

Vernon's Texas Statutes and Codes Annotated

Family Code (Refs & Annos)

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

Subtitle B. Suits Affecting the Parent-Child Relationship

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

Subchapter C. Hearing and Order

V.T.C.A., Family Code § 161.211

§ 161.211. Direct or Collateral Attack on Termination Order

Currentness

(a) Notwithstanding [Rule 329, Texas Rules of Civil Procedure](#), the validity of an order terminating the parental rights of a person who has been personally served or who has executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in a child or whose rights have been terminated under [Section 161.002\(b\)](#) is not subject to collateral or direct attack after the sixth month after the date the order was signed.

(b) Notwithstanding [Rule 329, Texas Rules of Civil Procedure](#), the validity of an order terminating the parental rights of a person who is served by citation by publication is not subject to collateral or direct attack after the sixth month after the date the order was signed.

(c) A direct or collateral attack on an order terminating parental rights based on an unrevoked affidavit of relinquishment of parental rights or affidavit of waiver of interest in a child is limited to issues relating to fraud, duress, or coercion in the execution of the affidavit.

Credits

Added by Acts 1997, 75th Leg., ch. 600, § 1, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 601, § 2, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 1390, § 19, eff. Sept. 1, 1999.

[Notes of Decisions \(59\)](#)

O'CONNOR'S ANNOTATIONS

In re D.S., 602 S.W.3d 504, 509 (Tex.2020). “We hold §161.211(c)’s plain language forecloses a collateral attack premised on an erroneous home-state determination even if that determination implicates a trial court’s subject-matter jurisdiction. ... By enacting §161.211(c), our Legislature made a clear policy choice: when parents choose to relinquish their parental rights in accordance with the ‘exacting’ and ‘detailed’ statutory requirements for doing so, a collateral attack is limited to specific

grounds relating to whether the relinquishment was knowing and voluntary. Chapter 152 jurisdictional defects are not one of the enumerated grounds for challenging an order effectuating a voluntary termination of parental rights.”

In re K.S.L., 538 S.W.3d 107, 111 (Tex.2017). “The parents contend [Fam. Code] §161.211(c) should only apply to challenges to the *affidavit*, rather than all challenges to the *order* of termination. We cannot agree because the plain wording of the statute applies to attacks on any ‘order terminating parental rights’ and is not limited only to attacks on the affidavit on which the order is based. *At 113*: The parents, in signing the affidavits of relinquishment, voluntarily and knowingly waived their parental rights. We have recognized that ‘[w]hile a parental rights termination proceeding encumbers a value far more precious than any property right, this right may be waived through statutes such as ... [Fam. Code] §161.103.’ *At 115*: [T]here are many safeguards included in the statutory elements for an affidavit of relinquishment, and the affidavit is itself strong evidence that termination is in the child’s best interest. In addition, the parent may appeal on grounds that the affidavit was secured by fraud, duress, or coercion as provided by §161.211(c), grounds directed at whether the parent’s waiver of parental rights was knowing and voluntary. We cannot say that the Legislature, in setting out these detailed procedures that are intended to ensure that terminations are knowing and voluntary, while also addressing the need for finality and promptness in these proceedings, has imposed a procedure that violates federal due process.”

In re E.R., 385 S.W.3d 552, 566 (Tex.2012). “A complete failure of service deprives a litigant of due process and a trial court of personal jurisdiction; the resulting judgment is void and may be challenged at any time. ... Accordingly, [§161.211] cannot place a temporal limit on a challenge to a void judgment filed by a defendant who did not receive the type of notice to which she was constitutionally entitled. Despite the Legislature’s intent to expedite termination proceedings, it cannot do so at the expense of a parent’s constitutional right to notice.”

In re J.H., 486 S.W.3d 190, 198 (Tex.App.--Dallas 2016, no pet.). Mother “challenges whether sufficient evidence supports the trial court’s finding that terminating Mother’s parental rights was in the children’s best interest. [F]amily code §161.211(c) bars Mother’s argument. [¶] The order terminating Mother’s parental rights is based on her relinquishment affidavit. Accordingly, Mother cannot make any arguments on appeal except arguments relating to fraud, duress, or coercion in the execution of the affidavit. Mother’s [argument] does not relate to fraud, duress, or coercion in the execution of the affidavit. Accordingly, §161.211(c) defeats her [argument] on appeal.”

In re K.D., 471 S.W.3d 147, 160 (Tex.App.--Texarkana 2015, no pet.). “Mother ... argues that the Affidavit [executed pursuant to Fam. Code §161.103] was obtained via constructive fraud.... [C]onstructive fraud requires proof of a fiduciary or confidential relationship between the parties. Neither the Department, nor its agents, nor the child’s ad litem occupy a confidential or fiduciary relationship with a parent in a parental-rights termination case. While the Department may provide services to parents as part of a family service plan, the Department acts to secure the best interests of the child rather than the parent.”

Moore v. Brown, 408 S.W.3d 423, 433 (Tex.App.--Austin 2013, pet. denied). Birth parents’ “central contention ... is that ... they executed their affidavits relinquishing parental rights less than 48 hours after the child’s birth, and contrary to the requirements of [Fam. Code] §161.103. [Birth parents] urge that this defect not only negates the sole statutory ground for the district court’s termination order, but renders the affidavit a ‘nullity’ or ‘void’ for all purposes and effectively returns the parties to the status quo that existed before the affidavits were executed. *At 436*: Although [birth parents] insist that the phrase ‘person who has executed an affidavit of relinquishment of parental rights’ [under Fam. Code §161.211(a)] presumes and requires ‘an affidavit of relinquishment of parental rights’ that complies with each of the requirements of §161.103, subsection (a) does not actually say this.... *At 438*: [Further, §161.211(c)’s] limitation of ... ‘issues relating to fraud, duress, or coercion in the execution of the affidavit’ proscribes challenges based solely on a complaint that the affidavit violated one of §161.103’s requirements. Subsection (c) thus bars ... claims seeking to invalidate or set aside the termination order on the ground that [the] affidavits of relinquishment were executed within the 48-hour waiting period. *At 439*: [Consequently,] we have concluded that [birth parents’] waivers of their parental rights to [child] must be given effect.” See also *In re C.O.G.*, No. 13-12-00577-CV, 2013 WL 6583971 (Tex.App.--Corpus Christi 2013, no pet.) (memo op.; 12-12-13) (termination order could not be challenged on the basis that it didn’t comply with §161.103’s two-credible-witnesses requirement).

In re Bullock, 146 S.W.3d 783, 790-91 (Tex.App.--Beaumont 2004, orig. proceeding). “Essentially, §161.211’s six month limitation on attacks on termination rulings is an affirmative defense.... The defense of limitations does not bar a plaintiff from filing a lawsuit. As such, [mother] was required to plead and present the affirmative defense of limitations, but failed to

do so. Coupled with our finding that §161.211 is not a jurisdictional prerequisite to suit, the procedural default by [mother] at the ... bill of review hearing results in our concluding that [mother and stepfather] have failed to establish ‘that the facts and law permit the trial court to make but one decision.’” See also *In re M.Y.W.*, No. 14-06-00185-CV, 2006 WL 3360482 (Tex.App.--Houston [14th Dist.] 2006, pet. denied) (memo op.; 11-21-06). But see *In re C.T.C.*, 365 S.W.3d 853, 858 (Tex.App.--Dallas 2012, pet. granted, judgment vacated w.r.m.) (six-month deadline in §161.211(a) is bar to or preclusion of challenge to termination order more than six months after termination order is signed; it is not plea in avoidance).

V. T. C. A., Family Code § 161.211, TX FAMILY § 161.211

Current through the end of the 2021 Regular Session and Chapters 1 to 6 of the Second Called Session of the 87th Legislature. Some statute sections may be more current, but not necessarily complete through the whole Session. See credits for details.

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