

# TEXAS LAWYER

## Parental Rights Terminated? “(O)” What a Case!

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On December 15, 2023, the Texas Supreme Court delivered an opinion in [In the Interest of R.J.G.](#) which many should take notice of, including Child Protective Services (CPS) caseworkers, child welfare attorneys, parents who find themselves threatened with termination of their parental rights and judges charged with the difficult task of parsing whether or not children deserve an on-going relationship with their parent. The court focused, in part, on the mandate that the state must prove that “governmental intrusion is warranted.” The bar is set high when a potential means of resolution is termination of parental rights. Those who operate in this arena would be well served to review this unpublished opinion, as well as

the predicate grounds for termination set out in [Texas Family Code Section 161.001\(b\)\(1\)](#).

In this particular case, the Texas Department of Family and Protective Services (“Department”) sought to terminate the parental rights of a mother who was 19 years-old when she gave birth to her third child. [The Department relied on “\(O\)”](#) grounds, which would mean that the Department was charged with providing clear and convincing evidence that the parent facing termination of her rights:

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

The ripple effect of the COVID pandemic continues to impact court cases. The Department removed the children from their mother’s care when she was late in picking them up from daycare one night. The daycare closed at midnight. The mother lied to the police about what caused her delay in picking the children up. The Department took possession of all three children the next day, filing pleadings seeking termination of mother’s parental rights. The trial court entered emergency orders naming the Department as the children’s temporary managing conservator. The Department then issued a parenting plan, which the mother signed off on. One “Family Plan of Service” was issued for the mother and for one child’s father. The service plan set out joint goals for the mother and for the father

as condition precedents to reunification of the family, including: having a stable home, maintaining stable employment, undergoing substance abuse treatment, signing up for and engaging in parenting classes focused on keeping their children in a safe and hygienic home, and taking care of (any) pending criminal matters.

The mother was also charged with undergoing a psychological evaluation, and to present at My Health My Resources (“MHMR”) for the purposes of allowing MHMR evaluate the mother and advise the Department about the mother's symptoms and the history of mental health for her family of origin. The mother spent one year seeking to comply with the Department’s parenting plan. She attended “individual counseling, parenting classes, and substance abuse classes; stayed drug free; maintained a job and a clean and stable home; and stayed in contact with her caseworker.” She was charged with successfully completing parenting classes, to engage in services with Daniel Browne, LPC and to focus on coping mechanisms and healthy ways of dealing with her mood swings, as well as healthier ways of raising her children within a functional family structure. The mother was also charged with engaging in substance abuse classes at [S.C.A.N.](#) The mother attempted to engage with S.C.A.N., but had difficulty doing so given closures that were occasioned by the COVID pandemic. In lieu of the recommended work with S.C.A.N., she engaged in counseling with Mr. Browne. One year after the children were removed from her care, the Department filed a status report with the court indicating that the mother “had demonstrated adequate and appropriate compliance with the [plan].” Two months later, counselor Browne changed his mind; he discharged the mother from his care, and wrote in his progress notes that the mother “was not able to complete services successfully.” Browne also wrote that he believed that the mother “did not show the capacity or willingness to remove herself from violence or drug abuse related influences.”

The Department presented only one witness at trial -- its caseworker. Though the mother could show substantial compliance with the Department's family service plan, the caseworker testified at trial that "Mother had not complied with the plan in the way the Department wanted." After being discharged by LPC Browne, the mother sought treatment at Grupo Amor, based on her caseworker's referral and recommendation. The mother testified that her work at Grupo Amor included classes focused on "anger management, substance abuse, domestic violence,... how to feed the family, and how to be a single mother." The mother's testimony reflected that she not only completed classes at Grupo Amor, she provided the Department with a certificate of completion. Her caseworker denied receiving the certificate of completion, but acknowledged the mother's work with Grupo Amor. In addition to her work with Grupo Amor, the mother sought treatment with yet another therapist, to whom she had been referred by a professional at Grupo Amor. The mother's caseworker testified that mother had completed that subsequent therapy, but the caseworker added that she discounted that work as the therapist did not address the reason for the removal of the children and the other incidents that arose during the pendency of the case.

When subjected to cross examination, the record reflects the following exchange:

Q: Would it be fair to say she has complied; she just hasn't complied when the State needed her to comply or in the way she was ordered to comply? Is that a fair statement?

A: Yes.

The trial court decided that a determination as to whether mother had substantially complied with the Department's service plan was inappropriate, instead concluding that the mother had not strictly complied with the Department's service plan. As

the trial court concluded that mother had not strictly complied with the terms of the service plan, the trial court granted termination of the mother's parental rights. The intermediate appellate court concluded that the trial court had issued an appropriate ruling. On further appeal to the State's highest court, the Texas Supreme Court observes that the Legislature requires that the Department must provide clear and convincing evidence to justify termination of at least one ground set out in Texas Family Code Section 161.001(b)(1), and further, that the termination of parental rights serves the child's best interests.

Precedent establishes a strong presumption in favor of maintaining the parent-child relationship. "[T]here is a strong [presumption](#) that the best interest of a child is served by keeping the child with a parent." "And because of the [strong presumption](#) in favor of maintaining the parent-child relationship and the due process implications of terminating a parent's rights to her minor child without clear and convincing evidence, 'the best interest standard does not permit termination merely because a child might be better off living elsewhere.'" Termination of parental rights must be based on substantial reasons - not a matter of whim by the Department or by the court. "Moreover, termination is [not warranted](#) 'without the [most solid and substantial reasons](#).'" "

In 2022, the [Texas Supreme Court](#) held that "subsection (O) contemplates direct, specifically required actions." Termination under subsection (O) is warranted when a parent fails to comply with a service plan "only when that plan requires the parent to perform specific actions." The trier of fact must find "a firm belief or conviction as to the truth of the allegations sought to be established." The Court of Appeals affirmed the trial court's verdict.

The Texas Supreme Court analyzed each point of the family service plan in R.J.G., the directives for goals of treatment, and how the mother took proactive steps and/or was noncompliant with the terms of the family service plan. “A judgment terminating parental rights is ‘the [‘death penalty’ of civil cases.](#)” Justice Huddle opined that “[a] court’s decision to impose this penalty demands more than **bureaucratic or mechanical box-checking.**” Emphasis added. The Texas Supreme Court distinguishes the instant case from other cases where termination was granted on “(O)” grounds, as in those other cases, there was “sporadic incidents of partial compliance” but the parent(s) in those other cases “violated many material provisions of the trial court’s orders.” Justice Huddle acknowledges that “[t]here may be provisions in particular service plans for which nothing less than strict compliance will suffice to avoid termination. . . . Where, as here, the plan requires a parent to attend classes with a specified service provider and the parent goes elsewhere (with the Department’s approval), the parent’s technical noncompliance with that requirement would not support termination under (O).”

What is the take away? Defense counsel must scrutinize the requirements of service plans carefully. Try to obtain Department approval of any deviation from the specific terms of the Family Service Plan, or court orders authorizing such alternatives. Attorneys who have done this type of work may have represented a variety of parents -- some who are compliant; some who are noncompliant. Attorneys who have represented parents and children in child welfare cases have experienced [great turnover in caseworkers](#) on a given case in recent years. While the [Department is charged with reunifying families in Texas](#), often a very different agenda is presented by caseworkers. Termination cases mandate that due process is to be guaranteed. Defense counsel must assure that their client’s rights are preserved. Termination of parental rights may serve the best interests of children in

some cases, but the Department must be forced to prove its case by clear and convincing evidence. Application of “(O)” grounds must be more than mechanical. Trial courts must explore whether a parent’s noncompliance is more than “trivial” or “immaterial.”

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