

NOVEMBER 2025 CASELAW UPDATE

(Cases from October 1–31, 2025)

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**DIVORCE:
PROCEDURE AND JURISDICTION**

Wife's Trial Amendment To Add Request To Partition Marital Residence—Despite A Consistent Claim Until Trial The Property Was Community Property—Was Permissible Because It Did Not Reshape The Nature Of Trial, Husband Could Have Anticipated The Claim, And The Amendment Did Not Detrimentially Affect Husband's Presentation Of The Case.

1. *Anderson v. Anderson*, No. 12-25-00030-CV, 2025 WL 3049979 (Tex. App.—Tyler 2025, no pet. h.) (mem. op.) (10-31-2025).

Facts: Before marriage, the couple purchased real property, and each party's name was on the deed as a grantee. The purchase was made using funds from a joint checking account, but some of the funds in the account were from the proceeds of a sale of Husband's separate property. The parties disputed whether the source of the funds to purchase the property came from community funds or Husband's separate funds.

At the trial's conclusion, the parties' attorneys discussed with the trial court whether a potential partition of the property— if Wife had a separate-property interest in it—was tried by consent. Wife's counsel took the position that because the issue of characterization was thoroughly tried, the court could partition the property. Husband argued that he had only taken the position that the entire property was his separate property, and he had not consented to partition. Wife then asked to allow a trial amendment to include a request to partition the property. The trial court orally found it had jurisdiction to render an order partitioning the property.

Initially, a final decree confirmed the property as Husband's separate property. However, after reviewing Wife's motion to modify, correct, or reform the judgment, the court issued an order requiring Husband to transfer a portion of the proceeds from the sale of the property (which occurred after the decree) to Wife. Husband appealed.

Holding: Affirmed.

Opinion: Husband argued the trial court erred in granting the trial amendment because the issue of partition was not tried by consent. The parties agreed that prior to trial, neither had sought partition of the property. Wife consistently maintained the property was community property, while Husband asserted it was his separate property.

An amendment is prejudicial on its face when: (1) it asserts a new substantive matter that reshapes the nature of the trial itself; (2) the opposing party could not have anticipated the new substantive matter given the development of the case up to the time the amendment was requested; and (3) the amendment would detrimentally affect the opposing party's presentation of its case. In examining the first factor, partition had common elements with Husband's claim. Because both parties' names were on the deed, for Husband to prove his separate-property claim, he was required to rebut the presumption that he and Wife had equal interests in the property. At trial, Husband presented evidence that Wife "contributed an unequal amount" toward the acquisition. Additionally, the parties disputed the admissibility of bank records. Wife's counsel explained the records were necessary to determine Wife's percent interest in the property, and Husband's counsel made no direct response to that explanation. The trial court could have, thus, reasonably concluded Husband could have anticipated the partition issue. Finally, although Wife maintained until trial the property was community property, she acknowledged at trial that because the property was acquired before marriage, it could not be community property, and instead, she asserted each owned an undivided one-half interest in the property. Nothing in the record suggested Husband would have presented different or additional evidence (or that the amendment would have reshaped the nature of the trial) if Wife had changed her position earlier. Therefore, the trial court did not abuse its discretion in allowing the trial amendment.

**DIVORCE:
DISCOVERY**

Death-Penalty Sanctions Not Error Because Lesser Sanctions Were Attempted, And Husband Failed To Show Striking His Pleadings Resulted In Improper Judgment Or Prevented Him From Presenting His Case.

2. *In re R.J.K.*, No. 05-24-00099-CV, 2025 WL 2723277 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (09-24-2025).

Facts: Husband and Wife were married for about 6 years and had one Child. Husband petitioned for divorce, and Wife counter-petitioned. Leading up to trial, Wife filed motions to compel discovery, and the trial court entered rulings in Wife's favor. However, the transcripts of those hearing were not part of the appellate record. Additionally, transcripts relating to Wife obtaining a protective order were omitted from the appellate record. At trial, Husband admitted to placing tracking and listening devices on Wife's car and breaking into her cell phone. Wife testified that Husband sexually assaulted her more than once and placed spyware on her phone. Wife went to a women's shelter due to Husband's behavior. Additionally, due to Husband's failure to respond to discovery, the trial court presumed Husband's income for the purpose of determining child support.

The final decree appointed Wife as the Child's sole managing conservator and ordered Husband to pay maximum guideline child support. The decree included a family-violence finding and permanent injunctions against Husband stalking Wife or committing family violence. Husband appealed.



Holding: Affirmed.

Opinion: Husband argued the trial court abused its discretion by striking his pleadings because the evidence was legally insufficient to support death penalty sanctions. To succeed on appeal, Husband was required to show the trial court erred in entering the sanctions and that the sanctions probably caused error. When imposing death penalty sanctions, the trial court may consider the history of the litigation. It is not limited to considering only the last violation of discovery rules.

Husband failed to provide a full reporter's record with his appeal. Thus, the appellate court was required to presume the omitted portions of the record supported the judgment. Moreover, the record established, and Husband did not dispute, that Husband failed to comply with prior discovery orders. Despite lesser sanctions of fees and prohibitions from conducting further discovery, Husband continued to fail to fully respond to Wife's discovery requests. Moreover, Husband failed to establish how striking his pleadings caused the rendition of an improper judgment or prevented him from presenting his case.

Husband additionally raised a due process complaint on appeal, but because that issue was not raised in the trial court, he failed to preserve error. Regardless, because the trial court considered lesser sanctions, and because Husband received notice of Wife's motion for sanctions, Husband's due process complaint failed on the merits.

Husband next complained of the final protective order, but he failed to include the relevant transcripts in the record. Although Husband attached the transcript to his brief, attaching exhibits to an appellate brief does not make those exhibits part of the record. In the absence of a record, the appellate court did not consider this argument on appeal.

Finally, Husband challenged the sufficiency of the evidence to support the permanent injunction. Husband asserted there was no evidence he continued to stalk Wife and no evidence of harm. However, Wife told the court Husband's actions caused her to feel threatened and afraid for her life. The trial court was free to believe Wife's testimony and discredit Husband's.

Contrary to Husband's assertion, the permanent injunction did not require an underlying finding that family violence was likely to occur in the future. Although there was conflicting evidence presented at trial, there was sufficient evidence to support the trial court's determination that the permanent injunction was necessary.

DIVORCE: PROPERTY DIVISION

Property Received By Wife From Her Parents During Marriage Presumed To Be A Gift, And Husband Failed To Rebut Gift Presumption; Provision Allowing Wife To File Federal Taxes As Head Of Household Struck Because State Court Cannot Determine Issues Of Federal Tax Law.

3. *Miles v. Miles*, No. 05-24-00018-CV, 2025 WL 2881164 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (10-09-2025).

Facts: Husband and Wife were married almost 25 years. When the parties married, Husband worked at Texas Instruments, but about 8 years into the marriage, he lost his job. Although he used a severance package to contribute to family expenses for a while, Husband did not obtain another job and instead stayed home with the parties' Child. About 6 years after being laid off, Husband went to law school in South Carolina, while Wife remained in Texas and continued working. The Child stayed with his paternal grandparents during that time. Husband and the Child returned to Texas after Husband's graduation, but Husband did not obtain a law license or a job.

After the Child was an adult, Wife filed for divorce, and Husband filed a counter-petition. At trial, Husband was represented by counsel, and Wife appeared pro se. Wife testified that certain real property in North Carolina was gifted to her by her parents. She acknowledged that the property was gifted during the marriage. Husband asserted that community funds were contributed to the property during marriage, but he conceded he personally did not pay taxes on the property.

The trial court issued a memorandum ruling requiring a relatively immediate sale of the marital residence and dividing the proceeds of the sale of the marital residence 60/40 in Wife's favor. Other personal property was specifically awarded in the division, with many accounts being divided in half, and the North Carolina property was confirmed as Wife's separate property. Additionally, Wife was permitted to declare herself as head of household for the year before the memorandum ruling was issued. Husband was awarded attorney's fees to be paid out of the proceeds of the marital residence. And, the party remaining in the residence until the sale was ordered to pay rent to the other party if one of them moved out. A final decree was signed in conformity with the memorandum ruling.

Subsequently, Husband filed motions to modify the judgment. The trial court issued an order setting aside the decree and instructed Wife pay \$10,000 as security to Husband or else the trial court would grant Husband's requested relief, which included his request that the North Carolina property be characterized as community property. Wife filed a motion for reconsideration of that order. The trial court then issued a new ruling setting aside its interim order and modifying the prior decree by changing the division of the net proceeds of the sale of the residence to a 50/50 split (after the attorney's fees were paid to Husband) and including additional provisions regarding the potential appointment of a receiver.

Husband appealed pro se.

Holding: Affirmed as Modified.

Opinion: Husband first challenged the characterization of the North Carolina property as Wife's separate property. While the evidence was not voluminous, it was sufficient to support the determination. When a parent conveys property to a child, a gift



presumption arises. The party challenging that presumption must show with clear and convincing evidence a lack of donative intent.

The deeds granting the property from Wife's parents to Wife included the nominal consideration of \$10. Husband argued this consideration negated the gift presumption. However, consideration recited in a document of transfer may refer to a non-valuable consideration that is not inconsistent with a gift. There was no evidence of "onerous consideration." Further, there was no evidence in the record the \$10 consideration was paid. Additionally, Husband testified that he would not pursue an appeal with respect to the North Carolina property if the trial court divided the marital residence 50/50, indicating his understanding he did not have a valid legal claim to the North Carolina property. Thus, Husband failed to overcome the gift presumption, and the trial court did not abuse its discretion in characterizing the property as Wife's separate property.

Husband additionally complained of Wife transferring the North Carolina property to her brother after the divorce. However, even if the appellate court had sustained Husband's first issue, the only relief the court could have provided was a remand for a just and right division.

Husband also challenged the decree's provision that Wife was permitted to file federal income taxes as head of household. Husband also waived that issue for review; however, the court was required to address the issue because it raised jurisdictional questions. State courts cannot determine issues of Federal tax law. Accordingly, this provision was struck from the decree for lack of jurisdiction, and Husband's issue was dismissed as moot.

Further, Husband complained of the decree's award to Wife of the parties' master bedroom furniture. He asserted the bedroom suite should have been divided equally with the other household furniture. Husband did not contradict Wife's claim at trial that the suite was purchased during marriage, and he failed to show how any error regarding this award would have had more than a de minimis impact on the just and right division.

Finally, Husband challenged the receivership language. Husband separately appealed the appointment of the receiver, and Husband's complaints in that appeal were overruled. Thus, most of Husband's challenges regarding the receiver in this appeal were moot. Husband additionally asserted that the trial court abused its discretion in modifying the receivership provision of the initial decree. However, the trial court had plenary power at the time it rendered its modified order.

In a cross-appeal, in two issues, Wife complained of the sufficiency of the evidence to support the attorney's fee award and argued the provision that the fees be taken from the proceeds of the marital residence was unconstitutional. The appellate court held that Wife failed to preserve these issues by failing to raise them in the trial court.

Wife additionally challenged Husband's claim of indigency. However, such a challenge must be raised in the trial court with an allegation that "the Statement was materially false when made or that because of changed circumstances, it is no longer true."

Husband Failed To Rebut Gift Presumption Regarding Deeds Conveying Real Property To Wife During Marriage.

4. *Barragan v. Barragan*, No. 09-23-00312-CV, 2025 WL 2984680 (Tex. App.—Beaumont 2025, no pet. h.) (mem. op.) (10-23-2025).

Facts: During the parties' marriage, Wife learned Husband was unfaithful. Shortly afterwards, to show his commitment to the marriage, Husband executed two deeds transferring property to Wife. When the parties cross-petitioned for divorce, Wife claimed the two properties as her separate property, and Husband disputed the claim. He asserted that when the deeds were executed, he meant only to add Wife's name to the deeds, not to remove his own. After hearing evidence and reviewing the deeds, the trial court determined one property was gifted to Wife by Husband, making it her separate property. The court found the other property was community property but awarded it to Wife as part of the just and right division of the community estate. Husband appealed.

Holding: Affirmed.

Opinion: Husband argued that the trial court mischaracterized one of the properties as Wife's separate property. Husband claimed that because the parties spoke Spanish, they did not understand the English-language documents, leading to a mutual mistake regarding the recitals. Further, Husband argued neither physical deed was conveyed to him as required to complete the transfer.

To prove a mutual mistake, the evidence must show that both parties were acting under the same misunderstanding of the same material fact. Wife testified that Husband desired to transfer the two properties to show he was a faithful husband. Wife explained the plan was to give her the properties, not to simply add her name to the deeds. Husband testified that he did not know the deeds would remove his name, but he also acknowledged that he did not pay attention or read the deeds before signing. Husband did not ask to speak to a lawyer or have a lawyer review the deeds. Husband's testimony did not support his claim of mutual mistake. Any mistake would have been Husband's unilateral mistake.

Further, contrary to Husband's assertion, manual delivery of the deed is not required. Moreover, Wife, the grantee, maintained control of the deeds after execution. The Property Code requires conveyance *by* the conveyor, not *to* the conveyor.

Next, Husband argued Wife failed to establish by clear and convincing evidence that the first property was her separate property because the deed did not include donative intent and separate-property recitals. Although the parties presented conflicting evidence, the trial court was free to disbelieve any or all of Husband's testimony. The trial court could have reasonably concluded Husband failed to rebut the gift presumption.



Evidence Supported Awarding Wife 75% Of Community Estate.

5. *In re Marriage of Jaroszewski*, No. 13-24-00222-CV, 2025 WL 3030597 (Tex. App.—Corpus Christi—Edinburg 2025, no pet. h.) (mem. op.) (10-30-2025).

Facts: Husband and Wife were married for about seven years and had three Children. During the divorce proceedings, by agreement, the parties shared the marital residence; although, Wife had exclusive use of the master bedroom. Both accused the other of adultery. There was evidence Wife had become close to another man shortly before the divorce but no evidence she engaged in intercourse with that man. Husband admitted to having sex in Wife's bed with another woman while Wife was out of town during the divorce. Husband did not believe that incident constituted adultery because the marriage was not "intact" at the time. Wife reported that Husband abused alcohol, but Husband denied having a problem. The child custody evaluator expressed concerns that Husband did not accept responsibility for his actions.

Husband denied many allegations against him, but admitted he beat up, in front of the Children, the man with whom he believed Wife had an affair. He also admitted to shooting guns at a large photo of Wife with the Children but asserted it was one of the Children's ideas. He burned the photo later so no one could see what had been done to it. After hearing evidence, the court named the parties joint managing conservators, granted Wife the exclusive right to designate the Children's primary residence, and gave Husband a modified standard possession order. Additionally, the court granted the community estate two reimbursement awards: one related to Husband's waste and one related to the purchase of property with Wife's separate funds. Husband appealed.

Holding: Affirmed.

Opinion: Husband first challenged the division of the community estate, arguing it unfairly and unjustly awarded Wife 78% of the estate. Wife acknowledged the division resulted in a 75/25 split but asserted the evidence supported the result.

Husband did not challenge the findings that he committed adultery and was guilty of cruel treatment against Wife. Rather, Husband challenged findings that he committed waste and that the community estate was entitled to reimbursement. However, Husband stipulated to the reimbursement claim relating to the purchase with Wife's separate funds, and the evidence supported a finding that Husband's use of community funds to benefit his parents' rental property was waste. Further, in addition to the adultery and cruelty findings, the court listed in its findings about 10 other *Murff* factors that supported a disproportionate award. While Husband complained of one of the listed factors on appeal, he failed to address all of them. Accordingly, Husband's appellate complaint was overruled.

Next, Husband complained that the court awarded him a standard possession order instead of a 50/50 possession order, which the parties had been following pursuant to their agreed temporary order. Rather than address the *Holley* factors, Husband complained that Wife did not explicitly request a standard possession order in her pleading. Wife's pleading asserted that she believed the parties would reach an agreement regarding possession, and if they could not, she asked the court to make orders in the best interest of the Children. Wife did not explicitly request either a standard possession order or a 50/50 possession order; however, she did request Husband's periods of possession be supervised due to his history of alcohol use. From that request, Husband was on notice that Wife sought to significantly reduce his possession. Further, Husband failed to object when Wife testified at trial that she did not believe 50/50 was in the Children's best interest. Nor did Husband object to the child custody evaluator's report, which did not recommend a 50/50 possession schedule.

Finally, Husband argued the judge was impartial and deprived him of a fair trial. Although Husband identified instances that he perceived to show bias, he did "not come close to making that showing [of bias] in this case."

DIVORCE: ENFORCEMENT OF PROPERTY DIVISION

Husband Granted Summary Judgment In His Suit For Declaratory Judgment Regarding Amounts Due To Wife Pursuant To Their Five-Year-Old AID.

6. *Nichols v. Nichols*, No. 03-23-00733-CV, 2025 WL 2933605 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (10-16-2025).

Facts: About 15 years ago, the parties began the dissolution of their 18-year marriage. After a few years, they signed a "Binding Settlement Agreement" that valued the community estate at a bit over \$12 million. It took another four years to finalize the divorce with an Agreed Final Decree that referenced the Binding Settlement Agreement and an Agreement Incident to Divorce ("AID"). The AID was not filed with the court, but copies were kept by each of the parties' attorneys. The decree provided that in the event of conflicts, the AID would control. Around the same time the decree was signed, the parties signed two addenda to the AID, and the second addendum provided precise sums owned by Husband to Wife instead of the percentages outlined in the AID and Binding Settlement Agreement.

Five years after the divorce, Husband sought a declaratory judgment to clarify certain terms of the parties' agreements, including caps on the amounts he owed to Wife. Wife filed a general denial and asserted claims for fraud and fraudulent inducement. Husband responded with his own affirmative defenses. After discovery, Husband moved for summary judgment, which the trial court granted. Husband was awarded attorney's fees, and that award was used to offset in part the amount due to Wife. After a final judgment based on the summary judgment was signed, Wife appealed.



Holding: Affirmed.

Opinion: On appeal, Wife asserted the portions of the parties' agreement on which the trial court relied in granting a summary judgment were ambiguous, creating a genuine issue of material fact. Summary judgment is not the proper vehicle for resolving disputes about an ambiguous contract, but it may resolve a dispute about an unambiguous one. While extrinsic evidence of the parties' intent is not admissible to create an ambiguity, the contract may be read in light of the circumstances surrounding its execution to determine whether an ambiguity exists.

Wife asserted the trial court erred in finding the agreement imposed a cap on the dollar amount she could receive. The court analyzed the agreement's description of percentages awarded to the parties, amounts to be withheld for taxes, and applicable tax rates to be applied to Wife's shares. Based on the language used, punctuation, and sentence structures, Wife's interpretations of the AID lacked merit. Additionally, the second addendum signed by the parties plainly stated that Wife was owed a sum certain.

Wife additionally challenged a "waiver of fees" that impacted the amount due to her and complained that the court's findings were based solely on Husband's self-serving declaration. Husband asserted that the company in question waived fees based on business reasons having nothing to do with the AID. On appeal, Wife complained that Husband's statements were not supported by any business records or meeting minutes. However, she did not object in the trial court to Husband's declaration, which was the undisputed sworn testimony of a person with personal knowledge.

In the trial court, Husband moved for summary judgment on Wife's claims of fraud. Husband asserted the evidence conclusively established any reliance by Wife on Husband's misrepresentations was not justifiable. While typically a question of fact, unjustifiable reliance can be shown when the person alleging fraud has actual knowledge that a statement is false.

Here, during negotiations, Husband provided a framework of values to assist with negotiations. However, neither party knew the actual values of the companies in question, which is why they agreed to percentage splits rather than specific values. While some values were listed in the AID, the AID made clear that any values were estimated and not precise. Wife knew at the time of negotiations that the actual values and tax liabilities of the various entities were all unknown. During discovery in the divorce, Wife repeatedly requested tax returns, but the copies provided to her were unsigned and not verifiable. Wife knew that she did not have accurate tax returns but nevertheless signed the AID.

Temporary Injunction In Property Enforcement Reversed For Failing To Satisfy Requirements For Injunctive Relief.

7. *A.W.E. v. D.M.F.N.*, No. 05-25-00076-CV, 2025 WL 2966475 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (10-21-2025).

Facts: Wife appealed the divorce decree, which was affirmed by the appellate court. Additionally, Wife appealed a judgment from a separate civil suit she filed against Husband alleging breach of fiduciary duty and fraud. That appeal was still pending at the time of this opinion. Separately, Husband filed a post-decree Chapter 9 enforcement suit in the trial court. Husband obtained a temporary restraining order, an order appointing a receiver to sell the parties' companies, and other temporary injunctions against Wife. Subsequently, after a hearing on Husband's amended application for injunctions, the trial court—in an 8-page order—prohibited Wife from filing lawsuits, in or outside Texas, against the company without first discussing the merits of her claims with the board of directors to give them a chance to investigate the basis of the suit. Wife filed an interlocutory appeal.

Holding: Reversed and Rendered.

Opinion: Wife asserted the trial court lacked authority to prevent her from filing federal lawsuits; impermissibly waived a bond; failed to meet the legal requirements to impose the injunction; made findings not supported by the evidence; and issued an injunction that was overbroad and lacked requisite specificity.

A Texas state court may not enjoin a party from filing or otherwise abridging the right of a party to file in personam actions in federal courts. Because the injunction did not distinguish between state and federal lawsuits, the order was void to the extent it enjoined Wife from filing an in personam action in federal court.

Contrary to Husband's assertion, Rule 693a (allowing the waiver of a bond in divorce proceedings) did not apply because the underlying action was not a divorce but an enforcement of a property division. Thus, the trial court could not issue the injunction without a bond.

Further, the appellate court agreed with Wife that the injunction lacked requisite specificity. For example, FedEx used to be one of the company's clients, but Wife was unsure whether it still was. Under the injunction, if Wife were in a car accident with a FedEx truck, she might not be able to file a lawsuit regarding that accident that had nothing to do with the company identified in the divorce decree.

Finally, the record did not show that the company's value would be irreparably harmed if the injunction were not issued, and there was no evidence Husband lacked an adequate remedy at law. Although Husband expressed concerns about a delay of a sale impacting the proceeds, "irreparable" harm is not that which can be adequately compensated in damages.

Husband Could Not Be Found In Immediate Contempt For Violating Clarified Order That Was Necessary Because The Decree Was Not Specific Enough To Be Enforceable By Contempt.

8. *In re Le*, No. 05-25-00019-CV, 2025 WL 3027413 (Tex. App.—Dallas 2025, orig. proceeding) (mem. op.) (10-29-2025).



Facts: The parties' divorce decree awarded Husband the marital residence and ordered him to pay Wife \$190k for her interest within 90 days. Wife transferred ownership of the residence to Husband, but he did not transfer the funds to her. Thus, Wife filed a petition to enforce the decree and to clarify the decree if it was not specific enough to be enforced by contempt. At the hearing on Wife's enforcement, she acknowledged the decree failed to specify where Husband was to send payment. Husband claimed his failure to pay Wife was due to his inability to locate her. The court signed an order clarifying the decree to require payment be made to Wife's attorney's office and found Husband guilty of contempt. The court ordered Husband be confined but suspended commitment on condition that Husband pay the amount owed to Wife. Husband petitioned for writ of mandamus, asserting the portion of the clarification order finding him in contempt was void.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: An alleged contemnor must have knowledge or notice of the underlying order, and the order must be enforceable by contempt before the alleged contemnor may be found in contempt. A party cannot be held in contempt for violating a court order of which he had no knowledge, as willful disobedience is a necessary element of contempt. Further, a court may not give retroactive effect to a clarifying order in such a way as to subject a party immediately to contempt.

Here, Wife did not expressly ask for a contempt finding, and the court did not indicate during the hearing that contempt was a potential outcome. Rather, the court found the decree was not specific enough to be enforceable by contempt. The court erred in finding Husband in contempt without providing adequate notice or a reasonable time to comply with the clarified order.

**SAPCR:
PROCEDURE AND JURISDICTION**

Mother Failed To Show Juror Misconduct Because There Was No Evidence That Alleged Misconduct Impacted The Verdict.

9. *In re T.B.P.*, No. 14-24-00229-CV, 2025 WL 2907028 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (10-14-2025).

Facts: Mother and Father each asked for the appointment as their Child's sole managing conservator. A jury found the parents should be appointed joint managing conservators and Mother should have the exclusive right to designate the Child's primary residence with a geographic restriction. Mother appealed.

Holding: Affirmed.

Opinion: Mother complained for the first time on appeal that the trial court failed to instruct the jury not to research the case on their own or discuss the case with others, including the other jurors, until instructed otherwise. Father countered on appeal that Mother failed to preserve the issue by failing to raise the complaint in the trial court. The appellate court agreed. When the trial court provided some instruction regarding taking notes and speaking to others, Mother did not object to the instructions given or request further instructions.

Mother additionally complained of the trial court's denial of her motion for new trial based on alleged jury misconduct. Mother had offered an affidavit from one juror stating that another juror had expressed opinions about the case before the jury had begun deliberations. Also, one juror was "on his cell phone constantly," though the affiant did not know what that juror was doing on the phone. Assuming for the sake of argument the statements in the affidavit were evidence of misconduct, there was no evidence of probable injury to Mother. To show probable injury, there must be some indication in the record that the alleged misconduct most likely caused a juror to vote differently than he would otherwise have done on one or more issues vital to the judgment. Unspecified negative comments were insufficient to warrant a new trial where there was no evidence the comment most likely caused the jurors to vote differently than they would have voted otherwise.

Attorney's Fee Award Amount Remanded Because Mother Failed To Segregate Fees Incurred For Seeking Protective Order From Fees Incurred In The SAPCR.

10. *Harris v. True*, No. 03-25-00127-CV, 2025 WL 2941954 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (10-17-2025).

Facts: Mother and Father had an on-and-off relationship. Father admitted to being an occasional user of hard or illegal drugs; drinking and driving; and mixing alcohol, cocaine, and energy drinks with his prescription Adderall. When Mother became pregnant, she was hesitant to tell Father because she knew he did not want Children. After learning of the pregnancy, Father accused Mother of taking fertility medications to get pregnant. Initially, the couple tried to make their relationship work but failed. Mother stated that Father did not help much when the Child was an infant. Father complained that Mother did not give him as much access to the Child as he would like. Mother lived in Austin, and Father wanted to move to Dallas where his business was located. Father offered evidence of Soberlink tests to support his assertion that he had gone many months without drugs or alcohol. After a jury trial, Mother was given the exclusive right to designate the Child's primary residence. The court adopted the guardian ad litem's recommended step-up possession order for Father and made Mother the "tiebreaker" for certain rights.



Additionally, based in part on evidence Father had impersonated Mother to gain access to medical information, the court imposed permanent injunctions against Father. Finally, the court ordered Father to pay maximum guideline support, awarded retroactive child support, and awarded Mother attorney's fees. Father appealed.

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

Opinion: Father argued the trial court erred in ordering him to pay over \$20k in retroactive child support and almost \$2000 in retroactive medical and dental support. Father asserted he paid more than that voluntarily during the relevant time, and the trial court failed to credit those payments. The Family Code provides that a court "shall consider" certain factors when determining whether to order retroactive child support, and the trial court's findings included the requisite findings. However, contrary to Father's assertion, there is no requirement for the court to consider actual support or other necessities for the child. Moreover, Father did not present any evidence showing that the award would place a financial burden on him or his family.

Father additionally challenged the award of attorney's fees to Mother of over \$90k for trial fees and \$15k for appellate fees. Father asserted insufficient evidence supported the awards and that Mother failed to segregate fees relating to the SAPCR from fees relating to her seeking a protective order. Although Father argued Mother failed to put on live testimony regarding fees, Father had agreed to that manner of presentation. Further, Mother's evidence regarding both the incurred trial fees and expected appellate fees satisfied the requirements laid out by the Texas Supreme Court in *Rohrmoos*. However, Mother failed to segregate the protective order fees from the SAPCR fees. Because the trial court did not find Father had committed family violence and did not issue a protective order, Mother could not recover fees for those services. Therefore, that issue was reversed for the trial court to correct the amount of attorney's fees awarded.

Next, contrary to Father's assertion, ample evidence supported deviating from the standard possession order, including Father harassing conduct towards Mother, lack of specific plans for housing or schooling for the Child, and past use of "hard or illegal drugs." To the extent Father offered evidence supporting his position on appeal, the trial court did not abuse its discretion in determining the modified possession order was in Child's best interest.

Father further challenged the award to Mother of certain exclusive rights and the designation of Mother as "tiebreaker" for decisions regarding educational, psychological, and psychiatric decisions. Mother had made most of the decisions for the Child since birth and provided the Child's health insurance. Mother had specific plans for the Child, while Father remained uncertain. Further, the parents had difficulty communicating but generally agreed on decisions regarding medical care and education. The trial court did not abuse its discretion in determining how to allocate rights and duties.

Finally, Father asserted the court abused its discretion by enjoining him from certain conduct, including allowing the Child to be cared for by certain people and recording, stalking, or impersonating Mother. However, the appellate court noted that it had previously held that permanent injunctions in family law are permissible when the injunctions are in the child's best interest. Sufficient evidence supported the trial court's determination that the injunctive relief was in the Child's best interest.

**SAPCR:
DISCOVERY**

Sanctions Improperly Excessive Because Lesser Sanctions Not Considered And Some Of The Sanctions Were Not Related To The Sanctionable Conduct.

11. *Orsinger v. Orsinger*, No. 03-23-00664-CV, 2025 WL 3038066 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (10-31-2025).

Facts: The parties' agreed divorce decree set Father's child-support obligation for about a year. After that date, his obligation would be based on his monthly net resources for the next year, as determined by binding arbitration. Father was required to pay 30% of his monthly net resources with a cap of \$3500, and he was required to provide Mother with copies of his W-2 and paystubs as well as any other documents reflecting income earned. The parties were to file an agreed order with a precise child-support obligation once his net resources were determined. The deadline for the subsequent agreed order passed, and Father's payments became sporadic.

The OAG filed a motion for clarification and modification, and Mother filed a cross-petition to modify child support. Mother made discovery requests and later sought to compel responses. The court granted Mother's motion to compel, awarded attorney's fees, but probated the award pending Father's compliance. Mother filed a second motion to compel that resulted in "123 counts of criminal contempt and sentenced him to 170 days in jail for each count, to be served concurrently. The court held that [Father] could suspend the commitment for those counts for ten years if he paid to [Mother] \$7,860 in attorney's fees and \$248.78 in expenses associated with prosecuting the enforcement action. If [Father] did not suspend his confinement by paying the fees and expenses by the deadline, he could purge himself of civil contempt by paying those amounts." Additionally, the court barred Father from presenting evidence on certain topics and concluded that it would be taken as fact that Father's income was significantly less than what it should be due to intentional un- or underemployment. Father appealed.

Holding: Reversed and Remanded

Opinion: Although Father appealed the contempt findings, such orders are only reviewed by petition for writ of habeas corpus (if the contemnor is jailed) or writ of mandamus (if the contemnor is not jailed). The appellate court lacked jurisdiction over the appeal of the contempt findings and dismissed that portion of his appeal.



Father next challenged the imposition of death penalty sanctions. Although an appellate court generally does not have jurisdiction over discovery sanctions, it could consider the sanctions as part of its review of the award for attorney's fees.

The trial court issued a first order compelling discovery. Subsequently, when it found Father had continued to fail to comply with that order, a second order was issued, which was the subject of this appeal. The appellate court overruled some of Father's evidence-sufficiency complaints and sustained others. The first order compelled him to produce information for each month he paid child support, including his net resources for that month and how much he paid in child support that month. Father asserted that his providing annualized information was sufficient because Mother could just divide the numbers by 12. The appellate court disagreed and held that the trial court did not abuse its discretion in finding Father failed to comply with the first order.

However, Mother had also sought Father's credit report. Father provided a screen printout with limited data including a statement that he lacked enough credit history to generate a FICO score. Mother argued the report was suspect in its brevity. Suspicion is not proof, and the trial court abused its discretion by concluding this production was inadequate.

Father also failed to produce tax returns and supporting documentation. When asked whether he filed his taxes, Father pleaded his Fifth Amendment privilege. There was no evidence the requested documents existed or were in Father's possession. The trial court abused its discretion in finding Father failed to provide adequate responsive material concerning the request for tax documentation.

While the trial court did not strike Father's pleadings, it did prohibit him from introducing evidence regarding whether he paid or overpaid his child support obligation or any offsets that should be applied. Additionally, the court ordered that it would be taken as established that Father was intentionally un- or underemployed. These sanctions were excessive at this stage of the litigation. Lesser sanctions were not properly considered. The only sanction imposed in the first order was an attorney's fee award of less than \$1000. Father offered some discovery that was insufficiently specific, but that did not support the excessive sanctions. "[Father's] refusal to comply with the monthly calculation and explanation requirements of Interrogatory 6 is more problematic because his appellate argument shows that his non-compliance is rooted in something other than misunderstanding or a need for clarification; however, his dismissive appellate argument was not before the trial court when it imposed the sanction." Finally, the finding that Father was un- or underemployed did not directly relate to the discovery abuse and was improper.

Because some of Father's issues were sustained, the attorney's fee award was remanded for further proceedings.

SAPCR: CONSERVATORSHIP

Evidence Supported Conservatorship Orders.

12. *Parson v. Parson*, No. 11-24-00104-CV, 2025 WL 2933613 (Tex. App.—Eastland 2025, no pet. h.) (mem. op.) (10-16-2025).

Facts: The parents were married for only a couple of years before filing for divorce. Both had histories of drug use but had tested negative consistently during the divorce proceedings. Father had a history of alcohol abuse but had recently been attending Alcoholics Anonymous meetings. Mother moved with the Child to Mississippi without notice shortly before the divorce was initiated in Texas. Both accused the other of having a messy home while claiming their own home was clean. Father had been discharged from the military during the marriage after a positive test for cocaine. Mother asserted that Father and his family used racist slurs towards her because she was Black. Mother admitted to attempting to commit suicide in her teens and other acts of self-harm. She asserted she had not cut herself in years. Both parents relied on their respective parents for assistance in caring for the Child. Mother's parents were Jehovah Witnesses and spent hours with the Child at church, where there was no childcare. Father's father had a felony DWI. Mother had no driver's license but sometimes drove the family when Father was intoxicated.

The final decree gave Father the exclusive right to designate the Child's primary residence and issued findings stating that it had considered Mother's abrupt move, the work schedules of each parent, family support, parental cooperation, and living arrangements. It specifically noted that race and religion did not factor into the decision. Mother appealed.

Holding: Affirmed.

Opinion: Mother challenged the Court's decision to give Father the exclusive right to designate the Child's primary residence. Although there was conflicting evidence regarding the varying faults of the parents, the trial court's decision was not an abuse of discretion.

Mother next argued the trial court improperly considered her parents' religious faith when making a conservatorship determination. During trial, Mother did not object to any testimony regarding her family's religious views and practices. Further, there was no indication the trial court relied on the religious views or practices of either party in reaching its decision.

Mother's Argumentative Behavior Upon Hearing Court's Oral Ruling Supported Changing The Ruling From Joint Managing Conservatorship To Father Having Sole Managing Conservatorship.

13. *Gleason v. Heidemeyer*, No. 03-25-00100-CV, 2025 WL 2989176 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (10-24-2025).



Facts: Father filed a petition for divorce and request for temporary restraining order with an attached affidavit describing an assault by Mother against him that resulted in criminal charges against Mother. Father described other incidents, including Mother attempting to take the Children out of daycare, threatening to take the Children and not return them, and sending Father's family threatening text messages. Throughout the divorce proceedings, Mother was combative and uncooperative. She failed to abide by the rules relating to her supervised access with the Children and did not attend many of her scheduled visitations. The guardian ad litem was unsure whether Mother did not understand the court orders or whether Mother's behavior was indicative of mental-health issues. The guardian ad litem recommended Father be given sole managing conservatorship and Mother have a step-up possession schedule.

At the trial's conclusion, the court stated it was appointing the parents joint managing conservators but advised Mother she had a lot of work to do to repair her relationship with her Children. Mother initially stated she understood, but as the details of the ruling were set out, Mother became argumentative with the court. After stating an intention not to communicate with Father, she left the courtroom. The trial court then decided to grant Father's request for sole managing conservatorship. Mother appealed.

Holding: Affirmed.

Opinion: Mother argued the trial court abused its discretion in naming Father as the Children's sole managing conservator, requiring Mother to complete psychological testing, and requiring Mother's access to the Children be supervised.

Acknowledging the Family Code's requirement to consider whether family violence occurred, Mother asserted that her arrest for assault was a "minor incident" and implied that it should not have been considered because Father paid the bond for her release, and she continued to share parenting time with Father after the assault. However, Father disputed Mother's claim about shared parenting time. Additionally, in his supporting affidavit attached to his pleading, Father described the "minor incident" that involved the police coming to his house twice, Mother cracking the glass of Father's front door, and Mother throwing lawn decorations at Father causing him to bleed. Mother attempted to physically attack Father's sister, and the Children were at Father's home during the event. Further, Father cited another incident of family violence in which Mother left bite marks, scratch marks, and a bruise on the back of Father's head. Father noted there were "quite a few" other incidents of violence towards him.

Additionally, Mother failed to regularly exercise her periods of possession during the case, and she failed to follow the rules about visitation, including the requirements to bring a diaper bag and show up on time. Mother was unable to communicate effectively with Father and refused to consistently use AppClose as instructed by the court. The guardian ad litem stated that she usually recommended joint managing conservatorship but recommended sole managing conservatorship in this case because of the communication difficulties between the parents.

Next, Mother complained of the court changing its ruling about conservatorship after Mother became upset and left the courtroom. However, the trial court did not abuse its discretion by viewing Mother's subsequent argumentativeness with the trial court, followed by her abrupt departure from the courtroom before the end of the proceedings, as indicative of her inability to be an effective joint managing conservator.

With respect to the psychological evaluation, one was ordered during the proceedings, but Mother never complied. Evidence suggested Mother's behavior could be indicative of mental-health issues. Thus, the court did not err in requiring Mother to complete an evaluation.

SAPCR: MODIFICATION

Evidence Supported Removing Grandmother As Possessory Conservator And Terminating Her Periods Of Possession.

14. *In re H.M.*, No. 07-25-00135-CV, 2025 WL 2962024 (Tex. App.—Amarillo 2025, no pet. h.) (mem. op.) (10-20-2025).

Facts: After a hearing on an original SAPCR, the court signed an order appointing the parents as joint managing conservators and paternal Grandmother as a possessory conservator. The possession schedule somewhat split a standard possession order between Father and Grandmother, with Grandmother having more time than Father, and Father's access being supervised with no overnights.

About a year and a half later, Mother filed a petition to modify the possession schedule, asking to give Father an expanded standard possession schedule, remove Grandmother as a conservator, and terminate Grandmother's periods of possession. Father filed a pro se general denial, but at trial, he stated his general agreement with Mother's proposed modification. The trial court granted Mother's requested relief, and Grandmother appealed.

Holding: Affirmed.

Opinion: Grandmother challenged the sufficiency of the evidence to support findings of a material and substantial change in circumstances and that the modification was in the Child's best interest. Grandmother asserted that any perceived change was contemplated by the prior order.

At the time of the prior order, there was a no-contact order between Mother and Father due to a pending criminal case against Father. Father was unemployed and had limited, supervised access to the Child. Grandmother supervised Father's periods of possession. The Child was three years old and not in school.



At the time of trial in the modification proceeding, Father's criminal charges were resolved, and he had a job. The Child was five years old and in kindergarten. Father had been exercising unsupervised possession because Mother allowed Father access to the Child upon request. Mother and Father's communications and relationship had improved. Mother described the relationship as "healthy." They were able to respectfully schedule visitations. The Child was happy when returning from visitations with Father, and Mother felt comfortable exchanging the Child with Father.

Grandmother did not think either parent was fit to raise the Child and described Father as hostile and volatile. Grandmother described her relationship with Father as toxic.

Mother noted that when Grandmother attended doctors' visits, Grandmother asked so many questions that it took away from Mother and Father's time to visit with the doctors. Mother also disagreed with some of Grandmother's decisions regarding medical care. Mother described Grandmother as overly involved and overbearing.

The Child appeared to be doing well with increased happiness and confidence due to Father's stability and his parents' improved relationship. The Child seemed to be benefiting from increased time with his Father.

Grandmother's assertion that the change was anticipated was based on the trial court's admonishment in the original ruling stating the parents could come back to court after they "got [their] things together." Grandmother argued that the parents' parenting skills improving was, thus, an anticipated change. The appellate court declined to interpret those comments as preventing future modification.

Grandmother also argued that Father did not plead for affirmative relief and that Mother lacked standing to request affirmative relief on his behalf. However, Mother's requests were not solely to benefit Father but to benefit the Child. Mother sought an order that allowed the Child to spend more quality time with his parents, without Grandmother's interference or oversight.

Evidence Supported Modifying Possession And Expanding The Geographic Restriction On The Child's Residence.

15. *In re J.R.J.*, No. 06-25-00008-CV, 2025 WL 2962029 (Tex. App.—Texarkana 2025, no pet. h.) (mem. op.) (10-21-2025).

Facts: The parties' divorce decree named them joint managing conservators of their Child and gave them a week-on/week-off possession schedule. No monthly child support was ordered, but Mother was required to pay Father \$25 per month for cash medical support.

When Mother married a man who had a child from a prior relationship, Mother filed a motion to modify, seeking a possession schedule to allow the step-children to be on the same schedule and facilitate a relationship between them. Additionally, Mother asked to change her medical support obligation because Father had let the Child's insurance lapse, and Mother started providing coverage for the Child. Mother further requested Father be ordered to pay monthly child support and that the geographic restriction on the Child's residence be expanded to include counties contiguous to the existing single-county restriction. After hearing evidence, the court granted Mother's requested relief. Father appealed.

Holding: Affirmed.

Opinion: Father argued no evidence supported a finding that a material and substantial change had occurred. Mother remarried. Father violated the decree, forcing Mother to obtain private health insurance with the Child before she found a job that would provide coverage. Ample evidence supported the finding.

Father additionally challenged the expansion of the geographic restriction, asserting it was not in the Child's best interest. Altering the possession schedule would be better for the Child because she would be able to spend more time with her step-brother. Mother and her new husband were looking for a bigger house so the Child could have her own room. While the Child was already attending a good school, the one where Mother wanted to enroll the Child offered more extracurricular activities to assist with her possible autism and to help build her social skills. No evidence was presented to show that the move would have any effect on the Child's familial relationships with Father or extended family. Father did not argue he could not relocate to be closer to the Child. The evidence was sufficient to support the trial court's decision.

SAPCR:

REMOVAL OF CHILD / TERMINATION OF PARENTAL RIGHTS

Family Code Limitation Providing Affidavit Of Voluntary Relinquishment Can Only Be Challenged With Evidence Of Fraud, Duress, Or Coercion Is Additional Limitation To Bill Of Review Procedure, Not A Replacement For Traditional Bill of Review Procedure.

16. *In re D.M.W.*, ___ S.W.3d ___, No. 05-25-00534-CV, 2025 WL 2821557 (Tex. App.—Dallas 2025, no pet. h.) (10-03-2025).

Facts: In a mediation involving Mother, TDFPS, and the adoptive parents, Mother agreed to voluntarily relinquish her parental rights to two of her five Children. That MSA also provided Mother would have monthly visitation until the relinquishment. In a second mediation, the parties created a possibility for Mother to have some contact with the Children after adoption. Subsequently, Mother's parental rights were terminated based on her signing an affidavit of voluntary relinquishment.

Thereafter, the adoptive family cancelled many of Mother's visitations with Children for various reasons. Later, the Children were removed from the adoptive parents' home due to an allegation of child-pornography against the adoptive father. Because



Mother's visitations were conditioned by the MSA on the Children's placement with the adoptive family, TDFPS argued Mother no longer had a right to visitation.

Mother filed a petition for bill of review, asserting the adoptive father fraudulently induced Mother into signing the affidavits of voluntary relinquishment because the adoptive father failed to disclose his addiction to child pornography. The trial court denied Mother's petition, and she appealed.

Holding: Affirmed.

Opinion: To support a petition for bill of review, the petitioner must show: (1) a meritorious claim or defense; (2) the party was prevented from asserting her claim or defense by the fraud, accident, or wrongful act of her opponent or by official mistake; and (3) the party was prevented from asserting her claim or defense through no fault or negligence on her own part. Additionally, the Family Code provides that an affidavit of voluntary relinquishment may be challenged only if the affidavit was obtained through fraud, duress, or coercion.

Mother argued that if she satisfied the Family Code requirements regarding fraud, duress, or coercion, she was entitled to a bill of review. Mother further asserted that the fraud could have been committed by anyone, not just the opposing party in the underlying termination case. TDFPS countered that the Family Code could not supplant the traditional elements of a bill of review and that, rather, the Family Code imposed an additional requirement on someone challenging a termination judgment based on an affidavit of voluntary relinquishment.

The actual language of the statute provides that a challenge to the affidavit "is limited to" claims of fraud, duress, or coercion. Mother's view asked the court to replace "is limited to" with the idea that her challenge "must be sustained" if the petitioner establishes fraud, duress, or coercion. Mother's interpretation asked the court to ignore settled law and rewrite the text of the legislature's choice. Moreover, the Family Code section cited by Mother did not address the other two elements of a bill of review.



**In Parental-Termination Cases, A Court May Not Terminate Parental Rights In The Face Of An Unequivocal And Unre-
pudiated Statement Made By Someone Speaking On TDFPS's Behalf That Withdraws Termination As A Requested
Form Of Relief.**

17. *D.V. v. TDFPS*, ___ S.W.3d ___, No. 24-0840, 2025 WL 3038976 (Tex. 2025) (10-31-2025).

Facts: The TDFPS representative twice stated at trial that TDFPS sought to restrict but not terminate Mother's parental rights. The trial court nevertheless terminated Mother's parental rights. She appealed, and TDFPS argued on appeal that it had not abandoned its pleaded request for termination. The appellate court affirmed. Mother petitioned the Texas Supreme Court for review.

Holding: Reversed and Rendered.

Opinion: When affirming the trial court's decision, the appellate court opined, "[i]n interpreting stipulations, courts consider the language used 'and the surrounding circumstances, including the state of the pleadings, the allegations made therein, and the attitudes of the parties toward the issue.'" The appellate court identified the case's larger "context" as including the termination recommendations from the CASA volunteer and attorney ad litem; the presentation of evidence that would support termination; the request by Mother's counsel not to terminate; and the statements abandoning termination coming not from TDFPS's counsel but its designated representative. Accordingly, the court "agree[d] with" TDFPS's contention that, given this "context," the statements expressly withdrawing termination as TDFPS's requested relief did not have the effect of doing so.

Without opining as to whether this approach would be appropriate in an ordinary civil suit, the Supreme Court held it was inadequate in a parental-termination case. Claims can be formally abandoned. But a claim may also be abandoned by stipulation, so that "[w]hen parties stipulate that only certain questions will be tried, all others are thereby waived." The question here, then, was simply whether the statements by TDFPS's designated representative amount to the TDFPS's unequivocal abandonment of termination as a requested remedy. The representative clearly stated it wished to "limit and restrict" Mother's rights and to "limit [Mother's] rights to parent non-conservator." The TDFPS representative unequivocally presented those statements as being for TDFPS and were not her personal views.

CASA's statement could not be imputed as TDFPS's. Father did not seek termination of Mother's rights. While evidence at trial could have supported termination, it also could have supported restricting Mother's parental rights. It would be bizarre to restore termination as an option because Mother's counsel asked the court not to terminate. With respect to the reliance on TDFPS's representative, rather than its counsel, stating TDFPS was not seeking termination: the point of having a designated representative of TDFPS was for that representative to apprise the court of TDFPS's position. When TDFPS's counsel asked for the representative of TDFPS's position and received an answer, counsel did not make any effort to countermand that answer. Finally, TDFPS's reliance on its live pleading was not persuasive because its live pleading also requested termination of Father's parental rights, yet at trial, it openly advocated for Father to be given full authority over the Child. "In other words, it is hard to give much weight to what the live pleading says about termination when *in this very case* the live pleading demanded a termination that the department had undisputedly abandoned." (emphasis in original).



The Supreme Court rendered Mother's rights were not terminated and remanded for the trial court to render judgment consistent with this opinion and resolve any remaining issues.

FAMILY VIOLENCE / PROTECTIVE ORDERS

Wife's Controverted Testimony Alone Insufficient To Require Family Violence Finding.

18. *Olschewsky v. Olschewsky*, No. 03-24-00377-CV, 2025 WL 2797602 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (10-02-2025).

Facts: Wife filed an application for a protective order on behalf of herself and the Children under the Family Code. The trial court conducted a final hearing on the protective order at the same time it heard the parties' motions for temporary orders in their divorce proceeding. Husband, Wife, Husband's mother and brother, and a CPS investigator testified. The trial court denied Wife's request for a protective order and found no family violence occurred. Wife appealed the denial of the protective order.

Holding: Affirmed.

Opinion: In a single issue, Wife argued the evidence showed Husband committed four acts of offensive-contact assault and, thus, committed family violence. To the extent Wife's argument relied on her own testimony, the trial court was entitled to disbelieve her. Additionally, Husband testified that Wife was always the aggressor. The court could have reasonably believed Husband's versions of events and that Husband did not know, nor should he have known, that Wife would find that particular contact to be offensive or provocative at that time.

Evidence Supported Denying Protective Order Based On Finding Wife Was Not Credible Witness.

19. *Vest v. Vest*, No. 05-24-00898-CV, 2025 WL 3036667 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (10-30-2025).

Facts: Wife was 77 years old and had been married to Husband for nearly 40 years. Husband was roughly the same age as Wife or older. Wife filed a pro se application for protective order. Wife alleged Husband attacked her, requiring her to seek medical care. Both parties had counsel at trial. Wife acknowledged Husband needed a cane or walker to get around and used an oxygen tank to breathe but nevertheless was capable of harming her. Wife could not remember who assisted her in filling out the pro se application.

Wife's testimony about the attack was inconsistent, particularly in that, she described Husband attacking her from behind, but she suffered a broken tailbone. Husband asserted his Fifth Amendment privilege. The court denied the protective order but entered permanent injunctions prohibiting Husband from committing family violence against Wife or going near her for two years. In its findings, the court stated that Wife's testimony was not credible and found the described injuries were not likely caused by Husband. The court additionally noted Wife's memory gaps and inconsistent testimony. Wife appealed.

Holding: Affirmed.

Opinion: Wife complained her testimony and photographs of her injuries supported a finding of family violence, particularly in light of Husband's failure to controvert her testimony. Specifically, she challenged the court's finding that she was not a credible witness. Witness credibility issues that depend on appearance and demeanor, such as those in this case, cannot be weighed by an appellate court. Moreover, there was evidence to support the trial court's finding, including its ability to observe Husband's physical limitations in court. The court was not required to draw any negative inferences from Husband's invocation of the Fifth Amendment.

Wife additionally challenged the permanent injunctions. "Although the injunctions granted [Wife] much of the relief she sought via protective order, she complains they were improper because there was no liability on any underlying cause of action, a prerequisite to a permanent injunction." Wife did not bring this issue to the trial court's attention and thus waived the issue for appeal.

MISCELLANEOUS

Father Ordered To Pay Costs Despite Statement Of Indigency Because He Admitted To Recently Receiving A Loan Of Nearly \$100,000 That He Could Have "Rounded Up" To Include Estimated Court Costs.

20. *In re S.V.*, No. 05-23-00324-CV, 2025 WL 2898007 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (10-10-2025).

Facts: As part of an appeal, Father filed a statement of inability to afford payment of court costs. The appellate court thus ordered the reporter to prepare the record. Shortly thereafter, however, Mother filed in the trial court a challenge to Father's statement. After an evidentiary hearing, the court found Father's statement was not materially true when made, his statement was no longer



true in material aspects, and he failed to meet his burden to prove his inability to afford costs. Father filed a notice of appeal, which the appellate court construed as a motion to review the order sustaining Mother's contest.

Holding: Affirmed as Modified.

Opinion: The test for determining indigence is whether the record as a whole shows the declarant proved "by a preponderance of the evidence that the applicant would be unable to pay the costs, or a part thereof, or give security therefor, if he really wanted to and made a good-faith effort to do so." Some factors the court may consider are the declarant's employment history, the value of the party's claim, whether it could afford the basis for security of a loan, and whether the party can secure a bona fide loan to pay the costs. Also, if the declarant owns valuable property that he could dispose of and thereby secure the necessary funds without depriving himself or his family of the necessities of life, he should be required to pay the costs. But the declarant is not required to show that family or friends are unable to pay the costs.

Father became old enough to receive social security benefits before making his statement, but at the Rule 145 hearing, he admitted to not including that income on his statement. Although Father received about \$2000 a month for consulting work, in an interrogatory response to Mother he claimed no one owed him money. Father had been in a car accident and sued the other driver and his own insurance carrier. However, his statement did not disclose any settlement amounts, which he later admitted were around \$10,000. After the car accident, he replaced his previous car with a brand new car. He later took out a mortgage and used the funds to pay off the new car and all of his credit card debts. He claimed he was able to pay the \$3200 monthly mortgage with his social security payments. Because he used the settlement money to pay off his child support arrears, there was no longer any withholding from his social security income for child support. Within the past few years, Father had taken out a \$45,000 SBA loan, but he did not include that on his statement of inability to pay costs because he "forgot." Additionally, Father had recently put solar panels on his house, requiring an \$18,000 loan.

Father had also filed a petition against Bank of America, in which he alleged he was scammed into depositing money orders and cashier's checks totaling almost \$100,000 into various accounts. Father had borrowed money to make these deposits. Mother's counsel asked how Father could borrow almost \$100,000 yet not be able to afford a \$700 fee for a transcript. When Father was nonresponsive, the court pressured Father to answer. Father admitted he could have rounded up the loan \$700 to have the additional money from the loan to pay for the transcript. The trial court did not abuse its discretion in finding Father could pay costs if he made a good-faith effort to do so.

Father argued that because the appellate court ordered the reporter to prepare the record, the trial court lacked jurisdiction to consider Mother's challenge. However, the appellate order was based on the fact that nothing before the appellate court indicated that Father had been ordered to pay costs. The appellate order did not deprive the trial court of jurisdiction to consider Mother's challenge.

Father next challenged the fact that Mother did not file her challenge within 10 days. Father's argument was based on an outdated version of the rule. There is no deadline.

Finally, Father asserted that no evidence was offered regarding the specific cost of the reporter's record. Father was correct. Thus, the portion of the order referring to the specific amount due to the court reporter was struck and replaced with an order to pay the court reporter in accordance with her specific instructions.

Temporary Orders Pending Appeal Void Because Signed More Than 60 Days After Father's Notice Of Appeal.

21. *In re Simons*, No. 13-25-00458-CV, 2025 WL 2922881 (Tex. App.—Corpus Christi—Edinburg 2025, orig. proceeding) (mem. op.) (10-14-2025).

Facts: After a final decree was signed in a divorce with Children, Father filed a motion for new trial, and Mother filed a motion for temporary orders pending appeal. On the 60th day after the notice of appeal had been filed (which was more than 105 days after the judgment), the court began the hearing on Mother's motion for temporary orders pending appeal. However, that hearing was continued until a date 4 days later. Three days after that, the court signed temporary orders pending appeal that required Father to pay Mother's interim attorney's fees pending appeal. Father filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Mother requested fees pursuant to Texas Family Code Sections 6.709 (divorce) and 109.001 (SAPCR). Both of those statutes require an order to be signed no later than the 60th day after any eligible party has filed a notice of appeal. Once that deadline passed, the trial court no longer had any authority to sign an order. Thus, the temporary orders pending appeal were void.

Jury Verdict Reversed And Rendered That Appellees Take Nothing For The Civil Claims Of Malicious Prosecution And Abuse Of Process Due To Mother's Seemingly Unfounded Claims Of Child Abuse.

22. *Labrado v. Labrado*, No. 08-24-00220-CV, 2025 WL 3055129 (Tex. App.—El Paso 2025, no pet. h.) (mem. op.) (10-31-2025).



Facts: In Mother's petition to divorce Father, she alleged one of her Children made outcries about Father, Uncle, and Uncle's Girlfriend's children. Uncle owned a Daycare. Mother and Father had two Children, and Uncle was in a relationship with Girlfriend, whose own two children attended the Daycare. Mother sought a restraining order to prevent Father from withdrawing the Children from their school because Mother expressed concerns Father would take the Children to the Daycare and that Girlfriend's children participated in the alleged abuse could be there. Subsequently, Mother obtained ex parte restraining orders against Father and Uncle for the protection of the Child. After investigations, CPS ruled out the allegations.

Father, Uncle, and the Daycare (collectively, "Appellees") sued Mother for malicious prosecution and abuse of process asserting her allegations were false. During the six-day jury trial, Father testified that he had a close relationship with the Children, which was severely harmed by Mother's false reports to CPS, the police department, and trial court. Uncle testified Mother's allegations interfered with his ability to conduct business to the extent that there was a period of time he was prohibited from going to his own Daycare. He also testified about the physical strain and emotional turmoil he suffered as a result of the allegations. Mother was a director of a child abuse clinic, and more than one witness opined Mother may have been coaching the Children. A detective found the Child's outcry not to be credible.

The jury charge presented the jury with the elements of malicious prosecution and an explanation of how immunity could apply to a person when providing testimony in a divorce proceeding. The jury found in favor of Appellees, and the trial court awarded judgments against Mother amounting to nearly \$1 million. Mother appealed.

Holding: Reversed and Rendered.

Majority Opinion: (C.J. Mendoza, J. Palafax, J. Soto)

Mother asserted she conclusively established her immunity defense and the evidence was insufficient to supporting findings of malicious prosecution or abuse of process. Appellees' argument at trial was that Mother lacked a good-faith basis to support her claims and, on appeal, argued that the judicial-proceedings privilege only applied to defamation lawsuits. The appellate court disagreed that the scope of the privilege was so limited and instead found the privilege applies to torts other than defamation, including claims for malicious prosecution and abuse of process, "when the essence of the [tortious] claim is that injury occurred as the result of allegedly false statements made during a judicial proceeding." "The privilege would be lost if the appellant could merely drop the defamation causes of action and creatively replead a new cause of action."

Under the judicial-proceedings privilege, communications made in the due course of a judicial proceeding "will not serve as the basis of a civil action ... regardless of the negligence or malice with which they are made." Here, Mother's statements contained in her affidavit were attached to her divorce petition and were, thus, filed in a judicial proceeding. Thus, Appellees' malicious prosecution claim was barred. Additionally, because Mother's statements to CPS and the police were made during quasi-judicial proceedings, the privilege extended to those statements as well.

Abuse of process is the malicious use or misapplication of process to accomplish an ulterior purpose. "It is critical to a cause of action for abuse of process that the process be improperly used after it has been issued." "In other words, the tort assumes that the original issuance of a legal process was justified, but the process itself is subsequently used for a purpose for which it was not intended. Mother's pleadings for restraining orders were for the protection of the Children, which was presumed proper. There was no evidence Mother took any action after obtaining the protective orders that could have been considered abuse of process. Even if she had an ulterior motive for obtaining the orders, there was no evidence on at least one element for the abuse of process claim.

Under their claim for civil malicious prosecution, Appellees had to plead and prove: (1) the institution or continuation of civil proceedings against them; (2) by or at the insistence of Mother; (3) malice in the commencement of the proceedings; (4) lack of probable cause for the proceedings; (5) termination of the proceedings in their favor; and (6) special damages. First, there was no evidence Mother initiated the CPS proceedings. The report itself did not name the reporter, and it was undisputed that Mother's brother reported the first outcry. Assuming the jury believed Mother coached the Child to make an outcry, there were many other inferences to be made to satisfy the tortious elements, amounting to no more than surmise and suspicion. Additionally, Appellees did not elaborate on the alleged claims Mother made against them. Further, one investigation began after the Child directly made an outcry to CPS, so there was no evidence that investigation was made at Mother's insistence. Accordingly, the appellate court rendered that Appellees take nothing on their claims.

Concurring and Dissenting Opinion: (J. Soto)

When a jury charge definition is not challenged, appellate courts measure sufficiency of the evidence under the charge's definition, even if it is not the correct definition under the law. Mother did not object to the immunity definition provided to the jury and did not argue on appeal that it was incorrect. The charge provided:

When a defendant testifies at trial, no civil liability for malicious prosecution may arise from that testimony. Here, the defendant has claimed that she is immune from civil liability based on her testimony in the underlying divorce proceedings, resulting in a restraining order and subsequent protective order.

The majority used caselaw to define the privilege rather than the jury charge, which was an improper review. Mother's statements were not trial testimony but in affidavits attached to pleadings, which, under the charge, were not protected.

Additionally, the question in the malicious prosecution claim was whether Mother initiated an investigation, not that her complaint contained any specific content. Thus, elaboration on the nature of Mother's claims by Appellees was unnecessary. Regardless, the record clearly provided the substance of Mother's claims. Additionally, Uncle provided sufficient testimony to support the extent of his mental anguish to support the jury awards to Uncle. However, Father failed to present any "special injuries" to support his malicious prosecution claim, and it was appropriate to render that he take nothing for that claim.

