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CASELAW UPDATE

(Cases from September 1–30, 2026)

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**DIVORCE:
PROCEDURE AND JURISDICTION**

Wife's Jury Demand Did Not Survive Her Nonsuit, so Trial Court Did Not Abuse Its Discretion in Denying Her Request to Try Husband's Request for Attorney's Fees to a Jury.

1. *Tran v. Overby*, No. 01-23-00971-CV, 2026 WL 2793945 (Tex. App.—Houston [1st Dist.] 2026, no pet. h.) (mem. op.) (09-18-2026).

Facts: Wife filed for divorce, and Husband filed an answer in which he asked for attorney's fees. Wife requested a jury trial and paid the requisite fee. The day before the jury trial, Wife nonsuited the divorce. Six months later, Husband filed a motion to recover attorney's fees and to be declared the prevailing party. Wife responded with a request for a jury trial on the issue of fees. A bench trial was conducted almost a month later.

At the hearing, Wife objected to the trial court's refusal to grant a jury trial. The court denied Husband's request to be identified as the prevailing party but ordered Wife to pay a portion of Husband's fees. Wife appealed with the aid of counsel.

Holding: Affirmed.

Opinion: Wife argued Husband's request for fees did not survive her nonsuit. Husband's request for fees was raised before Wife's nonsuit. Wife could not nonsuit Husband's claims.

Wife additionally argued the trial court erred in denying her request for a jury trial. Wife's jury request prior to her nonsuit did not survive her nonsuit. Wife's request for a jury was timely as being immediately after Husband's request for a hearing. However, Wife did not pay the fee for her post-nonsuit jury demand. Moreover, Wife did not present evidence that granting her request would not interfere with the orderly handling of the court's docket, delay the trial of the case, or operate to injure Husband. Accordingly, the trial court did not abuse its discretion.

Service of Notice of Hearing to Email Address on File with the Electronic Filing Manager Presumed Valid.

2. *Cortez v. Pacheco*, No. 04-25-00511-CV, 2026 WL 2858958 (Tex. App.—San Antonio 2026, no pet. h.) (mem. op.) (09-23-2026).

Facts: The OAG initiated a suit that resulted in a default SAPCR order establishing Father's parentage and appointing Mother and Father as joint managing conservators. About a year later, Father filed a petition for divorce. In various pleadings, he provided three different but similar email addresses for himself, with one email address matching the one listed in the prior SAPCR order. The divorce proceeding was transferred to a new county and proceeded under the prior SAPCR cause number. Mother then filed an answer and counterpetition. Mother moved to set the case for final trial, and the certificate of service indicated that Father received notice of the hearing sent to the email address in the final SAPCR order. Father appeared, and the court granted his request for additional time to retain counsel. The next notice of the reset hearing was sent to the same email address; however, Father failed to appear at that hearing. Mother offered testimony regarding the grounds for divorce, the parties' children, child support, and the marital estate. They purchased a home during the marriage. She testified that Father had physically assaulted her and had pled guilty when she filed charges against him. The court signed a default decree that dissolved the marriage, appointed the parties joint managing conservators, ordered child support, awarded Mother the marital residence, and included a family violence finding. Nearly three months later, Father appealed.

Holding: Affirmed.

Opinion: Father asserted, via a timely-sought restricted appeal, that he was denied due process and that the decree was unsupported by sufficient evidence.

Father received notice of the final hearing at the email address repeatedly identified as his electronic service address. The certificate of service created a presumption Father received notice. Father asserted that email address was the wrong address. However, nothing in the record indicated Father ever changed his designated electronic filing manager email address before the final setting. Additionally, Father's motion for an extension of appellate deadlines listed the same email address to which the notice of hearing was sent.

Father argued that because his original petition for divorce alleged he acquired the marital residence before marriage, the trial court erred in accepting Mother's community-property characterization. Father failed to appear and failed to present evidence to support his separate-property claim. He pointed to no legal authority that imposes an obligation on the trial court to develop evidence on behalf of an absent party.

Similarly, because Father failed to appear, he could not complain on appeal about the reliability of Mother's evidence to support her valuation of the marital residence, assessment of Father's child-support arrearages, or the allegations of family violence.



Pakistani Divorce Not Entitled to Comity Because the Notice by Publication to Wife was Constitutionally Inadequate and Denied Wife Due Process.

3. *Azhar v. Choudhri*, __ S.W.3d __, No. 24-0939, 2026 WL 2879758 (Tex. 2026) (09-25-2026).

Facts: Husband and Wife married in Pakistan in 2008 when Wife was eighteen and Husband was twenty-eight. Husband had been living in Texas since he was three years old but traveled to Pakistan to find a wife via an arranged marriage. Wife joined Husband in Texas after obtaining a visa. During the marriage, the parties amassed over \$100 million in community assets. Husband continuously abused Wife physically and emotionally. In 2012, Husband sent Wife to Pakistan, “ostensibly to renew her visa.” However, Husband divorced Wife, without her knowledge through a talaq proceeding in Pakistan. Husband provided no notice to Wife of his intent to divorce her or the existence of the divorce. Wife was not served with process. Instead, Husband effectuated service by publishing a notice, that Wife did not come across, in a Pakistani newspaper.

Wife learned of the divorce two years later and began a process of challenging the divorce under Pakistani law and filed for divorce in Texas. The Pakistani Supreme Court denied Wife’s requested relief. The Texas trial court thus dismissed Wife’s divorce suit for want of jurisdiction, finding the parties were already divorced, and rendered a take-nothing judgment against Wife in her request for a division of property. The appellate court affirmed the trial court’s decision. Wife petitioned the Texas Supreme Court for review.

Holding: Reversed and Remanded to the Trial Court.

Opinion: In the nineteenth century, the U.S. Supreme Court explained that no sovereign is ever required to recognize the judgment of a foreign sovereign, and comity “is neither a matter of absolute obligation, on the one hand nor of mere courtesy and good will, upon the other.” “A judgment affecting the status of persons, such as a decree confirming or dissolving a marriage, is recognized as valid in every country, unless contrary to the policy of its own law.” American courts must balance international duty and convenience with the rights and protection of their own citizens. A foreign judgment issued without jurisdiction or due process need not be recognized by Texas courts. “There are no precise guidelines ... for deciding whether comity should be invoked.” Extending comity to a judgment that violates Texas public policy would be inappropriate. Mere differences between Texas law and foreign law are not a reason to deny the extension of comity. The foreign law must violate good morals, natural justice, or be prejudicial to the general interests of Texas’s own citizens.

Husband argued that because his notice satisfied Pakistani law, the notice was adequate. The Texas Supreme Court recently noted in a different opinion that a fundamental requirement of due process in any proceeding that is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. While notice by publication is not always impermissible, such notice violates due process when the address of a known defendant is readily ascertainable.

Husband offered no evidence that normal means of communication with Wife were unavailable. As a matter of law, the notice provided here was constitutionally inadequate, and far short of what Texas public policy demands. “Other countries are welcome to conclude otherwise, but their judgments are not entitled to comity in a Texas court.”

Husband Failed to Establish that His Military Deployment Prevented Him from Appearing at Trial via Zoom.

4. *Masimula v. Masimula*, No. 08-25-00207-CV, 2026 WL 2932346 (Tex. App.—El Paso 2026, no pet. h.) (mem. op.) (09-29-2026).

Facts: Wife filed, through counsel, a petition for divorce. Husband, pro se, filed an answer stating he was a “Service Member.” Husband failed to appear at final trial, so the court signed a default divorce decree. Husband appealed, raising several issues. Because the default decree included spousal maintenance despite Wife not pleading for that relief, the appellate court struck the maintenance award and affirmed the decree as modified.

Subsequently, the trial court conducted an entry hearing to enter a modified decree consistent with the appellate opinion. Wife failed to appear. At that hearing, Husband attempted to raise an issue related to his military service and a request for spousal support, but the trial court interrupted him, pointed out the appeal had already been concluded, stated that the hearing was “for information purposes,” and noted that the court drafted the modified decree because the parties had not done so.

Husband appealed again.

Holding: Affirmed.

Opinion: Husband asserted that at the first default hearing, he was deployed, and he claimed Wife and the trial court were aware of that fact. He asserted the trial court violated the Servicemembers Act by signing the default judgment and not granting a stay or appointing counsel to represent him in his absence. However, Husband did not request a stay or appointed counsel as required by the Act and could not raise that issue in the second appeal. Moreover, at the first default hearing, the court noted on the record that Husband did not seek relief under the Servicemembers Civil Relief Act.



In his second issue, Husband argued the default decree should have been set aside pursuant to *Craddock*. However, contrary to Husband's assertions, the record did not establish that his failure to appear was justified or due to a mistake or accident. Before the initial default hearing, Husband sent communications regarding his situation to the court without copying Wife despite being admonished about ex parte communications. Husband complained about internet connectivity issues that prevented him from appearing by Zoom; however, he had ample time to arrange for personal internet connectivity. Husband waited until the day before the hearing to inform the court he could not attend, and his request for a reset was not supported by any explanation.

Finally, Husband challenged the sufficiency of the evidence to support the decree. However, that argument was barred by the law-of-the-case doctrine, and the appellate court's earlier opinion in this divorce proceeding. Husband could not cure briefing waiver from the first appeal by submitting a more focused brief in the second appeal.

Default Divorce Decree Reversed Because Record Contained No Proof Wife was Served with Amended Petition Seeking More Onerous Relief.

5. *In re Marriage of Washington*, No. 07-26-00129-CV, 2026 WL 2960157 (Tex. App.—Amarillo 2026, no pet. h.) (mem. op.) (09-30-2026).

Facts: Wife was initially represented by an attorney when she filed for divorce. That attorney withdrew, and a second attorney represented Wife for a time. However, that attorney also withdrew, leaving Wife pro se. The withdrawal order directed that all notices would be sent to Wife directly by certified mail, first-class mail, and email.

Subsequently, Husband filed an amended petition adding claims for a permanent injunction, attorney's fees, and spousal maintenance. Wife failed to appear at final trial, and the court granted a default judgment. Husband later obtained a nunc pro tunc judgment to correct the date of marriage and a statement about Wife's appearance at trial. Nearly six months after the initial default judgment, Wife appealed.

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

Opinion: To succeed on a restricted appeal, error must be apparent on the face of the record. Among other complaints, Wife asserted she did not receive a copy of Husband's amended petition with the claims for an injunction, fees, and maintenance. While there is ordinarily a presumption of service, here, the record was devoid of evidence Wife was properly served pursuant to Rule 21a. Husband's amended petition did not contain a certificate of service or provide any proof of the method or date of service on Wife. On the automatically generated e-filing certificate, only Husband's attorney was listed. The order for Wife's second attorney's withdrawal required service to be completed by certified mail, first-class mail, and email. Nothing in the record indicated Husband complied with that order. Further, because the amended petition sought more onerous relief than the prior petition, service was required, and the default judgment without service could not stand.

Although a trial court cannot sever a divorce from a property judgment, the appellate court may affirm the dissolution of marriage while reversing the remainder of a divorce decree. Because neither party challenged the dissolution of marriage, that portion of the decree was affirmed.

DIVORCE: PROPERTY AGREEMENTS

Husband's Signature on Agreed Decree Not Required after He Already Agreed in Open Court to Terms of Divorce.

6. *In re Marriage of Cannon*, No. 06-25-00134-CV, 2026 WL 2618425 (Tex. App.—Texarkana 2026, no pet. h.) (mem. op.) (09-04-2026).

Facts: Both parties were represented by counsel during their divorce proceedings. At what was scheduled to be a temporary orders hearing, counsel announced the parties had reached a final agreement. The agreement read into the record included the agreed division of the parties' property and required Husband to pay support for the adult-disabled Child. Wife testified that the Child was on the autism spectrum and would never be able to live on his own. Husband testified that he heard and understood the agreement and wanted the court to grant a final decree of divorce based on the agreement. The trial court accepted the agreement and ordered Husband's counsel to prepare a decree.

Almost two months later, Wife filed a proposed decree and motion to enter. A month after that, Wife filed an amended motion that incorporated changes requested by Husband. A week later, Husband's counsel filed a motion to withdraw. Husband sent an email to the trial court clerk asking the clerk to file a motion for continuance, objection to the final decree, objection to his attorney's withdrawal, and a few other documents. The clerk responded, "Received." The court signed an order granting the withdrawal of Husband's attorney and signed a final decree of divorce, which included a judgment for child-support arrearages. Neither Husband nor his formal counsel signed the decree. Husband appealed.

Holding: Affirmed.



Opinion: Husband complained about the trial court signing the decree without his signature. The court reporter's transcript reflected the court made a present rendition on the parties' agreement in open court. The judge's oral rendition made the subsequent signing of the decree a ministerial act. Husband's review of the agreement before signing was not required after he already stated his agreement on the record in open court.

Husband next argued the court abused its discretion in denying his request for a continuance associated with his objection to his attorney's withdrawal. When the basis of a pro se motion for continuance is the withdrawal of his attorney, the movant must show that the withdrawal was not due to the movant's own fault or negligence. Here, Husband's attorney moved to withdraw based on an inability to effectively communicate with Husband. Husband did not file any objection to the withdraw, did not appear at the hearing to contest it, and offered no evidence that the withdrawal resulted from circumstances beyond his own fault or negligence. The record supported the presumption the trial court did not abuse its discretion in denying a continuance.

Husband additionally challenged the award of support for his disabled-adult Child because the record contained only lay testimony and no medical records or similar evidence. Wife offered her testimony regarding the Child without objection from Husband. He did not object to the disability finding. He expressly acknowledged he was waiving a hearing on the issue but wanted the court to grant divorce on the parties agreement that day.

**DIVORCE:
PROPERTY DIVISION**

Because Wife Failed to Challenge Credibility of Earnest-Money Contract, the Pre-Marriage Contract was Credible Evidence Trial Court Could Not Disregard, Making House Indisputably Husband's Separate Property.

7. *Davis v. Davis*, __ S.W.3d __, No. 05-25-00826-CV, 2026 WL 2815884 (Tex. App.—Dallas 2026, no pet. h.) (09-18-2026).

Facts: Husband and Wife lived together before marriage in a house owned by Husband's uncle. The uncle died, and his will instructed that the house would be sold with the proceeds being distributed to six beneficiaries, including Husband. The beneficiaries signed documents agreeing to allow Husband to purchase the home, and Wife notarized some of these documents. Before marriage, Husband signed a one-to-four residential contract ("earnest money contract"), in which his mother (who was his uncle's estate's executor and a licensed real-estate agent) agreed to sell the house to Husband, and Husband agreed to buy the house, but no money was required to change hands with that contract. The sale of the house closed after the parties married. Money changed hands for the first time after marriage.

At the subsequent divorce trial, Wife raised no objection to the entry of the earnest money contract as an exhibit. Wife testified that she had knowledge of the documents.

The final decree confirmed a 30% interest in the house as Husband's separate property and divided the remaining 70% equally between the parties as community property. The court ordered Husband to pay Wife for her 35% share of the equity in the house and, if he failed to do so, appointed a receiver to sell the house and distribute the proceeds. Husband appealed.

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

Opinion: Inception of title occurs when a party first has a right or claim to the property by virtue of which title is finally vested. Although findings were issued, there was no express finding regarding Husband's claim of inception of title. Thus, the trial court impliedly found either that the earnest money contract lacked credibility or inception of title did not occur when he signed the earnest money contract.

Caselaw provides that an earnest money contract provides a right of claim to property, and here, the earnest money contract was signed before marriage. That contract did not list Wife as a buyer—only Husband. No evidence showed Husband ever conveyed any interest in the house to Wife.

Wife asserted that the trial court properly disregarded the earnest money contract in this case because no money changed hands at the time of signing, Husband offered no evidence of attempts to finance the house before marriage, Husband was under no obligation to pay any moneys before marriage, and the earnest money contract was illusory for lacking consideration. Wife noted (1) Husband's prior fraudulent actions involving him signing Wife's name to collect an insurance payout and (2) the trial court's role in determining the credibility of witnesses and evidence.

The appellate court acknowledged that it was Husband's burden to present clear-and-convincing evidence that the house was his separate property. However, the appellate court held the trial court abused its discretion in failing to conclude the earnest money agreement was conclusive evidence to support Husband's claim. The appellate court held that the mutual promises of the bilateral contract represented consideration, making the contract not illusory. The trial court could not ignore undisputed testimony that was clear, positive, direct, otherwise credible, free from contradictions and inconsistencies, and could have been readily controverted. At trial, Husband's mother testified regarding the validity of the earnest money contract, and Wife offered no evidence the contract was fabricated. Wife did not cross-examine Husband or his mother regarding the contract's authenticity.

Because this mischaracterization materially affected the just and right division of the community estate, the property was remanded for further proceedings. The appointment of a receiver was vacated.



Because Property was Mixed Character, Decree Could Require Potential Sale of Property and Did Not Constitute a Divestment of Husband's Separate Property.

8. *Ridgway v. Frolova*, No. 03-25-00050-CV, 2026 WL 2869275 (Tex. App.—Austin 2026, no pet. h.) (mem. op.) (09-24-2026).

Facts: At trial in their divorce proceeding, the parties disputed the characterization of a piece of real property. Wife's expert offered tracing evidence and concluded the property was roughly 30% Wife's separate property, 55% Husband's separate, and 15% community property. Husband's expert reached a similar but not exact conclusion regarding percentages. The expert reports also had different amounts for the purchase price of the property. The parties offered two different appraisal values.

Wife's proposed property division characterized the property as community but offered a mixed characterization in the alternative. Husband listed the property as partly his separate and partly community. The final decree awarded the property to Husband but ordered him to refinance the property and pay Wife a specific dollar amount by a date certain. If he failed to refinance the property, the property would be sold, and the net proceeds would be divided equally between the parties. Although findings were issued, the findings did not include values for any specific item of property, and Husband did not request additional findings. Husband appealed.

Holding: Affirmed

Opinion: Husband challenged the characterization of the property as community property, rather than finding a portion of the property was his separate property. Although Wife's inventory listed the property as community property, the Austin court had "previously expressed skepticism that a party's opinion as to whether property is community or separate, as reflected in an inventory, controls a court's analysis." The court did not see the inventory's characterization as conclusive.

Neither party presented evidence that the property was purchased exclusively with community funds. The property was purchased during marriage. Both parties' tracing experts traced the purchase moneys to the proceeds of the sale of Husband's separate-property house and a mixed-character bank account. The funds in that account were not so commingled as to defy characterization. The evidence was unclear regarding the actual purchase price of the disputed property, which likely led to credibility issues.

Neither expert addressed the gift presumption that arose when the parties put both names on the deed to the disputed property. Husband testified that he intended the property to be "ours." Neither party took steps to protect their respective separate interest in the disputed property.

Contrary to Husband's assertion, his separate interest in the property did not preclude the court-ordered sale of the property. Because the property was purchased with community and separate funds, the parties were tenants-in-common. When property is held by parties as tenants-in-common, they may seek to partition the property, and such a partition may be done concurrently with a divorce proceeding. The court-ordered sale did not deprive Husband of separate property but converted real property to personal property.

Further, because Husband's separate interest was only roughly 25% (with the community property portion being 75), dividing the proceeds equally between the parties did not deprive Husband of his separate property interest.

"Moreover, and perhaps most importantly," the order to sell the property was not effective unless Husband first failed to refinance the property and buy out Wife's interest. Because the record did not show the property was listed for sale, the appellate court had no evidence Husband might be divested of any separate property. Thus, Husband failed to show he was harmed by the trial court's order. Additionally, without findings, the court could not address whether the division was just and right (i.e., whether the division was harmful).

**DIVORCE:
ENFORCEMENT OF PROPERTY DIVISION**

Husband's Transfer of His Homestead Could Not be a "Fraudulent Transfer" Under TUFTA Because His Homestead was Exempt Property.

9. *Michelena v. Michelena*, No. 13-25-00002-CV, 2026 WL 2662336 (Tex. App.—Corpus Christi—Edinburg 2026, no pet. h.) (mem. op.) (09-10-2026).

Facts: When they divorced, Wife obtained a money judgment as part of the property division. A few years later, Husband filed for bankruptcy and an order of discharge was eventually issued. The bankruptcy court found the money judgment from the divorce was not dischargeable because the property in dispute was Husband's homestead and was exempt from execution.

Subsequently, Wife filed an abstract of judgment. Nearly a year after that, Husband conveyed his interest in the homestead [to someone with the same last name as Husband] and purchased a new homestead. Wife filed a suit alleging the transfer was fraudulent because she was a judgment creditor, and the transfer was made with intent to hinder, delay, or defraud her. Husband and the transferee moved for partial summary judgment, asserting Wife's claim under the Texas Uniform Fraudulent Transfer Act ("TUFTA") failed because the property was homestead property. Wife responded that the property was not exempt because:

if [Husband] would have sold the property at the listed price or appraised value, upon the sale of the property, his share of the proceeds of the sale would have been \$1,500,000.00 minus the cost of the sale It is therefore likely that [Husband] ... would receive a net amount of approximately \$1,300,000.00, which he would have 6



months to invest in a new homestead If he did not, then that portion of the sale proceeds that he did not use to buy a new homestead would be subject to seizure.

Husband and the transferee responded that because the homestead was exempt under TUFTA, Wife's claim would still fail even if Husband conveyed the interest for nothing in return. After several more replies, the trial court granted summary judgment and signed a take-nothing order. Wife's motion for new trial was overruled by operation of law, and she appealed.

Holding: Affirmed.

Opinion: TUFTA operates to prevent debtors from defrauding creditors by placing assets beyond their reach. It delineates the types of transfers and obligations that are fraudulent; enumerates the remedies available to a creditor; prescribes the measure of liability of a transferee; and lists defenses and protections afforded a transferee. To obtain relief under the TUFTA, a plaintiff must prove: (1) that it is a creditor with a claim against (2) a debtor; (3) that the debtor transferred assets after, or a reasonable time before, the plaintiff's claim arose; and (4) that the transfer was made with the intent to hinder, delay, or defraud the plaintiff creditor. The definition of an asset expressly excludes property to the extent it is generally exempt under nonbankruptcy law, which encompasses homestead property.

Husband and transferee argued the transferred asset was Husband's homestead, and Wife did not dispute that fact. Wife's argument was not based on the facts of this case. The conveyance of Husband's homestead could not constitute a fraudulent transfer under TUFTA, so the trial court did not abuse its discretion in granting summary judgment.

**SAPCR:
TEMPORARY ORDERS**

Ex Parte Temporary Restraining Order Prohibiting Father's Access to His Children Vacated Because Order Did Not Comport with Rule 680 or Family Code Section 105.001.

10. *In re Morales*, No. 08-26-00096-CV, 2026 WL 2618424 (Tex. App.—El Paso 2026, orig. proceeding) (mem. op.) (09-03-2026).

Facts: Mother and Father had two Children. Mother filed a motion for an emergency ex parte restraining order to prevent Father from exercising possession of the Children until after a hearing. In a supporting "affidavit," Mother referenced information allegedly expressed to her by the Child's therapist repeating what the Child told the therapist. The affidavit was neither signed nor notarized. The court granted the requested ex parte injunction and stated it would be effective until further order of the court until it expired by operation of law. A hearing was scheduled to occur 13 days after that order. More than two months after that order, Father filed a motion to dissolve the ex parte order and objected to the supporting "affidavit." Father argued that because Mother's motion did not comply with Rule of Civil Procedure 680 and was not supported by affidavit as required by the Family Code, the ex parte order should not have been granted or extended. Less than an hour later, the court signed an order extending the ex parte order and scheduled a hearing to take place over two months later. Father sought mandamus relief. Although the appellate court invited a response from Mother, no response was filed.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: A temporary restraining order that fails to comply with Texas Rule of Civil Procedure 680 is void. Under Rule 680, an ex parte order may be granted if supported by an affidavit or verified complaint stating specific facts to support a claim of immediate and irreparable injury, loss, or damage. Such an order will expire at the end of 14 days and can be extended only once for good cause. Additional extensions must be agreed to by the parties. The order must state the date it expires and a date for a hearing on the application for temporary injunction, and the hearing may not be set more than 14 days from the date granting the ex parte order. The hearing shall be set for the earliest date possible. If the movant does not proceed with the hearing timely, the court shall dissolve the restraining order.

Under the Family Code, a temporary order excluding a parent from possession may not be rendered except on verified pleading or affidavit.

Here, neither of the court's orders complied with either Rule 680 or the Family Code. No hearing was conducted. The emergency motion was not supported by affidavit or verified complaint. Neither order expressly stated the date the order would expire. Because Father did not consent to the order, it could not be extended beyond 28 days after the initial order. Mother did not proceed with the application for protective order by either the 14-day or 28-day deadline. The trial court clearly abused its discretion by (1) issuing a temporary restraining order without a hearing in the absence of an affidavit or verified complaint, (2) issuing a temporary order prohibiting Father from exercising possession of his children in the absence of an affidavit, (3) failing to state the date on which the order would expire in either of the temporary restraining orders; (4) extending the temporary restraining order beyond the maximum possible duration without Father's consent, and (5) failing to dissolve the temporary restraining order (a) when the Mother failed to proceed with the application for temporary injunction and (b) when a temporary injunction was not issued on the date set for the temporary-injunction hearing or by the date on which the temporary restraining order was required to expire.



Temporary Orders Pending Appeal Could Not Include Nonconditional Award for Appellate Attorney's Fees Because No Evidence that Award was Necessary to Preserve and Protect the Safety and Welfare of the Child Pending Appeal.

11. *In re Johnson*, No. 10-26-00321-CV, 2026 WL 2664676 (Tex. App.—Waco 2026, orig. proceeding) (mem. op.) (09-10-2026).

Facts: Mother appealed from an order in a suit to modify the parent-child relationship. Mother filed an emergency motion in the trial court to suspend enforcement of the modified possession order pending appeal. Father responded with a motion for temporary orders requiring Mother to pay his appellate attorney's fees. The trial court denied Mother's motion to suspend enforcement and granted Father's request for fees. The court ordered Mother to pay Father nearly \$50k by a date certain. Mother sought mandamus relief, and the appellate court granted Mother's emergency motion to stay pending mandamus review.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Mother first argued that the trial court abused its discretion in awarding Father appellate fees because he failed to show that the fees were necessary to preserve or protect the Child's safety or welfare pending the appeal. Father responded that Mother waived her appellate complaint by failing to file a motion for reconsideration in the trial court. However, during the temporary orders hearing, Mother raised this specific objection multiple times. The trial court overruled Mother's objection and granted a running objection. Thus, Mother preserved her complaint and was not required to file a motion for reconsideration to do so.

Mother argued there was no evidence that immediate payment of appellate fees was necessary to preserve and protect the Child's safety or welfare pending the appeal. During the temporary orders hearing, Father testified that he borrowed money from his parents for fees. He testified that he would ensure the Child was clothed and fed, but the need to pay attorney's fees would impact the Child's quality of life. He did not identify any specific need that would be unmet. He also stated that if fees were not shifted to Mother, "we're going to be in court until the end of time." The attorneys testified to the reasonableness of their fees and indicated they would need to withdraw if Father was ever unable to replenish his trust account as necessary.

The best interest of the Child is not the proper standard under Family Law Section 109.001 [temporary orders pending appeal in SAPCRs]. Father bore the burden of showing that the fees were necessary to preserve and protect the safety and welfare of the Child during the pendency of the appeal. He did not do so.

Ex Parte Temporary Restraining Order Could Not be Extended After 14 Days Had Elapsed; However, Trial Court Could Still Conduct a Hearing After the Order's Expiration to Consider Whether Injunctive Relief was Appropriate Through Temporary Orders.

12. *In re McDowell*, No. 08-26-00326-CV, 2026 WL 2727973 (Tex. App.—El Paso 2026, orig. proceeding) (mem. op.) (09-15-2026).

Facts: The parties' divorce decree named Mother as a possessory conservator of their Child. Mother appealed, and that appeal remained pending at the time of this mandamus proceeding. Pending the appeal, Father initiated a modification suit in the trial court and asked for a temporary restraining order to prevent Mother from having any access to the Child.

The court issued an ex parte temporary restraining order granting Father's requested relief. The order provided it would "remain in effect until further order of this Court or until it expire[d] by operation of law." A hearing was set to occur within 14 days. Before the hearing, Mother filed a motion to dissolve the restraining order and expressly stated that she did not agree to any extension of the order beyond that permitted by Texas Rule of Civil Procedure 680.

A week after the date for the hearing, the court signed an "Ex Parte Temporary Restraining Order and Order to Appear," purportedly based on a second application filed by Father. The second order again prohibited Mother from having access to the Child. A hearing was set to occur within a week. The day after this second order, Mother filed a petition for writ of mandamus. The appellate court requested a response. The trial court filed a response explaining that Mother had agreed to reset the hearing (originally set for 17 days after the first motion for TRO) to give Mother time to retain an attorney before the hearing. Father did not file a response. Mother filed a reply stating that she agreed to reset a temporary orders hearing and did not agree to extend the duration of the restraining order.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: All temporary restraining orders are subject to the requirements of Texas Rules of Civil Procedure 680 and 683, unless statutorily exempted from specific requirements. Under Rule 680, an ex parte temporary restraining order expires after 14 days and can be extended only once for another 14-day period unless otherwise agreed. The order must state the date it expires and include the day and time of the hearing, which must be set within 14 days from the order. The order must set forth reasons for its issuance and be specific in its terms. An order cannot be extended after its expiration.

Neither of the trial court's restraining orders complied with Rules 680 and 683. Neither stated the date on which they would expire. Because the second was issued more than 14 days after the first, it could only have been issued by agreement of the parties. Neither order stated the reasons for its issuance. Finally, the trial court has jurisdiction to hear an application for an injunction, and the order to appear was not affected by the invalidity of the temporary restraining order.



Father's Concerns About the Child's Hygiene and Unsubstantiated Complaints About Neglect were Insufficient to Support Temporary Orders that Removed Mother's Exclusive Right to Designate the Child's Primary Residence.

13. *In re Ward*, No. 07-26-00346-CV, 2026 WL 2819075 (Tex. App.—Amarillo 2026, orig. proceeding) (mem. op.) (09-18-2026).

Facts: An agreed final decree of divorce appointed Mother as the Child's sole managing conservator and Father as a possessory conservator. Father was provided with a step-up possession schedule and ordered to pay child support. Subsequently, Father moved to Ohio, while Mother stayed in Texas.

After Father and his mother visited the Child for the first time in three years, Father filed a petition to modify and asked to be named the Child's sole managing conservator, raising allegations of neglect against Mother via a supporting affidavit. The trial court issued a temporary restraining order preventing Mother from having access to the Child until a hearing was held.

Father asserted that after his two-week visitation with the Child, he was concerned about the Child's hygiene and a cavity. He thought the Child ate too fast, was hungry again too quickly, and was significantly overweight. Although he didn't enter the house, he believed that a house Mother owned was in a horrible state with trash everywhere. He acknowledged Mother and the Child lived in an apartment and not that house. There was testimony that a neighbor's child peed on the Child once. A CPS investigation into Mother's alleged neglect was ruled out.

After the hearing, the court appointed Father as a temporary joint managing conservator and gave him the exclusive right to designate the Child's primary residence. The court additionally imposed supervised visitation on Mother and ordered her to pay child support. Mother sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Mother asserted the trial court abused its discretion by issuing temporary orders that removed her exclusive right to designate the Child's primary residence because the evidence was insufficient to establish the Child's present circumstances would significantly impair the Child's physical health or emotional development.

The temporary orders contained no express significant impairment finding. Even if Father's concerns were true, they did not constitute evidence of specific acts or omissions by Mother demonstrating the Child's present circumstances would significantly impair her physical health or emotional development. Father had no knowledge of the Child's current living conditions. Mother was the only witness to provide testimony regarding the Child's current living conditions, and she introduced photographs of the apartment showing the home to be clean and appropriate. The CPS allegations were ruled out. While the evidence may have supported concerns, it did not justify issuing a temporary order changing the person with the exclusive right to designate the Child's primary residence.

**SAPCR:
MODIFICATION**

Evidence Supported Determination that Requested Modification was Not in the Best Interest of the Child.

14. *In re J.Z.S.*, No. 14-25-00827-CV, 2026 WL 2662333 (Tex. App.—Houston [14th Dist.] 2026, no pet. h.) (mem. op.) (09-10-2026).

Facts: The parties' divorce decree appointed Mother as the joint managing conservator with the exclusive right to designate the Child's primary residence. Five years later, Father filed a suit to modify and asked for that exclusive right among other relief. The trial court denied the requested modification, and Father appealed. Mother did not file an appellate brief.

Holding: Affirmed.

Opinion: The parties agreed that there had been a material and substantial change in circumstances. Thus, in reviewing Father's appeal, the appellate court reviewed whether the trial court abused its discretion in finding the requested modification was not in the best interest of the Child.

Father lived in Alabama since the parties' divorce and exercised possession sporadically. Father attempted to pick up the Child for a summer visitation, but Mother had moved to New Mexico. Father found her through a private investigator. Mother moved back to Texas, but far from where she lived at the time of divorce and outside the geographic restriction on the Child's residence. Father raised allegations that Mother's new boyfriend was pedophile, but no evidence supported the allegation. Father complained Mother was unable to properly care for the Child. Mother responded that she was surprised Father was seeking additional rights because he had not previously exercised his rights. She believed Father filed the modification suit in retaliation for a sexual abuse allegation raised by Mother's older son.

Mother worked as a daycare teacher and had a three-bedroom house. She had family support where she currently lived and did not intend to move again. The Child was doing well in school, was involved in extracurricular activities, and had many friends. Contrary to Father's assertions, the Child maintained appropriate hygiene, and Mother took him to doctors' appointments. Although Mother expressed some concerns about Father spending time with the Child due to her other child's allegations, she did not oppose the possession order detailed in the divorce decree. The court interviewed the Child and summarized the interview as the Child being happy but wanting to spend more time with his Father. The Child's desire to see his Father did not



necessarily warrant changing which parent had the exclusive right to designate the Child's primary residence. The court encouraged the parents to take advantage of the rights granted in the divorce decree.

Evidence Supported Removing Non-Parent Conservators as Joint Managing Conservators and Appointing Mother as the Child's Sole Managing Conservator.

15. *In re B.B.*, No. 06-26-00031-CV, 2026 WL 2682054 (Tex. App.—Texarkana 2026, no pet. h.) (mem. op.) (09-14-2026).

Facts: A prior order appointed Conservators as joint managing conservators and Mother as a possessory conservator. Subsequently, Mother filed a modification suit seeking sole managing conservatorship. She asserted the Conservators move outside the geographic restriction imposed by the prior order constituted a material and substantial change in circumstances.

During the case, the trial court found Conservators committed a total of 36 violations of court orders and held them in contempt. In addition to moving out of the county, they had filed a petition to terminate Mother's parental rights and sought to adopt the Child. Conservators denied Mother her possession rights and posted about the case on social media, which Mother asserted harmed the Child's best interest.

Mother admitted to prior drug use but had since become sober. She had been employed for years despite Conservators' attempts to have Mother's nursing license suspended. Mother planned to have the Child live with her and go to the same school as his older halfsibling. Mother had local family and believed appointing her as the Child's sole managing conservator would be in the Child's best interest. An amicus attorney spoke well of Mother and supported Mother's requested relief. Conservators did not testify at the final hearing. The trial court granted Mother's requested relief and issued findings, including that Conservators had blatant disregard for court orders and were vexatious and manipulative. Conservators appealed their removal as the Child's joint managing conservators.

Holding: Affirmed.

Opinion: In a separate mandamus proceeding, the appellate court considered Conservators' complaint that the trial court abused its discretion in refusing to grant their motion for mandatory venue transfer. Conservators had moved outside the geographic restriction in violation of court orders and had been found in contempt. The appellate court found, in the mandamus proceeding, the trial court did not abuse its discretion. Thus, to the extent Conservators raised the same complaint in this appeal, that issue was moot and overruled.

Conservators' appeal failed to address their actions and focused only on Mother. Ample evidence supported a finding of a material and substantial change in circumstances. Additionally, evidence supported both Mother's parental fitness and a finding that appointing her as a sole managing conservator was in the Child's best interest. Further, the trial court had already determined in prior orders that remaining in the county where Mother lived was in the Child's best interest. Conservators' actions showed their appointment was no longer in the Child's best interest.

MISCELLANEOUS

The Trial Court Did Not Abuse Its Discretion in Changing the Child's Last Name to Father's Last Name.

16. *In re Marriage of Callahan and Lewis*, No. 06-25-00104-CV, 2026 WL 2819994 (Tex. App.—Texarkana 2026, no pet. h.) (mem. op.) (09-21-2026).

Facts: Father and Mother were only married nine months before Mother filed for divorce. She gave birth while the divorce was pending and did not list Father as the father on the Child's birth certificate. In a separate proceeding, Mother changed her last name before the Child was born. Mother testified that Father agreed to the Child's last name and to change his own last name. Father denied this assertion. He testified that he did not learn that his name was not on the Child's birth certificate until obtaining a copy for health insurance purposes. The Child was nearly a year old by the time of the bench trial.

The parties reached an MSA on property issues, and the child-related issues were tried to the bench. Father asked for the Child to be given his last name. When Mother became pregnant, Father discussed terminating the pregnancy, moved out of the marital residence, and had little communication with her during the pregnancy. Mother did not consult Father about the Child's name. Father attended most of the Child's doctor's appointments after birth.

The trial court found it was in the Child's best interest to change the Child's last name and imposed a step-up-possession schedule for Father. Mother had an older child from a prior marriage and asked the court to make the final phase of the step-up schedule align with her possession of the older child, which would have given Father the second and fourth weekends, instead of first, third, and fifth, as well as some changes to the standard summer schedule. The court awarded Mother appellate attorney's fees conditioned on Father's unsuccessful appeal. Mother appealed the merits of the order, and Father cross-appealed the attorney's fee award.

Holding: Affirmed.



Opinion: Mother argued the evidence was insufficient to support the trial court's decision to change the Child's name. When determining whether to change a child's name, the Fort Worth appellate court (from which this appeal was transferred) has held that courts should consider the following non-exhaustive list of factors:

- (1) whether the changed name or original name would best avoid embarrassment, inconvenience, or confusion;
- (2) the length of time that the child has carried the original name;
- (3) the degree of community respect associated with the original and changed names;
- (4) whether the change will positively or adversely affect the bond between the child and the parent or the parent's families;
- (5) the preference, maturity, and age of the child; and
- (6) whether the party seeking the name change is motivated by an attempt to alienate the child from a parent.

The court noted that other appellate courts have provided different lists. Regardless, the list is nonexclusive and case-dependent, and the primary consideration is the best interest of the child. Additionally, the appellate court reviews this issue under the abuse of discretion standard.

Here, the Child was a child of the marriage between Mother and Father, the pregnancy was discovered during the marriage, Mother's maiden name (which she changed during the pendency of the divorce and which she named the Child) was not the same last name as her other child's last name, Mother failed to list Father on the Child's birth certificate and did not seek input from Father when naming the Child, Father had attended doctor's appointments after the Child's birth, Father had the resources to pay above-guideline child support, Father was providing health insurance for the Child, and the parties were named joint managing conservators. Mother did not show the court acted in an arbitrary fashion without reference to guiding rules or principles.

Mother additionally challenged the final phase of the possession schedule because it did not align with her half-sibling's schedule. However, contrary to Mother's assertion, the visitation schedule provided significant time together for the Child and her half-sibling.

Because Father did not lose an appeal, the condition for the appellate fee award was not triggered. Thus, his cross-appeal was dismissed as moot.

Attorney's Fee Awards Reversed and Remanded Because Invoices so Heavily Redacted that It was Impossible to Ascertain What Work was Done.

17. *Hernandez v. Frithiof*, No. 03-23-00787-CV, 2026 WL 2949438 (Tex. App.—Austin 2026, no pet. h.) (mem. op.) (09-30-2026).

Facts: The parties had two Children. Multiple SAPCRs had been litigated during the Children's lifetime. When the Children were roughly 13 and 14 years old, the court issued temporary orders naming Mother as the Children's sole managing conservator, barring Father from contacting the Children, and requiring Father to pay child support. Two years later, he divorced from another woman, was convicted of sexually assaulting his stepdaughter, and stopped paying child support to Mother. Yet, he maintained a pleading seeking sole managing conservatorship of the Children. At a hearing about six months after the divorce and conviction, testimony revealed Father had been terminated from his employment, had no income, and could not provide health insurance for the Children. However, he was still paying child support to another woman with whom he had a three-year-old child. A final order in the modification proceeding involving the parties' two Children, now 16 and 17 years old, ordered child support to be paid in a lump sum, plus lump sums for medical and dental insurance, child support arrearages, and unreimbursed medical and dental expenses. Additionally, the court awarded Mother two judgments for attorney's fees, one enforceable as child support, and the other enforceable as a debt. Father appealed. The appellate court stayed the appeal to allow the trial court to issue findings of facts and conclusions of law and reinstated the appeal after receiving those findings and conclusions. The lump sum amounts in the findings differed from the amounts in the judgment.

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

Opinion: Mother agreed with Father's first appellate issue, which was a complaint that the order failed to include a step-down provision for when the first Child reached the age of 18. Including that step-down provision would reduce the lump-sum due, and Mother proposed a remittitur for the revised amount. The appellate court made the suggested modification and held this modification resolved Father's first issue.

Father additionally challenged the award of attorney's fees as child support and argued Mother failed to properly segregate her fees. Father also argued that Mother's attorney's fee records were so heavily redacted that it was impossible to ascertain what work was done. Although Father did not raise that argument until his supplemental appellant's brief, the redactions affected the appellate court's sufficiency review.

While some of the line items were unredacted, others were partly redacted, and some were almost entirely obscured except for the date, the worker's initials, the amount of time claimed, the rate, and the amount billed. The redactions of the work performed eliminated information that would have tied the bill items to particular actions performed. Mother's attorney's testimony did not fill in the gaps left by the redactions. Mother bore the burden to prove reasonableness and necessity. But, the evidence presented was insufficient to support the amount awarded. Because the evidence was legally sufficient to support an award of fees, the appellate court declined to issue a take-nothing judgment and instead remanded the issue for further proceedings.



Mother Could Not Afford to Pay Costs of Appeal Because Her Basic Essentials Exceeded Her Income.

18. *Morris v. Morris*, No. 04-26-00115-CV, 2026 WL 2935545 (Tex. App.—San Antonio 2026, no pet. h.) (mem. op.) (09-30-2026).

Facts: The parties cross-petitioned for modification in a post-divorce SAPCR. The trial court issued a final order in the modification suit, requiring Mother to pay child support to Father, rendering an order for attorney's fees against Mother, and granting Father a judgment for overpayment of child support. Mother filed a timely notice of appeal and a statement of inability to afford payment of court costs. The court reporter challenged Mother's statement, and a hearing was conducted. The trial court found Mother had the ability to pay costs of an appeal. Mother filed in the appellate court a motion to review the trial court order regarding her ability to pay costs.

Holding: Reversed and Remanded.

Opinion: At the hearing on Mother's ability to afford costs, Mother was the only witness to testify. Mother was a teacher, and after accounting for deductions, her net monthly income was under \$3000. In summers, she worked as a bartender for extra income, but during the school year, she was prohibited from having a second job. When adding together her monthly rent, car payment, car insurance, and utilities, she had about \$150 left to spend on food, gas, and other necessities, such as copays or medication. Mother's sworn statement averred that she spent about \$500 more than she earned each month. She stated there was no way for her to afford the cost of a transcript after paying "everyday living bills."

At the hearing's conclusion, the court took judicial notice of the 2026 Federal Poverty Guidelines and found Mother had the ability to pay costs. Mother's income was twice the annual poverty guideline for a household of two.

In determining indigence, the question is not merely whether a person *can* pay costs but whether they can *afford* to pay costs. A person cannot afford costs if paying them would preclude them from paying for basic essentials like housing and food. Here, the uncontradicted evidence established Mother's basic essentials exceeded her income. The trial court abused its discretion in ordering Mother to pay costs of appeal.

