NOVEMBER 2026 CASELAW UPDATE

(Cases from October 1–31, 2026)

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DIVORCE: PROPERTY DIVISION

Husband Failed to Present Sufficient Evidence to Rebut Community-Property Presumption, Notwithstanding Wife Not Offering Controverting Evidence.

1. *Jarvis v. Jarvis*, No. 09-24-00364-CV, 2026 WL 2948264 (Tex. App.—Beaumont 2026, no pet. h.) (mem. op.) (10-01-2026).

Facts: The parties were married for over 20 years. Wife worked for a mortgage company, and her income fluctuated based on the housing market. Husband was in the military. Wife had a child from a prior marriage, but the parties did not initially tell the child that Husband was not the child's father. When the child was a teenager, Husband told the child about the child's parentage without involving Wife, which upset the child. Later, when Husband was teaching the child to drive, Husband yelled at and slapped the child after she violated one of his "rules." Wife filed for divorce.

The parties offered conflicting testimony regarding characterization of certain assets, including retirement benefits. After considering the parties' testimony, certain stipulations by the parties, documentary evidence, and the testimony of Wife's expert witness, the court issued a property division and findings of fact and conclusions of law. Husband appealed.

Holding: Affirmed.

Opinion: Husband argued the trial court erroneously characterized certain property as community property rather than his separate property and improperly divested him of separate property by awarding it to Wife. Husband cited to his own testimony regarding character and claimed that because Wife offered no contradictory testimony, the court should have agreed with Husband.

During marriage, each spouse has power to manage certain community property, including their personal earnings. Property held in the name of one spouse is not necessarily separate property but may instead be special community property, which is community property that is subject to one spouse's sole management, control, and disposition. While that spouse has the power to dispose of that property, the managing spouse has the burden to show dispositions were fair.

Husband asserted the trial court erroneously classified his 401k as commingled community property. He asserted that because it was opened before marriage and because Wife did not contribute to the account, it was his separate property. Husband cited a document that he claimed established no dividends were paid; however, the document showed the account paid dividends during marriage. The trial court did not abuse its discretion in finding Husband's testimony and this single document did not meet his clear-and-convincing burden. Although Husband complained Wife did not present evidence the account was community, the burden was not hers. Husband bore the burden to rebut the community-property presumption, and he did not do so. A trial court is not required to accepted uncontroverted evidence in every case.

Husband next challenged the community characterization of an account that he claimed was funded with the proceeds of the sale of his separate real property. Husband provided no evidence to support his claimed source of the initial funds. Mere testimony is generally insufficient to rebut the community property presumption, and the trial court did not abuse its discretion in finding the account was community property.

Finally, Husband challenged the characterization of certain real property as community, rather than as his separate property. Husband's argument here presupposed the above-referenced account was his separate property. Because he failed to establish that account was his separate property, his final argument likewise failed.

Despite Jury Finding Husband at Fault for Dissolution of Marriage, Evidence Sufficient to Support Property Division Favoring Husband.

2. *Ward v. Valencia*, No. 01-24-00676-CV, 2026 WL 3126802 (Tex. App.—Houston [1st Dist.] 2026, no pet. h.) (mem. op.) (10-20-2026).

Facts: The parties' divorce was tried to a jury, which found the grounds of cruel treatment, adultery, and family violence supported divorce. The trial court awarded Wife a majority of the assets and granted Husband a judgment for attorney's fees. This resulted in a division in Husband's favor. Wife appealed.

Holding: Affirmed.

Opinion: Wife argued that the award to Husband of attorney's fees resulted in an unjust division of the community estate. Wife failed to preserve this complaint for appeal by failing to bring it to the trial court's attention. To the extent Wife's complaint was an evidence sufficiency argument that could be raised for the first time on appeal, a review of the record supported the judgment.

Wife did not argue on appeal that the evidence was insufficient to support the $75,000 attorney's fees award, given that Husband requested $200,000. She did not challenge the fee itself, only that it unjustly impacted the division of the community estate. Husband's attorney submitted an affidavit, testimony, and an itemized statement to establish the requested fees were reasonable and necessary. Additionally, aside from the fee award, Wife was awarded more assets and liabilities than Husband

resulting in a roughly 48/52 division in Husband's favor. Wife did not complain about the award of assets or liabilities to either party.

The trial court's division of the community estate was supported by sufficient evidence and was not an abuse of discretion.

DIVORCE: ENFORCEMENT OF PROPERTY DIVISION

Agreed "Court-Ordered Maintenance" that Did Not Comply with Chapter 8 Could Only have been Contractual Alimony and Could Not be Modified or Terminated by the Court.

3. *In re C.A.B.*, No. 05-24-01372-CV, 2026 WL 2628360 (Tex. App.—Dallas 2026, no pet. h.) (mem. op.) (09-04-2026).

Facts: Husband and Wife divorced and agreed to "court-ordered maintenance." The parties agreed that Wife was eligible for Chapter 8 spousal maintenance and obligated Husband to pay Wife $2500 monthly until Wife remarried or cohabitated with a romantic partner. If Wife chose to reside with her parents for more than 60 days, Husband's payments would be reduced to $1500 but would revert to $2500 if she moved back out of her parents' residence. Additionally, Husband was required to obtain a life-insurance policy to secure his maintenance obligation, and the obligation would survive Husband's death as an obligation of his estate.

Fourteen years later, Husband filed a petition for review and termination of the court-ordered maintenance. He argued that under Chapter 8, his obligation should not have exceeded 5 years. Wife responded that Husband's claim was frivolous and moved for summary judgment, which the court denied. Wife then sought a declaratory judgment that the obligation was "contractual alimony" not subject to Chapter 8 of the Family Code.

At a final bench trial, Husband asserted that contrary to the recitation in the divorce decree, the parties had not entered any written agreement. Shortly after divorce, Husband lost his job and was unable to make child- or spousal-support payments. At the time of divorce, he believed he would eventually be able to seek termination of court ordered maintenance. He said he waited until the parties' children were grown before doing so. Further, at the time of divorce, Wife was unable to work due to vision issues and migraines. However, at the time of this suit, Wife had been employed for over three years. Under the decree, Wife was required to provide Husband with tax information but had not done so in the last four years.

After Husband rested, Wife "moved for a directed verdict" because Husband only established Wife had a job, not that she was able to meet her minimum reasonable needs. Husband responded that maintenance could not exceed the time limitations imposed by the Family Code and that Wife was not disabled. The trial court noted that Wife previously sought enforcement of the maintenance under Chapter 8 shortly after the divorce. Wife argued that her attorneys were wrong to do that. The court responded:

> Okay. But whether they were wrong or not it happened, and I can't unring that bell. So if she's already availed herself of the remedies of it, it's hard to go back now and say but I don't like it. Because I'm guessing people incurred costs and everything else to defend against whatever those claims that were brought.

The trial court orally ruled that it would terminate Husband's spousal-maintenance obligation. Pursuant to Husband's request, the court issued findings. Wife appealed.

Holding: Reversed and Remanded.

Opinion: Wife challenged the trial court's conclusion that the court-ordered maintenance was awarded pursuant to Chapter 8 rather than by agreement.

The parties' decree recited that they had entered into a written agreement, and they approved the decree as to both form and substance. They stipulated that the agreement was enforceable as a contract. The decree contained no findings regarding eligibility for Chapter 8 maintenance. It did not consider the Family Code's provisions pertaining to the amount and duration of maintenance. On the contrary, the decree provided that the obligation would not terminate on Husband's death. The obligation was required to be secured by a life-insurance policy. The provisions went beyond what is authorized by the Family Code and could only have been the result of an agreement.

Husband argued Wife should have been equitably and judicially estopped from arguing the terms were contractual because she had previously sought enforcement under Chapter 8. Estoppel is an affirmative defense that must be set forth in an answer. Husband did not file an answer. Husband asserted that notwithstanding his lack of pleading, the issue was tried by consent. But, an issue is not tried by consent merely because evidence regarding the issue is admitted. At trial, Husband asserted Wife judicially admitted to the obligation being Chapter 8 maintenance. On appeal, he raised claims of estoppel. Husband's argument regarding judicial admission could not have been calculated to elicit an objection regarding equitable and judicial estoppel. Thus, the question of estoppel was not tried by consent.

Husband Could Not be Held in Contempt for Failing to Pay Wife's Health Insurance as Agreed in Divorce Decree; Requiring Husband to Replace Lapsed Life-Insurance Policy with Similar Policy Did Not Modify Divorce Decree.

4. *In re Trumble*, No. 06-26-00087-CV, 2026 WL 3031594 (Tex. App.—Texarkana 2026, orig. proceeding) (mem. op.) (10-09-2026).

Facts: The court signed an agreed final decree of divorce. Ten years later, Wife filed a petition for enforcement by contempt because Husband:

- failed to pay monthly payments to Wife for her interest in the community estate;
- failed to make payments to Wife's retirement account;
- cancelled a life-insurance policy; and
- failed to pay for Wife's health insurance.

Husband responded with special exceptions.

After a hearing, the court found Husband breached the decree, awarded Wife money judgments; held Husband in contempt; and sentenced him to confinement for 180 days or until he purged himself of contempt. The confinement was suspended on condition of Husband's reinstatement of the life-insurance policy, payment of arrearages, and compliance with the decree.

Husband moved to vacate and modify the judgment because his nonpayment of debts could not be enforced by contempt, and reinstatement of the life-insurance policy was impossible. Wife responded that Husband's failure to pay health insurance and maintain life insurance did not constitute debt obligations.

After another hearing and additional briefing, the court stated through an order that "even if it were inclined to vacate or modify the [contempt order], which it would not be inclined to do, it lack[ed] jurisdiction to modify or vacate the [contempt order]." With respect to the alleged impossibility to reinstate the life-insurance policy, the court clarified that Husband needed to get a substitute or replacement policy that provided the same coverage as the one Husband allowed to lapse.

Husband sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Chapter 9 of the Family Code allows enforcement and specifies what types of provisions may and may not be enforceable by contempt. Additionally, the Texas Constitution prohibits imprisonment for a failure to pay a debt. Under the decree, Husband was required to pay for Wife's health insurance for 15 years. Wife argued the obligation was a "performance obligation." However, an order incorporating a voluntary support obligation that is not spousal maintenance as defined by the Family Code is a debt enforceable as a contract, not a court-ordered obligation enforceable as a judgment. Thus, the contempt finding based on Husband's failure to pay for Wife's health insurance was void.

Husband next challenged the order to obtain a new or substituted life-insurance policy. Husband asserted the divorce decree only required he maintain the policy that existed at the time, and the court's new order modified the divorce decree. However, this order did not modify the decree but only clarified the order to enforce the existing decree.

Husband further asserted the trial court incorrectly determined it lacked jurisdiction to vacate or modify the contempt order. Husband had not asked to modify the divorce decree but the contempt order, which had been rendered within the prior 30 days. Thus, the trial court still had plenary power to modify the contempt order and erred in finding otherwise.

Mandamus relief was conditionally granted only as to the issues addressed in this opinion.

Domestication of California Judgment Enforceable for Failure to Timely Contest Domestication, Despite California Later Vacating the Underlying Order; Trial Court Could Not Include Husband's LLC and Partnership Interests in Turnover Order to Satisfy Judgment Because a "Charging Order" Was Exclusive Remedy.

5. *Gagnon v. Gagnon*, No. 12-25-00011-CV, 2026 WL 3270851 (Tex. App.—Tyler 2026, no pet. h.) (mem. op.) (on reh'g) (10-30-2026).

Facts: While the parties were in the process of divorcing in California, Husband suddenly and unexpectedly left with the Child for rural east Texas. Five years later, the California court rendered a default judgment that Husband did not appeal. Later that year, Wife filed to domesticate the California order in Texas. Husband did not challenge the petition, so the order became final and enforceable in Texas. The Texas trial court appointed a receiver and ordered Husband to produce financial documents and records. Husband did not appeal the receivership order. The receiver moved to hold Husband in contempt for noncompliance.

Husband responded by asking the California court to reopen a portion of the judgment regarding the division of property, and the California court granted Husband's request. It vacated the prior order and ordered Wife to serve Husband with an amended petition for the division of property. The child-related provisions and dissolution of marriage remained in effect.

Husband next moved to terminate the receivership in Texas, arguing that because the portion of the California order Wife sought to enforce had been vacated, the domesticated Texas judgment was necessarily void. The Texas court denied Husband's motion, finding the California order had not been found void for lack of jurisdiction, so Texas could continue with the enforcement.

The Texas appellate court denied Husband's petition for writ of mandamus and dismissed his appeal for want of jurisdiction. The Trial court conducted a show cause hearing as to why Husband should not be held in contempt for violating the receivership order. The court found Husband in contempt and issued a fine. The court then granted the receiver's motions for turnover of nonexempt property. Husband appealed. Shortly after appealing, Husband filed for Chapter 13 bankruptcy, resulting in a stay of the appeal. After the bankruptcy court dismissed the bankruptcy with prejudice, the appeal was reinstated.

Holding: Reversed in Part; Affirmed in Part

Opinion: When a judgment creditor files an authenticated copy of a foreign judgment pursuant to the Uniform Enforcement of Foreign Judgments Act ("UEFJA"), a prima facie case for its enforcement is presented. The burden then shifts to the judgment



debtor to prove that the foreign judgment should not be given full faith and credit. There are five well-established reasons that a judgment should not be given full credit:

1) the foreign judgment is interlocutory;
2) the foreign judgment is subject to modification under the rendering state's law;
3) the rendering state lacked jurisdiction;
4) the foreign judgment was secured by extrinsic fraud; and
5) the period for enforcing the foreign judgment in Texas expired under Section 16.066 of the civil practice and remedies code.

The California judgment became enforceable as a Texas judgment on the day Wife filed an authenticated copy in Texas state court. The burden then shifted to Husband to prove the California judgment should not be given full faith and credit.

Husband first asserted the trial court erred by enforcing the California order after being informed of the order being vacated. Husband's prior appeal was dismissed for not being timely filed. The issue of whether the trial court could enforce the California judgment with a receivership order was an accelerated appeal, and Husband missed the deadline. In his first issue, Husband again tried to raise the same question, and his appeal was still untimely. Thus, the appellate court lacked jurisdiction to address the issue.

Husband next asserted the trial court erred when it authorized the receiver to sell Husband's interests in an LLC and a partnership. He asserted his ownership interests were not subject to turnover relief and that a charging order was the exclusive remedy to satisfy a judgment.

A judgment creditor of a member of an LLC may enforce a judgment against that member by requesting a charging order against the member's interest in the company. A charging order is "the exclusive remedy by which a judgment creditor of a member or any other owner of a membership interest may satisfy a judgment out of the judgment debtor's membership interest." Likewise, a "charging order is the exclusive remedy by which a judgment creditor of a partner … may satisfy a judgment out of the judgment debtor's partnership interest." The charging order procedure was developed to prevent a judgment creditor's disruption of an entity's business by forcing an execution sale of the partner's or member's entity interest to satisfy a debt of the individual partner or member. Accordingly, the trial court's turnover order as to the LLC and partnership was an abuse of discretion.

Husband's remaining complaints were overruled for failure to adequately present his appellate complaints.

SAPCR:
Procedure and Jurisdiction

Stepfather's Supporting Affidavit Containing Generalities and Speculation Did Not Satisfy the Requirements of the New Section 102.0031; However, the Trial Court had Authority to Grant Stepfather Leave to Amend the Affidavit.

6. *In re L.S.*, No. 02-26-00574-CV, 2026 WL 3011028 (Tex. App.—Fort Worth 2026, orig. proceeding) (mem. op.) (10-06-2026).

Facts: Mother and Father had a Child, and shortly after the Child's birth, a court order appointed them joint managing conservators, with Mother having the exclusive right to designate the Child's primary residence. About five years later, Mother married Stepfather. About eight years after that, Mother died.

Stepfather filed a petition to modify and relied on the former Section 102.003(a)(9) for standing based on his actual care, control, and possession of the Child for the requisite period. Stepfather's petition was supported by an affidavit. Father never contested Stepfather's standing pursuant to the former Section 102.003(a)(9). In his petition, Stepfather also relied on the fact that the Child was over the age of 12, and Stepfather anticipated the Child telling the court in chambers whom she wanted to have the exclusive right to designate her primary residence.

After interviewing the Child in chambers, the court made findings that Stepfather had standing under the former Section 102.003(a)(9) and that the parental presumption was overcome "because appointing [Father] as primary custodian would cause significant emotional impairment to [the Child]." The letter constituted a rendition on standing.

Subsequently, the new standing statutes became effective. Because the suit was still pending, the new affidavit requirement of Section 102.0031 applied to Stepfather's case. However, Father did not challenge Stepfather affidavit, and Stepfather did not amend his affidavit. A few months after the new statutes became effective, temporary orders gave Stepfather the exclusive right to designate the Child's primary residence without a geographic restriction and ordered Father to pay monthly child support. The order was drafted to include findings consistent with the new legislative changes.

Three months later, about six months after the new statutes had become effective, Father filed a plea to the jurisdiction, challenging Stepfather's affidavit. The court conducted a hearing on Father's plea. Father noted that Stepfather could have filed an amended affidavit but did not do so. Stepfather argued that his affidavit was sufficient, but if the court found otherwise, he requested leave to amend the affidavit. The court agreed the affidavit was sufficient, denied Father's plea to the jurisdiction, and made the Child's in-chambers interview part of the record. Four months later, Father filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Father argued that because the affidavit was insufficient, Stepfather suit should have been dismissed for lack of jurisdiction. The appellate opinion set forth Stepfather's affidavit in its entirety. It stated that Stepfather had been the Child's primary

caretaker for years with Mother. Father had rarely exercised visitation, and the Child's aunt was always present during those periods of visitation. The Child was afraid to go with Father.

Stepfather's initial affidavit did not need to comply with Section 102.0031 because the statute was not yet effective. But after September 1, 2025, the affidavit did need to comply with Section 102.0031. When the trial court found Stepfather's affidavit sufficient, it appeared to have retrofitted the information it gathered from the in-chambers interview. The initial letter ruling on Stepfather's standing relied primarily on that in-chambers interview. Yet, the question before the court was not whether sufficient evidence supported a finding regarding standing but whether the affidavit complied with Section 102.0031. A Section 102.0031 affidavit must raise more than a surmise or suspicion of harm. Emotional distress caused by a change in circumstances—without more—may not rise to the level of significant impairment. Stepfather's affidavit amounted to inferential speculation. The statute requires more than generalities.

The trial court abused its discretion in ruling the affidavit was sufficient. However, the appellate court declined to dismiss the suit. Stepfather requested in the trial court leave to amend the affidavit if it was insufficient, and the trial court did not rule on that request. The appellate court remanded the matter with instructions to rule on that request.

Great-Uncle Could Not Rely on Mother's Delay in Challenging His Standing as a Defense to Her Motion to Dismiss Because Mother Could Not Confer Standing by Consent.

7. *In re K.D.H.*, No. 11-26-00240-CV, 2026 WL 3160310 (Tex. App.—Eastland 2026, orig. proceeding) (mem. op.) (10-22-2026).

Facts: Mother became pregnant at the age of 16, and Mother and the Child initially lived with maternal grandmother. When grandmother became ill and was hospitalized, her brother (maternal great-uncle ("Uncle")) visited Mother. Uncle asked Mother if the Child could stay temporarily with Uncle and his wife. Mother initially refused unless she was given wine coolers. Later, Mother recognized she could not care for the Child without assistance and agreed that the Child could live with Uncle.

Four months later, Uncle and his wife filed suit to be named as the Child's managing conservators. They alleged standing based on a claim that appointing the Child's parents as managing conservators would significantly impair the Child's physical health or emotional wellbeing. They also asserted standing based on consanguinity. Less than a month later, Mother filed a cross-petition to adjudicate parentage. The court granted Mother's motion to strike Uncle's *wife's* pleading; however, Mother did not challenge Uncle's standing at that point. After a hearing, the court found that appointing the Child's parents as managing conservators would "presently and significantly impair the child's physical health or emotional development and rendered a temporary order appointing Uncle as managing conservator and Mother as possessory conservator.

Over a year later, Mother filed a motion to dismiss Uncle's suit for lack of standing and noted that Uncle had not filed an affidavit as required by the new Section 102.0031. Uncle responded by filing an amended petition asserting standing based on his sole care, control, and custody since Mother's voluntary agreement to allow the Child to live with him. After a hearing on Mother's motion to dismiss, she nonsuited her petition to adjudicate parentage. The court signed an order denying Mother's motion to dismiss, finding Mother consented to Uncle's standing, and finding no defects in Uncle's pleadings. Mother sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Uncle only had possession of the Child for four months at the time he filed his petition. Thus, he could not base standing on Section 102.003(a)(9). The time period under that statute is calculated based on the date the initial pleading was filed.

At the time Uncle filed his suit, Section 102.004 standing only extended to the third degree of consanguinity, which does not include great-uncles. Uncle was only related to the Child within the fourth degree of consanguinity, so he lacked standing under that Section at the time his petition was filed.

Uncle responded that Mother should have been estopped from challenging his standing due to her 15-month delay in filing her motion to dismiss and plea to the jurisdiction and for four months after the trial court ruled to seek mandamus relief. Additionally, Uncle argued the trial court did not abuse its discretion in relying on Mother's representation that she consented to Uncle's standing.

Standing is a prerequisite to the invocation of the trial court's subject matter jurisdiction and therefore essential to its power to act. Standing cannot be conferred by consent or waiver and may be raised for the first time on appeal. Even an agreed order in a SAPCR is void as to any party that lacks standing. Mother could not consent to Uncle's standing.

SAPCR: CONSERVATORSHIP

Geographic Restriction Allowing Mother to Move to a New County to Complete Her Nursing Degree was in Children's Best Interest.

8. *Cain v. Cain*, No. 09-24-00337-CV, 2026 WL 2946539 (Tex. App.—Beaumont 2026, no pet. h.) (mem. op.) (10-01-2026).

Facts: At the time of divorce, the parties had two Children, one of whom was born shortly after separation. One of the contested issues at the bench trial was the geographic restriction to be imposed on the Children's primary residence. The parties had already agreed they would be appointed joint managing conservators, and Mother would have the exclusive right to designate the Children's primary residence.

Mother was working on completing her nurse practitioner degree and testified it would be easier to locate a provider to complete her clinicals if she were permitted to move to a different county where she had family connections in the medical field. Mother's entire family was in the county where she sought to move, and Father also had family in that area. She believed Father could continue to exercise a standard possession schedule if she were permitted to move, and she offered to meet Father at a halfway point to exchange their older Child and to meet with Father on Sundays for him to spend time with the infant. She requested a phase-in schedule for the infant because Father had only spent two hours alone with the infant in the last year, and Mother was still breastfeeding that Child. She further testified Father was not often helpful with the Children, so being near family would be beneficial for her and the Children. Mother testified that she would be able to earn significantly more money once she obtained her degree. Mother was enrolled in an online nurse practitioner program but testified getting more clinicals where the parties lived at the time of trial would be difficult.

Father testified that Mother's proposed possession schedule severely limited the time he would have with the Children. Father attended nearly all the older Child's baseball practices and assisted with coaching, and if Mother moved, he would be unable to participate as much. Father wanted to be able to allow the older Child to bond with his cousin, but Mother's proposed schedule would not allow those two children to bond. He wanted to be able to have more time with the younger Child once that Child was no longer breastfeeding. Father agreed that notwithstanding the court-ordered possession schedule, Mother had an open-door policy and was good at co-parenting. He would not have that luxury if Mother moved. Father testified he successfully changed the younger Child's diaper three or four times.

In the final decree of divorce, the geographic restriction on the Children's residence permitted Mother's proposed move conditioned upon her acceptance into a nurse practitioner program in that area. Father appealed.

Holding: Affirmed.

Opinion: Father disputed Mother's claim that she needed to move in order to secure clinical hours and her assertion that he frequently visited his family in the location where Mother sought to move. He argued the move would negatively impact his relationship with the Children and would not improve Mother's financial status as she claimed. However, in reviewing the case under the abuse-of-discretion standard and applying the *Lenz* and *Holley* factors, the evidence supported the trial court's judgment.

Law-of-the-Case Doctrine Precluded Father's Appointment as a Managing Conservator Because the Appellate Court Had Previously Found There was Credible Evidence Father Had Physically Abused Mother's Older Child.

9. *In re Coronado*, No. 11-26-00247-CV, 2026 WL 3251992 (Tex. App.—Eastland 2026, orig. proceeding) (mem. op.) (10-29-2026).

Facts: Mother had two pre-teen children before her marriage to Father. The third Child was born shortly after the parties married. Mother learned Father spanked and slapped the middle child so hard that it caused the child bruising. Father had also spanked the oldest child and threatened to physically discipline and humiliate the oldest child "like in county [jail]." Mother reported the abuse and was granted a protective order. The older children spoke to law enforcement and forensic interviewers, leading to Father's arrest for the felony offense of injury to a child. Mother offered photographs and text messages to support her allegations. She also testified that Father had pushed and shoved her. Mother asked the court to name her sole managing conservator.

Father pleaded the Fifth seven times during the initial temporary orders hearing. He agreed he texted in graphic detail his plans to discipline the oldest child. At the hearing's conclusion, the court appointed Mother and Father joint managing conservators of the Child with Father's periods of possession to be supervised. The court issued temporary orders requiring Mother to transport the Child for Father's periods of possession because she was "the one that moved." The court stated that Mother could not have been trying to hide from Father because Mother went to where her family was, and Father would look there for her. The court told Father it was forced to require Father's periods of possession to be supervised. Mother filed a petition for mandamus relief.

The appellate court found the trial court abused its discretion by (1) appointing the parties joint managing conservators when there was credible evidence Father had physically abused Mother's older child, and (2) ordering Mother to provide all transportation for Father's visitation. The appellate court directed the trial court to vacate the temporary orders.

After vacating the prior temporary orders, the trial court held a second temporary orders hearing and informed the parties, "we're starting over from scratch." Mother was still residing with her three children in the county to which she had moved and had obtained "better employment," enrolled the Child in daycare, and registered the older children in school. Father had exercised his supervised visitation, which went well. The Child had problems with the travel, including "blowout[]" diapers and throwing up from motion sickness. Mother asked the trial court to order that Father's visitation occur closer to the Child's residence.

At the second hearing's conclusion, the court again appointed the parties joint managing conservators, gave Mother the exclusive right to designate the Child's primary residence in the county where Father lived, and granted Father unsupervised visitation under a standard possession order, despite the Child being under the age of three. The court found there had been no

family violence and stated it had evaluated the factors in Section 153.254 in making its visitation order. Mother again sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Although the temporary orders were not reduced to a written order at the time Mother filed this petition for writ of mandamus, the trial court's oral findings and rulings were adequately shown in the transcript from the second temporary orders hearing.

Mother argued the trial court clearly abused its discretion in failing to appoint her as the Child's sole managing conservator. The Family Code prohibits the appointment of a parent as a managing conservator if credible evidence is presented of a history or pattern of violence directed against a child. In the prior mandamus, the appellate court held that such credible evidence was presented in this case. Therefore, the trial court's appointment of Father as a managing conservator was a clear abuse of discretion.

The transcript from the first hearing was not offered into evidence at the second hearing. Yet, Father was asked if he recalled saying the same things he had said at the prior hearing and whether he recalled the photographs presented as evidence at the first hearing. He did. Father was asked whether he believed that notwithstanding "that act of violence," he should be appointed the "primary" conservator. Father testified that the charge against him for injury to a child was pending, but he had not been indicted.

In the process of announcing its rulings, the trial court noted that no one asked the court to take judicial notice of the prior hearing; however, it recited facts from the first hearing as serving as the basis for the second ruling.

The "law of the case" doctrine is a principal under which questions of law decided on appeal to a court of last resort will govern the case throughout its subsequent stages. This doctrine applies to mandamus proceedings when an issue has been resolved on the merits in a prior mandamus proceeding. The doctrine "does not necessarily apply when either the issues or the facts presented at successive appeals are not substantially the same as those involved on the first trial."

In the first mandamus, the appellate court held Father was prohibited from being appointed a joint managing conservator, and no evidence at the second hearing would alter that holding. Rather, the second hearing reaffirmed that holding. The trial court's attempt to reweigh the evidence violated the law of the case doctrine. The trial court abused its discretion in failing to appoint Mother as the Child's sole managing conservator.

Mother additionally argued the trial court abused its discretion by ordering a geographic restriction on her residence and granting Father unsupervised possession. Because reweighing evidence is a trial court function, mandamus will not lie if the record contains legally sufficient evidence both against and in support of a trial court's decision. Here, because the evidence was conflicting, the trial court did not abuse its discretion in imposing a geographic restriction on the Child's residence. Similarly, when reviewing the evidence and conducting the balancing test under Family Code Section 153.004, the trial court did not abuse its discretion in ordering unsupervised visitation for Father.

SAPCR: Possession

Injunction Prohibiting Any Member of Father's Family Being Present Around the Children Overbroad and Modified to Require Father to be Present When His Family was in the Children's Presence During Father's Periods of Possession.

10. *In re S.M.C.*, No. 05-25-00589-CV, 2026 WL 3029951 (Tex. App.—Dallas 2026, no pet. h.) (mem. op.) (10-08-2026).

Facts: Soon after the birth of Mother and Father's first Child (a daughter) during the parties' marriage, Mother discovered that paternal Grandfather was a registered sex offender who had pleaded guilty to an offense against his daughter (paternal Aunt) over 20 years earlier. Mother was concerned about the Child being in Grandfather's presence, but Father did not share Mother's concern, which caused significant conflict in the marriage. The parties' second Child (a son) was born a few years later. A few years after that, Mother filed a petition for divorce. Mother sought sole managing conservatorship, and Father asked for a 50/50 possession schedule.

Temporary orders issued by an associate judge imposed phased visitation for Father, with the initial phase requiring supervision by Aunt. Mother also had the right to provide a paid supervisor, and Mother exercised that right. The order enjoined the parties from allowing the Children to have any contact with Grandfather. A child custody evaluation report expressed concerns about Mother's possible manipulation and alienating behavior, Father's use of corporal punishment, and Father's judgment regarding Grandfather. The report recommended appointing the parties joint managing conservators, giving Father an expanded standard possession order, requiring Father to complete a chaperone training course, requiring line-of-sight supervision by Father of the Children in Grandfather's presence, and prohibiting overnight visitations in the same house as Grandfather. The associate judge signed further temporary orders allowing paternal Grandmother to watch the Children while Father was working but maintained the injunction prohibiting Grandfather from being in the Children's presence.

At trial, Mother asked the court to make the Grandfather injunction and corporal punishment injunction permanent. The parties stipulated to the property division, child support, and a mutual injunction against corporal punishment. The child custody evaluation report was admitted by agreement. The primary disagreement centered on Grandfather's presence. Father asked the court to implement the recommendations of the child custody evaluation report, and Mother asked to continue the injunction preventing Grandfather from being around the Children. By the time of trial, Grandfather's offense had occurred more than 30

years earlier, and Father and Grandmother both testified Grandfather had changed since then. Father stated the family had healed. Mother shared the evaluator's concerns that Father had poor judgment regarding Grandfather and that Father did not take the no-contact order seriously. After considering evidence, the trial court issued a memorandum ruling including the following permanent injunctions: (1) it adopted the parties' agreement regarding corporal punishment; (2) Grandfather could not be around the Children under any circumstance; and (3) Father could not have any other family member present during his periods of visitation with the Children. Father filed a post-trial motion that, in part, sought clarification of the third injunction. The trial court signed a final order consistent with the memorandum ruling and allowed Father's request for clarification to be overruled by operation of law. Father appealed.

Holding: Affirmed as Modified.

Opinion: Father complained that the "any family member" injunction was not pleaded and was not tried by consent. Because the court had jurisdiction over the parties and subject matter, the judgment was not "void." Thus, the injunction was not void for lack of jurisdiction. Additionally, in Father's post-trial motion, he did not raise the lack-of-pleading complaint, so it was not preserved for appellate review.

Father next argued the court abused its discretion by sua sponte imposing the "any family member" injunction because the injunction was vague, overly broad, and not supported by legally or factually sufficient evidence. Noting the split of authority on this standard of review, the Dallas court stated it does not apply the general standards applicable to permanent injunctions in civil cases to family-law cases. Family-law injunctions are reviewed under the abuse-of-discretion standard. Restrictions or limitations on a parent's right to possession of or access to a child may not exceed those that are required to protect the best interest of the child.

Father argued the injunction was vague and ambiguous because it did not define "family" or identify specific persons who could not be around the Children. He pointed to the definition of "family" in Title IV of the Family Code but further pointed out that definition potentially included each Child's sibling and Mother. Mother responded that the common understanding of the term could be applied. The appellate court determined the trial court's injunction should be modified to include Title IV's definition of family but to explicitly exclude the Children and Mother.

Father next argued the evidence was legally and factually insufficient to support the "any family member" injunction because there was no evidence to support depriving the Children of their entire paternal family. Mother responded the record contained evidence that Father and his family lacked an understanding of the dangers of permitting Grandfather to be in the presence of the Children, Father's family was constantly present during Father's periods of possession and potentially negatively impacted Father's parenting, and Mother was concerned Father's family was toxic and secretive and could harm the Children.

There was evidence that no one in Father's family told Mother that Grandfather was a registered sex offender, Father believed it would be safe for the Children to be around Grandfather, Father said he did not have a problem leaving the Children alone with Grandmother or Aunt if Grandfather was also present (but said he would abide the court's order), Aunt allowed her children (16 and 21 years old at the time of trial) to be around Grandfather and raised her children around him, the evaluation report noted Aunt expressed no concerns about Grandfather, Grandmother testified Grandfather had changed and had no concerns about Grandfather, and Mother said Father did not see the risk of forcing physical contact (hugs and kisses) on the Children (Father denied doing this). Given the totality of the evidence, the trial court did not abuse its discretion in believing the Children would not be properly supervised by Father or his family if Grandfather were present.

Additionally, there was some evidence Aunt left her own children unsupervised with Grandfather despite his prior conviction and that the parties' Children were permitted to Facetime with Grandfather in violation of the trial court's temporary no-contact order. The evidence thus supported an implicit finding that Father's family might violate the trial court's final no-contact order.

Contrary to Mother's assertion, the evidence was insufficient to establish that Father's family's presence negatively impacted his parenting to a degree that supported an injunction against the presence of every member of Father's family during his periods of possession.

The trial court had broad, but not unlimited, discretion to act in the Children's best interest. Reviewing the evidence as a whole, the evidence was sufficient to support a determination that members of Father's family might permit the Children to be alone with Grandfather; however, the evidence was insufficient to enjoin Father's family from being in the presence of the Children under any circumstance. Therefore, the trial court abused its discretion by issuing an injunction that exceeded what was necessary to protect the Children's best interest, and a more tailored injunction was warranted.

Accordingly, the "any family member" injunction was modified to require Father to be present whenever his family was present with the Children during Father's periods of possession. The trial court was ordered to sign a new order with the modified injunction within 45 days.

SAPCR:
CHILD SUPPORT

Child Support Not Required to be Offset by Disability Benefit Received by Obligor.

11. *In re M.G.*, No. 14-25-01164-CV, 2026 WL 3160161 (Tex. App.—Houston [14th Dist.] 2026, no pet. h.) (mem. op.) (10-22-2026).

Facts: Mother and Father appeared pro se at trial and on appeal. The issues regarding their child were tried to the bench. Mother offered no evidence regarding Father's income; however, Father testified he was a veteran "going through [his] disability claim right [then]." After trial, Mother learned Father had been receiving disability income, and the trial court granted her motion to reopen the evidence. The trial court signed a final judgment for conservatorship, possession and access, and support. Father appealed, raising 50 issues, most of which were overruled for failure to preserve complaints or inadequate appellate briefing.

Holding: Affirmed.

Opinion: Father asserted the trial court erred in failing to offset his child support obligation based on VA benefits received for the Child. The reduction to a guideline child support amount required by Section 154.132 only applies when the child receives periodic benefits or the benefits are paid to or for the child. Courts apply this provision when the disability payment is made to the child or to the support obligee, not when the disability payment is made to the obligor. Father could not "have it both ways." He could not retain the dependent VA benefit while also offsetting his child support obligation. No evidence showed Mother or the Child was receiving a dependent benefit based on Father's disability.

Father also argued the child support obligation should have been reduced based on him providing food, diapers, and milk while the Child was in his care. Parents have a duty to support a child with clothing, food, and shelter. The trial court did not abuse its discretion in finding Father's argument unpersuasive to rebut the presumption that guideline support was in the Child's best interest.

Father complained about the imposition of the "under three" provisions for his possession schedule; however, the Child reached the age of three years before the appeal concluded, so that issue was mooted.

Father complained that the trial court failed to issue findings explaining why Mother was granted certain exclusive rights. Father did not request additional or amended findings, so he was not entitled to additional findings. Regardless, a finding that the trial court's conservatorship determinations are in the best interest of the child is sufficient; no additional findings are required.

SAPCR: MODIFICATION

Statement in Order Advising Parties that Positive Drug and Alcohol Test Results Could Impact a Future Modification was Not an Impermissible Advisory Opinion.

12. *In re Marriage of Quillen and Daniel*, No. 05-25-00304-CV, 2026 WL 3003047 (Tex. App.—Dallas 2026, no pet. h.) (mem. op.) (10-06-2026).

Facts: Mother and Father had three Children before they married. However, Mother filed for divorce after only a few years of marriage. The parties reached a partial MSA with respect to property issues and tried the child-related issues to the bench. The court appointed the parents as joint managing conservators and included a provision regarding alcohol and illegal-drug testing: "Any positive test result can be the subject of a request that the court reconsider conservatorship and access/possession orders in this case." Father appealed.

Holding: Affirmed.

Opinion: Father first challenged the imposition that he pay maximum monthly guideline child support. Father had a jewelry business and claimed to have earned little in recent years. Mother submitted bank records showing deposits that called Father's claims into question. Father agreed that the bank records were accurate but asserted the deposits did not account for business expenses.

Father bore the burden to present evidence of expenses that would reduce his self-employment income. Yet, Father provided little evidence from which the court could determine which expenditures were ordinary and necessary business expenses. Father only generally referenced payroll, inventory, rent, supplies, and credit card fees. The trial court was not required to accept Father's characterization of those expenses in the absence of proof. Further, the bank statements showed numerous personal expenses from Father's business accounts, including charges from restaurants, liquor stores, grocery stores, gas stations, and the like. Father also paid his attorney's fees from his business account. Given the totality of the evidence, the trial court could have reasonably determined that Father's business income constituted resources sufficient to support an order for maximum monthly guideline child support.

Father additionally challenged the statement regarding the court potentially considering future positive test results constituted an impermissible advisory opinion because it purported to predetermine issues that could arise in a future modification proceeding. However, the challenged language did not alter the statutory requirements imposed on the court and the parties in any future modification proceeding. It did not state that a positive test result would constitute a material and substantial change in circumstances. It did not state that a positive test result necessarily meant that modification would be in the Children's best interest. It did not require modification based solely on a positive test result. And, it did not foreclose a party from seeking modification based on other circumstances. It did not prematurely resolve any future controversy.

Evidence Supported Appointing Father as Sole Managing Conservator and Awarding Mother Less than a Standard Visitation Schedule.

13. *In re M.L.*, No. 09-25-00052-CV, 2026 WL 3023690 (Tex. App.—Beaumont 2026, no pet. h.) (mem. op.) (10-08-2026).

Facts: The parties' divorce decree appointed them joint managing conservators and required Father to pay child support. A geographic restriction was imposed on the Children's residence, and rights and duties were shared between the parents.

Father filed a modification suit, seeking sole managing conservatorship, and the case was tried to a jury. Mother's cleaning lady testified Mother's home was unsanitary, with toys and clothing strewn about and sometimes animal feces on the carpet. There was little food in the house, and the cleaning lady sometimes brought McDonald's or pizza for the Children because they were hungry. The cleaning lady had witnessed Mother drinking alcohol and smoking cigarettes while pregnant. Mother would ask the cleaning lady for money for gas but then return from the store with cigarettes. Mother asked the cleaning lady to use Mother's food stamp card for groceries and cash and to give Mother cash in return, which would have been food stamp fraud.

A neighbor testified similarly about the condition of Mother's home and said that Mother told the neighbor that Mother took calls late at night because Mother had to deal with prime ministers and the Russian government. The neighbor and her husband often cared for the Children when Mother was inebriated. Father's new wife testified about Mother's drunken behavior around the Children and poor parenting skills generally.

The court-appointed evaluator, a psychologist, testified the Children were having behavioral problems of which Mother lacked a good grasp. He agreed that Mother should not be the Children primary caretaking because she would not seek help the Children needed. Mother made untruthful allegations against Father, including that Father made one of the Children vape marijuana.

After a nine-day jury trial, the jury announced a 10-2 verdict. Neither party requested a poll. The court stated on the record that the signed verdict sheet was misplaced after it was read into the record. The court entered judgment based on a reconstituted verdict. Mother appealed.

Holding: Affirmed.

Opinion: Mother asserted the evidence did not support a finding of a material and substantial change since the last conservatorship order. However, she filed a counterpetition alleging such a change, which constituted a judicial admission.

Mother also complained there was error to the jury charge because it did not contain an instruction concerning the "fit parent" rule. However, Mother proposed a jury charge without requiring a finding on this issue and did not object to the charge presented to the jury. Moreover, there was ample evidence to support an implicit or deemed finding Mother was not a fit parent at the time of trial.

Mother next argued there was no evidence to overcome the presumption that a standard possession order for Mother would have been in the Children's best interest. The trial court explicitly found that a standard possession order, especially midweek access, would not be in the best interest of the Children and would be injurious to their safety and welfare. Reviewing the evidence in light of the *Holley* factors, the evidence supported this conclusion.

Mother complained about the exclusion of OurFamilyWizard messages as evidence based on a sustained objection on hearsay and lack of predicate. Mother made no offer of proof for two of the excluded exhibits for the appellate court to review. A third excluded exhibit was in the appellate record, but it contained hearsay, and the trial court did not abuse its discretion in excluding it. Mother complained of certain sustained objections during the testimony of a therapist, but Mother failed to show that any excluded testimony likely caused an improper verdict.

Mother complained that a mistrial should have been granted due to the missing verdict. However, the verdict was read into the record. Neither party asked to poll the jurors, and the process of reconstituting the verdict was permitted under Rule of Appellate Procedure 34.5(e).

Parties' Agreement to Nonmaterial Terms Not Required for Rendition of a Family-Code Compliant Judgment; However, Trial Court Erred in Failing to Specify Dates for the Beginning and Ending of Child Support Obligations.

14. *In re A.S.P.*, No. 13-24-00500-CV, 2026 WL 3082931 (Tex. App.—Corpus Christi–Edinburg 2026, no pet. h.) (mem. op.) (10-15-2026).

Facts: The parties' divorce decree appointed them joint managing conservators and gave Mother the exclusive right to designate the Child's primary residence and ordered Father to pay child support. About nine years later, Father was found in arrears, and the court set a monthly obligation to satisfy the arrearages. If he had not fully paid the arrearages judgment by the time the Child aged out, the monthly obligation would increase. When the Child was about 17 years old, Father moved for the exclusive right to designate the Child's primary residence and asked that Mother be ordered to pay child support. Mother appeared pro se and agreed to Father's requested relief. Mother asked to clarify that the agreement did not modify Father's arrearage judgment, and the court confirmed it lacked authority to change child support obligations owed before the current suit. Father's attorney was directed to draft an order, and in a section entitled "Past child support," Father's proposed order provided that Father's arrearages were offset because the Child had been living with Father for the last two years. Mother obtained counsel, who objected to provisions in Father's proposed order regarding support and possession. Mother filed her own proposed order. Father stated he

withdrew his proposed order but did not consent to Mother's proposed order. Father asserted the court lacked jurisdiction to sign Mother's proposed order in the absence of his agreement.

After a hearing, the trial court signed Mother's proposed order, crossed out the start date for Mother's child support obligation, and included a Mother Hubbard clause. Father filed a motion to reform the judgment stating that numerous portions of Mother's proposed order were not agreed to by the parties, and the order lacked rulings on certain issues. After the court denied Father's motion, he appealed.

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

Opinion: Father asserted there were 23 items in Mother's proposed order that were not agreed to by the parties, including a provision stating that child support was an obligation of the estate and a HIPAA notification. Father failed to explain how those items were material to the parties' agreement.

Father additionally complained the order failed to include certain terms, including the end date for his child support obligation and the start date for Mother's child support obligation. These terms were vitally important to the child support order. Instead of ruling, the trial court told the parties to "figure it out." The trial court abused its discretion in failing to include these terms.

SAPCR: Enforcement of Child Support

Contempt Findings Could Not be Challenged via Appeal.

15. *Udall v. Minns*, No. 03-24-00635-CV, 2026 WL 3174047 (Tex. App.—Austin 2026, no pet. h.) (mem. op.) (10-23-2026).

Facts: Father died shortly after Mother and Father divorced. Maternal Grandfather obtained an order appointing Grandfather sole managing conservator of Mother's three Children, and Mother appealed. While the appeal was pending, Grandfather filed an enforcement action seeking child support, medical support, and unreimbursed medical expenses. Grandfather asked that Mother be held in contempt and jailed for up to 180 days. Mother responded that enforcement was premature because her appeal was pending and because she lacked the ability to pay.

After an evidentiary hearing, the court found Mother in contempt, signed a judgment for arrearages, ordered Mother be jailed for each separate violation with the periods of confinement to run concurrently, and suspended her commitment pending a review hearing. Mother appealed this judgment as well.

Meanwhile, Grandfather filed a motion to revoke the suspension of Mother's commitment because she had only made nominal payments in the intervening period. The trial court denied Mother's jurisdictional claims of voidness based on the case being transferred to a new trial court, and the appellate court denied Mother's motion to stay enforcement of child support pending appeal.

Holding: Affirmed in Part; Dismissed in Part.

Opinion: Mother asserted that because the proceedings were transferred to a new court within the same county after the first court (the divorce court) acquired continuing exclusive jurisdiction, the second court lacked jurisdiction to consider Grandfather's claims entirely, and all orders rendered by that second court were void. The appellate court addressed this argument in Mother's other appeal and disagreed with Mother. *Udall v. Minns*, 730 S.W.3d 704 (Tex. App.—Austin Jan. 30, 2026, pet. denied).

Mother also challenged the contempt findings. However, contempt findings cannot be challenged via appeal and may only be reviewed through original proceedings (mandamus or habeas corpus). Mother asked the appellate court to construe her pleading as a petition for writ of mandamus. However, not all of Mother's issues raised in this appeal were reviewable under a mandamus standard. Accordingly, the complaint regarding contempt findings was dismissed for lack of jurisdiction.

Mother additionally challenged the arrearages findings and claimed the evidence was insufficient to support the judgment. Although Mother claimed Grandfather did not meet "prerequisites" to payment imposed by the order, Mother did not identify any way in which Grandfather failed to abide by the order.

SAPCR: Removal of Child / Termination of Parental Rights

Termination Reversed Because TDFPS Showed No Efforts to Return the Child to Mother.

16. ***In re M.S.***, __ S.W.3d __, No. 07-26-00219-CV, 2026 WL 3014829 (Tex. App.—Amarillo 2026, no pet. h.) (10-06-2026).

Facts: Three days after the Child's birth, TDFPS removed the Child from Mother's care out of concern for Mother's mental health. The Child was placed with maternal Grandparents, who were prepared to adopt the Child. TDFPS filed suit to terminate Mother's parental rights.

A TDFPS permanency specialist testified that she had frequent contact with Grandparents but only one conversation with Mother. The specialist stated she had attempted to have more contact with Mother. Mother would respond to text messages

with lengthy suspicions of conspiracy and did not respond to the specialist's attempts to redirect the conversation. One visitation was arranged, but Mother did not attend. A family service plan was implemented, but the specialist never spoke to Mother about the plan, Mother was not apprised as to what was expected of her, and Mother did not sign the plan. There was nothing in the record to suggest Mother received a copy of the plan. On Mother's objection, the plan was excluded from evidence at trial.

When asked why TDFPS believed termination was in the Children's best interest, the supervisor cited Mother's lack of participation in the plan and emphasized Mother's mental health challenges. The trial court terminated Mother's parental rights on the ground of constructive abandonment. Mother appealed.

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

Majority Opinion: (J. Pratt, C.J. Parker, J. Doss)

To prove constructive abandonment, TDFPS ware required to establish:

1. the Child had been in TDFPS's permanent or temporary managing conservatorship for at least six months;
2. TDFPS made reasonable efforts to return the Child to Mother;
3. Mother had not regularly visited or maintained significant contact with the Child; and
4. Mother had demonstrated an inability to provide the Child with a safe environment.

In her appeal, Mother focused on the "reasonable efforts to return" element. This element focuses on TDFPS's actions. TDFPS cannot rely on the parent's failures or shortcomings to satisfy this requirement. Mother additionally challenged the related findings under Section 161.001(f) and (g), which also concern TDFPS's reasonable efforts to return the Child.

TDFPS spoke to Mother about what a future service plan would look like; however, once a plan was created, TDFPS failed to discuss the completed plan with Mother. Nothing in the record indicated TDFPS took any steps to ensure Mother understood what was expected of her under the plan. The specialist had only one communication with Mother and eventually ceased attempts to contact Mother about seven months before trial. Mother's mental health concerns may have contributed to communication difficulties, but that did not excuse TDFPS from attempting to communicate with Mother. Reasonable efforts, given TDFPS's knowledge that Mother was undergoing mental health treatment, required TDFPS to take extra care in explaining and clarifying what Mother was required to do under TDFPS's plan. Other than one scheduled visitation, there was no evidence TDFPS attempted to foster the twice weekly intended visitation per its visitation plan. One attempt to arrange visitation with Mother was inadequate.

Mother's mental health was a key factor in the Child's removal, and the service plan was tailored to meet Mother's mental health needs. There was no evidence TDFPS undertook any effort to confirm Mother was following recommendations or was even aware of recommendations. It appeared from the record, TDFPS did nothing. There was some evidence Mother was receiving treatment, but it was unclear whether Mother underwent treatment under her own initiative or for some other reason.

The specialist stated Mother would not participate in scheduling a home visit; however, the specialist did not confirm Mother's living circumstances or make sufficient efforts to contact Mother regarding this issue.

The Child was placed with material grandparents. Mother proposed an alternative placement because she did not want the Child with her parents. The specialist never spoke with Mother's proposed alternative, and no further investigation was made into the alternative placement.

Because TDFPS failed to meet its burden, the appellate court reversed and rendered judgment denying termination. The appointment of TDFPS as managing conservator was not challenged on appeal and was, thus, affirmed.

Concurring Opinion: (J. Doss)

The legislature requires TDPFS to make reasonable efforts to return a child and is only excused from doing so when a continuing danger prevents the child's return. The legislature has made written, explicit findings regarding reasonable efforts and a continuing danger mandatory. Here, the termination order included findings that conclusorily tracked the statutory language. Even if this were sufficient to meet the statutory requirements, no evidence in the record supported the findings. The order provided "[TDFPS] made the following reasonable efforts to return the child home to the parents:_____." The trial court left the blank empty.

When a trial court is not required to make express findings, the reviewing court may sustain an implied finding if the record supports such a finding. "Implied or presumed findings, however, have no place where a statute forbids that silence and requires the trial court to state, in its order, what it found."

"The Legislature told the trial court to show its work. We review the work the trial court showed, not what it could have shown. Because the evidence does not support the efforts the trial court found, rendition is required."

Grandfather's Bill of Review Petition Untimely Filed More than Six Months after Termination/Adoption Order, and Grandfather Lacked Standing to Pursue a SAPCR for Possession of the Child.

17. ***Toliver v. Norton***, __ S.W.3d __, No. 07-25-00257-CV, 2026 WL 3173110 (Tex. App.—Amarillo 2026, no pet. h.) (mem. op.) (10-22-2026).

Facts: In 2016, a New Mexico court entered an Order Appointing Kinship Guardian appointing Paternal Grandmother as the Child's guardian. Grandfather was not a party to that proceeding, and the court explicitly found Grandfather was not provided any rights, responsibilities, or duties.

A few years later, Grandmother moved to Texas and allowed Grandfather to have some access to the Child. However, after an argument between Grandmother and Grandfather, Grandmother and her husband filed a petition in Texas to terminate the parents' parental rights and adopt the Child. In 2023, an order granted the requested relief for termination and adoption. At the final hearing, the Child's father defaulted, and the Child's mother appeared through an attorney ad litem after being served by publication. Grandfather was not served with citation.

Five months after the Texas termination/adoption order, Grandfather filed a motion as intervenor in the New Mexico case seeking to remove Grandmother as the Child's guardian and to appoint Grandfather in her stead. After Grandmother's attorney was served with the intervention, the attorney informed Grandfather of the termination and adoption. The New Mexico court nevertheless granted Grandfather's requested relief via an ex parte order. Eleven months after the Texas termination/adoption order, Grandfather filed in Texas a petition for bill of review and declaratory judgment. Also in Texas, under a separate cause number, Grandfather initiated a suit affecting the parent-child relationship asking for shared custody with Grandmother and her husband. A few weeks later, the New Mexico court dissolved its ex parte order appointing Grandfather as guardian.

After hearings in Texas, the trial court dismissed each of Grandfather's Texas suits for lack of standing. Grandfather appealed both, and the appellate court issued a consolidated opinion.

Holding: Affirmed.

Opinion: Grandfather argued the Texas trial court lacked authority to consider the termination and adoption proceeding because New Mexico retained continuing, exclusive jurisdiction. On appeal, Grandmother and her husband argued the bill of review was "time barred" under the Family Code because Grandfather was required to bring any challenge to the order within six months.

Several courts have reviewed the six-month limitations in the Family Code's chapters on termination and adoption and determined that the deadline is not a statute of limitation but a bar to or preclusion of a challenge to a termination order. While a statute of limitations can be waived, subject-matter jurisdiction cannot.

Grandfather filed his petition for bill of review outside the 6-month statutory window. The Child's mother and father were properly notified of the suit. Grandfather complained he was not served with notice of the termination/adoption proceeding, but he was not entitled to notice under Texas law or under the New Mexico order at the time of the termination/adoption proceedings. The trial court did not abuse its discretion in dismissing the bill of review proceeding.

Additionally, Grandfather lacked standing to file a SAPCR under the Family Code, so the trial court did not abuse its discretion in also dismissing that suit.

From the opinion:

> We write further to note the concern that this case exposes. Whether a person with a legitimate relationship to a child, or a court that has already exercised continuing jurisdiction over the child, receives any notice of a Texas termination and adoption depends entirely on who the petitioner chooses to cite. Where, as here, the petitioner is herself the person to whom the other State's order gave custody, nothing in the statutory scheme ensures that the Texas court is told of that order or that its existence is tested against the UCCJEA's requirements. And once six months passes, the Legislature's strong interest in finality forecloses review even of a claim that the judgment was entered without jurisdiction. That interest in finality is a weighty and legitimate one. But the absence of any mechanism for notice to affected persons or for jurisdictional scrutiny at the front end raises concerns of due process that only the Legislature is positioned to address. The cost of these gaps falls primarily on the child, whose stability is the very thing finality is meant to protect, but also on the family relationships that may be severed without any court having examined whether it had the power to do so. Our decision today is compelled by the law as it stands.

Termination Reversed Because TDFPS Failed to Make Reasonable Efforts to Return the Child to Her Parents and Because Insufficient Evidence Supported a Finding that the Parents' Recent History Created a Continuing Danger Preventing the Child's Return.

18. ***In re R.N.***, __ S.W.3d __, No. 11-26-00135-CV, 2026 WL 3252126 (Tex. App.—Eastland 2026, no pet. h.) (10-29-2026).

Facts: The parents were in their early 20s when the Child was born. Initially, the Child was not gaining weight and was diagnosed with feeding problems. Within a few weeks, the Child was diagnosed with failure to thrive and was hospitalized. The parents were instructed as to how to feed and care for the baby. Later, witnesses testified as to not being sure whether the parents did not understand the instructions or simply disregarded them. The Child gained weight in the hospital and was released to the parents, but the Child was later hospitalized again for the same issues. At the subsequent trial, there was a dispute as to whether a genetic condition affected the Child's ability to eat properly or gain weight or whether the parents were not adequately caring for the Child. The Child was removed from the parents and placed in a few different homes, and her weight fluctuated in all environments.

At trial on TDFPS's petition to terminate the parents' parental rights, a few witnesses testified that Father seemed controlling of Mother. Father denied the accusation. Mother worked days, and Father worked nights to ensure someone could always be with the Child. Father was a former foster child who had been convicted of inappropriately touching a seven-year-old girl when he was twelve years old. No other criminal history for Father was revealed, and he regretted his actions. He claimed that an older boy had influenced him when he was younger. During this suit, someone reported Father for showering with the Child while she was infant, but all allegations were ruled out.

The parents had exercised their periods of visitation fully and had good interactions with the Child. There were reports that the parents' home had roaches and concerns that they did not remove the Child from the home during the extermination process, but no witness had any personal knowledge to support this concern. The parents testified they removed all the food from the cabinets and took the Child to another home during the fumigation. Although there were some complaints the parents' home was messy, the parents were receptive to feedback.

At the time of trial, the Child was living with foster parents who wanted to adopt the Child, and the Child could feed herself. Father's criminal history was referred to often, as was the Child's difficulties with her weight when she was bottle fed. A jury found that the parents endangered the Child; termination was in the Child's best interest; TDFPS made reasonable efforts to return the Child to the parents; and despite those efforts, a continuing danger prevented the Child's return. The parents appealed.

Holding: Reversed and Remanded.

Opinion: The parents challenged all the jury's findings, but the appellate court focused on whether the evidence supported the Section 161.001(f) findings because that question was dispositive of the appeal.

A parent-child relationship may not be terminated unless:

> [T]he [factfinder determines] by clear and convincing evidence … that … [TDPFS] made reasonable efforts to return the child to the parent before commencement of a trial on the merits and despite those reasonable efforts, a continuing danger remains in the home that prevents the return of the child to the parent.

Evidence of a service plan is not absolutely required nor is it the exclusive means of establishing TDFPS's reasonable efforts to return a child. The inquiry is whether TDFPS made reasonable efforts, not ideal efforts. Also, the reasonableness of the efforts must be considered with the parents' *recent* history or engagement, or lack thereof.

Here, TDFPS relied on Father's status as a registered sex offender and his one, prior act of sexual misconduct with a minor child when he was twelve as a basis to seek termination. Mother indicated to TDFPS that it was her understanding that Father's status as a registered sex offender was not a concern and, because it was not, she intended to remain with him. Mother was not required to work any services that pertained to Father's sex offender status, and she believed she had completed the conditions of her service plan. Due process required that TDFPS explicitly explain to Mother that remaining in the same household with Father could result in TDFPS seeking to terminate her parental rights to the Child. The record was devoid of any such admonishment. Rather, TDFPS affirmatively signaled to Mother that there would be no adverse consequences if she remained with Father. Further, TDFPS temporarily returned the Child to the home despite knowing Father was a registered sex offender. TDFPS did not ask Father to work any services beyond those already required of him due to the sex offender status. Under these facts, a reasonable factfinder could not have formed a firm belief or conviction that TDFPS's efforts were reasonable in this circumstance because TDFPS failed to: (1) admonish the parents that Father's status as a registered sex offender created a continuing danger that prevented the Child's return to them; (2) create a family plan of service that addressed the steps that were necessary for the parents to eliminate the alleged continuing danger; and (3) refer appropriate services to the parents to assist them in remediating the alleged continuing danger.

The court next noted that it had not yet addressed the meaning of "continuing danger" and that no other Family Code statute imposes the evidentiary burden of "clear and convincing" on "continuing danger." The court held that the *present* existence of a continuing danger was critical, meaning that the parents' *recent* history should have been the backdrop of the evaluation. The continuing danger need not be the same danger that instigated removal, but a danger must exist at the time trial commences.

Father had accepted responsibility for his past conduct and completed a sexual offender rehabilitation program. While TDFPS relied heavily on this past conduct at trial, the Child was not removed for sexual abuse concerns. The allegation made during the course of the proceedings was ruled out. Any abuse inference would have been speculative. There was no evidence to support a finding that the parents' home was unsafe *when trial commenced*. No evidence suggested the Child was ever harmed by conditions in the home, and photographs showed the parents' home was presently clean. Both parents had stable employment, and TDFPS acknowledged that the home had improved during the proceedings.

Finally, the only evidence regarding the Child's inability to feed was from the time she was bottle fed, which was no longer a concern. Moreover, the Child's weight fluctuated when in TDFPS's care, and the cause of her difficulties was disputed. The parents had acquired a vehicle and could take the Child to medical appointments, and they had already shown their ability to seek medical assistance when necessary.

The appellate court held that a reasonable factfinder could not have formed a firm belief or conviction that a continuing danger prevented the Child's return to the parents, especially when evaluated against the parents' recent history. Accordingly, the entire case was remanded to the trial court for a new trial and ordered to commence within 180 days of the opinion.

FAMILY VIOLENCE / PROTECTIVE ORDERS

Code of Criminal Procedure Chapter 7B Protective Order Affirmed Based on Girlfriend's Repeated Threatening Electronic Communications to Boyfriend.

19. *Paul v. West*, No. 09-24-00350-CV, 2026 WL 3082770 (Tex. App.—Beaumont 2026, no pet. h.) (mem. op.) (10-15-2026).

Facts: Boyfriend and Girlfriend were in a relationship for about 18 months, until Boyfriend ended the relationship. Girlfriend stole Boyfriend's Rolex but denied that allegation. Boyfriend believed he was "under surveillance" by Girlfriend because when he

arrived at the police station to report the theft, Girlfriend contacted him and asked him not to make the report. Girlfriend had been previously arrested for domestic violence, talked about killing her ex-husband, assaulted her ex-husband, had a drug-dependency issue, had been fired from several jobs for aggression, and refused mental health treatment. Girlfriend sent Boyfriend numerous harassing and unstable emails. Boyfriend applied for a protective order and attached a supporting affidavit with exhibits including text message and emails from Girlfriend.

At a hearing on the application, the court noted the existence of a prior protective order and instructed that the court would only consider evidence from events after the date of the prior order. The court also indicated it was only concerned with the allegations of stalking. The court sustained some of Girlfriend's evidentiary objections, resulting in the exclusion of some evidence, but other evidence, including videos, was admitted without objection. Boyfriend authenticated some threatening text message that appeared to be from a motorcycle gang member, but Boyfriend alleged the texts were actually from Girlfriend. Boyfriend identified phrases in the texts that were "catchphrases" of Girlfriend when arguing.

The trial court found reasonable grounds to believe Girlfriend committed the offense of stalking against Boyfriend and signed a one-year protective order. Girlfriend appealed pro se.

Holding: Affirmed.

Opinion: Although the protective order expired before the appellate court issued an opinion, the collateral consequences exception to the mootness doctrine applied because the "effects of a protective order carry significant legal repercussions and a social stigma even though the protective order has expired."

Applying the abuse of discretion standard, the admitted evidence was sufficient to support the trial court's finding that Girlfriend committed the act of stalking as defined by the Penal Code, and the court was authorized to render a protective order under the Code of Criminal Procedure.

Lifetime Protective Order Affirmed Because Boyfriend Could Not Establish any Reversible Error Related to Service of Citation.

20. *Foster v. Wise*, No. 01-24-00510-CV, 2026 WL 2117520 (Tex. App.—Houston [1st Dist.] 2026, no pet. h.) (mem. op.) (on reh'g) (10-16-2026).

Facts: Girlfriend applied for a protective order against Boyfriend based, in part, on physical abuse. Boyfriend failed to appear, and the court signed a default lifetime protective order. Nearly six months later, Boyfriend filed a restricted appeal.

Holding: Affirmed.

Opinion: Boyfriend asserted the citation was defective because it was not "signed by the clerk of the court under the court's seal." The clerk's signature was in a stylized font without a preceding "/s/." However, the Rule requiring the "/s/" (Rule 21(f)(7)) only applies to documents that are electronically served, filed, or issued by a court or clerk. The citation was not *electronically* served, filed, or issued. It was hand delivered.

Boyfriend asserted the rules for signatures on electronic documents should have applied because Girlfriend checked a box requesting "E-Issuance by District Clerk." However, she also checked a box for "Civil Process Server," and the record stated citation and application were hand delivered. Even if a copy of the application was issued by electronic service—which the record did not establish—the document in the record was not. So, the appellate court declined to apply the rules for electronically served, filed, or issued documents to it.

"Although a signature is traditionally 'the name of the signer, handwritten in ink,' a signature may also be 'written in pencil, typed, printed, made with a rubber stamp, or impressed into the paper.'" Boyfriend did not cite any authority that a specialized definition of signature was required in this case.

Boyfriend additionally complained that while the return of service referenced the date an amended application was filed, it did not specify whether the original or amended application was served on him. Boyfriend asserted this error deprived the trial court of personal jurisdiction over him. On the facts of this case, the discrepancy did not matter because both applications requested the same relief. The only difference was that the amended application included additional evidence. When a party has been served with an original petition, for purposes of jurisdiction, new citation for an amended petition is necessary for a non-appearing party only when the amended petition seeks a more onerous judgment than prayed for in the original petition.

MISCELLANEOUS

Inception of Title Occurred when Parties Entered into Rent-to-Own Contract for Real Property, Making the Property Community Property Even Though the Principal was Not Fully Paid Until After Husband's Death.

21. *Rincon v. Ramirez*, No. 03-25-00001-CV, 2026 WL 2575019 (Tex. App.—Austin 2026, no pet. h.) (mem. op.) (08-31-2026).

Facts: In 1968, Mother and Father entered into a rent-to-own contract for real property. They agreed to make payments on the property, while the "seller" retained title. Once the principal amount was paid in full, the seller would deliver a warranty deed conveying the property to the parties in fee simple.

Five years later, Father died intestate, leaving 13 heirs: five children from his first marriage and eight children from his marriage to Mother, including their Daughter. At the time of Father's death, the principal amount due on the real property had not been paid, so the contract remained executory.

Over the next 20 years, Mother continued to make payments until she finally finished paying the principal due and obtained equitable title to the property. Eight years after the final payment, the seller's widow conveyed legal title to the property to Mother through a special warranty deed. Mother filed an affidavit with the county clerk regarding Father's death, his heirs, and the purchase of the property.

Sixteen years later, Mother died testate, naming Daughter as her executor and sole beneficiary. Three years after that, Daughter probated Mother's will and believed she owned the property in fee simple as Mother's sole beneficiary.

Three years after that, Daughter listed the property for sale and accepted an offer. However, the title company identified a cloud on the title based on Mother's affidavit filed with the county clerk. The title company opined that the property belonged to Mother and Father's community estate when Father died, resulting in all his children having an equal interest in Father's 1/2 share of the estate. The title company informed Daughter that the cloud could be removed if the other children conveyed their interests to her or if a court rendered judgment declaring Daughter to be the sole owner of the property.

Daughter asked the other children to convey their interests, but four stated they would only do so if Daughter paid them for their interest. They could not reach an agreement, and the sale failed.

Daughter filed an original petition asserted claims for trespass to title and quiet title. She asked the court to render judgment awarding her title, declare Mother's affidavit void as it related to the property, and declare that the rent-to-own contract had no effect on the general warranty deed conveying the property to Mother after Father's death. After discovery, Daughter moved for summary judgment, and her four siblings ("Appellants") filed a response. Daughter argued inception of title occurred after Father's death, and because she was Mother sole beneficiary, she was the sole owner of the property. Appellants argued the inception of title related back to the initial rent-to-own contract. The trial court agreed with Daughter and granted her summary judgment. Appellants appealed.

Holding: Reversed and Remanded.

Opinion: To obtain summary judgment, Daughter bore the burden to conclusively establish the property was not community property on Father's death. "[P]roperty is characterized as 'separate' or 'community' at the time of inception of title, that is to say, when a party first has a ***claim of right*** to the property by virtue of which title is ***ultimately*** vested." At inception of title, title need not be vested; all that is need is a "right of claim" to the property that may vest in the future. "When real property is acquired under a contract for deed or installment contract, the inception of title relates back to the time the contract was executed, not the time when legal title is conveyed."

Daughter's various arguments against this straightforward application of the rule were unavailing. Contrary to Daughter's assertion, no caselaw cited required equitable title to transfer to one of the spouses before a spouse's death. Whether the Appellants made any payments towards the property would have no impact on inception-of-title. Appellants' failure to challenge the validity of the deed to Mother or the probate of her will also did not impact inception-of-title.

Because Daughter failed to establish her claim as a matter of law, summary judgment was improper, and the case was remanded for further proceedings.

No Abuse of Discretion in Changing 18-Month-Old Child's Last Name from Mother's to Father's.

22. *In re I.C.S.*, No. 15-25-00045-CV, 2026 WL 3055763 (Tex. App.—15th Dist. 2026, no pet. h.) (mem. op.) (10-13-2026).

Facts: About a year after the Child's birth, Father filed a suit affecting the parent-child relationship and asked, among other requested relief, for the Child's last name to be changed from Mother's to Father's. A few months later, the parties signed an MSA and an addendum to the MSA, which were both filed with the trial court clerk. The parties did not reach an agreement regarding the Child's last name. At final trial, the pro se parties testified, and the judge asked a few questions. The court granted the name change, and Mother appealed.

Holding: Affirmed.

Opinion: At the time of trial, the Child was 18 months old, so the child had no preferences, Mother's surname had not been used for long, and changing the name would not create confusion. Mother testified that the relationship between Father and the Child was a "good" one. Although she testified that Father had missed some possession time with the Child and some medical appointments, Mother explained that her primary reason for opposing the name change was personal—she was concerned that having the Child carry Father's last name would signify to the world that she had a Child out of wedlock. Father, on the other hand, wished for his son to carry his name to solidify the bond between father and child. That was the extent of the evidence before the trial court on this issue. Based on this evidence, the appellate court could not identify an abuse of discretion.

Father Lacked Standing to Seek Guardianship of Adult Child in Probate Court Because His Suit to Reduce Child Support Filed in the Family Court Created an Interest Adverse to the Child's.

23. ***In re Bayouth***, __ S.W.3d __, No. 11-25-00090-CV, 2026 WL 3161666 (Tex. App.—Eastland 2026, no pet. h.) (10-22-2026).

Facts: Mother and Father divorced, and Mother was awarded "primary custody" of their Child. Father's obligation to pay child support extended after the Child turned 18 due to the Child's total incapacitation. Mother was appointed as the Child's permanent guardian. Father became disabled and started receiving SSDI. Mother received payments because of Father's disability. Father filed a petition to modify the child support obligation and alleged he was entitled to a credit for the social security payments made to Mother.

About nine months after initiating the modification suit, Father filed an application to be appointed as the permanent guardian of the Child's estate. Mother filed a motion in limine in response, asserting Father lacked standing due to his adverse interest that had arisen from his petition to modify child support. Father responded that his interest was adverse to Mother not to the Child. Father claimed he had applied for guardianship due to Mother's mismanagement of the Child's estate. Mother had previously created a trust for the Child that was managed by a company. Father had not pursued alternatives to guardianship and acknowledged that he was not arguing the trust was being mismanaged.

The court found Father had an adverse interest and that his application was filed in bad faith. Thus, the court awarded Mother attorney's fees. Father appealed.

Holding: Affirmed.

Opinion: Father asserted the court erred in finding he had an interest adverse to the Child and lacked standing to file a guardianship application. The Estates Code grants standing to apply for a guardianship of a ward's estate unless the applicant has an interest that is adverse to the proposed ward or incapacitated person. The Code does not define "interest that is adverse." Courts have found that an interest is adverse when the applicant's interests would not promote and protect the proposed ward's well-being. Father argued the inquiry should focus on whether the relief sought would materially harm the ward's welfare and not merely whether the applicant's interest was a potential conflict.

The standard for determining whether an applicant has an interest adverse to the potential ward that would deprive the applicant of standing differs from the standard for determining whether a person has a conflict of interest and is precluded from being appointed guardian.

Here, Father's child support obligation was $2650, and Mother received an additional $1829 from Social Security. If the SAPCR trial court granted Father's modification petition, Father would only be required to pay $821, which was the difference between his obligation and the Social Security payment to Mother. Father correctly argued that the modification would not change the child support due, but it would reduce the amount of money Mother would receive for the Child's benefit. Without expressing an opinion as to whether Father should receive an offset, the court held that Father's interest was adverse to the Child's. Father was actively seeking to reduce the monthly income Mother received for the Child's benefit. The trial court did not err in finding Father lacked standing.

Father additionally challenged the award to Mother of attorney's fees. The Estates Code authorizes the assessment of attorney's fees against a party to a guardianship proceeding who is found to have "acted in bad faith or without just cause in prosecuting or objecting to an application in the proceeding." Although the statute uses the word "or," the trial court found fees were justified because Father acted in bad faith *and* without just cause.

Father asserted in his application that alternatives to guardianship were considered but none were feasible and would obviate the need for guardianship. However, at the hearing, Father testified that alternatives were feasible, including the existence of the special needs trust. Father's only complaint regarding the trust was that he had no input into its management, not that it was infeasible. Father's testimony conflicted with his application, and the trial court did not abuse its discretion in finding Father filed the application without just cause.

Father filed his application for guardianship two weeks after filing an amended petition in the modification proceeding. The trial court could have reasonably determined that Father filed the application with the bad faith motive of circumventing the family court's disposition in the modification suit.

Provisions of Stepfather's Will Regarding Son were Voided by Divorce Because Son was Not Equitably Adopted by Stepfather.

24. ***Maniscalco v. Womack***, __ S.W.3d __, No. 01-23-00419-CV, 2026 WL 3210414 (Tex. App.—Houston [1st Dist.] 2026, no pet. h.) (10-27-2026).

Facts: When Mother and Decedent married, Son was almost nine years old. During Mother and Decedent's marriage, Decedent executed a will leaving his estate to Mother, or if she predeceased him, then to Son. During the marriage, Mother pursued enforcements of child support payments from Son's biological father.

Subsequently, Mother and Decedent divorced, and the pleadings and orders in that suit stated that there were no children of the marriage.

After Decedent died, one of his four brothers filed an application to be appointed as Decedent's independent administrator, asserting Decedent died without a will. Son filed an application to probate Decedent's will, which Decedent's brother contested. Although the trial court initially signed a judgment in the brother's favor, a new trial was granted, and the case was tried to a jury.

By the time of the jury trial, three of Decedent's brothers had died, including the one who filed the application for administration, so his son (Nephew) continued pursuing the matter with his remaining uncle (Decedent's fourth brother). The deceased brothers testified by deposition, along with twelve other witnesses, including Son and Mother.

The jury found that contrary to Son's assertions, he was not equitably adopted by Decedent, which precluded his taking through Decedent's will because of Mother and Decedent's subsequent divorce. The jury also found that all the parties had sought relief in good faith, entitling them to awards of attorney's fees under the Estates Code. Son was awarded over $400k from Decedent's estate in fees, Nephew received an award for almost $300k, and the living brother was awarded a bit over $100k.

Son appealed, raising a few procedural claims and challenging the finding he was not adopted by equitable estoppel. Nephew and the brother cross-appealed, challenging the attorney's fee awards to Son.

Holding: Affirmed.

Opinion: Son complained that improper "jury argument" regarding his past criminal convictions tainted the jury. Because there was no such "jury argument," the appellate court construed the complaint to be regarding elicited testimony that Son argued violated an order in limine regarding his past convictions. When Son's story changed about the reason he had not sought appointment as administrator, Nephew asked if Son had not sought appointment due to his past felony conviction. Son testified that the conviction had been reduced to a misdemeanor, so he was not disqualified from serving.

The jury was instructed to disregard the first question about the felony, and the appellate court presumed the jury did so. Moreover, Son testified regarding the offense the following day of trial.

The appellate court noted that a motion in limine "does not preserve error on evidentiary rulings because it does not seek a ruling on admissibility.'" Son did not complain on appeal that anything was improperly admitted under the Rules of Evidence, and there was nothing for the appellate court to review.

Son also complained about "jury argument" regarding an affidavit offered by Son. Son claimed that Nephew's counsel attacked the affiant's failure to appear and testify. During closing, Nephew's attorney noted the affidavit was provided by a 90-year-old man who lived in Louisiana and was allegedly the only person to have heard Decedent to refer to Son as his son. Son made no objection to this argument during trial. Moreover, Son had testified that the affiant was 94 or 95 years old and could not travel.

Son also made an argument about the admission of unauthenticated pleadings. However, he did not identify any specific pleadings, and an appellate court has no duty to review the record in an effort to make an appellant's argument for him.

Son argued the trial court erred in failing to grant him a mistrial, but he did not cite to the record where he moved for a mistrial. To the extent his argument was based on alleged violations of an order in limine, such an order, even if agreed, is not an agreement to exclude evidence. A trial court has discretion in crafting a remedy for violations of an order in limine. In a review of the record, the trial court did not abuse its discretion in this case.

Son's final challenge regarded the jury's finding he was not adopted by estoppel. Adoption by estoppel is an equitable doctrine created to address circumstances when a parent's efforts to adopt the child are ineffective because of a failure to strictly comply with statutory procedures or because, out of neglect or design, agreements to adopt are not performed." To establish adoption by estoppel, the adopted child must prove, by a preponderance of the evidence:

(1) the existence of an agreement by the parent to adopt the child, and
(2) "performance" by the child, meaning that the child must show "love and affection" to the parent and render "services" such as a child would render to a parent.

For a child to be adopted by estoppel, a natural parent must "deliver[] a child into the custody of others under an agreement between the parent and the custodians that the child will be adopted, and thereafter the custodians and child live in a relationship consistent with that of parent and child." Courts have found that a child cannot be adopted by estoppel if their biological parent has not given up or abandoned the child or lost their rights to the child.

Texas Estates Code Section 123.001 provides that if a divorce occurs after execution of the will, provisions relating to the former spouse and any relative of the former spouse who is not a relative of the testator are void.

Some circumstantial evidence was presented at trial to support Son's claim; however, more evidence supported the jury's finding. On Son's behalf, Mother testified that she and Decedent agreed that Decedent would adopt Son, and Son was aware of the agreement. Decedent's will referred to Son as his son and child. Son claimed to have maintained a relationship with Decedent after the divorce and had photographic evidence to corroborate this testimony. Decedent once included on a resume that he had children.

However, several witnesses testified they had never heard that Son was anything more than a stepson and that they had not heard Decedent refer to Son as his son. Two witnesses testified they heard Decedent say Son had received everything he was going to receive from Decedent. Decedent never formally adopted Son. Mother continued pursuing child support from Son's biological father, even after the alleged adoption agreement. The biological father's rights were never terminated. Mother and Decedent's divorce decree stated there were no children of the marriage.

The evidence supported the jury's finding that Son was not adopted by estoppel. However, with respect to the cross-appeal, the evidence also supported a finding that Son's petition was filed in good-faith.



Texas Estates Code Section 352.052 authorizes the recovery of attorney's fees for a suit filed in good faith "whether or not successful." Contrary to Nephew and the brother's arguments, the fact that some evidence supported the jury's findings did not preclude Son's ability to recover fees.

Finally, Decedent's brother argued that Son should be required to pay for the clerk's record, which contained 1076 pages of unnecessary documents. Without discernment for the issues to be raised on appeal, Son requested the entire trial court record be compiled as the clerk's record, which included superseded pleadings, citations, waivers, hearing notices, vacation letters, discovery documents not relevant to any issue on appeal, and applications and reports of sales of property. The appellate court sustained this complaint and took it into consideration when allocating costs of the appeal.

Girlfriend Not Entitled to Judgment for Breach of Contract for Her Ex's Failure to Repay Loans Because "Red Flags" Should Have Caused Her to Question at the Outset Whether the Loans Would be Repaid.

25. *Griffin v. Hood*, No. 14-25-00523-CV, 2026 WL 3210442 (Tex. App.—Houston [14th Dist.] 2026, no pet. h.) (mem. op.) (10-27-2026).

Facts: Attorney and Investigator met when Investigator approached Attorney's former law firm for limited engagement legal assistance. Later, Attorney was diagnosed with cancer and underwent treatment. When Investigator came back to the firm for additional legal help, Attorney referred Investigator to another lawyer in the firm. When Attorney's health improved, she began working on Investigator's legal matter.

Attorney and Investigator began a romantic relationship, and Investigator moved into Attorney's house. Investigator was consistently in gambling debt, and Attorney repeatedly loaned money to Investigator and Investigator's PI firm to cover gambling debts, credit card bills, payroll, and other expenses. Investigator claimed to have repaid the debt, but Attorney disagreed. Attorney testified that in some instances she loaned Investigator money because Investigator threatened her with physical harm.

When the couple broke up, Investigator hid listening devices, cameras, and GPS trackers in Attorney's home, car, and phone (via apps). Investigator sued Attorney to recover allegedly hundreds of thousands of dollars' worth of personal property in Attorney's home. Attorney filed a counterclaim against Investigator and her PI firm for violations of the federal wiretap statute and fraudulent tax filing statute, invasion of privacy/IIED, stalking, fraudulent inducement, fraud, constructive fraud, negligent misrepresentation, breach of contract, promissory estoppel, conversion, money had and received, theft, tortious interference, fraudulent lien, negligence, assault, and conspiracy.

After a bench trial, the court signed judgment in Attorney's favor on her claims for breach of contract, fraud, invasion of privacy, and violations of the two federal statutes. The court awarded Attorney several money judgments, totaling a bit over $1 million. The court found one conversion claim in favor of Investigator and awarded her $1800. Investigator and her firm appealed.

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

Opinion: Among several other appellate complaints, Investigator and her firm argued attorney failed to segregate her recoverable attorney's fees from the nonrecoverable fees. Attorney argued Investigator failed to preserve this argument. However, in a bench trial, a party's failure to segregate fees can be preserved by first raising the issue in a post-judgment motion, as Investigator did. While segregation is not necessary for claims that are inextricably intertwined, Attorney did not establish segregation was unnecessary. So, this issue was reversed for a new trial on attorney's fees.

Investigator and her firm challenged the sufficiency of the evidence to support the judgment for Attorney on her fraudulent-inducement claim. A fraudulent-inducement claim requires proof that: (1) the defendant made a material misrepresentation; (2) the defendant knew at the time that the representation was false or lacked knowledge of its truth; (3) the defendant intended that the plaintiff should rely or act on the misrepresentation; (4) the plaintiff relied on the misrepresentation; and (5) the plaintiff's reliance on the misrepresentation caused injury.

A person may not "justifiably rely" on a representation if there are red flags indicating such reliance is unwarranted. Here, Investigator had gambling debts before the couple's romantic relationship began. Attorney began loaning Investigator money almost immediately after the relationship started. Attorney testified she never knew what the loans were for. Investigator moved in with Attorney because Investigator "had nowhere else to go." Just before the relationship began, Investigator had been sued for embezzlement. Attorney should have known Investigator lacked the ability to repay the substantial loans, and these "red flags" negated as a matter of law any justifiable reliance, from the very outset, on Investigator's promises to repay Attorney. A reasonably prudent person would have, at the very least, inquired as to how Investigator planned to repay the loans before transferring any money.

Investigator and her firm also complained there was insufficient evidence to support the judgment for invasion of privacy. To prove invasion of privacy by intrusion, there are three elements to establish: (1) an intentional intrusion, physically or otherwise, upon the solitude, seclusion, or private affairs or concerns of another; (2) that such intrusion would be highly offensive to a reasonable person; and (3) that the plaintiff suffered injury as a result of the intrusion. The core of the tort of invasion of privacy is the offense of prying into the private domain of another, not the publicity that may result from such prying.

Investigator testified that she did not tell Attorney about the hidden cameras because the last time Attorney learned of the cameras, Attorney ripped them out. Investigator used the tracking device because Attorney "wasn't answering her phone." Additional evidence indicated there were multiple cameras in the home. The evidence was sufficient to support the judgment on invasion of privacy.

Investigator asserted Attorney was awarded a double recovery with respect to the federal wiretapping claim and the invasion of privacy claim. The appellate court agreed and rendered Attorney take nothing on the federal wiretapping claim, leaving Attorney with the greater recovery.

The appellate court also sustained Investigator's appellate complaint that the trial court erred in making her and her firm jointly and severally liable for exemplary damages. An award of exemplary damages must be specific as to a defendant.

Boyfriend Not Entitled to Rule 202 Pre-Suit Deposition of Girlfriend to Identify Potential Defendants Who May Have Aided and Abetted Her in an Abortion Because Boyfriend Did Not Establish Texas Had Personal Jurisdiction Over Any Alleged Potential Defendants.

26. *Torres v. Lummus*, No. 01-24-00818-CV, 2026 WL 3263462 (Tex. App.—Houston [1st Dist.] 2026, no pet. h.) (mem. op.) (10-30-2026).

Facts: Boyfriend filed a "Verified Petition to Take Deposition to Perpetuate or Obtain Testimony for Use in an Anticipated Suit" under Texas Rule of Civil Procedure 202. He sought to depose Girlfriend and her mother regarding a terminated pregnancy. Boyfriend alleged Girlfriend refused to disclose to him how she obtained the abortion or whether anyone other than her mother aided or abetted her in obtaining the abortion. Boyfriend stated he was seeking pre-suit discovery for an anticipated suit under the Texas Heartbeat Act and the Texas Wrongful Death statute. He explained he was unwilling to file until he determined the range of potential defendants, as well as any possible defensive or substantive arguments that they might raise in the litigation.

Girlfriend and her mother filed an original answer and motion to transfer venue. They argued that because Boyfriend's verification did not support a deposition for an anticipated suit but only a deposition to investigate a potential claim, venue was only appropriate in the county where Girlfriend and her mother resided. Further, even if Boyfriend's verification was sufficient, he did not allege than any events or omissions giving rise to his claims arose in the county in which he filed suit. Girlfriend and her mother further argued the venue provisions of the Texas Heartbeat Act were unconstitutional.

The court conducted a hearing on the motion to transfer, which focused primarily on the purpose of Boyfriend's petition: whether he was seeking to perpetuate testimony for use in an anticipated suit or to investigate a potential claim. The Rule allows for one or the other, and the procedures and venue restrictions for each differ. At the hearing's conclusion, the trial court orally denied the motion to transfer and found that Boyfriend pleaded facts to support filing in the county in which he filed.

Subsequently, the trial court granted Boyfriend's petition to take pre-suit depositions, and Girlfriend and her mother appealed.

Holding: Reversed and Rendered.

Majority Opinion: (J. Rivas-Molloy, J. Gunn, J. Morgan)

First, the appellate court considered its own jurisdiction over the appeal. Rule 202 pre-suit discovery orders are only appealable when sought from someone against whom suit is *not* anticipated. Otherwise, the order should be challenged via mandamus because the order would be considered ancillary to the subsequent anticipated suit. Because Girlfriend's mother could not be sued under the wrongful-death statute or the Texas Heartbeat Act, the Rule 202 order was final and appealable as to her. Additionally, Boyfriend did not allege in his petition that he anticipated suing Mother; he wanted to sue the individuals who aided and abetted her. He was considering filing suit against the manufacturers and distributors of any abortion pills used, as wells as any other individuals who financed or facilitated the abortion. At the venue transfer hearing, Boyfriend stated he did not intend to sue Girlfriend or her mother. Thus, the appellate court concluded it had jurisdiction over the appeal.

Rule 202 provides:

> A person may petition the court for an order authorizing the taking of a deposition on oral examination or written questions either:
>
> (a) to perpetuate or obtain the person's own testimony or that of any other person for use in an anticipated suit; or
>
> (b) to investigate a potential claim or suit.

The petition must (1) be verified, (2) be filed in the proper county in the name of the petitioner, (3) state the purpose of the petition, (4) state the subject matter of the anticipated action, if any, and the petitioner's interest in it; (5) if suit is anticipated, identify the parties the petitioner expects will have an adverse interest in the anticipated suit, or if the parties cannot be identified through diligent inquiry, describe those persons, and (6) identify the person to be deposed, the areas of inquiry, and need for the testimony.

A trial court "must" order a Rule 202 deposition "if, but only if, it finds" that:

> (1) allowing the petitioner to take the requested deposition may prevent a failure or delay of justice in an anticipated suit[;]or
>
> (2) the likely benefit of allowing the petitioner to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure.

Venue is proper where the venue for the anticipated suit would be, or where the witness resides if no suit is yet anticipated.

Rule 202 depositions are not intended for "routine use." It is not "a license for forced interrogations." The burden is on a Rule 202 plaintiff to plead allegations showing personal jurisdiction over the defendants in the anticipated suit. "Rule 202 does not guarantee access to information for every petitioner who claims to need it."

In his Rule 202 petition, Boyfriend did not establish the trial court had personal jurisdiction over any of the alleged potential defendants. The trial court exceeded its authority in granting the Rule 202 petition.

Concurring Opinion: (J. Morgan, J. Gunn)

Rule 202 allows a prospective plaintiff to petition a court for an order authorizing a deposition (1) to perpetuate or obtain testimony for use in an anticipated suit; or (2) to investigate a potential claim or suit. Boyfriend's pleadings clearly stated he sought information for the first reason.

"The problem for [Boyfriend] is that our Supreme Court requires those invoking Rule 202 to have more information about the potential suit than what [Boyfriend] currently ha[d]. A Rule 202 petition seeking to obtain testimony for an anticipated suit must be filed in the 'proper court' in a county where venue for the suit may lie. Our Supreme Court interpreted the phrase 'proper court' to mean a court that, at minimum would have personal jurisdiction over the prospective defendant." (citations omitted).

In the Texas Supreme Court opinion cited in the majority opinion, Justice Hecht expressed concern that an expansive use of Rule 202 would negate protections offered to individuals from other states who enter special appearances. The expansive view would "make Texas the world's inspector general." Justice Lehrmann dissented, expressing that the restrictive view would force parties into making "impossible showing[s]." A party cannot establish personal jurisdiction over an individual if the party does not know who the individual is.

Policy choices like these involve tradeoffs. One of the Texas Supreme Court's duties is to make these sorts of evaluations, and the appellate court's duty is to follow the Texas Supreme Court's decisions.