

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-11-00047-CV**

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**IN RE DAVID M.**

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**Original Proceeding**

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**MEMORANDUM OPINION**

In December 2010, the Texas Department of Family and Protective Services (“the Department”) filed a petition in the 258th District Court of San Jacinto County for protection and conservatorship of B.M., a child, and for termination of the parental rights of relators, David M. and P.M. The petition alleged grounds for removal of the child from the San Jacinto County home of David M. *See* Tex. Fam. Code Ann. § 262.101 (West 2008). David M. challenged the trial court’s jurisdiction on the grounds that the County Court at Law No. 4 of Montgomery County, Texas, is the court of continuing jurisdiction. *See* Tex. Fam. Code Ann. §§ 155.001-.002 (West 2008).

The mandamus record shows that in May 2008 the Montgomery County court entered a final decree of divorce, which included a custody order concerning B.M., in the

divorce proceeding of David M. and P.M. A suit for modification of the custody order has been filed in the Montgomery County court and the case was set for trial. It appears that the Montgomery County court is the court of continuing jurisdiction. *See* Tex. Fam. Code Ann. § 155.002. The Montgomery County court has jurisdiction of a suit with regard to B.M. “except as provided by . . . Chapter 262.” *Id.* § 155.001(c).

When the Department takes possession of a child pursuant to Chapter 262, the court must conduct a full adversary hearing within fourteen days. *See* Tex. Fam. Code Ann. § 262.201(a) (West Supp. 2010). At the conclusion of the hearing, the court shall order the return of the child unless the court finds that there is a continuing danger to the physical health and safety of the child and for the child to remain in the home is contrary to the welfare of the child. *Id.* § 262.201(b), (c). In that event, the court shall issue an appropriate temporary order. *Id.* § 262.201(c); *see also* Tex. Fam. Code Ann. § 105.001 (West 2008). If at the conclusion of the full adversary hearing the court renders a temporary order, the court of continuing jurisdiction must be identified. *See* Tex. Fam. Code Ann. § 262.202 (West 2008). If a party files a motion to transfer, the court that rendered the temporary order must transfer the suit to the court of continuing jurisdiction. *Id.* § 262.203(a)(1). The temporary order remains in effect until properly superseded by a court with jurisdiction. *Id.* § 262.204(a).

The San Jacinto County court exercised jurisdiction under Chapter 262 of the Family Code. The exercise of that jurisdiction is limited to authorizing removal of the

child, making and extending a temporary restraining order, and making a temporary order after a full adversary hearing. *See* Tex. Fam. Code Ann. §§ 262.102, 262.103 (West 2008); *see also id.* § 262.201. The Family Code authorizes the trial court to conduct a full adversary hearing and enter a temporary order if the court finds such an order to be necessary for the protection of the child. *See id.* § 262.201. Although the San Jacinto County court scheduled an adversary hearing for January 19, 2011, David M. did not appear for the hearing and the trial court rescheduled the hearing for February 16, 2011. The relator has not shown that the trial court has exercised jurisdiction not authorized by Chapter 262 of the Family Code. Accordingly, the petition for writ of mandamus is denied.

PETITION DENIED.

PER CURIAM

Submitted on February 18, 2011  
Opinion Delivered March 10, 2011

Before McKeithen, C.J., Gaultney and Kreger, JJ.