

Supreme Court of Texas

No. 25-1123

In the Interest of A.L., C.L., and A.L., Children

On Petition for Review from the
Court of Appeals for the Second District of Texas

CHIEF JUSTICE BLACKLOCK, concurring in the denial of the petition for review.

The failings of both parents in this case are abundant, and the evidence is more than sufficient to uphold the termination of their parental rights. In addition to challenging termination, however, Father challenges the district court’s decision not to place the children with relatives who were vetted by the Department of Family and Protective Services. The court of appeals declined to address that issue. It reasoned that once it affirmed the termination of Father’s rights, he “bec[a]me a former parent with no legal relationship to the children” and therefore lacked “standing” to challenge the children’s placement. ___ S.W.3d ___, 2025 WL 3181388, at *7 (Tex. App.—Fort Worth Nov. 13, 2025). A lack of standing is a lack of jurisdiction, which means a lack of power, regardless of the merits. The court of appeals thus believed it could not review the trial court’s denial of Father’s request to

place the children with extended family, even if that decision violated the law.

I concur in the Court's denial of the petition for review. I would not overturn the termination of Father's parental rights, which was well deserved. Nor would I disturb the district court's decision about the placement of the children. In a suitable future case, however, the Court may need to decide whether appellate courts have jurisdiction to review a trial court's decision not to place children with extended family members when that issue has been preserved on appeal by a terminated parent. I am inclined to think they do, although I understand why courts of appeals have reached the opposite conclusion.

The court of appeals followed its precedent. *See In re K.T.*, No. 02-14-00392-CV, 2015 WL 3460979, at *19 (Tex. App.—Fort Worth May 28, 2015, no pet.). Other courts have followed the same rule. *E.g., In re J.H.*, No. 01-22-00629-CV, 2023 WL 2169952, at *27 (Tex. App.—Houston [1st Dist.] Feb. 23, 2023, pet. denied); *A.K. v. Tex. Dep't of Fam. & Protective Servs.*, No. 03-22-00285-CV, 2022 WL 14989625, at *10 (Tex. App.—Austin Oct. 27, 2022, pet. denied); *In re H.M.M.*, 230 S.W.3d 204, 204–05 (Tex. App.—Houston [14th Dist.] 2006, no pet.).

The logic of these holdings has some appeal. After termination of rights, the law treats the former parent as a non-parent. By statute, “an order terminating the parent-child relationship divests the parent and the child of all legal rights and duties with respect to each other” TEX. FAM. CODE § 161.206(b). Non-parents generally lack a legally cognizable interest in the whereabouts of children not their own. And I agree that Father, after the termination of his rights, must be treated

by the law like a non-parent. Where I balk is at the notion that this legal disability fully and finally attaches within the still-pending termination litigation in a way that precludes appellate review of the terminated parent's preserved objections to the children's placement. The children must go somewhere; that issue is part of the litigation, and the parent's termination does not resolve it.

We usually ask whether a *plaintiff* has standing to seek judicial resolution of a dispute. If a random non-parent filed a lawsuit seeking to interfere in the placement of someone else's children, we would of course dismiss the case because the plaintiff lacks standing. That conception of standing—which asks whether the proper party is seeking the courts' resolution of a question—is what I think the court of appeals had in mind when it concluded Father lacks standing, as a non-parent, to challenge the children's placement.

Father was not the plaintiff. He did not invoke the court's jurisdiction. This litigation was thrust upon him—for good reason given his deplorable actions. For all his faults, he is not in the position of a non-parent seeking the courts' resolution of a question that is none of his business. He did not seek the courts' resolution of anything. The government initiated the litigation—again, for good reason. Father was thus compelled, as a defendant, to litigate two questions in the district court: whether he would remain the children's legal father, and if he did not, whether the children would remain part of his extended family by virtue of their placement with relatives. He litigated those questions, and the judgment resolves both against him. He appealed the judgment as to both questions but was told that he cannot appeal the second

question unless he succeeds on the first. He was given this answer even though (1) he participated in the litigation of the second question by advocating for an extended-family placement, (2) he was the only party asking the court of appeals to consider whether the district court followed the law when placing the children, and (3) he was the litigant best situated to advocate on appeal for the children's legislatively protected interest in maintaining ties with the extended family, *see* TEX. FAM. CODE § 262.114(d).

I doubt that the Family Code compels the courts to treat the very judgment Father is appealing as an insurmountable impediment to his appeal of the judgment. Section 161.206(b) says that a parent whose legal rights have been judicially terminated is divested “of all legal rights and duties” with respect to the child. The question is whether that command operates within the still-pending termination litigation to preclude appellate review of issues fully litigated, preserved, and urged by a terminated parent. Maybe, but I doubt it—particularly when, as here, the issue is whether the children will be placed with extended family or friends and thereby maintain some potential connection, in the future, to the terminated parent.

These parents failed their children terribly, worse even than in the typical termination case, and I do not suggest the lower courts should have tried harder to facilitate the parents' continued connection to the children. In many other cases, however, it may be that placing children with extended family is best for the children not just because it preserves their family ties but also because it could, in the future, facilitate a relationship between the child and a biological parent whose

legal rights had to be terminated. The Legislature has acknowledged that it is often best for a child to maintain natural ties with extended family after termination, which is why the Family Code prefers that the child be placed with “a person related to the child by blood, marriage, or adoption.” TEX. FAM. CODE § 262.114(d)(1).

Again, I doubt that the absolute withdrawal of all of a parent’s “legal rights and duties” fully attaches within the pending termination litigation itself. But even if it does, what ends is the parent’s legal status *as a parent* and all of the many rights and duties associated with that status. Yet apart from his status as a parent, a terminated parent remains a part of the extended family to which the Legislature has given a preference in the placement of the children. A terminated parent’s efforts to advocate on behalf of his family’s legislatively protected interest in maintaining post-termination ties with the children should not so quickly be analogized to a mere stranger attempting to inject himself into business not his own. Instead, the law acknowledges and protects the children’s natural ties to the extended family, of which the terminated parent remains a member. A terminated parent’s capacity not as a parent but as a representative of the extended family is likely enough on its own, I think, to provide the legally cognizable interest necessary to secure the appellate court’s jurisdiction to consider the terminated parent’s objections to the lower court’s decision not to place the children with family members.

As a practical matter, the parent facing termination may often be the only party to the case with an interest in advocating for the extended family’s connection to the child—and therefore the only party motivated

to seek appellate review of a contrary decision. Attorneys ad litem and others will advocate for the children's welfare as best they can, but their focus is on the children's welfare alone, not the family's. It is not their job to advocate for the family's interest. Often, the only litigant in a position to do so may be the terminated parent.

If the Family Code squarely foreclosed the appellate courts from considering a terminated parent's arguments regarding family placement, that would be the end of it, barring constitutional arguments. I am not convinced that the Code's general statement about the consequences of a termination order requires that result, particularly in light of the Code's stated preference for family placement. While I agree with the Court's denial of this petition, future cases may enable this Court or the courts of appeals to more fully consider the issue. Separately, the Legislature may wish to consider statutory changes directly addressing the ability of a terminated parent or other family member to participate in appeals of child placement decisions after termination of parental rights.

James D. Blacklock
Chief Justice

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