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CASELAW UPDATE

(Cases from March 1–31, 2025)

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DIVORCE: PROCEDURE AND JURISDICTION

Default Divorce Decree Reversed Through Restricted Appeal Because Return Of Service "Incomplete In All Regards."

1. *In re Marriage of Garcia and Alvarado*, No. 10-24-00209-CV, 2025 WL 799302 (Tex. App.—Waco 2025, no pet. h.) (mem. op.) (03-13-2025).

Facts: Husband filed for divorce and citation was served on Wife in Mexico. Five months after the trial court signed a default decree of divorce, Wife filed a restricted appeal.

Holding: Reversed and Remanded.

Opinion: A restricted appeal must be filed within six months by a party to the suit who did not participate in the hearing resulting in the judgement or file any post judgment motions, and to be entitled to reversal, an error must be apparent on the face of the record.

The return of citation was "incomplete in all regards." It included no date or time the citation "came to hand;" no identification of the person to whom it was to be delivered; no date or time the citation was delivered; and no signature by an officer or authorized person. Although Husband argued Wife had actual knowledge of the suit, no evidence of that knowledge was before the trial court at the time it rendered the default judgment. Moreover, even with a DHL tracking sheet, the failure to file a complete return of service was fatal to the judgment.

DIVORCE: INFORMAL MARRIAGE

Wife's Claimed Date Of Marriage In Petition Put Husband On Notice Of Informal-Marriage Claim; However, Conclusory Evidence Insufficient To Support Finding Of Informal Marriage.

2. *Montemayor v. Montemayor*, No. 01-23-00374-CV, 2025 WL 898315 (Tex. App.—Houston [1st Dist.] 2025, no pet. h.) (mem. op.) (03-25-2025).

Facts: Husband's petition for divorce asserted a date of marriage coinciding with the parties' marriage ceremony. Wife's counterpetition asserted they married about a year earlier. They signed a partial MSA addressing the child-related issues but presented their property disputes to the court. The parties disputed the value and characterization of the marital residence, and the characterization of a piece of real property in Mexico and Husband's trucking company.

At trial, when Wife brought up her claim of informal marriage, Husband objected to Wife asserting an informal marriage in the absence of a pleading for that claim. The trial court agreed with Wife's assertion that she was not required to specifically plead for such an adjudication.

Husband noted that the parties' first Child was born less than a year before the ceremonial marriage. He had signed an acknowledgement of paternity and asked the divorce court to formally adjudicate his paternity.

After the court issued a memorandum ruling, Wife filed a proposed final decree. Husband objected to her inclusion of the date of marriage being a year before the ceremony. After a decree was signed, Husband appealed.

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

Opinion: When no special exceptions are made to a pleading, courts will liberally construe pleadings in the pleader's favor. Acknowledging there was little authority addressing the issue of whether an informal marriage must be specially pleaded, the court could find no authority requiring a specific pleading that an alleged marriage began informally. Wife's pleading included a date of marriage a year before Husband's, and the inclusion of that date was sufficient to put Husband on notice of Wife's claim.

The parties agreed they began cohabitating before the marriage date identified in Wife's petition. Wife claimed the parties referred to each other as husband and wife before getting a marriage certificate and filed taxes as a married couple before the ceremony. Husband could not recall how they filed taxes that year, and the tax return was not admitted as evidence. The deed for the marital residence referred to the parties as husband and wife and was signed before the ceremony. However, there was no evidence regarding an agreement to be married or that they represented to others that they were married. The appellate court sustained Husband's complaint and found the evidence to be legally and factually insufficient to support a finding of an informal marriage.

Because the date of marriage was inaccurate, the property division was reversed to address characterization issues.

DIVORCE: GROUNDS FOR DIVORCE/ANNULMENT

Marriage Annulled Because Husband Fraudulently Induced Wife Into Marriage For A Green Card; Attorney's Fees Reversed Because Despite Stipulation As To Qualifications And Amount Sought, There Was No Stipulation Or Evidence About The Reasonableness And Necessity Of The Fees.

3. *Singh v. Kaur*, No. 02-24-00023-CV, 2025 WL 728102 (Tex. App.—Fort Worth 2025, no pet. h.) (mem. op.) (03-06-2025).

Facts: When Husband and Wife began dating, Wife was a US citizen, but Husband was not. They were engaged for about 4 months before having a civil ceremony at a courthouse. They discussed travelling to India for a traditional wedding ceremony; however, Husband was involved in a pending asylum case that made this difficult. Husband needed a green card in order to be able to return to the US after a trip to India. Wife was particularly upset by Husband's pressure to assist him because he knew that she had been married before to a man who used her to gain US citizenship before becoming abusive. Before the couple could travel to India, the marriage fell apart. Wife obtained an annulment based on Husband's fraudulent inducement to marriage, and the trial court awarded Wife attorney's fees. Husband appealed.

Holding: Affirmed in Part; Reversed and Remanded in Part

Opinion: Husband first challenged the annulment, arguing the evidence was insufficient to support a fraudulent inducement finding. A trial court may annul a marriage if the other party used fraud to induce the petitioner to marry, and the petitioner did not voluntarily cohabitate with the other party after learning of the fraud. Fraudulent inducement is established by proving that a false material misrepresentation was made that was known to be false, was intended to be acted upon, was relied upon, and caused injury. A material misrepresentation means a reasonable person would attach importance to and be induced to act on information.

Husband argued that he did not need a green card to live or conduct business in the US. Wife knew of Husband's asylum status while the couple was dating. Husband told Wife he was not the person who would ask her to file for his paperwork. However, the day after he proposed, Husband did just that. Husband was aware of Wife's prior Husband using her to obtain immigration status. After the civil ceremony, Husband began pressuring Wife to help him get a green card because of his inability to travel. Husband asked Wife to meet with an immigration attorney about a potential trip to India. Husband would claim not to want a green card but would continually bring up his expiring work visa and inability to visit family in India. Wife discovered that despite pushing for the trip to India for the alleged purpose of conducting the traditional ceremony, Husband had not formalized any plans for the ceremony. The court was free to believe Wife's version of events and discredit Husband's disavowment of Wife's testimony.

Husband additionally complained of the attorney's fee award. At trial, Husband stipulated to Wife's attorney's qualifications and the amount of fees Wife incurred in the suit. A stipulation is an agreement, admission, or concession made in a judicial proceeding by the parties or their attorney's respecting a specified matter. A stipulation is not enforceable unless it is made in writing or in open court on the record. The court stated on the record that Husband's attorney stipulated to Wife's fees being reasonable and necessary; however, the record did not reflect that stipulation. Husband's attorney stipulated only to Wife's qualifications and the amount sought. Husband's attorney did not state that the fees were reasonable or necessary. Thus, the attorney's fee award was remanded for further proceedings.

DIVORCE: PROPERTY DIVISION

Husband Sufficiently Established Through Community-Out-First Tracing That 60% Of A Bank Account Was His Separate Property.

4. *Graham v. Graham*, No. 05-23-01258-CV, 2025 WL 886967 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (03-21-2025).

Facts: After a bench trial in a divorce, the court confirmed 60% of a bank account as Husband's separate property and divided the remaining 40% equally between the parties. Wife appealed.

Holding: Affirmed.

Opinion: On appeal, Wife challenged the characterization of 60% of the bank account as Husband's separate property. Wife argued that Husband's testimony alone was insufficient to overcome the community-property presumption. However, contrary to Wife's assertion, Husband offered corroborating and supporting evidence to demonstrate the separate property character of the funds. Moreover, Husband testified that funds originated from money he inherited from his father, and Wife did not contradict that assertion. Wife merely argued that the funds were comingled, making the entire account community property. However, Husband offered tracing evidence using the community-out-first method to establish the funds were his separate property.

Trial Court Had Authority To Appoint Receiver To Sell Marital Residence As Part Of Just And Right Division; However, Receivership Order Remanded To Ensure It Matched Language Of Divorce Decree Regarding Conditions of Sale.

5. *Miles v. Miles*, No. 05-24-00740-CV, 2025 WL 863479 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (03-19-2025).

Facts: Before the final divorce trial, the court ordered the parties to sell the marital residence, but that did not happen. At trial, because the parties had not even listed the house for sale, the judge expressed frustration with the parties. A final decree was rendered and subsequently modified. The initial decree ordered the parties to sell the residence and provided that if the parties did not appoint a realtor by a date certain or could not otherwise agree on certain prerequisites of a sale, the realtor would apply for the appointment of a receiver, and a receiver would be appointed with or without a hearing.

A subsequent order modified the division of the net proceeds from 60/40 in Wife's favor to a 50/50 split. It also included the possibility of the appointment of a receiver:

> If the Realtor Deadline is not met for any reason, the Court will sua sponte, without the need for any further Motion, appoint a Receiver, who may be a realtor (but is not required to be a realtor) on terms and conditions acceptable to the Court to take possession of the property and sell it on terms and conditions approved by the Court.
>
> The property shall be sold for a price mutually agreeable to the parties. If no agreement can be reached and the Realtor (or Receiver) obtains a contract for sale of the property for $600,000 or more, that price shall be used. If no agreement can be reached and the Realtor (or Receiver) believes that the property should be listed or sold for a price less than $600,000, the Relator (or Receiver) may seek permission of the Court, after hearing with notice to the parties, for a lesser price.

The "Realtor Deadline" was not met. A few months after the deadline, Wife filed a motion for the appointment of a receiver. After a non-evidentiary hearing, the court appointed a receiver. Husband (who had already pro se appealed the divorce decree), filed a pro se interlocutory appeal of the appointment of a receiver.

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

Opinion: Wife argued Husband's interlocutory appeal was untimely, and the appellate court lacked jurisdiction to consider the interlocutory appeal. Wife argued that because the amended decree provided for the sua sponte appointment of a receiver, Husband was required to challenge the appointment within 20 days after the signing of that order, rather than waiting until after the actual appointment. The appellate court held that because the parties could have avoided the appointment of a receiver by meeting the Realtor Deadline, Husband was not required to challenge the appointment of a receiver until one had actually been appointed.

Husband did not challenge the ruling requiring the property to be sold and did not challenge the 50/50 division of the net proceeds. He only challenged (in this appeal) the appointment of a receiver. Husband first challenged the lack of separate findings regarding the receivership appointment. Here, however, the court included relevant findings in the amended decree. Moreover, Husband did not argue or establish that he was unable to present his appellate issue due to a lack of findings. Thus, Husband was not harmed by the court not issuing separate findings.

Husband next argued that the sale of the marital residence before the conclusion of his other appeal would cause irreparable harm. In the other appeal, Husband challenged the characterization of certain real property as Wife's separate property, which, if reversed, would alter the division of the parties' other assets. However, the trial court temporarily stayed the receivership appointment, so the appellate court did not address that issue.

Husband further argued Wife failed to comply with the Texas Civil Practice and Remedies Code regarding receivership appointments. Husband's reliance was misplaced because the Family Code controls the division of property in a divorce. When property is not subject to partition in kind, a receiver may be appointed to effectuate a just and right division of the community estate. Here, the bulk of the community estate was the marital residence and retirement accounts. The court ordered the parties to sell the residence long before trial. Given the parties' failure to comply with court orders, the court did not abuse its discretion in appointing a receiver.

Husband additionally argued the receivership order impermissibly modified the property division. The receivership order tracked the language of the amended decree, with the exception of the language regarding the realtor needing court permission to sell the property for less than $600,000 if necessary. Thus, because it was unlikely the parties would agree to a price, the appellate court reversed with an instruction to modify the receivership order to include the $600,000 provision.

Because Husband Did Not Appeal Divorce Decree Dividing Entire Retirement 50/50, He Could Not Complain About QDRO's Language Consistent With That Division Five Years Later.

6. *Williams v. Nunnally-Williams*, No. 04-23-00110-CV, 2025 WL 871626 (Tex. App.—San Antonio 2025, no pet. h.) (mem. op.) (03-19-2025).

Facts: Five years after the parties' divorce, Husband filed a petition for a post-divorce QDRO to effectuate the division of his military retirement. The QDRO quoted the relevant portion of the divorce decree, which divided the entire retirement as community property and split it equally between the parties. Husband argued that this division impermissibly divested him of a separate-property portion of the retirement. The trial court signed a QDRO that divided the entire retirement 50/50. Husband appealed.

Holding: Affirmed.

Opinion: The appellate record did not contain a copy of the divorce decree or of the transcript containing the agreement read into the record at the time of divorce. Additionally, there was no specific evidence of when the parties married or when Husband's military service began.

Although Husband's complaint on appeal concerned the recently signed QDRO, his complaint was really that the divorce decree contained an error. Husband bore the burden in the divorce to show that any portion of his retirement was separate property. The parties could have agreed at the time of divorce to have treated the retirement as community property. Husband failed to timely appeal the divorce decree, and the trial court's plenary power to modify the property division and long since expired.

SAPCR: PROCEDURE AND JURISDICTION

Despite The Issue Not Arising Until After Final Trial, Texas Lacked UCCJEA Jurisdiction Over Child, And Court Erred In Failing To Sever And Dismiss The Child-Related Issues From The Parties' Divorce.

7. *In re Jenkins*, No. 04-24-00873-CV, 2025 WL 702830 (Tex. App.—San Antonio 2025, orig. proceeding) (mem. op.) (03-05-2025).

Facts: Father was stationed in Japan when the Child was born there. Mother, Father, and the Child were still living in Japan when Father filed a petition for divorce in Texas. Mother filed a counterpetition and then moved with the Child to Philadelphia. The parties reached a partial mediated settlement agreement but could not agree on a geographic restriction on the Child's residence or on travel costs associated with visitation.

After the conclusion of a final hearing, Mother hired a new attorney, who filed a motion to sever and dismiss, asserting Texas lacked subject matter jurisdiction over the Child-related matters. Father asserted, via argument only, that he was precluded from filing suit in Japan due to military restrictions. Mother advised the court, also via argument only, that she had filed a suit in Philadelphia, were she and the Child reside. The court denied Mother's motion and found it also had emergency UCCJEA jurisdiction. Mother sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Father bore the burden of proof on jurisdictional facts, but he failed to file an affidavit or verified pleading setting forth facts relating to where the Child lived in the five years preceding the suit. Mother filed an affidavit, albeit after final trial but before a final order, demonstrating the Child had only lived in Japan until moving to Philadelphia after the suit was filed. Under those facts, Texas could only take home state jurisdiction if no other state had home state jurisdiction or if all courts with jurisdiction had declined jurisdiction. There was no evidence that Japan had declined jurisdiction. Even if the trial court correctly assumed temporary emergency jurisdiction, the scope of that jurisdiction had passed. Moreover, Pennsylvania may have acquired home state jurisdiction before Mother filed her petition there.

Fit-Parent Presumption Overcome With Evidence Of Mother's Drug Use, The Child Feeling Traumatized, And Mother's Inability To Protect The Child From Domestic Violence.

8. *In re K.R.S.*, No. 11-24-00048-CV, 2025 WL 792878 (Tex. App.—Eastland 2025, no pet. h.) (mem. op.) (03-13-2025).

Facts: After Mother failed a drug test, the Child was removed and placed with his paternal Grandmother. Mother went to rehabilitation for a month and picked up the Child when she was released. Grandmother filed a suit seeking sole managing conservatorship of the Child. Father did not participate in the suit. After a hearing, the court appointed Grandmother sole managing conservator and appointed the parents as possessory conservators. Mother was awarded visitation conditioned on drug testing and abstinence from illegal drug use. Mother was given a stair-step possession order, and Father was awarded no visitation. Mother appealed.

Holding: Affirmed

Opinion: At the outset, Mother asserted that the trial court impermissibly relied on recollections from a temporary orders hearing. Noting that a court may not judicially notice testimony taken at a prior hearing unless the testimony is admitted into evidence at the subsequent hearing, the court limited its review to only the evidence admitted at the final hearing.

Mother argued that the trial court's significant impairment finding was based on nothing more than surmise and was against the great weight and preponderance of the evidence. However, the trial court heard testimony that the Child tested positive for drugs in her care. Despite negative drug tests, Mother had a pattern of using drugs when she was stressed. Mother admitted to using drugs less than a year before the final hearing. The Child was exposed to domestic violence, and Mother acknowledged she lacked the ability to protect her children from Father. The Child had been traumatized by Mother leaving him alone and recalling a time when Mother provided food for the Child's sibling but not for the Child. Additionally, there was evidence Mother experienced suicidal thoughts.

Default Paternity Order Reversed Because Failure To Give Alleged Father Notice Of Reset Final Hearing Deprived Him Of Due Process.

9. *In re E.G.*, No. 05-24-00481-CV, 2025 WL 823869 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (03-14-2025).

Facts: Alleged Father was served with a suit to establish the parent-child relationship. Alleged Father did not file an answer, but he did appear pro se at a virtual hearing, at which the court ordered DNA testing. The DNA-testing order also included a notice that a final hearing would be held a bit over 2 months later. However, the final hearing was conducted more than two months after that stated date, with no hearing occurring on the date for which Father received notice. Nothing in the record indicated Alleged Father was apprised of the actual final hearing date. The trial court signed a default order adjudicating Alleged Father as the Child's father, and he timely filed a restricted appeal.

Holding: Reversed and Remanded.

Opinion: Texas Rule of Civil Procedure 245 requires reasonable notice of a reset final hearing in a contested matter. Failure to provide this notice violates a parties' due process and warrants a new trial. Thus, without notice, Alleged Father was deprived of due process and entitled to a new trial.

SAPCR: Alternative Dispute Resolution

Because Provisions Of Rule 11 Agreement Were Dependent Covenants, Father Was Excused From His Violation Of Prohibition Against Filing A Modification Suit Because Mother Violated Father's Right To Possession Of The Child; Sanction Award Against Mother's Attorney Reversed Because Order Did Not Include Requisite Findings.

10. *In re S.G.B.*, No. 05-23-00684-CV, 2025 WL 806209 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (03-13-2025).

Facts: In a modification suit, Mother and Father signed a Rule 11 agreement that required Father's possession to be supervised, required the parties to attempt counseling before litigation, prohibited Father from attempting to eliminate the supervision requirement until after the Child turned 16 years old, prohibited Mother from seeking jail time as punishment for failure to pay child support, and provided that if either party violated the agreement that party would pay the other's attorney's fees and costs regardless of the outcome of litigation.

Father filed a modification suit before the Child was 16 and without attempting counseling first because Mother had allegedly failed to release possession of the Child as agreed. Mother responded with a counterclaim alleging family violence against Father and requesting sole managing conservatorship. Father alleged Mother had repudiated the agreement and raised affirmative defenses.

During a jury trial, Mother's counsel violated an order in limine regarding the alleged family violence. The trial court granted a mistrial, and Father sought sanctions against Mother's attorney. In the second jury trial, the charge included a question on Father's affirmative defenses. The court overruled Mother's objections to the question's inclusion. Mother alleged breaches (failure to surrender possession) were independent covenants from the provisions Father breached. The jury found father failed to comply with the agreement, but his failure was excused.

A bench trial resolved remaining issues, including Father's request for sanctions. The court found Mother's counsel willfully and intentionally violated the in limine order and ordered counsel to pay Father's attorney's fees of just under $5000. Mother and her trial counsel appealed.

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

Opinion: On appeal, Mother again complained of the inclusion of the question regarding Father's affirmative defenses. A prerequisite to the remedy of excuse of performance is that covenants in a contract must be mutually dependent clauses. Mother argued they were independent clauses. Whether a covenant is dependent or independent depends on the parties' intention at the time the contract is made. Generally, when a covenant goes only to part of the consideration on both sides and a breach may be compensated for in damages, it is to be regarded as an independent covenant, unless this is contrary to the expressed intent of the parties. However, if the intent is not discernable from the contract's language, the question must be resolved through a question of equity and fairness. Courts presume dependence rather than independence because such a construction ordinarily prevents one party from having the benefit of his contract without performing his own obligations.

Here, the contract did not specify whether the provisions were independent or dependent. The appellate court reasoned that the parties likely would not have entered the contract without the provisions regarding Father's possession. Thus, Mother's obligations regarding surrendering the Child were mutually dependent with Father's obligations regarding future lawsuits. Thus, the trial court did not err in including the charge question regarding Father's affirmative defense.

The appellate court additionally rejected Mother's complaints that the evidence was insufficient to establish Father's affirmative defense and that Father failed to provide fair notice of his claim that she breached the agreement.

Mother further contended the trial court erred in not submitting to the jury a question regarding whether Father committed family violence. However, before trial, Father stipulated to conservatorship. Thus, there were no conservatorship questions to present to the jury and no reason to submit to the jury the question of whether there had been a history or pattern of family violence.

Finally, in response to Mother's counsel's appellate challenge to the sanctions order, Father argued that Mother's counsel was required to bring a separate appeal. However, the notice of appeal stated that Mother's counsel was joining her in the appeal as "a person affected by the orders." Thus, counsel was permitted to present the issue in the same appeal.

Because the trial court failed to make the necessary findings to support the sanctions order, that portion of the order was reversed. Although the order included a finding that Mother's counsel intentionally and willfully violated the order, the order did not include a finding of bad faith or that the conduct significantly interfered with the court's legitimate exercise of its core functions.

Father's Post-MSA Discovery That Mother Allegedly Lied In MSA Negotiations Did Not Constitute A Material And Substantial Change To Support Modification Of The Order Based On The MSA.

11. *In re P.J.*, No. 02-24-00236-CV, 2025 WL 807494 (Tex. App.—Fort Worth 2025, no pet. h.) (mem. op.) (03-13-2025).

Facts: Mother and Father had one Child. They obtained a final SAPCR order when the Child was about 6 years old, but Father filed a petition to modify that order less than a year later. That modification suit resulted in an MSA that gave Father the exclusive right to designate the Child's primary residence and imposed restrictions on Mother, including prohibiting her from consuming alcohol within 12 hours of her possession of the Child and submitting to drug tests requested by Father up to once a quarter. The MSA also provided that neither parent would pay child support to the other. About a month after the order was signed on the MSA, Father again moved to modify, claiming Mother had lied to him about pre-MSA events. Father sought sole managing conservatorship.

In the subsequent proceedings, the court admonished Mother not to introduce the Child to paramours. After Mother ignored that admonishment, she claimed to not know what "paramour" meant, and the court subsequently amended temporary orders to include the provision in writing. Father claimed that Mother, as a hairdresser, knew how to avoid getting a positive drug screening from hair samples and had faked test results. Mother's estranged husband testified about Mother's drug use and mistreatment of the Child and said that Mother had left a loaded gun in the Child's room on more than one occasion. Mother testified that she earned between $40k and $60k, but her estranged husband said Mother could earn as much as $200,000 a year. Father said Mother wasted her money on tattoos and drugs. Father additionally said Mother had only paid $600 of the temporary child support she had been ordered to pay during the pendency of the modification.

After the final bench trial, the court appointed Father sole managing conservator and ordered Mother to pay child support and child support arrearages. Mother appealed.

Holding: Reversed and Remanded.

Opinion: Mother argued there was insufficient evidence to support a material and substantial change to support either a modification of custody or child support, and there was insufficient evidence to support the amount the court found her to be in child-support arrears.

Father argued that his discovery of Mother's false statements regarding her parental fitness and the Child's circumstances constituted a material and substantial change. However, this argument amounted to an attack on the MSA's validity, and a modification proceeding is not the proper vehicle for such an attack. Father was required to establish an actual material and substantial change in circumstances"—in reality, not just his awareness or understanding of reality." Father discovery that circumstances were not what he thought was not equivalent to an actual change in circumstances.

Father additionally pointed to post-MSA events to support his assertion of changed circumstances. Father asserted Mother did not exercise her midweek possession consistently; however, there was no evidence whether she did so before the MSA. Father also noted injuries the Child suffered while under supervised possession with Mother; however, he failed to explain why an injury constituted a change in the Child's circumstances or Mother's fitness. Father complained of Mother introducing the Child to her boyfriend in violation of the court's oral order. Violating a court's directive does not equate to a material and substantial change for the purpose of a modification. Finally, Father asserted Mother failed two drug tests. However, Mother had a prescription for amphetamine, and other than Father's allegations, there was no evidence or expert testimony supporting an allegation that test results were faked. Further, there was no evidence that any alleged drug use impacted the Child. Accordingly, there was no evidence to support a material and substantial change as a ground for modifying custody.

Similarly, Father did not argue at trial that Mother's income had changed. He simply alleged what he believed her current income was.

Finally, although Mother acknowledged that she had not fully complied with the temporary orders for child support, she did not know the exact amount of payments she had missed, and Father produced no evidence of an amount. Further, although the court found Mother in arrears for medical support, that topic was not addressed.

Final Order Void Because Mother Withdrew Consent From Agreement Made On The Record In Open Court Because Court Did Not Make Present Rendition Accepting The Agreement As The Judgment Of The Court.

12. *In re M.E.B.*, No. 14-23-00928-CV, 2025 WL 899846 (Tex. App.—Houston [14th Dist.] 2025, no pet. h.) (mem. op.) (03-25-2025).

Facts: Father filed a SAPCR asking for an adjudication of his parentage and for sole managing conservatorship of the Child. Mother filed a counter-petition, but she was incarcerated at the time of trial. At trial, the court asked if the parties could reach an agreement. The court advised Mother that she could seek a full-blown trial on the merits but cautioned she would be unlikely to get her requested relief of unsupervised visitation because she had been involved in a drug deal that resulted in shots fired with the Child in the car with Mother. Mother stated that she would agree to supervision, Father being named sole managing conservator, and a child support obligation to begin after her release from incarceration. The trial court did not render judgment but instructed Father's attorney to draft an order. When Mother was presented with a written order, she refused to sign, stating that after seeing it in writing, she no longer thought it was in her Child's best interest. She notified the court of her withdrawal of consent. Regardless, the court signed Father's proposed order, and Mother appealed.

Holding: Reversed and Remanded.

Opinion: An agreed judgment rendered after a party has withdrawn consent is void. Judgment is rendered when the decision is officially announced in open court, by memorandum filed with the clerk, or otherwise announced publicly. Regardless of the method used, the language must reflect the judge's present declaration of a decision. The transcript did not reflect the trial judge's acceptance of the parties' agreement or reflect a present rendition of judgment. The court's docket sheet did not indicate that a decision had been made; it only stated that Father's attorney would take the future action of drafting an order. Because Mother withdrew her consent before judgment was rendered, the order was void.

SAPCR: PARENTAGE

Wife Entitled To Mandamus Relief From Order Granting Alleged Father's Oral Request At Discovery Hearing For Adjudication Of Parentage Without 45 Days' Notice To Wife.

13. *In re C.B.*, No. 02-25-00026-CV, 2025 WL 728233 (Tex. App.—Fort Worth 2025, orig. proceeding) (mem. op.) (03-06-2025).

Facts: During a same-sex marriage between Mother and Wife, Mother became pregnant and had a Child. Both women were listed as parents on the Child's birth certificate. Three years later, Mother filed for divorce. In an amended petition, Mother denied Wife's parentage of the Child and named a man as the alleged biological father. A temporary order required Wife to pay child support and awarded her an expanded standard visitation schedule. Alleged Father filed a petition in intervention seeking genetic testing and an adjudication of his paternity. Wife opposed this request, and an amicus attorney was appointed. However, the court later dismissed the amicus and ordered genetic testing, which established that Alleged Father was the biological father.

At a hearing on a motion to compel discovery, Alleged Father presented the genetic testing results and orally requested an order adjudicating him as the Child's father. Wife opposed the request, asserting it was an issue for final trial, and she was entitled to adequate notice. The trial court signed an order adjudicating Alleged Father as the Child's father, and Wife sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted in Part

Opinion: Wife first challenged the order requiring genetic testing. Wife did not seek mandamus relief until six months after the trial court signed the genetic testing order—and nearly eight months after the relief was orally granted. The test was performed two months after the oral ruling. Wife could have sought a stay to prevent the testing, but she did not do so. Moreover, Wife agreed to permit the test results to be entered into evidence. Wife offered no explanation for her delay. Therefore, Wife was not entitled to mandamus relief in her challenge to the genetic testing order due to the delay in seeking relief.

Wife next argued the trial court erred in granting Alleged Father's oral request for an order adjudicating his parentage. Rule of Civil Procedure 245 requires reasonable notice of not less than 45 days for a first trial setting. There is a rebuttable presumption the trial court complied with this Rule. The record was clear that the only matters to be heard at the hearing was Wife's motion to compel, and Alleged Father's motions for a protective order and a bifurcation of the divorce and SAPCR. By adjudicating Alleged Father as the Child's father, the court, in effect, tried a contested case without notice. Further, because Wife lacked an adequate remedy by appeal, she was entitled to mandamus relief. The trial court was directed to set a new hearing on the adjudication of Alleged Father's paternity with reasonable notice to all parties.

SAPCR: CONSERVATORSHIP

Evidence Supported 50/50 Possession Order; Trial Court's Decision To Appoint Parties Joint Managing Conservators Despite Wife's Allegations Of Abuse Did Not Create Inference That Court Found Wife Not To Be Credible Witness.

14. *In re L.C.W.*, No. 05-23-00815-CV, 2025 WL 823874 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (03-14-2025).

Facts: Wife and Husband were married for five years and had one Child. Husband filed for divorce on the grounds of insupportability, adultery, and cruel treatment. Wife countered on the grounds of insupportability and cruel treatment. After a final bench trial, the court appointed the parties joint managing conservators with a 50/50 possession schedule, confirmed as Wife's separate property certain percentages on funds in specified accounts, and awarded Wife the marital residence. Husband appealed.

Although Husband filed a request for findings, he did not file a notice of past-due findings, none were issued, and he did not complain about a lack of findings on appeal.

Holding: Affirmed.

Opinion: Husband first complained that the trial court erred in "deviating from the standard possession schedule and not giving [him] primary custody." Acknowledging Wife's allegations of family violence, Husband contended that the trial court must not have found Wife's evidence credible if the court appointed him as a managing conservator.

Because the Family Code does not use the term "primary custody," the appellate court interpreted Husband's argument as an assertion that the trial court should have appointed Mother a possessory conservator for the purpose of following the Code's standard possession order. Both parties offered evidence of the other's alleged misdeeds, including Husband's assertion that Wife sometimes put her work ahead of the Child, and Wife's claim that Husband sexually assaulted her in front of the Child. Wife stated she did not immediately report the assault due to embarrassment and cultural inhibitions. She ultimately dropped the criminal case against Husband because she knew she had to coparent with Husband for the rest of the Child's life and did not want him to go to jail. Husband's medical notes showed that he drank four to six beers to help him feel happier and not suicidal; it was difficult for him to do work, take care of things at home, and get along with other people; he became easily annoyed or irritable nearly every day; and he experienced panic-like symptoms and avoided being in public. Husband would lock himself in a room but come out every few hours to accuse Wife of having affairs. Wife testified that Husband had not contributed towards household expenses for years. The child custody evaluator stated that Mother seemed more attuned to the Child's needs. Given the totality of the evidence, the trial court did not err in rendering a 50/50 possession order.

Husband next argued the trial court erred in confirming portions of certain accounts as Wife's separate property instead of including the accounts in the just and right division of the community estate. Wife retained experts to trace the accounts, but Husband presented those experts' reports as trial exhibits. Husband also offered his own expert's report. Wife's experts' reports traced the accounts using community-out-first and clearinghouse principles and specified Wife's separate property interest in each account. Husband failed to point to any substantive trial evidence disputing Wife's tracing evidence or showing any changes to the accounts in the window between the completion of the reports and the date of trial. Thus, the court did not err in confirming the funds as Wife's separate property.

Finally, Husband argued the trial court erred in confirming the marital residence as Wife's separate property. However, the court "awarded" the residence to Wife as part of the just and right division of the community estate; it did not "confirm" the residence as separate property. Thus, the appellate court construed Husband's argument as a complaint that awarding Wife the residence resulted in an unjust division of the community estate. Husband failed to point to any facts tending to show the trial court abused its discretion in the property division, and in reviewing the record in light of the *Murff* factors, the court found no abuse of discretion.

SAPCR: POSSESSION

Husband Could Not Challenge Valuations On Appeal Without Offering Competing Values At Trial; Cash Bond Requirement Before International Travel To Non-Hague Country Reasonable Given Risk Of International Abduction.

15. *In re Marriage of Dajani and Qaimari*, No. 05-24-00335-CV, 2025 WL 875374 (Tex. App.—Dallas 2025, no pet. h.) (mem. op.) (03-20-2025).

Facts: After a bench trial in a divorce with Children, the court awarded Husband property in Jordan, required both parties to post a bond seven days before travelling to any country that is not a U.S. Hague Convention Treaty Partner, and awarded Husband a large sum of cash in the division of the community estate. Husband appealed.

Holding: Affirmed.

Opinion: Husband first challenged the award of the Jordan property without evidence of its value and for awarding him cash without evidence the cash existed. Husband complained that the only evidence was provided by Wife, was out of date, and was inaccurate. The party complaining of the division has the burden to show the division was so unjust and unfair as to constitute

an abuse of discretion. A party who does not provide any value cannot, on appeal, complain of the lack of information in dividing the community estate. Wife offered a valuation of the property in Jordan, and although Husband contested the valuation, he offered no alternative value. Wife offered a photograph of the cash awarded to Husband and testified that Husband kept it in a backpack to which she was not allowed access. The trial court was free to take Wife's testimony and evidence as more credible than Husband's.

Husband additionally challenged the bond requirement associated with international travel. If credible evidence indicates a potential risk of the international abduction of a child, the court must determine whether it is necessary to take measures to protect the Child. Here, there was evidence that both parties had strong connections to Jordan, which was not a party to the Hague. Both parties traveled there regularly. Evidence showed a Jordian court was unlikely to recognize a U.S. court order regarding the Children and that women did not have the same rights as they would in the U.S. Further, both parties had taken the Children out of state without notice to the other party and that custody orders were not always adhered to. Father argued the bond amount of $500,000 was arbitrary but cited no caselaw to support an assertion that this amount was excessive or outside the norms in this type of situation.

SAPCR: CHILD SUPPORT

Without Finding Of Net Resources Or Stated Reasons For Deviating From Guidelines, Child Support Obligation For Two Children Of More Than 25% Of Mother's Income Reversed.

16. *Cash v. Rodriguez*, No. 03-23-00270-CV, 2025 WL 920382 (Tex. App.—Austin 2025, no pet. h.) (mem. op.) (03-27-2025).

Facts: About one month after the entry of an agreed order in a SAPCR, Mother filed a petition to modify, asserting she was extremely concerned about the safety and well-being of the Children; Father "continue[d] to let a deviant" around the Children; and despite several outcries to therapists, doctors, and other public officials, Mother's concerns were being ignored. Father filed a counterpetition seeking sole managing conservatorship asserting Mother was engaging in parental alienation and coaching the Children to make false accusations about Father. After a trial, at which experts testified, the Court granted Father's requested relief. Mother appealed.

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

Opinion: The trial court stated its basis for its conservatorship determination was Mother's attempts to brainwash the Children against Father and his family, interference with the Children's therapy, and inability to provide a stable home. Mother did not challenge these findings on appeal but instead cited testimony that would have supported her requested relief. Mother did not show how the trial court incorrectly applied the law. Because there was some evidence to support the judgment, there was no abuse of discretion. Similarly, there was sufficient evidence to support the requirement that Mother's visitation be supervised, that she complete a psychological evaluation, and that she attend a high-conflict parenting class.

However, the court abused its discretion in ordering Mother to pay $400 a month in child support because that amount exceeded 25% of her net available resources. The court found that Mother earned $1574.63 a month and did not pay rent. Mother offered evidence that her net monthly resources after social security taxes and Medicare were $1385.25. The court made no finding of Mother's "net resources." Assuming the court found that deviation from guidelines was appropriate, it did not make the requisite findings to support that deviation.

SAPCR: MODIFICATION

Evidence Supported Modification To Give Father The Exclusive Right To Designate The Children's Primary Residence; Mother Failed To Show That Decision Was Based On Prejudice Against Her Transgender Partner.

17. *In re O.S.*, No. 02-23-00158-CV, 2025 WL 728107 (Tex. App.—Fort Worth 2025, no pet. h.) (mem. op.) (03-06-2025).

Facts: Shortly after Mother and Father's divorce 2014, Mother and Partner began a relationship; however, they broke up for a period during which time Mother remarried and separated from new Husband. "Although Partner self-identified as a female, multiple witnesses—including both Partner and Mother—testified that 'legally, [Partner's] a male.' [The appellate court] therefore use[d] male pronouns for Partner to avoid confusion." After leaving Husband, Mother and Partner resumed their relationship, and Partner moved into Mother's home.

The 2014 divorce decree appointed the parents joint managing conservators, with Mother having the exclusive right to designate the Children's primary residence, but educational and medical decisions were given to the parents independently. The decree also contained a morality clause regarding an intimate unmarried partner staying the night when the Children were present.

Father sought to be appointed the person with the exclusive rights to designate the Children's primary residence and to make educational and medical decisions. Mother counter-petitioned seeking the exclusive right regarding educational and medical decisions. Father alleged Mother failed to consistently surrender the Children, and he complained of Mother's medical and education decisions and of Partner's influence on the Children.

Mother and Father each discussed ailments suffered by the Children, with Mother characterizing them as normal childhood illnesses and injuries, and Father characterizing them as examples of Mother's negligence. Father asserted that Mother home-schooling one of the Children caused that Child to fall behind in school. Mother explained that while living in Utah, that state advised taking extra precautions for children with ADHD. Mother re-enrolled the Child in public school as soon as possible.

Partner had previously worked in the sex industry. Mother questioned the sincerity of Father's concern regarding that issue, given Mother and Father met at a BDSM event, and Father used to work on the production of BDSM videos. Also, although Father and his wife were not genetically related, Mother asserted Father's wife was his niece by marriage. Partner suffered from PTSD and did not take medication consistently. Partner no longer took medication for borderline personality disorder believing Partner had been cured. Father also expressed concerns about Partner's aggressive political posts on social media. Partner described the posts as merely an example of a very dark sense of humor. However, Partner had made serious Facebook posts attacking Father as a fascist and using other similar terms. Father asserted those posts led to more than a hundred calls to Father's job until he was fired. Mother claimed not to follow the social media posts.

After a bench trial, the court granted Father's requested relief. Mother appealed.

Holding: Affirmed.

Opinion: Mother complained of the trial court's finding that a material and substantial change in circumstances supported modification. However, Mother filed a counterpetition judicially admitting to such a change. Moreover, Mother only challenged on appeal two of the trial court's findings supporting a material and substantial change. She failed to address the other identified bases for the finding.

Mother additionally argued the modification was not in the Children's best interest. Mother argued the modification decision was based on Partner's online "pro-transgender content," and the trial court's decision violated Partner's right to freedom of speech. However, the court heard contradictory evidence during the bench trial and, as the finder of fact, was charged with the duty of resolving factual discrepancies. Although Partner characterized most of the posts as tongue-in-cheek jokes, at least one post had the real-world consequence of Father losing his job. Moreover, there was evidence to support the trial court's decision that had nothing to do with Partner's posts.

Mother challenged the trial court's time limitations and other rules regarding witnesses. However, Mother failed to preserve those issues for appeal. Even if she had made timely objections, she failed to make any offers of proof or bills of exception regarding what she would have proffered if given more time.

Mother finally challenged the court's denial of her motion for new trial based on her claim of new evidence. Mother acknowledged the evidence was not newly discovered. The court allowed Mother a hearing to present her claims. Most of Mother's evidence was inadmissible for lack of relevancy or other reasons having nothing to do with the due diligence requirement for new evidence. The trial court did not abuse its discretion in denying the motion for new trial.

Request To Modify Geographic Restriction To Prevent Mother's Move Across Texas Was Denied Because Father Failed To Show That Modification Would Be In The Best Interest Of The Children.

18. *In re M.E.R.*, No. 11-23-00263-CV, 2025 WL 714722 (Tex. App.—Eastland 2025, no pet. h.) (mem. op.) (03-06-2025).

Facts: The prior order gave Mother the exclusive right to designate the Children's primary residence in Texas. The parties lived in Midland at the time of that order; however, according to Mother, the choice to live there was due to her work for Chevron, it was intended to be temporary, and Father knew Mother intended to move to Houston next for her job. When Mother received a promotion that required a move to Houston, she notified Father and the trial court. Father filed a petition to modify to change the geographic restriction on the Children's residence to only Midland and to have travel expenses associated with visitation allocated between the parties. Mother filed a counterpetition seeking to be named sole managing conservator, with Father's possession being supervised.

The trial court denied both parties' modification petitions, and Father appealed.

Holding: Affirmed.

Opinion: Without addressing whether Mother's move constituted a material and substantial change or whether Mother's counterpetition constituted a judicial admission of a material and substantial change, the appellate court found that Father failed to show that the trial court erred in finding that modification was not in the best interest of the Children.

The trial court found that Mother had a good-faith motive for moving to Houston, and Father did not challenge that finding. Further, there was some evidence that Father had the ability to relocate to Houston and had the ability to take time off work to accommodate his travel to see the Children. His current employer could potentially transfer Father to Houston, and Father had job skills that would give him opportunities should he seek new employment. In reviewing the *Holley* and *Lenz* factors, the evidence was sufficient to support a decision not to alter the geographic restriction on Mother's right to determine the Children's primary residence.

Additionally, the trial court found that Father offered no credible evidence to support his claim that travel to Houston would cost him $1000 a trip, and Father failed to challenge that finding on appeal.

TDFPS's Pre-Petition Efforts To Place The Child With Relatives Of The Incarcerated Parents Satisfied The Requirement To Make Reasonable Efforts To Return The Child.

19. ***In re M.N.M.***, __ S.W.3d __, No. 11-24-00260-CV, 2025 WL 714725 (Tex. App.—Eastland 2025, no pet. h.) (03-06-2025).

Facts: Mother's and Father's rights to another child had been terminated on endangerment grounds within one year before the current suit. The Child in this suit was removed because she tested positive for drugs at birth. The Child was returned to Mother and Father—who lived with the Child's paternal great grandmother—on condition that the great grandmother would supervise possession. However, the Child was removed again after the great grandmother failed to supervise, and the parents were arrested for shoplifting. The Child was then placed with his maternal grandmother. However, maternal grandmother was not a suitable placement due to her criminal history. The caseworker worked with the parents for a short while, but did not arrange for the parents to complete their services after incarceration. The Child was placed with a foster family who wanted to adopt her. After a trial, the court terminated the parents' parental rights on TFC 161.001(b)(E, M, and N) grounds. The parents appealed.

Holding: Affirmed.

Opinion: Mother and Father challenged the trial court's 161.001(f) finding that TDFPS made reasonable efforts to return the Child before the final hearing.

The trial court terminated on the grounds of 161.001(b)(1)(E), (M) and (N), and the parents did not challenge those grounds for termination. Subsection N is commonly referred to as the "constructive abandonment" ground and requires a finding that "the department made reasonable efforts to return the child … and … a continuing danger remains" in the parents' home. Subsection (f) was enacted after the existence of Subsection N, and it presumed that Legislature enacted the new provision with full knowledge of the existing law. Thus, notwithstanding this language's similarity to Subsection (f), courts must not interpret a statute in a manner that renders any part or provision meaningless.

Here, TDFPS implemented a family service plan, which is generally considered a reasonable effort to return the child to the parent. The issue is whether TDFPS made reasonable efforts, not ideal efforts. Implementation of a service plan is not "absolutely required" to show reasonable efforts to return a child. Courts have found that incarceration or deportation can excuse TDFPS's choice not to make a service plan, if TDFPS attempted to place the child with the parent's relatives.

Although the parents argued that the court should have focused on only efforts made between the date of the filing of the petition for termination and the final trial, the appellate court held that the statute was not so restrictive. Efforts made before filing the petition could be considered. Further, the question was not limited to whether TDFPS was the temporary managing conservator. The children may be placed in foster care with the goal of returning the children to their home.

The appellate court noted that an incarcerated person cannot be expected to complete every requirement of a service plan while in custody, but many evaluations, classes, and assessments can be achieved with a caseworker's assistance. Here, although the caseworker did not assist in completing the parents' service plan, the caseworker did maintain contact with the parents and searched for relatives with whom to place the Child.

Further, the reasonableness of TDFPS's reunification efforts must be viewed in light of the parents' efforts. Mother and Father failed to acquire a legal source of income and safe housing, continued testing positive for various drugs, and did not engage in counseling. The parents had other children removed from their care recently. The Child here tested positive for marijuana, and Mother and Father violated orders requiring their possession of the Child to be supervised. Mother and Father's incarceration rendered them physically unable to care for the Child, and their potential family members were eliminated as safe placement options.

★★★ TEXAS SUPREME COURT ★★★

Order Dismissing TDFPS's Suit Based On Notice Of Nonsuit Was Not Final Because It Did Not Clearly Render Judgment On Mother And Father's Motions For Sanctions Against TDFPS.

20. *In re C.K.M.*, __ S.W.3d __, No. 24-0267, 2025 WL 807353 (Tex. 2025) (03-14-2025).

Facts: TDFPS initiated a SAPCR that required Mother and Father to participate in services. Almost a year later, TDFPS filed a separate petition to terminate Mother and Father's parental rights. Mother filed an answer, moved to consolidate the two suits, filed counterpetitions seeking sole managing conservatorship, and filed a motion for sanctions, asserting TDFPS's claims were frivolous and brought in bad faith. Father filed his own answer, counterpetition, and motion for sanctions. In response, TDFPS moved to nonsuit its claims. The trial court stated it was required to grant the nonsuit and expressed frustration with TDFPS. The court further stated an intent to conduct a separate sanctions hearing.

About a month after signing the dismissal order, the court conducted the sanctions hearing. Roughly a week later, it signed the order granting sanctions. TDFPS appealed the sanctions order, arguing the trial court had lost plenary power by the time it signed the order. The appellate court dismissed the appeal and vacated the sanctions order as void. Father petitioned the Texas Supreme Court for review.

Holding: Appeal Dismissed; Remanded to Trial Court.

Opinion: Generally, the appellate courts only have jurisdiction to review appeals of final orders. An order is final if (1) it disposes of all then-pending claims and parties or (2) it unmistakably states that it is a final judgment as to all claims and parties. TDFPS argued the judgment was final because it clearly expressed an intent to dismiss all pending claims and parties and enter a final judgment.

To constitute a final judgment under the "second method" of reviewing judgments, the intent to dispose of the case must be unequivocally expressed in the words of the order itself. It must leave no doubt about the court's intention. Here, the order did not state that it was final or that it disposed of all claims and parties. It did not contain a Mother Hubbard clause or language authorizing its enforcement or execution. There was no decretal language except for a provision that the attorney ad litem was relieved of all duties.

TDFPS argued, and the appellate court agreed, that the order was final because it directed the court clerk to remove "this cause" from the court's docket and notify the parties that "this cause is hereby dismissed." TDFPS argued that "this cause" necessarily referred to the entire consolidated case, including counterclaims and motions filed by all parties. However, the title of the order only referred to TDFPS's motion to terminate, the introductory paragraph stated only that the specific request "was heard," and the only relief granted was to terminate temporary orders and relieve the attorney ad litem of duties. The dismissal order lacked the necessary "host of indica" of finality, and use of the word "cause" did not unequivocally express the court's intent to enter a final judgment. The trial court retained plenary power when it signed the sanctions order.

MISCELLANEOUS

Mother Not Entitled To Interim Attorney's Fees In Modification Suit Because She Failed To Establish Connection Between Requested Fees And The "Safety And Welfare" Of The Child.

21. *In re Perkins*, No. 14-24-00720-CV, 2025 WL 868530 (Tex. App.—Houston [14th Dist.] 2025, orig. proceeding) (mem. op.) (03-20-2025).

Facts: Since the Child was born, several orders had been rendered. Father moved to modify a prior order based on an MSA. The trial court granted Mother's no evidence MSJ and dismissed Father's claims. Father appealed that decision, and the appellate court remanded the trial court's ruling. During the pendency of that appeal, Father sought clarification of the prior order based on the MSA. The court referred that issue to arbitration as required by the prior order. A few months after a final order was rendered in the remanded suit, Father filed another motion to modify seeking sole managing conservatorship among other modifications. Mother filed a motion for interim attorney's fees, noting dismissals, nonsuits, and appeals. Mother stated she had been involved in constant litigation for the prior three years and had already incurred over $20,000 in attorney's fees. Because Father had requested a jury trial in the present suit, Mother's attorney estimated fees exceeding $100,000. After a hearing, the court ordered Father to pay $90,000 in interim fees. Father filed a petition for writ of mandamus.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Mother stated that she had concerns for the Child's emotional well-being. The Child was aware of the suit because Mother and the Child were in the car in the parking lot for the Child's basketball game when Mother was served with citation. Father had been resisting complying with discovery requests. Mother stated she had no more funds to pay for attorneys, was afraid her attorney would need to withdraw, and she did not believe it was in her best interest to represent herself in a jury trial. Mother stated that the Child would be devastated if Mother lost the suit because she could not afford an attorney. She believed the fees were necessary to protect the Child's best interest. Father said he did not have $90,000 to pay to Mother's attorney. Mother's attorney testified as to the reasonableness of her fees, her associate's fees, and her paralegal's fees and outlined matters that would need to be addressed in the case. Mother stated that serving her with citation in the Child's presence traumatized the Child, and granting Father's requested relief regarding possession would negatively impact the Child's well-being. Mother had not filed a counterpetition raising any safety or wellness concerns.

Texas Family Code Section 105.001(a) authorizes temporary orders, including interim attorney's fees, that are for the "safety and welfare" of the Child. Although the trial court included a finding in its order that the fees were ordered for the Child's safety and welfare, there was no evidence to support such a finding. Mother's motion did not raise any concerns about the Child's welfare, safety, or specific needs. When asked why she sought fees, Mother stated she could not afford representation and that proceeding without representation would not be beneficial to her or her son. Neither her motion nor her testimony established a connection between the necessity for interim fees and the safety and welfare of the Child.