

Question

Under the Texas Family Code, does a court exceed its subject matter jurisdiction if it orders a parent to vacate their home without findings or evidence, and then moves to set for final trial?

Answer (Texas)

Short response

Under the Texas Family Code, a court may exceed its subject matter jurisdiction if it orders a parent to vacate their home without findings or evidence, as such orders typically require proper pleadings, evidence, and adherence to statutory procedural requirements. However, the court maintains jurisdiction to set the case for final trial regardless of errors in temporary orders.

Summary

The Texas Family Code provides courts with authority to issue temporary orders in suits affecting the parent-child relationship, including orders that may require a parent to vacate their home. However, this authority is not unlimited and must be exercised in accordance with specific statutory requirements and constitutional protections. When a court issues orders that affect fundamental parental rights without the required findings or evidence, it may exceed its authority, though this does not necessarily constitute a complete lack of subject matter jurisdiction over the case itself.

The case law and statutory framework demonstrate that courts must follow specific procedural requirements before ordering a parent to vacate their home, including notice, hearing, and specific findings based on evidence. While temporary orders are generally not appealable through interlocutory appeal, a court's failure to adhere to these requirements may constitute an abuse of discretion that can be challenged through mandamus relief. The court would still maintain subject matter jurisdiction to proceed to final trial, even if particular temporary orders were improperly issued.

Background and Relevant Legal Framework

Statutory Authority for Temporary Orders

The Texas Family Code provides courts with the authority to issue various temporary orders in suits affecting the parent-child relationship (SAPCR) and divorce proceedings. This authority serves the purpose of protecting the parties and children during the pendency of the case.

In divorce cases, [Tex. Fam. Code § 6.502](#) specifically authorizes courts to issue temporary orders "for the preservation of the property and protection of the parties as deemed necessary and equitable," including orders "awarding one spouse exclusive occupancy of the residence during the pendency of the case." This provision explicitly grants courts the power to order a party to vacate their home under appropriate circumstances in a divorce proceeding.

For cases involving children, [Tex. Fam. Code § 105.001](#) authorizes courts to "make a temporary order, including the modification of a prior temporary order, for the safety and welfare of the child," which can include orders "restraining a party from disturbing the peace of the child or another party." However, the statute includes important procedural safeguards: "Except as provided by Subsection (c), temporary restraining orders and temporary injunctions under this section shall be granted without the necessity of an affidavit or verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result before notice can be served and a hearing can be held."

Critically, [Tex. Fam. Code § 105.001](#) also specifies that "an order may not be rendered... excluding a parent from possession of or access to a child" except on a "verified pleading or an affidavit in accordance with the Texas Rules of Civil Procedure." This provision establishes a clear procedural requirement for orders that exclude parents from accessing their children.

Protective Orders and Emergency Situations

In cases involving family violence, [Tex. Fam. Code § 85.001](#) requires that "at the close of a hearing on an application for a protective order, the court shall find whether family violence has occurred." Only if the court makes this finding can it "render a protective order as provided by Section FAMILY CODE 85.022 applying only to a person found to have committed family violence." This statutory language makes clear that findings of family violence are a prerequisite to issuing a protective order.

For emergency situations involving child safety, [Tex. Fam. Code § 262.102](#) establishes the conditions under which a court may issue a temporary order for the conservatorship of a child without prior notice and hearing. The court must find that:

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;" and
3. several other conditions regarding the lack of time for a full hearing and the inadequacy of less restrictive alternatives.

Similarly, [Tex. Fam. Code § 262.201](#) requires that after a full adversary hearing in a suit filed by a governmental entity, the court must order the return of a child to the parent unless it finds "sufficient evidence to satisfy a person of ordinary prudence and caution" of danger to the child's physical health or safety, among other requirements.

Case Law on Court Authority and Parental Rights

Texas courts have consistently recognized the fundamental constitutional rights of parents in making child-rearing decisions. In [In re C.J.C., 603 S.W.3d 804 \(Tex. 2020\)](#), the Texas Supreme Court emphasized that "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.'" The court noted that the Texas Legislature has adopted a parallel presumption

requiring appointment of parents as managing conservators unless it "would significantly impair the child's physical health or emotional development."

The requirement for proper pleadings and evidence before issuing orders affecting custody was addressed in [In re N.A., 04-24-00145-CV \(Tex. App. Oct 30, 2024\)](#), where the court recognized that "[w]ithout proper pleadings and evidence, a trial court exceeds its authority when it issues orders affecting the custody of a child."

Additionally, [In re C.D.C., No. 05-20-00983-CV \(Tex. App. Feb 02, 2021\)](#) emphasized that "there must be evidence or a finding rebutting the fit-parent presumption that Father acts in the child's best interest" and that "[i]f there is no such evidence or finding rebutting the fit-parent presumption, the trial court abused its discretion."

Analysis of Court Authority to Order a Parent to Vacate Their Home

Required Findings and Evidence

Based on the statutory framework and case law, courts must have appropriate findings based on evidence before ordering a parent to vacate their home. The specific findings required depend on the context of the case:

In divorce cases under [Tex. Fam. Code § 6.502](#), a court may order one spouse to vacate the home as a temporary measure "after notice and hearing" when "deemed necessary and equitable" for the "protection of the parties."

In protective order cases under [Tex. Fam. Code § 85.001](#), the court must find that "family violence has occurred" before issuing a protective order that could require a parent to leave the home.

In emergency child removal situations under [Tex. Fam. Code § 262.102](#), the court must find "immediate danger to the physical health or safety of the child" or that the child "has been a victim of neglect or sexual abuse" along with other specific findings.

For orders that effectively exclude a parent from possession or access to a child under [Tex. Fam. Code § 105.001](#), a "verified pleading or an affidavit in accordance with the Texas Rules of Civil Procedure" is required.

The court in [In re V.K., 607 S.W.3d 471 \(Tex. App. 2020\)](#) emphasized that certain motions require "a live, evidentiary hearing, not [decision] by submission," stating that "[t]he trial court's refusal to conduct an evidentiary hearing violates the Legislature's statutory mandate."

Subject Matter Jurisdiction vs. Abuse of Discretion

An important distinction exists between a court exceeding its subject matter jurisdiction and a court abusing its discretion. Subject matter jurisdiction refers to the court's power to hear a particular type of case, while abuse of discretion pertains to errors in how the court exercises its authority within a case over which it has jurisdiction.

Texas courts have broad subject matter jurisdiction over family law matters. As noted in the historical case [Page v. Sherrill, 415 S.W.2d 642 \(Tex. 1967\)](#), "The District Court shall have * * * original jurisdiction and general control over * * * minors under such regulations as may be prescribed by law." The court further observed that district courts "have broad discretion in determining the custody of children, even to the extent of taking the custody of a minor from its own parents."

However, this jurisdiction must be exercised in accordance with statutory requirements and constitutional protections. When a court fails to follow these requirements, it may abuse its discretion rather than exceed its jurisdiction. As stated in [In re L.C.L., 396 S.W.3d 712 \(Tex. App. 2013\)](#), "A trial court abuses its discretion when it acts arbitrarily and unreasonably without reference to guiding principles."

In [In re K.M., NO. 12-18-00044-CV \(Tex. App. Apr 18, 2018\)](#), the court emphasized that temporary orders in a suit affecting the parent-child relationship require "notice and a hearing" except in certain emergency situations. Failure to provide such notice and hearing before ordering a parent to vacate their home would likely constitute an abuse of discretion.

Standing and Subject Matter Jurisdiction

Standing is a critical component of subject matter jurisdiction in family law cases. As noted in [In re S.M.D., 329 S.W.3d 8 \(Tex. App. 2010\)](#), "Standing is implicit in the concept of subject matter jurisdiction" and a "party's lack of standing deprives the court of subject matter jurisdiction and renders subsequent trial court action void."

However, if a court has proper jurisdiction over a SAPCR or divorce case, errors in temporary orders—such as ordering a parent to vacate without proper findings—would not necessarily deprive the court of subject matter jurisdiction over the entire case. Instead, those specific orders might be void or voidable, subject to challenge through appropriate procedures.

Implied Findings

In some cases, courts may not make explicit findings but may have sufficient evidence in the record to support implied findings. As noted in [Mauldin v. Clements, 428 S.W.3d 247 \(Tex. App. 2014\)](#), "When, as here, the trial court does not make separate findings of fact and conclusions of law, we imply the findings necessary to support the judgment." The reviewing court will "review the entire record to determine if the trial court's implied findings are supported by any evidence."

Therefore, even if a court does not explicitly state findings when ordering a parent to vacate their home, the order might still be valid if the record contains evidence that would support the necessary findings. However, for certain types of orders—such as those excluding a parent from possession or access to a child—[Tex. Fam. Code § 105.001](#) specifically requires a "verified pleading or an affidavit," suggesting that implied findings would be insufficient in those

circumstances.

Remedies for Improper Temporary Orders

Limited Appealability of Temporary Orders

Temporary orders in family law cases are generally not subject to interlocutory appeal. As noted in [Normand v. Fox, 940 S.W.2d 401 \(Tex. App. 1997\)](#), temporary orders "are clearly interlocutory and not appealable." This principle was reaffirmed in [In re Curb, 07-23-00014-CV \(Tex. App. Feb 06, 2023\)](#), which stated that "temporary orders in conservatorship matters are not subject to interlocutory appeal under the Texas Family Code."

Mandamus Relief

Given the lack of interlocutory appeal, mandamus relief becomes the appropriate remedy when a trial court improperly orders a parent to vacate their home without the necessary findings or evidence. [In re Curb, 07-23-00014-CV \(Tex. App. Feb 06, 2023\)](#) explains that "when a trial court abuses its discretion in the issuance of temporary orders in a suit affecting the parent-child relationship, mandamus relief is proper because there are no adequate appellate remedies."

Effect on Setting Final Trial

While a court may exceed its authority by issuing a temporary order without proper findings or evidence, this error does not necessarily affect its jurisdiction to set the case for final trial. The court would still maintain subject matter jurisdiction over the underlying case (divorce, SAPCR, etc.), even if particular temporary orders were improperly issued.

In [In re Milton, 420 S.W.3d 245 \(Tex. App. 2014\)](#), the court found that while Texas had "subject-matter jurisdiction over the suit affecting the parent-child relationship," venue was improper. The court vacated certain orders but directed the trial court with proper venue to "consider the matters underlying the challenged temporary orders and determine whether the challenged orders should remain in effect, be modified, or be set aside." This indicates that improper temporary orders do not prevent the case from proceeding to final resolution.

Constitutional Considerations

Parental Rights and Due Process

Courts must be mindful of constitutional due process requirements when ordering a parent to vacate their home. As the Texas Supreme Court noted in [In re E.R., 385 S.W.3d 552 \(Tex. 2012\)](#), "Despite the Legislature's intent to expedite termination proceedings, it cannot do so at the expense of a parent's constitutional right to notice."

Similarly, [In re C.J.C., 603 S.W.3d 804 \(Tex. 2020\)](#) emphasized the "fundamental right of parents to make child rearing decisions" and the statutory presumption that parents should be appointed managing conservators unless doing so "would significantly impair the child's physical health or emotional development."

These constitutional considerations reinforce the requirement for proper findings and evidence before ordering a parent to vacate their home, especially when such an order affects the parent's relationship with their child.

Fit Parent Presumption

The fit parent presumption is a significant consideration in determining whether a court has exceeded its authority. In [In re G.B., 05-21-00463-CV \(Tex. App. Sep 07, 2021\)](#), the court cited the Texas Supreme Court's holding that "when a nonparent requests conservatorship or possession of a child, the child's best interest is embedded with the presumption that it is the fit parent—not a court—who makes the determination whether to allow that request."

This presumption suggests that courts should be particularly cautious when issuing orders that interfere with the decisions of fit parents, including orders requiring them to vacate their homes. Such orders should be supported by evidence sufficient to overcome the presumption that the parent is acting in the child's best interest.

Exceptions and Caveats

Emergency Situations

In emergency situations involving child safety, courts have broader authority to act quickly. [Tex. Fam. Code § 262.102](#) provides specific conditions under which a court may issue emergency orders without prior notice and hearing. Similarly, [Page v. Sherrill, 415 S.W.2d 642 \(Tex. 1967\)](#) recognized that district courts have the "power to enter an emergency custody order, without notice, when no valid suit for divorce is pending."

However, even in emergency situations, the court must make specific findings based on evidence. For example, [Tex. Fam. Code § 262.107](#) requires the court to be satisfied that "the evidence shows that... there is a continuing danger to the physical health or safety of the child" before it can decline to return a child taken into possession without a court order.

Implicit Findings

While explicit findings are generally required, [Mauldin v. Clements, 428 S.W.3d 247 \(Tex. App. 2014\)](#) suggests that courts may sometimes rely on implied findings supported by the record. However, this flexibility is limited by specific statutory requirements, such as the need for a verified pleading or affidavit under [Tex. Fam. Code § 105.001](#) for certain types of orders.

Modification Standards

For modification of existing orders, [In re H.V.S., No. 04-20-00217-CV \(Tex. App. Sep 23, 2020\)](#) notes that a court may modify an order "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." This standard applies to modifications of existing orders rather than initial temporary orders.

Conclusion

Based on the Texas Family Code and relevant case law, a court may exceed its authority—though not necessarily its subject matter jurisdiction over the case as a whole—if it orders a parent to vacate their home without proper findings or evidence. The specific requirements depend on the context:

In divorce cases under [Tex. Fam. Code § 6.502](#), notice and hearing are required, and the order must be "necessary and equitable" for the "protection of the parties."

In cases involving protective orders under [Tex. Fam. Code § 85.001](#), the court must find that "family violence has occurred."

For orders that effectively exclude a parent from possession or access to a child under [Tex. Fam. Code § 105.001](#), a "verified pleading or an affidavit" is required.

In emergency situations involving child safety under [Tex. Fam. Code § 262.102](#), the court must find "immediate danger" to the child and satisfy other specific requirements.

If a court issues an order requiring a parent to vacate their home without satisfying these requirements, it may constitute an abuse of discretion rather than a complete lack of subject matter jurisdiction. The appropriate remedy would typically be mandamus relief, as temporary orders are generally not subject to interlocutory appeal.

Importantly, even if a court improperly orders a parent to vacate their home, this error would not deprive the court of jurisdiction to proceed to final trial. The court would still maintain subject matter jurisdiction over the underlying case, although specific improper orders might be subject to challenge and potential reversal.

Courts must be mindful of the constitutional and statutory protections afforded to parents, including the fit parent presumption and due process requirements. These protections reinforce the need for proper findings and evidence before issuing orders that interfere with fundamental parental rights, such as requiring a parent to vacate their home.

Legal Authorities

[Mauldin v. Clements, 428 S.W.3d 247 \(Tex. App. 2014\)](#)

Texas Court of Appeals

Extract

When, as here, the trial court does not make separate findings of fact and conclusions of law, we imply the findings necessary to support the judgment. In re S.M.D., 329 S.W.3d 8, 13 (Tex.App.-San Antonio 2010, pet. dismiss'd) (citing Worford v. Stamper, 801 S.W.2d 108, 109 (Tex.1990)). We review the entire record to determine if the trial court's implied findings are supported by any evidence. Id. (citing Waco Indep. Sch. Dist. v. Gibson, 22 S.W.3d 849, 853 (Tex.2000)).

Summary

Even if a trial court does not make explicit findings of fact and conclusions of law, the necessary findings to support the judgment can be implied. The court reviews the entire record to determine if there is any evidence supporting these implied findings. This suggests that a court may not necessarily exceed its jurisdiction if it does not make explicit findings, as long as the record supports the judgment.

[In re Milton, 420 S.W.3d 245 \(Tex. App. 2014\)](#)

Texas Court of Appeals

Extract

We conclude that Texas has subject-matter jurisdiction over the suit affecting the parent-child relationship (SAPCR), but that venue is improper in Harris County. We therefore conditionally grant mandamus relief and direct the trial court to transfer the case to Fort Bend County. We vacate the trial court's order of contempt and order for capias for arrest. We abate the proceedings in this court and direct the Fort Bend County trial judge who will preside over the case to consider the matters underlying the challenged temporary orders and determine whether the challenged orders should remain in effect, be modified, or be set aside, and to render its own orders accordingly. See id. The trial judge is not limited to considering only evidence on which the orders were based.

Summary

The Texas court had subject-matter jurisdiction over the SAPCR but found that the venue was improper. The court vacated certain orders and directed the trial court to reconsider the temporary orders, suggesting that the trial court must base its decisions on proper findings and evidence. This implies that a court may exceed its jurisdiction if it issues orders without proper findings or evidence, as the trial court was directed to reassess the orders.

[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. In re H.N.T., 367 S.W.3d 901, 903 (Tex.App.-Dallas 2012, no pet.); Jacobs v. Dobrei, 991 S.W.2d 462, 463 (Tex.App.-Dallas 1999, no pet.). A trial court abuses its discretion when it acts arbitrarily and unreasonably without reference to guiding principles. In re H.N.T., 367 S.W.3d at 903; In re W.C.B., 337 S.W.3d 510, 513 (Tex.App.-Dallas 2011, no pet.). In family law cases, the abuse of discretion standard of review overlaps with traditional standards of review.

Summary

The passage provides insight into how appellate courts review trial court orders in family law cases, specifically regarding child custody, control, possession, and visitation. It explains that a trial court abuses its discretion if it acts arbitrarily and unreasonably without reference to guiding principles. This is relevant to the question of whether a court exceeds its jurisdiction by ordering a parent to vacate their home without findings or evidence, as such an action could be considered an abuse of discretion.

[In re E.R., 385 S.W.3d 552, 55 Tex. Sup. Ct. J. 1130 \(Tex. 2012\)](#)

Texas Supreme Court

Extract

Despite the Legislature's intent to expedite termination proceedings, it cannot do so at the expense of a parent's constitutional right to notice. Cf. In the Interest of M.N., 262 S.W.3d 799, 803 (Tex.2008) (noting that Family Code did not indicate legislative intent to unfairly or unreasonably preclude parents from appealing final orders).

Summary

The passage highlights the importance of a parent's constitutional right to notice in termination proceedings. It suggests that any action taken by the court that undermines this right, such as ordering a parent to vacate their home without proper findings or evidence, could be seen as exceeding its jurisdiction. The passage emphasizes that legislative intent cannot override constitutional rights, indicating that due process must be upheld.

[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.' ... The Texas Legislature does not disagree. Five years before Troxel, the legislature added a statutory parental presumption applicable to original custody determinations: [U]nless 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

The passage emphasizes the fundamental right of parents to make decisions regarding their children and the presumption that parents should be appointed as managing conservators unless there is evidence that such an appointment would harm the child's physical health or emotional development. This suggests that a court must have findings or evidence to justify ordering a parent to vacate their home, as such an order would infringe on the parent's fundamental rights without proper justification.

[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. ... It has long been recognized that the district courts have broad discretion in determining the custody of children, even to the extent of taking the custody of a minor from its own parents. ... 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. ... Power of the district court to enter an emergency custody order, without notice, when no valid suit for divorce is pending was upheld in*

Green v. Green, 146 S.W. 567 (Tex.Civ.App.--Amarillo 1912, writ dismissed).

Summary

Texas district courts have broad discretion and general control over minors, including the power to make temporary custody orders without notice to the parents, especially in emergency situations or during pending divorce proceedings. This suggests that the court's actions in ordering a parent to vacate their home could be within its jurisdiction if it is related to the welfare of minors.

[Rector v. Rector, 08-21-00173-CV](#)

Texas Court of Appeals

Extract

In general, a trial court has the authority to issue a protective order under Title 4 of the Texas Family Code for the benefit of a child when it finds that family violence has occurred and is likely to occur in the future. TEX. FAM. CODE ANN. §§ 81.001, 85.001. However, when a Texas court learns that another state has commenced custody proceedings, it must follow the UCCJEA prior to entering an order that modifies a possession order, which the trial court's protective order did in this case.

Summary

A Texas court must follow the UCCJEA when another state has commenced custody proceedings before entering an order that modifies a possession order. This suggests that if a court issues an order without following the required jurisdictional steps, it may exceed its jurisdiction. The passage specifically addresses the requirement for findings of family violence before issuing a protective order, implying that without such findings or evidence, the court may not have the authority to issue certain orders, such as ordering a parent to vacate their home.

[In re J.A.F.](#)

Texas Court of Appeals

Extract

Though Title 4's section 85.063(a) required the protective order application in question to be filed in the trial court, section 85.063's text does not mention jurisdiction. Tex. Fam. Code § 85.063(a). 'Under the unambiguous text of Family Code section 85.063(a), this section addresses the court in which an application for a protective order should be filed; this section does not address which court has jurisdiction to hear or rule upon a protective-order application.'

Summary

While section 85.063(a) of the Texas Family Code specifies where a protective order application should be filed, it does not address the jurisdiction of the court to hear or rule on such applications. This suggests that the filing requirements do not inherently confer or limit jurisdiction, which is a separate consideration.

[Normand v. Fox, 940 S.W.2d 401 \(Tex. App. 1997\)](#)

Texas Court of Appeals

Extract

Section 71.15 authorizes the issuance of temporary orders until a hearing for a protective order can be had. TEX. FAM.CODE ANN. § 71.15. These temporary orders are analogous to temporary orders granted in the context of a suit affecting the parent-child relationship. Id. § 109.001. This type of order protects the status quo until the trial court has an opportunity to adjudicate the dispute. Temporary orders are clearly interlocutory and not appealable. Id. § 109.001(c); Cook, 886 S.W.2d at 839.

Summary

Temporary orders, such as those that might order a parent to vacate their home, are interlocutory and not appealable. This suggests that such orders are within the court's jurisdiction as they are meant to maintain the status quo until a final hearing can be conducted. The court's ability to issue these orders is supported by the Texas Family Code, which allows for temporary orders to be issued to protect the status quo.

[In re K.M., NO. 12-18-00044-CV \(Tex. App. Apr 18, 2018\)](#)

Texas Court of Appeals

Extract

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. TEX. FAM. CODE ANN. § 105.001(a). The trial court is further authorized to render temporary orders in a suit for modification. Id. § 156.006(a) (West Supp. 2017). Other than an emergency order sought by a governmental entity, an order may not be rendered under section 105.001(a)(1), (2), or (5) except after notice and a hearing.

Summary

A trial court has the authority to make temporary orders for the child's safety and welfare, but such orders (except emergency orders by a governmental entity) require notice and a hearing. This suggests that a court cannot exceed its jurisdiction by ordering a parent to vacate their home without findings or evidence, as such an order would require a hearing and notice.

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

Texas Court of Appeals

Extract

Relator contends that Family Code section 83.004 requires a live, evidentiary hearing on motions to vacate temporary ex parte orders. ... The trial court's refusal to conduct an evidentiary hearing violates the Legislature's statutory mandate that motions to vacate be decided in a live, evidentiary hearing, not by submission. See Tex. Fam. Code Ann. § 83.004.

Summary

Under Texas Family Code section 83.004, a motion to vacate a temporary ex parte order requires a live, evidentiary hearing. The trial court's refusal to conduct such a hearing violates the statutory mandate. This suggests that if a court orders a parent to vacate their home without findings or evidence and without a proper hearing, it may exceed its jurisdiction or violate procedural requirements.

[In re Curb, 07-23-00014-CV \(Tex. App. Feb 06, 2023\)](#)

Texas Court of Appeals

Extract

Generally, temporary orders in conservatorship matters are not subject to interlocutory appeal under the Texas Family Code. Tex. Fam. Code Ann. § 105.001(e); In re Allen, 359 S.W.3d 284, 288 (Tex. App.-Texarkana 2012, orig. proceeding). Thus, when a trial court abuses its discretion in the issuance of temporary orders in a suit affecting the parent-child relationship, mandamus relief is proper because there are no adequate appellate remedies.

Summary

Temporary orders in conservatorship matters are generally not subject to interlocutory appeal, meaning they cannot be appealed before the final decision in the case. However, if a trial court abuses its discretion in issuing such temporary orders, mandamus relief is appropriate because there are no adequate appellate remedies. This suggests that if a court orders a parent to vacate their home without findings or evidence, it may be considered an abuse of discretion, and the appropriate remedy would be to seek mandamus relief.

[In re C.R.](#)

Texas Court of Appeals

Extract

The Texas Family Code empowers the trial court in a SAPCR to issue a temporary order for the conservatorship of a child as well as a temporary restraining order or attachment of a child authorizing a governmental entity to take possession of a child. See Tex. Fam. Code Ann. §§ 105.001(a)(1), 262.102(a). ... A temporary order, temporary restraining order, or attachment of the child issued under Section 262.102(a) expires not later than fourteen days after the date it is issued unless it is extended as provided by the Texas Rules of Civil Procedure or Section 262.201(e).[] Id. § 262.103.

Summary

The Texas Family Code allows for temporary orders in SAPCR cases, but these orders are subject to specific limitations, such as expiration within fourteen days unless extended under certain conditions. This suggests that a court must adhere to these procedural requirements and limitations when issuing such orders, which may imply that a court could exceed its jurisdiction if it fails to follow these statutory guidelines.

[In re H.V.S., No. 04-20-00217-CV \(Tex. App. Sep 23, 2020\)](#)

Texas Court of Appeals

Extract

A trial 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,' inter alia, 'the circumstances of the child, a conservator, or other party affected by the order have materially and substantially changed since' the rendition of the earlier order. TEX. FAM. CODE ANN. § 156.101(a).

Summary

A trial court has the authority to modify conservatorship orders if it is in the best interest of the child and if there has been a material and substantial change in circumstances. This suggests that the court must have evidence or findings to justify such modifications. If a court orders a parent to vacate their home without such findings or evidence, it may not be acting within its jurisdiction as outlined by the Texas Family Code.

[In re C.D.C., No. 05-20-00983-CV \(Tex. App. Feb 02, 2021\)](#)

Texas Court of Appeals

Extract

The Texas Supreme Court has made clear that there must be evidence or a finding rebutting the fit-parent presumption that Father acts in the child's best interest. See In re C.J.C., 603 S.W.3d at 820. If there is no such evidence or finding rebutting the fit-parent presumption, the trial court abused its discretion. See id.

Summary

The Texas Supreme Court requires evidence or a finding to rebut the fit-parent presumption before a court can make orders affecting a parent's rights. If a court orders a parent to vacate their home without such findings or evidence, it may be seen as an abuse of discretion. This suggests that the court could exceed its jurisdiction if it acts without the necessary findings or evidence.

[In re G.B., 05-21-00463-CV \(Tex. App. Sep 07, 2021\)](#)

Texas Court of Appeals

Extract

The Texas Supreme Court granted the father's petition and held that '[w]hen a nonparent requests conservatorship or possession of a child, the child's best interest is embedded with the presumption that it is the fit parent-not a court-who makes the determination whether to allow that request.' ... The trial court found that Father is a fit parent, and the record supports this finding. Nonetheless, the trial court concluded that granting Grandmother possessory conservatorship on a temporary basis was in the Children's best interest. The Texas Supreme Court's decision in C.J.C., however, forecloses consideration of Grandmother as a possessory conservator over a fit parent's objection unless Grandmother overcomes the presumption that Father, as a fit parent, acts in the Children's best interest.

Summary

Presumption that a fit parent acts in the best interest of their child, which is a key consideration in conservatorship cases. The Texas Supreme Court's decision in C.J.C. emphasizes that a court should not override this presumption without evidence that the parent is unfit. This principle is relevant to the question of whether a court can order a parent to vacate their home without findings or evidence, as it suggests that such an order would require a finding that the parent is unfit or that the presumption has been rebutted.

[In re N.A., 04-24-00145-CV \(Tex. App. Oct 30, 2024\)](#)

Texas Court of Appeals

Extract

In In re M.G.N., even where we applied Leithold to affirm a modification to a conservatorship order between two biological parents, we recognized that '[t]he Texas Family Code specifically requires parties to include in their pleadings a 'statement describing what action the court is requested to take concerning the child and the statutory grounds on which the request is made.' ... And, we noted, that '[w]ithout proper pleadings and evidence, a trial court exceeds its authority' when it issues orders affecting the custody of a child.

Summary

The passage from "In re N.A." highlights that the Texas Family Code requires specific pleadings and evidence to support any court orders affecting child custody. It emphasizes that without proper pleadings and evidence, a trial court exceeds its authority. This directly relates to the question of whether a court exceeds its

jurisdiction by ordering a parent to vacate their home without findings or evidence. The passage suggests that such an action would indeed exceed the court's authority, as it lacks the necessary legal foundation.

[In re K.B., 683 S.W.3d 850 \(Tex. App. 2024\)](#)

Texas Court of Appeals

Extract

The Department must satisfy several procedural requirements before it may deprive a parent of custody of her child: As a general rule, before DFPS can 'take possession of a child,' the Department must do two things: (1) file a suit affecting the parent-child relationship that is supported by an affidavit; and (2) obtain an emergency order. Ordinarily, the order is signed Without a hearing, based on the allegations in DFPS' petition and affidavit. But the order is only temporary, expiring 14 days after its signing. Then a full adversary hearing is held.

Summary

Procedural requirements that must be met before the Department can take possession of a child, which includes filing a suit with an affidavit and obtaining an emergency order. These orders are temporary and require a full adversary hearing. This suggests that there are specific procedural steps that must be followed, which may imply that a court could exceed its jurisdiction if it bypasses these steps without proper findings or evidence.

[In re S.M.D., 329 S.W.3d 8 \(Tex. App. 2010\)](#)

Texas Court of Appeals

Extract

A party seeking conservatorship of a child must have standing to seek such relief. In re S.S.J.-J., 153 S.W.3d 132, 134 (Tex.App.-San Antonio 2004, no pet.). 'Standing is implicit in the concept of subject matter jurisdiction.' Tex. Ass'n of Bus. v. Tex. Air Control Bd., 852 S.W.2d 440, 443 (Tex. 1993). Because '[s]ubject matter jurisdiction is essential to the authority of a court to decide a case,' a party's lack of standing deprives the court of subject matter jurisdiction and renders subsequent trial court action void. Id.; In re Smith, 260 S.W.3d 568, 572 (Tex.App.-Houston [14th Dist.] 2008, orig. proceeding).

Summary

Standing is a fundamental component of subject matter jurisdiction. If a party lacks standing, the court does not have the authority to decide the case, and any actions taken by the court would be void. This principle is crucial in determining whether a court has exceeded its jurisdiction, particularly in family law cases involving conservatorship.

[Tex. Fam. Code § 262.107 Tex. Fam. Code § 262.107 Standard For Decision At Initial Hearing After Taking Possession of Child Without a Court Order In Emergency](#)

Extract

The court shall order the return of the child at the initial hearing regarding a child taken in possession without a court order by a governmental entity unless the court is satisfied that: the evidence shows that one of the following circumstances exists: (A) there is a continuing danger to the physical health or safety of the child if the child is returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian who is presently entitled to possession of the child; ... 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

The court must have evidence of specific circumstances, such as a continuing danger to the child's health or safety, to justify not returning a child to their home. The passage emphasizes the need for evidence and reasonable efforts to prevent removal, which implies that a court should not make orders affecting parental rights, such as vacating a home, without proper findings or evidence. This suggests that a court may exceed its jurisdiction if it orders a parent to vacate their home without such findings or evidence.

[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

A court must find sufficient evidence of danger to the child's physical health or safety before ordering the removal of a child from a parent's custody. This implies that a court must have findings or evidence to justify such an order. If a court orders a parent to vacate their home without such findings or evidence, it may exceed its jurisdiction, as the statute requires evidence to support such decisions.

[Tex. Fam. Code § 6.502 Tex. Fam. Code § 6.502 Temporary Injunction and Other Temporary Orders](#)

Extract

While a suit for dissolution of a marriage is pending and on the motion of a party or on the court's own motion after notice and hearing, the court may render an appropriate order, including the granting of a temporary injunction for the preservation of the property and protection of the parties as deemed necessary and equitable and including an order directed to one or both parties: ... awarding one spouse exclusive occupancy of the residence during the pendency of the case;

Summary

During a pending suit for the dissolution of a marriage, the court has the authority to issue temporary orders, including awarding one spouse exclusive occupancy of the residence. This suggests that the court does not exceed its subject matter jurisdiction by ordering a parent to vacate their home, provided that the order is made after notice and hearing and is deemed necessary and equitable for the protection of the parties.

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

Extract

In a suit, the court may make a temporary order, including the modification of a prior temporary order, for the safety and welfare of the child, including an order: ... restraining a party from disturbing the peace of the child or another party; ... Except as provided by Subsection (c), temporary restraining orders and temporary injunctions under this section shall be granted without the necessity of an affidavit or verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result before notice can be served and a hearing can be held. ... 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 Texas Family Code allows courts to issue temporary orders for the safety and welfare of the child, which can include restraining a party from disturbing the peace of another party. However, the code specifies that orders excluding a parent from possession of or access to a child require a verified pleading or affidavit. This suggests that a court may not have the authority to order a parent to vacate their home without findings or evidence, as such an order would likely require a verified pleading or affidavit.

[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

Conditions under which a court may issue a temporary order for the conservatorship of a child without prior notice and a hearing. It specifies that the court must find immediate danger to the child's physical health or safety, among other criteria. This suggests that a court must have specific findings or evidence to justify such an order. Therefore, if a court orders a parent to vacate their home without such findings or evidence, it may exceed its subject matter jurisdiction.

[Tex. Fam. Code § 85.001 Tex. Fam. Code § 85.001 Required Findings and Orders](#)

Extract

At the close of a hearing on an application for a protective order, the court shall find whether family violence has occurred. If the court finds that family violence has occurred, the court: shall render a protective order as provided by Section FAMILY CODE 85.022 applying only to a person found to have committed family violence; and may render a protective order as provided by Section FAMILY CODE 85.021 applying to both parties that is in the best interest of the person protected by the order or member of the family or household of the person protected by the order.

Summary

A court must make a finding of family violence at the close of a hearing on an application for a protective order. If such a finding is made, the court is authorized to render a protective order. This suggests that the court must have evidence or findings of family violence before it can issue orders related to protective measures, such as requiring a parent to vacate their home. Therefore, if a court orders a parent to vacate their home without such findings or evidence, it may exceed its jurisdiction.

This memo was compiled by Vincent AI based on vLex materials available as of April 28, 2025. [View full answer on vLex](#)