

# **SEPTEMBER 2025 CASELAW UPDATE**

(Cases from August 1–31, 2025)

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**DIVORCE:  
PROCEDURE AND JURISDICTION**

**Trial Court's Oral Ruling In Conjunction With Parties' Requests, Docket Entry, And Lack Of Any Outstanding Issues To Be Ruled Upon Indicated A Present Rendition Of Divorce Based On Parties' Agreement.**

1. *Valdez v. Valdez*, No. 05-23-01286-CV, 2025 WL 2346150 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (08-13-2025).

**Facts:** At the final hearing in their divorce, the parties entered an agreement into the record regarding the property division. The parties asked the court to accept their agreement, and Husband testified that he wanted a divorce that day. The court stated "I'll approve the agreement of the parties. Make it an order of the Court. Who is going to draft this for[] me?" The docket sheet indicated "Final Hrg. Both parties with Atty. Agreements dictated and approved. Divorce Granted."

Although Wife's attorney drafted and circulated a decree, Husband did not sign. Wife filed a motion to sign the decree. Six months after the final hearing, Husband filed a motion for new trial or reconsideration and a notice of his revocation of the agreement that was read into the record. The trial court reviewed the transcript and determined that it had orally rendered judgment at the final hearing. Nearly three years later, Wife filed another motion to sign. Husband again asserted that his agreement had been timely revoked. The trial court signed a final decree in conformity with the parties' agreement, and Husband appealed.

**Holding: Affirmed.**

**Opinion:** Husband argued the trial court's language at the conclusion of the hearing did not indicate a present rendition that would make the agreement an order of the court and irrevocable. However, the parties asked the court to accept their agreement. Husband asked for an order that day, the court informed the parties to make it an order of the Court. It did not provide guidelines for drafting a judgment or indicate intent to render judgment in the future. The same-day docket entry was consistent with this interpretation. Further, the decree stated that it was "pronounced and rendered" on the day of the final hearing. Nothing in the record conflicted with that statement, so the appellate court presumed that recitation in the decree was true.

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**Due To Husband's Failure To Timely Or Adequately Produce Discovery Responses, Trial Court Did Not Err In Denying His Post-Trial Motion To Reopen Evidence.**

2. *Hoff v. Hoff*, No. 02-25-00058-CV, 2025 WL 2458611 (Tex. App.—Fort Worth 2025, no pet. h.) (mem. op.) (08-26-2025).

**Facts:** Husband and Wife filed cross petitions for divorce. Only Wife filed an inventory and appraisal. Husband failed to respond to discovery or serve her with initial disclosures. Because Husband's attorney could not get in contact with Husband to acquire discovery responses, Husband's attorney withdrew. After the court granted Wife's motion to compel, Husband still failed to respond.

Husband retained a new attorney on the day of trial, but the trial court denied Husband's motion for a continuance. After the conclusion of the bench trial, the court took the property division under advisement. The court denied Husband's motion to reopen the evidence. After the court signed a final order, no findings were requested or issued. Husband appealed.

**Holding: Affirmed.**

**Opinion:** Husband asserted the trial court abused its discretion by awarding Wife a disproportionate division of the community estate. At trial, the parties disputed the methods for valuing oil interests and farming and ranching property. Each presented their lay opinions as to how they reached their respective proposed valuations. These two assets were not the only ones divided in the decree, which did not include values for most of the assets or liabilities. The decree did not specify whether the division was disproportionate. In the absence of findings, the appellate court could not determine whether an error occurred or, if so, whether the error was harmful.

Husband next complained of the denial of his motion to reopen evidence. In determining whether to grant a motion to reopen the evidence, a trial court may consider several factors, including whether (1) the moving party showed due diligence in obtaining the evidence; (2) the proffered evidence is decisive; (3) the reception of such evidence will cause undue delay; and (4) granting the motion will cause an injustice. Here, Husband refused to adequately participate in discovery for the 18 months between the original petition and trial. He had ample opportunity to obtain the evidence he sought to introduce post-trial but chose not to timely do so.



**DIVORCE:  
GROUNDS FOR DIVORCE/ANNULMENT**

**Annulment Reversed Because Husband's Evidence Could Not Support A Finding He Was Fraudulently Induced Into Marriage.**

3. *Trapal v. Dodge*, No. 14-24-00770-CV, 2025 WL 2419945 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (08-21-2025).

**Facts:** About one month after the parties married, Wife moved out. Husband filed a petition to annul the marriage, and Wife filed a counter-petition for divorce.

Husband met Wife in the Philippines while vacationing with a friend. He claimed she was a prostitute, but Wife denied that allegation. They immediately began a sexual relationship and continued a long-distance relationship for over five years. Shortly after meeting, Wife quit her job, and Husband sent her at least \$700 a month. Husband visited her frequently, and they travelled together on vacations. Husband met Wife's family. Wife declined Husband's marriage proposals a number of times before finally accepting. Husband obtained a visa for Wife so she could live with him in the U.S. No evidence indicated Wife sought a visa or asked Husband to obtain one for her. The visa process took a few years, and during that time, the couple became less close. When Wife finally arrived in the U.S., she refused to share a bed with Husband. They did not consummate the marriage on their wedding day but did have sexual relationship on several occasions during the marriage.

Wife left Husband a note when she moved out expressing her dissatisfaction with the relationship and apologizing because the relationship did not work out. Wife moved to California with Husband's friend. Husband believed Wife had planned to leave him before she arrived in the U.S. At the hearing, Husband's friend testified about Husband's temper and stated his belief that he had to help Wife get away from Husband. The friend denied having a sexual or dating relationship with Wife.

Husband claimed Wife induced him into marriage for a green card. Wife claimed she did not want to come to the U.S. because she had no family here but changed her mind when Husband told her they could get married and start a life together. Wife stated that the relationship changed because of COVID-19 and a surgery she had that made her unable to engage in sex. She claimed to have attempted to resolve her problems with Husband, but he would become angry. She was not scared of Husband when she lived in the Philippines, but she became scared when living with him in the U.S. Husband told her she could no longer speak with her family on the phone.

The trial court signed a decree of annulment. The trial court's findings sided with Husband's version of events but also included findings that were not supported by the record, including a finding that Husband reduced Wife's monthly support from \$700 to \$500 after she moved to the U.S. Husband gave Wife a single gift of \$500 and then became angry with how she spent it. Wife appealed.

**Holding: Reversed and Remanded.**

**Opinion:** In determining whether to grant an annulment based on fraud, courts generally look for evidence of fraudulent inducement, which is established by proving that a false material misrepresentation was made that was known to be false when it was made, was intended to be acted upon, was relied upon, and caused injury.

Here, the trial court did not find that Wife made a material misrepresentation or a false statement of any kind. There was no evidence Wife pushed Husband to marry her or made any promises or representations if Husband did not marry her. Rather, Wife declined marriage proposals for two years before accepting. Husband testified that Wife used her "attractiveness" and "her sexuality to coerce" him into assisting with her visa application. But, Husband did not begin the visa application process until after Wife agreed to marry him. There was no evidence Wife raised the immigration issue during the two years she was declining his proposals. Further, Husband's allegations that Wife used her attractiveness to induce him were conclusory. He offered no statements or actions by Wife to support his allegation. "That the two were engaged in a years-long consensual sexual relationship cannot be considered 'coercion[.]'"

Even presuming Wife's general attractiveness could support a fraudulent inducement theory, Wife resisted sexual contact for months before moving to the U.S. and marrying Husband, but he went through the marriage anyway. Even accepting Husband's version of events as true—as the appellate court was required to do—the evidence did not support a finding that Wife fraudulently induced Husband into a marriage.

Further, because Husband met the residence and domiciliary requirements for a divorce, and because the requisite waiting period had passed, the trial court should have granted Wife's request for a divorce.

**Mother's Testimony About Father's Physical Abuse Supported Implicit Finding That His Cruelty Made Living With Him Insupportable.**

4. *Mpacko v. Ngue*, No. 03-25-00122-CV, 2025 WL 2471788 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (08-28-2025).

**Facts:** The parties married in Cameroon and moved to the U.S. the following year. Mother moved to DC from Texas while she was pregnant with their second Child. Father filed for divorce in Texas shortly after that Child was born. The Texas and DC courts determined Texas was the older Child's home state, but DC addressed custody of the younger Child.



In Texas, Mother asked to be named the sole managing conservator of the older Child based in part on allegations that Father committed family violence. At the bench trial, Mother testified about multiple instances of Father physically abusing her. After Father threatened to kill her, Mother moved to DC. The DC court had given Mother sole custody of the younger Child and granted Father limited supervised access. Mother asked the Texas court to grant the same order for the older Child to let the two Children be on the same schedule. Father denied Mother's allegations and stated he was appealing the DC order.

The court granted a divorce on the ground of cruelty, appointed Mother the older Child's sole managing conservator, made a family violence finding against Father, gave Father limited supervised possession of the older Child in DC, and ordered Father to pay child support. Father appealed.

**Holding: Affirmed**

**Opinion:** Among other complaints, Father argued the trial court abused its discretion in granting the divorced based on cruelty. "Cruelty," as that word is used in divorce cases, is an act that endangers or threatens life, limb or health of the aggrieved party, including any outrages upon the feelings or any infliction of mental pain or anguish." Cruelty has also been defined as "the willful, persistent infliction of unnecessary suffering, whether in realization or apprehension, whether of mind or body, to such an extent as to render cohabitation dangerous and unendurable." "The term comprehends conduct endangering life, limb or health or productive of mental anguish, and conduct of a nature utterly destructive of the purpose and object of the marital relationship." "Abuse need not be limited to bodily injury; nonetheless, physical abuse will support granting a divorce on cruelty grounds."

Although Father acknowledged that Mother testified that he physically abused her, he asserted that "there was no real testimony or documentary evidence that detailed how [his] behavior rendered living with him insupportable." However, Mother answered in the affirmative when asked if it was fair to say that the marriage ended due to family violence. Moreover, Mother provided ample testimony from which a reasonable factfinder could find Father engaged in abusive behavior that rendered living with him insupportable.

**DIVORCE:  
ALTERNATIVE DISPUTE RESOLUTION**

**Arbitrator Did Not Exceed Her Authority By Not Considering Issues Not Presented During Arbitration.**

5. *In re Marriage of Sheridan*, No. 07-25-00006-CV, 2025 WL 2406112 (Tex. App.—Amarillo 2025, no pet. h.) (mem. op.) (08-19-2025).

**Facts:** After Husband discovered Wife's affair, they participated in a few years of marriage counseling and signed a post-marital agreement ("PMA") before eventually divorcing. The PMA included a non-disclosure provision regarding data Husband obtained from Wife's phone and required him to delete the data within 48 hours of signing the agreement or else he would lose interest in certain assets. Additionally, the PMA included an arbitration provision.

Because the parties could not agree on whether Husband complied with the provision regarding deleting data, the dispute was submitted to be heard by an agreed arbitrator. The arbitrator found in Wife's favor. Husband challenged Wife's motion to enter a decree based on the arbitration award because Husband asserted there were still issues to be arbitrated, including claims of Wife's alleged breaches of the PMA. At the final hearing, Wife argued Husband should have addressed his concerns at the arbitration hearing. The trial court signed a decree based on the arbitration award, and Husband appealed with the aid of counsel.

**Holding: Affirmed.**

**Opinion:** Husband argued the arbitrator exceeded her authority by refusing to resolve specific issues related to the disposition of the marital estate. Wife responded Husband waived his appellate complaint by failing to invoke one of the statutory grounds for vacating the arbitration award. The appellate court agreed with Wife.

The PMA provided "[t]he parties agree to submit to binding arbitration any dispute or controversy," at the arbitration hearing, the parties narrowed the focus of the hearing to only one issue—whether the forfeiture provision of the PMA had been triggered. Husband's counsel announced, "the question before the arbitrator today is one of forfeiture ...." Wife's counsel responded "[i]t's really going to boil down to [the forfeiture provision] of the postmarital agreement." "And we are asking that the forfeiture provisions [] be enforced." Husband's counsel stated, "[w]here we do agree, however, is that the Court's decision and focus, of course, will be on this concept of forfeiture." Husband did not present any other issues at the arbitration hearing, yet he maintained that she exceeded her powers by refusing to resolve those issues. The contention was not logical.



**DIVORCE:  
PROPERTY AGREEMENTS**

**Agreed Post-Divorce Spousal Support For Wife Offset By Reimbursement Owed To Community Estate From Wife's Separate Estate; However, Court Erroneously Included Chapter 8 Termination Conditions When Obligation Was Not Chapter 8 Maintenance And Conditions Were Not Part Of Agreement.**

6. *McCartney v. McCartney*, \_\_ S.W.3d \_\_, No. 14-24-00310-CV, 2025 WL 2213213 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (08-05-2025).

**Facts:** About 15 years into the parties' marriage, they signed a partition and exchange agreement ("PEA"). About 2 years later, Husband filed for divorce. The court acknowledged the agreement and divided all other property pursuant to Husband's proposed property division.

Under the PEA, certain real property became Wife's sole and separate property; however, the community continued making mortgage, insurance, taxes, and HOA payments on the property. In the divorce decree, the court ordered Wife's separate estate to reimburse the community for those payments. The court ordered that the "balancing payment" for the reimbursement would be paid by reducing the amount of spousal maintenance to which Husband had agreed to pay under the PEA. The court additionally imposed contingencies that would trigger termination of the maintenance. Wife appealed.

**Holding: Affirmed as Modified.**

**Opinion:** In his appellee's brief, Husband argued that because Wife requested only a partial reporter's record and failed to file a statement of points to be presented on appeal, the appellate court was required to presume the omitted portions of the record were relevant and supported the trial court's judgment. However, that presumption does not apply when the issue on appeal turns on a question of law.

Wife first challenged the reimbursement award based on whether "Wife's half" of the community was used to pay the costs associated with the real property partitioned to her in the PEA. Because Wife's complaint was an evidence-based complaint, the court was required to presume the omitted portions of the record were relevant and supported the judgment.

Wife additionally challenged the reimbursement award based on an argument that Husband either waived the claim by signing the PEA or that the newly revised reimbursement statute of the Family Code precluded a reimbursement claim after the parties' agreement.

Neither party asserted the PEA was ambiguous. Neither party challenged that a community estate generally has a right to reimbursement for payments benefitting a separate estate as were made in this case. Wife's argument was that Husband released any right to reimbursement by signing the agreement. Such rights can be released by a marital property agreement, but to release a claim effectively, the instrument must mention the claim to be released. The parties' PEA did not mention reimbursement claims. Further, the Family Code relied upon by Wife (Section 3.410) merely clarifies that property agreements *can* release reimbursement claims after the recent amendments, just as they could before the amendments.

Wife also cited a conclusion of law from the trial court, which—in apparent conflict with the decree—found Husband gave up his right to reimbursement and was barred from making such claim. The appellate court noted the conclusion stated *Husband* gave up rights to reimbursement, not that the *community estate* did so.

When a conflict exists between a judgment and subsequent findings of fact and conclusions of law, the findings generally control. However, conclusions of law are not binding on the appellate court and are reviewed de novo. The appellate court held it was not bound by that conflicting conclusion of law and did not need to modify the judgment.

Wife next challenged the spousal support terms because the court reduced the agreed-to monthly payments and because the Court imposed additional contingencies for terminating Husband's obligation. Wife did not cite any authority to support her assertion that the trial court could not reduce the award. Further, the court did not rewrite the parties' agreement; it offset the amount due to Wife based on the reimbursement award, which was permissible, fair, just, and equitable.

However, the trial court included the conditions set out in Chapter 8 regarding termination of spousal maintenance, despite those conditions not being contemplated by the parties' PEA. The conditions of Chapter 8 apply only to court-ordered maintenance, not contractually agreed spousal-support obligations. Texas law distinguishes between court-*ordered* maintenance and court-*approved* obligations.

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**Declaratory Judgment Finding Post-Nuptial Agreement Unenforceable Reversed Because Wife Failed To Present Evidence The Agreement Was Signed Involuntarily Or Was Unconscionable When Signed.**

7. *Choudhury v. Choudhury*, No. 14-23-00825-CV, 2025 WL 2399148 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (08-19-2025).

**Facts:** Husband and Wife were married for just over 30 years. A few years before the underlying divorce proceeding, Wife filed for divorce but nonsuited. After her nonsuit, the parties signed a post-nuptial agreement dividing the community estate. Once Wife filed for divorce again, Husband sought a declaratory judgment to enforce the post-nuptial agreement. Wife responded, asserting she entered the agreement involuntarily and the agreement was unconscionable.



In the first divorce, Husband filed a pro se answer indicating the parties were attempting to reconcile. Wife emailed Husband links to websites instructing parties on do-it-yourself post-nuptial agreements. Husband testified they drafted the document together, and Wife denied participating. Husband testified Wife told him her attorney would review the agreement, and he agreed to reimburse her for attorney's fees. The first divorce was nonsuited shortly thereafter. The parties went to a bank near Wife's work and signed the agreement in front of notary during Wife's lunch break. Wife's attorney was not present for the execution. The agreement did not disclose values for any of the accounts divided by the agreement.

Wife denied many of the events above and claimed she did not see a final copy of the agreement until the parties signed it at the bank. She denied having the opportunity for her attorney to review it. Although she received a \$1000 deposit from Husband around that time, she claimed it was not for attorney's fees but did not suggest an alternate purpose for the deposit. Wife claimed Husband threatened to jeopardize her immigration status if she did not sign the agreement and that was the only reason she signed.

At the conclusion of the bench trial, the court found the agreement was unenforceable. Husband appealed.

**Holding: Reversed and Rendered.**

**Opinion:** Husband first asserted the evidence was legally and factually insufficient to support a finding Wife signed the agreement involuntarily. Husband argued Wife initiated the creation of the agreement, the agreement was signed in front of a notary, and Wife was represented by counsel at the time of negotiations and agreement.

As the party challenging enforceability, Wife bore the burden of establishing involuntariness. Even taking Wife's version of events as true, she sent email links to Husband about how to draft an agreement, she negotiated the amount of spousal support she would receive, and she saw the final version on Husband's computer while he read it to her. Additionally, Wife was represented by counsel while Husband was not, and Wife spoke to her counsel at the time the agreement was being drafted. Wife chose the location for where the agreement would be executed, and the parties arrived there separately.

Moreover, despite Wife's claims of duress, to be a contract defense, the alleged duress must consist of a threat to do something the threatening party has no legal right to do. Husband had the right to report suspected immigration violations to immigration authorities. Wife had an attorney and could inquire as to whether Husband's threats were credible. Despite Wife's claim that Husband "forbade" her from discussing the agreement with counsel, Wife offered no evidence of how that threat destroyed her free agency to reach out to counsel. Despite Wife's claim that she did not participate in drafting the agreement, she admitted to negotiating the amount of spousal support she would receive, and she emailed the links to Husband.

While the trial court issued findings to support the judgment, the appellate court's review of the record showed those findings were erroneous.

Wife claimed Husband breached a fiduciary duty to her. However, assuming Husband did breach a duty, the appellate court held that in the totality of the circumstances, a breach alone was insufficient to support a finding of involuntariness. Nothing indicated that Husband acted in the role of attorney or financial advisor during the marriage.

Next, Husband argued Wife failed to meet her burden to establish the agreement was unconscionable when signed. Wife was represented by counsel. No evidence indicated Husband had a superior bargaining ability or education. Wife picked the location for execution. The agreement stated that Wife was under no compulsion and was of sound mind. Nothing indicated the agreement was unconscionable. Wife had the means to discover values of any accounts through the use of her attorney.

**DIVORCE:  
PROPERTY DIVISION**

**Trial Court Could Award A Disproportionate Division Without Granting Divorce On Fault Grounds.**

8. *Paez v. Rodriguez*, No. 03-24-00731-CV, 2025 WL 2325163 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (08-13-2025).

**Facts:** Husband and Wife were married for nearly 50 years. Wife earned money from babysitting children at the marital residence. The parties had custody of their Grandchild, who Wife also cared for. Husband often threatened to sell everything and return to Colombia. Wife did not drive, spoke little English, and worried that without the marital residence, she would not have means to sustain herself and the Grandchild. Husband owned his own business.

After a bench trial, the court rendered a divorce and, as part of the property division, awarded Wife the marital residence. Husband appealed.

**Holding: Affirmed.**

**Opinion:** Husband argued the trial court erred in awarding Wife the marital home when it granted the divorce on no-fault grounds. However, even when a divorce is not granted on fault-based grounds, the community estate need not be equally divided. The court should consider the *Murff* factors when making its just and right division. Here, Wife needed the home to have a steady income, whereas Husband owned his own business. The parties' adult child testified that Husband had a greater earning capacity than Wife. Wife had custody of the parties' grandchild. Husband stated he wanted the house to be sold but offered no alternative for where the grandchild would live. Additionally, although the court granted the divorce on no-fault grounds, it could still consider the adult child's testimony about Husband's abuse of Wife during the marriage.





### **Tax Appraisal Could Support Trial Court's Valuation Finding When No Controverting Evidence Of Value Offered.**

9. *Eudarc v. Ynganeh*, No. 05-24-00489-CV, 2025 WL 2346149 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (08-13-2025).

**Facts:** In his divorce petition, Husband alleged Wife committed fraud on the community estate and wasted community assets. Both parties sought a disproportionate division of the community estate. Wife's attorney withdrew the morning of trial, so Wife represented herself. After the bench trial, the court signed a final decree, and Wife appealed with the aid of counsel.

#### **Holding: Affirmed**

**Opinion:** Among other complaints, Wife argued the trial court erred in vastly undervaluing certain real property, which made the overall division of the marital estate unjust. At trial, Husband offered the tax appraisal as evidence of value, and Wife did not offer any different value. Wife failed to establish the trial court implicitly found in favor of Husband's valuation.

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### **Wife's Separate Property Interest In Real Property Was Lost When The Property Was Transferred To An LLC.**

10. *In re Marriage of Thatcher*, No. 07-25-00011-CV, 2025 WL 2396576 (Tex. App.—Amarillo 2025, no pet. h.) (mem. op.) (08-18-2025).

**Facts:** Husband and Wife married and then moved to Texas from the UK, primarily to invest in real estate. Wife's father gave her money to use to purchase property. One home was purchased using those funds. On the advice of an immigration attorney, the purchase and title documents were in Husband's name only. Later, the parties purchased another home with Wife's father. Pursuant to an oral agreement, Wife's father would have a fifty-percent interest in the property, but only Husband and Wife were on the title documents.

The parties then formed a real estate holding company (the "LLC") and each of Husband and Wife held a 50% interest in the LLC. The first-purchased home was transferred into the LLC and was subsequently transferred back out before being sold. Wife filed for divorce and claimed the first-purchased home as her separate property. Wife's father intervened in the suit to claim his interest in the second home. The trial court made rulings in Wife's favor, and Husband appealed.

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

**Opinion:** Through seven issues, Husband challenged the trial court's confirmation of Wife's separate property. Wife introduced evidence that the initial purchase money for the contested property was received by Wife as a gift from her parents. Wife produced a gift letter from her parents, and Husband and his expert both acknowledge the funds were a gift.

The funds received from Wife's parents were placed into a joint account, and the subsequently purchased real property was placed in Husband's sole name. While these actions created a presumption of a gift from Wife to Husband, that presumption was rebuttable. Wife testified that at the time of purchase, she was going through immigration proceedings and placed the property in Husband's name to avoid any appearance that she was attempting to immigrate illegally. She testified that it was never her intent to gift the property to Husband. That evidence was sufficient to rebut the gift presumption.

However, Wife subsequently transferred the property to a corporate entity, which meant that the property was no longer community or separate property because it was no longer owned by either party. Thus, the proceeds of the subsequent sale of the property could not be traced to Wife's separate property, and the trial court erred in confirming the proceeds as such.

Husband next complained of the trial court finding Wife's father owned a fifty percent interest in the other real property. Husband asserted that any oral agreement giving Wife's father an interest was unenforceable because it violated the statute of frauds. However, the statute of frauds is an affirmative defense in a suit for breach of contract that renders the contract voidable and unenforceable. The party relying on the statute of frauds to avoid his agreement must plead it as an affirmative defense and bears the initial burden of establishing its applicability.

Here, Wife's father intervened in the suit claiming his half-ownership in the property. Husband filed no responsive pleadings to the intervention. The record did not reflect that a statute-of-fraud defense was tried by consent. Testimonial evidence established that the parties would purchase the property and Wife's father would possess the rights to half the property's rentals and eventual sale. Wife's father wired funds to the parties and the title company for a portion of the purchase. Although Wife's father's name was not on the deed, Husband acknowledged that rental profits were provided to Wife's father. In the appeal, Husband pointed to a "gift letter" indicating that Wife's father's contribution to the property purchase was a gift. However, it was Husband and Wife who suggested the creation of that letter to ensure Wife's father would not be responsible for payments on the mortgage. The gift letter was not determinative.

Finally, Husband challenged the just and right division of the community estate. Because the characterization issues likely had a material effect on the division, the issue was reversed for further proceedings.



**Possession Order Giving Father Access As Agreed By Him And The Children Reversed For Lack Of Specificity; Reimbursement Award For Community Contributions To Enhance Father's Separate Estate Reversed Because No Evidence Of Enhanced Value.**

11. *In re Marriage of Cruey*, No. 12-24-00159-CV, 2025 WL 3084452 (Tex. App.—Tyler 2025, no pet. h.) (mem. op.) (08-21-2025).

**Facts:** Mother and Father were married about 14 years and had four Children. Father filed for divorce, and a jury found Father should have the exclusive right to designate one of the Children's primary residence, and Mother should have the exclusive right to designate the primary residence of the other three Children. All other issues were tried to the bench.

The final decree appointed the parents joint managing conservators of all four Children, required Mother's periods of possession of the one Child in Father's "primary care" to be supervised, and required Father's periods of possession of the other three be supervised. Additionally, Father was enjoined from attending the Children's school unless invited and from approaching Mother and her family members.

The decree also awarded two reimbursement awards to Mother for improvements on Father's separate estate and the community estate. Father appealed. Mother did not.

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

**Opinion:** Only a partial reporter's record was provided to the appellate court, and Father did not file a statement of points. The record did not include transcripts of evidentiary hearings that had been conducted to address Father's attendance at the Children's school lunches and attorney's fees. Thus, Father's appellate challenges on these two issues were waived because the appellate court was required to presume the omitted portions of the record supported those rulings.

Father first argued the evidence was legally insufficient to support the order giving him limited periods of possession. Father asserted the restrictions on his access were unreasonable because it did not specify times for his access, leaving his periods of possession to Mother's discretion. The court restricted Father's periods of possession due to sexual abuse by the one Child in Father's "primary care" against one of the other Children and Father's refusal to believe the outcry or take steps to protect the Children. Additionally, Father continually violated court's orders by not paying support and by going to the Children's school despite orders not to do so. Father did not exercise all his periods of possession, did not ask to visit one of the Children, and discussed the litigation with the Children. The order only gave Father access to the Children if the Children agreed in advance, which could effectively result in no access at all. The trial court abused its discretion in failing to either deny all access or give Father specified periods of access.

Father next challenged the reimbursement claims. The reimbursement awards were based on payments made by the community estate towards Father's separate real property. However, one of the awards was for repayment of a debt associated with one property, and the other was for improvements made to the other property. Both awards to Wife were valued at half the community estate's dollar-for-dollar contribution. Although some underlying facts were disputed, the parties agreed the two properties were Husband's separate estate and that the disputed payments were made from the community estate. With respect to the first reimbursement award, the dollar-for-dollar award was appropriate; however, when one estate enhances another, the correct valuation for the reimbursement should be the enhancement in value. The record contained no evidence of any changed value in that property. Thus, the trial court lacked sufficient information to exercise its discretion to award the second reimbursement award.

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**Trial Court Did Not Err In Not Including Every *Murff* Factor In Its Findings Because The Factors Are Discretionary, And Not All Of Them Were Applicable To This Case.**

12. *Bustamante v. Salinas*, No. 05-24-00451-CV, 2025 WL 2495045 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (08-29-2025).

**Facts:** Husband and Wife were married 35 years before Wife filed her petition for divorce. Wife sought a divorce on the grounds of insupportability and cruelty. Husband generally denied her petition and countered for a divorce on the ground of insupportability. Both parties asked for a disproportionate division of the community estate based in part on alleged waste. At the bench trial, the parties argued about the contents of a safety deposit box. Husband asserted it contained only documents. Wife asserted it also had \$100,000 cash in it. The safety-deposit box was awarded to Husband, and presuming it contained the \$100,000 cash, Husband's share of the estate was about \$7000 more than Wife's. Husband appealed.

**Holding: Affirmed.**

**Opinion:** Husband challenged the property division, arguing it was inequitable and unjust. Specifically, Husband argued the trial court failed to consider the *Murff* factors when dividing the community estate. In *Murff*, the Texas Supreme Court repeatedly used the words "may consider" when setting out the various factors; nowhere did the Court state that the trial court "must" consider each and every factor.

Here, there was no evidence the breakup of the marriage was the fault of one spouse. There was no evidence of the parties' education or business opportunities or any evidence of separate property. The findings indicated the court took the





parties' earning capacities into consideration. Wife was injured, had to pay medical bills, and the injury reduced her ability to work and her recent income. Although no other factors were mentioned in the court's findings, the court did find that the division was just and right having due regard for the rights of each party. Husband did not request additional or amended findings. Additionally, the court found that Wife's testimony was credible, where Husband's was not.

Husband further complained that the court failed to adequately consider and make findings regarding the liabilities of the estate. Husband failed to request findings pursuant to Texas Family Code Section 6.711 and only requested findings pursuant to the Rules of Civil Procedure. However, even if Husband had requested additional findings permitted under the Family Code, the parties only testified about a single car loan. While Husband complained of \$40,000 Wife allegedly wasted, that would not be considered a debt, the court found the money was spent on reasonable necessities, and the court rejected Husband's waste claim.

**DIVORCE:  
SPOUSAL MAINTENANCE AND ALIMONY**

**Spousal Maintenance Could Not Be Based On Earning Potential.**

13. *Harwood v. Harwood*, \_\_ S.W.3d \_\_, No. 03-23-00455-CV, 2025 WL 2233982 (Tex. App.—Austin 2025, no pet. h.) (08-06-2025).

**Facts:** Husband and Wife were married for over 20 years and had three Children, one of whom was an adult by the time of their divorce. In her counterpetition, Wife asked for an award of spousal maintenance. Wife testified regarding her lymphedema that caused swelling and infections in her right leg. Wife received monthly social security disability payments ("SSDI"). Before that, Wife worked at Chanel as an account manager. However, she claimed that she could no longer get a job or work full-time. She requested spousal maintenance for an indefinite period, set at 20% of Husband's income. Wife presented evidence of her minimum reasonable needs and available resources, including SSDI and child support. Husband argued Wife led an active life and could push through a lot of things. Early in the marriage, Husband played professional basketball. He later began working at 24-Hour Fitness, working up to district manager with a six-figure annual salary. Later, he became a self-employed "life coach" earning less than \$40k a year. The court set spousal maintenance based on Husband's earning potential, rather than his actual income. The court replied in the affirmative to Husband's attorney's clarifying question, "so you're applying Chapter 154 to Chapter 8 to come up with this amount of maintenance?" The trial court signed a decree and denied Husband's motion for new trial. Wife appealed.

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

**Opinion:** In reviewing the record, the appellate court determined the evidence was legally and factually sufficient to support a finding Wife's disability entitled her to spousal maintenance. Thus, the appellate court overruled Husband's first issue.

In his second issue, Husband asserted the trial court abused its discretion in setting his spousal maintenance obligation at \$1500 a month based on a the finding he was intentionally underemployed. The Family Code limits the situations in which maintenance may be awarded, and if maintenance is available, it is capped at the lesser of \$5000 a month or 20% of the obligor's average monthly gross income. The statute defines "gross income" with itemized lists of what is and is not included. At the time of trial, Husband testified to earning \$3300 a month, 20% of which is \$660.

Nothing in Chapter 8 authorizes the court to rely upon a finding of intentional unemployment when determining the amount of spousal maintenance to be ordered.

**Wife's Symptoms Of PTSD Caused By Husband's Betrayals Prevented Her From Satisfying Her Minimum Reasonable Needs; Wife Was Not Required To Spend Down Long-Term Assets; Evidence Sufficient To Establish Needs Exceeded Award; And The Spousal Maintenance Award Did Not Exceed 20% Of Husband's Gross Monthly Income.**

14. *In re Marriage of Willis*, No. 06-25-00007-CV, 2025 WL 2433204 (Tex. App.—Texarkana 2025, no pet. h.) (mem. op.) (08-25-2025).

**Facts:** Husband was a real estate broker and an ordained Baptist minister. He wrote a book (not yet published) detailing his addiction to pornography and adultery, including with teenage boys while acting as a youth pastor. In the book, Husband admitted to cruel treatment of Wife. Husband contracted an STD, was aware of the symptoms, yet continued to have sexual relations with Wife before she had knowledge of his adultery.

Husband believed God had absolved him of his sins, so he decided to tell Wife everything and encouraged her to remain with him. She left. Later that year, Husband emailed the couples' adult children to apologize for treating Wife like a slave or as if she were worthless. Wife filed for divorce and asked for spousal maintenance.

At trial, the evidence showed that Wife had assisted Husband with his real estate business, often working long hours, sometimes into the night, without pay. Sometimes, Wife continued working while Husband left to go sit in a hot tub. During the marriage, Husband controlled the money and did not allow her funds to purchase new clothing because she did not go anywhere. Wife was 61-years old at the time of trial. A licensed counselor testified Wife had complex PTSD due to Husband's activities and



disclosures. Wife would have great difficulty returning to work in the real estate industry because that work constituted a primary trigger for her trauma. The counselor testified that Wife was not physically capable of working due to the effects of the PTSD. The counselor could not predict how long it would be before Wife might be fit for work. Wife had previously been a teacher, but she quit in 1991 to homeschool the parties' children.

Husband had ignored Wife's requests for him to stop emailing and texting her. He sent her at least 252 emails and 260 text messages since the separation. Although he acknowledged his mistreatment of Wife, he still wanted to publish the book against her wishes to share his journey with God. The trial court reviewed Husband's book before ruling.

With respect to her minimum reasonable needs, Wife testified that she wanted to buy a home so that she could live alone and find herself again. She had inherited some money from her father and had some retirement funds. She had not applied for jobs or sought further training. The income earned from Husband's real estate business had been reported under Husband's Social Security number, so he would eventually receive those benefits. Wife's projected benefits were about a quarter of what Husband would receive. Husband had a six-figure annual income for the last few years, but Wife also had six-figure debt.

The trial court granted the divorce on the grounds of adultery and cruelty and awarded Wife a disproportionate share of the community estate. Additionally, the court awarded Wife monthly spousal maintenance of \$2,500 for eight years. Husband appealed.

**Holding: Affirmed.**

**Opinion:** Husband challenged the award of spousal maintenance. The evidence supported a finding that due to her mental health, which deteriorated because of Husband's betrayal, Wife lacked the ability to earn sufficient income. Wife had trouble sleeping, experienced panic attacks, could not concentrate, and could no longer perform daily tasks that used to be easy for her. Husband set back Wife's ability to recover by continuing to email and text her.

Husband argued the court erred because Wife did not establish the amount necessary to meet her minimum reasonable needs and the amount exceeded 20% of his gross income.

Quoting *Mehta v. Mehta*, No. 23-0507, 2025 WL 1733627 (Tex. 2025) (06-20-2025), the court explained that "[m]inimum reasonable needs" is not defined in the Family Code." As a result, "[t]rial courts generally have discretion to determine these needs on a case-by-case, fact-specific basis." "Although an itemized list of monthly income and expenses is the most 'helpful' evidence to establish eligibility, neither the Family Code nor our cases require exactitude." "[A]lmost everyone has basic essential needs such as food, utilities, and medical expenses."

Although Wife did not testify what her anticipated mortgage payment would be, the trial court was aware that the parties' current monthly mortgage payment was almost \$2000. Husband listed his monthly expenses, including yard maintenance, food, and utilities, the total of which exceeded \$2000. Wife also testified she paid over \$2000 a month for the couple's health insurance, and her monthly credit card debt payments were nearly \$2500 a month. Both parties testified that they did not believe they could survive on \$2000 a month, and Husband estimated he would need \$4000 a month. The evidence supported the trial court's determination that Wife's needs were at least \$2500.

Husband complained that in addition to her separate property, Wife had sufficient property awarded to her in the property division to meet her minimum reasonable needs. Wife's separate property included a \$100 savings account, jewelry, and cemetery plots. She also inherited about \$50k in an Edward Jones account, but she was not required to spend down long-term assets. The parties had real estate to be sold, but due to a market downturn, Husband could not predict how long it would take for the properties to sell. All the properties had mortgages associated with them. While Wife had some cash assets, she would need those funds to make a down payment on her new home. Viewing the evidence in the light most favorable to the judgment, the evidence sufficiently rebutted the presumption maintenance was not warranted and that Wife could not access sufficient funds immediately and without consequence to provide for her minimum reasonable needs.

The trial court awarded Husband the real estate business that previously netted between \$100k and \$300k in annual profits. The award of \$2500 in monthly spousal support was less than 20% of Husband's monthly gross income.

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**Husband Not Entitled To New Trial After Entry Of Default Decree Because His Failure To Answer Was Result Of Conscious Indifference; However, Wife Failed To Present Evidence Of Her Due Diligence To Rebut Presumption Against Spousal Maintenance.**

15. *In re Marriage of Grigsby*, \_\_ S.W.3d \_\_, No. 13-24-00513-CV, 2025 WL 2470215 (Tex. App.—Corpus Christi—Edinburg 2025, no pet. h.) (08-28-2025).

**Facts:** Wife filed a petition for divorce, alleging adultery and seeking a disproportionate share of the community estate and spousal maintenance. Husband did not answer or appear. The default divorce decree awarded Wife the marital residence and three vehicles. Each party was awarded his or her respective retirement and personal property in their control. Husband was ordered to pay to Wife \$1000 per month for five years for spousal maintenance plus spousal support arrearages based on an earlier temporary order. Husband filed a *Craddock* motion for new trial, which was denied. Husband appealed.

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

**Opinion:** Husband argued the trial court erred in denying his motion for new trial. Husband had attached a supporting affidavit to his motion for new trial, which stated that he did not understand the legal process and believed the parties were going to



reconcile. Although he acknowledged being served with the original petition, he claimed that Wife intercepted his mail, preventing him from knowing about any other activities in the proceedings. Wife asserted she informed Husband twice of the final hearing and never considered reconciliation.

Husband claimed that his long work hours made it difficult to speak with an attorney; however, the fact that he considered speaking with an attorney indicated that he understood the legal matter was important to his Wife. Husband claimed he did not understand what he needed to do in the proceedings but acknowledged receiving an order to appear. Husband acknowledged being served with the original petition, and he knew the hearings were moving forward. The citation informed Husband that a failure to answer could result in a default judgment. Husband's excuses did not negate his conscious indifference in his failure to answer. The trial court did not err in denying Husband's motions based on the first element of *Craddock*.

Husband next challenged the sufficiency of the evidence to support the trial court's disproportionate division of the community estate, which Husband asserted was based on the finding of adultery. At trial, in support of her claim that Husband committed adultery, Wife simply answered "yes" twice when asked if Husband committed adultery. However, even in the light of this scant testimony, Wife also testified that Husband's gambling depleted the parties' savings, Husband was the breadwinner, and Wife needed some money to get back on her feet. The additional testimony supported granting Wife a disproportionate share of the community estate, regardless of whether Wife proved Husband committed adultery.

Finally, Husband challenged the award of spousal maintenance. Wife testified she would not be able to meet her reasonable and necessary expenses without maintenance. However, there was no evidence regarding whether Wife exercised diligence in earning sufficient income or in developing the necessary skills to do so.

In her appellee's brief, Wife asked the appellate court to remand the spousal-maintenance issue if it found the evidence was insufficient. The Texas Supreme Court has held

[A]s a practical matter, in an uncontested hearing, evidence of unliquidated damages is often not fully developed. This is particularly true when the trial judge expresses a willingness to enter judgment on the evidence that has been presented. Therefore, when an appellate court sustains a no evidence point after an uncontested hearing on unliquidated damages following a no-answer default judgment, the appropriate disposition is a remand for a new trial on the issue of unliquidated damages.

The appellate court found this situation to be analogous and remanded the issue for further proceedings.

### DIVORCE: ENFORCEMENT OF PROPERTY DIVISION

#### **Wife's Interpretation Of Decree Ignored Confirmation Of Husband's Separate Property And Rendered Meaningless The Provision Excepting That Separate Property From The Cash In Her Control.**

16. *In re Marriage of Lane*, No. 07-24-00231-CV, 2025 WL 2309270 (Tex. App.—Amarillo 2025, no pet. h.) (mem. op.) (08-11-2025).

**Facts:** Before marriage Husband had an interest in a company where he worked for over three decades. Husband sold the business for almost \$2 million. When Wife filed for divorce, she withdrew a significant portion of these funds to support her children. She repaid some but not all of the withdrawn funds.

The parties signed an MSA that was incorporated into the final decree of divorce, which awarded Wife certain items and cash in her control "SAVE AND EXCEPT" funds received by Husband from the sale of the company. The decree included a confirmation of Husband's separate property interest in those sale proceeds. However, at the time of divorce, the sale proceeds were in Wife's control, and she argued the decree thus awarded them to her.

Husband petitioned for enforcement. Wife countered with her own enforcement petition, asserting Husband owed her money under other provisions in the decree. Husband asserted he would pay Wife what was due to her after she turned over his separate property funds. Husband testified that the value of the net sale proceeds was not included in the decree because that amount was "known" to the parties. At the enforcement hearing, an expert testified and applied the community-out-first tracing method to determine the amount Wife owed Husband. The trial court offset the amounts owed to each party and rendered a judgment requiring Wife to pay Husband about \$150,000. Wife appealed.

#### **Holding: Affirmed.**

**Opinion:** Wife argued the trial court lacked subject matter jurisdiction to substantively alter the decree and that res judicata barred the relitigation of separate property. Although the better practice would have been to specify within the MSA the exact amount at the time the MSA was executed, the parties agreed that "all" funds from the sale were Husband's separate property. The delayed determination of that amount did not alter the character of the property or change the property division. Husband's enforcement suit was not a relitigation of the decree or a collateral attack on it. Wife's interpretation of the decree ignored the "SAVE AND EXCEPT" provision and attempted to render that provision meaningless. Moreover, Wife's interpretation asked the court to divest Husband of his separate property.

Wife alternatively argued the trial court erred in explicitly finding the decree included a patent ambiguity. She argued the trial court impermissibly allowed extraneous evidence of the parties' intentions to create an ambiguity. A judgment only contains a patent ambiguity when the ambiguity is evident on the face of the judgment. A latent ambiguity arises when a facially unambiguous document is applied to the subject matter and an ambiguity appears by reason of some collateral matter. Extraneous



evidence is needed to determine the existence of a latent ambiguity. Here, the decree was facially unambiguous. The alleged ambiguity asserted by Wife was the lack of a specific award of the proceeds in the section detailing the property awarded to Husband. However, Wife's assertion lacked merit because the proceeds were confirmed as Husband's separate property within the decree. Thus, although the trial court erred in characterizing the ambiguity as patent instead of latent, that error did not harm Wife and did not require reversal.

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**Proposed QDRO Signed As Agreed To Form Only Did Not Constitute A Rule 11 Agreement; Post-Divorce Suit To Divide Property Governed By Chapter 9, Not Chapter 7.**

17. *Saunders v. Hartley*, No. 14-24-00575-CV, 2025 WL 2355814 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (08-14-2025).

**Facts:** Before marriage, Wife lived on property purchased by her parents for her. Husband moved in with Wife after they married. A few years later, the couple purchased the property from Wife's parents, making the property community property. When the parties were divorcing, the property was placed on the market for sale. Although the decree indicated the parties agreed to a property division, no agreement was attached to the decree. Husband stated that the parties had oral agreements regarding certain retirement accounts and the property purchased from Wife's parents. After the divorce was finalized and the property was sold, Husband presented Wife a check that purported to reflect her share of their agreement. Wife refused to accept the check and filed a petition for post-divorce division of property. After a bench trial, the court asked the parties to present the court with a proposed QDRO. However, upon review of the QDRO, the court determined the proposed order did not reflect the court's intent in the final decree of divorce. The court edited the proposed order before signing it and issued a final order in the post-divorce suit. Wife appealed, and Husband cross-appealed.

**Holding: Affirmed.**

**Opinion:** A QDRO is a species of post-divorce enforcement, and the trial court retains jurisdiction to enforce its own orders. The QDRO may not alter the property division of the divorce.

Wife first argued the QDRO signed by the trial court did not comply with the Family Code. In support, Wife cited Section 7.003, which addresses the division of retirement benefits in a divorce. However, this suit was a post-divorce division, which was governed by Chapter 9, not Chapter 7.

Wife next argued because the court allowed the parties to complete a proposed QDRO, that action created a Rule 11 agreement. Wife asserted that because the proposed QDRO was written, signed by the parties, and filed with the court, the proposed QDRO constituted a valid Rule 11 agreement. However, the attorneys signed the agreement as agreed to in form only. Wife signed the proposed order to indicate her agreement as to form and content. Husband only "signed" the agreement through his counsel. Nothing about the signatures on the proposed QDRO indicated an intent by both parties to be bound to the order.

Next, contrary to Wife's assertion, attorney's fees in a Chapter 9 enforcement suit are discretionary. Wife was not entitled to an award of attorney's fees.

Through a cross-appeal, Husband complained of the disproportionate award to Wife of the assets not previously divided. Chapter 9 permits the court to divide undivided assets in a manner it deems to be just and right. Husband first appeared to argue that because the property had been sold before the post-divorce division suit, the trial court lacked jurisdiction to divide it. However, the question was not whether the property existed at the time of the Chapter 9 suit but whether it existed at the time of divorce—and whether it was included in the divorce decree's property division. The parties did not dispute that the property existed as part of the community estate at the time of divorce. Thus, the proceeds of the sale of that property were also community property.

Husband also argued Wife was estopped from seeking more than 50% of the proceeds of the sale of the property because she had previously agreed pursuant to the "Seller Proceeds Instructions," which provided that each party would receive 50% of the net proceeds. However, Husband failed to establish that document was a contract. Additionally, the trial court could have considered the *Murff* factors in determining what constituted a just and right division.

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**Wife Failed To Present Grounds In Rule 91a Motion To Support Dismissing Husband's Post-Divorce Petition To Divide Undivided Community Property.**

18. *Serna v. Serna*, No. 13-24-00449-CV, 2025 WL 2416756 (Tex. App.—Corpus Christi—Edinburg 2025, no pet. h.) (mem. op.) (08-21-2025).

**Facts:** Husband filed a suit for a post-divorce division of undivided community property and included a claim for fraud on the community. The property in question was real property in Colorado, and Husband asserted it was unaddressed by the divorce decree because the parties agreed to divide it between themselves later. About 15 years after divorce, Wife informed Husband that she would not follow the agreement and transferred the property to a third party.

In response to Husband's post-divorce petition, Wife filed a Texas Rule of Civil Procedure 91a motion to dismiss. The trial court granted Wife's motion, and Husband appealed.



**Holding: Reversed and Remanded.**

**Opinion:** Wife asserted that Husband failed to reference Texas Family Code Section 9.201 (post-divorce divisions) or Texas Civil Practices and Remedies Code Section 37.003 (declaratory judgments) in his petition. However, when special exceptions are not filed, the court construes petitions liberally in favor of the pleader. Husband's pleading asked the trial court to declare the property as community property and divide it 50/50 between the parties. Husband also sought reasonable attorney's fees. Given Husband's pleading, the declaratory judgment statute, and the division procedure of the Family Code, an attorney of reasonable competence could have ascertained the nature and basic issues of Husband's claims.

Wife also argued Husband's suit failed because under Colorado law, the property would have been separate property. While Texas courts lack jurisdiction to adjudicate title to land outside the state, Texas courts may enforce an in personam obligation by ordering a party to convey land located in another state. Additionally, in a Texas divorce, characterization is not based on the law applicable in the property's location. Instead, out-of-state property acquired by a spouse during the marriage—even when it would be considered separate property under that state's laws—is community property if it “would have been community property [had the acquiring spouse been] domiciled in [Texas] at the time of the acquisition.”

Wife further argued Husband's claim was barred because his suit was filed over 14 years after the divorce. However, Wife did not argue that Husband's claim was barred by any statute of limitations or raise that claim as an affirmative defense in her answer. Regardless, even if she had raised a statute of limitations defense, the limitations period would have been tolled until “the date a former spouse unequivocally repudiates the existence of the ownership interest of the other former spouse and communicates that repudiation to the other former spouse.”

Finally, Wife asserted on appeal that Husband's claim was barred by *res judicata*. However, she did not make that argument to the trial court, so it could not have served as the basis for granting her Rule 91a motion. Moreover, caselaw is clear that *res judicata* is not implicated when a party seeks post-decree division of property that was not adjudicated in the final divorce decree.

Because Wife failed to present any basis for granting her Rule 91a motion, the trial court erred in dismissing Husband's suit.

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**Wife Granted Money Judgment Instead Of Vehicle Because Award Of Vehicle No Longer Adequate Remedy; No Error In Valuing Vehicle Slightly Less Than Wife's Proposed Value Range Because Wife Had Not Seen The Vehicle In Quite Some Time.**

19. *Buiphram v. Nguyen*, No. 14-23-00553-CV, 2025 WL 2487103 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (08-29-2025).

**Facts:** After the trial court signed a divorce decree, the appellate court affirmed the decree. In the decree, Husband was required to turn over to Wife Social Security payments for the benefit of the Child within three days of receipt. Subsequently, in a suit to enforce the decree, Wife asserted Husband failed to turnover of the Social Security payments, a vehicle awarded to her, and attorney's fees as ordered. Although the Social Security payments were eventually redirected to Wife, a delay in accomplishing that transition resulted in Wife not receiving over \$10,000 in payments that she asserted were due to her under the decree. In addition to seeking money judgments for the Social Security payments and attorney's fees, Wife asserted that the turnover of the vehicle was no longer adequate and asked for a money judgment for the vehicle as well. Wife further sought an award of attorney's fees in the enforcement action. Husband generally denied Wife's allegations and argued he lacked the ability to pay the amounts ordered and had no property to be sold or to otherwise cover the judgments.

After a hearing, the court ordered Husband to pay Wife a money judgment in lieu of the vehicle, assessed a \$500 fine against Husband, and awarded Wife less than a quarter of the attorney's fees she asked for in the enforcement suit. The trial court otherwise denied all relief not expressly granted. Wife appealed.

**Holding: Affirmed.**

**Opinion:** Wife complained of the trial court's failure to award her judgment regarding the Social Security payments. However, in the court's findings, it noted that the decree was not enforceable on that point because it did not specify a date by which the funds had to be directed to Wife. Further, Wife began receiving payments before the decree was signed.

Wife also challenged the failure to award her a judgment for the unpaid attorney's fees awarded in the divorce. At the enforcement hearing, Wife testified that she had received no money for attorney's fees from either Husband or her trial attorney. Wife offered a document with a single sentence: “There are no records of any payment received from [Husband].” There was no other information on the document. Wife also argued that Husband invoked his Fifth Amendment privilege when asked about the fees, which would have supported an inference he had not paid. However, the trial court found that the document was insufficient. The trial court did not abuse its discretion in finding the scant evidence offered by Wife to be insufficient to support her claim.

Wife next challenged the valuation of the vehicle awarded her. Wife testified to a range of values (\$3600 to \$5600) for the vehicle and explained she could not be more specific because she was unaware of the condition of the vehicle. Husband did not object or provide a competing value. The trial court granted a judgment for slightly less than the lowest value in the range





provided by Wife (\$3500). Here, although the trial court awarded a judgment for just outside the range of values, the court may have rationally discounted that range based on the fact Wife had not seen the vehicle for some time.

Finally, Wife complained of the trial court only awarding her less than a fourth of the fees sought in the enforcement proceeding. Wife cited no legal authority to support her claim that she was entitled to additional fees.

**SAPCR:  
PROCEDURE AND JURISDICTION**

**Mother's Requested Trial Amendment To Address Unpleaded-For Adult-Disabled Child Support Denied Because Allowing Amendment Would Have Been Prejudicial On Its Face Against Father.**

20. *Chibuogwu v. Chibuogwu*, No. 14-24-00488-CV, 2025 WL 2450492 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (08-26-2025).

**Facts:** Father filed for a divorce. Mother answered and did not plead for adult disabled child support. The parties reached an informal settlement agreement for most issues and tried the remaining issues to the bench. As part of the agreement read into the record, Father had agreed to provide health insurance for the parties' 27-year-old child who had a mental health disability. Mother then replied that she believed that the parties had agreed the adult child's social security payments would continue "to be extended," but Father disagreed that any agreement had been reached regarding child support. On the record, the court invited Father to try by consent the issue of adult disabled child support, but Father would not agree to the trial amendment. At the hearing's conclusion, the court rendered a judgment that did not address child support. Mother's motions for reconsideration and new trial were denied, and she appealed pro se.

**Holding: Affirmed.**

**Opinion:** Texas Rule of Civil Procedure 66 allows trial amendments when the amendment would not prejudice the opposing party's action or defense on the merits. A court has discretion to deny a trial amendment adding a new cause of action if the opposing party objects and it appears that the new matter was known to the party seeking the amendment, or by reasonable diligence, it could have been known.

By the time of trial, the case had been pending for 15 months. Mother's pleadings did not raise the child-support claim, and Father opposed it. The requested trial amendment was prejudicial on its face. Mother could have timely pleaded her claim well in advance of trial. Moreover, if Mother could meet her burden of proof, nothing would prevent her from filing another suit to seek the relief.

**Mother's Periodic Visits With The Child To The State Of The Child's Birth Did Not Change The Fact That Mother And The Child Moved To Texas, Making Texas The Child's Home State.**

21. *In re D.A.M.*, No. 07-24-00327-CV, 2025 WL 2496247 (Tex. App.—Amarillo 2025, no pet. h.) (mem. op.) (08-29-2025).

**Facts:** Mother filed an original petition in a SAPCR. Father responded asserting Texas lacked jurisdiction because the Child lived in Indiana. Mother filed an amended petition asserting the Texas Court additionally had emergency jurisdiction pursuant to the UCCJEA.

Father argued the Child had only been in Texas 29 days and was born in Indiana, making Indiana the Child's home state. The Child had not been in either state for six consecutive months. Indiana declined jurisdiction. The Child also visited California for a week. The trial court denied Father's plea to the jurisdiction and, after a final trial, appointed Mother as the Child's sole managing conservator. Father appealed.

**Holding: Affirmed.**

**Opinion:** Father asserted Texas lacked subject matter jurisdiction because Texas was not the Child's home state. Father argued that visits to Indiana and California disrupted the consecutive six-month period to establish Texas as the Child's home state. Father asserted that because the Child was born in Indiana, it remained the Child's home state.

Father did not dispute that Mother and the Child moved to Texas more than a year before Mother initiated her suit. Although the Child periodically visited Indiana during that time period, the Child's residence was in Texas. "[T]ime spent away from a state during a temporary absence is counted as time in the state for the purposes of determining a child's 'home state.'" Mother had no intention to return to Indiana.





**SAPCR:  
POSSESSION**

**Evidence Of Father's Negative Parenting Tactics Supported Deviating From The Parties Agreed Parenting Plan Temporarily Followed Pending Trial.**

22. *Zachery v. Zachery*, No. 04-24-00531-CV, 2025 WL 2408550 (Tex. App.—San Antonio 2025, no pet. h.) (mem. op.) (08-20-2025).

**Facts:** Mother and Father were married for twenty years and had three minor Children at the time of trial. After a bench trial, the court granted the divorce on the ground of cruelty, named both parents joint managing conservators, and gave Mother many exclusive rights to the Children. Father was granted a standard possession schedule for two of the Children, but access to the oldest teenage daughter was dependent on Father completing reunification therapy. Father appealed, pro se.

**Holding: Affirmed.**

**Opinion:** Father first argued that the trial court erred in granting Mother certain exclusive rights regarding the care of the Children. The trial court interviewed the Children, but no record was made by agreement of the parties. Additionally, ample testimony showed Father's parenting tactics negatively affected his relationship with three of his daughters, two of whom were adults, leading to him having never met two of his grandchildren. His oldest minor daughter attended therapy with Father but had refused to have overnight visitation with Father for the year leading up to trial. At trial, Mother testified that the previously agreed-to parenting plan was no longer working and was not in the best interest of the Children. The trial court, as factfinder, did not abuse its discretion in determining Mother was the more credible witness and in making orders for the Children accordingly.

Father next argued the trial court erred in awarding Wife a disproportionate share of the community estate. The divorce was granted on the ground of Husband's cruelty. Husband's fault in the breakup of the marriage, in addition to the other *Murff* factors could have been considered in the court's just and right division. Regardless, contrary to Husband's assertion, the decree appeared to divide the assets relatively equally between the parties.

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**Husband's Agreement As To Form Waived Appellate Complaints; However, Decree's Reference To "Attached" Possession Schedule That Was Not Actually Attached Reversed For Correction Of That Mistake.**

23. *In re Marriage of Adeyemo*, No. 05-24-00405-CV, 2025 WL 2452284 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (08-25-2025).

**Facts:** Husband and Wife were married for about 15 years and had two Children. Wife obtained a protective order against Husband and filed for divorce a month later, seeking a divorce on the grounds of insupportability and cruelty. Husband counter-sued for a divorce on no-fault grounds. After a bench trial, Wife filed a motion to sign her proposed decree. Husband objected to provisions in her proposed decree relating to the grounds for divorce and insurance provisions for the Children. He did not raise any objections regarding the property division, the requirement his access to the Children be supervised, or his child-support obligation.

The signed decree referenced an "attached" supervised visitation order for Husband, but no possession schedule was attached. Both parties signed the decree as "approved and consented to as to both form and substance." Husband appealed.

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

**Opinion:** Husband challenged a money judgment to Wife as part of the property division and the amount of his child support obligation. In the absence of a record from the motion to enter hearing, there was no evidence to controvert Husband's signature showing he approved the decree as to substance and, thus, waived his right to appeal.

Husband also challenged the supervised visitation order because no order was attached to the decree. In the absence of the attachment, Husband argued he would be unable to enforce his rights, which effectively denied him all access to the Children. Because the parties approved and consented to the decree as to form and substance, they agreed to Husband having supervised visitation. Wife admitted in her appellee's brief that her attorney neglected to present a drafted order for supervised visitation at the hearing on the motion to sign. "Even an agreed decree may be reformed for mutual mistake." Due to that mutual mistake, Husband did not waive his appellate issue. Further, the trial court found that it would be in the best interest of the Children for Father to have supervised access at the county visitation center.

Wife argued that Husband was thwarting the entry of the supervised visitation order, but the record did not reflect Wife attempted to present the order to the trial court, with or without Husband's consent. Husband's consent to the order was not required so long as the order reflected the trial court's ruling. The trial court abused its discretion in entering a decree that effectively denied Husband all access to the Children when the record revealed that was not the intended result.



**SAPCR:  
MODIFICATION**

**Evidence Of Father's Failure To Exercise Visitation, Resulting In Increased Child-Care Costs To Mother, Supported Increasing Father's Child Support Obligation.**

24. *In re K.A.N.*, No. 05-24-00670-CV, 2025 WL 2308878 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (08-11-2025).

**Facts:** Five years after entry of an agreed order in a SAPCR, Mother filed a modification petition. Among other requests, Mother sought an increase in Father's child support obligation and alleged Father was underemployed or hiding his true employment status. Father filed a counter-petition that, among other requests, sought a reduction of his child support obligation.

At the bench trial, Mother testified about Father's failure to exercise his periods of possession, which increased her expenses. For example, when Father failed to pick up the Child for Thanksgiving vacation, Mother enrolled the Child in a swimming program. Father claimed to be unemployed.

Father had four younger children with another woman. He stayed at home with those children while looking for work. He was in a car accident and had difficulty finding work. Father had been receiving unemployment, but it ran out.

At the trial's conclusion, the court indicated it had issues with Father's credibility and the timeline of events as presented by Father. The court signed a final order increasing Father's child-support obligation. Father appealed.

**Holding: Affirmed.**

**Opinion:** In his first issue, Father argued that Mother failed to meet her burden to establish a material and substantial change because she did not offer historical evidence of the parties' financial circumstances. In his second issue, Father argued his unemployment constituted a material and substantial change in circumstances.

Contrary to Father's argument, the material and substantial change need not necessarily be a change in the financial condition of one of the parties; it can involve something else, such as a change in custody of the child. Here, Mother's alleged change in circumstances was the fact that Father had only exercised a small fraction of his visitation in the years since the original order. As a result, the Child was with Mother much more often than contemplated in the original order. This resulted in increased expenses for her, including the cost of camps over school breaks and babysitters. Father saw the Child only during the summers, and there was no evidence Father planned to see him more frequently in the future.

Father did not present documentation to support his claims regarding unemployment benefits or medical restrictions on his ability to work. The crash report from the car accident showed Father told the police officer he did not need medical attention. Father was fired weeks before the car accident. The trial court found Father not to be a credible witness.

The evidence supported the findings that a material and substantial change warranted increasing child support and not reducing it.

Father further complained the trial court erred in deviating from the child support guidelines. The Family Code permits deviating from the guidelines upon consideration of 1) the age and needs of the child, 2) the amount of time of possession of and access to the child, and 3) child-care expenses incurred by either party to maintain gainful employment. Father did not establish the trial court abused its broad discretion in deviating from the guidelines.

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**Because No Record Was Made Of The Trial Court's Interview With The Child, The Court Of Appeals Was Required To Presume That The Evidence Received During That Interview Supported The Judgment.**

25. *In re A.K.M.*, No. 05-24-00153-CV, 2025 WL 2400126 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (08-18-2025).

**Facts:** When the Child was about 7-years-old, the trial court rendered an order establishing Father's paternity and giving Father the exclusive right to designate the Child's primary residence. Three years later, after the Child made an outcry against Father about extreme corporal punishment, Mother filed an application for a temporary restraining order and a petition to modify the parent-child relationship. Father filed a counterpetition. The parties reached a Rule 11 agreement that gave Mother the exclusive right to designate the Child's primary residence and gave Father a limited possession schedule. However, a few months later, with the aid of new counsel, Father revoked his agreement. The trial court nevertheless signed temporary orders based on the agreement. By the time of trial, the Child was 14-years old. The trial court signed a final order appointing the parties joint managing conservators, with Mother having the exclusive right to designate the Child's primary residence. Father appealed pro se.

**Holding: Affirmed.**

**Opinion:** Father first challenged the finding of a material and substantial change in circumstances. However, the court did not need to find a material and substantial change in circumstances to give Mother the exclusive right to designate the Child's primary residence because the Child was over the age of 12 and expressed in chambers his desire to live primarily with Mother. Moreover, Father judicially admitted to a material and substantial change through his counterpetition.



Father next argued the evidence was insufficient to support a finding that the modification was in the best interest of the Child. No record was made of the interview with the Child. In the absence of such a record, the court was required to presume that the evidence received during that interview supported the judgment.

Additionally, Father complained of the requirement that he pay child support. Because the court modified possession, it had authority to modify child support. Further, the order was within the Family Code's guidelines.

Father next raised arguments regarding the exclusion of testimony from various witnesses. However, some of the excluded evidence could not have harmed Father because it would have been cumulative of other testimony, and for other complained-of exclusions, Father failed to make an offer of proof.

Father next challenged the entry of the temporary orders after he revoked his agreement. Because the final order mooted the temporary orders, Father's appellate complaint was moot.

Finally, Father complained of the lack of specificity in the trial court's findings of fact and conclusions of law. However, the findings requested by Father were contrary to and inconsistent with the original findings. Further, even if Father had been entitled to additional findings, Father was not prevented from presenting his appellate complaints and was not harmed.

**SAPCR:**  
**ENFORCEMENT OF POSSESSION / CONSERVATORSHIP**

**Provision Regarding Exchanges Of Child Clarified In Enforcement Suit Because The Provision Was Not Specific Enough To Be Enforceable By Contempt; However, Provision Regarding Electronic Communication Was Clear And Unambiguous And, Thus, Could Not Be "Clarified" In Enforcement Proceeding.**

26. *In re A.N.I.*, No. 04-24-00389-CV, 2025 WL 2331544 (Tex. App.—San Antonio 2025, no pet. h.) (mem. op.) (08-13-2025).

**Facts:** Father filed a suit to enforce a SAPCR because Mother failed to pay child support, failed to show up to exchanges of the Child, and denied Father electronic access to the Child. Only Mother and Father's attorney testified; Father did not testify. Mother acknowledged she had not paid all of her child support obligation but asserted financial circumstances prevented her from being able to pay as ordered. She also testified about her decision to change the platform used for electronic access. The court denied Father's motion to enforce and his requested attorney's fees but purportedly clarified some provisions of the prior order. Father appealed.

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

**Opinion:** Father argued that (1) the court failed to make a finding that the altered provisions were ambiguous; (2) the altered provisions were not ambiguous and could not be clarified; and (3) the clarification impermissibly modified the prior order.

A court may clarify a prior judgment if the order is not specific enough to be enforced by contempt. The only basis for clarifying a prior order is when a provision is ambiguous and non-specific. A substantive change made by a clarification order is not enforceable. Here, the prior order required the parties to be present at exchanges, identified the addresses for exchanges, and allowed the parties to designate a competent adult to pick up or return the Child. The clarified order required adults to remain in their vehicles, allow the Child to walk from one vehicle to the other if safe to do so, and refrain from harassing or threatening behavior. Father argued the clarified order modified the prior order by allowing a competent adult to replace the parent at the exchange.

Father invited the error by asking the trial court to clarify the prior order if it was not specific enough to enforce by contempt. Regardless, the appellate court held that the provisions from the prior order were non-specific and ambiguous. The prior order stated that visitation would be forfeited if a parent failed to show up. Mother testified that the term was supposed to forfeit visitation if the parent picking up failed to show up, not if the dropping off parent failed to show up. Father argued that he should not have to deal with Mother's parents at exchanges. The appellate court concluded that the prior provisions did not spell out the details of compliance in clear, specific, and unambiguous terms so that Mother would readily know exactly what duties or obligations were imposed on her. Moreover, Father did not argue in the trial court that the clarification order modified the prior order with respect to exchanges and could not raise that issue for the first time on appeal.

Father next argued the court erred in modifying his electronic access. The prior order provided:

Each parent shall have video contact daily during periods longer than a weekend beginning at 8:00 p.m. and ending at 8:15 p.m. During the weekends, the video contact shall be on Saturday.

and the clarification order provided:

On Tuesdays, Thursdays, and Saturdays of each month, the parent who is not in possession of the child shall be entitled to electronic communication with the child between 8:00 p.m. and 8:15 p.m. on each of those specific days.

The prior order clearly provided daily communication, while the modified order only provided visitation 3 times a week. The prior order was clear, specific, and unambiguous and not subject to clarification.



**SAPCR:  
ENFORCEMENT OF CHILD SUPPORT**

**Contempt Order Void For Including Violations For Non-Payment Of Attorney's Fees Not Classified As Child Support And For Non-Payment Of Support Obligations Allegedly Missed After Mother's Petition Was Filed.**

27. *In re Anderson*, No. 07-25-00221-CV, 2025 WL 2490068 (Tex. App.—Amarillo 2025, orig. proceeding) (mem. op.) (08-28-2025).

**Facts:** Mother filed a suit to enforce child support. After a hearing, the court found Father failed to make multiple payments of child support, retroactive child support, medical support, dental support, and attorney's fees. The court totaled the amount due and ordered that Father had to pay more than double that amount to purge civil contempt and avoid jail. The additional moneys included interest on the support arrearages, missed support payments after Mother's enforcement petition, and attorney's fees for the current proceeding. Father filed a petition for writ of mandamus.

**Holding: Writ of Mandamus Conditionally Granted.**

**Opinion:** A contempt order that imposes a single penalty for multiple violations is void in its entirety if at least one violation is invalid. The appellate court noted in a footnote: "Had the commitment order identified a discrete penalty for each failure to comply, our result might be different. And, of course, nothing prevents the trial court from issuing a new commitment order that imposes a different civil contempt sentence on different terms. It is unnecessary to decide the validity of such an order today." (citations omitted).

Father did not challenge the contempt violations regarding the unpaid support. He did challenge the court's order subjecting him to incarceration for failure to pay attorney's fees that were not expressly designated for child-support collection and the lack of notice for the alleged violations after Mother's petition.

When attorney's fees are rendered simply as a judgment enforceable as a debt, those fees are not enforceable by imprisonment. When attorney's fees are awarded pursuant to Chapter 157 of the Family Code as additional child support, those fees are not considered a debt and may be enforced by contempt. Because the fees here were awarded in a prior modification suit, they were only enforceable as a debt, and the trial court erred in conditioning Father's imprisonment on payment of the fees.

Before a court may impose contempt for conduct occurring outside the judge's presence, due process requires the alleged contemnor receive notice of the allegations. An enforcement petition must include each date of alleged contempt. Father could not be found in contempt for nonpayment of support payments not specified in Mother's enforcement petition.

Because one or more of the violations were invalid, the entire contempt order was void.

**FAMILY VIOLENCE / PROTECTIVE ORDERS**

**Orders For Conservatorship, Possession, And Support Struck Because Mother Filed Only An Application For Protective Order And The Additional SAPCR Issues Were Not Tried By Consent.**

28. *Mendoza v. Frazer*, No. 01-23-00896-CV, 2025 WL 2212079 (Tex. App.—Houston [1st Dist.] 2025, no pet. h.) (mem. op.) (08-05-2025).

**Facts:** Mother filed an application for a protective order against Father based on allegations of family violence and stalking for the protection of Mother and the Child. At the hearing, Mother testified about daily violence while they lived together and Father's homicidal and suicidal ideations. Father owned firearms that he kept loaded, and he set them out to be visible during arguments with Mother. After Father was evicted from Mother's home, Mother often caught him around her when he had no reason to be near her, and he refused to "stop following her." Other witnesses testified about interactions between the parties, including Father throwing a TV across the room towards Mother while she was holding the Child.

After the trial, the court entered a protective order and additionally rendered conservatorship orders, appointing the parties joint managing conservators with Mother having the exclusive right to designate the Child's primary residence with a geographic restriction. The court also made orders for possession and child support. Mother filed a motion to modify the order and a motion for new trial, seeking to set aside the additional SAPCR orders because those orders did not conform to her pleadings. After the court denied those motions, Mother appealed.

**Holding: Affirmed as Modified.**

**Opinion:** Mother's application for a protective order did not request any orders regarding conservatorship, possession, or support. Those issues were not tried by consent. The entirety of the hearing was focused on Mother and Father's relationship, Mother's allegations against Father, and Father's behaviors before and after his eviction from Mother's home. The appellate court, thus, deleted the SAPCR orders and otherwise affirmed the protective order.



### **Evidence Supported Denial Of Mother's Application For Protective Order.**

29. *J.G. v. M.G.*, No. 02-24-00496-CV, 2025 WL 2264197 (Tex. App.—Fort Worth 2025, no pet. h.) (mem. op.) (08-07-2025).

**Facts:** During their divorce, Mother sought a protective order against Father. The court simultaneously conducted a hearing on Mother's protective order and a hearing for temporary orders in the divorce proceeding. The court denied the protective order and rendered temporary orders that included a supervision requirement for Father's periods of visitation with the parties' four Children. Despite denying Mother's protective order, the court extended certain injunctions of the emergency ex parte protective order but made the injunctions mutual. Mother appealed the denial of the protective order.

**Holding: Affirmed.**

**Opinion:** Mother and Father offered different versions of events. Mother asserted that Father intentionally caused her phone to strike her, which constituted family violence. Father admitted he tried to take Mother's phone but let go when he realized she was not going to let go. Because Mother was pulling on the phone, when Father let go, the phone struck her in the face. The trial judge stated on the record that it found neither party to be credible. The court could have reasonably determined that "Father did not know, nor should he have known, that Mother would find that particular contact to be offensive or provocative at that time."

"Our holding should not be read to hold that a person's grabbing a phone from someone's hand can never constitute family violence or that it is insufficient evidence of such an allegation. Rather, our holding is limited specifically to the facts of this case in light of the applicable standard of review."

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### **Protective Order Could Extend Protection To Applicant's Adult Children Based On The Finding That The Applicant Was Entitled To A Protective Order Under The Code Of Criminal Procedure.**

30. *K.B. v. E.B.*, No. 02-24-00481-CV, 2025 WL 2264196 (Tex. App.—Fort Worth 2025, no pet. h.) (mem. op.) (08-07-2025).

**Facts:** Husband and Wife divorced about 14 years ago. The decree prohibited Husband from communicating with Wife except through her attorney and from contacting the parties' Children except as set out in a supervised possession order. Two years after the divorce, Husband was sentenced to 10 years' confinement for stalking Wife. Just after Husband was sentenced, the divorce court extended the protective order for 10 years.

About a week after the protective order's expiration, the DA's office applied for a new protective order. Husband, still incarcerated, represented himself. After a hearing, the trial court entered a 50-year protective order. Husband appealed pro se.

**Holding: Affirmed.**

**Opinion:** Among other complaints, Husband argued the protective order should not have included the parties' Children because they were now adults. Once the trial court makes the requisite finding to issue a protective order, the Code of Criminal Procedure authorizes the order to include any member of the applicant's family or household. Wife asked for the order to protect her family. The appellate court noted the recent holding in *Sary v. Ethridge*, 712 S.W.3d 584 (Tex. 2025), requiring a significant impairment finding to ban all contact between a parent and child. However, the appellate court declined to extend that holding to adult Children.

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### **Regardless Of Which Version Of The Statute Applied, Evidence Supported A Finding That Family Violence Was Likely To Reoccur.**

31. *D.R. v. C.R.*, No. 04-23-00931-CV, 2025 WL 2331484 (Tex. App.—San Antonio 2025, no pet. h.) (mem. op.) (08-13-2025).

**Facts:** Over the course of a lengthy divorce proceeding, Mother had to file more than one habeas petition to have the Children returned to her from Father. After one forced return, someone shot at Mother and her boyfriend. Mother had no proof that Father was the shooter, but she could not think of anyone else who would have wanted to commit that act. Mother presented photographs of injuries sustained by Father. She also reported that Father harassed her with repeated phone calls from unknown numbers. The child custody evaluator reported seeing Father in possession of seven cell phones. The child custody evaluator also expressed concerns about family violence. Ultimately, the trial court signed a final protective order, and Father appealed.

**Holding: Affirmed.**

**Opinion:** In the appeal, the parties disputed whether the recent amendment to the protective-order statute applied, namely whether Mother was required to establish the likelihood of future violence. While the court noted that another appellate court held that the amendment would apply to an order rendered after September 1, 2023, this appellate court was reluctant to apply the amendment to a case that was tried before September 1 but rendered after. Regardless, because the evidence supported





both a finding that family violence had occurred and a finding that family violence was likely to reoccur in the future, the order was affirmed.

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**Attorney's Fee Award Reversed In Protective-Order Proceeding Because There Was No Statutory Ground To Support The Award.**

32. *Landa v. Rogers*, No. 14-24-00168-CV, 2025 WL 2399149 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (08-19-2025).

**Facts:** Mother filed for a protective order from Father on the Child's behalf, alleging family violence. Mother also filed an affidavit of indigency. Father answered and sought attorney's fees because the application was frivolously filed or designed to harass. After a hearing, the trial court denied the application and awarded Father fees. Despite Mother's request, no findings were issued. Mother appealed.

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

**Opinion:** In Texas, a party generally may not recover attorney's fees unless authorized by statute or contract. Additionally, the party seeking to recover attorney's fees carries the burden of proof, and the party must demonstrate that the fees are reasonable and necessary.

The trial court did not specify in the order the basis for the fee award, but it orally cited Section 92.001 at the hearing. Although Mother did not raise an objection at trial, she preserved her complaint about reliance on that statute because she timely requested findings regarding the fee award and timely filed a notice of past-due findings. Section 92.001 does not authorize the award of attorney's fees. Moreover, that section applies when a person reports family violence in bad faith to a local law enforcement agency, which Mother did not do. Additionally, Section 81.005 could not serve as the basis for the fee award because the court did not find Mother had committed family violence, which is required by that section.

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**Failure To Include Requisite Findings In Protective Order Corrected By Appellate Court Because Findings Were Made In Trial Court's Oral Rendition And The Requisite Findings Were Supported By Sufficient Evidence.**

33. *Garza v. Renteria*, \_\_\_ S.W.3d \_\_\_, No. 14-24-00079-CV, 2025 WL 2413260 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (08-21-2025).

**Facts:** Ex-Girlfriend and Husband previously dated. Ex-Girlfriend and Wife were third cousins. Husband alleged Ex-Girlfriend had been abusive and aggressive towards him and his children and had made threats, including blackmail and extortion. Additionally, Ex-Girlfriend harassed and threatened Husband and Husband's former employers. Husband was terminated after Ex-Girlfriend posted a link to a pornographic website on Husband's employer's Facebook page and sent the link directly to all the employees. Although Husband obtained an ex parte protective order, Ex-Girlfriend violated it by continuing to harass Husband, his family, and his employer. After blocking Ex-Girlfriend's number, Husband received a "ton of messages" from Ex-Girlfriend via unknown numbers.

At the hearing's conclusion, the court orally rendered that it found dating violence under the Family Code based on Ex-Girlfriend and Husband's past relationship. The court also found family violence based on Ex-Girlfriend and Wife's familial relationship. The court granted a 10-year protective order for Husband, Wife, and Husband's children. The court further explained that pursuant to the Code of Criminal Procedure, the court found Ex-Girlfriend was likely to engage in stalking and harassment in the future. However, the written protective order only stated that Ex-Girlfriend had committed dating violence and family violence. Ex-Girlfriend appealed.

**Holding: Affirmed as Modified.**

**Opinion:** Ex-Girlfriend argued the protective order failed to include requisite findings to issue a protective order exceeding 2 years, and the evidence was insufficient to support the order.

The Code of Criminal Procedure authorizes a protective order when the respondent engaged in conduct that would qualify as stalking under the Penal Code. When a protective order is issued under the Code of Criminal Procedure, the court must find that (1) probable cause exists to believe that a stalking offense under Penal Code was committed; and (2) the nature of the scheme or course of conduct engaged in by the defendant in committing the offense indicates the defendant is likely in the future to engage in conduct prohibited by Penal Code. Protective orders under the Code of Criminal Procedure may be effective for as long as the duration of the lives of the offender and the victim.

Under the Family Code, a protective order may be effective for longer than 2 years if the court finds the respondent committed an act constituting a felony-level offense involving family violence. That finding must be included in the order if it lasts longer than 2 years.

Although the written order did not include the requisite findings, the oral rendition did. Moreover, the evidence supported the oral findings. Contrary to Ex-Girlfriend's assertion, the evidence was neither conclusory nor insufficient. Thus, the appellate court modified the protective order to include the findings that:





- Probable cause exists to believe that [Ex-Girlfriend] committed the offense of stalking under Penal Code § 42.072, which is a felony-level offense, involving family violence.
- The nature of the scheme or course of conduct engaged in by [Ex-Girlfriend] in committing the offense indicates [Ex-Girlfriend] is likely to engage in stalking in the future.

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**Evidence That Husband Once Hit Wife With A Closed Fist On The Back Of Her Head Sufficient To Support Family-Violence Finding.**

34. *Cole v. Cole*, No. 03-24-00275-CV, 2025 WL 4007245 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (08-28-2025).

**Facts:** During the pendency of a divorce, the State separately filed for a protective order against Husband on Wife's behalf. After an evidentiary hearing, at which Husband admitted to "conking" Wife on the head, the court issued a protective order. Husband perfected an appeal. Wife then asked the State to terminate the order, and the trial court obliged.

**Holding: Affirmed.**

**Opinion:** An appellate court may review whether a protective order was appropriately granted even if it is terminated before the review.

Husband challenged the sufficiency of the evidence to support the finding he committed family violence. Although the trial court stated on the record that Wife's testimony regarding all but the "conking" incident was not credible, it found her testimony regarding that evidence was credible. Wife testified that Husband "conked" her on the back of the head and caused her to see stars. Wife believed he had hit her with a closed fist. When Wife asked what he was doing, Husband said it was something his mother used to do. Wife's testimony was sufficient evidence to support the family-violence finding. To the extent Husband testified the "conk" was just a "boip on the head" that he did only once to stop Wife's violence against him but was also "absolutely a mistake," the court could have disbelieved his testimony.

Husband also raised a constitutional due process claim regarding the time allotted to the parties at the final hearing. However, although Husband received time checks during the hearing, he did not raise any objection

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**Testimony Supported Finding That No Family Violence Occurred.**

35. *Aderhold v. Bell*, No. 03-24-00258-CV, 2025 WL 2485158 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (08-29-2025).

**Facts:** Mother and Father were divorced and had two Children: Son (14) and Daughter (17). While a separate modification suit was pending, Father sought a protective order on behalf of the Children to protect them from Mother's live-in Boyfriend. Father alleged Boyfriend committed family violence against Daughter, but Mother and Boyfriend denied any violence occurred. One night, the Daughter and a few of her friends had a party with alcohol at Mother's home while Mother and Boyfriend were away. When Mother and Boyfriend returned, Daughter was away, but evidence of the party remained. Boyfriend yelled at Daughter's friends when they got back to the home.

Boyfriend testified that after Daughter's friends left, Mother and the Children argued, and the Children physically attacked Mother. In an effort to stop the attack, Boyfriend grabbed Daughter and tried to restrain her. The Daughter fell and was bruised. Father was told what happened later, which prompted him to seek the protective order.

Before the final trial, Mother's attorney received a phone call from a concerned parent of one of the Children's friends, who wanted to remain anonymous. That parent said that the Children were playing Mother and Father against each other. Daughter wanted to live with Father because Father let her drink alcohol. The caller said Daughter had admitted to being dishonest about Boyfriend. Mother's attorney offered a recording of the anonymous call, which was admitted alongside the testimony of the legal assistant who took the call. Allegations were made that the anonymous caller was Father's ex-girlfriend, who had broken up with Father because of the ongoing litigation. The ex-girlfriend testified and denied being the caller.

The trial court denied the application for protective order, and Father appealed.'

**Holding: Affirmed.**

**Opinion:** Father argued the appellate court could not consider the trial court's findings of fact and conclusions of law because they were issued untimely. The appellate court can consider untimely findings if the appellant does not show injury. Father did not show harm.

Father additionally challenged the sufficiency of the evidence to support the denial of his application. He argued the court erred in failing to find family violence occurred. Daughter had attacked Mother in the past, and Mother and Boyfriend had previously discussed a plan in which Boyfriend would physically remove the Daughter and attempt to deescalate the situation. Mother discussed this plan with Father, and Father did not object. Boyfriend had never been violent or threatened the Children in the years he and Mother had been dating. The testimony supported a reasonable inference that Boyfriend's actions were not a threat to Daughter and did not place her in fear of imminent physical harm.

After Daughter fell, she was told to go to her room, which she did. Daughter did not raise any accusation against Boyfriend regarding the cause of her fall at that time or at breakfast the next day. She just wanted her phone back and complained about



Boyfriend yelling at her friends. The trial court found Daughter's statements about the incident were inconsistent, not trustworthy, and were self-contradicted by Daughter, and the evidence supported that finding.

### MISCELLANEOUS

#### **Petitioner, With History Of Multiple Criminal Assault Charges, Not Entitled To Name Change Merely Because Charges Did Not Result In Convictions.**

36. *In re Name Change of Muhammad*, No. 05-24-00648-CV, 2025 WL 2403704 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (08-19-2025).

**Facts:** Petitioner filed a pro se petition seeking to change his first name. He asserted he had no criminal record, but he failed to sign his supporting declaration, and the original petition was not verified.

Texas DPS filed a statement that there was no record on file or no record that DPS was legally authorized to produce. A printout showed no criminal history at the Texas DPS for Petitioner. However, the trial court's record also contained an FBI criminal history record showing several criminal charges by the state of Missouri. Petitioner was charged with misdemeanor domestic assault, felony domestic assault, and a misdemeanor charge of endangering the welfare of a child. The record did not show any convictions but did not include the dispositions of all charges.

Petitioner signed and filed a declaration to prove up his requested name change, declaring under penalty of perjury that he did not have an FBI or SID number, had not been charged with a class A or B misdemeanor or felony, and had not been convicted of a felony. A final hearing was conducted, but no record of the hearing was supplied to the appellate court. In his appellate brief, Petitioner acknowledged answering in the negative when asked about whether he had been charged with a crime higher than a misdemeanor. Petitioner claimed not to be aware of the charges until the FBI background check was ordered. On the same day as the hearing, Petitioner filed an amended petition acknowledging the felony charge.

The trial court denied the requested name change but did not state the reason, and Petitioner did not request findings. Petitioner appealed pro se.

**Holding: Affirmed.**

**Opinion:** Petitioner argued the trial judge ruled against him due to his arrest history rather than his conviction history. The fact that a petitioner does not have a felony conviction and is not subject to the sex offender registration requirements does not automatically require the trial court to grant the petitioner's request to change his name. Rather, before granting such a request, the trial court must also determine that "the change is in the interest or to the benefit of the petitioner and in the interest of the public." Petitioner failed to establish the trial court abused its discretion. Even in his amended petition, Petitioner failed to disclose his full criminal history.

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#### **Temporary Orders Pending Appeal Not Void For Being Signed Before Mother Filed Her Notice Of Appeal; Evidence Supported Awarding Father Attorney's Fees For Defending Against Mother's Motion For Temporary Orders Pending Appeal And Awarding Father Conditional Appellate Attorney's Fees.**

37. *In re A.P.L.*, \_\_\_ S.W.3d \_\_\_, No. 01-23-00725-CV, 2025 WL 2412903 (Tex. App.—Houston [1st Dist.] 2025, no pet. h.) (08-21-2025).

**Facts:** The parties' agreed final decree of divorce appointed the parents as joint managing conservators, gave Mother the exclusive right to designate the Children's primary residence, provided a possession order that took into consideration the parents' respective religions, and ordered Father to pay child support. If Mother and Father could not make a unified decision on medical, mental-health, or educational needs, tiebreakers specializing in the appropriate field were appointed by the decree. After the divorce, many tiebreakers withdrew from the role due to conflicts between the parties.

Three years after the divorce, Father petitioned to modify the decree based primarily on Mother's alienating behavior. Father sought the exclusive rights to designate the Children's residence and to make medical, mental-health, and educational decisions. Father asked the court to terminate his child support obligation and give Mother a standard possession order.

After a ten-day bench trial that focused heavily on the Children's medical and mental-health issues, as well as co-parenting challenges, the trial court granted Father's requested relief. Mother filed a motion for temporary orders pending appeal, asserting Father was not properly caring for the Children's needs. Father requested appellate attorney's fees, which he claimed were necessary for the Children's safety and welfare during the pendency of the appeal. The trial court denied Mother's motion and granted Father about \$100,000 in attorney's fees for responding to the motion and approximately \$175,000 in conditional appellate attorney's fees. Mother appealed.

**Holding: Affirmed.**

**Opinion:** Mother asserted no material and substantial change supported the modification. Mother correctly noted there was no evidence of abuse, violence, drugs, neglect, or other endangerment. However, these factors are not necessary to establish a material and substantial change. Since the divorce, one Child began struggling with anxiety, focus, and behavior at school, was



moved from a more rigorous academic program to a remedial school, and required specific interventions for ADHD. The other Child's needs related to growth-hormone treatments and learning disabilities had evolved. Mother impaired Father's ability to be informed about and contribute to decisions about the Children's needs. Mother disparaged Father in correspondence with the Children's healthcare providers. Mother interfered with Father's relationship with the Children and involved the Children in the parents' disagreements. Mother deprived Father of possession time. While evidence was disputed, the trial court was in the best position to resolve conflicting issues of fact.

Additionally, both parents sought to modify the parties' rights and duties regarding the Children. Thus, Father was not required to present evidence of a material and substantial change to support granting him the exclusive rights to make decisions regarding the Children's medical, mental-health, and educational needs because Mother judicially admitted such a change existed. Further, when parents cannot effectively co-parent, the court may choose to give decision-making rights exclusively to one parent.

Mother additionally argued the court ignored the younger Child's wishes because that Child told the judge in chambers that everything was fine with Mother. However, Mother ignored the older Child's statements regarding Mother making the Child feel bad about herself for gaining weight and the older Child's express desire to spend more time with Father.

Mother further argued the trial court's findings of fact were not specific enough. However, the trial court is only required to make findings on ultimate or controlling issues. Mother's requested additional findings were no more than requests for explanations of the court's ruling and were not required.

Mother challenged the award of attorney's fees in the temporary orders pending appeal via mandamus and appeal. While prior opinions from this appellate court had held that temporary orders pending appeal could not be challenged within the appeal, the legislature subsequently amended the statute to expressly permit the challenge by either mandamus or appeal. Thus, Mother's mandamus proceeding was denied because the issue was addressed in this appeal.

Mother argued the temporary order was void because it was signed before Mother filed her notice of appeal. Mother asserted the statute only allowed the trial court to grant relief after an appeal had been perfected. However, the statute imposes a deadline after which the trial court may not act, not a date that must first pass before the court may act. Nothing in the statute limits the trial court's ability to act only after a notice of appeal is filed.

Mother also challenged the temporary order for ordering non-appellate attorney's fees. Assuming without deciding that the statute only allows appellate attorney's fees, Mother presented no authority to support her argument that the order was "void" for any jurisdictional defect.

Finally, Mother challenged the sufficiency of the evidence to support a finding that the fees were necessary to protect the Children's safety and welfare. In his response to Mother's motion for temporary orders pending appeal, Father asserted there was no threat to the Children to support granting her requested relief. Contrary to Mother's assertion, this was not a judicial admission that the attorney's fees he sought were unnecessary. Additionally, Mother argued Father was financially stable and did not establish he could not provide for the Children's needs in the absence of an award for fees. The modified order gave Father the primary responsibility for caring for the Children, who each required various tutors, therapists, and other specialists. Father testified he was "in debt up to [his] eyeballs," owed more than \$200,000 due to the litigation, and his attorney testified that Father would incur another \$175,000 to defend the order on appeal. Father testified that he would have to use up savings intended for the Children's education to pay litigation costs, and he was missing payments on the new family home. Thus, the evidence supported a finding that the fees were necessary for the Children's safety and welfare.

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### **Wife's Post-Divorce Suit For Tortious Claims Based On Husband's Actions During Marriage Barred By Res Judicata.**

38. *Huang v. Hackbarth*, No. 09-24-00329-CV, 2025 WL 2416830 (Tex. App.—Beaumont 2025, no pet. h.) (mem. op.) (08-21-2025).

**Facts:** The parties' marriage lasted about four years, and the divorce proceeding lasted about five years. About two months after a divorce decree was signed based on an MSA, Wife filed an original petition raising claims of sexual assault, IIED, and intrusion of privacy. Wife's claims were based on acts that allegedly occurred during the marriage. She asserted Husband had taken pictures of her without her consent while she was not properly clothed, and she claimed not to have discovered the photos until after the divorce. Husband responded with affirmative defenses of waiver, estoppel, claim preclusion, and res judicata.

Husband moved for summary judgment on the ground of res judicata. As part of his summary judgment evidence, Husband included Wife's divorce pleadings that alleged Husband had committed acts of cruelty and sought a disproportionate division on that ground. Additionally, the parties' MSA purported to release each other from any claims that they may have held against each other. In her initial disclosures and a deposition in the divorce proceeding, Wife claimed Husband sexually assaulted her. During the deposition, Wife said her daughter told her about seeing inappropriate pictures of Wife on Husband's phone.

After considering the pleadings, the court granted Husband's motion for summary judgment and dismissed all of Wife's claims with prejudice. Wife appealed.

### **Holding: Affirmed.**

**Opinion:** Wife argued that spousal torts are not compulsory claims but were only permissive, so res judicata did not bar her claims in a separate civil suit. The doctrine of res judicata bars a second action by the parties on matters that were "actually litigated in a previous suit, as well as claims 'which, through the exercise of diligence, could have been litigated in a prior suit.'" 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) the second action is based on the same claims that were raised or could have been raised in the first lawsuit.

Here, Wife put Husband's tortious conduct at issue in her petitions for divorce, and this was the type of case in which interspousal tort claims should have been joined with the divorce. Wife raised claims of cruelty and family violence in the divorce proceeding. Wife's claims for assault and IIED in the civil suit were based on the same claims that were raised or could have been raised in the divorce proceeding. The trial court correctly found that those claims were barred for res judicata.

With respect to the claim for intrusion of privacy, that claim could have been asserted with the exercise of due diligence. Wife was informed of the inappropriate photos, but Wife did not want to look at them. Wife had access to the photos on the cloud shared by the parties. Even if her claim for intrusion of privacy was not litigated, it could have been. The discovery rule would only apply to injuries that were inherently undiscoverable or that could not be discovered with the use of reasonable diligence.

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**Despite Husband's Attorney's Concerns, Husband Failed To Preserve Issue Of Mental Incompetency Because No Incompetency Finding Sought, No Guardianship Proceeding Pursued, And Husband Submitted Requested Relief At Trial.**

39. *Rodriguez v. Rodriguez*, No. 08-24-00123-CV, 2025 WL 2447563 (Tex. App.—El Paso 2025, no pet. h.) (mem. op.) (08-25-2025).

**Facts:** Husband's counsel asked the trial court to order Husband to undergo a mental examination. The court granted the request, Husband was evaluated, and a written report was provided. However, the report was never introduced into evidence and was not made part of the appellate record.

Six months later, at a pretrial conference, Husband's counsel questioned Husband's competency to participate in trial. The trial court advised the parties it would not resolve that issue and that it was ultimately Husband's counsel's issue to address.

Three months after that, the court conducted a final trial. Husband's counsel refused to call Husband to testify, again raising a question of competency. The court explained that the psychiatric evaluation was not the equivalent of a finding of incompetency, and the probate court was the only court to make such a finding. Husband's counsel then stated that he had a list of items Husband wished to keep that had been communicated to Husband's counsel before the psychiatric evaluation. The court rendered a final decree and findings of fact. Husband appealed.

**Holding: Affirmed.**

**Opinion:** Husband argued the court erred in determining he waived his mental competency issue by adopting a position statement. The findings concluded the competency issue was waived because (1) Husband failed to request a finding he was mentally incompetent; (2) Husband failed to take steps to initiate a guardianship proceeding regarding his competency in the 9-month period between his counsel initially raising the issue and final trial; and (3) Husband submitted a "position statement" detailing how he wished to divide the community estate.

Husband did not dispute that he did not request a finding of incompetence and initiated no guardianship proceeding. Although the position statement reiterated Husband's counsel's belief Husband was not mentally competent, Husband raised no objection to the case being decided on the merits and instead outlined Husband's prior-expressed wishes. Husband offered no reason why the position statement would have been offered for any other purpose than to allow the court to divide the community estate. Further, Husband did not request a continuance or request any other relief relating to his alleged incompetence.

