

**NOTICE: THIS DOCUMENT
CONTAINS SENSITIVE DATA**

CAUSE NO. CV19-04-307-01

IN THE INTEREST OF

IAN EDWARD CRUZ

A CHILD

§ IN THE COUNTY COURT

§

§ AT LAW #2

§

§ WISE COUNTY, TEXAS

**MOTION TO DISMISS CASE FOR WANT OR PROSECUTION AND
ALTERNATIVE MOTION TO MODIFY INTERIM ORDERS**

This Motion to Dismiss Case for Want of Prosecution and Alternative Motion to Modify Interim Orders is brought by Rebecca Nance, Movant. The last three numbers of Movant's driver's license number are 132. The last three numbers of Movant's Social Security number are 242. Movant is the mother and joint managing conservator of the child. Respondent in this motion is Matthew Porter.

The present orders relating to conservatorship of the child have become unworkable and are no longer in the best interest of the child. The present orders do not provide for any rights, duties, or specific and enforceable terms for possession of and access to the child.

The order to be modified is entitled "Reset Order and Interim Order" and was rendered on August 12, 2019. In that order, a temporary orders hearing was

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scheduled roughly one month later on September, 19, 2019, and the order contained some terms for interim possession of the child. That hearing in September 2019 was passed by Respondent, and there was never another temporary orders hearing scheduled.

The requested modification will be in the best interest of the child.

Jurisdiction

This Court has continuing, exclusive jurisdiction of this suit.

Child

The following child is the subject of this suit:

Name: **Ian Edward Cruz a/k/a Ian Edward Nance-Porter**
Sex: Male
Birth date: December 7, 2016
County of residence: Unknown (possibly Hopkins County, Texas)

Parties Affected

The following parties may be affected by this suit:

Name: Matthew Porter
Relationship: joint managing conservator

Service of this document may be had on Respondent's attorney of record, Donald Nemec, in accordance with Rule 21a, Texas Rules of Civil Procedure.

Motion to Dismiss Case

Movant requests the Court, after notice and hearing, to dismiss this case for want of prosecution. Respondent has not pursued his Petition to Modify Parent-Child Relationship. Movant suspects that Respondent has moved the child from Wise County and contiguous counties, a geographic restriction on the residence of the child set in the Order Establishing the Parent-Child Relationship, entered on November 2, 2018, which is the order sought to be modified in this cause.

Alternative Request for Temporary Orders

Movant requests the Court, after notice and hearing, to make temporary orders for the safety and welfare of the child, including but not limited to the following:

Appointing Movant the temporary conservator who has the exclusive rights to designate the primary residence of the child and to make educational decisions on the child's behalf.

Alternatively, appointing Movant and Respondent as Joint Managing Conservators and restricting the primary residence of the child to Wise County, and contiguous counties in Texas.

Alternatively, entering a possession schedule in accordance with a Standard Possession Order, Chapter 153, Texas Family Code.

Ordering reasonable periods of electronic communication between the child and Movant to supplement Movant's periods of possession of the child.

Ordering the preparation of a child custody evaluation regarding the circumstances and condition of the child, and the parties, and the residence of any person requesting conservatorship of, possession of, or access to the child and any issue or question relating to the suit at the request of the Court before or during the evaluation process.

Ordering a pretrial conference to simplify the issues in this case and determine the stipulations of the parties and for any other matters the Court deems appropriate.

Request for Attorney's Fees, Expenses, Costs, and Interest

It was necessary for Movant to secure the services of Chad D. Petross, a licensed attorney, to preserve and protect the child's rights. Respondent should be ordered to pay reasonable attorney's fees, expenses, and costs through trial and appeal, and a judgment should be rendered in favor of this attorney and against Respondent and be ordered paid directly to Movant's attorney, who may enforce the judgment in the attorney's own name. Movant requests postjudgment interest as allowed by law.

Prayer

Movant prays that citation and notice issue as required by law and that the Court enter its orders in accordance with the allegations contained in this petition.

Movant prays for attorney's fees, expenses, costs, and interest as requested above.

Movant prays for general relief.

Respectfully submitted.

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/s/ Chad D. Petross
Chad D. Petross
State Bar No.: 24056127
Attorney for Rebecca Nance

Certificate of Service

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure, as follows:

Donald Nemec
Attorney for Matthew Porter
Via E-File Service to dcnemec@nemeclaw.com

/s/ Chad D. Petross
Chad D. Petross
Attorney for Rebecca Nance

**WISE COUNTY STANDING ORDER REGARDING
CHILDREN, PROPERTY AND CONDUCT OF THE PARTIES**

No party to this lawsuit has requested this order. Rather, this order is a standing order of the Wise County District Court that applies in every divorce suit and every suit affecting the parent-child relationship filed in Wise County. The District Court of Wise County has adopted this order because the parties and their children should be protected and their property preserved while the lawsuit is pending before the Court. Therefore, **IT IS ORDERED**:

1. **NO DISRUPTION OF CHILDREN.** Both parties are ORDERED to refrain from doing the following acts concerning any children who are subjects of this cause:

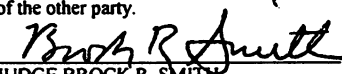
- 1.1 Removing the children from the State of Texas, acting directly or in concert with others, without the written agreement of both parties or an order of this Court.
- 1.2 Disrupting or withdrawing the children from the school or day-care facility where the children are presently enrolled, without the written agreement of both parties or an order of this Court.
- 1.3 Hiding or secreting the children from the other parent or changing the children's current place of abode, without the written agreement of both parents or an order of this Court.
- 1.4 Disturbing the peace of the children.
- 1.5 Making disparaging remarks about each other or the other person's family members, to include but not be limited to the child's grandparents, aunts, uncles, or stepparents.
- 1.6 Discussing with the children, or with any other person in the presence of the children, any litigation related to the children or the other party.
- 1.7 If this is an original divorce action, allowing anyone with whom the party is romantically involved, to remain overnight in the home while in possession of the children. Overnight is defined from 10:00 p.m. until 7:00 a.m.


2. **CONDUCT OF THE PARTIES DURING THE CASE.** Both parties are ORDERED to refrain from doing the following acts:

- 2.1 Using vulgar, profane, obscene, or indecent language, or a coarse or offensive manner to communicate with the other party, whether in person, by telephone, or in writing.
- 2.2 Threatening the other party in person, by telephone or in writing to take unlawful action against any person.
- 2.3 Placing one or more telephone calls, at an unreasonable hour, in an offensive or repetitious manner, without a legitimate purpose of communication, or anonymously.
- 2.4 Opening or diverting mail addressed to the other party.

3. **PRESERVATION OF PROPERTY AND USE OF FUNDS DURING DIVORCE CASE.** If this is a divorce case, both parties to the marriage are ORDERED to refrain from the following acts:

- 3.1 Destroying, removing, concealing, encumbering, transferring, or otherwise harming or reducing the value of the property of one or both of the parties.
- 3.2 Misrepresenting or refusing to disclose to the other party or to the Court, on proper request, the existence, amount, or location of any property of one or both of the parties.
- 3.3 Damaging or destroying the tangible property of one or both of the parties, including any document that represents or embodies anything of value.
- 3.4 Tampering with the tangible property of one or both of the parties, including any document that represents or embodies anything of value, and causing pecuniary loss to the other party.
- 3.5 Selling, transferring, assigning, mortgaging, encumbering, or in any other manner alienating any of the property of either party, whether personal property or real estate property, and whether separate or community, except as specifically authorized by this order.
- 3.6 Incurring any indebtedness, other than legal expense in connection with this suit, except as specifically authorized by this order.
- 3.7 Making withdrawals from any checking or savings account in any financial institution for any purpose, except as specifically authorized by this order.
- 3.8 Spending any sum of cash in either party's possession or subject to either party's control for any purpose, except as specifically authorized by this order.
- 3.9 Withdrawing or borrowing in any manner for any purpose from any retirement, profit-sharing, pension, death, or other employee benefit plan or employee savings plan or from any individual retirement account or Keogh account, except as specifically authorized by this order.
- 3.10 Signing or endorsing the other party's name on any negotiable instrument, check, or draft, such as tax refunds, insurance payments, and dividends, or attempting to negotiate any negotiable instrument payable to the other party without the personal signature of the other party.
- 3.11 Taking any action to terminate or limit credit or charge cards in the name of the other party.


JUDGE BROCK R. SMITH
271ST JUDICIAL DISTRICT COURT
JACK AND WISE COUNTIES


JUDGE GREG LOWERY
WISE COUNTY
COUNTY COURT AT LAW NO. 1

- 3.12 Entering, operating, or exercising control over the motor vehicle in the possession of the other party.
- 3.13 Discontinuing or altering the withholding for federal income taxes on wage or salary while this suit is pending.
- 3.14 Terminating or in any manner affecting the service of water, electricity, gas, telephone, cable television, or other contractual services, such as security, pest control, landscaping or yard maintenance at the other party's residence or in any manner attempting to withdraw any deposits for service in connection with such services.
- 3.15 Intercepting or recording the other party's electronic communications.

4. **PERSONAL AND BUSINESS RECORDS IN DIVORCE CASE.** If this is a divorce case, both parties to the marriage are ORDERED to refrain from doing the following acts:

- 4.1 Concealing or destroying any family records, property records, financial records, business records or any records of income, debts, or other obligations.
- 4.2 Falsifying any writing or record relating to the property of either party.
- 4.3 "Records" include e-mail or other digital or electronic data, whether stored on a computer hard drive, diskette or other electronic storage device.

5. **INSURANCE IN DIVORCE CASE.** If this is a divorce case, both parties to the marriage are ORDERED to refrain from doing the following acts:

- 5.1 Withdrawing or borrowing in any manner all or any part of the case surrender value of life insurance policies on the life of either party, except as specifically authorized by this order.
- 5.2 Changing or in any manner altering the beneficiary designation on any life insurance on the life of either party or the parties' children.
- 5.3 Canceling, altering, or in any manner affecting any casualty, automobile, or health insurance policies insuring the parties' property of persons including the parties' minor children.

6. **SPECIFIC AUTHORIZATIONS IN DIVORCE CASE.** If this is a divorce case, both parties to the marriage are specifically authorized to do the following:

- 6.1 To engage in acts reasonable and necessary to the conduct of that party's usual business and occupation.
- 6.2 To make expenditures and incur indebtedness for reasonable attorney's fees and expenses in connection with this suit.
- 6.3 To make expenditures and incur indebtedness for reasonable and necessary living expenses commensurate with such expenditures and indebtedness incurred for the past six months.
- 6.4 To make withdrawals from accounts in financial institutions only for the purposes authorized by this order.

7. **SERVICE AND APPLICATION OF THIS ORDER.**

- 7.1 The Petitioner shall attach a copy of this order to the original petition and to each copy of this petition. At the time the petition is filed, if the Petitioner has failed to attach a copy of this order to the petition and any copy of the petition, the Clerk shall ensure that a copy of this order is attached to the petition and every copy of the petition presented.
- 7.2 This order is effective upon the filing of the original petition and shall remain in full force and effect as a temporary restraining order for fourteen days after the date of the filing of the original petition. If no party contests this order by presenting evidence at a hearing on or before fourteen days after the day of the filing of the original petition, this order shall continue in full force and effect as a temporary injunction until further order of this Court. This entire order will terminate and will no longer be effective when the Court signs a final order or the case is dismissed.

8. **EFFECT OF OTHER COURT ORDERS.** If any part of this order is different from any part of a protective order that has already been entered or is later entered, the protective order provisions prevail. Any part of this order not changed by some later order remains in full force and effect until the Court signs a final decree.

9. **PARTIES ENCOURAGED/ORDERED TO MEDIATE.** The parties are encouraged to settle their disputes amicably without court intervention. In the event the parties are unable to settle their disputes, they are hereby ORDERED to use alternative dispute resolution methods, such as mediation, to settle those items that cannot be agreed to before setting a hearing on temporary orders or final orders.

THIS WISE COUNTY STANDING ORDER REGARDING CHILDREN, PROPERTY AND CONDUCT OF THE PARTIES SHALL BECOME EFFECTIVE ON JANUARY 11, 2021.


JUDGE STEPHEN J. WREN
WISE COUNTY
COUNTY COURT AT LAW NO. 2