

By: Goodman

H.B. No. 252

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the use of parenting plans and parenting coordinators
3 in suits affecting the parent-child relationship.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. The legislature finds that the use of parenting
6 plans and parenting coordinators in suits affecting the
7 parent-child relationship will assist in promoting the best
8 interest of children and in helping litigants resolve their issues
9 relating to parenting. The legislature further finds that
10 conciliatory forms of dispute resolution, including mediation and
11 the use of parenting coordinators, promote the policy set forth in
12 Section 153.001, Family Code.

13 SECTION 2. Chapter 153, Family Code, is amended by adding
14 Subchapter J to read as follows:

15 SUBCHAPTER J. PARENTING PLAN AND PARENTING COORDINATOR

16 Sec. 153.601. DEFINITIONS. In this subchapter:

17 (1) "Dispute resolution process" means a process of
18 alternative dispute resolution conducted in accordance with
19 Section 153.0071 of this chapter and Chapter 154, Civil Practice
20 and Remedies Code.

21 (2) "High-conflict case" means a suit affecting the
22 parent-child relationship in which the parties demonstrate a
23 pattern of:

24 (A) repetitious litigation;

1 (B) anger and distrust;

2 (C) verbal abuse;

3 (D) physical aggression or threats of physical
4 aggression;

5 (E) difficulty in communicating about and
6 cooperating in the care of their children; or

7 (F) other behaviors that in the discretion of the
8 court warrant the appointment of a parenting coordinator.

9 (3) "Parenting coordinator" means an impartial third
10 party appointed by the court to assist parties in resolving issues
11 relating to parenting and other family issues arising from an order
12 in a suit affecting the parent-child relationship.

13 (4) "Parenting plan" means a temporary or final court
14 order that sets out the rights and duties of parents in a suit
15 affecting the parent-child relationship and includes provisions
16 relating to conservatorship, possession of and access to a child,
17 and child support, and a dispute resolution process to minimize
18 future disputes.

19 Sec. 153.602. REQUIREMENT FOR TEMPORARY PARENTING PLAN.

20 (a) A temporary order in a suit affecting the parent-child
21 relationship must incorporate a temporary parenting plan. The
22 temporary parenting plan must comply with the requirements for a
23 final parenting plan under Section 153.603.

24 (b) If the parties cannot agree to a temporary parenting
25 plan, the court may, on the motion of a party or on the court's own
26 motion, order the parties to participate in a dispute resolution
27 process to establish a temporary parenting plan.

1 (c) If a dispute resolution process is not available or is
2 not successful, a party may request and the court may order an
3 expedited hearing to establish a temporary parenting plan.

4 Sec. 153.603. REQUIREMENT OF FINAL PARENTING PLAN. (a) A
5 final order in a suit affecting the parent-child relationship must
6 incorporate a final parenting plan. A final parenting plan must:

7 (1) establish the rights and duties of each parent
8 with respect to the child, consistent with the criteria in this
9 chapter;

10 (2) minimize the child's exposure to harmful parental
11 conflict;

12 (3) provide for the child's changing needs as the child
13 grows and matures, in a way that minimizes the need for further
14 modifications to the final parenting plan; and

15 (4) provide for a dispute resolution process or other
16 voluntary dispute resolution procedures, before court action,
17 unless precluded or limited by Section 153.0071.

18 (b) In providing for a dispute resolution process, the
19 parenting plan must state that:

20 (1) preference shall be given to carrying out the
21 parenting plan; and

22 (2) the parties shall use the designated process to
23 resolve disputes.

24 (c) If the parties cannot reach agreement on a final
25 parenting plan, the court, on the motion of a party or on the
26 court's own motion, may order appropriate dispute resolution
27 proceedings under Section 153.0071 to determine a final parenting

1 plan.

2 (d) If the parties have not reached agreement on a final
3 parenting plan on or before the 30th day before the date set for
4 trial, each party shall file with the court and serve a proposed
5 final parenting plan. Failure by a party to comply with this
6 subsection may result in the court's adoption of the proposed final
7 parenting plan filed by the opposing party if the court finds that
8 plan to be in the best interest of the child.

9 (e) Each party filing a proposed final parenting plan must
10 attach:

11 (1) a verified statement of income determined in
12 accordance with the child support guidelines and related provisions
13 prescribed by Chapter 154; and

14 (2) a verified statement that the plan is proposed in
15 good faith and is in the best interest of the child.

16 Sec. 153.604. MODIFICATION OF FINAL PARENTING PLAN. (a) In
17 a suit for modification, a proposed parenting plan shall be filed
18 with the court and served with the petition for modification and
19 with the response to the petition for modification, unless the
20 modification is sought only with regard to child support. The
21 obligor party's proposed parenting plan must be accompanied by a
22 verified statement of income determined in accordance with the
23 child support guidelines and related provisions prescribed by
24 Chapter 154.

25 (b) The procedure for modifying a final parenting plan is
26 governed by Chapter 156.

27 Sec. 153.605. APPOINTMENT OF PARENTING COORDINATOR. (a)

1 In a suit affecting the parent-child relationship, the court may,
2 on its own motion or on a motion or agreement of the parties,
3 appoint a parenting coordinator to assist the parties in resolving
4 issues related to parenting or other family issues in the suit.

5 (b) The court may not appoint a parenting coordinator if any
6 party objects unless the court makes specific findings that:

7 (1) the case is or is likely to become a high-conflict
8 case; or

9 (2) the appointment of a parenting coordinator is in
10 the best interest of any minor child in the suit.

11 Sec. 153.606. AUTHORITY OF PARENTING COORDINATOR. (a) The
12 authority of a parenting coordinator must be specified in the order
13 appointing the parenting coordinator and limited to matters that
14 will aid the parties in:

15 (1) identifying disputed issues;

16 (2) reducing misunderstandings;

17 (3) clarifying priorities;

18 (4) exploring possibilities for problem solving;

19 (5) developing methods of collaboration in parenting;

20 (6) developing a parenting plan; and

21 (7) complying with the court's order regarding
22 conservatorship or possession of and access to the child.

23 (b) The appointment of a parenting coordinator does not
24 divest the court of:

25 (1) its exclusive jurisdiction to determine issues of
26 conservatorship, support, and possession of and access to the
27 child; and

1 (2) the authority to exercise management and control
2 of the suit.

3 (c) The parenting coordinator may not modify any order,
4 judgment, or decree but may urge or suggest that the parties agree
5 to minor temporary departures from a parenting plan if the
6 parenting coordinator is authorized by the court to do so. Any
7 agreement made by the parties and the parent coordinator may be
8 reduced to writing and presented to the court for approval.

9 (d) Meetings between the parenting coordinator and the
10 parties may be informal and are not required to follow any specific
11 procedures.

12 (e) A parenting coordinator may not:

13 (1) be compelled to produce work product developed
14 during the appointment as parenting coordinator;

15 (2) be required to disclose the source of any
16 information;

17 (3) submit a report into evidence, except as required
18 by Section 153.608; or

19 (4) testify in court.

20 (f) Subsection (e) does not affect the duty to report child
21 abuse or neglect under Section 261.101.

22 Sec. 153.607. REMOVAL OF PARENTING COORDINATOR. (a)
23 Except as otherwise provided by this section, the court shall
24 reserve the right to remove the parenting coordinator in the
25 court's discretion.

26 (b) The court may remove the parenting coordinator:

27 (1) on the request and agreement of both parties; or

1 (2) on the motion of a party, if good cause is shown.

2 Sec. 153.608. REPORT OF PARENTING COORDINATOR. A parenting
3 coordinator shall submit a written report to the court and to the
4 parties as often as ordered by the court. In the report, the
5 parenting coordinator may give only an opinion regarding whether
6 the parenting coordination is succeeding and should continue.

7 Sec. 153.609. COMPENSATION OF PARENTING COORDINATOR. (a)
8 A court may not appoint a parenting coordinator, other than an
9 employee described by Subsection (c) or a volunteer appointed under
10 Subsection (d), unless the court finds that the parties have the
11 means to pay the fees of the parenting coordinator.

12 (b) Any fees of a parenting coordinator appointed under
13 Subsection (a) shall be allocated between the parties as determined
14 by the court.

15 (c) Public funds may not be used to pay the fees of a
16 parenting coordinator. Notwithstanding this prohibition, a court
17 may appoint an employee of the court, the domestic relations
18 office, or a comparable county agency to act as a parenting
19 coordinator if personnel are available to serve that function.

20 (d) If due to hardship the parties are unable to pay the fees
21 of a parenting coordinator, and a public employee is not available
22 under Subsection (c), the court, if feasible, may appoint a person
23 to act as a parenting coordinator on a volunteer basis.

24 Sec. 153.610. QUALIFICATIONS OF PARENTING COORDINATOR. (a)
25 The court shall determine the required qualifications of a
26 parenting coordinator, provided that a parenting coordinator must
27 at least:

1 (1) hold a bachelor's degree in counseling, education,
2 family studies, psychology, or social work and, unless waived by
3 the court, complete a parenting coordinator course of at least 16
4 hours; or

5 (2) hold a graduate degree in a mental health
6 profession, with an emphasis in family and children's issues.

7 (b) The actions of a parenting coordinator who is not an
8 attorney does not constitute the practice of law.

9 SECTION 3. Section 153.007, Family Code, is amended to read
10 as follows:

11 Sec. 153.007. AGREED PARENTING PLAN [~~AGREEMENT CONCERNING~~
12 ~~CONSERVATORSHIP~~]. (a) To promote the amicable settlement of
13 disputes between the parties to a suit, the parties may enter into a
14 written agreed parenting plan [~~agreement~~] containing provisions
15 for conservatorship and possession of the child and for
16 modification of the parenting plan [~~agreement~~], including
17 variations from the standard possession order.

18 (b) If the court finds that the agreed parenting plan
19 [~~agreement~~] is in the child's best interest, the court shall render
20 an order in accordance with the parenting plan [~~agreement~~].

21 (c) Terms of the agreed parenting plan [~~agreement~~]
22 contained in the order or incorporated by reference regarding
23 conservatorship or support of or access to a child in an order may
24 be enforced by all remedies available for enforcement of a
25 judgment, including contempt, but are not enforceable as a
26 contract.

27 (d) If the court finds the agreed parenting plan [~~agreement~~]

1 is not in the child's best interest, the court may request the
2 parties to submit a revised parenting plan [~~agreement~~] or the court
3 may render an order for the conservatorship and possession of the
4 child.

5 SECTION 4. Section 153.133, Family Code, is amended to read
6 as follows:

7 Sec. 153.133. PARENTING PLAN [~~AGREEMENT~~] FOR JOINT MANAGING
8 CONSERVATORSHIP. (a) If a written agreed parenting plan
9 [~~agreement of the parents~~] is filed with the court, the court shall
10 render an order appointing the parents as joint managing
11 conservators only if the parenting plan [~~agreement~~]:

12 (1) designates the conservator who has the exclusive
13 right to designate the primary residence of the child and:

14 (A) establishes, until modified by further
15 order, the geographic area within which the conservator shall
16 maintain the child's primary residence; or

17 (B) specifies that the conservator may designate
18 the child's primary residence without regard to geographic
19 location;

20 (2) specifies the rights and duties of each parent
21 regarding the child's physical care, support, and education;

22 (3) includes provisions to minimize disruption of the
23 child's education, daily routine, and association with friends;

24 (4) allocates between the parents, independently,
25 jointly, or exclusively, all of the remaining rights and duties of a
26 parent provided by Chapter 151;

27 (5) is voluntarily and knowingly made by each parent

1 and has not been repudiated by either parent at the time the order
2 is rendered; and

3 (6) is in the best interest of the child.

4 (b) The agreed parenting plan must [~~agreement may~~] contain
5 an alternative dispute resolution procedure that the parties agree
6 to use before requesting enforcement or modification of the terms
7 and conditions of the joint conservatorship through litigation,
8 except in an emergency.

9 SECTION 5. Section 153.134(a), Family Code, is amended to
10 read as follows:

11 (a) If a written agreed parenting plan [~~agreement of the~~
12 ~~parents~~] is not filed with the court, the court may render an order
13 appointing the parents joint managing conservators only if the
14 appointment is in the best interest of the child, considering the
15 following factors:

16 (1) whether the physical, psychological, or emotional
17 needs and development of the child will benefit from the
18 appointment of joint managing conservators;

19 (2) the ability of the parents to give first priority
20 to the welfare of the child and reach shared decisions in the
21 child's best interest;

22 (3) whether each parent can encourage and accept a
23 positive relationship between the child and the other parent;

24 (4) whether both parents participated in child rearing
25 before the filing of the suit;

26 (5) the geographical proximity of the parents'
27 residences;

1 (6) if the child is 12 years of age or older, the
2 child's preference, if any, regarding the appointment of joint
3 managing conservators; and

4 (7) any other relevant factor.

5 SECTION 6. Subchapter J, Chapter 153, Family Code, as added
6 by this Act, and the changes in law made by this Act to Sections
7 153.007, 153.133, and 153.134, Family Code, apply only to a suit
8 affecting the parent-child relationship filed on or after the
9 effective date of this Act. A suit affecting the parent-child
10 relationship filed before the effective date of this Act is
11 governed by Chapter 153, Family Code, as it existed before
12 amendment by this Act, and the former law is continued in effect for
13 that purpose.

14 SECTION 7. This Act takes effect September 1, 2005.