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May 31, 2019

Mr. Charles L. "Chip" Babcock
Chair, Supreme Court Advisory Committee
Jackson Walker L.L.P.
cbabcock@jw.com

Re: Referral of Rules Issues

Dear Chip:

The Supreme Court requests the Advisory Committee to study and make recommendations on the following matters. Some require immediate attention, while others are longer-range initiatives. I have provided a complete list for the Committee's information.

Several matters arise from legislation passed by the 86th Legislature, which, if signed by the Governor, takes effect immediately or on September 1, 2019. The Committee should conclude its work on them by its June 21, 2019 meeting. Many of the changes may be simple and straightforward. They are:

Joint Judicial Campaign Activity. The State Commission on Judicial Conduct has disciplined judges for joint campaign activities based on Canons 2B and 5(2) of the Code of Judicial Conduct. Canon 2B states in part: "A judge shall not allow any relationship to influence judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge." Canon 5(2) states in part: "A judge or judicial candidate shall not authorize the public use of his or her name endorsing another candidate for any public office, except that either may indicate support for a political party." HB 3233, passed by the 86th Legislature, adds Election Code § 253.1612, which states that the "Code of Judicial Conduct may not prohibit, and a judicial candidate may not be penalized for, a joint campaign activity conducted by two or more judicial candidates." The Committee should consider whether the text of the rules should be changed or a comment added to reference or restate the statute.

MDL Applicability. Government Code §§ 74.161-.201 create the Judicial Panel on Multidistrict Litigation, and Rule of Judicial Administration 13 governs its operation. SB 827, § 2 adds § 74.1625 to prohibit the MDL panel from transferring two types of actions: (1) DTPA actions (unless specifically allowed under the DTPA) and (2) Texas Medicaid Fraud Prevention Act actions. The amendment does not direct that Rule 13 be changed, but the Committee should consider whether the text of Rule 13.1 should be changed and a comment added to reference or restate the statute.

Expedited Actions. Rule of Civil Procedure 169 implements Government Code § 22.004(h). SB 2342 adds § 22.004(h-1), which calls for rules, "[i]n addition to the rules adopted under [s]ubsection (h), . . . to promote the prompt, efficient, and cost-effective resolution of civil actions filed in county courts at law in which the amount in controversy does not exceed $250,000 . . . balanc[ing] the need for lowering discovery costs in these actions against the complexity of and discovery needs in these actions." Rules necessary to implement this change must be adopted by January 1, 2021. But the statute makes various other changes that take effect September 1, 2019. The Committee should consider whether other rules should be changed, such as Rules of Civil Procedure 47, 224, and 500.3, or comments added to reference or restate the statute by that date.

Dismissal. Rule of Civil Procedure 91a provides for the dismissal of baseless causes of action, implementing Government Code § 22.004(g). Civil Practice and Remedies Code § 30.021 mandates an award of costs and attorney fees to the prevailing party. HB 3300 amends § 30.021 to make an award discretionary and applies to cases commenced on or after September 1, 2019. The Committee should consider whether other rules should be changed or comments added to reference or restate the statute by that date.

Notice of Appeal. SB 891, § 7.02, adds Civil Practice and Remedies Code § 51.017 to require service of notice of appeal on court reporters. The Committee has already considered this change. The statute is effective September 1, 2019.

One other matter arising from legislation passed by the 86th Legislature requires rule-making by January 1, 2020:

Public Guardians. Section 24 of SB 667, passed by the 86th Legislature, adds Subchapter G-1 to Chapter 1104 of the Estates Code, which governs public guardians and directs the Court "in consultation with the Office of Court Administration . . . and the presiding judge of the statutory probate courts . . . [to] adopt rules necessary to implement this subchapter." Section 67 of the bill provides that the Court "shall adopt rules necessary to implement Subchapter G-1, . . . including rules governing the transfer of the guardianship of the person or of the estate of a ward, or both, if appropriate, to an office of public guardian established under that subchapter or a public guardian contracted under that subchapter." OCA and Judge Guy Herman will draft these rules, and the Committee should review them.

Other matters arising from legislation passed this Session set extended deadlines for rule-making:

Citation. SB 891, passed by the 86th Legislature, amends several state statutes to address citation. The bill adds Government Code § 72.034 directing the Court "by rule [to] establish procedures for the submission of public information to the public information Internet website by a person who is required to publish the information" by June 1, 2020. The bill also adds Civil Practice and Remedies Code § 17.033 requiring the Court to "adopt rules to provide for the substituted service of citation by an electronic communication sent to a defendant through a social media presence" by December 31, 2020. The Committee should make recommendations.

Protective Order Registry Forms. SB 325 requires the Office of Court Administration to create an online registry for family violence protective orders and applications and to permit public access to certain information about the protective orders by June 1, 2020. The bill also adds Government Code § 72.158 directing the Court to "prescribe a form for use by a person requesting a grant or removal of public access" to the information and permits the Court to prescribe related procedures. The bill does not specify a deadline for the forms. The Committee should recommend appropriate forms.

Criminal Forms. HB 51 adds Government Code § 72.0245 requiring the Office of Court Administration to create a number of forms for use in criminal actions, such as forms to waive a jury trial and enter a plea of guilty or nolo contendere, and forms for a trial court to admonish a defendant before accepting a guilty or nolo contendere plea. It also requires the Supreme Court to "by rule . . . set the date by which all courts with jurisdiction over criminal actions must adopt and use the forms created . . . ." OCA will work with Holly Taylor, the Court of Criminal Appeals' Rules Attorney, to formulate a plan to develop the forms. The Committee should review the forms when drafted. The statutory deadline is September 1, 2020.

Procedures Related to Mental Health. SB 362 directs the Supreme Court to "adopt rules to streamline and promote the efficiency of court processes under Chapter 573, Health and Safety Code" and "adopt rules or implement other measures to create consistency and increase access to the judicial branch for mental health issues." The Judicial Commission on Mental Health will draft these rules, and the Committee should review them.

CPS and Juvenile Cases. HB 2737 requires the Court and its Children's Commission to "annually . . . provide guidance to judges who preside over child protective services cases or juvenile cases," and requires the Court to "adopt the rules necessary to accomplish the purpose of this section." The statute sets no deadline. The Children's Commission is developing an implementation plan. The Committee should review any rules proposed by the Commission.

Transfer on Death Deed Forms. SB 874 requires the Court to promulgate "a form for use to create a transfer on death deed and a form for use to create an instrument for revocation of a transfer on death deed." The statute sets no deadline. The Probate Forms Task Force will develop these and other forms for the Committee's review.

Finally, there are several matters unrelated to recent legislation on which the Court requests the Committee's recommendations.

Suits Affecting the Parent-Child Relationship. In response to HB 7, passed by the 85th Legislature, the Court appointed the HB 7 Task Force to draft the rules required by the statute and to make any other recommendations for expediting and improving the trial and appeal of cases governed by Family Code Chapter 264. On November 27, 2017, the HB 7 Task Force submitted a report and recommendations to the Court ("Phase I Report"). The Committee studied the Phase I Report and made recommendations to the Court. Subsequently, on December 31, 2018, the Task Force submitted a second report and recommendations to the Court ("Phase II Report"). The Phase II Report is attached to this letter. The Committee should review the Phase II Report and make recommendations.

Out-of-Time Appeals in Parental Rights Termination Cases. A parent whose appeal from a judgment terminating his rights in a child is untimely may contend that the delay is not his fault and may blame ineffective assistance of counsel. This can complicate and extend the appellate process. The Committee should consider rules to address this situation, including:

- a narrow late-appeal procedure;
- an abate-and-remand procedure like the one proposed in the Phase II Report;
- a habeas- or bill-of-review-style procedure; and
- prophylactic procedures not considered in the Phase I or Phase II Reports, such as a requirement that trial counsel stay on until the notice of appeal has been filed.

Registration of In-House Counsel. A majority of states require that an attorney employed as in-house counsel and residing in one state but licensed in another either register, obtain a limited license, or be fully licensed to practice in the state of residence. The Board of Law Examiners has approved new Rule 23 of the Rules Governing Admission to the Bar, requiring only registration of in-house counsel. The proposed rule is attached. The Committee should review the rule and make recommendations.

Civil Rules in Municipal Courts. Municipal Court Judge Ryan Henry has proposed that procedural rules be adopted for civil cases in municipal courts. The Committee should set up a process for considering Judge Henry's proposals and making recommendations.

Motions for Rehearing in the Courts of Appeals. Justice Christopher and the State Bar Court Rules Committee have each proposed amendments to Rule of Appellate Procedure 49.3, which are attached. The Committee should consider both and make recommendations.

Parental Leave Continuance Rule. In the attached memorandum, the State Bar Court Rules Committee proposes a parental leave continuance rule. The State of Florida has studied such a procedure in depth. The Committee should consider that work and the proposal and make recommendations.

As always, the Court is grateful for the Committee's counsel and your leadership.

Sincerely,

Nathan L. Hecht
Chief Justice

Attachments

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 17-9070

REPORT OF THE HOUSE BILL 7 TASK FORCE FOR PROCEDURAL RULES IN SUITS AFFECTING THE PARENT–CHILD RELATIONSHIP FILED BY A GOVERNMENTAL ENTITY

Phase II

Submitted to the Supreme Court of Texas on December 31, 2018

TO THE HONORABLE SUPREME COURT:

INTRODUCTION

The House Bill 7 Task Force for Procedural Rules in Suits Affecting the Parent-Child Relationship Filed by a Governmental Entity ("HB 7 Task Force") was established on July 10, 2017 by the Supreme Court of Texas (hereinafter "Supreme Court"), pursuant to Misc. Docket No. 17-9070. The HB 7 Task Force was charged with the responsibility to advise the Supreme Court regarding rules to be adopted or revised for trial and post-trial proceedings in cases involving termination of the parent-child relationship.

The need for a revision of the rules arose from House Bill 7, enacted by the 85th Legislature (Act of May 26, 2017, 85th Leg., R.S., ch. 317), effective September 1, 2017. House Bill 7 added Section 105.002(d) of the Family Code, directing the Department of Family and Protective Services ("Department") and the Supreme Court of Texas Children's Commission ("Children's Commission") to consider whether broad-form or specific jury questions should be required in Suits Affecting the Parent Child Relationship (SAPCR) filed by the Department. House Bill 7 also added Section 263.4055 of the Texas Family Code (hereinafter "Family Code") directing the Supreme Court to establish procedures to address the conflict between the filing of a motion for new trial and the filing of an appeal of a final order rendered under Chapter 263 of the Family Code, as well as the period of time, including an extension of at least 20 days, for a court reporter to submit the reporter's record of a trial to an appellate court following a final order rendered under Chapter 263. In addition, the Supreme Court requested that the HB 7 Task Force examine possible reasons for the increase in parental termination appeals and make recommendations on how to address the increase. Supreme Court of Texas Misc. Order 17-9070 directed the HB 7

Task Force to advise the Court on the rules required by House Bill 7 as well as other recommendations deemed appropriate to expedite and improve the trial and appeal of cases governed by Family Code Chapter 263 no later than December 1, 2017. The HB 7 Task Force submitted a report on November 27, 2017. *See Appendix A.* House Bill 7 required recommendations to be submitted to the Texas Legislature no later than December 31, 2017, and that report was submitted on December 15, 2017.

The Supreme Court of Texas, in Misc. Order 17-9070, appointed the following persons to the HB 7 Task Force:

Hon. Dean Rucker, Chair, Presiding Judge, Seventh Administrative Judicial Region of Texas, Midland

Hon. Eva Guzman, Court Liaison to the HB 7 Task Force and Children's Commission's Chair, Justice, Supreme Court of Texas, Austin

Hon. Debra H. Lehrmann, Justice, Supreme Court of Texas, Austin

Tina Amberboy, Executive Director, Supreme Court Children's Commission, Austin

Mark Briggs, Attorney, El Paso

Hon. Ada Brown, Justice, 5th Court of Appeals, Dallas

Audrey Carmical, General Counsel, Department of Family and Protective Services, Austin

William B. Connolly, Attorney, Houston

Lawrence M. Doss, Attorney, Lubbock

Anna Ford, Director of Litigation, Department of Family and Protective Services

Sandra D. Hachem, Assistant County Attorney for Harris County, Houston

Lisa Bowlin Hobbs, Attorney, Austin

Anissa Johnson, Attorney, Office of Court Administration, Austin

Hon. Sandee Marion, Chief Justice, 4th Court of Appeals, San Antonio

Hon. Michael Massengale, Justice, 1st Court of Appeals, Houston

Dylan Moench, Staff Attorney, Supreme Court Children's Commission, Austin

Richard R. Orsinger, Attorney, San Antonio

Hon. Paul Rotenberry, Judge, 326th District Court, Abilene

Georganna L. Simpson, Attorney, Dallas

Hon. John J. Specia, Judge (Ret.), San Antonio

Hon. Angela Tucker, Judge, 199th District Court, McKinney

Luz A. ("Lucy") Williamson, Attorney, Edinburg

Martha Newton, Rules Attorney, Supreme Court of Texas, Austin

RECOMMENDATIONS

The HB 7 Task Force recommended the following in its November 2017 Report to the Supreme Court:

1. Amend Texas Rule of Civil Procedure 277 to eliminate the use of broad-form jury questions in termination of parental rights cases.

The HB 7 Task Force recommended that the Supreme Court, as an exercise of its rulemaking authority, require granulated charges in parental termination cases and that Texas Rule of Civil Procedure (Tex. R. Civ. P.) 277 should be amended to eliminate the use of broad-form jury questions in termination of parental rights cases. The HB 7 Task Force also crafted a pattern jury charge (PJC) to effectuate the move from broad-form submission to separate questions on the two elements (grounds and best interest) required for termination under Sections 161.001(b)(1) and (2), Texas Family Code.

The Court referred the suggested rule change to the Supreme Court Advisory Committee (SCAC) for consideration. The SCAC considered the HB 7 Task Force recommendation on Friday, September 28, 2018 and voted to support the Rule 277 language submitted by the Task Force in its November 2017 Report, but declined to support the Task Force PJC suggestions. Rather, the SCAC voted to support its own PJCs and on November 14, 2018, Judge Dean Rucker, Chair of the HB 7 Task Force, along with the Executive Director of the Children's Commission submitted a memo to the Supreme Court General Counsel articulating concerns about the SCAC PJC recommendations. *See Appendix B*. This matter is pending before the Supreme Court.

2. Amend Texas Rule of Appellate Procedure 28.4(b) to require that Notice of Appeal should be provided to the court reporter who prepared the record and to the trial judge who heard the case.

In its November 2017 report, the Task Force further recommended that Texas Rule of Appellate Procedure (Tex. R. App. P.) 28.4(b) be amended to require that notice of appeal should be provided to the court reporter(s) who prepared the record(s) and to the trial judge who heard the case. *See Appendix A, Page 19*. The HB 7 Task Force also determined, at the time, that there was no conflict between the rules related to a motion for new trial and the filing of a notice of appeal and thus no related rule amendments were recommended when the original report was submitted on November 27, 2017. *See Appendix A, Page 7*. However, the motion for new trial was revisited by the HB 7 Task Force during Phase II as part of its discussion related to ineffective assistance of counsel.

3. Amend Texas Rule of Appellate Procedure 35.1 to allow an extension of time for Filing of the Court Reporter Record

Finally, the November 2017 report recommended that the Supreme Court extend the time to file the court reporter record from 10 to 15 days in all accelerated appeals. *See Appendix A, Page 20*.

4. Additional Issues Considered by the Task Force in 2018

Throughout 2018, the HB 7 Task Force continued to meet to discuss: (1) a parent's right to counsel on appeal as well as notice of the right to appeal, and what procedures might be appropriate to ensure that appeals are pursued at the parent's direction; (2) procedural issues related to motions for new trial and post-trial matters, such as a meaningful opportunity to establish a record to support a claim of ineffective assistance of counsel; (3) the appropriateness of *Anders*-style procedure or alternative methods for appellate counsel to indicate that a parental-termination appeal lacks merit; and (4) the increase in parental termination appeals. All matters were assigned to two subcommittees chaired by Justice Michael Massengale (First Court of Appeals) and Chief Justice Sandee Marion (Fourth Court of Appeals). The subcommittees' recommendations were adopted by the HB 7 Task Force on October 17, 2018 and are outlined below.

(1) Indigent Parent's Right to Counsel on Appeal, Notice of Right to Appeal, and Show of Authority to Appeal

An indigent parent in a parental-termination proceeding is entitled to representation of counsel until the case is dismissed, all appeals are exhausted or waived, or the attorney is relieved or replaced.[1]

The HB 7 Task Force proposes that a defendant in a parental-termination suit be notified in the citation about the right to counsel, including the right to counsel on appeal. This will provide an additional measure of notice in the event appointed counsel later declines to pursue an appeal due to abandonment of the case by the parent. The admonition could be added to the required notice and take the following form:

> "You have the right to be represented by an attorney. If you are indigent and unable to afford an attorney, you have the right to request the appointment of an attorney by contacting the court at [address], [telephone number]. If you appear in opposition to the suit, claim indigence, and request the appointment of an attorney, the court will require you to sign an affidavit of indigence and the court may hear evidence to determine if you are indigent. If the court determines you are indigent and eligible for appointment of an attorney, the court will appoint an attorney to represent you."
>
> "You are further notified that if a judgment is rendered against you, you have a right to appeal the judgment to the court of appeals and to the Supreme Court of Texas, and if you are indigent an attorney will be appointed to conduct the appeal at no cost to you."

To the extent the Supreme Court is currently considering a revision of Rule 99 to include standard form citations, the Task Force proposes the creation of a customized form citation, in English and Spanish (and with an internet citation to translations in other languages), to be used in parental

[1] Tex. Fam. Code § 107.016(3)

termination cases. Such a citation could have language customized to address the availability of default judgments in parental-termination cases.

The filing of a notice of appeal starts the process of immediately preparing a record, for which a court reporter might not be compensated.[2] To avoid initiating the preparation of an appellate record in circumstances when a terminated parent may not be actually seeking to challenge a final order, the HB 7 Task Force recommends an amendment to Rule 28.4(c) to require that a notice of appeal include an attorney certification that "the attorney consulted with the appellant and the appellant has directed the attorney to pursue the appeal." *See Appendix C, Rule 28.4(c)*. The Task Force further proposes a similar certification in a petition for review filed in the Supreme Court. *See Appendix D, Rule 53.2(l)*. As an enforcement mechanism, the Task Force proposes borrowing from the procedure in Texas Rule of Civil Procedure 12 to challenge an attorney's authority but eliminating the requirement of a sworn motion.[3]

(2) <u>Motion for New Trial and Ineffective Assistance of Counsel (IAC)</u>

The law applicable to claims of ineffective assistance of counsel (IAC) is heavily influenced by the development of the law in criminal contexts. There is a critical distinction between the procedural universes applicable to IAC claims in criminal and civil contexts. To the extent IAC law as implemented in Texas makes it very difficult to effectively advance an IAC claim on direct appeal,[4] the Court of Criminal Appeals has explained that direct appeal is not the preferred method of raising IAC, and post-conviction habeas corpus is the preferred procedural avenue.[5] Thus a person convicted of a crime gets a second bite at the IAC apple, albeit without a right to appointed counsel. By contrast, the exhaustion of a direct appeal in a parental-termination case is essentially the end of the procedural road, at least to the extent a terminated parent has no other procedural opportunity to collaterally attack a final order of termination.

The IAC standard has two elements: (1) deficient professional conduct, and (2) prejudice.[6] A major limitation on IAC claims under the *Strickland* standard is that because attorneys may have strategic reasons at the time they make decisions that may be second-guessed in hindsight, they are presumed to have acted reasonably[7] and generally will not be held ineffective unless they have had an opportunity to explain themselves.[8] In other words, an IAC claim generally must be supported by evidence beyond the mere record of the underlying proceeding. The successful IAC claimant usually needs a supplemental record consisting of at least affidavits, and often an evidentiary hearing.

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[2] Tex. R. App. P. 28.4(b)(1)

[3] Tex. R. Civ. P. 12

[4] *See e.g., Trevino v. Thaler, 569 U.S. 413, 417, 133 S. Ct. 1911, 1915 (2013); Robinson v. State, 16 S.W.3d 808, 811 (Tex. Crim. App. 2000)*

[5] *Mata v. State*, 226 S.W. 3d 425, 430 n. 14 (Tex. Crim. App. 2007); Robinson, 16 S.W.3d at 810

[6] *In re M.S.*, 115 S.W.3d 534, 545 (Tex. 2003) (citing *Strickland v. Washington,* 466 U.S. 668, 104 S. Ct. 2052 (1984)).

[7] *Id.*

[8] *See Walker v. Texas Dept. of Family & Protective Servs., 312 S.W.3d 608, 623 (Tex. App.—Houston [1st Dist.] 2009 pet. denied*

Post-judgment timelines in parental-termination cases provide a limited opportunity for a lawyer to evaluate potential IAC claims and build a record to support them, particularly when juxtaposed against the likelihood that the lawyer evaluating an IAC claim has been newly appointed at or after entry of a final order. If an appellate lawyer is appointed at the same time the final order is entered, to the extent there will be an IAC issue raised, the lawyer has to determine the grounds for IAC, ascertain how to create a sufficient evidentiary record to prove IAC, file the motion for new trial within 30 days of the order, and get the evidence into the record either in written form or by means of an evidentiary hearing before the 75th day, when the motion for new trial is denied by operation of law if not ruled upon earlier.[9]

Initially, the Task Force considered a proposal to amend Rule 329b of the Texas Rules of Civil Procedure for a suit for termination of the parent-child relationship or a suit affecting the parent child relationship seeking managing conservatorship filed by a governmental entity. The proposal required that the request for preparation of a reporter's record be made within 20 days of a final order in the case. The proposal then required that the motion for new trial be filed prior to or within 30 days after the filing of the completed reporter's record. The subcommittee also recommended an amendment to Texas Rule of Appellate Procedure 38.6(a) which would provide that if a motion for new trial was timely filed as provided, the appellant's brief must be filed within 20 days after the later of (1) the date the clerk's record was supplemented to include post-judgment filings; or (2) the date the reporter's record was supplemented to include post-judgment proceedings. Finally, the proposal provided for an amendment to Rule 6 of the Texas Rules of Judicial Administration to require that the intermediate appellate courts must bring a final disposition of an appeal within 180 days after the later of (1) the date the clerk's record was filed; or (2) the date the reporter's record was filed.

After discussion of the proposal at the October 17, 2018 Task Force meeting, the Task Force rejected the proposal. The Task Force then discussed and adopted a more facile proposal that would provide an opportunity for the limited abatement of an appeal for the purpose of holding an evidentiary hearing in support of an IAC claim. The abatement would not exceed twenty days and would toll the running of the 180-day period for the appellate court to bring the appeal to final disposition as required by Texas Rule of Judicial Administration 6.2(a). *See Appendix C, Rule 28.4(d).*

(3) *Anders* / Certificate of No Merit

The HB 7 Task Force recognizes that there is significant momentum behind the *Anders* practice in the appellate courts,[10] and the Supreme Court gave no indication that it was seeking to eliminate the practice. The Supreme Court's charge directed the Task Force to draft *Anders* brief procedures in appeals of parental termination and child protection cases for inclusion in the Rules of Appellate Procedure. The Task Force was also asked to propose a rule addressing the inconsistency presented by the *In re P.M.* decision relating to the right to counsel through Supreme Court review in parental termination appeals in contrast to analogous procedures in the criminal-law context, in which there is

[9] Tex. R. Civ. P. 329b(a); Tex. R. Civ. P. 329b(c)

[10] *E.g., In re P.M., 520 S.W.3d 24, 27 (Tex. 2016)*

no statutory right to continued representation through the petition stage at the Court of Criminal Appeals.

Additional proposed amendments to Rules 28.4 and 53.2 provide a suggested procedure for attorney handling and appellate disposition of "frivolous parental termination and child protection appeals." *See Appendix C, Rule 28.4(f), (g) and (h) and Rule 53.2(m)*. Amendments to these rules will resolve the *In re P.M.* dilemma by specifying that an appointed appellate lawyer invoking the frivolous-appeal procedure should not actually move to withdraw for that reason, nor should the court of appeals allow the attorney to withdraw solely for that reason. The proposed rule amendments otherwise codify the traditional *Anders* standard for explaining the basis for the attorney's conclusion that the appeal is frivolous, as well as the procedure for the appellant to file a *pro se* response. Proposed Rule 53.2(m) would allow counsel, after the court of appeals has determined the appeal to be frivolous, to adopt the brief filed in the court of appeals by reference in a petition for review with the Texas Supreme in lieu of the contents required by subparts (f)-(j) above.

The Task Force also submits with this report a "Parental Termination Brief Checklist" suitable for publication on appellate court websites to guide the evaluation of parental-termination appeals and, if warranted, *Anders* briefs. *See Appendix E*.

(4) <u>Increase in Appeals/Opinion Templates</u>

HB 7 Task Force members discussed the increase in appellate filings in the intermediate appellate courts and the Texas Supreme Court during the initial phase of its work in 2017. The Task Force reviewed data on appellate filings since 2011 but did not arrive at a consensus for the reasons for the increase. At the Supreme Court's direction as the Task Force entered into Phase II of its work, the Task Force considered whether the Supreme Court should promote or adopt a template designed to produce shorter Court of Appeals opinions. To that end, a HB 7 subcommittee drafted several templates designed to streamline COA review of appeals. *See Appendix F*. Template A is used when the issue on appeal is limited to statutory grounds only. Template B is used when the issue on appeal is limited to the best interest of the child. Template C is used when the issues on appeal involve both statutory grounds and best interest. The templates are appropriate only when the complaints on appeal are the legal and/or factual sufficiency of the evidence to support a ground for termination and/or the best interest finding.

CONCLUSION

The members of the House Bill 7 Task Force are honored to have been entrusted with the opportunity to make recommendations to the Supreme Court on these post-trial issues. The discussions of this assembled body of distinguished jurists and attorneys were robust and enlightening. I trust that the Task Force has fully dispatched the charge of the Court. Should the Court determine that there are related issues that should be considered by this Task Force, we remain ready to be of service. Allow

me to express our gratitude for the privilege of assisting the Court in the exercise of its important role in overseeing the rules of procedure that govern litigation in the courts of our State.

DEAN RUCKER
Chair of the HB 7 Task Force

Phase II Report
Appendix A

IN THE SUPREME COURT OF TEXAS

Misc. Docket No. 17-9070

REPORT OF THE HOUSE BILL 7 TASK FORCE FOR PROCEDURAL RULES IN SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP FILED BY A GOVERNMENTAL ENTITY

Submitted to the Supreme Court of Texas on November 27, 2017

TO THE HONORABLE SUPREME COURT:

I. INTRODUCTION

The House Bill 7 Task Force for Procedural Rules in Suits Affecting the Parent-Child Relationship Filed by a Governmental Entity ("HB 7 Task Force") was established on July 10, 2017 by the Supreme Court of Texas (hereinafter "Supreme Court"), pursuant to Misc. Docket No. 17-9070. The HB 7 Task Force was charged with the responsibility to advise the Supreme Court regarding rules to be adopted or revised for trial and post-trial proceedings in cases involving termination of the parent–child relationship.

The need for a revision of the rules arose from House Bill 7, enacted by the 85th Legislature (Act of May 26, 2017, 85th Leg., R.S., ch. 317), effective September 1, 2017. House Bill 7 added Section 105.002(d) of the Family Code, directing the Department of Family and Protective Services ("Department") and the Supreme Court of Texas Children's Commission ("Children's Commission") to consider whether broad-form or specific jury questions should be required in Suits Affecting the Parent Child Relationship (SAPCR) filed by the Department. House Bill 7 also added Section 263.4055 of the Texas Family Code (hereinafter "Family Code") directing the Supreme Court to establish procedures to address the conflict between the filing of a motion for new trial and the filing of an appeal of a final order rendered under Chapter 263 of the Family Code, as well as the period of time, including an extension of at least 20 days, for a court reporter to submit the reporter's record of a trial to an appellate court following a final order rendered under Chapter 263. In addition, the Supreme Court requested that the HB 7 Task Force examine possible reasons for the increase in parental termination appeals and make recommendations on how to address the increase. Supreme Court of Texas Misc. Order 17-9070 directs the HB 7 Task Force to advise the Court on the rules required by House Bill 7 as well as other recommendations deemed appropriate to expedite and improve the trial and appeal of cases governed by Family Code Chapter 263 no later than December 1, 2017. In formulating the recommendations, the HB 7 Task Force is to be guided by the principle that proceedings under Chapter 263 should be expedited to minimize disruption and confusion in the lives of children and parents without precluding full consideration of the issues and their just and fair resolution. House Bill 7 requires recommendations to be submitted to the Texas Legislature no later than December 31, 2017.

The Supreme Court of Texas, in Misc. Order 17-9070, appointed the following persons to the HB 7 Task Force:

Hon. Dean Rucker, Chair, Presiding Judge, Seventh Administrative Judicial Region of Texas, Midland

Hon. Debra H. Lehrmann, Justice, Supreme Court of Texas, Austin

Tina Amberboy, Executive Director, Supreme Court Children's Commission, Austin

Mark Briggs, Attorney, El Paso

Hon. Ada Brown, Justice, 5th Court of Appeals, Dallas

Audrey Carmical, General Counsel, Department of Family and Protective Services, Austin

William B. Connolly, Attorney, Houston

Lawrence M. Doss, Attorney, Lubbock

Anna Ford, Director of Litigation, Department of Family and Protective Services

Sandra D. Hachem, Assistant County Attorney for Harris County, Houston

Lisa Bowlin Hobbs, Attorney, Austin

Anissa Johnson, Attorney, Office of Court Administration, Austin

Hon. Sandee Marion, Chief Justice, 4th Court of Appeals, San Antonio

Hon. Michael Massengale, Justice, 1st Court of Appeals, Houston

Dylan Moench, Staff Attorney, Supreme Court Children's Commission, Austin

Richard R. Orsinger, Attorney, San Antonio

Hon. Paul Rotenberry, Judge, 326th District Court, Abilene

Georganna L. Simpson, Attorney, Dallas

Hon. John J. Specia, Judge (Ret.), San Antonio

Hon. Angela Tucker, Judge, 199th District Court, McKinney

Luz A. ("Lucy") Williamson, Attorney, Edinburg

Hon. Eva Guzman, Court Liaison to the HB 7 Task Force and Children's Commission's Chair, Justice, Supreme Court of Texas, Austin

Martha Newton, Rules Attorney, Supreme Court of Texas, Austin

II. PROCESS OF REVIEW

The HB 7 Task Force worked in accordance with a timeline and a work plan that outlined the issues for review. The HB 7 Task Force held one in-person meeting on August 18, 2017. Additional

teleconferences were held on September 18th, October 11th, and October 18th. In addition to meetings and conference calls, the HB 7 Task Force reviewed and provided input to the Final Report.

Work Plan (Schedule and Deliverables):

08/18/17 (Fri)	HB7 TF met in Austin
09/01/17 (Fri)	8/18/17 meeting summary provided to HB7 TF
09/18/17 (Mon)	HB7 TF conference call, input collected
10/01/17 (Mon)	Report writing began
10/10/17 (Tues)	First draft of report to HB7 TF
10/11/17 (Wed)	HB7 TF conference call to discuss filing of court reporter record
10/18/17 (Wed)	HB7 TF conference call to discuss report
11/01/17 (Wed)	Second draft provided to HB7 TF
11/15/17 (Wed)	Edits completed
12/01/17 (Fri)	Report submitted to Supreme Court
12/29/17 (Fri)	Report submitted to Texas Legislature

III. RECOMMENDATIONS

The HB 7 Task Force recommends that the Supreme Court, as an exercise of its rulemaking authority, require granulated charges in parental termination cases and that Texas Rule of Civil Procedure (Tex. R. Civ. P.) 277 should be amended to eliminate the use of broad-form jury questions in termination of parental rights cases. The Task Force further recommends that Texas Rule of Appellate Procedure (Tex. R. App. P.) 28.4(b) be amended to require that notice of appeal should be provided to the court reporter(s) who prepared the record(s) and to the trial judge who heard the case. The HB 7 Task Force determined that there is no conflict between the rules related to a motion for new trial and the filing of a notice of appeal and thus no related rule amendments are required or recommended. Finally, the HB 7 Task Force requests additional guidance from the Supreme Court on the issues related to the increase in number of appeals. The Supreme Court provided additional guidance prior to the September 18, 2017 conference call, and granted permission for the HB 7 Task Force to take up resolution of this last remaining issue after January 1, 2018. Thus, with regard to the increase in parental termination appeals, this report contains no recommendations or further discussion. The increase in parental termination appeals and related matters will be studied in early 2018 and a report will be issued to the Supreme Court in the near future.

IV. Discussion: Broad-Form Jury Charge in Parental Termination Cases

At the August 18, 2017 in-person meeting, the HB 7 Task Force discussed: (1) Broad-form Jury Submission; (2) Motion for New Trial and Notice of Appeal; (3) Filing of the Court Reporter's Record; and (4) Increase in Parental Termination Appeals. The discussion on broad-form submission centered on the case law in this area, the history of broad-form submission, the reasoning for the practice, and the problems presented by the use of broad-form submission. In particular, the inability to determine precisely which grounds form the basis of a termination presents a burden on the appellate courts because a challenge to the sufficiency of the evidence must address each and every alleged termination ground rather than being confined to those grounds actually found by a jury. The HB 7 Task Force also discussed the movement among parent advocates to require the jury to address each ground as to each parent, due process concerns, and whether changes to Rule 277 should apply to private termination cases.

Broad-form jury charges in parental termination cases have been specifically sanctioned by the Supreme Court since *Tex. Dep't of Human Servs. v. E.B.,* 802 S.W.2d 647 (Tex. 1990). The Court ruled that Tex. R. Civ. P. 277 (Rule 277) mandates broad-form submission to be used whenever feasible. However, in 2002, the Supreme Court allowed exceptions to the requirement for broad-form submissions in *Crown Life Ins. v. Casteel,* 22 S.W.3d 378 (Tex. 2000), stating that Rule 277 is not absolute. The 10th Court of Appeals in Waco extended the application of *Crown Life,* to termination cases in *In the Interest of B.L.D*., 113 S.W.3d 340 (Tex. 2003) stating "in termination cases, procedural due process requires a strict application of [Tex. R. Civ. P.] 292's requirement of accord by ten or more jurors" and "the disjunctive form of the charge, without more, may violate due process because it allows for the possibility of termination based on a statutory ground not found by at least ten jurors to have been violated." *Id. at 216.* The Supreme Court overturned the appellate court's ruling on the ground that the error had not been properly preserved but did not reach the merits of the argument and acknowledged the intermediate appellate courts were divided on the issue. See Appendix A for additional history related to use of broad-form submission.

The Task Force also discussed whether the Supreme Court set precedent for granulated questions when in 2012 the Court amended Tex. R. Civ. P. 306 (Rule 306) to require that in a suit for termination of the parent-child relationship or a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship, the judgment must state the specific grounds for termination or for appointment of the managing conservator. Thus, amended Rule 306 may support that broad-form submission is no longer "feasible" under Rule 277.

At the end of the discussion, Judge Rucker appointed a subcommittee to lead the charge on drafting proposed amendments to Rule 277. Task Force members Richard Orsinger, Justice Michael Massengale, Bill Connolly, and Brenda Kinsler (a Department litigation specialist who attended the August 18th meeting on behalf of Task Force member Anna Ford), agreed to serve on the subcommittee and report back to the full committee on the conference call scheduled for September 18, 2017.

On the September 18, 2017 conference call, Task Force member Richard Orsinger noted for the group that the challenge in drafting an amended rule was dealing with multiple children and multiple parents and multiple grounds. The concept for the change proposed to the full HB 7 Task Force was to fold the ground into the question so that the individual ground would be integrated into a stand-alone question, as to the mother, and father, and as to each child separately.

The HB 7 Task Force discussed that it is a rare case that has only one mother and one father, acknowledging that there could be one mother with several children and different fathers for each child. Also, there was discussion that it is unlikely that the same termination grounds would be applicable to all parents. In other words, there could be a ground (and thus a jury question) that would relate to only one parent – or one child. Representatives from the Harris County Attorney's Office noted that even if one parent abuses a child, but not others in the home, case law holds that parental rights can be terminated on all children based on the abuse of one child and the risk presented to others in the home. Task Force member Sandra Hachem expressed concern that granulated jury questions will cause confusion. Task Force member Justice Massengale noted that it is not always going to be the case that conduct endangering one child necessarily endangers another child and a jury needs to make a determination with regard to each ground and each child noting that the statutory language found in Family Code Sections 161.001(b)(1)(D) and (E) refer to "the child," not "a child."

The Task Force also discussed the House Bill 7 amendment to Section 161.206(a-1), Family Code, which requires clear and convincing evidence for each parent in order to terminate parental rights of that parent.

At the conclusion of the September 18, 2017 call, the HB 7 Task Force agreed to recommend amending Rule 277, adding a comment to the proposed rule change, and submitting an example of jury questions to be proposed for inclusion in the Supreme Court's administrative order announcing the rule amendment. See Appendix B. Task Force member Sandra Hachem objected to amending Rule 277.

On the October 18, 2017 conference call, the HB 7 Task Force discussed Rule 277 again, including whether the rule change should apply to all terminations, private and state-sponsored. Judge Rucker notified Task Force members that he had informed the Executive Committee of the Family Law Council that the Task Force was considering a recommendation to amend Rule 277 and that the proposed recommendation would encompass both private and state-sponsored termination cases.

Task Force member Audrey Carmical, General Counsel for the Department of Family and Protective Services, expressed concerns about potential confusion of jurors if the state moves away from broad-form submission to granular questions. Ms. Carmical was invited by Judge Rucker to submit a written statement to the Task Force of the Department's concerns. Ms. Carmical submitted a written statement on October 18, 2017, noting that while the Department acknowledges and appreciates the importance of enhancing parents' due process protections, the use of granulated submission may lead to an unintended negative impact on permanency outcomes for children in care. Specifically, prior

to the *E.B.* decision, attorneys who utilized narrow form submission experienced cases in which jurors would often become confused as to which ground constituted abuse and which ground constituted neglect. As a result, nine jurors might find for termination under Family Code 161.001(b)(1)(D) but another three might find for termination under (E), failing to meet the required number of jurors to find for termination of parental rights. Ms. Carmical's note went on to say that there were situations prior to *E.B.* where a judge was "forced to appoint DFPS as Permanent Managing Conservator of the subject children, leaving them to grow up in foster care." The Department anticipates that confusion is likely to increase with the use of narrow submission as pursuant to Tex. R. Civ. P. 292(a), because the same ten or more jurors are required to agree on all answers made upon which the court bases its judgment. Ms. Carmical also requested that an analysis of *In re E.M.*, 494 S.W.3d 209, 229 (Tex. App.—Waco 2015, pet. denied) from the Waco Court of Appeals in 2015 and *In re C.C.*, No. 10-16-00129-CV, 2016 WL 6808944, at *13 (Tex. App.—Waco Nov. 16, 2016, no pet.) be added as a report appendix. See Appendix C.

V. Discussion: Motion for New Trial and Notice of Appeal

The 2012 changes made to Rule 28.4, Texas Rules of Appellate Procedure, required that parental termination appeals be treated as an accelerated appeal under Tex. R. App. P. 26.1 (Rule 26.1), including the requirement that a notice of appeal be filed 20 days after the judgment is signed. Under Tex. R. Civ. P. 329b (Rule 329b), motions for new trial may be filed up to 30 days after a final judgment is signed and a trial court has 75 days to rule on the motion. The 85th Texas Legislature proposed a solution to this perceived conflict in the filed version of House Bill 7, which required a motion for new trial within five days of a final judgment in a child protection case and required the trial court to rule on the motion within 14 days. The language was withdrawn from House Bill 7 before final passage so that this matter could be examined by the HB 7 Task Force.

At the August 18, 2017 meeting, the HB 7 Task Force discussed whether five days was too short a time to properly prepare a motion for a new trial because it is unlikely that a court reporter's record could be produced in such a short amount of time. Also, there was concern that attorneys would not be able to properly review the record for errors and may therefore be motivated to file a boilerplate motion, potentially missing a point of error. The HB 7 Task Force also discussed the merits of shortening the time for disposition of a motion for new trial in parental termination and child protection cases from 75 days to 60 days after the signing of a final order. However, it was pointed out that there is no rule or law that prohibits an attorney from pursuing both a motion for new trial and filing a notice of appeal at the same time.

This point was reiterated and discussed again during the September 18, 2017 conference call, and it was noted that a trial court's plenary power allows the court to rule on the motion for new trial even if a notice of appeal has been filed. Task Force member Justice Michael Massengale submitted additional reasons for not truncating the period for filing a motion for new trial in termination proceedings via an email sent to the Task Force on October 18, 2017, including that there may be a

different lawyer handling the appeal and the new attorney will need time to become familiar with the case. Also, the motion for new trial may need to be supported by evidence, adduced either through affidavits or an evidentiary hearing.

Thus, the HB 7 Task Force recommends that time to file a motion for new trial should not be amended and to do so in the manner envisioned by the filed version of House Bill 7 would dramatically truncate the timeline and potentially damage a parent's ability to challenge error. However, the HB 7 Task Force did agree to recommend amendment to Tex. R. App. P. 28.4 (Rule 28.4) to require the attorney filing the notice of appeal to provide notice to the court reporter(s) who prepared the record(s) and the trial judge who heard the case. See Appendix D.

VI. Discussion: Filing of the Court Reporter Record

In 2011, the HB 906 Task Force appointed by the Texas Supreme Court studied the matters of time to file the reporter's record and the extension of time to file the record. In the HB 906 Task Force report submitted to the Supreme Court on October 14, 2011, the HB 906 Task Force recommended that court reporters be required to file the reporter's record within 30 days of the filing of the notice of appeal. The HB 906 Task Force also recommended that an extension or extensions could be granted by the court of appeals for good cause, not to exceed 60 days cumulatively, absent extraordinary circumstances. *Final Report of the Task Force for Post-Trial Rules in Cases Involving Termination of the Parental Relationship* (October 14, 2011), at pages 7 and 17. The Supreme Court did not adopt the recommendation and instead amended Tex. R. App. P. 35.3(c) to permit extensions of 10 days each in an accelerated appeal. The Court further provided in Tex. R. App. P. 28.4(b)(2) that any extension or extensions granted must not exceed 30 days cumulatively, absent extraordinary circumstances. Since that time, court reporters have voiced concern about their ability to complete a trial record within the 10-day period while maintaining their normal court duties. Court reporters have also stated that trial courts are often reluctant to release court reporters from their regular duties to complete a trial record or hire substitute court reporters due to budgetary pressure from county commissioners' courts.

At the August 18, 2017 meeting, the HB 7 Task Force discussed whether timelines should be adjusted to account for the number of days it takes to prepare a record as well as who should have responsibility to notify the court reporter that a notice of appeal has been filed. Many court reporters had reported to HB 7 Task Force members that much of the problem stems from not receiving timely notice that a notice of appeal has been filed, and that by the time they are made aware, the deadline to file the record is upon them or has already passed.

Task Force members discussed commencing the 180-day deadline for the appellate court to resolve the appeal from the date the reporter's record is filed rather than the date notice of appeal is filed, but there was strong resistance to any changes that might delay the resolution of the appeal. General

concern was also expressed that any changes that were made solely to parental termination and child protection cases would result in these cases receiving a lower priority than other accelerated appeals. Motions to extend the initial deadline for the reporter's record from 10 days to 15 days for all accelerated appeals, and to extend the initial deadline from 10 to 15 days only for child protection cases were considered by the HB 7 Task Force. Both motions failed to pass.

The HB 7 Task Force also discussed that the urgency of resolving child protection appeals outweighs a rule amendment allowing court reporters more time to file the reporter's record. This discussion was bolstered by the fact that the appellate court members of the Task Force stated that the courts of appeal are routinely granting requests for extensions of time to file the reporter record while still being able to timely issue opinions. It was also noted that the courts of appeal already have the authority to grant an extension beyond the 30 cumulative days for extraordinary circumstances, such as a lengthy jury trial.

All HB 7 Task Force members agreed that the Texas Rules of Appellate Procedure should be amended to require an attorney filing a notice of appeal to notify the court reporter at the time the notice of appeal is filed. This issue was revisited during the HB 7 Task Force's September 18, 2017 conference call and the decision was made to recommend that the attorney filing a notice of appeal also be required to notify the trial court judge who handled the trial. See Appendix D.

On the September 18, 2017, conference call, the HB 7 Task Force agreed to revisit the court reporter record issue once more and a conference call was scheduled for Wednesday, October 11, 2017. On the October 11, 2017 conference call, the HB 7 Task Force heard from three members about the volume of records created in CPS cases and that many court reporters are spending a great deal of their personal time to produce records timely. It was also reported that there is a shortage of substitute court reporters in certain parts of the state. A minority of members were of the opinion that the problem with filing the record timely is not related to whether there are 10 days or 15 days to do so, but rather the dearth of court reporter resources available throughout the state. Others expressed the opinion that if the deadline is to be extended to 15 days for this type of accelerated case, that the time to file the report record in all cases on an accelerated timetable should be adjusted to allow for 15 days rather than 10. The Task Force considered a motion to extend the time to file the reporter's record in all accelerated appeals from 10 days to 15 days, noting that extending to 15 days encompasses two weekends for the reporter to timely file the record instead of just one. The motion passed 12-2. Subsequent to the call held on October 11, 2017, Task Force Member Judge John J. Specia, submitted a written statement on October 16, 2017, to Judge Dean Rucker, Task Force Chair, requesting that his prior vote in favor of the motion be changed to reflect that he abstained from voting. Thus the vote was revised and recorded as eleven in favor, two opposed, and one in abstention.

On the October 18, 2017 conference call, the Task Force again discussed the issue of extending the time to file the reporter's record from 10 to 15 days. Prior to the October 18, 2017 conference call, Task Force member Lisa Hobbs, in support of the Task Force recommendation to extend the time to

file the reporter's record in all accelerated appeals, noted that it makes little sense to give more time solely to prepare a record in what should arguably be the most accelerated of appeals [appeals of parental termination and child protection cases] than other accelerated appeals, given the instability an appeal may create in a child's life. The HB 7 Task Force agreed to propose amendments to Tex. R. App. P 35.1 (Rule 35.1) to extend the time to file the court reporter(s) record(s) from 10 to 15 days. See Appendix E.

VII. CONCLUSION

I am honored to have again been selected to chair this Task Force of distinguished justices, judges and lawyers. On behalf of the members of the House Bill 7 Task Force, please allow me to express our gratitude for the privilege of assisting the Court in the exercise of its important role in overseeing the rules of procedure that govern litigation in the courts of our State.

DEAN RUCKER
Chair of the HB 7 Task Force

APPENDIX A

Background regarding broad-form submission was provided by Task Force Member Richard Orsinger of San Antonio, who served on the State Bar of Texas' Pattern Jury Charge Committee–Family Law that drafted the broad-form submission question for parental termination that is in use today. Orsinger explained that the Chair of that PJC Committee was U.T. Law Professor John J. Sampson, who wrote a law review article exploring the history of broad-form submission, *TDHS v E.B., The Coup de Grace For Special Issues*, 23 ST. MARY'S L.J. 221 (1991) ("Sampson"). Professor Sampson divided jury submission practice in Texas into three eras: the era from 1913-1973, where courts were required to submit issues "distinctly and separately;" the era from 1973-1988, where the courts had discretion to submit either separate questions or detailed instructions with questions in broad-form; and the era after January 1, 1988, where the courts were required to "submit ... the cause upon broad-form questions" "whenever feasible." *Id*. at 227-35 (quoting Tex. R. Civ. P. 277). Professor Sampson characterized the 1988 amendment to Rule 277 as a "radical" reform. *Id*. at 234. To add further context, Orsinger quoted the following language from Chief Justice Pope's unanimous Opinion for the Court in *Lemos v. Montez*, 680 S.W.2d 798, 801 (Tex. 1984):

> Prior to 1913 there was such a gradual accumulation of instructions considered helpful to juries, that an errorless charge became almost impossible. In 1913, to escape from the unsuccessful general charge, the Texas Legislature enacted article 1984a. Submission of Special Issues Act, ch. 59, § 1, 1913 Tex. Gen. Laws 113. The new procedure required the use of special issues that would be submitted separately and distinctly.
>
> In 1973, after sixty years, it became apparent that Texas courts, while escaping from the voluminous instructions to jurors, had substituted in the place of instructions, a jury system that was overloaded with granulated issues to the point that jury trials were again ineffective. The Supreme Court in 1973 amended Rule 277, Tex. R. Civ. P., by abolishing the requirement that issues be submitted distinctly and separately. Since that time, broad issues have been repeatedly approved by this court as the correct method for jury submission.
>
> This court's approval and adoption of the broad issue submission was not a signal to devise new or different instructions and definitions. We have learned from history that the growth and proliferation of both instructions and issues come one sentence at a time. For every thrust by the plaintiff for an instruction or an issue, there comes a parry by the defendant. Once begun, the instructive aids and balancing issues multiply. Judicial history teaches that broad issues and accepted definitions suffice and that a workable jury system demands strict adherence to simplicity in jury charges.

Given this background, the PJC Family Law Committee suggested a broad-form submission where the grounds for termination were specified in instructions, and the jury was further instructed that termination must be in the best interest of the child, and the jury was asked: "Should the parent–child relationship between PARENT and CHILD be terminated?" This instruction was used in a 1988 Travis County parental-termination case, *TDHS v. E.B.* The mother was terminated by the trial court, but the Austin Court of Appeals reversed, saying that the broad-form submission could have resulted in termination when only five jurors thought the mother had placed the child in a dangerous situation while another five jurors thought the mother had engaged in dangerous conduct, but the minimum required ten jurors did not agree that any one ground for termination existed. Sampson, at 244-45.

The Court of Appeals also said that the jury question invaded the role of the trial court "to determine the ultimate legal question of whether the parent–child relationship should be terminated." *Id.*

A unanimous Supreme Court reversed the Court of Appeals, in an opinion authored by Justice Eugene A. Cook, who was Board Certified in Family Law by the Texas Board of Legal Specialization, and who wrote:

> The issue before this court is whether Rule 277 of the Texas Rules of Civil Procedure means exactly what it says, that is, "In all jury cases the court shall, whenever feasible, submit the cause upon broad-form questions."

Texas Dep't of Human Servs. v. E.B., 802 S.W.2d 647, 648 (Tex. 1990). Justice Cook went on to say:

> The charge in parental rights cases should be the same as in other civil cases. The controlling question in this case was whether the parent–child relationship between the mother and each of her two children should be terminated, not what specific ground or grounds under § 15.02 the jury relied on to answer affirmatively the questions posed. All ten jurors agree that the mother had endangered the child by doing one or the other of the things listed in § 15.02. Petitioner argues that the charge, as presented to the jury, violates her due process right by depriving a natural mother of her fundamental right to the care, custody and management of her children. Recognizing her rights does not change the form of submission. The standard for review of the charge is abuse of discretion, and abuse of discretion occurs only when the trial court acts without reference to any guiding principle. Here the trial court tracked the statutory language in the instruction and then asked the controlling question. This simply does not amount to abuse of discretion.
>
> Broad-form questions reduce conflicting jury answers, thus reducing appeals and avoiding retrials. Rule 277 expedites trials by simplifying the charge conference and making questions easier for the jury to comprehend and answer.
>
> Accordingly, we reverse the judgment of the court of appeals and affirm the judgment of the trial court.

Id. at 649. Broad-form submission thus became the rule in parental-termination cases.

The pendulum on broad-form submission began to swing back in the case of *Crown Life Ins. Co. v. Casteel*, 22 S.W.3d 378 (Tex. 2000), where the Supreme Court reversed a trial court for making a broad-form submission based on instructions relating to two theories of liability, one of which was valid under Texas law and the other of which was invalid. The Supreme Court wrote that Rule 277 required broad-form submission "whenever feasible," but that broad-form submission was not feasible when one or more grounds for recovery was invalid or uncertain. *Id.* at 389-90. In the parental termination case of *In the Interest of B.L.D.*, 56 S.W.3d 203 (Tex. App.–Waco 2001), *rev'd on other grounds*, 113 S.W.3d 340 (Tex. 2003), the Court of Appeals held that a broad-form submission that does not guarantee that at least ten jurors agreed on the same ground for termination violates due process of law. *Id.* at 219.

APPENDIX B

Rule 277. Submission to the Jury

In all jury cases the court shall, whenever feasible, submit the cause upon broad-form questions.

The court shall submit such instructions and definitions as shall be proper to enable the jury to render a verdict.

Inferential rebuttal questions shall not be submitted in the charge. The placing of the burden of proof may be accomplished by instructions rather than by inclusion in the question.

In any cause in which the jury is required to apportion the loss among the parties the court shall submit a question or questions inquiring what percentage, if any, of the negligence or causation, as the case may be, that caused the occurrence or injury in question is attributable to each of the persons found to have been culpable. The court shall also instruct the jury to answer the damage question or questions without any reduction because of the percentage of negligence or causation, if any, of the person injured. The court may predicate the damage question or questions upon affirmative findings of liability.

In a suit in which termination of the parent–child relationship is requested, the court shall submit separate questions for each parent and each child on (1) each individual ground for termination of the parent–child relationship and (2) whether termination of the parent–child relationship is in the best interest of the child.

The court may submit a question disjunctively when it is apparent from the evidence that one or the other of the conditions or facts inquired about necessarily exists.

The court shall not in its charge comment directly on the weight of the evidence or advise the jury of the effect of their answers, but the court's charge shall not be objectionable on the ground that it incidentally constitutes a comment on the weight of the evidence or advises the jury of the effect of their answers when it is properly a part of an instruction or definition.

Comment to 2017 Change:

The rule has been amended to require a jury question on each individual statutory ground for termination as to each parent and each child without requiring further granulated questions for subparts of an individual ground for termination. The rule has also been amended to require a separate question on best interest of the child as to each parent and each child.

Recommended Pattern Jury Charge

The following format for the submission of each of the grounds pleaded are recommended for submission to the Pattern Jury Charge Family/Probate Committee should the Supreme Court adopt the HB 7 Task Force recommendations:

Question No. 1

Do you find by clear and convincing evidence that MOTHER [and/or] FATHER knowingly placed or knowingly allowed the child[ren] to remain in conditions or surroundings which endangered the physical or emotional well-being of the child[ren]?

Answer by writing "Yes" or "No" as to MOTHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Answer by writing "Yes" or "No" as to FATHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Question No. 2

Do you find by clear and convincing evidence that MOTHER [and/or] FATHER engaged in conduct or knowingly placed the child[ren] with persons who engaged in conduct that endangered the physical or emotional well-being of the child[ren]?

Answer by writing "Yes" or "No" as to MOTHER.

CHILD 1. Answer: _____ CHILD

2. Answer: _____

Answer by writing "Yes" or "No" as to FATHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Question No. 3

Do you find by clear and convincing evidence that MOTHER [and/o]r FATHER constructively abandoned the child[ren] who [has/have] been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and (i) the department has made reasonable efforts to return the child[ren] to the parent; (ii) the parent has not regularly visited or maintained significant contact with the child[ren]; and (iii) the parent has demonstrated as inability to provide the child[ren] with a safe environment.

Answer by writing “Yes” or “No” as to MOTHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Answer by writing “Yes” or “No” as to FATHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Question No. 4

Do you find by clear and convincing evidence that termination of the parent–child relationship between MOTHER [and/or] FATHER and the child is in the best interests of the child?

Answer by writing “Yes” or “No” as to MOTHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

Answer by writing “Yes” or “No” as to FATHER.

CHILD 1. Answer: _____

CHILD 2. Answer: _____

APPENDIX C

In *E.M.*, the Waco Court of Appeals, consistent with the Supreme Court's decision in *Tex. Dep't of Human Servs. v. E.B.*, 802 S.W. 3d 647, 649 (Tex. 1990), concluded the trial court did not abuse its discretion in refusing Mother's request for a jury charge instruction requiring the agreement of 10 jurors as to any predicate act. *In re E.M.*, 494 S.W.3d 209, 229 (Tex. App.—Waco 2015, pet. denied). In so finding, the Waco Court reiterated and in essence reaffirmed the Supreme Court's reasoning in *E.B.* by quoting the following passage from that case:

> The controlling question in this case was whether the parent–child relationship between the mother and each of her two children should be terminated, not what specific ground or grounds under [the predecessor to family code section 161.001] the jury relied on to answer affirmatively the questions posed. All ten jurors agree that the mother had endangered the child by doing one or the other of the things listed in [the predecessor to section 161.001]. Respondent argues that the charge, as presented to the jury, violates her due process right by depriving a natural mother of her fundamental right to the care, custody and management of her children. Recognizing her rights does not change the form of submission.... Here the trial court tracked the statutory language in the instruction and then asked the controlling question. This simply does not amount to abuse of discretion.

Tex. Dep't of Human Servs. v. E.B., 802 S.W. 3d at 649; *In re E.M.*, 494 S.W.3d 209, 229 (Tex. App.—Waco 2015, pet. denied).

Notably, the decision in *E.M.* was penned by Chief Justice Gray, who was the lone dissenter in the Waco Court of Appeals decision in *In re B.L.D.*, in which Justice Gray had stated:

> [T]he due process argument regarding broad form submissions in a termination case has been considered and summarily rejected by the Supreme Court. *Texas Dept. of Human Services v. E.B.,* 802 S.W.2d 647, 649 (Tex.1990). The Dosseys have not brought themselves within the *Crown Life* exception because they have not shown that any theory submitted to the jury was "an improperly submitted invalid theory." *Crown Life Ins. v. Casteel,* 22 S.W.3d 378, 388 (Tex. 2000). We fly in the face of existing Texas Supreme Court precedent on this issue by holding to the contrary.

In re B.L.D., 56 S.W.3d 203, 221 (Tex. App.—Waco 2001), *rev'd on other grounds*, 113 S.W.3d 340 (Tex. 2003).

The Waco Court of Appeals also held the trial court did not abuse its discretion by submitting a broad-form jury charge on the six termination grounds. *In re C.C.*, No. 10-16-00129-CV, 2016 WL 6808944, at *13 (Tex. App.—Waco Nov. 16, 2016, no pet.). In so concluding, the Waco Court stated that:

> [L]ast year we noted that the Supreme Court has held that a trial court does not abuse its discretion by submitting a broad-form jury charge in a termination case.

In re E.M., 494 S.W.3d 209, 229 (Tex. App.–Waco 2015, pet. denied) (citing *Tex. Dep't Human Servs. v. E.B.*, 802 S.W.2d 647, 649 (Tex. 1990) (op. on reh'g)).

APPENDIX D

Rule 28.4 Accelerated Appeals in Parental Termination and Child Protection Cases

(a) ***Application and Definitions.***

(1) Appeals in parental termination and child protection cases are governed by the rules of appellate procedure for accelerated appeals, except as otherwise provided in Rule 28.4.

(2) In Rule 28.4:

(A) a "parental termination case" means a suit in which termination of the parent–child relationship is at issue.

(B) a "child protection case" means a suit affecting the parent–child relationship filed by a governmental entity for managing conservatorship.

(b) ***Notice of Appeal.***

(1) Service of Notice. In addition to requirements for service of notice of appeal imposed in Rule 25.1(e), the notice of appeal must be served on the court reporter or court reporters responsible for preparing the reporter's record.

(2) Clerk's Duties. In addition to the responsibility imposed on the trial court clerk in Rule 25.1(f), the trial court clerk must immediately send a copy of the notice of appeal to the judge who tried the case.

(c) ***Appellate Record.***

(1) Responsibility for Preparation of the Reporter's Record. In addition to the responsibility imposed on the trial court in Rule 35.3(c), when the reporter's responsibility to prepare, certify and timely file the reporter's record arises under Rule 35.3(b), the trial court must direct the official or deputy reporter to immediately commence the preparation of the reporter's record. The trial court must arrange for a substitute reporter, if necessary.

(2) Extension of Time. The appellate court may grant an extension of time to file a record under Rule 35.3(c); however, the extension or extensions granted must not exceed 30 days cumulatively, absent extraordinary circumstances.

(3) Restriction on Preparation Inapplicable. Section 13.003 of the Civil Practice & Remedies Code does not apply to an appeal from a parental termination or child protection case.

(d) ***Remand for New Trial.*** If the judgment of the appellate court reverses and remands a parental termination or child protection case for a new trial, the judgment must instruct the trial court to commence the new trial no later than 180 days after the mandate is issued by the appellate court.

APPENDIX E

Rule 35. Time to File Record; Responsibility for Filing Record

35.1. Civil Cases. The appellate record must be filed in the appellate court within 60 days after the judgment is signed, except as follows:

(a) if Rule 26.1(a) applies, within 120 days after the judgment is signed;

(b) if Rule 26.1(b) applies, within ~~10~~ 15 days after the notice of appeal is filed; or

(c) if Rule 26.1(c) applies, within 30 days after the notice of appeal is filed.

Phase II Report
Appendix B

HOUSE BILL 7 TASK FORCE ON RULES OF PROCEDURE IN SUITS AFFECTING THE PARENT-CHILD RELATIONSHIP FILED BY A GOVERNMENTAL ENTITY (HB7 TASK FORCE)

TO: NINA HESS HSU

FROM: HON. DEAN RUCKER, CHAIR, HB 7 TASK FORCE

RE: BROAD-FORM SUBMISSION OF JURY QUESTIONS IN PARENTAL TERMINATION CASES

DATE: NOVEMBER 14, 2018

In November 2017, after many months of meetings and deliberations, the House Bill 7 Task Force submitted a report to the Supreme Court recommending that the Supreme Court, as an exercise of its rulemaking authority, require granulated charges in parental termination cases and that Texas Rule of Civil Procedure (Tex. R. Civ. P.) 277 should be amended to eliminate the use of broad-form jury questions in termination of parental rights cases. The Court referred the suggested rule change to the Supreme Court Advisory Committee (SCAC) for consideration. The SCAC considered the HB 7 Task Force recommendation on Friday, September 28, 2018.

On behalf of the HB 7 Task Force, I write to inform the Court of our concerns with a portion of the recommendations made by the SCAC

In its November 2017 Report to the Supreme Court, the HB 7 Task Force recommended the following amendment to TRCP 277:

In a suit in which termination of the parent-child relationship is requested, the court shall submit separate questions for each parent and each child on (1) each individual ground for termination of the parent-child relationship and (2) whether termination of the parent-child relationship is in the best interest of the child.

The HB 7 Task Force also crafted a pattern jury charge (PJC) to effectuate the move from broad-form submission to separate questions on the two elements (grounds and best interest) required for termination under Sections 161.001(b)(1) and (2), Texas Family Code.

HB 7 TF example (Texas Family Code Section 161.001(b)(1)(D) or "D" ground)

Do you find by clear and convincing evidence that MOTHER [and/or] FATHER knowingly placed or knowingly allowed the child[ren] to remain in conditions or surroundings which endangered the physical or emotional well-being of the child[ren]?

Answer by writing "Yes" or "No" as to MOTHER

Child 1. Answer ____

Child 2. Answer ____

Answer by writing "Yes" or "No" as to FATHER

Child 1. Answer ____

Child 2. Answer ____

SCAC considered this PJC on September 28, 2018 and rejected it. Instead, the SCAC voted 26-2 to word the PJC related to grounds in Texas Family Code Section 161.001(b)(1) as follows:

SCAC example (Texas Family Code Section 161.001(b)(1)(D) or "D" ground)

As to those children named below, do you find by clear and convincing evidence that Parent 1 or Parent 2 knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endangered the child's physical or emotional well-being.

Answer "Yes" or "No" as to Parent 1 as to each Child

Child 1. Answer ____

Child 2. Answer ____

Answer "Yes" or "No" as to Parent 2 as to each Child

Child 1. Answer ____

Child 2. Answer ____

The HB 7 Task Force agrees with the form of the proposed jury question recommended by the SCAC; however, the Task Force believes that any jury questions on a ground or grounds for termination of parental rights should strictly follow the statutory language for grounds in Section 161.001(b)(1), Texas Family Code.

As to the jury question on Best Interest, the following resulted.

HB 7 TF example (Texas Family Code Section 161.001(b)(2) or "Best Interest")

Do you find by clear and convincing evidence that termination of the parent-child relationship between MOTHER [and/or] FATHER and the child is in the best interest of the child?

Answer by writing "Yes" or "No" as to MOTHER

Child 1. Answer ____

Child 2. Answer ____

Answer by writing "Yes" or "No" as to FATHER

Child 1. Answer ____
Child 2. Answer ____

SCAC considered this PJC on September 28, 2018 and rejected it. Instead, the SCAC voted 26-2 to word the PJC related to best interest as follows:

SCAC example (Texas Family Code Section 161.001(b)(2) or "Best Interest")

If you have answered Question 1 [or 2 or 3, etc] "Yes" as to any Parent or any Child, then answer Question 2 [or 3 or 4, etc., depending on the number of grounds preceding] as to that Parent or Child. Otherwise do not answer Question 2.

Question 2:

As to those children named below, do you find by clear and convincing evidence that terminating the parent-child relationship is in the child's best interest and that the parent–child relationship with Parent 1 or Parent 2 should be terminated?

Answer "Yes" or "No" as to Parent 1 as to each Child

Child 1. Answer ____

Child 2. Answer ____

Answer "Yes" or "No" as to Parent 2 as to each Child

Child 1. Answer ____

Child 2. Answer ____

While the Task Force agrees with SCAC's recommendation predicating the answer to Question 2 (best interest) on whether the jury has answered Question 1 (grounds) in the affirmative, the Task

Force has concerns about the SCAC's addition of the language "and that the parent-child relationship with Parent 1 or Parent 2 ***should be terminated***?" (emphasis supplied)

The inclusion of the additional language into the best interest question as suggested by SCAC adds a jury finding that is not required by statute and may lead to confusion. If that language remains in the best interest jury question as recommended by SCAC, an enterprising attorney could and likely will argue to the jury that although the jury may determine that there is clear and convincing evidence that a ground or grounds for termination exists, and that there is clear and convincing evidence that termination is in the child's best interest, but that the jury could still answer "no" as to whether the parent–child relationship *should be terminated*, especially since the additional language is *"and that the parent–child relationship with Parent 1 or Parent 2 should be terminated"* is phrased in the conjunctive.

Further, the matter of whether the parent-child relationship "should be terminated" is subsumed in the jury question on best interest of the child. Any jury charge on termination will contain a definition of "best interest" and will set out the factors the jury should consider when determining whether the termination of parental rights is in a child's best interest. The jury charge will set out the relevant factors set out in the Texas Supreme Court's seminal decision in *Holley v. Adams*, 544 S.W.2d 367 (Tex. 1976). There is no need to risk confusing a jury by asking the jury whether the parent-child relationship "should be terminated." Both the Family Code and caselaw clearly inform the bench and bar that only two elements are required to support a termination of parental rights, those being (1) a finding of a ground for termination of parental rights, and (2) a finding that the termination of parent rights is in the child's best interest. Further, if the SCAC recommendation to include the "should be terminated" language as a finding in a termination case, does this third finding require clear and convincing evidence or will it be subject to some other standard of proof? The SCAC's reasoning for including the "should be terminated" stems from the discretionary word "may" rather than "shall" in Texas Family Code Section 161.001(b)(1), which provides that a court *may* order termination of the parent-child relationship if the court finds by clear and convincing evidence on grounds and best interest. The SCAC has expressed a concern that even if a jury finds grounds for termination exist and that the termination is in the best interest of the child, the trial court has the discretion under Section 161.001(b)(1) to disregard the jury's answers supporting termination of parental rights. However, it is unknown how often a judge enters a judgment notwithstanding the verdict when a jury finds grounds and best interest by clear and convincing evidence.

Rather than adopting the SCAC's solution to this issue by asking a jury whether termination of the parent-child relationship "should be granted" as a part of the best interest question, the Task Force suggests that a better way to address the issue is by amending the Texas Family Code to ensure that a court may not contravene a jury verdict in a parental termination case.

The HB 7 Task Force will be submitting a final report on the additional issues referred by the Court. The Task Force's concerns expressed in this memorandum will be contained in that report.

cc: Jaclyn Daumerie

Martha Newton

Phase II Report
Appendix C

Rule 28. Accelerated, Agreed, and Permissive Appeals in Civil Cases

28.4. Accelerated Appeals in Parental Termination and Child Protection Cases

(a) *Application and Definitions.*

(1) Appeals in parental termination and child protection cases are governed by the rules of appellate procedure for accelerated appeals, except as otherwise provided in Rule 28.4.

(2) In Rule 28.4:

(A) a "parental termination case" means a suit in which termination of the parent-child relationship is at issue.

(B) a "child protection case" means a suit affecting the parent-child relationship filed by a governmental entity for managing conservatorship.

(b) *Appellate Record.*

(1) Responsibility for Preparation of Reporter's Record. In addition to the responsibility imposed on the trial court in Rule 35.3(c), when the reporter's responsibility to prepare, certify and timely file the reporter's record arises under Rule 35.3(b), the trial court must direct the official or deputy reporter to immediately commence the preparation of the reporter's record. The trial court must arrange for a substitute reporter, if necessary.

(2) Extension of Time. The appellate court may grant an extension of time to file a record under Rule 35.3(c); however, the extension or extensions granted must not exceed 30 days cumulatively, absent extraordinary circumstances.

(3) Restriction on Preparation Inapplicable. Section 13.003 of the Civil Practice & Remedies Code does not apply to an appeal from a parental termination or child protection case.

(c) <u>*Certification by Appointed Counsel and Motion to Show Authority*. A notice of appeal filed by appointed counsel must state that the attorney consulted with the appellant and the appellant has directed the attorney to pursue the appeal. A party, the district clerk, or a court reporter may, by written motion stating a belief that the appeal is being prosecuted without authority, cause the attorney to be cited to appear before the court and show his authority to act. The notice of the motion shall be served upon the challenged attorney at least three days before the hearing on the motion. At the hearing on the motion, the burden of proof shall be upon the challenged attorney to show sufficient authority to file the notice of appeal. Upon failure to show such authority, the court shall strike the notice of appeal. The motion shall be heard and determined within ten days of service of the motion, and all appellate deadlines shall be suspended pending the court's ruling. The court must rule on the motion</u>

to show authority not later than the third day following the date of the hearing on the motion, and if the court does not timely rule, the motion is considered to have been denied by operation of law.

(d) *Remand for Evidentiary Hearing*. For good cause shown by written motion filed no later than 20 days after the later of the date the clerk's record was filed or the date the reporter's record was filed, the appellate court may order a remand for the limited purpose of holding an evidentiary hearing concerning an allegation of ineffective assistance of counsel. The appellate court must rule on the motion for remand within three days; otherwise it will be denied by operation of law. The trial court shall begin the evidentiary hearing no later than the seventh day after the abatement order. The hearing shall be recorded by a court reporter and the trial court shall make findings of fact as to whether any counsel rendered deficient performance on behalf of appellant and whether appellant was prejudiced as a result. No later than 20 days from the date of the abatement order the court reporter shall file a supplemental reporter's record of the hearing and the district clerk shall file a supplemental clerk's record, including the trial court's findings of fact, and the appeal shall be reinstated. The deadline in Rule 6.2(a) of the Rules of Judicial Administration shall be tolled for no more than 20 days pending an abatement ordered under this rule.

(e) *Remand for New Trial.* If the judgment of the appellate court reverses and remands a parental termination or child protection case for a new trial, the judgment must instruct the trial court to commence the new trial no later than 180 days after the mandate is issued by the appellate court.

(f) *Frivolous Parental Termination and Child Protection Appeals*. An appointed attorney representing a party appealing from a final order in a parental termination case or child protection case should not move to withdraw based upon a determination that the appeal is frivolous.[11] Instead, the attorney must:

(1) certify that the attorney has determined the appeal to be frivolous because there are no appellate issues arguable on their merits;[12]

(2) contemporaneously file a brief that:

(A) demonstrates the attorney has mastered the record and researched the case adequately;

(B) explains the attorney's determination that there are no nonfrivolous grounds for appeal; and

(C) provides citations to the record to facilitate appellate review and to assist the client in exercising the right to file a pro se brief; and

(D) in a parental termination case, addresses all issues included in the Parental Termination Appeal Checklist approved by the Supreme Court;

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[11] *In re P.M.*, 520 S.W.3d 24, 26 (Tex. 2016); *In re A.M.*, 495 S.W.3d 573, 582-83 & n.2 (Tex. App.—Houston [1st Dist.] 2016, pet. denied).

[12] *In re D.A.S.*, 973 S.W.2d 296, 297 (Tex. 1998) (citing *Anders v. California*, 386 U.S. 738, 744, 87 S. Ct. 1396 (1967)).

(3) notify the client in writing of the right to access the appellate record and provide the client with a form motion for pro se access to the appellate record; and

(4) contemporaneously file a copy of the written notice provided to the client in satisfaction of Rule 28.4(d)(3).

(g) *Pro Se Response to Certification of Frivolous Appeal*. A party appealing from a final order in a parental termination case or child protection case whose attorney has certified the appeal to be frivolous may file a pro se response identifying nonfrivolous grounds for appeal. Any such response must be filed on the schedule applicable to an appellee's brief under Rule 38.6(b). An appellate court may abate the appeal for appointment of a new lawyer to evaluate a nonfrivolous ground for appeal that has not been adequately addressed by counsel.

(h) *Court of Appeals Disposition of Frivolous Parental Termination and Child Protection Appeals*. In addition to the requirements of Rule 47, upon determination that an appeal in a parental termination case or child protection case is frivolous because there are no appellate issues arguable on their merits, a court of appeals should affirm the final order, subject to the requirements that the attorney still must:

(1) within five days after the opinion is handed down, send the client a copy of the opinion and judgment;

(2) inform the client that the attorney and the court of appeals both determined the appeal is frivolous because there are no appellate issues arguable on their merits;

(3) advise the client that the attorney cannot recommend that further review of a frivolous appeal;

(4) notify the client of the right to file a petition for review under Rule 53; and

(5) file a petition for review if actually requested by the client. [13]

[13] *Cf*. TEX. R. APP. P. 48.4 ("In criminal cases, the attorney representing the defendant on appeal shall, within five days after the opinion is handed down, send his client a copy of the opinion and judgment, along with notification of the defendant's right to file a pro se petition for discretionary review under Rule 68. This notification shall be sent certified mail, return receipt requested, to the defendant at his last known address. The attorney shall also send the court of appeals a letter certifying his compliance with this rule and attaching a copy of the return receipt within the time for filing a motion for rehearing. The court of appeals shall file this letter in its record of the appeal.").

Phase II Report
Appendix D

Rule 53. Petition for Review

53.2. Contents of Petition

The petition for review must, under appropriate headings and in the order here indicated, contain the following items:

(a) *Identity of Parties and Counsel*. The petition must give a complete list of all parties to the trial court's final judgment, and the names and addresses of all trial and appellate counsel.

(b) *Table of Contents*. The petition must have a table of contents with references to the pages of the petition. The table of contents must indicate the subject matter of each issue or point, or group of issues or points.

(c) *Index of Authorities*. The petition must have an index of authorities arranged alphabetically and indicating the pages of the petition where the authorities are cited.

(d) *Statement of the Case*. The petition must contain a statement of the case that should seldom exceed one page and should not discuss the facts. The statement must contain the following:

(1) a concise description of the nature of the case (e.g., whether it is a suit for damages, on a note, or in trespass to try title);

(2) the name of the judge who signed the order or judgment appealed from;

(3) the designation of the trial court and the county in which it is located;

(4) the disposition of the case by the trial court;

(5) the parties in the court of appeals;

(6) the district of the court of appeals;

(7) the names of the justices who participated in the decision in the court of appeals, the author of the opinion for the court, and the author of any separate opinion;

(8) the citation for the court of appeals' opinion; and

(9) the disposition of the case by the court of appeals, including the disposition of any motions for rehearing or en banc reconsideration, and whether any motions for rehearing or en banc reconsideration are pending in the court of appeals at the time the petition for review is filed.

(e) *Statement of Jurisdiction*. The petition must state, without argument, the basis of the Court's jurisdiction.

(f) *Issues Presented*. The petition must state concisely all issues or points presented for review. The statement of an issue or point will be treated as covering every subsidiary question that is fairly included. If the matter complained of originated in the trial court, it

should have been preserved for appellate review in the trial court and assigned as error in the court of appeals.

(g) *Statement of Facts*. The petition must affirm that the court of appeals correctly stated the nature of the case, except in any particulars pointed out. The petition must state concisely and without argument the facts and procedural background pertinent to the issues or points presented. The statement must be supported by record references.

(h) *Summary of the Argument*. The petition must contain a succinct, clear, and accurate statement of the arguments made in the body of the petition. This summary must not merely repeat the issues or points presented for review.

(i) *Argument*. The petition must contain a clear and concise argument for the contentions made, with appropriate citations to authorities and to the record. The argument need not address every issue or point included in the statement of issues or points. Any issue or point not addressed may be addressed in the brief on the merits if one is requested by the Court. The argument should state the reasons why the Supreme Court should exercise jurisdiction to hear the case with specific reference to the factors listed in Rule 56.1(a). The petition need not quote at length from a matter included in the appendix; a reference to the appendix is sufficient. The Court will consider the court of appeals' opinion along with the petition, so statements in that opinion need not be repeated.

(j) *Prayer*. The petition must contain a short conclusion that clearly states the nature of the relief sought.

(k) *Appendix*.

(1) Necessary Contents. Unless voluminous or impracticable, the appendix must contain a copy of:

(A) the judgment or other appealable order of the trial court from which relief in the court of appeals was sought;

(B) the jury charge and verdict, if any, or the trial court's findings of fact and conclusions of law, if any;

(C) the opinion and judgment of the court of appeals; and

(D) the text of any rule, regulation, ordinance, statute, constitutional provision, or other law on which the argument is based (excluding case law), and the text of any contract or other document that is central to the argument.

(2) Optional Contents. The appendix may contain any other item pertinent to the issues or points presented for review, including copies or excerpts of relevant court opinions, statutes, constitutional provisions, documents on which the suit

was based, pleadings, and similar material. Items should not be included in the appendix to attempt to avoid the page limits for the petition.

(l) *Certification by Appointed Counsel*. In a case in which the petitioner has a statutory right to counsel for purposes of seeking review by the Supreme Court, a petition filed by appointed counsel must state that the attorney consulted with the petitioner and the petitioner has directed the attorney to file a petition for review.

(m) *Review of Appeal Determined to be Frivolous by the Court of Appeals*. To the extent appointed counsel informed the court of appeals that, after thoroughly reviewing the record, counsel concluded that there are no non-frivolous grounds for appeal, and the court of appeals likewise determined the appeal to be frivolous, the petition may adopt the brief filed in the court of appeals by reference in lieu of the contents required by subparts (f)-(j) above.

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Appendix E

PARENTAL TERMINATION BRIEF CHECKLIST

You are strongly encouraged to consult your client, consult trial counsel, and complete and append this checklist to your *Anders* brief to ensure compliance with the appellate rules and to assist the court in conducting its examination of the record. Provide citations to the record and to relevant authority, where appropriate, in the right-hand column to demonstrate compliance by the trial court or parties.

Pretrial	
Service of process	
Any adverse pretrial rulings	
Pretrial effectiveness of counsel	
Did counsel's representation reflect satisfaction of basic obligations to the client, as described in the American Bar Association's *Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases*?[14]	
Did counsel's representation reflect an appropriate attorney-client relationship?[15]	
Did counsel's representation reflect an appropriate pretrial investigation?[16]	
Did counsel's representation reflect appropriate utilization of informal and formal discovery procedures?[17]	
Did counsel's pretrial representation reflect appropriate preparation?[18]	
Trial	
Timeliness of proceeding under Family Code § 263.401	
Jury selection, if applicable	
Any adverse rulings during trial on objections or motions	
Sufficiency of the evidence, including a recitation of applicable legal elements and evaluation of evidence adduced at trial, including any evidence suggesting that termination would not be in the best interest of the child	
Jury instructions, if applicable	
Effectiveness of counsel at trial	
Did counsel's representation at trial reflect appropriate preparation, including the identification, location, and preparation of all witnesses, as well as adequate cross-examination of adverse witnesses?[19]	
Did counsel object to inadmissible evidence and otherwise take appropriate steps to preserve error?	

[14] AM. BAR ASS'N, STANDARDS OF PRACTICE FOR ATTORNEYS REPRESENTING PARENTS IN ABUSE AND NEGLECT CASES, at 8-11, https://www.americanbar.org/content/dam/aba/administrative/child_law/ParentStds.authcheckdam.pdf (basic obligations of parent's attorney) [hereinafter, *ABA Standards*]; *see also* TEX. FAM. CODE § 107.0131(a)(1)(I).

[15] *ABA Standards*, at 11-19 (relationship with the client).

[16] *ABA Standards*, at 19-20 (investigation).

[17] *ABA Standards*, at 20-21 (informal and formal discovery).

[18] *ABA Standards*, at 21-29 (court preparation, hearings).

[19] *ABA Standards*, at 21-29 (court preparation, hearings).

Post-trial	
Any adverse rulings on post-trial motions	
Post-trial effectiveness of counsel	
Was the client actually represented by counsel during the period when a motion for new trial could be filed?	
Did counsel utilize appropriate post-trial procedures, including the utilization of a motion for new trial as necessary to supplement the record and preserve error?[20]	
In the Supreme Court of Texas: Any issues identified by appellant in pro se filings responding to a previous certification that the appeal is frivolous	

[20] *ABA Standards*, at 29-32 (post hearings/appeals).

Phase II Report
Appendix F

INSTRUCTIONS FOR USE OF TEMPLATES

The sample opinions are designed to provide guidance and are by no means comprehensive for use in all parental termination appeals.

These sample opinions are for use only when the complaints on appeal are the legal and/or factual sufficiency of the evidence to support a ground(s) for termination and/or the best interest finding.

Use only the footnotes applicable to the issues in the appeal.

Phase II Report, Appendix F
Template A

Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. __-__-_____-CV

IN THE INTEREST OF A.B.C. [and D.E.F.], Child/Children

From the _____ Judicial District Court, _____ County, Texas
Trial Court No. _____
Honorable _____, Judge Presiding

Opinion by: _____, Justice

Sitting: _____, Justice
_____, Justice
_____, Justice

Delivered and Filed:

AFFIRMED

Appellant Father/Mother appeals the trial court's order terminating his/her parental rights to his/her child/children _____.[1] Father/Mother does not challenge the sufficiency of the evidence supporting the trial court's/jury's statutory predicate finding(s). Instead, Father/Mother asserts the evidence is neither legally nor factually sufficient for the trial court/jury to have found by clear and convincing evidence that terminating his/her parental rights is in his/her child's/children's best interests. We affirm the trial court's order.

BACKGROUND[2]

[Recitation of basic facts: Department received report, filed petition, child/children removed, statutory ground(s) pleaded by Department . . . .] On _____, after a bench/jury trial, the trial court terminated Father's/Mother's parental rights. Father/Mother appeals.

EVIDENCE REQUIRED, STANDARDS OF REVIEW

The evidentiary standards[3] the Department must meet and the statutory grounds[4] the trial court/jury must find to terminate a parent's rights to a child are well known, as are the applicable legal[5] and factual[6] sufficiency standards of review. We apply them here.

BASES FOR TERMINATION

A. Father's/Mother's Course of Parental Conduct

The trial court/jury found by clear and convincing evidence that [statutory ground(s)]. *See* TEX. FAM. CODE ANN. § 161.001(b)(1) ([list grounds paragraphs *e.g.*, (N), (O)]). On appeal, Father/Mother does not challenge this/these predicate statutory ground/s finding/s.

B. Best Interests of the Child/Children

Instead, Father/Mother challenges the sufficiency of the evidence supporting the trial court's/jury's finding that terminating his/her parental rights is in his/her child/children's best interests. *See id.* § 161.001(b)(2). The non-exclusive *Holley* factors[7] for assessing best interests of children are well known. Applying each standard of review and the applicable factors, we examine the evidence pertaining to the best interests of the child/children.

C. Evidence of Best Interests of the Child/Children

A bench/jury trial was held on [date/s]. The trial court/jury heard testimony from [list of witnesses], and it received recommendations from the children's attorney ad litem. The trial court/jury heard testimony pertaining to the child's/children's best interests, and the trial court/jury

was the "sole judge[] of the credibility of the witnesses and the weight to give their testimony." *See City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005); *In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006).

Father/Mother argues that the evidence that parental termination was in the child's/children's best interest is legally and factually insufficient because _____.

The Department responds _____.

The trial court/jury heard testimony that [key evidence of *Holley* factors, (and statutory factors, if appropriate) with cites after each key fact or facts; e.g., desires of the child, present and future emotional and physical needs of the child, present or future emotional and physical danger to the child, child's age and physical and mental vulnerabilities, etc.] *Holley*, 544 S.W.2d at 372 (factors (_), (_), (_)); *see also* TEX. FAM. CODE ANN. § 263.307(b)(_), (_), (_).

Considering all the evidence in the light most favorable to the trial court's/jury's findings, we conclude the evidence is legally and factually sufficient to demonstrate that terminating Father's/Mother's parental rights to his/her child/children was in the child/children's best interests. *See* TEX. FAM. CODE ANN. § 161.001(b)(2); *Holley*, 544 S.W.2d at 372.

CONCLUSION

Because (1) Father/Mother does not challenge the trial court's/jury's finding, by clear and convincing evidence, of a predicate ground for termination and (2) the evidence is legally and factually sufficient to support the trial court's/jury's finding that termination of Father's/Mother's parental rights is in the best interest of the child/each child, we affirm the trial court's order.

_____, Justice

[1] To protect the minors' identities, we refer to the parent/parents and the child/children using aliases/initials. *See* TEX. R. APP. P. 9.8.

[2] Because Father/Mother is the only appellant, we limit our recitation of the facts to those that pertain to Father/Mother and the child/children.

[3] Clear and Convincing Evidence. If the Department moves to terminate a parent's rights to a child, the Department must prove by clear and convincing evidence that the parent's acts or omissions met one or more of the grounds for involuntary termination listed in section 161.001(b)(1) of the Family Code and that terminating the parent's rights is in the best interest of the child. TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2017); *In re J.F.C.*, 96 S.W.3d 256, 261 (Tex. 2002). "'Clear and convincing evidence' means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." TEX. FAM. CODE ANN. § 101.007 (West 2014). The same evidence used to prove the parent's acts or omissions under section 161.001(b)(1) may be used in determining the best interest of the child under section 161.001(b)(2). *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002); *In re D.M.*, 452 S.W.3d 462, 471 (Tex. App.—San Antonio 2014, no pet.). The trial court may consider a parent's past deliberate conduct to infer future conduct in a similar situation. *D.M.*, 452 S.W.3d at 472.

[4] Statutory Grounds for Termination. The Family Code authorizes a court to terminate the parent-child relationship if, inter alia, it finds by clear and convincing evidence that the parent's acts or omissions met certain criteria. *See* TEX. FAM. CODE § 161.001(b). Here, the trial court/jury found Father's/Mother's conduct met the following criteria or ground [delete inapplicable grounds]:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return;
(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;
(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months;
(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;
(F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;
(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;
(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;
(I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;
(J) been the major cause of:
  (i) the failure of the child to be enrolled in school as required by the Education Code; or
  (ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;
(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;
(L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:

(i) Section 19.02 (murder);
(ii) Section 19.03 (capital murder);
(iii) Section 19.04 (manslaughter);
(iv) Section 21.11 (indecency with a child);
(v) Section 22.01 (assault);
(vi) Section 22.011 (sexual assault);
(vii) Section 22.02 (aggravated assault);
(viii) Section 22.021 (aggravated sexual assault);
(ix) Section 22.04 (injury to a child, elderly individual, or disabled individual);
(x) Section 22.041 (abandoning or endangering child);
(xi) Section 25.02 (prohibited sexual conduct);
(xii) Section 43.25 (sexual performance by a child);
(xiii) Section 43.26 (possession or promotion of child pornography);
(xiv) Section 21.02 (continuous sexual abuse of young child or children);
(xv) Section 20A.02(a)(7) or (8) (trafficking of persons); and
(xvi) Section 43.05(a)(2) (compelling prostitution);

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

(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and:
(i) the department has made reasonable efforts to return the child to the parent;
(ii) the parent has not regularly visited or maintained significant contact with the child; and
(iii) the parent has demonstrated an inability to provide the child with a safe environment;

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

(P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:
(i) failed to complete a court-ordered substance abuse treatment program; or
(ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;

(Q) knowingly engaged in criminal conduct that has resulted in the parent's:
(i) conviction of an offense; and
(ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition;

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

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

(T) been convicted of:
(i) the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;
(ii) criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i);
(iii) criminal solicitation under Section 15.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that

contains elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, of the offense described by Subparagraph (i); or

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

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

Id. § 161.001(b)(1).

[5] Legal Sufficiency. When a clear and convincing evidence standard applies, a legal sufficiency review requires a court to "'look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true.'" *In re J.L.*, 163 S.W.3d 79, 85 (Tex. 2005) (quoting *J.F.C.*, 96 S.W.3d at 266). "[L]ooking at the evidence in the light most favorable to the judgment means that a reviewing court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so, [and the] court should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible." *Id*. If the court "determines that [a] reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true," the evidence is legally sufficient. *Id*.

[6] Factual Sufficiency. Under a clear and convincing standard, evidence is factually sufficient if "a factfinder could reasonably form a firm belief or conviction about the truth of the State's allegations." *C.H.*, 89 S.W.3d at 25; *accord In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). We must consider "whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding." *J.F.C.*, 96 S.W.3d at 266; *accord H.R.M.*, 209 S.W.3d at 108. "If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient." *J.F.C.*, 96 S.W.3d at 266.

[7] *Holley* Factors. The Supreme Court of Texas identified the following as factors to consider in determining the best interest of a child in its landmark case *Holley v. Adams*:

(A) the desires of the child;
(B) the emotional and physical needs of the child now and in the future;
(C) the emotional and physical danger to the child now and in the future;
(D) the parental abilities of the individuals seeking custody;
(E) the programs available to assist these individuals to promote the best interest of the child;
(F) the plans for the child by these individuals or by the agency seeking custody;
(G) the stability of the home or proposed placement;
(H) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and
(I) any excuse for the acts or omissions of the parent.

Holley v. Adams, 544 S.W.2d 367, 371–72 (Tex. 1976) (footnotes omitted); *accord In re E.N.C.*, 384 S.W.3d 796, 807 (Tex. 2012) (reciting the *Holley* factors); *see also* TEX. FAM. CODE ANN. § 263.307 (West 2014) (articulating best-interest factors to "be considered by the court and the department in determining whether the child's parents are willing and able to provide the child with a safe environment").

Fourth Court of Appeals
San Antonio, Texas

No. __-__-_____-CV

IN THE INTEREST OF A.B.C. [and D.E.F.], Child/Children

From the _____ Judicial District Court, _____ County, Texas
Trial Court No. _____
Honorable _____, Judge Presiding

BEFORE JUSTICE _____, JUSTICE _____, AND JUSTICE _____

In accordance with this Court's opinion of this date, the trial court's order terminating ___'s parental rights to A.B.C. [and D.E.F.] is AFFIRMED. Appellant is indigent; no costs are taxed in this appeal.

SIGNED

_____
_____, Justice

created on: October 7, 2018

Phase II Report, Appendix F
Template B

Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. __-__-_____-CV

IN THE INTEREST OF A.B.C. [and D.E.F.], Child/Children

From the _____ Judicial District Court, _____ County, Texas
Trial Court No. _____
Honorable _____, Judge Presiding

Opinion by: _____, Justice

Sitting: _____, Justice
_____, Justice
_____, Justice

Delivered and Filed:

AFFIRMED

Appellant Father/Mother appeals the trial court's order terminating his/her parental rights to his/her child/children _____.[1] Father/Mother asserts the evidence is neither legally nor factually sufficient for the trial court/jury to have found by clear and convincing evidence that his/her course of conduct met a statutory ground for termination. Because (1) the evidence was sufficient to support the trial court's/jury's finding of a predicate ground/predicate grounds for terminating Father's/Mother's parental rights, and (2) Father/Mother does not challenge the finding that terminating his/her parental rights was in the child's/children's best interest, we affirm the trial court's order.

BACKGROUND[2]

[Recitation of basic facts: Department received report, filed petition, child/children removed. Father/Mother reoffended, did not complete service plan, or other ground.] On _____, after a bench/jury trial, the trial court terminated Father's/Mother's parental rights. Father/Mother appeals.

EVIDENTIARY STANDARDS, STATUTORY GROUNDS, STANDARDS OF REVIEW

The evidentiary standards[3] the Department must meet and the statutory grounds[4] the trial court/jury must find to terminate a parent's rights to a child are well known, as are the applicable legal[5] and factual[6] sufficiency standards of review. We apply them here.

BASES FOR TERMINATION

A. First Statutory Ground Finding

The trial court/jury found by clear and convincing evidence that [first statutory ground]. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(_).

Father/Mother argues that the evidence to support this finding is legally and factually insufficient because _____.

The Department responds _____.

The trial court/jury heard evidence that . . . .[brief recitation of facts pertaining to and supporting the first statutory ground]

Considering all the evidence in the light most favorable to the trial court's/jury's findings, we conclude the trial court/jury could have formed a firm belief or conviction that [first statutory ground] . *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(_); [Texas Supreme Court case cite].

B. Second Statutory Ground Finding

[Repeat the same format from first ground, or, state that one ground is sufficient. [cite]]

C. Best Interests of the Child/Children

Father/Mother does not challenge the sufficiency of the evidence supporting the trial court's/jury's finding that terminating his/her parental rights is in his/her child's/children's best interests. *See id.* § 161.001(b)(2).

CONCLUSION

Because (1) the evidence was legally and factually sufficient to support the trial court's/jury's finding by clear and convincing evidence of a predicate ground/predicate grounds for termination and (2) Father/Mother does not challenge the finding that termination of his/her parental rights is in the best interest of the child/each child, we affirm the trial court's order.

_____, Justice

[1] To protect the minors' identities, we refer to the parent/parents and the child/children using aliases/initials. *See* TEX. R. APP. P. 9.8.

[2] Because Father/Mother is the only appellant, we limit our recitation of the facts to those that pertain to Father/Mother and the child/children.

[3] Clear and Convincing Evidence. If the Department moves to terminate a parent's rights to a child, the Department must prove by clear and convincing evidence that the parent's acts or omissions met one or more of the grounds for involuntary termination listed in section 161.001(b)(1) of the Family Code and that terminating the parent's rights is in the best interest of the child. TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2017); *In re J.F.C.*, 96 S.W.3d 256, 261 (Tex. 2002). "'Clear and convincing evidence' means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." TEX. FAM. CODE ANN. § 101.007 (West 2014). The same evidence used to prove the parent's acts or omissions under section 161.001(b)(1) may be used in determining the best interest of the child under section 161.001(b)(2). *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002); *In re D.M.*, 452 S.W.3d 462, 471 (Tex. App.—San Antonio 2014, no pet.). The trial court may consider a parent's past deliberate conduct to infer future conduct in a similar situation. *D.M.*, 452 S.W.3d at 472.

[4] Statutory Grounds for Termination. The Family Code authorizes a court to terminate the parent-child relationship if, inter alia, it finds by clear and convincing evidence that the parent's acts or omissions met certain criteria. *See* TEX. FAM. CODE § 161.001(b). Here, the trial court/jury found Father's/Mother's conduct met the following criteria or ground [delete inapplicable grounds]:

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

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

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

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

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

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

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

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

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

(J) been the major cause of:

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

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

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

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

(i) Section 19.02 (murder);

(ii) Section 19.03 (capital murder);

(iii) Section 19.04 (manslaughter);

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

(v) Section 22.01 (assault);

(vi) Section 22.011 (sexual assault);

(vii) Section 22.02 (aggravated assault);

(viii) Section 22.021 (aggravated sexual assault);

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

(x) Section 22.041 (abandoning or endangering child);

(xi) Section 25.02 (prohibited sexual conduct);

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

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

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

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

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

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

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

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

(ii) the parent has not regularly visited or maintained significant contact with the child; and
(iii) the parent has demonstrated an inability to provide the child with a safe environment;

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

(P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:
(i) failed to complete a court-ordered substance abuse treatment program; or
(ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;

(Q) knowingly engaged in criminal conduct that has resulted in the parent's:
(i) conviction of an offense; and
(ii) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition;

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

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

(T) been convicted of:
(i) the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;
(ii) criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i);
(iii) criminal solicitation under Section 15.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, of the offense described by Subparagraph (i); or
(iv) the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; or

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

Id. § 161.001(b)(1).

[5] Legal Sufficiency. When a clear and convincing evidence standard applies, a legal sufficiency review requires a court to "'look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true.'" *In re J.L.*, 163 S.W.3d 79, 85 (Tex. 2005) (quoting *J.F.C.*, 96 S.W.3d at 266). "[L]ooking at the evidence in the light most favorable to the judgment means that a reviewing court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so, [and the] court should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible." *Id*. If the court "'determines that [a] reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true,'" the evidence is legally sufficient. *Id*.

[6] Factual Sufficiency. Under a clear and convincing standard, evidence is factually sufficient if "a factfinder could reasonably form a firm belief or conviction about the truth of the State's allegations." *C.H.*, 89 S.W.3d at 25; *accord In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). We must consider "whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding." *J.F.C.*, 96 S.W.3d at 266; *accord H.R.M.*, 209 S.W.3d at 108. "If, in light of the entire record, the disputed evidence that a reasonable factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient." *J.F.C.*, 96 S.W.3d at 266.

Fourth Court of Appeals
San Antonio, Texas

JUDGMENT

No. __-__-_____-CV

IN THE INTEREST OF A.B.C. and [D.E.F.], Child/Children

From the _____ Judicial District Court, _____ County, Texas
Trial Court No. _____
Honorable _____, Judge Presiding

BEFORE JUSTICE _____, JUSTICE _____, AND JUSTICE _____

In accordance with this Court's opinion of this date, the trial court's order terminating ___'s parental rights to A.B.C. [and D.E.F]. is AFFIRMED. Appellant is indigent; no costs are taxed in this appeal.

SIGNED

_____
_____, Justice

Phase II Report, Appendix F
Template C

Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. __-__-_____-CV

IN THE INTEREST OF A.B.C. [and D.E.F.], Child/Children

From the _____ Judicial District Court, _____ County, Texas
Trial Court No. _____
Honorable _____, Judge Presiding

Opinion by: _____, Justice

Sitting: _____, Justice
_____, Justice
_____, Justice

Delivered and Filed:

AFFIRMED

Appellant Father/Mother appeals the trial court's order terminating his/her parental rights to his/her child/children _____.[1] Father/Mother asserts the evidence is neither legally nor factually sufficient for the trial court/jury to have found by clear and convincing evidence that his/her course of conduct met a statutory ground for termination or that terminating his/her parental rights is in his/her child/children's best interests. Because the evidence was legally and factually sufficient to support the trial court's/jury's statutory ground(s) and best interest findings, we affirm the trial court's order.

BACKGROUND[2]

[Recitation of basic facts: Department received report, filed petition, child/children removed. Father/Mother reoffended, did not complete service plan, or other ground.] On _____, after a bench/jury trial, the trial court terminated Father's/Mother's parental rights. Father/Mother appeals.

EVIDENTIARY STANDARDS, STATUTORY GROUNDS, STANDARDS OF REVIEW

The evidentiary standards[3] the Department must meet and the statutory grounds[4] the trial court/jury must find to terminate a parent's rights to a child are well known, as are the applicable legal[5] and factual[6] sufficiency standards of review. We apply them here.

BASES FOR TERMINATION

A. First Statutory Ground Finding

The trial court/jury found by clear and convincing evidence that [first statutory ground]. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(_).

Father/Mother argues that the evidence to support this finding is legally and factually insufficient because _____.

The Department responds _____.

The trial court/jury heard evidence that _____ [brief recitation of facts pertaining to and supporting first statutory ground]

Considering all the evidence in the light most favorable to the trial court's/jury's findings, we conclude the trial court/jury could have formed a firm belief or conviction that [first statutory ground]. *See* TEX. FAM. CODE ANN. § 161.001(b)(1)(_); [Texas Supreme Court case cite].

B. Second Statutory Ground Finding

[Repeat the same format from first ground, or, state that one ground is sufficient. [cite]]

C. Best Interests of the Child/Children

Father/Mother also challenges the sufficiency of the evidence supporting the trial court's/jury's finding that terminating his/her parental rights is in his/her child's/children's best interests. *See id.* § 161.001(b)(2). The non-exclusive *Holley* factors[7] for assessing best interests of children are well known. Applying each standard of review and the applicable factors, we examine the evidence pertaining to the best interests of the child/children.

D. Evidence of Best Interests of the Child/Children

A bench/jury trial was held on [date/s]. The trial court/jury heard testimony from [list of witnesses], and it received recommendations from the children's attorney ad litem. The trial court/jury heard testimony pertaining to the child's/children's best interests, and the trial court/jury was the "sole judge[] of the credibility of the witnesses and the weight to give their testimony." *See City of Keller v. Wilson*, 168 S.W.3d 802, 819 (Tex. 2005); In re *H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006).

Father/Mother argues that the evidence that parental termination was in the child's/children's best interest is legally and factually insufficient because _____.

The Department responds _____.

The trial court/jury heard testimony that _____.

[key evidence that implicates *Holley*, (and statutory factors, if appropriate) with cites after each key fact or facts; e.g., desires of the child, present and future emotional and physical needs of the child, present or future emotional and physical danger to the child, child's age and physical and mental vulnerabilities, etc.] *Holley*, 544 S.W.2d at 372 (factors (_), (_), (_)); *see also* TEX. FAM. CODE ANN. § 263.307(b)(_), (_), (_).

Considering all the evidence in the light most favorable to the trial court's/jury's findings, we conclude the evidence is legally and factually sufficient to demonstrate that terminating

Father's/Mother's parental rights to his/her child/children was in the child/children's best interests. *See* TEX. FAM. CODE ANN. § 161.001(b)(2); *Holley*, 544 S.W.2d at 372.

CONCLUSION

Because the evidence was legally and factually sufficient to support the trial court's/jury's finding, by clear and convincing evidence, (1) of a predicate ground/predicate grounds for termination and (2) that termination of Father's/Mother's parental rights is in the best interest of the child/each child, we affirm the trial court's order.

_____, Justice

[1] To protect the minors' identities, we refer to the parent/parents and the child/children using aliases/initials. *See* TEX. R. APP. P. 9.8.

[2] Because Father/Mother is the only appellant, we limit our recitation of the facts to those that pertain to Father/Mother and the child/children.

[3] Clear and Convincing Evidence. If the Department moves to terminate a parent's rights to a child, the Department must prove by clear and convincing evidence that the parent's acts or omissions met one or more of the grounds for involuntary termination listed in section 161.001(b)(1) of the Family Code and that terminating the parent's rights is in the best interest of the child. TEX. FAM. CODE ANN. § 161.001(b) (West Supp. 2017); *In re J.F.C.*, 96 S.W.3d 256, 261 (Tex. 2002). "'Clear and convincing evidence' means the measure or degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established." TEX. FAM. CODE ANN. § 101.007 (West 2014). The same evidence used to prove the parent's acts or omissions under section 161.001(b)(1) may be used in determining the best interest of the child under section 161.001(b)(2). *In re C.H.*, 89 S.W.3d 17, 28 (Tex. 2002); *In re D.M.*, 452 S.W.3d 462, 471 (Tex. App.—San Antonio 2014, no pet.). The trial court may consider a parent's past deliberate conduct to infer future conduct in a similar situation. *D.M.*, 452 S.W.3d at 472.

[4] Statutory Grounds for Termination. The Family Code authorizes a court to terminate the parent-child relationship if, inter alia, it finds by clear and convincing evidence that the parent's acts or omissions met certain criteria. *See* TEX. FAM. CODE § 161.001(b). Here, the trial court/jury found Father's/Mother's conduct met the following criteria or ground [delete inapplicable grounds]:

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

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child;
(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child;
(F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition;
(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence;
(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth;
(I) contumaciously refused to submit to a reasonable and lawful order of a court under Subchapter D, Chapter 261;
(J) been the major cause of:
  (i) the failure of the child to be enrolled in school as required by the Education Code; or
  (ii) the child's absence from the child's home without the consent of the parents or guardian for a substantial length of time or without the intent to return;
(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by this chapter;
(L) been convicted or has been placed on community supervision, including deferred adjudication community supervision, for being criminally responsible for the death or serious injury of a child under the following sections of the Penal Code, or under a law of another jurisdiction that contains elements that are substantially similar to the elements of an offense under one of the following Penal Code sections, or adjudicated under Title 3 for conduct that caused the death or serious injury of a child and that would constitute a violation of one of the following Penal Code sections:
  (i) Section 19.02 (murder);
  (ii) Section 19.03 (capital murder);
  (iii) Section 19.04 (manslaughter);
  (iv) Section 21.11 (indecency with a child);
  (v) Section 22.01 (assault);
  (vi) Section 22.011 (sexual assault);
  (vii) Section 22.02 (aggravated assault);
  (viii) Section 22.021 (aggravated sexual assault);
  (ix) Section 22.04 (injury to a child, elderly individual, or disabled individual);
  (x) Section 22.041 (abandoning or endangering child);
  (xi) Section 25.02 (prohibited sexual conduct);
  (xii) Section 43.25 (sexual performance by a child);
  (xiii) Section 43.26 (possession or promotion of child pornography);
  (xiv) Section 21.02 (continuous sexual abuse of young child or children);
  (xv) Section 20A.02(a)(7) or (8) (trafficking of persons); and
  (xvi) Section 43.05(a)(2) (compelling prostitution);
(M) had his or her parent-child relationship terminated with respect to another child based on a finding that the parent's conduct was in violation of Paragraph (D) or (E) or substantially equivalent provisions of the law of another state;
(N) constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for not less than six months, and:
  (i) the department has made reasonable efforts to return the child to the parent;
  (ii) the parent has not regularly visited or maintained significant contact with the child; and
  (iii) the parent has demonstrated an inability to provide the child with a safe environment;
(O) failed to comply with the provisions of a court order that specifically established the actions necessary for the parent to obtain the return of the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services for

not less than nine months as a result of the child's removal from the parent under Chapter 262 for the abuse or neglect of the child;

(P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and:
  (i) failed to complete a court-ordered substance abuse treatment program; or
  (ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance;

(Q) knowingly engaged in criminal conduct that has resulted in the parent's:
  (i) conviction of an offense; and

(R) confinement or imprisonment and inability to care for the child for not less than two years from the date of filing the petition; been the cause of the child being born addicted to alcohol or a controlled substance, other than a controlled substance legally obtained by prescription;

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

(T) been convicted of:
  (i) the murder of the other parent of the child under Section 19.02 or 19.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 19.02 or 19.03, Penal Code;
  (ii) criminal attempt under Section 15.01, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.01, Penal Code, to commit the offense described by Subparagraph (i);
  (iii) criminal solicitation under Section 15.03, Penal Code, or under a law of another state, federal law, the law of a foreign country, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 15.03, Penal Code, of the offense described by Subparagraph (i); or
  (iv) the sexual assault of the other parent of the child under Section 22.011 or 22.021, Penal Code, or under a law of another state, federal law, or the Uniform Code of Military Justice that contains elements that are substantially similar to the elements of an offense under Section 22.011 or 22.021, Penal Code; or

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

Id. § 161.001(b)(1).

[5] Legal Sufficiency. When a clear and convincing evidence standard applies, a legal sufficiency review requires a court to "'look at all the evidence in the light most favorable to the finding to determine whether a reasonable trier of fact could have formed a firm belief or conviction that its finding was true.'" *In re J.L.*, 163 S.W.3d 79, 85 (Tex. 2005) (quoting *J.F.C.*, 96 S.W.3d at 266). "[L]ooking at the evidence in the light most favorable to the judgment means that a reviewing court must assume that the factfinder resolved disputed facts in favor of its finding if a reasonable factfinder could do so, [and the] court should disregard all evidence that a reasonable factfinder could have disbelieved or found to have been incredible." *Id*. If the court "'determines that [a] reasonable factfinder could form a firm belief or conviction that the matter that must be proven is true,'" the evidence is legally sufficient. *Id*.

[6] Factual Sufficiency. Under a clear and convincing standard, evidence is factually sufficient if "a factfinder could reasonably form a firm belief or conviction about the truth of the State's allegations." *C.H.*, 89 S.W.3d at 25; *accord In re H.R.M.*, 209 S.W.3d 105, 108 (Tex. 2006). We must consider "whether disputed evidence is such that a reasonable factfinder could not have resolved that disputed evidence in favor of its finding." *J.F.C.*, 96 S.W.3d at 266; *accord H.R.M.*, 209 S.W.3d at 108. "If, in light of the entire record, the disputed evidence that a reasonable

factfinder could not have credited in favor of the finding is so significant that a factfinder could not reasonably have formed a firm belief or conviction, then the evidence is factually insufficient." *J.F.C.*, 96 S.W.3d at 266.

[7] *Holley* Factors. The Supreme Court of Texas identified the following as factors to consider in determining the best interest of a child in its landmark case *Holley v. Adams*:

(A) the desires of the child;
(B) the emotional and physical needs of the child now and in the future;
(C) the emotional and physical danger to the child now and in the future;
(D) the parental abilities of the individuals seeking custody;
(E) the programs available to assist these individuals to promote the best interest of the child;
(F) the plans for the child by these individuals or by the agency seeking custody;
(G) the stability of the home or proposed placement;
(H) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and
(I) any excuse for the acts or omissions of the parent.

Holley v. Adams, 544 S.W.2d 367, 371–72 (Tex. 1976) (footnotes omitted); *accord In re E.N.C.*, 384 S.W.3d 796, 807 (Tex. 2012) (reciting the *Holley* factors) ; *see also* TEX. FAM. CODE ANN. § 263.307 (West 2014) (articulating best-interest factors to "be considered by the court and the department in determining whether the child's parents are willing and able to provide the child with a safe environment").

Fourth Court of Appeals
San Antonio, Texas

JUDGMENT

No. __-__-_____-CV

IN THE INTEREST OF A.B.C. [and D.E.F.], Child/Children

From the _____ Judicial District Court, _____ County, Texas
Trial Court No. _____
Honorable _____, Judge Presiding

BEFORE JUSTICE _____, JUSTICE _____, AND JUSTICE _____

In accordance with this Court's opinion of this date, the trial court's order terminating ___'s parental rights to A.B.C. [and D.E.F.] is AFFIRMED. Appellant is indigent; no costs are taxed in this appeal.

SIGNED

_____
_____, Justice