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***Family Law*: A Request by the OAG for Modification of Support Incidental to a Proceeding to Modify Conservatorship Is Sufficient to Authorize Referral to an Associate Title IV-D Judge.**

As a participant in the "Title IV-D" program that provides federal matching funds for child support enforcement, Texas created an "associate judge" position to meet federally mandated deadlines. Tex. Fam. Code chapter 201. The Title IV-D associate judge may not enter final orders on the merits. The associate judge's rulings are reviewed *de novo* by the referring judge on request but otherwise become orders of the referring judge if the ruling is not enforceable by contempt or incarceration. By statute, Title IV-D cases are automatically referred to the Title IV-D associate judge.

The case in *Office of the Attorney General of Texas v. C. W. H.* began when the father and managing conservator left the children in the care of the mother's parents. The grandparents moved to have themselves named the children's managing conservators. The OAG filed a motion in the same proceeding to change the father's status. The OAG alleged the father had voluntarily relinquished custody. The case was referred to the Title IV-D associate judge.

The father, who was incarcerated, answered *pro se* and asked the court to issue a bench warrant or allow him to participate in the proceeding through telecommunications. Without acting on the father's requests, the associate judge made the grandparents managing conservators after a hearing without the father.

The court of appeals reversed the associate judge's order for two reasons: 1) lack of authority to modify conservatorship and 2) failing to consider the father's request to participate in the hearing. There was no dispute that the associate judge erred in refusing the father's request, but the OAG urged that reversal of that part of the court of appeals opinion and judgment that the associate judge did not have authority to modify custody.

In a unanimous opinion by Justice Boyd, the court agreed with the OAG that the case was properly referred to the associate judge because, even though custody issues were involved, the OAG had requested modification of the child support arrangements. That request was enough to make the matter a Title IV-D case that should have been referred to the associate judge. That the case also involved custody issues did not preclude referral to the associate judge. The court found no impediment to referral to an unelected decision maker because the father's rights could be reviewed by the elected judge.

Having determined that the OAG's motion to modify support authorized the referral, the opinion next addressed whether the associate judge was authorized to hear that portion of the case seeking to modify conservatorship. Because the conservatorship modification was part of the service the OAG provided in connection with establishing or modifying child support, it was within the federal Title IV-D mandate so that the Family Code authorized the associate judge to act on matters

[1] The opinions expressed are solely those of the author. They do not necessarily represent the views of Munsch, Hardt Kopf & Harr, P.C. or its clients.

incidental to support, including modification of conservatorship. According to the opinion, the court of appeals overlooked that Family Code §201.104 did not need to authorize specifically modifications of conservatorship because it authorized associate judges to "render and sign any order that is not a final order on the merits of the case" and "recommend to the referring court any order after a trial on the merits." These general grants of authority were broad enough to include modification of conservatorship.

The judgment of the court of appeals vacating the associate judge's order was upheld on the alternate basis that the associate judge erred in proceeding without considering the father's request to participate. At first blush, the opinion's resolution of the authority issue seems advisory. However, its resolution was akin to that of a jurisdictional question essential to the ultimate resolution of the case.

***Appellate Procedure*: Even if the Same Relief is Sought, a Motion Challenging the Evidentiary Basis of a Suit is Sufficiently Different from a Challenge to the Pleadings so that It May Be Considered an Independent Basis for Interlocutory Appeal.**

Interlocutory appeals must be filed within 20 days after the appealable order is signed. Tex. R. App. P. 26.1(b). When available for the disposition of a motion, ; *see* Tex. Civ. Prac. & Rem. Code § 51.014, the time to perfect the appeal is not extended by subsequent motions that only seek reconsideration of the propositions advanced in the original motion. If it were otherwise, the deadline to perfect the appeal would be meaningless. *City of Houston v. Jones' Estate*, 388 S.W.3d 663 (Tex. 2012) (per curiam).

In *City of Magnolia 4A Economic Dev. Corp. v. Smedley*, the governmental entity oversaw the construction of a walking and hiking path. The plaintiff sued for damages and injunctive relief, alleging the path caused water to back up and damage his property. The trial court dismissed the plaintiff's damage claims, but, as to the request for injunctive relief, denied the governmental entity's immunity-based plea to the jurisdiction and its motion to dismiss the suit as baseless. The governmental entity had unsuccessfully asserted, among other things, because there had been no *allegation* that the governmental entity owned or controlled the adjacent property and, therefore, no allegation of facts which, if true, showed that it could comply with any injunctive relief.

The governmental entity did not appeal the ruling on its jurisdictional and dismissal motions, but later moved for summary judgment. The summary judgment motion was based on the claim that the *summary judgment evidence conclusively established* that the governmental entity did not own or control the adjacent property and, therefore, the plaintiff lacked standing to seek injunctive relief against it. Some, but not all, of the evidentiary support for the plea to the jurisdiction and summary judgment motion was the same. The governmental entity filed its notice of appeal within twenty days of the denial of the summary judgment motion.

The court of appeals dismissed for want of jurisdiction, treating the appeal as untimely because it considered the summary judgment motion to be nothing more than a motion for reconsideration of the ruling on the dismissal motion. The Texas Supreme Court, in a *per curiam* opinion agreed that both the initial motion and the summary judgment motion were pleas to the jurisdiction, but they did not agree that the grounds for the two motions were the same. The former was based on the sufficiency of the pleadings. The latter was an attack on the evidentiary basis for the plaintiff's contentions, The court deemed this difference sufficient to constitute the assertion of a new and different ground for relief than that asserted in the initial motion. Accordingly, the summary judgment motion was more than a mere motion for reconsideration under *Jones' Estate* and the ruling on that motion was appealable independently of the ruling on the initial motion.