JANUARY 2026 CASELAW UPDATE

(Cases from December 1–31, 2025)

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DIVORCE:
PROCEDURE AND JURISDICTION

★★★ TEXAS SUPREME COURT ★★★

Wife's Non-Receipt of Citation Sufficient to Support First Element of *Craddock* Test, Entitling Her to a New Trial, Notwithstanding Completed Alternative Service Before Rendition of Default Decree.

1. ***Tabakman v. Tabakman***, __ S.W.3d __, No. 24-0919, 2025 WL 3492090 (Tex. 2025) (per curiam) (12-05-2025).

Facts: The parties had been married for 13 years and had one Child together. Wife left due to mistreatment by Husband, and that same month, Husband filed for divorce and informed Wife of his filing. Wife later testified that she did not know what to do, had no access to money for an attorney, and was afraid. Wife assumed she would be served in person. However, after months of unsuccessful service attempts, the trial court signed an order for alternative service by attaching the petition to the door of Wife's parents' home. After Wife failed to answer, Husband obtained a default judgment. Wife learned of the default judgment when Husband absconded with the Child and their dog, and she immediately contacted an attorney, who filed an answer and a *Craddock* motion for new trial. Although Wife's motion was filed before the written order was signed, the court nevertheless signed the default decree. Subsequently, the court denied Wife's *Craddock* motion, finding she was consciously indifferent to answering and failed to show a new trial would not harm Husband.

Wife appealed. The appellate court held that Wife was aware of the ongoing suit and that her excuse of not being aware of the alternative service was insufficient to negate the finding of conscious indifference in failing to answer. Thus, the appellate court affirmed the default decree. Wife petitioned the Texas Supreme Court for review.

Holding: Appellate Judgment Reversed; Remanded to Trial Court.

Opinion: Default judgments are greatly disfavored under Texas law. The law merely tolerates such judgments because defendants cannot defeat the authority of the courts simply by refusing to appear. "Accordingly, any doubts about a default judgment—not just doubts about service—'must be resolved against the party who secured the default.'" When the three elements of *Craddock* are satisfied, a new trial must be granted. Even if a defendant does not satisfy the *Craddock* test, a court has broad discretion to order a new trial if "good cause" supports doing so.

A failure to answer is not intentional merely because it is deliberate, and conscious indifference is more than mere negligence. Here, Wife thought the papers would be served on her in person. Her mistake of law in not knowing of alternative service methods could satisfy the first *Craddock* element. Additionally, Wife was unaware of any attempts to serve her. She had not heard anyone knocking on her parents' door and was unaware of anyone otherwise attempting to contact her. Once she learned of the default decree, she expeditiously filed an answer before the decree was signed. She never learned of any documents being affixed to her parents' door.

Husband argued Wife's claims of nonservice were conclusory. However, "[p]eople often do not know where or how they lost something—that is precisely why it remains 'lost.'" Additionally, Wife's claims were supported by her father's testimony explaining that construction work was being done at his house at the time. He testified that the neighborhood security officer should have notified him of visitors, but no notification was received. The construction crew also did not give him any documents from the door.

While Wife had general knowledge of an ongoing suit, she never received a citation warning her that a failure to answer could result in a default judgment. While not understanding a citation is not an excuse for not answering, not receiving citation is generally sufficient to support granting a new trial.

Husband additionally argued that he controverted Wife's claim by establishing alternative service was properly executed. Alternative service provides proof of how and when service was executed but is "no evidence in the record of when defendant received actual notice." The process server testified that he did not see Wife, and there was no evidence she received the citation.

Husband next argued Wife failed to show that she would succeed on a meritorious claim. However, Husband set Wife's burden too high. She was merely required to "set up" a meritorious defense, not show that she would succeed at trial on the claim.

Finally, Wife represented at the hearing on her *Craddock* motion that she was ready for trial, agreed to pay Husband's costs incurred in obtaining the default decree, and acknowledged the court's authority to award fees relating to the new trial motion. This satisfied her initial burden and shifted the burden to Husband to show injury. While he generally complained about strains relating to litigation, he did not show how those complaints would disadvantage him in presenting the merits of his case at a new trial.

Docket Sheet Indicating Parties' Were Divorced, a Record Was Waived, and an Agreement Was Adopted Was Sufficient to Establish Present Rendition of Divorce Before Husband's Death.

2. *Chancey v. Chancey*, No. 01-24-00266-CV, 2025 WL 3521319 (Tex. App.—Houston [1st Dist.] 2025, no pet. h.) (mem. op.) (12-09-2025).

Facts: Husband filed for divorce. About nine months later, the parties signed a handwritten Rule 11 agreement with respect to use of property during the divorce, payment of debts, and Wife's name change. Subsequently, counsel for both parties withdrew. Before a decree was signed, Husband passed away. Wife filed a suggestion of death and motion to dismiss, claiming the parties had reconciled before Husband's death. The case was dismissed for want of prosecution.

Nearly a year and a half later, Husband's Daughter filed a motion for new trial or to reinstate, arguing the divorce had been granted before Husband's death. Daughter relied upon a docket sheet entry stating that evidence was presented, the divorce was granted, and property was divided pursuant to a Rule 11 agreement. Wife moved to strike Daughter's petition in intervention, challenging her standing and the claim that the divorce was ever rendered.

After an evidentiary hearing, the trial court reinstated the case and signed an "agreed" final decree of divorce. The trial court denied Wife's motion for new trial, and she appealed.

Holding: Reversed and Rendered.

Opinion: Wife argued the divorce was not final when pronounced and rendered from the bench. The appellate court reviewed *Baker v. Bizzle*, 687 S.W.3d 285 (Tex. 2024) and the more recent *Sargent v. Sargent*, No. 02-24-00470-CV, 2025 WL 2627033 (Tex. App.—Fort Worth Sept. 11, 2025, no pet.). In *Baker*, the trial court rendered the divorce but took the property division under advisement. Although there were email discussions regarding the division, no final order was signed before one of the parties' died, and the emails were not part of the trial court's record. Thus, the oral rendition was interlocutory, and the trial court lacked jurisdiction to finalize the divorce. In *Sargent*, the court rendered judgment on the record, and the subsequent written order was merely a ministerial act.

Here, there was no reporter's record; however, the docket sheet indicated a present rendition of divorce. The docket sheet notations further indicated the parties' waived the making of a record, granted Wife's name change, and adopted the parties' Rule 11 agreement. Thus, unlike in *Baker*, the court finally disposed of all issues between the party on the day of rendition. Additionally, the parties and the trial court signed the document entitled both "Final OR[D]ERS/Decree" and "RULE 11 AGREEMENT (with entry to follow)" and filed it with the court clerk. Thus, unlike in *Baker*, the court made its ruling public before the death of a party.

Wife argued the "Final OR[D]ERS/Decree" document was not final because it did not divide her retirement account, credit cards, bank accounts, art, or mementos. However, the parties waived the making of a record, so the appellate court was required to assume the evidence presented at trial supported the judgment.

Accordingly, the rendition finalized the divorce, and the documents signed that day controlled. Husband's subsequent passing divested the trial court of authority to sign any subsequent orders. Further, the orders dismissing and reinstating the case were void and without effect.

DIVORCE: INFORMAL MARRIAGE

"Dead Man's Rule" Did Not Require Exclusion of Wife's Testimony About Her Agreement with Decedent to Be Married Because Other Evidence Corroborated the Existence of an Agreement.

3. *In re Estate of Davidson*, No. 01-24-00026-CV, 2025 WL 3712248 (Tex. App.—Houston [1st Dist.] 2025, no pet. h.) (mem. op.) (12-23-2025).

Facts: After Decedent's death, his adult Sons discovered a will that had been executed while Decedent was still married to their Mother, and the Sons sought to admit that will to probate. Wife objected to the application and asserted she had entered into an informal marriage with Decedent and that he had revoked his previous will but died before executing a new one.

In a bench trial, Wife presented evidence she and decedent lived together and held themselves out as a married couple. While Wife also testified that she and Decedent agreed to be married, the Sons argued the "Dead Man's Rule" barred her testimony about what Decedent may have said. The trial court determined Wife established a marriage by the preponderance of the evidence and that Wife was Decedent's surviving spouse. The Sons appealed.

Holding: Affirmed.

Opinion: The Sons challenged the sufficiency of the evidence to support the finding that the Wife and Decedent entered into an informal marriage and argued the trial court erred in denying their oral motion for a "directed verdict" because Wife presented no admissible evidence to support her assertion Wife and Decedent agreed to be married.

The trial court was presented with conflicting evidence regarding cohabitation in Texas and representations to others that Wife and Decedent were married. However, the trial court as the sole judge of the credibility of witnesses was free to believe Wife and her witnesses while disbelieving the Sons' version of events.

With respect to the agreement, Wife testified about a conversation she had with Decedent regarding an agreement. Per Wife's testimony, Decedent said, "you f*** around on me, I'll kill you. And [Wife] said to him, if you f*** around on me, I'll kill you too." After that conversation, they laughed and began holding themselves out as a married couple. The Sons argued that the Dead Man's Rule prevented the trial court from considering this conversation as evidence to support an agreement to be married.

Texas Rule of Evidence 601(b) details the Dead Man's Rule as it exists today. Generally, testimony of a decedent cannot be admitted without corroboration. Corroborating evidence "must tend to support some of the material allegations or issues that are raised by the pleadings and testified to by the witness whose evidence is sought to be corroborated." "It is sufficient, for instance, if the corroborating evidence shows conduct on the part of the deceased which is generally consistent with the testimony concerning the deceased's statements." Contrary to the Son's argument, there was evidence from other sources that Decedent behaved as if he were married to Wife. Again, the evidence was conflicting, but the trial court was in the best position to resolve those conflicts.

DIVORCE: ALTERNATIVE DISPUTE RESOLUTION

Consent Decree Required to Be Consistent with Parties' Oral Agreement Read into the Record; Because Joint Exhibit Not Offered into Evidence, Additional Provisions from Exhibit Could Not Be Included in the Consent Decree.

4. *In re Marriage of Rizvi and Khaja*, No. 13-24-00069-CV, 2025 WL 3764018 (Tex. App.—Corpus Christi–Edinburg 2025, no pet. h.) (mem. op.) (12-30-2025).

Facts: On the final day of trial, the parties announced they had reached an agreement. The parties then testified on the record regarding their agreement, and a joint exhibit was referred to but was not offered into evidence. Among other provisions, the parties agreed that a third party would manage the day-to-day activities of their company and that no further distributions would be made after that day. An email was sent from Wife's counsel to Husband's attorney's paralegal with the attached joint exhibit and stated the parties would agree to terms for transfer of ownership of the company or else they would re-appear before the trial court.

Subsequently, Husband filed a motion to sign and a motion to reopen evidence. Husband argued the evidence should be reopened to address whether Wife needed to refinance the company. The trial court denied the motion to reopen evidence. In his proposed decree, Husband included language restricting distributions from the company. Wife argued the additional language conflicted with the "Rule 11 agreement"—the post-trial email regarding transferring ownership. The trial court agreed with Wife and signed a decree without Husband's proposed language. Husband appealed.

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

Opinion: Husband argued the final decree did not match the parties' agreement. The parties' agreement at trial was dictated on the record in open court before a certified shorthand reporter, both parties were present, and the terms of the agreement and the parties' acknowledgement of the agreement was put on the record. Thus, that oral agreement satisfied the requirements of Rule 11 and was enforceable. Because the Rule 11 agreement was valid and enforceable, the decree was required to be in strict or literal compliance with the terms of the parties' agreement. However, the subsequent email was not signed by the parties or their attorneys and was not admitted into evidence. Thus, neither that email nor the joint exhibit was part of the Rule 11 agreement.

Wife responded that the circumstances surrounding the settlement agreement indicated that restrictions on distributions were only necessary until a decree was signed. Wife pointed to the joint exhibit to support this assertion. However, the joint exhibit was never offered and was not part of the agreement. Therefore, because the parties testified to their agreement regarding distributions in their oral agreement, the trial court erred in failing to include that language in the final decree.

Husband next argued the trial court erred in failing to reopen evidence. Although Husband urged that the information he sought to present was new, he offered no evidence as to why the evidence was previously unavailable, and he did not argue that he did not have an opportunity to present the evidence before judgment. Rather, he conclusorily claimed he was diligent in obtaining evidence without offering any further elaboration.

DIVORCE: RETIREMENT BENEFITS

Decree Could Not Prohibit Husband from Electing VA Disability Retirement Even If That Election Deprived Wife of Any Agreed-to Retirement Benefits Pursuant to Their MSA.

5. *In re Marriage of Morgan*, No. 13-24-00256-CV, 2025 WL 3677314 (Tex. App.—Corpus Christi–Edinburg 2025, no pet. h.) (mem. op.) (12-18-2025).

Facts: The parties' MSA in their divorce provided Wife would receive 50% of the community portion of Husband's net disposable retired pay. Husband moved for entry of a decree, but Wife argued the MSA was unenforceable because it allowed Husband to waive his retirement pay to receive disability pay. Wife asked the trial court to include language to prohibit Husband from waiving his miliary retirement pay because military disability is not divisible in a divorce. The final decree prohibited Husband from taking action to reduce Wife's share of his retirement and required Husband, if he did reduce Wife's share, to pay her for the amount of the reduction. Husband appealed.

Holding: Affirmed as Modified.

Opinion: Husband argued the trial court improperly prohibited him from converting his military retirement into disability payments and erred in ordering him to reimburse Wife for the costs of that election. A divorce court cannot apportion miliary retirement pay that has been waived to receive VA disability benefits. A court may not expressly or impliedly prohibit a retired military member from making that election. Thus, here, the trial court erred in improperly prohibiting Husband from waiving some or all of his retirement pay to collect disability.

Additionally, a trial court may not require a retired military member to pay his ex-spouse for the reduced retirement benefits due to the election to receive VA disability benefits. Wife argued that other states had approved this type of provision. However, no Texas court has. Accordingly, the provisions were struck from the decree, but the decree was otherwise affirmed.

In a cross-appeal, Wife argued the MSA should be set aside because there was no meeting of the minds. The MSA met the Family Code's requirement to entitle the parties' to judgment on the MSA. No evidence was presented to the trial court regarding a meeting of the minds, so the appellate court could not reverse the decree on that ground. Additionally, while Wife argued the MSA was ambiguous, she failed to articulate what language was ambiguous or what the conflicting interpretations would be.

DIVORCE: ENFORCEMENT OF PROPERTY DIVISION

Husband Not Entitled to Temporary Injunctive Relief Because Allegations of Irreparable Injuries Were Vague and Speculative; Receivership Appointment Vacated Because Order Impermissibly Modified Property Division by Stripping Wife's Rights Granted in Decree.

6. *A.W.E. v. D.M.F.N.*, No. 05-24-00507-CV, 2025 WL 3530958 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (12-09-2025).

Facts: Husband and Wife each owned stock in a company, and the final decree of divorce ordered the sale of the company with Husband and Wife receiving half of the net proceeds. The appellate court affirmed the decree after Wife appealed. Husband filed a petition to enforce, alleging Wife violated standing orders, failed to comply with the decree, and violated temporary injunctions pending appeal. After a hearing, the court signed an order imposing similar temporary injunctions and appointing a receiver to sell the company. Wife appealed.

Holding: Reversed and Rendered in Part; Reversed and Remanded in Part

Opinion: Wife first challenged the injunctions imposed against her. Specifically, she alleged the evidence was insufficient to support a finding of any irreparable injury. Wife was enjoined from acts such as contacting the company, threatening the company's employees, filing lawsuits against the company, and making public statements about the company. The trial court found that in the absence of an injunction, Wife's actions would prevent the ability to sell the company and leave the company with no adequate remedy at law.

At the hearing, the company's senior vice president of operations in human resources testified that Wife's actions made the vice president consider resigning; however, she did not say she probably would resign. There was no evidence that the vice president was a key employee. The company's outside general counsel expressed concerns about the potential of people leaving the company, but those speculations could not support injunctive relief. Additionally, Husband complained of a RICO suit filed by Wife; however, the federal court ordered redactions that would redress any injury to the company from the potential disclosure of proprietary information. Husband's concerns about further lawsuits and potential disclosures were simply fear and apprehension that could not establish injury, let alone irreparable injury.

Husband additionally presented expert testimony regarding how Wife's actions could chill enthusiasm of potential buyers and experts. However, the testimony was vague and speculative and did not support granting injunctive relief. Further, there was no evidence that the company could not be compensated monetarily if Wife's actions did cause lost value in the future; meaning, Husband did not show that any potential injury was irreparable. Accordingly, the temporary injunctions were dissolved.

Wife additionally complained of the appointment of a receiver because the appointment impermissibly changed the property division in the divorce decree. The divorce decree permitted Wife to participate in the sale of the company, and the receivership order removed that right. Wife's participation was crucial to obtaining the highest price and deciding other terms of the sale. The receivership stripped Wife of those rights and authorized the receiver to make those decisions in Wife's name. This change substantively altered the division of property and was beyond the trial court's authority in a post-divorce enforcement suit. Accordingly, the receivership was vacated, and the case was remanded for further proceedings.

Wife Did Not Need to Join Company as a Party in Enforcement Action Seeking to Recover Her Interest from Husband's Profits from the Sale of That Company.

7. *Perry v. Perry*, No. 09-24-00342-CV, 2025 WL 3546579 (Tex. App.—Beaumont 2025, no pet. h.) (mem. op.) (12-11-2025).

Facts: After learning Husband was about to sell a company without distributing to Wife any proceeds, Wife filed a Chapter 9 enforcement suit to enforce provisions of their divorce decree. Wife sought to enforce both the distribution of sales proceeds and an unpaid award of attorney's fees from the divorce. She requested the appointment of a receiver and a clarification order if necessary. At the hearing on Wife's petition, Husband argued he had not received adequate notice and that the company had not been served with the enforcement petition. Wife countered that she was not seeking affirmative relief from the company but from Husband. Wife explained that Husband had a one-third interest in the company, and she was entitled to half of that third upon sale. Wife acknowledged she had filed a lis pendens on the real property owned by the company. Husband testified that he had no money and that no distributions had been made from the company to him since the divorce. Husband explained he had appealed the decree, and Wife had made no prior efforts to enforce the attorney's fee award. One of the other owners of the company stated that the company had been listed for sale, there were no offers yet, and the lis pendens was making the sale difficult. Husband's attorney argued that the jump from no demand letters to a motion to appoint a receiver was extreme. The trial court disagreed with Husband's characterization and described the parties' divorce as one of the most frustrating it had heard in the past 16 years. The trial court granted Wife's requested relief, and Husband appealed.

Holding: Affirmed.

Opinion: Husband first argued the trial court erred in granting Wife a hearing because he only received 8 days' notice, rather than 10 days. Failure to give 10 days' notice does not render the proceeding void unless the lack of notice amounted to a denial of constitutional due process. Here, Husband was represented by counsel; his counsel cross-examined Wife's witnesses; he presented his own witnesses, and he testified extensively. He asked for a continuance because the company had not been served, but he did not argue that he lacked time to prepare for the hearing. On appeal, he complained of lack of notice but made no specific allegation regarding how he was prejudiced.

Husband next argued the court erred in granting a hearing and in granting Wife's requested relief because she failed to serve the company, which Husband claimed was a "necessary party" to the enforcement because of Wife's filing of a lis pendens and her request to have a receiver take property owned by the company. Husband was the "respondent" in Wife's suit to enforce the divorce decree. Nothing in the Family Code required Wife to serve any third party. The decree awarded Wife a half interest in Husband's share of the proceeds. The company did not claim an interest in Wife's share, and the proceeding did not impair the company's ability to sell or protect its property. The receivership order did not give the receiver any right to the company's property, only to the property in which Husband had an interest.

SAPCR: Procedure and Jurisdiction

Stepmother Lacked Standing to Amend Her Counterpetition for Divorce to Include a SAPCR Because She Did Not Share a Residence with the Child in the 90 Days Immediately Preceding Her Amended Petition.

8. *In re P.R.*, No. 02-25-00543-CV, 2025 WL 3559018 (Tex. App.—Fort Worth 2025, orig. proceeding) (mem. op.) (12-11-2025).

Facts: Mother and Father were married, but Mother died shortly after the Child was born. Not long after that, Father married Stepmother, but she moved out of the marital residence about 4 years later. Father petitioned for divorce and asserted there were no children of the marriage. Stepmother filed a similar counterpetition; however, she later amended it to seek conservatorship of the Child. Father challenged Stepmother's standing to make that request.

At a hearing on Stepmother's standing, the undisputed evidence showed Stepmother provided actual care, control, and possession of the Child and acted as the Child's mother for years. Father initially obtained a protective order after filing for divorce to prevent Stepmother from seeing the Child, but he later allowed Stepmother to see the Child. During that time, Stepmother cared for the Child, took her to school and doctor's appointments, and kept the Child overnight with Father's permission. However, after a few months, Father stopped allowing overnight visits. The trial court determined Stepmother satisfied the requirements of Texas Family Code Section 102.003(a)(9) and denied Father's plea to the jurisdiction. The court appointed the parties joint managing conservators. Father sought mandamus relief.

Holding: Writ of Mandamus Conditional Granted.

Opinion: At the time of filing, the prior version of the statute applied, requiring "actual" care, control, and possession for at least six months ending not more than 90 days preceding the petition. Although Stepmother had actual care, control, and possession of the Child and acted as a mother to the Child, she did not share a principal residence with the Child within the 90 days of her petition. Father argued that lack of a shared residence defeated Stepmother's claim of standing. "Stepmother acknowledge[d] that at the time she first filed the SAPCR, she had not shared a principal residence with [the Child] within no more than 90 days before the SAPCR's filing." Stepmother argued the relation-back doctrine should have applied, making the date of filing the date of her original counterpetition for divorce, despite not having any SAPCR-related pleadings in that counterpetition.

Family Code Section 101.031 defines "suit" as an action under "this" title (Title 5 SAPCRs). The time requirements of Section 102.003 are measured by when a "suit" is filed. Even if Father may have anticipated a future suit involving the Child, Stepmother's initial counterpetition did not constitute a Title 5 suit—only her amended counterpetition did. Thus, the timeframe

for determining standing in the SAPCR had to be calculated based on her amended counterpetition and could not relate back to the original counterpetition for divorce.

Stepmother argued that she did not initially include the Child in her original counterpetition due to alleged erroneous advice of prior counsel. Regardless, the courts are bound by the statutory framework with respect to standing in SAPCRs, and evidence of a close relationship between Stepmother and the Child cannot provide a basis for ignoring the Legislature's intent. Contrary to Stepmother's claim of an unjust result, at the time of the hearing, Father had not restricted all Stepmother's access.

Mother Entitled to Restricted Appeal and New Trial Because No Evidence of Proper Service Appeared in the Record.

9. *In re G.K.*, No. 02-25-00420-CV, 2025 WL 3558969 (Tex. App.—Fort Worth 2025, no pet. h.) (mem. op.) (12-11-2025).

Facts: Mother and Father were not represented by attorneys at trial or on appeal. Father sought to modify the prior SAPCR order because Mother had accepted a job in the Democratic Republic of Congo and expressed a desire to move there with the Child. Father sought "full custody." Father's petition did not include a certificate of service or request citation be served on Mother. The record did not include a return of service on or answer from Mother. Mother did file multiple motions, including a demand to dismiss Father's motion to find her in contempt.

About three weeks after he filed his petition, Father moved to require Mother to designate an agent for service or to waive service. The court did not rule on that motion, but it did sign an order denying international travel on certain days. Subsequently, Father moved for final hearing and a default order, asserting Mother had moved and had constructively abandoned the Child. This motion also contained no certificate of service. Father also filed a motion asking the OAG be served with notice and requested the OAG's intervention with respect to child support. That motion had no certificate of service indicating Mother had been served. At trial, Father alleged Mother knew of the proceedings but offered no evidence to substantiate that claim. The trial court signed Father's proposed default order that day.

Four months later, Mother filed a notice of restricted appeal.

Holding: Reversed and Remanded.

Opinion: To prevail on a restricted appeal, an appellant must establish that: (1) it filed notice of the restricted appeal within six months after the judgment was signed; (2) it was a party to the underlying lawsuit; (3) it did not participate in the hearing that resulted in the judgment complained of and did not timely file any postjudgment motions or requests for findings of fact and conclusions of law; and (4) error is apparent on the face of the record.

Although Mother filed a post-judgment motion to set aside the default order, that motion was not timely filed. Father attached emails to his appellee's brief to support his appellate argument that Mother had actual knowledge of the trial court proceedings. However, documents attached to an appellate brief cannot be considered by the appellate court if those documents were not in the appellate record. Mother was entitled to proper service, and the trial court was required to obtain personal jurisdiction over Mother before signing a binding judgment. The record here contained no return of citation, and there are no presumptions in favor of valid issuance, service, and return of citation.

Even if Mother's motions could be construed as a general appearance, there was no evidence Mother was served with notice of the final hearing. No evidence showed the motion requesting the OAG's involvement was served on Mother. Failure to provide Mother with adequate service deprived her of her due process right to appear and present her case.

Father's Self-Diagnosed Purported Injury on Date of Trial Insufficient to Show His Choice Not to Appear Was Not an Act of Conscious Indifference, Particularly When He Did Not Request a Continuance or Ask to Appear Remotely.

10. *Nitz v. Bouffard*, No. 03-25-00205-CV, 2025 WL 3558565 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (12-12-2025).

Facts: The Child's parents had been involved in litigation for a large portion of her life, resulting in 3 prior final orders before the most recent modification suit filed by Mother. Father had been previously ordered to submit to Soberlink testing five times a day per the parties' agreement, and Mother alleged he was no longer complying with that requirement. On the day of the final hearing, Father (pro se) sent an email to the court administrator advising that he was injured and unable to attend the hearing. The email was discussed at the beginning of the hearing. The trial court nevertheless signed a final default order, modifying possession and child support. Father hired a new attorney, who filed a *Craddock* motion for new trial to which no supporting affidavit or other evidence was attached. At a hearing on the motion, Father asserted that he had fallen from a ladder and rebroken his tailbone. Father rested and took some codeine that he had on hand but did not go to a doctor. He acknowledged that he had not requested the hearing be reset. In denying the motion, the court found Father's failure to appear was a result of conscious indifference. Father appealed.

Holding: Affirmed.

Opinion: Father first asserted he did not receive proper notice of the final trial. The final setting at which Father failed to appear was not the first setting. Father had received more than 45 days' notice of the initial setting. That hearing was reset, and Father received 12 days' notice of the reset hearing. Rule of Civil Procedure 245 only requires 45 days' notice of the first setting. Notice

of a reset final hearing must be "reasonable." Nothing in the record indicated the 12 days' notice was inadequate. Additionally, when setting the new date via email with Mother's counsel and the trial court, Father never asserted he was entitled to 45 days' notice or said he needed more time to hire counsel. When asked about the date at the new trial hearing, Father said he planned to attend and represent himself at the reset final hearing. Father failed to show he lacked adequate notice.

Father next argued he was entitled to a new trial under *Craddock* and that his failure to appear was not the result of conscious indifference. Father offered no medical evidence to support his self-diagnosis of a broken tailbone. Father said he could walk after the fall. He explained that he began feeling better but could not sit on anything flat. He did not move for a continuance or ask to appear remotely. Based on Father's testimony, the trial court could have reasonably concluded Father's purported injury was not so severe that it rendered him unable to attend the hearing or that even if it did, Father had the ability to ask for a continuance or appear remotely but chose not to do so.

Child Support Review Case Remanded for a New Trial Because No Record Made, and There Was No Indication Father Waived the Making of a Record.

11. *In re D.Z.C.*, No. 04-24-00565-CV, 2025 WL 3650390 (Tex. App.—San Antonio 2025, no pet. h.) (mem. op.) (12-17-2025).

Facts: After an evidentiary hearing, the court signed an order in a child-support review initiated by the OAG. Father appealed.

After a clerk's record was filed, but before a reporter's record was filed, Father filed an appellant's brief. The appellate court reached out to Father to determine whether he wished for the appeal to be considered without a reporter's record. Father then detailed his efforts to obtain a reporter's record. The court coordinator had informed him that the audio recording of that day had been reviewed, and no record of Father's case was found. The OAG then responded that if this were true, Father would be entitled to a new trial. However, the OAG could not confirm whether a recording of the trial existed.

The appellate court then ordered the court coordinator to file a response. That response indicated that proceedings that day were made by Zoom, and recordings were generally kept through that application. However, that day, a visiting judge was presiding, and no record was made.

Holding: Reversed and Remanded.

Opinion: The Family Code requires a record be made of contested hearings unless the making of a record is waived by the parties. Here, the court's findings indicated a record was made, but the coordinator confirmed that was not the case. Nothing in the clerk's record suggested Father waived the making of a record, and the OAG did not assert otherwise. Because this error probably prevented Father from properly presenting his case on appeal, the case had to be remanded for a new hearing.

Girlfriend Lost Standing in Pending SAPCR Because Her Amended Petition with Supporting Affidavit Was Insufficient to Satisfy the New Family Code Section 102.0031.

12. *In re S.N.*, No. 02-25-00525-CV, 2025 WL 3713587 (Tex. App.—Fort Worth 2025, orig. proceeding) (mem. op.) (12-22-2025).

Facts: During their relationship, Mother and Girlfriend each adopted children and gave the other conservatorship rights to certain children each had adopted. Later, the Child was placed in Mother and Girlfriend's home because, in part, he was a sibling of one of Mother's adopted children. When Mother and Girlfriend broke up, they agreed to a possession schedule for the previously adopted children, and the Child followed the same schedule. About 6 months after the breakup, Mother adopted the Child.

Girlfriend filed suit to be appointed the Child's sole managing conservator. Despite the lawsuit, Mother and Girlfriend continued following the agreed possession schedule for a few years until Mother terminated Girlfriend's visitations with the Child.

On September 1, 2025, the new statute requiring affidavits from nonparents (Section 102.0031) became effective and applied to pending litigation. Thus, Girlfriend amended her petition and attached a supporting affidavit. Mother filed a motion to dismiss, alleging Girlfriend's affidavit was insufficient to support the requested relief. After the trial court denied the motion to dismiss, Mother sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: When standing has been conferred by statute, the statute itself provides the proper framework for a standing analysis. The new Section 102.0031 requires a nonparent to attach to her petition a supporting affidavit that contains facts to support an allegation that denying the relief sought would significantly impair the child's physical health or emotional development. If the affidavit is insufficient, the court "shall" deny the relief sought and dismiss the suit.

Girlfriend's affidavit described her relationship with the Child, concerns that the Child blamed himself for the parties' breakup, and concerns that Mother's choice to withhold the Child from Girlfriend was detrimental the Child's wellbeing. The appellate court reviewed the affidavit in light of the numerous opinions addressing significant impairment in the context of grandparent-access suits because the statutory language is nearly identical. Because the statements in Girlfriend's affidavit were conclusory and would fail in the grandparent-access context, the affidavit also failed here.

Although Girlfriend noted that the appellate court previously found in favor of her in standing arguments, those prior opinions were issued before the legislative change. A party may lose standing while a case is pending. Further, contrary to Girlfriend's assertions, the new legislative change did not intend to codify Justice Lehrmann's concurrence in *In re C.J.C.*, 603 S.W.3d 804 (Tex. 2020) (orig. proceeding) but to codify the majority opinion in that case. Additionally, *C.J.C.* did not concern standing.

Grandmother Had Standing Under Former Section 102.003(a)(11) [Deleted by Recent Legislative Amendment].

13. *In re C.A.S.*, No. 14-24-00721-CV, 2025 WL 3764020 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (12-30-2025).

Facts: Maternal Grandmother filed an original SAPCR shortly after Mother's death. Grandmother sought joint managing conservatorship with Grandmother having the exclusive right to designate the Children's primary residence. Grandmother alternatively sought possession and access. Grandmother relied on the former version of Texas Family Code Section 102.009(a)(3) for standing (requiring "actual" care instead of "exclusive"). Father moved to dismiss Grandmother's petition and argued she lacked standing under Section 102.004. Grandmother amended her petition to include claims of standing under Section 102.004 and 102.003(a)(11) which was similar to (a)(9) but included a provision for if the Child's parent was deceased. Subsection (a)(11) was subsequently removed by the Legislature.

After being discharged from rehab, Mother moved in with Grandmother because Father refused to let Mother return to his home. When Mother died from an overdose, Father retook possession of the Children and allowed Grandmother some visitation. Father did not dispute Grandmother's timeline, but he argued Mother had possession of the Children while living with Grandmother, depriving Grandmother of standing under Subsection (a)(9). Father further argued that Grandmother failed to show significant impairment in the Children's present circumstances and, thus, lacked standing under Section 102.004. Father did not address standing under Section (a)(11). The trial court granted Father's motion to dismiss without issuing findings. Grandmother appealed.

Holding: Reversed and Remanded.

Opinion: In the absence of any explicit findings, the trial court implicitly found Grandmother lacked standing under all three statutory provisions. On appeal, Grandmother only argued the trial court erred in finding she lacked standing under Section 102.003(a)(11). Under that section, Grandmother was required to prove: (1) that she resided with both the Children and the Mother for at least six months, (2) that she filed her petition no later than ninety days after that period of cohabitation had ended, and (3) that the Mother was deceased at the time that the petition was filed. The facts to determine the answers to those questions were not intertwined with the merits of Grandmother's petition. Because the relevant jurisdictional evidence was undisputed, the trial court erred in dismissing Grandmother's suit.

SAPCR: MODIFICATION

Evidence That Both Parents Changed Job Schedules, Remarried, and Had More Children, in Addition to the Child's Brain-Tumor Diagnosis, Supported Finding Material and Substantial Change in Circumstances.

14. *In re P.R.M.*, No. 14-24-00809-CV, 2025 WL 3677317 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (12-18-2025).

Facts: The parties' divorce decree granted Father weekend possession of their one-year-old Child every weekend so long as her resided within 100 miles of Mother. If he moved farther away, he would have possession on the first, third, and fifth weekends of each month. At the time of divorce, Father lived 12 miles away from Mother.

Subsequently, both parties remarried and had more children. Father moved to a new home about 70 miles from Mother. After Father refused to agree to a new custody arrangement proposed by Mother, she filed a modification suit. In support of her claim of changed circumstances, Mother asserted she used to work every weekend but no longer did, Father used to be available every weekend but had become a firefighter with a firefighter's work schedule, the Child had missed out on weekend social activities due to the existing possession schedule, and the Child had been recently diagnosed with a brain tumor requiring multiple weekly appointments. The trial court found a material and substantial change existed and gave Father possession more akin to a standard possession order. Father appealed.

Holding: Affirmed.

Opinion: Father first asserted that no material and substantial change existed, but if it did, the change was anticipated. Due to the parties' work schedules at the time of divorce, giving Father possession every weekend made sense. However, both parties' schedules had changed. Additionally, the increased distance between the parties' homes meant the Child had to spend at least 3 hours in the car every weekend. Because of the Child's tumor diagnosis, Mother spent most of her time with the Child during the week taking the Child to medical appointments and did not get the opportunity to enjoy time or relax with the Child. Although

Father argued that his move was anticipated, and the other changes were not material, the "combined force of evidence" supported the trial court's finding of a material and substantial change in circumstances.

Father next argued that the new possession schedule bore no relationship to the change in circumstances. There is no statutory requirement that the requested modification be specifically tailored to the change in circumstances. However, to the extent Father's argument could be construed as one challenging the sufficiency of the evidence to support the best-interest finding, the appellate court disagreed.

No Abuse of Discretion in Imposing a 2-2-3-3 Possession Schedule When the Parties' Homes Were 35 Miles Apart.

15. *In re A.L.K.*, No. 08-23-00347-CV, 2025 WL 3760587 (Tex. App.—El Paso 2025, no pet. h.) (mem. op.) (12-29-2025).

Facts: The parties met and had a Child in El Paso and then moved to Austin. When they separated, Mother and the Child moved back to El Paso. Pursuant to their divorce decree, Mother had the exclusive right to designate the Child's primary residence without a geographic restriction and to make educational decisions. A few years later, Father remarried and moved to El Paso. Mother married a man who lived in Georgia, and they had a child that was born in El Paso.

Father filed a modification suit and asserted the Child's present environment might endanger the Child's physical health or significantly impair the Child's emotional development. Father asked for the exclusive right to designate the Child's primary residence and make educational decisions, restrict the Child's residence to El Paso, grant Mother possession pursuant to a standard possession order or a schedule deemed appropriate by a family therapist, and reduce Father's child support obligation. Mother filed a counterpetition seeking to increase Father's child support obligation.

After a final hearing, the trial court restricted the Child's residence to El Paso, gave Father the right to make educational decisions after conferring with Mother, terminated child support, issued a 2-2-3-3 possession schedule, and gave each party a right of first refusal for possession. Mother kept the exclusive right to designate the Child's primary residence. Mother appealed.

Holding: Affirmed.

Opinion: Mother first challenged the trial court's finding of a material and substantial change. Both parties had remarried. Mother had a new Child. Mother's new husband lived in Georgia, and Mother intended to move there. Father met his burden of establishing a material and substantial change.

Mother additionally challenged the finding that the modified order was in the Child's best interest. In the trial court, both parties offered evidence regarding the Child's current school and alternative options. The court expressed concerns about the amount of time the Child spent travelling to and from school and suggested the parties choose a school at a midpoint between them but left the ultimate decision to Father. Applying the abuse of discretion standard, the trial court did not abuse its discretion in reaching its decision that Father should be the decision maker regarding the Child's education if the parents could not agree.

Mother further challenged the imposition of a 50/50 possession schedule when neither party requested one. Mother asserted the order was not in the Child's best interest because Father moved to El Paso two months before the final hearing and chose a home 35 miles from Mother's. Father asked for a standard possession schedule or one "deemed appropriate by a family therapist." No legal authority required a more specific request. Mother was on notice the trial court could alter the possession schedule. Mother did not cite any authority to support a claim that a 50/50 schedule was an abuse of discretion based on the 35-mile distance between the parties.

FAMILY VIOLENCE / PROTECTIVE ORDERS

Ex-Girlfriend's Inability to Move On After Breakup, Excessive Phone Calls and Text Messages, and Unwelcome Appearance at Ex-Boyfriend's Home Supported Granting 7B Protective Order.

16. *Sattar v. Hazlitt*, No. 01-24-00576-CV, 2025 WL 3636177 (Tex. App.—Houston [1st Dist.] 2025, no pet. h.) (mem. op.) (12-16-2025).

Facts: Boyfriend and Girlfriend dated briefly after meeting through an online app. Girlfriend became pregnant and told Boyfriend about the pregnancy. However, she had a miscarriage. Boyfriend and Girlfriend broke up but remained friends. Boyfriend wanted to support Girlfriend after the miscarriage. Girlfriend kept the fetal tissue in a candy bag in her freezer and named it "Grapeseed."

The parties kept in touch for a few years. When Boyfriend met a new romantic partner, he advised Girlfriend that she needed to move on with her life too. Girlfriend began threatening to tell Boyfriend's family about the miscarriage, pressuring Boyfriend to get back in a relationship with her, and threatening him with a lawsuit. She sent him over 100 text messages, called him dozens of times at inappropriate hours, and showed up unannounced at Boyfriend's home. Girlfriend told Boyfriend's pregnant wife that Girlfriend was Boyfriend's girlfriend. When Girlfriend refused to leave Boyfriend's home, he called the police, who handcuffed her, drove her away, and left her at a nearby Starbucks. Boyfriend applied for a protective order because he felt stalked and harassed. The trial court granted a protective order under Chater 7B of the Texas Code of Criminal Procedure, and Girlfriend appealed.

Holding: Affirmed.

Opinion: Girlfriend challenged the sufficiency of the evidence to support the protective order. There was more than a scintilla of evidence that Boyfriend felt harassed, terrified, intimidated, annoyed, alarmed, tormented, embarrassed, or offended by Girlfriend's conduct and that a reasonable person would feel likewise. Thus, the evidence was legally sufficient to support the protective order. Further, the trial court acted within its discretion in believing Boyfriend's testimony and disbelieving Girlfriend's testimony. Any conflicting evidence in Girlfriend's favor did not render the evidence as being against the great weight and preponderance of the trial court's judgment.

Girlfriend additionally alleged the trial court was biased against her. Given the full context of the trial, any comments by the trial court was not "victim blaming" but an indication the court did not believe Girlfriend was a victim.

MISCELLANEOUS

Award for Conditional Appellate Attorney's Reversed and Rendered as "Take Nothing" Because No Evidence Supported the Amount Requested.

17. *Taylor v. Taylor*, No. 05-24-00544-CV, 2025 WL 3464949 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (12-02-2025).

Facts: The parties cross-petitioned for divorce. Husband also brought a third-party action against Wife's sons regarding civil conspiracy. In temporary orders, the parties agreed to appoint a joint Forensic Accountant. Wife and her attorneys were uncooperative with the Forensic Accountant, so it intervened for unpaid fees and attorney's fees.

Ultimately, the divorce was granted on insupportability. The court granted reimbursement claims against both parties, found Wife committed fraud, and reconstituted the community estate. The court signed a "Final Judgment for Intervenor" that was incorporated into the final decree of divorce. Wife appealed.

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

Opinion: The Forensic Accountant asserted Wife's notice of appeal with respect to it was late because her notice was filed more than 30 days after the Final Judgment for Intervenor was rendered. Wife argued that the deadlines did not begin running until after the final decree of divorce was signed. In general, there can be only one final judgment in a case. A final judgment disposes of all parties and all claims to a case. The intervention judgment did not meet that criteria because it did not dispose of all parties and claims. Despite its title, it was not a final appealable judgment and was only an interlocutory judgment. No order severed the intervenor judgment from the rest of the case, so Wife's timely appeal of the final decree of divorce could also challenge on appeal the intervenor judgment.

Wife challenged the trial court's characterization of certain property. However, Wife introduced the Forensic Accountant's report, and the report was admitted as evidence. The final decree adopted the characterizations in the report. Moreover, Wife offered no evidence to refute the characterizations. Wife could not assign error on appeal to characterizations she sponsored, requested, and never disputed.

Wife additionally challenged the valuation of an unaffixed cabin that sat on Husband's separate-property land. However, Wife offered no evidence of valuation at trial. Thus, she could not complain on appeal that the trial court lacked sufficient information regarding that property's value.

The decree awarded 22 separate reimbursement claims, and Wife challenged 4 of them on appeal. However, Wife failed to challenge those claims at trial, and she endorsed the report that set out the claims. Moreover, contrary to Wife's assertions, the revised statute still allows for reimbursement claims recognized by common law, and none of the claims were excluded by statute.

Wife further challenged the finding she committed fraud and the trial court's reconstitution of the community estate. Husband showed that Wife disposed of his interest in community estate without Husband's knowledge or consent, creating a presumption of fraud and shifting the burden to Wife to show the dispositions were fair. Again, the sums were set forth in the unchallenged report. Additionally, other evidence supported the trial court's findings regarding Wife's fraud.

The trial court awarded the Forensic Accountant a judgment for attorney's fees incurred at trial (split evenly between Husband and Wife) and an additional sum for conditional appellate attorney's fees. While the Forensic Account provided testimonial and documentary evidence to support the amount of already incurred fees, there was no opinion testimony regarding estimated legal expenses on appeal or about any relevant legal experience that could form a basis for an assertion that the estimated amount was reasonable. Thus, the evidence was insufficient to support the award of conditional appellate attorney's fees, and the appellate court rendered the Forensic Accountant take nothing in appellate fees.

Wife also challenged the judgment in favor of the Forensic Accountant. Specifically, Wife challenged the form of the intervenor's pleading. However, the pleading clearly stated Husband and Wife signed a contract for services and the amount of the unpaid fees. Wife filed no special exceptions. An attorney of reasonable competence could, on review of the pleading, ascertain the nature and the basic issues of the controversy. Thus, the Forensic Accountant's pleading was sufficient. Additionally, the issues were tried by consent without objection, and the judgment was supported by the evidence.

Applying a Summary-Judgment Standard of Review to Intervenor's Motion for Declaratory Judgment, Wife Failed to Meet Her Burden to Challenge the Merits of Intervenor's Claims.

18. *Hernandez v. Castano*, No. 01-23-00916-CV, 2025 WL 3768329 (Tex. App.—Houston [1st Dist.] 2025, no pet. h.) (mem. op.) (12-31-2025).

Facts: Husband filed a petition for divorce. Intervenor filed a petition in intervention asserting Husband was in possession of real property acquired by fraud. While Intervenor was married to her husband, Wife began dating that husband, who purchased property with community funds belonging to Intervenor and her husband. Subsequently, Intervenor's husband built a home on the property and transferred the property to Wife. Meanwhile, Intervenor had been unaware of these actions. When Intervenor divorced her husband, the property was not mentioned in her decree because she was unaware of the property's existence.

In Husband and Wife's divorce proceeding, Intervenor sought a declaratory judgment that the property had been fraudulently transferred and belonged to Intervenor. She cited other litigation to support her claim to the property. Wife filed a motion to strike Intervenor's petition and a motion to abate, citing the other litigation (including a suit to divide undivided community property and a bill of review) that was still pending. The divorce court abated the divorce due to the other pending litigation. Nearly two months later, Intervenor sought to have the abatement lifted due to a resolution one of the other cases. Intervenor asked the divorce court to sign a declaratory judgment that her husband fraudulently transferred the property to hide it from Intervenor and creditors, and Husband and Wife had no title, claim, or interest in the property based on res judicata. In addition to challenging the lift of the abatement, Husband and Wife nonsuited their divorce. The trial court signed a final judgment granting Intervenor's requested relief. Wife appealed.

Holding: Affirmed.

Opinion: Wife asserted the trial court erred in granting Intervenor's relief without reinstating the divorce proceeding. The abatement order stated the abatement would remain in place "until further order of the court." The final judgment itself lifted the abatement.

Wife additionally argued the lifting of the abatement was premature because only one of the two other pending suits was resolved. Generally, if two lawsuits concerning the same subject matter are filed, the court in which the first suit was filed acquires dominant jurisdiction. The divorce court properly abated the divorce while the first-filed property dispute was resolved. Once the property dispute was resolved, it was proper for the divorce court to lift the abatement.

Wife further characterized Intervenor's motion as one for summary judgment for which Wife did not receive 21 days' notice. Intervenor's motion was filed more than two months before the hearing, and the notice of hearing specifically stated it would address the motion to lift the abatement and motion for declaratory judgment. Additionally, a non-movant in a summary judgment proceeding may request a continuance, and Wife did not do so. Finally, Intervenor moved for judgment on the grounds of res judicata and attached findings of fact and conclusions of law from the other proceeding. Wife did not challenge the merits of Intervenor's motion and, thus, did not meet a burden to establish a genuine issue of material fact.