

the case has been pending for more than a year, we still disagree about what the complaints are and whether they were preserved. In this context, adhering to our preservation rules isn't a mere technical nicety; the interests at stake are too important to relax rules that serve a critical purpose. As we recently said, "[a]ppellate review of potentially reversible error never presented to a trial court would undermine the Legislature's dual intent to ensure finality in these cases and expedite their resolution." *In re B.L.D. and B.R.D.*, ___ S.W.3d ___, ___ (Tex. 2003); *see also* TEX. FAM. CODE § 161.211(a) (prohibiting direct or collateral attack on order terminating parental rights based on affidavit of relinquishment after six months). Injecting any greater uncertainty and complexity into the process would only serve to discourage potential adoptive parents, who are already turning to simpler and less expensive foreign adoptions in record numbers. *See* Genard C. Armas, *Many U.S. Parents Look Abroad to Adopt*, *Census Bureau Says*, *MIAMI HERALD*, Aug. 22, 2003, available at <http://www.miami.com/mld/miamiherald/2003/08/22/news/nation/6591007.htm>; UNITED STATES CENSUS BUREAU, UNITED STATES DEPARTMENT OF COMMERCE, *ADOPTED CHILDREN STEPCHILDREN: 2000 11* (Aug. 2003).

Here, after hearing evidence regarding the circumstances surrounding the affidavits' execution and the boys' best interests, the trial court ordered termination of Duenas's and Inocencio's parental rights. The court of appeals affirmed. ___ S.W.3d ___. Duenas argues that the affidavit he signed was procured in a manner that violated his right to due process because he neither speaks nor reads English, and the affidavit was not translated into Spanish. We granted Duenas's petition for review to consider this constitutional issue, but on further review we conclude that the issue was not preserved. We also granted Inocencio's petition for review to decide whether the order terminating her parental rights should be set aside because her relinquishment affidavit was procured as the result of fraud or undue influence. A majority of the Court concludes that the record contains legally sufficient evidence to support termination of her parental rights. Accordingly, we affirm the court of appeals' judgment.

I

In April 1999, fifteen-year-old Inocencio gave birth prematurely to twin boys, L.M.I. and J.A.I., allegedly fathered by twenty-five-year-old Ricardo Duenas. Duenas and Inocencio were not married or living together at the time. At some point before the boys' birth, Inocencio had become acquainted with Texas City police detective Brian Goetschius, who had responded to a report that Inocencio was working as a nude dancer at a sexually oriented business. Detective Goetschius began offering Inocencio occasional advice, sometimes at her mother's behest. After learning of her pregnancy, Goetschius drove Inocencio to several doctor's appointments and helped her apply for governmental assistance. Five months after the boys were born, Inocencio's sister, Esther Gonzalez, contacted the detective asking for help in placing the children for adoption. Eventually, Goetschius and his wife, Dawnell, arranged for the children to be adopted by Monica and Miles Montegut, Dawnell's sister and brother-in-law.

On September 24, 1999, Gonzalez went to her mother's home, where Inocencio and the boys lived, and told Inocencio that the Monteguts wanted to adopt the children. Gonzalez, Inocencio, and their mother, Guillerma Pruitt, all testified that Inocencio at first rejected the idea of allowing the adoption, but was ultimately persuaded that it would be in the boys' best interest. Gonzalez then drove Inocencio, the twins, and Pruitt to pick up Duenas at the restaurant where he worked. The group proceeded to the office of the Monteguts' attorney, Mark Ciavaglia, who had prepared irrevocable affidavits of relinquishment of parental rights for Inocencio and Duenas to sign. Duenas, a Honduran citizen, testified that he does not understand English, that none of the affidavit was translated for him, and that he did not understand the affidavit's import. Other witnesses testified that Duenas appeared to understand Ciavaglia's explanation of the affidavit, and that significant portions of the affidavit were translated. Ciavaglia then explained the affidavit to Inocencio, who testified that Ciavaglia advised her not to sign if she had any reservations. Inocencio initially refused to sign the affidavit, but changed her mind after the adoptive parents agreed to send her pictures and information about the boys' condition twice a year. After both Inocencio and Duenas

signed their respective affidavits, they left the boys with Ciavaglia to be surrendered to the Monteguts.

A few days later, Inocencio had a change of heart and decided to pursue legal action to regain custody of the children. On October 1, 1999, the Monteguts filed their petition to terminate the parent/child relationship. The same day, the trial court issued a temporary order giving the Monteguts custody of the children. Three days later, Inocencio filed a motion to revoke her affidavit. On November 17, 1999, Duenas filed his answer to the Monteguts' petition and a counter-petition for voluntary paternity. He also filed a motion to revoke his affidavit of relinquishment.

On November 23, 1999, the trial court held a hearing on the motions to revoke the affidavits to determine whether the affidavits were executed involuntarily. After hearing testimony from nine witnesses, the trial court found that the affidavits were voluntarily executed. The court also found that Duenas was not the children's presumed father, and that the legal parent-child relationship did not exist at the time Duenas signed his affidavit of relinquishment. The trial court further found by clear and convincing evidence that it was in the children's best interest to terminate Duenas's and Inocencio's parental rights. The court ordered Duenas's and Inocencio's rights terminated, and awarded the Monteguts custody of the children. The court of appeals affirmed the trial court's decision. ___ S.W.3d ___.

II

Duenas's petition for review argues that "the order terminating [his] parental rights should be set aside since [his] signature on the affidavit of relinquishment was procured in a manner that violated [his] due process rights." Upon further review of the record, we conclude that Duenas failed to preserve this issue in the trial court. His answer and counterpetition to the termination proceedings cite no constitutional authority, and he did not raise the issue in any post-judgment motion. In fact, the only reference to the constitution in the entire record appears when Duenas's attorney, in arguing for a continuance, explained that she had only recently been hired after Duenas's coworkers told him that the termination "was probably not constitutional and not right." Duenas's "Revocation of Affidavit" merely states that "[t]he Affidavit of

Relinquishment was not translated for me.” The trial court obviously did not discern a due process challenge in Duenas's argument, because the court specifically found that “RICARDO DUENAS present[sic] issues of fraud, duress, and overreaching to the Court to deny that his Father's Affidavit of Relinquishment of Parental Rights was signed voluntarily.” *See Vela v. Marywood*, 17 S.W.3d 750, 760 (Tex. App. – Austin 2000, pet. denied, 53 S.W.3d 684 (Tex. 2000) (noting that at common law “the word ‘fraud’ refers to an . . . omission, or concealment in breach of a legal duty . . . when the breach causes injury to another or the taking of an undue and unconscientious advantage”).

Duenas, who was represented by counsel, sought no finding and raised no legal argument before the trial court about a constitutional claim. Given that Duenas was afforded an extensive evidentiary hearing on the voluntariness of his affidavit, it was not apparent from the context that Duenas was attempting to raise a due process challenge. Under our Rules of Appellate Procedure, a party must present to the trial court a timely request, motion, or objection, state the specific grounds therefor, and obtain a ruling. TEX. R. APP. P. 33.1. As noted above, allowing appellate review of unpreserved error would undermine the Legislature’s intent that cases terminating parental rights be expeditiously resolved, thus “[p]romot[ing] the child’s interest in a final decision and thus placement in a safe and stable home.” *In re B.L.D. and B.R.D.*, ___ S.W.3d at ___ (quoting *In re J.F.C.*, 96 S.W.3d 256, 304 (Tex. 2002)). Both we and the United States Supreme Court have held that constitutional error was waived in comparable circumstances. *See Webb v. Webb*, 451 U.S. 493, 496-97 (1981) (holding that constitutional error was waived, even though petitioner repeatedly used the phrase “full faith and credit,” because petitioner did not cite to the federal Constitution or to any cases relying on the Full Faith and Credit Clause of the federal Constitution); *Tex. Dep’t of Protective and Regulatory Servs. v. Sherry*, 46 S.W.3d 857, 860-61 (Tex. 2001) (holding that alleged biological father who sought to establish paternity waived constitutional error, though it was undisputed that father had received no notice or hearing on prior paternity adjudication that created bar). Accordingly, we hold that the due process argument Duenas raises here was not preserved below.

And due process is the only argument that Duenas raises here. Nowhere does he present the issue that Justice Hecht and Justice Owen pose, that there is not clear and convincing evidence of a statutory ground for reversal. ___ S.W.3d at ___(HECHT, J. dissenting); ___ S.W.3d at ___ (OWEN, J., dissenting). At oral argument, Duenas’s attorney expressly disavowed any argument that his affidavit did not comply with the statute:

JUSTICE OWEN: Are you also making a statutory argument that it doesn’t comply with the statute?

DUENAS’S ATTORNEY: As it relates to him, I’ve not made any statutory argument.

OWEN: Your only argument was due process?

CASEY: Yes.

That concession was entirely consistent with Duenas’s briefing, which states the issue presented is “Should the order terminating RICARDO’s parental rights be set aside since RICARDO’s signature on the affidavit of relinquishment of his parental rights was procured in a manner that violated RICARDO’s due process rights?” Because the only issue presented in Duenas’s petition for review was not preserved, we affirm the court of appeals’ judgment as to Duenas.

III

Inocencio argues that the order terminating her parental rights should be set aside because it was procured in exchange for unenforceable promises and as the result of illegal conduct by Detective Goetschius, his wife, and Esther Gonzalez. Inocencio argues that the Monteguts’ promise to provide periodic information and photographs of the boys was unenforceable as a matter of law, citing *Vela*. Because the promise was unenforceable, she argues, the promise fraudulently induced her to sign the affidavit of relinquishment.

Inocencio filed no pleadings or post-trial motions in the trial court challenging the enforceability of the Monteguts’ promise, even though she, like Duenas, was represented by an attorney. The only

documents Inocencio presented in the trial court were her “Revocation of Affidavit,” and a handwritten letter attached to a letter from the attorney who had been representing her mother in her effort to be named the twins’ managing conservator in which Inocencio states that “[t]he only reason [the boys] are not with us now is because of my sisters [sic] threats and badgering.” Inocencio’s revocation states only that “[i]t is my desire to revoke [the affidavit of relinquishment].” While there is evidence that the promise of pictures and updates played a significant role in Inocencio’s decision to sign the affidavit, her argument about the enforceability of that promise was never raised or ruled upon. Inocencio thus waived this challenge to the affidavit, and we express no opinion on it. *See In re Barr*, 13 S.W.3d 525, 555 (Tex. Rev. Trib. 1998); *Tarrant County Water Control and Imp. Dist. Number One v. Fullwood*, 963 S.W.2d 60, 72 (Tex. 1998).

Inocencio also contends that Detective Goetschius, his wife, and Gonzalez acted as adoption intermediaries without meeting the requirements of Chapter 42 of the Human Resources Code; consequently, she argues, their actions amount to undue influence in her decision to relinquish her parental rights. But like her argument regarding the purported unenforceability of the Monteguts’ promises, Inocencio never raised or secured a ruling on this theory in the trial court. Accordingly, it too is waived.

IV

A.

A brief response to the dissenting justices’ depiction of the record in this case is warranted. Both dissents effectively second-guess the trial court’s resolution of a factual dispute by relying on evidence that is either disputed, or that the court could easily have rejected as not credible. Even under the standard we articulated in *In re J.F.C.*, this reweighing of the evidence is improper. *See In re J.F.C.*, 96 S.W.3d 256, 266 (Tex. 2002). And in a case like this, where so much turns on the witnesses’ credibility and state of mind, appellate factfinding is particularly dangerous.

Neither of the dissents, for example, credits evidence that Duenas understood English. This is

important, because the evidence is undisputed that Ciavaglia went over the affidavit with Duenas in English, although he may have paraphrased parts of it. For example, Gonzalez testified that Ciavaglia “went step by step and made sure to – that [Duenas and Inocencio] understood what they were signing. . . . Mark [Ciavaglia] explained it in detail. And Ricardo kept on, like he acknowledged what was being said.” And Ciavaglia testified that he told Duenas that “[t]his document is very – excuse me – very important. And that by signing it, you’re acknowledging that you understand this document and you understand the consequences of this document, and that you fully, finally, and forever give up any parental rights to your children. And you also relinquish your right and give up your right to change your mind.” Ciavaglia also testified that he went “through the form and I was explaining it to [Duenas].”

And Duenas’s testimony about his ability to understand English was inconsistent; although he testified that he understood *no* English whatsoever, he soon contradicted himself:

ATTORNEY AD LITEM: Mr. Duenas, I’m a little confused as to how much English you understand. Let me go over some testimony that I think you gave the court a little bit earlier.

When the lawyer told you in English to sign here and initial here, did you tell the Court that you understood that?

DUENAS: Yes, I did understand.

Duenas also submitted a Statement of Paternity in English and swore, in the attached verification, “that he has read the foregoing Statement of Paternity.”

Other witnesses testified that Duenas appeared to understand what was transpiring at the affidavit signing:

Q: How did you receive the information from Ricardo Duenas?

CIAVAGLIA: I asked him verbally.

Q: And was he able to understand what you asked him and relay the information?

CIAVAGLIA: He seemed to be. He seemed to understand English and responded to questions.

Q: When you asked for his name, did he respond with his name correct – give you a detail of his name, or did he write it out? How did he do it?

CIAVAGLIA: He pronounced it, and I just wrote it. As I wrote his last name, I spelled it out loud; and he acknowledged that was correct.

And Gonzalez testified that after Duenas signed the affidavit, she told him in English, “Thank you. What you are doing is very courageous.” She then asked her mother to translate, but Duenas interrupted and told the mother it was unnecessary. Moreover, there was evidence that Duenas had been working four years for a chef who spoke only English. Although Duenas testified that a coworker translated the chef’s directions, the trial court may have found Duenas’s self-contradicted testimony that he understood no English after four years in this environment not credible. The trial court may also have found Duenas not credible because he testified that none of the affidavit had been translated for him, whenever other witness testified that at least some portions of the affidavit were translated. In any event, the trial court had the opportunity to observe Duenas’s responses and demeanor; second-guessing the trial court’s factfinding in these circumstances is unwarranted and ill-advised.

B.

Moreover, the dissenters’ assumption that Duenas’s mere biological relationship with the twins afforded him “rights, fundamental and constitutional in their magnitude” is questionable. As we have noted, the trial court found that Duenas was not the twins’ presumed father, and that Duenas had no legal relationship with the boys at the time he signed the affidavit. Duenas, a twenty-five-year-old man, admits that he fathered twin sons by a fifteen-year-old child who was incapable of legally consenting to a sexual relationship. Duenas signed the affidavit relinquishing his parental rights more than five months after the boys’ birth, while he was living with another woman. Until he filed a counterpetition for paternity in this case (five days before the scheduled termination hearing, almost two months after signing the relinquishment affidavit, and more than seven months after Inocencio gave birth to the twins), Duenas took no steps to establish parental rights. Moreover, Duenas did not request a full translation of the relinquishment affidavit,

even though there was nothing to prevent him from doing so and he knew that the proceedings would affect the boys' future. His failure to do so could be interpreted as disinterest. And there is evidence that Duenas contributed little, if any, to the boys' support and daily care.¹ The record strongly suggests that Inocencio's mother had assumed almost complete responsibility for the twins, and it is undisputed that she had moved to be named their managing conservator. The boys were receiving public assistance through the WIC program, and at one point there was an attempt to obtain child support from Duenas through the attorney general's office.

The Supreme Court has made it abundantly clear that a man's mere biological relationship with a child is insufficient to confer a protected liberty interest upon him. In *Lehr v. Robertson*, the Court explained:

The difference between the developed parent-child relationship that was implicated in *Stanley* and *Caban*, and the potential relationship involved in *Quilloin* [*v. Walcott*, 434 U.S. 246 (1978)] and this case, is both clear and significant. When an unwed father demonstrates a full commitment to the responsibilities of parenthood by "com[ing] forward to participate in the rearing of his child," his interest in personal contact with his child acquires substantial protection under the due process clause. At that point it may be said that he "act[s] as a father toward his children." But the mere existence of a biological link does not merit equivalent constitutional protection. . . . "[T]he importance of the familial relationship, to the individuals involved and to the society, stems from the emotional attachments that derive from the intimacy of daily association, and from the role it plays in 'promot[ing] a way of life' through the instruction of children as well as from the fact of blood relationship."

463 U.S. 248, 261 (1983) (citations omitted) (emphasis added). In *Lehr*, the Court held that a putative father who had never established a substantial relationship with his child was not entitled to notice of adoption proceedings as a matter of due process.² *Id.* at 265. This Court, too, has long recognized that any constitutional interest a putative father may claim stems from his acceptance of "the legal and moral

¹ Duenas and Inocencio both testified that he contributed to the twins' support, but their testimony about the extent of that support is inconsistent. There is undisputed evidence that, at the affidavit signing, Inocencio stated that Duenas "didn't help her, [she] thought he was a sh***y a** father."

² The dissenting opinion in *Lehr* reveals that the biological father in that case had aggressively pursued a relationship with the child, but had been thwarted by the child's mother. *Lehr*, 463 U.S. at 268-69 (WHITE, J., dissenting). Nevertheless, the Court held that the putative father's lack of any substantial relationship with the child weighed against recognizing a constitutional right to notice and hearing.

commitment to the family,” not from a mere biological relationship. *In re K.*, 535 S.W.2d 168, 171 (Tex. 1976), *cert. denied*, 429 U.S. 907 (1976); *see also In re T.E.T.*, 603 S.W.2d 793, 795 (Tex. 1980), *cert. denied sub nom., Oldag v. Catholic Charities of the Diocese of Galveston-Houston*, 450 U.S. 1025 (1981) (holding that statute that imposed different requirements to establish parental rights on father than on mother did not violate father’s right to equal protection under the law); *In re J.W.T.*, 872 S.W.2d 189, 195 (Tex. 1994) (noting that a father’s constitutional “interest does not come into existence or is soon lost, however, if the father is unable to demonstrate that he is fit and committed to the responsibilities of parenthood [or if the father has not] ‘taken concrete actions to grasp his opportunity to be a father’”) (quoting *In re Adoption of B.G.S.*, 556 So.2d 545, 550 (La. 1990)).

V

Because the theories on which Duenas and Inocencio seek to reverse the court of appeals’

judgment were never presented in the trial court, they were not preserved for our review. Accordingly, we affirm the court of appeals’ judgment.

Harriet O’Neill
Justice

OPINION DELIVERED: September 18, 2003.