

Question

What are the grounds and procedures for filing a plea to the jurisdiction in Texas state courts, particularly in family law cases when a judge initially ordered me to vacate and that caused the rest of the case to prejudice me significantly?

Answer (Texas)

Short response

A plea to the jurisdiction in Texas family law cases challenges the court's authority to hear a case and can be filed when the court lacks subject matter jurisdiction, personal jurisdiction over a party, or jurisdiction under specific family code provisions. To contest jurisdiction when prejudiced by an initial order to vacate, you must file a sworn motion prior to any other pleadings, present evidence of jurisdictional defects, and request a hearing before any other matters are considered.

Summary

A plea to the jurisdiction is a procedural mechanism that challenges a Texas court's authority to hear and decide a case based on jurisdictional grounds. In family law cases, jurisdictional challenges frequently arise in relation to residency requirements for divorce proceedings, interstate child custody disputes under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), or when a court lacks personal jurisdiction over a non-resident party. When filing such a plea, the movant must follow specific procedures including filing a sworn motion prior to other pleadings, presenting evidence relevant to the jurisdictional issue, and obtaining a ruling on the jurisdictional challenge before proceeding to other matters.

For a situation where a judge's initial order to vacate has prejudiced subsequent proceedings, jurisdictional challenges might focus on whether the court had proper authority to issue that initial order, whether the order resulted from unjustifiable conduct by a party, or whether another court would have been the proper forum. Subject matter jurisdiction can never be waived and can be raised at any time, making it possible to challenge even after initial proceedings have begun. Texas courts must address jurisdictional challenges before proceeding to the merits of a case, and if jurisdiction is found lacking, the case must be dismissed or transferred to a court with proper jurisdiction.

Background and Relevant Law

Subject Matter Jurisdiction in Texas Courts

Subject matter jurisdiction refers to a court's power to hear and determine a particular type of case. In Texas, this is a fundamental prerequisite for any court action. As explained in [Stallworth v. Stallworth, 201 S.W.3d 338 \(Tex. App. 2006\)](#), "Subject matter jurisdiction is essential for a court to have the authority to resolve a case." This principle is so fundamental that as noted in [In re Estes, 153 S.W.3d 591 \(Tex. App. 2004\)](#), "Subject matter jurisdiction is never presumed." However, it should be noted that this case was stated as overruled by [In re Walker, 428 S.W.3d 212 \(Tex. App. 2014\)](#), though the basic principle regarding subject matter jurisdiction remains valid in Texas law.

The Texas Supreme Court emphasized in [Texas Dept. Parks and Wildlife v. Miranda, 133 S.W.3d 217 \(Tex. 2004\)](#) that "a court must not proceed on the merits of a case until legitimate challenges to its jurisdiction have been decided." While this case was stated as abrogated by [Russell v. City of Fort Worth Texas, No. 2-05-191-CV \(Tex. App. 5/18/2006\)](#), the principle that jurisdictional challenges must be resolved before proceeding to merits continues to be a cornerstone of Texas procedural law.

Grounds for Filing a Plea to the Jurisdiction in Family Law Cases

1. Residency Requirements for Divorce Cases

One common ground for challenging jurisdiction in family law cases involves the statutory residency requirements for divorce proceedings. [Boyd v. Davidovich](#) explains that "Section 6.301 of the Texas Family Code provides that '[a] suit for divorce may not be maintained in this state unless at the time the suit is filed either the petitioner or respondent has been: (1) a domiciliary of this state for the preceding six-month period; and (2) a resident of the county in which the suit is filed for the preceding 90-day period.'" These requirements are "analogous to jurisdiction in that it is mandatory and cannot be waived."

Similarly, [Griffith v. Griffith, 341 S.W.3d 43 \(Tex. App. 2011\)](#) highlights how these residency requirements can be used as a ground for jurisdictional challenges, noting that failure to prove domiciliary status for the required period may result in lack of subject matter jurisdiction.

2. Child Custody Jurisdiction Under the UCCJEA

In family law cases involving children, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) provides specific jurisdictional grounds. [In re J.C.B., 209 S.W.3d 821 \(Tex. App. 2006\)](#) explains that "a Texas court may make an initial custody determination regarding a child if 1) the child's 'home state' is Texas, 2) the child's 'home state' was Texas within six months prior to the commencement of the proceeding if the child is absent from Texas but a parent continued to live here, 3) the child has no 'home state' or the courts of the child's 'home state' declined to exercise jurisdiction over the child because Texas was the more appropriate forum, 4) all courts potentially having jurisdiction over the child declined to exercise it because Texas is the more appropriate forum, and 5) no court of any other state would have jurisdiction over the child."

The concept of "home state" is crucial in these determinations. [Ruffier v. Ruffier, 190 S.W.3d 884 \(Tex. App. 2006\)](#) defines a child's home state as "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding."

3. Continuing Jurisdiction Limitations

Texas law also provides grounds for challenging a court's continuing jurisdiction in family law matters. [Dillon v. Medellin, 627 S.W.2d 737 \(Tex. App. 1981\)](#) references Texas Family Code provisions on "Exceptions to Continuing Jurisdiction," which limit a court's ability to modify custody orders when "the managing conservator and the child have established and continued to maintain their principal residence in another state for more than six months" or when "all of the parties and the child have established and continue to maintain their principal residence outside this state."

4. Unjustifiable Conduct

Another ground for challenging jurisdiction involves situations where a party has engaged in unjustifiable conduct. [Tex. Fam. Code § 152.208](#) provides that "if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction" with certain exceptions. This was applied in [In re S.L.P., 123 S.W.3d 685 \(Tex. App. 2003\)](#), which noted that "The UCCJEA mandates that the trial court 'shall' decline jurisdiction when the party seeking to invoke jurisdiction has engaged in unjustifiable conduct."

This provision could be particularly relevant in cases where a party has been prejudiced by an initial order to vacate, especially if that order resulted from unjustifiable conduct by the opposing party.

5. Limited Jurisdiction in Specific Matters

[Quimby v. Quimby, NO. 01-18-00705-CV \(Tex. App. Jun 20, 2019\)](#) explains that "Family Code section 6.308(b) provides that a trial court's authority to resolve the issues in controversy between the parties may be restricted because the court lacks: (1) the required personal jurisdiction over a nonresident party in a suit for dissolution of the marriage; (2) the required jurisdiction under Family Code Chapter 152 (UCCJEA), governing child custody matters; or (3) the required jurisdiction under Family Code Chapter 159 ("Uniform Interstate Family Support Act"), governing certain child support orders." Consequently, "a trial court may have jurisdiction to grant a divorce, which is an adjudication of the parties' status, but lack jurisdiction to divide their property, which is an adjudication of the parties' rights."

Procedures for Filing a Plea to the Jurisdiction

1. Filing Requirements

[In re Oates, 104 S.W.3d 571 \(Tex. App. 2003\)](#) explains that "A plea to the jurisdiction is a dilatory plea by which a party contests the trial court's authority to determine the subject matter of the cause of action." The procedures for filing such a plea are specific and must be followed carefully.

For challenges to personal jurisdiction, [Bruneio v. Bruneio, 890 S.W.2d 150 \(Tex. App. 1994\)](#) explains that Texas Rule of Civil Procedure 120a "provides the procedure for a party to challenge the trial court's jurisdiction over his person by sworn motion: 'Such special appearance shall be made by sworn motion filed prior to motion to transfer venue or any other plea, pleading or motion; provided, however, that a motion to transfer venue and any other plea, pleading, or motion may be contained in the same instrument or filed subsequent thereto without waiver of such special appearance; and may be amended to cure defects.'"

2. Burden of Proof and Pleading Requirements

[In re Oates, 104 S.W.3d 571 \(Tex. App. 2003\)](#) further explains that "The petitioner has the burden to allege facts that affirmatively show the trial court has subject matter jurisdiction." However, the Texas Supreme Court in [In re Forlenza, 140 S.W.3d 373 \(Tex. 2004\)](#) clarified that in continuing jurisdiction cases, "we disagree with Robert's contention that it was Ann's burden in the first instance to establish that the children have a significant connection with Texas and that substantial evidence is available here. As a general matter, the pleader must allege facts that affirmatively demonstrate the court's jurisdiction to hear the case."

3. Evidence and Hearings

Both [Stallworth v. Stallworth, 201 S.W.3d 338 \(Tex. App. 2006\)](#) and [In re Estes, 153 S.W.3d 591 \(Tex. App. 2004\)](#) (noting again its overruled status) explain that "in deciding whether to grant or deny a plea to the jurisdiction, the court need not look solely to the pleadings but may consider evidence and must do so when necessary to resolve the jurisdictional issues raised."

Regarding the timing of hearings, [Bruneio v. Bruneio, 890 S.W.2d 150 \(Tex. App. 1994\)](#) notes that Texas Rule of Civil Procedure 120a(2) "specifically requires that '[a]ny motion to challenge the jurisdiction provided for herein shall be heard and determined before a motion to transfer venue or any other plea or pleading may be heard.'" This procedural requirement ensures that jurisdictional challenges are addressed before the court proceeds to other matters.

Analysis of Jurisdictional Challenges in Cases with Prejudicial Initial Orders

Evaluating Initial Orders and Their Impact

When a judge has issued an initial order to vacate that has allegedly prejudiced subsequent proceedings, several jurisdictional questions may arise. First, it's important to determine whether the court had proper jurisdiction to issue that initial order.

If the order to vacate related to a residence that impacted the jurisdictional residency requirements under Family Code Section 6.301, this could potentially affect the court's subject matter jurisdiction over divorce proceedings. As explained in [Boyd v. Davidovich](#), these residency requirements are "mandatory and cannot be waived," so an order that interfered with a party's ability to maintain residency could potentially create jurisdictional issues.

In child custody matters, if the initial order to vacate affected the determination of a child's "home state" under the UCCJEA, this could also create grounds for a jurisdictional challenge. As [In re S.L.P., 123 S.W.3d 685 \(Tex. App. 2003\)](#) explains, Texas courts must decline jurisdiction in cases where a party has engaged in "unjustifiable conduct." If the initial order to vacate resulted from such conduct by the opposing party, this could provide grounds for challenging the court's jurisdiction.

Timing of Jurisdictional Challenges

A crucial consideration is the timing of any jurisdictional challenge. For challenges to personal jurisdiction, [Bruneio v. Bruneio, 890 S.W.2d 150 \(Tex. App. 1994\)](#) makes clear that such challenges must be made "by sworn motion filed prior to motion to transfer venue or any other plea, pleading or motion." Failure to follow this procedure could result in waiver of the jurisdictional challenge.

However, challenges to subject matter jurisdiction are treated differently. As noted in [In re Estes, 153 S.W.3d 591 \(Tex. App. 2004\)](#), "Subject matter jurisdiction is never presumed." Even though this case was overruled by In re Walker, the principle that subject matter jurisdiction cannot be presumed and can be raised at any time remains valid in Texas law. This means that even if significant time has passed since the initial prejudicial order, a challenge to the court's subject matter jurisdiction may still be possible.

The secondary material on "[Texas Courts and Subject Matter Jurisdiction](#)" confirms this principle, stating that "the absence of subject matter jurisdiction can generally be raised at any time and can be raised by a court sua sponte."

Procedural Considerations for Challenging Prejudicial Orders

When filing a plea to the jurisdiction based on a prejudicial initial order to vacate, several procedural considerations are important:

Specific Grounds: The plea should clearly articulate the specific jurisdictional defect. According to Plea To The Jurisdiction, "In deciding a plea to the jurisdiction, courts construe the pleadings in the plaintiff's favor and look to the pleader's intent."

Evidence: As explained in [Roach v. Ingram, 557 S.W.3d 203 \(Tex. App. 2018\)](#), "Evidence relevant to the jurisdictional issue can be introduced and considered at the plea to the jurisdiction stage if needed to determine jurisdiction." This means that evidence showing how the initial order has prejudiced subsequent proceedings should be presented.

Hearing Requirement: [Bruneio v. Bruneio, 890 S.W.2d 150 \(Tex. App. 1994\)](#) emphasizes that jurisdictional challenges "shall be heard and determined before a motion to transfer venue or any other plea or pleading may be heard."

Standard of Review: [In re Estes, 153 S.W.3d 591 \(Tex. App. 2004\)](#) (noting its overruled status) explains that "The existence of a court's subject matter jurisdiction over a case or controversy is a legal question," and "the standard of review is de novo." This means that if a trial court denies a plea to the jurisdiction, the issue can be reviewed anew on appeal.

Specific Family Law Jurisdictional Considerations

In family law cases specifically, several additional considerations apply:

Divorce Proceedings: If the case involves divorce, [Boyd v. Davidovich](#) and [Griffith v. Griffith, 341 S.W.3d 43 \(Tex. App. 2011\)](#) highlight the importance of meeting the six-month state domiciliary and 90-day county residency requirements. If the initial order to vacate affected these requirements, this could be grounds for a jurisdictional challenge.

Child Custody: In cases involving children, [In re J.C.B., 209 S.W.3d 821 \(Tex. App. 2006\)](#) and [Ruffier v. Ruffier, 190 S.W.3d 884 \(Tex. App. 2006\)](#) explain the UCCJEA requirements for establishing jurisdiction based on the child's "home state." If the initial order affected the determination of the child's home state, this could create jurisdictional issues.

Continuing Jurisdiction: [Dillon v. Medellin, 627 S.W.2d 737 \(Tex. App. 1981\)](#) addresses exceptions to continuing jurisdiction when parties have established residences outside of Texas. If the order to vacate resulted in relocation outside of Texas for more than six months, this could affect the court's continuing jurisdiction.

Unjustifiable Conduct: [Tex. Fam. Code § 152.208](#) as applied in [In re S.L.P., 123 S.W.3d 685 \(Tex. App. 2003\)](#) provides that courts must decline jurisdiction when a party has engaged in unjustifiable conduct. If the initial order to vacate resulted from such conduct, this could provide grounds for a jurisdictional challenge.

Limited Jurisdiction: [Quimby v. Quimby, NO. 01-18-00705-CV \(Tex. App. Jun 20, 2019\)](#) explains that a court may have jurisdiction over some aspects of a family law case (like granting a divorce) but not others (like property division). This is important to consider when challenging jurisdiction based on a prejudicial initial order.

Exceptions and Caveats

Waiver of Jurisdictional Challenges

While subject matter jurisdiction cannot be waived, challenges to personal jurisdiction can be waived if not properly raised. [Bruneio v. Bruneio, 890 S.W.2d 150 \(Tex. App. 1994\)](#) emphasizes the importance of following the proper procedure for special appearances to challenge personal jurisdiction, which must be made "by sworn motion filed prior to motion to transfer venue or any other plea, pleading or motion."

Opportunity to Amend Pleadings

If a plea to the jurisdiction is based on insufficient pleadings rather than incurable jurisdictional defects, Plea To The Jurisdiction notes that "If a plaintiff fails to plead facts establishing jurisdiction, but the petition does not contain incurable defects in jurisdiction, it is a pleading sufficiency issue, and the plaintiff should be allowed the opportunity to amend. On the other hand, if the pleadings affirmatively negate the existence of jurisdiction, then the plea may be granted without allowing the plaintiff an opportunity to amend."

Intertwined Jurisdictional and Merits Questions

[Texas Dept. Parks and Wildlife v. Miranda, 133 S.W.3d 217 \(Tex. 2004\)](#) (noting its abrogated status) addresses situations where "the determination of the subject matter jurisdiction of the court implicates the merits of the parties' cause of action." In such cases, "by reserving for the fact finder the resolution of disputed jurisdictional facts that implicate the merits of the claim or defense, we preserve the parties' right to present the merits of their case at trial."

Exceptions to UCCJEA Jurisdiction Declination

While [Tex. Fam. Code § 152.208](#) requires courts to decline jurisdiction when a party has engaged in unjustifiable conduct, there are exceptions. The statute provides that a court may exercise jurisdiction despite unjustifiable conduct if: "the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction; a court of the state otherwise having jurisdiction under Sections 152.201 through 152.203 determines that this state is a more appropriate forum under Section 152.207; or no court of any other state would have jurisdiction under the criteria specified in Sections 152.201 through 152.203."

Conclusion

Filing a plea to the jurisdiction in Texas family law cases, particularly when prejudiced by an initial order to vacate, requires careful attention to both jurisdictional grounds and procedural requirements. The grounds for such a plea may include lack of subject matter jurisdiction due to residency requirements, lack of personal jurisdiction over a non-resident party, lack of jurisdiction under the UCCJEA for child custody matters, or jurisdiction based on unjustifiable conduct.

Procedurally, a plea to the jurisdiction must be filed as a sworn motion, should clearly articulate the specific jurisdictional defect, should be supported by evidence relevant to the jurisdictional issue, and must be heard and determined before other matters. For challenges to personal jurisdiction specifically, the plea must be filed before any other pleadings.

In cases where an initial order to vacate has prejudiced subsequent proceedings, it's important to consider how that order affected jurisdictional factors such as residency requirements, determination of a child's "home state," or whether the order resulted from unjustifiable conduct. While challenges to personal jurisdiction may be waived if not properly raised, challenges to subject matter jurisdiction can be raised at any time.

Texas courts must address jurisdictional challenges before proceeding to the merits of a case. If jurisdiction is found lacking, the case must be dismissed or transferred to a court with proper jurisdiction. Given the complex nature of jurisdictional issues in family law cases, particularly when prejudicial orders have been issued, consulting with an attorney experienced in Texas family law and jurisdictional challenges is advisable.

Legal Authorities

[In re Milton, NO. 01-13-00240-CV \(Tex. App. Dec 19, 2013\)](#)

Texas Court of Appeals

Extract

The problem is aggravated by the majority's ignoring the fact that the Harris County court, although lacking both jurisdiction and venue, nevertheless improperly persuaded a Utah court official to decline jurisdiction over a suit seeking an initial child custody determination that Nicolette had properly filed in Utah and in which Jonathan had appeared and answered. This Court's disposition of this case—asserting the jurisdiction of this Court and the Fort Bend and Harris County courts over the underlying proceedings and transferring the case to Fort Bend County—not only is unsupported by law but invites the protracted, expensive, and duplicative litigation the UCCJEA was enacted to prevent. Therefore, I disagree with the majority's argument and disposition of this case on jurisdictional and forum non conveniens grounds, as well as on residency grounds. I can find no jurisdiction over this case in Texas and no authority of the Harris County court to have issued any orders or to have persuaded the Utah court to decline jurisdiction on forum non conveniens grounds.

Summary

The passage discusses a situation where a Texas court improperly asserted jurisdiction over a child custody case that was initially filed in another state (Utah). It highlights the lack of jurisdiction and venue by the Texas court and criticizes the court's actions in persuading the Utah court to decline jurisdiction. This is relevant to the question as it provides insight into jurisdictional issues and improper court actions in family law cases.

[Roach v. Ingram, 557 S.W.3d 203 \(Tex. App. 2018\)](#)

Texas Court of Appeals

Extract

*The issue of whether a court has jurisdiction is a matter of law that is reviewed de novo. *Miranda*, 133 S.W.3d at 226. In reviewing a grant or denial of a plea to the jurisdiction, we determine whether the plaintiff's pleadings, construed in favor of the plaintiff, allege sufficient facts affirmatively demonstrating the court's jurisdiction to hear the case. *Id.* Evidence relevant to the jurisdictional issue can be introduced and considered at the plea to the jurisdiction stage if needed to determine jurisdiction. *Id.* at 227. The plea to the jurisdiction must be granted if the plaintiff's pleadings affirmatively negate the existence of jurisdiction or if the defendant presents undisputed evidence that negates the existence of the court's jurisdiction. *Heckman v. Williamson Cty.*, 369 S.W.3d 137, 150 (Tex. 2012).*

Summary

General framework for understanding how pleas to the jurisdiction are evaluated in Texas state courts. It explains that jurisdiction is a legal matter reviewed de novo, meaning the appellate court considers it anew. The court examines whether the plaintiff's pleadings show sufficient facts to establish jurisdiction. If the pleadings negate jurisdiction or if the defendant provides undisputed evidence negating jurisdiction, the plea must be granted. This framework is applicable to

various types of cases, including family law, although the passage does not specifically address family law scenarios.

[Texas Dept. Parks and Wildlife v. Miranda, 133 S.W.3d 217 \(Tex. 2004\)](#)

Texas Supreme Court

Extract

We adhere to the fundamental precept that a court must not proceed on the merits of a case until legitimate challenges to its jurisdiction have been decided. This standard accomplishes this goal and more. It also protects the interests of the state and the injured claimants in cases like this one, in which the determination of the subject matter jurisdiction of the court implicates the merits of the parties' cause of action. The standard allows the state in a timely manner to extricate itself from litigation if it is truly immune. However, by reserving for the fact finder the resolution of disputed jurisdictional facts that implicate the merits of the claim or defense, we preserve the parties' right to present the merits of their case at trial.

Summary

The passage from the Texas Supreme Court case emphasizes the importance of resolving jurisdictional challenges before proceeding to the merits of a case. This principle is crucial in ensuring that a court has the authority to hear a case and make decisions. The passage also highlights that when jurisdictional facts are intertwined with the merits of a case, these should be resolved by a fact finder, preserving the parties' rights to present their case. This is relevant to the question as it outlines the procedural importance of addressing jurisdictional issues, which could be applicable in family law cases where a jurisdictional challenge might arise due to an initial order that prejudices the case.

[Dillon v. Medellin, 627 S.W.2d 737 \(Tex. App. 1981\)](#)

Texas Court of Appeals

Extract

On July 15, 1980, the mother was personally served with citation in the State of Louisiana, and on August 20, 1980, she filed a special appearance, asserting that the court did not have continuing jurisdiction because she and the child had resided in the State of Louisiana more than six months prior to the filing of the petition to modify. In her special appearance motion, the mother made reference to Texas Family Code Ann. § 11.052 (Vernon Supp. 1980-1981), entitled 'Exceptions to Continuing Jurisdiction,' which provides: (a) Except on the written agreement of all the parties, a court may not exercise its continuing jurisdiction to modify: (1) the appointment of a managing conservator if the managing conservator and the child have established and continued to maintain their principal residence in another state for more than six months unless the action was filed and pending before the six-month period; or (2) any part of a decree if all of the parties and the child have established and continue to maintain their principal residence outside this state. (b) This section does not affect the power of the court to enforce and enter a judgment on its decree.

Summary

The passage discusses a situation where a party challenged the jurisdiction of a Texas court in a family law case by filing a special appearance. The challenge was based on the fact that the parties had resided outside of Texas for more than six months, invoking Texas Family Code Ann. § 11.052, which limits the court's continuing jurisdiction in such circumstances. This is relevant to the question as it provides a legal basis for challenging jurisdiction in family law cases when parties have moved out of state.

[Bruneio v. Bruneio, 890 S.W.2d 150 \(Tex. App. 1994\)](#)

Texas Court of Appeals

Extract

By his first point of error, Anthony complains that the trial court failed to conduct a hearing and rule on his special appearance and plea to the jurisdiction. Under the Uniform Child Custody Jurisdiction Act, a Texas court may decide child custody matters if Texas is the home state of the child on the date of the commencement of the proceeding, with 'home state' generally meaning the state in which the child has lived with a parent for the past six months. ... Texas Rule of Civil Procedure 120a provides the procedure for a party to challenge the trial court's jurisdiction over his person by sworn motion: 'Such special appearance shall be made by sworn motion filed prior to motion to transfer venue or any other plea, pleading or motion; provided, however, that a motion to transfer venue and any other plea, pleading, or motion may be contained in the same instrument or filed subsequent thereto without waiver of such special appearance; and may be amended to cure defects.' Tex.R.Civ.P. 120a(1). The rule specifically requires that '[a]ny motion to challenge the jurisdiction provided for herein shall be heard and determined before a motion to transfer venue or any other plea or pleading may be heard.' Tex.R.Civ.P. 120a(2).

Summary

The passage provides insight into the procedures for filing a plea to the jurisdiction in Texas state courts, specifically in family law cases. It highlights the importance of filing a special appearance by sworn motion before any other pleadings and the requirement for the court to hear and determine jurisdictional challenges before addressing other matters. This is relevant to understanding how jurisdictional issues should be addressed in family law cases in Texas.

[In re Oates, 104 S.W.3d 571 \(Tex. App. 2003\)](#)

Texas Court of Appeals

Extract

A plea to the jurisdiction is a dilatory plea by which a party contests the trial court's authority to determine the subject matter of the cause of action. ... The petitioner has the burden to allege facts that affirmatively show the trial court has subject matter jurisdiction. ... A respondent may assert in the plea that another court has exclusive jurisdiction or that the petitioner has made fraudulent allegations for the purpose of conferring jurisdiction. ... In deciding whether to grant or deny a plea to the jurisdiction, the court need not look solely to the pleadings but may consider evidence and must do so when necessary to resolve the jurisdictional issues raised.

Summary

General explanation of what a plea to the jurisdiction is and the procedures involved. It explains that a plea to the jurisdiction is used to contest the trial court's authority over the subject matter and that the petitioner must show facts that affirmatively establish jurisdiction. It also notes that the court can consider evidence beyond the pleadings to resolve jurisdictional issues. This information is relevant to understanding the grounds and procedures for filing such a plea in Texas state courts.

[Ruffier v. Ruffier, 190 S.W.3d 884 \(Tex. App. 2006\)](#)

Texas Court of Appeals

Extract

In his Brief in Support of Motion to Dismiss, Appellant asserts for the first time that the trial court lacked subject matter jurisdiction over the child custody issues, because Texas was not J.C.R.'s home state as defined by the Texas Family Code section 152.102(7). ... The Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), adopted by Texas effective September 1, 1999, governs subject matter jurisdiction over custody issues in Texas. TEX. FAM. CODE ANN. § 152.001-.317 (Vernon 2002 & Vernon Supp.2005). ... The Texas Family Code provides that Texas may exercise jurisdiction if Texas is the home state of the child on the date of the commencement of the proceeding. See TEX. FAM.CODE ANN. § 152.201(a)(1). A child's home state is 'the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding.' Id. § 152.102(7); In re Oates, 104 S.W.3d 571, 576-77 (Tex.App.-El Paso 2003, orig. proceeding).

Summary

The passage provides insight into how subject matter jurisdiction is determined in Texas family law cases, specifically child custody cases, under the UCCJEA. It explains that Texas courts can only exercise jurisdiction if Texas is the child's home state or if other conditions under the UCCJEA are met. This is relevant to filing a plea to the jurisdiction, as it outlines the grounds on which a party can argue that a Texas court lacks jurisdiction.

[In re S.L.P., 123 S.W.3d 685 \(Tex. App. 2003\)](#)

Texas Court of Appeals

Extract

Following a bench trial, the court granted Appellee's special appearance and plea to the jurisdiction, determining that it did not have personal jurisdiction over Appellee because his domicile was Washington. The court declined subject-matter jurisdiction for three reasons: • The State of Nevada maintains continuing jurisdiction concurrent with the State of Washington, and Texas courts will give all orders entered by the State of Nevada full faith and credit. • Texas is an inconvenient forum to make a custody determination under the circumstances in this case. • Appellant's and/or the children's unjustifiable conduct permits the trial court to decline jurisdiction. ... Because the custody of children is the underlying issue in this case, jurisdiction is predicated on the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), which Texas adopted effective September 1, 1999. ... The UCCJEA mandates that the trial court 'shall' decline jurisdiction when the party seeking to invoke jurisdiction has engaged in unjustifiable conduct. ... Because section 152.208 states that the court 'shall' decline to exercise its jurisdiction in cases of unjustifiable conduct, the UCCJEA does not permit the trial court to exercise jurisdiction over this case.

Summary

The passage provides insight into the grounds for filing a plea to the jurisdiction in Texas family law cases, particularly under the UCCJEA. It highlights that a court may decline jurisdiction if another state has continuing jurisdiction, if Texas is an inconvenient forum, or if the party seeking jurisdiction has engaged in unjustifiable conduct. These grounds are relevant to understanding how a plea to the jurisdiction might be filed and considered in Texas state courts.

[In re Forlenza, 140 S.W.3d 373 \(Tex. 2004\)](#)

Texas Supreme Court

Extract

After the trial court in this case made an initial child-custody determination, the children lived with their custodial parent in four different states over a five and one-half year period while the non-custodial parent remained in Texas. In this modification suit, we must decide whether significant connections with Texas exist or substantial evidence is available here such that the initial trial court retained exclusive continuing jurisdiction under section 152.202(a)(1) of the Texas Family Code. Based on the record presented, we hold that the trial court retained exclusive continuing jurisdiction over the modification proceedings and the court of appeals erred in concluding otherwise. ... Robert's challenge involves the proper interpretation of section 152.202(a), which governs the duration of the decree-granting state's exclusive continuing jurisdiction. That section provides that a court of this state that has made an initial child-custody determination consistent with section 152.201 has exclusive continuing jurisdiction over the determination until ... Robert's jurisdictional plea contends that Ann failed to establish that a significant connection with Texas exists and that substantial evidence is available here concerning the children's care, protection, training, and personal relationships. As a preliminary matter, Robert asserts that, in making this determination, the court may not consider any contacts that occurred or any evidence that was created after September 10, 2001. We agree that jurisdiction must be determined at the proceeding's commencement, which section 152.102(5) defines as the filing of the first pleading B in this instance, Ann's motion to modify the prior agreed possession order. See Tex. Fam. Code. § 152.102(5). However, we disagree with Robert's contention that it was Ann's burden in the first instance to establish that the children have a significant connection with Texas and that substantial evidence is available here. As a general matter, the pleader must allege facts that affirmatively demonstrate the court's jurisdiction to hear the case.

Summary

The passage provides insight into the grounds for challenging jurisdiction in Texas family law cases, specifically under the UCCJEA. It highlights the importance of establishing significant connections and substantial evidence in Texas to retain jurisdiction. The passage also clarifies that the burden of proof regarding jurisdictional facts lies with the pleader, and jurisdiction is determined at the commencement of proceedings.

[Stallworth v. Stallworth, 201 S.W.3d 338 \(Tex. App. 2006\)](#)

Texas Court of Appeals

Extract

Subject matter jurisdiction is essential for a court to have the authority to resolve a case. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993). A party may challenge a court's subject matter jurisdiction by filing a plea to the jurisdiction. *Tex. Dep't of Transp. v. Jones*, 8 S.W.3d 636, 638-39 (Tex. 1999). When a plea to the jurisdiction challenges the pleadings, we determine if the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause. *Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). However, if a plea to the jurisdiction challenges the existence of jurisdictional facts — as Wife does here — we consider relevant evidence submitted by the parties when necessary to resolve the jurisdictional issues raised, as the trial court is required to do. *Id.* at 227 (citing *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000)).

Summary

Process for such a plea, including the need to demonstrate jurisdictional facts and the consideration of relevant evidence.

[In re J.C.B., 209 S.W.3d 821 \(Tex. App. 2006\)](#)

Texas Court of Appeals

Extract

Next, statute provides that a Texas court may make an initial custody determination regarding a child if 1) the child's 'home state' is Texas, 2) the child's 'home state' was Texas within six months prior to the commencement of the proceeding if the child is absent from Texas but a parent continued to live here, 3) the child has no 'home state' or the courts of the child's 'home state' declined to exercise jurisdiction over the child because Texas was the more appropriate forum, 4) all courts potentially having jurisdiction over the child declined to exercise it because Texas is the more appropriate forum, and 5) no court of any other state would have jurisdiction over the child. TEX. FAM.CODE ANN. § 152.201(a)(1)-(4) (Vernon 2002).

Summary

Statutory grounds under which Texas courts can assert jurisdiction in child custody cases, which is relevant to understanding when a plea to the jurisdiction might be appropriate. It highlights the importance of the child's "home state" and the conditions under which Texas can assume jurisdiction, which are critical factors in jurisdictional disputes.

[Lemley v. Miller, 932 S.W.2d 284 \(Tex. App. 1996\)](#)

Texas Court of Appeals

Extract

Jurisdiction in child custody determinations is governed by the Family Code. See Tex.Fam.Code Ann. §§ 152.001-.025 (West 1996). A 'custody determination' means a court discussion, orders, or instructions providing for the custody of a child including visitation rights, but not including decisions related to child support. § 152.002(3). Satisfaction of the statutory provisions confers subject matter jurisdiction over the custody case as well as personal jurisdiction over a nonresident parent. In re S.A.V., 837 S.W.2d 80, 85 (Tex.1992); see also Shaffer v. Heitner, 433 U.S. 186, 208, n. 30, 97 S.Ct. 2569, 2582, n. 30, 53 L.Ed.2d 683 (1977).

Summary

The passage provides insight into the jurisdictional grounds for child custody determinations in Texas, as governed by the Texas Family Code. It explains that jurisdiction is conferred by satisfying statutory provisions, which include determining the "home state" of the child or establishing significant connections with Texas. This is relevant to understanding the grounds for challenging jurisdiction in family law cases.

[In re Estes, 153 S.W.3d 591 \(Tex. App. 2004\)](#)

Texas Court of Appeals

Extract

Subject matter jurisdiction is never presumed. Texas Ass'n of Bus. v. Texas Air Control Bd., 852 S.W.2d 440, 443-44 (Tex.1993). The existence of a court's subject matter jurisdiction over a case or controversy is a legal question. Mayhew v. Town of Sunnyvale, 964 S.W.2d 922, 928 (Tex.1998). Accordingly, the standard of review is de novo. Id. In examining jurisdiction vested in Texas courts by a statute such as the Family Code, the most important rule is to ascertain and give effect to the Legislature's intent. See State v. Hodges, 92 S.W.3d 489, 494 (Tex.2002). The Legislature's intent is determined by examining the language used in the statute within the context of the entire statute. See id. Because a court deciding a plea to the jurisdiction is not required to look solely to the pleadings, but may consider evidence and must do so when necessary to resolve the jurisdictional issue, see Bland Indep. Sch. Dist. v. Blue, 34 S.W.3d 547, 554 (Tex.2000), appellate review is of the pleadings and evidence relevant to the jurisdictional issue. See Texas Dep't. of Criminal Justice v. Miller, 51 S.W.3d 583, 587 (Tex.2001). Whether undisputed evidence of jurisdictional facts establishes a trial court's jurisdiction is a question of law. Texas Dep't. of Parks and Wildlife v. Miranda, 133 S.W.3d 217, 226 (Tex.2004).

Summary

The passage provides insight into the grounds and procedures for filing a plea to the jurisdiction in Texas state courts. It emphasizes that subject matter jurisdiction is a legal question and is never presumed. The court must ascertain the Legislature's intent by examining the statute's language. A court deciding a plea to the jurisdiction can consider evidence beyond the pleadings to resolve jurisdictional issues. This is relevant to family law cases where jurisdictional challenges may arise, such as when a judge's initial order may have prejudiced the case.

[Boyd v. Davidovich](#)

Texas Court of Appeals

Extract

Section 6.301 of the Texas Family Code provides that '[a] suit for divorce may not be maintained in this state unless at the time the suit is filed either the petitioner or respondent has been: (1) a domiciliary of this state for the preceding six-month period; and (2) a resident of the county in which the suit is filed for the preceding 90-day period.' Tex. Fam. Code Ann. § 6.301. This requirement is analogous to jurisdiction in that it is mandatory and cannot be waived. In re Swart, 581 S.W.3d 844, 848 (Tex. App.-Dallas 2019, no pet.) (citing In re Milton, 420 S.W.3d 245, 247 (Tex. App.-Houston [1st Dist.] 2013, orig. proceeding)).

Summary

Section 6.301 of the Texas Family Code outlines mandatory jurisdictional requirements for filing a divorce suit in Texas. These requirements include being a domiciliary of Texas for the preceding six months and a resident of the county where the suit is filed for the preceding 90 days. This is relevant to jurisdictional challenges, as failing to meet these requirements could be grounds for a plea to the jurisdiction.

[In re Interest of A.R.C., No. 04-19-00198-CV \(Tex. App. Mar 04, 2020\)](#)

Texas Court of Appeals

Extract

The mother, appellee C.L., filed a special appearance, plea to the jurisdiction, and answer. The plea asserted lack of personal jurisdiction over her and lack of subject matter jurisdiction pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), section 152.203 of the Texas Family Code. She further requested if the court found it had jurisdiction to modify custody, that it decline to do so because the petitioner engaged in unjustifiable conduct. See TEX. FAM. CODE § 152.208.

Summary

The passage provides insight into the grounds for filing a plea to the jurisdiction in Texas family law cases, particularly under the UCCJEA. It highlights that a plea to the jurisdiction can be based on a lack of personal or subject matter jurisdiction, and it can also involve arguments related to unjustifiable conduct by the petitioner. This is relevant to cases where jurisdictional issues arise due to interstate custody disputes.

[Quimby v. Quimby, NO. 01-18-00705-CV \(Tex. App. Jun 20, 2019\)](#)

Texas Court of Appeals

Extract

Family Code section 6.308(b) provides that a trial court's authority to resolve the issues in controversy between the parties may be restricted because the court lacks: (1) the required personal jurisdiction over a nonresident party in a suit for dissolution of the marriage; (2) the required jurisdiction under Family Code Chapter 152 (UCCJEA), governing child custody matters; or (3) the required jurisdiction under Family Code Chapter 159 ("Uniform Interstate Family Support Act"), governing certain child support orders. TEX. FAM. CODE § 6.308(b). Thus, a trial court may have jurisdiction to grant a divorce, which is an adjudication of the parties' status, but lack jurisdiction to divide their property, which is an adjudication of the parties' rights.

Summary

The passage from the Quimby v. Quimby case provides insight into the grounds for filing a plea to the jurisdiction in Texas family law cases. It highlights that a trial court's authority may be limited if it lacks personal jurisdiction over a nonresident party or the required jurisdiction under specific family code chapters related to child custody and support. This is relevant to the question as it addresses the jurisdictional challenges that can arise in family law cases, which may be pertinent if a judge's initial order to vacate has prejudiced the case.

[Griffith v. Griffith, 341 S.W.3d 43 \(Tex. App. 2011\)](#)

Texas Court of Appeals

Extract

Kenneth also argues that his special appearance should have been sustained because the trial court lacked subject matter jurisdiction. Kenneth argues that Martha did not prove at the special appearance hearing that she was a domiciliary of Texas for the preceding six months before she filed suit or that she was a resident of Medina County for the preceding ninety-day period before she filed suit. Section 6.301 of the Family Code states that A suit for divorce may not be maintained in this state unless at the time the suit is filed either the petitioner or the respondent has been: (1) a domiciliary of this state for the preceding six-month period; and (2) a resident of the county in which the suit is filed for the preceding 90-day period. Tex. Fam. Code Ann. § 6.301 (West 2006).

Summary

The passage provides insight into the requirements for establishing subject matter jurisdiction in Texas family law cases. It highlights that a suit for divorce cannot be maintained unless the petitioner or respondent has been a domiciliary of Texas for the preceding six months and a resident of the county where the suit is filed for the preceding 90 days. This is relevant to filing a plea to the jurisdiction, as it addresses the grounds on which a court's jurisdiction can be challenged.

[Tex. Fam. Code § 152.208 Tex. Fam. Code § 152.208 Jurisdiction Declined By Reason of Conduct](#)

Extract

Except as otherwise provided in Section 152.204 or other law of this state, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless: the parents and all persons acting as parents have acquiesced in the exercise of jurisdiction; a court of the state otherwise having jurisdiction under Sections 152.201 through 152.203 determines that this state is a more appropriate forum under Section 152.207; or no court of any other state would have jurisdiction under the criteria specified in Sections 152.201 through 152.203.

Summary

The passage provides insight into situations where a Texas court may decline jurisdiction in family law cases, particularly those involving child custody, if the party seeking jurisdiction has engaged in unjustifiable conduct. This is relevant to the question as it addresses the grounds on which a court may refuse to exercise jurisdiction, which could be pertinent if the initial order to vacate was based on such conduct. The passage outlines exceptions and conditions under which jurisdiction may still be exercised, providing a framework for understanding when a plea to the jurisdiction might be appropriate.

[Plea To The Jurisdiction](#)

Extract

In deciding a plea to the jurisdiction, courts construe the pleadings in the plaintiff's favor and look to the pleader's intent. However, a court may not weigh the claims' merits, but may only consider the plaintiffs' pleadings and the evidence pertinent to the jurisdictional inquiry. If a plaintiff fails to plead facts establishing

jurisdiction, but the petition does not contain incurable defects in jurisdiction, it is a pleading sufficiency issue, and the plaintiff should be allowed the opportunity to amend. On the other hand, if the pleadings affirmatively negate the existence of jurisdiction, then the plea may be granted without allowing the plaintiff an opportunity to amend.

Summary

General overview of how courts handle pleas to the jurisdiction in Texas. It explains that courts focus on the pleadings and the intent behind them, rather than the merits of the claims. It also outlines the procedure if a plaintiff fails to establish jurisdiction, indicating that they may be allowed to amend their pleadings unless the pleadings clearly negate jurisdiction.

Texas Courts And Subject Matter Jurisdiction

Extract

Subject-matter jurisdiction concerns a court's power to hear a case. Without it, a court does not have authority to decide a case. Subject matter jurisdiction is distinct from the concept of personal jurisdiction, which involves a court's power to bind a particular party... Whether a trial court has subject matter jurisdiction is a question of law. Subject matter jurisdiction is never presumed and cannot be waived or conferred by agreement. And the absence of subject matter jurisdiction can generally be raised at any time and can be raised by a court sua sponte. In reviewing a challenge to the court's subject matter jurisdiction, the trial court can review the pleadings and any other evidence relevant to the subject matter jurisdiction issue.

Summary

The passage provides insight into the concept of subject matter jurisdiction in Texas state courts, explaining that it is a question of law and can be challenged at any time. This is relevant to filing a plea to the jurisdiction, as such a plea would challenge the court's authority to hear the case based on subject matter jurisdiction.

This memo was compiled by Vincent AI based on vLex materials available as of April 23, 2025. [View full answer on vLex](#)