

O'Connor v. Trish Ho

Decided Aug 25, 2023

07-23-00172-CV

08-25-2023

DAVID O'CONNOR, APPELLANT v. TRISH HO, APPELLEE

Judy C. Parker, Justice

On Appeal from the County Court at Law No. 4 Williamson County, Texas ¹ Trial Court No. 23-0028-POC4, Honorable John McMaster, Presiding

¹ This appeal was transferred to this Court from the Third Court of Appeals by docket equalization order of the Supreme Court of Texas. See [TEX. GOV'T CODE ANN. § 73.001](#).

Before PARKER and DOSS and YARBROUGH, JJ.

MEMORANDUM OPINION

Judy C. Parker, Justice

David O'Connor appeals from the entry of a protective order entered in favor of Trish Ho. In his sole issue on ² appeal, O'Connor challenges the trial court's jurisdiction to issue the order. We affirm. *²

Background

Ho and O'Connor are the parents of one child, L.O.,² and are parties to an ongoing suit affecting the parent-child relationship (SAPCR) in Travis County, where Ho lives. O'Connor lives in Williamson County. On February 8, 2023, O'Connor filed a pro se application for protective order in County Court at Law No. 4 in Williamson County alleging that Ho had engaged in stalking. On March 9, 2023, Ho filed an application for protective order in the same Williamson County court alleging that O'Connor had engaged in conduct that constitutes family violence. Ho's application identified both herself and L.O. as "protected persons" under the order. Among other things, she requested that O'Connor be prohibited from going to or near certain locations frequented by Ho and L.O, including their residence, place of employment, place of worship, school, and extracurricular providers.

² We use initials to protect the minor child's identity. See [TEX. R. APP. P. 9.8](#).

The trial court conducted a hearing on the competing applications for protective orders on March 23 and 24. It found that a protective order is warranted and granted Ho's application on March 30. On April 4, O'Connor filed his notice of appeal.

Analysis

On this sole issue on appeal, O'Connor asserts that the trial court lacked jurisdiction to hear and grant Ho's application for a protective order. He argues that Ho's application was actually "a cleverly disguised modification of the SAPCR because the relief sought went directly to [his] access to his son." Thus, O'Connor claims, the case had to be heard ³ in Travis County, at least to the extent it involved L.O. See TEX. FAM. CODE ANN. § 55.001(A) (ESTABLISHING COURT OF CONTINUING, EXCLUSIVE JURISDICTION IN SAPCR).

"[S]ubject-matter jurisdiction is essential to a court's power to decide a case." *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 553-54 (Tex. 2000). An order entered by a court without subject-matter jurisdiction is void. *Browning v. Probstok*, 165 S.W.3d 336, 346 (Tex. 2005). Determining whether a trial court had subject-matter jurisdiction is a question of law, which we review de novo. *City of Houston v. Rhule*, 417 S.W.3d 440, 442 (Tex. 2013) (per curiam).

Under the Texas Family Code, a court acquires continuing, exclusive jurisdiction over matters governed by Title 5, which concerns the parent-child relationship, in connection with a child upon the rendition of a final order. TEX. FAM. CODE ANN. § 155.001(A).³ But protective orders are governed by Title 4. See TEX. FAM. CODE ANN. §§ 82.001-011. "[A] PROCEEDING FOR PROTECTIVE ORDERS BROUGHT UNDER TITLE 4 IS AN independent remedy which is not limited to the court having continuing jurisdiction." *Copeland v. Copeland*, No. 05-18-01431-CV, 2020 Tex.App. LEXIS 5553, at *2 (Tex. App.-Dallas Jul. 20, 2020, no pet.) (mem. op.). Moreover, "Title 4 plainly contemplates that an application for a protective order may be filed on behalf of a child who is subject to the continuing jurisdiction of a court under Title 5." *In re Salgado*, 53 S.W.3d 752, 760 (Tex. App.-El Paso 2001, orig. proceeding) (court did not err in asserting jurisdiction over application for protective order, even though divorce court in a different county had ⁴ continuing jurisdiction over custody of child). As the court in *Salgado* observed, the provisions for protective orders in Title 4 indicate that the Legislature "obviously anticipated that a protective order may conflict with a valid pre-existing custody order." *Id.* at 761.

³ Although the record does not include a final order from a court in Travis County establishing that such court acquired continuing, exclusive jurisdiction, counsel represented to the trial court that the SAPCR filed in Travis County was closed in 2017 and a modification was filed in 2019.

Therefore, even if the family court in Travis County has acquired continuing, exclusive jurisdiction under section 155.001 of the Family Code as to L.O., that would not deprive the trial court in this case of exercising jurisdiction in a protective order proceeding. See *In re Saldana*, 607 S.W.3d 448, 449 (Tex. App.-Houston [14th Dist.] 2020, no pet.). The continuing, exclusive jurisdiction of the SAPCR court applies only to matters covered by Title 5; it does not affect jurisdiction in protective-order proceedings under Title 4. *Id.*; see also TEX. FAM. CODE ANN. §§ 82.001-011.

As a county court at law in Williamson County, the trial court "has concurrent jurisdiction with the district court in family law cases and proceedings." TEX. GOV'T CODE ANN. § 25.2482(a). The trial court had jurisdiction over the subject matter of Ho's protective order application.

We overrule O'Connor's sole issue.

Conclusion

Having overruled O'Connor's sole issue on appeal, we affirm the order of the trial court.

