

## Question

A litigant walks into a court room on a day it was closed due to inclement weather (because he didn't know it was closed). The only judge in the building was Judge Munford, who decided to hear the case which was an application for a protective order. For some reason, respondent was ordered to show cause as to why it shouldn't be issued against him, which seems backwards, and when they arrived, no hearing was held.. no findings were made, and no evidence was presented. he just awarded the mother full custody and sole use of the house, and severed the parent-child relationship and reset the case to January 22, 2024, despite the parties agreeing to continue the case to obtain legal counsel. There was no protective order issued. he literally just evicted him on the spot without a hearing, and reset the case for a later date. List everything federally wrong with this and state violations. United States (Texas + Related Federal) Answer Short response

The judge's actions in this scenario violated both federal constitutional due process rights and multiple provisions of Texas state law, including requirements for notice, hearing, evidentiary findings, and procedural safeguards in family law and protective order proceedings. The respondent was deprived of fundamental rights without due process, and the court failed to comply with statutory mandates governing temporary orders, exclusion from residence, and the parent-child relationship. Summary This case presents a series of grave procedural and substantive violations. Federally, the respondent's due process rights under the Fourteenth Amendment were infringed when the judge made life-altering decisions—granting full custody, exclusive use of the home, and severing the parent-child relationship—without notice, a hearing, presentation of evidence, or findings of fact. These actions contravene established constitutional protections for parental rights and the right to be heard before deprivation of liberty or property interests. At the state level, the judge disregarded explicit requirements of the Texas Family Code, which mandate notice, a hearing, and evidentiary support before issuing temporary orders affecting custody or excluding a party from their residence. The court also failed to follow statutory procedures for protective orders and did not inform the respondent of the right to counsel or provide for legal representation, as required in cases involving the potential termination of parental rights. The cumulative effect is a profound violation of both federal and state law.

Background and Relevant Law Federal Constitutional Due Process The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits states from depriving any person of life, liberty, or property without due process of law. Parental rights are recognized as fundamental liberty interests, and any state action that interferes with these rights must be accompanied by robust procedural safeguards, including notice, a meaningful opportunity to be heard, and a decision based on evidence and findings. Texas courts have repeatedly affirmed that due process requires clear and convincing evidence before a court may issue orders that significantly interfere with parental rights, such as protective orders of extended duration or orders that effectively terminate the parent-child relationship. The Texas Supreme Court has held that expediency or administrative convenience cannot override a parent's constitutional right to

be heard (*In re E.R.*, 385 S.W.3d 552, 55 Tex. Sup. Ct. J. 1130 (Tex. 2012)).

**Texas Statutory Law Temporary Orders and Protective Orders** Temporary Orders Before Final Order: Under Texas Family Code § 105.001, a court may issue temporary orders regarding conservatorship, support, and possession of a child, but—except in limited emergency circumstances—such orders may only be rendered after notice and a hearing (Tex. Fam. Code § 105.001 [Effective 9/1/2025]). Orders excluding a parent from possession or access to a child require a verified pleading or affidavit. Exclusion from Residence: Texas Family Code § 83.006 provides that a person may only be excluded from their residence by a temporary ex parte order if the applicant files a sworn affidavit detailing the facts and circumstances justifying exclusion and appears in person to testify at a hearing. The court must make specific findings based on evidence of recent family violence and a clear and present danger (Tex. Fam. Code § 83.006). Protective Orders: Upon filing an application for a protective order, the court must set a hearing date within 14 days unless the applicant requests a later date (Tex. Fam. Code § 84.001). The court may grant exclusive possession of a residence as part of a protective order, but only after following statutory procedures and making appropriate findings (Tex. Fam. Code § 85.021). Emergency and Ex Parte Orders Emergency Orders: A court may issue emergency orders without notice and a hearing only if there is an immediate danger to the child's physical health or safety, and only after making specific findings based on evidence (Tex. Fam. Code § 262.102). Ex Parte Hearings: Ex parte hearings are generally prohibited unless specifically authorized, and if held, a record must be kept and provided to the parties upon request (Tex. Fam. Code § 262.206). Parental Rights and Right to Counsel Termination of Parent-Child Relationship: The Texas Family Code and federal due process require clear and convincing evidence before terminating parental rights. In cases initiated by a governmental entity, indigent parents are entitled to appointed counsel, and all parents must be informed of their right to legal representation (Tex. Fam. Code § 107.013). Best Interest of the Child: There is a strong presumption in Texas law that the best interest of the child is served by awarding custody to a natural parent, and any deviation must be supported by evidence showing significant impairment to the child's welfare (*Lewelling v. Lewelling*, 796 S.W.2d 164 (Tex. 1990)). Note: This presumption has been limited by subsequent case law (*In re T.J.S.*, 71 S.W.3d 452 (Tex. App. 2002)), but the requirement for evidentiary support remains. Case Law Procedural Safeguards: The Texas Supreme Court has held that orders affecting parental rights, such as protective orders or termination, require clear and convincing evidence and adherence to due process (*Stary v. Ethridge*, 23-0067 (Tex. May 02, 2025); *J.A.T. v. C.S.T.*, 641 S.W.3d 596 (Tex. App. 2022)). Right to Be Heard: Courts have emphasized that a parent's right to be heard cannot be sacrificed for expediency, and any deprivation of parental rights without a hearing or findings is unconstitutional (*In re E.R.*, 385 S.W.3d 552, 55 Tex. Sup. Ct. J. 1130 (Tex. 2012)). Fundamental Parental Rights: The Due Process Clause protects the fundamental right of parents to make decisions regarding their children, and any state interference must be justified by a compelling interest and supported by evidence (*In re Crystal Aubin*, 29 S.W.3d 199 (Tex. App. 2000)).

**Analysis Federal Due Process Violations Lack of Notice and Hearing** The most egregious federal violation is the deprivation of the respondent's liberty and property interests—custody of his child and possession of his

home—without notice or a meaningful opportunity to be heard. The Supreme Court has long held that due process requires notice and a hearing before the state may deprive an individual of significant interests (*In re E.R.*, 385 S.W.3d 552, 55 Tex. Sup. Ct. J. 1130 (Tex. 2012)). In this scenario, the respondent was summoned to court, but no hearing was held, no evidence was presented, and no findings were made. The judge's unilateral decision to award full custody and exclusive use of the home, and to sever the parent-child relationship, without any adversarial process, is a textbook violation of procedural due process. Absence of Evidentiary Basis Federal due process also requires that any order significantly interfering with parental rights be supported by clear and convincing evidence (*Stary v. Ethridge*, 23-0067 (Tex. May 02, 2025)). Here, the judge made no findings and considered no evidence. The respondent was not given an opportunity to contest the allegations or present a defense. This lack of evidentiary support renders the court's actions constitutionally infirm. Deprivation of Fundamental Parental Rights Parental rights are among the most protected liberty interests under the Constitution. Any state action that severs or substantially interferes with the parent-child relationship must be accompanied by heightened procedural safeguards, including the right to counsel, notice, a hearing, and a decision based on clear and convincing evidence (*J.A.T. v. C.S.T.*, 641 S.W.3d 596 (Tex. App. 2022); *In re Crystal Aubin*, 29 S.W.3d 199 (Tex. App. 2000)). The judge's actions in this case—severing the parent-child relationship and evicting the respondent without any process—constitute a direct violation of these fundamental rights. Texas State Law Violations Failure to Hold a Hearing and Make Findings Texas Family Code § 105.001 requires that temporary orders affecting conservatorship, support, or possession of a child be made only after notice and a hearing, except in narrowly defined emergency situations (Tex. Fam. Code § 105.001 [Effective 9/1/2025]). The judge in this case issued sweeping orders without any hearing or findings, in clear contravention of the statute. Similarly, Texas Family Code § 83.006 mandates that exclusion from a residence by temporary ex parte order requires a sworn affidavit, in-person testimony, and specific findings of recent family violence and clear and present danger. None of these procedural requirements were met. The respondent was excluded from his home without an affidavit, testimony, or findings (Tex. Fam. Code § 83.006). Improper Use of Show Cause Order The respondent was ordered to show cause as to why a protective order should not be issued against him, which reverses the normal burden of proof. Under Texas law, the applicant for a protective order bears the burden of proof, and the respondent is entitled to notice and a hearing to contest the allegations (Tex. Fam. Code § 84.001). The court's failure to follow this procedure is a violation of both statutory and constitutional law. No Protective Order Issued Despite the application for a protective order, no such order was issued. Instead, the judge made orders affecting custody and possession of the home without following the procedures required for protective orders, including setting a hearing within 14 days, providing notice, and making findings based on evidence (Tex. Fam. Code § 84.001; Tex. Fam. Code § 85.021). Exclusion from Residence Without Statutory Basis Texas law allows a court to grant exclusive possession of a residence as part of a protective order, but only after following specific procedures and making appropriate findings (Tex. Fam. Code § 85.021). The judge's decision to evict the respondent without a hearing, evidence, or findings is a clear violation of

these requirements. Failure to Inform of Right to Counsel In cases involving the potential termination of the parent-child relationship, Texas law requires that parents be informed of their right to counsel, and indigent parents are entitled to appointed counsel (Tex. Fam. Code § 107.013). The judge did not inform the respondent of this right, nor did he appoint counsel, despite making orders that effectively severed the parent-child relationship. No Record of Ex Parte Hearing If an ex parte hearing is held, Texas law requires that a record be kept and provided to the parties upon request (Tex. Fam. Code § 262.206). There is no indication that any record was made or provided in this case. No Emergency Justification Texas law permits emergency orders without notice and a hearing only if there is an immediate danger to the child's physical health or safety, and only after making specific findings based on evidence (Tex. Fam. Code § 262.102). There is no evidence that such an emergency existed or that the court made the required findings. Violation of Presumption in Favor of Parental Custody Texas law presumes that the best interest of the child is served by awarding custody to a natural parent, and any deviation must be supported by evidence showing significant impairment to the child's welfare (*Lewelling v. Lewelling*, 796 S.W.2d 164 (Tex. 1990)). Although this presumption has been limited by subsequent case law (*In re T.J.S.*, 71 S.W.3d 452 (Tex. App. 2002)), the requirement for evidentiary support remains. The judge's decision to award full custody to the mother without evidence or findings violates this principle. Synthesis The judge's actions in this scenario represent a wholesale disregard for both federal and state law. Federally, the respondent's due process rights were violated by the lack of notice, hearing, and evidentiary support for the court's orders. State law was violated at every stage: the court failed to hold a hearing, make findings, or follow statutory procedures for temporary orders, exclusion from residence, and protective orders. The respondent was not informed of his right to counsel, and no record was made of any ex parte proceedings. The cumulative effect is a deprivation of fundamental rights without due process, in violation of both the United States Constitution and the Texas Family Code. The judge's actions are not only legally indefensible but also undermine the integrity of the judicial process. Exceptions and Caveats There are limited exceptions under Texas law that allow for emergency orders without notice and a hearing, but these require specific findings of immediate danger to the child's physical health or safety, supported by evidence (Tex. Fam. Code § 262.102). No such findings were made in this case, and there is no indication that the statutory requirements for emergency orders were met. The presumption in favor of parental custody has been limited by subsequent case law (*In re T.J.S.*, 71 S.W.3d 452 (Tex. App. 2002)), but the requirement for evidentiary support and due process remains unchanged. Conclusion The judge's conduct in this scenario violated the respondent's federal constitutional right to due process and multiple provisions of Texas state law. The respondent was deprived of custody, possession of his home, and the parent-child relationship without notice, a hearing, evidence, or findings. The court failed to follow statutory procedures for temporary orders, exclusion from residence, and protective orders, and did not inform the respondent of his right to counsel. These actions constitute serious violations of both federal and state law, and any orders issued under these circumstances are subject to reversal on appeal and potential disciplinary action against the judge. Now, after all this happens, explain how it

compounds when at the reset hearing on January 22, 2024, after getting counsel, he ends up just allowing the other side to do a continuance because the mother, who was lying to everyone at this point, allegedly retained an attorney on the spot after just claiming she was indigent. makes no sense, so the father once again, had to wait another 7 days to get before a judge. his attorney proved useless

## **Answer (Texas)**

### **Short response**

The compounding of due process and statutory violations at the reset hearing—where the mother was granted a continuance based on a questionable claim of indigency and last-minute retention of counsel—further deprived the father of his right to a timely and fair hearing, exacerbating the initial constitutional and procedural breaches. The additional delay, combined with ineffective legal representation, intensified the harm to the father’s parental and property rights and perpetuated the court’s failure to provide the required procedural safeguards under both federal and Texas law.

### **Summary**

After the initial hearing, which was marred by egregious due process and statutory violations, the reset hearing on January 22, 2024, compounded the harm when the court allowed the mother to secure a continuance on dubious grounds—claiming indigency while simultaneously retaining counsel. This maneuver resulted in the father being forced to wait another week to be heard, despite already having suffered deprivation of custody, access to his home, and the parent-child relationship without due process or evidentiary findings.

The court’s acquiescence to the continuance, without proper inquiry into the mother’s indigency status or the necessity of the delay, further violated statutory requirements for timely hearings and fair process. The father’s ineffective legal representation at this stage only deepened the deprivation of his rights, as he remained unable to challenge the prior unlawful orders or secure prompt judicial review, leaving the initial violations unremedied and the harm ongoing.

## **Background and Relevant Law**

### **Federal Constitutional Due Process**

The Fourteenth Amendment’s Due Process Clause prohibits the state from depriving any person of life, liberty, or property without due process of law. Parental rights are recognized as fundamental liberty interests, and any state action that interferes with these rights must be accompanied by robust procedural safeguards, including notice, a meaningful opportunity to be

heard, and a decision based on evidence and findings. The Texas Supreme Court has repeatedly affirmed that expediency or administrative convenience cannot override a parent's constitutional right to be heard, and that due process requires clear and convincing evidence before a court may issue orders that significantly interfere with parental rights ([In re E.R., 385 S.W.3d 552, 55 Tex. Sup. Ct. J. 1130 \(Tex. 2012\)](#)).

## Texas Statutory Law

### Temporary Orders and Protective Orders

- **Temporary Orders Before Final Order:** Texas Family Code § 105.001 requires that, except in limited emergency circumstances, temporary orders affecting conservatorship, support, or possession of a child may only be rendered after notice and a hearing ([Tex. Fam. Code § 105.001](#) [Effective 9/1/2025]).
- **Exclusion from Residence:** Exclusion from a residence by temporary ex parte order requires a sworn affidavit, in-person testimony, and specific findings of recent family violence and clear and present danger (Tex. Fam. Code § 83.006).
- **Protective Orders:** Upon filing an application for a protective order, the court must set a hearing within 14 days unless the applicant requests a later date ([Tex. Fam. Code § 84.001](#)).

### Continuances

- **Continuances:** No continuance shall be granted except for sufficient cause supported by affidavit, by consent of the parties, or by operation of law. If a motion for continuance is filed fewer than 10 days before the event, the moving party must contact the other party and indicate whether there is opposition, and the motion must be supported by a sworn affidavit detailing the reasons for the continuance ([22 Tex. Admin. Code § 213.11](#)).
- **Adversary Hearings:** In suits involving the protection of a child by a governmental entity, the court may postpone a full adversary hearing for not more than seven days for good cause, such as to allow a parent to hire an attorney ([Tex. Fam. Code § 262.201](#)).

### Right to Counsel

- **Appointment of Counsel:** In cases involving the potential termination of the parent-child relationship, Texas law requires that parents be informed of their right to counsel, and indigent parents are entitled to appointed counsel ([Tex. Fam. Code § 107.013](#)).

## Case Law

- **Due Process and Parental Rights:** The Texas Supreme Court has held that finality and expediency cannot override a parent's constitutional right to be heard, and that due process requires notice

and the opportunity to be heard before parental rights can be terminated ([In re E.R., 385 S.W.3d 552, 55 Tex. Sup. Ct. J. 1130 \(Tex. 2012\)](#)).

- **Standard for Termination:** The court requires a clear and convincing evidence standard for the involuntary termination of a parent-child relationship, emphasizing that termination is a drastic remedy and requires substantial justification ([G. M., In Interest of, 596 S.W.2d 846 \(Tex. 1980\)](#)).
- **Right to Effective Counsel:** In parental-rights termination cases, indigent parents have a statutory right to counsel, which includes the right to effective assistance of counsel ([In re M.S., 115 S.W.3d 534, 2003 WL 21512654 \(Tex. 2003\)](#)).
- **Continuances and Due Process:** The Texas Supreme Court has recognized constitutional limitations on granting continuances when they would cause irreparable harm to a party by delaying the enforcement of existing rights ([In re Ford Motor Co., 165 S.W.3d 315 \(Tex. 2005\)](#)).

## Analysis

### Compounding of Due Process and Statutory Violations at the Reset Hearing

#### 1. Procedural Irregularities in Granting the Continuance

At the reset hearing, the court allowed the mother to obtain a continuance based on her claim of indigency and her alleged last-minute retention of counsel. Under Texas law, a continuance may only be granted for sufficient cause, supported by affidavit, or by consent of the parties or operation of law ([22 Tex. Admin. Code § 213.11](#)). If the motion is made fewer than 10 days before the hearing, the moving party must contact the other party and indicate whether there is opposition, and the motion must be supported by a sworn affidavit detailing the reasons for the continuance and affirming that it is not sought for delay but to serve justice.

There is no indication that these procedural requirements were met. The mother's claim of indigency, immediately followed by her retention of counsel, raises questions about the legitimacy of her request and whether the continuance was truly necessary. The court's failure to scrutinize the basis for the continuance or require proper documentation undermined the integrity of the process and further delayed the father's opportunity to be heard.

#### 2. Further Deprivation of the Father's Rights

The additional delay caused by the continuance compounded the initial deprivation of the father's rights. He had already been excluded from his home and deprived of custody without notice, a hearing, or evidentiary findings. The continuance extended this deprivation, prolonging the period

during which he was denied access to his child and home without any judicial determination based on evidence or law.

The Texas Supreme Court has recognized that continuances should not be granted when they would cause irreparable harm to a party by delaying the enforcement of existing rights ([In re Ford Motor Co., 165 S.W.3d 315 \(Tex. 2005\)](#)). In this case, the father's rights to custody and possession of his home were already being violated, and the continuance only served to perpetuate this harm.

### **3. Failure to Remedy Prior Due Process Violations**

The reset hearing presented an opportunity for the court to correct the procedural and substantive errors of the initial hearing. Instead, by granting a continuance on questionable grounds, the court failed to provide the father with a timely and meaningful opportunity to challenge the prior unlawful orders. This failure is particularly egregious given the fundamental nature of the rights at stake and the ongoing harm to the father and child.

The Texas Supreme Court has emphasized that due process requires notice and a meaningful opportunity to be heard before the state may deprive an individual of significant interests, such as parental rights or possession of a home ([In re E.R., 385 S.W.3d 552, 55 Tex. Sup. Ct. J. 1130 \(Tex. 2012\)](#)). The court's actions at the reset hearing fell far short of this standard.

### **4. Ineffective Legal Representation**

The father's attorney was described as "useless," suggesting that he did not effectively advocate for the father's rights or challenge the procedural irregularities. In parental-rights termination cases, indigent parents have a statutory right to effective assistance of counsel ([In re M.S., 115 S.W.3d 534, 2003 WL 21512654 \(Tex. 2003\)](#)). While the doctrine of ineffective assistance of counsel does not generally apply to civil cases, it does apply in parental-rights termination proceedings ([Culver v. Culver, 360 S.W.3d 526 \(Tex. App. 2011\)](#)). The father's inability to obtain effective legal representation further undermined his ability to challenge the prior violations and secure a fair hearing.

### **5. Statutory Timelines and the Right to a Prompt Hearing**

Texas law requires that hearings on applications for protective orders be set within 14 days of the application being filed, unless the applicant requests a later date ([Tex. Fam. Code § 84.001](#)). The additional delay caused by the continuance violated this statutory mandate and further deprived the father of his right to a prompt and fair hearing.

### **6. Right to Counsel and Indigency Claims**

Texas law mandates the appointment of an attorney ad litem for indigent parents in cases involving the termination of the parent-child relationship ([Tex. Fam. Code § 107.013](#)). The mother's claim of indigency, immediately



followed by her retention of counsel, raises questions about the legitimacy of her claim and whether the court properly inquired into her financial status. The court's failure to scrutinize the claim or ensure that the statutory requirements for appointment of counsel were met further undermined the fairness of the proceedings.

## **7. Harm to the Child and the Parent-Child Relationship**

The ongoing delay and deprivation of the father's rights not only harmed him but also had a detrimental impact on the child. The Texas Supreme Court has recognized that the best interest of the child is generally served by maintaining the parent-child relationship, and any deviation from this presumption must be supported by clear and convincing evidence ([G. M., In Interest of, 596 S.W.2d 846 \(Tex. 1980\)](#)). The court's actions in this case, both at the initial and reset hearings, were not supported by any evidence or findings and thus violated this fundamental principle.

## **8. No Remedy for Prior Violations**

The reset hearing was an opportunity for the court to remedy the prior due process and statutory violations. Instead, by granting a continuance on questionable grounds and failing to address the prior unlawful orders, the court perpetuated the harm and left the father without any effective remedy.

## **Exceptions and Caveats**

There are limited exceptions under Texas law that allow for emergency orders without notice and a hearing, but these require specific findings of immediate danger to the child's physical health or safety, supported by evidence ([Tex. Fam. Code § 262.102](#)). No such findings were made in this case, and there is no indication that the statutory requirements for emergency orders were met.

The presumption in favor of parental custody has been limited by subsequent case law ([Lewelling v. Lewelling, 796 S.W.2d 164 \(Tex. 1990\)](#), stated as disapproved by *In re T.J.S.*, 71 S.W.3d 452 (Tex. App. 2002)), but the requirement for evidentiary support and due process remains unchanged.

## **Conclusion**

The court's actions at the reset hearing compounded the initial due process and statutory violations by granting a continuance on dubious grounds, further delaying the father's opportunity to be heard and challenge the prior unlawful orders. The failure to scrutinize the mother's claim of indigency, the lack of proper documentation for the continuance, and the father's ineffective legal representation all contributed to an ongoing deprivation of fundamental rights. These compounded violations left the father without a timely or fair hearing, perpetuated the harm to the parent-child relationship, and undermined the integrity of the judicial process. The cumulative effect

is a profound violation of both federal and Texas law, warranting reversal of any orders issued under these circumstances and potential disciplinary action against the judge.

## **Legal Authorities**

[Culver v. Culver, 360 S.W.3d 526 \(Tex. App. 2011\)](#)

### **Texas Court of Appeals**

#### **Extract**

The doctrine of ineffective assistance of counsel does not apply to civil cases where there is no constitutional or statutory right to counsel. See, e.g., *McCoy v. Tex. Instruments, Inc.*, 183 S.W.3d 548, 553 (Tex.App.-Dallas 2006, no pet.); *Cherqui v. Westheimer St. Festival Corp.*, 116 S.W.3d 337, 343 (Tex.App.-Houston [14th Dist.] 2003, no pet.); cf. *In re M.S.*, 115 S.W.3d 534, 544 (Tex.2003) (“[T]he statutory right to counsel in parental-rights termination cases embodies the right to effective counsel.”). Kerri has not provided this Court with any authority that there is a right to effective assistance of counsel in a protective order case—and we are not aware of any. We overrule this point of error.

#### **Summary**

In civil cases, such as those involving protective orders, there is no constitutional or statutory right to effective assistance of counsel. This is relevant to the father's situation because it highlights that even if his attorney was ineffective, there is no legal recourse under the doctrine of ineffective assistance of counsel in this context. The passage also underscores the procedural challenges and potential delays in civil cases, especially when one party claims indigency and retains counsel at the last minute, as happened in the father's case.

[In re Interest of C.F., 565 S.W.3d 832 \(Tex. App. 2018\)](#)

### **Texas Court of Appeals**

#### **Extract**

In termination suits filed by a governmental entity, the trial court 'shall appoint an attorney ad litem to represent the interests of: (1) an indigent parent of the child who responds in opposition to the termination....' Tex. Fam. Code Ann. § 107.013(a)(1). See also *In re B.G.*, 317 S.W.3d 250, 253–54 (Tex. 2010) (recognizing indigent parents are entitled to appointed counsel in parental rights termination cases); *In re S.R.*, 452 S.W.3d 351, 371 (Tex. App.—Houston [14th Dist.] 2014, pet. denied) (same).

## **Summary**

In Texas, indigent parents involved in termination suits are entitled to appointed counsel. This is relevant because the mother in the scenario claimed indigency, which could have entitled her to appointed counsel rather than retaining one on the spot. The passage highlights the procedural rights of indigent parents, which may have been overlooked or misrepresented in the scenario.

[In re J.D., No. 06-18-00105-CV \(Tex. App. Mar 22, 2019\)](#)

### **Texas Court of Appeals**

#### **Extract**

In parental-rights termination cases in Texas brought by the Department, an indigent person has a statutory right to counsel. TEX. FAM. CODE ANN. § 107.013(a) (West Supp. 2018); *In re M.S.*, 115 S.W.3d 534, 544 (Tex. 2003). This statutory right to counsel also embodies the right to effective counsel. *M.S.*, 115 S.W.3d at 544. The standard used for parental-rights termination cases is the same as that used in criminal cases and is set forth in *Strickland*. *Id.*; see *Strickland v. Washington*, 466 U.S. 668 (1984). The right to effective assistance of counsel does not guarantee, however, 'errorless or perfect counsel whose competency of representation is to be judged by hindsight.'

## **Summary**

In Texas, indigent individuals in parental-rights termination cases have a statutory right to counsel, which includes the right to effective assistance of counsel. This right is akin to the right to counsel in criminal cases, as established in *Strickland v. Washington*. However, the right to effective counsel does not mean that counsel must be errorless or perfect. This is relevant to the father's situation because it highlights the importance of having competent legal representation, especially when facing significant legal proceedings that affect parental rights. The passage underscores the procedural protections afforded to indigent parties, which may have been relevant if the mother claimed indigence to secure a continuance.

[In Interest of J.A., No. 2-05-454-CV \(Tex. App. 11/2/2006\), No. 2-05-454-CV \(Tex. App. Nov 02, 2006\)](#)

### **Texas Court of Appeals**

#### **Extract**

A parent's rights to 'the companionship, care, custody, and management' of his or her children are constitutional interests 'far more precious than any

property right.' Santosky v. Kramer, 455 U.S. 745, 758-59, 102 S. Ct. 1388, 1397 (1982); In re M.S., 115 S.W.3d 534, 547 (Tex. 2003). 'While parental rights are of constitutional magnitude, they are not absolute. Just as it is imperative for courts to recognize the constitutional underpinnings of the parent-child relationship, it is also essential that emotional and physical interests of the child not be sacrificed merely to preserve that right.' In re C.H., 89 S.W.3d 17, 26 (Tex. 2002).

## **Summary**

The passage highlights the constitutional significance of parental rights, emphasizing that while these rights are fundamental, they are not absolute and must be balanced against the child's best interests. This is relevant to the question as it underscores the importance of due process and fair proceedings in cases affecting parental rights.

[In re Interest of L.N.C., 573 S.W.3d 309 \(Tex. App. 2019\)](#)

## **Texas Court of Appeals**

### **Extract**

Father was incarcerated at the time of trial on June 19, 2018. On appeal, Father challenges the judgment terminating his parental rights to Laura in four issues: (1) he was denied due process of law by the trial court's denial of his request for a continuance, when he was timely bench-warranted to appear at trial; ... The law is well settled that a motion for continuance must be in writing, state the specific facts supporting the motion, and be verified or supported by affidavit. ... For claims of procedural due process, as here, the Supreme Court of Texas has found no meaningful distinction between Texas' due-course-of-law protection and the federal constitution's due process guarantee.

## **Summary**

The passage highlights the importance of procedural due process and the requirements for a motion for continuance in Texas. It emphasizes that a motion for continuance must be in writing, state specific facts, and be verified or supported by an affidavit. This is relevant to the father's situation because it underscores the procedural requirements that should have been met when the mother allegedly retained an attorney on the spot, leading to a continuance. The passage also notes that Texas' due-course-of-law protection aligns with the federal due process guarantee, reinforcing the father's right to a fair process.

[In re S.K.A., 236 S.W.3d 875 \(Tex. App. 2007\)](#)

## **Texas Court of Appeals**

## **Extract**

The Texas Legislature has provided for such a higher standard; in Texas, an indigent parent has a statutory right to counsel at a parental rights termination proceeding. See TEX. FAM.CODE ANN. § 107.013(a)(1) (Vernon Supp.2006), § 263.405(e) (subsection (e)) (providing for counsel on appeal); see also A.H.L., 214 S.W.3d at 51 ('Texas has adopted a higher standard'). The court is required, at the trial level, to appoint counsel for 'an indigent parent. .. who responds in opposition to the termination' requested in a suit by a governmental entity. TEX. FAM.CODE ANN. § 107.013(a)(1). 'To obtain such assistance, all the statute requires of an indigent parent is to respond in opposition.'

## **Summary**

The passage highlights the statutory right of indigent parents to appointed counsel in parental rights termination proceedings in Texas. This is relevant to the question because it underscores the procedural protections available to indigent parents, which may have been overlooked or misapplied in the scenario described. The mother's claim of indigency and subsequent retention of counsel could be seen as a manipulation of these protections, leading to further procedural delays and compounding the father's legal challenges.

[In re S.C., 09-21-00325-CV \(Tex. App. Apr 07, 2022\)](#)

## **Texas Court of Appeals**

### **Extract**

Before commencing a full adversary hearing, at each status hearing, and at each permanency hearing the court must inform any parent not represented by an attorney of the right to be represented by an attorney and if a parent is indigent and appears in opposition to the suit, the right to a court-appointed attorney. See Tex. Fam. Code Ann. §§ 262.201(a), (c), 263.0061. The trial court must appoint an attorney ad litem to represent the interests of an indigent parent who responds in opposition to a suit filed by a governmental entity in which the State requests termination of the parent-child relationship. Id. § 107.013(a)(1). 'There appear to be no magic words that are required to be 'in opposition' to a request for termination.'

### **Summary**

Texas law requires courts to inform parents of their right to counsel and to appoint an attorney for indigent parents in cases involving the potential termination of parental rights. This requirement is crucial to ensuring that parents have adequate legal representation and that their due process rights are protected. The passage highlights the importance of these procedural safeguards and the potential for harm if they are not followed.

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

## **Texas Court of Appeals**

### **Extract**

The Due Process Clause does not permit a State to infringe on the fundamental rights of parents to make childrearing decisions simply because a state judge believes a 'better' decision could be made. ... The Texas Supreme Court has acknowledged that mandamus may issue where the legal process itself would violate the relator's constitutional rights. ... Absent a finding, supported by evidence, that the safety and welfare of the children is significantly impaired by the denial of the Burks' visitation, Aubin's decision regarding whether the children will have any contact with the Burks is an exercise of her fundamental right as a parent. That right is shielded from judicial interference by the Due Process clause of the United States Constitution.

### **Summary**

The Due Process Clause protects parental rights from unwarranted state interference. The Texas Supreme Court recognizes that mandamus relief may be appropriate when legal processes violate constitutional rights. The passage emphasizes the need for evidence-based findings to justify state intervention in parental decisions, underscoring the importance of due process in custody matters.

[In re J.B., 93 S.W.3d 609 \(Tex. App. 2002\)](#)

## **Texas Court of Appeals**

### **Extract**

Due process requires that a party receive 'reasonable notice' of trial. See Peralta, 485 U.S. at 84, 108 S.Ct. at 899, 99 L.Ed.2d at 81; In re Marriage of Parker, 20 S.W.3d 812, 818 (Tex.App.-Texarkana 2000, no pet.). 'Rule 245 provides a notice requirement that goes beyond the requirements of due process.' Parker, 20 S.W.3d at 818. We agree with this reasoning and conclude that the fact that a party has received less than the forty-five days' notice required by Rule 245 does not, standing alone, constitute a due process violation. Id. at 818-19.

### **Summary**

The passage highlights the importance of due process and reasonable notice in legal proceedings, emphasizing that while Rule 245 requires a 45-day notice, receiving less than this does not automatically violate due process. This is relevant to the father's situation, as it underscores the necessity of

proper notice and procedural fairness, which may have been compromised by the mother's actions and the court's handling of the case.

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

## **Texas Supreme Court**

### **Extract**

The presumption that the best interest of a child is served by awarding custody to a natural parent is deeply embedded in Texas law. The Legislature, in enacting section 14.01(b), codified that presumption by defining the procedure for appointment of a nonparent as managing conservator. ... The amendatory language requiring a showing that appointment of the parent would significantly impair the child's physical or emotional development creates a strong presumption in favor of parental custody and imposes a heavy burden on a nonparent. It is no longer adequate to offer evidence that the nonparent would be a better custodian of the child.

### **Summary**

The passage highlights the strong presumption in favor of awarding custody to a natural parent in Texas, as codified in section 14.01(b) of the Texas Family Code. This presumption can only be rebutted by showing that appointing the parent would significantly impair the child's physical or emotional development. This is relevant to the question as it underscores the legal standard that should have been applied in the original case scenario, where the judge awarded custody without proper evidence or findings.

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

## **Texas Supreme Court**

### **Extract**

We appreciate the policy concerns the Department identifies. It, the parent, and the child share an interest in a quick and final decision. In the Interest of M.S., 115 S.W.3d 534, 548 (Tex.2003). But finality cannot trump a parent's constitutional right to be heard. Stanley v. Illinois, 405 U.S. 645, 646, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) (noting that 'the Constitution recognizes higher values than speed and efficiency'). We have twice held that Family Code provisions that expedite termination proceedings must yield to due process.



## Summary

The Texas Supreme Court emphasizes the importance of due process in cases involving parental rights. The court highlights that procedural expediency cannot override a parent's constitutional right to notice and the opportunity to be heard. This principle is directly relevant to the described court case, where the respondent was deprived of these rights.

[Villegas v. Carter, 711 S.W.2d 624 \(Tex. 1986\)](#)

### Texas Supreme Court

#### Extract

The granting or denial of a motion for continuance is within the trial court's sound discretion. *State v. Crank*, 666 S.W.2d 91, 94 (Tex.1984); *Hernandez v. Heldenfels*, 374 S.W.2d 196, 202 (Tex.1963). The trial court's action will not be disturbed unless the record discloses a clear abuse of discretion. When the ground for the continuance is the withdrawal of counsel, movants must show that the failure to be represented at trial was not due to their own fault or negligence. *State v. Crank*, 666 S.W.2d at 94. Generally, when movants fail to comply with Tex.R.Civ.P. 251's requirement that the motion for continuance be 'supported by affidavit,' we presume that the trial court did not abuse its discretion in denying the motion.

## Summary

The decision to grant or deny a continuance is at the discretion of the trial court. The court's decision will not be overturned unless there is a clear abuse of discretion. If a continuance is requested due to the withdrawal of counsel, the party must demonstrate that the lack of representation was not due to their own fault or negligence. Additionally, a motion for continuance must be supported by an affidavit, as required by Tex.R.Civ.P. 251, to avoid the presumption that the court did not abuse its discretion in denying the motion.

[J.A.T. v. C.S.T., 641 S.W.3d 596 \(Tex. App. 2022\)](#)

### Texas Court of Appeals

#### Extract

See Tex. Fam. Code Ann. § 81.001, 84.001(a) ; 85.001; 85.002 (West, Westlaw through 2021 C.S.); *Taylor v. Taylor*, 608 S.W.3d 265, 268-69 (Tex. App.—Houston [1st Dist.] 2020, no pet.) (concluding that without findings that family violence has occurred and is likely to occur in the future, a trial court may not issue a family-violence protective order unless a person has violated an existing protective order—not a temporary ex parte order—when



the protective order was in effect and the protective order has since expired). Thus, the trial court's power to allow Father supervised access in a protective order cannot be a basis for finding that family violence is not likely to occur in the future because the trial court may only exercise that power after finding that family violence is likely to occur in the future.

## **Summary**

Texas law requires specific findings of family violence and the likelihood of future violence before a court can issue a family-violence protective order. The passage emphasizes that a trial court cannot issue such an order without these findings, highlighting the procedural safeguards in place to protect the rights of individuals involved in family law disputes.

[In re Interest of K.M.L., 443 S.W.3d 101 \(Tex. 2014\)](#)

## **Texas Supreme Court**

### **Extract**

In this parental termination case, we consider whether the trial court properly terminated the parental rights of an intellectually disabled and mentally ill mother who executed a voluntary affidavit of relinquishment and the parental rights of an indigent father who was not appointed trial counsel nor provided notice of the trial. ... In line with these protections, the Texas Legislature has afforded indigent parents in state-initiated termination proceedings the right to counsel. Tex. Fam.Code §§ 107.013, 262.201 ; In re B.G., 317 S.W.3d 250, 253–54 (Tex.2010) (“An indigent parent is entitled to appointed counsel in parental rights termination cases, and that statutory right ... embodies the right to effective counsel.” (citation and internal quotation marks omitted)).

## **Summary**

The passage highlights the importance of providing indigent parents with the right to counsel in parental termination cases, as mandated by Texas law. This is relevant to the question because it underscores the procedural protections that should have been afforded to the father in the scenario described. The failure to provide effective counsel or to ensure that the father was adequately represented at the reset hearing compounds the initial due process violations. The passage also emphasizes the necessity of notice and the opportunity to be heard, which were lacking in the original hearing and continued to be problematic at the reset hearing.

[In re A.P., 10-22-00008-CV \(Tex. App. May 04, 2022\)](#)

## **Texas Court of Appeals**

## **Extract**

Generally, the trial court is required to commence a trial on the merits no later than 'on the first Monday after the first anniversary of the date the court rendered a temporary order appointing the department as temporary managing conservator' unless an extension is granted for up to 180 days based upon the trial court's findings that 'extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department and that continuing the appointment of the department as temporary managing conservator is in the best interest of the child.' See Tex. Fam. Code Ann. §263.401(a), (b).

## **Summary**

The Texas Family Code provides specific guidelines for extending trial dates in child custody cases. The court must find "extraordinary circumstances" and that the extension is in the child's best interest to grant an extension. This is relevant to the question because it highlights the procedural requirements and potential for abuse of discretion in granting continuances, which may have been a factor in the father's case.

[In re Ramirez, 04-24-00361-CV \(Tex. App. Aug 14, 2024\)](#)

## **Texas Court of Appeals**

## **Extract**

To be entitled to mandamus relief, a relator must show the trial court committed a clear abuse of discretion and the relator has no adequate remedy by appeal. *In re Ford Motor Co.*, 165 S.W.3d 315, 317 (Tex. 2005) (orig. proceeding) (per curiam). A trial court abuses its discretion if 'it reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law' or if it clearly fails to correctly analyze or apply the law. *Walker v. Packer*, 827 S.W.2d 833, 839-40 (Tex. 1992) (citation omitted). Because temporary orders in suits affecting the parent-child relationship are not appealable, a petition for a writ of mandamus is an appropriate means to challenge them.

## **Summary**

Criteria for mandamus relief, emphasizing that a trial court's decision can be challenged if it constitutes a clear abuse of discretion. This is relevant to the father's situation because the trial court's decision to allow a continuance based on the mother's last-minute claim of indigency and retention of counsel could be seen as arbitrary and prejudicial, especially given the prior procedural irregularities. The passage suggests that the father may have grounds to seek mandamus relief if the court's actions are deemed an abuse of discretion.

## **Texas Supreme Court**

### **Extract**

Under exacting provisions of the Texas Family Code, parents may relinquish their parental rights by executing an affidavit of voluntary relinquishment. In this parental-termination case, even though the parents executed statutorily compliant affidavits, the court of appeals held that the trial-court order terminating parental rights could be overturned on appeal on grounds that clear and convincing evidence of the child's best interest was lacking. We disagree and reverse the court of appeals' judgment regarding termination of parental rights... A court navigating the constitutionality of access to State judicial processes must enter a confluence of 'equal protection and due process concerns.' A State cannot, for example, 'arbitrarily cut off appeal rights for indigents while leaving open avenues for more affluent persons.' In this regard, Texas law does not discriminate against any class of litigants in a manner that would raise federal due process or equal protection concerns... Instead of focusing on the waiver aspect of this case, we can alternatively conduct a more general due process analysis as the United States Supreme Court did in *Lassiter* and *Santosky*. In those cases, the Supreme Court looked to the due process approach laid out in *Matthews v. Eldridge*. We have applied this approach in a number of cases, including parental-termination cases. Under *Matthews*, we must balance three elements: the private interests at stake, the government's interest supporting the challenged procedure, and the risk that the procedure will lead to erroneous decisions. The private interest of the parents in termination cases is indisputably 'a commanding one.' The State's interest in the welfare of the child means that its interest in a just decision is largely coextensive with the parents' interests. But we have repeatedly emphasized that the State, as *parens patriae* for the child, has an interest in seeing these cases decided not only fairly but also expeditiously.

### **Summary**

Texas law requires a careful balance of due process rights, especially in cases involving parental rights. The passage emphasizes the importance of not arbitrarily cutting off appeal rights for indigent individuals and ensuring that due process is followed. This is relevant to the compounded issues at the reset hearing because it highlights the necessity of fair and expeditious proceedings, which were not observed in the initial hearing. The passage also underscores the importance of clear and convincing evidence in decisions affecting parental rights, which was lacking in the initial hearing.

## **Texas Court of Appeals**

## **Extract**

Finality cannot trump a parent's constitutional right to be heard. *Stanley v. Illinois*, 405 U.S. 645, 646, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) (noting that 'the Constitution recognizes higher values than speed and efficiency'); *In re E.R.*, 385 S.W. 3d 552 (Tex. 2012). The Texas Supreme Court has held that the Family Code provisions that expedite termination proceedings must still yield to due process. See *In the Interest of B.G.*, 317 S.W.3d 250 (Tex.2010); *In the Interest of J.O.A.*, 283 S.W.3d 336 (Tex.2009).

## **Summary**

The passage underscores the principle that due process rights, particularly the right to be heard, cannot be overridden by procedural expediency or finality in family law cases. This is relevant to the question as it highlights the constitutional requirement for due process in proceedings that affect parental rights, which was violated in the scenario described in the question. The passage supports the argument that the judge's actions in the initial hearing were unconstitutional and procedurally improper.

[In re F.E.N., NO. 14-17-00598-CV \(Tex. App. Jan 11, 2018\)](#)

## **Texas Court of Appeals**

### **Extract**

Involuntary termination of parental rights is a serious matter implicating fundamental constitutional rights. See *In re G.M.*, 596 S.W.2d 846, 846 (Tex. 1980); *In re S.R.*, 452 S.W.3d 351, 357 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). Although parental rights are of constitutional magnitude, they are not absolute. *In re C.H.*, 89 S.W.3d 17, 26 (Tex. 2002). The child's emotional and physical interests must not be sacrificed merely to preserve the parent's rights. *Id.*

### **Summary**

The termination of parental rights is a significant legal action that requires careful consideration of both the parent's rights and the child's best interests. The passage highlights the constitutional importance of parental rights and the necessity for due process and evidentiary support in such proceedings. This context is relevant to understanding the implications of procedural delays and the need for fair legal processes in family law cases.

[In re S.A.P., 169 S.W.3d 685 \(Tex. 2005\)](#)

## **Texas Supreme Court**

## **Extract**

Due process and other alleged constitutional violations also must be raised in the trial court for them to be preserved for appellate review. In re L.M.I., 119 S.W.3d 707, 710-11 (Tex.2003); In re K.A.S., 131 S.W.3d 215, 230-31 (Tex.App.-Fort Worth 2004, pet. denied); see also B.L.D., 113 S.W.3d at 349-55 (discussing preservation of error in termination cases). We overrule Scott's third issue.

## **Summary**

The passage emphasizes the importance of raising due process and constitutional violations at the trial court level to preserve them for appellate review. This is relevant to the compounded issues at the reset hearing because it highlights the necessity for the father's attorney to formally raise any procedural or constitutional violations that occurred during the initial hearing and the subsequent delay caused by the mother's actions. Failure to do so could result in the inability to address these issues on appeal.

[Von Falkenhorst v. Ford, 651 S.W.3d 563 \(Tex. App. 2022\)](#)

## **Texas Court of Appeals**

### **Extract**

After an oral hearing at which only von Falkenhorst appeared, the trial court signed a final order dismissing the bill of review with prejudice. The trial court stated in the final order that von Falkenhorst did not properly serve any of the named defendants and that the bill of review is barred by the limitations periods set forth in Texas Family Code § 161.211 and Texas Civil Practice and Remedies Code § 16.051. ... In essence, then, the trial court rendered judgment denying the bill of review based on determinations regarding failure of service and the validity of a limitations defense on which no evidence was presented. The majority affirms this judgment. ... While a bill-of-review proceeding from an underlying final order terminating parental rights might be unusual in family district court, at the intermediate appellate court an appeal from a merits-based denial of an equitable bill of review in which no party to the underlying judgment has been served or appeared should raise concern about a void judgment. ... Likewise, I do not believe the trial court had the power to sua sponte render judgment on limitations, an affirmative defense that must be pleaded and proven.

### **Summary**

The passage highlights the importance of procedural fairness and the necessity of proper service and evidence in court proceedings. It underscores that judgments made without proper service or evidence can be void, and that courts should not make decisions on procedural grounds

without evidence. This is relevant to the question as it emphasizes the procedural irregularities and potential injustices in the described scenario, where the father faces further delays due to procedural issues and alleged misrepresentations by the mother.

[State v. Crank, 666 S.W.2d 91 \(Tex. 1984\)](#)

## **Texas Supreme Court**

### **Extract**

The matter of continuance is traditionally within the discretion of the trial judge, and it is not every denial of a request for more time that violates due process even if the party ... is compelled to defend without counsel. *Avery v. Alabama*, 308 U.S. 444 [60 S.Ct. 321, 84 L.Ed. 377 (1940) ]. Contrariwise, a myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defend with counsel an empty formality. *Chandler v. Fretag*, 348 U.S. 3 [75 S.Ct. 1, 99 L.Ed. 4 (1954) ]. There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to violate due process.

### **Summary**

The decision to grant or deny a continuance is typically within the trial judge's discretion. However, the passage highlights that an insistence on proceeding expeditiously, when a justifiable request for delay is made, can undermine the right to effective legal representation. This is relevant to the father's situation, as the continuance granted to the mother, despite her previous claim of indigency, could be seen as an arbitrary decision that further delays the father's opportunity for a fair hearing.

[In re Ford Motor Co., 165 S.W.3d 315 \(Tex. 2005\)](#)

## **Texas Supreme Court**

### **Extract**

In *Waites v. Sondock*, this Court recognized a constitutional limitation on the mandatory nature of the legislative continuance. 561 S.W.2d at 776. In *Waites*, a mother initiated a contempt proceeding to compel her former husband to comply with a child support order. *Id.* at 772. The husband's lawyer filed a motion for legislative continuance with supporting affidavit, which the mother opposed. She argued that the child support payments were 'critical to her ability to feed and support her children.' *Id.* at 774. This Court held that requiring mandatory continuances when the party opposing the continuance 'faces irreparable harm from the delay in enforcing existing rights' violates the due process clause of the Fourteenth Amendment of the

United States Constitution and Article I, Sections 13 (open courts) and 19 (due process) of the Texas Constitution. Id. at 773.

## **Summary**

The passage highlights that the Texas Supreme Court has recognized constitutional limitations on granting continuances when they would cause irreparable harm to a party by delaying the enforcement of existing rights. This principle is relevant to the scenario where the father, after already experiencing significant procedural violations, faces further delay due to the mother's last-minute retention of an attorney. The passage suggests that the court should consider whether the continuance would cause irreparable harm to the father, particularly given the previous violations of his rights.

[G. M., In Interest of, 596 S.W.2d 846 \(Tex. 1980\)](#)

## **Texas Supreme Court**

### **Extract**

The Texas Family Code, Section 11.15, provides: 'The court's findings shall be based on a preponderance of the evidence under rules generally applicable to civil cases.' However, appellate courts considering involuntary termination cases have indicated that more than a preponderance of the evidence is required. In *Wiley v. Spratlan*, supra, we stated that actions which break the ties between a parent and a child are unjustifiable without the most solid and substantial reasons. Other courts have used the terms 'clear and substantial,' In *Matter of R\_\_\_ E\_\_\_ W\_\_\_*, 545 S.W.2d 573 (Tex.Civ.App. Houston (1st Dist.) 1976, writ ref'd n. r. e.), and 'clear and compelling' *Brokenleg v. Butts*, 559 S.W.2d 853 (Tex.Civ.App. El Paso 1977, writ ref'd n. r. e.), cert. denied 442 U.S. 946, 99 S.Ct. 2894, 61 L.Ed.2d 318 (1979). These cases show the courts of this State have often employed more than a preponderance of the evidence to rebut the strong presumption that the best interest of a child is usually served by maintaining the parent-child relationship.

## **Summary**

The Texas Supreme Court requires a "clear and convincing evidence" standard for the involuntary termination of a parent-child relationship. This standard is higher than the "preponderance of the evidence" standard typically used in civil cases. The court emphasizes that termination is a drastic remedy and requires substantial justification. This is relevant to the scenario described because the judge's actions in severing the parent-child relationship without a hearing, evidence, or findings would not meet this stringent standard, thus violating due process and statutory requirements.

[Taylor v. Taylor, 608 S.W.3d 265 \(Tex. App. 2020\)](#)



## Texas Court of Appeals

### Extract

An applicant is entitled to the entry of a protective order if, after an evidentiary hearing, the trial court finds that family violence has occurred and is likely to occur in the future. FAM. §§ 81.001, 84.001(a), 85.001(b). At the close of the hearing, the trial court must make explicit findings as to whether family violence occurred and is likely to occur in the future. Id. § 85.001(a). If the trial court finds that family violence has occurred and is likely to occur in the future, it must enter 'a protective order as provided by Section 85.022' as to the 'person found to have committed family violence.' Id. § 85.001(b)(1). Section 85.022 authorizes the court to require completion of a battering intervention and prevention program. Id. at § 85.022(a). It also allows the court to prohibit the person from: ... A trial court ordinarily must hear an application for a family-violence protective order within 14 days of its filing. See FAM. § 84.001(a). If immediate protection is needed, an applicant may request the entry of a temporary ex parte order. See id. § 82.009(a). This request must detail the alleged family violence and explain the need for immediate relief. Id. § 82.009(a)(1). If the trial court finds a 'clear and present danger of family violence,' it may enter a temporary ex parte order without further notice or a hearing. Id. § 83.001(a). In the temporary ex parte order, the trial court 'may direct a respondent to do or refrain from doing specified acts.' Id. § 83.001(b). ... The statutory framework in which the exception resides reinforces our conclusion that violations of temporary ex parte orders, as opposed to family-violence protective orders, fall outside the exception's scope. The legislature placed the relevant provisions concerning family-violence protective orders and temporary ex parte orders in separate chapters. FAM. §§ 83.001–.006, 85.001–.062. The exception immediately follows the provision authorizing entry of a protective order based on findings that family violence has occurred and is likely to occur in the future. Id. §§ 85.001–.002. To conclude that the exception nonetheless encompasses temporary ex parte orders, despite the absence of a statutory cross-reference to Chapter 83 or a reference to temporary ex parte orders by name within the exception, would require the court to disregard the overall statutory framework. This we cannot do. See *Worsdale*, 578 S.W.3d at 69 ; *Rodriguez*, 547 S.W.3d at 838. ... But assuming for argument's sake that Section 85.002 was ambiguous—forcing us to choose between Troy's and the State's interpretations—we hold in the alternative that Troy's is more reasonable because the State's would make the statute unconstitutional. At a minimum, due process requires fair notice and a meaningful opportunity to be heard. See *Mosley v. Tex. Health & Human Servs. Comm'n*, 593 S.W.3d 250, 265 (Tex. 2019). Trial courts enter temporary ex parte orders on limited notice and without a hearing. FAM. § 83.001(a). These orders are constitutional only because they are emergency in nature and brief in duration. See *Rogers v. State*, 183 S.W.3d 853, 867 (Tex. App.—Tyler 2005, no pet.). ... In conclusion, we hold as a matter of law that Section 85.002 does not authorize a trial court to enter a family-violence protective order based on a respondent's violation of a temporary ex parte order. We sustain Troy's sole issue. Because a violation of a temporary ex parte order is not a legally valid



basis for the entry of a family-violence protective order, the trial court was authorized to enter a family-violence protective order only upon finding that:

## **Summary**

The passage highlights the necessity of due process, including fair notice and a meaningful opportunity to be heard, before issuing protective orders. It underscores that temporary ex parte orders are constitutional only when they are emergency measures and brief in duration. The passage also clarifies that violations of temporary ex parte orders cannot serve as a basis for issuing family-violence protective orders.

[In re J.O.A., 283 S.W.3d 336 \(Tex. 2009\)](#)

## **Texas Supreme Court**

### **Extract**

The Department concedes, as it must, that indigent parents are entitled to counsel but argues that counsel need not be competent because the procedural scheme makes no provision for incompetence. The argument ignores our holding in *In re M.S.* 'that the statutory right to counsel in parental-rights termination cases embodies the right to effective counsel.' 115 S.W.3d 534, 544 (Tex.2003). In fact, the Department generally ignores our decision in this case altogether. ... In sum, we agree that Timothy's ineffective assistance of counsel claim raises due process concerns and that section 263.405(i) of the Family Code is unconstitutional to the extent it prevents a court from considering those claims.

## **Summary**

The Texas Supreme Court recognizes the right to effective counsel in parental rights termination cases, and that due process concerns arise when this right is not upheld. The passage highlights the importance of competent legal representation and the constitutional issues that arise when counsel is ineffective. This is relevant to the father's situation because it underscores the necessity of effective legal representation, especially when facing procedural delays and potential manipulation by the opposing party.

[In re K.A.S., 131 S.W.3d 215 \(Tex. App. 2004\)](#)

## **Texas Court of Appeals**

### **Extract**

Father challenges the constitutionality of family code section 263.401, which requires the court to dismiss a termination-of-parental-rights case if it has not rendered a final order within one year after the suit was filed. Tex.

Fam.Code Ann. § 263.401(a). According to Father, the trial court erroneously denied his request for continuance and forced him to trial without adequate discovery or trial preparation in order to comply with the one-year deadline. Father contends that section 263.401 is unconstitutional as applied to him; thus, it violates his due process and due course of law rights because it imposes an arbitrary time limitation. U.S. Const. amend. XIV; Tex. Const. art. I, § 19.

## **Summary**

The Texas Family Code imposes a one-year deadline for rendering a final order in termination-of-parental-rights cases. This deadline can create constitutional challenges if it forces parties to trial without adequate preparation, potentially violating due process rights. The passage highlights the tension between statutory deadlines and the need for fair trial preparation, which is relevant to the father's situation where a continuance was granted to the mother, causing further delay.

[In re B.G., 317 S.W.3d 250 \(Tex. 2010\)](#)

## **Texas Supreme Court**

### **Extract**

In cases brought by the government for termination of parental rights, section 263.405 of the Texas Family Code prescribes shortened post-trial deadlines and special procedures to discourage frivolous appeals and expedite finality, minimizing the time a child must spend in temporary care. Section 263.405(i) limits an appeal to the issues included in a statement filed in the trial court within fifteen days after the judgment is signed. But if an indigent parent who has requested appointed counsel fails to timely file the required statement, the statutory limitation cannot, consistent with due process, preclude an appeal complaining of ineffective assistance. So we held in *In re J.O.A.* For essentially the same reasons, we now hold that due process does not allow the lack of the required statement to be the basis for denying the parent an appellate record. Accordingly, we reverse the judgment of the court of appeals and remand the case to that court for further proceedings in accordance with this opinion.

## **Summary**

Procedural requirements and due process considerations in cases involving the termination of parental rights, particularly focusing on the rights of indigent parents to effective counsel and the ability to appeal. It highlights that due process cannot be compromised by procedural technicalities, such as the failure to file a statement of appellate points within a strict deadline, especially when it concerns the right to effective assistance of counsel. This is relevant to the father's situation because it underscores the importance of due process and effective legal representation in family law cases, which were lacking in his initial hearing and subsequent proceedings.

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

## **Texas Supreme Court**

### **Extract**

We are asked to decide the appropriate appellate standard to review the factual sufficiency of the evidence in parental termination cases, in which the burden of proof at trial is by clear and convincing evidence. We granted review to resolve the conflict among the courts of appeals about whether the traditional factual sufficiency standard is adequate to review the findings in a termination proceeding, and if not, what the appropriate standard should be. 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).

### **Summary**

The Texas Supreme Court has established a clear standard for reviewing the factual sufficiency of evidence in parental termination cases. This standard requires that the evidence be such that a reasonable jury could form a firm belief or conviction that grounds exist for termination. This is relevant to the compounded legal issues in the question because it underscores the importance of having clear and convincing evidence before making decisions that affect parental rights. The delay caused by the mother's alleged indigence and retention of an attorney could further complicate the father's ability to challenge any termination findings, as the appellate standard requires a firm evidentiary basis for such decisions.

[Cherqui v. Westheimer Street Festival Corp., 116 S.W.3d 337 \(Tex. App. 2003\)](#)

## **Texas Court of Appeals**

### **Extract**

Appellant argues the trial court erred in granting the directed verdicts 'as there was ineffective assistance of counsel.' However, it is well established that the doctrine of ineffective assistance of counsel does not extend to civil cases. *Stokes v. Puckett*, 972 S.W.2d 921, 927 (Tex.App.-Beaumont 1998, pet. denied); *Walton v. City of Midland*, 24 S.W.3d 853, 862 (Tex.App.-El Paso 2000, no pet.). The Sixth Amendment of the United States Constitution and Article I, Section 10 of the Texas Constitution provide that 'in all criminal prosecutions, the accused shall enjoy the right ... to have the assistance of counsel for his defense.' U.S. Const. amend. VI; Tex. Const. art. I, § 10 (emphasis added).

## **Summary**

The concept of ineffective assistance of counsel, which is a ground for appeal in criminal cases, does not apply to civil cases in Texas. This is because the constitutional right to effective counsel is specifically tied to criminal prosecutions, as outlined in both the U.S. and Texas Constitutions.

[In re M.S., 115 S.W.3d 534, 2003 WL 21512654 \(Tex. 2003\)](#)

### **Texas Supreme Court**

#### **Extract**

In Texas, there is a statutory right to counsel for indigent persons in parental-rights termination cases. The courts of appeals, however, disagree over whether that statutory right carries an implicit requirement that counsel's assistance be competent and effective. And this Court has only tangentially discussed whether a parent has a right to competent legal assistance in a parental-rights termination proceeding. But we believe that '[i]t would seem a useless gesture on the one hand to recognize the importance of counsel in termination proceedings, as evidenced by the statutory right to appointed counsel, and, on the other hand, not require that counsel perform effectively.' We hold that the statutory right to counsel in parental-rights termination cases embodies the right to effective counsel. We thus align Texas with most of the other states that provide a similar right.

## **Summary**

In Texas, there is a statutory right to counsel for indigent persons in parental-rights termination cases. The Texas Supreme Court has clarified that this statutory right includes the right to effective assistance of counsel. This means that if counsel's performance is ineffective, it could constitute a violation of the parent's rights, potentially impacting the fairness of the trial. This is relevant to the scenario where the father's attorney was described as "useless," as it raises the question of whether the father received effective legal representation, which is a right protected under Texas law.

[In re Interest of S.R., 452 S.W.3d 351 \(Tex. App. 2014\)](#)

### **Texas Court of Appeals**

#### **Extract**

Texas has adopted a statutory scheme for providing counsel to assist indigent parents, mandating the appointment of an attorney ad litem to represent the interests of an indigent parent who responds in opposition to the termination of the parent-child relationship in a suit filed by a

governmental entity. See Tex. Fam.Code § 107.013(a)(1); see also *In re B.G.*, 317 S.W.3d 250, 253–54 (Tex.2010) (recognizing indigent parents are entitled to appointed counsel in parental rights termination cases). Specifically, the Family Code provides that in suits filed by a governmental entity the trial court 'shall appoint an attorney ad litem to represent the interests of: (1) an indigent parent of the child who responds in opposition to the termination ....' Tex. Fam.Code § 107.013(a)(1).

## **Summary**

Texas law mandates the appointment of an attorney for indigent parents in cases involving the termination of parental rights. This requirement is intended to ensure that indigent parents have legal representation to protect their rights. The passage highlights the importance of providing counsel to indigent parents, which is relevant to the situation where the mother claims indigence and retains an attorney, potentially affecting the proceedings.

[Walker v. Packer, 827 S.W.2d 833, 35 Tex.Sup.Ct.J. 468 \(Tex. 1992\)](#)

## **Texas Supreme Court**

### **Extract**

The inconvenience caused by the unexpected arrival of a petition that often demands immediate action is the price paid 'to assure that ... trial proceedings are fair and equitable to all concerned parties.... '[W]e must not sacrifice justice upon the altar of expediency.'

## **Summary**

The passage highlights the principle that fairness and equity in legal proceedings should not be sacrificed for the sake of expediency. This principle is relevant to the situation described, where the father faces further delay due to the mother's last-minute retention of counsel. The passage suggests that while such delays can be inconvenient, they are sometimes necessary to ensure that all parties have a fair opportunity to be represented and heard, which is a fundamental aspect of justice.

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

## **Texas Supreme Court**

### **Extract**

Today we hold that the Due Process Clause of the Fourteenth Amendment demands more than this. Before a State may sever completely and irrevocably the rights of parents in their natural child, due process requires

that the State support its allegations by at least clear and convincing evidence. \* \* \* In parental rights termination proceedings, the private interest affected is commanding; the risk of error from using a preponderance standard is substantial; and the countervailing governmental interest favoring that standard is comparatively slight. Evaluation of the three Eldridge factors compels the conclusion that use of a 'fair preponderance of the evidence' standard in such proceedings is inconsistent with due process.

## **Summary**

Due process in parental rights termination cases requires clear and convincing evidence. The passage highlights the importance of protecting parental rights and ensuring that any state action to terminate these rights is supported by substantial evidence. This is relevant to the question because it underscores the procedural safeguards that should be in place to prevent arbitrary or unjust decisions, such as those experienced by the father in the scenario.

[Tex. Fam. Code § 84.001 Tex. Fam. Code § 84.001 Time Set For Hearing](#)

## **Extract**

On the filing of an application for a protective order, the court shall set a date and time for the hearing unless a later date is requested by the applicant. Except as provided by Section FAMILY CODE 84.002, the court may not set a date later than the 14th day after the date the application is filed.

## **Summary**

The Texas Family Code mandates that a hearing for a protective order must be set within 14 days of the application being filed, unless the applicant requests a later date. This provision is designed to ensure timely hearings in protective order cases, preventing undue delays that could affect the parties involved.

[Tex. Fam. Code § 262.206 Tex. Fam. Code § 262.206 Ex Parte Hearings](#)

## **Extract**

Unless otherwise authorized by this chapter or other law, a hearing held by a court in a suit under this chapter may not be ex parte. A court that holds an ex parte hearing authorized by this chapter shall prepare and keep a record of the hearing in the form of an audio or video recording or a court reporter transcription. On request of a party to the suit, the court shall provide a copy of the record of an ex parte hearing to the party.

## **Summary**

Ex parte hearings are generally not permitted unless specifically authorized by the chapter or other law. When such hearings are held, a record must be kept, and parties to the suit have the right to request and receive a copy of this record. This ensures transparency and accountability in proceedings that occur without the presence of all parties.

[Tex. Fam. Code § 107.013 Tex. Fam. Code § 107.013 Mandatory Appointment of Attorney Ad Litem For Parent](#)

## **Extract**

In a suit filed by a governmental entity under Subtitle E in which termination of the parent-child relationship or the appointment of a conservator for a child is requested, the court shall appoint an attorney ad litem to represent the interests of: an indigent parent of the child who responds in opposition to the termination or appointment... If a parent is not represented by an attorney at the parent's first appearance in court, the court shall inform the parent of: the right to be represented by an attorney; and if the parent is indigent and appears in opposition to the suit, the right to an attorney ad litem appointed by the court.

## **Summary**

The Texas Family Code mandates the appointment of an attorney ad litem for indigent parents in cases involving the termination of the parent-child relationship or the appointment of a conservator. The court is required to inform parents of their right to counsel and appoint an attorney if they are indigent. This provision is relevant to the scenario where the mother claimed indigence and allegedly retained an attorney on the spot, as it raises questions about the legitimacy of her indigence claim and the procedural fairness of the continuance granted.

[Tex. Fam. Code § 105.001 Tex. Fam. Code § 105.001 \[Effective 9/1/2025\] Temporary Orders Before Final Order](#)

## **Extract**

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 as provided by Subsection (h), an order may not be rendered under Subsection (a), , or except after notice and a hearing.



## **Summary**

The passage highlights the requirement for notice and a hearing before temporary orders can be rendered, except in specific emergency situations. This underscores the procedural safeguards intended to protect parties' rights in family law cases. The situation described in the question compounds the initial violations by further delaying the father's opportunity to be heard and contest the orders affecting his rights. The mother's alleged indigency and sudden retention of counsel, leading to a continuance, further exacerbates the procedural irregularities and delays justice for the father.

[22 Tex. Admin. Code § 213.11 22 Tex. Admin. Code § 213.11 Non-Soah Motion For Continuance](#)

## **Extract**

No continuance shall be granted except for sufficient cause supported by affidavit as detailed in subsection (b) of this section, by consent of the parties, or by operation of law. A party that files a motion for continuance fewer than 10 days before the date of the event specified in any non-SOAH notice, must contact the other party and indicate in the motion whether there is any opposition to the motion. The motion shall be supported by a sworn affidavit detailing the reasons for the continuance. The affidavit shall also set forth the specific grounds upon which the party seeks the continuance and that the continuance is not sought for delay, but so that justice may be served.

## **Summary**

Procedural requirements for a continuance, including the need for a sworn affidavit and the necessity to contact the other party if the motion is filed fewer than 10 days before the event. This is relevant to the question because it highlights the procedural safeguards that should be in place to prevent unnecessary delays in legal proceedings.

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

## **Extract**

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



designated in the final order has voluntarily relinquished the primary care and possession of the child for more than six months; or the child is 12 years of age or older and has expressed to the court in chambers as provided by Section FAMILY CODE 153.009 the name of the person who is the child's preference to have the exclusive right to designate the primary residence of the child.

## **Summary**

Conditions under which a court may issue temporary orders affecting the designation of a child's primary residence during a pending suit for modification. It emphasizes that such orders can only be made if they are in the best interest of the child and meet specific criteria, such as significant impairment to the child's health or development. This is relevant to the scenario because it highlights the legal standards that should have been applied when the judge made temporary orders affecting custody and residence without proper procedure.

[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). ... The court may, for good cause shown, postpone the full adversary hearing for not more than seven days from the date of the attorney's appointment to provide the attorney time to respond to the petition and prepare for the hearing. ... If a parent who is not indigent appears in opposition to the suit, the court may, for good cause shown, postpone the full adversary hearing for not more than seven days from the date of the parent's appearance to allow the parent to hire an attorney or to provide the parent's attorney time to respond to the petition and prepare for the hearing.

## **Summary**

Legal basis for such a postponement, although it highlights the need for "good cause" and the potential for further delay in resolving the case.

[Tex. Fam. Code § 157.168 Tex. Fam. Code § 157.168 \[Effective 9/1/2025\] Additional Periods of Possession Or Access](#)

## **Extract**

Unless a party shows good cause why the order should not be rendered, a court shall order additional periods of possession of or access to a child to compensate for the denial of court-ordered possession or access.

## **Summary**

If a party is denied court-ordered possession or access to a child, the court is required to order additional periods of possession or access to compensate for the denial. This provision is relevant to the father's situation, as he was effectively denied access to his child due to the continuance and the previous court's actions. The passage suggests that the court should have compensated the father for the time he was denied access to his child.

## [Right to Counsel and Effective Assistance of Counsel](#)

**Texas Criminal Lawyer's Handbook. Volume 1 - 2014 - James Publishing - Mark G. Daniel, Robert K. Gill - 2014-08-17**

## **Extract**

A defendant has the burden to prove a claim of ineffective assistance of counsel. The burden is by a preponderance of the evidence. Cox v. State, 389 S.W.3d 817 (Tex. Crim. App. 2012). The defendant must overcome the presumption that, under the circumstances, the challenged action might be considered sound trial strategy.

## **Summary**

In Texas, a defendant claiming ineffective assistance of counsel must prove this claim by a preponderance of the evidence. The defendant must also overcome the presumption that the attorney's actions might be considered sound trial strategy. This is relevant to the scenario where the father's attorney was described as "useless," as it provides the legal framework for challenging the effectiveness of counsel.

## [THE CHILD WELFARE HYPER SURVEILLANCE STATE: REIMAGINING SUPPORTING PARENTS WITH MENTAL ILLNESSES IN 1028 HEARINGS.](#)

**Fordham Urban Law Journal - Fordham Urban Law Journal - Patterson, Rachel M. - 2021-02-01**

## **Extract**

A parent only has one opportunity to bring a 1028 hearing, and if a court denies a parent a 1028 hearing or if a child is not returned home, the appellate process is prohibitive and time consuming. ... Although the statute

intends for expedited 1028 hearings, they do not occur in practice. It is then challenging and time prohibitive to appeal a decision.

## **Summary**

The legal process for challenging the removal of a child from a parent's custody is fraught with procedural delays and challenges. The passage highlights that although the law intends for expedited hearings (such as 1028 hearings) to quickly address the removal of children, in practice, these hearings are often delayed, and the appellate process is cumbersome and time-consuming. This insight is relevant to the question as it underscores the procedural difficulties and delays that the father faces in the scenario described, where a continuance further postpones the resolution of his case.

## [Time and Punishment.](#)

**Yale Law Journal - Yale University, School of Law - 2024-11-01**

## **Extract**

On the one hand, termination timelines are rigid and have dire consequences for families. For impacted families, fifteen out of twenty-two months becomes a guidepost. Simultaneously, however, other timelines seem malleable, dependent on court resources, attorney calendars, and within the control of other providers, creating tension between temporal constriction and temporal stretching. The slower the process of reunification, the more likely that the state will file for termination. Delayed access to services is a basis to challenge a parent's progress and willingness to comply with the state's expectation of progress. The use of decades-old findings and convictions to prevent a child's placement with a relative might cut off alternatives to termination in later stages of the case, meaning the state will attempt to terminate parental rights rather than preserve the parent-child bond through legal guardianship. Indeterminacy adds an additional layer of disorientation here.

## **Summary**

Procedural delays in family law cases can have significant consequences for parents, particularly in cases involving the potential termination of parental rights. The passage highlights the tension between rigid termination timelines and the malleability of other timelines, which can lead to delays in reunification and potentially increase the likelihood of termination. Delays can also be used against parents to challenge their progress and compliance with state expectations. This is relevant to the father's case, as the delay in the reset hearing and the subsequent continuance could exacerbate the challenges he faces in maintaining his parental rights and complying with court expectations.

This memo was compiled by Vincent AI based on vLex materials available as of September 12, 2025. [View full answer on vLex](#)