



Children's Commission

Jurist in Residence Letter:

For Judges Handling Child Protective Services Cases

November 10, 2017

Supreme Court Emergency Order and Applicability of Family Code Section 263.401

Pursuant to authority granted by the Texas Government Code Section 22.0035(b)¹, the Supreme Court of Texas on September 5, 2017, issued Misc. Docket No. 17-9111 suspending the applicability of Texas Family Code Section 263.401, which governs dismissals, new trials, and extensions in child protection cases.² The Supreme Court extended this emergency order twice for two additional periods of 30 days each on September 26, 2017 (Misc. Docket No. 17-9126) and on October 25, 2017 (Misc. Docket No. 17-9135).³ This emergency order is set to expire on November 23, 2017, and a third extension cannot be presumed.

Chapter 263 of the Texas Family Code provides for the dismissal of a suit affecting the parent-child relationship in which the Department of Family and Protective Services is the conservator of a child if the court does not take certain actions prescribed by Section 263.401. Several courts in counties declared a disaster by Governor Abbott were unable to conduct proceedings because of difficulties with access to facilities, travel, and communication, hence the need for the emergency order issued by the Supreme Court on September 5, 2017. Without the emergency order in place, all courts will be required to apply Section 263.401 in the ordinary course of business.

Please note that the 85th Legislature amended Section 263.401 in two different bills (House Bill 7 and Senate Bill 11) both effective September 1, 2017. Amended Section 263.401(a) requires that *court jurisdiction automatically terminates without a court order* (emphasis added) unless the court has commenced the trial on the merits or granted an extension under Section 263.401(b) or (b-1) by the original dismissal date.

The applicability language of House Bill 7 and Senate Bill 11 conflict with regard to the applicability of the amendment to suits affecting the parent-child relationship filed before September 1, 2017. House Bill 7 states that the amendment to Section 263.401 applies to a suit affecting the parent-child relationship *pending in a trial court on the effective date of the Act or filed on or after the effective date of the Act*. (emphasis added).⁴ Further, House Bill 7 applicability language provides that *the former law applies only to suits affecting the parent-child relationship in which a final order is rendered before the effective date of the Act*. (emphasis added).

The applicability language of Senate Bill 11 provides that the amendment to Section 263.401 applies to suits *filed on or after the effective date of the Act*, and that a suit affecting the parent-child relationship filed prior to the effective date of the Act is governed by the law in effect on the date the suit was filed, *and the former law is continued in effect for that purpose*.⁵ (emphasis added).

Thus, House Bill 7 applies the former law only to those cases where a final order was issued before September 1, 2017, and Senate Bill 11 applies the former law to all cases filed before September 1, 2017, without regard to whether a final order was issued before the effective date of the Act.

The conflict between the applicability language in House Bill 7 and Senate Bill 11 would likely be resolved under the Texas Code Construction Act. Section 311.025(a) of that Act states that the statute on which the last legislative vote is taken on the bill enacting the statute prevails when statutes enacted during the same legislative sessions are irreconcilable.⁶ The Texas House passed House Bill 7 on May 24, 2017,

and the Texas Senate passed House Bill 7 on May 26, 2017. The bill was reported enrolled on May 29, 2017, and signed by Governor Abbott on May 31, 2017. Both the Texas House and the Texas Senate passed Senate Bill 11 on May 28, 2017. It was reported enrolled on May 29, 2017, and signed by Governor Abbott on May 31, 2017. As Senate Bill 11 was the bill on which the last legislative vote was taken on May 28, 2017, the new provision for automatic dismissal without a court order applies solely to cases filed on or after September 1, 2017, and the former law on dismissal applies to cases that were pending prior to September 1, 2017.



Hon. Dean Rucker

Jurist In Residence



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¹ Tex. Gov't Code Ann. § 22.035(b)

² Tex. Fam. Code Ann. § 263.401

³ <http://www.txcourts.gov/supreme/administrative-orders/2017/>

⁴ <http://www.capitol.state.tx.us/tlodocs/85R/billtext/pdf/HB00007F.pdf#navpanes=0>

⁵ <http://www.capitol.state.tx.us/tlodocs/85R/billtext/pdf/SB00011F.pdf#navpanes=0>

⁶ Tex. Gov't Code Ann. § 311.025