

Question

What are the broader implications in Texas case law when a court refuses to hear a properly filed emergency motion seeking relief for a child, resulting in direct injury to the child?

Answer (Texas)

Short response

A Texas court's refusal to hear a properly filed emergency motion seeking relief for a child—where that refusal results in direct injury to the child—can constitute a failure to fulfill statutory duties and may be viewed as an abuse of discretion, exposing the court's decision to mandamus relief and undermining the state's *parens patriae* responsibility to protect children. Such refusals have significant implications for judicial accountability, the integrity of child protection procedures, and the availability of legal remedies to prevent or redress harm to children.

Summary

Texas law imposes clear statutory and common law duties on courts to promptly consider emergency motions that seek to protect children from imminent harm. When a court fails to hear such a motion, especially where direct injury to the child results, this not only contravenes legislative mandates but also may be deemed an abuse of judicial discretion, subject to extraordinary remedies such as mandamus.

The broader implications of such refusals include potential legal liability for the court, erosion of public trust in the judicial system's ability to safeguard vulnerable children, and the risk of undermining the statutory framework designed to ensure swift intervention in emergencies. Texas case law and statutes emphasize the necessity of timely judicial action in child protection matters, and failure to act can have far-reaching consequences for both the affected child and the legal system as a whole.

Background and Relevant Law

Legislative Framework

Texas statutes provide a comprehensive framework for the protection of children in emergency situations. Several key provisions are directly relevant:

- **Temporary Orders for Child Safety:** Courts are empowered to issue temporary orders to ensure the safety and welfare of a child in suits affecting the parent-child relationship, including emergency orders without notice in certain circumstances ([Tex. Fam. Code § 105.001](#)).
- **Prompt Hearings After Emergency Removal:** When a child is taken into possession by a governmental entity without a court order, the court must hold an initial hearing on or before the first business day after removal, or as soon as the court is available, but no later than the third business day ([Tex. Fam. Code § 262.106](#)).
- **Full Adversary Hearing Requirement:** A full adversary hearing must be held within 14 days after a child is taken into possession by a governmental entity, unless an extension is granted ([Tex. Fam. Code § 262.201](#)).
- **Protective Orders in Abuse/Neglect Cases:** Courts are required to make findings and issue protective orders if there are reasonable grounds to believe a child is a victim of abuse or neglect and faces a threat of continued harm ([Tex. Fam. Code § 261.504](#)).
- **Timely Hearings on Petitions:** Courts must hold hearings on petitions related to child welfare within 14 days of filing, unless good cause exists for a short extension ([Tex. Fam. Code § 262.404](#); [Tex. Fam. Code § 264.203](#)).
- **Emergency Custody Warrants:** If a child is at imminent risk of serious physical harm or removal from the state, courts may issue warrants for immediate custody and must hold a hearing on the next judicial day after execution ([Tex. Fam. Code § 152.311](#)).

These statutes collectively establish a legislative intent that courts act swiftly and decisively to protect children in emergencies, with specific deadlines and mandatory duties.

Case Law

Texas appellate and Supreme Court decisions reinforce and interpret these statutory duties:

- **Judicial Discretion and Parens Patriae Duty:** Courts have broad discretion to issue immediate protective orders for children and are charged with a *parens patriae* duty to protect children within their jurisdiction ([In re M.G.M., 163 S.W.3d 191 \(Tex. 2005\)](#); [Saavedra v. Schmidt, 96 S.W.3d 533 \(Tex. App. 2002\)](#); [Garza v. Harney, 726 S.W.2d 198 \(Tex. App. 1987\)](#)).
- **Mandamus as a Remedy:** When a court abuses its discretion by refusing to hear or act on an emergency motion, and no adequate appellate remedy exists, mandamus relief is available ([In re Pate, 407 S.W.3d 416 \(Tex. App. 2013\)](#); [Milner v. Kilgore, 718 S.W.2d 759 \(Tex. App. 1986\)](#)).
- **Imminent Danger Standard:** Courts must act when there is evidence of imminent danger of physical or emotional harm to a child, and a refusal to do so may be an abuse of discretion ([In re Lau, 89 S.W.3d 757 \(Tex. App. 2002\)](#); [Forbes v. Wettman, 598 S.W.2d 231 \(Tex. 1980\)](#)).
- **Emergency Jurisdiction:** Texas courts may exercise emergency jurisdiction to protect a child present in the state who is threatened with mistreatment or abuse, even if another state has concurrent jurisdiction ([White v. Blake, 859 S.W.2d 551 \(Tex. App. 1993\)](#); [Jeffries, In re, 979 S.W.2d 429 \(Tex. App. 1998\)](#)).
- **Judicial Oversight of Agency Action:** The Department of Family and Protective Services' emergency actions are subject to judicial oversight, underscoring the court's role as a safeguard for the child's welfare ([In re Justin M., 549 S.W.3d 330 \(Tex. App. 2018\)](#); [In re C.M.D., NUMBER 13-20-00402-CV \(Tex. App. Feb 11, 2021\)](#)).

Analysis

Statutory Duties and Judicial Accountability

The Texas Family Code imposes explicit duties on courts to act promptly in emergency situations involving children. The statutes cited above require courts to hold hearings within strict timeframes and to issue protective orders when statutory criteria are met. These provisions are not merely aspirational; they are mandatory, reflecting the legislature's intent to prioritize child safety and welfare above procedural convenience or judicial backlog.

A court's refusal to hear a properly filed emergency motion—especially where the motion alleges imminent harm and is supported by evidence—constitutes a failure to comply with these statutory mandates. Such a refusal can result in direct injury to the child, precisely the harm the statutory framework is designed to prevent. The legislative scheme provides for judicial intervention as a critical safeguard, and failure to act undermines the entire protective apparatus.

Abuse of Discretion and Mandamus Relief

Texas appellate courts have consistently held that a trial court's refusal to exercise its jurisdiction or to act on an emergency motion affecting a child's welfare may be reviewed for abuse of discretion. If the refusal results in direct injury to the child and there is no adequate remedy at law, mandamus relief is available to compel the court to act ([In re Pate, 407 S.W.3d 416 \(Tex. App. 2013\)](#); [Milner v. Kilgore, 718 S.W.2d 759 \(Tex. App. 1986\)](#)).

The abuse of discretion standard is met when a court acts arbitrarily, unreasonably, or without reference to guiding rules and principles. In the context of emergency child protection, the guiding rules are the statutory mandates for prompt hearings and protective orders. A refusal to hear an emergency motion, absent a valid legal basis, is likely to be viewed as arbitrary and contrary to legislative intent.

Parens Patriae and the State's Protective Role

Texas courts, echoing the doctrine of parens patriae, recognize a fundamental duty to protect children within their jurisdiction. This duty is not merely theoretical; it is operationalized through statutes and case law that empower and require courts to intervene when a child is at risk ([In re M.G.M., 163 S.W.3d 191 \(Tex. 2005\)](#); [Saavedra v. Schmidt, 96 S.W.3d 533 \(Tex. App. 2002\)](#)).

A refusal to hear an emergency motion seeking relief for a child in imminent danger is a failure to exercise this parens patriae responsibility. The broader implication is that the court, and by extension the state, has abdicated its protective role, potentially exposing children to preventable harm and eroding public confidence in the legal system's ability to safeguard vulnerable individuals.

Jurisdictional Considerations and Emergency Authority

Texas law provides that courts may exercise emergency jurisdiction to protect a child present in the state who is threatened with mistreatment or abuse, even if another state has concurrent jurisdiction ([White v. Blake, 859 S.W.2d 551 \(Tex. App. 1993\)](#); [Jeffries, In re, 979 S.W.2d 429 \(Tex. App. 1998\)](#)). This emergency authority is intended to ensure that no child falls through the cracks due to jurisdictional disputes.

A refusal to hear an emergency motion in such circumstances not only risks direct harm to the child but also undermines the purpose of emergency jurisdiction provisions, which are designed to provide immediate protection regardless of ongoing custody disputes or interstate complexities.

Judicial Oversight and Procedural Safeguards

The statutory and case law framework emphasizes the importance of judicial oversight in emergency child protection matters. The Department of Family and Protective Services' authority to remove a child in emergencies is explicitly subject to court review, and courts are required to hold prompt hearings to assess the necessity and propriety of such removals ([In re Justin M., 549 S.W.3d 330 \(Tex. App. 2018\)](#); [In re C.M.D., NUMBER 13-20-00402-CV \(Tex. App. Feb 11, 2021\)](#)).

A court's refusal to hear an emergency motion disrupts this system of checks and balances, potentially allowing agency action to go unreviewed or, conversely, leaving children unprotected when agency intervention is not forthcoming. The broader implication is a breakdown in the procedural safeguards designed to ensure that emergency interventions are both necessary and effective.

Consequences for the Child and the Legal System

The most immediate consequence of a court's refusal to hear a properly filed emergency motion is the risk of direct injury to the child—physical, emotional, or psychological harm that could have been prevented by timely judicial intervention. Beyond the individual case, such refusals have systemic implications:

- **Legal Liability and Accountability:** Courts that fail to act in accordance with statutory duties may be subject to extraordinary remedies, such as mandamus, and their decisions may be reversed on appeal if an abuse of discretion is found.
- **Erosion of Public Trust:** The public's confidence in the legal system's ability to protect children is undermined when courts fail to fulfill their protective role.
- **Potential for Legislative Reform:** Persistent failures by courts to hear emergency motions may prompt legislative action to clarify or strengthen judicial duties and remedies.
- **Impact on Agency Practice:** If courts are perceived as unreliable in providing timely relief, agencies may be less likely to seek judicial intervention, potentially leaving children at greater risk.

Exceptions and Caveats

While the law is clear in imposing duties on courts to act in emergencies, there are important caveats:

- **Discretion in Assessing Evidence:** Courts retain discretion to determine whether the evidence presented in an emergency motion meets the statutory threshold for imminent danger or immediate harm ([In re Lau, 89 S.W.3d 757 \(Tex. App. 2002\)](#); [Forbes v. Wettman, 598 S.W.2d 231 \(Tex. 1980\)](#)). A refusal to grant relief is not necessarily an abuse of discretion if the evidence is insufficient.

- **Mandamus is an Extraordinary Remedy:** Not every refusal to hear an emergency motion will result in mandamus relief; the standard is high, requiring a clear abuse of discretion and no adequate remedy at law ([In re Pate, 407 S.W.3d 416 \(Tex. App. 2013\)](#); [Milner v. Kilgore, 718 S.W.2d 759 \(Tex. App. 1986\)](#)).
- **Jurisdictional Limits:** Emergency jurisdiction is temporary and does not confer authority to make permanent custody determinations unless other jurisdictional prerequisites are met ([Abderholden v. Morizot, 856 S.W.2d 829 \(Tex. App. 1993\)](#)).

Conclusion

In Texas, the refusal of a court to hear a properly filed emergency motion seeking relief for a child—where that refusal results in direct injury—has profound legal and systemic implications. Statutory mandates and case law make clear that courts have a duty to act promptly to protect children in emergencies. Failure to do so may constitute an abuse of discretion, subject the court's decision to mandamus relief, and undermine the state's *parens patriae* responsibility. The broader consequences include potential legal liability, erosion of public trust, and the risk of systemic failures in child protection. Ultimately, the law is designed to ensure that children's safety is paramount, and judicial inaction in the face of emergency can have far-reaching and deeply troubling effects.

Legal Authorities

[In re E.C.R., 402 S.W.3d 239, 56 Tex. Sup. Ct. J. 666 \(Tex. 2013\)](#)

Texas Supreme Court

Extract

The Family Code allows a court to terminate a parent's rights to her child if the child has been in the State's custody for at least nine months, and the State proves, by clear and convincing evidence, that the parent failed to comply with a court order that specified what she had to do to get her child back. Tex. Fam.Code § 161.001(1)(O). The provision applies, however, only if the child was removed from the parent under Family Code Chapter 262 for 'abuse or neglect of the child.' Id. We must decide whether abuse or neglect includes placing the child's physical health or safety at substantial risk, as outlined below. Because we conclude that it does, and because the parent's abuse or neglect of another child is relevant to that determination, we reverse in part the court of appeals' judgment and remand the case to that court.

Summary

Conditions under which a parent's rights can be terminated, emphasizing that a child's removal due to substantial risk to their health or safety qualifies as "abuse or neglect." This interpretation is crucial in understanding the broader implications of emergency motions for child relief. If a court refuses to hear such a motion, it could potentially overlook situations where a child's health or safety is at substantial risk, which is a recognized ground for state intervention and parental rights termination under Texas law.

[Soto-Ruphuy v. Yates, 687 S.W.2d 19 \(Tex. App. 1984\)](#)

Texas Court of Appeals

Extract

Ernesto argues that the Texas district court has jurisdiction under section 11.53(a)(3)(B), the 'emergency protection' section. That section confers jurisdiction upon a Texas court when the child is physically present in the State and 'it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or there is a serious and immediate question concerning the welfare of the child[.]' ... A serious and immediate question concerning the welfare of the child, as that language is interpreted under section 14.10(c), is said to contemplate a situation where the child is in imminent danger of physical or emotional harm and immediate action is necessary to protect the child.

Summary

Texas law provides specific jurisdictional grounds under section 11.53(a)(3)(B) for courts to intervene in emergency situations to protect a child. This is applicable when a child is in imminent danger of physical or emotional harm, and immediate action is necessary. The passage highlights the importance of having evidence to support claims of imminent danger to justify the court's jurisdiction in such emergency matters.

[In re A.S., 13-23-00156-CV \(Tex. App. May 05, 2023\)](#)

Texas Court of Appeals

Extract

The removal of a child on an emergency basis before fully litigating custody matters 'is an extreme measure that may be taken only when the circumstances indicate a danger to the physical health and welfare of the child and the need for his [or her] protection is so urgent that immediate removal from the home is necessary.' In re Pate, 407 S.W.3d 416, 419 (Tex. App.-Houston [14th Dist.] 2013, orig. proceeding). Unless the evidence reflects the existence of each requirement set forth in this section, the court must return the child to the custody of its parents pending further litigation.

Summary

Conditions under which a court may order the emergency removal of a child, emphasizing that such measures are extreme and require evidence of immediate danger to the child's health or welfare. This suggests that if a court refuses to hear an emergency motion, it may be due to a lack of evidence meeting these stringent requirements. The passage implies that the court must adhere to statutory standards, and failure to do so could result in the child being returned to potentially harmful conditions. This highlights the importance of courts carefully considering emergency motions to prevent direct injury to children.

[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.

Summary

The court has a duty to consider such motions to ensure the child's safety and welfare. If a court refuses to hear a properly filed emergency motion, it may be neglecting its responsibility under this statute, potentially leading to direct injury to the child.

[In re Lau, 89 S.W.3d 757 \(Tex. App. 2002\)](#)

Texas Court of Appeals

Extract

The Texas Supreme Court has defined 'serious immediate question' to mean imminent danger of physical or emotional harm that requires immediate action to protect the child. Forbes v. Wettman, 598 S.W.2d 231, 232 (Tex.1980) (orig.proceeding). A trial court abuses its discretion in denying a petition for writ of habeas corpus by the party with the legal right to possession unless it finds upon sufficient evidence that the child was in imminent danger of physical or emotional harm. Id. at 232; Rocha, 809 S.W.2d at 683.

Summary

Texas law requires a court to act when there is an imminent danger of physical or emotional harm to a child. If a court refuses to hear an emergency motion without finding sufficient evidence of such danger, it may be considered an abuse of discretion. This suggests that courts have a duty to protect children from harm and must provide a written order with findings if they deny relief. The implications are that courts must carefully consider emergency motions related to child welfare and provide clear justification for their decisions.

[Garza v. Harney, 726 S.W.2d 198 \(Tex. App. 1987\)](#)

Texas Court of Appeals

Extract

We initially note that a trial court has broad discretion in issuing orders for the immediate protection of a child. McElreath v. Stewart, 545 S.W.2d at 958; Milner v. Kilgore, 718 S.W.2d at 762. After carefully analyzing the few authorities pertinent to the facts before us, we have concluded that the district court was empowered to act, but only on a short term, temporary, emergency basis. We do not construe the foregoing statutes to bar a court from making emergency orders to protect a child. Rather, we agree with, and adopt, the interpretation of the emergency grant of jurisdiction stated in Hache v. Riley, 186 N.J.Super. 119, 451 A.2d 971 (Ch.Div.1982). In that case, the New Jersey court pointed out that a court could exercise emergency jurisdiction under the Uniform Act whenever there was a potential for immediate harm.

Summary

Texas courts have broad discretion to issue emergency orders for the protection of a child. This discretion is supported by the Uniform Child Custody Jurisdiction Act, which allows courts to exercise emergency jurisdiction when there is potential for immediate harm to a child. The case of Garza v. Harney illustrates that courts are empowered to act on a temporary, emergency basis to protect children, even when jurisdictional issues with other states or nations are present. This suggests that a refusal to hear a properly filed emergency motion could be seen as a failure to exercise this discretion, potentially leading to direct harm to the child.

[In re C.M.D., NUMBER 13-20-00402-CV \(Tex. App. Feb 11, 2021\)](#)

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.

Summary

Procedures and authority granted to the Department of Family and Protective Services under Chapter 262 of the Texas Family Code for emergency removal of a child. It emphasizes that such emergency actions are subject to judicial oversight, indicating that the courts have a role in reviewing and overseeing these emergency decisions. This implies that if a court refuses to hear a properly filed emergency motion, it could potentially undermine the judicial oversight intended by the statute, which is crucial for protecting the child's health and safety.

[Milner v. Kilgore, 718 S.W.2d 759 \(Tex. App. 1986\)](#)

Texas Court of Appeals

Extract

Mandamus issues only to correct a clear abuse of discretion or the violation of a duty imposed by law where there is no adequate remedy at law." ... "However, the situation contemplated under sections 11.53(a)(3) and 14.10 of the Family Code is one where the child is in imminent danger of physical or emotional harm and immediate action is necessary to protect the child.

Summary

A writ of mandamus can be issued to correct a court's clear abuse of discretion or violation of a legal duty when there is no adequate remedy at law. In the context of child custody, this is particularly relevant when a child is in imminent danger of harm, and immediate action is necessary. The passage suggests that if a court refuses to hear an emergency motion under such circumstances, it may be seen as an abuse of discretion, potentially justifying mandamus relief.

[Abderholden v. Morizot, 856 S.W.2d 829 \(Tex. App. 1993\)](#)

Texas Court of Appeals

Extract

By its terms, § 11.53(a)(3)(B) confers jurisdiction only in an emergency. Generally, emergency jurisdiction confers only temporary jurisdiction to prevent irreparable and immediate harm to children. Absent satisfaction of other UCCJA jurisdictional prerequisites, § 11.53(a)(3)(B) does not confer upon the state exercising emergency jurisdiction the authority to make a permanent custody disposition. ... Limiting emergency jurisdiction under § 11.53(a)(3)(B) to issuance of appropriate temporary orders is consistent with other provisions of the Family Code and promotes the purposes of the Act.

Summary

This does not extend to permanent custody decisions unless other jurisdictional requirements are met. This interpretation aligns with the broader purposes of the Family Code, emphasizing the protection of children in emergencies while maintaining jurisdictional integrity.

[Creavin v. Moloney, 773 S.W.2d 698 \(Tex. App. 1989\)](#)

Texas Court of Appeals

Extract

A trial court's refusal to exercise its jurisdiction over a suit affecting the parent-child relationship will not be disturbed on appeal absent a clear abuse of discretion. See Haley v. Haley, 713 S.W.2d 801, 804 (Tex.App.--Houston [1st Dist.] 1986, no writ).

Summary

A trial court's decision not to exercise jurisdiction in cases affecting the parent-child relationship is typically upheld unless there is a clear abuse of discretion. This suggests that if a court refuses to hear a properly filed emergency motion for a child, the decision may not be overturned on appeal unless it can be shown that the court clearly abused its discretion. This sets a high bar for challenging such refusals, potentially impacting the ability to seek timely relief for a child in emergency situations.

[In re M.G.M., 163 S.W.3d 191 \(Tex. 2005\)](#)

Texas Supreme Court

Extract

"A trial court enjoys broad discretion in issuing orders for immediate protection of a child." Saavedra v. Schmidt, 96 S.W.3d 533, 544 (Tex.App.-Austin 2002, no pet.) (citing Garza v. Harney, 726 S.W.2d 198, 202 (Tex.App.-Amarillo 1987, orig. proceeding)). "States have a parens patriae duty to children within their borders, and the possibility that allegations of immediate harm might be true is sufficient for a court to assume temporary emergency jurisdiction in the best interests of the child under the UCCJEA." Id. at 544. Even the duty of states to recognize and enforce a custody determination of another state must yield if circumstances require temporary emergency orders to protect the child. Id.

Summary

The Texas Family Code and the UCCJEA provide that Texas courts have broad discretion to issue orders for the immediate protection of a child. This includes the ability to assume temporary emergency jurisdiction if a child is present in Texas and is threatened with mistreatment or abuse. The court's duty to protect the child can override the obligation to recognize custody determinations from other states if immediate harm is alleged. This suggests that a refusal to hear an emergency motion could be seen as a failure to exercise this discretion and duty, potentially leading to broader implications for the court's responsibility to protect children.

[Jeffries, In re, 979 S.W.2d 429 \(Tex. App. 1998\)](#)

Texas Court of Appeals

Extract

Section 152.003 of the UCCJA provides that a Texas court 'has jurisdiction to make a child custody determination' if: ... (3) the child is physically present in Texas and: ... (B) it is necessary in an emergency to protect the child because the child has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or there is a serious and immediate question concerning the welfare of the child; ... 'Subject matter jurisdiction is an issue that may be raised for the first time on appeal; it may not be waived by the parties.' Texas Ass'n of Bus. v. Texas Air Control Bd., 852 S.W.2d 440, 445 (Tex.1993). For this reason, we conclude that a party to a custody proceeding may challenge the court's jurisdiction under the UCCJA at any stage in the proceeding.

Summary

Texas courts have jurisdiction to make child custody determinations in emergency situations where a child is physically present in Texas and there is a necessity to protect the child from mistreatment, abuse, or neglect. The passage also highlights that subject matter jurisdiction can be challenged at any stage of the proceeding, emphasizing the importance of addressing jurisdictional issues promptly, especially in cases involving the welfare of a child.

[White v. Blake, 859 S.W.2d 551 \(Tex. App. 1993\)](#)

Texas Court of Appeals

Extract

Thus, under the PKPA Texas had only concurrent jurisdiction over the child, K_B_W_, and Respondent could only have made a determination affecting custody of K_B_W_ if the Alabama court no longer had jurisdiction, or it had declined to exercise its jurisdiction over the child. Consequently, he argues, the only type of order Respondent had jurisdiction to enter was an order 'on a short term, temporary, emergency basis.' Citing Garza v. Harney, 726 S.W.2d 198, 203 (Tex.App.--Amarillo 1987, no writ). Relator argues that Respondent's protective order exceeds the scope of her jurisdiction and is therefore void. We disagree with Relator's arguments. Under the PKPA § 1738A(c)(2)(C) and Chapter 71 of the TEXAS FAMILY CODE, Respondent had jurisdiction to enter a protective order on behalf of K_B_W_. Sections 1738A(a) and (c)(2)(C) provide: (a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsection (f) of this section, any child custody determination made consistently with the provisions of this section by a court of another State. ... (c) A child custody determination made by a court of a State is consistent with the provisions of this section only if-- (2) one of the following conditions is met: (C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse; (emphasis added)

Summary

Jurisdictional authority of Texas courts under the PKPA and Texas Family Code to issue emergency protective orders for children physically present in Texas when there is a threat of mistreatment or abuse. It highlights that Texas courts can exercise jurisdiction in emergency situations to protect a child, even if another state has concurrent jurisdiction, provided the child is present in Texas and there is an immediate threat. This implies that Texas courts have a duty to hear emergency motions seeking relief for a child in such circumstances.

[Saavedra v. Schmidt, 96 S.W.3d 533 \(Tex. App. 2002\)](#)

Texas Court of Appeals

Extract

Under section 152.204, a court of this state may assume temporary jurisdiction over a custody dispute if the child is present in this state and it is necessary to protect a child subjected to or threatened with mistreatment or abuse. Tex. Fam. Code Ann. § 152.204. A trial court enjoys broad discretion in issuing orders for immediate protection of a child. Garza v. Harney, 726 S.W.2d 198, 202 (Tex.App.-Amarillo 1987, orig. proceeding). States have a parens patriae duty to children within their borders, and the possibility that allegations of immediate harm might be true is sufficient for a court to assume temporary emergency jurisdiction in the best interests of the child under the UCCJEA.

Summary

Texas courts have the authority to assume temporary emergency jurisdiction in child custody disputes if the child is present in Texas and there is a necessity to protect the child from mistreatment or abuse. This is supported by the Texas Family Code and the UCCJEA, which emphasize the state's duty to protect children within its borders. The court's discretion in these matters is broad, allowing for immediate protective orders when there is a possibility of harm. This implies that if a court refuses to hear an emergency motion that seeks to protect a child, it may be neglecting its duty under the parens patriae doctrine and the provisions of the UCCJEA.

[Forbes v. Wettman, 598 S.W.2d 231 \(Tex. 1980\)](#)

Texas Supreme Court

Extract

Under Texas Family Code Annotated, section 14.10(a), a court is required to grant a writ of habeas corpus if it finds that the relator is entitled to possession of a child by virtue of a court order. We have held that mandamus is a proper remedy to compel enforcement of the relator's right to custody. Lamphere v. Chrisman, 554 S.W.2d 935 (Tex.1977). ... This Court discussed the meaning of 'serious immediate question of the welfare of the child' in McElreath v. Stewart, 545 S.W.2d 955 (Tex.1977). We stated: 'The court contemplated a situation where the child was in imminent danger of physical or emotional harm and immediate action was necessary to protect the child.' 545 S.W.2d at 958.

Summary

Texas law requires courts to act when a child's welfare is in immediate danger, specifically through the issuance of a writ of habeas corpus if a relator is entitled to custody. The court's refusal to hear an emergency motion could be challenged through mandamus if it fails to protect a child in imminent danger. This suggests that the legal framework is designed to prioritize the child's immediate safety and provides mechanisms to enforce this priority.

[In re Justin M., 549 S.W.3d 330 \(Tex. App. 2018\)](#)

Texas Court of Appeals

Extract

Chapter 262 of the Texas Family Code sets forth the procedures and substantive requirements by which the Department may take possession of a child when necessary to protect that child's health and safety. Under that chapter, the Department is granted authority in urgent circumstances to remove a child from his or her home without prior notice. See TEX. FAM. CODE ANN. §§ 262.101, 262.104 (West Supp. 2017). This emergency authority is subject to judicial oversight. See TEX. FAM. CODE ANN. §§ 262.102, 262.106 –.107 (West Supp. 2017).

Summary

Legal framework under Chapter 262 of the Texas Family Code, which provides the Department with the authority to remove a child from their home in urgent situations to protect their health and safety. This authority is subject to judicial oversight, indicating that the courts have a role in reviewing such emergency actions. The implication is that if a court refuses to hear a properly filed emergency motion, it may be failing in its duty to provide the necessary judicial oversight intended to protect the child's welfare.

[In re Pate, 407 S.W.3d 416 \(Tex. App. 2013\)](#)

Texas Court of Appeals

Extract

Mandamus relief is appropriate only if a trial court abuses its discretion and no adequate appellate remedy exists. In re CSX Corp., 124 S.W.3d 149, 151 (Tex.2003). The order about which Pate complains is a temporary order in a suit affecting the parent-child relationship, which is not subject to an interlocutory appeal under the Texas Family Code. Tex. Fam.Code Ann. § 6.507. Accordingly, Pate lacks a clear and adequate remedy at law and has thus satisfied the first requirement for mandamus relief. See In re Tex. Dep't of Family & Protective Servs., 255 S.W.3d 613, 614 (Tex.2008) (orig. proceeding); In re Allen, 359 S.W.3d 284, 288 (Tex.App.-Texarkana 2012, orig. proceeding).

Summary

When a court refuses to hear a properly filed emergency motion, resulting in direct injury to a child, the affected party may seek mandamus relief if the court's refusal constitutes an abuse of discretion and there is no adequate appellate remedy. This suggests that in such situations, the legal system provides a mechanism to address the court's refusal through mandamus relief, highlighting the importance of judicial discretion and the availability of remedies in urgent child welfare cases.

[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

The Texas Family Code provides specific criteria that must be met before a court can issue an emergency order for the conservatorship of a child without prior notice and a hearing. This includes finding immediate danger to the child's physical health or safety, among other conditions. The passage highlights the importance of the court's role in assessing the urgency and necessity of such orders to protect the child. If a court refuses to hear a properly filed emergency motion, it could potentially result in harm to the child if the criteria for immediate danger are met but not addressed.

[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, unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved, a full adversary hearing shall be held not later than the 14th day after the date the child was taken into possession by the governmental entity, unless the court grants an extension under Subsection (e) or (e-1).

Summary

Requirement for a full adversary hearing to be held within 14 days after a child is taken into possession by a governmental entity, unless an extension is granted. This requirement ensures that the court promptly addresses the situation and makes a determination regarding the child's welfare. The broader implication is that the court is mandated to act swiftly to protect the child's interests, and a refusal to hear an emergency motion could potentially violate this statutory requirement, leading to direct injury to the child.

[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 into 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 is required to order the return of a child taken without a court order unless specific conditions are met that justify the child's continued removal. This implies that the court has a duty to hear cases involving emergency motions for child protection to determine if these conditions are met. If a court refuses to hear such a motion, it could potentially result in a failure to protect the child from harm, which is contrary to the legislative intent of ensuring child safety.

[40 Tex. Admin. Code § 700.1103 40 Tex. Admin. Code § 700.1103 Provision of In-Home Services When an Emergency Hearing Cannot Be Held Within Legally Required Time Limits](#)

Extract

When the Texas Department of Protective and Regulatory Services has removed a child from a home without a court order pursuant to Texas Family Code (TFC), §262.104, and must return the child to the home because an emergency hearing cannot be held within the time limits required in TFC, §262.106(c), Protective Services for Families and Children must provide whatever services it can in the home to protect the child from further harm.

Summary

When a child is removed from a home without a court order and an emergency hearing cannot be held within the required time limits, the Department of Protective and Regulatory Services is obligated to provide in-home services to protect the child from further harm. This indicates that there are procedural safeguards in place to protect children even when the court system is unable to act within the required time frame.

[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... An order under Subsection (a) may be rendered without notice and an adversary hearing if the order is an emergency order sought by a governmental entity under Chapter 262.

Summary

Texas law allows courts to issue temporary orders for the safety and welfare of a child, including emergency orders without notice and an adversary hearing if sought by a governmental entity. This suggests that the law prioritizes the child's safety and welfare, allowing for swift action in emergencies. If a court refuses to hear a properly filed emergency motion, it could potentially contradict the intent of this provision, which is to ensure the child's immediate safety and welfare. The broader implication is that such a refusal could be seen as neglecting the statutory duty to protect children, potentially leading to legal challenges or reforms to ensure compliance with the law.

[Tex. Fam. Code § 109.001 Tex. Fam. Code § 109.001 Temporary Orders During Pendency of Appeal](#)

Extract

In a suit affecting the parent-child relationship, on the motion of any party or on the court's own motion and after notice and hearing, the court may make any order necessary to preserve and protect the safety and welfare of the child during the pendency of an appeal as the court may deem necessary and equitable... A party may seek review of the trial court's temporary order under this section by: petition for writ of mandamus; or proper assignment in the party's brief.

Summary

During the pendency of an appeal in a suit affecting the parent-child relationship, the court has the authority to make any order necessary to protect the child's safety and welfare. This includes appointing temporary conservators, requiring temporary support, and enjoining parties from disturbing the peace of the child. If a court refuses to hear a properly filed emergency motion, it could potentially be seen as neglecting its duty to protect the child's welfare. The passage also provides a mechanism for review of the trial court's temporary order through a petition for writ of mandamus or proper assignment in the party's brief, which suggests that there are legal remedies available if a court fails to act appropriately.

[Tex. Fam. Code § 261.504 Tex. Fam. Code § 261.504 Required Findings; Issuance of Protective Order](#)

Extract

At the close of a hearing on an application for a protective order under this subchapter, the court shall find whether there are reasonable grounds to believe that: the child: (A) is a victim of abuse or neglect; or (B) has a history of being abused or neglected; and there is a threat of: (A) immediate or continued abuse or neglect to the child; (B) someone illegally taking the child from the home in which the child is placed; (C) behavior that poses a threat to the caregiver with whom the child is placed; or (D) someone committing an act of violence against the child or the child's caregiver.

Summary

The court is required to make specific findings regarding the presence of abuse or neglect and the threat of continued harm to the child. If such findings are made, the court must issue a protective order. This indicates that the court has a mandatory duty to assess the situation and provide protection if the criteria are met. The refusal to hear a properly filed emergency motion could potentially violate this duty, leading to broader implications such as failure to protect the child and possible legal consequences for the court.

[Tex. Fam. Code § 262.404 Tex. Fam. Code § 262.404 Filing Suit; Petition Requirements](#)

Extract

The court shall hold a hearing on the petition not later than the 14th day after the date the petition is filed unless the court finds good cause for extending that date for not more than 14 days.

Summary

The court is required to hold a hearing on a petition not later than 14 days after it is filed, unless there is good cause to extend this period by no more than an additional 14 days. This requirement underscores the importance of timely judicial intervention in cases involving the welfare of a child. If a court refuses to hear a properly filed emergency motion within this timeframe, it could potentially result in a failure to protect the child from harm, which may have broader implications in terms of legal accountability and the child's safety.

[Tex. Fam. Code § 264.203](#) [Tex. Fam. Code § 264.203 Required Participation](#)

Extract

The court shall hold a hearing on the petition not later than the 14th day after the date the petition is filed unless the court finds good cause for extending that date for not more than 14 days.

Summary

The court is mandated to hold a hearing on a petition related to child welfare within a specific timeframe unless there is a justified reason for delay. This suggests that there is a legal obligation for the court to act promptly in matters concerning the welfare of a child. If a court refuses to hear a properly filed emergency motion, it could be seen as a failure to comply with this statutory requirement, potentially leading to legal consequences or implications for the court's decision-making process.

[Tex. Fam. Code § 152.311](#) [Tex. Fam. Code § 152.311 Warrant to Take Physical Custody of Child](#)

Extract

Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is imminently likely to suffer serious physical harm or be removed from this state. If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

Summary

Texas law provides a mechanism for the immediate protection of a child who is at risk of serious physical harm or removal from the state. The law mandates that a hearing on such a petition must occur on the next judicial day after the warrant is executed, or as soon as possible thereafter. This indicates the importance of timely judicial intervention in cases where a child's safety is at risk. If a court refuses to hear a properly filed emergency motion, it could potentially violate this statutory requirement, leading to broader implications such as the failure to protect the child and possible legal consequences for not adhering to the statutory mandate.

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

Extract

In determining whether to appoint a party as a sole or joint managing conservator, the court shall consider evidence of the intentional use of abusive physical force, or evidence of sexual abuse, by a party directed against the party's spouse, a parent of the child, or any person younger than 18 years of age committed within a two-year period preceding the filing of the suit or during the pendency of the suit.

Summary

The Texas Family Code requires courts to consider evidence of abuse or neglect when determining conservatorship and access to a child. This implies that if a court refuses to hear an emergency motion seeking relief for a child, it may be neglecting its duty to consider such evidence, potentially resulting in harm to the child. The broader implication is that the court's refusal could be seen as a failure to protect the child's best interests, which is a fundamental principle in family law.

[Tex. Fam. Code § 262.1015](#) [Tex. Fam. Code § 262.1015 Removal of Alleged Perpetrator; Offense](#)

Extract

A court may issue a temporary restraining order in a suit by the department for the removal of an alleged perpetrator under Subsection (a) if the department's petition states facts sufficient to satisfy the court that: there is an immediate danger to the physical health or safety of the child or the child has been a victim of

sexual abuse; there is no time, consistent with the physical health or safety of the child, for an adversary hearing; the child is not in danger of abuse from a parent or other adult with whom the child will continue to reside in the residence of the child; the parent or other adult with whom the child will continue to reside in the child's home is likely to: (A) make a reasonable effort to monitor the residence; and (B) report to the department and the appropriate law enforcement agency any attempt by the alleged perpetrator to return to the residence; and the issuance of the order is in the best interest of the child.

Summary

The Texas Family Code provides a mechanism for the Department of Family and Protective Services to seek a temporary restraining order for the removal of an alleged perpetrator of child abuse from the child's residence. This is contingent upon the department's petition demonstrating immediate danger to the child's physical health or safety, among other criteria. The court's refusal to hear such a motion, when properly filed and meeting these criteria, could result in a failure to protect the child from harm, which is contrary to the intent of the statute.

[Tex. Fam. Code § 262.106 Tex. Fam. Code § 262.106 Initial Hearing After Taking Possession of Child In Emergency Without Court Order](#)

Extract

The court in which a suit has been filed after a child has been taken into possession without a court order by a governmental entity shall hold an initial hearing on or before the first business day after the date the child is taken into possession. The court shall render orders that are necessary to protect the physical health and safety of the child. If the court is unavailable for a hearing on the first business day, then, and only in that event, the hearing shall be held no later than the first business day after the court becomes available, provided that the hearing is held no later than the third business day after the child is taken into possession.

Summary

Requirement for a court to hold an initial hearing promptly after a child is taken into possession by a governmental entity without a court order. This hearing is crucial to ensure that orders necessary to protect the child's physical health and safety are rendered. The passage implies that if a court fails to hold such a hearing within the specified timeframe, it could result in a failure to protect the child, potentially leading to direct injury. This requirement underscores the importance of timely judicial intervention in emergency situations involving children.

This memo was compiled by Vincent AI based on vLex materials available as of May 02, 2025. [View full answer on vLex](#)