

Texas Family Law – Jurisdiction and Service of Process

By Morgan, Lewis & Bockius LLP – March 31, 2021

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Custody Determination – Jurisdiction

Initial Custody Determination

Tex. Fam. Code Ann. 152.201

Jurisdiction exists where:

- (1) Texas is child's home state at commencement of proceeding or Texas was child's home state six months prior to commencement of proceeding and child is absent from Texas but at least one parent or person acting as parent continues to live in Texas; or
- (2) Court of another state does not have jurisdiction under subdivision (1) or court of home state of child declines jurisdiction on the ground that Texas is the more appropriate forum under § 152.207 (pertaining to convenience of forum) or § 152.208 (pertaining to unjustifiable conduct of the child in home state) and
 - (a) child and at least one parent have a significant connection to Texas other than mere physical presence and;
 - (b) substantial evidence is available in Texas concerning the child's care, protection, training, and personal relationships; or
- (3) all courts having jurisdiction under (1) and (2) declined to exercise jurisdiction on the ground that a court in Texas is the more appropriate forum to determine the custody of the child under § 152.207 (pertaining to convenience of forum) or § 152.208 (pertaining to unjustifiable conduct of the child in home state);
- (4) no court of any other state would have jurisdiction under subsections (1), (2), or (3).

Temporary Emergency Jurisdiction

Tex. Fam. Code Ann. § 152.204

A Texas court has temporary emergency jurisdiction if the child is present in Texas and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

Authority Interpreting § 152.204

In re Marriage of Lai, 333 S.W.3d 645, 650 (Tex. App.—Dallas 2009, no pet.) (“The exercise of jurisdiction under section 152.204 is reserved for extraordinary circumstances.”); Garza v. Henry, 726 S.W. 2d 198, 202 (Tex. Civ. App.—Amarillo 1987, no writ) (finding that the child was subjected to “mistreatment or abuse” for jurisdictional purposes where the mother testified that the father of the child “many times pushed and shoved and battered” the child and was “very often psychologically abusive to her”); In re S.J., 522 S.W.3d 576 (Tex. App.—Houston [14th Dist.] 2017, no pet.) (mother's moving with child from India to Texas without father's knowledge or consent did not constitute “mistreatment” or “abuse” supporting the exercise of temporary emergency jurisdiction).

Custody Determination – Service/Notification Requirements

Tex. Fam. Code Ann. 152.201

Before a child custody determination is made under Chapter 152 of the Texas Family Code, notice and an opportunity to be heard in accordance with the standards of Section 152.108 must be given to:

- (1) all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state;
- (2) any parent whose parental rights have not been previously terminated; and
- (3) any person having physical custody of the child.

Tex. Fam. Code Ann. 152.201

(a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.

(c) Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

Paternity and Child Support Proceeding – Jurisdiction

Tex. Fam. Code Ann. § 159.201

Jurisdiction permitted in a proceeding against a non-resident defendant to establish or enforce a support order or to determine parentage of a child if:

- (1) the individual is personally served in State;
- (2) the individual submits to the jurisdiction of the State (by entering general appearance or filing a responsive document having the effect of waiving any contest to personal jurisdiction);
- (3) the individual resided with child in the State;
- (4) individual resided in the State and previously paid prenatal expenses or support for child;
- (5) child resides in State as a result of the individual's acts or directives;
- (6) individual engaged in sexual intercourse in State and child may have been conceived in State;
- (7) individual asserted parentage in the paternity registry maintained in the State's vital statistics unit; or
- (8) any other basis for jurisdiction consistent with State and US constitutions for the exercise of personal jurisdiction.

Paternity and Child Support Proceeding – Service/Notification Requirements

See above explanation of means of notice and service under Tex. Fam. Code Ann. § 159.201 and the general rules for service of non-resident defendants.

Child Abuse/Neglect Proceeding – Jurisdiction

Tex. Fam. Code Ann. § 262.002

A suit brought by a governmental entity to protect the health and safety of a child from abuse or neglect may be filed in a court with jurisdiction to hear the suit in the county in which the child is found.

Child Abuse/Neglect Proceeding – Service/Notification Requirements

Tex. Fam. Code Ann. § 262.101

An original suit filed by a governmental entity that requests permission to take possession of a child without prior notice and a hearing must be supported by an affidavit sworn to by a person with personal knowledge and stating facts sufficient to satisfy a person of ordinary prudence and caution that:

- (1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse;
- (2) continuation in the home would be contrary to the child 's welfare;
- (3) there is no time, consistent with the physical health or safety of the child, for a full adversary hearing under Subchapter C; and
- (4) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for the removal of the child.

Tex. Fam. Code Ann. § 262.102

Before a court may, without prior notice and a hearing, issue a temporary order for the conservatorship of a child under Section 105.001(a)(1) or a temporary restraining order or attachment of a child authorizing a governmental entity to take possession of a child in a suit brought by a governmental entity, the court must find that:

- (1) there is an immediate danger to the physical health or safety of the child or the child has been a victim of neglect or sexual abuse;
- (2) continuation in the home would be contrary to the child 's welfare;
- (3) there is no time, consistent with the physical health or safety of the child and the nature of the emergency, for a full adversary hearing under Subchapter C; and
- (4) reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to prevent or eliminate the need for removal of the child.

Tex. Fam. Code Ann. § 262.109

- (a) The state must give written notice to each parent of the child or to the child 's conservator or legal guardian when a representative of the state takes possession of a child under this chapter.
- (b) The written notice must be given as soon as practicable, but in any event not later than the first business day after the date the child is taken into possession.

Divorce and Legal Separation – Jurisdiction

Tex. Fam. Code Ann. § 82.003

- (a) If the petitioner in a suit for dissolution of a marriage is a resident or a domiciliary of Texas at the time the suit for dissolution is filed, the court may exercise personal jurisdiction over the respondent or over the respondent 's personal representative although the respondent is not a resident of this state if:
 - (1) this state is the last marital residence of the petitioner and the respondent and the suit is filed before the second anniversary of the date on which marital residence ended; or
 - (2) there is any basis consistent with the constitutions of this state and the United States for the exercise of the personal jurisdiction.
- (b) A court acquiring jurisdiction under this section also acquires jurisdiction over the respondent in a suit affecting the parent-child relationship.

Divorce and Legal Separation – Service/Notification Requirements

Texas Rule of Civil Procedure 108

Where the defendant is absent from Texas, or is a nonresident of Texas, the form of notice to such defendant of the institution of the suit shall be the same as prescribed for citation to a resident defendant; and such notice may be served by any disinterested person who is not less than eighteen years of age, in the same manner as provided in Texas Rule of Civil Procedure 106.

Adoption Proceeding – Jurisdiction

Tex. Fam. Code Ann. § 103.001

A suit in which adoption is requested may be filed in the county where the child resides or in the county where the petitioner's reside, regardless of whether another court has continuing exclusive jurisdiction, and a court that has continuing exclusive jurisdiction is not required to transfer the suit affecting the parent-child relationship to the court in which the adoption suit was filed.

Tex. Fam. Code Ann. § 162.001

A child residing in Texas may be adopted if:

- (1) the parent-child relationship as to each living parent of the child has been terminated or a suit for termination is joined with the suit for adoption;
- (2) the parent whose rights have not been terminated is presently the spouse of the petitioner and the proceeding is for a stepparent adoption;
- (3) the child is at least two years old, the parent-child relationship has been terminated with respect to one parent, the person seeking the adoption has been a managing conservator or has had actual care, possession, and control of the child for a period of six months preceding the adoption or is the child's former stepparent, and the non-terminated parent consents to the adoption; or
- (4) the child is at least two years old, the parent-child relationship has been terminated with respect to one parent, and the person seeking the adoption is the child's former stepparent and has been a managing conservator or has had actual care, possession, and control of the child for a period of one year preceding the adoption.

Adoption Proceeding – Service/Notification Requirements

Tex. Fam. Code Ann. § 162.0045; 162

The court shall grant a motion for preferential setting for a final hearing on an adoption, and the adopting parents as well as the child to be adopted, if he or she is 12 or older, must attend the hearing unless the court waives this requirement.

Tex. Fam. Code Ann. § 160.402

(a) Except as otherwise provided by Subsection (b), a man who desires to be notified of a proceeding for the adoption of or the termination of parental rights regarding a child that he may have fathered may register with the registry of paternity:

- (1) before the birth of the child; or
- (2) not later than the 31st day after the date of the birth of the child.

(b) A man is entitled to notice of a proceeding described by Subsection (a) regardless of whether he registers with the registry of paternity if:

- (1) a father-child relationship between the man and the child has been established under this chapter or another law; or
- (2) the man commences a proceeding to adjudicate his paternity before the court has terminated his parental rights.

(c)A registrant shall promptly notify the registry in a record of any change in the information provided by the registrant. The vital statistics unit shall incorporate all new information received into its records but is not required to affirmatively seek to obtain current information for incorporation in the registry.

Tex. Fam. Code Ann. § 160.403

Except as provided by Sections 161.002(b)(2), (3), and (4) and (f) [governing termination of the rights of a biological father], notice of a proceeding to adopt or to terminate parental rights regarding a child must be given to a registrant who has timely registered with regard to that child. Notice must be given in a manner prescribed for service of process in a civil action.

Domestic Violence – Jurisdiction

Tex. Fam. Code Ann. § 85.001

A Texas court may issue a protective order upon a finding, after a hearing, that family violence has occurred and family violence is likely to occur in the future.

Tex. Fam. Code Ann. § 82.003

An application for a protective order may be filed in:

- (1) the county in which the applicant resides;
- (2) the county in which the respondent resides; or
- (3) any county in which the family violence is alleged to have occurred.

Domestic Violence– Service/Notification Requirements

Tex. Fam. Code Ann. § 84.041

Notice of an application for a protective order must:

- (1) be styled "The State of Texas";
- (2) be signed by the clerk of the court under the court 's seal;
- (3) contain the name and location of the court;
- (4) show the date the application was filed;
- (5) show the date notice of the application for a protective order was issued;
- (6) show the date, time, and place of the hearing;
- (7) show the file number;
- (8) show the name of each applicant and each person alleged to have committed family violence;
- (9) be directed to each person alleged to have committed family violence;
- (10) show:
 - (A)the name and address of the attorney for the applicant; or
 - (B) if the applicant is not represented by an attorney: (i) the mailing address of the applicant; or (ii) if applicable, the name and mailing address of the person designated under Section 82.011; and (11) contain the address of the clerk of the court.
- (b) the notice of an application for a protective order must state: "An application for a protective order has been filed in the court stated in this notice alleging that you have committed family violence. You may employ an attorney to defend you against this allegation. You or your attorney may, but are not required to, file a written answer to the application. Any answer must be filed before the hearing on the application. If you receive this notice within 48 hours before the time set for the hearing, you may request the court to reschedule the hearing not later than 14 days after the date set for the hearing. If you do not attend the hearing, a default judgment may be taken and a protective order may be issued against you."