

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 11-9138

INTERIM REPORT OF THE TASK FORCE FOR POST-TRIAL RULES IN CASES INVOLVING TERMINATION OF THE PARENTAL RELATIONSHIP

Submitted to the Supreme Court of Texas on August 15, 2011

TO THE HONORABLE SUPREME COURT:

I. INTRODUCTION

The task force was established by the Supreme Court of Texas on July 15, 2011 pursuant to Misc. Docket No. 11-9138. The task force was charged with the responsibility to advise the Supreme Court regarding rules to be adopted or revised for post-trial proceedings in cases involving termination of the parental relationship pursuant to House Bill 906 enacted by the 82nd Legislature (Act of May 5, 2011, 82nd Leg., R.S., ch. 75).

Because House Bill 906 amends section 263.405 of the Texas Family Code to eliminate certain post-trial procedures effective September 1, 2011, the task force was directed to advise the Court by August 15, 2011, what rules or rules amendments should be adopted before September 1, 2011, if any.

The members of the task force are:

Honorable Dean Rucker, Chair, 318th Family District Court, *Midland*

Tina Amberboy, Supreme Court Permanent Judicial Commission for Children, Youth and Families, *Austin*

Honorable Debra H. Lehrmann, Supreme Court of Texas, *Austin*

Sandra Hachem, Office of the Harris County Attorney, *Houston*

Jo Chris Lopez, Langley & Banack, *San Antonio*

Jack W. Marr, Marr, Meier & Bradicich, L.L.P., *Victoria*

Honorable Ann Crawford McClure, Court of Appeals, Eighth District of Texas, *El Paso*

Richard R. Orsinger, McCurley, Orsinger, McCurley, Nelson & Downing, L.L.P., *Dallas*

Georganna L. Simpson, Simpson Martin, L.L.P., *Dallas*

Charles A. Spain, Jr., Court of Appeals, First District of Texas, *Houston*

Court Liaison: Honorable Eva Guzman, Supreme Court of Texas, *Austin*

Rules Attorney: Marisa Secco, Supreme Court of Texas, *Austin*

II. PROCESS OF REVIEW

The Task Force met by teleconference on August 10, 2011 and August 12, 2011.

III. RECOMMENDATION

Attached are (1) House Bill 906 enacted by the 82nd Legislature (Act of May 5, 2011, 82nd Leg., R.S., ch. 75), and (2) the recommended amendments to Rule 20.1 of the Texas Rules of Appellate Procedure, affecting the establishment of indigence (Rule 20.1(a)) and the requirement to file an affidavit of indigence with or before the notice of appeal (Rule 20.1(c)(1)). The task force recommends that the attached rule amendments should be adopted by the Supreme Court of Texas to be effective September 1, 2011.

IV. CONCLUSION

The task force is also charged to make final recommendations to the Court by October 17, 2011, on the rules to be adopted, to be presented to the Supreme Court Advisory Committee at its regular meeting on October 21-22, 2011. The task force will continue meeting to complete its work on this charge.

We appreciate the opportunity to participate in this process.

AN ACT

relating to appointments made in and the appeal of certain suits affecting the parent-child relationship.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 107.013, Family Code, is amended by adding Subsection (e) to read as follows:

(e) A parent who the court has determined is indigent for purposes of this section is presumed to remain indigent for the duration of the suit and any subsequent appeal unless the court, after reconsideration on the motion of the parent, the attorney ad litem for the parent, or the attorney representing the governmental entity, determines that the parent is no longer indigent due to a material and substantial change in the parent's financial circumstances.

SECTION 2. Section 107.016, Family Code, is amended to read as follows:

Sec. 107.016. CONTINUED REPRESENTATION; DURATION OF APPOINTMENT.

In a suit filed by a governmental entity in which termination of the parent-child relationship or appointment of the entity as conservator of the child is requested;

(1) ~~[7]~~ an order appointing the Department of Family and Protective ~~[and Regulatory]~~ Services as the child's managing conservator may provide for the continuation of the appointment of the guardian ad litem or attorney ad litem for the child for any period set by the court; and

(2) an attorney appointed under this subchapter to serve as an attorney ad litem for a parent or an alleged father continues to serve in that capacity until the earliest of:

(A) the date the suit affecting the parent-child relationship is dismissed;

(B) the date all appeals in relation to any final order terminating parental rights are exhausted or waived; or

(C) the date the attorney is relieved of the attorney's duties or replaced by another attorney after a finding of good cause is rendered by the court on the record.

SECTION 3. Section 109.002(a), Family Code, is amended to read as follows:

(a) An appeal from a final order rendered in a suit, when allowed under this section or under other provisions of law, shall be as in civil cases generally under the Texas Rules of Appellate Procedure. An appeal in a suit in which termination of the parent-child relationship is in issue shall be given precedence over other civil cases and shall be accelerated by the appellate courts. The procedures for an accelerated appeal under the Texas Rules of Appellate Procedure apply to an appeal in which the termination of the parent-child relationship is in issue.

SECTION 4. Sections 263.405(a), (b), and (c), Family Code, are amended to read as follows:

(a) An appeal of a final order rendered under this subchapter is governed by the procedures [~~rules of the supreme court~~] for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure [~~and the procedures provided by this section~~]. The appellate court shall render its final order or judgment with the least possible delay.

(b) A final order rendered under this subchapter must contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined: "A PARTY AFFECTED BY THIS ORDER HAS THE RIGHT TO APPEAL. AN APPEAL IN A SUIT IN WHICH TERMINATION OF THE PARENT-CHILD RELATIONSHIP IS SOUGHT IS GOVERNED BY THE PROCEDURES FOR ACCELERATED APPEALS IN CIVIL CASES UNDER THE TEXAS RULES OF APPELLATE PROCEDURE. FAILURE TO FOLLOW THE TEXAS RULES OF APPELLATE PROCEDURE FOR ACCELERATED APPEALS MAY RESULT IN THE DISMISSAL OF THE APPEAL." [~~Not later than the 15th day after the date a final order is signed by the trial judge, a party who intends to request a new trial or appeal the order must file with the trial court:~~

~~[(1) a request for a new trial; or~~

~~[(2) if an appeal is sought, a statement of the point or points on which the party intends to appeal.]~~

(c) The supreme court shall adopt rules accelerating the disposition by the appellate court and the supreme court of an appeal of a final order granting termination of the parent-child relationship rendered under this subchapter. [~~A motion for a new trial, a request for findings of fact and conclusions of law, or any other post trial motion in the trial court does not extend the deadline for filing a notice of appeal under Rule 26.1(b), Texas Rules of Appellate Procedure, or~~

~~the deadline for filing an affidavit of indigence under Rule 20, Texas Rules of Appellate Procedure.]~~

SECTION 5. Sections 263.405(b-1), (d), (e), (f), (g), (h), and (i), Family Code, are repealed.

SECTION 6. The Supreme Court of Texas shall adopt rules of appellate procedure as required by Section 263.405(c), Family Code, as amended by this Act, as soon as practicable after the effective date of this Act, but not later than March 1, 2012.

SECTION 7. Section 107.013(e), Family Code, as added by this Act, and Section 107.016, Family Code, as amended by this Act, apply only to a suit affecting the parent-child relationship pending in a trial court on or filed on or after the effective date of this Act.

SECTION 8. Sections 109.002(a) and 263.405(a) and (b), Family Code, as amended by this Act, apply only to a final order rendered on or after the effective date of this Act. A final order rendered before the effective date of this Act is governed by the law in effect on the date the order was rendered, and the former law is continued in effect for that purpose.

SECTION 9. This Act takes effect September 1, 2011.

Rule 20. When Party is Indigent

20.1. Civil Cases

(a) *Establishing Indigence.*

(1) By Certificate. If the appellant proceeded in the trial court without advance payment of costs pursuant to a certificate under Texas Rule of Civil Procedure 145(c) confirming that the appellant was screened for eligibility to receive free legal services under income guidelines used by a program funded by Interest on Lawyers Trust Accounts or the Texas Access to Justice Foundation, an additional certificate may be filed in the appellate court confirming that the appellant was rescreened after rendition of the trial court's judgment and again found eligible under program guidelines. A party's affidavit of inability accompanied by the certificate may not be contested.

(2) By Affidavit. A party who cannot pay the costs in an appellate court may proceed without advance payment of costs if:

(A) the party files an affidavit of indigence in compliance with this rule;

(B) the claim of indigence is not contestable, is not contested, or, if contested, the contest is not sustained by written order; and

(C) the party timely files a notice of appeal.

(3) By Presumption of Indigence. In a suit filed by a governmental entity in which termination of the parent-child relationship or managing conservatorship is requested, a parent who the trial court has determined is indigent is presumed to remain indigent for the duration of the suit and any subsequent appeal, as provided by section 107.013 of the Family Code, and is also presumed to be indigent for the purpose of proceeding in the appellate court without advance payment of costs. The parent shall file with the appellate court a sworn or certified copy of the order appointing the parent's attorney pursuant to section 107.013 of the Family Code with or before the notice of appeal; however, if the order of appointment is not signed until after the filing of the notice of appeal, the parent shall file it within ten days of the date the order appointing the parent's attorney is signed.

...

(c) When and Where Affidavit Filed.

(1) Appeals. An appellant must file the affidavit of indigence in the trial court with or before the notice of appeal. The prior filing of an affidavit of indigence in the trial court pursuant to Texas Rule of Civil Procedure 145 does not meet the requirements of this rule, which requires a separate affidavit and proof of current indigence, except in cases in which a presumption of indigence has been established as provided by Rule 20.1(a)(3). An appellee who is required to pay part of the cost of preparation of the record under Rule 34.5(b)(3) or 34.6(c)(3) must file an affidavit of indigence in the trial court within 15 days after the date when the appellee becomes responsible for paying that cost.

(2) Other Proceedings. In any other appellate court proceeding, except in cases in which a presumption of indigence has been established as provided by Rule 20.1(a)(3), a petitioner must file the affidavit of indigence in the court in which the proceeding is filed, with or before the document seeking relief. A respondent who requests preparation of a record in connection with an appellate court proceeding must file an affidavit of indigence in the appellate court within 15 days after the date when the respondent requests preparation of the record, except in cases in which a presumption of indigence has been established as provided by Rule 20.1(a)(3).