

Court of Appeals
Fourth Court of Appeals District of Texas
San Antonio



MEMORANDUM OPINION

No. 04-12-00591-CV

IN RE Firas Hashem ISSA

Original Mandamus Proceeding¹

PER CURIAM

Sitting: Sandee Bryan Marion, Justice
Steven C. Hilbig, Justice
Marialyn Barnard, Justice

Delivered and Filed: October 3, 2012

PETITION FOR WRIT OF MANDAMUS DENIED

On September 13, 2012, relator Firas Hashem Issa filed a petition for writ of mandamus asserting the trial court abused its discretion in (1) rendering the July 31, 2012 Temporary Orders modifying conservatorship and possession provisions of the May 5, 2011 Order in Suit to Modify Parent-Child Relationship, and (2) denying relator's Motion to Reconsider Temporary Orders.

On September 17, 2009, Firas and Mary Frances Issa, real party in interest, were divorced. The parties were appointed joint managing conservators and Firas was appointed as the parent with the exclusive right to designate the primary residence of the children. On May 5, 2011, the trial court entered an Order in Suit to Modify Parent-Child Relationship appointing

¹ This proceeding arises out of Cause No. 2011-CI-01104, styled *In the Interest of NMI and SEI, Children*, pending in the 288th Judicial District Court, Bexar County, Texas, the Honorable Solomon J. Casseb, III presiding.

Firas as the sole managing conservator of the children and granting Mary only supervised visitation. Four months later, on September 26, 2011, Mary filed a petition to modify. Firas subsequently filed a motion for no evidence summary judgment which was granted by the trial court on February 9, 2012. After an unsuccessful appeal, Mary filed a second motion to modify seeking: (1) exclusive right to designate the primary residence of the children; (2) standard possession of the children; (3) modification of child support; and (4) temporary orders.

After additional pleadings were filed by the parties, on July 30 and 31, 2012 the trial court heard temporary orders. At the beginning of the hearing, the trial court signed an order dismissing the portion of Mary's petition that sought to modify the designation of the person having the exclusive right to designate the primary residence of the children. At the end of the hearing, the trial court signed temporary orders granting Mary unsupervised visitation with the children. The temporary orders were signed on August 9, 2012 and Firas's motion to reconsider the temporary orders was denied by the trial court on September 10, 2012.

Firas argues the trial court abused its discretion in entering the temporary orders because there was no proof of a material and substantial change in circumstances since the entry of the prior order. More specifically, Firas relies on section 156.102 of the Texas Family Code; however, section 156.102 only applies to a "suit seeking to modify the designation of the person having the exclusive right to designate the primary residence of a child." *See* TEX. FAM. CODE ANN. § 156.102 (West Supp. 2012). Here, that portion of the suit was dismissed by the trial court on July 31, 2012 and relator has not objected to this action by the trial court. Relator's sole argument is based on a statutory provision that has no bearing on the trial court's decision regarding temporary orders that do not seek to modify the designation of the person having the exclusive right to designate the primary residence of a child. Accordingly, relator failed to

establish that he is entitled to the mandamus relief sought and the petition for writ of mandamus is DENIED. TEX. R. APP. P. 52.8(a).

PER CURIAM