



An Overview of Civil Appeals in the Intermediate Courts of Appeal

Presented by: Justice Gina Benavides
Thirteenth Court of Appeals-Corpus Christi and
Edinburg

In re E.R., 385 S.W.3d 552, 563 (Tex. 2012)

- ▶ “Parental rights are far more precious than any property right, and when the State initiates a termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it.”

Familiarize Yourself with the Appellate Process

- ▶ Become familiar with the appellate rules and process.
- ▶ Read the Texas Rules of Appellate Procedure (TRAP).
- ▶ Read the Texas Standards for Appellate Conduct.
- ▶ Local Court of Appeals Rules on Website
- ▶ Learn about the judges who you will be arguing before.
- ▶ Child Protection Law could have different deadlines

For Example

Parental-rights termination cases are accelerated appeals, the notice of appeal must be filed within 20 days after the judgment or order is signed

Communication with the Court

- ▶ Parties communicate with the clerks.
- ▶ The clerks communicate with the parties.
- ▶ If you have a question, ask! The clerks do not bite and are happy to help with something on the front end, rather than on the back end.

Jurisdiction is Key

- ▶ Courts act with the power that is given.
- ▶ Make sure you have a final judgment, except for certain interlocutory appeals permitted by statute.
- ▶ It would not hurt to explain how the court has jurisdiction.
- ▶ And don't forget Mandamus

Notice of Appeal

- ▶ Make sure you know the rules, deadlines, etc. associated with appeals.
- ▶ A defective notice of appeal can be trouble.
- ▶ An untimely notice could leave the appellate court without jurisdiction

The Record

- ▶ Complete records are essential.
- ▶ Timely request the clerk and reporter's record (if applicable), and timely pay for them.
- ▶ Ensure that the clerk's record contains all necessary documents for the disposition of the appeal.
- ▶ Be sure the reporter's record (if necessary) contains all relevant proceedings.
- ▶ Request the appropriate record
- ▶ Again timing and the necessary record

Briefing

- ▶ One of the most essential part of an appeal—important enough for two slides!
- ▶ Know the rules and deadlines.
- ▶ Know the standards of review for your issues.
- ▶ Know case precedent.
- ▶ Distinguish cases that are opposite of your position.
- ▶ Brevity and narrowing of issues can be more helpful than harmful.
- ▶ Look for decisions from the court in which the appeal is pending that support your argument.

Briefing, Continued

- ▶ Check to be sure error was preserved on your relevant issue!
- ▶ Draft, organize, research, and edit.
- ▶ Shepardize cases!
- ▶ If appellee, respond to appellant's issues in order in which they are presented, or identify which issues you are addressing.
- ▶ Advise the court of controlling legal authorities.
- ▶ Supplement your briefing if the law changes.
- ▶ Reply briefing

Parental Termination Briefing

- ▶ A detailed procedural history
- ▶ A detailed recitation of *relevant* factual information
- ▶ The placement of child after termination
- ▶ A two-pronged approach when conducting a factual/legal sufficiency analysis

Two Prong Test

The Department of Family and Protective Services must prove by clear and convincing evidence that:

- (1) the parent has violated one of the enumerated statutory violations under section 161.001(b)(1); and
- (2) Termination is in the child's best interest

Statutory Termination Prong

If the trial court has found more than one statutory violation under section 161.001(b)(1), it is imperative for an appellant to analyze and argue why each statutory ground is factually and legally insufficient because only one predicate finding under section 161.001(b)(1) is necessary to support a judgment of termination when there is also a finding that termination is in the child's best interest

Standard of Review

Factual and Legal Sufficiency
Standard in a Parental Termination
is unique

Oral Argument

- ▶ Know the rules.
- ▶ Just asking for it is not enough
- ▶ Do not ask to reschedule unless absolutely necessary.
- ▶ The Court has read the briefs, so do not merely rehash the arguments raised in them.
- ▶ If asked a question, answer it! If you are unable to adequately respond, ask the court if you can file a post-submission brief to respond to the question.

Opinions

- ▶ Timetable for issuance of opinions:
 - ▶ If orally argued, the court has one year from the date of the oral argument to hand down an opinion or memorandum opinion.
 - ▶ If submitted on the briefs, the court has two years to issue their opinion.
- ▶ If a case is transferred from another jurisdiction, the transferee court follows the precedent of the transferor court.

Rehearing

- ▶ Types of motions for rehearing (MFR)
- ▶ Deadlines for motions for rehearing
 - ▶ Must be filed within 15 days after judgment or order rendered
- ▶ Motions for rehearing should explain clearly why the court should reconsider its opinion. It should not be snarky, insulting, or sarcastic.



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