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CASELAW UPDATE

(Cases from May 1–31, 2026)

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DIVORCE: PROCEDURE AND JURISDICTION

Wife Failed to Establish Her Failure to Appear at Final Trial was Not Intentional or Due to Conscious Indifference.

1. *Calbow v. Calbow*, No. 03-24-00456-CV, 2026 WL 1391451 (Tex. App.—Austin 2026, no pet. h.) (mem. op.) (05-19-2026).

Facts: The parties cross petitioned for divorce. Husband sought a divorce on insupportability, while Wife asserted adultery and cruelty as grounds. Wife's counsel withdrew and new counsel was substituted as Wife's attorney. That same month, the trial court signed a scheduling order with a trial setting. Wife's new attorney later withdrew, and the trial date—which was to occur about four months later—was listed on the order granting the withdrawal.

Three days before trial, Wife filed an "agreed" motion for continuance; however, it was unsigned by Husband's counsel. The day before trial, Husband filed a brief in support of his requested relief regarding the marital residence. On the day of trial, Wife failed to appear. The court noted that Wife's motion for continuance had been filed but not set for hearing and asked opposing counsel whether the motion was in fact agreed. Husband's attorney stated there was no agreement on a continuance, but there had been an agreement for the existing trial date. After the hearing, the court signed a default decree.

Wife then filed a motion to set aside the default judgment using on a form. She checked a box asserting that the judgment should be set aside due to accident or mistake. In the section instructing her to state specific facts to support that claim, Wife described the history of the case and concluded that she was not an attorney and had no knowledge of the process. At the hearing, Wife explained she thought the only issue would be her motion for continuance and that the court would address that without her needing to appear. The court denied the motion to set aside the default judgment. Wife appealed.

Holding: Affirmed.

Opinion: Although the withdrawal order contained a hearing date a few days before the actual hearing, Wife's motion for continuance showed that Wife knew the actual date of the final hearing. Contrary to her assertion on appeal, Wife had notice of the final hearing.

Although Wife called her motion for continuance "agreed," in her motion to set aside default judgment, she stated her motion for continuance was opposed. Wife knew her motion was opposed yet failed to appear. Her belief that the court would either approve or deny it did not provide a justification for failing to appear. If the court had denied her motion, it would mean the trial would continue as scheduled. There was no evidence Wife had reason to believe her motion would nullify the existing trial date.

Husband Waived Appellate Complaints by Signing Decree as "Approved and Consented to as to Both Form and Substance."

2. *Algaissi v. Qamer*, No. 02-25-00212-CV, 2026 WL 1449839 (Tex. App.—Fort Worth 2026, no pet. h.) (mem. op.) (05-21-2026).

Facts: After a bench trial, the court signed a final decree of divorce that included provisions for the parties three Children. Husband and the parties' attorney's each signed the decree indicating their approval and consent to the decree as to both form and substance. Husband appealed.

Holding: Affirmed.

Opinion: Husband failed to pay the reporter for a record, so the appellate court only addressed the appellate issues that could be decided without a reporter's record. Before briefing was submitted, the appellate court invited Husband to provide good cause as to why a record was not obtained, but Husband did not do so. Even after this "void" was noted in Wife's appellee's brief, Husband did not address the lack of a record in a reply. "However, despite Husband's abject failure to respond to [the court's] order, [the court was] aware of the supreme court's 'general approach of resolving cases on the merits and preserving appellate rights when possible.'"

Husband challenged the appointment of Wife as the parent with the exclusive right to designate the Children's primary residence, the division of the community estate, and the finding of actual and constructive fraud committed by Husband against the community estate. Because Husband signed the decree as agreed as to form and consent, he waived his right to complain of the issues he raised in this appeal—he invited the error. Further, in a review of the trial court's findings and the appellate record, the appellate court found the trial court did not abuse its discretion and overruled Husband's complaints.

Arbitrator Did Not Exceed Its Authority by Ordering Husband to Pay for a QDRO to Divide Retirement Accounts Pursuant to Parties' Premarital Agreement.

3. *Wood v. Wood*, No. 14-25-00250-CV, 2026 WL 1427049 (Tex. App.—Houston [14th Dist.] 2026, no pet. h.) (on reh'g) (mem. op.) (05-21-2026).

Facts: The parties signed a premarital agreement providing that no community estate would be created. If a joint account was opened, each party would own a 50% separate-property interest in the account. Upon marriage, Husband would convert certain retirement accounts to joint accounts.

When the marriage became insupportable, the parties signed an MSA reciting that no community property existed and referenced attached tables that identified their separate property. The MSA did not include any tables, but it referenced Schedules A through F, just as the premarital agreement had. Specifically, the MSA said that Exhibit F reaffirmed the parties' agreement regarding Husband's retirement accounts of which each spouse would own a one-half separate property interest. The MSA also contained an arbitration clause to resolve drafting disputes.

After signing the MSA, Husband filed for divorce, and Wife filed a general denial. Wife filed a proposed divorce decree, but Husband objected, asserting it did not comport with the MSA. The court granted Husband's motion for arbitration.

The arbitrator commented that Husband might have had a fiduciary duty regarding the Schedule F accounts, but there was no evidence of mismanagement. The arbitrator held that to determine each party's share of the Schedule F accounts, Husband would have to pay for a QDRO and supply the necessary documentation. The arbitrator did not find that Husband had an obligation to provide an accounting to Wife. While the arbitrator did not explain this reasoning, the appellate court noted that in the premarital agreement, Wife had voluntarily waived any further disclosures regarding property, including its value. Husband prepared a decree, which included a provision requiring Husband to hire QDRO services within 30 days of signing the decree. The trial court signed Husband's proposed decree over Wife's objection. She appealed.

Holding: Affirmed.

Opinion: Wife argued the trial court should have vacated the arbitrator's award because it impermissibly recharacterized the Schedule F accounts as divisible assets. Wife acknowledged that she agreed to arbitration in the MSA but argued the arbitrator exceeded this authority by making substantive rulings on property rights.

The arbitrator explained that the parties had partitioned their property in the premarital agreement, and no community property existed. Nothing in the arbitrator's award conflicted with that partition. The arbitrator had the power under the MSA's arbitration clause to make the drafting guidance in the arbitration award.

Wife additionally argued that the decree divested her of her separate property. Wife argued the "as of" date in the premarital agreement addressed valuation at the time of that agreement and that valuation date deprived her of the separate property agreed to by the parties with respect to Husband's retirement accounts. However, the final decree accounted for the parties' agreement by confirming "any contributions, interest, dividends, gains, or losses on that amount *arising since that date*." Wife was not divested of any separate property. Wife additionally complained of the residual confirmation clause that covered any property not already apportioned in the decree. However, that clause also stated it did not apply to any asset "expressly apportioned otherwise in this decree." Wife's complaint lacked merit.

Wife further asserted the decree erroneously disposed of a pending claim for breach of fiduciary duty. Wife did not file any counterpetition and made no affirmative request for relief other than for attorney's fees. Wife asserted the claim existed because the arbitrator addressed it. However, the arbitrator said there was no evidence of mismanagement.

Parties' MSA Survived Dismissal of Divorce Without Prejudice and was Enforceable in Subsequent Divorce Proceeding.

4. *Tilleman v. Tilleman*, No. 03-25-00020-CV, 2026 WL 1500825 (Tex. App.—Austin 2026, no pet. h.) (mem. op.) (05-29-2026).

Facts: Father filed for divorce. About half-a-year later, the parties signed an MSA resolving all outstanding issues. Neither party sought to enforce the MSA. Rather, a few months later, they filed a joint notice of nonsuit, and the case was dismissed without prejudice. Less than a year later, Father filed another petition for divorce and asked the court to enforce the MSA. Mother contested enforcement and argued the prior MSA only applied to the first divorce suit, and she had revoked her consent. The trial court found Father was entitled to judgment on the MSA and signed a final decree of divorce incorporating its terms. Mother appealed.

Holding: Affirmed.

Opinion: Mother pointed to language in the MSA referencing a final order to be signed "in this cause" and argued the second divorce was not the same cause. However, the MSA purported to resolve "all issues relating to" the divorce, not just the initial lawsuit. Because the initial divorce was dismissed without prejudice, those "issues relating to" the parties' divorce remained at

issue. The parties agreed the MSA was irrevocable and that no community estate would arise after the MSA's execution. Although the parties agreed to limit enforceability until the entry of a final order, that did not mean the MSA did not survive the nonsuit. MSAs are contracts, not court orders.

> Since the parties filed their briefs in this case, two courts, including our own, have held that a party should seek judgment on an MSA executed during the pendency of a child custody proceeding while that proceeding is pending, or else they risk losing their right to judgment on the MSA. *See In re B.W.A.*, __ S.W.3d __, No. 03-25-00931-CV 2026 WL 917433, at *6 (Tex. App.—Austin Apr. 1, 2026, orig. proceeding) ("[S]ection 153.0071 did not empower the trial court to enter an order on an MSA after its plenary power had expired."); *In re C.T.H.*, __ S.W.3d __, No. 05-22-01202-CV, 2025 WL 3285467, at *8 (Tex. App.—Dallas Nov. 25, 2025, pet. filed) ("When the plenary power of the trial court expired in the original case and Grandparents had done nothing with the MSA, the MSA simply evaporated.").

The court distinguished this case from the two referenced above because both involved final judgments on the merits after a trial. Here, the initial divorce was dismissed without prejudice, and the issues remained unresolved. Res judicata did not apply. The court further noted another Dallas opinion finding that an MSA survived a dismissal without prejudice. *In re S.K.D.*, No. 05-11-00253-CV, 2014 WL 3058452, at *1–2 (Tex. App.—Dallas July 8, 2014, no pet.) (mem. op.).

The court disagreed with Mother's position that this holding would raise public policy concerns. Mother argued that parties would be hampered by a "holding that parties are literally forever bound to decision to [an MSA]—despite their clear intention to abandon the underlying suit and reconcile their marriage." The MSA here did not include any provision regarding enforceability after a dismissal without prejudice. Additionally, the MSA complied with the Family Code. Enforcement of this MSA did not violate public policy.

DIVORCE: PROPERTY AGREEMENTS

Divorce Remanded Because Trial Court Improperly Found Premarital Agreement was Void.

5. *In re Marriage of Potyondy*, No. 05-24-00312-CV, 2026 WL 1214429 (Tex. App.—Dallas 2026, no pet. h.) (mem. op.) (on reh'g) (05-04-2026).

Facts: Days before marriage, the parties signed a premarital agreement. At the time of the divorce trial, Husband lived in California, and Wife lived in Texas with the parties' three Children. At the time of the agreement, Husband had savings, and Wife was in debt. They were both 30 years old. Husband testified that they discussed the making of an agreement, Husband hired an attorney, and the agreement went through many revisions before being signed. Wife asserted she was only given two days to review the agreement and felt she had no option but to sign. The agreement provided that upon divorce, community property would be divided equally, but Husband would be reimbursed for half of the difference between Husband's positive net worth and Wife's negative net worth at the time of marriage.

The trial court concluded the agreement was unconscionable when signed and was therefore void. The court found Wife was young, did not understand the ramifications of what she was doing, and lacked legal representation. Husband appealed.

Holding: Reversed and Remanded.

Opinion: Husband asserted the trial court incorrectly found the premarital agreement was unenforceable. Texas law generally favors premarital agreements. A premarital agreement can only be found to be unenforceable if it was not signed voluntarily; or if the agreement was unconscionable when made *and* certain disclosures were not made.

Here, the trial court's finding about unconscionability did not fully address the disclosure portion of the statute. While there were some findings regarding disclosure, the court did not find that Wife "did not have or reasonably could not have had, adequate knowledge of the property or financial obligations of" Husband when she entered the agreement. Even if the appellate court were inclined to presume such a finding, there was no evidence pertaining to this required element. Moreover, the agreement itself included a provision stating that each party acknowledged that he or she had, or reasonably could have had, a full and complete knowledge of the property owned by the other party, as well as complete knowledge of all financial obligations of the other party. Wife presented no evidence to challenge this provision of the agreement.

In a footnote, the appellate court noted that the finding that 30-year-old Wife was too young to understand the ramifications did not support a conclusion that Wife lacked adequate knowledge of the property and financial obligations of the parties.

DIVORCE: PROPERTY DIVISION

Temporary Order Requiring Sale of House was Not Binding and Did Not Preclude Award of House to Wife in Final Decree.

6. *Cylear v. Johnson Cylear*, No. 03-25-00129-CV, 2026 WL 1338080 (Tex. App.—Austin 2026, no pet. h.) (mem. op.) (05-14-2026).

Facts: After a nearly two-year separation, Husband filed for a no-fault divorce, and Wife counter-petitioned for a divorce based on abandonment and insupportability. A temporary order based on a hearing without a transcript required the marital residence to be sold, and each party would be responsible for half the mortgage until the residence was sold. A jury determined the divorce should be granted on insupportability grounds, determined the characterization of several assets, found Husband's separate estate was entitled to reimbursement from Wife's separate estate and from the community estate, found Husband had not committed constructive fraud because the disputed transactions were "fair," and determined the amount of each parties' reasonable and necessary attorney's fees. The remaining issues were tried to the bench. Both parties appealed.

Holding: Affirmed.

Opinion: Husband first argued the court erred in awarding the marital residence to Wife because the parties had entered a binding agreement that the property would be sold. Husband's argument was based on a Rule 11 agreement filed with the trial court; however, that agreement did not bear the parties' signatures. Additionally, although a Rule 11 agreement can be made on the record in open court, no transcript of the relevant hearing was included in the appellate record. Further, the Family Code provides that a property agreement may be revised before rendition of divorce unless binding under another rule of law. By setting the case for a contested hearing on the division of the marital estate, including the marital residence, the parties repudiated any asserted agreement regarding the marital residence.

Husband asserted the temporary order regarding the sale of the residence constituted a finding that the sale was just and right. However, there was no "just and right" finding in the temporary order. Additionally, there was no evidence of any offer to purchase the residence or that the property was ever under a contract for sale. Husband additionally asserted the agreement was binding because he had signed a residential real estate listing agreement with the realtor. However, that agreement had an expiration date and was not "binding under another rule of law" to prohibit Wife from repudiating the agreement before the rendition of divorce. Further, the Family Code gave the court the authority to review the agreement to determine whether it was just and right before rendition of a final judgment.

Husband also asserted the trial court abused its discretion by awarding an account to Wife when the jury had found it was 36% Husband's separate property. Husband failed to raise this issue in a motion for new trial or otherwise bring it to the trial court's attention and, thus, waived it for appellate review. Further, Husband's argument misstated the jury's findings and the division of assets.

Husband next argued the trial court abused its discretion in awarding Wife a disproportionate share of the community estate despite granting the divorce on the ground of insupportability. However, the court can consider the *Murff* factors in a no-fault divorce, and the evidence supported the division.

In her cross-appeal, Wife argued the trial court erred in denying her claim of constructive fraud. The jury found, in this order, that the transactions complained of by Wife were fair and that Husband depleted the community by nearly $350k. Wife asserted that these answers conflicted, and the court was required to award her that amount found by the jury in her constructive fraud claim. The fact that the jury charge did not condition the "amount" question on a negative answer to the "fair" question did not alter the result. Because the jury found the transactions were fair, the court properly disregarded the jury's answer to the subsequent question regarding amount.

Husband's Appellate Complaints Waived Because Findings Contained No Values, and Husband Did Not Request Additional or Amended Findings.

7. *Henry v. Cook*, No. 14-25-00089-CV, 2026 WL 1396084 (Tex. App.—Houston [14th Dist.] 2026, no pet. h.) (mem. op.) (05-19-2026).

Facts: The parties' divorce proceedings lasted longer than their brief marriage. After the entry of a final decree, Husband appealed.

Holding: Affirmed.

Opinion: Husband argued the court erred in failing to make adequate findings of fact. However, Husband waived this issue by failing to request additional or amended findings. Husband additionally argued the court erred in dividing the estate disproportionately in Wife's favor. Although Husband asserted Wife was awarded nearly 60% of the community estate, the findings contained no values of the parties' assets and liabilities. Husband noted that both parties filed inventories, but those inventories

could not serve as a substitute for findings because there was no way of knowing the values assigned by the parties to the community assets and liabilities. The parties disputed the values of multiple assets. Thus, the appellate court could not determine whether the property division was just and right and overruled Husband's complaint.

Husband also challenged an award of attorney's fees; however, the court ordered each party be responsible for his or her own fees.

Husband argued he received ineffective assistance of counsel. Parties are only entitled to counsel in criminal prosecutions. Husband's complaint was unavailable to him in this civil proceeding.

Husband's remaining issues were overruled for either failure to preserve the complaint or failure to establish harm. The appellate court noted that fault is a *Murff* factor that may affect the just and right division, even in no-fault divorces.

Default Property Division Awarding Marital Residence to Father Failed to Consider the Best Interest of the Children and was Reversed for a New Just and Right Division.

8. *Martinez v. Batres*, No. 03-24-00388-CV, 2026 WL 1440302 (Tex. App.—Austin 2026, no pet. h.) (mem. op.) (05-22-2026).

Facts: Father filed a petition for a no-fault divorce in which he stated an expectation for the parties to reach agreements; however, he also requested attorney's fees. A return of service indicated Mother was personally served, but she did not file an answer. A final hearing was conducted without notice to Mother, and the court signed a final decree granting Father's requested relief, which included appointing the parties joint managing conservators and giving Mother the exclusive right to designate the Children's primary residence and to receive child support. Father offered a spreadsheet with values to support his proposed division of the marital estate, which purported to divide the estate relatively equally. The court did not award attorney's fees. Part of the division awarded Father the parties' residence in Texas and awarded Mother a home in Mexico.

About a month after trial, one of the Children returned to the Texas house from school to find a handwritten eviction notice on the front door. Mother filed a restricted appeal.

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

Opinion: Mother argued the decree was "unduly harsh" because it forcibly evicted her and her two Children from the marital residence with no evidence to support the division. To succeed on a restricted appeal, error must be apparent on the face of the record. At the divorce trial, the court "held onto" the exhibits rather than provide them to the court reporter. Mother asserted this excluded the exhibits from being part of the appellate record. The appellate court abated the appeal to allow the exhibits to be added to the reporter's record while still considering Mother's argument.

At trial, the court noted Father's request that Mother be given the exclusive right to designate the Children's primary residence with a local geographic restriction alongside Father's request that he be awarded the marital residence. The court asked where Mother would go, and Father responded, "She has another house. She has another house here in San Marcos and has [her ex] living there. [S]he can live there with my sons." Father offered a tax appraisal document to support Mother's partial ownership of the nearby house but did not offer any evidence to support his assertion that she could live with his sons. Father's statement was conclusory. There was no competent evidence about where Mother and the Children would live or how their needs would be met. The trial court could not have properly considered the Children's rights when awarding the Texas residence to Father and the Mexico residence to Mother. Additionally, Husband's purported valuation of the Mexico residence was unsubstantiated. While a property-owner is qualified to offer testimony of value, a naked assertion is insufficient. The trial court lacked sufficient information upon which to divide the property in a "just and right" manner, so the entire division was remanded for a new division.

Texas Law Applied to Division of Real Property Located in Oregon Because Texas Had Personal Jurisdiction over Both Parties.

9. *Jiang v. Dawson*, No. 01-24-00056-CV, 2026 WL 1501156 (Tex. App.—Houston [1st Dist.] 2026, no pet. h.) (mem. op.) (05-28-2026).

Facts: The parties purchased two houses in Oregon during the marriage before moving to Texas. Before Husband filed for divorce, Wife transferred one of the houses to her son from a prior marriage. A jury determined both houses were community property, and Wife committed fraud against the community estate. The division of the estate was tried to the bench. Both parties filed post-verdict motions. After entry of a final decree, Wife appealed.

Holding: Affirmed.

Opinion: Wife asserted the court erred in applying Texas law instead of Oregon law in determining the characterization of the Oregon houses. The Family Code provides that once the court establishes personal jurisdiction over both spouses, Texas law applies to property decisions, even if the property is located in another state. Wife's argument lacked merit.

DIVORCE:
ENFORCEMENT OF PROPERTY DIVISION

Erroneous Duplication of Mortgages in Decree Constituted Intrinsic Fraud that Could Not Support a Petition for Bill of Review.

10. *Yeddula v. Yeddula*, No. 07-26-00024-CV, 2026 WL 1392288 (Tex. App.—Amarillo 2026, no pet. h.) (mem. op.) (05-18-2026).

Facts: Husband was at times represented by counsel but was mostly pro se in the divorce, enforcement, bill of review, and appeal. The parties were married for 20 years. Wife filed for divorce, and although he had filed an answer, Husband failed to appear at the final trial in the divorce. The decree ordered a sale of the marital residence. Wife was to receive a set amount of the net proceeds, with the remainder being paid to Husband. Additionally, an owelty of partition was granted to Wife to secure her interest in that set amount. When Husband received a copy of the signed default decree, he timely requested findings and filed a motion for new trial. However, Husband's attorney later informed the court that Husband no longer wished to proceed with the motion for new trial or appeal.

Almost a year later, Wife filed a motion to enforce the decree and to appoint a receiver to sell the residence. In addition to answering the enforcement motion, Husband filed a petition for bill of review to set aside the default decree. The trial court denied a bill of review and appointed a receiver. Husband appealed.

Holding: Affirmed.

Opinion: In six issues, Husband challenged the denial of his petition for bill of review. The record showed Husband received notice of the final hearing in the divorce, and he was properly served with the signed decree. In his petition for bill of review, Husband asserted that three mortgages, totaling more than $500k had been counted twice in the decree, inflating his equalization payment to Wife and allegedly constituting extrinsic fraud. Husband asserted his attorney's claim that Husband no longer wished to pursue the motion for new trial was based on Husband being unable to pay his attorney. Wife acknowledged the error regarding the duplicate mortgages but maintained Husband failed to establish the elements to be successful in a bill of review proceeding. The duplication of the mortgages was *intrinsic* fraud, not extrinsic, and could not support a bill of review. Additionally, Husband was at fault for not appearing at the final divorce trial. Further, contrary to Husband's assertion, the appointment of a receiver to effectuate the sale of a homestead pursuant to a divorce decree did not violate the Texas Constitution due to an explicit exception for this circumstance.

Husband additionally challenged the order granting Wife's motion for enforcement and the appointment of a receiver. Three years had passed since the decree was signed. Husband had not paid Wife the equalization payment. Husband had not listed the property for sale. In his defense, Husband merely stated, "I deny everything" and stated a wish to be the homestead "for a long time." Husband presented no evidence and did not cross-examine Wife.

Husband Committed Civil Theft by Immediately Spending Wife's Share of Post-Divorce Proceeds from Sale of Business Asset.

11. *Croom v. Croom*, No. 05-24-00967-CV, 2026 WL 1430601 (Tex. App.—Dallas 2026, no pet. h.) (mem. op.) (05-20-2026).

Facts: More than 10 years ago, the court granted a divorce on the ground of adultery and found Husband committed waste and fraud on the community. Husband appealed, but the appellate court affirmed a large equalization award in Wife's favor. The decree also ordered the parties' interest in a company be divided equally between them.

Three years after the decree was affirmed, the company sold its office building and distributed over a million to its partners, with Husband receiving about $500,000. Husband's interest in the company had increased from 30% at the time of divorce to 40% at the time of the distribution. Husband did not inform Wife of the distribution or pay her any proceeds pursuant to the decree. Instead, Husband used the funds to buy a car and life insurance. When Wife learned of the distribution, she sued Husband for civil theft, conversion, and breach of fiduciary duty. After a bench trial, the court awarded Wife one-half of the 30% interest in the company. The court further awarded Wife exemplary damages, attorney's fees, and appellate fees. Husband appealed.

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

Opinion: Husband asserted the large equalization award in the divorce decree included her 1/2 interest in the company. However, the two provisions were entirely separate in the divorce decree. No language suggested the court intended to include Wife's interest in company as part of the equalization award.

Husband additionally argued that the award to Wife of half of the community's "present interest" in the company could not include the subsequent sale of the building. However, the decree explicitly awarded the parties one-half of "all rights and privileges, past, present, *or future*, arising out of or in connection with the operation of the business."

Contrary to Husband's assertion the increased value of the company after divorce did not affect the plain language of the divorce decree or the property division therein. Husband additionally argued the decree could not have awarded Wife an interest in the business because it did not make her a partner. However, Wife's interest was in the community's interest in the partnership, which is permissible under Texas law. Once the distribution was made, Wife was entitled to her share of the proceeds.

Next, Husband argued the evidence did not support the finding that his actions amounted to civil theft. Under the Texas Theft Liability Act, a person who commits theft is liable for the damages resulting from the theft. A theft occurs when property is unlawfully appropriated by someone with the intent to deprive the owner of that property. The term "property" includes money. "Appropriate" means to "acquire or otherwise exercise control over property other than real property." Appropriation is unlawful if it is "without the owner's effective consent." The facts here fit squarely within the definition of civil theft.

Husband argued that Wife still retained an interest in the company, notwithstanding his use of the disbursed proceeds. This view ignored the plain language of the decree awarding Wife a share of Husband's interest in the company's assets.

Husband further asserted there was no evidence of his intent. However, intent can be proved through circumstantial evidence. While a mistake of fact may negate intent, that mistake must be reasonable. There was no reasonable way to read the decree not to require a portion of the distribution to belong to Wife.

Husband argued the evidence was insufficient to support a malice finding in connection with the award of exemplary damages. Wife testified Husband continually refused to abide by the decree and told her, "the courts can't enforce anything." Husband admitted to having no intent to pay Wife and to immediately spending all the proceeds.

Finally, Husband asserted Wife was not entitled to fees because she failed to segregate recoverable fees for theft from nonrecoverable fees for breach of fiduciary duty. Additionally, Wife initially sued multiple defendants, and all the other defendants were eventually dismissed. Wife did not segregate fees associated with the dismissed claims. While the development of some of Wife's claims may have been intertwined, some were not. Wife was required to segregate her fees. Because she did not do so, the issue was remanded to the trial court for further proceedings.

Trial Court Had Authority to Clarify and Enforce Divorce Decree's Division of Military Retirement Benefits.

12. *In re Marriage of Zesiger*, No. 07-25-00390-CV, 2026 WL 1426287 (Tex. App.—Amarillo 2026, no pet. h.) (mem. op.) (05-20-2026).

Facts: The parties were married for 15 years. The decree awarded Wife one-half of Husband's military benefits earned during the divorce. When Husband retired from the military, Wife filed an enforcement suit related to those benefits. After a hearing, the court found Wife was entitled to a portion of the retirement and ordered monthly payments. Husband appealed.

Holding: Affirmed

Opinion: The final decree awarded Wife one-half of Husband's retirement benefits arising during the marriage. The enforcement order clarified that provision to state the specific dollar amount to which Wife was entitled each month. The enforcement order additionally ordered Husband to execute and deliver the forms necessary to effectuate the order.

Husband asserted the trial court's order impermissibly overstepped its authority by making an order reserved for the federal government. He asserted that only the federal government could calculate and disburse any divisible portion of retired pay. Wife countered that federal law explicitly allowed state courts to divide and enforce disposable retired pay pursuant to a divorce decree. The appellate court agreed with Wife. Nothing the trial court did in its enforcement order exceeded the authority granted it by statute.

SAPCR:
Procedure and Jurisdiction

Because Child Only Lived in Texas for Less than 6 Months, Had Been in Georgia for Most of the Child's Life, and Lived in Georgia at the Time of Filing, the Trial Court Did Not Abuse its Discretion in Finding Georgia was the More Convenient Forum Under the UCCJEA.

13. *In re A.M.K.*, No. 14-25-00656-CV, 2026 WL 1343582 (Tex. App.—Houston [14th Dist.] 2026, no pet. h.) (mem. op.) (05-14-2026).

Facts: The Child was born in Georgia, but the family moved to Texas before the Child's first birthday. Just after the Child's first birthday, Mother and the Child returned to Georgia, purportedly to visit, but they never returned. A few weeks later, Father initiated a SAPCR in Texas, and Mother responded with a motion to dismiss, asserting that Georgia was the Child's home state. After an evidentiary hearing, the court found the Child had been living in Texas for 6 months as of the filing of Father's petition, making Texas the Child's home state. Mother filed a request for de novo review, asserting the Child had only been in Texas for 5 months and 8 days. At the de novo review hearing, Mother asserted that her return to Georgia was based on emotional and physical abuse by Father. The district judge reversed the AJ's ruling and found (1) Texas was not the Child's home state, and (2) Texas was not a convenient forum for the SAPCR. Father appealed.

Holding: Affirmed.

Opinion: Based on the undisputed facts, the maximum length of time the Child was in Texas was 5 months and 20 days. Thus, under the plain language of the UCCJEA, Texas was not the Child's home state.

Among other complaints, Father argued Texas had jurisdiction to make an initial child-custody determination because the Child had significant connections with Texas. However, regardless of whether this was true, the trial court declined to exercise jurisdiction because it was an inconvenient forum. Father asserted that Georgia was not the more convenient forum because no proceeding had been initiated in Georgia until after Texas declined jurisdiction. While the existence of a Georgia proceeding could have bearing on the question of either state's familiarity with the case, that question alone was not dispositive. Mother and the Child lived in Georgia at the time of filing. The Child had been in Georgia most of the Child's life. Mother's extended family, who could offer useful testimony, resided in Georgia. The trial court did not abuse its discretion in finding Georgia was a more convenient forum.

Grandparents' Affidavit Insufficient to Support Finding that Denial of Their Access to the Child Would Significantly Impair the Child's Physical Health or Emotional Well-Being.

14. *In re A.K.B.*, No. 04-25-00338-CV, 2026 WL 1409991 (Tex. App.—San Antonio 2026, no pet. h.) (mem. op.) (05-20-2026).

Facts: The Child's mother passed away when the Child was three-years old. Father and the Child lived with maternal Grandparents for a period of time, during which, Grandparents played a substantial role in the Child's upbringing. In an affidavit in support of standing, Grandparents alleged Father struggled with mental health issues, including a period of hospitalization following suicidal ideations. Additionally, they alleged Father used corporal punishment on the Child, purposefully tripped the Child, and called Grandparents' names. Father stopped the Child's martial arts classes, and Grandparents disagreed with that decision. Grandparents believed Father's live-in girlfriend was volatile and unkind. School personnel had expressed concerns about the Child's well-being.

After Father discontinued contact between Grandparents and the Child, Grandparents filed an original petition for grandparent access. The trial court found Grandparents' supporting affidavit was insufficient and dismissed the petition. Grandparents' appealed.

Holding: Affirmed.

Opinion: Grandparents asserted the trial court prematurely applied the fit-parent analysis to their suit. They argued that the fit-parent presumption did not apply to standing but only to the merits of their claim. The Family Code's affidavit requirement does not create an independent pleading standard divorced from the merits determination. It requires dismissal unless supporting affidavits allege facts that, if true, would be sufficient to support relief. And the Family Code's grandparent access provision permits relief only if the grandparent overcomes the presumption that a fit parent acts in the child's best interest by proving that denial of access would significantly impair the child's physical health or emotional well-being. Thus, while grandparents are not required to prove their case at the pleading stage, they are required to present facts that, if proven, would be capable of overcoming the fit-parent presumption.

Here, even accepting Grandparents allegations as true, they did not allege facts showing that denial of access would significantly impair the Child's physical health or emotional well-being. There was no question of a loving relationship between the Grandparents and the Child or that the loss of the relationship caused the Child distress. However, these allegations were insufficient as a matter of law. Additionally, while some of the other statements were troubling, they did not supply the type of concrete harm the statute requires. Generalized concerns about a child's emotional well-being, without more, are insufficient. The statements about Father's past mental health struggles were no evidence of his current ability to care for the Child. Critically, the affidavits did not establish a causal connection between the alleged concerns and the denial of Grandparent access.

"This case illustrates the demanding nature of the statutory framework governing grandparent access suits. By incorporating the constitutional protections recognized in *Troxel*, the Legislature made such suits extremely difficult to sustain. [The appellate court did] not question Grandparents' love for their grandson or the sincerity of their concerns. Nevertheless, courts must give special weight to a fit parent's decisions, and the Legislature has imposed an extraordinarily high burden on those who seek to override those decisions."

SAPCR:
DISCOVERY

Father's Evidence to Support a Material and Substantial Change Excluded Because He Failed to Assert in His Disclosures Any Facts to Support His Claim.

15. *Tolle v. Tolle*, No. 14-24-00769-CV, 2026 WL 1427052 (Tex. App.—Houston [14th Dist.] 2026, no pet. h.) (mem. op.) (05-21-2026).

Facts: Six years after the parties divorced, Father filed a petition to modify the parent-child relationship, seeking certain exclusive rights. In his initial mandatory disclosures, Father simply stated that the circumstances had materially and substantially changed since the divorce, and modification was in the best interest of the Child. About 18 months later, Father filed an amended petition that was substantially similar. A few months after that, the case was called to trial, and Mother objected to the admission of any evidence concerning a material and substantial change because Father failed to disclose facts supporting his assertions in his initial disclosures. The court sustained the objection and excluded the evidence.

Mother then requested a "directed verdict" because there was no evidence to support the factors necessary for a modification. The trial court granted the request and signed a final judgment denying Father's relief. Father appealed.

Holding: Affirmed.

Opinion: Father argued that the mandatory disclosure requirement did not apply to his amended petition because it was filed after the rule change, but even if the former rules applied, he complied and established good cause or that there was no surprise to Mother, and the court erred in granting the "directed verdict."

When implementing the changes, the Supreme Court instructed that the new rules only applied to an action filed on or after the date of change. Despite the amended pleading, the suit commenced while the former rules applied. Father's amended petition was substantially similar to the initial pleading and did not set up a new cause of action or seek a more onerous judgment.

Disclosures that fall entirely short of conveying even a general factual narrative are inadequate and do not meet the requirements of the rules. Father failed to provide any factual bases for his legal contentions.

Father asserted that Mother could not have been surprised because she had deposed him. However, he failed to articulate how or why the deposition disclosed the factual bases for his request or even what those bases were. On this appellate record, the court could not conclude the trial court erred.

A failure to produce, amend, or supplement discovery results in the automatic exclusion of evidence. In the absence of evidence establishing good cause or lack of surprise, the trial court was required to exclude Father's evidence.

SAPCR:
Temporary Orders

Father's Allegations of Mother's Drug Use (Particularly when He Also Used) and Overnight Male Guests was Insufficient to Support a Temporary Order Changing the Person with the Exclusive Right to Designate the Children's Primary Residence.

16. *In re McLean*, No. 11-26-00118-CV, 2026 WL 1423501 (Tex. App.—Eastland 2026, orig. proceeding) (mem. op.) (05-21-2026).

Facts: A final divorce decree appointed the parents joint managing conservators and gave Mother the exclusive right to designate the Children's primary residence. Father later filed a modification suit, seeking that exclusive right. After an evidentiary hearing, the court effectively granted this right temporarily by naming Father temporary sole managing conservator. The court focused on Mother's violation of Father's right to possession based on Mother's claim that the Children were terrified of Father. In response to a claim by Father that Mother had been using cocaine, the court ordered both parents to submit to hair follicle testing. Both parents' results returned positive. Mother claimed she had not used cocaine in over a year, but Father admitted to relatively recent use with his "buddies." Mother offered evidence the Children were doing well in school, while Father did not have any information about the Children's grades or teachers. He did not know the Children were in counseling, and he was unaware of any present danger to the Children's physical health. The court acknowledged the change in conservatorship was not based on any significant impairment but on Mother's refusal to follow court orders after being warned. Mother successfully mandamused this change in conservatorship.

After the earlier mandamus, the court withdrew its temporary orders and issued a second letter ruling that expressed concerns about Mother's positive drug test result, evidence of men spending the night at her home while she had possession of the Children, and evidence showing the Children's absences from school. The court also noted Mother's electricity had been turned off once and stated a belief that Mother's cocaine use was affecting her memory. The court again appointed Father as the Children's temporary sole managing conservator and required Mother to submit to additional drug testing. Mother's access to the Children was conditioned on a clean drug test result on a 180-day hair follicle test and 48-hour urinalysis. Mother again sought mandamus relief.

Holding: Writ of Mandamus Conditionally Granted.

Opinion: Mother first challenged the temporary change to her right to designate the Children's primary residence. Father, as the movant in the trial court, held the high burden of showing evidence of bad acts or omissions committed against the Children to support a temporary order changing the person with the exclusive right to designate the Children's primary residence. Here, even taking Father's allegations as true, the evidence was insufficient.

Mother also challenged the "asymmetric" drug testing orders that did not apply to Father. She argued the test imposition was punitive. Because the evidence did not support the change in conservatorship, the entire order needed to be vacated, so the appellate court did not address this argument.

SAPCR:
Alternative Dispute Resolution

Husband Failed to Present Any Legal Ground to Support a Need to Present Evidence to Support Setting Aside the Parties' MSA.

17. *Mitchell v. Mitchell*, No. 07-26-00058-CV, 2026 WL 1408803 (Tex. App.—Amarillo 2026, no pet. h.) (mem. op.) (05-19-2026).

Facts: In the course of their divorce proceedings, the parties signed a mediated settlement agreement. Two months later, Husband filed a motion to set aside the MSA, alleging fraud, duress, and coercion. After hearing argument of counsel, the court determined it was unnecessary to hear additional evidence and denied Husband's motion. A final decree was signed adopting the MSA and imposing sanctions against Husband and his attorney. Husband's motion for new trial was overruled by operation of law, and he appealed.

Holding: Affirmed.

Opinion: On appeal, Husband argued the trial court erred in not hearing evidence because the evidence could have supported setting aside the MSA on fraud, duress, or coercion grounds. However, at the hearing on his motion, Husband's counsel only argued that the MSA should be set aside based on the Children's best interest and changing circumstances, which are not valid grounds for setting aside an MSA. Moreover, Husband failed to preserve his appellate complaint because he did not object to the lack of an opportunity to present evidence and did not ask to call any witnesses. While Husband's motion addressed fraud, duress, and coercion, "[m]erely filing a document that raises a complaint, however, does not preserve error; the party must bring the complaint to the trial court's attention during court proceedings and request a ruling."

SAPCR:
Conservatorship

No Abuse of Discretion to Decline Interview of 10-Year-Old Child Where Other Evidence Sufficient to Provide Nature of Abuse Allegations.

18. *Adejokun v. Obosi*, No. 14-25-00044-CV, 2026 WL 1252098 (Tex. App.—Houston [14th Dist.] 2026, no pet. h.) (mem. op.) (05-07-2026).

Facts: At the time of the divorce trial, the Child was about ten-years old. During the divorce proceedings, the Child had been admitted to a psychiatric hospital after experiencing tactile and auditory hallucinations. During the hospitalization, the Child alleged Father had put his foot on her "boom boom," which had been interpreted to meet bottom. TDFPS investigated and ruled out the allegation.

The parties eventually signed a mediated settlement agreement addressing many, but not all, issues in the divorce. The remaining issues, including possession and access, were tried to a bench. Mother strongly believed Father had molested the Child. Father asked for a step-up possession schedule that began with supervised possession. He believed supervision would protect him from Mother's lies and coaching of the Child. The TDFPS investigator testified that she believed Father was telling the truth. Mother filed a motion to have the trial court confer with the Child, but the court denied that motion. The final order appointed Mother as sole managing conservator and gave Father supervised visitation, including Skype calls three times a week. Mother appealed.

Holding: Affirmed.

Opinion: Mother complained the trial court abused its discretion by excluding the Child's testimony about the alleged sexual abuse. When the testimony was objected to as hearsay, Mother did not raise the outcry-of-a-child exception. Contrary to Mother's assertion, the trial court was not required to sua sponte admit the evidence. Mother failed to preserve this issue for appellate review.

Mother additionally complained of the trial court's denial of her motion to interview the Child. The relevant statute gives the trial court permissive discretion to interview a child under the age of 12 years. The admitted evidence, including a 20-page TDFPS report, was sufficient to allow the trial court to exercise its discretion regarding protecting the Child in light of the abuse allegations.

Because the Ordinary Meaning of "Primary Residence" Encompasses a Home Where the Child Lives Most of the Time, Possession Order Failing to Award Father Equal or More Possession Time than Mother Contravened Jury Verdict Finding Father Should Have the Exclusive Right to Designate the Children's Primary Residence.

19. ***Gopalan v. Marsh***, __ S.W.3d __, No. 25-0161, 2026 WL 1445580 (Tex. 2026) (05-22-2026).

Facts: The parents agreed to joint managing conservatorship, but their respective rights and duties were tried to a jury. After a five-day jury trial, the verdict found Father should have the exclusive right to designate the Children's primary residence. While the court adopted the jury's verdict, it awarded Mother greater possession time, monthly child support, the majority of exclusive parental rights, and conditional appellate attorney's fees.

Father appealed. The appellate court majority found the decree implemented the letter of the verdict. It acknowledged a split of authority on the issues and noted there was no requirement in the Family Code requiring one conservator to have more possession time than another. The dissent believed "primary" meant that the Child should be at that residence more than any other residence. Father petitioned the Supreme Court for review.

Holding: Reversed and Remanded to Trial Court.

Opinion: The court first addressed the legislative history regarding custody and conservatorship along with the tension between a jury's verdict and judicial discretion. Currently, the Family Code prohibits judicial contravention of a jury's determination of which parent should have the exclusive right to designate a child's primary residence while also prohibiting submission to a jury question of specific terms or conditions of possession.

Thus, the question came down to the definition of "primary residence" within the statutory context. Applying the plain dictionary definition, a child's primary residence could not be a place where the child actually lived less time than elsewhere. The appellate courts that decided otherwise failed to apply the term's plain meaning and instead found the primary residence label was simply to achieve stability for the purpose of school enrollment and as a significant factor in the power of relocation. The history of the Family Code does not support that narrow construction. Therefore, the trial court contravened the jury's verdict by awarding more possession time to Mother.

However, the Court emphatically rejected Father's attempts to conflate "primary residence" with "primary parent," as that concept had no basis in the Family Code. Giving one parent the right to designate the child's primary residence does not create a hierarchal relationship between the parents.

> Courts and litigants should avoid injecting into highly charged divorce proceedings shorthand references like "primary parent" that carry contentious value judgments untethered from any legal grounding.

Because the appellate court found no reversible error, it did not address Father's complaint regarding attorney's fees. While the Supreme Court sustained one of Father's complaints, the courts overruled others. Mother was entitled to recover fees addressing Father's unmeritorious issues. A remand was necessary to determine the amount appropriate.

History of Conflict Between the Parents and of Father's Inability to Follow Court Orders Supported Granting Mother Certain Exclusive Rights.

20. *Bizimana v. Ogunsanya*, No. 03-25-00865-CV, 2026 WL __[1] (Tex. App.—Austin 2026, no pet. h.) (mem. op.) (05-28-2026).

Facts: Mother filed for divorce when their Child was about a year old. The parties had already been separated for some time. Mother had an attorney for temporary orders but was unrepresented at final trial. Father did not retain an attorney, although his yearly income was between $160,000 and $170,000. The court ordered Father to pay guideline child support, half of the Child's prenatal expenses, and half of Mother's attorney's fees. The court appointed the parents joint managing conservators and gave Mother certain exclusive rights. Father appealed.

Holding: Affirmed.

Opinion: Among other complaints, Father asserted the trial court violated the parental presumption by removing his "joint decision-making authority" and "reduc[ing] possession despite undisputed evidence showing that Appellant had been an active and involved parent and that the parties had successfully maintained a 50/50 parenting schedule." The Family Code requires trial courts to allocate duties independently, jointly, or exclusively. Considering the history of conflict between the parties and Father's repeated failures to comply with temporary orders, the trial court did not abuse its discretion in awarding certain exclusive rights to Mother. Further, with respect to his complaint about the possession schedule, a standard possession schedule is in a child's best interest, and Father presented no reason why such a schedule was an abuse of discretion here.

[1] Not Available on Westlaw as of June 2, 2026.

Father additionally argued that the trial court erred in ordering him to pay guideline support when Mother's income was also substantial. In his appeal, Father compared his net income to Mother's gross income, and even using those numbers, Mother's was less than Father's. Mother testified that she could not afford daycare and requested child support to aid in paying for that. Father had not paid temporary support as ordered or assisted in paying for the hospital bills associated with the Child's birth.

SAPCR: CHILD SUPPORT

Evidence Supported Awarding Indefinite Child Support Based on the Child's Inability to Care for Himself.

21. *Huskey v. White*, No. 14-25-00360-CV, 2026 WL 1345265 (Tex. App.—Houston [14th Dist.] 2026, no pet. h.) (mem. op.) (05-14-2026).

Facts: At the time of divorce, the Children were 10 and 8 years old and lived exclusively with Mother. A few months before the younger Child's 18th birthday, Father filed a petition to terminate income withholding. In response, the OAG filed a petition to modify, seeking indefinite child support based on the Child's disability. Mother filed a counterpetition seeking the same relief as the OAG. After a bench trial, the court found the Child was incapable of self-support and continued the existing obligation for that one Child indefinitely. Father appealed.

Holding: Affirmed.

Opinion: Father challenged the finding that the Child was disabled. Mother testified that when the Child was young, he was diagnosed with encephalopathy, global developmental delays, receptive expressive language disorder, and articulation disorder. He received therapy, and his classes were modified because he was unable to do all the work. Although the Child was 20 years old at the time of trial, he had a second-grade reading level and did not understand the concepts of time or days of the week. He could bathe, dress himself, use the microwave, and complete basic household chores, but he could not otherwise cook or drive. He enjoyed video games and received SSI benefits. Wife admitted that no one told her the Child could "never" be self-sufficient. Father did not believe the Child had a condition but only a slight learning disability. Father did not know the difference between the Child's special education curriculum and the general education curriculum. An expert witness retained by Father testified that the Child was a great candidate for rehabilitation services offered through the TWC. She believed the Child could learn tasks needed for a job but would absolutely need special supervision. She was not prepared to testify whether the Child could care for himself or live on his own.

On appeal, Father argued Mother's testimony was conclusory, contradictory, and insufficient to support the judgment. Applying the abuse-of-discretion standard, the evidence was sufficient to support the trial court's determination that the Child required substantial care and personal supervision because of a mental disability and would not be capable of self-support and that the disability existed since before the Child's 18th birthday.

SAPCR: MODIFICATION

Mother's Attempt to Relitigate SAPCR via "Emergency" Modification Motion Constituted Relitigation to Support Vexatious Litigant Finding.

22. *In re I.P.P.*, No. 05-25-00624-CV, 2026 WL 1234239 (Tex. App.—Dallas 2026, no pet. h.) (mem. op.) (05-05-2026).

Facts: The parties lived together and had one Child but never married. When the Child was about three-years old, Father initiated an original SAPCR that was resolved via a mediated settlement agreement. Over the next few years, Mother filed numerous pro se pleadings. After the trial court granted Father's motion to declare Mother a vexatious litigant, Mother appealed.

Holding: Affirmed.

Opinion: Among other complaints, Mother argued the trial court erred by concluding her emergency modification motion constituted "relitigation" under the vexatious litigant statute. After reviewing the docket, the appellate court disagreed.

Mother further challenged the imposition of a $160,000 security bond to be posted before future filings was punitive, unsupported, and unconstitutional. However, she provided no legal basis to support her appellate complaints.

Finally, Mother asserted that the trial court's refusal to hear her emergency motion ignored the best interest of the Child. However, the docket showed that a hearing was conducted on Mother's motion. Moreover, the court granted Mother's motion to confer with the Child.

Evidence of Events Occurring After Filing of Petition Admissible to Support Material and Substantial Change.

23. *Loria v. Loria*, No. 03-25-00920-CV, 2026 WL 1250433 (Tex. App.—Austin 2026, no pet. h.) (mem. op.) (05-07-2026).

Facts: About a year after the parties' divorce, Father filed a petition to modify. After a final evidentiary hearing, at which both parties were represented by counsel, the court granted Father's requested relief, including giving Father the exclusive right to designate the Children's primary residence with a geographic restriction and the right to be a tie breaker for medical decisions on which the parties could not agree. Mother appealed pro se.

Holding: Affirmed.

Opinion: Mother first argued the trial court could not consider evidence occurring during the suit to substantiate a material and substantial change. There was no legal support for this argument. The trial court was required to compare the circumstances at the time of the prior order with the circumstances at the time of modification, which could include evidence occurring after Father filed his petition to modify. Additionally, Mother judicially admitted to a material and substantial change in circumstances through her counterpetition seeking affirmative relief, including requesting the exclusive right to make medical decisions for the Children.

Mother additionally challenged the trial court's adoption of Father's proposed findings without drafting its own findings. Nothing prohibited the trial court from taking this course of action. While Mother asserted findings were incorrect, evidence supported the written findings. Finally, contrary to Mother's appellate claims, under the abuse-of-discretion standard of review, the evidence supported the trial court's judgment.

Mother's Encouragement of the Child's Resentment of Father Supported Jury Verdict Appointing Father as Sole Managing Conservator.

24. *In re I.W.O.*, No. 10-24-00031-CV, 2026 WL 1346509 (Tex. App.—Waco 2026, no pet. h.) (mem. op.) (05-14-2026).

Facts: A final divorce decree named Mother and Father as joint managing conservators and gave Mother the exclusive right to designate the Child's primary residence with a geographic restriction. After the Child refused to have visitation with Father, Father filed a petition to modify, and Mother filed a counterpetition. Each parent sought sole managing conservatorship. A jury found Father should be appointed sole managing conservator, and a judgment was signed in accordance with the verdict. Mother appealed.

Holding: Affirmed.

Opinion: Mother asserted the trial court abused its discretion by refusing to permit the Child to testify at trial. After two days of testimony at trial, Mother stated she intended to have the Child testify. Father objected, asserting the testimony would be unnecessarily cumulative. The trial court agreed with Father. On the final day of trial, Mother re-urged her request with a supporting written brief. The court denied Mother's request again but allowed her to call the Child for an offer of proof. The 14 year old Child, who was on the autism spectrum, testified that he was homeschooled and attended a co-op once a week. He socialized with other children at the co-op and at church. The Child described a tibial torsion that caused him pain when he walked or ran and a desire for surgery to correct the issue. The Child complained that Father did not help with hygiene issues and did not properly prepare his food. The Child did not believe Father would change and did not want to live with Father.

Mother asserted that because the Child was competent to testify, the court had no discretion to refuse to allow the testimony. However, the trial court here did not exclude the testimony based on competency. Even if the trial court erred in excluding the testimony based on Rule 403, Mother bore the burden on appeal to show the exclusion probably caused the rendition of an improper judgment or prevented her from presenting her appellate complaint. Mother was required to show the testimony was both controlling on a material issue and not cumulative of other evidence. The jury heard from numerous therapists, counselors, and health care providers about the Child's preference for Mother and how the Child was doing well with his current educational environment. The jury heard about the parties' disagreement on how to treat the Child's tibial torsion and doctors' recommendations on the topic. Mother failed to show the testimony was not cumulative or that the exclusion probably caused the rendition of an improper judgment.

Mother next challenged the sufficiency of the evidence to support the verdict and findings. First, Mother judicially admitted to a material and substantial change by requesting the same relief requested by Father. Thus, the only appellate question was whether the modification was a positive improvement for the Child. Father maintained Mother poisoned the Child against him. The custody evaluator opined Mother did not encourage a positive relationship between Father and the Child. The evaluator reported that a CPS investigator observed Mother encouraged the Child to resent Father and Mother blamed Father for the Child's distress and physical problems. Other professionals reported concerns about Mother's influence. Reviewing the evidence in the light favorable to the verdict, the evidence supported the jury's verdict.

Evidence of Mother's Violent Behavior Supported Modification Order Appointing Father as Sole Managing Conservator.

25. *In re K.A.B.*, No. 05-25-00986-CV, 2026 WL 1458587 (Tex. App.—Dallas 2026, no pet. h.) (mem. op.) (05-22-2026).

Facts: Father filed a petition to modify the parties' divorce decree and asked for the exclusive right to designate the Child's primary residence. The parties were pro se at trial and on appeal. An amicus attorney had been appointed, and the OAG appeared. After a final trial, the court appointed Father as sole managing conservator, ordered Father to pay to Mother his child support arrearages, and ordered Mother to pay future child support. Mother appealed.

Holding: Affirmed.

Opinion: Mother complained of the time limits and certain evidentiary rulings; however, she failed to preserve these issues or adequately brief them for appellate review.

Mother additionally challenged the sufficiency of the evidence to support the appointment of Father as sole managing conservator. In the years leading up to the modification, Mother became more violent towards Father and other people, often in the Child's presence. Specific incidents included Mother spending five or ten minutes kicking Grandmother's door during an exchange, slapping the Child's face, body slamming the Child on the bed when the Child was having trouble with homework, and spraying mace in Father's and his girlfriend's faces. A 911 call corroborated a report of Mother stabbing her boyfriend in the Child's presence. The Child was having difficulties in school and began attending therapy for anger management issues. The court found Mother committed domestic violence on numerous occasions.

SAPCR: Enforcement of Child Support

Even Though DNA Result Showed Father was Not the Child's Father, Trial Court Lacked Authority to Retroactively "Cancel" Father's Child Support Obligation or Find Zero Arrearages.

26. *In re Z.R.Q.*, No. 05-24-01514-CV, 2026 WL 1390335 (Tex. App.—Dallas 2026, no pet. h.) (mem. op.) (05-18-2026).

Facts: The OAG initiated a suit for child support. Father was notified of a child support review negotiation but did not appear. Subsequently, according to the return of citation, Father was personally served with citation, but he did not file an answer or request a hearing on the OAG's proposed order. The court signed the order, adjudicating Father as the father and ordering Father to pay monthly child support.

About two years later, Father filed a modification that included a request for bill of review. Father asserted he had not been served in the prior suit and denied being the Child's father. The OAG intervened with a request for an arrearages judgment. DNA testing was ordered, and when Father was excluded as a potential biological father, the court temporarily abated Father's child support obligation. Father asked the court to "disestablish" his paternity and terminate child support retroactively. He also signed a voluntary relinquishment of parental rights, stating he was not the Child's father. Mother failed to appear at the final bench trial. Father testified he had not been living at the address indicated on the return of service in the original suit. The court terminated Father's parental rights and ordered that all previously ordered child support be terminated retroactively. The court issued a zero arrearages finding. The OAG appealed.

Holding: Reversed and Remanded.

Opinion: The OAG asserted Father failed to satisfy the requirements of a no-service or traditional bill of review. But the trial court did not grant a bill of review. It terminated Father's parental rights and modified the initial order without vacating it. Even presuming Father's motion raised a bill of review claim, the trial court denied that relief with the Mother Hubbard clause: "It is ORDERED that all relief requested in the cause and not expressly granted is denied."

Because the initial order was not vacated, the court's power to modify was limited by the Family Code. The court lacked discretion to forgive arrearages accrued before termination of Father's parental rights and lacked authority to retroactively modify support obligations accruing before service of the modification suit.

SAPCR: Removal of Child / Termination of Parental Rights

Mother's Petition to Reinstate Her Parental Rights Denied Because the Children Became the Subject of an Adoption Placement Agreement After Mother's Petition but Before Trial.

27. ***In re N.L.S.***, __ S.W.3d __, No. 01-26-00100-CV, 2026 WL 1290731 (Tex. App.—Houston [1st Dist.] 2026, no pet. h.) (mem. op.) (05-12-2026).

Facts: Mother and Father's parental rights to their two Children were terminated, and TDFPS was named the Children's managing conservator. Two years later, Mother notified TDFPS of her intent to reinstate her parental rights. At the same time, the Children began residing with their prospective adoptive parents. A few months later, the prospective adoptive parents signed a notice of intent to adopt; however, the appeal of Father's termination was still pending at that time. A few months after that, Mother again notified TDFPS of her intent to reinstate, and the following month—after Father's appeal was finalized—Mother

filed her petition. The month after that, the prospective adoptive parents signed an intent to adopt form, and TDFPS entered adoption placement agreement with the prospective adoptive parents.

The trial court conducted a hearing and denied Mother's petition because the Children were subject to an adoption placement agreement. Mother appealed.

Holding: Affirmed.

Opinion: Mother asserted the trial court erred in denying her petition because the Children were not subject to an adoption placement agreement at the time she filed her petition.

The Family Code provides that a former parent whose rights were terminated may file a petition to reinstate those rights only if, among other requirements, "[t]he child is not the subject of an adoption placement agreement." A different section provides that a hearing must be conducted within 60 days of the petition, and the court may grant the petition if, among other requirements, "the child has not been adopted and is not the subject of an adoption placement agreement." Mother argued the two statutes created "a temporal disconnect" because she could be eligible at the time of filing but become ineligible because of an intervening adoption placement agreement.

Mother's position ignored the plain language of the statutes. The other Houston appellate court had previously reached the same conclusion. Mother also asked the court to read into the statutes a stay of adoption proceedings while the petition was pending. However, this too had no textual basis in the Code. The trial court noted that to follow Mother's logic would allow a parent whose rights had been terminated to stall adoption proceedings, which would be contrary to public policy. Because the Children were the subject of an adoption placement agreement, the trial court correctly denied her petition.

FAMILY VIOLENCE / PROTECTIVE ORDERS

Protective Order Rendered Pursuant to Parties' MSA to Finalize Divorce Could Not be Modified Based on Lack of Otherwise Requisite Findings.

28. ***Travis v. Vanderbilt***, __ S.W.3d __, No. 03-25-00528-CV, 2026 WL 1194006 (Tex. App.—Austin 2026, no pet. h.) (05-01-2026).

Facts: While the parties' divorce was pending, Wife sought a protective order using an Office of Court Administration (OCA) form. Wife checked a box stating the reason for the applications was that Husband "committed sexual assault or abuse, indecent assault, indecency with a child, compelling prostitution, stalking, or trafficking." She attached an affidavit detailing Husband's conduct that she asserted violated existing temporary orders. The parties later entered an MSA to resolve both the protective order and the divorce. The agreement included a provision that the parties agreed to a protective order and that counsel would convert the pro se form. The parties signed the agreed protective order as "approved and consented to as to both form and substance."

Wife alleged, and Husband did not dispute, that three weeks after the MSA and two weeks after the protective order was signed, Husband was found to be speeding in the vicinity of Wife's home in possession of a firearm, violating the terms of the protective order. A few weeks later, Husband moved to reconsider and modify the protective order to change the duration from the parties' lifetime to two years. Wife responded that the requested modification conflicted with the MSA and was not in her best interest. The trial court denied Husband's motion, and he appealed.

Holding: Affirmed.

Opinion: Husband argued that because there was no family-violence finding, the duration provision was voidable. He further argued that because the court retained plenary power at the time of his request to modify, the court should have reduced the order's duration to the statutory default of two years.

The MSA satisfied the statutory requirements of the Family Code. Husband argued the protective order lacked the requisite findings under either the Family Code or Code of Criminal Procedure. Wife argued it would be "absurd" to allow a party to agree to a protective order to avoid findings only to argue about the lack of findings on appeal. Because the protective order complied with the parties' MSA, the trial court did not err in denying Husband's request to modify the order.

Evidence Supported Two-Year Protective Order Based on Father Stalking Mother.

29. *Rideout v. Rideout*, No. 02-25-00231-CV, 2026 WL 1355368 (Tex. App.—Fort Worth 2026, no pet. h.) (mem. op.) (05-14-2026).

Facts: After Mother and Father divorced, Mother moved with their Child to "start over." Father began attending Mother's church against her wishes. She asked him to at least go to a different service, but he refused and sat near her. When the Child began playing soccer, Father attended all the games and practices and made a point of sitting right next to Mother. If she moved, he followed her.

When Father failed to pay child support, Mother sought enforcement, during which a Rule 11 agreement required the parties to communicate exclusively through AppCose. The day after, Father informed Mother he was moving to a neighborhood

"right behind" hers. He then started showing up at Mother's gym and encountered her at restaurants and grocery stores. He then began sending her a torrent of messages criticizing her and her family. Mother attempted to change churches, but Father said he would follow her, which frightened her because she had not told anyone about the change.

In lieu of probation for failing to pay child support, Father agreed to a permanent injunction prohibiting him from coming within 30 feet of Mother without written consent. Two months later, he violated the injunction. After he was arrested for harassing her, Mother applied for a protective order. After an evidentiary hearing, the court found reasonable grounds to believe Father committed the offense of stalking and signed a protective order prohibiting Father from being with 200 feet of Mother, her residence, or her employment for two years. Father appealed pro se.

Holding: Affirmed.

Opinion: A person commits the offense of stalking "if the person, on more than one occasion and pursuant to the same scheme or course of conduct that is directed at a specific other person, knowingly engages in conduct that" (1) constitutes harassment under Penal Code Section 42.07; (2) causes the other person "to feel harassed, terrified, intimidated, annoyed, alarmed, abused, tormented, embarrassed, or offended"; and (3) would cause a reasonable person "to feel harassed, terrified, intimidated, annoyed, alarmed, abused, tormented, embarrassed, or offended" under the circumstances. Mother presented credible evidence of stalking.

Father additionally asserted the protective order was unconstitutional as applied to him and violated his Second Amendment right to possess firearms. This argument has been previously rejected by the courts and was overruled here.

MISCELLANEOUS

Judgment Nunc Pro Tunc Deleting Attorney's Fee Award Vacated Because the Deletion was "Correcting" a Judicial Error, Not a Clerical One.

30. *In re S.M.M.*, No. 05-24-01212-CV, 2026 WL 1309161 (Tex. App.—Dallas 2026, no pet. h.) (mem. op.) (05-12-2026).

Facts: Ten years after entering a child-support agreement, Father filed a motion to modify, and Mother filed a counterpetition. Mother sought attorney's fees by affidavit. After an evidentiary hearing on support, the court took the matter under advisement and issued a written order that included an award for fees. About 8 months after the expiration of the trial court's plenary power, Mother asked for a judgment nunc pro tunc to correct Mother's address, direct that attorney's fees be paid to Mother's attorney instead of Mother, set a date for payment of unreimbursed medical expenses, and set a date for payment of attorney's fees. Father responded with his own motion for judgment nunc pro tunc asking the court to strike the attorney's fee award. The court granted Father's requested relief and partially granted Mother's. Mother appealed.

Holding: Reversed and Vacated

Opinion: Quoting the U.S. Supreme Court, ""Put colorfully, [n]unc pro tunc orders are not some Orwellian vehicle for revisionist history – creating 'facts' that never occurred in fact. Put plainly, the court 'cannot make the record what it is not.'"

Father argued the trial court did not render the attorney fee award concurrently with the modification of child support. At the hearing, the court said, "I'm going to take attorney's fees under advisement … but I believe I can also give the prevailing party attorney's fees, … I will take that matter under advisement." Because there was no oral rendition on the issue, the signing of the subsequent written judgment constituted rendition.

Next, the parties disputed whether nunc pro tunc's deletion of the attorney's fee award was a clerical or judicial change to the prior order. Father asserted it was clerical because there was no evidence the court ever awarded fees when rendering judgment. There was no evidence in the record of any ruling on attorney's fees until the final judgment, which neither party appealed. Even if the inclusion of the fee award in the initial written order was a mistake, it was a judicial one, not a clerical one. The trial court erred in granting Father's motion for judgment nunc pro tunc. The trial court lacked plenary power to "correct" the error.

In response to Mother's appeal of the partial denial of her motion for judgment nunc pro tunc, Father asserted she could not appeal the denial of a motion for judgment nunc pro tunc because it was not a final order. Father was correct, and the proper procedure for challenging the denial of a judgment nunc pro tunc is a petition for writ of mandamus. Accordingly, the trial court rejected Mother's complaint for lack of jurisdiction.

Attorney Awarded $5 Million in Damages for Opposing Counsel's Assault by Offensive Physical Contact; No Error in Permitting Pleading Amendment Post Trial to Increase the Damages Sought to Conform to the Verdict.

31. *Manka v. Acosta*, No. 04-25-00089-CV, 2026 WL 1326508 (Tex. App.—San Antonio 2026, no pet. h.) (mem. op.) (05-13-2026).

Facts: This opinion involves a suit between the attorneys, who did not previously know one another, and who represented parties in a family-law dispute. Acosta represented her brother, who was a party to the suit. At some point, while the parties were conferring privately, Manka told Acosta that he liked to put his arms around his clients to make opposing counsel and his client's

husbands or ex-husbands feel uncomfortable. Security footage showed Manka moved next to Acosta and put his hand around her waist. Later, he touched her hair and put his arm around her shoulder. The parties informed their attorneys that they had reached an agreement. Before leaving the courthouse, Acosta extended her hand to Manka, but instead of taking it, he leaned forward and grabbed and squeezed her buttocks. Acosta slapped his chest, and Manka left. Acosta reported the incident to the sheriff, and a deputy filed a misdemeanor charge of assault against Manka.

Acosta sued Manka for assault by offensive physical contact and IIED. Manka filed a counterpetition alleging defamation, business disparagement, and tortious interference with contract. Acosta moved to dismiss under the TCPA and Rule 91a. The court denied the TCPA motion but granted the 91a motion. A jury found in Acosta's favor and awarded her judgments totaling $5 million. After a final order was signed consistent with the jury's verdict, Manka appealed.

Holding: Affirmed.

Opinion: Manka first challenged the sufficiency of the evidence, which was reviewed under the abuse of discretion standard. Because "[t]he elements of a civil assault mirror those of a criminal assault," a person can be civilly liable for assault if he intentionally or knowingly caused physical contact with another person when he knew or reasonably should have believed the other person would consider the contact offensive or provocative. Manka argued that there was no claim of bodily injury or objectively verifiable evidence that he knew or should have known that she would have found the contact offensive. Bodily injury is not required to establish assault by offensive contact.

While there was no direct evidence of Manka's hand on Acosta's buttocks, the circumstantial evidence supported Acosta's version of events. Acosta's brother was present during the incident and testified. Acosta's father heard Manka's statements about touching his clients to make others uncomfortable. Manka claimed he did not touch Acosta's buttocks and had no way of knowing she would consider his actions offensive. He did not deny touching her lower back, waist, hair, or shoulder. The jury was free to credit Acosta's testimony and evidence as being more reliable.

Manka also challenged the jury's finding he intentionally inflicted emotional distress on Acosta. He argued IIED is a gap-filler tort not to be used where the plaintiff's claim is really another tort. Acosta responded that Manka was not harmed by the purported error. Manka argued the trial court should have refused to submit the liability question to the jury. However, he did not establish any error in the submission of the question that led to an improper judgment or prevented him from presenting his appellate complaint. He also did not raise any appellate complaint regarding the jury question asking for the appropriate compensation to Acosta if Manka was liable. Because the appellate court affirmed the assault finding, Manka showed no reversible error with respect to the IIED finding.

Manka further challenged the sufficiency of the evidence to support past and future mental anguish damages. Compensable mental anguish "implies a relatively high degree of mental pain and distress. It is more than mere disappointment, anger, resentment or embarrassment, although it may include all of these." Manka did not challenge the existence of compensable mental anguish. He only challenged the amount. Manka asserted the award was improperly used to "punish" him. Acosta's counsel did ask the jury to award her $25 million in mental anguish damages to punish Manka. However, if the jury's verdict was rational and did not partake in prohibited motives, the courts should defer to the jury's verdict. Here, the jury heard that because of the assault, Acosta had suffered panic attacks and had difficulty sleeping. She felt nauseated. The assault re-triggered PTSD related to a knife attack against her in college. It took a long time after the incident for Acosta to rebuild her confidence. She was prescribed medication for anxiety and depression and attended several mental health appointments. The jury's verdict of $3 million in mental anguish damages roughly equaled the cost of 5 hours of therapy every day since the incident. The court did not suggest that Acosta attended that much therapy, but the number of days and cost of therapy were appropriate anchors for the jury to make a decision about the amount of damages. Further, Acosta presented evidence demonstrating a reasonable probability she would suffer compensable future mental anguish.

Manka additionally challenged the Rule 91a dismissal of his counterclaims. However, he failed to challenge all the potential grounds for denial making the issue inadequately briefed.

Finally, Manka argued the trial court erred in allowing Acosta to amend her pleadings to conform to the jury's verdict. The Rules allow post-trial amendment with leave unless there is a showing that the filing will operate as a surprise to the opposing party. A party may amend a pleading after the verdict but before the judgment to conform to the verdict. Acosta's pleading sought damages less than $250,000, but at trial she asked for more. Manka, himself, testified Acosta was asking for a million dollars. Manka was not surprised by the amendment to increase the amount of damages sought, nor did he suggest that the increased amount raised any new substantive matter.

Email Signature Block Constituted Valid Signature to Create Enforceable Rule 11 Agreement.

32. ***Morales v. Lowenberg***, __ S.W.3d __, No. 03-24-00309-CV, 2026 WL 1506469 (Tex. App.—Austin 2026, no pet. h.) (mem. op.) (05-28-2026).

Facts: After the couple broke up, they fought over possession of a dog. They agreed to each keep the dog half of the time, and that agreement worked for about 7 months. However, Boyfriend sued Girlfriend for conversion and breach of contract. The court granted Boyfriend a temporary injunction requiring Girlfriend to deliver the dog to Boyfriend.

After efforts to reach an agreement, Girlfriend sent Boyfriend's attorney an email with a "settlement offer" offering to relinquish the dog if the parties would sign mutual releases, and Boyfriend would never contact her or her family again. Girlfriend's email closed with her name "Esq.," preferred pronouns, phone number, and employer. Boyfriend's attorney responded that

Boyfriend was in agreement and sent a release for Girlfriend's review. However, shortly after the date by which Girlfriend was to turnover the dog, an attorney filed an appearance on her behalf and announced that Girlfriend revoked all settlement offers. The new attorney asserted the email exchange did not constitute a Rule 11 agreement because it lacked signatures. After the trial court enforced the agreement, Girlfriend appealed.

Holding: Affirmed as Modified.

Opinion: Girlfriend asserted the agreement was not an enforceable Rule 11 agreement because its formation was unconscionable, and she did not sign it. A valid, enforceable Rule 11 agreement must be in writing, signed, and filed with the court or made in open court on the record. Parties may enter into a binding settlement agreement even if they contemplate that a more formal document will be executed at a later date. A court can enforce, via general contract law, a settlement agreement complying with Rule 11 even after one side revokes their consent.

Whether an electronic "signature" constitutes a signature for the purpose of Rule 11 depends on the sender's intent. The Fort Worth court of appeals had previously determined that a signature block automatically appended to an email did not constitute a signature in the absence of an "/s/" indicating an intent to sign. The 14th Court of Appeals declined to follow Fort Worth's precedent and held a signature block was sufficient to support formation of a Rule 11 Agreement:

> Regardless of whether parties to a Rule 11 agreement type their names with a typewriter, a computer keyboard, or a touchscreen, and regardless of whether they type their names in an email or create a "signature block" to be included with their email, the effect is the same. They have signed it.

Here, the Austin court was persuaded by the 14th's reasoning. Girlfriend's arguments relied on authority reviewing signatures on pleadings; however, the email was not a pleading. It was a contract. Further, circumstantial evidence supported a finding Girlfriend intended the email be an offer, including its title of "settlement offer" and the body of the email expressing a desire to "be done" with the lawsuit. She clearly set out a time and date for relinquishment in exchange for signed releases.

Contrary to Girlfriend's assertions, the circumstances of formation of the agreement were not unconscionable. Girlfriend was under the pressure of contempt, but she had alternatives. She demonstrated her awareness of her ability to bargain. Although she was a new attorney, she was licensed and theoretically learned the mechanics of contract formation. There was no evidence Boyfriend was the stronger party.

Finally, Girlfriend challenged the award to Boyfriend of attorney's fees associated with Girlfriend's breach. Because some of the awarded fees were not directly related to the enforcement of the Rule 11 agreement, the appellate court modified the award to remove the excess fees and affirmed the judgment as modified.