

UNITED STATES DISTRICT COURT

for the

Eastern District of Texas Sherman

Ronald B. Palmer and Sherry L.
Palmer
Plaintiffs,

v.

STATE OF TEXAS, and Kenneth
Paxton, Jr., in his official
capacity as Attorney General of
Texas, and The Honorable
Margaret Barnes, in her official
capacity as 367th District Court
Judge, and The Honorable
Jonathan Bailey, in his official
capacity as 431st District Court
Judge,
Defendants.

CIVIL ACTION NO. 4:15-cv-657

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THE PARTIES

1) Plaintiff, Ronald B Palmer, is now and at all times relevant to this Complaint a resident of Corinth, County of Denton, and State of Texas. Plaintiff is the father of a minor child subject to the continuing jurisdiction of the 367th Judicial District Court of Denton County, State of Texas as a result of a Suit Affecting the Parent-Child Relationship (SAPCR herein) incident to a divorce action, Tex. Fam. Code Title 5.

2) Plaintiff, Sherry L Palmer, is now and at all times relevant to this Complaint a resident of Corinth, County of Denton, and State of Texas. Plaintiff is the mother of a minor child subject to the continuing jurisdiction of the 431st Judicial District Court of Denton County, State of Texas as a result of a SAPCR incident to a divorce action, Tex. Fam. Code Title 5.

3) Defendant is the State of Texas (hereinafter “State” or “Texas”), one of the sovereign States of the United States of America.

4) Defendant in his official capacity, Kenneth Paxton, Jr. is now and at all times relevant to this Complaint the Attorney General for the State of Texas.

5) Defendant in her official capacity, The Honorable Margaret Barnes, is now and at all times relevant to this Complaint the presiding judge over the 367th Judicial District Court of Denton County in the State of Texas.

5) Defendant in his official capacity, The Honorable Jonathan Bailey, is now and at all times relevant to this Complaint the presiding judge over the 431st Judicial District Court of Denton County in the State of Texas.

VENUE AND JURISDICTION

1) Plaintiffs invoke the jurisdiction of this court under the 1st, 4th, 5th, and 14th Amendments, Article III, and Article VI to the United States Constitution; and under Title 28, U.S. Code, § 1331, § 1343, § 1361, and § 1391, Title 28 U.S. Code, § 2201 and § 2202; and Title 42 U.S. Code, § 1983.

2) Plaintiffs invoke the overbreadth doctrine, as the public policy of the State of Texas regarding best interest of a child in suits affecting the parent-child relationship grants broad sweeping powers to family court judges that quell 1st Amendment speech between parent and child, that quells protected activities of a parent, and that fundamentally alters the nature of the intimate and expressive relationship between parent and child.

3) Further, the policy creates a climate of fear in the family law attorney community that inhibits willingness of those attorneys to bring constitutional claims, to assert the constitutional rights of their clients, and even to admit publically that the Texas Family Code may actually violate the federal constitution while failing to achieve any legitimate interest the state may have in protecting children from harm. Where the state seeks to protect children from harm, it has less drastic means at its disposal, see Johnson v. City of Opelousas, 658 F. 2d 1071 (5th Cir. 1981), (...that purpose cannot be sought by means that “broadly stifle fundamental personal liberties” when “less drastic means for achieving the same basic purpose” are available.) The overbreadth is real and substantial and the statutes at issue here are not written with the necessary precision to withstand an overbreadth analysis and as such they “furnish insufficient checks on Government discretion, see Hiatt v. United States, 415 F. 2d 670 (5th Cir. 1969).

4) Neither Rooker-Feldman nor any other abstention doctrine applies here as there are no open or active cases involving petitioners in litigation in any state court related to these statutes, see Brillhart v. Excess Ins. Co. of America, 316 US 494, 495 (Supreme Court 1942). Further, Tex. Fam. Code § 153.002 is facially unconstitutional individually in every sentence, paragraph, and section. It is written in a manner to preclude narrowing by judicial opinion. Further, the Supreme Court of Texas has had opportunity to address the best interest standard and maintains that it allows a judge to overrule both fit parents, Lenz v. Lenz, 79 SW 3d 18 (Tex. Supreme Court 2002), (Of course, the child's best interest trumps that of either parent...). Nor have any Texas Appellate courts sought to narrow the scope, See, Leonard v. Lane, 821 SW 2d 277 (Tex. App. –Houston 1991), (The court has the right to act in the best interest of the child, notwithstanding any agreements of the parties.) See also, In re CCJ, 244 SW 3d 919 (Tex. App. –Dallas 2008), (The trial court retains broad discretion in crafting the rights and duties of each conservator so as to effectuate the best interest of the child.) See also, Hill v. Hill, 819 SW 2d 572 (Tex. App. –Dallas 1991), (... the courts must be able to order an effective increase in the payments without regard to any “contracts” between the parties... they cannot agree to prohibit the intervention of the courts required by the Family Code as necessary to protect the children.)

5) Neither plaintiff seeks to appeal any current orders. The relief sought in this action will not alter existing court orders regarding custody or possession of children or regarding a divorce.

6) All issues brought in these actions are of a federal constitutional nature and are properly within the jurisdiction of this federal district court, see Wise v. Bravo,

666 F. 2d 1332, 1337 (10th Cir. 1981). In the instant case principles of federalism compel federal intervention, see Steffel v. Thompson, 415 US 472, 473, & 475 (Supreme Court 1974), MedImmune, Inc. v. Genentech, Inc., 549 US 772, 773 (Supreme Court 2007), Justice v. Hosemann, 771 F. 3d 291 (5th Cir. 2014), (once a plaintiff has shown more than a "subjective chill" — that is, that he "is seriously interested in disobeying, and the defendant seriously intent on enforcing, the challenged measure" — the case presents a viable "case or controversy" under Article III.)

7) Plaintiffs assert declaratory and injunctive relief as protective measures, as punitive measures, and as compensation for the past wrongs done to them.

8) This petition has become necessary because Petitioners' seek to modify child custody agreements and are subject to the other parent seeking modification and Plaintiffs' political activities against the Texas Family Code and beliefs leave them susceptible to threats to punish and enforce the statutes against Plaintiffs without any expectation of securing valid legitimate state interests or adjudications of unfitness or danger to a child. Rather, Plaintiffs, if they file for modification as desired, would be subject to punishment for their beliefs and their political activism through deprivation of rights with their children. Plaintiffs would have no way of showing the harassment or punishment when it is cloaked in a virtually unappealable "best interest" factual finding which is nothing more than a judge's unqualified opinion.

STANDING

1) Petitioners have standing to pursue this allegation as a consequence of the law barring parents from seeking any modification of elements of the custody/possession/parenting plan order even those lacking constitutional implications

without subjecting themselves to absolute deprivation of fundamental rights for themselves and their children; subject only to the subjective written finding of a state district court judge that doing so is in a child's best interest. Petitioners are in fear of seeking such modification on the grounds that they must relinquish all parental rights to the state as a prerequisite for seeking modification. Petitioners are also subject to having their rights infringed at any time based on a filing for modification by the other parent; and live in constant fear of invidious state authority that has a chilling effect on the parenting choices they might make if not subject to the absolute whim of a district court judge. This chilling effect on parenting decisions includes limiting the content of private discussions with petitioners' children based on the fear of how a judge might perceive that communication; and punish petitioners with deprivation of fundamental liberties for those communications they have with their children about important civil, moral, and religious values.

2) Petitioners have suffered severe damages in the form of multi-year court battles costing tens of thousands of dollars. The family relationships between petitioners and their children have suffered significant damage. Petitioners are fearful of teaching their children any values that may offend the conservative sensibilities of the presiding district judges who have near absolute authority to punish petitioners for daring to teach those values. The Texas Family Code has had a chilling effect on the ability of petitioners to parent their children as they choose within appropriate laws and has fundamentally altered the relationship they have with their children. Every parental decision plaintiffs make is filtered by a concern for how it might be interpreted by their judge, and they have no way of knowing what actions they may take or not take to protect themselves

from having their parental rights deprived based on that judge's unknowable opinion. Proper respect for the fundamental rights of parent and child would eliminate these costs and burdens faced by parents as equal rights would be ensured and the only matters that could be fought over would be a few narrowly focused decisions that require agreement of the parents or a decision by a judge.

3) Petitioners were restrained from exercising their constitutional right to petition this court as a result of the near absolute power the District Courts of Denton County wield over parents who have ever been subject to or who may become subject to a SAPCR. Petitioners feared and continue to fear retaliation from the District Courts that when cloaked within the veil of a "best interest of the child" finding would be nearly impossible to prove. Petitioners fear the certain and irreparable damage to their parent-child relationships that would result from any retaliation even if they were to prevail on appeal in the state courts. Petitioners only now file as their children are nearing the age at which they are beyond the reach of the District Court's authority under SAPCR so as to minimize the damage although the damage would still be great. Parents similarly situated all throughout the state live under this fear and do not petition the court for the rights that are rightfully theirs and their child's because of the chilling effect that the near absolute power these judges have over their ability to parent their child and their authority with their child. Plaintiffs have discouraged other damaged parents from joining this action to avoid exposing them and their much younger children to this risk.

4) The manner in which SAPCR authority has been exercised against Petitioners and against many of the Petitioners associates has created conditions of fear more than sufficient to infringe upon the exercise of fundamental constitutional rights.

5) Ronald won a state appeal against his ex-wife and was awarded costs.

Ronald has chosen not to request an order against his ex-wife to pay these costs for fear that she would seek modification of the parenting plan and that the district judge would punish Ronald for winning the appeal of her order. This fear is directly related to the way in which the judge spoke to Ronald and the emotion she conveyed as she leaned over the bench, where he was standing at the bench, and looked him directly in the eye to deliver the message, a message that can only be understood through directly experiencing it. Ronald has a grievance. He was awarded court costs by the appellate court. He requires a district court order to receive that award. The best interest of the child policy makes him fearful of retribution in the form of a virtually unreviewable punishment for petitioning the district court for this order should the mother file any type of modification as a result. Ronald also fears sua sponte action by his judge even though such action would be improper. Such a petition is protected 1st Amendment speech.

6) Petitioners were financially devastated as a result of the state's unconstitutional actions to the point of having had to file bankruptcy. This result works directly against the best interests of our children. The state benefits, the attorneys benefit, the social workers benefit, but the children and the parents lose.

7) Petitioners bring these actions on their own behalf and on behalf of all fit parents in Texas who now are subject to this state policy or who may become subject to this state policy as a result of nothing more than the filing of a SAPCR.

FACTS

FACTS FOR PLAINTIFF RONALD B. PALMER

- 1) Ronald B Palmer, father, divorced from Nakasone Julie Palmer-Lynch, mother.
- 2) Ronald and Nakaysone have a minor child, M.C. Palmer.
- 3) Ronald and Nakaysone have an agreed judgment issued in 2007 that grants divorce and establishes a parenting plan where each parent has essentially equal rights and equal time with the child. Each parent has possession every other day and every other weekend. There are no special considerations for holidays or any other special days. The duty to care for the child financially is an equal shared duty of both parents.
- 4) Ronald and Nakaysone are subject to the continuing jurisdiction of Denton County Courts until October 6, 2016. At any time up to that date either party can file for modification under Tex. Fam. Code § 156.001 at which point both parents would in practical effect lose all parental rights subject to nothing more than the filing of a petition and the best interest determination of a district court judge under Tex. Fam. Code § 153.002, see In re CAMM, 243 SW 3d 216 (Tex. App. –Houston 2007), ("[a]ny right of the parent must yield to that primary consideration [of the child's best interest]").
- 5) At any time either party can petition for child support under Tex. Fam. Code § 154.001 which places no limit of any kind on the judge's discretion to award child

support payments to a third party. Because child-support was never awarded, such an action would be an original award under Tex. Fam. Code § 154.001.

6) If any third party files a modification suit against us we are without the benefit of the constitutional presumption that we as fit parents make best interest determinations for our child, even against a non-parent third party. Texas courts do not recognize a federal constitutional parental presumption but Texas does have a statutory parental presumption, see Tex. Fam. Code § 153.131 and Troxel v. Granville, 530 US 68 (Supreme Court 2000), (...for there is a presumption that fit parents act in the best interests of their children.) Even this statutory presumption is denied to parents in modification proceedings even when brought by non-parent third parties, see In re VLK, 24 SW 3d 339, 340 (Tex. Supreme Court 2000), (We hold that the parental presumption applies only in original custody determinations and does not apply in a modification suit.) See In re C.A.M.M., 243 SW 3d 224, 225 (Tex. App. –Houston 2007), (...our lawmakers have chosen to deprive fit parents of the parental presumption... The Texas Family Code allows non-parents to usurp fundamental parental rights from a fit parent.)(Justice Concurring)

FACTS FOR PLAINTIFF SHERRY L. PALMER

- 1) Sherry L Palmer, mother, divorced from Jeffrey Michael Schneider, father.
- 2) Sherry and Jeffrey have a minor child, M. J. Schneider subject to continuing jurisdiction. The other children who were subject to this suit are now adults and are no longer subject to the jurisdiction of this state.

3) Sherry and Jeffrey have an agreed divorce decree that granted divorce and established a 50/50 parenting plan. This agreed divorce decree was disturbed and the equal parenting plan was destroyed when the father filed to modify that agreement in 2009. The father was not required to prove mother to be unfit or that there was any specific danger to the children before the court assumed all rights of the children and proceeded to act as though each parent only had the rights that it granted to each of them. The mother was denied her constitutional parental presumptions. Neither Sherry nor Jeffrey were ever allowed proper adjudication or opportunity to rebut state authority, nor do any of the state statutes require any adjudication. The mother was denied care, custody, control, and possession at multiple times for constitutionally significant periods of time based solely on temporary orders and without a deprivation hearing where she could contest state authority to act. This deprivation caused extreme damage to all of her children emotionally and to the relationship between her and her children.

4) Sherry and Jeffrey now have an agreed order issued in May 2012 that established a new parenting plan. Each parent has possession of the child during specified times in the order. Mother has the child during the school year and father on all holidays and the entire summer. This arrangement was made as a result of contempt proceedings where the father served jail time and because of the two parents residing in different states (mother in Texas and father moved to California). The duty to care for the child financially is an equal shared duty of both parents. Both parties are restrained from having any discussions with their child regarding the litigation. Both parties are restrained from having any discussions regarding the other parent, the other parent's

spouse or relatives in any derogatory or negative manner. All friends are also restrained from having any of these discussions within earshot of the child. This new order never should have been necessary. If the courts had respected the rights of both parties and the children the expense, years of emotionally destructive behaviors encouraged by the attorneys and the court process never would have been allowed.

5) Sherry and Jeffrey are subject to the continuing jurisdiction of Denton County Courts until August 18, 2017. At any time up to that date either party can file for modification at which point both parents would lose all parental rights again subject to nothing more than the filing of a petition and the best interest determination of a district court judge. Parties are in effect punished for filing any type of modification with total loss of parental rights with no expectation of protection of equal parental rights and no proper application of due process according to the importance of these rights, and no true opportunity to challenge the lack of proper due process within the state process. The Texas Family Code requires nothing more than a written finding stating its actions are in the best interest of the child for the district court judge to deny any and all fundamental parental rights to either parent and/or the child, Tex. Fam. Code § 153.072. Parties are not allowed an adjudicative hearing where their rights can be balanced against state action as the State of Texas presumes authority to make best interest determinations for the child over the objections of either or both fit parents, Tex. Fam. Code § 153.002. Parties are denied the constitutional presumption of fitness and the constitutional presumption of acting in their child's best interests, In re CAMM, supra at 216 (By including the parental presumption in original suits affecting the parent-child relationship but not in suits for modification of conservatorship... "[a]ny right of the

parent must yield to that primary consideration [of the child's best interest]"). In original suits parents are afforded the lesser statutory presumption but not the constitutional presumption. Parents with minor children who seek to dissolve a marriage are required to file a SAPCR, Tex. Fam. Code § 6.406. The filing of a SAPCR effectively terminates all parental and child rights in favor of state determination of a child's best interests without any requirement to give the parent's determinations any weight.

COMPLAINTS

COMPLAINT I (CONSTITUTION APPLIES IN SAPCR)

1) This Complaint seeks a declaratory judgment that the Fourteenth Amendment limits the authority of state court judges at any level to infringe the fundamental rights of fit parents or their children without due process of law and/or equal protection of the laws even in suits affecting the parent-child relationship and that parties have a right to raise federal constitutional questions at the District Court and that these rights are sufficiently well-established to support 42 U.S.C. 1983 action or a 42 U.S.C. 1985 action for conspiracy. Further, it is unreasonable for any state court judge to believe that their authority, even in a SAPCR, exceeds federal constitutional limitations.

2) Further, this Complaint seeks relief enjoining Defendants and all state court judges 1) from infringing the fundamental rights of parents or children in suits affecting the parent-child relationship without due process and equal protection of the laws 2) from infringing the right of parties to raise constitutional issues with the district

court, and 3) to affirmatively provide constitutionally appropriate procedural protections in SAPCR.

3) Further, as a remedial measure, this Complaint seeks relief enjoining Defendants and state court judges at the district level in SAPCR cases to affirmatively inform the parties on the record that they have constitutional rights as parents, that their child has constitutional rights, and that each family unit consisting of parent and child is constitutionally protected and that they have the right to assert those constitutional rights on their own behalf and on behalf of their child in the District Court in every SAPCR. We are asking this court to actively supervise this injunction until such time as behaviors of judges and attorneys change in a lasting way in support of vigorous protection of these rights.

COMPLAINT II (RIGHTS ARE INDIVIDUAL/MARITAL STATUS)

1) This Complaint seeks a declaratory judgment that parental rights are individual rights attaching to each parent individually irrespective of the marital status of the parents or of changes in the marital status of the parents and that fit parents may not be treated differently from other fit parents based on their marital status without fact-specific compelling state justification and that this right is sufficiently well-established to support 42 U.S.C. 1983 action or a 42 U.S.C. 1985 action for conspiracy.

2) Further, this Complaint seeks relief enjoining Defendants and state court judges 1) from infringing the fundamental rights of parents based on the marital status of the child's parents or based on changes in the marital status of the child's parents in

suits affecting the parent-child relationship without due process of law and 2) to affirmatively provide constitutionally appropriate procedural protections in SAPCR.

COMPLAINT III (FIRST AMENDMENT)

1) This Complaint seeks a declaratory judgement that parents and their children share a First Amendment free association right to have and maintain an intimate and expressive familial relationship, to live together as a family, and to teach, learn, and share moral, religious, and civic values between each other free from unwarranted government interference into the family relationship and that this right is sufficiently well-established to support 42 U.S.C. 1983 action or a 42 U.S.C. 1985 conspiracy action. Further, termination of parental rights is not the minimum degree of state interference with the family association right required for constitutional protections to attach and it is unreasonable for any state judge to presume that it is. The State of Texas may not infringe or unduly burden the right of family association between individual parent and child without strict scrutiny due process protection for that protected family relationship and the communications between parent and child.

2) Further, this Complaint seeks relief enjoining Defendants and state court judges 1) from interfering with the family relationship that exists between each parent and their child, from unreasonably limiting their ability to live together as a family free from government interference, and/or from limiting a parent's or child's right to communicate with each other based on the content of that speech even in suits affecting the parent-child relationship, except where the court has shown a compelling state interest, a necessity to act, where statutes that authorize action are narrowly tailored, and where the action taken is the least restrictive means possible to achieve the state's

legitimate purpose and 2) to affirmatively provide strict scrutiny procedural protections to these rights in SAPCR.

COMPLAINT IV (SEIZURES)

1) This Complaint seeks a declaratory judgment that parents and their children are protected from possession orders that create a meaningful interference with their possessory interest of a child and with a child's possessory interest to be in the possession of each fit parent by the Fourth Amendment's restrictions on unreasonable seizures.

2) Further, this Complaint seeks relief enjoining Defendants and state court judges 1) from issuing possession orders in suits affecting the parent-child relationship except where the court has fully complied with all relevant Fourth Amendment jurisprudence and 2) to affirmatively provide constitutionally appropriate procedural protections in SAPCR.

COMPLAINT V (SEARCHES)

1) This Complaint seeks a declaratory judgment that parents and their children are protected from unreasonable searches by the Fourteenth Amendment and that the state's assertion of the best interest of a child does not justify an exploratory search even in suits affecting the parent-child relationship and that this right is sufficiently well-established to support 42 U.S.C. 1983 action or a 42 U.S.C. 1985 action for conspiracy. Further, this complaint seeks a declaratory judgment that Tex. Fam. Code § 107.051 is unconstitutional on its face as authorizing an exploratory search. Further, this complaint seeks a declaratory judgment that a broad best interest inquiry

into the best interests of a child in the SAPCR context is an impermissible “exploratory search” into the private protected family relationship designed to explore for and collect evidence for the purpose of deprivation of fundamental rights.

2) Further, this Complaint seeks relief enjoining Defendants and state court judges 1) from issuing search orders, family studies, social studies, child custody evaluations, guardian ad litem appointment, psychological studies, or any other intrusive search including broad best interest inquiries into the conditions of the family even in suits affecting the parent-child relationship except where the court has fully complied with all relevant Fourth Amendment jurisprudence and 2) to affirmatively provide constitutionally appropriate procedural protections in SAPCR.

COMPLAINT VI (BEST INTEREST OF THE CHILD)

1) This Complaint seeks a declaratory judgement that the Fourteenth Amendment prohibits state court judges from making best interest determinations for a child in the face of objections by either fit parent even in suits affecting the parent-child relationship except where the court has shown a compelling state interest and a necessity to act, where statutes that authorize action are narrowly tailored, and where the action taken is the least restrictive means possible to achieve the state’s legitimate purpose and that this right is sufficiently well-established to support 42 U.S.C. 1983 action and a 42 U.S.C. 1985 conspiracy action.

2) Further, this Complaint seeks relief enjoining Defendants and state court judges 1) from making best interest determinations for children over the objections of a fit parent in suits affecting the parent-child relationship even when the parents are in

disagreement except where the court has shown a compelling state interest and a necessity to act, where statutes that authorize action are narrowly tailored, and where the action taken is the least restrictive means possible to achieve the state's legitimate purpose and 2) to affirmatively provide constitutionally appropriate procedural protections in SAPCR.

COMPLAINT VII (NECESSITY FOR AN EVIDENTIARY HEARING)

1) This Complaint seeks a declaratory judgment that the Fourteenth Amendment prohibits state court judges from limiting the fundamental rights of parents or child, even in suits affecting the parent-child relationship, without providing an evidentiary hearing where the parent has been properly served with written charges or where a parent can assert their legal and constitutional rights and their child's legal and constitutional rights in a hearing designed to balance all private interests involved against the asserted need for state action to infringe those rights and where the state bears the burden of proof and that this right is sufficiently well-established to support 42 U.S.C. 1983 action or a 42 U.S.C. 1985 conspiracy action.

2) Further, this Complaint seeks relief enjoining Defendants and state court judges 1) from infringing the fundamental rights of parents or children in suits affecting the parent-child relationship prior to holding an adjudicative hearing affording parents and children all proper due process and from denying parents the opportunity to present constitutional arguments against state action, (where probable cause of harm to a child has been shown, courts may take temporary actions consistent with Fourth Amendment jurisprudence to protect a child), and 2) to affirmatively provide constitutionally appropriate procedural protections in SAPCR.

COMPLAINT VIII (STATUTES UNCONSTITUTIONAL)

1) This Complaint seeks a declaratory judgment that Tex. Fam. Code § 154.001 is unconstitutional on its face and as generally applied as it provides unrestrained discretion to a trial court judge to deprive a parent of property rights without appropriate 4th Amendment protections and creates a class of parent subject to quasi-criminal and criminal sanctions without appropriate procedural safeguards or even the minimum requirement of an evidentiary deprivation hearing. Further, this Complaint seeks a declaratory judgment that these statutes:

a. improperly allow a state judge to impose a duty of support, the non-payment of which can be punished by jail with insufficient procedural protections,

b. create quasi-criminal overtones to a statute that is labeled civil implicating a broader scope and degree of protected rights,

c. overreach in the scope of fundamental rights impacted by the imposition of such a duty,

d. infringe fundamental rights without limiting state authority to do so in any meaningful way,

d. they fail to provide any of the requisite 4th amendment protections for seizing property, and

e. they deny equal protection of the law to a class of parent without appropriate procedural safeguards. Further, this Complaint seeks a declaratory judgment that:

a. where the state does not show on the record that a parent has failed to care for their child directly, the state lacks even a legitimate interest to support these statutes,

b. where the state receives financial incentive from the federal government through Title IV D to award and to increase the amount of child support, the state has financial incentives that conflict with the protection of fundamental rights necessitating additional scrutiny,

c. the state has at its disposal less burdensome methods for achieving any conceivable interest it may have to justify these statutes, and

d. that the 4th amendment is implicated where the state imposes a duty of support that must be paid to a third party.

2) Further, this Complaint seeks relief enjoining state court judges a) from issuing any orders under authority granted by Tex. Fam. Code § 154.001 and b) to affirmatively provide constitutionally appropriate procedural protections in SAPCR, and c) to order the payment of support to a third party only after a showing that the paying parent failed to meet minimum standards of care for the child and satisfying all relevant 4th amendment jurisprudence.

COMPLAINT IX (STATUTES UNCONSTITUTIONAL)

1) This Complaint seeks a declaratory judgement that the public policy of Texas that allows a state court judge to infringe, limit, or unduly burden fundamental rights of parent or child based solely on a state judge's determination of a child's best interest is unconstitutional; that there is a constitutional presumption that fit parents act in the best interests of their children; that the public policy of Texas which authorizes a state judge to deny this parental presumption in a modification proceeding is unconstitutional; that Tex. Fam. Code § 153.001(a)(1) impermissibly shifts the burden

of proof onto fit parents and contravenes the parental presumption and is unconstitutional; that Tex. Fam. Code § 153.002 places state policy above the constitutional rights of parent and child and is unconstitutional; that Tex. Fam. Code § 153.072 and the Tex. Fam. Code generally fail to provide sufficient procedural protection for fundamental rights and is unconstitutional; that the public policy of Texas that provides for strict scrutiny protections of fundamental rights in termination proceedings but not in SAPCR proceedings is unconstitutional; that, while the state may set minimum generally applicable health, safety, and welfare standards for children, a state policy that mandate a “best interest” standard which compels fit parents to battle over who is the better parent and punishes the lesser fit parent with infringement of fundamental rights is unconstitutional. Further, this complaint seeks a declaratory judgement that:

a. absent a showing on the record of a compelling state interest and the showing of a necessity to act, the state lacks even a legitimate interest in infringing the rights of a fit parent,

b. at a minimum, the state must provide a hearing where the parent may assert their constitutional rights to be free from unwarranted government interference in the parent-child relationship,

c. the State may not justify interference in the parent-child relationship based solely on the marital status of the child’s parents or a change in the marital status of the child’s parents or compel a SAPCR as a result of divorce,

d. the State may not infringe a parent’s or child’s fundamental rights beyond the degree that is necessary to meet legitimate state objectives,

e. where the state creates a statutory right the state may not infringe that right without due process adequate to the nature of the right,

f. the state's determination of a child's best interest is not a state interest sufficient to overcome a fit parent's determination of their child's best interest,

g. the "best interest of the child" is not a federal constitutional right of any child,

h. conflict between parents regardless of marital status is not a trigger for broad state authority, and

i. the presumption that parents are fit and that fit parents make determinations that must be presumed to be in the best interest of their children is a federal constitutional presumption that the state must overcome before taking any action against a parent.

2) Further, this Complaint seeks relief enjoining Defendants and state court judges from issuing any child custody or possession orders infringing the rights of fit parents based solely on a judge's determination of a child's best interests and further:

a) from interpreting the Texas Family Code in a manner that purports to grant the court authority to avoid, ignore, or dispense with any federal constitutional protections in suits affecting the parent-child relationship,

b) from making best interest determinations for children over the objection of individual fit parents based on nothing more than state statutes authorizing a judge to do so,

c) from infringing the fundamental rights of a fit parent to their child, or a child to their fit parents based solely on a written finding that doing so is in the best interest of a child and/or without application of due process consistent with constitutional protections of those rights,

d) from creating classes of fit parents and/or classes of child who receive lesser constitutional protections for their rights based on nothing more than the filing of a SAPCR, based on a physical separation between the child's parents, based on a dissolution of marriage between a child's parents, or from doing so without application of due process consistent with constitutional protections of fundamental rights,

e) from using divorce between fit parents as pretext for invading the privacy and family association rights of each family unit consisting of an individual parent and one or more of their children except under strict scrutiny conditions or from infringing other fundamental rights except upon application of due process consistent with constitutional protections of those rights,

f) to use nothing less than strict scrutiny when evaluating the appropriateness of invading the intimate and expressive relationship existing between each individual parent and each individual child even in the context of SAPCR,

g) to affirmatively provide constitutionally appropriate procedural protections in SAPCR.

COMPLAINT X (OVERBREADTH)

1) This complaint seeks a declaratory judgment that the public policy of the State of Texas which allows a state court judge to infringe the speech, expression, and

family association rights of fit parents and their children based on Tex. Fam. Codes § 153.002, § 153.072, § 156.001, and § 156.101 is overbroad and unconstitutional as it chills the exercise of protected 1st Amendment rights of parent, of child, and of the legal community without a legitimate state interest, in a manner that is more drastic than necessary to achieve any legitimate state interest, and while failing to protect children from harm. Tex. Fam. Codes § 153.002, § 153.072, § 156.001, and § 156.101 are unconstitutionally overbroad.

2) Further, this Complaint seeks relief enjoining Defendants and state court judges 1) from making best interest of the child determinations for children over the objection of either fit parents except upon a showing of a compelling state interest, a fact specific necessity for state action, a narrowly tailored statute, and that the action is the least restrictive means possible to achieve the state interest, and 2) to affirmatively provide constitutionally appropriate procedural protections in SAPCR.

RELIEF REQUESTED

- 1) Plaintiffs pray that a Three-Judge Court be convened to hear this cause.
- 2) Plaintiffs Pray that declaratory judgments be issued as requested herein.
- 3) Plaintiffs further pray for a temporary and permanent injunction, restraining Defendants, their agents, and successors, and all Texas State Judges from making orders under the challenged statutes or that violate the rights declared, that costs be taxed against the Defendants and for such further relief, at law or in equity, to which Plaintiffs may be entitled.

APPENDIX

Appendix I: Tex. Fam. Code § 107.051
Appendix II: Tex. Fam. Code § 153.001
Tex. Fam. Code § 153.002
Tex. Fam. Code § 153.072
Appendix III: Tex. Fam. Code § 154.001
Appendix IV: Tex. Fam. Code § 156.001
Appendix V: Tex. Fam. Code § 6.406
Appendix VI: Tex. Fam. Code § 156.001
Tex. Fam. Code § 156.101

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