

Question

What factors can a trial court in Texas consider in a contested custody case to determine parental fitness?

Answer (Texas)

Short response

A Texas trial court determining parental fitness in a contested custody case considers a broad range of statutory and common law factors, all focused on the best interest of the child, including the child's needs, parental abilities, history of abuse or neglect, home stability, and the willingness of each parent to foster a safe and supportive environment. The court's analysis is guided by both the Texas Family Code and the non-exhaustive "Holley factors" established by Texas case law.

Summary

In Texas, the determination of parental fitness in contested custody cases is governed by the overarching principle that the best interest of the child is the primary consideration. Courts are required to evaluate a variety of statutory factors set out in the Texas Family Code, such as the child's physical and emotional needs, the presence of family violence or abuse, the stability of the home, and the ability of each parent to provide a safe and nurturing environment.

In addition to statutory guidance, Texas courts routinely apply the "Holley factors," a non-exhaustive list of considerations developed by the Texas Supreme Court, which include the child's desires, the emotional and physical needs and dangers to the child, parental abilities, available support programs, plans for the child, and the stability of the home. These factors, together with statutory mandates, provide a comprehensive framework for trial courts to assess parental fitness in the context of each unique custody dispute.

Background and Relevant Law

Legislative Framework

The Texas Family Code provides the primary statutory framework for determining parental fitness in custody disputes. The central statutory mandate is that the best interest of the child must always be the court's primary consideration in matters of conservatorship, possession, and access ([Tex. Fam. Code § 153.002](#)). This principle is reinforced by the public policy of Texas, which seeks to ensure children have frequent and continuing contact with parents who act in their best interest and to provide a safe, stable, and nonviolent environment ([Tex. Fam. Code § 153.001](#)).

Several specific statutory provisions elaborate on the factors relevant to parental fitness:

- **Section 263.307** lists factors for determining whether parents can provide a safe environment, including the child's vulnerabilities, history of harm, family violence, substance abuse, willingness to seek counseling, and the adequacy of parenting skills ([Tex. Fam. Code § 263.307](#)).
- **Section 153.004** requires courts to consider evidence of domestic violence, sexual abuse, or child neglect, and restricts the appointment of joint managing conservators if there is credible evidence of such conduct ([Tex. Fam. Code § 153.004](#)).
- **Section 153.005** mandates consideration of any history or pattern of family violence, child abuse, or neglect, and the existence of protective orders ([Tex. Fam. Code § 153.005](#)).
- **Section 153.131** establishes a rebuttable presumption that appointing parents as joint managing conservators is in the child's best interest, but this presumption is removed if there is a history of family violence or if such appointment would significantly impair the child's physical health or emotional development ([Tex. Fam. Code § 153.131](#)).
- **Section 153.134** provides additional factors for joint conservatorship, such as the child's needs, the parents' ability to prioritize the child's welfare, the encouragement of a positive relationship with the other parent, prior participation in child-rearing, and the child's preference if age-appropriate ([Tex. Fam. Code § 153.134](#)).
- **Section 107.109** outlines the elements of a child custody evaluation, including interviews, observations, review of school and health records, criminal history, and assessment of the parent-child relationship ([Tex. Fam. Code § 107.109](#)).

For children under three, **Section 153.254** directs courts to consider factors such as caregiving history, the effect of separation, the availability and willingness of parties to care for the child, and the child's developmental needs ([Tex. Fam. Code § 153.254](#)).

In cases involving modification of custody orders, **Section 156.101** allows modification if it is in the child's best interest and there has been a material and substantial change in circumstances, or if the child (age 12 or older) expresses a preference ([Tex. Fam. Code § 156.101](#)).

Finally, **Section 161.001** (in the context of termination of parental rights) lists grounds such as abandonment, endangerment, failure to support, and substance abuse, which, while more severe, are relevant to the assessment of parental fitness in custody disputes ([Tex. Fam. Code § 161.001](#)).

Case Law

Texas courts have developed a robust body of case law interpreting and applying these statutory mandates. The most influential judicial articulation of relevant factors is found in the Texas Supreme Court's decision in [*Holley v. Adams*](#), which set out a non-exhaustive list of considerations for determining the best interest of the child. These "Holley factors" include:

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 those individuals to promote the child's best interest;
6. The plans for the child by the individuals or agency 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 ([Holley v. Adams, 544 S.W.2d 367 \(Tex. 1976\)](#)).

These factors have been repeatedly reaffirmed and applied in subsequent appellate and Supreme Court decisions ([In re A.C., 560 S.W.3d 624 \(Tex. 2018\)](#); [In re E.N.C., 384 S.W.3d 796 \(Tex. 2012\)](#); [In re S.C., 04-22-00125-CV \(Tex. App. Aug 17, 2022\)](#); [In re A.A.C.](#) (Tex. App. Oct. 5, 2023); [C.L.W. v. R.V.W.](#) (Tex. App. Aug. 10, 2023)). The Holley factors are not exhaustive, and courts may consider any other relevant circumstances.

It is important to note that the Holley factors have been codified by statute, as recognized in *Corrales v. Department of Family and Prot.*, 155 S.W.3d 478 (Tex. App. 2004). This codification does not diminish their authority but rather integrates them into the statutory framework, ensuring their continued relevance and application.

Texas courts also consider evidence of how a parent has treated other children or a spouse, especially in cases involving endangerment or abuse ([In re S.C., 04-22-00125-CV \(Tex. App. Aug 17, 2022\)](#)). The willingness and ability of a parent to provide a safe environment, seek counseling, and effect positive changes are also relevant ([In re T.A.G., No. 04-20-00565-CV \(Tex. App. May 19, 2021\)](#)).

Analysis

Statutory Factors

The Texas Family Code provides a detailed list of factors that a trial court must consider when assessing parental fitness in a contested custody case. These include:

- **Child's Age and Vulnerabilities:** The court examines the child's age and any physical or mental vulnerabilities, recognizing that younger or more vulnerable children may require greater protection and support ([Tex. Fam. Code § 263.307](#)).
- **History of Harm or Abuse:** Any history or pattern of family violence, child abuse, or neglect is a critical factor. The court must consider whether there is credible evidence of such conduct, and if so, may be required to restrict or deny conservatorship or access (Tex. Fam. Code §§ 153.004, 153.005).
- **Parental Abilities and Willingness to Change:** The court evaluates the parent's ability to provide adequate health and nutritional care, appropriate discipline, guidance, supervision, and a safe home environment. The parent's willingness to seek counseling, cooperate with agencies, and make positive changes is also considered ([Tex. Fam. Code § 263.307](#)).
- **Stability and Support System:** The stability of the home and the availability of a social support system, including extended family and friends, are relevant to the child's well-being ([Tex. Fam. Code § 263.307](#)).
- **Substance Abuse and Criminal History:** Evidence of substance abuse or criminal conduct by the parent or others in the home is a significant factor, as it may endanger the child's safety (Tex. Fam. Code §§ 263.307, 161.001).
- **Child's Preference:** If the child is 12 years of age or older, the court may consider the child's preference regarding conservatorship ([Tex. Fam. Code § 153.134](#)).
- **Ability to Foster Relationship with Other Parent:** The court considers whether each parent can encourage and accept a positive relationship between the child and the other parent ([Tex. Fam. Code § 153.134](#)).
- **History of Caregiving:** For very young children, the court looks at the caregiving provided before and during the suit, the effect of separation, and the willingness of each party to personally care for the child ([Tex. Fam. Code § 153.254](#)).

Judicially Developed Factors (Holley Factors)

The Holley factors, as codified and consistently applied by Texas courts, provide a flexible, non-exhaustive framework for evaluating parental fitness. These factors allow the court to consider:

- The child's desires, which may be particularly relevant for older children;
- The present and future emotional and physical needs of the child, ensuring that the parent can meet both immediate and long-term requirements;
- The present and future emotional and physical danger to the child, including exposure to violence, neglect, or unsafe environments;
- The parental abilities of the individuals seeking custody, such as their parenting skills, judgment, and capacity to provide for the child's needs;
- The availability of programs to assist the parent in promoting the child's best interest, such as counseling, education, or support services;
- The plans for the child by the parent or agency, including stability and long-term prospects;
- The stability of the home or proposed placement, recognizing that frequent moves or unstable living situations may be detrimental;
- Acts or omissions of the parent that may indicate an improper parent-child relationship, such as abandonment, neglect, or harmful behavior;
- Any excuse for the parent's acts or omissions, allowing the court to consider mitigating circumstances ([Holley v. Adams, 544 S.W.2d 367 \(Tex. 1976\)](#); [In re A.C., 560 S.W.3d 624 \(Tex. 2018\)](#); [In re E.N.C., 384 S.W.3d 796 \(Tex. 2012\)](#)).

These factors are not exclusive, and the court may consider any other circumstances relevant to the child's best interest.

Application in Practice

In practice, Texas trial courts synthesize the statutory and Holley factors, weighing the evidence presented in each case. For example, a court may find that a parent's history of substance abuse, combined with a lack of stable housing and failure to seek treatment, weighs heavily against a finding of parental fitness. Conversely, a parent who has demonstrated a commitment to the child's well-being, maintained a stable home, and fostered a positive relationship with the other

parent may be favored.

Courts also consider the impact of the parent's conduct toward other children or family members, as this may indicate a pattern of behavior relevant to the child at issue ([In re S.C., 04-22-00125-CV \(Tex. App. Aug 17, 2022\)](#)). The willingness to accept and complete counseling, cooperate with agencies, and make positive changes within a reasonable time frame are also important considerations ([Tex. Fam. Code § 263.307](#)).

The child's own preferences, particularly for older children, may be considered but are not determinative. The court must balance the child's wishes with other factors, such as safety and stability ([Tex. Fam. Code § 153.134](#)).

Exceptions and Caveats

While the statutory and Holley factors provide a comprehensive framework, the court retains broad discretion to consider any other relevant circumstances. No single factor is controlling, and the weight given to each factor may vary depending on the facts of the case ([C.L.W. v. R.V.W.](#), (Tex. App. Aug. 10, 2023); [In re M.T.](#) (Tex. App. Aug. 9, 2022)). For example, a history of family violence or abuse may be dispositive, overriding other positive factors.

It is also important to note that the Holley factors, while originally developed in the context of termination of parental rights, have been applied broadly to conservatorship and custody cases ([In re Interest of S.D.A., 587 S.W.3d 484 \(Tex. App. 2019\)](#); [Howe v. Howe, 551 S.W.3d 236 \(Tex. App. 2018\)](#)). Their codification by statute ensures their continued relevance, but courts may adapt or supplement them as appropriate.

The presumption in favor of appointing parents as joint managing conservators can be rebutted by evidence that such an appointment would significantly impair the child's physical health or emotional development, or by a history of family violence ([Tex. Fam. Code § 153.131](#); [In re K.R.P., 80 S.W.3d 669 \(Tex. App. 2002\)](#)).

Conclusion

In summary, a Texas trial court determining parental fitness in a contested custody case must consider a wide array of statutory and common law factors, all centered on the best interest of the child. The court evaluates the child's needs, parental abilities, history of abuse or neglect, home stability, and the willingness of each parent to foster a safe and supportive environment. The statutory factors in the Texas Family Code, together with the non-exhaustive Holley factors, provide a comprehensive and flexible framework for courts to assess parental fitness in the unique circumstances of each case. No single factor is determinative, and the court has broad discretion to weigh the evidence and make a decision that serves the child's best interest.

Legal Authorities

[In re K.R.P., 80 S.W.3d 669 \(Tex. App. 2002\)](#)

Texas Court of Appeals

Extract

With respect to Pullin, Cameron was required to rebut the parental presumption in Pullin's favor because Pullin filed a motion seeking custody of his child. As noted above, the parental presumption may be rebutted when the evidence presented to the trial court establishes that the appointment of a natural parent 'would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development.' TEX. FAM. CODE ANN. § 153.131(a); V.L.K., 24 S.W.3d at 341. We must, therefore, review the evidence presented at trial to determine whether Cameron met her burden to show that Pullin's appointment as managing conservator would significantly impair the child's health or emotional development.

Summary

The passage provides insight into the factors a trial court in Texas can consider when determining parental fitness in a contested custody case. Specifically, it highlights that the court can consider whether appointing a natural parent as managing conservator would significantly impair the child's physical health or emotional development. This is a statutory standard under Texas Family Code § 153.131(a). The passage also indicates that evidence of past abusive and criminal behavior can be significant in the court's decision-making process.

[Holley v. Adams, 544 S.W.2d 367 \(Tex. 1976\)](#)

Texas Supreme Court

Extract

Included among these are the following: (A) the desires of the child; (B) the emotional and physical needs of the child now and in the future; (C) the emotional and physical danger to the child now and in the future; (D) the parental abilities of the individuals seeking custody; (E) the programs available to assist these individuals to promote the best interest of the child; (F) the plans for the child by these individuals or by the agency seeking custody; (G) the stability of the home or proposed placement; (H) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and (I) any excuse for the acts or omissions of the parent.

Summary

The Texas Supreme Court in "Holley v. Adams" provides a non-exhaustive list of factors that a trial court can consider when determining parental fitness in a contested custody case. These factors focus on the best interest of the child and include considerations such as the child's desires, emotional and physical needs, potential dangers, parental abilities, available programs, plans for the child, home stability, and the parent's conduct.

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

Texas Supreme Court

Extract

Sections 153.002, 153.005, and 153.131 of the Texas Family Code outline the general standards for determining conservatorship. TEX. FAM.CODE §§ 153.002, 153.005, 153.131. Section 153.002 provides that the primary consideration in determining issues of conservatorship and possession of and access to the child is always the child's best interest.

Summary

The primary factor a trial court in Texas must consider in a contested custody case is the child's best interest. This is a broad standard that encompasses various aspects of parental fitness, including the ability to provide for the child's physical and emotional needs, the stability of the home environment, and the relationship between the child and each parent.

[C.L.W. v. R.V.W.](#)

Texas Court of Appeals

Extract

The factors include (1) the child's desires; (2) the child's emotional and physical needs 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 these individuals or the agency seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions of the parent which may show that the existing parent-child relationship is not a proper one; and (9) any excuse for the act or omissions of the parent. Holley, 544 S.W.2d at 371-72. No single factor is controlling. See *In re C.H.*, 89 S.W.3d 17, 27 (Tex. 2002).

Summary

List of factors that Texas courts consider when determining parental fitness in contested custody cases. These factors are derived from established case law and are used to assess the best interest of the child, which is the primary consideration in custody determinations. The passage is from a recent Texas Court of Appeals case, indicating its relevance and applicability to current custody disputes in Texas.

[Lenz v. Lenz, 79 S.W.3d 10, 45 Tex. Sup. Ct. J. 781 \(Tex. 2002\)](#)

Texas Supreme Court

Extract

The Legislature has made clear that '[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.' TEX. FAM.CODE § 153.002. ... As most of these cases rely on a best-interest standard as the ultimate guide for determining whether a modification for purposes of relocation should be granted, the factors they consider reflect the public policy concerns implicit in Texas' own statutory best-interest standard for modification. See TEX. FAM.CODE § 156.202(2) (modification must be 'a positive improvement for and in the best interest of the child'). The factors highlighted by those courts thus may assist us in giving meaning to our best-interest standard in the relocation context, particularly in light of the Legislature's overarching goals of assuring that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child and to provide a safe, stable, and nonviolent environment for the child. See id. § 153.001(a).

Summary

The passage from Lenz v. Lenz highlights that the primary consideration in custody cases is the "best interest of the child," as mandated by Texas Family Code § 153.002. It emphasizes that the factors considered in these cases reflect public policy concerns, such as ensuring frequent and continuing contact with parents who act in the child's best interest and providing a safe, stable, and nonviolent environment. This framework is applicable to all custody cases in Texas, making it a general guideline for determining parental fitness.

[In re Interest of B.O., NO. 02-16-00485-CV \(Tex. App. Jun 15, 2017\)](#)

Texas Court of Appeals

Extract

The trial court also had to consider the caregiving provided by Mother, Father, and D.M. to B.O. before and during the current suit. Other than during their in-person visits prior to B.O.'s journey to New York, Mother and Father provided no caregiving because the child was removed from them at the hospital after she was born, but the trial court could consider evidence of how they had taken care of their other two children, R. and C., and their lifestyle choices. ... And the trial

court had to consider the effect on B.O. that could result from separation, particularly in light of the fact that the separation, due to B.O.'s New York placement, had already been in place for several months by the time of the trial. The trial court further had to consider that although Mother and Father had testified that they were willing and available to take care of B.O., they had also indicated that they would take her with them to some of their tree-trimming jobs or leave her in day care. Given their history of panhandling and manipulative behavior and their expressed desire to keep possession of B.O. because she was their ticket into the shelter of their choice, the trial court could also have determined that Mother and Father would use the child to solicit handouts.

Summary

The trial court considers various factors related to parental fitness, including the caregiving history of the parents, their lifestyle choices, the potential impact of separation on the child, and the parents' intentions and behaviors. These factors are used to assess the best interests of the child, which is the primary consideration in custody cases.

[Long v. Long, 144 S.W.3d 64 \(Tex. App. 2004\)](#)

Texas Court of Appeals

Extract

Family Code Section 156.101 specifies that a court may modify an order that provides for the appointment of a conservator of a child if modification would be in the best interest of the child and the circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed since the rendition of the order. Tex. Fam.Code Ann. § 156.101 (Vernon 2002). The Legislature has made clear that '[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.' Tex. Fam.Code Ann. § 153.002 (Vernon 2002). Courts may use the nonexhaustive list of Holley factors to determine the child's best interest. ... (A) the desires of the child; (B) the emotional and physical needs of the child now and in the future; (C) the emotional and physical danger to the child now and in the future; (D) the parental abilities of the individuals seeking custody; (E) the programs available to assist these individuals to promote the best interest of the child; (F) the plans for the child by these individuals or by the agency seeking custody; (G) the stability of the home or proposed placement; (H) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and (I) any excuse for the acts or omissions of the parent.

Summary

The Texas Family Code and case law provide a framework for determining parental fitness in custody cases. The primary consideration is the best interest of the child, as outlined in the Texas Family Code. The Holley factors provide a nonexhaustive list of considerations that courts may use to assess the best interest of the child, which directly relates to determining parental fitness.

[In re M.T.](#)

Texas Court of Appeals

Extract

The best-interest inquiry is child-centered and focuses on the child's well-being, safety, and development. In re A.C., 560 S.W.3d 624, 631 (Tex. 2018). The fact finder may consider several factors to determine the child's best interest, including: the desires of the child; the present and future physical and emotional needs of the child; the present and future emotional and physical danger to the child; the parental abilities of the persons seeking custody; the programs available to assist those persons seeking custody in promoting the best interest of the child; the plans for the child by the individuals or agency seeking custody; the stability of the home or proposed placement; acts or omissions of the parent that may indicate the existing parent-child relationship is not appropriate; and any excuse for the parent's acts or omissions. Holley v. Adams, 544 S.W.2d 367, 371-72 (Tex. 1976); In...

Summary

List of factors that a trial court in Texas may consider when determining the best interest of a child in a custody case. These factors are derived from established case law and are generally applicable to custody cases in Texas. The passage is directly relevant to the question as it outlines the considerations for determining parental fitness in the context of a child's best interest.

[Gonzalez v. Sanchez, No. 07-16-00289-CV \(Tex. App. Feb 23, 2018\)](#)

Texas Court of Appeals

Extract

A trial court's findings on modification of conservatorship shall be based on a preponderance of the evidence. TEX. FAM. CODE ANN. § 105.005 (West 2014). The best interest of the child is the primary consideration in determining issues concerning conservatorship and possession of or access to a child. § 153.002. A court may use numerous factors to determine best interest. Holley v. Adams, 544 S.W.2d 367, 371-72 (Tex. 1976). Those factors, which are not exhaustive, include (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 individual seeking custody; (5) the programs available to assist the individual to promote the best interest of the child; (6) the plans for the child by the individual or by the agency seeking custody; (7) the stability of the home or proposed placement; (8) the acts or omissions

of the parent that 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.* In the context of a custody modification, other factors to consider include the child's need for stability and the need to prevent constant litigation in child custody cases.

Summary

List of factors that a Texas trial court can consider when determining parental fitness in a contested custody case. These factors are derived from the Texas Family Code and the Holley v. Adams case, which are applicable to custody cases in Texas. The factors focus on the best interest of the child, which is the primary consideration in such cases.

[In re T.A.G., No. 04-20-00565-CV \(Tex. App. May 19, 2021\)](#)

Texas Court of Appeals

Extract

In determining whether a child's parent is willing and able to provide the child with a safe environment, we consider the factors set forth in Texas Family Code section 263.307(b). See id. § 263.307(b). Our best interest analysis is also guided by consideration of the non-exhaustive Holley factors. See Holley v. Adams, 544 S.W.2d 367, 371-72 (Tex. 1976). These factors include: (1) the child's desires; (2) the child's present and future emotional and physical needs; (3) any present or future emotional and physical danger to the child; (4) the parental abilities of the individuals seeking custody; (5) the programs available to assist the individuals seeking custody to promote the child's best interest; (6) the plans for the child by the individuals or agency seeking custody; (7) the stability of the home or proposed placement; (8) the parent's acts or omissions which may indicate that the existing parent-child relationship is improper; and (9) any excuse for the parent's acts or omissions.

Summary

List of factors that a trial court in Texas can consider when determining parental fitness in a contested custody case. These factors are derived from the Texas Family Code and the Holley factors, which are well-established in Texas case law. The factors cover a range of considerations, including the child's needs and desires, the parent's abilities and plans, and the stability and safety of the proposed home environment. This information is applicable to any contested custody case in Texas, making it highly relevant to the question.

[In re Interest of S.D.A., 587 S.W.3d 484 \(Tex. App. 2019\)](#)

Texas Court of Appeals

Extract

The best interest of the child is always the primary consideration in determining issues of conservatorship and possession. TEX.FAM.CODE ANN. § 153.002. Courts may use the non-exhaustive list of Holley factors to determine the child's best interest. See Holley v. Adams, 544 S.W.2d 367, 371-72 (Tex. 1976); see also In re Doe 2, 19 S.W.3d 278, 282 n.20 (Tex. 2000) (recognizing that intermediate courts employ the Holley factors to ascertain best interest in conservatorship cases); Howe v. Howe, 551 S.W.3d 236, 259 (Tex.App.—El Paso 2018, no pet.).

Summary

The best interest of the child is the primary consideration in custody cases, and it references the Holley factors as a non-exhaustive list used by courts to determine this best interest. This suggests that the Holley factors are a key tool in assessing parental fitness in contested custody cases.

[In re C. J. W., NO. 01-18-00514-CV \(Tex. App. Nov 13, 2018\)](#)

Texas Court of Appeals

Extract

Courts may consider the following non-exclusive factors in reviewing the sufficiency of the evidence to support the best interest finding: the desires of the child; the present and future physical and emotional needs of the child; the present and future emotional and physical danger to the child; the parental abilities of the persons seeking custody; the programs available to assist those persons seeking custody in promoting the best interest of the child; the plans for the child by the individuals or agency seeking custody; the stability of the home or proposed placement; acts or omissions of the parent which may indicate the existing parent-child relationship is not appropriate; and any excuse for the parent's acts or omissions. Holley v. Adams, 544 S.W.2d 367, 371-72 (Tex. 1976). This list of factors is not exhaustive, however, and evidence is not required on all the factors to support a finding that terminating a parent's rights is in the child's best interest.

Summary

List of factors that Texas courts may consider when determining the best interest of the child in custody cases. These factors are relevant to assessing parental fitness, as they include considerations of the child's needs, the parental abilities, and the stability of the home environment. The context of the passage is a legal decision that references established case law, indicating that these factors are widely recognized in Texas custody cases. The scope is broad, as it applies to any

custody case where the best interest of the child is being evaluated.

In re A.C.

Texas Court of Appeals

Extract

In determining the best interest of the child, courts examine several factors, including: (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 individual seeking custody; (5) the programs available to assist the individual to promote the child's best interest; (6) the plans for the child by these individuals; (6) the stability of the home; (7) the acts or omissions of the parent indicating that the existing parent-child relationship is not a proper one; and (8) any excuse for parent's acts or omissions. Holley v. Adams, 544 S.W.2d 367, 371-72 (Tex. 1976).

Summary

Clear list of these factors, which are crucial in evaluating the suitability of a parent in a custody dispute.

In re S.C., 04-22-00125-CV (Tex. App. Aug 17, 2022)

Texas Court of Appeals

Extract

*"In determining whether the Department has established that the parent engaged in an endangering course of conduct, we may consider evidence concerning how a parent has treated another child or a spouse." In re M.D.M., 579 S.W.3d at 764; see In re J.T.G., 121 S.W.3d 117, 125 (Tex. App.-Fort Worth 2003, no pet.) ("[A]busive or violent conduct by a parent. ... may produce an environment that endangers the physical or emotional well-being of a child."). ... "Evidence of how a parent has treated another child is relevant to the best-interest analysis." In re M.A.A., No. 01-20-00709-CV, 2021 WL 1134308, at *23 (Tex. App.-Houston [1st Dist.] Mar. 25, 2021, no pet.) (mem. op.); see In re M.D.M., 579 S.W.3d at 764 (considering "evidence concerning how a parent has treated another child" in a statutory ground analysis).*

Summary

In determining parental fitness, a trial court in Texas can consider evidence of how a parent has treated another child or a spouse, particularly in cases involving endangerment. This includes abusive or violent conduct that may create an environment endangering the child's physical or emotional well-being. Additionally, evidence of how a parent has treated another child is relevant to the best-interest analysis. These considerations are part of the statutory and common law factors for determining the best interests of the child.

In re L.P.

Texas Court of Appeals

Extract

The Family Code statutory factors[] and the Holley factors[] for best interest of the child are well known. Applying each standard of review and the applicable statutory and common law factors, we examine the evidence pertaining to the best interest of the child. ... Statutory Factors for Best Interest of the Child. The Texas legislature codified certain factors courts are to use in determining the best interest of a child: TEX. FAM. CODE ANN. § 263.307(b); see In re A.C., 560 S.W.3d 624, 631 (Tex. 2018) (recognizing statutory factors). Holley Factors. The Supreme Court of Texas identified the following factors to determine the best interest of a child in its landmark case Holley v. Adams: Holley v. Adams, 544 S.W.2d 367, 371-72 (Tex. 1976) (footnotes omitted); accord In re E. N.C., 384 S.W.3d 796, 807 (Tex. 2012) (reciting the Holley factors).

Summary

The passage provides insight into the factors considered by Texas courts in determining the best interest of a child, which is a key component in assessing parental fitness in custody cases. The passage references both statutory factors codified in the Texas Family Code and the Holley factors established by the Supreme Court of Texas, indicating their broad applicability in such cases.

Howe v. Howe, 551 S.W.3d 236 (Tex. App. 2018)

Texas Court of Appeals

Extract

The best interest of the child is always the primary consideration in determining issues of conservatorship and possession. TEX.FAM.CODE ANN. § 153.002 (West 2014). Courts may use the non-exhaustive list of Holley factors to determine the child's best interest. Holley v. Adams, 544 S.W.2d 367, 371-72 (Tex. 1976); see also In re Doe 2, 19 S.W.3d 278, 300 n.20 (Tex. 2000) (recognizing that intermediate courts employ the Holley factors to ascertain best interest in conservatorship cases); Long v. Long, 144 S.W.3d 64, 68 (Tex.App.—El Paso 2004, no pet.) (applying Holley factors). Those 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 these individuals or by the agency 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. Holley, 544 S.W.2d at 371-72. These considerations are not exhaustive.

Summary

The Texas courts consider the best interest of the child as the primary factor in custody cases. The Holley factors provide a non-exhaustive list of considerations that courts may use to determine what is in the child's best interest. These factors are widely recognized and applied in Texas conservatorship cases.

[In re J.Q.J., NO. 01-18-01094-CV \(Tex. App. May 30, 2019\)](#)

Texas Court of Appeals

Extract

Courts may consider the following non-exclusive factors in reviewing the sufficiency of the evidence to support the best interest finding: the desires of the child; the present and future physical and emotional needs of the child; the present and future emotional and physical danger to the child; the parental abilities of the persons seeking custody; the programs available to assist those persons seeking custody in promoting the best interest of the child; the plans for the child by the individuals or agency seeking custody; the stability of the home or proposed placement; acts or omissions of the parent which may indicate the existing parent-child relationship is not appropriate; and any excuse for the parent's acts or omissions. Holley v. Adams, 544 S.W.2d 367, 371-72 (Tex. 1976).

Summary

List of factors that Texas courts may consider when determining the best interest of the child in custody cases. These factors are directly related to assessing parental fitness, as they include considerations of the child's needs, parental abilities, and the stability of the home environment. The reference to Holley v. Adams indicates that these factors are well-established in Texas case law.

[In re A.C., 560 S.W.3d 624 \(Tex. 2018\)](#)

Texas Supreme Court

Extract

The second termination prong—best interests—is child-centered and focuses on the child's well-being, safety, and development. A best-interest determination is thus guided by several non-exclusive factors, including: (1) the child's emotional and physical needs; (2) the emotional and physical danger to the child now and in the future; (3) the parental abilities of the individuals seeking custody; (4) the plans for the child by those individuals and the stability of the home; (5) the plans for the child by the agency seeking custody and the stability of the proposed placement; (6) the parent's acts or omissions that may indicate the existing parent-child relationship is improper; and (7) any excuse for the parent's acts or omissions.

Summary

List of factors that a trial court in Texas can consider when determining the best interest of a child in custody cases. These factors are child-centered and focus on the child's well-being, safety, and development. The context of the passage is a Texas Supreme Court case, which means it is authoritative and applicable to similar cases in Texas. The scope is broad as it outlines general factors for consideration in custody cases, not limited to specific circumstances.

[In re E.N.C., 384 S.W.3d 796, 56 Tex. Sup. Ct. J. 19 \(Tex. 2012\)](#)

Texas Supreme Court

Extract

We have previously articulated nonexclusive factors to be considered in determining whether termination of parental rights is in a child's best interest: (1) the child's desires; (2) the child's emotional and physical needs now and in the future; (3) any 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 the individuals seeking custody to promote the best interest of the child; (6) the plans for the child by the individuals or agency seeking custody; (7) the stability of the home or proposed placement; (8) the parent's acts or omissions which may indicate that the existing parent-child relationship is improper; and (9) any excuse for the parent's acts or omissions.

Summary

The passage from the Texas Supreme Court case "In re E.N.C." provides a list of nonexclusive factors that are considered when determining whether the termination of parental rights is in a child's best interest. These factors are relevant to assessing parental fitness in contested custody cases, as they address various aspects of the child's welfare and the parent's ability to provide a suitable environment.

[In Re: Jane Doe 2, 19 S.W.3d 278 \(Tex. App. 2000\)](#)

Texas Court of Appeals

Extract

Moreover, in many other family law contexts, such as custody, adoption, and child support, we review a trial court's best interests findings for abuse of discretion. ... In Holley v. Adams, we developed a list of non-exhaustive factors for determining a minor's best interests.

Summary

In custody cases, the trial court's determination of a child's best interests is reviewed under an abuse of discretion standard. It also references the case Holley v. Adams, which developed a list of non-exhaustive factors for determining a minor's best interests. This suggests that the factors from Holley v. Adams are relevant in assessing parental fitness in custody cases.

[Tex. Fam. Code § 263.307 Tex. Fam. Code § 263.307 Factors In Determining Best Interest of Child](#)

Extract

The following factors should be considered by the court and the department in determining whether the child's parents are willing and able to provide the child with a safe environment: the child's age and physical and mental vulnerabilities; the frequency and nature of out-of-home placements; the magnitude, frequency, and circumstances of the harm to the child; whether the child has been the victim of repeated harm after the initial report and intervention by the department; whether the child is fearful of living in or returning to the child's home; the results of psychiatric, psychological, or developmental evaluations of the child, the child's parents, other family members, or others who have access to the child's home; whether there is a history of abusive or assaultive conduct by the child's family or others who have access to the child's home; whether there is a history of substance abuse by the child's family or others who have access to the child's home; whether the perpetrator of the harm to the child is identified; the willingness and ability of the child's family to seek out, accept, and complete counseling services and to cooperate with and facilitate an appropriate agency's close supervision; the willingness and ability of the child's family to effect positive environmental and personal changes within a reasonable period of time; whether the child's family demonstrates adequate parenting skills, including providing the child and other children under the family's care with: (A) minimally adequate health and nutritional care; (B) care, nurturance, and appropriate discipline consistent with the child's physical and psychological development; (C) guidance and supervision consistent with the child's safety; (D) a safe physical home environment; (E) protection from repeated exposure to violence even though the violence may not be directed at the child; and (F) an understanding of the child's needs and capabilities; and whether an adequate social support system consisting of an extended family and friends is available to the child.

Summary

The Texas Family Code provides specific factors that a court should consider when determining parental fitness in custody cases. These factors focus on the ability and willingness of the parents to provide a safe and nurturing environment for the child, taking into account the child's vulnerabilities, history of harm, and the family's ability to make positive changes and provide adequate care.

[Tex. Fam. Code § 153.002 Tex. Fam. Code § 153.002 Best Interest of Child](#)

Extract

The 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.

Summary

The primary consideration for a trial court in Texas when determining issues of conservatorship and possession of and access to a child is the "best interest of the child." This indicates that any factors considered by the court in determining parental fitness must align with what is deemed to be in the child's best interest. The passage does not specify particular factors but establishes the overarching principle guiding such determinations.

[Tex. Fam. Code § 161.001 Tex. Fam. Code § 161.001 Involuntary Termination of Parent-Child Relationship](#)

Extract

The court may order termination of the parent-child relationship if the court finds by clear and convincing evidence: that the parent has: (A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return; (B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months;

(C) voluntarily left the child alone or in the possession of another without providing adequate support of the child and remained away for a period of at least six months; (D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child; (E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child; (F) failed to support the child in accordance with the parent's ability during a period of one year ending within six months of the date of the filing of the petition; ... (P) used a controlled substance, as defined by Chapter 481, Health and Safety Code, in a manner that endangered the health or safety of the child, and: (i) failed to complete a court-ordered substance abuse treatment program; or (ii) after completion of a court-ordered substance abuse treatment program, continued to abuse a controlled substance; ... and that termination is in the best interest of the child.

Summary

The Texas Family Code provides specific grounds under which a court may consider terminating the parent-child relationship. These grounds include abandonment, endangerment, failure to support, substance abuse, and other factors that may indicate a parent's inability to provide a safe and supportive environment for the child. These factors are relevant in determining parental fitness in contested custody cases, as they directly relate to the parent's ability to care for and protect the child.

[Tex. Fam. Code § 153.254 Tex. Fam. Code § 153.254 Child Less Than Three Years of Age](#)

Extract

The court shall render an order appropriate under the circumstances for possession of a child less than three years of age. In rendering the order, the court shall consider evidence of all relevant factors, including: the caregiving provided to the child before and during the current suit; the effect on the child that may result from separation from either party; the availability of the parties as caregivers and the willingness of the parties to personally care for the child; the physical, medical, behavioral, and developmental needs of the child; the physical, medical, emotional, economic, and social conditions of the parties; the impact and influence of individuals, other than the parties, who will be present during periods of possession; the presence of siblings during periods of possession; the child's need to develop healthy attachments to both parents; the child's need for continuity of routine; the location and proximity of the residences of the parties; the need for a temporary possession schedule that incrementally shifts to the schedule provided in the prospective order under Subsection (d) based on: (A) the age of the child; or (B) minimal or inconsistent contact with the child by a party; the ability of the parties to share in the responsibilities, rights, and duties of parenting; and any other evidence of the best interest of the child.

Summary

The Texas Family Code provides specific guidelines for determining parental fitness in custody cases involving children under three years old. The court considers various factors, including caregiving history, the child's needs, the parents' conditions, and the child's best interest. This is specifically applicable to cases involving young children, indicating a focused scope on this age group.

[Tex. Fam. Code § 153.001 Tex. Fam. Code § 153.001 Public Policy](#)

Extract

The public policy of this state is to: assure that children will have frequent and continuing contact with parents who have shown the ability to act in the best interest of the child; provide a safe, stable, and nonviolent environment for the child; and encourage parents to share in the rights and duties of raising their child after the parents have separated or dissolved their marriage.

Summary

The public policy of Texas emphasizes the importance of ensuring that children have frequent and continuing contact with parents who can act in the child's best interest. It also stresses the need for a safe, stable, and nonviolent environment for the child and encourages shared parental responsibilities post-separation or divorce. These elements are crucial in determining parental fitness in custody cases.

[Tex. Fam. Code § 153.004 Tex. Fam. Code § 153.004 History of Domestic Violence Or Sexual Abuse](#)

Extract

In determining whether to appoint a party as a sole or joint managing conservator, the court shall consider evidence of the intentional use of abusive physical force, or evidence of sexual abuse, by a party directed against the party's spouse, a parent of the child, or any person younger than 18 years of age committed within a two-year period preceding the filing of the suit or during the pendency of the suit. The court may not appoint joint managing conservators if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by one parent directed against the other parent, a spouse, or a child, including a sexual assault in violation of Section Penal Code 22.011 or Penal Code 22.021, Penal Code, that results in the other parent becoming pregnant with the child. A history of sexual abuse includes a sexual assault that results in the other parent becoming pregnant with the child, regardless of the prior relationship of the parents. It is a rebuttable presumption that the appointment of a parent as the sole managing conservator of a child or as the conservator who has the exclusive right to determine the primary residence of a child is not in the best interest of the child if credible evidence is presented of a history or pattern of past or present child neglect, or physical or sexual abuse by that parent directed against the other parent, a spouse, or a child.

Summary

The court considers evidence of abusive physical force or sexual abuse, child neglect, and family violence when determining parental fitness in custody cases. The presence of such evidence can influence the court's decision on appointing sole or joint managing conservators and can lead to restrictions on a parent's access to the child. The material is applicable to any custody case in Texas where these issues are relevant.

[Tex. Fam. Code § 153.134 Tex. Fam. Code § 153.134 Court-Ordered Joint Conservatorship](#)

Extract

If a written agreed parenting plan is not filed with the court, the court may render an order appointing the parents joint managing conservators only if the appointment is in the best interest of the child, considering the following factors: whether the physical, psychological, or emotional needs and development of the child will benefit from the appointment of joint managing conservators; the ability of the parents to give first priority to the welfare of the child and reach shared decisions in the child's best interest; whether each parent can encourage and accept a positive relationship between the child and the other parent; whether both parents participated in child rearing before the filing of the suit; the geographical proximity of the parents' residences; if the child is 12 years of age or older, the child's preference, if any, regarding the person to have the exclusive right to designate the primary residence of the child; and any other relevant factor.

Summary

The court considers several factors to determine parental fitness in contested custody cases. These factors include the child's needs and development, the parents' ability to prioritize the child's welfare, the encouragement of a positive relationship with the other parent, prior participation in child-rearing, geographical proximity, the child's preference if they are 12 or older, and any other relevant factors. This information is applicable to cases involving joint managing conservatorship.

[Tex. Fam. Code § 107.109 Tex. Fam. Code § 107.109 Elements of Child Custody Evaluation](#)

Extract

The basic elements of a child custody evaluation under this subchapter consist of: a personal interview of each party to the suit seeking conservatorship of, possession of, or access to the child; interviews, conducted in a developmentally appropriate manner, of each child who is the subject of the suit who is at least four years of age during a period of possession of each party to the suit but outside the presence of the party; observation of each child who is the subject of the suit, regardless of the age of the child, in the presence of each party to the suit, including, as appropriate, during supervised visitation, unless contact between a party and a child is prohibited by court order or the person conducting the evaluation has good cause for not conducting the observation and states the good cause in writing provided to the parties to the suit before the completion of the evaluation; an observation and, if the child is at least four years of age, an interview of any child who is not a subject of the suit who lives on a full-time basis in a residence that is the subject of the evaluation, including with other children or parties who are subjects of the evaluation, where appropriate; the obtaining of information from relevant collateral sources, including the review of: (A) relevant school records; (B) relevant physical and mental health records of each party to the suit and each child who is the subject of the suit; (C) relevant records of the department obtained under Section FAMILY CODE 107.111; (D) criminal history information relating to each child who is the subject of the suit, each party to the suit, and each person who lives with a party to the suit; and (E) notwithstanding other law, records or information from any other collateral source that may have relevant information; for each individual residing in a residence subject to the child custody evaluation, consideration of any criminal history information and any contact with the department or a law enforcement agency regarding abuse or neglect; and assessment of the relationship between each child who is the subject of the suit and each party seeking possession of or access to the child.

Summary

The Texas Family Code outlines specific elements that must be considered in a child custody evaluation. These elements include personal interviews, observations, and obtaining information from collateral sources such as school and health records, criminal history, and the relationship between the child and each party. This framework is applicable to any contested custody case in Texas where a child custody evaluation is ordered.

[Tex. Fam. Code § 153.005 Tex. Fam. Code § 153.005 Appointment of Sole Or Joint Managing Conservator](#)

Extract

In making an appointment authorized by this section, the court shall consider whether, preceding the filing of the suit or during the pendency of the suit: a party engaged in a history or pattern of family violence, as defined by Section FAMILY CODE 71.004; a party engaged in a history or pattern of child abuse or child neglect; or a final protective order was rendered against a party.

Summary

The passage provides specific factors that a Texas trial court must consider when determining parental fitness in a contested custody case. These factors include a history or pattern of family violence, child abuse, or child neglect, and whether a final protective order has been rendered against a party. This information is directly relevant to assessing parental fitness in custody cases.

[Tex. Fam. Code § 156.101 Tex. Fam. Code § 156.101 Grounds For Modification of Order Establishing Conservatorship Or Possession and Access](#)

Extract

The court may modify an order that provides for the appointment of a conservator of a child, that provides the terms and conditions of conservatorship, or that provides for the possession of or access to a child if modification would be in the best interest of the child and: the circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed since the earlier of: (A) the date of the rendition of the order; or (B) the date of the signing of a mediated or collaborative law settlement agreement on which the order is based; the child is at least 12 years of age and has expressed to the court in chambers as provided by Section FAMILY CODE 153.009 the name of the person who is the child's preference to have the exclusive right to designate the primary residence of the child; or the conservator who has the exclusive right to designate the primary residence of the child has voluntarily relinquished the primary care and possession of the child to another person for at least six months.

Summary

The court can consider modifying custody orders if it is in the best interest of the child. Factors include material and substantial changes in circumstances, the child's preference if they are at least 12 years old, and whether the conservator has voluntarily relinquished care for at least six months. These factors are relevant to determining parental fitness in contested custody cases.

[Tex. Fam. Code § 153.131 Tex. Fam. Code § 153.131 Presumption that Parent to Be Appointed Managing Conservator](#)

Extract

(a) Subject to the prohibition in Section FAMILY CODE 153.004, unless the court finds that appointment of the parent or parents would not be in the best interest of the child because the appointment would significantly impair the child's physical health or emotional development, a parent shall be appointed sole managing conservator or both parents shall be appointed as joint managing conservators of the child. (b) It is a rebuttable presumption that the appointment of the parents of a child as joint managing conservators is in the best interest of the child. A finding of a history of family violence involving the parents of a child removes the presumption under this subsection.

Summary

The passage outlines that in Texas, there is a presumption that appointing parents as joint managing conservators is in the best interest of the child. However, this presumption can be rebutted if the court finds that such an appointment would significantly impair the child's physical health or emotional development. Additionally, a history of family violence involving the parents can remove this presumption. This indicates that factors such as the child's best interest, potential impairment to the child's health or development, and any history of family violence are considered by the court in determining parental fitness.

[Coercive Control in High-Conflict Custody Litigation](#)

Family Law Quarterly - American Bar Association - Gillian R. Chadwick and Stef Sloan - 2023-01-01

Extract

The universal legal standard for child custody determinations is the "best interest of the child." Most states have attempted to concretize this abstract concept by creating specific "best interest" custody factors, such as "[e]ach parent's role and involvement with the minor child before and after separation," "the emotional and physical needs of the child," and "the school activity schedule of the child," as well as "evidence of domestic abuse" and "the willingness and ability of each parent to respect and appreciate the bond between the child and the other parent and to allow for a continuing relationship between the child and the other parent." The best interest factors are generally considered non-exhaustive, meaning that courts may consider other points besides those included in the enumerated factors.

Summary

The "best interest of the child" is the universal standard for child custody determinations. The passage provides specific factors that are considered under this standard, such as each parent's involvement with the child, the child's emotional and physical needs, the child's school activity schedule, evidence of domestic abuse, and the willingness of each parent to foster a relationship between the child and the other parent. These factors are non-exhaustive, meaning courts have the discretion to consider additional factors as well.

[The Many Looks of Physical Custody: A Parenting Plan for Every Situation](#)

Family Advocate - American Bar Association - Maleaha L. Brown - 2021-04-07

Extract

In nearly all courts, the best interest of the child is the standard to be applied in determining a custody parenting plan. The court should consider what parenting plan best meets the child's health, safety, and well-being. While factors vary from state to state and are not always statutory, common factors that a court properly considers in determining a parenting plan in the child's best interest are the age of the child, the child's preference depending on the child's age, and a parent's willingness to support the other parent's relationship with the child.

Summary

The passage provides insight into the general standard used by courts, which is the best interest of the child. It outlines common factors that courts consider, such as the child's age, the child's preference, and a parent's willingness to support the other parent's relationship with the child. These factors are relevant to determining parental fitness in a custody case.

This memo was compiled by Vincent AI based on vLex materials available as of May 09, 2025. [View full answer on vLex](#)