

TEXAS COURT OF APPEALS, THIRD DISTRICT, AUSTIN

Paul O’Brien v. Tiffanie O’Brien

O’Brien · No. 03-25-00334-CV · Decided April 30, 2026

SUMMARY

The Texas Court of Appeals, Third District, abated an appeal from a final divorce decree to allow the trial court to reconsider a motion to modify temporary orders pending appeal. The court held that Texas Family Code section 109.001(b-3) and (b-4) permit the trial court to consider modifying an existing temporary order while the appeal remains pending, subject to the statutory requirements.

CASE DETAILS

|                       |                                                                                                                                                                                                                            |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Texas Court of Appeals, Third District, Austin                                                                                                                                                                             |
| WRITING FOR THE COURT | Justice Triana; Justice Kelly; Justice Ellis                                                                                                                                                                               |
| JURISDICTION          | Texas Court of Appeals, Third District, Austin                                                                                                                                                                             |
| DECIDED               | April 30, 2026                                                                                                                                                                                                             |
| DOCKET                | 03-25-00334-CV                                                                                                                                                                                                             |
| DISPOSITION           | other                                                                                                                                                                                                                      |
| PROCEDURAL POSTURE    | Appeal from a final decree of divorce; the appellee moved to remand for a hearing on a motion to modify temporary orders pending appeal.                                                                                   |
| STANDARD OF REVIEW    | The opinion does not expressly identify a standard of review. The appellate court interpreted Texas Family Code section 109.001 and exercised its authority under Texas Rule of Appellate Procedure 2 to abate the appeal. |
| PRECEDENTIAL VALUE    | published                                                                                                                                                                                                                  |
| PARTIES               | Paul O’Brien v. Tiffanie O’Brien                                                                                                                                                                                           |

TOPICS

- family law procedure
- appellate procedure
- child support
- attorney fees
- statutory interpretation

PRACTICE AREAS

- family law
- appellate procedure
- child support
- attorney fees

QUESTIONS PRESENTED

1. Whether the trial court retained jurisdiction under Texas Family Code section 109.001 to modify an existing temporary order pending appeal after the sixty-day period for issuing an initial temporary order had expired.
2. Whether section 109.001 limits modification of a previous temporary order to the subject matter of provisions already included in that order.
3. Whether the appeal should be abated to permit the trial court to reconsider Tiffanie's motion to modify under section 109.001(b-4).

#### **HOLDINGS**

1. The trial court retains jurisdiction to modify and enforce an existing temporary order under Texas Family Code section 109.001(b-3) unless the appellate court supersedes the order, even though the sixty-day period in section 109.001(b-2) for issuing an initial temporary order has expired.
2. Nothing in section 109.001 limits a trial court's modification of a previous temporary order to the subject matter of provisions included in the previous order.
3. The appeal should be abated to allow the trial court to conduct another hearing and reconsider Tiffanie's motion to modify the temporary orders under section 109.001(b-3) and (b-4).

#### **KEY QUOTATIONS**

*“Nothing in the statutory language limits a trial court’s modification of a temporary order to the subject matter of provisions included in a previous temporary order.” (at 4)*

*“On the facts and record present here, where the trial court issued an initial temporary order, and the appeal is still pending, the trial court does not lack jurisdiction to consider whether Tiffanie’s motion to modify satisfies the requirements of Subsection 109.001(b-4).” (at 7)*

#### **FACTUAL BACKGROUND**

After the divorce decree was appealed, the trial court issued temporary orders requiring Paul to become current on child support, pay arrearages and attorney's fees, transfer the children's 529 plans, and address other amounts allegedly owed under the decree. Mediation was unsuccessful, and Tiffanie sought modification of the temporary orders based on continuing child-support arrearages, unpaid obligations, requested temporary support, attorney's fees, and other relief. The trial court believed the requested relief might exceed its jurisdiction because the statutory sixty-day period for issuing initial temporary orders had expired.

#### **PROCEDURAL HISTORY**

The 53rd District Court of Travis County rendered a final divorce decree. During the appeal, the trial court issued temporary orders under Texas Family Code section 109.001, the parties participated unsuccessfully in mediation, and Tiffanie moved to modify the temporary orders. The trial court indicated that the requested relief presented a jurisdictional problem. The court of appeals abated the appeal to allow the trial court to reconsider the motion in light of the appellate court's conclusion that the trial court retained jurisdiction.

#### **DISPOSITION**

other

## REMAND INSTRUCTIONS

The appeal is abated, not remanded, to allow the trial court to conduct another hearing and reconsider Tiffanie's motion to modify the temporary orders in light of the appellate court's confirmation that the trial court has jurisdiction under Texas Family Code section 109.001(b-3) and (b-4). Tiffanie must submit a motion to reinstate the appeal or a status report concerning the motion to modify, accompanied by a motion to extend the abatement, on or before June 1, 2026. The appeal remains abated until further order.

## CASES CITED

- Morris v. Veilleux, No. 03-22-00178-CV, 2023 WL 8191911 (Tex. App.—Austin Nov. 28, 2023, no pet.) (mem. op.)
- In re G.D.P., No. 14-21-00593-CV, 2023 WL 4883235 (Tex. App.—Houston [14th Dist.] Aug. 1, 2023, no pet.) (mem. op.)

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