

IN THE 322nd DISTRICT COURT
OF TARRANT COUNTY
FORT WORTH, TEXAS
No. 322-744263-23 (consolidated)

Morgan Michelle Myers,

Petitioner,

v.

Charles Dustin Myers,

Respondent

MOTION TO SIGN

June 20th, 2024

To the Honorable 322nd District Court of Tarrant County, Texas:

The United States Constitution, Texas Constitution, Texas Family Code, Local Rules of Tarrant County, Texas Civil Practice and Remedies Code, and the Texas Rules of Civil Procedure all work in harmony to protect the rights and interests of citizens residing within this State, forming a pyramid of protection.

A. The constitutional level

At the top of the pyramid – the United States Constitution and Texas Constitution provide the highest level of protection, which safeguard citizens from the deprivation of life, liberty, and property without due process of law. The Fifth and Fourteenth Amendments of the *United States Constitution* guarantee that no person shall be deprived of life, liberty, or property without due process of law (U.S. Const.

amends. V, XIV). Similarly, the *Texas Constitution* provides that no citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land (Tex. Const. art. I, § 19). Several cases handed down by this State's highest court have also held that "Texas has long recognized that '[t]he natural right which exists between parents and their children is one of constitutional dimensions.'" *In re Y.B.*, 300 S.W.3d 1 (Tex. App. 2009)(quoting *Wiley v. Spratlan*, 543 S.W.2d 349, 352 (Tex.1976).

B. The statutory level.

However, these recent developments regarding parental rights have increasingly intertwined constitutional principles with the provisions of the next level of the pyramid - the *Texas Family Code*, which have blurred the lines between these once distinct levels of legal authority with the State's heavy interest in the Children subject to its' jurisdiction. The phrase "best interest of the child" is referenced 109 times throughout the Texas Family Code, and "the child's best interest" appears 31 times. Notably, throughout all 1,627 pages of the legislation, the word "always" appears only once, and is preceded by the word "shall":

“[t]he best interest of the child **shall always** be the primary consideration of the court in determining the issues of conservatorship and possession of and access to the child.” - *Id* § 153.002 (emphasis added) ; *In re V.L.K.*, 24 S.W.3d 338, 342 (Tex. 2000); *Villasenor v. Villasenor*, 911 S.W.2d 411, 419 (Tex. App.-San Antonio 1995, no writ); *In the Interest of H.R.H.*, No. 04-08-00538-CV (Tex. App. 4/15/2009)

With such clear language on the face of the statute, this puts Judicial officers of this State in a position in which they “**shall always**” consider these interests in any determinations that they make regarding possession of and access to a child.

To meet this high statutory burden, "Courts employ the non-exhaustive list of Holley factors to determine the best interests of the children." *In the Interest of H.R.H.*, No. 04-08-00538-CV (Tex. App. 4/15/2009) (referencing *Holley v. Adams*, 544 S.W.2d 367, 371-72 (Tex. 1976))

The factors include, but are not limited to:

(1) the desires of the child; (2) the emotional and physical needs of the child now and in the future; (3) the emotional and physical danger to the child now and in the future; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist these individuals to promote the best interest of the child; (6) the plans for the child by the individuals seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and (9) any excuse for the acts or omissions of the parent. *Id* at 544 S.W.2d at 371-72

C. Procedural and remedial statutory level

In order to determine the factors needed to determine the best interest of the child, discovery must be completed in accordance with the procedural requirements set forth in the *Texas Family Code*, the *Texas Rules of Civil Procedure*, and the *Texas Civil Practice and Remedies Code*. These statutes collectively provide the necessary framework for conducting discovery, ensuring proper legal procedures are followed, and outlining available remedies if such procedures are not followed.

D. Local procedural level

At the base of the pyramid, the local procedural level, the *Local Rules of Tarrant County* provide specific guidelines and practices that must be adhered to in legal proceedings within the county. These rules ensure that court procedures are conducted efficiently and consistently, addressing the unique administrative needs of the local judiciary. Compliance with these local rules is essential to

uphold the integrity of the legal process and to ensure that cases are handled fairly and promptly.