DFPS CASE LAW UPDATE

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IN THE INTEREST OF J.R.; NO. 09-18-00433-CV
9TH COURT OF APPEALS, TEXAS

In this case that came down on February 28, 2019 the 9th Court of Appeals reversed the Trial Court because of lack of service on the father.

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DFPS listed “Mexico” as Father’s address but noted that the name and location of Father were unknown. The Department requested that “process be served at that address or in Court.” The Department maintained that it would make a diligent effort to locate Father and requested service of process if Father’s address became known.

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The record shows that in May 2017, FINDRS conducted an electronic search at the Department's request, and the FINDRS Diligent Search Report indicated that Father reportedly resides in Mexico but could not be located. The FINDRS Report stated that if the absent parent is a citizen of a foreign country and is believed to be currently residing in their home country, the Department's caseworker must contact the consulate of that country and request assistance in locating the absent parent. In June 2017, the Department filed a motion for substituted service of citation by posting, and the Department attached an affidavit regarding a due diligence search, in which an investigator averred that he had made a good faith effort to locate Father.

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The trial court granted the Department's motion for substituted service of citation by posting. In July 2017, the trial court found that Father had been served by citation by posting and appointed Father an attorney. However, the Department subsequently filed various Permanency Reports, in which the Department reported that Father resides in Mexico, his physical address was unknown, and he had not yet been served with service of process. In January 2018, Father's appointed counsel filed a report stating that she had been unable to locate Father.

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In March 2018, the Department filed a first amended petition, and in October 2018, the trial court conducted a bench trial, during which the Department maintained that Father had been served by posting. During the trial, Jeff Sermons, a case worker with the Department, testified that the Department requested to serve Father by posting, but Sermons also testified that the Department had located Father's specific address in Mexico and had "sent everything through the [c]onsulate[]" and to Father's appointed counsel. Sermons explained that he had not had any contact with Father, nor had he received a written response from the consulate regarding the information he had forwarded. According to Sermons, the consulate contacted the Department's immigration specialist and advised the Department to contact Juan Aguilar in Dallas, and when Sermons spoke to Aguilar, Aguilar indicated that Father wanted J.R. to be with him.

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Sermons testified that the Department never attempted to serve Father at the address in Mexico, because the immigration specialist attempted service through the consulate.

After the Department rested, Father's counsel moved for a directed verdict, arguing, among other things, that Father's rights should not be terminated because there was no evidence of "any actual notice[]" despite Sermons's testimony that the Department knew Father's address in Mexico.

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The Department argued that Father was served by posting and that the Department never received a response from the Mexican Consulate when it tried to establish Father's residence. The trial court denied the motion for a directed verdict and entered an order terminating Father's parental rights to J.R. The trial court issued findings of fact and conclusions of law, in which it found, among other things, that it had jurisdiction over all the parties. Father appealed.

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The Court of Appeals discussed Jurisdiction and service of citation and stated:

"Service of process may be effected upon a party in a foreign country if service of the citation and petition is made pursuant to the terms and provisions of any applicable treaty or convention, and proof of service may be made as provided by the applicable treaty or convention. *See* Tex. R. Civ. P. 108a(1), (2). The Hague Service Convention governs the service of process on a defendant located in Mexico. *In the Interest of J.P.L.*, 359 S.W.3d 695, 705 (Tex. App.—San Antonio 2011, pet. denied). The Hague Service Convention applies in all civil matters in which there is an occasion to transmit a judicial document for service abroad, and its intent is to simplify and expedite international service of process and to ensure that it is adequately effected. *Id.* In all cases in which it applies, the Hague Service Convention preempts any inconsistent methods of service prescribed by Texas law. *In the Interest of T.M.E.*, 2018 WL 5810854, at *5."

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The Court of Appeals further stated: “Our review of the record shows that there is no evidence that the Department served the Central Authority of Mexico with its lawsuit against Father or that the Central Authority returned a certificate of service. *See id.*; *see also* Tex. R. Civ. P. 108a(1), (2). Additionally, because Mexico has filed declarations objecting to any alternative channel of service, citation by posting to a defendant who is known to be in Mexico does not comport with the terms of the Hague Service Convention. *See In the Interest of T.M.E.*, 2018 WL 5810854, at *5. We also note that the record does not contain a return of citation by publication showing how and when the citation was executed. *See* Tex. R. Civ. P. 117. “

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The Court of Appeals found: “Based on this record, we conclude that Father was never properly served with the Department’s lawsuit as required by the Hague Service Convention. *See In the Interest of T.M.E.*, 2018 WL 5810854, at *5. We further conclude that the trial court’s order terminating Father’s parental rights to J.R. is void because the trial court never acquired personal jurisdiction over Father. *See id.* We sustain issue six. Because issue six is dispositive, we need not address Father’s remaining six issues. *See* Tex. R. App. P. 47.1. Accordingly, we reverse that part of the trial court’s judgment terminating Father’s parental rights to J.R. and remand the case for a new trial as to Father. *See In the Interest of E.R.*, 385 S.W.3d at 569-70; *In the Interest of J.M.*, 387 S.W.3d at 870; *Velasco*, 312 S.W.3d at 800.

REVERSED AND REMANDED.

IN THE INTEREST OF C.M.J. AKA C.W A CHILD NO: 01-18- 00885-CV, IN THE 1ST COURT OF APPEALS, TEXAS

In this case that came down on March 5, 2019 the 1st Court of Appeals reversed termination of Mother's parental rights because the Trial Court's granting of DFPS' Motion for Summary Judgement was error regarding best interest burden of proof.

IN THE INTEREST OF C.M.J. AKA C.W A CHILD NO: 01-18-00885-CV, IN THE 1ST COURT OF APPEALS, TEXAS

The Appellate Court discussed fully the facts of the case and that mother continued to test positive during the pendency of the case including that mother had her parental rights terminated to 4 prior children.

IN THE INTEREST OF C.M.J. AKA C.W A CHILD NO: 01-18-00885-CV, IN THE 1ST COURT OF APPEALS, TEXAS

DFPS later filed a motion for summary judgment, maintaining that termination of the parents' parental rights was warranted as a matter of law. Specifically, the Department argued that its summary-judgment evidence conclusively established that termination of the mother's parental rights was supported by Texas Family Code 161.001(b)(1)(M) and that termination of her rights was in C.M.J.'s best interest. The Department's evidence detailed the accounts described above. That evidence included the referral affidavits from this case and the two previous cases, police reports, the mother's drug-test results, the criminal records of the mother and the father, several affidavits by Department caseworkers who were involved with the case, and certified copies of the termination decrees of the mother's other four children.

IN THE INTEREST OF C.M.J. AKA C.W A CHILD NO: 01-18-00885-CV, IN THE 1ST COURT OF APPEALS, TEXAS

The trial granted the Department's motion, terminating the mother's parental rights under section 161.001(b)(1)(M), finding "by clear and convincing evidence t at termination of the parent-child relationship between the mother and C.M.J . is in the child's best interest," and naming the Department as sole managing conservator. Mother Appealed.

IN THE INTEREST OF C.M.J. AKA C.W A CHILD NO: 01-18-00885-CV, IN THE 1ST COURT OF APPEALS, TEXAS

The Appellate Court Discussed the Summary Judgement: “The mother maintains the Department’s summary-judgment evidence is insufficient to support parental termination as a matter of law. We review summary judgments de novo. *Valence Operating Co. v. Dorsett*, 164 S.W.3d 656, 661 (Tex. 2005). Before a trial court may terminate parental rights, the Department must prove by clear and convincing evidence that both a predicate statutory ground under section 161.001(b)(1) exists and that terminating parental rights is in the child’s best interest. TEX. FAM. CODE § 161.001(b)(1); *In re B.L.D.*, 113 S.W.3d 340, 353–54 (Tex. 2003). Normally, the Department satisfies its burden through a trial. But here, the Department chose to proceed through summary judgment under Rule of Civil Procedure 166a.1

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The Court of Appeals went on to say “In the typical summary-judgment case, the movant must establish that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166(a); *M.D. Anderson Hosp. & Tumor Inst. v. Willrich*, 28 S.W.3d 22, 23 (Tex. 2000). If the movant satisfies this standard, the burden shifts to the nonmovant to raise a genuine issue of material fact that will preclude summary judgment. *Willrich*, 28 S.W.3d at 23. Unlike most civil cases, which are governed by a preponderance-of-the-evidence standard, parental-termination cases employ the

“clear and convincing” standard. *See* TEX. FAM. CODE § 161.001(b). Accordingly, we must first determine whether this clear-and-convincing evidentiary standard alters the typical summary-judgment standard.

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The Court of Appeals further stated: “The constitutional authority for incorporating the clear-and-convincing

standard into the summary-judgment standard that was lacking in the public-figure defamation context exists here. “If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs.” *Santosky*, 455 U.S. at 753. In light of these constitutional considerations, we conclude that, in the context of a parental-termination case, the clear-and-convincing standard applies at the summary-judgment stage. As the *Huckabee* court described, the clear-and-convincing summary judgment standard is difficult to satisfy. On a cold summary judgment record, without having observed a single witness, it would take keen insight to forecast accurately whether probative evidence would or would not produce a “firm belief or conviction” in the mind of the trier of fact. The distinction, in a paper record, between evidence that will merely raise a fact issue and evidence that will be clear and convincing is generally subtle, if not wholly subjective. *Huckabee*, 19 S.W.3d at 422–23. Hence, the court noted, “We believe it obvious that this determination may be more easily and accurately made after a trial on the merits.” *Id.* at 423. We now apply this clear-and-convincing standard to the summary-judgment evidence in this case, beginning first with the predicate-statutory ground. The Colorado Court of Appeals has taken a nearly identical approach.

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The Appellate Court further stated “Here, the Department’s summary judgment evidence included trial-court decrees terminating the mother’s parental rights over her other four children. The first decree was signed on February 1, 2011, and contained findings that the mother violated both subsections (D) and (E). The second decree was signed on February 21, 2013, and contained findings that the

mother violated subsections (O) and (M). Subsection (M) requires only that the Department establish that the mother had her parental rights as to other children terminated for her violation of subsections (D) or (E). Absent evidence that the decrees were suspended or reversed, we cannot see how the mother could produce any evidence that would create a fact issue on the decrees that contain findings that she violated subsections (D) and (E). Under this circumstance, summary judgment on whether the parent violated section 161.001(b)(1)(M) is appropriate because decrees showing that the parent violated subsections (D) or (E) satisfy the Department’s burden under subsection (M) as a matter of law, with no evidence weighing required. *See In re A.C.*, 394 S.W.3d at 640–41. Summary judgment on a child’s best interest, however, presents different concerns. “

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The Appellate Court further stated “Unlike the wholly objective inquiry that subsection (M) calls for, a child’s best-interest determination under subsection 161.001(b)(2) calls for a delicate weighing and balancing of numerous factors that are unique to each child and parent. Accordingly, when the mother submitted summary-judgment evidence of her paying money to C.M.J.’s caregiver, the trial court could not rule on the Department’s summary-judgment motion on best interest without weighing the parties’ competing summary-judgment evidence. *See supra* note 3; *Huckabee*, 19 S.W.3d at 422–23 (“Texas law has always emphasized that trial courts must not weigh the evidence at the summary judgment stage.”). Thus, the trial court improperly granted the Department’s summary-judgment on C.M.J.’s best interest.”

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The Appellate Court further stated “Our holding should not be read as a categorical prohibition against summary judgment on best interest in parental-termination cases. There may be circumstances

where it is appropriate. *See, e.g.*, *Dowell v. Dowell*, 276 S.W.3d 17, 22 (Tex. App.—El Paso 2008, no pet.) (“There may be instances where the acts or omissions of the parent, standing alone, are sufficient to establish as a matter of law that termination is in the best interest of the children.”); *In re T.H.*, No. 05-99-01142-CV, 2000 WL1853042, at *2 (Tex. App.—Dallas 2000, no pet.) (rejecting argument that summary judgment is never appropriate for parental-termination cases). *But see In re E.N.C.*, 384 S.W.3d at 808 (“A lack of evidence does not constitute clear and convincing evidence.”) (Christopher, J., concurring). But summary judgment on a child’s best interest will rarely be appropriate.4 We overrule in part and sustain in part the mother’s second issue. The trial court must commence a new trial no later than 180

days after the issuance of our mandate in this case. *See* TEX. R. APP. P. 28.4(c).

IN THE INTEREST OF J. G. S., A CHILD
NO: 01-18-00844-CV 1ST COURT OF APPEALS, TEXAS

In this case that came down from the 1st Court of Appeals on March 14, 2019 the Court of Appeals reversed termination of the father's parental rights because of factually insufficient evidence of best interest grounds.

IN THE INTEREST OF J. G. S., A CHILD
NO: 01-18-00844-CV 1ST COURT OF APPEALS, TEXAS

The Paternal Grandmother who had been the child's sole managing conservator for the past 4 years filed to terminate the parents parental rights. The trial Court terminated the parental rights of the parents and granted the adoption the next day. The father appealed asserting insufficient evidence of best interest grounds. The father was a navy reservist and was deployed to Guantanamo Bay, Cuba and Just three months later, around November 2013, Cooper learned that another Service member had made a sexual-assault allegation against him that the Navy was investigating. Charges were brought against Cooper in April 2014. A general court-martial proceeding followed and, in September 2014, Cooper was convicted of "three specifications of sexual assault and one specification of abusive sexual contact, in violation of Article 120, Uniform Code of Military Justice (UCMJ), 10 U.S.C. § 920." He was convicted in September 2014. Cooper appealed his conviction through the military court system.

IN THE INTEREST OF J. G. S., A CHILD
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The record includes a “statement of confinement,” dated September 30, 2015, from the Department of the Navy. It states that Cooper has been in confinement since his conviction and that his “current release date is 4 August 2019,” which “is subject to change.”

In August 2016—while Cooper remained confined and his appeal was pending—his mother, Sims, sued to terminate Cooper’s and Strong’s parental rights and to adopt Joanne. Sims sought termination on the ground that Cooper and Strong voluntarily left Joanne in her possession for an extended period of time without providing adequate support. Sims did not cite to particular subsections of the termination statute, instead, relying on general allegations of absence and nonsupport. Within the same pleading, Sims petitioned to adopt Joanne.

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Cooper filed a pro se answer. He informed the court that he was confined at the Naval Consolidated Brig in Miramar, California and that he "strongly desires to maintain his parent child relationship with his daughter and in no way wishes it is interfered with by his mother Rita Sims."

The trial court appointed an amicus attorney "to provide legal services to assist the Court in protecting" Joanne's interests. And the trial court entered an order for an evaluator selected by the Harris County Domestic Relations Office to "prepare an evaluation to determine whether termination of [Cooper's and

Strong's] parental rights is in the best interest" of Joanne and to "evaluate the circumstances and the condition of [Sims's] home and social environment." The results of these evaluations are not in the record.

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In February 2018, Cooper moved for the trial judge to confer with Joanne in chambers to learn of Joanne's wishes as they related to the termination and adoption proceedings. His motion also requested that the interview be recorded and made part of the record. The record does not include any written order disposing of Cooper's motion. Nor is there any indication in the record that the trial judge met with Joanne.

Later that month, Sims amended her petition to add an additional ground for terminating Cooper's parental rights. She sought termination because Cooper has been "convicted by a Military Court-Martial" for the offenses of "unauthorized absence," "wrongful use of marijuana," and "sexual assault," had been sentenced to five years' confinement, and had his convictions affirmed by the United States Navy-Marine Corps Court of Criminal Appeals on May 26, 2016. Again, Sims did not specify any particular subsections of the termination statute.

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Cooper then moved to stay the proceedings under the Servicemembers Civil Relief Act, 50 U.S.C. § 3932(b) (permitting trial court to grant 90-day stay in proceedings for servicemembers and for extended stays under certain conditions). The trial court granted a 90-day stay, which stayed the proceedings until May 2018. During the stay, in March 2018, a military appellate court reversed Cooper's court-martial, concluding that he was denied his statutory right to available counsel of his choice. The court also considered the legal and factual sufficiency of the evidence supporting the sexual-assault convictions. It described the government's case against Cooper as "not overwhelming" but, nonetheless, supported by legally and factually sufficient evidence. *See United States v. Cooper*, No. 201500039, 2018 WL 1178847, at *16–17 (N-M. Ct. Crim. App. Mar. 7, 2018) (citing Uniform Code Military Justice art. 66(c), and *United States v. Washington*, 57 M.J. 394, 399 (C.A.A.F. 2002)), *rev'd*, *United States v. Cooper*, No. 18-0282, 2019 WL 629509, at *1 (A.F. Ct. Crim. App. Feb. 12, 2019). The appellate court reversed the conviction, set aside the sentence, and remanded the case. Cooper remained confined at the Navy Brig in California as he awaited retrial.

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The stay ended in May 2018, and the termination and adoption trial began that month. Cooper appeared by phone; his counsel was present at trial. Sims answered two questions on the record, then the trial court announced that trial would be recessed until a later date. All remaining testimony and evidence was presented about three months later, on September 8, 2018, which was approximately one year before Cooper's anticipated release date from confinement by the Navy, even without a successful appeal. At the September 2018 trial, Cooper again participated by phone, while his attorney appeared in person.

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The Paternal Grandmother testified and called one witness. The Child was 9 years old and not called and there is no evidence in the record that the Trial Court interviewed her. The father moved for a directed verdict that there was insufficient evidence of best interest grounds. The Court denied the motion. The father then testified and that he gave his mother money and called his daughter and that the grandmother moved and did not let him know where she was while he was deployed. The trial Court granted termination and the adoption the next day and the father appealed.

IN THE INTEREST OF J. G. S., A CHILD
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The Appellate Court stated “At the conclusion of the termination hearing, the trial court announced its rendition of termination without making a finding that clear and convincing evidence existed to support a conclusion that termination was in Joanne’s best interest. Later, however, the trial court issued a written order terminating Cooper’s parental rights, which included the following finding: Best Interests of Child .The Court finds clear and convincing evidence that it is in the best interest of the child for the parent-child relationship between [Strong] and [Cooper] and [Joanne] to be terminated. A similarly worded finding appears a second time in the order. Neither finding is accompanied by factual findings or other explanations why termination would better meet Joanne’s best interest. Cooper filed a written request for findings of fact and conclusions of law. The trial court did not issue any. In sum, the trial court made a finding that clear and convincing evidence supports its conclusion that terminating Cooper’s parental rights was in Joanne’s best interest, but the trial court did not provide findings of fact or conclusions of law to explain the court’s reasoning in reaching this determination. We therefore have no guidance on the trial court’s evaluation of the evidence in light of specific *Holley* factors or how one factor may have predominated in the analysis, if at all.”

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The Appellate Court further stated “Sims and her supporting witness testified that termination was in Joanne’s best interest, but neither explained the basis for their opinion. The trial court found that termination was in Joanne’s best interest but did not issue findings of fact or conclusions of law explaining the basis for the finding. Cooper appealed the sufficiency of the evidence on best interest, and Sims filed a brief that fails to directly address the legal and factual arguments related to best interest. Sims has presented no evidence that Joanne’s emotional and physical interests would be sacrificed if Cooper’s parental rights as possessory conservator with supervised visits were preserved. This case does not involve a challenge to Sims’s sole-managing-conservator role. Joanne will continue to live with Sims. Cooper is not seeking more rights; he seeks to maintain the judicially limited rights he already possessed. He seeks to maintain the legally recognized, familial relationship he has had with Joanne and to prevent his mother from excluding him from Joanne’s life. Sims made no showing of why life without Cooper was better than life with him, even in a limited role with infrequent contact.

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The Appellate Court concluded “We conclude that there is (1) legally insufficient evidence of the predicate findings against Cooper under Subsections (B), (C), and (F); (2) legally and factually sufficient evidence of the Subsection (Q) predicate finding; (3) legally sufficient evidence that termination of Cooper’s parental rights is in Joanne’s best interest; but (4) factually insufficient evidence that termination is in Joanne’s best interest. Accordingly, we reverse the trial court’s order terminating Cooper’s parental rights for factually insufficient evidence on best interest. We remand that portion of the suit for additional proceedings consistent with this opinion.”

IN THE INTEREST OF S.S.R., E.L.R. JR., AND Z.N.R., CHILDREN NO: 13-18-00576-CV 13TH COURT OF APPEALS, TEXAS

In this case that came down on March 21, 2019 from the 13th Court of Appeals the court reversed the Trial Court for denying a de novo hearing from the Associate Judge to the District Judge.

IN THE INTEREST OF S.S.R., E.L.R. JR., AND Z.N.R., CHILDREN NO: 13-18-00576-CV 13TH COURT OF APPEALS, TEXAS

On August 14, 2018, September 5, 2018, and September 17, 2018, a bench trial was held before an associate judge concerning the termination of Mother's and Father's parental rights. On September 28, 2018, Mother and Father were e-mailed the associate judge's report. *See id*. § 201.011 (West, Westlaw through 2017 1st C.S.) ("The associate judge's report may contain the associate judge's findings, conclusions, or recommendations and may be in the form of a proposed order."). In its report to the referring court, the associate judge found that Mother's and Father's parental rights should be terminated under family code section161.001(b)(1)(D), (E), and (O). *See id*. §§ 161.001(b)(1)(D), (E), and (O). The associate judge also found that termination was in the best interests of the children. *See id*. §§ 161.001(b)(2).

IN THE INTEREST OF S.S.R., E.L.R. JR., AND Z.N.R., CHILDREN NO: 13-18-00576-CV 13TH COURT OF APPEALS, TEXAS

On October 3, 2018, both Mother and Father filed a request for a de novo hearing of the associate judge's report. They each requested a de novo hearing on "all issues of fact and findings of law" related to: (1) termination of their parent-child relationship; (2) the associate judge's finding that termination would be in the children's best interests; and (3) the associate judge's naming of the Department as the permanent managing conservator of the children. On October 9, 2018, the associate judge signed the formal order of termination. On October 10, 2018, the district judge of the referring court denied Mother's and Father's request for a de novo hearing, finding that the parents "failed to specify the issues that would be presented to the referring court as required by [Texas Family Code] Sec. 201.015(b)." *See id*. § 201.015(b). This appeal ensued.

IN THE INTEREST OF S.S.R., E.L.R. JR., AND Z.N.R., CHILDREN NO: 13-18-00576-CV 13TH COURT OF APPEALS, TEXAS

After discussing the statutory requirements for the filing of a request for a de novo hearing the Appellate Court stated “The record in this case shows that Mother and Father timely filed an appeal of the associate judge’s report and that they each unambiguously requested a de novo hearing on “[a]ll issues of fact and findings of law related to” the termination of their parental rights and the associate judge’s finding that termination was in the children’s best interests. Mother and Father requested a de novo hearing on October 3, 2018, which was within three working days of receiving notice of the substance of the associate judge’s report. *See* TEX. FAM. CODE ANN. § 201.015(a). Their request clearly specified which findings and conclusions of the associate judge that Mother and Father objected to. *See id*.

§ 201.015(b).

IN THE INTEREST OF S.S.R., E.L.R. JR., AND Z.N.R., CHILDREN NO: 13-18-00576-CV 13TH COURT OF APPEALS, TEXAS

Therefore, Mother and Father argue that they were entitled to a de novo hearing before the referring court. We agree. Once Mother and Father timely filed their request to the referring court for a de novo hearing on the associate judge's report, "[they] completed the prerequisites necessary to entitle [them] to have a de novo hearing." *Harrell*, 986 S.W.2d at 631; *see In re A.M.*, 418 S.W.3d at 835; *see also In Interest of A.A.T.*, 2016 WL 8188946, at *2. Mother and Father were entitled to a de novo hearing before the referring court on all issues of fact and findings of law related to the termination of their parental rights, including the statutory findings under section 161.001(b)(1) and the finding that termination was in the best interest of the children. We sustain Mother's and Father's first issue. Because we sustain their first issue, we need not address their second and third issues challenging the factual and legal sufficiency of the evidence. *See* TEX. R. APP. P. 47.1

IN THE INTEREST OF F.M.E.A.F., A.A.F.H., AND A.J.F.H., CHILDREN NO: 14-18-00865-CV
14TH COURT OF APPEALS, TEXAS

In this case that came down on March 21, 2019 from the 14th Court of Appeals the Appellate Court reversed termination of mother's parental rights to the oldest 16 year old child for lack of best interest grounds.

IN THE INTEREST OF F.M.E.A.F., A.A.F.H., AND A.J.F.H., CHILDREN NO: 14-18-00865-CV
14TH COURT OF APPEALS, TEXAS

The history of the case is that in 2013 DFPS filed a termination petition that was denied but DFPS was appointed SMC In 2016. They refiled in November, 2017 to modify the prior order to terminate parental rights. It is undisputed in this case that Mother signed a family service plan directing her to refrain from criminal activity, and she subsequently committed a state jail felony theft for which she was placed on community supervision. Then she pleaded guilty to another state jail felony theft, and her community supervision was revoked. In each case, she was sentenced to 180 days in state jail to run concurrently. She was incarcerated at the time of the final hearing. When she was arrested, she failed to attend a supervised meeting with her children or provide advanced notice of her absence as required by the family service plan. Mother's failures to comply with the family service plan and her incarceration for state jail felonies support the trial court's finding by clear and convincing evidence that there was a material and substantial change under Section 161.004. *See id.*; *In re C.A.C.*, 2012 WL 4465234, at *9–10.

IN THE INTEREST OF F.M.E.A.F., A.A.F.H., AND A.J.F.H., CHILDREN NO: 14-18-00865-CV
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Mother is bipolar and has a history of not being properly medicated. When she is not properly medicated, she is unstable. In July 2013, Mother had a "mental breakdown" following the death of her twin babies shortly after their births. While Mother was visiting in Dallas, she threatened suicide in her children's presence by breaking a pair of sunglasses and threatening to slit her wrists. Mother was held in a psychiatric hospital for a week and a half while the Department took emergency custody of the children.

Mother has an extensive criminal history for thefts, trespassing, and resisting arrest, as reflected by judgments of convictions admitted at the final hearing:

Offense	Offense Date	Conviction Date	Sentence
Theft <$2,500 2/more prev convs	3/8/2018	7/17/2018	180 days TDCJ state jail
Trespass Prop/Bldg-No Depart	11/17/2016	2/8/2017	2 days jail
Theft <$2,500 2/more prev conv	9/12/2016	7/17/2018	180 days TDCJ state jail
Trespass Prop/Bldg – No Depart	2/14/2015	2/16/2015	6 days jail
Theft Under $1500 – 3rd Offense	7/5/2014	2/17/2015	1 year TDCJ state jail
Resisting Arrest/Search	2/8/2013	2/15/2013	30 days jail
Theft Under $1500 – 3rd Offense	9/26/2011	5/17/2012	8 months state jail
Evading Arrest/ Detention	4/7/2010	4/14/2010	14 days jail
Theft $50 to $500	12/5/2005	12/08/2005	30 days jail
Resisting Arrest	4/7/2005	4/15/2005	20 days jail
Resisting Arrest	6/1/2000	6/9/2000	30 days jail
Theft $50 to $500	1/12/2000	6/9/2000	30 days jail

IN THE INTEREST OF F.M.E.A.F., A.A.F.H., AND A.J.F.H., CHILDREN NO: 14-18-00865-CV
14TH COURT OF APPEALS, TEXAS

The Appellate Court then discussed the children and the 16 year old “The Department’s records describe sixteen-year-old Fanny as a bright, beautiful, and well-mannered girl with a big heart. She ran track for school and made A s and B s. She plans to go to college. She was, however, always worried about her younger siblings because she felt like a parent to them.” The caseworker testified “The caseworker testified that Fanny wants a mother and does not want to be adopted. The only complaint that the caseworker knew about Fanny from a foster parent related to a time Fanny possessed a cell phone and would make unsupervised phone calls back and forth with Mother. Fanny was calling Mother because Fanny wanted to talk to Mother. By the time of the final hearing, Fanny was aware of Mother’s mental health disability.

IN THE INTEREST OF F.M.E.A.F., A.A.F.H., AND A.J.F.H., CHILDREN NO: 14-18-00865-CV
14TH COURT OF APPEALS, TEXAS

The caseworker testified "Up until the final hearing, the children had been living together in foster care. On the second day of the final hearing, however, Fanny moved into a relative's home without her siblings. Quite a few families had asked to adopt Fanny, but she did not want to be adopted. The Department's primary goal for Fanny is "independent living" so Fanny will "age out of the system." The caseworker testified that parental rights did not need to be terminated for Fanny to go through independent living courses. When asked whether Mother's rights could be kept intact and Fanny still age out appropriately, the caseworker testified, "Yes, she could." The caseworker testified that if Mother's rights were not terminated for Fanny, the relative could still provide a safe environment for Fanny. The relative, however, did not have a good history with Mother. The relative had "backed away" from being considered for placement earlier because the relative was concerned about Mother's mental well-being and lifestyle choices. The Department's goal for the younger children was adoption.

IN THE INTEREST OF F.M.E.A.F., A.A.F.H., AND A.J.F.H., CHILDREN NO: 14-18-00865-CV
14TH COURT OF APPEALS, TEXAS

The Appellate Court Stated “Considering all of the evidence discussed above, a reasonable factfinder could not have formed a firm belief or conviction that termination of Mother’s parental rights is in Fanny’s best interest. “

IN THE INTEREST OF F.M.E.A.F., A.A.F.H., AND A.J.F.H., CHILDREN NO: 14-18-00865-CV
14TH COURT OF APPEALS, TEXAS

The Appellate Court discussed the caseworker's further testimony "As the caseworker acknowledged, the Department's goal for Fanny to transition to independent living by aging out of the system could be met even if the trial court did not order termination. Although the relative with whom Fanny had been placed initially expressed concern about Mother's conduct and mental illness, the caseworker testified that the relative could still provide a safe environment for Fanny regardless of whether Mother's rights were terminated. "

The Appellate Court found "Having sustained Mother's challenge to the legal sufficiency of the evidence to support the trial court's finding that termination of the parent-child relationship is in Fanny's best interest, we reverse the portions of the final order terminating Mother's parental rights to Fanny, and we render judgment denying the Department's request to terminate Mother's parental rights to Fanny."

IN THE INTEREST OF K.M.J. NO: 04-18-00727-CV
4TH COURT OF APPEALS, TEXAS

In this case that came down on April 3, 2019 from the 4th Court of Appeals the Appellate Court reversed termination of father's parental rights based upon a lack of best interest evidence.

IN THE INTEREST OF K.M.J. NO: 04-18-00727-CV
4TH COURT OF APPEALS, TEXAS

DFPS presented only the caseworker who testified that father completed most of his family service plan and tested negative for drugs. He also testified that termination should happen because father did not complete all of his family service plan.

IN THE INTEREST OF K.M.J. NO: 04-18-00727-CV
4TH COURT OF APPEALS, TEXAS

The caseworker testified to conclusions he made with no evidence to support his conclusions about drug use and purported allegations of sexual abuse of a child. There was no evidence of either.

IN THE INTEREST OF K.M.J. NO: 04-18-00727-CV
4TH COURT OF APPEALS, TEXAS

At the conclusion of the hearing, the trial court found that Father had failed to comply with the provisions of a court order that specifically established the actions necessary for him to obtain the return of his children who had been in the Department's temporary or permanent managing conservatorship for not less than nine months as a result of their removal under Chapter 262. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(O). The trial court further found that termination of Father's parental rights to K.M.J. and A.N.J. was in the children's best interests. *Id.* § 161.001(b)(2). Father appealed.

IN THE INTEREST OF K.M.J. NO: 04-18-00727-CV
4TH COURT OF APPEALS, TEXAS

On appeal, Father does not challenge the trial court's finding that he failed to comply with the family service plan in each case. *See id.* § 161.001(b)(1)(O). Father's sole issue on appeal is that the evidence is legally and factually insufficient to support the trial court's findings that termination of his parental rights is in each child's best interest. *See id.* § 161.001(b)(2).

IN THE INTEREST OF K.M.J. NO: 04-18-00727-CV
4TH COURT OF APPEALS, TEXAS

The Appellate Court Stated “Viewing the evidence in the light most favorable to the trial court’s best interest findings, and assuming resolution of disputed facts in favor of the findings, we hold that a reasonable trier of fact could have formed a firm belief or conviction that termination of Father’s rights was in the children’s best interest. *See In re J.F.C.*, 96 S.W.3d at 266 (legal sufficiency standard). However, after considering all the evidence presented, including the disputed and contrary evidence, under the factual sufficiency standard, we cannot say that the “degree of proof” rose to the level of “clear and convincing” as required to support the best interest findings. *See* TEX. FAM. CODE ANN. § 101.007. After deferring to the trial court’s credibility assessments, and giving full credence to Logsdon’s testimony, the quality of the proof on best interest is lacking and failed to meet the heightened burden of proof.

IN THE INTEREST OF K.M.J. NO: 04-18-00727-CV
4TH COURT OF APPEALS, TEXAS

Setting aside Logsdon's testimony about Father's failure to fully complete his service plan (which Father does not challenge), his testimony concerning the suspected drug use by Father was conclusory and based on speculation and "belief," with no hard evidence of dirty drug tests or the confirmed presence of drugs in Father's home. *See Gunn v. McCoy*, 554 S.W.3d 645, 662 (Tex. 2018) (testimony offered with no basis to support it is "merely a conclusory statement and cannot be considered probative evidence, regardless of whether there is no objection") (quoting *Houston Unlimited, Inc. Metal Processing v. Mel Acres Ranch*, 443 S.W.3d 820, 829 (Tex. 2014)); *see also Ryland Group, Inc. v. Hood*, 924 S.W.2d 120, 122 (Tex. 1996) (per curiam) (when a witness does not provide underlying facts to support a conclusion, the testimony is conclusory and amounts to no evidence).

Similarly, Logsdon's testimony about K.M.J.'s sexual abuse outcry was conclusory and vague—only that an outcry was made—with no supporting details that could lead to a "firm belief or conviction" that the allegation was true. The fact that K.M.J. said nothing about sexual abuse at her Child Safe interview must be weighed against her outcry made shortly before the termination trial began. Logsdon's testimony that K.M.J. suffered from eating issues before her removal and did not suffer from them at her aunt's home could support an inference that her improvement was a result of being away from Father, but could equally support an inference that her improvement was due to her treatment and medication at Laurel Ridge or her removal from her mother's presence. *See Lozano v. Lozano*, 52 S.W.3d 141, 148 (Tex. 2001) (per curiam)

IN THE INTEREST OF K.M.J. NO: 04-18-00727-CV
4TH COURT OF APPEALS, TEXAS

The Appellate Court stated “Given the meager nature of the evidence in favor of the trial court’s best interest findings, we cannot conclude the evidence is factually sufficient to produce “a firm belief or conviction as to the truth of the allegations sought to be established.” TEX. FAM. CODE ANN. § 101.007; *see In re J.F.C.*, 96 S.W.3d at 266; *see also In re A.H.*, 414 S.W.3d 802, 807 (Tex. App.—San Antonio 2013, no pet.) (conclusory “best interest” testimony such as a caseworker’s testimony that a child would be better off with a new family, even if uncontradicted, does not amount to more than a scintilla of evidence and does not meet the clear and convincing standard). We therefore hold that the Department failed to meet its heightened burden to establish by clear and convincing evidence that termination of Father’s parental rights is in the children’s best interest. TEX. FAM. CODE ANN. §§ 101.007, 161.001(b)(2); *In re J.F.C.*, 96 S.W.3d at 263.

Based on the foregoing reasons, we reverse the portions of the trial court’s orders terminating Father’s parental rights to K.M.J. and A.N.J. and remand the causes for further proceedings. The trial court’s orders are affirmed in all other respects, including the portions of the orders appointing the Department as sole managing conservator of the children.

IN THE INTEREST OF D.R.P and H.I.P., CHILDREN NO: 13-18-00677-CV 13TH COURT OF APPEALS, TEXAS

In this case that came down April 4, 2019 the 13th Court of Appeals reversed termination of the mother's parental rights based upon lack of best interest evidence.

IN THE INTEREST OF D.R.P and H.I.P., CHILDREN NO: 13-18-00677-CV 13TH COURT OF APPEALS, TEXAS

In September 2017, the Department prepared a family service plan for Mother, which she acknowledged and signed. The trial court adopted the service plan and ordered that Mother comply with its provisions. At that point, the Department's permanency goal was "family reunification." The service plan required Mother to, among other things, attend substance abuse treatment, have negative drug tests, seek treatment for her depression, complete a psychological evaluation, attend supervised visitation with the children, meet with her caseworker monthly, attend life skills courses, and attend substance abuse group classes.

IN THE INTEREST OF D.R.P and H.I.P., CHILDREN NO: 13-18-00677-CV 13TH COURT OF APPEALS, TEXAS

The DFPS caseworker testified that mother did not complete much of her Family Service Plan. However mother's counselor testified that mother began counseling with her and was sober and completed most of her program and was becoming stable and was sober. The Child Advocate also testified that termination of mother's parental rights is not in the best interest of the children and that it would upset the children because they are bonded to their mother. She testified that it may not be time to return the children to the mother at this time.

IN THE INTEREST OF D.R.P and H.I.P., CHILDREN NO: 13-18-00677-CV 13TH COURT OF APPEALS, TEXAS

Mother testified that she is sober, working and progressing in counseling and that at this time it is best if the children remain in their placement but not to terminate her rights.

The trial court found: The Court finds by clear and convincing evidence that termination of the parent-child relationship between [Mother] and the children subject of this suit is in the children's best interest.

IN THE INTEREST OF D.R.P and H.I.P., CHILDREN NO: 13-18-00677-CV 13TH COURT OF APPEALS, TEXAS

Further, the Court finds by clear and convincing evidence that Mother has:

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

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;

failed to comply with the provisions of a court order that specifically established the actions necessary for the mother to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department . . . 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.

This appeal ensued.

IN THE INTEREST OF D.R.P and H.I.P., CHILDREN NO: 13-18-00677-CV 13TH COURT OF APPEALS, TEXAS

The Appellate Court discussed the factors of best interest and found “The Department emphasizes Mother’s failure to complete the Department’s service plan for reunification. Mother accepted responsibility for her inability to complete the service plan and admits that at the time of removal, she was not in the right mind set. The trial court heard evidence that there has been a positive change in Mother’s behavior and willingness to complete her service plan. *See In re M.G.D.*, 108 S.W.3d 508, 514 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (holding that not all evidence of recent changes in behavior should be indicative of insufficient evidence to terminate, “[i]nstead, evidence of a recent turnaround should be determinative only if it is reasonable to conclude that rehabilitation, once begun, will surely continue.”). During the last four to six months of the fifteen months from removal to termination, Mother began to improve her behavior and attend counseling for her drug use, mental stability, and domestic violence. She also began to improve her life skills and parenting skills.

IN THE INTEREST OF D.R.P and H.I.P., CHILDREN NO: 13-18-00677-CV 13TH COURT OF APPEALS, TEXAS

The Appellate Court further stated “Termination “‘can never be justified without the most solid and substantial reasons.’” *Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex. 1976) (quoting *State v. Deaton*, 93 Tex. 243, 54 S.W. 901, 903 (1900)). We deem the evidence legally insufficient to allow a reasonable trier of fact to form a firm belief or conviction, based on clear and convincing evidence, that termination of Mother’s rights was in the best interest of the children.3 *In re N.L.D*., 412 S.W.3d 810, 824 (Tex. App.—Texarkana 2013, no pet.). We sustain Mother’s sole issue. The Appellate Court Reversed the termination and because mother did not challenge the appointment of DFPS as SMC that continued.

IN THE INTEREST OF I.L., C.C., and R.C., Children NO: 04-18-00742-CV 4TH COURT OF APPEALS, TEXAS

In this case that came down April 10, 2019 the 4th Court of Appeals reversed termination of mother's parental rights because of ineffective assistance of counsel at the Motion for New Trial stage of the proceedings.

IN THE INTEREST OF I.L., C.C., and R.C., Children NO: 04-18-00742-CV 4TH COURT OF APPEALS, TEXAS

The case proceeded to a bench trial. Ana appeared in person, and her trial counsel participated by phone. The record does not show why counsel was not physically present. At trial, the Department did not seek to terminate Ana's parental rights, but to have Ana appointed possessory conservator with no access to the children, stipulating this was in the children's best interest. I.L.'s older sister, Maria, agreed to be I.L.'s managing conservator and that Ana should be appointed possessory conservator with no access to the children. Ana testified she wanted more time to complete drug treatment.

During closing arguments, the children's attorney ad litem agreed Ana should be appointed possessory conservator with no access because it is in the children's best interest.

IN THE INTEREST OF I.L., C.C., and R.C., Children NO: 04-18-00742-CV 4TH COURT OF APPEALS, TEXAS

Ana's counsel requested more time, but requested alternatively that she be appointed possessory conservator. The trial court orally pronounced Ana was appointed possessory conservator with no access to the children. The following day, the trial court signed a final written order decreeing Ana is "not" appointed possessory conservator. The final written order was approved as to form by the Department's and Jose's attorneys. The signature lines for the other attorneys to approve as to form are blank. The day after the trial court signed the final written order, Ana's trial counsel filed a notice of appeal and a motion to withdraw and substitute counsel. The motion was granted a few days later, and the trial court appointed appellate counsel to represent Ana on October 23, 2018. Ana's counsel did not file any post-judgment motion complaining about the final written order.

IN THE INTEREST OF I.L., C.C., and R.C., Children NO: 04-18-00742-CV 4TH COURT OF APPEALS, TEXAS

The Appellate Court discussed appointment of counsel "Section 107.013 of the Texas Family Code provides "a statutory right to counsel for indigent persons" in certain proceedings. *In re M.S.*, 115 S.W.3d 534, 544 (Tex. 2003) (citing TEX. FAM. CODE § 107.013(a)(1)). The Supreme Court of Texas has held this statutory right to counsel "embodies the right to effective counsel." *Id.* Consistent with courts of other states, the supreme court held section 107.013's appointment provision embodied a right to effective assistance of counsel in termination proceedings because, otherwise, the appointment provision would "seem a useless gesture." *Id.* The supreme court's holding in *M.S.* is crystal clear: if the appointment of counsel is statutorily required under section 107.013, a parent has the right to effective assistance of counsel. *See id.*; *see also In re P.M.*, 520 S.W.3d 24, 25 (Tex. 2016) (per curiam). Thus, whether Ana had the right to effective assistance of counsel turns on whether section 107.013 required appointment of counsel. *See M.S.*, 115 S.W.3d at 544.

Anna filed an affidavit of indigence and was appointed counsel.

IN THE INTEREST OF I.L., C.C., and R.C., Children NO: 04-18-00742-CV 4TH COURT OF APPEALS, TEXAS

The Appellate Court stated “The strong presumption in favor of counsel requires that we presume counsel performed competently unless the record affirmatively shows otherwise. *See M.S.*, 115 S.W.3d at 545. In the motion for new trial stage, this strong presumption gives rise to the rebuttable presumption that counsel considered filing a motion for new trial, rejected the consideration based on either strategy or a professional opinion there was no error about which to complain, and discussed the merits with the client. *See id.* at 545, 550; *J.A.R.*, 2019 WL 451731, at *2. That said, the record affirmatively shows that during the motion for new trial stage, counsel did not file a motion complaining about or objecting to the final written order not conforming to the trial proceedings.12 We therefore consider whether counsel performed deficiently in failing to file such a post-judgment motion.

“That a motion for new trial is required for appellate review” of a judgment granting unrequested relief “is something that competent trial counsel in Texas should know. And filing such a motion is not a difficult task.” *See id.* at 549; *see also A.V.A. Servs., Inc. v. Parts Indus. Corp.*, 949 S.W.2d 852, 853 (Tex. App.—Beaumont 1997, no writ).14 Presuming counsel read the final written order and decided not to file a post-judgment motion for strategic reasons or based on a professional opinion, we must determine whether counsel’s decision was objectively unreasonable. *See M.S.*, 115 S.W.3d at 549.

IN THE INTEREST OF I.L., C.C., and R.C., Children NO: 04-18-00742-CV 4TH COURT OF APPEALS, TEXAS

The Appellate Court further found “When the trial court rendered its order in open court in accordance with the Department’s request at trial, Ana’s counsel had no basis to object to the order not conforming to the trial proceedings. But when the trial court signed the final written order, it granted relief no party requested, and the order therefore did not conform to the trial proceedings. Under the circumstances presented in this case, a post-judgment motion raising this complaint would have preserved a meritorious issue for this appeal. Thus, counsel’s decision not to raise the issue properly in a timely post-judgment motion was objectively unreasonable. *See M.S.*, 115 S.W.3d at 549. Consequently, we hold Ana’s counsel performed deficiently during the motion for new trial stage. *See id.* at 545.

IN THE INTEREST OF I.L., C.C., and R.C., Children NO: 04-18-00742-CV 4TH COURT OF APPEALS, TEXAS

The Appellate Court discussed prejudice to mother “When the trial court rendered its order in open court appointing Ana possessory conservator with no access, Ana had secured these rights. When the trial court signed the final written order, Ana lost these rights. Thus, there “is a reasonable probability that, but for counsel’s unprofessional error(s), the result of the proceeding would have been different.” *See M.S.*, 115 S.W.3d at 550. Regardless of whether section 153.073 parental rights unrelated to access are also protected by the U.S. Constitution, the Legislature has determined these parental rights are significant enough to codify. Accordingly, we hold a loss of these parental rights is significant enough to constitute prejudice.

IN THE INTEREST OF I.L., C.C., and R.C., Children NO: 04-18-00742-CV 4TH COURT OF APPEALS, TEXAS

The Appellate Court concluded “Having concluded Ana received ineffective assistance of counsel during the motion for new trial stage, we must dispose of the appeal as though the unraised issue had been preserved. *See M.S.*, 115 S.W.3d at 550 (requiring that we address the issue as though it had been preserved). The unraised issue relates to the final written order not conforming to the trial proceedings regarding Ana’s possessory conservatorship without access to the children. Accordingly, we reverse the portion of the trial court’s order decreeing that Ana is not appointed possessory conservator and remand this case for the entry of a new final order consistent with the trial court’s oral pronouncement during the trial proceedings. *See J.M.*, 352 S.W.3d at 828 (reversing and remanding when final order was contrary to trial proceedings). “

IN THE INTEREST OF B.C.H. NO: 09-18-00437-CV
9TH COURT OF APPEALS, TEXAS

In this case that came down on May 2, 2019 from the 9th Court of Appeals the Appellate Court reversed termination based upon insufficient evidence of grounds and best interest.

IN THE INTEREST OF B.C.H. NO: 09-18-00437-CV
9TH COURT OF APPEALS, TEXAS

The case was tried to the bench. In three issues on appeal, Mother contends: (1) the evidence is legally and factually insufficient to support the trial court's determination by clear and convincing evidence that grounds for involuntary termination exist under section 161.001(b)(1)(A)–(F); (2) the evidence is legally and factually insufficient to support the trial court's determination by clear and convincing evidence that termination was in the child's best interest; and (3) the trial court's termination order lacks material findings, is improper, unenforceable, void and unconstitutional.

IN THE INTEREST OF B.C.H. NO: 09-18-00437-CV
9TH COURT OF APPEALS, TEXAS

Grandmother who has custody of the child testified that the mother had visits with the child and they went well but mother did not visit all the time. The Grandmother sought termination of parental rights for abandonment and 161.001(1) (d) and (e) and non-support.

IN THE INTEREST OF B.C.H. NO: 09-18-00437-CV
9TH COURT OF APPEALS, TEXAS

The Appellate Court discussed all of the testimony and evidence as to grounds for termination and discussed best interest testimony. There was no evidence of desires of the child, the ad litem suggested that termination would negatively impact the child, and that the mother should remain in the child's life.

The Appellate Court stated "After analyzing the record as a whole and considering the relevant non-exhaustive *Holley* factors, we conclude the trial court could not have formed a firm belief or conviction that termination was in the best interest of B.C.H. *See In re J.F.C.*, 96 S.W.3d at 266. Despite Grandmother's allegation that termination was in the best interest of B.C.H., the evidence disputing that in this case, particularly the ad litem's report, was substantial. The fact that the ad litem opined there was "no risk of foreseeable harm" if the court allowed Mother to retain her rights and the child would "remain safe in the care of the grandparents," but termination "carries with it possible psychological ramifications that could affect the child for his lifetime" is so significant that a reasonable fact finder could not have resolved the disputed evidence in favor of its finding. "

IN THE INTEREST OF B.C.H. NO: 09-18-00437-CV
9TH COURT OF APPEALS, TEXAS

The Appellate Court further found “Weighing the factors for and against termination, we hold the evidence is factually insufficient to support termination of Mother’s parental rights by a clear and convincing standard since: (1) the ad litem’s report acknowledged termination carried the risk of life-long psychological ramifications for the child, yet there was no foreseeable risk if the court allowed Mother to retain her rights; and (2) the grandparents presented scant evidence the trial court could credit as Mother’s future inability to meet the needs of her child under the Holley factors to overcome the ad litem’s assessment of the emotional risk to the child. *See Yonko*, 196 S.W.3d at 249 (citing *In re K.C.M.*, 4 S.W.3d 392, 394–95 (Tex. App.—Houston [1st Dist.] 1999, pet. denied)).

IN THE INTEREST OF B.C.H. NO: 09-18-00437-CV
9TH COURT OF APPEALS, TEXAS

The Appellate Court concluded “We conclude the evidence was legally insufficient to support the trial court’s findings that mother committed predicate acts in section 161.001(b)(1)(A) through (F) by clear and convincing evidence. *See* Tex. Fam. Code Ann. § 161.001(b)(1)(A)–(F). We also conclude the evidence was factually insufficient to support the trial court’s finding that termination was in the best interest of the child. *See id.* § 161.001(b)(2). We reverse the portion of the trial court’s order terminating Mother’s parental rights and render judgment that Mother’s parental rights are restored.

IN THE INTEREST OF A.L.M.-F., A.M., J.A.-F., N.A.-F., AND E.A.-F., CHILDREN NO: 17-063 TEXAS SUPREME COURT

In this case that came down on May 3, 2019 the Texas Supreme Court said that if you waive a jury trial when trying a DFPS case to the Associate Judge you are not entitled to a Jury Trial on a de novo hearing to the referring court.

IN THE INTEREST OF A.L.M.-F., A.M., J.A.-F., N.A.-F., AND E.A.-F., CHILDREN NO: 17-063 TEXAS SUPREME COURT

The Department of Family and Protective Services filed a petition to terminate Mother's

parental rights to her five children based on child endangerment and noncompliance with a court order establishing the terms for reunification.6 Without objection by either party, the trial court referred the case to an associate judge for adjudication on the merits, and the parties waived the right to a jury trial. Following a two-day bench trial at which both sides called witnesses, the associate judge found sufficient evidence of grounds to terminate Mother's parental rights and that termination is in the children's best interests. The day after receiving the associate judge's report, Mother demanded a jury trial, and immediately following that, she timely requested a de novo hearing and requested a jury trial again.

IN THE INTEREST OF A.L.M.-F., A.M., J.A.-F., N.A.-F., AND E.A.-F., CHILDREN NO: 17-063 TEXAS SUPREME COURT

The referring court denied mother's request for a jury trial and mother appealed alleging that she is entitled to a jury trial on a de novo trial. The referring court The referring court denied the jury request and set a de novo hearing date in compliance with the statutory deadline. At the hearing, the transcripts and exhibits from the associate-judge proceedings were admitted into evidence, but no witnesses were called to testify. After taking the matter under advisement, the court terminated Mother's parental rights and appointed the Department permanent managing conservator.

IN THE INTEREST OF A.L.M.-F., A.M., J.A.-F., N.A.-F., AND E.A.-F., CHILDREN NO: 17-063 TEXAS SUPREME COURT

Mother argues that the Family Code protects her constitutional rights by guaranteeing that parties can demand at least one jury trial at any stage of the trial-court proceedings. Asserting a first-time jury trial is available in a de novo hearing as a matter of right, she complains that the lower courts failed to afford her a presumption that a timely jury demand must be granted.

IN THE INTEREST OF A.L.M.-F., A.M., J.A.-F., N.A.-F., AND E.A.-F., CHILDREN NO: 17-063 TEXAS SUPREME COURT

The Supreme Court discussed the facts “Trial on the merits before an associate judge is not compulsory under our civil referral statutes and may be avoided if a party objects: Unless a party files a written objection to the associate judge hearing a trial on the merits, the judge may refer the trial to the associate judge. A trial on the merits is any final adjudication from which an appeal may be taken to a court of appeals. A party desiring a jury trial before the referring court need only object to the associate-judge referral and timely demand a jury trial:

A party must file an objection to an associate judge hearing a trial on the merits or presiding at a jury trial not later than the 10th day after the date the party receives notice that the associate judge will hear the trial. If an objection is filed, the referring court shall hear the trial on the merits or preside at a jury trial. Here, by failing to object to the referral, Mother declined the opportunity to have a jury trial before the referring court in the first instance.

IN THE INTEREST OF A.L.M.-F., A.M., J.A.-F., N.A.-F., AND E.A.-F., CHILDREN NO: 17-063 TEXAS SUPREME COURT

The Supreme Court went on “Section 201.015 applies to associate-judge referrals in child-protection, Title IV-D, and juvenile justice cases20 and has near equivalents applicable to associate-judge referrals in other civil cases and probate proceedings. Under section 201.015, when a case is referred to an associate judge for any authorized purpose—including disposition on the merits—“[a] party may request a de novo hearing before the referring court by filing with the clerk of the referring court a written request not later than the third working day after the date the party receives notice of [the substance of the associate judge’s ruling or order].”22 De novo hearings are limited to the specific issues stated in the de novo hearing request,23 and the referring court must conduct the de novo hearing within thirty days of the request.

IN THE INTEREST OF A.L.M.-F., A.M., J.A.-F., N.A.-F., AND E.A.-F., CHILDREN NO: 17-063 TEXAS SUPREME COURT

The Supreme Court further stated “A “trial de novo” is a new and independent action in the reviewing court with “all the attributes of an original action” as if no trial of any kind has occurred in the court below. But under Chapter 201, a hearing is not equivalent to a trial, and review under section 201.015 is not entirely independent of the proceedings before the associate judge.

On the back end, the de novo hearing procedures in section 201.015 apply to all associate-judge rulings without making similar distinctions, describing the procedure only as a

hearing, not a trial. When construing a statute, we “presume the Legislature selected statutory words, phrases, and expressions deliberately and purposefully and was just as careful in selecting the words, phrases, and expressions that were included or omitted.”37 In that vein, the juxtaposition of word choice in the associate-judge referral statutes is compelling with regard to legislative intent.

IN THE INTEREST OF A.L.M.-F., A.M., J.A.-F., N.A.-F., AND E.A.-F., CHILDREN NO: 17-063 TEXAS SUPREME COURT

The Supreme Court further stated “Here, we agree with the court of appeals that the referring court did not abuse its discretion in denying Mother’s demand for a jury at the de novo hearing. Moreover, the jury request was opposed, and with a mere ten days between the hearing on Mother’s jury demand and the de novo hearing deadline, the Department asserted that presentation

of the merits would be hampered due to the difficulty and expense of recalling witnesses to testify live before the jury. While section 201.015(c) allows the referring court to “consider the record from the hearing before the associate judge,” it is silent about whether prior testimony from those proceedings could be considered in a jury trial. Even assuming it could,72 and even assuming a case

prepared for presentation to the bench would be adequate for a jury, the referring court could reasonably conclude the Department would be unfairly prejudiced if forced to rely on the cold written word in lieu of live testimony before the jury.

IN THE INTEREST OF A.L.M.-F., A.M., J.A.-F., N.A.-F., AND E.A.-F., CHILDREN NO: 17-063 TEXAS SUPREME COURT

The Supreme Court Concluded “Chapter 201 of the Family Code fulfills the statutory promise of a jury trial on demand by allowing for a jury trial in either the referring court or before an associate judge. Associate judge proceedings do not occur by happenstance, nor are they compelled. So with a timely objection, parties can choose to have the referring court adjudicate the merits following a bench or jury trial. But once the parties elect a bench trial before the associate judge, Chapter 201 does not confer a right to demand a jury trial in a de novo hearing. If a de novo hearing is requested, the referring court has discretion to grant a first-time jury request, but the statute cannot reasonably be read as affording the parties a right to a jury trial at that juncture. And because we agree with the court of appeals that the trial court was not obligated to grant Mother’s jury demand under the circumstances, we affirm the court of appeals’ judgment.

JUSTICE EVA GUZMAN

IN THE INTEREST OF J.E., A CHILD NO: 04-19-00050-CV
4TH COURT OF APPEALS. TEXAS

In this case that came down on May 15, 2019 from the 4th Court of Appeals the Court reversed termination of a father's parental rights because he was not the father. The Court of Appeals in the Opinion named the District Court Judge and Associate Judge in the Opinion!

IN THE INTEREST OF J.E., A CHILD NO: 04-19-00050-CV
4TH COURT OF APPEALS. TEXAS

After the newborn child was born positive for drugs DFPS filed a Petition to terminate 3 children. The Appellant was married to the mother.

Ultimately, the Department sought termination of E.A.'s, R.A.'s, and D.G.'s parental rights to J.E. After the final hearing, the trial court rendered an order of termination. With regard to R.A., the trial court found he is not the father of J.E. Despite this finding, the trial court also found R.A. knowingly engaged in criminal conduct that resulted in his conviction, confinement, and inability to care for J.E. for not less than two years from the date the petition was filed. *See* TEX. FAM. CODE § 161.001(b)(1)(Q). However, the trial court made no best interest finding as to R.A.

R.A. perfected this appeal.

IN THE INTEREST OF J.E., A CHILD NO: 04-19-00050-CV
4TH COURT OF APPEALS. TEXAS

The Appellate Court stated “R.A. does not meet any of the statutory requisites that would make him a presumed father. *See* TEX. FAM. CODE § 160.204(a). Therefore, he is not a “parent” whose rights are subject to termination. *See id.* § 101.024(a). Because the evidence supports the trial court’s finding that R.A. is not J.E.’s father — and therefore has no parental rights to terminate — the trial court erred in finding, even in the alternative, that R.A. knowingly engaged in criminal conduct that resulted in his conviction and confinement and inability to care for J.E. for not less than two years from the date the petition was filed and terminating his parental rights on this basis. *See* TEX. FAM. CODE § 161.001(b)(1)(Q) and We modify the trial court’s termination order and strike the portion of that order finding that R.A.’s parental rights should be terminated under section 161.001(b)(1)(Q) of the Code. As modified, we affirm the termination order. *See* TEX. R. APP. P. 43.2(b) (authorizing court of appeals to modify trial court’s judgment and affirm as modified).

IN THE INTEREST OF N.G., A CHILD NO: 18-058
SUPREME COURT OF TEXAS

In this case that came down May 17, 2019 from the Texas Supreme Court the Court reversed the Court of Appeals Order affirming the termination of mother's parental rights based upon 161.001(1)(o) because the Court of Appeals did not discuss the ground sufficiently in their opinion.

IN THE INTEREST OF N.G., A CHILD NO: 18-058
SUPREME COURT OF TEXAS

The Supreme Court found “In the court of appeals, the mother argued that “the evidence was legally and factually insufficient to show that she 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.” Because a trial court must necessarily decide that a court order is sufficiently specific for the parent to comply before terminating a parent’s rights under section 161.001(b)(1)(O), a trial court cannot terminate parental rights for failure to comply without first considering the order’s specificity. *See* TEX. FAM. CODE § 161.001(b)(1)(O). Likewise, an appellate court errs when it upholds termination under a section 161.001(b)(1)(O) finding without considering the specificity of the order. Here, the court of appeals noted that the mother did not argue the service plan itself was not sufficiently specific, characterizing her challenge as to the specificity of the order only. *See* ___ S.W.3d at ___. Because the trial court incorporated the service plan into the order, however, we conclude that the mother’s challenge encompassed the specificity of the service plan.

IN THE INTEREST OF N.G., A CHILD NO: 18-058
SUPREME COURT OF TEXAS

The Supreme Court found “While the court of appeals held that the evidence was legally and factually sufficient to support the trial court’s finding that the mother failed to comply with the provisions of the order under section 161.001(b)(1)(O), it did not address the specificity of the order’s provisions. *See id.* at ___. We hold that the court of appeals erred in failing to address the specificity of the order, which included the service plan.

Without hearing oral argument, *see* TEX. R. APP. P. 59.1, we grant the petition for review and reverse the court of appeals’ judgment affirming the trial court’s termination of the mother’s parental rights because the court of appeals erred in failing to review the legal and factual sufficiency of the evidence to support section 161.001(b)(1)(D) and (E) findings as grounds for termination, and because the court of appeals failed to address the specificity of the order under section 161.001(b)(1)(O). Therefore, we remand the case to the court of appeals for further proceedings consistent with this opinion.

IN THE INTEREST OF G.X.H., JR. AND B.X.H., CHILDREN NO: 14-19-00053-CV 14TH COURT OF APPEALS, TEXAS

In this case that came down on June 27, 2019 from the 14th Court of Appeals the Appellate Court vacated and dismissed the DFPS case because trial did not commence within one year of the filing of the Petition.

IN THE INTEREST OF G.X.H., JR. AND B.X.H., CHILDREN NO: 14-19-00053-CV 14TH COURT OF APPEALS, TEXAS

Effective September 1, 2017, the trial court in a parental termination case automatically loses jurisdiction if the trial on the merits does not begin by the deadline imposed by section 263.401(a) of the Texas Family Code. Section 263.401(a) states:

(a) Unless the court has commenced the trial on the merits or granted an extension under Subsection (b) or (b-1), on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator, the court's jurisdiction over the suit affecting the parent-child relationship filed by the department that requests termination of the parent-child relationship or requests that the department be named conservator of the child is terminated and the suit is automatically dismissed without a court order. Not later than the 60th day before the day the suit is automatically dismissed, the court shall notify all parties to the suit of the automatic dismissal date.

IN THE INTEREST OF G.X.H., JR. AND B.X.H., CHILDREN NO: 14-19-00053-CV 14TH COURT OF APPEALS, TEXAS

The Appellate Court stated “The trial court signed an Order for Protection of a Child in an Emergency on September 21, 2017, the day suit was filed, appointing the Department as the boys’ temporary managing conservator until a full adversary hearing was held. The full adversary hearing was held on October 5, 2017, after which the trial court signed an order appointing the Department as Gregory’s and Brandon’s temporary managing conservator. Assuming the first order started the section 263.401(a) clock, the first anniversary of that date was Friday, September 21, 2018. The first Monday after that date was Monday, September 24, 2018. The trial on the merits began on October 17, 2018. The trial on the merits did not commence by the deadline imposed by section 263.401(a), and no extension was granted under section 263.401(b) or (b-1). As a result, the trial court’s jurisdiction terminated and the suit was automatically dismissed on September 24, 2018. The decree, which was signed after the trial court’s jurisdiction had terminated, is void.”

IN THE INTEREST OF G.X.H., JR. AND B.X.H., CHILDREN NO: 14-19-00053-CV 14TH COURT OF APPEALS, TEXAS

The Appellate Court discussed due process and various cases and concluded “We lack jurisdiction to address the merits of an appeal from a void judgment. We have jurisdiction only to determine that the judgment is void and make appropriate orders based on that determination. *Freedom Commc’ns, Inc. v. Coronado*, 372 S.W.3d 621, 623 (Tex. 2012) (per curiam); *Helix Energy Solutions Group, Inc. v. Howard*, 452 S.W.3d 40, 45 (Tex. App.—Houston [14th Dist.] 2014, no pet.). When a trial court’s void judgment is appealed, we have jurisdiction to declare the judgment void and dismiss the underlying case. Tex. R. App. P. 43.2(e); *see Goodman-Delaney v. Grantham*, 484 S.W.3d 171, 175 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

We vacate the trial court’s decree and dismiss the underlying case.

IN THE INTEREST OF D.D.M., J.C.M., AND J.D.M., JR., CHILDREN NO:01-18-01033-CV 1ST COURT OF APPEALS TEXAS

In this case that came down on July 9, 2019 from the 1st Court of Appeals the Appellate Court reversed father's termination on lack of best interest evidence.

IN THE INTEREST OF D.D.M., J.C.M., AND J.D.M., JR., CHILDREN NO:01-18-01033-CV 1ST COURT OF APPEALS TEXAS

The Appellate Court discussed the testimony “The children desire to remain with their father. The CASA, who supervised J.M.’s visits with his children, described the children as having a very strong bond

with him and J.M. as having a very strong bond with them. In light of this testimony, and the lack of any evidence indicating that the children did not want to be placed with their father, this factor weighs against termination under the legal and factual-sufficiency standards of review and in favor of maintaining the parent children relationship.

IN THE INTEREST OF D.D.M., J.C.M., AND J.D.M., JR., CHILDREN NO:01-18-01033-CV 1ST COURT OF APPEALS TEXAS

D.D.M. was around five years old and J.D.M. was around six years old at the time of the termination decree. There is no evidence or suggestion in the record

that J.M. engaged in assaultive conduct. J.M. testified that one of the reasons he attempted to remove the children from the mother's care was because he had heard

that men at her apartment were "whooping" his kids. Further, J.M. averred that he is now living with his new girlfriend in her residence and that he was working forty

hours a week at McDonald's. He explained that his new girlfriend has no criminal history or CPS history and is willing and able to watch the children when he is at work. J.M. explained that he and his girlfriend are financially stable and would be capable of caring for the children appropriately, such as taking them to school, taking them to doctors' appointments and dental appointments, and making sure they are fed. Further, the caseworker testified that she visited J.M.'s new home and did not see anything that would be dangerous for the children

IN THE INTEREST OF D.D.M., J.C.M., AND J.D.M., JR., CHILDREN NO:01-18-01033-CV 1ST COURT OF APPEALS TEXAS

The Appellate Court further stated “Under the factual-sufficiency standard, however, we must consider J.M.’s testimony. *See id.* (“While the trial court could have chosen to disbelieve this testimony, we are mindful that under a factual sufficiency review we must consider all of the evidence equally.”). And with J.M.’s testimony, the majority of the *Holley* factors substantially weigh against the best-interest finding, as detailed above. In light of the constitutional concerns related to parental termination, clear instructions from the supreme court to strictly scrutinize termination proceedings and strictly construe involuntary-termination statutes, the strong presumption that preservation of the parent-child relationship is in the children’s best interest, the absence of evidence that J.M. would not meet his children’s needs, and our obligation under a factual-sufficiency review to consider all evidence equally, we conclude that the record evidence does not permit a reasonable factfinder to form a firm belief or conviction that termination of J.M.’s parental rights would be in J.D.M.’s and D.D.M.’s best interests. We therefore sustain J.M.’s issue that the evidence is factually insufficient to support a finding that termination is in his children’s best interests.

IN THE INTEREST OF D.D.M., J.C.M., AND J.D.M., JR., CHILDREN NO:01-18-01033-CV 1ST COURT OF APPEALS TEXAS

The Appellate Court concluded “We affirm that part of the trial court’s termination order appointing the Department as permanent managing conservator of D.D.M. and J.D.M. We reverse the order’s termination of J.M.’s parental rights to D.D.M. and J.D.M. and remand this case for a new trial.

CHAD EVERET BRACKEEN et al vs.
DAVID BERNHARDT, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR , CHEROKEE NATION; ONEIDA NATION; QUINAULT INDIAN NATION; MORONGO BAND OF MISSION INDIANS, Intervenor Defendants – Appellants: NO: 18-11479, 5th CIRCUIT FEDERAL COURT OF APPEALS

In this case that came down from the 5th Circuit Federal Court of Appeals on August 9, 2019 the Appellate Court reversed the Trial Court's determination that the Plaintiffs had standing to sue and that ICWA was unconstitutional.

CHAD EVERET BRACKEEN et al vs.
DAVID BERNHARDT, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR , CHEROKEE NATION; ONEIDA NATION; QUINAULT INDIAN NATION; MORONGO BAND OF MISSION INDIANS, Intervenor Defendants – Appellants: NO: 18-11479, 5th CIRCUIT FEDERAL COURT OF APPEALS

The Plaintiffs included adoptive parents, the States of Texas, Indiana and Louisiana and sued the Secretary of Interior, Bureau of Indian Affairs, Department of the Interior, Health and Human Services and the Indian tribes named above.

CHAD EVERET BRACKEEN et al vs.
DAVID BERNHARDT, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR , CHEROKEE NATION; ONEIDA NATION; QUINAULT INDIAN NATION; MORONGO BAND OF MISSION INDIANS, Intervenor Defendants – Appellants: NO: 18-11479, 5th CIRCUIT FEDERAL COURT OF APPEALS

The Court of Appeals stated at the beginning of the Opinion: “This case presents facial constitutional challenges to the Indian Child Welfare Act of 1978 (ICWA) and statutory and constitutional challenges to the 2016 administrative rule (the Final Rule) that was promulgated by the Department of the Interior to clarify provisions of ICWA. Plaintiffs are the states of Texas, Indiana, and Louisiana, and seven individuals seeking to adopt Indian children. Defendants are the United States of America, several federal agencies and officials in their official capacities, and five intervening Indian tribes. Defendants moved to dismiss the complaint for lack of subject matter jurisdiction, but the district court denied the motion, concluding, as relevant to this appeal, that Plaintiffs had Article III standing. The district court then granted summary judgment in favor of Plaintiffs, ruling that provisions of ICWA and the Final Rule violated equal protection, the Tenth Amendment, the non delegation doctrine, and the Administrative Procedure Act. Defendants appealed. Although we AFFIRM the district court’s ruling that Plaintiffs had standing, we REVERSE the district court’s grant of summary judgment to Plaintiffs and RENDER judgment in favor of Defendants.”

CHAD EVERET BRACKEEN et al vs.
DAVID BERNHARDT, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR , CHEROKEE NATION; ONEIDA NATION; QUINAULT INDIAN NATION; MORONGO BAND OF MISSION INDIANS, Intervenor Defendants – Appellants: NO: 18-11479, 5th CIRCUIT FEDERAL COURT OF APPEALS

The Appellate Court discussed ICWA and its history. And stated that the law requires "The Final Rule provides that states have the responsibility of determining whether a child is an "Indian child" subject to ICWA's requirements. 25 C.F.R. §§ 23.107–22; 81 Fed. Reg. at 38,778, 38,869–73. The Final Rule also sets forth notice and recordkeeping requirements for states, *see* 25 U.S.C. §§ 23.140–41; 81 Fed. Reg. at 38,778, 38,875–76, and requirements for states and individuals regarding voluntary proceedings and parental withdrawal of consent, *see* 25 C.F.R. §§ 23.124–28; 81 Fed. Reg. at 38,778, 38,873–74. The Final Rule also restates ICWA's placement preferences and clarifies when they apply and when states may depart from them. *See* 25 C.F.R. §§ 23.129–32; 81 Fed. Reg. at 38,778, 38,874–75."

CHAD EVERET BRACKEEN et al vs.
DAVID BERNHARDT, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR , CHEROKEE NATION; ONEIDA NATION; QUINAULT INDIAN NATION; MORONGO BAND OF MISSION INDIANS, Intervenor Defendants – Appellants: NO:
18-11479, 5th CIRCUIT FEDERAL COURT OF APPEALS

The Appellate Court went on to discuss the parties to the adoptions and that the Indian Tribes contested the adoptions and then discussed the history of the case “Plaintiffs filed the instant action against the Federal Defendants in October 2017, alleging that the Final Rule and certain provisions of ICWA are unconstitutional and seeking injunctive and declaratory relief. Plaintiffs argued that ICWA and the Final Rule violated equal protection and substantive due process under the Fifth Amendment and the anti commandeering doctrine that arises from the Tenth Amendment. Plaintiffs additionally sought a declaration that provisions of ICWA and the Final Rule violated the non delegation doctrine and the Administrative Procedure Act (APA). Defendants moved to dismiss, alleging that Plaintiffs lacked standing. The district court denied the motion. All parties filed cross-motions for summary judgment. The district court granted Plaintiffs’ motion for summary judgment in part, concluding that ICWA and the Final Rule violated equal protection, the Tenth Amendment, and the non delegation doctrine, and that the challenged portions of the Final Rule were invalid under the APA.4”

CHAD EVERET BRACKEEN et al vs.
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Defendants appealed. A panel of this court subsequently stayed the district court's judgment pending further order of this court. In total, fourteen amicus briefs were filed in this court, including a brief in support of Plaintiffs and affirmance filed by the state of Ohio; and a brief in support of Defendants and reversal filed by the states of California, Alaska, Arizona, Colorado, Idaho, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Montana, New Jersey, New Mexico, Oregon, Rhode Island, Utah, Virginia, Washington, and Wisconsin.

CHAD EVERET BRACKEEN et al vs.
DAVID BERNHARDT, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR ,
CHEROKEE NATION; ONEIDA NATION; QUINAULT INDIAN NATION; MORONGO BAND OF MISSION INDIANS, Intervenor Defendants – Appellants: NO:
18-11479, 5th CIRCUIT FEDERAL COURT OF APPEALS

The Appellate Court discussed standing and found that all the Plaintiff's had standing to bring the action in the Northern Federal District Court of Texas.

CHAD EVERET BRACKEEN et al vs.
DAVID BERNHARDT, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR , CHEROKEE NATION; ONEIDA NATION; QUINAULT INDIAN NATION; MORONGO BAND OF MISSION INDIANS, Intervenor Defendants – Appellants: NO: 18-11479, 5th CIRCUIT FEDERAL COURT OF APPEALS

The Appellate Court then went on to discuss ICAW and stated "ICWA specifies that Congress's authority to regulate the adoption of Indian children arises under the Indian Commerce Clause as well as "other constitutional authority." 25 U.S.C. § 1901(1). The Indian Commerce Clause provides that "[t]he Congress shall have Power To . . . regulate Commerce . . . with the Indian Tribes." U.S. CONST. art. I, § 8, cl. 3. The Supreme Court has repeatedly held that the Indian Commerce Clause grants Congress power over Indian affairs. *See Lara*, 541 U.S. at 200 (noting that the Indian Commerce and Treaty Clauses are sources of Congress's "plenary and exclusive" "powers to legislate in respect to Indian tribes"); *Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue of New Mexico*, 458 U.S. 832, 837 (1982) (discussing Congress's "broad power . . . to regulate tribal affairs under the Indian Commerce Clause"); *Mancari*, 417 U.S. at 551–52 (noting that "[t]he plenary power of Congress to deal with the special problems of Indians is drawn both explicitly and implicitly from," inter alia, the Indian Commerce Clause). Plaintiffs do not provide authority to support a departure from that principle here. "

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The Appellate Court further stated “Moreover, ICWA clearly regulates private individuals. *See Murphy*, 138 S. Ct. at 1479–80. In enacting the statute, Congress declared that it was the dual policy of the United States to protect the best interests of Indian children and promote the stability and security of Indian families and tribes. 25 U.S.C. § 1902. Each of the challenged provisions applies within the context of state court proceedings involving Indian children and is informed by and designed to promote Congress’s goals by conferring rights upon Indian children and families.17 *See* H.R. REP. No. 95-1386, at 18 (1978) (“We conclude that rights arising under [ICWA] may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local law, is adequate to the occasion.”

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DAVID BERNHARDT, SECRETARY, U.S. DEPARTMENT OF THE INTERIOR , CHEROKEE NATION; ONEIDA NATION; QUINAULT INDIAN NATION; MORONGO BAND OF MISSION INDIANS, Intervenor Defendants – Appellants: NO: 18-11479, 5th CIRCUIT FEDERAL COURT OF APPEALS

And The Appellate Court further stated "Arguably, two of the challenged provisions of ICWA could be construed to simultaneously "confer[] rights" on Indian children and families while "imposing restrictions" on state agencies. *See Murphy*, 138 S. Ct. at 1479–80. Section 1915(c) requires "the agency or court effecting [a] placement" to adhere to a tribe's established order of placement preferences, and section 1915(e) requires states to keep records and make them available to the Secretary and Indian tribes. 25 U.S.C. § 1915(c), (e). However, *Murphy* instructs that for a provision of a federal statute to preempt state law, the provision must be "*best read* as one that regulates private actors." *See* 138 S. Ct. at 1479 (emphasis added). In light of Congress's express purpose in enacting ICWA, the legislative history of the statute, and section 1915's scope in setting forth minimum standards for the "Placement of Indian children," we conclude that these provisions are "best read" as regulating private actors by conferring rights on Indian children and families. *See id. "*

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The Appellate Court then discussed the Federal Government power to affect states and individuals “The Supreme Court has long recognized that Congress may incorporate the laws of another sovereign into federal law without violating the nond elegation doctrine. *See Mazurie*, 419 U.S. at 557 (“[I]ndependent tribal authority is quite sufficient to protect Congress’ decision to vest in tribal councils this portion of its own authority ‘to regulate Commerce . . . with the Indian tribes.’”); *United States v. Sharpnack*, 355 U.S. 286, 293–94 (1958) (holding that a statute that prospectively incorporated state criminal laws “in force at the time” of the alleged crime was a “deliberate continuing adoption by Congress” of state law as binding federal law in federal enclaves within state boundaries); *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 80 (1824) (“Although Congress cannot enable a State to legislate, Congress may adopt the provisions of a State on any subject.”). “Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory.” *Mazurie*, 419 U.S. at 557.”

CHAD EVERET BRACKEEN et al vs.
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The Appellate Court further stated “The “Trial” court reasoned that because Congress specified a heightened evidentiary standard in other provisions of ICWA, but did not do so with respect to section 1915, Congress did not intend for the heightened clear-and-convincing-evidence standard to apply. This was error. “When interpreting statutes that govern agency action, . . . a congressional mandate in one section and silence in another often suggests not a prohibition but simply a decision *not to mandate* any solution in the second context, i.e., to leave the question to agency discretion.” *Catawba Cty., N.C. v. E.P.A.*, 571 F.3d 20, 36 (D.C. Cir. 2009). “[T]hat Congress spoke in one place but remained silent in another . . . rarely if ever suffices for the direct answer that *Chevron* step one requires.” *Id.* (cleaned up); *see also Texas Rural Legal Aid, Inc. v. Legal Servs. Corp.*, 940 F.2d 685, 694 (D.C. Cir. 1991) (“Under *Chevron,* we normally withhold deference from an agency’s interpretation of a statute only when Congress has directly spoken to the precise question at issue, and the *expressio* canon is simply too thin a reed to support the conclusion that Congress has clearly resolved this issue.”) (internal citations and quotation marks omitted).

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The Appellate Court then concluded “For these reasons, we conclude that Plaintiffs had standing to bring all claims and that ICWA and the Final Rule are constitutional because they are based on a political classification that is rationally related to the fulfillment of Congress’s unique obligation toward Indians; ICWA preempts conflicting state laws and does not violate the Tenth Amendment anti commandeering doctrine; and ICWA and the Final Rule do not violate the non delegation doctrine. We also conclude that the Final Rule implementing the ICWA is valid because the ICWA is constitutional, the BIA did not exceed its authority when it issued the Final Rule, and the agency’s interpretation of ICWA section 1915 is reasonable. Accordingly, we AFFIRM the district court’s judgment that Plaintiffs had Article III standing. But we REVERSE the district court’s grant of summary judgment for Plaintiffs and RENDER judgment in favor of Defendants on all claims. “

IN THE INTEREST OF L.E., A CHILD NO: 11-19-00084-CV 11th COURT OF APPEALS, TEXAS

In this case that came down from the 11th Court of Appeals on August 15, 2019 the Appellate Court affirmed termination but reversed child support orders against mother and father.

IN THE INTEREST OF L.E., A CHILD NO: 11-19-00084-CV 11th COURT OF APPEALS, TEXAS

The Appellate Court discussed all of the evidence regarding termination and affirmed that but reversed the order of the trial court regarding child support arrearage by the parents due to lack of evidence or findings by the court in rendition.

IN THE INTEREST OF L.E., A CHILD NO: 11-19-00084-CV 11th COURT OF APPEALS, TEXAS

The Appellate Court discussed the evidence and the trial court's Order "In the mother's fourth and fifth issues and in all five of the father's issues, the parents challenge the portion of the trial court's order that relates to child support. The record shows that continued child support was not addressed at trial and that the trial court did not mention child support when it pronounced its findings in open court at the end of the trial. The order of termination, however, contains the following provisions regarding child support: Pursuant to § 154.001, Texas Family Code, **IT IS ORDERED** that the parents shall pay child support for the child as set forth in Attachment A to this Order, which is incorporated herein as if set out verbatim in this paragraph.

14.[2] Child support arrearage owed to the Department for child support not paid by [**the mother**] during the pendency of this suit **IS/IS NOT** waived.

14.[3] Child support arrearage owed to the Department for child support not paid by [**the father**] during the pendency of this suit **IS/IS NOT** waived.

We note that the record does not contain an "Attachment A" as mentioned in paragraph 14.1 and that the trial court did not circle or strike through any portion of the wording "**IS/IS NOT**" in the paragraphs 14.[2] and 14.[3].

IN THE INTEREST OF L.E., A CHILD NO: 11-19-00084-CV 11th COURT OF APPEALS, TEXAS

The Appellate Court further stated “We note that the record does not contain an “Attachment A” as mentioned in paragraph 14.1 and that the trial court did not circle or strike through any portion of the wording “**IS/IS NOT**” in the paragraphs 14.[2] and 14.[3].

The Texas Family Code provides in relevant part that a court “may order each person *who is financially able* and whose parental rights have been terminated with respect to . . . a child in substitute care for whom the department has been appointed managing conservator . . . to support the child in the manner specified by the order.” FAM. § 154.001(a-1) (emphasis added). The Department “concedes that the record does not support the trial court’s order of child support” and requests that this court reverse the portion of the trial court’s order that relates to child support. Based upon our review of the entire record, we agree with the parties that the record does not contain legally sufficient evidence that either parent “is financially able.” Consequently, we reverse the order of the trial court to the extent that it orders the parents to pay child support. Because we also agree that the record does not show that either parent was ordered to pay child support during the pendency of this case, we reverse the trial court’s order to the extent that it orders the parents to pay such arrearages. We sustain the legal sufficiency challenges in the mother’s fourth issue and the father’s first and second issues. Accordingly, we need not address the mother’s fifth issue or the father’s remaining issues, which all relate to child support. *See* TEX. R. APP. P. 47.1.

IN THE INTEREST OF J.C., JR., A CHILD, NO: 12-19-00102-CV , 12TH COURT OF APPEALS, TEXAS

In this case that came down on August 21, 2019 from the 12th Court of Appeals the Appellate Court reversed termination of the mother's and father's parental rights.

IN THE INTEREST OF J.C., JR., A CHILD, NO: 12-19-00102-CV , 12TH COURT OF APPEALS, TEXAS

J.C. is the father and M.D. is the mother of J.C., Jr. On March 6, 2018, the Department of Family and Protective Services (the Department) filed an original petition for protection of J.C., Jr., for conservatorship, and for termination of J.C.'s and M.D.'s parental rights. Both parents filed an original answer within the month through separate attorneys. Although there is no order in the record, one of the Department's status reports to the court noted that it was appointed temporary managing conservator of the child on March 6, 2018.

At the conclusion of the trial on the merits, the trial court found, by clear and convincing evidence, that J.C. engaged in one or more of the acts or omissions necessary to support termination of his parental rights under subsection (O) of Texas Family Code Section 161.001(b)(1). The trial court also found that termination of the parent-child relationship between J.C. and J.C., Jr. was in the child's best interest. Based on these findings, the trial court ordered that the parent-child relationship between J.C. and J.C., Jr. be terminated.

IN THE INTEREST OF J.C., JR., A CHILD, NO: 12-19-00102-CV , 12TH COURT OF APPEALS, TEXAS

Additionally, the trial court found, by clear and convincing evidence, that M.D. engaged in one or more of the acts or omissions necessary to support termination of her parental rights under subsection (O) of Texas Family Code Section 161.001(b)(1). The trial court also found that termination of the parent-child relationship between M.D. and J.C., Jr. was in the child's best interest. Based on these findings, the trial court ordered that the parent-child relationship between M.D. and J.C., Jr. be terminated. This appeal followed.

IN THE INTEREST OF J.C., JR., A CHILD, NO:
12-19-00102-CV , 12TH COURT OF APPEALS, TEXAS

The Appellate Court discussed the Clear and Convincing standard for grounds and best interest in termination cases. The parents argued on appeal that the standard for clear and convincing evidence of best interest was not met.

IN THE INTEREST OF J.C., JR., A CHILD, NO: 12-19-00102-CV , 12TH COURT OF APPEALS, TEXAS

The Appellate Court discussed the evidence regarding mother's service plan progress and stated" According to Krystal Morrell, a Department caseworker, M.D. completed most of her service plan before October 1, 2018, including parenting classes, a transportation plan and budget, psychosocial and psychological evaluations, an alcohol and drug assessment, inpatient rehabilitation as recommended, outpatient rehabilitation, attending regular visitations, submitting to drug testing, consistently contacting the caseworker, and working for a retail stocking company.

However, M.D. was diagnosed with bipolar II disorder, substance abuse disorder in remission, and possible social anxiety. She never sought medication for her bipolar II disorder which concerned the psychologist who conducted the psychological evaluation. According to the psychologist, M.D. should follow recommended medications and counseling in order to care for a child. However, he noted, M.D. did not report any troubling hypomanic episodes."

IN THE INTEREST OF J.C., JR., A CHILD, NO: 12-19-00102-CV , 12TH COURT OF APPEALS, TEXAS

The Appellate Court then discussed the father's progress on his service plan "Regarding J.C.'s service plan, Morrell stated that before October 1, 2018, he regularly submitted to drug testing, completed parenting classes even though he did not submit a written report establishing what he learned, completed a psychological evaluation which recommended further mental health treatment, successfully completed addiction counseling, and regularly attended visitations. However, the psychologist testified that J.C. did not disclose enough information in his psychological evaluation for a valid diagnosis even though he was tentatively diagnosed with bipolar disorder. Further, J.C. worked for several different contractors.

Both parents, however, violated their service plan. They were both arrested for public intoxication on July 13, 2018, and issued misdemeanor citations, did not have a home that the caseworker could visit, lived briefly with J.C.'s cousin who they admit could not pass a background check, did not complete mental health counseling, and tested positive for marijuana on their last drug test requested by the Department. "

IN THE INTEREST OF J.C., JR., A CHILD, NO: 12-19-00102-CV , 12TH COURT OF APPEALS, TEXAS

The Appellate Court went on to conclude" Although the parents did not complete their service plan before moving to Utah, more concerning is the lack of explanation or reasoning why the investigator or the CASA volunteer believed it was in the child's best interest for J.C.'s and M.D.'s parental rights to be terminated. The investigator's and CASA volunteer's argument that it was in the child's best interest to terminate J.C.'s and M.D.'s parental rights was conclusory. *See* ***In re A.H.***, 414 S.W.3d 802, 807 (Tex. App.–San Antonio 2013, no pet.) (holding that "conclusory testimony, such as the caseworker's, even if uncontradicted does not amount to more than a scintilla of evidence[, a]nd, '[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.'"). Further, Morrell admitted that as recently as two months before trial, the plan was to grant the caregivers permanent managing conservatorship of the child, similar to the older sibling. However, when the caregivers made known their desire to adopt the child, the Department decided to seek termination. The primary evidence favoring termination is the lack of evidence regarding the parents' recent sobriety, home, and employment, and their failure to continue services after moving to Utah. There is no evidence after the child was removed that the parents harmed the child or that they were inappropriate with the child. Morrell admitted that the parents were doing "fairly well" before moving to Utah. "

IN THE INTEREST OF J.C., JR., A CHILD, NO: 12-19-00102-CV , 12TH COURT OF APPEALS, TEXAS

The Appellate Court went on to discuss "due process" and stated "Due process commands that courts apply the clear and convincing evidentiary standard in parental rights termination cases. *See* ***Santosky v. Kramer***, 455 U.S. 745, 769, 102 S. Ct. 1388, 1403, 71 L.Ed.2d 599 (1982); ***J.F.C.***, 96 S.W.3d at 263; *see also* ***In re B.G.***, 317 S.W.3d 250, 257 (Tex. 2010) (observing that a parental rights termination case implicates "fundamental liberties" and "a parent's interest in maintaining custody of and raising his or her child is paramount" (quoting ***In re M.S.***, 115 S.W.3d 534, 547 (Tex. 2003))). Indeed, "involuntary termination statutes are strictly construed in favor of the parent." *See* ***In re S.K.A.***, 236 S.W.3d 875, 900 (Tex. App.—Texarkana 2007, pet. denied) (quoting ***Holick v. Smith***, 685 S.W.2d 18, 20 (Tex. 1985)). The Department is required to support its allegations against a parent by clear and convincing evidence; conjecture, a preponderance of the evidence, or lack of recent evidence is not enough. *See* ***In re E.N.C.***, 384 S.W.3d 796, 810 (Tex. 2012); ***In re J.M.C.A.***, 31 S.W.3d 692, 696 (Tex. App.—Houston [1st Dist.] 2000, no pet.). Finally, termination "'can never be justified without the most solid and substantial reasons.'" *See* ***Wiley***, 543 S.W.2d at 352 (quoting ***State v. Deaton***, 93 Tex. 243, 54 S.W. 901, 903 (1900)).

IN THE INTEREST OF J.C., JR., A CHILD, NO: 12-19-00102-CV , 12TH COURT OF APPEALS, TEXAS

The Appellate Court concluded “From the evidence above, we conclude the Department failed to meet its burden to establish by clear and convincing evidence that termination of J.C.’s and M.D.’s parental rights was in the best interest of the child. Therefore, viewing the above evidence relating to the statutory and ***Holley*** factors in the light most favorable to the trial court’s best interest finding, we conclude that a reasonable fact finder could not have formed a firm belief or conviction that termination of J.C.’s and M.D.’s parental rights is in the child’s best interest, and therefore, the evidence of best interest under Section 161.001(b)(2) is legally insufficient. *See* TEX. FAM. CODE ANN. § 161.001(b)(2); ***In re J.F.C.***, 96 S.W.3d at 266. We note the presence of scant evidence relevant to each factor to support the trial court’s finding. *See* ***In re M.R.J.M.***, 280 S.W.3d at 507. Because the evidence is legally insufficient to support the trial court’s finding that termination of J.C.’s and M.D.’s parental rights is in the best interest of the child, we do not address the factual sufficiency of the evidence. Accordingly, we sustain J.C.’s and M.D.’s first issue. The Appellate Court Reversed Termination and remanded the case to the trial Court for further proceedings “

IN THE INTEREST OF E.O., A CHILD, NO. 01-19-00207-CV, 1st COURT OF APPEALS, TEXAS

In this case that came down on August 27, 2019 the First Court of Appeals reversed termination of mother's parental rights because the trial court denied the mother's timely request for a de novo hearing the associate judge.

IN THE INTEREST OF E.O., A CHILD, NO. 01-19-00207-CV, 1st COURT OF APPEALS, TEXAS

A bench trial was held on the Department of Family and Protective Services' petition to terminate M.M.'s parental rights to her child E.O. before an associate judge, who made an oral associate judge's report of termination of M.M.'s parental rights. Before a final order was entered, M.M. filed a notice of appeal. M.M. also filed a timely request for a de novo hearing before the district judge. Because of her premature notice of appeal, M.M. moved to abate the appeal in this court so that the district judge could hold the de novo hearing and enter a final order. Because this court had not ruled on the motion to abate in the pending appeal, the district judge declined to proceed with the de novo hearing without a ruling or instruction from this court.

IN THE INTEREST OF E.O., A CHILD, NO. 01-19-00207-CV, 1st COURT OF APPEALS, TEXAS

Thereafter, and still before this court had ruled on the motion to abate and before holding a de novo hearing, the district judge signed a final order of termination.1 A few days later, and before receiving notice of the final order, this court abated the appeal for thirty days so that the district judge could sign a final order. M.M. had the trial court clerk set her de novo hearing, and she also filed her original proceeding for mandamus relief requesting that we order the district judge to vacate the final order and to hold the de novo hearing.

The Department filed a response to M.M.'s petition for writ of mandamus and this court then consolidated the two appellate proceedings and allowed the

parties' mandamus briefs to serve as their appellate briefs

IN THE INTEREST OF E.O., A CHILD, NO. 01-19-00207-CV, 1st COURT OF APPEALS, TEXAS

The Appellate Court discussed the law "A trial court may refer to an associate judge "any aspect of a suit over which the court has jurisdiction" under the Family Code. TEX. FAM. CODE § 201.005(a). When a matter is referred to an associate judge, the associate judge may, among other things, conduct a hearing, hear evidence, make findings of fact, and recommend an order to be rendered. *Id.* § 201.007. When an associate judge makes a recommendation or temporary order, any party may request a "de novo hearing before the referring court," specifying the issues that will be presented to the referring court. *Id.* § 201.015(a), (b). The de novo hearing is mandatory when properly requested. *Id.* § 201.015(f) ("The referring court . . . shall hold a de novo hearing . . . ."); *Phagan v. Aleman*, 29 S.W.3d 632, 635 (Tex. App.—Houston [1stDist.] 2000, no pet.); *see also In re S.S.R.*, No. 13-18-00576-CV, 2019 WL 1290659, at *2 (Tex. App.—Corpus Christi–Edinburg Mar. 21, 2019, no pet.); *Harrell v. Harrell*, 986 S.W.2d 629, 631 (Tex. App.—El Paso 1998, no writ).

IN THE INTEREST OF E.O., A CHILD, NO. 01-19-00207-CV, 1st COURT OF APPEALS, TEXAS

The Appellate Court further stated" A referring court errs if it fails to hold a properly requested de novo hearing and signs a final order of termination. *See S.S.R.*, 2019 WL 1290659, at *2; *Harrell*, 986 S.W.2d at 631. The failure to hold such a hearing is presumed

harmful. *Phagan*, 29 S.W.3d at 635; *see also In re R.A.O.*, 561 S.W.3d 704, 710–11 (Tex. App.—Houston [14th Dist.] 2018, no pet.). We therefore reverse that part of the final order terminating M.M.'s parental rights and remand this case for a de novo hearing. *See S.S.R.*, 2019 WL 1290659, at *2; *R.A.O.*, 561 S.W.3d at 711; *Harrell*, 986 S.W.2d at 631–32. The part of the final order terminating N.O.'s parental rights is unaffected by this reversal."

Conclusion

We reverse the part of the trial court's final order terminating M.M.'s parental rights and remand this case for a de novo hearing. We dismiss as moot M.M.'s original proceeding.

IN RE: M.B. AND V.B., RELATORS; No. 05-19-00971-CV No. 05-19-00973-CV , 5th COURT OF APPEALS, TEXAS

In this Case that came down from the 5th Court of Appeals on September 19, 2019 In an original Mandamus proceeding, Relators M.B. and V.B. (Foster Parents) seek relief from the trial court's order consolidating their suit affecting the parent-child relationship (SAPCR) with a pending SAPCR filed by the Texas Department of Family and Protective Services (Department) and denying the Foster Parents' request for a jury trial in the consolidated proceeding.

IN RE: M.B. AND V.B., RELATORS; No. 05-19-00971-CV No. 05-19-00973-CV , 5th COURT OF APPEALS, TEXAS

The Relators are the Foster Parents and were originally supportive of the return of the child to be reunited with the mother but then the child was removed by DFPS and the Ad litem expressed reservation regarding return of the child to mother/ DFPS was appointed TMC and the next day the Foster parents filed an intervention in the DFPS case seeking termination of mother's and father's parental rights. A Motion to Strike was filed and a hearing was held but the Court did not rule. The Foster Parents dismissed the intervention and filed a new SAPCR under cause number 87706 seeking to terminate mother's and father's rights.

IN RE: M.B. AND V.B., RELATORS; No. 05-19-00971-CV No. 05-19-00973-CV , 5th COURT OF APPEALS, TEXAS

The Foster Parents payed a jury fee on their case and then a Motion to Consolidate was filed the day of trial and the Trial Court Granted it and Foster Parents requested a Jury Trial based upon their timely Jury Fee being paid. The Trial Court Denied it and the Foster Parents filed the Mandamus.

IN RE: M.B. AND V.B., RELATORS; No. 05-19-00971-CV No. 05-19-00973-CV , 5th COURT OF APPEALS, TEXAS

The Appellate Court Stated: “The trial court’s scheduling order in the CPS Case required a jury demand to be filed at least sixty days before trial. At the consolidation hearing, the trial setting was moved to September 30, 2019. Thus, after consolidation of the cases, the Foster Parents’ demand for a jury trial, filed July 25, 2019 in the new SAPCR, was filed more than sixty days before the new trial setting and therefore timely. *See Halsell*, 810 S.W.2d at 371 (untimely jury demand became timely when court reset case for date more than thirty days after request for jury trial).”

IN RE: M.B. AND V.B., RELATORS; No. 05-19-00971-CV No. 05-19-00973-CV , 5th COURT OF APPEALS, TEXAS

The Appellate Court further stated" When a jury trial is available as a matter of right, a timely request is presumptively reasonable and ordinarily must be granted absent evidence rebutting the presumption of reasonableness. *See id*. In this proceeding, the Department presented no evidence that granting a jury trial would cause it injury. Further, the trial court indicated it would be able to try the case to a jury on September 30, 2019 and allowing a jury trial would not disrupt its docket. Thus, the record reflects that allowing a jury trial would not injure the adverse party, disrupt the court's docket, or impede the ordinary handling of the court's business. *See id.*; *In re J.M.B.*, No. 05-16-01311-CV, 2017 WL 1536506, at *2–3 (Tex. App.—Dallas Apr. 27, 2017, no pet.). Under these circumstances, we conclude the trial court abused its discretion by denying the Foster Parents' request for a jury. We grant the petition for writ of mandamus to the extent it seeks to vacate the denial of a jury trial. "

IN RE: M.B. AND V.B., RELATORS; No. 05-19-00971-CV No. 05-19-00973-CV , 5th COURT OF APPEALS, TEXAS

The Appellate Court concluded: “We conditionally grant the petition for writ of mandamus regarding the Foster Parents’ request for a jury trial. We order the trial court to vacate that portion of its oral order of August 2, 2019 denying the Foster Parents’ request for a jury trial. A writ will issue only in the event the trial court fails to comply with this opinion and the order of this date.”

N. M., Appellant v. Texas Department of Family and Protective Services, Appellee, NO. 03-19-00240-CV , 3rd Court of Appeals, Texas

In this case that came down September 26, 2019 from the 3rd Court of Appeals the Appellate Court reversed the trial court termination decree because the trial court did not comply with the Indian Child Welfare Act.

N. M., Appellant v. Texas Department of Family and Protective Services, Appellee, NO. 03-19-00240-CV , 3rd Court of Appeals, Texas

Mother advised the Court that the children the subject of the DFPS case were Native American children. DFPS gave notice to the tribe but at trial the State called the following witnesses: (1) Nathaniel Choate, Family Based Safety Services worker who testified regarding the intake of the case as the on-call investigator; (2) Ashley Hernandez, caseworker for the Department and courtesy worker for N.M., whose duties were to help her with her family service plan, set up her services, and check her home environment and its appropriateness for the children; (3) the children's maternal aunt, who testified about the placement of the children in her home on and after October 26, 2018, N.M.'s visitation with the children and the children's relationship with her, and her plans for the children; and (4) Victoria Davis, the Department's caseworker who testified regarding the Department's family service plan, and recommended that N.M.'s rights be terminated and that such termination was in the children's best interests.

N. M., Appellant v. Texas Department of Family and Protective Services, Appellee, NO. 03-19-00240-CV , 3rd Court of Appeals, Texas

After all parties rested, the associate judge on March 20, 2019, orally pronounced judgment terminating N.M.'s parental rights. On March 27, 2019, the associate judge signed an Order of Termination terminating N.M.'s parental rights to both children on the grounds orally pronounced. *See* Tex. Fam. Code § 161.001(b)(1)(D), (E), (N), (O). The district court approved and signed the associate judge's report on March 29, 2019, and issued its judgment terminating N.M.'s parental rights and appointing the Department as permanent managing conservator for A.M. and M.M. The district court also made findings that A.M. and M.M. "are . . . Indian Child[ren] within the meaning of the Indian Child Welfare Act."

N. M., Appellant v. Texas Department of Family and Protective Services, Appellee, NO. 03-19-00240-CV , 3rd Court of Appeals, Texas

In her sole issue on appeal, N.M. argues that the evidence is insufficient to terminate her parental rights because no testimony from a qualified expert witness was presented at trial. Accordingly, N.M. contends that this Court must reverse the portion of the judgment pertaining to her parental rights, and the Department agrees. Because no testimony from a qualified expert was presented at trial, N.M. also argues that the evidence is insufficient to support the appointment of the Department as permanent managing conservator for M.M. and A.M.

N. M., Appellant v. Texas Department of Family and Protective Services, Appellee, NO. 03-19-00240-CV , 3rd Court of Appeals, Texas

The Appellate Court discussed ICWA and stated that there must be an expert to testify regarding Indian Child Welfare issues and the burden of proof is beyond a reasonable doubt in Indian Child Welfare Act cases and reversed the termination and appointment of DFPS as PMC and Ordered a retrial within 180 days of the Appellate Courts Ruling.

IN THE INTEREST OF C.W., A CHILD: NO 18-1034, SUPREME COURT OF TEXAS

In this case that came down from the Supreme Court of Texas on October 18, 2019 the Supreme Court remanded the case to the Court of Appeals because although the Appellate Court discussed the required findings for best interest the Appellate Court failed to discuss the termination grounds adequately for 161.001(1)(d).

IN THE INTEREST OF C.W., A CHILD: NO 18-1034, SUPREME COURT OF TEXAS

The Supreme Court stated: We recently held in *In re N.G.* that when a trial court makes a finding to terminate parental rights under section 161.001(b)(1)(D) or (E) and the parent challenges that finding on appeal, due process requires the appellate court to review that finding and detail its analysis. 577 S.W.3d at 235–36. Here, the court of appeals upheld termination of the mother's parental rights only under section 161.001(b)(1)(O). ___ S.W.3d at ___. "

IN THE INTEREST OF C.W., A CHILD: NO 18-1034, SUPREME COURT OF TEXAS

The Supreme Court further stated: Because the mother specifically challenged the legal and factual sufficiency of the evidence to support the trial court's finding under section 161.001(b)(1)(D), a finding which can affect her parental rights to other children under section161.001(b)(1)(M), we hold that the court of appeals erred in failing to address the mother's challenge to the section 161.001(b)(1)(D) finding. Accordingly, without hearing oral argument, *see* TEX. R. APP. P. 59.1, we grant the mother's petition, affirm in part and reverse in part the court of appeals' judgment, and remand the case to the court of appeals for further proceedings consistent with this opinion."

IN THE INTEREST OF A.G., JR., A CHILD: N0. 11-19-00178-CV , 11TH COURT OF APPEALS, TEXAS

In this case that came down from the 11th Court of Appeals on October 24, 2019 the Appellate Court Modified the Trial Court's findings of termination of the father's parental rights on Section 161.001(1)(e).

IN THE INTEREST OF A.G., JR., A CHILD: N0. 11-19-00178-CV , 11TH COURT OF APPEALS, TEXAS

The father was incarcerated 4 months prior to the birth of the child and the child was removed from the mother for drug use, physical abuse and the child testing positive for meth at birth. The trial was held one year after the child was removed from mother. The Trial Court terminated father's parental rights for Section 161.001(1)(e) and (q). Father appealed alleging insufficient evidence of section (e) because he was incarcerated at the time of the removal.

IN THE INTEREST OF A.G., JR., A CHILD: N0. 11-19-00178-CV , 11TH COURT OF APPEALS, TEXAS

The Appellate Court stated: “Here, the record indicates that the child was born more than four months after Appellant was incarcerated. The Department presented no evidence that Appellant was aware that he even had a child until after the Department removed the child from the child’s mother. The record is devoid of any evidence relating to Appellant’s knowledge of the mother’s drug use. Although there was some evidence that Appellant had a criminal history in addition to the conviction for burglary of a habitation, the extent of that criminal history was not proved at trial. The trial court sustained Appellant’s objections to hearsay and speculation when the Department attempted to question the conservatorship caseworker about Appellant’s criminal history; the trial court also pointed out that the Department’s pleadings were not in evidence. The evidence fails to show that Appellant engaged in conduct or knowingly placed the child with someone that engaged in conduct that endangered the child’s physical or emotional well-being. “

IN THE INTEREST OF A.G., JR., A CHILD: N0. 11-19-00178-CV , 11TH COURT OF APPEALS, TEXAS

The Appellate Court further stated: “We hold that the evidence is legally insufficient to uphold the trial court’s finding as to Appellant under subsection (E). Consequently, we strike the trial court’s finding made pursuant to subsection (E) as the Department failed to present clear and convincing evidence under that subsection. We sustain Appellant’s issue to the extent that Appellant challenges the subsection (E) finding, but we decline Appellant’s request to reverse the trial court’s order of termination. The trial court made a finding pursuant to subsection (Q) and a finding that termination would be in the child’s best interest. Appellant did not challenge these findings on appeal. Because the termination of Appellant’s parental rights may be upheld on the unchallenged findings, we do not reverse the trial court’s order. *See M.G.*, 2019 WL

IN THE INTEREST OF A.L.R., A CHILD: N0. 04-19-00349-CV, 4TH COURT OF APPEALS, TEXAS

In this case that came down from the 4th Court of Appeals, Texas on November 6, 2019 the Appellate Court reversed termination of the father's parental rights based upon lack of best interest evidence by clear and convincing evidence.

IN THE INTEREST OF A.L.R., A CHILD: N0. 04-19-00349-CV, 4TH COURT OF APPEALS, TEXAS

A.L.R. was born February 27, 2018 to J.R. (father) and E.B. (mother). A month later, the Department of Family and Protective Services filed an original petition for conservatorship of A.L.R. and for termination of her parents' rights. The affidavit filed in support of the petition asserted that removal of A.L.R. was sought because there was an open case in the Department involving E.B.'s three other children. That case arose out of the October 2017 death of another of E.B.'s children, K.A. The affidavit stated allegations of abuse and neglect had been made against E.B., J.R., and J.R.'s parents as a result of the child's death and that J.R. had been arrested and was in jail in connection with the child's death. The Department sought A.L.R.'s removal from E.B. because E.B. was living with J.R.'s parents, and the Department was concerned the child should not be in that home.

IN THE INTEREST OF A.L.R., A CHILD: N0. 04-19-00349-CV, 4TH COURT OF APPEALS, TEXAS

At the Show Cause hearing DFPS was appointed TMC of the child and the Court Ordered that the father have no access to the child. The child was placed with the mother's mother and step-father who had the other 3 children in their possession. In the fall of 2018, the grand jury declined to indict J.R. on any charges related to the death of K.A. However, J.R. had been convicted in 2016 of burglary of a habitation and placed on probation. In January 2018, while J.R. was in custody in connection with K.A.'s death and before A.L.R. was born, J.R.'s probation was revoked, and he was sentenced to five years in prison. After J.R. was no-billed by the grand jury, he was moved from Val Verde County and taken into state custody to serve that sentence. J.R. was in prison at the time of this trial in May 2019, and the undisputed evidence was that he would be released by August 2019.

IN THE INTEREST OF A.L.R., A CHILD: N0. 04-19-00349-CV, 4TH COURT OF APPEALS, TEXAS

The case was tried on May 7, 2019 and the caseworker Ramos testified father had expressed a desire to complete other services, but there are not many offered at the Hamilton Unit and the Department is not able to schedule services at state prisons. She testified father had done everything he could do to comply with the plan since it was presented to him. She acknowledged that the plan stated father was taking classes to prepare for his release from prison and that he intended to provide a safe environment for his daughter upon his release. Ramos testified she did not have any reason to believe father would not follow through with his plan. The rest of her testimony was similar. The Appellate Court discussed the requirements for proving best interest (Holly Factors).

IN THE INTEREST OF A.L.R., A CHILD: N0. 04-19-00349-CV, 4TH COURT OF APPEALS, TEXAS

The Appellate Court Stated "J.R. testified he was asking the court to name him a possessory conservator of A.L.R., that he wanted to be involved in her life, and was prepared to pay child support. The Department contends this factor weighs in favor of the trial court's finding because there is no evidence of how J.R. intended to provide for A.L.R., deal with her day-to-day care, or provide for her educational needs.3 However, this argument misapplies the standard of review and burden of proof. *See In re E.N.C.*, 384 S.W.3d at 808. The Department bore the burden to establish with clear and convincing evidence that termination of J.R.'s rights is in A.L.R.'s best interest. The Department's failure to elicit testimony about J.R.'s plans for A.L.R.'s future does not constitute evidence that he has no plans or that his plans are "weak and ill-defined," as argued by the Department. *See id.* (stating that "[a] lack of evidence does not constitute clear and convincing evidence"). A.L.R.'s best interest."

IN THE INTEREST OF A.L.R., A CHILD: N0. 04-19-00349-CV, 4TH COURT OF APPEALS, TEXAS

The Appellate Court concluded" On this record, we conclude that no reasonable factfinder could form a firm belief or conviction that termination of J.R.'s parental rights is in A.L.R.'s best interest. We therefore reverse the part of the trial court's order that terminated J.R.'s parental rights, render judgment denying the request for termination, and remand the case to the trial court for further proceedings. *See* TEX. FAM. CODE § 161.205 (when termination is denied, court may render orders in the best interest of the child); *In re E.N.C.*, 384 S.W.3d at 810; *In re J.F.C.*, 96 S.W.3d at 266. J.R. did not challenge the trial court's finding in support of its appointment of a non-parent as A.L.R.'s permanent managing conservator and we do not disturb that part of the trial court's order."

IN THE INTEREST OF J.F. II, A CHILD: N0. 07-19-00174-CV, 7th COURT OF APPEALS, TEXAS

In this case that came down from the 7th Court of Appeals, Texas on November 6, 2019 the Appellate Court reversed termination of mother's parental rights for failure to appoint her an attorney prior to trial.

IN THE INTEREST OF J.F. II, A CHILD: N0. 07-19-00174-CV, 7th COURT OF APPEALS, TEXAS

On November 1, 2017, B.T. filed her *Application for Appointment of Attorney & Affidavit of Indigence*. That same day, the trial court (a former associate judge) signed an order finding that B.T. was indigent and appointed counsel to represent her. On March 12, 2018, B.T. chose to retain a family lawyer and filed a *Motion to Substitute Counsel.* Citing B.T.'s failure to cooperate, on August 15, 2018, retained counsel moved to withdraw. No order appears in the clerk's record granting the motion to withdraw. At the commencement of the trial on the merits on September 14, 2018, B.T. requested a court-appointed attorney and moved for a continuance. She announced that she needed a continuance to "get an attorney. I need a court-appointed one, if you can." The trial court indicated there had been a hearing on retained counsel's motion to withdraw just a week earlier on September 7, 2018, at which B.T. was not present. The trial court then asked B.T. if she would "have been asking the Court to release [retained counsel] or would [she] have been asking the Court to keep him on as [her] attorney?" She answered, "[r]elease."

IN THE INTEREST OF J.F. II, A CHILD: N0. 07-19-00174-CV, 7th COURT OF APPEALS, TEXAS

When the trial resumed on September 28th, the Department announced, “present and ready to proceed . . . .” B.T. again moved for a continuance and was advised by the trial court to announce her name “but state not ready,” and B.T. complied. She explained that she had attempted to retain counsel but did not have the financial resources for fees being quoted to her by several attorneys. She also sought the assistance of Legal Aid and the Texas Tech Law School Clinic but was denied assistance. The day before the trial had resumed, B.T. again filed paperwork establishing her indigence as well as requesting the appointment of counsel. The trial court acknowledged the filing but deferred ruling on the request for counsel. The Department again opposed a continuance and eventually, the trial court again denied B.T.’s motion for continuance. The court also ruled, “[y]our request for additional time to get a court-appointed or hired attorney is also denied.”

IN THE INTEREST OF J.F. II, A CHILD: N0. 07-19-00174-CV, 7th COURT OF APPEALS, TEXAS

The trial continued with B.T. as the first witness. Without any legal representation, she answered questions from three attorneys. After the presentation of witnesses and evidence, the trial court again ruled that B.T.'s motion for continuance as well as her request for an extension of the dismissal date were denied. The ruling continued as follows:

[f]urther, [B.T.] had again applied for a court-appointed attorney. I find that that is her second request for court-appointed attorney, having released her first one, and then had representation by a hired attorney, who has now since withdrawn. I am denying her request for that second court-appointed attorney as *untimely*. I believe it was the day prior to the final hearing when that application was received.

IN THE INTEREST OF J.F. II, A CHILD: N0. 07-19-00174-CV, 7th COURT OF APPEALS, TEXAS

Based on the Department's case, the trial court found clear and convincing evidence to support termination of B.T.'s parental rights for (1) knowingly placing or allowing her child to remain in conditions or surroundings that endangered his physical or emotional well-being, (2) engaging in conduct or knowingly placing her child with persons who engaged in conduct that endangered his physical or emotional well-being, and (3) failing to comply with the provisions of a court order that specifically established the actions necessary for her to obtain the return of her child. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(D), (E), (O) (West Supp. 2019). The trial court also found that termination of B.T.'s parental rights to J.F. II was in his best interest. § 161.001(b)(2). Finally, the trial court found that B.T. failed to provide by a preponderance of the evidence any explanation as to why she was unable to comply with the provisions of the court order, or whether she had made a good faith effort to comply and why the failure to comply was not her fault. § 161.001(d).

IN THE INTEREST OF J.F. II, A CHILD: N0. 07-19-00174-CV, 7th COURT OF APPEALS, TEXAS

B.T. filed a request for a *de novo* hearing before the referring court. In her written request, she listed her issue as the lack of representation at the trial on the merits and explained that she was absent on the final day because she had been hospitalized. The *de novo* hearing commenced on November 19, 2018. B.T. was still without legal representation and stated, “I don’t know if I can get a lawyer for this . . . I almost have enough money saved up . . . .” B.T. also requested a continuance, which was again opposed by the Department and by the attorney ad litem for the child. The referring court announced that it would be reading the entire record from the trial and relying on the testimony that had been previously presented.4 Counsel for the Department added that the caseworker would be providing testimony on the child’s status and his placement.

IN THE INTEREST OF J.F. II, A CHILD: N0. 07-19-00174-CV, 7th COURT OF APPEALS, TEXAS

More than three months later, on February 27, 2019, the *de novo* hearing resumed. The referring court announced that it had read the transcription from the trial on the merits. The court also stated that B.T. had been arrested the night before for various traffic violations. She had been transported to the holding area to await continuation of the *de novo* hearing when she experienced medical problems that required hospitalization. The *de novo* hearing was continued and the trial court declared, “[i]t is going to be my intent to appoint [B.T.] an attorney, so I’ll give that attorney an appropriate amount of time to get prepared.” The hearing was recessed and counsel was appointed that same day to represent B.T. Several months later, on May 16, 2019, the *de novo* hearing resumed, this time with court-appointed counsel representing B.T.

IN THE INTEREST OF J.F. II, A CHILD: N0. 07-19-00174-CV, 7th COURT OF APPEALS, TEXAS

The referring court made known that it had read and would be considering the reporter's record from the trial on the merits. Noting that B.T. was without counsel at the previous *de novo* hearing, the referring court notified the parties that "we'll treat it as if we're pretty much starting over" and allowed the Department to re-open its evidence. The Department offered into evidence Petitioner's Exhibit 1, six volumes from the trial on the merits. The exhibit was admitted without objection.

B.T.'s counsel re-urged B.T.'s motion for continuance and for an extension of the case deadline to give B.T. the opportunity to work her services guided by the assistance of counsel. The motion was denied and the *de novo* hearing continued.

IN THE INTEREST OF J.F. II, A CHILD: N0. 07-19-00174-CV, 7th COURT OF APPEALS, TEXAS

The Appellate Court stated" We begin our review with issue two as it is dispositive of this appeal. As noted by appellate counsel, the record filed in this case "is a nightmare" and the reporter's record is "extremely confusing." The following table sets forth a timeline for the termination proceedings. September 14, 2018Commencement of trial on the merits without counsel September 24, 2018,Continuation of trial on the merits without counsel October 4, 2018 Continuation of trial on the merits without counsel October 19, 2018 Continuation of trial on the merits without counsel November 19, 2018 Commencement of *de novo* hearing without counsel February 27, 2019Continuation of *de novo* hearing with appointment of counsel May 16, 2019 Continuation of *de novo* hearing with appointed counsel."

IN THE INTEREST OF J.F. II, A CHILD: N0. 07-19-00174-CV, 7th COURT OF APPEALS, TEXAS

The Appellate Court stated" B.T. asserts her due process rights were violated by the denial of appointed counsel at the trial on the merits. That error, she maintains, was not cured when counsel was later appointed for the continuation of the *de novo* hearing. We agree. Denial of the right to counsel under section 107.013(a) is reversible error. *See In re E.A.F.*, 424 S.W.3d 742, 747 (Tex. App.—Houston [14th Dist.] 2014, pet. denied); *In re J.M.*, 361 S.W.3d 734, 738-39 (Tex. App.—Amarillo 2012, no pet.); *In re C.D.S.*, 172 S.W.3d 179, 186 (Tex. App.—Fort Worth 2005, no pet.). *See also In re M.P.*, No. 02-18-00361-CV, 2019 Tex. App. LEXIS 904, at *4 (Tex. App.—Fort Worth Feb. 7, 2019, no pet.) (mem. op.) (finding reversible error in proceeding to trial without first considering a parent's affidavit of indigence even after the Department conceded that upon the parent's filing of an affidavit of indigence, the trial court should have addressed it prior to proceeding with the trial on the merits). There are two requirements for a parent to be entitled to appointed counsel under the statute, both of which B.T. satisfied. First, the parent must be indigent.

IN THE INTEREST OF J.F. II, A CHILD: N0. 07-19-00174-CV, 7th COURT OF APPEALS, TEXAS

It is undisputed that B.T. had been declared indigent by the former associate judge when termination proceedings were initiated in 2017. The associate judge who presided at the trial on the merits was also aware of B.T.'s indigent status. B.T.'s presumption of indigence went unchallenged and thus, remained intact throughout the proceedings. That she temporarily was represented by retained counsel did not alter her status. *See In re M.H.*, 02-18-00329-CV, 2019 Tex. App. LEXIS 2231, at *4-6 (Tex. App.—Fort Worth March 21, 2019, no pet.) (mem. op.).

IN THE INTEREST OF J.F. II, A CHILD: N0. 07-19-00174-CV, 7th COURT OF APPEALS, TEXAS

The Appellate Court further stated" The heightened standard of review that applies to termination proceedings is rendered meaningless when a parent is left without legal representation at a critical stage of the proceedings. A delayed appointment of counsel for an indigent parent who opposes a government-initiated termination and requests counsel may "render the ultimate appointment a toothless exercise." *In re V.L.B.*, 445 S.W.3d at 807. As such, we find the trial court's denial of court-appointed counsel to represent B.T. during the trial on the merits constitutes reversible error.

IN THE INTEREST OF J.F. II, A CHILD: N0. 07-19-00174-CV, 7th COURT OF APPEALS, TEXAS

The Appellate Court concluded “Generally, finding error requires a harm analysis under Rule 44.1(a)(1). TEX. R. APP. P. 44.1(a)(1). *See also In re E.A.G.*, 373 S.W.3d 129, 144 (Tex. App.—San Antonio 2012, pet. denied) (applying Rule 44.1(a) to a trial court’s erroneous ruling on admission of expert testimony); *In re S.P.*, 168 S.W.3d 197, 210 (Tex. App.—Dallas 2005, no pet.) (finding that an erroneous evidentiary ruling caused the rendition of an improper judgment). However, a violation of the statutory scheme mandated by section 107.013(a) of the Family Code presumes that a parent was prejudiced. *See In re A.J.*, 559 S.W.3d 713, 722 (Tex. App.—Tyler 2018, no pet.) (citation omitted). Therefore, this court need not conduct a harm analysis under Rule 44.1(a). Issue two is sustained. Our disposition pretermits consideration of issue one. TEX. R. APP. P. 47.1 and reversed the Order of termination and Ordered a new trial within 180 days.”

IN RE K.L.M., Relator, NO:14-19-00713-CV, IN THE 14TH COURT OF APPEALS, TEXAS

- In this case that came down from the 14th Court of Appeals, Texas on November 14, 2019, the Appellate Court granted a Mandamus based upon the failure of proof of the urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal and failure of proof that reasonable efforts were made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.

IN RE K.L.M., Relator, NO:14-19-00713-CV, IN THE 14TH COURT OF APPEALS, TEXAS

With regard to subjection (g)(2)—the urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal—Mother argues that the Department failed to use any reasonable efforts to prevent the child's removal. Mother claims that continuation in the home was a viable option because Mother's grandmother was willing to stay at the child's home to keep the child there. At the adversary hearing, Mother's grandmother testified that she was present when Caseworker Clark removed the child from Mother's home. Mother's grandmother offered to stay in Mother's home to supervise the child. The Department refused Mother's grandmother's offer. Clark similarly testified that Mother's grandmother offered to stay in the home and supervise the child.

IN RE K.L.M., Relator, NO:14-19-00713-CV, IN THE 14TH COURT OF APPEALS, TEXAS

Clark's supervisor, who was not present when Clark removed the child from Mother's home, refused Mother's grandmother's offer to stay in the home with the child. Clark observed that Mother's home was a nice home: it was clean, there a bedroom for the child, and food in the refrigerator. Clark testified that the child was removed from Mother's home because Mother tested positive for heroine. Mother acknowledges that the Department is not expected to ignore a positive drug test. Mother acknowledges that the Department is not expected to ignore a positive drug test. *See In re M.N.M.*, 524 S.W.3d 396, 405 (Tex. App.—Houston [14th Dist.] 2017, orig. proceeding) ("The Department could not ignore a pre-removal hair follicle test that came back positive or the results of post-removal drug tests[.]"). On the other hand, "the Texas Family Code provides a range of mechanisms to address controlled substance abuse by parents." *Id.*

IN RE K.L.M., Relator, NO:14-19-00713-CV, IN THE 14TH COURT OF APPEALS, TEXAS

The Appellate Court discussed the case “In *M.N.M.*, the mother’s hair follicle test was positive for amphetamine and methamphetamine and was not specific as to time and potentially encompassed a period of months earlier and the pre-removal urinalysis was negative. *Id.* at 400, 405. In her visits with the mother, father, and the child before removal, the caseworker observed an injury-free two-year-old who was appropriately dressed, groomed, fed, housed, and behaved; appropriate interactions between the child and the father; a clean and hazard-free house; and a kitchen stocked with food. *Id.* at 405. This court held that the record did not support removal or that an urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child’s removal or the subsequent refusal to return the child. *Id.* at 406.

IN RE K.L.M., Relator, NO:14-19-00713-CV, IN THE 14TH COURT OF APPEALS, TEXAS

The Appellate Court concluded: “In light of testimony that (1) Mother’s grandmother offered to stay in the child’s home and supervise the child, and (2) the home was clean, the child had her own bedroom, and the was food in the home, and (3) that the Department presented no evidence that it made reasonable efforts to protect the child short of removal from the home, we conclude that there is no evidence to support the trial court’s finding that there was an urgent need for protection that required the immediate removal of the child or that reasonable efforts were made to eliminate or prevent the child’s removal from Mother’s home. We sustain Mother’s second issue. The department has not satisfied all the requirements of section 262.201(g) to remove from the child from her home and to refuse to return the child after a full adversary hearing. Therefore, the child must be returned to her home with Mother. *See Pate*, 407 S.W.3d at 419.

IN RE K.L.M., Relator, NO:14-19-00713-CV, IN THE 14TH COURT OF APPEALS, TEXAS

The Appellate Court Ordered: “Accordingly, we conditionally grant relator’s petition for writ of mandamus and direct the trial court to vacate the temporary order following adversary hearing signed August 27, 2019, and order the return of the present possession of the child to relator. The writ will issue only if the trial court fails to comply.”

IN THE INTEREST OF T.S., R.S., I.S., AND S.S., CHILDREN; NO. 07-19-00260-CV, 7TH COURT OF APPEALS, TEXAS

In this case that came down from the 7th Court of Appeals of Texas on November 18, 2019 the Appellate Court abated and remanded the termination case after mother attempted to appeal the termination of her parental rights because DFPS intervened in the mother and father's divorce and the divorce was not final, even though the termination order was entered by the court.

IN THE INTEREST OF T.S., R.S., I.S., AND S.S., CHILDREN; NO. 07-19-00260-CV, 7TH COURT OF APPEALS, TEXAS

The Appellate Court discussed the case: " The Order of Termination before us appears to dispose only of the Department's petition in intervention; it does not appear to address the original divorce action filed by the mother. That being so, the court remains uncertain as to the appealability of the Order of Termination. *See Azbill v. Dallas Cty. Child Protective Servs. Unit of Tex. Dep't of Human & Regulatory Servs.*, 860 S.W.2d 133, 135–36 (Tex. App.—Dallas 1993, no writ). Though the record suggests that the trial court intended its Order of Termination to be final as to the parent-child relationships at issue and operate in such a way as to effectively remove the child custody issue from any remaining issues in the divorce proceeding, the fact that the claims bear the same cause number also suggests that the trial court's order did not dispose of all pending claims and parties. *See generally Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195–200 (Tex. 2001). We seek clarification and/or modification from the trial court concerning the finality and appealability of the Order of Termination at bar.

IN THE INTEREST OF T.S., R.S., I.S., AND S.S., CHILDREN; NO. 07-19-00260-CV, 7TH COURT OF APPEALS, TEXAS

The Appellate Court concluded:" So that the trial court may enter orders that would clarify the appealability of the Order of Termination or otherwise make the latter order final and appealable, we abate the appeal and remand the cause to the trial court. *See* TEX. R. APP. P. 27.2 (providing that the appellate court may allow an appealed order that is not final to be modified so as to be made final and may allow the modified order and all proceedings relating to it to be included in a supplemental record). Upon remand, the trial court may convene such hearing and issue such orders or judgments necessary to create a final, appealable order in this cause. Further, the trial court shall order the preparation of a supplemental clerk's and reporter's records, as applicable, reflecting the orders and actions taken and cause those records to be filed with the Clerk of this court no later than December 3, 2019. Should additional time be required to perform these obligations, same must be requested by December 3, 2019.

IN THE INTEREST OF J.F.C. AND J.T.C., NO. 09-19-00224-CV, 9TH COURT OF APPEALS, TEXAS

In this case that came down from the 9th Court of Appeals on November 9, 2019 the Appellate Court dismissed the DFPS case without prejudice because the trial was not commenced within the 1 year statutory requirement. WOW, ANOTHER ONE!!!!!

IN THE INTEREST OF K.B. AND J.B, NO. 09-19-00239-CV, 9TH COURT OF APPEALS, TEXAS

In this case that came down from the 9th Court of Appeals on December 5, 2019 the Appellate Court again vacated the trial court (Polk County District Court)Order because the trial was not commenced within the one year statutory requirement. THAT MAKES THREE NOW!!!!!

IN THE INTEREST OF A.S.G., AND N.P.G., CHILDREN, NO. 14-19-00832-CV, 14TH COURT OF APPEALS, TEXAS

In this case that came down from the 14th Court of Appeals on December 5, 2019 the Appellate Court reversed the termination of mother's parental rights and appointing DFPS as managing conservator of the children because the Court Reporter could not provide all of the volumes of the record due to electronic recording problems.

IN THE INTEREST OF A.S.G., AND N.P.G., CHILDREN, NO. 14-19-00832-CV, 14TH COURT OF APPEALS, TEXAS

The Appellate Court stated “An appellant is entitled to a new trial when she timely requests the reporter’s record, and, by no fault of the ppellant, the reporter’s record has been lost or destroyed, is necessary for the appeal, and cannot be reconstructed. See Tex. R. App. P. 34.6(f); Gavrel v. Rodriguez,225 S.W.3d 758, 761 (Tex. App.—Houston [14th Dist.] 2007, pet. denied); In re B.H.,No.14-16-01011-CV, 2017 WL 1015697, *1 (Tex. App.—Houston [14th Dist.] Mar. 14, 2017, no pet.) (mem. op.) (per curiam) (reversing portion of judgment terminating appellant’s parental rights and granting appellant new trial because reporter’s record was lost or destroyed).”

IN THE INTEREST OF A.S.G., AND N.P.G., CHILDREN, NO. 14-19-00832-CV, 14TH COURT OF APPEALS, TEXAS

The Appellate Court further stated “On November 13, 2019, we abated this appeal for the trial court to make findings under Texas Rule of Appellate Procedure 34.6(f). Supplemental clerk’s and reporter’s records regarding those findings have been filed. The trial court found:(1) Mother timely requested a reporter’s record;(2)without Mother’s fault, a significant portion of the court reporter’s notes and recordings have been lost or destroyed or is inaudible;(3)the lost, destroyed, or inaudible portion of the reporter’s notes and recordings are necessary to the appeal’s resolution; and(4)the parties cannot agree on the replacement of the portions of the reporter’s notes or recordings nor can the parties agree that the notes or recordings can be duplicated with reasonable certainty.”

IN THE INTEREST OF A.S.G., AND N.P.G., CHILDREN, NO. 14-19-00832-CV, 14TH COURT OF APPEALS, TEXAS

The Appellate Court found “The trial court concluded that Mother is entitled to a new trial under Texas Rule of Appellate Procedure 34.6(f). In light of the trial court’s findings, we REVERSE only that portion of the final decree terminating Mother’s parental rights tot he Children and REMAND this case to the trial court for a new trial to be held as to only those claims brought by the Department against Mother. See Tex. Fam. Code Ann. §263.401(b-1). We leave the remainder of the decree undisturbed”

IN THE INTEREST OFS.J.H.,
NO: 08-19-00182-CV, 8TH COURT OF APPEALS. TEXAS

In this case that came down from the 8th Court of Appeals on December 9, 2019 the Appellate Court reversed termination of mother's parental rights because DFPS failed to comply with the Indian Child Welfare Act by failing to notify the tribe that the father, who prior to relinquishing his parental rights, advised the Court of the two tribes that the child qualified for enrollment.

IN THE INTEREST OFS.J.H.,
NO: 08-19-00182-CV, 8TH COURT OF APPEALS. TEXAS

The Appellate Court Stated: “The ICWA applies in this case unless and until notification is given to Cherokee officials and Cherokee officials confirm that S.J.H. is not a member of their tribe, though the trial court has the discretion to determine Indian child status in the event that attempts to contact tribal authorities are unsuccessful and a final citizenship determination from relevant authorities is not forth coming. So long as the ICWA presumptively applies, the trial court must use the beyond a reasonable doubt standard necessary for termination of the parental rights of an Indian child, even though Mother herself is not a member of a Native American tribe. The failure to contact Cherokee officials to ascertain S.J.H.’s potential Indian child status and the failure to use the beyond a reasonable doubt standard here were both errors.”

IN THE INTEREST OFS.J.H., NO: 08-19-00182-CV, 8TH COURT OF APPEALS. TEXAS

The Appellate Court concluded: “The failure to contact Cherokee officials to ascertain S.J.H.’s potential Indian child status and the failure to use the beyond a reasonable doubt standard here were both errors. Because these errors are not perfunctory errors that case be easily corrected by abating and directing the trial court to remedy the errors, remand for further proceedings in the trial court is required. As such, we reverse the judgment of the trial court as to Mother and remand for further proceedings consistent with this opinion.

IN THE INTEREST OF J.T., A CHILD, NO:10-19-00298-CV, 10TH COURT OF APPEALS, TEXAS

In this case that came down from the 10th Court of Appeals on December 18, 2019 the Appellate Court reversed termination of the mother's parental rights and remanded the case back to the trial court because the judge let the jurors ask questions of each witness after the attorneys were done with questioning of each witness.

IN THE INTEREST OF J.T., A CHILD, NO:10-19-00298-CV, 10TH COURT OF APPEALS, TEXAS

The Appellate Court stated: “In this proceeding, Margaret 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. **The same trial court judge that presided over this proceeding was told over 25 years ago that this very process was improper in a criminal trial by the highest court In the Interest of J.T., a Child in this state in criminal law matters, thus constituting reversible error. Morrison v. State, 845 S.W.2d 882 (Tex. Crim. App. 1992).”**

IN THE INTEREST OF J.T., A CHILD, NO:10-19-00298-CV, 10TH COURT OF APPEALS, TEXAS

The Appellate Court further stated: “In this proceeding, both Margaret and the Department objected in writing prior to the trial and throughout the proceedings. The trial court denied the written motions and overruled the objections during the trial. The trial court granted a running objection to the allowance of juror questions to Margaret and the Department as well. Nevertheless, to the extent there may be a difference in civil and criminal law on the issue, we agree with the rationale and holding of the Court of Criminal Appeals in Morrison and apply it to the facts of this proceeding and hold that it was error to allow the jury to ask questions of the witnesses.”

IN THE INTEREST OF J.T., A CHILD, NO:10-19-00298-CV, 10TH COURT OF APPEALS, TEXAS

The Appellate Court found: “The trial court’s judgment is reversed and this proceeding is remanded for a new trial to be commenced on a date not later than 180 days after this Court remands this proceeding to the trial court. “

REALLY!!!!!!

ETHICS IS IMPORTANT IN APPEALS AS WELL