TCMP — Texas Catholic Marriage Project

The Petitioner's Interest in Dissolution Opposes the Children's Interests in Family Preservation

Legal Memorandum

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Question presented

Where the children's interests are advanced through preservation of their existing intact family, how does the petitioner's pursuit of dissolution place her legal interest in opposition to theirs?

Proposed answer

The petitioner seeks a judgment dissolving the marriage; the children's preservation position seeks continuation of the family sustained by that marriage. Those requested outcomes directly oppose one another.

The conflict concerns the relief sought and the interests affected. It does not depend on attributing improper motives to the petitioner. Her personal interest in obtaining dissolution cannot be treated as equivalent to the children's interests in preserving their family.

Factual premises

1. Before suit, both parents agreed that their children's best interests were served by their intact two-parent family.

2. The children receive security, continuing parental care, and religious formation within that family.

3. The respondent continues to advance the parents' prior shared judgment.

4. The petitioner seeks dissolution under Texas Family Code § 6.001.

5. Her petition, in this scenario, identifies no concrete harm, particularized injury, or threatened injury arising from continuation of the intact family.

6. The children's preservation position rests on these factual premises and is to be advanced through independent legal representation.

The petitioner's legal interest is obtaining dissolution

The petitioner invokes § 6.001 to obtain a judicial judgment ending the civil marriage. Her litigation succeeds on that claim when the court grants dissolution.

Section 6.001 identifies the statutory ground for that relief. It does not make the petitioner's desired outcome the legal position of the children. Tex. Fam. Code Ann. § 6.001.

The children's preservation interests concern continuation

The children's preservation interests concern maintaining the existing family relationship through which they receive care, security, parental involvement, and religious formation.

Section 1.101 recognizes children's security as a purpose supporting preservation of marriage against claims of invalidity. This memorandum draws upon that legislative recognition in developing the preservation argument in the dissolution setting. Tex. Fam. Code Ann. § 1.101.

On the stated premises, the children's preservation position seeks continuation of the arrangement both parents previously understood to serve them.

The opposing interests cannot be collapsed into one position

Petitioner's dissolution interest	Children's preservation interests
Obtain a judgment ending the marriage.	Preserve the existing marital family.
Change the legal structure supporting the intact household.	Maintain the continuity and security attributed to that structure.
Secure relief despite the respondent's opposition.	Obtain independent consideration of the interests affected by that relief.

A judgment granting the petitioner's requested dissolution defeats the requested preservation of the marriage. The petitioner and the children therefore cannot be presumed to share the same litigation objective on that issue.

This does not mean their interests oppose one another in every matter. The adversity identified here concerns dissolution and preservation.

Alleging insupportability does not resolve that adversity

Section 6.402(a) permits pleading a divorce ground substantially in statutory language without specifying underlying evidentiary facts. The resulting allegation is not proof that dissolution advances the children's preservation interests. Tex. Fam. Code Ann. § 6.402(a).

The petitioner's allegation of insupportability does not rebut the parents' prior shared judgment or convert her dissolution objective into the children's preservation position. The children's interests require their own articulation rather than being absorbed into her request for relief.

Consequence for the children's legal advocacy

The proposed theory is that a parent seeking dissolution should not control legal advocacy whose objective is to protect the children's interests in opposing that dissolution. Otherwise, the person requesting the challenged outcome could determine whether, and how, the children's opposing interests are presented.

Texas law recognizes adversity as relevant to representation of minors. Rule 173.2 addresses adverse interests involving a next friend or guardian, subject to Rule 173.1's limits. Section 107.021(a-1) likewise recognizes the significance of nonconflicting representation in private termination proceedings. These provisions support the proposed principle by analogy. Tex. R. Civ. P. 173.1–.2; Tex. Fam. Code Ann. § 107.021(a-1).

The respondent's authority to arrange independent counsel rests on § 151.001(a)(7). On the stated facts, his preservation objective aligns with the interests that counsel would be retained to protect. Tex. Fam. Code Ann. § 151.001(a)(7).

Conclusion

The petitioner's legal interest in obtaining dissolution opposes the children's asserted interests in preserving their existing intact family. Her success on the dissolution claim entails rejection of the requested preservation outcome.

That adversity supplies the proposed basis for preventing her from controlling the children's preservation advocacy, while permitting the respondent to retain independent counsel to advance those interests.

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