

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-08-00235-CV

In re Sara Steed, et al.

ORIGINAL PROCEEDING FROM SCHLEICHER COUNTY

MEMORANDUM OPINION

PER CURIAM

This original mandamus proceeding involves the temporary custody of a number of children who were removed from their homes on an emergency basis from the Yearning For Zion ranch outside of Eldorado, Texas.¹ The ranch is associated with the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS), and a number of families live there. Relators are thirty-eight women who were living at the ranch and had children taken into custody on an emergency basis by the Texas Department of Family and Protective Services based on allegations by the Department that there was immediate danger to the physical health or safety of the children.

Relators seek a writ of mandamus requiring the district court to vacate its temporary orders² in which it named the Department the temporary sole managing conservator of their

¹ The Department removed over 450 children from their homes on the Yearning For Zion ranch over the course of three days. This proceeding does not involve parents of all of the children removed.

² The temporary orders reviewed in this proceeding were issued following the hearing held April 17-18, 2008, and were signed the week of April 21, 2008.

children.³ Relators complain that the Department failed to meet its burden under section 262.201 of the Texas Family Code to demonstrate (1) that there was a danger to the physical health or safety of their children, (2) that there was an urgent need for protection of the children that required the immediate removal of the children from their parents, or (3) that the Department made reasonable efforts to eliminate or prevent the children's removal from their parents. Tex. Fam. Code Ann. § 262.201 (West Supp. 2007). Without such proof, Relators argue, the district court was required to return the children to their parents and abused its discretion by failing to do so.

Removing children from their homes and parents on an emergency basis before fully litigating the issue of whether the parents should continue to have custody of the children is an extreme measure. It is, unfortunately, sometimes necessary for the protection of the children involved. However, it is a step that the legislature has provided may be taken only when the circumstances indicate a danger to the physical health and welfare of the children and the need for protection of the children is so urgent that immediate removal of the children from the home is necessary. *See id.*⁴ Section 262.201 further requires the Department, when it has taken children into

³ Because temporary orders in a suit affecting a parent-child relationship are not subject to interlocutory appeal under the family code, mandamus review is appropriate. *Dancy v. Daggett*, 815 S.W.2d 548, 549 (Tex. 1991); *In re Vernor*, 94 S.W.3d 201, 210 (Tex. App.—Austin 2002, orig. proceeding).

⁴ Section 262.201 provides, in relevant part, as follows:

(a) Unless the child has already been returned to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession and the temporary order, if any, has been dissolved, a full adversary hearing shall be held not later than the 14th day after the date the child was taken into possession by the governmental entity.

custody on an emergency basis, to make a showing of specific circumstances that justify keeping the children in the Department's temporary custody pending full litigation of the question of permanent custody. Unless there is sufficient evidence to demonstrate the existence of each of

(b) At the conclusion of the full adversary hearing, the court shall order the return of the child to the parent, managing conservator, possessory conservator, guardian, caretaker, or custodian entitled to possession unless the court finds sufficient evidence to satisfy a person of ordinary prudence and caution that:

(1) there was a danger to the physical health or safety of the child which was caused by an act or failure to act of the person entitled to possession and for the child to remain in the home is contrary to the welfare of the child;

(2) the urgent need for protection required the immediate removal of the child and reasonable efforts, consistent with the circumstances and providing for the safety of the child, were made to eliminate or prevent the child's removal; and

(3) reasonable efforts have been made to enable the child to return home, but there is a substantial risk of a continuing danger if the child is returned home.

....

(d) In determining whether there is a continuing danger to the physical health or safety of the child, the court may consider whether the household to which the child would be returned includes a person who:

(1) has abused or neglected another child in a manner that caused serious injury to or the death of the other child; or

(2) has sexually abused another child.

Tex. Fam. Code Ann. § 262.201 (West Supp. 2007).

