

No. 24-0881

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**In the Supreme Court of Texas**

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

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On Petition for Review  
from the Seventh Court of Appeals, Amarillo

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**BRIEF FOR RESPONDENT**

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KEN PAXTON  
Attorney General of Texas

AARON L. NIELSON  
Solicitor General

BRENT WEBSTER  
First Assistant Attorney General

CORY A. SCANLON  
Assistant Solicitor General  
State Bar No. 24104599  
Cory.Scanlon@oag.texas.gov

Office of the Attorney General  
P.O. Box 12548 (MC 059)  
Austin, Texas 78711-2548  
Tel.: (512) 936-1700  
Fax: (512) 474-2697

MEAGAN CORSER  
Assistant Attorney General

REBECCA SAFAVI  
Appellate Attorney  
Office of General Counsel  
Texas Department of Family and  
Protective Services

Counsel for Respondent

---

## IDENTITY OF PARTIES AND COUNSEL

### **Petitioners:**

C.N., Mother

R.L., Father

### **Appellate and Trial Counsel for C.N.:**

Michael J. Sharpee

Sharpee Law Firm

P.O. Box 1819

Amarillo, Texas 79105

(806) 367-9713

Mike@SharpeeLawFirm.com

Natalie Archer (withdrawn)

The Archer Law Firm, PLLC

801 S. Fillmore, Suite 710

Amarillo, Texas 79101

(806) 372-9258

ArcherDefense@gmail.com

Cody M. Pirtle

1008 West 10th Avenue

Amarillo, Texas 79101

(806) 373-3054

CMPirtlelaw@gmail.com

Vincent Nowak

1301 Daws Drive

Amarillo, Texas 79124

(806) 679-7914

venowak@gmail.com

### **Appellate and Trial Counsel for R.L.:**

Jay Michelsen

Michelsen Law Firm

112 W. Main Street

Canadian, Texas 79014

(806) 323-3261

JayMichelsen@MichelsenLaw.com

Joel B. Jackson

901 S. Polk Street

Amarillo, Texas 79101

(806) 331-6277

Joel@bj-law.com

**Respondent:**

Texas Department of Family and Protective Services

**Appellate and Trial Counsel for Respondent:**

Ken Paxton

Brent Webster

Aaron L. Nielsen

Cory A. Scanlon (lead counsel)

Meagan Corser

Office of the Attorney General

P.O. Box 12548 (MC 059)

Austin, Texas 78711-2548

Tel.: (512) 936-1700

Fax: (512) 474-269

Cory.Scanlon@oag.texas.gov

Vicki Kozikoujekian

Glenna Cordray

Rebecca Safavi

Todd Alvey

Texas Department of Family  
and Protective Services

P.O. Box 149030, MC:E611

Austin, Texas 78714

(512) 929-6808

Rebecca.Sa-

favi@dfps.texas.gov

**Children:**

K.N., K.L., K.L., and K.L.

**Appellate and Trial Counsel for Children:**

Taylor Harris

Rick J. Harris, P.C.

314 North Cuyler Street

Pampa, Texas 79066

(806) 665-3788

Rickjharris.law@gmail.com

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**RECORD REFERENCES**

This brief cites record references and related documents according to the glossary below:

<b>Citation Example</b>	<b>Document Cited</b>
“4.RR.105”	Reporter’s Record (seven volumes)
“7.RR.71”	Trial exhibits paginated to PDF
“CR.402”	Clerk’s Record
“CN.Br.36”	Mother/Clare’s Brief on the Merits
“RL.Br.21”	Father/Ronnie’s Brief on the Merits

## STATEMENT OF THE CASE

*Nature of the Case:* After lengthy and ultimately unsuccessful efforts to provide services, the Texas Department of Family and Protective Services sought to terminate Clare’s and Ronnies’s parental rights to Karen, Kate, and Karl as well as Clare’s parental rights to Kim.<sup>1</sup>

*Trial Court:* 223rd Judicial District Court, Gray County  
The Honorable Phil N. Vanderpool

*Disposition in the Trial Court:* A jury found that predicate grounds support termination of the parent-child relationship (1) between Ronnie and his three children and (2) between Clare and all four children. CR.508-10. The jury also found that the best interests of the children required termination of (1) Ronnie’s parental rights to his three children but (2) Clare’s parental rights only to Kim. CR.509-11. As a result, the trial court (1) terminated Ronnie’s parental rights to Karen, Kate, and Karl; (2) terminated Clare’s parental rights to Kim; and (3) appointed the Department as permanent managing conservator of all four children. CR.618-20.

*Parties in the Court of Appeals:* Clare and Ronnie were the appellants.  
The Department was the appellee.

*Disposition in the Court of Appeals:* The court of appeals affirmed the decision below. *In re K.N.*, No. 07-24-00146-CV, 2024 WL 4249163 (Tex. App.—Amarillo Sept. 19, 2024, pet. pending) (mem. op.) (Quinn, C.J., joined by Parker and Doss, JJ.).

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<sup>1</sup> Under Texas Rule of Appellate Procedure 9.8, the Department refers to Petitioners by the aliases Clare and Ronnie and the children by the aliases Kim, Karen, Kate, and Karl. *See* Tex. R. App. P. 9.8.

## **STATEMENT OF JURISDICTION**

The Court should deny review because Clare and Ronnie have not established jurisdiction under Texas Government Code section 22.001(a) by “present[ing] a question of law that is important to the jurisprudence of the state.”

### **ISSUES PRESENTED**

1. Whether the trial court had jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to decide the Department’s suit seeking to terminate Clare’s and Ronnie’s parental rights.
2. Whether a failure to satisfy the UCCJEA’s statutory requirements may be presented for the first time on appeal.
3. Whether legally sufficient evidence supported termination of Clare’s and Ronnie’s parental rights.

## INTRODUCTION

After Clare and Ronnie's child raised repeated allegations of physical abuse to teachers and family, and after Clare and Ronnie repeatedly took steps to evade the Department—ultimately by fleeing Texas with their children—they were finally called to account before a jury of their peers. The jury agreed that Clare's violent tendencies, her tremendous anger issues, Ronnie's drug problems, and both parents' neglect of the children warranted termination of Clare's parental rights as to Kim, her oldest daughter; placement of the remaining children in the managing conservatorship of the Department; and termination of Ronnie's parental rights as to his three children. The Department proceeded to trial only because Clare and Ronnie sabotaged its years-long efforts to mitigate these problems with services and to reunite the family. The court of appeals upheld the trial court's judgment in its entirety.

Instead of simply avoiding the court system, Clare and Ronnie now change tactics by asking this Court to *ratify* their admitted attempts to defy court orders of this State by escaping to Louisiana. They assert for the first time in this Court that Texas courts had no subject-matter jurisdiction to hear the Department's suit. The parents also seek to relitigate evidentiary matters that the jury correctly weighed and decided. The Court should deny review because neither the trial court nor the court of appeals erred in its rulings and Clare and Ronnie do not raise issues of importance to the jurisprudence of Texas.

## STATEMENT OF FACTS

The court of appeals correctly stated the nature of the case. *See supra* p. xiv.

### I. Factual Background

Between 2021 and 2022, the Department received reports that Clare and Ronnie were responsible for physical abuse and neglect of their four children. Clare and Ronnie are married and have three children together: Karen, Kate, and Karl. CR.506-07. Clare also has a fourth daughter, Kim, from a prior relationship; Kim's father is unknown. 2.RR.158; CR.500. While this case was pending, Clare and Ronnie had a fifth child not involved in this suit. 4.RR.51, 154-55.

#### A. 2021 Report

1. On January 21, 2021, the Department received its first report that Clare had physically abused Kim. 7.RR.7, 10. The report alleged that Clare had "spank[ed]" Kim on the shoulder so hard that Kim's shoulder continued to hurt the day after the spanking. 7.RR.10. The report also alleged that "every day after school," Clare made Kim "stand [against] and look at the wall with her window open." 7.RR.10. The report said that though Kim did not look "malnourished," every day during school lunches she would "eat[] her food very fast and always ask[] for seconds." 7.RR.10.

When the Department investigator went to the family's home to speak with Clare and Ronnie, they denied that Clare had physically abused or hit Kim. 7.RR.10; 2.RR.111-13. Kim, then nine, "did not make any outcry" about the shoulder injury during the visit, 2.RR.114, but confirmed that both her parents spanked her on her bottom and legs, 7.RR.10-11. Kim privately told the investigator that "she was scared of her mom, because of the way her eyes look . . . when she's yelling at her."

2.RR.144. And Kim’s younger sister Karen, then six, told the investigator that Clare would spank Kim on her wrists and spank Karen on her arm. 2.RR.115, 127; 7.RR.11.

Clare explained that she made Kim stand against the wall as punishment for “misbehaving quite a bit.” 2.RR.112; 7.RR.10. As Clare later testified, Ronnie also sometimes used these wall stands as punishment. 4.RR.201. Kim confirmed that the wall stands were punishment for “talking back” and for bad grades, but she said that it happened every day. 2.RR.114. As Kim clarified, “she [wa]s not allowed to sit; she ha[d] to stand.” 7.RR.10; 2.RR.132-33. Although Clare alleged that she never made Kim stand against the wall for more than thirty minutes at a time, 2.RR.112, 133; 7.RR.10, Kim told the investigator that “she could only eat, do her homework, and get ready for bed, [and] other than that she was standing on the wall,” 2.RR.114.

Clare and Ronnie also claimed that Kim ate the same foods that everyone else ate. 2.RR.113; 7.RR.10. Kim confirmed that Clare cooked every night but said that Kim ate “a ham sandwich most nights.” 2.RR.114, 134. Clare said Kim would sometimes have a sandwich for dinner when she did not like what everyone else was eating. 7.RR.Pet.Ex.1 at 5. Clare also claimed that Kim is lactose intolerant and cannot eat certain foods (such as ice cream) that the other children eat. 7.RR.10; 2.RR.134-35; *see also* 4.RR.123-24. But, as relatives noted later, Kim would eat dairy at their houses without any problems. 7.RR.11; 2.RR.143.

2. Family members and school officials expressed concerns about Clare disciplining Kim too harshly and not allowing Kim to eat breakfast at school—even though breakfast was free for all students. 7.RR.12; 2.RR.116-17, 134. For example, multiple family members had observed Kim “scarf[ing] down food and want[ing]

seconds as if she has not eaten in days,” and they noticed a red mark on Kim’s forehead from resting her head on a wall while standing against it. 7.RR.11; 2.RR.116-17. One family member was concerned enough to call Kim’s school to make sure she was getting breakfast at school and to offer to bring Kim snacks at school. 7.RR.11-12. When the Department spoke to an official at school about the food concerns, the official confirmed that Kim ate breakfast at school every morning but said that Kim was “scared her mother would find out.” 7.RR.12; 2.RR.116-17, 134. Clare later did find out about it and punished Kim. 7.RR.12.

The Department attempted to follow up with Clare and Ronnie about these concerns but could not reach them. 2.RR.116-17. Because Ronnie had instructed the children’s school not to permit the Department to interview the children, the Department sought a court order to interview the children. 7.RR.6-8; 2.RR.117; *see* Tex. Fam. Code § 261.303(b). The court obliged, allowing the Department to take Kim and Karen to Bridge Children’s Advocacy Center for forensic interviews.<sup>2</sup> 7.RR.14; 2.RR.117-18. At the forensic interview, Kim noted that Ronnie made her “kneel on rice for approximately ten minutes at a time” on one or two occasions. 2.RR.118, 136-37. As Clare later clarified, kneeling on rice was apparently an alternative to standing against the wall because Kim had complained about the standing. 4.RR.129.

3. At the investigation’s conclusion, the Department determined that allowing Kim to remain at home would be a risk to her safety, 2.RR.118, in no small part because Ronnie had been aware of the abuse but failed to intervene, and the

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<sup>2</sup> Clare’s brief calls the forensic interview the “Bridge interview.” CN.Br.26.

Department had concerns that he would continue not to protect Kim. 2.RR.129-30. Seeking to avoid a formal removal, the Department proposed that Clare and Ronnie voluntarily allow Kim to live with her maternal great-grandparents. 2.RR.118-19. Clare and Ronnie agreed to that plan. 2.RR.137-38; *see also* 2.RR.123-25. So, in May 2021, the Department closed the case. 2.RR.124, 138.

### **B. 2022 Report**

On March 4, 2022, the Department received its second report that Clare had physically abused Kim, who had returned to her parents' home after the Department closed its first case. 3.RR.23; 7.RR.20; *see* 2.RR.138; 4.RR.135-36. The report alleged that Clare would “grab[] and drag[] [Kim] by her hair when she [was] not listening” and that Clare had told Kim not to talk about it at school. 3.RR.21-22; 7.RR.20. As the school official who made the report later testified, Kim disclosed to the official that she was scared of going home after school and that she sometimes hid in the closet to avoid being dragged by her hair. 3.RR.84-85.

In response, a new investigator went to Kim's school to talk to Kim about the report. 3.RR.22; 7.RR.20. Kim was afraid to talk to the investigator because she feared getting in trouble if Clare found out. 3.RR.22; 7.RR.20. Kim was especially frightened because of Clare's anger issues, 3.RR.23; 7.RR.20, which sometimes led Clare to “get[] so mad [that] she want[ed] to ‘rip [Kim's] head off,’” 7.RR.20. Kim told the investigator that Clare's punishments had changed from making Kim *stand* against the wall to making Kim *sit* on the floor against the wall “for days.” 3.RR.23, 53; 7.RR.Pet.20.

Three days after that, the Department received a third report of physical abuse. 3.RR.25; 7.RR.22. The report stated that Kim had passed a note to a teacher saying that Clare had dragged Kim by her hair and slapped her across the face. 3.RR.25; 7.RR.22. But Kim refused to talk to the investigator about this new report because she had gotten in trouble for talking to the Department about the second report. 3.RR.26; 7.RR.22. Clare would later publicly lash out, twice, at the Pampa Walmart at one of the school officials who reported Kim’s outcry, telling the official that she needed to “watch her back.” 3.RR.85-87; 4.RR.150. These outbursts led to charges of obstruction and retaliation against Clare. 4.RR.149.

During the Department’s second investigation, one of Clare’s family members told the investigator that when Kim was an infant, Clare would spank Kim with a wooden spoon so hard that it left bruises, and that when Kim was about six years old, the family member had observed scratch marks on Kim’s neck.<sup>3</sup> 7.RR.24. Additional evidence of physical abuse showed that, about two years before the second report, a nurse at Kim’s school observed “multiple bruises” on Kim’s arm, legs, bottom, and back. 3.RR.100. Those bruises were belt marks from where Clare had spanked Kim. 3.RR.97-98, 102; *K.V.*, 2024 WL 4249163, at \*1 (characterizing this as evidence of “beatings with a belt”). Kim also had thumbprint marks on her arm from where Clare held Kim’s arms behind her back during the spankings. 3.RR.97-98, 102; *see*

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<sup>3</sup> At trial, the family member also briefly expressed concern that Kim had been sleeping on a large pillow with dog designs on it that the family referred to as the “dog bed”—an incident that Clare references in her brief. 3.RR.148-49; 4.RR.130-31; CN.Br.33.

4.RR.133. But Kim was scared to see the nurse because she feared getting in trouble if Clare found out. 3.RR.99-100.

Based on this information, the Department was primarily concerned about Clare's physical abuse of Kim; but the Department was also concerned about Ronnie's failure to protect Kim from the abuse. 2.RR.129. Ronnie even admitted at trial that he was aware of Clare's disciplinary decisions and participated in some of them. 4.RR.231. And according to Kim and her siblings, Ronnie was in the home during the abuse and was aware of it, but he did nothing to stop it. 3.RR.235-36.

## **II. Procedural History**

### **A. Petition for court-ordered services**

1. Based on the consistent allegations of physical abuse that Kim, school officials, and family members had shared, the Department sought court intervention. Still seeking to avoid removing the children, the Department petitioned for a court order requiring Clare to participate in services. *See* 3.RR.27. On April 8, 2022, the court ordered Clare to participate in counseling, anger-control training, and a psychological evaluation. 7.RR.30. The court also ordered Kim to participate in counseling, but it did not order Ronnie or the other three children to participate in services. *See* 7.RR.30; 3.RR.33-34.

By law, Clare had six months to complete these services. Tex. Fam. Code § 264.203(q); CR.63. But by July 2022, Clare had made no effort to complete the services, and the Department had been unable to contact Clare or Ronnie, despite

repeated attempts to do so via phone and in person. 3.RR.62-68. Even Clare’s attorney had trouble communicating with Clare. CR.78-79.

On August 18, 2022, shortly after the new school year started, the Department received two more reports from different school officials. 3.RR.47; 7.RR.67-69. The officials both expressed concern for Kim and Karen because Clare and Ronnie had not yet enrolled the girls in school. 3.RR.47; 7.RR.68. When the Department met with Clare at the family’s home in Pampa, Texas, on August 18, 2022, she “stated [that] she would not be working any services with the [D]epartment and [that] there was nothing the [D]epartment could do about” it. 7.RR.68.

2. Clare and Ronnie claim that they moved to Louisiana two days later on August 20, 2022. 4.RR.193. But they did not inform the Department of this development until at least September 2022, 3.RR.51; *see* 3.RR.198-99 (implying that the Department discovered the move during the adversary hearing on September 21, 2022), and ultimately provided no documentation or other evidence to support their August 20 move date, *see generally* 4.RR.118-261. Indeed, Ronnie’s testimony at trial casts doubt on that timeline: He admitted that he “was still in Texas working” at the time of the adversary hearing on September 21. 4.RR.235.

Clare later claimed that they moved “[t]o get away from [her] family, and to be closer to [Ronnie’s] family.” 4.RR.142-43. But although Clare claimed to believe that she was free to leave Texas, 4.RR.143, she admitted that she purposefully did not enroll the children in school in Louisiana because she “knew that [the Department] would get the children if [she] enrolled them in school,” 4.RR.143-44. And the family’s caseworker later testified that “the reason [that Clare and Ronnie] had

taken [the children] to Louisiana” was that Clare and Ronnie “were afraid that . . . they were going to lose their kids.” 3.RR.199.

## **B. Removal and termination**

### **1. Trial court proceedings**

a. Because Clare refused to participate in any services that might have alleviated Clare’s abusive tendencies such that Kim and her siblings could safely stay in the home, the Department took the next step of seeking removal of the children. CR.81-111. On August 31, 2022, the Department filed a petition for removal and termination. CR.81. That same day, the trial court issued an emergency order granting conservatorship to the Department and permitting the Department to remove the children. CR.113-18.

At the adversary hearing, the trial court found that all four children faced physical danger in the home, CR.151, and ordered their removal, CR.152-53. But Clare told the trial court that she had no plans of surrendering the children. 4.RR.181. And as she later testified, Clare refused to comply with the court’s order to surrender the children to the Department. 4.RR.182. As a result, in November 2022, Clare was arrested, 4.RR.144; 7.RR.137; and her criminal case was still pending at the time of trial in this case, 4.RR.148. Clare testified that she would not have left Texas if she knew she would be arrested and that she did not believe the Texas conservatorship order could be enforced out of state. 4.RR.190.

b. For his part, Ronnie was arrested in January 2023 for aggravated flight from an officer, reckless operation of a motor vehicle, and possession of

methamphetamine.<sup>4</sup> 3.RR.12-13. Before the arrest, Louisiana police had attempted to pull Ronnie over for riding without license plates. 3.RR.11; 7.RR.118. Ronnie then fled from the police, leading a dozen officers on a twelve- to fifteen-mile chase “at speeds of over 130 miles per hour” across two different parishes. 3.RR.11-12. The chase ended only when Ronnie wrecked on a gravel driveway—but not before he attempted to flee on foot. 3.RR.12. When the officers arrested and searched Ronnie, they found methamphetamine. 3.RR.12-13.

Eight months later, in August 2023, Ronnie tested positive for amphetamines. 3.RR.170-71, 218. He claimed that this outcome resulted from prescription medication that he was taking, but he refused to disclose any information necessary for the Department to verify the prescription. 3.RR.173-74. *But see* 3.RR.193-94.

c. After the Department removed the children pursuant to the trial court’s order, Clare and Ronnie chose not to exercise their periods of visitation for several months. 3.RR.164-66. *Contra* 4.RR.140. They also failed to comply with their service plan—for example, they did not attend counseling or provide their home address to the Department, both of which the plan required for reunification. 3.RR.160-71, 182-83. And Clare refused to comply with the plan’s anger-management requirements. 3.RR.182-83. According to the children’s Court-Appointed Special Advocates (CASA) worker, Clare seemed uninterested in reunification throughout the

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<sup>4</sup> Ronnie’s criminal record included convictions in 2017 for dangerous-drug possession and firearm theft. 7.RR.26.

case. 3.RR.229. Kim likewise lacked interest in reunification and, in fact, stated that she “refuse[d]” to go home because she feared Clare. 4.RR.33; *see also* 4.RR.63.

As events continued to unfold, the Department learned that the younger three children had suffered from emotional abuse and—at minimum—neglect. The younger children had to witness Kim’s abuse, which, their CASA worker testified, itself constituted emotional abuse. 3.RR.236-37. The children also had longstanding medical problems for which the parents failed to seek treatment. *See* 4.RR.12-13. Kate, who was only four years old at the time of removal, already had eleven cavities that later required oral surgery to fill. 4.RR.12. Karen and Kate both needed glasses but did not get them until after they were removed. 4.RR.12. And Kim had warts “all over her hands, and beginning to move to her lips,” that the doctors could not “get control of.” 4.RR.12. Those warts required multiple medical appointments while Kim was in the Department’s conservatorship; at the time of trial, Kim’s doctors still needed to do more testing to determine what was causing the warts. 4.RR.12-13. After removal, the Department placed the children with their maternal grandparents, who ensured that the children attended school and otherwise received care. 4.RR.9, 29-30, 32-33.

**d.** In December 2023, a jury terminated both Clare’s and Ronnie’s parental rights due to Clare’s abuse and Ronnie’s exposing the children to endangering circumstances. CR.504-15. Per the jury’s verdict, the trial court terminated Clare’s parental rights to Kim based on endangerment under Family Code section 161.001(b)(1)(D) and (E), constructive abandonment under paragraph (N), and failure to comply with a court order under paragraph (O). CR.617-18; Tex. Fam.

Code § 161.001(b)(1)(D)-(E), (N)-(O). The court also terminated Ronnie’s parental rights to Karen, Kate, and Karl on the same grounds. CR.619-20. The court appointed the Department as permanent managing conservator of all four children. CR.620-22.

## **2. Court-of-appeals proceedings**

The parents appealed the termination orders. *K.N.*, 2024 WL 4249163, at \*1. They challenged the legal and factual sufficiency of the termination and conservatorship orders as well as the trial court’s exclusion of an administrative report. *Id.* But they did not challenge jurisdiction under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA). CN.Br.9; RL.Br.10.

As relevant here, the court of appeals held that the evidence was legally and factually sufficient to support termination of both Clare’s and Ronnie’s parental rights based on paragraphs (D) and (E). *K.N.*, 2024 WL 4249163, at \*2, \*4-5. As a result, the court did not address the sufficiency of the evidence under paragraphs (N) and (O). *Id.* As Clare and Ronnie made no mention of jurisdictional defects under the UCCJEA, the court of appeals did not opine on those arguments.

## **SUMMARY OF THE ARGUMENT**

**I.** Texas properly exercised jurisdiction under the UCCJEA. Texas is the children’s “home state” under any fair reading of the statute. Any party’s presence in Louisiana was merely a temporary absence, which does not count toward the home-state determination. Alternatively, the whole family had significant connections to Texas based on their longstanding residence, work, school experiences, familial

relationships, and care in this State. The Department also amassed a vast evidentiary record over two investigations about incidents occurring almost exclusively in Texas.

II. The Court should not allow the parents to raise a UCCJEA challenge for the first time in this Court. The parents have forfeited that challenge. And if any tension exists between treating the UCCJEA's requirements as necessary for subject-matter jurisdiction on the one hand and giving finality and closure to parents and children on the other, this Court should err on the side of finality.

III. The court of appeals correctly held that abundant grounds supported termination of Clare's and Ronnie's parental rights and the Department's appointment as managing conservator of Karen, Kate, and Karl. Clare's history of physical violence toward Kim and her exposure of the remaining children to this trauma created more than adequate grounds to uphold these rulings. Ronnie ignores his participation in a high-speed police chase and arrest for possession of methamphetamine in his briefing. And both parents constructively abandoned their children by remaining in Louisiana after the children's removal and refusing to perform court-ordered services required for reunification. At bottom, Clare merely disputes the factual sufficiency of the evidence, which this Court lacks jurisdiction to re-weigh. The Court should deny review.

### **STANDARD OF REVIEW**

This Court reviews legal sufficiency by analyzing the evidence in the light most favorable to the judgment: It assumes that factfinders in the trial court "resolved disputed facts in favor of its finding if a reasonable factfinder could do so," and it "should disregard all evidence that a reasonable factfinder could have disbelieved or

found to have been incredible.” *In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002). When reviewing parental-rights termination orders under the clear-and-convincing-evidence standard, the Court considers “whether the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the matter.” *Id.* In contrast to termination orders, though, conservatorship orders are subject to a preponderance standard, are “review[ed] only for abuse of discretion, and may be reversed only if the decision is arbitrary and unreasonable.” *In re J.A.J.*, 243 S.W.3d 611, 616 (Tex. 2007).

Litigants ordinarily challenge subject-matter jurisdiction in a plea to the jurisdiction. *E.g.*, *Bland ISD v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000). When no party has raised a fact issue regarding jurisdictional facts, the Court decides jurisdictional issues as pure legal questions and reviews them de novo. *See Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

## ARGUMENT

### **I. The Department Satisfied the Statutory Requirements for Jurisdiction Under the UCCJEA.**

Casting the UCCJEA as a tool for voiding the trial court’s orders in the manner Clare and Ronnie suggest would fundamentally undermine the Act’s purposes. The UCCJEA is designed to ensure consistency in child-custody adjudications across state lines. The law prevents the exact gamesmanship that Clare and Ronnie engaged in here—first by intentionally seeking to avoid the Department’s proceedings by uprooting their children to a State in which they give no evidence of a stable home life, and second by raising the UCCJEA as a defense to termination of their parental

rights for the first time in this Court. *See In re D.S.*, 602 S.W.3d 504, 513 (Tex. 2020) (“The UCCJEA advances an overarching objective of expediency and stability in an increasingly mobile world by helping prevent manipulation of the system and undue complication of child-custody disputes, which can occur when a child is moved from one state to another.”).

In relevant part, the UCCJEA states:

(a) Except as otherwise provided in Section 152.204 [governing emergency removals], a court of this state has jurisdiction to make an initial child custody determination only if:

(1) this state is the home state of the child on the date of the commencement of the proceeding . . . [, or];

(2) a court of another state does not have jurisdiction under Subdivision (1) . . . and:

(A) the child and the child’s parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) substantial evidence is available in this state concerning the child’s care, protection, training, and personal relationships . . . .

(b) Subsection (a) is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is *not necessary* or sufficient to make a child custody determination.

Tex. Fam. Code § 152.201 (emphasis added).<sup>5</sup>

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<sup>5</sup> Although the Department does not invoke subsections (a)(3) or (a)(4), it bears mentioning that under subsection (a)(3), Texas is the home state when all other courts that may have jurisdiction under subdivisions (1) or (2) decline jurisdiction

Extensive record evidence showed that only Texas can be the children’s home state under chapter 152, as the trial court expressly found. CR.617; *see* Tex. Fam. Code § 152.201(a)(1). Thus, Texas had exclusive, continuing jurisdiction over this case. Tex. Fam. Code § 152.202; La. Stat. § 13:1814. Put another way, it would be unlawful to adjudicate this dispute anywhere else. *In re Dean*, 393 S.W.3d 741, 746-47 (Tex. 2012) (orig. proceeding).

For all of Clare and Ronnie’s efforts to bring the UCCJEA to the forefront of this appeal, they say exceedingly little about why Louisiana, and not Texas, was the real home state. And even if a parent subject to court-ordered services in Texas could defeat a Texas court’s home-state jurisdiction by simply absconding with the children over state lines eleven days before the Department could petition for termination, the trial record demonstrated that the parents and children have significant connections to Texas, where substantial evidence of the children’s “care, protection, training, and personal relationships” was available. *See* Tex. Fam. Code § 152.201(a)(2)(B). The parents’ construction of the UCCJEA would lead to

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because those courts determine that Texas “is the more appropriate forum” for adjudicating custody based on convenience of the parties (section 152.207) or a parent’s unjustified conduct in seeking to establish jurisdiction in that state (section 152.208). Tex. Fam. Code § 152.201(a)(3). And under subsection (a)(4), Texas is the home state if no State can establish jurisdiction under subdivisions (1)-(3). *Id.* § 152.201(a)(4). Clare and Ronnie have never asked a Louisiana court to deem that State “the more appropriate forum” for adjudicating this dispute, and if they did, the Louisiana court would likely deny jurisdiction based on their unjustifiable conduct. *See id.* § 152.201(a)(3); *Young v. Young*, 670 So. 2d 689, 692-93 (La. Ct. App. 1996) (construing the conduct provision of the UCCJEA’s predecessor).

intolerable results, destroy the purpose for which the Legislature adopted the Act, and allow abusive parents to escape accountability by uprooting their children’s lives and throwing them into unknown communities hundreds of miles away in other States. The Court should deny review and refuse to legitimize the parents’ attempts to game the system.

**A. Texas is the home state.**

The trial court had home-state jurisdiction because the children and parents lived in Texas for more than six months immediately before the proceedings. *See id.* §§ 152.102(7), .201(a)(1). A child’s “home state” is the State where the child “lived with a parent . . . for at least six consecutive months immediately before the commencement of a child custody proceeding.” *Id.* § 152.102(7). That six-month period includes any “period of temporary absence of a parent.” *Id.* Read together, the trial court has UCCJEA jurisdiction when (1) the child and one parent live in the State for at least six consecutive months and (2) this six-month period occurs immediately before the custody suit commences. *See id.* §§ 152.201(a)(1), .102(7).

**1. Only Texas meets the duration requirement.**

No party disputes that the family resided in Texas for the requisite six months; the parents dispute only whether these six months took place “‘immediately’ before the commencement” of proceedings. *See* CN.Br.16-21. But as the Department showed, the children lived in Pampa, Texas, at least as early as January 25, 2021, when the Department’s investigator visited their home. 7.RR.10. The family maintained that residence until at least August 20, 2022—the date Clare claims (without documentary evidence) that the family left for Louisiana. *See generally* 4.RR.118-261.

That is nearly nineteen months of continuous residency in Texas. Plus, the paternity registry shows that the three younger children were born in Texas. CR.194-97. And even though the registry lists Kim’s place of birth as “unknown,” Kim may have been born here as well given that Clare and Ronnie do not claim that Kim was born elsewhere. CR.194-97. This all suggests the family likely lived in Texas from the children’s birth. The family was also at their Texas home on August 18, 2022, when the Department confronted Clare about her failure to enroll her children in school, 3.RR.47-48—eleven days before the Department sought termination on August 31, 2022, CR.81.

The parents’ contrary arguments fail for two reasons. *First*, because Clare’s testimony regarding the family’s residency contradicted Ronnie’s, the jury was entitled to find that Clare’s testimony regarding the August 20 move date was fabricated. *See J.F.C.*, 96 S.W.3d at 266. *Second*, even if the family did move to Louisiana on August 20, the suit’s commencement eleven days later did not defeat home-state jurisdiction because the children and parents resided in Texas for the required duration immediately before the commencement. *See Tex. Fam. Code* § 152.102(7); *Powell v. Stover*, 165 S.W.3d 322, 326 (Tex. 2005).

a. Clare and Ronnie’s testimony concerning their move was not credible because it was contradictory. Clare testified that she and Ronnie moved to Louisiana with the children on August 20, 2022. 4.RR.193. In nearly 150 pages of trial testimony, Clare and Ronnie offered no other evidence that they moved on that date. 4.RR.118-261. Ronnie testified that he “was still in Texas working” at the time of the adversary hearing on September 21, 2022. 4.RR.235. And at the adversary hearing itself,

Ronnie similarly testified that he was working in Pampa at the time. CR.185; 4.RR.235; 7.RR.71. The jury could have properly disregarded Clare’s and Ronnie’s contradictory testimony about the move date. *See J.F.C.*, 96 S.W.3d at 266. Even more, Clare and Ronnie never sought to establish Louisiana as their home state in a Louisiana proceeding and did not reside in Louisiana for the duration that the UCCJEA requires. *See Huffstutlar v. Koons*, 789 S.W.2d 707, 712 (Tex. App.—Dallas 1990, orig. proceeding) (en banc).

**b.** The premise of Clare and Ronnie’s argument is that Texas courts instantly lose jurisdiction the moment parents move their children across state lines with the intent to establish a different residence. But this Court has already resolved the issue of whether mere presence in another State (even when the parent intends to permanently relocate the child’s residence) defeats home-state jurisdiction. In *Powell*, this Court held that Texas did not have home-state jurisdiction when a mother brought her child from Tennessee to Texas, stated her intent to permanently relocate to Texas, and lived in Texas for two weeks before filing her suit for divorce and custody in Texas. 165 S.W.3d at 325-26. In so concluding, the Court rejected a test that turned on a parent’s “subjective intent” to establish residence because it “would thwart the UCCJEA’s meaning and purpose.” *Id.* at 326. Instead, as the Court explained, the test turns on the facts, an approach that works to “strengthen rather than undermine the certainty that prioritizing home-state jurisdiction [in the UCCJEA] was intended to promote.” *Id.*

Here, the parents attempted to manipulate geographic facts to evade the reach of Texas’s home-state jurisdiction. That was the very reason that the children were

even in Louisiana: Clare herself testified that she believed that moving to Louisiana would frustrate Texas’s jurisdiction. 4.RR.142-44, 190. For all her bluster that Texas tried to “obtain jurisdiction by force,” CN.Br.21, these actions show Clare and Ronnie’s awareness that Texas maintained home-state jurisdiction.

Under the UCCJEA, disgruntled parents cannot protect themselves from unfavorable court orders by absconding with their children across state lines. In fact, the UCCJEA denies home-state jurisdiction where a parent ginned it up by acting in bad faith. Tex. Fam. Code § 152.208; La. Stat. § 13:1820. Texas courts have also refused to recognize substantial-connection jurisdiction that is perfected in bad faith. *See, e.g., In re Brilliant*, 86 S.W.3d 680, 692 (Tex. App.—El Paso 2002, no pet.) (“We are disinclined to accord much weight to attachments [the child] may have developed in the months following her return to Massachusetts in July 2000 when the move was in complete and utter disregard of a court order.”). Here, the parents attempted to do exactly that. Rather than ratify this evasion tactic, the Court should deny review because both lower courts definitively had home-state jurisdiction. CR.617; *see K.N.*, 2024 WL 4249163, at \*4. This Court’s decisions in *Powell* and *In re D.S.*, *infra* pp. 30-37, supply sufficient guidance for the jurisprudence of the State and preclude the need for review.

## **2. Periods of temporary absence from the home state count towards presence in the home state.**

A child’s temporary departure from the State does not interrupt a continuous window of residence under the UCCJEA. Tex. Fam. Code § 152.102(7); *In re E.A.F.*, No. 11-05-00288-CV, 2008 WL 1893208, at \*2 (Tex. App.—Eastland Apr. 24,

2008, no pet.) (mem. op.) (holding that Texas was the home state of a child who had remained there except for the four days before his custody proceeding commenced); *see also In re Marriage of McDermott*, 307 P.3d 717, 720 (Wash. 2013) (“Where a child is temporarily absent from his or her home state, the time of absence is part of the period measured in order to determine the child’s home state.”). Even departures lasting five and a half months are not always enough to reset a child’s home-state status. *In re McCormick*, 87 S.W.3d 746, 750 (Tex. App.—Amarillo 2002, orig. proceeding); *see also Welch–Dodden v. Roberts*, 42 P.3d 1166, 1174 (Ariz. Ct. App. 2002) (finding home-state jurisdiction in Oklahoma even when a child’s six-month residence there was sandwiched between three- and four-month stints in Arizona).

Here, Clare and Ronnie offer no explanation as to why the time in Louisiana is not a “temporary absence” within the meaning of section 152.201(a). Nor can they. The children were in Louisiana only after August 20, 2022, and not during any six-month period under which home-state jurisdiction was already established in Texas.

Though this Court has not opined at length concerning the “temporary absence” language in the UCCJEA, other States have adopted an explicit “temporary absence” rule to exempt certain breaks in a child’s continuous home-state residence. *See, e.g., McDermott*, 307 P.3d at 720; *see also In re C.J.S.*, 702 S.W.3d 573, 596-97 (Tex. App.—Houston [1st Dist.] 2024, no pet.). These tests generally take three forms depending on the State: (1) duration; (2) intent to permanently move; and (3) the totality of the circumstances. *See Drexler v. Bornman*, 92 A.3d 628, 632 (Md. 2014) (quoting *Chick v. Chick*, 596 S.E.2d 303, 308 (N.C. Ct. App. 2004)). Based on this Court’s decision in *Powell*, however, intent does not control; so the Court should

look to the duration of the absence in relation to the six-month period for home-state jurisdiction. *See* 165 S.W.3d at 326 (holding that home-state determinations are based on the facts, not on parents’ “subjective intent”).

Whether the Court views the Louisiana sojourn as a “temporary absence” or as the abbreviated makings of a permanent relocation, the Court cannot use that timing to defeat home-state jurisdiction. What matters is the departure’s length and nature (*i.e.*, whether it is truly temporary). Based on this jurisprudence, eleven days is well within a temporary framework. *See id.* (explaining that two weeks in Texas did not establish home-state jurisdiction); *E.A.F.*, 2008 WL 1893208, at \*2 (explaining that four days of absence was still “immediately prior to suit being filed”). Moreover, this temporary absence—coming as it did immediately before commencement of the suit—does not truly *need* to count towards the preceding six-month period of continuous Texas residency. *Supra* pp. 17-20.

And a temporary absence from home is especially meaningless when, as here, the child has resided in their home state since birth. *McCormick*, 87 S.W.3d at 750; *E.A.F.*, 2008 WL 1893208, at \*2. As the Eleventh Court has held, even if a “child did not reside in Texas on the date suit was filed,” Texas is still the home state if “the child ha[s] resided in Texas for his entire life . . . immediately prior to suit being filed.” *E.A.F.*, 2008 WL 1893208, at \*2. That reasoning should apply with full force here to the extent the children’s physical absence from Texas when suit was filed has any bearing. *See also In re Calderon-Garza*, 81 S.W.3d 899, 903 (Tex. App.—El Paso 2002, orig. proceeding) (finding that an infant had spent his entire life in Texas, which was thus his home state even if he wasn’t present there on the day of the

UCCJEA suit). *But see In re J.P.*, 598 S.W.3d 789, 796 n.8 (Tex. App. 2020—Fort Worth, pet. denied) (recognizing that “[a] child’s home state can change as a family moves” when a Michigan family relocated to Texas nearly two years before UCCJEA proceedings commenced).

Clare and Ronnie assert that these temporary-departure rules don’t apply when *both* parents depart a State with their children. CN.Br.16-17; RL.Br.15. But, again, this Court has already rejected the subjective-intent test. *See Powell*, 165 S.W.3d at 326. Moreover, although the UCCJEA is more often invoked when divorced parents relocate to different States from each other, *see, e.g., In re Burk*, 252 S.W.3d 736 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding [mandamus denied]), parents may not void their child’s home-state status by simply departing Texas with the child, Tex. Fam. Code § 152.102(7).

Other States have rejected an approach that would give abusive or neglectful parents such power. *E.g., Stephens v. Fourth Jud. Dist. Ct.*, 128 P.3d 1026, 1028-29 (Mont. 2006) (finding that Montana home-state status survived both parents’ moving with the children to Arkansas because the UCCJEA prioritizes recognition of a stable home state). For example, the Colorado Supreme Court held that Colorado remained the home state even when both parents moved to Montana and the child was moved to a Montana foster facility. *R.W. v. People ex rel. E.W.*, 523 P.3d 422, 426-27 (Colo. 2022). Once again, that court rested on the primacy of finding a home for UCCJEA adjudication. *Id.* Also, like Louisiana in this case, Montana’s courts did not attempt to assert jurisdiction. *Id.* at 426. More importantly, nothing in the case

law from various jurisdictions indicates that parents may subvert home-state court authority by unilaterally agreeing to decamp with their children.

**B. Alternatively, the parents and children had significant connections to, and substantial evidence was available in, Texas.**

Children may be temporarily “homeless” under the UCCJEA, either because they have not lived anywhere long enough to establish home-state jurisdiction or because their home state refuses to exercise jurisdiction. Tex. Fam. Code § 152.201(a)(2); *In re Oates*, 104 S.W.3d 571, 578 (Tex. App.—El Paso 2003, orig. proceeding). Even under these conditions, States can exercise jurisdiction where a “significant connection” exists between the child and that State and evidence is available in the State. *See, e.g., McCormick*, 87 S.W.3d 746 at 751. This rule ensures that some authority can still resolve a custody dispute. Specifically, the UCCJEA provides for jurisdiction where

(A) the child and the child’s parents, or the child and at least one parent . . . , have a significant connection with this state other than mere physical presence; and

(B) substantial evidence is available in this state concerning the child’s care, protection, training, and personal relationships . . . .

Tex. Fam. Code § 152.201(a)(2)(A)-(B).

Though this language implies that many States could potentially exercise jurisdiction at the same time, Texas courts look to significant-connection jurisdiction “only when Texas is not the home state and it appears that no other state could assert home state jurisdiction.” *Oates*, 104 S.W.3d at 578 (citing *Lemley v. Miller*, 932 S.W.2d 284, 286 (Tex. App.—Austin 1996, no pet.)). Notably, “the UCCJEA

does not premise the exclusive continuing jurisdiction determination on which state has the *most* significant connection with the child.” *In re Forlenza*, 140 S.W.3d 373, 378 (Tex. 2004) (orig. proceeding). The Court simply needs to identify *a* significant connection. Tex. Fam. Code § 152.201(a)(2)(A). For example, if “evidence was admitted which establishes that [the child] has significant ties with [a different state], that fact alone does not necessarily mean that there is no significant connection with Texas.” *McCormick*, 87 S.W.3d at 750. Put differently, the significant-connection test turns not on whether any evidence is available in Louisiana but on the nature and quality of the children’s connection with Texas. The parents put forth no evidence of the children’s ties with Louisiana; instead, the trial record shows a deep, substantial connection with Texas.

*First*, the children have a significant connection to Texas because of their lengthy period of domicile here. *Supra* pp. 17-20. The CASA permanency report<sup>6</sup> confirmed as much. CR.253-56; *see also, e.g.*, 4.RR.29-30, 32-33, 74. Of course, the statute does not require that children be frequently, physically present within the State for a significant connection with that State to exist. *Forlenza*, 140 S.W.3d at 378 (“[I]nsofar as [the Court’s] statement[s in other cases] might suggest that such a high level of physical presence in Texas is necessary to satisfy [UCCJEA]’s

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<sup>6</sup> This report was not entered as an exhibit at trial, but the trial court cannot be said to have erred in relying on those uncontroverted statements in the record to confirm its jurisdiction. *See In re K.M.P.*, 323 S.W.3d 601, 603 (Tex. App. — Austin 2010, pet. denied) (citing *White v. White*, 179 S.W.2d 503, 506 (Tex. 1944)) (stating that jurisdiction should be upheld unless “the record affirmatively and conclusively negates the existence of jurisdiction”).

significant-connection standard, we disapprove it.”). Significant-connection jurisdiction does not even require that children have been in Texas during particularly recent years. *See id.* (collecting cases where children moved away from a State for six, seven, and eight years, but maintained significant connections with the State). Still, domicile provides strong evidence of a child’s ties to the forum, particularly a period of domicile as lengthy as these children’s. *See, e.g., In re J.S.N.*, No. 14-23-00572-CV, 2024 WL 1269914, at \*7 (Tex. App.—Houston [1st Dist.] Mar. 26, 2024, pet. denied) (mem. op.) (describing the value of family residence towards establishing significant connections). The record evidence here easily clears this low hurdle.

*Second*, beyond their domicile, all four children have significant, substantial connections to Texas. Thanks to the love and support of their maternal grandparents, with whom they are bonded, the children have a stable home life in Texas, and they succeeded in school in Texas while Clare and Ronnie hid out in Louisiana. 4.RR.29-30, 32-33, 74; CR.253-56; *see also In re T.B.*, 497 S.W.3d 640, 646 (Tex. App.—Fort Worth 2016, pet. denied) (“[F]actors showing a significant connection to the state . . . [include] whether the child attends school in the state.”). The children have likewise bonded with their extended family members, CR.253-56—many of whom live in Texas, 3.RR.141-43 (aunt); 4.RR.8-14 (grandparents); *see J.S.N.*, 2024 WL 1269914, at \*7 (citing *Forlenza*, 140 S.W.3d at 377) (emphasizing the “fact that children’s relatives resided in Texas and maintained relationship with children constituted a significant connection to Texas”); *In re S.J.A.*, 272 S.W.3d 678, 685 (Tex. App.—Dallas 2008, no pet.) (emphasizing the importance of extended family ties to a State). The parents in this case also lived and worked in Texas for many

years. *E.g.*, 4.RR.235 (addressing husband’s Texas employment); CR.255 (showing mother had a Texas real-estate license). Any of these factors alone suffices. Together, they are insurmountable.

*Third*, as to the availability of evidence in Texas, the Department compiled two lengthy case files over a nearly three-year span, during which it investigated the allegations of abuse and neglect, attempted to reunify the family, and ultimately tried the parental-rights termination to a jury. Besides the information concerning Clare’s and Ronnie’s separate criminal arrests in Louisiana, all this information came from witnesses and information collected in Texas. The Department has extensively documented the children’s medical care, school progress, and emotional well-being. *Supra* pp. 10-11. The Pampa area is also home to the majority of the witnesses at trial, including the children’s educators and relatives, *see, e.g.*, 3.RR.96 (Pampa ISD employee), 141-43 (aunt), with the exception of the Louisiana police officer who testified regarding Ronnie’s high-speed police chase and arrest for possession of methamphetamine, 3.RR.10-19. The Department showed much more than necessary to demonstrate that evidence of the “care, protection, training, and personal relationships” was almost exclusively available in Texas, thus meeting the test for significant-connection jurisdiction several times over. *See* Tex. Fam. Code § 152.201(a)(2)(B).

### **C. The parents’ contrary arguments lack merit.**

Clare and Ronnie both argue that the trial court improperly “bootstrapped” emergency jurisdiction with home-state jurisdiction. CN.Br.13-15; RL.Br.14. Although it is unclear what they mean by this assertion, a closer reading of their

preferred, pre-UCCJEA authority, *Garza v. Harney*, 726 S.W.2d 198 (Tex. App.—Amarillo 1987, orig. proceeding), shows that it does not apply here. In *Garza*, the failure of subject-matter jurisdiction in Texas was premised on pre-existing litigation in Mexico, where the parents first petitioned for divorce and custody. *See id.* at 202 (“The emergency involving the daughter permitted the district court to enter a temporary order for the daughter’s protection until proper steps are taken in the original forum state to adequately protect the daughter. The district court cannot, however, take any other action that would change the orders of the Mexican court.”). *Garza* is thus wholly inapposite because Clare and Ronnie had no parallel litigation pending in Louisiana.

Clare and Ronnie also cite no authority in support of their argument that the trial court erred because the Department improperly invoked Family Code section 262.002 for emergency protection of the children. In any event, the propriety of those temporary emergency orders is moot, or at least subsumed in the trial court’s final termination order. *See, e.g., In re P.W.*, No. 10-22-00259-CV, 2023 WL 68146, at \*3 (Tex. App.—Waco Jan. 4, 2023, pet. denied) (mem. op.) (collecting cases). That the trial court had jurisdiction under either home-state or significant-connection jurisdiction has nothing to do with jurisdiction to issue emergency orders.

Clare and Ronnie make two additional arguments (with no authority or citation to the record) that Texas lacks UCCJEA jurisdiction because (1) the children were not physically present in Gray County (where Pampa is located) and (2) the trial court did not make findings to support its jurisdiction. CN.Br.15-16, RL.Br.13-16. Each argument fails under section 152.201’s plain text and the record. The first

ignores subsection (c)'s language: "Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination." Tex. Fam. Code § 152.201(c). And this Court's decisions contradict the second argument: This Court has held that when the Family Code requires the trial court to make findings in support of its jurisdiction, it will expressly say so. *E.g.*, *In re J.S.*, 670 S.W.3d 591, 602-03 (Tex. 2023) (construing Family Code's automatic-dismissal statute's "extraordinary circumstances" finding requirement as mandatory, not jurisdictional).

More fundamentally, when courts entertain attacks on their subject-matter jurisdiction like this one, the Court will not void the trial court's orders for lack of jurisdiction unless "the record affirmatively and conclusively negates the existence of jurisdiction." *In re K.M.P.*, 323 S.W.3d 601, 603 (Tex. App.—Austin 2010, pet. denied) (citing *White v. White*, 179 S.W.2d 503, 506 (Tex. 1944)); *cf.* *In re G.X.H.*, 627 S.W.3d 288, 299 (Tex. 2021) (rejecting jurisdictional challenge under the automatic-dismissal statute because "in the absence of a request for written findings following a nonjury trial, all necessary fact findings are implied" (citing *Shields Ltd. P'ship v. Bradberry*, 526 S.W.3d 471, 480 (Tex. 2017))). Both Clare's and Ronnie's arguments on this point cite no statute requiring the trial court to enter its jurisdictional findings in the record. And it is easy to see why the Legislature declined to add such a requirement, lest parents come along years later and attempt to void a termination proceeding for lack of subject-matter jurisdiction.

What's more, the record contradicts Clare and Ronnie's argument regarding the trial court's findings. The Department's petition included an affidavit from a

Department caseworker establishing home-state jurisdiction by reciting the children's home address and the facts he collected there and elsewhere in Texas. CR.81, 94-101. The trial court's final order terminating parental rights expressly stated that Texas is the home state under Chapter 152. CR.617. During status and permanency hearings over the several months that Clare and Ronnie abandoned their children in Texas to remain in Louisiana, the trial court repeatedly found that it had jurisdiction and that "all necessary prerequisites of the law have been satisfied." CR.187, 267. Clare and Ronnie assert no valid grounds for voiding the termination order, so the Court should deny their petition for review.

## **II. A Parent May Not Raise a UCCJEA Attack for the First Time in This Court.**

The Court should deny review under the principles it announced in *In re D.S.* There, this Court rejected a father's challenge to the trial court's UCCJEA jurisdiction when he had relinquished his parental rights via affidavit because, even though the challenge could prove that the trial court lacked subject-matter jurisdiction, it did not satisfy the statutory requirements to assert fraud, duress, or coercion in execution of the affidavit. *D.S.*, 602 S.W.3d at 508-09. Both the majority and concurring opinions emphasized the importance of finality and closure for the children. *Id.* at 512-14, 517; *id.* at 520 (Lehrmann, J., concurring); *see also In re K.S.L.*, 538 S.W.3d 107, 114 (Tex. 2017) ("The child's best interest is inherently threatened by undue uncertainty and delay in finally determining where the child will live and who will raise her.").

That reasoning, and section 161.211(a)'s six-month time bar, apply with special force here. The parents had the opportunity to assert UCCJEA defects in the trial court or even at the court of appeals, but instead delayed that challenge in a way that maximizes its detrimental effect to finality. *See* Tex. Fam. Code § 161.211(a); *D.S.*, 602 S.W.3d at 508-09; *id.* at 520 (Lehrmann, J., concurring). After multiple levels of judicial review, the children should not be left wondering if their custody proceedings were lawful. The Court should accordingly deny review and avoid the undue delay that is at odds with children's best interests. *See K.S.L.*, 538 S.W.3d at 114.

**A. The UCCJEA's requirements do not implicate subject-matter jurisdiction.**

1. Permitting petitioners to raise UCCJEA defects for the first time before this Court clashes with the Legislature's purposes in adopting the Act. This Court observed that the UCCJEA "advances an overarching objective of expediency and stability in an increasingly mobile world by helping prevent manipulation of the system and undue complication of child-custody disputes, which can occur when a child is moved from one state to another." *D.S.*, 602 S.W.3d at 513. The parents' interests in their custodial and due-process rights are no doubt of fundamental importance, but those rights should give way to finality when the parents have unjustifiably delayed in asserting them and unnecessarily prolonged the custody proceedings. *Cf. In re E.R.*, 385 S.W.3d 552, 567 (Tex. 2012) (holding that mother was deprived of due process by defective service by publication, but that an unreasonable delay in asserting her rights could result in denial of a new trial).

Even in areas far less sensitive than child protection, this Court has adopted the “modern direction of policy . . . to reduce the vulnerability of final judgments to attack on the ground that the tribunal lacked subject matter jurisdiction.” *Dubai Petrol Co. v. Kazi*, 12 S.W.3d 71, 76 (Tex. 2000) (quoting Restatement (Second) of Judgments § 11 cmt. e (Am. L. Inst. 1982)). This approach is preferable to a “perverse” system that “treat[s] a judgment as perpetually void” and “opens the way to making judgments vulnerable to delayed attack for a variety of irregularities that perhaps ought to be sealed in a judgment,” *especially* when the children’s best interests in finality come into play. *See id.* (quoting Restatement (Second) of Judgments § 12 cmt. b (Am. L. Inst. 1982)); *see also D.S.*, 602 S.W.3d at 508-09; *id.* at 520 (Lehrmann, J., concurring). The parents’ preferred approach would subvert both this jurisprudence and the children’s best interests in the finality of parental-rights-termination judgments. *See K.S.L.*, 538 S.W.3d at 114.

2. The Legislature’s use of the word “jurisdiction” in section 152.201 does not evince clear legislative intent to make that statute’s requirements jurisdictional prerequisites to suit. This Court does not read statutory text in isolation or without consideration of other indicators regarding legislative intent present elsewhere in the text and statutory scheme. *City of Houston v. Bates*, 406 S.W.3d 539, 545 (Tex. 2013). As Justice Lehrmann observed in *D.S.*, final orders rendered without continuing, exclusive jurisdiction are voidable, rather than void and open to attack for the first time on appeal. 602 S.W.3d at 520 (Lehrmann, J., concurring) (citing Tex. Fam. Code § 161.104(b)).

Additionally, as other courts have observed,<sup>7</sup> a legislative intent to bar all direct and collateral attacks after six months equates to a specific legislative intent *not* to treat the UCCJEA’s requirements as jurisdictional requirements that parties may challenge for the first time on appeal. *Cf. In re J.W.*, 267 Cal. Rptr. 3d 554, 562-63 (Ct. App. 2020) (reasoning that a California statute that “prohibits virtually all collateral attacks on termination orders” is clear legislative intent not to treat UCCJEA requirements as going to fundamental jurisdiction that can be raised for the first time on appeal). That logic also applies to the six-month bar in section 161.011(a), as the Department explains below. *See* Tex. Fam. Code § 161.211(a); *infra* pp. 35-37. And because the UCCJEA allows competing courts in different States to agree which State is a more convenient forum and consider an agreement of the parties as to which State that may be, the UCCJEA cannot create subject-matter jurisdiction prerequisites—which cannot be established through waiver or consent of the parties. *D.S.*, 602 S.W.3d at 519-20 (Lehrmann, J., concurring) (quoting Tex. Fam. Code §§ 152.201(a)(2)-(3), .207(b)(5)); *see Tex. Ass’n of Bus. v. Tex. Air Control Bd. (TACB)*, 963 S.W.2d 440, 445 (Tex. 1993).

3. The Court has often observed that trial courts have no power to decide a case when they lack subject-matter jurisdiction, nor can subject-matter jurisdiction arise

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<sup>7</sup> *McCormick v. Robertson*, 28 N.E.3d 795, 803 (Ill. 2015); *Kenda v. Pleskovic*, 39 A.3d 1249, 1256-67 (D.C. 2012); *Hightower v. Myers*, 304 S.W.3d 727, 733-34 (Mo. 2010) (en banc); *Williams v. Williams*, 555 N.E.2d 142, 145 (Ind. 1990). To be sure, these States are in the minority, *e.g.*, *Jackson v. Sanomi*, 742 S.E.2d 717, 717 (Ga. 2013), but—as *D.S.* notes—“none [of the majority states] devote analysis to *why* the statute is jurisdictional” and “[t]he issue is not settled,” 602 S.W.3d at 518 & n.83.

from the consent or waiver of the parties, *Dubai Petrol.*, 12 S.W.3d at 75; *TACB*, 963 S.W.2d at 445, but it has not treated defects under the UCCJEA according to these stringent rules, *D.S.*, 602 S.W.3d at 508-09. The *D.S.* concurrence would hold that the UCCJEA’s home-state requirements do not count as subject-matter-jurisdiction requirements, *id.* at 520 (Lehrmann, J., concurring), but that view is implicit in the majority opinion, which rejected the father’s challenge even while acknowledging that his challenge could prove the trial court lacked subject-matter jurisdiction to terminate his parental rights, *see id.* at 514 (majority op.) (“Whatever meaning ‘jurisdiction’ may have in Chapter 152, the collateral attack here is statutorily barred.”); *cf. Rattray v. City of Brownsville*, 662 S.W.3d 860, 869 (Tex. 2023) (“In summary, no court should proceed to the merits . . . if that requires turning a blind eye to jurisdictional concerns that the court itself perceives or that the parties have raised.”).

This Court has not treated the UCCJEA as jurisdictional. Parties may raise challenges to the trial court’s subject-matter jurisdiction for the first time on appeal, *TACB*, 963 S.W.2d at 445, and when an appellate court holds that the trial court lacked subject-matter jurisdiction over the case to begin with, the judgment below is void, *G.X.H.*, 627 S.W.3d at 298 (citing *Browning v. Prostok*, 165 S.W.3d 336, 346 (Tex. 2005)). Moreover, not only may a party raise subject-matter-jurisdiction defects for the first time on appeal, but the appellate court “is *obliged* to ascertain that subject matter jurisdiction exists regardless of whether the parties questioned it.” *In re USAA*, 307 S.W.3d 299, 306 (Tex. 2010) (orig. proceeding) (quoting *Univ. of Tex. Sw. Med. Ctr. v. Loutzenhiser*, 140 S.W.3d 351, 359 (Tex. 2004)). The majority in

*D.S.*, however, implicitly held that (1) parents can consent to—or waive alleged defects as to—UCCJEA jurisdiction in Texas through an unrevoked affidavit of relinquishment; (2) the father could *not* raise the UCCJEA defect for the first time in a collateral attack to the trial court’s subject-matter jurisdiction; and (3) UCCJEA defects could be treated as merely voidable, rather than void *ab initio*. See 602 S.W.3d at 512-14, 517. Thus, the Court should deny Clare’s and Ronnie’s petitions and treat the attack as waivable in the same manner it treated the challenge in *D.S.*

**B. Parents’ challenge to the termination order’s validity is statutorily time-barred.**

The holding of *D.S.* barring the father’s collateral attack under section 161.211(c) should also apply to termination orders for parents who have been personally served under section 161.211(a). That statute states: “the validity of an order terminating the parental rights of a person who has been personally served . . . is not subject to collateral or direct attack after the sixth month after the date the order was signed.” Tex. Fam. Code § 161.211(a). *D.S.* confirmed prior rulings establishing that section 161.211(c)’s six-month bar “have sweeping, all-encompassing breadth, applying to complaints of everything from procedural errors to jurisdictional defects.” 602 S.W.3d at 516 (quoting *Moore v. Brown*, 408 S.W.3d 423, 435 (Tex. App.—Austin 2013, pet. denied)). And it did so by observing that the provision applies to both “‘direct’ and ‘collateral’ attack[s].” *Id.* This logic extends to section 161.211(a), which also contains the same operative language and applies to a parent who has been served. See Tex. Fam. Code § 161.211(a).

Here, the trial court signed its termination order on April 8, 2024, CR.623, but Clare and Ronnie raised no claim concerning UCCJEA jurisdiction until November 4 and 25, 2024, when they filed their respective petitions for review. But their six-month deadline to directly or collaterally attack the order would have been October 8, 2024. *See* Tex. Fam. Code § 161.211(a). Regarding the statute’s service requirement, Clare was personally served after she went to jail in her custody-interference case. 4.RR.147. To the extent the parents may assert that personal service was lacking, personal service under section 161.211(a) was excused because the parents made general appearances through answering the petition. *C.M.C. v. Tex. Dep’t of Fam. & Protective Servs.*, 696 S.W.3d 185, 194 (Tex. App.—Houston [1st Dist.] 2024, pet. denied); 7.RR.71; CR.147, 378. The parents here do not assert a due-process claim that they lacked notice of termination. *E.g., E.R.*, 385 S.W.3d at 566. Indeed, they were represented by counsel, appeared in the trial court, and demanded a jury trial to determine whether their parental rights should be terminated. 7.RR.71; CR.150, 616. Because Clare and Ronnie generally appeared, and because section 161.211(a) does not permit direct or collateral attacks to the termination order after six months, the parents may not use the UCCJEA to void the judgment here.

Beyond this statutory bar, this Court has said in the context of appellate waiver in a parental-rights termination case that

adhering to our preservation rules isn’t a mere technical nicety; the interests at stake are too important to relax rules that serve a critical purpose. As we recently said, “[a]ppellate review of potentially reversible error never presented to a trial court would undermine the Legislature’s dual intent to ensure finality in these cases and expedite their resolution.”

*In re L.M.I.*, 119 S.W.3d 707, 708-09 (Tex. 2003) (first quoting *In re B.L.D.*, 113 S.W.3d 340, 353 (Tex. 2003) (alteration in original); and then citing Tex. Fam. Code § 161.211(a)). As explained above, adhering to standard preservation rules here honors several legislative choices and serves broader policy interests in finality and disincentivizing manipulation of the interstate family-court system.

### **III. Legally Sufficient Evidence Supports the Trial Court’s Termination and Conservatorship Orders.**

If the Court agrees with the Department that the Texas courts had jurisdiction to enter the termination orders, the Court should deny review because the court of appeals correctly upheld the trial court’s termination orders as to both Clare and Ronnie. Ronnie’s brief refuses to engage with his documented problems with law enforcement and methamphetamine, RL.Br.4-5; *K.N.*, 2024 WL 4249163, at \*4-5, and Clare’s brief, in a de facto factual-sufficiency challenge, asks this Court to reweigh the evidence presented to the jury, CN.Br.24-47, a request outside this Court’s jurisdiction.

#### **A. The evidence of endangerment exceeds the legal-sufficiency threshold.**

This Court has long affirmed the legal sufficiency of parental-rights terminations based on conduct far less troublesome than Clare’s and Ronnie’s. Although the Department spent eighteen months across two investigations trying to reunify the family and prevent the need for termination, Clare and Ronnie continued to endanger all four children. Now on appeal, Clare and Ronnie cannot challenge the jury’s

endangerment findings by belatedly complaining about the initial removal or by challenging how the jury determined credibility.

1. **The jury found that Clare endangered the children because she bruised Kim all over her body, dragged Kim by her hair, deprived her of food, and excessively punished her—in addition to exposing the other children to that abuse.**

- a. “Proof that a parent specifically caused an injury is not necessary” for a finding of endangerment, but it does simplify the analysis. *See In re C.E.*, 687 S.W.3d 304, 310 (Tex. 2024) (per curiam) (citing *Tex. Dep’t of Hum. Servs. v. Boyd*, 727 S.W.2d 531, 533 (Tex. 1987)). After all, infliction of an actual, physical injury certainly constitutes “expos[ure] to loss or injury.” *See Boyd*, 727 S.W.2d at 533 (citing *Endanger*, Webster’s New Twentieth Century Dictionary of the English Language 599 (1976)).

And here, Kim’s physical injuries abound. She had bruises on her arm, legs, and bottom; scratches on her neck; and thumbprint marks on her arm. 3.RR.97-98, 100; 7.RR.24. Clare’s excessive spanking caused these bruises: Clare spanked Kim first with a wooden spoon when Kim was an infant, then with a belt when she was older. 3.RR.97-98, 102; 7.RR.24. On at least one occasion, Clare spanked Kim’s shoulder so hard that it still hurt the next day. 7.RR.10. On another occasion, Kim had a red mark on her forehead—which was still visible the next day—from where she had rested her head on a wall while standing against it. 7.RR.11; 2.RR.116-17. These injuries concerned school officials and Kim’s extended family members so much that they all recounted the injuries to the Department on multiple occasions. *E.g.*, 7.RR.24.

While Clare admits that Kim “may have had a bruise” on her bottom from a spanking one time three years before trial, she makes no attempt to explain the rest of Kim’s bruises—which school officials and family members had witnessed for years. CN.Br.32. And even generously construing Clare’s claim that she stopped spanking Kim to “accommodate[]” the Department’s “prefer[ence that] you not . . . spank,” CN.Br.32, the response barely acknowledges that repeatedly bruising a child for years is wrong, *see* 4.RR.133.

More importantly, Clare claimed only that she stopped the *visible* injuries. But Clare also caused invisible injuries when she dragged Kim by her hair. 3.RR.21-22. And those undisputedly occurred after spankings supposedly stopped. *See* 7.RR.15-28. On multiple occasions, Kim told her school officials that Clare would “grab[] and drag[] [Kim] by her hair when she [was] not listening.” 3.RR.21-22. Kim also passed her teacher a note that said that Clare had slapped Kim across her face. 3.RR.25. Thus, the record of physical violence against Kim that the jury heard satisfied the clear-and-convincing standard many times over.

Kim also told her school officials that she sometimes hid in the closet to avoid being dragged by her hair and was often scared to go home after school. 3.RR.84-85. Kim was especially frightened because Clare would sometimes “get[] so mad [that] she want[ed] to ‘rip [Kim’s] head off.’” 7.RR.20. And while Clare points out that Kim later told an investigator that—despite hiding in the closet to avoid it—the hair pulling did not hurt, that is no answer. CN.Br.33. As Kim told the investigator, she said this only because she feared future reprisals from Clare: Specifically, Kim told the investigator that “she’s scared of her mother due to her mother’s anger.”

3.RR.23. Further, Clare’s argument only complains about how the jury weighed the credibility of the evidence—not whether the evidence existed, as a legal-sufficiency challenge requires. *See In re K.M.L.*, 443 S.W.3d 101, 112-13 (Tex. 2014). Another time, Kim privately told an investigator that “she was scared of her mom, because of the way her [mom’s] eyes look . . . when she’s yelling at her.” 2.RR.144. And that look was on full display at the Pampa Walmart when Clare blew up at the school official who reported one of Kim’s outcries. 3.RR.85-86; 4.RR.150. It is no wonder that after the removal, Kim did not want to go home. 4.RR.33, 63.

Then there was the food deprivation. At school, Kim was always hungry at lunch, 7.RR.10, at least in part because Clare prohibited Kim from eating her free school breakfast, 7.RR.12; 2.RR.116-17, 134. And when Kim did eat the school breakfast, Clare punished her. 7.RR.12. Outside school, Kim’s hunger persisted. Kim’s family members and teachers would observe her “scarf[ing] down food and want[ing] seconds as if she has not eaten in days.” 7.RR.11; 2.RR.116-17, 134. One family member even called Kim’s school to ensure that Kim was getting breakfast at school and offered to bring snacks to the school for Kim. 7.RR.11-12. Clare’s generic claims that Kim “had plenty of food to eat” fail to explain these allegations or to create anything more than a credibility determination for the jury. CN.Br.32. Given Clare’s similar inability to explain the years of bruises, it was within the jury’s province to determine that her blanket denial was not credible.

And finally, Clare made Kim stand facing a wall for extended periods every day. That punishment eventually changed to sitting on the floor with her back against the wall “for days.” 3.RR.23, 53; 7.RR.20. Here again, Clare’s response that the wall

standing lasted for only “30 minutes at a time” concerns only how the jury weighed the credibility of the evidence. CN.Br.31. But the jury could weigh the conflicting testimony and, given the repeated outcries and concerns from family members, reasonably determine that Clare’s abbreviated timeline lacked credibility.

Given the extensive evidence of endangerment, Clare’s claim that “[t]he sole basis for . . . termination was [her] refusal to work services” paints an incomplete, incorrect picture of the evidence. CN.Br.35. After all, refusing to comply with her court-ordered service plan was only one of the four grounds on which the jury terminated her rights, CR.617-18, and she does not challenge that ground or the constructive-abandonment ground before this Court, *supra* p. 12.

**b.** Although the jury chose not to terminate Clare’s rights to the other three children because it did not believe termination would be in the children’s best interests, the jury *did* find that Clare endangered those children. And the evidence of endangerment supports the jury’s verdict appointing the Department as permanent managing conservator of the three younger children.

To appoint the Department as managing conservator, the trial court needed to find only that leaving conservatorship with Clare “would significantly impair the child[ren]’s physical health or emotional development.” *J.A.J.*, 243 S.W.3d at 616 (first citing Tex. Fam. Code § 105.005; and then citing *Lewelling v. Lewelling*, 796 S.W.2d 164, 167 (Tex. 1990)). As this Court has explained, evidence of significant impairment “should include the acts or omissions of the parent.” *In re F.E.N.*, 579 S.W.3d 74, 77 (Tex. 2019) (per curiam) (citing *Lewelling*, 796 S.W.2d at 167). And those acts or omissions include “physical abuse, severe neglect, abandonment,

drug or alcohol abuse, or immoral behavior by a parent.” *E.g.*, *In re T.H.*, 650 S.W.3d 224, 238 (Tex. App.—Fort Worth 2021, orig. proceeding) (quoting *In re Caudillo*, No. 03-19-00208-CV, 2020 WL 6478417, at \*5 (Tex. App.—Austin Oct. 28, 2020, orig. proceeding) (mem. op.)). The Court may also consider “parental irresponsibility, . . . 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 482, 492 (Tex. App.—Fort Worth 2015, no pet.); *see In re A.J.H.*, No. 07-19-00327-CV, 2020 WL 1174574, at \*2 (Tex. App.—Amarillo Mar. 11, 2020, no pet.) (mem. op.); *In re M.M.*, No. 12-18-00243-CV, 2019 WL 1032736, at \*3 (Tex. App.—Tyler Mar. 5, 2019, pet. denied) (mem. op.).

Conservatorship orders are subject to a preponderance standard, are “review[ed] only for abuse of discretion, and may be reversed only if the decision is arbitrary and unreasonable.” *J.A.J.*, 243 S.W.3d at 616 (citing *Gillespie v. Gillespie*, 644 S.W.2d 449, 451 (Tex. 1982)). So, even an “evidentiary review that results in *reversal* of a termination order may not yield the same result for a conservatorship appointment.” *Id.* (emphasis added) That is to say, even if the evidence were insufficient to support the termination order as to Kim (and it is sufficient), the evidence would definitely be sufficient to support the conservatorship orders as to the other children.

And because the “harm suffered or the danger faced by *other* children under the parent’s care” contributes to the risks present in a child’s environment, *In re K.N.D.*, 424 S.W.3d 8, 10 (Tex. 2014) (per curiam) (emphasis added) (quoting *In re E.C.R.*, 402 S.W.3d 239, 248 (Tex. 2013)), Clare’s treatment of Kim also contributed to Clare’s significant impairment of the other three children’s welfare. If

“[a]cts of violence or abuse directed toward one child can endanger other children that are not the direct victims of the conduct and support *termination* of parental rights of the other children,” those acts surely support, at a minimum, conservatorship appointments for the other children, as other children in the home are likely to witness the abuse or experience abuse themselves. *In re I.E.*, No. 07-21-00040-CV, 2021 WL 3207712, at \*7 (Tex. App.—Amarillo July 29, 2021, pet. denied) (mem. op.) (emphasis added) (citing *In re Baby Boy R.*, 191 S.W.3d 916, 925 (Tex. App.—Dallas 2006, pet. denied)).

That is exactly what happened here. Kim’s younger sister Karen (then six years old) witnessed some of the abuse and told an investigator about how Clare would spank Kim on her wrists and arm. 2.RR.115, 127; 7.RR.11. And the jury heard testimony that Clare and Ronnie had failed to seek treatment for some of the younger children’s longstanding medical issues. For example, Kate (then four years old) had eleven cavities that later required oral surgery to fill. 4.RR.12. Karen and Kate both needed glasses but did not get them until after they were removed from Clare and Ronnie. 4.RR.12. But more importantly, the fact that Clare had spent years bruising Kim exposed the younger children to a more direct risk of harm—being physically injured themselves.

In addition, Clare fled the jurisdiction with her children. Although she claimed to believe that she was free to leave the State with the children, she admitted that she kept the children out of school in Louisiana precisely to prevent the Department from detecting them. 3.RR.99. In particular, Clare admitted that she knew that if she enrolled the children in school, the Department “would get [them].” 4.RR.143-44.

She briefly claimed that she was homeschooling the children. 4.RR.143. But unlike Texas,<sup>8</sup> Louisiana requires parents to apply to the State for approval to homeschool within fifteen days after they begin homeschooling. La. Stat. Ann. § 17:236.1(A). The record here does not indicate that Clare and Ronnie ever submitted that application. *See* 4.RR.143-44.

After the children’s removal, Clare continued to contribute to the significant impairment of the children’s welfare by choosing not to complete the tasks necessary for reunification. She even failed to do things as simple as providing their new home address in Louisiana to the Department—which was required for reunification. 3.RR.160-71, 182-83. She was also arrested for violating the court order that she told the trial judge point-blank she was refusing to follow. 4.RR.144, 182; 7.RR.137; *see In re J.F.-G.*, 627 S.W.3d 304, 313 (Tex. 2021) (“Imprisonment thus ‘is certainly a factor’ the trial court may weigh when considering endangerment.” (quoting *Boyd*, 727 S.W.2d at 533)).

Clare’s refusal to follow court orders shows that she was willing to subvert the efforts not only of the Department but also those of the Texas judiciary. After all, she also faced charges of obstruction and retaliation for lashing out at the school official who reported one of Kim’s outcries. 4.RR.149; *see also* Tex. Fam. Code § 261.101(b) (requiring teachers to report outcries of abuse). Clare demonstrated poor judgment, resulting in her own imprisonment and, later, her prolonged

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<sup>8</sup> *Homeschool in Texas*, Tex. Home Sch. Coal., <https://thsc.org/homeschool-in-texas>; *see also Tex. Educ. Agency v. Leeper*, 893 S.W.2d 432, 439, 443-44 (Tex. 1994).

separation from her children. *See T.H.*, 650 S.W.3d at 238. Those consequences, as Clare and Ronnie both admit, were avoidable had the parents chosen working toward reunification with their children over flouting the law. CN.Br.37; RL.Br.29.

And Clare made little effort to see the children during her periods of visitation. 3.RR.164-65; *cf.* CR.254, 271. As the children's CASA worker testified, Clare appeared to have little interest in reunification throughout the pendency of the case. 3.RR.229-30. By no measure has the trial court abused its discretion in finding that the conservatorship order was justified when Clare not only exposed the children to the risks of injury and her own imprisonment, but also failed to complete the services necessary to secure the children's return.

In response, Clare complains about the children's initial removal. But that issue is now moot. CN.Br.35-37, 39-43. Clare could have challenged the removal order through mandamus, but she did not. *See In re A.A.*, 670 S.W.3d 520, 528-29 (Tex. 2023) (citing *E.C.R.*, 402 S.W.3d 239, 248 & n.8 (Tex. 2013)). And because the termination order superseded the removal order, she cannot challenge it now. *See, e.g., In re B.M.*, No. 12-18-00094-CV, 2018 WL 4767179, at \*2 (Tex. App.—Tyler Oct. 3, 2018, no pet.) (mem. op.).

To the extent that Clare complains that the trial court excluded the administrative report, 7.RR.213-23, she does not specify how the court of appeals erred, CN.Br.37-38. The trial court excluded the report under Rule 403 because the report related to the propriety of the initial removal, which (1) was not at issue, (2) was subject to a limine order, 4.RR.103, and (3) is now moot, *see, e.g., B.M.*, 2018 WL 4767179, at \*2; *see also A.A.*, 670 S.W.3d at 528-29; Tex. R. Evid. 403. And in any

event, as the court of appeals explained, the report’s definition of “emotional abuse” differs from the termination statute’s definition of emotional “endangerment”—a distinction easy for the jury to confuse. *Compare* Tex. Admin. Code § 707.453(b) (defining emotional abuse), *with* Tex. Fam. Code § 161.001(b)(1)(D)-(E) (defining endangerment). The parents identify no error in the court of appeals’ careful analysis.

**2. The jury found that Ronnie endangered the children because he failed to protect Kim from Clare’s abuse, possessed felony-level drugs, and made little effort at reunification.**

Ronnie also endangered the children, but in different ways. *First*, he failed to protect Kim from Clare’s excessive punishment or to protect the other children from being exposed to it. *Then*, after the children were removed, he got caught with a felony amount of methamphetamine after a police chase—an incident he has chosen not to address in his brief on the merits. And *finally*, he, like Clare, made little effort at reunification.

a. Endangering conduct need not “be directed at the child,” nor need “the child ‘actually suffer[] injury.’” *C.E.*, 687 S.W.3d at 310 (alteration in original) (quoting *In re J.W.*, 645 S.W.3d 726, 748 (Tex. 2022)). Nor does endangerment require an “actual and concrete threat of injury.” *Boyd*, 727 S.W.2d at 533 (emphasis omitted). Indeed, this Court has “expressly disapprove[d]” of characterizing “endangerment” as “danger.” *Id.* Rather, endangerment merely requires an “*expos[ure]* to loss or injury”—that is, something “more than a threat of metaphysical injury or

the possible ill effects of a less-than-ideal family environment.” *Id.* (emphasis added) (citation omitted).

Although “[p]arents typically can be counted on to move heaven and earth to protect their children,” the failure to do so sometimes “entails the need for an escape hatch.” *J.W.*, 645 S.W.3d at 753 (Young, J., concurring). After all, a parent’s failure to protect their child “is among the most serious breaches of trust imaginable.” *Id.* That is why a parent’s decision to “accept[] the endangering conduct of other people” is itself endangerment. *In re D.L.*, No. 10-23-00374-CV, 2024 WL 1817743, at \*3 (Tex. App.—Waco Apr. 25, 2024, no pet.) (mem. op.).

Because the “harm suffered or the danger faced by other children under the parent’s care” is one of the risks of a child’s environment, *E.C.R.*, 402 S.W.3d at 248; *K.N.D.*, 424 S.W.3d at 10, Kim’s bruises, scratches, and thumbprint marks all demonstrate a risk to the younger children, as well. That Kim was Ronnie’s stepdaughter, rather than his biological daughter, changes nothing about the analysis. *See Baby Boy R.*, 191 S.W.3d at 925; *see also Boyd*, 727 S.W.2d at 533. As Kim’s stepfather and a member of her household, Ronnie was “responsible for [her] care, custody, [and] welfare.” *See* Tex. Fam. Code § 261.001(5)(B)-(C). But although Ronnie was in the home during the abuse and was aware of it, he did nothing to stop it. The court of appeals thus correctly held that Ronnie acknowledged the risk to his children—he even considered fleeing Clare with them for their own protection—but decided such protective actions were unnecessary. *K.N.*, 2024 WL 4249163, at \*4 (“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.” (citing Tex. Fam. Code § 161.001(b)(1)(E)).

**b.** Ronnie also endangered the children through his drug activity. Not only was he arrested for possession of methamphetamine, 3.RR.12-13, but he also tested positive for amphetamines months later, 3.RR.173-74; *but see* 3.RR.193-94. Every court of appeals in this State agrees that “a parent’s continued drug use after removal of a child—with knowledge that his or her parental rights are at stake—is especially salient because . . . [it] shows either an inability or unwillingness to place the responsibilities of parenthood ahead of the parent’s desire to use drugs.” *In re E.D.*, 682 S.W.3d 595, 609 (Tex. App.—Houston [1st Dist.] 2023, pet. denied).<sup>9</sup> Illegal drug use demonstrates a “a voluntary, deliberate, and conscious” choice to

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<sup>9</sup> See also *In re B.F.*, No. 02-23-00131-CV, 2023 WL 5615867, at \*6 (Tex. App.—Fort Worth Aug. 31, 2023, no pet.) (mem. op.); *F.C. v. Tex. Dep’t of Fam. & Protective Servs.*, No. 03-19-00625-CV, 2020 WL 101998, at \*8 (Tex. App.—Austin Jan. 9, 2020, no pet.) (mem. op.); *In re J.C.R.*, No. 04-18-00949-CV, 2019 WL 2110109, at \*2 (Tex. App.—San Antonio May 15, 2019, pet. denied) (mem. op.); *In re C.V.L.*, 591 S.W.3d 734, 751 (Tex. App.—Dallas 2019, pet. denied); *In re S.K.A.*, 236 S.W.3d 875, 901 (Tex. App.—Texarkana 2007, pet. denied); *In re F.T.*, No. 07-12-0495-CV, 2013 WL 1182948, at \*3 (Tex. App.—Amarillo Mar. 20, 2013, no pet.) (mem. op.); *In re A.H.*, 679 S.W.3d 817, 830 (Tex. App.—El Paso 2023, pet. denied) (mem. op.); *In re M.S.*, 662 S.W.3d 620, 629 (Tex. App.—Beaumont 2023, pet. denied); *In re T.B.*, No. 10-18-00247-CV, 2018 WL 5049062, at \*2 (Tex. App.—Waco Oct. 17, 2018, no pet.) (mem. op.); *In re J.S.*, 687 S.W.3d 541, 551 (Tex. App.—Eastland 2024, no pet.); *In re R.M.*, No. 12-21-00099-CV, 2021 WL 4898460, at \*4 (Tex. App.—Tyler Oct. 20, 2021, pet. denied) (mem. op.); *In re D.J.E.*, No. 13-08-00349-CV, 2008 WL 5196608, at \*4 (Tex. App.—Corpus Christi–Edinburg Dec. 11, 2008, no pet.) (mem. op.); *In re S.R.*, 452 S.W.3d 351, 361-62 (Tex. App.—Houston [14th Dist.] 2014, pet. denied).

“expose[] the child to the possibility that the parent may be impaired or imprisoned.” *R.M.*, 2021 WL 4898460, at \*4 (citations omitted). And here, Ronnie’s decision to abuse illegal drugs not only *exposed* him to criminal arrest but actually *resulted* in it. *Supra* pp. 9-10.

And Ronnie risked not only incarceration by using drugs. He also (literally) ran from the police, presumably in an effort to hide his drugs. 3.RR.12. Thankfully, none of the children were travelling with Ronnie during the 130-miles-per-hour police chase when he crashed on a gravel driveway, which could have proven fatal for any of the children. 3.RR.11-12. But the children were saved from that severe risk precisely because the Department removed them two months before. That is how the child-welfare system is supposed to work.

In response, Ronnie argues that he did not “endanger” the children because he did not physically harm them. RL.Br.31-32. But as this Court has held, “endangerment does not require a parent’s drug use to directly harm the child.” *In re R.R.A.*, 687 S.W.3d 269, 278 (Tex. 2024); *In re A.V.*, 697 S.W.3d 657, 659 (Tex. 2024) (per curiam) (upholding termination where drug use, coupled with failure to perform services, demonstrated a “pattern of continued substantial risk of harm to the child sufficient to support a trial court’s finding of endangerment”). Rather, it was Ronnie’s “pattern of parental behavior that present[ed] a substantial risk of harm to the child[ren].” *See R.R.A.*, 687 S.W.3d at 278. Ronnie’s brief is silent concerning these events.

That “pattern of parental behavior,” *id.*, did not stop at exposure to physical harm. Ronnie also made little effort to visit the children during his periods of

visitation, 3.RR.164-65; CR.254, 271, and made virtually no effort to comply with his service plan, which was necessary for reunification: He, like Clare, failed to provide his new address to the Department or attend counseling, 3.RR.160-71, 182-83.

But rather than contest this evidence, Ronnie seeks to collaterally attack the initial removal, generally averring that the “removal was not predicated on actual harm.” RL.Br.18-20. Not so. The trial court found—twice—that the children were in “immediate danger” and that allowing the children to remain in the home “would be contrary to [their] welfare.” CR.113, 151.

And any complaints about those findings are now moot, anyway. *See, e.g., B.M.*, 2018 WL 4767179, at \*2. “[A] temporary order which makes findings to support removal is superseded by the entry of a final order of termination, rendering moot any complaint about the temporary order.” *Id.* (citations omitted); *see* Tex. Fam. Code § 262.204(a); *see also Jarrett v. Jarrett*, No. 09-23-00168-CV, 2025 WL 1338095, at \*9 (Tex. App.—Beaumont May 8, 2025, no pet. h.) (collecting cases); *cf. A.A.*, 670 S.W.3d at 528-29 (“[T]emporary orders in suits affecting the parent-child relationship are reviewable by mandamus.”). So, Ronnie’s “complaints about the adversary hearing and the temporary order resulting from that hearing are . . . not subject to review on [this] appeal.” *B.M.*, 2018 WL 4767179, at \*2. Indeed, Ronnie *admitted* that he could not challenge the removal in this appeal by petitioning for a writ of

mandamus three weeks before trial.<sup>10</sup> CR.430, 495-96; *B.M.*, 2018 WL 4767179, at \*1 (citations omitted); *see A.A.*, 670 S.W.3d at 528-29.

**3. In any event, the jury found that two more grounds support termination—and those findings remain undisturbed.**

Because of the court of appeals affirmed the terminations under paragraphs (D) and (E), it did not reach the jury’s findings under paragraphs (N) and (O). *See In re N.G.*, 577 S.W.3d 230, 237 (Tex. 2019) (per curiam) (requiring courts of appeals to analyze in detail supporting grounds for terminations under paragraphs (D) and (E)). Those grounds for termination therefore remain undisturbed, and Clare and Ronnie do not challenge them before this Court.

To start, Clare and Ronnie undisputedly failed to comply with their service plans under paragraph (O), which permits termination if a parent failed to comply with a court-ordered service plan necessary for reunification. Tex. Fam. Code § 161.001(b)(1)(O); *see* CR.49-50, 150-61, 267. Clare agrees that “[i]t is undisputed that [she] refused to work services or cooperate with the Department.” CN.Br.39. And for his part, Ronnie admits that he “refused” to comply with the service plan because he viewed it as violation of “his right to privacy,” an “unnecessary state intrusion,” and a “coercive action unsupported by legal findings.” RL.Br.24. The record supplies ample evidence to corroborate those conscious refusals. Moreover,

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<sup>10</sup> Ronnie petitioned for mandamus on September 19, 2023, almost a year after the removal. *In re R.L.*, No. 07-23-00315-CV, 2023 WL 7118056, at \*1 (Tex. App.—Amarillo Oct. 27, 2023, orig. proceeding). The court of appeals and this Court both denied mandamus relief. *Id.*; CR.496.

Clare and Ronnie made little effort to visit the children during their periods of visitation and failed to attend counseling. 3.RR.160-71, 182-83. *Contra* 4.RR.140. And the children's CASA worker testified that Clare seemed uninterested in reunification throughout the pendency of the case. 3.RR.229-30.

Next, for similar reasons, Clare and Ronnie constructively abandoned their children under paragraph (N). Under that paragraph, a parent constructively abandons a child if

(1) the Department had permanent or temporary conservatorship of the child for at least six months; (2) the Department made reasonable efforts to return the child to the parent; (3) the parent did not regularly visit or maintain significant contact with the child; and (4) the parent demonstrated an inability to provide the child with a safe environment.

*In re G.P.*, 503 S.W.3d 531, 533 (Tex. App.—Waco 2016, pet. denied) (citing Tex. Fam. Code § 161.001(b)(1)(N)).

Here, the Department had conservatorship for over a year before the case went to trial. The Department issued service plans to both Clare and Ronnie, but they refused to put forth the effort to comply, instead choosing to hide out in Louisiana. They also failed to visit the children regularly, and the trial court eventually terminated those visits for noncompliance with the service plan's other terms. 7.RR.105. And Clare and Ronnie have made no efforts to resolve the issues that originally rendered the environment unsafe for the children—principally, Clare's anger issues and excessive punishments, Ronnie's drug issues, and their joint exposure of the younger children to Kim's abuse. Because the alternative undisputed grounds support the

terminations, Clare’s and Ronnie’s complaints about the endangerment grounds are futile.

**B. This Court lacks jurisdiction to review the factual sufficiency of the evidence.**

Finally, this Court does “not have jurisdiction to conduct [the] factual sufficiency review” Clare seeks here. *See In re H.R.M.*, 209 S.W.3d 105, 110 (Tex. 2006) (per curiam) (citing Tex. Const. art. V, § 6). Many of Clare’s arguments challenge how the jury weighed the evidence and the credibility determinations that the jury made. CN.Br.24-40. But “determining the credibility of witnesses and the weight to be given their testimony” is exactly what a factual-sufficiency review requires. *In re Commitment of Stoddard*, 619 S.W.3d 665, 668 (Tex. 2020). And even in factual-sufficiency review, a court of appeals must still “presume that the factfinder resolved disputed evidence in favor of the finding if a reasonable factfinder could do so.” *Id.*; *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002). And the court may not “supplant the jury’s judgment with its own.” *H.R.M.*, 209 S.W.3d at 108 (citation omitted).

Although this Court may “ensure that the intermediate appellate courts follow applicable legal standards in making their review of the evidence,” *In re S.M.R.*, 434 S.W.3d 576, 586 (Tex. 2014) (citation omitted), that review is limited to ensuring that the court of appeals “consider[ed] the record in its entirety,” *In re A.B.*, 437 S.W.3d 498, 505 n.7, 507 (Tex. 2014). Because the court of appeals affirmed the jury’s verdict, the court was not required to detail the evidence in its opinion. *Id.* at 505. But the court chose to do so, and as it concluded, a reasonable jury could have found sufficient evidence to terminate Clare’s and Ronnie’s parental rights based on

endangerment. Therefore, the court of appeals properly carried out its factual-sufficiency review, and this Court lacks jurisdiction to second-guess it.

**PRAYER**

The Court should deny Clare's and Ronnie's petitions for review. But if it chooses to grant, it should affirm.

Respectfully submitted.

KEN PAXTON  
Attorney General of Texas

AARON L. NIELSON  
Solicitor General

BRENT WEBSTER  
First Assistant Attorney General

/s/ Cory A. Scanlon  
CORY A. SCANLON  
Assistant Solicitor General  
State Bar No. 24104599  
Cory.Scanlon@oag.texas.gov

Office of the Attorney General  
P.O. Box 12548 (MC 059)  
Austin, Texas 78711-2548  
Tel.: (512) 936-1700  
Fax: (512) 474-2697

MEAGAN CORSER  
Assistant Attorney General

REBECCA SAFAVI  
Appellate Attorney  
Office of General Counsel  
Texas Department of Family and  
Protective Services

Counsel for Respondent

## **CERTIFICATE OF COMPLIANCE**

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/s/ Cory A. Scanlon  
CORY A. SCANLON

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Associated Case Party: C. N.

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Sharpee	788401	mike@sharpeelawfirm.com	6/20/2025 4:11:30 PM	SENT

Associated Case Party: The Children

Name	BarNumber	Email	TimestampSubmitted	Status
Taylor Harris	24072143	rickjharris.law@gmail.com	6/20/2025 4:11:30 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	6/20/2025 4:11:30 PM	SENT
Nancy Villarreal		nancy.villarreal@oag.texas.gov	6/20/2025 4:11:30 PM	SENT
Cory Scanlon		cory.scanlon@oag.texas.gov	6/20/2025 4:11:30 PM	SENT
Meagan Corser	24142802	meagan.corser@oag.texas.gov	6/20/2025 4:11:30 PM	SENT

Associated Case Party: R. L.

Name	BarNumber	Email	TimestampSubmitted	Status
Jay Michelsen	24088057	jaymichelsen.esq@gmail.com	6/20/2025 4:11:30 PM	SENT