

Final Hearing Checklist for Non-Jury Trial

Statutory

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

- ☐ Notice provided to parties within 45 days of setting for trial. [Tex. R. Civ. P. 245](#)
- ☐ Legal relief sought by parties properly plead. [Tex. Fam. Code § 102.003](#); [Tex. Fam. Code § 102.008](#)
- ☐ All parties have been served. [Tex. Fam. Code § 102.009](#)
- ☐ Ensure compliance with the Indian Child Welfare Act, if applicable. [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](#); [Tex. Fam. Code § 161.001\(b\)\(1\),\(b\)\(2\), and \(f\)](#); [Tex. Fam. Code § 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\(a\)](#)

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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 90 days 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.