

## **Question**

If a judge orders a parent to vacate without findings at the onset of a case, is the case fundamentally flawed under Texas law?

## **Answer (Texas)**

### **Short response**

Under Texas law, a judge's order requiring a parent to vacate without findings at the onset of a case is fundamentally flawed unless it falls within specific statutory exceptions for emergency situations involving family violence or immediate danger to a child's physical health or safety. Without such emergency circumstances, Texas law generally requires notice, a hearing, and specific findings before a parent can be ordered to vacate their home or be denied possession of or access to their child.

### **Summary**

Texas Family Code provides several pathways for courts to issue temporary orders affecting parent-child relationships, but each pathway has specific procedural and substantive requirements that must be followed. When a judge orders a parent to vacate without findings at the onset of a case, the order's validity depends on whether it complies with the applicable statutory framework. For temporary orders in non-emergency situations, Texas courts must generally provide notice and hold an adversary hearing before issuing orders that restrict parental rights, including orders requiring a parent to vacate the home.

However, in emergency situations where there is a clear and present danger of family violence or an immediate threat to a child's physical health or safety, Texas law authorizes courts to issue ex parte orders without prior notice or hearing. Even in these emergency situations, though, the court must make specific findings based on evidence presented in a verified pleading or affidavit. A case becomes fundamentally flawed when a court issues an order requiring a parent to vacate without either complying with the notice and hearing requirements for standard temporary orders or making the specific findings required for emergency ex parte orders.

## **Background and Relevant Law**

### **Statutory Framework**

Texas Family Code provides multiple statutory provisions that govern when and how a court may issue temporary orders affecting the parent-child relationship, including those that would require a parent to vacate a home or restrict access to a child.

### **Standard Temporary Orders**

Under Texas Family Code § 105.001, a court may issue temporary orders for the safety and welfare of a child in a suit affecting the parent-child relationship. However, these orders generally require notice and a hearing before they can be entered. The statute specifically states that "except on a verified pleading or an affidavit in accordance with the Texas Rules of Civil Procedure, an order may not be rendered... excluding a parent from possession of or access to a child." This provision emphasizes that procedural safeguards must be followed before restricting parental rights.

The case law has established that certain temporary orders cannot be rendered without notice and a hearing. In [In re Farmer](#), No. 10-19-00050-CV (Tex. App. Feb 27, 2019), the court noted that "relator was entitled to a notice and an adversary hearing before entry of a new temporary order modifying the custody of the children in this case."

### **Emergency Orders**

Texas law recognizes that emergency situations may necessitate immediate action. Texas Family Code § 83.001 provides that "if the court finds from the information contained in an application for a protective order that there is a clear and present danger of family violence, the court, without further notice to the individual alleged to have committed family violence and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the family or household of the applicant."

Similarly, Texas Family Code § 262.102 authorizes courts to issue temporary orders for the conservatorship of a child without prior notice and a hearing in cases where a governmental entity seeks to take possession of a child. However, this authority is conditioned on specific findings, including:

1. There is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse;
2. Continuation in the home would be contrary to the child's welfare;
3. There is no time, consistent with the physical health or safety of the child and the nature of the emergency, for a full adversary hearing; and
4. Reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.

The Texas Supreme Court has recognized this emergency authority in [Page v. Sherrill](#), 415 S.W.2d 642 (Tex. 1967), noting that district courts "are charged with the profound responsibility of protecting [minors'] health and safety. Effective discharge of this responsibility under situations of emergency will sometime demand immediate action by the courts. Such action may, by necessity, consist of a temporary taking of a child from the possession of its legal custodian, with or without notice, pending a full hearing."

### **Parental Presumption**

Texas law contains a strong presumption in favor of parental rights. Texas Family Code § 153.131 establishes that "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."

This presumption has been emphasized by the Texas Supreme Court in [Lewelling v. Lewelling, 796 S.W.2d 164 \(Tex. 1990\)](#), which stated that "the presumption that the best interest of a child is served by awarding custody to a natural parent is deeply embedded in Texas law." The court further noted that "the only satisfactory reason to deny a parent appointment as a managing conservator is 'because the appointment would significantly impair the child's physical health or emotional development.'" It is important to note that Lewelling was stated as disapproved by [In re T.J.S., 71 S.W.3d 452 \(Tex. App. 2002\)](#). However, the disapproval appears to be on other grounds, as the parental presumption remains firmly established in Texas law, as confirmed by more recent cases like [In re C.J.C., 603 S.W.3d 804 \(Tex. 2020\)](#).

## **Modification Proceedings**

In modification proceedings, Texas Family Code § 156.006 imposes additional restrictions on temporary orders. The statute provides that "while a suit for modification is pending, the court may not render a temporary order that has the effect of creating a designation, or changing the designation, of the person who has the exclusive right to designate the primary residence of the child, or the effect of creating a geographic area, or changing or eliminating the geographic area, within which a conservator must maintain the child's primary residence, under the final order unless the temporary order is in the best interest of the child" and meets certain specific conditions.

## **Case Law Interpretation**

### **Emergency Situations**

Courts have consistently recognized that emergency situations may justify immediate action without prior notice or hearing. In [In re A.C.T.M., \(Tex. App. 2024-02-15\)](#), the court explained that "Chapter 262 of the family code sets forth the procedures and substantive requirements for the Department to take possession of a child when necessary to protect that child's health and safety... Under this chapter, the Department is granted authority in urgent circumstances to remove a child from his or her home without prior notice to the parents."

Similarly, in [In re V.K., 607 S.W.3d 471 \(Tex. App. 2020\)](#), the court reiterated the authority provided by Texas Family Code § 83.001 to issue temporary ex parte orders without notice or hearing in cases of family violence.

However, even in emergency situations, specific findings are required. In [In re Salazar \(Tex. App. 2025-02-12\)](#), the court emphasized that a movant seeking temporary orders under Texas Family Code § 156.006(b)(1) "shall execute and attach to the motion an affidavit on the person's personal knowledge or the person's belief based on representations made to the person by a person with personal knowledge that contains facts that support the allegation that the child's present circumstances would significantly impair the child's physical health or emotional development."

### **High Burden for Changing Custody**

Courts have consistently held that there is a high burden for issuing temporary orders that change custody arrangements. In [In re Salazar \(Tex. App. 2025-02-12\)](#), the court stated that "Section 156.006(b)(1) imposes a high burden on the movant, and a trial court lacks authority to grant temporary relief unless the movant satisfies that burden." The court further explained that the movant must "present evidence of bad acts or omissions committed against the children" and that "[a] showing that the requested temporary orders are in the children's best interest, without more, is not sufficient."

The court in [In re Adkins \(Tex. App. 2024-02-21\)](#) similarly emphasized the requirements under Texas Family Code § 156.006(b)(1) for rendering temporary orders in a suit for modification, noting that a court may not issue a temporary order changing the designation of the person with the exclusive right to designate the child's primary residence unless it is in the child's best interest and necessary due to circumstances that would significantly impair the child's physical or emotional development.

### **Required Findings and Procedural Safeguards**

Courts have consistently emphasized the importance of appropriate findings and procedural safeguards. In [In re Interest of J.J.R.S., 627 S.W.3d 211 \(Tex. 2021\)](#), the Texas Supreme Court noted that when a child is taken into possession without prior notice or a hearing, Texas law requires a full adversary hearing within fourteen days. At this hearing, "the parents are informed that the court may temporarily restrict or terminate their parental rights unless they are willing and able to provide the child with a safe environment."

In [In re L.C.L., 396 S.W.3d 712 \(Tex. App. 2013\)](#), the court emphasized that a trial court must act with reference to guiding principles and not arbitrarily. The court noted that Texas Family Code § 153.131(b) presumes that the appointment of a parent as a joint managing conservator is in the best interest of a child unless the trial court finds that there is a history of family violence. The court also noted that a trial court is required to "consider the commission of family violence in determining whether to deny, restrict, or limit the possession of a child by a parent who is appointed as a possessory conservator."

In [In re E.W.O., No. 10-19-00050-CV \(Tex. App. Feb 27, 2019\)](#), the court found that the trial court had abused its discretion by issuing a temporary order without making the necessary findings of significant impairment as required by Texas Family Code § 156.006(b-1).

## **Analysis**

### **When Orders to Vacate Without Findings Are Fundamentally Flawed**

Based on the statutory framework and case law, a judge's order requiring a parent to vacate without findings at the onset of a case is fundamentally flawed under Texas law in several circumstances.

### **No Emergency Exception Applies**

If there is no emergency situation involving family violence or immediate danger to a child's physical health or safety, an order requiring a parent to vacate without findings is fundamentally flawed. Texas Family Code § 105.001 explicitly states that "except on a verified pleading or an affidavit in accordance with the Texas Rules of Civil Procedure, an order may not be rendered... excluding a parent from possession of or access to a child." Without such verified pleading or affidavit, and in the absence of an applicable emergency exception, the court lacks the authority to issue such an order.

#### No Notice or Hearing Provided

Even when temporary orders are permissible, they generally require notice and a hearing. As stated in [In re Herring, 221 S.W.3d 729 \(Tex. App. 2007\)](#), "certain temporary orders may not be rendered except after notice and hearing, including orders for the temporary conservatorship of the child." Similarly, in [In re Farmer, No. 10-19-00050-CV \(Tex. App. Feb 27, 2019\)](#), the court held that a parent "was entitled to a notice and an adversary hearing before entry of a new temporary order modifying the custody of the children in this case."

#### Modification Context

In the context of modification proceedings, Texas Family Code § 156.006 imposes additional requirements. As explained in [In re Salazar \(Tex. App. 2025-02-12\)](#), this provision "imposes a high burden on the movant, and a trial court lacks authority to grant temporary relief unless the movant satisfies that burden." The movant must "present evidence of bad acts or omissions committed against the children," and a mere showing that the orders are in the best interest of the child is not sufficient.

In [In re E.W.O., No. 10-19-00050-CV \(Tex. App. Feb 27, 2019\)](#), the court found that the trial court had abused its discretion by issuing a temporary order without making the necessary findings of significant impairment as required by Texas Family Code § 156.006(b-1).

#### When Orders to Vacate Without Findings May Be Valid

Despite the general requirement for findings, notice, and hearing, there are circumstances where a judge's order requiring a parent to vacate without extensive findings at the onset of a case may be valid under Texas law.

#### Genuine Emergency Involving Family Violence

Under Texas Family Code § 83.001, a court may issue a temporary ex parte order without further notice or a hearing if it "finds from the information contained in an application for a protective order that there is a clear and present danger of family violence." As recognized in [In re V.K., 607 S.W.3d 471 \(Tex. App. 2020\)](#), this provision allows courts to act swiftly in situations where family violence is a concern.

However, even in these cases, the court must make a finding of a "clear and present danger of family violence" based on the information in the application. While this finding may be relatively brief compared to the findings required for non-emergency orders, some finding is still necessary to justify the ex parte order.

#### Immediate Danger to Child's Health or Safety

Similarly, Texas Family Code § 262.102 authorizes courts to issue temporary orders for the conservatorship of a child without prior notice and a hearing if certain findings are made, including an immediate danger to the child's physical health or safety. As explained in [In re A.C.T.M. \(Tex. App. 2024-02-15\)](#), this provision grants authority "in urgent circumstances to remove a child from his or her home without prior notice to the parents."

However, the court must still make specific findings, including the existence of an immediate danger, that continuation in the home would be contrary to the child's welfare, that there is no time for a full adversary hearing, and that reasonable efforts were made to prevent or eliminate the need for removal.

#### Consent or Agreement of the Parties

If the parent voluntarily agrees to vacate the premises, the lack of findings would not necessarily render the case fundamentally flawed. However, this scenario is outside the scope of the question, which focuses on orders requiring a parent to vacate.

#### Consequences of a Fundamentally Flawed Order

When a judge's order requiring a parent to vacate is fundamentally flawed, several consequences may follow.

#### Subject to Reversal on Appeal or Mandamus

A temporary order that is issued without the required findings may be subject to reversal on appeal or mandamus. In [In re E.W.O., No. 10-19-00050-CV \(Tex. App. Feb 27, 2019\)](#), the court found that the trial court had abused its discretion by issuing a temporary order without making the necessary findings, and in [In re Salazar \(Tex. App. 2025-02-12\)](#), the court emphasized that a trial court lacks authority to grant temporary relief unless the movant satisfies the high burden imposed by Texas Family Code § 156.006(b)(1).

#### May Be Rendered Moot by Final Order

However, it is important to note that temporary orders may be rendered moot by the entry of a final order. In [In re B.M., NO. 12-18-00094-CV \(Tex. App. Oct 03, 2018\)](#), the court stated that "it is well-settled that a temporary order is superseded by entry of a final order, rendering moot any complaint about the temporary order." Therefore, while a temporary order requiring a parent to vacate without findings may be fundamentally flawed, this flaw may not ultimately affect the outcome of the case if a proper final order is entered after a full hearing.

#### Exceptions and Caveats

##### Limited Duration of Emergency Orders

Even when emergency orders are valid, they are generally of limited duration. For example, as noted in [In re Interest of J.J.R.S., 627 S.W.3d 211 \(Tex. 2021\)](#), when a governmental entity takes possession of a child without prior notice or hearing, a court must generally hold a full adversary hearing within fourteen days. This ensures that while emergency action may be taken without extensive findings, the parent will soon have an opportunity to be heard.

### Different Standards for Different Types of Orders

It is important to note that different standards apply to different types of orders. Orders under Texas Family Code § 83.001 (related to family violence) have different requirements than orders under Texas Family Code § 262.102 (related to child protection) or Texas Family Code § 156.006 (related to modification). The specific statutory framework governing the order will determine what findings are required and whether the order is fundamentally flawed.

### Consideration of Family Violence

Texas courts are required to consider family violence when making decisions about possession and access. As noted in [In re L.C.L., 396 S.W.3d 712 \(Tex. App. 2013\)](#), a trial court must "consider the commission of family violence in determining whether to deny, restrict, or limit the possession of a child by a parent who is appointed as a possessory conservator." This consideration may justify orders requiring a parent to vacate, but findings related to family violence should be made to support such orders.

### Conclusion

Based on the statutory framework and case law in Texas, a judge's order requiring a parent to vacate without findings at the onset of a case is generally fundamentally flawed under Texas law, with limited exceptions for genuine emergencies involving family violence or immediate danger to a child's physical health or safety.

The strong parental presumption in Texas law, as established in Texas Family Code § 153.131 and affirmed in cases like [In re C.J.C., 603 S.W.3d 804 \(Tex. 2020\)](#), requires courts to make specific findings before interfering with parental rights. As stated in [Lewelling v. Lewelling, 796 S.W.2d 164 \(Tex. 1990\)](#), "the only satisfactory reason to deny a parent appointment as a managing conservator is 'because the appointment would significantly impair the child's physical health or emotional development.'" While Lewelling was partially disapproved in [In re T.J.S., 71 S.W.3d 452 \(Tex. App. 2002\)](#), the principle of parental presumption remains firmly established in Texas law.

In non-emergency situations, Texas Family Code § 105.001 explicitly prohibits orders "excluding a parent from possession of or access to a child" except on a verified pleading or affidavit. Similarly, Texas Family Code § 156.006 imposes a high burden for temporary orders in modification proceedings, requiring evidence of circumstances that would significantly impair the child's physical health or emotional development.

Even in emergency situations, some findings are required. Under Texas Family Code § 83.001, a court must find "a clear and present danger of family violence," and under Texas Family Code § 262.102, a court must find, among other things, "an immediate danger to the physical health or safety of the child."

Therefore, a judge's order requiring a parent to vacate without any findings at the onset of a case is fundamentally flawed under Texas law, except in the limited circumstances where statutory exceptions for emergency situations apply, and even then, some findings, albeit potentially brief ones, are required.

However, it is important to note that such flaws may ultimately be rendered moot by the entry of a final order after a full hearing, as temporary orders are superseded by final orders. Nevertheless, the initial order requiring a parent to vacate without findings would still be fundamentally flawed under Texas law.

### Legal Authorities

[In re L.C.L., 396 S.W.3d 712 \(Tex. App. 2013\)](#)

#### Texas Court of Appeals

##### Extract

*An appellate court reviews a trial court's order regarding child custody, control, possession, and visitation for an abuse of discretion. ... A trial court abuses its discretion when it acts arbitrarily and unreasonably without reference to guiding principles. ... Section 153.131(b) of the Texas Family Code provides that the appointment of a parent as a joint managing conservator is presumed to be in the best interest of a child unless the trial court finds that there is a history of family violence. ... The trial court is required to 'consider the commission of family violence in determining whether to deny, restrict, or limit the possession of a child by a parent who is appointed as a possessory conservator.'*

##### Summary

The Texas Family Code requires that certain findings, such as a history of family violence, be considered when making decisions about child custody and conservatorship. A trial court must act with reference to guiding principles and not arbitrarily. If a judge orders a parent to vacate without making necessary findings, such as those related to family violence, it could be considered an abuse of discretion. This suggests that the case could be fundamentally flawed if the order was made without the required findings.

[In re C.J.C., 603 S.W.3d 804 \(Tex. 2020\)](#)

#### Texas Supreme Court

##### Extract

*The government may not 'infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a 'better decision' could be made.' Even before Troxel, the Texas Legislature adopted a parallel presumption, requiring that a child's parents be appointed managing conservators in initial child custody suits unless it 'would significantly impair the child's physical health or emotional development.'*

## **Summary**

The passage from "In re C.J.C." highlights the fundamental right of parents to make decisions regarding their children, which is protected under Texas law. This right is supported by a presumption that parents should be appointed as managing conservators unless there is a significant risk to the child's health or development. If a judge orders a parent to vacate without making specific findings that justify such an order, it could be seen as an infringement on this fundamental right. The case law suggests that any decision that overrides a parent's rights must be supported by findings that demonstrate a significant risk to the child, aligning with the statutory and constitutional protections for parental rights.

### [In re E.W.O., No. 10-19-00050-CV \(Tex. App. Feb 27, 2019\)](#)

#### **Texas Court of Appeals**

##### **Extract**

*The trial court did not make a finding of significant impairment or otherwise refer to the Section 156.006(b-1) standards in the hearing, the written ruling, or in the formal temporary orders. Because the evidence was not sufficient to support the trial court's order, the trial court abused its discretion by rendering a temporary order that changed the right to designate the primary residence of the child from the relator to the father.*

## **Summary**

The trial court abused its discretion by issuing a temporary order without making the necessary findings of significant impairment as required by Texas Family Code Section 156.006(b-1). This suggests that a case may be fundamentally flawed if a judge orders a parent to vacate without the necessary findings, as it would constitute an abuse of discretion.

### [In re Farmer](#)

#### **Texas Court of Appeals**

##### **Extract**

*In a suit affecting the parent-child relationship, the trial court may make a temporary order for the safety and welfare of the child, including an order modifying a prior temporary order. TEX. FAM. CODE ANN. § 105.001(a). Specifically, section 105.001(a) of the Texas Family Code provides that, in a suit affecting the parent-child relationship, a trial court may make a temporary order for the child's safety and welfare, including an order (1) for the temporary conservatorship of the child, (2) for the temporary support of the child, (3) to restrain a party from disturbing the peace of the child or another party, (4) to prohibit a person from removing the child beyond a geographical area identified by the court, or (5) for payment of reasonable attorney's fees and expenses. Id. ... Here, the trial court's December 21, 2022 letter ruling is an order modifying a prior temporary order. See TEX. FAM. CODE ANN. § 105.001(a). Therefore, relator was entitled to a notice and an adversary hearing before entry of a new temporary order modifying the custody of the children in this case. See id. § 105.001(a)-(b), (h); see also In re Chester, 357 S.W.3d at 107; In re Herring, 221 S.W.3d 729, 730 (Tex. App.-San Antonio 2007, orig. proceeding); In re K.L.R., 162 S.W.3d at 301.*

## **Summary**

Under Texas Family Code § 105.001(a), a trial court can issue temporary orders for the safety and welfare of a child in suits affecting the parent-child relationship. However, it also specifies that a parent is entitled to notice and an adversary hearing before the entry of a new temporary order modifying custody. This suggests that if a judge orders a parent to vacate without findings or without providing notice and an opportunity for a hearing, it could be considered procedurally flawed under Texas law.

### [Page v. Sherrill, 415 S.W.2d 642, 31 A.L.R.3d 1371 \(Tex. 1967\)](#)

#### **Texas Supreme Court**

##### **Extract**

*Relator contends first that a district court has no power to take minor children from their parents without notice. While it is true this power has not been specifically granted, general authority for the exercise of such power is set forth in the Constitution of Texas: 'The District Court shall have \*\*\* original jurisdiction and general control over \*\*\* minors under such regulations as may be prescribed by law.' Tex. Const. Art. V, § 8, Vernon's Ann. St. ... There would seem to be no room for doubt of the power of a court to enter an order, without notice to the parents, for the temporary custody of a child of parties to a pending suit for divorce. Art. 4639, Vernon's Texas Civil Statutes, confers power on a divorce court to make temporary orders respecting the welfare of children of the parties in the broadest possible language. ... Since the district courts are vested with general supervisory control of minors, they are charged with the profound responsibility of protecting their health and safety. Effective discharge of this responsibility under situations of emergency will sometime demand immediate action by the courts. Such action may, by necessity, consist of a temporary taking of a child from the possession of its legal custodian, with or without notice, pending a full hearing.*

## **Summary**

Texas district courts have broad discretion and authority to make temporary custody orders without notice to the parents if it is necessary to protect the health and safety of minors. This authority is derived from the Texas Constitution and relevant statutes, which grant district courts general control over minors. The courts are empowered to act swiftly in emergencies to ensure the welfare of children, even if it means temporarily removing them from their legal custodians without prior notice.

### [In re Adkins](#)

#### **Texas Court of Appeals**

##### **Extract**

*While subsection 156.006(a) of the Texas Family Code allows a court to render temporary orders in a suit for modification, subsection 156.006(b)(1) provides, in part, that [w]hile a suit for modification is pending, the court may not render a temporary order that has the effect of creating a designation, or changing the designation, of the person who has the exclusive right to designate the primary residence of the child... under the final order unless the temporary order is in the best interest of the child and[,] the order is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development.'*

## **Summary**

The passage from the Texas Court of Appeals judgment in "In re Adkins" discusses the requirements under Texas Family Code § 156.006(b)(1) for rendering temporary orders in a suit for modification. It specifies that a court may not issue a temporary order changing the designation of the person with the exclusive right to designate the child's primary residence unless it is in the child's best interest and necessary due to circumstances that would significantly impair the child's physical or emotional development. This implies that if a judge orders a parent to vacate without making the necessary findings regarding the child's best interest and the necessity of the order, the case could be considered fundamentally flawed under Texas law.

### [In re Crystal Aubin, 29 S.W.3d 199 \(Tex. App. 2000\)](#)

#### **Texas Court of Appeals**

##### **Extract**

*The temporary orders entered by the trial court are another matter. The Family Code authorizes the trial court to enter temporary orders for the safety and welfare of the children. Tex. Fam. Code Ann. § 105.001 (Vernon Supp. 2000). The strong presumption in favor of parental custody requires that the nonparent seeking custody affirmatively prove by a preponderance of the evidence that appointment of the parent as managing conservator would significantly impair the child, either physically or emotionally. Lewelling v. Lewelling, 796 S.W.2d 164, 167 (Tex. 1990). At the conclusion of the hearing on temporary orders, the trial court stated that the Burks had not met their burden of showing that appointment of the parent would significantly impair the children's physical health and emotional development. For this reason, the trial court appointed Aubin as the sole managing conservator of her children.*

## **Summary**

Under Texas law, there is a strong presumption in favor of parental custody. For a nonparent to gain custody, they must prove by a preponderance of the evidence that the parent's appointment as managing conservator would significantly impair the child. This implies that if a judge orders a parent to vacate without such findings, it could be considered a fundamental flaw in the case, as it would not align with the legal requirements for altering custody.

### [In re B.M., NO. 12-18-00094-CV \(Tex. App. Oct 03, 2018\)](#)

#### **Texas Court of Appeals**

##### **Extract**

*Moreover, it is well-settled that a temporary order is superseded by entry of a final order, rendering moot any complaint about the temporary order. See In re A.K., 487 S.W.3d 679, 683 (Tex. App.-San Antonio 2016, no pet.); In re J.D.L., No. 12-17-00225-CV, 2017 WL 6523183, at \*2 (Tex. App.—Tyler Dec. 21, 2017, pet. denied) (mem. op.). In other words, a temporary order which makes findings to support removal under Texas Family Code Section 262.201(g) is superseded by the entry of a final order of termination.*

## **Summary**

In Texas family law, a temporary order, even if it involves findings to support removal, is superseded by a final order. This suggests that any procedural issues or lack of findings in a temporary order may become moot once a final order is entered. Therefore, the initial lack of findings in a temporary order does not necessarily render the entire case fundamentally flawed, as the final order takes precedence.

### [In re V.K., 607 S.W.3d 471 \(Tex. App. 2020\)](#)

## Texas Court of Appeals

### Extract

Section 83.001 of the Texas Family Code, entitled 'Requirements for a Temporary ex parte Order,' provides: *If the court finds from the information contained in an application for a protective order that there is a clear and present danger of family violence, the court, without further notice to the individual alleged to have committed family violence and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the family or household of the applicant.*

### Summary

The passage from the Texas Family Code Section 83.001 indicates that a court can issue a temporary ex parte order without further notice or a hearing if there is a clear and present danger of family violence. This suggests that under Texas law, a judge can order a parent to vacate without findings at the onset of a case if there is sufficient evidence of danger, and this does not inherently make the case fundamentally flawed. The law provides the court with the authority to act swiftly in situations where family violence is a concern.

## [In re Interest of J.J.R.S., 627 S.W.3d 211 \(Tex. 2021\)](#)

### Texas Supreme Court

### Extract

*When a governmental entity takes possession of a child without prior notice or a hearing under Texas Family Code section 262.101—as was done here—a court generally must hold a full adversary hearing within fourteen days. TEX. FAM. CODE § 262.201(a). At this hearing—colloquially known as a 'Chapter 262 hearing'—the parents are informed that the court may temporarily restrict or terminate their parental rights unless they are willing and able to provide the child with a safe environment. Id. § 262.201(m). At the conclusion of the hearing, the court may issue temporary orders under chapter 105 of the Texas Family Code. Id. § 262.102(a); see id. § 105.001.*

### Summary

When a child is taken into possession by a governmental entity without prior notice or a hearing, Texas law requires a full adversary hearing within fourteen days. This hearing is crucial as it informs the parents of potential temporary restrictions or termination of parental rights. The court may issue temporary orders following this hearing. The requirement for a hearing and the issuance of temporary orders suggest that findings or a basis for the court's actions are necessary, implying that a case could be flawed if a parent is ordered to vacate without such findings or a hearing.

## [In re Herring, 221 S.W.3d 729 \(Tex. App. 2007\)](#)

### Texas Court of Appeals

### Extract

*Generally, while a suit for modification is pending, a trial court may not render a temporary order that has the effect of changing the designation of the person who has the exclusive right to designate the child's primary residence under the final order. TEX. FAM.CODE ANN. § 156.006 (Vernon Supp.2006). However, the trial court may enter such an order when necessary because the child's present circumstances would significantly impair the child's physical health or emotional development. Id. In a suit affecting the parent-child relationship, the trial court may make a temporary order for the safety and welfare of the child, including an order modifying a prior temporary Order. TEX. FAM.CODE ANN. § 105.001(a) (Vernon Supp. 2006). Certain temporary orders may not be rendered except after notice and hearing, including orders for the temporary conservatorship of the child.*

### Summary

Under Texas law, a trial court must provide notice and a hearing before rendering certain temporary orders, such as those affecting conservatorship. This suggests that if a judge orders a parent to vacate without findings or a hearing, it could be considered a clear abuse of discretion, as it would not comply with the procedural requirements outlined in the Texas Family Code.

## [Widner v. Pixley, 439 S.W.2d 403 \(Tex. Ct. App. 1969\)](#)

### Texas Civil Court of Appeals

### Extract

*The trial court had the authority, upon the showing of an emergency requiring immediate action, to enter a Temporary order relating to the custody of the child. Page v. Sherrill, 415 S.W.2d 642, 645 (Tex. Sup., 1967). But no final adjudication of the custody could be made until after the issuance of citation and a full hearing to determine what would be in the best interest of the child involved. Knollhoff, supra; Page, supra; Dannelley v. Dannelley, 417 S.W.2d 55, 59 (Tex. Sup., 1967). The rule is stated in Goodman v. Goodman, 236 S.W.2d 641, 646 (Tex. Civ.App., 1951), opinion by Judge Pope while on the Court of Civil Appeals: 'A permanent order may not be made upon a hearing for a temporary order unless the adversary submits to such procedure, which is not the case before us. The*

*notice to appear for a temporary hearing will not support the final judgment. Until the full hearing is conducted the rights and welfare of this child cannot be known. An adjudication short of a full hearing is not for the best welfare of the child.' Accord: Livingston v. Nealy, 382 S.W.2d 511, 514 (Tex.Civ.App., 1964, error ref. n.r.e.).*

## **Summary**

Authority of a trial court to issue temporary orders in child custody cases when there is an emergency requiring immediate action. However, it emphasizes that no final adjudication of custody can be made without a full hearing to determine the best interest of the child. This implies that any order made without such a hearing, especially if it is intended to be permanent, would be fundamentally flawed. The passage is relevant to the question as it addresses the necessity of findings and a full hearing before making a final custody decision.

### In re Salazar

#### **Texas Court of Appeals**

##### **Extract**

*"While a suit for modification is pending, the court may not render a temporary order that has the effect of creating a designation, or changing the designation, of the person who has the exclusive right to designate the primary residence of the child, or the effect of... changing or eliminating the geographic area, within which a conservator must maintain the child's primary residence, under the final order unless the temporary order is in the best interest of the child and," inter alia, "the order is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development[.]"] Tex. Fam. Code § 156.006(b)(1). Because the temporary orders changed the final decree's designation "of the person who has the exclusive right to designate the primary residence of" B.E.K. and removed the final decree's geographic restrictions on B.E.K.'s residence, section 156.006(b)(1)'s requirements apply here. See id. Section 156.001(b)(1) imposes a high burden on the movant, and a trial court lacks authority to grant temporary relief unless the movant satisfies that burden. In re Walser, 648 S.W.3d 442, 446 (Tex. App.-San Antonio 2021, orig. proceeding); In re Sanchez, 228 S.W.3d 214, 217 (Tex. App.-San Antonio 2007, orig. proceeding). The movant must "present evidence of bad acts or omissions committed against the children." In re Walser, 648 S.W.3d at 446. A showing that the requested temporary orders are in the children's best interest, without more, is not sufficient. See In re Ostrofsky, 112 S.W.3d 925, 929-30 (Tex. App.-Houston [14th Dist.] 2003, orig. proceeding). Additionally, a movant who requests temporary orders under section 156.006(b)(1) "shall execute and attach to the motion an affidavit on the person's personal knowledge or the person's belief based on representations made to the person by a person with personal knowledge that contains facts that support the allegation that the child's present circumstances would significantly impair the child's physical health or emotional development." Tex. Fam. Code § 156.006(b-1). "The court shall deny the relief sought and decline to schedule a hearing on the motion unless the court determines, on the basis of the affidavit, that facts adequate to support the allegation are stated in the affidavit." Id.*

## **Summary**

The Texas Family Code § 156.006(b)(1) sets a high burden for granting temporary orders that change the designation of the person who has the exclusive right to designate the primary residence of a child. The court must find that such an order is in the best interest of the child and necessary due to circumstances that would significantly impair the child's physical health or emotional development. Additionally, an affidavit must be attached to the motion, providing facts to support the allegation. Without these findings and the required affidavit, the court lacks authority to issue such temporary orders. Therefore, if a judge orders a parent to vacate without these findings, it could be considered a fundamental flaw under Texas law.

### In re A.C.T.M.

#### **Texas Court of Appeals**

##### **Extract**

*Chapter 262 of the family code sets forth the procedures and substantive requirements for the Department to take possession of a child when necessary to protect that child's health and safety. In re J.M., 549 S.W.3d 330, 332-33 (Tex. App.-Texarkana 2018, no pet.). Under this chapter, the Department is granted authority in urgent circumstances to remove a child from his or her home without prior notice to the parents. See Tex. Fam. Code Ann. §§ 262.101, 262.104. This emergency authority is subject to judicial oversight. See id. §§ 262.102, 262.106-.107. Pursuant to § 262.102, 'a court may, without prior notice and a hearing, issue a temporary order for the conservatorship of a child under [§] 105.001(a)(1) or a temporary restraining order or attachment of a child authorizing a governmental entity to take possession of a child in a suit brought by a governmental entity,' provided that the trial court finds: (1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse; (2) continuation in the home would be contrary to the child's welfare; (3) there is no time, consistent with the physical health or safety of the child and the nature of the emergency, for a full adversary hearing under Subchapter C; and (4) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.*

## **Summary**

Conditions under which a court in Texas may issue a temporary order for the conservatorship of a child without prior notice or a hearing. It specifies that such an order can be made if there is an immediate danger to the child's health or safety, among other criteria. This suggests that a judge can order a parent to vacate without findings at the onset of a case if these conditions are met, and it would not necessarily render the case fundamentally flawed under Texas law.

### Lewelling v. Lewelling, 796 S.W.2d 164 (Tex. 1990)

## Texas Supreme Court

### Extract

*The presumption that the best interest of a child is served by awarding custody to a natural parent is deeply embedded in Texas law. The Legislature, in enacting section 14.01(b), codified that presumption by defining the procedure for appointment of a nonparent as managing conservator. ... In 1987, however, the legislature made clear the paramount importance of the parental presumption by amending the statute to provide: ... the only satisfactory reason to deny a parent appointment as a managing conservator is 'because the appointment would significantly impair the child's physical health or emotional development.'*

### Summary

The passage highlights the strong presumption in Texas law that favors awarding custody to a natural parent unless there is a significant impairment to the child's physical health or emotional development. This presumption is codified in the Texas Family Code and emphasizes the importance of findings that justify denying a parent custody. If a judge orders a parent to vacate without such findings, it could be argued that the case is fundamentally flawed because it does not adhere to the statutory requirements that protect parental rights.

## [In re Interest of A.K., 487 S.W.3d 679 \(Tex. App. 2016\)](#)

### Texas Court of Appeals

### Extract

*In his first two issues, Father complains about the aggravated circumstances finding made by the associate judge in a temporary order, which was confirmed by the trial court in a separate temporary order after Father requested de novo review of the finding. On appeal, Father argues the findings are improper because (1) they were based on a preponderance of the evidence as opposed to clear and convincing evidence, and (2) the events resulting from the findings—waiver of service plan, waiver of requirement to make reasonable efforts to return the child to Father, and expedited trial date—violated his right to due process.*

### Summary

The passage discusses a situation where a parent challenged the findings of aggravated circumstances in temporary orders, arguing that they were based on a lower standard of proof and violated due process rights. This is relevant to the question as it addresses the procedural requirements and standards of evidence necessary for temporary orders in Texas family law cases.

## [Tex. Fam. Code § 105.001 Tex. Fam. Code § 105.001 Temporary Orders Before Final Order](#)

### Extract

*Except on a verified pleading or an affidavit in accordance with the Texas Rules of Civil Procedure, an order may not be rendered: ... excluding a parent from possession of or access to a child.*

### Summary

The passage from Tex. Fam. Code § 105.001 specifies that an order excluding a parent from possession of or access to a child cannot be rendered without a verified pleading or an affidavit in accordance with the Texas Rules of Civil Procedure. This implies that there must be a formal, verified basis for such an order, suggesting that a judge cannot simply order a parent to vacate without findings or proper procedural steps. This requirement is crucial to ensure that the rights of the parent are considered and that any exclusion is justified by evidence or verified claims.

## [Tex. Fam. Code § 262.201 Tex. Fam. Code § 262.201 Full Adversary Hearing; Findings of the Court](#)

### Extract

*In a suit filed under Section FAMILY CODE 262.101 or FAMILY CODE 262.105, at the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession from whom the child is removed unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that: there was a danger to the physical health or safety of the child...; the urgent need for protection required the immediate removal of the child...; and reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.*

### Summary

Under Texas law, a court must make specific findings at the conclusion of a full adversary hearing to justify the removal of a child from a parent. These findings must demonstrate a danger to the child's health or safety, an urgent need for protection, and that reasonable efforts have been made to enable the child's return home. If a judge orders a parent to vacate without making these findings, it could be argued that the case is fundamentally flawed because the statutory requirements for removal have not been met.

[Tex. Fam. Code § 263.002 Tex. Fam. Code § 263.002 Review of Placements By Court; Findings](#)

**Extract**

*At each permanency hearing before the final order, the court shall review the placement of each child in the temporary managing conservatorship of the department who has not been returned to the child's home. At the end of the hearing, the court shall order the department to return the child to the child's parent or parents unless the court finds, with respect to each parent, that: there is a continuing danger to the physical health or safety of the child; and returning the child to the child's parent or parents is contrary to the welfare of the child.*

**Summary**

The court is required to make specific findings regarding the safety and welfare of the child before ordering the child to be returned to the parent. This implies that any order affecting the parent-child relationship, such as ordering a parent to vacate, should be based on findings related to the child's safety and welfare. Therefore, if a judge orders a parent to vacate without such findings, it could be considered a procedural flaw under Texas law.

[Tex. Fam. Code § 262.102 Tex. Fam. Code § 262.102 Emergency Order Authorizing Possession of Child](#)

**Extract**

*Before a court may, without prior notice and a hearing, issue a temporary order for the conservatorship of a child under Section FAMILY CODE 105.001(a) or a temporary restraining order or attachment of a child authorizing a governmental entity to take possession of a child in a suit brought by a governmental entity, the court must find that: there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse; continuation in the home would be contrary to the child's welfare; there is no time, consistent with the physical health or safety of the child and the nature of the emergency, for a full adversary hearing under Subchapter C; the child would not be adequately protected in the child's home with an order for the removal of the alleged perpetrator under Section FAMILY CODE 262.1015 or FAMILY CODE 262.1016 or a protective order issued under Title 4; placing the child with a relative or designated caregiver or with a caregiver under a parental child safety placement agreement authorized by Subchapter L, Chapter 264: (A) was offered but refused; (B) was not possible because there was no time, consistent with the physical health or safety of the child and the nature of the emergency, to conduct the caregiver evaluation; or (C) would pose an immediate danger to the physical health or safety of the child; and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.*

**Summary**

Specific findings a court must make before issuing a temporary order for the conservatorship of a child without prior notice and a hearing. These findings include immediate danger to the child's health or safety, the necessity of removal from the home, and the inadequacy of other protective measures. If a judge orders a parent to vacate without making these findings, it could be argued that the case is fundamentally flawed under Texas law, as the statutory requirements for such an order have not been met.

[Tex. Fam. Code § 156.006 Tex. Fam. Code § 156.006 Temporary Orders](#)

**Extract**

*While a suit for modification is pending, the court may not render a temporary order that has the effect of creating a designation, or changing the designation, of the person who has the exclusive right to designate the primary residence of the child, or the effect of creating a geographic area, or changing or eliminating the geographic area, within which a conservator must maintain the child's primary residence, under the final order unless the temporary order is in the best interest of the child and: the order is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development; the person designated in the final order has voluntarily relinquished the primary care and possession of the child for more than six months; or the child is 12 years of age or older 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.*

**Summary**

Under Texas law, a court may not issue a temporary order that changes the designation of the person who has the exclusive right to designate the primary residence of the child unless it is in the best interest of the child and certain conditions are met. These conditions include significant impairment to the child's physical health or emotional development, voluntary relinquishment of primary care by the designated person, or the child's preference if they are 12 years or older. This suggests that if a judge orders a parent to vacate without findings that meet these conditions, the order may not comply with the statutory requirements, potentially rendering the case fundamentally flawed.

[Tex. Fam. Code § 83.001 Tex. Fam. Code § 83.001 Requirements For Temporary Ex Parte Order](#)

**Extract**

*(a) If the court finds from the information contained in an application for a protective order that there is a clear and present danger of family violence, the court, without further notice to the individual alleged to have committed family violence and without a hearing, may enter a temporary ex parte order for the protection of the applicant or any other member of the family or household of the applicant.*

## **Summary**

Such an order is not fundamentally flawed if it is based on the court's finding of a clear and present danger of family violence.

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

## **Extract**

*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.*

## **Summary**

Texas law presumes that appointing a parent as a managing conservator is in the child's best interest unless there is a finding that such an appointment would significantly impair the child's physical health or emotional development. This implies that a judge should make specific findings if deviating from this presumption, such as ordering a parent to vacate.

This memo was compiled by Vincent AI based on vLex materials available as of May 17, 2025. [View full answer on vLex](#)