FILED
24-0881
5/1/2025 3:30 PM
tex-100343207
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

NO. 24-0881

IN THE SUPREME COURT OF TEXAS

In the Interest of K.N., K.L., K.L. and K.L., Children

On Petition for Review from the 7th Court of Appeals, Amarillo, Texas
Cause No. 07-24-00146-CV

BRIEF ON THE MERITS

SHARPEE LAW FIRM
Michael J. Sharpee, SBN 00788401
P.O. Box 1819
Amarillo, TX 79105
Telephone: (806)367-9713
Facsimile: (806)367-9716
mike@sharpeelawfirm.com

Attorney for Petitioner

PETITIONER REQUESTS ORAL ARGUMENT

IDENTITY OF PARTIES AND COUNSEL

PARTIES	**COUNSEL**
Petitioner C.N. ("Petitioner")	Michael J. Sharpee, SBN 00788401 Sharpee Law Firm P.O. Box 1819 Amarillo, TX 79105 Tel: (806) 367-9713 *mike@sharpeelawfirm.com*
Respondent The Dept. of Family and Protective Services ("Respondent")	Cory A. Scanlon P.O. Box 12548 Austin, Texas 78711 Tel: 512-936-1700 *Cory.scanlon@oag.texas.gov*
Real Party in Interest R.L. ("Father")	Jay Michelsen 112 W Main St. Canadian, Texas 79014 Tel: (806) 323-3261 *jaymichelsen@michelsenlaw.com*
Ad Litem K.N., K.L., K.L., and K.L. ("The Children")	Taylor Harris 314 N. Cuyler Pampa, Texas 79065 Tel: (806) 665-3788 *taylor@rickjharrislaw.com*

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Statutes

Rules

NO. 24-0881

IN THE SUPREME COURT TEXAS

In the Interest of K.N., K.L., K.L., and K.L., Children

BRIEF ON THE MERITS

TO THE HONORABLE JUSTICES OF THE COURT:

STATEMENT OF THE CASE

On March 29, The Department filed a Petition for Temporary Order for Required Participation in Services (CR 13). On August 31, 2022, the Department filed its Original Petition for Protection of a Child, for Conservatorship, and for Termination (CR 81). The Department was appointed the temporary managing conservator of the children on September 27, 2022 (CR 150). A final jury trial in this matter was held December 11, 2023 through December 15, 2023, where C.N.'s parental rights were terminated based upon 161.001(b)(1)(D), 161.001(b)(1)(E), 161.001(b)(1)(N) and 161.001(b)(2).

Proceedings in the trial court. The lawsuit was filed in the 223rd Judicial District Court, Gray County, Texas, Honorable Judge Phil N. Vanderpool presiding.

The judgment of the trial court. Judge Vanderpool signed an order of termination on April 9, 2024.

Proceedings in the court of appeals. Petitioner appealed the judgment to the 7th Court of Appeals. Petitioner was the Appellant and Texas Department of Family and Protective Services was the Appellee. Father was a Real Party in Interest.

The opinion of the panel. The panel that decided the case was composed of Justice Quinn, Justice Parker, and Justice Doss.

The judgment of the court of appeals. The court of appeals affirmed the judgment of the trial court on September 19, 2024.

ISSUE PRESENTED

ISSUE 1: **The trial court did not have subject matter jurisdiction under the UCCJEA.**

ISSUE 2: **Is termination of parental rights under D and E, and the placing of other children into the sole managing conservatorship of the Department without termination, justified on the basis of C.N.'s refusal to cooperate as opposed to neglect or abuse?**

STATEMENT OF FACTS

The opinion of the court of appeals correctly states the nature of the case.

SUMMARY OF ARGUMENT

At the time of the commencement of the initial custody proceeding the children were living in Louisiana, not Texas. The statute governing the filing of the emergency order of protection requires that the suit be brought in the county in which the children are found. There was no compliance with this statute making the subsequent order void. There was not compliance with the UCCJEA for the trial court to exercise jurisdiction making the order of termination and sole managing conservatorship void.

C.N. asserts she was not terminated for any abuse or neglect (endangerment) under D and E, but rather her refusal to go to counseling, anger management and obtain a psych study. After a six-month standoff between C.N. and the Department, she moved to Louisiana. It was not until then that the Department sought termination and removal, with no new allegations of abuse or neglect. As a matter of law, the termination and the sole managing conservatorship of younger siblings should be reversed.

ARGUMENT

ISSUE 1: The trial court did not have subject matter jurisdiction under the UCCJEA.

For the first time in her Petition for Review, C.N. raises the issue of subject matter jurisdiction. Subject matter jurisdiction cannot be waived and can be raised for the first time on appeal or in a petition for review**.** *Carroll v. Carroll*, 304 S.W.3d 366, 367 (Tex. 2010).

The Department has cited to Justice Lehram's concurring opinion in *In the Interest of D.S.*, 602 S.W.3d 504 (Tex. 2020) for the proposition that the UCCJEA does not implicate a court's subject matter jurisdiction. Concurring opinions do not constitute precedent:

> However, a concurring opinion has no precedential value and does not bind this Court. *See Live Oak Cnty. v. Lower Nueces River Water Supply Dist.,* 446 S.W.2d 14, 20 (Tex.Civ.App.-Beaumont 1969, writ ref'd n.r.e.) ("We have not, in our recitation of the holdings of the several courts, included the remarks found in the concurring opinion on the Summary Judgment Appeal ....
> It has been said that a concurring opinion has no binding effect as precedent since it represents only the personal views of the concurring judge and does not constitute the law of the case."
> *GoDaddy.com, LLC v. Toups*, 429 S.W.3d 752, 756 (Tex. App. 2014)

If the Honorable Court decides to take on the issue of the interplay of the UCCJEA and subject matter jurisdiction head-on in this case, there will be precedent on the matter. Until then, it has been recognized that the UCCJEA

governs which court in which state has jurisdiction to make initial custody determinations. *See In re Dean,* 393 S.W.3d 741 (Tex. 2012**).** It would be unfair, given the precedent, to say C.N. cannot now present her claims concerning jurisdiction. If the Court decides that the UCCJEA does not implicate subject matter jurisdiction, so be it. But that is a new concept only found in a concurring opinion and C.N. should not be prohibited from bringing this point of error.

As the Court recalls, *D.S.* involved a collateral attack on a termination and adoption. This petition is a direct attack on the trial court's jurisdiction and should be allowed.

The question presented is can the trial court claim home state jurisdiction when the children were not present in the state at the commencement of the action, but are forcibly returned by law enforcement pursuant to an emergency order.

The "Order to Work Services" is not an initial custody determination.

The case began when the oldest child made an outcry at the school that she was being dragged by her hair by her mother. The Department's investigator was told by C.N. that she would not cooperate with the Department, so a motion and order to participate in services was obtained on April 8, 2022. (CR-35; RR V 3, pg 26-27). The entry of the order to participate is not an initial custody determination triggering subject matter jurisdiction under the UCCJEA. Texas Family Code

section 264.203, which allows the court to enter an order of participation, specifically states that the order may not require the child to be placed out of the home or put in the conservatorship of the Department, Texas Family Code Section 264.203(e). Therefore, it does not constitute a "child custody determination" nor a "child custody proceeding" nor an "initial determination" as defined in Texas Family Code section 102.102. The order of participation was not the "commencement of a proceeding" as found in Texas Family Code section 152.201 from which home state jurisdiction is determined.

The" Order for Protection in an Emergency "did not comply with Texas Family Code section 262.002.

As the case proceeded, with C.N. refusing to comply with the order of participation, both parents and the children moved to Louisiana on August 20, 2022. (RR V 4, pg 193). Subsequently, the Department files an "Original Petition for Protection of a Child, for Conservatorship and for Termination in Suit Affecting Parent Child Relationship" on August 31, 2022 (CR 81) and on the same date, the court enters an "Order for Protection in an Emergency" (CR 113). In this order for emergency protection, the basis for the court's jurisdiction is stated as pursuant to Texas Family Code section 262.002. This statute provides that the suit

may be filed “in a court with jurisdiction to hear the suit in the county where the child may be found”.

At the adversary hearing that was held Sepetember 21, 2022, C.N. told the court she would not turn the children over to the Department (RR V 4, pg 181-182). The family is still living in Louisiana at this time. Subsequently, C.N. is indicted on October 10, 2022 for interference with a child custody order (RR V 7, Pet. Ex 14). In November 2022, C.N. was arrested in Louisiana on this charge and the children are transported back to Texas (RR V 4, pg 144; RR V 7, Mothers Ex. 1). Ultimately C.N.’s rights to one child are terminated and the remaining three children are placed in the care of the Department as sole managing conservators. The orders recites that the basis for jurisdiction was that Texas was the home state of the children.

As defined in the UCCJEA, the “Original Petition for Protection…..” was the commencement of a proceeding from which jurisdiction is measured, Texas Family Code section 152.201. The court found in its order for emergency protection that it had jurisdiction under Texas Family Code section 262.002. The children were not in Gray County, Texas. The statute requires the action be filed in the county where the children can be found. The statute’s requirement that suit be brought in the county where the child is located was not complied with, and thus

the court had no jurisdiction to enter this order. This would make subsequent orders void because the court did not have jurisdiction under the applicable statute to make an initial custody determination.

The "emergency order" cannot be used to bootstrap jurisdiction

The UCCJEA is the exclusive basis for making a child custody determination by a court of this state, Texas Family Code section 152.201(b).

The initial custody determination was made pursuant to an emergency order of protection. The UCCJEA provides for emergency jurisdiction if the child is present in the state, Texas Family Code 152.204. Here, the children were not present in the state at the time of the initial custody determination, so this statute cannot provide a basis for jurisdiction. Even if the court was exercising emergency jurisdiction, this cannot provide a basis for the rendering of a final custody determination. *Garza v. Harney*, 726 S.W.2d 198, 202–03 (Tex. App. 1987).

> After carefully analyzing the few authorities pertinent to the facts before us, we have concluded that the district court was empowered to act, but only on a *short term, temporary, emergency basis.* We do not construe the foregoing statutes to bar a court from making emergency orders to protect a child. Rather, we agree with, and adopt, the interpretation of the emergency grant of jurisdiction stated in *Hache v. Riley,* 186 N.J.Super. 119, 451 A.2d 971 (Ch.Div.1982). In that case, the New Jersey court pointed out that a court could exercise emergency jurisdiction under the Uniform Act whenever there was a potential for immediate harm. It emphasized, however,

> that exercise of the emergency jurisdiction "does not take on the same characteristic or implications as the exercise of jurisdiction under other provisions of the act." *Id.* 451 A.2d at 975. The court then held:
>
> Assumption of emergency jurisdiction is an assumption of temporary jurisdiction only; it is meant solely to prevent irreparable and immediate harm to children and, absent satisfaction of other UCCJA jurisdictional prerequisites, does not confer upon the state exercising emergency jurisdiction the authority to make a permanent custody disposition.
>
> In reaching that conclusion, the court quoted Professor Bodenheimer:
>
> There are, of course, legitimate occasions for the exercise of emergency jurisdiction. However, this special power to take protective measures does not encompass jurisdiction to make a permanent custody determination or to modify the custody decree of a court with continuing jurisdiction. Emergency jurisdiction confers authority to make temporary orders, including temporary custody for a limited period of time, pending proceedings in the state with regular jurisdiction under the Act. [Bodenheimer, "Interstate Custody; Initial Jurisdiction and Continuing Jurisdiction under the UCCJA," XIV Fam.Law Q. No. 4 (Winter 1981); footnotes omitted.]
>
> *Garza v. Harney,* 726 S.W.2d 198 (Tex.App.–Amarillo 1987, no writ).

This is what happened in the present case. The court entered an emergency order for protection and used this to forcibly remove the children from Louisiana and bring them back to Texas, approximately four months after they had been living in Louisiana. Once the children had been forcibly placed back in Texas by the Department and law enforcement, the Department could claim home state jurisdiction in the final orders of termination and conservatorship. The Department

and the court cannot use emergency jurisdiction to bootstrap up to home state jurisdiction according to case law.

Was there any other basis to claim jurisdiction under the UCCJEA?

Home State Jurisdiction—Under the UCCJEA, a state has jurisdiction if that state was one in which a child lived with a parent for at least six consecutive months immediately before the commencement of a child custody proceeding or was the home state of the child within six months before the commencement of the proceeding and the child is absent from the state, but a parent continues to live in that state. *See* TEX. FAM.CODE ANN. §§ 152.102(7), 152.201(a)(1). The word "lived" connotes physical presence. *Powell v. Stover,* 165 S.W.3d 322, 326 (Tex.2005). In *Powell,* this honorable Court explained that the Legislature used the word "lived" to avoid "complicating the determination of a child's home state with inquiries into the states of mind of the child or the child's adult caretakers." *Id.* (citing *Escobar v. Reisinger,* 133 N.M. 487, 64 P.3d 514, 517 (2003)). The UCCJEA suggests that the child's physical location is the central factor to be considered when determining the child's home state. *Id.*

At the time of the initial custody determination, the children and both parents were living in Louisiana. Therefore, Texas Family Code 152.201(1) cannot

provide a basis for jurisdiction because 1. The children's physical location was Louisiana at the time the action was commenced. That is where they were living. 2. Both parents had also left Texas, so the provision of the statute which allows the court to exercise jurisdiction within six months even if the child is not present in the state but a parent remains in the state is not applicable.

Petitioner recognizes that Texas Family Code section 152.102 (7) defines "home state" as where the child has lived with a parent for at least 6 months "immediately" before the commencement of the child custody proceeding. "Immediately" is defined in Webster's Dictionary as "without interval of time". A case cited by the Department hinged on this issue. In *Caleron-Garza,* 81 S.W.3d 400, the mother left for Mexico within one day of a paternity action being filed. Although not specified in the case, the absence from the state could probably be measured in hours. Perhaps this falls within the definition of "immediately prior to" commencement of the suit. However, in the present case, the record shows the family had been in Louisiana for eleven days. C.N. argues that eleven days is an interval of time between the move and the commencement of the suit thus, Texas was not the home state immediately prior to the commencement of the suit. If the legislature had wanted to give a window of time, they could have provided for one, like they did if a parent and child move and one parent remains behind. In those

circumstances, the court retains jurisdiction for 6 months. No such window is provided when the entire family moves. C.N. asserts under these circumstances, Texas was not the home state of the child and there was no basis for the trial court to exercise jurisdiction over the children or C.N.

As to the second basis for jurisdiction under the statute, (Texas Family Code section 152.201(2)), there were no findings to support jurisdiction under this subsection. No findings that another state would not have jurisdiction under section one of the statute, no finding that Texas is a more appropriate forum, no finding that any of the parties have a significant connection to Texas, no finding that substantial evidence is available in this state, or that no other court would have jurisdiction. The only finding to support jurisdiction as found in the final order of termination and conservatorship, was that Texas was the children's home state. C.N. asserts a naked statement that Texas was the home state of the children, as found in the final orders of termination and conservatorship, is not sufficient to satisfy the requirements of the UCCJEA and confer subject matter jurisdiction under these circumstances. Given the constitutional nature of the rights involved in the parent child relationship, strict compliance with the statutes should be required. That did not happen in this case and the orders should be declared void.

Cases cited by the Department are not probative of the issue.

The Department submits four cases in their reply to the petition for discretionary review. They assert these cases "clearly" establish that Texas was the home state for purposes of the trial court's jurisdiction. C.N. disputes this claim.

In Re Burk, 252 S.W.3d 736 (Tex.App.-Houston [14th Dist.], mandamus denied) involved a mother moving to Colorado and filing a suit there and father responding with a divorce petition he filed in Texas. The case turned on the fact that father continued to live in Texas after the mother and child moved to Colorado. Thus, the six-month window for filing in Texas by the father was at issue. The trial court and appellate court found that father had filed within the six months after mother left and thus Texas had jurisdiction. In the present case, there was no parent left in Texas after the family moved. C.N. asserts *In Re Burk* does not address the issues in this case.

In Re McCormick, 87 S.W.3d 746 (Tex.App.–Amarillo, 2022, mandamus denied) involved a Texas court that had already made an initial custody determination via a divorce decree. Several motions to modify were subsequently filed and father and the child had moved to Kansas, but were there just short of six months at the time the latest motion to modify was filed by the mother. Father sought an order declining jurisdiction from the Texas court based on the Texas Family Code sections 152.202 and 153.207, the inconvenient forum basis for the

Texas court to release jurisdiction. The trial court denied the relief and refused to decline jurisdiction. The appellate court affirmed. *McCormick* involves different statutes and different facts, i.e. there is already a court of continuing jurisdiction and the question was whether it was appropriate for the trial court to retain jurisdiction. In the present case, the issue is not whether to decline jurisdiction but whether there was jurisdiction to make an initial custody determination.

The Department alludes that inconvenient forum would provide a basis for the Texas court to have jurisdiction. This is speculation. Texas Family Code section 152.207 requires that the parties be able to submit information on a whole list of factors for the court to look at in deciding inconvenient forum. The record before the court does not support a contention that this ever happened. Inconvenient forum is not found in any findings or court orders. *McCormick* is not dispositive of any issue presented by the current case before the Court.

In Re Oates, 104 S.W.3d 571 (Tex.App.–El Paso, 2003, mandamus granted) involved a father who died, mother moved to New York but had only been there three months when grandparents filed suit in Texas. The trial court found it had jurisdiction, the appellate court reversed. The case turned on the definition of "persons acting as a parent" under the 152. 201(2)(A)(B). Because grandparents could not meet this definition, there was no basis for the Texas court to exercise

jurisdiction. Again, this issue is not dispositive in the present case. No parent remained in Texas when the initial custody determination was made. Interestingly though, the court of appeals found that even though mother had only been in New York for three months and the children had lived in Texas their whole lives, the Texas court could not exercise jurisdiction to make an initial custody determination.

In the Interest of E.A.F., 2008 WL 1893208 (Tex.App. Eastland 2008) involved a paternity action filed by father in Texas. Mother asserted she was in Oklahoma and not subject to personal jurisdiction and that Texas was an inconvenient forum. Father continued to reside in Texas after mother and child resided in Oklahoma, thus, the suit was filed within the six-month window. Texas had home state jurisdiction. C.N. asserts there was dicta in the case in that because mother had only been gone for four days before the filing of the action in Texas, Texas was the home state "immediately" before the commencement of the action. Interestingly, the Texas court ultimately declined jurisdiction because in the fifteen months it took to resolve the jurisdictional issues, it determined Oklahoma was the more convenient forum. This declining of jurisdiction was upheld.

Again, there was no parent still residing in the state when the family in the present case moved so the analysis is not probative.

In Re E.A.F. relied on *In Re Calderon-Garza,* 81 S.W.3d 899 (Tex.App.–El Paso, 2002) for its discussion that four days absence still fell in the window of "immediately" before the commencement of the suit. As already referred to above, in *Calderon*, mother was gone for one day before suit was filed. C.N. will contrast this with her and her family being gone for 11 days before the suit was commenced in Texas.

Another distinguishing factor in the present case is that it was not a private case in which parties moved, voluntarily and remained in the new state. In the present case, the family had moved and four months later the Texas court compelled, then to return. Writs of attachment were issued and criminal charges and warrants issued. C.N. was forced to return to the state via her arrest. The children taken into custody by law enforcement in Louisiana and turned over to the Department. Obviously, those facts do not exist in the cases cited by the Department. Does the UCCJEA or any other statute allow the State to obtain jurisdiction by force??

Can a parent evade the Department by simply moving?

The Department raises a valid issue. Can the parent subject of the Departments investigation simply avoid it by moving to another jurisdiction? The answer is no.

It is not out of the ordinary, in West Texas anyway, where a state district court may only be a few miles away from Oklahoma or New Mexico for a party to move a short distance and be in another jurisdiction. What is the remedy in these situations? What should have happened upon the family moving to Louisiana? The UCCJEA was designed to handle these situations. Typically, based on experience, the Department contacts their sister agency in Louisiana and they initiate their own investigation and file under the emergency provisions found in the UCCJEA. At that point, the statutes provide the procedure for the two jurisdictions to determine who will hear the case. The courts communicate and, aside from deciding home state, the issue of forum non convenes can be raised and Louisiana can decline jurisdiction. Or the "unclean hands" provision in the UCCJEA can be raised to argue the parents are trying to escape consequences by leaving the state. None of this happened. Is not this the whole purpose of the UCCJEA? Even if somehow the UCCJEA is divorced from subject matter jurisdiction, does it not still provide the mechanism for deciding "where" the case will be heard? The procedures for making this determination are provided for in the statute. C.N. turns the Department's question around and asks what the remedy is when the process mandated by the statute is not followed, and instead, the State of Texas turns to law

enforcement, criminal warrants and extraterritorial writs of attachment to secure its jurisdiction? Is this not exactly what the UCCJEA was designed to prevent?

Summary

The Texas court did not have jurisdiction by the State's own statutes to issue an emergency order. Therefore, this initial custody order was void. Texas was not the home state of the children at the time of the commencement of the action. The entire family was in Louisiana and had been there for 11 days. The children did not return to Texas until 4 months later when they were forced to return by law enforcement. There is no indication the family would have ever returned to Texas but for this action by law enforcement, based on an initial custody determination that the trial court did not have jurisdiction to enter an order in the first place.

The Department cannot use emergency jurisdiction to boot strap into home state jurisdiction.

Texas was not the home state of the children at the time the initial custody proceeding was filed. There was no other basis for jurisdiction under the UCCJEA and the procedures the statute provides to handle this situation were not followed. Instead, law enforcement was used to forcibly return the children to Texas.

Under these circumstances, the trial court's judgment of termination as to one child and managing conservatorship of the other children should be reversed as void or voidable.

Because the trial court did not have emergency jurisdiction to make an initial custody determination, did not have home state jurisdiction, and because the UCCJEA provisions for handling children moving out of state were not followed, the trial court's orders of termination and for conservatorship should be reversed.

ISSUE 2: **Is termination of parental rights under D and E, and the placing of other children into the sole managing conservatorship of the Department without termination, justified on the basis of C.N.'s refusal to cooperate as opposed to neglect or abuse?**

C.N. attacks her termination on D and E grounds. In determining there was legally and factually sufficient evidence to support termination on these grounds, the Honorable Court of Appeals relied on the following:

> "lengthy wall stands or walls sits, by most accounts lasting for hours at a time, beatings with a belt, and kneeling on grains of dry rice for extended periods. Punishment of K.N. also included forms of food deprivation that is, depriving K.N. of food given to other family members. School officials became concerned with the way K.N. would eat and her fear of her mother discovering that she ate breakfast at school. Other acts by Mother directed at K.N. included dragging the child by her hair, injuring her shoulder, and making her sleep in the dog's bed.
> Mother refused to work any services or cooperate in any meaningful way. Instead, she and Father moved the children to

> Louisiana to escape what they considered interference by the Department. There, the children were kept out of school to prevent their detection by the Department. Evidence further illustrates that the children were in need of medical or dental care but were denied it."

The Court also mentioned that C.N. had confronted school staff that had reported an outcry.

The Department, in its briefing lists the proponents who testified to these allegations. However, all of these allegations were either refuted or recanted.

Factual Background – Initial Case

C.N. had an initial case that started in January of 2021. There were allegations that K.N.'s shoulder was hurt because of discipline, that K.N. was required to stand against the wall for extended periods of time, and that K.N. ate fast at school and always asked for seconds (RR V 2, pg 110). C.N. was interviewed and reported that she never hit K.N., that when K.N. misbehaved, she was required to stand against the wall for no more than 30 minutes, and K.N. ate what everybody else in the house ate (RR V 2, pg 110). C.N. reported K.N. would throw fits, kicked a hole in the wall one time, and had trouble with grades at school (RR V 2, pg 126). The investigator went to the home and found it clean, with running water and plenty of food (RR V 2, pg 121). Food was not an issue because there was plenty in the home (RR V 2, pg 127). The Department obtained an order

to do a bridge interview with K.N. (RR V 2, pg 116). The interview was sought because of what the school reported and family members concerns about K.N.'s treatment (RR V 2, pg 128). The maternal grandparents admitted to the investigator they did not see the children much and had very little contact with them (RR V 2, pg 145).

At the Bridge interview, K.N. denied her mother did anything to hurt her shoulder (RR V 2, pg 121). K.N. said she had plenty to eat at home (RR V 2, pg 123). K.N. could not remember the last time she was spanked (RR V 2, pg 127). There were no marks or bruising on K.N. (RR V 2, pg 127). K.N. did say she was required to kneel on rice once or twice for 5 to ten minutes (RR V 2, pg 117-118). K.N. was scared she would be put in foster care (RR V 2, pg 117-118).

C.N. agreed to place K.N. with a family member and CPS had no further contact on this case (RR V 2, pg 121). K.N. stayed with her grandparents for about a month and then came home to her family because she wanted to come home (RR V 4, pg 136). There was no legal action taken in this case other than order for bridge interview and an agreed placement.

Factual Background – Second Case

The second case, which results in termination, begins in March 2022 (RR V 7, P Ex 3). K.N. reported to the school that her mom drags her around by her hair

and K.N. has been told not to talk about what goes on at home (RR V 3, pg 21). The investigator makes contact with K.N. at school, K.N. was scared to talk to them but opened up and talked to the investigator (RR V 3, pg 22). K.N. reports her mom pulled her hair but it didn't hurt. Her mom disciplines her by yelling, sitting against the wall and writing sentences (RR V 3, pg 22).

The investigator goes to the house and mom says she will not cooperate (RR V 3, pg 24).

There was a second report from a teacher that K.N. passed a note that she was being drug by her hair by her mother (RR V 3, pg 25). This time K.N. would not talk to her because she got in trouble last time she did (RR V 3, pg 26). The investigator went to the house and the parents refused to cooperate (RR V 3, pg 26). At this point, the children are not removed but The Department seeks an order to participate in services (RR V 3, pg 27). This order was entered on April 8, 2022 (RR V 7, P Ex 4). The investigator admits C.N. has a right not to talk to her (RR V 3, pg 29-30). There were no marks or bruises on the children, no one was in immediate danger (RR V 3, pg 30). The children stayed in the house (RR V 3, pg 31). There was only one incident of K.N.'s hair being pulled (RR V 3, pg 55).

The caseworker made numerous attempts to contact C.N. and they were unsuccessful (RR V 3, pg 63-67). He admits that he has no idea whether the

children are safe or not (RR V 3, pg 77-78). He never had any contact with C.N. from April 2022 through September 2022 (RR V 3, pg 75).

There still had been no removal of the children. In August 2022, C.N. and family move to Louisiana (RR V 3, pg 165).

Thereafter, a petition for protection of a child, for conservatorship and termination is filed by the Department (CR 81). An order for protection of a child in an emergency is entered granting the Department temporary conservatorship on August 31, 2022 (CR 113). Writs of attachment are issued for the children on the same date (CR 132-138). C.N. is arrested in Louisiana in November 2022 and The Department takes possession of the children (RR V 4, pg 144).

The caseworker that takes over after removal describes how C.N. refused to work the services the Department required (RR V 3, pg 157-175). The worker admitted that he was confused as to why this was even a case (RR V 3, pg 181). The worker admitted that if C.N. had worked services, it would have been unusual for the kids to NOT be returned to C.N. (RR V 3, pg 174, 188). K.N. told him in November 2022 that she felt safe with her parents (RR V 3, pg 195). K.N. told the worker that she did not think her mother was harsh on her and she missed her parents, at least at the beginning of the case (RR V 3, pg 196).

C.N.'s sister testifies there were no outcries of physical abuse, she was concerned about emotional abuse (RR V 3, pg 148). There were no signs of physical abuse (RR V 3, pg 151).

Maternal grandmother admitted she has not been around the kids that much (RR V 4, pg 19). She was more worried about emotional abuse, not physical abuse (RR V 4, pg 23).

The teacher that received K.N.'s outcry admitted she did not have much contact with K.N. (RR V 3, pg 83). K.N. told her that her mother drug her by her hair and she hid in the closet (RR V 3, pg 84-85). She further testified to confrontations she had with C.N. in public and C.N. had threatened her (RR V 3, pg 86). The teacher admitted that K.N. said the hair pulling was a long time ago (RR V 3, pg 92).

The school nurse testifies (RR V 3, pg 96). She testifies that three years ago she saw K.N. with thumbprints on her arms where C.N. held her arms and spanked her with a belt. There were belt marks on her legs, bottom and some on her back (RR V 3, pg 97, 103). She wanted to be safe than sorry, so she made a CPS report (RR V 3, pg 98). She can't remember what K.N. said about why she was spanked (RR V 3, pg 98).

C.N. testifies (RR V 4, pg 117). K.N. has ADHD. She has behavioral issues with anger, she has fits, tantrums, is argumentative and back talks (RR V 4, pg 121-122). C.N. addresses this with time outs, 30 minutes at a time unless she is still acting out, she sits or stands against the wall in her room, also has to stay inside and no I-pad (RR V 4, pg 122). K.N. knows why she is being disciplined and she can eat whatever she wants (RR V 4, pg 122). K.N. sometimes gets a separate meal because she was hungry before supper, it was at her request, not punishment (RR V 4, pg 124). K.N. ate breakfast at home and C.N. did not want the school to feed her because of concern for dairy intolerance (RR V 4, pg 125). She has never slapped K.N. or drug her by her hair (RR V 4, pg 125). One time she pulled K.N.'s ponytail when K.N. turned her back to her, to get K.N.'s attention (RR V 4, pg 126-127). She did not tell K.N. not to talk to CPS, just don't exaggerate when you do, because K.N. tends to exaggerate (RR V 4, pg 129). She has taken the children to the dentist (RR V 4, pg 128). The kneeling on rice incident was explained. K.N. was in timeout and R.L. said you can kneel on rice like I had to, K.N. said she would do it, lasted about one minute and was a one-time deal (RR V 4, pg 129). The sleeping on a dog bed was explained. It is a 5x5 pillow in K.N.'s room, made by her grandmother, its in her room and she likes to sleep on it (RR V 4, pg 131). C.N. admits she spanked K.N. in January 2021. K.N. may have had a bruise on her

butt from busting her bottom, she would put her hands behind to protect and there was a bruise on her arm (RR V 4, pg 133). Physical discipline stopped after this (RR V 4, pg 180). Since then, discipline is sitting against the wall for 30 minutes every 3-4 days (RR V 4, pg 177-178).

The Department, as well as the Honorable Court of Appeals, opines that given this record, there was factually sufficient evidence to support termination. C.N. also challenged legal sufficiency, and given this record, asserts the evidence was legally insufficient. Focusing on the issues that were relevant to the Court of Appeals:

- Wall sits or timeouts - The Department's counselor said time-outs are appropriate for a certain time length depending on the child (RR V 3, pg 137). C.N. disciplines the child with time-outs, 30 minutes at a time, unless she is still acting out, she sits or stands against the wall in her room, also has to stay inside and no I-pad (RR V 4, pg 122). K.N. told the caseworker in November 2022 that she felt safe with her parents (RR V 3, pg 195). K.N. told the worker that she did not think her mother was harsh on her and she missed her parents, at least at the beginning of the case (RR V 3, pg 196). It does not seem from this testimony from the daughter and the mother that this type of discipline was crossing the line.

- Beatings with a belt/injury to shoulder – C.N. admits that three years before the termination, she spanked K.N. in January 2021. K.N. may have had a bruise on her butt from busting her bottom, she would put her hands behind to protect and there was a bruise on her arm (RR V 4, pg 133). Physical discipline stopped after this (RR V 4, pg 180). Since then, discipline is sitting against the wall for 30 minutes every 3-4 days (RR V 4, pg 177-178).
- Kneeling on rice for an extended period of time - This was a one-time event as described above. R.L. had been disciplined this way and as opposed to remaining in time out, the child chose to try it. It lasted one minute (RR V 4, pg 129).
- Depriving the child of food — K.N. told the caseworker in the first case that she had plenty of food to eat (RR V 2, pg 127). C.N. testified that K.N. can eat whatever she wants (RR V 4, pg 122). K.N. sometimes gets a separate meal because she was hungry before supper, it was at her request, not punishment (RR 4, pg 122-124)
- K.N. not to eat breakfast at school - C.N. testified her daughter ate breakfast at home and she did not want the school to feed her because of concern for dairy intolerance (RR V 4, pg 125).

- Dragging by hair – C.N. in the first case said that her mother pulled her hair but it didn't hurt (RR V 3, pg 22). One time, C.N. pulled K.N.'s ponytail when she turned her back to her, just to get K.N.'s attention (RR V 4, pg 126-127). The teacher admitted that K.N. said the hair pulling was a long time ago (RR V 3, pg 92).
- Sleeping on the dog bed- The sleeping on a dog bed was explained. It is a 5x5 pillow in K.N.'s room, made by her grandmother. It's in her room and she likes to sleep on it (RR V 4, pg 131).
- Didn't provide medical care – This allegation centers on the dentist. C.N. has taken the children to the dentist (RR V 4, pg 128). She was not made aware of any cavities or some other sort of emergency with the children's teeth.
- Confronting the teacher- It is true that C.N. confronted the school teacher that reported the outcry. However, C.N. fails to see how this is relevant to anything that was going on in her home or in any way indicative of how she treated the children.

So far, all of these above allegations can be viewed as varying degrees of discipline used by a parent. The Court of Appeals stated it was a case of discipline gone too far. C.N. asserts there was nothing excessive to justify termination. As

held by this Court, traditional means of discipline may have fallen out of favor, but they should not be the basis for a termination.

> However far out of favor such traditional disciplinary measures may have fallen in some quarters, a parent's choice to employ them should be afforded no weight in a termination proceeding. Threatening to withhold presents as punishment is a ubiquitous part of popular Christmas culture. A little hot sauce for lies or bad words seems downright humane compared to the vigorous mouth-washing feared by generations of foul-mouthed children and administered by generations of loving mothers. And how many parents at their wits' end have made their kids run around the block or do pushups or jumping jacks? If reliance on these old-fashioned punishments—and others like them, such as spanking—can be used against parents by a government that seeks to take away their parental rights, then "the fundamental right of parents to make decisions concerning the care, custody, and control of their children" is no longer what it once was.
>
> "[D]eeply rooted in our Nation's history and tradition[ ] is the belief that the parental role implies a substantial measure of authority over one's children." *Bellotti v. Baird*, 443 U.S. 622, 638, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979). If some judges and juries around the State now believe that punishing children the way previous generations of American children were punished amounts to "sordid maltreatment" justifying government intervention, the Legislature may wish to make its views known. The advisability or efficacy of these punishments is not the issue. The issue is whether Texas parents still have the liberty to employ them as they see fit without fearing a knock on the door from child protective services. I believe they do. But this Court is not well situated to micromanage these evidentiary questions in hundreds of parental-rights cases around the State. The opinions about proper child-rearing

> held by well-meaning "experts"—who often testify for the government in child-protection cases—do not always reflect the opinions held by most Texans. As that divergence of opinion persists, further legislative protection for a parent's reasonable choice of disciplinary methods may be necessary to adequately preserve the family autonomy so "basic in the structure of our society." *Id.* (citation omitted).
> *Int. of A.M.,* 630 S.W.3d 25, 27 (Tex. 2019).

All of the above allegations were either reasonably explained by C.N. or their severity downplayed by the child herself. For purposes of argument, assume all of the allegations and outcries are true. They still do not rise to the level of endangering conduct such that the children should have been removed, much less terminated. Testimony and evidence that was not addressed by the Court of Appeals substantiates that these allegations didn't have much, if anything, to do with the termination.

Children not removed because of abuse or neglect

The recitation of facts above is presented to emphasize that the termination of C.N.'s rights, and removal of the other children was not because of endangering conduct. The sole basis for the removal and termination was C.N.'s refusal to work services. To be clear, C.N. did not fail to work services, she refused to work services.

This case is one of the rare ones where substance abuse was not an issue. There were no failed drug screens by C.N. and no allegations that she used drugs or abused alcohol.

The children were not removed after the initial outcry. The children were not removed after The Bridge interview. The Department did not initially seek a removal but only an order to participate in services. For the months of March, April, May, June, July and August, K.N. remained in her mother's care. C.N. asserts this is because the Department had no reason to remove, because there was no abuse or neglect. There was no petition for emergency removal filed until the end of August after C.N. had left the state.

In the first affidavit to support emergency removal of the children, it states the same facts as were submitted in the motion to participate. Under the heading "Facts Necessitating Removal" is a list of C.N.'s noncompliance and the Department's attempts to obtain cooperation and compliance. Nothing about the abuse, just C.N.'s noncompliance (CR 96).

In the second affidavit, there is the same recitation of facts from the affidavit to support the motion to participate. It also added the list of C.N.'s failure to cooperate and concludes the children should be removed because of this failure to cooperate (CR 111).

The caseworker testified that if C.N. would have worked her services, it "would not have been unusual for the children to have been returned to her" (RR V 3, pg 174). The Department's attorney recognizes the issue in his opening statement saying this is a case about principal and mother telling the State they couldn't tell her how to raise her children and her defiance of court orders…. nothing about abusing the children (RR V 2, pg 97-100). C.N. is punished for being defiant by having her visitation suspended because she is not working services (RR V 2, pg 121,129).

Although the Court of Appeals held it was not error to exclude the administrative report, the Department responded in its Appellee brief that the evidence was merely cumulative.

> Next, their arguments fail as the evidence is cumulative of evidence contained elsewhere in the record. On September 25, 2023, Jarrett Stone submitted to an oral deposition. F. Ex. 23. Mr. Stone testified he was the FBSS worker for Clare and Ronnie in 2022. F. Ex. 23. Therein, Mr. Stone confirmed that during a prior case, the emotional abuse ruling for Kim by Clare was ruled "unable to determine. F. Ex. 23. Mr. Stone then stated he was unaware as to whether the emotional abuse finding was ruled out by administrative review on July 11. F. Ex. 23. However, in the Department notes that were introduced by Clare, it specifically states that the allegations of emotional abuse of Kim by Clare were ruled out. M. Ex. 1.

The report and its admissions that there was no emotional abuse by the C.N. against the daughter was in the record and was evidence that the Department itself determined there was no emotional abuse. The culmination of the administrative review was to rule out emotional abuse by C.N. against K.N. It was ruled out because there was no evidence K.N. suffered any substantial damage to her emotional, social, or cognitive development. The review finds that a preponderance of evidence does not exist for a finding of emotional abuse and the finding of "reason to believe" is changed to "ruled out" (RR V 7, M-5) C.N. asks how, if any, of her supposed "across the line discipline" had no effect on the child's emotional, social, or cognitive development, how can it be abuse of any kind?

The neighbor, who saw C.N. and the children daily, had no problem with how C.N. was raising the children (CR 22-23).

C.N. asserts her termination (and removal of her other children) had nothing to do with the treatment of the children. If the children were being physically abused to the point they were in danger, why would the Department leave them in the house with C.N. for the first six months of the case? The allegations all predate the opening of the second investigation, yet the children were still left with C.N. One is left wondering, just as the Department's caseworker did, "why is this even a case?"

C.N. asserts it was not a coincidence that the Department decided to remove the children once she moved to Louisiana. She asserts that given the factual background, the termination and removal of the children were based on the second set of concerns as listed by the Court of Appeals, those being her failure to cooperate with the Department and refusing to work services and "fleeing" to another state. It is a reasonable inference that the Department realized they were going to lose jurisdiction over the children if they let the move stand.

First of all, C.N. testified that she did not "flee" the jurisdiction but moved to be closer to her husband's family for support and to get away from her family (RR V 4, pg 142). There were no orders that prevented the family from moving and no other basis for saying the family somehow violated the law in exercising their right to move. For example, there is nothing in the Family Code that says if CPS opens an investigation. you are prohibited from leaving the state or county until it is completed. This situation is handled by the UCCJEA as briefed above. It cannot provide a basis for removal of the children. much less termination. There was no evidence the children suffered any harm as a result of the move.

The heart of the case is the failure of C.N. to work services. This is all that happened from the time of the outcry through the removal of the children. It is undisputed that C.N. refused to work services or cooperate with the Department.

Can the failure to work services be the basis for termination in and of itself? Certainly, in some cases, but should there not be a predicate that the children are being abused and neglected before the refusal to cooperate with the Department subjects you to termination and removal of your children?

The U.S. Supreme Court has opined on the constitutional right of parents to raise their children:

> The liberty interest at issue in this case, the interest of parents in the care, custody, and control of their children perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer* v. *Nebraska,* 262 U. S. 390, 399, 401 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in *Pierce* v. *Society of Sisters,* 268 U. S. 510, 534-535 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." We explained in *Pierce* that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id.* at 535. We returned to the subject in *Prince* v. *Massachusetts,* 321 U. S. 158 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.* at 166.
>
> In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. See, *e. g., Stanley* v. *Illinois,* 405

> U. S. 645, 651 (1972) ("It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements'" (citation omitted)); *Wisconsin* v. *Yoder,* 406 U. S. 205, 232 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"); *Quilloin* v. *Walcott,* 434 U. S. 246, 255 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); *Parham* v. *J. R.,* 442 U. S. 584, 602 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); *Santosky* v. *Kramer,* 455 U. S. 745, 753 (1982) (discussing "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Glucksberg, supra,* at 720 ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the righ[t]… to direct the education and upbringing of one's children" (citing *Meyer* and *Pierce)).*
> *Troxel v. Granville,* 500 U.S. 57 (2000)

The only caveat to state involvement is if the parent is "unfit". This has remained undefined.

Likewise, this Honorable Court has recognized these principles in *C.J.C:*

> Texas jurisprudence underscores this fundamental right, and we too recognize that it gives rise to a "legal presumption" that it is in a child's best interest to be raised by his or her parents. Although the best interest of the child is the paramount issue in

> a custody determination, "[t]he presumption is that the best interest of the children" is served "by awarding them" to a parent. Thus, the fit-parent presumption is "deeply embedded in Texas law" as part of the determination of a child's best interest. The Texas Legislature does not disagree. Five years before *Troxel*, the legislature added a statutory parental presumption applicable to original custody determinations:
>
> [U]nless the court finds that appointment of the parent or parents would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development, a parent shall be appointed sole managing conservator or both parents shall be appointed as joint managing conservators of the child.
>
> *In Re C.J.C.,* 603 S.W.3d 804 (Tex 2020).

Given this case authority, the questions become "Was C.N. an unfit parent? Was she guilty of conduct that significantly impaired the child's physical health or emotional development? The Department ruled out emotional abuse. Would the Department leave children in an environment for six months if they were suffering physical abuse? C.N. asserts the Department would have removed immediately if they had such concerns. At most, the behavior relied on by the Department constitutes traditional methods of discipline and caused no harm to the child. C.N. insists that the only reason the children were removed from her care was her refusal to cooperate with the Department's demands. C.N. took a stand on the issue, insisting that working services is an admission that she had done something wrong. Does this make her an "unfit" parent? If the court accepts the proposition that C.N.

did not engage in endangering conduct, then all that is left is her refusal to obey the Department's demands. If there was no endangering conduct, why did C.N. have to work services in the first place? C.N. asserts that a report was made, and the Department opens a case. The Department cannot close the case until their administrative protocols are followed, the "boxes checked". There were no concerns about the children's safety. Punishing C.N. for refusal to participate in services, her refusal to "just play along", by taking her children away, should not be allowed. It should be outside the authority of the State and the Department to punish C.N. by destroying her family because she wouldn't do what she was told. Maybe the State has an interest in enforcing its services when there is abuse or neglect. It should not be the case when the only allegations are use of traditional means of discipline. C.N. insists there never should have been a case in the first place, there was no basis for a removal and ultimately no basis for a jury trial to terminate her rights.

The Department's sole managing conservatorship of the other children

The problems raised by C.N. in the removal and termination of her rights to her oldest child are magnified when you look at the removal of the three youngest children from her and their placement in the Department's managing conservatorship.

In the first case from 2021, the investigator testified there were no concerns for the younger children (RR V 2, pg 129). The outcry witness testified that K.N. never reported any of the alleged abuse was happening to her siblings (RR V 3, pg 101). The investigator on the 2022 report stated that at the time she had no concerns about the younger children, only K.N. (RR V 3, pg 32). Placement, maternal grandmother, testified that she had no real concerns about the younger children (RR V 3, pg 27). The affidavits to support the motions to order participation in services and the motion for emergency removal of the children make no mention of the younger children. In fact, part of the Department's concerns were that K.N. is treated differently from her siblings (CR 110).

There is no evidence to support a finding that C.N. would impair the physical or emotional development of the younger children. Any such conclusion would be pure surmise based on allegations raised by K.N. There is no direct evidence to support such a finding and even under the preponderance of evidence, this finding must be overturned.

Note that in determining whether C.N. should be a possessory conservator of the younger children, the fact finder had to implicitly find that C.N., having access to the children. would not endanger their physical or emotional welfare of the children (instructions for jury, question 11).

One of the factors the fact finder was to consider in making the determination of managing conservatorship is “the needs and desires of the child” (jury instruction to question 10).

The two youngest children are 3 and 5 (RR V 4, pg 70) The oldest, K.L., is 8. She has been adamant that she wants to return to C.N. She has always been very consistent about wanting to return to her parents (RR V 4, pg 94). She has told the counselor that she misses her parents and wants to go home (RR V 4, pg 79). She told the counselor she wants to return to C.N. (RR V 4, pg 70). She is always very positive about her mother (RR V 4, pg 84). Placement, maternal grandmother, reports that the children wanted to talk to C.N., that they missed their parents and even cried on occasion when they went to bed because they missed their parents (RR V 4, pg 43). So, taking into account the desires of the children, the only evidence is that they want to return to their parents.

Even under the preponderance of evidence standard, there is no evidence that C.N. poses a threat to the emotional or physical welfare of the three youngest children. In seven volumes of reporters record, they are barely mentioned except to say no one has any concerns about their treatment and that they want to return to C.N. The finding that The Department is to be the permanent managing

conservator of the three younger children should be overturned and a judgment rendered returning these children C.N. as the managing conservator.

Summary

In summary, C.N. quotes from the dissents by Justice Busby and /Chief Justice Blacklock:

> In any non-ideal family situation—whether poverty, homelessness, drugs, living in a rough neighborhood, etc.—the children will face many dangers not faced by children in more ideal environments. This does not make their parents eligible for the civil death penalty under the Family Code. *See In re D.T.*, 625 S.W.3d 62, 69 (Tex. 2021) (describing parental termination as the "death penalty" of civil cases). Properly understood, the statute requires clear and convincing evidence of endangerment *that warrants the extraordinary remedy of termination.* This surely means, at a minimum, that the children have actually suffered significant harm or have blessedly avoided significant harm despite being exposed to extraordinarily dangerous conditions by their parents.
> *Int. of R.R.A.,* 687 S.W.3d 269, 284 (Tex. 2024).

C.N.'s case presents one in which the Court must balance the parents right to raise their children as they see fit without State interference with the State's interest in protecting children from abuse and neglect. C.N. asserts that none of her alleged conduct in disciplining the child comes anywhere close to a basis for termination. C.N. asserts that her refusal to comply with the Department's demands that she work services should not be the basis for a termination of her

parental rights. C.N. and her children could continue to be monitored, for example, Louisiana should be notified of the situation and they could monitor the situation. The termination of her rights as to the oldest child and the removal of the other children had nothing to do with the children's physical, or emotional health or any other safety concerns. It was punitive because she would not do what she was told, that is the only reason.

At best, this was a "marginal" case. The Department's need to be involved with this family at all is highly questionable. Given this particular situation, the parents of these children did nothing to merit termination of parental rights or removal of the other children.

CONCLUSION AND PRAYER

C.N. seeks an order reversing and rendering the termination of her parental rights. C.N. seeks an order reversing and rendering the appointment of the Department as the sole managing conservator of her other children. C.N. seeks an order that the children be returned to her custody and control immediately. C.N. does not address the termination grounds based on N and O because they were not addressed in the Court of Appeals opinion. If the Court thinks remand on these issues to the Court of Appeals is appropriate, then it is requested.

SHARPEE LAW FIRM

Michael J. Sharpee, SBN 00788401
7450 Golden Pond Place, Suite 400
Amarillo, TX 79121
Telephone: (806)367-9713
Facsimile: (806)367-9716
Attorney for Petitioner

By: */s/ Michael J. Sharpee*
Michael J. Sharpee

CERTIFICATE OF COMPLIANCE

Pursuant to TEX. R. APP. P. 9.4, I hereby certify that this entire Brief on the Merits contains 11058 **total** words. This is a computer-generated document and in making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

/s/ Michael J. Sharpee
Michael J. Sharpee
Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on May 1, 2025, as follows:

Via Email
Texas Dept. of Family and Protective Services
Cory Scanlon

Via Email
Jay Michelsen
112 W Main St.
Canadian, Texas 79014

Via Email
Taylor Harris
310 N. Cuyler
Pampa, Texas 79065

/s/ Michael J. Sharpee
Michael J. Sharpee
Attorney for Petitioner

Automated Certificate of eService

This automated certificate of service was created by the efiling system.
The filer served this document via email generated by the efiling system
on the date and to the persons listed below:

Cortney Holdaway on behalf of Michael Sharpee
Bar No. 788401
cortney@sharpeelawfirm.com
Envelope ID: 100343207
Filing Code Description: Brief on the Merits (all briefs)
Filing Description: Brief on the Merits
Status as of 5/1/2025 3:38 PM CST

Associated Case Party: C. N.

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Sharpee	788401	mike@sharpeelawfirm.com	5/1/2025 3:30:19 PM	SENT

Associated Case Party: Texas Department of Family and Protective Services

Name	BarNumber	Email	TimestampSubmitted	Status
Rebecca Leigh Safavi	24086491	rebecca.safavi@dfps.texas.gov	5/1/2025 3:30:19 PM	SENT
Nancy Villarreal		nancy.villarreal@oag.texas.gov	5/1/2025 3:30:19 PM	SENT
Cory Scanlon		cory.scanlon@oag.texas.gov	5/1/2025 3:30:19 PM	SENT

Associated Case Party: R. L.

Name	BarNumber	Email	TimestampSubmitted	Status
Jay Michelsen	24088057	jaymichelsen.esq@gmail.com	5/1/2025 3:30:19 PM	SENT

Associated Case Party: The Children

Name	BarNumber	Email	TimestampSubmitted	Status
Taylor Harris	24072143	rickjharris.law@gmail.com	5/1/2025 3:30:19 PM	SENT