

**Supreme Court of Texas**  
**December 13, 2013**

***Tucker v. Thomas***

No. 12-0183

Case Summary written by Jessica Rugeley, Online Edition Editor.

Justice Green delivered the opinion of the Court. Justice Guzman filed a concurring opinion in which Justice Lehrmann joined. Justice Brown did not participate.

Rosser Tucker and Lizabeth Thomas divorced in 2005 and were appointed as joint managing conservators of their three children. Thomas was given the exclusive right to designate the children's primary residence and Tucker was granted visitation rights and ordered to pay child support. In 2008, Tucker sought to modify the decree and requested that he be named as the parent with the exclusive right to designate the children's primary residence. Thomas filed a countersuit, requesting that she be named sole managing conservator of the children and requesting that Tucker's child support obligation be increased. The trial court denied Tucker's request and granted the request for increased child support. The court also ordered Tucker to pay Thomas's attorney's fees as additional child support. Tucker appealed the award of attorney's fees and the court of appeals affirmed, holding that the Family Code gives the trial court authority to order a parent to pay attorney's fees for legal services benefitting the children as additional child support in non-enforcement modification suits.

Issue: Whether a trial court has authority to order a parent to pay attorney's fees as additional child support in a non-enforcement modification suit under Title 5 of the Texas Family Code.

The court held that there is no statutory authority allowing a court to order a parent to pay attorney's fees in a non-enforcement modification suit. While the Family Code allows courts to order a parent to pay attorney's fees in situations such as failure to pay child support or failure to comply with the terms of an order, the Code is silent as to non-enforcement modification suits. Therefore, as the Legislature "expressly authorized the assessment of attorney's fees as additional child support in enforcement suits, but not in modification suits or under Title 5's general attorney's fees provision," the Court held that the Legislature did not intend to grant trial courts authority to characterize attorney's fees in modification suits as part of a child support obligation.

Justice Guzman, concurring, joined by Justice Lehrmann

Justice Guzman concurred to explain the history behind awarding attorney's fees in custody actions and to discuss why the subject has resulted in a lack of uniformity among the courts of appeals. Justice Guzman pointed out that the long use of the doctrine of necessities caused the lack of uniformity. Though it was used to prevent frivolous lawsuits, the lack of statutory authority means that courts do not have the discretion to award attorney's fees in modification suits.

***Ysleta Independent School District v. Franco***

No. 13-0072

Case Summary written by Jessica Rugeley, Online Edition Editor.

Per Curiam.

Franco was a principal at a pre-k academy in the Ysleta ISD. He notified his immediate supervisor about an asbestos problem in the school and asked to be transferred. After some communication, Franco was indefinitely suspended and filed a whistleblower claim. Franco admitted that he only reported to school officials but argued that, as the school district is a government entity, it is a law-enforcement authority under the Whistleblower Act. The trial court agreed and denied the ISD's plea to the jurisdiction. The court of appeals affirmed.

Issue: Whether a report to personnel whose only power is to oversee compliance within the entity itself is enough to confer "law-enforcement authority" status.

The Court held that Franco's actions were insufficient because he failed to show an objective, good-faith belief that the ISD qualifies as a law-enforcement authority under the Whistleblower Act. This Court's recent jurisprudence demonstrates that a report to someone charged only with internal compliance is insufficient. Therefore, the Court reversed the court of appeals and dismissed the case.