

BILL ANALYSIS

Senate Research Center
85R24220 JSC-D

C.S.S.B. 1237
By: Rodríguez
State Affairs
4/24/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1237 is part of the legislative package of the Family Law Section of the State Bar of Texas. The bill was approved by the Section's Legislative Committee, reviewed and approved by all sections of the Bar, and approved by the full Board of the State Bar.

S.B. 1237 updates the procedures that are applied when a family law case is appealed. The thrust of the bill is to make the rules for appeals in family law cases consistent while addressing issues that impact family law litigants during appeals.

S.B. 1237 clarifies what types of temporary orders a trial court can make during the pendency of an appeal of the trial court's order to an appellate court, and what orders can be enforced by a trial court during an appeal. Temporary orders during an appeal are important in family law cases, since appeals can last a year or longer and families need to know what property can be used for support, what periods of possession of children they should exercise, and other day-to-day issues that are impacted by orders that are being appealed.

The bill clarifies that a trial court must wait to enforce its property division until the period for a party to appeal the court's ruling has elapsed and clarifies the situations in which findings are required to be in a trial court's order even without a request for findings of fact and conclusions of law by any party.

S.B. 1237 also clarifies that accelerated appeals procedures apply in cases when a trial court's order actually terminates a person's parental rights and in cases when interstate child custody is an issue. (Original Author's / Sponsor's Statement of Intent)

C.S.S.B. 1237 amends current law relating to procedures in a suit for dissolution of a marriage or a suit affecting the parent-child relationship.

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 Section 6.709, Family Code, as follows:

Sec. 6.709. TEMPORARY ORDERS DURING APPEAL. (a) Authorizes the trial court, in a suit for dissolution of a marriage, rather than not later than the 30th day after the date an appeal is perfected, on the motion of a party or on the court's own motion, after notice and hearing, to render a temporary order as considered equitable and necessary for the preservation of the property and for the protection of the parties during an appeal, including an order directed toward one or both parties:

- (1) requiring the support of either spouse;
- (2) requiring the payment of reasonable and necessary attorney's fees and expenses;

- (3) appointing a receiver for the preservation and protection of the property of the parties;
- (4) awarding one spouse exclusive occupancy of the parties' residence pending the appeal;
- (5) enjoining a party from dissipating or transferring the property awarded to the other party in the trial court's property division; or
- (6) suspending the operation of all or part of the property division that is being appealed.

Makes nonsubstantive changes.

(b) Provides that a temporary order under this section enjoining a party from dissipating or transferring the property awarded to the other party in the trial court's property division may be rendered without the issuance of a bond between the spouses or an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result, is not required to define the injury or state why the injury is irreparable or include an order setting the suit for trial on the merits with respect to the ultimate relief sought and may not prohibit a party's use, transfer, conveyance, or dissipation of the property awarded to the other party in the trial court's property division if the use, transfer, conveyance, or dissipation of the property is for the purpose of suspending the enforcement of the property division that is the subject of the appeal.

(c) Prohibits a temporary order under this section that suspends the operation of all or part of the property division that is the subject of the appeal from being rendered unless the trial court takes reasonable steps to ensure that the party awarded property in the trial court's property division is protected from the other party's dissipation or transfer of that property.

(d) Requires the trial court, in considering a party's request to suspend the enforcement of the property division, to consider whether any relief granted under Subsection (a) is adequate to protect the party's interest in the property awarded to the party or the party who was not awarded the property should also be required to provide security for the appeal in addition to any relief granted under Subsection (a).

(e) Requires the trial court, if the trial court determines that the party awarded the property can be adequately protected from the other party's dissipation of assets during the appeal only if the other party provides security for the appeal, to set the appropriate amount of security, taking into consideration any relief granted under Subsection (a) and the amount of security that the other party would otherwise have to provide by law if relief under Subsection (a) was not granted.

(f) Authorizes the trial court, in rendering a temporary order under this section that suspends enforcement of all or part of the property division, to grant any relief under Subsection (a), in addition to requiring the party who was not awarded the property to post security for that part of the property division to be suspended. Authorizes the trial court to require that the party who was not awarded the property post all or only part of the security that would otherwise be required by law.

(g) Provides that this section does not prevent a party who was not awarded the property from exercising that party's right to suspend the enforcement of the property division as provided by law.

(h) Provides that a motion seeking an original temporary order under this section may be filed before trial and may not be filed by a party after the date by which that party is required to file the party's notice of appeal under the Texas Rules of Appellate Procedure.

(i) Provides that the trial court retains jurisdiction to conduct a hearing and sign an original temporary order under this section until the 60th day after the date any eligible party has filed a notice of appeal from final judgment under the Texas Rules of Appellate Procedure.

(j) Provides that the trial court retains jurisdiction to modify and enforce a temporary order, rather than to enforce a temporary order, under this section unless the appellate court, on proper showing, supersedes the trial court's order.

(k) Authorizes a trial court, on the motion of a party or on the court's own motion, after notice and hearing, to modify a previous temporary order rendered under this section if the circumstances of a party have materially and substantially changed since the rendition of the previous order and modification is equitable and necessary for the preservation of the property or for the protection of the parties during the appeal.

(l) Authorizes a party to seek review of the trial court's temporary order under this section by motion filed in the court of appeals with jurisdiction or potential jurisdiction over the appeal from the judgment in the case, proper assignment in the party's brief, or petition for writ of mandamus.

(m) Provides that a temporary order rendered under this section is not subject to interlocutory appeal.

(n) Provides that the remedies provided in this section are cumulative of all other remedies allowed by law.

SECTION 2. Amends Section 6.711, Family Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires the court, in a suit for dissolution of a marriage in which the court has rendered a judgment dividing the estate of the parties, on request by a party, to state in writing its findings of fact and conclusions of law, including the characterization and value of all assets, liabilities, claims, and offsets on which disputed evidence has been presented. Deletes existing Subdivision (1) designation and the text of Subdivision (2). Makes nonsubstantive changes.

(c) Provides that the findings of fact and conclusions of law required by this section are in addition to any other findings or conclusions required or authorized by law.

SECTION 3. Amends Section 9.007(c), Family Code, as follows:

(c) Prohibits the trial court from rendering an order to assist in the implementation of or to clarify the property division made or approved in the decree before the 30th day after the date the final judgment is signed, rather than providing that the power of the court to render further orders to assist in the implementation of or to clarify the property division is abated while an appellate proceeding is pending. Prohibits the trial court, if a timely motion for new trial or to vacate, modify, correct, or reform the decree is filed, from rendering an order to assist in the implementation of or to clarify the property division made or approved in the decree before the 30th day after the date the order overruling the motion is signed or the motion is overruled by operation of law.

SECTION 4. Amends Section 109.001, Family Code, by amending Subsections (a) and (b) and adding Subsections (b-1), (b-2), (b-3), (b-4), (b-5), and (e), as follows:

(a) Authorizes the court, in a suit affecting the parent-child relationship, rather than not later than the 30th day after the date an appeal is perfected, on the motion of any party or on the court's own motion and after notice and hearing, to make any order necessary to preserve and protect the safety and welfare of the child during the pendency of an appeal as the court may deem necessary and equitable. Authorizes an order, in addition to other matters, to enjoin, rather than restrain, a party from molesting or disturbing the peace of the child or another party or to require the payment of reasonable and necessary attorney's fees and expenses. Makes nonsubstantive changes.

(b) Provides that a temporary order under this section enjoining a party from molesting or disturbing the peace of the child or another party may be rendered without the issuance of a bond between the spouses or an affidavit or a verified pleading stating specific facts showing that immediate and irreparable injury, loss, or damage will result, and is not required to define the injury or state why the injury is irreparable or include an order setting the suit for trial on the merits with respect to the ultimate relief sought.

(b-1) Provides that a motion seeking an original temporary order under this section may be filed before trial and may not be filed by a party after the date by which that party is required to file the party's notice of appeal under the Texas Rules of Appellate Procedure.

(b-2) Provides that the trial court retains jurisdiction to conduct a hearing and sign a temporary order under this section until the 60th day after the date any eligible party has filed a notice of appeal from final judgment under the Texas Rules of Appellate Procedure.

(b-3) Provides that the trial court retains jurisdiction to modify and enforce a temporary order, rather than its orders rendered, under this section unless the appellate court, on a proper showing, supersedes the court's order.

(b-4) Authorizes the trial court, on the motion of a party or on the court's own motion, after notice and hearing, to modify a previous temporary order rendered under this section if the circumstances of a party have materially and substantially changed since the rendition of the previous order and modification is equitable and necessary for the safety and welfare of the child.

(b-5) Authorizes a party to seek review of the trial court's temporary order under this section by petition for writ of mandamus or proper assignment in the party's brief.

(e) Provides that the remedies provided in this section are cumulative of all other remedies allowed by law.

SECTION 5. Amends the heading to Section 109.002, Family Code, to read as follows:

Sec. 109.002. APPELLATE REVIEW.

SECTION 6. Amends Section 109.002, Family Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires that an appeal from a final order rendered in a suit, when allowed under this section or under other provisions of law, be as in civil cases generally under the Texas Rules of Appellate Procedure, except that an appeal from a final order rendered under Subchapter D (Enforcement), Chapter 152 (Uniform Child Custody Jurisdiction and Enforcement Act), is required to comply with Section 152.314 (Appeals).

(a-1) Requires that an appeal in a suit in which termination of the parent-child relationship is ordered, rather than in issue, be given precedence over other civil cases by the appellate courts, be accelerated, and follow the procedures for an accelerated appeal under the Texas Rule of Appellate Procedure, rather than apply to an appeal in which the termination of the parent-child relationship is in issue. Makes nonsubstantive changes.

SECTION 7. Amends Section 109.003, Family Code, as follows:

Sec. 109.003. New heading: PAYMENT FOR COURT REPORTER'S RECORD. (a) Authorizes the trial court, if the party requesting a court reporter's record, rather than statement of facts, in an appeal of a suit has filed an affidavit stating the party's inability to pay costs as provided by Rule 20, Texas Rules of Appellate Procedure, and the affidavit is approved by the trial court, to order the county in which the trial was held to pay the costs of preparing the court reporter's record, rather than statement of facts.

(b) Makes a conforming change.

SECTION 8. Amends Section 152.314, Family Code, as follows:

Sec. 152.314. New heading: ACCELERATED APPEALS. Authorizes an appeal to be taken from a final order in a proceeding under this subchapter in accordance with accelerated, rather than expedited, appellate procedures in other civil cases. Prohibits the enforcing court, unless the court enters a temporary emergency order under Section 152.204 (Temporary Emergency Jurisdiction), from staying an order enforcing a child custody determination pending appeal.

SECTION 9. Amends Section 153.258, Family Code, as follows:

Sec. 153.258. REQUEST FOR FINDINGS WHEN ORDER VARIES FROM STANDARD ORDER. (a) Requires the court, in all cases in which possession of a child by a parent is contested and the possession of the child varies from the standard possession order, including a possession order for a child under three years of age, on request by a party, to state in writing the specific reasons for the variance from the standard order. Deletes existing text requiring the court, without regard to Rules 296 through 299, Texas Rules of Civil Procedure, in all cases in which possession of a child by a parent is contested and the possession of the child varies from the standard possession order, on written request made or filed with the court not later than 10 days after the date of the hearing or an oral request made in open court during the hearing, to state in the order the specific reasons for the variance from the standard order.

(b) Requires that a request for findings of fact under this section conform to the Texas Rules of Civil Procedure.

SECTION 10. Amends Section 154.130, Family Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires the court, without regard to Rules 296 through 299, Texas Rules of Civil Procedure, in rendering an order of child support, to make the findings required by Subsection (b) if:

(1) a party files a written request with the court before the final order is signed, but not later than 20, rather than 10, days after the date of rendition of the order, rather than the hearing;

(2) and (3) makes no changes to these subdivisions.

(c) Provides that findings under Subsection (b)(2) are required only if evidence of the monthly net resources of the obligee has been offered.

SECTION 11. Amends Section 156.005, Family Code, as follows:

Sec. 156.005. FRIVOLOUS FILING OF SUIT FOR MODIFICATION. Requires the court, notwithstanding Rules 296 through 299, Texas Rules of Civil Procedure, if the court finds that a suit for modification is filed frivolously or is designed to harass a party, to state that finding in the order and assess, rather than tax, attorney's fees as costs against the offending party.

SECTION 12. Repealers: Sections 153.254(b) (relating to requiring the court in rendering an order to make findings in support of the order if a party makes certain requests) and (c) (relating to requiring the court make and enter the findings no later than the 15th day after the date the party makes the request), Family Code.

Repealer: Section 154.130(a-1) (relating to requiring the court to make and enter the findings, if required, not later than the 15th day after the date of the party's request), Family Code.

SECTION 13. Authorizes any party to the appeal, notwithstanding Section 6.709, Family Code, as amended by this Act, if any eligible parties have filed a notice of appeal from a final judgment under the Texas Rules of Appellate Procedure before September 1, 2017, to file a motion in the trial court for an original temporary order under Section 6.709, Family Code, as it existed immediately before the effective date of this Act, and provides that the trial court has jurisdiction to conduct a hearing and sign an original temporary order under that section until October 30, 2017.

SECTION 14. Makes application of this Act, except as provided by Section 13 of this Act, prospective.

SECTION 15. Effective date: September 1, 2017.