

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-08-00688-CV

Joachim Osayande Osojie, Appellant

v.

Vivian Osojie, Appellee

**FROM COUNTY COURT AT LAW NO. 4 OF WILLIAMSON COUNTY,
NO. 07-2948-FC4, HONORABLE JOHN McMASTER, JUDGE PRESIDING**

CONCURRING OPINION

Because I agree that the district court did not err when it issued its final decree, I concur in the majority's result. I write separately only to note my continuing belief, as expressed previously in *In re J.R.D.*, 169 S.W.3d 740 (Tex. App.—Austin 2005, pet. denied) (Puryear, J., concurring), that the current standards of review employed by courts in making and reviewing orders that have the effect of limiting a parent's access to his or her child do not comport with the constitutional nature of a parent's right to raise his or her children, nor do they comport with the legislative mandate regarding a parent's right to have access to his or her children. *See Troxel v. Granville*, 530 U.S. 57, 65 (2000) (parents have fundamental liberty interest with respect to their relationships with their children that is constitutionally protected); *see also* Tex. Fam. Code Ann. § 153.193 (West 2008) (terms in order denying parent possession of child or restricting or limiting parent's right to possess or access child "may not exceed those that are required to protect the best

interest of the child”). It is my belief that the fundamental nature of the parental rights involved in this case requires that limitations on a parent’s access be reviewed under the heightened clear and convincing standard. *See In re L.M.M.*, No. 03-04-00452-CV, 2005 Tex. App. LEXIS 7191 (Tex. App.—Austin Aug. 31, 2005, no pet.) (Puryear, J., concurring).

In the present case, the trial court’s findings and conclusions regarding Joachim’s access to his children are supported by clear, convincing, and uncontroverted evidence establishing that the limitations imposed were in the best interest of the children. For this reason, I concur in the judgment of the court affirming the district court’s decree.

David Puryear, Justice

Before Justices Patterson, Puryear and Pemberton

Filed: August 27, 2009