

By: _____

S.B. No. _____

A BILL TO BE ENTITLED

AN ACT

Relating to the fundamental fairness in Suits Affecting the Parent-Child Relationship.

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

SECTION 1: AMENDMENT OF SECTION 151.004, Effective June 14, 20, are amended to read as follows:

Sec. 151.004. LIMITATION ON STATE JUDICIAL ACTION. Judicial action under this code is limited by state and federal constitutional constraints; every litigant under this code is entitled to a just, fair, equitable and impartial adjudication of the rights of litigants under established principles of substantive law; and every litigant is entitled to the equal application of the laws of Texas and the equal application of the Texas Rules of Civil Procedure.

SECTION 2. EFFECT OF ACT. (a) This Act clarifies for the Texas Judiciary that the Texas Family Code is intended by the Texas Legislature to be implemented in a manner consistent with state and federal constitutional guarantees, that provides by statutory command that Rule 1 of the Texas Rules of Civil Procedure SHALL be applied in SAPCR proceedings, and that the Texas Rules of Civil Procedure SHALL be applied equally to parents in SAPCR proceedings as with civil litigants generally. (b) This act corrects the erroneous holdings of the Texas First District Court of Appeals that constitutional, statutory, and procedural limitations on judicial action in SAPCR proceedings are mere technicalities that do not limit the trial court's discretion. (c) This act corrects the erroneous holdings of the Texas Fourth District Court of Appeals that trial court judges in SAPCR proceedings are NOT state actors taking state action under the Texas Family Code and subsequently are NOT limited by Fourteenth Amendment limitations on judicial action. (d) This act clarifies that the Texas Legislature has NOT granted trial court judges unbridled discretion to violate constitutional rights of parents in SAPCR proceedings.

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SECTION 3. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect on the September 1, 2021.

BILL SUMMARY: Bill Summary (Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the re-engrossed version of this bill will be available at <http://www.tdi.texas.gov/reports/leg/86bills/billsummary.html>.) The bill amends provisions relating SAPCR actions and certain other actions in the family code. With respect to such actions, the bill: Amends the legislative declaration to emphasize that the Texas Family Code does NOT authorize unbridled discretion of Texas trial court judges to violate constitutional rights based on the trial court’s viewpoint regarding the child’s best interest and that it is the public policy of the state of Texas, mirroring the federal policy, that it is always in the public interest for trial court judges to prevent the violation of the constitutional rights of litigants before them, even in SAPCR proceedings;

SENATE SPONSORSHIP _____, HOUSE SPONSORSHIP _____, Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment. Capital letters indicate new material to be added to existing statute. Dashes through the words indicate deletions from existing statute.

Supporting references:

IN THE INTEREST OF I.M.M. AND K.R.M., CHILDREN, NO. 01-17-00415-CV (Tex: First District Court of Appeals)

Furthermore, there is a “diminished significance of technical pleading rules” in modification suits where the principal concern is the children’s best interest, King v. Lyons, 457 S.W.3d 122, 129–30 (Tex. App.—Houston [1st Dist.] 2014, no pet.), and the trial court has discretion to place conditions on matters of possession even when the pleadings do not request such conditions. In re W.B.B., No. 05-17-00384-CV, 2018 WL 3434588, at *6 (Tex. App.—Dallas July 17, 2018, no pet.) (mem. op.); MacCallum v. MacCallum, 801 S.W.2d 579, 586 (Tex. App.—

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Corpus Christi 1990, writ denied) (“Pleadings are of little importance in child custody cases and the trial court’s efforts to exercise broad, equitable powers in determining what will be best for the future welfare of a child should be unhampered by narrow technical rulings.”).

Sanchez v. Sanchez, _____ (Tex: 4th Dist. 2007)

In issue six, Edward raises what he deems "constitutional issues." He first contends "the state" has infringed upon his "fundamental liberty interest" with regard to his right to custody and care of his children without a compelling state interest. Edward appears to assume this case involves state action because it was presided over by a state district judge. There is no legal support for Edward's presumption and his argument is wholly without merit. There has been no "state action" in this case; rather, this was a private suit between two individuals concerning issues of divorce and child custody.

This was a memorandum opinion (unpublished) that was appealed to and rejected by SCOTUS. The appeal was brought pro se, and the “state action” question was not raised with SCOTUS. This case was cited in 2017 by OC in a Texas state appeal brought by a pro se father seeking protection for his constitutional rights. The state’s records of this case have been deleted in accordance with standard retention policies, but the case history remains in the state appellate court system. Appellant found the exhibit copy provided herein at: <https://www.casemine.com/judgement/us/5914b3f8add7b049347697cf#>. The SCOTUS denial is available in Westlaw.