

**No. 24-0881**

**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, Texas  
No. 07-24-00146-CV

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**RESPONSE TO PETITION FOR REVIEW**

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TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

## **IDENTITY OF PARTIES AND COUNSEL**

In accordance with Texas Rule of Appellate Procedure 38.2(a)(1)(A), the Department adopts the Identity of Parties and Counsel set out in “Clare’s” brief<sup>1</sup>.

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<sup>1</sup> To protect the confidentiality of the child, the Department will refer to the appellant petitioners as “Clare” and “Ronnie.” TEX. R. APP. P. 9.8.

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## STATEMENT OF THE CASE

*Nature of the Case:* Involuntary termination of parental rights under chapter 161 of the Texas Family Code as to the subject children

*Trial Court:* 223<sup>rd</sup> District Court, Gray County Texas, the Honorable Judge Phil Vanderpool presiding.

*Disposition in the Trial Court:* After a jury trial, the court found by clear and convincing evidence that termination of the parent-child relationship between Appellant Clare and the oldest child is in the child's best interest and that Appellant engaged in acts or conduct that satisfied one or more of the statutory grounds for termination. The court's order also named Appellant Clare the possessory conservator of the youngest three children. The court also found by clear and convincing evidence that termination of the parent-child relationship between Appellant Ronnie and the three youngest children is in the children's best interest and that Appellant engaged in acts or conduct that satisfied one or more of the statutory grounds for termination

*Parties in the Court of Appeals:* Clare, Appellant  
Ronnie, Appellant  
Texas Dept. of Family and Protective Services,  
Appellee

*Disposition in the Seventh Court of Appeals:* After a review of the evidence, the Seventh Court of Appeals found the evidence was sufficient to support the trial jury's determination for termination of parental rights and conservatorship was supported by the evidence. Judgment affirmed.

*Justices Participating in Decision* Opinion by Brian Quinn, Chief Justice; also sitting,  
Lawrence M. Doss, Justice; Judy C. Parker, Justice

## **ISSUES PRESENTED; REASONS FOR DENIAL OF PETITION FOR REVIEW**

The children resided in Texas for more than six months immediately preceding the filing of the petition. Clare and Ronnie intentionally fled to Louisiana in an attempt to avoid Department involvement. The children also have substantial connection with Texas and significant evidence concerning them exists here. Should their issue be denied?

Ronnie and Clare fail to challenge the Court's decision affirming termination of their parental rights under (N), (O), and best interest, and their conservatorship issues are therefore subsumed. The Court of Appeals relied on established principles when finding direct physical abuse, failure to remove children from an abusive environment, criminal conduct, drug abuse, failure to comply with court-ordered services, instability, medical neglect, and educational neglect all support termination of parental rights. Should their issues be rejected?

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**RESPONSE TO PETITIONS FOR REVIEW**

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To the Honorable Justices of the Supreme Court of Texas:

Respondent, the Texas Department of Family and Protective Services, submits its *Response* to the *Petitions for Review* filed by both “Clare” and “Ronnie”.<sup>1</sup>

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<sup>1</sup> In accordance with Rule of Appellate Procedure 9.8, the Department will refer to the petitioners as “Clare” and “Ronnie” and the children as “K.N.”, “K.L.1”, “K.L.2”, and “K.L.3.”. TEX. R. APP. P. 9.8.

After a jury trial, the Honorable Phil Vanderpool entered orders which: 1) terminated Clare's parental rights to the oldest child, K.N. under Texas Family Code subsections 161.001(b)(1)(D), (E), (N), and (O) and a finding that termination was in the child's best interest; 2) terminated Ronnie's parental rights to K.L.1, K.L.2, and K.L.3 under Texas Family Code subsections 161.001(b)(1)(D), (E), (N), and (O) and a finding that termination was in the children's best interest; 3) named Clare as the possessory conservator of K.L.1, K.L.2, and K.L.3; and 4) named the Department as the managing conservator of all four children. CR 1:605-26; APPENDICES 1 and 2. The final order was affirmed on appeal on September 19, 2024. *In re K.N., K.L., K.L., and K.L.*, No. 07-24-00146-CV, 2024 WL 4249163 (Tex. App.—Amarillo Sept. 19, 2024, pet. filed). Applying clear and established authority, the Court of Appeals held that the evidence was sufficient to support the final order and overruled their evidentiary issues. *Id.*

For the first time, Clare and Ronnie both allege the trial court did not have jurisdiction over the matter under the Uniform Child Custody Jurisdiction and Enforcement Act. CLARE'S PETITION 10-15; RONNIE'S PETITION 11-16. They both also question whether it was proper to terminate parental rights and deny conservatorship based on a refusal to comply with the Department, which the

Department will interpret as a challenge to the sufficiency of the evidence supporting subsections (D) and (E) and conservatorship. Because the Court of Appeals relied on clear precedent to reach its decision, and the *Petitions for Review* present no divide in authority or novel issue, the Department respectfully requests that this Honorable Court deny the *Petitions for Review*.

### **STATEMENT OF FACTS**

The Department adopts the facts considered by the Court of Appeals in its opinion, with the addition of the following:

#### ***2021 Department Involvement***

The Department received a report on January 21, 2021 alleging concern for physical abuse of K.N. by Clare, including harsh discipline, spanking, a hurt shoulder, and always asking for extra food. P. Ex. 1.

Laurie Martinez, Department investigator, confirmed she received a report of physical abuse of K.N. by Clare. RR 2:111. She stated she went to the home and spoke with them on January 25, 2021. RR 2:111. She related she spoke with Clare, who denied any physical abuse. RR 2:111. Ms. Martinez recalled the report stated K.N. had an injured shoulder as a result of physical discipline from Clare. RR 2:112.

She related there were also concerns about K.N. being forced to stand on a wall for very long periods of time. RR 2:112. Ms. Martinez discussed this allegation with Clare, who explained “[K.N.] has been misbehaving quite a bit, and she -- as a form of punishment [K.N.] was made to stand on the wall no longer than 30 minutes at a time.” RR 2:112. Ms. Martinez related there were also reports that K.N. was eating very fast at school and always wanting seconds; she recalled Clare told her K.N. was picky but she gets what everyone else gets at home. RR 2:113.

Ms. Martinez testified she also discussed the allegations with Ronnie, who responded “basically the same” as Clare. RR 2:113.

Ms. Martinez recalled K.N. was nine at the time, and: “She said she had to stand on the wall every day until May, because she was talking back and bad grades. She said that she could only eat, do her homework, and get ready for bed, other than that she was standing on the wall.” RR 2:114. She recalled the child said her shoulder hurt but made no other outcry and denied it was Clare who hurt her. RR 2:114, 122. She stated K.N. told her that Clare cooks every night but she usually eats a ham sandwich. RR 4:114. Ms. Martinez also spoke with K.L.1, who told her she receives spankings on the arm and K.N. gets spankings on the wrist. RR 2:115. She stated that the other two children were too young to talk to. RR 4:115.

Ms. Martinez recalled Clare and Ronnie stated they would not engage in services, claiming they would seek their own counseling. RR 2:119. Ms. Martinez testified Ronnie and Clare reported behavioral problems with K.N., stating “she would throw fits, and she – and [Clare] said that [K.N.] did punch a hole in her wall. No, not punch, kick a hole in her wall being so upset one day.” RR 2:126.

The caseworker contacted family members, who disclosed concerns that K.N. always eats fast and asks for seconds. P. Ex. 1. The family members also noted concerns K.N. was treated differently than the other children and suffered harsh punishment. P. Ex. 1. Ms. Martinez testified that after she spoke with the family, she received notice from the children’s school in February that Ronnie informed the school that no Department worker was to interview the children because it is more challenging to ensure child safety. RR 2:1115-16, 135.

On March 26, 2021, the Department filed its *Petition for Orders in Aid of Investigation of a Report of Child Abuse or Neglect* requiring K.N. and K.L.1 to be transported for a forensic interview. P. Ex. 1. The order granting the Department’s request was signed the same day. P. Ex. 2. Ms. Martinez testified the Department filed a petition in aid of investigation because: “We continued to receive concerns from family members, and school personnel that -- regarding [K.N.], and her

discipline, and her not being allowed to eat at school. Not being able -- not being allowed to eat breakfast at school, and she was usually starving by lunchtime.” RR 2:116. She clarified later the child said she was not allowed to eat breakfast at school because she eats breakfast at home. RR 2:140.

’Ms. Martinez testified that during a forensic interview, K.N. was “very, very worried that she was going to be taken from her – her parents. She kept saying that [Clare] was telling her that a foster home was a very, very bad place for mean children, and she was very emotional.” RR 2:117-18. She testified K.N. also outcried that once or twice in the past, Ronnie had made her kneel on rice for about ten minutes at a time and also that she was scared of Clare. RR 2:118, 144.

Ms. Martinez discussed the food issues with K.N., who told her that “her mother cooks, that -- and she would eat a ham sandwich. I think the concern is, she was not allowed to eat breakfast at school . . . And so she would get to school and be starving, so she would eat breakfast, and she would be afraid that [Clare] would . . . find out”. RR 2:134.

Ms. Martinez testified that after talking with the children and school personnel, there were concerns K.N. was being scapegoated. RR 2:128. Ms. Martinez testified she discussed the situation with Ronnie, who said sometimes

Clare's behavior is "out there" and he had considered leaving with the children, but it never "panned out." RR 2:130.

Ms. Martinez testified that following the interview, she transported the children back home, and she discussed services and a PCSP for K.N. RR 2:118. She related that Ronnie and Clare did not want to do a PCSP, but they agreed for K.N. to stay with Clare's grandparents. RR 2:119. Ms. Martinez testified the case was closed at that time in March 2021. RR 2:120. K.N. returned to live with Clare and Ronnie some time thereafter. P. Ex. 3.

On March 26, 2021, the caseworker received a phone call from the school superintendent, who disclosed K.N. was afraid of Clare finding out she was eating breakfast at school. P. Ex. 1. After K.N. spilled syrup on her shirt one day, Clare discovered K.N. was eating breakfast at school, and thereafter K.N. was getting only toast and water at home as punishment. P. Ex. 1. The superintendent relayed that K.N. told another student she was forced to kneel on rice as punishment. P. Ex. 1. The superintendent also related family members had called the school concerned K.N. was not getting enough food. P. Ex. 1. The superintendent "expressed worry and great concern" for K.N. P. Ex. 1.

## ***2022 Department Involvement***

On March 4, 2022, the Department received an intake alleging physical abuse of K.N. by Clare, stating that Clare grabs and drags K.N. by the hair and is abusive toward her. P. Ex. 3. The intake reported Clare had told K.N. not to tell anyone what happens at home and if the Department were called, K.N. would be placed in a “bad home.” P. Ex. 3.

The caseworker went to K.N.’s school on March 8, 2022. P. Ex. 3. K.N. told the caseworker she wanted to talk to her but was scared, as she would get in trouble for talking to the Department. P. Ex. 3. K.N. reported that Clare yells at her and had pulled her hair. P. Ex. 3. K.N. disclosed she was worried that one day Clare would “lose her anger . . . and just do anything.” P. Ex. 3. K.N. told the caseworker that Ronnie will often talk Clare into returning K.N.’s iPad and letting her come out of her room to go outside to play. P. Ex. 3. Leitha Little, Department investigator testified this demonstrated Ronnie knew what Clare was doing. RR 3:49.

The caseworker went to the home, but Clare would not speak with her. P. Ex. 3. Ronnie called the caseworker later and similarly reported that they would not allow access to the home or cooperate. P. Ex. 3. Later in the evening, Ronnie allowed the caseworker to come to the outside of the home so she could see the

children, but not speak with them. P. Ex. 3.

On March 11, 2022, the Department received another report stating K.N. passed a note at school saying she was being hurt at home; she stated her hair was being pulled and her face was being slapped. P. Ex. 3. The caseworker went to the school and spoke with school personnel, who stated that in February 2020, she observed bruising on K.N.; K.N. disclosed the bruises were from Clare spanking her and hitting her arms by accident while trying to spank her. P. Ex. 3.

Ms. Little was assigned to the investigation in March 2022 regarding Clare and all four children. RR 3:21. She stated there were allegations of physical abuse of K.N. by Clare, specifically that Clare “grabs and drags [K.N.] by her hair when she doesn’t listen.” RR 3:21. She stated that the report also stated Clare told K.N. that what happens at home “is not to be talked about at school.” RR 3:22.

Ms. Little testified that she made contact with K.N. at school, and the child was “scared. She stated that she was scared to talk with me due to the last CPS report”. RR 3:22. She stated that K.N.:

did say that her mom had pulled her hair She said that when her mom pulled her hair it did not hurt. She said that she’s scared of her mother due to her mother’s anger. She said her mom’s working on her anger issues. [K.N.] -- you know, she said her mom disciplines her by yelling

at her. [K.N.] stated that when her mom gets mad she wants to rip her head off, but she said her mom does not do that. [K.N.] did say that when she gets in trouble that she has to do wall sits and write sentences.

RR 3:22-23. Ms. Little testified she felt K.N. was being treated differently and that posed an immediate danger. RR 3:31. She stated that she felt there was emotional abuse in the home. RR 3:31.

Ms. Little testified that on March 20, she received a new report that K.N. gave her teacher a note saying she had been dragged by her hair by Clare. RR 3:25. She testified she went to talk with K.N. about the note, and K.N. told her “she could no longer speak with me because she had gotten in trouble the first time that she had spoken with me.” RR 3:26. Ms. Little stated she then went to Clare’s home and Clare refused to speak with her. RR 3:26. She related that Ronnie called her again later and again reiterated he had no concerns and he would not be cooperating. RR 3:26. Ms. Little related she spoke with Ronnie and Clare about counseling, but Clare claimed she was already in counseling although she refused to provide the name of the counselor. RR 3:27.

On March 23, 2022, the caseworker met with K.N. at school. P. Ex. 3. K.N. disclosed that she had gotten into “a lot of trouble” after speaking with her the

previous time. P. Ex. 3. K.N. disclosed she had to sit on the wall “for days” after the last time, so she had “learned her lesson” and would not speak with the Department again. P. Ex. 3.

On March 25, 2022, the caseworker attempted to speak with Clare and Ronnie, but both refused to cooperate. P. Ex. 3. The caseworker spoke with other family members, both of whom disclosed concerns about how Clare treats K.N., including past incidents of leaving bruising and scratching. P. Ex. 3. Clare’s sister reported that Ronnie is aware of how K.N. is treated but makes excuses for Clare’s behavior. P. Ex. 3.

On March 29, 2022, the Department filed a *Petition for Temporary Order for Required Participation in Services*. P. Ex. 3. Ms. Little testified that because they refused to engage in services or cooperate, the Department sought an order of participation. RR 3:27. She stated the Department was asking for counseling for K.N. as well as counseling, anger control classes, and psychological evaluation for Clare. RR 3:27. The *Petition* included all four children but named only Clare as the respondent. P. Ex. 3. The *Temporary Order for Required Participation in Services* was entered April 8, 2022 requiring Clare to participate in certain services. P. Ex. 3.

Ms. Little testified she went to the home twice in August 2022. RR 3:32. She explained there were additional concerns reported and the children were supposed to be in school. RR 3:47. She stated the first time was on August 18 and she was not able to make contact with anyone at that time. RR 3:47-48. She stated she went back shortly thereafter, and law enforcement was already there; she confirmed law enforcement had been able to see the children that day. RR 3:48.

Ms. Little described K.N.'s demeanor during their conversations: "Anytime [K.N.] would start to make an outcry she would automatically take that back and say, you know, my mom's working on things. She didn't mean to hurt her. When she pulled her hair, it didn't hurt. She always took up for her mother." RR 3:41. She related K.N. told her the wall stands were her discipline instead of spanking. RR 3:41-42. She testified K.N. also told her that her siblings would get to go outside to play, but she would have to stay inside and watch as a form of punishment. RR 3:42.

Falone Gonzales, former SPED employee with Austin Elementary, testified that March 4, 2022, K.N. approached her and asked to go to the counselor; Ms. Gonzales explained the counselor was not there that day, and so K.N. told her:

That she was scared to go home. That she – that her mom had been dragging her by her hair. She would hide from her in the closet. She told me that she had previously, I guess, been removed from the home.

That when she came into the home everything was good for a while, and then Mom started doing those things to her. Started telling her if she told anybody CPS would get involved, and she would go to a foster home where she was treated worse. What happened at home needed to stay at home. That she had tried -- she wanted to tell her grandma by the situation, but Mom wouldn't let her see her grandma, and that she was scared to go home

RR 3:84-85. Ms. Gonzales testified she accordingly made a report to the Department. RR 3:86.

Ms. Gonzales recalled she encountered Clare twice after making the referral, with the first being around June 28, 2022 at Walmart, and Clare told her she “needed to stay away from her daughter. That when school resumed that I better have no contacts. That I needed to watch my back.” RR 2:86-87. Ms. Gonzales testified she had to eventually push past Clare because she was just “going on and on”, and “At that point I walked up to like where the security things are where you walk through. And she was at the door screaming that I better watch my fucking back. Calling me a bitch. Telling me that Brittany Deleon better watch her back.” RR 2:87.

Ms. Gonzales testified a second incident happened a couple of weeks later, also at Walmart, which ultimately escalated into both her and Clare raising their voices when Clare would not leave her alone.

RR 2:88.

### *Current Case*

Jarrett Stone, FBSS worker, stated he was unable to discuss services with Ronnie and Clare, following the Department's filing of the *Petition for Temporary Order for Required Participation in Services* stating that following his assignment to the case in April, he called four times and went to the house twice, but was not able to get in touch with them. RR 3:63.

Mr. Stone testified that in May, they temporarily halted the attempts to contact Ronnie and Clare because a request for a *de novo* hearing was filed following the entry a *Temporary Order for Required Participation in Services* requiring Clare to participate in services. RR 3:64; CR 1:35-38. He related he attempted one in-person visit on May 12, but then received notice of the appeal. RR 3:65.

On July 14, 2022, following a *de novo* hearing, the court entered a *Temporary Order Required Participation in Services after De Novo Hearing Before the Referring Court*, again requiring Clare to participate in services. CR 1:49. Mr. Stone testified he accordingly resumed contact attempts on July 8. RR 3:65. He related he attempted five phone calls and three in-person visits with Clare in July. RR 3:66. He related none of these attempts were successful. RR 3:66.

Mr. Stone recalled that in August, he attempted to call Clare six times and three in-person visits, none of which were successful. RR 3:67.

Mr. Stone stated he never was able to help Ronnie and Clare do services or even see the children. RR 3:68.

The Department filed its *Original Petition for Protection of a Child, for Conservatorship, and for Termination in Suit Affecting the Parent-Child Relationship* on August 31, 2022 and the court signed an emergency order granting conservatorship to the Department the same day P. Ex. 7.

Clare claimed she and Ronnie moved to Louisiana on August 20, 2022. RR 4:193. Clare and Ronnie provided no supporting documentation or evidence that they moved to Louisiana before August 31, 2022. RR *passim*.

Mr. Stone explained he talked with Ronnie on the phone on August 31, 2022 and informed him of the trial court's emergency order granting the Department conservatorship. RR 3:67-68.

Clare confirmed that when she left for Louisiana, she had already been ordered to work services and she had not done so. RR 4:165. Clare confirmed that she decided she would not comply because she did not feel the services were

narrowly tailored and accordingly ignored the FBSS worker. RR 4:171.

The adversary hearing occurred on September 21, 2022. P. Ex. 8. Clare and Ronnie appeared by videoconference. P. Ex. 8. The order stated that Clare “shall turn the children over to DFPS by 5:00 pm on Monday, September 26, 2022 at any DFPS office located in Texas.” P. Ex. 8.

Clare recalled being present at the September 2022 adversary hearing and confirmed she told the judge she had no plans of surrendering the children. RR 4:181. She confirmed she was ordered to relinquish the children to the Department by the following Monday, but she admitted she failed to do so even though she knew it was a court order. RR 4:182. On October 10, 2022, Clare was charged with interference with child custody due to her failure to return the children to Texas pursuant to the court order. P. Ex. 17. Ronnie admitted he and Clare had discussions about whether they should return the children to Texas after the adversary hearing. RR 4:237.

Clare testified she was arrested in November 2022. RR 4:144. She related K.N. was with her at the time, and there were eight or nine police officers and it was traumatizing to her and to K.N. RR 4:144. Clare testified she would not have left Texas if she knew she would be arrested; she admitted she did not believe the Texas

order could be enforced there. RR 4:190.

### **SUMMARY OF THE ARGUMENT**

Texas was clearly the children's home state when the Department filed its petition. They had lived here their entire lives. Even if the trial court believed Clare's and Ronnie's claim that they fled to Louisiana shortly before the filing, the plain language of the statute and authority from this Court make it plain that this would not alter the fact that the children's home state was where they resided for the six months immediately preceding the filing of the petition. Moreover, even if Texas was not the children's home state, there is overwhelming evidence that they have a substantial connection with Texas, and significant evidence concerning the children is available here.

Ronnie and Clare fail to challenge the Court of Appeal's determination affirming the final order's N, O, and best interest finding. Therefore, the conservatorship determination has been subsumed, and their conservatorship arguments are totally moot. As to the Court of Appeal's (D) and (E) determination, the Court of Appeals relied on clear and established principles that physical abuse, instability, criminal conduct, drug abuse, refusal to participate in services, and medical and educational neglect support termination of their parental rights.

Their petitions present nothing for review and should be denied.

## ARGUMENT

- I. **RESPONSE TO CLARE AND RONNIE’S UCCJEA ISSUE** The children resided in Texas for more than six months immediately preceding the filing of the petition. Clare and Ronnie intentionally fled to Louisiana to avoid Department involvement. The children also have substantial connection with Texas, and significant evidence concerning them exists here. Should their issue be denied?

For the first time in their respective *Petitions for Review*, both Clare and Ronnie argue that Texas did not have jurisdiction over the matter<sup>2</sup>, alleging that because they left Texas on August 21, 2022, Texas was not the children’s home state on August 31, 2022 when the Department filed its *Original Petition*. Their argument should be rejected.

### A. UCCJEA

Tex. Fam. Code § 152.201 provides as follows, in relevant part:

#### Initial Child Custody Jurisdiction

(a) Except as otherwise provided in Section 152.204, a court of this state has

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<sup>2</sup> Both Clare and Ronnie make a passing comment that the issue of UCCJEA concerns subject matter jurisdiction and so can be raised for the first time on appeal. The Department does not concede this is accurate, especially in light of Justice Lehrmann’s dissent in *In re D.S.*, 602 S.W.3d 504 (Tex. 2020). However, the Department will analyze the UCCJEA issue as if properly presented and preserved, reserving any response to that issue for a brief on the merits, if requested.

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 was the home state of the child within six months before commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(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

...

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

Tex. Fam. Code § 152.201; (Westlaw 2024); APPENDIX 3.

Tex. Fam. Code § 152.102 defines "home state" and provides, in pertinent part:

(7) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding

Tex. Fam. Code § 152.102 (Westlaw 2024); APPENDIX 4.

Louisiana has adopted the UCCJEA and has statutory provisions nearly identical to those adopted in Texas listed above. La. Rev. Stat. Ann. § 13:1802; 1813; APPENDIX 6.

## **B. Relevant Case Law**

The UCCJEA was enacted “to clarify and to unify the standards for courts’ continuing and modification jurisdiction in interstate child-custody matters.” *In re Forlenza*, 140 S.W.3d 373, 374 (Tex. 2004) (orig. proceeding). The UCCJEA governs jurisdiction over child custody issues between Texas and other states. *In re Isquierdo*, 426 S.W.3d 128, 131 (Tex. App.—Houston [1st Dist.] 2012, orig. proceeding).

A trial court enjoys broad discretion in issuing orders for immediate protection of a child. *Garza v. Harney*, 726 S.W.2d 198, 202 (Tex. App.—Amarillo 1987, orig. proceeding). States have a *parens patriae* duty to children within their borders, and the possibility that allegations of immediate harm might be true is sufficient for a court to assume temporary emergency jurisdiction in the best interests of the child under the UCCJEA. *In re Nada R.*, 89 Cal.App.4th 1166, 108 Cal.Rptr.2d 493, 500

(2001).

Unjustifiable Conduct

This Honorable Court has reiterated that the UCCJEA should be interpreted in such a way as to deter abductions of children. *Powell v. Stover, III.*, 165 S.W.3d 322, 326 (Tex. 2005). *Powell* also notes “the UCCJEA should be construed in such a way as to strengthen rather than undermine the certainty that prioritizing home-state jurisdiction was intended to promote, and thus decline to apply a test to determine where a child ‘lived’ based on the parties’ subjective intent”. *Id. citing Escobar v. Reisinger*, 133 N.M. 487, 64 P.3d 514, 517 (2003); *see also In re S.L.P.*, 123 S.W.3d 685, 690 (trial court did not err in sustaining Father’s plea to the jurisdiction under Tex. Fam. Code § 152.208 where Mother failed to apprise the court her parental rights had been terminated in Nevada and she was only able to keep the children in Texas for longer than six months by interfering with Father’s custodial rights); *In re Carpenter*, 835 S.W.2d 760, 762 (Tex. App.—Amarillo 1992, no writ) (Father engaged in unjustifiable conduct because he abducted child, removed child from state, and kept child from Mother for four years until Father and child were located in living in Texas); *In re C.J.S.*, No. 01-22-00396-CV, 2024 WL 2806203, at \*20 (Tex. App.—Houston [1st Dist.] May 31, 2024, no pet. h.) (mem.

op.) (no unjustifiable conduct where Mother traveled back and forth between Texas and Louisiana with Father's knowledge and made full disclosure to the court). The Texas Family Code contains a provision wherein a court with jurisdiction under the UCCJEA shall decline to exercise jurisdiction where the person seeking to invoke jurisdiction has engaged in unjustifiable conduct. Tex. Fam. Code § 152.208 (Westlaw 2024). Louisiana has adopted an identical provision. La. Stat. Ann. § 13:1820 (Westlaw 2024).

### Home State

In *In re Burk*, Mother filed a petition for writ of mandamus asking that the trial court judge be compelled to set aside his order overruling her plea to the jurisdiction. *In re Burk*, 252 S.W.3d 736, 738 (Tex. App.—Houston [14th Dist.] 2008, orig. proceeding). In May 2006, Father moved to Waco from Colorado, with Mother and the child moving to join him in June. *Id.* Mother moved back to Colorado with the child on July 27 or 28. *Id.* On September 29, 2007, Mother filed a petition regarding custody in Colorado. *Id.* On October 12, 2007, Father filed a divorce. *Id.* Mother's plea to the jurisdiction was rejected, and she thereafter filed for mandamus relief. *Id.* The Court of Appeals ultimately held that Texas was the home state because the Father filed on October 12, 2007, and as of that date, the

child lived in Texas from birth until July 17 or 28. *Id.* at 741. “Accordingly, Texas was the home state within six months before the Texas proceeding commenced and Texas has jurisdiction under section 152.201(a)(1).” *Id.*

In *In re Calderon-Garza*, 81 S.W.3d 899 (Tex. App.—El Paso 2002, no pet.), the Court of Appeals found that the child’s home state for purposes of UCCJEA jurisdiction was Texas. The child’s father resided in New York, and the mother was a resident of Mexico. *Id.* Mother came to Texas and gave birth in El Paso in February, then returned to Mexico in March. *Id.* at 901. The day after Mother took the child and returned to Mexico, Father filed in Texas to establish paternity. *Id.* The Court of Appeals determined the child’s home state was Texas, as even though the child did not reside in Texas on the day the suit was commenced, until that point, the child had resided in Texas for his entire life. *Id.* at 903. The Court in *In re E.A.F.* relied on the holding in *Calderon-Garza* in ruling that when a child had only been removed from the state just four days before the petition was filed, Texas was still the child’s home state, as he had resided in Texas his entire life until he was taken by the mother to Oklahoma. *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.). *See also In re McCormick*, 87 S.W.3d 746, 750 (Tex. App.—Amarillo 2002 (Texas was child’s

home state, as he had been residing in Kansas for two weeks less than six months at the time the proceeding was commenced, as six months is the time required to establish a new home state); *In re Oates*, 104 S.W.3d 571, 577 (Tex. App.—El Paso 2003) (determination of home state requires examining where the child lived immediately preceding the filing of the petition, and because “Texas would . . . have jurisdiction if the children had lived here with a parent . . . for at least six months immediately before suit was filed” grandparents who had children in Texas for only three months failed to establish Texas was the children’s home state); *In re C.H.*, No. 05-21-00015-CV, 2022 WL 2187451, at \*1 (Tex. App.—Dallas June 17, 2022, no pet.) (mem. op.) (Texas was home state of child where he was removed to California a week after birth and petition was filed six days later).

*Significant Connection*

Significant connection jurisdiction is appropriate to employ when Texas is not the home state and no other state could assert home state jurisdiction. *In re S.M.A.*, 555 S.W.3d 754, fn. 6 (Tex. App.—Texarkana 2018, no pet.). When making a determination that a child and at least one parent have significant connection with Texas, the issue is not which state has the most significant connection, but instead, the court considers the nature and quality of the child’s contacts with the state. *In re*

*Forlenza*, 140 S.W.3d 373 (Tex. 2004). Simply because there is evidence establishing a child has a connection with the state of residence does not mean there is no significant connection with Texas or that substantial evidence cannot be found here. *McCormick*, 87 S.W.3d at 751 (significant connection existed with Texas although child had lived outside Texas for just under six months). Some factors showing significant connection and substantial evidence include whether a child resides or attends school in the state, whether the child’s family resides in the state, or whether a parent has made educational plans for the child in the state. *In re T.B. and A.B.*, 497 S.W.3d 640, 645 (Tex. App.—Fort Worth 2016, no pet.), *citing Forlenza*, 140 S.W.3d at 378; *S.J.A.*, 272 S.W.3d at 685. If there is a significant connection with Texas, it is not necessary to address whether substantial evidence is present. *In re E.A.C.*, 665 S.W.3d 764, 773 (Tex. App.—San Antonio 2023, pet. denied) Even just visitation inside a state can be enough to establish a significant connection, especially where the children have a relationship with relatives in the state. *Id.*; *see also S.M.A.* 555 S.W.3d at 759 (substantial evidence was available in Texas where child had resided and been cared for within Texas and evidence showed the children had many personal relationships in Texas).

### C. Analysis

The trial court clearly had jurisdiction under the UCCJEA, as Texas was the children's home state. The statute's plain language clearly provides that the children's home state is where the children were residing for at least six months immediately preceding filing of the petition. Tex. Fam. Code § 152.102(7) (Westlaw 2024); APPENDIX 4. Even if the court believed Clare's claim that they fled to Louisiana eleven days before the petition was filed, this still does not save their argument. Authority clearly shows that the relevant time period is the six months immediately preceding the filing of the petition, and a handful of days will not prevent a determination that Texas is the children's home state. *Burk*, 252 S.W.3d at 738; *Calderon-Garza*, 81 S.W.3d at 900-03; *E.A.F.*, 2008 WL 1893208, at \*2; *McCormick*, 87 S.W.3d at 750; *Oates*, 104 S.W.3d at 577. In addition, they cannot show they established a new home state in Louisiana, as they had not resided there for at least six months when the Department filed its petition. *Id.* Moreover, Clare freely admitted the reason they left Texas was to avoid Department involvement, refused to enroll the children in school to further avoid detection, she did not believe Texas orders could be enforced in Louisiana. RR 4:142-44, 190. Allowing Ronnie and Clare to duck responsibility in Texas because they absconded specifically to

avoid Department involvement would undermine authority from this Court that the UCCJEA should be interpreted in a way to deter child abduction. *Powell*, 165 S.W.3d at 326.

Even if, *arguendo*, Texas was not the children's home state, the trial court still had jurisdiction due to the children's significant connection and the extensive evidence about the children's care, protection, training, and personal relationships is available here. Tex. Fam. Code § 152.201(a)(2) (Westlaw 2024). It is undisputed the children had lived their entire lives in Texas, attended school here, and have relatives here, and multiple people testified at trial to detailed interactions with the children. *RR passim*. The issue is not whether there is evidence about the children available in Louisiana, but rather the nature and quality of the children's connection with Texas, and that clearly was a deep and substantial connection. *Forlenza*, 140 S.W.3d at 378.

Clare and Ronnie's reliance on *Powell* is misplaced and indeed strikes against their position. They point out that the UCCJEA states that a child's physical location is the central factor but fail to address the very plain six-month requirement in the statute. They also fail to address that the only reason the children may have been located in Louisiana is because they were fleeing Department involvement and

actively secreting the children. Moreover, *Powell* does not support their cause, because in that case, the child had resided in Tennessee for ten months immediately preceding the filing of the petition, making Tennessee the child's home state. *Powell*, 165 S.W.3d at 328. The child was in Texas for two weeks when Mother filed a divorce and SAPCR in Texas, but because the child resided in Tennessee for the ten months immediately preceding the move, Tennessee and not Texas had home state jurisdiction. *Id.* Identically to *Powell*, the children in this case resided in Texas for longer than six months before a move and the proceeding was commenced a short time following that move. Therefore, *Powell* actually supports the trial court's determination that Texas is the children's home state. *Id.*

Finally, Ronnie and Clare argue the findings in the court's order that Texas is the home state are not sufficient but cite to absolutely nothing to support their apparent claim that a clear finding in a final order which tracks the statutory language would somehow be insufficient. Their petitions should be denied.

**II. RESPONSE TO RONNIE’S AND CLARE’S SUFFICIENCY ISSUES:** Ronnie and Clare fail to challenge the Court’s decision affirming termination of their parental rights under (N), (O), and best interest, and their conservatorship issues are therefore subsumed. The Court of Appeals relied on established principles when finding direct physical abuse, failure to remove children from an abusive environment, criminal conduct, drug abuse, failure to comply with court-ordered services, instability, medical neglect, and educational neglect all support termination of parental rights. Should their issues be rejected?

The Department will interpret Clare’s and Ronnie’s issues as challenging the sufficiency of the evidence supporting termination of their respective parental rights under (D) and (E) as well as sufficiency of the evidence supporting the court’s conservatorship challenge.

The Department would initially point out that neither Clare nor Ronnie challenge the Court of Appeals’ affirming of the termination of parental rights pursuant to subsections (N) and/or (O). CLARE’S PETITION *PASSIM*; RONNIE’S PETITION *PASSIM*. They likewise fail to challenge the Court of Appeal’s best interest determination. CLARE’S PETITION *PASSIM*; RONNIE’S PETITION *PASSIM*. Therefore, any challenge they make to the conservatorship issues is completely moot, as there is obvious and abundant authority that the conservatorship finding is subsumed by the termination of parental rights. *In re D.N.C.*, 252 S.W.3d 317, 319 (Tex. 2008).

The conservatorship finding was nevertheless totally supported by the evidence including, but not limited to, the evidence supporting subsections (D) and (E), discussed *infra*. Moreover, as only one ground is necessary to sustain termination of parental rights, the issues regarding (D) and (E) are only relative for collateral consequences, as per *In re N.G.*, 577 S.W.3d 230 (Tex. 2019); *In re A.V. and J.V.*, 113 S.W.3d 355, 362 (Tex. 2003). The Department will therefore only briefly address the issue of termination of Clare's and Ronnie's parental rights under (D) and (E).

The Court of Appeals properly relied on the overwhelming evidence to determinate that the trial court's termination of Clare's and Ronnie's parental rights was proper, including: 1) Clare's direct physical abuse of K.N.; 2) Clare's administering of abusive punishments, such as food deprivation; 3) K.N.'s clear fear of Clare; 4) Ronnie's knowledge of this abuse and his failure to protect K.N. or remove his own children from the abusive environment; 5) refusal to participate in court-ordered services; 6) fleeing to Louisiana specifically to avoid Department involvement; 7) educational neglect; 8) failure to provide appropriate dental and medical care; 9) Clare's criminal conduct; 10) Ronnie tested positive for methamphetamine during the case; and 11) Ronnie's arrest for aggravated flight

from an officer, reckless operation, and possession of methamphetamine. *K.N.*, 2024 WL 4249163, at \*1-\*2, \*4-\*5. There is ample case law supporting the Court’s decision, and neither Ronnie nor Clare explain any split in Texas courts on these issues. *See, e.g., In re M.C., D.C., and C.W.*, 917 S.W.2d 268, 269 (Tex. 1996); *In re M.J.M.L.*, 31 S.W.3d 347, 350 (Tex. App.—San Antonio 2000, pet. denied); *In re J.O.A.*, 283 S.W.3d 336, 345-46 (Tex. 2009); *In re W.S.*, 899 S.W.2d 772, 776 (Tex. App.—Fort Worth 1995, no writ); *In re C.L.S.E.H. and C.H.H., Jr.*, No. 02-10-00475-CV, 2011 WL 3795226, at \*4 (Tex. App.—Fort Worth Aug. 25, 2011, no pet.) (mem.op.); *Director of Dallas County Child Protective Servs. v. Bowling*, 833 S.W.2d 730, 733-34 (Tex. App.—Dallas 1992, no writ); *In re N.K.* 99 S.W.3d 295, 300 (Tex. App.—Texarkana 2003, no pet.); *A.S. v. Tex. Dep’t of Family and Protective Services*, 394 S.W.3d 703, 712 (Tex. App.—El Paso 2012, no pet.); *In re N.P.*, No. 09-20-00218-CV, 2021 WL 203339, at \*6-7 (Tex. App.—Beaumont Jan. 21, 2021, pet. denied) (mem. op.); *T.D. v. Tex. Dep’t of Family and Protective Servs.*, 683 S.W.3d 901, 914-15 (Tex. App.—Austin Jan. 26, 2024, pet. denied).

Indeed, both Ronnie and Clare ignore much of the above-evidence and instead invite this Court to engage in reweighing of the evidence. CLARE’S PETITION *PASSIM*; RONNIE’S PETITION *PASSIM*. This is clearly inappropriate, and their arguments should

be rejected. *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006); *In re L.M.I.*, 119 S.W.3d 707, 712 (Tex. 2003). Although they attempt to characterize the termination of their parental rights as being based solely on a refusal to cooperate with the Department, this is simply an inaccurate characterization of the evidence produced at trial. Their argument should be rejected.

### **PRAYER**

For the reasons above, the Department prays that this Honorable Court deny the *Petition for Review*, which would leave intact the First Court of Appeals' opinion.

Respectfully submitted,

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## CERTIFICATE OF COMPLIANCE OF WORD COUNT

In accordance with Texas Rules of Appellate Procedure 9.4 (e) and (i), the undersigned attorney of record certifies that the *Response to Petition for Review* contains 14-point typeface for the body of the brief, 12-point typeface for footnotes in the brief, and contains 7.388 words, excluding those words identified as not being counted in appellate rule of procedure 9.4(i)(1), and was prepared on Microsoft Word 2010®.

/s/ Rebecca L. Safavi

Rebecca L. Safavi, Appellate Attorney

## CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the foregoing RESPONSE TO PETITION FOR REVIEW was e-filed and sent to each individual below, *via* e-mail, on January 24, 2025:

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# **APPENDICES**

**APPENDIX TO RESPONSE TO PETITION FOR REVIEW**

Respondent, Texas Department of Family and Protective Services, submits these documents in support of its Response to Petition for Review.

**LIST OF DOCUMENTS**

1. *In re K.N., K.L., K.L., and K.L.*,  
No. 07-24-00146-CV, 2024 WL 4249163  
(Tex. App.—Amarillo Sept. 19, 2024, pet. filed)..... Tab 1
2. *Final Orders* ..... Tab 2
3. TEX. FAM. CODE § 152.201 (Westlaw 2025) ..... Tab 3
4. TEX. FAM. CODE § 152.102 (Westlaw 2025) ..... Tab 4
5. TEX. FAM. CODE § 161.001 (Westlaw 2025) ..... Tab 5
6. LA. REV. STAT. ANN. § 13:1802 (Westlaw 2025)..... Tab 6
7. LA. REV. STAT. ANN. § 13:1813 (Westlaw 2025)..... Tab 7

# APPENDIX 1

2024 WL 4249163

Only the Westlaw citation is currently available.

SEE TX R RAP RULE 47.2 FOR  
DESIGNATION AND SIGNING OF OPINIONS.

Court of Appeals of Texas, Amarillo.

In the INTEREST OF K.N.,  
K.L., K.L., and K.L., Children

No. 07-24-00146-CV

|

September 19, 2024

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

**Attorneys and Law Firms**

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Rebecca L. Safavi, for Appellee Texas Department of Family  
and Protective Services.

Michael J. Sharpee, for Appellant Niccum, Cama.

Jay Michelsen, for Appellant Lerille, Robby.

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

**MEMORANDUM OPINION**

Brian Quinn, Chief Justice

\*1 Mother, CN, and Father, RL, appeal the trial court's orders entered in this suit affecting the parent-child relationship. The matter involves four children. Each had the same mother, CN. One child, KN, had an "unknown" father.<sup>1</sup> The other three (KL1, KL2, and KL3 or the KL siblings) were fathered by RL. Upon trial, a jury found statutory grounds existed to terminate the parental relationship between him and the KL siblings. The best interests of those siblings also favored termination, according to the jury.<sup>2</sup> The same is true regarding Mother and all four children, at least with regard to the existence of statutory grounds supporting termination. Despite two of those grounds implicating Mother's endangerment of each child, the jury decided that the best interests of the KL siblings did not

favor termination, even though those of KN did. Confusing? Yes, but that is the framework within which we consider the separate issues of Mother and Father and, ultimately, affirm.

***Mother's Complaint about the Sufficiency of the Evidence***

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

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

***Statutory Grounds***

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

Here, there is evidence that Mother's discipline of KN crossed the line into abuse in terms of lengthy wall stands or walls sits, by most accounts lasting for hours at a time, beatings with a belt, and kneeling on grains of dry rice for extended periods. Punishment of KN also included forms of food deprivation, that is, depriving KN of food given to other family members. School officials became concerned with the way KN would eat and her fear of her mother discovering that she ate breakfast at school. Other acts by Mother directed at KN included dragging the child by her hair, injuring her shoulder, and making her sleep in the dog's bed. Abusive or violent conduct by a parent can support a conclusion that a child's physical or emotional well-being was endangered. *In re McElhaney*, No. 07-04-0577-CV, 2005 WL 66351, 2005 Tex. App. LEXIS 236 (Tex. App.—Amarillo Jan. 12, 2005, no pet.) (mem. op.).

\*2 When the Department got involved with the family, Mother refused to work any services or cooperate in any

meaningful way. Instead, she and Father moved the children to Louisiana to escape what they considered interference by the Department. There, the children were kept out of school to prevent their detection by the Department. *See T.D. v. Tex. Dep't of Family & Protective Servs.*, 683 S.W.3d 901, 914 (Tex. App.—Austin 2024, no pet.) (observing that failing to educate children is endangering conduct). Evidence further illustrates that the children were in need of medical or dental care but were denied it. *See In re J.H.*, No. 07-21-00059-CV, 2021 WL 2693284, 2021 Tex. App. LEXIS 5209 (Tex. App.—Amarillo June 30, 2021, pet. denied) (mem. op.) (“[M]edical neglect endangers the children.”).

We add that Mother also twice confronted the school's staff member at the grocery store resulting in criminal charges being brought against her. Criminal conduct is relevant to the endangerment analysis under subsections (D) and (E) as it subjects children to a life of uncertainty. *See In re B.J.F.*, No. 01-23-00522-CV, 2024 WL 117174 at \*5, 2024 Tex. App. LEXIS 192 at \*78 (Tex. App.—Houston [1st Dist.] Jan. 11, 2024, pet. denied) (mem. op.).

We conclude that, based on the record before us, the evidence was legally and factually sufficient to enable a factfinder to form a firm conviction and belief that Mother endangered the physical well-being of KN. Because one predicate ground for termination is sufficient to support the decision, we need not address Mother's issues challenging the sufficiency of the evidence to support the trial court's findings under subsections (N) and (O). *See In re A.M.A.*, No. 07-16-00224-CV, 2016 WL 5786984, 2016 Tex. App. LEXIS 10565 (Tex. App.—Amarillo Sept. 27, 2016, pet. denied) (mem. op.) (citing *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003)).

#### *Best Interest of the Child*

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

may also be considered in the assessment of best interests. *See In re E.P.*, No. 07-23-00449-CV, 2024 WL 2755703, 2024 Tex. App. LEXIS 3671 (Tex. App.—Amarillo May 29, 2024, pet. denied) (mem. op.). Comparing the evidence described earlier with *Holley* and other relevant indicia leads us to conclude that the jury's best interest finding had the support of both legally and factually sufficient evidence.

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

The maternal grandparents have provided a stable and loving environment for the children. Family friends, with whom the children have an established relationship, also hope to care of the children as a unit to relieve the grandparents of the demands of raising four children. So too is the extended family committed to the children staying together.

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

#### *Mother's Issue on Conservatorship*

As said earlier, the jury found that it was not in the best interests of the KL siblings to terminate Mother's parental

rights. Because they remained intact, who to serve as their managing conservator remained an open question. Ultimately, the trial court designated the Department to so serve. Mother argues that the selection constituted an example of abused discretion. We overrule the issue.

Generally, to appoint one other than a parent as managing conservator, a preponderance of the evidence must illustrate that retaining the parent in that status would not be in the child's best interests because it would significantly impair the child's physical health or emotional development. *See* TEX.

FAM. CODE ANN. §§ 105.005, 153.131(a), 263.404;

*In re J.A.J.*, 243 S.W.3d 611, 614 (Tex. 2007). Evidence must support the logical inference that some specific, identifiable behavior or conduct of the parent, demonstrated by specific acts or omissions, will probably cause serious harm. *R.H. v. D.A.*, No. 03-16-00442-CV, 2017 WL 875317, 2017 Tex. App. LEXIS 1743 (Tex. App.—Austin Mar. 2, 2017, pet. dismiss'd) (mem. op.). If such is found and the trial court appoints another, the determination is reviewed for abused discretion. *See In re J.A.J.*, 243 S.W.3d at 616. Within that setting, the legal insufficiency and factual insufficiency of the evidence underlying the decision are merely relevant factors in the assessment, not independent grounds of error. *See In re A.M.*, 604 S.W.3d 192, 197 (Tex. App.—Amarillo 2020, pet. denied).

Acts or omissions that may significantly impair a child's physical health or emotional development include, but are not limited to, physical abuse, severe neglect, abandonment, drug or alcohol abuse, parental irresponsibility, and bad judgment. *See In re M.L.*, No. 02-15-00258-CV, 2016 WL 3655190 at \*4, 2016 Tex. App. LEXIS 7189 at \*11 (Tex. App.—Fort Worth July 7, 2016, no pet.) (mem. op.); *see also In re J.Y.*, 528 S.W.3d 679, 687 (Tex. App.—Texarkana 2017, no pet.) (observing evidence of the mother's "volatile emotions and erratic behavior" as relevant to the conservatorship determination); *In re S.T.*, 508 S.W.3d 482, 492 (Tex. App.—Fort Worth 2015, no pet.) (noting that a "parent's treatment of other children may be relevant" when determining conservatorship). Courts also examine other considerations such as parental irresponsibility, a history of mental disorders and suicidal thoughts, frequent moves, bad judgment, child abandonment, and an unstable, disorganized, and chaotic lifestyle that has put and will continue to put the child at risk. *In re S.T.*, 508 S.W.3d at 492.

\*4 Here, the aforementioned abuse of KN and endangerment to which all the children were exposed, the medical or dental neglect suffered by the children, the educational neglect they experienced, Mother's refusal to participate in services to improve her parenting skills, the parental decision to move the family to Louisiana to evade the Department's supervision over the children, Mother's anger issues exemplified by the physical punishment inflicted on KN, and her screaming threats publicly in a Walmart against someone who reported an instance of abuse to the Department constitute evidence from which the jury (and court) could determine that appointing Mother as managing conservator would not serve the best interests of the children since it would significantly impair the children's physical health or emotional development.<sup>4</sup> *See In re E.M.T.*, No. 04-18-00805-CV, 2019 WL 1370323 at \*2, 2019 Tex. App. LEXIS 2358 at \*7 (Tex. App.—San Antonio Mar. 27, 2019, no pet.) (mem. op.) (noting evidence of the parent's anger and use of physical discipline as factors indicating the appointment of the parent as managing conservator would significantly impair the child's physical health and emotional development).

#### **Father's Sufficiency Contentions**

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

#### **Statutory Grounds**

We reiterate the evidence noted above and supporting the termination of Mother's parental rights to KN. Though Father was not directly involved in the abuse of KN, he was present when it occurred and knew of it. In fact, he acknowledged that Mother's behavior was aberrant and expressed that he had considered leaving with all the children, but his plans "never panned out." That is evidence of his knowingly placing the children with a person who engaged in conduct which endangered the children's physical or emotional well-being.

*See* TEX. FAM. CODE ANN. § 161.001(b)(1)(E). He had a responsibility to the children to provide them a safe environment, free from abusive behavior. *See In re C.N.L.*, No. 13-23-00591-CV, 2024 WL 1787893 at \*5, 2024 Tex. App. LEXIS 2860 at \*11 (Tex. App.—Corpus Christi Apr. 25, 2024, no pet.) (mem. op.) (a child's physical or emotional well-being is endangered when a parent fails to remove them from a home in which abusive or violent conduct is occurring). And, in that responsibility, he failed.

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

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

\*5 Together, the foregoing constituted evidence permitting a rational factfinder to form a firm conviction and belief that termination was warranted under subsections (D) and (E). Father’s contention otherwise is simply wrong.

#### *Best Interests of the Children*

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

#### *Admission of Police Report*

Father also complains about the admission of a Louisiana police report involving his pursuit and eventual arrest in that state. Yet, it was not the sole evidence of that escapade. The officer who authored the report testified, without objection, about the attempted traffic stop of Father, the ensuing high-speed pursuit, his apprehension and arrest, and the discovery of approximately four grams of methamphetamine in Father’s pocket. Purported error concerning the admission of evidence is harmless when other like evidence is admitted without objection. See *In re L.T.*, No. 07-09-0280-CV, 2010 WL 1222052 at \*2, 2010 Tex. App. LEXIS 2250 at \*10 (Tex. App.—Amarillo Mar. 30, 2010, no pet.) (mem. op.). That having occurred here, we overrule Father’s complaint about admitting the police report itself.

#### *Father as Managing Conservator*

Father seems to contend through his fifth issue that the trial court erred in failing to appoint him managing conservator. To the extent he does, we overrule the issue based upon 1) the very evidence supporting the termination of his parental rights and 2) the evidence supporting the appointment in lieu of Mother. Our incorporating that evidence here leads us to conclude that the trial court did not abuse its discretion in appointing the Department managing conservator of the children. See *In re C.N.S.*, No. 14-14-00301-CV, 2014 WL 3887722 at \*7, 2014 Tex. App. LEXIS 8612 at \*33 (Tex. App.—Houston [14th Dist.] Aug. 7, 2014, no pet.) (mem. op.) (holding that the very evidence supporting termination insulated the decision to appoint the Department as managing conservator from an allegation of abused discretion).

#### *Mother’s and Father’s Common Issue: Exclusion of Administrative Review Report*

Finally, both Father and Mother argue that the trial court erred in excluding from evidence a report about an administrative review and investigative findings. The report allegedly illustrated that an earlier finding by the Department about an instance of emotional abuse between Mother and KN had been reversed. The trial court excluded the evidence, conceding that it may bear some relevance but concluding its probative value was substantially outweighed by a danger of unfair prejudice and confusing the issues. See TEX. R. EVID. 403. Other reasons were also revealed by the trial court for excluding the report. They included hearsay and the lack of evidence qualifying the investigator issuing the report as an expert. In reviewing the trial court’s decision, we again apply the standard of abused discretion. *In re D.D.*, No. 02-17-00368-CV, 2018 WL 1630708 at \*3, 2018 Tex. App.

LEXIS 2440 at \*34 (Tex. App.—Fort Worth Apr. 5, 2018, no pet.) (mem. op.) (per curiam) (so requiring). And, upon doing so, we overrule the issue.

\*6 The administrative report in question indicated that an investigator ruled out evidence of emotional abuse. Apparently, “emotional abuse” for the Department’s administrative purposes, consisted of establishing that the parent “caused a mental or emotional injury to her daughter that resulted in an observable and material impairment in her growth.” Explicit within that test is proof of actual injury, that is, “observable” “mental or emotional injury” resulting in material impairment. Yet, statute permits termination for “endanger[ing] the physical or emotional well-being of the child.”  TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E). Though endangering requires more than a threat of metaphysical injury or the possible ill effects of a questionable family environment, the child need not suffer actual injury to satisfy the parameters of either (D) or (E). *In re J.J.*, No. 07-13-00117-CV, 2013 WL 4711542, 2013 Tex. App. LEXIS 11194 (Tex. App.—Amarillo Aug. 29, 2013, no pet.) (mem. op.). So, the test utilized when determining whether to terminate a parental relationship under the Family Code significantly differs from that used by the Department in conducting its administrative affairs. The differing tests (i.e., the need for trauma in the administrative setting versus the lack of need in the judicial setting) therefore minimizes the relevance of the report in a termination trial. Utilizing it here to bar termination under either (D) or (E) is like proving a piece of fruit is not an apple by showing it is not an

orange. One could reasonably view such a comparison as likely to interject confusion; this is especially so when, like here, the administrative finding was based not on the lack of questionable conduct but rather the lack of injury from that conduct.<sup>5</sup> Given these circumstances, we cannot say that a trial court’s exclusion of the report under Rule 403 because its nominal relevance was substantially outweighed by the risk of confusing the issues would be unreasonable or an abuse of discretion.

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

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

#### All Citations

Not Reported in S.W. Rptr., 2024 WL 4249163

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### Footnotes

- 1 The parental rights of the unknown father were terminated, as well. But, he did not appeal.
- 2 The finding also encompassed the best interests of KN, though she was not the biological daughter of RL.
- 3 The  *Holley* factors are as follows: 1) the desires of the child; 2) the emotional and physical needs of the child now and in the future; 3) the emotional and physical danger to the child now and in the future; 4) the parental abilities of the individuals seeking custody; 5) the programs available to assist these individuals to promote the best interest of the child; 6) the plans for the child by these individuals or by the agency seeking custody; 7) the stability of the home or proposed placement; 8) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and 9) any excuse for the acts or omissions of the parent.  *Holley*, 544 S.W.2d at 371–72.

- 4 Those threats resulted in criminal charges being filed against Mother. Additionally, Mother's own family expressed concerns regarding Mother's anger issues, explaining that it was difficult to maintain a relationship with her due to her anger and unpredictability. Whenever the family confronted Mother about her mistreatment of KN, she would scream and leave. Father also expressed some apprehension about Mother's anger, having stated to Mother's family that "at least it was [KN] and not him getting in trouble."
- 5 The reported stated: "There is insufficient evidence that [KN] experienced significant or serious negative effects on her intellectual or psychological development or functioning."

# **APPENDIX 2**

**NOTICE: THIS DOCUMENT  
CONTAINS SENSITIVE DATA**

**CAUSE NO. 40,562**

**IN THE INTEREST OF**

**K.L.1  
K.L.2  
K.L.3**

**CHILDREN**

§  
§  
§  
§  
§  
§  
§

**IN THE DISTRICT COURT OF**

**GRAY COUNTY, TEXAS**

**223RD JUDICIAL DISTRICT**

**FINAL ORDER IN SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP**

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

**1. Appearances**

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

Respondent Mother **Clare** appeared in person and through attorney  
1.2. of record **NATALIE ARCHER** and announced ready.

A final judgment has been rendered terminating the parental rights of  
1.3. **Ronnie**. No further notice is required.

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

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

**2. Findings**

2.1. The Court, having examined the record and heard the evidence and argument of counsel, finds that this Court has jurisdiction of this case and of all the parties and that no other court has continuing, exclusive jurisdiction of this case.

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

2.3. All persons entitled to citation were properly cited.

2.4. The Court finds that **Ronnie** is the father of the child  
**K.L.1, K.L.2, and K.L.3**

2.5. The Court finds that this order sufficiently defines the rights and duties of the parents of the children pursuant to § 153.603, Texas Family Code, and no further parenting plan is appropriate or necessary.

**3. Jury**

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

**4. Record**

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

**5. The Children**

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

5.1. Name: **K.L.1**  
Sex: **Female**  
Birth Date:  
Social Security Number:  
Present Residence:

5.2. Name: **K.L.2**  
Sex: **Female**  
Birth Date:  
Social Security Number:  
Present Residence:

5.3. Name: **K.L.3**  
Sex: **Male**  
Birth Date:  
Social Security Number:  
Present Residence:

**6. Managing Conservatorship: K.L.1**

6.1. The Court finds that the appointment of Clare as managing conservator would not be in the best interest of the child K.L.1 because the appointment would significantly impair the child's physical health or emotional development; and it would not be in the best interest of the child to appoint a relative of the child or another person as managing conservator.

6.2. **IT IS THEREFORE ORDERED** that the **DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** is appointed Permanent Managing Conservator of the child K.L.1, with the rights and duties specified in § 153.371, Texas Family Code; the Court finds this appointment to be in the best interest of the child.

6.2.1. **IT IS ORDERED** that, in addition to the rights and duties listed in § 153.371, Texas Family Code, the Department is authorized to consent to the medical care for K.L.1 under § 266.004, Texas Family Code.

**7. Managing Conservatorship: K.L.2**

7.1. The Court finds that the appointment of Clare as managing conservator would not be in the best interest of the child K.L.2 because the appointment would significantly impair the child's physical health or emotional

development; and it would not be in the best interest of the child to appoint a relative of the child or another person as managing conservator.

7.2. **IT IS THEREFORE ORDERED** that the **DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** is appointed Permanent Managing Conservator of the child **K.L.2**, with the rights and duties specified in § 153.371, Texas Family Code; the Court finds this appointment to be in the best interest of the child.

7.2.1. **IT IS ORDERED** that, in addition to the rights and duties listed in § 153.371, Texas Family Code, the Department is authorized to consent to the medical care for **K.L.2** under § 266.004, Texas Family Code.

**8. Managing Conservatorship: K.L.3**

8.1. The Court finds that the appointment of **Clare** as managing conservator would not be in the best interest of the child **K.L.3** because the appointment would significantly impair the child's physical health or emotional development; and it would not be in the best interest of the child to appoint a relative of the child or another person as managing conservator.

8.2. **IT IS THEREFORE ORDERED** that the **DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** is appointed Permanent Managing Conservator of the child **K.L.3**, with the rights and duties specified in § 153.371, Texas Family Code; the Court finds this appointment to be in the best interest of the child.

8.2.1. **IT IS ORDERED** that, in addition to the rights and duties listed in § 153.371, Texas Family Code, the Department is authorized to consent to the medical care for **K.L.3** under § 266.004, Texas Family Code.

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

**9. Parties Granted Possession or Access**

9.1. Respondent Mother **Clare** is appointed possessory conservator of the children, **K.L.1, K.L.2, K.L.3**

The Court finds that such appointment is in the best interest of the children, and possession and access shall be as provided by this order, and does not exceed the restrictions needed to protect the best interest of the children.

**9.2. Rights of Parent at All Times Pursuant to § 153.073, Texas Family Code:**

9.2.1. Unless limited by court order, a parent appointed as a conservator of the children has at all times the right:

9.2.1.1. to receive information from any other conservator of the children concerning the health, education, and welfare of the children;

9.2.1.2. to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the children;

9.2.1.3. of access to medical, dental, psychological, and educational records of the children;

9.2.1.4. to consult with a physician, dentist, or psychologist of the children;

- 9.2.1.5. to consult with school officials concerning the children's welfare and educational status, including school activities;
- 9.2.1.6. to attend school activities, including school lunches, performances, and field trips;
- 9.2.1.7. to be designated on the children's records as a person to be notified in case of an emergency;
- 9.2.1.8. to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the children; and
- 9.2.1.9. to manage the estate of the children to the extent the estate has been created by the parent or the parent's family.

9.3. **Rights and Duties During Period of Possession Pursuant to § 153.074, Texas Family Code:**

- 9.3.1. Unless limited by court order, a parent appointed as a conservator of the children has the following rights and duties during the period that the parent has possession of the children:
  - 9.3.1.1. the duty of care, control, protection, and reasonable discipline of the children;
  - 9.3.1.2. the duty to support the children, including providing the children with clothing, food, shelter, and medical and dental care not involving an invasive procedure;
  - 9.3.1.3. the right to consent for the children to medical and dental care not involving an invasive procedure; and
  - 9.3.1.4. the right to direct the moral and religious training of the children.

9.4. **Duty to Provide Information Pursuant to § 153.076, Texas Family Code:**

- 9.4.1. **IT IS ORDERED** that each conservator of the children has a duty to inform the other conservator of the children in a timely manner of significant information concerning the health, education, and welfare of the children.
- 9.4.2. **IT IS ORDERED** pursuant to § 153.076(b), Texas Family Code, that each conservator of the children has the duty to inform the other conservator if the conservator resides with for at least 30 days, marries, or intends to marry a person who the conservator knows:
  - 9.4.2.1. is registered as a sex offender under Chapter 62, Code of Criminal Procedure; or
  - 9.4.2.2. is currently charged with an offense for which on conviction the person would be required to register under that chapter.
- 9.4.3. The notice required to be made under § 153.076(b), Texas Family Code, must be made as soon as practicable but not later than the 40<sup>th</sup> day after the date the conservator of the children begins to reside with the person or the 10<sup>th</sup> day after the date the marriage occurs, as appropriate. The notice must include a description of the offense that is the basis of the person's requirement to register as a sex offender or of the offense with which the person is charged.

9.4.4. **IT IS ORDERED** pursuant to §153.076(b-1), Texas Family Code, that each conservator of **K.L.1, K.L.2, and K.L.3** has the duty to inform the other conservator of the children if the conservator:

9.4.4.1. Establishes a residence with a person who the conservator knows is the subject of a final protective order sought by an individual other than the conservator that is in effect on the date the residence with the person is established; or

9.4.4.2. Resides with, or allows unsupervised access to a child by, a person who is the subject of a final protective order sought by the conservator after the expiration of the 60 day period following the date the final protective order is issued; or

9.4.4.3. Is the subject of a final protective order issued after the date of the order establishing conservatorship.

9.4.5. The notice required to be made under §153.076(b-1), Texas Family Code, must be made as soon as practicable but not later than:

9.4.5.1. The 30<sup>th</sup> day after the date the conservator establishes residence with the person who is the subject of the final protective order, if notice is required by subsection 7.5.4.1 above; or

9.4.5.2. The 90<sup>th</sup> day after the date the final protective order was issued, if notice is required by subsection 7.5.4.2 above; or

9.4.5.3. The 30<sup>th</sup> day after the date the final protective order was issued, if notice is required by subsection 7.5.4.3 above.

**9.4.6. A CONSERVATOR COMMITS AN OFFENSE IF THE CONSERVATOR FAILS TO PROVIDE NOTICE IN THE MANNER REQUIRED BY SUBSECTIONS (b) AND (c), OR SUBSECTIONS (b-1) AND (c-1), AS APPLICABLE, OF § 153.076, TEXAS FAMILY CODE. AN OFFENSE UNDER § 153.076 (d) IS A CLASS C MISDEMEANOR.**

9.5. **IT IS ORDERED** that Clare shall have possession of the children at times mutually agreed to in advance by the parties and, in the absence of mutual agreement, as specified in **Attachment A** to this order, which is incorporated herein as if set out verbatim in this paragraph. The periods of possession ordered above apply to each child the subject of this suit while that child is under the age of eighteen years and not otherwise emancipated.

## **10. Child Support**

10.1. **IT IS ORDERED** that Clare shall pay child support for the children as set forth in **Attachment B** to this Order, which is incorporated herein as if set out verbatim in this paragraph.

10.2. The Court finds that if it is modifying an existing order for support of the child to require payments to be made to the Department of Family and Protective Services, then the Clerk of the Court shall provide notice of the order to the Office of the Attorney General not later than the 10<sup>th</sup> day after the date the order is rendered.

**11. Statement On Modification**

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

- 11.1. THE CIRCUMSTANCES OF THE CHILDREN OR A PERSON AFFECTED BY THE ORDER HAVE MATERIALLY AND SUBSTANTIALLY CHANGED; OR**
- 11.2. IT HAS BEEN THREE YEARS SINCE THE ORDER WAS RENDERED OR LAST MODIFIED AND THE MONTHLY AMOUNT OF THE CHILD SUPPORT AWARD UNDER THE ORDER DIFFERS BY EITHER 20 PERCENT OR \$100.00 FROM THE AMOUNT THAT WOULD BE AWARDED IN ACCORDANCE WITH THE CHILD SUPPORT GUIDELINES.**

**12. Additional Orders of the Court**

- 12.1. Clare will perform the services provided by the Department or approved by the Department as set forth in the Family Plan of Service or any updated Family Plan of Service on file with the Court.**

**13. Required Information and Notices Regarding the Parties and Children**

- 13.1. EXCEPT FOR THOSE PERSONS SPECIFICALLY EXEMPTED FROM SUCH DISCLOSURE BELOW, EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.**
- 13.2. THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.**
- 13.3. NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS: YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE TERMS OF CHILD CUSTODY SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CLAIM, CIVIL OR OTHERWISE, REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THE ORDER THAT RELATE TO CHILD CUSTODY. ANY PERSON WHO KNOWINGLY PRESENTS FOR**

**ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS \$ 10,000.**

**13.4. FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IN THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.**

13.5. Notice shall be given to the other party by delivering a copy of the notice to the party by registered or certified mail, return receipt requested. Notice shall be given to the Court by delivering a copy of the notice either in person to the clerk of the Court or by registered or certified mail addressed to the clerk. Notice to the State Case Registry shall not be required until the registry is established and procedures for notification published by the Title IV-D agency under Chapter 234, Texas Family Code.

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

13.6.1. Name: Clare  
Driver's License:  
Current address:

**14. Warnings to Parties**

**FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.**

**FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY'S NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.**

**FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.**

**15. Court-Ordered Ad Litem or Advocate**

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

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

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

**16. Court Ordered Ad Litem for** Clare

16.1. **IT IS THEREFORE ORDERED** that **NATALIE ARCHER** is continued in this relationship as long as the children remain in the Conservatorship of the Department.

**17. Dismissal of Other Court-Ordered Relationships**

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

**18. Denial of Other Relief**

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

**19. WARNING: APPEAL OF FINAL ORDER, PURSUANT TO § 263.405, TEXAS FAMILY CODE**

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

**20. NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS:**

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

SIGNED this 8th day of April, 2024.

  
\_\_\_\_\_  
JUDGE PRESIDING

**ATTACHMENT A**

**Possession of and Access to the Children**

21. **IT IS ORDERED** that Respondent Mother, Clare, named as possessory conservator of the children **K.L.1, K.L.2, K.L.3** shall have possession and access as follows:

21.1. Clare shall have remote supervised visitation with the children in a therapeutic setting with Tina Souder while she continues to work services for the Department. Tina Souder or her designee shall supervise the visitation. Said visitation shall be at the frequency and duration determined by the Court at one time per month until further order of the Court.

Additionally, any remote supervised visitation (and any other visitation) with the children by Respondent Mother, Clare, will be subject to and will not take place unless and until Respondent Mother, Clare, consistently works services provided by the Texas Department of Family and Protective Services ("TxDFPS") or, if services not provided by the TxDFPS, services which the TxDFPS approves prior to the Respondent Mother, Clare, working such services.

## ATTACHMENT B

### Child Support

#### 22. Child Support Obligation:

22.1. The Court finds that Clare is obligated to support K.L.1, K.L.2, and K.L.3, children the subject of this suit, pursuant to §154.001, Texas Family Code.

#### 22.2. Monthly Payments

22.2.1. **IT IS ORDERED** that Clare is obligated to pay and shall pay child support to **THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** of **\$362.70** per month for the support of K.L.1, K.L.2, K.L.3, with the first payment being due and payable on March 1, 2024, and a like payment being due and payable on the 1st day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

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

22.2.1.2. any child marries;

22.2.1.3. any child dies;

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

22.2.1.5. further order modifying this child support;

22.2.1.6. any child is dismissed from this action; or

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

22.2.2. Thereafter, Clare is **ORDERED** to pay child support of **\$323.84**, per month for the support of K.L.2 and K.L.3, due and payable on the 1st day of the first month immediately following the date of the earliest occurrence of one of the events specified in items listed under **Monthly Payments** above and a like sum of **\$323.84** due and payable on the 1st day of each month thereafter until the next occurrence of one of the specified events.

22.2.3. Thereafter, Clare is **ORDERED** to pay child support of **\$251.87**, per month for the support of K.L.3, due and payable on the 1st day of the first month immediately following the date of the earliest occurrence of one of the events specified in items listed under **Monthly Payments** above and a like sum of **\$251.87** due and payable on the 1st day of each month thereafter until the next occurrence of one of the specified events.

#### 22.3. Notice of Change of Employer

**IT IS FURTHER ORDERED** that Clare and her employer shall notify this Court and the Managing Conservator of the children the subject of this suit by U.S.

certified mail, return receipt requested, of any termination of employment. This notice shall be given no later than seven days after the termination of employment, and shall include the current, or last known address of Clare and the name and address of the new employer, if known. Clare shall inform any subsequent employer of this support obligation and the withholding order.

**23. Place and Manner of Payment of Child Support**

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

**24. Statement on Guidelines**

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

**25. Statement On Modification**

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

- 25.1. THE CIRCUMSTANCES OF THE CHILDREN OR A PERSON AFFECTED BY THE ORDER HAVE MATERIALLY AND SUBSTANTIALLY CHANGED; OR**
- 25.2. IT HAS BEEN THREE YEARS SINCE THE ORDER WAS RENDERED OR LAST MODIFIED AND THE MONTHLY AMOUNT OF THE CHILD SUPPORT AWARD UNDER THE ORDER DIFFERS BY EITHER 20 PERCENT OR \$100.00 FROM THE AMOUNT THAT WOULD BE AWARDED IN ACCORDANCE WITH THE CHILD SUPPORT GUIDELINES.**

**26. Termination of Duty of Support**

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

- 26.1. any child reaches the age of eighteen years, provided that, if the child is fully enrolled in an accredited secondary school in a program leading toward a high school diploma, the periodic child support payments shall continue to be due and paid until the end of the month in which the child graduates;
- 26.2. any child marries;
- 26.3. any child dies;
- 26.4. any child's disabilities are otherwise removed for general purposes;
- 26.5. further order modifying this child support;
- 26.6. any child is dismissed from this action; or
- 26.7. the date on which the child begins active service in the armed forces, as defined by 10 U.S.C., Section 101.

**NOTICE: THIS DOCUMENT  
CONTAINS SENSITIVE DATA**

**CAUSE NO. 40,562**

<b>IN THE INTEREST OF</b>	§	<b>IN THE DISTRICT COURT OF</b>
	§	
<b>K.N.</b>	§	
<b>K.L.1</b>	§	<b>GRAY COUNTY, TEXAS</b>
<b>K.L.2.</b>	§	
<b>K.L.3</b>	§	
<b>CHILDREN</b>	§	<b>223RD JUDICIAL DISTRICT</b>

**ORDER OF TERMINATION**

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

**1. Appearances**

- 1.1. The Department of Family and Protective Services (“the Department”) appeared through **HEIDI COMBS**, permanency specialist from St. Francis Ministries, and by attorney, **TODD L. ALVEY**. St. Francis Ministries has assumed the Department’s statutory duties for providing foster care services in this county and hearing pursuant to Texas Family Code Chapter 264, Subchapter B-1.
- 1.2. Respondent Mother **Clare** appeared in person and through attorney of record **NATALIE ARCHER** and announced ready.
- 1.3. Respondent Presumed Father **Ronnie** appeared in person and through attorney of record **JOEL B. JACKSON** and announced ready.
- 1.4. Not appearing was an **UNKNOWN MAN**, against whom an interlocutory decree of termination as to the child **Kaisley Niccum**, was rendered by this Court. That interlocutory decree of termination is a final judgment for appellate purposes upon signing of this order.
- 1.5. **TAYLOR HARRIS**, appointed by the Court as Attorney Ad Litem for the children the subject of this suit, appeared and announced ready.
- 1.6. **CASA OF THE HIGH PLAINS, INC.**, appointed by the Court as Guardian Ad Litem for the children the subject of this suit, appeared and announced ready.

**2. Jurisdiction and Service of Process**

- 2.1. The Court, having examined the record and heard the evidence and argument of counsel, finds the following:
  - 2.1.1. a request for identification of a court of continuing, exclusive jurisdiction has been made as required by Section 155.101, Texas Family Code.

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

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

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

### **3. Jury**

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

### **4. Record**

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

### **5. The Children**

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

5.1. Name: **K.N.**  
Sex: **Female**  
Birth Date:  
Present Residence:

5.2. Name: **K.L.1**  
Sex: **Female**  
Birth Date:  
Present Residence:

5.3. Name: **K.L.2**  
Sex: **Female**  
Birth Date:  
Present Residence:

5.4. Name: **K.L.3**  
Sex: **Male**  
Birth Date:  
Present Residence:

### **6. Reasonable Efforts to Return the Children**

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

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

- 6.2.1. The Department created a family service plan that is narrowly tailored to address any specific issues identified.
- 6.2.2. The Department made a referral for services, provided services, or paid for services.

**7. Termination of Respondent Mother Clare Parental Rights**

- 7.1. The Court finds by clear and convincing evidence that termination of the parent-child relationship between Clare and the child, K.N. the subject of this suit is in the child's best interest, pursuant to § 161.001(b)(2), Texas Family Code.
- 7.2. Further, the Court finds by clear and convincing evidence that Clare has:
  - 7.2.1. knowingly placed or knowingly allowed K.N. to remain in conditions or surroundings which endanger the physical or emotional well-being of K.N., pursuant to § 161.001(b)(1)(D), Texas Family Code;
  - 7.2.2. engaged in conduct or knowingly placed K.N. with persons who engaged in conduct which endangers the physical or emotional well-being of K.N., pursuant to § 161.001(b)(1)(E), Texas Family Code;
  - 7.2.3. constructively abandoned K.N. who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months and: (1) the Department has made reasonable efforts to return K.N. to the mother; (2) the mother has not regularly visited or maintained significant contact with K.N. ; and (3) the mother has demonstrated an inability to provide K.N. with a safe environment, pursuant to § 161.001(b)(1)(N), Texas Family Code;
  - 7.2.4. failed to comply with the provisions of a court order that specifically established the actions necessary for the mother to obtain the return of K.N. who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of K.N. removal from the parent under Chapter 262 for the abuse or neglect of the child, pursuant to § 161.001(b)(1)(O), Texas Family Code.
- 7.3. **IT IS THEREFORE ORDERED** that the parent-child relationship between Clare and K.N. the subject of this suit is terminated.
- 7.4. In accordance with §161.001(c), Texas Family Code, the Court finds that the order of termination of the parent child relationship as to Clare is not based on evidence that Clare :
  - 7.4.1. homeschooled the child;
  - 7.4.2. is economically disadvantaged;
  - 7.4.3. has been charged with a nonviolent misdemeanor other than:
    - 7.4.3.1. an offense under Title 5, Penal Code;

- 7.4.3.2. an offense under Title 6, Penal Code; or
  - 7.4.3.3. an offense that involves family violence, as defined by §71.004 of this code;
  - 7.4.4. provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code;
  - 7.4.5. declined immunization for the child for reasons of conscience, including a religious belief;
  - 7.4.6. sought an opinion from more than one medical provider relating to the child's medical care, transferred the child's medical care to a new medical provider, or transferred the child to a new health care facility; or
  - 7.4.7. allowed the child to engage in independent activities that are appropriate and typical for the child's level of maturity, physical condition, developmental abilities, or culture.
- 7.5. In accordance with §161.001(d), Texas Family Code, the Court finds that **Clare** did not prove by a preponderance of evidence that **Clare** [ (1) was unable to comply with specific provisions of a court order; and (2) the parent made a good faith effort to comply with the order and the failure to comply with the order is not attributable to any fault of the parent.

**8. Termination of Respondent Father **Ronnie** Parental Rights**

- 8.1. The Court finds by clear and convincing evidence that termination of the parent-child relationship between **Ronnie** and the children **K.L.1, K.L.2, and K.L.3**, is in the children's best interest, pursuant to § 161.001(b)(2), Texas Family Code.
- 8.2. Further, the Court finds by clear and convincing evidence that **Ronnie** has:
- 8.2.1. knowingly placed or knowingly allowed the children to remain in conditions or surroundings which endanger the physical or emotional well-being of the children, pursuant to § 161.001(b)(1)(D), Texas Family Code;
  - 8.2.2. engaged in conduct or knowingly placed the children with persons who engaged in conduct which endangers the physical or emotional well-being of the children, pursuant to § 161.001(b)(1)(E), Texas Family Code;
  - 8.2.3. constructively abandoned the children who have been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months and: (1) the Department has made reasonable efforts to return the children to the father; (2) the father has not regularly visited or maintained significant contact with the children; and (3) the father has demonstrated an inability to provide the children with a safe environment, pursuant to § 161.001(b)(1)(N), Texas Family Code;
  - 8.2.4. failed to comply with the provisions of a court order that specifically established the actions necessary for the father to obtain the return of the children who have been in the permanent or temporary managing

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

8.3. **IT IS THEREFORE ORDERED** that the parent-child relationship between Ronnie and the children **K.L.1, K.L.2, and K.L.3** is terminated.

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

8.4.1. homeschooled the child;

8.4.2. is economically disadvantaged;

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

8.4.3.1. an offense under Title 5, Penal Code;

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

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

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

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

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

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

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

## 9. Interstate Compact

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

## 10. Managing Conservatorship: K.N.

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

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

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

**11. Managing Conservatorship: K.L.1**

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

11.2. **IT IS ORDERED** that the **DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** is appointed Permanent Managing Conservator of **K.L.1**, a child the subject of this suit, with the rights and duties specified in § 153.371, Texas Family Code; the Court finding this appointment to be in the best interest of the child.

11.2.1. In addition to these rights and duties, **IT IS ORDERED** that the Department is authorized to consent to the medical care for **K.L.1** under § 266.004, Texas Family Code.

**12. Managing Conservatorship: K.L.2**

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

12.2. **IT IS ORDERED** that the **DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** is appointed Permanent Managing Conservator of **K.L.2**, a child the subject of this suit, with the rights and duties specified in § 153.371, Texas Family Code; the Court finding this appointment to be in the best interest of the child.

12.2.1. In addition to these rights and duties, **IT IS ORDERED** that the Department is authorized to consent to the medical care for **K.L.2** under § 266.004, Texas Family Code.

**13. Managing Conservatorship: K.L.3**

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

13.2. **IT IS ORDERED** that the **DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** is appointed Permanent Managing Conservator of **K.L.3**, a child the subject of this suit, with the rights and duties specified in §

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

13.2.1. In addition to these rights and duties, **IT IS ORDERED** that the Department is authorized to consent to the medical care for **K.L.3** under § 266.004, Texas Family Code.

**14. Required Information Regarding the Parties and Children**

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

14.1.1. Name: Clare  
Driver's License:  
Current address:

14.1.2. Name: Ronnie  
Driver's License:  
Current address:

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

**15. Continuation of Court-Ordered Ad Litem or Advocate**

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

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

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

**16. Court Ordered Ad Litem for Parent**

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

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

**17. Dismissal of Other Court-Ordered Relationships**

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

**18. Post-Termination Child Support**

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

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

**19. Inheritance Rights**

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

**20. Denial of Other Relief**

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

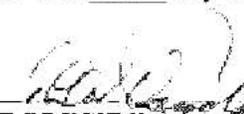
**21. WARNING: APPEAL OF FINAL ORDER, PURSUANT TO § 263.405, TFC**

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

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

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

SIGNED this 8th day of April, 2024.

  
\_\_\_\_\_  
JUDGE PRESIDING

**ATTACHMENT A**

**Child Support**

**23. Child Support Obligation:** Clare

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

**23.2. Monthly Payments**

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

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

23.2.1.2. any child marries;

23.2.1.3. any child dies;

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

23.2.1.5. further order modifying this child support;

23.2.1.6. any child is dismissed from this action; or

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

**23.3. Notice of Change of Employer**

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

**24. Child Support Obligation:** Ronnie

24.1. The Court finds that Ronnie Ronnie is obligated to support K.L.1, K.L.2, and K.L.3 , children the subject of this suit, pursuant to §154.001(a-1), Texas Family Code.

## 24.2. Monthly Payments

24.2.1. **IT IS ORDERED** that [ Ronnie is obligated to pay and shall pay child support to **THE DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** of **\$394.00** per month for the support of Ronnie

**K.L.1, K.L.2. and K.L.3**, with the first payment being due and payable on March 1, 2024, and a like payment being due and payable on the 1st day of each month thereafter until the first month following the date of the earliest occurrence of one of the events specified below:

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

24.2.1.2. any child marries;

24.2.1.3. any child dies;

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

24.2.1.5. further order modifying this child support;

24.2.1.6. any child is dismissed from this action; or

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

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

24.2.3. Thereafter, Ronnie is **ORDERED** to pay child support of **\$251.87**, per month, for **K.L.3** due and payable on the 1<sup>st</sup> day of the first month immediately following the date of the earliest occurrence of one of the events specified in items listed under **Monthly Payments** above and a like sum of **\$251.87** due and payable on the 1st day of each month thereafter until the next occurrence of one of the specified events.

## 24.3. Notice of Change of Employer

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

**25. Place and Manner of Payment of Child Support**

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

**26. Statement on Guidelines**

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

**27. Statement On Modification**

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

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

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

**28. Termination of Duty of Support**

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

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

28.2. any child marries;

28.3. any child dies;

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

28.5. further order modifying this child support;

28.6. any child is dismissed from this action; or

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

# **APPENDIX 3**

Vernon's Texas Statutes and Codes Annotated

Family Code (Refs & Annos)

Title 5. The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship (Refs & Annos)

Subtitle B. Suits Affecting the Parent-Child Relationship

Chapter 152. Uniform Child Custody Jurisdiction and Enforcement Act (Refs & Annos)

Subchapter C. Jurisdiction

V.T.C.A., Family Code § 152.201

§ 152.201. Initial Child Custody Jurisdiction

Currentness

(a) Except as otherwise provided in Section 152.204, 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 was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) a court of another state does not have jurisdiction under Subdivision (1), or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under Section 152.207 or 152.208, 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;

(3) all courts having jurisdiction under Subdivision (1) or (2) have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under Section 152.207 or 152.208; or

(4) no court of any other state would have jurisdiction under the criteria specified in Subdivision (1), (2), or (3).

(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.

#### Credits

Added by Acts 1999, 76th Leg., ch. 34, § 1, eff. Sept. 1, 1999.

Notes of Decisions (237)

#### O'CONNOR'S NOTES

**Source:** Former Fam. Code §11.53.

#### O'CONNOR'S CROSS REFERENCES

See also *O'Connor's Fam. Law Handbook*, “Jurisdiction to grant relief,” ch. 4-A, §2.2.

#### O'CONNOR'S ANNOTATIONS

*In re Dean*, 393 S.W.3d 741, 747 (Tex.2012). “Whether the Texas divorce action was filed [before suit in New Mexico] is irrelevant in determining jurisdiction over custody matters, as the two proceedings involve different inquiries. Jurisdiction over custody determinations is governed by the [UCCJEA], regardless of whether there is an ongoing divorce. *At 750*: The New Mexico trial court ... had jurisdiction over the custody dispute because New Mexico is [child's] home state. Yet the New Mexico trial court deferred to Texas. ... As applied to the facts here, the [UCCJEA] would have allowed Texas to exercise jurisdiction only if New Mexico had declined jurisdiction ‘on the ground that [Texas] ... is the more appropriate forum ... under §152.207 or 152.208.’ But New Mexico’s declination was not based on [either statute]. ... Rather, the New Mexico court dismissed the case solely because ‘Texas has determined it will exercise jurisdiction.’ We appreciate that trial court’s effort to avoid an interstate conflict, but we do not believe the [UCCJEA] allows deferral on that basis.”

*Powell v. Stover*, 165 S.W.3d 322, 323 (Tex.2005). See annotation under Family Code §152.102.

*In re A.J.T.*, 654 S.W.3d 312, 317 (Tex.App.--Eastland 2022, no pet.). “Physical presence of, or *personal jurisdiction over, a party or a child is not necessary or sufficient* to make a child custody determination.’ [Father] conflates personal and subject-matter jurisdiction and fails to acknowledge that subject-matter jurisdiction for child custody matters may not be ‘invoked’ by the actions of a parent. Nor can it be waived or consented to in place of the requirements outlined in §152.201.... Because subject-matter jurisdiction cannot be presumed or waived, and can be raised at any time, [mother] did not confer subject-matter jurisdiction by any action before the trial court.”

*In re D.S.*, 555 S.W.3d 301, 317 (Tex.App.--Dallas 2018), *rev'd on other grounds*, 602 S.W.3d 504 (Tex.2020). “Father contends that because the trial court lacked any possible power to proceed, he was entitled to rely on extrinsic evidence in this collateral attack to establish the trial court lacked subject matter jurisdiction over the termination proceeding. Void judgments may be attacked collaterally with extrinsic evidence when the court ‘under the very law of its creation,’ does not have ‘any possible power’ to decide the case. Extrinsic evidence also may be used to collaterally attack a judgment when a statute terminating a court's jurisdiction ‘firmly established ... the public policy of this state.’ *At 318*: [T]he trial court in this case had general jurisdiction over child custody matters. Texas has, however, statutorily withdrawn the trial court's jurisdiction to make an initial child custody determination if Texas is not the child's home state and does not have jurisdiction of the child.... We conclude ... that this case is postured squarely within the ‘no possible power to act’ exception to the no-extrinsic-evidence rule. Accordingly, the trial court erred by determining it could not consider extrinsic evidence in determining whether it had subject matter jurisdiction to make the initial child custody determination.”

*In re S.J.*, 522 S.W.3d 576, 582-83 (Tex.App.--Houston [14th Dist.] 2017, orig. proceeding). “Father argues that even if the jurisdictional requirements of the UCCJEA ... were not met, the trial court still has inherent power to apply the equitable principles of *parens patriae* to issue orders, in its ‘broad discretion ... for immediate protection of a child,’ when it determines those orders to be necessary in the child's best interest.... Father cites no case or statute that indicates that the principle of *parens patriae* is a jurisdictional avenue independent of the [UCCJEA] for children whose home state is outside Texas. Rather, the UCCJEA is the ‘exclusive jurisdictional basis’ for Texas courts to make a child custody determination. Unless a court finds

that it has jurisdiction under one of the four enumerated grounds in §152.201(b), it cannot exercise jurisdiction over a child custody determination.”

*In re S.A.H.*, 465 S.W.3d 662, 666 (Tex.App.--Houston [14th Dist.] 2014, no pet.). “[T]he operative date for determining whether Texas has jurisdiction is the date the suit was filed in Texas.”

*Berwick v. Wagner*, 336 S.W.3d 805, 814 (Tex.App.--Houston [1st Dist.] 2011, pet. denied). Petitioner “argues that the [Texas] trial court should not have registered the California judgment [establishing the parent-child relationship] because ... the California court lacked jurisdiction to enter an order containing a custody determination before [child] was born. *At 815-16*: As the *Waltenburg* court [below] noted, interpreting the UCCJEA to permit a party to file a pre-birth suit so as to trump any post-birth proper jurisdiction of another state would run counter to the UCCJEA's preference for home-state jurisdiction. ... We agree.... We do not, however, read *Waltenburg*'s refusal to recognize UCCJEA orders entered pre-birth simply because the petition is filed (or the judgment entered) before the child is born so broadly as to include cases where the court otherwise has proper jurisdiction over the matter upon the child's birth. In cases in which the pre-birth suit and the ‘home state’ of the child are one and the same, courts have recognized that UCCJEA petitions can be filed pre-birth with the jurisdictional analysis reserved for post-birth (if there is an issue at that point about jurisdictions or competing forums).”

*In re S.J.A.*, 272 S.W.3d 678, 685 (Tex.App.--Dallas 2008, no pet.). “A high level of physical presence in Texas is not necessary to satisfy the significant-connection standard. Further, the question is not which state has *the most* significant connection with the children. Rather, in determining whether the record supports a finding the children and Mother have a significant connection with Texas, we look at the nature and quality of the children's contacts with Texas.”

*Waltenburg v. Waltenburg*, 270 S.W.3d 308, 316 (Tex.App.--Dallas 2008, no pet.). “[T]he UCCJEA [does not] authorize jurisdiction over a child custody proceeding concerning an unborn child. *At 318*: [R]eading the UCCJEA to authorize jurisdiction over a custody matter concerning an unborn child would defeat the clear purpose underlying the legislature's enactment of the UCCJEA--to prioritize home-state jurisdiction. Under such a reading, a party could file suit pre-birth under the UCCJEA provision authorizing jurisdiction when ‘no other court has jurisdiction,’ and use the ‘simultaneous proceeding’ provision to control, post-birth, whether the child's home state can ever exercise that ‘priority’ jurisdiction. We reject this reading of the UCCJEA.” See also *Arnold v. Price*, 365 S.W.3d 455, 461 (Tex.App.--Fort Worth 2011, no pet.); *Berwick v. Wagner*, under this code section.

*In re Barnes*, 127 S.W.3d 843, 847-48 (Tex.App.--San Antonio 2003, orig. proceeding). Section 152.201(a)(2)'s “significant connection jurisdiction should only be employed when Texas is not the home state and it appears that no other state could assert home state jurisdiction.... [Child] has never lived in this state; his only connection with Texas is that his father now resides here. Therefore, the trial court erred in taking jurisdiction over the custody dispute under §152.201(a)(2). [¶] [I]t does not appear the Utah court made a decision to decline jurisdiction over the custody matter. Even if it has, Virginia is still a proper forum for the custody matters. Until both Virginia and Utah have declined jurisdiction in favor of Texas, Texas is not authorized to take jurisdiction over [child's] custody determination.” (Internal quotes omitted.) See also *Ruffier v. Ruffier*, 190 S.W.3d 884, 890 (Tex.App.--El Paso 2006, no pet.) (until Belarus has declined jurisdiction in favor of Texas, Texas is not authorized to assert significant-connection jurisdiction over custody determination).

*In re Y.M.A.*, 111 S.W.3d 790, 794 (Tex.App.--Fort Worth 2003, no pet.). “The family had lived in Egypt within the six months before commencement of [W's] proceeding. Although [H] had taken [child] to Texas approximately one month before [W] filed the Egyptian proceeding, [W] continued to live in Egypt despite [child's] absence. Thus, Egypt was the child's home state and had jurisdiction to make the initial child custody order. Because Egypt, which is considered a state of the U.S. for applying jurisdictional rules, had jurisdiction of the case under §152.201(a)(1), a Texas court would have no jurisdiction over the case.”

## O'CONNOR'S COMMENTS

### NCCUSL Comment

This section provides mandatory jurisdictional rules for the original child custody proceeding. It generally continues the provisions of the UCCJA §3. However, there have been a number of changes to the jurisdictional bases.

**1. Home state jurisdiction.** The jurisdiction of the home state has been prioritized over other jurisdictional bases. Section 3 of the UCCJA provided four independent and concurrent bases of jurisdiction. The PKPA provides that full faith and credit can only be given to an initial custody determination of a “significant connection” state when there is no home state. This Act prioritizes home state jurisdiction in the same manner as the PKPA thereby eliminating any potential conflict between the two acts.

The six-month extended home state provision of subsection (a)(1) has been modified slightly from the UCCJA. The UCCJA provided that home state jurisdiction continued for six months when the child had been removed by a person seeking the child’s custody or for other reasons and a parent or a person acting as a parent continues to reside in the home state. Under this Act, it is no longer necessary to determine why the child has been removed. The only inquiry relates to the status of the person left behind. This change provides a slightly more refined home state standard than the UCCJA or the PKPA, which also requires a determination that the child has been removed “by a contestant or for other reasons.” The scope of the PKPA’s provision is theoretically narrower than this Act. However, the phrase “or for other reasons” covers most fact situations where the child is not in the home state and, therefore, the difference has no substantive effect.

In another sense, the six-month extended home state jurisdiction provision in this Act is narrower than the comparable provision in the PKPA. The PKPA’s definition of extended home state is more expansive because it applies whenever a “contestant” remains in the home state. That class of individuals has been eliminated in this Act. This Act retains the original UCCJA classification of “parent or person acting as parent” to define who must remain for a state to exercise the six-month extended home state jurisdiction. This eliminates the undesirable jurisdictional determinations which would occur as a result of differing state substantive laws on visitation involving grandparents and others. For example, if State A’s law provided that grandparents could obtain visitation with a child after the death of one of the parents, then the grandparents, who would be considered “contestants” under the PKPA, could file a proceeding within six months after the remaining parent moved and have the case heard in State A. However, if State A did not provide that grandparents could seek visitation under such circumstances, the grandparents would not be considered “contestants” and State B where the child acquired a new home state would provide the only forum. This Act bases jurisdiction on the parent and child or person acting as a parent and child relationship without regard to grandparents or other potential seekers of custody or visitation. There is no conflict with the broader provision of the PKPA. The PKPA in §(c)(1) authorizes states to narrow the scope of their jurisdiction.

**2. Significant connection jurisdiction.** This jurisdictional basis has been amended in four particulars from the UCCJA. First, the “best interest” language of the UCCJA has been eliminated. This phrase tended to create confusion between the jurisdictional issue and the substantive custody determination. Since the language was not necessary for the jurisdictional issue, it has been removed.

Second, the UCCJA based jurisdiction on the presence of a significant connection between the child and the child’s parents or the child and at least one contestant. This Act requires that the significant connections be between the child, the child’s parents or the child and a person acting as a parent.

Third, a significant connection state may assume jurisdiction only when there is no home state or when the home state decides that the significant connection state would be a more appropriate forum under Section 152.207 or 152.208. Fourth, the determination of significant connections has been changed to eliminate the language of “present or future care.” The jurisdictional determination should be made by determining whether there is sufficient evidence in the state for the court to make an informed custody determination. That evidence might relate to the past as well as to the “present or future.”

Emergency jurisdiction has been moved to a separate section. This is to make it clear that the power to protect a child in crisis does not include the power to enter a permanent order for that child except as provided by that section.

Subsection (a)(3) provides for jurisdiction when all states with jurisdiction under subsections (a)(1) and (a)(2) determine that this state is a more appropriate forum. The determination would have to be made by all states with jurisdiction under subsections (a)(1) and (a)(2). Jurisdiction would not exist under this paragraph because the home state determined it is a more appropriate place to hear the case if there is another state that could exercise significant connection jurisdiction under subsection (a)(2).

Subsection (a)(4) retains the concept of jurisdiction by necessity as found in the UCCJA and in the PKPA. This default jurisdiction only occurs if no other state would have jurisdiction under subsections (a)(1) through (a)(3).

Subsections (b) and (c) clearly state the relationship between jurisdiction under this Act and other forms of jurisdiction. Personal jurisdiction over, or the physical presence of, a parent or the child is neither necessary nor required under this Act. In other words neither minimum contacts nor service within the state is required for the court to have jurisdiction to make a custody determination. Further, the presence of minimum contacts or service within the state does not confer jurisdiction to make a custody determination. Subject to Section 152.204, satisfaction of the requirements of subsection (a) is mandatory.

The requirements of this section, plus the notice and hearing provisions of the Act, are all that is necessary to satisfy due process. This Act, like the UCCJA and the PKPA is based on Justice Frankfurter's concurrence in *May v. Anderson*, 345 U.S. 528 (1953). As pointed out by Professor Bodenheimer, the reporter for the UCCJA, no "workable interstate custody law could be built around [Justice] Burton's plurality opinion...." Bridgette Bodenheimer, *The Uniform Child Custody Jurisdiction Act: A Legislative Remedy for Children Caught in the Conflict of Laws*, 22 Vand.L.Rev. 1207, 1233 (1969). It should also be noted that since jurisdiction to make a child custody determination is subject matter jurisdiction, an agreement of the parties to confer jurisdiction on a court that would not otherwise have jurisdiction under this Act is ineffective.

V. T. C. A., Family Code § 152.201, TX FAMILY § 152.201

Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

# **APPENDIX 4**

Vernon's Texas Statutes and Codes Annotated

Family Code (Refs & Annos)

Title 5. The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship (Refs & Annos)

Subtitle B. Suits Affecting the Parent-Child Relationship

Chapter 152. Uniform Child Custody Jurisdiction and Enforcement Act (Refs & Annos)

Subchapter B. General Provisions

V.T.C.A., Family Code § 152.102

§ 152.102. Definitions

Currentness

In this chapter:

- (1) “Abandoned” means left without provision for reasonable and necessary care or supervision.
- (2) “Child” means an individual who has not attained 18 years of age.
- (3) “Child custody determination” means a judgment, decree, or other order of a court providing for legal custody, physical custody, or visitation with respect to a child. The term includes permanent, temporary, initial, and modification orders. The term does not include an order relating to child support or another monetary obligation of an individual.
- (4) “Child custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Subchapter D.<sup>1</sup>
- (5) “Commencement” means the filing of the first pleading in a proceeding.
- (6) “Court” means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.
- (7) “Home state” means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with a parent or a person acting as a parent. A period of temporary absence of a parent or a person acting as a parent is part of the period.
- (8) “Initial determination” means the first child custody determination concerning a particular child.

(9) “Issuing court” means the court that makes a child custody determination for which enforcement is sought under this chapter.

(10) “Issuing state” means the state in which a child custody determination is made.

(11) “Legal custody” means the managing conservatorship of a child.

(12) “Modification” means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(13) “Person acting as a parent” means a person, other than a parent, who:

(A) has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and

(B) has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(14) “Physical custody” means the physical care and supervision of a child.

(15) “Tribe” means an Indian tribe or band, or Alaskan Native village, that is recognized by federal law or formally acknowledged by a state.

(16) “Visitation” means the possession of or access to a child.

(17) “Warrant” means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

### **Credits**

Added by Acts 1999, 76th Leg., ch. 34, § 1, eff. Sept. 1, 1999.

Notes of Decisions (76)

### **O’CONNOR’S NOTES**

**Source:** Former Fam. Code §11.52.

### **O’CONNOR’S ANNOTATIONS**

*In re Dean*, 393 S.W.3d 741, 749 (Tex.2012). Father “asserts that the home state rule [unconstitutionally] violates [his equal-protection rights] because a woman controls where she lives prior to giving birth, and that [deprives the father] of immediate post-birth involvement. [¶] [Family Code] §152.201(a) is a procedural mechanism for determining jurisdiction. The statute defines home state to establish where the proceedings should take place, without a bias for either parent. The *place of birth*

is not the relevant consideration. Instead, we look to ‘the State in which the child lived *from* birth with [a parent or person acting as a parent].’ Residence is determinative, and it favors neither women nor men. A child could live ‘from birth’ with his father or his mother, and [Fam. Code] §§152.102(7) and 152.201(a) would apply with equal force in either scenario.” Held: Home-state rule did not violate father’s equal-protection rights under either the Texas Equal Rights Amendment or the 14th Amendment to the U.S. Constitution.

**Powell v. Stover**, 165 S.W.3d 322, 323 (Tex.2005). “We hold that, because the child lived in Tennessee with his parents for at least six consecutive months immediately before the child-custody proceeding was commenced, Texas is not the child’s home state and the trial court’s exercise of jurisdiction was improper. *At 326*: The Family Code defines ‘home state’ as the state in which a child ‘lived’ with a parent. The word ‘lived’ strongly connotes physical presence. [¶] The purposes behind the UCCJEA further suggest that a child’s physical location is the central factor to be considered when determining a child’s home state. The UCCJEA was intended to give prominence to objective factors. *At 327*: [A] test based on the totality of the circumstances suffers from essentially the same weakness as a purely intent-based test; both seek to promote flexibility at the expense of the jurisdictional certainty that the home-state provision was intended to provide. *At 328*: We therefore hold that in determining where a child lived for purposes of establishing home-state jurisdiction, the trial court must consider the child’s physical presence in a state.” See also **Seligman-Hargis v. Hargis**, 186 S.W.3d 582, 586 (Tex.App.--Dallas 2006, no pet.) (evidence established children had never lived in Texas and had been in Germany since 1997, so Germany was home state).

**In re L.N.A.H.**, 665 S.W.3d 907, 910-11 (Tex.App.--Houston [14th Dist.] 2023, no pet.). See annotation under Family Code §152.105.

**In re Meekins**, 550 S.W.3d 729, 739 n.4 (Tex.App.--Houston [1st Dist.] 2018, orig proceeding). “We note that [father], in numerous filings in the trial court, stated that the trial court had ‘continuing, exclusive jurisdiction’ over this case as a result of prior proceedings. To the extent these statements can be construed as judicial admissions, we further note that subject-matter jurisdiction cannot be conferred by agreement or estoppel, nor can it be conferred by judicial admission. *At 740*: The mandamus record does not reflect that the trial court dismissed the case on the basis that it never acquired jurisdiction under the UCCJEA because Texas was not [child’s] home state at the time of the original SAPCR. Instead, the record supports the trial court’s implied determination that it had jurisdiction under the UCCJEA but that Illinois was a more appropriate forum for the modification proceeding. Evidence in the mandamus record supports this implied determination.”

**In re Walker**, 428 S.W.3d 212, 218 (Tex.App.--Houston [1st Dist.] 2014, orig. proceeding). Child “was born ... in Georgia and lived there the majority of her life. On May 25, 2012, [father] purportedly ‘moved’ to Texas with [child]; however, within a very short time [father] and [child] returned to Georgia where they lived at the same residence as they had prior to May 25, 2012. [Father], with [child], finally left Georgia for Texas on July 25, 2012. [Father] instituted this proceeding on November 27, 2012. Because [child] did not move from Georgia until July 25, 2012, and July 25, 2012 is within six months of November 27, 2012, Georgia was [child’s] home state within six months of the initiation of this child custody proceeding. [¶] [A]lthough [child] was absent from Georgia from May 25, 2012 until June 2012, this does not affect Georgia’s home state jurisdiction. ‘A temporary absence from the state continues to count as though the child lived within the state for purposes of determining the home state.’” See also **In re K.Y.**, 273 S.W.3d 703, 707 (Tex.App.--Houston [14th Dist.] 2008, no pet.) (Texas was considered children’s home state even though they took frequent trips to Oklahoma to visit foster parent during six-month period before suit was filed; such visits do not show that children moved from Texas). *But see In re Tieri*, under this code section.

**Berwick v. Wagner**, 336 S.W.3d 805, 811 (Tex.App.--Houston [1st Dist.] 2011, pet. denied). One of child’s adoptive fathers “contends that a parentage order cannot be a child custody determination under the UCCJEA absent *express* adjudication of custody in the judgment. [¶] [W]e conclude the trial court correctly recognized the ... judgment as a child custody determination because it resulted from proceedings in which ‘legal custody, physical custody, or visitation [was] an issue’ between the presumptive and intended parents. While custody was not disputed between [the two fathers] in that proceeding, it was very much at issue with relation to [child’s] surrogate mother and her husband.... *At 812*: [N]ot all proceedings related to parentage involve custody. But many do, either expressly or by implication. *At 813*: [W]e are unpersuaded by [the] argument that the

judgment must expressly mention the word ‘custody’ to qualify as a child custody determination. *At 814*: Because the ... order both terminates [child's] presumptive parental rights and grants exclusive parental rights and--by implication--custody to [the fathers], the trial court correctly concluded it qualifies as a ‘child custody determination’ for purposes of [Fam. Code] §152.305.”

*In re Tieri*, 283 S.W.3d 889, 894 (Tex.App.--Tyler 2008, orig. proceeding). “Although a temporary absence of a parent is part of the [six-month requirement to find a child’s home state under §152.102(7)], there is no provision for the children’s temporary absence from the state. ... However, the respondent court characterized the absence of the children from Texas ... as ‘temporary.’ [¶] In total, the children lived in Texas for seven months before [mother] filed for divorce and custody.... However, these months were not consecutive. ... Because the children did not live with [mother] in Texas for a period of six consecutive months before she filed for divorce and custody, Texas is not the children’s home state. Therefore, the respondent court abused its discretion by including periods of absence from the state in calculating the length of the children’s residence in Texas.” *But see In re Walker*, under this code section.

*In re Burk*, 252 S.W.3d 736, 740 (Tex.App.--Houston [14th Dist.] 2008, orig. proceeding). Mother “contends Texas is not the ‘home state’ because ‘home state’ is defined as ‘the’ state in which the child lived from birth. [She] contends this means the child must have lived in only one state from birth. [Mother] argues [child] has not lived in Texas, i.e., ‘the state,’ *from birth* because [child] lived in more than one state before commencement of the proceeding. [Father] claims the language requires only that Texas must have been the child’s home state at some time *within six months before* commencement of the proceeding. *At 741*: There is no indication the legislature intended ‘the home state ... within six months,’ to apply only to children six months of age or older. [¶] We agree with [father’s] interpretation.”

## O’CONNOR’S COMMENTS

### NCCUSL Comment

The UCCJA did not contain a definition of “child.” The definition here is taken from the PKPA.

The definition of “child-custody determination” now closely tracks the PKPA definition. It encompasses any judgment, decree or other order which provides for the custody of, or visitation with, a child, regardless of local terminology, including such labels as “managing conservatorship” or “parenting plan.”

The definition of “child-custody proceeding” has been expanded from the comparable definition in the UCCJA. These listed proceedings have generally been determined to be the type of proceeding to which the UCCJA and PKPA are applicable. The list of examples removes any controversy about the types of proceedings where a custody determination can occur. Proceedings that affect access to the child are subject to this Act. The inclusion of proceedings related to protection from domestic violence is necessary because in some states domestic violence proceedings may affect custody of and visitation with a child. Juvenile delinquency or proceedings to confer contractual rights are not “custody proceedings” because they do not relate to civil aspects of access to a child. While a determination of paternity is covered under the Uniform Interstate Family Support Act, the custody and visitation aspects of paternity cases are custody proceedings. Cases involving the Hague Convention on the Civil Aspects of International Child Abduction have not been included at this point because custody of the child is not determined in a proceeding under the International Child Abductions Remedies Act. Those proceedings are specially included in the Subchapter D enforcement process.

“Commencement” has been included in the definitions as a replacement for the term “pending” found in the UCCJA. Its inclusion simplifies some of the simultaneous proceedings provisions of this Act.

The definition of “home state” has been reworded slightly. No substantive change is intended from the UCCJA.

The term “issuing state” is borrowed from UIFSA. In UIFSA, it refers to the court that issued the support or parentage order. Here, it refers to the state, or the court, which made the custody determination that is sought to be enforced. It is used primarily in Subchapter D.

The term “person acting as a parent” has been slightly redefined. It has been broadened from the definition in the UCCJA to include a person who has acted as a parent for a significant period of time prior to the filing of the custody proceeding as well as a person who currently has physical custody of the child. In addition, a person acting as a parent must either have legal custody or claim a right to legal custody under the law of this state. The reference to the law of this state means that a court determines the issue of whether someone is a “person acting as a parent” under its own law. This reaffirms the traditional view that a court in a child custody case applies its own substantive law. The court does not have to undertake a choice-of-law analysis to determine whether the individual who is claiming to be a person acting as a parent has standing to seek custody of the child.

The definition of “tribe” is the one mandated for use in Uniform Acts. Should a state choose to apply this Act to tribal adjudications, this definition should be enacted as well as the entirety of Section 152.104.

The term “contestant” as has been omitted from this revision. It was defined in the UCCJA §2(1) as “a person, including a parent, who claims a right to custody or visitation rights with respect to a child.” It seems to have served little purpose over the years, and whatever function it once had has been subsumed by state laws on who has standing to seek custody of or visitation with a child. In addition UCCJA §2(5) which defined “decree” and “custody decree” has been eliminated as duplicative of the definition of “custody determination.”

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### Footnotes

1 V.T.C.A., Family Code § 152.301 et seq.

V. T. C. A., Family Code § 152.102, TX FAMILY § 152.102

Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

# **APPENDIX 5**

Vernon's Texas Statutes and Codes Annotated

Family Code (Refs & Annos)

Title 5. The Parent-Child Relationship and the Suit Affecting the Parent-Child Relationship (Refs & Annos)

Subtitle B. Suits Affecting the Parent-Child Relationship

Chapter 161. Termination of the Parent-Child Relationship (Refs & Annos)

Subchapter A. Grounds

V.T.C.A., Family Code § 161.001

§ 161.001. Involuntary Termination of Parent-Child Relationship

Currentness

(a) In this section, “born addicted to alcohol or a controlled substance” means a child:

(1) who is born to a mother who during the pregnancy used a controlled substance, as defined by Chapter 481, Health and Safety Code, other than a controlled substance legally obtained by prescription, or alcohol; and

(2) who, after birth as a result of the mother's use of the controlled substance or alcohol:

(A) experiences observable withdrawal from the alcohol or controlled substance;

(B) exhibits observable or harmful effects in the child's physical appearance or functioning; or

(C) exhibits the demonstrable presence of alcohol or a controlled substance in the child's bodily fluids.

(b) The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence:

(1) that the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;

(F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Education Code; or

(ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;

(L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:

(i) Section 19.02 (murder);

(ii) Section 19.03 (capital murder);

(iii) Section 19.04 (manslaughter);

(iv) Section 21.11 (indecenty with a child);

(v) Section 22.01 (assault);

(vi) Section 22.011 (sexual assault);

(vii) Section 22.02 (aggravated assault);

(viii) Section 22.021 (aggravated sexual assault);

(ix) Section 22.04 (injury to a child, elderly individual, or disabled individual);

(x) Section 22.041 (abandoning or endangering a child, elderly individual, or disabled individual);

(xi) Section 25.02 (prohibited sexual conduct);

(xii) Section 43.25 (sexual performance by a child);

(xiii) Section 43.26 (possession or promotion of child pornography);

(xiv) Section 21.02 (continuous sexual abuse of young child or disabled individual);

(xv) Section 20A.02(a)(7) or (8) (trafficking of persons); and

(xvi) Section 43.05(a)(2) (compelling prostitution);

(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state;

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and:

(i) the department has made reasonable efforts to return the child to the parent;

(ii) the parent has not regularly visited or maintained significant contact with the child; and

(iii) the parent has demonstrated an inability to provide the child with a safe environment;

(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;

(P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:

(i) failed to complete a court-ordered substance abuse treatment program; or

(ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;

(Q) knowingly engaged in criminal conduct that has resulted in the parent's:

(i) conviction of an offense; and

(ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition;

(R) been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription;

(S) voluntarily delivered the child to a designated emergency infant care provider under Section 262.302 without expressing an intent to return for the child;

(T) been convicted of:

(i) the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;

(ii) criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i);

(iii) criminal solicitation under Section 15.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, of the offense described by Subparagraph (i); or

(iv) the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code;

(U) been placed on community supervision, including deferred adjudication community supervision, or another functionally equivalent form of community supervision or probation, for being criminally responsible for the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; or

(V) been convicted of:

(i) criminal solicitation of a minor under Section 15.031, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.031, Penal Code; or

(ii) online solicitation of a minor under Section 33.021, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 33.021, Penal Code; and

(2) that termination is in the best interest of the child.

(c) Evidence of one or more of the following does not constitute clear and convincing evidence sufficient for a court to make a finding under Subsection (b) and order termination of the parent-child relationship:

(1) the parent homeschooled the child;

(2) the parent is economically disadvantaged;

(3) the parent has been charged with a nonviolent misdemeanor offense other than:

(A) an offense under Title 5, Penal Code;

(B) an offense under Title 6, Penal Code; or

(C) an offense that involves family violence, as defined by Section 71.004 of this code;

(4) the parent provided or administered low-THC cannabis to a child for whom the low-THC cannabis was prescribed under Chapter 169, Occupations Code;

(5) the parent declined immunization for the child for reasons of conscience, including a religious belief;

(6) the parent sought an opinion from more than one medical provider relating to the child's medical care, transferred the child's medical care to a new medical provider, or transferred the child to another health care facility; or

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

(d) A court may not order termination under Subsection (b)(1)(O) based on the failure by the parent to comply with a specific provision of a court order if a parent proves by a preponderance of evidence that:

(1) the parent was unable to comply with specific provisions of the court order; and

(2) the parent made a good faith effort to comply with the order and the failure to comply with the order is not attributable to any fault of the parent.

(d-1) The court may not order termination under Subsection (b)(1)(M) unless the petition for the termination of the parent-child relationship is filed not later than the first anniversary of the date the department or an equivalent agency in another state was granted managing conservatorship of a child in the case that resulted in the termination of the parent-child relationship with respect to that child based on a finding that the parent's conduct violated Subsection (b)(1)(D) or (E) or substantially equivalent provisions of the law of another state.

(e) This section does not prohibit the Department of Family and Protective Services from offering evidence described by Subsection (c) as part of an action to terminate the parent-child relationship under this subchapter.

(f) In a suit for termination of the parent-child relationship filed by the Department of Family and Protective Services, the court may not order termination of the parent-child relationship under Subsection (b)(1) unless the court finds by clear and convincing evidence and describes in writing with specificity in a separate section of the order that:

(1) the department made reasonable efforts to return the child to the parent before commencement of a trial on the merits and despite those reasonable efforts, a continuing danger remains in the home that prevents the return of the child to the parent; or

(2) reasonable efforts to return the child to the parent, including the requirement for the department to provide a family service plan to the parent, have been waived under Section 262.2015.

(g) In a suit for termination of the parent-child relationship filed by the Department of Family and Protective Services in which the department made reasonable efforts to return the child to the child's home but a continuing danger in the home prevented the child's return, the court shall include in a separate section of its order written findings describing with specificity the reasonable efforts the department made to return the child to the child's home.

### Credits

Added by Acts 1995, 74th Leg., ch. 20, § 1, eff. April 20, 1995. Amended by Acts 1995, 74th Leg., ch. 709, § 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 751, § 65, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 575, § 9, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1022, § 60, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1087, § 1, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1390, § 18, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 809, § 1, eff. Sept. 1, 2001; Acts 2005, 79th Leg., ch. 508, § 2, eff. Sept. 1, 2005; Acts 2007, 80th Leg., ch. 593, § 3.30, eff. Sept. 1, 2007; Acts 2009, 81st Leg., ch. 86, § 1, eff. Sept. 1, 2009; Acts 2011, 82nd Leg., ch. 1 (S.B. 24), § 4.02, eff. Sept. 1, 2011; Acts 2015, 84th Leg., ch. 1 (S.B. 219), § 1.078, eff. April 2, 2015; Acts 2015, 84th Leg., ch. 944 (S.B. 206), § 11, eff. Sept. 1, 2015; Acts 2017, 85th Leg., ch. 40 (S.B. 77), § 2, eff. Sept. 1, 2017; Acts 2017, 85th Leg., ch. 317 (H.B. 7), § 12, eff. Sept. 1, 2017; Acts 2021, 87th Leg., ch. 8 (H.B. 567), § 3, eff. Sept. 1, 2021; Acts 2021, 87th Leg., ch. 29 (H.B. 2536), § 1, eff. May 15, 2021; Acts 2021, 87th Leg., ch. 221 (H.B. 375), § 2.17, eff. Sept. 1, 2021; Acts 2021, 87th Leg., ch. 831 (H.B. 2924), § 1, eff. Sept. 1, 2021; Acts 2023, 88th Leg., ch. 675 (H.B. 1087), § 1, eff. Sept. 1, 2023; Acts 2023, 88th Leg., ch. 728 (H.B. 2658), § 1, eff. Sept. 1, 2023; Acts 2023, 88th Leg., ch. 768 (H.B. 4595), § 8.002, eff. Sept. 1, 2023; Acts 2023, 88th Leg., ch. 830 (H.B. 2187), § 5, eff. Sept. 1, 2023.

### Editors' Notes

#### VALIDITY

<For validity of this section, see Interest of C.J.B., No. 14-23-00186-CV, 2023 WL 5963385 (Tex. App.--Houston [14th Dist.] Sept. 14, 2023, no pet. h.).>

Notes of Decisions (3829)

### O'CONNOR'S NOTES

**Source:** Former Fam. Code §§11.15(b), 15.02(a).

### O'CONNOR'S CROSS REFERENCES

See also *O'Connor's Fam. Law Handbook*, "Terminating the Parent-Child Relationship," ch. 4-H, §12.

### O'CONNOR'S ANNOTATIONS

#### Generally

*Holick v. Smith*, 685 S.W.2d 18, 20 (Tex.1985). "The natural right existing between parents and their children is of constitutional dimensions. . . . A termination decree is complete, final, irrevocable and divests for all time that natural right as well as all legal rights, privileges, duties and powers with respect to each other except for the child's right to inherit. . . . Consequently, termination proceedings should be strictly scrutinized, and involuntary termination statutes are strictly construed in favor of the parent."

*Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex.1976). "Actions which break the ties between a parent and child 'can never be justified without the most solid and substantial reasons.' Particularly in an action which permanently sunders those ties, should the proceedings be strictly scrutinized. This court has always recognized the strong presumption that the best interest of a minor

is usually served by keeping custody in the natural parents. [¶] ‘The presumption is based upon a logical belief that the ties of the natural relationship of parent and child ordinarily furnish strong assurance of genuine efforts on the part of the custodians to provide the child with the best care and opportunities possible, and, as well, the best atmosphere for the mental, moral and emotional development of the child.’”

*In re R.H.*, \_\_ S.W.3d \_\_, 2024 WL 1207303 (Tex.App.--Fort Worth 2024, pet. filed 6-4-24) (No. 02-23-00371-CV; 3-21-24). “Mother claims that a Texas state court may only make a finding under [the Indian Child Welfare Act (ICWA), 25 U.S.C.] §1912(f) ...--it cannot make both the ICWA finding and termination findings under [Fam. Code] §161.001(b).... [¶] [W]e do not believe that ICWA preempts the Family Code. [W]hile a parent's rights to an Indian child may not be terminated without a §1912(f) finding, the existence of that finding does not preclude, and is not inconsistent with, the trial court's also making state-court findings.” *But see In re W.D.H.*, 43 S.W.3d 30 (Tex. App.--Houston [14th Dist.] 2001, pet. denied).

*In re N.L.W.*, 534 S.W.3d 102, 111 (Tex.App.--Texarkana 2017, no pet.). “[T]he question of whether termination of a parent-child relationship is in the child’s best interest is ‘a conclusion drawn by way of reasonable inference from the evidence.’ As such, and regardless of whether it is a pure question of fact or a mixed question of law and fact, the best interest issue is not a pure question of law. Consequently, whether termination of a parent-child relationship is in the child’s best interest is a matter capable of being judicially admitted under [TRCP] 198. *At 112*: [B]ecause [father] failed to answer [mother’s] requests for admission that termination of his parental rights was in [child’s] best interest, he is deemed to have admitted that fact. *At 115*: Because deemed admissions constitute judicial admissions, [father’s] admissions were ‘conclusive . . . , and it relieve[d mother’s] burden of proving [that termination of [father’s] parental rights was in [child’s] best interest], and bars [father] from disputing it.’ Because ‘[a]dmissions of fact on file at the time of a summary judgment hearing are proper summary judgment proof and will, therefore, support a motion for summary judgment,’ . . . and because a judicially admitted fact is no longer subject to a legal or factual sufficiency attack on appeal, . . . the trial court did not err in granting summary judgment.”

*In re D.N.*, 405 S.W.3d 863, 870 (Tex.App.--Amarillo 2013, no pet.). “[A] trial court can terminate the parent-child relationship, even though it previously denied termination in another order, using [Fam. Code] §161.001 alone if termination is sought on *evidence of acts or omissions having occurred since the earlier order in which termination was denied*. But, to rely on acts or omissions evidence of which has been presented to the trial court prior to the earlier order denying termination, the Department must garner sufficient evidence of [Fam. Code] §161.004's elements, including a material and substantial change of the parties' circumstances.”

*Ruiz v. TDFPS*, 212 S.W.3d 804, 813-14 (Tex.App.--Houston [1st Dist.] 2006, no pet.). “[T]his Court, in an en banc opinion, has specifically rejected DFPS’s argument that we may affirm a trial court’s termination order on the basis of a subsection of §161.001, which, although pleaded by DFPS in its original petition, was not expressly found to have been violated in the decree.... ‘[A] parental rights termination order can be upheld only on grounds both pleaded by [DFPS] and found by the trial court.’”

*In re S.A.P.*, 169 S.W.3d 685, 695 (Tex.App.--Waco 2005, no pet.), *overruled on other grounds*, *In re E.C.*, 402 S.W.3d 239 (Tex.2013). “In a proceeding to terminate the parent-child relationship brought under §161.001, [petitioner] must establish by clear and convincing evidence two elements: (1) one or more acts or omissions enumerated under subsection (1) [now subsection (b)(1)] of §161.001 (termed a predicate violation); *and* (2) that termination is in the best interest of the child. The factfinder must find that *both* elements are established by clear and convincing evidence, and proof of one element does not relieve the petitioner of the burden of proving the other. If multiple predicate violations under §161.001(1) [now §161.001(b)(1)] were found in the trial court, we can affirm based on any one ground because only one predicate violation under §161.001(1) is necessary to a termination judgment.”

*In re J.T.G.*, 121 S.W.3d 117, 130 (Tex.App.--Fort Worth 2003, no pet.). Held: The entitlement in criminal proceedings of an indigent defendant to an expert in order to prepare and present a defense is not extended to parental-termination cases.

*Avery v. State*, 963 S.W.2d 550, 553 (Tex.App.--Houston [1st Dist.] 1997, no pet.). “The parental conduct to be examined in considering termination of parental rights includes what the parents did before and after the birth of the child.”

### ***Clear & Convincing Evidence***

*In re C.E.*, 687 S.W.3d 304, 308-09 (Tex.2024). “When the standard of proof is clear and convincing evidence, an appellate court reviewing the legal sufficiency of the evidence considers ‘all evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true.’ Courts ‘must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so,’ but courts ‘should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible.’ [¶] Here, the court of appeals was concerned that ‘the record shows inconsistencies in the facts as to what symptoms developed, when they developed, and how they were reported,’ and it concluded that ‘[f]or these reasons, the evidence is legally insufficient to find that Mother--or any other specific person--caused [child’s] injuries.’ Under the standard of review we have just described, however, evidence is not legally insufficient merely due to inconsistencies or disputes in the evidence. [¶] Rather, a core function of the jury under any standard of proof--including clear and convincing evidence--is to resolve conflicts in testimony, weigh evidence, and draw reasonable inferences from basic facts to ultimate facts. In doing so, juries may consider circumstantial evidence, weigh witness credibility, and draw reasonable inferences from the evidence they choose to believe. A reviewing court may not substitute its judgment for that of the jury.”

*In re N.G.*, 577 S.W.3d 230, 235 (Tex.2019). “In parental termination cases, due process mandates a clear and convincing evidence standard of proof. ‘Due process compels this heightened standard because terminating the parent-child relationship imposes permanent, irrevocable consequences.’ ... Because of this high evidentiary burden at trial, we have concluded that appellate review in parental termination cases also warrants a heightened standard of review. Further, a parent must be permitted to appeal the termination of parental rights, and due process requires that the appeal be meaningful. *At 237*: [W]hen a court of appeals reverses a finding based on insufficient evidence, the court must ‘detail the evidence relevant to the issue of parental termination and clearly state why the evidence is insufficient to support a termination finding by clear and convincing evidence.’”

*In re A.B.*, 437 S.W.3d 498, 502-03 (Tex.2014). “Because the termination of parental rights implicates fundamental interests, a higher standard of proof--clear and convincing evidence--is required at trial. Given this higher burden at trial, ... a proper factual sufficiency review requires the court of appeals to determine whether ‘the evidence is such that a factfinder could reasonably form a firm belief or conviction about the truth of the State’s allegations.’ ‘If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient.’ And in making this determination, the reviewing court must undertake ‘an exacting review of the entire record with a healthy regard for the constitutional interests at stake.’ [¶] [D]espite the heightened standard of review ..., the court of appeals must nevertheless still provide due deference to the decisions of the factfinder, who, having full opportunity to observe witness testimony first-hand, is the sole arbiter when assessing the credibility and demeanor of witnesses. [I]f a court of appeals is *reversing* the jury’s finding based on insufficient evidence, the reviewing court must ‘detail the evidence relevant to the issue of parental termination and clearly state why the evidence is insufficient to support a termination finding by clear and convincing evidence.’ *At 505*: But ... we decline to mandate that courts of appeals detail the evidence when affirming a jury verdict.”

*In re C.M.J.*, 573 S.W.3d 404, 410-411 (Tex.App.--Houston [1st Dist.] 2019, pet. denied). “[I]n the context of a parental-termination case, the clear-and-convincing standard applies at the summary-judgment stage.”

*In re E.W.*, 494 S.W.3d 287, 296-97 (Tex.App.--Texarkana 2015, no pet.). “The trial court specifically stated that it was relying on its own ‘judicial knowledge’ of the case in terminating [parents’] parental rights.... We have no doubt that the trial court may have been well acquainted through previous dealings with the parties with facts that may have supported termination on one of these grounds. However, it is inappropriate for a trial judge to take judicial notice of testimony even in a retrial of the same case. In order for testimony from a prior hearing or trial to be considered in a subsequent proceeding, the transcript of that testimony must be properly authenticated and entered into evidence. Thus, a trial judge may not even judicially notice testimony

that was given at a temporary hearing in a family law case at a subsequent hearing in the same cause without admitting the prior testimony into evidence. The Department admitted no such transcripts into evidence at this termination hearing, and none were included in the clerk's record. [¶] Simply put, there was no evidence to support the trial court's finding that the Department proved the existence of either ground (D) or ground (E) by clear and convincing evidence.” (Internal quotes omitted.)

### ***Due Process***

***In re M.P.***, 639 S.W.3d 700, 704 (Tex.2022). “Here, the court of appeals determined that there was legally and factually sufficient evidence to support terminating Father's rights under §161.001(b)(1)(O) but factually insufficient evidence to support termination under (D) and (E). Thus, the proper remedy was to affirm the trial court's termination under (O) and strike the (D) and (E) findings, which would dispose of the case. [¶] Striking the insufficiently supported findings avoids the mootness issues raised by the Department and the concurrences in the denial of en banc review. [B]ecause the Department already got its requested relief, ‘even if on remand the trial court were to again find that Father committed a predicate act under (D) or (E), it could not be the case that Father's rights to [child] were terminated on those grounds.’ Thus, we hold that the court of appeals erred in remanding the case for a new trial on the factually insufficient predicate grounds.”

***In re D.T.***, 625 S.W.3d 62, 73 (Tex.2021). See annotation under Family Code §107.013.

***In re N.G.***, 577 S.W.3d 230, 235 (Tex.2019). “When due process requires the heightened standard for termination of parental rights by clear and convincing evidence, it follows that due process also requires a heightened standard of review of a trial court's finding under § 161.001(b)(1)(D) or (E), even when another ground is sufficient for termination, because of the potential consequences for parental rights to a different child [under Fam. Code § 161.001(b)(1)(M), which references (D) and (E)]. A parent may be denied the fundamental liberty interest in parenting only after they have been provided due process and due course of law, and terminating parental rights based on a challenged, unreviewed § 161.001(b)(1)(D) or (E) finding runs afoul of this principle. When a parent has presented the issue on appeal, an appellate court that denies review of a § 161.001(b)(1)(D) or (E) finding deprives the parent of a meaningful appeal and eliminates the parent's only chance for review of a finding that will be binding as to parental rights to other children. *At 237*: Allowing § 161.001(b)(1)(D) or (E) findings to go unreviewed on appeal when the parent has presented the issue to the court thus violates the parent's due process and due course of law rights. [¶] Additionally, when a court of appeals reverses a finding based on insufficient evidence, the court must ‘detail the evidence relevant to the issue of parental termination and clearly state why the evidence is insufficient to support a termination finding by clear and convincing evidence.’”

***In re M.S.***, 115 S.W.3d 534, 549 (Tex.2003). The State’s “initial interest in maintaining the familial bond versus its interest in maintaining procedural integrity weighs in favor of permitting a factual sufficiency review when counsel unjustifiably fails to [preserve error]. [¶] The parent’s, child’s and government’s interest in a just and accurate decision dovetails with the third ***Eldridge*** factor--that of the risk of erroneous deprivation. [W]e cannot think of a more serious risk of erroneous deprivation of parental rights than when the evidence, though minimally existing, fails to clearly and convincingly establish in favor of jury findings that parental rights should be terminated.” See also ***Mathews v. Eldridge***, 424 U.S. 319, 335 (1976).

***In re B.L.D.***, 113 S.W.3d 340, 354 (Tex.2003). “As a general rule, due process does not mandate that appellate courts review unpreserved complaints of charge error in parental rights termination cases. [¶] [W]e acknowledge that in a given parental rights termination case, a different calibration of the ***Eldridge*** factors[, (1) private interests at stake, (2) the countervailing governmental interest, and (3) the risk of an erroneous deprivation of parental rights,] could require a court of appeals to review an unpreserved complaint of error to ensure that our procedures comport with due process.” This could occur when a failure to preserve charge error constitutes ineffective assistance of counsel. See also ***Mathews v. Eldridge***, 424 U.S. 319, 335 (1976).

***In re P.W.***, 579 S.W.3d 713, 721 (Tex.App.--Houston [14th Dist.] 2019, no pet.). “[T]he ***N.G.*** [above] court made deliberate statements for future guidance in the conduct of litigation. Without determining whether nonconstitutional law required review of the trial court's findings under [§ 161.001](D) and (E), the ***N.G.*** court concluded that (1) allowing (D) and (E) findings to go unreviewed on appeal when the parent has presented the issue to the appellate court violates the parent’s due-process and due-

course-of-law rights and (2) due process and due course of law require an appellate court to detail its analysis as to why a parent's challenge to a finding under (D) or (E) lacks merit. [C]onsistency with the high court's recent pronouncements demands that, without first determining whether nonconstitutional law requires review of the trial court's (D) and (E) findings, we determine whether Mother's challenge to the (D) and (E) findings has merit and detail our analysis, even though another finding listed in the Final Order as a ground for termination provides a proper basis for the predicate act required under § 161.001(b)(1) and even though Mother does not challenge the trial court's best-interest-of-the-child finding."

*In re L.N.C.*, 573 S.W.3d 309, 322 (Tex.App.--Houston [14th Dist.] 2019, pet. denied). "[I]n a proceeding to terminate parental rights[,] a prison inmate has an interest that is entitled to protection. In such a proceeding, due process requires, at a minimum, notice and an opportunity to be heard at a meaningful time and in a meaningful manner. We determine what process is due based upon the practical requirements of the circumstances. Three factors are weighed: (1) the private interest affected by the proceeding or official action; (2) the countervailing governmental interest supporting use of the challenged proceeding; and (3) the risk of an erroneous deprivation of the private interest due to the procedures used. *At 324*: A prisoner's right of access 'entails not so much his personal presence as his opportunity to present evidence or contradict the evidence of the opposing party.' If the trial court determines that the inmate's personal appearance is not warranted, then the trial court should allow the inmate to proceed by affidavit, deposition, telephone, or other effective means."

*In re P. RJ E.*, 499 S.W.3d 571, 576 (Tex.App.--Houston [1st Dist.] 2016, pet. denied). See annotation under Family Code §102.010.

*In re A.M.*, 385 S.W.3d 74, 78 (Tex.App.--Waco 2012, pet. denied). "We ... address the Department's assertion that [mother's] factual-sufficiency complaint is not preserved because she did not file a motion for new trial asserting factual insufficiency. [¶] The [Texas Supreme Court] has not directly addressed whether the factual-sufficiency preservation requirement comports with due process in termination cases, though it has viewed the preservation requirement through the prism of an ineffective-assistance claim. *At 79*: [I]t appears to us that, in [*In re M.S.*, above], the supreme court implicitly declined to dispense with the factual-sufficiency preservation requirement in termination cases. We therefore ... hold that in termination cases, to raise a factual-sufficiency complaint on appeal, it must be preserved by including it in a motion for new trial."

*In re R.M.T.*, 352 S.W.3d 12, 18 (Tex.App.--Texarkana 2011, no pet.). "[T]here is no Texas authority which would permit a trial court to halt termination proceedings due to the incompetency of the parent. *At 19-20*: [Father] argues that because a parental rights termination proceeding is a quasi-criminal proceeding, procedural due process requires (as in criminal cases), that he not be subjected to trial until such time as he is competent to do so. [¶] We do not believe ... that classification of a termination proceeding as quasi-criminal can (or should) be a sole factor which is outcome determinative in resolving the question of whether [father's] termination of parental rights proceeding should have been continued until such time as he regained competency. Rather, we look to and weigh the *Eldridge* factors to determine if the termination proceeding in this case afforded [father] the measure of procedural due process to which he was entitled..." See also *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

### **Juries**

*In re J.W.*, 645 S.W.3d 726, 751 (Tex.2022) (No. 19-1069; 5-27-22). "Here, the broad-form charge erroneously, and over Father's objection, commingled a valid termination ground supported by sufficient evidence (Subsection (O)) with an invalid termination ground supported by legally insufficient evidence (Subsection (D)). We reaffirmed in *Harris County [v. Smith]*, 96 S.W.3d 230, 231 (Tex. 2002)] that the right to a fair trial includes a jury properly instructed on the issues authorized and supported by the law governing the case. In a case involving termination of parental rights, the 'death penalty' of civil cases, the importance of safeguarding a parent's right to a fair trial is even more pronounced." (Internal quotes omitted.)

*In re J.T.*, 594 S.W.3d 782, 783-84 (Tex.App.--Waco 2019, no pet.). Mother "complains that the trial court erroneously utilized a procedure to allow jurors to ask whatever questions they had for each witness after the parties had concluded their questioning of the witness. [¶] [W]e ... hold that it was error to allow the jury to ask questions of the witnesses. Moreover, allowing the jury to do so probably caused the rendition of an improper judgment or probably prevented the appellant from properly presenting

the case to this Court. This is in part because, from all of the questions tendered by the jurors, there were over 165 of the jurors' questions actually allowed and asked by the trial court to the witnesses, and it is impractical, if not impossible, to isolate in the record the impact of the evidence received in response to those questions and determine what, if any, impact it had on the judgment. We do not intend to imply that fewer questions would necessarily be harmless, but hold that on this record, the manner in which the trial was conducted significantly impaired [mother's] ability to present the issue on appeal and show its impact on the judgment.”

**§161.001(b)(1)(A)**

*In re R.D.S.*, 902 S.W.2d 714, 718-19 (Tex.App.--Amarillo 1995, no writ). “[A] statute vests the trial judge with authority to end a parent-child relationship if it finds that ‘the parent ... voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return.’ There is no specified time frame within which these pivotal indicia must arise. Though some authority suggests that the underlying misconduct may not be too remote in time, it is certain that it need not immediately precede the final hearing. [¶] Furthermore, discontinuing the misconduct does not necessarily prevent the court from acting. Once activity within the parameters of [Fam. Code] §15.02(a) [now §161.001(b)(1)] occurs, a parent’s change of heart does not stay the court’s hand. ... Thus, if the evidence at bar established that [mother] voluntarily left her son with someone other than his biological father while expressing an intent not to return, the court was entitled to sever the parent-child relationship, notwithstanding her later attempt to renounce her decision.” See also *In re S.S.G.*, 153 S.W.3d 479, 484 (Tex.App.--Amarillo 2004, pet. denied) (having intent and expressing intent are not synonymous).

*Swinney v. Mosher*, 830 S.W.2d 187, 195 (Tex.App.--Fort Worth 1992, writ denied). There is no “evidence that [respondent] abandoned [daughter] as contemplated by [Fam. Code] §15.02(1)(A) [now §161.001(b)(1)(A)]. [Respondent’s] actions of surrendering possession of [daughter] and execution of the affidavit relinquishing her parental rights were done in contemplation of her adoption ..., not with an intent to abandon.... Also, there is [no] evidence that [respondent] expressed ‘an intent not to return’ as that language was intended to be applied by the legislature. [Respondent’s] actions were done in furtherance of her original agreement to allow [petitioners] to adopt [daughter], which under [Fam. Code] §15.03(d)[, now §161.103, respondent] had a right to revoke. [Respondent’s] prompt notice to [adopting couple] of her intent to revoke the affidavit coupled with her prompt retention of a lawyer, her attendance at all hearings concerning her termination, and her weekly visitation [with daughter], when it was permitted, establishes conclusively that [respondent] did not intend to abandon [daughter] under §15.02(1)(A). Any finding to the contrary would render §15.03(d) null and void. [¶] A finding that parental rights could be involuntarily terminated based on the actions consistent with an open adoption would be contrary to the history of Texas law prior to the Family Code and a subversion of the legislatures’ intent....”

*Smith v. McLin*, 632 S.W.2d 390, 392 (Tex.App.--Austin 1982, writ ref’d n.r.e.). Adopting parents “provided [respondent] with an affidavit of relinquishment. The instrument, which [respondent] signed before a notary, manifested a clear intent to completely sever her ties with the child. Because the instrument was defective it could not, standing alone, serve as the proof necessary for termination. It is, however, evidentiary as to [respondent’s] expressed intent not to return.”

**§161.001(b)(1)(B)**

*Brokenleg v. Butts*, 559 S.W.2d 853, 856 (Tex.App.--El Paso 1977, writ ref’d n.r.e.). There are four elements to Fam. Code §15.02(1)(B), now §161.001(b)(1)(B): “(1) voluntarily leaving the child; (2) without expressing an intent to return; (3) without providing for the adequate support of the child; and (4) remaining away for a period of at least three months. [T]he standard for determining nonsupport under Subparagraph (B) is whether or not there is provision for adequate support of the child, rather than the parent’s ability to support the child as in Subparagraph (F). The evidence in this case all reflects that the grandparents were able to and did in fact adequately support the child.... Since the test under this Subparagraph is not whether or not the parent actually supported the child, but whether or not arrangements were made for the adequate support of the child, and the evidence is undisputed that they were, we conclude that §15.02(1)(B) is not applicable....”

**§161.001(b)(1)(C)**

*Holick v. Smith*, 685 S.W.2d 18, 21 (Tex.1985). Respondents “argue that the legislature intended to require parents to personally ‘provide adequate support’ under (1)(C) [now (b)(1)(C)] because (1)(B) [now (b)(1)(B)] contains the language ‘provide for the adequate support.’ [¶] We believe that subsection (1)(C) is capable of two interpretations. ‘Provide’ is defined to mean ‘to furnish; supply’ or ‘to fit out with means to an end.’ Thus, subsection (1)(C) is susceptible to an interpretation which would merely require that the parent make arrangements for adequate support rather than personally support the child. [¶] We hold that under [Fam. Code] §15.02(1)(C) [now §161.001(b)(1)(C)], [mother] was required to make arrangements for the adequate support rather than personally support the children.” See also *In re R.M.*, 180 S.W.3d 874, 878 (Tex.App.--Texarkana 2005, no pet.) (physical delivery of child is not significant; controlling issue is whether parent was aware of, consented to, and participated in arrangement for child’s support).

*In re F.E.N.*, 542 S.W.3d 752, 762 (Tex.App.--Houston [14th Dist.] 2018), *pet. denied*, 579 S.W.3d 74. “The period of six months [referenced in § 161.001(b)(1)(C)] is a period of six consecutive months. [¶] Father contends there is no evidence that he voluntarily left [child]. *At 763*: Father’s visitation with [child] was suspended by court order ... until he obtained a clean drug test and paternity was established. We note that this order was signed before Father made an appearance in the case. Additionally, the record does not establish that Father’s visitation was reinstated, although there is evidence that Father requested the court to reinstate his visits three to four years prior to trial.... We conclude that Father’s time away from [child] was not ‘voluntary.’” See also *Interest of J.W.*, 645 S.W.3d 726, 751 (Tex.2022) , under Family Code § 161.001(b)(1)(D); *In re F.E.N.*, under Family Code § 153.131.

*In re B.T.*, 954 S.W.2d 44, 49 (Tex.App.--San Antonio 1997, *pet. denied*). Respondent “claims in his brief that he did not voluntarily leave [child] with the Department since he was in jail most of the time. Mere imprisonment does not constitute intentional abandonment of the child as a matter of law. However, imprisonment is a factor to consider along with the other evidence.”

*In re S.K.S.*, 648 S.W.2d 402, 404 (Tex.App.--San Antonio 1983, no writ). Under §161.001(1)(C), now §161.001(b)(1)(C), “[i]n-ability to provide support during some months would not interrupt the running of the [limitations] period if no effort is made to pay support during other months in which there is clear ability to pay.” See also *In re Guillory*, 618 S.W.2d 948, 951 (Tex.App.--Houston [1st Dist.] 1981, no writ) (termination for nonsupport applies even when inability to pay is result of parent’s conscious choice).

**§161.001(b)(1)(D)**

*In re C.E.*, 687 S.W.3d 304, 310 (Tex.2024). “[A]lthough paragraphs (D) and (E) require conduct that places the child in danger or knowledge that conditions or other persons place the child in danger, these paragraphs do not require that endangering ‘conduct be directed at the child’ or that the child ‘actually suffer[ ] injury.’ Instead, termination under (D) requires that the child’s environment is a source of endangerment, and the parent’s conduct may create that dangerous environment. And termination under (E) requires that a parent’s conduct endanger the child’s physical or emotional well-being. Proof that a parent specifically caused an injury is not necessary. A finding of endangerment is supported ‘if the evidence ... shows a course of conduct which has the effect of endangering the physical or emotional well-being of the child.’”

*In re R.R.A.*, 687 S.W.3d 269, 287 (Tex.2024). “We hold that the court of appeals erred in requiring direct evidence that Father’s drug use resulted in physical injury to his children. [¶] While illegal drug use alone may not be sufficient to show endangerment, a pattern of drug use accompanied by circumstances that indicate related dangers to the child can establish a substantial risk of harm. A reviewing court should not evaluate drug-use evidence in isolation; rather, it should consider additional evidence that a factfinder could reasonably credit that demonstrates that illegal drug use presents a risk to the parent’s ‘ability to parent.’ *At 280*: Father argues that the Legislature’s addition of (P) ... renders drug use an insufficient basis to support termination under (D) and (E). We disagree that the inclusion of (P) forces the exclusion of drug-related conduct as endangering conduct under (D) and (E). Newly added specific grounds for termination under §161.001 do not expressly circumscribe the scope of

provisions (D) and (E). ‘[C]onduct that might endanger a child's physical or emotional well-being’ is relevant for termination under subsections (D) and (E) concomitantly with a more specifically applicable subsequent ground. The Legislature could have carved out drug use from grounds (D) and (E) when adding ground (P) to §161.001, but it did not. By adding ground (P), ‘the Legislature has expanded the grounds for termination, not curtailed them.’ Drug-related conduct considered under (P) thus may also inform the (D) and (E) termination analysis. *At 281*: A parent's pattern of illegal use of a controlled substance like methamphetamine supports a finding of endangerment under (P) when the evidence shows it adversely affected the parent's ability to parent, presenting a substantial risk of harm to the child's health and safety. Such drug-use evidence is also relevant under the (D) and (E) grounds for termination. When a pattern of drug use is coupled with credible evidence of attendant risks to employment, housing, and prolonged absence from the children, a factfinder reasonably can find endangerment to the child's physical or emotional well-being under (D) and (E).”

*Interest of J.W.*, 645 S.W.3d 726, 749-50 (Tex.2022). “[T]he courts of appeals have held that the relevant time frame for evaluating this ground is before the child's removal ‘since conditions or surroundings cannot endanger a child unless that child is exposed to them.’ As a general matter, we agree with that reasoning. The suitability of a child's living conditions and the conduct of parents or others in the home are relevant to a Subsection (D) inquiry. Moreover, evidence that a parent will knowingly expose the child to a dangerous environment in the future, while relevant to a best-interest determination, is not proof that the parent has knowingly exposed the child to a dangerous environment in the past for Subsection (D) purposes. [¶] Both Mother and Father have had only supervised visits with [child] since his birth and have had no say in his living conditions. Accordingly, to support the jury's Subsection (D) finding, the Department necessarily relies on Father's role in [child's] ‘environment’ before he was born. Certainly, *Mother's* use of controlled substances while pregnant created a dangerous environment for [child], but the extent to which *Father* bears responsibility for that environment is a much more difficult question. [¶] [A] parent's knowledge of the other parent's drug use during pregnancy and corresponding failure to attempt to protect the unborn child from the effects of that drug use can contribute to an endangering environment and thus support an endangerment finding. [H]olding otherwise would effectively endorse a parent's willful ignorance of the significant risk that a pregnant mother's drug use poses, which we decline to do. But neither do we endorse attributing any and all known dangers posed to a child during the mother's pregnancy to the other parent.”

*In re G.C.S.*, 657 S.W.3d 114, 130 (Tex.App.--El Paso 2022, pet. denied). “‘Unsanitary conditions can qualify as surroundings that endanger a child.’ A lack of electricity or water for the winter months and the lack of an indoor toilet are factors that jeopardize a child's physical and emotional well-being. ‘While poverty should not be a basis for termination of parental rights, a parent's inability to provide basic utilities in the family home may constitute evidence of endangerment of the children's well-being.’ Moreover, the inappropriate or unlawful conduct of a person who lives in the home of a child is inherently part of the ‘conditions or surroundings’ of that home.”

*In re L.E.R.*, 650 S.W.3d 771, 785 (Tex.App.--Houston [14th Dist.] 2022, no pet.). “[D]omestic violence in Mother's and Father's home, Mother's health issues, the home being in disrepair, Mother being abusive and not providing a safe environment per her service plan, and her extended family not recommending she maintain her parental rights to [child] is not evidence in support of a finding under subsection D. [Child] was never in Mother's home or care; [child] never lived with Mother. Therefore, Mother never placed or allowed [child] to remain in conditions or surroundings which endangered [child's] physical or emotional well-being as required by subsection D.”

*In re G.M.*, 649 S.W.3d 801, 809 (Tex.App.--El Paso 2022, no pet.). “A child is endangered when the environment creates a potential for danger that the parent is aware of but disregards. Sexual abuse is conduct that endangers a child's physical or emotional well-being. Domestic violence and a propensity for violence may be considered evidence of endangerment, even if the endangering acts did not occur in the child's presence, were not directed at the child, or did not cause actual injury to the child. A parent's decision to continue living with someone who has committed instances of domestic violence may support an endangerment finding under Subsection (b)(1)(D). Likewise, a mother's act of allowing her boyfriend back into her home after her daughters reported that he sexually abused them may also be considered evidence of endangerment.”

*In re R.W.*, 627 S.W.3d 501, 512 (Tex.App.--Texarkana 2021, no pet.). “Although there are certain circumstances that will support removal based on unsavory living conditions--or even homelessness--those cases do not generally uphold termination findings based solely on those factors. *At 513*: [T]o the extent that [child] was exposed to domestic violence, Mother removed him from exposure to future incidents of violence by taking refuge in a domestic violence shelter. Had she failed to do so, Mother could have been found to have endangered [child’s] physical or emotional well-being.”

*In re L.D.C.*, 622 S.W.3d 63, 71-72 (Tex.App.--El Paso 2020, no pet.). On “Father’s criminal conviction for arson[, it] is uncontested that Father set fire to a house while [child] and Mother were inside. That is direct evidence that Father placed [child] in grave physical danger. Even if Father genuinely did not intend to kill Mother, [child], or any of the home’s other occupants by setting fire to the house, Father did intend to set the fire, and ‘intentional criminal activity which exposed the parent to incarceration is relevant evidence tending to establish a course of conduct endangering the emotional and physical well being of the child.’ Indeed, Subsection D permits termination ‘because of a single act or omission.’ Setting fire to a house in which [child] was sleeping is an act of arson, standing alone, is enough to justify termination under either Subsection D or Subsection E. Additionally, Mother testified that Father is subject to a previous no-contact order, which also could weigh in favor of an inference that Father previously engaged in a course of endangering conduct. The fact that Father’s conduct in committing arson also subjected him to incarceration is another factor that weighs in favor of an endangerment finding, as conduct that subjects a child to the probability of abandonment ‘because a parent is jailed endangers both the physical and emotional well-being of the child.’ Finally, Father admitted to committing domestic violence in [child’s] presence. ‘Domestic violence, want of self-control, and propensity for violence may be considered as evidence of endangerment.’ Taking these factors in total, we find that the trial court could have found by a preponderance of the evidence that Subsection D and Subsection E predicates were established.”

*In re M.G.*, 585 S.W.3d 51, 57 (Tex.App.--Eastland 2019, no pet.). “Subsection (D) requires that the parent knowingly place or knowingly allow the child to remain in such conditions. [¶] Here, the record is devoid of any evidence relating to the father’s knowledge of the conditions of the home, the conditions of the home at the time of removal, or the father’s knowledge of the mother’s drug use. Although one witness mentioned the father’s ‘criminal history,’ the extent of that criminal history was not proved at trial. The record failed to show that the father engaged in conduct or knowingly placed [child] with someone that engaged in conduct that endangered [child’s] physical or emotional well-being. Nothing in the record shows how long the father had been incarcerated or whether he was aware that the mother was engaging in conduct that endangered [child].”

*In re E.A.R.*, 583 S.W.3d 898, 908 (Tex.App.--El Paso 2019, pet. denied). “Conduct that demonstrates awareness of an endangering environment is sufficient to show endangerment. *At 909*: In the context of subsection D, the term ‘environment’ includes the conduct of the parents or others ... in the home. Inappropriate, abusive, or unlawful conduct by persons who live in the child’s home or with whom the child is compelled to associate on a regular basis in his home is a part of the ‘conditions or surroundings’ of the child’s home under [§161.001(b)(1)(D)]. Further, a child’s unexplained, non-accidental fractures of various ages support a reasonable inference that the child’s caregivers knew of the injuries and their cause, and supports termination under subsection D. [¶] The presence of ... unexplained, non-accidental fractures of various ages supports a reasonable inference that [mother] and [father] knew of the injuries and their cause, and supports termination under subsection D.”

*In re B.M.S.*, 581 S.W.3d 911, 917 (Tex.App.--El Paso 2019, no pet.). “A child is endangered when the environment creates a potential for danger that the parent is aware of but disregards. ... Evidence of illegal drug use and drug-related criminal activity by a parent supports the conclusion that the children’s surroundings are endangering to their physical or emotional well-being. [¶] [Father] testified he did not know the specific drugs [mother] and her boyfriend were using, and he was unaware of the domestic violence in the home, but he knew she was using drugs in front of the children. [Father] understood that [mother’s] use of drugs created an environment which endangered the children’s physical or emotional well-being. The evidence also showed that [father] had only sporadic contact with the children when he would drop by uninvited and he made no effort to protect the children by removing them from [mother’s] home. We conclude that the evidence, viewed in the light most favorable to the challenged endangerment finding, was sufficient for a reasonable fact finder to have formed a firm belief or conviction that [father] knowingly allowed the children to remain in conditions or surroundings which endangered their physical or emotional well-being.”

*In re P.W.*, 579 S.W.3d 713, 724 (Tex.App.--Houston [14th Dist.] 2019, no pet.). “A direct appeal from the final termination order under Family Code §109.002(a-1) likely presents the only opportunity for review of the trial court’s findings under [Fam. Code §161.001(b)(1)](D) and (E). In addition, if a party does not challenge these findings and waits to see if the Department seeks to use these findings against the party in a future termination case as to another child, no remedy likely will be available because, in most scenarios, one whose parental rights have been terminated may not assert a direct or collateral attack against the final termination order more than six months after the date on which the trial court signed the order. In those cases, once that period expires, Texas statutes do not allow a party to challenge the (D) and (E) findings in the final order in the future if the Department seeks to terminate parental rights as to another child under subsection (M).”

*In re J.J.L.*, 578 S.W.3d 601, 611 (Tex.App.--Houston [14th Dist.] 2019, no pet.). “A parent’s unwillingness to admit she has a substance abuse problem suggests she will continue to abuse drugs and therefore continue to endanger her child. *At 612*: In any event, substance abuse is ‘hard to escape,’ and the fact finder is ‘not required to ignore a long history of dependency ... merely because it abates as trial approaches.’ The trial court may reasonably decide a parent’s changes before trial are too late to impact the best-interest decision. Although a reasonable fact finder could look at Mother’s attempts at sobriety and decide they justified the risk of keeping her as a parent, we cannot say the trial court acted unreasonably in finding [child’s] best interest lay elsewhere.”

*In re L.M.*, 572 S.W.3d 823, 835 (Tex.App.--Houston [14th Dist.] 2019, no pet.). “Father ... denied falsely that he was growing several marijuana plants.... A parent’s unwillingness to admit he has a substance-abuse problem suggests he will continue to engage in the same behaviors that endangered his child. Cultivating large quantities of marijuana in a residence where a child is living is an endangering course of conduct to the child. A parent’s continuing drug-related conduct can qualify as a voluntary, deliberate, and conscious course of conduct endangering the child’s well-being. A parent’s drug use exposes the child to the possibility the parent may be impaired or imprisoned and, thus, unable to take care of the child.”

*In re N.G.*, 577 S.W.3d 230, 235 (Tex.2019). See annotation under this code section, *Due Process*.

*In re E.J.Z.*, 547 S.W.3d 339, 349-50 (Tex.App.--Texarkana 2018, no pet.). “No one at trial testified that they knew who abused [son]. However, Mother and Father said they cared for both children and that [son] was never left alone with anyone else long enough to have sustained the significant injuries. [¶] Here, it was within the jury’s purview to resolve credibility issues and the issue of whether [son’s] injuries were the result of child abuse or a medical condition. ‘A child’s unexplained, non-accidental fractures of various ages support a reasonable inference that the child’s caregivers knew of the injuries and their cause.’ [¶] With respect to [daughter], ‘[a] parent’s abuse of the other parent or children can support a finding of endangerment.’ [Caseworker] testified that [a] child can suffer emotional abuse when witnessing domestic violence in the home. Thus, [caseworker] said [sister] would have suffered emotional abuse if she was present in the home when [son] was injured. [B]ecause Mother and Father were the primary caretakers of both children, evidence at trial showed that [brother] had experienced petechiae and discoloration on more than one occasion, and ... the abuse occurred at least three times, the jury could have determined that [daughter] had witnessed more than one incident of abuse and [son’s] suffering.”

*In re J.E.M.M.*, 532 S.W.3d 874, 881 (Tex.App.--Houston [14th Dist.] 2017, no pet.). “A child is endangered when the environment creates a potential for danger and the parent is aware of the danger but consciously disregards it. [¶] The Department contends Mother ignored the danger presented by leaving [child 1] and [child 2] in the care of [child 3], who was 10¾ years old at the time. *At 883-84*: Though an adult might be more capable of managing risks, a near 11-year-old with a track record of helping provides greater protection than leaving no one to supervise.... Leaving [child 3] to supervise his younger siblings was not without risks, but the record contains no clear and convincing evidence that Mother showed a conscious disregard of those risks. Mother mitigated the risks by remaining in close proximity to the children (in the same building) and returning quickly. [¶] While it may have been a less-than-ideal situation, living conditions that are merely less-than-ideal do not support a finding under subsection D. [¶] Toddler-running-and-bumping accidents can happen with or without adult supervision. The evidence shows that [child 2] was an energetic child who was prone to falls and collisions. No evidence showed [child 2’s] head injury

would not have occurred had an adult been present. Likewise, assuming [child 1] inflicted the bite marks on his little sister, no evidence suggests that an adult could have stopped him from biting her. The child-bites [child 2] received did not cause serious or permanent injury. Notably, the record does not show any other incidents of [child 2] being bitten. So, even if the trial court disregarded the evidence that Mother was unaware of how the bite marks occurred and instead found that [child 1] bit [child 2], the record contains no evidence that Mother knew of the biting behavior or could have predicted the preschooler would bite the toddler or that Mother or any other adult could have prevented the bites. ¶¶ Though [child 2] suffered child-bites as well as a serious head injury in a less-than-ideal environment, subsection D requires proof that Mother knowingly exposed the children to an endangering environment. The record contains no evidence that Mother consciously disregarded a known danger.” (Internal quotes omitted.)

*In re E.M.*, 494 S.W.3d 209, 222 (Tex.App.--Waco 2015, pet. denied). “A parent’s illegal drug use and drug-related criminal activity may ... support a finding that the child’s surroundings endanger his or her physical or emotional well-being. ... A factfinder may reasonably infer from a parent’s refusal to take a drug test that the parent was using drugs. A parent’s continued drug use demonstrates an inability to provide for the child’s emotional and physical needs and to provide a stable environment for the child.”

*A.S. v. TDFPS*, 394 S.W.3d 703, 713 (Tex.App.--El Paso 2012, no pet.). “[T]here are some distinctions in the application of subsections (D) and (E). Knowledge of paternity is a prerequisite to a showing of knowing placement of a child in an endangering environment under §161.001(1)(D) [now §161.001(b)(1)(D)], however it is not a prerequisite to a showing of a parental course of conduct which endangers a child under §161.001(1)(E) [now §161.001(b)(1)(E)]. Furthermore, termination [under] §161.001(1)(D) is permitted 'because of a single act or omission.' Conversely, termination under (E) requires a conscious course of conduct by the parent.”

*In re H.L.F.*, No. 12-11-00243-CV, 2012 WL 5993726 (Tex.App.--Tyler 2012, pet. denied) (memo op.; 11-30-12). “[T]he fact that a mother used a controlled substance while she was pregnant and did not obtain routine prenatal care does not mean that termination is automatic. ¶¶ The Department did not present any evidence that [child] tested positive for any controlled substance, that she needed specialized medical treatment, or that she suffered from any birth defects, abnormalities, or complications as a result of [mother’s] drug use during the first trimester of her pregnancy. At the time of the removal, [mother] had not had possession of [child]. Therefore, [mother] could not have exposed [child] to endangering conditions or surroundings between the time of [child’s] birth and the time of her removal. ¶¶ [The Department] implicitly contend[s] that [methamphetamine use prior to and during the first trimester of mother’s pregnancy] created an endangering condition or surrounding inside [mother’s] womb before [child] was born. [But this is not a case involving] a mother who abused one or more controlled substances throughout her pregnancy and had a child who was born addicted to the controlled substance or with the controlled substance still in the child’s system. ¶¶ [W]e hold that the evidence is legally insufficient to terminate [mother’s] parental rights pursuant to subsection (D).”

**§161.001(b)(1)(E)**

*In re J.F.-G.*, 627 S.W.3d 304, 313-15 (Tex.2021). “A parent’s criminal history--taking into account the nature of the crimes, the duration of incarceration, and whether a pattern of escalating, repeated convictions exists--can support a finding of endangerment. Imprisonment thus ‘is certainly a factor’ the trial court may weigh when considering endangerment. ¶¶ Newer subsections of [§161.001] identify particular circumstances in which a crime or imprisonment, standing alone, supports termination. When it added these grounds, however, the Legislature did not circumscribe subsection (E) or exclude incarceration from conduct that might endanger a child’s physical or emotional well-being. Lengthy incarceration presents a risk of endangerment to the child’s well-being--such a significant risk, in fact, that the Legislature provides for the *pre-emptive* termination of parental rights, even before the risk associated with incarceration manifests itself. ¶¶ [S]ubsection (E) should not be read so capaciously as to ‘render the legislature’s painstaking enumeration of other predicate acts superfluous.’ But under subsections (L), (Q), (T), and (U) a single criminal conviction may result in termination. These grounds allow the Department to act swiftly to protect children without specific evidence of long-term abandonment. In such cases, the State may ‘act in anticipation of a parent’s abandonment of the child’ due to incarceration, not in response to it. *At 316*: [M]other admitted that

she had contact with the father only three or four times a year. Leaving aside incarceration, an absence of that duration resulting from criminal conduct is sufficient evidence to establish a ‘pattern of conduct that is inimical to the very idea of child-rearing’ that endangered [child’s] physical or emotional well-being. The trial court, as the factfinder, could reasonably conclude that such a disruption is qualitatively different from a single, short-term incarceration. *At 317*: We decline the invitation to draw a bright-line rule that incarceration cannot support an endangerment finding under subsection (E).”

*In re N.G.*, 577 S.W.3d 230, 235 (Tex.2019). See annotation under this code section, *Due Process*.

*In re E.N.C.*, 384 S.W.3d 796, 805 (Tex.2012). “[D]eportation, like incarceration, is a factor that may be considered (albeit an insufficient one in and of itself to establish endangerment), [but] its relevance to endangerment depends on the circumstances. Under the [appellate] court’s reasoning, the mere threat of deportation or incarceration resulting from an unlawful act, regardless of severity, would establish endangerment. We disagree with that analysis. . . . The court’s broad reasoning necessarily applies to citizens as well. Any offense committed by a citizen that could lead to imprisonment or confinement would also apparently establish endangerment, simply because the parent’s ability to be present in his children’s lives would be uncertain. Our nation’s Constitution forbids such a far-reaching interpretation of our parental rights termination statutes. *At 806*: [T]here are similarities between incarceration and deportation in that the parent is no longer available to reside with the children in their home in the U.S. But, [u]nlike an incarcerated individual, a person who is deported is able to work, have a home, and support a family. More importantly, it is possible for the person’s children to live with him. [¶] Deportation flowing from an unknown offense occurring many years earlier cannot satisfy the State’s burden of proving by clear and convincing evidence that a parent engaged in an endangering course of conduct. . . .” See also *J.O. v. TDFPS*, 604 S.W.3d 182, 191 (Tex.App.--Austin 2020, no pet.); *In re R.A.G.*, under this code section.

*In re M.C.*, 917 S.W.2d 268, 270 (Tex.1996). “Although there is no evidence that [respondent] inflicted direct physical abuse on her children, there is evidence that she neglected their physical needs, and neglect can be just as dangerous to the well-being of a child as direct physical abuse.”

*In re C.B.*, 659 S.W.3d 504, 516 (Tex.App.--Tyler 2023, no pet.). “[S]cienter is not required for a parent’s own acts under §161.001(b)(1)(E); scienter is required under subsection (E) only when the parent places the child with others who engage in endangering acts.”

*In re E.G.*, 643 S.W.3d 236, 252 (Tex.App.--Amarillo 2022, no pet.). “A parent’s mental state may be considered in determining whether a child is endangered if that mental state allows the parent to engage in conduct that jeopardizes the physical or emotional well-being of the child. Suicidal ideation may also contribute to a finding that a parent engaged in endangering conduct. *At 253*: While mental incompetence or mental illness alone are not grounds for termination of the parent-child relationship, ‘[w]hen a parent’s mental state allows the parent to engage in conduct that endangers the physical or emotional well-being of the child, that conduct has bearing on the advisability of terminating the parent’s rights.’”

*D.H. v. TDFPS*, 652 S.W.3d 54, 61-62 (Tex.App.--Austin 2021, no pet.). “Although we agree that ‘a finding of endangerment based on drug use alone is not automatic,’ . . . to the extent [that other courts have] held . . . that direct evidence is required to show a causal link between drug use and endangerment, we disagree. [¶] Endangerment does not have to be established as an independent proposition but may instead be inferred from parental misconduct. As a result, a court’s consideration of allegations of endangerment is a fact-intensive process and depends on the specific circumstances of the case. In some circumstances, a parent’s drug use might be so pervasive or serious that the factfinder could reasonably infer that the drug use is endangering, despite a lack of evidence showing that the drug use caused some other endangering activity or even that the drug use occurred while the children were in the parent’s direct care. In addition, this and numerous other courts of appeals have recognized that a parent’s decision to use illegal drugs while the termination suit is pending, and the parent is at risk of losing her child, may support a finding of endangering conduct under subsection (E). This is because a parent’s ongoing drug use jeopardizes the parent-child relationship and subjects the child to a life of uncertainty and instability.”

*In re J.A.V.*, 632 S.W.3d 121, 130-31 (Tex.App.--El Paso 2021, no pet.). “Mother contends the evidence was legally and factually insufficient to support termination of her parental rights because although the Department established that Mother used drugs, the Department did not establish that her drug use endangered Child. We disagree. [¶] A parent’s use of narcotics and its effects on his or her ability to parent may qualify as an endangering course of conduct under Subsection (E). Illegal drug use during pregnancy specifically can also support a charge that the mother has engaged in conduct that endangers the physical and emotional welfare of the child. [¶] Two months before Child’s birth, Mother was admitted into a heroin detox treatment program while pregnant, and ... at the time of her admission, Mother was under the influence of drugs and in a state of active withdrawal. Because of Mother’s drug abuse during pregnancy, Child was born in a state of opiate withdrawal and had to be treated with morphine. The causal connection between Mother’s actions during pregnancy and direct physical endangerment to Child is clearly established under these circumstances.”

*In re L.W.*, 609 S.W.3d 189, 200-01 (Tex.App.--Texarkana 2020, no pet.). “Subsection (b)(1)(E) permits termination when the parent has engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child. ‘Endanger’ means to expose to loss or injury; to jeopardize. It is not necessary that the conduct be directed at the child or that the child actually suffer injury. Under subsection (E), it is sufficient that the child’s well-being is jeopardized or exposed to loss or injury. Further, termination under subsection (E) must be based on more than a single act or omission. Instead, a voluntary, deliberate, and conscious course of conduct by the parent is required. [¶] Subsection E refers only to the parent’s conduct, as evidenced not only by the parent’s acts, but also by the parent’s omissions or failures to act. The conduct to be examined includes what the parent did both before and after the child was born. To be relevant, the conduct does not have to have been directed at the child, nor must actual harm result to the child from the conduct. [¶] A fact-finder can consider the history of abuse between the mother and the father for purposes of subsection (E), even if the children are not always present.” (Internal quotes omitted.) *But see In re T.C.H.*, No. 07-11-00179-CV, 2011 WL 6757409 (Tex.App.--Amarillo 2011, no pet.) (memo op.; 12-22-11) (termination can be based on single act or omission in extreme cases).

*In re C.V.L.*, 591 S.W.3d 734, 752 (Tex.App.--Dallas 2019, pet. denied). “Here, the Department presented factually insufficient evidence that Father’s past use of methamphetamines endangered [child]. This is not a case in which the Department alleged that Father used drugs in the child’s presence, left the child in the care of drug users or in a home where drugs were present, or was ever arrested or incarcerated for drug possession. The Department relied solely on Father’s positive drug tests to support the termination. Under this record, we conclude that no reasonable fact finder could form a firm belief or conviction that Father’s past drug use knowingly placed or knowingly allowed [child] to remain in conditions or surroundings that endangered her physical or emotional well-being. Therefore, we hold that the evidence is factually insufficient to terminate father’s parental rights pursuant to subsection (D). [¶] The same is true under subsection (E). While unquestionably an exercise of poor judgment, Father’s use of methamphetamines on two occasions, standing alone, does not rise to the level of a conscious course of conduct. Therefore, we hold that the evidence is factually insufficient to terminate Father’s parental rights pursuant to subsection (E).”

*In re J.S.*, 584 S.W.3d 622, 636 (Tex.App.--Houston [1st Dist.] 2019, no pet.). “[A] parent’s illegal drug usage, even after removal of the child from the home and during the pendency of termination proceedings, may establish an endangering course of conduct because it ‘creates the possibility that the parent will be impaired or imprisoned and thus incapable of parenting.’ ... Father has a history with illegal drugs ... and ... he continued to test positive for cocaine usage during the pendency of the underlying termination proceedings. Based on these facts, we conclude that the trial court, as the factfinder, reasonably could have formed a firm belief or conviction that Father engaged in conduct that endangered [child’s] physical and emotional well-being. *At 637*: Father also argues that there was no evidence in the record tying his positive drug test results and his past criminal history to any present endangerment of [child]. Courts have repeatedly held, however, that conduct does not have to be directed toward the child to constitute an endangering course of conduct under subsection (E). This Court has held that the conduct does not have to be directed toward the child and the child does not need to actually be injured by the parent’s conduct; instead, ‘danger to a child need not be established as an independent proposition and may be inferred from parental misconduct.’ Father points to no authority requiring the Department to prove how drug use or criminal history specifically endangered a particular child. We decline Father’s invitation to impose such a requirement here.” *See also In re M.G.P.*, No. 02-11-00038-CV, 2011 WL 6415168 (Tex.App.--Fort Worth 2011, pet. denied) (memo op.; 12-22-11) (drug use before mother knew she was pregnant

did not support termination because she stopped using drugs when she learned she was pregnant); *In re A.S.*, 261 S.W.3d 76, 86 (Tex.App.--Houston [14th Dist.] 2008, pet. denied) (one-time use of marijuana during pregnancy did not support termination).

*In re M.D.M.*, 579 S.W.3d 744, 764 (Tex.App.--Houston [1st Dist.] 2019, no. pet.). “In determining whether the Department has established that the parent engaged in an endangering course of conduct, we may consider evidence concerning how a parent has treated another child or a spouse. Under subsection (E), we consider the child's environment before the Department obtained custody of the child. *At 765*: Abusive and violent criminal conduct by a parent can also produce an endangering environment. Evidence that a person has engaged in abusive and violent conduct in the past permits an inference that the person will continue to engage in violent behavior in the future. A factfinder may also infer that a parent’s lack of contact with the child and absence from the child's life endangered the child’s emotional well-being.”

*In re T.L.E.*, 579 S.W.3d 616, 625-26 (Tex.App.--Houston [14th Dist.] 2019, pet. denied). “Father appears to argue that evidence of the prior conviction [for indecency with a child] only goes toward proof of subsection L. To the contrary, ‘[e]vidence of sexual abuse of one child is sufficient to support a finding of endangerment with respect to other children.’ Violent or abusive acts directed toward one child can endanger other children that are not the direct victims of the abuse in question and support termination of parental rights as to the other children, even if the other children were not yet born at the time of the conduct. Courts of appeals have consistently held in termination cases that evidence a parent has sexually or physically abused a child not subject of the termination action also constitutes evidence of endangerment to the child subject to the termination action. [¶] [W]e may infer from a parent’s plea of guilty to aggravated sexual assault of a stepdaughter that the parent engaged in conduct that will endanger or jeopardize the physical or emotional well-being of other children in the home who may discover the abuse or be abused themselves. [¶] Father also argues that his conviction for indecency with a child was too remote in time to constitute legally- and factually-sufficient evidence supporting the trial court’s endangerment finding. Father suggests that this court ignore Father’s prior conviction in reviewing the sufficiency of the evidence of endangerment. While termination may not be based solely on conditions that existed in the distant past but no longer exist, the dispositive inquiry is whether the past continues to bear on the present. Father’s conviction for indecency with a child requires him to register as a sex offender. In requiring lifetime registration, the Legislature has made a policy decision that the crime for which Father was convicted will never be so remote that it will no longer be a matter of legitimate public concern. Therefore, evidence of Father’s prior conviction for indecency with a child by contact is sufficient to support the trial court’s endangerment finding under §161.001(b)(1)(E).”

*In re F.E.N.*, 542 S.W.3d 752, 764-65 (Tex.App.--Houston [14th Dist.] 2018), *pet. denied*, 579 S.W.3d 74. “‘One parent’s drug-related endangerment of the child may be imputed to the other parent.’ However, Father must have had knowledge of Mother’s drug use for his inaction to constitute endangerment. [¶] [B]oth Mother and Father testified that Father was unaware of Mother’s drug use. Mother testified she hid her drug use from everyone. Father testified Mother told him the reason for [child’s] removal by the Department was she drank beer. The Department contends the trial court was free to disregard the testimony that Father was unaware of Mother’s drug use based on the referrals to the Department alleging Mother’s drug use and Father’s testimony that he lived with Mother before and after [child’s] birth. However, ‘although a trial court is generally free to disbelieve testimony, in the absence of competent evidence to the contrary, it is not authorized to find that the opposite of the testimony is true.’ Our review of the record shows that the testimony that Father had no knowledge of Mother’s drug use was left uncontroverted.” *See also In re F.E.N.*, under Family Code §153.131.

*In re E.R.W.*, 528 S.W.3d 251, 264-65 (Tex.App.--Houston [14th Dist.] 2017, no. pet.). “[S]ubjecting a child to a life of uncertainty and instability endangers the child’s physical and emotional well-being. Although incarceration alone will not support termination, evidence of criminal conduct, convictions, and imprisonment may support a finding of endangerment under subsection (E). Likewise, illegal drug use may support termination under §161.001(1)(E) because ‘it exposes the child to the possibility that the parent may be impaired or imprisoned.’ A parent’s decision to engage in illegal drug use during the pendency of a termination suit, when the parent is at risk of losing a child, may support a finding that the parent engaged in conduct that endangered the child’s physical or emotional well-being. Additionally, a fact finder reasonably can infer that a parent’s failure to submit to court-ordered drug tests indicates the parent is avoiding testing because they were using illegal drugs.” *See also In re U.G.G.*, 573 S.W.3d 391, 400-01 (Tex.App.--El Paso 2019, no. pet.) (father’s use of illegal drugs while termination case

was pending, even though he knew his parental rights were in jeopardy, and refusal to submit to drug test two months before trial supported termination).

*In re R.A.G.*, 545 S.W.3d 645, 652 (Tex.App.--El Paso 2017, no pet.). Father “was incarcerated for the first four years of [child’s] life.... Following his release from prison, [father] was deported to Mexico. It is understandable that [father], as a result of his deportation, has been unable to visit with [child] in person in the U.S., but the evidence showed that [father] has not had any other type of contact with [child] during the years following his deportation. According to [father’s] sister, [father] has maintained the same telephone number and Facebook account since his release from prison ..., yet he made no effort to contact [child] even after he learned that the child had been removed from [mother’s] care. [Father] has been absent from [child’s] life to the extent that [child] did not even know that [father] is [child’s] father. While incarceration and deportation are not sufficient, standing alone, to support a finding under §161.001(b)(1)(E), these facts are part of [father’s] overall course of conduct. We conclude that the evidence is legally and factually sufficient to establish a firm conviction or belief in the mind of the trier of fact that [father] engaged in conduct that endangered [child’s] physical or emotional well-being under §161.001(b)(1)(E).” See also *In re E.N.C.*, under this code section.

*Burns v. Burns*, 434 S.W.3d 223, 228 (Tex.App.--Houston [1st Dist.] 2014, no pet.). “According to [mother, father] judicially admitted that he endangered the child’s emotional well-being by not visiting him [for several years], which conclusively proves that [father] engaged in conduct proscribed by §161.001(1)(E) [now §161.001(b)(1)(E)]. At 229: [Father’s] acknowledgment that his absence from [child’s] life ‘endangers [child’s] emotional well-being’ is a testimonial admission, but it is not the kind of unequivocal statement that amounts to a judicial admission. At 230: Because the parties disputed both the reasons for, and effect of, [father’s] absence from [child’s] life, we hold [mother] cannot establish that [father’s] rights must be terminated as a matter of law.”

*In re A.T.*, 406 S.W.3d 365, 372 (Tex.App.--Dallas 2013, pet. denied). Mother “asserts that her low IQ rendered her incapable of knowing and recognizing any danger to [child]. We disagree. Courts have held that limited mental capacity does not, as a matter of law, negate a parent’s ability to knowingly neglect their child. At 374: [T]he evidence supports the trial court’s ruling that Mother and Father violated §§161.001(1)(D) and (E) [now §161.001(b)(1)(D) and (E)].”

*In re C.A.B.*, 289 S.W.3d 874, 883 (Tex.App.--Houston [14th Dist.] 2009, no pet.). “[A] court may consider evidence establishing that a parent continued to engage in endangering conduct after the child’s removal by the Department or after the child no longer was in the parent’s care, thus showing the parent continued to engage in the course of conduct in question.” See also *Walker v. TDFPS*, 312 S.W.3d 608, 617 (Tex.App.--Houston [1st Dist.] 2009, pet. denied) (same as annotation); *In re S.T.*, 263 S.W.3d 394, 402 (Tex.App.--Waco 2008, pet. denied) (father committed criminal acts before and after child’s removal even though he knew his parental rights were in jeopardy; all conduct was evidence of endangerment). But see *In re J.K.F.*, 345 S.W.3d 706, 711 (Tex.App.--Dallas 2011, no pet.) (relevant time frame to determine endangerment is before children are removed).

*Doyle v. TDPRS*, 16 S.W.3d 390, 398 (Tex.App.--El Paso 2000, pet. denied). “The [TDPRS] urges that [respondent’s] failure to locate and maintain stable employment so that she could provide for the children’s needs and her failure to provide a stable home for the children violates §161.001(1)(E) [now §161.001(b)(1)(E)]. Ordinarily, the stability of the home is one of the factors that should be examined in ascertaining the best interest of a child. Depending on the evidence, it is possible that a parent’s failure to provide a stable home and otherwise provide for the children’s needs may contribute to a finding that termination is appropriate.” See also *In re J.R.*, 171 S.W.3d 558, 578 (Tex.App.--Houston [14th Dist.] 2005, no pet.) (§161.001(1)(E), now §161.001(b)(1)(E), finding cannot be based solely on failure to maintain stable housing).

#### **§161.001(b)(1)(F)**

*Interest of S.E.F.*, No. 05-21-00361-CV, 2021 WL 4057433, (Tex.App.--Dallas 2021, no pet.) (memo op.; 9-3-21). “Father argues the failure to pay for 12 consecutive months requires an analysis separate from the issue of his ability to pay. Father argues ... that ‘the requisite period of time was satisfied in which the additional arrearage payment was not made’ and a separate

sentence states the court's further determination that sufficient evidence in the record showed Father had the ability to make payments but such payments were not made. ...Father argues ‘[h]aving the ability to pay, and whether or not payments are made are two separate, very important findings that need to be made independently in order to terminate a parent's parental rights’ under §161.001(b)(1)(F). [¶] We decline to adopt Father's [interpretation of] §161.001(b)(1)(F) that would prevent application of that section when a parent makes a minimal payment during a 12-month period though not a payment in accordance with the parent's ability to pay.”

*In re F.E.N.*, 542 S.W.3d 752, 765-66 (Tex.App.--Houston [14th Dist.] 2018), *pet. denied*, 579 S.W.3d 74. “A parent has a duty to provide support for his child, even when the parent does not have custody of the child. Support includes ‘providing the child with clothing, food, shelter, medical and dental care, and education.’ [¶] The Department does not contest that Father sent financial support to Mother ..., but instead contends that the Department was the only one authorized to receive support on [child’s] behalf as her managing conservator.... The Department does not cite any case law in support of its argument. Additionally, at trial, no evidence was offered to establish that only the Department could receive financial support intended for [child] when it was appointed managing conservator. We note that Father was not served in this proceeding and was not ordered to pay the Department for [child’s] support or notified where support should be sent. ... Based on the evidence in the record, we conclude the Department did not establish Father’s provision of financial support to Mother for [child] was a failure to support [child].” *See also In re F.E.N.*, under Family Code §153.131.

*In re D.M.D.*, 363 S.W.3d 916, 922 (Tex.App.--Houston [14th Dist.] 2012, no pet.). Mother's “primary support obligation was to pay ... court-ordered child support. Nevertheless, [she] ignored this responsibility by providing certain necessities directly to the children--in the process circumventing the ability of the Department and the foster families to recoup money they were spending to support the children. Because [mother] had the ability but chose not to pay at least some amount of child support, the trial court could have reasonably found [she] failed to support the child in accordance with her ability during a period of one year ending within six months of the date of the filing of the petition.”

*In re C.L.*, 322 S.W.3d 889, 892-93 (Tex.App.--Houston [14th Dist.] 2010, no pet.). “The undisputed evidence in the record shows that in [a] 12-month period ..., [father] gave no money whatsoever in [child] support.... [Father] had the ability to provide at least some support during these 12 months, but he provided none. [He] argues that DFPS must present evidence of his ability to pay during each month of the 12-month period. The evidence in the record regarding [his] income is not broken down on a monthly basis for the entire time period. However, even if [father] was unable to provide support during some of those months, that will not interrupt the running of the one-year period if he made no effort to pay during other months in which there is a clear ability to pay. It is undisputed that [father] had [some] income in the relevant time frame but provided no support at all. This is sufficient to support a finding ... of a violation of §161.001(1)(F) [now §161.001(b)(1)(F)].” *See also In re C.M.C.*, No. 11-02-00270-CV, 2003 WL 760678 (Tex.App.--Eastland 2003, no pet.) (memo op.; 3-6-03) (inability to provide support during some months will not interrupt running of one-year period if no effort is made to pay support during other months); *In re T.B.D.*, under this code section.

*In re N.A.F.*, 282 S.W.3d 113, 118 (Tex.App.--Waco 2009, no pet.). “While it is true that a child-support order contains an implied finding that the obligor was able to pay the ordered support, that ‘support order only contains an implied finding as of the time the order is entered; it cannot predict the future.’ Thus, a child-support order is no evidence of [father's] ability to pay support for the 12 consecutive months required by §161.001(1)(F) [now §161.001(b)(1)(F)].” *See also In re D.M.D.*, 363 S.W.3d 916, 920 (Tex.App.--Houston [14th Dist.] 2012, no pet.).

*In re E.M.E.*, 223 S.W.3d 71, 73-74 (Tex.App.--El Paso 2007, no pet.). “[W] argued at trial that the child support order contains an implied finding that [H] has the ability to pay the amount of child support ordered[, thus requiring H to prove as an affirmative defense that he did not have the ability to pay]. Section 161.001 does not create [an] affirmative defense in termination proceedings. To the contrary, §161.001(1)(F) [now §161.001(b)(1)(F)] squarely places the burden to prove ability to pay on the petitioner. [¶] [R]equiring the respondent to present evidence of inability to pay wrongfully shifts the burden and excuses the petitioner from proving that the parent failed to support in accordance with the parent’s ability.” *See also In*

*re L.J.N.*, 329 S.W.3d 667, 672 (Tex.App.--Corpus Christi 2010, no pet.) (managing conservators had burden to prove that incarcerated father had ability to pay child support); *In re N.A.F.*, 282 S.W.3d 113, 117-18 (Tex.App.--Waco 2009, no pet.) (same as annotation). *But see In re J.M.M.*, 80 S.W.3d 232, 251 (Tex.App.--Fort Worth 2002, pet. denied) (inability to pay court-ordered child support is affirmative defense in termination suit), *disapproved on other grounds, In re J.F.C.*, 96 S.W.3d 256 (Tex.2002) .

*In re T.B.D.*, 223 S.W.3d 515, 518 (Tex.App.--Amarillo 2006, no pet.). “The one-year period means 12 consecutive months, and there must be proof the parent had the ability to pay support during each month of the 12-month period.” *See also In re R.M.*, 180 S.W.3d 874, 878 (Tex.App.--Texarkana 2005, no pet.) (termination was proper when father worked for 18-month period before suit was filed but did not pay any child support); *Hellman v. Kincy*, 632 S.W.2d 216, 218 (Tex.App.--Fort Worth 1982, no writ) (12 consecutive months of not making arrearage payments supported termination even though father made current child-support payments during that period); *In re C.L.*, under this code section.

**§161.001(b)(1)(H)**

*In re D.M.F.*, 283 S.W.3d 124, 132 (Tex.App.--Fort Worth 2009, pet. granted, judgm't vacated w.r.m.). Section 161.001(1)(H), now §161.001(b)(1)(H), “requires scienter or prior knowledge of the pregnancy. [¶] [B]ecause there is no clear and convincing proof that [father] had knowledge that [mother] was carrying his child until ... *after* the child was born, the evidence could not show that he abandoned her *during* her pregnancy. [S]ubsection H cannot apply.”

*In re T.M.Z.*, 665 S.W.2d 184, 187 (Tex.App.--San Antonio 1984, no writ). “Although the evidence clearly shows it was the mother who left the scene when violence erupted during her seventh month of pregnancy, we do not agree there was no ‘voluntary abandonment’ by the father as the result of her departure. The father knew where his pregnant [W] went; he knew her parents and the location of their house. Testimony indicates he did go to that house on occasion, but he never provided any support either to [W] or his child. He was not prohibited from tendering support through the [mail]. He was not prohibited from going to the attending doctor’s office to arrange payment for prenatal care. Nor was he denied entrance to the business office of the hospital to arrange payment for hospital care for [W] and for delivery of his child. [¶] Abandonment can mean more than a physical leave-taking. It can also mean to turn one’s back on a duty that one has.”

*Allred v. Harris Cty. Child Welfare Unit*, 615 S.W.2d 803, 807 (Tex.App.--Houston [1st Dist.] 1980, writ ref’d n.r.e.). “The evidence that [father] entered into a course of wilful criminal activity with knowledge of [W’s] pregnancy and of the possible consequences of his course of conduct implied a conscious disregard and indifference to his parental responsibilities and the subsequent imprisonment for such conduct constituted ‘voluntary abandonment.’”

**§161.001(b)(1)(J)**

*Yonko v. DFPS*, 196 S.W.3d 236, 242 (Tex.App.--Houston [1st Dist.] 2006, no pet.). Mother “admits that she never enrolled [child] in school or otherwise provided him with a certified home-school education... [Mother] further contends that she and [child] were never Texas residents for any relevant time period under the statute. [¶] The compulsory education statute does not state a residency requirement, and the case law indicates that moving frequently does not exempt a parent from the requirement of enrolling a child in school or otherwise providing for his education.”

**§161.001(b)(1)(K)**

*In re K.S.L.*, 538 S.W.3d 107, 110 (Tex.2017). Section §161.001(b) “is unmistakably written in the conjunctive and requires both a statutorily-compliant affidavit [of relinquishment] *and* a finding that termination is in the child's best interest. *At 112*: [I]n the ordinary case a sworn, voluntary, and knowing relinquishment of parental rights, where the parent expressly attests that termination is in the child's best interest, would satisfy a requirement that the trial court's best-interest finding be supported under [the clear-and-convincing] standard of proof. ... A parent's willingness to voluntarily give up her child, and to swear

affirmatively that this is in her child's best interest, is sufficient, absent unusual or extenuating circumstances, to produce a firm belief or conviction that the child's best interest is served by termination.”

*In re K.M.L.*, 443 S.W.3d 101, 113 (Tex.2014). “Family Code §161.001(1)(K) [now §161.001(b)(1)(K)] permits a trial court to terminate the parent-child relationship if it finds by clear and convincing evidence that the parent has executed an unrevoked or irrevocable affidavit of relinquishment of parental rights. The petitioner ... has the burden to prove the elements necessary to support termination of the parent-child relationship. [Family Code] §161.103 requires that the affidavit be for *voluntary* relinquishment, ... and implicit in §161.001(1)(K) is the requirement that the affidavit of parental rights be voluntarily executed. An involuntarily executed affidavit is a complete defense to a termination suit based on §161.001(1)(K).”

*In re B.B.F.*, 595 S.W.2d 873, 874 (Tex.App.--San Antonio 1980, no writ). “Since execution of an affidavit of relinquishment of parental rights is a proper basis for terminating those rights in a subsequent suit to terminate the parent-child relationship, and a waiver of process may be included in the affidavit, it is clear that a waiver of citation may be signed prior to the filing of suit. Thus, the Family Code provides an exception to the general rule that a waiver of citation is proper only if executed after suit is brought. There is a sound reason for this exception. After executing an unrevoked or irrevocable affidavit of relinquishment of parental rights, a natural parent is no longer an interested party in a suit to terminate the parent-child relationship. Consequently, neither due process nor logic require that a person who has voluntarily relinquished parental rights and waived service of citation be given notice of a subsequent suit to terminate the parent-child relationship.”

#### **§161.001(b)(1)(L)**

*In re Z.N.*, 602 S.W.3d 541, 547-48 (Tex.2020). “Section 161.001’s plain language requires that the Department demonstrate that ‘death or serious injury of a child’ resulted from one of the offenses enumerated in ground (L). We hold that, under §161.001(b)(1)(L)(iv), a parent’s conviction for indecency with a child can constitute legally sufficient evidence that the parent was ‘criminally responsible’ for the ‘serious injury of a child.’ *At n. 5*: Because this case involves only the offense of indecency with a child, we need not and do not address whether a conviction for other offenses enumerated in ground (L) can imply serious injury to a child. [¶] [W]e note that the simple illegality of the act does not in itself indicate that a trial court may infer serious injury. As such, the phrase ‘convicted ... for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code’ requires not only that an offense be committed but also that death or serious injury result from that offense. [¶] Still, for the purpose of ground (L), a conviction for an enumerated offense can imply that a serious injury has occurred based on the nature of the offense and the injury that will likely result. Here, [Pen. Code] §21.11 provides the necessary reasonable basis for a factfinder to infer that serious injury resulted from the commission of the offense of indecency with a child. [¶] Given the physical, emotional, and psychological harm that can (and often does) result from the actions that constitute indecency with a child, a trier of fact may draw the ‘reasonable and logical’ inference that a conviction for indecency with a child, standing alone, resulted in serious injury to the child for the purpose of predicate ground (L). [¶] That said, a parent may certainly refute any inference of serious injury to a child resulting from a conviction. Thus, a parent may argue that the conviction at issue does not imply serious injury and may present evidence controverting the existence of serious injury in a particular case.”

*In re L.S.R.*, 92 S.W.3d 529, 530 (Tex.2002). “The State presented evidence at trial showing that [father] had received deferred adjudication for the offense of indecency with a child, an offense [father] committed against his four-year-old cousin when he was 16. The court of appeals held that there was no evidence to support termination under §161.001(1)(L)(iv) [now §161.001(b)(1)(L)(iv)] because there had been ‘no showing that [father’s] cousin suffered death or serious injury as a result of his conduct.’ The court of appeals deleted this ground for termination from the judgment, but otherwise affirmed the judgment against [father]. [¶] We deny the petitions for review, but disavow any suggestion that molestation of a four-year-old, or indecency with a child, generally, does not cause serious injury.”

*In re A.L.*, 389 S.W.3d 896, 900-01 (Tex.App.--Houston [14th Dist.] 2012, no pet.). “The Family Code does not define ‘serious injury,’ and [mother] urges us to adopt the Penal Code’s definition of ‘serious bodily injury’ as the standard required for [Fam. Code §161.001(1)(L), now §161.001(b)(1)(L),] to support termination. We decline to do so. [¶] ‘Serious injury,’ as used in

subsection (L) modifies all the offenses listed thereunder. Not all offenses listed in subsection (L) require bodily injury. We conclude demonstrating 'serious injury' to a child under subsection (L) does not require a showing of 'serious bodily injury' as defined in the Penal Code. [¶] 'Serious' means 'having important or dangerous possible consequences,' while 'injury' means 'hurt, damage, or loss sustained.'" See also *C.H. v. DFPS*, No. 01-11-00385-CV, 2012 WL 586972 (Tex.App.--Houston [1st Dist.] 2012, pet. denied) (memo op.; 2-23-12) (§161.001(1)(L) requires showing of "serious injury" as defined by dictionary, not "serious bodily injury" as required by Pen. Code).

**§161.001(b)(1)(M)**

*In re P.W.*, 579 S.W.3d 713, 723 (Tex.App.--Houston [14th Dist.] 2019, no pet.). "Interpreting subsection (M) to allow the Department to prove a predicate act based on a termination finding as to another child when a court has deleted the finding or reversed the final order or when a court in a pending appeal might delete the finding or reverse the final order would raise a serious doubt as to the constitutionality of subsection (M). Therefore, we interpret subsection (M) to require the Department to prove that a trial court had signed a final order terminating the parent's parent-child relationship as to another child based on a finding that the parent's conduct violated (1) subsection (D) or subsection (E) or (2) a substantially equivalent provisions of another state's law, and also that (1) the final termination order is final by appeal and (2) no court has deleted the finding or reversed or set aside the final order. This interpretation of subsection (M) differs from that of courts that have concluded that a certified copy of a prior final termination order as to another child based on (D) or (E) is sufficient evidence to support an (M) finding." But see *In re A.C.*, under this code section.

*In re A.C.*, 394 S.W.3d 633, 640 (Tex.App.--Houston [1st Dist.] 2012, no pet.). "The mother challenges whether [prior termination] decree could be used to prove a prior termination because the decree, and therefore the termination, was on appeal and thus not necessarily final. The prior decree stated that 'this case is not final until [the trial court's] plenary jurisdiction from this final judgment expires, and all appeals, if any, have concluded.' While acknowledging that the 'case' was not final and accordingly maintaining the appointment of the attorneys ad litem and the guardian ad litem, the decree reiterated that 'this judgment is final.' But finality, in the sense of a complete exhaustion or waiver of all possible appellate remedies, is not expressly required by [§161.001(1)(M), now §161.001(b)(1)(M)]." But see *In re P.W.*, under this code section.

*In re J.M.M.*, 80 S.W.3d 232, 243 (Tex.App.--Fort Worth 2002, pet. denied), *disapproved on other grounds*, *In re J.F.C.*, 96 S.W.3d 256 (Tex.2002). "We hold that, when a prior decree of termination as to another child is properly admitted into evidence, the TDPRS need not reestablish that the parent's conduct with respect to that child was in violation of §161.001(1)(D) or (E) [now §161.001(b)(1)(D), (E)]. The TDPRS need only show that [parent's] rights were terminated as to her other children based on findings that she violated [sub]sections (D) and (E)." See also *Espinosa v. TDFPS*, No. 01-08-00309-CV, 2008 WL 4757051 (Tex.App.--Houston [1st Dist.] 2008, no pet.) (memo op.; 10-30-08).

**§161.001(b)(1)(N)**

*In re A.M.*, No. 05-21-00712-CV, 2022 WL 278972 (Tex.App.--Dallas 2022, no pet.) (memo op.; 1-31-22). "[T]he Department can prove it made reasonable efforts to return the child to [father] by showing that [father] impeded the Department's attempts to timely adjudicate [father's] parentage. In other words, an alleged father in [father's] situation cannot use a delay in adjudication of parentage that he created to defend against termination of his parental rights. [¶] [C]aseworkers made a diligent search to locate [father] and made several attempts to contact and/or serve him. ... And [father] knew of the Department's attempts to contact him and the reason. ... Nevertheless, he refused to respond because, based on his own testimony, he feared being arrested on an outstanding warrant, he wanted to wait to see the paternity results of the other two men identified by Mother, and/or he needed 'more time' to get matters in order to take care of his legal issues. When he finally confirmed he was [child's] father ..., he waited to contact the Department for more than a month, which was one week before trial. This evidence does not merely establish that [father] impeded the Department's efforts to determine his parentage; rather, it shows he actively avoided the Department and the paternity determination."

*In re J.W.*, 615 S.W.3d 453, 467-68 (Tex.App.--Texarkana 2020, no pet.) “[T]he Department’s argument is essentially that, even though it did not provide the service plan to [father] until 15 days before trial, and even though the trial court did not issue its Additional Temporary Order until 29 days before trial, the trial court and the Department told [father] when he first appeared in court ... that he would have to perform services before the final trial. It concludes that such evidence establishes that it made a reasonable effort to return [child] to [father]. However, to allow termination based on general orders and statements regarding [father’s] need to perform future services without actually implementing a plan would significantly undermine the statutory provisions requiring that the Department prepare a service plan in cooperation with the parents. Accordingly, the fact that [father] knew he would have to perform services at some future point does not satisfy the Department’s requirement that it make a reasonable effort to return the child to a parent. Thus, [father’s] failure to comply with these general orders and statements of future obligations do not establish that the Department made a reasonable effort to return [child] to [father] as required by subsection N.”

*In re F.E.N.*, 542 S.W.3d 752, 766-67 (Tex.App.--Houston [14th Dist.] 2018), *pet. denied*, 579 S.W.3d 74. “While implementation of a family service plan by the Department is generally considered a reasonable effort to return a child to the parent, that is not the only evidence which can satisfy this element. [¶] We consider whether the record reflects that there were reasonable efforts to return the child in spite of the absence of a family service plan. We focus on the Department’s efforts, not Father’s. In determining whether the evidence is sufficient to support termination under subsection (N), the question is whether the Department made reasonable efforts, not ideal efforts. [¶] The permanency goal as stated in this service plan was ‘Alt. Family: [u]nrelated, [a]doption,’ and not family reunification. [¶] Subsequently, the trial court entered an order suspending Father’s visitation until paternity could be established, despite Father’s name being on the birth certificate, and until Father submitted a clean drug test, despite there being no allegations of Father’s drug use. ... The record contains a copy of Father’s acknowledgement of paternity and negative drug tests related to Father. However, there is no evidence the Department made any attempt to resume Father’s visitation with [child]. Father met with [child’s] psychologist. The psychologist recommended that Father not be allowed any visitation with [child] as such would endanger her emotional well-being because she is bonded to the foster family. [¶] We do not agree that the Department’s actions constitute a reasonable effort to return [child] to Father. The record does not shed light on the Department’s failure to serve Father with notice of the first suit or whether any attempt at service was made. Additionally, the Department’s ... permanency goal of unrelated adoption is contrary to an attempt to return [child] to Father.”

*In re R.I.D.*, 543 S.W.3d 422, 427-28 (Tex.App.--Houston [14th Dist.] 2018, no pet.). “We find the evidence legally insufficient to support a finding under part (iii) of subsection N: that Father has demonstrated an inability to provide the child with a safe environment. [¶] ‘Environment’ refers to ‘the acceptability of living conditions, as well as a parent’s conduct in the home.’ Courts use that definition in considering another statutory predicate for termination under §161.001(b)(1): subsection D... We see no reason not to apply the same definition in our subsection N analysis. [¶] The record contains no evidence of Father’s living conditions. Although the Department elicited testimony ... about Mother’s living situation, no witness was asked, for example, where Father lived, who lived with him, or how much room there would be for [child]. [¶] Further, there is no evidence about Father’s conduct in his home. The record contains a judgment of Father’s conviction of misdemeanor possession of marijuana six years before trial. [Caseworker] testified Father also had an assault charge ..., but no other information about the alleged offense appears in the record. Notably, the record does not reflect whether he was convicted of assault. [¶] The Department suggests Father’s alleged unwillingness to care for [child] eliminates its burden to prove his inability to do so... [¶] We disagree. Given the lack of any evidence about Father’s living conditions, we are unwilling to equate Father’s supposed preference that [child] live with Father’s mother ... with proof by clear and convincing evidence that he is unable to provide [child] a safe environment.”

*In re G.P.*, 503 S.W.3d 531, 533-34 (Tex.App.--Waco 2016, *pet. denied*). “Under the second element, ‘[r]eturning the child to the parent, per §161.001(1)(N)(i) [now §161.001(b)(1)(N)(i)], does not necessarily mean that the child has to be physically delivered’ to the individual. In fact, courts have previously held that this element can be satisfied by preparing and administering a service plan. [¶] There are several factors to indicate a parent’s willingness and ability to provide the child with a safe environment: ‘the child’s age and physical and mental vulnerabilities; the willingness and ability of the child’s family to seek

out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision; the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time; and whether the child's family demonstrates adequate parenting skills, including providing the child with minimally adequate health and nutritional care, a safe physical home environment, and an understanding of the child's needs and capabilities.”

*In re A.T.L.*, \_\_S.W.3d\_\_, 2015 WL 6507807 (Tex.App.--San Antonio 2015, pet. denied) (No. 04-15-00379-CV; 10-28-15). “[T]he requirement that the Department has made reasonable efforts to return the child to the parent may be inapplicable when the parent is incarcerated.’ However, reasonable efforts to return a child to a parent ‘under §161.001(1)(N)(i) does not necessarily mean the child must be physically delivered to the incarcerated parent.’ [¶] [Father] was confirmed as [child’s] father during the ... termination hearing; he signed his plan [four months later]; he was incarcerated approximately three weeks later; and he remained incarcerated until the termination hearing. According to [father], there is no evidence in the record that he was provided a reasonable opportunity to enroll in, much less complete, any of his plan requirements. [¶] Although there appears to be no dispute that [mother] denied him any contact with [child], nothing in the record indicates [father] took any action to contact or gain access to his child in the more than eight months between her birth and his incarceration, or during the period of his incarceration. [Caseworker] testified [father] told her [that] doing the services was not imperative to him and [that] the plan was not important to him at that point in time because he wanted to get himself situated first. [¶] [T]he Department's preparation and administration of a service plan, in conjunction with its consideration of relative placements, supports the trial court's finding that the Department made reasonable efforts to return the child to [father]. [¶] Incarceration does not render ‘it impossible for the parent to maintain significant contact with the child.’ ... On this record, we conclude the evidence supports the trial court's finding that [father] did not regularly visit or maintain significant contact with [child].” See also *In re M.V.G.*, 440 S.W.3d 54, 60-61 (Tex.App.--Waco 2010, no pet.) (Department must make “reasonable efforts,” not ideal efforts).

*Earvin v. DFPS*, 229 S.W.3d 345, 348 (Tex.App.--Houston [1st Dist.] 2007, no pet.). “While we agree ... that the first three elements of constructive abandonment have been met, we do not agree that the [TDFPS] met its burden on the fourth element. At 349: The [TDFPS] cites no authority that a parent has an obligation to attempt to take custody of a child when the mother is in a treatment center and subsequently released. Nothing in the record indicates that [father] was aware of the severity of the mother’s drug use or knew or should have known that the mother would resume drug use after being released from the treatment center. [¶] What the record does show, however, is that [father] cared for [child] while the mother was in the hospital and the treatment center, that [father] had access to a home to provide for [child], and that he had obtained a job three weeks before trial. Even if the trial court, as the trier of fact, chose to disbelieve [father’s] testimony as not credible, this does not prove that the opposite is true.”

*In re D.S.A.*, 113 S.W.3d 567, 573-74 (Tex.App.--Amarillo 2003, no pet.). “[W]e disagree with the proposition that §161.001(1)(N) [now §161.001(b)(1)(N)] ‘was never intended to apply to someone’ in prison merely because the parent is in prison. ... Returning the child to the parent, per §161.001(1)(N)(i), does not necessarily mean that the child has to be physically delivered to the incarcerated individual. [I]t is quite conceivable that one in prison may still be able to [provide a good environment] by ... leaving the ward in the capable hands of a relative, friend or spouse. If such could be done, then it is conceivable that the State has the ability to relinquish its custody over the youth and, thereby, effectively return the child to the incarcerated parent. ... Nor can we say that incarceration renders it impossible for the parent to maintain significant contact with the child. While the child may not be able to live with the parent in a jail cell, ... the parent could nonetheless pursue a significant relationship [through] written correspondence. In sum, incarceration does not render sub-paragraph (N) inapplicable simply because of incarceration.” See also *In re L.C.M.*, 645 S.W.3d 914, 921 (Tex.App.--El Paso 2022, no pet.) (DFPS efforts to place incarcerated parent’s child with relatives constituted legally and factually sufficient evidence that reunification was attempted). But see *In re D.T.*, 34 S.W.3d 625, 633 (Tex.App.--Fort Worth 2000, pet. denied) (requirement that Department return child to parent under §161.001(1)(N), now §161.001(b)(1)(N), does not apply to parent who is incarcerated).

**§161.001(b)(1)(O)**

*In re R.J.G.*, 681 S.W.3d 370, 373-74 (Tex.2023). “[E]ven if the Department proves by clear and convincing evidence that a parent failed to comply with a requirement ‘specifically established’ in the written plan, that requirement may be so trivial and immaterial, considering the totality of what the plan requires, that the parent’s noncompliance does not justify termination. A trial court should not reflexively order termination when the evidence demonstrates noncompliance with a plan requirement. Instead, the trial court should consider whether the nature and degree of the asserted noncompliance justifies termination under the totality of the circumstances. *At 379*: [T]ermination is not automatic or required, even if the Department properly proves a parent failed to comply with a specific plan provision. Regardless of whether a predicate ground for termination is found by the court or a jury, the trial court bears the ultimate responsibility for determining whether that finding supports termination. This Court and others have recognized that it is the violation of ‘material’ requirements of a plan that justify termination under (O). Thus, if the noncompliance is trivial or immaterial in light of the plan’s requirements overall, termination under (O) is not appropriate. [¶] [S]trict compliance with every detail of a service plan is not always required to avoid termination under (O). *At 382*: There may be provisions in particular service plans for which nothing less than strict compliance will suffice to avoid termination. Easy examples are provisions that require a parent suffering from drug addiction to complete a drug treatment program or require a parent just released from prison to refrain from re-offending. Even a single or slight violation of these or other material service plan provisions could justify termination. But other requirements--particularly those that are bureaucratic or technical--may be too trivial, in the larger context of the plan and the parent’s overall performance, to have their breach give rise to termination.”

*In re A.A.*, 670 S.W.3d 520, 526 (Tex.2023). “Mother ... reads [‘the child’s removal from the parent ... for ... abuse or neglect’] as limiting (O)’s reach to a parent whose wrongdoing caused a child to be physically taken from that parent. We disagree. *At 531-32*: [T]his is exactly the kind of case that (O) is for. DFPS cannot leave a child with a parent whose conduct or home environment would endanger the child; several policy statements in the Family Code make that clear. DFPS had to pursue removal of [children] from Mother once it determined that Mother could not provide a stable home environment for them. In a case like this one where the other parent’s conduct directly caused DFPS’ involvement, none of the other §161.001(b)(1) grounds may provide a pathway to either reunification or termination. That is the work that (O) does. It gives a parent like Mother an opportunity to have the child returned to her by demonstrating her parenting ability through compliance with the service plan. But at the same time, if the parent in Mother’s position cannot demonstrate her ability to provide a stable home for the child, then her rights to the child can be terminated, thereby clearing the path for the child’s adoption.”

*In re A.L.R.*, 646 S.W.3d 833, 837 (Tex.2022). “Because the general order does not ‘specifically establish[ ]’ the actions that a parent must take, however, violation of the order does not fulfill the ground for termination under Subsection (O). Subsection (O) contemplates direct, specifically required actions. Here, those actions are worded as requests, not as positive mandates. For example, the plan states: ‘The Department *requests* that [the father] participate in parenting classes,’ not ‘the father *must*.’ *At 838*: The service plan’s goals, unlike its ‘tasks,’ are worded as commands. These goals, however, are not part of the checklist establishing specific actions that the parent must complete to obtain the return of the child. A parent could interpret the service plan as *requiring* that a parent provide the child with a safe environment, with the Department’s *requested* ‘tasks’ acting as signposts to help achieve that goal. The plan does not alert the parent to the mandatory nature of specific criteria, as it must to serve as grounds for termination under Subsection (O).”

*In re S.M.R.*, 434 S.W.3d 576, 584 (Tex.2014). “[W]hether a parent has done enough under the family-service plan to defeat termination under subpart (O) is ordinarily a fact question. [¶] While parents have generally had little success arguing substantial compliance to reverse a termination judgment under subpart (O), ... here the argument simply suggests a factual dispute. Conceivably, subpart (O) could be established as a termination ground as a matter of law. But when questions of compliance and degree are raised, and the trial court declines to terminate on this ground, the evidence is not conclusive; it is disputed.”

*In re E.C.R.*, 402 S.W.3d 239, 248 (Tex.2013). “[W]hile [Fam. Code §161.001(1)(O), now §161.001(b)(1)(O),] requires removal under [Fam. Code] ch. 262 for abuse or neglect, those words are used broadly. ‘[A]buse or neglect of the child’ necessarily includes the risks or threats of the environment in which the child is placed. Part of that calculus includes the harm

suffered or the danger faced by other children under the parent's care. If a parent has neglected, sexually abused, or otherwise endangered her child's physical health or safety, such that initial and continued removal are appropriate, the child has been 'remov[ed] from the parent under Ch. 262 for the abuse or neglect of the child.'" See also *In re S.M.R.*, 434 S.W.3d 576, 583 (Tex.2014) (acts or omissions listed in Fam. Code ch. 261 can be used to "inform" the terms abuse and neglect in ch. 262); *In re K.N.D.*, 424 S.W.3d 8, 9-10 (Tex.2014) (evidence showed that child was removed for abuse and neglect under Fam. Code ch. 262 as required by §161.001(1)(O), now §161.001(b)(1)(O); mother's fight with roommates caused child's early birth, and mother had recently relinquished parental rights to her first child because she could not care for child).

*In re J.W.*, 615 S.W.3d 453, 464 (Tex.App.--Texarkana 2020, no pet.). "[I]n order to prove a parent's parental rights should be terminated under subsections O and P based on the parent's failure to comply with a trial court's orders, including orders to comply with the Department's service plan, the Department must also present clear and convincing evidence that the 'parent was given a reasonable opportunity to comply with the terms of the plan' and the trial court's order."

*In re M.P.*, 618 S.W.3d 88, 101 (Tex.App.--Houston [14th Dist.] 2020), *rev'd in part on other grounds*, 639 S.W.3d 700 (Tex.2022). "Father argues that the service plan was not sufficiently 'specific' under subsection O because, as a general matter, it did not contain deadlines for completion of tasks. [E]ven when the deadline for completion of a task is not specifically delineated, a parent could reasonably infer from the proceedings that, at the very least, 'the deadline for compliance for each requirement would have been prior to termination.' Moreover, Father's plan included some tasks for which deadlines were either stated or inapplicable. [¶] Father next argues the subsection O finding should be reversed because he proved his affirmative defense that he was unable to complete the plan.... At 102: Father argues that he was unable to understand the service plan, and accordingly was unable to comply with it, because he cannot read due to his intellectual disabilities. While the statute requires the parent to prove that he could not comply with 'specific provisions' of the court order in question, evidence that a parent cannot read at all may support a blanket determination that the parent was unable to comply with any part of the court order due to a lack of comprehension. [¶] By failing to identify specific portions of the service plan he was unable to comply with, however, Father assumes the burden to prove that he could not comply with the service plan *at all* because of his lack of comprehension of it. ... Moreover, Father does not explain how his inability to read prevented him from completing tasks such as maintaining contact with the Department (the evidence shows he contacted [CPS conservatorship worker] by phone at least once, so he was aware of how to do so), attending family visits (which he did at least once), or submitting to random drug screening, particularly in light of Aunt's testimony that Father was 'refusing to take certain drug tests at certain times' and 'refusing to do his plans that he needs to do.' At 103: Father failed to prove his [§161.001(d)] affirmative defense by a preponderance of the evidence."

*In re A.J.A.R.*, No. 14-20-00084-CV, 2020 WL 4260343 (Tex.App.--Houston [14th Dist.] 2020, pet. denied) (memo op.; 7-24-20). "Although Father's substantial compliance with the service plan does not undermine the trial court's [§161.001(b)(1)(O)] finding, ... we consider the evidence that Father completed the 'vast majority' of the service plan for purposes of the best-interest analysis. The record does not show that his failure to comply with the service plan--by not always scheduling his drug tests within 24 hours, and by using cocaine twice in a six month period--was due to indifference or malice toward his children. [¶] By completing the vast majority of the service plan, maintaining stable employment, securing an appropriate home for the children, regularly visiting the children, bonding with the children, being loved by the children, never having caused physical or emotional injury to the children, providing necessities to the children, ending his relationship with Mother (who could not explain the children's injuries and continued to commit offenses involving violence), and showing improvement on his drug tests (going from 'pretty high' results to 'very low' results), Father has shown a willingness and ability to effect positive environmental and personal changes. [¶] The evidence is factually insufficient to support the termination of Father's parental rights."

*In re V.A.*, 598 S.W.3d 317, 330-331 (Tex.App.--Houston [14th Dist.] 2020, pet. denied). "Mother contends she complied with the plan by attending all required counseling sessions, consistently testing negative for drugs and alcohol, refraining from criminal activity, and visiting her children regularly. Mother's negative drug and alcohol tests are commendable, as is her lack of criminal activity, but neither was a requirement of her service plan. The requirements of her service plan that she did not satisfy were: (1) acquire, maintain for more than six months, and provide documentation of a legal form of income; and (2)

take all prescribed medications. [¶] Our sufficiency analysis does not depend on the wisdom of the service plan’s requirements. It is undisputed she did not satisfy the employment requirement. Though the record contains no evidence about the details of Mother’s epilepsy or treatment, we do not presume to question the efficacy of her prescription. For purposes of subsection O, all we may consider is that she was prescribed to take medication, and there is some evidence to support an inference that she did not take her medication as prescribed. Therefore, we conclude the evidence is legally and factually sufficient to support termination under subsection O.”

*In re E.F.*, 591 S.W.3d 138, 144 (Tex.App.--San Antonio 2019, no pet.). “Mother contends the trial court was precluded from terminating her parental rights based on §161.001(b)(1)(O). Mother argues her mental health issues precluded her ability to complete all of the requested hair follicle exams. Mother testified she shaved her head in an effort to deal with bald spots resulting from a mental condition that caused her to pull her hair out. [¶] [T]he evidence relied upon by Mother would excuse only her failure to submit to random drug testing; it would not excuse her failure to complete the mandated parenting classes or the requirement that she remain drug free. We have found no evidence, nor does Mother point to any, regarding her inability to comply with the requirement that she complete the mandated parenting classes. Mother references her mental health issues, but there is nothing in the record to suggest these issues, for which Mother is medicated, precluded completion of her parenting classes. Moreover, the service plan required that Mother not only submit to drug testing, but that she remain drug free. Neither the evidence pointed to by Mother nor any other evidence in the record shows her mental health condition made her unable to comply with the requirement that she not engage in illegal drug use. [¶] Even if there is evidence supporting completion or good faith engagement in [some] services, the evidence still shows an unexcused failure to complete other service plan requirements.”

*D.F. v. TDFPS*, 393 S.W.3d 821, 830 (Tex.App.--El Paso 2012, no pet.). “Children are removed from their parents under [Fam. Code] ch. 262 for the abuse or neglect of a child where the children may have been physically in the care of a relative, a medical or social services institution, or the Department. At the time of her removal, [child] was residing at the Child Crisis Center. While she was physically removed from that facility, we find for purposes of ch. 262, she was removed from her parent.”

**§161.001(b)(1)(P)**

*In re R.R.A.*, 687 S.W.3d 269, 277 (Tex.2024). “The Legislature deployed ‘endangered’ in ground (P) nearly ten years after the Court interpreted ‘endanger’ for grounds (D) and (E) in [*Texas Dept. of Human Servs. v. Boyd*, 727 S.W.2d 531 (Tex.1987)]. We thus give ‘endangered’ in (P) the meaning we assigned ‘endanger(s)’ in *Boyd*. ... A factfinder may infer endangerment from ‘a course of conduct’ that presents substantial risks to the child’s physical or emotional well-being--the focus of grounds (D) and (E)--or to the child’s health and safety--the focus of ground (P). *At 281*: A parent’s pattern of illegal use of a controlled substance like methamphetamine supports a finding of endangerment under (P) when the evidence shows it adversely affected the parent’s ability to parent, presenting a substantial risk of harm to the child’s health and safety.”

*In re J.W.*, 615 S.W.3d 453, 464 (Tex.App.--Texarkana 2020, no pet.). See annotation under Family Code §161.001(b)(1)(O).

*In re A.Q.W.*, 395 S.W.3d 285, 290-91 (Tex.App.--San Antonio 2013, no pet.), *overruled on other grounds*, *In re J.M.T.*, 617 S.W.3d 604 (Tex.App.--San Antonio 2020, no pet.). “Because [father] was incarcerated the six and one-half months from the time of [child’s] birth to the time of the termination hearing, he could not have ‘used a controlled substance ... in a manner that endangered the health or safety of the child.’ And ... having received his service plan only 34[ ] days before the termination hearing, there is no evidence [father] was provided with an opportunity to enroll in, much less complete, ‘a court-ordered substance abuse treatment program’ while incarcerated. Finally, there is no evidence he has ‘continued to abuse a controlled substance.’ [¶] [T]he State argues [father’s] drug use is a ‘course of conduct’ that has endangered [child’s] health and safety. The State speculates this ‘course of conduct’ subjects a child to being left alone because his parent is once again jailed or once again committed to a drug treatment facility. But nothing in the record supports this speculation. There is no evidence [father] has been jailed repeatedly or been in and out of drug treatment of any type. Therefore, we conclude the evidence is legally insufficient to support a finding under §161.001(1)(P) [now §161.001(b)(1)(P)].”

*In re J.E.H.*, 384 S.W.3d 864, 871 (Tex.App.--San Antonio 2012, no pet.). “[T]he Department had the burden of proving that [father] used a controlled substance *in a manner that endangered [child]*. . . . The Department . . . points out that [father] testified he tested positive for cocaine during the pendency of this suit. While [father] admitted that he tested positive for cocaine during the pendency of this suit, he denied having actually used cocaine and gave no testimony that would support a finding that his use of controlled substance endangered [child]. There is simply no evidence in this record that supports the finding [father] used a controlled substance *in a manner that endangered [child]*.”

**§161.001(b)(1)(Q)**

*In re C.L.E.E.G.*, 639 S.W.3d 696, 700 (Tex.2022). “[B]y essentially requiring the Department to show Father had ‘zero chance of early release,’ the court of appeals erred by ‘impermissibly elevat[ing] the burden of proof from clear and convincing to beyond a reasonable doubt.’”

*In re H.R.M.*, 209 S.W.3d 105, 108-09 (Tex.2006). “We recognize that a two-year sentence does not automatically meet subsection Q’s two-year imprisonment requirement. In some cases, neither the length of the sentence nor the projected release date is dispositive of when the parent will in fact be released from prison. A parent sentenced to more than two years might well be paroled within two years. Thus, evidence of the availability of parole is relevant to determine whether the parent will be released within two years. Mere introduction of parole-related evidence, however, does not prevent a factfinder from forming a firm conviction or belief that the parent will remain incarcerated for at least two years. *At 110*: [Also,] [a]bsent evidence that the non-incarcerated parent agreed to care for the child on behalf of the incarcerated parent, merely leaving a child with a non-incarcerated parent does not constitute the ability to provide care.” See also *In re R.A.L.*, 291 S.W.3d 438, 443-44 (Tex.App.--Texarkana 2009, no pet.) (evidence that parents had been repeatedly denied parole in past was sufficient for jury to form belief that neither parent would be paroled within two years).

*In re A.V.*, 113 S.W.3d 355, 356-57 (Tex.2003). “We hold that subsection Q’s time period is prospective and that the subsection is constitutional even though applied to a parent incarcerated before the subsection’s effective date. *At 360*: In reading subsection Q to apply prospectively, the subsection fills a gap left by other grounds for termination. A prospective reading of subsection Q allows the State to act in anticipation of a parent’s abandonment of the child and not just in response to it. Thus, if the parent is convicted and sentenced to serve at least two years and will be unable to provide for his or her child during that time, the State may use subsection Q to ensure that the child will not be neglected.”

*In re I.N.B.*, 662 S.W.3d 631, 645-46 (Tex.App.--Beaumont 2023, no pet.). “[A] parent relying on another’s provision of care to avoid termination under Subsection (Q) must demonstrate that the care is being provided on behalf of the parent, not out of an existing duty or inclination to care for the child.”

*In re J.G.S.*, 574 S.W.3d 101, 118 (Tex.App.--Houston [1st Dist.] 2019, pet. denied). “The requirement of clear and convincing evidence of an ‘inability to care for the child’ is not met on the mere showing of prolonged incarceration. ‘Otherwise, the termination of parental rights could become an additional punishment automatically imposed along with imprisonment for almost any crime.’ Therefore, evidence of a two-year incarceration is only the first of a three-step analysis. *At 119-20*: During the first step, the party moving for termination must produce evidence of criminal conduct by the parent that results in confinement for two or more years. The burden of production then shifts to the parent. [¶] In the second step, the parent must produce some evidence of how the parent will provide care for the child during the period of confinement or that the parent has arranged with another person for that person to provide care for the child during the period of confinement. [¶] If the parent’s burden of production is met, the third step shifts the burden to the party seeking to terminate parental rights. That party then has the burden of persuasion to show by clear and convincing evidence that the parent’s provision or arrangement would not adequately satisfy the parent’s duty to the child. [¶] The parties do not point us to any caselaw analyzing whether a conviction that was based on legally and factually sufficient evidence but was nonetheless reversed for retrial meets the requirements of a ‘conviction’ under Subsection (Q). Nor have we found any such case. [¶] [T]he focus of . . . Subsection (Q) is not whether a conviction is final or will be affirmed on appeal but, rather, whether there is a period of two or more years in which the parent will be confined following

a conviction, thereby raising the possibility of inadequate parental care. [C]ourts have permitted termination of parental rights while an appeal of the parent's conviction remains pending.”

*In re A.R.*, 497 S.W.3d 500, 503 (Tex.App.--Texarkana 2015, no pet.). “[I]n order to satisfy the elements of subsection (Q), the Department must present evidence that [father] knowingly engaged in the conduct that resulted in his conviction. ... DWI, third or more, [is] found in [Pen. Code] Ch. 49.... [Pen. Code] §49.11(a) ... provides, ‘[P]roof of a culpable mental state is not required for conviction of an offense under this chapter.’ Thus, the holding in [*In re*] *C.D.E.* [below] is applicable here, and the Department could not establish that [father] knowingly engaged in the conduct that resulted in his conviction of the offense of DWI, third or more, by merely introducing evidence of the conviction. Instead, the Department was required to present proof of the facts surrounding the conviction to show that the father knowingly engaged in the conduct resulting in that conviction.”

*In re C.D.E.*, 391 S.W.3d 287, 299 (Tex.App.--Fort Worth 2012, no pet.). “Father's mere conviction for the strict-liability offense of intoxication manslaughter cannot automatically supply the knowing element required by subsection (Q). [¶] Given its common and ordinary meaning, the term 'knowingly' means 'in a knowing manner' and 'with awareness, deliberateness or intention.' *At 300*: [W]e hold that to establish that a parent 'knowingly engaged in criminal conduct' as set forth in subsection (Q), the Department must prove more than mere negligence. *At 301*: [T]he record contains no evidence from which the trial court could have formed a firm conviction or belief that Father '*knowingly* [as opposed to negligently] engaged in criminal conduct'....”

*In re D.J.H.*, 381 S.W.3d 606, 612 (Tex.App.--San Antonio 2012, no pet.). Father “argues that the trial court erred in terminating his parental rights based on subsection (Q) ... because he will be released from prison less than two years from the date the State's amended petition for termination was filed. According to [father], the date of the amended petition for termination should control because it was the amended petition that added subsection (Q) as a ground for termination. *At 613*: Given that the purpose of subsection (Q) is to protect children from being neglected, and not to provide notice, it is logical to conclude that when subsection (Q) refers to 'the petition,' it is referring to the original petition for termination, and not a subsequently amended one adding an allegation for termination under subsection (Q).”

#### **§161.001(b)(1)(R)**

*In re L.G.R.*, 498 S.W.3d 195, 202-03 (Tex.App.--Houston [14th Dist.] 2016, pet. denied). “Mother argues the evidence is legally and factually insufficient to support the trial court's finding because there were no observable signs of marijuana, or withdrawal from marijuana in the Child at birth. The Family Code, however, does not require proof of signs of withdrawal. Under the Family Code definition, it is sufficient to show that the demonstrable presence of a controlled substance was observable in the Child's bodily fluids. [¶] Mother further argues that the Department presented no expert testimony that Mother was the cause of the Child being born addicted to a controlled substance. Mother does not cite, nor have we found, any legal authority supporting her argument that the Department was required to present expert testimony as to causation. A reasonable fact-finder could believe that a child's testing positive for a controlled substance at birth could be caused by its mother's use of the controlled substance during pregnancy. Mother's admission of marijuana use during pregnancy and the admission of the medical records showing marijuana in the Child's bodily fluids constitute sufficient evidence under the Family Code that Mother was the cause of the Child being born addicted to a controlled substance.”

#### **§161.001(b)(1)(T)**

*In re E.M.N.*, 221 S.W.3d 815, 825 (Tex.App.--Fort Worth 2007, no pet.). “Despite [mother's] conviction and imprisonment before subsection (T)'s enactment, [her] rights were not violated by its retroactive application. [Child] and [managing conservator], her grandmother, are part of the public whose interest subsection (T) advances. Subsection (T)'s underlying purpose is not to add additional punishment to [mother] for murdering [child's] father, but to safeguard the public welfare and advance the public interest by facilitating termination when one parent murders the other--an act previously used to support terminations under subsection (E). Therefore, [mother] cannot now claim surprise and damage to her settled expectations under these circumstances.”

**§161.001(b)(2)--Best Interest**

**Interest of J.F.-G.**, 627 S.W.3d 304, 317-18 (Tex. 2021). “Although ... father's strides toward overcoming his past conduct are important in evaluating [child's] best interests, his rehabilitation does not negate his past criminal conduct and incarceration such that a trial court could not consider them to have been endangering to [child]. Based on the evidence before it, the trial court reasonably could have formed the firm belief that [child's] father engaged in endangering conduct under subsection (E). We note, specifically: his absence from her childhood for more than eight years; his history of dealing drugs; his choice not to monitor her safety during his incarceration; and his minimal effort to contact Julie or be part of decisions regarding her health, education, or well-being.”

**Holley v. Adams**, 544 S.W.2d 367, 371-72 (Tex.1976). “An extended number of factors have been considered by the courts in ascertaining the best interest of the child. Included among these are the following: (A) the desires of the child; (B) the emotional and physical needs of the child now and in the future; (C) the emotional and physical danger to the child now and in the future; (D) the parental abilities of the individuals seeking custody; (E) the programs available to assist these individuals to promote the best interest of the child; (F) the plans for the child by these individuals or by the agency seeking custody; (G) the stability of the home or proposed placement; (H) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and (I) any excuse for the acts or omissions of the parent. This listing is by no means exhaustive, but does indicate a number of considerations which either have been or would appear to be pertinent.” See also **Swate v. Swate**, 72 S.W.3d 763, 769 (Tex.App.--Waco 2002, pet. denied) (stepparent's desire to adopt is another factor); **Salas v. TDPRS**, 71 S.W.3d 783, 792 (Tex.App.--El Paso 2002, no pet.) (child's young age is another factor).

**C. C. v. TDFPS**, 653 S.W.3d 204, 217-18 (Tex.App.--Austin 2022, no pet.). “When it comes to children with physical or intellectual disabilities, ‘The fact that a child has special needs does not automatically mean that termination of the parent-child relationship is in the best interest of the child.’ Instead, the factfinder must view the existence of any special needs--like all relevant facts and circumstances--through the **Holley** lens. For example, the factfinder must weigh the parties' relative abilities to meet the child's needs and any programs available to help them do so. Thus, a child's special needs weighs in favor of termination to the extent the evidence suggests that ‘termination of [the] parental rights would improve the outlook’ for the child's health.”

**In re L.M.**, 572 S.W.3d 823, 837 (Tex.App.--Houston [14th Dist.] 2019, no pet.). “Though the State gives preference to an adult relative over a non-relative if that placement is in the best interest of the child, the overriding consideration for the court in placement decisions is always the child's best interest. A child's anticipated placement is a factor in determining the child's best interest, but the fact that placement will be with non-relatives is not a bar to termination. That the Department has not considered potential placement with a paternal relative does not bear on whether termination is in the child's best interest.”

**In re D.A.Z.**, 583 S.W.3d 676, 682 (Tex.App.--El Paso 2018, no pet.). “Evidence that a child is well-cared for by her foster family, is bonded to her foster family, and has spent minimal time in the presence of a parent is relevant to the best interest determination under the desires of the child factor.”

**In re J.K.V.**, 490 S.W.3d 250, 258 (Tex.App.--Texarkana 2016, no pet.). “[P]roof that a parent is outside the U.S. and cannot return should not automatically establish best interest. Still, there is evidence that [father] may not have done all he could to return and exercise parental duties over [child]. Accordingly, we find that [this] factor weighs slightly in favor of terminating [father's] parental rights.”

**In re K.D.**, 471 S.W.3d 147, 165 (Tex.App.--Texarkana 2015, no pet.). Family Code “§§153.002 and 161.001(2) both require the trial court to determine the best interest of the child, and [**In re Lee**, 411 S.W.3d 445 (Tex.2013),] holds that [an MSA] obtained under [Fam. Code] §153.0071(e) forecloses the trial court's best-interest review under §153.002. *At 171*: Having determined that **Lee's** interpretation of §153.0071(e) in the context of best-interest review under §153.002 does not apply to parental-rights termination cases brought by the Department [see **In re K.D.** annotation under Family Code §153.0071], we must now interpret

§153.0071(e) in the context of best-interest review under §161.001(2). *At 172*: [O]nly cases for conservatorship, possession, and access to children that are referred to mediation under §153.0071(c) can produce [an MSA] that forecloses the trial court's best-interest review. Because termination cases are governed by [Fam. Code] Ch. 161, §153.0071(e) would not apply to such cases. Therefore, §153.0071(c) and (e) can be interpreted to mean that any suit under Title 5, including a parental-rights termination suit, may be referred to mediation, but only those suits for conservatorship, possession, and access that produce [an MSA] can eliminate the trial court's best-interest review. *At 174*: Section 153.0071(e) does not foreclose judicial review of the best-interest element of proof in a parental-rights termination case brought by the Department. Likewise, we hold that §153.0071(e) does not foreclose an appellate court from reviewing the legal and factual sufficiency of a trial court's finding that termination is in the child's best interest. Therefore, we are not bound by the MSA and or the Affidavit to find that termination of Mother's parental rights was in [child's] best interest; instead, the Department was required to prove best interest by clear and convincing evidence.”

***J.S. v. TDFPS***, 511 S.W.3d 145, 160 (Tex.App.--El Paso 2014, no pet.). “The evidence supporting the predicate ground(s) [under §161.001(1), now §161.001(b)(1),] may also be used to support the finding that termination is in the best interests of the child. *At 161*: Mother urges this Court to weigh the evidence of her actual acts or omissions without reference to her guilty plea [to injury of a child] to determine whether there is legal or factual sufficiency to support the termination grounds. [Mother argues that] DFPS has waived the evidence of Mother's conviction because [§161.001(1)(L), now §161.001(b)(1)(L),] was not pleaded and DFPS induced Mother to plead guilty. [¶] It is uncontroverted Mother pled guilty to injury of a child and received four years' deferred adjudication supervision. ... Mother denies she committed the injury to a child. Secondly, she asserts, her plea of guilty, presumably under oath, was motivated by her fear of Father coupled with DFPS's reassurance her children would be reunified with her. [T]here is no authority to collaterally attack a criminal conviction in a parental termination case. Therefore, we are not inclined to peer behind Mother's guilty plea to injury of [child] and will not disregard it in our sufficiency analysis.”

***T.W. v. TDFPS***, 431 S.W.3d 645, 651 (Tex.App.--El Paso 2014, no pet.). “While it is presumed that it is in the child's best interest to preserve the parent-child relationship, the requirement to show that termination is in the child's best interest in addition to the clear and convincing standard of proof subsumes reunification issues and guarantees the constitutionality of termination proceedings. A separate consideration of alternatives to termination is not required. When determining the child's best interest, the focus is on the child and not the parent.”

***In re E.D.***, 419 S.W.3d 615, 618 (Tex.App.--San Antonio 2013, pet. denied). In response to being asked why termination would be in the best interest of the children, CPS supervisor “explained that if both parents' parental rights were terminated, the children's maternal grandparents could get financial assistance after adopting the children. She said that if the parental rights were not terminated, the grandparents would not be entitled to a financial subsidy. *At 619*: We do not believe terminating a parent's rights to his children so that someone can obtain financial subsidies upon adoption is an appropriate basis on which to base a best interest finding.”

***In re A.H.***, 414 S.W.3d 802, 807 (Tex.App.--San Antonio 2013, no pet.). “The only evidence of best interest was offered by the caseworker who testified termination of all parental rights was in the children's best interest 'because the children need a loving family that will care for them and take care of their needs,' and the children were to be adopted by their current care givers. The State argues that although the evidence regarding best interest was 'limited,' no evidence was offered to contradict the caseworker's testimony and [mother] offered no proof that termination of her parental rights was not in the children's best interest. But due process and the Texas Family Code place the burden of proof on the Department to prove the necessary elements by the heightened burden of 'clear and convincing evidence.' Thus, conclusory testimony, such as the caseworker's, even if uncontradicted does not amount to more than a scintilla of evidence. And, '[a]lthough [a parent's] behavior may reasonably suggest that a child would be better off with a new family, the best interest standard does not permit termination merely because a child might be better off living elsewhere.'”

***In re N.L.D.***, 412 S.W.3d 810, 819 (Tex.App.--Texarkana 2013, no pet.). “Evidence supporting the termination of parental rights [under §161.001(1), now §161.001(b)(1),] is also probative of best interest. A parent's inability to provide adequate care

for her child, lack of parenting skills, and poor judgment may be considered when looking at the child's best interests. Parental drug abuse is also a factor to be considered in determining a child's best interests. *At 823*: Evidence that a person has recently improved her life weighs against a finding that termination is in the best interest of the child.”

*In re S.R.L.*, 243 S.W.3d 232, 235-36 (Tex.App.--Houston [14th Dist.] 2007, no pet.). “The factfinder must find both a statutory violation and that termination is in the children’s best interest. The trial judge may have believed DFPS conclusively established a statutory ground for termination under subsection Q, but the best interest determination is a separate inquiry. Because the trial judge did not actually form a firm conviction or belief that severing [father’s] relationship with his children was in their best interest, we conclude the evidence is legally insufficient. [¶] That a parent is imprisoned does not automatically establish that termination of parental rights is in the child’s best interest.”

*In re C.J.B.*, 137 S.W.3d 814, 820 (Tex.App.--Waco 2004, no pet.). “[T]he factors considered in termination cases are broader than those mentioned in [Fam. Code] §263.307, which is limited to the factors considered when ‘determining whether the child’s parents are willing and able to provide the child a safe environment...’ Many, if not all, of the 13 factors listed in §263.307, one with six sub-parts, are subsumed within one of the broader *Holley* factors. [¶] Further, neither the Texas Supreme Court, nor this Court, has ever held that the *Holley* factors are exhaustive, or that all such considerations must be proved as a condition precedent to parental termination. The absence of evidence about some of these considerations does not preclude a factfinder from reasonably forming a firm belief or conviction that termination is in the child’s best interest. The analysis of one factor may be adequate in a particular factual situation to support a finding that termination is in the best interest of the child.” *See also In re D.W.*, 445 S.W.3d 913, 925 (Tex.App.--Dallas 2014, pet. denied).

V. T. C. A., Family Code § 161.001, TX FAMILY § 161.001

Current through the end of the 2023 Regular, Second, Third and Fourth Called Sessions of the 88th Legislature, and the Nov. 7, 2023 general election.

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# **APPENDIX 6**

West's Louisiana Statutes Annotated

Louisiana Revised Statutes

Title 13. Courts and Judicial Procedure (Refs & Annos)

Chapter 6. Juvenile Courts (Refs & Annos)

Part IV. Uniform Child Custody Jurisdiction and Enforcement Act (Refs & Annos)

Subpart A. General Provisions

LSA-R.S. 13:1802

§ 1802. Definitions

Currentness

- (1) “Abandoned” means left without provision for reasonable and necessary care or supervision.
- (2) “Child” means an individual who has not attained eighteen years of age.
- (3) “Child custody determination” means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.
- (4) “Child custody proceeding” means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Subpart C of this Part.
- (5) “Commencement” means the filing of the first pleading in a proceeding.
- (6) “Court” means an entity authorized under the law of a state to establish, enforce, or modify a child custody determination.
- (7)(a) “Home state” means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.
- (b) When a parent or a person acting as a parent is required to evacuate this state with a minor child because of an emergency or disaster declared under the provisions of [R.S. 29:721 et seq.](#), or declared by federal authority, and for an unforeseen reason resulting from the effects of such emergency or disaster is unable to return to this state for an extended period of time, this state shall be determined to be the home state if the child lived with his parents, a parent, or a person acting as his parent for a period of at least twelve consecutive months immediately preceding the time involved.

- (8) “Initial determination” means the first child custody determination concerning a particular child.
- (9) “Issuing court” means the court that makes a child custody determination for which enforcement is sought under this Act.
- (10) “Issuing state” means the state in which a child custody determination is made.
- (11) “Modification” means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.
- (12) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.
- (13) “Person acting as a parent” means a person, other than a parent, who:
- (a) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and
  - (b) Has been awarded legal custody by a court or claims a right to legal custody under the laws of this state.
- (14) “Physical custody” means the physical care and supervision of a child.
- (15) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- (16) “Tribe” means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.
- (17) “Warrant” means an order issued by a court authorizing law enforcement officers to take physical custody of a child.

**Credits**

Added by [Acts 2006, No. 822, § 1, eff. Aug. 15, 2007](#).

[Notes of Decisions \(17\)](#)

LSA-R.S. 13:1802, LA R.S. 13:1802

The Constitution, Revised Statutes, and the Codes are current through the 2024 First Extraordinary, Second Extraordinary, and Regular Sessions.

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# **APPENDIX 7**

West's Louisiana Statutes Annotated

Louisiana Revised Statutes

Title 13. Courts and Judicial Procedure (Refs & Annos)

Chapter 6. Juvenile Courts (Refs & Annos)

Part IV. Uniform Child Custody Jurisdiction and Enforcement Act (Refs & Annos)

Subpart B. Jurisdiction

LSA-R.S. 13:1813

§ 1813. Initial child custody jurisdiction

Currentness

A. Except as otherwise provided in [R.S. 13:1816](#), 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 was the home state of the child within six months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state, or had been the child's home state within twelve months before commencement of the proceeding and the child is absent from the state because he was required to leave or was evacuated due to an emergency or disaster declared under the provisions of [R.S. 29:721 et seq.](#), or declared by federal authority, and for an unforeseen reason resulting from the effects of such emergency or disaster was unable to return to this state for an extended period of time.

(2) A court of another state does not have jurisdiction or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under [R.S. 13:1819](#) or 1820; 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.

(b) Substantial evidence is available in this state concerning the child's care, protection, training, and personal relationships.

(3) All courts having jurisdiction have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under [R.S. 13:1819](#) or 1820; or

(4) No court of any other state would have jurisdiction under the criteria specified in Paragraph (1), (2), or (3) of this Subsection.

B. Subsection A of this Section 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.

**Credits**

Added by [Acts 2006, No. 822, § 1](#), eff. Aug. 15, 2007.

[Notes of Decisions \(250\)](#)

LSA-R.S. 13:1813, LA R.S. 13:1813

The Constitution, Revised Statutes, and the Codes are current through the 2024 First Extraordinary, Second Extraordinary, and Regular Sessions.

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