



(1) the petition under this section is filed after the date the order denying termination was rendered;

(2) the circumstances of the child, parent, sole managing conservator, possessory conservator, or other party affected by the order denying termination have materially and substantially changed since the date that the order was rendered;

(3) the parent committed an act listed under Section 161.001 before the date the order denying termination was rendered; and

(4) termination is in the best interest of the child.

(b) At a hearing under this section, the court may consider evidence presented at a previous hearing in a suit for termination of the parent-child relationship of the parent with respect to the same child.

History of Fam. Code §161.004: Acts 1995, 74th Leg., ch. 20, §1, eff. Apr. 20, 1995. Source: Former Fam. Code §15.025.

ANNOTATIONS

Thompson v. TDFPS, 176 S.W.3d 121, 127 (Tex. App.—Houston [1st Dist.] 2004, pet. denied), *overruled on other grounds*, *Cervantes-Peterson v. TDFPS*, 221 S.W.3d 244 (Tex.App.—Houston [1st Dist.] 2006, no pet.). “Because each of the conditions with which the father failed to comply was a condition precedent to maintaining possessory conservatorship imposed by the court’s ... decree denying termination of parental rights at that time, the evidence that the father did not comply with the court-ordered plan is necessarily indicative of a change in circumstance between the time the prior order was entered and the time this suit was filed seeking termination of appellant’s parental rights after denial of the prior petition to terminate. Before the court imposed the service plan in its ... decree, the father had no obligation to undertake these corrective steps. We hold that TDPRS met its burden to prove by clear and convincing evidence that circumstances had materially and substantially changed in regard to the entire family during the year following the original order denying termination and the second order terminating the father’s parental rights.”

In re T.V., 27 S.W.3d 622, 624 n.1 (Tex.App.—Waco 2000, no pet.). Section 161.004 “was passed in response to the concern created by the holding in *Slatton v. Brazoria Cty. Prot. Servs. Unit*, 804 S.W.2d 550 (Tex. App.—Texarkana 1991, no writ). *Slatton* applied the doctrine of res judicata and collateral estoppel to an order denying termination of parental rights.”

A FAM §161.005. TERMINATION WHEN PARENT IS PETITIONER

(a) A parent may file a suit for termination of the petitioner’s parent-child relationship. Except as provided by Subsection (h), the [The] court may order termination if termination is in the best interest of the child.

(b) If the petition designates the Department of Protective and Regulatory Services as managing conservator, the department shall be given service of citation. The court shall notify the department if the court appoints the department as the managing conservator of the child.

(c) Subject to Subsection (d), a man may file a suit for termination of the parent-child relationship between the man and a child if, without obtaining genetic testing, the man signed an acknowledgment of paternity of the child in accordance with Subchapter D, Chapter 160, or was adjudicated to be the father of the child in a previous proceeding under this title in which genetic testing did not occur. The petition must be verified and must allege facts showing that the petitioner:

(1) is not the child’s genetic father; and

(2) signed the acknowledgment of paternity or failed to contest parentage in the previous proceeding because of the mistaken belief, at the time the acknowledgment was signed or on the date the court order in the previous proceeding was rendered, that he was the child’s genetic father based on misrepresentations that led him to that conclusion.

(d) A man may not file a petition under Subsection (c) if:

(1) the man is the child’s adoptive father;

(2) the child was conceived by assisted reproduction and the man consented to assisted reproduction by his wife under Subchapter H, Chapter 160; or

(3) the man is the intended father of the child under a gestational agreement validated by a court under Subchapter I, Chapter 160.

(e) A petition under Subsection (c) must be filed not later than the first anniversary of the date on which the petitioner becomes aware of the facts alleged in the petition indicating that the petitioner is not the child’s genetic father.

(e-1) Subsection (e) applies beginning September 1, 2012. Before that date, a petition may be filed under Subsection (c) regardless of the date on which the pe-

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itioner became aware of the facts alleged in the petition indicating that the petitioner is not the child's genetic father. This subsection expires September 1, 2013.

(f) In a proceeding initiated under Subsection (c), the court shall hold a pretrial hearing to determine whether the petitioner has established a meritorious prima facie case for termination of the parent-child relationship. If a meritorious prima facie claim is established, the court shall order the petitioner and the child to submit to genetic testing under Subchapter F, Chapter 160.

(g) If the results of genetic testing ordered under Subsection (f) identify the petitioner as the child's genetic father under the standards prescribed by Section 160.505 and the results of any further testing requested by the petitioner and ordered by the court under Subchapter F, Chapter 160, do not exclude the petitioner as the child's genetic father, the court shall deny the petitioner's request for termination of the parent-child relationship.

(h) If the results of genetic testing ordered under Subsection (f) exclude the petitioner as the child's genetic father, the court shall render an order terminating the parent-child relationship.

(i) An order under Subsection (h) terminating the parent-child relationship ends the petitioner's obligation for future support of the child as of the date the order is rendered. The order does not affect the petitioner's obligations for support of the child incurred before that date or the petitioner's obligation to pay interest that accrues after that date on the basis of child support arrearages existing on that date. Those obligations are enforceable until satisfied by any means available for the enforcement of child support other than contempt.

(j) An order under Subsection (h) terminating the parent-child relationship does not preclude:

(1) the initiation of a proceeding under Chapter 160 to adjudicate whether another man is the child's parent; or

(2) if the other man subject to a proceeding under Subdivision (1) is adjudicated as the child's parent, the rendition of an order requiring that man to pay child support for the child under Chapter 154, subject to Subsection (k).

(k) Notwithstanding Section 154.131, an order described by Subsection (j)(2) may not require the other man to pay retroactive child support for any period pre-

ceding the date on which the order under Subsection (h) terminated the parent-child relationship between the child and the man seeking termination under this section.

(l) At any time before the court renders an order terminating the parent-child relationship under Subsection (h), the petitioner may request that the court also order periods of possession of or access to the child by the petitioner following termination of the parent-child relationship. If requested, the court may order periods of possession of or access to the child only if the court determines that denial of periods of possession of or access to the child would significantly impair the child's physical health or emotional well-being.

(m) The court may include provisions in an order under Subsection (l) that require:

(1) the child or any party to the proceeding to participate in counseling with a mental health professional who:

(A) has a background in family therapy; and

(B) holds a professional license that requires the person to possess at least a master's degree; and

(2) any party to pay the costs of the counseling described by Subdivision (1).

(n) Notwithstanding Subsection (m)(1), if a person who possesses the qualifications described by that subdivision is not available in the county in which the court is located, the court may require that the counseling be conducted by another person the court considers qualified for that purpose.

(o) During any period of possession of or access to the child ordered under Subsection (l) the petitioner has the rights and duties specified by Section 153.074, subject to any limitation specified by the court in its order.

History of Fam. Code §161.005: Acts 1995, 74th Leg., ch. 20, §1, eff. Apr. 20, 1995. Amended by Acts 1995, 74th Leg., ch. 751, §68, eff. Sept. 1, 1995; S.B. 785, §2, 82nd Leg., eff. May 12, 2011. Source: Former Fam. Code §15.01.

ANNOTATIONS

Dockery v. State, No. 03-05-00713-CV (Tex.App.—Austin 2006, pet. denied) (memo op.; 11-14-06). Father "acknowledges in his petition that he is the father of the child that is the subject of the suit. At the hearing, he made it clear that one of his purposes in seeking a termination was to eliminate his child support arrearage. [¶] [Father] provided no evidence that termination was in the child's best interest. Because his child is now 19, [father] argues that he should not have to

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