

BILL ANALYSIS

Senate Research Center

H.B. 260
By: Goodman (Averitt)
Jurisprudence
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Many provisions in the Family Code contain inconsistent or outdated terminology and do not reflect current practice or case law. H.B. 260 makes consistent some of the terminology and better reflects current practice and case law. The bill makes technical corrections where inconsistencies or outdated terminology exist in the Family Code. The bill provides necessary changes and clarifications to ensure a more uniform and efficient execution of family law in the state.

H.B. 260 makes only a few substantive changes, including changes related to motions to transfer suits affecting the parent-child relationship. These changes provide a more effective and timely transfer that benefits all parties involved, especially the children.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 81, Family Code, by adding Section 81.009, as follows:

Sec. 81.009. APPEAL. (a) Provides that a protective order rendered under this subtitle is a final, appealable order.

(b) Provides that an appeal of a protective order rendered under this subtitle, with or without a supersedeas bond, does not suspend the order. Provides that the court that rendered the protective order retains jurisdiction to enforce the order until the appellate court supersedes the order.

(c) Authorizes the appellate court in its opinion, on the motion or on the court's own motion, to identify the parties by fictitious names or by the parties' initials only.

SECTION 2. Amends Section 102.004, Family Code, as follows:

Sec. 102.004. New heading: STANDING FOR GRANDPARENT OR OTHER PERSON. (a) Authorizes a grandparent, in addition to the general standing to file suit provided by Section 102.003, to file an original suit requesting managing conservatorship if there is satisfactory proof to the court that the order requested is necessary because the child's present circumstances would significantly impair the child's physical health or emotional development, rather than welfare. Makes conforming changes.

(b) Prohibits an original suit requesting possessory conservatorship from being filed by a grandparent or other person. Authorizes the court, however, to grant a grandparent or other person deemed by the court to have had substantial past contact with the child leave to intervene in a pending suit filed by a person authorized to do so under this subchapter if there is satisfactory proof to the court that appointment of a parent as a sole managing conservator or both parents as joint managing conservators would significantly impair the child's physical health or emotional development.

(c) Provides that possession of or access, rather than only access, to a child by a grandparent is governed by the standards established by Chapter 153.

SECTION 3. Amends Section 102.009(a), Family Code, as follows:

(a) Amends which entities are entitled to service of citation on the filing of a petition in an original suit.

SECTION 4. Amends Section 105.008(a), Family Code, to make a conforming change.

SECTION 5. Amends Section 105.009, Family Code, by adding Subsection (m), to require a course under this section to be available in both English and Spanish.

SECTION 6. Amends Section 153.0071, Family Code, by adding Subsection (e-1), as follows:

(e-1) Authorizes a court, notwithstanding Subsections (d) and (e), to decline to enter a judgment on a mediated settlement agreement if the court makes certain findings.

SECTION 7. Amends Section 153.009, Family Code, as follows:

Sec. 153.009. INTERVIEW OF CHILD IN CHAMBERS. (a) Requires, rather than authorizes a court, in a nonjury trial or at a hearing, on the application of a party, the amicus attorney, or the attorney ad litem for the child, to interview in chambers a child 12 years of age or older and may interview in chambers a child under 12 years of age to determine the child's wishes as to conservatorship or as to the person who is required to have the exclusive right to determine the child's primary residence. Authorizes the court to also interview a child in chambers on the court's own motion for a purpose specified by this subsection.

(b) Authorizes a court, in a nonjury trial or at a hearing, on the application of a party, the amicus attorney, or the attorney ad litem for the child or on the court's own motion, to interview the child in chambers to determine the child's wishes as to possession, access, or any other issue in the suit affecting the parent-child relationship. Deletes existing text relating to the appropriate procedure for when the issue of managing conservatorship is contested. Makes conforming changes.

(c) Provides that interviewing a child does not diminish the discretion of the court in determining the best interests of the child.

(d) Prohibits a court, in a jury trial, from interviewing the child in chambers regarding an issue on which a party is entitled to a jury verdict.

(e) Authorizes the court, in any trial or hearing, to permit the attorney for a party, the amicus attorney, the guardian ad litem for the child, or the attorney ad litem for the child to be present at the interview.

(f) Redesignates from existing Subsection (d). Requires the court, on the motion of a party, the amicus attorney, or the attorney ad litem for the child, or on the court's own motion, to cause a record of the interview to be made when the child is 12 years of age or older. Requires a record of the interview shall be part of the record in the case.

SECTION 8. Amends Section 153.132, Family Code, to make conforming changes.

SECTION 9. Amends Section 153.134(a), Family Code, to authorize the court, if a written agreement of the parents is not filed with the court, to render an order appointing the parents joint managing conservators only if the appointment is in the best interest of the child, considering certain factors, including if the child is 12 years of age or older, the child's preference, if any, regarding the person to have the exclusive right to designate the primary

residence of the child, rather than the child's preference regarding the appointment of joint managing conservators.

SECTION 10. Amends Section 153.312(b), Family Code, to provide that certain provisions govern possession of the child for vacations and certain specific holidays and supersede conflicting weekend or Thursday, rather than Wednesday, periods of possession.

SECTION 11. Amends Sections 155.201(a) and (b), Family Code, as follows:

(a) Requires, on the filing of a motion showing that a suit for dissolution of the marriage of the child's parents has been filed in another court and requesting a transfer to that court, the court having continuing, exclusive jurisdiction of a suit affecting the parent-child relationship, within the time required by Section 155.204, to transfer the proceedings to the court in which the dissolution of the marriage is pending. Requires the motion to comply with the requirements of Section 155.204(a).

(b) Requires a court, if a suit to modify or a motion to enforce an order is filed in the court having continuing, exclusive jurisdiction of a suit, on the timely motion of a party the court, within the time required by Section 155.204, to transfer the proceeding to another county in this state if the child has resided in the other county for six months or longer.

SECTION 12. Amends Section 155.204, Family Code, as follows:

Sec. 155.204. PROCEDURE FOR TRANSFER. (a) Authorizes a motion to transfer under Section 155.201(a) to be filed at any time. Requires the motion to contain a certification that all other parties, including the attorney general, if applicable, have been informed of the filing of the motion.

(b) Creates this subsection from existing text. Makes a conforming change.

(c) Creates this subsection from existing text. Requires the proceeding, if a timely motion to transfer has been filed and no controverting affidavit is filed within the period allowed for its filing, the proceeding, not later than the 21st day after the final date of the period allowed for the filing of a controverting affidavit, to be transferred without a hearing to the proper court. Deletes existing text requiring the transfer to be prompt.

(d) Redesignates from existing Subsection (b).

(e) Redesignates from existing Subsection (c).

(f) Redesignates from existing Subsection (d).

(g) Requires the proceeding to be transferred to the proper court not later than the 21st day after the date the hearing is concluded if the court finds after the hearing on the motion to transfer that grounds for the transfer exist.

(h) Redesignates from existing Subsection (h).

(i) Redesignates from existing Subsection (f). Authorizes a party to file the transfer order with the clerk of the court of continuing, exclusive jurisdiction if a transfer order has been signed, rather than rendered. Makes a conforming change.

SECTION 13. Amends Sections 155.207(a), (b), and (c), Family Code, as follows:

(a) Requires, on the signing of an order of transfer, the clerk of the court transferring a proceeding to send to the proper court in the county to which transfer is being made certain amended documents and judicial proceedings.

(b) Requires the clerk of the transferring court to keep a copy of the transferred pleadings and other requested documents, rather than the files. Makes conforming changes.

(c) Makes a conforming change.

SECTION 14. Amends Section 156.006(b), Family Code, to make nonsubstantive changes.

SECTION 15. Amends Section 156.401, Family Code, by amending Subsections (a) and (d) and adding Subsection (a-1), as follows:

(a) Provides an exception to this subsection as created by Subsection (a-1).

(a-1) Authorizes the court, if the parties agree to an order under which the amount of child support differs from the amount that would be awarded in accordance with the child support guidelines, to modify the order only if the circumstances of the child or a person affected by the order have materially and substantially changed since the date of the order's rendition.

(d) Makes a conforming change.

SECTION 16. Amends Sections 156.410(a) and (c), Family Code, to make conforming changes.

SECTION 17. Amends Section 157.005(b), Family Code, as follows:

(b) Provides that the court retains jurisdiction to confirm the total amount of child support arrearages and render judgment for past-due child support if a motion for enforcement requesting a money judgment is filed not later than the 10th anniversary after the date the child becomes an adult or the date on which the child support obligation terminates under the child support order or by operation of law. Deletes existing text providing a date based on different guidelines.

SECTION 18. Amends Section 160.760, Family Code, by adding Subsection (d), as follows:

(d) Authorizes the gestational mother or an appropriate state agency, if the intended parents fail to file the notice required by Subsection (a), to file the notice required by that subsection. Requires the court to order that the intended parents are the child's parents and are financially responsible for the child n a showing that an order validating the gestational agreement was rendered in accordance with Section 160.756.

SECTION 19. Amends Section 162.017(d), Family Code, to provide that nothing in this chapter precludes or affects the rights of a biological or adoptive maternal or paternal grandparent to reasonable possession of or access to a grandchild, as provided in Chapter 153.

SECTION 20. Makes application of Section 81.009, Family Code, as added by this Act, prospective.

SECTION 21. Makes application of Sections 102.004 and 102.009, Family Code, as amended by this Act, prospective.

SECTION 22. Provides that the changes in law made by this Act to Sections 153.0071 and 153.009, Family Code, apply only to a suit affecting the parent-child relationship pending before a trial court on or filed on or after the effective date of this Act.

SECTION 23. Makes application of Section 153.134, Family Code, as amended by this Act, prospective.

SECTION 24. Makes application of Sections 155.201, 155.204, and 155.207, Family Code, as amended by this Act, prospective.

SECTION 25. Makes application of Section 156.006, Family Code, as amended by this Act, prospective.

SECTION 26. Provides that the change in law made by this Act to Section 156.401, Family Code, applies only to a suit for modification pending before a trial court on or filed on or after the effective date of this Act.

SECTION 27. Makes application of Section 157.005, Family Code, as amended by this Act, prospective.

SECTION 28. Effective date: upon passage or September 1, 2005.