Final Hearing Checklist for Non-Jury Trial

Statutory

Prior to Final Hearing, review the court file to determine:

- ☐ Notice provided to parties not less than 45 days before first setting for trial. Tex. R. Civ. P. 245; Tex. Fam. Code § 263.0021
- ☐ All parties have been served. Tex. Fam. Code § 102.009
- ☐ Legal relief sought by parties with standing and properly pleaded. Tex. Fam. Code §§ 102.003, 102.008
- ☐ Ensure compliance with the Indian Child Welfare Act, if applicable; including notice to parent or Indian custodian, and the tribe or its Secretary. 25 U.S.C. § 1912

At the Hearing:

- ☐ Recite appearances of all parties present at the hearing.
- ☐ Take announcements regarding readiness to proceed to trial.
- ☐ Rule on any pending pretrial motions.
- ☐ Opening Statements, unless waived.
- ☐ Evidence
  - ***See* Termination Grounds Checklist**
  - *Holley v. Adams* best interest factors to consider:
    - the desires of the child
    - the emotional and physical needs of the child now and in the future
    - the emotional and physical danger to the child now and in the future
    - the parental abilities of the individuals seeking custody
    - the programs available to assist those individuals to promote the best interest of the child
    - the plans for the child by these individuals or by the agency seeking custody
    - the stability of the home or proposed placement
    - the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one
    - any excuse for the acts or omissions of the parent.

Holley v. Adams, 544 S.W.2d 367 (Tex. 1976)

- DFPS made reasonable efforts to return the child to the parent and despite those reasonable efforts, a continuing danger remains in the home.

- ☐ Closing arguments, unless waived.

Court Findings

At the End of the Hearing:

- ☐ Determine if evidence meets burden of proof to support pleadings:
  - For Termination of Parental Rights: Clear and Convincing Evidence, specified as to:
    - each ground alleged against that parent,
    - best interest of child, and
    - whether DFPS made reasonable efforts to return the child to the parent and despite those reasonable efforts, a continuing danger remains in the home. Tex. Fam. Code §§ 101.007, 161.001(b)(1), (b)(2), (f), 161.206(a-1)
  - For Conservatorship: Preponderance of the Evidence. Tex. Fam. Code § 105.005
  - For ICWA: Beyond a Reasonable Doubt. 25 U.S.C. § 1912(f)
- ☐ If termination is ordered, appoint a managing conservator (DFPS or other suitable individual). Tex. Fam. Code § 161.207
- ☐ If termination is NOT ordered and DFPS is awarded managing conservatorship, must find that:
  - Appointment of parent would not be in the child's best interest because it would significantly impair the child's physical health or emotional development (Clear and Convincing Evidence) Tex. Fam. Code § 153.002(c); and
  - It would not be in the child's best interest to appoint a relative of the child or another person as the managing conservator. Tex. Fam. Code § 263.404(a)

Final Hearing Checklist for Non-Jury Trial

continued

Court Findings

- ☐ If termination is NOT ordered and DFPS is awarded managing conservatorship, consider whether:
  - The child will turn 18 in not less than 3 years;
  - The child is at least 12 years old or has continuously expressed a strong desire against being adopted; and
  - The needs and desires of the child.

Tex. Fam. Code § 263.404(b)

- ☐ Advise parties of their right to appeal. Tex. Fam. Code § 263.405
- ☐ Set Permanency Hearing After Final Order for no later than six months after order if PMC granted to DFPS with termination. Tex. Fam. Code § 263.501(b)
- ☐ Set Permanency Hearing After Final Order for no later than 180 days if PMC granted to DFPS without termination. Tex. Fam. Code § 263.501(a)
- ☐ Continue appointment of child's attorney ad litem (AAL), or guardian ad litem (GAL), or attorney in the dual role as long as the child is in the conservatorship of DFPS. Tex. Fam. Code § 107.016

Best Practices

- ☐ Remind Parent's Attorney of appellate duties.
- ☐ Set initial placement review hearings sooner than statutorily required to ensure progress toward the child's permanency goal.