Court has defined the term "statutory prerequisite" as having three components: (1) a prerequisite must be found in the relevant statutory language, (2) the prerequisite must be a requirement, and (3) the requirement must be met before the lawsuit is filed.

The Appellate Court first examined the language of the statute. TFC § 161.302(b) provides that "[a] petition for the reinstatement of parental rights may be filed under this subchapter only if: (1) the termination of parental rights resulted from a suit filed by the department; (2) at least two years have passed since the issuance of the order terminating the former parent's parental rights and an appeal of the order is not pending; (3) the child has not been adopted; (4) the child is not the subject of an adoption placement agreement; and (5) the petitioner has provided the notice required by Subsection (d), if the petitioner is the former parent whose parental rights are sought to be reinstated.

The Court observed that "[g]iving the words within the statute their plain and ordinary meaning, we interpret the second clause of subsection (b)(2) as providing a description of a mandatory ("may be filed ... **only if ...**") requirement imposed on the party seeking parental reinstatement when filing the lawsuit. But nothing within the text of this provision expressly states that it is a "jurisdictional" requirement. Further, the Court of Appeals stated that "the provision contains no language indicating any jurisdictional consequences for non-compliance with Subsection (b); however, TFC § 161.303(c) demonstrates that the petitioner has the burden of proof *at the hearing* and that the trial court may "grant a petition and order the reinstatement of the former parent's parental rights only if the court finds by a preponderance of the evidence that: (1) reinstatement of parental rights is in the child's best interests; (2) at least two years have passed since issuance of the order terminating parental rights and **an appeal of the order is not pending**; (3) the child has not been adopted and is not the subject of an adoption placement agreement; (4) if the child is 12 years of age or older, the child consents to the reinstatement and desires to reside with the parent; (5) the former parent has remedied the conditions that were grounds for rendering the order terminating parental rights; and (6) the former parent is willing and has the capability to perform parental duties as provided in Section 151.001, including maintaining the health, safety, and welfare of the child."

The Court of Appeals reasoned that "if we were to find that the provisions under [S]ubsection (b)(2) were jurisdictional, then all parental reinstatement actions including those not brought against the Department (e.g., Petitions filed *by* the Department), would be vulnerable to jurisdictional attacks as to these requirements well past the date of the merits

hearing and during an appeal, thus expanding the timeline of opportunity to relitigate parental rights." In contrast, the Court stated, "if we were to conclude that Subsection (b)(2) was not jurisdictional, a terminated parent could, as [Father] has done, file suit before the appeal on his termination has concluded without the risk of dismissal on jurisdictional grounds;" however, "he should expect his case to be dismissed at his hearing on the merits if the section 161.303(c)(2) requirement is not satisfied, i.e., if the appeal of the termination order is still pending at that time," and nothing in the statute prevents the Department from filing a summary-judgment motion on the grounds that the statutory requirement is not satisfied.

Accordingly, the Appellate Court concluded that, "the first four requirements under 161.302(b) are non-jurisdictional mandatory requirements, and because [S]ubsections 161.302(b)(1) and (2) were not subject to dismissal on jurisdictional grounds, whether by plea to the jurisdiction, motion to dismiss for lack of subject matter jurisdiction or sua sponte, the trial court erred when it independently concluded that [Father] had not satisfied 161.302(b)(1) and erred when it implicitly concluded that [Father] had not satisfied 161.302(b)(2) when it granted the Department's Motion." Reversed and remanded for further proceedings. *In re S.H.V.V.*, No. 14-23-00807-CV (Tex. App.—Houston [14th Dist.] June 26, 2025, no pet.) (mem. op.).

B. Error in Modification of Jury's Verdict

This was an original proceeding arising from a jury verdict terminating the parental rights of Father, Real Party in Interest, in a private suit between Father and Uncle and Aunt, Relators.

The jury trial was held in August 2024. After the parties rested and closed, the jury returned a verdict terminating Father's parental rights under TFC §§ 161.001(b)(1)(D) and (E), and found termination was in the child's best interest.

Father filed his motion for Judgment Notwithstanding the Verdict (JNOV) and motion for new trial on the same day. In addition to challenging the legal and factual sufficiency of the evidence, Father's motion for JNOV argued that the evidence was legally insufficient to support the jury's endangerment and best interest findings, and an inconsistent juror poll further warranted setting aside the jury's verdict. His motion for new trial challenged the legal and factual sufficiency of the jury's endangerment and best interest findings and asserted grounds of juror confusion, an inconsistent juror poll, juror misconduct, and bailiff misconduct as additional grounds for a new trial. In support of his motion for new trial, Father submitted his own affidavit, the jury charge, and affidavits from three jurors.

A hearing on both motions was held on November 20, 2024. At the hearing, no live testimony was heard, and the trial court admitted the three juror affidavits. The trial court ultimately denied Father's motion for JNOV and granted his motion for new trial.

Texas Rule of Civil Procedure 320 provides, in part:

> New trials may be granted and judgment set aside for good

> cause, on motion or on the court's own motion on such terms as the court shall direct. New trials may be granted when the damages are manifestly too small or too large.

Aunt and Uncle first challenged the trial court's granting of a new trial, arguing the evidence was legally and factually sufficient, contending the court's order improperly focused only on evidence supporting Father's requested relief and ignored the evidence supporting the jury's verdict.

The Court of Appeals reviewed the new-trial order to determine whether, under *In re Columbia Med. Ctr. of Las Colinas, Subsidiary, L.P.,* 290 S.W.3d 204, 210 (Tex. 2009) (orig. proceeding), the trial court provided a clear basis as to why the jury verdict was set aside. It also observed that to be facially valid, the articulated rationale must be (1) "a reason for which a new trial is legally appropriate" and (2) "specific enough to indicate that the trial court did not simply parrot a pro forma template but rather derived the articulated reasons from the particular facts and circumstances of the case at hand."

The first two paragraphs of the trial court's three-page order provided:

> A fair trial includes a jury properly instructed on the issues authorized and support[ed] by the law governing the case. In a case involving Termination of parental [rights], the "death penalty" of civil cases, the importance of safeguarding a parent['s] right to a fair trial is even more pronounced.
>
> The jury verdict was factually and legally insufficient to support section TFC 161.001(b)(1)(D) and (E) findings as grounds for termination OR best interests. Due process mandates a heightened standard of proof which is clear and convincing evidence, and that burden of proof was always on the [Aunt and Uncle]. There was not clear and convincing evidence to support the jury finding of termination. There was no measure or degree of proof that would produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established. The Court finds that the verdict is contrary to the overwhelming weight of all relevant evidence as to be clearly wrong and unjust.

The Appellate Court concluded that "the mere recitation of a legal standard, such as a statement that a finding is against the great weight and preponderance of the evidence, will not suffice." The Court next turned to the remainder of the new-trial order, which provided a lengthy recitation of certain testimony. It noted that the trial court advanced twenty-six evidentiary points to support its challenge to the sufficiency of the evidence. It agreed with Aunt and Uncle, who maintained that "instead of considering the evidence as a whole, [the trial court] merely recited isolated and disrupted pieces of evidence that would support Father's position and ignored evidence that would support the

jury's verdict—which is not the correct legal standard."

The Appellate Court clarified that while the trial court provided a long list of evidentiary points, it did not "in any way explain *how* that evidence undermines the jury's verdict and nearly all the evidence cited in the new-trial order went to the best interest finding, and there was no connection or discussion of the evidence regarding either Subsections D or E". While the Court recognized that "a trial court need not provide a detailed catalog of the evidence," its rationale must nevertheless "ensure that, however subject to differences of opinion its reasoning may be, it was not a mere substitution of the trial court's judgment for the jury's. It observed that the trial court's duty was to "explain how the evidence (or lack of evidence) undermines the jury's findings," and the trial court failed to do so.

The Appellate Court also noted that the trial court ignored evidence proffered by Aunt and Uncle to support the jury's endangerment findings. This included evidence of Father's past criminal conduct and drug use during the Department's investigation, including that the child tested positive for methamphetamines in connection with a report made about Father's unsupervised visitation with the child, and that drug paraphernalia was found in Father's apartment during that investigation. Father also testified that since his release from prison in 2018, he had not undergone a psychological assessment for his addictions and had not completed any rehabilitation or substance abuse programs outside of prison. Other evidence included Father's enrollment in a drug court program on May 29, 2018. He tested positive for methamphetamine and cocaine at intake and was ultimately discharged from the program due to noncompliance. The jury also heard Mother's testimony that Father tackled her from behind when she was five months pregnant and shoved her on another occasion after the child was born.

The Court of Appeals concluded that the trial court's stated basis with respect to the sufficiency of the evidence "does not amount to a cogent and reasonably specific explanation of the reasoning that led the court to conclude that a new trial was warranted," and because the stated basis did not meet the facial requirements, the order was not facially valid as required by the Texas Supreme Court. Accordingly, it held that the trial court abused its discretion in granting a new trial based on its articulated ground of insufficient evidence to support the jury's endangerment and best interest findings.

Regarding the portion of Father's motion for new trial alleging misconduct, the Court concluded the trial court abused its discretion by granting Father's motion for new trial because no evidence, apart from the affidavits, was presented at the hearing on Father's motion for new trial. Mandamus relief was conditionally granted, and the trial court was directed to vacate its new-trial order, reinstate the verdict, and proceed in the normal course with the post-trial stages of litigation. *In re R.E.S.*, 725 S.W.3d 471 (Tex. App.—El Paso 2025, orig. proceeding).

C. Constitutionality of Termination of Parental rights

On appeal, Father argued that termination of his parental rights must satisfy strict scrutiny, and therefore his parental rights could not be

terminated unless termination was the least restrictive means to satisfy a compelling governmental interest. According to Father, termination would not survive strict scrutiny if less restrictive alternatives were available. While acknowledging Father's issue was unpreserved, the Court of Appeals concluded that existing protections sufficiently safeguarded Father's constitutional rights and, therefore, declined to apply a strict scrutiny review to the trial court's termination order.

On November 4, 2025, the Texas Constitution was amended to add Section 37 to Article I, which reads:

> To enshrine truths that are deeply rooted in this nation's history and traditions, the people of Texas hereby affirm that a parent has the responsibility to nurture and protect the parent's child and the corresponding fundamental right to exercise care, custody, and control of the parent's child, including the right to make decisions concerning the child's upbringing.

The Court reasoned that Section 37 tracked the language of Texas jurisprudence, which already recognized a parent's "fundamental right to exercise care, custody, and control" and, therefore, this amendment simply "affirm[ed]" that right. The Court explained that, prior to the adoption of the constitutional amendment, the Texas Supreme Court had long recognized that parents have the "fundamental right to make decisions concerning 'the care, the custody, and control of their children.'" *See In re A.B.*, 437 S.W.3d 498, 502 (Tex. 2014) (internal citations omitted). Thus, Father could have raised his constitutional complaint in the trial court even though Section 37 did not yet exist when the termination order in this case was entered.

The Court noted that the Texas Supreme Court has never applied strict scrutiny when deciding whether a statute or the state's conduct unduly infringes on the fundamental rights of parents. Further, the Court pointed out that the best interest analysis necessarily implicates whether termination of the parent-child relationship was the least restrictive means to accomplish the compelling governmental interest of protecting children. Additionally, the Court explained that in Department suits, trial courts "may not order termination ... unless the court finds by clear and convincing evidence" that "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 ...." *See* TFC § 161.001(f). Because the best interest analysis and clear and convincing evidence standard "guarantee[d] the constitutionality of termination proceedings," the Court declined to apply a strict scrutiny review to a final order terminating parental rights.

Accordingly, the Court of Appeals affirmed the trial court's order. *In re T.R.*, No. 01-25-00924-CV,___S.W.3d____(Tex. App.—Houston [1st Dist.] 2026, mot'n for reh'g filed).

D. TFC § 201.015 AND DUE PROCESS

Following termination of her parental rights, Mother argued the trial court violated TFC §

201.015, which authorizes a party to request a *de novo* hearing before the referring court by filing a written request not later than the third working day after the date the party received notice of the substance of the associate judge's report. She further argued that the trial court violated her due process rights by signing the order terminating her parental rights before completing the timely requested *de novo* hearing.

The bench trial was held before an associate judge. On February 3, 2025, the associate judge issued a letter finding, by clear and convincing evidence, that termination of the parent-child relationship between Mother and the subject child was in the child's best interest and that Mother engaged in acts or conduct that satisfied two of the statutory grounds for termination. On February 6, 2025, Mother filed a request for a *de novo* hearing within the time prescribed by TFC § 201.015. On February 14, 2025, a formal order of termination was signed by the associate judge.

On February 18, 2025, the referring court began the *de novo* hearing but announced that it was awaiting the official reporter's record from the underlying trial and would conclude the hearing once the record was received. However, on March 7, 2025, prior to the completion of the *de novo* hearing, the referring court signed an order adopting the associate judge's order of termination. On April 10, 2025, the referring court concluded the *de novo* hearing. A second order adopting the associate judge's order of termination was signed five days later, followed by a subsequent order signed on April 21, 2025, which stated: "[T]his Court declines to change the Associate Judge's ruling and affirms the Order of Termination previously entered by the Associate Judge in this cause."

On appeal, while the parties agreed that Mother's *de novo* request was timely and the referring court should not have signed an order adopting the order of termination before the *de novo* was completed, the Department argued that the referring court cured the error by completing the *de novo* hearing on April 10 and signing a second order adopting the associate judge's order of termination.

In rejecting the Department's argument, the Court of Appeals noted that the referring court's March 7 order adopting the associate judge's order of termination was a final, appealable judgment, as the order disposed of all issues and parties. The Court further noted that trial courts retain plenary power for only thirty days after signing a final judgment and, because nothing occurred to extend the trial court's plenary power in the current case, the referring court's plenary power expired before it completed the *de novo* hearing on April 10 and before the additional April 15 and April 21 orders were signed. Accordingly, the Court held that the referring court lacked jurisdiction to complete the *de novo* hearing on April 10 and to sign its additional orders thereafter. The Court stated that such actions by the referring court "were a nullity and could not cure the referring court's error of signing the order adopting the associate judge's order of termination on March 7, 2025, before the *de novo* hearing was completed." The Court of Appeals reversed the referring court's judgment terminating Mother's parental rights and remanded the case for a *de novo* hearing to be completed. *In re I.S.*, No. 10-25-00077-CV (Tex. App.—Waco Mar. 26, 2026, no pet.) (mem. op.).

E. Unauthorized Discharge of Appellate Counsel

Father was found indigent and appointed counsel to represent him in a termination suit brought by the Department. Following a jury trial, the trial court appointed Maternal Grandmother, who intervened in the suit, as the child's sole managing conservator and Father as a possessory conservator. Father indicated his intent to appeal the decision, and the trial court appointed him appellate counsel who then filed a notice of appeal on Father's behalf.

Before all briefs had been filed in the pending appeal, the trial court, on its own motion and the motion of the Maternal Grandmother, held a hearing to reconsider Father's previously determined indigency. The trial court found that Father was no longer indigent and discharged his appointed appellate counsel. Father's *pro se* petition for writ of mandamus followed.

TFC § 107.013(e) provides:

> A parent who the court has determined is indigent for purposes of this section is presumed to remain indigent for the duration of the suit and any subsequent appeal unless the court, after reconsideration on the motion of the parent, the attorney ad litem for the parent, or the attorney representing the governmental entity, determines that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances

TFC § 107.016(2) provides that an attorney appointed under this subsection shall continue in that capacity until:

> (A) the date the suit affecting the parent-child relationship is dismissed;
> (B) the date all appeals in relation to a final order terminating parental rights are exhausted or waived; or
>
> (C) the date the attorney is relieved of the attorney's duties or replaced by another attorney after a finding of good cause is rendered by the court on the record.

The Department argued that TFC § 107.013(e) did not authorize the trial court nor Maternal Grandmother to move to reconsider Father's indigency. It noted that while a reversal of a finding of indigency might qualify as good cause under TFC § 107.016 to remove court-appointed counsel, the trial court was not authorized under TFC § 107.013 to make that finding.

Father's appointed counsel agreed but argued TFC § 107.016 was irrelevant to the analysis as the trial court proceeded under TFC § 107.013. Maternal Grandmother conceded neither she nor the trial court were authorized under § 107.013 to move to reconsider Father's indigency but argued Father's petition should be denied because he failed to provide the reporter's record of the indigency hearing and because the trial court might have found good cause under TFC § 107.016.

The Court of Appeals noted that the trial court did not make a good cause finding and based its order strictly on the finding that Father was

no longer indigent pursuant to TFC § 107.013. The Court held, however, that the trial court abused its discretion because neither it nor Maternal Grandmother were authorized under TFC § 107.013(e) to move to reconsider Father's indigency. Accordingly, the Court conditionally granted Father's petition for writ of mandamus and ordered the trial court to vacate the order discharging Father's appointed appellate counsel. *In re D.D.*, No. 02-25-00335-CV (Tex. App.—Fort Worth July 31, 2025, orig. proceeding) (mem. op.).