STATE BAR of TEXAS

Child Protection Law Section

CPLS Newsletter — Fall 2020

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Child Protection Law Section Board — 2020-21

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Message from the Chair

Chair Tiffany Crouch Bartlett

With the advent of COVID-19, I did not get the chance to introduce myself to you in person when I assumed my role as Chair of our Section this year. However, even more disappointing was my inability to provide a formal in-person congratulatory message about our Section's deep appreciation for our first Chair, Justice Debra Lehrmann. As most of you know, Justice Lehrmann spearheaded this Section's formation and became our first Chair in 2018. Under her leadership and dedicated service, our Section flourished to over 800 members and began several important traditions, including its annual Advanced Child Protection Law course that provides excellent statewide training for child protection lawyers. Our Section owes so much to Justice Lehrmann and it is my hope that I will honor this Section with similar dedicated service during my tenure.

With Appreciation & Gratitude,
Your Chair, *Tiffany Crouch Bartlett*

In this issue:

The Newsletter Committee needs energetic members. See the back cover for more information.

Recap of the Supreme Court's COVID-19 Orders by Justice Debra Lehrmann

On March 13, Governor Abbott issued a disaster declaration in response to the COVID-19 pandemic. Approximately four hours later, the Supreme Court of Texas, joined by the Court of Criminal Appeals, issued its first emergency order regarding the COVID-19 state of disaster pursuant to Texas Government Code § 22.0035(b). To date, the Supreme Court has issued a total of 29 emergency orders. The following aspects of the emergency orders ("EO") are still in effect:

- All courts have much discretion to modify or suspend deadlines and procedures (including those set by statute), except that "all deadlines and procedures" *must* be modified or suspended "to avoid risk to court staff, parties, attorneys, jurors, and the public." (EO 29, ¶ 3(a)).

"In child protection cases, there are specified limits on a court's ability to extend the dismissal date in Texas Family Code Section 263.401."

- All courts must "use all reasonable efforts to conduct proceedings remotely." (EO 29, ¶4).

- All courts are required to follow the Office of Court Administration's ("OCA") guidance, which is available at: https://txcourts.gov/court-coronavirus-information/court-guidance. (EO 29, ¶ 4).

- Justice courts and municipal courts must not hold in-person jury proceedings, which includes jury selection and jury trials, until February 1, 2021, with no exceptions. (EO 29, ¶ 6).

- District courts, statutory or constitutional county courts, or statutory probate courts must not hold in-person jury proceedings before December 1, 2020, unless certain specified requirements are met:

  ◊ A court wishing to conduct an in-person jury proceeding must have a COVID-19 communication protocol in place, obtain approval for each proceeding from the local administrative judge and the Regional Presiding Judge, and hear all objections to proceeding within 7 days of the proceeding. (EO 29, ¶7(b), (c), (d) & (e)).

  ◊ The relevant local administrative district judge must have an operating plan on file with OCA and verify local health conditions with the local health authorities within 5 days of the proceeding. (EO 29, ¶ 7(a)).

- All courts are permitted to conduct remote jury proceedings, including jury selection and jury trials, with certain limitations:

  ◊ All courts must ensure that all potential and selected jurors have access to the appropriate technology to participate remotely. (OCA is assisting with access issues and other issues related to conducting remote jury proceedings.)

  ◊ In criminal cases where confinement in jail or prison is a potential punishment, courts must obtain the appropriate waivers and consents.

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Ten Recent Supreme Court Cases Child Protection Attorneys Should Know

by Sandra Hachem (Sr. Asst. Harris Co. Attn'y)

***In re C.J.C.*, 603 S.W.3d 804 (Tex. 2020) (Lehrmann, J., concurring):**

Fit Parent Presumption for Nonparent Modification Suit

The Supreme Court considered whether a nonparent could obtain an order for temporary possessory conservatorship to a child in a modification suit against a parent without application of a parental presumption. The Supreme Court did not find the parental presumption at TEX. FAM. CODE § 153.131 applicable, consistent with its prior holding in *V.L.K.,* 24 S.W.3d 338 (Tex. 2000). Nevertheless, it held that the constitutional infirmities identified by the U.S. Supreme Court in *Troxel v. Granville*, 530 U.S.57 (2000), required it.

It held it would read "*any best-interest determination in which the court weighs a fit parent's rights against a claim to conservatorship or access by a nonparent to include a presumption that a fit parent acts in his or her child's best interest*." *C.J.C.*, 603 S.W.3d 804, 818-19 (Tex. 2020) (emphasis added). As such, it found the court's temporary order in this modification proceeding was subject to the presumption that the father determines the child's best interest based on his fundamental right as a fit parent. *Id.* 819.

Importantly, Justice Lehrmann's concurring opinion emphasized that the specific proof required to overcome this constitutionally imposed fit parent presumption was not addressed since that issue was not before it.

***In re F.E.N.*, 579 S.W.3d 74 (Tex. 2019) (per curiam):**

Type of Conduct for Significant Impairment Not Specified

The Supreme Court denied the Department's request to review the court of appeals' judgment reversing and remanding the appointment of the Department as the child's managing conservator. Also, it did not interfere with the appellate court's remand order since it found reasons other than those set forth by the court of appeals to remand. Nonetheless, the Court denied review with an opinion, and this opinion is important for the reasons it disagreed with the court of appeals.

Namely, the Supreme Court commented it did not agree in all respects with the appellate court's analysis reversing the appointment of the Department as sole managing conservator on the underlying facts. 579 S.W.3d at 77. In making that statement, the Court acknowledged that it previously held in *Lewelling v. Lewelling*, 796 S.W.2d 164, 164 (Tex. 1990) that Section § 153.131(a) of the Family Code placed a burden on the nonparent to establish that a parent's appointment would result in significant impairment to the child and the acts or omissions demonstrating that result should be included. The Court noted:

> [W]e did not address whether the parent's conduct must be of a certain type or nature; we held only that, to

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Abuse, Abandonment and Neglect of Undocumented Children

by Alma R. Benavides

This article focuses on undocumented children in the care of the Texas Department of Family and Protective Services (the Department) as a result of abuse, abandonment, neglect or other similar maltreatment who are not able to be reunified with one or both parents in their home country.[1]

There are many undocumented children who, as a result of emergency removal proceedings filed to protect a child, are placed by the Department in the care of relatives, friends of the family, or foster care. Regardless of whether a child is reunified with one parent in the United States, placed with relatives, fictive kin, or remain in the permanent care of the Department, the child risks growing up in the United States, subject to the possibility of deportation, unable to remain lawfully in the United States, obtain employment, or receive a higher education.

"Regardless of whether a child is reunified with one parent in the United States, placed with relatives, fictive kin, or remain in the permanent care of the Department, the child risks growing up in the United States, subject to the possibility of deportation, unable to remain lawfully in the United States, obtain employment, or receive a higher education."

A child who has been subject to abuse, abandonment, neglect, or other similar maltreatment, and cannot be reunified with one or both parents in his or her home country, can apply for Special Immigrant Juvenile Status. We, however, as practitioners, can help these children become permanent residents who can achieve citizenship in the United States.

Special Immigrant Juvenile Classification

Congress created the special immigrant juvenile (SIJ) classification when it enacted the Immigration Act of 1990 (IMMACT90).[2] The SIJ classification is available to certain children[3] in the United States who are subject to state juvenile court proceedings regardless of whether they are involved with the Department.

In order to apply for the SIJ classification, a Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) must be filed on behalf of eligible children.[4] To qualify, a state juvenile court order must be submitted with the application. The court order must make certain judicial determinations on dependency or custody, parental reunification, and the best interests of the child, in addition to satisfying all other eligibility requirements under the statute.[5] Other eligibility requirements include a showing that the child must have suffered abuse, neglect, abandonment, or a similar basis under state law and cannot be reunified with one or both parents in their home country.

The child who is seeking to be the beneficiary of the SIJ classification must have been a juvenile when the court order was issued. The court order must be issued from a court that

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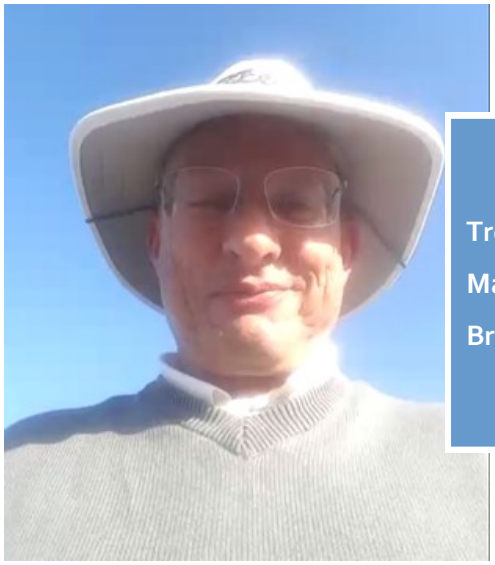
Results of the CPL Section's Elections

On July 13-14, 2020, the Child Protection Law Section held its formal election for incoming officers and council members. Like other sections during COVID-19, voting was done through a ballot system sent by the State Bar to each of the members in a Section e-blast. The results of that election showed a majority of the Section members voted to approve the following slate of new officers and council members:

Vice Chair: Sandra Hachem

OFFICERS:

Chair-Elect: Rhonda Hunter



Treasurer: Mark Briggs

Secretary: Hon. Bill Harris

Ethics is knowing the difference between what you have a right to do and what is right to do.

-Justice Potter Stewart

NEWLY-ELECTED COUNCIL MEMBERS:

Andrea Frye

Term Ending Spring 2021

Barbara Elias-Perciful

Term Ending Spring 2023

Alma Benavides

Term Ending Spring 2023

Derbha Jones

Term Ending Spring 2023

Ten Recent Supreme Court Cases, cont.

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> overcome the parental presumption, a nonparent seeking custody is "required to identify some act or omission committed by [the parent] which demonstrates that naming [the parent] as managing conservator will significantly impair [the child's] physical health or emotional development."

Id. at 77 n.5. With that comment, the Supreme Court emphasized that the type or nature of an act or omission necessary to overcome the parental presumption under Section 153.131(a) of the Family Code has not been limited to a specified type or nature by the Court.

The court of appeals in this case essentially found that proof under Section 153.131(a) was limited to a specified nature or type to overcome the presumption because it found this section requires an act or omission that "*would cause harm*." *See In re F.E.N.*, 542 S.W.3d 752, 770 & 772 (Tex. App.—Houston [14th Dist.] 2018, pet. denied) (emphasis added) ("absent affirmative evidence of an *act or omission by the Father that would cause harm*, the parental presumption could not be overcome."). In formulating the conclusion that an act or omission must be of a nature that it would cause harm, the court of appeals relied on a number of decisions by other courts of appeals that held the type conduct required to overcome the parental presumption under *Lewelling* must show (1) a "link between the parent's conduct and harm to the child;" (2) "may not be based on evidence which merely raise a surmise or speculation of harm;" and (3) generally require proof that the parent's conduct "would have a detrimental effect" and "support a logical inference that the "the parent's 'specific, identifiable behavior or conduct will probably result in the child being emotionally impaired or physically harmed.'"542 S.W.3d at 770. The Supreme Court's *per curiam* opinion indicates reliance on those propositions may be inaccurate; or, at least when applied to facts as those in this case.

Notably, the underlying facts of this case involved a father who never married, was a shrimper who worked extensive periods at sea, ended his relationship with the child's mother around the time of the child's birth, would visit the child while an infant but ended visits when the Department removed the child due to mom's drug abuse and neglect. 579 S.W.3d at. 75-76. That child then remained in the same foster home from age three until age nine when the Department proceeded with trial against the father for parental termination and appointment of the Department as sole managing conservator. While those facts did not reveal a specific act or omission by the father that "*would cause harm*" to the child, the circumstances certainly appeared to give basis to infer the father's lack of parental involvement for the majority of the child's life showed his appointment as sole managing conservator would significantly impair this child emotionally.

COMMENT: In reading this opinion, it may be helpful to read *Danet v. Bhan*, 436 S.W.3d 793, 796 (Tex. 2014). That case, like this case, involved a challenge to a nonparent's appointment as managing conservator on facts in which the nonparent cared for the child most of his life as a consequence of parental actions/inactions. While the Supreme Court expressed it would not suggest removal of

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the child from his long-term stable environment was conclusive proof to rebut the parental presumption, it affirmed the decision commenting that: "*These questions are purely contextual and are subject to the judgment of the fact finder at trial.*" *Id.* at 797-98.

***In re Z.N.*, 602 S.W.3d 541 (Tex. 2020) (per curiam).**

Nature of the Offense May Imply Serious Injury under TFC § 161.001(b)(1)(L)

The Supreme Court addressed whether a factfinder can reasonably infer proof of "serious injury of a child" from the type of conviction offered in support of the finding under Section 161.001(b)(1)(L) of the Family Code for parental termination. The Supreme Court acknowledged "simple illegality of the act does not itself indicate that a trial court may infer serious injury;" however, "for the purpose of ground (L), a conviction for an enumerated offense can imply that a serious injury has occurred based on the nature of the offense and the injury that will likely result." 602 S.W3d at 547-48. Because the record in this case showed the Father was convicted for indecency with three children aged 4, 10, and 11 and the described crime involved intentionally engaging in sexual contact by touching their genitals, the court found a trier of fact could reasonable infer the children suffered serious injury for purposes of Ground L.

***In re D.S.*, 602 S.W.3d 504 (Tex. 2020) (Lehrmann, J., concurring):**

TFC § 162..211(c) Precludes UCCJEA Challenge to Relinquishment

The Supreme Court addressed whether Section 161.211(c) of the Family Code prevented a father from collaterally challenging a judgment for parental termination (signed 6 months earlier) on a new claim that the "home state" determination per the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (TFC ch. 152) was wrong. The majority opinion acknowledged that the State courts of this nation are divided on whether the UCCJEA is a "subject-matter jurisdiction statute" but decided it did not have to address that because TFC 161.211 disposed of the issue before it. 602 S.W3d at 518. Namely, it held: "section 161.211(c)'s plain language forecloses a collateral attack premised on an erroneous home-state determination even if that determination implicates a trial court's subject-matter jurisdiction." 602 S.W.3d at 509.

Importantly, Justice Lehrmann issued a concurring opinion, joined by Justices Devine and Busby, finding the decision correct on another basis: that is, "a court's lack of 'jurisdiction' under the … UCCJEA … does not equate to a lack of 'subject matter jurisdiction' that deprives the court of the power to hear and decide the case, thereby endangering a judgment's finality." *Id.*

***In re L.G.*, 596 S.W.3d 778 (Tex. 2020) (per curiam).**

Due Process does not Preclude an "O" Finding Simply Because Parent is Indigent

The Supreme Court addressed a father's claim that the appellate court violated his rights to Equal Protection and Due Process (or Course) of law by relying on his indi-

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gence to terminate his parental rights under Subsection O of Section 161.001(b)(1) of the Family Code. Subsection O is a finding that the parent failed to comply with an order that provides actions necessary for reunification while the child is in the Department's temporary managing conservatorship for at least 9 months. The Supreme Court held the appellate court properly found the father "failed to show that his poverty prevented him from completing … services required of him under the court ordered plan." 596 S.W.3d at 780. Therefore, the Court effectively found that when a parent's indigence does not affirmatively prevent compliance with a court order for reunification, neither due process nor equal protection protections preclude a predicate termination finding under subpart O.

***In re B.G.*, 592 S.W.3d 133 (Tex. 2020) (per curiam).**

Affidavit Required for Indigence Hearing, but Court must Admonish

The Supreme Court considered whether the trial court was required to conduct a pre-trial inquiry into the parent's indigence status when the parent neither claimed indigence nor filed the requisite affidavit until after the trial concluded. Section 107.013(d) of the Family Code provides that a trial court "is not authorized to hold a hearing to determine indigency status … until the parent 'file[s] an affidavit of indigence' with the court." 592 S.W.3d at 136. Nevertheless, the Supreme Court affirmed the decision to remand the case because the trial court failed to give the parent the mandatory, statutory admonishments regarding her right to appointed counsel under Section 263.0061 of the Family Code, and the parent specifically raised that issue in her appellate brief.

COMMENT: This case illustrates the importance of including all legal claims in an appellate brief.

***In re A.L.M.-F.*, 593 S.W.3d 271 (Tex. 2020) (per curiam).**

***De Novo* Hearing is not Trial *De Novo* with Right to Jury Trial**

The Supreme Court considered whether a parent who waived the right to a jury trial before the associate judge had the right to demand a jury trial for the *de novo* hearing she requested under Section 201.015 of the Family Code. Looking at the nature of *de novo* hearings under Section 201.015, it held: "a *de novo* hearing is not an entirely new and independent action, but instead, is an extension of the original trial on the merits." 593 S.W.3d at 280. It then concluded that "Chapter 201 neither prohibits nor grants a right to a first-time jury trial in a *de novo* hearing, but permits the court to grant one in its discretion." *Id.* 281. As such, Section 201.015 did not give a party a right to demand a jury trial for first time after requesting a *de novo* hearing. *Id.* at 283.

***In re N.G.*, 577 S.W.3d 230 (Tex. 2019) (per curiam).**

D and E Grounds Subject to Review even if Other Grounds Proven

In *In re A.V.*, 113 S.W.3d 355, 362 (Tex. 2003), the Supreme Court found an appellate court need only review one predicate ground

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found by the trial court for parental termination because "[o]nly one predicate finding … is necessary to support a judgment of termination when there is also a finding that termination is in the child's best interest." In this case, the appellate court found sufficient proof of at least one ground, Subsection O, to support parental termination. Nevertheless, the parents argued due process required the appellate court to review their challenges to the other predicates findings, Subsections D and E of Section 161.001(b)(1), as they could be used to support a future finding under Subsection M. The Supreme Court agreed and held: "Allowing section 161.001(b)(1)(D) or (E) findings to go unreviewed on appeal when the parent has presented the issue to the court … violates the parent's due process and due course of law rights." 577 S.W.3d at 238.

COMMENT: The Supreme Court has not addressed whether appellate review of D or E findings is required on an Anders brief. *See In re E.K.*, 608 S.W.3d 815 (Tex. 2020) (concurrence from pet. denied).

***In re C.W.*, 586 S.W.3d 405 (Tex. 2019) (per curiam).**

Supreme Court does not Review Claim Omitted from Briefing

The Supreme Court makes an important point about preservation of error in the petition for review process in its footnote 1. Namely, it notes the mother's petition for review directly challenged the sufficiency of the evidence under section 161.003, but abandoned that issue in her brief on the merits. 586 S.W.3d at 406 n.1. As such, the Supreme Court stated it would not address it. This note clarifies that parental termination cases, just like any other civil case, must properly brief to preserve claims for review in the Supreme Court. *See Windrum v. Kareh*, 581 S.W.3d 761, 768 n.3 (Tex. 2019) (declining to address an issue listed in the petition for review but abandoned in subsequent briefing).

***In re Z.M.M.*, 577 S.W.3d 541 (Tex. 2019) (per curiam).**

Claim Addressed in Briefing Considered even Without Mention in Point or Issue

The Supreme Court considered the appellate court's failure to address the sufficiency of proof for the finding of the defense under Subsection (d) of TFC § 161.001(b)(1). The Court recognized that the appellant-parent's issue on appeal only explicitly challenged subpart (O) under Section 161.001(b)(1). Nevertheless, the father's argument in his briefing to the Court included reasons why he could not comply with the order for the finding under Subsection O and he specifically argued Subsection (d) should have precluded the O finding because it was not his fault he was unable to comply despite good faith efforts. The Supreme Court noted appellate courts must broadly construe issues to reach all core and substantive questions such that the merits of an appeal are addressed when reasonably possible to provide the party with a meaningful appeal. Therefore, on the parent's briefing it held the appellate court should have reviewed his arguments about Subsection (d) even though it was not included in the wording of his appellate point. This case emphasizes the importance of full briefing of arguments to ensure all claims are reached.

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Undocumented Children, cont.

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has the authority to act as a juvenile court.[6]

When applying for SIJ status, the applicant may submit the Form I-360 concurrently with Form I-485, Application to Register Permanent Residence or Adjust Status, and Form I-765, Application for Employment Authorization, depending on whether the child is involved in removal proceedings in immigration court.[7] The U.S. Citizenship and Immigration Services, (USCIS), has sole discretion to adjudicate Form I-360 and approve or deny the SIJ classification.

Pleadings and Court Orders [Juvenile Court Order]

The best interest of the child shall always be the primary consideration of the court in determining issues of conservatorship and possession of and access to the child.[8] Requesting the proper relief in the pleading filed with the court is imperative, and practitioners should provide background information to support the allegations of abuse, neglect, abandonment or a similar basis under state law. The pleading should further support the basis as to why it is not in the best interest of the child to be reunified with one or both parents in his or her home country. As a result of the child being abused, neglected or abandoned, the person seeking conservatorship of the child should request to be appointed as a sole managing conservator.[9] The sole managing conservator should have all the rights and duties of a person appointed in such capacity.[10]

Complete statutory references to the applicable sections in the Texas Family Code should be included in the petition and the court order.[11] The person seeking conservatorship of the child should present sufficient evidence to ask the court to find that the parent(s) who abused, neglected, or abandoned the child not be appointed as a joint managing conservator or possessory conservator because the appointment is not in the best interest of the child. Further, evidence should be presented to support that parental possession or access would endanger the physical or emotional welfare of the child.[12]

Finally, the evidence presented to the court should be sufficient to support why the court should find the child has been abused, neglected or abandoned, or a similar basis under state law; that the child cannot be reunified with one or both parents in his or her home country; and that it would not be in the best interest of the child to return to his or her native country.

It should be noted that the court order obtained on behalf of a child in Texas can have a variety of titles, but the most common title is an *Order in Suit Affecting the Parent Child Relationship*.[13] In certain circumstances, a *Decree of Divorce* may include certain judicial determinations regarding dependency or custody, parental reunification, and the best interests of the child along with the other eligibility requirements under the statute.

Once the court grants the relief requested, a certified copy of the court order should be obtained and the next step should be working with an attorney who has immigration experience in submitting the Form I-360 prior to the child reaching the age of 18. For those children who remain in the permanent care of a non-parent managing conservator, whether fictive kin, kinship or in the perma-

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nent care of the Department, a practitioner should contact the Department's Special Immigrant Juvenile Status Specialist[14] who has been assigned to the applicable Region where the case was filed.

Conclusion

The process of applying for SIJ status and receiving a response from USCIS will take time. Many applications are not approved immediately. In some instances, after submitting the Form I-360, USCIS may send a letter known as a Request for Evidence (RFE) before making a final decision. The RFE likely will require further documentation to be submitted by the petitioner by a date certain. All evidence requested should be submitted together by the deadline. Missing the deadline will likely result in the petition being denied. In rare circumstances, a court order may need to be corrected or modified. Accordingly, as not all court orders can be modified or corrected, practitioners should exercise care in preparing orders to ensure no further legal action is required. Individuals who have obtained a court order after reaching the age of 18 likely will not be granted SIJS status despite the eligibility standards.[15]

Once a child is classified as a special immigrant juvenile, he or she may be eligible to adjust status, if all eligibility requirements are met.[16] An SIJ classification may allow the child to remain in the United States while waiting for adjustment of status. Importantly, the classification is not an affirmative defense to deportation. If a child has an Order of Deportation and is eligible for the SIJ classification, one should still file a petition for SIJ after obtaining the family court order of dependency. While USCIS cannot adjust the status of a child who has an Order of Deportation, every effort should be made to set aside the Order of Deportation so that the child may apply to adjust status to permanent resident.

If a child is the beneficiary of an approved SIJ petition, USCIS still may revoke that petition for good and sufficient cause.[17] First, USCIS must issue a Notice of Intent to Revoke (NOIR) and will provide the child an opportunity to offer evidence in support of the petition and in opposition to the grounds alleged for revocation.[18] If the petition is denied, the child (or Petitioner who filed on behalf of the child) will be notified of the right to appeal.[19]

As a final note, USCIS adjudicates residency applications for children with the SIJ classification based on the Final Action Date and the availability of a visa. There are a limited number of SIJS visas available, and each country is allocated only a certain number of these visas. Thus, the child's home country impacts how quickly he or she might be eligible to apply for a green card. At the time of writing, children from certain countries including Guatemala, Honduras, and El Salvador must wait several years before their Final Action Dates are current whereas children from Mexico and Colombia are eligible to apply for adjustment sooner.

* * * * * * * End Notes: * * * * * * *

[1] The application for Special Immigrant Juvenile Status is also available to undocumented children who are not involved with the Texas Department of Family and Protective Services; however, this article focuses on children in care.

[2] *See* Pub. L. 101-649, 104 Stat. 4978 (November 29, 1990).

[3] For purposes of this definition, this pa-

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per refers to "alien" children, which means any person not a citizen or national of the United States.

[4] Special Immigrant Juvenile Status is a classification under federal law that allows a child to seek a "green card," i.e., adjustment of status to lawful permanent residence.

[5] *See* 8 U.S.C. § 1101(a)(27)(J).

[6] Section §23.001 of the TEX. GOV'T CODE states that each district court, county court, and statutory county court exercising the constitutional jurisdiction of either a county court or a district court, has jurisdiction over juvenile matters and may be designated a juvenile court. Under TEX. GOV'T CODE §24.601, a family district court has the jurisdiction and power provided for district courts by the constitution and laws of this state. Its jurisdiction is concurrent with that of other district courts in the county in which it is located. A family district court has primary responsibility for cases involving family law matters.

[7] Having work authorization does not necessarily mean you are in the United States lawfully or that you have legal permanent resident status; however, even though a child may not be old enough to apply for employment, the work authorization is a valid form of U.S. identification.

[8] *See* TEX. FAM. CODE §153.002.

[9] *Id.* at §153.005. The Texas Family Code further supports the appointment of a non-parent as a conservator of the child. *See* Subchapter G, Appointment of Non-Parent as Conservator. In cases involving the Texas Department of Family and Protective Services, this could be fictive kin, kinship or TDFPS named as a Non-Parent as Conservator.

[10] *Id.* at §153.132.

[11] *See* TEX. FAM. CODE Chapter 152, Chapter 161, and Chapter 261.

[12] *Id.* at §153.191.

[13] Other titles can be used such as an *Order of Dependency.*

The Texas Department of Family and Protective Services has an Immigration Unit that will handle submitting the Form I-360 for a child who remains in care.

[15] *Budhathoki v. Nielsen*, 898 F.3d 504 (5th Cir. 2018). Plaintiffs, who were each over the age of 18, filed Suits Affecting Parent -Child Relationship (SAPCR) in which the state courts awarded child support and made certain findings. The Fifth Circuit affirmed and held that USCIS properly determined that the state court orders for child support were not the equivalent of the necessary "care and custody" rulings required for SIJ status.

[16] *See* USCIC Policy Manual, Part F – Special Immigrant-Based (EB-4) Adjustment (Chapter 7); *see also* 8 CFR § 204.11. If a child has an Order of Deportation but is eligible for SIJ the classification, one should still file a petition for SIJ status after obtaining the family court order of dependency despite the immigration court order.

[17] *See* U.S.C. §1155.

[18] USCIS automatically revokes an approved SIJ petition, as of the date of approval, if any one of the following circumstances occurs before a decision on the adjustment of

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status application is issued: (1) marriage of the petitioner; (2) reunification of the petitioner with one or both parents by virtue of a court order where a juvenile court previously deemed reunification with that parent, or both parents, not viable due to abuse, neglect, abandonment or a similar basis under state law; or (3) reversal by the juvenile court of the determination that it would not be in the petitioner's best interest to be returned to the petitioner's or his or her parent's country of national origin or last habitual residence.

[19] An appeal may be made to the Associate Commissioner, Examinations. *See* 8 C.F.R. § 204.11(e).

* * * * * * * Author Info. * * * * * * *

By Alma R. Benavides
Board Certified — Family Law
Board Certified — Child Welfare Law
Texas Board off Legal Specialization
Family Law Mediator — Collaborative Lawyer

4690 McDermott Road, Suite 100
Plano, Texas 75024
972-578-2600 (telephone)
alma@benavidesfamilylaw.com

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Recap of COVID-19 Orders, cont.

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- ◊ In all other cases, courts must hear any objections to proceeding remotely on the record. (EO 29, ¶ 8).

- In child protection cases, there are specified limits on a court's ability to extend the dismissal date in Texas Family Code Section 263.401. (EO 29, ¶ 3(b)).

- In child custody matters, possession and access are not affected by shelter-in-place orders or pandemic-related school closures. (EO 29, ¶ 13).

- In residential eviction suits, there are additional pleading requirements, and courts must include additional information in the citation to alert defendant tenants about certain protections. There are also special procedures in place if the defendant tenant claims protections under the Centers for Disease Control and Prevention order halting evictions or if both the plaintiff landlord and defendant tenant express interest in the Texas Eviction Diversion Program, which is still in its pilot stage. (EOs 25 & 27).

- The deadline for payment of State Bar membership fees was extended from August 31 to October 31, 2020. (EO 23).

To view all the Court's emergency orders in full please visit: https://www.txcourts.gov/supreme/administrative-orders/2020/.

≈CPLS≈

CPLS Newsletter Committee:

Editor-in-Chief:
Sandra Hachem

Articles Editors:
Alma Benavides
Andrea Frye

Section-Update Ed.:
(unfilled)

Technical Editor:
Michael Hull

Staff Editors:
Rhonda Hunter
Sydney Keller

Newsletter Committee Contact Info:

Sandra Hachem
1019 Congress, 15th Fl.
Houston, TX 77002

713-274-5293 (T)
713-437-4700 (F)

sandra.hachem@cao.hctx.net

Interested in serving on the CPLS Newsletter Committee?

⇒ Committee appointments last one year from October 1 of every year

⇒ Positions Descriptions:

- Editor-in-Chief: Coordinates efforts with committee to produce the Section's newsletters; assists in administrative tasks to ensure production of at least two newsletters per year.
- Submission Editor: (two needed): Obtains at least two legal articles for each newsletter; completes editing assignments given by Editor-in-Chief by March 1 and August 1 of each year.
- Section-Update Editor: Produces and promotes articles about the Section, including pictures for historical and celebratory context; completes submissions by March 1 and August 1 of each year.
- Technical Editor: Coordinates with Website Committee to ensure that newsletters are properly posted on the website; works with State Bar rep. and Editor-in-Chief to ensure pleasant and proper newsletter format.
- Staff Editor (two or more needed): Reviews legal articles and section updates submitted, makes appropriate grammar and stylistic corrections and timely returns items to Editor-in-Chief.

⇒ All candidates interested in serving on the Newsletter Committee should contact Editor-In-Chief Sandra Hachem at sandra.hachem@cao.hctx.net.

Dates to Remember:

-Dec. 10-11, 2020: State Bar Adv. Trial Skills for Family Lawyers

-Dec. 14, 2020: Judge Byrne's Free CLE Series: *Evidence in Parental Termination Cases* (register through Austin Bar Association site; 1-hour program is free, but registration required)

-Mar.25-26, 2021: CPLS Annual Child Protection Law Conf.

-May 2021: Tex. Dist. & Co. Attn'ys Civil Seminar

-Jun. 22, 2021: State Bar Legislative Update: Fam. Law

-Aug. 1, 2021: Family Law 101

-Aug. 2-5, 2021: State Bar Advanced Fam. Law

-Aug. 4, 2021: Adv. Fam. Law Child Abuse Workshop

Tex. S. Ct. Oral Argument

⇒ Upcoming: Feb. 3, 2021 @ 9:00 a.m.

- *In re G.X.H., Jr. & B.X.H.*, No. 19-0959
- Construction and constitutionality of TFC § 263.401.

⇒ Watch upcoming and recent TXSCT oral arguments online:

- www.texasbarcle.com/cle/tsc.asp

Please let us know if you have any dates or information that you think might be helpful or interesting to our CPL Section members. Thank You!!!