

Podcast 17: Temporary Orders

Jake: All right. So this week we are talking about a pretty broad topic again, temporary orders. Brian's here with me.

Just so everybody knows you're going to hear a little baby, hopefully he's asleep right now, but those little infant noises are my son Walker asleep on me. So he doesn't have much to contribute to the podcast other than that. Of course, he agrees with everything that his dad's going to say. Just wanted to explain the background noise a little bit.

So let's talk about temporary orders. Brian, I'm going to give you a really broad question. What are temporary orders? And, I guess let's just stick with that and then we'll talk about why do you need them?

Brian: They're quick relief. They're not an immediate relief from a court. Really the court telling somebody to do something or not to do something is a temporary restraining order, but those are rare and those are by law only supposed to last 14 days. That doesn't get you very far down the road.

So, for the structure of how everything is going to look until your case is finalized we call that the temporary orders period. And if you don't agree, you need a hearing to set up those orders. They're particularly important in divorces in Texas because Texas as I understand it is the only state without a legal separation concept.

So it's the kind of the Texas equivalent of a legal separation where you, two spouses set up rules real quickly about who's gonna pay what bills and where the money is going to go. And of course, with kids and any kid case, it's going to set up how visitation child support custody is going to look in that period until the case is finalized.

Jake: Yeah. And talking about the importance of it is, these hearings happen really quickly.

The case gets filed. If there's a restraining order that has to be done within 14 days, and a lot of times there's benign restraining orders that if there's a County, and we talk about this more in detail on the website, but if there's a County that doesn't have, what's called a standing order when the divorce is filed, you have to get a restraining order that, as awful as that sounds, it may just be the sort of a standard one which says don't transfer money or hide the kids or anything like that.

But even there they end within 14 days, so these things are done really quickly. And then, like you were saying, Brian, as far as the importance of them, with kid cases. It sets the precedent for what's going to happen on a custody case. If you have a family that can't agree on possession, access, or conservatorship of a kid, what a judge says on temporary orders is a lot of times difficult to undo on final trial. Do you agree with that, Brian?

Brian: Oh, for sure. And, I've seen it happen. I've seen juries or judges occasionally flip things around, but it's rare and everybody knows that. So not only is it difficult to flip that at a trial, but it's such a well-known concept that most cases people tend to just give up and settle if

they don't get their way on a temporary orders hearing, which isn't always the right thing to do, but that's a very common dynamic.

Jake: Yeah. But particularly if you have cases in Travis County or Bexar County, we have what's called a rotating docket on those two counties and the court rotates, the judges rotate. So you may have one judge with temporary orders. You may have a different judge for final.

Harris County, Dallas County, like Williamson County, kinda like that, whatever judge hears your temporary orders is probably going to be the judge that hears your final orders. You may be in Harris County and have an associate judge who does temporary orders and then a district judge here for final. In a lot of counties though the judge who hears your temporary orders is likely going to be the judge that hears the final as well.

So if you did a big old swing and a miss on temporary orders, and then you're in front of the same judge six months later, it is hard. It makes it difficult and that results in a lot of jury demands, or at least when it's permitted when a judge misses the ball on temporary orders.

A lot of times we'll make the jury demand in those situations, but you don't want to be in that situation. You want to be a winner right off the bat. There's a lot of law firms out there that I think are caught flat footed or they don't take it seriously. They don't come up prepared and then all of a sudden they're behind the eight ball for the rest of the case.

We get hired a lot in those situations where a lawyer didn't take a temporary orders hearing seriously, the client lost temporary orders, and they come to us and we're fixing the situation which you can do, but you prefer to get it right the first time.

Talk to me about time limits, Brian. You and I take cases all over the state of Texas so what are the time limits that you've seen courts do on temporary orders?

Brian: You're talking about the amount of time that you're allowed to litigate it?

Jake: Yeah. You and I, on the other side, our clients can't agree on custody, they can't agree on who stays in the house, and they can't agree on support and how bills are going to get paid. How different can that look throughout the state?

Brian: Wildly different. When I started my practice out in Austin we could just roll down to the courthouse and tell the judge we wanted three days for a hearing and we would get it. I remember being hired at 11:00 AM one morning and starting a three-day hearing on temporary orders at 1:30 PM, two and a half hours later. That was quite interesting.

The other extreme is Collin County, North of Dallas. You are allowed 20 minutes aside and that includes the lawyers talking and that's it. With those 20 minutes, they are going to determine, as we just told you, probably the future of at least your children's issues. I think the financial issues in that situation and the divorce would be less important.

Most counties are somewhere in between.

I think you're typically going to get a couple of hours. One or two hours aside is pretty typical these days, and then they'll give you more if you have some kind of burning issue or really complex matter. Is that sort of the situation that you've seen?

Jake: Yeah. Yeah, definitely. Travis County, I think is probably the most unique. Austin is Travis County and it is probably the most unique in the state where they have what's called the long docket. First of all, it's got a central docket, like Bexar County where you don't know what judge you're going to get until you show up.

Because of the central docket I think the central docket counties have had the ability to get to cases more than counties that don't have a central docket. Now the downside of course, is that you get parked in front of random judges that don't know the case. But because of that, cases tend to get reached more. So you get a little more time in those counties for temporary orders.

But Travis County, what makes it even more unique is it has what's called the long docket. The long dock has Monday settings where if you need more than three hours and if you roll up on the long docket for temporary orders, yeah they'll give you it. If you show up and announce two days, they will give you two days. And, if you announce four days, five days, you have to know how the docket looks that day because they're probably not going to give a temporary hearing that's more than three days as an associate judge, because they need those associate judges for shorter cases.

So you have to know the strategy behind that, but yeah you could be in a long hearing. I've done temporary orders hearing with experts involved and hundreds of exhibits and thousands of pages of medical records. And he got all together in two weeks, which I think requires, probably sounds like a lot of time, but if you understand litigation how much preparation if you do it right?

How much preparation goes into a hearing? That's a lot of preparation in a really short amount of time. If you think about civil lawyers that do personal injury cases or medical malpractice or contract disputes, they're preparing. They have a week long trial and their case has been on file for two years or something before they go to court.

And then the family lawyers, the good ones are rolling in doing what we call trial with two weeks worth of preparation. Or, if you're Brian two hours worth of preparation. It just goes back to the importance of hiring somebody that's not afraid to do that. My guess, Brian is that client that called you called around a lot of people, maybe called you first, but whoever else, if they did call anybody else and the lawyer told him they're crazy and there's no way they're going to touch that case and do that. And then you're the one that actually would go do that and that's why we do a really good job at it.

Brian: I'm sure. Yeah, like most people she was, probably trying to find the first good lawyer she could find. And, yeah, I bet you not anybody else would've taken that on. So I did.

Jake: So temporary orders, can they be modified once a judge issues them?

Brian: They can. There is also a difference county to county. Again, I found Travis County, Austin to be pretty easy to do that. And, other counties, in Harris County, Houston, you have a high burden. You have to have an affidavit and a very special reason to do that.

That's not always easy to do. The courts are usually looking for ways to avoid redoing the same thing that they're going to have to deal with at the end of the case, unless there's something dramatic that occurs. So I think you should plan on those temporary orders lasting you through till the end of the case in almost all cases.

Jake: Yeah. Yeah. I think that's right. Now of course, I think what's important to remember through all of this is that a lot of cases, they get started and everybody agrees on temporary orders. So they agree to a lot of things on temporary orders. They separate, the divorce gets filed, and everybody knows that the wife is going to stay in the house and the husband's already moved out or the wife already moved out, and maybe they have a dispute about temporary support, but they know what they're going to do with the kids. If there's a general idea of what they're going to do with the kids and they are working out all the issues that may be going to court on.

We're talking about these four or five day trials on temporary orders or these big issues, and that happens. Sometimes we get hired a lot when people can't agree on anything on temporary orders, but it also happens a lot where people work it out and the lawyers put their heads together and come up with creative ways to handle the case while the case is pending.

Really, temporary orders, this is just a band-aid that's trying to get you to your final trial so you can either resolve in a mediation or go trial it if you can't. Sometimes we work them out with both sides thinking it's not perfect, but it's definitely not something that's gonna last, that they would agree to if it's going to last till their children turn 18 something everybody can live with while the case gets worked up for final trial. So when we talk about on our website, the five steps of every single case and try to remind people, at any given time you can work this stuff out.

But you also need to prepare, be prepared, and have a lawyer who's prepared to go to court if it doesn't work out because that happens. You don't want to, we talked about it, you don't wanna get caught flat footed and then you've got this big hole to dig out of and things don't go your way on temporary orders.

Or you don't want to agree to something really silly, on temporary orders. And then you go do a consult with me or Brian and we're going "Oh, how do you end up agreeing to that, we'll help you. We'll try to get you out of it." I've seen lawyers get their clients to agree to some pretty silly stuff on temporary orders just trying to avoid the courthouse the lawyer doesn't want to go to, he doesn't want to have a hearing.

I think they probably haven't had the discussion that we're having with their clients. These are temporary orders, but these really do set a precedent. Somebody comes into your office, Brian and says, I agreed to 50/50, no child support on temporary orders because my lawyer told me it's just temporary. Don't worry about it. Would you agree with that advice?

Brian: I think that's really egregious. Yeah. It goes back to that. If you agree on temporary orders and you set up a final trial it is hard to say "But now judge, I don't want to do that anymore."

That's a hard pitch. There's reasons and you can do it and I've gotten people out of it when they have had different lawyers and agree to something that I wouldn't have done on temporary orders. And I've been able to go to court and you gotta be able to explain to the judge or say this was temporary or here's what was going on at that time.

Here's why that doesn't work anymore. This all goes back to, you want to handle it right the first time. If it's not handled right the first time, we get hired a lot in those cases and we've fixed a lot of those situations, but it's better. We get it right the first time.

Jake: Yeah. I think that's a pretty broad overview of what it is. Yeah. I think you'll hear in the podcast, we interweave temporary orders and the effect it has on a divorce when we talk about other issues like final trial, and jury trials, guardianship, and stuff like that. But, that's a pretty good broad overview. Don't you think Brian?

Brian: I do, we could spend a lot of time on the drill down on it and we will I'm sure. And future podcasts with it's a good overview of this very important topic.

Jake: Yeah, absolutely.

Brian: Okay. Sounds good.

Jake: All right. Bye.