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NO. 08-15-00250-CV

IN THE COURT OF APPEALS

FOR THE EIGHTH DISTRICT OF TEXAS

AT EL PASO

IN THE INTEREST OF THE CHILD V.L.R.

On appeal from Cause No. 2014DCM2530

65th Judicial District Court of El Paso

El Paso County, Texas

BRIEF OF APPELLANT

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ORAL ARGUMENT REQUESTED

IDENTITY OF THE PARTIES AND COUNSEL

The following is a complete list of all parties of the trial court's final judgment and appealable order, as well as the names and addresses of all trial and appellate counsel.

Hon. Yahara Gutierrez
Judge 65th Judicial District Court
500 E. San Antonio, Ste.
El Paso, Texas 7991

Hon. Richard Ainsa
Associate Judge, 65th Judicial Court
500 E. San Antonio, Ste.
El Paso, Texas 79901

PARTIES	COUNSEL
Department of Family and Protective Services	Hon. JoAnn Bernal County Attorney 500 E. San Antonio, Room 503 El Paso, Texas 79901 Hon. Michael Alvarez Assistant County Attorney 500 E. San Antonio, Room 503 El Paso, Texas 79901 Represented Appellee during the bench trial
S.H.R., Respondent and Appellant	Hon. Maria B. Ramirez 1119 E. San Antonio, El Paso, Texas 79901 Represented Appellant during the trial and this appeal

PARTIES	COUNSEL
G.D.R. and R.G., Respondents	Hon. Jaime Gandara Public Defender 500 E. San Antonio , 5th Floor El Paso, Texas 79901 Hon. Elizabeth Sanchez Assistant Public Defender 500 E. San Antonio El Paso, Texas 79901
V.L.R, Minor Child	Hon. Marina Chavez-Soto 7921 North Loop Ste. E El Paso, Texas 79915 Attorney Ad Litem for V.L.R.
Appellee Department of Family and Protective Services	Hon. Mark T. Zuniga 2401 Ridgepoint Drive, Bldg. H-2 Austin, Texas 78754

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STATEMENT OF THE CASE

This is an appeal of a trial court's judgment terminating the parental rights of S.H.R. pursuant to Texas Family Code §161.001(1)(N) and §161.001(1)(O).

The Original Petition filed on July 29, 2014, and brought by the Department of Family and Protective Services hereinafter referred to as Appellee and requests emergency orders and temporary sole managing conservatorship of V.L.R. against S.H.R., Appellant, and G.D.R. the presumed father of V.L.R., and R.G., the alleged biological father of V.L.R. CR 1:12-28.

Additionally, the original petition requests that the parentage of R.G. be determined and that if reunification between V.L.R., S.H.R.., G.D.R. or R.G. cannot be achieved, Appellee requests that S.H.R., G.D.R, and R.G.,'S parental rights be terminated. CR 1:13,16,18-20.

On August 4, 2014, Appellee filed two (2) documents entitled "Notice of Pending Custody Proceeding Involving Indian Children" hereinafter referred to as notices. One notice is addressed to the U.S. Department of Interior Bureau of Indian Affairs-Southern Plains Region in Oklahoma and the second notice is addressed to the Oglala Sioux Tribe in South Dakota; the certificate of service attached to each document and signed by

Appellee's counsel states the notices were sent to "all the attorneys of record in accordance with the Texas Rules of Civil Procedure on August 1, 2014." CR 1:37-39, 1:40-42, CR 1 39, 42

On August 12, 2014, the court entered temporary orders appointing Appellee Temporary Managing Conservator of V.L.R. and S.H.R. and G.D.R. possessory conservators of V.L.R. This order was approved as to form only. CR 1:50-74.

On January 12, 2015, Appellee filed a First Amended Petition for Protection of child for Conservatorship and for Termination in Suit Affecting the Parent Child relationship. CR 1:129-139

On May 5, 2015, Appellee filed a Second Amended Petition for Protection of child for Conservatorship and for Termination in Suit Affecting the Parent Child Relationship. In its second amended petition, and in addition to the prior grounds of Texas Family Code §161.001(1)(E) and §161.001(1)(D), Appellee pleads that S.H.R.'S rights be terminated as S.H.R. constructively abandoned V.L.R. pursuant to Texas Family Code §161.001(1)(N) and failed to comply with a court order pursuant to Texas Family Code §161.001(1)(O). [1]

[1] Although the CR does not include the Second Amended Petition to Terminate, undersigned counsel was provided with a file-stamped copy of this petition.

There is no indication from the Court's record that Appellee filed or mailed any additional documents entitled "Notice of Pending Custody Procedings Involving Indian Children" after the First Amended or Second Amended Petitions were filed.

The bench trial was held on July 1, 2015, before the Honorable Richard Ainsa. Counsel for S.H.R. requested a continuance of the final hearing as she had been in contact with S.H.R. The oral motion for a continuance was denied. TR 2:4

During the trial, Appellee abandoned its request that S.H.R.'s parental rights be terminated pursuant to Texas Family Code §161.001(1)(D) and §161.001(1)(E) and only proceeded on Texas Family Code §161.001(1)(N) and §161.001(1)(O). TR 2:42

At the conclusion of the bench trial, the trial court terminated S.H.R.'S rights pursuant to Texas Family Code §161.001(1)(N) and §161.001(1)(O) and found that the termination was in the best interest of V.L.R. The order was recommended by the Honorable Richard Ainsa and adopted by the Honorable Yahara Gutierrez on July 1, 2015. CR 1:169-175

The attorney ad litem for V.L.R. advocated against terminating the parental rights of G.D.R. and S.H.R.

S.H.R. timely perfected this accelerated appeal on July 20, 2015. CR 1:177-178

ISSUES PRESENTED

Issue Number One

The trial court committed reversible error when it failed to identify V.L.R.'S membership in the Oglala Sioux Tribe or the Nogales Tribe as V.L.R., is an Indian Child as defined by the Federal Indian Child Welfare Act, 25 U.S.C. §1903(4), hereinafter referred to as the ICWA and said error requires a reversal of the trial court's judgment.

Issue Number Two

The trial court committed reversible error when it failed to determine whether Appellee sent "Notice of Pending Custody Proceeding Involving Indian Children" pursuant to the Federal Indian Child Welfare Act, 25 U.S.C. §1912(a) as V.L.R., is an Indian Child as defined by the ICWA and said error requires reversal of the trial court's judgment.

Issue Number Three

The trial court committed reversible error when it failed to determine that the documents entitled "Notice of Pending Custody Proceeding Involving Indian Children" and sent to the Oglala Sioux Tribe and to the U.S. Department of Interior Bureau of Indian Affairs-Southern Plains Region in Oklahoma were deficient pursuant to the Federal Indian Child Welfare Act, 25 U.S.C. §1912(a) as V.L.R., is an Indian Child as defined by the Federal Indian Child Welfare Act, 25 U.S.C. §1903(4).

Issue Number Four

The trial court committed reversible error in terminating S.H.R.'S parental rights as the trial court failed to find "that the continued custody of the child by the parent or custodian is likely to result in serious emotional or physical damage to the child" pursuant to the ICWA, 25 U.S.C §1912(f).

Issue Number Five

The trial court committed reversible error in terminating S.H.R.'S parental rights and finding that S.H.R. constructively abandoned V.L.R. who had been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services or an authorized agency for not less than six months and (1) the Department or an authorized agency had made reasonable efforts to return V.L.R. to S.H.R.; (2) S.H.R. had not regularly visited or maintained significant contact with V.L.R.; and (3) S.H.R. demonstrated an inability to provide V.L.R with a safe environment as the evidence was insufficient to support such a finding beyond a reasonable doubt.

Issue Number Six

The trial court committed reversible error in terminating S.H.R.'S parental rights when it found S.H.R. failed to comply with the provisions of a court order that specifically established the actions necessary for S.H.R. to obtain the return of V.L.R. who had 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 V.L.R.'S removal from S.H.R. under Chapter 262 for the abuse or neglect of the child, pursuant to §161.001(1)(O), Texas Family Code as the evidence was insufficient to support the findings beyond a reasonable doubt.

STATEMENT OF FACTS

On July 29, 2014, the Department of Protective and Family Services filed an original petition for protection of the child, for conservatorship, and for termination in suit affecting the parent child relationship. In that petition, Appellee seeks temporary sole managing conservatorship of V.L.R, age 14 at the time the original petition was filed. Appellee alleged that S.H.R. had knowingly placed or knowingly allowed V.L.R. to remain in conditions or surroundings which endanger the physical or emotional well-being of V.L.R.

pursuant Texas Family Code §161.001(1)(D). Appellee further alleges that S.H.R. engaged in conduct or knowingly placed V.L.R. with persons who engaged in conduct which endangered the physical or emotional well being of V.L.R. pursuant to Texas Family Code §161.001(1)(E). CR 1:12-28

In support of the request for a temporary order of protection, an affidavit attached to Appellee's original petition and signed by caseworker Jessica Rodriguez, an employee of the Department of Family and Protective Services, states that on July 3, 2014, Appellee received an intake report alleging the neglectful supervision and refusal to accept parental responsibility of V.L.R. by the managing conservator pursuant to a court order, J.R. TR 2:11 According to Ms. Rodriguez, V.L.R. was seen near a friend's house in Ysleta, Texas; V.L.R. sent a text message to J.R., and J.R., the managing conservator refused to accept V.L.R.in her home. CR 1:24-25

When Ms. Rodriguez contacted J.R., J. R. stated that that she had not heard from V.L.R. in a month and that V.L.R. could not return home because V.L.R. was making false statements and allegations against J.R. J.R. further stated that she was unable to care for V.L.R. due to V.L.R.'S behavior. CR 1:25

J.R., the managing conservator, stated that V.L.R. was a member of the Oglala Sioux Tribe. CR 1:25

In the affidavit, Ms. Rodriguez further states that she contacted the Oglala Sioux Tribe from South Dakota and spoke to a man by the name of W.C. who confirmed that V.L.R. was a member of the Oglala Sioux Tribe. According to J.R., W.C. stated that "the tribe would not be stepping in and authorized the Department to proceed with the necessary actions." CR 1:26

Ms. Rodriguez also contacted a G.S., "JPD officer", who provided documents from the "Sioux Tribe." According to the documents, V.H.R., and V.H.R.'S sister were wards of the State of Nebraska in 2000. The "tribe" intervened and the "tribe" granted maternal grandfather custody; however, the "tribe" intervened again and placed V.L.R. with a relative, J.R. CR 1:26

Ms. Rodriguez further states that G.S. spoke to S.H.R. and S.H.R. informed her that although S.H.R. was still married to G.D.R., G.D.R., is not V.L.R.'S biological father. S.H.R. named R.G. as the biological father and stated that R.G. is a "tribal member" but did not know the name of the tribe although S.H.R. stated that R.G. is from Morton, Minnesota. The affidavit signed by Jessica Rodriguez was not admitted into evidence at the July 1, 2015 trial. CR 1:26

On August 4, 2014, Appellee filed two (2) documents entitled "Notice of Pending Custody Proceeding Involving Indian Children" hereinafter referred to as the notices. One notice is addressed to the U.S. Department of

Interior Bureau of Indian Affairs-Southern Plains Region in Oklahoma. The certificate of service attached to each notice and signed by Appellee's counsel states the documents were sent to "all the attorneys of record in accordance with the Texas Rules of Civil Procedure on August 1, 2014." CR 1:37-42

These notices were not introduced at the July 1, 2015 trial.

On May 5, 2015, Appellee filed a Second Amended Petition for Protection of child for Conservatorship and for Termination in Suit Affecting the Parent Child Relationship. In addition to the Texas Family Code §161.001(1) (D) and (E) grounds, Appellee requests that S.H.R.'s paternal rights be terminated as S.H.R. constructively abandoned V.L.R. and failed to comply with a court order pursuant to Texas Family Code §161.001(1)(N) and (O).

Two (2) witnesses testified during the bench trial on July 1, 2015. J.R., managing conservator of V.L.R. and Lizette Frias, V.L.R.'S caseworker and Appellee's employee.

The attorney ad litem for V.L.R., Marina Chavez-Soto advocated against termination of the parental rights of S.H.R., G.D.R. and R.G. The attorney ad litem argued that if the parental rights were to be terminated and Appellee appointed sole managing conservator, V.L.R. would be unable to

have a relationship with V.L.R.'S sister who remained in the care of Juana Rivas, the managing conservator. At the time of the bench trial, V.L.R. was 15 years of age. Ms. Chavez-Soto also argued that the termination was not in the best interest of V.L.R.

During the bench trial, counsel for Appellee asked the court to take judicial notice of the return of service for S.H.R. The only document introduced into evidence was the Certificate of Paternity Registry Search. TR 3

The evidence at trial is that S.H.R. has not any contact with V.H.R. who has been in J.R.'S care for more than 10 years and that "everything that has happened to V.L.R. as happened while V.H.R. was J.R.'S care. TR 2:11-12.

At the conclusion of the evidence, the trial court recommended to the referring court that S.H.R.'S, G.D.R.'S and R.G.'s parental rights be terminated as requested in the Second Amended Petition and that Appellee be appointed sole managing conservator.

The order was signed on July 1, 2015. CR 1:174

Issue Number One

The trial court committed reversible error when it failed to identify V.L.R.'S, membership in the Oglala Sioux Tribe or the Nogales Tribe as V.L.R., is an Indian Child as defined by the Federal Indian Child Welfare Act, 25 U.S.C. §1903(4).

Issue Number Two

The trial court committed reversible error when it failed to determine whether Appellee sent "Notice of Pending Custody Proceeding Involving Indian Children" pursuant to the Federal Indian Child Welfare Act, 25 U.S.C. §1912(a) as V.L.R., is an Indian Child as defined by the Federal Indian Child Welfare Act, 25 U.S.C. §1903(4).

Issue Number Three

The trial court committed reversible error when it failed to determine that the documents entitled "Notice of Pending Custody Proceeding Involving Indian Children" and sent to the Oglala Sioux Tribe and to the U.S. Department of Interior Bureau of Indian Affairs-Southern Plains Region in Oklahoma were deficient pursuant to the Federal Indian Child Welfare Act, 25 U.S.C. §1912(a) as V.L.R., is an Indian Child as defined by the Federal Indian Child Welfare Act, 25 U.S.C. §1903(4).

As Issues Number One, Two and Three involve common questions of law and fact, the three (3) points of error will be addressed in this point of error.

Appellant argues that is V.L.R. is a Indian Child as defined by the Indian Child Welfare Act of 1978, 25 U.S.C.A §§1901-1963 and hereinafter referred to as the ICWA, and as such, the trial court committed reversible error in failing to verify V.L.R.'S membership in a specific "Indian tribe", in failing to notify that tribe of the court proceedings, and in failing to determine that Appellee failed to comply with the strict ICWA notification guidelines.

Further, although S.H.R. failed to object to this error at trial, this Court should review the trial court's failure to comply with the ICWA provisions "de novo."

The Indian Child Welfare Act, hereinafter referred to as "ICWA' was enacted by Congress in 1978 and applies to all state child custody proceedings involving an Indian child when the court knows or has reason to know an Indian child is involved. Indian Child Welfare Act of 1978, 25 U.S.C.A §§1901-1963; *Doty-Jabbaar v. Dallas County Child Protective Services,* 19 S.W.3d 870, 874 (Tex.App.-Dallas 2000, pet. denied).

An "Indian child" is defined by the ICWA as an "unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe." 25 U.S.C.A. § 1903(4); *See Interest of J.J.C., a Child* and *In the Interest of A.M.C., a Child*, 302 S.W.3d 896 (Tex. App.--Waco2009).

After Congress enacted the ICWA, the Bureau of Indian Affairs created guidelines for state courts to use in Indian Child Custody proceedings and to assist in the interpretation of the ICWA. Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings, 44 FED. REG. AT 67,584 (1979). The BIA Guidelines state that notice is

necessary and certain information is required "so that the persons who receive notice may exercise their rights in a timely manner. BIA 44 FED. REG. AT 67,594; *See also In Re K.S.,* 448 S.W.3d 521, 529 (Tex. App., 2014).

The ICWA places the burden on the trial court to seek verification of the child's status through either the Bureau of Indian Affairs or the child's tribe. Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings, 44 FED. REG. AT 67,586 (stating that "the court shall seek verification of the child's status"). *See Yavapai-Apache Tribe v. Mejia*, 906 S.W. 152, 163-164 (Tex.App.-Houston [14th Dist.] 1995, orig. proceeding).

It is not disputed that this matter involves a "child custody proceeding" and that V.L.R. is an "Indian child" as those terms are defined by the ICWA. 25 U.S.C.A. § 1903(4). Futhermore, Appellee accepted as true that V.L.R. is a member if a tribe as evidenced by court order it prepared and the trial court signed that applied the ICWA standard of beyond a reasonable doubt. CR 1:169-175

Both V.L.R.'S managing conservator, J.R., and Lizette Frias, V.L.R.'S caseworker, testified at the July 1, 2015 bench trial that V.L.R. is a

member of a Native American tribe and is the age of 15 at the time of trial.TR V 2:62.

J.R. testifies as follows:

Q. And then is she actually a Native American or she is partly Native American?

A. Yes.

Q. And is the partly Native American due to her mother or her father?

A. The mama. TR 2:13

J.R. fails to identify V.L.R.'S membership in a specific tribe. TR 2:8-13

Likewise, Ms. Frias states as follows:

Q. All right. Now, the indication is that this child is of Indian heritage, is that correct?

A. Yes. TR 2:24.

Once the child is identified as an Indian child, the trial court must verify the child's membership in a "specific tribe" to notify that tribe of the court proceedings.

The ICWA requires that the parents,"Indian Custodian" (defined by ICWA as "Any Native person who has legal custody of the child) and under

tribal law or custom or under state law or to whom temporary physical care, custody, or control has been transferred by the parent"), the child's tribe (If child is affiliated with, or eligible for, membership in more than one tribe, *all* tribes should receive notice) the Bureau of Indian Affairs (only if identity/location of the tribe and/or parent, or Indian Custodian cannot be determined). ICWA 25 U.S.C.A. §1912(a).

In the instant case, the trial court committed reversible error when it proceeded with the bench trial and terminated S.H.R'S parental rights without correctly identifying V.L.R.'S membership in a specific Indian Tribe and in failing to determine whether that tribe had received notice of the child custody proceeding involving V.L.R. *See also In Re R.R. Jr.* at 219 (the commentary to section B-1 of the Guidelines indicates that it's the trial court and the Petitioner's burden to make inquiry sufficient to determine whether the child is Indian of not.)

The only admissible evidence offered by Appellee of a specific Indian tribe or of any notice to that tribe, is the testimony of Lizette Frias who testified that she called and spoke to someone at the *Nogales* Tribe.

Ms. Frias states as follows:

A On numerous cases, I would call the tribe requesting their assistance letting them know about this and they had a child that was

registered with the *Nogales Tribe*. They informed me that they did, but they explained to me that they no longer held jurisdiction on her.TR 2:24

Although counsel did not object to the trial court's failure to identify V.L.R.'S specific tribe during trial, this error may be presented to this Court as a point of error irrespective of preservation of error. *See Interest of J.J.C., a Child* and *In the Interest of A.M.C., a Child*, 302 S.W.3d 896, 902 (Tex. App.--Waco 2009).

Whether the trial court correctly applies the ICWA is a question of law. *Interest of W.D.H.* 43 S.W. 3d. 30, 33 (Tex.App.—Houston. [14th Dist.], 2001) (citing *J.W. v. R.J.,* 951 P.2d 1206, 1209 (Alaska 1998) and (In *re I.E.M.,* 233 Mich.App. 438, 443, 592 N.W.2d 751, 754 (1999).

In Texas, questions of law are subject to de novo review. *See Precast Structures, Inc. v. City of Houston,* 942 S.W.2d 632, 636 (Tex. App.--Houston [14th Dist.] 1996, no writ) (citing *State v. Heal*, 917 S.W.2d 6, 9 (Tex. 1996)).

The instant case is similar to *Interest of J.J.C., a Child* and *In the Interest of A.M.C.,* 302 S.W. 3rd 896 (Tex.App.—Waco 2009); In *J.J.C.* the mother, whose rights were terminated, argued for the first time on appeal that the Department failed to comply with the provisions of the ICWA. *Id.* at 898-899.

The *J.J.C.* Court held that although Texas state rules require preservation of error by the complaining party during the trial in order to raise an issue on appeal, the protections enumerated in the ICWA are mandatory and preempt state law, and the failure to follow the ICWA may be raised for the first time on appeal. *Id.* at 899. *See also In Re R.R., Jr.*, , 294 S.W. 3d 213, 224-227 (Tex.App.—Fort Worth, 2009—no pet); the *R.R., Jr.* court remanded for the trial court to determine whether the children were Indian children; if they were not, the termination of parental rights was affirmed. *Id.* at 227

In the instant case, the trial court committed reversible error by failing to identify V.L.R.'S membership in a specific Indian tribe and a de novo review of this issue requires that this case be reversed to the trial court. *See also In Re R.R. Jr.* at 219 (the commentary to section B-1 of the Guidelines indicates that it's the trial court and the Petitioner's burden to make inquiry sufficient to determine whether the child is Indian of not.)

The exact inquiry that the trial court or Petitioner is required to make is set forth in 25 C.F.R. §23.11 and it is entitled "Notice of Involuntary Child Custody Proceedings and Payment of Court Appointed Counsel in State Courts. See also *In Re R.R. Jr.* Id. at 219.

Further, the trial court committed reversible error by failing to determine whether V.L.R.'S specific tribe received notice.

The only admissible evidence presented that identified V.L.R.'S tribe is that of Ms. Frias, who testified that she called the "Nogales Tribe." TR 2:24. [2]

The ICWA, 25 U.S.C. §1912 and requires that written notice of the court proceedings be sent to the identified tribe or if membership in the tribe cannot be identified, to the Bureau of Indian Affairs by certified mail return receipt.

The Bureau of Indian Affairs guidelines state that proceedings in state courts involving the custody of Indian children shall follow strict procedures and meet stringent requirements to justify any result in an individual case contrary to these preferences." Bureau of Indian Affairs Guidelines for State Courts; Indian Child Custody Proceedings, 44 FED. REG. at 67,586. Specific instructions are provided in the BIA Guidelines for the determination of the status of an alleged Indian child. *See In Re J.J.C.,* at

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According to the affidavit attached to the original petition and signed by caseworker, Jessica Rodriguez states that Ms. Rodriguez contacted the *Oglala Sioux Tribe from South Dakota* and spoke to W.C. who confirmed that V.L.R. was a member of the *Oglala Sioux Tribe. CR1:26*
Ms. Rodriguez also contacted a "JPD officer, G.S. who provided documents from the *Sioux Tribe.* According to the documents, V.H.R., and her sister were ward of the State of Nebraska in 2000. The "tribe" intervened and the "tribe" granted maternal grandfather custody; however, the "tribe" intervened again and placed V.L.R. with a relative, J.R. Ms. Rodriguez also learned that S.H.R.although married to G.D.R. claimed that R.G, is the biological father of V.L.R. and that R.G. is a "tribal member" but did not know the name of the tribe although S.H.R. stated that R.G. is from Morton, Minnesota. CR 1:26 And S.H.R. mailed a letter confirming these statement. CR 116.
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902; *See also In Re R.R. Jr.* 294 S.W.3d 213, 224. (Tex. App., --Fort Worth 2009, no pet.).

Clearly, the act of calling a "tribe" is insufficient to comply with these provisions. ICWA 25 U.S.C.A. §1912(a).

Additionally, the trial court committed reversible error by failing to determine that Appellee did not notify V.L.R.'S specific tribe, the Nogales Tribe, of the child custody proceedings as mandated by the ICWA and the BIA guidelines. *Id.* at 899; See 25 C.F.R. §23.11(d)(1-4); *See also Yavapai-Apache Tribe v. Mejia*, 906 S.W. 152, 163-164 (Tex.App.-Houston [14th Dist.] 1995, orig. proceeding).

On August 4, 2014, Appellee filed two (2) documents entitled "Notice of Pending Custody Proceeding Involving Indian Children" hereinafter referred to as the notices. One notice is addressed to the U.S. Department of Interior Bureau of Indian Affairs-Southern Plains Region in Oklahoma and the second notice is addressed to the Oglala Sioux Tribe. CR 1:37-42

Although these notices were not introduced at trial nor did the trial court take judicial notice of their filing by Appellee, for this Court to consider these notices sufficient for purposes of the ICWA, there has to be clear evidence that V.L.R is a member of the Oglala Sioux Tribe or that V.L.R.'S membership in a tribe is unidentifiable and that therefore, the U.S.

Department of Interior Bureau of Indian Affairs-Southern Plains Region in Oklahoma is the "appropriate Area Director."

The ICWA requires that notice be sent to the "appropriate Area Director" when the trial court finds that an Indian child's tribe is unidentified. *Id.* §23.11(a), (b), and (f). In fact, in the Texas counties of El Paso and Hudspeth, if the identity of the tribe is unknown, notice must be sent to Anadarko Indian Director, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005. 25 C.F.R. §23.11 (c)(4*); See also In Re R.R. Jr.*, at 219.

A de novo review of the evidence shows that V.L.R. is not a member of the Oglala Sioux Tribe as the only evidence presented is that V.L.R. is a member of the Nogales tribe and therefore, the trial court committed reversible error. TR 2:24.

Likewise, a de novo review of the evidence does not support a finding that V.L.R.'S membership in a tribe is first, unidentified which requires notice to be sent to "appropriate Area Director" and secondly, as referred to in Appellee's notice, that U.S. Department of Interior Bureau of Indian Affairs-Southern Plains Region in Oklahoma is the "appropriate Area Director"*Id.* §23.11(a), (b), and (f).

Again, the trial court commits reversible error. 25 C.F.R. §23.11 (c)(4) states that in the Texas counties of El Paso and Hudspeth, the notice should be sent to Anadarko Indian Director, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005. 25 C.F.R. §23.11 (c)(4*); In Re R.R.*, at 219. *See also, Interest of J.J.C., a Child* at 901, *In Re R.R.*, 294 S.W.3d 213, 222 (Tex.App.—Fort Worth 2009, no.pet.).

When the child's tribe is unidentified, not only does the ICWA require notice to the "appropriate Area Director", but the Secretary of the Interior must also be notified of the child custody proceeding. 25 C.F.R. §23.11(a),(b),and (f). *See also, Interest of J.J.C., a Child* at 901, *In Re R.R.*, 294 S.W.3d 213, 222 (Tex.App.—Fort Worth 2009, no.pet.).

In the instant case, there is no evidence that the Secretary of the Interior was notified. 25 C.F.R. §23.11(a), (b), and (f).

Assuming arguendo that this Court finds that V.L.R. is a member of the Oglala Tribe or that U.S. Department of Interior Bureau of Indian Affairs-Southern Plains Region in Oklahoma is the "appropriate Area Director", the notices themselves are deficient for the purposes of strict notice provisions of the ICWA. 25 U.S.C.A. §1912, 25 C.F.R. §23.11(d) (1-4).

The purpose of the ICWA is to notify the identified tribe that there is a child custody proceeding involving one of their members.

Both notices state that a copy of Appellee's original petition is attached; however, a review of the court's record indicates that the original petition is not attached to the purported notices. CR 1:37-42. Assuming arguendo that the notices were received, the notice does not contain the nature of the child custody proceeding involving V.L.R. or the information required by 25 C.F.R. § 23.11(d)(4). A copy of the petition, complaint or other document shall be attached to the notice. 25 C.F.R. § 23.11(d)(4); *See also In re R.R. Jr.* at 221. CR 1:37-42

25 C.F.R. §23.11(d)(1-4) states that the notices must include the name of the Indian child, the child's birth date and birthplace, the name of the tribe or tribes in which the child may be eligible for enrollment, "all names known, and current and former addresses of the Indian child's biological mother, biological father, maternal and paternal grandparents and great grandparents ... including maiden, married and former names or aliases; birthdates; places of birth and death; tribal enrollment numbers and/or other identifying information." *Id.* § 23.11(d)(1)-(4). CR 1:37-42

Further, the notices were not mailed by certified mail return receipt requested as required by 25 C.F.R §23.11.

§23.11 states as follows:

a) Notice; time for commencement of proceedings; additional time for preparation

In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, **by registered mail with return receipt requested,** of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: Provided, that the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

There is no indication that either notice was mailed by certified mail return receipt requested. Instead each notice contains a certificate of service signed by Appellee's counsel that states the document is sent to "all the attorneys of record in accordance with the Texas Rules of Civil Procedure on August 1, 2014." CR 1:39, 42.

It is clear that the trial court and Appellee has failed to comply with the strict requirements of the ICWA and these errors are not harmless and require reversal and remand to the trial court. *Id. J.J.C.,* at 902.

Issue Number Four

The trial court committed reversible error in terminating S.H.R.'S parental rights as the trial court failed to find "that the continued custody of the child

by the parent or custodian is likely to result in serious emotional or physical damage to the child" pursuant to the ICWA 25 C.F.R. §1912(f).

On May 15, 2015, and in addition to the (D) and (E) grounds, Appellee filed a Second Amended Petition requesting that S.H.R.'s rights be terminated as S.H.R. constructively abandoned the child and failed to comply with a court order pursuant to Texas Family Code §161.001(1)(N) and (O).

During the July 1, 2015 trial, Appellee abandoned its request for termination based on Texas Family Code §161.001(1)(D) and (E) grounds and proceeded only on Texas Family Code §161.001(1)(N) and (O). TR 2:67-68, 72.

The Supreme Court of Texas holds that as involuntary termination of parental rights embodies fundamental constitutional rights. Because a termination action "permanently sunders" the bonds between a parent and child, the proceedings must be strictly scrutinized. *Wiley v. Spratlan,* 543 S.W.2d 349, 352 (Tex. 1976); *In re Shaw,* 966 S.W.2d 174, 179 (Tex. App.-El Paso 1998, no pet.).

Further, the trial court committed reversible error when it Section 1912(f) sets forth the minimum standard for involuntary termination of parental rights. No termination of parental rights may be ordered in such proceeding in the absence of a determination supported by evidence beyond

a reasonable doubt, including testimony of *qualified expert witnesses* that the continued custody that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. 25 U.S.C. §1912(f).

During the July 1, 2015 trial, S.H.R.'S counsel argued that Appellee failed to establish the grounds enumerated in Appellee's petition beyond a reasonable doubt and that Appellee failed to establish beyond a reasonable doubt that the termination is in V.L.R.'S best interests. TR 2:72-73.

The order of termination signed July 1, 2015 states in relevant part as follows:

6. Termination of Respondent Mother S.H.R.'S Parental Rights.

6. The Court finds beyond a reasonable doubt that termination of the parent-child relationship between S.H.R. and the child the subject of this suit is in the child's best interest.

The trial court's oral findings on July 1, 2015 mirror the written order. CR 1:174.

THE COURT: All right. This Court is satisfied that there is sufficient evidence supporting the State's grounds for termination. And that the mother has constructively abandoned her child and she has not complied with the service plan. Add that the fathers have not registered with the paternity registry and a diligent search was made for I guess location and failed. TR 2:75.

And for those reasons, the Court terminates the parental rights of the mother, S.H.R., of the alleged father, G.R., and the alleged father, R.G., and between them and their daughter, V.L.R. *The Court will find that its in the best interest of the juvenile child* to have parental rights terminated and that the Department will be appointed permanent managing conservator of the child. TR 2:75

The trial court in the instant failed to and would have been unable to make the required "best interest" finding mandated by ICWA—that is, a finding "that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." 25 U.S.C.A. 1912(f).

This is reversible error.

The facts in instant case are similar to *In the Interest of W.D.H.,* 43 S.W.3d 30 (Tex.App.-Houston [14th Dist.]). The *W.D.H.* court reversed the trial court's judgment when the trial court failed to make the finding, "that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." *Id.* at 36.

The *W.D. H.* court states as follows: The language of the ICWA is clear and unambiguous--parental rights may not be terminated in the absence

of such a determination. *Id.* at 36; *See also Doty-Jabbaar,* 19 S.W.3d at 877.

Further, the *W.D.H.* court held the trial court failed to make the ICWA best interest finding as no qualified expert witness testified that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. *Id.* at 35; 25 U.S.C. 1912(f) (1983).

Such are the facts in the instant case. A review of Appellee's evidence shows that the evidence is insufficient to support finding that "that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child as no qualified expert witness testified that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

At trial, Ms. Frias testifies as V.L.R.'S caseworker and not as an expert witness and states that V.L.R. was removed from the managing conservator, J.R. and not SH.R, Appellant. TR 2:9-11, TR 2:18, 2:40

Ms. Frias further testifies that J.R. does not pose a risk or danger to V.L.R. TR 2:41, that J.R. is an appropriate placement for V.L.R. TR 2:41 especially as J.R. retains custody of V.L.R.'S sibling. TR 2:41.

Ms. Frias only testifies about V.L.R.'s best interest when she is questioned about maternal grandfather.

Q. …Do you think that he would be in V.'S best interest?

A. Back then or now?

Q. Now?

A. Yes.

Q. Based on what you heard, you believe that it is in V.'S best interest?

A. Yes.

TR.2:47-48.

The evidence presented at the bench trial is insufficient to support the ICWA'S best interest finding as neither J.R. nor Ms. Frias testify "that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." The trial court committed reversible error in failing to require testimony from an expert witness that the continued that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child." 25 U.S.C. §1912(f).

The language of this provision of the ICWA is clear and unambiguous; parental rights may not be terminated absent that finding.

Further, the trial court failed to consider factors unique to Indian culture that are considered in the standard "Anglo" culture. The Houston court held that it is best for the Indian child to maintain ties with the Indian tribe, culture and family. *In re W.D.H.,* at 36 (citing *Quinn v. Walters*, 320 Or. 223, 881 P.2d. 795, 810 (1994). (stating "[t]he best interests of the child standard, by its very nature requires a subjective evaluation of a multitude of factors, many, if not all of which are imbued with the values of majority culture").

The Houston court held that as the Texas Family Code provisions are in conflict with those of the ICWA, the trial court erred in making its determinations under the Family Code and not the ICWA. *See Yavapai-Apache Tribe,* 906 S.W.2d at 170 (stating the ICWA "was specifically directed at preventing the infiltration of Anglo standards" in custody proceedings involving Indian children). *See also Doty-Jabbaar,* 19 S.W.3d at 877.

A review of this evidence shows that Appellee failed to present any evidence to support a finding that it was best for V.L.R., an Indian child, not to maintain ties with here Indian tribe, her culture and her family.

Ms. Frias testified that although she had made contact with S.H.R.'S brother, Appellee did not consider him as a placement as he "sounded

intoxicated" on the telephone. TR 2: 24-26. There is no evidence that Appellee conducted any type of home study for S.H.R.'S brother.

Ms. Frias also had information on S.H.R.'S cousins but "they didn't work out as possible placements." TR 2:25-26. No explanantion was offered as to why V.H.R. was no placed with the cousins.

There is some evidence that V.L.R. was a runaway but there are no specific dates offered by Appellee.

Ms. Frias also testifies that the maternal grandfather, Mr. L. was a possible placement when Ms. Frias located him in May, 2015—11 months after V.L.R'S was in placement, and that no home study (ICPC) had been conducted on maternal grandfather although he was interested in V.L.R. TR 2:47-48, 2:28-29.

Appellee failed to present a "qualified expert witness" and the evidence is factually insufficient to suppor the trial court's finding that it was in the "best interests of V.L.R. that S.H.R.'S rights be terminated. *In re Elliot,* 218 Mich.App. 196, 210, 554 N.W.2d 32, 38 (1996); *Doty-Jabbaar,* 19 S.W.3d at 876.

In is reversible error for the trial court to have terminated S.H.R.'S rights in absence of that finding and the error requires reversal of the trial court's judgment.

Issue Number Five

The trial court committed reversible error in terminating S.H.R.'S parental rights and finding that S.H.R. constructively abandoned V.L.R. who had been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services or an authorized agency for not less than six months and (1) the Department or an authorized agency had made reasonable efforts to return V.L.R. to S.H.R.; (2) S.H.R. had not regularly visited or maintained significant contact with V.L.R.; and (3) S.H.R. demonstrated an inability to provide V.L.R with a safe environment as the evidence was insufficient to support such a finding beyond a reasonable doubt.

Issue Number Six

The trial court committed reversible error in terminating S.H.R.'S parental rights when it found S.H.R. failed to comply with the provisions of a court order that specifically established the actions necessary for S.H.R. to obtain the return of V.L.R. who had 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 V.L.R.'S removal from S.H.R. under Chapter 262 for the abuse or neglect of the child, pursuant to §161.001(1)(O), Texas Family Code as the evidence was insufficient to support the findings beyond a reasonable doubt.

As Issues Number Five and Six involve common questions of law and fact, the two (2) points of error will be addressed in this point of error.

Appellant argues that the trial court committed reversible error in finding the evidence is legally sufficient to support a finding beyond a reasonable doubt and secondly, the trial court in the instant case committed reversible error when it combined the requisites of the Family Code and the ICWA by applying the evidentiary standard of "beyond a reasonable doubt"

as found in the ICWA to its findings under the Family Code. *In the Interest of W.D.H.*, 43 S.W.3d 30 (Tex.App.-Houston [14th Dist.] 2001).

In cases involving Indian children, Federal law provides a higher standard of protection to the rights of the parent and any finding must be beyond a reasonable doubt. 25 U.S.C.A § 1921. Additionally, the ICWA mandates that the trial court must make a finding "that the continued custody of the child by the parent or custodian is likely to result in serious emotional or physical damage to the child." ICWA 25 U.S.C.A. §1912(f) (1983)

The evidence is legally insufficient to establish beyond a reasonable doubt that S.H.R. demonstrated an inability to provide the child with a safe environment.

The trial court's order states as follows:

6.2 Further, the Court finds beyond a reasonable doubt that S.H.R. has:

> 6.2.1 constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services or an authorized agency for not less than six months, and:
> (i) the department or authorized agency has made reasonable efforts to return the child to the mother;
> (ii) the mother has not regularly visited or maintained significant contact with the child; and
> (iii) the mother has demonstrated an inability to provide the child with a safe environment pursuant to §161.001(1)(N), Texas Family Code;
>
> 6.2.2 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 pursuant to §161.001(1)(O), Texas Family Code. CR

For the trial court to have made a finding beyond a reasonable doubt to support a finding under 6.2.1, Appellee had to present evidence that S.H.R. demonstrated an inability to provide V.L.R. with a safe environment. Ms. Frias testified to the contrary.

Ms. Frias testifies that she does not know if S.H.R.'S environment is safe for V.L.R. cannot assume that S.H.R. is not a safe placement for V.L.R., but believes it is best for S.H.R.'S rights to be terminated.

Q. Now, you really don't know if mom has a safe environment for V.L.R., right? Correct?

A. No I do know.

Q. You do not know. You have been to my client's house?

A. No. I know where she is.

Q. You have been to my client's house.

A. No.

Q. So, you really don't know if she has a safe environment for V.L.R., right?

A. No.

Q. And you can't tell the Judge that she doesn't have a safe environment for V.L.R., right? Correct?

A. No.

TR 2:46

J.R. testifies as follows:

Q. So my client, S.H.R. does not have any rights?

A. No.

TR 2:11

Q. So everything that has happened to V. has happened while she was under your care?

A. Yes.

TR 2:11

Q. Because my client really hasn't had anything to do with V., right?

A. No, I think she hasn't.

TR 2:12-13

Secondly, courts have held that a trial court commits reversible error it terminated parental rights applying the termination provision of the Texas Family Code but applying ICWA standard of beyond a reasonable doubt. *In re W.D.H.*, at 36.

The court's reasonsing is that federal law preempts state law when committed error when its findings that Federal law preempts state law when: (1) Congress has expressly preempted state law, (2) Congress has installed a comprehensive regulatory scheme in the area, removing the entire field from the state realm, or (3) state law directly conflicts with the force or purpose of federal law. *Id. In re W.D.H.* at 36. *Cardinal Towing & Auto Repair, Inc. v. City of Bedford, Tex.,* 180 F.3d 686, 690 (5th Cir. 1999); *See also In the Interest of B.S.T.,* 977 S.W.2d 481, 484 (Tex.App.--Houston [14th Dist.] 1998, no pet.) (to support termination, the trial court to make an affirmative finding of at least one of the enumerated statutory grounds and a finding of best interest.

The evidence is legally insufficient to establish beyond a reasonable doubt that V.L.R. was removed from S.H.R. as a result of abuse or neglect of V.L.R.

Ms. Frias testifies as follows:

Q. And V.L.R. wa removed from J.R.'S house because V.L.R. was in conditions or surroundings that endangered her physical or emotionsl well-being, right?

A. No.

Q. And she was not removed because J.R. placed her in contact with persons who engagd in conduct that endangered V.L.R.'S physical or emotional well-being?

A. No.

TR 2:41.

Q. And when V.L.R. was removed or when there was a court order granting the Department temporary managing conservatorship, it was because J.R. called the Department and said, I can't control V.L.R., right?

A. She refused to take parental responsibility.

TR 2:40-41

Further, J.R. testifies that she believes S.H.R. does not have any rights over V.L.R., and that V.L.R. in care because of V.L.R'S conduct that occurred while under the supervision of J.R. TR 2:11

Further, the ICWA §1912(d) requires that a party seeking the termination of parental rights to an Indian child under State law shall satisfy the Court that active efforts have been made to provide remedial services. The evidence in the instant case is insufficient to support such a finding.

Ms. Frias testified that she never made actual contact with S.H.R. TR 2:45. She further testified that although she sent out letters some of the letters came back; TR 2:44 that she sent a letter to the county jail in June,

2015 even though S.H.R. was not at the jail. TR 2:28; The letter to contact S.H.R. was sent 11 months after V.L.R. came into care. TR 2:27.

Further, there was no proof that the service plan and that provided the remedial services sent to S.H.R. and required by was received by S.H.R. even though she mail it certified mail return receipt requested as required by ICWA §1912(d). TR 2:23, 2:45-46

Q. How do you know the service plan got to my client?

A. Because we do certified mail.

Q. And she signed for the letter?

A. No.

TR 2:44-45

Q. Sure. You cannot show that my client actually received the service plan in this case, correct?

A. Correct.

TR 2:45-46

Q. When you initially testified you said that you could tell this Court that my client received the service plan because it was sent certified mail with the return receipt requested and it was not signed by her, correct?

A. Correct.

Q. And that is still correct, right now?

A. Yes.

TR 2:54-55.

For the trial court to have made a finding beyond a reasonable doubt to support a finding under 6.2.2, Appellee had to present evidence that S.H.R. received the remedial services ICWA §1912(d).and it is clear that Appellee failed to do so.

Texas courts have consistently held that in a state court proceeding involving an Indian child, the trial court must meet the strict notice provisions and the best interest's finding of the Indian Child Welfare Act of 1978, 25 U.S.C.A §§1901-1963.

The failure of the trial court to do so is reversible error as a matter of law.

PRAYER

For the reasons set forth in this brief, the S.H.R. respectfully requests that this Court reverse the *Order of Termination*, terminating S.H.R.'S parental rights.

Respectfully Submitted,

/S/ MARIA B. RAMIREZ
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CERTIFICATE OF COMPLIANCE OF WORD COUNT

In accordance with Texas Rules of Appellate Procedure 9.4 (e) and (i), the undersigned attorney of record certifies that the Appellee's Brief contains **14-point** typeface for the body of the brief, **12-point** typeface for footnotes in the brief, and contains **8,057** words, excluding those words identified as not being counted in appellate rule of procedure 9.4(i)(1), and was prepared on Microsoft Word 2010®.

/S/ MARIA B. RAMIREZ
MARIA B. RAMIREZ

Certificate of Service

On September 2, 2015, a true and correct copy of this BRIEF OF APPELLANT was served on the following attorneys *via* electronic mail: Marina Chavez-Soto (mchavezlaw@aol.com) Mark T. Zuniga (Mark.Zuniga@dfps.state.tx.us)

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APPENDIX

Filed 7/8/2015 1:54:25 PM
Norma L. Favela
District Clerk
El Paso County
2014DCM5350

NOTICE: THIS DOCUMENT CONTAINS SENSITIVE DATA.

CAUSE NO. 2014DCM5350

IN THE INTEREST OF	§	**IN THE DISTRICT COURT OF**
	§	
	§	**EL PASO COUNTY, TEXAS**
	§	
A CHILD	§	**65TH JUDICIAL DISTRICT**

ORDER OF TERMINATION

On July 1, 2015, the Court heard this case.

1. Appearances

1.1. The Department of Family and Protective Services ("the Department") appeared through **LIZETTE FRIAS**, caseworker, and by attorney, **MICHAEL J. ALVAREZ** and announced ready.

1.2. Respondent Mother [redacted] appeared through attorney of record MARIA RAMIREZ and announced ready.

1.3. Respondent Alleged Father [redacted] appeared through attorney of record ELIZABETH SANCHEZ and announced ready.

1.4. Respondent Alleged Father [redacted] appeared through attorney of record ELIZABETH SANCHEZ and announced ready.

1.5. Respondent MANAGING CONSERVATOR [redacted] appeared in person and announced ready.

1.6. **MARINA CHAVEZ**, appointed by the Court as Attorney Ad Litem for the child the subject of this suit, appeared and announced ready.

1.7. **HEATHER WALES, CASA**, appointed by the Court as Guardian Ad Litem for the child the subject of this suit, appeared and announced ready.

2. Jurisdiction and Service of Process

2.1. The Court, having examined the record and heard the evidence and argument of counsel, finds the following:

2.1.1. a request for identification of a court of continuing, exclusive jurisdiction has been made as required by Section 155.101, Texas Family Code.

2.1.2. this Court has jurisdiction of this case and of all the parties and that no other court has continuing, exclusive jurisdiction of this case.

2.2. The Court, having examined the record and heard the evidence and argument of counsel, finds that the State of Texas has jurisdiction to render final orders regarding the child the subject of this suit pursuant to Subchapter C, Chapter 152, Texas Family Code, by virtue of the fact that Texas is the home state of the child.

2.3. The Court finds that all persons entitled to citation were properly cited.

2.4. The Court finds beyond a reasonable doubt that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that these efforts have proved unsuccessful, and the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

3. Jury

A jury was waived. and all questions of fact and of law were submitted to the Court.

4. Record

The record of testimony was duly reported by the court reporter for the 65th Judicial District Court of El Paso County.

5. The Child

The Court finds that the following child is the subject of this suit:

Name:	
Sex:	**Female**
Birth Date:	**April 26,**
Present Residence:	**institutional placement**
Driver's License Number:	**n/a**

6. Termination of Respondent Mother's Parental Rights

6.1. The Court finds beyond a reasonable doubt that termination of the parent-child relationship between and the child the subject of this suit is in the child's best interest.

6.2. Further. the Court finds beyond a reasonable doubt that has:

6.2.1. constructively abandoned the child who has been in the permanent or temporary managing conservatorship of the Department of Family and Protective Services or an authorized agency for not less than six months and: (1) the Department or authorized agency has made reasonable efforts to return the child to the mother; (2) the mother has not regularly visited or maintained significant contact with the child; and (3) the mother has

demonstrated an inability to provide the child with a safe environment, pursuant to § 161.001(1)(N), Texas Family Code;

6.2.2. failed to comply with the provisions of a court order that specifically established the actions necessary for the mother 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, pursuant to § 161.001(1)(O), Texas Family Code;

6.3. **IT IS THEREFORE ORDERED** that the parent-child relationship between [redacted] and the child the subject of this suit is terminated.

7. **Termination of Alleged Father** **Parental Rights**

7.1. The Court finds beyond a reasonable doubt that [redacted] has not registered with the paternity registry, and after the exercise of due diligence by the petitioner, his identity is known, but he cannot be located.

7.2. The Court also finds beyond a reasonable doubt that termination of the parent-child relationship between the alleged father and [redacted] hild the subject of this suit, is in the best interest of the child.

7.3. **IT IS THEREFORE ORDERED** that the parent-child relationship, if any exists or could exist. between [redacted] and [redacted], a child the subject of this suit, is terminated.

8. **Termination of Alleged Father** **arental Rights**

8.1. The Court finds beyond a reasonable doubt that [redacted] has not registered with the paternity registry, and after the exercise of due diligence by the petitioner. his identity is known, but he cannot be located.

8.2. The Court also finds beyond a reasonable doubt that termination of the parent-child relationship between the alleged father and [redacted] a child the subject of this suit, is in the best interest of the child.

8.3. **IT IS THEREFORE ORDERED** that the parent-child relationship, if any exists or could exist. between [redacted] and [redacted], a child the subject of this suit, is terminated.

9. Interstate Compact

The Court finds that Petitioner has filed a verified allegation or statement regarding compliance with the Interstate Compact on the Placement of Children as required by § 162.002(b)(1) of the Texas Family Code.

10. Managing Conservatorship:

10.1. The Court finds that the appointment of the Respondents as permanent managing conservator of the child is not in the child's best interest because the appointment would significantly impair child's physical health or emotional development.

10.2. **IT IS ORDERED** that the **DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES** is appointed Permanent Managing Conservator of [redacted] child the subject of this suit, with the rights and duties specified in § 153.371, Texas Family Code; the Court finding this appointment to be in the best interest of the child.

10.2.1. In addition to these rights and duties, **IT IS ORDERED** that the Department is authorized to consent to the medical care for [redacted] under § 266.004, Texas Family Code.

10.3. **IT IS ORDERED** that each parent, who has not previously done so, provide information regarding the medical history of the parent and parent's ancestors on the medical history report form, pursuant to § 161.2021, Texas Family Code.

11. Continuation of Court-Ordered Ad Litem or Advocate

11.1. The Court finds that the child the subject of this suit will continue in care and this Court will continue to review the placement, progress and welfare of the child.

11.2. **IT IS THEREFORE ORDERED** that **MARINA CHAVEZ,** earlier appointed as Attorney Ad Litem to represent the best interest of the child, is continued in this relationship until further order of this Court or final disposition of this suit.

11.3. **IT IS THEREFORE ORDERED** that **HEATHER WALES, CASA,** earlier appointed as Guardian Ad Litem to represent the best interest of the child, is continued in this relationship until further order of this Court or final disposition of this suit.

12. Court Ordered Ad Litem for Parent

12.1. **IT IS THEREFORE ORDERED** that **MARIA RAMIREZ** earlier appointed to represent [redacted] is relieved of all duties based on a finding of good cause.

12.2. **IT IS THEREFORE ORDERED** that **ELIZABETH SANCHEZ** earlier appointed to represent (is relieved of all duties based on a finding of good cause.

12.3. **IT IS THEREFORE ORDERED** that **ELIZABETH SANCHEZ** earlier appointed to represent is relieved of all duties based on a finding of good cause.

13. Dismissal of Other Court-Ordered Relationships

Except as otherwise provided in this order, any other existing court-ordered relationships with the child the subject of this suit are hereby terminated and any parties claiming a court-ordered relationship with the child are dismissed from this suit.

14. Child Support

Pursuant to § 154.001, Texas Family Code, **IT IS ORDERED** that the parents shall pay child support for the child as set forth in Attachment A to this Order, which is incorporated herein as if set out verbatim in this paragraph.

15. Inheritance Rights

This Order shall not affect the right of any child to inherit from and through any party.

16. Denial of Other Relief

IT IS ORDERED that all relief requested in this case and not expressly granted is denied.

17. WARNING: APPEAL OF FINAL ORDER, PURSUANT TO § 263.405, TFC

A PARTY AFFECTED BY THIS ORDER HAS THE RIGHT TO APPEAL. AN APPEAL IN A SUIT IN WHICH TERMINATION OF THE PARENT-CHILD RELATIONSHIP IS SOUGHT IS GOVERNED BY THE PROCEDURES FOR ACCELERATED APPEALS IN CIVIL CASES UNDER THE TEXAS RULES OF APPELLATE PROCEDURE. FAILURE TO FOLLOW THE TEXAS RULES OF APPELLATE PROCEDURE FOR ACCELERATED APPEALS MAY RESULT IN THE DISMISSAL OF THE APPEAL.

18. NOTICE TO ANY PEACE OFFICER OF THE STATE OF TEXAS:

YOU MAY USE REASONABLE EFFORTS TO ENFORCE THE TERMS OF CHILD CUSTODY SPECIFIED IN THIS ORDER. A PEACE OFFICER WHO RELIES ON THE TERMS OF A COURT ORDER AND THE OFFICER'S AGENCY ARE ENTITLED TO THE APPLICABLE IMMUNITY AGAINST ANY CLAIM, CIVIL OR OTHERWISE, REGARDING THE OFFICER'S GOOD FAITH ACTS PERFORMED IN THE SCOPE OF THE OFFICER'S DUTIES IN ENFORCING THE TERMS OF THE ORDER THAT RELATE TO CHILD

CUSTODY. ANY PERSON WHO KNOWINGLY PRESENTS FOR ENFORCEMENT AN ORDER THAT IS INVALID OR NO LONGER IN EFFECT COMMITS AN OFFENSE THAT MAY BE PUNISHABLE BY CONFINEMENT IN JAIL FOR AS LONG AS TWO YEARS AND A FINE OF AS MUCH AS $10,000.

SIGNED this 1 day of July, 2015.

ASSOCIATE JUDGE

SIGNED and ENTERED this 1st day of July, 2015.

JUDGE

APPROVED AS TO FORM:

MICHAEL J. ALVAREZ
Attorney for Petitioner, Department of Family and Protective Services
State Bar # 00790224

MARINA CHAVEZ
Attorney Ad Litem for the Child
State Bar # 24005286

Heather Wales, CASA
Guardian Ad Litem for the Child

Mother of the Child

MARIA RAMIREZ
Attorney for the Mother
State Bar # 16506305

G. D. R.
Alleged Father of the Child

ELIZABETH SANCHEZ
Attorney for the Alleged Father
State Bar # _____

R G.
Alleged Father of the Child

ELIZABETH SANCHEZ
Attorney for the Alleged Father
State Bar # _____

MANAGING CONSERVATOR of the Child