

Supplement to:
Baker's
Texas Family Code
Handbook

2012 Edition

by Lang Baker

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This supplement includes the statutory text of Texas Family Code Sec. 263.405. Appeal of Final Order before amendment effective 9/1/11 (HB 906, 2011) and case notes under that version of the section.

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Full text of the Texas Family Code, as amended through the 1st Called Session of the Texas Legislature in 2011,

and

Thousands of notes from published opinions of the Texas Supreme Court, the Texas Court of Criminal Appeals and the fourteen Courts of Appeals of decisions under the Texas Family Code reported through 338 S.W.3d.

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CITATION FORM

v S = v State

Ep = Ex Parte

: = S.W.2d or 3d, Texas Supreme Court

/ = S.W.2d or 3d, Court of Criminal Appeals

<#> = S.W.2d or 3d, Court of Appeals

vol. no. 338 or less = S.W.3d

COURTS OF APPEALS

<1>	Houston
<2>	Fort Worth
<3>	Austin
<4>	San Antonio
<5>	Dallas
<6>	Texarkana
<7>	Amarillo
<8>	El Paso
<9>	Beaumont
<10>	Waco
<11>	Eastland
<12>	Tyler
<13>	Corpus Christi
<14>	Houston

For example:

283:336 (2009) stands for 283 S.W.3d 336 (Tex. 2009)

292<11>807 (2009) stands for 292 S.W.3d 807 (Tex.App. - Eastland 2009)

**Chapter 263. Review of Placement of Children Under Care
of Department of Protective and Regulatory Services**

Subchapter E. Final Order for Child Under Department Care

Statutory text of Section 263.405 before amendment effective 9/1/11 (HB 906, 2011):

Sec. 263.405. Appeal of Final Order

(a) An appeal of a final order rendered under this subchapter is governed by the rules of the supreme court for accelerated appeals in civil cases and the procedures provided by this section. The appellate court shall render its final order or judgment with the least possible delay.

(b) Not later than the 15th day after the date a final order is signed by the trial judge, a party who intends to request a new trial or appeal the order must file with the trial court:

(1) a request for a new trial; or

(2) if an appeal is sought, a statement of the point or points on which the party intends to appeal.

(b-1) The statement under Subsection (b)(2) may be combined with a motion for a new trial.

(c) A motion for a new trial, a request for findings of fact and conclusions of law, or any other post-trial motion in the trial court does not extend the deadline for filing a notice of appeal under Rule 26.1(b), Texas Rules of Appellate Procedure, or the deadline for filing an affidavit of indigence under Rule 20, Texas Rules of Appellate Procedure.

(d) The trial court shall hold a hearing not later than the 30th day after the date the final order is signed to determine whether:

(1) a new trial should be granted;

(2) a party's claim of indigence, if any, should be sustained; and

(3) the appeal is frivolous as provided by Section 13.003(b), Civil Practice and Remedies Code.

(e) If a party claims indigency and requests the appointment of an attorney, the court shall require the person to file an affidavit of indigency and shall hear evidence to determine the issue of indigency. If the court does not render a written order denying the claim of indigence or requiring the person to pay partial costs before the 36th day after the date the final order being appealed is signed, the court shall consider the person to be indigent and shall appoint counsel to represent the person.

(f) The appellate record must be filed in the appellate court not later than the 60th day after the date the final order is signed by the trial judge, unless the trial court, after a hearing, grants a new trial or denies a request for a trial court record at no cost.

(g) The appellant may appeal the court's order denying the appellant's claim of indigence or the court's finding that the appeal is frivolous by filing with the appellate court the reporter's record and clerk's record of the hearing held under this section, both of which shall be provided without advance payment, not later than the 10th day after the date the court makes the decision. The appellate court shall review the records and may require the parties to file appellate briefs on the issues presented, but may not hear oral argument on the issues. The appellate court shall render appropriate orders after reviewing the records and appellate briefs, if any.

(h) Except on a showing of good cause, the appellate court may not extend the time for filing a record or appellate brief.

(i) The appellate court may not consider any issue that was not specifically presented to the trial court in a timely filed statement of the points on which the party intends to appeal or in a statement combined with a motion for new trial. For purposes of this subsection, a claim that a judicial decision is contrary to the evidence or that the evidence is factually or legally insufficient is not sufficiently specific to preserve an issue for appeal.

Notes from before 2011 amendment of Sec. 263.405

Parent failed to demonstrate that 263.405(b) and (i) were unconstitutional as applied to him, where he did not identify any appellate issue he was prevented from pursuing because of them, and did not allege he would have discovered more issues if more time had been allowed; he was appointed appellate counsel 2 1/2 months before the 15 day deadline established in subsection (b). In re D.J.R., 319<8>759 (2010)

No merit to contention 263.405(b) and (i) are unconstitutional on their face or as applied for violation of due process because expedited timetable deprived parent's appellate counsel of meaningful review of trial record. Appellate counsel obtained and reviewed transcript of proceedings before he filed statement of points, and parent did not contend there were any issues appellate counsel was precluded from raising because of statutory time restrictions. Parent did not identify any appellate issues she was prevented from pursuing because of time restrictions, nor allege she would have discovered more issues if more time had been allowed. M.C. v DFPS, 300<8>305 (2009)

263.405 does not deprive an indigent parent at the ability to prosecute a meaningful appeal; 263.405(b) and (i) are not facially unconstitutional. In light of applicable procedural safeguards, parent did not demonstrate that 263.405(b) always causes an erroneous deprivation of parental rights. If counsel needs a reporter's record to prepare a statement of points, trial court has authority to extend the 15 day deadline of 263.405(b). In re S.N., 292<11>807 (2009)

263.405(b) and (i) did not operate to violate parent's due process rights, where he did not avail himself of the procedural safeguards in the statute and did not identify any meritorious claims. No merit to contention due process was violated because he was required to file a statement of points that he intended to appeal before preparation of reporter's record; counsel did not ask for an extension of time to file a statement

of points in order to obtain a reporter's record; counsel had time to discuss the points presented at previous hearings; counsel also had access to clerk's file to review the petition, the service plan, and the progress reports that described the events leading up to removal of the children and decision to proceed with termination. In re S.N., 292<11>807 (2009)

263.405(b) did not deprive indigent parent of due process, on claim the 15 day deadline violates procedural due process by requiring her to file statement of points before preparation of reporter's record, where that record was available to counsel to review in preparing brief on appeal, and no errors were identified that allegedly occurred during the hearings in that record, and court's independent review of the record did not reveal any potential issues from those hearings. In re J.S., 291<11>60 (2009)

263.405(i) does not deprive indigent parents of procedural due process, on claim that provision precludes any and all challenges to legal or factual sufficiency of evidence supporting termination order. Appellant misinterpreted that provision; it does not preclude a challenge to the legal and factual sufficiency, but only provides that a general allegation that the evidence is legally or factually insufficient will not preserve the issue for appellate review. In re J.S., 291<11>60 (2009)

263.405(i) does not violate separation of powers doctrine, on claim legislature interfered with core judicial function by precluding review of challenges of sufficiency of the evidence. That provision does not preclude appellate review of sufficiency of evidence. In re J.S., 291<11>60 (2009)

Court of appeals could not consider issue of constitutionality of 263.405 raised for first time in motion for rehearing. The sole purpose of a motion for rehearing is to provide the appellate court an opportunity to correct any errors on issues already presented. In re M.T., 290<12>908 (2009)

**263.405
constitu-
tionality**

263.405(i) does not place an arbitrary and unreasonable barrier to appellate court consideration, resulting in an unconstitutional deprivation of a parent's due process rights, in violation of the Texas and US constitutions, by requiring appellant to identify appellate points prior to the appeal being perfected and before the trial court must file findings of fact and conclusions of law. A trial court may grant a party's motion to enlarge time for filing a statement of points where the party shows good cause for its failure to timely file it. In re S.N., 287<14>183 (2009)

263.405(i) is unconstitutional to extent it prevents a court from considering claims of ineffective assistance of counsel. In re J.O.A., 283:336 (2009)

No merit to contention that 263.405(i) is facially unconstitutional because it arbitrarily removes a right that civil litigants have in other appeals: to challenge legal and factual suff of evid on appeal, on premise that expedited timetable deprives appellate counsel of meaningful review of trial record. Although appellate counsel often has little or no background on what occurred at trial other than information obtained from trial counsel or the client, that does not automatically result in depriving parents whose parental rights have been terminated of their due process and equal protection rights. In re N.C.M., 271<4>327 (2008)

263.405 was not unconstitutional on claim it denies a free transcript to an indigent parent and prevents parent from a meaningful appeal; 263.405 applies regardless of ability to pay; parent was not denied record because she could not pay for it, but was denied record because any appeal would be frivolous. In re M.L.B., 269<9>757 (2008)

263.405 was not unconstitutional on claim that due process is violated by trial transcript not being available to appellant and appellate court in reviewing trial court's finding that an appeal would be frivolous. Appeals court reviewed trial court determination that points were frivolous and agreed that trial court findings were supported by evid presented at post-trial hearing. In re M.L.B., 269<9>757 (2008)

Texas Supreme Court denied petition for review, and expressly stated that it neither approved nor disapproved the holding of court of appeals regarding constitutionality of 263.405(i). In re G.B., 264:742 (2008); In re D.F., 260:461 (2008); In re J.J., 260:461 (2008); In re D.W., 260:462 (2008), on petition for review of 249<2>625; In re K.W., 260:462 (2008); In re S.K.A., 260:463 (2008), on petition for review of 236<6>875

Termination of parental rights affirmed because no substantial question was presented for review, following trial court finding under 263.405 that appeal would be frivolous. No merit to F's contention that 263.405(b) and (i) denied F due process and equal protection, as applied. In re A.F., 259<9>303 (2008)

Where application of statutory scheme under 263.405(b) & (i) resulted in appointment of counsel only after deadline for filing statement of points had lapsed, 263.405(i) was unconstitutional as applied to indigent parent not provided timely requested appointed counsel during critical period before deadline under 263.405(b). Remedy was to deem late-filed statement of points to be timely filed under 263.405(b). In re S.K.A., 236<6>875

263.405 263.405 is illogically circular when it prevents an indigent parent from obtaining a record until after the trial court makes a non-frivolous determination as to points that require a record to formulate and present. In re Q.W.J., 331<7>9 (2010)

constr- In making a frivolous determination under 263.405(b)(3), trial court is not being asked to decide merits of appeal; that task is for appeals court; trial court's role is to determine whether there is an arguable basis for an appeal, that is, whether issues raised in a statement of points are frivolous. In re Q.W.J., 331<7>9 (2010)

uction In a contested termination proceeding, sufficiency of the evid is an arguable issue on appeal. In re Q.W.J., 331<7>9 (2010)

A challenge to the constitutionality of 263.405 raises a substantial question which should be reviewed on the merits by an appellate court. In re Q.W.J., 331<7>9 (2010)

If record of new trial hearing contains summary of evid adduced at termination trial, both in support of and contrary to termination order, then a determination, based only upon the record of the new trial hearing, of whether the trial court abused its discretion in determining appeal was frivolous, is generally possible. This places an obligation on the attorneys for the state, the respondent, and any ad litem to present a full summary of the evid adduced at the termination trial. Conclusory statements by counsel that the evid was suff or insuff are inadequate. Trial courts should require attorneys to present a full summary of the evid, even if the judge hearing a motion for new trial is the same

(2007)

263.405(i) did not bar M from challenging constitutionality of that provision on claim it unduly interferes with court of appeals' power and authority to exercise its core judicial functions. That issue could be raised for first time on appeal because it could not be addressed in trial court. In re D.W., 249<2>625 (2008)

263.405(i) is unconstitutionally void because it violates separation of powers clause to extent it forecloses power of court of appeals to review issues properly preserved for appeal, because it unduly interferes with substantive power of court of appeals as an appellate court to rehear and determine issues on the merits that were decided in the trial court. Because 263.405(i) is void, court of appeals is not barred by that statute from considering points that were not listed in a statement of points so long as they were properly preserved for appellate review. In re D.W., 249<2>625 (2008)

263.405(b) does not violate Equal Protection Clause; all parents, indigent and non-indigent, involved in a suit with TDFPS must comply with appeal requirements of 263.405. Also, in instant case parent's right to due process was not violated. In re R.J.S., 219<5>623 (2007)

No merit to contention that 263.405 is unconstitutional because it treats an indigent party's appeal differently from a non-indigent party's appeal. Its provisions apply equally to indigent and non-indigent parents. In re T.C., 200<2>788 (2006); In re K.D., 202<2>860 (2006)

No merit to contention that 263.405 is unconstitutional because it makes a distinction between parents in a private termination case and parents in termination action brought by DFPS. Its provisions apply equally in termination suits initiated by DFPS and by private individuals. In re T.C., 200<2>788 (2006); In re K.D., 202<2>860 (2006)

No merit to contention that 263.405 denied parents constitutional right to appeal with a full record, where appeals court, after reviewing record from the frivolousness hearing, ordered court reporter to prepare and file reporter's record containing all evid admitted at termination trial; appeals court then reviewed entire record, fully examined merits of parents' purported issues on appeal, and concluded 263.405 did not deny meaningful appeal, and that they suffered no harm from complaint of denial of record. In re T.C., 200<2>788 (2006); In re K.D., 202<2>860 (2006)

No merit to contention 263.405(g) is unconstitutional violation of separation of powers clause because it interferes with power courts of appeals have under Art V Sec 6(a) to decide factual sufficiency complaints. An "appropriate order" of court of appeals under 263.405(g) is an order that reporter's record of all evid admitted in termination case be prepared and filed in the appeal without advance payment by appellant, when necessary to review trial court's determination that an appeal raising a factual sufficiency complaint is frivolous, which protects court of appeals' factual sufficiency review power. In re M.R.J.M., 193<2>670 (2006)

judge who presided over the termination trial. In re J.J.L., 327<4>282 (2010)

If a trial court makes a frivolousness finding, parent's appeal is initially limited to the frivolousness issue. Appeals court can review substantive issues only if it determines trial court abused its discretion in determining the appeal was frivolous. In re C.L., 322<14>889 (2010)

Appeal was an accelerated appeal subject to provisions of Chapter 263, where department filed case requesting F's parental rights should be terminated, and later the termination allegation was dismissed and the case was tried as a conservatorship-access trial. 263.405 applied even though the termination allegations had been abandoned. In re G.J.P., 314<6>217 (2010)

Provisions of ICWA allowing post-judgment challenges to involuntary termination proceedings preempt the Texas rules and statutes regarding preservation of error. Protections enumerated in the ICWA are mandatory as to the trial court and the department and preempt state law. Failure to follow the ICWA may be raised for the first time on appeal. In re J.J.C., 302<10>896 (2009)

Because a party appealing a judgment in which a finding of frivolousness was issued is initially limited to a review of that finding, appeals courts may not consider the substantive merits of legal and factual sufficiency challenges unless it first concludes that the frivolousness finding must be reversed. In re

J.J.C., 302<14>436 (2009)

When a parent challenges sufficiency of evidence to support termination and trial court has found appeal was frivolous, appeals court construes parent's challenge to encompass a challenge to the frivolous finding even when parent does not specifically assign error to that finding. In re J.J.C., 302<14>436 (2009)

To satisfy the requirements of 263.405(i), a statement of points must be sufficiently specific to allow the trial court to correct any erroneous findings on the challenged grounds. In re J.J.C., 302<14>436 (2009)

Appellate review of frivolous finding was not limited to the record of the frivolousness hearing, where transcript of that hearing showed the department relied on and trial court considered the termination hearing proceedings in evaluating the frivolousness issue. In re J.J.C., 302<14>436 (2009)

Under 263.405(d)(3), the trial court is required to determine whether proposed appeals are frivolous, regardless of whether department requests such a finding or presents any argument or evidence. In re J.J.C., 302<14>436 (2009)

An appeal is frivolous when it lacks an arguable basis in law or in fact. Court of appeals reviews trial court finding of frivolousness for an abuse of discretion. M.C. v DFPS, 300<8>300 (2008)

Where trial court held appeal to be frivolous, the only record to which parent was entitled was record of the hearing on the trial court's determination that the appeal was frivolous. No merit to counsel's claim that he could not prepare a meaningful appeal without a complete record. Motion to abate appeal denied. In re J.J.W., 285<6>893 (2009)

Where termination order was first entered by associate judge and subsequently a trial de novo was conducted by referring court, appeals court could only consider points of error listed in statement of points filed after the trial de novo, and could not consider points listed only in prior statement of points filed before trial de novo. In re K.C.B., 280<7>888 (2009)

Where trial court had abused its discretion in finding F failed to prove indigence, and F's grounds for appeal included claims of insuff evid, appeals court held as matter of due process that court reporter must file transcription of all evid admitted at trial at no cost to F, in order to review issue of whether F's appeal was frivolous. In re S.T., 242<10>923 (2006)

Counsel's unjustifiable failure to preserve certain issues for review may deprive a parent of due process. To show ineffective assistance, parent must establish both deficient performance and prejudice. In re S.M.T., 241<9>650 (2006)

263.405(e) conditions appointment of counsel on only the indigence question. An indigent person has a statutory right to appointed counsel to represent him in an appeal challenging a court's determination under 263.405(d) that his appeal is frivolous. In re S.T., 239<10>452 (2006)

On appeal from termination of parental rights, appeals court denied F's request that it order court reporter to transcribe record of trial before deciding whether appeal was frivolous. No merit to contention due process required court reporter's notes be prepared: evid described in hearing did not present a substantial question for appellate review; department described evid that would support its alleged grounds for termination and F did not identify any evid from trial that would arguably support an argument that jury could not have formed a firm belief or conviction as to truth of the allegations. In re A.S., 239<9>390 (2006)

On appeal from order terminating parental rights, F was not required to file statement of points under 263.405(b); that provision does not apply to a private termination proceeding. In re J.R.S., 232<2>278 (2007)

In order to obtain a free record on appeal from termination order, a claim of ineffective assistance of counsel must be more than merely a conclusory statement that trial counsel was ineffective. Appellate counsel must present allegations of the manner in which trial counsel was ineffective and arguments in support of the claim before appeals court will consider ordering a free record to be filed. In re J.J.L., 327<4>282 (2010)

Where record from new trial hearing contained no summary of evid adduced at trial, and only contained conclusory statements

Requirements of 263.405 do not negate jurisdiction of appellate court. Lack of specific statement of points of appeal results in no issues being preserved for appellate review. In re J.W.H., 222<10>661 (2007)

Although 109.002(a) provision appears to apply to all termination suits and does not contain a requirement to file a statement of points, termination suits that involve TDFPS fall specifically within chapter 263 and the appeal provision specific to that statute apply over the general provisions. In re R.J.S., 219<5>623 (2007)

The appeal requirements in 263.405(b) apply only to appeals of final orders under Subchapter E. In re R.J.S., 219<5>623 (2007)

Trial court's final order terminating parental rights was subject to appeal requirements of 263.405(b) because TDFPS was a party to the termination case. In re R.J.S., 219<5>623 (2007)

Requirement of 263.405(b) that appellants file a statement of points on appeal within 15 days of final order is not jurisdictional; failure to include issues in that filing does not waive them on appeal. In re S.P., 168<5>197 (2005)

Failure to include a particular point or points in statement of points filed under 263.405(b) does not waive right to raise the excluded points on appeal and does not bar consideration of the point on appeal when appellee does not demonstrate prejudice. In re B.T., 154<2>200 (2004)

Purpose of statutory requirement of a statement of points on appeal is to provide trial court with mechanism to determine whether an appeal is frivolous and thereby reduce or eliminate unmeritorious parental-termination appeals. In re T.A.C.W., 143<4>249 (2004)

Failure to file statement of points under 263.405(b) does not waive non-jurisdictional issues on appeal. No merit to contention such failure waived challenge to sufficiency of evid to support termination. In re J.J.O., 131<2>618 (2004)

A party's failure to include a particular point or points in statement of points filed under 263.405(b) does not waive right to raise such points on appeal, as long as party complies with procedural requirement to file a statement of points and appellee does not establish prejudice. In re W.J.H., 111<2>707 (2003)

On appeal from termination of parental rights, appeals court may review trial court's 263.405 finding of frivolousness under abuse of discretion standard. In re K.D., 202<2>860 (2006)

Appeals court reviews trial court finding of frivolousness under abuse of discretion standard. In re T.C., 200<2>788 (2006)

Failure to comply with 263.405(d) does not deprive appeals court of jurisdiction over appeal from termination of parental rights. Wall v TDFPS, 173<3>178 (2005)

Language of 263.405(d) makes a hearing on a motion for new trial mandatory in a termination case, but does not say what should happen when trial court fails to comply with that mandatory provision. Wall v TDFPS, 173<3>178 (2005)

On appeal by CPS from judgment n.o.v. that set aside jury verdict that termination was in children's best interest, no merit to contention of CPS that was abuse of discretion to appoint appellate counsel for M because of delay in trial court holding indigency hearing and making appointment. Purpose of 263.405, Appeal of Final Order, is to reduce post-judgment appellate delays, not to deprive appellate court of jurisdiction. CPS did not show harm from failure of trial court to require affidavit of indigency or hold hearing within 30 days. Based on M's testimony proving indigency at hearing, it was not abuse of discretion to grant motion within 36 days of trial court's final order. In re M.G.D., 108<14>508 (2003)

263.405(i) applies to an appeal filed on or after Sept 1, 2005. In re C.M., 208<14>89 (2006)

by the attorneys that the evid was either insuff or suff, it was impossible for appeals court to determine based upon review of only the record from the new trial hearing whether trial court abused its discretion in finding appeal frivolous. A review of reporter's record from termination proceeding was necessary to determine whether trial court abused its discretion. Appeals court ordered preparation of record containing all evid admitted at the termination trial. In re J.J.L., 327<4>282 (2010)

**263.405
free
record**

263.405

263.405 appeal abated Where parent, after termination judgment was signed, filed a signed but unsworn indigence "affidavit," that document indicated she did not have adequate resources to pay the required costs and fees for her appeal, even though it did not comply with requirements of 263.405(e). Appeal abated and cause remanded to allow parent reasonable opportunity to amend her indigence affidavit and for trial court to reconsider her indigence claim. In re B.N., 303<10>16 (2009)

On appeal from order terminating parental rights, where trial court denied motion for new trial, sustained parent's affidavit of indigence, and ruled the appeal was frivolous: appeals court was unable to determine from review of record of new trial hearing alone whether trial court's determination that appeal was frivolous was an abuse of discretion; appeals court concluded review of reporter's record from termination proceeding was necessary to determine whether trial court abused its discretion. Appeals court ordered court reporter to prepare and file without cost to parent reporter's records containing all evidence admitted at termination trial. In re T.C., 299<4>828 (2009)

When appointed counsel in a parental rights termination case files a motion to withdraw, the trial court should determine whether to grant the motion. Where trial court's plenary jurisdiction had expired, court of appeals abated the appeal to permit trial court to consider counsel's motion to withdraw. In re M.V.G., 285<10>573 (2009)

On appeal by M from termination of parental rights, it was error for court of appeals to deny M's request to supplement record and affirm termination without addressing merits of appeal, where M timely filed statement required by 263.405 and designated it for inclusion in clerk's record but statement was omitted from the record. Given constitutional dimension of the fundamental liberty interest in natural parents to the care, custody and management of their child, justice is not served when a case, like instant one, ripe for determination on the merits is decided on a procedural technicality that can easily be corrected. In re K.C.B., 251:514 (2008)

Where trial court abused its discretion when it found F failed to prove his indigence, appeal was abated for appointment of counsel. In re S.T., 239<10>452 (2006)

Where trial court, after hearing under 263.405(d), denied motion for new trial and found appellant was not indigent because she had not filed an affidavit of inability to pay costs and found her appeal was frivolous under CPRC 13.003(b); and appeals court

263.405 reversed Trial court order finding notices of appeal frivolous reversed where arguable grounds for appeal existed; trial court abused its discretion in finding appeal was frivolous and denying parents a free reporter's record, where parents raised issues in their statements of points challenging sufficiency of evid to

263.405 timeliness 263.405(i) deprived indigent parent of due process where trial court determined that parent had presented no substantial question for appellate review, not because the issues in his statement of points challenging sufficiency of evid and exclusion of witnesses were frivolous, but because the statement was not timely filed; parent's complaint was that because a statement of points was not timely filed, despite his entitlement to effective representation by appointed counsel, trial court determined no issues could be raised on appeal, that an appeal would therefore be frivolous, and consequently, no record should be prepared. Late filing should not impede the appeal; a complete appellate record should be prepared, and Court of Appeals should consider issues raised in statement of points as if had been timely filed. In re B.G., 317:250 (2010)

Trial court could grant parent's motion to enlarge time for filing her statement of points if she showed good cause for her failure to timely file it, under Texas Rule of Civil Procedure 5. In re M.N., 262:799 (2008)

It was not abuse of discretion for trial court to grant parent's motion to extend time for filing points of appeal, and her statement of points was timely filed, where record showed parent pleaded facts underlying her late filing and her attorney explained the late filing without objection at hearing, and DFPS did not claim that five-date-late filing prejudiced or could have prejudiced any party. In re M.N., 262:799 (2008)

Where appeals court in prior order had found trial court abused its discretion in finding F failed to prove indigence, and abated appeal for appointment of counsel and for explanation of late filing of F's request for preparation of clerk's record; and trial counsel offered explanation that appeals court found was reasonable, appeals court granted implied motion for extension and held appeal was timely perfected. In re S.T., 242<10>923

sent letter to appellant's attorney requesting notification to court of whether appellant intended to appeal trial court's non-indigent or frivolousness findings; and court had not received response from attorney nor reporter's record and clerk's record of trial court hearing on which its non-indigent or frivolousness findings were based: court ordered counsel to file response stating why he did not respond to prior letter and why reporter's record and clerk's record of trial court hearing on which its non-indigent or frivolousness findings were based had not been filed in appeals court. In re V.I., 206<10>171 (2006)

Where no statement of points was filed as required by 263.405(b), appellant was granted 14 days to file supplemental brief addressing issue of ability of appeals court to address any issue raised in appellant's brief and explain why issues in brief previously filed should not be dismissed. In re E.A.R., 188<10>879 (2006)

Where trial court erred by failing to conduct a hearing pursuant to 263.405(d), appeal abated and court instructed to conduct hearing consistent with statute and appeals court's opinion. Wall v TDFPS, 173<3>178 (2005)

On accelerated appeal of order terminating parental rights, DPRS motion for extension of time to file brief granted, but only for three weeks (three weeks less than requested). Grounds stated in motion did not supply suff details to show good cause under 263.405(h) for length of extension requested. In re J.I., 156<2>651 (2005)

Jurisdiction was properly invoked by timely filed notice of appeal in termination action, but appeals court could not proceed further in the appeal without trial court's ruling as to whether appeal was frivolous. Appeal abated and cause remanded for hearing and ruling by trial court on whether F's appeal was frivolous in accordance with 263.405(d)(3). In re T.A.C.W., 143<4>249 (2004)

Procedures of Anders v. California, 386 US 738 (1967), governing criminal cases when counsel concludes appeal is without merit, apply to appeals in parental rights termination cases where counsel is appointed under 263.405(e). Appeal abated and remanded to trial court for hearing to determine if all available steps were taken to inform appellant of her counsel's conclusion that her appeal was without merit and of her right to review record and file a pro se brief. In re K.M., 98<2>774 (2003)

support termination in contested termination proceeding, and challenge to constitutionality of 263.405. In re Q.W.J., 331<7>9 (2010)

(2006)
263.405(g) plainly states manner to obtain appellate review of adverse determinations under 263.405(d); no separate notice of appeal is required. In re S.T., 239<10>452 (2006)

Although 263.405(g) imposes no deadline for appellant's requests for records for appeal, the statute necessarily imposes by implication a 10-day deadline on such requests. In re S.T., 239<10>452 (2006)

Where request for preparation of clerk's record under 263.405(g) was filed late, but within 15 days of deadline, court implied a motion for extension which must be granted if appellant provides a reasonable explanation for the late filing. If no reasonable explanation is provided, appeal will be dismissed. In re S.T., 239<10>452 (2006)

Appeal from termination of parental rights dismissed for lack of jurisdiction where M failed to give good cause for extension of time to file her notice of appeal. In re K.M.Z., 178<2>432 (2005)

Appeal from termination of parental rights was timely perfected under accelerated appeal procedure of 263.405(a) & (c), even though M did not file notice of appeal within 20 days of original final judgment, where trial court granted her timely filed motion to modify, correct or reform judgment by correcting and making a number of changes to its original judgment, and within three days after corrected judgment was signed M filed notice of accelerated appeal. No merit to contention appeal was not perfected because notice of appeal was not given within 20 days of original judgment. Restriction of 263.405(c) does not purport to eliminate post-trial motions or otherwise constrict trial court's plenary power. Because trial court actually modified and corrected its judgment while it retained plenary power jurisdiction to do so, time for filing notice of appeal must be

calculated from date of new final judgment. Time for filing notice of accelerated notice of appeal was restarted not by filing of the motion but by act of the court. In re J.L., 163:79 (2005)

Appeal dismissed for lack of jurisdiction where notice of appeal from termination order was untimely. Trial court signed "Interlocutory Final Order" terminating M's parental rights but not adjudicating parental rights of other parties to proceeding. Notwithstanding interlocutory label, an order that terminates parent-child relationship and appoints DPRS or some other person the child's managing conservator is a final order appealable under 109.002(b) regardless of whether parental rights of other parties to proceeding are adjudicated by the order. Because M's notice of appeal was untimely under 263.405, appeal dismissed. In re T.L.S., 143<10>284 (2004)

An appeal from a termination order is perfected by timely filing notice of appeal; a late-filed statement of points on appeal does not deprive appellate court of jurisdiction. In re T.A.C.W., 143<4>249 (2004)

Appeal dismissed for lack of jurisdiction where notice of appeal from termination order was filed 81 days after court signed decree, which was untimely; clerk of court of appeals notified parties that notice was untimely and appeal would be dismissed for lack of jurisdiction if a response showing grounds for continuing the appeal was not filed within 10 days, and

Parent was not denied effective assistance of counsel for failure to file a statement of appellate points, where parent did not demonstrate any harm. Her brief offered no substantive arguments to demonstrate that evid at trial was legally or factually insuff to support termination of her parental rights. Robinson v DFPS, 317<1>410 (2010)

In termination proceeding, parent was denied effective assistance of counsel where trial counsel failed to file a statement of points and that decision was neither strategic nor a concession to any lack of perceived merit. Trial counsel filed notice of appeal simultaneously with his motion to withdraw and did nothing further; appellate counsel was appointed after the statement of points was due; parent was still represented by trial counsel when the deadline to file the statement of points passed. In re J.O.A., 283:336 (2009)

The best way to avoid ineffective assistance of counsel claims is for the trial court to take a proactive approach, assuring that indigent parents do not inadvertently waive their appellate rights. Because of the accelerated nature of appeals in termination cases, trial courts must act expeditiously when

Under facts of the instant case, where F was indigent, represented by court-appointed lawyer at trial, and represented by a different court-appointed lawyer on appeal, it would be extremely difficult for his counsel to procure trial transcript and court record, familiarize himself with the case, evaluate the performance of trial counsel, and file a statement of appellate points with the court within the 15-day window provided by the statute. Failure to meet that deadline would bar appellate court from considering what may be a valid challenge of ineffective assistance of counsel. In instant case, the procedural rule must give way out of concern for due process of law; appeals court therefore reviewed merits of challenge of ineffective assistance of counsel. Walker v DFPS, 312<1>608 (2009)

No merit to contention parent's statement of points was not timely filed, where order by an associate judge terminating parental rights was interlocutory and did not become final until trial court entered order terminating parental rights. Statement of points was timely filed following date order became final. M.C. v DFPS, 300<8>300 (2008)

Trial court abused its discretion when it concluded appeal was frivolous, where parent challenged constitutionality of 263.405; given that one court of appeals had held 263.405(i) was unconstitutional, parent's constitutional arguments had an arguable basis in law. M.C. v DFPS, 300<8>300 (2008)

On appeal from order terminating parental rights, trial court abused its discretion by concluding appeal was frivolous, where parent challenged constitutionality of 263.405. Given that one Court of Appeals has held that 263.405(i) is unconstitutional because it violates separation of powers clause, parent's constitutional challenges have an arguable basis in law. Trial court order finding appeal frivolous reversed and appeal ordered to proceed on the merits. D.R. v DFPS, 281<8>598 (2008)

Statement of points were timely where trial court extended deadline, it was filed within 30 days of termination order, and state did not challenge trial court's order granting extension. In

appellant's response did not state a basis for court to exercise appellate jurisdiction. In re B.W.M., 129<10>709 (2004)

State's motion to dismiss for untimely notice of appeal under 263.405 denied. Trial court order overruling motion for new trial by written order extended trial court's plenary power; during that time M filed motion to modify, correct or reform judgment pursuant to court's plenary jurisdiction and withdrew first notice of appeal; trial court signed new judgment correcting prior one, and M filed timely notice of appeal following new judgment. Effect of new judgment, not motion for new trial, extended time for filing notice of appeal. In re J.L., 127<13>911 (2004); reversed on other grounds, 163:79 (2005)

On appeal by parents from order appointing maternal grandparents joint managing conservators and parents only joint possessory conservators, appeal dismissed for failure to timely file appeal under rules for accelerated appeals under 263.405. Those rules apply where DPRS files a suit requesting conservatorship of child or termination of parental rights and a final order as defined in 263.401 is entered, as was the case here. No merit to parents' contention that accelerated appeal rules did not apply because DPRS abandoned its request for termination and remained a party focusing on getting custody for grandparents. In re A.J.K., 116<14>165 (2003)

appointing new counsel for the appeal. In re J.O.A., 283:336 (2009)

On appeal from termination of parental rights, where none of issues raised in appeal were presented to trial court in a timely-filed statement of points, M did not show denial of effective assistance of counsel where (1) she was still represented by trial counsel during time for filing statement of points, (2) she was aware of right to appeal and right to appellate counsel, (3) she did not inform trial counsel of desire to appeal until after time to file statement of points had expired, and then only to ask him to withdraw from case, and (4) she had opportunities to develop a record to support her claims at hearing on motion for new trial and at remand for appointment of appellate counsel, but failed to overcome presumption that counsel's conduct was within range of reasonable professional assistance. M also failed to show prejudice from failure to file statement of points to preserve review of suff of evid where evid was suff to support termination. In re S.M.T., 241<9>650 (2006)

**263.405
effective-
ness of
counsel**

re Z.C., 280<2>470 (2009)

Where trial court erred in finding frivolous, challenge to factual suff of evid to support finding that termination was in best interest of the child, appeals court would consider the entire appellate record to determine factual suff of evid to support that finding. In re A.B., 269<8>120 (2008)

A parent whose parental rights have been terminated may raise for first time on appeal a claim of ineffective assistance of counsel for counsel's failure to file a statement of points for appeal. Bermea v DFPS, 265<1>34 (2008)

Failure of counsel to file statement of points appealing legal and factual suff of evid to support order terminating parental rights constituted deficient conduct that satisfied first prong of Strickland, but parent did not suffer any harm from counsel's deficient conduct where parent challenged suff of evid for one predicate for termination, but did not challenge suff of evid to support finding of alternative predicate nor to support finding that termination was in children's best interest, so she could not have prevailed on her suff of evid arguments and result of proceeding would not have been different if she had received effective counsel. Bermea v DFPS, 265<1>34 (2008)

No merit department's contention that F's statement of points were too general to meet requirements of 264.405(i), where each point complained that evid was factually insuff to support predicate finding for termination of parental rights, and each point was addressed to a particular predicate finding. In re S.T., 263<10>394 (2008)

Trial court correctly found that point of review challenging factual suff of evid to support findings under (1)(E) was frivolous, where evid was suff to support specific finding that F endangered child by committing violent acts in presence of child or unspecified "criminal acts." There was evid of F's involvement in marijuana trafficking both before and after child's removal, and that he personally used marijuana both before and after child's removal. In re S.T., 263<10>394 (2008)

**263.405
appeal
considered**

Where F challenged trial court conclusion that points of review were frivolous, and each point challenged factual suff of evid to support a separate predicate finding for termination, once appeals court found evid was suff as to one of predicate findings, rendering that point of review frivolous, appeals court did not need to address suff of evid to support the other predicate grounds. In re S.T., 263<10>394 (2008)

On appeal from termination of parental rights, no merit to department's contention that appeals court could not consider issue because parents did not include challenge to department's conservatorship appointment in their statement of appellate points presented to trial court under 263.405(b). Where evid was insuff to support termination of parental rights, and trial court made no findings under 153.131 that would independently support portion of order awarding conservatorship to department, department's appointment was solely consequence of termination decision under 161.001, so parent's challenge to conservatorship order was subsumed in their appeal of termination order. Appeals court reversed portion of order that appointed department sole managing conservator and remanded cause to trial court for limited purpose of rendering an order consistent with 161.205. In re A.S., 261<14>76 (2008)

On appeal from termination of parental rights, statement of points* was suff for M to challenge to suff of evid to support finding that termination was in best interest of children, where it did more than raise a general claim of legal and factually sufficiency, but specifically informed trial court that evid was legally and factually insuff to support its findings that termination was in best interest of the children. Adams v TDFPS, 236<1>271 (2007)

On appeal from trial court determination that M's appeal of termination of parental rights would be frivolous, appeals court held her sole point of error relating to her jury demand was not frivolous, where she showed an arguable basis that material issues of fact existed as to the best interest determination of the children, and ordered briefs be filed. In re M.N.V., 216<4>833 (2006)

On appeal from termination of parental rights, parents did not waive claims of ineffective assistance of counsel by failure to

include issue in statement of points. In re B.T., 154<2>200 (2004)

It was abuse of discretion to find parent presented no substantial question for appellate review and find appeal was frivolous or without an arguable basis either in law or in fact, resulting in denial to indigent of complete record for appeal under 263.405(d)(3), where limited record before appeals court included contradiction between termination order based on findings under 161.001(D) and (E), and judicial admissions* by attorney for DPRS contradicting those findings. Trial court order vacated and parent granted free record on appeal and right to proceed without advance payment of costs. In re H.D.H., 127<9>921 (2004)

Purpose of 263.405 is that a parent whose parental rights are terminated receive either (1) a normal accelerated appeal, unlimited by statement of points, after a finding by trial court that the appeal is not frivolous, or (2) an appeal from the trial court's determination that the appeal is frivolous. Under facts of instant case, failure to file statement of points under 263.405(d) was not a jurisdictional defect preventing appeals court from addressing F's issues on appeal. In re S.J.G., 124<2>237 (2003)

On appeal from termination order, DPRS motion to dismiss for lack of jurisdiction denied. No merit to contention appeal must be dismissed for failure to comply with 263.405(b), where M's motion for new trial filed four days after trial court signed termination decree complied with requirements of statute. In re B.G., 104<10>565 (2002)

Failure to file a 263.405(b) statement of points within 15 days of date final order is signed by trial court does not deprive appeals court of jurisdiction over an appeal from that order when appellant timely files notice of appeal. No merit to DPRS contention that M's failure to timely file statement of points jurisdictionally barred appellate review of M's challenges to termination of her parental rights. Also, issues M raised on appeal dealt with same two complaints raised in her statement of points: factual and legal sufficiency of evid and voluntariness of her affidavit of relinquishment. In re D.R.L.M., 84<2>281 (2002)

court's finding that appeal was frivolous and did not reach merits of the appeal. In re J.J.C., 302<14>436 (2009)

Parent waived complaint that trial court unlawfully extended statutory deadline for dismissing case where issue was not included in statement of points under 263.405 (reversing court of appeals holding that the issue concerned trial court's jurisdiction and could not be waived). In re J.H.G., 302:304 (2010)

Court of appeals was barred from considering complaint that parent was denied effective assistance of counsel with respect to right to appeal termination order by neglecting to comply with 263.405(b). 263.405(i) precludes consideration of such an issue. In re R.M., 281<4>456 (2007)

On appeal from termination of parental rights, F failed to preserve for review on appeal his challenge to legal and factual suff of evid to support finding that termination was in best interest of child where he did not file a statement of points as required by 263.405(b)(2) and his motion for new trial did not challenge that finding, so was not preserved under 263.405(b-1), but because the motion for new trial did challenge suff of evid to support predicate findings under 161.001(1)(D) and (E) and def's issues on appeal could be construed as encompassing subsidiary challenges to those findings, appeals court could address those subsidiary challenges to trial court's 161.001(1) findings. However, because def did not challenge trial court's other predicate findings under 161.001(1)(F), (N) or (O), and because trial court found evid supported termination under either one or more of the predicate grounds, judgment could be supported on unchallenged predicate finding, so appeals court could not address the challenged or the unchallenged predicate findings. Fletcher v DFPS, 277<1>58 (2009)

No merit to contention that petition to terminate F's parental rights should be dismissed for failure to serve M (who had already relinquished her parental rights) as a necessary party under 102.009(a)(7) where issue was not raised in F's statement of points under 263.405(b)(2). In re K.Y., 273<14>703 (2008)

It was not abuse of discretion to determine that M's point for review on suff of evid to support finding under 161.001(1)(E) was frivolous where evid showed both M and her husband were violent towards each other when children were present. In re

263.405 appeal or issue not considered It was not abuse of discretion for trial court to find that appeal from termination of parental rights was frivolous, where parent challenged sufficiency of evid to support termination and court of appeals found evid was suff to support at least one of statutory grounds for termination found by trial court. In re M.P., 327<4>280 (2010)

Order terminating parental rights was affirmed where parent did not file a statement of appellate points as required by 263.405(b)(2), and where, in response to order to file document in appeals court listing issues she intended to raise on appeal, she stated she intended to contest sufficiency of evid, but did not assert that she intended to claim that statute requiring statement of appellate points was unconstitutional as applied to her, nor that she was deprived of effective assistance of counsel. In re P.P.M.I., 318<4>905 (2010)

Appeal by DFPS from determination of frivolousness in its attempted appeal, made by trial court under 463.405(d), was dismissed for lack of jurisdiction where there was not a final appealable order. Where face of order was ambiguous as to its being a final order, appeals court examined the record for guidance. At the hearing to enter the order, trial court affirmatively stated that petition of foster parents for intervention was still active and would remain so after the order was signed, and also continued the representation of the parent's appointed attorney throughout the intervention in the future. The purposeful exclusion of the petition in intervention from the order strongly disfavored finality, and the trial court's statements taken with the language of the order itself were sufficiently clear and unequivocal as to the trial court's intent. A direct appeal was therefore premature due to the presence of the intervention. In re J.D., 304<10>522 (2009)

Where parent's statement lacked specificity required to preserve his arguments that evidence was legally and factually insufficient to support trial court findings for termination under 161.001(1): 263.405(i) barred consideration of the merits of those issues, so trial court's finding that those points were frivolous was both correct and immaterial. In re J.J.C., 302<14>436 (2009)

Where trial court did not abuse its discretion in finding that parent's challenge to legal and factual sufficiency of evidence supporting best interest finding did not present a substantial question for appellate review, court of appeals affirmed trial

J.J.S., 272<10>74 (2008)

It was not abuse of discretion to determine that M's point for review on suff of evid to support finding that termination was in children's best interest was frivolous where evid showed M's instability and history of abusive relationships, she made little or no progress with family service plan, multiple specialists considered there to be a high risk of danger to children's mental and emotional well-being now and in the future, and was evid M was aware that husband posed a risk to children before his alleged sexual assault on one of them occurred. In re J.J.S., 272<10>74 (2008)

It was not abuse of discretion to determine that M's point for review (of failure of trial court to appoint M possessory conservator and require department to make reasonable efforts to reunite her with her children) was frivolous, where department presented evid suff to conclude children were in immediate or urgent danger under 262.201 and that department made reasonable efforts to reunite M with her children. In re J.J.S., 272<10>74 (2008)

Where record contained no statement of points on appeal or motion for new trial, court could not consider arguments on legal and factual suff of evid to support termination. Bermea v DFPS, 265<1>34 (2008)

On appeal from termination of parental rights, where trial court found appeals were frivolous under 263.405(d), trial court correctly found that two of the challenges to sufficiency of evid were frivolous, where parents in their statement of points made only a general claim that evid was insuff, which was not sufficiently specific to preserve issue for appeal; third challenge to suff of evid was sufficiently specific, but, in light of evid at trial, it was not abuse of discretion for trial court to find the complaint was frivolous. Lumpkin v DFPS, 260<1>524 (2008)

On appeal from termination of parental rights it was not error to determine that appeals would be frivolous, where trial evid supported grounds alleged for termination and that termination was in best interest of child, and at termination hearing no evid was presented to controvert department's evid that supported grounds for termination. In re J.B., 259<9>383 (2008)

On appeal from termination of parental rights, court could not consider contention evid was legally and factually insuff to support findings under 163.003(a)(1)-(4) where M's statement of points did not include a statement of intent to challenge legal and factual suff of evid to support those findings. (But statement of points* was suff for M to challenge to suff of evid to support finding that termination was in best interest of children.) Adams v TDFPS, 236<1>271 (2007)

On appeal by M from termination of parental rights, M's issues dismissed and judgment as to M affirmed, where her statement of points as untimely file, so under 263.405(i) appeals court could not consider her issues on appeal. In re T.R.F., 230<10>263 (2007)

On appeal from termination of parental rights, appeal disposed of without addressing merits of issues raised in appellant's brief (challenging suff of evid) where appellant did not file statement of points, either standing alone or combined with a motion for new trial. Pool v TDFPS, 227<1>212 (2007)

Where appeal from termination of parental rights was disposed of under requirements of 263.405(i) for failure to file statement of points, no merit to contention appellant was prevented from asserting his right to appeal termination because appellate counsel was not appointed before deadline for filing statement of points had passed, where appellant did not assert trial counsel effectively abandoned him after trial court signed its judgment nor that trial counsel provided ineffective assistance of counsel. Pool v TDFPS, 227<1>212 (2007)

On accelerated appeal from termination of parental rights, appeals court could not consider any issues raised where parent failed to file with trial court a statement of points she intended to appeal or a motion for new trial as required by 263.405(i). In re C.B.M., 225<8>703 (2006)

Accelerated appeal of termination order dismissed where M's affidavit of inability to pay costs was filed too late. In re M.A., 222<14>670 (2007)

On appeal from termination order, no issues preserved for review where all but one of issues in statement of points filed with trial court were not mentioned in brief on appeal; and single point that appeared to be raised in appeal brief (that state did not meet burden of proof at trial) was not suff to draw trial judge's attention to any specific erroneous findings in order to correct those findings. In re J.W.H., 222<10>661 (2007)

On accelerated appeal from order terminating parental rights, appeals court could not consider issues contending (1) was error for trial court to determine appeal was frivolous, (2) denial of effective assistance of counsel, and (3) insuff evid to support termination, where statement of points was not timely. In re R.C., 243<7>674 (2007)

On appeal from termination of parental rights, court could not consider appellant's issues because appellant failed to present those issues to trial court in a statement of points. In re R.J.S., 219<5>623 (2007)

Even if notice of appeal from termination of parental rights (stating particular trial court findings that parent desired to appeal) could be considered as a statement of points, appeals court could not consider parent's sufficiency points because parent failed to "present" them to trial court. "Presenting" the statement of points requires both timely filing of the statement and requesting a hearing. Nothing in record showed the statements of what parent desired to appeal, contained in notice of appeal, were considered by trial court; and was no evid a hearing was conducted, and a hearing was mandatory under 263.405(d). In re R.J.S., 219<5>623 (2007)

Termination of parental rights affirmed where parent did not file statement of points, so appeals court could not consider her issues on appeal, even ineffective assistance of counsel. In re R.M.R., 218<13>863 (2007)

Appeal from termination of parental rights dismissed, where (1) trial court held hearing on motion for new trial and statement of points on appeal, denied motion for new trial and found appellant was not indigent because she had not filed an affidavit of inability to pay costs of appeal, and found appeal was frivolous under 13.003(b) CPRC, under 263.405(d); (2) court of appeals requested her attorney to notify court whether appellant intended to appeal trial court's non-indigence or frivolousness findings and received no response; (3) no notice of appeal from trial court's order, and no reporter's record from that hearing was filed; and (3) appellant failed to file response to appeals court's order for statement of why appellant did not respond to prior letter from court and why no court reporter's record from trial court hearing had been filed. In re V.I., 214<10>707 (2007)

Under 263.405(i), appeals court could not consider F's claim that his right to a fair trial before a neutral and unbiased judge was violated because trial judge had a direct pecuniary interest in case and exhibited a deep-seated antagonism against F based on political speech F posted on internet, where issue was not set forth in F's combined motion for new trial and statement of points. In re A.H.L., 214<8>45 (2006)

Under 263.405(i), appeals court could not consider F's claim that was abuse of discretion to deny his motion to disqualify attorney ad litem appointed to represent child's interest, for conflict of interest and ineffective assistance of counsel for not challenging any of temporary orders, where issue was not set forth in F's combined motion for new trial and statement of points. In re A.H.L., 214<8>45 (2006)

Under 263.405(i), appeals court could not consider F's claim that evid was legally and factually insuff to support termination order, where in his combined motion for new trial and statement of points he alleged in a single sentence, without a more specific argument, that the evid was legally and factually suff to uphold jury's verdict and order of termination. That claim was not sufficiently specific to preserve issue for appeal. In re A.H.L., 214<8>45 (2006)

Final order appointing DFPS permanent managing conservator of child affirmed where M did not present trial court with a timely filed statement of points presented to appeals court. In re C.M., 208<14>89 (2006)

Termination of parental rights affirmed where parent did not file a timely motion for new trial or statement of point or points on which parent intended to appeal, and brief on appeal raised no issues that could be considered in absence of meeting requirements of 263.405(b). In re S.E., 203<4>14 (2006)

In termination suit, frivolousness findings under 263.405 were not abuse of discretion, on issues of delay in appointment of counsel, ineffective assistance of trial counsel, legal and factual sufficiency of evid, constitutionality of termination process as a whole, and evidentiary rulings. In re K.D., 202<2>860 (2006)

On appeal from termination of parental rights, issues dismissed and judgment affirmed, where parent did not file required statement of points and did not file a motion for new trial. In re E.A.R., 201<10>813 (2006)

On appeal from termination of parental rights, court was barred under 263.405(i) from considering claims of ineffective assistance of counsel because they did not appear in parent's

263.405

statement of points or motion for new trial. In re D.A.R., 201<2>229 (2006)

It was not abuse of discretion for trial court to find appeal of termination of parental rights would be frivolous, where evid at trial demonstrated parents abused drugs, got into physical fights, did not maintain a stable home for their children, did not maintain stable employment, abandoned their children when they moved cross-country, left children with people who were

violent and known drug users, and did not pay child support; M was in jail at time of trial and had participated in several criminal activities; F did "virtually nothing" on CPS service plan; and children suffered from aggression, developmental delays, and anxiety issues as result of being neglected and moved around. In re T.C., 200<2>788 (2006)

263.405 Where parental rights were terminated under several subprovisions within 161.001(1) and parents in statement of points under 263.405(i) sought to challenge suff of evid under some but not all of those subprovisions, their failure to challenge suff of evid under one of those subprovisions made it unnecessary for court of appeals to review suff of evid to support as to subprovisions to which challenges were raised. In re K.W., 335<6>767 (2011)

Under 263.405(i), appeals court could not consider F's claim that counsel was ineffective on three certain grounds that were

not alleged in his combined motion for new trial and statement of issues, but could consider the one ground that was raised in his combined motion for new trial and statement of issues. In re A.H.L., 214<8>45 (2006)

On appeal from termination of parental rights, certain points asserted on appeal were dismissed for failure to present them in statement of points or motion for new trial, while others properly raised in statement of points were addressed by court of appeals. In re S.B., 207<2>877 (2006)