

Reversed in Part, Remanded, and Memorandum Opinion filed December 5, 2019.



In The

Fourteenth Court of Appeals

NO. 14-19-00834-CV

IN THE INTEREST OF N.A.H., A CHILD

**On Appeal from the 309th District Court
Harris County, Texas
Trial Court Cause No. 2018-02336**

M E M O R A N D U M O P I N I O N

This accelerated appeal arises from a final decree in a suit in which termination of the parent-child relationship was at issue. *See* Tex. Fam. Code Ann. § 109.002(a-1). The trial court terminated the parental rights of S.H. (Mother) and C.A.T. (Father), respectively, with respect to their son, N.A.H.¹ The trial court also appointed the Texas Department of Family and Protective Services (the “Department”) to be N.A.H.’s managing conservator. Only Mother appeals.²

¹ We use initials to refer to the children and parents involved in this case. *See* Tex. Fam. Code Ann. § 109.002(d); Tex. R. App. P. 9.8(b)(2).

² Mother’s parental rights as to other children were terminated in two separate proceedings. Her appeals from those terminations were assigned to this court. No. 14-19-00832-CV, *In the Interest*

Court reporter Tony Baiamonte III notified this court that he is unable to produce his portion of the reporter's record (volumes 2, 5, and 6) because the electronic recording is inaudible. An appellant is entitled to a new trial when she timely requests the reporter's record, and, by no fault of the appellant, the reporter's record has been lost or destroyed, is necessary for the appeal, and cannot be reconstructed. *See* Tex. R. App. P. 34.6(f); *Gavrel v. Rodriguez*, 225 S.W.3d 758, 761 (Tex. App.—Houston [14th Dist.] 2007, pet. denied); *In re B.H.*, No. 14-16-01011-CV, 2017 WL 1015697, *1 (Tex. App.—Houston [14th Dist.] Mar. 14, 2017, no pet.) (mem. op.) (per curiam) (reversing portion of judgment terminating appellant's parental rights and granting appellant new trial because reporter's record was lost or destroyed).

On November 13, 2019, we abated this appeal for the trial court to make findings under Texas Rule of Appellate Procedure 34.6(f). Supplemental clerk's and reporter's records regarding those findings have been filed. The trial court found:

- (1) Mother timely requested a reporter's record;
- (2) without Mother's fault, a significant portion of the court reporter's notes and recordings have been lost or destroyed or is inaudible;
- (3) the lost, destroyed, or inaudible portion of the reporter's notes and recordings are necessary to the appeal's resolution; and
- (4) the parties cannot agree on the replacement of the portions of the reporter's notes or recordings nor can the parties agree that the notes or recordings can be duplicated with reasonable certainty.

The trial court concluded that Mother is entitled to a new trial under Texas Rule of Appellate Procedure 34.6(f).

of A.S.G., and N.P.G., Children; and No. 14-19-00833-CV, In the Interest of E.H., a Child.

In light of the trial court's findings, we **REVERSE** only that portion of the final decree terminating Mother's parental rights to N.A.H. and **REMAND** this case to the trial court for a new trial to be held as to only those claims brought by the Department against Mother. *See* Tex. Fam. Code Ann. § 263.401(b-1). We leave the remainder of the decree undisturbed.

PER CURIAM

Panel consists of Chief Justice Frost and Justices Christopher and Bourliot.