SECTION 9 JURY TRIALS

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JURY TRIALS

Both the U.S. and the Texas Constitutions guarantee the right to a jury.[1] With some limitations not generally applicable to suits brought by CPS, a party to a Suit Affecting the Parent-Child Relationship (SAPCR) is entitled to request a jury.[2] While the substantive proof is no different when a jury hears a case, there are specialized procedural requirements, as well as unique courtroom dynamics that require special trial techniques and preparation.

Authority

TEX. R. CIV. P. 216-236; 271-289.
TEX. FAM. CODE §105.002.

Jury Demand

To invoke the right to a jury trial, a party must file a written request with the clerk of the court.[3] The request must be made within a reasonable time, no less than 30 days before a trial date is set.[4] A request must be in writing and be accompanied by payment of jury fees no later than the 10th day before trial is set to begin, unless a fee exemption applies (if DFPS is requesting the jury, the in writing agency is entitled to an exemption).[5] A court has discretion to grant an untimely jury demand if doing so will not interfere with the court's docket, delay the trial, or injure the opposing party.[6]

A party may appear through counsel at a jury trial and thereby avoid a waiver of the right to trial by jury.[7] If a party has perfected the right to a jury in accordance with Tex. R. Civ. P. 216 but proceeds to trial without a jury, the party must object on the record or indicate affirmatively that it stands on the right to a jury trial to preserve error.[8]

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[1] U.S. CONST. Amend. VII; TEX. CONST. Art. I, § 15.
[2] TEX. FAM. CODE §105.002(b) (no jury trial in suit for adoption, to adjudicate issues of consent to adoption, child support, terms or conditions of possession or access or rights or duties of managing conservator, except which joint managing conservator has exclusive right to designate child's primary residence).
[3] TEX. R. CIV. P. 216(a).
[4] *Id.*
[5] TEX. GOV'T. CODE §51.604; TEX. R. CIV. P. 216(b); TEX. HUM. RES. CODE §40.062.

[6] *In re P.L.G.M.*, No. 02-13-00181-CV, 2013 Tex. App. LEXIS 13755 (Tex. App. —Fort Worth 2013,no pet.) (abuse of discretion to deny jury demand where CPS removed children again shortly after timely jury demand withdrawn, and court extended dismissal date and granted continuance,).
[7] TEX. R. CIV. P. 220; *In re M.N.V.*, 216 S.W.3d 833, 835 (Tex. App.—San Antonio 2006, no pet.).
[8] *In re M.B.P.*, 257 S.W.3d 804 (Tex. App. —Dallas, 2008, no pet.).

Jury Shuffle

Any party can request a jury shuffle once without explanation as to why it is necessary.[9] The demand must be made by any party or attorney in the case prior to voir dire examination.[10] There shall be only one shuffle by the trial judge in each case.[11]

Pre-Trial

When a jury is hearing a case, and depending upon the discovery control plan, the trial court may require the attorneys to submit all exhibit and witness lists at the pre-trial conference. All witnesses must correspond to both fact and expert witnesses listed in responses to requests for disclosure and interrogatories. If possible, stipulate to evidentiary exhibits in advance of the pre-trial hearing. Also, ensure that discovery is fully supplemented in a timely manner to avoid the possible exclusion of witnesses or evidence.

TIP:
An expert's curriculum vitae must be provided in a response to a request for disclosure. Remember that if you stipulate to an expert's credentials, you will forfeit the chance to educate the jury about your expert's unique background and value as a witness. It's also a good idea not to offer an expert's resume or curriculum vitae until *after* the witness has testified to his or her credentials. Otherwise, the expert's testimony may be barred because it duplicates the written document already admitted.

Motion in Limine

What is a motion in limine?

A motion in limine is a procedural device that permits a party to identify, before trial, certain evidentiary rulings that the trial court may be asked to make.[12] A motion in limine is a written motion made before a jury trial to request a protective order prohibiting discussion of specific questions or statements in front of the jury. The purpose of this procedure is to prevent the jury from being exposed to potentially prejudicial information before a ruling on admissibility can be obtained.[13] A motion in limine is designed to avoid the injection of irrelevant, inadmissible, or prejudicial information into a trial. See, Practice Guide, SECTION 11, TOOLS, Jury, Motion in Limine.

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[9] TEX. R. CIV. P. 223.
[10] *Id.*
[11] *Id.*
[12] *W.C. v. DFPS*, 2013 Tex. App. LEXIS 299 (Tex. App. — Austin, Jan. 8, 2013, no pet.)
[13] *In re R.N.*, 356 S.W.3d 568 (Tex. App.—Texarkana 2011, no pet.).

The trial court's ruling on a motion in limine is not a ruling that excludes or admits evidence.[14] It is merely a tentative ruling that prohibits a party from asking certain questions or offering certain evidence in front of the jury without first approaching the bench for a ruling.

TIP:
To maximize the impact of a motion in limine, request that the prohibitions extend to all parties, witnesses, and counsel, and that opposing counsel be ordered to instruct witnesses and clients accordingly. In drafting the motion, consider whether your own client or witnesses may have difficulty avoiding any prohibitions in the order. If this happens, a court may conclude that CPS opened the door on a specific issue, and as a result, the prohibition is lifted. If this is a risk, consider narrowing the terms of the motion in limine.

Why is a motion in limine important?

- The ruling on a motion in limine sets the ground rules for evidence in the case;
- An objection to improper evidence or limiting instruction after the fact is often unavoidable, but will not necessarily remove the impression that prejudicial evidence can have on jurors. Once a jury has heard highly prejudicial or inflammatory testimony, it is almost impossible to "unring the bell," or "get the skunk out of the jury box;" and
- A well-crafted motion in limine anticipates potential problems and avoids exposing the jury to potentially misleading or confusing evidence.

When is a motion in limine filed?

Preferably, the motion in limine should be filed prior to the pre-trial conference, so the trial court can rule on the motion at the pre-trial conference. Once the trial court has made its rulings regarding material issues and admissible evidence, the parties can better fashion their voir dire questions and opening statements.

A motion in limine does not preserve error. If the evidence is offered at trial, the party that wants to exclude it must object when the evidence is offered.[15] When a motion in limine is granted, the party that wants to introduce the evidence must: (1) approach the bench and ask for a ruling; (2) formally offer the evidence; and (3) obtain a ruling on the offer.A party seeking to object to a violation of a motion in limine must do so immediately or risk

[14] *In re R.F., No. 09-10-00220-CV, 2011 Tex. App. LEXIS 2373*(Tex. App. — Beaumont, 2011, no pet.).
[15] *Zinda v. McCann St., Ltd*., 178 S.W. 3d 883, 894 (Tex. App. —Texarkana 2005, pet denied).

waiving the error.[16] The cumulative effect of repeated violations of a motion in limine may be grounds for reversal, a mistrial, or sanctions.[17]

How should a motion in limine be submitted?

Pre-trial

- Before requesting a motion in limine, find out if opposing counsel will agree to specific issues, and in doing so, narrow the scope of issues for the court to decide;
- Any motion in limine that is complex or lengthy should be filed well before the pre-trial conference with copies of the supporting case law;
- Number each limine request, cite the supporting authority, and insert provisions for the court to indicate GRANTED or DENIED for each individual request;
- Schedule sufficient time for a hearing on contested issues; and
- Prepare a written ruling in advance of the hearing on a motion in limine and get the ruling signed and filed with the court before trial begins. Making a record is essential to preserve any issue for appellate review.

Jury Instructions

After the jury is sworn in and before the voir dire examination begins, the court must give the jury panel instructions as prescribed by the Supreme Court.[18] Approved instructions to the jury panel and to the jury are set out following rule 226a.[19]

Voir Dire

Voir dire means "to speak the truth" — an apt phrase for the process used to examine potential jurors for bias or prejudice that might prevent a fair trial.[20] Voir dire is the *only* time an attorney gets to directly interact with prospective jurors. It is the first opportunity an attorney has to get to know a jury and the first opportunity the attorney has to educate the jury panel about the case. It is the only time the jury panel will be able to tell an attorney what they think about issues relevant to the case prior to the verdict. An attorney's most important goal in voir dire is to get the panel talking. If a member of the

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[16] *Weidner v. Sanchez*, 14 S.W.3d 353 (Tex. App.—Houston [14th Dist.] 2000, no pet.).

[17] *Id*. at 363.

[18] TEX. R. CIV. P. 226a.

[19] *Id*.

[20] *In re Z.C.J.L*, 2013 LEXIS 8284 (Tex. App.—Houston [14th Dist.] 2013, no pet.) (mem.op). (purpose of voir dire is to protect the right to an impartial jury by exposing improper juror biases or bases for disqualification).

jury panel voices criticism of CPS or social workers, this may be an opportunity to find out who among the potential jurors has strong negative opinions about termination of parental rights, the agency, or other relevant issues. If a potential juror has a strong bias, that person may be subject to being stricken for cause (see discussion of challenges, below). Potential juror's comments, followed up properly, can also be used as a springboard to educate the entire panel about the case in a way that might cause one or more jurors to reconsider a specific position.

Voir dire is also an opportunity to educate potential jurors about the process of a CPS case, including how CPS's main goal is family reunification. In addition, voir dire can be used to explain to prospective jurors that CPS offers many services to struggling parents, such as counseling, parenting classes, anger management training, and other relevant services to assist in family preservation and reunification.

Each judge may require the litigants to conduct voir dire in accordance with the judge's specific direction. While voir dire in each case must be tailored to the facts, a sample voir dire for CPS cases is designed to prompt consideration of common relevant issues.[21] Once you have gathered basic information from members of the panel, it is helpful to ask open-ended questions and then to get other panel members to reflect on those answers.

EXAMPLE:

Ms. Garcia, "Do you agree with Ms. Jones' contention that a parent's rights should be terminated only upon a showing of physical abuse?"

"If not, why not?"

"Mr. Smith, Ms. Garcia has stated that a child who has witnessed physical abuse of a sibling can suffer from fear and anxiety, and she considered that endangering conduct. Can you think of other ways in which a child might suffer mental or emotional abuse?"

"Ms. Jackson, do you agree with Ms. Garcia and Mr. Smith's belief that there are some instances in which mental or emotional abuse can be as bad as, or even worse than, physical abuse? Can you think of other examples?"

Who are you looking for in voir dire?

The potential jurors you want to identify and attempt to eliminate from the jury pool include those who, for whatever reason, will never vote to terminate parental rights, no matter what evidence is presented. Some general characteristics that may be cause for concern in a potential juror in a CPS case include people who:

- Have strong beliefs about the State's intrusion into a family's private life;

[21] See Practice Guide, SECTION 11 TOOLS, Jury, Voir Dire.

- Have little or no contact or experience with children;
- Think that CPS (the police, the DA, etc.) frequently find child abuse where none exists;
- Think children are unreliable witnesses;
- Think children often lie about sexual abuse;
- Think termination of parental rights is morally wrong;
- Know someone who was falsely accused of child abuse;
- Are professionals (therapist, psychologist, advocate, etc.) whose experience has led them to be sympathetic to sexual perpetrators, child abusers, substance abusers, perpetrators of domestic violence, or other relevant populations;
- Have had a negative experience with CPS, either personally or through a friend or family member; or
- Believe that CPS's primary mission is to "snatch" children.

TIP:
An example of an issue that may require careful education of the jury is the fact that there are often no medical findings in a sexual abuse case. By laying a foundation on this issue during voir dire and introducing expert evidence at trial to explain why this occurs, this issue can be removed as an obstacle for the jury in a sexual abuse case. This is a prime example of an issue that may require some special attention because it pertains to information that is not common knowledge.[22]

How can you challenge a potential juror?

For Cause

A potential juror is subject to disqualification for cause if he or she expresses opinions that reveal an unwillingness or inability to follow the law or show bias for or against one side that would unduly prejudice the other side.[23] Strikes for cause are unlimited, and as such, whenever possible, an attorney should attempt to have a potential juror struck for cause and avoid using peremptory strikes. The trial court has great latitude in controlling voir dire and may restrict trial counsel from attempting to gauge the weight a potential juror may give to evidence, as opposed to discovering a potential juror's attitude or bias.[24]

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[22] *See Investigation & Prosecution of Child Sexual Abuse*, T. Buess and D. Darby (2011 Texas District and County Attorneys Association) p. 177, citing research showing medical evidence is found in only a fraction of sexual abuse cases, even when the allegation included penetration.

[23] TEX. R. CIV. P. 228.

[24] *Hyundai Motor Vo. v. Vasquez*, 189 S.W. 3d 743 (Tex. 2006) (proposed question inappropriately sought to test the weight jurors would place on evidence).

TIP: Do not let a panel member with extreme views contaminate the jury. Ask to approach the bench and question the panel member outside the hearing of the other panel members. If a potential juror shows bias, use a challenge for cause.

Peremptory Strikes

Peremptory strikes allow a party to remove a member of the panel without stating a reason. This allows removal of a person who can't be shown to be biased but who has opinions or attitudes that may be at odds with the agency's position in the case. Each side is allocated six peremptory strikes in district court.[25] It is not unusual for CPS to share strikes with similarly aligned parties, including the attorney ad litem or a relative if the parties' positions are substantially the same.[26] If these parties are not aligned, it is important to advise the court, and request that the agency not share strikes with any party that is not aligned.

If a party's use of peremptory strikes reveals a pattern of striking all persons of one race, ethnicity, or gender, a *Batson* challenge may be brought.[27] If a *Batson* challenge occurs, the party who exercised the strikes must be prepared to articulate a racially neutral reason for the strikes.

TIP:
Always have at least one other person watching the panel during voir dire. The observations of reliable persons as to how the panel reacts to comments and questions can be an invaluable tool in evaluating a jury panel and assessing how to most effectively use strikes.

Jury Charge

The jury charge is the collection of questions, definitions, and instructions the court gives to the jury to help them in resolving the factual disputes in the case. The jury charge instructs the jury on the law applicable to the case. Many judges require that the jury charge be submitted to the court on a writable CD. The trial court must read the charge to the jury prior to final argument.[28]

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[25] TEX. R. CIV. P. 233.

[26] *In re M.N.G.*, 147 S.W.3d 521, 532 (Tex. App.—Fort Worth 2004, pet. denied) (error for trial court to afford extra strikes where attorney ad litem admitted coordinating with DFPS to avoid double strikes).

[27] *Batson v. Kentucky*, 476 U.S. 79 (1986); *In re J.A.W.*, 2010 Tex. App. LEXIS 2369 (Tex. App—Texarkana 2010, pet. denied) (mem.op) (trial court's assessment of race neutral reasons for striking venire members entitled to deference).

[28] TEX. R. CIV. P. 275; See Practice Guide, SECTION 11 TOOLS, Jury Charge.

In preparing a jury charge, trial counsel should:

- Prepare the proposed charge as part of trial preparation;
- Expose the jury to terms, instructions, and questions during voir dire;
- Know the local rules regarding the timeframe for filing a jury charge;[29]
- Be prepared to discuss and address legal issues raised by the charge instruments at both informal and formal charge conferences;
- Adjust the jury charge as needed to reflect the evidence that is actually admitted at trial;
- Submit timely written requests for proposed questions, definitions, and instructions to be given to the jury in the jury charge;[30]
- Make timely and specific objections to the charge, although objections also may be written or dictated to the court reporter in the presence of the court and opposing counsel;[31]
- Get a ruling on objections and requests for charge before the case is submitted to jury;[32] and
- Use the jury charge in closing argument to tell the jury unequivocally how to answer question by question, citing the specific evidence that supports each answer.

Drafting A Jury Charge

Drafting a jury charge requires careful attention to the facts and law. Pattern jury charges offer a useful resource, as long as care is used to tailor the charges to the particular case circumstances.[33] A jury charge must be carefully crafted and reviewed to ensure:

- Each issue raised by the pleadings and evidence is addressed;[34]
- The charge accurately states the law;
- There is no comment on the weight of evidence or the effect of the jury's answer;
- Whenever feasible "broad-form questions" are used (basically a general conclusion as opposed to a series of single issue questions); and[35]
- Admonitory instructions are included.[36]

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[29] The TEX. R. CIV. P. does not require that the charge be filed pretrial but practitioners should be aware of local rules regarding charges. To find local rules, consult Texas Judicial Online at www.courts.state.tx.us.

[30] TEX. R. CIV. P. 273.

[31] TEX. R. CIV. P. 272, 274.

[32] TEX. R. CIV. P. 276 (trial judge's endorsement of refused or modified instructions, questions, or definitions preserves objection).

[33] Texas Pattern Jury Charges—Family & Probate (2014); See Practice Guide, SECTION 11 TOOLS, Jury Charge.

[34] TEX. R. CIV. P. 278.

[35] TEX. R. CIV. P. 277.

[36] TEX. R. CIV. P. 226a.

The Texas Supreme Court has held that broad-form jury charges are appropriate in parental-rights termination cases.[37] The purpose of broad-form submission is to reduce conflicting jury answers and simplify the jury charge. *Id*. The rationale is that jurors must agree to terminate parental rights, but not on the underlying predicate ground. While litigants may still challenge the use of a broad form jury charge, courts across Texas have acknowledged the Supreme Court's approval of the use of broad form charge.[38]

The jury charge must be supported by the pleadings. In a termination of parental rights case, this requires that counsel for CPS ensures that the agency's pleadings address:

- The statutory ground(s) for termination;
- That termination is in the child's best interest;
- The names of the parties and children; and
- Appointment of DFPS as permanent managing conservator.

In a termination of parental rights suit, always include the language in Texas Family Code section 153.131 that appointment of a parent as conservator would significantly impair the physical health or emotional development of a child.[39] Without this option, if a jury does not find termination of parental rights is supported by the evidence, the child can be returned to the parents if there is no alternative to award DFPS conservatorship.

Requests for questions, definitions, and instructions to the jury must be separate and apart from a party's objections to the court's charge.[40]

After the Verdict

Once the jury verdict is returned and accepted by the court, counsel for CPS must:

- Prepare the judgment, making sure to track the language of the jury charge;
- Circulate the judgment for signatures from opposing counsel, CASA, and any other parties;
- File a Motion to Enter Judgment if a party fails or refuses to sign the judgment; and
- Schedule a Permanency Hearing.

Tex. Dep't of Human Servs. v. E.B., 802 S.W.2d 647, 649 (Tex. 1990);. *In re B.L.D. and B.R.D.*, 113 S.W.3d 340, 355 (Tex. 2003) (The "charge [in the *B.L.D.* case] follows our precedent in *E.B.*, tracks the statutory language of the Family Code, and comports with Texas Rule of Civil Procedure 277 and 292.").

[38] *In re A.K.*, No. 06-04-00078-CV, 2005 Tex. App. LEXIS 35 (Tex. App.—Texarkana 2008, no pet.)(mem.op.) ("[d]espite *E.B.*, several other biological parents have advanced Kipp's argument--but in each case, unsuccessfully…. We continue to be bound by *E.B.*; thus, the submission of a disjunctive question regarding a parent's predicate act or omission under Section 161.001(1) is proper."); See *Summary of Cases on Broad Form Jury Charge,* below.

[39] *In re J.A.J.*, 243 S.W. 3d 611 (Tex. 2007).

[40] TEX. R. CIV. P 273.

SUMMARY OF CASES ON BROAD FORM JURY CHARGE

Texas Supreme Court

Tex. Dep't of Human Servs. v. E.B., 802 S.W.2d 647, 649 (Tex. 1990) ("Rule 277 mandates broad-form submissions 'whenever feasible', that is, in any or every instance in which it is capable of being accomplished."; "The controlling question in this case was whether the parent-child relationship between the mother and each of her two children should be terminated, not what specific ground or grounds under § 15.02 [then codified statutory termination grounds] the jury relied on to answer affirmatively the questions posed. All ten jurors agree that the mother had endangered the child by doing one or the other of the things listed in § 15.02"; "Here the trial court tracked the statutory language in the instruction and then asked the controlling question. This simply does not amount to abuse of discretion.").

In re B.L.D. and B.R.D., 113 S.W.3d 340, 355 (Tex. 2003) (The "charge [in the *B.L.D.* case] follows our precedent in *E.B.*, tracks the statutory language of the Family Code, and comports with Texas Rule of Civil Procedure 277 and 292.").

First Court of Appeals

In re M.C.M., C.M.M., J.L.M., and L.S.M., 57 S.W.3d 27, 31 n. 2 (Tex. App.—Houston [1st Dist.] 2001, pet. denied) (Affirming the trial court's use of broad-form submission in a parental-rights termination case; the court noted that the Waco Court of Appeals declined to follow *E.B.*, writing: "However, the Supreme Court, in *E.B.*, considered and approved a charge almost identical to that given in this case. [Citation omitted]. *E.B.* has not been overruled, and this Court must follow it.").

Second Court of Appeals

In re J.T.G., 121 S.W.3d 117, 128-29 (Tex. App.—Fort Worth 2003, no pet.) (The court followed *E.B.* and upheld jury's finding of termination when multiple statutory grounds for termination were pled and the trial court submitted the issue using a broad-form question).

Third Court of Appeals

Click v. Tex. Dep't of Family and Protective Servs., No. 03-10-00123-CV, 2010 Tex. App. LEXIS 8152, at *12 (Tex. App.—Austin Oct. 8, 2010, no pet.) (mem. op.) ("In light of this language in *E.B.*, we hold that due process allows jurors to agree that at least one of the alleged grounds for termination has been proven without reaching an agreement as to any particular ground. Thus, because the law does not require jurors to agree on the specific ground for termination, it was not an abuse of discretion to instruct the jury accordingly.").

Carr v. Tex. Dep't of Protective and Regulatory Serv., No. 03-03-00273-CV, 2004 Tex. App. LEXIS 92,at *19 (Tex. App.–Austin Jan. 8, 2004, pet. denied) (mem. op.) ("Only the [Texas] [S]upreme [C]ourt may revisit the issue and hold that in termination cases due process requires that the same ten jurors must agree on the ground or grounds to support termination of parental rights. Absent such guidance from the supreme court, we may not depart from *E.B.'s* clear holding that broad form submissions such as the one in this case are proper, *Casteel* notwithstanding.").

Fourth Court of Appeals

In re C.P. et al, No. 04-03-00790-CV, 2004 Tex. App. LEXIS 9193 at *4 (Tex. App.—San Antonio Oct. 20, 2004, no pet.) (mem. op.) ("The Texas Supreme Court has held that the submission of a single broad-form question concerning whether parental rights should be terminated is proper.").

Fifth Court of Appeals

In re J.W. and D.S.G., 113 S.W.3d 605, 613 (Tex. App.—Dallas 2003, pet. denied) ("Thus, we conclude the trial court properly submitted the controlling issues in this case through its broad-form submission.").

Sixth Court of Appeals

In re L.C, L.C., et al., 145 S.W.3d 790, 794 (Tex. App.—Texarkana 2004, no pet.) ("Despite *E.B.*'s holding, several other biological parents have advanced this "ten jurors" argument. The issue has been repeatedly resolved against them." [Citations omitted]. "We, too, are bound by *E.B.*").

Seventh Court of Appeals

In re J.H.M., No. 07-07-0109-CV, 2009 Tex. App. LEXIS 9886, at *14 (Tex. App.—Amarillo Dec. 29, 2009, no pet.) (mem. op.) (Appellate court rejected mother's due process complaint regarding broad-form submission; "Controlling Texas case law specifically authorizes broad-form submission in parental rights cases. [Citing *E.B.*]. Furthermore, it is well-settled law that a jury charge that tracks the statutory language and then asks the controlling question does not amount to an abuse of discretion. [Citing *E.B.*]").

In re K.S., 76 S.W.3d 36, 49 (Tex. App.—Amarillo 2002, no pet.) ("We are bound to follow *E.B.* unless the Texas Supreme Court overrules or vitiates it.").

Eighth Court of Appeals

King v. Tex. Dept. of Protective and Regulatory Servs., No. 08-03-00100-CV, 2004 Tex. App. LEXIS 5997, at *24 (Tex. App.—El Paso July 2, 2004, no pet.) (mem. op.) ("In all jury cases the court shall, whenever feasible, submit the cause upon broad-form

questions. Tex.R. Civ. P. 277. The charge in parental rights cases should be the same as in other civil cases. *Tex. Dep't of Human Servs. v. E.B.*, 802 S.W.2d 647, 649 (Tex.1990).").

Ninth Court of Appeals

In re Commitment of Miller, 262 S.W.3d 877, 893 (Tex. App.—Beaumont 2008, pet. denied) (Noting that *E.B.* upholds broad-form submission in proceedings to terminate parental rights).

Twelfth Court of Appeals

In re S.L., No. 12-10-00173-CV, 2011 Tex. App. LEXIS 1493, at *6 (Tex. App.—Tyler Feb. 23, 2011, no pet.) (mem. op.) ("Because the jury charge approved in *E.B.* is almost identical to that given in this case and *E.B.* has not been overruled, we conclude that *E.B.* is binding on this court.").

Thirteenth Court of Appeals

In re J.L., No. 13-02-044-CV, 2006 Tex. App. LEXIS 11102, at *25(Tex. App.—Corpus Christi Dec. 28, 2006, no pet.) (mem. op.) ("As the State suggests, broad form submission has been specifically approved by our highest court.").

Tenth Court of Appeals -

In re B.L.D. and B.R.D., 56 S.W.3d 203, 219 (Tex. App.—Waco 2001) (rejecting broad form), rev'd on other grounds 113 S.W.3d 340, 355 (Tex. 2003). *But see* Chief Justice Gray's dissent: "the due process argument regarding broad form submissions in a termination case has been considered and summarily rejected by the Supreme Court."; "The [appellants] have not brought themselves within the *Crown Life* exception because they have not shown that any theory submitted to the jury was 'an improperly submitted invalid theory.'").

In re V.R.J., 2006 Tex. App. LEXIS 6541(Tex. App.—Waco 2006) (court rejects ineffective assistance claim based on failure to challenge broad form jury charge based on lack of evidence, observing that "[i]n any case, the Texas Supreme Court has held that counsel does not fail to render effective assistance in not objecting to broad-form charge in a termination suit, " citing *E.B.* and *In re J.F.C.*, 96 S.W. 256 (Tex. 2002),).