SECTION REPORT
FAMILY LAW

http://www.sbotfam.org Volume 2025-2 (Spring)

SECTION INFORMATION

IN THIS MONTH'S REPORT

NEWSLETTER CO-EDITORS-IN-CHIEF:

Beth M. Johnson, PLLC
8150 N. Cent. Expy, Ste. 1255
Dallas, Texas 75206
(972) 467-5847
beth@bethmjohnson.com

Patrick A. Wright, Attorney-Mediator
The Wright Firm, L.L.P.
400 Parker Square, Ste 205
Flower Mound, Texas 75028
(972) 353-4600
patrick@thewrightlawyers.com

COUNCIL EXECUTIVE DIRECTOR
Christi A. Lankford
clankford@sbotfam.org
Section Wear and Publications

Family Law Section, State Bar of Texas
Section Report Disclaimer

The Family Law Section presents the information in the *Family Law Section Report* as a service to its members. Opinions expressed herein are solely those of the respective authors and are not the opinions of the State Bar of Texas or the Family Law Section. While the information in the *Family Law Section Report* addresses legal issues, it is not legal advice. Due to the rapidly changing nature of the law and the Family Law Section's reliance on information provided by outside sources, the Family Law Section makes no warranty or guarantee concerning the accuracy or reliability of the content of the *Family Law Section Report*. Views or opinions are not intended to malign or endorse any race, gender, religion, ethnic group, sexual orientation, political affiliation, or individual.

Message from the Chair

This is my last Section Report as chair, and I am very grateful to have had the opportunity to serve in this capacity. I conclude my year with even greater awe of our Section members and volunteers than when I began. Y'all are something special. I hope you are encouraged and challenged by these highlights from 2024–25.

Pro Bono Committee and FLES Seminars

The Pro Bono Committee, co-chaired by Lauren Melhart and Sarah Darnell, organizes CLE seminars in mid-sized cities that are free of charge for those who agree to take at least two pro bono cases. In 2024, attendees volunteered for over 212 pro bono assignments. The 2025 seminars are right around the corner:

	Course Directors:
Lubbock - May 2, 2025	Danny Webb and Laura Fidelie
McAllen - May 23, 2025	Rocky Pilgrim and Natalie Webb
Tyler - May 30, 2025	Christina Hollwarth and Roxie Cluck
Midland - June 6, 2025	Emily Miller and Adam Dietrich
Richmond - June 6, 2025	Tasha Wilson and Aaron Reimer
Laredo - TBD	Kimberly Pack Wilson and Amy Rod

Big thanks to our course directors and all who will volunteer to speak. If you live close to these areas, please make plans to attend. Our members care and seek opportunities to help families in need of legal services, and your Section is committed to helping you be aware of the needs and hands-on ways you can help.

Leadership Class

And speaking of pro bono work—your inaugural Leadership Class has already volunteered for 17 pro bono cases as part of their coursework! Way to jump in, guys! With committee chair Kevin Segler at the helm, they're also continuing their monthly meetings to learn about the Section and other family law organizations, working with mentors, and planning for their class project. This is an exciting group of young family lawyers!

Membership

The Membership Committee, chaired by Kelly Fritsch, has gone above and beyond this year. I'm sure you've noticed the increase of social media updates on Section events and efforts. If not, click here, and find the links in the top right corner to join the fun. But beyond that, they have visited almost every Texas law school to meet and encourage family-lawyers-to-be, providing them with information about the Section, encouraging personal interaction with lawyers in their area, and impressing upon them the need for competent and caring family lawyers.

GO TO TABLE OF CONTENTS

Publications

Your Publications Committee, chaired by Chris Nickelson, is always looking for new and helpful ways to make this challenging practice a little easier. And the Formbook Committee, chaired by Jonathan Bates, works year-round to provide the latest updates to the Practice Manual. This year, these committees provided us with the following updated materials that you can buy here:

Fingertips Series – Evidence, Property, and Children
Fast Guide to Family Law- Checklist for Everyday Practice
Predicates Manual 6.0
Texas Family Law Practice Manual

Future of Family Law

The Future of Family Law committee, chaired by Leigh de la Reza, provided helpful insight to the Texas Supreme Court in response to their requests for comments on proposed rules changes. There can be unintended consequences to even the best ideas, and this committee seeks to educate and inform when asked to provide reflections. We all benefit from their diligent and timely efforts!

Nominating

If you're interested in helping on these hard-working committees, please let a Council member know. So many volunteer on a regular basis, but we know there are others who would love to join in. Just let us know, and we will put you to work—because that's what your Council and Committees are all about!

The primary reason we can do all that our Section accomplishes in any year is our amazing Executive Director, Christi Lankford. Christi supports us with her quiet fortitude, tireless efforts, and historical expertise. She not only helps us navigate the day-to-day requirements but also empowers new projects and long-term programs with unparalleled grace and wisdom. Christi, you amaze us, and we appreciate you beyond words!

This has been one of the greatest joys of my professional life. Thank you all for an incredible year endeavoring together to promote the highest degree of professionalism, education, fellowship, and excellence in the practice of family law!

We hope to see you soon at an upcoming CLE!

CLE Save the Dates:

Marriage Dissolution 101: 2025 (live)
Galveston - Apr 23, 2025
Register for Course

Marriage Dissolution Institute 2025 (live)
Galveston - Apr 24-25, 2025
Register for Course

Advanced Family Law 101: 2025 (live)
San Antonio – August

Advanced Family Law (live)
San Antonio – August

Anna McKim
Chair, Family Law Section

In this Report's Spotlight, I've asked incoming chair Lisa Hoppes to share how and why she became interested in Section work. Lisa's years of experience, energetic approach to opportunities, and love of this Section will serve us all well in the coming year!

GO TO TABLE OF CONTENTS

My Journey with the Family Law Section
Lisa Hoppes[1]

As I prepare to take on the duties and responsibilities as Chair of the Family Law Section in June, I find myself reflecting on the path my life has taken both professionally and personally, and the impact my involvement in the Family Law Section had on my journey.

Just over 30 years ago, I joined the Family Law Section by checking the box on the State Bar membership form and paying my $40.00 section dues. I remember getting my first Toolkit in the mail and thinking it was wonderful. It got more wonderful each time I used it. I soon discovered the Section has many publications and resources that enhance my practice and make me a better lawyer. To this day, the "Predicates Manual," the "Texas Family Law Practice Manual," and the "Client Homework" are among my favorite publications. At its core, the Family Law Section is a group of incredible people. It is the volunteers who spend countless hours updating existing publications and creating new publications each year. It is the people who give their time and talent to write the quarterly Section Report, the monthly Membership Update, and the yearly bibliography which keeps me up to date on the most recent case law and emerging family law issues. It is the members who attend the seminars and use the publications to become even better family law attorneys for their clients and give back to their communities through pro bono services.

I briefly worked for an oil and gas company right out of law school. I remember hearing comments that family law attorneys were not "real lawyers," and family law was not "real law." When I attended my first Advanced Family Law course, I was amazed that family lawyers were expected to understand other areas of the law from real estate, criminal, and trusts, to tax, and yes, oil and gas and mineral rights. I could not fathom that I would need to understand mental health issues, family dynamics, and drug and alcohol issues, or that I would deal with those issues on a daily basis. I was awe struck by the knowledge of not only those who presented at the conference, but also of those who attended. Everyone I talked to taught me something. I was lucky as a young lawyer to have wonderful local mentors, but the Family Law Section is one of the largest sections of the State Bar, and attorneys from different regions of the state bring unique and different perspectives and experiences. They have always been willing to share those experiences and offer encouragement. What I have experienced across the board is kindness and an overall willingness to answer all the questions I had as a baby lawyer about legal issues, work-life balance, and professionalism. I have mentors across the state that I still reach out to, 30 years later, when I need to talk through a legal conundrum, need to vent about something that went wrong, or need advice on what to do better. Some of my dearest friends live hundreds of miles away from me, and they are only my friends because I met them through my involvement in the Family Law Section. I value and cherish the relationships and friendships that have grown over the years more than I can ever express.

For young lawyers who are reading this, get involved. Create your own support system and build relationships that will sustain you when the going gets tough—and it will get tough. We deal with tough issues. Use the publications and resources to make your daily work life a little bit easier and to make you better educated, more informed lawyers. Volunteer and continue to make the Section the best it can be for those coming behind you.

To all the "seasoned" lawyers out there, remember to give back what you received as a young lawyer. Continue to offer mentorship, guidance, and support so we continue to promote the values established by those who came before us.

---

[1] Lisa Hoppes, a **board-certified family law attorney** in Texas, has over 30 years of experience advocating for clients in divorce, child custody, and complex property disputes. As the founder of Hoppes Law Firm, PLLC, she is dedicated to providing compassionate, strategic representation. Recognized on the **Texas Super Lawyers** list since 2011, Lisa is a respected leader in family law, known for her expertise in high-conflict cases. She currently serves as Chair-Elect officer of the Texas Family Law Section and is the **incoming Chair of the Texas Family Law Section.** She may be reached at Lisa@hoppeslawfirm.com

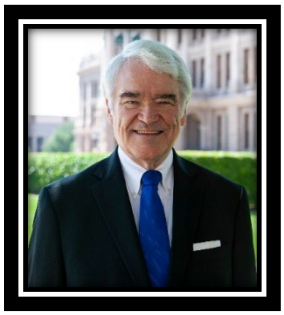
GO TO TABLE OF CONTENTS

For the wonderful legal minds and extraordinary people who came before me, I say “thank you.” Thank you for having the vision to create something so incredibly valuable that will continue to have a profound impact on our profession.

Family Lawyers are “real lawyers,” and we practice “real law.” Each of us should be proud of the work we do and the contributions we make. I know I am.

JUDICIAL SPOTLIGHT

Many Justices, One Court
by The Honorable Nathan L. Hecht[1]



The 1988 Texas Supreme Court election was historic. Six of the nine seats on the Court were on the ballot instead of the usual three, more than ever before. Unlike most under-the-radar judicial elections, the races drew much attention. Prompted by unlimited campaign contributions in recent election cycles, very critical articles frequented the national press from the *New York Times* to the *Wall Street Journal*, including a segment on CBS *60 Minutes* entitled *Is Justice for Sale in Texas?* Many believed the answer to that question was at stake.

The winners that year were split by party labels three-to-three, and the Court was a very diverse group. Oscar Mauzy and I, for example, saw the law, shall we say, differently. Riding with him and a bunch of lawyers in an elevator going up to a law firm Christmas party, one lawyer drily observed, “If this elevator crashes, there will be mixed emotions.” Oscar and I chuckled (sort of). But strong as the differences were, the Court found much common ground. I and other Dallas trial judges had regarded Senator Mauzy, in his previous position, as our go-to legislator despite our different ballot labels. And notably, Justice Mauzy’s opinion for the Court in our 1989 *Edgewood* decision, profoundly reshaping public-school finance in Texas, was unanimous.[2]

In 1991, we reaffirmed in our *Crown Central* per curiam that appeals should be decided on the merits rather than procedure,[3] and we all agreed in *TransAmerican* that discovery sanctions must be directed at the abuser and not be excessive, abating the sanction wars threatening to take over litigation.[4] I could go on. The Court’s disagreements, more than a few, are laid out in the *South Western Reporter* for all to read. How and when Justices persuade one another and reach consensus are consigned to unreported conference discussions and chambers conversations. Dissents naturally get more notice.

From different perspectives, the Justices all sought justice and worked together to build the state’s jurisprudence. Over 36 years I served with 38 Justices (out of a total of 131 over 179 years, by my count). Many Justices, one Court. With different backgrounds, experiences, and views of the law, my colleagues were bound by mutual respect and almost unfailingly collegial. They were all deeply dedicated to the good of the people of Texas, and it was an honor to serve among them.

In this period of societal discord, the judiciary and the legal profession must lead in ensuring that the promise of access to equal justice under law is kept real to all.

---

[1] **Nathan L. Hecht** served as the 27th Chief Justice of the Supreme Court of Texas from 2013 until his retirement on December 31, 2024. Appointed by Governor Rick Perry, he was the longest-serving member in the Court's history, with a tenure spanning over 36 years. Born on August 15, 1949, in Clovis, New Mexico, Hecht earned his Bachelor of Arts from Yale University and graduated cum laude from Southern Methodist University Dedman School of Law. He began his judicial career on the 95th District Court of Dallas County in 1981, later serving on the Texas Court of Appeals for the Fifth District before his election to the Supreme Court in 1988. Throughout his career, Chief Justice Hecht was a staunch advocate for judicial efficiency, transparency, and accessibility. He played a pivotal role in implementing electronic filing systems and virtual hearings, significantly modernizing court operations. He was also instrumental in promoting access to justice initiatives, emphasizing that "justice for only those who can afford it is neither justice for all nor justice at all." Under his leadership, the Court heard over 2,700 oral arguments, and he authored approximately 7,000 pages of opinions. His judicial philosophy emphasized textualism and judicial restraint, influencing numerous significant decisions on constitutional and business law. Chief Justice Hecht's legacy is marked by his unwavering dedication to upholding the rule of law and enhancing the judicial system's accessibility and efficiency for all Texans.

[2] *Edgewood v. Kirby*, 777 S.W.2d 391 (Tex. 1989).

[3] *Crown Life Ins. Co. v. Estate of Gonzalez*, 820 S.W.2d 121, 121 (Tex. 1991) (per curiam).

[4] *TransAmerican Nat. Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991).

GO TO TABLE OF CONTENTS

Trailblazers
Charlie Hodges[1]

If you are lucky enough to know Charlie Hodges, you know that anytime you are around him, he is sure to bring a smile to your face. He has a knack for meeting and connecting with people through good conversation and laughter. Although spending time with Charlie will guarantee you a good time, he is also very serious when it comes to his career, family, and friends. Charlie has been described by many as a very loyal friend that will give you the shirt off his back. Charlie is also known to be a sharp dressed man, so that shirt off his back would likely be a bold pattern or color. Charlie's personality is the perfect fit for the field of family law. Charlie has mastered the art of working hard and playing hard.

Charlie is a Dallas native. Although he left Dallas several times throughout his life for short periods of time, he has always ended up back there. He started out his college career at Vanderbilt University. However, he missed the Lone Star State, so he returned to Texas where he graduated with a Bachelor of Arts Degree from the University of Texas at Austin. After graduation, he joined the National Guard Army Reserves. During his service, he spent time at Ft. Polk and Ft. Benning for airborne training.

Charlie began his law school career at SMU. Before graduating, he left SMU to work for Lloyd Bentsen's Senate campaign. He then joined his Senate staff in Washington, D.C. and worked as Special Assistant to Senator Bentsen. After his time with Senator Bentsen, Charlie returned to law school, graduating from the University of Texas at Austin.

Before beginning his career in family law, Charlie worked as an Assistant Attorney General of Texas and Special Counsel for the Secretary of State of Texas. He also worked for a publicly held technology company in the healthcare field as their Vice President of Marketing.

After working in other legal areas for many years, Charlie's desire to help families turned him in the direction of family law. Charlie excelled in that area as well, becoming Board Certified in family law. In addition to the practice of law, Charlie has held many prestigious positions within various legal organizations. He has been actively involved in the American Academy of Matrimonial Lawyers, serving in roles such as President, Board of Governors, and Board of Directors. Charlie has also served as Chair of the Family Law Council and is a Past President of the Texas Family Law Foundation. He recently became a Diplomat of the American College of Family Trial Lawyers, which is limited to only 100 members.

In 2016, Charlie was presented with the Dan Price Award, which is an esteemed award presented by the State Bar of Texas Family Law Section in recognition of an unreserved commitment to clients and to the legal profession.

Charlie has had an amazing career and doesn't show signs of slowing down anytime soon. He has met many amazing people throughout his life and career. He has met famous figures such as Lyndon B. Johnson, Charlie Wilson, Kinky Friedman and more! If you ever need anything, and Charlie can't help you himself, Charlie is certain to know a guy or gal who can help or assist.

[1] The Section Report would like to thank Sarah Darnell and the Family Law Section History and Archives Committee for the submission of this article.

GO TO TABLE OF CONTENTS

2025-2026 Recommended Nominations Slate
State Bar of Texas Family Law Section

Pursuant to Article VI, Section 1 of the Bylaws of the State Bar of Texas, Family Law Section, the Nominating Committee of the Section hereby forwards the following names for the following positions of the Family Law Council:

Officers

Chair:	**Lisa Hoppes (no vote required)**
Chair-Elect:	**Jim Mueller**
Vice-Chair:	**Lon Loveless**
Treasurer	**Susan McLerran**
Secretary:	**Leigh de la Reza**
Immediate Past Chair:	**Anna McKim (no vote required)**

Nominations to the Class of 2030

Robert Epstein (Dallas)
Laura Fidelie (Wichita Falls)
Kimberly Naylor (Fort Worth) (silver bullet)
Angela Stout (Houston)
Robert Tsai (Houston)

Class of 2027 (unexpired term of Leigh de la Reza)

Kevin Segler

The election will take place on **April 26, 2025**, at the section meeting during the Marriage Dissolution seminar.

Table of Cases

GO TO TABLE OF CONTENTS

IN THE LAW REVIEWS AND LEGAL PUBLICATIONS

Non-Texas

Happy New Year!, Lyne **Ranson**, 47-WTR Fam. Advoc. 3 (2025)

From the Editor in Chief, Kathleen A. **Hogan**, 47-WTR Fam. Advoc. 4 (2025)

The Alphabet Soup of Business Valuations, Joseph **Emanuele** & Tracy Farryl **Katz**, 47-WTRFam. Advoc. 6 (2025)

Understanding Business Valuation Approaches and Methods: A Comprehensive Guide For Attorneys, William C. **Dameworth** & Kelly A. **Schmid**, 47-WTR Fam. Advoc. 8 (2025)

The Role of Control and Marketability Discounts in Business Valuation, Lukasz **Kustra**, 47-WTR Fam. Advoc. 12 (2025)

Standards of Value: How Is Value Defined in a Business Valuation? Gregory M. **Clark**, 47-WTR Fam. Advoc. 16 (2025)

Discovery of Documents and Information Used by Business Appraisers and Forensic Accountants in Family Law Matters, Glenn S. **Liebman** & Brandon T. **Warshall**, 47-WTR Fam. Advoc. 18 (2025)

Choice of Business Entity: Corporations and LLCs, W. Y. Alex **Webb**, 47-WTR Fam. Advoc 21 (2025)

Forensic Analysis and Review of Proper Documentation for Business Valuations, James **Godbout** & Brian **Schwerdtfeger**, 47-WTR Fam. Advoc. 24 (2025)

Personal Goodwill in Divorce: What It Is and How One Can Value It, Bruce L. Richman, 47-WTR Fam. Advoc. 30 (2025)

Dissecting a Business Valuation Report: What to Look for in the First Read-Through, Charles W. **Clanton**, 47-WTR Fam. Advoc. 34 (2025)

Challenges in Distributing Closely Held Business Interests in Divorce, Alicia **Jurney**, 47-WTR Fam. Advoc. 40 (2025)

The Art of Drafting Lost Wage Provisions in Gestational Surrogacy Agreements, Elizabeth **Swire Falker**, 47-WTR Fam. Advoc. 43 (2025)

Creating Effective Parenting Plans for Children with Disabilities, Judge Margaret **Pickard**, Dr. Stephanie **Holland**, Psy.D., & Neethy **Eapen**, 58 Fam. L.Q. 1 (2024-2025)

The Privilege of a Presumption: A Proposal for the Equal Application of the Presumption of Parentage to Same-Sex Couples, Mary J. “Janie” **Nichols**, 58 Fam. L.Q. 45 (2024-2025)

Personality Disorders and the Parent-Child Relationship: Breaking the Cycle of Generational Trauma in Family Courts, Ashtar R. **Abboud**, 58 Fam. L.Q. 61 (2024-2025)

“You've Got Dreams He'll Never Take Away”: The Role of Protective Employment Legislation in Liberating Survivors of Domestic Violence, Emily **Dillan**, 58 Fam. L.Q. 81 (2024-2025)

GO TO TABLE OF CONTENTS

Family Law From Around the Nation
By Rob McAngus[1]

Agreements: A North Dakota court determined that the wife had reasonable time to seek legal representation before signing, despite the agreement being signed two days before the wedding. It also found that the wife received adequate financial disclosure, given her long-term relationship with the husband and her involvement in managing their shared finances. Lastly, the court concluded that the wife's consent to the agreement was voluntary and not under duress, considering her business acumen, education, and prior experience with legal agreements. These findings collectively supported the enforcement of the premarital agreement. *Olson v. Olson*, No. 20240103, 2024 ND 224 (North Dakota Supreme Court, Dec. 5, 2024). In *J.M. v. G.V.*, 2025 NY Slip Op 25004 (Kings Cty., Jan. 2, 2025), a couple married in 2018 after signing a prenuptial agreement one week before their wedding. The husband, who was unrepresented during the negotiation of the agreement, later sought to set it aside during divorce proceedings, claiming it was unconscionable, fraudulent, and the result of overreaching. The court's decision focused on the validity of spousal support waivers in prenuptial agreements, particularly for self-represented parties. The court ruled that for a knowing waiver of maintenance by a self-represented litigant, the prenuptial agreement must include notice of the presumptive maintenance calculations, including both parties' incomes and the full calculation under the guideline statute formula.

Property: In Oklahoma, a former wife was entitled to 50% of the former husband's firefighter pension benefits under the traditional retirement option, which were later deposited into his account under the deferred retirement option he chose upon retiring. Although the divorce decree did not explicitly address benefits under the deferred option, the former wife had already acquired a property right to her share of the traditional pension benefits once the decree was finalized. Moving the funds to the deferred option did not alter their status as vested marital assets. The deferred account was simply an alternative within the pension program, not an entirely separate plan. As a result, the former husband could not unilaterally change the nature of the pension benefits to create a new post-divorce asset that would fall outside the divorce settlement. *Cummings v. Sasnett*, No. 120418, 2025 OK 7 (Oklahoma Supreme Court, January 22, 2025). A New York court held any cash or equity consideration received by former husband in connection with restricted stock units (RSUs) granted by his former employer was marital property subject to equitable distribution provisions set forth in parties' stipulation of settlement, which was incorporated but not merged into judgment of divorce, warranting reversal of trial court's denial of former wife's motion to, in effect, enforce provisions of a stipulation of settlement pertaining to equitable distribution of the RSUs and remittal for further proceedings. The RSUs were a form of deferred compensation derived from husband's employment and contemplated to be enjoyed by both spouses at future date, stipulation of settlement indicated that RSUs were marital property subject to equitable distribution, and stipulation did not require RSUs to vest to become marital property. *Maritzen v. Maritzen*, No. 2023-05695, 2025 N.Y. Slip Op. 00316 (New York Supreme Court, Appellate Division, Second Department, January 22, 2025). In Oregon, the record supported a trial court's conclusion that a wife's student-loan debt from an advanced degree was not marital debt to be divided equally, in dissolution action, despite some of the funds having been used for family expenses. The Court held that the mother had begun to “reap her rewards” in terms of career opportunities and current, as well as potential future income, and loan funds also assisted the mother to later develop a nonprofit in which she applied her advanced-degree expertise. *Wintle v. Martin*, 337 Or. App. 343 (Oregon Court of Appeals, January 8, 2025).

---

[1]Rob McAngus is a partner at Mueller Family Law, P.C. He is board-certified in Family Law by the Texas Board of Legal Specialization and a Fellow of both the American Academy of Matrimonial Lawyers and the International Academy of Family Law Specialists. Rob’s practice is devoted primarily to complex and high-conflict divorce matters. Rob serves on the Advisory Board for the Texas Board of Legal Specialization, the Texas Family Law Foundation Board and the Texas Academy of Family Law Specialists Board. Rob may be reached at rmcangus@muellerflg.com.

GO TO TABLE OF CONTENTS

Enforcement: In Georgia, an order requiring the former husband to transfer an additional 289 shares of stock from his IRA to the former wife improperly modified the original divorce decree. The decree had only mandated that the husband transfer $375,000 in the form of a pro-rata share of stocks, bonds, and other non-cash assets. This ruling was issued during contempt proceedings on both parties' motions, despite the wife's claim that she received lower value shares due to changes in the IRA holdings caused by the husband's delay in making the transfer. Even though the additional shares were meant to compensate for appreciation during the delay, the decree did not restrict the husband from buying, selling, or reallocating shares within the IRA before the transfer date. Therefore, the order effectively imposed a new restriction on stock trading that was not originally included in the divorce agreement. *Aftuck v. Aftuck*, No. A24A1752 (Georgia Court of Appeals, January 15, 2025).

Support: In Mississippi, a court held that the husband should be given a “credit" for the State's adoption-assistance payment, which was intended for the benefit of their child. The court determined that half of the $700 monthly adoption supplement received by the wife should be attributed to the husband, reducing his child support obligation to $581 per month instead of the statutory $931. However, the Court of Appeals held this was incorrect. The adoption assistance payment is meant to support the child, based on the child’s needs, not to offset the husband’s financial responsibility, and he was not entitled to receive credit for it. *Begnaud v. Begnaud*, No. 2023-CA-00822-COA (Mississippi Court of Appeals, January 7, 2025).

Offer and Acceptance: A Delaware case involved a dispute over whether an email exchange between an ex-wife and ex-husband constituted a binding contract for the sale of her interest in marital property. The Family Court ruled that no enforceable contract existed, finding that the parties had not sufficiently expressed their intent to be bound and that essential terms were missing. However, on appeal, the court determined that the Family Court overlooked key evidence demonstrating the parties’ intent and material terms. As a result, the ruling was reversed, and the case was remanded for further proceedings to determine appropriate relief. *Shilling v. Shilling*, No. 66, 2024 (Delaware Supreme Court, Dec. 4, 2024).

Open Courts: After a divorce in Nevada, the father sought to modify custody of his two children. The trial court allowed a press organization to have camera access to the proceedings and later denied the mother’s request to close the hearing. In response, the mother filed a petition for a writ of mandamus, asking the District Court to vacate its order and reconsider her motion. The court held that the mother lacked an adequate legal remedy without the writ and that the trial court had failed to properly apply the factors from *Falconi v. Eighth Judicial District Court*, instead incorrectly prioritizing public access over potential circumstances justifying a closed hearing. The Court held that the lower court erroneously concluded no such circumstances or interests could outweigh the public's right of access to family law proceedings and granted press organization's request for camera access to a modification hearing involving two children. *Nester v. Eighth Judicial District Court in and for County of Clark*, No. 88597, 141 Nev. Adv. Op. 4 (Nevada Supreme Court, January 30, 2025).

Annulments: On appeal in a Florida case, the Husband asserts that an annulment is proper because the parties never consummated the marriage and the Wife married him solely for immigration benefits, committing fraud. At trial, husband testified that he never consummated the marriage, he had never seen her naked, and didn’t know her bra size or any intimate detail about her body. Husband testified that she only married him to obtain legal status. The wife admitted she never received an engagement ring, but said she signed a prenuptial agreement, that they had consummated the marriage, and had intercourse on several occasions, but only in the dark. Accordingly, she had never visually inspected his body. Because the record contained ample evidence supporting the trial court's findings that the parties consummated the marriage and the Wife did not enter the marriage to commit fraud, the court upheld the trial court’s denial of the Husband's petition for annulment of marriage. *Rojas v. Londono*, No. 3D24-0455 (Third District Court of Appeals of Florida, January 08, 2025).

GO TO TABLE OF CONTENTS

Competent Forensic Interviews? How Can You Tell?
By John A. Zervopoulos, Ph.D., J.D., ABPP[1]

You're in the middle of a complicated child custody case. You just received the evaluator's 75-page report. While scanning it, you question the recommendations, which don't favor your client.

When re-reading the report the next morning, you check the methods the evaluator used to collect her data. Turns out, same as other evaluators—interviews, psych testing, and contacts with collateral sources. Then you note the evaluator based her opinions mostly on interviews with the parties. How can you tell if the evaluator conducted competent interviews?

Too often, lawyers shy away from challenging the quality of evaluator interviews, viewing them merely as a routine subjective information-gathering task. But the quality of the interviews may provide you with critical information to question the reliability of evaluators' opinions and recommendations.

To challenge the quality of those interviews, think first about how you interview a prospective client before taking his or her case. You do more than copy two hours' worth of complaints. You listen to the story. You probe strengths and weaknesses. You consider whether the person's concerns can legally support a case. You assess what evidence might be compelling and admissible at trial.

Hold evaluators to the same thorough interview approach you adopt in your practice. But rely on more than the report's accounting of the interviews to test their quality. Also, make sure you review the evaluator's interview notes from the file. ***As you do, see if the expert:***

- ***Conducted enough parent interviews to competently address the court's referral questions.*** In family law cases, two interviews are not enough to build sufficient rapport and explore case concerns. Three may not be either, especially when troublesome issues are being assessed. And too often, evaluators improperly substitute lengthy questionnaires for extra interviews, questionaries filled out at the kitchen table with a glass of wine rather than in the evaluator's office.

- ***Spent sufficient time exploring specific case issues.*** This shows when the evaluator focused on parents' he-said/she-said complaints, asked only a few questions of key case issues with little follow up, or failed to ask questions that reflect the professional literature in specific case issues being assessed.

- ***Asked parents about concerns raised in relevant collateral records.*** Too often, evaluators don't ask parents to explain concerns raised in collateral records, which are relevant to the case. And sometimes, evaluators don't even review those records until the end of the evaluation period after all interviews with the parents have been completed.

- ***Asked parents about concerns raised in the evaluator's collateral interviews with persons who have relevant information about the parent and child.*** The child's teachers, physicians, and counselors may provide important perspectives on the child and parent-child relationships.

---

[1] ***John A. Zervopoulos, Ph.D., J.D., ABPP,*** a lawyer and board-certified forensic psychologist, directs *PsychologyLaw Partners*, where he assists family lawyers as a *Consulting Partner* to understand, critique, and use psychological materials and evidence in their cases, and helps edit and draft motions and briefs that relate to experts' work and testimony. He has authored two ABA-published books: *How to Examine Mental Health Experts: A Family Lawyer's Handbook of Issues and Strategies—Second Ed.,* in 2020, and *Confronting Mental Health Evidence: A Practical PLAN to Examine Reliability and Experts in Family Law—Second Ed.* in 2015. John is online at www.psychologylawpartners.com. You can contact him at 972-458-8007 or at jzerv@psychologylawpartners.com.

GO TO TABLE OF CONTENTS

• ***Presented parents with problematic social media posts.*** A parent's social media posts (Facebook, Twitter, Instagram) can sink her case. Did the evaluator, who comes into possession of those potentially problematic posts, allow the examinee to explain them?

• ***Considered reasonable alternative explanations of the case facts and evaluation data other than the evaluator's opinion.*** This is a bias-buster. If the evaluator has not considered this step throughout the evaluation process, the evaluator's opinions may be infused with one of more biases (confirmation, hindsight, overconfidence, etc.) that will color the recommendations.

Evaluators should be more than stenographers, merely producing transcripts of examinee complaints and allegations. Hold evaluators to the same thorough interview approach that you bring to your own client interviews. You'll be surprised at how your questions of the evaluation quickly open up.

Bridging the (Valuation) Gap: Why Business Valuation Experts Reach Different Conclusions By Aaron Ballard, CPA/ABV[1]

Mr. Ballard has been in trial—and hasn't that happened to us all? So, enjoy this classic Ballard article, straight from the Section Report vault, which originally ran in the Summer 2019 Section Report. Enjoy, and Aaron Ballard will return in the next Section Report with a new article.

If you've ever had a case involving the valuation of a closely held business with competing valuation experts on either side, you've likely asked yourself the following question: how is it possible that two "experts" can value the same business with the same set of documents and reach such vastly different conclusions of value?

The disparity between two valuation experts' opinions can be a confusing and frustrating obstacle to overcome when attempting to resolve a divorce case involving an interest in a closely held business. Understanding why valuation experts reach different conclusions and the most common areas where business valuations diverge will enable you to determine the best course of action when faced with this conundrum.

The old cliché about something being both an art and a science certainly applies to the field of business valuation. While there are fundamental procedures and widely accepted methods underlying the business valuation profession, appraiser judgment and experience also come into play. For this reason, one right answer does not necessarily exist to the question of what a business is worth. This is not to say, however, that *wrong* answers don't exist; wrong answers certainly do exist in the realm of business valuation.

Think of a business valuation in terms of a "range of reasonableness." Valuation experts may arrive at slightly different conclusions based on minor discrepancies in assumptions or reasonable differences in the application of appraiser judgment in good faith. If this is the case, both conclusions may exist within the range of reasonableness, with neither being right or wrong per se. These types of disputes can often be resolved since the gap between the two valuations is usually insignificant.

Challenges arise, however, when one expert's valuation falls outside the range of reasonableness. This problem generally occurs for one of the following reasons (or a combination thereof):

- one or more demonstrable mathematical/mechanical errors;
- materially different data/inputs relied upon;
- compound effect of many small differences in assumptions, all tilted in one direction; or
- unsupported, manipulated, or invalid assumptions/methodology.

[1] Aaron Ballard, CPA/ABV is a partner in the Forensic, Litigation & Valuation Services group at Whitley Penn. He has spent his entire 15-year career providing litigation support and expert testimony regarding business valuations, tracing and characterization of marital assets, forensic accounting, and other financial issues. The majority of his practice is within the context of Texas divorce cases. Mr. Ballard can be reached at aaron.ballard@whitleypenn.com.

GO TO TABLE OF CONTENTS

These deficiencies typically crop up in the same few areas of business valuation. Some of the most common areas where experts deviate are summarized below; these are the aspects of business valuation most prone to error or manipulation:

- Adjustments to the financial statements: Every business valuation must consider whether any adjustments need to be made to the financial statements. Adjustments are often necessary to "normalize" the reported historical financial performance of the business so that it is representative of what a buyer could expect in the future. Differences in the normalizing adjustments applied by each appraiser are a common reason for large discrepancies between business valuations. Perhaps the most contested adjustment involves owner/officer compensation. Depending on the form of the business entity and other considerations, the compensation being taken by the owner/officer in the form of salaries and bonuses may be either above or below market compensation. Normalizing owner/officer compensation, or failing to do so, can have a major impact on the business's cash flows and, ultimately, the conclusion of value.
- Non-operating assets: Another area to be examined when a large discrepancy exists between two business valuations is that of non-operating assets. Non-operating assets are assets owned by a business but not necessary for day-to-day operations. These assets must be considered separately and are typically a direct add-back to the value of the business's operating assets. Common non-operating assets include personal assets like vehicles or boats, vacant land, idle equipment, and excess cash. To the extent one appraiser has properly classified certain assets as non-operating in nature and the other has not, this alone can explain a large gap between two valuations.
- Selection and weighting of valuation methods: There are three approaches to business valuation—the asset approach, the market approach, and income approach—and each approach has multiple methods. Although all three approaches should be considered when performing a valuation, appraisers are afforded a substantial amount of latitude in determining which methods to rely on and how much weight to allocate each one. This opens the door to the possibility of manipulation. Differences in which methods are used and how those methods are reconciled can result in valuation discrepancies.
- Discount rate: A detailed discussion of the discount rate is beyond the scope of this column. Just know that the discount rate plays a critical role in the income approach and that differences in the amount of the discount rate can cause large swings in value.
- Tax affecting: Did both appraisers' tax affect the business's earnings? What tax rates did they use? If one appraiser applied a 20% tax rate while the other appraiser applied a 40% tax rate, it is likely that a large gap between the valuations exists.
- Discounts for lack of control / lack of marketability: At the end of the valuation, it is sometimes appropriate to apply certain discounts, particularly when the ownership interest being valued is less than 50%. These discounts (for lack of control and/or lack of marketability) can have a considerable impact on the conclusion of value, and appraiser judgment plays an important role in determining the magnitude of these discounts.
- Personal goodwill: Last, but certainly not least, is the issue of personal goodwill. In Texas, personal goodwill is not a divisible marital asset and therefore must be excluded when performing a business valuation for divorce purposes. Determining how much value should be allocated to an owner's personal goodwill is an area that often involves a high degree of appraiser judgment and is therefore ripe for abuse. If two competing experts have reached vastly different conclusions, examining their treatment of personal goodwill is usually a good place to start to understand the discrepancy.

When faced with two disparate business valuations, understanding the underlying causes of the disparity and their relative impact on value is critical before determining the next steps to be taken. A basic understanding of the most disputed areas, as highlighted above, could give you an edge in bridging the valuation gap and reaching a more favorable outcome for your client.

GO TO TABLE OF CONTENTS

The Trump Administration's Immigration Initiatives as of February 15, 2025

By Angelique Montano[1]

The Trump Administration's first 100 days of its second term will be full of announcements, actions, and initiatives, just as his first term as President, and just as expected from his rhetoric on the campaign trail. Among his federal government initiatives and Executive Orders, immigration law has been and will continue to be a major area of focus for Trump. This is a quick summary of such changes in these first weeks of his second term. As previously mentioned, immigration law is highly politized as it is federal law and how its statutes, regulations, and programs are interpreted, implemented, and handled can change quickly since the immigration agencies are all under the executive branch.

President Trump has made immigration a priority in his first and second terms and as of Day One of this term, he has introduced initiatives as head of the federal agencies that handle immigration matters. A comprehensive listing of all his immigration-related initiatives related to both illegal and legal immigration, which affect humanitarian, family-based, and employment-based immigration, are too plentiful to include here. Here are some highlights of such initiatives from January 20, 2025, to present, several of which are under legal challenges in the federal courts:

Immigration & Customs Enforcement (ICE) & Deportation/Removal Initiatives

ICE's "Enhanced Targeted Operations" in Chicago. ICE issued a short statement that it, along with federal partners, including the FBI, ATF, DEA, CBP, and the U.S. Marshals Service, began conducting "enhanced targeted operations" on 1/26/25 in Chicago to "enforce U.S. immigration law and preserve public safety and national security."

ICE Mass Arrests in January. ICE arrested approximately 2,000 immigrants in less than a week in Chicago, New York, New Jersey, San Francisco, Colorado, Florida, Atlanta, Boston, Minnesota, Texas, Tennessee, Utah, and other locations. Some, not all, of the arrests were of gang members, cartel members, and convicted criminals. There were also "collateral" arrests, wherein law enforcement was targeting specific individuals but encountered other undocumented persons.

Note: It has been reported that ICE averaged 311 daily arrests nationwide in the fiscal year ending September 30, 2024 (under the Biden Administration).

DHS Notice Designating Noncitizens for Expedited Removal. DHS published a notice titled "Designating Aliens for Expedited Removal" rescinding a prior 3/21/22 notice and fully restoring the scope of expedited removal authorized by Congress. The designation is effective as of 6:00pm (ET) on 1/21/25. (90 FR 8139, 1/24/25).

Note: When ICE or US Customs & Border Protection (CBP) arrests a person within the United States (as opposed to at the border), the foreign national usually has the chance to see an immigration judge before he or she is deported. "Expedited Removal," which has existed *before* the Trump Administration, allows the government to quickly deport someone they believe to be undocumented,[2] without seeing an immigration judge. This was used against people within 100 miles of the land border and within 14 days of their arrival. Under Trump 2.0, the government has said it plans to use Expedited Removal anywhere in the country against any undocumented person who cannot prove he or she has been in the United States continuously for two years prior to the arrest.

Executive Orders (EO) & Other Actions Affecting Border Security & Other Security Issues

EO on the Military Prioritizing U.S. Border Security. On 1/20/25, President Trump issued Executive Order 14167, which calls on U.S. Department of Defense to assign USNORTHCOM the mission of sealing U.S. borders by repelling unlawful mass migration, narcotics trafficking, human smuggling and trafficking, and other criminal activities. (90 Federal Register (FR) 8613, 1/30/25).

---

[1] Ms. Montano is a solo practitioner, who practices immigration law in Houston, Texas. She may be reached at angelique@amontanoimmigration.com.

[2] There are other reasons that the government can use Expedited Removal, including for visitors with valid U.S. visas or entering through the ESTA program.

GO TO TABLE OF CONTENTS

EO Designating Cartels & Other Organizations as Foreign Terrorist Organizations*.* On 1/20/25, President Trump issued Executive Order 14157, which orders the Attorney General and DHS Secretary within 14 days of the order to take all appropriate action, in consultation with the Secretary of State, to make operational preparations regarding implementation. (90 FR 8439, 1/29/25).

Executive Orders (EO) & Other Actions Affecting Asylum & Humanitarian Issues

EO Suspending the U.S. Refugee Admissions Program. On 1/20/25, President Trump issued Executive Order 14163 that, among other actions, suspends the U.S. Refugee Assistance Program (USRAP) effective at 12:01am (ET) on 1/27/25. (90 FR 8459, 1/30/25).

Department of Homeland Security (DHS) Vacating Temporary Protected Status (TPS) for Venezuelans. USCIS notice that the DHS Secretary is terminating the 10/3/23 Temporary Protected Status (TPS) designation of Venezuela, effective 4/7/25. This termination determination does not apply to the 2021 designation of Venezuela for TPS, which remains in effect until 9/10/25. (90 FR 9040, 2/5/25).

Executive Orders & Other Actions Affecting the U.S. Citizenship & Immigration Services (USCIS)

Note: USCIS is the agency within the U.S. Department of Homeland Security that reviews and adjudicates applications for immigration benefits, such as work permits, Lawful Permanent Residency, and naturalization.

EO on Removing Barriers to American Leadership in Artificial Intelligence (AI). This Executive Order revokes certain existing AI policies and directives following the revocation of a 10/30/23 EO that recommended policies to facilitate access to O-1 visas (temporary work visas for foreign nationals of extraordinary ability), First Preference Employment-Based Immigrant Visas (which include foreign nationals of extraordinary ability, as well as outstanding researchers & professors), Second Preference Employment-Based Immigrant Visas (for foreign nationals whose work is in the National Interest), and entrepreneur parole visa options for foreign nationals with AI expertise. (90 FR 8741, 1/31/25).

USCIS Waives COVID-19 Vaccination Requirement. Effective 01/22/2025, USCIS is waiving any and all requirements that applicants for adjustment of status to that of a lawful permanent resident present documentation on their Form I-693, Report of Immigration Medical Examination and Vaccination Record, that they received the COVID-19 vaccination. USCIS will not issue any Request for Evidence or Notice of Intent to Deny related to proving a COVID-19 vaccination. USCIS will not deny any adjustment of status application based on the applicant's failure to present documentation that they received the COVID-19 vaccination.

Executive Orders (EO) Affecting the U.S. Department of State's Visa Office

EO on U.S. Foreign Relations. On 2/12/25, President Trump issued an Executive Order that calls for, among other things, the reform of the Foreign Service in recruiting, performance, evaluation, and retention standards, and directs the Secretary of State to revise or replace the *Foreign Affairs Manual* (FAM). The FAM and associated handbooks are a single, comprehensive, and authoritative source for the Department's organizational structures, policies, and procedures that govern the operations of the State Department, the Foreign Service and, when applicable, other federal agencies. Basically, the FAM is the State Department's regulations.

EO on Enhancing Visa Vetting & Screening**.** On 1/20/25, President Trump issued Executive Order 14161 to further enhance the vetting and screening processes across all relevant federal agencies for purposes of visa issuance. (90 FR 8451, 1/30/25).

EO on American First Policy Directive to the Secretary of State*.* On 1/20/25, President Trump issued Executive Order 14150, which requires the Secretary of State to issue guidance bringing the Department of State's (DOS) policies, programs, personnel, and operations in line with an America First foreign policy. (90 FR 8337, 1/29/25).

Executive Order Affecting Constitutional Law Issues

EO on Birthright Citizenship*.* On 1/20/25, President Trump issued Executive Order 14160 denying citizenship to certain persons, including those born from a mother who was unlawfully present in the United States and the father was not a U.S. citizen or LPR at the time of said person's birth. (90 FR 8449, 1/29/25).

Note: This is being challenged in federal court, especially on constitutional grounds (14th Amendment). For example, soon after the EO was issued, attorneys general from 22 states sued to block

President Donald Trump's move to end a century-old immigration practice known as birthright citizenship guaranteeing that U.S.-born children are citizens regardless of their parents' status. As of 02/10/2025, a federal court in New Hampshire blocked the order with a preliminary injunction. This will be a continuing issue with further federal court actions and filings.

Texas Ethics Opinion 705: Guiding Lawyers in the AI Era
By Patrick A. Wright[1]

Ever since ChatGPT burst onto the scene in late 2022, Texas attorneys have been eyeing generative AI with equal parts excitement and caution. The appeal is obvious—tools like ChatGPT can draft briefs, research cases, and churn out legal text in seconds. But the risks became painfully clear after a few lawyers famously *"cited non-existent judicial opinions made up by ChatGPT"* and got sanctioned for it. Now, the State Bar of Texas has responded. In February 2025, the bar's Professional Ethics Committee adopted Opinion No. 705, giving lawyers a road map for using AI without running afoul of ethics rules.[2]

Why an AI Ethics Opinion Now?

Generative AI is everywhere, and the legal world is no exception. Texas lawyers have watched colleagues in other states learn hard lessons about blindly trusting AI. The *Mata v. Avianca* incident, where fake case citations slipped into a brief, became a cautionary tale.[3] In Texas, a Taskforce on Responsible AI asked for guidance on how existing ethics rules apply to tools like ChatGPT. The result is Ethics Opinion 705, which aims to *"provide a high-level overview of ethical issues"* posed by AI in law practice.[4] The committee makes clear this is a snapshot, not the final word, as technology is evolving rapidly. Still, the opinion lays out core principles to keep lawyers on solid ethical ground.

Key Takeaways from Opinion 705

Texas's new opinion doesn't read like a tech manual—it boils down to familiar duties adapted for the AI age. Here are the major points for practicing lawyers:

Competence in the AI Age: You're *not required* to use AI in your practice, especially while the cost-benefit is still unclear. But don't be a Luddite either. The committee warns against *"unnecessarily retreating"* from tech that might save clients time and money. If you do use AI, you must understand the tool. In other words, have *"a reasonable and current understanding of the technology"* so you can assess risks like hallucinated results or bad data. Tech-savvy lawyering is now part of being competent.

Protect Client Confidentiality: Think twice before feeding client facts into ChatGPT. Many AI platforms are "self-learning"—they might store your input and later *spit out your client's secrets to others*, which "is obviously unacceptable. Opinion 705 says lawyers should be confident the AI won't reveal confidential info or misuse it, and if not, *don't input any confidential information without client consent*. Practical steps include understanding how the AI service handles data, checking its terms of use, and training your staff on AI dos and don'ts. Privacy isn't optional; it's paramount.

Oversight and Accuracy: No matter how smart the AI seems, you are the lawyer of record. The committee puts it bluntly: *"lawyers are responsible for the work product they submit regardless of who (or what) does the original research and drafting"*. That means double-checking everything. AI output can be a great starting draft, but you must verify citations, facts, and reasoning *"for accuracy*

---

[1]Patrick A. Wright is a graduate of South Texas College of Law. He is Board Certified in Family Law and Child Welfare by the Texas Board of Legal Specialization and is a member of the American Academy of Matrimonial Lawyers. He is a co-editor of this Section Report, a co-vice chair for the ABA TECHSHOW 2025, a co-course director for the 2025 Advanced Family Law Course, a member of the LPM Committee of the State Bar of Texas, and the Managing Partner of The Wright Firm, L.L.P. in Flower Mound, Texas. Patrick's involvement with various committees, speaking, and writing credits focuses on AI, future initiatives by both the Family Law Section and the ABA, and the practice of family law. He may be reached at Patrick@thewrightlawyers.com.

[2] Tex. Comm. on Prof'l Ethics, Op. 705 (2025).

[3] *See Mata v. Avianca*, No. 22-cv-1461, 2023 WL 4114965 (S.D.N.Y. June 22, 2023).

[4] *Id*.

GO TO TABLE OF CONTENTS

and quality". Failing to vet an AI-drafted brief could violate rules on competence, candor to the court, and fairness. Treat your AI like a junior paralegal—useful, but in need of supervision.

Fair Billing Practices: AI might let you get work done in a fraction of the time, but you can't bill the client for hours you didn't work. Opinion 705 makes clear that if a task takes 2 hours with AI instead of 5, you bill 2, not 5. The *"time saved"* belongs to the client, not the lawyer. However, if an AI tool charges a fee per use, you can pass along that cost at cost (like billing for Westlaw research charges), without markup. In short: be transparent and fair—efficiency is a client benefit, not a hidden profit center.

What It Means for Texas Lawyers

Texas Ethics Opinion 705 doesn't ban AI or proclaim it the future—it strikes a balanced, cautious tone. For Texas attorneys, it's essentially permission to explore AI's benefits *with eyes wide open*. The opinion reinforces that core duties of competence, confidentiality, and honesty apply no matter what new tool comes along Lawyers here now have official guidance that says, *yes, you can use generative AI—just do so responsibly*. That means staying educated about technology, implementing safeguards, and keeping clients in the loop when appropriate. In a profession built on judgment, AI is just another tool—powerful but needing human oversight. As the technology evolves, Texas lawyers can lean on Opinion 705's common-sense principles to integrate AI into practice without tripping over ethical lines. In the end, it's about embracing innovation while upholding the standards of the profession).[5]

Considering this guidance, the importance of **continuing education** in legal technology has never been greater. Fortunately, there are two **excellent CLE opportunities** for Texas lawyers looking to stay ahead of the curve. The first is **right here in Texas** at the **Advanced Family Law Conference 2025**, taking place **live in San Antonio from August 4-7, 2025.** As **Co-Chair alongside Lauren Melhart**, I can say with confidence that this year's conference will feature **several sessions dedicated to legal technology,** including an entire **Technology Track on the fourth day**—a must-attend for any lawyer navigating AI and other innovations in family law.

The second can't-miss event is the **ABA TECHSHOW 2025**, running **April 2-5, 2025, at the Hyatt Regency McCormick Place in Chicago, Illinois**. As one of the largest **legal tech conferences in the world**, TECHSHOW will feature **over 100 vendors, cutting-edge CLE sessions, live product demonstrations, and keynote presentations.** But don't wait—**rooms are filling up fast! As a Co-Vice Chair for this year's event, I'm happy to answer any questions or provide additional information—feel free to reach out.** Whether you're looking for practical AI strategies, hands-on training, or the latest insights into tech ethics, these two conferences will provide invaluable guidance to help Texas lawyers integrate technology **ethically and effectively** into their practice.

[5] *Id.*

ARTICLES

Upward Deviations from Guideline Child Support
By Lauren E. Melhart[1]

If you've ever handled a family law case involving custody of minor children, you've had to calculate guideline support. Fortunately, the Texas guideline formula is simple—determine the obligor's gross resources, subtract the mandatory deductions, and apply the appropriate percent to the net resources amount (up to the current cap). What happens, though, when the obligee needs (or just wants) more than the guideline amount? In these scenarios, what you must plead and prove turns on whether net resources are above or below the statutory net resources cap.

Net Resources Below Cap

When net resources are at or below the cap, the evidence must show that "application of the guidelines would be unjust or inappropriate under the circumstances" to justify variance from the guideline amount. Tex. Fam. Code § 154.122(b). Courts have broad discretion when making this determination but must consider "all relevant factors." *Id.* §§ 153.122(b), 154.123(b). A list of non-exclusive factors courts can consider is contained in Section 154.123(b). These factors provide a basis for variance from the child support guidelines, but they only apply to an upward variance for net resources below cap. *Rodriguez v. Rodriguez*, 860 S.W.2d 414, 417 (Tex. 1993) (applying the former statutes).

Net Resources Above Cap

When the obligor's net resources exceed the statutory cap, additional amounts of child support beyond the guidelines may be ordered, but there are only two relevant factors to consider—(1) the proven needs of the child and (2) the income of the parties. Tex. Fam. Code § 154.126; *Nordstrom v. Nordstrom*, 965 S.W.2d 575, 579 n.4 (Tex. App.—Houston [1st Dist.] 1997, pet. denied). If the child's needs are greater than the presumptive amount, the excess expenses are allocated between the parties based on their respective circumstances. *Id.*

Proven Needs

What constitutes "needs" of the child has not been defined by statute or by case law. *See Rodriguez*, 860 S.W.2d at 417 n. 3. In evaluating the needs of the child, courts should be guided by the paramount principle in child support decisions: the best interest of the child. *Id.* The Texas Supreme Court has concluded that the "needs of the child include more than the bare necessities of life," *id.,* which are generally understood to be food, clothing, shelter, health care, education, and transportation. Of course, when evaluating needs, these are the minimum essentials that should be reviewed. Estimates and projections of future expenses may be considered as needs when awarding above-guidelines child support. *Zajac v. Penkova*, 924 S.W.2d 405, 409 (Tex. App.—San Antonio 1996, no writ).

Additionally, the child's needs should be segregated from those of the parent. *Lide v. Lide*, 116 S.W.3d 147, 158 (Tex. App.—El Paso 2003, no pet.). Specifically, the obligee's living expenses must be deleted from the calculation of the needs of the child. *Id.* In *Lide*, the trial court awarded above-guidelines support, but Mother never itemized or explained the children's needs as segregated from her own. *Id.* Had Father's net resources exceeded the net resources cap in effect at that time, the trial court's support award would have been erroneous. *Id.*

Income of the Parties and Allocation of Expenses

Once the trial court has determined the needs of the child, the court must then allocate responsibility to meet these needs between the parents. Tex. Fam. Code § 154.126(b). The first step in this allocation

[1] Lauren E. Melhart is a partner at Kinser & Bates, LLP in Dallas, Texas. Lauren E. Melhart, a Fellow of the American Academy of Matrimonial Lawyers and Board Certified in Family Law by the Texas Board of Legal Specialization, serves on the State Bar of Texas Family Law Section Council and is the 2025 Advanced Family Law Co-Course Director. She practices throughout the DFW Metroplex and can be reached at lauren@kinserbates.com.

GO TO TABLE OF CONTENTS

is to subtract the entire amount of the presumptive award from the total proven needs. *Id.* Next, the court shall allocate the remaining needs between the parties "according to the circumstances of the parties." *Id*. In no event may the obligor be ordered to pay more than the guideline max or 100 percent of the child's proven needs, whichever is greater. *Id.* Practically speaking, this limitation means an obligor with net resources below the cap can be required to pay support in excess of the child's needs but an obligor with net resources greater than the cap cannot. *Lide*, 116 S.W.3d at 156-57.

When needs are beyond the presumptive award of support, both parties' net resources will be considered so each party's ability to satisfy the remaining needs can be assessed. *See* Tex. Fam. Code § 154.126(b). Thus, in a case where the obligor's net resources exceed the current cap, the party seeking additional child support must be prepared to reveal his or her own net resources. The court is not required to specifically allocate the dollar amount of each need to a parent but instead may divide the total cost into lump sum assignments. *In re Pecht*, 874 S.W.2d 797, 802–03 (Tex. App.—Texarkana 1994, no writ). For instance, in *Pecht*, the appellate court affirmed a flat monthly child support payment above the guideline amount based on Mother's testimony of the children's needs. *Id.* The trial court did not allocate any exact amounts for the needs of the children, which included special health care, a special school, various forms of therapy, a special summer camp, special childcare needs, and special and extraordinary educational needs. *Id.* The Texarkana court upheld the trial court's allocation, holding that a monthly lump sum award was appropriate under the circumstances. *Id*. at 803.

Best Interest Still Matters

In determining whether the court should deviate from the guidelines, the underlying concern will always be the best interest of the child. *Rodriguez*, 860 S.W.2d at 417. There is no bright-line rule for determining what is in a child's best interest; each case must be determined by its unique set of facts. *See Lenz v. Lenz*, 79 S.W.3d 10, 19 (Tex. 2002). Suits affecting the parent-child relationship are intensely fact driven and evaluation of the best interest of a child requires a court to consider and balance numerous factors. *Id.*

Not So Fast: Trend in Disconnection Between the "Primary" Designation and the Right to Choose School

By Kacy Dudley[1]

As practitioners, we often associate the right to designate primary residence with the right to choose school, but the case law is trending toward recognizing these two rights as separate and distinct. What follows is a discussion of seminal cases over the last two decades.

***Doncer v. Dickerson*, 81 S.W.3d 349 (Tex. App.—El Paso 2002, no pet.)**

In this case, a step-mother brought a modification suit after the death of her husband (the child's biological father), alleging standing under Tex. Fam. Code §102.003(a)(11), which gives a person with whom the child and the child's guardian, managing conservator, or parent have resided for at least six months ending not more than 90 days preceding the date of the filing of the petition if the child's guardian, managing conservator, or parent is deceased at the time of the filing of the petition, standing. In its analysis, the court evaluated whether the word "principal" in Tex. Fam. Code §102.003(b) ("[i]n computing the time necessary for standing under [Subsection] (a)(11) the court may not require that the time be continuous and uninterrupted but shall consider the child's principal residence during the relevant time preceding the date of commencement of the suit") carries the same connotation as "primary residence" as used in §153.134(b)(1), and concluded it did not. The Court stated, really as dicta, that the term "[p]rimary residence' as used throughout the Family Code is necessary [in part because] [w]hen a child is spending time in the households of both parents … one parent must have the ability to determine residency for

---

[1]Kacy L. Dudley is a board-certified family lawyer in Austin, Texas. She is past chair of the Austin Bar Association's Family Law Section, is on council for the Texas Bar Association's Family Law Section and is currently developing a mentorship program for the Travis County Advocates, the group of Austin lawyers board certified in Family Law. She may be reached at Kacy Dudley kdudley@dudley-law.com

GO TO TABLE OF CONTENTS

purposes, of public-school enrollment if the parents reside in different districts." *Doncer*, 81 S.W.3d at 361.

***London v. London*, 94 S.W.3d 139 (Tex. App.—Houston [14th Dist.] 2002, no pet.)**

In this modification case, a jury awarded the mother the exclusive right to designate the children's primary residence, and the issue of which parent should have the right to make education decisions was tried to the trial court, which awarded that right exclusively to the father. The mother claimed that in granting the father this exclusive right, the trial court negated her right to establish the primary residence of the children. In its decision, the Court of Appeals noted that "[w]hen appointing both parents as joint conservators Family Code[, §153.134(b)(2)] requires the trial court to 'specify the rights and duties of each parent regarding the child's physical care, support, and education'" and found that "[t]here is no limitation on the manner in which the court may assign those rights." *London*, 94 S.W.3d at 150.

***In re Cole*, No. 03-14-00458-CV, 2014 Tex. App. LEXIS 8752, 2014 WL 3893055 (Tex. App.—Austin 2014, no pet.) (mem. op.)**

At divorce, the parties agreed the father would have the exclusive right to designate the children's primary residence and the parties would make educational decisions jointly by agreement. When divorce proceedings originally commenced, the children attended school in District A. By the time the parties' divorce was finalized, neither party lived in District A but rather in District B and C (the mother and father, respectively). However, the parties agreed informally between them that the children should continue attending school in District A, and the mother secured a transfer allowing them to do so. Subsequently the father reversed course and stated his intent to enroll the children in his district, District C, pursuant to his right to designate the children's primary residence, which prompted the mother to file a modification. At temporary orders, the trial court saw fit to keep the children in District A based on the availability of the transfer. The father filed a mandamus, arguing that the trial court's order (that the children continue to attend school in District A) deprived him of his right to designate their primary residence. The court of appeals found that the father's ability to designate the children's primary residence was unaffected by the trial court's order that the children attend school in District A. The court further stated, "[w]e do not read *Doncer* as holding that the right to determine a child's primary residence gives the person holding that right the absolute power to decide which public school that child will attend. Rather, the [*Doncer*] court simply noted that when a child spends time in households in different school districts, the child's 'primary residence,' as designated by the person with the right to do so, serves to identify which school district the child resides in for purposes of public-school enrollment. Thus, by designating the child's 'primary residence,' the person with the right to do so has also identified in which public school the child has the right to enroll. But the court did not go so far as to hold that the person with the exclusive right to designate the child's residence also necessarily has the exclusive right to choose the public school the child will attend. We do not agree that the phrase 'ability to determine residency for purposes of public-school enrollment' as used by the court in *Doncer* equates to the power to decide what public school a child shall attend. Rather, these are separate rights and, in the present case, have been allocated differently in the Agreed Decree of Divorce. While Father has the exclusive right to designate the children's 'primary residence,' Mother and Father share the right to make decisions concerning the children's education and must concur in the exercise of that right. Any decision regarding the children's education proposed by one parent is 'subject to the agreement of the other parent.'" *Cole*, 2014 Tex. App. LEXIS 8752, at *7–*9.

***In the Interest of K.S.F. and K.D.F.*, No. 05-21-01030-CV, 2023 Tex. App. LEXIS 720, 2023 WL 1501632 (Tex. App.—Dallas 2023, no pet.) (mem. op.)**

When the parties in this case divorced, the mother was given the exclusive right to designate the children's primary residence (subject to a geographic restriction) and educational decisions were to be made jointly by agreement. Subsequently, the mother remarried and moved in with her new husband, who lived within a specified geographic area but in a different school district. Without the father's consent, the mother then withdrew the children from their existing district and enrolled them in the new district, which prompted the father's modification suit. The court of appeals stated: "we adopt the reasoning of the Austin Court of Appeals in *Cole* and hold that the person with the exclusive right to determine the primary residence is not necessarily given the exclusive right to choose the public school the child will attend. Allowing Mother's right to designate the children's primary residence to override Father's right to

make decisions concerning the children's education would essentially strip him of a substantive right he was previously granted." *K.S.F.*, 2023 Tex. App. LEXIS 720, at *16.

***Gopalan v. Marsh*, __ S.W.3d __, No. 03-22-00649-CV, 2025 WL 272092 (Tex. App.—Austin 2025, pet. filed)**

This case is like *London* in that at trial, a jury awarded one party (here, the father) the exclusive right to designate the children's primary residence, and the issue of which parent should have the right to make education decisions was tried to the trial court, which awarded that right exclusively to the other party (here, the mother). The father appealed, making a similar argument as the mother did in *London*—that in granting the mother the exclusive right to make education decisions, the trial court negated the father's right to establish the primary residence of the children. Here the court of appeals stated, "Father and Mother both have parental rights that are constitutionally protected … and Father's appointment as the parent with the right to designate the children's primary residence does not make his parental rights and duties toward the children any more precious or entitled to constitutional protection than Mother's rights … In enacting the Family Code, the Legislature expressly contemplated a division of rights and duties and did not automatically award them to the parent given the right to establish the child's primary residence … we find no abuse of discretion in the trial court awarding the contested exclusive decision-making rights to Mother when the jury awarded Father the exclusive right to establish the children's primary residence. Of the contested rights, school enrollment is the only one at all tied to residence, and even those rights are somewhat distinct," (citing *Cole*). *Gopalan*, 2025 WL 272092, at *11.

The reasoning behind each of the post-*Doncer* decisions seems to be based on the Courts' interpretation of 151.001 of the Texas Family Code, in which the legislature "specially and expressly recognized various substantive rights and duties of parents" and "[i]n setting forth these rights under separate and distinct subsections … the legislature determined that decisions concerning residency and education are separate rights." *K.S.F.*, 2023 Tex. App. LEXIS 720, at 15. The *K.S.F*. Court went on to say, "Had the legislature intended to vest the parent with the right to designate the primary residence of the child the additional right to make educational decisions to the exclusion of the other parent, it would have done so, but it did not." *Id*

The *Gopalan* Court said "by clear statutory design … appointment as the conservator with the right to establish the child's primary residence does not come bundled with a superior or primary right to make a host of other decisions as a joint managing conservator …. Although the Legislature could have granted the entire bundle of rights and responsibilities over the children to the parent [with the right to] decide the children's primary residence, it clearly did not." *Gopalan*, 2025 WL 272092, at *6, *11.

The dissenting opinion in the *Gopalan* decision is of particular interest. The majority opinion did not take issue with the fact that while the father was granted the exclusive right to designate the children's primary residence by the jury, the trial court awarded him less time with the children than would be afforded in a standard possession order (citing, among other things, the lack of any minimum amount of possession that must be awarded to the "primary" parent in the Family Code). The dissent said, "[i]n my view, the word "primary" before "residence" must mean something [discussing the plain meaning of the word "primary," references in the standard possession order to distance from "the child's primary residence", the IRS' definition of "primary parent," etc.] and said that to hold that a primary parent should not, as a threshold matter, have even slightly more time than the other parent would produce "an absurd result[:] … If the parent with the right to determine the primary residence does not get to choose where the child lives at least half of the time, then what right have they been given? The right to choose where the parent who has possession for most of the time lives?" *Id.,* at *22–*24. "Based on my construction of the statute, I would conclude that to give meaning to the jury verdict, the joint managing conservator with the right to designate primary residence must be given at least half time with the children. However, I also think that the disposition of some of those rights might flow from where the children are spending most of their time." *Id.*, at *25. The dissent was saying here essentially what *Doncer* and *Cole* said—that in those cases where children are spending a majority of their time in one place, another right (such as the right to enroll a child in school in that district) might arise as a result, but not an "absolute right," as *Cole* put it.

In *K.S.F.* (the case where the mother remarried, moved, and moved the children to the new district, which was still inside the geographic restriction), the court concluded that the mother's unilateral decision

to change the children's school, in contravention of [the parties' orders'] express provision regarding the father's rights with respect to the children's education, may violate the existing orders and constitute a material and substantial change in circumstances." *K.S.F.*, 2023 Tex. App. LEXIS 720, at *16–*17. How many of us have had former clients call under similar circumstances and given them our blessing to do what the mother did in *K.S.F.*?! Best practice, given the trend in case law, is to ask permission via a modification rather than beg for forgiveness in an enforcement scenario. Moving forward, be specific about school choice in your pleadings, negotiations and orders. Do not assume the primary parent also has the right to choose school.

In terms of arguing in favor of a modification (or defending against an enforcement), in a case where one party has the exclusive right to designate a child's primary residence, and the other party has a more traditional possession schedule akin to a standard (or even expanded standard) possession schedule and the child is therefore spending the majority of "school nights" at the primary parent's residence, it makes sense that school choice should follow the right to designate the child's primary residence, provided the primary parent's choice is the public school to which they are zoned. However, as we trend toward more equal possession schedules in response to the modern division of labor in parenting, the issue is less clear and involves a comparison of quality, distance, and other factors. And: beware of the looming specter of school vouchers!

The New Amicus Attorney Role
By Rachel Li[1] and Ambrosia Wilkerson[2]

Section 104.008(a) of the Texas Family Code—added and effective on September 1, 2015—prohibits a person from offering "an expert opinion or recommendation" about conservatorship or possession and access "unless the person has conducted a child custody evaluation." However, trial court judges frequently utilized the amicus attorney role to investigate high conflict custody cases and make recommendations to the court regarding conservatorship, possession and access, and in some cases, child support. More recently, the courts have recognized that the only persons permitted by the Texas Family Code to offer a recommendation are the child custody evaluator and a guardian ad litem appointed under section 107.002(e–g) of the Texas Family Code. The inquiries presented are what is left of the amicus attorney role and should it still exist.

The amicus attorney has an unobstructed view of the case facts and parties that the court and the attorneys for the parties are not privy to. Since its 2003 amendment, the Texas Family Code requires the amicus to perform specific functions, including interviewing the parties, the children of the suit, relevant witnesses, and obtaining and reviewing records. The requirements of the amicus specified in the Texas Family Code exist to provide the amicus with necessary tools to ascertain and elicit evidence that the parties may (not) share with the court. Thus, the new amicus attorney's unique role in the case is to provide evidence to the court without bias or agenda for either party, but with the sole focus of the best interest of the child.

Unlike an attorney ad litem (AAL) for the child who owes the child a duty to provide legal services, the amicus attorney is unimpeded and not bound by the child's expressed objectives. This is an important distinction in high conflict cases where a child may be subject to undue pressure from parents or other factors. It is important that the court consider the distinction(s) between the roles when appointing an ad litem versus an amicus.

[1] Rachel Li is the Founder and Managing Attorney at Li Family Law Group. She is one of a few Asian Pacific attorneys who are board certified by the Texas Board of Legal Specialization in Texas Family Law and has served the legal community by advocating against overstepping legal boundaries permitted by the Texas Family Code for court appointed representatives. Read more about Rachel Li at https://lifamilylawgroup.com/attorneys/rachel-li/. She may be reached at rachel@rachellilaw.com

[2] Ambrosia Wilkerson is an Associate Attorney at Li Family Law Group. She is a member of the Texas Family Law section and has worked closely with Rachel Li to change practice trends related to court appointed attorneys and child advocacy. Learn more about Ambrosia Wilkerson at https://lifamilylawgroup.com/attorneys/ambrosia-wilkerson/.

GO TO TABLE OF CONTENTS

Rather, the amicus attorney can and should mimic certain functions of the child custody evaluator, including visiting the homes of each party and observing the child with each parent and other members of the child's household. It is important for the amicus to witness the familial interactions at each home and identify any potential safety issues that may exist. Conducting a home visit is more than just taking a brief tour of the home, nitpicking over cleanliness, or determining whether the décor is magazine worthy. Instead, a home visit should consider whether the parent or party has food, utilities, and basic comforts. Where does the child sleep? Are there pets in the home, and if so, are pets cared for? It is important to look at the entire house, not just the parts that are lived in. A garage, laundry room, or storage room can provide useful insight into the household. The focus should be on whether the environment is safe and nurturing for the age and circumstances of the child.

The amicus attorney should review school records, medical records, and interview the child's teachers, coaches, and medical professionals to the extent possible. Teachers, coaches, and professionals who have frequent contact with the child may offer a unique perspective than what the parties provide. School records may provide insight into the child's wellbeing, especially considering that teachers or counselors spend a lot of time with their students and are sometimes trusted adults with whom the child confides. In some cases, the school staff and counselors may not know the child's parents are fighting a custody battle, so interviewing them may prompt school personnel to keep a closer watch on the child and provide additional information to the amicus later in the case.

In a case where the child may have special needs and may need accommodations, the amicus attorney may need to request the court order evaluations or services for the child. If the child is suffering from mental health concerns, the amicus should bring these concerns to the court and request relief for the child's wellbeing (that does not include conservatorship or possession and access). Requested relief for appointment of a counselor for the child or orders for evaluations are not recommendations for conservatorship or possession and access.

The amicus attorney can call witnesses and should subpoena its own witnesses for hearings and trial as needed, rather than depend upon the attorneys for the parties to ensure that a witness is present to testify. The court does not know the potential witnesses' identity and must rely on the amicus to ensure that the witnesses are called and that all relevant evidence is presented.

The new amicus attorney role has yet to be settled without controversy. Despite instruction from the Texas Family Code, some courts have continued to ask the amicus for recommendations as to conservatorship or possession and access, while other courts have asked the amicus to submit "Requested Relief" or a written report to continue the tradition of the amicus recommendation. Submitting requested relief to the court regarding conservatorship or possession and access is a recommendation, even if the parties agree that the amicus can do so. And, while the amicus is charged by the Texas Family Code to participate in the litigation to the "same extent of a party," nothing in the law supports the amicus offering a recommendation. Under the current framework, the new amicus attorney can request relief from the court to make orders for conservatorship or possession and access without making a recommendation or request as to the type of conservatorship that the parties should be appointed to or what each party's possession of and access to the child should be.

In conclusion, courts can still rely on the amicus attorney to protect the health and safety of the child through these functions. It is not the amicus attorney's duty to determine which parent should be primary or what the visitation schedule should be. The purpose of the amicus attorney is to be the eyes and ears of the court. It is the amicus attorney's responsibility to investigate the case and ensure that the court hears all the evidence—good, bad, and ugly for everyone, including the child.

CASE DIGESTS

Editors-In-Chief: Beth M. Johnson (B.M.J.) and Patrick A. Wright (P.A.W.). Guest editors this month include: Georganna L. Simpson (G.L.S.), Audrey Blair Pedersen (A.B.P.), Sallee S. Smyth (S.S.S.), Holly J. Draper (H.J.D), Jimmy Verner (J.V.), and Paul M. Leopold.

DIVORCE: PROCEDURE AND JURISDICTION

Wife Failed To Show Trial Court Erred In Extending Comity To Divorce Certificate Granted By Russian Consulate; Jury Award For Appellate Fees Reversed Because Twice What Was Supported By Evidence.

¶25-2-01. *Telegina v. Nechayuk*, No. 09-22-00383-CV, 2024 WL 5080262 (Tex. App.—Beaumont 2024, no pet. h.) (mem. op.) (12-12-2024).

Facts: Husband and Wife, Russian citizens, filed a joint application for dissolution of marriage with the Russian Consulate, which was granted. About three months later, Wife filed an original petition for divorce with tort claims. Husband filed a plea to the jurisdiction and motion to dismiss. After a comity hearing, the trial court agreed with Husband with respect to the divorce. The court subsequently granted two partial summary judgments disposing of all but one of Wife's remaining claims and then dismissed the final claim. The question of Husband's attorney's fees was tried to a jury, which awarded him over $800k plus costs and appellate attorney's fees of $300,000. Wife appealed.

Holding: Affirmed in part; Reversed in Part with Suggested Remittitur.

Opinion: In 102 issues, Wife, pro se, challenged the final judgement and several interlocutory orders. In an attempt to liberally construe Wife's brief, the court narrowed her arguments down, including a primary complaint that the trial court erred in extending comity to the Russian divorce.

States are not required to give full faith and credit to foreign country judgments, making dismissal based on comity a matter of discretion. Wife raised three challenges within her complaint that the trial court should not have extended comity to the Russian Consulate.

First, Russian law allows citizens residing abroad to obtain an administrative divorce through the Russian Consulate if they have no child or property issues. Although Wife claimed on appeal that the parties had property disputes, they filed an agreement with the Consulate stating they had settled any disputes. Thus, contrary to Wife's complaint, the parties' domicile in Texas did not prevent the trial court from recognizing the Russian divorce.

Second, Wife's general assertion that Russia is the United States' "biggest global rival" did not make the Russian divorce one that would violate Texas public policy.

Third, evidence supported Husband's description of events that Wife voluntarily went with him to the Russian consulate to negotiate and resolve the divorce. She initialed every page of the agreement, intended to abide by the agreement, and agreed to its terms. The evidence supported a finding that Wife had an opportunity to be heard at a meaningful time and a meaningful manner and was not deprived due process.

In her next major complaint, Wife asserted the trial court erred in granting summary judgments in favor of Husband. Wife asserted that their prenuptial agreement and agreement with the Russian consulate were ambiguous or not entered into voluntarily. However, Husband conclusively showed that the agreements complied with the Family Code, Wife had days to consider the Russian agreement to divorce, and there was no evidence of any involuntariness or ambiguity.

Wife additionally asserted that Husband breached the prenuptial agreement. However, the dissolution agreement terminated the prenuptial agreement. Thus, Wife's claims in the post-dissolution suit were

mooted by the dissolution agreement. Wife also claimed that Husband paid a judgment awarded to her in the dissolution agreement two days late. But she failed to show how the delay harmed her.

Next, Wife complained of the trial court striking her pleadings. In the trial court, Husband was forced to file special exceptions to address Wife's pleading defects, and she was ordered six times to attempt to cure those defects. Wife failed to do so, and the trial court did not abuse its discretion in dismissing Wife's remaining improperly pleaded claims.

Finally, in his request for fees, Husband introduced text messages to him from Wife, in which she threatened that if he did not agree within 24 hours, they would be engaged in litigation till there will be no courts on earth left. And then we'll start litigation on Mars[.]" The jury awarded Husband $816,871.50 to defend against the divorce suit and mandamus actions in the trial court; $150,000.00 for representation in the court of appeals; $30,000.00 to file a petition for review in the Supreme Court of Texas; $100,000.00 for merits briefing in the Supreme Court of Texas; and $20,000.00 through oral argument and completion of Supreme Court of Texas proceedings. The trial court also awarded Husband $10,647.00 for costs and expenses incurred to defend against the suit and related mandamus actions.

With respect to appellate fees, Husband's attorney testified that they "could easily be 50,000 to $75,000" given Wife's history with the courts. The attorney further testified that fees in the Texas Supreme Court could range from $15,000 to $65,000. The total amount testified to by Husband's attorney equaled about half what the jury awarded. Accordingly, the appellate court suggested Husband accept a remittitur of $145,000. Otherwise, the issue of appellate fees would be remanded to the trial court.

Editor's comment: *I feel physical pain at the thought of responding to a 102-issue pro-se appellate brief. Oh my … As an FYI, appellate courts like to see the issues limited to no more than five issues, but three is a nice, friendly number. And there's absolutely nothing wrong with one. One hundred and two??? (And the court denied her motion to extend the word limit. I don't even know how you can fit 102 issues in a brief that complies with the rules.) B.M.J.*

Editor's comment: *You should always challenge a foreign divorce decree because as the opinion notes the doctrine of comity does not mean automatic recognition of the foreign decree. G.L.S.*

Editor's comment: *The jury awarded attorney's fees for defending against mandamus proceedings in the court of appeals. The opinion didn't discuss it—probably because it had 101 other issues to dispose of, but trial courts don't have jurisdiction to award fees for defending against original proceedings in the courts of appeals. That is within the courts of appeals' original jurisdiction. P.M.L.*

Husband Entitled To New Trial Because No Evidence To Support Just And Right Division Of Community Estate.

¶25-2-02. *Vick v. Vick*, No. 02-23-00436-CV, 2024 WL 5162469 (Tex. App.—Fort Worth 2024, no pet. h.) (mem. op.) (12-19-2024).

Facts: The parties' divorce was tried to the bench with each presenting pro se. The transcript was less than 40 pages long with no documentary exhibits. Neither party presented any evidence regarding the value of Wife's pension plan. The parties asked the court to divide the pension plan equally. The court orally rendered "[Wife's] pension plan … be divided 50/50" and ordered Wife to prepare a decree within 30 days. Nine months later, no decree had been presented, and a new judge took the bench. Wife hired an attorney to prepare the decree, which was signed. That decree awarded Wife 100% of her pension plan. After considering and denying Husband's motion for new trial, the court ordered Husband to pay attorney's fees to Wife. Husband appealed.

Holding: Reversed and Remanded.

Opinion: Although a "scintilla" of evidence is a low bar, the evidence here did not clear it. Although both parties asked for the plan to be divided equally, neither identified the value of the plan or how it compared to other assets. The trial court lacked sufficient evidence to make a "just and right" division as required by the Family Code.

GO TO TABLE OF CONTENTS

The attorney's fee award was purportedly part of the property division. However, no fees were awarded after the original trial. Moreover, Wife offered no evidence at that trial to support an attorney's fee award. Additionally, contrary to Wife's assertion on appeal, the fees could not be construed as a sanction because no sanctionable conduct was identified in the order. There was no basis for the attorney's fee award.

Editor's comment: *Although this case was admittedly a mess in the trial court, I don't like the precedent it potentially sets. If one party is not at trial, then the other party bears the burden of ensuring the court has evidence of values to make a just and right division. But generally, if both parties are there, they share the burden of establishing values. An appellant should not be permitted to fail to present evidence in a trial at which he appeared and then complain that there was no evidence. B.M.J.*

Editor's comment: *Agreed. G.L.S.*

Editor's comment: *Be aware that this is not the law in every appellate district. To complain on appeal about the trial court not having sufficient information to divide property, there are other courts that hold that the complaining party must first offer their own evidence about value. See Zhang case below. A.B.P.*

Editor's comment: *Same song, different verse: The record must contain enough evidence to support the trial court's division. J.V.*

Editor's comment: *Other cases that have looked at this issue don't allow a party who was at trial to complain about not presenting sufficient evidence. Maybe because the trial court ended up awarding all of it to the wife did the appellate court treat this differently. P.M.L.*

Husband Entitled To Bill Of Review To Set Aside Default Divorce Because Returns Of Service Did Not Comply With Rules Of Civil Procedure.

¶25-2-03. *Rheman v. Rheman*, No. 13-23-00579-CV, 2024 WL 5272304 (Tex. App.—Corpus Christi–Edinburg 2024, no pet. h.) (mem. op.) (12-30-2024).

Facts: Wife filed for divorce and attempted to serve Husband. The process server was unable to deliver documents to Husband's residence due to locked gates and "no trespassing" signs. The server filed two returns of citation, which were unclear as to whether Husband had been personally served at a Starbucks on two different dates. The process server's testimony conflicted as to whether Husband had been served on the first date, second date, or both. Wife did not amend the returns.

Although the trial court sent Husband notice of a TRO hearing, the notice was returned for "no mail receptacle unable to forward." Husband did not answer or appear at the final hearing, and the court signed a final default decree dividing real property. Notice of the decree was sent to Husband but was also returned as unable to deliver.

Husband timely filed a petition for bill of review. He said that the notices sent by the court were sent to the correct street name and number but had the wrong zip code, which meant they were sent to the wrong address. Additionally, Husband asserted that Wife "fraudulently" claimed his separate real property was community property.

During a jury trial, significant evidence was presented regarding Husband's memory issues as a result of head injury in a car accident many years earlier. He started referring to himself as "Thomas No Doubt" as a result of his memory issues. He remembered receiving papers at a Starbucks, and he admitted to having removed his mailbox. He returned the papers to Wife's lawyer because they were addressed to the wrong person—not to "Thomas No Doubt."

The jury found Husband was properly served, and the trial court denied Husband's bill of review. Husband appealed.

Holding: Reversed and Remanded.

Opinion: Husband argued the returns of service failed to strictly comply with the Rules of Civil Procedure, and the trial court erred in denying his bill of review. A bill of review proponent claiming non-service need only show that the judgment was rendered unmixed with any fault or negligence of their own. This element is conclusively established if the plaintiff can prove he was never served.

Here, the first return failed to include a street number in the address where Husband was served, and the second return did not include any address. Neither return indicated the time or manner in which Husband was served. Neither return included the date and time the process server received the documents to serve on Husband. A return of service is not a trivial, formulaic document. The returns were fatally defective because they did not comply with Texas Rule of Civil Procedure 105. While there was some evidence Husband was provided with copies, "strict compliance" must appear on the record for a default judgment to withstand direct attack.

Editor's comment: *Before seeking a default judgment, always make sure that the certificate of service has been properly completed by the process server and, if there is any doubt as to completion of service, call the process server as a witness at the default hearing. G.L.S.*

Editor's comment: *Before taking a default judgment, take the time to get out TRCP 99 and 107 to make sure the citation and return have all the requirement information. Courts strictly construe these provisions, leaving the case open to attack by bill of review for up to four years. A.B.P.*

Editor's comment: *Inadequate returns of service are not a new or an unusual problem. J.V.*

Editor's comment: *There is no presumption of proper service if challenged. You need evidence that service occurred, which can come from the return of service. A return of service can be amended, as the court notes, so be sure to check all the boxes before taking a default judgment. P.M.L.*

Although Final Trial In The Divorce Occurred Before Husband's Death, The Trial Court Did Not Render The Parties Divorced Before His Death, And Wife Was An Heir Of Husband's Estate.

¶25-2-04. *In re Estate of Williams*, No. 09-23-00019-CV, 2025 WL 5384669 (Tex. App.—Beaumont 2025, no pet. h.) (mem. op.) (02-06-2025).

Facts: Decedent had been married twice. He had one child with his first wife and two with Second Wife. Only the youngest was still a minor at the time of Decedent's death. After a final hearing in a suit to divorce Decedent and Second Wife, the court took the issues under advisement. Three days later, the judge issued a letter ruling, which was file-stamped about a week after it was signed; however, it was unclear from the record whether the letter was filed with the clerk by a party or by the court. The letter ruling addressed the division of property and child-related orders, but it did not state the divorce was granted. Before a decree could be presented to the court, Decedent died.

Decedent's Brother filed an application for independent administration in the same court, asserting Decedent was not married at the time of his death and that Decedent's only heirs were his three children. Second Wife filed an objection, alleging she and Decedent were married at the time of his death, and she was one of Decedent's heirs. Second Wife also sought to be appointed administrator of the estate. The court appointed Second Wife as administrator of the estate and signed a judgment declaring heirship, which identified the percent interest in Decedent's estate for each of his four heirs. Brother and Decedent's Oldest Child appealed.

Holding: Affirmed.

Opinion: Brother and Oldest Child argued the probate court erred in finding the court had not rendered a divorce before Decedent's death. Rendition of judgment requires a present act, either by spoken word or signed memorandum, that decides the issues on which the ruling is made. The critical inquiries concern the court's use of language indicating a present intent to render a full, final, and complete decision and whether the court officially announced that decision publicly. If the judge's words only indicate an intention to render judgment in the future or to provide guidelines for drafting a judgment, the

pronouncement cannot be considered a present rendition of judgment. The words used by the trial court must clearly indicate the intent to render judgment at the time the words are expressed.

The records from the divorce case were not included in the appellate record; however, the same court heard both matters. In the heirship hearing, the court noted that it had taken the divorce issues under advisement and subsequently issued a letter ruling. Neither during the divorce hearing, nor in the letter ruling, was a mention of whether the divorce was granted. Brother and Oldest Child argued the letter indicated an intent to render a divorce. However, the language of the letter did not express a final rendition. It contained no language regarding jurisdictional findings, the date of marriage, the date any children were born, the grounds supporting divorce, or that the property division was just and right. The letter ruling instructed the parties to prepare a decree and noted that a hearing would be scheduled if the parties could not reach an agreement as to the form of the decree.

Editor's comment: *Given that you never know when you client might die, you should always to a prove up as part of the final hearing/trial and, if the Court states that it is going to take the case under consideration before ruling—then request that the Court render the parties divorced as part of its ruling. G.L.S.*

Editor's comment: *The court reiterates that rendition "requires a present intent to render a full, final, and complete decision. … The words used by the trial court must clearly indicate the intent to render judgment at the time the words are expressed." Watch out for inadequate, colloquial expressions such as "I am going to grant the divorce in this case." James v. Hubbard, 21 S.W. 3d 558 (Tex. App.—San Antonio 2000, no pet.). J.V.*

Editor's comment: *A party's filing of a court's ruling is not an official act to make the court's ruling public. If the court doesn't file its ruling, ask for it or get that ruling in open court on the record. I also find it troubling if this court is suggesting that memorandum rulings must include all of the requirements of a final order to be considered a rendition. P.M.L.*

Despite Husband's Untimely Submitted Proposed Jury Questions And Other Failures To Respond To Discovery, Trial Court Erred In Dismissing Venire Panel Because Fact Issue Remained To Be Presented To A Jury.

¶25-2-05. *In re Marriage of Leeson*, No. 13-23-00158-CV, 2025 WL 555766 (Tex. App.—Corpus Christi–Edinburg) 2025, no pet. h.) (mem. op.) (02-20-2025).

Facts: Husband and Wife were married for nearly 25 years when Wife filed for divorce. Husband responded with a cross-petition. In addition to disputing characterizations and value of certain assets, both parties alleged cruelty and each sought reimbursement to the community estate from the other's separate estate. After the close of discovery pursuant to a scheduling order, Husband filed a jury demand. The trial court gave Husband a deadline for submitting his proposed jury questions, but he failed to timely comply. After a hearing on Wife' motion in limine, the court determined there were no factual issues to be presented to a jury, dismissed the venire panel, and conducted a bench trial. After a final decree was signed, Husband appealed.

Holding: Affirmed in Part; Reversed and Remanded in Part.

Opinion: On appeal, Husband complained of the trial court's refusal to conduct a jury trial. It was undisputed that Husband timely requested a jury and paid the requisite fee. Wife asserted Husband waived his appellate complaint by failing to object when the trial court announced that the venire panel was to be dismissed, and a bench trial would be conducted instead. However, the Texas Supreme Court previously affirmed the proposition that a formal exception to the trial court's ruling to dismiss a jury is not required to preserve the complaint for appeal. Thus, Husband's complaint was not waived.

Wife next argued that denial of Husband's request for a jury was harmless because Husband "was unable, solely by his own pre-trial conduct, to identify a single jury issue that was not foreclosed by a combination of the pleadings, pretrial discovery answer, and sworn inventories." Contrary to Wife's assertion, even if the jury findings on the disposition of property would have been merely advisory, the

denial of Husband's jury demand would be harmful if there were disputed fact issues concerning the "status of property" upon which the disposition of property was based.

The appellate court disagreed with Wife that there were no fact issues appropriate for the jury to decide. For example, while Husband's failure to timely respond to discovery prohibited him from presenting certain evidence in support of his claim of cruelty, Wife was permitted to present her claim that Husband had been cruel. Thus, Husband would have been able to present evidence in defense of Wife's claims against him, which was a fact issue appropriate for a jury. Additionally, certain characterization claims were timely raised in Husband's sworn inventory creating a fact issue for a jury. Further, the parties disputed the value of certain assets, also addressed in Husband's inventory.

Moreover, the trial court incorrectly sustained Wife's objection that Husband could not testify as to value under the property-owner rule because Husband failed to identify himself as an expert. This rule allows *lay witnesses* to provide opinion testimony, providing the testimony is (a) rationally based on the witness's perception and (b) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

DIVORCE:
GROUNDS FOR DIVORCE/ANNULMENT

No Evidence Supported Grounds For Divorce Granted In Default Decree.

¶25-2-06. *Janish v. Janish*, No. 03-23-00275-CV, 2025 WL 492505 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (02-14-2025).

Facts: Father filed for divorce on insupportability and adultery grounds. Mother did not answer. Mother received notice of final trial but did not appear. Father testified but offered no documentary evidence. The trial court granted the divorce on insupportability and adultery; granted Father a disproportionate share of the estate; granted Father the exclusive right to designate the Son's residence and Mother the exclusive right to designate the Daughter's residence; and ordered no child support. Less than six months later, Mother filed a restricted appeal.

Holding: Reversed and Remanded

Opinion: To succeed on a restricted appeal, the appellant must establish error on the face of the record. The only evidence to support insupportability:

> Q (by Father's attorney). And do you ***agree that there is no possibility*** of being able to put your marriage back together?
>
> A (by Father). ***No***.

(emphasis added). Because the question was framed in the negative it is possible that Father misunderstood it. However, as worded, the record reflects that Father believed the marriage could be salvaged, so granting the divorce on the ground of insupportability was not supported by the evidence. Additionally, the only evidence regarding adultery was Father's confirmation that he pleaded for that relief. Thus, no evidence supported granting the divorce on the ground of adultery.

Editor's comment: *I have read too many transcripts in which questions asked in the negative cause confusion—either for the witness or the factfinder. Be very careful to make clear records and ask straightforward questions that don't require triple negatives to answer correctly. B.M.J.*

Editor's comment: *When proving up insupportability, follow the words of the statute, TFC 6.001: "[T]he court may grant a divorce without regard to fault if the marriage has become insupportable because of discord or conflict of personalities that destroys the legitimate ends of the marital relationship and prevents any reasonable expectation of reconciliation." J.V.*

GO TO TABLE OF CONTENTS

DIVORCE:
ALTERNATIVE DISPUTE RESOLUTION

Attorneys Could Not Compel Arbitration Of Fees Incurred In Divorce Proceeding Merely Because Husband And Wife Agreed To Arbitrate Issues In Divorce.

¶25-2-07. *Shackelford, Bowen, McKinley & Norton, LLP v. Peters*, No. 05-23-00454-CV, 2024 WL 3218223 (Tex. App.—Dallas 2024, no pet.) (mem. op.) (06-28-2024).

Facts: Wife hired Attorneys to represent her in a divorce. The written agreement between Wife and the Attorneys stated that Wife would be solely responsible for any fees assessed against her by the trial court, and any award of fees to Wife would be paid to Attorneys. Attorneys recommended Wife hire Accountants to consult in the case regarding property issues, and Wife agreed. The agreement between Wife and Accountants included an arbitration cause.

After the divorce had been pending for three years, Attorneys asked Wife if she wanted to arbitrate with Arbitrator to attempt to resolve the divorce and SAPCR issues. Wife agreed. The agreed arbitration order stated that the parties would be bound by the attached "Family Law Arbitration Rules," but no rules were attached. The order further stated that all issues in the divorce would be presented to the arbitrator, and no issues would be presented to the trial court in a final trial. Wife signed the order indicating her agreement to its terms, and Attorneys signed it indicating their agreement as to form only.

Subsequently, Attorneys signed an agreed motion to withdraw as counsel, and that same day, Attorneys intervened seeking unpaid fees. Accountants later filed an intervention for unpaid fees. Wife responded with claims for negligence, malpractice, breach of contract, breach of fiduciary duty, and violations of TDTPA. Wife and Husband signed an amended arbitration order stating that only divorce and SACPR issues would be addressed in mediation and explicitly excluded any attorneys' or expert fees claims from arbitration. At a hearing, Wife testified that she was not told about an arbitration provision. Wife's new lawyer testified about the delays being caused by the interventions.

The trial court denied Accountants and Attorneys' motion to stay the proceedings and compel arbitration and granted Wife and Husband's request to sever the fees issues from the divorce and SAPCR. The court did not sign the amended arbitration order. Accountants and Attorneys appealed.

Holding: Reversed and Remanded in Part; Affirmed in Part; Writ of Mandamus Denied.

Opinion: Attorneys argued they had a right to compel arbitration under the Agreed Order for Arbitration. However, Attorneys were not a party to that order. The defined parties were Wife and Husband. A person can be forced to arbitrate only those issues they have specifically agreed to submit to arbitration. The presumption in favor of arbitration does not apply to the existence of an agreement or to the identity of parties who may be bound.

Attorneys further argued that they could enforce the arbitration order based on theories of (1) assumption, (2) equitable estoppel; or (3) third-party beneficiary. Additionally, Attorneys relied on a theory of agency.

For assumption to apply, the assignee must expressly or impliedly assume the contractual obligations of another. Attorneys did not assume any contractual obligations of Wife and did not raise any claims against Husband.

The theory of equitable estoppel allows a non-signatory to compel arbitration when the signatory to a written agreement containing an arbitration provision must rely on the terms of the agreement in asserting their claim against the non-signatory. Although Attorneys argued that Wife's counterclaims were dependent upon the arbitration order and were intertwined with Attorneys' claims, Wife never sought to benefit from the arbitration order in connection with the claims between her and Attorneys/Accountants.

A third-party may enforce a contract as a beneficiary only if the contracting parties entered the contract "directly and primarily for the third party's benefit." No language in the arbitration order "clearly and

fully" conferred a benefit to Attorneys/Accounts. The agreed arbitration order was primarily for the benefit of resolving the conflicts between Wife and Husband.

Under a theory of agency, "a contracting party generally cannot avoid clauses by suing the other party's agents" who are non-signatories. Although Wife's claims against Attorneys arguably concerned allegedly wrongful acts they committed while acting as her agents, Wife obviously could not be held liable for the claims she is herself asserting against Attorneys based on those acts.

Accountants relied on their agreement with Wife as a basis for compelling arbitration. Wife acknowledged signing that agreement but argued it was substantively and procedurally unenforceable because it required her to pay fees for "any action" against the Accountants. However, whether that provision alone would render the entire agreement unconscionable was a question for the arbitrator. Wife further complained of the provisions that (1) the parties agree not to demand a jury trial to address questions regarding fees; (2) disputes would be determined by arbitration in Tarrant County by the AAA rules; and (3) costs would be borne equally by both parties. However, Wife failed to elaborate as to how those provisions were unconscionable, and arbitration agreements are not "per se" unconscionable. Thus, because Wife failed to show that the arbitration provision contained in the agreement between her and Accountants was unconscionable, the court erred in denying Accountants' motion to compel arbitration.

In a separate mandamus action, Accountants/Attorneys complained of the severance of their claims from the divorce proceeding. The appellate court acknowledged that claims for attorney's fees arising out of a suit for divorce should generally be resolved in the divorce proceeding because "the allotment of attorney's fees is part of the general division of the community estate." But, here, the fact that the claims and counterclaims between Wife and Accountants/Attorneys would not be determined in the divorce and SAPCR, arbitration was already an effective severance of those claims from the divorce action. The facts and issues that formed the basis of the claims between Wife and Accountants/Attorneys were not so interwoven as to make severance improper.

DIVORCE: PROPERTY DIVISION

Husband's Contradictory Testimony Failed To Overcome Burden To Establish Marital Residence Was Community Property.

¶25-2-08. *In re Marriage of Rodriguez*, No. 10-22-00152-CV, 2024 WL 5242660 (Tex. App.—Waco 2024, no pet. h.) (mem. op.) (12-30-2024).

Facts: Husband filed for divorce but inadvertently served Wife's daughter with the petition. After Husband obtained a default judgment, Wife succeeded in her motion for new trial based on ineffective service. Wife then filed a general denial but did not file a counter-petition for divorce. The main contested issue in the divorce was characterization of the marital residence, in which the parties had lived for over 15 years. Husband claimed that the property was owned by his father of a similar name (who was deceased but whose estate had not been probated), making the house not marital property, or alternatively, his father had gifted the marital residence inter vivos at some point. However, Husband offered no tracing or inception-of-title evidence to support his gift claim. Further, although he showed the deed had been signed by someone purportedly using his father's social security number, Husband did not exclude the possibility that he was improperly using his father's social security number at that time. In addition to other circumstantial evidence, Wife presented evidence showing that Husband's signature matched the signature on the deed. The court found that the marital residence was community property. Husband appealed.

Holding: Affirmed.

Opinion: Husband asserted that because Wife had no affirmative pleadings on file, she failed to preserve any complaint regarding the characterization of the marital residence. However, Wife's general denial

properly raised the issue of ownership of property. Husband bore the burden sufficient to overcome the presumption the residence was community property.

With respect to characterization, the court Husband's testimony was contradictory and not credible. The trial court was in the best position to resolve factual discrepancies.

Editor's comment: *This is a reminder again from our appellate courts that the clear and convincing standard is a high burden for the party asserting a separate property claim. It should include documents showing how the spouse acquired title and a clear explanation of how he or she came to own the property. A.B.P.*

★★★ TEXAS SUPREME COURT ★★★

Bonus Earned During Marriage But Paid After Divorce Was Community Property Subject To Consideration In Division Of Marital Estate.

¶25-2-09. ***In re J.Y.O.***, __ S.W.3d __, No. 22-0787, 2024 WL 5250363 (Tex. 2024) (12-31-2024).

Facts: After a bench trial, the court granted a divorce, but litigation continued. Within a few months of the divorce being granted, Husband received his annual bonus. Wife filed a motion to have the bonus transferred to the registry of the court for a characterization determination. After a hearing on that issue, the court held that the bonus was Husband's separate property. The final decree also characterized the marital residence such that each party had a 50% separate property interest in the home and the majority of Husband's 401(k) as his separate property.

Wife appealed, and the appellate court affirmed the trial court's decision regarding the bonus and marital residence but reversed the decision regarding Husband's 401(k). Both parties sought review by the Texas Supreme Court.

Holding: Appellate Judgment Reversed in Part and Affirmed in Part; Remanded to Trial Court.

Opinion: Wife challenged the trial court's confirmation of Husband's bonus as his separate property. Husband argued that caselaw provides that future income is not community property. Husband's bonus was earned based on performance during the marriage. The bonus was approved shortly before divorce. If Husband was not employed by the company at the time of distribution, he would have not been entitled to a bonus. Husband received the bonus shortly after the divorce. The appellate court held that because the bonus was received after marriage, it was not community property to be divided by the trial court. However, the case on which the appellate court relied dealt with an MSA and its failure to define "future income." As with retirement benefits, when a bonus is based on earnings of the community that may not bloom into full maturity at some future date, that bonus is subject to consideration in the division of the marital estate. "The opposite rule would promote gamesmanship by a bonus-earning spouse who can orchestrate deferring the bonus' payment until after divorce." Thus, the trial court erred in confirming the bonus as Husband's separate property, and the appellate court erred in affirming that decision.

Husband challenged the trial court's determination that Husband failed to rebut the gift presumption when the parties refinanced Husband's home and added Wife's name to the deed. During the marriage, Wife expressed concerns that their marital residence was not "their residence" because Husband owned it before marriage. She suggested buying a new home, but Husband did not want to move. The parties then refinanced the house, and the deed listed Wife as both grantor and grantee. At trial, Husband stated that he thought that was strange, but he did not directly refute any intention of a gift. To rebut the presumption, Husband was required to *clearly establish* there was no intention to make a gift. Husband's evidence fell short.

Additionally, the court noted that when presenting evidence to rebut an intent to gift property to a spouse, the rule against parol evidence is limited to cases where there is an express separate-property presumption recital in the deed.

Finally, Husband challenged the appellate court's reversal of the trial court's determination that the majority of funds in a 401(k) account were Husband's separate property. Husband had a Fidelity 401(k) he owned before marriage (roughly $20k). Husband opened and funded a new 401(k) with Merrill Lynch

during the marriage, which was the subject of Husband's appellate complaint (roughly $300k). Although Husband offered some statements, there were significant gaps. The trial court found a dollar amount for Husband's pre-marriage contributions but did not explain the calculation used to arrive at its number. The appellate court rejected the trial court's math and methodology because it was based on what "could have" been deposited in the account. Based on the evidence presented at trial, the only separate property Husband could trace were the funds in the Fidelity account. Husband failed to prove the source of funds for the Merrill Lynch account, and he did not account for community contributions during the marriage. The appellate court correctly reversed the trial court's confirmation of the majority of the funds in the Merrill Lynch account as Husband's separate property.

Editor's comment: *For years now, there has been a dispute in the intermediate appellate courts about whether parol evidence can be used to rebut the interspousal gift presumption without first proving fraud, accident, or mistake. This issue regularly comes up when, for instance, one spouse who owned a house before marriage signs a deed in favor of the other spouse during a refinance. The Supreme Court now tells us that a showing of fraud, accident or mistake is not necessary. Absent a separate property recital, the evidence is admissible to show lack of intent to make a gift. A.B.P.*

Editor's comment: *I absolutely think the Court made the right decision here in finding that the bonus was community property and subject to division. With respect to the house gift presumption, if you have a client who claims they did not gift by adding the spouse to the deed, make sure they very clearly state that on the stand. It's unclear if it would have been enough if he did directly refute any intention of a gift, but if that's all you have, be sure you do it. H.J.D.*

Company's Forfeiture Of Right To Do Business Due To Non-Payment Of Taxes Did Not Terminate Company Or Change Pre-Marriage Inception Of Title, And Issuance Of Stocks During Marriage Was "Non-Event" Due To Lack Of Consideration.

¶25-2-10. *In re Marriage of Pinkert*, No. 07-23-00309-CV, 2025 WL 8919833 (Tex. App.—Amarillo 2025, no pet. h.) (mem. op.) (01-15-2025).

Facts: Husband and his father created a company, and Husband's father deeded real property to that company shortly after its foundation. Husband and Wife married about a year later. About 10 years later, Wife filed for divorce, and Husband counter-petitioned.

During the marriage, the company's right to do business was terminated through tax forfeiture, but it regained its status two years later after paying past-due taxes. Two years after that, a second forfeiture reoccurred, and the company remained inactive for the following seven years. During that second period of inactivity, the company issued stock (divided equally) to Husband and his father, although the amount of shares identified was 10 times the amount of the initial foundation.

After a trial, the court found Husband's interest in the real property that had been transferred to the company was community property to be divided in the parties' divorce. The court found that Husband's father held a 50% interest in the land, and Husband and Wife each held a 25% interest. Additionally, the court awarded Wife a reimbursement claim for her improvements to the property. Husband appealed.

Holding: Affirmed in Part; Reversed and Rendered in Part.

Opinion: Husband argued that the property belonged to the company and, thus, could not be divided as part of the parties' divorce.

The record contained no evidence supporting a conclusion that the company dissolved during marriage, i.e., that it lost its corporate identity during marriage. The trial court's conclusion about dissolution appeared to have been based on one or both periods of tax forfeiture, implicitly treating the company as a terminated entity. However, under the Texas Business Organizations Code, a "terminated entity" means one whose existence has been terminated and not reinstated by Code provisions or forfeited under the Tax Code and the forfeiture not set aside. Nonpayment of franchise taxes cannot involuntarily terminate a corporation under the Texas Business Organizations Code. The company was therefore not a terminated entity under the Tax Code.

GO TO TABLE OF CONTENTS

Wife countered that because the company distributed half its shares in the company to Husband during the marriage, the community property held a 1/2 interest in the company. While stock certificates can evidence ownership, actual ownership depends on all the facts and circumstances of a case. On creation, the company authorized 100 total shares with 50 each going to Husband and his father. For unknown reasons, six years later, certificates representing 500 shares were issued to each of Husband and Father, with no evidence of any consideration given. Under Texas law, shares may not be issued until consideration has been paid. Thus, in the absence of consideration, the issuance of the shares was, legally speaking, a non-event.

Editor's comment: *When dealing with a change in the structure of a business entity during the marriage, a good place to start is the Texas Business Organizations Code. This Code has sections on each type of entity (LLCs, corporations, partnerships, etc.) and addresses the effect of many of these events, which ultimately can affect character. A.B.P.*

Editor's comment: *A tax forfeiture can have a substantial effect on a corporation in litigation. A forfeited corporation may not sue or defend in court. Also, directors and officers are liable for corporate debts incurred after forfeiture and until any subsequent reinstatement. Texas Tax Code § 171.252. Should corporations become part of your case, you might want to check on their status with Texas SoSDirect. J.V.*

Divorce Decree That Divided Canadian Properties Pursuant To Parties Agreement Was Not Void.

¶25-2-11. *In re M.R.*, No. 02-24-00491-CV, 2025 WL 271279 (Tex. App.—Fort Worth 2025, orig. proceeding) (mem. op.) (01-22-2025).

Facts: Husband and Wife were married for about 25 years. Husband was born and raised in Canada, and Wife became a Canadian citizen during the marriage. They lived in Canada for a large portion of the marriage; however, Wife and their Children moved to Texas towards the end of marriage, so Wife could pursue a master's degree. Before Husband could join Wife in Texas, they decided to divorce. The parties signed an informal settlement agreement and an agreed decree of divorce that awarded Wife one Canadian property and awarded each party a 50% undivided interest in another Canadian property and included provisions to sell the second property.

About eight months after the divorce decree was signed, Wife filed a motion to modify the parent-child relationship alleging violence, and Husband "responded" with a petition for bill of review to set aside the divorce decree. Husband argued Wife was emotionally, verbally, and physically abusive to him during the marriage and that the decree did not match the informal settlement agreement. He claimed that he did not read either document but relied on Wife's representation of their contents. Husband asserted Wife breached her fiduciary duty to him and took advantage of his fragile mental state. Husband did not raise a claim regarding lack of personal jurisdiction.

During the hearing on Husband's petition for bill of review, the trial court halted the hearing and stated it lacked authority to divide the Canadian property. Thus, the trial court reasoned, the decree had to be set aside. The final written order stated that the decree was void for lack of jurisdiction and that the bill of review was dismissed. Husband filed a counterpetition for divorce, and Wife sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Because neither party appealed the dismissal of the bill of review, and in this mandamus proceeding, Wife only challenged the finding that the decree was void, the question of whether Husband presented sufficient evidence to support his bill of review was not before the appellate court.

Errors other than lack of jurisdiction merely render a judgment voidable, and a challenge to a voidable judgment must be timely corrected through the normal appellate process or other proper proceedings. A claim that a judgment is void because the trial court lacked jurisdictional power is a collateral attack on that judgment that can be raised at any time.

GO TO TABLE OF CONTENTS

Here, even if the trial court lacked jurisdiction over the parties' Canadian properties, the decree as a whole was not void. Further, neither party asserted the court lacked subject matter jurisdiction over the divorce or the parties' children at the time of divorce. Further, the decree recited that Husband had made a general appearance and agreed to the terms of the decree, waiving any complaints of personal jurisdiction. Husband's direct attack of the decree through the petition for bill of review, rather than challenging jurisdictional defects, further emphasized his assent to jurisdiction. Thus, the trial court clearly abused its discretion in declaring the decree void.

Husband Not Harmed From Lack Of Findings Of Fact Because Trial Court's Letter Ruling Sufficient To Explain Why It Granted Disproportionate Division.

¶25-2-12. *In re Marriage of Pearson*, No. 06-24-00052-CV, 2025 WL 300827 (Tex. App.—Texarkana 2025, no pet. h.) (mem. op.) (01-27-2025).

Facts: Husband and Wife were married for about ten years and had three Children. When Wife filed for divorce, she accused Husband of cruel treatment and asked for a disproportionate division of the community estate. Husband filed a counterpetition requesting the same. At trial, Husband did not testify. Wife stated that Husband had abused her throughout the marriage, until she became afraid for her life and left without the Children. She testified to over 30 incidents of domestic violence and had called the police 20 times. She offered photos of her bruises from the abuse. She had incurred over $15,000 in bills for dental treatment caused by the abuse. Additionally, Wife had been diagnosed with lupus, which prevented her from getting work. She asked for $1000 a month in spousal maintenance. A psychological evaluation showed Husband suffered from bipolar disorder, PTSD, and generalized anxiety. He had a history of anger issues, getting arrested, and getting into fights. The trial court issued a letter ruling granting spousal maintenance and awarding Wife 60% of the proceeds from the sale of the parties' marital residence. Husband appealed.

Holding: Affirmed.

Opinion: Husband first complained of the trial court's failure to issue findings despite his timely request. However, the court set forth its reasons for a disproportionate division, so the appellate court was not forced to guess the basis of the trial court's reasoning. Because Husband could not establish harm, the error was not a reversible one.

Husband further complained the trial court erred in making a disproportionate division in Wife's favor. He argued that the division was inequitable because he was currently the managing conservator of the parties' Children. However, he did not address the reasons the trial court had in support of a disproportionate division. The trial court noted in its writing that part of the reason it granted Wife a larger share of the proceeds from the sale of the marital residence was due to Wife's dental expenses to repair her teeth due to Husband's abuse. This finding implied Husband was at fault for the breakup of the marriage. Even in a no-fault divorce, the court can consider fault in the break of the marriage as a factor supporting a disproportionate division.

Additionally, Husband argued the trial court failed to enter findings on the *Murff* factors relating to the spouses' capacities and abilities. However, in the letter ruling, the court stated it granted Wife spousal maintenance because she lacked sufficient property to meet her minimum reasonable needs. This finding implied that Wife had less capacity to earn sufficient income, in comparison to Husband, as a result of the breakup of the marriage.

Editor's comment: *Be aware of what court of appeals district you're in. Some disagree with Texarkana and do not look to a judge's comments for knowing the reasons for the ruling if there are no formal findings of fact. P.M.L.*

GO TO TABLE OF CONTENTS

Husband Failed To Preserve Any Complaints For Appeal By Failing To Present His Own Valuations Of The Parties' Assets.

¶25-2-13. *Zhang v. Ding*, No. 14-24-00128-CV, 2025 WL 454224 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (02-11-2025).

Facts: Husband appealed a divorce decree.

Holding: Affirmed.

Opinion: Although Husband complained that the trial court erred in accepting Wife's values, Husband failed to present any evidence of his own regarding the couple's property. Further, Husband did not request findings of fact or conclusions of law.

Husband additionally argued the trial court erred in granting Wife's claims for reimbursement. However, the final decree did not mention reimbursement. The decree awarded Wife a money judgment for "the purpose of a just and right division."

Husband finally argued the trial court erred in failing to stay enforcement pending his appeal. However, Husband never set the motion for hearing.

Editor's comment: *At a minimum, a party should always offer an inventory and appraisement or a spreadsheet with their values as an exhibit—otherwise, you waive an appeal as to valuation or disproportionate division. G.L.S.*

Husband Could Not Properly Present Appellate Complaint Regarding Property Division Because He Failed To Request Findings Regarding The Values Of The Estate.

¶25-2-14. *Nieczyperowicz v. Nieczyperowicz*, No. 14-23-00695-CV, 2025 WL 480824 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (02-13-2025).

Facts: Husband and Wife were married for about 15 years before Wife filed for divorce, alleging cruelty. Husband countersued on no-fault grounds but asked for a disproportionate share of the community estate. The trial court rendered a final decree of divorce, and Husband appealed.

Holding: Affirmed.

Opinion: In his sole complaint, Husband argued the trial court erred in awarding Wife a disproportionate share of the community estate. Neither party requested findings and none were issued. Moreover, contrary to Husband's allegations in his brief, the decree appeared to divide the assets and liabilities relatively evenly between the parties.

Editor's comment: *If a party wants to appeal the property division, it is imperative that the party request Findings of Fact and Conclusions of Law pursuant to TFC 6.711, which includes findings regarding the characterization and value of all assets, liabilities, claims, and offsets on which disputed evidence was presented. Without these findings, you will be out of luck on appeal. G.L.S.*

DIVORCE:
RETIREMENT BENEFITS

Just And Right Division Remanded Because Trial Court Failed To Account For Matching Contributions When Determining The Value Of Wife's Pension Plan.

¶25-2-15. ***Key v. Key***, __ S.W.3d __, No. 14-23-00726-CV, 2025 WL 409047 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (02-06-2025).

Facts: After nearly 30 years of marriage, Wife left the marital residence without notice to Husband. She then filed for divorce and requested a disproportionate division of the marital estate. Part of the estate included Wife's pension plan, which Wife valued at roughly $400,000, but Husband believed it was worth between $1.6 and $3 million. The court accepted Wife's valuation of the pension plan, found that the estate was worth about $1.7 million, awarded Wife her pension, and divided the estate roughly equally. Husband appealed.

Holding: Affirmed in Part; Reversed and Remanded in Part.

Opinion: Part of the basis for Husband's estimate was the fact that Wife's employer would match her contributions, and Wife did not factor that into her valuation at all. The appellate court held that failing to factor in the matching contributions or undervaluing those contributions resulted in a severely undervaluation of the pension. Although the appellate court could not determine the specific actual value, it appeared that the matching contributions would at least double the amount assigned to the asset by the trial court. Given the size of the pension, the erroneous valuation probably caused the rendition of an improper judgment, requiring a remand of the entire division of the community estate.

Husband also complained of the trial court's finding of fraud and reconstituting the community estate in the amount of that fraud claim. Fraud is presumed when one spouse disposes of community assets without the other spouse's knowledge or consent. At trial, Husband acknowledged to writing checks to his mother amounting to roughly $150,000 without Wife's knowledge or consent. The burden was then on Husband to introduce evidence those transfers were fair. He testified that Wife had left and had taken many assets with her. Husband claimed to have transferred the funds to his mother because he was afraid Wife would deplete the accounts. Husband asserted that he used those funds to pay bills and other necessaries; however, he did not offer any corroborating evidence to support that assertion. The trial court was free to reject Husband's explanation.

DIVORCE:
SPOUSAL MAINTENANCE AND ALIMONY

Provision Requiring Husband To Pay Mortgage And Taxes On House Could Not Be Modified Because The Requirement Was Part Of The Property Division And Not Spousal Support.

¶25-2-16. *Gomez v. Gomez*, No. 04-23-00873-CV, 2024 WL 4957628 (Tex. App.—San Antonio 2024, no pet. h.) (mem. op.) (12-04-2024).

Facts: A final decree awarded Husband title to a home but granted Wife a life estate in the same property. Additionally, the court ordered Husband to pay spousal support and all mortgage and tax payments on the home. Nine years later, Husband sought to modify the spousal support obligation because Wife had begun cohabitating with a new romantic partner. Husband also asked the court to terminate his obligation to pay the mortgage and taxes for the home. The court granted Husband's request as to spousal support but denied it as to the mortgage and taxes. Husband appealed.

Holding: Affirmed.

Opinion: Husband complained of a lack of findings. However, he failed to timely file a notice of past-due findings, so that complaint was waived for appeal.

Husband additionally argued the court should have terminated his obligation to pay the mortgage and taxes because it was "an additional spousal support." Although one section of the divorce decree characterized the mortgage loan payments on the home as "an additional spousal support obligation," another section of the divorce decree expressly ordered Husband to pay "[a]ll encumbrances, ad valorem taxes, liens, assessments, or other charges due or to become due on the property awarded herein to him." The decree awarded Husband the home as his sole and separate property. Therefore, according to the express terms of the decree, he was obligated to pay the taxes on it. The trial court could not alter the property division in the unappealed divorce decree.

Editor's comment: *I disagree with the holding in this case because while the Court states that the decree should be interpreted as you would a contract, it ignores the principles that, in a contract, specific terms control over general terms and no terms should be rendered meaningless. Here, the decree specifically stated that the mortgage loan payments were "an additional spousal support obligation", then later it includes the standard general boilerplate language from the formbook regarding payment of all ad valorem taxes, liens, etc. on property awarded to Husband. Here, the Court's opinion disregards and ignores the specific language. G.L.S.*

Editor's comment: *It isn't clear if the divorce decree was agreed or if the parties had a trial. If they had a trial, the husband should have appealed the divorce initially. Requiring the husband to pay everything on the house indefinitely during Wife's life seems way out of line. If they had an agreement, the husband has no one to blame by himself for the terms. H.J.D.*

Editor's comment: *I think this requires a clarification to determine the overlap between the division of property and the spousal support. It should be either one or the other or there's some form of double dipping as seen in this holding. P.M.L.*

Temporary Orders Pending Appeal Ineffective Because Motion Was Not Filed Timely; Evidence Supported Maximum Statutory Spousal Maintenance.

¶25-2-17. *Czarkowski-Golejweski v. Wilson*, No. 07-24-00127-CV, 2025 WL 20566 (Tex. App.—Amarillo 2025, no pet. h.) (mem. op.) (01-02-2025).

Facts: Husband and Wife married in Australia and then moved to Texas. Husband obtained a financially lucrative job, while Wife "toiled with employment paying no more than $10.50 an hour." Wife then suffered deteriorating health and a mental condition that resulted in unemployment, medication, and surgeries. Husband cheated on Wife and filed for divorce. After a trial, the court ordered Husband to pay spousal maintenance of $5000 a month for 30 months, after which time the matter would be revisited. Husband filed a notice of appeal. Wife obtained temporary orders pending appeal that included an award for appellate attorney's fees.

Holding: Affirmed; Temporary Order Pending Appeal Reversed

Opinion: Husband asserted the trial court erred in granting Wife spousal maintenance because her minimum reasonable needs included "wants." Husband cited no authority suggesting that only the cheapest basic essentials to survive constitute needs. Here, Wife "suffer[ed] from psoriatic arthritis to a degree requiring surgery, major depressive disorder, severe anemia, costochondritis, chronic pain, pain induced insomnia, and disk herniation resulting in multiple surgeries." Furthermore, the "continued erosion of [her] joints and spine will require continued surgeries into the foreseeable future." She was "disabled, and her disability will continue indefinitely beyond the foreseeable future." Husband did not contest these facts. Nor did he dispute that she had no income, her conditions prevented her from earning an income, she

would have substantial medical and mental expenses indefinitely, or his monthly income exceeded $32,000.

In addition to her testimony, Wife presented an exhibit listing her monthly expenditures, which included veterinary bills, gas, housing expenses, utilities, transportation, and medical costs. Wife's expenses exceeded the statutory limit of $5000, which is what the trial court ordered. The trial court did not abuse its discretion.

Husband next complained of the temporary orders pending appeal that awarded Wife appellate attorney's fees. Texas Family Code Section 6.709 requires that a motion for temporary orders pending appeal be filed no later than the date by which that party must file a notice of appeal. Here, Husband extended the deadlines to 90 days after the judgment. Once Husband filed his notice of appeal, Wife was bound to file a cross-appeal by that same 90-day limit or 14 days after Husband's notice was filed—whichever was later. Regardless of whether she filed a cross-appeal, that date was her deadline to file a motion for temporary orders pending appeal. Her motion was filed about 2 weeks after that. Thus, the trial court lacked authority to sign any temporary orders pending appeal, and her award for appellate attorney's fees was reversed.

Editor's comment: *This opinion is dripping with sarcastic disdain for Husband. I'm curious whether he picked up on it. B.M.J.*

Editor's comment: *Temporary orders pending appeal can provide additional relief, but they come with traps. P.M.L.*

Husband Could Not Be Held In Contempt For Nonpayment Of Contractual Alimony.

¶25-2-18. *In re Aguilar*, No. 04-24-00222-CV, 2025 WL 262449 (Tex. App.—San Antonio 2025, orig. proceeding) (mem. op.) (01-22-2025).

Facts: The parties' divorce decree included a provision that Husband pay contractual spousal maintenance to Wife for 48 months. The decree explicitly stated that the payments were "intended to qualify as contractual alimony as that term is defined in section 71(a) of the [IRS Code]." Nearly five years later, Wife filed a petition for enforcement seeking contempt for nonpayment of all 48 payments. After failed mediation and a hearing, the trial court held Husband in contempt for each violation and ordered him confined for a period not to exceed 18 months but suspended the sentence on terms not relevant to the issues raised in this original proceeding. Husband filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Husband argued the trial court abused its discretion in holding him in contempt for nonpayment of a contractual obligation. An order incorporating a voluntary support obligation that does not qualify as Chapter 8 spousal maintenance creates a debt that is enforceable as a contract, not a court-ordered obligation that is enforceable as a judgment. Despite any use of decretal language ("It is ordered …") the use of the word order alone is not dispositive. The plain language of the order stated that the obligation was "contractual alimony" not Chapter 8 spousal maintenance. The obligation was a debt that could not be enforced through contempt.

Editor's comment: *Given the financial obligations imposed by some contractual alimony/spousal maintenance obligations, these cases are frequently litigated years after the divorce is finalized. Many of these cases focus on the question of whether an obligation is "contractual" in nature or is truly a Chapter 8 maintenance award, and the nature of the obligation will dictate its enforcement and susceptibility to future termination or modification. Recall also that the Family Code's enforcement mechanisms have been modified over the years. It's important to review the Code and applicable law when advising clients on these obligations. A.B.P.*

Editor's comment: *You can't go to jail for a debt. I don't know how many enforcements I've had to argue this. P.M.L.*

GO TO TABLE OF CONTENTS

DIVORCE:
ENFORCEMENT OF PROPERTY DIVISION

Enforcement Order Impermissibly Modified Divorce Decree By Changing Award To Wife Of 100% Of Husband's Retirement Benefits To A 50/50 Division.

¶25-2-19. *In re Marriage of Homburg*, No. 13-22-00614-CV, 2024 WL 4986073 (Tex. App.—Corpus Christi–Edinburg 2024, no pet. h.) (mem. op.) (12-05-2024).

Facts: In the parties' divorce decree, Wife was awarded Husband's military retirement as part of the just and right division. About 15 years later, Wife filed suit to enforce because Husband had reduced the amount being paid to her by 50%. Husband asserted that federal law prohibited an award of greater than 50% and that he needed to keep something back for himself. The trial court denied Wife's request for reimbursement for her alleged arrearages and signed an order that Husband's benefits be divided "fifty-fifty." Wife appealed.

Holding: Reversed and Remanded.

Opinion: Wife asserted that the divorce decree unambiguously awarded Husband's entire retirement benefit to her, and the trial court improperly modified the decree by reducing her award to 50%. The decree unambiguously awarded Wife "all" of Husband's retirement. Husband did not argue the words of the decree were unambiguous. Rather, he argued that application of a federal law created a latent ambiguity. The statute provides in relevant part that "[t]he total amount of the disposable retired pay of a member payable under all court orders … may not exceed 50 percent of such disposable retired pay." However, the Texas Supreme Court has held that that does not limit the amount of retirement pay that can be characterized and apportioned by a divorce court. Rather, it is intended as a limit on the amount of disposable retired pay that can be garnished and paid out by the service secretaries pursuant to court orders. Because the federal statute did not render the decree unenforceable, its application did not create a latent ambiguity. Thus, the trial court abused its discretion in modifying the award.

Wife Failed To Establish Meritorious Defense To Support Bill Of Review To Set Aside Denial Of Property Enforcement Because Her Defense Attempted To Modify Original Division.

¶25-2-20. *Miller v. Miller*, No. 05-23-01194-CV, 2024 WL 5116646 (Tex. App.—Dallas 2024, no pet. h.) (mem. op.) (12-16-2024).

Facts: In their divorce, the parties signed an agreed decree that awarded Husband the marital residence but gave Wife the option to purchase the property by a date certain for a specified dollar amount. Although Wife sent Husband a proposal to purchase the residence, her proposed closing date was for after the date required in the decree. Thus, Husband chose not to respond to the offer. Wife filed an enforcement action asserting that Husband had interfered with her ability to purchase the marital residence. Husband responded that Wife failed to make a timely offer that comported with the decree. The trial court orally denied Wife's requested relief.

Subsequently, Husband's attorney filed a proposed order in the enforcement suit that included the word "Agreed" in the title. Wife's attorney contacted Husband's attorney to say that the proposed order should not be signed by the court because the order was not agreed. Wife did not object to any other portion of the order. Husband's attorney stated that she would contact the court but suggested Wife's attorney file formal objections if necessary. About two weeks later, a docket entry next to the order stated "do not sign," the trial court signed the proposed order. Two days after the order was signed—without having knowledge of the signed order—Wife filed an objection to the proposed order.

Wife filed a petition for bill of review to set aside the enforcement order. After a bench trial on the full merits of the bill of review, the trial court denied Wife's requested relief. Wife appealed.

GO TO TABLE OF CONTENTS

Holding: Affirmed.

Opinion: To be entitled to a bill of review, a petitioner must show that (1) she failed to timely file a motion for new trial or otherwise advance an appeal of the trial court's judgment, (2) she failed to do so because of an official mistake or by the fraud, accident, or wrongful act of the opposing party, (3) her failure to act was unmixed with any fault or negligence on her part, and (4) she has a meritorious ground of appeal. The question of a meritorious ground for appeal is typically addressed first to avoid a full-blown trial on the merits if there is no meritorious ground, but making that pretrial determination is not required.

Here the trial court did not make a pretrial determination of a meritorious ground but allowed Wife to present all of her bill-of-review evidence. Regardless, Wife was required to show a meritorious ground. Wife asserted that her meritorious ground was that "the parties' option agreement nowhere required the option to be exercised by all-cash tender; the trial court invented that requirement and unlawfully changed the parties' agreement … [and] she was ready, willing, and able to assume the existing indebtedness on the home." The unambiguous language of the decree required Wife to pay a certain amount and close on or before a set date. However, Wife claimed that she could instead assume Husband's mortgage and argued that he should have facilitated her attempts to do that. During the enforcement proceeding Husband introduced evidence that Wife was denied a loan in the month that the closing was required. Contrary to Wife's assertions, permitting her to assume the mortgage would have impermissibly modified the divorce decree. Thus, Wife failed to present a meritorious defense and was not entitled to a bill of review.

Wife additionally asserted she presented a meritorious defense because she withdrew her consent to the enforcement order before it was signed. A party may revoke consent to an agreement at any time before judgment is rendered on the agreement. A trial court must be put on notice that consent is lacking. Wife acknowledged she did not notify the court until after the order was signed but asserted that her communications with opposing counsel, the opposing counsel's communications with the court, and the docket entry were sufficient to apprise the court of her withdrawal of consent. However, Wife was the repudiating party, and the court rejected Wife's invitation to conclude that an opposing counsel can effectively communicate the other party's withdrawal of consent. Additionally, the docket entry stating "Do not sign sending new one" was not sufficient to apprise the court that either party had withdrawn consent. Moreover, docket entries are inherently unreliable, are merely memorandum made for the convenience of the clerk and the court and cannot be relied upon in an appeal.

Wife's Failure To Remove Husband's Name From Vehicle Loan Did Not Authorize Court To Award Vehicle To Husband In Post-Divorce Enforcement Suit.

¶25-2-21. *Smith-Bragg v. Bragg*, No. 04-23-00742-CV, 2024 WL 5194657 (Tex. App.—San Antonio 2024, no pet. h.) (mem. op.) (12-23-2024).

Facts: A final divorce decree awarded Wife a vehicle as her sole and separate property. She was ordered to remove Husband's name from the loan on the vehicle. When she failed to timely do so, Husband moved to enforce the judgment and sought reimbursement for payments made on the loan. The trial court ordered Wife to surrender possession of the vehicle to Husband. Wife appealed.

Holding: Reversed and Rendered in Part; Vacated in Part; Affirmed in Part.

Opinion: While a court retains authority to enforce its orders, it cannot modify a property division after its plenary power has expired. The order for Husband to take possession of the vehicle impermissibly modified the decree.

Decree's Agreed Provision Entitling Ex-Wife To One-Half Proceeds Of Residence In Event Of Husband's Default On Mortgage Payments Did Not Grant Ex-Wife A Property Interest In Residence.

¶25-2-22. *Dattore v. Harvey*, No. 03-22-00657-CV, 2024 WL 5241038 (Tex. App.—Austin 2024, no pet. h.) (mem. op.) (12-27-2024).

Facts: Decedent and Ex-Wife divorce in the early 90's. Their divorce decree incorporated an agreement that awarded the marital residence to Decedent, who would be required to make all necessary payments associated with the residence. If he failed to pay the mortgage, the residence would be sold, and Ex-Wife would not be held liable for any financial responsibilities associated with the residence. Additionally, if the residence was sold, Ex-Wife would receive 1/2 of the net proceeds. If Ex-Wife died before a sale, 1/2 of the net proceeds would go to her estate.

Before his death, Decedent remarried, continued to reside in the residence, and paid off the mortgage. About four years after Decedent's death, Ex-Wife filed suit to force sale of the residence. Decedent's new wife filed a petition to clarify the division, asserting the decree unambiguously awarded the residence to Decedent. The trial court agreed with Decedent's new wife and awarded her attorney's fees. Ex-Wife appealed.

Holding: Affirmed.

Opinion: Ex-Wife argued the divorce decree unambiguously gave her rights to half the net profits of any future sale of the residence. She argued the decree unambiguously awarded her a one-half ownership interest in the residence. Decedent's new wife countered that Ex-Wife's claim was purely conditional on a sale if Husband defaulted on the mortgage payments. The decree expressly divested Ex-Wife of any ownership interest in the residence in the paragraph preceding the award to Decedent as his sole and separate property. When harmonizing those provisions, the decree did not award a property interest to Ex-Wife.

Ex-Wife additionally argued the decree created an implied vendor's lien on the residence, requiring the property to be sold at a reasonable time and for a reasonable price. However, nothing in the decree or underlying agreement expressly stated that the conditional grant of future net proceeds was solely an exchange of consideration and not part of the larger "just and right" division of the marital estate.

Editor's comment: *This case makes the point (as do many others) that provisions regarding the ownership and sale of a residence in the final decree deserve attention to detail. The trial court is very limited in its ability to change anything substantive in the property division. It would require speculation to know why the parties agreed to this arrangement. This case awarded wife one-half of the proceeds of the sale of the residence but apparently gave her no effective way to ever receive those funds. A.B.P.*

Editor's comment: *I wondered why this couldn't have been brought as a breach of contract case, too, but even if Ex-Wife's right to half the proceeds of the sale of the house was not conditional on Ex-Husband's failure to pay the mortgage, there never was a sale. J.V.*

No Evidence Supported Jury Verdict Finding Breach Of Contract Because Purported "Deeds" Did Not Convey Property And Were Not In Compliance With Parties' Agreement.

¶25-2-23. *Fausett v. Warren*, No. 05-22-01341-CV, 2025 WL 352192 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (01-24-2025).

Facts: Two men divorced, and the decree incorporated an AID that had been signed pursuant to an MSA. The AID confirmed as Warren's separate property two condominiums in Mexico. Additionally, Fausett was awarded a sum of cash for those condominiums. To effectuate this transaction, both parties were required to sign any required documents by a certain date.

Subsequently, Warren sued Fausett for failing to execute documents as ordered. Fausett then filed a petition to enforce the decree, and Warren filed an original counterclaim for breach of contract.

Warren's counterclaim (bifurcated from Fausett's claim) was tried to a jury. The jury found Fausett breached the agreement, which—by the terms of the agreement—entitled Warren to $600k in liquidated damages and about $61k in attorney's fees. Although Fausett's claims had not yet been presented, the trial court signed a final order conforming with the jury verdict and ordering Fausett take nothing on his claims. Fausett appealed.

Holding: Affirmed in Part; Reversed and Rendered in Part.

GO TO TABLE OF CONTENTS

Opinion: The agreement provided that Warren was only entitled to liquidated damages if Fausett had not signed deeds pursuant to the AID within 24 months from the divorce. However, the documents Warren provided to Fausett for signature were not deeds. Instead, they were instructions to a Mexican bank, identified as "Trustee," to take future actions with respect to the property. The only documents in evidence did not convey interest in land. Thus, there was no evidence to support the jury verdict, including the award for fees—which were based solely on the breach of contract claim.

On appeal, Fausett asserted that he was entitled to money damages as described in the AID if Warren's claims were unsuccessful. Although Fausett's claims were not presented to the jury pursuant to an agreed order to bifurcate the trials, the trial court dismissed his claims in its final judgment. Fausett filed post-judgment motions regarding the verdict; however, he did not raise any issue regarding the trial court's disposal of Fausett's claim for any funds. Because Fausett failed to timely raise an objection on this issue, he failed to preserve error for appellate review.

Editor's comment: *If either party is required to sign documents to aid the transfer of property, the form of the documents required to be signed should be attached as exhibits to the divorce decree and/or AID. That way there is no confusion as to what is to be signed and allows the harmed party to seek contempt if the specified documents are not signed. G.L.S.*

Editor's comment: *There were no deeds for Fausett to sign. Per Mexican law, title to the condos was held in a bank trust, with Fausett and Warren as beneficiaries. J.V.*

Trial Court's Determination For Amount Of Bond Required To Supersede Money Judgment Affirmed Under Abuse Of Discretion Standard.

¶25-2-24. *Moore v. Moore*, No. 04-24-00367-CV, 2025 WL 470392 (Tex. App.—San Antonio 2025, no pet. h.) (mem. op.) (02-12-2025).

Facts: A divorce decree awarded Wife $20,000. Husband appealed from the divorce. The trial court set a supersedes bond to suspend enforcement at $22,125 to cover the judgment plus interest pending appeal. Husband motioned the appellate court to review the bond, claiming it was excessive.

Holding: Motion to Review Supersedeas Bond Denied.

Opinion: A judgment debtor may supersede a judgment while pursuing an appeal by filing with the trial court clerk a "good and sufficient bond." The bond must be in the amount required by Texas Rule of Appellate Procedure 24.2. When the judgment is monetary, the bond must equal the sum of compensatory damages plus interest for the during of the appeal and costs.

A party may challenge in the appellate court the trial court's supersedeas ruling for sufficiency or excessiveness, and the appellate court will review such a challenge under an abuse of discretion standard. Here, however, Husband failed to present the appellate court with a sufficient record to review the judgment.

Dissolution Of Receivership Order With Accompanying Turnover Order Appropriate When Purpose Of Receivership Satisfied And Non-Exempt Assets Existed To Satisfy Judgments In Divorce Decree.

¶25-2-25. *McCray v. Spector*, No. 05-23-00738-CV, 2025 WL 537425 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (02-18-2025).

Facts: Husband filed for divorce 15 years ago. While the divorce was pending, a receiver was appointed to manage and dispose of Husband's property as ordered by the court. Five years later, another receivership order was rendered due to Husband's bankruptcy proceeding. The same receiver was authorized to pay Husband's living expenses and all family support obligations to Wife. About a year after the second

receivership order, the trial court signed a final decree of divorce that included a judgment against Husband for fraud against the community estate. The receivership continued.

Six years after the divorce, Wife filed a motion to dissolve the receivership, for release of funds, and for turnover relief. She asserted the purpose for the receivership had been satisfied, and Husband had non-exempt property under the receiver's control that should be turned over to her to satisfy the judgment against Husband. At the hearing on Wife's motion, she said she was still owed $1.5 million. She had no complaints about the receiver's conduct.

The parties had agreed on a process for determining tax liability for the year of divorce. The receiver was contacted once by Husband and once each by two of Husband's attorneys regarding payment of Husband's income tax liabilities. The receiver informed them he was not opposed to paying the taxes, but he would need court approval. Husband never filed a motion to withdraw money from any account to pay taxes. The receiver explained that paying Husband's tax obligation would diminish Wife's expected share of the estate at the end of the receivership, and he wanted the court and Wife to be involved before taxes were paid.

Wife had been awarded securities accounts from which the receiver withdrew money to pay expenses pursuant to the receivership order. When the receiver made these withdraws, he was unaware of any tax liability associated with the withdraws because the accounts had "sufficient cash" each time. The bank holding the securities account refused to communicate with the receiver for any purpose other than sending money, so the receiver was unaware that, despite the divorce decree, the accounts were still associated with Husband's social security number instead of Wife's.

The receiver received payments from one of Husband's companies on Husband's behalf. The receiver suspected the funds were pretax monies, but he never received any tax documents from the company. Additionally, the receiver did not disclose one account until Wife's motion to dissolve the receivership because, until that time, the receiver believed it was an illiquid account held by a partnership. He disclosed the account to Wife upon learning it was a liquid security and stated that the money in it had not been touched since the divorce.

The associate judge granted Wife's requested relief, and after a de novo review hearing, the trial court generally affirmed and adopted that ruling. Husband appealed.

Holding: Affirmed.

Opinion: During a divorce, a trial court may render an order appointing a receiver for the preservation and protection of the parties' property. A receiver is not appointed for the benefit of the applicant, but to receive and preserve the property for the benefit of all interested parties. A receiver must exercise "the same degree of discretion in the discharge of his duties as an ordinarily prudent man of business would exercise in the management of his own affairs." A receiver derives authority from the receivership order and has only the powers conferred by that order.

Husband challenged the trial court's finding that the receiver's duties were discharged in accordance with the trial court's order with reasonable care and prudence. Specifically, Husband complained that he believed the receiver was in control of all Husband's finances, income, and accounts and that there was not anything left to do. Husband stated that because of this belief, he further believed he did not have to handle his annual tax return. However, two years after the divorce, he learned that the bankruptcy trustee had filed his taxes during the bankruptcy. When the receiver informed Husband that Husband would need to file a motion to have his taxes paid, Husband responded that he did not have a lawyer at that time. Further, the receiver acted with diligence and prudence based on the information available to him. Consistently, upon learning new information, the receiver took necessary steps as appropriate.

Husband further complained of the turnover order to satisfy Wife's judgments. He argued there was no lien on the assets, and the assets were not in his possession at the time of the turnover order. The turnover statute is a purely procedural device by which creditors may reach nonexempt assets that are otherwise difficult to attach. Contrary to Husband's assertion, Wife was not required to first exhaust other legal remedies before relying on the turnover statute. Additionally, the order dissolving the receivership distributed the estate and allocated assets to Husband, so they were in his possession to be turned over to Wife.

SAPCR:
PROCEDURE AND JURISDICTION

SAPCR Not Required To Be Transferred To County Were Divorce Petition Was Filed Because Mother Asserted No Marriage Existed And Father Did Not Offer Evidence To Support His Claim Of A Marriage.

¶25-2-26. *In re N.M.B.H.*, No. 05-23-01187-CV, 2024 WL 4945307 (Tex. App.—Dallas 2024, no pet. h.) (mem. op.) (12-03-2024).

Facts: Mother filed an original SAPCR asking for the parents to be named joint managing conservators and seeking the exclusive right to designate the Child's primary residence. Father filed a similar counter-petition. Neither party asserted they were married. During the course of the proceedings, Father temporarily lost his right to possess the Child, and Mother alleged Father was harassing her despite temporary injunctions to protect her from harassment.

Although Father had counsel initially, he was later pro se. Father filed a pro se motion to transfer the suit to a different county, claiming to have filed a petition for divorce in that county. Mother responded with a controverting affidavit stating that she never married Father and that his motion was simply a tactic to get away from the judge who knew Father's "horrible personal and litigation conduct." After a hearing, the court denied the transfer.

After hearing evidence, the jury found Mother should be appointed sole managing conservator and that Father should not be a possessory conservator. Subsequently, the court conducted a hearing on child support and signed a final order that included a finding Father committed family violence. Father appealed.

Holding: Affirmed.

Opinion: Father argued the trial court erred in not granting the requested transfer because it was mandatory. However, the transfer is only mandatory in the absence of a controverting affidavit. If a controverting affidavit is filed, the court must conduct a hearing to determine if grounds for a transfer exist. Here, Mother disputed the existence of a marriage via her affidavit. At the hearing, Father did not offer any evidence to prove the existence of a marriage.

Editor's comment: *This is probably the correct decision based on the facts of this case, but the plain language of the statutes don't require there to be a marriage between the parents to have a mandatory transfer. Rather, there just has to be a dissolution suit filed. The mother's affidavit didn't say a dissolution suit wasn't filed, only that she wasn't married to the father. I wonder if the father's dissolution suit was dismissed or went to trial. P.M.L.*

Mother Entitled To Reversal Of No-Answer Default Judgment In Suit Initiated By OAG Because Mother Not Served With Father's Counterpetition And Court Granted Father's Requested Relief.

¶25-2-27. *Richardson v. Wilkins*, No. 01-23-00951-CV, 2024 WL 5081479 (Tex. App.—Houston [1st Dist.] 2024, no pet. h.) (mem. op.) (12-12-2024).

Facts: Mother failed to answer or appear in a suit to establish parentage initiated by the OAG. The OAG acknowledged that the Child lived with Mother and asked that Father be ordered to pay court costs. Father filed a counterpetition—that was not personally served on Mother—in which he sought to be appointed sole managing conservator of the Child with Mother being ordered to pay child support. Father alleged Mother had engaged in a history or pattern of child neglect.

After a trial, the court granted Father's requested relief. Only Father testified; the OAG called no witnesses. Subsequently, Mother filed a restricted appeal.

GO TO TABLE OF CONTENTS

Holding: Reversed and Remanded.

Opinion: Mother argued she was entitled to a restricted appeal because she was never served with Father's counterpetition. Father argued that the judgment should be affirmed because Mother was served with the OAG's petition. However, the OAG's petition did not ask that any parent be appointed as a sole managing conservator. Additionally, the OAG stated that Father had documents in his possession that would show the nature and extent of his ability to pay child support and asked that he be ordered to pay costs. Because Mother was not served with Father's counterpetition, the trial court erred in granting a default based on Father's requested relief.

Editor's comment: *Before taking a default, it is important to review the pleadings. The court should not grant a default unless the respondent has fair notice of the claims asserted against him. A.B.P.*

Editor's comment: *When multiple parties are involved, always be sure to serve all of them. Remember that the OAG is a necessary party in many cases and should be included in this service. P.M.L.*

Mandamus Relief Granted To Vacate Contempt Order And Temporary Orders Changing The Person With The Exclusive Right To Designate The Child's Primary Residence Because No Evidence Offered—Only Attorney Argument.

¶25-2-28. *In re Salazar*, No. 04-24-00542-CV, 2025 WL 470393 (Tex. App.—San Antonio 2025, orig. proceeding) (mem. op.) (02-12-2025).

Facts: A final decree of divorce appointed Mother the exclusive right to designate the Children's primary residence and granted Father an equalization judgment to be paid by a date certain. If Mother did not pay by that date, the marital residence awarded to Wife would be sold, and a portion of the proceeds would be distributed to Father to satisfy the equalization judgment.

Almost a year after the deadline passed, Father filed a motion for enforcement regarding the equalization judgment. He did not ask that the house be sold, but he did ask that Mother be held in contempt. About nine months later, he filed a modification suit, seeking, in part, the exclusive right to designate the Children's primary residence and reduced the previously existing geographic restriction.

The trial court heard both of Father's motions together. Father's attorney explained the enforcement motion, but Father did not testify. Mother testified that the house was not marketable. Father's attorney explained that Father did not contest Mother continuing to be the primary parent for their 15- and 17-year-olds. Father was concerned about their youngest Child, who Father alleged was left alone frequently while Mother worked and the other two Children were out. No evidence was presented via sworn testimony or otherwise.

The trial court signed a contempt order, which found Mother in contempt, ordered the house be sold for the first bone fide offer that met or exceeded 95% of the listed price, and awarded Father attorney's fees in the enforcement. Additionally, the court signed temporary orders giving Father the exclusive right to designate the primary residence of the youngest Child without a geographic restriction. Mother sought mandamus and emergency relief from the appellate court. The appellate court granted an emergency stay of both orders pending a resolution of the mandamus proceeding. Father filed no response to Mother's petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted

Opinion: The contempt motion was not sworn and did not include an affidavit or other evidence to support its allegations. The court's finding was based solely on the arguments of Father's counsel. Although Father's counsel asked the court whether it would like to hear testimony, the trial judge told the attorney to "just kind of go over each" request. Nothing indicated that Father's counsel had personal knowledge of any of the allegations. Thus, the contempt order was not supported by competent evidence.

Father's petition to modify was not accompanied by an affidavit to support an allegation that the youngest Child's present circumstances would significantly impair her physical health or emotional development. Thus, the trial court should have declined a hearing on temporary orders to change the person

with the exclusive right to designate her primary residence. Although this error could have been cured with sufficient evidence being presented at the hearing, no evidence was presented at all—much less significant impairment evidence.

Trial Court's Denial Of Mother's "Eleventh-Hour" Request To Appear By Zoom Insufficient Basis To Set Aside Default Judgment.

¶25-2-29. *In re A.C.*, No. 09-22-00439-CV, 2025 WL 4498536 (Tex. App.—Beaumont 2025, no pet. h.) (mem. op.) (01-23-2025).

Facts: The OAG filed a suit to modify Father's child support obligation. Father filed a counter petition in the SAPCR asking for the exclusive right to designate the Children's primary residence. Additionally, Father filed a motion to enforce possession. Mother filed a motion to transfer venue and sought to reduce Father's periods of possession.

On the morning of the final hearing, Mother contacted the court by telephone stating she was under the impression that she could appear by Zoom. The court responded that "was never the case." Mother failed to appear, and after hearing testimony from Father and his wife, the court signed a default order. The parties remained joint managing conservators, Father was granted the exclusive right to designate the Children's primary residence, and Mother was ordered to pay child support. The trial court denied Mother's motion to set aside the judgment, and she appealed.

Holding: Affirmed.

Opinion: Relying on Rule 21d, Mother asserted she had good cause to attend remotely because she had no transportation and no money to hire an attorney. Additionally, the court had allowed her to attend other hearings remotely. Rule 21d allows remote appearances but does not require them. A party who objects to the required method of attendance must do so within a reasonable time after receiving notice. Mother did not do so. She waited until the morning of the hearing to inquire about attending remotely. Mother failed to preserve her complaint for review by failing to timely object; however, even if the appellate court were to review the issue, the trial court did not abuse its discretion in denying Mother's "eleventh-hour request."

In Mother's *Craddock* motion for new trial, she failed to explain why she believed she had good cause to appear remotely, did not explain how her failure to attend was a mistake or accident, and did not include facts indicating that granting the motion would not cause undue delay or injury to Father.

Grandmother Failed To Establish Standing; Mother Entitled To Mandamus Relief And Dismissal Of Grandmother's Intervention.

¶25-2-30. *In re A.G.*, No. 02-24-00548-CV, 2025 WL 294159 (Tex. App.—Fort Worth 2025, orig. proceeding) (mem. op.) (01-24-2025).

Facts: Mother and Father were joint managing conservators of their two Children until Father's death. Before Father's death, an injunction had been imposed preventing Mother's husband from being present during Mother's periods of possession due to abuse allegations. Days after Father's death, Father's stepfather ("Grandfather") filed a petition in intervention seeking possession or access. Grandfather's wife ("Grandmother") joined the intervention, but by the time of the mandamus proceeding, Grandfather was no longer a party. Mother's above-referenced husband (now "Ex-Husband") also intervened, resulting in the prior injunction being rewritten to prevent Mother from allowing the Children to contact Ex-Husband.

Grandmother sought to be named the Children's sole managing conservator. Mother filed a plea to the jurisdiction, challenging Grandmother's standing. After hearing evidence, the court held that Grandmother and Grandfather (despite Grandfather no longer being a party) had standing and denied Mother's plea. Mother sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Grandmother had alleged standing under Family Code Sections 102.003(a)(11) and (13); 102.004; and 153.432.

Grandmother lacked standing under subsection (a)(11) because it requires the party to have resided with the Child for six months. Although Grandmother "visited" the Child "almost daily" for over a year, she did not reside with the Child. Grandmother lacked standing under subsection (a)(13) because that statute requires both parents to be deceased. Mother was alive.

To establish standing under Section 102.004, Grandmother was required to present satisfactory proof of significant impairment. Grandmother asserted the Children did not receive proper psychiatric help and that her requests to attend counseling with the Children were refused. Mother explained that the Children participated in group grief counseling that did not allow grandparents to attend. One of the Children received one-on-one counseling for five months before the therapist recommended group therapy. Grandmother did not ask to attend the one-on-one counseling while it was occurring. Grandmother additionally complained that Mother did not regularly exercise visitation while Father was alive and that the Children returned in the same clothes they left in and did not shower over the weekend. Mother denied these allegations. Grandmother further complained that Mother prevented Father's family from having access to the Children after his death. Mother again denied this allegation and stated that at least one member of Father's family texted one of the Children daily. Mother had not blocked anyone's numbers or told the Children not to contact anyone. Grandmother's primary fears seemed to be centered on possible exposure to Ex-Husband. However, Mother and Ex-Husband were no longer married. The Children had no contact with him for over a year, and Mother's contacts with him were limited to discussions about the case.

Parental irresponsibility, poor judgment, and an unstable or chaotic lifestyle may support a finding of significant impairment, but only if those findings are directly related to a specific risk to the child that exists when the petition is filed. Grandmother failed to identify any specific risk and failed to overcome the fit-parent presumption.

To establish standing under 153.432, Grandmother was required to attach an affidavit with supporting facts to show that denial of possession would significantly impair the Children's physical health or emotional well-being. Grandmother's speculative testimony that denial of access "may" cause harm if they were given "proper psychiatric help" was insufficient. There was no evidence of the Children suffering harm, nor was there any evidence of a present threat of harm.

Editor's comment: *Although this case references that the grandmother did not overcome the fit parent presumption, it is important to understand that the fit parent presumption is generally an issue for final trial, not standing. It was only relevant here because of the significant impairment requirement for standing in 102.004. H.J.D.*

Editor's comment: *This point bears emphasis: "Parental irresponsibility, poor judgment, and an unstable or chaotic lifestyle may support a finding of significant impairment, but only if those findings are directly related to a specific risk to the child that exists when the petition is filed." J.V.*

Incarcerated Father Denied Due Process Because He Did Not Receive Notice Of Final Hearing.

¶25-2-31. *In re J.A.*, No. 10-23-00197-CV, 2025 WL 341845 (Tex. App.—Waco 2025, no pet. h.) (mem. op.) (01-30-2025).

Facts: TDFPS initiated a SAPCR that included a request for termination. Father was imprisoned shortly thereafter. Within the same suit, the OAG filed a petition to establish paternity, and an order was signed requesting Father's appearance at the final hearing by telephone. At the paternity hearing's outset, Father stated he had no notice of the hearing and did not know what it was going to be about. He orally requested a continuance, but the trial court denied the request, stating Father had notice of everything for which he was supposed to receive notice.

Despite the denial of the continuance, the court gave Father ten days to mail in certain documents Father wished to introduce. Ten days after that hearing, Father filed a written motion for continuance complaining again of lack of notice. Father attached a request he had sent to the prison mailroom asking if Father had received any mail in the month leading up to the hearing and the response that there was

"nothing found." Additionally, Father attached an affidavit averring he had no knowledge of an order setting the hearing and stated that he needed to conduct discovery to have been prepared for the hearing and identified certain witnesses he would have called. About a week later, the motion for continuance was "dismissed without action."

A few days after that dismissal, the final hearing continued. Although the final paternity order stated Father announced "ready," no such acknowledgment was located in the record. The trial court found Father was the biological father, but it did not order him to pay support. Father appealed, arguing lack of notice that deprived him of due process.

Holding: Reversed and Remanded.

Opinion: A party who has made an appearance is entitled to notice of a trial setting. If the party has no email, notice may be served by mail. A certificate by a party or an attorney of record, or the return of the officer, or the affidavit of any person showing service of a notice is prima facie evidence of the fact of service. Compliance with Rule 21a creates a rebuttable presumption of effective notice. However, evidence of non-receipt negates that presumption. Receipt of notice can be of particular importance when incarcerated persons are involved because they require an intermediary to receive and distribute their mail.

Here, Father denied receiving notice and provided documentation showing no record of notice was received. Even if the trial judge disbelieved Father's initial unsworn statements at the first hearing, that disbelief would not provide affirmative evidence that service occurred. Further, the order setting the hearing did not contain a certificate of service or any other indication it was served on Father. The record contained no notice of trial. Neither the court's verbal assertion nor its recitation in the final order that notice was sent complied with Rule 21a.

Editor's comment: *When dealing with a person in prison, one idea is to get a precept and have the local constable execute personal service. It is not unusual that when notice is sent by regular mail or CMRRR that another person at the prison will sign the return receipt, which can cause problems when trying to uphold the judgment later. A.B.P.*

Aunt Had Standing Under TFC § 102.003(a)(13) Because Mother Was Deceased, And No Person Fit The Family Code's Definition Of "Father" Of The Children.

¶25-2-32. *In re Battenfield*, No. 06-24-00090-CV, 2025 WL 502507 (Tex. App.—Texarkana 2025, orig. proceeding) (mem. op.) (02-14-2025).

Facts: Mother was never married and had three minor Children. Unrelated Guardians took in the Children with Mother's consent—first via a guardianship, then via conservatorship. Mother's sister ("Aunt") had children similar in age to Mother's Children. After Mother died, the relationship between Aunt and Guardians became strained. Then, one of the Children died while under the Guardians' care. Aunt attempted to gain custody of the two surviving Children. The Guardians contested standing, stating Aunt could not rely on Family Code Section 102.003(a)(13) (third degree of consanguinity and deceased parents) because the Children's fathers were still alive. The Guardians offered evidence of whom they believed the Fathers were. After a hearing, the court found Aunt lacked standing, so she sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: The Guardians relied on the plain and common meaning of parents, which would include the Children's biological fathers, whoever they may be. Aunt responded that the Family Code defined "father," and no one fit that definition at the time she filed her suit.

When interpreting statutes, courts presume the Legislature's intent is reflected in the words of the statute and give those words their fair meaning. The court will analyze statutes as a cohesive, contextual whole, accepting that lawmaker-authors chose their words carefully, both in what the authors included and in what they excluded. Courts look to the statutory scheme as a whole, not to snippets taken in isolation.

GO TO TABLE OF CONTENTS

The statutory definition of "parent" prevails; the definition of "parent" in Section 101.024(a) applies to "parents" in Section 102.003(a)(13). Section 101.001 explicitly provides that definitions in that subchapter apply to that title. Both the definition of parent and subsection (a)(13) are in Title 5. The trial court erred in accepting the purported plain meaning of "parents." An alleged father is not a parent under the Family Code. Because Aunt was related to the Children within the third degree of consanguinity, and because the Children's only legal "parent" was deceased, Aunt had standing.

Editor's comment: *As happens frequently, the parties in this case tried to have the court hear the whole case on the merits instead of addressing standing first. This decision also led to Aunt seeking more relief than could be granted via a mandamus. Much was left of this opinion because it was not relevant to the question of standing:*

> *The trial court heard more testimony and legal arguments than we recite here. As might be expected, both sides were attempting to persuade the trial court regarding the ultimate outcome. We do not address the ultimate outcome. What is before us is a single question: [Aunt's] standing.*

By failing to address the standing issue first, much time and money was likely wasted, which cannot be in the best interest of the Children. Standing is a preliminary question in every single case and should be addressed before going into any other matters. B.M.J.

Allegation That Attorney Would Be A Material Witness In Modification Suit, Without Supporting Evidence, Insufficient To Support Attorney Disqualification.

¶25-2-33. *In re Smith*, No. 10-24-00347-CV, 2025 WL 559913 (Tex. App.—Waco 2025, orig. proceeding) (mem. op.) (02-20-2025).

Facts: Father filed a modification suit. The Child's maternal grandfather is an Attorney, who filed an answer and counter-petition on Mother's behalf. Father filed a motion to disqualify based on a "clear conflict of interest." Father further argued Attorney was a material witness because Attorney purchased a motorcycle that was wrecked by one of the Children. The trial court granted the disqualification. Mother sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: An order disqualifying an attorney is subject to mandamus relief because such an order can cause immediate harm by depriving a party of chosen counsel and disrupting court proceedings. To establish a basis for disqualification, the movant must show specific violations of one or more disciplinary rules. The disciplinary rules are merely guidelines, and the trial court should not disqualify a lawyer for a disciplinary violation in the absence of actual prejudice shown. "Thus, technical compliance with ethical rules might not foreclose disqualification, and conversely a violation of ethical rules might not require disqualification."

Rule 3.08(a) applies when an attorney may be called to testify regarding an essential fact of their client's case, and Rule 3.08(b) applies when an attorney may be compelled to testify in a manner that will be substantially adverse to their client's case. In either instance, Rule 3.08 should rarely be the basis for disqualification.

During the disqualification hearing, Father called no witnesses and offered no evidence. His sole contention was argument regarding his belief that Attorney was going to be a material witness. Father additionally argued that Attorney would have more access to the guardian ad litem, which would be unfair to Father. The reporter's record, containing only attorney argument, was a mere 8 pages long. Because a mere allegation will not support attorney disqualification, mandamus relief was appropriate.

After the disqualification, the trial judge ordered the clerk to return or reject documents filed by Attorney. Although Mother complained of this act in her mandamus, she had not attempted to refile the documents directly with the trial court or bring her complaint first to the trial court. Thus, the appellate court could not address this issue in the mandamus.

Editor's comment: *Disqualification, whether under Rule 3.08 or another rule, is an evidentiary matter. The factfinder has to determine what Rule(s) of Professional Conduct the attorney has violated that warrants his or her removal and usually how non-disqualification will harm the opposing party. If the attorney is a material fact witness under 3.08, or the attorney has confidential information of the opposing party because of a prior consult or representation, or some other rule, you need evidence to satisfy your burden. P.M.L.*

SAPCR: DISCOVERY

Mother Not Entitled To Disclosures In Absence Of Making A Request For Disclosures.

¶25-2-34. ***In re R.R.***, __ S.W.3d __, No. 01-24-00417-CV, 2024 WL 4940585 (Tex. App.—Houston [1st Dist.] 2024, no pet. h.) (12-02-2024).

Facts: During the termination proceeding, Mother became agitated during a therapist's testimony regarding Mother's mental state and deficiencies in caring for the Children. Mother asked for a break, which the trial court granted. However, after the break, trial continued while Mother waited in the cafeteria. Ample evidence showed Mother physically, mentally, and sexually abused the Children. Mother offered her own testimony and generally denied all accusations against her. At the trial's conclusion, the court terminated Mother's rights on endangerment grounds. Mother appealed.

Holding: Affirmed.

Opinion: Mother argued DFPS failed to disclose the therapist and another professional as expert witnesses pursuant to the TRCP rules regarding initial disclosures. However, initial disclosures are not required in family-law suits, and Mother made no request for disclosures. DFPS was not required to make disclosures in the absence of a request. Moreover, Mother was provided therapy as a part of her service plan, and both experts' reports were filed with the court and provided to mother more than a year before the commencement of trial. Finally, the expert witnesses were identified on the first day of trial, but they did not testify until over two months later because trial was continued. Mother had ample time to prepare her cross-examination and was not prejudiced by a lack of disclosure.

Arrearage Finding Reversed Because Based On Evidence That Was Not Timely Produced, And Mother Failed To Establish Good Cause Or Lack Of Surprise To Warrant Exception To Automatic Exclusion Rule.

¶25-2-35. *In re O.L.C.*, No. 07-24-00071-CV, 2024 WL 5161887 (Tex. App.—Amarillo 2024, no pet. h.) (mem. op.) (12-18-2024).

Facts: A final divorce decree required Father to provide health insurance for the parties' three minor Children. Five years later, Mother added the Children to her policy, and Father removed them from his. After the third Child turned 18, Mother filed suit to enforce the insurance provision of the decree, seeking reimbursement for the premiums she had paid. After a hearing, the trial court held Father in contempt and awarded Mother reimbursement of about $60k but denied her request for attorney's fees. Father appealed.

Holding: Reversed and Remanded.

Opinion: During trial, Father objected to documents offered by Mother because she failed to timely produce them in discovery. The trial court merely responded, "[s]he's allowed to authenticate her documents, all right." Under the Rules of Civil Procedure, a failure to timely produce documents in discovery results

in an automatic exclusion unless the court finds (1) the failure resulted from "good cause"; or (2) the admission will not unfairly surprise or prejudice the other party. Without one of those findings, the trial court erred in admitting the evidence. Although Mother asserted Father "knew" of her claims, there was no evidence that he knew of the manner and means by which she would prove the sums she paid for premiums. The onus was on Mother, and she failed to meet her burden. No evidence would support even an implied finding of good cause or lack of surprise. Because this error probably caused the rendition of an improper judgment, reversal was appropriate.

Editor's comment: *TRCP 193.6 is a powerful tool, but you need to know what the Rule says. Once you prove nondisclosure, the burden shifts to the proponent of the evidence. They have to show, on the record, good cause or lack of surprise or unfair prejudice. And even then, the court can grant a continuance so everyone can get their day in court. P.M.L.*

SAPCR: TEMPORARY ORDERS

Mandamus Denied Because Factual Matters In Dispute So Trial Court's Finding That Father Failed to Meet His Burden To Show Significant Impairment Was Not Arbitrary And Unreasonable.

¶25-2-36. *In re Romine*, No. 11-24-00266-CV, 2024 WL 4982214 (Tex. App.—Eastland 2024, orig. proceeding) (mem. op.) (12-05-2024).

Facts: Since the parties' divorce, the Children lived with Mother roughly halfway between Plano and Midland (in Comanche County). Father lived in Plano but traveled to Midland during the week for work, where he had a house. About 3 years after the divorce, Mother moved to Midland County without the court's or Father's permission. Father asserted that move significantly impaired the Children's emotional development.

Father testified that Mother's move caused the ten-year-old to throw a fit and start talking like a baby. Father claimed that the Child would emotionally shut down. Father further testified, based on what he had heard from the Children, that Mother routinely pinched the Children and chased the ten-year-old with a flyswatter. Father noticed bruising on the seven-year-old's arm, which he believed was caused by Mother. Mother acknowledged disciplining the Children but denied abuse. The attorney ad litem testified that the parents loved the Children very much but had very different opinion about things, which cause the Children to feel caught in the middle and worried about hurting either parent's feelings. She suggested the Children stay at Father's home with lots of visitation with Mother.

The trial court denied Father's request to change via temporary orders the person with the exclusive right to designate the Children's primary residence. Father sought mandamus relief.

Holding: Writ of Mandamus Denied.

Opinion: Nearly every contention raised by either party was in dispute, and it is not for an appellate court to reconcile disputed factual matters in a mandamus proceeding. Therefore, the trial court's finding that Father failed to meet his burden to show significant impairment was not so arbitrary and unreasonable as to amount to a clear and prejudicial error of law.

Editor's comment: *Original proceedings are not for resolving disputed fact issues. And the denial of a request is a high burden to overcome. If father's request had been granted and the mother mandamused, however, the court would be looking at whether the evidence could support that significant impairment finding if the trial court believed it. P.M.L.*

SAPCR:
PARENTAGE

Wife's Post-Divorce Parentage Suit Barred By Res Judicata Because The Issue Of Parentage Was Addressed In The Divorce Proceeding, And Wife's Constitutional Challenge Could Have Been Raised At That Time.

¶25-2-37. *In re R.G.S.*, No. 09-22-00425-CV, 2024 WL 4986066 (Tex. App.—Beaumont 2024, no pet. h.) (mem. op.) (12-05-2024).

Facts: Biological Mother and Wife married, and a year later, they signed an agreement for Mother to become pregnant using a sperm donor from a reproductive services organization. After Mother gave birth, Mother filed for divorce. The parties signed an MSA, in which Wife was to be adjudicated as a parent to the Child. However, after questions were raised as to the legality of that adjudication, the case was put on hold. The parties subsequently presented a final decree and attended a hearing. Wife testified about her actual care, control, and possession of the Child and asked to be named a non-parent conservator if the court decided not to adjudicate her as a parent. The trial court found Wife had standing pursuant to her actual care, control, and possession of the Child but declined to adjudicate her as a parent. It signed the proposed decree that was "approved and consented to as to both form and substance" by each party. The decree found Mother to be a parent but was silent as to Wife's parentage of the Child.

Six months later, Wife filed a petition for adoption or to adjudicate her as a parent. The court severed the parentage suit from the adoption and found that her suit for parentage was barred by res judicata because it was already addressed in the divorce. Wife appealed.

Holding: Affirmed.

Opinion: Wife asserted res judicata did not preclude her suit because the trial court refused to rule one way or the other on her parentage in the divorce proceeding. However, res judicata also prevents parties from relitigating matters that could have been litigated in a prior lawsuit. "Res judicata requires proof of three elements: '(1) a prior final judgment on the merits by a court of competent jurisdiction; (2) identity of parties or those in privity with them; and (3) a second action based on the same claims as were raised or could have been raised in the first action.'"

Contrary to Wife's contention, the court did not "omit" an adjudication but found that Mother was "the" parent of the Child. Additionally, the decree included a Mother Hubbard clause indicating its finality. Next, the parties in each suit were identical. Finally, in the divorce, Wife testified that if the court could not adjudicate her as a parent, she wanted to be named as a nonparent conservator of the Child. Thus, all three elements of the doctrine of res judicata were satisfied.

Wife further asserted the trial court erred when it failed to apply the Uniform Parentage Act under general neutral terms. However, this argument was also barred by res judicata despite her not having made it in the divorce proceeding. Res judicata also bars permissible claims.

Editor's comment: *The Texas Family Code still fails to grapple with the parental rights of same sex parents. This case does not mention any presumptions of maternity or the several Texas cases addressing these presumptions under Obergefell. It is important to counsel both parents to consult with lawyers, if possible, before becoming pregnant to understand the complicated legal framework for same sex parents. A.B.P.*

Editor's comment: *The Beaumont COA has historically been very conservative. This case may have turned out differently in another court. P.M.L.*

GO TO TABLE OF CONTENTS

SAPCR:
CONSERVATORSHIP

While Family Code Requires Custody Evaluator To Provide A Report, There Is No Requirement For It To Be In Writing; Because Father Failed To Timely Request A Written Report Or Object To Lack Of One, His Appellate Complaint Was Waived.

¶25-2-38. *Johnson v. Jonson*, No. 01-22-00457-CV, 2024 WL 4982513 (Tex. App.—Houston [1st Dist.] 2024, no pet. h.) (mem. op.) (12-05-2024).

Facts: Mother and Father were appointed joint managing conservators with certain rights and duties subject to the consent of the other. Mother had the exclusive right to designate the Children's primary residence. About a year after the divorce, Father filed a suit to modify and asked to be appointed the conservator with the exclusive right to designate the Children's primary residence, as well as the exclusive rights to consent to medical and psychiatric care and education. Mother filed a counterpetition seeking sole managing conservatorship. There was ample evidence that the parties did not coparent well. Father forced one of the Children's therapists to quit because he alleged a conflict of interest after finding out that the Child was fostering a cat received from the therapist. Father appeared to believe that everything would be resolved if Mother could be removed as a primary parent. Mother wanted the Children to have two parents but found it difficult to work with Father. The court-appointed evaluator testified that the "make or breaker deal" for him was Mother's support for the Children having two parents.

Ultimately, the trial court granted Father a standard possession order, which was a reduction for him because he had two additional nights a month under the prior order. The court signed an order that included an award of attorney's fees in the SAPCR and found Father's suit was filed frivolously or designed to harass Mother. Subsequently, the court granted Mother's motion for rule 13 sanctions and awarded her fees in connection with Father's discovery disputes leading up to trial. Father appealed.

Holding: Reversed and Rendered in Part; Affirmed in Part.

Opinion: Father argued that the evidence was insufficient to support a Rule 13 sanctions finding. The trial court found that Father's discovery disputes were frivolous because each of the discovery issues were resolved before Father sought court intervention, requiring Mother to needlessly incur fees. However, although some issues were resolved, Mother had not complied with the local rule requiring her disclosure of her tax return until after a court order specifically requiring the parties to comply with local rules. Regardless of whether the tax return was used by Father during trial, he was entitled to that disclosure under the local rules, and thus, his motion to compel was not groundless and did not warrant sanctions.

Additionally, contrary to Mother's assertion that some of Father's motions to compel were filed after the commencement of trial, the record did not reflect that trial commenced on the date cited by Mother. Rather, on that date—which had originally been scheduled for trial—the court instead directed the parties to attend mediation. The parties did not announce they were ready, neither offered an opening statement, and no witnesses were called. Without any basis to support the sanctions findings, the appellate court reversed and rendered that Mother would take nothing on her request for attorney's fees under Rule 13.

Father further argued the trial court abused its discretion in awarding fees under Texas Family Code 156.006 in the final SAPCR order because there was no evidence his modification suit was filed frivolously or designed to harass Mother. However, although the trial court found that Mother was entitled to fees pursuant to that section, it also held that "good cause" existed to award fees. Thus, the fees could be supported under the more general Section 106.002, which permits attorney's fees to be awarded in a SAPCR for good cause. Because Father failed to challenge this basis for fees, the appellate court affirmed the award.

Father also argued the court erred in allowing the child custody evaluator to testify despite an alleged failure to create a written report. However, prior to trial the evaluator gave both parties and oral report, neither party requested a written report, the evaluator was designated by an expert by both parties, and

Father waited until the second day of trial to raise this complaint. Thus, Father waived the issue for appellate review.

Finally, Father complained about the court's modification of possession in the absence of pleadings to support the relief granted. Presuming the pleadings were insufficient, the issue was tried by consent, and the evidence supported the trial court's judgment.

Editor's comment: *I am very concerned about the holding in this case. Although TFC 107.113 just states that an evaluator must prepare a report, I believe that reading the entire statute, along with all the other statutes referencing that statute, including the mandate in TFC 107.113 to file and provide copies of the report by a date certain implies that a written report is required. Hard to file and provide a copy of an oral report. Essentially, this court's holding requires that the parties make a specific request for a "written" report not just an oral report. Additionally, how can an attorney ever know if the evaluator included all of the elements set forth in TFC 107.1113 without a written report. It would take an inordinate amount of time to cross-examine the evaluator on each-and-every element. The takeaway here seems to be that you should always make sure that there is a requirement for a "written" report to be part of the order for a custody evaluation (as it is in the formbook) and, if the evaluator fails to prepare a "written" report, don't wait until trial to complain about it. Unfortunately, Father's attorney learned a hard lesson. G.L.S.*

Editor's comment: *I agree with G.L.S. This is why case updates are so important, to learn from the "mistakes" of others. I say "mistakes" in quotations because sometimes you don't do anything wrong until the courts interpret the law differently than what we all thought it meant. P.M.L.*

Although The Parents Disagreed On How To Treat Their Autistic Child, No Evidence Showed That One Parent's Choice Was Better Than The Other, So Each Permitted To Make Non-Invasive Medical Decisions During Their Periods Of Possession.

¶25-2-39. *In re S.S.*, No. 05-23-00928-CV, 2025 WL 593671 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (02-24-2025).

Facts: In their divorce proceeding, Mother and Father contested how to care for their youngest Child, who was diagnosed with autism spectrum disorder, level two severity; ADHD; intellectual, developmental disorder with mild severity; and combined presentation and language disorder. In Father's possession, the Child was unruly and sometimes hit Father. Mother testified the Child was well behaved in her possession. Father adhered to prescribed medication regimens, but Mother did not because she struggled to believe the Child needed medication. The Child's doctor testified that sporadic administration of the medication would reduce their beneficial effect. While the intermittent administration would not cause harm, it likely contributed to unruly behavior.

Father argued that both parents should have been ordered to administer the prescribed medications because medication is not optional. Father wanted Mother to have limited possession due to her failure to administer the medication. Another doctor prescribed a different therapy, which Mother believed was helping the Child. Mother believed that the Child regressed when with Father because he was not receiving the different therapy (which was not described in the appellate record).

Mother enrolled the Child in public school, where he was in general and special education classes. An assistant accompanied the Child to the general education classes. His special education case manager testified that the Child had made tremendous growth over the past year. Father wanted the Child to attend a special needs school, where all the Child's needs could be met. At the special needs school, the Child would receive one-on-one attention.

The parties' divorce decree gave each parent the right to consent to non-invasive medical treatment for their youngest Child during that parent's period of possession and gave Mother the exclusive right to enroll the youngest Child in school. Father appealed.

Holding: Affirmed.

Opinion: Medication and behavioral therapies had been prescribed to help the Child, and each therapeutic intervention would be most effective when administered consistently. The parents disagreed on

which was the best, and both refused to administer the therapy chosen by the other parent. Father's solution was for him to be given the exclusive right to make decisions, but he did not explain why his chosen therapy was superior or why the court should not award Mother the exclusive right instead. The record did not show that either parent's chosen treatment was better than the other. The trial court acted within its discretion in awarding each parent the right to consent to non-invasive medical treatment during their respective periods of possession.

The evidence showed that the school Mother chose was giving the Child individualized attention. The Child was having fewer meltdowns, was developing coping skills, was improving his ability to express his wants and needs, and was experiencing tremendous growth. The trial court did not abuse its discretion in giving Mother the exclusive right to enroll the Child in school.

Editor's comment: *I get that these are difficult decisions to make, but this seems counterintuitive. If consistency was key with both therapies, and neither was better than the other, then pick one to have consistency rather than flip-flopping between each home. The primary consideration is always the best interest of the child, so put the child first rather than the parents. P.M.L.*

Evidence Of Father's Overuse Of Prescription Painkillers Sufficient To Support Injunction Against Operating Motor Vehicles With The Child As A Passenger, Despite Mother's Failure To Plead For That Specific Relief.

¶25-2-40. *Rincon v. Berezkina*, No. 09-23-00054-CV, 2025 WL 634904 (Tex. App.—Beaumont 2025, no pet. h.) (mem. op.) (02-27-2025).

Facts: Mother—a citizen of Croatia and Cypress, resident of Monaco and Austria, and temporary-visa-holder in New Zealand—filed for divorce in Russia, where she and her family lived. A few weeks later, Father filed for divorce in Texas. Father asserted that while on vacation in France, Mother abducted the one-year-old Child and went to Russia. Father believed Mother was suffering from post-partum depression and claimed to be fearful for the Child's safety. The Russian court granted Mother a divorce and awarded Father limited possession. Father unsuccessfully appealed in the Russian courts.

In Texas, Mother filed a plea to the jurisdiction, request to decline jurisdiction, notice of foreign order, and motion to dismiss. After a hearing, the Texas court found the Russian order violated Father's rights and did not recognize the Russian order under the principles of comity.

Both parents sought sole managing conservatorship. Mother alleged Father abused prescription drugs and asked that he be enjoined from drug use during his periods of possession.

A jury heard evidence regarding conservatorship. Mother explained that Father was from Venezuela, and the couple had met about nine times in different countries before marrying. After marriage, they had a home in Texas, where the Child was born. Shortly before trial, Mother learned Father had been diagnosed with rhabdomyolysis years earlier, for which he had been prescribed pain medication. Father had told Mother he had cancer, but that was not true.

While Mother and Father were vacationing in France, Mother learned that her green card was denied, so she and the Child went to Russia on her father's private plane. In the time leading up to this departure, Mother had become increasingly frustrated with Father's pill usage, refusal to attend marriage counseling, and lack of assistance with the Child. In 2015, Father told her he stopped taking pills; however, Mother saw signs in 2017 that he was still taking them. Upon leaving for Russia, Mother told Father he needed to address his drug use before she would return.

After moving to Russia, Mother entered the U.S. twice using a Croation passport and did not bring the Child because she was traveling for court appearances. She offered to exchange the Child in France or Dubai, but Father refused.

Father's father was awaiting federal sentencing for federal crimes that had led to wealthy individuals losing millions of dollars in civil forfeitures and going to prison. Father's family had been deposed in the divorce proceeding in relation to these crimes, which caused Father stress and anxiety. Father did not have a good relationship with his father. Mother's father was an oligarch affiliated with Vladimir Putin. Both parties obtained orders in limine to prevent discussions about criminal activity, but during trial they argued that doors had been opened and to not allow full coverage of testimony would create false

impressions for the jury. After hearing argument, the court dissolved portions of the orders in limine to allow relevant testimony.

After hearing testimony from the parties and many other witnesses, the jury found that Mother should be appointed the Child's sole managing conservator. After mediation failed to address the remaining issues, the court rendered a modified step-up possession order for Father with exchanges occurring in France. Father was enjoined from operating motor vehicles when the Child was a passenger. After a decree incorporating the jury verdict was signed, Father appealed.

Holding: Affirmed.

Opinion: Father argued the trial court abused its discretion by deviating from the standard possession order and setting the location for exchange in France, rather than Texas. While there is a presumption that the standard possession order is in a child's best interest, that presumption is rebuttable if the court is presented with sufficient evidence. In deviating from the standard possession order, the trial court may consider "(1) the age, developmental status, circumstances, needs, and best interest of the child; (2) the circumstances of the managing conservator and of the parent named as a possessory conservator; and (3) any other relevant factor." Here, the court heard testimony regarding the parents' abilities to care for the Child, Father's drug use, the stability of Mother's home in Russia, the potential danger imposed by the Child's grandparents, and the parties' ability to travel internationally. Father did not feel comfortable traveling to Russia, and Mother could not return to the U.S.

Father next complained of the injunction against him operating a motor vehicle with the Child. He argued no pleading placed him on notice of this request. In child custody cases, the child's best interest are of paramount concern, and technical pleading requirements are of reduced significance. The court may unilaterally impose conditions not requested so long as the court does not act arbitrarily. Here, there was significant evidence Father was taking more pain medication than was prescribed or recommended. Father refused rehabilitation and denied that his drug use could impact the Child. Father spent much time sleeping and watching TV and was described as being withdrawn and zoned out. The court's restriction was not arbitrary or an abuse of discretion.

Finally, Father argued the court erred in permitting testimony regarding his parents' white-collar criminal history. Father asserted that even if relevant, the probative value of the testimony was substantially outweighed by its prejudicial effect. Father sought to introduce evidence that Mother once told her life coach that she would kill the Child before letting Father's family have him. Mother argued that this statement in isolation was incredibly inflammatory, and Mother should be permitted to describe Father's family to give the jury context. The trial court agreed with Mother that Father had opened the door to that line of questioning. Allowing Mother to introduce the rebuttal testimony was not a clear abuse of discretion, and the trial court could have reasonably concluded that the door had been opened and that the evidence regarding Father's family's criminal history was relevant to the Child's best interest because it concerned the Child's home environment.

Editor's comment: *Be aware what COA district you're in when it comes to permanent injunctions. Most adhere to the rule that injunctions are simply a restriction on possession and access, so formal pleadings aren't necessary if possession and access is at issue (be aware of any requested/ordered injunctions that are unrelated to possession and access, though). Fort Worth, at least, disagrees based on TFC 105.003(a). If you're in the Fort Worth COA district, properly plead and prove permanent injunctions as in civil cases generally if you want them and specially except and don't try them by consent if you don't. P.M.L.*

Despite Father's Assertions To The Contrary, The Record Showed The Court Considered All The Evidence And The Best Interests Of The Children.

¶25-2-41. *Schilling v. Farmer-Schilling*, No. 14-23-00177-CV, 2025 WL 630662 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (02-27-2025).

Facts: After a bench trial in a divorce, the court signed a final decree. Father appealed.

Holding: Affirmed.

Opinion: Father argued the court erred in granting Mother the exclusive right to designate the Children's primary residence, Father asserted the trial court ignored "many of the warning signs presented during trial." Mother used the family Apple ID to share intimate photos with people she was dating. Mother sexted using a text account she shared with one of the Children. Mother testified that she did not know at the time that the accounts were shared, and she assured the court that the Children never saw the objectionable content. Father additionally said that the parties' daughter made an outcry and said Mother encouraged the Child to touch her own genitals, which led to a CPS report filed by the Child's counselor. Father cited no evidence to support the claim. Rather, the counselor contacted CPS after Father alleged Mother abused the Child. Father admitted he believed the photos Mother shared with her paramours was abuse. After hearing this from the Father, the amicus attorney explained to Father the difference between abuse and poor parenting decisions.

Father additionally complained of Mother not informing him of doctors' appointments, minor scrapes and bruises, and the name of one of the Children's therapists. However, Father had a habit of making the Children and Mother uncomfortable during doctor's appointments, which he never attended during the marriage. Mother always informed Father of the result of the visits. Additionally, Father subpoenaed the Child's therapist during trial, and Mother chose not to disclose the name of the new therapist to afford the Child privacy and allow her to feel safe to express herself during therapy.

Father further asserted that Mother drank alcohol in the Children's presence and had paramours at the residence, even before the divorce was final. Mother acknowledged having a glass of wine a week and apologized for consuming alcohol in violations of temporary orders. Father claimed 17 men visited Mother after separation, but video surveillance showed only two, and Mother testified that she only had a relationship with one, which she said was a mistake. She apologized for the behavior and said she was in a bad headspace and was truly sorry. Additionally, the men did not visit when the Children were present.

Subsequently, nine months after separation, Mother began exclusively dating someone, got engaged, and allowed her fiancé to move into her home three years after Mother and Father petitioned for divorce. She testified that the kids like him and appreciated how well he treated Mother. They were building a life together and operated as a family unit.

Contrary to Father's assertion, none of the above evidence showed the trial court acted arbitrarily in appointing Mother as the parent with the exclusive right to designate the Children's primary residence.

Father next asserted that giving each parent the independent right to make medical decisions robbed the other parent of the right to be informed. First, the decree required the parties to keep each other informed and gave each person the right to access medical information for the Children. Second, the evidence showed that the parties could not be in each other's company without causing the Children stress. Thus, the trial court reasonably determined that the parents should not attend appointments together.

Next, Father complained that the trial court abused its discretion in deviating from the standard possession order. The court awarded each parent 15 days a month in each of June, July, and August. The court explained to Father that this was more generous to him than the standard 30 days. Father appeared to be complaining that he did not get 30 consecutive days. However, Mother testified that 30 days away from the Children would be too long for either parent. The trial court's determination was not an abuse of discretion.

Father additionally attempted to challenge the division of the community estate; however, no findings of fact were issued, making an appellate review impossible.

Finally, Father asserted the trial court erred in failing to hold Mother in contempt for violations of temporary orders, e.g., drinking alcohol, letting her fiancé stay the night, and failing to inform him of the change to the Child's therapist. Contempt should only be used as a last resort, and despite his pleading for jail time, Father testified that he did not want Mother to go to jail. Rather, he asserted the trial court ignored the best interest of the Children. The record did not support this assertion; the court stated it wanted the Children to have a great relationship with both their parents.

GO TO TABLE OF CONTENTS

SAPCR:
POSSESSION

Evidence Sufficient To Support Award To Mother Of Marital Residence, Granting Father A Non-Expanded Standard Possession Order, And Ordering Father To Pay Maximum Guideline Child Support.

¶25-2-42. *In re Marriage of Peralta*, No. 05-23-00217-CV, 2025 WL 251339 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (01-21-2025).

Facts: A divorce decree awarded Mother the marital residence, appointed the parties joint managing conservators of their two Children, granted Mother the exclusive right to designate the Children's primary residence, awarded Father a non-expanded standard possession order, and ordered Father to pay maximum guideline monthly child support to Mother. Father appealed.

Holding: Affirmed.

Opinion: Father asserted the trial court erred in not granting him expanded standard possession as that was presumptively in the best interest of the Children. Contrary to Father's assertion, the trial court was not required to make a written finding before deviating from the Family Code's standard possession order. Additionally, the evidence supported granting Father less than the expanded standard possession order. After Father's periods of possession, the Children were sleepy, malnourished, and sick with fever, headaches, body aches, and a stomach virus, resulting in poor performances at school. Father failed to take the Children to soccer practices and did not respond to Mother's communications regarding the Children. Additionally, there was evidence of family violence by Father, although Mother did not make an allegation of that in her pleadings or seek that his periods of possession be supervised.

Father further challenged the amount of his child-support obligation because it failed to consider his business expenses when computing his net resources. Mother produced bank statements showing Father's income from two jewelry stores, and she testified there were additional cash sales that were not accounted for in the bank statements. The trial court was free to take Mother's evidence as more credible than Father's.

Father finally challenged the award of the marital residence to Mother. Father asserted Mother and her sister purchased the home together with the intent that Mother and Father would own half, and Mother's sister and husband would own half. The community estate included many assets. Each party was awarded a jewelry store, with Father receiving the more profitable one. Further, there was evidence that Father disposed of assets during the divorce and refused to obey court orders requiring the return of those assets.

Father Not Entitled To Greater Possession Time Merely Because Jury Found He Should Have The Exclusive Right To Designate The Children's Primary Residence.

¶25-2-43. ***Gopalan v. Marsh***, __ S.W.3d __, No. 03-22-00649-CV, 2025 WL 272092 (Tex. App.—Austin 2025, pet. filed) (mem. op.) (01-23-2025).

Facts: Mother and Father purchased a residence about a year after they married, and the source of funds for that purchase was disputed during their divorce proceedings. After an 8-day jury trial, the jury determined Father should have the exclusive right to designate the primary residence of the parties' two Children and that the residence was property of mixed character, with each party and the community estate having a percent interest. Subsequently, the trial court granted Mother's motion for JNOV, finding Father failed to overcome the community property presumption and awarded the residence to Mother. The final order appointed the parties joint managing conservators and gave Father the exclusive right to designate the Children's primary residence, but it gave many other exclusive rights to Mother and

imposed a bond on Father of $250,000 before he could travel internationally with the Children. The court also ordered Father to pay Mother monthly child support and gave Father a possession order awarding him less time than a standard possession order would. Father's possession time would increase upon completion of joint therapy. Father appealed.

Holding: Affirmed.

Majority Opinion: (C.J. Byrne, J. Theofanis)

Father argued that the trial court's order contravened the jury verdict finding he should have the exclusive right to designate the Children's primary residence by failing to make him the "primary" parent and by not awarding him more possession time than that awarded to Mother. However, nothing in the Family Code defines "primary" parent, nothing ties the right to determine a child's primary residence to possession time, and the Code prohibits a jury from determining possession time. Further, the evidence, reviewed under an abuse-of-discretion standard, supported the trial court's possession order. For example, Father refused to take one of the Children to summer activities and was reportedly aggressive with the Child about that decision. The trial court's order was consistent with the verdict and the Family Code.

Similarly, Father argued the trial court erred in—despite the jury's finding he should be the "primary" conservator—granting Mother the exclusive rights to consent to medical and psychological treatment, educational decisions, and to apply and keep the Children's passports. Although Father raised constitutionality challenges in his brief, a decree granting certain exclusive rights to one fit parent is not unconstitutional and is permitted by the Family Code. Evidence here showed the parents had difficulty making decisions together, supporting the court's decision to give one person those exclusive rights.

Father additionally challenged the imposition that he post a bond before traveling internationally with the Children. Father had strong ties with India, which country is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction. Father argued the trial court's reliance on this fact was insensitive, given his presence in the U.S. for the prior 24 years. He challenged the trial court's finding as one evoking racial stereotypes. Father further argued that the amount of the bond was exorbitant. The Family Code provides a list of factors to consider when there may be risk of international abduction, including whether a parent has strong cultural ties to a country that is not a member of the Hague. The Code permits requiring a bond to offset the costs of recovering the child. Further, Mother testified that Father had threatened to take the Children away and that he lacked sufficient financial reasons to stay in the U.S. Despite the large amount of the bond, $250,000 was less than the $1.12 million Father claimed he had already incurred in litigating the current suit. Moreover, Father earned an annual income exceeding $500,000. Finally, the bond did not prohibit Father from travelling with the Children, and the state had a compelling interesting in protecting the Children from international abduction. The bond was not imposed because Father was Indian but because he had threatened to take the Children to India.

Father next complained of the trial court granting him the exclusive right to designate the Children's primary residence while also requiring he pay monthly child support to Mother. Father earned roughly 12 times the amount Mother earned annually, and her monthly expenses exceeded her monthly income. Based on the record, the trial court did not err in ordering Father to pay child support to Mother.

Father further complained that the trial court erred in its characterization of a residence. The jury found Father had a 5.95% interest in the residence, but the trial court granted a JNOV finding Father failed to meet the standard for clear and convincing evidence to overcome the community-property presumption. Father claimed at trial to have used funds from a pre-marriage 401(k) to make the down-payment on the residence. However, Father was unable to obtain statements dating back to the relevant time period. Additionally, Father did not establish that his 401(k) had not commingled with community funds before the purchase of the residence. Without any documentary evidence to support Father's testimony, his testimony amounted to no more than a scintilla of evidence, and the record was legally insufficient to support the jury's separate-property finding.

Concurring and Dissenting Opinion: (J. Triana)

The jury's verdict should carry with it implications for the amount of possession time entitled to a person with the exclusive right to designate a child's primary residence. By definition, a primary residence is the principal, or most important, residence. For a residence to be the most important, the child should live there at least half, if not more, of the time. This would also be consistent with the IRS's definitions relating to deductions. If the parent with the right to determine the primary residence does not get to

choose where the child lives at least half of the time, then what right have they been given? The right to choose where the parent who has possession for most of the time lives? That would be an absurd result.

Additionally, the majority incorrectly applied the no-evidence standard to Father's characterization issue. The appellate court was limited to reviewing only the evidence supporting the verdict and was required to disregard all evidence to the contrary. Father's testimony was uncontroverted, and the trial court erred in ignoring the jury's determination.

Editor's comment: *While the typical cost to obtain a bond ranges from 1% to 10% of the total bond, child surety bonds often require collateral equaling some or all of the total. I've seen this go poorly in mediation when the parties did not realize what they were agreeing to. B.M.J.*

Editor's comment: *I agree with the dissent and am concerned about the majority opinion especially regarding Father not receiving possession of the children at least half of the time when he was given the right to determine the children's "primary residence." Various dictionaries define "primary residence" as the residence where a person lives for most of the year. As to the majority's comment regarding the TFC not specifically tying "primary residence" to possession, the Texas Supreme Court has held that "Undefined terms in a statute are typically given their ordinary meaning, but if a different or more precise definition is apparent from the term's use in the context of the statute, we apply that meaning." In re Ford Motor Co., 442 S.W.3d 265, 271 (Tex. 2014). How is Father's residence the children's "primary residence" if they don't live at that residence for at least one-half of the year? G.L.S.*

Editor's comment: *Again, I agree with G.L.S. What does "primary residence" mean if not where the child primarily lives? Common sense could do just as well as dictionary definitions in this instance. When looking at standing for a nonparent who claims actual care, control, and possession, the supreme court said that the person must share a "principal residence" with the child, which means that the child lives there more than half the time. In re H.S., 550 S.W.3d 151, 159–60 (Tex. 2018). I think principal residence and primary residence are synonymous. P.M.L.*

Father's Aggressive Behavior And Disregard Of The Child's Emotions Supported Granting Him Only Periodic Video Access And Prohibiting Him From Interacting With The Child's School And Medical Professionals.

¶25-2-44. *In re S.C.T.*, No. 09-23-00044-CV, 2025 WL 635082 (Tex. App.—Beaumont 2025, no pet. h.) (mem. op.) (02-27-2025).

Facts: After their divorce, Mother sought to limit Father's periods of possession with the Child because Father's behavior caused the Child anxiety. Father threatened therapists and evaluators who provided reports that Father was aggressive and paranoid. Initially, the trial court temporarily limited Father's access to the Child to two eight-hour periods on the first and third Saturdays plus two ten-minute phone calls on the second and forth Saturdays of the month. Father filed pro se motions to set aside the child custody evaluations on the ground that he was not determined to be unfit. Mother said that Father told the Child that Mother lied to her, and Father made efforts to remove people who might help the Child from the Child's life. Mother was cautious about asking the court for help because Father retaliated through the Child. After another evidentiary hearing, the court temporarily excluded Father from possession of or access to the Child until after another custody evaluation. The new evaluation was critical of both parents and recommended Father's access resume on a stair-step progression. Mother later filed a motion for emergency temporary orders, attaching an affidavit from the court-appointed supervisor who reported suicidal ideations from the Child purportedly based on Father's behavior. The trial court granted Mother's requested relief, noting Father's open disregard for the orders prohibiting him from discussing litigation with the Child.

Questions of conservatorship were presented to a jury. Mother testified at length about the difficulties presented by Father's behaviors and asked for exclusive rights to make medical, psychiatric, and educational decisions for the Children. She asked that Father not attend the Child's extracurricular activities during Mother's periods of possession. Mother did not believe the Child would be better without Father, but she wanted both parents to be mentally healthy and safe. She did not think Father was a good parent,

but the Child loved Father. Father testified about the conspiratorial plot against him. Father did not take medication recommended by mental health professionals. He claimed to have sought counseling but had no records to support that claim. He believed it was appropriate for him to tell Mother how to parent and admitted to calling Mother names and questioning the Child about Mother's life. Father produced extensive videos that he claimed to have taken to protect himself, but some of the videos supported Mother's version of events. A therapist testified that Father projected blame onto others but was unable to accept responsibility for his own actions. However, the therapist also criticized Mother for believing Father was the sole cause of the Child's problems. Other than anxiety issues, the Child appeared to be a normal, happy child. The therapist recommended Father's visitation resume with "strings attached." Other witnesses testified along similar lines.

The jury found the parents should be joint managing conservators, with Mother having the exclusive right to determine the Child's primary residence. The trial court held a hearing to address the remaining issues. The judge granted Mother's requested relief and expressed regret at that outcome. The judge explained that he believed Father should have a relationship with the Child, but the Child's suicidal ideations should be taken seriously. In addition to granting Mother most of the statutory rights exclusively, the court permanently enjoined Father from appearing at the Child's school and repetitively asking to speak to the Child outside of his designated times.

Holding: Affirmed.

Opinion: Father first argued that the trial court erred in not granting him specific periods of possession of the Child. Citing *In re J.J.R.S.*, 627 S.W.3d 211 (Tex. 2021), the court noted in some circumstances, an order for possession "as agreed" can be in a child's best interest. Further, contrary to Father's assertion, the possession order did not completely deny Father possession or access. The order gave Father video visitation three times a month on specific days at specific times and allowed for the possibility for an expansion of his access per written agreement. Multiple witnesses testified about the negative impacts of Father's behavior on the Child. Contrary to Father's assertion, the appointment as a joint managing conservator did not require the award of equal or nearly equal periods of possession.

Father next argued the court erred in requiring him to secure all firearms during his periods of possession, asserting this infringed on his Second Amendment rights. The Child had repeatedly mentioned Father's guns to counselors and reported Father was scary and had pointed a gun at someone. Further, multiple witnesses testified the Child expressed a desire to kill herself and once asked for a weapon. Moreover, the restriction only required Father to secure his firearms while the Child was in his possession. Protecting the Child from harm was a compelling government interest.

Father further complained of the prohibition from recording the Child and others. Father asserted this restriction violated his First Amendment rights. The evidence showed that Father's recordings made the Child uncomfortable to the extent that she quit some activities that she had enjoyed. This evidence supported a finding that the restriction against videoing the Child was in the Child's best interest. Further, there is no constitutional right to record others.

Additionally, Father challenged numerous other prohibitions, including him contacting the Child's school, teachers, medical professionals, and others. Significant evidence showed Father's poor behavior at school events, which constituted some evidence of a substantive and probative behavior supporting the injunctions being in the Child's best interest.

In his fifth issue, Father challenged the permanent inunction against having non-married romantic interests stay the night when the Child was present. Although Father testified to a stable relationship with his girlfriend, the next day, he contacted the police for a civil standby while his girlfriend moved out of Father's home.

In his last issue concerning the Child, Father challenged the court's award of exclusive rights to Mother. The trial court's order mirrored the therapist's recommendations, which were further supported by evidence of Father's harmful parenting, dismissive attitude about the Child's emotions, and disregard of court orders.

Finally, Father argued the court erred in awarding Mother attorney's fees for trial and conditional post-judgment and appellate attorney's fees. The evidence presented satisfied the *Rohrmoos* standard and an attorney's fee award was permitted by the Texas Family Code.

SAPCR:
CHILD SUPPORT

Mother's Testimony Of Father's Income During Relationship And That Father Continued To Do The Same Work Supported Finding Of Net Resources When Father Offered No Contradictory Evidence.

¶25-2-45. *Lee-Young v. Paterson*, No. 01-22-00834-CV, 2024 WL 5048983 (Tex. App.—Houston [1st Dist.] 2024, no pet. h.) (mem. op.) (12-10-2024).

Facts: Father worked as a party planner, MC, and club promoter. After Mother and Father had been separated for about three-and-a-half years, Mother sought child support and retroactive child support from Father. Mother alleged Father had provided zero financial support for the eight-year-old child. Mother testified as to Father's income but was unable to provide documentary evidence because Father failed to respond to discovery. Mother acknowledged that she lacked personal knowledge of Father's current income, but she testified about what he had earned during their relationship and that he continued to do the same work. She additionally noted that Father was paid in cash and did not report all his income to the IRS. The trial court based child support on Mother's testimony and granted a judgment for arrearages of nearly $50k. The arrearages were to paid at the rate of $100 per month until paid in full, as Mother requested. Father appealed.

Holding: Affirmed.

Opinion: Father asserted that no evidence supported the trial court's determination of his net available monthly resources. Mother testified Father had been in the same profession for 15 years and that he earned about $7500 monthly during their relationship. She testified that Father told her this and that she had seen the money firsthand. Father did not dispute that he had earned that amount in the past, that he told Mother he earned that amount, or that Mother had seen the cash. Both parties testified that Father was still doing the same type of work he had done while Mother and Father were in a relationship. Mother testified that she had seen on Facebook that Father was busy with work. Although the evidence was not conclusive or indisputable, it lacked any contradictory evidence.

Although Father did not raise a factual-sufficiency challenge, the court reviewed the evidence for factual sufficiency. The absence of Father's financial information and tax returns did not adversely affect the sufficiency of the evidence admitted at trial. Additionally, the trial court was required to resolve the factual disputes. Moreover, it was undisputed that Father was paid in cash and did not report all of his income, which would make his excluded tax documents less informative even if admitted.

Father's Choice To Start Own Business Was Not Evidence Of Intentional Underemployment.

¶25-2-46. *In re N.A.W.*, No. 09-22-00354-CV, 2024 WL 5160039 (Tex. App.—Beaumont 2024, no pet. h.) (mem. op.) (12-19-2024).

Facts: After several prior modifications of child support, the OAG initiated a suit to review Father's child support obligation. Mother filed an answer asserting there had been no change in circumstances and that Father's obligation should remain the same. Father asserted that his income had dramatically decreased and requested a reduction of his child-support obligation. During the prior suit, Father had a job working for an electric company, but he was no longer employed there. He had started his own business. His income fluctuated, but he was able to pay himself a steady weekly paycheck plus a weekly draw at the advice of his CPA. After a bench trial, the court found Father's net resources were less than they were at the prior order and modified Father's obligation accordingly. Mother appealed.

Holding: Affirmed.

GO TO TABLE OF CONTENTS

Opinion: First, Mother asserted the trial court erred in finding a material and substantial change in Father's financial circumstances because, in the prior suit, he had testified about the potential risk of losing hours, making the reduction an anticipated change. At the prior modification, Father stated he had formed an LLC but did not intend to start operating his own business yet because he was still making good money with his current employment. Father had additionally testified that he understood that his hours were going to be reduced due to Covid causing fewer business opportunities for his employer, but Father did not anticipate a total elimination of hours. Moreover, although there was a potential for Father to begin operating his own business, there was no indication that Father or the court could have known what his income would have been through that venture.

Mother next argued that the court erred in calculating Father's net resources. Although Father had not yet filed a tax return for his business, he presented testimony and bank statements to show his income and expenses. Although Mother claimed Father appeared to be continuing to live the same lifestyle as before, the trial court was free to believe Father over Mother.

Finally, Mother argued the trial court erred in failing to find Father was intentionally underemployed. While a person cannot evade a child-support obligation by voluntarily remaining underemployed, a parent has a right to pursue his own happiness. The court must engage in a case-by-case determination to decide whether child support should be set based on potential versus actual earnings. Here, Father's prior employer reduced Father's hours and encouraged him to file for unemployment. Father chose not to seek unemployment but instead started his own company. Although Father had been making less money than before, so was his prior employer. There was no evidence that Father's reduced income was intentional.

Evidence Supported Finding Father Was Underemployed Because He Was Paid $9 An Hour By A Consulting Company He Founded With His Wife.

¶25-2-47. *In re J.T.L.*, No. 14-23-00741-CV, 2025 WL 409044 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (02-06-2025).

Facts: Mother and Father never married and had one Child. Father was ordered to pay child support and medical support. A few years later, he sought to decrease his child support obligation. Mother countered with a petition seeking an increase in child support because Father was intentionally underemployed. After a bench trial, the court agreed with Mother and increased Father's child support obligation. Father appealed.

Holding: Affirmed.

Opinion: Father worked as an office clerk earning $9 and hour with irregular hours. Additionally, he was a musician. While he used to have a successful career as an R&B singer, he transitioned to Christian music, which resulted in a significant decrease in earnings. He further testified that his earning potential was limited because he only had a high school diploma, and he had a criminal record for assault. He had worked as a janitor in the past, but he claimed that job paid less than the office clerk job.

Mother testified that Father used to have an ownership interest in a medical supply company, which allowed Father to earn a few thousand dollars a month. Mother did not offer any documentary evidence to support that claim, which Father argued made Mother's testimony insufficient to support a finding of his underemployment.

However, a tax return from two years before the modification was introduced showing Father's self-employment income had been $153,300. Additionally, there was evidence that Father and his current wife founded the company for which he was allegedly an office clerk. Although Father denied founding the company, he was its registered agent. A formal letter from the company documenting Father's pay was dated less than three weeks before he filed his modification suit. The company consisted of four individuals, including Father and a person who was paid entirely on commission. Finally, the evidence showed Father did not have a close relationship with the Child and had not exercised his possession rights in the last three years. The trial court did not abuse its discretion in finding Father was underemployed.

SAPCR:
MODIFICATION

No Explicit Written Finding Of Material And Substantial Change Required When Evidence Supported An Implicit Finding Of A Material And Substantial Change; Attorney's Fee Award Remanded Because Attorney's Testimony Was Conclusory.

¶25-2-48. *In re L.C.*, No. 05-23-00632-CV, 2024 WL 5001934 (Tex. App.—Dallas 2024, no pet. h.) (mem. op.) (12-06-2024).

Facts: After a SAPCR modification proceeding at which Father appeared pro se, he appealed, raising 18 issues (most of which were waived for inadequate briefing).

Holding: Reversed and Remanded in Part; Affirmed in Part.

Opinion: Father argued that the trial court erred in modifying conservatorship and child support because it did not make an explicit finding of a material and substantial change. However, despite not using the term "material and substantial change," the court outlined the reasons for its ruling, including the changed circumstances since the prior order. The trial court followed the statutory guidelines, and the evidence supported the ordered modification.

Father additionally complained that the trial court failed to make necessary findings of facts. After the court signed its initial findings, Father filed 82 pages of requested additional findings of fact and conclusions of law. While this request in the trial court preserved his complaint on appeal, Father failed to show how any specific omitted finding or conclusion affected the ultimate issues or disposition in the case.

Father complained of the time limitations at trial. The parties had requested 2 hours per side, but the trial court allotted them 45 minutes per side. Before trial, Father objected to this time limitation. During the proceeding, the court gave each party equal time and advised them of their time remaining. Father asserted that he lacked time to present evidence and arguments; however, he failed to make an offer or proof or a post-trial bill of exception setting forth the evidence and arguments he would have provided.

Finally, Father complained of the attorney's fee award to Mother. At trial, Mother's attorney testified about the years licensed, board specialty, hourly rate of the attorney and support staff, total number of hours worked, and total amount requested. The attorney stated a belief that the fees were reasonable and necessary. Although this constituted "some" evidence, it was general, conclusory, and failed to meet the requirements of *Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469 (Tex. 2019). Because Mother presented some evidence to support her claim, the appellate court remanded the issue for further proceedings.

Editor's comment: *To give an appellate attorney a chance to argue about time limitations, I think you need to (1) object in writing or on the record before trial to the time limitation AND provide detail as to why you need additional time (# of experts, complexity of issues; anticipated time for each witness, etc.); (2) raise an objection before trial begins about the time (and perhaps ask for more time after time checks); and (3) after trial, file a bill of exception detailing all the evidence and arguments you would have offered if you had been afforded more time. (In step one, it might help to remind the trial judge that s/he is not permitted to, in a final trial, rely upon testimony heard at prior hearings.) Without all of those pieces, the issue will almost always be waived for appellate review because "[e]very trial court has the inherent power to control the disposition of the cases on its docket 'with economy of time and effort for itself, for counsel, and for litigants.'" B.M.J.*

Editor's comment: *As soon as you receive notice of a time limit, which many times occurs at the pretrial hearing, you should file a Motion for Additional Time setting out the issues, number of witnesses, including experts, that you anticipate will be called, and how much time that you will need for their direct exam and cross-examination and that the time limitation prevents your client from having a fair opportunity to*

*present their case. Obtain a hearing, make sure it is on the record, get a signed order, and request a transcript. Then if the trial court denies the requested additional time, you will have an opportunity to seek a mandamus prior to trial and request a stay of the trial if necessary. "Every trial court has the inherent power to control the disposition of the cases on its docket "with economy of time and effort for itself, for counsel, and for litigants." Int. of B.W.S., No. 05-20-00343-CV, 2022 WL 2712494, at *3 (Tex. App.—Dallas July 13, 2022, no pet.) (mem.op.) (quoting State v. Gaylor Inv. Trust P'ship, 322 S.W.3d 814, 819 (Tex. App.—Houston [14th Dist.] 2010, no pet.). "That inherent power, together with applicable rules of procedure and evidence, give trial courts broad, but not unfettered, discretion in handling trials." Id. However, "[t]he control given the trial judge must be exercised reasonably, and a party must be given a fair opportunity to present its case so that the factfinder may ascertain the truth." Id. In the event the mandamus is denied, re-urge your request at the beginning of trial and if you are unable to put on all your evidence, re-urge your request and put on offers of proof as to what testimony you believe each of the witnesses/experts would have given and include as documentary offers of proof each document that you believe would have been introduced into evidence if given sufficient time. G.L.S.*

***Editor's comment:** I agree with B.M.J. Preserving error regarding lack of time is extremely burdensome. I'd add that, when the court says your time is up, ask for more time to call each of the witnesses you still want to call and why, and when the court says no, then ask to make an offer of proof as to each and every witness and the evidence (both testimony and documentary) that they will provide. Denying the opportunity to make an offer of proof requires reversal on appeal. So, either way, the judge is going to hear your evidence, either in the offer of proof or in a retrial—the question to consider before doing that is how mad do you want to make the judge if you're going to have to retry the case in that same court again. P.M.L.*

Exclusion In Jury Trial Of Temporary Orders Permitting Mother's Move Outside Original Geographical Restriction Improper Given Father's Portrayal Of Mother's Move As "Unilateral."

¶25-2-49. *In re B.A.R.U.*, No. 14-23-00328-CV, 2025 WL 454221 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (02-11-2025).

Facts: After a brief romantic relationship ended, Mother discovered she was pregnant, and a suit affecting the parent-child relationship began. The initial temporary order gave Mother the exclusive right to designate the Child's primary residence in Harris County. However, Mother had been unemployed for quite some time and was having difficulty finding work in Harris County. When she was offered a job in Dallas County, the trial court, after a hearing, modified the temporary orders to include Dallas in the geographical restriction.

In a jury trial, Father argued Mother "unilaterally" moved to Dallas. Mother sought to introduce the modified temporary orders into evidence to show she had prior authorization to move. Father argued that admitting the order would amount to a comment on the weight of the evidence by the judge. Mother was allowed to answer a question affirming that no order had been violated, but the trial court refused to allow the admission of, or discussion about, the modified temporary orders. However, the initial orders restricting the residence to only Harris County were admitted into evidence.

The jury found in Father's favor and granted him the exclusive right to designate the Child's primary residence in Harris County. Mother appealed.

Holding: Reversed and Remanded

Opinion: In his appellee's brief, Father argued Mother failed to preserve her complaint for appeal by failing to make an offer of proof of the excluded evidence. The record clearly established what evidence Mother sought to admit and which was excluded, and the excluded temporary order was in the trial court's file and clerk's record on appeal. There was no mystery or confusion regarding what the evidence was.

Mother argued the trial court erred in excluding the order because it was relevant to the question presented and Father created a false impression throughout trial implying Mother's move was done unilaterally and without authorization. Generally, orders containing findings based on pretrial evidence could form a judicial influence no less proscribed than judicial testimony. However, orders could be admissible

for certain purposes so long as the judge's factual findings are redacted. Additionally, otherwise inadmissible evidence may be admitted to correct a false impression.

Here, the order in question was signed by an associate judge, not the judge presiding over the jury trial. Additionally, the order did not contain any findings of fact; it simply modified the geographical restriction. Further, the order was necessary to rebut the false impression created by Father. Because Mother's move to Dallas was a key issue at trial, the exclusion of the modified temporary order probably contributed in a substantial way to bring about the adverse judgment. Despite the trial court noting that it was unfair of Father to refer to the move as "unilateral," the court nevertheless excluded the order and prohibited Mother from testifying that she was authorized by the court to make the move. Her sole answer of "no" to the question of whether she violated an order conflicted with the story presented by Father and did little to ameliorate the harm.

Editor's comment: *While this appeal was pending M filed a new modification suit and neither side asked that it be abated while the appeal remained pending. As such, the parties geared up and began a jury trial in December 2024 in the modification suit. Trial was suspended for a short period to conduct additional discovery and before the jury returned to complete the trial, this Opinion was issued. By virtue of the court's Opinion reversing and remanding the original order, the trial court has now declared a mistrial of the modification proceeding since there is no longer an order to be modified! S.S.S.*

Father's Access To Middle Child Reduced Because Father Failed To Exercise His Possession Consistently, He Offered To "Give" Custody To Mother, The Child Adamantly Did Not Want To Spend Time With Father, And Father And The Child Had "Some Pretty Ugly Fights" And "Traumatic Events."

¶25-2-50. *In re R.O.M.*, No. 05-23-00926-CV, 2024 WL 5102895 (Tex. App.—Dallas 2024, no pet. h.) (mem. op.) (12-13-2024).

Facts: Mother and Father were divorced with three Children, ages 17, 14, and 11 at the time of this modification. At a hearing in the modification suit that Father initiated, Mother complained that Father never exercised his possession awarded to him in the divorce decree. Father countered that he initially visited the Children at Mother's house, but the middle Child did not want to come to see him. He stated that the older two Children used to visit him periodically, but that "totally died." Father often allowed the middle Child to stay with Mother instead of visiting him. Father acknowledged the Children felt like he had abandoned them but denied doing so. However, he once texted Mother an offer to take custody of the youngest Child in exchange for Mother taking the other two. Once, the middle Child texted Mother asking for the cops to be called because Father was chasing and threatening the middle Child. The middle Child told Mother via text that Father had tackled her and pinned her to the wall because the middle Child would not give him his phone. She texted that her Father's girlfriend had the abuse on video and asked Mother to tell the cops that Father was abusing the middle Child. When the police arrived, they admonished the middle Child for not listening to her father. The trial court met with the older two Children in chambers. Additionally, a therapist testified that the middle Child had suffered from "some pretty traumatic events." A final order limited Father's access to the middle Child to two 2-hour lunches a month in a public restaurant. Father appealed.

Holding: Affirmed.

Opinion: Father argued that neither party asked for his possession to be reduced, and the issue was not tried by consent. He argued that the order had to be vacated for not conforming to the pleadings. Father pleaded a material and substantial change supported giving him the exclusive right to designate the Children's primary residence with Mother being awarded a standard possession schedule. Mother requested sole managing conservatorship. At trial, Father requested an expanded standard possession schedule, and Mother stated they needed a clear possession schedule. Neither party sought a reduced schedule for Father's periods of possession with the middle Child. However, both parents placed possession of the Children as an issue to be resolved by the trial court, and Father sought modification. Accordingly, the trial court had authority to modify the possession order in a manner that was in the best

interest of the Children. Further, contrary to Father's assertion, the evidence supported reducing Father's time with the middle Child.

Order Requiring Father To Pay For Alcohol Monitoring And Supervisor Reasonable Given Father's Failure To Comply With Prior Orders Not To Consume Alcohol.

¶25-2-51. *In re R.M.T.*, No. 05-23-01164-CV, 2024 WL 5198702 (Tex. App.—Dallas 2024, no pet. h.) (mem. op.) (12-23-2024).

Facts: At the time of trial, Father had not seen the Child in 15 months because of his failure to comply with court orders regarding his alcohol abuse. Although Father was represented by counsel for the majority of the proceedings, he was not represented at trial or on appeal.

Holding: Affirmed.

Opinion: Among other complaints, Father asserted that the imposition requiring him to pay for alcohol monitoring and court-appointed supervisor was excessive and beyond his ability to pay. However, Father failed to present any evidence regarding the costs of those expenses. Moreover, even if these costs were construed as child support, the court had authority under the Family Code to deviate from the guidelines if a deviation was supported by the evidence. Father's net resources were $8500 a month, and Mother's were just over $5000. The Child's monthly expenses were at least $5000, and Mother paid for insurance and childcare. Father's actions throughout the case were abusive, groundless, baseless, and frivolous, causing Mother to incur excessive legal fees. Father admitted to being noncompliant with court orders that he refrain from alcohol use. The trial court did not abuse its discretion in requiring Father to pay for alcohol monitoring and a supervisor to facilitate his access to the Child.

Editor's comment: *Neither Mother nor the OAG filed a responsive brief in the appeal. B.M.J.*

Injunction Preventing Grandparents From Contacting Children Not A Prior Restraint On Their Freedom Of Speech Because Injunction Was Not Content-Based.

¶25-2-52. *In re C.T.H.*, No. 05-22-01202-CV, 2024 WL 5232862 (Tex. App.—Dallas 2024, no pet. h.) (mem. op.) (12-27-2024).

Facts: Early in their relationship, Mother, Father, and one of their Children lived with the maternal Grandparents. Mother and the Child moved out, but after the birth of the second Child, Mother moved back in with Grandparents. Shortly afterwards, Mother and Father divorced. The decree appointed Mother and Father as joint managing conservators with Mother being "primary." Grandparents had intervened in the divorce and were ordered to provide secondary health insurance for the Children.

In a subsequent modification proceeding, Mother stated that she had moved out of Grandparents' home and that Grandmother had become more controlling since Mother and Father's divorce. Mother moved in with her boyfriend, who she later married. Grandparents intervened in the modification suit seeking to be named sole managing conservators of the Children. Father had no affirmative pleading in the suit. After a trial, Grandparents were released from any obligation to provide health insurance, their requests for conservatorship and possession were denied, and multiple injunctions were entered against Grandparents to prevent them from contacting the Children. Grandparents appealed.

Holding: Affirmed

Opinion: Grandparents argued the injunctions preventing them from contacting or communicating with the Children, Mother, and Mother's husband and from contacting the Children's child-care facilities or schools constituted an unconstitutional prior restraint on their free speech without the requisite supporting findings. First, Grandparents failed to make this complaint to the trial court. Moreover, even if they preserved their complaint, it lacked merit. The injunctions were not directed at the content of Grandparents'

communications. Because the injunctions were not content based, the court was not required to perform a prior restraint analysis.

Grandparents additionally argued that the evidence did not support any of the injunctions against them. They asked the appellate court to review whether the traditional requirements of a permanent injunction—a wrongful act, imminent harm, irreparable injury, and no adequate remedy at law—were met, as the Fort Worth appellate court does in family law cases. However, in family-law cases, the Dallas court reviews permanent injunctions for an abuse of discretion. Grandparents argued the injunctions could not stand under either standard. The trial court was in the best position to weigh the evidence and found that Grandmother's behavior had risen to the level that it was in the Children's best interest that she be enjoined from contacting the Children's schools. It further found that the injunctions were necessary due to the high level of animosity between the parties.

Grandparents further argued that a conflict between the findings and injunctions required reversal. Despite an injunction that Mother not permit the Children to have contact with the Grandparents, the court issued a finding that Mother had the discretion to choose to allow Grandparents to have access to the Children. If there is a conflict between the judgment and findings, the findings control. Here, however, the conflict was harmless. Even if that injunction were vacated, other injunctions prevented Grandparents from communicating with the Children. Thus, a modification suit would still need to be filed if Mother changed her mind about Grandparents' access to the Children.

Grandparents additionally sought to enforce an MSA entered into during Mother's divorce proceeding that gave Grandparents access to the Children. Grandparents did not raise this issue in the trial court, and the MSA applied to the divorce, not the subsequent modification suit. The trial court did not abuse its discretion in refusing to render judgment on the ten-year-old MSA.

Grandparents next argued that the trial court erred in failing to reopen the evidence to present online interviews given by Mother discussing one of the Children's sexuality and suicidal behaviors. Grandparents believed Mother's actions could significantly impair the Children's mental health. However, some of these interviews happened before the trial. Thus, Grandparents failed to establish due diligence in obtaining the evidence to support reopening the evidence.

Finally, Grandparents argued the evidence was insufficient to support a fit-parent finding. Because there is a presumption of fitness, Grandparents bore the burden of overcoming that presumption. However, Grandparents' allegations were not supported by the evidence, and there was evidence to reflect Mother had legitimate reasons to disassociate herself and her Children from Grandparents. Contrary to Grandparents assertions, the record reflected the Children were more than adequately cared for by their parents.

Mother Ordered To Pay Retroactive Child Support Based On Final Order Appointing Father, Instead Of Mother, As The Person With The Exclusive Right To Designate The Child's Primary Residence.

¶25-2-53. *In re D.N.W.*, No. 05-23-01104-CV, 2024 WL 5244611 (Tex. App.—Dallas 2024, no pet. h.) (mem. op.) (12-30-2024).

Facts: Mother and Father had one Child at the time of divorce. They were appointed joint managing conservators, and Mother had been granted the exclusive right to designate the Child's primary residence. After the Child was over the age of 12, Father filed a suit to be appointed the person with that exclusive right. In temporary orders, the Court gave Father that exclusive right with a condition that the Child's school not change. At final trial, the parents, Child's therapist, and custody evaluator testified. The Court granted Father's requested relief and ordered Mother to pay current and retroactive child support. Mother appealed.

Holding: Affirmed.

Opinion: First, Mother argued the evidence was insufficient to change the person with the exclusive right to designate the Child's primary residence from Mother to Father. However, the court heard significant evidence of the Child's behavioral issues while with Mother that did not exist while the Child was with Father. The Child had a history of lying to Mother, and while Mother asserted the Child lied to the court

and experts, there was no evidence to support that accusation. Additionally, the parents did not coparent well, and the Child, who was a teenager, stated a desire for Father to have the exclusive right to designate her primary residence.

Mother next asserted the trial court erred in its calculation of retroactive child support. However, Mother framed the question as a modification of temporary orders, which was not the case. The suit was to modify a prior divorce decree. Thus, contrary to Mother's assertion, Father was required to show a material and substantial change in circumstances since the divorce, not since the temporary orders. Further, the court had the authority to retroactively set the modification to begin after the date Mother was served or appeared in the suit, which it did. Finally, the fact that the court changed the person with the exclusive right to designate the Child's primary residence constituted a material and substantial change to support modification of child support.

Parties' Inability To Communicate Or Coparent Supported Granting Mother Exclusive Rights To Make Decisions And Changing Possession Schedule From 50/50 To A Modified Standard Possession Schedule.

¶25-2-54. *In re B.M.*, No. 02-24-00035-CV, 2025 WL 211330 (Tex. App.—Fort Worth 2025, no pet. h.) (mem. op.) (01-16-2025).

Facts: A divorce decree appointed the parents joint managing conservators and granted them a week-on/week-off possession schedule. Because Father was interfering with her periods of possession and not co-parenting well, Mother sought to modify the order to obtain the exclusive right to enroll the Child in school and to change Father's periods of possession to an expanded standard possession order. Father counter-petitioned, also seeking to modify conservatorship and possession. After a final hearing, the trial court granted Mother exclusive rights, including decisions about the Child's medical and education, and awarded Father a modified standard possession order. The trial court denied Father's motion for reconsideration and his request to reopen the evidence. Father appealed.

Holding: Affirmed.

Opinion: Father argued the modification of possession was not tied to changed circumstances and challenged the finding of fact regarding the parties' lack of communication and inability to cooperate or coparent because Father alleged those issues existed at the time of divorce and were not a changed circumstance. However, Father failed to challenge the other findings that support changing the possession schedule, including Father's failure to abide by court orders regarding electronic communication and his disparaging comments to Mother in front of the Child.

Father next argued that because he was a pilot, a standard possession order was inappropriate and unworkable and asserted that the trial court erred in not maintaining the 50/50 possession schedule. However, Father had asked in his counterpetition that Mother have expanded standard possession. Despite his pleading, at trial, Father asked for a 50/50 schedule and offered no explanation for the discrepancy. Moreover, Father failed to put on any evidence regarding any unworkability during trial. On appeal, Father failed to acknowledge extensive evidence to support the modification, including: Mother was in counseling, but Father was not; the Child's therapist testified that the parents' disputes were causing the Child stress; Father discussed litigation with the Child; Father refused to take the Child to events during his periods of possession; Mother believed a more stable schedule would be in the Child's best interest; a psychological evaluation showed Father had anger and irritability issues and was abusive; and Father failed to tell Mother about camps in which he enrolled the Child and failed to respond to her on OurFamilyWizard.

Father further argued about the court granting Mother exclusive rights. However, Father again ignored evidence to support the findings and did not challenge all of the findings of fact that supported the order.

Finally, Father complained of the court's denial of his motion to reopen the evidence. Father sought to put on additional evidence to show how the standard possession order was unworkable and that he had started individual counseling. The trial court permitted Father to make an offer of proof. Father was on notice of the issues being tried, and the trial court could have determined that Father had not exercised

due diligence in starting counseling. The psychological evaluation recommended counseling, and Father failed to seek it until nearly a year later.

Child's Therapist's Testimony Regarding Reports Of Abuse From Child Sufficient To Support Finding Mother Engaged In A History Or Pattern Of Abuse.

¶25-2-55. *Hoffman v. Hoffman*, No. 03-24-00141-CV, 2025 WL 270613 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (01-23-2025).

Facts: A final order had appointed Mother and Father as joint managing conservators of the Child, with Mother having the exclusive right to designate the Child's primary residence without a geographical restriction. After the Child was transported to the hospital for injuries in Colorado while in Mother's possession, a CPS case was initiated there. Mother and Father signed a Rule 11 agreement that Father would have possession of the Child until the CPS case was resolved. Father's understanding was that the parties would return to court at that time, but Mother believed the Child would be returned to her after the CPS case concluded. Colorado dismissed the case, and Father stated he understood the basis for the dismissal to be the Child's placement with him.

After the dismissal, Mother arranged for a visitation with the Child, at which Father sent his girlfriend to supervise. Mother attempted to place the Child in her car to go to the park, and Father's girlfriend resisted, believing that a supervision requirement was still in place. The police were called, and the girlfriend recorded the incident. The Child was heard to be screaming to be let out of Mother's car.

At a final trial in a modification suit, the video of the above incident was admitted. Additionally, the Child's therapist testified that the Child was extremely fearful of being kidnapped by Mother and reported being punched and slapped often by Mother. The court granted Father the exclusive right to designate the Child's primary residence and granted Mother an extremely limited possession order. Mother appealed.

Holding: Affirmed.

Opinion: Mother argued the trial court erred in finding she had engaged in a history or pattern of child abuse because the Colorado CPS investigation had been summarily dismissed. However, Mother ignored that the Child's therapist had testified that the Child reported multiple instances of abuse while in Mother's care. Thus, some substantive and probative evidence supported the finding.

Mother additionally argued the trial court erred by failing to enforce the parties' Rule 11 agreement. Father responded that Mother never filed a motion to enforce the Rule 11, and thus, the issue was not preserved for appellate review. The appellate court agreed with Father.

Father Granted Exclusive Right To Designate Child's Primary Residence Because He Provided More Stability And Support With The Child's Education.

¶25-2-56. *Chavarria v. Rodriguez*, No. 03-22-00716-CV, 2025 WL 352188 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (01-31-2025).

Facts: Mother and Father had been appointed joint managing conservators of their Child, with Mother having the exclusive right to designate the Child's primary residence. About six years later, Father filed a modification suit, alleging Mother had a history or pattern of child neglect. The seven-year-old Child had been found wandering around unsupervised while looking for help for Mother. Mother had attempted suicide, and the Child was aware of the attempt. CPS placed the Child with a family friend, and Father was not notified. Father was concerned because the Child had been returned to Mother's care without supervision.

In response to Father's suit, Mother asked to be named the sole managing conservator. However, the court signed agreed temporary orders providing the Child would remain in Father's possession for a time and then would return to Mother's care. Father's child support obligation would be abated while the Child was in his care. After a final hearing, the court continued the appointment of the parents as joint

managing conservators but granted Father the exclusive right to designate the Child's primary residence. It terminated Father's child support obligation, ordered Mother to pay child support, and granted Mother unsupervised access to the Child under a standard possession order. Mother appealed.

Holding: Affirmed.

Opinion: Mother argued the trial court erred in granting Father the exclusive right to designate the Child's primary residence. She argued the court abused its discretion in finding a material and substantial change and that the change was not in the Child's best interest.

Because Mother asked for the court to appoint her as a sole managing conservator, she judicially admitted to a material and substantial change to support modifying conservatorship. Thus, she could not complain on appeal about the sufficiency of the evidence to support that finding. In addition to the facts above, Father said that there had been difficulties exchanging the Child because Mother was often sick or lacked transportation. Mother also had a history of seizures and a stroke, which Father believed posed a risk to the Child's safety. Mother failed to keep the Child up to date with medical needs, including shots, glasses, and dental needs, despite Father providing medical insurance. The Child had attended five schools in 2 years and had 36 absences, 23 of which were unexcused. Additionally, the Child was behind in school and had failed a recent standardized test. During the time the Child stayed with Father, Father and his wife helped find programs to help the Child with school, and she loved school.

Mother denied being suicidal and stated she did not work because she was applying for disability. Mother did not believe the Child was delayed academically and attributed any difficulties to learning disabilities, not Mother's frequent moves. Mother stated she had been in a stable home for more than five months. Considering the evidence as a whole, the trial court did not abuse its discretion in granting Father the exclusive right to designate the Child's primary residence.

Mother's New Husband's Failure To Acknowledge How His Aggressive Behavior Affected The Children Supported Decision To Give Father The Exclusive Right To Designate The Children's Primary Residence.

¶25-2-57. *Cobb v. Dennis*, No. 03-23-00511-CV, 2025 WL 608321 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (02-26-2025).

Facts: Mother and Father had six Children, and in the divorce decree, Mother was granted the exclusive right to designate the Children's primary residence without a geographical restriction. Father was granted possession as agreed by the parties. Subsequently, through an MSA in a modification proceeding, Father was given a standard possession order. A few years later, Father sought a TRO and filed for modification, asserting that Mother's new husband had assaulted one of the Children. By the time of final trial, all but two of the Children had become adults, and Father sought to be their joint managing conservator with the exclusive right to designate their primary residence. The court granted Father's requested relief, and Mother appealed.

Holding: Affirmed.

Opinion: Mother asserted, relying on *In re V.L.K.*, 24 S.W.3d 338 (Tex. 2000), that the evidence was legally insufficient to support a finding that the modification would be a positive improvement for the Children However, after *V.L.K.*, the legislature amended the Family Code to remove the "positive improvement" language. To support a modification, Father was required to show that a material and substantial change occurred and that modification was in the Children's best interest. Construing Mother's complaint as a challenge to the second prong, the appellate court reviewed the record.

The trial court heard from seven witnesses—three of the Children, two ex-wives of Mother's current husband, Mother's current husband, and the Children's guardian ad litem. The adult Children testified about the current husband's angry outbursts and breaking of things in the home. The outbursts caused "terror" in at least one of the Children. One adult Child did not think the youngest two were safe around Mother's current husband; he was concerned about his Mother's ongoing relationship with the man.

Both ex-wives testified about verbal abuse and aggression but no physical violence. He was described as charismatic and manipulative. Mother's husband denied being a danger to the Children. He said he was in counseling and an "overcomers" class at his church. He expressed surprise at the older Children's testimony because they had normal interactions all the time and never mentioned being fearful. He also controverted his ex-wives' descriptions of his anger.

The guardian ad litem testified that she was unaware of any problems in the last 16 months and recommended the Children continue living primarily with Mother.

The trial court as factfinder could have reasonably determined that, despite his efforts, Mother's husband did not acknowledge or hold himself accountable for inappropriate conduct and failed to recognize the lasting impact of his assault. Considering the evidence as a whole and indulging every reasonable inference that would support the trial court's finding, the appellate court held that sufficient evidence supported the judgment.

SAPCR:
Enforcement of Possession / Conservatorship

Mother's Attorney/Husband Not Disqualified From Representing Her In Enforcement Proceeding Merely Because He Witnessed Alleged Violations By Mother.

¶25-2-58. *In re Monroe*, No. 04-24-00488-CV, 2024 WL 4965678 (Tex. App.—San Antonio 2024, orig. proceeding) (mem. op.) (12-04-2024).

Facts: Father filed an enforcement petition because Mother failed multiple times to surrender the Children to him for his periods of possession. Additionally, Father moved to disqualify Mother's attorney because Mother and her attorney were married, so her attorney would be a material fact witness. Mother's husband/attorney responded that he did not intend to testify and that his testimony was not necessary. The trial court granted Father's motion, and Mother sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Mother argued that Father presented no evidence in support of his motion. "To justify disqualification under Rule 3.08(b), the movant must establish the lawyer's testimony is 'required for the movant's claim or defense and prejudicial to the interests of the testifying attorney's client.'"

Here, Father presented no evidence to support his claim. He simply announced the intention to call Mother's husband/attorney as a witness. Although Father stated that Mother's husband/attorney witnessed two of the alleged violations, he did not establish that Mother's husband/attorney's testimony was necessary to establish whether the Children were surrendered. Father did not show that evidence was unavailable from any other source, and he did not show how he would be prejudiced by Mother's husband/attorney representing her in the enforcement proceeding.

Editor's comment: *Again, disqualification is an evidentiary matter. It appears that some evidence was presented but not enough to meet the burden. P.M.L.*

GO TO TABLE OF CONTENTS

SAPCR:
Enforcement of Child Support

Final Child-Support Modification Order Suit Did Not Prevent Subsequent Enforcement Suit Addressing Unpaid Child Support Obligations From Before That Modified Order.

¶25-2-59. *Randolph v. Randolph*, No. 14-23-00747-CV, 2024 WL 5132246 (Tex. App.—Houston [14th Dist.] 2024, no pet. h.) (mem. op.) (12-17-2024).

Facts: The parties' divorce decree required Father to pay child support. Three years later, Mother successfully petitioned to increase that obligation. Two years after that, Father filed an emergency petition to enforce possession and to modify child support. After hearing evidence, the trial court awarded Mother arrearages, held Father in contempt, and awarded Mother attorney's fees. Father's order of commitment was suspended so long as he paid child support as ordered. Father appealed.

Holding: Dismissed in Part; Affirmed in Part.

Opinion: A contempt judgment is reviewable only through a petition for writ of habeas corpus or a petition for writ of mandamus. This is true even when the contempt order is appealed along with an otherwise appealable order. Thus, the appellate court lacked jurisdiction to consider Father's complaints regarding the contempt judgment.

Father argued res judicata barred the trial court from enforcing arrearages accruing prior to the post-divorce modification. However, that prior modification order did not address arrearages. Thus, the issue of arrearages had not been previously tried and was not barred by res judicata.

SAPCR:
Removal of Child / Termination of Parental Rights

Mother Entitled To Extension Of Automatic Dismissal Date To Give Her More Time To Complete Service Plan Because She Had Had Made A Good Faith Effort To Complete The Plan.

¶25-2-60. ***In re X.M.B.E.***, __ S.W.3d __, No. 11-24-00237-CV, 2025 WL 409039 (Tex. App.—Eastland 2025, no pet. h.) (02-06-2025).

Facts: After the Child was removed, Mother was given a service plan. At the conclusion of a permanency hearing, the "permanency specialist" testified that Mother was partially compliant with all that had been asked of her. Mother had done almost everything, and if she completed the services, there was a good possibility the Child would be returned home. Three weeks later, Mother called the police because the Child's father had beaten up Mother. The police stated that Mother was upset but not confrontational. The father was uncooperative, and force was necessary to detain him.

At the final hearing, Mother requested an extension of the automatic dismissal date. She explained that the recent assault had caused her to fear being in the father's presence and that she had fled to Oklahoma to live with her mother. Because Mother was out of state, there had been a disruption in her services leading to an inability to complete her service plan requirements. The court denied Mother's request because, at that time, she still had nine more months to complete the plan before the deadline.

Mother attempted to complete her services in Oklahoma, but that state did not provide the same services that had been required of her in Texas. The permanency specialist was unable to provide a recommendation regarding Mother's home because she had not travelled to Oklahoma to see where Mother was living. Mother struggled to exercise visitation because she relied on her mother for

transportation, and Mother's mother had recently been in an accident. The permanency specialist testified the Child should remain with her aunt and uncle because Mother had not sufficiently addressed the reasons for removal; however, the permanency specialist did not address at the hearing the reasons for the removal. The trial court terminated Mother's parental rights. Mother appealed.

Holding: Reversed and Remanded in Part.

Opinion: Actions caused by the parent's fault generally cannot constitute "extraordinary circumstances" to support extending the automatic dismissal date. Yet, in 2021, the legislature amended Section 263.401 to include subsection (b-3), which provides:

> A [trial] court *shall* find under Subsection (b) that extraordinary circumstances necessitate the child remaining in the temporary managing conservatorship of the department if:
>
> (1) a parent of a child has made a *good faith effort* to successfully complete the service plan but needs additional time; and
>
> (2) on completion of the service plan the [trial] court intends to order the child returned to the parent.

Because the change to the Code was recent, there was little caselaw interpreting it. Thus, the appellate court analyzed the plain meaning of "good faith effort" and other caselaw interpreting the concept in other contexts. A parent's obstinance, apathy, intentional delay, or outright refusal to engage in services is the antithesis of a "good faith effort." Here, however, Mother had a valid reason for leaving Texas, and she made genuine attempts to comply with the service plan after moving to Oklahoma. TDFPS had described the father's attack as "a spectacular physical blow-up where [he] brutally assaulted [Mother]." Mother found herself suddenly without housing, transportation, and financial support and sought refuge with her mother. Mother found mental health services in Oklahoma that were "just not in the way that suited the Department." The permanency specialist was not "able to give a judgment on" Mother's current living arrangement. Further, the court expressed a clear intention to return the Child to Mother upon the completion of her service plan. Because Mother had made a good faith effort to complete the service plan and needed additional time to do so, and because the court stated an intent to return the Child to Mother upon completion, the trial court erred in refusing to find extraordinary circumstances existed.

Further, to the extent the court relied on prior pleadings and hearings to reach its determination that denying the extension of the automatic dismissal date, that too was error. TDFPS failed to introduce any evidence explaining the need for removal or why denying the extension was in the Child's best interest.

Editor's comment: *I don't know if this is a hindsight is 20/20 kind of issue, but just reading about what the mother went through (while working her services the mother was attacked by the father, who she relied on financially; she moved to Oklahoma with her mother, who she then relied on financially, to get away from the father; and then her mother was in a car accident with the only car they had, so she couldn't make her visits or continue most of her services), it seems like a no-brainer that she should have gotten more time to complete her services since she was on the right track before the father attacked her. P.M.L.*

SAPCR: ADOPTION

Mother Was Not Estopped From Refusing To Consent To Adoption After Entering Into Reproductive Services Agreement With Wife.

¶25-2-61. *In re R.G.S.*, No. 09-23-00308-CV, 2024 WL 4986072 (Tex. App.—Beaumont 2024, no pet. h.) (mem. op.) (12-05-2024).

Facts: Biological Mother and Wife married, and a year later, they signed an agreement for Mother to become pregnant using a sperm donor from a reproductive services organization. After Mother gave birth, Mother filed for divorce. The parties signed an MSA, in which Wife was to be adjudicated as a

parent to the Child. However, after questions were raised as to the legality of that adjudication, the case was put on hold. The parties subsequently presented a final decree and attended a hearing. Wife testified about her actual care, control, and possession of the Child and asked to be named a non-parent conservator if the court decided not to adjudicate her as a parent. The trial court found Wife had standing pursuant to her actual care, control, and possession of the Child but declined to adjudicate her as a parent. It signed the proposed decree that was "approved and consented to as to both form and substance" by each party. The decree found Mother to be a parent but was silent as to Wife's parentage of the Child.

Six months later, Wife filed a petition for adoption or to adjudicate her as a parent. The court severed the parentage suit from the adoption and ordered a child custody evaluation for the adoption case. The evaluation testified that both women were "terrific" caregivers to the Child. Wife testified that the parties had intended both parties to be parents to the Child. Mother testified that she did not believe allowing the adoption was in the Child's best interest because she found Wife difficult to work with. The trial court denied Wife's petition to adopt the Child, and she appealed.

Holding: Affirmed.

Opinion: Wife argued the trial court erred in failing to waive the requirement for a managing conservator to consent to the adoption because there was no evidence Mother had good cause to withhold consent. However, Wife was not biologically related to the Child, agreed to the divorce decree that did not find her to be a parent, and did not timely appeal the decree. Additionally, Wife was not seeking to terminate Mother's rights and did not assert that Mother was not a fit parent. The child custody evaluator believed Wife should be in the Child's life but expressly declined to state an opinion regarding adoption.

Wife additionally argued that Mother's refusal to consent was inconsistent with the reproductive services agreement, and Mother should have been estopped from refusing to consent to the adoption. However, Wife testified at trial that Mother had consistently refused to allow Wife to adopt the Child, even when the parties were still a couple. Further, the Family Code allows a conservator to revoke consent to an adoption.

Further, Wife asserted she was entitled to adoption by estoppel because she resided with the Child for the first two years of her life. However, this doctrine of equity is not the same as legal adoption and does not have the same legal consequences as a statutory adoption. The equitable doctrine merely protects inheritance rights. Wife also argued she was entitled to adoption by estoppel under the "presumed father" statute. However, presuming without deciding that statute applied, it would only entitle Wife to notice if an adoption proceeding were initiated, and notice was not an issue in this case.

Finally, the evidence supported a finding that adoption was not in the Child's best interest. Mother testified that it was not. The evaluator expressed no opinion but did state that it would be in the Child's best interest to continue under the existing custody orders which gave Wife periodic possession of and access to the Child.

Editor's comment: *These are the same parties and child as In re R.G.S. above. P.M.L.*

FAMILY VIOLENCE / PROTECTIVE ORDERS

Evidence Supported 2-Year Protective Order Based On Testimony From Victim And From Police Officers Who Interviewed Victim A Few Days After The Event.

¶25-2-62. *Harter v. Harter*, No. 14-23-00340-CV, 2024 WL 5051195 (Tex. App.—Houston [14th Dist.] 2024, no pet. h.) (mem. op.) (12-10-2024).

Facts: Girlfriend filed a protective order against Boyfriend (who was married to another woman) to protect Girlfriend and their teenage Child. Boyfriend had sexually assaulted her on one occasion, and on a separate occasion he restrained her by pressing down on her chest, which restricted her breathing and caused significant bruising. Girlfriend did not immediately go to the police but went later when her sister noticed issues with Girlfriend. Both of the police officers who interviewed Girlfriend stated that the injuries were consistent with her version of events. Girlfriend did not mention the sexual assault during that

interview. Girlfriend's sister, however, informed hospital staff, and a rape kit was collected. The detective investigating the rape stated that she believed Girlfriend's allegation. No semen was collected in the rape kit, which was not unusual because of the delay between the rape and the collection. Girlfriend's nephew witnessed and testified about the occasion in which Boyfriend restrained Girlfriend. Girlfriend testified that she went on with her life as normal after the rape because she had become resilient during her long relationship with Boyfriend.

During cross-examination, Boyfriend focused on purported financial motivations for seeking a protective order and claimed Girlfriend was angry because he was seeing another woman. Boyfriend had a number of witnesses testify as to his good character, but none who were present during the alleged attacks. Boyfriend maintained that any violence was in self defense.

Although Girlfriend sought a lifetime protective order, the court granted a two-year protective order and ordered Boyfriend to pay Girlfriend's attorney's fees. Boyfriend appealed.

Holding: Affirmed.

Opinion: Boyfriend challenged the legal and factual sufficiency of the evidence to support the protective order. Boyfriend argued that his actions were all defensive measures. The sworn testimony of an applicant alone may be sufficient to support a protective order. Further, in this case, Girlfriend presented other witnesses in addition to her own testimony. The court had sufficient evidence to find that family violence had occurred and was likely to occur again in the future.

Boyfriend additionally argued the court erred in refusing to subpoena the parties' Child to testify at the protective order hearing. Boyfriend had previously subpoenaed the Child, through Girlfriend, to appear at a prior hearing. The record did not establish whether the Child was in the courthouse as ordered. Thus, Boyfriend did not establish noncompliance with the subpoena. Nothing in the record established that the Child had been subpoenaed or ordered to reappear at the protective order hearing. Further, Boyfriend did not file a motion to compel the Child's testimony as required by the local rules. Further, Boyfriend did not explicitly request the court to issue a subpoena for the Child to appear at the protective order hearing.

Finally, Boyfriend complained that he was unable to introduce a bodycam video from the officers' interview with Girlfriend. Presuming without deciding that Boyfriend preserved his due process complaint regarding the bodycam video, he failed to show that he was prejudiced by its omission. The officer watched the video to refresh his memory before testifying, and Boyfriend had previously seen the video. Further, Boyfriend did not make an offer of proof or bill of exception.

Testimonial Evidence Supported Protective Order, So Girlfriend Could Not Show Admission Of Video Evidence Was Harmful Error.

¶25-2-63. *Johnson v. Vernon*, No. 05-24-00179-CV, 2025 WL 303953 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (01-27-2025).

Facts: Boyfriend and girlfriend broke off their marriage engagement but continued to live together for years. However, Boyfriend ultimately gave girlfriend a written eviction notice. Girlfriend became angry and hit boyfriend multiple times, including on the fistula on his arm where he received dialysis treatment. She then yelled "bleed out, mother f***er." Boyfriend called 911, and Girlfriend was arrested for assault on an elderly disabled man.

At a protective order hearing, in addition to testimony, the State introduced five videos Boyfriend had made during the incident on his phone. The court granted a one-year protective order. Girlfriend appealed.

Holding: Affirmed.

Opinion: Girlfriend argued the admission of the videos were not relevant and if they were, their probative value was outweighed by the danger of unfair prejudice. Even if the court erred in admitting the videos, the testimony supported the protective order. Girlfriend failed to show that the admission of the videos probably caused the rendition of an improper judgment; i.e., she failed to show that any error was harmful.

Editor's comment: *Here, the trial court issued the protective order after September 1, 2023, so the new version of TFC 85.001(a) should have applied, and the court no longer needed to find that family violence will occur in the future. Unfortunately, in its opinion the COA cites to a 2015 opinion that references the old version of TFC 85.001 when stating what findings a trial court is required to make before rendering a protective order. Fortunately, the decision did not rest on whether family violence would occur in the future. G.L.S.*

Editor's comment: *One type of harmless error: when the same evidence is admitted at another time without objection. Not a lot of detail in this opinion, but the testimony seems to show the same things the videos did. P.M.L.*

MISCELLANEOUS

Because Wife Did Not Timely File A Notice Of Appeal, She Could Not Raise Any Direct Challenges To The Final Decree Of Divorce.

¶25-2-64. *Detillier v. Smith*, No. 09-22-00384-CV, 2024 WL 4986064 (Tex. App.—Beaumont 2024, no pet. h.) (mem. op.) (12-05-2024).

Facts: Biological Mother and Wife married, and a year later, they signed an agreement for Mother to become pregnant using a sperm donor from a reproductive services organization. After Mother gave birth, Mother filed for divorce. The parties signed an MSA, in which Wife was to be adjudicated as a parent to the Child. However, after questions were raised as to the legality of that adjudication, the case was put on hold. The parties subsequently presented a final decree and attended a hearing. Wife testified about her actual care, control, and possession of the Child and asked to be named a non-parent conservator if the court decided not to adjudicate her as a parent. The trial court found Wife had standing pursuant to her actual care, control, and possession of the Child but declined to adjudicate her as a parent. It signed the proposed decree that was "approved and consented to as to both form and substance" by each party. The decree found Mother to be a parent but was silent as to Wife's parentage of the Child.

About two months later, Wife filed a petition to declare the divorce decree void, asserting it unconstitutionally denied her the fundamental right to be a parent. Mother responded that the petition was an impermissible collateral attack on the judgment. After the trial court denied Wife's petition, she appealed.

Holding: Affirmed.

Opinion: Wife argued that the decree violated her Constitutional right by failing to apply the Uniform Parentage Act equally regardless of gender. Additionally, Wife argued that because the decree failed to adjudicate her as a parent, it was not a final judgment. However, contrary to Wife's contention, the court did not "omit" an adjudication but found that Mother was "the" parent of the Child. Additionally, the decree included a Mother Hubbard clause indicating its finality. Because the decree was a final order, post-judgment deadlines applied. Wife did not file a post-judgment motion to extend the trial court's plenary power. Thus, Wife could only challenge the decree through collateral attack—by showing the decree was void because the court rendering judgment had no jurisdiction over the parties or property, no jurisdiction over the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act. Because Wife failed to timely file a direct appeal, she could not directly challenge the constitutionality of the final decree.

Wife further argued that the court erred in signing a decree that was inconsistent with the parties' MSA. After the parties signed an MSA, and after the court instructed the parties to talk and decide what they wanted to do, the parties jointly presented a final decree that was signed by both parties and their attorneys. The decree included a provision stating that to the extent the decree and MSA differed, the decree controlled. For the same reasons Mother could not directly challenge the constitutionality of the decree, she could not directly challenge the decree's variance from the parties' MSA.

GO TO TABLE OF CONTENTS

Editor's comment: *These are the same parties and child as both In re R.G.S. cases above. P.M.L.*

Second Firm Enacted Sufficient Measures To Reduce Any Potential Risk Of Misuse Of Confidences From Paralegal Who Previously Worked For Opposing Party's Law Firm.

¶25-2-65. *In re A.D.*, No. 02-24-00432-CV, 2024 WL 4985484 (Tex. App.—Fort Worth 2024, orig. proceeding) (mem. op.) (12-05-2024).

Facts: Mother consulted with an attorney at the First Firm while the Paralegal was employed there. However, the Paralegal was out that day, attending a function at her child's school. Father hired Second Firm to represent him in the suit between him and Mother. The Paralegal accepted a job at Second Firm and disclosed to that firm that she had been employed at the First Firm during Mother's consultation. The Second Firm screened the Paralegal from the case and ensured she was not exposed to any discussions regarding the case.

The First Firm informed the Second Firm of the potential conflict and asked the Second Firm to withdraw. The Second Firm declined, and the First Firm filed a motion for disqualification. At the hearing on that motion, evidence showed the Paralegal was aware of a scheduled deposition of Father and expressed some excitement at being able to visit with her former co-workers. Other than that text exchange with her former co-workers, the Paralegal testified to knowing nothing of the case due to the screening procedures. Although the trial court noted that the Second Firm did everything it was supposed to, it granted Mother's motion to disqualify Father's attorneys and imposed sanctions requiring the Second Firm to pay $5000 to the First Firm for attorney's fees in pursuing the disqualification. Father sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: First, a nonlawyer who worked on a matter at a prior firm is subject to a conclusive, irrebuttable presumption that she obtained confidential information on the matter. Second, there is rebuttable presumption that the employee shared the client's confidences with the second firm. That second presumption can be rebutted with a showing that the firm (1) instructed the paralegal "not to work on any matter on which the paralegal worked during the prior employment, or regarding which the paralegal has information relating to the former employer's representation;" and (2) took "other reasonable steps to ensure that the paralegal does not work in connection with matters on which the paralegal worked during the prior employment, absent client consent."

Here, Father rebutted the second presumption through the Paralegal's testimony that the Second Firm had electronically and physically prohibited her from accessing the case file, escorted her from docket meeting when the case came up, and refrained from discussing the case with her or asking her about it. The Paralegal also testified she had not conveyed any confidential information to the Second Firm.

Mother argued that the Second Firm's compliance with ethical provisions did not guard against a genuine threat of disclosure. However, Mother did not explain how the court could have inferred that the screening measures were ineffective. The Paralegal's exposure to the Second Firm's overall schedule did not establish a threat of disclosure of confidential information. The court noted that the "ultimate question" was whether the Second Firm took "measures sufficient to *reduce* the potential for misuse of confidences to an *acceptable* level." (emphasis in original).

Editor's comment: *I'm sure we'll be seeing a lot more of this now that the TDRPC have been amended to allow lawyers to change firms and be screened just like nonlawyers. P.M.L.*

Appellate Fee Award Remanded Because No Testimony Regarding What Services Would Reasonably Be Necessary To Defend Appeal.

¶25-2-66. *Mustafa v. Asim*, No. 03-23-00018-CV, 2024 WL 5241054 (Tex. App.—Austin 2024, no pet. h.) (mem. op.) (12-20-2024).

Facts: Father filed a petition to modify the parent-child relationship regarding possession and child support three years after the prior order. Father's possession had previously been ordered to be under continuous professional supervision. Father asked for standard possession and reduced child support that "conformed with the guidelines." Father had moved to Pakistan and claimed to be making an amount in rupees that converted to no more than $1000 a month. However, Father offered no documentary evidence to support this claimed conversion rate. Additionally, Father acknowledged to not being "purposefully employed." The trial court denied Father's modification and awarded Mother attorney's fees, including appellate fees. Although Father was represented by counsel at trial, he presented his appeal pro se.

Holding: Reversed and Remanded in Part; Affirmed in Part.

Opinion: Father complained that the court abused its discretion in finding his objection to the assigned judge was untimely. However, although Father argued he first learned of the assignment within the statutory time limit, the objected-to judge presided over a hearing years before in the modification suit without objection. Additionally, Father had already objected to a different assigned judge, and the statute only permits one objection.

Father next argued the trial court erred in allowing Mother's expert witness to testify despite Mother's disclosure only seven days before trial. However, the expert was a private investigator hired by Father, Mother's failure to designate the investigator was inadvertent, and Father could not have been surprised that the investigator would be called to testify.

Father further challenged several of the trial court's findings for lacking sufficient evidence. However, the record supported the court's findings.

Father additionally asserted the evidence was insufficient to support the amount of appellate attorney's fees. Mother's lawyer, as an expert witness, testified that Mother would incur $50,000 in appellate attorney's fees, which would be comprised of $30,000 for the appeal, $5000 for oral argument in the appellate court, $10,000 for a petition for review in the Texas Supreme Court, and $5000 for oral argument in the Texas Supreme Court. However, there was no testimony about the services he reasonably believed would be necessary to defend the appeal. Thus, the evidence was legally insufficient to support the award, requiring a remand.

Editor's comment: *The bar for proving appellate attorney's fees is really low but requirements more than just the anticipated amount. There must be testimony about anticipated services rendered, such as reviewing the transcripts and clerk's record, researching the legal issues presented, and writing the brief. A.B.P.*

Editor's comment: *If you don't do appeals and don't know what services are expected to be reasonable and necessary, please reach out to me or any appellate attorney. We are more than happy to help you secure appellate fees for your client. P.M.L.*

Mother Liable For Damages For Past And Future Damage To Father's Reputation And Mental Anguish Because She Aggressively Blogged And Posted On Social Media Defamatory Assertions That Father Was A Pedophile And Child Molester.

¶25-2-67. ***Zoanni v. Hogan***, __ S.W.3d __, No. 01-16-00584-CV, 2024 WL 5248863 (Tex. App.—Houston [1st Dist.] 2024, no pet. h.) (on reh'g) (12-31-2024).

Facts: A few years after their divorce, Mother began blogging about Father accusing him of being a pedophile and child molester. Father had worked in the church as a youth pastor for years. Some evidence indicated that Father had issues with pornography and possible inclinations to be voyeuristic. Mother went to her Child's pediatrician with her concerns, and after the pediatrician found no basis for an assertion that Father harmed the Child, Mother fired the pediatrician. Mother continued blogging and posting accusations on Facebook, which caused significant problems for Father at his church and in his community. Father sued Mother for defamation. A jury found in Father's favor and awarded him $900,000

in compensatory damages for 8 statements, and $1,200,000 in compensatory damages for 5 statements. Mother appealed.

The intermediate court initially reversed and rendered with regard to 9 of 13 statements because it found Father failed to comply with the Defamation Mitigation Act for those statements. However, the Texas Supreme Court later reversed the intermediate court's decision, stating that the Defamation Mitigation Act did not support a right of dismissal. *Hogan v. Zoanni*, 627 S.W.3d 163 (Tex. 2021). Thus, on remand, the intermediate court was instructed to review Mother's remaining four issues presented in her appeal.

Holding: Affirmed

Opinion: Mother first argued the trial court erred by excluding a witness statement based on the clergy privilege. However, presuming the court erred, any excluded statements were cumulative of other admitted evidence. Further, contrary to Mother's assertion, the witness in question was not an "unimpeachable" witness. The complete statement indicated that the witness used his statement to air grievances about Father and other church members who he believed should not hold credentials with the church.

In her second issue, Mother argued that part of the judgment improperly penalized her for her opinions. Defamation is defined generally "as the invasion of a person's interest in [his] reputation and good name." Actionable defamation requires (1) publication of a false statement of fact to a third party, (2) that is defamatory concerning the plaintiff, (3) that is made with the requisite degree of fault regarding the truth of the statement (negligence if the plaintiff is a private individual), and (4) that proximately causes damages. Defamatory statements are those that tend to (1) "injure a living person's reputation and thereby expose the person to public hatred, contempt or ridicule, or financial injury" or (2) "impeach any person's honesty, integrity, virtue, or reputation." "To qualify as defamation, a statement should be derogatory, degrading, somewhat shocking, and contain elements of disgrace." A communication that considering the circumstances is "merely unflattering, abusive, annoying, irksome, or embarrassing" or "only hurts a person's feelings, is not actionable."

To distinguish between an actionable statement of fact and a constitutionally protected expression of opinion, the court focuses on the statement's verifiability and the entire context in which it was made. To be actionable as defamation, a statement must be an assertion of verifiable fact, that is, a statement that purports to be verifiable. A verifiably false statement, however, is not actionable as defamation if the entire context of the statement discloses that "it is merely an opinion masquerading as fact." Merely couching a statement as an "opinion" does not mean it is constitutionally protected.

While some of Mother's statements could be viewed as opinions, others could not. Her statement to her Child's former pediatrician that Father was a pedophile was a factual accusation. Whether Father was a pedophile was a verifiable fact. Similarly, her statements that she felt strongly that there was child pornography on Father's computers were verifiable facts. These statements were actionable as defamation.

In her third issue, Wife complained the trial court erred in failing to include a mitigation instruction because some of the damage to Father's reputation was done by himself. The party "who caused the loss bears the burden of proving lack of diligence on the part of the plaintiff." A defendant cannot get a mitigation instruction merely by asserting that a plaintiff failed to mitigate his damages. Rather, a defendant is entitled to a mitigation instruction if the evidence (1) "clearly show[s] that the plaintiff's decision not to mitigate caused further damages," and (2) "sufficiently guide[s] the jury in determining which damages were attributable to the plaintiff's decision not to mitigate."

Damages resulting from a failure to mitigate are "not proximately caused by the wrongdoer's acts or omissions, but by the injured person's own subsequent negligence, and are thus not recoverable from the wrongdoer." In other words, once injured by a wrongdoer, a plaintiff has a duty to mitigate (avoid) further, subsequent damages. Most of the evidence Mother relied on to support her request for a mitigation instruction concerns Father's conduct before she made the alleged defamatory statements.

In her third issue, Mother argued there was legally insufficient evidence she published two complained-of police report statements. However, those two statements were listed in the jury demand among other statements. The jury was then asked to assess damages based on the prior answer regarding the cumulative statements. Because Mother did not object to the form of the question at the charge conference, she could not show harm. The appellate court had no way to determine the impact of the two isolated statements had on the overall money judgment.

GO TO TABLE OF CONTENTS

In a separate issue, Mother complained of the sufficiency of the evidence to support the actual damages award, the award was manifestly too large, and punitive damages were impermissibly awarded as actual damages. Although Wife asserted there was no evidence to support a finding that Father suffered compensable past and future mental anguish, Father and his wife testified at length about how the blog had impacted his life and his career. Mother further asserted no evidence supported damages for past or future loss of reputation because no witness testified they thought less of Father due to Mother's defamatory statements. Father felt shunned by his church. People Father had known his whole life no longer could make eye contact with him. Father's wife had obtained a handgun because she had become fearful of her community. People had left the church to avoid being around Father. Further, Father's wife testified that Father had a good reputation in the community before Mother began blogging.

Mother waived her complaints about the amount of the jury verdict because her brief failed to address the charge as it was actually presented to the jury. Her global challenge was insufficient to provide the appellate court with an issue to review.

Editor's comment: *This feels like a bit of Streisand Effect. He won the defamation suit, but here I am, reading a 100-page opinion with ALL the details about the defamatory statements. Also, it should be noted that unlike statements protected by TCPA, these were not statements made in "participation with the legal system" but rather public internet rants. B.M.J.*

Editor's comment: *We have all seen these cases where one parent accuses the other parent of sexual or physical abuse of child, some cases with merit and some without. There is where part of our job as counselors is to caution clients against public accusations that are not made in the context of the appropriate channels, such as pleadings and proper reports to the authorities. Here, mother exposed herself to substantial financial damages and untold emotional distress for all involved. A.B.P.*

Editor's comment: *Given the prevalence of social media and the volatility of many divorces, you should always consider alleging defamation if opposing party crosses the line. This is another reason that should always request in discovery the opposing party's social media posts. G.L.S.*

Therapist Presented Prima Facie Case Of Defamation Sufficient To Support Denial Of Father's Motion To Dismiss Under The TCPA.

¶25-2-68. *Taylor v. Duckworth*, No. 09-24-00003-CV, 2025 WL 243030 (Tex. App.—Beaumont 2025, no pet. h.) (mem. op.) (01-16-2025).

Facts: After a modification proceeding ended, Father sued the Child's Therapist for IIED, alleging malicious conduct and that the Therapist and her assistant intentionally and negligently misrepresented facts to the court, damaging Father's relationship with the Child. Father's complaint centered on an affidavit attached to the mother's request for a TRO. Father asserted that the recantation of events was not truthful. Additionally, Father asserted that the Therapist's testimony at the TRO hearing was false. The Therapist countered Father's IIED suit with a claim for defamation, and Father filed a motion to dismiss the defamation suit under the Texas Citizens Protection Act ("TCPA").

At a hearing on the dismissal motion, the Therapist testified about Father harassing her office in person and via email. Father had requested the Child's records, and the Therapist's office asked to fill out and return forms for access to the records. Instead of filling out forms, Father angrily went to the Therapist's office and lied to the front desk to get access. Father's actions were described as threatening, and the Therapist filed a police report, installed security cameras and new locks, and sent Father a cease-and-desist notice. Later, Father posted online videos about alleged ethical violations. Additionally, Father filed a complaint against the Therapist with the licensing board; however, his complaint was dismissed for lacking merit. After the trial court denied Father's motion to dismiss, he filed an interlocutory appeal.

Holding: Affirmed.

Opinion: The TCPA provides a 3-step process for dismissal. First, the movant must show that the legal action is based on the movant's first amendment rights: speech, petition, or association. If the movant is

successful in that first step, the non-movant must present a prima facie case to support her claims. If the non-movant is successful, then the burden shifts back to the movant to establish an affirmative defense by the preponderance of the evidence.

Here, the appellate court divided the statements identified in the Therapist's claim into 5 categories, which all implicated Father's right to petition: (1) Father's statements on social media and TV interviews regarding the Therapist's conduct during Father's custody suit; (2) Father's online statements regarding the Therapist's conduct in other courts; (3) Father's statements at a public meeting for the organization that governs licensing; (4) Father's online statements to the licensing board; and (5) Father's testimony asserting that the Therapist and other professionals engaged in a plot to separate him from his Child. Because the statement implicated Father's right to petition, the TCPA applied, and the burden shifted to the Therapist to present a prima facie case.

To establish defamation, a plaintiff must show: (1) the defendant published a false statement of fact to a third party, (2) that was defamatory concerning the plaintiff, (3) with the required degree of fault, at least amounting to negligence, and (4) damages, unless it is a damages-per-se claim. At the dismissal hearing, the Therapist provided evidence of Father's statements and how those statements negatively impacted her practice. She further identified the amount of revenue she could lose due to Father's statements. Additionally, she described the steps she had to take to counter those statements, including improving her referral sources when she could have been taking cases. The Therapist further noted five colleagues had approached her regarding Father's videos. Father's attack on the Therapist's business or profession constituted defamation per se. The Therapist succeeded in presenting a prima facie case to support her claims.

Finally, because Father failed to fully present any affirmative defense, the trial court did not err in denying his motion to dismiss.

Evidence Supported Imposing Restriction For Mother To Obtain Written Consent From Father Before Traveling To India With Child.

¶25-2-69. *Allepalli v. Allepalli*, No. 03-23-00536-CV, 2025 WL 464844 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (02-12-2025).

Facts: At the time of the final decree of divorce was signed, the parties' Child was 9 years old. Mother appealed.

Holding: Affirmed.

Opinion: Mother argued the trial court abused its discretion by placing a restriction on the Child's international travel until the age of 13. The restriction required written consent from the non-traveling parent. On appeal, Mother did not challenge the trial court's findings that (1) she unreasonably withheld the Child in India before the divorce for nearly two-and-a-half years without Father's consent; (2) she had strong ties to India, which was not a party to the Hague Convention on the Civil Aspects of International Child Abduction; and (3) the restriction was in the best interest of the Child.

The Family Code authorizes a court to take measures to prevent international abduction if credible evidence is presented. To determine whether there is a risk of international abduction of a child by a parent, the court shall consider evidence that the parent (1) has taken, kept, withheld, or concealed a child in violation of another person's right of possession of or access to the child; (2) has previously threatened to take, keep, withhold, or conceal a child; (3) is able to work outside of the United States; (4) has recently engaged in planning activities that could facilitate the removal of the child from the United States by the parent; (5) has a history of domestic violence; and (6) has a criminal history or a history of violating court orders. If there is credible evidence of a risk of abduction through one or more of such factors, the court shall then consider evidence of additional factors to evaluate such risk, including the following factors relevant here: (1) whether the parent has strong familial, emotional, or cultural ties to another country, particularly a country that is not a signatory to or compliant with the Hague Convention on the Civil Aspects of International Child Abduction; (2) whether the parent lacks strong ties to the United States, regardless of whether the parent is a citizen or permanent resident of the United States; (3) whether the foreign country to which the parent has ties presents obstacles to the recovery and return of

a child who is abducted to the country from the United States or has any legal mechanisms for immediately and effectively enforcing an order regarding the possession of or access to the child issued by this state.

Based on the unchallenged findings, plus additional evidence in the appellate record, the court did not abuse its discretion by requiring Mother to obtain written consent from Father before taking the Child to India.

Mother next challenged the trial court's refusal to let a real estate agent testify about property in India. However, because she failed to make an offer of proof, that issue was not preserved for appeal.

Finally, Mother challenged the valuations of certain properties. Although holding the issue was not adequately briefed for appellate review, the court noted that the only evidence of value was provided by Father. Without any controverting evidence from Mother, the trial court did not abuse its discretion in accepting Father's valuations.

Editor's comment: *A list of countries that are signatories to the 1980 Hague Convention on the Civil Aspects of Internation Child Abduction can be found at:* https://travel.state.gov/content/travel/en/International-Parental-Child-Abduction/abductions/hague-abduction-country-list.html *G.L.S*.

Editor's comment: *Hague cases are hard to overturn on appeal, especially when they're denied. And India isn't even a member of the Hague Convention, so the father wouldn't have any recourse there if the mother fled. AND ALWAYS MAKE AN OFFER OF PROOF! P.M.L.*

Appellants Failed To Provide Evidence To Rebut Lack Of Service Of Appellee's Motion For Summary Judgment; Appellee Established Entitlement To Summary Judgment As A Matter Of Law And Appellants Failed To Respond To Counter Appellee's Evidence.

¶25-2-70. *Longoria v. Garcia*, No. 13-23-00352-CV, 2025 WL 480811 (Tex. App.—Corpus Christi–Edinburg 2025, no pet. h.) (mem. op.) (02-13-2025).

Facts: A divorce decree provided that certain real property would be sold, with the proceeds being divided equally between the parties. About a year later, the parties entered a contract to sell the property to Husband's Son. The divorce court appointed Husband to be "the receiver in charge of selling the property" to his Son. Relying on that order, the Son took possession of the property and made improvements to it. Subsequently, Wife sold her interest in the property to the Buyers, who demanded the Son vacate the property. Husband then gifted his interest in the property to his Son.

The Son sued the Buyers for interfering with his contract and for civil conspiracy. The Son filed a traditional motion for summary judgment and asserted the Buyers attended the hearing at which Husband was appointed as the receiver in charge of selling the property and had seen the Son's contract to purchase the property from Husband. The trial court granted a partial summary judgment, finding the Buyers interfered with the Son's contract. The Son then filed a second motion for summary judgment seeking damages for lack of use of the property. The trial court granted this motion as well and rendered a final order.

The Buyers moved to set aside the second summary judgment on the grounds that they had no notice of the Son's motion. The Son had faxed motion to the Buyers, but their fax machine had been disconnected. Further, the Buyers claimed to have received no emails from the Son on that date. The Son responded that he used the e-filing system to email the Buyers using the email address on file with the e-filing system and also faxed the motion. The Son said nothing had been returned as undeliverable. The motion to set aside the judgment was overruled by operation of law, and the Buyers appealed.

Holding: Affirmed.

Opinion: First, the Buyers challenged the denial of their motion to set aside the judgment based on lack of service. A certificate of service is prima facie evidence of service. However, if service is challenged, it must be proved. Here, the record showed that the Buyers were served via the e-filing service in accordance with Rule 21a, and an automated certificate of service showed that notice had been sent to the email address on file. Other than saying in their motion that they could not locate an email with notice,

the Buyers presented no evidence—by affidavit or otherwise—that they did not receive notice at the email address on file. This situation is precisely what Rule 21a was designed to avoid. In the absence of evidence, the Buyers failed to rebut the presumption of service.

Next, the Buyers asserted the Son had not established he was entitled to summary judgment as a matter of law. The general rule in cases involving injury to real property is that the proper measure of damages is the cost to restore or replace, plus loss of use for temporary injury. Here, because the Buyers failed to respond to the motion for summary judgment, the only question was whether the Son established entitlement to damages as a matter of law.

Through an affidavit, the Son explained that when he initially took possession of the property, he made improvements and repairs, and he provided the cost of those repairs. When the Buyers took possession and the Son was removed from the property, the Buyers "made a mess." The Son attached photos showing the property before and after the Buyers had taken possession. The Son stated that he lost use of the property due to the Buyers wrongful possession. The Son further provided an expert affidavit opining on the property's potential rental income for the period during which the Son was forced to vacate the property. Finally, the Son detailed the expenses related to cleaning up the mess created by the Buyers. The trial court granted a money judgment comprised of the lost potential rent and the cost to clean the mess. Thus, the Son provided evidence he was entitled to judgment as a matter of law, and the Buyers did not present any evidence to refute the Son's evidence.