

## Question

The court issued orders without any evidence being presented. Judicial decisions, especially those affecting fundamental rights such as custodial rights, must be based on evidence. The absence of evidence to support the court's orders renders them arbitrary and capricious. Consequently, the orders should be declared void due to the lack of evidentiary support.

## Answer (Texas)

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### Introduction:

The issue at hand is whether judicial orders issued without any evidentiary support, particularly those affecting fundamental rights such as custodial rights, can be deemed arbitrary and capricious, and thus void. The user seeks to challenge such orders on the grounds that they lack the necessary evidentiary foundation, rendering them legally unsustainable. This note outlines the legal arguments supporting this position, drawing on relevant facts and legal principles.

### Relevant Facts and Assumptions:

In this case, the following facts are relevant:

1. The court issued orders affecting custodial rights without any evidence being presented.
2. The orders in question have significant implications for the fundamental rights of the parties involved, particularly parental rights.

### Legal Principles:

The following legal principles are applicable:

**Requirement of Evidence in Judicial Decisions:** Under [40 Tex. Admin. Code § 730.1716](#), findings of fact must be based exclusively on evidence and matters officially noticed. This underscores the necessity for decisions, especially those affecting fundamental rights, to be grounded in evidence. The absence of such evidence renders decisions arbitrary and capricious.

**Clear and Convincing Evidence Standard:** In cases involving the termination of parental rights, Texas law requires clear and convincing evidence of both a predicate violation and that termination is in the child's best interest, as established in [In re W.S., No. 10-17-00318-CV \(Tex. App. Mar 28, 2018\)](#). This standard is crucial for ensuring that decisions affecting fundamental rights are not arbitrary.

**Constitutional and Statutory Requirements:** The Texas Supreme Court in [In re L.M.I., 119 S.W.3d 707 \(Tex. 2003\)](#), emphasized that the burden of proof cannot be shifted to a parent and must be met by clear and convincing evidence, aligning with both federal constitutional and Texas statutory requirements.

**Substantial Evidence Rule:** The necessity for decisions to be supported by substantial evidence is highlighted in [Montgomery ISD v. Davis, 34 S.W.3d 559 \(Tex. 2000\)](#), where the Texas Supreme Court overturned a decision due to lack of evidentiary support.

**Judicial Review and Due Process:** The principle that decisions must be supported by substantial evidence to avoid being arbitrary and capricious is further supported by [Texas Health Facilities Com'n v. Charter Medical-Dallas, Inc., 665 S.W.2d 446 \(Tex. 1984\)](#), although it was later superseded by statute. This case illustrates the importance of evidentiary support in upholding due process.

These principles are relevant because they collectively establish that judicial decisions, particularly those affecting fundamental rights, must be based on substantial evidence to avoid being arbitrary and capricious.

### Application and Analysis:

Applying the law to the facts, it follows that:

Given that the court issued orders without any evidence, and under the legal principle that findings must be based on evidence as per [40 Tex. Admin. Code § 730.1716](#), it is likely that the orders are arbitrary and capricious. This argument is supported by the requirement for clear and convincing evidence in [In re W.S., No. 10-17-00318-CV \(Tex. App. Mar 28, 2018\)](#).

The necessity for substantial evidence is further reinforced by [Montgomery ISD v. Davis, 34 S.W.3d 559 \(Tex. 2000\)](#), where the lack of evidentiary support led to the reversal of a decision. This supports the user's position that the orders should be declared void.

Alternatively, even if the court finds that some evidence was considered, the outcome should remain the same because the evidence must meet the clear and convincing standard, as emphasized in [In re L.M.I., 119 S.W.3d 707 \(Tex. 2003\)](#).

### Key Submissions:

Judicial decisions affecting fundamental rights must be based on substantial evidence, as established in [40 Tex. Admin. Code § 730.1716](#) and supported by [In re W.S., No. 10-17-00318-CV \(Tex. App. Mar 28, 2018\)](#).

The absence of evidence renders decisions arbitrary and capricious, aligning with the principles set forth in [Montgomery ISD v. Davis, 34 S.W.3d 559 \(Tex. 2000\)](#).

The requirement for clear and convincing evidence in parental rights cases, as highlighted in [In re L.M.I., 119 S.W.3d 707 \(Tex. 2003\)](#), further supports the user's position.

## **Alternative Arguments:**

- If the court considers any evidence presented, the argument remains strong due to the necessity for clear and convincing evidence, as supported by [In re L.M.I., 119 S.W.3d 707 \(Tex. 2003\)](#).

## **Areas of Risk:**

The argument is potentially weakened by the fact that [Texas Health Facilities Com'n v. Charter Medical-Dallas, Inc., 665 S.W.2d 446 \(Tex. 1984\)](#) was superseded by statute. However, mitigating this risk by focusing on the clear and convincing evidence standard in [In re W.S., No. 10-17-00318-CV \(Tex. App. Mar 28, 2018\)](#) may strengthen the user's position.

## **Conclusion:**

Based on the facts and legal principles discussed, the strongest argument is that the court's orders are void due to the lack of evidentiary support, rendering them arbitrary and capricious. The user has a solid basis for challenging the orders, as demonstrated by the application of the law to the facts.

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## **Legal Authorities**

### [Texas Health Facilities Com'n v. Charter Medical-Dallas, Inc., 665 S.W.2d 446 \(Tex. 1984\)](#)

#### **Texas Supreme Court**

##### **Extract**

*The court of appeals held that the absence of underlying facts rendered the Commission's ultimate findings arbitrary and capricious... The APTRA codifies the principle of judicial review under the substantial evidence rule. Section 19(e)(5) authorizes a reviewing court to test an agency's findings, inferences, conclusions, and decisions to determine whether they are reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole... The reviewing court may reverse an agency decision because of the absence of substantial evidence only if such absence has prejudiced substantial rights of the litigant.*

##### **Summary**

Requirement for agency decisions to be supported by substantial evidence and notes that the absence of such evidence can render decisions arbitrary and capricious. This aligns with the proposition that judicial decisions, especially those affecting fundamental rights, must be based on evidence. The passage also highlights that a lack of substantial evidence can lead to the reversal of decisions if it prejudices substantial rights, which supports the idea that orders without evidentiary support can be declared void.

### [Montgomery ISD v. Davis, 34 S.W.3d 559 \(Tex. 2000\)](#)

#### **Texas Supreme Court**

##### **Extract**

*Thus we conclude that the Board did not have authority within the statutory scheme of subchapter F to make the additional findings, and while the Board could rely on the undisputed evidence in the record to reach its conclusion of law, that evidence - concerning the incident in the assistant principal's office - does not support the only basis for the nonrenewal, that Davis failed to maintain effective working relationships or good rapport. Without those impermissible additional findings or undisputed evidence to support its conclusion of law, the Board's ultimate determination cannot stand. Because the only basis for not renewing Davis' contract is not supported by substantial evidence, the court of appeals properly affirmed the trial court's judgment reversing the commissioner's decision.*

##### **Summary**

The Texas Supreme Court emphasized that decisions must be supported by substantial evidence. In this case, the Board's decision was overturned because it lacked evidentiary support. This aligns with the proposition that judicial decisions, especially those affecting fundamental rights, must be based on evidence, and without such evidence, decisions are arbitrary and capricious.

### [In re C.H., 89 S.W.3d 17 \(Tex. 2002\)](#)

#### **Texas Supreme Court**

##### **Extract**

*We hold that termination findings must be upheld against a factual sufficiency challenge if the evidence is such that a reasonable jury could form a firm belief or conviction that grounds exist for termination under Texas Family Code sections 161.001 and 161.206(a). When reversing on insufficiency grounds, the reviewing court must detail the evidence relevant to the issue of parental termination and clearly state why the evidence is insufficient to support a termination finding by clear and convincing evidence.*

##### **Summary**

The Texas Supreme Court emphasizes the necessity of evidence in judicial decisions, particularly in cases involving the termination of parental rights. The court requires that termination findings be based on clear and convincing evidence, and if a decision is challenged for lack of evidence, the reviewing court must explicitly detail why the evidence is insufficient. This supports the proposition that judicial decisions affecting fundamental rights must be based on evidence, and without such evidence, the decisions can be deemed arbitrary and capricious.

[In re L.M.I., 119 S.W.3d 707 \(Tex. 2003\)](#)

**Texas Supreme Court**

**Extract**

*The clear and convincing evidence requirement necessarily means that the burden of proof that an affidavit of relinquishment was voluntarily executed cannot be shifted to a parent. There must be clear and convincing evidence, from the record as a whole, that the affidavit was knowingly and voluntarily executed. Shifting the burden of proof to a parent is in irreconcilable conflict with the clear and convincing standard of proof that the United States Supreme Court has said the federal Constitution requires before parental rights can be terminated and that the Texas Legislature has required in parental termination cases.*

**Summary**

The passage emphasizes the necessity of clear and convincing evidence to support the termination of parental rights, as required by both the federal Constitution and Texas law. It highlights that shifting the burden of proof to the parent, rather than requiring the state to provide evidence, conflicts with these requirements. This supports the proposition that judicial decisions affecting fundamental rights must be based on evidence, and without such evidence, the decisions are arbitrary and capricious.

[Turner v. Lutz, 685 S.W.2d 356 \(Tex. App. 1984\)](#)

**Texas Court of Appeals**

**Extract**

*Although the Texas Family Code, Section 11.15 provides that the court's findings shall be 'based on a preponderance of the evidence,' the Texas courts have applied the 'clear and convincing evidence' standard of proof in all proceedings for involuntary termination of the parent-child relationship. ... Termination is a drastic remedy and is of such weight and gravity that due process requires the state to justify termination of the parent-child relationship by proof of more substantial than a preponderance of the evidence.*

**Summary**

The passage highlights the importance of evidence in judicial decisions, particularly in cases involving fundamental rights like parental rights. It underscores that decisions must be based on a "clear and convincing evidence" standard, which is higher than a mere "preponderance of the evidence." This supports the proposition that judicial decisions affecting fundamental rights must be based on substantial evidence, and without such evidence, the decisions could be considered arbitrary and capricious.

[In re Castillo, 101 S.W.3d 174 \(Tex. App. 2003\)](#)

**Texas Court of Appeals**

**Extract**

*In a termination proceeding, these rules prohibit a trial court from terminating a person's parental rights on a statutory ground not pled by the Department. ... If there are no findings of fact, a judgment will be upheld on any legal theory that has support in the evidence.*

**Summary**

The passage highlights that in termination proceedings, a trial court cannot terminate parental rights on grounds not pled by the Department, emphasizing the necessity of specific pleadings and evidence. Additionally, it states that a judgment will only be upheld if there is support in the evidence. This aligns with the proposition that judicial decisions, especially those affecting fundamental rights, must be based on evidence. The absence of evidence would render such decisions arbitrary and capricious.

[In re W.S., No. 10-17-00318-CV \(Tex. App. Mar 28, 2018\)](#)

**Texas Court of Appeals**

**Extract**

*In a proceeding to terminate the parent-child relationship brought under Family Code section 161.001, the Department of Family and Protective Services must establish by clear and convincing evidence two elements: (1) one or more acts or omissions enumerated under subsection (b)(1) of section 161.001, termed a predicate violation; and (2) that termination is in the best interest of the child. TEX. FAM. CODE ANN. § 161.001(b)(1), (2) (West Supp. 2017); Swate v. Swate, 72 S.W.3d 763, 766 (Tex. App.—Waco 2002, pet. denied). The factfinder must find that both elements are established by clear and convincing evidence, and proof of one element does not relieve the petitioner of the burden of proving the other.*

## **Summary**

In Texas, the termination of parental rights requires clear and convincing evidence of both a predicate violation and that termination is in the child's best interest. This establishes a legal standard that decisions affecting fundamental rights, such as custodial rights, must be based on evidence. The passage supports the proposition that without such evidence, judicial decisions are arbitrary and capricious.

### [40 Tex. Admin. Code § 730.1716 40 Tex. Admin. Code § 730.1716 Decisions](#)

## **Extract**

*Findings of fact must be based exclusively on the evidence and on matters officially noticed.*

## **Summary**

Findings of fact must be based exclusively on evidence. This requirement underscores the necessity for decisions, especially those affecting fundamental rights, to be grounded in evidence. The absence of such evidence would render any decision arbitrary and capricious, supporting the proposition that orders issued without evidence should be declared void.

### [THE DUE PROCESS BONA FIDES OF EXECUTIVE SELF-PARDONS AND BLANKET PARDONS.](#)

#### **Faulkner Law Review - Thomas Goode Jones School of Law - Bayer, Peter Brandon - 2017-09-22**

## **Extract**

*is 'arbitrary or capricious' if it is immoral, that is, lacking 'fundamental fairness'... Importantly and unsurprisingly, determining whether a challenged governmental action is arbitrary or capricious, in fact, constitutes a moral judgment. This point cannot be overstated because, given that 'arbitrary or capricious' conduct is immoral conduct, and given that the Constitution prohibits 'arbitrary or capricious' governmental conduct, the legal meaning of 'due process of law'--that is, the legal meaning of the constitutional provision proscribing 'arbitrary or capricious' behavior--is in fact a moral determination.*

## **Summary**

The Constitution prohibits arbitrary or capricious governmental conduct, which is considered immoral and lacking fundamental fairness. This aligns with the proposition that judicial decisions, especially those affecting fundamental rights, must be based on evidence to avoid being arbitrary and capricious. The passage supports the idea that decisions without evidentiary support violate due process.

### [Third-Party Custody, Parental Liberty, and Children's Interests](#)

#### **Family Advocate - American Bar Association - Barbara A. Atwood - 2021-04-16**

## **Extract**

*In light of the significant constitutional interests at stake, most states require nonparents to prove their claim for custody by clear and convincing evidence, either by court decision or by statute. See, e.g., Dara v. Gish, 404 P.3d 154 (Alaska 2017) (third party seeking custody must show by clear and convincing evidence that parent is unfit or that child will suffer clear detriment if placed in custody of parent); Cal. Fam. Code § 3041 (nonparent must show by clear and convincing evidence that grant of custody to parent will result... appellate courts seem to reverse grants of third-party custody with remarkable frequency).*

## **Summary**

The passage highlights the requirement for nonparents to provide clear and convincing evidence when seeking custody, due to the significant constitutional interests involved. This evidentiary standard is crucial to protect parental rights and ensure that judicial decisions are not arbitrary. The frequent reversal of third-party custody grants by appellate courts underscores the importance of this standard. The passage supports the proposition by illustrating that decisions affecting custodial rights must be based on substantial evidence, and without such evidence, orders may be deemed arbitrary and capricious.

### [Applying the UCCJEA in Family Law](#)

#### **Family Advocate - American Bar Association - Joseph W. Booth - 2021-04-08**

## **Extract**

*In light of the significant constitutional interests at stake, most states require nonparents to prove their claim for custody by clear and convincing evidence, either by court decision or by statute. See, e.g., Dara v. Gish, 404 P.3d 154 (Alaska 2017) (third party seeking custody must show by clear and convincing evidence that parent is unfit or that child will suffer clear detriment if placed in custody of parent); Cal. Fam. Code § 3041 (nonparent must show by clear and convincing evidence that grant of custody to parent will result in detriment to child).*

## **Summary**

Courts require a high standard of evidence, specifically "clear and convincing evidence," to make custody determinations, especially when nonparents are involved. This evidentiary requirement underscores the importance of basing judicial decisions on substantial evidence, particularly when fundamental rights, such as parental rights, are at stake. The passage supports the proposition by illustrating that without such evidence, court orders could be deemed arbitrary and capricious.

## [Federal Court Rules That FDA Was Arbitrary And Capricious In Deeming Premium Cigars Subject To The Tobacco Control Act](#)

### **Extract**

*In a Memorandum Opinion and Order issued on July 5, 2022, Judge Amit P. Mehta of the U.S. District Court of the District of Columbia ruled that FDA's decision to deem premium cigars was indeed arbitrary and capricious. Specifically, the Court found that there was pertinent record evidence on premium cigar usage, but that FDA failed to adequately consider the submitted comments and data, despite signaling during rulemaking (i.e., the presentation of the two options) that evidence of different usage patterns and public health impacts would be a central consideration in deciding whether to exclude premium cigars from the scope of the final rule.*

## **Summary**

Precedent where a decision was invalidated due to lack of evidentiary support, which aligns with the proposition regarding the necessity of evidence in judicial decisions affecting fundamental rights.

This memo was compiled by Vincent AI based on vLex materials available as of April 24, 2025. [View full answer on vLex](#)