FILED
24-0881
5/1/2025 2:28 AM
tex-100306685
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

NO. 24-1881

In the Supreme Court of Texas

R.L.,

Petitioner,

v.

Texas Department of Family and Protective Services,
Respondent.

On Petition for Review from the
Seventh Court of Appeals, Amarillo, Texas
No. 07-24-00146-CV
and from the 223rd Judicial District Court, Gray County, Texas
Trial Court Cause No. 40,562

BRIEF ON THE MERITS OF PETITIONER R.L.

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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 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. The petitioner appealed the judgment to the 7th Court of Appeals. The petitioner was the Appellant and the Texas Department of Family and Protective Services was the Appellee. Mother 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.

STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction over this appeal because the court of appeals has committed an error of law of such importance to the state's jurisprudence that it should be corrected. Tex. Gov't Code § 22.01(a)(6). The natural right existing between parents and their children is of constitutional dimension. See Santosky v. Kramer, 455 U.S. 745, 758-59, 102 S. Ct. 1388, 71 L.Ed. 2d 599 (1982). See also Holick v. Smith, 685 S.W.2d 18, 20 (Tex. 1985). Consequently, termination proceedings are strictly construed in favor of the parent. In re E.R., 385 S.W.3d 552, 563 (Tex. 2012).

ISSUES PRESENTED

1. **Whether the trial court lacked subject matter jurisdiction under the UCCJEA where the children resided in Louisiana at the time proceedings commenced.**
2. **Whether termination under Texas Family Code § 161.001(b)(1)(D) and (E) can be upheld where the father was not found to have committed abuse or neglect, but merely knew of the mother's conduct and declined to cooperate with the Department.**

STATEMENT OF FACTS

R.L. resided in Texas with his partner and children until August 20, 2022, when the family relocated to Louisiana. This relocation was confirmed by sworn deposition testimony of a Department witness. Nevertheless, on August 31, 2022, the Department filed its petition in Gray County and obtained emergency orders despite the children's absence from Texas.

The Department did not allege immediate harm or act upon any emergent danger occurring in Texas. The children were returned to Texas through a writ of attachment after the mother's arrest in Louisiana, months after the original outcry. The case proceeded to trial where R.L. was ultimately terminated primarily for failing to cooperate with the Department.

SUMMARY OF THE ARGUMENT

The trial court lacked jurisdiction under the UCCJEA because Texas was not the children's home state at the time of the filing. Emergency jurisdiction was improperly used to bootstrap permanent orders, violating both the statute and its intended limitations.

Further, termination of R.L.'s parental rights was not supported by clear and convincing evidence of endangerment. The record reflects his rights were

terminated due to refusal to comply with services, not due to any act of abuse or neglect.

ARGUMENT

This is a parental rights termination case. Of the hundreds of petitions for review filed annually on termination cases (Int. of R.R.A., 687 S.W.3d 269, 281- 85, (Tex. 2024)(Justice Busby dissent) this case merits the Court's review for two reasons. First, the trial court did not have subject matter jurisdiction. Second, this question presented is whether termination is justified, not because of any neglect or abuse, but because the parent refused to cooperate with the Department to assure the Department that there was no abuse or neglect under D and E termination grounds.

I. THE TRIAL COURT LACKED JURISDICTION UNDER THE UCCJEA AND § 262.002

For the first time in his Petition for Review, R.L. 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 question presented: 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 four months after the commencement of the action.

The case began when K.N. made an outcry at the school that she was being dragged by her hair by C.N. The Department's investigator was told by C.N. 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 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 in Texas Family Code Section 152.201 from which home state jurisdiction is determined.

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," naming the father R.L. for the first time, 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 the suit may be filed "in a court with jurisdiction to hear the suit in the county where the child may be found".

As a result of the emergency order of protection and adversary hearing was held September 21, 2022 and 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 of 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, Pet. 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 conservator. The orders recite 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, which the statute says is where the suit is to be filed. The statutory requirement that a 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 statue applicable to make an initial custody determination. The Court could stop here, but C.N. will continue if the Court were to ask, "Was there any other basis for 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 (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. This basis for jurisdiction would lead to a conclusion that subsequent orders were void.

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 that time of the initial custody determination the children and both parents were living in Louisiana. Therefore, the 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.

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.

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. R.L. 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 parental relationship, strict compliance with the statutes should be required. That did not happen in this case and the orders should be declared void. R.L. is aware of Justice Lehrams concurring opinion in In the Interest of D.S., 602 S.W.3d 504 (Tex 2020) that the UCCJEA does not implicate subject matter jurisdiction. However, as the Honorable Justice points out, its main concern is where the case should be litigated and failure to follow its provision can result in a finding of error making the judgment voidable in a direct attack, but not a collateral one. This case presents a direct attack.

The orders should be declared void for failure to adhere to the requirement to obtain jurisdiction and the children returned to the parents.

II. TERMINATION UNDER (D) AND (E) WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE

A. Origin of the Case: No Allegation or Finding of Danger to R.L.'s Children

This case began in March 2022 when K.N., a child who is not biologically or legally related to R.L., disclosed to school staff that her mother, C.N., had pulled her by the hair and imposed non-physical disciplinary measures such as writing sentences and sitting against a wall. (RR V3, p. 22). Importantly, K.N. clarified that the hair-pulling did not cause her pain. The school made a referral to the Department of Family and Protective Services, and an investigator was dispatched.

The Department's investigator met K.N. at school and, after initial hesitation, K.N. disclosed her mother's conduct. The investigator found no signs of bruising, marks, or other injuries. She confirmed there was no immediate danger to the children in the home. (RR V3, pp. 30–31).

When the investigator went to the home to follow up, she was met outside by R.L., who permitted her to observe the children but denied entry to the home or permission to interview the children indoors. (RR V3, p. 25). At no

point did K.N. allege that R.L. had mistreated her or her siblings, nor did the Department express concern about his conduct. R.L. was not named in the initial filings, and the Department did not request any services for him. (RR V3, pp. 27, 33).

Rather, the Department filed a Petition for Order for Participation in Services requesting only that C.N. complete individual counseling, anger management, and a psychological evaluation. The restrained scope of this request suggests the Department did not view the situation as warranting broader intervention. (RR V3, p. 27). Notably, no removal of the children occurred at this time, and they remained in the home.

This context is critical because it reflects the Department's own determination that neither the conditions nor the parental conduct at issue rose to a level that warranted removal or immediate protective action. If the Department believed at that time that the children were not in imminent danger, it is difficult to reconcile how the same facts later justified termination, particularly in the absence of new allegations or risk findings as to R.L.

B. Months of Inaction, No Additional Allegations, and a Constitutionally Protected Move

After the initial investigation in March 2022, the Department's caseworker attempted to maintain contact with C.N. but was largely unsuccessful. From April through September 2022, the Department had no meaningful contact with the family. The caseworker testified that he made numerous efforts to reach out, all of which failed, and that he had no knowledge of whether the children were safe. (RR V3, pp. 63–67, 75, 77–78). Despite the lack of contact, the Department did not present new allegations.

In August 2022, the family relocated to Louisiana. (RR V3, p. 165). This move was fully within their constitutional right to travel and live where they saw fit. The Department interpreted the relocation as an act of evasion or defiance, though there is no evidence that the move itself endangered the children or violated any court order. At this point, no removal had occurred, and R.L. remained uninvolved in any alleged misconduct.

Following the move, the Department escalated its response by seeking an emergency removal and filing for writs of attachment. The affidavits supporting these emergency filings were essentially duplicates of those used to request the initial service order months earlier. (CR 96, 111). They added only

the family's relocation and the failure to comply with services—no new facts or allegations of abuse were included. The Department continued to omit R.L. from the pleadings, and no testimony or affidavit identified him as a person of concern.

This chain of events demonstrates that the Department's motivation had shifted away from child safety and toward securing parental submission to its authority. The emergency removal was not predicated on actual harm, but on perceived defiance. This kind of governmental overreach raises serious constitutional concerns, particularly where no individualized finding of risk to the children was ever made against R.L.

C. Return and Removal Without New Basis for Action

After the family's relocation to Louisiana, the Department escalated its involvement by seeking emergency custody of the children. This action was triggered not by new evidence of danger or harm, but by continued noncompliance with service requests and the Department's inability to access the family. The Department secured writs of attachment and, following C.N.'s arrest, the children were returned to Texas in November 2022. (RR V3, p. 165).

The Department's supporting affidavits for this emergency removal

mirrored those previously submitted in support of the motion to compel services. (CR 96, 111). The only additions were procedural: reciting the family's move and the parents' continued refusal to cooperate. Critically, there were no new factual allegations of abuse or endangerment, and still no claims were made against R.L. No Department witness testified that any harm occurred between March and November 2022.

This lack of evolving concern is telling. For nearly six months, the Department allowed the children to remain in the home, even after the initial report. The decision to seek removal only after relocation and ongoing noncompliance, without a change in circumstances, indicates that the action was punitive rather than protective. The Department effectively penalized R.L. for exercising his right to privacy and for refusing to permit agency control of his household in the absence of court findings.

D. Absence of Evidence Regarding R.L.'s Children

Throughout the entirety of the case, the record is devoid of any evidence suggesting that R.L.'s three biological children—then ages 3, 5, and 8—were subjected to abuse, neglect, or conditions that posed a danger to their well-being. K.N.'s statements pertained exclusively to her mother, C.N., and the Department's initial investigation revealed no cause for concern regarding the

younger children. (RR V3, pp. 30–34).

The investigator testified that her concerns were focused solely on K.N. and not on the younger children. (RR V3, p. 32). Furthermore, R.L. was not named in any petition for services, nor was he identified as a person of concern at any stage prior to the removal. (RR V3, p. 33). The maternal grandmother also testified that she had no reason to believe the younger children were mistreated or in danger. (RR V3, p. 27). Testimony at trial confirmed that K.N. never made allegations against R.L., and the second caseworker admitted that he did not view R.L. as a threat. (RR V3, p. 197:11–21). The Department's filings themselves admitted that part of the concern was that K.N. was being treated differently from her siblings. (CR 110).

Additionally, the emotional bond between the children and R.L. was both strong and consistent. The eldest child, K.L., repeatedly stated that she wanted to return home. (RR V4, p. 94). Placement witnesses confirmed that the children cried at night and missed their parents. (RR V4, p. 43). These facts support a finding of attachment, not impairment, and contradict any inference that the children were harmed by remaining in R.L.'s care.

E. Court of Appeals' Overbroad Inference from Isolated Incident

The Court of Appeals acknowledged that R.L. was not directly involved in any alleged abuse of K.N. It cited only that "mother's discipline crossed the line" and that R.L. "was present when it occurred and knew of it." Relying on this limited observation, the Court concluded that R.L.'s parental rights to all four children—including his three biological children—should be terminated under Texas Family Code §§ 161.001(b)(1)(D) and (E).

This conclusion disregards the individualized inquiry that the law requires. The Court failed to assess whether R.L.'s conduct met the statutory definition of endangerment. The mere fact that he was present during a non-injurious disciplinary event involving a child not his own—who stated that she was not hurt—is insufficient to satisfy the clear and convincing evidence standard.

The appellate court's analysis failed to consider the absence of harm, the absence of R.L.'s participation, and the lack of any allegations regarding his own children. Moreover, the Court did not address the Department's decision not to proceed on grounds (N) and (O), nor did it examine whether R.L.'s conduct independently warranted termination. This omission is significant and renders the appellate opinion incomplete.

F. Termination Based on Constitutionally Protected Conduct

The record demonstrates that the Department's basis for termination was not a finding of endangerment, but rather R.L.'s refusal to acquiesce to the Department's authority. R.L. declined to engage in counseling, anger management, or psychological evaluation, and he refused to provide medical records after testing positive for amphetamine. However, he immediately produced photographic proof of a valid prescription for Adderall. (RR V3, pp. 173, 193). The caseworker admitted that this evidence was never submitted to the Medical Review Officer. (RR V3, p. 215:5–20). R.L. also refused to allow the Department to conduct in-home interviews without legal process and declined to participate in services for which he was never ordered or found to be in need. These refusals were treated as evidence of parental unfitness, but they are constitutionally protected actions. Parents are not required to waive their rights in order to preserve custody of their children.

The Department's use of these lawful refusals as grounds for termination constitutes governmental overreach. The record contains no evidence that R.L. endangered his children. Instead, it shows a parent exercising his right to privacy, resisting unnecessary state intrusion, and protecting his family from coercive action unsupported by legal findings.

G. A Marginal Case Where Termination Was Not Warranted

This case represents exactly the type of marginal situation that this Court has repeatedly cautioned against using as grounds for termination of parental rights. The Texas Supreme Court has made clear that termination is the "death penalty" of civil cases and should be reserved for the most extreme instances where clear and convincing evidence demonstrates that a parent has engaged in conduct that places a child in significant danger. See In re D.T., 625 S.W.3d 62, 69 (Tex. 2021).

The facts of this case fall far short of that threshold. There was no injury to any child. There was no finding that R.L. ever endangered his children. The only incident cited in the record involved the mother, C.N., pulling K.N.'s hair in a manner that K.N. herself said did not cause her pain. There were no allegations of ongoing or escalating violence. The younger children were never the subjects of any complaint or outcry.

The Department's theory of endangerment relies on the idea that witnessing a single act of discipline involving a sibling somehow placed R.L.'s children in harm's way. That theory lacks factual and legal support. In re R.R.A., 687 S.W.3d 269 (Tex. 2024), while reaffirming the Boyd standard, also featured strong dissents from Justice Blacklock and Justice Busby, who warned

against expanding the reach of § 161.001 to cases where harm is speculative or nonexistent. They emphasized that in marginal cases, courts must exercise restraint.

Justice Blacklock cautioned: "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." R.R.A., 687 S.W.3d at 284 (Blacklock, J., dissenting).

None of those indicators are present here. There was no extraordinary danger. There was no significant harm. There was no pattern of abuse, instability, or neglect. The children were bonded to their parents, wanted to return home, and were described as emotionally affected by their separation. The Department's witnesses confirmed there were no concerns specific to R.L.'s parenting.

Under these circumstances, termination was not only legally unjustified—it was a misuse of the State's protective power. It punished noncompliance with non-binding requests and exercised the most drastic remedy available without the requisite evidentiary foundation.

H. Conclusion: A Constitutional Error Demanding Reversal

The Department's own statements at trial confirm that this case was not about child safety but about the principle of parental compliance. In opening argument, the Department emphasized C.N.'s defiance of court orders and the agency's perceived authority over how she should raise her children. No reference was made to actual abuse, harm, or risk regarding R.L.'s three children.

R.L.'s parental rights were terminated not because he harmed his children or exposed them to danger, but because he refused to undergo services for which no individualized justification was ever found. He did not submit to counseling, anger management, or psychological evaluation. He did not allow the Department to enter his home or to interview the children without cause. He did not sign away his medical privacy without legal compulsion. These actions, protected under the Constitution, were treated as evidence of unfitness.

This Court has long recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. See Troxel v. Granville, 530 U.S. 57 (2000). In Texas, that principle is reflected in both statutory presumptions and constitutional protections. See Tex. Fam. Code § 153.131; In re J.A.J., 243 S.W.3d 611, 614 (Tex. 2007). The State may not override those rights absent clear and convincing evidence of danger.

Here, the State offered no such evidence. It relied instead on a theory of implied endangerment based on passive presence and procedural defiance. To affirm termination under these facts would eviscerate the constitutional boundaries that guard family integrity. It would sanction termination not as a protective measure, but as a punitive one.

This Court must not permit the erosion of constitutional protections through bureaucratic convenience. Petitioner respectfully urges the Court to reverse the termination of R.L.'s parental rights and to affirm that the State cannot sever the parent-child relationship based on noncompliance alone. This case presents an opportunity to reaffirm that due process, not acquiescence, remains the standard for governmental intrusion into the family.

V. A Marginal Case Demanding Caution, Not Termination

This Court has repeatedly warned that termination of parental rights is the "death penalty" of civil law. See *In re D.T.*, 625 S.W.3d 62, 69 (Tex. 2021). In *In re R.R.A.*, 687 S.W.3d 269 (Tex. 2024), while the majority affirmed the Boyd standard for endangerment, the dissenting justices emphasized that courts must guard against terminating parental rights in marginal cases lacking real, concrete harm. This is precisely that kind of case.

No injuries, no medical findings, no emotional impairment—just a refusal to comply with services. Termination in such a context transforms the protective power of the State into a punitive force, punishing lawful resistance rather than preventing harm.

Upon removal, the caseworker assigned testified candidly that he was unsure why the case had even been initiated. He conceded that, had C.N. cooperated with services, the children likely would have been returned. The Department's own witnesses further confirmed that there were no safety concerns regarding the younger children. The outcry witness testified K.N. never disclosed any abuse by R.L., and the investigator confirmed she had no concerns about his parenting.

Despite this, R.L.'s three young children—ages 3, 5, and 8—were permanently removed from his care. The Department sought and secured termination based on nothing more than his refusal to engage with their preferred protocols. The oldest child repeatedly expressed her desire to return home. The Department's own placement, the maternal grandmother, testified that the children missed their parents and often cried themselves to sleep.

Texas law presumes that a fit parent will be appointed managing conservator of their child absent clear and convincing evidence of significant impairment or family violence. See Tex. Fam. Code § 153.131; In re J.A.J., 243 S.W.3d 611, 614 (Tex. 2007). Here, the Department failed to meet this burden. There was no allegation or evidence that R.L. harmed any child. The only reference to him was his presence during an incident in which K.N.'s hair was pulled—a method of discipline which, although disfavored, did not cause injury and was described by the child herself as non-painful.

This Court has held that reliance on "old-fashioned" parenting methods such as spanking or time-outs cannot justify the termination of fundamental parental rights. In re A.M., 630 S.W.3d 25, 27 (Tex. 2019). To endorse termination in this context—absent physical harm, absent direct culpability, and absent any pattern of endangerment—would be to authorize the State to impose the "death penalty" of family law in cases where constitutional protections should prevail. See In re D.T., 625 S.W.3d 62, 69 (Tex. 2021); In re R.R.A., 687 S.W.3d 269, 284 (Tex. 2024) (Blacklock, J., dissenting).

Finally, the record reflects that R.L. tested positive for amphetamine during the case but immediately provided photographic evidence of a valid

prescription for Adderall. The caseworker admitted he never submitted that evidence for verification. R.L.'s refusal to provide medical records was held against him, further underscoring the theme of punitive reaction to parental assertion of privacy and autonomy.

In sum, this case was never about abuse or danger—it was about principle, as the Department itself admitted in opening argument. It was about punishing a parent for asserting his constitutional rights, for refusing to submit to bureaucratic demands without cause, and for defending his family from government overreach. Such a basis cannot meet the constitutional threshold for termination. Petitioner respectfully asks this Court to correct that error and restore the integrity of the protections afforded to Texas families.

REASONS FOR REVIEW

This Court's review is warranted to reaffirm:

- Jurisdiction cannot be based on outdated facts or retroactively created;
- Termination must be supported by clear and convincing evidence;
- Statutory and constitutional safeguards in parental rights cases must be strictly enforced.

CONCLUSION AND PRAYER

WHEREFORE, Petitioner R.L. respectfully prays that this Court:

For reasons stated in the petition, the Petitioner asks the Supreme Court to grant this review, and after oral arguments, reverse the judgment of the court of appeals and vacate the trial court's orders for lack of subject matter jurisdiction and reinstate R.L.'s parental rights or remand the case for further proceedings and grant all other relief to which the Petitioner may be justly entitled.

- Grant the petition for review;
- Reverse the judgment of the court of appeals;
- Vacate the trial court's orders for lack of subject matter jurisdiction;
- Reinstate R.L.'s parental rights or remand the case for further proceedings; and
- Grant all other relief to which Petitioner may be justly entitled.

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CERTIFICATE OF SERVICE

Pursuant to Texas Rule of Appellate Procedure 9.5, I certify that a true and correct copy of the foregoing document was served on May 1, 2025, on the following counsel and parties of record via electronic service through the Texas eFile system and/or email:

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CERTIFICATE OF COMPLIANCE

Pursuant to Texas Rule of Appellate Procedure 9.4(i)(3), I certify that this Brief on the Merits contains **13,972 words**, in Equity Text A font or Equity Text B Tab font, excluding the parts of the brief exempted by Rule 9.4(i)(1). This document was generated by a computer using Microsoft Word, which provides the word count.

Respectfully submitted,

/s/ Jay A. Michelsen
Jay A. Michelsen
Attorney for Petitioner

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Filed 4/9/2024 8:28 AM
Phyllis Carroll
District Clerk
Gray County, Texas
Reviewed By: Phyllis Carroll

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA

CAUSE NO. 40,562

IN THE INTEREST OF	§	**IN THE DISTRICT COURT OF**
	§	
K[redacted] N[redacted]	§	
K[redacted] L[redacted]	§	**GRAY COUNTY, TEXAS**
K[redacted] L[redacted]	§	
K[redacted] L[redacted]	§	
	§	
CHILDREN	§	**223RD JUDICIAL DISTRICT**

ORDER OF TERMINATION

On December 11, 2023 through December 15, 2023, the Court heard and rendered this case.

1. Appearances

1.1. The Department of Family and Protective Services ("the Department") appeared through **HEIDI COMBS**, permanency specialist from St. Francis Ministries, and by attorney, **TODD L. ALVEY**. St. Francis Ministries has assumed the Department's statutory duties for providing foster care services in this county and hearing pursuant to Texas Family Code Chapter 264, Subchapter B-1.

1.2. Respondent Mother **C[redacted] N[redacted]** appeared in person and through attorney of record **NATALIE ARCHER** and announced ready.

1.3. Respondent Presumed Father **R[redacted] L[redacted]** appeared in person and through attorney of record **JOEL B. JACKSON** and announced ready.

1.4. Not appearing was an **UNKNOWN MAN**, against whom an interlocutory decree of termination as to the child Kaisley Niccum, was rendered by this Court. That interlocutory decree of termination is a final judgment for appellate purposes upon signing of this order.

1.5. **TAYLOR HARRIS**, appointed by the Court as Attorney Ad Litem for the children the subject of this suit, appeared and announced ready.

1.6. **CASA OF THE HIGH PLAINS, INC.**, appointed by the Court as Guardian Ad Litem for the children the subject of this suit, appeared and announced ready.

2. Jurisdiction and Service of Process

2.1. The Court, having examined the record and heard the evidence and argument of counsel, finds the following:

2.1.1. a request for identification of a court of continuing, exclusive jurisdiction has been made as required by Section 155.101, Texas Family Code.

2.1.2. this Court has jurisdiction of this case and of all the parties and that no other court has continuing, exclusive jurisdiction of this case.

2.2. The Court, having examined the record and heard the evidence and argument of counsel, finds that the State of Texas has jurisdiction to render final orders regarding the children the subject of this suit pursuant to Subchapter C, Chapter 152, Texas Family Code, by virtue of the fact that Texas is the home state of the children.

2.3. The Court finds that all persons entitled to citation were properly cited.

3. Jury

A jury was duly selected. The Court submitted this case to the jury on questions, and the jury returned its findings on those questions. The jury's findings were received by the Court and filed of record. The questions submitted to the jury and the findings on those questions are approved by the Court and incorporated in this order.

4. Record

The record of testimony was duly reported by the court reporter for the 223rd Judicial District Court of Gray County.

5. The Children

The Court finds that the following children are the subject of this suit:

5.1. Name: **K[redacted] N[redacted]**
Sex: **Female**
Birth Date: [redacted]
Present Residence: **Relative's Home**

5.2. Name: **K[redacted] L[redacted]**
Sex: **Female**
Birth Date: [redacted]
Present Residence: **Relative's Home**

5.3. Name: **K[redacted] L[redacted]**
Sex: **Female**
Birth Date: [redacted]
Present Residence: **Relative's Home**

5.4. Name: **K[redacted] L[redacted]**
Sex: **Male**
Birth Date: [redacted]
Present Residence: **Relative's Home**

6. Reasonable Efforts to Return the Children

6.1. The Court finds by clear and convincing evidence that the Department made reasonable efforts to return the children to the parents. However, despite those reasonable efforts to return the children home to the parents, a continuing danger remains in the home that prevents return.

6.2. The Court specifically finds that those reasonable efforts include the following:

6.2.1. The Department created a family service plan that is narrowly tailored to address any specific issues identified.

6.2.2. The Department made a referral for services, provided services, or paid for services.

7. Termination of Respondent Mother C[redacted]S Parental Rights

7.1. The Court finds by clear and convincing evidence that termination of the parent-child relationship between C[redacted] and the child, K[redacted] the subject of this suit is in the child's best interest, pursuant to § 161.001(b)(2), Texas Family Code.

7.2. Further, the Court finds by clear and convincing evidence that C[redacted] has:

7.2.1. knowingly placed or knowingly allowed K[redacted] to remain in conditions or surroundings which endanger the physical or emotional well-being of K[redacted] pursuant to § 161.001(b)(1)(D), Texas Family Code;

7.2.2. engaged in conduct or knowingly placed K[redacted] with persons who engaged in conduct which endangers the physical or emotional well-being of K[redacted] pursuant to § 161.001(b)(1)(E), Texas Family Code;

7.2.3. constructively abandoned K[redacted] who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months and: (1) the Department has made reasonable efforts to return K[redacted] to the mother; (2) the mother has not regularly visited or maintained significant contact with K[redacted]; and (3) the mother has demonstrated an inability to provide K[redacted] with a safe environment, pursuant to § 161.001(b)(1)(N), Texas Family Code;

7.2.4. failed to comply with the provisions of a court order that specifically established the actions necessary for the mother to obtain the return of K[redacted] who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of K[redacted] removal from the parent under Chapter 262 for the abuse or neglect of the child, pursuant to § 161.001(b)(1)(O), Texas Family Code.

7.3. **IT IS THEREFORE ORDERED** that the parent-child relationship between C[redacted] and K[redacted] the subject of this suit is terminated.

7.4. In accordance with §161.001(c), Texas Family Code, the Court finds that the order of termination of the parent child relationship as to C[redacted] is not based on evidence that C[redacted]:

7.4.1. homeschooled the child;

7.4.2. is economically disadvantaged;

7.4.3. has been charged with a nonviolent misdemeanor other than:

7.4.3.1. an offense under Title 5, Penal Code;

7.4.3.2. an offense under Title 6, Penal Code; or

7.4.3.3. an offense that involves family violence, as defined by §71.004 of this code;

7.4.4. provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code;

7.4.5. declined immunization for the child for reasons of conscience, including a religious belief;

7.4.6. sought an opinion from more than one medical provider relating to the child's medical care, transferred the child's medical care to a new medical provider, or transferred the child to a new health care facility; or

7.4.7. allowed the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture.

7.5. In accordance with §161.001(d), Texas Family Code, the Court finds that **C[redacted] N[redacted]** did not prove by a preponderance of evidence that **C[redacted] N[redacted]** (1) was unable to comply with specific provisions of a court order; and (2) the parent made a good faith effort to comply with the order and the failure to comply with the order is not attributable to any fault of the parent.

8. Termination of Respondent Father R[redacted] L[redacted] Parental Rights

8.1. The Court finds by clear and convincing evidence that termination of the parent-child relationship between **R[redacted] L[redacted]** and the children **K[redacted] L[redacted], K[redacted] L[redacted], AND K[redacted] L[redacted]**, is in the children's best interest, pursuant to § 161.001(b)(2), Texas Family Code.

8.2. Further, the Court finds by clear and convincing evidence that **R[redacted] L[redacted]** has:

8.2.1. knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endanger the physical or emotional well-being of the children, pursuant to § 161.001(b)(1)(D), Texas Family Code;

8.2.2. engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangers the physical or emotional well-being of the children, pursuant to § 161.001(b)(1)(E), Texas Family Code;

8.2.3. constructively abandoned the children who have been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months and: (1) the Department has made reasonable efforts to return the children to the father; (2) the father has not regularly visited or maintained significant contact with the children; and (3) the father has demonstrated an inability to provide the children with a safe environment, pursuant to § 161.001(b)(1)(N), Texas Family Code;

8.2.4. failed to comply with the provisions of a court order that specifically established the actions necessary for the father to obtain the return of the children who have been in the permanent or temporary managing

conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the children's removal from the parent under Chapter 262 for the abuse or neglect of the children, pursuant to § 161.001(b)(1)(O), Texas Family Code;

8.3. **IT IS THEREFORE ORDERED** that the parent-child relationship between **R[redacted] L[redacted]** and the children **K[redacted] L[redacted], K[redacted] L[redacted], AND K[redacted] L[redacted]** is terminated.

8.4. In accordance with §161.001(c), Texas Family Code, the Court finds that the order of termination of the parent child relationship as to **R[redacted] L[redacted]** is not based on evidence that **R[redacted] L[redacted]**:

8.4.1. homeschooled the child;

8.4.2. is economically disadvantaged;

8.4.3. has been charged with a nonviolent misdemeanor other than:

8.4.3.1. an offense under Title 5, Penal Code;

8.4.3.2. an offense under Title 6, Penal Code; or

8.4.3.3. an offense that involves family violence, as defined by §71.004 of this code;

8.4.4. provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code;

8.4.5. declined immunization for the child for reasons of conscience, including a religious belief;

8.4.6. sought an opinion from more than one medical provider relating to the child's medical care, transferred the child's medical care to a new medical provider, or transferred the child to a new health care facility;

8.4.7. allowed the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture, or

8.5. In accordance with §161.001(d), Texas Family Code, the Court finds that **R[redacted] L[redacted]** did not prove by a preponderance of evidence that **R[redacted] L[redacted]** (1) was unable to comply with specific provisions of a court order; and (2) the parent made a good faith effort to comply with the order and the failure to comply with the order is not attributable to any fault of the parent.

9. Interstate Compact

The Court finds that Petitioner has filed a verified allegation or statement regarding compliance with the Interstate Compact on the Placement of Children as required by § 162.002(b)(1) of the Texas Family Code.

10. Managing Conservatorship: K[redacted] N[redacted]

10.1. The Court finds that the appointment of the Respondents as permanent managing conservator of the children is not in the children's best interest because the appointment would significantly impair children's physical health or emotional development.

10.2. **IT IS ORDERED** that the **DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** is appointed Permanent Managing Conservator of **K[redacted] N[redacted]**, a child the subject of this suit, with the rights and duties specified in § 153.371, Texas Family Code; the Court finding this appointment to be in the best interest of the child.

10.2.1. In addition to these rights and duties, **IT IS ORDERED** that the Department is authorized to consent to the medical care for **K[redacted] N[redacted]** under § 266.004, Texas Family Code.

11. Managing Conservatorship: K[redacted] L[redacted]

11.1. The Court finds that the appointment of the Respondents as permanent managing conservator of the children is not in the children's best interest because the appointment would significantly impair children's physical health or emotional development.

11.2. **IT IS ORDERED** that the **DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** is appointed Permanent Managing Conservator of **K[redacted] L[redacted]**, a child the subject of this suit, with the rights and duties specified in § 153.371, Texas Family Code; the Court finding this appointment to be in the best interest of the child.

11.2.1. In addition to these rights and duties, **IT IS ORDERED** that the Department is authorized to consent to the medical care for **K[redacted] L[redacted]** under § 266.004, Texas Family Code.

12. Managing Conservatorship: K[redacted] L[redacted]

12.1. The Court finds that the appointment of the Respondents as permanent managing conservator of the children is not in the children's best interest because the appointment would significantly impair children's physical health or emotional development.

12.2. **IT IS ORDERED** that the **DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** is appointed Permanent Managing Conservator of **K[redacted] L[redacted]**, a child the subject of this suit, with the rights and duties specified in § 153.371, Texas Family Code; the Court finding this appointment to be in the best interest of the child.

12.2.1. In addition to these rights and duties, **IT IS ORDERED** that the Department is authorized to consent to the medical care for **K[redacted] L[redacted]** under § 266.004, Texas Family Code.

13. Managing Conservatorship: K[redacted] L[redacted]

13.1. The Court finds that the appointment of the Respondents as permanent managing conservator of the children is not in the children's best interest because the appointment would significantly impair children's physical health or emotional development.

13.2. **IT IS ORDERED** that the **DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** is appointed Permanent Managing Conservator of **K[redacted] L[redacted]**, a child the subject of this suit, with the rights and duties specified in §

153.371, Texas Family Code; the Court finding this appointment to be in the best interest of the child.

13.2.1. In addition to these rights and duties, **IT IS ORDERED** that the Department is authorized to consent to the medical care for **K[redacted] L[redacted]** under § 266.004, Texas Family Code.

14. Required Information Regarding the Parties and Children

14.1. The children's information is provided above; the information required of each party not exempted from such disclosure is:

14.1.1. Name: **C[redacted] N[redacted]**
Driver's License: **Unknown**
Current address: [redacted]

14.1.2. Name: **R[redacted] L[redacted]**
Driver's License: **Unknown**
Current address: [redacted]

14.2. **IT IS ORDERED** that each parent, who has not previously done so, provide information regarding the medical history of the parent and parent's ancestors on the medical history report form, pursuant to § 161.2021, Texas Family Code.

15. Continuation of Court-Ordered Ad Litem or Advocate

15.1. The Court finds that the children the subject of this suit will continue in care and this Court will continue to review the placement, progress and welfare of the children.

15.2. **IT IS THEREFORE ORDERED** that **TAYLOR HARRIS**, earlier appointed as Attorney and Guardian Ad Litem to represent the children, is continued in this relationship as long as the children remain in the Conservatorship of the Department.

15.3. **IT IS THEREFORE ORDERED** that **CASA OF THE HIGH PLAINS, INC.**, earlier appointed as Guardian Ad Litem to represent the children, is continued in this relationship as long as the children remain in the Conservatorship of the Department.

16. Court Ordered Ad Litem for Parent

16.1. **IT IS THEREFORE ORDERED** that **NATALIE ARCHER** earlier appointed to represent **C[redacted] N[redacted]** is continued in this relationship as long as the children remain in the Conservatorship of the Department.

16.2. **IT IS THEREFORE ORDERED** that **JOEL B. JACKSON** earlier appointed to represent **R[redacted] L[redacted]** is **DISMISSED** based on a finding of good cause.

17. Dismissal of Other Court-Ordered Relationships

Except as otherwise provided in this order, any other existing court-ordered relationships with the children the subject of this suit are hereby terminated and any parties claiming a court-ordered relationship with the children are dismissed from this suit.

18. Post-Termination Child Support

18.1. Pursuant to § 154.001 (a-1), Texas Family Code, **IT IS ORDERED** that **C[redacted] N[redacted]** shall pay child support for the child, **K[redacted] N[redacted]** as set forth in Attachment A to this Order, which is incorporated herein as if set out verbatim in this paragraph.

18.2. Pursuant to § 154.001 (a-1), Texas Family Code, **IT IS ORDERED** that **R[redacted] LI[redacted]** shall pay child support for the children as set forth in Attachment A to this Order, which is incorporated herein as if set out verbatim in this paragraph.

19. Inheritance Rights

This Order shall not affect the right of any child to inherit from and through any party.

20. Denial of Other Relief

IT IS ORDERED that all relief requested in this case and not expressly granted is denied.

21. WARNING: APPEAL OF FINAL ORDER, PURSUANT TO § 263.405, TFC

A PARTY AFFECTED BY THIS ORDER HAS THE RIGHT TO APPEAL. AN APPEAL IN A SUIT IN WHICH TERMINATION OF THE PARENT-CHILD RELATIONSHIP IS SOUGHT IS GOVERNED BY THE PROCEDURES FOR ACCELERATED APPEALS IN CIVIL CASES UNDER THE TEXAS RULES OF APPELLATE PROCEDURE. FAILURE TO FOLLOW THE TEXAS RULES OF APPELLATE PROCEDURE FOR ACCELERATED APPEALS MAY RESULT IN THE DISMISSAL OF THE APPEAL.

22. NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS:

YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE TERMS OF CHILD CUSTODY SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CLAIM, CIVIL OR OTHERWISE, REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THE ORDER THAT RELATE TO CHILD CUSTODY. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000.

SIGNED this 8th day of April, 2024.

JUDGE PRESIDING

ATTACHMENT A

Child Support

23. Child Support Obligation: C[redacted] N[redacted]

23.1. The Court finds that **C[redacted] N[redacted]** is obligated to support **K[redacted] N[redacted]**, a child the subject of this suit, pursuant to §154.001(a-1), Texas Family Code.

23.2. **Monthly Payments**

23.2.1. **IT IS ORDERED** that **C[redacted] N[redacted]** is obligated to pay and shall pay child support to **THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** of **$187.47** per month for the support of **K[redacted] N[redacted]**, with the first payment being due and payable on March 1, 2024, and a like payment being due and payable on the 1st day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

23.2.1.1. any child reaches the age of eighteen years, provided that, if the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma, the periodic child support payments shall continue to be due and paid until the end of the month in which the child graduates;

23.2.1.2. any child marries;

23.2.1.3. any child dies;

23.2.1.4. any child's disabilities are otherwise removed for general purposes;

23.2.1.5. further order modifying this child support;

23.2.1.6. any child is dismissed from this action; or

23.2.1.7. the date on which the child begins active service in the armed forces, as defined by 10 U.S.C., Section 101.

23.3. **Notice of Change of Employer**

IT IS FURTHER ORDERED that **C[redacted] N[redacted]** and his employer shall notify this Court and the Managing Conservator of the children the subject of this suit by U.S. certified mail, return receipt requested, of any termination of employment. This notice shall be given no later than seven days after the termination of employment, and shall include the current, or last known address of **C[redacted] N[redacted]** and the name and address of the new employer, if known. **C[redacted] N[redacted]** shall inform any subsequent employer of this support obligation and the withholding order.

24. Child Support Obligation: R[redacted] L[redacted]

24.1. The Court finds that **R[redacted] L[redacted]** is obligated to support **K[redacted] L[redacted], K[redacted] L[redacted], AND K[redacted] L[redacted]**, children the subject of this suit, pursuant to §154.001(a-1), Texas Family Code.

24.2. **Monthly Payments**

24.2.1. **IT IS ORDERED** that **R[redacted] L[redacted]** is obligated to pay and shall pay child support to **THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** of **$394.00** per month for the support of **K[redacted] L[redacted], K[redacted] L[redacted], AND K[redacted] L[redacted]**, with the first payment being due and payable on March 1, 2024, and a like payment being due and payable on the 1st day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

24.2.1.1. any child reaches the age of eighteen years, provided that, if the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma, the periodic child support payments shall continue to be due and paid until the end of the month in which the child graduates;

24.2.1.2. any child marries;

24.2.1.3. any child dies;

24.2.1.4. any child's disabilities are otherwise removed for general purposes;

24.2.1.5. further order modifying this child support;

24.2.1.6. any child is dismissed from this action; or

24.2.1.7. the date on which the child begins active service in the armed forces, as defined by 10 U.S.C., Section 101.

24.2.2. Thereafter, **R[redacted] L[redacted]** is **ORDERED** to pay child support of **$323.84**, per month, for **K[redacted] L[redacted]** due and payable on the 1st day of the first month immediately following the date of the earliest occurrence of one of the events specified in items listed under **Monthly Payments** above and a like sum of **$323.84** due and payable on the 1st day of each month thereafter until the next occurrence of one of the specified events.

24.2.3. Thereafter, **R[redacted] L[redacted]** is **ORDERED** to pay child support of **$251.87**, per month, for **K[redacted] L[redacted]** due and payable on the 1st day of the first month immediately following the date of the earliest occurrence of one of the events specified in items listed under **Monthly Payments** above and a like sum of **$251.87** due and payable on the 1st day of each month thereafter until the next occurrence of one of the specified events.

24.3. **Notice of Change of Employer**

IT IS FURTHER ORDERED that **R[redacted] L[redacted]** and his employer shall notify this Court and the Managing Conservator of the children the subject of this suit by U.S. certified mail, return receipt requested, of any termination of employment. This notice shall be given no later than seven days after the termination of employment, and shall include the current, or last known address of **R[redacted] L[redacted]** and the name and address of the new employer, if known. **R[redacted] L[redacted]** shall inform any subsequent employer of this support obligation and the withholding order.

25. Place and Manner of Payment of Child Support

25.1. **IT IS ORDERED** that all child support payments are to be made through the **Texas Child Support State Disbursement Unit, P.O. Box 659791, San Antonio, Texas 78265-9791**, for distribution according to law.

26. Statement on Guidelines

To the extent that any support obligation specified above varies from the amount computed by applying the percentage guidelines in Chapter 154, Texas Family Code, the Court finds that the application of the percentage guidelines would be unjust or inappropriate, as more particularly shown in this Court's Findings on Child Support Order with respect to each obligor, which findings are incorporated herein as if set out verbatim in this paragraph.

27. Statement On Modification

THE COURT MAY MODIFY THIS ORDER THAT PROVIDES FOR THE SUPPORT OF CHILDREN, IF:

27.1. THE CIRCUMSTANCES OF THE CHILDREN OR A PERSON AFFECTED BY THE ORDER HAVE MATERIALLY AND SUBSTANTIALLY CHANGED; OR

27.2. IT HAS BEEN THREE YEARS SINCE THE ORDER WAS RENDERED OR LAST MODIFIED AND THE MONTHLY AMOUNT OF THE CHILD SUPPORT AWARD UNDER THE ORDER DIFFERS BY EITHER 20 PERCENT OR $100.00 FROM THE AMOUNT THAT WOULD BE AWARDED IN ACCORDANCE WITH THE CHILD SUPPORT GUIDELINES.

28. Termination of Duty of Support

Pursuant to §154.006, Texas Family Code, unless otherwise agreed in writing or expressly provided in the order or as provided by Subsection (b), the child support order terminates on

28.1. any child reaches the age of eighteen years, provided that, if the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma, the periodic child support payments shall continue to be due and paid until the end of the month in which the child graduates;

28.2. any child marries;

28.3. any child dies;

28.4. any child's disabilities are otherwise removed for general purposes;

28.5. further order modifying this child support;

28.6. any child is dismissed from this action; or

28.7. the date on which the child begins active service in the armed forces, as defined by 10 U.S.C., Section 101.

No. 07-24-00146-CV

In the Interest of K.N., K.L., K.L., and K.L., Children	§	From the 223rd District Court of Gray County
	§	
		September 19, 2024
	§	
		Opinion by Chief Justice Quinn
	§	

J U D G M E N T

Pursuant to the opinion of the Court dated September 19, 2024, it is ordered, adjudged, and decreed that the orders of the trial court be affirmed.

Inasmuch as this is an appeal *in forma pauperis,* no costs beyond those that have already been paid are adjudged.

It is further ordered that this decision be certified below for observance.

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In The
Court of Appeals
Seventh District of Texas at Amarillo

No. 07-24-00146-CV

IN THE INTEREST OF K.N., K.L., K.L., AND K.L., CHILDREN

On Appeal from the 223rd District Court
Gray County, Texas
Trial Court No. 40,562, Honorable Phil N. Vanderpool, Presiding

September 19, 2024

MEMORANDUM OPINION

Before QUINN, C.J., and PARKER and DOSS, JJ.

Mother, CN, and Father, RL, appeal the trial court's orders entered in this suit affecting the parent-child relationship. The matter involves four children. Each had the same mother, CN. One child, KN, had an "unknown" father.[1] The other three (KL1, KL2, and KL3 or the KL siblings) were fathered by RL. Upon trial, a jury found statutory grounds existed to terminate the parental relationship between him and the KL siblings. The best interests of those siblings also favored termination, according to the jury.[2] The

[1] The parental rights of the unknown father were terminated, as well. But, he did not appeal.

[2] The finding also encompassed the best interests of KN, though she was not the biological daughter of RL.

same is true regarding Mother and all four children, at least with regard to the existence of statutory grounds supporting termination. Despite two of those grounds implicating Mother's endangerment of each child, the jury decided that the best interests of the KL siblings did not favor termination, even though those of KN did. Confusing? Yes, but that is the framework within which we consider the separate issues of Mother and Father and, ultimately, affirm.

Mother's Complaint about the Sufficiency of the Evidence

Mother posits that the Department failed to present sufficient evidence supporting the two prongs implicit in terminating parental rights. Allegedly, the Department failed to prove a requisite statutory ground and that best interests of KN favored termination. We overrule the issue.

The standards for reviewing are well-established and described most recently in *In re J.F.-G.*, 627 S.W.3d 304 (Tex. 2021). We apply them here.

Statutory Grounds

The Texas Family Code permits termination if the parent knowingly placed or knowingly allowed a child to remain in conditions or surroundings which endanger the child's physical or emotional well-being. TEX. FAM. CODE ANN. § 161.001(b)(1)(D). It also provides for termination if the parent had engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the child's physical or emotional well-being. *See id.* § 161.001(b)(1)(E). To endanger is to expose to loss or injury, to jeopardize. *See In re J.W.*, 645 S.W.3d 726, 748 (Tex. 2022). These were two of several grounds found by the jury.

Here, there is evidence that Mother's discipline of KN crossed the line into abuse in terms of 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 KN also included forms of food deprivation, that is, depriving KN of food given to other family members. School officials became concerned with the way KN would eat and her fear of her mother discovering that she ate breakfast at school. Other acts by Mother directed at KN included dragging the child by her hair, injuring her shoulder, and making her sleep in the dog's bed. Abusive or violent conduct by a parent can support a conclusion that a child's physical or emotional well-being was endangered. *In re McElhaney*, No. 07-04-0577-CV, 2005 Tex. App. LEXIS 236, at *1–2 (Tex. App.—Amarillo Jan. 12, 2005, no pet.) (mem. op.).

When the Department got involved with the family, 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. *See T.D. v. Tex. Dep't of Family & Protective Servs.*, 683 S.W.3d 901, 914 (Tex. App.—Austin 2024, no pet.) (observing that failing to educate children is endangering conduct). Evidence further illustrates that the children were in need of medical or dental care but were denied it. *See In re J.H.*, No. 07-21-00059-CV, 2021 Tex. App. LEXIS 5209, at *9 n.4 (Tex. App.—Amarillo June 30, 2021, pet. denied) (mem. op.) ("[M]edical neglect endangers the children.").

We add that Mother also twice confronted the school's staff member at the grocery store resulting in criminal charges being brought against her. Criminal conduct is relevant

to the endangerment analysis under subsections (D) and (E) as it subjects children to a life of uncertainty. *See In re B.J.F.*, No. 01-23-00522-CV, 2024 Tex. App. LEXIS 192, at *78 (Tex. App.—Houston [1st Dist.] Jan. 11, 2024, pet. denied) (mem. op.).

We conclude that, based on the record before us, the evidence was legally and factually sufficient to enable a factfinder to form a firm conviction and belief that Mother endangered the physical well-being of KN. Because one predicate ground for termination is sufficient to support the decision, we need not address Mother's issues challenging the sufficiency of the evidence to support the trial court's findings under subsections (N) and (O). *See In re A.M.A.*, No. 07-16-00224-CV, 2016 Tex. App. LEXIS 10565, at *9–10 (Tex. App.—Amarillo Sept. 27, 2016, pet. denied) (mem. op.) (citing *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003)).

Best Interest of the Child

In addition to finding that a predicate ground supports termination, the trial court must also find by clear and convincing evidence that termination of the parent-child relationship favors the child's best interest. *See* TEX. FAM. CODE ANN. § 161.001(b)(2). When assessing the evidence regarding the trial court's best-interest determination, we consider the factors itemized in *Holley v. Adams*, 544 S.W.2d 367 (Tex. 1976).[3] Although those factors are not exhaustive, they indicate a number of considerations which either have been or would appear to be pertinent. *Holley*, 544 S.W.2d at 372. Additionally,

[3] The *Holley* factors are as follows: 1) the desires of the child; 2) the emotional and physical needs of the child now and in the future; 3) the emotional and physical danger to the child now and in the future; 4) the parental abilities of the individuals seeking custody; 5) the programs available to assist these individuals to promote the best interest of the child; 6) the plans for the child by these individuals or by the agency seeking custody; 7) the stability of the home or proposed placement; 8) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and 9) any excuse for the acts or omissions of the parent. *Holley*, 544 S.W.2d at 371–72.

evidence establishing the statutory grounds for termination may also be considered in the assessment of best interests. *See In re E.P.*, No. 07-23-00449-CV, 2024 Tex. App. LEXIS 3671, at *5–6 (Tex. App.—Amarillo May 29, 2024, pet. denied) (mem. op.). Comparing the evidence described earlier with *Holley* and other relevant indicia leads us to conclude that the jury's best interest finding had the support of both legally and factually sufficient evidence.

KN clearly expressed her fear of having to return to her mother's care. So too were the children denied medical or dental care. The record indicates that the children's current social, educational, medical, and emotional needs are being attended to in their current home. Furthermore, the abuse and danger posed by Mother to KN has been eliminated through the placement while the younger children are insulated from witnessing it. Though there is evidence that Mother undertook counseling outside the Department's family services plan, her failure to complete other services also tips against her in the balance. *See In re D.C.*, 128 S.W.3d 707, 717 (Tex. App.—Fort Worth 2004, no pet.) (concluding that a parent's refusal or inability to provide a stable home, remain gainfully employed, or comply with a court-ordered service plan supports a finding that termination is in the child's best interest). And, again, both Mother and Father ignored the children's educational needs by refusing to enroll them in school after moving to Louisiana. Mother's acts and omissions that served to endanger KN's physical and emotional well-being have been detailed above and need not be reiterated. They too support the decision that termination favors KN's interests.

The maternal grandparents have provided a stable and loving environment for the children. Family friends, with whom the children have an established relationship, also

hope to care of the children as a unit to relieve the grandparents of the demands of raising four children. So too is the extended family committed to the children staying together.

In sum, the foregoing is legally and factually sufficient evidence to support both the finding that termination of the parent-child relationship between Mother and KN is in the latter's best interests and a statutory ground warranting termination. So, the purported error complained of by Mother is non-existent.

Mother's Issue on Conservatorship

As said earlier, the jury found that it was not in the best interests of the KL siblings to terminate Mother's parental rights. Because they remained intact, who to serve as their managing conservator remained an open question. Ultimately, the trial court designated the Department to so serve. Mother argues that the selection constituted an example of abused discretion. We overrule the issue.

Generally, to appoint one other than a parent as managing conservator, a preponderance of the evidence must illustrate that retaining the parent in that status would not be in the child's best interests because it would significantly impair the child's physical health or emotional development. *See* TEX. FAM. CODE ANN. §§ 105.005, 153.131(a), 263.404; *In re J.A.J.*, 243 S.W.3d 611, 614 (Tex. 2007). Evidence must support the logical inference that some specific, identifiable behavior or conduct of the parent, demonstrated by specific acts or omissions, will probably cause serious harm. *R.H. v. D.A.*, No. 03-16-00442-CV, 2017 Tex. App. LEXIS 1743, at *10–11 (Tex. App.—Austin Mar. 2, 2017, pet. dism'd) (mem. op.). If such is found and the trial court appoints another, the determination is reviewed for abused discretion. *See In re J.A.J.*, 243 S.W.3d at 616. Within that setting, the legal insufficiency and factual insufficiency of the evidence

underlying the decision are merely relevant factors in the assessment, not independent grounds of error. *See In re A.M.*, 604 S.W.3d 192, 197 (Tex. App.—Amarillo 2020, pet. denied).

Acts or omissions that may significantly impair a child's physical health or emotional development include, but are not limited to, physical abuse, severe neglect, abandonment, drug or alcohol abuse, parental irresponsibility, and bad judgment. *See In re M.L.*, No. 02-15-00258-CV, 2016 Tex. App. LEXIS 7189, at *11 (Tex. App.—Fort Worth July 7, 2016, no pet.) (mem. op.); *see also In re J.Y.*, 528 S.W.3d 679, 687 (Tex. App.—Texarkana 2017, no pet.) (observing evidence of the mother's "volatile emotions and erratic behavior" as relevant to the conservatorship determination); *In re S.T.*, 508 S.W.3d 482, 492 (Tex. App.—Fort Worth 2015, no pet.) (noting that a "parent's treatment of other children may be relevant" when determining conservatorship). Courts also examine other considerations such as parental irresponsibility, a history of mental disorders and suicidal thoughts, frequent moves, bad judgment, child abandonment, and an unstable, disorganized, and chaotic lifestyle that has put and will continue to put the child at risk. *In re S.T.*, 508 S.W.3d at 492.

Here, the aforementioned abuse of KN and endangerment to which all the children were exposed, the medical or dental neglect suffered by the children, the educational neglect they experienced, Mother's refusal to participate in services to improve her parenting skills, the parental decision to move the family to Louisiana to evade the Department's supervision over the children, Mother's anger issues exemplified by the physical punishment inflicted on KN, and her screaming threats publicly in a Walmart against someone who reported an instance of abuse to the Department constitute

evidence from which the jury (and court) could determine that appointing Mother as managing conservator would not serve the best interests of the children since it would significantly impair the children's physical health or emotional development.[4] *See In re E.M.T.*, No. 04-18-00805-CV, 2019 Tex. App. LEXIS 2358, at *7 (Tex. App.—San Antonio Mar. 27, 2019, no pet.) (mem. op.) (noting evidence of the parent's anger and use of physical discipline as factors indicating the appointment of the parent as managing conservator would significantly impair the child's physical health and emotional development).

Father's Sufficiency Contentions

Father also challenges the sufficiency of the evidence to support termination of his parental rights to the KL siblings under subsections (D) and (E). We overrule the issue.

Statutory Grounds

We reiterate the evidence noted above and supporting the termination of Mother's parental rights to KN. Though Father was not directly involved in the abuse of KN, he was present when it occurred and knew of it. In fact, he acknowledged that Mother's behavior was aberrant and expressed that he had considered leaving with all the children, but his plans "never panned out." That is evidence of his knowingly placing the children with a person who engaged in conduct which endangered the children's physical or emotional well-being. See TEX. FAM. CODE ANN. § 161.001(b)(1)(E). He had a responsibility to the children to provide them a safe environment, free from abusive

[4] Those threats resulted in criminal charges being filed against Mother. Additionally, Mother's own family expressed concerns regarding Mother's anger issues, explaining that it was difficult to maintain a relationship with her due to her anger and unpredictability. Whenever the family confronted Mother about her mistreatment of KN, she would scream and leave. Father also expressed some apprehension about Mother's anger, having stated to Mother's family that "at least it was [KN] and not him getting in trouble."

behavior. *See In re C.N.L.*, No. 13-23-00591-CV, 2024 Tex. App. LEXIS 2860, at *11 (Tex. App.—Corpus Christi Apr. 25, 2024, no pet.) (mem. op.) (a child's physical or emotional well-being is endangered when a parent fails to remove them from a home in which abusive or violent conduct is occurring). And, in that responsibility, he failed.

Additionally, the Department curtailed his visitations with the children due to a positive drug test for amphetamine. Though claiming it to be the result of ingesting prescribed medication, he refused to sign a medical release that would permit the Department to confirm his excuse. And, evidence of his arrest in Louisiana for aggravated flight from an officer, reckless operation, ***and possession of methamphetamine*** should not be ignored. *See In re McElhaney*, 2005 Tex. App. LEXIS 236, at *1–2; *see also In re B.J.F.*, 2024 Tex. App. LEXIS 192, at *78 ("A parent's criminal conduct, convictions, and imprisonment also endangers [sic] a child's physical and emotional well-being because it subjects the child to a life of uncertainty and instability."). That he was found with the illegal contraband of methamphetamine when arrested tends to rebut his suggestion that the earlier, positive drug test for amphetamine was the result of ingesting prescribed medication.

We further note his 1) failure to participate in any services offered by the Department, 2) involvement in thwarting the Department's effort to care for the children by moving them to Louisiana, and 3) involvement in restricting the children from attending school to further evade the Department. So too did he neglect the children's medical and dental needs.

Together, the foregoing constituted evidence permitting a rational factfinder to form a firm conviction and belief that termination was warranted under subsections (D) and (E). Father's contention otherwise is simply wrong.

Best Interests of the Children

We reiterate the *Holley* factors mentioned earlier. Comparing them to the evidence of record, we too conclude that the jury had ample basis to clearly and convincingly find that termination of the parental relationship served the best interests of the KL siblings. That evidence included 1) Father's endangerment of the children's physical and emotional well-being, 2) his failure to meet their medical, dental, and educational needs, 3) his continued criminal behavior, 4) his seeming effort to defend or excuse the actions of Mother, 5) his participation in the removal of the children from the Department's jurisdiction, 6) his refusal to perform services, and 7) the beneficial current placement of the children.

Admission of Police Report

Father also complains about the admission of a Louisiana police report involving his pursuit and eventual arrest in that state. Yet, it was not the sole evidence of that escapade. The officer who authored the report testified, without objection, about the attempted traffic stop of Father, the ensuing high-speed pursuit, his apprehension and arrest, and the discovery of approximately four grams of methamphetamine in Father's pocket. Purported error concerning the admission of evidence is harmless when other like evidence is admitted without objection. *See In re L.T.*, No. 07-09-0280-CV, 2010 Tex. App. LEXIS 2250, at *10 (Tex. App.—Amarillo Mar. 30, 2010, no pet.) (mem. op.). That

having occurred here, we overrule Father's complaint about admitting the police report itself.

Father as Managing Conservator

Father seems to contend through his fifth issue that the trial court erred in failing to appoint him managing conservator. To the extent he does, we overrule the issue based upon 1) the very evidence supporting the termination of his parental rights and 2) the evidence supporting the appointment in lieu of Mother. Our incorporating that evidence here leads us to conclude that the trial court did not abuse its discretion in appointing the Department managing conservator of the children. *See In re C.N.S.*, No. 14-14-00301-CV, 2014 Tex. App. LEXIS 8612, at *33 (Tex. App.—Houston [14th Dist.] Aug. 7, 2014, no pet.) (mem. op.) (holding that the very evidence supporting termination insulated the decision to appoint the Department as managing conservator from an allegation of abused discretion).

Mother's and Father's Common Issue: Exclusion of Administrative Review Report

Finally, both Father and Mother argue that the trial court erred in excluding from evidence a report about an administrative review and investigative findings. The report allegedly illustrated that an earlier finding by the Department about an instance of emotional abuse between Mother and KN had been reversed. The trial court excluded the evidence, conceding that it may bear some relevance but concluding its probative value was substantially outweighed by a danger of unfair prejudice and confusing the issues. *See* TEX. R. EVID. 403. Other reasons were also revealed by the trial court for excluding the report. They included hearsay and the lack of evidence qualifying the investigator issuing the report as an expert. In reviewing the trial court's decision, we

again apply the standard of abused discretion. *In re D.D.*, No. 02-17-00368-CV, 2018 Tex. App. LEXIS 2440, at *34 (Tex. App.—Fort Worth Apr. 5, 2018, no pet.) (mem. op.) (per curiam) (so requiring). And, upon doing so, we overrule the issue.

The administrative report in question indicated that an investigator ruled out evidence of emotional abuse. Apparently, "emotional abuse" for the Department's administrative purposes, consisted of establishing that the parent "caused a mental or emotional injury to her daughter that resulted in an observable and material impairment in her growth." Explicit within that test is proof of actual injury, that is, "observable" "mental or emotional injury" resulting in material impairment. Yet, statute permits termination for "endanger[ing] the physical or emotional well-being of the child." TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E). Though endangering requires more than a threat of metaphysical injury or the possible ill effects of a questionable family environment, the child need not suffer actual injury to satisfy the parameters of either (D) or (E). *In re J.J.*, No. 07-13-00117-CV, 2013 Tex. App. LEXIS 11194, at *10–11 (Tex. App.—Amarillo Aug. 29, 2013, no pet.) (mem. op.). So, the test utilized when determining whether to terminate a parental relationship under the Family Code significantly differs from that used by the Department in conducting its administrative affairs. The differing tests (i.e., the need for trauma in the administrative setting versus the lack of need in the judicial setting) therefore minimizes the relevance of the report in a termination trial. Utilizing it here to bar termination under either (D) or (E) is like proving a piece of fruit is not an apple by showing it is not an orange. One could reasonably view such a comparison as likely to interject confusion; this is especially so when, like here, the administrative finding was based not

on the lack of questionable conduct but rather the lack of injury from that conduct.[5] Given these circumstances, we cannot say that a trial court's exclusion of the report under Rule 403 because its nominal relevance was substantially outweighed by the risk of confusing the issues would be unreasonable or an abuse of discretion.

Before closing, though, we note another matter. Interestingly, the same report continued with: "[i]t should be noted that by no means does changing the disposition to Rule Out negate the fact that ***risk was identified*** by the investigator and services were recommended for this family." (Emphasis added). Logically, the existence of a "risk" furthers the notion of endangerment. That is, to "endanger" means to expose to loss or injury or to jeopardize. *Id.* at *10-11. Exposing one to a risk of emotional harm nudges the conduct closer towards the line of endangerment contemplated under (D) and (E). So, admitting the report could well have fostered the Department's position, which, in turn, means excluding it from evidence minimized any harm to Mother or Father.

Having overruled the issues presented by both Mother and Father, we affirm the trial court's orders.

Brian Quinn
Chief Justice

[5] The reported stated: "There is insufficient evidence that [KN] experienced significant or serious negative effects on her intellectual or psychological development or functioning."

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